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

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IN RE 91ST STREET CRANE COLLAPSE LITIGATION: Index No. 771000/2010E
Date: 12/01/2011

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THIS DOCUMENT RELATES TO: ALL CASES

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CASE MANAGEMENT ORDER NO. 18

PAUL G. FEINMAN, J.:

I. Next Compliance Conference:

The next compliance conference shall be held at 2:15 p.m. on Thursday, December 8, 2011.

II. New York Crane/Lomma defendants discovery responses

a. Photographs from May 2007

As the court stated on the record at the November 3, 2011 compliance conference, to the extent any party has in their possession, custody, or control any photographs of the subject crane that may be relevant to the crane's condition at the time of its collapse that have not yet been made available for production, such photographs were required to be produced within 15 days of the last conference, i.e., November 18, 2011, along with an affidavit identifying the date, time, and location that the photograph was taken. Any such photograph(s) which were directed by the court to be produced at the November 3, 2011 conference which have not yet been produced are hereby precluded from use at trial by the non-producing party.

b. Leo's September 6, 2011 demands

At the November 3, 2011 compliance conference, Group 1 Wrongful Death Plaintiff Leo

requested that the court provide rulings regarding the New York Crane defendants' responses to Leo's discovery demands, dated September 6, 2011 (index no. 117294/2008; Doc. 934). The court notes that these demands were not e-filed under the *In re 91st Street Crane Collapse Litigation* index number (771000/2010), as required by CMO #1, but instead solely filed under the *Leo* index number. The demands included two sets of four individual requests. The first set of four relates to a passage taken from a letter, dated August 24, 2011, that was submitted by counsel for the New York Crane defendants pursuant to CMO #15:

> "Additionally, in light of the recent deposition testimony solicited from defendants Sorbara, Shapiro and New York Rigging regarding the duties and responsibilities of deceased Donald Christopher Leo ('decedent Leo') as the operator of the crane involved in this incident, as well as the results of the August 11, 2011 inspection and testing of crane components, the New York Crane Defendants request leave to withdraw that portion of their motion in the Leo case that seeks to remove their Third Affirmative Defense of contributory negligence on the part of the decedent Leo."

Items 1-3 demand the specific date, page number and line of the deposition testimony of Sorbara, Shapiro and New York Rigging referred to in the New York Crane defendants' August 24 letter. Item 4 demands the production of a "certified true and complete copy of the 'results of the August 11, 2011 inspection and testing of the crane components'" referred to in the New York Crane defendants' letter. The New York Crane defendants' responses to Items 1-3 stated that they "...object to this demand as it is palpably improper and calls for information beyond the scope of what is permissible under CPLR 3101 for this disclosure device" (Doc. 990). As to Item 4, the New York Crane defendants object on the ground that it calls for documents protected by the attorney-client privilege, the attorney work product doctrine, and/or any other privilege or immunity. They further object to Item 4 as "palpably improper, vague and overly broad in that it calls for information and/or documents beyond which the Wrongful Death

Plaintiffs are entitled to per CPLR 3101 (d)." Finally, the New York Crane defendants "reserve their right to serve an expert witness report and expert witness disclosure pursuant to CPLR 3101 (d)."

Items 1-3 of the first set of Leo's four demands are stricken as improper. The court notes in passing that Leo's counsel has the transcripts of the depositions of Sorbara, Shapiro and New York. As to Item 4, the vagueness of this demand, even if it is taking its language from the New York Crane defendants' letter, forecloses the court's effective review. This court had no supervisory role over the August 11, 2011 testing and inspection of the crane's components, which was permitted as part of the discovery process in the related criminal matter. The court is aware that the attorneys for the New York Crane defendants in the criminal action, the District Attorney, and some of the civil attorneys for the parties in this litigation, along with various experts, were present for the inspection and testing. In seeking the production of a "certified true and complete copy of the results ...," Leo appears to be demanding the notes or subsequent reports generated by someone present at the inspection. To the extent that any such report was generated by a party's attorney, the demand for "results" may encompass attorney work product "reflecting an attorney's legal research, analysis, conclusions, legal theory or strategy" (*see Brooklyn Union Gas Co. v American Home Assur. Co.*, 23 AD3d 190 [1st Dept 2005]). The protections afforded to attorney work product also "extends to experts retained as consultants to assist in analyzing or preparing the case 'as adjunct to the lawyer's strategic thought processes, thus qualifying for complete exemption from disclosure'" (*Hudson Ins. Co. v Oppenheim*, 72 AD3d 489, 490 [1st Dept 2010]). The vagueness of Item 4, as well as the fact that it appears to encompass materials that fall within the protections of CPLR 3101 (c) and beyond the scope of what is required by CPLR 3101 (d), requires the court to strike this demand as it is currently

phrased. Obviously, at the appropriate juncture, defendants will need to make appropriate expert disclosure.

The second set of four demands relate to representations made to the court by counsel for the New York Crane defendants at the September 1, 2011 compliance conference. The first item seeks copies of each retainer agreement between the New York Crane defendants' counsel, Glenn Fuerth and/or his law firm, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, and defendant Howard I. Shapiro & Associates Consulting Engineers, P.C. for the period of 2003 through the present, or, if no written retainer agreement exists, a sworn reply containing five categories of specified information if no written retainer agreement exists. Item 2 seeks "copies of each and every bill and each and every payment made together with a current statement of account" referred to above. The third item seeks the same type of information as Item 1, but relates to any retainer agreements between the New York Crane defendants and Shapiro. Item 4 seeks copies of each bill and a current statement of account as to any agreement referred to in Item 3.

In response to Items 1 and 2, the New York Crane defendants object to each demand as "palpably improper, vague, overbroad and not reasonably calculated to lead to the discovery of admissible evidence," and on the ground that it is improper to seek "documents created by, maintained by and/or in the possession of a party, Howard I. Shapiro & Associates Consulting Engineers, P.C." from a non-party, Wilson Elser (Doc. 990). The New York Crane defendants respond to Items 3 and 4 by objecting to each demand "palpably improper, vague, overbroad and not reasonably calculated to lead to the discovery of admissible evidence" (*id.*). As to Item 3, the New York Crane defendants also object to the demand "on the ground that it improperly seeks information in the form of an interrogatory and beyond the scope of which the Wrongful

Death Plaintiffs are entitled to under CPLR 3101" (*id.*).

As mentioned above, the second group of Leo's demands arise out of a discussion held on the record before the court at the September 1, 2011 compliance conference. At that time, the court overruled certain objections asserted by the New York Crane defendants' attorney at the deposition of Shapiro based on the attorney-client privilege and directed Shapiro to provide answers to the Group 1 Wrongful Death Plaintiffs' questions, as revised to account for Shapiro's objections to form, which the court sustained. The court found this would afford the Group 1 Wrongful Death Plaintiffs the opportunity to develop a record as to the possible bias or prejudice that Shapiro may possess because of its history of working with Fuerth and Wilson Elser, who now represents the New York Crane defendants. However, Leo's September 6 demands, although nominally addressed to the New York Crane defendants, seek extensive document discovery that would only be in the possession of their counsel, Wilson Elser, or Shapiro. Moreover, the demands are overly broad, for example, in seeking "each and every bill and each and every payment made together with a current statement of account," and would impose an undue burden on Wilson Elser, who is not a party in this action. Given that these demands relate to matters that are collateral to the causes of action and defenses at issue in this action, and the other considerations discussed herein, these demands are stricken. To the extent Shapiro was not able to provide sufficient answers on the issue of his prior retention of or by the New York Crane defendants and/or Wilson Elser, then Leo should serve limited interrogatories directly to Shapiro. Pursuant to CMO #1, any such demands must be e-filed under the general index number for the *In re 91st Street Crane Collapse Litigation.*

III. Macombs Bridge/Broadway Show

Pursuant to this court's decision and order dated August 16, 2011, Group 1 Wrongful

Death Plaintiff Leo provided an authorization to counsel for the New York Crane defendants allowing them to obtain records related to the decedent Donald Christopher Leo's employment at "the McCombs [sic] Bridge for Broadway Show," as the project was referred to in the deposition testimony of Donald R. Leo, the executor of the decedent's estate. The authorization was accompanied by a print-out from the New York State Department of State. When the New York Crane defendants attempted to execute the authorization by mailing it to the address provided on the Department of State print-out, the authorization was returned by the postal service as undeliverable. Leo's attorney then apparently represented to counsel for the New York Crane defendants that her client has no further information regarding the last known address for the "McCombs [sic] Bridge for Broadway Show." At the November 3, 2011 compliance conference, the New York Crane defendants asked the court to direct Leo to provide a *Jackson* affidavit if he maintains that he has no additional information regarding the address and setting forth the efforts that he undertook thus far in his attempts to comply with this portion of the court's August 16th decision and order. Leo objects, arguing that the representations of Leo's counsel in correspondence with counsel for the New York Crane defendants and before the court on the record are sufficient.

Given the lack of full compliance with defendants' discovery demands in this litigation, which required the court's intervention by its August 16 decision and order, Leo is directed to provide the requested *Jackson* affidavit within 15 days of the issuance of this case management order.

IV. Contested additional party depositions - Scott DeMatteis

Group 1 Wrongful Death Plaintiffs request an additional deposition of Leon D. DeMatteis Construction Corp. They specifically seek to depose Scott DeMatteis. To be entitled

to this additional deposition, plaintiffs must make a proper showing that either (1) the deponent already deposed had insufficient knowledge or was otherwise inadequate, or (2) that there is a substantial likelihood that the additional person sought for deposition possesses material and necessary information in addition to that already provided by other individuals (*see Abreu v Deb-bie Realty Assocs.*, 44 AD3d 415, 416 [1st Dept 2007]).

Argument was heard on the issue of Scott DeMatteis's deposition at the October 6, 2011 compliance conference. Prior to that conference, in response to CMO #15, the parties had submitted letters to the court setting forth their positions on requested additional party depositions. At the October 6th conference, counsel for plaintiffs and DeMatteis provided conflicting accounts of what was said by Salvatore Novello, DeMatteis Corp.'s Vice-President of Construction, during his deposition testimony, requiring the court to postpone issuing a ruling as to the propriety of Scott DeMatteis's deposition until it could undertake its own review of Novello's 1,098 page deposition transcript. The court directed DeMatteis Corp. to e-file a copy of Novello's complete deposition transcript. By October 14, 2011, plaintiffs were permitted to file a two-page submission referring to the specific passages in the transcript that supported their characterization of his testimony, and in support of their request to depose Scott DeMatteis. DeMatteis Corp. would then have one week to e-file their own two-page submission in response.

Thereafter, plaintiffs e-filed their submission on October 15, 2011, a day after it was due (Docs. 992-993). DeMatteis Corp. e-filed its response on October 18, 2011 (Doc. 995). Plaintiffs submitted another letter on October 19, 2011, in which Leo's attorney explains that she personally attempted to file the first letter on October 14, 2011, "multiple times and for more than four hours - before the efiling was accepted and confirmed" (Doc. 996). At the November 3, 2011 compliance conference, DeMatteis Corp.'s attorney, Mark Levi, represented that he had

conferred with Peter Garganese, the "e-file clerk on this matter," and he advised him that Leo's attorney logged into the NYSECF system at three different times on October 14, the last time being 10:26 p.m., and at 1:36 a.m. and 7:34 a.m. on October 15, 2011. According to Levi, Garganese also said that there were no problems with the NYSECF system the night of October 14. Thus, Levi argued that the filing was late and that under the court's rules the late filing should be rejected.

The court finds this whole exchange between counsel about the timeliness of the e-filing of Leo's counsel's letter disconcerting. It is an unnecessary waste of client resources and the court's time; it is emblematic of how the parties' counsel, at various points in this litigation, have become more involved in playing "gotcha" and making "tit-for-tat" arguments, as opposed to working cooperatively to resolve disputes on their merits in a courteous and professional manner. In short, given that there was no prejudice to DeMatteis Corp. occasioned by the delay, as evidenced by the fact that it did not seek any extension of the time for its filing, and, in fact, submitted its letter early, the court declines to reject plaintiffs' submission solely on the basis of untimeliness.

The court notes that other letters, in addition to those specifically authorized by the court at the October 6th compliance conference, were filed on the issue of Scott DeMatteis's deposition by 1765 First Associates, LLC, plaintiffs and DeMatteis Corp (Docs. 1002-1005, 1006, 1008, 1009, 1010). Because the court expressly permitted only the filing of a two-page submission by plaintiffs and a two-page response by DeMatteis Corp., the court will not consider the additional, unauthorized submissions. Again, the ceaseless effort to have the last word has resulted in an unnecessary waste of client resources and the court's time.

Furthermore, plaintiffs' October 15, 2011 (dated October 14, 2011) submission does not

comply with the limitations imposed by the court at the October 6th compliance conference. Plaintiffs' submission includes a two-page letter, followed by 120 pages of exhibits. Rather than use the two-pages to refer to the specific portions of Novello's transcript that support ordering Scott DeMatteis's deposition, plaintiffs' submission refers to and attaches the following: (1) three letters previously e-filed by plaintiffs with their original attachments, including excerpts from Novello's deposition transcript; (2) two contracts that were marked as exhibits at other parties' depositions; (3) excerpts from the deposition transcript of Joseph Sorbara of Sorbara Construction Corp.; and (4) excerpts from the deposition transcript of Alan Sullivan of 1765 First Associates, LLC. Only in the last paragraph of plaintiffs' letter does it refer to a series of page numbers from Novello's deposition transcript.

Review of the transcript from the October 6th compliance conference shows that there was nothing ambiguous about the court's directive that plaintiffs' submission be limited to two pages in which plaintiffs could direct the court's attention to specific page numbers of Novello's deposition transcript (Doc. 1011 at 79). The transcript also shows that the parties' attorneys indicated that they understood that the submission was to be limited in scope and length (*id.* at 79-80). Although plaintiffs' counsel asked permission to submit copies of contracts between certain defendants for consideration on this issue, such request was not granted. Notwithstanding the unambiguous directives of this court, plaintiffs' submitted approximately 122 pages on October 15, which included, among other things, copies of contracts between certain defendants, and three other letters from October 19, October 20 and October 23, 2011. Because plaintiffs' submissions do not comply with the court's directives, the court would be warranted in rejecting the submissions altogether and not take them into consideration in determining whether Scott DeMatteis should be deposed.

The court has seriously considered whether counsel for Leo and counsel for DeMatteis should both be asked to appear and answer why sanctions should not be imposed for the conduct and "letter campaign" which the court has outlined. However, in order to avoid prolonging the resolution of this issue any further, the court will consider the arguments plaintiffs have made at compliance conferences and in letters which were submitted in compliance with prior court orders on the issue of Scott DeMatteis's deposition. Before discussing the merits of these contentions, the court notes in response to the court's directive at the compliance conference on September 1, 2011, that the parties submit a list of all individuals that they are requesting for an additional party deposition, plaintiffs listed Anthony Corrado and Scott DeMatteis on behalf of DeMatteis Corp. In response, DeMatteis Corp. agreed only to Corrado's deposition. The deposition of Corrado, DeMatteis's project superintendent for the East 91st Street construction project, has been scheduled but has not yet taken place. The court also notes that although plaintiffs have suggested in some of their recent letters that *Richard* DeMatteis should also be deposed, such request was waived by not including it in their September 1, 2011 list.

In support of their request to depose Scott DeMatteis, plaintiffs argue that Salvatore Novello referred to Scott DeMatteis in his deposition testimony as "the person with authority to control operations at the 91st Street jobsite, the person who negotiated the terms of the contracts between DeMatteis Construction and other defendants ... and who supervised the activities of, inter alia, Salvatore Novello and Anthony Winston, the DeMatteis project manager" (Doc. 934, Plaintiffs' letter, dated Sept. 1, 2011). At the October 6 compliance conference, when asked what new testimony was expected from Scott DeMatteis, counsel responded, "...all the finances, all the financial benefits, all the financial penalties involved in this case ...We need somebody with authority, somebody who could make decisions, who could give directions" (Doc. 1011,

Oct. 6 transcript at 73-74). Plaintiffs also argued that Novello testified that when he heard about the crane collapse at the East 91st Street, "his first phone call was to Scott DeMatteis. They were talking all day long, making arrangements to do clean-up, meeting with attorneys" (*id.* at 74).

Upon review of the parties' contentions and the deposition transcript of Salvatore Novello, the court concludes that Scott DeMatteis's deposition could not be supported based on any contention that Novello lacked knowledge of material and necessary information. The testimony shows that Novello, DeMatteis Corp.'s Vice-President of Construction, was in charge of DeMatteis Corp.'s work at the East 91st Street construction site and that he possessed knowledge of nearly all aspects of DeMatteis Corp.'s activities. As such, to be entitled to an additional deposition, plaintiffs must have made a sufficient showing that of a substantial likelihood that the Scott DeMatteis possesses material and necessary information in addition to that already provided by Novello or any other deponent (*see Abreu v Deb-bie Realty Assocs.*, 44 AD3d at 416).

Based on Novello's testimony, Scott DeMatteis's direct involvement in the East 91st Street construction project was limited to certain specific activities. Contract negotiations and the selection of the various subcontractors in connection with the East 91st Street project were activities performed by DeMatteis Corp.'s Estimating Department, specifically, Jim Kilbride (*see* Doc. 989, Novello transcript at 323-325; 757-758). For example, while Novello did testify that Scott DeMatteis had the authority to make the decision to hire defendant, Sorbara Construction Corp., he also stated that Kilbride was the individual who in fact made the decision to hire Sorbara after reviewing the competing bids, interviewing the prospective contractors, and based on his prior experience working with Sorbara (*id.*). Plaintiffs argue that Novello's testimony shows that Scott DeMatteis negotiated the terms of a change order between Sorbara

and DeMatteis Corp., which increased the amount of money to be paid to Sorbara. However, a closer look of the relevant portions of the deposition transcript reveals that Novello merely described an exhibit that he had been shown as an "agreement between Scott DeMatteis and Marino Sorbara," while also making it clear that this was based on his reading of the exhibit he was being shown, rather than based on his understanding (*id.* at 797-798). Furthermore, Novello says there was a series of meetings between Sorbara and DeMatteis Corp. in early 2008 which led to the execution of the change order (*id.* at 801). Novello testified that he was present at some of these meetings, but did not expressly state that Scott DeMatteis was present for any meeting other than the final meeting when the change order was executed (*id.* at 802). Although plaintiffs' counsel choose not ask Novello too many questions about what happened at these meetings, Novello did state that the tower crane at issue in this action was not discussed (*id.* at 802).

In addition, DeMatteis Corp.'s attorney has represented that the change order was negotiated by Kilbride on behalf of DeMatteis Corp. and William Kell on behalf of Sorbara, and that the final terms of the change order were finally negotiated by Joseph Sorbara, William Kell, Marino Sorbara, Novello and Kilbride, and that Scott DeMatteis only was there for the final meeting where the change order was executed (*see* Doc. 968, Levi letter, dated Sept. 22). This representation is consistent with Novello's testimony. Thus, even assuming that the negotiations between Sorbara and DeMatteis regarding the change order would reveal material and necessary information, there is nothing in Novello's testimony that indicates a substantial likelihood that Scott DeMatteis would possess unique information about these matters in addition to what was described by Novello.

Plaintiffs' main argument in support of deposing Scott DeMatteis is based on his alleged

authority to control operations at the East 91st Street construction site. While there is no dispute that Novello testified that he reported to Scott DeMatteis, Novello also indicated that several individuals employed by DeMatteis Corp. at the East 91st Street site reported to him, including the two project managers, Corrado and Tony Winston, the project superintendent, assistant superintendent, and the labor foreman, all of whom were involved with DeMatteis's day-to-day operations at the East 91st Street site and had the most interaction with the subcontractors (*id.* at 703-705). Furthermore, an individual's rank in an organization's chain-of-command is not determinative on the issue of whether that individual should be deposed. Rather, the central inquiry is whether there has been a sufficient showing that the requested individual possesses material and necessary information that has not been provided by another deponent. Plaintiffs can only point to a few instances where Novello testified that he lacked knowledge as to a particular matter that Scott DeMatteis might possibly know. One instance was in response to a line of questioning by Leo's counsel regarding a joint claim by DeMatteis Corp. and 1765 First Avenue Associates, LLC for damages arising out of the May 30 crane collapse (*id.* at 159-161). The other instance was in response to certain questions related to DeMatteis Corp.'s retention of a crisis management or public relations firm after the crane collapse (*id.* at 834). Because both of these topics involve DeMatteis's post-accident actions and, thus, are not material or necessary to the prosecution or defense of the claims asserted in this action, plaintiffs are not entitled to an additional deposition to examine these matters.

In conclusion, upon review of Novello's deposition transcript, plaintiffs have not made a sufficient showing of a substantial likelihood that Scott DeMatteis's deposition would result in the disclosure of unique, material and necessary information (*see Barnwell v Emigrant Savings Bank*, 81 AD3d 518, 519 [1st Dept 2011]). Novello's testimony demonstrates that he possessed

personal knowledge as to most aspects of DeMatteis Corp.'s activities related to the crane collapse at the East 91st Street construction site. It also suggests that other individuals, such as Steve Mezick and Jim Kilbride, and not Scott DeMatteis, are the individuals that were the most involved in the relevant activities. However, plaintiffs did not include either of these individuals on their list of proposed depositions and, therefore, have waived their ability to do so. Accordingly, plaintiffs' request to depose Scott DeMatteis is denied.

V. Deposition Scheduling Order Revisions

Since issuing Case Management Order #17, the parties have requested modifications due to scheduling conflicts or changed circumstances. In revising the deposition schedule, the court has endeavored to take these matters into consideration. The schedule provided in Case Management Order #17 is now amended as follows, subject to future modifications as the court may deem fit:

Track 2:

December 2:	Burch - Richard Burch
December 5:	Burch - Stuart Burch and Shannon Toohey
December 7:	Calabro
December 9:	*No depositions scheduled at this time*
December 12:	Conneely - Summer Lee (a.m) and Joshua Nuckols
December 14:	Conneely - Cathie M. Pfleger (a.m) and Tara Price
December 16:	Conneely - Reto Rauschenberger (a.m) and Gil & Sharon Rachlin
December 19:	Conneely - Joe Conneely (a.m) and Claire Conneely
January 4:	Leino
January 6:	Oddo
January 9:	Rizzocasio
January 11:	Wellens
January 13:	Bryant
January 16:	*No depositions scheduled - Martin Luther King Day*

Track 3:

January 18:	Leon D. DeMatteis Construction Corporation - Anthony Corrado (Day #1)
January 20:	*No Track 3 depositions - Open date for any necessary Track 2 depositions*
January 23:	Leon D. DeMatteis Construction Corporation - Anthony Corrado (Day #2)
January 25:	Sorbara Construction Corp. - William Kell (Day #1)
January 27:	Sorbara Construction Corp. - William Kell (Day #2)
January 30:	Sorbara Construction Corp. - John Boitz (Day #1)
February 1:	Sorbara Construction Corp. - John Boitz (Day #2)
February 3:	Sorbara Construction Corp. - John Sanders (Day #1)
February 6:	Sorbara Construction Corp. - John Sanders (Day #2)
February 8:	*No Track 3 depositions - Open date for any necessary Track 2 depositions*
February 10:	*No Track 3 depositions - Open date for any necessary Track 2 depositions*
February 13:	Sorbara Construction Corp. - Carmela Sorbara (Day #1)
February 15:	Sorbara Construction Corp. - Carmela Sorbara (Day #2)
February 17:	Mattone Group Construction Co. Ltd., Mattone Group Ltd., Mattone Group, LLC - Douglas MacLaury (Day #1)
February 20:	*No depositions scheduled - Washington's Birthday*
February 22:	Mattone Group Construction Co. Ltd., Mattone Group Ltd., Mattone Group, LLC - Douglas MacLaury (Day #2)

The parties remain free to alter this deposition schedule so long as all parties execute a stipulation clearly detailing any such changes and provided that the court is furnished with a copy of such stipulation at least one week in advance of any such amendments. Attached to the stipulation should be a complete revised schedule reflecting the changes. Even where an agreement cannot be reached, any future request for an alteration of a deposition scheduling order must be accompanied by a proposed revised schedule, or risk not being considered by the court.

The scheduled provided above presumes that all prior depositions were completed as scheduled in CMO #17. Although the parties indicated that some delays had occurred at the last compliance conference, the court has not received a copy of any proposed revisions to the schedule as required by the court's previous case management orders.

A few matters related to deposition scheduling warrant further discussion. The court

notes that the deposition of Uke Kurtaj, the father and a distributee of Group 1 Wrongful Death Plaintiff Kurtaj, has been removed from the schedule provided in CMO #17 and will be rescheduled at a later time to coincide with the trial of James Lomma and New York Crane in the related criminal matter. Although Kurtaj had previously offered only one day for this deposition, counsel for Kurtaj is advised that it should schedule, at a minimum, three days for Kurtaj's deposition. The court mentions this in order to dispel any suggestion that may have been drawn from CMO #17 that Kurtaj's deposition would only be limited to one day, and is based several factors including the length of the depositions that have already taken place in this litigation and the fact that the length of Uke Kurtaj's deposition will certainly be extended because he requires the use of an interpreter. On another scheduling issue related to the pending criminal proceedings, the schedule provided above does not include the deposition of James Lomma and Tibor Varganyi, which are to be scheduled in a subsequent case management order upon conclusion of the criminal proceedings.

This constitutes the order of the court.

Dated: December 1, 2011

New York, New York

Paul G. Feinman

J.S.C.

(91st St. Crane Litigation_CMO 18.wpd)