

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ORDER
21 MC 100 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

The motions of defendants En-Tech Corporation and C. B. Contracting Corporation are denied. Issues of fact make the motion against these defendants premature. The task of determining which of the construction defendants may have caused injuries to which of the plaintiffs cannot be determined on the record now existing.

I make this ruling notwithstanding serious misgivings about the merits of the plaintiffs' case against these two defendants. C. B. Contracting Corp. performed welding work on site, and En-Tech worked to clear the sewers. There is a dispute as to whether C. B. Contracting Corp. worked from February 2002 or from May 2002, and if its work emitted "torch fumes" that caused respiratory injuries to nearby workers. Regarding En-Tech, there is a dispute as to whether it dumped decanted, but contaminated, sewer water and was involved in dust suppression activities with contaminated water that caused respiratory injuries to workers.

Plaintiffs make large claims on limited facts. But, plaintiffs claim that they have not yet had adequate discovery on these issues, and they are correct. We have been concentrating on other issues: first, on issues of immunity that took many months and involved a long appeal with a stay issued by the Court of Appeals; and then, on core

discovery and on eliciting objective facts about plaintiff's true injuries. There has not yet been sufficient discovery on specific defendants' general liability to specific plaintiffs. That issue, and others, will be topics of discussion at the next pre-trial conference, scheduled to be held November 19, 2008, 4:00 pm.

This order, with my previous order dated October 3, 2008 and the party's stipulation of September 3, 2008, terminates all aspects of defendants' motion dated July 11, 2008.

SO ORDERED.

Dated: October 27, 2008
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge