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2006 NY Slip Op 2644, *; 2006 N.Y. App. Div. LEXIS 4250, **

[*1] In re: New York **Asbestos** Litigation; Margaret Marshall, as Administratrix of the Estate of Noah Pride, Plaintiff-Respondent, v John Crane, Inc., Defendant-Appellant. Bernard Mayer, Plaintiff-Respondent, v John Crane, Inc., Defendant-Appellant.

8246- 8246A, Index 119369/02, Index 106231/03

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

2006 NY Slip Op 2644; 2006 N.Y. App. Div. LEXIS 4250

April 11, 2006, Decided

April 11, 2006, Entered

NOTICE: [1]** THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING THE RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

CORE TERMS: pain and suffering, asbestos, dust, amended judgment, notice of entry, future pain, jury trial, unanimously, stipulates, suffering, modified, vacated

COUNSEL: 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 (Steven J. Phillips of counsel), for respondents.

JUDGES: Tom, J.P., Marlow, Gonzalez, Catterson, Malone, JJ.

OPINION: Judgment, Supreme Court, New York County (Paula J. Omansky, J.), entered December 13, 2004, which, after a jury trial, awarded plaintiff Margaret Marshall, as Administratrix of the estate of Noah Pride, \$ 8 million for past pain and suffering, unanimously modified, on the facts, the pain and suffering award vacated, and the matter remanded for a new trial solely on the issue of damages for past pain and suffering, and otherwise affirmed, without costs, unless plaintiff, within 30 days of service of a copy of this order with notice of entry, stipulates to reduce the award for pain and suffering to \$ 3 million and to entry of an amended judgment in accordance therewith. Judgment, same court and Justice, **[**2]** entered December 13, 2004, which, after the same jury trial, awarded plaintiff Bernard Mayer \$ 7 million for past pain and suffering and \$ 7 million for future pain and suffering, unanimously modified, on the facts, the pain and suffering awards vacated, and the matter remanded for new a trial solely on the issue of damages, and otherwise affirmed, without costs, unless plaintiff, within 30 days of service of a copy of this order with notice of entry, stipulates to reduce the award for past pain and suffering to \$ 3 million, and to reduce the award for future pain and suffering to \$ 1.5 million, and to entry of an amended judgment in accordance therewith.

The evidence, fairly interpreted, permitted the liability verdicts reached by the jury (see **[*2]** , *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, 625 N.E.2d 588, 605 N.Y.S.2d 3 [1993]). The evidence demonstrated that both plaintiffs were regularly exposed to dust from working with defendant's gaskets and packing, which were made of **asbestos**. The experts indicated that such dust from **asbestos**-containing products contained **[**3]** enough **asbestos** to cause mesothelioma. No *Frye* hearing was required (*see Lustenring v AC&S, Inc.*, 13 A.D.3d 69, 786 N.Y.S.2d 20 [2004], *lv denied* 4 N.Y.3d 708, 796 N.Y.S.2d 581 [2005]). The evidence also permitted the jury to conclude that defendant had not sustained its burden of showing that the negligence of nonparty defendants was a significant cause of plaintiff's 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, 719 N.E.2d 926, 697 N.Y.S.2d 565 [1999], *cert denied sub nom Worthington Corp. v Ronsini*, 529 U.S. 1019, 120 S. Ct. 1419, 146 L. Ed. 2d 312 [2000]), and that defendant had not met its burden of showing the proper amount of the equitable shares attributable to the other companies (*see id.*; *Zalinka v Owens-Corning Fiberglass Corp.*, 221 A.D.2d 830, 633 N.Y.S.2d 884 [1995]; *Bigelow v Acands, Inc.*, 196 A.D.2d 436, 601 N.Y.S.2d 478 [1993]). Defendant argues that damages for pain and suffering should be calculated on a per month basis. We reject this argument (*Reed v City of New York*, 304 A.D.2d 1, 7, 757 N.Y.S.2d 244 [2003], *lv denied* 100 N.Y.2d 503, 791 N.E.2d 961, 761 N.Y.S.2d 595 [2003]). **[**4]** We have reviewed defendant's remaining arguments regarding the trial court's evidentiary rulings and find that defendant was not deprived of a fair trial by the claimed errors.

However, we find that the damage awards deviate materially from what is reasonable compensation under the circumstances (CPLR 5501[c]) to the extent indicated.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 11, 2006

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