

Rachel's Environment & Health News

#58 - Carbide Officials Face Homicide Charges In Bhopal, India, Court

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The corporate world is watching closely the trial of Union Carbide in Bhopal, India, because it is the first major test of an American company's liability for accidents at a third-world plant.

Union Carbide of Danbury, CT, had sought to face trial in India, not in the U.S., for events surrounding the leak of deadly gas from its pesticide plant in Bhopal Dec. 2, 1984. Now company officials may have doubts about the wisdom of that decision, but there's no turning back. The Indian government announced in September, 1987, it is seeking \$3 billion in damages and, in December, India's Central Bureau of Investigation, the equivalent of our FBI, filed criminal charges of "culpable homicide," a crime just short of murder, against 10 Carbide officials.

The United States Supreme Court in October refused to overturn a New York federal appeals court decision placing the trial in Indian courts, so trial preliminaries are proceeding in Bhopal. American lawyers representing Indian plaintiffs had wanted a U.S. trial because damage awards are typically higher in U.S. courts than in India. Carbide, for similar reasons, wanted the trial in India, though the corporation's lawyers hoped for a time to avoid a trial all together.

In November, Carbide offered to settle the matter for a payment of between \$500 and \$650 million to be spread over 10 years. This represented an offer of \$20,000 to the families of each of the 2660 people killed, \$10,000 to each of the 20,000 people severely injured, and \$500 to each of the 186,000 less severely injured, plus about \$150 million to build a new hospital in Bhopal and as compensation for business and government losses caused by the accident. Carbide wants to settle because a trial will create business uncertainty, forcing the company to carry a \$3 billion liability on its books. "Carbide can't make any aggressive moves in the market with that kind of liability," said one analyst in the WALL STREET JOURNAL. However, the Indian government turned down Carbide's offer and trial preparations continued. On Dec. 1, the criminal charges were filed against Carbide officials.

Then in mid-December Bhopal District Judge M.W. Deo ordered Carbide to pay \$270 million as "interim compensation" to the survivors and victims of the gas leak from Carbide's Bhopal plant the night of Dec. 2, 1984. The judge ordered Carbide to make payment within 60 days but said this would not prejudice the outcome of the trial; in other words, Carbide can get its money back if it prevails in court. Carbide said the court order "amounts to awarding damages without a trial--a practise that runs counter to the laws of India and other democracies."

Carbide claims that the leak of methyl isocyanate from its pesticide plant was caused by sabotage by a disgruntled employee, and not by poor worker training, poor equipment maintenance, and poor plant design, which are the causes alleged by the Indian government. Carbide also argues that, even if unsafe conditions did exist at the plant, Carbide's U.S. operation (which owned 50.9% of the Bhopal plant) is not responsible. Carbide has countersued the government of India, arguing that the Indian government failed to adequately regulate Carbide's activities--an interesting legal theory with profound implications. If Carbide should prevail in its lawsuit, governments would be compelled to increase their enforcement vigilance for fear of liability for accidents at facilities they regulate.

The criminal charges against Carbide's executives carry a minimum sentence of three years in jail, to a maximum of life imprisonment. The executives were ordered to appear in court in Bhopal February 4, 1988, to answer charges.

After the Indian government's case is settled, which may take many months, or even longer, Carbide faces an additional 523,770 claims filed by private parties.

--Peter Montague

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COMPREHENSIVE STUDY OF TOBACCO SHOWS REAL DANGER TO BYSTANDERS

People who smoke tobacco are making people around them sick, and in some cases contributing to those peoples' deaths, according to a book-length study by the National Academy of Sciences. Some of the study's conclusions:

If you are married to a tobacco smoker and you don't smoke yourself, your chances of getting lung cancer are increased 34% because of "environmental tobacco smoke" (ETS) in your home.

"Considering the evidence as a whole, exposure to ETS increases the incidence of lung cancer among nonsmokers," says the Academy.

Pregnant women exposed daily for several hours to ETS have an increased likelihood of producing low birth-weight children; low birth-weight children have a greater likelihood of dying, compared to normal birth-weight children.

Children of parents who smoke, compared to children of parents who do not smoke, show an increased prevalence of respiratory symptoms, usually cough, sputum, and wheezing. Bronchitis, pneumonia, and other lower-respiratory infections occur up to twice as often in children less than a year old who have one or more parents who smoke.

In 1980, 32% of adult Americans considered themselves smokers, about half of them male and half of them female. In 1955, half of all men smoked and 25% of women smoked. Since 1964, when the first Surgeon General's report linked cigarettes to lung cancer, more women are smoking and fewer men are smoking; those who do smoke are smoking 10% more cigarettes per day (30 per day vs. 27 per day), perhaps because individual cigarettes are less potent than they used to be.

The current report by the National Academy is a careful review of all previous studies of the human health effects of "environmental tobacco smoke." This report lays to rest the argument that smoking only hurts the smoker; it shows beyond any reasonable doubt that smoking hurts everyone who breathes the air near a smoker. From reading the Academy's study, we conclude: smoking is anti-social behavior and those who do it in the presence of others are guilty of assault or worse.

Get: Barbara Hulka and others, ENVIRONMENTAL TOBACCO SMOKE: MEASURING EXPOSURE AND ASSESSING HEALTH EFFECTS, (Washington, DC: National Academy of Sciences [2101 Constitution Ave., NW, Washington, DC 20418], 1986; 5th printing, 1987. 337 pgs. \$19.95. Phone (202) 3342665.

--Peter Montague

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