

NEWS & VIEWS

ATTORNEY ADVERTISING

- ASBESTOS & OCCUPATIONAL DISEASE
CHILDHOOD LEAD POISONING
MEDICAL MALPRACTICE
AUTOMOBILE ACCIDENTS
CONSTRUCTION ACCIDENTS
SOCIAL SECURITY DISABILITY
WORKERS' COMPENSATION
FIRE LOSS CLAIMS

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FORMER SUPREME COURT JUDGE RECEIVES SUBSTANTIAL SETTLEMENT

Earlier this year, LIPSITZ & PONTERIO obtained a settlement in excess of 1.6 million dollars for the family of a former New York State trial judge.

The judge also had additional exposure to asbestos outside of the workplace. Our client was a respected public servant, happily married for 47 years and the loving father of six children who enjoyed excellent health.

The judge also had additional exposure to asbestos outside of the workplace.

Our client was a respected public servant, happily married for 47 years and the loving father of six children who enjoyed excellent health. In December 2005 he suddenly developed flu-like symptoms and shortly thereafter he was diagnosed with an aggressive form of mesothelioma which took his life three months later.

48-YEAR-OLD FORMER BRAKE WORKER RECEIVES MULTI-MILLION DOLLAR SETTLEMENT FOR NYC CASE

After 14 months of litigation, LIPSITZ & PONTERIO obtained a 5.6 million dollar settlement for a 48-year-old former brake worker and his family.

Starting in the 1970s, our client was exposed to asbestos fibers, dust and particles when he installed and replaced automotive parts which contained asbestos. For the next two decades, he held numerous jobs in which he was repeatedly exposed to harmful asbestos-containing products.

In September 2005, the plaintiff began noticing shortness of breath. Shortly thereafter, he was diagnosed with malignant mesothelioma.

Our client has been happily married for 18 years and continues to financially support his two college-aged children.

TEACHER'S FAMILY AWARDED MULTI-MILLION DOLLAR SETTLEMENT

LIPSITZ & PONTERIO has obtained a cash settlement, in excess of 2 million dollars, for the family of a 42-year-old woman who passed away due to her physician's negligence.

Our client was a teacher, mother, and the wife of her high school sweetheart. In 2004 she suffered a heart attack which required that a pump be inserted through her groin to assist her heart. Doctors also gave her blood thinners to prevent any blood clots from forming. Her heart eventually stabilized, but the doctor's failure to discontinue using blood thinners before removing the pump caused our client to bleed to death.

The attorneys at LIPSITZ & PONTERIO were privileged to represent this family in their lawsuit and we will continue to represent victims of medical malpractice.

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## TOYS RECALLED FOR LEAD CONTENT BUT OLD PAINT IN HOUSES POSES GREATER RISK

The recent and pervasive news about toy recalls due to lead content or coating is disturbing, and parents everywhere have a right to be concerned. However, experts agree that lead poisoning suffered by children living in older dwellings within the city limits of Buffalo and Rochester is "almost entirely the result of deteriorated lead-based paint in housing." [Coalition to Prevent Lead Poisoning, www.leadsafeby2010.org](http://www.leadsafeby2010.org). Children are most commonly exposed to lead through chips and microscopic particles of old lead paint generated by friction between painted surfaces on windows, doors and porches, thus permeating the child's environment, getting onto his/her skin and hands, and passing into the body by routine hand-to-mouth activity.

It is hard to say, at this point, that the recalled imported toys are a serious source of *actual* lead exposure among children, because such toys have to be mouthed and chewed to disturb what is likely intact paint. In other cases, lead

was used as a stabilizer in plastics, such as was used in lunchboxes, making access less likely. There was a greater risk of lead exposure with the earlier-recalled children's jewelry because the jewelry was mouthed and sometimes swallowed. In 2007, toy-maker Fisher-Price recalled 83 types of toys which included 967,000 plastic preschool toys made by a Chinese vendor and sold in the United States. Sesame Street®, Dora the Explorer™, and Go Diego Go™ are among the toys recalled because they contained illegal amounts of lead. The Federal Consumer Product Safety Commission's standard for lead in paint is 600 parts per million. Tests of the Go Diego Go backpack chair found lead levels as high as 4,600 parts per million. However, the impermissible levels of lead content in the toys generally do not reach the denseness of concentrations of lead found in old exterior house paint.



Eighty percent of toys sold in the United States are made in China and millions of toys have been recalled because of lead. Contaminated toys were an unsuspected source of lead exposure, and it is a growing problem. Lead is invisible to the naked eye, has no smell, or obvious symptoms. Children often place toys in their mouth and are exposed to lead in their environment by normal hand-to-mouth activity. Children under the age of three are at the greatest risk, but children are susceptible to lead poisoning up to the age of seven.

If you suspect your child has been in close contact with a toy containing lead, you should remove the toy immediately, contact your doctor and have your child tested. For more information on sources of lead exposure and prevention tips, visit [www.cdc.gov](http://www.cdc.gov) or call 1-800-CDC-INFO. Photos and descriptions of the recalled toys can also be found at [www.cpsc.gov](http://www.cpsc.gov), or [www.recalls.gov](http://www.recalls.gov) or <http://service.mattel.com/us/recall>. ■

## ASBESTOS; VARIOUS TYPES OF EXPOSURE

There are three types of asbestos exposure: exposure on the job, exposure through contact with people working with asbestos, and neighborhood exposure in manufacturing facilities.

Occupational exposure or on-the-job exposure is the most common type.

The second type, paraoccupational, occurs when asbestos fibers are brought into the home by someone exposed to asbestos at work. Family members are often exposed to asbestos dust from the worker's clothing. Although they are often exposed to smaller amounts of asbestos, family members are still very much at risk.

Lastly is neighborhood exposure.

Although this type of exposure is more indirect, it poses a risk for those who have homes or jobs near facilities that use asbestos. Asbestos dust can be easily carried through the air to cover surrounding areas. Refineries, steel mills, and building demolition sites are types of worksites that in the past have been known to cause neighborhood exposure.

Studies reveal that the standard air handling systems used within production facilities cannot remove extremely thin asbestos fibers from the air.

In addition, air currents can carry asbestos fibers, which are extremely light, throughout open building areas. This re-

sults in contamination of workers.

One study went so far as to measure fiber distribution from a construction site. The study revealed that asbestos fibers traveled for one-half mile, (though the concentration of fibers was diminished due to the mixing with clean air.)

The effects of exposure to any of these types may be felt as early as one week later or decades down the road.

If you have any concerns about asbestos exposure, please contact your doctor. For any additional information, feel free to contact LIPSITZ & PONTERIO. ■

## BUFFALO MAN FIGHTING MESOTHELIOMA WINS SETTLEMENT

A Buffalo area man, who as a teenager was employed part time remodeling homes, is battling for his life against the ravages of mesothelioma. LIPSITZ & PONTERIO began representing this man in 2006, and settled his case within 10 months for a sum in excess of 1.9 million dollars.

Our client, a loving husband and father of 2 children, was exposed to asbestos as a young man when he worked side jobs painting and remodeling homes, which required the use of asbestos-containing joint compound.

In new construction, joint compound was applied to seams and over nail/screw holes. The dust generated from such work put remodelers at great risk of exposure.

It was also common for remodelers to be exposed to asbestos by tearing down drywall. The removal of drywall sheets treated with joint compound which contained asbestos resulted in workers being exposed to the dust.

In addition to working on home renovations, our client was further exposed to asbestos when he worked on cars, installing brakes, which also contained asbestos. ■

## WNY WORKERS SEEK COMPENSATION FROM LINDE CERAMICS AND BETHLEHEM STEEL

During the 1940s and 1950s, the United States government established atomic weapons facilities throughout the country where workers were regularly exposed to radioactive materials. These facilities comprised the Manhattan Project. After the war these facilities were never properly decontaminated despite repeated efforts to reduce residual radiation levels. The residual radioactive material contaminated the buildings which returned to civilian production and contaminated water and soil. Returning soldiers came back to work at factories such as Bethlehem Steel and Linde Ceramics. Over the ensuing decades, these workers were exposed to hazardous levels of radiation and many of them developed cancers of various sorts.

In 2000 Congress passed legislation known as the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The purpose of the law was to provide compensation and medical benefits for workers who have developed cancers as a result of their exposure to radiation. Workers who developed radiogenic cancers are eligible to file a claim in one of two ways:

- Submitting a claim under the Individual Dose Reconstruction Program
- Submitting a claim under a previously designated Special Exposure Cohort (SEC)

### **Proposed Linde SEC Petition time periods are:**

1. November 1947 – December 1953
2. January 1954 – July 2006

The current Linde SEC designation is from October 1, 1942 – October 31, 1947

To file a claim through Individual Dose Reconstruction, the claimant must submit work records proving employment and medical records showing the development of a radiation-related cancer. Next, the

National Institute for Occupational Safety and Health (NIOSH) reviews the claim. If the illness is found to be at least 50% attributable to radiation exposure from the Manhattan Project, the claim is accepted and the worker is entitled to compensation. However, dose reconstruction is time consuming, highly technical and not necessarily based on sufficiently accurate data.

The second way to file for compensation is under the Special Exposure Cohort (SEC) Program. In order to qualify, an employee must have at least one of 22 "specified cancers" and must have worked at a recognized facility for a minimum of 250 days during a time period specified by the SEC.

If a claim is approved by either a dose reconstruction or under an SEC, the worker is entitled to \$150,000 in compensation.

Although there were other Manhattan Project sites, Linde Ceramics in Tonawanda and Bethlehem Steel in Lackawanna were the principal places in Western New York where the government processed materials used to make the atomic bomb. To date, only Linde has received SEC status and only for the period 1942-1947. There are many retired employees who went to work at Linde Ceramics after 1947 who suffer from the same devastating cancers. Their claims are usually rejected for compensation because they cannot file a claim under the existing SEC and because they fail to satisfy the more stringent, yet often arbitrary requirements of the dose reconstruction program.

Attorney John Ned Lipsitz at LIPSITZ & PONTERIO, LLC is working as part of a team of local volunteers who are preparing to file petitions for Special Exposure Cohort status at Linde for the years 1948-1953 and 1954-2000.

Currently, only 149 of the 478 claims arising out of Linde Ceramics have been paid. By expanding the SEC time period,

employees otherwise denied compensation should receive it.

Despite their best efforts, former workers of Bethlehem Steel have not yet been able to convince the government to grant them SEC status for any period of time.

At the height of the cold war, 1949-1952, Bethlehem Steel in Lackawanna, New York was under contract with the federal government to roll uranium rods for nuclear reactors. Workers at Bethlehem Steel did not know they were working with uranium, let alone that they were being exposed to radiation. Now, years later many workers have discovered they have cancer.

NIOSH is currently reviewing a SEC status petition for the Bethlehem Steel facility. If SEC status is granted, then employees that worked at Bethlehem Steel during the designated SEC time period would be compensated automatically for the development of a radiogenic cancer provided the employee worked at the facility for at least 250 days and developed one of the specified 22 "presumptive" cancers.

As of May 2007, more than 700 claims were filed by workers stemming from exposure to radiation as a result of their work with uranium at the Bethlehem Steel plant. Less than half have been compensated.

Many dedicated Americans worked on the top-secret Manhattan Project, and its aftermath, at Linde, Bethlehem Steel and elsewhere throughout the country. They were unwittingly exposed to varying levels of radiation day after day, for years. These workers were systematically lied to about radiation exposure risks and consequently were never provided with adequate safety equipment to reduce their radiation exposure risk. Now, many of them suffer from cancer and the government is turning them away for compensation to which they are entitled. Some have died while waiting. ■

## NEW YORK STATE UNCLAIMED FUNDS

You may not be aware, but the State of New York is currently holding billions of dollars in unclaimed funds.

Under New York State law, banks, investment companies, insurance companies, utility companies, and many other businesses must surrender inactive accounts to the New York State Comptroller who serves as guardian of these funds until they are claimed. If you can prove you are entitled to the money, the comptrollers' office will surrender the money to you at no charge.

The comptrollers' office recommends these simple steps to avoid having funds turned over to the state:

- Cash all checks promptly
- Keep accurate financial records.

- **Keep your accounts active.** Be sure to make a deposit each year.
- **When you move, notify all your financial institutions.**
- **Let a family member or trusted friend** know where you store your financial records.

The New York State Comptroller's office urges you to call if you think that you may have unclaimed funds. You may call the hotline at 1-800-221-9311 or 518-270-2200, Monday through Friday, 7:00 a.m. EST to 5:00 p.m. EST. Or write to the Office of the State Comptroller, c/o Office of Unclaimed Funds, 110 State Street, Albany, New York 12236. ■

## YOU DON'T HAVE TO ACCEPT "NO" FROM YOUR HEALTH INSURANCE COMPANY

Many of us are familiar with the "headache" of receiving a denial of coverage notice from a health insurance company for medicines or other treatments prescribed by the doctor. Even though the health insurance company may deem your treatment unnecessary or experimental, such determinations are not final. You do not have to accept NO from your insurance provider! But how do you turn that no into a yes?

Health insurance companies anticipate these disputes over coverage denials and must have a process in place for you to appeal your denial. Be sure to check

your insurance agreement for the steps necessary for making that appeal. Also, be sure to consult your doctor. No one knows better than your doctor why you need the treatments which he prescribed. Your doctor can be a highly effective advocate on your behalf.

If you are unable to settle your dispute by working through your insurance company's appeal process, you may wish to consider filing a grievance or a lawsuit.

You may file a grievance with the New York State Commissioner of Insurance in Albany. In more significant cases, where

the company's denial has caused you to experience further harm, a lawsuit may be in order.

You can sue your health insurance company for breach of contract.

Often a denial of coverage is unreasonable on its face and is merely a pretext for the health insurance company to save money by making as few payments as possible.

An experienced attorney at LIPSITZ & PONTERIO can help you determine the merits of your claim. ■

## DUREZ: BEGINNINGS AND MEMORIES

Durez Plastics in North Tonawanda, New York will always be remembered by the community surrounding it for its role in exposing workers, and their families alike, to asbestos dust.

Despite the tragedy surrounding the plant and the many deaths among its workers caused by asbestos exposure, Durez was once an important employer and vital part of North Tonawanda and the surrounding area.

Durez (originally named General Plastics) started off with five employees in an upstairs two-room loft on Young Street.

After being dismissed by DuPont during the recession of 1921, Harry M. Dent founded the Durez Company.

Durez had such simple beginnings that in its initial years Mr. Dent made personal deliveries in his car, selling phenolic resin on a small scale. In 1926, Mr. Dent expanded his operations and was so successful that a rival plastics company sent Pinkerton detectives to steal samples.

Durez continued to expand over the years and became part of the Hooker Chemical Corporation in 1955. At its peak Durez employed nearly 1,100 men and women, eventually becoming one of the largest manufacturers of phenolic resin and molding compounds in the world.

### ONE MAN'S BITTERSWEET MEMORIES OF DUREZ

*(On November 9, 2007 Eugene Jackson, a former Durez employee, agreed to sit down and reminisce about his time at Durez)*

Buckey, Shorty, Butch, Jackson, Itchy, Bootz, and Speedy – no, this is not the newest twist of Snow White's Seven Dwarfs but rather the nicknames of a few of the men who made up the workforce at Durez.

The nickname "Jackson" belongs to Eugene Jackson, a former Durez employee and happily married husband and father. As a young man, Mr. Jackson enlisted in the army and confesses to "liking the food." Shortly after leaving the army in 1954, Mr. Jackson began working at Durez in the warehouse. His ordinary week would usually consist of 12 hour days, but Mr. Jackson admits, "I didn't mind working overtime when good paying jobs were hard to come by."

However, life at Durez was not all work and no play. Outside of work some of the men of Durez engaged in a good-natured rivalry between neighboring factories in the form of softball tournaments. When asked if he played on the Durez softball team, Mr. Jackson, with a chuckle, says, "I wasn't good enough to be on the team." Many workers also would gather annually for "Hooker on the Lake Day."

Mr. Jackson remembers both the good times and the bad times. There was the strike of 1960 and its bitter aftermath. But it is the loss of many of his friends to mesothelioma that stands out starkly in his memory. Still, Mr. Jackson also recalls the laughter. "Sometimes I would find myself laughing out loud when thinking about work," he says. On nights when he would return home after his wife had gone to bed, he would sometimes accidentally wake her up because he was shaking from repressed laughter, at which point, she would usually roll over, and with a sigh, ask "what happened today?"

The camaraderie that existed at Durez is undeniable and the friendships that were formed there remain strong to this day, some of them spanning more than half a century.

***"I didn't mind working overtime  
when good paying jobs  
were hard to come by."***

***– Eugene Jackson***

## ASBESTOS BANKRUPTCY UPDATE

As part of our representation of clients suffering from asbestos disease, LIPSITZ & PONTERIO files claims against a variety of bankrupt asbestos companies. Following is an update of recent activity in this area:

**Armstrong World Industries** - This company manufactured asbestos-containing pipe covering, block, insulating cement, acoustic cement and tiles. The Joint Plan of Reorganization was approved. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Babcock & Wilcox** - This company manufactured steam-generating boilers and refractory products. Often, these systems were used in power plants and manufacturing facilities. The Joint Plan of Reorganization was approved by Judge Sarah Vance on January 17, 2006. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Combustion Engineering** - This company manufactured and supplied boilers and boiler products and manufactured refractory cement. The Plan of Reorganization was approved by Judge Judith K. Fitzgerald on December 19, 2005. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Federal Mogul** - This company distributed asbestos-containing fireproofing (Limpet) and manufactured asbestos-containing brakes. The 4<sup>th</sup> Amended Plan of Reorganization was proposed in Fall of 2006, and the Plan of Reorganization was approved by Judge Judith K. Fitzgerald on November 8, 2007. A Proof of Claim form should be released in early 2008.

**Dresser Industries (Harbison-Walker/Halliburton)** - Harbison-Walker manufactured a wide variety of refractory products and heat resistant materials found in and around industrial ovens, kilns, furnaces and boilers. The Joint Plan of Reorganization was approved. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Kaiser Aluminum** - This company manufactured refractory products. The Second Amended Joint Plan of Reorganization was approved by Judge Judith K. Fitzgerald on February 6, 2006. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Owens Corning/Fibreboard** - Owens Corning manufactured Kaylo pipe covering and block insulation. Fibreboard manufactured a variety of cements, pipecovering and block insulation. The 6<sup>th</sup> Amended Joint Plan of Reorganization was approved by Judge Judith K. Fitzgerald on November 2, 2006. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**Pittsburgh Corning** - This company manufactured an industrial thermal pipe insulation product known as Unibestos between 1962-1972. On December 21, 2006, Judge Judith K. Fitzgerald denied the Second Amended Plan of Reorganization. Until a Plan is accepted and approved by the Court, no Proof of Claim form will be released.

**U.S. Gypsum/A.P. Green** - U.S. Gypsum manufactured a number of construction products, including joint compound, ceiling tiles, roofing materials and decorative and acoustical plasters. A.P. Green manufactured refractory and insulation products, including firebricks. The Joint Plan of Reorganization was approved by Judge Judith K. Fitzgerald on July 28, 2006. A Proof of Claim form has been released by the Trust, and claims are currently being processed.

**W.R. Grace** - This company manufactured fireproofing and insulation compounds, including Monokote and Zonolite. Recently, claimants were required to file extensive Questionnaires detailing asbestos exposure, and Proof of Claim forms. The Trust is still in the process of determining how much money to allocate to each different claim level, and it is unclear when payment can be expected on W.R. Grace claims. ■

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## WORKER'S COMPENSATION AWARDED TO WIDOW FOR 1999 DEATH

The normal statute of limitations for filing a death claim under the New York State Workers' Compensation Act is two years, calculated from the date of death.

In 2005, our client came to LIPSITZ & PONTERIO seeking compensation for her husband's 1999 death. Her husband spent his career working in the coke ovens at Bethlehem Steel in Lackawanna, New York.

Although he was a non-smoker, this dedicated husband and father developed lung cancer from his exposure to the coke oven emissions.

LIPSITZ & PONTERIO had the case reviewed by an expert who concluded that her husband's death was caused by occupational exposure to coke oven emissions. The widow had no reason to know this prior to the expert consultation.

Because of this, LIPSITZ & PONTERIO was able to file a death claim a full eight years *after* the death, and we were able to obtain

a lump sum compensation settlement of \$116,000 continuing with weekly benefits of nearly \$300.

Although the standard statute of limitations is two years, under these circumstances we were able to argue that the two year statute of limitation should be measured from the date of the claim that his death was work related.

In 1977, the federal government knowing that coke oven emissions could cause cancer, predicted that several hundred coke oven workers would die annually. It has been well documented, as far back as the 1950s, that there were severe health dangers associated with working in the coke ovens, and yet no precautions were taken to inform or protect coke oven workers.

Many of the men and women who worked in the coke ovens at Bethlehem Steel in Lackawanna, New York, have died of lung cancer. ■

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