

New Jersey Judge Not Just Blowing Second Hand Smoke

By [Robert Wilson](#) 04/02/2015 07:34:00

A recent court decision in New Jersey shows both the continuing dangers of second hand smoke to those who are continually exposed to it, while at the same time demonstrating that the timelines involved in such situations may end up protecting employers from that liability. After what the State Department of Labor terms a "highly detailed examination of the evidence", a judge determined that the petitioner had indeed proven "all the elements of a compensable claim".

Despite that finding, however, the judge was "compelled to dismiss the claim with prejudice for lack of jurisdiction pursuant to N.J.S.A. 34:15-34 because the petitioner failed to file his claim until many years had passed after the date he knew the nature of his disability and its relation to his employment."

The case, *Pulejo v. Middlesex County Consumer Affairs*, was initially filed April 21, 2010, in which, Frank Pulejo, Jr., alleged "exposure to secondhand cigarette smoke from co-workers while employed by the Respondent, Middlesex County Consumer Affairs, from 1976 through 1997, resulting in the contracture of lung cancer and an aggravation of pre-existing chronic obstructive pulmonary disease (COPD)." He had developed COPD during 25 years of exposure to dust and chemicals at a previous employer. He was awarded a 10% permanent partial rating for that in 1981.

Pulejo retired in 1997. In 2000 he noticed a lump in his neck, and follow up examinations led to the discovery of lung cancer.

The court found that Pulejo adequately made his case that the cancer was caused by exposure to cigarette smoke from co-workers. He had spent 21 years in an office with several people. He was the only non-smoker in the office, had never smoked, and his family had no history

of lung cancer. The court also found that he had waited too long after identifying the source of his condition to bring the case before the courts.

You may read the case [here](#).

There are distinct challenges in this type of case. First and foremost, conditions of this nature often take many years to manifest themselves. Determining actual causation is often fraught with peril. In this case advanced age probably complicated the issue further. Pulejo was born in 1925, so would have been 75 years old at the time of diagnosis. Elderly patients have a much higher incident rate of cancer, so ferreting out the actual cause could be difficult.

Reporting requirements also make this a tough case to win . New Jersey law says that a worker should notify their employer as soon as possible, but not later than 90 days from the date of the accident. For Occupational Disease, there is no time limitation upon the filing of claims for compensation; but once the nature of the disease is known by a claimant they have just two years with which to make their claim. Clearly Pulejo was about 8 years too late on that count.

He had been out of the workplace for 3 years. At that age, dealing with a serious condition such as this, there were likely many distractions that led to the delay in filing. Not many people in that situation would, at the very time of diagnosis, think "I've got to file a workers' comp claim over this". I would imagine that they have other more pressing issues on their mind.

The good news here is that changing laws and societal standards will have the effect of dramatically reducing these types of cases from this point out. Smoking inside the workplace has been eliminated in many states, and greatly reduced in others over recent years.

Smokers today are largely being sent outside, or given designated areas where their smoke can not impact others. The days of being stuck working in smoke filled rooms have largely disappeared.

For employers that is good, as liabilities do exist if people manage to identify the cause of their malady early enough. For employees it is

great, as it means their malady may actually never be.

As we all know, the best type of malady is none. And like our New Jersey judge, I'm not just blowing smoke.

<http://www.workerscompensation.com/compnewsnetwork/from-bobs-cluttered-desk/21069-new-jersey-judge-not-just-blowing-second-hand-smoke.html>