

NEWS & VIEWS

Volume 2 | Fall 2009

ARE ASBESTOS PRODUCTS BEING SOLD TODAY?

Despite the well-documented health dangers associated with asbestos, this mineral has never been completely banned in the United States. There is indeed no level of exposure low enough to guarantee the prevention of a form of cancer known as mesothelioma. According to the Consumer Products Safety Commission, roofing materials account for 61% of all new asbestos-containing products, friction products account for 19%, gaskets account for 13% and 7% are classified as "other."¹ This simple mineral has been used in a wide variety of products and mechanical equipment since the beginning of the industrial revolution. Given the grave danger it poses to human health, why has our government not instituted an outright asbestos ban?

Some refer to this doomed effort as "The Failed Asbestos Ban." In 1979, the Environmental Protection Agency (EPA) decided to regulate asbestos under the Toxic Substances Control Act (TSCA). Through TSCA, the EPA attempted to institute an absolute asbestos ban. As the proposed ban became imminent, asbestos manufacturers and the Canadian government began to pressure the United States government, under the Reagan Administration, to halt the EPA's efforts. The Canadian government took a great interest in this matter because "95 percent of the 85,000 tons of asbestos used in the United States at the time came from Canada, primarily Quebec."² Due to overwhelming pressure from both Canadian and U.S. government officials, the EPA eventually agreed not to impose a



Pictured from left to right: close up of asbestos-containing gasket, roof aluminum over asbestos-containing flashing felt and roofing tar, and, pictured on bottom, asbestos-containing brake pads.

ban. In 1984, the EPA transferred the asbestos issue to the Occupational Safety and Health Administration (OSHA) and the Consumer Product Safety Commission (CPSC).

Several years later, the EPA found that the CPSC had not taken any significant action since 1982 to limit asbestos in consumer products. Outraged by the CPSC's failure to act and facing mounting public pressure, the EPA reversed its prior position and again decided to support a ban.

...continued on page 2

in this issue:



MESOTHELIOMA AND THE YOUNGER WORKER

Many assume that asbestos disease afflicts only retirees or those approaching retirement age. There is a misconception that asbestos disappeared from the work environment when stricter government regulations were enacted in the early 1970's. This is only partially true. While some products containing asbestos, such as pipe covering and spray applied fireproofing, were phased out in the early 1970's, many more continued to be sold and used for years, and, in some cases, decades. In addition to this oversight, Congress enacted legislation inadequate to address the threat posed by asbestos: the new laws merely regulated the sale of new products without requiring the removal of the millions of tons of asbestos already present in homes and public buildings built in previous decades. Asbestos disturbed through

renovation, remodeling or improper removal can cause serious illness as it deteriorates.

As we continue to represent asbestos victims, we have noticed an alarming trend: some of our clients are being diagnosed with mesothelioma at a much younger age, in some instances as young as in their thirties and forties. It is generally accepted in reputable medical and scientific literature that the onset of mesothelioma can occur twenty or thirty years after a person is first exposed to asbestos fibers. Prevailing medical reports also suggest that there is no safe level of exposure to this mineral, and several reports have documented the development of mesothelioma in persons after as little as a single exposure to asbestos. Sadly, we represent some clients who are just now being diagnosed with mesothelioma, and exposed to ...continued on page 2

Are Asbestos Products Being
Sold Today?1-2

Mesothelioma and the Younger
Worker.....1-2

Attorney Advertisement
Advisory3

Equipment Cases Out of Kodak.....4

Legwork Allows Injured Foundry
Worker's Case to Proceed.....4

Memories of Local No. 4 - Interview
with George Roehling.....5

Attorney Spotlight.....6

ARE ASBESTOS PRODUCTS BEING SOLD TODAY? *...continued from page 1*

In 1989, after conducting a ten-year study, the EPA announced that it would phase out all products containing asbestos. This ban applied to the manufacture, distribution and import of asbestos-containing products such as roofing materials, pipes, tile, insulation and brake linings. The ban drew a negative response from asbestos manufacturers and the Canadian government, who once again pressured the U.S. federal government to dissolve the ban. In 1991, the Fifth Circuit Court of Appeals in New Orleans vacated the ban under TSCA and held that the EPA had failed to present “substantial evidence” to justify the ban. As a result of this decision and despite numerous attempts to reenact the ban, asbestos-containing products are still being sold in the United States today. ■

1 www.ecy.wa.gov/porgrams/hwtr/demodebris/pages2/demowasteother.html

2 <http://reports.ewg.org/reports/asbestos/facts/fact5.php>

3 www.epa.gov/earth1/r6/6pd/asbestos/asbmatl.htm

MESOTHELIOMA AND THE YOUNGER WORKER

...continued from page 1

asbestos in the 1970's and 1980's. These unfortunate people worked in a variety of occupations and were exposed to a wide range of asbestos products, including joint compound used to finish drywall, asbestos gaskets and packing used in valves and pumps and brake linings found in automobiles and trucks.

Serious illness is always a tragedy. But the tragedy is magnified when mesothelioma strikes a young person. Someone diagnosed during his active working years must fight for his life while desperately worrying about how to continue to financially support his spouse and school-age children. Recently, we represented a single father in his mid-40's who was raising two teenage sons on his own. At the time of his diagnosis, our client was working as a salesman. He had been employed throughout the 1980's as a truck painter maintaining the fleet of a major trucking company. During the ten years he spent with the trucking company, he did not personally use any materials containing asbestos, but he worked in the same garage where mechanics repaired and replaced brake shoes on large eighteen-wheel trucks and trailers. Even though he was not directly working with asbestos brakes, his breathable airspace was contaminated with asbestos dust because the mechanics he was working with would disassemble brakes and use compressed air to clean the brake assemblies on large trucks before installing new asbestos-containing brake shoes.

asbestos bankruptcy update

As part of our continuing representation of clients suffering from asbestos disease, Lipsitz & Ponterio files claims against bankrupt asbestos companies. For recent developments concerning bankrupt asbestos companies, visit our Firm's website:

www.lipsitzponterio.com/asbestos

Sample List of Materials Suspected of Containing Asbestos³:

- Cement Wallboard
- HVAC Duct Insulation
- Cement Siding
- Boiler Insulation
- Asphalt Floor Tile
- Breaching Insulation
- Vinyl Floor Tile
- Ductwork Flexible (Fabric Connections)
- Vinyl Sheet Flooring
- Cooling Towers
- Flooring Backing
- Pipe Insulation (corrugated air-cell, block, etc.)
- Construction Mastics (floor tile, carpet, ceiling tile)
- Heating and Electrical Ducts
- Acoustical Plaster
- Electrical Panel Partitions
- Decorative Plaster
- Electrical Cloth
- Textured Paints/Coatings
- Electric Wiring Insulation
- Base Flashing
- Taping Compounds (thermal)
- Thermal Paper Products
- Packing Materials (for wall/floor penetrations)
- Fire Doors
- High Temperature Gaskets
- Caulking/Putties
- Laboratory Hoods/Table Tops
- Adhesives
- Laboratory Gloves
- Wallboard
- Fire Blankets
- Joint Compounds
- Fire Curtains
- Vinyl Wall Coverings
- Elevator Equipment Panels
- Spackling Compounds
- Ceiling Tiles and Lay-in Panels
- Chalkboards
- Spray-Applied Insulation
- Roofing Shingles
- Blown-in Insulation
- Roofing Felt
- Fireproofing Materials

Our client's exposure to asbestos took place in the 1980's, even though asbestos substitutes were by then available to brake and truck manufacturers. Because the asbestos defendants failed to use asbestos-free brake shoes and failed to adequately warn their workers that the brakes they were working on still contained asbestos, Lipsitz & Ponterio was able to negotiate a significant cash settlement that will enable the family to pay for his children's college education and more.

Because asbestos is still present in many buildings, workers and parents of school-age children should take care to prevent exposure to asbestos and the illnesses exposure can cause. If you suspect building materials containing asbestos are present in your home or work place, it is best not to attempt to remove the toxic material yourself. You should use a contractor certified in proper asbestos removal. If you suspect you have been exposed to asbestos in the past, you should notify your private doctor so that he or she may monitor your health for asbestos-related changes. If you or someone you love is diagnosed with mesothelioma or another asbestos-related cancer, you should contact us immediately so that we can help safeguard your legal rights.

ATTORNEY ADVERTISEMENT ADVISORY

Experience is required to develop the skill and judgment necessary to provide effective representation to the victims of asbestos-related diseases, including mesothelioma. You may have noticed a recent surge of television advertisements and pop-up websites targeting individuals diagnosed with mesothelioma or lung cancer caused by exposure to asbestos. The attorneys at Lipsitz & Ponterio, LLC urge you to consider the importance of choosing the right attorney to handle your case.

Advertising should not be condemned. The purpose of advertising is to provide useful information regarding the services offered by a law firm and to inform citizens of their legal right to seek compensation and redress their grievances regarding government action. Since the Supreme Court declared that categorical prohibitions on attorney advertising are unconstitutional, the number of law firms that advertise has grown rapidly.

Unfortunately, a growing number of individuals are selecting legal counsel based on the strength of a law firm's advertising campaign, rather than an appreciation for its level of experience and reputation in the community. Many of these firms are not admitted to practice law in New York State, and most of them will simply choose another lawyer, unknown to you, to handle your case.

The attorneys at Lipsitz & Ponterio invite you to visit our website or call us to make an appointment to meet with one of our attorneys. If you begin your Internet search for a lawyer to handle your mesothelioma case by typing the words "mesothelioma attorney" or "asbestos lawyer," you will not necessarily find a firm that will handle your case personally, or even one whose employees have the experience necessary to do so effectively. We urge you to speak to the experienced professionals at Lipsitz & Ponterio before making a final decision based on another firm's advertising campaign. ■

donation to disabled american veterans

Recently, the attorneys and staff at Lipsitz & Ponterio, LLC participated in a workplace collection drive on behalf of sick and injured troops. Items donated include clothing, personal items, pens, paper, drawing supplies, books and CD's so that our hospitalized veterans can pass the time a little easier. If you are interested in supporting the Disabled Americans Veterans organization, please visit www.dav.org for information on how you can donate and assist our troops.

before you contact another firm, we urge you to ask the following questions:

1. **Will you handle my case yourself? If not, will you refer me to a qualified firm?**
 - The attorneys at Lipsitz & Ponterio will handle your case personally. We have the experience necessary to do so, and we will not refer you elsewhere.
2. **Will you handle my case promptly and, if possible, while I am still alive?**
 - We will begin prosecuting your case immediately. We will not waste time by sending you to another lawyer. We know that mesothelioma and other asbestos-related diseases are often fatal, and we will take every practical step necessary to preserve your testimony while you are still in full command of all your mental faculties.
3. **How much experience do the lawyers in your office have?**
 - John N. Lipsitz and Michael A. Ponterio founded Lipsitz & Ponterio, LLC in 1995. We have over 50 years of combined experience helping victims of toxic exposure and negligence to recover damages from asbestos companies, product manufacturers and careless landlords. Since our firm's inception, we have doubled in size and developed a reputation for professional excellence.
4. **Will you travel to my home for a free consultation, even though I may no longer live in New York State?**
 - The attorneys at Lipsitz & Ponterio have made hundreds of trips throughout the United States to assist clients exposed to toxic materials, such as asbestos, while they lived and worked in New York State. Because diseases, such as mesothelioma, typically have a latency period of approximately ten to fifty years from initial exposure to asbestos to the development of this deadly disease, symptoms may first appear long after a worker has retired and moved out of the state.
5. **Will you provide me with advice and representation, not only in a lawsuit, if there is the basis for one, but also in workers' compensation proceedings and for social security disability benefits?**
 - John M. Pullano is Lipsitz & Ponterio's Licensed Workers' Compensation Representative, and he has over twenty years of experience before the Workers' Compensation Board and in handling Social Security claims. He is a full-time member of our staff.

EQUIPMENT CASES OUT OF KODAK

Two Eastman Kodak workers represented by Lipsitz & Ponterio recently received significant settlements for their asbestos-related injuries. Our clients, a machinist millwright and a pipefitter, were previously employed by the Eastman Kodak Company located in Rochester, New York. Both men were diagnosed with malignant mesothelioma. Their principal exposure was to asbestos insulation found on the exterior of mechanical equipment, including pumps and valves. These cases were concerned with the legal issue of a manufacturer's duty to provide adequate warnings about the hazards of exposure to both interior and exterior components of its products. Under New York state law, equipment manufacturers have a duty to disclose the latent dangers of asbestos exposure to workers who use their equipment. The asbestos-containing exterior insulation on this equipment served two purposes. First, it allowed the equipment to operate effectively at a high temperature. Second, it protected the workers from being burned by high temperature equipment.

In New York, when a lawsuit is filed for negligent failure to warn, as in any other negligence case, the plaintiff must prove that the defendant had a legal duty to the plaintiff, that the defendant breached that duty, and that the breach was a proximate cause of the plaintiff's injury *Becker v. Schwartz*, 46 N.Y. 2d 401 (1978). In the cases of both the millwright and the pipefitter, the equipment manufacturers had a duty to warn against dangers resulting from the foreseeable use of their products. Both of our clients were exposed to equipment laden with components containing asbestos. This

‘Under New York state law, equipment manufacturers have a duty to disclose the latent dangers of asbestos exposure to workers who use their equipment.’

equipment required the use of asbestos insulation, asbestos packing and asbestos gaskets in order for the equipment to function properly.

The millwright represented by Lipsitz & Ponterio was employed at Kodak for several decades beginning in 1952. His work on pumps required him to disturb the exterior insulation in order to properly maintain and repair the pumps to meet his employer's specifications. The lawyers at Lipsitz & Ponterio gathered numerous documents proving that the equipment manufacturers in this case knew that workers would be exposed to the exterior insulation on their equipment. Thanks to this vital information, the equipment manufacturers were held responsible for our clients' illness.

Each client received a substantial settlement to compensate for his exposure to asbestos at Kodak and subsequent diseases. ■

LEGWORK ALLOWS INJURED FOUNDRY WORKER'S CASE TO PROCEED

It can take decades for a person exposed to asbestos to show signs of disease. Because of this, lawyers sometimes have to do some detective work to find out who is responsible for the products that injured their client.

Lipsitz & Ponterio represents a gentleman who worked as a laborer in the finishing room of a Buffalo-area metal foundry. From 1963 until 1980, our client was regularly exposed to dust from acoustical insulation on the foundry's walls. The insulation in this particular foundry was extremely brittle and prone to crumbling. The day to day operation of the machinery often caused objects to strike the walls and release deadly asbestos dust.

Our client could testify about how he was exposed to the asbestos, but the insulation had been put on years earlier, when the foundry was built. Naturally, our client had no idea what brand of insulation it was or who sold it to his employer. Lipsitz & Ponterio was able to obtain documentation from the foundry which showed that National Gypsum's Thermacoustic brand insulation

was used in the construction of the foundry in 1956. The foundry also provided correspondence which identified a company called Buffalo Acoustical as a subcontractor that worked on the construction.

Armed with this information, a Lipsitz & Ponterio attorney traveled to North Carolina, where National Gypsum has a document repository. There, he found evidence that Buffalo Acoustical was the only company authorized to apply Thermacoustic in Buffalo during the time period that the foundry was constructed and even found a photograph of the inside of the foundry in an old advertisement for Thermacoustic.

At his deposition, Buffalo Acoustical's former president denied that the company had provided the insulation in question. Because of the advance research, we were able to prove that he was wrong. Despite the unusual fact pattern, Lipsitz & Ponterio was able to provide evidence as to who was responsible for the insulation that injured our client and negotiate a just settlement. ■

MEMORIES OF LOCAL NO. 4 - INTERVIEW WITH GEORGE ROEHLING

George Roehling retired in 1991, after a career spanning nearly thirty years, with Heat and Frost Insulators and Asbestos Workers Local Union No. 4 in Buffalo, NY. A couple of months ago, George graciously agreed to be interviewed by Lipsitz & Ponterio concerning his work as an asbestos pipe coverer for Local No. 4, his memories of working at Donner Hanna Coke and of the usual horse play with other Local No. 4 members. Here are some of the highlights of our conversation:

When did you leave South Buffalo? Where did you go to high school? I went to Bishop Timon and left South Buffalo right after high school; it must have been 1960.

What part of South Buffalo did you live in? I lived near Seneca and Stevenson Streets, about one mile toward the city from Cazenovia Park. A lot of Local 4 members came from South Buffalo.

How did you get into the Local No. 4 Union? Local 4 did not recruit. Bob Gittere was my wife's uncle and an old-timer from the union. I was taken in as an apprentice in 1961, right after high school, and did my apprenticeship for four years with Niagara Asbestos Insulation.

Tell us about the apprentice program. Yes, my apprenticeship lasted four years and then I took the test to become a journeyman. The test was farmed out to three different employers and I went to Niagara Asbestos Insulation, Insulation Distributors, Inc. (IDI) and Claxton under Red Alderdice.

What were your general duties as an apprentice? We had to carry boxes, mix cement, sweep, clean and do whatever the journeyman wanted us to do.

When you took the test to become a journeyman, whom did you work for? You worked with a journeyman, and the employer had to attest that you could do journeyman work. The test took three weeks, and at the time I was living on the East Side of Buffalo (Genesee and Bailey).

Who supervised your test? Jimmy Gram at Insulation Distributors, Inc. (IDI), Bob Hadley at Claxton and no one at Niagara because I was already working there.

Over the years you were in the Union working for Niagara as a journeyman, who were the "old timers" among journeymen? Larry and Freddie Pask, Larry Koenig, Mel Solly, Vern Solly, Tim Cummings, Sr., Ollie Gram, Witold (Vito) Sosnowski, Charlie and Dan Borucki, Bob Kilburn, Harry Kelly, Joe Walters, and Fay Skadan.

As a journeyman working for Niagara, did you work at Bethlehem Steel? Yes, but I also worked at Donner Hanna coke ovens. I wore the clogs there.



George Roehling, Local 4 Retiree

When you worked at Donner Hanna, were you a journeyman?

I worked for Niagara as an apprentice and as a journeyman. I worked at Donner Hanna as an apprentice and later, as a journeyman. I worked for Niagara 99% of the time, until I retired.

Tell us about your work at Donner Hanna. I was at Donner Hanna starting in 1961. The first battery when you went into the gate started to be built in the late 1950's.

Construction on that came to a halt for a period of time, and then construction resumed and I worked on that battery as a helper.

What did you do on top of the coke ovens at Donner Hanna?

There were steam lines that ran the length of the battery. These steam lines went into stacks, and flames would periodically shoot out of these stacks that were eventually put out with steam. You had to wear clogs because it was so hot up there. That is all they provided you with. If you stood on them with just your shoes, your feet would start to burn and you would have to run to the end. I wore the clogs up there. I am amazed anyone could work on top of the ovens for more than a few years and still be alive with that soot and smoke.

Let's discuss local Union activities. When did the Local No. 4 Union meet? The local Union met every month and those meetings were open to everyone in the Union. Sometimes there were disciplinary hearings held behind closed doors.

Was there an annual picnic? Oh yeah, local Union picnics were held all over Western New York. The Union also held a national annual convention in different places all over the U.S. I was not that active in the Union, so I didn't go to the convention.

Did you socialize in the Union with other members? Oh yeah. There was no softball league or anything like that, but we would go out. I traveled most of the time, and there were usually four to five guys on a job if it was a good-size job. We would go out, drink and poke fun.

Do you have any funny stories? Well, there are a lot that I cannot mention here. I can tell you about how some of the men were excellent seamsters. Some of these guys would come in and sew the canvas covers right over the steam pipes on some jobs. You would have a good job when some of these guys would go home and use their wives' sewing machines to sew canvas together and come back and put them on the pipe covering. ■



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

© 2009. All Rights Reserved.



ATTORNEY SPOTLIGHT

Joseph T. Kremer, Esq.

Joseph T. Kremer, Esq. is an experienced trial lawyer, who has represented personal injury victims since 1989. As an attorney at Lipsitz & Ponterio, Joe practices in the areas of lead paint poisoning, asbestos litigation, product liability, construction accidents, medical malpractice and automobile accidents. Historically, he has worked closely with local labor unions, including the UAW and USW in educating workers of the hazards of toxic exposures in factories, mills, power plants and construction sites. He has also lectured and written on the available remedies to those workers who have developed occupational illnesses.

Throughout his career, Joe has helped injured people obtain monetary awards for their injuries through settlements and trials. "In representing our clients we come across so many people who have been horribly injured or become sick through absolutely no fault of their own. As attorneys, we cannot undo the hurt and suffering that these people are forced to live with. However, in many cases, we are able to secure just and fair compensation. These people have lost their ability to work and many are the main breadwinner of the family. Being sure that they can pay their bills, send their kids to college and enjoy some financial security is very rewarding, and reminds me why I went to law school in the first place."

Joe and his wife Cynthia have one daughter, who is a college student at the Rochester Institute of Technology. In his free time, he enjoys woodworking and a wide variety of outdoor sports, including fishing, golf and tennis.

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