Like many other veterans of World War II, Lou Wims returned to his home in Rhode Island determined to get a good job, start a family and enjoy the benefits of life in peacetime. In 1946, Metals & Controls Corp. (M&C), a manufacturing firm in Attleboro, MA, offered the opportunity for Lou to leave textile mill work behind and become a part of a new growth industry. Metals & Controls fabricated clad metal products for use in the electrical and jewelry industries.[fn 1] M&C also produced nuclear fuel elements and components for the U.S. Navy and other customers.[fn 2]

After the first atomic bomb was detonated over Hiroshima, ushering in the nuclear age, the defense industry, and its contractors such as M&C, expanded to include nuclear technology. A technology that, while still in its infancy, would dominate world politics and play a key role in the new kind of war looming over the horizon, the Cold War. Lou, and thousands like him, left one war behind, only to fight the homefront battle of supplying nuclear elements to fuel the arms race. Decades would pass before the casualties of this effort were appreciated or counted.

Lou Wims worked at M&C until it was acquired by Texas Instruments (TI) in 1959.[fn 3] He was thereafter employed by Texas Instruments until his retirement in 1985, trading in his blue collar for a white one as he rose from a plumber’s helper to the plant and facilities manager, responsible for the entire Attleboro facility.

In its heyday, the Attleboro operation spanned twenty-three buildings and employed as many as 6,000 people.[fn 4] TI employees worked and played together in softball leagues, baseball leagues, golf tournaments and outings, all of which were covered by The Attlegram, the company’s weekly newspaper. Annual Kiddies Day events were held with carnival rides on the company grounds or, in later years, at Rocky Point or Lincoln Park. For many, working at TI was a family affair, with husbands, wives, brothers and sisters all employed at the Attleboro site.[fn 5] Lou’s wife, Ella, worked for a short time at M&C (where he coached her softball team), and three of their five children worked at TI for varying lengths of time.

Although later known for its production of electronic calculators, from 1952 to 1981 TI conducted uranium operations on the Attleboro site.[fn 6] Initially, M&C fabricated enriched uranium foils. From 1952 through 1965, M&C and its successor, TI, produced enriched uranium fuel elements under government contract
for the Air Force, the U.S. Naval Reactors Program, and others, including some commercial customers.[fn 7] From 1965 through 1981, TI fabricated fuel for the High Flux Isotope Reactor at Oak Ridge National Laboratory and other government-owned reactors.[fn 8] In fact, the Attleboro facility was “the first non-governmental facility allowed to fabricate fuel for nuclear reactors.”[fn 9] Most waste material from these projects, including scrap metal, was processed onsite and then shipped to U.S. government sites for disposal.[fn 10] However, some contaminated materials were burned at the Attleboro facility and some were buried on site.[fn 11] TI may also have dumped some contaminated materials at a private landfill on the Attleboro-Norton line. In November, 2012, TI entered a consent agreement, paying $15 million dollars to the U.S. Army Corps. of Engineers to settle a lawsuit claiming that TI disposed of radioactive uranium at that landfill.[fn 12] Remediation of radioactive contamination at TI’s Attleboro site began in 1981 and was not completed until 1997.[fn 13]

Lou was diagnosed with lung cancer in 1997 and died eleven months later. TI sold off the last remaining portion of what was once one of the region’s “biggest and best-known manufacturing operations” in 2006.[fn 14] Left behind in Attleboro and nearby communities were many retirees and former employees, with a number developing cancer of one type or another.[fn 15]

Word spread slowly among former co-workers that there was a federal program to compensate TI employees with cancer, the Energy Employees Occupational Illness Compensation Program (EEOICP).[fn 16] Although the program had been in effect since 2001, with $26.2 million in compensation relating to the Attleboro site paid as of January 2013, only a small percentage of those eligible were even aware of the program.[fn 17] Although TI stated that it was cooperating with government officials, a TI executive admitted that “very few former employees use the resources we have provided.”[fn 18] That changed on February 6, 2013 when U.S. Rep. Joseph Kennedy III learned about reports of higher cancer rates among former TI employees and the relative lack of communication regarding the availability of the compensation program.[fn 19] Kennedy questioned TI CEO Richard Templeton during a hearing on Capitol Hill, and elicited his agreement to re-examine the communication effort to see “if there’s more that could be done.”[fn 20]

On February 19, 2013, almost fifteen years after he died, a letter addressed to Lou Wims arrived at his home in Pawtucket (still occupied by a family member) informing him: “Our records indicate that you worked for Metals and Controls Corp, and/or Texas Instruments Incorporated in Attleboro, Massachusetts between 1952 and 1967. It is possible that you may be eligible for benefits pursuant to the Energy Employees Occupational Illness Compensation Program Act.”[fn 21] The letter provided a toll-free number and a website address for the Department of Labor’s New York Resource Center designated to handle all of the claims related to the Attleboro property.[fn 22]

Lou Wims was my father, and prior to the arrival of this letter, I had no idea that TI was an “an atomic weapons employer,”[fn 23] that the site was contaminated for decades, or that my dad’s cancer might have been caused by exposure to radiation. Although I was familiar with the use of compensation funds as an alternative to the tort system, I had never heard of the EEOICP. I wasn’t alone.

That week, letters arrived at the homes of at least 2,200 former TI employees.[fn 24] When I spoke with
the New York Resource Center later that week, I learned their phone had been ringing off the hook. Although the claim forms are relatively simple, it is inevitable that, as word spreads, more former TI employees will turn to attorneys for assistance. This article provides a brief overview of the program and a guide to attorneys who undertake to assist claimants.

The Energy Employee Occupational Illness Compensation Program Act

In 2000, Congress passed the EEIOCPA, finding that

“Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy, and at sites of vendors who supplied the Cold War Effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.”[fn 25]

Congress noted that recently discovered records documented “unmonitored exposures to radiation” at sites nationwide that the Department of Energy (DOE) self-regulated and that “[n]o other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.”[fn 26] Further, Congress found that “State workers’ compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites,” and thus, “[t]o ensure fairness and equity,” Congress directed that a fund be established “on the books of the Treasury” to compensate covered employees, or their survivors.[fn 27]

The program, administered by the Department of Labor, offers compensation under two provisions: Part B and Part E. Under Part B, current and former workers employed by the DOE or its contractors or subcontractors, beryllium vendors or atomic weapons employers are eligible if they have been diagnosed with: any cancer that is “at least as likely as not caused by radiation exposure,” chronic beryllium disease, beryllium sensitivity and, at specific sites, chronic silicosis.[fn 28] Eligible workers, or their survivors,[fn 29] may receive a lump sum payment of $150,000, medical care for covered conditions or medical monitoring for beryllium sensitivity.[fn 30]

Under Part E, compensation is available to current and former workers at DOE contractors or subcontractors who have acquired “any occupational illness at least as likely as not caused by exposure to a toxic substance.”[fn 31] Compensation, up to a maximum of $250,000, is based on permanent impairment, years of qualifying wage loss, medical care for covered conditions and compensation to a much more limited class of survivors if the employees’ death was contributed to or caused by the covered illness.[fn 32]

There is an important exception to the “at least as likely as not” causation standard under Part B. In 2004, recognizing that, for a certain class of employees, it “is not feasible to estimate with sufficient accuracy the radiation dose that the class received,” and that “there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class,” Congress designated a “Special Exposure Cohort” (“SEC”) for employees at certain facilities.[fn 33] Once a facility has been designated as part of the SEC, employees of
those facilities who have worked for a specified period of time and contracted any of 22 specified cancers are relieved of the need to establish causation [emphasis added].[fn 34]

In 2010, the Texas Instruments Attleboro facility was added to the SEC.[fn 35] Because there was no documentation that radiation was limited to any particular buildings on the Attleboro site, the National Institute of Occupational Safety and Health (NIOSH) determined that “workers could have been exposed to radioactive materials in any part of the M&C site.”[fn 36] All M&C/TI employees who worked at least 250 work days on the site between 1952 and 1967 are included in the SEC.[fn 37] Workers like Lou Wims would only need to prove their term of employment, as well as their diagnosis with one of the designated cancers. The claim forms themselves are simple, but the passage of so many years may mean that medical records have been destroyed, and employment documentation may be hard to come by; therefore, it’s likely that some claimants will seek the assistance of counsel.

The Lawyer’s Role

The EEIOCPA limits the fee an attorney may charge for assisting a claimant, due to the simple nature of the claim process. An attorney may charge “two percent for the filing of an initial claim for payment of lump-sum compensation” (typically, $3,000); “and…10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.”[fn 38] Although these fees are modest, they are fair, given the scope of work; moreover, attorneys should consider taking on the task, if requested, as a public service. Potential claimants within the SEC are elderly, and those outside of the SEC, but still eligible under Part B or Part E may be debilitated or unsophisticated.

There are only two forms necessary to submit a claim: either EE-1 for worker claims or EE-2 for survivor claims, and EE-3, which documents employment history.[fn 39] The New York Resource Center, which handles all claims for the New England states, will then advise of any supplemental documentation needed like birth and death certificates, medical records and verification of employment.

Recognizing the availability of the EEIOCPA and familiarity with its requirements are keys to providing good counsel to clients, whether or not those clients choose to have their attorney process the claim. Despite the large number of TI retirees and former employees living in the region, many who may be eligible for lump-sum compensation are unaware of the program. In fact, claims forms sent out by the New York Resource Center include a referral slip that seeks contact information for other former employees and survivors who might not know about the program.[fn 40]

It is important to note that compensation or benefits provided under the program are treated “as damages for human suffering” for IRS purposes (and, thus, not taxable income), and further, “shall not be included as income or resources for purposes of determining eligibility to receive benefits...or amount of such benefits” for certain needs-based programs such as Social Security Disability Insurance and Medicare listed in § 3803(c)(2)(C) of Title 31.[fn 41] A claim under the EEIOCPA is, however, likely an asset of a bankruptcy estate that, like an inchoate civil claim, must be disclosed to the trustee.[fn 42]
There are two classes of clients who would be well-served by being apprised of this program: 1) retirees and former employees who have been diagnosed with cancer, silicosis, beryllium sensitivity or any other occupational illness; and 2) the families of former M&C or TI workers who died of cancer or exposure to toxic substances. Even those former employees who do not presently have a cancer diagnosis should be advised of the existence of the program, should they one day acquire one of the designated diseases.

Given the historical significance of TI-Attleboro to the economy of our region, and the importance of our country’s nuclear deterrent force during that critical era, assisting Cold War era defense workers and their families by counseling them and perfecting their claims under the EEIOCPA is a relatively easy, rewarding way to aid in recovering some compensation for injuries suffered in service to our nation’s defense.

Endnotes
2 Id.
3 Id.
5 See Foster, supra note 4.
6 Memorandum from L. Joseph Callan, Executive Director for Operations, U.S. Nuclear Regulatory Commission to the Commissioners (Mar. 3, 1997) (on file with author).
7 Id.
8 Id.
9 Rick Foster, Our Nuclear Legacy, Sun Chronicle, October 10, 2010.
10 Callan Memorandum, supra note 6.
12 Rick Foster, Texas Instruments to pay feds $15 million for Shpack cleanup, Sun Chronicle, November 28, 2012; Callan Memorandum, supra note 6. Texas Instruments agreed to reimburse the federal government for a portion of the $70 million dollar cleanup. The company did not acknowledge liability. A survey of the site found that ashes from zirconium chips contained uranium, as well as a sign identified as coming from Texas Instruments.
13 Callan Memorandum, supra note 6.
14 Downing, supra note 4.
15 Foster, supra note 4. One former employee with cancer tracked down 177 former employees with cancer.
16 Id. In addition to the TI/M&C site, there are 19 other EEOICPA sites in the Commonwealth of Massachusetts.
17 Id.
18 Id.
19 Rick Foster, Kennedy questions TI president about cancer cases, Sun Chronicle, February 7, 2013.
20 Id.
21 Letter from Mary Ann Johnson, Ethics and Employee Relations, Texas Instruments, Inc. to Louis V. Wims (February 19, 2013) (on file with author).
22 Id.
23 Foster, supra note 4.
24 Rick Foster, Former TI workers starting to get letters about cancer help, Sun Chronicle, March 1, 2013.
28 New York Resource Center Fact Sheet (on file with author).
29 Id. Eligible survivors are designated by statute and include spouses, children, parents, grandchildren and grandparents.
30 Id.
31 Id.
32 Id. Under Part E, eligible survivors are more narrowly defined as spouses, as well as dependent children who, at the time of the employee’s death were either under age 18, under age 23 and a full-time student, or any age “if incapable of self-support.”
35 Foster, supra note 4.
36 Id.
37 Supra note 34.
38 42 U.S.C.A. § 7385g(a)(1)-(2) (West 2003).
39 Forms are available in pdf format at this link: http://www.dol.gov/owcp/energy/; alternatively, one can begin the claims process with a phone interview by calling the New York Energy Compensation Resource Center at 1-800-941-3943.
40 Department of Labor referral sheet (on file with author).
41 42 U.S.C.A. § 7385e(1)-(2) (West 2003); See U.S.C.A. § 3803(c)(2)(C) (West 2003) for a complete list of these programs.