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## Why I Care About BP's Legal Accountability

Joanne Doroshow



**Joanne Doroshow, Contributor**

Executive Director, Center for Justice & Democracy at New York Law School

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Twelve years ago, I got together with some consumer advocates from around the country and formed the [Center for Justice & Democracy](#). Our mission has always been to protect access to the civil courts for everyday people and fight attempts to limit corporate accountability for wrongdoing.

Our civil courts allow members of the public to confront the biggest corporations in the world on (more or less) a level playing field. Indeed, when it comes to helping victims of corporate violations, the United States has the best and, under some circumstances, the only laws available in the world for victims to obtain some sort of redress and to hold these corporate abusers financially accountable in court. But it's also a legal system that corporate wrongdoers will do anything to maneuver out of. I came to understand this not just working at CJ&D, but also after fighting for victims of some of the world's worst industrial disasters, work that has followed me throughout my life.

In 1989, I ran a California nonprofit group called the Bhopal Justice Campaign. Bhopal, India is [the site of](#) the world's worst industrial disaster, a 1984 catastrophic chemical leak that spread more than 27 tons of methyl isocyanate over the city. Union Carbide Corporation (now owned by Dow Chemical) and its Indian subsidiary ran the plant. Tens of thousands of people were killed, many dying in extreme agony. Hundreds of thousands suffered excruciating, debilitating injuries; a hundred thousand are still sick, and chemicals linger there because the company hightailed it out of India without ever cleaning it up.

We had only one goal - to try to bring the civil lawsuits to the United States. In February 1989, Union Carbide and the Indian government had struck a deal that would vastly under-compensate the Bhopal victims, release the company of future liability and have little impact on the firm's financial health. As we [wrote then](#), "Because Union Carbide made critical design, operational and expenditure decisions in the United States regarding Bhopal, our justice system has a responsibility in this case." We believed that if an

American corporation were allowed to be so careless with lives far removed from ours, it could be as careless here.

The company fought hard to kick the case back to India and it succeeded. The paltry settlement offer - \$470 million, or about \$500 per victim - went through. As a result, there has been virtually no corporate accountability for this catastrophe. Ironically, India's attorney general has just asked India's Supreme Court to force Dow to pay another \$1.1 billion for compensation and clean-up, "to cure gross miscarriage of justice and perpetration of irremediable injustice being suffered by the victims of the Bhopal gas tragedy." This is far less than what's needed but in any event, Dow is refusing, saying it's not responsible.

Before Bhopal, I spent five years of my life helping the community fight the restart of the Three Mile Island nuclear reactor. TMI's 1979 accident still stands as worst commercial nuclear accident in U.S. history. The restarting of TMI was something the nuclear industry believed it desperately needed for the industry to survive. However, the company running the reactor made it difficult, even by pro-industry Nuclear Regulatory Commission standards. Five years into the case, we were still in the middle of the NRC's licensing hearing process. Every month, new evidence surfaced demonstrating that the company's license to operate TMI should be revoked. By 1985, then Governor Dick Thornburgh, both U.S. Senators (Republicans), the entire area Congressional delegation, the entire Pennsylvania Senate, the community by 2 to 1 and 3 to 1 margins, all opposed TMI's restart. But the industry and its captive regulators, the NRC, apparently couldn't stomach the delay any longer. So they simply stopped the hearings and ordered the plant restarted. We got to court, but courts are notoriously resistant to second-guessing agencies like the NRC. So eventually, we lost.

What TMI and Bhopal each taught me was that corporations will find any way they can to try to control the judicial process and make sure their misconduct never gets thoroughly examined by a U.S. judge or jury. Lobbying for so-called "tort reform" laws, which place obstacles in the way of legitimate cases, is one way they do that. Another significant way is giving companies the power to decide which courts will hear cases that accuse them of wrongdoing (like Bhopal, or in the U.S., the [class action law](#) that passed in 2005.) But the most extreme version of corporate control of the judicial process is privatization. In other words, these are situations where disputes are resolved in administrative structures entirely

outside the courtroom. In these scenarios, decision-makers are paid by the wrongdoers themselves. The results may be binding - victims who accept settlements lose their right to trial by jury. And in the most extreme examples, victims lose all right to sue every culpable company that may be responsible for causing harm.

Unfortunately, this is exactly the structure set up to resolve claims resulting from the country's worst environmental disaster - the Deepwater Horizon oil rig explosion and spill in the Gulf earlier this year. Kenneth Feinberg and his law firm have a lucrative contract with BP to adjudicate claims in a structure known as the Gulf Coast Claims Facility. BP, as the legally responsible party, has set aside \$20 billion for claims, but the long-term effects of the disaster for businesses and communities will not be known for several years and losses will likely far exceed this amount. Mr. Feinberg is nonetheless heavily pressuring individuals and businesses to settle now and to relinquish their rights ever to sue not only BP but also all negligent companies.

Aside from the impact on victims, who must give up all legal rights before they know the extent of their losses, CJ&D is concerned that weakening the legal accountability of all culpable companies in this way could have grave ramifications for the future health and safety of the Gulf and elsewhere. While the claims process may be appropriate and necessary for some, the fact that it is being urged by an attorney representing and compensated by BP, who may be directly engaging victims outside of the presence of their own counsel, is deeply distressing.

BP can't kick this case back to the U.K. But the company has clearly figured out a way to control the process nonetheless. Mr. Feinberg has made clear that he hopes the companies responsible for this catastrophe are never forced to answer to a U.S. judge or jury. It's a disturbing precedent and one that CJ&D intends to follow closely.