

**E-FILE**

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

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

**CASE MANAGEMENT  
ORDER  
No. 9**

Index No. 769000/08  
Date: June 25, 2010

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HON. KAREN S. SMITH

The instant order supplements the eight prior Case Management Orders (“CMO”): CMO # 1, issued on December 4, 2008; Amended CMO # 2, issued on February 9, 2009; CMO # 3, issued on March 5, 2009, CMO #4, issued May 13, 2009, CMO #5, issued on June 26, 2009, CMO #6, issued on October 13, 2009, CMO #7 issued on January 19, 2010 and CMO #8 issued on April 12, 2010. Where there is a conflict between the orders, the instant order prevails.

It is hereby ORDERED as follows:

1) Pursuant to Administrative Order dated July 1, 2008 and subsequent order of Hon. Jacqueline Silbermann dated November 26, 2008, the following related action is hereby consolidated with the instant action under the consolidated Index No. 769000/2008, for purposes of discovery and trial: *Harleysville Ins. Co. of New York a/s/o La Moll Cleaners v East 51<sup>st</sup> Street Development Co. LLC, et al.*, Index No. 107752/10. The action will maintain its own index number and caption and shall heretofore be referred to as the “seventh wave case.” All parties are subject to each of the prior CMOs in the consolidated action, and discovery disputes or issues are to be raised before J.H.O. Beverley Cohen ([Bcohen@courts.state.ny.us](mailto:Bcohen@courts.state.ny.us)). Defendant East 51<sup>st</sup> Street Development Co. LLC must serve a copy of this CMO upon all parties in that action within 20 days of entry of this decision and order.

2) The seventh wave plaintiff must file an RJJ within **45 days** of the entry of this order, if not already done, and comply with the discovery schedule set forth in Paragraph 7 below; in **any other action which has been consolidated with the instant action in which an RJJ has not**

**been filed**, plaintiff must file an RJI within **10 days** of entry of this order or face sanctions by the Court.

3) The action captioned *New York Central Mutual Fire Insurance Company a/s/o Joyce Munn v N.Y. Crane & Equipment Corp. and Reliance Construction, Ltd.*, currently pending in Civil Court, New York County (Civil Court Index No. 11283/09) is hereby consolidated with the instant action under the consolidated Index No. 769000/2008, for purposes of discovery and trial, pursuant to Administrative Order dated July 1, 2008 and subsequent order of Hon. Jacqueline Silbermann dated November 26, 2008. Defendant New York Crane & Equipment Corp. must serve a copy of this CMO on all parties in the Civil Court action within 20 days of entry.

a) Plaintiff in the Civil Court action, *New York Central Mutual Fire Insurance Company a/s/o Joyce Munn v N.Y. Crane & Equipment Corp. and Reliance Construction, Ltd.* (Civil Court Index No. 11283/09) must serve a copy of this CMO on the Clerk of the Civil Court, New York County within 20 days of receipt of this CMO, who is directed to then transfer his files to the Clerk of the Supreme Court, New York County; upon receipt of the Civil Court files, the Clerk of the Court is directed to issue a “no fee” Supreme Court index number.

b) Within 20 days of the Clerk issuing a Supreme Court index number, plaintiff in the aforementioned Civil Court action must file an RJI and serve it on all parties, take the necessary steps to set the action up for e-filing (E-Filing Resource Center: 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us)), and contact chambers to be added to the Court’s email list (646-386-3371 or email Erin Lloyd at [elloyd@courts.state.ny.us](mailto:elloyd@courts.state.ny.us)).

c) Once an action is transferred from Civil Court and a Supreme Court Index Number has been issued, the following discovery schedule shall be followed:

- i) Plaintiff(s) and/or defendant(s) have 20 days to file written application with the Court for leave to serve supplemental discovery requests;
- ii) Plaintiff(s) and/or defendant(s) have 10 days thereafter to submit any objections to any supplemental and/or original master sets of discovery requests;
- iii) Opposition to objections raised in response to supplemental and/or original master sets of discovery requests must be received within 10 days thereafter;
- iv) If the parties have no supplemental requests and there is no objection to the original master sets of discovery requests, all documentary discovery must be complete pursuant to those original master requests within 60 days of the issuance of a Supreme Court index number; otherwise, all documentary discovery must be complete within 20 days of service of supplemental discovery requests or resolution by the Court of any dispute regarding same.

4) EBTs have been scheduled for the following parties on the dates indicated below.

Location and time shall be determined by the parties and notice of same shall be provided to all parties via email 5 days prior to the scheduled EBT date where possible but no less than 48 hours in advance of the EBT. All EBTs shall be conducted at offices within the City of New York, unless stipulated otherwise.

<b>Rachel Bernard</b>	June 28, 2010
<b>Robert Vetro</b>	June 30, 2010
<b>Jay Martino</b>	July 1, 2010 and July 6, 2010
<b>Matthew Banora</b>	July 12, 2010
<b>Matt Katkocin</b>	July 14 - 15, 2010
<b>Joy Cerasani (continuing)</b>	July 19, 2010
<b>Christopher Garcia</b>	July 20 - 21, 2010
<b>Darren Fernandez</b>	July 22 - 23, 2010*
<b>Rosario Galluzo</b>	July 26, 2010
<b>Rev. Peter Bannan</b>	July 29, 2010

<b>John Hines</b>	July 29, 2010
<b>Favelle Favco (Michael Koo)</b>	August 2, 2010
<b>CRSG (continuing)</b>	August 3, 2010
<b>JBS</b>	August 25, 2010
<b>New York Crane</b>	September 14 - 15, 2010
<b>City of New York</b>	September 21 - 22, 2010
<b>RCG/Reliance</b>	September 28 - 29, 2010
<b>East 51<sup>st</sup> Street</b>	October 19 - 20, 2010
<b>Crave Foods</b>	October 21, 2010

\* Fernandez's EBT was initially scheduled to go forward on June 22 - 23, 2010, but the Court was unable to reach him at any of the phone numbers known to it. As such, a Judicial Subpoena has been signed noticing the EBT for July 22 - 23, 2010.

5) The EBT of Michael Ingrati, which was originally scheduled for June 24, 2010, is canceled and a new date will be selected after an open commission is served, as it was recently discovered that the witness resides in Pennsylvania. The following parties' EBTs, in addition to any other outstanding defendant/third-party plaintiff/third-party defendant depositions, will be addressed at the next conference: **Liftex, Lift All, MetroWire and Indusco**. In addition, several plaintiffs are prepared to be deposed, and those EBTs will be addressed at the next conference.

6) Both JBS and CRSG have been granted leave to make their respective motions for summary judgment within 30 days of receipt of their respective clients' EBT transcripts.

7) The following discovery schedule applies to the seventh waive plaintiff and defendants:

a) July 23, 2010: Last date for plaintiff and/or defendants to file written application for leave to serve supplemental discovery requests.

- b) August 6, 2010: Last date for plaintiff and/or defendants to submit any objections to any supplemental and/or original master sets of discovery requests;
- c) August 20, 2010: Last date for plaintiff and/or defendants to submit opposition to objections raised in response to supplemental and/or original master sets of discovery requests;
- d) September 3, 2010: Last date for plaintiffs and/or defendants in all fifth wave cases to complete document production and to serve written responses to supplemental and/or original master sets of discovery requests;

8) As discussed on the record at the June 18, 2010 conference, the third-party plaintiffs must supplement their discovery and interrogatory responses within 30 days from the release of documents and materials currently unavailable because of the ongoing criminal prosecution and trial of William Rapetti.

9) As stated in earlier CMOs, there shall be no adjournments of scheduled discovery deadlines without **prior court approval upon a showing of good cause**. Failure to comply may result in the Court issuing sanctions, including striking the plaintiff's pleadings, upon a motion or *sua sponte*.

10) The Court has no record of an RJI being filed in the following cases, in violation of several prior CMOs. The plaintiff in each of these actions must file an RJI or demonstrate to the Court that its records are inaccurate within 10 days of entry of this order or face sanctions at the next compliance conference: *Corporate Electric Group, Inc. v Reliance Construction Group*, Index No. 103085/10; *Papaioannou, Demetrios v East 51<sup>st</sup> Street Development Company, et al.*, Index No. 108419/09; and *ThyssenKrupp Safway, Inc. v Reliance Construction Ltd., a/k/a RCG Group Ltd.*, Index No. 402781/08.

11) Court records indicate that the following consolidated actions have not yet been converted to E-Filing, as has been ordered in several previous CMOs. The plaintiff in each of

these actions must take the necessary steps to do so or contact the Court within 10 days of entry of this order: *Corporate Electric Group, Inc. v Reliance Construction Group*, Index No. 103085/10; *New York Timber, LLC v Joy Contractors, Inc., et al.*, Index No. 117935/2009; and *Papaioannou, Demetrios v East 51<sup>st</sup> Street Development Company, et al.*, Index No. 108419/09.

12) The following trials shall be conducted on the issue of damages only (dates amended): Bleidner v East 51<sup>st</sup> Street Development Co., Index No. 111098/2008, and Della Porta v East 51<sup>st</sup> Street Development Co., Index No. 104427/2008.

**Bleidner:** Jury selection shall commence on August 9, 2010, trial to begin on August 11, 2010; CPLR 3101(d) exchanges and expert reports, shall be provided by plaintiff to defendants on or before June 14, 2010; by defendants to plaintiff on or before July 14, 2010. Witnesses to be identified and names exchanged no later than August 3, 2010.

**Della Porta:** Jury selection shall commence on September 30, 2010, trial to begin October 5, 2010; CPLR 3101(d) exchanges and expert reports shall be provided by plaintiff to defendants on or before August 6, 2010; by defendants to plaintiff on or before September 7, 2010. Witnesses to be identified and names exchanged no later than September 23, 2010.

13) Counsel are reminded that attendance at regularly scheduled court conferences is **mandatory** for all parties, unless otherwise noted; if counsel for any party is unable to attend, she or he must designate counsel for another party to represent his or her party's interests. Failure to attend or designate a representative to attend on counsel's behalf may result in sanctions.

14) The pending motions for summary judgment in the **Labor Law actions only** are scheduled for oral argument on July 8, 2010 at 9:30 a.m. at 80 Centre Street in Room 280.

Please note that the Court will deem the cases ready for argument when all parties who have submitted papers on the motions are present.

15) Plaintiffs' counsel in the property damage actions and in the non-Labor Law personal injury actions have requested a conference to discuss settlement, and no objection was raised; the conference has been scheduled for July 16, 2010 at 10:00 a.m. at 80 Centre Street in Room 280.

16) The next Compliance Conference in the consolidated action will be held on August 6, 2010 at 10:00 a.m. at 80 Centre Street in Room 280.

Dated: June 25, 2010  
New York, New York

ENTER:



KAREN S. SMITH, J.S.C.