

**Matter of Steam Pipe Explosion at 41st St. &
Lexington Ave.**

2013 NY Slip Op 3363Q(U)

April 24, 2013

Supreme Court, New York County

Docket Number: 768000/2008

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JARFFE
Justice

PART 12

Index Number : 768000/2008
STEAM PIPE EXPLOSION AT 41ST
vs.
CONSOLIDATED EDISON OF NEW
SEQUENCE NUMBER : 002
COMPEL DISCLOSURE

INDEX NO. 768000/2008
MOTION DATE
MOTION SEQ. NO. 002

The following papers, numbered 1 to , were read on this motion to/for Compel Disclosure
Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits
Answering Affidavits -- Exhibits
Replying Affidavits

No(s) 160-181
No(s) 234-245
No(s) 269-282

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 4/24/13

[Signature] J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
IN RE: STEAM PIPE EXPLOSION AT 41st STREET
AND LEXINGTON AVENUE

Index No. 768000/08

Mot. seq. nos.: 002, 003
Subm.: 4/17/13

This Document Relates to All Cases

DECISION AND ORDER

-----X
BARBARA JAFFE, J.:

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By notice of motion dated September 14, 2012, defendant/third-party plaintiff Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. (Con Ed, collectively) move pursuant to CPLR 3124 for an order compelling discovery responses from third-party defendant Team Industrial Services, Inc. (Team). Team opposes.

By notice of motion dated September 24, 2012, Con Ed moves pursuant to CPLR 3124 for an order compelling discovery responses from third-party defendant City of New York. City opposes.

The motions are consolidated for disposition.

I. MOTION AGAINST TEAM

Con Ed's motion to compel discovery from Team is granted to the following extent:

- (1) Team is directed to produce eight boxes of documents in possession of Team's former counsel and relating to the *Diamond Shamrock* incident, for an *in camera* inspection within 30 days of the date of this order;
- (2) Team is directed to search its records for any prior incidents involving the excessive application of sealant and/or the use and application of sealant which caused or contributed to the failure or disruption of any customer's equipment occurring during the five years before the Steam Pipe Incident. Team is also directed to provide the other parties, within 30 days of the date of this order, with any responsive documents, or, if none are found, to provide a detailed affidavit describing its search for the documents, including where it searched, how it searched (i.e. the search parameters), and why no documents were found;
- (3)
 - (a) Team is directed to provide, within 30 days of the date of this order, a detailed affidavit describing its search for emails requested by Con Ed including a description of its email storage and/or retention policy in effect since 2003;
 - (b) Team is also directed to review, within 60 days of the date of this order, the email back-up tapes referenced in its opposition to Con Ed's motion, and search for emails related to the following:
 - (1) any leak repair jobs performed by it for Con Ed;
 - (2) any incidents involving the excessive application of sealant

and/or the use and application of sealant which caused or contributed to the failure or disruption of any customer's equipment during the five years before the Steam Pipe Incident; and

- (3) Labry's post-incident review or investigation.

To the extent that no responsive documents are found, Team is directed to provide a detailed affidavit describing its search for the documents, including where it searched, how it searched (i.e. the search parameters), and explaining why no documents were found. If responsive documents are found, Team must provide them within 30 days of the completion of its search, and if Team asserts that any of the responsive documents are privileged, it must submit them *in camera* along with a privilege log;

- (4) Team is directed to provide Con Ed, within 30 days of the date of this order, with an affidavit from Labry in which he details whether he produced or generated any documents incident to his post-incident review or investigation, and if so, where those documents are now or were last located;
- (5) Team is directed to provide, within 20 days of the date of this order, unredacted copies of the compensation information it provided to the other parties in redacted form, for an *in camera* review as to whether the documents reflect that the employee received any incentive-type of compensation during the five years before the Steam Pipe Incident. While Team argues that it is prohibited by federal law from disclosing such information, it cites no applicable law.

II. MOTION AGAINST CITY

Con Ed's motion to compel discovery from City is granted to the following extent:

City is to directed to provide, within 30 days of the date of this order, the following supplemental responses:

- (1) whether the hydraulic analysis performed after the Steam Pipe Incident involved any sewer or drainage systems in Manhattan;
- (2) how web-based complaints made to City are processed and/or stored by City; and
- (3) whether the documents relating to City's policies, standard operating procedures, or other written guidelines about sewer and water facilities and relevant maps which were produced by City constitute all such documents in its possession and/or control.

Con Ed's request concerning City e-mails is denied as the Affirmation of Daniel Gorayeb, dated November 28, 2012, and the Affidavit of James Roberts, dated November 29, 2012, sufficiently describe City's protocol for storing and retrieving emails, and specifically how it preserved and retrieved pertinent information and documents in this litigation.

Con Ed's request to conduct more City depositions is denied without prejudice to renew after the already-noticed depositions have been held.

Con Ed's request for an award of costs from City is denied, although it may renew its request if City does not provide timely responses to this order.

III. CONCLUSION

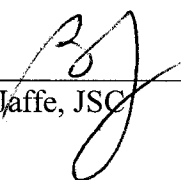
Accordingly, it is hereby

ORDERED, that defendant/third-party plaintiff Con Edison's motion to compel against

third-party defendant Team Industrial Services, Inc. is granted to the extent reflected above; and
it is further

ORDERED, that defendant/third-party plaintiff Con Edison's motion to compel against
third-party defendant City of New York is granted to the extent reflected above.

ENTER:



Barbara Jaffe, JSC

DATED: April 24, 2013
New York, New York