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**CASE MANAGEMENT  
ORDER**

IN RE EAST 51<sup>ST</sup> STREET CRANE COLLAPSE  
LITIGATION

**No. 1**

Index No.: 769000/2008

Date: 11/26/2008

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**PRESENT: KAREN S. SMITH, J.S.C.:**

**FILED**

DEC - 5 2008

**COUNTY CLERK'S OFFICE  
NEW YORK**

In order to assist the court and parties in efficiently resolving issues presented by the numerous cases involved in the East 51<sup>st</sup> Street Crane Collapse litigation, it is hereby ORDERED as follows:

- 1) All litigants are encouraged to file their papers pursuant to the e-filing procedures established in New York County Supreme Court.
  
- 2) All discovery demands and responses will be served and posted to an internet web site to be established as follows:
  - A) Counsel for Defendant, East 51<sup>st</sup> Street Development Co. shall arrange to have the web site set up by December 18, 2008. East 51<sup>st</sup> Street's Counsel will bare the initial cost of establishing the web site. Said counsel shall provide notification of the cost thereof to the 36 other firms which indicated they would share the costs of the site. Within 5 business days of receipt of the notification, the other firms shall remit their 1/36th share of the costs to East 51<sup>st</sup> Street Counsel. Any litigants who subsequently file pleadings and become involved in these crane collapse cases will not be assessed for the initial start up fees.
  
  - B) Counsel availing themselves of the web site discovery materials will pay the web master's monthly service charges (currently anticipated to be \$240.00 per month [this is per individual using the site - not per firm]).

*Faxed*  
**Scanned to New York EF on 12/5/08**

### 3) Division of Discovery Demands by Groups:

For purposes of formulating discovery demands, the litigants have divided themselves into groups. Each group will be represented by a committee. Counsel indicated below as Liaison are appointed as spokesperson for the group. Counsel indicated below as Sub-Liaison shall coordinate between the sub-group and the liaison for the group. All discovery demands must be channeled through and submitted by the committee to Liaison counsel then submitted for posting on the website. The groups and committees are:

#### A) Defendants:

##### i) Construction Defendants:

Tom Carruthers for East 51<sup>st</sup> Street (Co-Liaison)

Howard Klar for RGC

Glen Fuerth for NY Crane

Vincent Velardo for GCI

##### ii) Product Defendants

Tony Tagliagambe for Lift All

Neil Brody for Liftex

Bob Martin for Favco

##### iii) Municipal Defendant

John Fabiani for CNY (Co-Liaison)

#### B) Plaintiffs:

##### i) Labor Law §240 Plaintiffs

Vito Canavo for Bleidner (Liaison)

Alan Liebowitz for Jendersee

Derrick Sells for Stephens

##### ii) Non-Labor Law Personal Injury Plaintiffs

Daniel Shimko for Battistello

##### iii) Property Damage Plaintiffs

Gleason, Michael for Rite Aide

##### iv) Breach of Contract, Lien Foreclosures and Guarantee

Richard Lambert for Reliance

4) All previously served discovery demands will be replaced by the demands formulated by the committees. If there are any additional demands, the party making the demands must submit them to the committee for inclusion on the web site.

5) CURRENT SCHEDULING:

A) All initial committee discovery demands must be submitted to East 51<sup>st</sup> Street's counsel (Thomas Carruthers - O'Melveny & Meyers, LLP [212-326-2000]) by December 18, 2008.

B) Any and all objections to discovery demands must be made by letter (which must be e-filed pursuant to the New York County e-filing procedures) with a courtesy copy to the court by January 20, 2009. Any opposition to the objections must also be made by letter (also e-filed with a courtesy copy to the court) no later than January 28, 2009. The court will not consider any submissions which have not been submitted to it on or before January 28, 2009.

C) Counsel for parties to the consolidated litigation must attend the next **COMPLIANCE CONFERENCE ON JANUARY 29, 2009 AT 2:00 PM**. The court will rule on all discovery objections at that conference.

D) All parties who have served their summons and complaint or answer as of the date of this order shall respond to the discovery demands (as ruled upon by the court) on or before February 18, 2009. Discovery responses (including all documents provided therewith) are to be served by providing them directly to the web site server in the form and manner specified by the web site server.

E) Counsel for all parties to the consolidated litigation must attend a **COMPLIANCE CONFERENCE TO BE SCHEDULED ON FEBRUARY 26, 2009 AT 2:00 PM**. The deposition schedule will established at this conference.

6) GENERAL DUTIES OF LIAISON COUNSEL:

Liaison Counsel shall:

A) receive orders, notices , correspondence and telephone calls from the Court and the Clerk of the Court on matters of general applicability on behalf of all Plaintiffs or Defendants, as the case may be, and notify other counsel of such communications

B) submit all discovery documents (and any other items of general applicability but which are not part of the e-filed court record) to the web server for posting

C) act as general spokes-persons on behalf of their groups at all conferences and hearings - subject to the right of counsel for each party to present individual or divergent positions

D) coordinate and communicate with opposing liaison counsel with respect to the matters addressed in this and future Case Management Orders

E) notify the list maintenance Counsel, Glen Fuerth, Esq., and the Court in the event they become aware of any cases involved in this litigation which have not been properly shown on the case list

F) notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceeding before the Court as fully as such counsel deems necessary. Liaison Counsel shall not have the right to bind any party as to any matter without the consent of counsel for that party, except Liaison Counsel's own clients. Further, Liaison Counsel shall remain free to represent the interests and positions of their clients free of any claim ( including without limitation any claim of conflict) arising from service as Liaison Counsel.

#### 7) COURT ORDERS:

All Court and Administrative orders will be posted pursuant to the e-filing and SCROLL procedures. Additionally, they are being posted on the Supreme Court, New York County Website (<http://www.nycourts.gov/supctmanh/>) in the button labeled "Mass Tort Cases" under the left hand caption "Court Resources". Once you have opened the button the case appears under the title "CRANE COLLAPSE EAST 51st STREET". Clicking on the title will open the file and clicking on any of the orders listed in the file will open a copy of the order. These documents are available to any member of the general public who has internet access.

#### 8) PARTICIPATING CASE LIST:

Glen Fuerth (Counsel for NY Crane) will maintain and distribute, to the Court, co-counsel and Plaintiff's Liaison Counsel, an up-to-date service list of all the actions involved in this matter. The list shall include the mail and e-mail addresses for each counsel, the index

number and caption for each case and reference each counsel to the case or cases with which they are involved. The list shall be updated as necessary to reflect the commencement of new cases, the resolution of existing cases, the transfer of any related cases into or out of this court and any changes of counsel subsequent to the entry of this order.

#### 9) PRIVILEGE

The court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication, transmission or dissemination of information in connection with the East 51<sup>st</sup> Street Crane Collapse Litigation cases, among Plaintiffs' Counsel or among Defendants' Counsel, shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the work product doctrine, the protection afforded to material prepared for litigation, the joint prosecution or joint defense privilege, or any other privilege to which a party may be entitled. Cooperative efforts, as described in this order, shall not be used against any of the parties, be cited as purported evidence of a conspiracy, wrongful action, wrongful conduct, and shall not be communicated to the jury at the trial of any action. Nothing in this paragraph shall in any affect the applicability of any privileges or protection against disclosure otherwise available under law.

#### 10) FILING AND CAPTIONS:

A) Master File: Pursuant to a separate Order of the Administrative Judge, dated November 26, 2008, a Master File has been established for the coordinated cases titled: "IN RE EAST 51<sup>ST</sup> STREET CRANE COLLAPSE LITIGATION" bearing Index No. 769000/2008. The original of the Order will be filed by the County Clerk in the Master File and a copy will be deemed a part of the record of

each coordinated action. All subsequent entries in the Master File will also be applicable to all of the East 51<sup>st</sup> Street Crane Collapse Litigation Cases.

B) Individual Case Files: Each individual case shall also retain its separate index number and file in the Office of the Clerk of New York County and entries shall be made therein in accordance with this Order.

C) Case Captions:

i) Every document filed in the court record of coordinated actions (as opposed to discovery documents which are filed with the discovery web server) shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 62

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Index No.: 769000/2008

IN RE EAST 51<sup>ST</sup> STREET CRANE COLLAPSE  
LITIGATION

-----X

ii) If a document filed in the court record relates to all the East 51<sup>st</sup> Street Crane Collapse Cases, the following shall be added to the caption:

-----X

THIS [DOCUMENT] RELATES TO ALL CASES

-----X

iii a) If a document filed in the court record relates to one or more specified cases but not all of the consolidated cases, the shall be added to the caption:

-----X

Plaintiff(s)

- against -

Index No. [specific case]

Defendant(s)

-----X

AND RELATED CASES (SEE APPENDIX)

-----X

iii b) The primary case in which the document is applicable shall be captioned. All other related cases shall be listed in the Appendix, by caption and

index number. The Appendix shall be separately tabbed and easily identifiable to the Clerk of the Court.

iii c) When a document is only applicable to a specific case or group of cases, the Clerk for New York County will not file such a document in the Master File. The original document will be filed in the case bearing the primary caption and index number. In addition, the attorney submitting such document for filing shall provide the Clerk with a sufficient number of copies to file a copy of the document in each file listed in the Related Case Appendix and the clerk shall file one such copy in the case file for each related case to which the order applies.

#### 11) MASTER SERVICE LIST:

A) Counsel for East 51<sup>st</sup> Street Development Co. will work with Counsel for New York Crane to prepare a Master Service List containing the names, telephone numbers, mailing and e-mail addresses for all counsel to all parties and for those parties appearing *pro se*, if any, in the coordinated cases as they exist at the time of this Order. Counsel for East 51<sup>st</sup> Street Development Co. shall post the list to the discovery web site. Counsel (or parties *pro se*) appearing on the list shall be the appropriate entity for service pursuant to CPLR Rule 2103(b). Any party desiring to change the Master Service List shall notify the appropriate Liaison Counsel in writing.

B) Liaison Counsel shall submit updates of the Master Service List to the web server no later than the first business day of the month following the change. The Master Service List shall bear a heading showing the date of its latest update and a statement that it shall be used until it is superseded by a subsequently updated list.

#### 12) SERVICE OF DOCUMENTS:

A) Discovery demands and responses will be served by posting on the discovery internet web site. Due dates for the submission and posting of discovery documents to the web site have been established in this Order. Any further dates that are necessary will be established by the Court at scheduled compliance conferences.

B) The E-filing of a document automatically generates a notice to counsel involved in the case in which the document is filed. Counsel who e-file documents under an individual case index number (ie documents which do not effect all of the coordinated cases) shall also e-mail a notification to all counsel

(and *pro se* parties) on the currently effective Master Service List that the documents have been filed. Any attorney who does not represent one of the parties in the specific case but who desires to be served with a copy of the filed documents shall so notify the party serving the document and the serving party shall provide a copy of the filed document within three business days of the request for it. The court shall be provided with a courtesy copy of any e-filed documents in accordance with the established e-filing procedures for New York County. In the event that any particular document relates to all of the coordinated cases, it shall be E-filed in the Master File (Index No. 769000/2008). This will generate a notice of the filing to all attorneys in the coordinated cases. Courtesy copies are to be sent to the court in accordance with the E-filing procedures.

### 13) REQUESTS FOR JUDICIAL INTERVENTION:

For any action which is currently included in the coordinated actions but for which no RJI has yet been filed, Plaintiff's counsel in the action shall file an RJI within 14 days of the date this Order is entered. For any action which becomes included in the coordinated actions subsequent to the date of this order and for which no RJI has been filed prior to the action's inclusion in the coordinated actions, Plaintiff's counsel shall file an RJI within 14 days of the date that the action becomes included in the coordinated actions.

### 14) APPEARANCE OF COUNSEL

A) Counsel who have appeared in a court transferring a case to this Court for administration with the coordinated cases need not file a separate notice of appearance in this Court.

B) Any attorney duly admitted to practice before the Bar of any state may participate in discovery and pre-trial proceedings in the East 51<sup>st</sup> Street Crane Collapse Litigation. The Court reserves the right to issue *pro hac vice* admissions for purposes of trial and will address such admissions at a future date.

### 15) MOTIONS:

A) Counsel for all parties in any cases being transferred to this court for administration with the coordinated cases must advise the Court of any previously decided and/or pending motions that were filed with the transferor court. If the motion is already decided, parties must provide this Court with a courtesy copy of the decision. In the event that this Court is not provided notice of motions pending but undecided at the time of transfer, the Court will not act upon the motion but will, instead, deem it abandoned.

B) Counsel for all parties must exercise good faith efforts to attempt to resolve all discovery and non-dispositive issues prior to filing any motion in connection therewith. Counsel must certify that they have undertaken such efforts when filing any discovery related or non-dispositive motions.

16) DISCOVERY PROCEEDINGS:

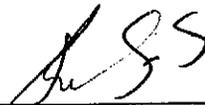
All disclosure and discovery proceedings in the coordinated actions are superceded by the provisions set forth in and directed by this and future coordinated Case Management Orders.

17) COMPLIANCE CONFERENCES:

Attendance at all compliance conferences by Counsel representing all parties to the coordinated cases is mandatory. Currently, conferences are scheduled for: **January 29, 2009** and **February 26, 2009 at 2:00 PM.**

Dated: December 4, 2008

ENTER:



Hon. Karen S. Smith, J.S.C.

**FILED**

DEC - 5 2008

**COUNTY CLERKS OFFICE  
NEW YORK**