

NEWS AND VIEWS

FROM THE LAW FIRM OF

LIPSITZ & PONTERIO, LLC

135 Delaware Avenue, Suite 210, Buffalo, New York 14202 ~ (716) 849-0701
345 Third Street, Suite 450, P.O. Box 788, Niagara Falls, New York 14303 ~ (716) 804-0517
Web Address: www.lipsitzponterio.com

**ASBESTOS AND
OCCUPATIONAL DISEASE**

**LEAD DISEASE
CASES**

**AUTOMOBILE
ACCIDENTS**

**CONSTRUCTION
ACCIDENTS**

**SOCIAL SECURITY
DISABILITY**

**MEDICAL
MALPRACTICE**

**WORKERS'
COMPENSATION**

**FIRE LOSS
CLAIMS**

SPRING 2001

Billboards Are Popping Up Everywhere

You see the billboards on the city streets. You see them on the highway. It seems that these days lawyer advertising is everywhere. Lawyers used to be judged by their reputations in the community where they practiced. At Lipsitz & Ponterio we still believe that this is the best way to choose a lawyer. The billboards hope to catch your eye. The firms that advertise are looking for name recognition. We hope you recognize us by our reputation for prompt, courteous and effective service. We also believe that the best advertising is advertising by word of mouth.

Claims for Occupational Disease and Death

Mike Ponterio and I have spent most of the past 15 years representing men and women suffering from diseases caused by exposure to toxic substances in the

workplace, including asbestos, silica dust, and numerous other cancer causing substances. As part of the legacy of heavy industry in Western New York, there will be many more cases of occupational disease and death in the years to come.

If your spouse or parent dies of a disease caused by occupational exposure, 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 filing of the death claim should be accompanied by a copy of the death certificate; the autopsy report, if one was performed; the funeral bill; proof of family relationship, for example, a marriage certificate; and the birth certificate of the decedent; as well as the birth certificate of the surviving spouse or children. If the claim is established, an award will be made providing for weekly benefits, in the case of a surviving spouse, or for a lump sum of

\$50,000 plus payment of the funeral bill, under circumstances where the survivors were not dependent upon the decedent at the time of his death.

Our office has handled many death claims and gives each case prompt and thorough attention. Often it is necessary to retain a medical expert to review the facts of the case and provide an opinion. We have the resources to prove your case so that you will receive valuable benefits to which you are entitled under the law. Please feel free to call and discuss your claim with the attorneys in our office.

In our experience, there are numerous sites throughout the Western New York area where industrial conditions were so contaminated with toxic substances that many retirees subsequently have died of occupational disease.

It is important to keep in mind also that 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. We have represented families whose loved ones worked at the following industrial sites in Western New York:

- Abex Friction Products (Medina, NY)
- Armstrong World Industries (Fulton, NY)
- Ashland Oil Refinery (Tonawanda, NY)
- Batavia School for the Blind
- Bethlehem Steel Corporation (Basic Oxygen Furnace; Open Hearth Furnace; Coke Ovens)
- Carbide Graphite
- Clarence Senior High School
- Colonel Ward Pumping Station (Buffalo, NY)
- Donner Hanna Coke
- Dunlop Tire and Rubber
- DuPont Chemical (Niagara Falls and Tonawanda, NY)
- Durez (f/k/a Reichhold) Division of Occidental Chemical Corporation (North Tonawanda, NY)
- Federal Reserve Bank (Buffalo, NY)
- Ford Motor Company
- Fredonia State College
- Garlock (Palmyra, NY)
- General Motors Forge and Foundry (Tonawanda, NY)
- Hooker Chemical (Buffalo Avenue, Niagara Falls, NY)
- Kimberly Clarke (Niagara Falls, NY)
- Kodak (Rochester, NY)
- Leisureland Bowling Alley (Hamburg, NY)
- Alfred University
- Allied Chemical Corporation (Buffalo, NY)
- Linde Division of Union Carbide Corporation
- New York State Electric & Gas Facilities
- Niagara Mohawk Power Facilities

- (Huntley or Dunkirk, NY)
- M&T Plaza (Buffalo, NY)
- Main Place Mall and Tower (Buffalo, NY)
- Marine Midland Center
- Mobil Oil Refinery
- Niagara Falls Air Force Base
- Rochester Gas & Electric Facilities
- Republic Steel
- Robert Moses Power Project (Lewiston, NY)
- SKF USA (Hornell, NY)
- Spaulding Fibre (Tonawanda, NY)
- University at Buffalo Law School
- Xerox Building (Rochester, NY)

New Federal Legislation May Help Individuals Who Worked at Former Manhattan Project Sites in Western New York

Throughout the second half of 2000, Congress had under consideration legislation which would finally provide compensation for workers exposed to excessive levels of radiation in the atomic weapons industry. This was a long overdue development. Many people have become sick and died as result of their exposure to radioactive materials. In all of these cases, although the government and its contractors were aware of the fatal potential of this exposure, the workers were unaware of the potentially hazardous effects.

On October 30, 2000, former President Clinton signed a law providing free medical care and \$150,000 to cancer victims unknowingly exposed to hazardous levels of radiation while working at the nation's nuclear weapons

plants. The legislation is known as The Energy Employee Occupational Illness Compensation Program Act of 2000. It may provide compensation for thousands of previously uncompensated workers.

The law has significant implications for former employees of various worksites in the Western New York area that were part of the Manhattan Project, including the Linde Division of Union Carbide in Tonawanda. Although the initial legislation was signed by President Clinton last year, the program has not been fully implemented, and it is unlikely to be fully implemented before the end of this summer. Hopefully, by that time, the Department of Labor will have drafted and published eligibility rules, including claim forms to apply for compensation.

One valuable feature of the law is that it allows injured workers to file claims for state workers compensation and at the same time also receive benefits under the new federal law. This applies as well to families of deceased workers who may apply for lump sum benefits of \$150,000.

Recently, John Ned Lipsitz met with a group of retired workers from the Linde Division of Union Carbide and discussed various aspects of the law. Our office plans to coordinate the filing of dozens, perhaps even hundreds of claims by former Linde workers suffering from cancer likely related to their past exposure to excessive levels of radiation.

These workers will face formidable obstacles. Because Linde ceased processing uranium, radium and thorium at the close of the Manhattan Project in the early 1950's, individual claimants will

have to provide information that will allow the Department of Labor or the National Institute of Occupational Safety and Health to reconstruct or estimate the actual doses of radioactive material to which they were exposed. Essentially, at the Linde facility, the radioactive waste resulting from the processing of uranium used to make the atom bomb 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. These airborne exposures, however, were not measured at the time they were taking place. Therefore, it is necessary to estimate the dose based on available historical information. The estimated dose will then be considered together with the type of cancer which forms the basis of each claim. Since some types of cancer are more closely related to the effects of exposure to excessive levels of radiation than other types of cancer, a claim will either succeed or fail based on a review of all the facts.

Limited information is currently available through the Department of Energy. If you would like to register your name with the Department of Energy so that eventually you will receive notice about implementation of the program, call 877-447-9756.

We will make available a map of the Linde property showing those buildings which were highly contaminated. This may be used to assist potential claimants in completing their applications for federal compensation later this summer.

One important thing to keep in mind is the impact of other risk factors on the development of particular cancers. It is easier to demonstrate a causal connection to a toxic exposure when other causes for the development of the cancer are ruled out. For example, a claim of lung cancer is much stronger in an individual without a history of smoking cigarettes. Similarly, a claim for colon cancer is easier to prove in an individual without a family history of colon cancer.

Informed Consent - Health Care Providers Must Disclose Risks

Our office represents a young woman who suffered a stroke as a result of chiropractic manipulation. According to our client's treating neurologist, an artery which transports blood to the brain was torn by a neck manipulation. As a result of the stroke, our client suffers from permanent injuries which include vertigo, poor balance and visual impairments.

A health care provider must disclose risks of medical procedures. In this case, the chiropractor never advised our client that a chiropractic manipulation could cause a stroke. The case settled a week before trial.

Buffalo Couple Successfully Challenges Insurance Denial in Fire Loss Case

Donald and Kristiana Gipson and their two children lost their home to a fire on January 14, 2000. The insurance company refused to pay the Gipsons the insurance proceeds for over a year. As a result of the fire, the Gipsons lost all of their possessions and lived in a small apartment. An investigation by the Buffalo Fire Department showed that the fire was accidentally caused by a dryer in the laundry room. After several months of intense litigation, the Gipson's insurance company finally agreed to pay them the fire insurance proceeds. The Gipsons will purchase a new home with the settlement.

Niagara Falls Woman Receives Settlement For an Assault at a Dentist's Office

In 1998, our client, an eighty-four year old Niagara Falls resident, was attacked in the lobby of her dentist's office. An unknown assailant struck her on the back of the head, stole her purse, and fled the scene. After being struck, our client fell down the stairs and sustained a serious head injury.

An investigation revealed that the dentist's office was in a dangerous neighborhood with a history of violent crime. We argued that a minimum security system would have prevented the assault. The case was successfully resolved for our client within six months.

Further Update on Asbestos Company Bankruptcies

In our last newsletter, we brought you up to date on the latest

bankruptcy filings by asbestos companies. We pointed out that the filing of a bankruptcy petition has the effect of bringing to a halt the prosecution of your claim against the bankrupt defendant. In other words, we are prohibited by law from continuing your lawsuit against the company, for example, Owens Corning, or otherwise attempting to collect damages from that company until such time as a plan is put into place to compensate asbestos personal injury victims.

Unfortunately, since we published our last newsletter, there have been two more bankruptcy filings. Armstrong World Industries filed for bankruptcy on December 12, 2000 and GAF Corporation filed for bankruptcy on January 5, 2001. Both of these companies were responsible for manufacturing asbestos containing insulation materials, including pipecovering, block and cement. These materials were used in construction of commercial and industrial buildings.

Some of our readers may have entered into settlements with either or both of these companies prior to the filing of the bankruptcy petitions. Unfortunately, at this time we cannot predict how the bankruptcy filings will affect the payment of those settlements. No doubt there will be a reduction in the amount paid by these two companies. It is too soon to tell how much that reduction will be.

Don't give up! We certainly will not give up on your behalf. Some of the bankruptcy claims may well prove to be a valuable source of recovery for you and your family over the next few years. We are

tracking developments and will keep you informed.

Asbestos Disease Evaluation

Although many of the asbestos companies responsible for negligently injuring and killing workers throughout the country and all across the globe are headed for bankruptcy, nonetheless the incidence of asbestos disease, especially serious cases involving cancer and death, is holding steady and may even be on the rise. We are committed to representing victims of asbestos disease and cancer. When that cancer results in death, we will represent the family and press all available claims on behalf of the family. Our office has prepared the following chart to assist individuals who suspect that they might be suffering from asbestos disease in obtaining a confirmed diagnosis.

See Chart on Page 6

Beryllium Case

In our last newsletter, we wrote about chronic disease caused by exposure to beryllium - a metal used in the defense industry, the automotive and aerospace industries, in electronics and in the manufacture of dental and medical equipment and supplies. Exposure occurs through the inhalation of beryllium dust at a work site or even at home, from dust-contaminated work clothes.

Our client, Dan, was exposed to beryllium while working as a machinist at Williams Gold Refining, Inc. on Main Street in Buffalo. Dan did not know that exposure to the dust, fumes and mist resulting from machining

beryllium can cause chronic beryllium disease, a permanent disability and potentially fatal disease. By the time he found out he already had the disease.

Dan is only 46 years old and is already on supplementary oxygen.

He is often out of breath, has a chronic sore throat and is always tired. Dan knows there is no cure for his disease. He takes prednisone, a steroid prescribed by his doctor to alleviate his symptoms, but long-term use of the medicine has side effects such as weight gain, early cataract formation, diabetes, osteoporosis and compression fractures.

Dan's wife, Janet, also worked at Williams. Fortunately, she is healthy. But Dan and Janet are concerned because their teenage son may have been exposed to beryllium they brought home on their dusty work clothes. They worry that someday their son will develop chronic beryllium disease.

We are pursuing a claim on Dan's behalf against two corporations that supplied beryllium to Williams Gold Refining. We believe these corporations have known for decades that exposure to their products could make people sick but that they chose not to tell workers like Dan about the risk.

We are aware that some of our clients and their families and friends may have been exposed to beryllium. Please call our office if you believe you were exposed to beryllium.

Lead Based Paint - A Health Hazard to Children and Adults

Prior to 1975, most of the paint

products used to paint the interior and exterior of residential homes and commercial buildings and structures contained dangerous levels of lead. Lead is a metal that was an ingredient in paint products. Exposure to lead can cause brain and other organ damage to our bodies. Exposure to lead-based paint in homes, apartment buildings and commercial structures (such as the Grand Island Bridge) can occur in three principal ways:

1. Lead dust generated by sanding and scraping chipped surfaces in preparation for repainting can be breathed in;
2. Chips of peeling and cracking lead paint can be ingested by small children causing lead to enter the body and potentially cause injury; and
3. Professional painters and workers on commercial job sites can sustain disabling work related injuries from exposure to lead based paint being removed during scraping and sanding of interior or exterior surfaces.

We currently represent a number of families whose children either breathed in lead contaminated dust or ingested lead-based paint chips and have suffered brain damage and organ failure.

If you or a family member rent a home or apartment, it is the owner/landlord's responsibility to maintain a lead-free environment.

Children are now tested for lead poisoning at routine pediatric examinations. Lead poisoning is detected by taking a blood test to determine whether you have high levels of lead.

If a family member has tested positive for lead poisoning and wishes to discuss his or her potential legal rights, please feel free to call our office at any time and ask for any of our attorneys. We will be glad to discuss a potential claim with you.

Testimonial

The following letter was written by Mrs. Gail LaBrutta as a Testimonial to Lipsitz & Ponterio, LLC, for her deceased husband, Theodore La Brutta.

Gentlemen:

On behalf of myself and my family, I would like to take this opportunity to express our sincere thanks and appreciation to your firm for all of your professional efforts on Ted's behalf in obtaining the settlements associated with his asbestos cancer. While these funds can never replace the loss of a very special husband, father and grandfather, Ted's knowing before he died that this settlement would ensure some financial security for myself and college funds for his grandchildren's future helped to give him some peace of mind during his final days here on earth.

Special thanks and recognition to you John (Comerford) for your professional abilities, but more

importantly for your compassion, empathy and genuine caring during the difficult days in Phoenix during the depositions. You made a very difficult and stressful process for Ted bearable.

During Ted's battle with asbestos cancer, we were unable to find support groups relating specifically to this illness. If I can assist any of your asbestos cancer clients or their family members, please feel free to give them my "e" mail address (buffcar1@aol.com) or my name and mailing address. I would be most happy to offer my support and empathy, share my experience with this horrible disease, and assist them in any way I can.

Again, thanks to each and every one of you!

Sincerely,

Gail LaBrutta

In Memoriam

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

2000

- Frank J. Tedesco September 4
- Arthur Hill September 24
- Joseph A. Maillet November 28
- Theodore LaBrutta..... November 29
- Raymond A. Rousselle December 11
- Joseph Zedonis December 18
- John E. Burns..... December 25

2001

- James M. Brown..... February 6
- Andrew J. Marx February 17

ASBESTOS DISEASE EVALUATION

INDIVIDUALS OVER THE AGE OF 45 WHO HAVE BEEN
OCCUPATIONALLY EXPOSED TO ASBESTOS MORE THAN 10 YEARS AGO

I.	II.	III.
Individual Who Has Not Had a Recent Chest X-Ray	Individual Who Has Recently Had a Chest X-Ray	Individual Who Had Prior Surgery
<ul style="list-style-type: none"> • Individual asks his personal physician or HMO to be referred to a lung doctor • If physician declines to make the referral, individual contacts his attorney or union and is referred to a lung specialist for evaluation at his cost • If the report from the lung specialist is positive for asbestos disease, an attorney may cover the cost of the evaluation as a disbursement to be reimbursed at a later date through proceeds of one of more settlements • If the report from the lung specialist is negative for asbestos disease, the individual still benefits by establishing a relationship with a lung specialist who can keep track of baseline data and monitor the individual for future illnesses 	<ul style="list-style-type: none"> • Obtain a copy of the x-ray report • Does x-ray report contain findings diagnostic for asbestos disease? • If the x-ray report is positive, the individual may retain an attorney who may refer the individual back to his personal physician or directly to a lung specialist for evaluation of the nature and extent of the disease process • If the x-ray report is negative, the individual or his attorney may obtain the x-ray film(s) and have it reviewed by a lung specialist, radiologist or B reader at the individual's expense • The cost of obtaining the x-ray film(s) and having it reviewed may be considered a disbursement which can be paid for by the attorney, to be reimbursed from proceeds of a settlement • If the new reading of the x-ray film is positive, the individual may retain an attorney to bring an action against the manufacturers and suppliers of asbestos-containing materials to which he was exposed, and he should be referred to a lung specialist • If the new reading of the x-ray film for asbestos disease is negative, the individual should still consider obtaining a complete evaluation by a lung specialist 	<ul style="list-style-type: none"> • If the individual has had prior surgery for cancer or respiratory disease, the individual or his attorney should obtain relevant medical records • Do the records contain findings diagnostic for asbestos disease? • If the medical records indicate the presence of asbestos disease, the individual may retain an attorney who may refer the individual back to his personal physician or directly to a specialist for further evaluation • If the records do not indicate the presence of asbestos disease, there are several options available to the individual: <ul style="list-style-type: none"> (1) the x-ray film(s) can be reviewed by a lung specialist, radiologist or B reader (2) pathology slides can be reviewed by a specialist (3) lung tissue burden analysis can be performed • The cost of these procedures may be considered a disbursement which can be paid for by the attorney, to be reimbursed from proceeds of a settlement

REGARDLESS OF NEGATIVE SCREENING RESULTS FOR ASBESTOS DISEASE, AN INDIVIDUAL WHO HAS A HISTORY OF EXPOSURE TO ASBESTOS SHOULD BE ENCOURAGED TO DEVELOP A RELATIONSHIP WITH A PHYSICIAN WHO WILL CONTINUE TO MONITOR HIM FOR THE ONSET OF FUTURE DISEASE