

NEWS & VIEWS

Summer 2011

Attorney Advertisement

BUFFALO JURY AWARDS \$ 2.5 MILLION DOLLARS TO CHEMIST IN MESOTHELIOMA CASE

We are pleased to announce that after a two-week trial presided over by New York Supreme Court Justice (retired) Hon. John P. Lane, J.H.O., an Erie County jury delivered a verdict in favor of James Ginter in the amount of \$2.5 million dollars. Mr. Ginter was diagnosed with mesothelioma in March 2010. He is married to Karen Ginter, with whom he has two children.

Mesothelioma is a rare form of cancer caused by exposure to asbestos.

James Ginter worked as a laboratory chemist at Durez Plastics in North Tonawanda, New York, beginning in 1979. Durez, located just outside Buffalo, New York, was a manufacturer of industrial resins and phenolic molding compounds. As a chemist, Mr. Ginter worked with a FAST (Friction Assessment Screening Test) Machine manufactured by Ford Motor Company. The use of this machine required Mr. Ginter to file and grind experimental asbestos-containing friction products ultimately used as brakes on automobiles. The FAST machine abraded the asbestos-containing friction materials during testing, which created visible dust in Mr. Ginter's work area. Despite knowing about the harmful effects of asbestos, including the fact that Ford knew that its own employees were dying from mesothelioma in the early 1970's, Ford manufactured this machine without providing any warnings.

The jury in this case assigned 15% of the responsibility for



Pictured Above: Keith R. Vona, Esq. & Michael A. Ponterio, Esq., who represented Mr. Ginter during his two week trial against Ford Motor Company.

damages to defendant Ford. The other remaining percentage of the responsibility for damages was assigned by the jury to other entities, including defendants, which settled before trial.

"Mike and I are very pleased with the outcome for our client. We had a very conscientious and diligent jury able to see

through the doubt that Ford attempted to cast during the trial and stay focused on the true issues involved in this case," said Keith R. Vona, an attorney at Lipsitz & Ponterio who, together with attorney Michael A. Ponterio, a partner at Lipsitz & Ponterio, represented Mr. Ginter during this trial. This verdict is a great victory for workers exposed to asbestos-containing dust from the manipulation of automobile friction products. ■

in this issue:



LIPSITZ & PONTERIO LAUNCHES SECONDHAND MESOTHELIOMA WEBSITE

Buffalo Jury Awards \$2.5 Million Dollars to Chemist in Mesothelioma Case.....1

Lipsitz & Ponterio Launches Secondhand Mesothelioma Website..... 1-2

Family of Former Bethlehem Steel Employee Receives Large Settlement for Lung Cancer.....2

17-Year Struggle Ends in Success..... 3-4

We are pleased to announce the launch of our new website *Secondhand Mesothelioma*, located at www.secondhandmesothelioma.com. This website was created as part of our continued service to the community.

Secondhand Mesothelioma is a user-friendly website offering valuable legal information for individuals diagnosed with mesothelioma and other asbestos-related diseases. Secondary asbestos exposure, also known as home exposure or para-occupational exposure, occurs as an indirect result of working with or around asbestos

materials. Home exposure generally occurs when wives and children come into close contact with their husbands, fathers and brothers who were covered in asbestos-laden dust from the workplace. Because of non-existent or inadequate warnings on a variety of asbestos-containing materials used in many different industries, many individuals were exposed to asbestos prior to the late 1970's.

This website offers information regarding asbestos exposure through contact with a family member who had direct daily exposure to

...continued on page 2



asbestos-containing materials, including fireproofing, insulation materials, joint compound (mud), floor tiles, ceiling tiles and roofing materials. *Secondhand Mesothelioma* also offers valuable technical and legal information regarding exposure to asbestos and the development of asbestos-related diseases, as well as information on how to seek legal redress in the New York State for asbestos-related injuries.

We welcome you to visit our new website located at www.secondhandmesothelioma.com. If you have any questions regarding our firm or its practice areas, please let us know by clicking the “Contact Us” button or by calling us at 716.849.0701 or toll-free 855.241.LUNG (5864). ■

FAMILY OF FORMER BETHLEHEM STEEL EMPLOYEE RECEIVES LARGE SETTLEMENT FOR LUNG CANCER

Lipsitz & Ponterio represents the family of a man who went to work at Bethlehem Steel in 1967 at the age of twenty-three. Our client was a member of the United Steel Workers Union. He worked at the steel plant until 1994. In the fall of 2007, at the age of sixty-three, our client developed lung cancer. For a significant portion of his employment at the plant, he worked on top of coke oven batteries as a lid man. His work involved opening lids at the top of the batteries so that the ovens could be charged with coal and sealing the lids after the charging process was completed.

The coke oven division at Bethlehem Steel was the largest coke oven operation in Western New York. 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 both as a fuel and as an additive.

The men who worked on top of coke oven batteries were exposed to large quantities of fumes, dust and vapors containing carcinogenic compounds, including polycyclic aromatic hydrocarbons (PAH). During an eight hour 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. The lid man’s job was one of the dirtiest jobs at any steel plant

In the Buffalo area there were three coke oven operations: the one at Bethlehem Steel, which was the largest; the Donner Hanna Coke Company in Buffalo; and Semet-Solvay in Tonawanda, now known as Tonawanda Coke and still in operation. Even the companies that designed and manufactured coke oven batteries concede that by the early 1960’s they were aware that coke oven emissions were a potent cause of respiratory cancers, including lung cancer. A large body of published evidence demonstrates that

the coke oven industry knew, or should have known, well before 1950 about the cancer hazards of exposure to coke oven emissions. Larry car drivers, lid men, pushers and other laborers who worked on top of or alongside coke oven batteries are at an elevated risk for developing lung cancer and other cancers.

As a result of our client’s exposure to coke oven emissions, he developed lung cancer and succumbed to this disease six months later. ■

keep us informed



We understand that a change in your medical condition can be difficult for you and your family. If you have previously filed a legal claim with Lipsitz & Ponterio, a change in your medical status may entitle you to additional legal claims. It is important to keep us updated so that we can file new claims on your behalf. Please email lp@lipsitzponterio.com or call 716-849-0701 with new information regarding your health.

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 let us know if you have an email address that you would like to keep on file as well. You can call our office at 716-849-0701 or email lp@lipsitzponterio.com with your new information.

17-YEAR STRUGGLE ENDS IN SUCCESS

In October 2000, President Clinton signed into law historic legislation recognizing the injustices suffered by generations of atomic weapons employees, many of whom developed cancers after being exposed to radioactive materials. This law, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), and more specifically Part B, was passed after the government fought claims for years brought by men and women employed at numerous locations where uranium was processed for making the Atomic Bomb. These locations and processes were collectively referred to as the “Manhattan Project.”

To qualify for benefits under Part B of EEOICPA, a claimant must be a current or former employee of a designated site or a select surviving family member of a deceased former employee; the afflicted individual must have worked a minimum of 250 days at that site (subject to certain restrictions on the time frame of employment); and the afflicted individual must have been diagnosed with at least one of the twenty-two specifically recognized cancers caused by exposure to radiation. Also, to qualify for benefits, the exposure must have been “at least as likely as not” a significant factor in aggravating, causing or contributing to the employee’s illness or death. Under this standard, the U.S. Department of Labor, utilizing a dose reconstruction model developed by the National Institute for Occupational Safety and Health (NIOSH), determines whether the probability of causation is 50% or greater.

Alternatively, under the EEOICPA, there are classes of employees designated with “Special Exposure Cohort” (SEC) status. Each class worked at the same facility where there was evidence of significant exposure, although not enough evidence remains to conduct a dose reconstruction. SEC status allows for compensation without the individual claimant having to prove case-specific causation, saving the time and expense related to proving individual claims.

Samuel Tornabene was one of thousands of workers around the nation unwittingly exposed to dangerous levels of radiation. He was employed at the former Linde Ceramics plant, an EEOICPA-recognized site in Tonawanda, NY, between September 1962 and September 1993. While working at Linde, Sam and his wife, Eleanor, raised a family in Western New York. Early in his career, Sam worked a variety of jobs that exposed him to high levels of lingering radioactive, alpha-emitting dust particles. In February 1993, he was diagnosed with non-Hodgkins lymphoma, a form of cancer caused by his exposure at Linde. Sam passed away in December 1993 as a result of the disease. Around the time of his passing, representatives from the Oil, Chemical & Atomic Workers Union local at Linde approached attorney John N. Lipsitz to represent the

“*To qualify for benefits under Part B of EEOICPA, a claimant must be a current or former employee of a designated site or a select surviving family member of a deceased former employee; the afflicted individual must have worked a minimum of 250 days at that site (subject to certain restrictions on the time frame of employment); and the afflicted individual must have been diagnosed with at least one of the twenty-two specifically recognized cancers caused by exposure to radiation.*”

family.

Eleanor Tornabene filed a claim for workers’ compensation benefits for the death of her husband. The claim was filed with the Worker’s Compensation Board. (As noted, there was no federal statute allowing such a claim until President Clinton signed the 2000 bill.) Three highly qualified experts testified in support of Eleanor’s claim: a Harvard-trained oncologist, who was Mr. Tornabene’s treating doctor; a senior pulmonologist in the Western New York medical community; and an industrial hygienist specializing in health physics. The employer, which controverted the claim, spent well over \$100,000 on out-of-town experts of its own. After a series of hearings between 1994 and 1998, the Worker’s Compensation Board rejected the family’s claim that exposure to radioactive dust particles was a definitive cause of Sam Tornabene’s cancer. It was undisputed, however, that Sam experienced significant exposure to radioactive dust at the plant.

Because the federal regulations implementing EEOICPA-recognized non-Hodgkin’s lymphoma as a radiogenic cancer, Eleanor Tornabene, whose claim on that score had been rejected by the Worker’s Compensation Board, was able to file her claim for



www.lipsitzponterio.com

ATTORNEYS

John N. Lipsitz

Michael A. Ponterio

John P. Comerford

Neil J. McKinnon

Kathleen A. Burr

Joseph T. Kremer

Anne E. Joynt

Keith R. Vona

Dennis P. Harlow

Mathew J. Morton

Henry D. Gartner

Of Counsel

Nan L. Haynes

Of Counsel

John M. Pullano

Licensed Workers'

Compensation Representative

© 2011. All Rights Reserved.

17-YEAR STRUGGLE ENDS IN SUCCESS...continued from page 3

benefits again, this time under the federal law. In 2008, the claim was rejected again. The U.S. Department of Labor rejected the claim after subjecting it to dose reconstruction and finding a less than 50% probability of causation. There ensued numerous attempts to have the government reconsider or reopen the claim, including a lawsuit brought on the family's behalf by Lipsitz & Ponterio against the Department of Labor, claiming that the government's denial of the claim was arbitrary and capricious.

In the meantime, Eleanor Tornabene joined a group effort which petitioned to obtain SEC status for a class of former employees from Linde. NIOSH received the petition, and that effort culminated in a recommendation made by the Department of Health and Human Services to Congress in April 2011, that the Linde plant

worker claimants who had been employed for at least 250 days between 1954 and 1969 be granted SEC status. In May 2011, the Linde SEC became official, and Sam Tornabene's claim fits squarely within its definition. Nearly two decades after the Tornabenes began to pursue their claim, success appears to be at hand. ■

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.

Lipsitz & Ponterio, LLC

Attorneys At Law

135 Delaware Ave.

5th Floor

Buffalo, NY 14202-2415

Tel: 716.849.0701

Fax: 716.849.0708

First Class
U.S. POSTAGE
PAID
BUFFALO, NY