

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 12

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IN RE 91<sup>ST</sup> STREET CRANE COLLAPSE LITIGATION:

Index No. 771000/10E  
Date: 3/23/2011

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THIS DOCUMENT RELATES TO: ALL CASES  
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**CASE MANAGEMENT ORDER NO. 10**

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**PAUL G. FEINMAN, J.:**

**This case management order follows a compliance conference held on the record on March 10, 2011 (Ct. Reporter Denise Paternoster).**

**I. Discovery from Wrongful Death Plaintiff Leo:**

**A. Address Information of Maria Leo**

Various defendants have requested the address of Maria Leo, the mother of the wrongful death decedent Donald Christopher Leo. Although Mrs. Leo is not a party to this action, she is a potential distributee and may possess information relevant to the issues of pecuniary loss, among other things. Accordingly, plaintiff Leo shall turn over the address information sought by April 4, 2011.

**B. Belcastro Commission**

Various defendants seek a commission to conduct a non-party deposition of Janine Belcastro in New Jersey. She was decedent Leo's fiancée at the time of his death. After this issue was raised at the party's last compliance conference, counsel for Leo e-filed a notice of appearance stating she would be the counsel of record in this action for nonparty Belcastro (Index No. 117294/2008, Doc. 711). Unlike Mrs. Leo, Ms. Belcastro is not a potential distributee.

However, it was suggested at plaintiff Donald Raymond Leo's deposition that Ms. Belcastro and the decedent jointly owned a condominium in New Jersey which is subject to a mortgage (*see* Index No. 117294/2008, Doc. 726). Nonetheless, defendants have not made a sufficient showing to warrant a granting of this request at this time.

**II. Uploading Plaintiffs' Discovery Related to Damages:**

Under CMO #1, the court designated Wilson, Elser, Moskowitz, Edelman & Dicker LLP (WEMED) as the law firm to whom all authorizations for the release of medical and other confidential materials would be directed. Concerned about the possibility of violating HIPAA regulations by republishing protected materials, WEMED has requested that all plaintiffs provide an additional authorization specifically giving permission to WEMED to upload documents to the case's secure website. To date, only two plaintiffs, Doran and Alexis, have provided these authorizations. As a result, many defendants do not have access to all documents received by WEMED pursuant to the original authorization and the depositions of Group 2 Labor Law plaintiffs have been forced to proceed solely on issues of liability. At the March 10, 2011 compliance conference, counsel for Group 2 Labor Law plaintiffs agreed to provide these authorizations. However, counsel for Group 1 Wrongful Death Plaintiff Leo suggested an alternative procedure where plaintiffs could securely upload these materials to the e-file website under the index number associated with his or her individual action. Adoption of this alternative procedure would require amendment of certain provisions of CMO #1.

To date, the court has not yet received a copy of the March 10, 2011 compliance conference transcript. Thus, this matter will be deferred until such time when the court has had the opportunity to review the record. Alternatively, liaison counsel for the Group 1 Wrongful

Death plaintiffs and the various defendant groups may submit a joint stipulation to be “so ordered” adopting whatever method the parties find mutually satisfactory.

**III. Lucius Pitkin, Inc.’s Demand for Bill of Particulars from Wrongful Death Plaintiffs:**

On February 22, 2011, Testing Defendant Lucius Pitkin, Inc. (“LPI”) served each Group 1 Wrongful Death Plaintiff with a separate demand for a bill of particulars. By separate letters dated February 28, 2011, each plaintiff rejected LPI’s demands as untimely and void under CMO #1 because they were not served by the steering committee for the Testing Defendants. LPI argues plaintiffs have not provided specific reasoning for maintaining this action against LPI. Further, LPI argues it should be able to individually serve a demand for bill of particulars because plaintiffs have served demands on both the Testing Defendants, as a group, and LPI, individually.

While Group 1 Wrongful Death Plaintiffs are correct in asserting LPI’s demands do not technically comply with the procedure set forth in CMO #1 for service of discovery demands, under CMO #1, Section 3 (C), “[i]f, on any issue, a particular party’s position differs from the position of that party’s group, then that party shall be entitled to present that position to the court separately.” At the compliance conference held March 10, 2011, counsel for LPI made a specialized showing that service of an additional demand for a bill of particulars specific to LPI was appropriate. Accordingly, plaintiffs must serve a responsive bill of particulars by April 15, 2011.

**IV. New York Crane & Equipment Discovery:**

**A. UCC Filings and Documents:**

Revised item 7 of Wrongful Death Plaintiffs’ CPLR Demands seeks “copies of UCC

filings regarding ownership information as to the main, sister and other Kodiak cranes, for the year 2000 to the present” (Doc. 469). New York Crane’s response indicated that it was “currently searching for the documents requested in this demand. Upon receipt, same will be immediately provided as a supplemental response” (*id.*). New York Crane has thus waived any objection to this demand and must turn over responsive documents in its possession, custody or control. This production must be made by April 15, 2011.

**B. *In Camera* Review**

At the last conference, the New York Crane defendants submitted a hard drive containing a copy of the contents of a personal computer belonging to nonparty Varganyi. New York Crane also submitted a privilege log pertaining to a DVD copy of the contents of a different personal computer belonging to Varganyi. However, the court has not been provided with a copy of the DVD used to prepare the privilege log. Furthermore, the court has not been provided with a privilege log pertaining to the hard drive submitted for *in camera* review. Thus, the court has not been provided with sufficient information from which an *in camera* review may be conducted. Therefore, New York Crane must provide the court with the missing DVD and privilege log by March 31, 2011.

**V. Deposition Schedule**

**A. City of New York Employees:**

The deposition schedule provided in CMO #6 is amended as follows. On March 28, 2011, the City will produce John Filingeri for examination before trial. On March 30, 2011, the City will produce Ashraf Omran.

**B. Michael Carbone:**

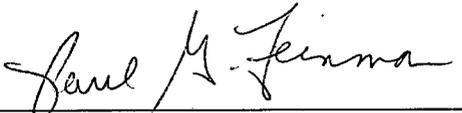
The schedule provided in CMO #6 is further amended to the extent that the continuation of defendant Michael Carbone's examination before trial shall take place on April 4, 2011.

**VI. New York Education Construct Fund (NYECF) Post-Deposition Discovery:**

NYECF must produce the development construction file referred to at the deposition of its designated deponent, Jamie Shmar, to the extent the contents of the file are relevant and not privileged. This production shall be provided to plaintiffs by April 15, 2011.

This constitutes the order of the court.

Dated: March 23, 2011  
New York, New York

  
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J.S.C.

(91st St. Crane Litigation\_CMO 10.wpd)