

NEWS & VIEWS

Fall 2012

Attorney Advertisement

LIPSITZ & PONTERIO RECOVERS \$2.4 MILLION FOR STEAMFITTER IN MESOTHELIOMA LAWSUIT

Lipsitz & Ponterio recently obtained a \$2.4 million settlement on behalf of a former steamfitter for injuries resulting from job-related exposure to asbestos. Our client was diagnosed with mesothelioma in July 2011 at the age of sixty-four. 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 this settlement, the plaintiff's family cannot disclose the names of the settling parties nor the amount each company contributed to the overall settlement.

Beginning in 1969, our client worked as a career steamfitter for Rochester Gas & Electric in Rochester, New York. As a steamfitter, he was exposed to a variety of asbestos-containing materials, including thermal insulation and internal asbestos-containing components found in the equipment he repaired and maintained. Our client's work as a steamfitter also involved the installation and removal of asbestos-containing gaskets on a variety of equipment, including valves, pumps, steam traps, soot blowers and compressors. Our client retired in 1999 and was diagnosed with mesothelioma in 2011.

After a yearlong battle with mesothelioma, our client passed



Pictured Above:

Valves similar to what our client maintained and repaired during his career as a steamfitter.

away in 2012. At the time of his death, he was living in Ashland, Ohio. He was married; had two children and five grandchildren. He honorably served in the Navy during the Vietnam War. He was a second-generation steamfitter who worked at various Rochester

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BUFFALO ASBESTOS JUDGE RULES VALVE MANUFACTURER MAY BE HELD LIABLE

In a recent written decision, Judicial Hearing Officer and Retired Supreme Court Justice, John P. Lane, held that a valve manufacturer may be liable for injuries arising from the use of its products.

The defendant, Crane Company, manufactured high temperature industrial valves, which contained internal asbestos-containing packing and gaskets. Because of the temperatures at which the valves operated, the asbestos gaskets would regularly become baked on to the

metal portion of the valves. Workers who maintained the valves had to grind and scrape the gaskets off the metal flanges exposing them to deadly asbestos dust. Crane Company argued that, since it did not supply the replacement gaskets to which our client was exposed, it had no duty to warn about the dangers of its product. Judge Lane's decision reaffirms the long-standing New York rule that a manufacturer is responsible for the foreseeable uses of its products, including the use of replacement parts. ■

LIPSITZ & PONTERIO RECOVERS \$2.4 MILLION FOR STEAMFITTER IN MESOTHELIOMA LAWSUIT ...continued from page 1

Gas & Electric stations, including the Bebee station.

Lipsitz & Ponterio lawyers, Michael A. Ponterio, John P. Comerford, Joseph T. Kremer and Keith R. Vona represented our client, and after a week and a half long trial with a valve manufacturer, the case was fully resolved. Our client's mesothelioma was caused by exposure to equipment, including internal components composed

of asbestos, which were manipulated by our client in connection with his work as a steamfitter. He was present and participated in outages during which asbestos-containing gaskets, packing and insulation materials were removed and replaced. Removing and reapplying asbestos-containing materials gives rise to airborne asbestos dust and fibers, which our client inhaled. ■

CANCER RISKS FROM COKE OVEN EMISSIONS, COAL TAR & COAL TAR PITCH

The production and refining of coal tar and its use in various other products involves a substantial risk of exposure to a group of chemicals known as polycyclic aromatic hydrocarbons (PAHs). Exposure to these chemicals can lead to a variety of diseases, including lung and other respiratory cancers, bladder cancer, and skin cancer. Harmful exposure occurs when the tar, or refined products made from the tar, are heated and give off dust and fume, called coal tar pitch volatiles (CTPVs).

Laborers involved in the following job classifications are particularly at risk of developing cancer: (1) Coke oven workers; (2) Roofers handling coal tar pitch; (3) Laborers working in the production of pavement sealer and its application; and (4) Factory workers involved in the production of carbon electrodes.

In the Buffalo area, there were three coke oven operations: Bethlehem Steel, which was the largest; Donner Hanna Coke

“Laborers who worked on top of or alongside coke oven batteries were exposed to large quantities of fumes, dust, and vapors containing carcinogenic CTPVs.”

Company in Buffalo; and Semet-Solvay in Tonawanda, now known as Tonawanda Coke, and still in operation. Coke is produced by baking coal in an airless refractory oven. The baking process drives off the volatile content of the coal and leaves a residue of pure carbon, or coke. Coke is commonly used in the steel-making process as a fuel and as an additive.

Laborers who worked on top of or alongside coke oven batteries were exposed to large quantities of fumes, dust, and vapors containing carcinogenic CTPVs. Topside jobs included the lid man, larry car driver, tar chaser, and maintenance worker; side battery jobs included the door cleaner and pusher man. During an eight



*Pictured Above:
Coke Oven Battery at Bethlehem Steel*

hour work shift, it was typical for one lid man to work on seventeen or eighteen ovens, spending at least fifteen minutes on top of each oven.

Coal tar pitch is an amorphous residue produced by the distillation or heat treatment of coal tar, which is a by-product of coal when it is carbonized to make coke. Coal tar pitch was used in the construction of industrial and commercial roofing. Exposure to fumes from hot coal tar pitch has been linked to lung, throat, skin, and bladder cancers. It was common practice during the 1960s - 1980s for roofing contractors to have their workers heat solid coal tar pitch in large kettles at construction sites. The workers operating the kettles, and those carrying pails of the hot pitch up to the roofing surfaces, were heavily exposed to carcinogenic CTPVs. In the Buffalo area there were numerous contractors who engaged in these construction practices.

Coal tar pitch is also used in the production of carbon electrodes, which transfer electricity to melt scrap iron and steel in electric arc furnaces. Carbon electrodes are made from coke after it is mixed with coal tar pitch and binders, including peanut oil. When the carbon electrodes are extruded and shaped, they are baked to carbonize the pitch and graphitized by heating to extremely high temperatures, which converts the carbon to graphite. When the electrodes leave the furnace, they are smooth, hard, and no longer

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ASBESTOS BANKRUPTCY TRUSTS – WHAT YOU NEED TO KNOW

You may have seen the ads on television about the billions of dollars deposited in bankruptcy trusts for the victims of asbestos-related disease, and you may be wondering how you can obtain compensation from these trusts for your case.

A wide variety of asbestos-containing products are implicated by the trusts, including pipe covering, insulating cement, joint compound, vermiculite insulation, fireproofing material, acoustical plaster, roofing materials, floor and ceiling tiles. Depending upon your job classification, and where you worked, you may be able to file claims with a few or many of the trusts. Every case in this respect is different.

Over fifty asbestos personal injury liability trusts have been established by the federal bankruptcy courts. The majority of these trusts are open to liability for exposure to products that were distributed nationally. Some of the trusts are limited to certain sections of the county where the bankrupt company's products were sold and distributed.

The value that any one trust places on an individual claim varies with the type of disease and whether the injury caused the claimant's family an economic hardship. A greater value is attached to an established mesothelioma claim rather than a lung cancer

welcome aboard!



Zachary J. Woods, Esq.

We are pleased to announce that Zachary James Woods has joined Lipsitz & Ponterio, LLC as an associate. Mr. Woods will focus on motion and appellate practice in the area of childhood lead poisoning litigation.

He received his J.D., *cum laude*, from the State University of New York at Buffalo Law School. He received his B.A., *cum laude*, in Political Science and Psychology, also from the State University of New York at Buffalo.

claim because the former is an aggressive cancer caused only by exposure to asbestos. The latter, although an equally devastating disease, may have been caused by exposure to other carcinogens, in addition to asbestos. ■

NEW CASES OF MESOTHELIOMA GRADUALLY DECLINE

Mesothelioma is a rare form of cancer caused by exposure to asbestos. Its name comes from the part of the body the disease attacks: the mesothelium, which is the general name for the various thin, protective linings that envelop several different internal organs.

The lining between the lungs and inner chest wall, the pleura, is most commonly affected by the development of mesothelioma. The disease also occurs, with somewhat less frequency, in the peritoneum and the pericardium, respectively the linings surrounding the abdominal cavity and the heart.

Exposure usually occurs while working in a job that either involves direct contact with raw asbestos fibers (such as during the manufacturing process of asbestos-containing products or the cleanup in such operations); or during the utilization and manipulation of asbestos-containing products (such as grinding gaskets or cutting pipe), which may release asbestos dust into the air. While the development of mesothelioma is largely connected to workplace exposure, it is not strictly confined to it. Exposure can also occur in the home as a result of fibers that remain on the clothing of a family member exposed at work. Moreover, exposure can occur simply by living or working in close proximity to a work site where asbestos is heavily employed.

Because of increasing awareness of the hazard, more stringent

“The latency period for mesothelioma, the time that elapses between exposure to asbestos and the manifestation of the cancer, is comparatively lengthy.”

governmental regulations and improved workplace conditions, the threat of asbestos and mesothelioma has diminished greatly. The latency period for mesothelioma, the time that elapses between exposure to asbestos and the manifestation of the cancer, is comparatively lengthy. The latency period is rarely less than fifteen years and can be as long as fifty years or more. It is entirely possible that an individual exposed to asbestos in the 1970s, 1960s, and even in the 1950s, could still develop mesothelioma today. Even though massive unregulated exposure to asbestos in heavy industry came to an end by the 1980s, people who were exposed before that time are still at risk due to the latent nature of the disease.

There is a scientific consensus that the annual incidence of mesothelioma in the United States has reached a plateau and will

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NEW CASES OF MESOTHELIOMA GRADUALLY DECLINE ...continued from page3

begin to decline over the next several years. Beginning in the 1980s, the number of people newly diagnosed with mesothelioma each year began to increase. That rate continued to climb steadily until very recently. Scientists and health professionals now believe that the annual incidence has reached its peak.

According to the New York State Department of Health's website, our state has an annual incidence of mesothelioma of 1.8 per 100,000 males and 0.4 per 100,000 females. The rate in Erie County, due to its industrial history, is even higher, reaching 3.3 per 100,000 males and 0.5 per 100,000 females. Monroe County, while having a lesser incidence than Erie County, is still above the state average, marking 2.3 per 100,000 males and 0.6 per 100,000 females.

When a person is diagnosed with mesothelioma, it is nothing short of devastating. While there are several options for treatment,

particularly if the disease is found early, there is still no cure. Compounding a dreadful situation, many difficult and stressful questions require answers: What is the next step after diagnosis? What personal and family matters do I need to take care of? How will I pay my medical bills? How will my family be taken care of?

Some resolution can be reached by pursuing your legal rights. Many people who have been diagnosed with mesothelioma have potential claims against one or more parties responsible for their exposure to asbestos. Since the firm's founding in 1995, our experienced attorneys have been at the forefront in helping claimants obtain the remedies to which they are entitled to under the law.

Hopefully, mesothelioma is on its way out. But until it is extinguished entirely, people diagnosed with this disease should keep their legal rights in mind. They are not alone in the fight to secure what is rightfully theirs. ■

CANCER RISKS FROM COKE OVEN EMISSIONS, COAL TAR & COAL TAR PITCH ...continued from page2

sticky with coal tar pitch residue. The graphitizing process generates significant amounts of toxic fumes and smoke. After the electrodes are graphitized, holes are drilled into the ends and they are filled with hot coal tar pitch. The machine containing the coal tar pitch emits carcinogenic fumes and vapors. Factory workers who manufactured carbon electrodes were exposed to these toxins. Even years after their initial exposure, they are at risk of developing lung other respiratory cancers. Great Lakes Carbon and Carbide Graphite, later known as Airco Speer or Speer Carbon, in Niagara Falls, New York, manufactured carbon electrodes for use in the steel-making industry.

Coal tar sealer (or blacktop) is generally a mix of hot coal tar, clay, and emulsifier. Historically, coal tar sealer has been produced in both large and small scale facilities. The manufacturing process involves exposure to fumes from hot coal tar, and the application process also involves exposure to CTPVs. There were a number of local manufacturers of coal tar sealer in the Buffalo area and several sources of the coal tar used as the base for the final product. Medical and scientific communities have not established a "safe" level for exposure to CTPVs.

Older workers and retirees who handled coal tar or coal tar pitch, or were exposed to coke oven emissions, are at a significantly increased risk of developing respiratory cancer, including throat and lung cancer, and bladder cancer, as a result of exposure during working years. Cancers are latent diseases which do not develop for many years after initial exposure.

There is only one law firm in New York State with experience in handling cases for coke oven workers, roofers, and coal tar sealer and carbon electrode production workers. If you or a loved one is

suffering from cancer that you believe may be related to coal tar pitch volatiles (CTPVs), please contact the attorneys at Lipsitz & Ponterio, LLC, about filing possible legal claims.

story of interest

Former Pizzeria Worker Sues Oven Manufacturer

As recently as the 1980s, companies that manufactured pizza ovens used asbestos transite blocks to form the bottoms of the ovens. Workers were unknowingly exposed to asbestos when they cleaned these ovens.

Lipsitz & Ponterio represents a 56-year-old man who worked at a Buffalo area pizza parlor. He was diagnosed with pleural mesothelioma in March 2011, and his only known exposure to asbestos was transite blocks. During the cooking process, pizzas were laid directly on top of the transite blocks. Our client cleaned the ovens with a wire brush in order to remove baked-on food debris. Scraping and sweeping the interior of the ovens created asbestos-containing dust.

Lipsitz & Ponterio has filed a lawsuit on behalf of this individual. It is our goal to utilize a provision of New York State law that allows a plaintiff with a terminal illness to have a trial date within one year of commencing a lawsuit. ■



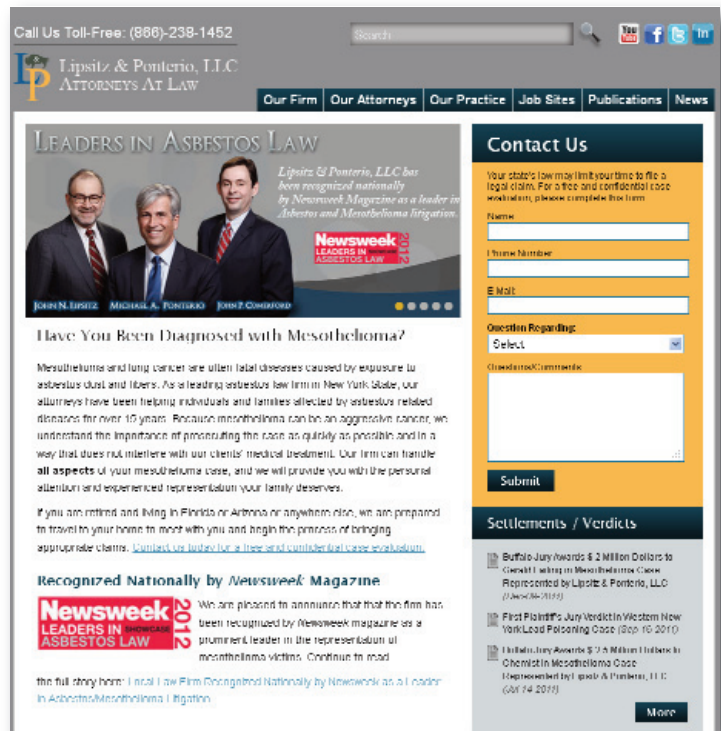
LIPSITZ & PONTERIO'S WEBSITE HAS A NEW LOOK

We are pleased to announce that we have recently redesigned the firm's website, www.lipsitzponterio.com. The redesign will allow the firm to better provide current and potential clients with key information about exposure to toxic substances at New York State job sites.

Our user-friendly website offers valuable information regarding the firm, its attorneys and its practice areas, including mesothelioma, childhood lead poisoning and other toxic torts. Because our practice is mainly concentrated in the areas of mesothelioma and other occupational-related diseases, the focus of this website is on New York State job sites where exposure to toxic substances, including asbestos and coal tar pitch, have occurred.

Our goal is to ensure that information pertaining to asbestos-containing materials and other toxic substances is easily accessible to workers suffering from mesothelioma and other occupational diseases, who are seeking legal redress in New York State.

If you have any questions regarding our firm or its website, please let us know by clicking on "Contact Us", or by calling our office at (716) 849-0701. ■



CURRENT DEVELOPMENTS IN MEDICARE

Federal law requires that personal injury plaintiffs, who are eligible for Medicare, take into consideration the interests of Medicare when settling their claims. The Medicare Secondary Payer Act (MSP) mandates that Medicare be reimbursed for most medical expenses it pays out, which are later determined to be the responsibility of a third party. When Medicare beneficiaries are involved in personal injury lawsuits, Medicare may have a claim to some of the settlement money. Medicare does not, however, have a statutory right to reimbursement for services paid for an unrelated injury, which is the basis of the client's lawsuit.

Last fall, Medicare clarified its policy regarding toxic exposure cases where all of the exposure occurred before December 5, 1980. If a plaintiff was exposed to toxic substances over a long period of time and the date of last exposure is before December 5, 1980, Medicare will not pursue a claim for reimbursement. On the other hand, if any of the relevant exposure occurred after December 5, 1980, Medicare can seek reimbursement for related medical expenses. This summer, a new wrinkle emerged as Medicare proposed new rules that may require settlement funds to be reserved for future payment of medical costs a Medicare beneficiary may incur.

Some Medicare beneficiaries receive coverage directly from the Medicare Trust Fund, while others participate in Medicare

Advantage Plans. It has always been the case that direct Medicare beneficiaries must consider the interest of Medicare when settling their claims. A number of court decisions have placed into question whether Medicare Advantage Plans are permitted to enforce the same reimbursement claims that belong to the federal government. At least one recent court decision appears to provide Medicare Advantage Plans with the same rights as the federal government. ■

client testimonial

John,

"Thank you for all you have done, especially for the way you treated Bill with gentleness and dignity. You gave him so much peace of mind. As always, his main concern was for my well being. It is not easy to lose the love of your life, but through God's mercy, time passes and life goes on.

Again, thank you for your caring and hard work on our behalf."

- Gert Yohe



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CDC CHANGES GUIDELINES, LOWERS LEAD LEVEL

For a number of years, the Center for Disease Control (CDC) has stated that there is no safe level of lead in the human body. Despite this stance, it has maintained a level of concern of 10 micrograms per deciliter ($\mu\text{g}/\text{dl}$) of lead for children under the age of 6 since 1991. That is, until recently.

This year, the CDC announced it is reducing the level of concern from 10 $\mu\text{g}/\text{dl}$ to 5 $\mu\text{g}/\text{dl}$. This new value is not an arbitrary number. It is a reference value based on the blood lead levels of the top 2.5% of American children, aged 1 to 6 years old. This means that the reference value of 5 $\mu\text{g}/\text{dl}$ will change as the blood lead levels of U.S. children change. If there is a decrease in the highest 2.5% of children's lead levels, then the reference value will fall even lower than 5 $\mu\text{g}/\text{dl}$. Per the new policy, the CDC will update the reference value every four years.

Each year, thousands of children, under age 6

in New York State, are found to have a lead level at or above 10 $\mu\text{g}/\text{dl}$. With the new reference value halving that to 5 $\mu\text{g}/\text{dl}$, even more children will be diagnosed with an elevated lead level.

The CDC's strong position is indicative of the serious problem faced by the United States government. Lead exposure has been linked to learning disabilities, decreased IQ, attention deficits, behavioral problems and a myriad of other serious injuries. There is no cure for lead poisoning. The damage is permanent. Lipsitz and Ponterio knows this firsthand because of our work with lead poisoned children and their families. Many clients were exposed to lead dust or lead-based paint as infants and toddlers and show the effects years later. Sadly, these deleterious effects last a lifetime. We are dedicated to pursuing awards on behalf of children poisoned by lead. ■

News & Views has been prepared by the attorneys at Lipsitz & Ponterio, LLC and is intended for general information purposes only and should not be considered legal advice. You are urged to contact an attorney concerning any specific questions you have relating to your own situation. Prior results do not guarantee a similar outcome.

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