

# Transport Workers Union Local 100 **IN THE NEWS**

As Seen In

The Chief

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A GROUNDBREAKING WIN: Anthony Nigro died of lung cancer in January 2012 after 28 years spent as a Bus Mechanic working in diesel-filled Metropolitan Transportation Authority depots. His wife, Dorota, won a settlement potentially worth more than \$1 million after a state Workers' Compensation Judge ruled that the illness was at least partly triggered by his occupational exposure. Her attorneys believe it's the first case establishing a legal connection between diesel exposure and cancer.

PHOTO PROVIDED BY DOROTA NIGRO

## Gets Large Workers' Comp Award for Death

# Bus Mechanic's Widow Proved He 'Wasn't Just a Number' With Win

By SARAH DORSEY

Dorota Nigro was used to the smell of diesel. It came home every day on Anthony Nigro's work clothes.

"When my husband used to bring home his uniform to wash, it smelled so bad," she said last week, sitting in a café near Manhattan's Michael J. Quill Bus Depot, where he worked prior to his death two years ago. "I used to tell him, go in the back door, straight to the laundry room, put it in the wash and throw some soap and start it. That's how bad it was."

### An Emotional Battle

A few days earlier, Ms. Nigro had won a potentially more-than-million-dollar judgment against the Metropolitan Transportation Authority in what her attorneys believe is the first case establishing a legal link between diesel emissions and cancer. Recalling her battle in state Workers' Compensation court, she said that the Judge had to quiet her a few times when opposing witnesses were testifying.

Anthony Nigro spent 28 years as a Bus Mechanic before dying in January 2012 at age 57 from lung cancer. His doctor believed it was

spurred by the years he spent breathing in diesel emissions. Months later, his wife wound up in a courtroom, hearing a witness for the transit agency question whether he really had much exposure to the fumes.

"I said, 'Are you kidding me? He worked the a.m. shift!'" Ms. Nigro recalled. She said the Judge had to silence her a couple of more times.

For the last eight years of his service, Mr. Nigro worked the 5 a.m. shift out of Mike Quill.

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# Bus Mechanic ‘Wasn’t Just a Number’

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In the mornings, as many as 200 to 300 of the city’s buses would line up, spewing their smoke into the depot. Before that, he’d worked at other properties and was also ex-

posed to other unhealthy types of dust, including metal shavings when he worked on brakes. She didn’t see how anyone could question the risk.

A longtime flight attendant, Ms. Nigro said she is used to dealing with what the public throws at her and sticking up for herself. “That’s why I’m mouthy,” she joked.

### ‘Want to Help Other Wives’

Her outspokenness took her far. After a two-year legal battle with the MTA before the state Workers’ Compensation Board, she was informed at the end of July that, for her husband’s death, she would get roughly \$100,000 in retroactive payments plus \$773 a week for life, unless she remarries.

“I did it to prove to my husband that you weren’t just a number,” she said. She knew that some of his co-workers had died of lung disease, and added, “I want to help the other wives.”

Mr. Nigro retired from the MTA in 2012. When he developed a persistent cough a few months earlier, he initially didn’t think much of it. He’d been a heavy smoker, but he quit more than two decades before. As the Centers for Disease Control touts in its anti-smoking brochures, the risk of lung cancer is thought to fall by half a decade after quitting.

As Ms. Nigro recalled it, the doctors at first didn’t think it was significant either. When her husband finally had it checked out, he was sent to a gastroenterologist; his primary physician thought he might have a touch of acid reflux.

### Weight Loss a Tipoff

By the time he went to the specialist, however, he’d already lost weight, Ms. Nigro said. His endoscopy showed nothing alarming in his stomach, and he was already walking out of the G.I. doctor’s office when he made a joke about the weight loss.

Of course he was thin, “with this little Gestapo at home, [feeding me] chicken, salad, chicken, salad,” Ms. Nigro recalled her husband saying. “God forbid I have a little piece of cheesecake.” But the joke made him chuckle, and the chuckle, according to Ms. Nigro, made him cough—and

cough and cough.

“[It] was a dry cough that you can’t control,” she said. She saw a look of alarm on the doctor’s face, and she called him back into the office. Right there, she wrote him orders for several scans.

When the diagnosis of Stage IV inoperable lung cancer was delivered at the end of September, Mr. Nigro had only been retired for a couple of months, his wife said. He lived for just over three more. Initially, he discouraged her from fighting the case with the MTA.

She hadn’t even thought of it, she said, until one of the oncologists told her the cancer was environmental. And then her husband was skeptical.

### ‘You’ll Fight the MTA?’

“Are you crazy, are you

really that thick?” she recalls him asking. “Are you going to fight the MTA? Don’t you know I’m just a number? You’re going to get sick doing this.”

“I’m already sick—I’m losing you,” she replied.

Proving that an environmental toxin caused an individual tumor can be a longshot. In state Workers’ Compensation cases, however, the petitioner need only prove that the exposure significantly contributed to the illness, an important distinction for Ms. Nigro, whose husband’s smoking history likely played a part.

Robert Grey, one of Ms. Nigro’s attorneys, noted that in class-action lawsuits, which have been won against tobacco companies and asbestos firms, statistics make the lines more clear. In a large group of workers, a rash of cancer cases not seen among their friends and neighbors would be conspicuous. Some might’ve gotten cancer anyway, but surely not all of them. But how do you prove that an individual tumor was, as an epidemiologist might put it, one of the excess cases?

### Like Asbestos Case

Davitt McAteer, who headed the Mine Safety and Health Administration during the Clinton era, believes the Nigro case is a landmark win that will lead to many more diesel settlements for workers, much like the first asbestos case.

“Absolutely. There’s no question about it,” he said in a phone interview last week.

“The problem with diesel is its ubiquitous nature,” he said. “It’s everywhere. And when you suggest that you’re going to regulate a product that’s so widespread, that’s in such widespread use, you really are taking on Goliath.”

The MTA award could be worth more than \$1 million if Ms. Nigro lives another 30 years. It was modest compared to some occupational-health settlements involving private companies, but Mr. McAteer said that shouldn’t diminish its importance.

### Expects Expansion

“The dam doesn’t break through a major hole. It starts with a small hole that gradually expands,” he said.

Diesel is all around us—used to power not just trucks and buses, but equipment like generators and other industrial tools—though those working in confined spaces are the most vulnerable to its effects. Mr. McAteer said that the neatest comparison might not be asbestos, but another substance that’s much more common.

“The same pattern exist[ed] with silica in the ’40s,” he said of the crystalline dust that can sicken miners and workers in dozens of other jobs who breathe it in without proper ventilation and protective gear. “You had a widely-used product that scientists suspected was dangerous. But it took [Labor Secretary] Frances Perkins to step up to the plate.”

He said he thought the Nigro decision “forces the issue onto the Secretary of Labor’s plate and says, ‘What are we going to do about this?’ Because Mr. Nigro won’t be the last case to come forward.”

### Colleagues Were Vital

Ms. Nigro said she never would have won if it weren’t for the personal testimony of a few retired co-workers and even supervisors who came forward.

“They described the a.m. service,” she said, acknowledging that the diesel fuel used today is cleaner than when her husband started. “[But] no matter how much they improve it, they’re still leaking fumes.”

“It’s because they loved my husband,” she said of the co-workers’ loyalty, calling Anthony “like the social director” of the depot. When there was a problem, “he fixed it just like that,” she said. “My husband was a good mechanic.”