

NEWS & VIEWS

Volume 2 | Fall 2010

Attorney Advertisement

POKORNEY SCHOLARSHIP ESTABLISHED FOR CORNELL UNIVERSITY FARRIER STUDENTS

Douglas J. Pokorney was born on May 22, 1942 in Ithaca, New York. He served in the United States Navy as a Boiler Technician on the *Charles H. Roan* from November 20, 1961 until he was honorably discharged on March 29, 1966. Doug was diagnosed with mesothelioma in 2004 as a result of his exposure to asbestos-containing insulation through the repair and maintenance of steam boilers, valves, pumps and other equipment onboard the *Roan*. Doug was a client of our firm. He lost his long battle with mesothelioma, and passed away on September 23, 2009.

After Doug completed his military service, he attended the Porterville Shoeing School and Lester Hollenbeck's Farrier School. For over forty years, he shod horses in his hometown of Ithaca, New York. Doug was also a notable member of the American Farriers Association, and he provided guidance to many farrier students at Cornell University.

In honor of her late husband, Denise Pokorney has established a scholarship fund endowment for students enrolled in the farrier course at Cornell. Doug was passionate about his horses and the time he spent giving presentations at numerous conventions and horse shows throughout the country. By establishing the farrier program scholarship fund in her husband's name, Denise hopes to perpetuate his dedication to the education of farriers.

The Douglas J. Pokorney Scholarship will pay full tuition for



*Cornell University Farrier Shop & Steve Kraus,
Doug Pokorney's best friend and farrier program
instructor at Cornell University*

one deserving student each fall semester. The scholarship has been partially funded by the auction of Doug's equipment and supplies and by donations from friends, farriers and several manufacturers and suppliers in the farrier industry. Denise Pokorney has financed the remaining balance to complete the fund.

The scholarship selection committee, including Denise Pokorney, Steve Kraus, Dierk Terlouw and Dr.

William Horne, has selected Condell Hughes as the first student to receive the Pokorney Scholarship. He is currently in his first semester at Cornell University. Mr. Hughes was born and raised in St. Croix, Virgin Islands, where he was employed at a race track. ■

in this
issue:

| | |
|--|-----|
| <i>Pokorney Scholarship Established for Cornell University Farrier Students</i>1 | |
| <i>Lipsitz & Ponterio Publishes Two New Websites</i> | 1-2 |
| <i>Former Donner Hanna Worker Sues Goke Oven Manufacturer</i> | 2 |
| <i>Eugene Jackson, Korean War Veteran, Shares Some Memories of Durez</i> | 3 |
| <i>Lipsitz & Ponterio Obtains \$325,000 for Family of Accident Victim</i> | 3 |
| <i>Progress on Claims for Atom Weapons Employees</i> | 4 |
| <i>Interview with Jim Hawley, Former Asbestos Insulation Worker</i> | 5 |
| <i>Large Settlement Goes to Bricklayer From Bethlehem Steel</i> | 5 |
| <i>Lipsitz & Ponterio Celebrates Its 15 Year Anniversary</i> | 6 |

LIPSITZ & PONTERIO PUBLISHES TWO NEW WEBSITES

We are pleased to announce the launch of two new websites: *Plastics and Mesothelioma*, located at www.asbestosplastic.com and *Carpenters and Mesothelioma*, located at www.mesotheliomacarpenter.com. Lipsitz & Ponterio's two new websites offer information regarding asbestos exposure in the plastics industry and construction trades.

Plastics and Mesothelioma serves as a niche website for workers who manufactured plastic molding compounds, as well as those who converted plastic molding compounds into hardened plastic products. As recently as the mid-1980's, asbestos was commonly used as a filler material in plastic molding compounds. This website

offers information regarding asbestos exposure during the transportation and delivery of asbestos-containing plastic molding compound, as well as an interactive map and list of plastic molding compound manufacturers and plastic mold shops throughout the United States.

Carpenters and Mesothelioma is a user-friendly website offering valuable legal information for carpenters diagnosed with mesothelioma and other asbestos-related diseases. Among the construction trades, carpenters have one of the highest incidence rates for developing mesothelioma. Before warnings were placed on asbestos-containing products in the late 1970's, carpenters who worked in construction or

...continued on page 2

home remodeling were exposed to asbestos through the application and removal of hundreds of different building products. This website provides a comprehensive list of building products that contained asbestos and videos featuring carpenters describing their exposure to asbestos through the application and removal of asbestos-containing materials.

Lipsitz & Ponterio created these two websites to provide workers with valuable technical and legal information about exposure to asbestos and the development of asbestos-related diseases. Both *Plas-*

tics and Mesothelioma and *Carpenters and Mesothelioma* were designed and implemented by our in-house marketing team. We encourage you to visit these helpful new websites, www.asbestosplastic.com and www.mesotheliomacarpenter.com. If you have any questions regarding our firm or our two new websites, please let us know by filling out the contact form located on each respective website or by calling our office at (716) 849-0701 or toll-free at (866) 238-1452. ■

FORMER DONNER HANNA WORKER SUES COKE OVEN MANUFACTURER

In 1918, Donner Hanna Coke constructed a coke plant near the intersection of Abby and Mystic Streets in South Buffalo on 88 acres of land that was previously a hickory grove. This facility produced metallurgic coke, a vital material used in the steel making process, as well as other coke by-products, including various chemicals, coke oven gas and coal tar. Until it ceased production in 1982, Donner Hanna was, at one time, one of three coke oven operations in the Buffalo area. The others were Semet-Solvay, known as Tonawanda Coke since 1978, and the larger Coke Oven Division at Bethlehem Steel in Lackawanna.

Donner Hanna's four coke oven batteries were designed and manufactured by Koppers, Inc. A battery is a large structure containing numerous coke ovens. At Donner Hanna, the number of ovens per battery varied between 15 and 50. Coke is produced by baking coal in an airless refractory oven. The baking process drives off the volatile content of the coal and leaves a residue of pure carbon, or coke. Coke is commonly used in the steel making process both as a fuel and as an additive.

Lipsitz & Ponterio, LLC represents the family of one of the hundreds of workers who passed through the gates of Donner Hanna Coke. Mark was born in 1957 in Buffalo. He married at the age of eighteen. One year later, in 1976, he was hired to work at Donner Hanna Coke as a laborer. Mark was quite often assigned to work as a lid man for the "A" and "B" coke oven batteries. He was exposed to high levels of coke oven emissions until his employment at Donner Hanna Coke ended in 1982. In September 2008, Mark was diagnosed with lung cancer; and, one year later, in September 2009, he passed away. His exposure to coke oven emissions at Donner Hanna Coke caused his untimely death and deprived his family of his companionship and support.

2 Many years before Mark worked at Donner Hanna, a resident of the neighborhood where Donner Hanna Coke was located took legal action against the company. In *Bove v. Donner Hanna Coke Corp.*, Antonia Bove, a homeowner and business proprietor who lived across the street from Donner Hanna, brought suit in the early 1930's to stop the plant from operating, because of the massive amounts of pollution emitted. The court dismissed her case with the opinion that,



since the area was industrialized before Mrs. Bove purchased her home, the smoke, fumes and other forms of pollution were a fact of life in the neighborhood that she must accept.

In the late 1980's, the City of Buffalo established a program to build new subsidized housing and offer grants to buyers of older homes for renovations in the area around the former Donna Hanna facility, known as Hickory Woods. By the late 1990's, it became clear that the neighborhood was contaminated with carcinogenic and otherwise hazardous industrial wastes, including coke waste, arsenic and lead. According to the New York State Cancer Registry, the zip code where Hickory Woods is located (14220) has 51 percent more instances of lung cancer than expected among men, and 42 percent more instances than expected among women. This neighborhood contains one of the highest rates of lung cancer in Western New York.

Coke oven emissions were proven to be cancer-causing as far back as the 1930's. Laborers who worked on top of or alongside coke oven batteries are at an elevated risk for developing lung cancer and other respiratory cancers. Coke ovens also presented a risk for exposure to asbestos due to the asbestos-containing refractory and insulating materials used to maintain operations. Asbestos exposure can cause mesothelioma, asbestosis, lung cancer and other cancers.

The attorneys at Lipsitz & Ponterio, LLC are working to assist Mark's family in receiving the financial compensation they deserve. Fortunately, our society has abandoned the kind of thinking expressed by the court in *Bove v. Donner Hanna Coke Corp.*, and we now have a better understanding of the need for a clean and healthy environment. ■

EUGENE JACKSON, KOREAN WAR VETERAN, SHARES SOME MEMORIES OF DUREZ

Lipsitz & Ponterio had the opportunity to sit down with Eugene Jackson, a former employee of Durez Plastics. Gene talked about the years he spent fighting in the Korean War and the jobs he held upon his return to North Tonawanda.

Eugene Jackson was born in 1931 and raised in North Tonawanda. As a young man, he had dreams of enlisting in the Army, but his mother discouraged him from doing so. Her brother lost his leg in World War II, and she was terrified of what might happen to her son. In July 1952, shortly after Gene turned twenty one, he was drafted into the Army. In 1953, he received orders to serve in Korea. Once he arrived there, he was thankful that he had not enlisted sooner. As he recalls, "This war was just awful. It was trench warfare. I remember trenches spanning nearly 155 miles. That is most of Korea, if you ask me. It was just terrible what some of these men experienced. I served in the war during the tail end of it, and I got lucky and lived through it." The war in Korea lasted three years and one month, and Gene served until the troops were sent home in February 1954.

Shortly after Gene returned to North Tonawanda, his parents moved to Long Beach, California. Gene, on the other hand, decided to stay in North Tonawanda because his friends were there. Gene worked at Niagara Plate on River Road, his first job after he returned from Korea. He worked there for about four months and



Pictured Above: Eugene Jackson

then received an employment opportunity at Remington Rand, a union shop that manufactured filing cabinets. While at Remington, Gene worked nights as a bartender at El Paul's on Military Road. Mr. Davies, a regular at El Paul's, convinced Gene to apply at Durez Plastics. In 1957, he was hired to work in the warehouse at Durez.

Gene has fond memories of working at Durez. "Overall, Durez was a good place to work because it was an overtime plant. You could work twelve hours a day for fourteen hours pay. They made it worth your while. I always wanted to work six days a week because the pay was good." Gene worked in the warehouse until the day he retired, October 1, 1986.

Gene is a member of the Niagara County Sportsmen's Association and enjoys target shooting in his free time. ■

LIPSITZ & PONTERIO OBTAINS \$325,000 FOR FAMILY OF ACCIDENT VICTIM

Lipsitz & Ponterio recently represented the widower of a seventy-six year old Ransomville, New York, resident who died from injuries suffered in a motor vehicle accident on December 11, 2008. Enduring great pain and suffering, the victim lingered in a state of consciousness for five days following the accident. On December 16, 2008, she slipped into a coma and became totally unresponsive. Eighteen days later, on January 3, 2009, she died from her injuries.

At 5:32 p.m. on December 11, 2008, the plaintiff's mini-van was travelling northbound on Ransomville Road, when the driver of a tractor-trailer pulled out in front of her as he was exiting a field. The plaintiff's vehicle struck the defendant's tractor-trailer as it was crossing the roadway turning left. The plaintiff was alone in her car and was using her seat belt. As a direct result of the defendant's negligence, the plaintiff sustained serious back and neck injuries. Three hours after the crash, the plaintiff was removed from her vehicle by the jaws of life, and she was subsequently air lifted to the Erie County Medical Center for treatment.

This case illustrates the importance of enlisting an expert in accident reconstruction. Immediately after the family retained Lipsitz & Ponterio, attorneys John P. Comerford and Mathew J. Morton engaged James D. Orr, an expert with over thirty years of

experience in automobile accident reconstruction.

Mr. Orr carefully reviewed the scene of the accident; factored the time of day and road conditions; reviewed police reports; and surveyed the damage to both vehicles involved in the accident. Based on his analysis, he determined that the accident was caused by the truck's headlights pointing in the direction of the victim's vehicle at dusk. The truck's headlights gave the appearance that it was in the proper lane. The truck's headlights obscured from the victim the light emitted by the low wattage marker lights and the reflective tape displayed on the sides and rear of the trailer. The plaintiff's focus was on the headlights, and given the time of day, the body of the trailer was invisible to the plaintiff. After careful evaluation of the circumstances, Mr. Orr concluded that the proximate cause of the collision was the defendant's failure to yield the right of way.

Following one day of mediation, this case settled for \$325,000. The monetary amount of this settlement is significant because damages under New York State law are limited to the period of conscious pain and suffering, which, for our client, was a total of five days. ■

PROGRESS ON CLAIMS FOR ATOM WEAPONS EMPLOYEES

In 1939, the United States government began a series of experiments, later known as the Manhattan Project, with the goal of producing atomic weapons and power plants. After the completion of the Manhattan Project, many of the facilities involved in atomic weapons production were not properly decontaminated. For decades, workers in these facilities were exposed to hazardous levels of radiation and many developed various types of cancer. Several locations in Western New York manufactured components for atomic weapons, including Bethlehem Steel in Lackawanna, the Linde Ceramics plant in Tonawanda and Simonds Saw and Steel in Lockport.

Congress passed the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) in 2000. The purpose of EEOICPA was to provide monetary compensation and medical benefits to atomic weapons workers who developed cancer as a result of radiation exposure, as well as to workers employed by atomic weapons producers who have developed chronic beryllium disease. Under this law, claims can be filed in one of two ways: (1) submitting a claim under the Individual Dose Reconstruction Program, or (2) submitting a claim under a Special Exposure Cohort. In order to file a claim under the Individual Dose Reconstruction Program, a claimant must submit records proving relevant employment and the development of radiogenic cancer. The National Institute for Occupational Safety and Health (NIOSH) then reviews the claim. If NIOSH finds the cancer to be at least 50% attributable to radiation exposure, the claim is accepted and the claimant will receive compensation. Individual dose reconstruction is a lengthy technical process that may not necessarily use accurate or relevant data.

The Special Exposure Cohort (SEC) program provides a less complicated claims procedure. Under the SEC program, a claimant must have at least one of twenty-two specified cancers, such as thyroid or lung cancer, and must have worked a minimum of 250 days at a designated SEC site during a specified time frame. An approved claimant is entitled to \$150,000 in compensation, as well as related medical expenses, under either dose reconstruction or an SEC.

Between 1949 and 1952, Bethlehem Steel rolled uranium fuel rods for nuclear reactors under a contract with the federal government. Workers were not informed that they were working with uranium or that they were being exposed to dangerous levels of radiation. On July 14, 2010, former workers at Bethlehem Steel were granted Special Exposure Cohort status for the period from January 1, 1949 to December 31, 1952. Since Bethlehem Steel employees were previously only eligible to file claims under the dose reconstruction program, a majority of claimants have been denied compensation. As of September 2010, Bethlehem Steel workers had filed 1,815 cases under the EEOICPA. Five hundred

twenty nine (529) cases were denied outright, without being sent for dose reconstruction. An additional five hundred seventy nine (579) cases were denied after review, with a vast majority of those cases rejected due to the government's claim that the cancer was not work related. Only 411 cases have been approved for compensation.

In 2005, Linde Ceramics workers received SEC status for the period from October 1, 1942 to October 31, 1947, which is when the facility actively processed uranium ore. Many employees who started work at Linde after 1947 have been afflicted with cancers known to be caused by radiation exposure. These workers are ineligible to file a claim under the Special Exposure Cohort. Instead, these workers are forced to file under the dose reconstruction program, which has proven to be an exercise in frustration for many of them. Of 473 cases filed under the EEOICPA for Linde Ceramics, 241 cases have been referred for dose reconstruction. Of those 241 cases, just 85 cases have been accepted for compensation. Attorney John Lipsitz of Lipsitz & Ponterio, LLC recently appeared before the NIOSH Advisory Board on Radiation and Worker Health to advocate SEC status for all Linde workers through 2006.

For over sixty years, employees who worked at facilities involved in uranium processing for the federal government were exposed to hazardous levels of radiation. These workers were not informed of the dangerous conditions under which they were working, nor were they provided with the appropriate safety equipment. Many retirees and former workers have developed cancer from their exposure to radiation, and the government has wrongfully denied them the compensation and medical benefits to which they are entitled. ■

information

For more information on the programs listed in this article, please visit the following websites:

- Division of Energy Employees Occupational Illness Compensation (DEEOIC):
<http://www.dol.gov/owcp/energy/>
- NIOSH Radiation Dose Reconstruction Program:
<http://www.cdc.gov/niosh/ocas/>
- NIOSH Radiation Dose Reconstruction - Bethlehem Steel:
<http://www.cdc.gov/niosh/ocas/bethst.html>
- NIOSH Radiation Dose Reconstruction - Linde Ceramics:
<http://www.cdc.gov/niosh/ocas/lindec.html>
- NIOSH Radiation Dose Reconstruction - Simonds Steel:
<http://www.cdc.gov/niosh/ocas/simondss.html>
- Special Exposure Cohort - Specified Cancers:
<http://www.cdc.gov/niosh/ocas/ocassec.html#cancers>

INTERVIEW WITH JIM HAWLEY, FORMER ASBESTOS INSULATION WORKER



Pictured Above: Jim Hawley

Jim Hawley worked as an asbestos pipe coverer and insulator for almost forty years. He was a member of the Heat and Frost Insulators and Asbestos Workers Local Union No. 4 in Buffalo, New York. A few months ago, Jim was interviewed by Lipsitz & Ponterio about his work as a pipe coverer at various job sites throughout Western New York and his duties as a business agent with the union.

When did you become a member of Local No. 4?

I entered the union as an apprentice in 1947 and right out of high school. At that time, the union hall was in the laborers building on Franklin St., behind Allen in the City of Buffalo.

How many members did Local No. 4 have in 1949?

There were about one hundred members in 1949. While I was in the union, there were about one hundred fifty members at maximum. I still keep in touch with some of the older members.

Do you know when the Union was established?

It was established in 1903 or 1905. Four cities formed the international union, including Buffalo, Cleveland, St. Louis and Pittsburgh.

How did you get involved with Local No. 4?

Well, my father was in the Local; he started in 1919. After high

school, I decided I wanted to follow that same path, so I joined the union and was active in it up until I retired in 1986.

When did you become a business agent?

I became a business agent in 1962. It was a yearly election process, but that quickly switched to two years. I was a business agent until 1972.

How far away did you do contract work?

Generally, you worked in your own jurisdiction. For me, that included all of Western New York and Warren, Potter, and McKean counties in Pennsylvania. You could travel outside of this area, but it did not happen too often. Your union card was all that you needed to show up at these job sites and complete your duties.

What job sites did you work at locally?

Let's see, mostly all of the big sites in Tonawanda and Niagara Falls. Ashland, Durez, Spaulding Fibre, Semet-Solvay, Hooker Chemical, Niagara Mohawk, all those places and more. I applied the pipe covering on steam and chemical lines. I did more than the average person with the cutting and band saw. Sometimes I felt like a snowman being surrounded by all that falling asbestos. When I see people who got sick from very little exposure to that stuff, I think of how lucky I am and wonder how it could be.

Now that you are retired, what are some things you like to do in your free time?

I try to get to the Shaw Festival at least two or three times a year. That is in Niagara-on-the-Lake. I really like it up there. My friend and I enjoy all those little shops there. I also enjoy going to Niawanda Park every Wednesday to see those free concerts. ■

LARGE SETTLEMENT GOES TO BRICKLAYER FROM BETHLEHEM STEEL

Our client went to work as a laborer at Bethlehem Steel in 1956. In a short time, he became a bricklayer and a member of the United Steel Workers. The plaintiff worked throughout the Bethlehem Steel facility, including the Coke Oven Division, the Open Hearths, the Basic Oxygen Furnace, the Strip Mills, the Bar Mills and the Blast Furnaces. As a bricklayer, his work frequently involved relining the ovens and the furnaces and working in close proximity to outside contractors applying asbestos-containing insulation to steam pipes and other hot surfaces. The plaintiff left his work at Bethlehem Steel in 1971. He worked as a truck driver for the next thirty years before retiring.

The plaintiff was in generally excellent health until the fall of 2008, when he began to experience bloating and discomfort. His symptoms persisted through the spring of 2009, and he was ultimately referred to a surgeon for exploratory surgery. The results

of his biopsy were diagnostic for mesothelioma, and he came to Lipsitz & Ponterio for legal representation very shortly thereafter.

We immediately began a lawsuit against a large group of manufacturers and distributors of asbestos-containing products used at the steel plant. Fortunately, by the summer of 2010 we were able to resolve all of our client's claims for approximately \$1.3 Million.

Due to his strong constitution and the fact that he lived a very healthy life, our client is alive and able to enjoy the time remaining to him. It has been a privilege for us to represent this man who spent his entire adult life working hard and caring for his family. A widower with four adult children, he served his country as a Marine in the Reserves from 1953 to 1960.

Both of the plaintiff's parents lived to see the age of ninety. Due to his diagnosis, it is unlikely that the plaintiff will enjoy such longevity. ■



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
- Henry D. Gartner
Of Counsel
- Nan L. Haynes
Of Counsel
- John M. Pullano
Licensed Workers'
Compensation Representative

© 2010. All Rights Reserved.

LIPSITZ & PONTERIO CELEBRATES ITS 15 YEAR ANNIVERSARY

Michael Ponterio and I formed our law partnership in 1995. At that time, we had no way of knowing that fifteen years later our firm would become a leader in representing Western New Yorkers with claims for exposure to toxic substances and occupational disease.

In 1995, I was representing workers from different industries suffering from asbestosis, as well as about ninety retirees from the Goodyear plant in Niagara Falls, whose lifetime healthcare benefits were threatened by the company. Mike was already an accomplished trial lawyer, whose focus was on representing victims of mesothelioma, plaintiffs in medical malpractice cases, and other serious injury matters.

Mike grew up in the City of Tonawanda, and his grandfather worked at the Durez plant in North Tonawanda. I am from the City of Buffalo. While we are both very proud of the area's rich industrial history, we are also keenly aware of the need to provide older workers with top-notch legal representation because of the legacy of contaminated workplaces, mostly as the result of the unregulated or poorly regulated use of asbestos in the decades following World War II. As our practice has grown, we have learned more and more about the numerous job sites throughout Western New York where industrial conditions were so contaminated with asbestos and other toxic substances that many retirees have subsequently become sick from a variety of occupational diseases.

Throughout the steady growth of our firm and expansion into such practice areas as childhood lead poisoning, our philosophy has not changed. Our attorneys effectively advocate for our clients. If you are injured as a result of negligence, you can call our office or send an inquiry through our website, and you will receive prompt and courteous service from our legal staff. ■

- John N. Lipsitz

News & Views has been prepared by the attorneys at Lipsitz & Ponterio, LLC and is intended for general information purposes only and should not be considered legal advice. You are urged to consult an attorney concerning any specific questions you have relating to your own situation. Our results do not guarantee a similar outcome.

Lipsitz & Ponterio, LLC
 Attorneys At Law
 135 Delaware Ave.
 5th Floor
 Buffalo, NY 14202-2410

Tel: 716.849.0701
 Fax: 716.849.0708

Presorted
 First Class Mail
 US Postage
 PAID
 Buffalo, NY
 Permit #2469