

NEWS & VIEWS

Spring 2013

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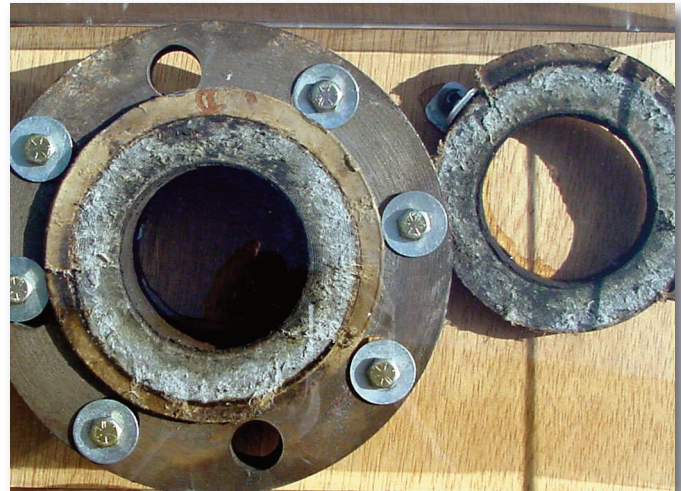
BUFFALO JURY AWARDS \$3 MILLION TO FORMER PIPEFITTER IN MESOTHELIOMA CASE

In October 2012, a jury in Buffalo, New York, delivered a verdict in the amount of three million dollars to the family of Gerald Suttner. In the fall of 2010, Mr. Sutter, age 76, was diagnosed with mesothelioma caused by his job-related exposure to asbestos-containing products.

Gerald Suttner worked as a pipefitter at the GM Powertrain Facility in Tonawanda, NY for 36 years. Beginning in 1964, Mr. Suttner's work included repairing valves manufactured by Crane Co. Part of his duties required him to remove and replace asbestos gaskets and packing materials, which created visible dust in his work area. Despite its knowledge of the harmful effects of asbestos since the early 1930s, Crane continued to incorporate asbestos into its products without warning the user of the dangers in handling these products. Mr. Suttner retired in 1997.

After a yearlong battle with mesothelioma, Mr. Suttner passed away on October 31, 2011. He is survived by his wife, three children and eleven grandchildren.

"Mr. Suttner worked hard in order to provide for his family, and he always played by the rules. Born to a single mother and raised by his grandparents, he was determined throughout his life to help other people struggling under difficult circumstances. It appears that this jury sent a strong message to defendant Crane that it, too, should have played by the rules that govern honorable behavior by



Pictured above: Worn Asbestos Gaskets, which are similar to the gaskets that Mr. Suttner was exposed to while working at GM Powertrain.

warning Mr. Suttner about the dangers of handling its products," said Michael A. Ponterio, a partner at Lipsitz & Ponterio who, together with Lipsitz & Ponterio attorneys, John P. Comerford and Joseph Kremer, represented Mr. Suttner during this trial.

At the conclusion of the trial, the jury assigned four percent of the responsibility for Mr. Suttner's injuries to defendant Crane and the remaining percentages of responsibility to other defendants, including those settling before trial. ■

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COKE PRODUCTION: ENVIRONMENTAL & OCCUPATIONAL IMPACTS

The industry of coke production has been part of Western New York history for well over one hundred years. Coke is produced by heating coal at high temperature. The coke is then shipped to other manufacturers for use as fuel and as an additive in the steel-making industry. Harmful byproduct emissions from coke production include benzene, toluene, xylene, ammonia, naphthalene and tar vapors.

The Tonawanda Coke Corporation, a local coke producer, has been in the news recently because of a federal prosecution for violations of the Clean Air Act. The Tonawanda Coke Corporation plant is located along the Niagara River about one mile north of Buffalo, New York. In 1978, the Tonawanda Coke Corporation purchased the 188 acre River Road site from Allied Chemical. (In

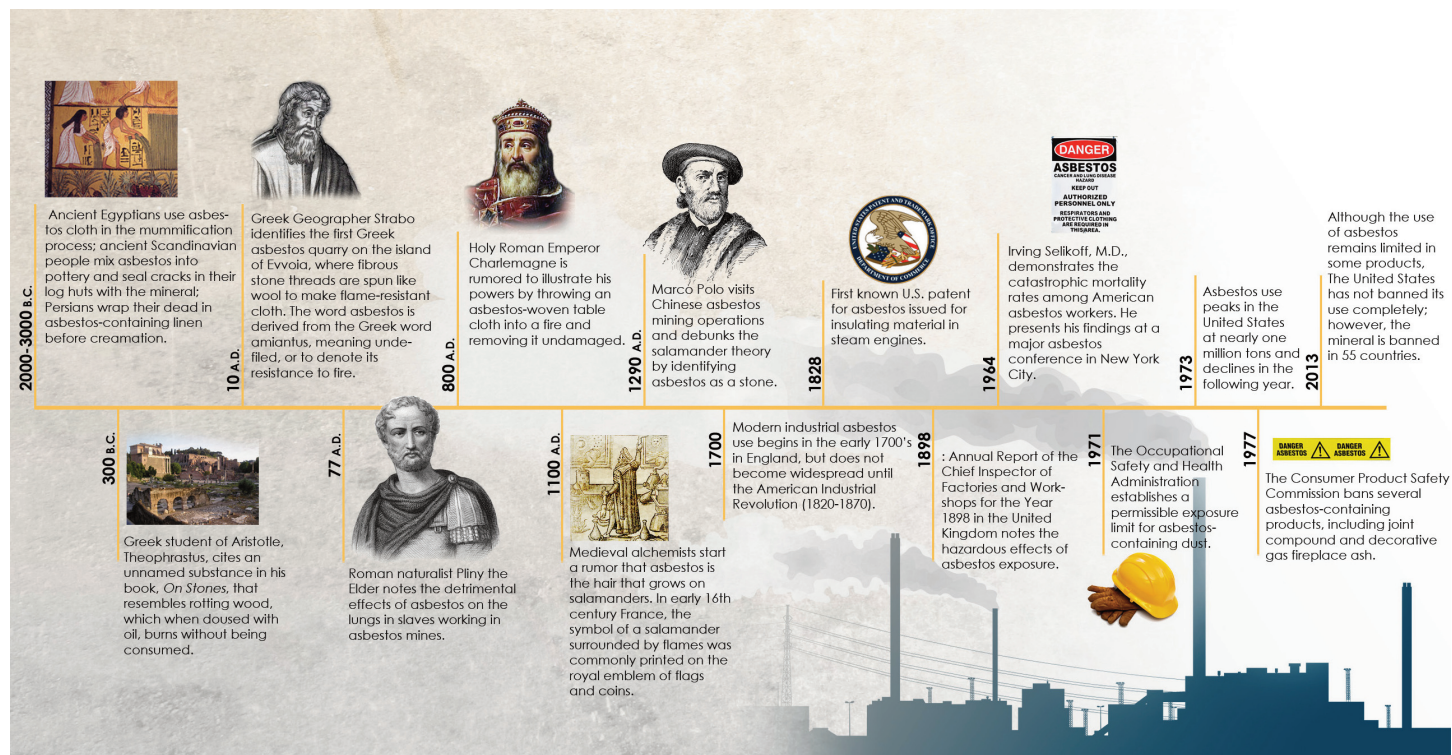
1917, Allied Chemical opened its coke plant as part of the Semet-Solvay Company.)

The Tonawanda Coke plant exposed workers and neighboring residents to hazardous air emissions, including benzene, formaldehyde, carbon tetrachloride and other toxins. The plant discharged industrial wastewater containing cyanide, ammonia and naphthalene into the local sewer system and storm sewers that lead to the Niagara River. Improper handling of coal tar sludge also contaminated soil in the area.

The government's investigation largely centered on the chemical benzene. A variety of industries rely on this chemical to manufacture items we use in everyday life. Benzene is a colorless, sweet smelling but highly flammable liquid. Benzene is found in cigarettes, gasoline

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ASBESTOS THROUGH THE AGES:



LIPSITZ & PONTERIO RECOVERS \$2.5 MILLION FOR FORMER DUREZ WORKER IN ASBESTOS MESOTHELIOMA LAWSUIT

After a week-long trial in September 2012, Lipsitz & Ponterio obtained a cash settlement in excess of \$2.5 million on behalf of a former Durez plant worker for injuries resulting from job-related exposure to asbestos. Our client was diagnosed with mesothelioma in September 2011 at the age of sixty-four. Subsequent to his diagnosis, he had extensive surgery involving the removal of his left lung and the lining around his heart and diaphragm. He brought suit against several companies responsible for the sale, manufacture and distribution of a variety of asbestos-containing products. Due to the confidential nature of the settlement, the plaintiff's family cannot disclose the names of the settling parties nor the amount each company contributed to the overall settlement.

Our client worked at Durez Plastics in North Tonawanda from 1969 to 1974, where he used raw asbestos fibers to make granulated plastic molding compounds, a base for plastic products. As part of his duties, he emptied bags of raw asbestos fibers into grinders used in the production of plastic molding compounds. Handling, dumping and mixing raw asbestos fibers gave rise to airborne asbestos contamination, creating visible dust in his work area. Despite their knowledge of the harmful effects of asbestos, the companies supplying the raw asbestos failed to provide any warnings on their bags of asbestos.

“Despite their knowledge of the harmful effects of asbestos, the asbestos companies supplying the raw asbestos failed to provide any warnings on their bags of asbestos.”

After a lengthy battle with mesothelioma, our client passed away in October 2012. He was married to his wife for over forty years and had three children and seven grandchildren. He spent many years coaching youth hockey teams, and he was active in other community organizations.

Lipsitz & Ponterio attorneys, Michael Ponterio, Keith Vona and Mathew Morton, represented our client, and, after a week-long trial, the case settled for over \$2.5 million. Our client's mesothelioma was caused by exposure to a variety of asbestos-containing products, including raw asbestos sold in bags. Lipsitz & Ponterio is proud of the fact that this case was litigated through the court system and successfully resolved within one year of the filing of the lawsuit. ■

COKE PRODUCTION: ENVIRONMENTAL & OCCUPATIONAL IMPACTS...continued from page 1



Pictured above: Inside of a coke oven, courtesy of the Clean Air Coalition

and printer toner.

Benzene has been labeled by the EPA as a Class A known human carcinogen, which can have harmful effects on bone marrow and can lower red blood cell counts. This contaminant has been strongly linked to Acute Myelogenous Leukemia (AML) and aplastic anemia, as well as other forms of leukemia. In 2012, the International Agency for Research on Cancer (IARC) recognized a positive association between benzene and multiple myeloma.

In February 2013, The New York State Department of Health released its findings on cancer rates in the Tonawanda area. The study revealed elevations in total cancers and in lung and bladder cancer in both males and females. The rates of esophageal and oral/pharynx cancers were elevated among males, and the rate of uterine cancer and leukemia were elevated among females.

Locally, the greatest source of benzene in our air comes from industrial emissions. Tonawanda has the highest air concentrations of benzene in Western New York. In 2004, citizens in the Ken-Ton area began to take air samples in their community. Groups such as the Western New York Clean Air Coalition prompted state and federal regulatory agencies to do further testing of the air in Tonawanda.

In 2007-2008, the New York State Department of Environmental Protection conducted an air quality study which revealed that benzene emissions in Tonawanda were 85 times greater than the EPA guidelines. The report, released in 2009, reflected that 70% of the benzene emissions were from one source, Tonawanda Coke Corporation. Other plants in the Tonawanda industrial corridor, including Dunlop, DuPont, Sunoco, NOCO and the Huntley Plant were also found to emit benzene.

In 2009, the Environmental Protection Agency (EPA) and the New York Department of Environmental Conservation (NY DEC) conducted an inspection and evaluation of Tonawanda Coke. The

plant was cited for violations of the Clean Air Act, the Clean Water Act and the Resource Conservation & Recovery Act for coal piles and leaking tanks.

Due to stepped up enforcement of regulations of the Clean Air Act, an October 2011 New York DEC report showed a significant reduction of the concentration of benzene and other pollutants at two designated testing sites. In 2011, the EPA issued additional orders to the Coke plant to comply with the Clean Water Act regarding cyanide limits and the Second Resource Conservation Recovery Act with respect to coal tar sludge.

Many workers are not aware of potential workplace hazards associated with benzene as a solvent, as an additive, and as a coke byproduct. The U.S. Department of Labor's Occupational Safety Health Administration (OSHA) has developed specific standards, regulations and references for industry workers whose jobs include exposure to this toxic substance. As the first line of defense, exposure to benzene can be controlled by limiting evaporation, preventing spills and employing correct work practices. Proper maintenance and regular inspection of manufacturing equipment is also essential to minimize accidental leaks. Engineering controls, such as hoods, canopies and proper ventilation in coordination with the use of personal protective equipment and respirators are necessary solutions for limiting the hazards of benzene in the workplace.

In 2010, Tonawanda Coke Corporation was cited by OSHA for 14 serious violations of workplace health and safety standards. The deficiencies involved the plant's respiratory protection program; the improper use of personal protective equipment; industrial hygiene; and coke oven operations. The OSHA citations carried proposed fines of \$48,500.

“Locally, the greatest source of benzene in our air comes from industrial emissions. Tonawanda has the highest air concentrations of benzene in Western New York.”

In connection with these citations, the New York State regional OSHA Administrator stated, “One means of preventing hazards is for employers to establish effective comprehensive workplace safety and health programs that involve their employees in proactively evaluating, identifying and eliminating hazards.”

On March 29, 2013, The Tonawanda Coke Corporation was found guilty in Federal District Court of 14 of 19 felony charges. The charges against the Corporation were based on violations of the Clean Air Act, the Clean Water Act and the Resource

Conservation Recovery Act. Sentencing is to take place in July, and the company could face possible fines of more than \$200 million. The plant's environmental control manager was found guilty of obstruction of justice and 14 other charges, and he could be sentenced to up to 75 years in jail.

The case is one of only two criminal prosecutions nationwide involving the Clean Air Act. All charges relate to the 2009 inspection of the facility. Six of the charges centered on a bleeder valve that spewed coke oven gas containing benzene into the air. During the trial, there were some tense moments of testimony. The plant manager testified about the adjustment of the valve just prior to government inspections in order to temporarily prevent the release of toxic gas. This revelation incriminated the company.

While it is clear that industry is a reality in the modern world, it is equally clear that companies must also take responsibility and comply with safety standards to protect their employees and surrounding communities from health risks associated with doing business with hazardous chemicals. ■

FACTORY WORKERS POISONED BY TOXIC GLUE

The pages of this newsletter are usually devoted to articles about toxic substances either no longer commonly used or which are highly regulated. Although substances like asbestos no longer pose such widespread hazards in the work place as they did some thirty years ago, today there are many highly toxic substances still used in factories and at construction sites causing serious injuries to workers here and abroad. One such substance is a chemical known as n-propyl bromide, or nPB. This chemical causes neurological damage and infertility, even when inhaled in low concentrations over prolonged periods of time.

Neurological damage is generally irreversible and expresses itself in staggered gait, numb hands and feet and spinal pain, symptoms which can lead to permanent disability. The chemical nPB is used by workers in the manufacture of high-tech electronics, in auto body shops and in dry cleaners. As recently reported in a lengthy article appearing in *The New York Times*, nPB is an ingredient in the glue used to assemble cushions for the furniture industry.

The story of how nPB was used by workers at Royale Comfort Seating in North Carolina is a stunning indictment of the indifference of the company's owners and managers, who placed profits above the health of their employees. Workers at Royale Comfort Seating have been exposed to dangerous levels of glue fumes containing nPB. The company could have switched to a safer more expensive glue but decided not to because the switch would have increased the cost of each cushion, thus exposing Royale Comfort to foreign competition.

As pointed out by the *New York Times* article, although OSHA has set standards with exposure limits for 16 substances encountered in the workplace, including asbestos, benzene, lead and arsenic, there

our representation



Deaths Associated with Tonawanda Coke

Air pollution is definitely a community concern. But the source of air pollution is almost invariably an unregulated or a poorly regulated industry. In that sense, by taking positive steps to protect the men and women who work in our factories and power plants, we can protect our environment and help everyone breathe cleaner air.

Lipsitz & Ponterio has the privilege of representing the families of workers who died as a result of the conditions at Tonawanda Coke. We represent the family of one man who worked at the plant until 1978, when ownership of the facility went from Allied Chemical to J.D. Crane and Tonawanda Coke. This client developed lung cancer in late 2008 and died of the cancer in 2011. His exposure to the emissions from the coke oven battery largely contributed to his disease and death. Occupational lung cancer has a latency period on average between twenty and thirty years.

Another client began working at the plant in the 1960s and continued working there throughout the last decade. He, too, worked on top of the coke oven battery, and he died of lung cancer earlier this year.

We are also investigating the death of a long-time employee who started out working for Allied Chemical and continued working at the site for Tonawanda Coke until his death as a result of leukemia in 2001. We believe that his widow had no reason to know at that time that his death was related to his work at the coke plant. Now we know that it is more likely than not that his death was caused by exposure to benzene. ■

are tens of thousands of dangerous substances handled by workers every day that remain largely unregulated.

Even in the presence of up to date ventilation systems, according to the Environmental Protection Agency (EPA), one cannot count on industry to use glues containing nPB in a manner that would protect human health. What then of the responsibility of manufacturers who make and sell such dangerous products? Some manufacturers of nPB have apparently discontinued sales, while at least one other manufacturer has taken the position that it has fulfilled its obligations by telling its customers to provide their workers with better protections or to stop using the glue. Is this an adequate response under circumstances where there are other, safer alternatives for gluing cushions together? Or is it just another evasion of responsibility by a manufacturer more interested in making a profit than in the health of its customers and their employees? ■

WHERE THERE'S A WILL... *by Henry Gartner*

A client recently told us that his Will is in his safe and that his relatives don't know the combination. He wanted to know if there was a form that he could fill out that would give them the power to get into the safe. He said that he also kept a computer backup in the safe, so his relatives might also need a piece of paper that tells them which files to look at. At the time we spoke, he hadn't shared this information with anyone.

This conversation pointed out what is perhaps obvious, but often not acted upon: it isn't enough to execute a Will and other advance directives, such as a Power of Attorney and Health Care Proxy. You also have to make your family and agents aware of these documents and leave them where they can be found. In our experience, our clients would make their passing much less stressful for their families by leaving a file or binder that includes not only their important papers, but also contains instructions for the steps they would want their family or executor to take following their death, such as the funeral home they prefer and wishes regarding burial, and even a list of local tradespeople, advisors, and friends that the family would not necessarily know.

To help you get started, we've compiled a list of legal documents that everyone should assemble in a file to guide their loved ones. Many of these things will also be very helpful in the event of serious illness. And even if you are in perfect health, the sense of being organized will provide tremendous satisfaction. You can use your imagination to think of yet other instructions that will help your heirs. Our suggestions:

- Last Will (and where original is located);
- Power of attorney;
- Health Care Proxy and Living Will;
- Living Trust Agreement;
- Prepaid funeral arrangements and cemetery deeds;
- Birth certificate, Marriage License and/or Divorce Papers;
- Passport;
- Safe deposit box information;
- Copies of deeds, title searches, and surveys of real property;
- Past tax returns;
- Loans you owe or owed to you, including mortgage information;
- Bank names and checking, savings and other bank account information
- Automobile or other vehicle titles and registrations;
- Stock and bond certificates, savings bonds;
- Life insurance policies and policy numbers, including who the beneficiaries are;
- Brokerage statements;
- Retirement account information, including IRAs, pensions, 401(k)s, including who the beneficiaries are;
- Credit card numbers and credit reports, if available;
- Passwords for computers, cell phones, email accounts and other online accounts.

If you have an elderly parent who might need to put these documents together, or you just want to find out what paperwork preparation they've already done, you might try to assemble the paperwork for yourself and then ask for their help. It might be easier for an elderly person if a child presents things not as a chore that he or she is being commanded to do, but as an instruction they need to give and an example they need to set. ■

welcome aboard!



John I. LaMancuso, Esq.

John I. LaMancuso has joined Lipsitz & Ponterio, LLC as an associate attorney. Mr. LaMancuso will focus his practice on asbestos and mesothelioma litigation, as well as personal injury matters.

John received his J.D., *magna cum laude*, from the State University of

New York at Buffalo Law School. He received his B.S., with high distinction, in Finance from the Kelley School of Business at Indiana University. John is admitted to practice law in the State of New York.

Mr. LaMancuso was born and raised in Jamestown, New York, and is a 2004 graduate of Jamestown High School. He lives in the City of Buffalo. Mr. LaMancuso is a communicant of St. James Roman Catholic Church in Jamestown and serves as a volunteer for Habitat for Humanity.



Grace M. Gannon, Esq.

Grace M. Gannon has joined the firm as an associate attorney. Ms. Gannon will focus her practice in the areas of mesothelioma and asbestos litigation.

Prior to joining the firm, Ms. Gannon served as the Director of Alumnae at Mount Mercy Academy where she directed institutional advancement activities with alumnae, donors and the community. She was also an associate at a department of a Buffalo law firm that concentrated its practice in toxic torts.

Ms. Gannon received her J.D. from the State University of New York at Buffalo Law School. She received her B.A., *magna cum laude*, from the College of New Rochelle. Ms. Gannon is admitted to practice law in New York State.

Grace resides in Buffalo, New York, with her husband Edward, their son and three daughters. She is a member of the Parent Association for Mount Mercy Academy and Notre Dame Academy, and she continues to assist with development and advancement endeavors for non-profit organizations, such as Dog Ears Bookstore and Enlightenment Center and other local educational institutions.

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ANNE E. JOYNT SELECTED AS A MEMBER OF THE STEERING COMMITTEE OF THE WOMEN'S TAP FUND

We are pleased to announce that Lipsitz & Ponterio attorney, Anne E. Joynt, has been selected to serve as a member of the Steering Committee of the Women's TAP Fund. Founded in 1992, The Women's TAP Fund is a political action committee dedicated to funding the election of qualified pro-choice women to run for public office in Western New York.

Ms. Joynt joined the firm in 2005, and she concentrates her practice in childhood lead paint litigation, as well as personal injury matters. She earned her B.A., *magna cum laude*, in English and Spanish, in 2002, from the State University of New York at Geneseo, and her J.D., in 2005, from the State University of New York at Buffalo Law School. Anne is a State Director of the Board of the Women's Bar Association of the State of New York, Western New York Chapter; and Immediate Past-President of the University at Buffalo Law



School GOLD Group; and a member of the SUNY Geneseo Regional Board of Directors. She 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 Young Professionals Committee. Anne is also an Ambassador for Planned Parenthood of Western New York. ■

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