UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAGARNATH SAHU, OHMWATI BAI, MOHAN LAL SEN, QAMAR SULTAN, MEENU RAWAT and MAKSOOD AHMED, on behalf of themselves and all others similarly situated, Plaintiffs, - against - UNION CARBIDE CORPORATION and WARREN ANDERSON, Defendants.	Index No. **07 CV 2156** CLASS ACTION COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF; JURY TRIAL DEMANDED

Plaintiffs, by their attorneys, bring this action both individually and on behalf of all other persons similarly situated, against Defendants Union Carbide Corporation ("Union Carbide" or the "Company"), as well as its former Chief Executive Officer, Warren Anderson (collectively, "Defendants"), for compensatory and punitive damages and injunctive relief relating to property damage caused by the massive soil and groundwater contamination in and around the former Union Carbide India Limited ("UCIL") plant in Bhopal, India that has polluted the drinking water supply and soil of at least sixteen residential colonies or neighborhoods in its vicinity and threatens to spread to other areas of Bhopal. Plaintiffs in the above-captioned case were originally absent class members of a putative Class in another action, *Bano v. Union Carbide*, 99 Civ. 11329 (JFK) (the "*Bano* Action"), until that action was dismissed on grounds that the named Plaintiff held no beneficial interest in the affected properties. Some named plaintiffs are also currently plaintiffs in *Sahu v. Union Carbide*, 04-cv-08825-JFK (the *Sahu* Action), seeking

damages and injunctive relief for personal injury. That case is now on appeal. *Sahu v. Union Carbide*. 06-5694. Plaintiffs' claims relate back to the filing of the *Bano* and *Sahu* Actions.

SUMMARY OF ACTION

1. This action concerns a large-scale environmental pollution problem that Union Carbide has bequeathed to the city of Bhopal. Defendants have caused massive contamination of the soils and drinking water supply of many residential communities in the vicinity of the former UCIL plant with toxic and carcinogenic chemicals emanating and spreading through a common groundwater aquifer from the land and premises of the former UCIL plant.

2. This environmental contamination was caused, in whole or in part, by Union Carbide as a direct consequence of the following acts and/or omissions: (i) Defendants' use of inadequate, highly polluting and inappropriate technology for the manufacture of pesticides; (ii) Defendants' failure to design, provide for or otherwise ensure that such technology would be employed with adequate waste disposal mechanisms and appropriate safeguards to prevent pollution of the underground water aquifer or drinking supply of residents in the communities near the plant; (iii) Defendants' negligent design, maintenance, location, monitoring and supervision of the UCIL facility during the period of its operation which resulted in leaks causing subsurface water contamination; (iv) Defendants' decision to ratify, approve, supervise, direct and/or implement an insufficient and grossly negligent remediation of the UCIL site which exacerbated and worsened the subsurface contamination of the groundwater aquifer; (v) Defendants' failure to provide for or to undertake any appropriate measures for containment or disposal of thousands of metric tons of toxic wastes and other hazardous chemicals located, stored or buried on the UCIL plant site; (vi) Defendants' decision to approve, ratify and/or authorize the burial of thousands of metric tons of solid and liquid waste in an underground

landfill where such toxic chemicals and wastes could pollute the underground water aquifer, soil and drinking supply of thousands of residents living near the UCIL plant thereby exacerbating the environmental problem in Bhopal; and (vi) Defendants' decision to abandon even the very limited and still-incomplete "Bhopal Plant Site Remediation & Asset Recovery Project" which Union Carbide had controlled, supervised and/or participated in.

3. Union Carbide is fully liable for all of the damages asserted herein because, at all relevant times, UCIL was the Company's specific agent, general agent and/or alter-ego. Union Carbide is also liable for the claims asserted herein because Union Carbide acted in concert with UCIL to (a) engage in or undertake tortious acts in concert with UCIL or pursuant to a common design with it, and/or (b) knew that UCIL's conduct and course of action constituted a breach of duty and provided substantial assistance or encouragement to UCIL to so conduct itself.

THE PARTIES

Plaintiffs

4. Jagarnath Sahu ("Sahu") is the husband of Janki Bai Sahu and owns the land in Shiv Shakti Nagar where he and his family have lived since 1998. Shiv Shakti Nagar is a residential community located in the vicinity of the former UCIL plant. He and his family have lived there since 1998.

5. Ohmwati Bai ("Bai") is 43 years old and resides in Garib Nagar. She purchased a house and property in Garib Nagar in 1987 and has continuously resided there since. She has had to rely on a nearby hand-pump or tubewell as her only means to obtain water for cooking, cleaning, bathing, laundry and drinking..

6. Mohan Lal Sen ("Sen") owns the land on which his residence is located in Shiv Shakti Nagar. He and his family have lived in this residential area near the former UCIL plant since 1994.

7. Qamar Sultan ("Qamar") is the owner of the house in Blue Moon Colony where Munee and her family reside in the upstairs portion. Her family purchased the land in Blue Moon Colony in 1988 and moved there with her family in 1992 after she had a two-story house constructed on it. Her family currently resides in the house and also rents a portion to another family. She had a private hand-pumped well installed on their property in 1992-93 to obtain water for drinking, cooking, bathing and laundry.

8. Meenu Rawat ("Meenu") resides in Sundar Nagar, another residential colony in the vicinity of the former UCIL plant. She purchased the house and property in which she lives with her husband and daughter in 1995. Her family paid to have a hand-pumped well installed on their property, approximately 70 feet deep, which is the only source for all the water her household consumes.

9. Maksood Ahmed ("Maksood") brings the claims asserted herein on behalf of himself, his family, as guardian of his minor children, and on behalf of all others similarly situated. Maksood and his family reside in Nawab Colony, another residential area in the vicinity of the former UCIL plant. He owns the house and property in which his family are living presently.

Defendants

10. Defendant Union Carbide Corporation is a New York corporation with its principal offices located at 39 Old Ridgebury Road, Danbury, Connecticut. As shown herein, Union Carbide's acts and/or omissions were responsible, in whole or in part, for causing the

large-scale environmental problem and property damages that are the subject-matter of this Complaint.

11. Defendant Warren Anderson ("Anderson") is the former Chief Executive Officer of Union Carbide, who presently resides in Long Island, New York and/or in Florida. Anderson participated in, ratified and/or approved crucial management decisions of Union Carbide, including but not limited to: (i) the nature, type and quality of technology transferred to the Bhopal plant; (ii) the location of that manufacturing technology on the existing campus of UCIL in the vicinity of and adjacent to residential neighborhoods and populations; (iii) the waste disposal facilities and environmental features of the technology transferred to UCIL, and (iv) the storage of large quantities of methyl isocyanate in bulk or excess capacity which contributed to problems of contamination. Anderson was either a prominent member of Union Carbide's management or held the post of Chief Executive Officer of Union Carbide, where he participated in, ratified or approved other corporate decisions and policies that contributed to or exacerbated the environmental contamination and property damage complained of herein.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that Plaintiffs' claims pose a federal question, and pursuant to 28 U.S.C. § 1332 insofar as there is complete diversity between the parties and the matter in controversy exceeds $75,000. This Court also has pendent and/or supplemental jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1367.

13. This Court has personal jurisdiction over the Defendants because both of the Defendants reside in or do business within the State of New York, and have minimum contacts with the State of New York based on purposeful availment of the laws of New York and continuous business activities in the jurisdiction.

14. Venue is proper pursuant to 28 U.S.C. § 1391(a) in that the Defendants do business within the District and/or own property within this District pursuant to 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

15. Plaintiffs allege that the same pesticide plant, a former subsidiary or affiliate of Defendant Union Carbide, that was responsible for causing one of the worst peacetime environmental disasters in history, the 1984 Bhopal Gas Leak Catastrophe, which killed and maimed thousands of residents of the city of Bhopal, India, is also responsible for another toxic legacy bequeathed to the people of Bhopal through the reckless and irresponsible policies, acts, omissions and practices of Defendants.

Defendants' "Bhopal Legacy"

16. On November 15, 1999, a report entitled "The Bhopal Legacy" was published by Greenpeace, conducted with the help of the laboratories and technical experts at the University of Exeter in the United Kingdom (the "Report"). The report presented findings based on tests of groundwater and soil samples collected from various locations within the former UCIL plant and in the residential neighborhoods in its vicinity. The scientific test results from the laboratories at the University of Exeter found "extensive and, in some locations, severe chemical contamination of the environment surrounding" the UCIL facility. The report concluded that "water samples drawn from wells serving the local community… confirmed the contamination of groundwater reserves with chemicals" resulting in the "exposure of the communities surrounding the plant to complex mixtures of hazardous chemicals… on a daily basis." Many of these chemicals are highly carcinogenic, mutagenic and/or toxic to bodily systems even in very small quantities if ingested over a period of time.

17. Further, the Report found that "[v]olatile organochlorine compounds (VOCs), including chloroform (trichloromethane), carbon tetrachloride (tetrachloromethane) and chlorinated benzenes were detectable in groundwater collected from all three wells close to the northern boundary of the former UCIL plant." One carcinogenic chemical, for example, was found in the drinking water supply at levels exceeding by 1,705 times the maximum permitted limit established by the World Health Organization.

18. Lower concentrations of the same contaminants "though still significantly elevated levels were found in samples of groundwater accessed immediately to the south of the boundary and from a well in the south-east corner of the site itself." The Report concluded: "Such southward movement indicates that the contaminants are not solely migrating with the general northbound flow of the groundwater, but are also spreading outward, probably through a complex of underground aquifers."

19. According to the Report, the spread of contaminants is worsening caused by the "continued and ongoing release of chemicals from materials which remain dumped or stored on site." No substantive action has been taken to date to address this growing and large-scale problem involving massive environmental pollution of soil and groundwater in and around the UCIL facility that continues to affect the drinking water supply and other property interests of thousands of people living in the area.

20. There can be no doubt that the toxic chemicals and pollution that have invaded the drinking water and other property interests of Plaintiffs come from the UCIL plant because the Report's scientific tests were able to "match" contaminants in groundwater from community wells "with those detected in soil samples" from UCIL in addition to documenting pollutants in

groundwater immediately to the south of the plant which established "movement of contamination against the direction of ground water flow."

21. The environmental contamination at issue was proximately caused or contributed to, and allowed to develop over time and mature into the large-scale pollution problem that it has become today, injuring and affecting thousands of individuals in the residential areas near the UCIL facility, by a series of unlawful, negligent and reckless actions, omissions, policies and practices by Union Carbide stretching from the early 1970s to at least 1994.

Union Carbide's Relationship With UCIL

22. Plaintiffs allege Union Carbide was a direct participant and joint tortfeasor in the activities and decisions that resulted in the environmental pollution at issue, and can be held liable for its own actions, omissions, policies and practices. Even if that were not the case, Union Carbide conspired with and/or worked in concert with UCIL to cause, exacerbate and/or conceal the pollution problem in Bhopal. Union Carbide also exercised sufficient actual control over UCIL, its Indian affiliate, that the latter was merely the general or specific agent, or the alter ego of the former, and Union Carbide ratified the environmental policies and/or unlawful, negligent or reckless acts and omissions of UCIL after the fact.

23. During the time period in question, Union Carbide's internal corporate structure, governance and official policies ensured that it operated as a single multinational corporation with an integrated worldwide empire of business facilities through an internal network of ownership and interlocking directors, common operating systems and procedures, as well as global distribution and marketing systems and shared financial and technical resources.

24. Union Carbide's corporate policies for controlling its global network were developed in a series of policy manuals which were enforced worldwide. The single set of

policies established by Union Carbide in those manuals apply to all subsidiaries across the board, which are defined as affiliates in which Union Carbide's ownership exceeds 50 percent. Other affiliates may or may not have had more discretion. It is an undisputed fact that, until sometime in the mid-1970s, Union Carbide owned 60% of the outstanding shares of UCIL.

25. Even after the 1970s, Union Carbide achieved its objective, in negotiations with the Indian government, of maintaining at least 50.9% of the equity of UCIL, as shown herein, in order to retain control over its Indian affiliate as part of a larger corporate strategy. Pursuant to Union Carbide's internal and official policies, a "subsidiary" as defined therein could not change the substance of any policy without review by the parent corporation.

26. During this period of time, Union Carbide's corporate charter provided (in Section 1.5.4) that the Company's management system is "designed to provide centralized, integrated corporate strategic planning, direction, and control." Union Carbide's policy manual stated that "it is the general policy of the Corporation to secure and maintain effective control of an Affiliate." In addition, Union Carbide's Health, Safety and Environmental Affairs Department was delegated: "The duty and authority to conduct periodic audits of… international affiliates relative to health, safety and the environment for adequacy of their management system." The manual also declares that Union Carbide's headquarters in Danbury was responsible for taking "positive steps to assure that all operations are conducted according to superior standards of safe designs and practices." In the words of Union Carbide's own manuals, all accidents involving fatal or serious injuries "will be reviewed by the UCC chief executive officer."

27. Union Carbide's policy manuals on environmental matters indicated an even more direct and detailed role for the U.S. corporation with respect to its "subsidiaries", defined as affiliates in which it held more than 50% equity. At a public press conference on March 20,

1985, Union Carbide's Chief Executive Officer ("CEO"), Warren Anderson, described the essentially complete control that the Company exercised over its subsidiaries. When asked at a press conference about UCIL in which Union Carbide held a 50.9% stake, Defendant Anderson publicly admitted that Union Carbide exercised effective and complete control over its Indian subsidiary: "Suppose we were a 40 percent owned company or 35 percent owned company, raises some inquiries on our part, do we want to participate around the world where you have less than *absolute control*?"

28. Just how close the relationship between Union Carbide and UCIL actually was can be determined by examining their interlocking directorates and corporate structure. At least four senior executives of Union Carbide's regional division at the time, Union Carbide Eastern, were members of UCIL's board of directors. UCIL's budgets, major capital expenditures, policy decisions and company reports had to be approved by Union Carbide's corporate headquarters in the United States. Moreover, UCIL formed an integral component of Union Carbide's agricultural products division, i.e. Union Carbide Agricultural Products Company ("UCAPC"), and was directly under the managerial control of the Director of the APC who, in turn, occupied the position of executive vice-president of Union Carbide Corporation, the parent company. As Executive Vice-President of Union Carbide, this individual answered directly to the CEO of Union Carbide, Defendant Warren Anderson. In this way, the relatively short chain of command traveled directly from Bhopal to corporate headquarters in Danbury, Connecticut.

29. Speaking with regard to UCIL in particular, Defendant Anderson publicly admitted at a press conference: "I am telling you if I knew personally of any location in the corporate world of Union Carbide that had an unsafe operation it would have been shut down." When asked by Rep. Henry Waxman of the Congressional Subcommittee on Health and

Environment whether or not the UCIL plant was safe prior to the disaster in 1984, Defendant Anderson responded as follows: "Yes… We had operated it safely for seven years."

30. Union Carbide actually produced an internal manual "Legal Control of a 50-50 Joint Venture Affiliate", which lists a number of "devices or expedients" on how to retain control of an affiliate. Another publication entitled "Master Guidelines and Check List for Matters to be Considered in Organizing and Reorganizing Equity in an Affiliate" details how to accomplish this key corporate objective.

31. In the context of the UCIL operation, Union Carbide's corporate policy of maintaining control of its Indian subsidiary was to prove decisive in more ways than one. As shown herein, the crucial decision to back-integrate UCIL from a formulation plant for pesticides into a manufacturing unit was made within the context of Union Carbide's policy of retaining more than 50% of UCIL's outstanding equity and, thus, effective control over UCIL.

Defendants' Fateful Decision To Back-Integrate UCIL

32. The UCIL facility began its operations in the mid-1960s as a formulations plant for Union Carbide's patented pesticide, "SEVIN," importing the chemical components of the product from other divisions or affiliates of Union Carbide in the United States before mixing and formulating the final product for sale in India. Originally, Union Carbide had proposed to locate the UCIL pesticide plant in Trombay, a city in southwestern India, but shifted the location to Bhopal because of its central geographic location and good railway connections to other parts of India. Throughout this period, Union Carbide owned 60% of the outstanding equity of its Indian subsidiary, UCIL, which was located on land leased from the State of Madhya Pradesh.

33. However, Indian legislation then in force would have required voluntary dilution in equity by Union Carbide since that legislation required all equity holdings by foreign entities

or individuals to be voluntarily reduced by public sale to no more than 40% and also required that future operations, manufacture and technology be financed in part by raising capital locally within India. In order to avoid and minimize the impact of this legislation upon its 60% equity stake in UCIL, Union Carbide embarked upon an unlawful course of action and plan that would allow it to maintain a majority stake in its Indian subsidiary.

34. Indian law did contain some exceptions to the voluntary dilution rule for those foreign companies that were engaged in the transfer of proprietary technology for manufacture or industry to local affiliates in India, along with the associated technical expertise, which was generally not available inside the developing country at the time. The choice before Union Carbide was simple: to transfer additional proprietary technology to UCIL to maintain its majority stake or to voluntarily reduce its ownership of the Indian subsidiary. Defendants chose to do neither.

35. Instead of complying with the law of the country in which they had been doing business for decades, Defendants made the decision to "backwards-integrate" UCIL from a mere formulation facility for pesticides into a manufacturing plant. Ordinarily, this would have required the transfer of a considerable amount of proprietary and state-of-the-art technology and services from Union Carbide.

36. Union Carbide could have chosen to reduce its equity holding in UCIL, or Union Carbide could have chosen to transfer technology and expertise for manufacture to its Indian subsidiary which was not available locally for manufacturing the pesticide SEVIN, i.e. to undertake "backwards-integration" or "back-integration" of UCIL in the production process from mere formulation of pesticides into their manufacture. Union Carbide chose to do neither. Instead, Union Carbide chose to transfer inadequate, improper and obsolete technology to UCIL

for engaging in this highly polluting and dangerous manufacture of pesticides in order to reduce the costs of investment involved in the "backwards-integration" and thereby maintain its own equity above 50% of UCIL's shares

37. Thus, Union Carbide chose to embark on a highly reckless, willful and grossly negligent scheme to evade the application of Indian law, specifically FERA, in complete and utter disregard of the high magnitude of risk and danger that its course of conduct posed to the health, safety and environment of the people in Bhopal directly as a consequence of this back-integration. The series of fateful decisions made, approved and/or ratified by Union Carbide and Warren Anderson are detailed in several documents, including a Capital Budget Report for UCIL dated December 2, 1973. Each of the aforesaid decisions would play a critical role as the proximate cause of the present environmental problem afflicting the communities located near the UCIL factory. Defendant Warren Anderson is specifically identified as one of the decision-makers on the "Management Committee" of Union Carbide that made all of the following critical decisions.

Defendants' Transfer of Inadequate Technology

38. Union Carbide's 1973 Capital Budget Proposal explicitly and unambiguously states the corporate motivation underlying the Company's negotiations with the Government of India for the transfer of technology to UCIL in the context of FERA. This internal Company document states that Union Carbide's purpose was to avoid "Government of India legislation requiring a dilution of foreign held equity whenever new capital expenditures are made" because "our total equity dilution is critical to our strategy in India." This was so because, as Union Carbide's document admits: "Our specific objective is not to accept any conditions which would reduce our equity below 51%."

39. Accordingly, Union Carbide had powerful incentives to reduce the costs of the back-integration of UCIL:

> It is proposed to make a single equity issue for all three projects and to maintain a minimum of 53.5% ownership of the company. In order to accomplish this, we will have to negotiate with GOI to reduce the amount of investment for purposes of the 25% new minority equity rule from approximately $28.0 million (Rs. 215 million) to approximately $20.6 million (Rs. 163 million). **The negotiated amounts will be mainly on the SEVIN project**.

(emphasis added).

40. Furthermore, Union Carbide had no intention of transferring its proprietary or "state of the art" technology to UCIL in order to back-integrate the Bhopal plant for the manufacture of SEVIN, as it was required to pursuant to its agreements with the Government of India.[1] Indeed, the 1973 Capital Budget Proposal shows that improper, inadequate and unproven technology was transferred to UCIL for a manufacturing process involving highly toxic and volatile chemical agents:

> Technology Risks
>
> The comparative risk of poor performance and of consequent need for further investment to correct it is considerably higher in the UCIL operation than it would be had proven technology been followed throughout. CO and 1-Napthol processes have not been tried commercially and even the MIC-to-Sevin process, as developed by UCC, has had only a limited trial run. Furthermore, while similar waste streams have been handled elsewhere, this particular combination of materials is new and, accordingly, affords further chance for difficulty. In short, it can be expected that there will be interruptions in operations and delays in reaching capacity or product quality that might have been avoided by adoption of proven technology.

[1] In subsequent litigation over the 1984 Bhopal Gas Leak, the Union of India asserted claims against Union Carbide including a claim for "breach of warranty" based on the fact that the Company had promised to transfer "state of the art" equipment and failed to do so pursuant to its warranty and representation.

The 1973 Capital Budget Proposal goes on to note that "waste streams" from the UCIL plant will pose "further chance of difficulty" because "this particular combination of materials is new."

41. The environmental risks posed by this inadequate technology were not only foreseeable, but were, indeed, foreseen by Union Carbide as risks that "might have been avoided by adoption of proven technology." Not only did Anderson participate in the UCC Management Committee that made this critical decision to utilize unproven technology in Bhopal, but subsequently as the CEO of Union Carbide at the time of the 1984 Bhopal Disaster, Anderson publicly misrepresented the facts about the technology transferred to UCIL: "Somebody has to say that our safety standards in the US are identical to that in India or in Brazil or some place else. And that what they do here we have been doing for years: same equipment, same design, same everything."

42. Adding to the reckless and/or grossly negligent conduct of Defendants, the 1973 Capital Budget Proposal shows that Union Carbide's Management Committee, including Warren Anderson, specifically approved or ratified the "**proposed** plant location" for this inadequate and unproven technology at "Bhopal, site of the formulation plant," even though it could just as easily have been located in another part of the city away from the densely populated residential communities that were located near and around the UCIL facility. Between 1972 and 1984, as the Report has noted, the UCIL plant was "located within a crowded working class neighborhood in Bhopal."

43. Moreover, Union Carbide and Anderson both approved and ratified the decision to store excess quantities of methyl isocyanate ("MIC"), an extremely hazardous and volatile chemical ingredient in the making of Union Carbide's SEVIN pesticide, at the Bhopal facility. This decision was made based upon market predictions that ultimately proved to be ill-founded,

but were enthusiastically endorsed by Union Carbide and its agricultural products division. In fact, the estimates contained in the 1973 Capital Budget Report unequivocally establish that Union Carbide sought to back-integrate UCIL both in order to maintain its equity stake in its Indian subsidiary and to reap huge profits from the lucrative Indian market for pesticides.

44. The excess storage of bulk quantities of MIC, apart from its own environmentally polluting nature, necessitated the utilization and storage of additional quantities of other associated chemicals required for the manufacture of SEVIN, and contributed to the highly polluting nature of the UCIL plant's technology.

45. The 1973 Capital Budget Proposal demonstrates in a chart that Union Carbide transferred the technology for four (4) of the seven (7) back-integrated components of the UCIL plant. Moreover, Union Carbide was responsible for reviewing and ultimately approving any other technology or design that it did not provide to UCIL: "To the extent feasible UCC will provide the necessary technology and process design and will review any technology and design developed outside UCC." This was not just a proposal in 1973. Union Carbide was already doing so: "UCC C&P Engineering… is also reviewing the process design done in India for the napthol unit other than refining."

Defendants Predicted The Groundwater Pollution Problem

46. The environmental hazards posed by the inadequate and polluting technology that Union Carbide was transferring to UCIL in Bhopal could not have been more foreseeable. In fact, Union Carbide's own engineers warned the Company even before the 1973 Capital Budget Proposal of the highly probable risk of groundwater contamination at the plant site. Whereas the layout and design of the UCIL plant was loosely based on its "sister plant" in Institute, West Virginia, the plant at Institute was designed to discharge its waste streams into the Kanahwa River. From the design stage, Union Carbide knew that the waste disposal problem would not be the same at Bhopal: "The process design for Bhopal is based on no discharges to surface waters. All wastewater streams from the Pesticide Unit at Bhopal will discharge into solar evaporation ponds. All wastewater will be contained in these in-plant ponds."

47. For those reasons, Union Carbide's Engineering Department at South Charleston in a document dated July 21, 1972 discussed the "**danger of polluting subsurface water supplies** in the Bhopal area", and noted that "new ponds will have to be constructed at one to two-year intervals throughout the life of the project" in order to prevent this danger. (emphasis added). It is an undisputed fact that this recommendation from engineers at Union Carbide was never implemented at the UCIL plant. Three solar evaporation ponds were planned in the design for the UCIL facility, and only these three ponds were functioning throughout the period of its operation from 1979 to 1984.

48. The Company's Engineering Department also proposed a "Waste Liquid Incinerator" in order to address the problem of groundwater contamination posed by the UCIL facility, but this too was never incorporated by Union Carbide into the design of the Bhopal plant. Further, in 1972, UCC Engineering at South Charleston that transmitted "a revised

version" of plans for the "Waste Disposal for India Sevin Unit" to UCIL. In January 1974, Union Carbide provided another "wastewater system design" to UCIL which "specifies the underground wastewater drainage facilities to be provided in the phosgene-methyl isocyanate (MIC) and SEVIN carbomoylation structures" of the UCIL plant in Bhopal.

49. The massive environmental problem in Bhopal today, *i.e*. the pollution spreading through the soil and groundwater aquifer in and around the UCIL plant, were caused in whole or in part by these fateful decisions made, approved and/or ratified by Defendants.

Defendants' Knew About Pollution During UCIL's Operation

50. Union Carbide's Management Committee and Anderson ultimately approved the 1973 Capital Budget Proposal and thereby ultimately approved the back-integration of UCIL with all of these serious design defects, technology risks and foreseeable groundwater pollution problems at a cost of $20 million, exactly the amount set forth in the 1973 Capital Budget Proposal. UCIL personnel from Bhopal were also sent to Union Carbide's offices in the United States for training in "Environmental Pollution/Control". Members of Union Carbide's Bhopal Working Committee were briefed on the start-up of the UCIL plant on July 16, 17 and 19, 1979.

51. Union Carbide personnel from outside India supervised start-up of the back-integrated UCIL plant in 1979. On or about March 25, 1982, Union Carbide officials in the United States were informed by telex from these personnel on the ground at Bhopal that there had been a major failure of two (2) of the solar evaporation ponds: "Phase II evaporation pond almost emptied. Reports of KR Datey at site and investigation of the leakage in progress. Unfortunately, emergency pond has also shown some signs of leakage." As of April 10, 1982, these two leaking solar evaporation ponds continued to dump toxic materials into the subsurface water reservoirs of Bhopal: "Continued leakage from evaporation pond causing great concern."

52. Union Carbide's own internal documents estimated that the "total inflow" of highly toxic wastes into the three solar evaporation ponds was estimated at 5,550 metric tons for each year that UCIL was in operation. In addition to the foregoing, there were at least 11 "waste pits" and "land fill areas" on the UCIL site holding toxic materials of different kinds.

53. Environmental surveys commissioned by Union Carbide or UCIL and conducted by Arthur D. Little, Inc. ("ADL") and India's National Environmental Engineering Research Institute ("NEERI") in 1993 demonstrate the staggering scale of the environmental problem caused by the operation of the UCIL facility. The Little/NEERI 1993 Study described four primary causes of contamination that occurred during the plant's operation: (a) "the indiscriminate disposal of wastes [that] would have resulted in the contamination of the soil and water environment"; (b) the "handling of raw materials and products [at] storage tanks and their transfer points"; (c) "spillages [of toxic materials] near the major process units"; and (d) the fact that "pesticides would have become airborne during handling operations and would have been deposited in other areas within the plant premises."

54. The "indiscriminate disposal of wastes" appears to have been, by far, the primary cause of industrial contamination. Over one-fifth (21%) of the nearly 100-acre campus of the Bhopal plant premises were designated to be used as three Disposal Areas located (a) "near the formulation plant on the north east side of the plant," (b) "on the eastern side of the plant," and (c) "on the southern side of the plant." Furthermore, the plant was designed with a drain that carried away hazardous waste materials into the ground underneath the SEVIN formulation unit, and also with a ditch that carried away such wastes alongside the unit. Researchers found extremely contaminated "sediment" and "sludge" still present in the drain and the ditch as late as May 1999. An internal "Operational Safety Survey" of the UCIL plant's operations conducted

by Union Carbide, dated May 1982, listed several "Action Plan Steps" such as "Contain spillage of Sevin residues" and "Find a better way of residue disposal/handling."

55. Despite Union Carbide's knowledge of the problems at UCIL during the period of its operation in terms of the leakage events, the indiscriminate disposal of wastes, the spillage of pesticide residues, and the foreseeable prospect of groundwater contamination, Union Carbide did not take any mitigating steps, measures or actions to control, limit or otherwise remediate the problems that would eventually lead, as the Company's own engineers had advised, to a massive environmental pollution problem with the subsurface water supply. Even if the failure to act on these problems may be attributed to UCIL, Union Carbide ratified , approved and/or acquiesced in that failure to act subsequently.

Union Carbide's "Bhopal Site Rehabilitation & Asset Recovery Project"

56. After the 1984 Bhopal Gas Leak Disaster, the UCIL facility was closed and never operated again, but remained within the custody and/or control of Union Carbide and its Indian subsidiary. After the closure of UCIL under the circumstances described above, Union Carbide's primary objective became to minimize any liability associated with UCIL's operation in Bhopal and to extricate itself from the situation with the least possible exposure to its assets. Yet, Union Carbide was aware that the lease from the State of Madhya Pradesh for the land on which the UCIL facility was located required a clean-up of the leased land to a condition suitable for its use according to local zoning restrictions. Union Carbide knew that the lease could not be surrendered to Madhya Pradesh authorities in its present condition at the time without incurring liabilities for the massive on-site and potential off-site contamination.

57. Again, rather than implementing an environmental program that could have contained or mitigated the problem of contamination or pollution from the badly polluted UCIL

factory site, Union Carbide chose to embark on a site-based project, undertaken at minimal expense, which would conceal both the seriousness of on-site pollution and the potential risks of off-site contamination, while enabling Union Carbide to recover money from the sale of its remaining assets at UCIL.

58. The fact that considerations of cost were uppermost in Union Carbide's decision-making process is revealed by how Union Carbide chose to handle the environmental problem posed by the tons of "Sevin and napthol tars" or "tarry residue" generated by the operation of the plant. The problem first arose shortly after the closure of UCIL after the Bhopal Disaster in 1984. By telex dated May 27, 1986, Union Carbide officials at Danbury were informed by personnel at UCIL that storage tanks at the UCIL plant "contain approx. 15 tons of sludge which is largely chlorosulfonic acid" that must be disposed of, and requesting "input" from Union Carbide "on how this job can be done." By letter dated September 2, 1986, Union Carbide responded by transmitting materials from E.I. duPont de Nemours and the Chemical Safety Data Sheet from the Manufacturing Chemists Association. The Company's American official stated that "[a]t this time I have no additional advice to offer for removal of the sludge." On October 9, 1987, UCIL officials submitted a proposal for approval to R. V. Mynen of Union Carbide "based on experiments carried out with actual sludge samples collected from the storage tanks", and proposing an "on-site joint review" to "be held at a date convenient to you, to finalise the action plan for the disposal of sludge."

59. By September 23, 1988, UCIL officials were also communicating notes on "Disposal of Sevin and Napthol Tar" generated in large quantities by the operations of the UCIL plant based "on guidelines received from UCC", and had concluded that "[w]e are not in a position to develop any proposal for disposal of the two tarry residues in view of the limitations

elaborated in the note." The Note concludes, for example, that "we do not have any practicable solution to resolve the problem of disposal of Sevin tar."

60. Tons of this tarry residue, with the final tally amounting to nearly 250 tons exhumed from other landfills within the UCIL premises, still remain on the UCIL site at Bhopal as of today where they continue to contribute to the pollution problem and pose additional risks to the environment. As shown herein, nothing was done by Union Carbide to address this issue over a period of years stretching across more than a decade.

61. Nearly five years after the closure of UCIL, Union Carbide began to formulate what it called the "Site Rehabilitation Project –Bhopal Plant", which was discussed during a meeting of unidentified Union Carbide personnel at South Charleston "on June 27 & 28, 1989." The document memorializing this meeting contains a detailed breakdown, in metric tons, of the total volume of solid and liquid wastes at the UCIL plant as of 1989, in addition to reflecting Union Carbide's cursory plans for "site rehabilitation". Even at this very preliminary stage, before any environmental tests or sampling had even been commenced, Union Carbide knew about and fully expected to find "subsurface water contamination" at various "landfill areas" at the plant.

62. The document catalogs and describes at least 11 pits containing waste materials of different kinds in the "Note on Waste Pits & Land Fill Areas". In 1989, UCC was aware that this accumulated toxic waste was leaching into soil and groundwater at the site because the lining of the solar evaporation ponds "may have developed leaks resulting in permeation of the effluent into the soil." There are three tables also provided with a breakdown in metric tons of the amount of "Liquid Waste" and a general, unquantified description of Solid Waste present at the site.

63. The final version of Union Carbide's project was entitled "Bhopal Site Rehabilitation And Assets Recovery Project", and described its "primary objectives" as three-fold: (1) "Rehabilitation of plant site to a condition suitable for future use of land and building as light industrial site"; (2) "Rehabilitation of evaporation pond site to a condition suitable for returning to State Govt for setting-up an industrial estate"; and (3) "Realization of best value for sale of movable assets." Only the third of these goals was ever completed because, as shown herein, Union Carbide had no intention of undertaking the costly and time-consuming environmental remediation measures needed to properly restore the UCIL plant campus of nearly 100-acres to a condition where it would not pose a risk of groundwater contamination or soil contamination, not to mention environmental and safety risks posed by the storage of toxic materials on site in open containers, as well as the large quantities of waste remaining on the site.

64. Union Carbide made the decision to involve its own expert consultants from the United States, Arthur D. Little, Inc., in whatever site rehabilitation efforts that UCIL was to undertake under Union Carbide's guidance and direction. Accordingly, "since no Indian organization has had similar exposure" in terms of environmental remediation, Union Carbide made the decision to appoint Arthur D. Little, "which has considerable experience in this field" to exercise "overall guidance" over UCIL and an Indian agency, NEERI, for the Project's purposes.

65. Initially, at least, the original Project envisioned that "all these activities are undertaken by a subsidiary of UCIL to be formed at a convenient time" in order to conceal the "Union Carbide name" and thereby "attract less attention from the media."

66. Union Carbide was responsible for devising appropriate standards and/or criteria for the Project drawn from the most appropriate of: (i) local Indian standards where available; (ii) promulgated, chemical-specific U.S. standards; and/or (iii) standards obtained from the World Health Organization. Under the guidance and supervision of Union Carbide and Arthur D. Little, UCIL was to be responsible for implementation of the Project and for periodic reports and consultation with appropriate authorities in the State of Madhya Pradesh and/or the Government of India.

67. At all relevant times, Union Carbide also played the leading role in establishing the basic terms of the arrangement between UCIL and Arthur D. Little, in addition to monitoring the performance of Arthur D. Little under that arrangement. Union Carbide took the lead in virtually all aspects of dealing with Arthur D. Little, including but not limited to negotiating, supervising, setting parameters for scope of work with Arthur D. Little, and providing for the payment of invoices rendered by Arthur D. Little.

68. From the outset, Union Carbide imposed stringent requirements and cost-related constraints on the Project in order to maximize its "asset recovery" objectives. These self-imposed restrictions in terms of costs and methodology were also conveyed to Arthur D. Little and UCIL. In a document dated November 30, 1989, Arthur D. Little was advised of "the revised scope of work" regarding the Project by M. D. Buckingham, on behalf of Union Carbide, who emphasized that, "[w]hen evaluating alternative approaches which achieve the required environmental concentrations, consideration shall be given to cost, permanence and other appropriate factors. To minimize the risks of off-site transport and to take maximum advantage of natural conditions, consideration should be given to on-site and natural clean up methods."

Such on-site and natural clean up methods as “mixing” or “biodegradation” were also the cheapest for Union Carbide.

69. However, as shown herein, Union Carbide failed to complete any aspect of even this very limited and cursory “Bhopal Site Rehabilitation & Asset Recovery Project”, because it chose to abandon the Project and leave the UCIL site in a badly polluted condition, essentially as it was as of 1984, as soon as Union Carbide was able to sell its assets and complete the “asset recovery” portion of its objective. Before that, Union Carbide developed first-hand knowledge of the scale of the groundwater contamination problem at the UCIL site, and greatly exacerbated the problem by burying thousands of metric tons of highly toxic waste in a landfill, with only a thin, inadequate plastic liner to stop these wastes from leaching into the groundwater aquifer.

Union Carbide’s “Internal” And Public Studies

70. On April 12, 1990, UCC officials, including N.W. Gaines in Danbury and M. D. Buckingham in Union Carbide Asia Pacific in Singapore, received a proposal from NEERI concerning an investigation of the environmental contamination on the UCIL plant site. NEERI’s 1990 study of environmental pollution on the UCIL campus grew directly out of these efforts. Yet, UCC knew that NEERI’s results were unreliable and authorized its own “in-house” and confidential investigation of groundwater contamination at the Bhopal plant site. No governmental agencies like NEERI were involved in this internal investigation because “information and results may not be kept confidential in government laboratories even if the client so desires”, and it was “advisable to send the samples to analytical laboratories outside India.”

71. Union Carbide’s internal investigation revealed high levels of contamination inside the UCIL site. Entitled “Presence of Toxic Ingredients In Soil/Water Samples Inside Plant

Premises", this internal report discusses "nine soil/solid samples and eight liquid samples" drawn in June-July 1989 from the UCIL plant:

> The solid samples had organic contamination varying from 10% to 100% and contained known ingredients like napthol and naphthalene in substantial quantities.
>
> Majority of the liquid samples contained napthol and/or Sevin in quantities far more than permitted by ISI for onland disposal. All samples caused 100% mortality to fish in toxicity assessment studies and were to be diluted several fold to render them suitable for survival of fish.

Nevertheless, as early as May 16, 1990, UCIL officials were trumpeting NEERI's preliminary results to Madhya Pradesh State officials as conclusive proof of their assertion that "no contamination of soil and ground water" existed at the UCIL site.

72. For internal purposes, however, Union Carbide officials "advise[d] caution in using the NEERI data" for anything other than public consumption "for two reasons: 1) the study was done for the state government, and I am not sure whether they are ready to publish it broadly, and 2) we do not know the exact sample and analytical protocols" used by NEERI. UCIL knew that NEERI was "found to ignore standard sampling procedures." UCIL also learned that NEERI's test results and samples for the 1990 Report had been conducted without an appropriate Quality Control Quality Assurance ("QCQA") program, thereby casting all of the conclusions of the 1990 Report into serious doubt.

73. Union Carbide's "Business Confidential" document, dated May 22, 1990, entitled "Response to Allegations of Environmental Contamination Around the Bhopal Plant Site" is instructive on how Union Carbide sought to conceal the scale of environmental contamination at Bhopal utilizing the efforts of NEERI: "While the ponds were clearly the focus of this [NEERI] study, the close proximity of the ponds to the plant, relative to the 10 km radius, seems to implicitly 'clear' the plant site itself." Union Carbide devised a "Management Response" to

mislead the public, independent investigators and authorities in India about the existence and scale of the environmental problem they had caused in Bhopal.

74. UCIL's dependence on UCC for technical guidance was so complete that Union Carbide proposed an intensive hands-on "training program" for UCIL's director, C.K. Hayaran, "in the U.S. for sometime during the third quarter. Main focus would be practical aspects of site remediation practices." There can be little doubt that, at least as far as the Project was concerned, Union Carbide effectively controlled UCIL and all of its activities in Bhopal pursuant to the Project, in addition to Union Carbide's control of UCIL's relationship with Arthur D. Little.

Union Carbide Approves Burial Of Toxic Waste

75. By November 1992, NEERI had prepared a "Process Package for Disposal of SEP Contents at UCIL, Bhopal." This report recommended drainage of liquid waste and dumping all of the solid material from Ponds I and II into Pond III and converting Pond III into a landfill. NEERI assumed that no groundwater contamination would be caused by this burial of tons of toxic waste and materials underground close to the groundwater aquifer, so much so that it did not recommend replacing the liner of the ponds. Yet, UCIL had already begun work on implementing the landfill option at least two years before NEERI's report was even issued. In fact, NEERI's 1992 report states that UCIL had already "pumped impounded water from Ponds II and III into Pond I after 1990 and 1991 monsoons as detailed in Annexure I," a step necessary for transferring the solid waste from Ponds I and II into Pond III. Given Union Carbide's overall supervision and guidance of the Project, it is impossible that UCIL would have begun this work without pre-approval from Union Carbide.

76. Union Carbide also clearly approved the landfill option despite its knowledge of the risks of groundwater contamination posed by the burial of tons of toxic waste accumulated in these ponds. This warning is contained in a memorandum dated August 26, 1993 from M.D. Buckingham to Dennis Macauley at UCC in Danbury.:

> One option is to pump to the burial in Pond 3 at the end of summer in mid 1994. I do not favor this approach as the hydraulic pressure developed as the site is subsequently covered over may lead to splitting of the liner.

By UCIL's own estimates, the "[t]otal contained inorganics" in the solar evaporation ponds "are estimated at about 1500-2000 tonnes." Upon information and belief, this landfill has been and continues to be one of the primary sources of contamination spreading through the underground aquifer in and around the UCIL premises.

77. With regard to "Disposal of Sevin and Napthol Tars," Union Carbide's own documents show that, as of 1993, nothing had been done in terms of disposal or clean-up of the several hundred tons of this highly toxic material. An email to Norm Gaines at UCC dated April 28, 1992 indicated that Sevin and Napthol "[t]ar residues exhumed to date now total 250t", i.e. 250 tons, at the Bhopal plant.

78. Another "Business Confidential" memo from M.D. Buckingham to N.W. Gaines at UCC conclusively demonstrates that little had been accomplished in terms of "site rehabilitation" under the Project, which was nevertheless a condition for termination of UCIL's land lease, a goal which Union Carbide wanted expedited:

> UCIL has leasehold occupancy of the two sites in Bhopal, the larger 65 acre site containing the initial formulation plant and chemical manufacturing operations, while the second 34 acre site consists of three solar evaporation ponds. **Both sites remain essentially as they were in December 1984**, though all working inventories have now been removed from the main plant…. The lease of these sites is conditional on continued chemical manufacture by UCIL, and **these leases will be relinquished by UCIL as soon as feasible**. Demolition of all process plant and cleanup of

> any soil contamination to risk evaluated standards **is required as a precondition of this**.

(emphasis added). All that had been accomplished thus far by Union Carbide under its Project was the creation of an even bigger problem of environmental contamination by its approval of the burial of thousands of tons of toxic waste in an underground landfill. All that Union Carbide had accomplished was to, literally, bury its problem.

Union Carbide Abandons The Project

79. By 1994, shortly after the sale of its remaining assets in UCIL, Union Carbide chose to effectively abandon the Project and leave the UCIL site, as well as the landfill which it had approved, in the badly polluted condition in existence since the closure of the plant in 1984. In fact, Union Carbide has admitted that it had no further involvement in UCIL's efforts after it sold its remaining shares "on September 9, 1994", and the company's name was changed to Eveready Industries India Limited ("EIIL").

80. After Union Carbide's withdrawal from the Project, nothing further happened on the UCIL factory site in Bhopal at all, besides the closure and covering of the landfill that Union Carbide had approved in 1992. This is hardly surprising since Union Carbide had devised, run and implemented the Project from the very start. No further work in terms of environmental remediation was done on the site before the lease was surrendered to local authorities.

81. A memorandum dated March 20, 1995 memorializes a discussion between UCIL officials acknowledging that "as per the terms of the lease of the land taken from the State Government it is to be surrendered, in usable and habitable condition. This required environmental investigation and remediation of site before handing over to Government." Materials attached to this document indicate that internal studies of "contamination" at the former UCIL site identified four separate areas of the plant as "contaminated" by "inorganics and

heavy metals present." Also, "material from the waste disposal areas" at the UCIL plant was estimated at 123.693 metric tons and the "floor sweepings from plant dismantling" alone were 18.386 metric tons, in addition to "more waste lying in pits, underground tanks and burials."

82. One study undertaken by NEERI on behalf of UCIL was completed in 1996. On October 16, 1997, NEERI submitted its final report on its investigation entitled "Assessment of Contaminated Areas Due to Past Disposal Practices at EIIL Bhopal."

83. In a memo dated November 26, 1996, UCIL officials submitted a draft of a final report by NEERI to Arthur D. Little, Inc., the Company's experts for evaluation of its conclusions because NEERI's investigation was conducted under "ADL's guidance" since "NEERI, although a premier organization, did not have this experience" in environmental testing. NEERI's Report warned Union Carbide and UCIL that "delay in the implementation of decontamination may lead to contamination of groundwater."

84. Union Carbide's own paid experts, Arthur D. Little, repudiated the conclusions of the 1997 NEERI Report that no groundwater contamination had taken place:

> 2. Ground Water Issues: There are two major issues we have identified concerning ground water at the site:
>
> 2.1 Statements concerning contaminant travel times to the aquifer below the site should be considered highly speculative. There is very little site-specific data that can be used to confidently predict infiltration rates. The information that does exist suggests that travel times could be significantly less than identified in the report. Refer to Tier II Comment No. 41 for details.
>
> 2.2 **There does not appear to be sufficient information to discount a potential impact to groundwater from contaminated soils present on the facility**…
>
> If remedial action is completed **as quickly as possible**, the potential for contaminant migration from soil to ground water will be diminished significantly.

(emphasis added). The Tier II comments referred to above concerning travel times of contaminants from soil to the aquifer also reiterate the same conclusions about the NEERI 1997 Report: "The conclusions regarding travel time to the water table may significantly underestimate the potential for groundwater contamination... However, site-specific data from the report suggest that travel times could be significantly faster than assumed." Significantly, Arthur D. Little's comments point out: "As an example, one can argue that the worst case scenario travel time would be 2 years…"

85. By this time, however, Union Carbide had already sold its remaining assets in India and effectively abandoned the Project, as minimal and inadequate as it was. After the sale, UCIL changed its name to Eveready Industries India Limited ("EIIL").

The Land Lease Is Relinquished

86. In approximately June of 1998, EIIL officials informed the Madhya Pradesh State authorities that the secured landfill, where the thousands of tons of toxic materials from the solar evaporation pond were buried, "is nearing completion." By letter dated April 21, 1998, EIIL contacted the Madhya Pradesh District Industries Centre to voluntarily relinquish their land lease requesting "your advice on surrender of the same to the appropriate authority." On June 29, 1998, the District Industries Centre wrote back to EIIL stating that the lease could be surrendered by July 10, 1998.

87. On February 5, 1999, the Madhya Pradesh Pollution Control Board wrote to EIIL demanding that it resume its responsibilities under Indian law for the clean-up of the Bhopal plant site:

> [T]his is to state that the hazardous waste such as Napthol tar and Sevin tar residues, unfinished pesticides, excavated & contaminated soil waste lying in the premises is to be decontaminated and disposed of safely and also the decontamination of the contaminated soil is to be done… In view of the

> above, Union Carbide Ltd. (presently EIIL) is totally responsible to dispose of safely all the hazardous waste as per the Hazardous Waste (Management & Handling Rule) 1989 Act. Hence, you are requested to please take immediate steps for the same.

By letter dated February 12, 1999, EIIL responded that it had no further responsibilities with regard to the Bhopal plant site. Another document references a legal submission by Madhya Pradesh Pollution Control Board to the Bhopal District Court which asserts that, under Indian law, "Union Carbide are fully responsible for the environmental remediation of the problem created by them."

The Present Condition of the UCIL Premises

88. In November 2002, Greenpeace conducted a follow-up study on the UCIL plant site with the aid of laboratories at the University of Exeter and published a report entitled "Chemical Stockpiles at Union Carbide India Limited in Bhopal: An Investigation" ("2002 GP/Exeter Report").

89. The 2002 GP/Exeter Report collected a total of sixteen samples from six stockpiles on the campus of the former UCIL plant. The testing of those samples "clearly establishes the presence of significant stockpiles of toxic and persistent chemicals within the Union Carbide India Limited site. They are inadequately contained; indeed the materials from the Sevin structure are effectively in the open." *See*, *Id*. at p. 5. The 2002 GP/Exeter Report concluded that many of the hundreds of toxic chemicals found in samples from these stockpiles "are highly persistent," "pose a threat to the health of exposed individuals through chronic toxicity", "can be expected to remain in the environment for many years" and "can also be passed from mother to child." *Id.* at 5.

90. The 2002 GP/Exeter Report contains dozens of photographs of the UCIL plant site, including those of toxic stockpiles and wastes at the facility, as well as estimates of the

thousands of tons of chemical toxins and wastes contained in those stockpiles. With regard to the "landfill" approved, ratified and/or authorized by Union Carbide in the area of the solar evaporation ponds, the GP/Exeter Report found that, as of November 2002, "the containment is visibly inadequate with rents in the liner at several locations" (p. 5), and that the "plastic liner has been breached in at least three locations." *Id.* at 32. "Organic compounds detected in the solid wastes left unattended and insecure on the territory of the former UCIL plant are variously toxic, persistent and/or bioaccumulative." *Id.* at 32. "This report in combination with previous works… provide unequivocal evidence of a continuing risk to the local population and the environment, with the potential for these to increase, rather than decrease, over time as degradation of the various structures in and around the [UCIL] plant and the continuing action of physicochemical dispersion processes lead to the further dispersion of the contaminant and stockpile inventory." *Id.*

CLASS ACTION ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves and all individuals who at any time from the establishment of the UCIL facility in India to the present reside in the adjacent residential communities and neighborhoods whose property or interest in or use of property has been damaged by exposure to toxic chemicals as a result of the discharge of toxic effluents and other persistent pollutants into the soil and water in and around the Union Carbide plant in Bhopal. The geographic scope of this Class is comprised of the following residential areas in the vicinity of the UCIL plant: Atal Ayub Nagar, Nawab Colony, Blue Moon Colony, Garib Nagar, Chanbadi, Timber Market, Prem Nagar, Shri Ram Colony, Shiv Nagar, Sundar Nagar, New Arif Nagar, Preet Nagar, Shiv Shakti Nagar, J.P. Nagar and Kanchi Chola.

92. There are predominating common questions of law and fact relating to the claims of Plaintiffs and the Classes including, but not limited to, the following:

(a) whether Defendants' approval, ratification, recommendation or decision to use inadequate or unproven technology and practices was negligent, reckless, wanton or intentional;

(b) whether Defendants' decision to locate the UCIL plant at the existing site was negligent or reckless;

(c) whether Defendants exercised sufficient control and/or discretion over its Indian affiliate such that UCIL was a mere agent or alter ego of Union Carbide;

(d) whether Defendants conspired with and/or worked in concert with UCIL with respect to the environmental pollution of soil and groundwater in Bhopal;

(e) whether Defendants contributed to the environmental contamination affecting the residents of Bhopal;

(f) whether Defendants' conduct constitutes a nuisance and, if so, whether it constitutes a public or private nuisance or both;

(g) whether Defendants may be liable for compensatory and/or punitive damages and the measure of such damages.

93. The members of the Classes sought to be represented by Plaintiffs are so numerous that joinder of all members is impracticable. The precise number of individuals whose property were exposed to contaminants and pollutants as a result of the environmental pollution of the soil and groundwater aquifer by the former UCIL factory is not known but, based on scientific tests conducted in 1999, at least 16 municipal wards with approximately 20,000 residents in the vicinity of the UCIL plant are affected by this contamination. There is also risk of serious injury to additional properties in the future based on reliable information that the contamination is spreading.

94. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of other Class members not parties to the

adjudication. The claims are so numerous and significant that it is likely that there would be a limited fund available from Defendants' assets inadequate to compensate Plaintiffs and the Class for either compensatory or punitive damages, or both. Individual litigation of these claims would be entirely impractical and would impair the ability of Class members to protect their interests.

95. The claims of the named Plaintiffs are typical of those of the Class, and the named Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests do not conflict with those of the Class, and Plaintiffs are represented by counsel experienced in class action litigation.

96. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIMS FOR RELIEF

Count I

Negligence

97. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

98. Defendants owed a duty to Plaintiffs and the putative Class to exercise reasonable care in designing, operating and maintaining the UCIL facility, as well as in manufacturing the pesticides produced therein and disposing of them and the wastes or by-products produced by them properly in connection with their manufacture, handling, disposal and storage at the plant.

99. Defendants in concert with or through UCIL breached this duty of care by engaging in the negligent manufacture and disposal of pesticides, chemicals and toxic effluents which contaminated the groundwater, land and soil in and around the UCIL facility in Bhopal

and by otherwise failing to employ safe, prudent and technologically current techniques to prevent the discharge of toxic chemicals, effluents and other by-products into the environment.

100. Defendants were negligent in one, some and/or all of the following respects: in using technology inadequate for the manufacture of pesticides and disposal of chemical by-products of that process; in failing to utilize proper technology and disposal mechanisms to prevent the contamination of the environment surrounding its Bhopal facility with pesticides, toxic chemicals and their by-products; in failing to exercise due care in the manufacture and disposal of its chemical products; in failing to prevent spills, discharges and other leaks of pesticides, toxic effluents and chemical by-products; in failing to warn the inhabitants of the residential communities surrounding its Bhopal facility of the toxicity of the chemicals manufactured therein; in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce safe methods of disposal of its pesticides, toxic chemicals and chemical by-products; in failing to disclose to Plaintiffs and the Class medical research and tests conducted by defendant on the toxicity of the products released by defendant into the environment; in failing to test all chemical products released into the environment for adverse health effects, or to cause said products to be tested; in concealing from Plaintiffs information concerning the effects of such products in humans and animals.

101. Defendants' breach of duty was wanton, outrageous, reckless and intentional. They consciously decided, for their own economic gain, to dump chemical by-products and toxic effluents into the environment, and thereby to expose the property of Plaintiffs and the Class to toxic chemicals including, but not limited to, benzene, lead, mercury, hydrocarbons and other toxins, knowing that such substances were toxic to humans.

102. As a direct and proximate result of Defendants' breach of duty, Plaintiffs and the Class have suffered injuries to their property. Plaintiffs and the Class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count II

Public Nuisance

103. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

104. Defendants' conduct and the resulting contamination of the environment in and around its pesticide-manufacturing facility in Bhopal has created a public nuisance which endangers and will continue for many years in the future to endanger the safety, health and comfort of a large number of persons.

105. Plaintiffs and members of the putative Class have suffered a special and peculiar harm of a kind different from that suffered by others living in the residential areas surrounding the UCIL plant in that their drinking water supply and soil is already polluted and continues to be polluted to this day by toxins and contaminants emanating from the UCIL campus and the solar evaporation ponds thereby damaging their property.

106. Defendants' conduct was unreasonable, wanton, outrageous, reckless and intentional, and Plaintiffs and the Class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count III

Private Nuisance

107. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

108. Defendants' conduct has caused non-trespassory (as well as trespassory) invasions of Plaintiffs' and Class members' private use and enjoyment of their land that have resulted in damage to their property.

109. Defendants' conduct has been unreasonable in that it has caused severe annoyance, harm, inconvenience and damage to the property of Plaintiffs and the Class.

110. Defendants' conduct was unreasonable, wanton, outrageous, reckless and intentional, and Plaintiffs and the Class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count IV

Strict Liability

111. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

112. The technology provided to UCIL by Union Carbide for the manufacture of pesticides at its Bhopal facility was designed, created and used by Defendants to maximize Union Carbide's profits. This technology was defective, inadequate, unproven and unreasonably dangerous to Plaintiffs' health and the environment.

113. The technology led to the contamination of the subsurface water supplies of the areas surrounding the Bhopal facility with toxic chemicals, pesticides and by-products without providing adequate warning to Plaintiffs and the Class in their own language, of the health

hazards associated with the exposure to such toxic chemicals and by-products resulting from Union Carbide's defective and unreasonably dangerous technology.

114. The technology was defectively designed and unreasonably dangerous in that, at all times, alternative technology existed for the manufacture of pesticides which would function without discharging toxic effluents, chemicals and their by-products into the environment, and without creating unreasonable health and property hazards to Plaintiffs and the Class.

115. Union Carbide was in the business of manufacturing and selling pesticides, and, by use of unreasonably dangerous technology, contaminated the groundwater aquifer and soil, and this contamination is the direct cause of the damages sustained by Plaintiffs and the Class.

116. Plaintiffs and the Class were wholly unaware of the dangerous propensities of the chemicals, pesticides and their by-products which rendered them unsafe if spilled and discarded into the environment. The property of Plaintiffs and the Class was exposed to chemicals, pesticides and their by-products in a manner that was reasonably anticipated by Defendants. Defendants intentionally exposed the property of Plaintiffs and the Class to toxic chemicals and by-products by deliberately discarding pesticides, chemicals and their by-products into the environment.

117. Plaintiffs and the Class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count V
Trespass

118. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

119. Defendants' intentional and reckless acts and omission have resulted in the discharge of chemicals, pesticides and other pollutants onto the real property in which Plaintiffs and the Class hold a beneficial interest.

120. Such acts and omissions constitute a trespass upon the property interest of the Plaintiffs and the Class.

121. Plaintiffs and the class are entitled to recover compensatory and punitive damages as a result of Defendants' trespass in amounts to be ascertained at trial.

Count VI
Injunctive Relief

122. Plaintiffs repeat and reallege each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

123. Defendants' intentional and deliberate acts and omissions as set forth above have resulted in the discharge of chemicals, pesticides and other pollutants onto the property of the Plaintiffs and the Class. The property of Plaintiffs and members of the Class has been and is being exposed to toxic chemicals, pollutants and/or their by-products emanating from the Bhopal plant.

124. At all relevant times, Defendants caused injury to the Plaintiffs' properties, as well as injuries to the properties of the other members of the putative Class. Plaintiffs have no adequate remedy at law for these harms.

125. In the absence of equitable or injunctive relief, Plaintiffs will be irreparably harmed.

126. Accordingly, Plaintiffs are entitled to equitable and injunctive relief to remedy the

contamination and spoliation of their properties and overall habitable environment. In the alternative, if injunctive relief is determined to be impracticable or otherwise denied, Plaintiffs are entitled to a damages remedy in lieu of an injunction.

Demand For Jury Trial

127. Plaintiffs demand a jury trial on all issues.

WHEREFORE, each Plaintiff and the putative Class demands judgment against the Defendants as follows:

(a) that this Court certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(b) adjudge and decree that Defendants are legally liable for some or all of the claims asserted in this Complaint;

(c) award such compensatory damages against Defendants as permitted by law in an amount as proven at trial;

(d) award such incidental, consequential and special damages against Defendants as permitted by law in an amount as may be proven at trial;

(e) award such punitive and exemplary damages against Defendants as may be permitted by law in an amount as proven at trial;

(f) grant equitable relief, including but not limited to injunctive relief, or, alternatively, damages in lieu of equitable relief if it is found to be impossible or impracticable; .

(g) award injunctive relief, in the event that the court determines that equitable relief is impracticable and that no damages remedy is available, ordering Union Carbide to submit to the jurisdiction of the Indian courts;

(h) award reasonable attorneys' fees and costs of this litigation, including the costs of experts; and

(i) grant such other and further relief as the Court deems just and proper.

Dated: March 13, 2007

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