

PRESENT:

Honorable Paul G. Feinman, J.S.C.

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

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IN RE: STEAM PIPE EXPLOSION AT 41ST :
STREET AND LEXINGTON AVENUE :
----- x

Index No. 768000/2008

Part 52 (Justice Feinman)

March 27, 2008

THIS DOCUMENT APPLIES TO ALL CASES :
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CASE MANAGEMENT ORDER NO. 2
ELECTRONIC FILING

I. Scope of Order

1. Order Applicable To All Parties in the STEAM PIPE EXPLOSION AT 41ST STREET AND LEXINGTON AVENUE Proceeding. This Order shall apply to all actions involving the steam pipe explosion at the intersection of 41st Street and Lexington Avenue currently pending before the undersigned in the Supreme Court of the State of New York, County of New York (the "Coordinated Proceeding"), and to all other actions involving the explosion at the intersection of 41st Street and Lexington Avenue that will be originally filed in, or transferred to, this Court and which will thereby become part of the Coordinated Proceeding (collectively, the "Steam Pipe Explosion Cases"). This Order is binding on all parties and their counsel in the Steam Pipe Explosion cases currently pending or subsequently made part of this Coordinated Proceeding.

2. Order To Be Read In Conjunction With Case Management Order No. 1. This Order shall be read in conjunction with the provisions concerning electronic filing set forth in Case

Management Order (“CMO”) No. 1, and this Order adopts all applicable provisions of CMO No. 1 in this proceeding including, without limitation, the definitions set forth therein.

II. The Parties’ Agreement Regarding Electronic Filing

3. Consent To Electronic Filing. Representatives of Plaintiffs’ and Defendants’ Liaison counsel have conferred and have jointly presented this Order setting forth the parties’ agreement and consent to electronic filing for all present and future cases in the Coordinated Proceeding, pursuant to terms set forth below.

4. In Pending Cases, Electronic Filing To Take Effect Upon Filing of An Omnibus Joint Consent To Electronic Filing Form. In those cases filed and served on or before March 4, 2008 (“Present Cases”), the parties shall file an Omnibus Joint Consent to Electronic Filing Form signed by Plaintiffs’ and Defendants’ Liaison Counsel on or before March 28, 2008 and stating that the parties consent to the use of electronic filing in this Coordinated Proceeding, and providing the names, firms, and e-mail addresses of Plaintiffs’ and Defendants’ Liaison Counsel and of the Steering Committee of Plaintiffs’ Counsel (the “SCPC”), and their respective designated representatives, and establishing as part of this Coordinated Proceeding a general case file entitled “IN RE: STEAM PIPE EXPLOSION AT 41ST STREET AND LEXINGTON AVENUE LITIGATION” and bearing Index No. 768000/2008 (“General Case”). In addition, there shall be attached to the Omnibus Joint Consent to Electronic Filing Form an appendix identifying all Present Cases by name, index number, and the name, firm and e-mail addresses of the plaintiff’s counsel and counsel for any defendants other than Con Edison¹ or the City of New York (the “Appendix of Present Cases”). The Form shall be filed and served by March 28, 2008, and, upon filing, electronic filing procedures shall take effect for all Present

¹ As in Case Management Order No. 1, “Con Edison” includes Consolidated Edison Company of New York, Inc. and Consolidated Edison, Inc.

Cases and the General Case. Parties shall add the suffix "E" to the index number on all papers hereafter filed with the Court in all cases in which electronic filing procedures have taken effect.

5. In Future Cases, Electronic Filing To Take Effect Upon Filing Of Complaint, Affidavits Of Service, And Plaintiff's Consent To Electronic Filing Form: In those related cases commenced after March 4, 2008 ("Future Cases"), electronic filing procedures shall take effect either by the on-line filing of a summons and complaint, the necessary affidavits reflecting service upon each named defendant, and a completed Plaintiff's Consent to Electronic Filing Form, or by the filing of a hard copy of the initiating papers and affidavits with the County Clerk and the transmission of a copy of the Consent to Electronic Filing Form to the E Filing Resource Center, Room 119, 60 Centre Street, New York, New York. A sample Plaintiff's Consent to Electronic Filing Form is attached as Exhibit A. This form shall be prepared, filed and served by the plaintiff's attorney, indicating that the plaintiff's attorney and Defendants' Liaison Counsel for Con Edison and the City of New York, respectively, consent to the use of electronic filing, and providing one or more e-mail addresses for the plaintiff's attorney, as well as the following e-mail addresses for Defendants' Liaison Counsel:

Liaison Counsel for Con Edison:

Guy Miller Struve
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
guy.struve@dpw.com

Additional e-mail addresses for Liaison Counsel for Con Edison (with same firm and street address as above):

Frances E. Bivens
frances.bivens@dpw.com

Nancy B. Ludmerer
nancy.ludmerer@dpw.com

Hayward H. Smith
hayward.smith@dpw.com

Heather M. Ward
heather.ward@dpw.com

Liaison Counsel for the City of New York:

Christopher Murdoch
New York City Law Department
100 Church Street
New York, New York 10007
cmurdoch@law.nyc.gov

The appearance of these names and e-mail addresses on any Plaintiff's Consent To Electronic Filing Form shall not be deemed an appearance by the above defendants. Con Edison and the City of New York shall not be required to file a Consent To Electronic Filing Form for Future Cases. In Future Cases naming only Con Edison and/or the City of New York as defendants, the plaintiffs' counsel shall not be required to file or serve a Notice of Availability of Electronic Filing Form.

6. Future Cases Naming Additional Defendants. In those Future Cases that name defendants other than Con Edison and/or the City of New York ("additional defendants"), Plaintiffs' counsel will, together with the summons and complaint, also file and serve on each such additional defendant a Notice of Availability of Electronic Filing Form and a Defendant's Consent To Electronic Filing Form, which are attached hereto as Exhibits B and C, respectively. The counsel for such additional defendant shall then have 30 days from the date of service either to consent or to decline to participate in the Court's electronic filing system. Consent can be effectuated on-line if counsel for such defendant is already a registered Filing User of the system. Otherwise, counsel shall submit a consent in writing to the Resource Center and consent on-line after obtaining an ID and Password. If counsel declines to consent, a written declination shall be submitted to the Resource Center by mail or personal delivery.

7. Notice Regarding Availability Of Electronic Filing Form Not Required. Except in Future Cases naming additional defendants, the Notice Regarding Availability of Electronic Filing Form shall not be required to be filed or served by any party.

8. Service of Interlocutory Papers through Electronic Filing. Proper service of any electronically served interlocutory document shall be deemed to have been effectuated when the Court's receipt for the filing and payment of the filing fee for said document, or the Court's confirmation of receipt in the case of a non-fee-bearing document, is sent from Court via the electronic filing system to opposing Counsel. The parties to the Coordinated Proceeding agree that the transmission of the receipt or confirmation shall constitute service of the document notwithstanding Section 202.5-b (g) of the Uniform Rules for the Trial Courts.

9. Papers to Be Filed Electronically. All papers to be filed with the Court shall be filed electronically on the website at www.nycourts.gov/e-file in accordance with the electronic filing rules set forth in Section 202.5-b of the Uniform Rules for Trial Courts, except where a special exemption is granted or as directed by the Court.

10. Previously Filed Papers. Each party shall be responsible for filing electronically, within thirty (30) days of entry of this Order, any papers previously filed by that party in any action in the Coordinated Proceeding. Re-filing of previously filed papers shall not have the effect of renewing previously decided motions, requests for judicial intervention, or any other prior requests made by any party.

11. Courtesy Hard Copies of Papers for Judicial Review. Unless otherwise directed by the Court, courtesy hard copies shall not be submitted.

12. Updating of Appendix of Present Cases. Con Edison's Liaison Counsel shall update and file the Appendix of Present Cases on the first business day of every month whenever new cases have been brought since the prior Appendix was filed.

13. All Other Procedures Governed By The Electronic Filing Rules. Except as indicated herein, all other filing, service, and other procedures shall be governed by the New York rules regarding electronic filing as set forth in Section 202.5-b of the Uniform Rules for the Trial Courts.

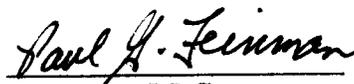
III. Registration For Electronic Filing

14. In Present Cases, All Counsel Shall Register by April 4, 2008. Counsel in Present Cases who are not already registered shall register for electronic filing promptly, but no later than April 4, 2008. Counsel shall register by submitting a Filing User Registration Form to obtain the confidential Filing User Identification Number and Password necessary to use the system. This form is available in the "Forms" section of the Court's Website at the address listed above. Once registered, counsel shall not have to register for each case.

15. In Future Cases, Plaintiff's and Defendants' Counsel Shall Register Within Ten Days Of Filing Their Respective Consent To Electronic Filing Forms. In Future Cases, the plaintiff's counsel shall register for electronic filing as set forth above no later than ten days after the filing and service of the Plaintiff's Consent To Electronic Filing Form. In Future Cases, defense counsel for additional defendants shall register for electronic filing as set forth above no later than ten days after the filing and service of the Defendant's Consent to Electronic Filing Form.

SO ORDERED.

Dated: March 27, 2008



J.S.C.

EXHIBIT A

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

-----x

IN RE: STEAM PIPE EXPLOSION AT 41ST
STREET AND LEXINGTON AVENUE

Index No. 768000/2008

-----x

[Plaintiff(s) name]

-against-

Index No. _____/20 _____

[Defendant(s) name]

PLAINTIFF'S CONSENT TO
ELECTRONIC FILING

-----x

Pursuant to Case Management Order No. 2, I, _____, submit this Plaintiff's

Consent in the above-entitled action and state as follows:

1. I am a plaintiff or an attorney for plaintiff in the individual case identified above. I consent to the use of electronic filing in this case and in the General Case, first listed above, and provide the following e-mail addresses for the purposes of service (the Primary Address) and giving additional notice of each filing in said cases pursuant to the terms set forth in Case Management Order

No. 2:

1. _____ (Primary Address)

2. _____

3. _____

2. Counsel for Con Edison and the City of New York, respectively, have consented to the use of electronic filing in this case, including with regard to service of initiating papers and subsequent papers, as set forth in Case Management Order No. 2, and have provided the following e-mail

addresses for the purpose of service of each filing pursuant to the terms set forth in Case Management

Order No. 2:

Liaison Counsel for Con Edison

Guy Miller Struve
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
guy.struve@dpw.com

Additional e-mail addresses for Liaison Counsel for Con Edison (with same firm and street address as above):

Frances E. Bivens
frances.bivens@dpw.com

Nancy B. Ludmerer
nancy.ludmerer@dpw.com

Hayward H. Smith
hayward.smith@dpw.com

Heather M. Ward
heather.ward@dpw.com

Liaison Counsel for the City of New York

Christopher Murdoch
New York City Law Department
100 Church Street
New York, New York 10007
cmurdoch@law.nyc.gov

3. The appearance of the above names and e-mail addresses of counsel for Con Edison and the City of New York shall not be deemed an appearance by Con Edison or the City of New York in this case. Pursuant to Case Management Order No. 2, these defendants shall not be required to file a separate Consent to Electronic Filing form.

Signature

Print or Type Name

Attorney for Plaintiff_____

(Firm Name)

(Firm Address)

(Phone)

(E-mail Address)

EXHIBIT B

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

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

-----X
[Plaintiff(s) name]

-against-

[Defendant(s) name]
-----X

Index No. 768000/2008

NOTICE OF
AVAILABILITY OF
ELECTRONIC FILING

Index No. _____/20 _____

PLEASE TAKE NOTICE that Plaintiffs and Defendants Con Edison and/or the City of New York in the above-captioned action consent and intend that this action proceed as an electronically-filed case pursuant to the terms set forth in Case Management Order No. 2. Service of papers by electronic means cannot be made upon a party unless that party consents to use of the system.

Under Case Management Order No. 2, each defendant other than Con Edison or the City of New York shall have 30 days from the date of service either to consent or to decline to participate in the Court's electronic filing system. Each defendant that consents shall file a Defendant's Consent to Electronic Filing form, which is provided herewith. Once any defendant has consented to electronic filing in such manner in any action in the above-referenced Coordinated Proceeding, that defendant is not required to consent in future cases. Such consent shall not be deemed an appearance by such additional defendant in this or future cases.

General Information

In New York state court practice, certain actions may be commenced and processed by means of the electronic filing system, including tort claims and commercial claims in the Supreme Court in New York County and other designated Counties.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the Court and served in a simple, convenient, and expeditious manner. Electronically filed case documents are filed with the court by filing on the Court website, which can be accessed at any time, day or night, at www.nycourts.gov/efile. In this litigation, electronic filing is governed by Case Management Order No. 2, and, where applicable, Section 202.5-b of the Uniform Rules for the Trial Courts.

Instructions

1. Defendants are strongly encouraged to consent to electronic filing.
2. Pursuant to Case Management Order No. 2, you have 30 days from the date of service either to consent or to decline to participate in electronic filing. To consent, you must file a Defendant's Consent to Electronic Filing form, which is provided herewith. Please transmit the consent form (copied to other counsel) to the Electronic Filing Resource Center, Room 119, 60 Centre Street, New York, New York 10007. If you are already a registered Filing User of the system, you can consent on-line in the case.
3. Pursuant to Case Management Order No. 2, you have ten days from the date of filing of a Defendant's Consent to Electronic Filing form to register for electronic filing by completing and signing a registration form and contacting the Electronic Filing Resource Center at efile@courts.state.ny.us or 646-386-3033. The registration form is available on the e-filing website listed above.

4. Once a defendant has consented in an action in the Coordinated Proceeding, the defendant is not required to consent in future cases.

5. For additional information about electronic filing, see the User's Manual and Frequently Asked Questions on the Court website or contact the Resource Center.

Dated: _____

_____ (Name)

_____ (Firm)

_____ (Address)

_____ (Phone)

_____ (Fax)

_____ (E-mail)

Attorney(s) for _____

EXHIBIT C

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

-----X

IN RE: STEAM PIPE EXPLOSION AT 41ST
STREET AND LEXINGTON AVENUE

-----X

[Plaintiff(s) name]

-against-

[Defendant(s) name]

-----X

Index No. 768000/2008

DEFENDANT'S CONSENT TO
ELECTRONIC FILING

Index No. _____/20 _____

Pursuant to Case Management Order No. 2, I, _____, am a defendant other than Con Edison or the City of New York, or an attorney for such defendant. I consent to the use of electronic filing in the individual case listed above and in the General Case, Index No. 768000/2008 first listed above, including with regard to service of interlocutory papers as provided in Case Management Order No. 2, and I provide the following e-mail addresses for the purposes of service (the Primary Address) and giving additional notice of each filing pursuant to the terms set forth in Case Management Order No. 2:

1. _____ (Primary Address)
2. _____
3. _____

As required under Case Management Order No. 2, I attest that I filed this Defendant's Consent to Electronic Filing within 30 days of service.

Signature

Print or Type Name

Attorney for _____

(Firm Name)

(Firm Address)

(Phone)

(E-mail Address)