

# NEWS & VIEWS

Volume 1 | Spring 2010

Attorney Advertisement

## LIPSITZ & PONTERIO ANNOUNCES NEW *BRAKES AND MESOTHELIOMA* WEBSITE

As part of our continued service to the community of Western New York, we are pleased to announce the launch of our new website, *Brakes and Mesothelioma*, located at [www.mesotheliomabrakes.com](http://www.mesotheliomabrakes.com). This user-friendly website offers information regarding asbestos exposure through the repair and maintenance of truck, passenger car, tractor and industrial machine brakes, as well as details regarding the federal government's stance on asbestos-containing brake linings. Our website also includes a comprehensive list of brake manufacturers and videos featuring auto and brake mechanics describing their exposure to asbestos-containing brake pads and linings.

*Brakes and Mesothelioma* serves as a unique tool for auto and brake mechanics diagnosed with mesothelioma and other asbestos-related diseases. Until the 1990's, asbestos was used in brake linings, clutches and gaskets. Lipsitz & Ponterio created this website as part of an ongoing effort to provide workers with valuable technical and legal information regarding exposure to asbestos-containing brake pads and linings. Because asbestos was never completely banned in the United States, many workers were exposed to asbestos-containing brakes, some as recently as the year 2000. Our goal at Lipsitz & Ponterio is to ensure that information pertaining to asbestos-containing brakes is easily accessible to brake and auto mechanics suffering from mesothelioma and

seeking legal redress in New York State.

Lipsitz & Ponterio's *Brakes and Mesothelioma* website was implemented and designed by our in-house marketing team. We encourage you to visit this helpful new site at [www.mesotheliomabrakes.com](http://www.mesotheliomabrakes.com). If you have any questions regarding our firm or our *Brakes and Mesothelioma* website, please let us know by clicking on "Contact Us" or by calling our office at (716) 849-0701.

### in this issue:



*Lipsitz & Ponterio Announces New Brakes and Mesothelioma Website* ....1

*Advantages to Mediation and Expedited Resolution*..... 1-2

*Interview with Don Holdaway - Dedicated Community Volunteer*.....2

*Asbestos-Contaminated Plants Located Throughout Our Western New York Communities*.....3

*Lipsitz & Ponterio Recovers Over \$3 Million for Boilermaker*.....3

*Lipsitz & Ponterio Represents Victim of Occupational Allergic Contact Dermatitis*..... 4

*Welcome Aboard*.....4

*Asbestos-Laden Cupolas Exposed Foundry Workers to Harm* .....5

*General Motors/Chevrolet Foundry Worker Case Settled*.....5

*Attorney Spotlight*.....6

## ADVANTAGES TO MEDIATION AND EXPEDITED RESOLUTION

It is rare that an automobile accident case ends up in United States District Court, but when one does, it is subject to the federal court's mandatory mediation program.

In 2008, Lipsitz & Ponterio represented a fifty-year-old plaintiff who, as a result of a car accident, suffered an injury requiring a two-level cervical fusion. Automobile accident cases are ordinarily resolved in state court. However, because the defendant was a citizen of Ontario and even though the injury took place here in New York, the defendant was entitled to have his case heard in federal court, on the somewhat antiquated theory that a federal judge would ensure that he would be given a fair trial, something the local state court system might not

have provided.

As a direct result of the defendant's negligence, our client has endured substantial pain and suffering since the accident in January 2006. At first, our client decided against surgery and opted instead for a two and a half year course of physical therapy, chiropractic treatment, massage therapy, acupuncture, epidural steroid injections and facet blocks. Because these conservative treatments did not fully relieve our client's symptoms, she finally decided to proceed with surgery.

In the federal court system, mediation is a flexible, non-binding, confidential process, where a qualified neutral (or mediator) facilitates resolution of the issues between the parties

...continued on page 2

*“The mediation process is an alternative to a trial, and it helps individuals communicate with one another to determine if it is possible to reach an agreement that satisfies both parties’ needs.”*

and assists with settlement discussions. The mediation process is an alternative to a trial and it helps individuals communicate with one another to determine if it is possible to reach an agreement that satisfies both parties’ needs. This process often saves a great deal of time and money along the way.

**INTERVIEW WITH DON HOLDAWAY - DEDICATED COMMUNITY VOLUNTEER**

Recently, Lipsitz & Ponterio had the opportunity to sit down and discuss the good old days in the City of Tonawanda with Donald Holdaway, a longtime volunteer firefighter. We talked about the years he served in the United States Army and Air Force, his volunteer work with Niagara Falls Volunteer Fire Company #3 and his memories of his other past employment.

Many readers of this newsletter may already know Don Holdaway as a sympathetic and caring fellow co-worker from their years of working at the Durez facility on Walck Road. Don has testified in numerous lawsuits on behalf of men sick and dying of asbestos-related diseases. Don grew up with three brothers and two sisters on River Road in Tonawanda, New York, not far from where he resides today. He enlisted in the United States Army on August 6, 1942, at the age of 18, and completed basic training in Miami Beach, Florida. Shortly after basic training, Don received orders to go overseas during World War II. He was stationed for two months in North Africa. Beginning in 1943, he was moved to India as part of the China-Burma Theater. While stationed in India, he serviced vehicles as a mechanic in a motor pool. Don met his wife Dorothea in India, where she was employed as the Adjutant General’s secretary of Allied Forces on the base where Don was stationed. They married on January 16, 1946, at St. Thomas Church in Calcutta, India. Mrs. Holdaway became an American citizen as a result of their marriage. Formerly a British subject, she was born, raised and educated in Calcutta. Shortly after they were married, Mr. and Mrs. Holdaway returned to the United States on a boat containing twenty-four war brides. It was at this time that Don attained the rank of Sergeant.

When Don returned to Tonawanda, New York, in 1946, he worked with his father for several months at the Batt Oil Company in North Tonawanda, followed by a brief employment at the Chevy Forge on River Road, before starting work at Durez.

In mediation, there are no judges or juries to make final, binding decisions; the parties themselves make their own agreements, and a mediator oversees discussions between parties. Benefits of mediation vary, depending upon a client’s needs and interests. In short, pre-trial mediation is a useful tool in obtaining early resolution of cases.

On average, most cases that go through the mediation process are settled in seven months, whereas lawsuits can take three years or longer. As soon as our client retained Lipsitz & Ponterio in December 2008, we aggressively moved the case forward. Through the use of pre-trial mediation, we were able to settle the case in four months for \$475,000. By using mediation as a form of alternative dispute resolution, our attorneys achieved a fair result for our client that might never have been obtained by waiting the several years it typically takes to reach a trial by jury. ■



*Pictured Above: Don Holdaway with Richard Goodman, current President of Niagara Hose Volunteer Fire Company # 3*

At the time Don was hired at Durez in February 1947, the workers at the plant were represented by the International Union of Electrical Workers (IUE). Several years later, the IUE was ousted from the plant because of its alleged affiliation with the Communist Party, and the

International Association of Machinists (IAM) took over representation of the workers. Don was originally hired as a B Pipefitter, but he held a variety of other positions until his retirement in 1983.

While Don was employed at Durez, he also served in the Air Force Reserves and was called to active duty in March 1951. He was stationed at the Niagara Falls Air Force Base, and he went from there to Korea, where he served for eight months during the Korean War.

Don began volunteering with Niagara Hose Volunteer Fire Company # 3 on Wheeler Street in the City of Tonawanda in February 1947. He remains an exempt volunteer fireman to this day and has also served as President of the Company.

In his spare time, Mr. Holdaway enjoys rebuilding a 1936 fire truck currently parked in the Niagara Hose Volunteer Fire Company’s garage. He also likes to volunteer and supervise design and construction at his church, St. Francis in Tonawanda, where numerous remodeling projects are taking place. Mr. and Mrs. Holdaway raised ten children in the home they still live in today. ■

## DID YOU OR A LOVED ONE WORK AT ANY OF THE ASBESTOS-CONTAMINATED PLANTS LOCATED THROUGHOUT OUR WESTERN NEW YORK COMMUNITIES?



You may have been diagnosed with mesothelioma or another asbestos-related disease because you were exposed many years ago to asbestos-containing materials while working at one of the plants along the River Road. Even if you never handled this material yourself, you may have been exposed to harmful concentrations of asbestos because your co-workers handled or installed asbestos-containing products.

Mesothelioma does not become evident at the time of exposure. It can take up to fifty years for the disease to show up, long after your career has ended. If you are suffering from mesothelioma because you worked in a factory, in an auto shop, delivered asbestos materials as a truck driver, and served in the Navy or worked in shipyards, our attorneys can help you receive the compensation you and your family deserve.

At Lipsitz & Ponterio, LLC our attorneys bring third-party lawsuits for mesothelioma and lung cancer against the companies that wrongfully failed to warn workers against the hazards of asbestos exposure. We have represented hundreds of workers from the job sites listed on the map to the left, and we have an extensive library of information regarding the products to which these workers were exposed.

For more information regarding these job sites and asbestos-related diseases, including mesothelioma, please visit our website [www.lipsitzponterio.com](http://www.lipsitzponterio.com) or call us at (716) 849-0701. ■

## LIPSITZ & PONTERIO RECOVERS OVER \$3 MILLION FOR BOILERMAKER

Lipsitz & Ponterio recently obtained over \$3 million in a settlement for a local union boilermaker for injuries resulting from job-related exposure to asbestos. Our client, a resident of Elma, New York, worked as a Local 7 Union Boilermaker between 1967 and 2002. In the fall of 2008 and at the age of sixty-one, our client developed mesothelioma. He brought suit against several companies responsible for the sale and distribution of a variety of asbestos-containing products. Due to the confidential nature of this settlement, the plaintiff's family is not at liberty to disclose the names of the settling parties or the amount each company contributed to the overall settlement.

Our client battled mesothelioma and died of this disease on January 25, 2010. He was married with three children and six grandchildren. He was a third-generation boilermaker who worked at large industrial sites throughout the Western New York area, including Niagara Mohawk's Huntley and Dunkirk steam stations, Ashland Oil, Hooker Chemical, Bethlehem Steel and DuPont in Niagara Falls.

The case settled two days after a jury was selected and just before Lipsitz & Ponterio lawyers, Michael A. Ponterio and Keith R. Vona were due to make opening statements. Our client's mesothelioma was caused by exposure to equipment, including pipes, valves and boilers covered with exterior insulation. He was present and participated in numerous shutdowns during which asbestos-containing insulation materials were removed and replaced. Dismantling and reapplying asbestos-containing insulation gives rise to a great deal of airborne asbestos contamination.

The attorneys at Lipsitz & Ponterio were raised and educated in Western New York and live and work in the Buffalo area. They feel privileged to represent a fellow Western New Yorker grievously injured by the negligent conduct of various asbestos manufacturers and distributors. "It is truly an honor to know and represent people like this. Our client was a hard-working family man who contracted a terrible disease through no fault of his own. Although money cannot adequately compensate for the harm that was done to our client, we hope that it will provide some measure of relief for his family in the difficult years ahead," said Keith R. Vona. ■



## LIPSITZ & PONTERIO REPRESENTS VICTIM OF OCCUPATIONAL ALLERGIC CONTACT DERMATITIS

Regular skin contact with rubber products poses a risk of allergic contact dermatitis to a small but significant percentage of the population. Unless it is diagnosed and treated early, this type of dermatitis can result in total and permanent disability. The rubber manufacturing industry has been aware of this hazard for decades but has done little or nothing to warn workers and consumers.

For at least fifty years, the rubber industry has been aware that chemical accelerators, which survive the vulcanization process or are formed by it, have the potential to be released from rubber products and absorbed by the skin, leading to allergic contact dermatitis in certain users. The following case study illustrates the effects of prolonged contact with bulk rubber hose on one of our clients, an industrial worker at a manufacturing facility in Buffalo, New York.

For approximately four years, beginning in 2001, our client manually fed sections of rubber hose through a machine in order to cut the hose into measured lengths. He did this as many as one thousand times a day.

In August 2004, our client began to experience a burning sensation when he washed his hands. His skin became irritated, particularly in the space between his left index finger and thumb, where the rubber hose he handled all day long came into regular contact with his skin. During the following weeks, his rash worsened and spread across the rest of his left hand and wrist, and eventually to his fingers and the backs and palms of his hands. This rash created an itchy, burning sensation in the affected areas and a feeling of “pins and needles.” At first, the rash improved on our client’s days off from work.

Because our client had worked with the same materials for years with no adverse effects, his doctor did not initially believe his rash was occupationally related.

The doctor prescribed topical creams and ointments for the rash, and, beginning in the winter of 2005, our client wore gloves at work whenever he could. He could not wear gloves when applying labels to finished hoses. In spite of these precautions, his condition worsened; the dermatitis had become so widespread by the spring of 2005 that he could no longer work. The dermatitis spread to his arms, torso, back, face and neck. His doctor referred him to a dermatologist specializing in skin disease.

The dermatologist scheduled patch testing to determine what was causing our client’s dermatitis. The results indicated he was allergic to two common rubber accelerators, mercaptobenzothiazole and thiuram, and was most likely suffering from dermatitis due to contact with rubber products at work.

In November 2008, the New York State Worker’s Compensation

Board granted our client total and permanent disability.

Two companies manufactured the type of rubber hose our client worked with. Neither company issued any kind of warning about the potential of certain chemicals in the hose they manufactured to cause allergic contact dermatitis. The industry knew for decades that such chemicals could and did cause sensitization and allergic reaction in both consumers and industrial workers. One company’s medical director even acknowledged that the medical profession had been aware since at least the 1950’s that these chemicals could persist in finished rubber products. She also testified that anyone who regularly touched and used automotive hose materials would be exposed to these potentially sensitizing chemicals.

Several dozen employees of one company were forced into early retirement by persistent dermatitis resulting from exposure to the same chemicals responsible for our client’s disease.

Neither our client nor his employer was aware of the risk inherent in working with rubber materials. The manufacturers were fully aware of this risk but failed to warn workers and even indicated that wearing gloves was an unnecessary precaution. They exposed our client and countless other workers to serious and often irreparable harm. ■

### welcome aboard!



As our firm continues to grow, we are pleased to welcome six new staff members to our office: Ian Buchalski, Charmain Jozwiak, Courtney Bajdas, Aaron Pontikos, Andrea McCarthy and Lisa Kimbrough. Ian and Aaron have been hired as legal assistants. Ian received his B.A. in Political Science from the University at Buffalo, and he also attended West Virginia University and the University of Copenhagen. Aaron received his B.A. in English from the University at Buffalo.

Charmain has been hired as a legal secretary in the firm’s Buffalo Lead Practice Group. Charmain has over thirty-six years of experience as a legal secretary, and she received her Administrative Assistant Associates Degree from Bryant and Stratton. Courtney has also been hired in the firm’s Buffalo Lead Practice Group as a legal assistant. She received her B.A. in Psychology from Boston University.

Andrea and Lisa have been hired as legal secretaries in the firm’s Rochester Lead Practice Group. Andrea received her Associates of Arts degree from the University of Florida and has over twenty years of experience as an administrative assistant. Lisa received her Associates degree in Secretarial Science from Bryant and Stratton and has over ten years of experience in customer relations. ■

## ASBESTOS-LADEN CUPOLAS EXPOSED FOUNDRY WORKERS TO HARM

Starting in 1985, wrecking crews began to demolish the buildings that made up the old General Motors' foundry on Irene Street in the Town of Tonawanda. Since the 1970's, government regulations have required that all asbestos be removed from a building prior to its demolition. The foundry buildings on Irene Street were full of asbestos-containing insulation. Demolition workers' suspicion that they were being exposed to life-threatening conditions was confirmed when federal occupational safety officials discovered that almost none of the asbestos had been removed from the foundry prior to its demolition. Members of Local 210 of the Laborers Union walked off the job in September 1986, claiming that the demolition was being carried out in an unsafe manner and that they were being exposed to asbestos. Unfortunately, the damage was already done to them and to the workers who finished the job.

What made the old GM foundry so dangerous? Prior to federal regulations imposed in the 1970's, fire-resistant and insulating materials were applied to hot surfaces in many foundries, including the one in Tonawanda. These materials contained asbestos. In the Tonawanda foundry, furnaces known as cupolas were used to melt and pour metal to create castings and parts. Asbestos-laden insulation covered the cupolas' pipes and ducts.

A typical cupola consists of a vertical steel shell lined with refractory brick. The charge is introduced into the furnace body by means of an opening about halfway up the vertical shaft. Most cupolas are built with a drop-bottom design consisting of hinged doors under the hearth. This allows the bottom to drop away at the end of melting to aid cleaning and repairs. Many foundry workers were required, as part of their jobs, to clean out cupolas by chipping away at layers of built-up slag and worn asbestos refractory materials.



Despite the threat they posed to workers' safety, cupola furnaces were for decades the primary means of melting cast iron in foundries. This is because cupolas employ a method of melting that is continuous in its operation, they are easy to use and their operating costs are low.

A company formerly known as Niagara Asbestos and currently known as Niagara Insulations is a thermal insulation distributor and contractor that regularly sent workers

to job sites, including the Tonawanda foundry, to apply insulation to steam pipes, cupolas and other equipment. Throughout the 1950's and 1960's, Niagara Asbestos employees worked in the Tonawanda foundry's cupola area removing and installing asbestos-containing insulation materials on pipes and ducts associated with the cupolas. Niagara also supplied asbestos-containing insulation to sites where in-house workers applied the insulation themselves.

Niagara Insulations and the demolition company that oversaw the foundry's demolition bear responsibility for exposing workers to asbestos. If you or someone you know worked in a foundry that contained cupolas and currently suffers from mesothelioma or any other asbestos-related disease, we urge you to contact Lipsitz & Ponterio to learn more about your legal rights. ■

## GENERAL MOTORS/CHEVROLET FOUNDRY WORKER CASE SETTLED

Lipsitz & Ponterio recently represented a gentleman from Holland, Michigan, who died at the age of 63 as a result of malignant mesothelioma. Our client worked at the General Motors/Chevrolet Foundry on River Road in Tonawanda, New York, from 1966 to 1984. The asbestos to which he was exposed to while employed there caused his mesothelioma.

The foundry where our client worked manufactured cast iron parts for the automotive industry, including brake drums, fly wheels, water pumps, manifolds and engine blocks. The iron was melted in large cupola furnaces by igniting coke at extremely high temperatures. Our client's exposure to asbestos occurred in the cupola area.

This area contained an enormous amount of asbestos-laden insulation, which was used on the cupola furnaces, associated duct work, and pipes. Because of constant wear and tear due to high temperatures, local contractors frequently had to repair and replace the insulation. When worn asbestos insulation is torn out and replaced with new insulation, it is usually cut with a saw. This practice

released millions of asbestos fibers into our client's work environment and breathing area. These fibers caused the disease that killed him.

Our client's lawsuit was filed in Erie County in January 2009. Prior to his death on March 25, 2009, attorneys from Lipsitz & Ponterio preserved his testimony at his home in Michigan. Our client's case came to trial in front of the Honorable John P. Lane on December 7, 2009. Michael A. Ponterio, Esq., and Keith R. Vona, Esq., represented our client's family at trial. After several days of testimony, the case was successfully resolved with a substantial settlement for our client's family.

The attorneys at Lipsitz & Ponterio recognize the serious nature of mesothelioma, and the importance of aggressively prosecuting this type of case as quickly as possible from the outset and preserving our clients' testimony in a timely fashion. Thanks to our attorneys' swift action, our client's case was resolved efficiently and without unduly burdening his family. ■



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

© 2010. All Rights Reserved.



**J**ohn N. Lipsitz, Esq. is a founding partner of Lipsitz & Ponterio. Since 1985, he has represented workers suffering from industrial diseases, such as asbestosis and mesothelioma. He has also represented plaintiffs in a variety of occupational disease cases, which were the first of their kind in New York State, including lawsuits for chronic beryllium disease. Shortly after Mr. Lipsitz was admitted to practice in New York State in 1979, he was hired by Prisoners' Legal Services of New York, as a staff attorney. He represented state prison inmates in various matters concerning the conditions of their confinement, including free speech rights and the free exercise of

religion. After representing inmates for three years, he became an instructor at the University at Buffalo Law School, teaching clinical practice courses in consumer bankruptcy, occupational safety and health law, constitutional rights and habeas corpus.

"I started my legal career representing state prison inmates. They have very few rights, but we fought very hard to protect those rights and to defend their dignity as human beings. In 1985, I began representing injured workers in claims against the manufacturers of dangerous products, and I brought to that struggle my desire for fair treatment and respect for human dignity."

During his thirty-one years of legal practice, Mr. Lipsitz has represented clients in a wide variety of cases, including class actions to vindicate constitutional rights and to preserve lifetime health insurance benefits for union retirees.

In addition to his experience trying numerous cases in front of juries, Mr. Lipsitz has briefed and argued numerous appeals before state and federal appellate courts and has handled hundreds of motions on significant legal issues in New York State trial courts.

John and his wife, Maria, have three children. In his spare time, Mr. Lipsitz enjoys reading and traveling. ■

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 14202-2410

Tel: 716.849.0701  
Fax: 716.849.0708

First Class  
U.S. POSTAGE  
PAID  
BUFFALO, NY