

NEWS & VIEWS

Winter 2014

Attorney Advertisement

JURY AWARDS \$3 MILLION TO ASHLAND OIL EMPLOYEE IN MESOTHELIOMA CASE

This summer, a Buffalo jury delivered a three million dollar verdict in the case of a former Ashland Oil employee. In February 2012, at the age of seventy-four, Lee Bernard Holdsworth was diagnosed with mesothelioma caused by his job-related exposure to asbestos. Mr. Holdsworth brought suit against several companies responsible for the sale and distribution of a variety of asbestos-containing products used at the oil refinery.

Lee Holdsworth battled mesothelioma for nearly a year. He died on January 17, 2013, in the care of Hospice of Buffalo. He was survived by his wife of over fifty years, who sadly passed away in October. Lee was also survived by his three children and ten grandchildren.

Lee Holdsworth began his career at the Ashland Oil facility in Tonawanda, New York, in 1956. Three years later he was promoted to the position of Lab Tester, a job he held for nearly 20 years. Beginning in the 1960s, virtually all the employees at the oil refinery participated in regular "shutdown work." During this work, the employees, including Lee Holdsworth, would leave their regular positions to participate in the removal and reinstallation of asbestos-containing gaskets, pipe covering, cement and block insulation. In particular, Lee removed asbestos gaskets from valves



Pictured above: Ashland Oil refinery in Tonawanda, New York, as it appeared in the late 1960s. As seen in the picture above, asbestos insulation covered miles of pipeline at this facility.

manufactured by Crane Co., the sole defendant remaining at trial. In order to remove gaskets from Crane valves, it was necessary for Lee to use an electric grinder, which created visible dust. Crane's knowledge of the harmful effects of the inhalation of asbestos dust dated back to the 1930s. Nonetheless, Crane continued to incorporate asbestos components into its products without warning the workers.

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LIPSITZ & PONTERIO LAUNCHES FACEBOOK CAMPAIGN TO BENEFIT ROSWELL PARK CANCER INSTITUTE

Lipsitz & Ponterio recently launched a campaign to raise funds for Roswell Park Cancer Institute (RPCI). For every new page "like" that Lipsitz & Ponterio's Facebook page receives, the firm will donate one dollar to RPCI for its research focusing on asbestos-related cancers, including mesothelioma and lung cancer. The fundraising campaign began in October 2013, and will continue through April 1, 2014, for a total cash donation up to \$5,000. Lipsitz & Ponterio is the first organization to launch a philanthropic Facebook campaign donating to RPCI.

How can you participate? First, make sure you "like" the Lipsitz & Ponterio page on Facebook (www.facebook.com/LipsitzPonterio). If you are signed in to Facebook, all you have to do is click



the "like" button to the right. The next step is easy: invite your colleagues, friends and family who use Facebook to "like" our page.

The firm has also supported RPCI's All Star Night Gala, and, most recently, the firm was the sole sponsor of RPCI's Breath of Life Celebration for lung cancer patients, survivors and their families. This event provided information about new approaches to cancer surveillance, treatment, research and survivorship.

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JURY AWARDS \$3 MILLION TO ASHLAND OIL EMPLOYEE IN MESOTHELIOMA CASE

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“Crane’s knowledge of the harmful effects of the inhalation of asbestos dust dated back to the 1930s. Nonetheless, Crane continued to incorporate asbestos components into its products without warning the workers.”

The Buffalo jury assigned 35% of the responsibility for causing Mr. Holdsworth’s injuries to defendant Crane and the remaining percentages of responsibility to other entities, including those defendants which settled before trial. The jury also found that Crane’s actions were taken with reckless disregard for the safety of others.

“The jury sent a strong message to Crane Co. that it cannot market hazardous products without providing any warnings,” said Michael A. Ponterio, a partner at Lipsitz & Ponterio who, together with Lipsitz & Ponterio attorneys John P. Comerford and John I. LaMancuso, represented Mr. Holdsworth at trial. ■

BETHLEHEM STEEL - DANGERS POSED AT THE OPEN HEARTH

In October 2013, Lipsitz & Ponterio obtained a substantial settlement for the family of a former Bethlehem Steel laborer. Our client, a resident of Hamburg, New York, worked as a furnace helper in the #3 Open Hearth Mold Yard. In the fall of 2012, at the age of sixty-seven, he was diagnosed with malignant mesothelioma. He brought suit against several companies responsible for the sale and distribution of a variety of asbestos-containing products to which he was exposed during the course of his employment.

After graduating from high school, our client went to work at Bethlehem Steel as an apprentice bricklayer. He worked alongside laborers who applied, removed and maintained asbestos materials. In 1966, he joined the United States Navy. After his honorable discharge in 1970, he returned to work at the plant for another two years during which he worked in the mold yards. Then he left the steel plant to work other jobs and attend college.

After a courageous battle with mesothelioma, our client passed away in October 2013. He was married to his wife for over forty years and had one child.

Before he died, our client gave a vivid account of his work at the steel plant in the #3 Open Hearth Mold Yard where he was exposed to asbestos-containing hot tops. As explained below, hot tops were an integral part of the steel-making process.

Throughout the 1950s, 1960s and 1970s, two open hearths were operational at Bethlehem Steel. The open hearths melted molten pig iron, produced in the blast furnaces, together with scrap steel. This refined molten steel was then tapped into enormous ladles. Mold men would pour the molten steel from these ladles into ingot molds in the mold yard. Once cooled, the steel ingots were stripped from the molds, sent to the soaking pits to be reheated to a uniform temperature, and finally sent to various mills for finishing.

In order to produce a higher yield of usable steel, mold men would place metal hot top castings on top of the ingot molds. In order to protect the hot top casting from the molten steel, which reached temperatures over 2800° Fahrenheit, asbestos-containing



refractory materials were used as a barrier between the molten steel and metal hot top casting. This was called a hot top system.

The older system of hot tops required workers to install fire brick inside of the hot top casting and cover it with a ¼” to ½” layer of asbestos-containing mortar (or cement). Workers mixed the mortar with water, which exposed them to dangerous levels of asbestos dust. From 1949 through 1973, more than 90 million pounds of asbestos-containing mortar were used in the open hearths.

In the mid 1960s, a newer system of hot tops was developed, utilizing pre-formed asbestos-containing boards, liners and rings. The rings protected the bottom of the hot top from the molten steel, while the boards and liners replaced the brick and mortar inside of the hot top castings. From 1967 through 1979, hundreds of thousands of asbestos-containing rings, liners and boards were used at Bethlehem Steel.

Regardless of the system, an asbestos-containing hot top cover was used to cover the molten steel in order to retain the heat within the ingot. From 1957 through 1972, more than 2 million asbestos-containing hot top covers were used at Bethlehem Steel.

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BLACKTOP WORKER RECEIVES SUBSTANTIAL SETTLEMENT

In October 2013, Lipsitz & Ponterio reached a sizeable settlement for the family of a long-time employee of a local blacktop manufacturer. This case illustrates the hazards of working with coal tar, a by-product of the coking process.

The client and his wife were childhood sweethearts. They married in 1962 while the client was on a brief leave from military service. After his discharge, the couple returned to live on the Erie County farm where he grew up. Three years later, he took a job at a small plant making and selling pavement sealer. He worked there until the business closed, approximately 34 years later. Because he was only 61 years old at that time, and still strong and energetic, he continued to work at various jobs. Even after he fully retired eight years later, he stayed active, mowing the grass on dozens of acres of the family farm, fishing and tinkering with small engines.

Despite having quit smoking cigarettes at age 25, our client was diagnosed with lung cancer in early 2011, and he died one year later. What caused this hard-working, quiet and careful man to die of lung cancer at age 74? Over the entire course of his 34 years making blacktop, he was exposed to the fumes of coal tar, the main ingredient in blacktop.

During the first several years of his employment, he hauled shipments of already made blacktop from a plant in New Jersey to his employer's factory in Western New York. He made the trip twice a week. Once his employer decided to manufacture the material, he was put in charge of receiving shipments of hot coal tar, which came in from outside companies three or four times each week. Each time a new shipment arrived, he had to oversee the process of unloading the hot coal tar into holding tanks and monitoring these holding tanks throughout the week. He had daily exposure to coal tar fumes that were so strong they would "take your breath away."

“These large companies employed thousands of workers in coal tar distilleries throughout North America, and they knew for many years, by 1965 or even earlier, that exposure to coal tar fumes caused lung cancer in humans.”

There were three companies that made the coal tar and sold it to our client's employer. These large companies employed thousands of workers in coal tar distilleries throughout North America, and they knew for many years, by 1965 or even earlier, that exposure to coal tar fumes caused lung cancer in humans. These companies



never had the common decency to warn the end users of the coal tar, which they sold to businesses all around the country. Had he been warned, our client would have taken measures to protect himself or, as he testified in this case, he would have looked for work elsewhere. The large companies that distilled and sold the coal tar to our client's employer had their own industrial hygienists on staff. They had their own corporate medical directors. They conducted research on animals. They even took measures to protect their own workers by enclosing their production systems.

How did these companies defend themselves in this case? They blamed the client's doctor for not detecting the lung cancer at an earlier stage. They subjected him to a full day of testimony. But the doctor was blameless. His records were thorough, and nothing in them indicated the slightest evidence of neglect. When the cancer was detected, the doctor sent our client directly to Roswell, where he received compassionate care.

When they realized that they could not place the blame on the doctor, they made the argument that coal tar fumes do not cause lung cancer in humans. This, however, was belied by earlier studies of their own tar distillery workers who were developing lung cancer at significantly increased rates. They also tried to blame our client's employer for failing to tell him about the hazard of developing lung cancer, a hazard that these companies studiously avoided communicating to their customers. And, finally, they tried to blame our client, whose formal schooling ended in the tenth grade.

There are more than 10,000 unregulated chemicals, which American workers are exposed to every day. If you suspect that you are suffering from a disease related to your work, call Lipsitz & Ponterio for a free consultation. ■

LIPSITZ & PONTERIO IS ON YOUTUBE

The attorneys at Lipsitz & Ponterio recently embarked on a new journey by filming several on-location videos at a variety of asbestos-contaminated job sites throughout Western New York. Up until the late 1970s, asbestos was incorporated into hundreds of materials, which were utilized in industrial and commercial plants. Many men and women who worked at these facilities were exposed to asbestos dust created by the application, removal, wear and tear and replacement of asbestos-containing materials.

The job site videos featured on the firm's website and its YouTube channel offer information regarding asbestos exposure at numerous plants located throughout Western New York, including Ashland Oil, Bethlehem Steel, Carbide Graphite, Kodak, Rochester Gas & Electric, and more.

"Travelling to the various job sites where our clients earned a living to support their families helps us understand the major commitment they made every day," said John P. Comerford, a partner at Lipsitz & Ponterio. "It is important for us to inform the public that individuals who worked at these local plants really did endure exposure to a tremendous amount of asbestos while performing their

daily work duties. The companies that sold asbestos products to local employers knew of the dangers of asbestos, but never warned workers. Asbestos-related diseases, including lung cancer and mesothelioma, are considered latent diseases, which means they can take many years after exposure to appear. As laborers who worked at these plants in the 1950s, 1960s and 1970s reach their golden years, we come to find that many of them are being diagnosed with mesothelioma or lung cancer. We would like to remind the public that we represent individuals who have asbestos-related diseases and that our attorneys work and live in Western New York."

We welcome you to view our latest videos on the firm's YouTube channel located here: www.youtube.com/user/LipsitzPonterioLLC or on the firm's website. If you have any questions regarding the types of cases Lipsitz & Ponterio handles or its practice areas, please fill out the "Contact Us" form on the website or call 716.849.0701 or toll-free 855.241.LUNG (5864). ■

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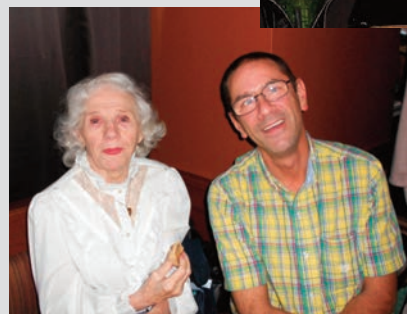


"For nearly thirty years, my partner Michael Ponterio and I have been representing individuals in the Buffalo Niagara region and throughout Upstate New York coping with work place-related cancers, including mesothelioma and lung cancer caused by exposure to asbestos," said John N. Lipsitz. "We recently partnered with Roswell Park to sponsor the Breath of Life event because we believe it is critical to reach out to worker populations at high risk of lung cancer for the purpose of screening, education, early detection and treatment."

Lipsitz & Ponterio has been a longtime supporter of Roswell Park Cancer Institute in support of our clients affected by cancer. ■

celebrating 18 years

In October, Lipsitz & Ponterio celebrated its 18 Year Anniversary with a reception in downtown Buffalo. The celebration was attended by attorneys and staff. Here are a few photographs commemorating the event:



TIMING YOUR SOCIAL SECURITY BENEFITS *by Henry Gartner, Esq.*

Most people don't resist the temptation to start collecting Social Security benefits as early as they are eligible, that is, at age 62. On the other hand, experts generally suggest that you wait as long as you can to commence benefits, even as late as age 70, the reason being that the increase in monthly payments between those starting at age 62 and age 70 is close to 75%. In other words, someone commencing benefits at age 62 at \$750 per month would receive \$1,000 per month if she waited until age 65 and \$1,320 per month if she waited until age 70. The advice, of course, assumes that you have funds to live on in the intervening years or you will continue to work and that the state of your health is not a factor. Other factors that come into consideration are whether you are single or married, and, if you are married, whether you or your spouse was the higher earner.

The purpose of this article is to suggest that the answer is not simple and that the decision of when to start collecting benefits should not be made without a careful analysis of your personal situation.

Using the figures from above, for example, by waiting until age 70, the recipient would forego \$72,000 in benefits between age 62 and 70, and it would require about 4 ½ years to reach the "break-even" point (the recipient would have to reach age 74 ½ before her decision to delay benefits paid off).

If a person is single, the "funds to live on" and "state of health" factors would figure heavily in the decision to delay collection.

If a person is married, however, things become much more complicated. This is because of age differences and differences between the spouses' earnings, as well as the other factors, including the

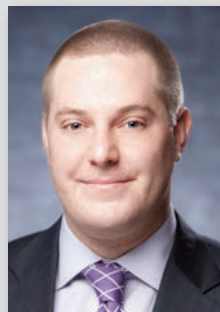
BETHLEHEM STEEL - DANGERS AT THE OPEN HEARTHS ...continued from page 2

After the molten steel was poured and cooled, cranes stripped the hot top from the ingot. The stripping process created clouds of asbestos dust, endangering all those who worked in the open hearths. Before the process could be repeated, the mold men used scrapers to remove any remaining asbestos-containing refractory materials from the metal hot top castings. As dust and debris accumulated, air hoses were used to clean off the platforms within the open hearths, where this work occurred. On a weekly basis, bulldozers would come through and push all of the asbestos-containing dust and debris out of the open hearths for disposal. The cleaning of the hot tops, air hosing, and bulldozing exposed laborers who worked within the open hearths to massive quantities of breathable asbestos fibers.

Additionally, workers, like our client were exposed to asbestos-containing insulation materials that were installed and removed from pipes and equipment located throughout the open hearths.

This case is important to other men and women who worked at Bethlehem Steel because it describes, in great detail, a process involving overwhelming exposure to asbestos. ■

welcome aboard!



Michael J. Jarosz, Esq.

Michael J. Jarosz has joined Lipsitz & Ponterio as an associate attorney. Mr. Jarosz will focus his practice on asbestos and mesothelioma litigation, childhood lead poisoning and workers' compensation matters.

Mr. Jarosz received his J.D., *magna cum laude*, from the State University of New York at Buffalo Law School. He received his B.A., *with first honors*, in Psychology from Boston College. Mr. Jarosz is admitted to practice law in the State of New York.

Mr. Jarosz was born and raised in Hamburg, New York, and is a 2006 graduate of St. Francis High School. He currently serves as a volunteer for the Friends of the Night People. Mr. Jarosz is proficient in Spanish and holds a black belt in Isshin Ryu Karate.

ability of the surviving spouse to receive a survivor's benefit. There are strategies that should be considered, because the survivor has options that will be affected by what his or her spouse elected to do while alive. If you want your surviving spouse to have the highest possible payment, it is critical that your personal circumstances be analyzed by a qualified advisor, rather than making a hasty election of early benefits. ■

keep us informed



Change in Your Medical Condition?

If you previously filed a claim with Lipsitz & Ponterio, a change in your medical status may entitle you to additional legal compensation. It is important to keep us updated so that we can file new claims on your behalf.

Moving? New Telephone Number? Email Address?

If you are moving or have a new telephone number, it is important that you inform us of this change as soon as possible. Please also let us know if you have a winter or summer mailing address, or an email address that you would like to provide.

Update Your Information by Calling or Emailing Us:

Call our office at (716) 849-0701 or
Email Marlene Potter:
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ATTORNEY SPOTLIGHT - ANNE E. JOYNT

Since 2005, Ms. Joynt has been a key member of the firm's lead practice group, which represents children suffering from lead poisoning. Anne has also practiced in the areas of asbestos litigation and personal injury.

"The best part about what I do is getting to help people who have been injured through no fault of their own. I love knowing, at the end of a case, that I've helped to make a positive difference in my client's life."

Anne is actively involved in the Western New York community, where she currently serves as an elected member of the Bar Association of Erie County Board of Directors; as a member of the Women's TAP Fund Steering Committee; and as a State Director of the Board of the Women's Bar Association of the State of New York, Western New York Chapter. She is a current member of the University at Buffalo Law School Alumni



Association Board of Directors and a Past President of the University at Buffalo Law School GOLD Group. Anne co-chairs the SUNY Geneseo Regional Board of Directors for Buffalo, and she also currently serves on the Board of

Directors for the Law Intern Program of Buffalo, as well as on the Buffalo and Erie County Public Library Nickel City Professionals Committee. She is an Ambassador for Planned Parenthood of WNY and in 2013, she was a finalist for the Athena Young Professional Award. ■