

New York Law Journal

Judge Lifts Seal on Documents in Crane Settlement

John Caher

January 5, 2012

A Manhattan judge has ordered the unsealing of settlement documents related to the fatal 2008 tower crane collapse on East 51st Street, where 31 people were killed or injured.

Supreme Court Justice Carol R. Edmead rejected the arguments of the defendants and held that since all of the Labor Law wrongful death cases have settled, there is no further justification for shielding the details from the public. In a decision dated Dec. 22, Justice Edmead ordered the documents unsealed as of Jan. 17.

"When global settlement was in its nascent stages, and the paramount issue was to resolve the Labor Law wrongful death damage trials, preserving the integrity of the settlement efforts in the Labor Law wrongful death cases outweighed disclosure of the settlement amounts," she wrote. "Now that those Labor Law wrongful death cases have been disposed, the need to keep confidential the settlement amounts is eviscerated."

Squeri v. East 51st Street Development, 103802/ 2009, stems from a March 15, 2008, tragedy where a 200-foot tower crane collapsed during the construction of a high-rise at 303 E. 51st St. Seven plaintiffs were awarded summary judgment on liability under the strict liability provision of Labor Law §240.

After one of the Labor Law wrongful death plaintiffs—a construction worker who died in the accident—settled, Justice Edmead in January 2011 temporarily sealed the settlement documents. Subsequently, after the five remaining Labor Law wrongful death actions settled, the plaintiffs and two defendants sought to unseal the documents.



Rescue workers search through wreckage of a crane collapse on 50th Street near Second Avenue in 2008.

Proponents of unsealing argued that since the Labor Law wrongful death actions are settled, there is no justification for maintaining the sealing order.

Opponents of sealing argued that it is premature to lift the sealing order since one non-Labor Law wrongful death action and one Labor Law personal injury matter are pending.

Justice Edmead found that the documents should be unsealed.

"The concern that knowledge of the terms of the settlements will derail or delay settlement of [the remaining cases] is diminished by the fact that these two cases are markedly different from the settled cases," Justice Edmead wrote.

She noted that one of the pending cases is not a wrongful death action and that the other is not premised on strict liability.

"These two cases do not present the same concern of 'piggy backing' on the settled cases in order to arrive at a settlement term," Justice Edmead wrote. "Thus, [the remaining cases] can be resolved on their own merits, without the risk of undue delay arising from the comparison of facts and circumstances of these cases with those of the other settled cases."

The judge added that further attempts to proceed to a global mediation cannot be accomplished without the parties' knowledge of available coverage.

Continued sealing would result in prejudice to the plaintiff "in that its decision to settle or try the case is based on which defendants are minded to settle as well as [plaintiff's] knowledge of available insurance coverage to satisfy the claims of those defendants who participated in settlement discussions," Justice Edmead said.

Robert E. Godosky of Godosky & Gentile in Manhattan was lead counsel for plaintiffs on the motion to unseal.

Colin Kaufman and **Adam Leitman Bailey** of the **Law Firm of Adam Leitman Bailey** represent Crave Foods Inc., a plaintiff in favor of unsealing.

"We salute Justice Edmead for keeping the courts' business and decisions open to the public which is a bedrock of our democracy," **Mr. Bailey** said in a statement. "We are hoping that this decision will now lead to fruitful settlement discussions between the parties."

Joshua Lindy of Brody, Benard & Branch represents Liftex Corp., a defendant favoring unsealing.

Tancred V. Schiavoni III of O'Melveny & Myers and Chad E. Sjoquist of Gallo Vitucci & Klar were lead counsel for the defendants opposed to the unsealing motion.