

NEWS & VIEWS

Fall 2017

Attorney Advertisement

For over 20 years, the attorneys at Lipsitz & Ponterio have represented workers and their families affected by **mesothelioma** or **lung cancer** caused by exposure to asbestos.

Did You Know...

Our experienced personal injury trial attorneys also represent individuals injured by:

- Motor Vehicle Accidents
- Medical Malpractice
- Defective Products

For more information, contact Lipsitz & Ponterio.

www.lipsitzponterio.com

(716) 849-0701

in this issue:



Lipsitz & Ponterio Client Awarded \$1.2 Million in Medical Malpractice Case.....1

A Summer Job Led to Mesothelioma; Lipsitz & Ponterio Settled Case for \$3.1 Million.....2

Workers' Compensation Benefits: Widow Whose Husband Was Exposed to Deadly Chemicals.....2

Lipsitz & Ponterio Moves to the Historic Liberty Building.....3

Exposure to Deadly Substances and Workers' Compensation Claims..4-5

Status of the Pittsburgh Corning Corporation Asbestos Settlement Trust.....5

Anne E. Joynt Named President of the WNY Chapter of the Women's Bar Association of the State of New York.....6

LIPSITZ & PONTERIO CLIENT AWARDED \$1.2 MILLION IN MEDICAL MALPRACTICE CASE

On July 19, 2017, after a two-week jury trial, Lipsitz & Ponterio attorneys, Michael Ponterio and John Richmond, obtained a \$1.2 million dollar verdict in a medical malpractice lawsuit against doctors from the University of Rochester Medical Center. The plaintiff, a 76-year-old grandmother, went in for a laparoscopic surgical procedure to remove a small fibroid on her cervix. During surgery, the doctors punctured her bowels in two places and failed to detect the perforations for 31 hours until the patient was in septic shock and near death.

What was supposed to be an overnight hospital stay ended up lasting 84 days, during which time our client underwent nine corrective surgical procedures and two skin grafts.

When she was discharged from the hospital, she still had an open wound in her abdomen.

The jury found the doctors negligent in failing to timely diagnose the holes in her bowels. "This was a very intelligent jury that followed the evidence and the law in arriving at their verdict in favor of our client," said attorney Michael Ponterio.

"While no amount of money can restore our client's health, we are pleased with the jury's verdict, which recognized that harm was done to her due to the doctors' negligence," said attorney John Richmond.

The Honorable Matthew A. Rosenbaum, presided over the trial in Monroe County Supreme Court in Rochester, New York. ■

A SUMMER JOB LED TO MESOTHELIOMA; LIPSITZ & PONTERIO SETTLED CASE FOR \$3.1 MILLION

As a 20-year old college student in the late 1960s, our client went to work at Norton Labs, a well-known plastic mold shop located on Mill Street in Lockport, New York. Norton Labs used large quantities of asbestos-containing plastic molding compounds to make hard plastic products for the automotive and electrical industries. At age seventy, our client was diagnosed with malignant mesothelioma. He contacted Lipsitz & Ponterio to represent him in seeking damages against several companies responsible for the manufacture, distribution and sale of asbestos-containing products to Norton Labs. The case settled with all defendants for approximately \$3.1 million.

It's important to note that this was our client's only known exposure to asbestos compounds. Working this summer job as a union janitor at Norton, his duties included sweeping and cleaning up dust, debris and flashing from the floors and mold shop machinery. Asbestos was used as filler in the molding compounds supplied to Norton Labs. Sweeping and cleaning dusty surfaces caused asbestos fibers to enter his breathing

“It is significant that while our client's exposure to asbestos was relatively brief, the intensity of his exposure to this highly toxic substance ultimately caused him to develop mesothelioma.”

zone, inducing mesothelioma over four decades later. Workers were exposed to asbestos in all departments, including preforming, molding and finishing.

It is significant that while our client's exposure to asbestos was relatively brief, the intensity of his exposure to this highly toxic substance ultimately caused him to develop mesothelioma.

He continues to battle mesothelioma and spends his time with family and friends. ■

WORKERS' COMPENSATION BENEFITS: WIDOW WHOSE HUSBAND WAS EXPOSED TO DEADLY CHEMICALS

Lipsitz & Ponterio recently obtained workers' compensation benefits for a widow whose husband was employed as a service manager at a local commercial equipment company for 24 years. The company manufactured chemicals used in the construction of tennis courts. While at work, he was exposed to benzene, which is found in xylene and coal tar. As a result of this exposure, he developed and ultimately died of multiple myeloma at the age of 52.

This case was assigned to a state administrative law judge, who concluded that the evidence was insufficient to establish a causal link between multiple myeloma and his occupational exposure. Even though the widow produced medical opinions demonstrating the link between benzene exposure and multiple myeloma, the judge required absolute proof that this exposure caused the decedent's multiple myeloma.

We argued that the legal standard the judge applied as absolute proof was incorrect and not necessary to establish a causal relationship under the Workers' Compensation Law. If the evidence establishes that it is more likely than not that the decedent's workplace exposure is linked to the decedent's disease, then the widow should be entitled to benefits.

Lipsitz & Ponterio appealed the administrative law judge's decision to the Workers' Compensation Board, which reversed the judge's order. The Board agreed with our theory and understanding of the burden of proving medical causation in this

occupational disease and death case.

While this case was strongly opposed by the compensation insurance carrier, we successfully established a causal relationship between the decedent's exposure to the chemicals he worked with and his development of multiple myeloma. As a result, the widow received a lump sum (Section 32) payment. ■

check it out

Founding Partners John Lipsitz and Michael Ponterio appeared on AM Buffalo and WNY Living in October 2017.



To watch, visit our website:
www.lipsitzponterio.com

LIPSITZ & PONTERIO MOVES TO THE HISTORIC LIBERTY BUILDING



Pictured above (left to right): Partner John Comerford and Founding Partners Michael Ponterio and John Lipsitz

After celebrating 22 years of practice in Buffalo, we are pleased to announce that our office has relocated to the historic Liberty Building at 424 Main Street in the heart of downtown Buffalo.

“These are exciting times for our firm and the Buffalo Niagara region, and this move reflects our continuing commitment to our clients and the communities we serve,” said John N. Lipsitz, noting that the architecturally and historically significant Liberty Building provides clients with a convenient location and greater accessibility to courts. He and Michael A. Ponterio founded the firm in 1995, with a staff of seven. Today the firm employs 48 people, including 15 experienced trial attorneys and 33 support staff.

“The development of our new space was a collaborative effort by many talented people and positions us to serve our clients well into the future,” said Ponterio. The renovation team included property manager, Christopher Potter, from Transwestern; Liberty Building leasing agent, Michael Manning; Steven Purpora, R.A., of Zaxis Architectural P.C., and Don Balcerzak, Commercial Buildouts, Inc. ■



The photos above and below show the before and after of our office space in the Liberty Building. The entire 15th floor was gutted before the renovations began. Some of the original features of the Liberty Building were kept, including the mail slots, elevator call buttons and elevator indicator lights. Amenities in the office include panoramic views of the City of Buffalo, conference rooms, a library, a kitchenette and a staff lounge.



EXPOSURE TO DEADLY SUBSTANCES AND WORKERS' COMPENSATION CLAIMS...continued from page 4

or her claim within two years of the date that he/she knew, or should have known, that the spouse's death was caused by occupational exposure to hazardous substances.

Exposure to toxic substances in the workplace may occur through inhalation, skin absorption or ingestion. The three initial steps to investigate a Workers' Compensation claim are:

- request the claimant's employment records;
- obtain historical exposure data related to the job site; and
- review Material Safety Data Sheets (these sheets provide the composition and health hazards of any toxic substance used at the workplace.)

An investigation also includes a request for medical records. An expert will review the records and provide an opinion. The expert's opinion, in addition to all the other information obtained, will help support the claimant's burden of proof, which must be met in order to succeed. In order to meet this burden, the claimant

must establish a recognizable link between his or her condition and a distinctive feature of his or her employment, such as exposure to one or more hazardous substances.

In some cases, it may be necessary to identify a co-worker who can corroborate the claimant's occupational exposure to a hazardous substance. In rare cases, where a co-worker cannot be located, the spouse may provide testimony related to the claimant's job duties, exposures and subsequent side effects. Lipsitz & Ponterio recently represented a client who worked in the textile industry and was often exposed to benzidine dyes in the work place. The spouse testified that the claimant's perspiration was often blue and would stain their bedsheets.

Lipsitz & Ponterio has handled numerous workers' compensation claims. Each case is given prompt and thorough attention. Call Lipsitz & Ponterio to discuss any potential workers' compensation claim. ■

STATUS OF THE PITTSBURGH CORNING CORPORATION ASBESTOS SETTLEMENT TRUST



*Pictured above: Unibestos Pipe Covering
Manufactured by Pittsburgh Corning*

From 1962 to 1972, the Pittsburgh Corning Corporation made asbestos-containing pipe covering and insulation products under the brand name Unibestos, which was widely used in industrial settings, including oil refineries, chemical plants, steel mills and power houses. In April 2000, after more than twenty years of defending itself against personal injury and wrongful death claims for asbestos disease, Pittsburgh Corning filed for bankruptcy. Because of the widespread use of Unibestos during a particularly intense period of industrial development in the United States, many workers and their families were injured and continue to be injured by Pittsburgh Corning's negligent failure to warn about the dangers of its asbestos products.

In 2016, after more than sixteen years of litigation in the United States Bankruptcy Court, the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust was established. The Trust finally began accepting claims from injured workers and their families in March 2017.

Some of our clients have been waiting many years for this Trust to be established. Because Unibestos was used at many of Western New York's largest work sites, we anticipate filing a large number of claims. Unfortunately, the Trust has been flooded with claims from across the country slowing down its review process. We are actively pursuing all eligible claims to be submitted, reviewed and processed. ■

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? Email 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 (716) 849-0701 or
email Marlene Potter:
mpotter@lipsitzponterio.com

EXPOSURE TO DEADLY SUBSTANCES AND WORKERS' COMPENSATION CLAIMS

For over 20 years, the attorneys at Lipsitz & Ponterio have represented men and women suffering from diseases caused by exposure to toxic substances in the workplace. These dangerous substances include asbestos, benzene, coal tar pitch volatiles and beryllium. The sellers, manufacturers, distributors and marketers of these toxic products often knew these products were dangerous, yet they ignored, scaled down or denied the health risks.

“While success in a third party lawsuit depends, in part, on evidence of a defendant’s negligence in the manufacturing and marketing of its toxic substances, it is not necessary to show that an employer was at fault in order to prove a claim of occupational disease or death under New York’s Workers’ Compensation Law.”

Lipsitz & Ponterio is the leading law firm in Western New York that represents workers and their families in third party lawsuits for occupational disease and death. We are also the region’s top law firm for pursuing occupational disease and death claims in workers’ compensation court. While success in a third party lawsuit depends, in part, on evidence of a defendant’s negligence in the manufacturing and marketing of its toxic substances, it is not necessary to show that an employer was at fault in order to prove a claim of occupational disease or death under New York’s Workers’ Compensation Law. This is because comp is a “no fault” system specifically designed to provide a remedy for injured workers. The claimant is not required to show that the employer was at fault in exposing the employee to one or more toxic substances, only that the exposure itself was central to the work performed by the employee and that it was a substantial contributing factor in causing illness or death. In death claims, the claimant does not have to prove that the workplace exposure was the one cause of death, only that it cut short the worker’s lifetime by a single day.

Lipsitz & Ponterio represents workers in cases where the onset of occupational disease makes it impossible for a worker to continue in his or her regular occupation. Many occupational diseases, however, such as asbestosis, do not appear until after retirement. Because wage replacement benefits are not available to workers who become disabled after retirement, these types of claims are relatively rare. But the law does recognize

important information

In addition to asbestos, there are several harmful substances that cause disease in the workplace:

- **Benzene**

Exposure to benzene in its pure form or as a component of other solvents increases the risk of developing leukemia and other blood and bone cancers.

- **Benzidine Based Dyes**

Exposure to benzidine based dyes is causally related to bladder cancer.

- **Beryllium Dust & Fumes**

Exposure to dust, fumes and mist resulting from the machining, sanding, grinding and cutting of beryllium alloys can cause potentially fatal chronic beryllium disease.

- **Coal Tar Pitch Volatiles**

Exposure to aerosolized coal tar and coal tar products, including coal tar pitch, can cause bladder, kidney, skin, lung and other respiratory cancers.

- **Coke Oven Emissions Exposure**

Exposure to coke oven emissions is a cause of lung, skin and other cancers.

- **Diesel Fumes**

Exposure to diesel exhaust is causally related to lung cancer.

- **Orthotolidine**

Exposure to orthotolidine is causally related to bladder cancer.

- **Vinyl Chloride**

Exposure to vinyl chloride is causally related to liver cancer.

the impact of occupational disease on families and provides weekly benefits for surviving spouses, even when the death occurs well after retirement.

Under the statute of limitations for a comp claim for occupational disease, the disabled worker must bring a claim within two years of the date that he or she learned of the disabling condition and its relationship to his or her employment. Under the statute of limitations for a comp claim for an occupationally-related death, the surviving spouse must file his

...continued on page 5

Lipsitz & Ponterio, LLC

Attorneys At Law
424 Main Street, Suite 1500
Buffalo, NY 14202

Tel: 716.849.0701
Fax: 716.849.0708

Lipsitz & Ponterio, LLC



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

John M. Pullano
Licensed Workers'
Compensation Representative

© 2017. All Rights Reserved.

page 6

ANNE E. JOYNT NAMED PRESIDENT OF THE WNY CHAPTER OF THE WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

We are pleased to announce that Lipsitz & Ponterio junior partner, Anne E. Joynt, was installed as the 33rd President of the Western New York Chapter of the Women's Bar Association of the State of New York at its Annual Installation and Awards Ceremony on July 20th. At the firm, Anne concentrates her practice in the areas of lead paint poisoning, asbestos and other personal injury matters.

"I have been involved with the Women's Bar Association since I became an attorney, and I am so honored to serve as president this year," said Anne. "The organization has done so much to promote the advancement of the status of women in society and of women in the legal profession. It is my hope and intention to continue the trend this year."

Anne joined the firm as an associate attorney in 2005. She graduated *magna cum laude* from the State University of New York College at Geneseo with a B.A. in English and Spanish. She received her law degree from the State University of New York at Buffalo Law School. As an active member of the Western New York legal community, Anne currently serves as vice president of the SUNY Buffalo



Photo by K.C. Kratt

Law Alumni Association Board of Directors. She was elected to serve on the Bar Association of Erie County Board of Directors from 2013-2016, and she also serves as a board member for a number of local not-for-profit organizations.

As the recipient of numerous awards for her community involvement throughout Western New York, Anne was recently honored by *Buffalo Business First* as a Legal Elite Leader and as a Leader in Law by *The Daily Record* in 2016. In 2014, she was named a "40 Under 40" honoree by *Buffalo Business First* and was named a Women in Leadership Honoree by the National Association of Women Business Owners Buffalo-Niagara. Since 2013, Anne has been selected as an Upstate New York Rising Star by Super Lawyers. ■