

EXHIBIT A

2012-PI 616617

2012-029529

In the Matter of the Claim of

VELIMIR ZIC and MARILYN ZIC

-against-

THE CITY OF NEW YORK

TO: THE COMPTROLLER OF THE CITY OF NEW YORK

PLEASE TAKE NOTICE that the undersigned Claimants hereby make claim and demand against you as follows:

1. The name and post-office address of each Claimant and Claimant's attorney is:

CLAIMANTS

VELIMIR ZIC and MARILYN ZIC
39 Mabaline Road
Old Bridge, New Jersey 08857

CLAIMANTS' ATTORNEY

STEPHEN M. CANTOR, P.C.
Attorney at Law
325 Broadway, Suite 502
New York, New York 10007

2. The nature of the claim: Personal injury.

3. The time when, the place where and the manner in which the claim arose:
VELIMIR ZIC, from on or before April 14, 2011, was employed as a painter, a paint abatement worker and foreman to perform work at the Thurgood Marshall U.S. Courthouse, the New York City Subway Station D line, the Brooklyn Navy Yard, the 59th Street Bridge

During the above mentioned period, VELIMIR ZIC was not provided with a safe place to work. Often, as a paint abatement worker, painter and foreman he was not provided with proper monitoring for contaminants, proper ventilation and proper respirators and filters, and while abating lead paint and working with paint, solvents, lacquer thinner, benzene, paint thinner and chemical strippers he inhaled lead dust, lead fumes and carcinogens. On April 24, 2012, he learned that the illnesses he suffered were the direct result of his work at said sites and time period.

4. The items of damage or injuries claimed:

- A. Lung Cancer, underwent right upper Lobectomy of the Lung in April, 2011.
- B. Lead Poisoning
- C. Headaches and nausea;
- D. Joint pain and constipation;
- E. Excessive tiredness and weakness; and
- F. Tremors and irritability.

TOTAL AMOUNT CLAIMED* In excess of Three Million Dollars (\$3,000,000.00)

And for the Claimant, Marilyn Zic, for the loss of consortium, society and companionship of her husband, Velimir Zic, in an amount not less than \$250,000.00.

*Do not use dollar amounts outside of New York City.


2012 MAR 27 PM 12:25

The undersigned claimants therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimants intend to commence an action on this claim.

Dated: 6/5/12


VELIMIR ZIC


MARILYN ZIC


Attorney for Claimants

Office and Post Office Address, Telephone Number
325 Broadway, Suite 502
New York, New York 10007
(212) 732-8456

INDIVIDUAL VERIFICATION

CORPORATE VERIFICATION

State of New York, County of

SS.:

State of New York, County of

SS.:

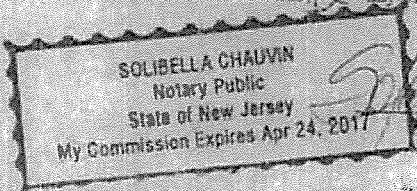
VELIMIR ZIC and MARILYN ZIC

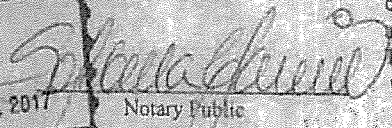
being duly sworn, deposes and says that deponents are the claimants in the within action; that they have read the foregoing Notice of Claim and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponents believe it to be true.

being duly sworn, deposes and says that deponents is the of corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this 12 day of June, 2012

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows.




Notary Public

Sworn to before me, this day of 2012

In the Matter of the Claim of

VELIMIR ZIC and MARILYN ZIC

Notice of Claim Against

THE CITY OF NEW YORK

STEPHEN M. CANTOR, P.C.
Attorney at Law

Attorney for Claimants
Office and Post Office Address

325 Broadway, Suite 502
New York, New York 10007
(212) 732-8456

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW
YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC.; HUNT
CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND
LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

Defendants.

Index No.

Date purchased:

Plaintiff(s) designate(s)
New York
County as the place of trial

The basis of the venue is
Plaintiff's place of injury

Summons

Plaintiffs reside at
39 Mabaline Road
Old Bridge, NJ 08857
County of MIDDLESEX

To the above named Defendant (s)

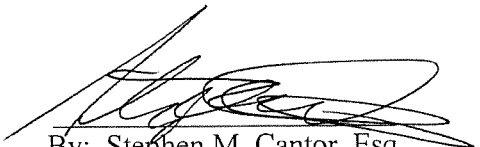
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 7, 2012

Defendants' addresses:

The City of New York
1 Centre Street, New York, NY 10007
The Metropolitan Transportation Authority
347 Madison Avenue, New York, NY 10017

STEPHEN M. CANTOR, P.C.,
ATTORNEY AT LAW


By: Stephen M. Cantor, Esq.

The New York City Transit Authority

130 Livingston Street, Brooklyn, NY 11201

Tishman Construction Corporation

100 Park Avenue, New York, NY 10017

AECOM Technology Corporation

100 Park Avenue, New York, NY 10017

Citnalta Construction Corp.

1601 Locust Avenue, Bohemia, NY 11716

Judlau Contracting, Inc.

26-15 Ulmer Street, College Point, NY 11354

The New York Times Company

620 Eighth Avenue, New York, NY 10018

Forest City Ratner Companies

1 Metro Tech Center North, Brooklyn, NY 11201

Forest City Enterprises

1100 Terminal Tower, 50 Public Square, Cleveland, OH 44113-2203

Amec Construction Management, Inc.

2200 Fletcher Avenue, 6th Floor, Fort Lee, NJ 07024

Boston Properties Limited Partnership

599 Lexington Avenue, New York, NY 10022-6004

Queens Ballpark Company, LLC.

123-01 Roosevelt Avenue, Flushing, NY 11368

Hunt Construction Group

752 Pacific Street, 6th Floor, Brooklyn, NY 11238

Lend Lease Corporation Limited

200 Park Avenue, New York, NY 10166

Total Safety Consulting

6 Highland Avenue, Staten Island, NY 10301

Office and Post Office Address

325 Broadway, Suite 502

New York, New York 10007-1187

(212) 732-8456

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No.

-against-

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a BOVIS
LEND LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

VERIFIED COMPLAINT

Defendants.

-----X

Plaintiffs, VELIMIR ZIC and MARILYN ZIC, by their attorneys Stephen M. Cantor, P.C., Attorney at Law, as and for their Verified Complaint against the defendants, respectfully show and allege:

THE PARTIES

1. At all times relevant hereto, plaintiff, VELIMIR ZIC, was and is a resident of the County of Middlesex, State of New Jersey.

2. At all times relevant hereto, plaintiff, MARILYN ZIC, was and is the lawful wife of the plaintiff VELIMIR ZIC.

3. That plaintiff, VELIMIR ZIC, from June 11, 2001 and continuing thereafter for almost ten (10) years, as a member of Local 806 Bridge Painters Union, employed by L & L Painting Co., Inc., 900 South Oyster Bay Road, Hicksville, NY 11801, was employed as a lead paint abatement worker, painter and foreman and was assigned to work on numerous days, within the following time spans, at the following sites: the

Interlocking Track/Atlantic Avenue NEW YORK CITY TRANSIT AUTHORITY (NYCTA) project, from June 11, 2001 to August 9, 2004; the deck replacement on the Harlem River Drive, from December 16, 2002 to October 24, 2005; the Battery Maritime Building, from May 10, 2004 to October 17, 2005; the 59th Street Bridge, from July 26, 2004 to July 20, 2009; The New York Times Building, from December 5, 2005 to January 8, 2007; the Bronx Park East (NYCTA) Station, from June 18, 2007 to August 13, 2007; the U.S. Post Office at 90 Church Street in New York County, from August 20, 2007 to April 7, 2008; Citi Field, from October 15, 2007 to May 11, 2009; the Brooklyn Navy Yard, from September 28, 2009 to October 19, 2009; the Rehabilitation of 7 Stations Project (NYCTA), West End Line, in Kings County, from January 11, 2010 to December 6, 2010; and the Thurgood Marshall U.S. Courthouse in New York County, from August 9, 2010 to April 18, 2011.

4. That at all times relevant hereto, upon information and belief, THE CITY OF NEW YORK, owns, operates, manages and maintains the 59th Street Bridge, known officially as the Ed Koch Queensboro Bridge, the Harlem River Drive, the Battery Maritime Building and the Brooklyn Navy Yard and, as such, was and is responsible for planning and supervising all lead paint abatement, painting, demolition and construction activities on the deck replacement on the Harlem River Drive, from December 16, 2002 to October 24, 2005; the Battery Maritime Building, from May 10, 2004 to October 17, 2005; the 59th Street Bridge, from July 26, 2004 to July 20, 2009; and the Brooklyn Navy Yard from September 28, 2009 to October 19, 2009.

5. That at all times relevant hereto, upon information and belief, the METROPOLITAN TRANSPORTATION AUTHORITY (MTA) was and is an authority and agency of New York State, located at 347 Madison Avenue, New York, NY 10017, and, as such, leases, owns, operates and manages the NYCTA facilities, stations and lines, among others, and, as such, was and is responsible for planning and supervising all lead paint abatement, painting, demolition and construction activities for NYCTA stations, lines, structure steel and other locations on the Interlocking Track/Atlantic Avenue (NYCTA) project, from June 11, 2001 to August 9, 2004; the Bronx Park East (NYCTA) Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5

and 7 Stations Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010.

6. That at all times relevant hereto, upon information and belief, the NEW YORK CITY TRANSIT AUTHORITY (NYCTA), now known popularly as MTA New York City Transit, was and is a public benefit corporation, controlled by and an affiliate of the MTA, located at 130 Livingston Street, Brooklyn, NY 11201, and, as such, leases, owns, operates and manages NYCTA facilities, stations, subway and elevated lines and, as such, was and is responsible for planning and supervising all lead paint abatement, painting, demolition and construction activities for NYCTA stations, lines, structure steel and other locations on the Interlocking Track/Atlantic Avenue NYCTA project, from June 11, 2001 to August 9, 2004; the Bronx Park East NYCTA Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5 and 7 Stations NYCTA Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010.

7. That at all times relevant hereto, upon information and belief, TISHMAN CONSTRUCTION CORPORATION, owned by and a subsidiary of AECOM TECHNOLOGY CORPORATION, was and is a corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, with offices at 100 Park Avenue, New York, NY 10017, and, as such, was responsible, as the General Construction Contractor for hiring sub-contractors, and for planning, supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at the Battery Maritime Building in the County, City and State of New York from May 10, 2004 to October 17, 2005.

8. That at all times relevant hereto, upon information and belief, AECOM TECHNOLOGY CORPORATION, with offices at 100 Park Avenue, New York, NY 10017, as the owner of its subsidiary, TISHMAN CONSTRUCTION CORPORATION, which was a corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, and, as such, was responsible, as the General Construction Contractor for hiring sub-contractors, and for planning, supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at the Battery Maritime Building in the County, City and State of New York from May 10, 2004 to October 17, 2005.

9. That at all times relevant hereto, upon information and belief, CITNALTA CONSTRUCTION CORP., was and is a corporation licensed to perform construction, demolition and rehabilitation work in the City and State of New York, with headquarters at 1601 Locust Avenue, Bohemia, NY 11716, and, as such, was responsible, as the General Construction Contractor in a Joint Venture with JUDLAU CONTRACTING, INC., for hiring sub-contractors, and for planning, supervising and overseeing certain lead paint abatement, painting, demolition and construction activities for NYCTA stations, lines, structure steel and other locations on the Interlocking Track/Atlantic Avenue NYCTA project, from June 11, 2001 to August 9, 2004; the Bronx Park East NYCTA Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5 and 7 Stations NYCTA Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010.

10. That at all times relevant hereto, upon information and belief, JUDLAU CONTRACTING, INC., was and is a corporation licensed to perform construction, demolition and rehabilitation work in the City and State of New York, with headquarters at 26-15 Ulmer Street, College Point, NY 11354, and, as such, was responsible, as the General Construction Contractor in a Joint Venture with CITNALTA CONSTRUCTION CORP., for hiring sub-contractors, and for planning, supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at NYCTA stations, lines, structure steel and other locations on the Interlocking Track/Atlantic Avenue NYCTA project, from June 11, 2001 to August 9, 2004; the Bronx Park East NYCTA Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5 and 7 Stations NYCTA Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010.

11. That at all times relevant hereto, upon information and belief, THE NEW YORK TIMES COMPANY, was and is a corporation and owner of the New York Times Building, located at 620 Eighth Avenue, New York, NY 10018, and, as such, was responsible, as the building owner for hiring contractors and for planning, supervising and overseeing all lead paint abatement, painting, demolition and construction activities at the New York Times Building from December 5, 2005 to January 8, 2007.

12. That at all times relevant hereto, upon information and belief, FOREST CITY RATNER COMPANIES, located at 1 MetroTech Center North, Brooklyn, NY 11201, a wholly owned subsidiary of FOREST CITY ENTERPRISES, was and is a business, company, corporation and owner of the New York Times Building, located at 620 Eighth Avenue, New York, NY 10018, and, as such, was responsible, as a building owner for hiring contractors and for planning, supervising and overseeing all painting, demolition and construction activities at the New York Times Building from December 5, 2005 to January 8, 2007.

13. That at all times relevant hereto, upon information and belief, FOREST CITY ENTERPRISES, 1100 Terminal Tower, 50 Public Square, Cleveland, OH 44113-2203, was and is an enterprise, business, company and corporation and as the sole owner of FOREST CITY RATNER COMPANIES was and is an owner of the New York Times Building, located at 620 Eighth Avenue, New York, NY 10018, and, as such, was responsible, as a building owner for hiring contractors and for planning, supervising and overseeing all painting, demolition and construction activities at the New York Times Building from December 5, 2005 to January 8, 2007.

14. That at all times relevant hereto, upon information and belief, AMEC CONSTRUCTION MANAGEMENT, INC., was and is a corporation licensed to perform construction, demolition and rehabilitation work in the City and State of New York, located at 2200 Fletcher Avenue, 6th Floor, Fort Lee, NJ 07024, and, as such, was responsible, as the General Construction Contractor, for hiring sub-contractors and for planning, supervising and overseeing certain painting, demolition and construction activities at the New York Times Building from December 5, 2005 to January 8, 2007.

15. That at all times relevant hereto, upon information and belief, BOSTON PROPERTIES LIMITED PARTNERSHIP, was and is a limited partnership, business, company and corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, with offices located at 599 Lexington Avenue, New York, NY 10022-6004 , and, as such, was responsible, as the General Construction Contractor, for hiring sub-contractors, and for planning, supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at the U.S.

Post Office located at 90 Church Street in the County, City and State of New York from August 20, 2007 to April 7, 2008.

16. That at all times relevant hereto, upon information and belief, QUEENS BALLPARK COMPANY, LLC., located at 123-01 Roosevelt Avenue, Flushing, NY 11368, was and is an enterprise, business, company and corporation and owner of Citi Field, located at 12001 Roosevelt Avenue, Corona, NY 11368, and, as such, was responsible, as the owner of Citi Field for hiring contractors and for planning, supervising and overseeing all painting, demolition and construction activities at Citi Field from October 15, 2007 to May 11, 2009.

17. That at all times relevant hereto, upon information and belief, HUNT CONSTRUCTION GROUP, was and is a corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, with headquarters at 6720 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85253, and offices at 752 Pacific Street, 6th Floor, Brooklyn, NY 11238, and, as such, was responsible, as the General Construction Contractor in a joint venture with LEND LEASE CORPORATION LIMITED f/k/a Bovis Lend Lease LMB, for hiring sub-contractors, and for planning, supervising and overseeing all painting, demolition and construction activities at Citi Field, located at 12001 Roosevelt Avenue, Corona, NY 11368, from October 15, 2007 to May 11, 2009.

18. That at all times relevant hereto, upon information and belief, LEND LEASE CORPORATION LIMITED f/k/a Bovis Lend Lease LMB, was and is a corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, located at 200 Park Avenue, New York, NY 10166, and, as such, was responsible, as the General Construction Contractor in a joint venture with HUNT CONSTRUCTION GROUP, for hiring sub-contractors, and for planning, supervising and overseeing all painting, demolition and construction activities at Citi Field, located at 12001 Roosevelt Avenue, Corona, NY 11368, from October 15, 2007 to May 11, 2009.

19. That at all times relevant hereto, upon information and belief, LEND LEASE CORPORATION LIMITED f/k/a Bovis Lend Lease LMB, was and is a corporation licensed to do construction, demolition and rehabilitation work in the City and State of New York, located at 200 Park Avenue, New York, NY 10166, and, as such, was

responsible, as the General Construction Contractor for hiring sub-contractors, and for planning, supervising and overseeing all lead paint abatement, painting, demolition and construction activities at the Thurgood Marshall U.S. Courthouse in the County, City and State of New York from August 9, 2010 to April 18, 2011.

20. That at all times relevant hereto, upon information and belief, TOTAL SAFETY CONSULTING, located at 6 Highland Avenue, Staten Island, NY 10301, was and is a business, company and corporation licensed to do safety consulting for lead paint abatement, painting, construction, demolition and rehabilitation work in the City and State of New York, and, as such, was responsible, as the safety consultant, for planning, supervising and overseeing safety procedures for all lead paint abatement, painting, demolition and construction activities at the Thurgood Marshall U.S. Courthouse in the County, City and State of New York from August 9, 2010 to April 18, 2011.

21. That heretofore, on or about the 27th day of June, 2012, and within 90 days after the claims herein arose, plaintiffs caused a notice of claim in writing, sworn to by and on behalf of the claimants, to be duly served upon the defendant, THE CITY OF NEW YORK, by delivering a copy thereof to said defendant personally, which notice of claim set forth the name and post office address of the claimants, their attorney, the nature of their claims, the time and location where and the manner in which said claims arose and described the known damages and injuries sustained by plaintiffs, to date; that at least thirty days have elapsed since the service of said notice; and that this action is being commenced within one year and 90 days after the happening of the event upon which the claim is based.

22. That heretofore, on or about the 27th day of June, 2012, and within 90 days after the claims herein arose, plaintiffs caused a notice of claim in writing, sworn to by and on behalf of the claimants, to be duly served upon the defendant, THE METROPOLITAN TRANSPORTATION AUTHORITY, by delivering a copy thereof to said defendant personally, which notice of claim set forth the name and post office address of the claimants, their attorney, the nature of their claims, the time and location where and the manner in which said claims arose and described the known damages and injuries sustained by plaintiffs, to date; that at least thirty days have elapsed since the service of

said notice; and that this action is being commenced within one year and 90 days after the happening of the event upon which the claim is based.

23. That heretofore, on or about the 27th day of June, 2012, and within 90 days after the claims herein arose, plaintiffs caused a notice of claim in writing, sworn to by and on behalf of the claimants, to be duly served upon the defendant, THE NEW YORK CITY TRANSIT AUTHORITY, by delivering a copy thereof to said defendant personally, which notice of claim set forth the name and post office address of the claimants, their attorney, the nature of their claims, the time and location where and the manner in which said claims arose and described the known damages and injuries sustained by plaintiffs, to date; that at least thirty days have elapsed since the service of said notice; and that this action is being commenced within one year and 90 days after the happening of the event upon which the claim is based.

AS AND FOR A FIRST CAUSE OF ACTION

24. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "23" of this Verified Complaint, as if fully set forth herein.

25. That plaintiff, VELIMIR ZIC, from June 11, 2001 to April 18, 2011, while doing assigned work as a lead paint abatement worker, painter and foreman at said projects, and solely as a result of the negligence of the above-named defendants, jointly and severally, sustained severe personal injuries, including lung cancer and lead poisoning, as a result of his exposure, inhalation and handling of painting materials, including, but not limited to, paints, solvents, lacquer thinner, benzene, paint thinner and chemical strippers, and as a result of his exposure and inhalation of lead fumes, lead smoke, lead dust and lead particles, among others, resulting, in part, if not wholly, from his exposure during lead paint abatement with, among others, chemicals, abrasives and power tools, and there was no proper monitoring of the air quality for dangerous contaminants at said sites, he was not provided with proper respiratory equipment and proper fit tests, which negligence caused permanent and acute symptoms, severe injuries and substantial pain and suffering as a result of his injuries.

26. The negative conduct of defendants, THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY

CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED; and TOTAL SAFETY CONSULTING, violated, among others, but not limited to, sections of the New York State Labor Law: Section 200, et seq., the general duty of the building owners and contractors to protect the health and safety of employees; and Section 241(6) and New York Codes, Rules and Regulations promulgated thereunder, requiring areas in which construction or demolition work is being performed to be operated so as to provide reasonable and adequate protection and safety to persons employed therein; in negligently, recklessly and carelessly permitting and allowing the aforesaid areas to remain in a dangerous, defective, hazardous and unsafe condition, and generally dangerous to persons or workers lawfully working in said areas; defendants failed to make adequate and sufficient inspection of the aforesaid areas; defendants failed to properly monitor the air for toxic contaminants in said areas; defendants failed to take proper means and precautions to prevent the said areas from becoming and remaining dangerous to workers; defendants failed to properly supervise demolition/construction activities, including lead paint abatement and painting, in which plaintiff and other workers were involved; and in otherwise being careless and negligent.

27. The negligent conduct of defendants, THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED; and TOTAL SAFETY CONSULTING, violated the above-mentioned New York State Labor Law Section 241(6) and New York Codes, Rules and Regulations promulgated thereunder, including, but not limited to:

12 NYCRR Subpart 23 – 1.2 (f) Finding of fact: Persons employed in ... demolition operations are exposed to various hazards, including exposure to the elements and air contaminants.

12 NYCRR Subpart 23 – 1.5 (a) General responsibility of employers, owners and contractors: Required to provide safe working conditions, personal protective equipment and safe places to work;

12 NYCRR Subpart 23 – 1.5 (b) General responsibility of employers, owners and contractors: General requirement of competency;

12 NYCRR Subpart 23 – 1.5 (c) (3) General responsibility of employers, owners and contractors: All safety devices, safeguards and equipment in use must be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged;

12 NYCRR Subpart 23 – 1.7 (g) Protection from general hazards. Air contaminated or oxygen deficient work areas: The atmosphere of any unventilated confined area...where dangerous air contaminants may be present...shall be tested by the employer,...or by a designated person before any person is permitted to work;

12 NYCRR Subpart 23 – 1.8 (b) (1) Personal protective equipment. Respirators: Where this Part requires a respirator to be provided, the employer shall furnish and the employee shall use an approved respirator.

12 NYCRR Subpart 12 – 1.1 Finding of fact.

12 NYCRR Subpart 12 – 1.2 Application.

12 NYCRR Subpart 12 – 1.4 (a) Prevention of air contamination. General: All operations which produce air contaminants shall be so conducted that the generation, release or dissemination of such air contaminants is kept at the lowest practicable level in compliance with this Part (rule) using proper control or protective procedures and equipment.

12 NYCRR Subpart 12 – 1.4 (b) (1) Responsibility of employers. Every employer shall effect compliance with the provisions of this Part (rule) relating to the prevention and removal of air contaminants,...and the provision, installation, operation and maintenance of control or protective equipment.

12 NYCRR Subpart 12 – 1.4 (b) (2) Responsibility of employers. Every employer shall instruct his employees as to the hazards of their work, the use of the control or protective equipment and their responsibility for complying with the provisions of this Part (rule).

12 NYCRR Subpart 12 – 1.4 (b) (4) Responsibility of employers. No employer shall...permit dangerous air contaminants to accumulate or remain in any place or area subject to the provisions of this Part (rule).

12 NYCRR Subpart 12 – 1.4 (c) Responsibility of employees. Every employee shall use the control and protective equipment provided for his protection...

12 NYCRR Subpart 12 – 1.5 (a) (1) Personal respiratory protective equipment. Use: Personal respiratory protective equipment shall not be used in lieu of other control methods, except for protection of employees in emergencies...

12 NYCRR Subpart 12 – 1.5 (a) (2) Personal respiratory protective equipment. Approval: Personal respiratory protective equipment shall be of a type approved by the board for the particular class of substance or substances constituting the air contaminant.

12 NYCRR Subpart 12 – 1.5 (a) (3) Personal respiratory protective equipment. Maintenance: Personal respiratory protective equipment shall be stored in air-tight containers or cabinets or in an uncontaminated area. Such equipment shall be cleaned, serviced and repaired to maintain it in effective working condition and it shall be sterilized before use by any person other than the last wearer.

12 NYCRR Subpart 12 – 1.6 (a) General control methods. One or more of the following methods shall be used to prevent, remove, or control dangerous air contaminants:

- (1) Substitution of a material or a method which does not produce dangerous air contaminants.
- (2) Local exhaust ventilation...
- (3) Dilution ventilation.
- (4) Application of water or other wetting agent.
- (5) Enclosure or isolation.
- (6) Other methods approved by the board.

12 NYCRR Subpart 12 – 1.6 (c) Isolation or segregation of operations. All...operations releasing or disseminating dangerous air contaminants shall be isolated, enclosed or otherwise segregated insofar as practicable.

12 NYCRR Subpart 12 – 1.9 (a) (1) Entering confined spaces. Confined spaces where dangerous air contaminants...are present or could be introduced from potential sources shall not be entered by any person for any reason until the atmosphere of such confined spaces has been tested and found free of dangerous air contaminants. If, however, due to

emergency conditions, any such confined space cannot be cleared of dangerous air contaminants by mechanical ventilation or equivalent means, any person entering such confined space shall be provided with and shall use an approved air line respirator, approved hose mask or approved self-contained breathing apparatus.

12 NYCRR Subpart 12 – 3.1 Evidence of dangerous air contaminants. General: The existence of air contaminants in quantities greater than those set forth in listed tables shall constitute prima facie evidence that such contaminants are dangerous air contaminants.

28. That by reason of the foregoing, the plaintiff, VELIMIR ZIC, was rendered sick and sore and was caused to suffer severe injuries of a permanent nature and character.

29. As a result of defendants' negligence, plaintiff, VELIMIR ZIC, suffered permanent physical injuries in an amount to be determined in excess of Five Million (\$5,000,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION

30. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "29" of this Verified Complaint, as if fully set forth herein.

31. While defendants, THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED; and TOTAL SAFETY CONSULTING, were engaged in supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at said sites and time periods said defendants negligently failed to properly supervise the lead paint abatement workers and painters, including the plaintiff, VELIMIR ZIC, at said locations to ensure that their work was performed in a safe manner, by failing to properly monitor the air quality for dangerous contaminants, failing to provide proper respiratory equipment and proper fit tests for the lead paint abatement workers, painters and foremen, and failing to use proper methods to prevent, remove and control substantial quantities of dangerous air contaminants, including painting

materials, painting material fumes, paint fumes, lead fumes, lead dust, lead particles and lead by-products, from being inhaled by the lead paint abatement workers, painters and foremen, including the plaintiff, VELIMIR ZIC, for more than ten (10) years.

32. As a result of the negligence of defendants, THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED; and TOTAL SAFETY CONSULTING, in failing to properly and adequately supervise the lead paint abatement, painting, demolition and construction work, the plaintiff, VELIMIR ZIC, suffered severe permanent physical injuries and substantial pain and suffering for which he seeks damages in an amount in excess of Three Million (\$3,000,000.00) Dollars.

AS AND FOR A THIRD CAUSE OF ACTION

33. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "32" of this Verified Complaint, as if fully set forth herein.

34. While defendant, THE METROPOLITAN TRANSPORTATION AUTHORITY, was engaged in supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at NYCTA stations, lines, structure steel, locations, among others, on the Interlocking Track/Atlantic Avenue (NYCTA) project in Kings County, from June 11, 2001 to August 9, 2004; the Bronx Park East (NYCTA) Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5 and 7 Stations Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010, said defendant negligently failed to properly monitor and supervise defendants, THE NEW YORK CITY TRANSIT AUTHORITY, CITNALTA CONSTRUCTION CORP., and JUDLAU CONTRACTING, INC., to ensure that said defendants' supervision of the lead paint abatement workers, painters and foremen, including the plaintiff, VELIMIR ZIC, at said locations was performed in a safe, thorough and proper manner. As a result, there was inadequate or no proper monitoring of the air quality for dangerous

contaminants, no proper respiratory equipment and proper fit tests for the lead paint abatement workers, painters and foremen and no proper methods used to prevent, remove, or control substantial quantities of dangerous air contaminants, including painting materials, painting fumes, paint, lead fumes, lead dust, lead particles and lead by-products, from being inhaled by the lead paint abatement workers, painters and foremen, including the plaintiff, VELIMIR ZIC, for approximately twenty-two hundred (2,200) hours, or two hundred seventy-five (275) eight hour shifts.

35. As a result of the negligence of defendant THE METROPOLITAN TRANSPORTATION AUTHORITY, in failing to properly and adequately monitor and supervise said defendants, supervision was inadequate and negligent and the plaintiff, VELIMIR ZIC, suffered severe permanent physical injuries and substantial pain and suffering for which he seeks damages in an amount in excess of Three Million (\$3,000,000.00) Dollars.

AS AND FOR A FOURTH CAUSE OF ACTION

36. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs “1” through “35” of this Verified Complaint, as if fully set forth herein.

37. While defendant, THE NEW YORK CITY TRANSIT AUTHORITY, was engaged in supervising and overseeing certain lead paint abatement, painting, demolition and construction activities at NYCTA stations, lines, structure steel, locations, among others, on the Interlocking Track/Atlantic Avenue (NYCTA) project in Kings County, from June 11, 2001 to August 9, 2004; the Bronx Park East (NYCTA) Station, from June 18, 2007 to August 13, 2007; and the Rehabilitation of 5 and 7 Stations Projects, West End Line, in Kings County from January 11, 2010 to December 6, 2010, said defendant negligently failed to properly monitor and supervise defendants, CITNALTA CONSTRUCTION CORP. and JUDLAU CONTRACTING, INC., to ensure that said defendants’ supervision of the lead paint abatement workers, painters and foremen, including the plaintiff, VELIMIR ZIC, at said locations was performed in a safe, thorough and proper manner. As a result, there was inadequate or no proper monitoring of the air quality for dangerous contaminants, no proper respiratory equipment and proper fit tests for the lead paint abatement workers, painters and foremen and no proper methods used to prevent, remove, or control substantial quantities of dangerous air contaminants, including painting materials, painting fumes, paint, lead fumes, lead dust,

lead particles and lead by-products, from being inhaled by the lead paint abatement workers, painters and foremen, including the plaintiff, VELIMIR ZIC, for approximately twenty-two hundred (2,200) hours, or two hundred seventy-five (275) eight hour shifts.

38. As a result of the negligence of defendant, THE NEW YORK CITY TRANSIT AUTHORITY, in failing to properly and adequately monitor and supervise said defendants, supervision was inadequate and negligent and the plaintiff, VELIMIR ZIC, suffered severe permanent physical injuries and substantial pain and suffering for which he seeks damages in an amount in excess of Three Million (\$3,000,000.00) Dollars.

AS AND FOR A FIFTH CAUSE OF ACTION

39. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "38" of this Verified Complaint, as if fully set forth herein.

40. While defendants, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES and FOREST CITY ENTERPRISES, were engaged in supervising and overseeing certain painting, demolition and construction activities at The New York Times Building from December 5, 2005 to January 8, 2007, said defendants negligently failed to properly monitor and supervise defendant, AMEC CONSTRUCTION MANAGEMENT, INC., to ensure that said defendant's supervision of the painters and foremen, including the plaintiff, VELIMIR ZIC, at said location was performed in a safe, thorough and proper manner. As a result, there was inadequate or no proper monitoring of the air quality for dangerous contaminants, no proper respiratory equipment and proper fit tests for the painters and foremen and no proper methods used to prevent, remove, or control substantial quantities of dangerous air contaminants, including painting materials, painting fumes and paint from being inhaled by the painters and foremen, including the plaintiff, VELIMIR ZIC, for approximately fourteen hundred (1400) hours, during one hundred and seventy-five (175) eight hour shifts.

41. As a result of the negligence of defendants, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES and FOREST CITY ENTERPRISES, in failing to properly and adequately monitor and supervise said defendant, supervision was inadequate and negligent and the plaintiff, VELIMIR ZIC, suffered severe permanent physical injuries and substantial pain and suffering for which he seeks damages in an amount in excess of Three Million (\$3,000,000.00) Dollars.

AS AND FOR A SIXTH CAUSE OF ACTION

42. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "41" of this Verified Complaint, as if fully set forth herein.

43. While defendant, QUEENS BALLPARK COMPANY, LLC., was engaged in supervising and overseeing certain painting, demolition and construction activities at Citi Field from October 15, 2007 to May 11, 2009, said defendant negligently failed to properly monitor and supervise defendants, HUNT CONSTRUCTION GROUP and LEND LEASE CORPORATION LIMITED, to ensure that said defendants' supervision of the painters and foremen, including the plaintiff, VELIMIR ZIC, at said location was performed in a safe, thorough and proper manner. As a result, there was inadequate or no proper monitoring of air quality for dangerous contaminants, no proper respiratory equipment and no proper fit tests for the painters and foremen and no proper methods used to prevent, remove, or control substantial quantities of dangerous air contaminants, including painting materials, painting fumes and paint from being inhaled by the painters and foremen, including the plaintiff, VELIMIR ZIC, for approximately eight hundred and fifty (850) hours, during one hundred and six (106) eight hour shifts.

44. As a result of the negligence of defendant, QUEENS BALLPARK COMPANY, LLC. in failing to properly and adequately monitor and supervise said defendants, supervision was inadequate and negligent and the plaintiff, VELIMIR ZIC, suffered severe permanent physical injuries and substantial pain and suffering for which he seeks damages in an amount in excess of Three Million (\$3,000,000.00) Dollars.

AS AND FOR A SEVENTH CAUSE OF ACTION

45. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "44" of this Verified Complaint, as if fully set forth herein.

46. Solely as a result of the above-described negligence of the defendants, THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY

ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED; and TOTAL SAFETY CONSULTING, plaintiff, VELIMIR ZIC, was rendered unable to perform his duties in the ordinary course of his employment, causing him to lose substantial past, present and future income as well as substantial benefits related thereto.

47. As a result of defendants' negligence, plaintiff, VELIMIR ZIC, suffered lost earnings and benefits in an amount to be determined, in excess of Two Million (\$2,000,000.00) Dollars.

AS AND FOR AN EIGHTH CAUSE OF ACTION (LOSS OF CONSORTIUM)

48. Plaintiffs repeat, reallege and reaffirm each and every allegation contained in Paragraphs "1" through "47" of this Verified Complaint, as if fully set forth herein.

49. At all times relevant hereto, plaintiff, MARILYN ZIC, was and is married to the injured plaintiff, VELIMIR ZIC, and solely as a result of said defendants' negligence, plaintiff, MARILYN ZIC, suffered the loss of consortium, society, companionship and services of said plaintiff, VELIMIR ZIC.

50. As a result of the defendants' negligence which caused severe injuries to plaintiff, VELIMIR ZIC, plaintiff, MARILYN ZIC, sustained damage in the amount to be determined, in excess of One Million (\$1,000,000.00) Dollars.

WHEREFORE, the plaintiffs demand judgment against defendants as follows:

- (i) In a sum to be determined, in excess of Five Million (\$5,000,000.00) Dollars on the First Cause of Action;
- (ii) In a sum to be determined, in excess of Three Million (\$3,000,000.00) Dollars on the Second Cause of Action;
- (iii) In a sum to be determined, in excess of Three Million (\$3,000,000.00) Dollars on the Third Cause of Action;
- (iv) In a sum to be determined, in excess of Three Million (\$3,000,000.00) Dollars on the Fourth Cause of Action; and
- (v) In a sum to be determined, in excess of Three Million (\$3,000,000.00) Dollars on the Fifth Cause of Action;
- (vi) In a sum to be determined, in excess of Three Million (\$3,000,000.00)

Dollars on the Sixth Cause of Action;

- (vii) In a sum to be determined, in excess of Two Million (\$2,000,000.00) Dollars on the Seventh Cause of Action;
- (viii) In a sum to be determined, in excess of One Million (\$1,000,000.00) Dollars on the Eighth Cause of Action;
- (ix) The costs and disbursements of this action; and
- (x) For such other and further relief as to this Court may deem just and proper.

Dated: New York, New York
November 7, 2012

Yours, etc.

STEPHEN M. CANTOR, P.C.,
ATTORNEY AT LAW

By: 

STEPHEN M. CANTOR, ESQ.
Attorneys for Plaintiffs
325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

Index No.

**ATTORNEY'S
VERIFICATION**

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a BOVIS
LEND LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

Defendants.

-----X


STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, the undersigned, an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of STEPHEN M. CANTOR, P.C., ATTORNEY AT LAW, the attorneys of record for Plaintiffs in the within action; I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the Plaintiffs is that Plaintiffs do not reside in the County where I maintain my offices for the practice of law.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: conversations and meetings had with Plaintiffs, investigations conducted by my office and examination of file maintained by my office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
November 7, 2012

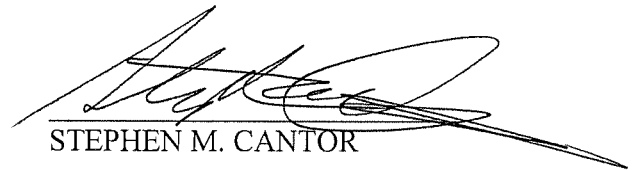


STEPHEN M. CANTOR, ESQ.

CERTIFICATION
PURSUANT TO SECTION 130-1.1a OF THE RULES OF
THE CHIEF ADMINISTRATOR 22 NYCRR

I, STEPHEN M. CANTOR, hereby make my certification as to the within document
pursuant to 22 NYCRR Section 130-1.1a

Dated: New York, New York
November 7, 2012



STEPHEN M. CANTOR

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

- against -

VERIFIED ANSWER

Index No. 159201-2012

File No. 2012-029529

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW
YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC; HUNT
CONSTRUCTION GROUP.; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND
LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

Defendants.

----- X

DEFENDANT, THE CITY OF NEW YORK, by its attorney, Michael A. Cardozo,
Corporation Counsel of the City of New York (also the "City"), answers the Verified Complaint
as follows:

1. Denies knowledge or information sufficient to form a belief with respect to
the truth of the allegations set forth in Paragraph 1 of the Verified Complaint.

2. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 2 of the Verified Complaint.

3. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 3 of the Verified Complaint.

4. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 4 of the Verified Complaint, except to admit that the City of New York is a municipal corporation, and the City leaves Plaintiffs to their proofs concerning their allegations as to the relationship of the City to the facilities and locations at the specific time periods referenced in Paragraph 4 of the Verified Complaint.

5. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 5 of the Verified Complaint.

6. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 6 of the Verified Complaint.

7. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 7 of the Verified Complaint.

8. Denies knowledge or information sufficient to form a belief with respect to the allegations set forth in Paragraph 8 of the Verified Complaint.

9. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 9 of the Verified Complaint.

10. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 10 of the Verified Complaint.

11. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 11 of the Verified Complaint.

12. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 12 of the Verified Complaint.

13. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 13 of the Verified Complaint.

14. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 14 of the Verified Complaint.

15. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 15 of the Verified Complaint.

16. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 16 of the Verified Complaint.

17. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 17 of the Verified Complaint.

18. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 18 of the Verified Complaint.

19. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 19 of the Verified Complaint.

20. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 20 of the Verified Complaint.

21. States that insofar as the allegations set forth in Paragraph 21 of the Verified Complaint set forth improper legal conclusions, no response is required. The City denies the balance of the allegations set forth in Paragraph 21 of the Verified Complaint, except to admit that on June 27, 2012 Plaintiffs submitted to the City of New York a document dated June 8, 2012, the contents of which speak for itself.

22. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 22 of the Verified Complaint.

23. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 23 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE FIRST
CAUSE OF ACTION**

24. Repeats each and every response set forth in Paragraphs 1 through 23 of the Answer to the Verified Complaint as if fully set forth herein.

25. Denies the allegations set forth in Paragraph 25 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 25 of the Verified Complaint insofar as they pertain to other defendants.

26. Denies the allegations set forth in Paragraph 26 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 26 of the Verified Complaint insofar as they pertain to other defendants.

27. Denies the allegations set forth in Paragraph 27 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 27 of the Verified Complaint insofar as they pertain to other defendants.

28. Denies the allegations set forth in Paragraph 28 of the Verified Complaint.

29. Denies the allegations set forth in Paragraph 29 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE SECOND
CAUSE OF ACTION**

30. Repeats each and every response set forth in Paragraphs 1 through 29 of the Answer to the Verified Complaint as if fully set forth herein.

31. Denies the allegations set forth in Paragraph 31 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 31 of the Verified Complaint insofar as they pertain to other defendants.

32. Denies the allegations set forth in Paragraph 32 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 32 of the Verified Complaint insofar as they pertain to other defendants.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE THIRD
CAUSE OF ACTION**

33. Repeats each and every response set forth in Paragraphs 1 through 32 of the Answer to the Verified Complaint as if fully set forth herein.

34. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 34 of the Verified Complaint.

35. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 35 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE FOURTH
CAUSE OF ACTION**

36. Repeats each and every response set forth in Paragraphs 1 through 35 of the Answer to the Verified Complaint as if fully set forth herein.

37. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 37 of the Verified Complaint.

38. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 38 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE FIFTH
CAUSE OF ACTION**

39. Repeats each and every response set forth in Paragraphs 1 through 38 of the Answer to the Verified Complaint as if fully set forth herein.

40. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 40 of the Verified Complaint.

41. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 41 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE SIXTH
CAUSE OF ACTION**

42. Repeats each and every response set forth in Paragraphs 1 through 41 of the Answer to the Verified Complaint as if fully set forth herein.

43. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 43 of the Verified Complaint.

44. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in Paragraph 44 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE SEVENTH
CAUSE OF ACTION**

45. Repeats each and every response set forth in Paragraphs 1 through 44 of the Answer to the Verified Complaint as if fully set forth herein.

46. Denies the allegations set forth in Paragraph 46 of the Verified Complaint insofar as they pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the allegations as set forth in Paragraph 46 of the Verified Complaint insofar as they pertain to other defendants.

47. Denies the allegations set forth in Paragraph 47 of the Verified Complaint.

**BY WAY OF RESPONSE TO THE ALLEGATIONS SET FORTH IN THE EIGHTH
CAUSE OF ACTION**

48. Repeats each and every response set forth in Paragraphs 1 through 47 of the Answer to the Verified Complaint as if fully set forth herein.

49. Denies the allegations set forth in Paragraph 49 of the Verified Complaint insofar as they may pertain to the City of New York, and denies knowledge or information sufficient to form a belief with respect to the balance of the allegations set forth in Paragraph 49 of the Verified Complaint insofar as they pertain to other defendants.

50. Denies the allegations set forth in Paragraph 50 of the Verified Complaint.

AS FOR A FIRST AFFIRMATIVE DEFENSE

51. The Verified Complaint fails to state a cause of action upon which relief can be granted.

AS FOR A SECOND AFFIRMATIVE DEFENSE

52. The City of New York is immune from suit for its exercise of discretion in the performance of a governmental function and/or its exercise of professional judgment.

AS FOR A THIRD AFFIRMATIVE DEFENSE

53. Any alleged exposure of Plaintiff to any substances, as claimed in the Verified Complaint, neither involved sufficient quantities of such agent(s) nor did the alleged exposure to such agent(s) continue for sufficient duration to cause any adverse health effects.

AS FOR A FOURTH AFFIRMATIVE DEFENSE

54. All of the damages and/or injuries allegedly suffered by Plaintiff were caused by the acts and conduct of Plaintiff and/or other parties, which intervened between any conduct or actions by the City and Plaintiff's alleged damages and/or injuries, thereby barring Plaintiff from any recovery from the City.

AS FOR A FIFTH AFFIRMATIVE DEFENSE

55. Whatever damages and/or injuries Plaintiff may have sustained were caused in whole or in part by Plaintiff's culpable conduct, and the amount of damages recovered, if any, shall therefore be diminished in that proportion which said culpable conduct attributable to Plaintiff bears to the culpable conduct which caused said damages and/or injuries.

AS FOR A SIXTH AFFIRMATIVE DEFENSE

56. The injuries or damages alleged in the Verified Complaint were caused in whole or in part by other person(s) who are or with reasonable diligence, would have been made party to this action, and accordingly the liability of the City is or may be limited by Articles 16 of the New York Civil Practice Laws and Rules.

AS FOR A SEVENTH AFFIRMATIVE DEFENSE

57. Plaintiff is barred from recovery in whole or in part by his failure to mitigate damages.

AS FOR AN EIGHTH AFFIRMATIVE DEFENSE

58. Plaintiffs' claims are barred by the statute of limitations.

AS FOR A NINTH AFFIRMATIVE DEFENSE

59. Plaintiffs' claims are barred by the doctrine of laches.

AS FOR A TENTH AFFIRMATIVE DEFENSE

60. Plaintiffs' claims are barred because of their failure to comply with the requirements of General Municipal Law Sections 50-e and 50-i.

AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE

61. Even assuming Plaintiff can demonstrate that he suffers from a recognized and classifiable medical condition, Plaintiff is barred from recovery because no or insufficient competent, objective evidence exists to evince that a causal connection exists between said medical condition and any physical conditions or substances as alleged in the Verified Complaint in accordance with applicable common and statutory law.

CROSS CLAIMS

62. Any damages sustained by Plaintiffs were caused in whole or part by the acts or omissions of one or more of the other Defendants named in the Verified Complaint, who are or may be liable to the City of New York for contribution on the basis of their equitable shares of responsibility, or for indemnity on the basis of a contract or contracts between said Defendant(s) and the City, actual or implied.

WHEREFORE, Defendant City of New York demands judgment dismissing the Verified Complaint and all Cross-Claims against it, together with the costs of this action, or, in the event that Defendant City of New York is adjudged liable, granting judgment over, or apportioning such liability in accordance with its equitable share of responsibility, and awarding the costs of this action, together with such other and further relief as to the Court may seem just and proper.

Dated: New York, NY
January 25, 2013

Yours, etc.,

MICHAEL A. CARDOZO, Corporation Counsel
Attorney for the City of New York

By:



Brian D. Lieberman
Assistant Corporation Counsel
100 Church Street, Rm. 4-182
New York, New York 10007
(212) 788-1678

TO:

Stephen M. Cantor, Esq.
Stephen M. Cantor, P.C.
Attorneys for Plaintiffs

325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

The Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

The New York City Transit Authority.
130 Livingston Street
Brooklyn, New York 11201

Tishman Construction Corporation
100 Park Avenue
New York, New York 10017

AECOM Technology Corporation
100 Park Avenue
New York, New York 10017

Citnalta Construction Corp.
1601 Locust Avenue
Bohemia, New York 11716

Judlau Contracting, Inc.
26-15 Ulmer Street
College Point, New York 11354

The New York Times Company
620 Eighth Avenue
New York, New York 10018

Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201

Forest City Enterprises
1100 Terminal Tower
50 Public Square
Cleveland, Ohio 44113-2203

Amec Construction Management, Inc.
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

Boston Properties Limited Partnership
599 Lexington Avenue
New York, New York 10022-6004

Queens Ballpark Company, LLC.
123-01 Roosevelt Avenue
Flushing, New York 11368

Hunt Construction Group
752 Pacific Street, 6th Floor
Brooklyn, New York 11238

Lend Lease Corporation Limited
200 Park Avenue
New York, NY 10166

Total Safety Consulting
6 Highland Avenue
Staten Island, New York 10301

ATTORNEY VERIFICATION

I, **BRIAN D. LIEBERMAN**, an attorney duly admitted to practice before the courts of the State of New York, affirms the following to be true under the penalty of perjury:

That I am an Assistant Corporation Counsel for the City of New York, the attorney of record for defendant the City of New York in the within action; I have read the foregoing Verified Answer and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason the verification is made by me and not by the defendant is because said defendant is a municipal corporation. The grounds of my belief as to all matters in the Verified Answer not stated upon my own knowledge are based upon records in defendant's custody.

Dated: New York, New York
January 25, 2013



BRIAN D. LIEBERMAN
Assistant Corporation Counsel

TO:

Stephen M. Cantor, Esq.
Stephen M. Cantor, P.C.
Attorneys for Plaintiffs
325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

The Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

The New York City Transit Authority.
130 Livingston Street
Brooklyn, New York 11201

Tishman Construction Corporation
100 Park Avenue
New York, New York 10017

AECOM Technology Corporation
100 Park Avenue
New York, New York 10017

Citnalta Construction Corp.
1601 Locust Avenue
Bohemia, New York 11716

Judlau Contracting, Inc.
26-15 Ulmer Street
College Point, New York 11354

The New York Times Company
620 Eighth Avenue
New York, New York 10018

Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201

Forest City Enterprises
1100 Terminal Tower
50 Public Square
Cleveland, Ohio 44113-2203

Amec Construction Management, Inc.
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

Boston Properties Limited Partnership
599 Lexington Avenue
New York, New York 10022-6004

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752 Pacific Street, 6th Floor
Brooklyn, New York 11238

Lend Lease Corporation Limited
200 Park Avenue
New York, NY 10166

Total Safety Consulting
6 Highland Avenue
Staten Island, New York 10301

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Index No:
159201/2012

Plaintiffs;

- against -

**VERIFIED ANSWER OF
DEFENDANTS
MTA AND NYCTA**

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION
CORPORATION; AECOM TECHNOLOGY CORPORATION;
CITNALTA CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.;
HUNT CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE
LMB, INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----X
Defendants New York City Transit Authority (hereinafter "Transit Authority" or
"NYCTA") and Metropolitan Transportation Authority (hereinafter "MTA") – the "defendants"
referred to in paragraphs 1-25 of this answer – by their attorneys, answer the complaint as
follows:

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the complaint.
2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the complaint.
3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the complaint, except admit that the NYCTA was in the process of reconfiguring the Interlocking Track at Atlantic Avenue in Brooklyn from

approximately 2002 to approximately 2006; awarded a contract for the painting of the steel elevated structure from the Bronx Park East station to the 241st Street station (IRT line) in the Bronx in approximately 2008; and awarded a contract to improve seven stations on the West End (BMT) line in Brooklyn in approximately 2009, with work occurring from approximately 2009 to present.

4. The allegations in paragraph 4 of the complaint are not addressed to and do not pertain to the defendants.

5. As to the allegations in paragraph 5 of the complaint, defendants admit that the MTA is a public authority of the State of New York, with offices at 347 Madison Avenue, New York, NY 10017. Defendants deny that the NYCTA is a subsidiary of the MTA, and that the MTA owns the lease on the NYCTA subway system. Moreover, defendants deny that the MTA was and is responsible for the planning and supervising of all construction activities on NYCTA stations.

6. As to the allegations in paragraph 6 of the complaint, defendants admit that the NYCTA is a public authority of the State of New York with offices at 130 Livingston Street, Brooklyn, NY 11201, but deny that NYCTA is a subsidiary of the MTA. Defendants further admit that the Transit Authority operates and manages the subway system of the City of New York.

7. Paragraphs 7 and 8 are not addressed to and do not pertain to the defendants.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the complaint, except admit that in or about July 2009, Judlau Contracting, Inc. and Citnalta Construction Corporation were awarded a contract, as a joint venture company, by the NYCTA to perform certain work in the improvement of seven stations on the West End (BMT) line in Brooklyn. Upon information and belief, in or about May

2008, Ahern Painting was awarded the contract for the painting of the steel elevated structure from the Bronx Park East station to the 241st Street station (IRT line) in the Bronx, and Gottlieb/Skanska was awarded the contract for reconfiguration of the Interlocking Track at Atlantic Avenue in Brooklyn, which work was done from approximately 2002 to approximately 2006.

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint but admit that Judlau Contracting, Inc. and Citnalta Construction Corp. hired subcontractors to perform certain work on seven stations on the West End (BMT) line in Brooklyn. Defendants deny that Judlau Contracting, Inc. and Citnalta Construction Corporation worked on the Interlocking Track at Atlantic Avenue project or the painting of the steel elevated structure at the Bronx Park East station in the Bronx.

10. Paragraphs 11 through 21 of the complaint are not addressed to and do not pertain to the defendants.

11. As to the allegations in paragraph 22 of the complaint, defendants admit that a document purporting to be a "notice of claim" was served upon the MTA on or about June 27, 2012.

12. As to the allegations in paragraph 23 of the complaint, defendants admit that a document purporting to be a "notice of claim" was served upon the NYCTA on or about June 27, 2012.

13. Paragraph 24 of the complaint does not set out any allegations to which the defendants can respond.

14. Defendants deny the allegations contained in paragraphs 25 through 29 of the complaint.

15. Paragraph 30 of the complaint does not set out any allegations to which the defendants can respond.

16. Defendants deny the allegations contained in paragraphs 31 and 32 of the complaint.

17. Paragraph 33 of the complaint does not set out any allegations to which the defendants can respond.

18. Defendants deny the allegations contained in paragraphs 34 and 35 of the complaint.

19. Paragraph 36 of the complaint does not set out any allegations to which the defendants can respond.

20. Defendants deny the allegations contained in paragraphs 37 and 38 of the complaint.

21. Paragraphs 39 through 45 of the complaint are not addressed to and do not pertain to the defendants.

22. Defendants deny the allegations contained in paragraphs 46 through 50 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

23. The complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. The notices of claim were not timely served on the defendant NYCTA or the defendant MTA.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

25. This lawsuit was not timely commenced against the defendant NYCTA or the defendant MTA.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

26. The defendant NYCTA and the defendant MTA are immune from suit for their exercise of discretion in the performance of a governmental function and/or their exercise of professional judgment.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

27. Plaintiffs' injuries were caused, in whole or in part, by the culpable conduct of said plaintiffs and/or other individuals, companies, partnerships, or other entities.

Dated: Brooklyn, New York
February 7, 2013

Yours, etc.



Kavita K. Bhatt
Richard Schoolman
Office of the General Counsel
New York City Transit Authority
130 Livingston Street, 12th Floor
Brooklyn, New York 11201
(718) 694-3908/4667
Attorneys for the Defendants

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
VELIMIR ZIC and MARILYN ZIC,

Index No:
159201/2012

Plaintiffs,

VERIFICATION

- against -

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION
CORPORATION; AECOM TECHNOLOGY CORPORATION;
CITNALTA CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.;
HUNT CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE
LMB, INC.; and TOTAL SAFETY CONSULTING,

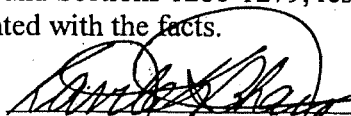
Defendants.

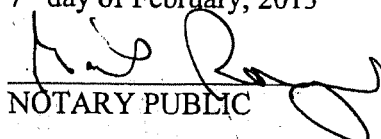
-----x
STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

KAVITA K. BHATT, being duly sworn deposes and says:

That she is an attorney for the New York City Transit Authority and the Metropolitan Transportation Authority, that she has read the foregoing **Verified Answer** and knows the contents thereof; that the foregoing **Verified Answer** is true to her own knowledge except as to the matters therein stated to be alleged on information and belief; that as to these matters she believes them to be true; that the source of deponent's information and the grounds of her belief are the records of the New York City Transit Authority and the statements made by employees of the said New York City Transit Authority and of the Metropolitan Transportation Authority concerning the subject matter of this action. This verification is made by deponent because the New York City Transit Authority and the Metropolitan Transportation Authority are public benefit corporations created by Sections 1201-1221 and Sections 1260-1279, respectively, of the New York Public Authorities Law and I am acquainted with the facts.

Sworn to before me this
7th day of February, 2013


KAVITA K. BHATT


NOTARY PUBLIC

GAIL ROGERS
Notary Public, State of New York
No. 01RO4992370
Qualified in Kings County
Commission Expires Feb. 24, 20 14

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

VERIFIED ANSWER

-against-

Index No.: 159201/2012

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW
YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC.; HUNT
CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND
LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

Defendants.

Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, by its attorneys FAUST
GOETZ SCHENKER & BLEE, as and for its answer to the plaintiffs' complaint, respectfully
alleges:

1. Denies knowledge and information sufficient to form a belief as to those allegations set forth in the paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 34, 35, 37, 38, 40, 41, 43, and 44.
2. Denies each and every allegation set forth in the paragraphs numbered 15, 25, 26, 27, 28, 29, 31, 32, 46, 47, 49, and 50.

3. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 23 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 24.

4. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 29 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 30.

5. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 32 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 33.

6. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 35 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 36.

7. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 38 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 39.

8. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint

designated 1 through 41 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 42.

9. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 44 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 45.

10. Defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, repeats and reiterates each and every denial heretofore made in this Answer to the paragraphs of the Complaint designated 1 through 47 inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the Complaint designated 48.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Any alleged exposure of plaintiff to any substances, as claimed in the Verified Complaint, neither involved sufficient quantities of such agent(s) nor did the alleged exposure to such agent(s) continue for sufficient duration to cause any adverse health effects.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Even assuming plaintiff can demonstrate that he suffers from a recognized and classifiable medical condition, plaintiff is barred from recovery because no or insufficient competent, objective evidence exists to evince that a causal connection exists between said medical condition and any physical conditions or substances as alleged in the Verified Complaint in accordance with applicable common and statutory law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of defendant, BOSTON PROPERTIES LIMITED PARTNERSHIP, to the plaintiffs herein for non-economic loss is limited to defendant

BOSTON PROPERTIES LIMITED PARTNERSHIP's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. That by entering into the activity in which the plaintiff(s) was engaged at the time of the occurrence set forth in the complaint, said plaintiff(s) knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff(s) herein as alleged in the Complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff(s) in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. The defendant BOSTON PROPERTIES LIMITED PARTNERSHIP not being fully advised as to all the facts and circumstances surrounding the incident complained of, hereby assert and reserve unto themselves the defenses of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense which the further investigation of this matter may prove applicable herein.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. Plaintiff(s) have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from

collateral sources. Any award made to plaintiff(s) shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. Any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff(s), then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

18. The Complaint fails to state a claim.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

19. Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the Complaint, were due to the acts of parties over whom the defendant BOSTON PROPERTIES LIMITED PARTNERSHIP was not obligated to exercise any control or supervision.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

20. Plaintiff(s) failed to mitigate damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

21. That the lawsuit herein was not commenced by the plaintiff(s) within the time prescribed by law, and the plaintiff(s), therefore, is barred from maintaining this action and recovery.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

22. The plaintiff(s) was injured while in the scope of plaintiff's employment and,

therefore, the plaintiff(s) are limited to the benefits under Worker's Compensation Law of the State of New York and as a result the Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

23. That the plaintiff(s) could with due diligence have obtained personal jurisdiction over tortfeasors not made parties to this lawsuit and thus the culpability of such missing or absent tortfeasors is to be apportioned into the total culpability allegedly causing the subject occurrence.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff(s) have released any and all claims of negligence.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

25. The plaintiffs' Complaint should be dismissed since the claims against the defendant BOSTON PROPERTIES LIMITED PARTNERSHIP are frivolous; and costs and attorneys fees should be awarded to defendant BOSTON PROPERTIES LIMITED PARTNERSHIP pursuant to CPLR §8303-a.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

26. Plaintiff(s) claims are barred to the extent that they destroyed evidence necessary for the fair defense of the claims asserted.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANTS
THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION
AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION;
CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW
YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; QUEENS
BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.;
and TOTAL SAFETY CONSULTING**

27. That if plaintiff was caused to sustain damages by reason of the claims set forth in the complaint, all of which are specifically denied, such damages were sustained by reason of the acts, conduct, misfeasance or nonfeasance, of co-defendants, their agents, servants and/or employees, and not by this answering defendant, and if any judgment is recovered by plaintiff against this answering defendant, such defendant will be damaged thereby, and co-defendants are or will be responsible therefore in whole or in part.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANTS
THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION
AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION;
CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW
YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; QUEENS
BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.;
and TOTAL SAFETY CONSULTING**

28. That if plaintiff(s) was caused to sustain damages by reason of the claims set forth in the complaint, all of which are specifically denied, and if any judgment is recovered by the plaintiff(s) against this answering defendant, that under a contract entered into between the parties or by reason of express or implied warranty, the co-defendants will be liable over to this answering defendant pursuant to the terms of the indemnity agreement in said contract or warranty, for the full amount of any verdict or judgment awarded to the plaintiff(s) against this answering defendant,

together with attorneys fees, costs and disbursements.

WHEREFORE, defendant BOSTON PROPERTIES LIMITED PARTNERSHIP demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
February 8, 2013

Yours, etc.



FAUST GOETZ SCHENKER & BLEE

By: Randy S. Faust

Attorneys for Defendant

BOSTON PROPERTIES LIMITED PARTNERSHIP

Two Rector Street, 20th Floor

New York, New York 10006

(212) 363-6900

Our File No.: 12225-CRT

TO:

Stephen M. Cantor, Esq.
STEPHEN M. CANTOR, P.C.
Attorneys for Plaintiffs
325 Broadway, Suite 503
New York, New York 10007-1187
(845) 679-6521
Fax: (845) 679-3399

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

RANDY S. FAUST, being duly sworn, deposes and says:

That he is the attorney for the defendant BOSTON PROPERTIES LIMITED PARTNERSHIP in the within action; that he has read the within Answer and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant BOSTON PROPERTIES LIMITED PARTNERSHIP is that the defendant is not within the county where deponent has his office.



RANDY S. FAUST

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No.: 159201/12

-against-

VERIFIED ANSWER

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING CORP.; THE NEW YORK
TIMES COMPANY; FOREST CITY RATNER
COMPANIES; FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC; HUNT CONSTRUCTION
GROUP; LEND LEASE CORPORATION LIMITED
f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL
SAFETY CONSULTING,

Defendants.

-----X

Defendants, TISHMAN CONSTRUCTION CORPORATION, AECOM
TECHNOLOGY CORPORATION, and LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC., (“Defendants”) by and through their counsel, COZEN
O’CONNOR, hereby answer the Verified Complaint, upon information and belief as follows:

THE PARTIES

FIRST: Defendants deny knowledge or information sufficient to form a
belief as to the truth of the allegations contained in paragraph “1” of the Verified Complaint.

SECOND: Defendants deny knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraph “2” of the Verified Complaint.

THIRD: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Verified Complaint.

FOURTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Verified Complaint.

FIFTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Verified Complaint.

SIXTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the Verified Complaint.

SEVENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the Verified Complaint in the form alleged.

EIGHTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the Verified Complaint in the form alleged.

NINTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Verified Complaint.

TENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the Verified Complaint.

ELEVENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the Verified Complaint.

TWELFTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the Verified Complaint.

THIRTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the Verified Complaint.

FOURTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Verified Complaint.

FIFTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the Verified Complaint.

SIXTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Verified Complaint.

SEVENTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the Verified Complaint in the form alleged.

EIGHTEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of the Verified Complaint in the form alleged.

NINETEENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the Verified Complaint in the form alleged.

TWENTIETH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Verified Complaint.

TWENTY-FIRST: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the Verified Complaint.

TWENTY-SECOND: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of the Verified Complaint.

TWENTY-THIRD: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS**

TWENTY-FOURTH: Defendants repeat and reiterate their responses to paragraphs "1" through "23" of the Complaint with the same force and effect as if set forth at length herein.

TWENTY-FIFTH: Defendants deny the allegations contained in paragraph “25” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

TWENTY-SIXTH: Defendants deny the allegations contained in paragraph “26” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

TWENTY-SEVENTH: Defendants deny the allegations contained in paragraph “27” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

TWENTY-EIGHTH: Defendants deny the allegations contained in paragraph “28” of the Verified Complaint.

TWENTY-NINTH: Defendants deny the allegations contained in paragraph “29” of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

THIRTIETH: Defendants repeat and reiterate their responses to paragraphs “1” through “29” of the Complaint with the same force and effect as if set forth at length herein.

THIRTY-FIRST: Defendants deny the allegations contained in paragraph "31" of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

THIRTY-SECOND: Defendants deny the allegations contained in paragraph "32" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

THIRTY-THIRD: Defendants repeat and reiterate their responses to paragraphs "1" through "32" of the Complaint with the same force and effect as if set forth at length herein.

THIRTY-FOURTH: Defendants deny the allegations contained in paragraph "34" of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

THIRTY-FIFTH: Defendants deny the allegations contained in paragraph "35" of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

THIRTY-SIXTH: Defendants repeat and reiterate their responses to paragraphs "1" through "35" of the Complaint with the same force and effect as if set forth at length herein.

THIRTY-SEVENTH: Defendants deny the allegations contained in paragraph “37” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

THIRTY-EIGHTH: Defendants deny the allegations contained in paragraph “38” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

THIRTY-NINTH: Defendants repeat and reiterate their responses to paragraphs “1” through “38” of the Complaint with the same force and effect as if set forth at length herein.

FORTIETH: Defendants deny the allegations contained in paragraph “40” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

FORTY-FIRST: Defendants deny the allegations contained in paragraph “41” of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

FORTY-SECOND: Defendants repeat and reiterate their responses to paragraphs "1" through "41" of the Complaint with the same force and effect as if set forth at length herein.

FORTY-THIRD: Defendants deny the allegations contained in paragraph "43" of the Verified Complaint.

FORTY-FOURTH: Defendants deny the allegations contained in paragraph "44" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

FORTY-FIFTH: Defendants repeat and reiterate their responses to paragraphs "1" through "44" of the Complaint with the same force and effect as if set forth at length herein.

FORTY-SIXTH: Defendants deny the allegations contained in paragraph "46" of the Verified Complaint to the extent such allegations are asserted against them and deny knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they are asserted against all other defendants.

FORTY-SEVENTH: Defendants deny the allegations contained in paragraph "47" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF ACTION DEFENDANTS
PLEAD, UPON INFORMATION AND BELIEF AS FOLLOWS:**

FORTY-EIGHTH: Defendants repeat and reiterate their responses to paragraphs "1" through "47" of the Complaint with the same force and effect as if set forth at length herein.

FORTY-NINTH: Defendants deny the allegations contained in paragraph "49" of the Verified Complaint.

FIFTIETH: Defendants deny the allegations contained in paragraph "50" of the Verified Complaint.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-FIRST: If, in fact, plaintiffs sustained injuries or damages as alleged in the Complaint, which damages and injuries are hereby expressly denied, said injuries and damages occurred as a result of the plaintiffs' own culpable conduct.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-SECOND: If, in fact, plaintiffs sustained damages as alleged in the Complaint, such damages were caused, in whole or in part, by the comparative negligence of plaintiff and such damages, which are hereby denied, should be diminished and reduced in the proportion to which the comparative negligence attributable to the plaintiffs bears upon the culpability, if any, of all parties.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:NSE

FIFTY-THIRD: That in the event that any judgment or verdict is rendered in favor of plaintiffs, these answering defendants are entitled to have such judgment or verdict reduced by the amount of any collateral payments made to the plaintiffs for expenses and by the amount of all such payments plaintiffs will receive in the future.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-FOURTH: If these answering defendants are found to be liable, then its liability is 50% or less of the total liability of all persons liable and by reason thereof, this answering defendants liability as to non-economic loss, if any, shall not exceed this defendants' equitable share thereof.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-FIFTH: That if the plaintiffs sustained damages as alleged in the Complaint, such damages were the result of the culpable conduct, action or inaction, or breach of duty of other persons or entities, being or not being parties to this action, or their servants, agents or employees, over whom these defendants had no control and these defendants are blameless and free from any and all culpable conduct, negligent acts or breach of duty as to said Plaintiffs.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-SIXTH: The injuries alleged in the plaintiffs' complaint were not caused by the negligence, carelessness and/or culpable conduct of these answering defendants, nor were the injuries proximately caused as a result of the acts or omissions of said defendants.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-SEVENTH: That these answering defendants allege that the plaintiffs received remuneration and/or compensation for some or all of the claimed economic loss and these answering defendants are entitled to have plaintiffs' award, if any, reduced by the amount of that remuneration and/or compensation pursuant to §4545(c) of the CPLR.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-EIGHTH: Plaintiffs' damages are attributable to plaintiffs in that plaintiff was a "recalcitrant worker" as of the time of the alleged event at issue.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTY-NINTH: Plaintiffs' injuries and damages, if any, were caused by acts, omissions or other conduct of individuals or entities over which this said defendants had no control and had no duty to control.

AS AND FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS PLEAD, UPON INFORMATION AND BELIEF, AS FOLLOWS:

SIXTIETH: Plaintiffs' action is barred in that Plaintiffs' actions were the "sole proximate cause" of the alleged event at issue.

AS AND FOR A FIRST CROSS CLAIM

SIXTY-FIRST: In the event that there is a verdict and judgment in favor of plaintiff against Defendants, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., then, and in that event, said Defendants demand judgment over and against all other co-defendants by reason of their culpable conduct being primary and or active, and TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC. are entitled to contractual and/or common law indemnification.

AS AND FOR A SECOND CROSS CLAIM

SIXTY-SECOND: In the event that there is a verdict and judgment in favor of plaintiff against Defendants, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC. then, and in that event, said Defendants demand judgment over and against all other co-defendants, in contribution in accordance with the relative culpability of said Defendants.

WHEREFORE, Defendants demand that the Complaint be dismissed together with all costs and attorneys' fees associated with their defense of this matter and judgment over and against co-defendants and their cross claims together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 4, 2013

Yours, etc.,

COZEN O'CONNOR

By: 

RICHARD FAMA

Attorneys for Defendants
TISHMAN CONSTRUCTION
CORPORATION, AECOM
TECHNOLOGY CORPORATION
LEND LEASE CORPORATION
LIMITED f/k/a BOVIS LEND LEASE
LMB, INC.,
45 Broadway
New York, NY 10016
212.509.9400

TO
STEPHEN M. CANTOR, P.C.,
Attorney for Plaintiff
325 Broadway, Suite 502

New York, NY 10007-1187
212.732.8456

MICHAEL A. CARDOZO
Corporation Counsel
Attorney for the City of New York
Brian D. Lieberman, Esq.
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Faust Goetz Schenker & Blee
Attorneys for Boston Properties Limited
Partnership.
Two Rector Street, 20th Floor
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Tele: 212-363-6900

The Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

The New York City Transit Authority
130 Livingston Street
Brooklyn, New York 11201

Citnalta Construction Corp
1601 Locust Avenue
Bohemia, New York 11716

Judlau Contracting, Inc.
26-15 Ulmer Street
College Point, New York 11354

The New York Times Company
620 Eighth Avenue
New York, New York 10018

Forest City Ratner Companies
I Metro Tech Center North
Brooklyn, New York 11201

Forest City Enterprises
1100 Terminal Tower
50 Public Square

Cleveland, Ohio 44 1 1 3 -2203

Amee Construction Management, Inc.
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

Queens Ballpark Company, LLC.
123-01 Roosevelt Avenue
Flushing, New York 11368

Hunt Construction Group
752 Pacific Street, 6th Floor
Brooklyn, New York 11238

Total Safety Consulting
6 Highland Avenue
Staten Island, New York 10301

ATTORNEY VERIFICATION

STATE OF NEW YORK)

 ss:

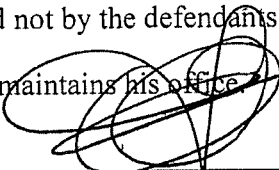
COUNTY OF NEW YORK)

RICHARD FAMA, an attorney duly admitted to practice law before the Courts of the State of New York, hereby deposes and says:

 I am a member of the firm of COZEN O’CONNOR, attorneys for the defendants, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.,

 I have read the foregoing Verified Answer and know the contents thereof and same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

 The reason this verification is made by me and not by the defendants is because defendants reside outside the county where deponent maintains his office.



RICHARD FAMA

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No.: 159201/12

- against -

VERIFIED ANSWER

THE CITY OF NEW YORK, THE METROPOLITAN
TRANSPORTATION AUTHORITY, THE NEW YORK
CITY TRANSIT AUTHORITY, TISHMAN
CONSTRUCTION CORPORATION, AECOM
TECHNOLOGY CORPORATION, CITNALTA
CONSTRUCTION CORP, JUDLAU CONTRACTING,
INC., THE NEW YORK TIMES COMPANY, FOREST
CITY RATNER COMPANIES, FOREST CITY
ENTERPRISES, AMEC CONSTRUCTION
MANAGEMENT INC, BOSTON PROPERTIES LIMITED
PARTNERSHIP, QUEENS BALLPARK COMPANY,
LLC, HUNT CONSTRUCTION GROUP, LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE
LMB, INC., and TOTAL SAFETY CONSULTING,

Defendants.

-----X
Defendant, JUDLAU CONTRACTING, INC., by its attorneys, LITCHFIELD
CAVO LLC, as and for their Verified Answer to plaintiffs Verified Complaint, allege
upon information and belief:

FIRST: Denies knowledge or information sufficient to form a belief as to
each and every allegation of the paragraphs of the Verified Complaint designated "1",
"2", "3", "4", "5", "6", "7", "8", "11", "12", "13", "14", "15", "16", "17", "18", "19",
"20", "21", "22" and "23".

SECOND: Denies each and every allegation of the paragraphs of the Verified
Complaint designated "9" and "10", except admits that JUDLAU CONTRACTING,
INC. is a domestic corporation with a principal place of business located at 26-15 Ulmer

Street, College Point, New York 11354, and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

THIRD: In response to the Verified Complaint paragraph number "24", this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "23", as if more fully set forth at length herein.

FOURTH: Denies each and every allegation of the paragraphs of the Verified Complaint designated "25", "26", and "27" as to JUDLAU CONTRACTING, INC., and denies knowledge or information sufficient to form a belief as to all other defendants, and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTH: Denies each and every allegation of the paragraphs of the Verified Complaint designated "28" and "29".

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

SIXTH: In response to the Verified Complaint paragraph number "30", this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "29", as if more fully set forth at length herein.

SEVENTH: Denies each and every allegation of the paragraphs of the Verified Complaint designated "31" and "32" as to JUDLAU CONTRACTING, INC., and denies knowledge or information sufficient to form a belief as to all other defendants, and

respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

EIGHTH: In response to the Verified Complaint paragraph number "33", this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "32", as if more fully set forth at length herein.

NINTH: Denies each and every allegation of the paragraph of the Verified Complaint designated "34" as to JUDLAU CONTRACTING, INC., and denies knowledge or information sufficient to form a belief as to all other defendants, and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TENTH: Denies each and every allegation of the paragraphs of the Verified Complaint designated "35".

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

ELEVENTH: In response to the Verified Complaint paragraph number "36", this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "35", as if more fully set forth at length herein.

TWELFTH: Denies each and every allegation of the paragraph of the Verified Complaint designated "37" as to JUDLAU CONTRACTING, INC., and denies knowledge or information sufficient to form a belief as to all other defendants, and

respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTEENTH: Denies each and every allegation of the paragraph of the Verified Complaint designated "38".

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

FOURTEENTH: In response to the Verified Complaint paragraph number "39, this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "38", as if more fully set forth at length herein.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraphs of the Verified Complaint designated "40" and "41".

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

SIXTEENTH: In response to the Verified Complaint paragraph number "42, this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "41", as if more fully set forth at length herein.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraphs of the Verified Complaint designated "43" and "44".

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

EIGHTEENTH: In response to the Verified Complaint paragraph number "45, this answering Defendant repeats, reiterates and realleges each and every response to

the allegations of the paragraphs of the Verified Complaint designated "1" through "44", as if more fully set forth at length herein.

NINETEENTH: Denies each and every allegation of the paragraph of the Verified Complaint designated "46" as to JUDLAU CONTRACTING, INC., and denies knowledge or information sufficient to form a belief as to all other defendants, and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTIETH: Denies each and every allegation of the paragraph of the Verified Complaint designated "47".

AS AND FOR A RESPONSE TO THE EIGHTH CAUSE OF ACTION

TWENTY-FIRST: In response to the Verified Complaint paragraph number "48, this answering Defendant repeats, reiterates and realleges each and every response to the allegations of the paragraphs of the Verified Complaint designated "1" through "47", as if more fully set forth at length herein.

TWENTY-SECOND: Denies each and every allegation of the paragraphs of the Verified Complaint designated "49" and "50".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

If the injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Verified Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of the plaintiff, and if any damages are recoverable against this answering defendant, the amount of such damages shall be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Any and all risks, hazards, defects and dangers alleged were of an open, obvious and apparent nature and inherent and known or should have been known to the plaintiff herein, and the plaintiff willingly and voluntarily assumed all such risks, hazards, defects and dangers. If it is determined the plaintiff assumed the risk, this answering defendant plead said facts in diminution of damages in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

If the injuries and damages were sustained by the plaintiffs at the time and place and in the manner alleged in the Verified Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of third parties, and if any damages are recoverable against this answering defendant, the amount of such damages shall be diminished in the proportion which culpable conduct attributable to third parties bears to the culpable conduct which caused the damages pursuant to CPLR §1601.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

This answering defendant claims the benefits of each and every provision of CPLR §4545 including, but not limited to, any credit or off-set by reason of any replacement or indemnification of costs or expenses from any collateral source.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

This answering defendant did not have actual or constructive notice of any defect which allegedly contributed to the happening of the subject incident.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

This answering defendant breached no duty owed to plaintiffs.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred or should be reduced due to the plaintiffs' failure to mitigate any injury or damage, if any, allegedly suffered and incurred.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' Verified Complaint must be dismissed due to failure to join all necessary and proper parties.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Complaint herein fails to state a cause of action upon which relief may be granted.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANTS
THE CITY OF NEW YORK, THE METROPOLITAN TRANSPORTATION
AUTHORITY, THE NEW YORK CITY TRANSIT AUTHORITY, TISHMAN
CONSTRUCTION CORPORATION, AECOM TECHNOLOGY
CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY
RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC
CONSTRUCTION MANAGEMENT INC, BOSTON PROPERTIES LIMITED
PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT
CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED F/K/A
BOVIS LEND LEASE LMB, INC., AND TOTAL SAFETY CONSULTING**

It is alleged that the damages sustained by the plaintiffs were the result of the culpable conduct of this answering defendant. This answering defendant cross claiming begs leave to refer to the plaintiffs' Verified Complaint at the time of Trial.

If the plaintiffs were caused to sustain the damages alleged in the Verified Complaint, said damages will have been sustained by reason of the culpable conduct of the adverse co-defendants.

That if this answering defendant cross claiming is also found culpable, then this answering defendant will be entitled to contribution or indemnification, in whole or in part, from the culpable parties named in this claim over, for the proportion of the plaintiffs'

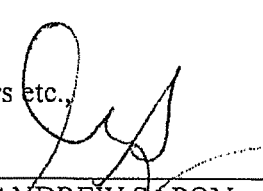
damages which were caused by the culpable parties named in this claim over together with all attorneys' fees, costs and disbursements.

WHEREFORE, this answering defendant seeks the following relief:

- 1) Dismissal of plaintiff's Verified Complaint;
- 2) Judgment on the cross-claims vs. the adverse defendants, and
- 3) Costs, disbursements and attorneys' fees incurred in this action.

Dated: New York, New York
April 1, 2013.

Yours etc.,



By: ANDREW SAPON
420 Lexington Avenue, Suite 2104
New York, New York 10170
(212) 792-9761
Our File No.: 3690-23
Attorney for Defendant
JUDLAU CONTRACTING, INC.

To:
STEPHEN M. CANTOR, P.C.
325 Broadway, Suite 402
New York, New York 10007-1187
Tele: (212) 732-8455
Attorneys for Plaintiffs

The City of New York
1 Centre Street
New York, New York 10007

The Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

The New York City Transit Authority
130 Livingston Street
Brooklyn, New York 11201

Tishman Construction Corporation
100 Park Avenue
New York, New York 10017

AECOM Technology Corporation
100 Park Avenue
New York, New York 10017

Citnalta Construction Corp.
1601 Locust Avenue
Bohemia, New York 11716

The New York Times Company
620 Eighth Avenue
New York, New York 10018

Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201

Forest City Enterprises
1100 Terminal Tower
50 Public Square
Cleveland, OH 44113-2203

Amec Construction Management, Inc.
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

Boston Properties Limited Partnership
599 Lexington Avenue
New York, New York 10022-6004

Queens Ballpark Company, LLC
123-01 Roosevelt Avenue
Flushing, New York 11368

Hunt Construction Group
752 Pacific Street, 6th Floor
Brooklyn, New York 11238

Lend Lease Corporation Limited
200 Park Avenue
New York, New York 10166

Total Safety Consulting
6 Highland Avenue
Staten Island, New York 10301

VERIFICATION

ANDREW SAPON, ESQ., an attorney-at-law duly admitted to practice in the Courts of the State of New York, affirms under penalties of perjury:

1. I am a partner in the firm of Litchfield Cavo, LLP, attorney for the Defendant JUDLAU CONTRACTING, INC in the within action; that I have read the foregoing Answer and know the contents thereof; that the same is true of knowledge except as to the matter stated upon information and belief, and that as to those matters I believe it to be true.

2. I further state that the grounds for my belief as to all of the matters not stated upon my knowledge and the source of my knowledge as to all the matters herein stated in the evidence in my possession.

3. I further state that the reason this verification is not made by JUDLAU CONTRACTING, INC is that said defendant is not now located in the County where affirmant has his office.

Dated: New York, New York
April 1, 2013.



ANDREW SAPON

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No. 159201-2012

- against -

File No. 2012-029529

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW
YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC; HUNT
CONSTRUCTION GROUP.; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND
LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

**NOTICE OF MOTION
BY DEFENDANT
CITY OF NEW YORK
TO DISMISS THE
COMPLAINT**

Defendants.

----- X

PLEASE TAKE NOTICE, that upon the annexed affirmation of BRIAN D. LIEBERMAN, dated Tuesday, April 16, 2013, the annexed exhibits and all of the papers, pleadings and proceedings heretofore had and filed herein, Defendants THE CITY OF NEW YORK, will move **before this Court at the New York County Courthouse located at 60 Centre Street, New York, NY, in the Motion Support Office, Room 130, on Tuesday, May 8, 2013 at 9:00 a.m.** of that day, or as soon thereafter as counsel can be heard, for an Order:

1. Pursuant to CPLR 3211(a)(7) and/or CPLR 3212, dismissing Plaintiffs' Complaint because Plaintiff Velimir Zic's claims are barred by the statute of limitations;

2. Plaintiffs' Notice of Claim is untimely; and

3. For such other and further relief as this Court may deem just and proper.


PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214, responsive papers, if any, are required to be served upon the undersigned at least seven (7) days prior to the return date hereof.

The above action is to recover damages for personal injuries.

No application has previously been made for the relief requested herein.

Dated: New York, NY
April 16, 2013

Yours etc.,
MICHAEL A. CARDOZO
Corporation Counsel
Attorney for Defendant
THE CITY OF NEW YORK
100 Church Street
New York , New York 10007


BRIAN D. LIEBERMAN
Assistant Corporation Counsel
Tel.: (212) 356-3234

TO:

Stephen M. Cantor, Esq.
Stephen M. Cantor, P.C.
Attorneys for Plaintiffs
325 Broadway, Suite 302
New York, NY 10007-1187
(via E-Filing)
Kavita K. Blatt, Esq.

Richard Schoolman, Esq.
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Metropolitan Transit Authority
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New York City Transit Authority
130 Livingston Street, 12th Floor
Brooklyn, New York 11201
(via E-Filing)

Randy S. Faust, Esq.
Faust Goetz Schenker & Blee
Attorneys for Defendant
Boston Properties Limited Partnership
2 Rector Street, 20th Floor
New York, NY 10006
(via E-Filing)

Richard Fama, Esq.
Cozen O'Connor
Attorneys for Tishman Construction Corporation,
AECOM Technology Corporation, Lend Lease Corp. f/k/a
Bovis Lend Lease LMB, Inc.
45 Broadway
New York, NY 10006
(via E-Filing)

Andrew Sapon, Esq.
Attorneys for Defendant
Judlau Contracting, Inc.
420 Lexington Avenue, Suite 2104
New York, NY 10170
(via E-Filing)

Citnalta Construction Corp.
1601 Locust Avenue
Bohemia, New York 11716
(via regular mail)

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Forest City Ratner Companies
1 Metro Tech Center North
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(via regular mail)

Amec Construction Management, Inc.
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024
(via regular mail)

Queens Ballpark Company, LLC.
123-01 Roosevelt Avenue
Flushing, New York 11368
(via regular mail)

Hunt Construction Group
752 Pacific Street, 6th Floor
Brooklyn, New York 11238
(via regular mail)

Total Safety Consulting
6 Highland Avenue
Staten Island, New York 10301
(via regular mail)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No. 159201-2012

- against -

File No. 2012-029529

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW
YORK CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK TIMES
COMPANY; FOREST CITY RATNER COMPANIES;
FOREST CITY ENTERPRISES; AMEC
CONSTRUCTION MANAGEMENT, INC.; BOSTON
PROPERTIES LIMITED PARTNERSHIP; QUEENS
BALLPARK COMPANY, LLC; HUNT
CONSTRUCTION GROUP.; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND
LEASE LMB, INC.; and TOTAL SAFETY
CONSULTING,

**AFFIRMATION IN
SUPPORT OF
DEFENDANT CITY
OF NEW YORK'S
MOTION TO DISMISS
THE COMPLAINT**

Defendants.

----- X

BRIAN D. LIEBERMAN, an attorney admitted to practice in the State of New York and an Assistant Corporation Counsel of the City of New York, affirms the truth of the following under the penalties of perjury pursuant to CPLR 2106, upon information and belief based upon the records maintained in this office:

1. This affirmation is submitted in support of the motion by Defendant CITY OF NEW YORK (also "City") for an order pursuant to CPLR 3211(a)(7) and/or CPLR 3212,

dismissing Plaintiffs' Complaint. Their claims are barred on the following grounds: (i) the Statue of Limitations has expired; (ii) Plaintiffs' Notice of Claim is a nullity, as Plaintiffs did not seek leave of court to file a late Notice of Claim in a timely manner; and (iii) for such other and further relief as this court may deem just and proper.

2. On or about June 27, 2012, Plaintiffs Velimir Zic and Marilyn Zic served the City with a Notice of Claim alleging that, as a result of the City's negligence, Velimir Zic had sustained lung cancer and other personal injuries from exposure to toxins while working as a "paint abatement worker, painter and foreman" on or before April 14, 2011 at several sites. His wife, Plaintiff Marilyn Zic, claims loss of consortium. See **Exhibit A**.

3. On August 23, 2012, the City held Section 50-h hearings of Mr. and Mrs. Zic. See **Exhibits B and C** respectively. As is detailed below, in his testimony, Mr. Zic confirmed that he began experiencing symptoms of lung cancer in January 2011 and received his diagnosis and underwent surgery on the affected lung in April 2011. Mrs. Zic provided similar testimony.

4. On or around January 7, 2013, Plaintiffs served the Complaint, naming the City and fifteen other defendants. See **Exhibit D**. Plaintiffs therein alleged that they had served the City with the Notice of Claim "within 90 days after the claims herein arose." (Id. at Para. 21)(emphasis in original).

5. Issue was joined when the City served Plaintiffs with its Answer dated January 25, 2013. See **Exhibit E**.

6. The City respectfully submits that Plaintiffs' sworn testimony establishes the limitation period for their claims expired by the end of April 2012, one year and ninety days after Mr. Zic first experienced symptoms of his medical condition. Plaintiffs served their Notice

of Claim in June 2012, fifteen months after the accrual date in January 2011. Accordingly, their claims are barred by the statute of limitations.

7. In addition, the City further respectfully submits, Plaintiffs' failure to comply with New York General Municipal Law ("GML") Section 50-e renders their Notice of Claim a nullity. With far more than ninety days having passed since the accrual date, even assuming *arguendo* that the limitation period had not yet expired, Plaintiffs had no choice but to seek leave of the Court to file a late Notice of Claim.

8. Given these circumstances, Plaintiffs' claims against the City are barred and the Complaint must be dismissed.

THE ALLEGATIONS IN PLAINTIFFS' NOTICE OF CLAIM AND COMPLAINT

9. In the Notice of Claim, Plaintiff Velimir Zic identifies himself as having "from on or before April 14, 2011, [been] employed as a painter, a paint abatement worker and foreman to perform work at the Thurgood Marshall U.S. Courthouse, the New York City Subway Station D line, the Brooklyn Navy Yard, the 59th Street Bridge." He alleges that during the course of his work, no proper contaminant monitoring was performed and that he was not provided with "proper ventilation and proper respirators and filters." Plaintiff asserts that this caused him to inhale "lead dust, lead fumes and carcinogens."

10. Plaintiff claims that his exposure to contaminants caused "Lung Cancer, [for which he] underwent [a] right upper Lobectomy of the Lung in April 2011" and "Lead Poisoning."¹

11. Despite his acknowledgment that he underwent surgery for lung cancer in April 2011, Plaintiff Velimir Zic also alleges in the Notice of Claim that "[o]n April 24, 2012, he

¹ Plaintiff Velimir Zic's other alleged injuries are limited to general symptoms, such as constipation, joint pain and headaches.

learned that the illnesses he suffered were the direct result of his work at said sites and time period.”

12. In the Complaint, Plaintiff Velimir Zic sets forth seven causes of action against a total of sixteen defendants. He identifies the City with several sites where he engaged in painting, lead abatement and other work, alleging that the City “owns, operates, manages and maintains these locations” and was “responsible for planning and supervising all [work]” at these sites at specified periods of time. (See Complaint, at Para. 4).

13. In the first cause of action, using language similar to that of the Notice of Claim, but extending it to all defendants, Plaintiff Velimir Zic contends that “from June 11, 2001 to April 18, 2011, while doing assigned work as a lead paint abatement worker, painter and foreman at [various] projects [listed earlier in the Complaint]...[he] sustained severe personal injuries, including lung cancer and lead poisoning, as result of his exposure, inhalation and handling of painting materials...[and] lead fumes.” (Id., at Para. 25). Plaintiffs attribute this exposure to a lack of proper monitoring and his “not being provided with proper respiratory equipment and proper fit tests.” (Id.).

14. Plaintiffs, relying upon allegations similar to those quoted above, also assert claims against the City for Mr. Zic’s alleged injuries in the second and seventh causes of action. (See Complaint, at Paras. 24-29; Paras. 30-32; and Paras. 45-47).

15. Plaintiff Marilyn Zic includes the City and all other defendants in her cause of action for loss of consortium. (Id. at Paras. 48-50).

16. Plaintiffs state that they served the notice of claim upon the City “within 90 days after the claims herein arose.” (Id. at Para. 21)(emphasis in original). They make the same

representation as to the two other governmental entities named as defendants. (Id. at Paras. 22 and 23).

**PLAINTIFFS' TESTIMONY REGARDING THE DISCOVERY OF VELIMIR ZIC'S
INJURIES**

17. Plaintiff Velimir Zic testified that, on April 14, 2011, he underwent surgery because of "a suspicious mass" on his right upper lung. (Transcript of Velimir Zic 50-h, hereafter "V. Zic Tr.," at page 12, lines 7-17; page 17, lines 12-19). Since the biopsy showed the mass was cancerous, the treating surgeon removed the entire lobe. (Id. at page 17, line 20, to page 18, line 7).

18. Plaintiff Velimir Zic further testified that he was diagnosed with lung cancer the same day as the surgery, April 14, 2011. (V. Zic. Tr. Page 51, lines 8-10).

19. Notably, this plaintiff also testified that he began experiencing symptoms months earlier that led him to seek treatment:

Q. Prior to the surgery, had you been having any symptoms that led to the discovery of the mass?

A. Just when I was at home at rest, it started in January of that year of 2011.

Q. What would you feel?

A. Shortness of breath.

Q. Anything else?

A. No.

Q. What did you do once you started realizing you were experiencing shortness of breath?

A. Nothing until my wife told me that I had to go to the doctor for that symptom.

Q. When was the first time you went to the doctor for that symptom?

A. Sometime in February.

(V. Zic Tr., at pages 12, line 18 to page 13, line 7).

20. Regarding his alleged lead poisoning, he testified that a doctor diagnosed him with that condition before his April 2011 cancer-related surgery. He also stated that he did not receive any treatment for lead poisoning. (V. Zic. Tr., at page 47, line 5 to page 48, line 1).

21. Plaintiff Marilyn Zic, in her 50-h hearing, similarly stated that Mr. Zic started suffering from shortness of breath at the “[e]nd of January, beginning of February 2011.” Because of this, Mr. Zic went to see his primary care doctor. (Transcript of Marilyn Zic 50-h hearing, hereafter “M. Zic Tr.,” at page 6, line 14 to page 7, line 5; page 7, lines 22-24).

22. Mrs. Zic further testified that her husband’s symptoms ultimately led to a diagnosis of lung cancer and removal of the entire right upper lobe on April 14, 2011. (Id. at page 7, line 25 to page 8, line 17; see also page 6, lines 7 to 13).

23. According to Mrs. Zic, her husband saw a “multitude” of doctors between the onset of his symptoms in January 2011 and the surgery performed in April 2011. (M. Zic Tr, at page 8, lines 18-20).

LEGAL ARGUMENT

POINT ONE

PLAINTIFFS’ CLAIMS ARE BARRED BY THE STATUE OF LIMITATIONS.

24. New York General Municipal Law Section 50-h(4) expressly provides that the transcript of a statutory hearing may be submitted on a motion in connection with which it was taken. Moreover, the First Department has held that, when considering a motion to dismiss, “a court is not confined to the notice of claim itself, but may also look to evidence adduced at a Section 50-h hearing, and to such other evidence that is properly before the Court.” Portillo v. New York City Transit Authority, 84 A.D.3d 535, 536 (1st Dep’t 2011)(citing D’Alessandro v. New York City Tr. Auth., 83 N.Y.2d 891, 613 N.Y.S.2d 849 (1994)).

25. Courts have routinely considered Section 50-h hearing testimony in connection with motions to dismiss or for summary judgment. See, e.g., Carter v. New York City Hous. Auth., 101 A.D.3d 510 (1st Dep’t 2012)(observing, in connection with dismissal of

claim on basis municipality had no notice of the condition that caused plaintiff's injuries, that plaintiff's opposition to summary judgment motion "should not be considered, as they were tailored to avoid the consequences of plaintiff's earlier 50-h testimony [to the contrary]"); Reno v. County of Westchester, 289 A.D.2d 216 (2nd Dep't 2001)(in upholding trial court's grant of motion to dismiss, appellate court stated, "[s]ince the testimony of the plaintiff at an examination pursuant to [GML] Section 50-h established that he received Workers Compensation benefits for his injuries, the plaintiff's causes of action against the County sounding in negligence were properly dismissed as barred by the exclusivity provisions of the Workers' Compensation Law");

26. Here, Plaintiffs' 50-h hearing testimony firmly establishes the date of accrual for Plaintiff Velimir Zic's cancer claim against the City. Specifically, Plaintiff Velimir Zic testified that he began experiencing symptoms of his lung cancer in January 2011. He was subsequently diagnosed on April 14, 2011, at the time he underwent a biopsy and then surgery to remove the affected portion of his right lung. The 50-h testimony of his wife, Plaintiff Marilyn Zic, corroborates these dates.

27. It is notable that Plaintiffs' Notice of Claim also specifies that the surgery took place at this time, stating in the alleged injuries section: "Lung Cancer, [for which he] underwent [a] right upper Lobectomy of the Lung in April 2011."

28. The First Department has stated: "Where, as here, the claimed injury results from exposure to a harmful substance, the action accrues upon discovery of the manifestations or symptoms of the latent disease that the harmful substance produced." Matter of Goffredo v. City of New York, 33 A.D.3d 346, 347 (1st Dep't 2006)(citations omitted). The operative date is always "when [plaintiff] first became aware of the manifestations or symptoms of the latent disease as opposed to its 'nonorganic etiology.'" Matter of Felder v. City of New York, 53

A.D.3d 401, 403 (1st Dep't 2008)(emphasis added)(quoting Matter of New York County DES Litig., 89 N.Y.2d 506, 514 (1997)).

29. Plaintiffs testified that Mr. Zic started experiencing the persistent shortness of breath in January 2011 that led to his seeking treatment and receiving a cancer diagnosis three months later. As such, any cause of action he had for alleged exposures to carcinogens began to accrue that month, January 2011. Accord Matter of Goffredo, 33A.D.3d at 347 (holding that date of accrual began at the time plaintiff's symptoms "manifested themselves" approximately 14 months before the diagnosis).

30. "The statute of limitations for tort claims against a municipal entity is one year and ninety days after the event occurred." Harper v. City of New York, 92 A.D.3d 505 (1st Dep't 2012)(citing GML 50-e(1)(a)). This one-year-and-ninety-day limitation period applies to claims against municipalities for exposure to contaminants and toxins and it runs from the time at which plaintiff began to suffer manifestations or symptoms of his purported illness. See Matter of Felder v. City of New York, 53 A.D.3d 401, 402-03 (1st Dep't 2008)(holding the "one-year-and-ninety-day statute of limitations [of] General Municipal Law Section 50-i" applicable to claims against City for alleged exposure to contaminants at World Trade Center disaster site); Matter of Goffredo v. City of New York, 33 A.D.3d 346, 347 (1st Dep't 2006)(holding petitioner's notice of claim filed "on or about December 29, 2003, approximately two years after petitioner's claim accrued [that time being when his symptoms first manifested on or about December 19, 2001], his initial petition was untimely and subject to dismissal").

31. Thus, the accrual of Plaintiffs' claim here began with the onset of symptoms in January 2011. Using the last day of the month, January 31, 2011, as the accrual

date, the limitation period against the City expired on March 1, 2012. Accordingly, Plaintiffs' claims are barred by the statute of limitations.²

POINT TWO

PLAINTIFFS' UNTIMELY NOTICE OF CLAIM, SERVED WITHOUT LEAVE OF COURT, IS A NULLITY.

32. GML Section 50-e requires that a notice of claim be served on a municipal entity within 90 days after the claim arises. A court may, in its discretion and upon application by the plaintiff, extend the time to serve a notice of claim. See GML Section 50-e(5). However, "once the statute of limitations has expired, the court is without discretion to entertain an application for leave to file a late notice of claim." Matter of Goffredo, 33 A.D.3d at 347 (citing Pierson v. City of New York, 56 N.Y.2d 950 (1982)).

33. Here, Plaintiffs did not file a Notice of claim within ninety days of January 31, 2011. Nor did they seek leave to file a late Notice of Claim within the ensuing one year period. Rather, Plaintiffs served their untimely Notice of Claim fifteen months later on June 27, 2012, followed by the filing of their Complaint several months thereafter.

34. Even assuming *arguendo* one were to use the date of diagnosis, April 14, 2011, as the starting date for accrual, Plaintiffs remain untimely. In this scenario, Plaintiffs would have had to file their Notice of Claim by July 13, 2011 or have sought leave of court to file a late Notice of Claim by July 13, 2012.


² As noted above, Plaintiff Velimir Zic alleges that he developed both lung cancer and lead poisoning in the Notice of Claim and the Complaint. Plaintiffs cannot argue that their claim of lead poisoning somehow survives. As noted in Paragraph 20 of this Affirmation, Mr. Zic testified at his 50h that he was diagnosed with lead poisoning before April 2011 (for which he never even received treatment). Therefore, the statute of limitations has expired on any claim Plaintiffs make for lead poisoning.

35. An “untimely notice of claim, served without seeking leave of the court, [is] a nullity, requiring dismissal of the complaint.” Wollins v. New York City Bd. Of Ed., 8 A.D.3d 30, 31 (1st Dep’t 2004). See also Walker v. New York City Health & Hosps. Corp., 36 A.D.3d 509 (1st Dep’t 2007)(“The motion court correctly observed that plaintiff had failed to file a timely notice of claim, and that counsel's attempt to file notice of claim outside the 90-day period, without leave of court, was a nullity”).

36. Therefore, Plaintiffs’ Notice of Claim, served out of time and without the requisite leave of Court, is a nullity, and their claims must be dismissed.

WHEREFORE, it is respectfully requested that the Court grant Defendants’ motion in its entirety, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 16, 2013


BRIAN D. LIEBERMAN
Assistant Corporation Counsel

TO:

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EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
VELIMIR ZIC and MARILYN ZIC,

Index No.: 0159201/2012

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING,

VERIFIED ANSWER OF DEFENDANT THE NEW YORK TIMES COMPANY

Defendants.

----- X

Defendant, THE NEW YORK TIMES COMPANY, ("NY Times"), by its attorneys, MOUND COTTON WOLLAN & GREENGRASS, as and for its Verified Answer to plaintiffs' November 7, 2012 Verified Complaint, upon information and belief, alleges as follows:

1. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 1.
2. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 2.
3. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 3.

4. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 4.
5. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 5.
6. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 6.
7. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 7.
8. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 8.
9. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 9.
10. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 10.
11. Denies each and every allegation contained in paragraph 11 of plaintiffs' verified complaint, except admits that THE NEW YORK TIMES COMPANY was and is a corporation.
12. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 12.
13. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 13.
14. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 14.

15. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 15.

16. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 16.

17. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 17.

18. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 18.

19. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 19.

20. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 20.

21. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 21.

22. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 22.

23. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 23.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

24. As and for its response to the allegations contained in paragraph 24 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 23 of this verified answer as if set forth at length herein.

25. Denies each and every allegation contained in paragraph 25.

26. Denies each and every allegation contained in paragraph 26 and refers all questions of law to the Court.

27. Denies each and every allegation contained in paragraph 27 and refers all questions of law to the Court.

28. Denies each and every allegation contained in paragraph 28.

29. Denies each and every allegation contained in paragraph 29.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

30. As and for its response to the allegations contained in paragraph 30 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 29 of this verified answer as if set forth at length herein.

31. Denies each and every allegation contained in paragraph 31 of plaintiffs' verified complaint.

32. Denies each and every allegation contained in paragraph 32.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

33. As and for its response to the allegations contained in paragraph 33 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 32 of this verified answer as if set forth at length herein.

34. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 34.

35. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 35.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

36. As and for its response to the allegations contained in paragraph 36 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 35 of this verified answer as if set forth at length herein

37. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 37.

38. D Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 38.

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

39. As and for its response to the allegations contained in paragraph 39 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 38 of this verified answer as if set forth at length herein.

40. Denies each and every allegation contained in paragraph 40.

41. Denies each and every allegation contained in paragraph 41.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

42. As and for its response to the allegations contained in paragraph 42 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 41 of this verified answer as if set forth at length herein.

43. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 43.

44. Denies knowledge and information sufficient to form a belief with respect to the truth of all allegations contained in paragraph 44.

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

45. As and for its response to the allegations contained in paragraph 45 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 44 of this verified answer as if set forth at length herein.

46. Denies each and every allegation contained in paragraph 46.

47. Denies each and every allegation contained in paragraph 47.

AS AND FOR A RESPONSE TO THE EIGHTH CAUSE OF ACTION

48. As and for its response to the allegations contained in paragraph 48 of plaintiffs' verified complaint, Defendant repeats and realleges each and every response set forth in paragraphs 1 through 47 of this verified answer as if set forth at length herein.

49. Denies knowledge and information sufficient to form a belief with respect to the truth of whether plaintiff, MARILYN ZIC, was and is married to plaintiff, VELIMIR ZIC. Defendant denies each and every other allegation contained in paragraph 49.

50. Denies each and every allegation contained in paragraph 50.

FOR A FIRST AFFIRMATIVE DEFENSE

51. This court lacks personal jurisdiction over NY Times as a result of improper, and lack of, service of process.

FOR A SECOND AFFIRMATIVE DEFENSE

52. All claims are time barred by the applicable statutes of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE

53. The causes of action pleaded in the Verified Complaint have not been asserted in a timely fashion and plaintiffs have neglected same and should be barred by the doctrine of laches.

FOR A FOURTH AFFIRMATIVE DEFENSE

54. Plaintiffs may not bring this action as they have failed to exhaust all administrative remedies.

FOR A FIFTH AFFIRMATIVE DEFENSE

55. The Verified Complaint and each and every allegation considered separately fails to state a claim against NY Times upon which relief can be granted

FOR A SIXTH AFFIRMATIVE DEFENSE

56. NY Times denies that it breached any duty, whether contractual or otherwise, due or owing to plaintiffs at the time and place set forth in the Verified Complaint.

FOR A SEVENTH AFFIRMATIVE DEFENSE

57. Upon information and belief, the injuries and damages alleged to have been sustained by the plaintiff were not reasonably foreseeable.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

58. Any and all risks, hazards, defects and dangers alleged were of an open, obvious and apparent nature and inherent and known or should have been known to the plaintiffs herein, and the plaintiffs willingly and voluntarily assumed all such risks, hazards, defects and dangers. If it is determined the plaintiffs assumed the risk, NY Times pleads said facts in diminution of damages in the proportion which the culpable conduct attributable to the plaintiffs bears to the culpable conduct which caused the damages.

FOR A NINTH AFFIRMATIVE DEFENSE

59. Any recovery by plaintiffs must be reduced, pursuant to CPLR § 4545 to the extent that any payments were received by plaintiffs from any collateral sources whatsoever, including but not limited to other litigation, first-party insurance coverage, workers' compensation, builders' risk policies, liquidation agreements, surety and performance bond payments, stipulated penalties, repair work performed by other entities, funds placed in escrow, taxed benefits claimed funds expended by county, state or federal regulatory agencies or any other collateral source.

FOR A TENTH AFFIRMATIVE DEFENSE

60. This legal action falls within the limited liability provisions of Article 16 of the CPLR and NY Times' liability, if any, shall be limited pursuant to Article 16.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

61. If the plaintiffs should prove that they sustained injuries and damages as alleged, such injuries and damages resulted from acts or omissions on the part of the third-parties over whom this defendant had no control or right of control.

FOR A TWELFTH AFFIRMATIVE DEFENSE

62. While NY Times denies plaintiffs' allegations of negligence, statutory liability and/or strict liability, any injury and damages, to the extent that plaintiffs may be able to prove such, were the result of intervening and/or interceding acts of superseding negligence on the part of parties over whom NY Times had no control nor had the right of control.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

63. At all times during the alleged exposure, the agents, servants and/or employees of NY Times used proper methods in handling the materials complained of in conformity with the available knowledge, state of the art, and research of the scientific and industrial communities.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

64. Plaintiffs, co-workers, and employers misused, abused, mistreated and misapplied the product and/or material the plaintiffs allege caused the injuries.

65. If the Court finds that any misuse, abuse, mistreatment and/or misapplication of the products/materials caused and/or contributed to the alleged damages or injuries to the plaintiffs, then NY Times requests that the amount of damages which might be recoverable shall be diminished by the proportion which the same misuse, abuse, mistreatment and/or misapplication, attributed to the plaintiff, co-workers and/or employers bear to the conduct which caused the alleged damages or injuries.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

66. Any oral warranties upon which plaintiffs relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

67. The NY Times acted with reasonable care and in accordance with the state of the art construction procedures.

FOR AN SEVENTEENTH AFFIRMATIVE DEFENSE

68. Any injuries suffered by the plaintiffs were not caused by a negligent act or omission of NY Times or any individual acting under its direction or control.

FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

69. Upon information and belief, plaintiffs failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Verified Complaint.

FOR A NINETEENTH AFFIRMATIVE DEFENSE

70. Plaintiffs are estopped from asserting the causes of action alleged in the Verified Complaint.

FOR A TWENTIETH AFFIRMATIVE DEFENSE

71. Plaintiffs waived the causes of action and recovery alleged in the Verified Complaint.

FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

72. Plaintiffs have failed to name and join essential and necessary parties.

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

73. Plaintiffs lack the requisite capacity, standing, and authority to bring the within action as they are not a real party in interest.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

74. Plaintiffs contributed to the alleged illnesses/injuries by the use, either in whole or in part, of other substances, products, medications and drugs.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

75. The injuries allegedly suffered by the plaintiffs, if any, which injuries are specifically denied by NY Times, were the result of culpable conduct or fault of third persons for whose conduct NY Times is not legally responsible, and the damages recovered by the plaintiffs, if any, should be diminished or reduced in the proportion to which said culpable conduct bears upon the culpable conduct which caused the damages. Any liability on the part of NY Times

(which liability is denied) is fifty percent or less of the liability of all persons who are the cause of the alleged injuries, if any, and the liability of NY Times for non-economic loss does not exceed its equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss pursuant to CPLR Sections 1601 through 1603.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

76. NY Times would be entitled to contribution, either in whole or in part, from the other defendants herein.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

77. Upon information and belief, some or all of causes of action may not be maintained because of arbitration and award.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

78. Upon information and belief, some or all of causes of action may not be maintained because of collateral estoppel.

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

79. Upon information and belief, some or all of causes of action may not be maintained because of discharge in bankruptcy.

FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

80. Upon information and belief, some or all of the causes of action may not be maintained because of infancy, or some other disability, of the plaintiff.

FOR A THIRTIETH AFFIRMATIVE DEFENSE

81. Upon information and belief, some or all of the causes of action may not be maintained because of payment.

FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

82. Upon information and belief, some or all of the causes of action may not be maintained because of release.

FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

83. Upon information and belief, some or all of the causes of action may not be maintained because of res judicata.

FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

84. Sections 200, 240, and 241 of the New York State Labor Law are inapplicable to the case at bar, and/or do not state a private cause of action.

FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

85. Plaintiffs' actions are subject to the New York State Worker's Compensation Act and thus may not be brought in this court.

FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

86. NY Times incorporates by reference, as if more fully set forth at length herein, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering defendants.

FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE

87. Plaintiffs' action, and each alleged cause of action, is barred by the government contractor defense. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988).

FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE

88. Plaintiffs' claims are barred, in whole or in part, because NY Times did not manufacture, supply, affix, and/or install the materials that allegedly caused plaintiffs harm.

FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE

89. The NY Times specifically reserves its right to assert further and/or different affirmative defenses as are appropriate as investigation and discovery continues in this action.

AS AND FOR A CROSS-CLAIM AGAINST ALL CO-DEFENDANTS

90. If plaintiff sustained damages at the time and place set forth in the plaintiffs' Verified Complaint through any carelessness, recklessness, and/or negligence other than that of plaintiffs, then these damages will have been caused and brought about by reason of the carelessness, recklessness, and/or negligence of the co-defendants not represented by this Verified Answer.

91. If the plaintiffs recover a judgment against NY Times, by operation of law or otherwise, NY Times will be entitled to judgment, contribution and/or indemnity over and against co-defendants, their agents, servants and/or employees, by reason of their carelessness, recklessness, and/or negligence for the amount of any such recovery, or a portion thereof, in accordance with principles of law regarding apportionment of fault and damages, along with costs, disbursements and reasonable expenses of the investigation and defense of this action, including reasonable attorneys' fees.

**AS AND FOR A CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY RATNER COMPANIES**

93. Upon information and belief, at the time of the alleged occurrence, there was in existence a written contract or agreement between the answering defendant, NY Times, and defendant Forest City Ratner Companies.

94. Pursuant to this contract or agreement, Forest City Ratner Companies is required to defend and indemnify the answering defendant from and against any and all claims, including those of the plaintiffs herein.

95. By reason of the foregoing, the answering defendant is entitled to full and complete contractual indemnification from Forest City Ratner Companies in this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY RATNER COMPANIES**

96. Although the answering defendant has denied the allegations of wrongdoing asserted against it in the plaintiffs' Verified Complaint, if the answering defendant is found to be liable to the plaintiff, then it would be entitled to contribution on the basis of apportionment of responsibility for the alleged occurrence and is entitled to judgment over and against Forest City Ratner Companies for all or part of any verdict or judgment that the plaintiffs may recover against the answering defendant.

97. By reason of the foregoing, the answering defendant is entitled to an allocation of any damages by reason of a verdict or judgment in proportion to the degrees of its wrongdoing, if any.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY RATNER COMPANIES**

98. Pursuant to the alleged written contract or agreement, Forest City Ratner Companies agreed to procure general liability insurance for the benefit of the answering defendant, NY Times, and naming it as an additional insured.

99. Upon information and belief, Forest City Ratner Companies breached said contract or agreement by failing, in whole or in part, to procure and provide the answering defendant with general liability insurance coverage as required by the contract or agreement.

100. By reason of the foregoing, the answering defendant has suffered and will continue to suffer damages, harm and prejudice by virtue of Forest City Ratner Companies' alleged breach of contract and failure, in whole or in part, to obtain and provide insurance

coverage pursuant to said contract or agreement, including, but not limited to, the costs of defending the within action and the costs incurred in connection with the expense of satisfying any judgment that may be obtained against the answering defendant herein.

101. By reason of the foregoing, the answering defendant is entitled to damages incurred by virtue of Forest City Ratner Companies' breach of contract and failure to obtain and provide liability insurance and judgment should be entered accordingly.

**AS AND FOR A CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY ENTERPRISES**

102. Upon information and belief, at the time of the alleged occurrence, there was in existence a written contract or agreement between the answering defendant, NY Times, and defendant Forest City Enterprises.

103. Pursuant to this contract or agreement, Forest City Enterprises is required to defend and indemnify the answering defendant from and against any and all claims, including those of the plaintiffs herein.

104. By reason of the foregoing, the answering defendant is entitled to full and complete contractual indemnification from Forest City Enterprises in this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY ENTERPRISES**

105. Although the answering defendant has denied the allegations of wrongdoing asserted against it in the plaintiffs' Verified Complaint, if the answering defendant is found to be liable to the plaintiffs, then it would be entitled to contribution on the basis of apportionment of responsibility for the alleged occurrence and is entitled to judgment over and against Forest City Enterprises for all or part of any verdict or judgment that the plaintiffs may recover against the answering defendant.

106. By reason of the foregoing, the answering defendant is entitled to an allocation of any damages by reason of a verdict or judgment in proportion to the degrees of its wrongdoing, if any.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST
DEFENDANT FOREST CITY ENTERPRISES**

107. Pursuant to the alleged written contract or agreement, Forest City Enterprises agreed to procure general liability insurance for the benefit of the answering defendant, NY Times, and naming it as an additional insured.

108. Upon information and belief, Forest City Enterprises breached said contract or agreement by failing, in whole or in part, to procure and provide the answering defendant with general liability insurance coverage as required by the contract or agreement.

109. By reason of the foregoing, the answering defendant has suffered and will continue to suffer damages, harm and prejudice by virtue of Forest City Enterprises' alleged breach of contract and failure, in whole or in part, to obtain and provide insurance coverage pursuant to said contract or agreement, including, but not limited to, the costs of defending the within action and the costs incurred in connection with the expense of satisfying any judgment that may be obtained against the answering defendant herein.

110. By reason of the foregoing, the answering defendant is entitled to damages incurred by virtue of Forest City Enterprises' breach of contract and failure to obtain and provide liability insurance and judgment should be entered accordingly.

**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANT
AMEC CONSTRUCTION MANAGEMENT, INC.**

111. Upon information and belief, at the time of the alleged occurrence, there was in existence a written contract or agreement between the answering defendant, NY Times, and defendant AMEC Construction Management, Inc.

112. Pursuant to this contract or agreement, AMEC Construction Management, Inc. is required to defend and indemnify the answering defendant from and against any and all claims, including those of the plaintiffs herein.

113. By reason of the foregoing, the answering defendant is entitled to full and complete contractual indemnification from AMEC Construction Management, Inc. in this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST
DEFENDANT AMEC CONSTRUCTION MANAGEMENT, INC.**

114. Although the answering defendant has denied the allegations of wrongdoing asserted against it in the plaintiffs' Verified Complaint, if the answering defendant is found to be liable to the plaintiffs, then it would be entitled to contribution on the basis of apportionment of responsibility for the alleged occurrence and is entitled to judgment over and against AMEC Construction Management, Inc. for all or part of any verdict or judgment that the plaintiffs may recover against the answering defendant.

115. By reason of the foregoing, the answering defendant is entitled to an allocation of any damages by reason of a verdict or judgment in proportion to the degrees of its wrongdoing, if any.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST
DEFENDANT AMEC CONSTRUCTION MANAGEMENT, INC.**

116. Pursuant to the alleged written contract or agreement, AMEC Construction Management, Inc. agreed to procure general liability insurance for the benefit of the answering defendant, NY Times, and naming it as an additional insured.

117. Upon information and belief, AMEC Construction Management, Inc. breached said contract or agreement by failing, in whole or in part, to procure and provide the answering defendant with general liability insurance coverage as required by the contract or agreement.

118. By reason of the foregoing, the answering defendant has suffered and will continue to suffer damages, harm and prejudice by virtue of AMEC Construction Management, Inc.'s alleged breach of contract and failure, in whole or in part, to obtain and provide insurance coverage pursuant to said contract or agreement, including, but not limited to, the costs of defending the within action and the costs incurred in connection with the expense of satisfying any judgment that may be obtained against the answering defendant herein.

119. By reason of the foregoing, the answering defendant is entitled to damages incurred by virtue of AMEC Construction Management, Inc.'s breach of contract and failure to obtain and provide liability insurance and judgment should be entered accordingly.

WHEREFORE, NY Times demands judgment dismissing plaintiffs' Verified Complaint, with prejudice, and awarding NY Times costs and disbursements; granting it judgment on its cross-claims; and, in the event of any judgment over and against NY Times, NY Times demands judgment, contribution and/or indemnity against all co-defendants in accordance

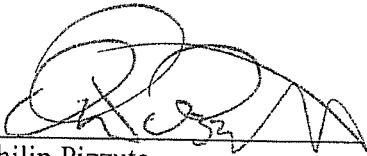
with the principles of fault and apportionment, along with costs and disbursements, including reasonable attorneys' fees.

Dated: April 26, 2013

Respectfully Submitted,

MOUND COTTON WOLLAN & GREENGRASS

By:



Philip Pizzuto
Attorneys for Defendant
The New York Times Company
One Battery Park Plaza
New York, NY 10004-1486
(212) 804-4200

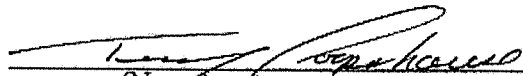
TO: STEPHEN M. CANTOR, P.C.
325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

All Defendants (see Service List)


VERIFICATION

STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

Terrel Coopershouse being duly sworn, deposes and says that I am a Director of The New York Times Company, a defendant herein. I have read the foregoing Amended Verified Answer of Defendant The New York Times Company and know the contents thereof; that the same is true to my knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe such to be true based upon the books and records maintained by defendant. This verification is made by me because The New York Times Company is a corporation and I am an Director thereof.


(Name)

Sworn to before me this
26th day of April, 2013



Notary Public

ELLEN HERB
Notary Public, State of New York
No. 01HE6183785
Qualified in New York County
Commission Expires April 2, 2015

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

VERIFIED ANSWER

Index No. 159201/12

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; ABCOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAW CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC.; and TOTAL
SAFETY CONSULTING,

Defendants.

-----x
Defendant THE NEW YORK TIMES COMPANY, by its attorneys,
DOPF, P.C., answers the plaintiffs' Complaint as follows, upon
information and belief:

1. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "1", "2" and "3", except begs leave to refer
all questions of law to the Court and all questions of fact to the trier
of fact.

2. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "4", "5", "6", "7", "8", "9" and "10".

3. Denies each and every allegation contained in the paragraphs of the Complaint designated "11", "12" and "13".

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "14", "15", "16", "17", "18", "19", "20", "21", "22" and "23".

AS AND FOR A FIRST CAUSE OF ACTION

5. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "24".

6. Denies each and every allegation contained in the paragraphs of the Complaint designated "25", "26", "27", "28" and "29".

AS AND FOR A SECOND CAUSE OF ACTION

7. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "30".

8. Denies each and every allegation contained in the paragraphs of the Complaint designated "31" and "32".

AS AND FOR A THIRD CAUSE OF ACTION

9. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "33".

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "34" and "35".

AS AND FOR A FOURTH CAUSE OF ACTION

11. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "36".

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "37" and "38".

AS AND FOR A FIFTH CAUSE OF ACTION

13. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "39".

14. Denies each and every allegation contained in the paragraphs of the Complaint designated "40" and "41".

AS AND FOR A SIXTH CAUSE OF ACTION

15. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "42".

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "43" and "44".

AS AND FOR A SEVENTH CAUSE OF ACTION

17. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "45".

18. Denies each and every allegation contained in the paragraphs of the Complaint designated "46" and "47".

AS AND FOR A EIGHTH CAUSE OF ACTION

19. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "48".

20. Denies each and every allegation contained in the paragraph of the Complaint designated "50".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

21. Upon information and belief, that the alleged cause or causes of action, if any, on behalf of the plaintiffs stated in the Complaint are barred by the applicable Statute of Limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

22. Whatever injuries plaintiff may have sustained at the time and place alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence or fault or

want of care on the part of the defendant and that any award will thereby be proportionately diminished or barred.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

23. The defendant herein is not a proper party to this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

24. Any injuries sustained by plaintiff arose out of and during the scope of the plaintiff's employment and, as such, the plaintiffs are barred from seeking a recovery herein and is relegated solely to his benefits recoverable under the Workers' Compensation Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

25. Whatever non-economic injuries plaintiff may have sustained as a result of the wrongdoing alleged in the Complaint will be limited as to the answering defendant by Article 16 of the New York State Civil Practice Law and Rules.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

26. Plaintiff failed to take reasonable steps in an effort to mitigate their damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

27. That all the dangers and risks incident to the situation mentioned in the Complaint were open, obvious and apparent and were known and assumed by plaintiff.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

28. Plaintiff's injuries were caused in whole or part by the negligent acts of other individuals and/or entities over whom this answering defendant had no supervision or control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

29. Any damages awarded to plaintiffs are subject to a set-off pursuant to CPLR 4545, to the extent plaintiffs received any reimbursement of their damages through any collateral source provider including but not limited to insurer, Workers' Compensation or Social Security/Disability.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

30. This action is barred or the defendant is entitled to a set-off against any award herein, including but not limited to a set-off pursuant to GOL § 15-108, to the extent that plaintiffs have previously recovered a sum for all or part of the damages claimed herein.

AS AND FOR AN ELEVENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE NEW YORK TIMES
COMPANY ALLEGES UPON INFORMATION AND
BELIEF:

31. That the plaintiff's own culpable conduct was the sole proximate cause of the accident and resulting injuries.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE,
DEFENDANT THE NEW YORK TIMES COMPANY
ALLEGES UPON INFORMATION AND BELIEF:

32. That the plaintiff was a recalcitrant worker in that he disregarded safety protocols, training and/or warnings and/or failed to heed instructions and/or failed to utilize proper safety gear made available to him by defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE NEW YORK TIMES
COMPANY ALLEGES UPON INFORMATION AND
BELIEF:

33. That the negligence of other third parties constituted a separate, independent, superseding, intervening and/or unforeseeable act or acts which constitute the cause of the alleged accident and resultant injuries.

AS AND FOR A FOURTEENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE NEW YORK TIMES
COMPANY ALLEGES UPON INFORMATION AND
BELIEF:

34. The plaintiffs have failed to join indispensable third parties to this litigation and plaintiffs are therefore barred from proceeding with this action

AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANTS THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; ABCOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAW CONTRACTING, INC.; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING, THE DEFENDANT THE NEW YORK TIMES COMPANY DEMANDS:

35. That if the plaintiffs recover judgment against the answering defendant, then the answering defendant requests an apportionment of responsibility among all defendants and indemnification for the full amount, or apportioned share, of any judgment.

WHEREFORE, defendant THE NEW YORK TIMES COMPANY demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
April 26, 2013

Yours, etc.,

DOPF, P.C.

By: 

Joseph R. Cammarosano
Attorneys for Defendant
THE NEW YORK TIMES COMPANY
440 Ninth Avenue
16th Floor
New York, New York 10001
(212) 244-9090

TO: STEPHEN M. CANTOR, P.C.
Attorneys for Plaintiffs
325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

THE CITY OF NEW YORK
Defendant
One Centre Street
New York, New York 10007

THE METROPOLITAN TRANSPORTATION AUTHORITY
Defendant
347 Madison Avenue
New York, New York 1007

THE NEW YORK CITY TRANSIT AUTHORITY
Defendant
130 Livingston Street
Brooklyn, New York 11201

TISHMAN CONSTRUCTION CORPORATION
Defendant
100 Park Avenue
New York, New York 10017

ABCOM TECHNOLOGY CORPORATION
Defendant
100 Park Avenue
New York, New York 10017

CITNALTA CONSTRUCTION CORP.
Defendant
1601 Locust Avenue
Bohemia, New York 11716

JUDLAW CONTRACTING, INC.
Defendant
26-15 Ulmer Stree
College Point, New York 11354

AMEC CONSTRUCTION MANAGEMENT, INC.
Defendant
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

BOSTON PROPERTIES LIMITED PARTNERSHIP
Defendant
599 Lexington Avenue
New York, New York 10022-6004

QUEENS BALLPARK COMPANY, LLC.
Defendant
123-01 Roosevelt Avenue
Flushing, New York 11368

HUNT CONSTRUCTION GROUP
Defendant
752 Pacific Street, 6th Floor
Brooklyn, New York 11238

LEND LEASE CORPORATION LIMITED
f/k/a BOVIS LEND LEASE LMB, INC.
Defendant
200 Park Avenue
New York, New York 10166

TOTAL SAFETY CONSULTING
Defendant
Six Highland Avenue
Staten Island, New York 10301

EXHIBIT J

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

VERIFIED ANSWER

Index No. 159201/12

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; ABCOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAW CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC.; and TOTAL
SAFETY CONSULTING,

Defendants.

-----x
Defendant FOREST CITY RATNER COMPANIES, improperly sued
herein, by its attorneys, DOPF, P.C., answers the plaintiffs'
Complaint as follows, upon information and belief:

1. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "1", "2" and "3", except begs leave to refer
all questions of law to the Court and all questions of fact to the trier
of fact.

2. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "4", "5", "6", "7", "8", "9" and "10".

3. Denies each and every allegation contained in the paragraphs of the Complaint designated "11", "12" and "13".

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "14", "15", "16", "17", "18", "19", "20", "21", "22" and "23".

AS AND FOR A FIRST CAUSE OF ACTION

5. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "24".

6. Denies each and every allegation contained in the paragraphs of the Complaint designated "25", "26", "27", "28" and "29".

AS AND FOR A SECOND CAUSE OF ACTION

7. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "30".

8. Denies each and every allegation contained in the paragraphs of the Complaint designated "31" and "32".

AS AND FOR A THIRD CAUSE OF ACTION

9. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "33".

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "34" and "35".

AS AND FOR A FOURTH CAUSE OF ACTION

11. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "36".

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "37" and "38".

AS AND FOR A FIFTH CAUSE OF ACTION

13. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "39".

14. Denies each and every allegation contained in the paragraphs of the Complaint designated "40" and "41".

AS AND FOR A SIXTH CAUSE OF ACTION

15. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "42".

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "43" and "44".

AS AND FOR A SEVENTH CAUSE OF ACTION

17. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "45".

18. Denies each and every allegation contained in the paragraphs of the Complaint designated "46" and "47".

AS AND FOR A EIGHTH CAUSE OF ACTION

19. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "48".

20. Denies each and every allegation contained in the paragraph of the Complaint designated "50".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

21. Upon information and belief, that the alleged cause or causes of action, if any, on behalf of the plaintiffs stated in the Complaint are barred by the applicable Statute of Limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

22. Whatever injuries plaintiff may have sustained at the time and place alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence or fault or

want of care on the part of the defendant and that any award will thereby be proportionately diminished or barred.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

23. The defendant herein is not a proper party to this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

24. Any injuries sustained by plaintiff arose out of and during the scope of the plaintiff's employment and, as such, the plaintiffs are barred from seeking a recovery herein and is relegated solely to his benefits recoverable under the Workers' Compensation Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

25. Whatever non-economic injuries plaintiff may have sustained as a result of the wrongdoing alleged in the Complaint will be limited as to the answering defendant by Article 16 of the New York State Civil Practice Law and Rules.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, DEFENDANT
THE FOREST CITY RATNER COMPANIES ALLEGES UPON
INFORMATION AND BELIEF:

26. Plaintiff failed to take reasonable steps in an effort to mitigate their damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY RATNER COMPANIES ALLEGES
UPON INFORMATION AND BELIEF:

31. That the plaintiff's own culpable conduct was the sole proximate cause of the accident and resulting injuries.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY RATNER COMPANIES ALLEGES
UPON INFORMATION AND BELIEF:

32. That the plaintiff was a recalcitrant worker in that he disregarded safety protocols, training and/or warnings and/or failed to heed instructions and/or failed to utilize proper safety gear made available to him by defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY RATNER COMPANIES ALLEGES
UPON INFORMATION AND BELIEF:

33. That the negligence of other third parties constituted a separate, independent, superseding, intervening and/or unforeseeable act or acts which constitute the cause of the alleged accident and resultant injuries.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY RATNER COMPANIES ALLEGES
UPON INFORMATION AND BELIEF:

34. The plaintiffs have failed to join indispensable third parties to this litigation and plaintiffs are therefore barred from proceeding with this action

AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANTS THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; ABCOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAW CONTRACTING, INC.; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING, THE DEFENDANT FOREST CITY RATNER COMPANIES DEMANDS:

35. That if the plaintiffs recover judgment against the answering defendant, then the answering defendant requests an apportionment of responsibility among all defendants and indemnification for the full amount, or apportioned share, of any judgment.

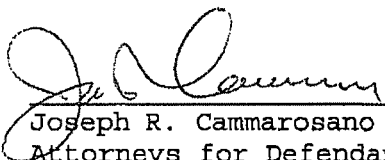
WHEREFORE, defendant FOREST CITY RATNER COMPANIES demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
April 26, 2013

Yours, etc.,

DOPF, P.C.

By:


Joseph R. Cammarosano
Attorneys for Defendant
FOREST CITY RATNER COMPANIES
440 Ninth Avenue
16th Floor
New York, New York 10001
(212) 244-9090

TO: STEPHEN M. CANTOR, P.C.
Attorneys for Plaintiffs
325 Broadway, Suite 502
New York, New York 10007-1187
(212) 732-8456

THE CITY OF NEW YORK
Defendant
One Centre Street
New York, New York 10007

THE METROPOLITAN TRANSPORTATION AUTHORITY
Defendant
347 Madison Avenue
New York, New York 1007

THE NEW YORK CITY TRANSIT AUTHORITY
Defendant
130 Livingston Street
Brooklyn, New York 11201

TISHMAN CONSTRUCTION CORPORATION
Defendant
100 Park Avenue
New York, New York 10017

ABCOM TECHNOLOGY CORPORATION
Defendant
100 Park Avenue
New York, New York 10017

CITNALTA CONSTRUCTION CORP.
Defendant
1601 Locust Avenue
Bohemia, New York 11716

JUDLAW CONTRACTING, INC.
Defendant
26-15 Ulmer Stree
College Point, New York 11354

AMEC CONSTRUCTION MANAGEMENT, INC.
Defendant
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

BOSTON PROPERTIES LIMITED PARTNERSHIP
Defendant
599 Lexington Avenue
New York, New York 10022-6004

QUEENS BALLPARK COMPANY, LLC.

Defendant

123-01 Roosevelt Avenue

Flushing, New York 11368

HUNT CONSTRUCTION GROUP

Defendant

752 Pacific Street, 6th Floor

Brooklyn, New York 11238

LEND LEASE CORPORATION LIMITED

f/k/a BOVIS LEND LEASE LMB, INC.

Defendant

200 Park Avenue

New York, New York 10166

TOTAL SAFETY CONSULTING

Defendant

Six Highland Avenue

Staten Island, New York 10301

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

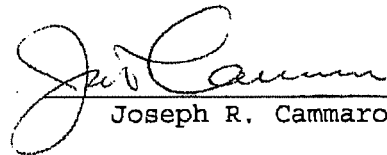
Joseph R. Cammarosano, an attorney duly admitted to practice law in the State of New York, affirms the truth of the following under the penalties of perjury:

That he is the attorney representing the defendant FOREST CITY RATNER COMPANIES.

That he has read the attached Answer and the same is true to his own belief, and as to those matters, he believes them to be true to the best of his knowledge.

That deponent's sources of information are medical records and correspondence with which deponent is fully familiar.

That this verification is made by deponent because his client is not does not reside in the county where deponent maintains his office.



Joseph R. Cammarosano

Sworn to before me this
26th day of April, 2013.



Notary Public

JACQUELINE P. CHANCE
Notary Public, State of New York
No. 01CH6244009
Qualified in Queens County
Commission Expires June 27, 2015

EXHIBIT K

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

VERIFIED ANSWER

Index No. 159201/12

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; ABCOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAW CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC.; and TOTAL
SAFETY CONSULTING,

Defendants.

-----X

Defendant FOREST CITY ENTERPRISES, improperly sued herein,
by its attorneys, DOPF, P.C., answers the plaintiffs' Complaint as
follows, upon information and belief:

1. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "1", "2" and "3", except begs leave to refer
all questions of law to the Court and all questions of fact to the trier
of fact.

2. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraphs of
the Complaint designated "4", "5", "6", "7", "8", "9" and "10".

3. Denies each and every allegation contained in the paragraphs of the Complaint designated "11", "12" and "13".

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "14", "15", "16", "17", "18", "19", "20", "21", "22" and "23".

AS AND FOR A FIRST CAUSE OF ACTION

5. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "24".

6. Denies each and every allegation contained in the paragraphs of the Complaint designated "25", "26", "27", "28" and "29".

AS AND FOR A SECOND CAUSE OF ACTION

7. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "30".

8. Denies each and every allegation contained in the paragraphs of the Complaint designated "31" and "32".

AS AND FOR A THIRD CAUSE OF ACTION

9. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "33".

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "34" and "35".

AS AND FOR A FOURTH CAUSE OF ACTION

11. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "36".

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "37" and "38".

AS AND FOR A FIFTH CAUSE OF ACTION

13. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "39".

14. Denies each and every allegation contained in the paragraphs of the Complaint designated "40" and "41".

AS AND FOR A SIXTH CAUSE OF ACTION

15. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiffs in the paragraph of the Complaint designated "42".

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated "43" and "44".

AS AND FOR A SEVENTH CAUSE OF ACTION

17. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "45".

18. Denies each and every allegation contained in the paragraphs of the Complaint designated "46" and "47".

AS AND FOR A EIGHTH CAUSE OF ACTION

19. Defendant repeats and reiterates each denial and every denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint reiterated and realleged by the plaintiff in the paragraph of the Complaint designated "48".

20. Denies each and every allegation contained in the paragraph of the Complaint designated "50".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

21. Upon information and belief, that the alleged cause or causes of action, if any, on behalf of the plaintiffs stated in the Complaint are barred by the applicable Statute of Limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

22. Whatever injuries plaintiff may have sustained at the time and place alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence or fault or

want of care on the part of the defendant and that any award will thereby be proportionately diminished or barred.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

23. The defendant herein is not a proper party to this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

24. Any injuries sustained by plaintiff arose out of and during the scope of the plaintiff's employment and, as such, the plaintiffs are barred from seeking a recovery herein and is relegated solely to his benefits recoverable under the Workers' Compensation Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

25. Whatever non-economic injuries plaintiff may have sustained as a result of the wrongdoing alleged in the Complaint will be limited as to the answering defendant by Article 16 of the New York State Civil Practice Law and Rules.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

26. Plaintiff failed to take reasonable steps in an effort to mitigate their damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

27. That all the dangers and risks incident to the situation mentioned in the Complaint were open, obvious and apparent and were known and assumed by plaintiff.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

28. Plaintiff's injuries were caused in whole or part by the negligent acts of other individuals and/or entities over whom this answering defendant had no supervision or control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

29. Any damages awarded to plaintiffs are subject to a set-off pursuant to CPLR 4545, to the extent plaintiffs received any reimbursement of their damages through any collateral source provider including but not limited to insurer, Workers' Compensation or Social Security/Disability.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

30. This action is barred or the defendant is entitled to a set-off against any award herein, including but not limited to a set-off pursuant to GOL § 15-108, to the extent that plaintiffs have previously recovered a sum for all or part of the damages claimed herein.

AS AND FOR AN ELEVENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE FOREST CITY
ENTERPRISES ALLEGES UPON INFORMATION AND
BELIEF:

31. That the plaintiff's own culpable conduct was the sole proximate cause of the accident and resulting injuries.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE,
DEFENDANT THE FOREST CITY ENTERPRISES
ALLEGES UPON INFORMATION AND BELIEF:

32. That the plaintiff was a recalcitrant worker in that he disregarded safety protocols, training and/or warnings and/or failed to heed instructions and/or failed to utilize proper safety gear made available to him by defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE FOREST CITY
ENTERPRISES ALLEGES UPON INFORMATION AND
BELIEF:

33. That the negligence of other third parties constituted a separate, independent, superseding, intervening and/or unforeseeable act or acts which constitute the cause of the alleged accident and resultant injuries.

AS AND FOR A FOURTEENTH AFFIRMATIVE
DEFENSE, DEFENDANT THE FOREST CITY
ENTERPRISES ALLEGES UPON INFORMATION AND
BELIEF:

34. The plaintiffs have failed to join indispensable third parties to this litigation and plaintiffs are therefore barred from proceeding with this action

AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANTS THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; ABCOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAW CONTRACTING, INC.; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING, THE DEFENDANT FOREST CITY ENTERPRISES DEMANDS:

35. That if the plaintiffs recover judgment against the answering defendant, then the answering defendant requests an apportionment of responsibility among all defendants and indemnification for the full amount, or apportioned share, of any judgment.

WHEREFORE, defendant FOREST CITY ENTERPRISES demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
April 26, 2013

Yours, etc.,

DOPF, P.C.

By: 

Joseph R. Cammarosano
Attorneys for Defendant
FOREST CITY ENTERPRISES
440 Ninth Avenue
16th Floor
New York, New York 10001
(212) 244-9090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

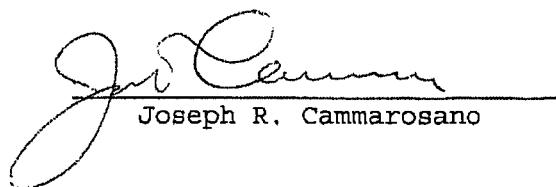
Joseph R. Cammarosano, an attorney duly admitted to practice law in the State of New York, affirms the truth of the following under the penalties of perjury:

That he is the attorney representing the defendant FOREST CITY ENTERPRISES.

That he has read the attached Answer and the same is true to his own belief, and as to those matters, he believes them to be true to the best of his knowledge.

That deponent's sources of information are medical records and correspondence with which deponent is fully familiar.

That this verification is made by deponent because his client is not does not reside in the county where deponent maintains his office.


Joseph R. Cammarosano

Sworn to before me this
20th day of April, 2013.


Notary Public

JACQUELINE P. CHANCE
Notary Public, State of New York
No. 01CH6244009
Qualified in Queens County
Commission Expires June 27, 2015

EXHIBIT L

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

Index No.: 159201/12

-against-

VERIFIED ANSWER

THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----X
Defendant, **CITNALTA CONSTRUCTION CORP.** ("CITNALTA"), by its attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, answering Plaintiff's Verified Complaint dated respectfully state as follows:

AS AND FOR AN ANSWER TO THE FIRST SECTION OF THE COMPLAINT ENTITLED "THE PARTIES"

1. CITNALTA denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1" and "3" of the Verified Complaint.

2. CITNALTA denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "2", "4", "5", "6", "7", "8", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", and "23" of the Verified Complaint, and refers all questions of law to the Court.

3. CITNALTA denies each and every allegation contained in Paragraphs "9" and "10" of the Verified Complaint, except only admits that CITNALTA is a corporation with a place of business located at 1601 Locust Avenue, Bohemia, New York, 11716, and that CITNALTA was a member of a joint venture, CITNALTA/JUDLAU, A JOINT VENTURE, which entered into a written agreement with the NEW YORK CITY TRANSIT AUTHORITY dated August 3, 2009 (contract number A-35797), regarding certain work and/or services to be performed and/or provided at a project known as the Rehab of 7 Stations, BMT West End Line, in Kings County, within the City and State of New York, and CITNALTA refers to the terms and conditions of that written agreement, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF
ACTION**

4. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "24" of the Verified Complaint.

5. CITNALTA denies each and every allegation contained in Paragraphs "25", "26", and "27" of the Verified Complaint as asserted against CITNALTA, and denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "25", "26", and "27" of the Verified Complaint as to the other named defendants, and refers all question of law to the Court.

6. CITNALTA denies each and every allegation contained in paragraphs "28" and "29" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF
ACTION**

7. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "30" of the Verified Complaint.

8. CITNALTA denies each and every allegation contained in Paragraphs "31" and "32" of the Verified Complaint as asserted against CITNALTA, and denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "31" and "32" of the Verified Complaint as to the other named defendants, and refers all question of law to the Court.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF
ACTION**

9. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "33" of the Verified Complaint.

10. CITNALTA denies each and every allegation contained in Paragraphs "34" and "35" of the Verified Complaint as asserted against CITNALTA, and denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "34" and "35" of the Verified Complaint as to the other named defendants, and refers all question of law to the Court.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF
ACTION**

11. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "36" of the Verified Complaint.

12. CITNALTA denies each and every allegation contained in Paragraphs "37" and "38" of the Verified Complaint as asserted against CITNALTA, and denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "37" and "38" of the Verified Complaint as to the other named defendants, and refers all question of law to the Court.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF
ACTION**

13. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "39" of the Verified Complaint.

14. CITNALTA denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "40" and "41" of the Verified Complaint, and refers all question of law to the Court.

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF
ACTION**

15. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "42" of the Verified Complaint.

16. CITNALTA denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "43" and "44" of the Verified Complaint, and refers all question of law to the Court.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE
OF ACTION**

17. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "45" of the Verified Complaint.

18. CITNALTA denies each and every allegation contained within Paragraphs "46" and "47" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE
OF ACTION**

19. CITNALTA repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "48" of the Verified Complaint.

20. CITNALTA denies each and every allegation contained within Paragraphs "49" and "50" of the Verified complaint, and denies each and every part of the prayer for relief, demand for judgment and all allegations of the WHEREFORE clause of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. That by entering into the activity in which the plaintiff was engaged at the time of the occurrence set forth in the Verified Complaint, the plaintiff knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff

herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by plaintiff in her activities and such risks were assumed and accepted by her in performing and engaging in said activities.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. In the event plaintiff recovers a verdict or judgment against DEFENDANTS, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. That any injuries and/or damages sustained by the plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of the plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. Defendants allege that other parties, whether named or unnamed in plaintiff's Complaint, and whether known or presently unknown to Defendants, were negligent or legally responsible or otherwise at fault for the damages alleged. Therefore, Defendants request that in the event any party recovers against Defendants, whether by settlement or judgment, an apportionment of fault be made by Court or jury as to all parties. Defendants further request a judgment or declaration of indemnification or contribution against each and every party or person in accordance

with the apportionment of fault. The liability of these answering defendants, if any, is limited to the percentage of culpability found against them by virtue of the fault of the other parties (both named and unnamed) and in accordance with the laws of the State of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. The liability of this defendant, if any, to the plaintiff(s) for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff(s) could have obtained personal jurisdiction with due diligence.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. In the event the plaintiffs recover a verdict or judgment against the defendants, then said verdict or judgment must be entered in accordance with CPLR 50-B.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

7. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff has failed to join a necessary and indispensable party in some or all of the causes of action who would be responsible for the damages alleged in plaintiff's Complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

9. Pursuant to General Obligations Law §15-108, plaintiff's claim should be diminished in whole or in part in any amount paid by or fairly allocable to any party with whom plaintiff has settled or may settle.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

10. The acts and/or omissions of Plaintiff(s) were the sole proximate cause of the alleged injuries and damages of which the Plaintiff(s) now complain.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

11. If plaintiff sustained any injuries or incurred any damages, the same were caused in whole or in part by the acts or omissions of persons other than this defendant, over whom they had no control, or by the superseding interventions of causes outside of their control.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

12. PLAINTIFF has failed to take reasonable steps to mitigate his damages.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

13. The complaint fails to state a cause of action as to one or more of the claims asserted.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

14. The plaintiff was a "recalcitrant worker" and therefore his complaint should be dismissed.

AS AND FOR A FIRST CROSS-CLAIM AGAINST TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION

GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY CONSULTING.

1. Upon information and belief, that if and in the event Plaintiff sustained the injuries and damages complained of, such injuries and damages were caused in whole or in part, by reason of the negligence, carelessness, recklessness, violations of law and/or strict liability of TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and/or TOTAL SAFETY CONSULTING.

2. By reason of the foregoing, in the event that any judgment or verdict is recovered against CITNALTA, then they shall be entitled to contribution from, and to judgment over and against, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY CONSULTING, equal to the proportionate share of responsibility as is adjudged between all the Defendants herein.

AS AND FOR A SECOND CROSS-CLAIM AGAINST TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES,

AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY CONSULTING.

That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiffs' complaint through any carelessness, recklessness and/or negligence other than the plaintiff's own, such damages were sustained wholly due to the primary and active carelessness, recklessness and negligent acts or omissions of TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY CONSULTING., their agents, servants and/or employees with the fault of CITNALTA, if any, being secondary, derivative, vicarious, and/or solely by operation of law.

3. Further, if plaintiffs should recover judgment against CITNALTA, then the above co-defendants shall be liable to indemnify CITNALTA in whole for the amount of any recovery obtained herein by the plaintiff against CITNALTA as the Court or Jury may direct.

4. That by reason of this action, CITNALTA has and will be put to costs and expenses including attorneys' fees and they demand judgment dismissing the complaint herein as to the answering defendants and further demand judgment over and against TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY

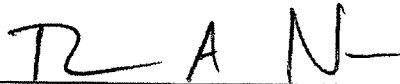
CORPORATION, THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT, INC., BOSTON PROPERTIES LTD PARTNERSHIP, QUEENS BALLPARK COMPANY, LLC, HUNT CONSTRUCTION GROUP, LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY CONSULTING. for the amount of any judgment which may be obtained herein by the plaintiff against the answering defendants or in such amount as the Court or Jury may direct together with the costs and disbursements of the action.

WHEREFORE, CITNALTA demands judgment dismissing the verified complaint of the plaintiffs, together with the attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
May 3, 2013

Yours, etc.

LEWIS BRISBOIS BISGAARD & SMITH LLP



Thomas A. Noss
Attorneys for Defendant
CITNALTA CONSTRUCTION CORP.
77 Water Street
New York, New York 10005
(212) 232-1300

TO:

STEPHEN M. CANTOR, P.C.
325 Broadway, Suite 502
New York, New York 10007-1187
Attorney for Plaintiff
Tel No. 212-732-8456

COZEN O'CONNOR
45 Broadway, 16th Floor
New York, New York 10006
Attorneys for Defendants
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AECOM TECHNOLOGY CORPORATION and
LEND LEASE CORPORATION LIMITED

CORPORATION COUNSEL OF THE CITY OF NY
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New York, New York 10007
Attorneys for Defendant
THE CITY OF NEW YORK

KAVITA K. BHATT
Office of the General Counsel
New York City Transit Authority
130 Livingston Street, 12th Fl.
Brooklyn, NY 11201
Attorneys for Defendants
THE METROPOLITAN TRANSIT AUTHORITY and
THE NEW YORK CITY TRANSIT AUTHORITY
Tel No.: 718- 694-3908/4667

ANDREW SAPON
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New York, New York 10170
Attorney for Defendant
JUDLAU CONTRACTING, INC.
Tel No.: 212-792-9761

THE NEW YORK TIMES COMPANY
620 Eighth Avenue
New York, NY 10018

FOREST CITY RATNER COMPANIES
1 Metro Tech Center North
Brooklyn, NY 11201

AMEC CONSTRUCTION MANAGEMENT, INC.
2200 Fletcher Avenue, 6th Fl.
Fort Lee, NJ 07024

BOSTON PROPERTIES LIMITED PARTNERSHIP
599 Lexington Avenue
New York, NY 10022-6004

QUEENS BALLPARK COMPANY, LLC
123-01 Roosevelt Avenue
Flushing, NY 11368

HUNT CONSTRUCTION GROUP
752 Pacific Street, 6th Floor
Brooklyn, NY 11238

TOTAL SAFETY CONSULTING
6 Highland Avenue
Staten Island, NY 10301

ATTORNEY'S VERIFICATION

The undersigned affirms the following statement to be true under the penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules.

That she is an associate of the firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, attorneys for Defendant, **CITNALTA CONSTRUCTION CORP.**

That he has read the foregoing document and knows the contents thereof, and that the same is true to the knowledge of your deponent except as to the matters therein alleged upon information and belief and that as to those matters he believes them to be true.

That the reason why this affirmation is being made by your deponent and not by DEFENDANT is that the DEFENDANT is located in Suffolk County and your affirmant does not maintain an office within the counties in which the defendants maintain their offices.

That the source of your deponent's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with DEFENDANT.

Dated: New York, New York
May 3, 2013



Thomas A. Noss

EXHIBIT M

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE METROPOLITAN
TRANSPORTATION AUTHORITY, THE NEW YORK CITY
TRANSIT AUTHORITY, TISHMAN CONSTRUCTION
CORPORATION, AECOM TECHNOLOGY CORPORATION,
CITNALTA CONSTRUCTION CORP., JUDLAU
CONTRACTING, INC. THE NEW YORK TIMES COMPANY,
FOREST CITY RATNER COMPANIES, FOREST CITY
ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT,
INC., BOSTON PROPERTIES LIMITED PARTNERSHIP,
QUEENS BALLPARK, LLC., HUNT CONSTRUCTION
GROUP, LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC., and TOTAL SAFETY
CONSULTING,

Defendants.

Index No.: 159201/2012

VERIFIED ANSWER

PLEASE TAKE NOTICE that defendant QUEENS BALLPARK COMPANY, L.L.C. i/s/h/a QUEENS BALLPARK, LLC (“Queens Ballpark”), by its attorneys, HAVKINS ROSENFELD RITZERT & VARRIALE, LLP, as and for its Verified Answer to the plaintiffs’ Verified Complaint, states upon information and belief, as follows:

THE PARIES

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “1” of the Verified Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “2” of the Verified Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3” of the Verified Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “4” of the Verified Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “5” of the Verified Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Verified Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Verified Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Verified Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Verified Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Verified Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Verified Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Verified Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Verified Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Verified Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Verified Complaint.

16. Denies, in the form alleged, each and every allegation contained in paragraph “16” of the Verified Complaint, and respectfully refers all questions of law to the Court.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the Verified Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Verified Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Verified Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the Verified Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Verified Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Verified Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

24. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “23”, as if fully set forth herein.

25. Denies each and every allegation contained in paragraph “25” as to Queens Ballpark and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the Verified Complaint as to all other defendants.

26. Denies each and every allegation contained in paragraph "26" as to QUEENS BALLPARK and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Verified Complaint as to all other defendants..

27. Denies each and every allegation contained in paragraph "27" as to Queens Ballpark and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Verified Complaint as to all other defendants.

28. Denies each and every allegation contained in paragraph "28" of the Verified Complaint.

29. Denies each and every allegation contained in paragraph "29" of the Verified Complaint.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

30. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs "1" through "29", as if fully set forth herein.

31. Denies each and every allegation contained in paragraph "31" as to Queens Ballpark and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Verified Complaint as to all other defendants.

32. Denies each and every allegation contained in paragraph "32" of the Verified Complaint.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

33. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs "1" through "32", as if fully set forth herein.

34. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Verified Complaint.

35. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

36. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “35”, as if fully set forth herein.

37. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “37” of the Verified Complaint.

38. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “38” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

39. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “38”, as if fully set forth herein.

40. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Verified Complaint.

41. Denies, in the form alleged, knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

42. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “41”, as if fully set forth herein.

43. Denies, each and every allegation contained in paragraph “43” of the Verified Complaint.

44. Denies each and every allegation contained in paragraph “44” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

45. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “44”, as if fully set forth herein.

46. Denies each and every allegation contained in paragraph “46” as to QUEENS BALLPARK and, as to the remaining defendants, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Verified Complaint.

47. Denies each and every allegation contained in paragraph “47” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE EIGHTH CAUSE OF ACTION

48. Queens Ballpark repeats, reiterates, and alleges all responses and allegations contained in paragraphs “1” through “47”, as if fully set forth herein.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “49” of the Verified Complaint.

50. Denies each and every allegation contained in paragraph “50” of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

51. If any injuries and/or damages were sustained by the plaintiffs at the time and place and in the manner alleged in the Verified Complaint, such injuries and/or damages are attributable in whole or in part to the culpable conduct of the plaintiffs, and the plaintiffs’ recovery, if any, shall be reduced by the proportionate share of culpability assigned to the plaintiffs.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

52. If the plaintiffs sustained the injuries complained of, which are denied, said injuries were caused in whole or in part by the conduct of one or more parties for whose conduct the

answering defendant is not responsible, has no control over, or with whom the answering defendant has no legal relation.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

53. In the event the plaintiffs recover a verdict or judgment against the answering defendant then said verdict or judgment must be reduced pursuant to CPLR § 4545 by those amounts which have been, or will, with reasonable certainty, replace or indemnify the plaintiffs, in whole or in part, for any past or future claimed medical expenses or other such economic loss, paid from any collateral source such as insurance, social security, Workers' Compensation or employee benefit program.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

54. The plaintiffs failed to properly mitigate their damages so as to prevent or reduce the extent of the injuries sustained.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

55. The answering defendant did not create or have actual or constructive notice of the alleged condition or defect alleged in the Verified Complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

56. Any damages alleged to have been sustained by the plaintiffs were caused in whole or in part by the culpable conduct, contributory negligence and/or assumption of risk of the plaintiffs or other parties, without any culpable conduct on the part of the answering defendant, and therefore, the amount of damages, if any, recoverable by the plaintiffs must be reduced pursuant to CPLR Articles 14, 14a and 16 in that proportion to which the culpable conduct attributed to the plaintiffs bear to the culpable conduct which caused the alleged damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

57. In accordance with CPLR 1601, et. seq., the liability of the answering defendant, if any, to the plaintiffs for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom the plaintiffs could have obtained jurisdiction with due diligence.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

58. In the event that any person or entity liable or claimed to be liable for injuries or damages in this action has been given or may hereafter be given a release or covenant not to sue, the answering defendant shall be entitled to protection under General Obligations Law § 15-108.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

59. The plaintiffs' claims and causes of action, as alleged in the Verified Complaint, are barred under the terms of the Workers' Compensation Law.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

60. Liability cannot be imposed on the answering defendant because the sole proximate cause of the plaintiffs' injuries as alleged in the Verified Complaint, were their own acts and/or omissions.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

61. The answering defendant hereby assert the "recalcitrant worker" defense.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

62. The plaintiffs' injuries, if any, were increased or caused by the plaintiffs' failure or neglect to properly utilize safety equipment at the time of the occurrence, and, therefore, the plaintiffs may not recover for those injuries which would not otherwise have been sustained.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

63. The culpable conduct of those responsible for the accident or the occurrence alleged in the Verified Complaint constituted a separate, independent, superseding, intervening culpable act or acts which constitute the sole proximate cause of the accident or occurrence alleged.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

64. The claims against the answering defendant is barred by the provisions of General Obligations Law §5-322.1.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

65. The Verified Complaint fails to state a cause of action.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

66. With respect to the happening of the alleged occurrence, the answering defendant had no duty of care, custody or control and as such the answering defendant is not liable to plaintiffs.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

67. Any damages alleged to have been sustained by the plaintiffs were caused in whole or in part by the culpable conduct, contributory negligence and/or assumption of risk of the plaintiffs and/or other parties, without any culpable conduct on the part of the answering defendant, and therefore, the amount of damages, if any, recoverable by the plaintiffs must be reduced pursuant to Article 16 of the New York City Practice Law and Rules in that proportion to which the culpable conduct attributed to the plaintiffs bear to the culpable conduct which caused the alleged damages.

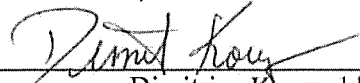
AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

68. The plaintiffs failed to join a necessary and indispensable party.

WHEREFORE, defendant QUEENS BALLPARK COMPANY, L.L.C., hereby demands judgment dismissing the plaintiffs' Verified Complaint in its entirety, with prejudice, and awarding it the costs and disbursements of this action, together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 31, 2013

**HAVKINS ROSENFELD RITZERT &
VARRIALE, LLP**

By: 
Dimitrios Kourouklis, Ph.D.
Attorneys for Defendant
QUEENS BALLPARK COMPANY, L.L.C.
1065 Avenue of the Americas, Suite 800
New York, New York 10018
(212) 488-1598
File No.: 11320-000133

TO:

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TRANSIT AUTHORITY & METROPOLITAN TRANSIT
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DOPF, P.C.

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RATNER COMPANIES, AND FOREST CITY
ENTERPRISES
Defendant
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HUNT CONSTRUCTION GROUP

Defendant
752 Pacific Street, 6th Floor
Brooklyn, New York 11238

AMEE CONSTRUCTION MANAGEMENT, INC.

Defendant
2200 Fletcher Avenue, 6th Floor
Fort Lee, New Jersey 07024

TOTAL SAFETY CONSULTING

Defendant
6 Highland Avenue
Staten Island, New York 10301

**ATTORNEY VERIFICATION
PURSUANT TO CPLR § 3020(d)(3)**

DIMITRIOS KOUROUKLIS, Ph.D., an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under penalties of perjury that:

I am associated with the law firm of HAVKINS ROSENFELD RITZERT & VARRIALE, LLP, the attorneys for the defendant, QUEENS BALLPARK COMPANY, L.L.C. in the above-entitled action. I have read the foregoing Verified Answer and know the contents thereof, and upon information and belief, I believe the matters alleged therein to be true.

The reason this verification is made by me and not by the defendant, QUEENS BALLPARK COMPANY, L.L.C. is because the defendant is not located in the county in which its attorneys maintain their offices.

The source of my information and the grounds of my beliefs are privileged communications and/or a review of the documents contained in the file.

Dated: New York, New York
May 31, 2013

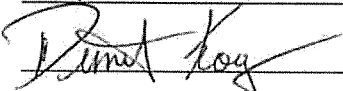


Dimitrios Kourouklis, Ph.D.

ATTORNEY CERTIFICATION
PURSUANT TO 22 NYCRR 130-1.1a

Pursuant to 22 NYCRR 130-1.1a, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the annexed document(s) are not frivolous as defined by Section 130-1.1(c) and was not obtained through illegal conduct, nor was it obtained in violation of 22 NYCRR 1200.41-a.

Dated: May 31, 2013

Signature: 

Print Signer's Name: Dimitrios Kourouklis

EXHIBIT N

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

**VERIFIED ANSWER WITH
CROSS-CLAIM**

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY;
FOREST CITY RATNER COMPANIES; FOREST
CITY ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION GROUP;
LEND LEASE CORPORATION LIMITED f/k/a
BOVIS LEND LEASE LMB, INC.; and TOTAL
SAFETY CONSULTING,

Index No. 159201/2012
IAS Part

Defendants.

-----X
Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY
CONSULTING, by its attorneys, PILLINGER MILLER TARALLO, LLP,
upon information and belief, answers the complaint of plaintiff
as follows:

1. Denies any knowledge or information sufficient to form a
belief as to the truth of the allegations contained in the
paragraphs of the complaint herein designated as: "1"; "2";
"3"; "4"; "5"; "6"; "7"; "8"; "9"; "10"; "11"; "12"; "13";
"14"; "15"; "16"; "17"; "18"; "19"; "21"; "22"; "23"; "26"

but denies the truth of same as to TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING and respectfully refers all issues of law to this Honorable Court; "27" but denies the truth of same as to TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING and respectfully refers all issues of law to this Honorable Court; "28"; "29"; "31" but denies the truth of same as to TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING; "34"; "37"; "40"; "43".

2. Denies each and every allegations contained in the paragraphs of the complaint herein designated as: "20" but admits TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING is a domestic limited liability company and respectfully refers all issues of law to this Honorable Court; "25"; "32"; "35"; "38"; "41"; "44"; "46"; "47"; "49"; "50".

3. Repeats, reiterates and re-alleges each and every response heretofore made herein as and for its answer to the allegations contained in the paragraphs of the Complaint herein designated as: "24"; "30"; "33"; "36"; "39"; "42"; "45"; "48".

PLEASE TAKE NOTICE that affirmative defenses are set forth as follows:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

4. That the amounts recoverable shall be diminished in the proportion which the culpable conduct attributable to plaintiffs and/or co-defendants bears to the culpable conduct which caused the injuries and/or damages, including, but not limited to, plaintiffs' contributory negligence, negligence in causing, creating or contributing to the conditions and damages complained of in the Complaint, plaintiff's culpable conduct and/or assumption of the risk.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

5. That the within Complaint fails to state a claim and/or cause of action upon which relief can be granted against this answering defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

6. That plaintiffs have failed to take reasonable steps to avoid and/or minimize their injuries and/or damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

7. That the within Complaint is barred by the doctrines of waiver, estoppel, laches and/or res judicata.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

8. That the liability of this answering defendant is limited under the terms of Article Sixteen of the C.P.L.R.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

9. That plaintiffs, through the exercise of reasonable care and caution, could have discovered the alleged defects and dangerous conditions, apprehended the danger and avoided the injuries.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

10. That the injuries and/or damages set forth in the within Complaint were the result of the negligence and/or culpable conduct of plaintiffs, co-defendants and/or third parties over whom this answering defendant exercised no control nor right of control and in no way participated and therefore plaintiffs cannot recover against this answering defendant.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

11. That the injuries and/or damages set forth in the within Complaint were the result of the negligence and/or culpable conduct of third parties and/or independent contractors over whom this answering defendant exercised no control and therefore plaintiffs cannot recover against this answering defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

12. Plaintiffs' exclusive remedy as to the claims asserted against this answering defendant is under the applicable Worker's Compensation Statute, wherefore plaintiffs are

barred from recovery in this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

13. That at all times during the conduct of its operations the members, officers, principals, agents, servants, employees and/or persons acting or who acted on behalf of this answering defendant used proper methods in its activities, in conformity to available knowledge and research of the site safety and industrial communities.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

14. That if plaintiffs sustained injuries or incurred damages as alleged, the same results from plaintiffs' pre-existing and/or unrelated medical, genetic and/or environmental conditions, diseases or illnesses.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

15. That if plaintiffs sustained injuries or incurred damages as alleged, the same were caused in whole or in part through the operations of nature and/or other intervening and/or superceding cause or causes.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE:

16. Plaintiffs failed to mitigate or otherwise act to lessen or reduce the injuries, damages and/or disabilities alleged in the within Complaint.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE:

17. Any past or future costs or expenses incurred or to be incurred by plaintiffs for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, have been or will with reasonable certainty will be replaced or indemnified in whole or in part from a collateral sources as defined in Section 4545(c) of the New York Civil Practice Law and Rules.
18. If any damages are recoverable against this answering defendant, the amount of such damages shall be diminished by the amount of funds which plaintiffs have or shall receive from such collateral sources.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE:

19. Plaintiffs have failed to join indispensable and/or necessary parties to this lawsuit and have failed to plead a reason for such non-joinder and therefore the within Complaint must be dismissed.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE:

20. That plaintiff VELIMIR ZIC was not exposed to "painting materials" (as defined by plaintiffs in the Complaint), toxic substances, toxic particulates, toxic dust, toxic chemicals, lead fumes, lead smoke, lead dust and lead particles, materials and/or toxins at the Thurgood Marshall

U.S. Courthouse, New York, New York.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE:

21. That defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING complied with all applicable laws, rules, codes, regulations, standards and instructions at all relevant times, including but not limited to, the New York City Building Code.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE:

22. That the injuries, losses, damages and occurrences alleged in the Complaint were the result of unprecedented, extraordinary and/or unforeseeable circumstances and/or independent and/or intervening and/or superceding cause or causes over which this answering defendant had no control or right of control and in no way participated so as to relieve this answering defendant from any liability in these actions.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE:

23. Plaintiff VELIMIR ZIC caused and/or contributed to his claimed illnesses, injuries and damages, either in whole or in part, by the exposure to and use of other substances, products, medications, drugs, toxins and/or "hazardous substances".

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE:

24. That the state of knowledge, or the state of the art, at the time of the occurrences and/or alleged exposures did not reasonably allow this answering defendant to know about, or take steps sufficient to alleviate the alleged risks of which plaintiffs complain.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE:

25. Although this answering defendant specifically denies liability for the occurrences and damages complained of, if this defendant is found liable for such occurrence and damages, this defendant's share of liability is fifty percent (50%) or less of the total liability assigned to all persons or entities liable and, pursuant to Section 1601 of the Civil Practice Law and Rules, the liability of this defendant to the plaintiff for the non-economic loss shall not exceed this defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE:

26. That the negligence, fault and culpable conduct of plaintiff VELIMIR ZIC herein caused the exposures in which plaintiffs were injured and/or damaged and/or injuries

and/or damages resulting therefrom.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE:

27. Any judgment entered in favor of plaintiffs should be reduced pursuant to General Obligations Law Section 15-108 by the amount of any settlement, release, covenant not to enforce a judgment or the amount of consideration paid by any person or entity liable to plaintiffs for injuries and/or damages alleged in the within Complaint.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE:

28. There exists no proximate causation between any alleged act or alleged breach of duty by this answering defendant and plaintiffs' alleged exposure, injuries and/or damages, and all plaintiffs' alleged exposure, injuries and/or damages were the result of the conduct of plaintiffs and/or of persons and/or entities other than this answering defendant.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE:

29. That the instrumentalities and/or personal protection equipment which allegedly resulted in and/or contributed to plaintiffs' alleged exposures, injuries and/or damages were not being used for their normal purpose, were not utilized by plaintiffs and/or were being misused.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE:

30. Without admitting the truth of plaintiffs' allegations, plaintiffs through the exercise of reasonable care could have discovered the alleged conditions, apprehended the alleged dangers and avoided the injuries and/or damages.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE:

31. Without admitting the truth of plaintiffs' allegations, plaintiffs voluntarily engaged in a dangerous activities and in doing so, assumed the risks attendant thereto and those risks were open, obvious and known.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE:

32. That the injuries, losses or damages alleged in the within Complaint were caused and/or contributed to by the contributory fault, lack of care, culpable conduct and negligence of plaintiffs and/or other individuals or entities for whose conduct this answering defendant is not responsible.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE:

33. That TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING had no duty to warn plaintiffs of the alleged dangerous conditions.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE:

34. Plaintiff VELIMIR ZIC failed to cooperate fully in his

medical care and treatment and did not inform his treating physicians of his complete medical history and/or give complete and truthful responses to questions posed.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE:

35. That the within actions are barred by the applicable Statute of Limitations.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE:

36. That the sole proximate cause of plaintiff's injuries was plaintiff's own negligence and/or culpable conduct.

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE:

37. That the within Complaint fail to state claims or cause of actions pursuant to the Labor Law of the State of New York as against this answering defendant.

AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE:

38. That any alleged violations by this answering defendant did not directly or indirectly cause plaintiffs' exposures, injuries and/or damages.

AS AND FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE:

39. That plaintiffs were not engaged in a protected activity under 29 CFR Section 1926.1127.

AS AND FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE:

40. Plaintiffs' claims and/or causes of action against this answering defendant are barred by State, Federal and Common

Law Immunity.

AS AND FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE:

41. Although this defendant specifically denies that it took any action or failed to take any action for which it may be cast in liability for plaintiffs' claims, to the extent that this answering defendant is found to have taken any such actions or failed to take any such actions, all such actions or inactions were taken in performance of discretionary functions undertaken by or under the direction or control of Caldwell, Wingate, Bovis Lend Lease, the U.S. Government and/or other federal agencies, their contractors and employees. Accordingly, this answering defendant is immune from liability for those actions or inactions pursuant to federal common law, the Federal Tort Claims Act and/or the common law of the State of New York.

AS AND FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE:

42. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING did not owe any duty to plaintiffs.

AS AND FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE:

43. To the extent that defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING owed a duty to plaintiffs which it specifically denies, TOTAL SAFETY CONSULTING LLC

i/s/h/a TOTAL SAFETY CONSULTING acted reasonably under the circumstances and complied with all applicable statutes, regulations, codes and industry standards.

AS AND FOR A FORTIETH AFFIRMATIVE DEFENSE:

44. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING hereby incorporates by reference any and all affirmative defenses asserted herein by its co-defendants.

AS AND FOR A FORTY-FIRST AFFIRMATIVE DEFENSE:

45. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING did not cause or create any dangerous, defective and/or unsafe condition or conditions at the locations allegedly involved herein.

AS AND FOR A FORTY-SECOND AFFIRMATIVE DEFENSE:

46. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING did not have actual or constructive notice of any danger and/or unsafe conditions on the properties and at the locations at issue including but not limited to the Thurgood Marshall U.S. Courthouse.

AS AND FOR A FORTY-THIRD AFFIRMATIVE DEFENSE:

47. Any injuries and/or damages sustained by plaintiff VELIMIR ZIC were caused solely by the actions or inactions of persons or entities for whose conduct TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING is not

legally responsible.

AS AND FOR A FORTY-FOURTH AFFIRMATIVE DEFENSE:

48. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING reserves unto itself all of those defenses and such other defenses, affirmative or otherwise, as may prove through discovery to be applicable as well as those defenses affirmed in otherwise raised by the other defendants herein.

AS AND FOR A FORTY-FIFTH AFFIRMATIVE DEFENSE:

49. Plaintiffs' alleged injuries were caused directly, solely and proximately by sensitivities, idiosyncrasies and other reactions peculiar to the allegedly injured plaintiffs and not found in the general public.

AS AND FOR A FORTY-SIXTH AFFIRMATIVE DEFENSE:

50. Any alleged injuries and/or damages sustained by plaintiffs were caused, in whole or in part, by the failure of the allegedly injured plaintiffs to exercise reasonable and ordinary care, caution or vigilance under the circumstances.

AS AND FOR A FORTY-SEVENTH AFFIRMATIVE DEFENSE:

51. That plaintiff VELIMIR ZIC failed to take reasonable and/or adequate steps and precautions for his own safety.

AS AND FOR A FORTY-EIGHTH AFFIRMATIVE DEFENSE:

52. Any recovery by plaintiffs for the alleged injuries and/or damages are barred, in whole or in part, by the allegedly injured plaintiff's failure and/or misuse of appropriate safety devices, personal protection equipment and/or respiratory protection made available to them that would have reduced or prevented the alleged injuries.

AS AND FOR A FORTY-NINTH AFFIRMATIVE DEFENSE:

53. Pursuant to Section 1411 of the New York Civil Practice Law and Rules, the amount of damages, if any, recoverable by plaintiff must be diminished in proportion with the allegedly injured plaintiffs negligence, assumption of risk, and/or other culpable conduct that caused the damages.

AS AND FOR A FIFTIETH AFFIRMATIVE DEFENSE:

54. That plaintiffs have failed to join necessary and indispensable parties herein and therefore the within claims and/or causes of action must be dismissed as to plaintiffs.

AS AND FOR A FIFTY-FIRST AFFIRMATIVE DEFENSE:

55. Upon information and belief, the injuries and damages alleged to have been sustained by plaintiff(s) were not reasonably foreseeable.

AS AND FOR A FIFTY-SECOND AFFIRMATIVE DEFENSE:

56. Upon information and belief, plaintiff VELIMIR ZIC disregarded warnings, safety measures, and training, and refused to utilize safety equipment that was available to him. Therefore, plaintiff recoverable damages shall be diminished by the proportion to which the same disregard of warnings, safety measures, and training attributed to plaintiff bears to the conduct which caused and/or contributed to the alleged damages or injuries.

AS AND FOR A FIFTY-THIRD AFFIRMATIVE DEFENSE:

57. That plaintiff was not employed by this answering defendant and plaintiff was not under this answering defendant's supervision, direction and/or control.

AS AND FOR A FIFTY-FOURTH AFFIRMATIVE DEFENSE:

58. Defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING is not liable to plaintiffs to the extent that the locations where plaintiff VELIMIR ZIC's injuries allegedly occurred were not areas where defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING worked at the relevant times.

AS AND FOR A FIFTY-FIFTH AFFIRMATIVE DEFENSE:

59. Plaintiff VELIMIR ZIC was a recalcitrant worker as a result of his failure and/or refusal to use and/or utilize

available tools, instruments, safety devices, safety equipment and/or devices and/or follow instructions and training.

AS AND FOR A FIFTY-SIXTH AFFIRMATIVE DEFENSE:

60. To the extent that plaintiffs are entitled to a recovery in this action, which this answering defendant expressly denies, plaintiffs are limited to a single recovery of their damages and may not recover the same damages multiple times under different causes of action and for different locations.

AS AND FOR A FIFTY-SEVENTH AFFIRMATIVE DEFENSE:

61. To the extent that plaintiff VELIMIR ZIC is found to have been exposed to harmful substances at the Thirgood Marshall U.S. Courthouse, which this answering defendant expressly denies, such exposure was only brief and not substantial, minimal in nature, and not the cause of any conditions or illnesses allegedly suffered by plaintiff.

AS AND FOR A FIFTY-EIGHTH AFFIRMATIVE DEFENSE:

62. Plaintiffs' claims are barred because local, state and federal authorities and agencies have mandated, directed, approved and/or ratified the alleged actions or omissions of defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING.

AS AND FOR A FIFTY-NINTH AFFIRMATIVE DEFENSE:

63. Plaintiffs claims are barred by the learned intermediary doctrine.

AS AND FOR A SIXTIETH AFFIRMATIVE DEFENSE:

64. That without admitting the truth of plaintiffs' Complaint, the lead hazards, exposures and inhalations and handling of painting materials within the Thurgood Marshall U.S. Courthouse existed despite TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING's diligent efforts to discover and prevent same.

AS AND FOR A SIXTY-FIRST AFFIRMATIVE DEFENSE:

65. To the extent that plaintiffs assert claims against TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING arising under Section 241(6) of the New York Labor Law, such claims must be dismissed insofar as they are based on alleged violations of rules or regulations that do not constitute a concrete or specific standard of conduct and/or are inapplicable to this answering defendant.

AS AND FOR A SIXTY-SECOND AFFIRMATIVE DEFENSE:

66. To the extent that plaintiffs seek recovery of exemplary and/or punitive damages from TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING, such recovery is unavailable because the conduct of TOTAL SAFETY CONSULTING

LLC i/s/h/a TOTAL SAFETY CONSULTING was not reckless, malicious, willful, wanton or grossly negligent.

AS AND FOR A SIXTY-THIRD AFFIRMATIVE DEFENSE:

67. To the extent that plaintiffs seek recovery from TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING based upon any alleged violation of any statute, regulation, or other law, no such liability may be founded on any statute, regulation or other law that does not apply to TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING.

AS AND FOR A SIXTY-FOURTH AFFIRMATIVE DEFENSE:

68. To the extent that plaintiffs' claims seek recovery for exemplary and/or punitive damages from TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING, such recovery violates the due process clauses of the New York State and United States Constitution.

AS AND FOR A SIXTY-FIFTH AFFIRMATIVE DEFENSE:

69. To the extent that plaintiffs' claims seek exemplary and/or punitive damages, such claims fails to state a claim upon which relief can be granted.

AS AND FOR A SIXTY-SIXTH AFFIRMATIVE DEFENSE:

70. That plaintiffs were not within the class of persons to be protected under the Labor Law of the State of New York, Rule 23 of the Industrial Code of the State of New York

~~and/or the rules and regulations of OSHA and therefore the~~
within Complaint must be dismissed.

AS AND FOR A SIXTY-SEVENTH AFFIRMATIVE DEFENSE:

71. That plaintiffs were not engaged in a protected activity and/or protected activities under the Labor Law of the State of New York.

AS AND FOR A SIXTY-EIGHTH AFFIRMATIVE DEFENSE:

72. That the instrumentalities, materials, tools, chemicals, abrasives, substances and/or products which allegedly injured plaintiff VELIMIR ZIC was not being used for their normal purpose and/or being misused.

AS AND FOR A SIXTY-NINTH AFFIRMATIVE DEFENSE:

73. That there is no personal jurisdiction over this answering defendant as service of process has not been properly made within the State of New York nor pursuant to statutory authority.

AS AND FOR A SEVENTIETH AFFIRMATIVE DEFENSE:

74. That if any of the issues herein have previously been fully litigated by the parties herein before another judicial and/or administrative tribunal and/or forum, and that tribunal and/or forum has rendered a final decision, order and/or judgment in connection therewith, then plaintiffs are precluded from relitigating said issues herein.

AS AND FOR A SEVENTY-FIRST AFFIRMATIVE DEFENSE:

75. That if plaintiffs have been granted any remedy by any other judicial and/or administrative tribunal and/or forum for any of the injuries alleged to have been sustained herein after having fully litigated the issues therein, then they are precluded from seeking further remedies herein for said injuries.

AS AND FOR A CROSS-CLAIM AGAINST DEFENDANTS THE CITY OF NEW YORK, THE METROPOLITAN TRANSPORTATION AUTHORITY, THE NEW YORK CITY TRANSIT AUTHORITY, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, CITNALTA CONSTRUCTION CORP., JUDLAU CONTRACTING INC., THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT INC., BOSTON PROPERTIES LIMITED PARTNERSHIP, QUEENS BALLPARK COMPANY LLC., HUNT CONSTRUCTION GROUP and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB INC., ANSWERING DEFENDANT TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

76. That, upon information and belief (on the authority of *Dole v. Dow Chemical*, 30 N.Y.2d 143; *Rogers v. Dorchester*, 32 N.Y.2d 553; *Kelly v. Diesel Construction*, 35 N.Y.2d 1), if plaintiffs sustained the injuries and damages in the manner and at the times and places alleged, and if it is found that this answering defendant is liable to plaintiffs herein, then upon said allegations of the Complaint and

upon the pleadings and evidence, said damages were sustained by reason of the sole, active, and primary carelessness and/or recklessness and/or negligence and/or affirmative acts of omissions or commission and/or gross negligence and/or in causing or creating the conditions complained of and/or breach of contract, breach of agreement and/or breach of warranty and/or strict liability and/or violation of codes, statutes, rules and/or regulations by co-defendants THE CITY OF NEW YORK, THE METROPOLITAN TRANSPORTATION AUTHORITY, THE NEW YORK CITY TRANSIT AUTHORITY, TISHMAN CONSTRUCTION CORPORATION, AECOM TECHNOLOGY CORPORATION, CITNALTA CONSTRUCTION CORP., JUDLAU CONTRACTING INC., THE NEW YORK TIMES COMPANY, FOREST CITY RATNER COMPANIES, FOREST CITY ENTERPRISES, AMEC CONSTRUCTION MANAGEMENT INC., BOSTON PROPERTIES LIMITED PARTNERSHIP, QUEENS BALLPARK COMPANY LLC., HUNT CONSTRUCTION GROUP and LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB INC., and this answering defendant is entitled to complete indemnification, both contractual and common law, and/or to be defended and held harmless from any judgment over against co-defendants herein, for all or part of any verdict or judgment that plaintiffs may recover against said answering defendant, and/or in the event that

judgment over is not recovered on the basis of full indemnification, both contractual and common law, then this answering defendant demands judgment over and against co-defendants herein on the basis of an apportionment of responsibility for the alleged occurrences for all or part of any judgment or verdict that plaintiffs may recover against said answering defendant, and that all of the provisions of limitation of liability under the Terms of Article Fourteen and Article Sixteen of the C.P.L.R. are pleaded herein by this cross-claiming defendant, together with costs, disbursements and reasonable attorneys' fees.

PLEASE TAKE NOTICE that this answering defendant hereby demands, pursuant to CPLR 3011, that co-defendants serve an answer to this cross-claim.

WHEREFORE, defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING demands judgment dismissing the Complaint of plaintiffs and further demands that in the event this answering defendant is found liable to plaintiffs herein, then this answering defendant have judgment over and against the aforementioned co-defendants on the cross-claim for all or part of the verdict or judgment that plaintiffs may recovery against TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING, together with the costs and disbursements of this action, plus

any and all attorney's fees.

Dated: New York, New York
June 17, 2013

Yours, etc.,

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Our File No. XL-00685/MHP

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AMEC CONSTRUCTION MANAGEMENT INC.
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VERIFICATION

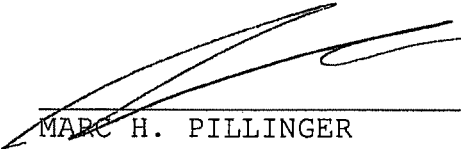
MARC H. PILLINGER, an attorney duly admitted to practice law in the State of New York, hereby affirms the truth of the following under penalty of perjury and pursuant to CPLR 2106:

I am member of Pillinger Miller Tarallo, LLP, and I have read the contents of the foregoing answer and it is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters I believe them to be true.

(✓) I make this verification because defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING resides outside of the county where Pillinger Miller Tarallo, LLP maintains its office.

(✓) I make this verification because defendant TOTAL SAFETY CONSULTING LLC i/s/h/a TOTAL SAFETY CONSULTING is a limited liability company and Pillinger Miller Tarallo, LLP, is its attorney in this action and my knowledge is based upon all facts and company records available and in my possession.

Dated: New York, New York
June 17, 2013



MARC H. PILLINGER

EXHIBIT O

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Index No. 159201/2012

Plaintiffs,

-against-

**ANSWER TO VERIFIED
COMPLAINT**

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC;
HUNT CONSTRUCTION GROUP; LEND LEASE
CORPORATION LIMITED f/k/a BOVIS LEND LEASE
LMB, INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----X

Defendant, AMEC CONSTRUCTION MANAGEMENT, INC. ("Defendant"), through
its attorneys, GORDON & REES, LLP, as and for their Answer to the Complaint, states as
follows upon information and belief:

THE PARTIES

1. Defendant denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraph "1" of the complaint.

2. Defendant denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraph "2" of the complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "4" of the complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6" of the complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "9" of the complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10" of the complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the complaint.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the complaint.

14. Defendant denies the allegations contained in paragraph “14” of the complaint, but admits that it is a Delaware Corporation formerly doing business in New York with its principal executive office located at 2020 Winston Park Drive, Suite 700, Oakville, Ontario, Canada L6H-6X.

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “15” of the complaint.

16. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “16” of the complaint.

17. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “17” of the complaint.

18. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “18” of the complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “19” of the complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “20” of the complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “21” of the complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “22” of the complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “23” of the complaint.

AS AND FOR A FIRST CAUSE OF ACTION

24. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs “1” through “23” as if fully set forth herein.

25. Defendant denies the allegations contained in paragraph “25” of the complaint, and refers all questions of law to the Court.

26. Defendant denies the allegations contained in paragraph “26” of the complaint, and refers all questions of law to the Court.

27. Defendant denies the allegations contained in paragraph “27” of the complaint, and refers all questions of law to the Court.

28. Defendant denies the allegations contained in paragraph “28” of the complaint.

29. Defendant denies the allegations contained in paragraph “29” of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION

30. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs “1” through “29” as if fully set forth herein.

31. Defendant denies the allegations contained in paragraph “31” of the complaint, and refers all questions of law to the Court.

32. Defendant denies the allegations contained in paragraph “32” of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION

33. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs “1” through “32” as if fully set forth herein.

34. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “34” of the complaint.

35. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "35" of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION

36. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs "1" through "35" as if fully set forth herein.

37. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "37" of the complaint.

38. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "38" of the complaint.

AS AND FOR A FIFTH CAUSE OF ACTION

39. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs "1" through "38" as if fully set forth herein.

40. Defendant denies the allegations contained in paragraph "40" of the complaint, and refers all questions of law to the Court.

41. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "41" of the complaint.

AS AND FOR A SIXTH CAUSE OF ACTION

42. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs "1" through "41" as if fully set forth herein.

43. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "43" of the complaint.

44. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "41" of the complaint.

AS AND FOR A SEVENTH CAUSE OF ACTION

45. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs "1" through "44" as if fully set forth herein.

46. Defendant denies the allegations contained in paragraph "46" of the complaint.

47. Defendant denies the allegations contained in paragraph "47" of the complaint.

AS AND FOR AN EIGHTH CAUSE OF ACTION (LOSS OF CONSORTIUM)

48. Defendant repeats, reiterates, and restates all answers previously provided in paragraphs "1" through "47" as if fully set forth herein.

49. Defendant denies the allegations contained in paragraph "49" of the complaint, and refers all questions of law to the Court.

50. Defendant denies the allegations contained in paragraph "50" of the complaint.

51. The wherefore paragraph immediately following paragraph "50" of the Complaint states a request for relief to which no responsive pleading is required. To the extent a responsive pleading is required, Defendant denies that Plaintiffs are entitled to any relief whatsoever.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

52. Any damages allegedly suffered by Plaintiffs were caused in whole or in part by Plaintiffs own culpable conduct. Plaintiffs' claims are therefore barred or diminished in the proportion that such culpable conduct of Plaintiffs bear to the total culpable conduct.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

53. Plaintiffs assumed the risk of sustaining any injury or injuries alleged in the Verified Complaint under the conditions and circumstances then existing and obvious.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

54. Any liability to the Plaintiffs are limited by the provisions of Article 16 of the

CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

55. Plaintiffs' conduct was the sole proximate cause of his injuries.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

56. The Court lacks jurisdiction over Defendant.

AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE

57. Plaintiffs failed to mitigate their damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

58. Plaintiffs have failed to join all necessary parties to the instant action.

AS AND FOR A EIGHT AFFIRMATIVE DEFENSE

59. Any injuries allegedly sustained by Plaintiffs were the result of the acts of parties whose actions Defendant exercised no direction or control over.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

60. Upon information and belief, Plaintiffs' economic loss, if any, as specified in §4545 of the CPLR, was or will be replaced or indemnified, in whole or in part, from collateral sources, and the answering defendant is entitled to have the Court consider same in determining such special damages as provided in § 4545 of the CPLR.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

61. The Verified Complaint fails to state a cause of action for which relief can be granted.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

62. Pursuant to New York General Obligations Law § 15-108, if Plaintiffs settle with other tortfeasors, the answering defendant's exposure, if any, shall be reduced accordingly.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

64. Plaintiffs' damages are attributable to Plaintiffs in that Plaintiff was a recalcitrant worker at the time of the alleged incident.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

65. Plaintiffs' claims are barred by the statute of limitations.

**AS AND FOR A CROSS-CLAIM FOR INDEMNIFICATION/CONTRIBUTION
AGAINST ALL CO-DEFENDANTS**

In furtherance of the Answer previously served herein, Defendant AMEC Construction Management, Inc. asserts the following cross-claims against all co-defendants:

That if the plaintiffs sustained the damages in the manner and at the time and place alleged by reason other than the plaintiffs' own carelessness, recklessness, negligence and/or acts of omission or commission and if it is found AMEC Construction Management, Inc. is liable to plaintiffs herein, all of this is specifically denied, then AMEC Construction Management, Inc., on the basis of apportionment of responsibility for the alleged occurrence, is entitled to contractual and/or common law indemnification and/or contribution from the co-defendants and judgment over and against the co-defendants and/or co-defendants as a result of the carelessness, recklessness, negligence and/or acts of omission or commission and/or breach of warranty and/or breach of contract and/or strict or statutory liability of co-defendants, their agents, servants and/or employees for all or part of any verdict or judgment that plaintiff may recover against AMEC Construction Management, Inc.

**AS AND FOR A CROSS-CLAIM BASED ON BREACH OF CONTRACT FOR FAILURE
TO PROCURE INSURANCE AGAINST ALL CO-DEFENDANTS**

Upon information and belief, all co-defendants entered into a contract and/or agreement for various services related to the subject property in which they agreed to name AMEC

Construction Management, Inc. as an insured and/or additional insured on all policies of insurance maintained by co-defendants in connection with the services provided at the subject property and which is the subject of this litigation. To the extent that co-defendants failed to obtain the agreed-upon and/or required insurance coverage, failed to name the correct parties as insureds and/or additional insureds, and/or failed to notify their primary and/or excess carriers of the potential and/or the existence of the underlying litigation and/or the underlying facts, if there is inadequate or insufficient coverage or exposure in excess of such insurance coverage, then co-defendants breached their contract and/or agreement with AMEC Construction Management, Inc.

If it is found that co-defendants breached their contract and/or agreement in the manner set forth above, judgment should be entered in favor of AMEC Construction Management, Inc., and against co-defendants requiring co-defendant(s) to defend and indemnify AMEC Construction Management, Inc. against all loss, damages, expense, and penalties, including reasonable attorneys' fees, which AMEC Construction Management, Inc. may sustain, and for which it was required to procure insurance covering AMEC Construction Management, Inc. as an insured and/or additional insured.

WHEREFORE, Defendant AMEC Construction Management, Inc. demands judgment dismissing the Verified Complaint, in its entirety, or in the alternative, awarding Defendant AMEC Construction Management, Inc. judgment against its co-defendants, in exact proportion to be determined at trial to the extent of any judgment in favor of Plaintiffs against Defendants together with costs and disbursements of this action and any relief this court deems just and proper.

Dated: New York, New York
September 4, 2013

Respectfully Submitted,

GORDON & REES, LLP

By: 

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Adam S. Furmansky, Esq.
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VERIFICATION

Joseph Salvo, an attorney at law duly admitted to practice before the courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. That I am a senior counsel with the law firm of GORDON & REES, LLP, attorneys for the answering defendant, AMEC Construction Management, Inc., in the above-entitled action.

2. That I have read the foregoing Answer and know the contents thereof, and that the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe it to be true,

3. This verification is made by myself and not by the defendant because the defendant is not presently in the county in which your deponent maintains his office.

4. The grounds of my belief as to all matters not stated upon my knowledge are based upon the books, records and documents in my office's possession.

AFFIRMED this 4th day of September, 2013



Joseph Salvo

EXHIBIT P

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT:

Justice

PART 5

Index Number : 159201/2012
ZIC, VELIMIR
vs
CITY OF NEW YORK
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____


Replying Affidavits _____ | No(s). _____

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

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 10-21-13
OCT 21 2013


_____, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 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: Part 5

-----X
VELIMER ZIC and MARILYN ZIC,

Plaintiffs,

-against-

DECISION/ORDER
Index No. 159201/2012
Seq. No. 001

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP., JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY; FOREST
CITY RATNER COMPANIES; FOREST CITY
ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC;
HUNT CONSTRUCTION GROUP; LEND LEASE
CONSTRUCTION GROUP; LEND LEASE CORPORATION
LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and
TOTAL SAFETY CONSULTING,

Defendants.

-----X
KATHRYN E. FREED, JSC:

RECITATION, AS REQUIRED BY CPLR§2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....1-2 (Exhs. A-E)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....3.....
REPLYING AFFIDAVITS.....4.....
EXHIBITS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Defendant, the City of New York ("the City"), moves for an order pursuant to CPLR§
3211(a)(7) (dismissal because the pleading fails to state a cause of action) and/or CPLR §3212,

(summary judgement), dismissing plaintiffs' Complaint as plaintiff Velimir Zic's claim is barred by the statute of limitations and is untimely. Plaintiffs oppose.

After a review of the papers presented, all relevant statutes and case law, the Court **grants** the motion.

Factual and procedural background:

In his Notice of Claim, plaintiff asserts that "from on or before April 14, 2011, [been] employed as a painter, a paint abatement worker and foreman to perform work at the Thurgood Marshall U.S. Courthouse, the New York City Subway Station D line, the Brooklyn Navy Yard, the 59th Street Bridge." He alleges that during the course of his work, no proper contaminant monitoring was performed and that he was not provided with "proper ventilation and proper respirators and filters." This caused him to inhale "lead dust, lead fumes and carcinogens."

Consequently, in April 2011, a CT scan and a PET scan revealed an abnormality on the right upper lobe of his lung. Following a tissue biopsy, a diagnosis of squamous cell carcinoma and adenocarcinoma was confirmed. Thereafter, plaintiff underwent surgery for the removal of the right upper lobe of his lung. Plaintiff alleges that his exposure to these contaminants caused him to have "Lung Cancer, [for which he] underwent [a] right upper Lobectomy of the Lung in April 2011" and "Lead Poisoning." Additionally, plaintiff alleges that "[o]n April 24, 2012, he learned that the illnesses he suffered were the direct result of his work at said sites and time period." Plaintiff Velimir's wife, Marilyn, alleges loss of consortium.

Plaintiff Velimir alleges that from June 11, 2001 and continuing thereafter for almost ten years, as a member of Local 806 Bridge Painters Union, employed by L&L Painting Co., Inc., he was employed as a lead paint abatement worker, painter and foreman and was assigned to work at the

following sites: the Interlocking Track/Atlantic Avenue NEW YORK CITY TRANSIT AUTHORITY (NYCTA) project, from June 11, 2001 to August 9, 2004; the deck replacement on the Harlem River Drive, from December 16, 2002 to October 24, 2005; the Battery Maritime Building, from May 10, 2004 to October 17, 2005; the 59th Street Bridge, from July 26, 2004 to July 20, 2009; The New York Times Building, from December 5, 2005 to January 8, 2007; the Bronx Park East (NYCTA) Station, from June 18, 2007 to August 13, 2007; the U.S. Post Office at 90 Church Street in New York County, from August 20, 2007 to April 7, 2008; Citi Field, from October 15, 2007 to May 11, 2009; the Brooklyn Navy Yard, from September 28, 2009 to October 19, 2009; the Rehabilitation of 7 Stations Project (NYCTA), West End Line, in Kings County, from January 11, 2010 to December 6, 2010; and the Thurgood Marshall U.S. Courthouse in New York County, from August 9, 2010 to April 18, 2011.

Plaintiffs allege that since the City owns, operates, manages and maintains the 59th Street Bridge, now known as the Ed Koch Queensboro Bridge, the Harlem River Drive, the Battery Maritime Building and the Brooklyn Navy Yard, it is responsible for the planning and supervising of all lead paint abatement, painting, demolition and construction activities occurring at the aforementioned dates and places.

Positions of the parties:

The City argues that plaintiffs' claims are barred by the statute of limitations in that General Municipal Law §50-e(1)(a) provides that the statute of limitations for tort claims against a municipality is one year and ninety days after the event occurred. It also argues that this one year and ninety day period applies to claims for exposure to contaminants and toxins and runs from the time at which plaintiff began to suffer manifestations or symptoms of his purported illness.

Thus, since the accrual of plaintiffs' claim here commenced with the onset of symptoms in January 2011, using the last day of the month, January 31, 2011, as the accrual date, the limitation period against the City expired on March 1, 2012.

The City also argues that plaintiffs' untimely Notice of Claim, served without leave of Court, is a mere nullity. It argues that plaintiffs did not file a Notice of Claim within 90 days of January 31, 2011, nor did they file a late Notice of Claim within the ensuing one year period. Rather, plaintiffs served their Notice of Claim fifteen months later, on June 27, 2012, followed by the filing of their Complaint, several months later. The City further argues that even assuming *arguendo* that if the date of diagnosis, April 14, 2011, was utilized as the date of accrual, plaintiffs Notice of Claim would still be deemed untimely in that they would have had to file same by July 13, 2011, or have sought leave to file a late one by July 13, 2012.

Plaintiffs respond that Velimer was diagnosed with lung cancer on April 14, 2011. Plaintiffs refer to and rely on various reports rendered by physicians as support for how they arrived at this date as the specific date of a definitive diagnosis. Plaintiffs refer to an "independent medical evaluation" conducted by Carl B. Friedman, M.D., "at the behest of the New York State Insurance Fund, probably associated with a workman's compensation application" (Aff. in Opp., p. 3, ¶2). Following a review of plaintiff's medical records, Dr. Friedman allegedly stated "[i]n my opinion, the patient's lung cancer is directly related to his occupational exposure to [these] carcinogens." Plaintiffs argue that because the aforementioned report which allegedly formulated Dr. Friedman's opinion was dated April 24, 2012, this is the date an actual diagnosis was rendered.

Moreover, plaintiffs refer to a subsequent report dated June 6, 2012, "of an independent pulmonary examination by Mitchell Horowitz, M.D" (*id.* p. 4, ¶¶ 3-4). Interestingly, Dr. Horowitz

allegedly states “ Aside from his exposure as a painter, there is no other explanation why this gentleman developed lung cancer at such an early stage. Therefore, in my opinion, it is more likely than not that his exposure as a painter played a causal role in his development of lung cancer. However, I am unable to establish a definite causal relationship between his exposure and the development of lung cancer.”

While plaintiffs concede that Dr. Horowitz could not, with any semblance of certainty, determine a causal connection between plaintiff’s work and his cancer, plaintiffs still assert that “it is highly significant that these findings and conclusions were based upon the results of an independent medical evaluation and an independent pulmonary examination” (*id.* p. 5).

Plaintiffs argue that CPLR§ 214(c)(2) provides that the three year period within an action to recover damages for personal injury caused by the latent effects of exposure to any substance or a combination of substances, in any form, upon the body shall be computed from the date plaintiff discovers the injury or from the date through the exercise of reasonable diligence, such injury should have been discovered by plaintiff, whichever is earlier. Plaintiffs argue that Velimar “discovered his injury, lung cancer” on or about April 24, 2012, upon reading Dr. Friedman’s report. Thus, plaintiffs served a timely Notice of Claim on or about June 27, 2012, within 90 days after the claim arose.

Conclusions of law:

When a notice of claim has not been served within the 90-day period specified in GML§ 50-e(1) of the General Municipal Law, an individual possessing a potential tort claim against a public corporation may also apply to the court pursuant to GML§50-e(5), for an extension of time within which to serve notice upon the respondent, and said application for the extension may be made

before or after the commencement of this action but not more than one year and ninety days after the cause of action accrued (*Cohen v. Pearl Riv. Union Free School Dist.*, 51 N.Y.2d 256, 258 [1980]; *Pierson v. City of New York*, 56 N.Y.2d 950, 954 [1982]).

In adopting CPLR§ 214–c, the goal of the Legislature was to “provide relief to injured New Yorkers whose claims would otherwise be dismissed for untimeliness simply because they were unaware of the latent injuries until after the limitations period had expired” (*Jensen v. Elec. Co.*, 82 N.Y.2d 77, 84 [1993]. CPLR§214--c (2) provides that the three year statute of limitations for injury caused by exposure to toxic substances “shall be computed from the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier.”

“[T]he drafters of CPLR§214–c intended the term ‘injury’ to refer to an actual illness, physical condition or other similarly discoverable objective manifestation of the damage caused by previous exposure to an injurious substance,” and there may be “separate and distinct disease processes [which] may constitute different injuries, each with its own time of discovery” (*Sweeney v. General Printing Inc. v. Div. of Sun Chemical Corp.*, 210 A.D.2d 865, 865-866 [3d Dept. 1995], *app denied* 85 N.Y.2d 808 [1995]).

The City argues that the statute of limitations for plaintiff’s claim began to accrue when he first experienced symptoms of lung cancer. It refers to plaintiff’s GML§ 50-h hearing wherein he testified that in January 2011, he began experiencing shortness of breath (Motion, Exh. B, p. 12, lines 20-23). While the City cites to several First Department cases wherein the respective courts held that the onset of manifestations or symptoms serve as the accrual date for toxic exposure claims, this Court finds the case of *Wetherill v. Eli Lilly & Co.*, 89 N.Y.2d 506, 513 [1997] to be both

instructive and compelling.

In *Wetherill*, the court stated: “We recognize that there may be situations in which the claimant may experience early symptoms that are too isolated or inconsequential to trigger the running of the Statute of Limitations under CPLR 214–c (2).” The Court also held that a “discovery of injury” occurs within the meaning of CPLR 214–c (2) when the plaintiff is diagnosed with the primary condition for which damages are sought (*id.* at p. 514).

In the case at bar, the Court rejects the City’s argument that plaintiff should have associated his early symptoms of shortness of breath to his eventual diagnosis. Indeed, shortness of breath is a symptom that can be indicative of numerous diseases, conditions, or even something relatively innocuous. Plaintiff was officially diagnosed with lung cancer on April 14, 2011, the day he underwent the removal of a mass on his right upper lung. Although plaintiff would have the statute of limitations run from the date of Dr. Friedman’s report, April 24, 2012, that report, at best, sets forth a causal connection between plaintiff’s lung cancer and his work as a painter.

The Court finds that April 14, 2011, the day plaintiff was actually diagnosed with cancer, is the appropriate date from which to compute the statute of limitations. As the Court noted above, pursuant to *Wetherill*, the “discovery of injury,” occurs within the meaning of CPLR§ 214–c (2) when plaintiff is diagnosed with the primary condition for which damages are sought (*id.* p. 514). Here, the primary condition was clearly diagnosed on April 14, 2011.

In the instant case, plaintiffs did not file their Notice of Claim within the statutorily mandated ninety days. Nor, did they seek leave to file a late Notice of Claim within the ensuing one year period. In consideration of this, the Court has no option but to grant the City’s motion for summary judgment.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that defendant City of New York's motion for summary judgment is granted and the complaint and any cross claims are hereby severed and dismissed as against said defendant, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that the remainder of the action shall continue, and it is further

ORDERED that the Trial Support Office is directed to reassign this case to the transit part and remove it from the Part 5 inventory. Plaintiff shall serve a copy of this order on all other parties and the Trial Support Office at 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: October 21, 2013

OCT 21 2013

ENTER:



Hon. Kathryn E. Freed
J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**

EXHIBIT Q

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----X

Index No.: 159201/12

**NOTICE OF MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT
(AS AGAINST THE MTA
AND NYCTA)**

PLEASE TAKE NOTICE that, upon the annexed affirmation of Thomas A. Noss, Esq., and the exhibits attached thereto, and all pleadings and proceedings heretofore had herein, the undersigned will move this Court at the New York County Courthouse, Room 130, Motion Submission Part, located at 60 Centre Street, New York, New York, 10007, on January 28th, 2014, at 9:30 a.m., for an Order: (a) pursuant to CPLR 3211(a)(5) and Public Authorities Law Sections 1212 and 1276, requesting that this Court dismiss Plaintiff's Complaint and all claims insofar as asserted against the NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION

AUTHORITY, because PLAINTIFFS' claims are time-barred by statute, and therefore must be dismissed as a matter of law; and (b), pursuant to CPLR 3211(a)(5), Public Authorities Law 1276, and General Municipal Law Section 50(e), dismissing PLAINTIFFS' Complaint and all claims insofar as asserted against the METROPOLITAN TRANSPORTATION AUTHORITY, because PLAINTIFFS failed to serve a timely Notice of Claim upon the MTA; and (c) for any such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering affidavits, if any, must be served at seven days before the motion return date.

Dated: New York, New York
January 6, 2014

Yours, etc.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

T A N

Thomas A. Noss

Attorneys for Defendant
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YORK CITY TRANSIT AUTHORITY AND
METROPOLITAN TRANSIT AUTHORITY**
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Brooklyn, NY 11238

LBBS File No.: 33650-2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE
METROPOLITAN TRANSPORTATION
AUTHORITY; THE NEW YORK CITY
TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK
TIMES COMPANY; FOREST CITY RATNER
COMPANIES; FOREST CITY ENTERPRISES;
AMEC CONSTRUCTION MANAGEMENT,
INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION
GROUP; LEND LEASE CORPORATION
LIMITED f/k/a BOVIS LEND LEASE LMB,
INC.; and TOTAL SAFETY CONSULTING,

Defendants.
-----X

Index No.: 159201/12

**AFFIRMATION IN
SUPPORT OF
MOTION TO DISMISS**

Thomas A. Noss, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms the following:

1. I am an associate of the law firm of Lewis Brisbois Bisgaard & Smith, LLP, attorneys for defendants CITNALTA CONSTRUCTION CORP. ("CITNALTA"); NEW YORK CITY TRANSIT AUTHORITY ("NYCTA"); and METROPOLITAN TRANSPORTATION AUTHORITY ("MTA") in this matter. I am fully familiar with the facts and circumstances of this case.

2. This Affirmation is submitted in support of NYCTA's and MTA's motion, pursuant to CPLR 3211(a)(5) and Public Authorities Law Sections 1212 and 1276, requesting that this Court issue an Order dismissing PLAINTIFF'S complaint and all claims as against the NYCTA and MTA because the statute of limitations expired prior to the commencement of PLAINTIFFS' action.

3. Separately and independently, the PLAINTIFFS' complaint and all claims against the MTA must be dismissed pursuant to CPLR 3211(a)(5) and Public Authorities Law Section 1276, because PLAINTIFFS did not serve a Notice of Claim upon the MTA until one year and two months after PLAINTIFFS' causes of action accrued, rendering the Notice of Claim against the MTA untimely and a nullity. Since timely service of a Notice of Claim is a condition precedent to commencing a lawsuit against the MTA, PLAINTIFFS' complaint as against the MTA must be dismissed.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

4. The instant action arises out of alleged workplace exposures to lead fumes, lead paint, and lead byproducts, allegedly occurring over many years at various worksites throughout the New York City metropolitan area. See Ex. "A", Summons & Complaint. The plaintiff, VELIMIR ZIC, alleges that he was a lead abatement worker and painter, and claims that he developed lung cancer and other alleged injuries as a result of exposure to substances over the course of his career. MR. ZIC'S wife, MARILYN ZIC, alleges derivative claims.

5. PLAINTIFFS commenced the instant action against the NYCTA and MTA with the filing of a summons and complaint on December 26, 2012. Ex. "A".

6. The NYCTA and MTA joined issue with the service of their Verified Answer on February 7, 2013. Ex. "B", Answer. With their third affirmative defense, the NYCTA and MTA asserted that "this lawsuit was not timely commenced against the defendant NYCTA or the defendant MTA." See Ex. "B", at Para. 25. With their second affirmative defense, the MTA asserted that PLAINTIFFS' "notice of claim was not timely served" upon the MTA. See Ex. "B", at Para. 24.

7. Lewis Brisbois Bisgaard & Smith, LLP, Counsel of Record for CITNALTA CONSTRUCTION CORP. in this matter, was assigned to represent the interests of the NYCTA and MTA in this action as well, and a duly executed substitution of counsel was signed and filed with the Court, recording the change of Counsel. Ex. "C", Substitution of Counsel.

8. Former defendant THE CITY OF NEW YORK made a motion to dismiss in April of 2013, arguing that the statute of limitations had run and, separately, that PLAINTIFFS' Notice of Claim against the City was untimely and a "nullity." This Court granted THE CITY OF NEW YORK's motion to dismiss, holding that "plaintiffs did not file their Notice of Claim within the statutorily mandated ninety days", and neither did they "seek leave to file a late Notice of Claim within the ensuing one year period." Ex. "D", Decision & Order of Hon. Kathryn Freed dated October 21, 2013.

9. In reaching its decision regarding the timeliness of PLAINTIFFS' Notice of Claim served upon the City of New York, and after consideration of the relevant precedent and following oral argument from the CITY OF NEW YORK and PLAINTIFFS' Counsels, this Court judicially determined the date upon which the PLAINTIFFS' causes of action accrued: "The Court finds that April 14, 2011, the day plaintiff was actually diagnosed with cancer, is the appropriate date from which to compute the statute of limitations" in this case. Ex. "D", Page 7.

10. Thus, it is the "law of the case" that the statute of limitations in this case began to run on April 14, 2011.

11. As demonstrated below, PLAINTIFFS' claims against the NYCTA and MTA are time-barred. The statute of limitations began to run on April 14, 2011, but PLAINTIFFS did not commence the instant action until December 26, 2012, one year and two-hundred and fifty-six days (256) later. Therefore, the action must be dismissed as against the MTA and NYCTA because it is time-barred under the Public Authorities Law.

12. Separately, although PLAINTIFFS' causes of action accrued on April 14, 2011, PLAINTIFFS did not serve a Notice of Claim on the MTA until July 26, 2012, over one year later and not within the 90 day time period mandated by statute. Therefore, PLAINTIFFS' claims against the MTA must be dismissed for the separate and independent reason that PLAINTIFFS failed to serve a timely Notice of Claim and did not seek leave of Court to serve it late.

**PLAINTIFFS' ACTION AGAINST THE NYCTA AND MTA IS TIME-BARRED
AND MUST BE DISMISSED**

13. Public Authorities Law Section 1276 "provides that the statute of limitations against the MTA ... is one year, with a thirty day toll from the day a plaintiff serves the statutorily required notice of claim, thus extending the period to one year and thirty days if the plaintiff serves a timely notice of claim." *Dixion v. New York City Transit Authority*, 897 N.Y.S.2d 669, at 669 (NY Cty. Supr. 2009), citing *Burgess v. Long Island Rail Authority*, 79 N.Y.2d 777, at 778 (1991)(wherein the Court of Appeals held that the plaintiff had only one year and thirty days from the accrual of claim to commence an action against the public authority, and the complaint should have been dismissed where the plaintiff commenced the action one year and thirty-three days after the cause of action accrued).

14. Similarly, the First Department has held that Public Authorities Law Section 1276 "gives a total possible time of one year and thirty days" to commence an action against the MTA from the accrual of the plaintiff's claim. See *Yasus v. Metropolitan Transportation Authority*, 128 A.D.2d 389; 512 N.Y.S.2d 397 (1st Dep't 1987).

15. As for the NYCTA, Public Authorities Law Section 1212 "provides that a tort action against the NYCTA must be commenced within one year and 90 days after the happening of the event upon which the claim is based." *Scheja v. Sosa and NYCTA*, 4 A.D.3d 410, at 410-411 (2d Dep't 2005). Even assuming an "extension" could apply pursuant to the tolling provision of CPLR 204(a), such an

"extension" would only amount to thirty days, for a maximum time period of one year and 120 days from the accrual of the cause of action. See *Scheja*, at 411.

16. Thus, with regard to any causes of action accruing on April 14, 2011, PLAINTIFFS had until May 14, 2012 (at the latest) to commence an action based on those claims against the MTA, and until August 13th, 2012 (again, at the latest) to commence an action based on those claims as against the NYCTA.

17. PLAINTIFFS commenced the instant action on December 26th, 2012, many months after the statute of limitations had expired as to the MTA and NYCTA. As a result, the MTA and NYCTA are entitled to complete dismissal of PLAINTIFFS' claims against them because all of their claims are time-barred.

18. DEFENDANTS MTA and NYCTA therefore request that this Court issue an Order, pursuant to PAL Sections 1212 and 1276, and CPLR 3211(a)(5), dismissing PLAINTIFF'S complaint and all claims insofar as they are asserted against the MTA and NYCTA.

PLAINTIFFS' NOTICE OF CLAIM SERVED ON THE MTA WAS UNTIMELY

19. Public Authorities Law Section 1276 (in conjunction with General Municipal Law 50-e) requires that, as a condition precedent to suit against the MTA, a plaintiff must serve a notice of claim upon the MTA within 90 days of the claim's accrual. Here, as already judicially determined in the Court's October 13, 2013 Order, PLAINTIFFS' causes of action accrued on April 14, 2011. Thus, PLAINTIFFS were required to serve any Notice of Claim on the MTA prior to July 14, 2011 (90 days after accrual).

20. However, PLAINTIFFS did not serve a Notice of Claim upon the MTA until June 27, 2012, over one year after the deadline to serve a notice of claim had passed. Ex. "E", Notice of Claim served on MTA June 27, 2012. In addition, PLAINTIFF did not seek leave to serve a late notice of claim.

21. As a result, this Court must dismiss PLAINTIFFS' claims against the MTA. See *Williams-Smith v. MTA New York City Transit*, 82 A.D.3d 512 (1st Dep't 2010)(holding that notice of claim served 91 days after incident was untimely as a matter of law).

WHEREFORE, Defendants MTA and NYCTA request that this Court issue an Order, pursuant to CPLR 3211 and PAL 1212 and 1276, dismissing PLAINTIFFS' complaint and all causes of action asserted against the MTA and NYCTA, as those claims are time-barred by statute, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 6, 2014

TZ A N

Thomas A. Noss

EXHIBIT R

LBBS File No.: 33650-2
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE NEW YORK CITY TRANSIT AUTHORITY; TISHMAN CONSTRUCTION CORPORATION; AECOM TECHNOLOGY CORPORATION; CITNALTA CONSTRUCTION CORP.; JUDLAU CONTRACTING, INC.; THE NEW YORK TIMES COMPANY; FOREST CITY RATNER COMPANIES; FOREST CITY ENTERPRISES; AMEC CONSTRUCTION MANAGEMENT, INC.; BOSTON PROPERTIES LIMITED PARTNERSHIP; QUEENS BALLPARK COMPANY, LLC.; HUNT CONSTRUCTION GROUP; LEND LEASE CORPORATION LIMITED f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----X
CITNALTA CONSTRUCTION CORP., METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, and JUDLAU CONTRACTING, INC.,

Third-Party Plaintiffs,

-against-

L & L PAINTING CO., INC.,

Third-Party Defendant.
-----X

Index No.: 159201/12

**NOTICE OF IMPLEADER
STATEMENT PURSUANT
TO CPLR RULE 3402(B)**

Third-Party Index No.:

COUNSELORS:

PLEASE TAKE NOTICE, that in the above-entitled action, the defendant has impleaded the above-named Third-Party Defendant, and that the caption of the action is now set forth above. This action is not on the trial calendar of this Court. A copy of this Notice has been served upon all attorneys who appeared in this action.

Dated: New York, New York
January 17, 2014

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: T A N
Thomas A. Noss

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TRANSPORTATION AUTHORITY and NEW
YORK CITY
TRANSIT AUTHORITY
77 Water Street, Suite 2100
New York, New York 10005
(212) 232-1300

TO:

L & L PAINTING CO., INC.
900 South Oyster Bay Road
Hicksville, New York 11801
Via Secretary of State

CC:

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HUNT CONSTRUCTION GROUP
752 Pacific Street, 6th Floor
Brooklyn, NY 11238

LBBS File No.: 33650-2
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE METROPOLITAN
TRANSPORTATION AUTHORITY; THE NEW YORK
CITY TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU CONTRACTING,
INC.; THE NEW YORK TIMES COMPANY;
FOREST CITY RATNER COMPANIES; FOREST
CITY ENTERPRISES; AMEC CONSTRUCTION
MANAGEMENT, INC.; BOSTON PROPERTIES
LIMITED PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION
GROUP; LEND LEASE CORPORATION LIMITED
f/k/a BOVIS LEND LEASE LMB, INC.; and TOTAL
SAFETY CONSULTING,

Defendants.

-----x
CITNALTA CONSTRUCTION CORP.,
METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY
TRANSIT AUTHORITY, and JUDLAU
CONTRACTING, INC.,

Third-Party Plaintiffs

-against-

L&L PAINTING CO., INC.,

Third-Party Defendant.

-----x
TO: L & L PAINTING CO., INC.

Index No.: 159201/12

**THIRD-PARTY
SUMMONS**

Third-Party Index No.:

YOU ARE HEREBY SUMMONED to serve an answer to this summons and complaint upon the Third-Party Plaintiffs' attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, 77 Water Street, 21st Floor, New York, New York, 10005, within twenty (20) days after service thereof exclusive of the date of service, or within thirty (30) days after completion of service, if service is made upon you by any other methods, other than by personal delivery to you in the State of New York. In case of your failure to answer the complaint, judgment will be taken against you by default for the relief demanded therein.

Dated: New York, New York
January 17, 2014

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: TR A N

Thomas A. Noss

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JUDLAU CONTRACTING, INC.,
METROPOLITAN TRANSPORTATION
AUTHORITY and NEW YORK CITY
TRANSIT AUTHORITY
77 Water Street, Suite 2100
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(212) 232-1300

TO:

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900 South Oyster Bay Road
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Via Secretary of State

CC:

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HUNT CONSTRUCTION GROUP
752 Pacific Street, 6th Floor
Brooklyn, NY 11238

LBBS File No.: 33650-2
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
VELIMIR ZIC and MARILYN ZIC,

Plaintiffs,

-against-

THE CITY OF NEW YORK; THE
METROPOLITAN TRANSPORTATION
AUTHORITY; THE NEW YORK CITY
TRANSIT AUTHORITY; TISHMAN
CONSTRUCTION CORPORATION; AECOM
TECHNOLOGY CORPORATION; CITNALTA
CONSTRUCTION CORP.; JUDLAU
CONTRACTING, INC.; THE NEW YORK
TIMES COMPANY; FOREST CITY RATNER
COMPANIES; FOREST CITY ENTERPRISES;
AMEC CONSTRUCTION MANAGEMENT,
INC.; BOSTON PROPERTIES LIMITED
PARTNERSHIP; QUEENS BALLPARK
COMPANY, LLC.; HUNT CONSTRUCTION
GROUP; LEND LEASE CORPORATION
LIMITED f/k/a BOVIS LEND LEASE LMB,
INC.; and TOTAL SAFETY CONSULTING,

Defendants.

-----x
CITNALTA CONSTRUCTION CORP.,
METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY
TRANSIT AUTHORITY, and JUDLAU
CONTRACTING, INC.,

Third-Party Plaintiffs,

-against-

L & L PAINTING CO., INC.,

Third-Party Defendant.
-----x

Index No.: 159201/12

**THIRD-PARTY
COMPLAINT**

Third-Party Index No.:

Defendants/Third-Party Plaintiffs, Judlau Contracting, Inc. ("Judlau"); Citnalta Construction Corp. ("Citnalta"); New York City Transit Authority ("NYCTA"); and Metropolitan Transportation Authority ("MTA") (collectively, the "Defendants/Third-Party Plaintiffs"), by and through their attorneys, Lewis Brisbois Bisgaard & Smith LLP, complaining of the Third-Party Defendant, L & L Painting Co., Inc. ("L & L Painting"), respectfully set forth and allege as follows upon information and belief:

1. That at all times hereinafter mentioned, Defendant/Third-Party Plaintiff Citnalta was and still is a domestic corporation authorized to do business within the State of New York.

2. That at all times hereinafter mentioned, Defendant/Third-Party Plaintiff Judlau was and still is a domestic corporation authorized to do business within the State of New York.

3. That at all times hereinafter mentioned, Defendant/Third-Party Plaintiff NYCTA was and still is a public authority formed pursuant to and existing by virtue of the laws of the State of New York.

4. That at all times hereinafter mentioned, Defendant/Third-Party Plaintiff MTA was and still is a public benefit corporation formed pursuant to and existing by virtue of the laws of the State of New York.

5. That at all times hereinafter mentioned, Third-Party Defendant L & L Painting was and still is a domestic corporation authorized to do business within the State of New York and with its principal place of business located within the State of New York.

6. That on or about December 26, 2012, Plaintiffs VELIMIR and MARILYN ZIC (the "Plaintiffs") commenced the within underlying action by service of a Summons and Verified Complaint (the "Zic Action"). See Exhibit "A". Issue was joined as to CITNALTA with the service of its Verified Answer on May 3, 2012. See Exhibit "B". Issue was joined as to the NYCTA and MTA with the service of their Verified Answer on February 7, 2013. See Exhibit "C". Issue was joined as to defendant/third-party plaintiff JUDLAU with the service of its Verified Answer on April 1, 2013. See Exhibit "D".

7. That Lewis Brisbois Bisgaard & Smith LLP was substituted as counsel of record for the NYCTA and MTA with the filing of a substitution of counsel on May 30, 2013. See Exhibit "E". Lewis Brisbois Bisgaard & Smith LLP was substituted as counsel of record for JUDLAU with the filing of a substitution of counsel on January 10, 2014. See Exhibit "F".

8. That Plaintiff VELIMIR ZIC alleges, among other things, that "while doing assigned work as a lead paint abatement worker, painter and foreman," he was allegedly caused to "sustain severe personal injuries, including lung cancer and lead poisoning, as a result of his exposure, inhalation and handling of painting materials" and "inhalation of lead fumes, lead smoke, lead dust and lead particles ..." Ex. "A", at Para. 25.

9. That Plaintiff VELIMIR ZIC alleges that (among other numerous work locations) he worked as a lead abatement worker at the "Rehabilitation of ... 7 Stations NYCTA Project, West End Line, in Kings County from January 11th, 2010 to December 6th, 2010". Id.

10. That to the extent Plaintiff VELIMIR ZIC actually performed any work at the "7 Stations Rehabilitation Project," he performed such work as an employee of L & L Painting.

11. That on October 5, 2009, L & L Painting entered into a written agreement ("the Lead Removal Subcontract") with Citnalta Construction Corp./Judlau Contracting, Inc., A Joint Venture (the "Joint Venture"), wherein L & L Painting agreed, among other things, to "perform all painting and associated lead abatement for the seven stations and line structures ... including lead removal and painting of steel repairs, column bases, painting of walls, columns, ceilings, floors, conduit, standpipe, manual wet scraping, establishing a wash station and painting containment areas, legally disposing of all lead paint materials." See Ex. "G", L & L Painting – Joint Venture Agreement for Lead Removal, at Para. 2.

12. That the Lead Removal Subcontract was in full force and effect at all times in which L & L Painting's employees performed work in connection with the 7 Stations Rehabilitation Project.

13. That L & L Painting was contractually responsible for the legal and safe disposal of lead materials in connection with work performed at the 7 Stations Rehabilitation Project.

14. That L & L Painting was contractually responsible for the erection of any lead containment areas and/or wash stations which may have been necessary and/or advisable and/or prudent in connection with any lead-producing activities carried out at the 7 Stations Rehabilitation Project.

15. That L & L Painting agreed in the Lead Removal Subcontract, at

Para. 17, as follows:

17. Subcontractor [L & L Painting] agrees to assume the entire responsibility and liability for and defense of and to pay and indemnify and hold CITNALTA / JUDLAU and/or the Owner [NYCTA] harmless from:

17.A.1. To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend Owner, Contractor ... and agents and employees of any of them from and against all claims, damages, losses and expenses including but not limited to attorneys' fees arising out of or in any way connected with the performance or lack of performance of this contract, provided any such claim, damage, loss or expense is (a) attributable to bodily injury, sickness, disease or death ... and (b) caused in whole or in part by any actual or alleged: Act or omission of the Subcontractor...

See Ex. "G", at Para. 17

16. That L & L Painting separately agreed in the Lead Removal Subcontract to procure insurance naming Citnalta, Judlau, NYCTA, and MTA as additional insureds, and that such insurance was to afford primary, non-contributory coverage for claims of bodily injury asserted against Judlau, Citnalta, NYCTA, and MTA arising out of L & L Painting's work on the 7 Stations Rehabilitation Project.

17. That, in spite of L & L Painting's contractual obligation to procure insurance naming Citnalta, Judlau, NYCTA, and MTA as additional insureds on a policy of insurance providing coverage for them with respect to claims of bodily injury arising out L & L Painting's work on the 7 Stations Rehabilitation Project,

Citnalta is currently not being defended or indemnified by any insurance provider in connection with the *Zic* Action.

**AS AND FOR A FIRST CAUSE OF ACTION FOR CONTRACTUAL
INDEMNIFICATION AGAINST L & L PAINTING**

18. Defendants/Third-Party Plaintiffs repeat, reiterate and reallege each and every allegation contained in Paragraphs "1" through "17" herein, with the same force and effect as if set forth at length herein.

19. That if and in the event Plaintiffs VELIMIR ZIC and MARILYN ZIC sustained the injuries and damages complained of, such injuries and damages were caused entirely by reason of the negligence, carelessness, recklessness, breach of contract and violations of law and strict liability of L & L Painting, there being no active or a primary wrong-doing on the part of Defendants/Third-Party Plaintiffs contributing thereto.

20. That pursuant to the terms of the Lead Removal Subcontract, L & L Painting must defend and indemnify Defendants/Third-Party Plaintiffs in the *Zic* Action.

21. By reason of the foregoing, Defendants/Third-Party Plaintiffs are entitled to full and/or partial contractual indemnity from, and for judgment over and against, L & L Painting, for all of any verdict or judgment which Plaintiffs may recover against Defendants/Third-Party Plaintiffs herein.

**AS AND FOR A SECOND CAUSE OF ACTION FOR FAILURE TO PROCURE
INSURANCE AGAINST L & L PAINTING**

22. Defendants/Third-Party Plaintiffs repeat, reiterate and reallege each and every allegation contained in Paragraphs "1" through "21" herein, with the same force and effect as if set forth at length herein.

23. That, pursuant to the terms of the Lead Removal Subcontract, L & L Painting was required to procure insurance naming Defendants/Third-Party Plaintiffs as additional insureds with respect to claims for bodily injury arising out of L & L Painting's work on the 7 Stations Rehabilitation Project.

24. That such insurance was required to afford insurance coverage to Defendants/Third-Party Plaintiffs on a primary, non-contributory basis.

25. That to date, no insurance provider has agreed to defend and/or indemnify Third-Party Plaintiffs in the *Zic* Action.

26. That to date, L & L Painting has not provided acknowledgment regarding its procurement of insurance coverage of the type and/or of the amount which L & L Painting was contractually required to procure to protect the interests of Defendants/Third-Party Plaintiffs in this action, resulting in harm to Defendants/Third-Party Plaintiffs, who have incurred costs in defending this action and will incur further costs in defense of this action, and even further costs in the event Plaintiffs obtain a judgment and/or verdict against Defendants/Third-Party Plaintiffs in *Zic* Action.

27. That in the event Plaintiffs in the underlying action obtain a verdict or judgment against Defendants/Third-Party Plaintiffs, and in the event there is no insurance coverage available to Defendants/Third-Party Plaintiffs to respond to such verdict or judgment, then Defendants/Third-Party Plaintiffs will be entitled to judgment over against L & L Painting arising out of its breach of contract for its failure to procure insurance naming Defendants/Third-Party Plaintiffs as additional insureds for claims including those alleged in the *Zic* Action.

WHEREFORE, Defendants/Third-Party Plaintiffs demand that in the event that Plaintiffs recover a verdict or judgment against Defendants/Third-Party Plaintiffs, then Defendants/Third-Party Plaintiffs demand judgment over and against L & L Painting as delineated above, together with the attorneys' fees, costs and disbursements of the Zic Action.

Dated: New York, New York
January 17, 2014

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: TL AN-

Thomas A. Noss

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77 Water Street, Suite 2100
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TO:

L & L PAINTING CO., INC.
900 South Oyster Bay Road
Hicksville, New York 11801
Via Secretary of State

CC:

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EXHIBIT S

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED

PRESENT: JUSTICE OF SUPREME COURT

PART 5

Justice

Index Number : 159201/2012
 ZIC, VELIMIR
 vs
 CITY OF NEW YORK
 Sequence Number : 002
 DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

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

*Motion and Case are respectfully
 transferred to Part 21 (Motor Vehicle).
 N.Y.C.T.A. is a party to this case.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICES STALDAN, PT. 21
 FOR THE FOLLOWING REASON(S): CASE IS A MOTOR VEHICLE CASE

Dated: 2-3-14
FEB 03 2014



_____, J.S.C.
 HON. KATHRYN FREED
 JUSTICE OF SUPREME COURT

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
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

EXHIBIT T

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

VELIMIR ZIC and MARILYN ZIC,

INDEX NO. 159201/12

Plaintiff,

MOTION DATE 1/28/14

- v -

MOTION SEQ. NO. 002

THE CITY OF NEW YORK et al.,

Defendants.

The following papers, numbered 52-58 were read on this motion to dismiss

Notice of Motion - Affirmation; Exhibits A; B; C; D; E; Affidavit of Service No(s) 52; 53; 54; 55; 56; 57; 58

Upon the foregoing papers, it is ordered that this motion to dismiss the complaint and all claims against the New York City Transit Authority and Metropolitan Transportation Authority is granted without opposition; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendants the New York City Transit Authority and Metropolitan Transportation Authority, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that all cross claims as against defendants the New York City Transit Authority and Metropolitan Transportation Authority are dismissed in their entirety; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the action is referred to the Trial Support Office for reassignment to an IAS General Part.

Dated: 5/16/14
New York, New York

[Signature] J.S.C.

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

- 1. Check one:
2. Check if appropriate: MOTION IS:
3. Check if appropriate:

- CASE DISPOSED
NON-FINAL DISPOSITION
GRANTED DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

HON. MICHAEL D. STALLMAN