

## H

Supreme Court, Appellate Division, First  
 Department, New York.  
 Natalie B. LUSTENRING, etc., Plaintiff-  
 Respondent,  
 v.  
 AC&S, INC., et al., Defendants,  
 John Crane, Inc., Defendant-Appellant.  
 John Matteson, et al., Plaintiffs-Respondents,  
 v.  
 AC&S, Inc., et al., Defendants,  
 John Crane, Inc., Defendant-Appellant.

Dec. 2, 2004.

**Background:** Workers brought action to recover for asbestos-related mesothelioma. The Supreme Court, New York County, [Marcy S. Friedman](#), J., entered judgment on jury verdict in favor of workers, and defendants appealed.

**Holding:** The Supreme Court, Appellate Division, held that there was sufficient evidence to support jury's verdict.  
 Affirmed.

## West Headnotes

**Products Liability**  83[313Ak83 Most Cited Cases](#)

There was sufficient evidence to support jury's finding that workers' mesothelioma was caused by defendant's activities, where evidence indicated that workers worked all day for long periods in clouds of dust raised specifically by manipulation and crushing of defendant's packing and gaskets, which were made with asbestos, and valid expert testimony indicated that such dust, raised from asbestos products and not just from industrial air in general, necessarily contained enough asbestos to cause mesothelioma.

**\*\*21** Baker & McKenzie, Chicago, IL ([Michael A. Pollard](#), of the Illinois Bar, admitted pro hac vice, of counsel), for appellant.

Levy Phillips & Konigsberg, LLP, New York (Lizabeth L. Burrell of counsel), for respondents.

[SULLIVAN](#), J.P., [ELLERIN](#), [LERNER](#), [MARLOW](#), [CATTERSON](#), JJ.

**\*69** Judgment, Supreme Court, New York County (Marcy S. Friedman, J.), entered August 12, 2003, which, after a jury trial, awarded plaintiff **Lustenring** the total amount of \$4,395,058, and judgment, same court and Justice, entered September 30, 2003, which, after the same jury trial, awarded plaintiff Matteson the total amount of \$3,277,864.65, unanimously affirmed, without costs.

The evidence, fairly interpreted, permitted the verdicts reached by the jury (see **\*70** [Matter of New York City Asbestos Litig. \[Brooklyn Naval Shipyard Cases\]](#), 188 A.D.2d 214, 225, 593 N.Y.S.2d 43 [1993], *affd. sub nom. Dudick v. Keene Corp.*, 82 N.Y.2d 821, 605 N.Y.S.2d 3, 625 N.E.2d 588 [1993]). Indeed, the evidence showed that both plaintiffs worked all day for long periods in clouds of dust raised specifically by the manipulation and crushing of defendant's packing and gaskets, which were made with asbestos. Valid expert testimony indicated that such dust, raised from asbestos products and not just from industrial air in general, necessarily contains enough asbestos to cause mesothelioma. Defendant's factual disagreement with plaintiffs' causation theory did not require a *Frye* hearing (see [Gayle v. Port Auth. of New York & New Jersey](#), 6 A.D.3d 183, 184, 775 N.Y.S.2d 2 [2004]). The evidence also supported the verdict that defendant did not sustain its burden of showing that negligence by nonparty defendants was a significant cause of plaintiffs' injuries (see [Matter of New York City Asbestos Litig. \[Ronsini v. Garlock, Inc.\]](#), 256 A.D.2d 250, 252, 683 N.Y.S.2d 39 [1998], *lv. denied* 93 N.Y.2d 818, 697 N.Y.S.2d 565, 719 N.E.2d 926 [1999], *cert. denied sub nom. Worthington Corp. v. Ronsini*, 529 U.S. 1019, 120 S.Ct. 1419, 146 L.Ed.2d 312 [2000]). We have reviewed defendant's remaining arguments for a new trial, respecting purportedly erroneous trial rulings, and find that any such errors did not deprive defendant of a fair trial. The damages do not deviate materially from what is reasonable compensation under the circumstances ([CPLR 5501\(c\)](#)).

13 A.D.3d 69, 786 N.Y.S.2d 20, 2004 N.Y. Slip Op. 08961

END OF DOCUMENT