

# Lipsitz & Ponterio, LLC

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## Personal Injury Claims

Michael Ponterio and I have spent a large portion of the past fifteen years representing men and women suffering from diseases caused by exposure to asbestos. Tragically, there will likely be many more cases of asbestos disease in the years to come. The residents of Niagara County, including most notably the former workers of the Durez facility in North Tonawanda, will see more than their fair share of these cases. Our office will continue to assist victims of asbestos exposure in these such cases.

For the past several years, Michael and I have also been representing people injured by means of other than exposure to asbestos, such as automobile accidents, construction accidents, and as a result of medical malpractice. We are fortunate to be able to bring to this work our years of experience in litigating asbestos disease cases where we developed our skills as trial lawyers and forceful negotiators. If you are injured as a result of negligence, you do not have to call the face on the billboard on the highway. You can call our office, and you will receive prompt, courteous service from lawyers you have known and trusted for years.

The following article written by Michael A. Ponterio describes our successful efforts, culminating in a trial and verdict on behalf of a

young woman injured in an automobile accident on Route 90 on her way back from Niagara Falls to the Buffalo area.

*John Ned Lipsitz*

## Jury Award In Auto Accident Case

John Lipsitz and I represented a 40 year old woman who was injured when her car was hit from behind by a tow truck at the I-190 in the Town of Tonawanda. Our client sustained back injuries in the form of a herniated disc.

Royal Insurance, the tow truck's insurance company, refused to pay any money, arguing that our client did not suffer any serious injuries as a result of the accident.

The insurance company produced an orthopedic surgeon and a neurologist to testify that our client was not seriously injured as a result of the car accident.

After a two week jury trial in Buffalo, the jury awarded our client over \$300,000.00. Royal Insurance did not appeal the jury verdict, but instead paid the jury award to our client.

Since this jury verdict, we have represented other families whose members have suffered injuries in car accidents. We have obtained several favorable money settlements for these families.

*Michael A. Ponterio*

## Retired Worker Awarded Cash Settlement

Attorney Neil J. McKinnon of our office recently received a \$400,000.00 cash settlement for our client, a retired worker who suffered broken bones when he was involved in a car accident.

The insurance company paid the cash award in *twenty-one days*.

*Michael A. Ponterio*

## Niagara Falls Hotel Owner Receives Million Dollar Award in Fire Loss Trial

Attorneys Michael Ponterio and John Comerford successfully represented the owner of the Envoy Motor Inn in Niagara Falls, New York against Dryden Mutual Insurance Company.

Dryden Mutual refused to pay the hotel owner when the Envoy Motor Inn was destroyed in a fire.

The insurance company argued that the owner intentionally set fire to his own hotel.

At the conclusion of a four week jury trial, the jury awarded the owner, our client, over *One Million Dollars* for the damage to his hotel.

The insurance company did not appeal the jury verdict, and paid our client the total amount of his policy, plus \$300,000.00 in interest.

*Michael A. Ponterio*

## Injured Construction Worker Set to go to Court

We currently represent a construction worker who was injured when he fell from an elevated height while working at the Somerset Power Project.

Our client, who fell and injured his knee, has had surgery for a knee replacement. His personal injury case is in Court before the Hon. Jacqueline Koshian, Supreme Court Judge in Niagara Falls.

*Michael A. Ponterio*

## Household Exposure to Asbestos

We represent Jean, whose husband worked at Durez, North Tonawanda, between 1961 and 1980. Jean and Paul were married in 1962. Jean washed Paul's work clothes every week, and more frequently in the summertime. She didn't know it at the time, but the process of shaking out and laundering her husband's clothes releases millions of microscopic asbestos fibers into her breathing zone, and contaminated the family home.

In 1995, Jean entered the Asbestos Health Screening Program begun nine years earlier by Occidental Chemical Corporation in response to demands by the International Association of Machinists Local representing the Durez work force.

The program provides yearly screenings for former Durez employees, who were part of the work force during the asbestos years, 1959 through 1979. Spouses are also eligible for the program, which includes a regular physical exam, breathing tests, and x-ray or CT of the chest and

lungs. (The program is not currently open to the children of workers, even if they helped do the family laundry. If you believe that your children were exposed to asbestos in this manner, your family doctor or health maintenance organization can make a referral to a lung specialist.)

Jean was followed by the Screening Program medical staff and by her own doctors. In 1998, she was diagnosed with lung cancer and underwent extensive surgery for the removal of a portion of her lung.

Working on Jean's behalf, our office contacted scientists at New York City's Mt. Sinai Medical Center in order to have her lung tissue tested for the presence of asbestos fiber. Tests were conducted, and they revealed high concentrations of asbestos fibers, particularly a rare form of asbestos fiber used at the Durez plant. These high concentrations were found in Jean's lymph nodes adjacent to her lungs. The lymph nodes drain fluid from the lungs, and that is why the asbestos fibers were concentrated there.

Based on these studies, another physician trained at the Mt. Sinai Medical Center has offered his opinion that Jean's lung cancer is a result at least in part of her husband's work exposure at Durez, and the performance of her household duties. The doctor's opinion was further strengthened by the fact that although Jean was a former cigarette smoker, she quit smoking cigarettes in about 1980, and her smoking history prior to that time was not extensive.

We are pursuing a claim on Jean's behalf, and on behalf of her family. The diagnosis and surgery caused a major disruption in her life. She

has had to undergo chemotherapy and radiation. She is just now getting back on her feet and back to work, but things can best be described as touch and go for Jean and Paul's family. This case may be set for trial before the end of the year 2001 and either resolved by settlement or a jury verdict.

If one or more of the members of your family worked for any significant period of time at the Durez facility in North Tonawanda and you laundered the work clothes at home, you should consider seeking a medical evaluation. If you are still living in the same house, 20 or 30 years later, you may consider having tests done to determine whether the laundry facilities or basement are still contaminated by harmful levels of asbestos. Asbestos does not disappear, and it does not degrade. There is a distinct possibility that asbestos fibers brought home on your husband's clothes or your son's clothes 30 years ago are still present in your home today.

*John Ned Lipsitz*

## Pending Federal Legislation

Since 1995, our office has represented Mrs. Eleanor Tornabene, whose husband, Samuel W. Tornabene, was a former worker at the Linde Air Products facility in Tonawanda, New York. Mrs. Tornabene has given us permission to reprint the text of a letter I recently sent on her behalf to Congressman LaFalce:

"I am writing to you in support of the Nuclear Workers' Compensation Amendment as it was recently adopted by unanimous consent in the Senate in the Defense Authorization Act. I understand that this amendment is on its way to

Conference. This legislation is a crucial step in redressing injustices committed against men and women who worked in our weapons and related industries since the Second World War. The Linde Air Products facility in Tonawanda, New York is among those facilities that would be included under the amendment as an atomic weapons facility. As you may be aware, the Linde site was part of the Manhattan Project during World War II and a great deal of the uranium used in the atomic bomb was processed at the Linde site. Unfortunately, the radioactive waste resulting from the processing of uranium was never properly remediated, and generations of workers following the Second World War have been exposed unnecessarily and without their knowledge to excessive levels of radioactive dust.

"A series of site studies conducted between the mid-1970's and the mid-1990's confirmed and reconfirmed the existence of excessive levels of alpha-emitting dust particles at the Linde site. In 1993, I undertook representation of an individual and his family affected by these tragic circumstances. Samuel W. Tornabene was employed as a maintenance worker at the Linde site from the early 1960's through the 1990's. He died of non-Hodgkins lymphoma on December 17, 1993 at the age of 58. At the time of his death, he was survived by his wife of many years, Eleanor J. Tornabene, and several children, among whom were dependent minors. We filed a case in the New York State Workers' Compensation Board for the Tornabene family in 1994. After approximately five years of litigation involving nearly a dozen witnesses, including doctors and other scientists, the Workers' Compensation Board denied the claim, essentially finding that Mr.

Tornabene's non-Hodgkins lymphoma was more than likely not related to his exposure to radioactive materials at the Linde site. This decision was reached despite the fact that Mr. Tornabene's medical history was devoid of any other known risk factor for non-Hodgkins lymphoma.

"During the course of the many sessions at the Workers' Compensation Board, we developed Mr. Tornabene's work history at the Linde facility in great detail. There was extensive testimony, for example, concerning a period of approximately six months in the mid-1960's when he was involved in destructive activities concerning a concrete floor that registered high levels of radioactive alpha-emitting dust particles. Mr. Tornabene was required to jack-hammer that floor in order to break it up so that heavy equipment could be moved. Mr. Tornabene eventually developed non-Hodgkins lymphoma and eventually died of that condition. Like the other workers at the Linde facility, he was never warned that he was being subjected to excessive levels of radioactive material. His employer, Union Carbide, never warned him. The successor employer, Praxair, never warned him. The United States government never warned him. In fact, the employer in this case against whom the claim was filed, Praxair, almost certainly spent more than \$100,000.00 to disprove the relationship between exposure to alpha-emitting dust particles and the development of non-Hodgkin's lymphoma.

"The proposed legislation provides compensation for nuclear workers who have developed certain "specified radiogenic cancers." One of the specified radiogenic cancers listed in the legislation is, in fact, non-Hodgkins lymphoma. Thus is

appears that the employer in the Tornabene case paid a large sum of money in order to disprove a scientific conclusion now reached by the United States government after extensive research and investigation at the federal level. According to the proposed legislation, non-Hodgkins lymphoma, a relatively rare cancer, the incidence of which is on the rise, may be caused by excessive levels of radioactive dust and is a 'specified radiogenic cancer.'

"I strongly and sincerely recommend your earnest consideration of the Nuclear Workers' Compensation Amendment. With such legislation in place, Mrs. Tornabene, and others like her, may yet have a chance to receive compensation for the loss of loved ones who died working at sites deemed of special importance to the national security. Tragically, as we are now all too well aware, these workers were often treated as guinea pigs and were never warned of the dangers inherent in their work."

*John Ned Lipsitz*

## In Memoriam

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

Denis Sullivan.....	April 2
Harold Wackett.....	April 5
Edwin Zuch .....	April 11
Howard Ballou .....	April 12
Joseph Wallo .....	April 21
Victor Mancinelli .....	April 22
Anthony Whytas .....	April 26
James McDonnell.....	April 27
Roger Ballard .....	April 30
Norbert Keller.....	May 5
Caroline Izzo .....	May 10
John Ross .....	June 4
Heinrich Jurzysta .....	June 12
Michael Augello .....	June 26