

Lawsuits:

Judge dismisses second-hand smoke lawsuit against Caesars Entertainment

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A federal judge has dismissed a lawsuit claiming the health of casino employees is in jeopardy because of their constant exposure to tobacco smoke.

U.S. District Judge Sarah Vance in Louisiana last week dismissed [a suit claiming Caesars Entertainment Corp. of Las Vegas was responsible](#) for the cancer death of a dealer at its Harrah's hotel-casino in New Orleans.

The suit filed by Denise Bevrotte claimed [Harrah's New Orleans](#) had failed to protect employees from second-hand cigarette and cigar smoke.

The suit complained her son, Maceo Bevrotte Jr., a Harrah's dealer for 15 years and a non-smoker, had contracted leukemia because of exposure to smoke at work and then died in 2010.

The suit had been proposed as a class-action representing more than 1,000 former, current and future nonsmoking employees of Harrah's New Orleans.

Vance dismissed the suit on technical legal grounds without the case advancing to the point where a determination could be made on whether Harrah's had a duty to protect employees from the dangers of smoke and whether it breached such a duty.

Bevrotte's wrongful death suit alleged her son contracted an occupational disease as defined by the Louisiana Workers' Compensation Act. The workers' compensation system is her sole avenue to pursue those claims, Vance ruled.

The judge rejected an argument by Bevrotte's attorney that whether leukemia is an occupation disease — which would shield Harrah's from lawsuit liability — is an issue that should have been decided with a trial in the court system.

Bevrotte's attorney, Jalila Jefferson-Bullock in New Orleans, couldn't immediately be reached for comment on the dismissal of the suit.

A [similar suit seeking class-action status](#) and filed in 2009 is pending in federal court in Las Vegas pitting dealer and union activist Kanie Kastroll against [Wynn Las Vegas](#). That suit doesn't allege anyone has died because of tobacco smoke in the casino but says the smoke aggravates Kastroll's asthma and subjects employees to "ingestion of cancer-causing chemicals and toxins."

That suit survived [an early dismissal motion](#) but is still in the legal-wrangling stage.

It's unclear when, or if, Kastroll's case will advance to the point where a decision is made on whether Wynn has failed to protect workers from tobacco dangers and whether it has a duty to do so.

Wynn attorneys said Kastroll's suit can't proceed as a class-action under a little-known provision in federal law governing "home-state controversies."

They said this provision bars federal class-action lawsuits when more than two-thirds of the proposed plaintiff class members are citizens of the forum state.

In this case, they say, the class-action can't stand because 99.6 percent of Wynn's current employees, and 91 percent of its former employees, live in Nevada.

On top of that, they've argued the [Nevada Clean Indoor Air Act](#), a successful 2006 ballot measure, specifically exempts nonrestricted gaming licensees like Wynn from smoking restrictions imposed on other workplaces.

In both the Bevrotte and Kastroll lawsuits, the casinos were accused of failing to protect workers by requiring them to deal at tables where gamblers smoke, failing to install adequate ventilation systems, encouraging customers to smoke by providing or selling cigarettes and failing to monitor the health of employees subjected to smoke.

The casino industry, for its part, says it has improved ventilation and that it's important for business reasons to cater to customers who smoke.

Nevertheless, [some casino smoking lawsuits have been successful](#) around the country, including one filed by a dealer against the Tropicana Atlantic City that was settled in 2010 for \$4.5 million.

And [Smoke-Free Gaming](#), an advocacy group, notes the new Revel resort opened smoke-free this year in Atlantic City.

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