

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SANDRA GERITANO, Individually and as Executrix  
of the Estate of VINCENT ANTHONY GERITANO,  
deceased,

Index No. : 190374/2014

Plaintiff,

**NOTICE OF ENTRY OF POST-  
VERDICT DECISION & ORDER**

v.

A.O. SMITH WATER PRODUCTS, et al.

Defendants.

PLEASE TAKE NOTICE, that annexed hereto is a true and correct copy of the Decision and Order of the Hon. Cynthia S. Kern, Justice of the Supreme Court of the State of New York, dated October 19, 2016, which was duly entered in the office of the Clerk of New York County on October 19, 2016.

Dated: New York, New York  
November 17, 2016

/s/ Seth A. Dymond  
Seth A. Dymond  
BELLUCK & FOX, LLP  
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TO: Nancy McDonald, Esq.  
Rula Alzadon Moor, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
*Attorneys for Burnham LLC*  
88 Pine Street, 24th Floor  
New York, New York 10005

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SANDRA GERITANO, Individually and as Executrix  
of the Estate of VINCENT ANTHONY GERITANO,  
deceased,

Index No. : 190374/2014

Plaintiff,

**CERTIFICATION OF SERVICE**

v.

A.O. SMITH WATER PRODUCTS, et al.

Defendants.

**SETH A. DYMOND**, affirms the following statements to be true pursuant to CPLR 2106:

I electronically filed and served the Notice of Entry of Post-Verdict Decision & Order by using the NYSCEF system on **November 17, 2016** to:

Nancy McDonald, Esq.  
Rula Alzadon Moor, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
88 Pine Street, 24th Floor  
New York, New York 10005

/s/ Seth A. Dymond  
Seth A. Dymond

FILED: NEW YORK COUNTY CLERK 10/19/2016 12:04 PM

NYSCEF DOC. NO. 272 RECEIVED NYSCEF: 10/19/2016

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

HON. CYNTHIA S. KERN  
J.S.C.

PRESENT: \_\_\_\_\_  
*Justice*

PART 55

Index Number : 190374/2014  
GERITANO, VINCENT A.  
vs  
A.O. SMITH WATER PRODUCTS  
Sequence Number : 011  
POST JUDGMENT OTHER

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/19/16

CSK, J.S.C.  
HON. CYNTHIA S. KERN

1. CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION  ANSWERED IN PART  OTHER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
IN RE: NEW YORK CITY ASBESTOS LITIGATION  
-----X

SANDRA GERITANO, Individually and as Executrix  
Of the Estate of VINCENT ANTHONY GERITANO,  
deceased,

Index No. 190374/2014

**DECISION/ORDER**

Plaintiffs,

-against-

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants.  
-----X

**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers

Numbered

Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Defendant Burnham LLC ("Burnham") has filed the present post-trial motion pursuant to CPLR § 4401 and § 4404 for a directed verdict or an order setting aside the verdict and directing that judgment be entered in favor of Burnham, or in the alternative, for a new trial, or in the alternative, for remittitur of the jury verdict. For the reasons set forth below, Burnham's motion is granted in part and denied in part.

In or around October 2014, decedent Vincent Anthony Geritano (hereinafter referred to as "Mr. Geritano" or "decedent") instituted this asbestos product-liability action alleging that he

developed mesothelioma as a result of his exposure to asbestos-containing products manufactured, supplied or distributed by the defendants. Following Mr. Geritano's death on February 16, 2015, his wife, plaintiff Sandra Geritano ("Mrs. Geritano"), filed a First Amended Complaint as executrix of the Mr. Geritano's estate adding a claim for wrongful death.

At the time the trial commenced, there were seven remaining defendants, Burnham, Crown Boiler Co., ECR International, Inc., Kohler Co., Columbia Boiler Company of Pottstown, Crane Co. and Sid Harvey Industries, Inc. During the course of the trial, plaintiff settled the case with Columbia Boiler Company of Pottstown, ECR International, Inc., Crane Co., Sid Harvey Industries, Inc. and Kohler and the case went to verdict against Crown Boiler Co. and Burnham only. The jury rendered a verdict of no liability against Crown Boiler Co. and in favor of plaintiff and against Burnham in the amount of \$6.25 million for past pain and suffering. The jury also allocated one percent liability to Sid Harvey Industries, Inc. and nine percent liability to each of the following entities: Burnham, American Radiator Co., Columbia Boiler Company of Pottstown, Compudyne Corporation, individually and as successor to York-Shipley, Inc., Crane Co., ECR International, Inc. f/k/a Dunkirk Radiator Corporation and as successor by merger to the Utica Companies, Inc., Oakfabco, Inc., individually and as successor-in-interest to Kewanee Boiler Corporation, Kohler Co., Peerless Industries, Inc., Weil-McLain, a division of Marley-Wylain Company and Zurn Industries, LLC, individually and as successor-in-interest to Erie City Iron Works. Additionally, the jury found that Burnham did not act with reckless disregard for the safety of Mr. Geritano.

Plaintiff testified at his deposition regarding his exposure to Burnham boilers. He testified that he was exposed to asbestos from various products and equipment while he worked

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