

# NEWS & VIEWS

Fall 2016

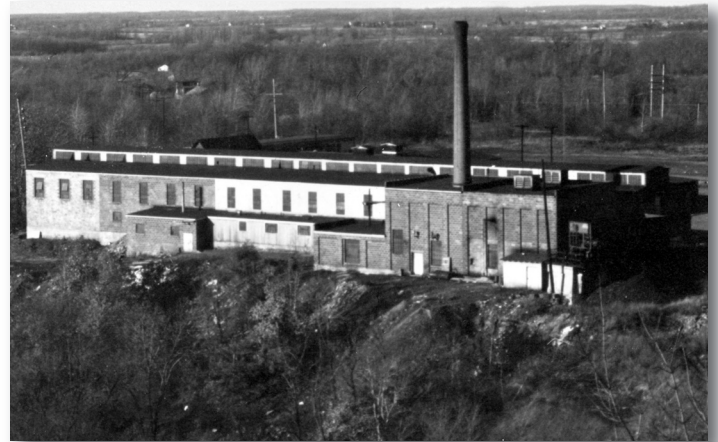
Attorney Advertisement

## LIPSITZ & PONTERIO HOSTS NORTON LABS MEETING IN LOCKPORT

**N**orton Labs, located on Mill Street in Lockport, New York, closed its doors in 1981, after being in business for nearly 65 years. The facility was a well-known plastic mold shop and manufacturer of hard plastic products. Norton Labs utilized asbestos-containing plastic molding compounds to manufacture various industrial plastic component parts for the automotive and electrical industries.

On June 22, 2016, Lipsitz & Ponterio, LLC, held an open meeting for former workers and retirees of Norton Labs at Elks Lodge #41 on North Canal Road in Lockport. Approximately twenty-five people gathered to discuss their health concerns and to learn more about their potential asbestos exposure while employed at the plastic molding facility. The purpose of the meeting, in part, was to identify and locate witnesses who worked with one of our mesothelioma clients during the late 1960s.

Volunteers from the Elks Lodge made everyone feel welcome. Attorneys and staff from Lipsitz & Ponterio were present, and a light lunch was provided for the attendees. Attorneys Michael A. Ponterio and John P. Comerford met with numerous retirees to discuss the legal remedies available for



*Pictured above: Norton Labs in Lockport  
Photograph courtesy of the Lockport Public Library*

claims of asbestos-related diseases. Norton Labs used large quantities of asbestos-containing plastic molding compounds to make plastic parts. Exposure to asbestos occurred in all departments, including the preforming, molding and finishing departments.

The firm represents a man whose only known exposure to asbestos occurred at Norton Labs where he was employed

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## \$6.4 MILLION DOLLAR SETTLEMENT IN MESOTHELIOMA CASE FOR WORKER EXPOSED TO ASBESTOS AS SUMMER HELP

**L**ipsitz & Ponterio recently settled a mesothelioma case on behalf of a former warehouse worker whose only exposure to asbestos occurred during summers while he was a college student. His primary exposure occurred when he removed solid state insulation from cardboard shipping boxes. This removal process caused sufficient amounts of airborne asbestos fibers to induce mesothelioma four decades later.

The case settled with all defendants for approximately \$6.4 million. Due to the confidential nature of the settlement, the names of the settling parties and the amount contributed by each company to the overall settlement cannot be disclosed.

The family hired Lipsitz & Ponterio because of our success in representing another plaintiff exposed to asbestos at the same job site.

Our firm has accumulated a great deal of information pertaining to the asbestos-containing materials and equipment used at many job sites throughout Western New York. You should consider our firm if you have been diagnosed with mesothelioma or lung cancer.

Our website is a useful resource as it contains background information you may need if you have been affected by asbestos exposure. You may view a comprehensive list of job sites at [www.lipsitzponterio.com](http://www.lipsitzponterio.com) ■

## LIPSITZ & PONTERIO HOSTS NORTON LABS MEETING IN LOCKPORT...continued from page 1

briefly as a union janitor during the summers of 1966, 1967 and 1969. His duties included sweeping and cleaning up dust, debris and flashing from the floors and mold shop machinery. Since asbestos was used as filler in the molding compounds supplied to Norton Labs, the sweeping of the floors and cleaning of the mold shop machinery caused asbestos fibers to become airborne and to be inhaled by our client. His exposure to asbestos was relatively brief; he was employed for only eight to ten weeks during each of three summers he worked at Norton.

The meeting was a success: at least two individuals recalled working with our client and agreed to be witnesses in his case. This was not the first such forum arranged by Lipsitz & Pontorio, LLC, and it will most certainly not be the last. We have conducted such meetings in the past for retired workers from the

Durez plant in North Tonawanda and for the residents of the surrounding neighborhood, as well as for former and retired workers of Carbide Graphite in Niagara Falls. These meetings present an invaluable opportunity for old friends and co-workers to reconnect and to help each another in important ways. ■

## MESOTHELIOMA - ASBESTOS EXPOSURE AT REPUBLIC STEEL

Lipsitz & Pontorio, LLC, recently represented two former Republic Steel workers who died from mesothelioma, a cancer caused by exposure to asbestos. Due to confidentiality agreements, our clients will be referred to as Client A and Client B throughout this article.

Client A and Client B were exposed to asbestos-containing “hot tops” and other thermal insulation products while employed by Republic Steel in South Buffalo. Both clients worked in the Open Hearth and Mold Yard departments.

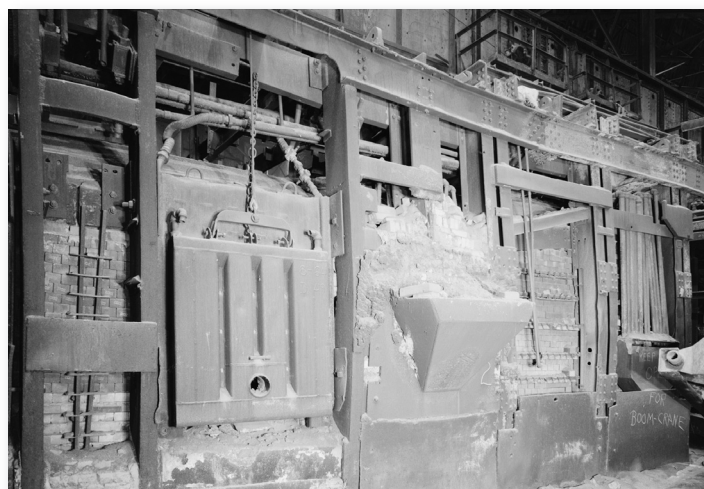
Between 1948 and 1977, Client A worked first as a Laborer and Helper in the Open Hearth and later as a Switchman and Engineer on the train inside the Mold Yard. Client B worked as a Laborer in the Open Hearth from 1965 until 1968 and then as a Crane Operator in the Mold Yard from 1969 until 1971. Client B died in December 2013 before he could testify in his own case.

Client A testified, before his death, not only in his own case but in Client B’s case as well, proving essential facts about both cases.

Client A testified that at the time he worked in the Open Hearth, outside contractors removed and installed asbestos-containing insulation in the workers’ immediate vicinity on a regular basis. The work activities of the insulation contractors caused both Client A and Client B to be exposed to massive amounts of asbestos dust.

During the time Client A worked in the Mold Yard as a Switchman and Engineer, he was exposed to the utilization and installation of asbestos-containing “hot top” materials as a bystander. After the steel ingots were poured, cooled and stripped from the molds, old “hot top” materials were removed and replaced with new asbestos-containing “hot top” materials before the next heat of steel was poured.

Client A also testified that Client B was a Crane Operator in the Mold Yard during the time that he worked there as a Switchman and Engineer. Client A gave detailed testimony concerning



*Pictured above: Open Hearth Furnace  
Photograph is courtesy of the Library of Congress*

Client B’s exposure to asbestos-containing “hot top” materials. Client A testified that Client B was exposed to asbestos from the “hot tops” more than anyone else because of his location in the crane above the activities in the Mold Yard. Client A’s testimony detailed the tremendous amount of asbestos both workers were exposed to during their time in the Mold Yard. Client A identified the manufacturers and distributors of the asbestos-containing “hot top” materials.

Our request for a joint trial was granted by the Court, which noted the factual and legal similarities linking the two cases. Both clients were diagnosed with and suffered from malignant mesothelioma; they were exposed to asbestos exclusively during their respective employments at Republic Steel; and they were exposed to the same asbestos-containing materials (insulation and “hot top” materials). In both cases, the same expert witnesses were prepared to testify, and the same defendant companies were named.

The consolidation process relieves the Court of the burden of having to hold separate trials in multiple cases involving similar

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## LIPSITZ & PONTERIO REPRESENTS FAMILIES INJURED BY DEFECTIVE PRODUCTS

Many of our clients, as well as the Western New York community as a whole, identify our firm with asbestos litigation, especially mesothelioma cases. While this area is certainly where we concentrate our practice, it is important to know that asbestos litigation is part of a broader area of law known as products liability.

Products liability arises from the idea that makers of products should be held responsible for defects in their products that cause injuries to consumers.

Perhaps the most widely known example of a defective product was found in the case of the Ford Pinto, where the car manufacturer's design called for the gas tank to be placed too close to the rear bumper making the vehicle likely to catch fire upon impact. It would have cost Ford an estimated \$11.00 per car to fix this design flaw.

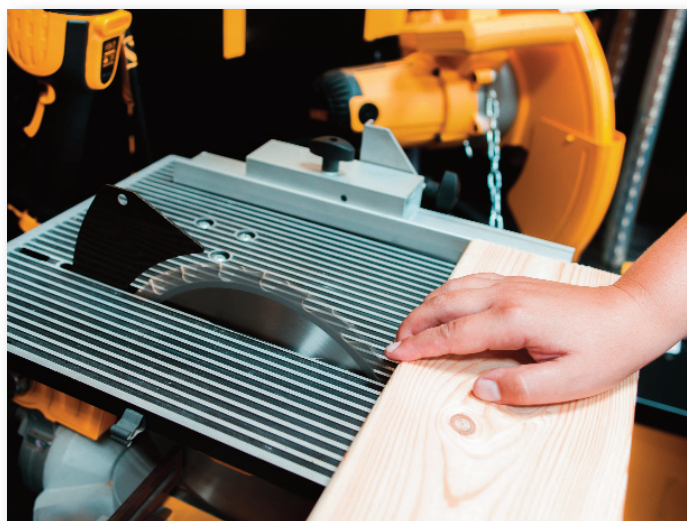
Some of the more recent high profile products liability cases involve defective ignition switches on certain General Motors cars, such as the Chevy Cobalt. It was discovered that the ignition switch could slip out of place causing the engine to stall and cutting power to the brakes and steering wheel, resulting in some catastrophic accidents.



*Pictured above: Dislodged airbag from a car's steering wheel. The defective design of Takata air bags caused them to explode on impact.*

Other examples of defective products that caused injuries to consumers include:

- **Takata Air Bags** – The heart of the problem involves the air bag exploding on impact;
- **Unsafe Drugs** – Duract, a pain management drug, was found to cause liver damage and in some instances, death;
- **Sports Utility Vehicles/Rollover** – Every year more than 10,000 people die in rollover accidents. A major area of litigation involves lack of roof strength, resulting in the crushing of the roof during a rollover accident;



*Pictured above: Table Saw. Table saws may cause accidental injury because they lack flesh-sensing technology, which could prevent catastrophic injuries to fingers and hands.*

- **Child Car Seats** – Child car seats are one of the most recalled products due to design defects in the car seat.
- **Table Saws** – Thousands of table saw injuries occur every year. Injuries to fingers and hands could be prevented if table saw manufactures incorporated flesh-sensing technology.

If you or a family member has been injured as a result of a defective product, please give us a call. ■

### keep us informed



#### Change in Your Medical Condition?

If you previously filed a claim with Lipsitz & Ponterio, a change in your medical status may entitle you to additional legal compensation. It is important to keep us updated so that we can file new claims on your behalf.

#### Moving? New Telephone Number? E-mail Address?

If you are moving or have a new telephone number, it is important that you inform us of this change as soon as possible. Please also let us know if you have a winter or summer address.

#### Update Your Information by Calling or E-mailing Us:

Call our office at (716) 849-0701 or  
E-mail Marlene Potter:  
[mpotter@lipsitzponterio.com](mailto:mpotter@lipsitzponterio.com)

## WESTERN NEW YORK LAWMAKERS CRACK DOWN ON NEGLIGENT PROPERTY OWNERS

In the wake of the Flint, Michigan, water crisis, Western New York's lawmakers are reviewing the effectiveness of laws and policies aimed at protecting children from lead poisoning. While lead-contaminated water was the culprit in the recent public health crisis in Flint, lead paint in older homes (particularly in inner-city areas) remains the primary source of childhood lead poisoning in New York State. As such, local courts and municipalities are attempting to make it more difficult for landlords to ignore dangerous lead paint conditions in their rental properties.

For the past twenty years, the Erie County Department of Health has been the primary agency responsible for lead poisoning control in the City of Buffalo. The Health Department inspects city homes after receiving reports that children residing therein were diagnosed with elevated blood lead levels. After the inspections, the Health Department orders the responsible property owners to remediate lead paint hazards present in the homes.

*“During the spring of 2016, however, City of Buffalo Mayor Byron Brown proposed a city-wide ‘Lead Hazard Control Program,’ which, if adopted, would add more proactive lead poisoning prevention laws to the City’s code.”*

During the spring of 2016, however, City of Buffalo Mayor Byron Brown proposed a city-wide “Lead Hazard Control Program,” which, if adopted, would add more proactive lead poisoning prevention laws to the City’s code. The program would require property owners to determine whether any lead paint hazards exist in their homes and then disclose this information to prospective tenants. The program would also require rental property managers to attend a lead paint remediation training class. Most significantly, the program would require the City to deny renewal of a Certificate of Occupancy if there were any lead paint hazards present in the rental properties that were easily accessible to young children, such as protruding windowsills and trim. Unfortunately, the City of Buffalo failed to enact what has arguably been the most successful measure used by the City of Rochester to drastically reduce its rate of childhood lead poisoning: a requirement that no Certificate of Occupancy be issued to any rental dwelling, including 1- and 2-unit properties without first performing a lead paint hazard inspection.

Similar to its Erie County counterpart, the Monroe County Department of Health has been the primary agency responsible for lead poisoning control in the City of Rochester. However, the City of Rochester has taken the initiative in recent years to



enact measures that go even further than the measures taken by the Monroe County Department of Health. By requiring a lead paint hazard inspection to be part of all inspections performed prior to the issuance of a Certificate of Occupancy for rental dwellings, combined with other measures, the City of Rochester decreased its number of reported childhood lead poisonings from a high of 1,019 cases in 2003 to 206 cases in 2015. Additionally, in late 2016, the City of Rochester will train approximately one hundred inner-city property owners to proactively identify and remediate lead paint hazards. The City of Rochester will also provide funding to property owners seeking to proactively abate lead paint hazards in their homes.

As local municipalities seek to decrease lead poisoning through education, advocacy, and increased regulation, the courts are also cracking down on landlords after lead poisoning has occurred. In the past, a legal loophole allowed many negligent landlords to escape liability in civil lead paint injury lawsuits by claiming that they were unaware of the health hazards of lead paint prior to the time of their victim’s poisoning. In a case recently handled by Lipsitz & Ponterio, LLC, a Rochester Appellate Court affirmed a trial court decision to more closely examine a landlord’s bald assertion that she was unaware of the health hazards of lead paint prior to her tenant’s elevated blood lead level diagnosis. In a written opinion, the Court noted that, prior to the diagnosis, the landlord subscribed to a local Rochester newspaper that published a number of articles on the topic of childhood lead poisoning. The Court reasoned that, based on the landlord’s newspaper subscription history, a jury could find the landlord’s statements of ignorance to be incredible on its face. The case, *June v. Vatter*, 121 A.D.3d 1588 (4th Dept. 2014), is now binding precedent in all childhood lead poisoning lawsuits throughout Buffalo, Rochester and Syracuse. ■



## MESOTHELIOMA - ASBESTOS EXPOSURE

AT REPUBLIC STEEL...continued from page 2

*“The consolidation process relieves the Court of the burden of having to hold separate trials in multiple cases involving similar facts, circumstances and witnesses.”*

facts, circumstances and witnesses. This process also allows the parties to share costs associated with the trial that they would otherwise have to bear alone.

Fortunately, the cases settled before trial. At Lipsitz & Pontorio, we often represent multiple workers from the same job site. It comes as no surprise that the men and women who worked shoulder to shoulder in factories and at construction sites regularly step forward to help one another in their hour of need. ■

### APPEALS COURT UPHOLDS \$3 MILLION VERDICT IN ASBESTOS CASE

Gerald Suttner never lived to see his landmark court victory. The former pipefitter at General Motor Co.’s engine plant in Tonawanda died at age 77 in 2011, well before New York’s highest court upheld a verdict on behalf of his widow.

The court, in a decision anxiously awaited by industry and business groups across the country, ruled against Crane Co., the Connecticut manufacturer found partially responsible for Suttner’s death. Suttner, who retired from GM in 1996 after more than 30 years of employment, was diagnosed with mesothelioma two years before his death.

A few months after Suttner died, a jury found Crane and several other companies failed to warn him about the risks of working with asbestos-containing replacement parts used in valves at the plant. The jury also awarded \$3 million to his family.

“Crane manufactured a product that, when used as intended, put workers at risk for terminal cancer,” John N. Lipsitz, one of Suttner’s lawyers, said in a statement.

Lipsitz compared Crane’s obligations to those of a gas grill manufacturer and its responsibility to warn users about the risk of explosion, even if the grill manufacturer does not sell the replacement propane tanks that fuel them.

The Court of Appeals agreed and upheld the jury verdict against Crane.

In its appeal, Crane argued that it did not have an obligation to warn Suttner and, in a friend of the court brief, the National Association of Manufacturers and Business Council of New York State joined several other national and statewide business groups in asking the court to overturn the verdict.

Crane, which said it never manufactured asbestos-containing

### Lipsitz & Pontorio Discusses Products Liability Law with Buffalo State College Students

In October 2016, Lipsitz & Pontorio hosted a discussion with a group of students and their professor from Buffalo State College on the subject of the ethical responsibilities that a manufacturer has to the users of its products. Professor Barry Yavener contacted the firm after seeing one of our television commercials. Professor Yavener’s interest was piqued by the statement that “the asbestos industry knew all about the health hazards of asbestos, going back to the 1930s, and failed to protect workers.” He believed his students would benefit from learning about products liability law and how it holds companies accountable for the products they introduce into the stream of commerce.

Barry Yavener, who has taught at Buffalo State College for thirty-two years, is a professor in the Interior Design Department. He teaches TEC 319 – Technology and Values, a course focusing on the social and ethical impacts of technology. The students who participated in the discussion are in their junior and senior years. Most are majoring in Industrial Education, which prepares them to teach industrial arts in middle and high school. One of the students is majoring in Industrial Technology with a focus on Quality Control. They were all familiar with the exploding Ford Pinto gas tank and the failure of the O-rings that led to the Challenger disaster in 1986. All of the students were interested in the ethical and moral dilemma of the corporate employee who believes his employer is making and selling a potentially dangerous product. How does he make his concerns known? What if they are waived aside? What are the risks of blowing the whistle?

John Lipsitz began his presentation with an introduction to products liability law with several examples of defective products and how they entered the market. The students then carried the discussion forward with many interesting and challenging questions and insights. ■

products, says the court ruling creates a new standard for when manufacturers have a duty to warn users about potential hazards.

“We are disappointed by the Court’s ruling, which is in conflict with those made by courts in other states, as well as on the federal level,” the company said in a statement after the ruling.

The appeals court decision upheld a ruling by an appellate court in Rochester, as well as the jury verdict in Buffalo. ■

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Phil Fairbanks - July 10, 2016

Lipsitz & Ponterio, LLC  
Attorneys At Law  
135 Delaware Ave.  
5th Floor  
Buffalo, NY 14202-2415

Tel: 716.849.0701  
Fax: 716.849.0708

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Lipsitz & Ponterio, LLC



[www.lipsitzponterio.com](http://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  
Zachary J. Woods  
Mary M. Comerford  
Grace M. Gannon  
John E. Richmond  
Ryan D. Ledebur

OF COUNSEL

Henry D. Gartner  
Nan L. Haynes  
Elizabeth M. Shost

John M. Pullano  
Licensed Workers'  
Compensation Representative

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## ATTORNEY RYAN D. LEDEBUR JOINS LIPSITZ & PONTERIO

We are pleased to announce that Ryan D. Ledebur has joined the firm as an associate attorney. Mr. Ledebur focuses his practice on representing individuals suffering from occupational diseases, including mesothelioma and lung cancer. In this role, he oversees the filing of claims with various asbestos bankruptcy trusts.

Prior to joining the firm, Mr. Ledebur served as a staff attorney at the Western New York Law Center (WNYLC), a not-for-profit law firm in Buffalo, New York, where he defended individuals facing residential foreclosures. He also helped staff the WNYLC consumer debt clinic, CLARO.

Mr. Ledebur was born and raised in Warren, Pennsylvania. He received his J.D., *magna cum laude*, from SUNY Buffalo Law School, and he received his B.A., *magna cum laude*, from



Houghton College. While pursuing his law degree, Mr. Ledebur was employed as a law clerk at Lipsitz & Ponterio assisting the firm's litigators in conducting legal research. He also received the ABA/BNA Award for

Excellence in the Study of Health Law .■