LIPSITZ & PONTERIO, LLC
ATTORNEYS AT LAW
Upstate New York's Leading Mesothelioma Attorneys

NEWS & VIEWS

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BUFFALO JURY AWARDS $2 MILLION TO FORMER DUREZ EMPLOYEE

A jury in Buffalo, New York, recently delivered a verdict in the amount of two million dollars in favor of Gerald Failing, a former factory worker, who was represented by Lipsitz & Ponterio. Mr. Failing, 66, was diagnosed with peritoneal mesothelioma in December 2010. He resides in Niagara Falls, New York.

Peritoneal mesothelioma affects the lining of the abdomen, and it is a rare form of cancer caused by exposure to asbestos.

Beginning in 1966, Gerald Failing worked in the compound department at Durez Plastics in North Tonawanda, New York, where he used raw asbestos fibers to make granulated plastic molding compounds, a base material for plastic products. Some of the raw asbestos that Mr. Failing poured and mixed at Durez was supplied by Hedman Resources Ltd., a Canadian asbestos mining company. Dumping and mixing raw asbestos fibers gives rise to airborne asbestos contamination. This created visible dust in Mr. Failing's work area. Durez Plastics was a manufacturer of industrial resins and phenolic molding compounds.

The jury assigned one hundred percent of the responsibility for Mr. Failing's injuries to defendant Hedman and also found that Hedman's actions were taken with reckless disregard for the safety of Mr. Failing and others.

"This verdict is a victory for Mr. Failing and workers like Mr. Failing who were not adequately protected in the workplace. It was a privilege to represent Mr. Failing in this case, and we are very pleased with the jury's findings," said Keith R. Vona, an attorney at Lipsitz & Ponterio who, together with attorney Michael A. Ponterio, a partner at Lipsitz & Ponterio, represented Mr. Failing during his trial. ■

Pictured Above:
Durez Plastics Plant in North Tonawanda, New York

in this issue:

EEOICPA PROGRAM EXPANDED FOR WORKERS AT LINDE CERAMICS; BETHLEHEM STEEL EMPLOYEES STILL SEEK COMPENSATION FOR RESIDUAL RADIATION PERIOD

In our summer 2011 newsletter, we wrote about the origin of The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and our long struggle to obtain benefits on behalf of a former Linde worker who died in 1993. In that article, we explained the difference between qualifying for the benefits on the basis of the Individual Dose Reconstruction Program and qualifying for benefits as a member of a class of employees designated as a Special Exposure Cohort (SEC). Our newsletter article also reported an important development for former and retired Linde workers, when the U.S. Department of Health and Human Services recommended to Congress, in April 2011, that the government establish a SEC for Linde plant claimants who worked at the plant between 1954 and 1969. (In 2005, Linde Ceramics workers received SEC status for the period from October 1, 1942 to October 31, 1947. During this time period, the facility actively processed uranium ore for the Atomic Energy Commission.)

We now have the pleasure to report that SEC status has also been recommended for men and women who worked at Linde between 1947 and 1954. Once this recommendation becomes final

...continued on page 2

EEOICPA Program Expanded for Workers at Linde Ceramics; Bethlehem Steel Employees Still Seek Compensation for Residual Radiation Period

...continued from page 1

> *"Once this recommendation becomes final later this year, it will close the gap between the SEC for 1942 to 1947 and the SEC for 1954 to 1969, and establish SEC coverage from 1942 through 1969."*

later this year, it will close the gap between the SEC for 1942 to 1947 and the SEC for 1954 to 1969, and establish SEC coverage from 1942 through 1969.

In order to qualify for benefits under a Special Exposure Cohort, a claimant must be a current or former employee of an atomic weapons facility or a select surviving family member of a deceased former employee; the affected individual must have worked a minimum of 250 days at a designated site during a specific time frame; and the affected individual must have been diagnosed with at least one of the twenty-two recognized cancers caused by radiation exposure.

Now that the situation has been remedied at Linde Ceramics, it is incumbent on the government to act soon to address the same legitimate demands of former and retired employees of the Bethlehem Steel Corporation in Lackawanna. As of 2010, only those former Bethlehem Steel employees who worked at the Lackawanna facility between January 1, 1949 and December 31, 1952, have been awarded SEC status. Because of the 250 day requirement, a worker who began at the steel plant at any time after the beginning of 1952 or later is ineligible, under the statute, to receive the $150,000 benefit.

Claimants from Bethlehem Steel are being treated unfairly, and the federal government, through the various agencies involved in administering the Act, should remedy this injustice. Unfortunately, the workers at the time were not told that the plant was processing hazardous uranium ore, nor were they provided with any protective equipment. The currently established SEC for Bethlehem Steel encompasses four consecutive years, yet the plant processed many times more uranium during 1952 than it did during the three preceding years, combined. Thus, men who started work at the plant part-way into 1952 were probably subjected to a radiation hazard significantly greater than that which prevailed earlier, when the rate of production was lower, yet still cannot qualify for the benefit, because of the 250 day requirement.

Given the intensity of the radiation hazard to which the workers in 1952 were exposed, and their resulting increased risk for the development of a radiogenic cancer, activists from Bethlehem Steel are calling for the period encompassed by the SEC to be significantly extended. They point out that the areas where the uranium was processed and the equipment used for that purpose were never properly decontaminated. The same mills used to roll uranium billets during the years 1949 through the end of 1952, although highly contaminated, remained in use to roll other metals long after the completion of the Manhattan Project. Countless workers were exposed to this dangerous residual radiation, and they remain ineligible to file claims under the Act. The radiation hazard was so intense and the contamination so pervasive, that all workers, regardless of job title or department, were affected.

Happily, there is cause for some optimism. Congressman Brian Higgins (NY-27) and Senators Charles Schumer and Kirsten Gillibrand are urging the National Institute for Occupational Safety and Health (NIOSH) to perform an extensive review of the conditions at Bethlehem Steel in the years following 1952. ■

information

For more information on the programs discussed in this article, please visit the following website:

- Division of Energy Employees Occupational Illness Compensation (DEEOIC): **www.dol.gov/owcp/energy/**

In addition to having worked for at least 250 days at Linde or Bethlehem Steel, a covered employee must also have at least one of the following types of cancer :

- Bone cancer
- Renal cancers
- Leukemia (other than chronic lymphocytic leukemia) provided the onset of the disease was at least two years after first exposure
- Lung cancer (other than in-situ lung cancer that is discovered during or after a post-mortem exam)

The following diseases provided onset was at least five years after first exposure:

- Multiple myeloma
- Lymphomas (other than Hodgkin's disease)
- Primary cancer of the:
  Bile ducts; Brain; Breast (female); Breast (male); Liver (except if cirrhosis or hepatitis B is indicated); Ovary; Pancreas; Pharynx; Salivary Gland; Small Intestine; Stomach; Thyroid; Urinary Bladder

* For more information regarding covered cancers, please visit:
www.dol.gov/owcp/energy/regs/compliance/law/SEC-Employees.htm#cancer_list

Cancer Risks From Inhalation of Hot Coal Tar Pitch Fumes

Coal tar pitch (CTP) is commonly used in the aluminum smelting and roofing industries. 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. This process typically occurs in coke ovens and can be found in steel-making plants world-wide. Exposure to aerosolized coal tar and coal tar products, including coal tar pitch, has been known for many decades to cause skin, lung, and other respiratory cancers in both humans and in experimental animals.

In the early 1950s, a number of companies, including the Koppers Company, now known as Beazer East, engaged in a cooperative research effort with the Kettering Laboratory of the University of Cincinnati to investigate the industrial cancer hazards of coal tar and its products. Koppers was one of the leading companies involved in the design and construction of coke oven batteries, and coal tar was one of the most important by-products of the coking process. Among other coke oven batteries designed and built by Koppers were those at Bethlehem Steel in Lackawanna and Donner Hanna Coke in Buffalo.

By 1957, animal experiments conducted as part of the Kettering Laboratory demonstrated that the inhalation of coal tar fumes caused lung cancers in laboratory animals. By 1960, the sponsors of the Kettering Laboratory investigation, including Koppers, were informed that the men working on the tops of the coke ovens and those men most directly exposed to the fumes from the carbonization of coal, were experiencing rates of lung cancer many times greater than the general population. The report of the Kettering investigation stated that, "unless valid evidence is obtained to the contrary, it is virtually certain that the relatively high incidence of lung cancer…will be linked to industrial exposure to coal tar."

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The International Agency for Research on Cancer has concluded that coal tar pitch causes cancer in both experimental animals and in humans. More specifically, the International Agency has concluded that exposures to roofers were substantially equivalent to exposures in coke oven workers for the production of cancer.

Exposures associated with roofing are the results of two operations. First, the old roof is removed by cutting, prying and scraping the existing roofing material from the roof and discarding it. Then, a new roof is installed by melting solid blocks of coal tar pitch, then pumping or carrying buckets of the molten material to the roof.

Older workers and retirees who handled coal tar pitch are at a significantly increased risk of developing respiratory cancer, including lung cancer, as a result of work they performed decades ago. Cancers are latent diseases, which often do not develop for many years after initial exposure. If you or a loved one is suffering from cancer that you believe may be related to past work as a roofer, you may wish to consult with an attorney at Lipsitz & Ponterio about possible legal claims. ■

First Lead Poisoning Plaintiff's Jury Verdict in Western New York

Lipsitz & Ponterio recently represented twenty-three-year-old Ashley Hicks, who was lead poisoned between the ages of three and six, while residing in rental properties in Rochester, New York. On September 14, 2011, her case was brought before a Monroe County Supreme Court jury. The jury deliberated for only three hours before it returned a verdict in favor of Ms. Hicks. This is the first time in Western New York history that a jury has ruled in favor of a plaintiff in a lead poisoning case.

Ms. Hicks was awarded damages in the amount of $221,000 for the impact her injuries will have on her capacity for future earnings. Lead poisoning affects the development of the brain. Ms. Hicks lived in a rental property contaminated with lead paint; she inhaled and/or ingested the paint, which ultimately gave rise to her injury. The jury ruled that the sole defendant at trial, landlord Richard Franco, is responsible for paying the entire verdict. The trial was presided over by State Supreme Court Justice Matthew A. Rosenbaum.

Ms. Hicks is currently enrolled at a community college where she hopes to earn an associate's degree, despite her learning disability. She graduated with an Individualized Education Plan diploma from high school in the Webster Central School District.

Lipsitz & Ponterio attorneys, Michael A. Ponterio, Neil J. McKinnon and Keith R. Vona, as well as Rochester attorney Dennis Herron, of Dennis Herron and Associates, represented Ms. Hicks at trial. "This verdict hopefully sends a strong message to landlords that they're going to be held accountable if they're going to collect rent and not take proper care of the property and allow children to be poisoned," said Keith R. Vona. ■

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Debt Responsibilities After Death

When someone dies, his or her other debts die with them, although the probate estate does have an obligation to pay creditors, if there is an estate. However, many people who are behind on their bills have little or no estate that requires probate. Surviving family members rarely have a legal obligation to pay debts unless they have co-signed on a loan, such as a mortgage or a credit card. Survivors are not legally responsible if the loan or account was solely in the name of the decedent. Most debts are for credit cards, and rarely for hospital bills or doctor's bills.

Beware of debt collectors who target survivors, saying that there is a moral obligation or a family obligation to pay, especially when you may have benefited from the debt that a loved one incurred. Such debt collection calls and letters may come when you are most vulnerable, and the calls or letters may appear to be sympathetic, including offers of condolences. Do not be misled.

Even if you are pursuing a lawsuit for injuries sustained by your loved one, debts are not payable until recoveries are paid in the lawsuit. Do not feel under any obligation to make a deal with a debt collector. You are under no obligation to engage in telephone conversations with debt collectors. Be firm with them and simply refer them to your estate attorney or your family attorney and tell them that they should no longer call you.

Make sure you know your legal obligation, if any, to pay, before agreeing to anything. You should take the time to consider carefully whether you wish to obligate yourself to pay a debt owed by a loved one before they died. Do not let a debt collector cloud your judgment about what might or might not be the moral thing to do. ■

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