

# NEWS AND VIEWS

FROM THE LAW FIRM OF

## LIPSITZ & PONTERIO, LLC

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**ASBESTOS AND  
OCCUPATIONAL DISEASE**

**LEAD DISEASE  
CASES**

**AUTOMOBILE  
ACCIDENTS**

**CONSTRUCTION  
ACCIDENTS**

**SOCIAL SECURITY  
DISABILITY**

**MEDICAL  
MALPRACTICE**

**WORKERS'  
COMPENSATION**

**FIRE LOSS  
CLAIMS**

FALL 2001

### Child Awarded Settlement in Lead Disease Lawsuit

In virtually all homes built before 1978, lead paint was used on interior and exterior surfaces. When lead paint deteriorates, paint chips become a source of dangerous exposure to young children. Lead is a toxic metal which affects the brain system of a child causing learning and speech difficulties, as well as severe behavioral problems.

Our client's child, age two, of Buffalo, New York, was exposed to high levels of lead dust in his bedroom due to negligent work done by outside contractors removing lead paint. Four years later, our client's child has speech and learning difficulties requiring special education.

In this case, the child had an extremely high level of lead in his blood when his blood was drawn and tested during a routine pediatric examination. He will receive a substantial cash settlement as a result of an agreement reached in early

September. It is believed to be the largest money award of its kind to date in Western New York.

At the request of the party paying the award, the amount of the settlement remains confidential.

If your child is found to have a lead reading in his or her bloodstream of 20 or higher, please call Lipsitz & Ponterio, LLC to discuss your potential legal rights.

### Firm Announces New Partners

By John Ned Lipsitz

Michael A. Ponterio and I are proud to announce that John P. Comerford, a graduate of Cornell University and the Buffalo Law School; Nan L. Haynes, a graduate of Empire State College and the Buffalo Law School; and Neil J. McKinnon, a graduate of the University of Buffalo and The University of Dayton School of Law have been named partners in the law firm of Lipsitz & Ponterio, LLC.

When Michael and I started the law firm of Lipsitz & Ponterio in October of 1995, John Comerford

was a recent law graduate working for us as a law clerk. John quickly became a valuable member of our team, a tireless investigator, and a scholar of the law. He passed his bar exam and was admitted to practice in New York, as well as in Massachusetts, in early 1996.

Shortly after John Comerford became a practicing lawyer and an associate attorney in our firm, we hired two experienced attorneys with proven abilities and a variety of legal skills. In law school, Nan Lipsitz Haynes was recognized for her superior research and writing skills and became an assistant to one of the distinguished faculty members of the Buffalo Law School. After she graduated with high honors in 1992, Nan engaged in the general practice of law for four years before joining Lipsitz & Ponterio as an associate attorney.

Neil J. McKinnon practiced law for several years in a large Buffalo law firm where he concentrated his work in the area of industrial disease, including asbestos disease litigation and repetitive stress syndrome. Neil's reputation for dedication to his clients and his

marvelous ability to get along with a wide variety of people, including judges and other lawyers, experts and court personnel, as well as his reputation for integrity in the community at large led us to hire Neil shortly after Nan became an associate attorney with the firm.

As we approach the sixth anniversary of the founding of our firm, we are mindful of the importance of recognizing hard work and maturity of judgment. It is with this in mind that Michael and I are proud to announce our new partners. John Comerford involves himself heavily in trial preparation and trial work in asbestos personal injury cases, childhood lead disease cases, and medical malpractice cases. Neil McKinnon has for the past several years represented the clients of Lipsitz & Ponterio in asbestos disease litigation in Rochester and Syracuse and represents plaintiffs in a variety of negligence cases. Nan L. Haynes spends the majority of her time in legal research, the drafting of legal memoranda and appellate briefs, and in preparing cases involving childhood lead disease and general negligence for trial. All three of our new partners have developed a detailed knowledge of workers' compensation law as it relates to industrial disease.

## **Changing Times in Asbestos Litigation**

The manufacture, sale and use of asbestos products have inflicted injury and death across our country and around the world. There are now tens of thousands of lawsuits pending in state and federal courts against a relatively small number of former manufacturers and producers of asbestos products. Not

unexpectedly, insurance monies set aside to pay victims of asbestos disease have been exhausted or are insufficient to pay pending claims, and more claims are anticipated.

Consequently, there has been a large increase in asbestos company bankruptcy filings, particularly in the past year. In light of this crisis affecting the rights of asbestos victims, the attorneys at Lipsitz & Ponterio have been for some time turning their attention toward the responsibility of those companies - often locally owned or operated - which engaged in selling and installing asbestos products. To the extent that local contractors knew of the dangers of asbestos yet failed to disclose those dangers to the public, they must be held responsible for the damages suffered by their victims, just as if they had manufactured the products in the first place.

Although bankruptcies have jeopardized the size of the money settlement you may receive in your asbestos lawsuit, the attorneys at Lipsitz & Ponterio are working aggressively to hold distributors, contractors and site owners accountable to the fullest extent under the law so that you and your family will receive just compensation for your injuries.

## **Local Asbestos Contractor Responsible for Niagara County Worker's Death**

Recently, attorneys at Lipsitz & Ponterio uncovered internal correspondence from 1960 revealing that a prominent local seller and installer of asbestos knew that asbestos dust caused

death in exposed workers yet failed to warn its own employees and customers.

Last week, this local contractor agreed to pay a half million dollars to the family of a former Niagara County factory worker who died from mesothelioma..

Previously, the largest settlement this contractor ever paid to any injured worker was \$65,000.

## **Medical Malpractice Young Woman Receives Award for Radiation Exposure**

Our office represented a young woman in a medical malpractice case against a physician who administered radiation treatments following surgery for cancer. According to our client's ob/gyn, she became sterile after receiving the radiation treatments to her pelvic area.

A physician must take reasonable steps to protect his patients from harm. In this case, the physician did not shield our client's ovaries from radiation exposure.

After a week-long trial, our client received a substantial cash settlement.

## **Update on Construction Worker Cases**

This summer the attorneys at Lipsitz & Ponterio won a court victory in Niagara County for a construction worker who fell from an elevated height and injured his knee, requiring a knee replacement.

Although the owner of the construction site has filed an appeal, our attorneys expect to

gain a victory in the higher court, as well.

If you fall from a height due to the absence of a required safety device or the failure of a safety device, you are protected under New York State Labor Law Section 240.

Unfortunately, the insurance industry and construction companies have combined together to weaken or eliminate your legal protections under Labor Law Section 240. This law puts responsibility for height-related injuries where it belongs - on the owners of construction sites, not on the victims of accidents. The insurance industry is lobbying intensely to shift the responsibility onto the backs of workers. Urge your state representatives not to cave into pressure from the insurance lobby.

If you, a family member or friend has fallen from a height while working on a construction site, please call Lipsitz & Ponterio to discuss your legal remedies.

## Upcoming Trials

We have a busy Fall trial schedule in our office. A few of these personal injury trials are highlighted for your review.

1. October 15, 2001 - We start a jury trial in Buffalo on behalf of a child injured from lead poisoning against a slum landlord who knew lead was dangerous and failed to alert the family he rented to.

2. October 16, 2001 - We represent a passenger in a van who suffered multiple fractures to both her legs when the van was hit by an NFT Metro bus. This auto accident trial will take place in Federal Court in Buffalo.

3. November 13, 2001 - We start a jury trial in Buffalo on behalf of a

family whose husband died of mesothelioma, an asbestos cancer. This wrongful death action is against manufacturers, distributors and installers of asbestos.

4. December 10, 2001 - We represent a construction worker who suffered disabling injuries in a fall at the work site. This jury trial will take place in State Supreme Court in Buffalo.

The courts belong to the people of the State of New York and the Nation. If you would like to see our attorneys in trial, please call our office for further details.

## Protect Your Family: Be Sure You Have an Up-To-Date Will, Health Care Proxy, and Power of Attorney

Without a Will, the laws of the state in which you live will determine how your estate is distributed, and that frequently is different from what you would have wanted.

A health care proxy and power of attorney can save your family untold hours of grief and legal expense should you become incapacitated, because these documents can avoid the necessity of a guardianship proceeding in court.

Our office works closely with Henry D. Gartner, an attorney who concentrates his practice in the areas of wills and estates. You may call him at 849-0021 to determine what is involved. Making a will, health care proxy, and power of attorney is one of the wisest investments of your life and after.

## Claims for Occupational Disease and Death

By John Ned Lipsitz

If your spouse or parent dies of a disease caused by toxic exposure at work, including lung disease and cancer, you are entitled to file a claim for death benefits under the New York State Workers' Compensation Law, provided that your claim is filed within two years of the date of death.

The firm of Lipsitz & Ponterio handles many occupational death claims and gives each case prompt and thorough attention. Where necessary, we obtain a medical expert to review the facts of the case and provide an opinion concerning the connection between industrial exposure and death. Although an individual may die of multiple causes, if occupational disease cuts short the life of a family member even one day sooner than he otherwise would have died, the surviving spouse may be entitled to lifetime benefits under the law.

In recent months, employers and the insurance companies that provide workers' compensation insurance coverage have become increasingly hostile to claims of death caused by industrial disease. The insurance industry is reluctant to recognize and deal with its responsibility to pay claims under the Workers' Compensation Law. Consequently, we have been fighting harder, and in some cases longer, in order to establish death cases under the Workers' Compensation Law.

In one recent case, involving exposure to carcinogens at the Hooker Chemical Plant on Buffalo Avenue in Niagara Falls, the treating doctor expressed his opinion that our client's exposure placed him at an increased risk for the development of bladder cancer from which he ultimately died. Based on this opinion, the workers' compensation judge found that

there was sufficient evidence to proceed with further development of the case, precisely because the doctor's opinion constituted some evidence of an occupational disease causally related to exposures experienced during the course of employment and because there was a probability that those exposures constituted the cause of the disease. The employer and its workers' compensation insurance carrier appealed this decision, and our attorneys were able to persuade the Board that the workers' compensation judge was correct in his initial decision.

Several months later, in another case, this time involving a claim that occupational exposure to asbestos over the course of a career as an ironworker was the cause of lung cancer, the workers' compensation judge ruled against the family's claim of occupationally related death. Our attorneys appealed from this decision and successfully persuaded the Board that the judge was wrong and that indeed the opinion of our medical expert, a specialist in pulmonary disease, was sufficient to move the case forward.

The Workers' Compensation Board ruled that the medical expert's opinion must set forth an accurate history of a work related occupational disease, a diagnosis, and a statement that there is a causal relationship between the work place exposure and the diagnosis. Applying that ruling to the facts before it, the Board found that our expert's opinion did indeed satisfy this standard.

The Board's decision made it clear that, as long as a doctor who treats or examines an injured worker will state that the exposure to a toxic substance at work was the cause of a particular disease, the case can go forward.

As you can see from this decision, it is very important to enlist the cooperation of the treating doctor in

proving a case of occupational disease and death.

## Testimonials

The following letter was written by Mrs. Judith Kendrick to Neil J. McKinnon as a testimonial to Lipsitz & Ponterio, LLC, for her deceased husband Donald M. Kendrick.

Dear Neil and Company:

I wanted to take this opportunity to thank you and your entire staff for the job you have done for me. Through this difficult time of my life, you all kept fighting for me. When the initial lawsuit fell through, you did not stop fighting for what was legally mine.

At times, I felt discouraged because the obstacles seemed to be impossible to solve, but your team found a different avenue of thought.

It was not just the money I was fighting for but to prove Allied was responsible for taking my husband's life. A person I wished you all could have met and then could understand why I wanted to get back at them for taking him away from me. He was the one who kept me pursuing the lawsuit. He did not want the company to get away with the things they were doing not only to him but the entire corporation.

I am grateful that the case has been settled in an amazing short period of time. I will never get over the loss of Don but this chapter of my life can now be closed. Your entire company working so hard for me made it much more tolerable for me. Your company always took the time to answer my questions via mail or over the phone. I cannot speak for your other clients. All I can say is how I was treated and that was with compassion and respect. Not just as a client but as a person.

Again, without your help and assistance, I would have been left with nothing. You have fulfilled

Don's promise to me that I would be cared for while he was alive and now that he has passed. From the bottom of my heart I want to thank each of you for helping me and wish all of you the best that life has to offer.

Sincerely yours,  
*Judith Kendrick*

The following note was written by Mrs. Doris Stringfellow to John Ned Lipsitz as a testimonial to Lipsitz & Ponterio, LLC, for her deceased husband Fred Stringfellow.

Dear John and Associates:

I just want to say thank you for all your work. I would never have gotten anything if not for you and your office help. Everyone was so great to me. Now I don't have to worry in my aging years.

Thank you very much.

*Mrs. Stringfellow*

## In Memoriam

We would like to express our condolences to the families of our recently deceased clients:

### 2000

David Rapp .....November 5  
August F. Wossner...December 25

### 2001

Gerard Jones.....February 10  
Ernest Lapan.....March 10  
William Yarmal .....March 27  
Samuel Ark .....April 4  
Richard J. Bayer .....April 18  
Frank J. Bubb, Jr. ....May 20  
James K. Hepburn .....May 22  
Doyle Miller .....June 14  
Kenneth W. Smalley.....July 5  
Elton Ziehl.....July 10  
Kenneth C. Painter.....August 16  
Wilson E. Dieffenderfer .August 22  
Fred Dillemath, Sr.....August 26  
Russell W. DeFrancesco August 28  
Evelyn Wolfanger.....August 28  
Robert Hagerty.....September 2