

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. 771000/10E
Date: 12/3/2010

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THIS DOCUMENT RELATES TO: ALL CASES
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CASE MANAGEMENT ORDER NO. 7

PAUL G. FEINMAN, J.:

I. Compliance Conferences

CMO4 is modified only to the extent that compliance conferences will no longer be held every Thursday. Instead, with the exception of a conference to be held on December 9, 2010, compliance conferences will be held on the first Thursday, at 2:15 P.M. of every month as follows: January 6, 2011, February 3, 2011, March 3, 2011, and April 7, 2011.

II. Confidentiality of Personnel Records

By order dated October 21, 2010, this court directed the City of New York, DOB, Patricia J. Lancaster, and Robert LiMandri ("City") to furnish the wrongful death plaintiffs with redacted versions of various personnel files among other documents (Doc. 520). The fifth decretal paragraph of that decision ordered "that the wrongful death plaintiffs shall hold the documents in the strictest of confidence, and shall not copy, share, disseminate, nor distribute any of these documents to any entity other than those directly involved in the 91st Street Crane Collapse Litigation" (Doc. 520). That language is hereby made applicable to all parties in this litigation. Any party that comes into possession with any of the subject documents shall hold those documents in the strictest of confidence, and shall not copy, share, disseminate, nor distribute any

of these documents to any entity other than those directly involved in the 91st Street Crane Collapse Litigation.

III. Wrongful Death Plaintiff's Preliminary CPLR Article 31 Demands (Doc. 34)

A. As Propounded upon the City defendants

As to item number one of E-Filing document number 34, the City shall, if it has not already done so, by December 31, 2010, furnish the wrongful death plaintiffs with an affidavit "where the subject [items] were likely to be kept, what efforts, if any, were made to preserve them, whether such [items] were routinely destroyed, or whether a search had been conducted in every location where the [items] were likely to be found" (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]; see *Rivera-Irby v City of New York*, 71 AD3d 482, 483 [1st Dept 2010]).

As to item number two, the City shall, by November 15, 2010, furnish the wrongful death plaintiffs with: (1) reproductions of the photographs of the Kodiak Tower Crane, serial number 84-052 which were relied upon for the ARUP report; and (2) with reproductions of the photographs of the Kodiak Tower Crane, serial number 84-052 which were taken on or about May 16, 2007. The City must make all reasonable attempts to assure that the quality of the reproductions are reasonably similar to the quality of the original photographs. The wrongful death plaintiffs may seek additional reproductions hereafter by referring to the Bates stamp number of the specific item sought.

At a compliance conference held on August 25, 2010, the parties agreed that item 15 of the wrongful death plaintiff's first notice of discovery and inspection upon the City (Doc. 48) would be deemed a CPLR 3101 (f) demand. The City responded to that demand (Doc. 432).

Similarly, item three of the wrongful death plaintiff's preliminary CPLR Article 31 demands states,

“Pursuant to CPLR 3101 (f) Certified and complete copies of each insurance policy and document(s) and policy limitations which policy or policies were in effect on May 30, 2008 and any excess, umbrella insurance, reinsurance, self-insurance, or indemnity agreements which may in whole or in part become available for the payment of any judgment which may be had on the allegations stated in [p]laintiff's verified complaint and/or extend coverage to each/any defendant(s) for [p]laintiff's claims; additionally, each defendant(s) is to produce any and all policies which may provide coverage or excess coverage to any individually named defendant(s) or co-defendant(s) in this action” (Doc. 34).

Item three is stricken. CPLR 3101 (f) obligates the City to inform the wrongful death plaintiffs “of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.” The City has sufficiently responded and is reminded, of course, that like any other party, it has an ongoing duty to “amend or supplement a response previously given . . . promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading” (CPLR 3101 [h]).¹

B. As Propounded upon 1765 First Associates, LLC (Doc. 34)

At a compliance conference held on December 2, 2010, the wrongful death plaintiffs agreed to narrow the scope of certain items and 1765 First Associates agreed to furnish the

¹ The court notes that this item has been the source of some contention as it pertains to defendants other than the City of New York (*see* Point VI, *infra*) (Doc. 572) .

wrongful death plaintiffs with a response to those tailored items by December 17, 2010. Those items are addressed as follows:

Item number 4 is narrowed as follows: “Identity by full case name, index number and county, any legal proceedings initiated by 1765 First Associates or any of its insurers and/or against 1765 First Associates or any of its insurers arising from the crane collapse of May 30, 2008.”

As to item number 7, 1765 is directed to furnish the wrongful death plaintiffs with a copy of party or witness statements pertaining to the May 30, 2008 crane collapse, which shall include statements made in verbal, written, tape, video, telephone, e-mail, or fax formats.

Item number 10 is deemed stricken.

1765 is directed to furnish the wrongful death plaintiffs with materials responsive to item numbers 11, 12, and 13.

1765 is directed to furnish the wrongful death plaintiffs with materials responsive to item number 14. However, the temporal period shall be limited to materials from May 1, 2005 through December 31, 2008.

1765 is directed to furnish the wrongful death plaintiffs with materials responsive to item number 16. However, “contractors or subcontractors” shall be deemed stricken from this item and the temporal period shall be limited to March 1, 2008 through May 30, 2008.

Item number 17 is stricken.

1765 is directed to respond to item number 18.

Certain other items were reserved for resolution by this court. Those items are addressed as follows:

Item number 8 is stricken as overly broad.

1765 is directed to furnish a response to item numbers 19 and 20. The court recognizes that the terms “primary supervisor(s)” or “primary inspector(s)” may or may not constitute the seeking of a legal conclusion or may be insufficiently clear as they pertain to 1765., but 1765 is, at the least, required to state as much in a response.

Item numbers 21 and 22 are stricken.

1765 shall furnish the wrongful death plaintiffs with documents responsive to item number 23, which is tailored as follows: “Provide each permit and application for permit filed by 1765 First Associates with any New York City agency, New York State agency, or with a Federal Government agency with respect to the subject construction project from inception through December 31, 2008.”

As to item number 24, 1765 shall furnish the wrongful death plaintiffs with responsive materials to the extent that 1765 possesses such materials.

The scope of item number 25 is narrowed. 1765 shall furnish the wrongful death plaintiffs with any “job site construction operations manual” that was generated by 1765.

The scope of item number 26 is narrowed. 1765 shall furnish the wrongful death plaintiffs with any “safety training materials” that were generated by 1765.

As to item number 27, 1765 shall furnish the wrongful death plaintiffs with responsive materials to the extent that 1765 possesses such materials.

Item number 29 is stricken.²

² The items are not consecutively numbers. Item number 27 is followed by item number 29; there is no item number 28.

As to the items that were reserved for resolution by the court, 1765 shall furnish the wrongful death plaintiffs with a response and/or furnish the pertinent documents on or before December 31, 2010.

Inasmuch as each defendant is unique, the court's resolution of these demands as they pertain to 1765 First Associates shall not be construed as having any effect upon these demands as they pertain to any other defendant.

IV. Wrongful Death Plaintiffs' Notice for Discovery and Inspection Propounded upon 1765 First Associates, LLC (Doc. 54)

In light of the foregoing (*see* Point III.B, *supra*) the wrongful death plaintiffs have agreed to withdraw items A1 through A3, B1 through B8, and C.

Other than items D1, D8, and D9, items D1 through D14 were either resolved or withdrawn at the December 2, 2010 compliance conference. 1765 is directed to furnish the wrongful death plaintiffs with responses to items D1, D8, and D9 by December 31, 2010. The parties are encouraged to resolve the remainder of the outstanding items (D15 through to the end of the document).

V. Edward Marquette's Personnel Files

At a compliance conference held between the wrongful death plaintiffs and the City on August 20, 2010, this court directed the wrongful death plaintiffs to submit an offer of proof as to their discovery demand requesting the personnel records of Edward Marquette, which they did (Doc. 446). The City replied (Doc. 464) to which the wrongful death plaintiffs submitted a supplemental reply (Doc. 486). Considering the foregoing in light of this court's decision and order dated October 20, 2010 (Doc. 537), the court is satisfied that wrongful death plaintiffs are

entitled to DOB personnel files of Edward Marquette. The City is directed to furnish the wrongful death plaintiffs by December 31, 2010. The parties shall hold these documents in the strictest of confidence, and shall not copy, share, disseminate, nor distribute any of these documents to any entity other than those directly involved in the 91st Street Crane Collapse Litigation.

VI. Item Number 3 of the Wrongful Death Plaintiff's Preliminary CPLR Article 31 Demands (Doc. 34)

Item number 3 is deemed stricken as against all defendants. Contrary to the manner in which the wrongful death plaintiffs pleaded item number 3, CPLR 3101 (f) only obligates the defendants to inform the wrongful death plaintiffs "of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Any defendant that has not furnished the wrongful death plaintiffs with a response to a CPLR 3101 (f) demand shall do so on or before December 21, 2010. The parties are reminded that they have an ongoing duty to "amend or supplement a response previously given . . . promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading" (CPLR 3101 [h]).

This constitutes the order of the court.

Dated: *December 3, 2010*
at 6²⁵ pm
New York, New York



J.S.C.