

# West Virginia Supreme Court Reaffirms Requirements for Asbestos-Related Lung Cancer Diagnoses

Article By:

James J. A. Mulhall

---

The ***West Virginia Supreme Court*** has recently held that a diagnosis of asbestosis, or evidence of asbestos bodies in the lungs, must be found before a diagnosis of asbestos-related lung cancer can be made in a workers' compensation claim. In a pair of opinions issued on May 7, 2015, the Court reaffirmed that holding.

Both opinions revisited the issue of asbestos-related lung cancer diagnoses. Both claimants appealed the Board of Review's affirmation of the Workers' Compensation Office of Judges' denial of workers' compensation benefits based on the claimants' lung cancer diagnoses. Both claimants had evidence of a prior smoking history, neither claimant had pleural plaques or parenchymal changes, and asbestos bodies were not found in either claimant's lung tissue samples.

On review, the Court affirmed the Board of Review's affirmation of the denial of the claims, holding that claimants cannot receive compensation for asbestos-related lung cancer without a diagnosis of asbestosis or evidence of asbestos bodies in the claimant's lungs. The Court held that in the absence of occupational pneumoconiosis and asbestosis, lung cancer cannot be causally attributed to occupational exposure.

These two decisions reinforce concrete precedent regarding the diagnosis of asbestos-related lung cancer. For example, the Court has previously affirmed benefit denials due to an absence of a diagnosis of asbestosis noting that the claimant's lung cancer "was a result of his significant smoking history and not materially contributed to by occupational pneumoconiosis and/or asbestos exposure." Further, the Court previously affirmed a denial of benefits despite a claimant's prior award of 10% disability for occupational pneumoconiosis because the claimant "did not have asbestosis or physical evidence of asbestos exposure."

© Steptoe & Johnson PLLC. All Rights Reserved.

---

National Law Review, Volume V, Number 176

Source URL: <https://natlawreview.com/article/west-virginia-supreme-court-reaffirms-requirements-asbestos-related-lung-cancer-diag>

