

A Sense of Justice for Maintainer's Family Breakthrough Ruling Connects Diesel Emissions to Lung Cancer

The family of deceased Local 100 Bus Maintainer Anthony Nigro has won a landmark job-related death claim case before the Workers Compensation Board that establishes a link between exposure to diesel exhaust and cancer for the first time in any court or legal proceeding.

Brother Nigro died of lung cancer in 2012 a few months after retiring. He had worked for 28 years as a Maintainer at MTA facilities, most recently Quill Depot.

The family's oncologist told Brother Nigro's widow, Dorota "Dora" Nigro, that he believed diesel exposure over many years was a cause of the cancer.

Attorney Robert Grey, of Grey & Grey, LLP, who filed the claim on behalf of the Nigro family, said that this is the "first case where a Workers Compensation Board, or any other court has recognized the cause and effect of diesel to occupational disease."

"In a legal sense, someone has to be the first to climb Mt. Everest in litigation on diesel exhaust," said Grey. "Hopefully, this is our Mt. Everest, and the path for other claimants who have been harmed by diesel exposure is less difficult."

The MTA disputed the claim and presented expert testimony by pulmonologist Dr. Lawrence Scharer who claimed that Brother Nigro had a history of smoking, and that "cigarettes was far and away more important" factor in this case than the diesel exposure.

However, Grey produced an expert witness specializing in occupational and preventative medicine who testified that "diesel dust emissions are a lung carcinogen" and that Brother Nigro's "occupation as a New York City Transit Authority mechanic for 28 years provided him ample exposure . . . to diesel exhaust emissions. . . And that exposure either caused or contributed to his lung cancer."



Above, Anthony Nigro, at Quill Depot. Left, Dorota Nigro, participating in recent NYCOSH symposium on diesel exhaust danger.

The expert said that smoking was also "a likely contributor," but that the diesel emissions were "more likely than not a significant contributing factor in causing or aggravating" Mr. Nigro's illness and death.

Three of Brother Nigro's former co-workers, now retired, gave powerful testimony supporting the family's claim of regular exposure to diesel exhaust.

Quill Depot Chair Vincent Coppola recalls Nigro as "a hard worker who made everyone smile. He knew everyone throughout the system, and he had friends in every location. His death so soon after retirement and the family's case has opened a lot of eyes around here. I think this successful case will open the legal doors for all bus maintainers who get sick in the future."

Workers' Compensation Law Judge Jay Leibowitz ruled in favor of the Nigro family and awarded them a weekly benefit of \$773.00 as well as approximately \$100,000 in benefits retroactive to his death, and a \$6,000 funeral expenses benefit.

The MTA has not appealed the ruling.

What They're Saying About Precedent-Setting Diesel Case

"The importance of this case cannot be underestimated. The law often fails to keep pace with new medical and scientific knowledge. At one time, conditions like asbestosis and carpal tunnel syndrome were not recognized as work-related. Today, their connection to work is well-known, but every time the law is expanded to cover new injuries and illnesses, and to protect more workers, the



Attorney Robert Grey

What They're Saying About Precedent-Setting Diesel Case

process has to start with one claim, by one person. This is that case, the first one in which the workers' compensation system has recognized a link between diesel exhaust and lung cancer. It will help pave the way for others to be compensated and to get medical care, and we hope that it will also encourage the Transit Authority to take steps to protect the occupational safety and health of its workers."

Robert Grey, Esq.
Grey & Grey, LLP

"This is an important case as it acknowledges the role that diesel exhaust emissions (DEE) play in lung cancer causation.

Workers with similar exposure profiles are also likely to be at risk. In my opinion,

these workers would benefit from an occupational medical screening, which in addition to traditional screening tests, could include low dose CT scan. Low dose CT has been shown to reduce lung cancer mortality and can be an important part of a screening program for those shown to be at-risk. Lastly, a health status review of current and former DEE exposed employees would be important to better understand the health-risks of this cohort of DEE exposed workers.

Lewis Pepper, MD, MPH
Barry Commoner Center
For Health and the Environment
Queens College, CUNY



"This case is really a monumental decision. It's reminiscent of where we were with asbestos in the '70s. This is how the asbestos fight started, with just a few cases. Then we found out about more, then they uncovered a pattern, and the flood-gates opened. We need to find out more about diesel and cancer trends among transit workers. We need to know how many of our members have been stricken by lung cancer, and target which job titles those cancers came from."



Dr. Frank Goldsmith
Director, Local 100
Occupational Health

This is quite a victory for the workers. Diesel exhaust is deadly. Those who must work in areas where there is exposure to diesel exhaust are at an elevated risk of cancer and other diseases.

Objective scientists around the globe agree on the risk and prevention, yet government agencies like the Department of Labor Occupational Safety and Health Administration and the Mine Safety and Health Administration decline to step up to the plate and regulate diesel exhaust.

Why? For the simple reason that diesel use is widespread, and the powerful corporations that produce and use diesel are averse to any regulation, claim-

ing it would be costly. They are right: it would cost, but nowhere near the amount that industry lobbyists suggest. Instead, the cost of not regulating this dangerous exhaust is being borne by the men and women who are exposed and who pay the price in illness, reduced quality of life, and shortened life spans.

Mechanics in bus depots, miners in underground mines that use diesel-powered equipment, subway maintenance workers exposed to diesel exhaust in the confined spaces of subways, among others. But their exposures and illnesses don't occur en masse, in noble settings like battlefields or sieges. Their illnesses and deaths occur one at a time, tucked away in homes and hospitals with their spouses and children nearby. These deaths are not the stuff of headlines.

If we look back in history to an earlier Department of Labor, under then-Secretary Frances Perkins, some eighty or so years ago, we find a similar issue with silica dust exposure. Like diesel, exposure to silica dust was known to be deadly, leading to the chronic and often fatal lung disease, silicosis. As with diesel exhaust today,

the preventive steps were well-known. Again, as always, the producers and users of silica were politically powerful and opposed to any workplace health or safety regulation. Again, as they are today, the lobbyists' cries of "Cost!" were just as loud and just as false. Silica use, now with regulations, is still very active in production and industry -- in this country and abroad.

So why cannot the same approach be taken with diesel exhaust?



Davitt McAteer
Former Assistant
Secretary Mine Safety
and Health
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