

*Note: Info not to be
Accredited!*

NOTES ON THE PROPOSED SETTLEMENT AGREEMENT

RE: U.S. vs. Hooker Chemical

1. Once ratified the agreement will be a legally binding settlement of action instituted by the United States and the State of New York against Hooker Chemicals and the other parties identified therein. The settlement defines duties and responsibilities of the parties, specifies the role of the court, identifies the criteria to be used in resolving specific disputes should they arise, bars any further recourse by the parties against each other so long as they are in compliance with the agreement and expressly restricts the applicability of the agreement to the parties themselves.

2. Liability of Hooker Chemical

- (A) To determine the extent to which the Agreement narrows or circumscribes Hooker Chemicals' liability we must examine paragraphs 5 and 11 of the Agreement.

Subparagraph 11(b) provides that "This Judgement shall constitute full discharge and release of Occidental, Hooker and any other Occidental subsidiary by all government parties hereto". However, paragraph 5 provides "it is intended that this Judgement shall neither create nor affect the rights of persons or entities who are not parties to this action".

{ In consequence one must look to U.S. Federal and State legislation as well as the Common Law to determine the nature and extent of Hooker's potential liability to non-parties.

Furthermore, the agreement does not touch upon the international obligations assumed by the United States and Canada under the Boundary Waters Treaty, which expressly prohibits pollution of waters causing injury to property or health of persons on either side of the border; nor with the obligations assumed by both countries under the Great Lakes Water Quality Agreement of 1978.

- (B) The containment, monitoring and maintenance programme itself may not adequately protect the waters of the Niagara River which flow into the Great Lakes. By giving judicial seal of approval to the programme the United States and New York State governments may be effectively barred from taking any action against Hooker Chemicals so long as the latter are in compliance with the agreement, except as regards those discharges that did not occur at the date of the agreement. Thus, there could conceivably have been a violation of the Treaty and the 1978 Great Lakes Agreement referred to above, but the two governments are barred from raising this violation at a subsequent point in time.

Furthermore, the emphasis on protection of health of U.S. citizens in New York State in determining the adequacy of Remedial Technology does not take account of Canadians, in the future, and this may restrict the ability of the government parties to the agreement to insist on more advanced technology at a future date. If these considerations are to be dealt with it would be essential to reconsider this particular provision.

*Can public interest
breach
violates*

(C) Some Further Points

(i) Delay or Prevention of Performance (para 8(a), page 13)

The "force majeure" clause which absolves Hooker Chemicals from liability for delays caused by circumstances beyond its control does not appear to cover circumstances brought about by Hooker Chemicals' own fault or lack of due diligence.

(ii) Occidental's Guarantee (Addendum IV)

This guarantee is limited to the eventuality of Hooker Chemicals' insolvency. It does not guarantee due performance, nor does it cover dissolution of the corporation or its ceasing to carry on operations altogether by closing its doors.