

## *Matter of New York City Asbestos Litig.*

Supreme Court of New York, Appellate Division, First Department

November 16, 2021, Decided; November 16, 2021, Entered

Index No. 190014/14, Appeal No. 14615-14615A, Case No. 2021-00870

### Reporter

2021 N.Y. App. Div. LEXIS 6375 \*; 2021 NY Slip Op 06326 \*\*

**[\*\*1]** In the Matter of New York City *Asbestos* Litigation. Ralph Lanza, as Personal Representative for the Estate of Santo Lanza, et al., Plaintiffs-Respondents, Kaiser Gypsum Company, Inc., Defendant-Appellant. Bram W. Kranichfeld, as Executor of the Estate of Henry C. Kranichfeld, Third-Party Plaintiff-Respondent, Kaiser Gypsum Company, Inc., Third-Party Defendant-Appellant.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**Prior History:** *Lanza v. Kaiser Gypsum Co., Inc.*, 70 Misc. 3d 921, 137 N.Y.S.3d 876, 2020 N.Y. Misc. LEXIS 5664, 2020 WL 7393276 (Sept. 3, 2020)

### Core Terms

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joint trial, manufactured, plaintiffs', *asbestos*, exposure, exposed

**Counsel:** **[\*1]** Marshall Dennehey Warner Coleman & Goggin, P.C., New York (Richard C. Imbrogno of counsel), for appellant.

The Early Law Firm, LLC, New York (Mark Bibro of counsel), for respondents.

**Judges:** Before: Manzanet-Daniels, J.P., Kapnick, Mazzarelli, Scarpulla, JJ.

### Opinion

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Orders, Supreme Court, New York County (Lucy Billings, J.), entered September 8, 2020, which granted plaintiffs' motions for a joint trial of these actions, unanimously affirmed, without costs.

These two *asbestos* exposure actions involve common questions of law and fact (see *CPLR 602[a]*; *Matter of New York City Asbestos Litig. [Brooklyn Nav. Shipyard Cases]*, 188 AD2d 214, 224-225, 593 N.Y.S.2d 43 [1st Dept 1993], *affd* 82 NY2d 821 [1993]; *see also Matter of New York City Asbestos Litig.*, 111 AD3d 574, 975 N.Y.S.2d 660 [1st Dept 2013]; *Matter of New York City Asbestos Litig.*, 99 AD3d 410, 951 N.Y.S.2d 154 [1st Dept 2012]). Defendant has not established that it will be prejudiced by a joint trial of the actions. The actions share the sole remaining defendant, counsel in both actions are identical, plaintiffs' decedents were exposed to the same product manufactured by defendant for similar periods of time, and both decedents died of the same disease (*see Matter of New York City Asbestos*

*Litig.*, 121 AD3d 230, 990 N.Y.S.2d 174 [1st Dept 2014], *affd* 27 NY3d 1172 [2016], 27 NY3d 765 [2016]). The fact that one of the decedents was a painter and the other a carpenter is a distinction without a difference since both were allegedly exposed to asbestos as a result of the sanding and cutting of defendant's joint compound. Their different exposures to products not manufactured by defendant can be addressed [\*2] through carefully crafted juror instructions and special verdict sheets.

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

ENTERED: November 16, 2021

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