The Bhopal Medical Appeal

Bhopal Medical Appeal v Dow London Olympic Stadium Wrap- Briefing

Overview

The Bhopal Medical Appeal's (BMA) aim is to embarrass LOCOG, over the announcement that Dow Chemical are to provide the London Olympic Stadium 'wrap', without being critical of the games, or the overall Olympic movement, in any other way. We hope to have the decision reversed and to prevent Dow from taking this massive PR opportunity at the expense of the London Games

Our contention is that: since the London Olympics have been consistently touted as the 'sustainable games' and that the Olympic site itself was heavily contaminated before work on the games began then Dow, given their connection to an **ongoing contamination situation in Bhopal**, must be seen as an inappropriate choice of sponsor.

It is important to note that we are **NOT talking about the 1984 Bhopal Gas Disaster.** The contamination issue we are referring to is an entirely separate, 'second disaster' which sees the drinking water, used by many thousands of poor people contaminated with highly toxic chemicals. These chemicals leached into the groundwater from toxic waste dumps in and around the abandoned Union Carbide pesticide factory, site of the 1984 disaster, while it was in operation. Union Carbide is a wholly owned subsidiary of Dow.

This second disaster is **not connected to the 1984 disaster** and that **fact is acknowledged in the US courts.** It is a major environmental catastrophe and public heath problem and, thanks to the continuing poisoning of tens of thousands of poor people is, our primary concern.

Focusing on this issue means that the debate must move quickly away from the 1984 Bhopal gas disaster. From past experience we have seen that Dow respond to any Bhopal related stories with a standard PR response, namely: ***"Dow did not own nor operate the Bhopal plant; A full, final settlement was made with the Indian Govt of $470m back in 1990".***

This is their standard response and is designed to suggest closure. But, in this case, it cannot do that. The water disaster is a separate issue, which has NOT been compensated- nor has there ever been any attempt to clean up the toxic mess.

We have all the facts to make a legitimate case explaining that the second disaster is not connected to the gas disaster- as acknowledged by the US courts. We are also able to make a clear case that Dow as owners of Union Carbide, the designers of the chemical process, are ultimately liable for the contamination.

The US courts accept that this ongoing contamination issue is not connected with the gas disaster and the 'polluter pays principle' sees Dow Chemical liable for the contamination.

These are the reasons that the $470m compensation payout, or the suggestion that Dow never owned nor operated the plant, have no relevance to our case. We have a very strong position if we can only communicate these facts.

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Bhopal's Second Disaster

Second Disaster Facts:

- The groundwater in Bhopal, around the abandoned Union Carbide factory (site of 1984 Bhopal Gas Disaster), is heavily contaminated with toxic chemicals.
- This groundwater has been the only reliable drinking water source for tens of thousands of people for many years.
- The chemicals in the water attack the body's organs causing serious chronic health problems, they are carcinogenic, and they cause birth defects.
- The contamination is being caused by water leaching through toxic waste that was buried on the factory site and by leakage from solar evaporation ponds located just outside of the factory site.
- The solar evaporation ponds are known to have been leaking years before the disaster (an internal Union Carbide memo from 1982 reveals this).
- Union Carbide was aware of the environmental and groundwater contamination, after carrying out tests in the area, but chose to keep the findings of these tests secret.
- The toxic contamination of the area became public knowledge when Greenpeace tested the area and published a report, in 1999, labeling the area a 'global toxic hotspot'.
- The US courts accept that the water contamination is a separate issue from the gas disaster.
- Dow Chemical, as owners of Union Carbide, and designers of the chemical process, are ultimately liable for the continuing contamination.

Dow's Defence Exposed

The Dow Chemical Company issued a statement saying: "Union Carbide Corporation (UCC) and Union Carbide India Limited (UCIL) settled their liability for the gas release tragedy with the Government of India in 1989 and paid $470 million to the Government of India. This settlement was upheld by the Indian Supreme Court.

The water contamination has nothing to do with the gas tragedy. This settlement covers injuries caused by gas exposure and DOES NOT cover birth defects or any liabilities arising from subsequent and continued contamination of the environment or groundwater. The water contamination, as acknowledged by the US courts, has nothing to do with the 1984 gas disaster.

Since 1999 litigation has been pending, in New York, exclusively focused on the ongoing water contamination. The American courts have universally accepted that the present-day pollution has nothing to do with the gas disaster or the 1989 settlement.

"... The Bhopal site was owned and operated by UCIL, a separate, publicly traded Indian Company. With the approval of the Supreme Court, Union Carbide sold its interest in UCIL in 1994 and UCIL was renamed Eveready Industries India Limited - a company that continues to operate in India today and is the company that was involved in the tragedy.

In 1984 the Bhopal factory *was* operated by Union Carbide India Limited (UCIL). But, Union Carbide Corporation (UCC), a US based company, retained the controlling interest in UCIL with 50.9% of the stock. Union Carbide is now a 100% owned subsidiary of Dow- with Dow executives sitting on its board.

As Dow themselves point out, UCC sold its shares in UCIL in 1994- a full ten years AFTER the disaster- and thus retained control of UCIL until that point. Dow's own statement acknowledges that both UCC and UCIL were liable for the disaster. If they accept the courts ruling, regarding the settlement, then they must accept their culpability.

UCC, for its part, consistently argued that UCIL was an entirely separate corporate entity. UCC also repeatedly claimed in the courts that it was purely a US-based corporation and denies that it had 'operations' in India or elsewhere outside the USA. However, UCC's 1984 annual report stated: ***"Union Carbide Corporation's business worldwide is conducted principally through the divisions, subsidiaries and affiliates listed below."*** One of those listed was UCIL, which was also included in UCC's consolidated balance sheet for the same year.

"Dow acquired shares of Union Carbide in 2001, seven years after UCIL became Eveready Industries India Limited. Union Carbide had no assets in India at the time of the transaction with Dow. Dow never owned or operated the UCIL plant site."

Union Carbide is now a 100% owned subsidiary of Dow. Under the 'polluter pays' principle, enshrined in the law of both the US and India, Union Carbide is responsible for the environmental damage. Under the 'successor liability' principle, also established in both US and Indian law, the current owner of UCC, Dow Chemical, is liable for the continuing environmental contamination and the damage to people's health caused by it.

In the takeover of 2001 Dow acquired all of Union Carbide's assets AND its liabilities. Dow has accepted Union Carbide's liabilities in the US. Outstanding liabilities of Union Carbide are directly addressed by Dow representatives and, once paid, are registered as charges on Dow's consolidated earnings.

Postscript

In a speech to the UN the Dow Chemical Company announced its commitment to creating safe, sustainable water supplies around the world, Andrew Liveris (Chairman and CEO of Dow) said:

"Water is the single most important chemical compound for the preservation and flourishing of human life... "And yet today, more than a billion people are in peril every day because they do not have enough water or the water they have is unhealthy. Lack of clean water is the single largest cause of disease in the world and more than 4,500 children die each day because of it."

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