

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:

GREATER NY MUTUAL INS. CO.	Index No. 100419/2009E	Index No.	771,000/2010
ROBERT G. LEINO	Index No. 101871/2009E	Date:	4/5/2010
JOHN ODERMATT	Index No. 102943/2009E		
KEVIN MAHONEY	Index No. 104543/2009E		
SIMEON ALEXIS	Index No. 105221/2009E		
JACK RIZZOCASIO	Index No. 108088/2009E		
FIRST & 91, LLC	Index No. 108543/2008E		
YASR ALGABYALI	Index No. 109171/2009E		
ROBERT GRAVES	Index No. 110068/2008E		
GIUSEPPE CALABRO	Index No. 110069/2008E		
CHRISTOPHER DORAN	Index No. 110200/2008E		
DANIEL ODDO	Index No. 111626/2008E		
STATE FARM FIRE & CAS. CO.	Index No. 111628/2009E		
JENNIFER KLING	Index No. 111967/2009E		
RICHARD S. BURCH	Index No. 112144/2009E		
DONALD RAYMOND LEO	Index No. 117294/2008E		
XHEVAHIRE SINANAJ	Index No. 117469/2008E		
MARINA HARSS	Index No. 150152/2009E		
VINCENT PODLASKI	Index No. 150166/2009E		

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THIS DOCUMENT RELATES TO: ALL CASES  
-----X

**CASE MANAGEMENT ORDER NO. 1**

**FILED**

APR - 6 2010

NEW YORK  
COUNTY CLERK'S OFFICE

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**THIS DOCUMENT RELATES TO: ALL CASES**  
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**CASE MANAGEMENT ORDER NO. 1**

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

These cases arise out of the collapse of a construction crane on May 30, 2008, at East 91<sup>st</sup> Street, New York County. By administrative order dated March 25, 2009, Hon. Joan B. Carey, the former Administrative Judge of the First Judicial District, assigned all actions arising out of this incident to this Part (*see* Adm. Order dated 3/25/2009, Index No. 560001/2009). To assist the court and parties in efficiently resolving pre-trial discovery and motion practice presented by

the numerous cases involved in the 91<sup>st</sup> Street Crane Collapse Litigation, it is hereby ORDERED:

**1. Applicability of this Order**

This Case Management Order (“CMO”) shall automatically apply to all above-mentioned actions and to all other actions arising out of or relating to the crane collapse on May 30, 2008, at East 91<sup>st</sup> Street. The court anticipates the issuance of additional CMOs as the litigation progresses, and will issue such orders as it sees fit.

**2. Master File, Case Files, and Captions**

**A. Master File**

The above-captioned actions are joined for the purposes of discovery, not consolidated. The court hereby directs that a Master File, entitled “In Re: 91<sup>st</sup> Street Crane Collapse Litigation,” Index No. 771000/10, shall be established (without fee) in the Office of the Clerk of New York County for all 91<sup>st</sup> Street Crane Collapse Litigation cases. The original of this CMO shall be filed by the County Clerk in the 91<sup>st</sup> Street Crane Collapse Litigation Master File, and a copy shall be deemed to be part of the record of each separate action. All subsequent entries in the 91<sup>st</sup> Street Crane Collapse Litigation Master File shall also be applicable to all of the 91<sup>st</sup> Street Crane Collapse Litigation cases. Each individual case shall also retain its separate index number and file in the Office of the Clerk of New York County and entries shall be made therein in accordance with this Order

**B. Case Files**

A separate file shall also be maintained in the Office of the Clerk of New York County under a separate index number for each individual 91<sup>st</sup> Street Crane Collapse Litigation

case assigned to this court, and entries shall be made therein in accordance with this CMO and/or future CMOs.

**C. Captions and Filing**

(i) *Every* document filed in the *court record* of these cases (as opposed to *discovery documents* which shall be filed with the discovery web server) shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 12  
-----X  
IN RE 91<sup>ST</sup> STREET CRANE COLLAPSE LITIGATION: Index No. 771000/2010  
-----X;

If a document filed in the court record relates to every 91<sup>st</sup> Street Crane Collapse case, then such document shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 12  
-----X  
IN RE 91<sup>ST</sup> STREET CRANE COLLAPSE LITIGATION: Index No. 771000/2010  
-----X  
**THIS DOCUMENT RELATES TO: ALL CASES**  
-----X;

(ii) If, instead, a document filed in the court record only relates to one or more specific cases but not to all of the 91<sup>st</sup> Street Crane Collapse Litigation cases, then such document shall bear the following caption(s)::

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 12  
-----X  
IN RE 91<sup>ST</sup> STREET CRANE COLLAPSE LITIGATION: Index No. 771000/2010  
-----X  
[Plaintiff(s) name], Index No. [specific case]

- against -

[Defendant(s) name]

-----X;

If a document only relates to one specified case or a group of specified cases, then the Clerk of the Court shall not file such a document in the Master File. Rather, that original document shall be filed in the file for the particular case(s) to which that document relates. The attorney submitting such a document for filing shall provide the Clerk with as many copies are needed for the Clerk to file a copy in each case file to which the document relates.

### **3. Steering Committees and Liaison Counsel**

A. To facilitate communication among the court and counsel, minimize duplication of effort, foster coordination of joint positions, promote efficacy and clarity, and for the purposes of formulating discovery demands, as discussed in paragraph 7, *infra*, the litigants are divided into five groups: (1) wrongful death plaintiffs; (2) other plaintiffs; (3) testing defendants; (4) construction defendants; (5) municipal defendants. All of the parties falling within each of these groups shall be represented by a steering committee of counsel as listed below. Each committee shall have a liaison(s) appointed as the spokesperson(s) for the group. Subject to further order of the court effecting such changes as circumstances may require, the groups, steering committee members, and liaisons are as follows:

#### **For Plaintiffs:**

##### **Group 1. Wrongful Death Plaintiffs:**

Bernadette Panzella, Esq.  
655 Avenue of the Americas, Suite 2E  
New York, NY 10010  
(212) 995-5353  
Bppc@yahoo.com

Susan Karten, Esq. (**Liaison**)  
Susan M. Karten & Associates, LLP  
355 Lexington Avenue  
New York, NY 10017  
(212) 826-3800  
Caskart@aol.com

**Group 2. Other Plaintiffs:**

Elizabeth Eilender, Esq. (**Liaison**)  
Jaroslawicz & Jaros, LLC  
225 Broadway, 24<sup>th</sup> Floor  
New York, NY 10007  
(212) 227-2780  
EEilender@lawjaros.com

David S. Smith, Esq.  
Gwertzman Lefkowitz Burman Smith & Marcus  
80 Broad Street  
New York, NY 10004  
(212) 968-1007  
Smith@gwertzmanlaw.com

**For Defendants:**

**Group 3. Testing Defendants:**

Richard Harris, Esq. (**Liaison**)  
Law Office of James J. Toomey  
485 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10017  
(631) 501-3009  
RHarris@travelers.com

Jeffrey Bard, Esq.  
Lawrence, Worden, Rainis & Bard, P.C.  
225 Broad Hollow Road, Suite 105E  
Melville, NY 11747  
(631) 694-0033  
JBard@lwrlawyer.com

Jason Katz, Esq.  
Lewis Johs Avallone, LLP  
425 Broad Hollow Road, Suite 400  
Melville, NY 11747

(631) 755-0101  
Jtkatz@lewisjohs.com

Jack Babchik, Esq.  
Babchik & Young, LLP  
2000 East Post Road  
White Plains, New York 10601  
(914) 470-0001  
Jack.babchik@babchikyoung.com

**Group 4. Construction Defendants:**

Mark D. Levi, Esq. (**Liaison**)  
Smith, Mazure, Director, Wilkins, Young, & Yagerman, P.C.  
111 John Street  
New York, NY 10038  
(212) 964-7400, ext. 217  
MLevi@smithmazure.com

Glenn J. Fuerth for New York Crane & Equipment Corp. et al.  
Wilson, Elser, Moskowitz, Edelman, & Dicker LLP  
150 East 42<sup>nd</sup> Street  
New York, NY 10017  
(212) 490-3000  
Glenn.Fuerth@wilsonelser.com

**Group 5. Municipal Defendants:**

Michael Tobin, Esq. (**Liaison**)  
Fabiani, Cohen, & Hall, LLP  
570 Lexington Avenue  
New York, NY 10022  
(212) 644-4420  
Tobinm@fcllp.com

B. The Steering Committees' responsibilities and duties shall be:

1. To consider case management issues for the parties within their groups; to consult with the other liaison counsel; to be heard on future CMOs after consultation with the other liaison counsel as designated in paragraph 4A, *supra*;
2. To correspond or meet with the all other members of their group for the



purpose of proposing responses to any questions or suggestions of the court or another group regarding orders, schedules, briefs, stipulations of fact, or other matters;

3. To coordinate motion practice within their particular group and amongst the other non-adversarial group(s), in a manner that promotes efficiency, avoids duplicative motions, and streamlines the briefing and argument of motions (*see also* paragraph 7, *infra*);

4. To coordinate discovery procedures, including, but not limited to, coordination of the preparation of joint demands for a bill of particulars, joint requests for the production of documents, joint written interrogatories, and joint notices to admit, pursuant to paragraph 7, *infra*, and any future CMOs governing discovery, where applicable;

5. To accurately represent the consensus of the particular group to which they are appointed on each of the above issues.

C. The steering committees shall not have the right to bind any party as to any matter without the consent of that particular party's counsel. If, 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. Further, to avoid any conflict of interest, each counsel serving on the steering committees shall remain free to represent the interests and positions of their particular clients at all times.

D. The court intends to hold regular status conferences. Before every such conference, all steering committee members shall confer with each other for the purposes of drafting an agenda for the conference. The agenda should clearly and specifically list each issue and/or

motion that shall be addressed at the conference. The list shall be submitted to the court at least three business days before each conference is scheduled. If the steering committees cannot agree upon a single agenda, each steering committee shall submit a list of items sought to be addressed at the conference to the court and to all liaison counsel at least three business days before each scheduled conference.

E. Steering committee members shall be reimbursed periodically, but not less than every two months, by the counsel for all of the parties within the group to which the committee members belong, pro rata (or if not pro rata, pursuant to a written agreement among the group members), for their necessary and reasonable expenses actually incurred in performing their tasks pursuant to this CMO and future CMOs. Each steering committee member shall keep reasonably detailed records of such expenses for examination by counsel for each party within the group.

F. Subject to the right of any party to present individual or divergent positions, the liaison counsel are vested with the following duties:

1. To receive orders, notices, correspondence, and telephone calls from the court on matters of general applicability on behalf of all plaintiffs or defendants within that liaison counsel's group, and shall notify all other counsel within their group of such communications;
2. To confer amongst each other and jointly maintain and distribute an up-to-date master service list pursuant to paragraph 9 of this order.
3. To submit all discovery documents (and any other item of general applicability but which are not part of the court record) to the web server for posting;
4. To act as the general spokes-persons on behalf of their group at all conferences

and hearings subject to the right of each party to have its counsel present any divergent position;

5. To coordinate and communicate with all other liaison counsel regarding the issues that should be addressed in future CMOs;

6. To communicate any consensus reached by the steering committee to which that liaison belongs to all other counsel belonging to that particular group;

7. To perform any other administrative task that may be required (i) to effectuate this CMO and future CMOs; (ii) by agreement of the parties within that liaison's group; (iii) by order of the court;

8. To promptly notify the court and all other liaison counsel if they become aware of any cases involved in this litigation which have not been properly indicated on the case list;

9. Notwithstanding the appointment of liaison counsel, each counsel shall have the right to participate in all proceedings before the court as fully as such counsel deems necessary. Liaison counsel shall not have the right to bind any party as to any matter without the consent of that party's counsel, except for each liaison counsel's own client(s);

10. If an RJJ has not been filed for a case to which this CMO applies, then the liaison counsel for the group to which that case belongs shall consult with counsel for that particular case and arrange for an RJJ to be filed within 14 days of the date of entry of this CMO. For any case relating to the 91<sup>st</sup> Street Crane Collapse Litigation that is commenced after the date of this CMO, the liaison counsel for the group to which that case belongs shall consult with counsel for that particular

case and arrange for an RJJ to be filed within 14 days of the date that the particular case becomes included in the 91<sup>st</sup> Street Crane Collapse Litigation;

11. To maintain records of receipts and disbursements they have advanced and report, in writing, such disbursements to the counsel for each party within their group;

12. Liaison counsel shall be reimbursed periodically, but not less than every two months, by the counsel for all of the parties within the group to which that liaison counsel belongs, pro rata (or if not pro rata, pursuant to a written agreement among the group members), for their necessary and reasonable expenses actually incurred in performing their tasks pursuant to this CMO and future CMOs.

Liaison counsel shall keep reasonably detailed records of such expenses for examination by counsel for each party within the group.

#### **4. Privilege**

The court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication, transmission, or dissemination of information in connection with the 91<sup>st</sup> Street Crane Collapse Litigation amongst plaintiffs' counsel, or amongst defendants' counsel, shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the work-product doctrine, the protection afforded to material prepared for litigation, the joint prosecution or joint defense privilege, nor any other privilege to which a party may be entitled. Cooperative efforts, as described in this CMO and future CMOs, shall not in any way be used against any of the parties, be cited as purported evidence of a conspiracy, wrongful action, or wrongful conduct, and shall not be communicated to the jury at the trial of any action. Nothing in this paragraph shall in any way

affect the applicability of any privileges or protection against disclosure otherwise available under law.

## **5. Third-Party Actions**

A. Where a party seeks to file a third-party complaint or other pleading that relates to *all* actions in 91<sup>st</sup> Street Crane Collapse Litigation, that pleading shall bear the caption set forth in paragraph 2C (i), *supra*.

B. Where a party seeks to file a third-party complaint or other pleading that relates to *one or more specific cases but not all cases*, that pleading shall bear the caption set forth in paragraph 2C (ii), *supra*.

C. The provisions governing filing of papers, electronic filing, and service of papers shall also apply to any third-party complaint or other pleading.

## **6. Rules of Procedure**

The Civil Practice Law and Rules, the Uniform Rules for Trial Courts, and the provisions of this CMO and any future CMO shall govern all actions in the 91<sup>st</sup> Street Crane Collapse Litigation.

## **7. General Procedures for Discovery**

A. The steering committees shall be responsible for coordinating discovery with the goal of ensuring that discovery is uniform and non-duplicative. Detailed procedures governing discovery and other demands for information shall be addressed here (*see* paragraph 10, *infra*) and in future CMOs. All discovery demands, made upon a party or a non-party witness, must be made under the direction of the proponent's steering committee. The liaison(s) for the proponent's steering committee shall confer with the other (non-adversarial) liaisons before the steering committee allows that proponent to make any

discovery demand. The steering committees shall make these coordinated efforts to prevent duplicate demands and promote efficiency. No demands for a bill of particular, request for production, interrogatories, notice to admit, deposition notice, subpoena duces tecum, nor subpoena ad testificandum may be propounded unless done so through the proponent's steering committee. All motions with respect to discovery, directed against a party or nonparty witness, must be made under the direction of the movant's steering committee. Prior to filing any non-dispositive motion, all parties must certify that they have attempted, in good faith, to resolve the issues pertaining to that motion. For discovery motions, the movant is required to adhere to the good faith requirements of 22 NYCRR 202.7 (a).

B. All disclosure and discovery proceedings and obligations directed against a party or non-party witness by any party are deemed withdrawn, except to the extent indicated by this court's orders dated April 2, 2010. After the date of issuance of this CMO, any discovery sought or motion made without the advice and direction of the proponent or movant's steering committee shall be deemed a nullity and responsive pleadings shall not be required, unless expressly ordered by the court.

C. Each party shall file a single response to all discovery propounded by the adversarial steering committee. Such response shall be applicable to all the cases in the 91<sup>st</sup> Street Crane Collapse Litigation. Each party shall produce documents to a central limited-access (password-protected) depository to be set up by Glenn Fuerth as discussed in paragraph 10.

D. Future CMOs shall address (among other things), a confidentiality stipulation and order, procedures for written discovery, document production (including creation of a

document depository), fact depositions, medical examinations of plaintiffs who assert personal injury or emotional distress claims, and expert discovery, as well as timetables for each of the above.

E. The court will consider whether in the case of certain categories of documents to be produced (including, without limitation, photographs, videotapes, databases or other items), the costs of producing such materials should be shared between or amongst the parties requesting them and the party or parties producing them. The respective proportions and amounts to be paid with respect to such categories of documents, as well as the categories of documents implicated, shall be the subject of a future CMO or by application to the court.

## **8. Electronic Filing**

All submissions relating to the 91<sup>st</sup> Street Crane Collapse Litigation shall be electronically filed in accordance with the e-filing procedures established by New York County Supreme Court ([www.nycourts.gov/e-file](http://www.nycourts.gov/e-file)). When a submission is applicable to all cases, the caption shall be Index No. 771000/2010 and the Clerk of New York County shall file such paper in the Master File. Any document so filed shall be deemed to have been filed in each case to which this CMO applies and shall constitute a part of the record of such case. Courtesy hard copies shall *not* be served unless the court specifically requests such copies. Should the court direct that a courtesy copy of a particular document be served, then that courtesy copy shall bear the phrase “Courtesy Copy–Original E-Filed as Document Number [E-File Document Number].”

## **9. Service of Papers**

### **A. Master Service List**

After conferring with each liaison counsel, Glenn Fuerth, Esq. shall maintain and

distribute maintain and distribute an up-to-date master service list of all the actions involved in the 91<sup>st</sup> Street Crane Collapse Litigation. The list shall include the name, address, e-mail address, and telephone number for each counsel within that particular liaison counsel's group. The list shall also specifically reference the index number and caption for which each counsel is appearing. The attorney named on that list shall be deemed the person upon whom valid service of papers (other than process) is to be made by any other party in accordance with CPLR 2103 (b). The list shall be updated as necessary to reflect the commencement of new cases, the resolution of existing cases, the transfer of any related cases into or out of this court and any changes of counsel subsequent to the entry of this order. Within 14 days of entry of this order, the list shall be distributed to the court, and the liaison counsel for each group shall also distribute the list to each counsel within that liaison's particular group. Mr. Fuerth shall post the list to the discovery web site. Each liaison counsel shall have an ongoing duty to, in writing, notify Mr. Fuerth of any changes. Mr. Fuerth shall have a duty to supplement or amend the master service list and, within 14 days of being informed of any such change, shall distribute an updated list to the court and to all other liaison counsel, who in turn will distribute the updated list to each of the parties within their group;

B. Discovery demands and responses will be served by posting on the discovery internet web site. The schedule is detailed by paragraph 10, *infra*. The court shall issue any amendments or changes in due dates by future CMOs or at compliance conferences.

C. The E-filing of a document automatically generates a notice to counsel involved in the case in which the document is filed. Counsel who e-file documents under an individual case's index number (i.e. documents that only relate to one particular case) shall also e-



mail a notification to the liaison for the group to which that counsel belongs. The liaison shall notify all other liaisons who shall, in turn, notify all the members of their group in accordance to the Master Service List. Any document that relates to all of the 91<sup>st</sup> Street Crane Collapse Litigation cases shall be e-filed with the Master File (Index No. 771000/2010). This will generate a notice of the filing to all counsel in the 91<sup>st</sup> Street Crane Collapse Litigation cases.

#### **10. Current Schedule**

All discovery demands and responses will be served and posted to a password-protected internet web site to be established as follows:

A. Glenn Fuerth, Esq. counsel for defendant New York Crane & Equipment Corp. et al. shall arrange to have a password-protected web site set up by **May 3, 2010**. Mr. Fuerth shall bare the initial cost of establishing the web site, but *all* other counsel (representing all plaintiffs, all defendants, all third-party plaintiffs, all third-party defendants, all second third-party plaintiffs, and all second third-party defendants) shall bear a pro rata share of the total sum expended. By **May 10, 2010**, Mr. Fuerth shall provide *all* other counsel with a reasonably detailed written notification which shall name the web master, the site address, any other pertinent information, and list the specific sum owed to Mr. Fuerth by all other counsel, who shall remit their pro rata share of expenditures to Mr. Fuerth by **May 17, 2010**. Any litigants who subsequently file pleadings and become involved in the 91<sup>st</sup> Street Crane Collapse Litigation case shall not be assessed for this initial start up fee.

B. Any counsel seeking to avail themselves of the web site discovery materials shall make those accommodations with the web master and, accordingly, shall be responsible for their own monthly service charges.

- C. All discovery demands must be channeled through the steering committee who shall submit the demands for posting on the web site.
- D. All disclosure and discovery proceedings and obligations directed against a party or non-party witness by any party are deemed withdrawn, except to the extent indicated by this court's orders dated April 2, 2010. All other previously served discovery demands will be replaced by demands which will be formulated by the steering committees (*see* paragraph 7, *supra*). All demands and responses made after the date of issuance of this order shall be posted to the website, via the steering committee. Failure to do so shall render any such demand a nullity.
- E. All discovery demands to be made upon any defendant must be submitted to the liaison for the steering committee to which that defendant belongs by **May 24, 2010**. All discovery demands to be made upon any plaintiff must be submitted to the liaison for the steering committee to which that plaintiff belongs by **May 31, 2010**.
- F. All objections to discovery demands must be made by letter (which must be posted to the web site and e-filed pursuant to the New York County e-filing procedures) by **June 7, 2010**. Any opposition to the objections must be made by letter (which must be posted to the web site and e-filed pursuant to the New York County e-filing procedures) by **June 14, 2010**. The court will only not consider an untimely submission.
- G. Counsel for parties shall attend the next compliance conference on **Wednesday, June 23, 2010, at 2:15 P.M.**, at which time the court will rule on all discovery objections.
- H. All parties who have served their summons and complaint or answer as of the date of this order shall respond to the discovery demands (as ruled upon by the court) on or before **July 21, 2010**. Discovery responses (including all documents provided therewith) are to

be served by providing them directly to the web site server in such a form and manner specified by the web site server.


I. Counsel for parties must attend a compliance conference on **Friday, July 30, 2010 at 10:00 A.M.**, at which time the court will issue a schedule for depositions.

#### **11. Further Matters**

Orders will be posted pursuant to the e-filing and SCROLL procedures and will also be posted on the Supreme Court, New York County Website ([www.nycourts.gov/supctmanh/](http://www.nycourts.gov/supctmanh/)) under the "Mass Tort Orders" link. Under that link will be a link entitled "91<sup>st</sup> Street Crane Collapse Litigation" under which the orders will be posted . These documents will be available to the general public.

This constitutes the order of the court.

Dated: April 5, 2010  
New York, New York

  
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J.S.C.

**FILED**  
APR - 6 2010  
NEW YORK  
COUNTY CLERK'S OFFICE