

Supreme Court, Appellate Division, First
Department, New York.

In re NEW YORK CITY ASBESTOS LITIGATION

Christine Wiegman, Individually and as the
Administratrix of the Estate of
Daniel Tucker, Plaintiff-Respondent,

v.

A C & S, Inc., et al., Defendants,
The Lincoln Electric Company, et al., Defendants-
Appellants.

Angel Gomez, Plaintiff-Respondent,

v.

A C & S, Inc., et al., Defendants,
The Lincoln Electric Company, Defendant-
Appellant.

Dec. 29, 2005.

Mayer, Brown, Rowe & Maw LLP, Washington, DC
([Andrew J. Pincus](#) of counsel), for appellants.

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

[TOM](#), J.P., [MARLOW](#), [ELLERIN](#), [SWEENEY](#),
[CATTERSON](#), JJ.

*1 Judgment (*Gomez*) and revised judgment
(*Weigman*), Supreme Court, New York County
(Louis B. York, J.), respectively entered June 15 and
August 26, 2004, which awarded plaintiffs damages
after a jury trial, unanimously affirmed, without
costs.

Defendants-appellants' claim that a *Frye* hearing
should have been held is without merit. The link
between asbestos and disease is well documented,
and the parties merely differed as to whether the
asbestos contained in this particular product could be
released in respirable form so as to cause disease.
Since the parties argued over causation, no novel
scientific technique or application of science was at
issue, and a *Frye* hearing was not warranted ([Gayle v.
Port Auth. of N.Y. and N.J.](#), 6 AD3d 183 [2004]).

Dr. Victor Roggli was called by defendant Crane to
testify in the *Perkins* case without objection by
defendants Hobart and Lincoln. He gave testimony
about exposure to asbestos gaskets and materials
manufactured by Crane, during a different time
period. He gave no testimony regarding the plaintiffs
in *Gomez* and *Tucker* and did not testify concerning

welding rods.

In a joint trial, cross-examination of a witness in a
separate case may be precluded. This case does not
warrant a deviation from that principle. Here, the
court gave limiting instructions, reminding the jury
that Dr. Roggli's testimony related only to the *Perkins*
case. Dr. Roggli was not, per se, an adverse witness
to defendants, and his testimony was not in direct
contravention of defendants' expert. It was not error
to preclude cross-examination of him by defendants.

Defendants' remaining contentions are without merit.

--- N.Y.S.2d ----, 2005 WL 3544293 (N.Y.A.D. 1
Dept.), 2005 N.Y. Slip Op. 10215

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