In The Matter Of:

DEMETRO v.
DORMITORY AUTHORITY

May 16, 2018

Bronx Supreme Court

```
 1   SUPREME COURT OF THE STATE OF NEW YORK
     COUNTY OF BRONX: CIVIL DIVISION - PART IA-16
 2   ------------------------------------------------------------x
     LOUIS DEMETRO and NANCY DEMETRO,
 3                                          Plaintiffs,

 4             -versus-

 5                                  Index # 16277-2006

 6   DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS
     LEND LEASE LMB, INC., THE CANNON CORPORATION d/b/a CANNON
 7   DESIGN, MARTIN ASSOCIATES, INC., L.P. GANS SALES COMPANY,
     INC., CENTER SHEET METAL, INC., BLUE DIAMOND SHEET METAL,
 8   INC., and METAL-FAB, INC.,
                                          Defendant(s)
 9   ------------------------------------------------------------x

10   DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS LEND
     LEASE LMB, INC. and CENTER SHEET METAL, INC.,
11
                                    Third-Party Plaintiffs
12
               -versus-
13                                  Index # 86001-2007

14   BLUE DIAMOND SHEET METAL, INC.,
                                          Defendant(s)
15   ------------------------------------------------------------x
     DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS LEND
16   LEASE LMB, INC., and CENTER SHEET METAL, INC.,

17                                  Third Third-Party Plaintiffs

18             -versus-
                                    Index # 3793-2009
19
     L.P. GANS SALES COMPANY, INC.,
20
                                    Third Third-Party Defendant(s)
21   ------------------------------------------------------------x
     MARTIN ASSOCIATES, INC.,
22                                  Fourth Third-Party Plaintiffs

23             -versus-
                                    Index # 83990-2010
24
     ANALYTICAL & COMBUSTION SYSTEMS, INC.,
25
```

                                    Fourth Third-Party Defendant(s)

```
-----------------------------------------------------------------x
DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS LEND
LEASE LMB, INC., and CENTER SHEET METAL, INC.,

                                    Fifth Third-Party Plaintiffs

              -versus-

JOHNSTON BOILER COMPANY,
                                    Fifth Third-Party Defendant(s)
-----------------------------------------------------------------x
                              May 16, 2018
                              851 Grand Concourse
                              Bronx, New York 10451
```

B E F O R E : Honorable FAVIOLA A. SOTO,
                         J U S T I C E

APPEARANCES:

        NOLL LAW FIRM
        Attorneys for Plaintiff
        33 Queens Street, Suite 102
        Syosset, New York 11791
        BY: RICHARD E. NOLL, ESQ.

        PERRY, VAN ETTEN, ROZANSKI & PRIMAVERA, LLP
        Attorneys for Defendants and Third-Party Plaintiffs
        Dormitory Authority, Bovis Lend Lease, Center Sheet
        60 Broad Street
        New York, New York 10004
        BY: KENNETH J. KUTNER, ESQ.

        DONOVAN HATEM, LLP
        Attorneys for Defendant Cannon Design
        112 West 34th Street - 18th Floor
        New York, New York 10120
        BY: SCOTT K. WINIKOW, ESQ.

                            Victoria Efferen

                        Senior Court Reporter

1

2   APPEARANCES: (Continued)

3   GOLDBERG SEGALLA, LLP
           Attorneys for Defendant Martin Associates
4   11 Martine Avenue, Suite 750
           White Plains, New York 10606
5   BY: JILL C. OWENS, ESQ.

6   AHMUTY, DEMERS & McMANUS
           Attorneys for Defendant Blue Diamond
7   200 I.U. Willets Road
           Albertson, New York 11507
8   BY: NEIL J. PALMIERI, ESQ.

9   LONDON FISCHER, LLP
           Attorneys for Third-Party Defendant Metal-Fab, Inc.
10   59 Maiden Lane
           New York, New York 10038
11   BY: BRIAN A. KALMAN, ESQ.

12   PIANA & GIOE, LLC.
           Attorneys for Third-Party Defendant L.P. Gans
13   1200 Veterans Memorial Highway, Suite 360
           Hauppauge, New York 11788
14   BY: JACK PIANA, ESQ.

15   LEWIS, JOHS, AVALLONE, AVILES, LLP
           Attorneys for Third-Party Defendant
16   Analytical Combustion Systems
           One CA Plaza, Suite 225
17   Islandia, New York 11749
           BY: JORDAN S. PALATIELLO, ESQ.
18
           HOAGLAND, LONGO, MORAN, DUNST and DOUKAS, LLP
19   Attorneys for Third-Party Defendant Johnston Boiler
           40 Paterson Street
20   New Brunswick, New Jersey
           BY: MICHAEL T. KEARNS, ESQ.
21

22

23

24

25

1   (Whereupon, the jury enters the courtroom)

2   THE COURT: Jury entering. Foreperson remaining

3   standing.

4   THE CLERK: In the case of Louis Demetro and Nancy

5   Demetro versus Dormitory Authority of the State of New York,

6   Bovis Lend Lease, LMB, Inc., The Cannon Corporation d/b/a

7   Cannon Design, Martin Associates, Inc., Center Sheet Metal,

8   Inc, Metal-Fab Inc., Blue Diamond Sheet Metal, Inc., L.P.

9   Gans Sales Company, Inc., Analytical and Combustion Systems,

10   and Johnston Boiler Company. Index 16277 of 2006 in and for

11   the Supreme Court of the State of New York, County of

12   Bronx.

13   Question number one, was the defendant Dormitory

14   Authority of the State of New York negligent?

15   THE FOREMAN: No.

16   THE CLERK: What vote?

17   THE FOREMAN: Five to one.

18   THE CLERK: Question number three, was the

19   defendant Bovis Lend Lease, LMB negligent?

20   THE FOREMAN: Yes.

21   THE CLERK: What vote?

22   THE FOREMAN: Six zero.

23   THE CLERK: Question number four, was the

24   defendant Bovis' negligence a substantial factor in causing

25   the accident?

1   THE FOREMAN: Yes.

2   THE CLERK: What vote?

3   THE FOREMAN: Five one.

4   THE CLERK: Question number five, was the

5   defendant Cannon Corporation negligent?

6   THE FOREMAN: Yes.

7   THE CLERK: What vote?

8   THE FOREMAN: Six zero.

9   THE CLERK: Question number six, was the defendant

10   Cannon's negligence a substantial factor in causing the

11   accident?

12   THE FOREMAN: Yes.

13   THE CLERK: What vote?

14   THE FOREMAN: Six zero.

15   THE CLERK: Question number seven, was the

16   defendant Martin Associates, Inc. negligent?

17   THE FOREMAN: Yes.

18   THE CLERK: What vote?

19   THE FOREMAN: Six zero.

20   THE CLERK: Question number eight, was the

21   defendant Martin's negligence a substantial factor in

22   causing the accident?

23   THE FOREMAN: Yes.

24   THE CLERK: What vote?

25   THE FOREMAN: Six zero.

1   THE CLERK: Question number nine, was the

2   defendant Center Sheet Metal, Inc. negligent?

3   THE FOREMAN: Yes.

4   THE CLERK: What vote?

5   THE FOREMAN: Six zero.

6   THE CLERK: Question number ten, was the defendant

7   Center Sheet Metal Inc.'s negligence a substantial factor in

8   causing the accident?

9   THE FOREMAN: No.

10   THE CLERK: What vote?

11   THE FOREMAN: Six zero.

12   THE CLERK: Question number 11, was the defendant

13   Metal-Fab, Inc. negligent?

14   THE FOREMAN: No.

15   THE CLERK: What vote?

16   THE FOREMAN: Six zero.

17   THE CLERK: Question number 13, was the defendant

18   Blue Diamond Sheet Metal, Inc. negligent?

19   THE FOREMAN: No.

20   THE CLERK: What vote?

21   THE FOREMAN: Six zero.

22   THE CLERK: Question number 15, was the defendant

23   L.P. Gans negligent?

24   THE FOREMAN: No.

25   THE CLERK: What vote?

1   THE FOREMAN: Six zero.

2   THE CLERK: Question number 17, was the defendant

3   Analytical Combustion Systems, Inc. negligent?

4   THE FOREMAN: No.

5   THE CLERK: What vote?

6   THE FOREMAN: Six zero.

7   THE CLERK: Question number 19, was the defendant

8   Johnston Boiler COMPANY negligent?

9   THE FOREMAN: No.

10   THE CLERK: What vote?

11   THE FOREMAN: Six zero.

12   THE CLERK: Question number 21, was the plaintiff

13 Louis Demetro negligent?

14   THE FOREMAN: No.

15   THE CLERK: What vote?

16   THE FOREMAN: Six zero.

17   THE CLERK: Number 23, apportion the percentage of

18 liability between party/parties that you found to be

19 negligent and whose negligence was a substantial factor in

20 causing the accident.

21   The total amount of liability must add up to 100

22 percent.

23   THE CLERK: DASNY?

24   THE FOREMAN: Zero.

25   THE CLERK: Bovis?

1   THE FOREMAN: 25.

2   THE CLERK: Cannon?

3   THE FOREMAN: 25.

4   THE CLERK: Martin?

5   THE FOREMAN: 50.

6   THE CLERK: Center Sheet Metal?

7   THE FOREMAN: Zero.

8   THE CLERK: Metal-Fab?

9   THE FOREMAN: Zero.

10   THE CLERK: Blue Diamond Sheet Metal?

11   THE FOREMAN: Zero.

12   THE CLERK: L.P. Gans?

13   THE FOREMAN: Zero.

14   THE CLERK: Analytical Combustion?

15   THE FOREMAN: Zero.

16   THE CLERK: Johnston?

17   THE FOREMAN: Zero.

18   THE CLERK: Louis Demetro?

19   THE FOREMAN: Zero.

20   THE CLERK: What was your vote?

21   THE FOREMAN: Six zero.

22   THE CLERK: Number 24, state of amount awarded to

23   plaintiff Louis Demetro for the following items of damages,

24   if any, up to the date of your verdict? If you decide not

25   to make an award, write no.

1   A, pain and suffering.

2   THE FOREMAN: One million five hundred thousand.

3   THE CLERK: What vote?

4   THE FOREMAN: Five one.

5   THE CLERK: B, medical expenses?

6   THE FOREMAN: 100,000 dollar.

7   THE CLERK: What vote?

8   THE FOREMAN: Five one.

9   THE CLERK: C, lost earnings?

10   THE FOREMAN: One million sixty thousand.

11   THE CLERK: What vote?

12   THE FOREMAN: Six zero.

13   THE CLERK: Number 25, state the amount awarded to

14   plaintiff Louis Demetro for the following item of damages,

15   if any to be incurred in the future. If you decide not to

16   make an award write none.

17   A, pain and suffering?

18   THE FOREMAN: One million five hundred thousand.

19   THE CLERK: What vote?

20   THE FOREMAN: Five one.

21   THE CLERK: B, medical expenses?

22   THE FOREMAN: Two hundred seventy-five thousand.

23   THE CLERK: What vote?

24   THE FOREMAN: Five to one.

25   THE CLERK: C, lost earnings?

1   THE FOREMAN: One million dollars.

2   THE CLERK: What vote?

3   THE FOREMAN: Five to one.

4   THE CLERK: Number 26, if you have made any award

5   for amounts intended to compensate the plaintiff Louis

6   Demetro for damages to be incurred in the future in question

7   23 above, then for each item for which an award is made,

8   state the period of years of which such amount is intended

9   to provide compensation.

10   A, pain and suffering?

11   THE FOREMAN: 20 years.

12   THE CLERK: What vote?

13   THE FOREMAN: Six zero.

14   THE CLERK: B, medical expenses?

15   THE FOREMAN: 20 years.

16   THE CLERK: What vote?

17   THE FOREMAN: Six zero.

18   THE CLERK: C, lost earnings?

19   THE FOREMAN: Eight years.

20   THE CLERK: What vote?

21   THE FOREMAN: Six zero.

22   THE CLERK: Number 27, state the amount awarded to

23   the plaintiff Nancy Demetro, if any, for her claim of loss

24   of services and consortium. If you decide not to make an

25   award, write none.

What is the amount indicated?

THE FOREMAN: 500 thousand.

THE CLERK: What vote?

THE FOREMAN: Five to one.

THE CLERK: Your verdict has been recorded.

THE COURT: Ladies and Mr. Mendoza, you came, you saw, you conquered. You came to this court months ago, you listened to all the evidence. You were able to go in the back and deliberate and agree towards a verdict. By agreeing and coming up with a verdict, you have fulfilled your obligation as jurors in the State of New York.

I want to thank you as the Judge of the Court to say what a pleasure it was to have you in my courtroom. When you come back to serve, I will not be here because I am retiring. You will all be in my hearts. You are now excused.

I will take you down stairs on the second floor and get you proof of service.

MR. KUTNER: Would you mind asking if they don't mind sticking around.

THE COURT: The attorneys may want to speak to you. You don't have to, but it is important for them to get your prospective. It helps them in their career and how to approach jurors in the future.

Attorneys, if you want to speak to the jurors,

1   speak to them in the hallway.

2   You are now excused.

3   (Whereupon, the jury exits the courtroom)

4   THE COURT: All right, all motions. The attorneys

5   have 60 days from today to make post trial motions.

6   MR. KUTNER: Just to protect the record, I want to

7   make a motion to set aside the verdict as contrary to the

8   law, the facts and as against the weight of the evidence.

9   THE COURT: Denied.

10   MR. KUTNER: Renew all motions that were made at

11   the closing of plaintiff's proof?

12   THE COURT: Whatever I ruled, denied.

13   MR. KUTNER: We were going to ask for 60 days.

14   MR. WINIKOW: I join in the same motions that

15   Mr. Kutner made.

16   THE COURT: Do you want to make them in 60 days?

17   MS. OWENS: Everything is preserved? Execution of

18   the judgment is stayed?

19   THE COURT: 60 days until I make a decision.

20   MR. WINIKOW: Your Honor, just so we are clear,

21   entry of judgment will be stayed until the motion is

22   decided?

23   THE COURT: That's what the CPLR says.

24   MR. WINIKOW: I would like to request a collateral

25   source hearing.

1   THE COURT: Try to arrange that and if you have a

2   problem, contact me and I will schedule a hearing.

3   MR. KUTNER: I was making that motion verbally and

4   my understanding is that I have 60 days to submit papers in

5   support of my oral application?

6   MR. KALMAN: All post trial motions on papers in

7   60 days?

8   THE COURT: Thank you all. You did a wonderful

9   job.

10   MR. KUTNER: Your Honor, I wanted to address that

11   there are contractual indemnification claims by DASNY and

12   possibly Bovis pursuant to the items of the contract that

13   were written between DASNY and Martin and DASNY and Cannon.

14   I just want to preserve my right to make my application to

15   the Court with the other motions with respect to the Court's

16   determination as to the applicability of the indemnification

17   provisions and the recovery of defense costs and attorneys'

18   fees as against those entities.

19   THE COURT: All motions within 60 days. Hopefully,

20   you can settle that issue amongst yourselves.

21   (Whereupon, the case is adjourned for post trial
     motions)

22   Certified to be a true and accurate transcription
     of the stenographic notes....

23   ADRIANNE TIRADO_____

24   VANESSA MOORE_____

25   VICTORIA EFFEREN_____

Ladies (1)
3626:6
law (1)
3627:8
Lease (2)
3619:6,19
Lend (2)
3619:6,19
liability (2)
3622:18,21
listened (1)
3626:8
LMB (2)
3619:6,19
loss (1)
3625:23
lost (3)
3624:9,25;3625:18
Louis (6)
3619:4;3622:13;
3623:18,23;3624:14;
3625:5
LP (3)
3619:8;3621:23;
3623:12

M

Martin (3)
3619:7;3620:16;
3623:4
Martin's (1)
3620:21
may (1)
3626:21
medical (3)
3624:5,21;3625:14
Mendoza (1)
3626:6
Metal (7)
3619:7,8;3621:2,7,
18;3623:6,10
Metal-Fab (3)
3619:8;3621:13;
3623:8
million (4)
3624:2,10,18;
3625:1
mind (2)
3626:19,20
months (1)
3626:7
motion (2)
3627:7,21
motions (4)
3627:4,5,10,14
must (1)
3622:21

N

Nancy (2)
3619:4;3625:23

negligence (5)
3619:24;3620:10,
21;3621:7;3622:19
negligent (12)
3619:14,19;3620:5,
16;3621:2,13,18,23;
3622:3,8,13,19
New (4)
3619:5,11,14;
3626:11
nine (1)
3621:1
none (2)
3624:16;3625:25
number (20)
3619:13,18,23;
3620:4,9,15,20;
3621:1,6,12,17,22;
3622:2,7,12,17;
3623:22;3624:13;
3625:4,22

O

obligation (1)
3626:11
one (13)
3619:13,17;3620:3;
3624:2,4,8,10,18,20,
24;3625:1,3;3626:4
OWENS (1)
3627:17

P

pain (3)
3624:1,17;3625:10
party/parties (1)
3622:18
percent (1)
3622:22
percentage (1)
3622:17
period (1)
3625:8
plaintiff (5)
3622:12;3623:23;
3624:14;3625:5,23
plaintiff's (1)
3627:11
pleasure (1)
3626:13
post (1)
3627:5
preserved (1)
3627:17
proof (2)
3626:18;3627:11
prospective (1)
3626:23
protect (1)
3627:6
provide (1)

3625:9

R

record (1)
3627:6
recorded (1)
3626:5
remaining (1)
3619:2
Renew (1)
3627:10
request (1)
3627:24
retiring (1)
3626:15
right (1)
3627:4
ruled (1)
3627:12

S

Sales (1)
3619:9
same (1)
3627:14
saw (1)
3626:7
second (1)
3626:17
serve (1)
3626:14
service (1)
3626:18
services (1)
3625:24
set (1)
3627:7
seven (1)
3620:15
seventy-five (1)
3624:22
Sheet (7)
3619:7,8;3621:2,7,
18;3623:6,10
Six (19)
3619:22;3620:8,9,
14,19,25;3621:5,11,
16,21;3622:1,6,11,16;
3623:21;3624:12;
3625:13,17,21
sixty (1)
3624:10
source (1)
3627:25
speak (3)
3626:21,25;3627:1
stairs (1)
3626:17
standing (1)
3619:3
State (8)

3619:5,11,14;
3623:22;3624:13;
3625:8,22;3626:11
stayed (2)
3627:18,21
sticking (1)
3626:20
substantial (5)
3619:24;3620:10,
21;3621:7;3622:19
suffering (3)
3624:1,17;3625:10
Supreme (1)
3619:11
Systems (2)
3619:9;3622:3

T

ten (1)
3621:6
thousand (5)
3624:2,10,18,22;
3626:2
three (1)
3619:18
today (1)
3627:5
total (1)
3622:21
towards (1)
3626:9
trial (1)
3627:5
Two (1)
3624:22

U

up (3)
3622:21;3623:24;
3626:10

V

verdict (5)
3623:24;3626:5,9,
10;3627:7
versus (1)
3619:5
vote (26)
3619:16,21;3620:2,
7,13,18,24;3621:4,10,
15,20,25;3622:5,10,
15;3623:20;3624:3,7,
11,19,23;3625:2,12,
16,20;3626:3

W

weight (1)
3627:8
Whereupon (2)

3619:1;3627:3
whose (1)
3622:19
WINIKOW (3)
3627:14,20,24
write (3)
3623:25;3624:16;
3625:25

Y

years (4)
3625:8,11,15,19
York (4)
3619:5,11,14;
3626:11

Z

zero (26)
3619:22;3620:8,14,
19,25;3621:5,11,16,
21;3622:1,6,11,16,24;
3623:7,9,11,13,15,17,
19,21;3624:12;
3625:13,17,21

1

100 (1)
3622:21
100,000 (1)
3624:6
11 (1)
3621:12
13 (1)
3621:17
15 (1)
3621:22
16277 (1)
3619:10
17 (1)
3622:2
19 (1)
3622:7

2

20 (2)
3625:11,15
2006 (1)
3619:10
21 (1)
3622:12
23 (2)
3622:17;3625:7
24 (1)
3623:22
25 (3)
3623:1,3;3624:13
26 (1)
3625:4
27 (1)

3625:22

5

50 (1)
3623:5
500 (1)
3626:2

6

60 (4)
3627:5,13,16,19