

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. 771000/2010E  
Date: 1/4/2011

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THIS DOCUMENT RELATES TO: ALL CASES  
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**CASE MANAGEMENT ORDER NO. 19**

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

**I. Next Compliance Conference:**

The next compliance conference is, as previously scheduled, set for Thursday, January 5, 2012 at 2:15 p.m.. The next conference after that shall be held on Thursday, February 2, 2012 at 2:15 p.m.

**II. Correction to Case Management Order No. 18**

In CMO #18, at the top of page 2, the court incorrectly stated that Group 1 Wrongful Death Plaintiff Leo's September 6, 2011 discovery 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." In fact, the demands had been filed under both the *Leo* and *In re 91st Street Crane Collapse Litigation* index numbers. Accordingly, the portion of CMO #18 that erroneously indicated that Leo's demands were only filed under the *Leo* index number is stricken from the order. However, the court notes that the stricken statement has no bearing on the substantive rulings of CMO #18, which are not modified by this case management order.

**III. Notice by publication**

At the compliance conference on December 8, 2011, Group 1 Wrongful Death Plaintiffs challenged the sufficiency of the notice by publication made by counsel to the New York Crane defendants in support of a motion to be relieve as required by the court's. The issue is deferred pending the court's receipt of an updated list from the Appellate Division, First Department regarding approved newspapers for publication. The court takes no position at this time as to Wrongful Death Plaintiffs' standing to assert a challenge as to the publication.

**IV. Photograph production procedure**

At the December 8, 2011 compliance conference, Group 1 Wrongful Death Plaintiffs complained that various, unspecified photographs that have been uploaded to the *In re 91<sup>st</sup> Street Crane Collapse Litigation* website are "so illegible as to be nearly unidentifiable," have no Bates numbers, or Bates numbers that are illegible, and asked the court set a firm date by which "all producing parties" would be required to produce "legible and properly Bates stamped photographs" (Doc. 1024).

On a related issue, at the December 8, 2011 compliance conference, Group 1 Wrongful Death Plaintiffs sought certain information regarding photographs that had been recently produced by the City defendants and Howard I. Shapiro & Associates Consulting Engineers, P.C. Similar information was also requested for photographs produced by Sorbara Construction Corp. and the New York Crane defendants.

By January 31, 2010, plaintiffs should identify the specific photographs they claim are illegible , using whatever enumeration system is used by the *In re 91<sup>st</sup> Street Crane Collapse Litigation* website. They shall also by that date, identify any photographs for which it seeks additional information, either by the enumeration system used by the *In re 91<sup>st</sup> Street Crane Collapse Litigation* website or a NYSCEFS document number or a Bates number from a

producing party. It must be clear which party produced the photograph, and the photograph must be identifiable. Thereafter, the party that produced the subject photographs will have until March 16, 2012, to provide an affidavit identifying the date, time, and location that the photograph was taken, as well as the source of the information. If the party is unable to locate the requested information, the producing party shall submit an affidavit by an individual with personal knowledge of the party's compliance efforts stating what, if any, of the requested information is unknown, and describing the efforts that the party undertook in its attempt to locate the requested information.

**V. Leo's affidavit in response to CMO #18**

CMO #18 directed plaintiff Leo to provide a *Jackson* affidavit regarding the efforts he undertook in formulating his response to this court's decision and order of August 16, 2011 related to defendants' request for authorizations from Leo for documents from "Macombs Bridge/Broadway Show." The court deems Leo's affidavit dated December 5, 2011 (Doc. 1024) sufficient, but precludes use of any documents from these projects to establish lost wages.

**VI. Amended deposition schedule**

Since issuing Case Management Order #18, 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 #18 is now amended as follows, subject to future modifications as the court may deem fit:

**Track 2:**

January 4:	Leino
January 6:	Oddo

January 9: Rizzocasio  
 January 11: Wellens  
 January 13: Calabro  
 January 16: *No depositions scheduled - Martin Luther King Day*  
 February 8: Conneely - Joe Conneely (a.m) and Claire Conneely  
 February 10: Odermatt - Vered Ohayon and Noel Allum  
 February 13: Bryant  
 February 15: Doran

**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: *No Track 3 depositions - Open date for any necessary Track 2 depositions*  
 February 15: *No Track 3 depositions - Open date for any necessary Track 2 depositions*  
 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 court notes that the fact that an individual does not appear in the schedule above does not necessarily mean that the party will not eventually be deposed. For example, the depositions of Tibor Varganyi, James Lomma and Uke Kurtaj will be added to the schedule at a later point, which will depend upon the timing of the trial in the related criminal action.

This constitutes the order of the court.

Dated: January 4, 2011  
New York, New York

  
J.S.C.

(91st St. Crane Litigation\_CMO 19.wpd)