

# NEWS & VIEWS

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- CONSTRUCTION ACCIDENTS
- SOCIAL SECURITY DISABILITY
- WORKERS' COMPENSATION
- FIRE LOSS CLAIMS

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## NIAGARA COUNTY RESIDENT RECEIVES \$1.8 MILLION CASH SETTLEMENT IN MEDICAL MALPRACTICE CLAIM

After a lengthy battle with the lawyers and insurance carriers for local doctors accused of medical malpractice, LIPSITZ & PONTERIO has obtained a cash settlement for a thirteen-year-old Niagara County girl suffering from severe learning disabilities.

At the start of surgery, the patient's breathing tube was lodged in the lung interfering with the flow of oxygen. The doctors should have discovered this problem and repositioned the tube. Unfortunately, they

failed to do so despite significant warning signs of distress. During the course of administering anesthesia, the girl's oxygen levels dropped significantly, leading to irreversible brain damage and learning disabilities.

We were privileged to represent this family in their lawsuit for medical malpractice. The attorneys at LIPSITZ & PONTERIO represent the victims of medical malpractice in cases where the injuries are serious and permanent and the evidence of negligence is strong and clear. ■

## NIAGARA COUNTY SIXTH IN NATION FOR MESOTHELIOMA

As many of our clients know, the incidence of malignant mesothelioma among the former and retired workers of the Durez facility in North Tonawanda is high. The death toll from this rapidly progressive cancer among the Durez workers now exceeds fifty. In addition to cases of mesothelioma, we also receive a steady stream of reports of death caused by lung cancer and asbestosis resulting from asbestos exposure at Durez.

As reported in a recent article published in "The International Journal of Occupational and Environmental Health," Niagara County ranks sixth in the nation for the highest death rate from malignant mesothelioma. It is almost certain that Durez accounts for the largest share of these deaths.

Durez was established in 1926 and soon became a leader in the production of plastic molding compounds. Unfortunately for its employees and for the residents of the area surrounding the plant on Walck Road, Durez employed raw asbestos fiber as a filler to strengthen its molding compounds.

The process of adding the raw asbestos to the mixes caused the harmful dust to become airborne and to spread around the plant and onto the neighboring lots.

Significant contamination also occurred at the plant in the Resin and Varnish buildings where large reactors, kettles and stills were insulated with crumbly, chalky and dusty asbestos-containing pipe covering and block.

The period of time between first exposure to asbestos dust and the onset of disease - whether mesothelioma, lung cancer or asbestosis - is typically between 15 and 50 years. Durez continued using asbestos until the end of 1978 and closed its facility in North Tonawanda in 1994.

The risk of contracting mesothelioma is not confined to employees - it also extends to their immediate families. This is because the asbestos fibers are extremely small and light and are capable of being transported home on a worker's clothing, hair and footwear. Even the relatively slight

*(Continued on page 6)*

## CHILDREN CONTINUE TO BE AT RISK FOR LEAD POISONING IN WESTERN NEW YORK

Childhood lead poisoning continues to be a major public health problem, especially in the inner cities of Buffalo, Rochester and Syracuse. Rural and suburban children are also at risk, because of the age of the housing in which they live. Housing built before 1978 often contains deteriorating lead-based paint on window sills, and other painted wood trim. Flaking and chipping paint turns into lead dust that children get onto their fingers and hands. They transfer the dust into their bodies by simple hand-to-mouth contact. Children under the age of three are at greatest risk but children are susceptible to lead poisoning up to about age seven.

Legislation aimed at making property owners more accountable for ridding their properties of lead hazards continues to be bogged down in Albany. All bills introduced in 2005 were sent to committees where no action is taken. However, the City of Rochester has enacted new legislation designed to put it on an ambitious course to eradicate lead paint hazards by the year 2010.

In Rochester, the law passed by the City Council includes a presumption that all buildings constructed before 1978 contain lead-based paint. The law calls for an initial investigation for all units designated in a high-risk area, even where a property passes a visual inspection with no obvious signs of chipping or peeling paint. The high risk area includes about 24,000 of the city's 53,000 rental units. The new law in Rochester places an affirmative duty on landlords to maintain their units free of lead-based paint hazards.

In Rochester, government leaders have finally recognized that too many children in Western New York continue to be at risk for lead poisoning. This is an entirely preventable public health problem. The public needs community resources, tougher laws, and money to be directed toward the eradication of lead-based paint hazards.

Higher childhood blood lead levels are associated with lower household income and older, poorly-maintained rental housing. The children of our minority populations are disproportionately

impacted by this problem. Lead-based paint in rental housing is the major remaining source of lead exposure and is responsible for most cases of childhood lead poisoning today. These additional facts about the serious impact of childhood lead poisoning are widely recognized:

- Even low levels of lead in young children can result in reduced intelligence and attention span, learning disabilities, hearing impairment and behavioral problems.



- A tiny amount of lead – concentrated in just one chip of paint – can result in serious poisoning and irreversible developmental damage in children under the age of six.

*(Continued on page 6)*

## LIPSITZ & PONTERIO HELP LEAD-POISONED CHILDREN

The attorneys at LIPSITZ & PONTERIO dedicate much of their time to representing children who have been injured by lead poisoning. We have sued dozens of negligent landlords. Some of our recent successful outcomes for children are listed below:

- A Buffalo landlord's insurance company agreed to pay \$300,000 to the guardian of a 12-year-old boy who suffered lead poisoning in a May Street house when he was a toddler. Most of the settlement funds have been placed into a supplemental needs account that will provide him with future lump sum payments, and additional monies were made available for this young man's current edu-

cational, extra-curricular and counseling needs as he struggles with academic and functional disabilities due to his lead poisoning.

- The insurance companies for two Monroe County landlords agreed to pay a total of \$440,000 to the guardian of a 15-year-old girl and her 12-year-old brother, both of whom were lead-poisoned as toddlers in rented apartments. The levels of the 15-year-old reached as high as 74 ug/dl (micrograms per deciliter of blood) when she was two years old, requiring emergency hospitalization. Most of these settlement funds will be used to provide the children with future lump sum payments for vocational training

and/or education. Some monies were made immediately available for this young girl's current special academic and extra-curricular needs.

- A landlord's insurance carrier agreed to pay \$625,000 in the case of an 11-year-old girl who suffered lead poisoning at a secondary address (aunt's apartment) in the mid- to late-1990s. The funds have been placed into a structured settlement account that will provide the young lead poisoned plaintiff with future lump sum payments beginning at age 18. The settlement was reached approximately one year after initiating the lawsuit against the defendant landlord. When our client was two years old, she had

*(Continued on page 7)*

## BUFFALO MAN OBTAINS JUSTICE IN FIGHT AGAINST COKE OVEN MANUFACTURERS

LIPSITZ & PONTERIO represents a Buffalo man who worked in the Coke Oven Division at Bethlehem Steel Corporation for over thirty years. During much of his time at the plant, he worked on the topside of the coke oven batteries, either as a lid man or as a larry car driver. These were very difficult job assignments, performed under very stressful conditions. Our client was diagnosed with lung cancer in 2002 and underwent an operation for the removal of a portion of his lung, followed by lengthy radiation treatments. Fortunately, he is still alive, and he and his wife will be able to enjoy the results of their patient determination to obtain justice from the companies that built, designed and maintained the coke ovens, as well as the companies that insulated them with cancer-causing asbestos.

As far as we have been able to determine, this was the first lawsuit in the Western New York area to seek damages from the coke oven companies, not only for their careless use of asbestos but also for their failure to contain the harmful dust and gases emitted by the coking process.

We also represent three other families in legal claims for disease caused by exposure to coke oven emissions. This is not surprising because the federal government predicted nearly thirty years ago that 250 workers would die annually from cancer related to coke oven emissions.

Here are some of the things that the coke oven manufacturers knew and did, all without informing the men on top of the ovens:

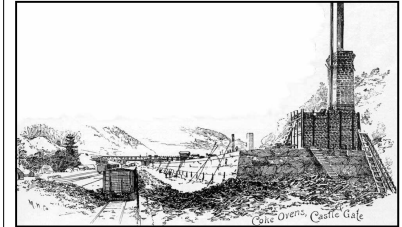
1. British scientists published the results of a study in 1936 showing that the incidence of death due to lung cancer among coke oven chargers was nearly three times greater than it was for matched controls.

2. In 1954, scientists at the University of Cincinnati told the companies who built the coke ovens at Bethlehem Steel to get the records of workers who had severe exposures to coal tar fumes. They specified larry car drivers and other job assignments. The point of the study was to determine the cause of death.

3. The lid men were considered to be the most exposed job classification in the coke oven operation. In 1957, the industry considered sampling the air in their breathing zones but was concerned about "possible unfavorable reactions." In other words, the men might start asking questions.

4. In 1957, one of the country's most respected researchers in the area of occupational cancer informed the companies that built the coke ovens at Bethlehem Steel that rats exposed to the inhalation of hot coal tar fumes were getting lung cancer. The industry did nothing to warn the workers.

By 1959, the industry learned from a review of its own records that workers on the top and side of the ovens were dying in excessive numbers from lung cancer. Nothing was done to inform the workers. Instead, the industry continued to study the situation. Coke oven workers continued to die. ■



- IF YOU OR ANY OF YOUR FAMILY MEMBERS WORKED AT ANY OF THE VARIOUS COKE OVEN OPERATIONS AROUND THE AREA, INCLUDING BETHLEHEM STEEL, TONAWANDA COKE OR DONNER HANNA, AND IF YOU ARE SUFFERING FROM LUNG OR OTHER CANCERS, OR FROM EMPHYSEMA, PLEASE CALL LIPSITZ & PONTERIO TO DISCUSS A POTENTIAL LEGAL CLAIM. OUR SERVICES INCLUDE LAWSUITS AGAINST MANUFACTURERS AND CLAIMS UNDER THE NEW YORK STATE WORKERS' COMPENSATION LAW.
- IT IS VERY IMPORTANT THAT YOU ACT IMMEDIATELY IF YOU BELIEVE THAT YOU MAY HAVE A CLAIM. OTHERWISE YOUR CASE MAY BE BARRED UNDER THE STATUTE OF LIMITATIONS.
- IF YOU ARE THE WIDOW OF A COKE OVEN WORKER WHO DIED OF A RESPIRATORY CANCER, KIDNEY CANCER OR POSSIBLY PROSTATE CANCER OR EMPHYSEMA, YOU MAY HAVE A CLAIM, EVEN IF MORE THAN TWO YEARS HAVE GONE BY SINCE THE DEATH OCCURRED, BUT YOU STILL MUST ACT AS QUICKLY AS POSSIBLE.

ONE WESTERN NEW YORK FIRM HAS EXPERIENCE IN THIS AREA:

**LIPSITZ & PONTERIO**

**The federal government predicted nearly thirty years ago that 250 workers would die annually from cancer related to coke oven exposure.**

## RHODE ISLAND WINS AGAINST FORMER MAKERS OF LEAD PAINT PRODUCTS

The former companies responsible for making the lead-concentrated pigment in lead paint that contaminates much of the nation's older housing stock were found liable for clean-up costs in the State of Rhode Island in a landmark jury case in February 2006. The jury agreed with the state's attorneys that the former makers of the lead pigments in paint had created a wide spread "public nuisance" due to the health dangers of their product. The industry knew as early as 1900 that its white lead pigment product was a "deadly cumulative poison" though it continued to be used in paint products for decades thereafter. Old lead-based paint still poisons children even though lead paint sales were banned in 1978.

The Rhode Island trial lasted more than three months during which the

jury heard from numerous health experts who described how lead-poisoned children can suffer brain damage, including behavior disorders and cognitive difficulties. After the jury decided that a "public nuisance" was involved with lead paint, they then determined that three of the defendants had caused or significantly contributed to the health problem now posed by deteriorated leaded paint, and that they should help fix the problem.

The State of Rhode Island has not yet estimated how much it will cost to rid that State of lead-based paint hazards. The court is going to decide that issue and will hold hearings on the costs of ridding Rhode Island's housing stock of lead-based paint hazards.

The defendant manufacturers say they plan to appeal the jury's ruling,

fearing copycat lawsuits in numerous other states where lead hazards continue to threaten children living in older housing stock. In the immediate wake of the stunning Rhode Island decision, an Appeals Court in California reversed a lower court's dismissal of a similar lawsuit. The lawsuit was brought by the City of San Francisco, surrounding municipalities and Bay Area school districts against most of the same defendants earlier sued in Rhode Island. The California Court of Appeals held that the municipal plaintiffs' claims for public nuisance, strict liability, negligence, and fraud causes of action can stand for now. ■

## (UN)FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT

The Fairness in Asbestos Injury Resolution Act, (FAIR) which came before the Senate earlier this year, has been tabled for now yet the question still exists, who would stand to benefit should the Act resurface? Many corporations will benefit if the Act passes, while many victims may be left without compensation.

Introduced by Senators Arlen Specter and Patrick Leahy, the FAIR Act brings asbestos to the forefront. Under



the FAIR Act, a trust fund would be established limiting the amount of money victims can obtain for their lethal exposure to asbestos. Somewhere in the neighborhood of \$140 billion would be set aside for the injured parties. An administrator would be ap-

pointed and responsible for processing claims for compensation for asbestos-related injuries and managing the fund. Estimates are that the amount falls short by as much as \$100 billion.

The waiting period for these compensation awards could also take years, and stringent criteria could affect the claims of many people, excluding them from filing a claim altogether.

Passage of the FAIR Act would also signal the end of litigation in the courts. Injured parties would no longer have their day in court, nor would they have a jury of their peers, but rather a government-appointed administrator would decide their lot.

What does that mean for the worker who was exposed to asbestos and is now suffering from asbestosis or mesothelioma? Those who can prove five years of on-the-job exposure are eligible. Those affected due to exposure from such things as doing their own home improvements or washing contaminated clothing and the like would be ineligible.

More than 300,000 Americans have died from asbestos-related diseases and estimates are that some 400,000 people will be inflicted with an asbestos-related disease in the future. Latency periods for these diseases can sometimes take up to thirty years or longer. The FAIR trust fund? It expires in twenty seven years.

Concerned about the FAIR Act? Contact your state representatives and ask them to vote NO. ■

[http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm](http://www.senate.gov/general/contact_information/senators_cfm.cfm)

Hillary Rodham Clinton:  
716-854-9725  
202-224-4451

Charles E. Schumer:  
716-846-4111  
202-224-6542

Or call Senator Leahy  
in Washington directly at:  
202-224-4242

## NEWS OF ASBESTOS CONTAMINATION FROM AROUND THE COUNTRY: LIBBY MONTANA

Libby Montana: population: approximately 3,000 – a sportsman's paradise known for its breathtaking scenery and pristine mountains – is home to one of the worst cases of asbestos exposure in U.S. history.

Vermiculite was discovered in Libby in the 1880s by gold miners and was subsequently mined from 1920 – 1990. Vermiculite, a naturally occurring mineral that may contain asbestos, is used in numerous ways including building insulation and as a soil additive. Unfortunately, the vermiculite from the Libby mine was contaminated with a highly toxic form of naturally-occurring asbestos called tremolite-actinolite asbestos. It's believed that the Libby mine, while it was open, produced close to 80% of the planet's supply of vermiculite. Of the various types of asbestos, tremolite is considered by many experts to be one of the most carcinogenic.

W.R. Grace owned the Libby, Montana mine from 1963 – 1990. In a 1996 deposition, a former W.R. Grace business manager of the mine stated that W.R. Grace knew of the dangers of asbestos exposure as early as 1956 yet failed to inform its employees, exposing them to life-threatening levels of toxic asbestos. A report by the Montana State Division of Disease Control of the Montana State Board of Health stated that the mine produced "asbestos that was of considerable toxicity to the workers." According to the report, W. R. Grace knew of the toxic levels of asbestos in the mine when it took over ownership in 1963 but it never informed the workers or the

residents of Libby. In 1990, W.R. Grace & Co. ceased mining operations in Libby.

The vermiculite was processed in the dry mill, the primary ore-processing facility. Tests conducted in 1969 revealed that dust from the mill's largest stack contained twenty percent asbestos and sometimes as high as forty percent. The mill's largest stack coughed up more than 20,000 pounds of dust a day. Based on those numbers, the dry mill stack emitted at least 5,000 pounds of asbestos a day.

The dust was so thick at times that not only were the mill's buildings blanketed, but also the laundered clothes drying on clothes lines in nearby yards.

The vermiculite mine was named as the source for asbestos contamination and the ultimate deaths of nearly 200 people. Additional cases of asbestos-related diseases, both occupational and non-occupational were also reported.

In the late 1990s, the citizens of Libby contacted the Environmental Protection Agency (EPA), and voiced their concerns about the potential health hazards of asbestos-contaminated vermiculite mined in their own backyards. The EPA arrived on the scene and began collecting samples of air, soil, dust and insulation used in homes and businesses.

The EPA estimates cleanup of some sort will have to be done on approximately 1,400 private residences. Nearly all of the homes in Libby are insulated with asbestos-contaminated insulation. ■

## WHAT YOU SHOULD KNOW ABOUT MEDICARE PART D

When Congress authorized the Medicare program's new prescription drug benefit, known as Part D, two years ago, it let private companies offer the coverage instead of mandating that the government provide it as it does traditional Medicare benefits. If you have been following this issue in the news or, worse, attempting to determine whether you should buy a drug plan, you know that finding the right plan can be horribly complex. The law set forth the basics of the plan, but granted private insurers great latitude in shaping the benefits.

A May 15, 2006 deadline was given for current Medicare participants to sign up for a plan. If you did not meet the deadline, you must wait until November 2006 to sign up and you will receive no benefits until January 2007; you will also have to pay a penalty. Reliable sources indicate that only if you spend less than \$750 per year on prescription drugs should you consider waiting to enroll.

• You should definitely join a plan if you have low income; you have coverage under a "Medigap" policy; or your annual prescription expenses are over \$750.

• You should not join a plan if you have a retiree policy that covers medications. You should have been notified if your plan has "creditable" coverage, which means that its drug benefit is at least equivalent to Medicare's. If the plan is later dropped, you can join a Medicare plan within two months and *not* pay a penalty.

• You will automatically be enrolled if you belong to a Medicare HMO or if you're on both Medicare and Medicaid.

Unfortunately, this is only the start. For help with the bewildering choices that may be available to you, you may need to solicit assistance from friends, family, or perhaps even your pharmacist. LIPSITZ & PONTERIO may also be able to provide you with other sources of information. ■



# NIAGARA COUNTY SIXTH IN NATION

*(Continued from page 1)*

exposure involved in shaking out work clothes before doing laundry is enough to result in mesothelioma decades later.

Medical literature contains many examples of housewives contracting mesothelioma by washing work clothes. We also know from experience that occasionally, but rarely, children of exposed workers will contract mesothelioma as a result of asbestos contamination originating from the workplace. Also, many college students obtained summer jobs at the plant, especially in the 1960s and early 1970s.

The attorneys at LIPSITZ & PONTERIO have been representing former and retired Durez workers and their families since 1985. We are very knowledgeable about the purchase and use of asbestos in all of its forms, including raw asbestos, solid-state insulation and gaskets.

We vigorously pursue claims of asbestos disease on behalf of our clients, we sue the companies responsible for supplying asbestos to the plant, and we file death claims through the Workers' Compensation Board for widows and their families.

Many of you have close friends and relatives who have moved away from the Western New York area but who are still at risk of disease due to their past association with Durez Plastics. We urge you to share this newsletter with them. If you would like to add the name of a friend or relative to our newsletter list, please let us know by contacting Mary Marsowicz at 849-0701. ■

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## CHILDREN AT RISK

*(Continued from page 2)*

- Children are poisoned by simple hand-to-mouth contact with leaded dust that exists in association with degraded lead-based paint.
- Childhood lead poisoning causes enormous societal costs, including medical costs and special education costs. ■

# MESOTHELIOMA CASE SETTLES FOR 1.5 MILLION

LIPSITZ & PONTERIO represents the family of a former brake mechanic admitted to the hospital in the fall of 2004 after complaining of shortness of breath. Within a few short weeks of our first meeting with the client, the lawyers at LIPSITZ & PONTERIO brought suit against the manufacturers of the asbestos-containing brakes and friction products with which he worked.

A settlement was reached in his mesothelioma case just weeks before he died of his disease at the age of 63.

Our client had a small brake shop located behind his home where he ground and drilled brakes for over 30 years. He identified six different companies responsible for manufacturing the materials with which he worked.

The defendant companies tried to convince the trial court that the asbestos used in their brakes did not have the potential to cause mesothelioma, a rare cancer in most cases caused only by the inhalation or ingestion of asbestos dust. In order to demonstrate the extent of our client's asbestos contamination, we arranged for an expert to sample the dust near the bench grinder which our client used to grind brakes. The dust was heavily contaminated with asbestos. The trial court rejected the defendants' argument that the asbestos in their products did not cause the mesothelioma in this case and allowed the case to proceed to trial before a jury.

After two days of trial, the case settled for approximately \$1.5 million. Our client lived long enough to know that his family would be provided for. ■

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## IN MEMORIAM

### 2004

Nelson Durfee ..... May 9  
 Santo B. Livolsi ..... November 14



### 2005

Richard Clabeaux ..... January 27  
 Richard Parks ..... April 25  
 Robert Hiam ..... August 29  
 Ronald Breidenstein ..... October 18  
 Benton Suter ..... October 31  
 Darryl Dale ..... November 9  
 Phyllis King ..... December 30

## LIPSITZ & PONTERIO HELP LEAD POISONED CHILDREN

(Continued from page 2)

extremely high lead levels, resulting in a number of emergency hospitalizations.

- Mediation of a lead paint poisoning case held shortly before a scheduled trial date has resulted in a settlement amount of \$237,500 for a 16-year-old boy. The insurance company for the landlord agreed to pay the settlement for injuries after the young boy was lead poisoned at the family's rental property. The funds have been placed into a structured settlement account that will not begin paying the young man until he reaches age 18, thereby allowing him to continue to receive his Social Security Disability payments.

- The insurance company for a City of Rochester landlord has agreed to pay the maximum insurance policy amount of \$300,000 to a 14-year-old girl and her 17-year-old relative, both of whom were lead poisoned as infants in a rented apartment where they lived. The case was settled after about 1½ years of litigation and one month prior to the scheduled trial. The funds will be placed into a structured settlement account to provide the children with future lump-sum payments for vocational training or education. ■

## BUFFALO WOMAN SETTLES AUTO CASE FOR \$400,000

LIPSITZ & PONTERIO has settled an automobile negligence case for a Buffalo woman whose car was hit from the side as she proceeded through the intersection at Oak and Genesee Streets in January 2004. Our client, in her early 60s, had the green light. The driver of the other car ran the red light, smashing into the side of our client's car and causing her to suffer a fracture of the right knee cap. Due to the diligent efforts of the attorneys at our firm, the matter was resolved and our client received her

settlement almost two years to the day from the date of the accident.

LIPSITZ & PONTERIO prides itself on providing timely service to its clients. If you or a family member are injured as the result of automobile negligence, you have a choice of attorneys. Our results compare favorably with the results of the area law firms with the big advertising budgets. You will receive personal and timely attention. ■

## WELCOME ABOARD!

We are pleased to announce that Anne E. Joynt and Keith R. Vona have joined our firm.

Anne joined the firm in August, 2005. She is a recent (2005) graduate of the University at Buffalo Law School. She completed her undergraduate work at the State University College of New York at Geneseo in 2002 with a

Bachelor of Arts degree in English and Spanish, graduating magna cum laude. Anne was admitted to the bar in February 2006 and devotes most of her time to motion practice and appeals.

Keith is also a 2005 graduate of the University at Buffalo Law School. Keith received a Bachelor of Science

in Criminal Justice and graduated magna cum laude from the University College of New York at Buffalo. Keith recently passed the New York State Bar Exam and will be admitted to the bar in June 2006.

Prior to accepting a position with us, Keith was a City of Buffalo police officer. ■

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OUR WEBSITE PROVIDES A WEALTH OF  
INFORMATION ABOUT EACH OF OUR AREAS  
OF PRACTICE

WHEN YOU VISIT OUR SITE, YOU WILL BE  
ABLE TO CLICK THE "TELL A FRIEND"  
LINK AND PASS THE INFORMATION TO  
FRIENDS AND RELATIVES WHO MAY BE  
INTERESTED