

THE UBHI CASE DOES NOT SIGNIFY THAT
CLAIMS BASED ON ETS EXPOSURE
ARE LEGALLY VIABLE

Proponents of workplace smoking bans point have suggested that a recent case involving a restaurant employee signifies that employers can expect to face increasing numbers of claims based on exposure to ETS. Ubhi v. State Comp. Ins. Fund, No. SFO-0341691 (Cal. Wrk. Comp. App. Bd.). This case signifies nothing of the sort.

Avtar Singh Ubhi, a waiter/manager in a Sausalito restaurant, included exposure to ETS among a number of factors that he claimed had caused him illness as a result of working in a restaurant with *inadequate ventilation*. The restaurant's insurer settled the case for a small fraction of the amount sought by Ubhi and with no determination that ETS had been a factor.

In his notice of claim, Ubhi asserted that he had suffered a heart attack as a result of working in "an enclosed space suffused with smoke emitted from tobacco smokers and galley ranges as well as from expelled breath and otherwise." Notice of Claim, received April 28, 1989.

Evidence presented during the case included a history of hypertension and angina, inadequate ventilation of cooking fumes in the restaurant, and medical testimony that Mr. Ubhi's existing condition was exacerbated by the stress placed on an individual of his personality type by the nature of the job. Conflicting expert evidence was presented with respect to the suggestion that ETS had been a factor.

The insurer offered to settle the claim. In approving the compromise settlement, for a fraction of the amount sought by Ubhi, the Workers' Compensation Appeals Board stressed:

"Expert opinion has been presented by the parties which is in conflict regarding the effect, if any, upon the applicant's cardiovascular system by tobacco smoke, if any, in the restaurant where the applicant worked as a waiter." Opinion and Special Finding -- Order Approving Compromise & Release, March 11, 1991 (emphasis added).

Ubhi had sought \$125,000 but received only \$9,500 (out of which his lawyer had to be paid), with an additional \$43,000 going to medical expenses. Under California law, the Board would not have permitted such a drastic reduction in Ubhi's claim if ETS had been established to be the cause of his illness and a recognized, viable basis for a workers' compensation claim.

Ironically, when Ubhi himself subsequently opened a restaurant, he initially did not ban smoking but provided separate smoking and non-smoking areas for his customers. The EPA's recent report on ETS, of course, did not link ETS exposure to heart disease.

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