

# NEXUS NEXUS NEXUS

Your link with current trends in radiation dosimetry

## THE IMPORTANCE OF PERSONNEL DOSIMETRY FOR LITIGATION


An interview with Donald E. Jose, Jose & Wiedis, an attorney specializing in radiation litigation.

**Nexus:** What types of cases are involved in radiation litigation?

**Mr. Jose:** Generally we see two types of cases; persons with cancer and persons who have been in some incident that upset them.

**Nexus:** What seems to motivate those who file a lawsuit?

**Mr. Jose:** The people with cancer, or their relatives, are generally angry that they have cancer and are looking for someone to blame.

  
People who have been in some unexpected exposure incident are upset, sometimes with the way they perceive they have been treated, and sometimes they are afraid of the additional dose. The motivation for some cases is just money, a chance to win the litigation lottery.

**Nexus:** Is there some way for an employer to identify those who may later sue?

**Mr. Jose:** I have personally seen hundreds of radiation cases and there is no way to identify them in advance. You cannot tell who will get cancer and you cannot tell who will be involved in an unexpected exposure incident. You cannot even tell who will be tempted by greed if an incident happens to them.

**Nexus:** What can an employer do?

**Mr. Jose:** An employer can do nothing to prevent future litigation because it cannot stop cancer and it cannot prevent unexpected exposure incidents. No matter how safety conscious an employer is, accidents will happen. The one thing that every employer can do is to prepare to face a lawsuit.

**Nexus:** How does an employer prepare to face a lawsuit, especially if they never have had any so they don't know what to expect?

**Mr. Jose:** The first question we ask in defending a case is what disease, if any, does the plaintiff have? The second question we ask is what was that person's external and internal dose? The third question we ask is how can we prove up that dose so that the judge or jury will believe it? The fourth question we ask is what epidemiological evidence exists for that disease at that dose level? This is the basic information we gather in order to assess the odds that the person's radiation exposure caused his or her cancer.

**Nexus:** It seems that the only part of that analysis the employer will be able to help you with is the dose.

**Mr. Jose:** That is correct and it is extremely important, more important than people realize. An employer must be able to prove the dose of any person who had any chance of being exposed to radiation and those records must be accessible for the entire lifetime of the workforce.

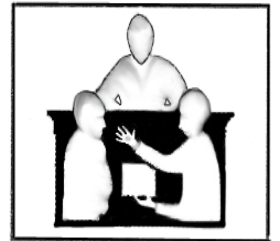
**Nexus:** To your knowledge, are employers keeping adequate records to protect themselves in future litigation?

**Mr. Jose:** I see a disturbing trend that employers will regret in years to come. That is a trend to badge fewer people. I understand that there is a great effort to save money, that the federal regulations do not require placing badges on persons if they are expected to receive only a tiny fraction of the

annual dose limit, and that badges that come back "0" seem to be wasted resources. However, a reading of "0" is very, very valuable data twenty years later when the person develops a cancer and sues.

**Nexus:** What do you recommend?

**Mr. Jose:** I recommend badging everyone who comes near radiation sources or who enters any restricted area where there are radiation sources even though their job should not take them near the source. If you want to save money and don't need to badge a person because they really don't get exposed, change from monthly dosimeters to quarterly or even yearly dosimeters for that person. Just be sure to have another dosimeter measuring natural background radiation and subtract that from a yearly badge so that you don't report background radiation as an occupational dose. Don't stop badging altogether. When a lawyer who is defending your company



in a ten million dollar lawsuit comes to you in the future and asks for a person's exposure history, a lot of people will feel foolish that they have nothing because they wanted to save a few dollars.

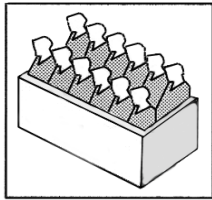
**Nexus:** How do you feel about in-house dosimetry programs?

**Mr. Jose:** Whenever I am asked about this I say that it is better to use outside contractors for your dosimetry, particularly ones that service hospitals.

**Nexus:** Why is that? It would seem that a company that can run its own dosimetry program has demonstrated a certain level of expertise and therefore its dose records should be trusted more.

**Mr. Jose:** You aren't thinking like a judge or jury deciding a multi-million dollar suit against a local company. You are thinking with scientific logic and they do not. In litigation, the defendant company is not assumed to be a good company full of competent people.

There will always be claims of "bad" things that this company did. It might even turn quite nasty. The plaintiff's lawyer and his experts will be telling the judge and jury how terrible this company and its employees were in some part of the operation of the company. You are then asking the judge or jury to place its faith as to the dose attributed to this plaintiff in the same company about which they hear such strong criticism. That doesn't make common sense does it? What you really want to be able to do as a lawyer in one of these cases is to divorce the issue of negligent acts from the issue of the plaintiff's dose by having that dose determined by a totally outside and independent source. If the jury understands that the dosimeter worn by the plaintiff was put into an envelope, shipped to the same outside contractor that the local hospital trusts with its dosimeters, read by the vendor with no knowledge as to the name of the person who wore it or the incident they were in, recorded as a routine business record and then reported to the company, that jury is more likely to trust the dose



attributed to the plaintiff by the company records.

**Nexus:** Have you been successful in defending these cases over the years?

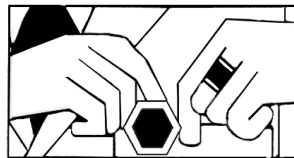
**Mr. Jose:** So far we have won every radiation case that we have handled which must be more than 30 cases by now, and most of those have been won before trial. It is best to be able to resolve these cases as quickly as possible to conserve money and company resources. Also, lay judges and juries are not scientifically astute and do not present the optimum forum for a correct resolution of such a case on the scientific merits. It is best if there can be a way to obtain a scientifically correct resolution prior to letting twelve people off the street decide the case.

**Nexus:** How have you been able to do that?

**Mr. Jose:** By just thinking through the scientific merits of these types of cases and developing general rules and then getting the Courts to adopt those rules as the proper steps to go through in processing one of these cases.

**Nexus:** Can you give us an example?

**Mr. Jose:** Sure. It occurred to us that the federal permissible dose limits are doing an adequate job of protecting workers and that it is not fair to tell an employer that a certain dose is "permissible" when received, but "negligent" when a lawsuit is filed years later. Thus, we argued and eventually established the rule that the duty owed in radiation cases is in compliance with the federal permissible dose limits. If the employer can simply prove to the satisfaction of the judge and jury that the plaintiff's dose was within the federal limits, the case should



be dismissed at that point. You can see why the highest credibility for the dose attributed to the plaintiff is important.

**Nexus:** What is your prediction for the future of this type of litigation?

**Mr. Jose:** I think that we will see much more of it, especially after the year 2000. There are three forces at work that will cause more litigation. First, cancer is a disease of old age, occurring mostly after age 50. Most people who work around radiation are not 50 yet due to the youngness of the industry. As they age, cancers will appear and they will sue. Second, the cancer rate in this country is increasing. Now about 33% of all people will be diagnosed with cancer at some time in their lives. For white males the figure is currently 40%. As medicine cures other diseases and people live longer, this percentage will just increase. By the year 2010, we may see a 50% natural cancer incidence. If one third to one half of all your workers get cancer, surely some of them will think that it was caused by the radiation that they received on the job and will sue. The third factor is greed. Americans seem to be getting more greedy and self-centered as time passes. I expect this trend to continue in our culture which means that more people with cancer or emotional distress will sue just to see if they can get some money even if they have no real anger.

*Don Jose and David Wiedis, Attorneys at Law specializing in radiation litigation, practice outside Philadelphia. Both Jose and Wiedis are highly visible within the health physics community. Several courses have been offered over the past years on how to avoid a litigation suit involving a supposed radiation incident. Jose and Wiedis are strong advocates for supporting documentation as a means to counteract a lawsuit brought on against a facility. One recommended method of inexpensive insurance versus the high cost of litigation is the importance of maintaining an active radiation dosimetry program.*