



Chris Coggins • 03/07/2000 02:32 PM

To: Lorillard R&D  
cc:  
Subject: Dismissal of New York Union Cases

Frm Jack Reilly, Esq:

I am pleased to report that Justice Edward Ramos of New York State Supreme Court in Manhattan has granted our motion to dismiss fourteen union fund suits, in yet another denunciation of third-party cost recovery legal theories. Judge Ramos finds that all of plaintiffs' claims in the fourteen suits -- including those for fraud, antitrust violations, deceptive trade practices, false advertising, breach of special duty, negligence, strict liability, negligent and intentional entrustment, indemnity, and public nuisance -- are remote, indirect, and derivative of third parties. Because the Funds would not have incurred the additional health care expenses it seeks to recover without the smokers suffering any (claimed) injury, "there can be no direct link between the alleged misconduct of Defendants and the alleged damage to the Funds." Consequently, their claims must be dismissed.

Justice Ramos relies heavily on the recent court decisions (including the Second Circuit's in Laborers Local 17) dismissing union fund suits and the longstanding rule of law "that the victim of a tort is the appropriate plaintiff and that third-party providers of medical care may recover only pursuant to rights of subrogation [the doctrine which allows insurers to be substituted for an individual insured in a lawsuit]." Were this Court to rule otherwise, he continues, "the basic theory of proximate cause would be turned on its head, resulting in remote plaintiffs making claims against defendants with whom there is an absolute lack of privity." To allow the funds' suits to proceed "would cause chaos in the judicial system, especially in light of the fact that the [union] participants and beneficiaries could bring suits on their own behalf."

Justice Ramos writes that he is "well aware" of Judge Jack Weinstein's decisions in Blue Cross of New Jersey (federal court, Brooklyn) and National Asbestos Workers (federal court, Brooklyn) permitting those suits to proceed, but finds that Weinstein's analysis is neither persuasive nor applicable.

Finally, Judge Ramos finds that plaintiffs' claims are barred by the statute of limitations, agreeing with our assertion that the funds have been on notice of the health risks associated with smoking for many years and "therefore failed to timely file these actions."

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