

Navigating Novel Negligence Cases

Part 5: How To Successfully
Litigate Fire Injury Cases

MATERIALS BY
Andrew Smiley

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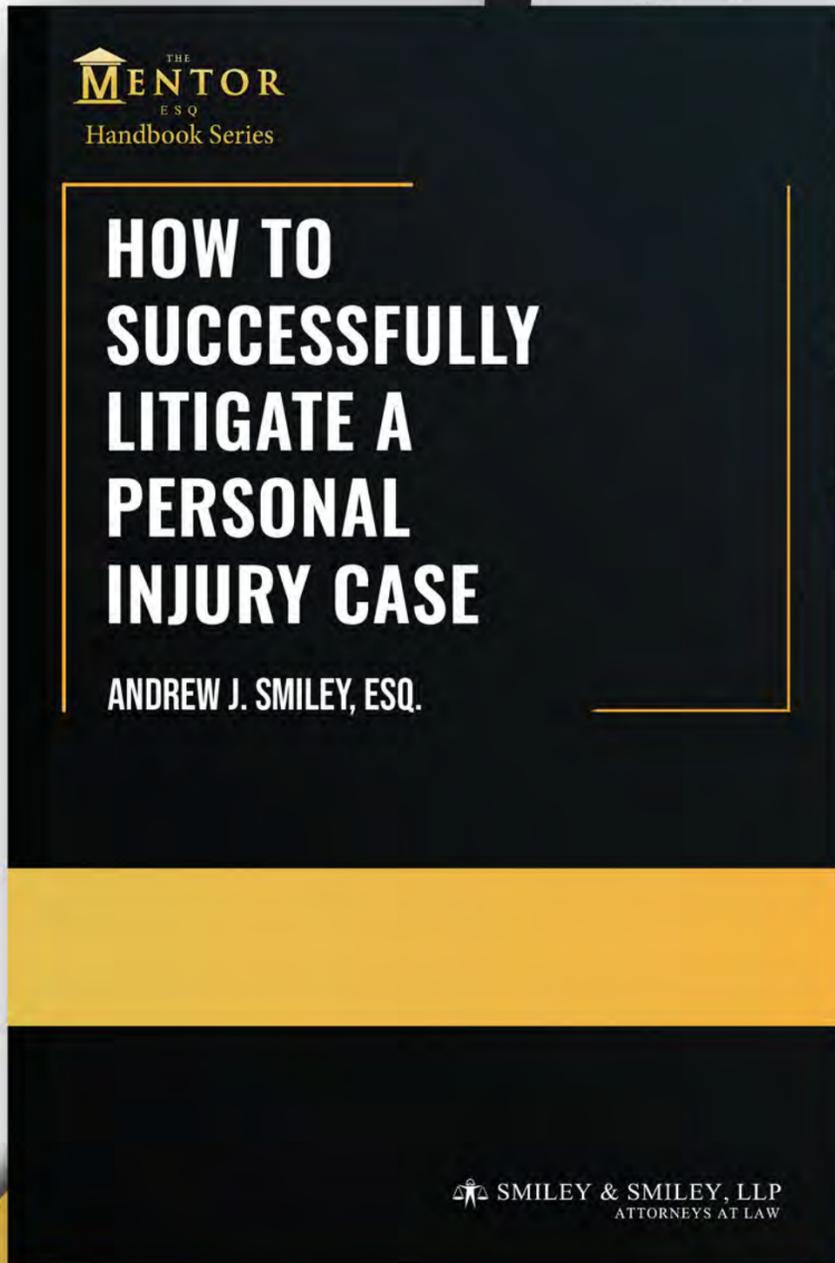
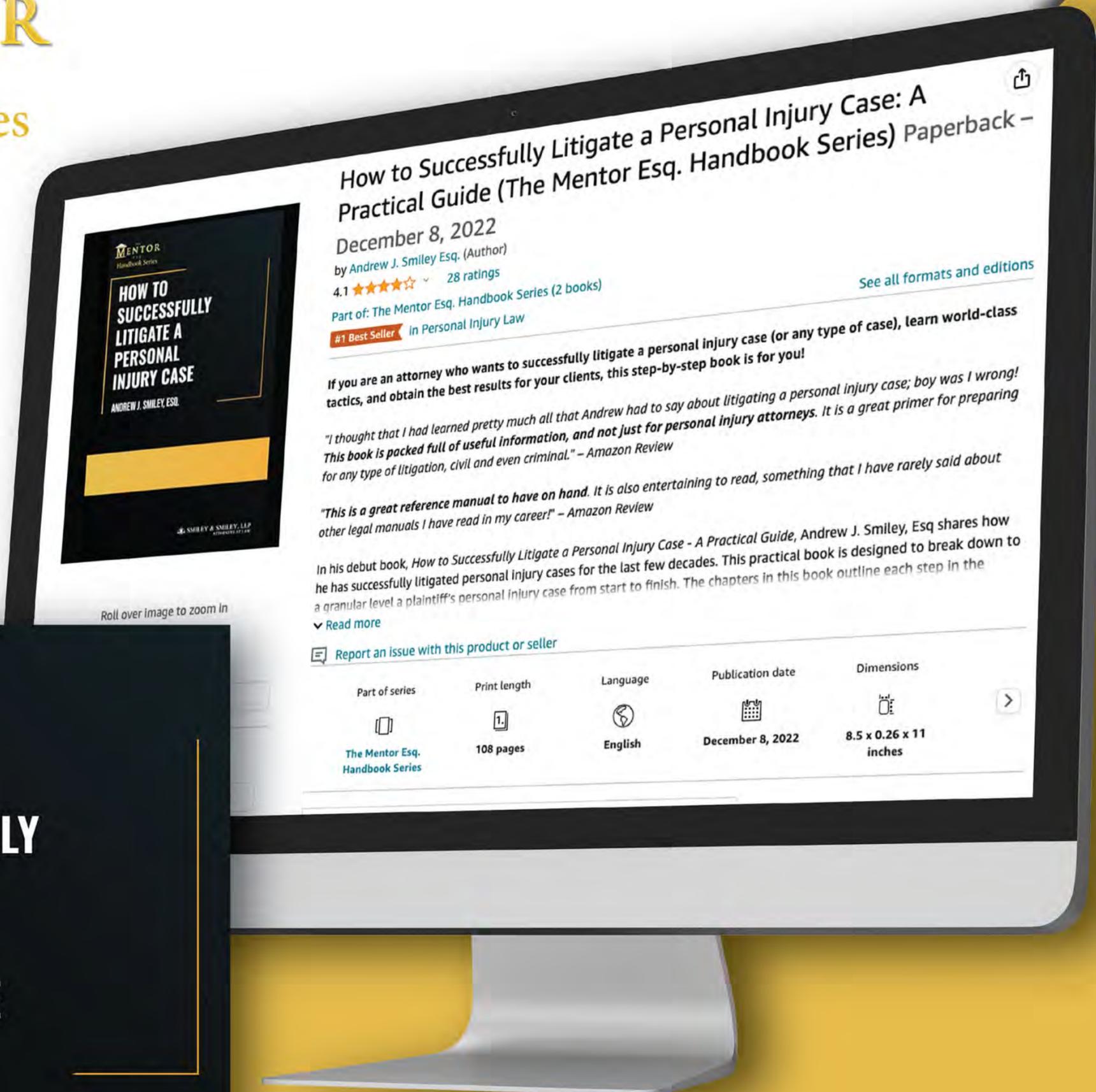
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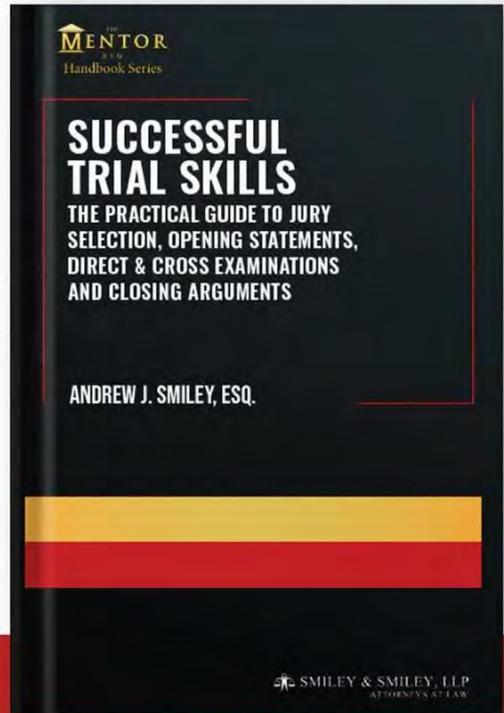
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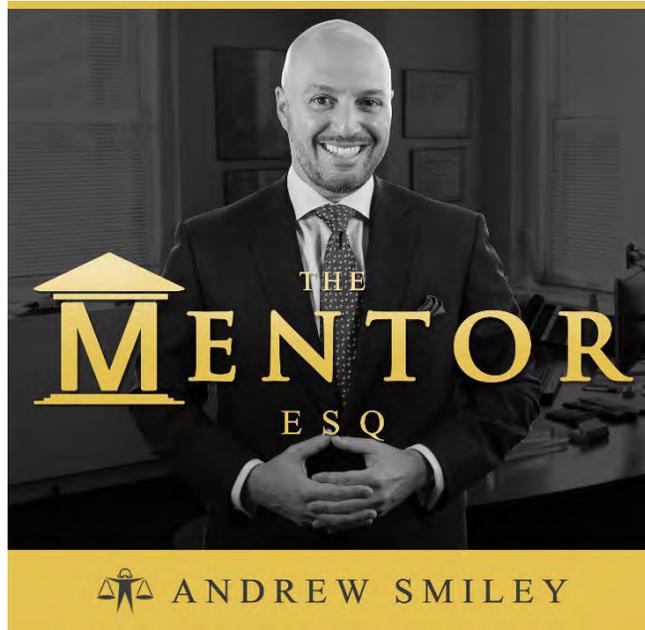
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CURRICULUM VITAE

Education:

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

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- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors

Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

Continuing Legal Education (CLE) Presentations:

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023

(66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023

(65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023

(64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023

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Continuing Legal Education (CLE) Presentations Continued:

(63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023

(62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023

(61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023

(60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023

(59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

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Continuing Legal Education (CLE) Presentations Continued:

- (47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022
- (46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022
- (45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021
- (44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021
- (43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021
- (42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021
- (41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021
- (40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021
- (39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021
- (38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021
- (37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021
- (36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021
- (35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021
- (34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020
- (33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

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Continuing Legal Education (CLE) Presentations Continued:

- (32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020
- (31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020
- (30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020
- (29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019
- (28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019
- (27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019
- (26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019
- (25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018
- (24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017
- (23) *Presenter on Evidence, 2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016
- (22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015
- (21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015
- (20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015
- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

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Continuing Legal Education (CLE) Presentations Continued:

- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances

Fox News Channel

- The O’Reilly Factor
- What’s Happening Now with Martha McCallum
- America’s News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

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Headline News

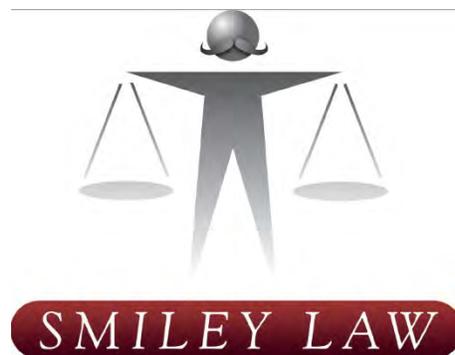
Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

High Performance Driving Events, Sim Racing, Tennis, Lego, Cooking



Chapter 12: Smoke Detecting and Carbon Monoxide Detecting Devices and Systems In Multiple Dwellings

§ 12-01 Owner Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to § 27-2045 of the Administrative Code of the City of New York, the owner of a Class A multiple dwelling which is required to be equipped with smoke detecting devices pursuant to section 907.2 of the New York City building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code shall:

(a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit and replace such devices in accordance with article 312 of chapter 3 of title 28 of the administrative code of the city of New York in locations specified in reference standard 17-12 of the 1968 building code or section 907.2.10 of the New York city building code, as applicable.

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development ("HPD" or "the Department") in a common area of the building, readily visible and preferably in the area of the inspection certificate, informing the occupants of such building that the owner is required by law to install one or more approved and operational smoke detecting devices in each dwelling unit in the building and to periodically replace such devices upon the expiration of their useful life in accordance with article 312 of chapter 3 of title 28 of the administrative code of the city of New York, and that each occupant is responsible for the maintenance and repair of such devices and for replacing any or all such devices which are stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit with a device meeting the requirements of article 312 of chapter 3 of title 28 of the administrative code of the city of New York. In addition, the notice should state that the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of twenty-five dollars or a maximum of fifty dollars where a combined smoke and carbon monoxide detecting device is installed, for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement. A sample of an approved notice is made part of these regulations in 28 RCNY § 12-04 and may also be found on HPD's website at www.nyc.gov/HPD.

(c) The notice in 28 RCNY § 12-01(b) above:

- (1) shall have letters not less than three-sixteenths of an inch in height;
- (2) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;
- (3) the notice shall be durable and shall be substantially secured to the common area where posted;
- (4) the notice shall be of metal, plastic, or decal;
- (5) lighting shall be sufficient to make the notice easily legible.

(d) For the notice required by subdivisions (b) and (c) of this section, an owner may in lieu of such otherwise required notice instead choose to post a single notice that incorporates and complies with subdivisions (b) and (c) of this section as well as the provisions of 28 RCNY § 12-06(b) and 28 RCNY § 12-11(b). A sample of an approved single notice, the language of which may be used for compliance with this subdivision, is made part of these regulations in 28 RCNY § 12-12.1 and may also be found on HPD's website at www.nyc.gov/HPD.

(e) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the prior occupant prior to the commencement of a new occupancy of a dwelling unit with a device meeting the requirements of article 312 of chapter 3 of title 28 of the administrative code of the city of New York.

(f) Replace within thirty calendar days after the receipt of written notice any such device which becomes inoperable within one year of the installation of such device and through no fault of the occupant of the dwelling unit.

(g) Keep the following records, on the premises or in the business office of the managing agent or owner, relating to the installation and maintenance of smoke detecting devices in the building:

(1) date notice posted pursuant to 28 RCNY § 12-01(b);

(2) date of installation of each smoke detecting device and other records showing that the device installed meets the requirements of Article 312 of Chapter 3 of Title 28 of the administrative code of the City of New York, including the manufacturer's suggested useful life of each device;

(3) whether the smoke detecting device receives its primary power from the building wiring or whether it is a battery-operated device;

(4) apartment number and location within apartment where device installed;

(5) records showing that maintenance work performed on each device has met the requirements of Article 312 of Chapter 3 of Title 28 of the administrative code of the City of New York;

(6) date tenant requested replacement/repair.

(7) These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-02 Occupant Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to § 27-2045(b) of the Administrative Code of the City of New York it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling in which a smoke detecting device has been provided and installed by the owner pursuant to section 907.2 of the New York city building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code to:

(a) keep and maintain such device in good repair; and

(b) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit with a device meeting the requirements of article 312 of chapter 3 of title 28 of the administrative code of the city of New York. *Note:* Except as provided in 28 RCNY § 12-01(d) and (e) above and article 312 of chapter 3 of title 28 of the administrative code of the city of New York, an owner of a Class A multiple dwelling who has provided and installed a smoke detecting device in a dwelling unit shall not be required to keep and maintain such device in good repair or to replace any such device which is stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit. In addition, the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of twenty-five dollars or a maximum of fifty dollars where a combined smoke and carbon monoxide detecting devices is installed, for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement.

§ 12-03 Owner Responsibilities for Smoke Detecting Devices for Class B Multiple Dwellings.

Pursuant to § 27-2046 of the Administrative Code of the City of New York the owner of a Class B multiple dwelling which is required to be equipped with smoke detecting devices pursuant to section 907.2 of the New York city building code or sections 27-978, 27-979, 27-980, and 27-981 of the 1968 building code shall:

(a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit or, in the alternative, provide and install a line-operated zoned smoke detecting system with central office tie-in for all public corridors and public spaces pursuant to rules and regulations promulgated by the Commissioner of the Department of Buildings.

(b) Keep and maintain smoke detecting devices in good repair and replace such devices in accordance with article 312 of chapter 3 of title 28 of the administrative code of the city of New York.

(c) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit in accordance with article 312 of chapter 3 of title 28 of the administrative code of the city of New York.

(d) Keep the following records, on the premises or in the business office of the managing agent or owner, relating to the installation and maintenance of smoke detecting devices in the buildings:

(1) date of installation of each smoke detecting device and other records showing that the device installed meets the requirements of Article 312 of Chapter 3 of Title 28 of the administrative code of the City of New York, including the

manufacturer's suggested useful life of each device;

(2) whether the smoke detecting device receives its primary power from the building wiring or whether it is a battery operated device or in the alternative whether it is a line operated zoned smoke detecting system with central annunciation and central tie-in for all public corridors and public spaces;

(3) room number and location within room where each smoke detecting device is installed;

(4) records showing that maintenance performed on each device has met the requirements of Article 312 of Chapter 3 of Title 28 of the administrative code of the City of New York.

These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-04 Form for Records or Smoke Detecting Devices.

A sample notice as required by 28 RCNY § 12-01(b) follows:

NOTICE

The law requires the owner of the premises to provide and install one or more approved and operational smoke detectors in each apartment in this building and to periodically replace such devices upon the expiration of their useful life in accordance with Article 312 of Chapter 3 of Title 28 of the New York City Administrative Code. The tenant of each apartment is responsible for the maintenance and repair of the detectors installed in the apartment and for replacing any or all detectors which are stolen, removed, missing or become inoperable during the occupancy of the apartment with a device meeting the requirements of Article 312 of Chapter 3 of Title 28 of the Administrative Code, unless a detector becomes inoperable within one year of being installed due to a manufacturing defect. The tenant of each apartment in this building in which a battery-operated smoke detector is provided and installed shall pay the owner a maximum of twenty-five dollars or a maximum of fifty dollars where a combined smoke and carbon monoxide detecting device is installed for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-05 Definitions.

For the purposes of this chapter

(a) CO means carbon monoxide; and

(b) CO alarm means a "carbon monoxide alarm" as defined in 1 RCNY Chapter 28 and shall also mean a "carbon monoxide detecting device" as such term is used in subchapter 7 of chapter 1 and subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York, and section 902.1 of the building code.*

§ 12-06 Owner Responsibilities for CO Alarms for Class A Multiple Dwellings.

Pursuant to § 27-2046.1 of the administrative code of the city of New York, the owner of a Class A multiple dwelling that is required to be equipped with carbon monoxide detecting devices pursuant to section 908.7 of the New York city building code or sections 27-981.1, 27-981.2 and 27-981.3 of the 1968 building code, and as prescribed by the Department of Buildings ("DOB") pursuant to 1 RCNY Chapter 28 shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarms in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping purposes, and replace such devices as necessary in accordance with article 12 of chapter 3 of title 28 of the administrative code;

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development ("HPD" or "the Department") in a common area of a Class A multiple dwelling, readily visible and preferably in the area of the inspection certificate informing the occupants of such building that:

(1) the owner is required by law to install one or more approved and operational CO alarm in each dwelling unit in the building within 15 feet of the primary entrance to each room lawfully used for sleeping purposes and to periodically replace such devices as necessary in accordance with Article 12 of Chapter 3 of Title 28 of the administrative code;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling unit; and

(3) the occupant of a dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm or where such alarm has been lost or damaged by such occupant, or where such alarm is replaced upon the expiration of its useful life pursuant to Article 12 of Chapter 3 of Title 28 of the New York City administrative code, shall reimburse the owner in the amount of \$25.00 per device for the cost of such work, or a maximum of \$50.00 per device where a combined smoke and carbon monoxide detecting device is installed, and such occupant shall have one year from the date of installation to make such reimbursement.

(4) A sample of an approved notice that may be used for CO alarms is made part of these regulations in 28 RCNY § 12-10 and may also be found on HPD's website at www.nyc.gov/HPD.

(5) For the notice otherwise required by this provision, an owner may in lieu of such notice, instead choose to post a single notice that incorporates and complies with this provision as well as the provisions of 28 RCNY § 12-01(b) and (c) and 28 RCNY § 12-11(b). A sample of an approved single notice, the language of which may be used for compliance with this subdivision, is made part of these regulations in 28 RCNY § 12-12.1 and may also be found on HPD's website at www.nyc.gov/HPD.

(6) The notice required by this subdivision shall conform with the following requirements:

(i) the notice shall have letters not less than three-sixteenths of an inch in height;

(ii) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(iii) the notice shall be durable and shall be substantially secured to the common area where posted;

(iv) the notice shall be of metal, plastic, or decal;

(v) lighting shall be sufficient to make the notice easily legible; and

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the prior occupant before the commencement of a new occupancy of the dwelling unit and replace such alarm upon the expiration of its useful life pursuant to article 12 of chapter 3 of title 28 of the New York city administrative code;

(d) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling unit;

(e) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off, that CO alarms have a useful life limitation and that the owner has a duty to replace such alarms upon the expiration of such useful life. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB and shall be provided at the time of installation;

(f) Keep the following records, on the premises or in the business office of the owner or managing agent, relating to the installation and maintenance of CO alarms in the building:

(1) date notice posted pursuant to 28 RCNY § 12-06(b);

(2) date of installation of each CO alarm and the expiration date of the manufacturer's suggested useful life of each such alarm;

(3) whether each CO alarm receives its primary power from the building wiring with secondary battery back-up, is a battery-operated alarm, or is a plug-in type CO alarm with a back-up battery;

(4) apartment number and location within apartment where each alarm was installed;

(5) maintenance work performed on each alarm; and

(7) date occupant requested replacement/repair. These records must be made available to the Commissioner of the Department of Housing Preservation and Development, DOB, the Fire Department, or the Department of Health and Mental Hygiene ("DOHMH") upon request.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-07 Owner Responsibilities for CO Alarms for Private Dwellings.

Pursuant to § 27-2046.1 of the administrative code of the city of New York, the owner of a private dwelling that is required to be equipped with CO alarms pursuant to section 908.7 of the New York city building code or sections 27-981.1, 27-981.2 and 27-981.3 of the 1968 building code and as prescribed by DOB pursuant to chapter 28 of title 1 of the rules of the city of New York shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping as prescribed in the DOB rules and regulations relating to CO alarms, and replace such devices as necessary in accordance with article 12 of chapter 3 of title 28 of the administrative code;

(b) For purposes of (c) through (g) of this section, "private dwelling" shall mean a dwelling unit in a one-family or two-family home that is occupied by a person or persons other than the owner of such unit or the owner's family

(c) Provide notice in a form approved by the Department to the occupants of such dwelling that:

(1) the owner is required by law to install an approved and operational CO alarm in each dwelling or dwelling unit in the building, within 15 feet of the primary entrance to each room lawfully used for sleeping and to periodically replace such devices as necessary in accordance with article 12 of chapter 3 of title 28 of the administrative code;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit; and

(3) the occupant of a dwelling or dwelling unit in which a CO alarm is newly installed, or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm, or where such alarm has been lost or damaged by such occupant or where such alarm is replaced upon the expiration of its useful life pursuant to article 12 of chapter 3 of title 28 of the New York city administrative code, shall reimburse the owner in the amount of \$25.00 per alarm for the cost of such work, and the occupant shall have one year from the date of installation to make such reimbursement;

(d) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling or dwelling unit and that has not been replaced by the prior occupant before commencement of a new occupancy of the dwelling or dwelling unit;

(e) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling or dwelling unit;

(f) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling or dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off and that CO alarms have a useful life limitation and that the owner has a duty to replace such alarms upon the expiration of such useful life. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB and shall be provided at the time of installation; and

(g) Keep the following records relating to the installation and maintenance of CO alarms in the dwelling or dwelling unit:

(1) date of installation of each CO alarm (1) and the expiration date of the manufacturer's suggested useful life of each such alarm;

(2) whether each CO alarm receives its primary power from the building wiring with secondary battery backup, is a battery-operated device, or is a plug-in type CO alarm with a back-up battery;

(3) location within dwelling or dwelling unit where each alarm is installed;

(4) maintenance work performed on each alarm; and

(5) date occupant requested replacement/repair. These records must be made available to the Commissioner of the Department of Housing Preservation and Development, DOB, the Fire Department, or DOHMH upon request.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-08 Occupant Responsibilities for CO Alarms for Class A Multiple Dwellings and Private Dwellings.

(a) Pursuant to § 27-2046.1 of the administrative code of the city of New York, it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling and the occupant of a dwelling or dwelling unit in a private dwelling in which a CO alarm has been provided and installed by the owner to:

(1) keep and maintain such CO alarm in good repair; and

(2) replace any alarm that is either stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

(b) The occupant of a dwelling or dwelling unit in which a CO alarm is newly installed, or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm, or where such alarm has been removed or damaged by such occupant, or where such alarm is replaced upon the expiration of its useful life pursuant to article 12 of chapter 3 of title 28 of the New York city administrative code shall reimburse the owner in the amount of \$25.00 per alarm for the cost of such work. Such occupant shall have one year from the date of installation to make such reimbursement.

(c) Except as provided in 28 RCNY § 12-06(c) and (d) and 28 RCNY § 12-07(d) and (e) above, an owner who has provided and installed a CO alarm in a dwelling or dwelling unit shall not be required to keep and maintain such alarm in good repair or to replace any such alarm that is stolen, removed, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

§ 12-09 Owner Responsibilities for CO Alarms for Class B Multiple Dwellings.

Pursuant to § 27-2046.2 of the administrative code of the city of New York, the owner of a Class B multiple dwelling that is required to be equipped with one or more CO alarms pursuant to section 908.7 of the New York city building code or sections 27-981.1, 27-981.2 and 27-981.3 of the 1968 building code and as prescribed by DOB pursuant to 1 RCNY Chapter 28 shall:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit and replace such devices as necessary in accordance with article 12 of chapter 3 of title 28 of the administrative code, or in the alternative, provide and install a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(b) Keep and maintain CO alarms or systems in good repair and replace such alarm upon the expiration of its useful life pursuant to article 12 of chapter 3 of title 28 of the New York city administrative code;

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit;

(d) Keep the following records, on the premises or in the business office of the managing agent or owner, relating to the installation and maintenance of CO alarms or systems:

(1) date of installation of each CO alarm or system and the expiration date of the manufacturer's suggested useful life of each such alarm;

(2) whether the CO alarm receives its primary power from the building wiring with secondary battery backup, is a battery-operated alarm, is a plug-in type CO alarm with a back-up battery, or in the alternative whether it is a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(3) room number and location within room where each CO alarm was installed;

(4) maintenance work performed on each alarm. These records must be made available to the Commissioner of the Department of Housing Preservation and Development, DOB, the Fire Department, or DOHMH upon request.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-10 Form for Notices for CO Alarms.

A sample form for providing notice to occupants pursuant to 28 RCNY § 12-06 follows:

NOTICE

The law requires the owner of the premises to provide a carbon monoxide alarm in each apartment in this building. The carbon monoxide alarm must be placed within 15 feet of the primary entrance to each sleeping room, must be equipped with an end of life alarm, and must be periodically replaced by the owner as necessary when the suggested useful life of the alarm expires. Tenants are responsible for the maintenance and repair of the alarms installed in the apartment and for replacing any or all alarms that are stolen, removed, missing, or become inoperable during the occupancy of the apartment, unless an alarm becomes inoperable within one year of being installed due to a manufacturing defect. The occupant of each apartment in which a carbon monoxide alarm is provided and installed must pay the owner \$25.00 per alarm, or a maximum of \$50.00 per device where a combined smoke and carbon monoxide detecting device is installed. This fee covers the cost of the work for the initial installation and each periodic replacement. The occupant has one year from the date of installation to pay the owner.

(Amended City Record 9/18/2017, eff. 10/18/2017)

§ 12-11 Owner Responsibilities for Notices of Suspected Gas Leak Procedures.

The owner of a tenant-occupied dwelling shall take all of the following actions:

(a) Deliver or cause to be delivered to each tenant and prospective tenant of such dwelling one time, along with the first lease or first lease renewal for such tenant or prospective tenant, a notice in a form approved by the Department of Housing Preservation and Development ("HPD") describing the procedures to be followed when a gas leak is suspected;

(b) Post a notice in a form approved by HPD in a common area of the dwelling, readily visible, informing the occupants of such dwelling of the procedures to be followed when a gas leak is suspected. This notice shall conform with the following requirements:

(1) the notice shall have letters not less than three-sixteenths of an inch in height;

(2) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(3) the notice shall be durable and shall be substantially secured to the common area where posted;

(4) the notice shall be of metal, plastic, or decal; and

(5) lighting shall be sufficient to make the notice easily legible.

(c) The notices required by subdivisions (a) and (b) of this section shall instruct tenants to leave the building and call 911 immediately after leaving when they suspect a gas leak and then call the gas service provider that is providing gas to the dwelling. The owner of the dwelling shall identify who the gas service provider for the dwelling is and provide the name and current emergency phone number of the appropriate gas service provider on the notices required by subdivisions (a) and (b). A sample of an approved notice, the language of which may be used for compliance with subdivisions (a) and (b) of this section, is made part of these regulations in 28 RCNY § 12-12, and may also be found on HPD's website at www.nyc.gov/HPD.

(1) When the gas service provider for the dwelling is Con Edison, the notices required by subdivisions (a) and (b) of this section shall instruct tenants to call Con Edison at 1-800-752-6633, after first leaving the building and calling 911, unless 1-800-752-6633 is no longer the number used to report suspected gas leaks to Con Edison, in which case the current emergency phone number used by Con Edison shall be used instead.

(2) When the gas service provider for the dwelling is National Grid, the notices required by subdivisions (a) and (b) of this section shall instruct tenants to call National Grid at 1-718-643-4050, after first leaving the building and calling 911, unless 1-718-643-4050 is no longer the current number used to report suspected gas leaks in New York City to National Grid, in which case the current emergency phone number used by National Grid for New York City shall be used instead.

(d) For the notice required to be posted by subdivision (b) of this section, an owner may in lieu of such otherwise required notice, choose to post a single notice that incorporates and complies with 28 RCNY § 12-01(b) and (c), 28 RCNY § 12-06(b), and 28 RCNY § 12-11(b). A sample of such an approved notice is made part of these regulations in 28 RCNY § 12-12.1 and may also be found on HPD's website at www.nyc.gov/HPD.

(Added City Record 9/18/2017, eff. 10/18/2017)

§ 12-12 Form for Notices for Suspected Gas Leak Procedures.

A sample notice, as required by subdivisions (a) and (b) of 28 RCNY § 12-11 follows. The language used in the sample notice below may be used by an owner for both of the notices required by such subdivisions (a) and (b).

NOTICE

The law requires the owner of the premises to advise tenants that when they suspect that a gas leak has occurred, they should take the following actions:

1. Quickly open nearby doors and windows and then leave the building immediately; do not attempt to locate the leak. Do not turn on or off any electrical appliances, do not smoke or light matches or lighters, and do not use a house-phone or cell-phone within the building;
2. After leaving the building, from a safe distance away from the building, call 911 immediately to report the suspected gas leak;
3. After calling 911, call the gas service provider for this building as follows:

Provider

Number

(Added City Record 9/18/2017, eff. 10/18/2017)

§ 12-12.1 Combined Form for Notice for Smoke Detecting Devices, Notice for Carbon Monoxide Alarms, and Notice for Suspected Gas Leak Procedures.

If an owner chooses to post a single notice that incorporates and complies with the notice requirements of 28 RCNY § 12-01(b) and (c), 28 RCNY § 12-06(b), and 28 RCNY § 12-11(b), the sample notice below may be used in lieu of the notices otherwise required by 28 RCNY § 12-01(b) and (c), 28 RCNY § 12-06(b), and 28 RCNY § 12-11(b) and shall be posted in a common area of the building, readily visible:

Notices for Suspected Gas Leaks, Smoke Detecting Devices, and Carbon Monoxide Alarms

NOTICE

The law requires the owner of the premises to notify tenants regarding the following:

Suspected Gas Leak Procedure: When a tenant suspects that a gas leak has occurred, the tenant should take the following actions:

1. Quickly open nearby doors and windows and then leave the building immediately; do not attempt to locate the leak. Do not turn on or off any electrical appliances, do not smoke or light matches or lighters, and do not use a house-phone or cell-phone within the building;
2. After leaving the building, from a safe distance away from the building, call 911 immediately to report the suspected gas leak;
3. After calling 911, call the gas service provider for this building as follows:

Provider

Number

Smoke Detectors: The law requires the owner of the premises to provide and install one or more approved and operational smoke detectors in each apartment and to periodically replace such devices upon the expiration of their useful life in accordance with Article 312 of Chapter 3 of Title 28 of the New York City Administrative Code. The tenant of each apartment is responsible for the maintenance and repair of the detectors installed in the apartment and for replacing any or all detectors which are stolen, removed, missing or become inoperable during the occupancy of the apartment with a device meeting the requirements of Article 312 of Chapter 3 of Title 28 of the Administrative Code, unless a detector becomes inoperable within one year of being installed due

to a manufacturing defect. The tenant of each apartment in this building in which a battery-operated smoke detector is provided and installed shall pay the owner a maximum of twenty-five dollars or a maximum of fifty dollars where a combined smoke and carbon monoxide detecting device is installed for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.

Carbon Monoxide Detectors: The law requires the owner of the premises to provide a carbon monoxide alarm in each apartment in this building. The carbon monoxide alarm must be placed within 15 feet of the primary entrance to each sleeping room, must be equipped with an end of life alarm, and must be periodically replaced by the owner as necessary when the suggested useful life of the alarm expires. Tenants are responsible for the maintenance and repair of the alarms installed in the apartment and for replacing any or all alarms that are stolen, removed, missing, or become inoperable during the occupancy of the apartment, unless an alarm becomes inoperable within one year of being installed due to a manufacturing defect. The occupant of each apartment in which a carbon monoxide alarm is provided and installed must pay the owner \$25.00 per alarm, or a maximum of \$50.00 per device where a combined smoke and carbon monoxide detecting device is installed. This fee covers the cost of the work for the initial installation and each periodic replacement. The occupant has one year from the date of installation to pay the owner.

- (1) Where the voice message is contained completely within the 1.5-second pause period of the audible emergency evacuation signal
- (2) Where the voice message complies with 29.3.5.2(2)(a) and (b) as follows:
 - (a) The voice message is first preceded by a minimum of eight cycles of the audible emergency evacuation signal.
 - (b) The voice message periodically interrupts the signal for no longer than 10 seconds, followed by a minimum of two cycles of the audible emergency evacuation signal between each voice message. The initial eight-cycle period shall not be required to be repeated.

29.3.6 All audible fire alarm signals installed shall meet the performance requirements of 18.4.3, 18.4.5.1, 18.4.5.2, and 29.3.8.

29.3.7* When visible appliances are provided, they shall meet the requirements of Section 18.5. Since hearing deficits are often not apparent, the responsibility for advising the appropriate person(s) of the existence of this deficit shall be that of the party with hearing loss.

29.3.8 Notification appliances provided in sleeping rooms and guest rooms for those with hearing loss shall comply with 29.3.8.1 and 29.3.8.2, as applicable.

29.3.8.1* Mild to Severe Hearing Loss. Notification appliances provided for those with mild to severe hearing loss shall comply with the following:

- (1) An audible notification appliance producing a low frequency alarm signal shall be installed in the following situations:
 - (a) Where required by governing laws, codes, or standards for people with hearing loss
 - (b) Where provided voluntarily for those with hearing loss
- (2)*The low frequency alarm signal output shall comply with the following:
 - (a) The waveform shall have a fundamental frequency of 520 Hz \pm 10 percent.
 - (b) The minimum sound level at the pillow shall be 75 dBA, or 15 dB above the average ambient sound level, or 5 dB above the maximum sound level having a duration of at least 60 seconds, whichever is greater.

29.3.8.2* Moderately Severe to Profound Hearing Loss. Visible notification appliances in accordance with the requirements of 18.5.5.7 and tactile notification appliances in accordance with the requirements of Section 18.10 shall be required for those with moderately severe to profound hearing loss in the following situations:

- (1)*Where required by governing laws, codes, or standards for people with hearing loss
- (2) Where provided voluntarily for those with hearing loss

29.3.9 Signals from notification appliances shall not be required to be synchronized.

29.4 Assumptions.

29.4.1* Occupants. The requirements of this chapter shall assume that occupants are not intimate with the ignition and are capable of self-rescue.

29.4.2* Escape Route.

29.4.2.1 The requirements of this chapter shall assume that the occupants have an escape plan.

29.4.2.2 An escape route shall be assumed to be available to occupants and to be unobstructed prior to the event of the fire.

29.4.2.3* The escape route shall be along the normal path of egress for the occupancy.

29.4.3* Equipment. The performance of fire-warning equipment discussed in this chapter shall depend on such equipment being properly selected, installed, operated, tested, and maintained in accordance with the provisions of this Code and with the manufacturer's published instructions provided with the equipment.

29.5 Detection and Notification. The use of fire alarm system smoke detectors and notification appliances shall be permitted to meet the fire-warning requirements for smoke alarms specified in 29.5.1.

29.5.1* Required Detection.

29.5.1.1* Where required by other governing laws, codes, or standards for a specific type of occupancy, approved single- and multiple-station smoke alarms shall be installed as follows:

- (1)*In all sleeping rooms and guest rooms
- (2)*Outside of each separate dwelling unit sleeping area, within 21 ft (6.4 m) of any door to a sleeping room, with the distance measured along a path of travel
- (3) On every level of a dwelling unit, including basements
- (4) On every level of a residential board and care occupancy (small facility), including basements and excluding crawl spaces and unfinished attics
- (5)*In the living area(s) of a guest suite
- (6) In the living area(s) of a residential board and care occupancy (small facility)

29.5.1.2 Where the area addressed in 29.5.1.1(2) is separated from the adjacent living areas by a door, a smoke alarm shall be installed in the area between the door and the sleeping rooms, and additional alarms shall be installed on the living area side of the door as specified by 29.5.1.1 and 29.5.1.3.

29.5.1.3 In addition to the requirements of 29.5.1.1(1) through (3), where the interior floor area for a given level of a dwelling unit, excluding garage areas, is greater than 1000 ft² (93 m²), smoke alarms shall be installed per 29.5.1.3.1 and 29.5.1.3.2.

29.5.1.3.1* All points on the ceiling shall have a smoke alarm within a distance of 30 ft (9.1 m) travel distance or shall have an equivalent of one smoke alarm per 500 ft² (46 m²) of floor area. One smoke alarm per 500 ft² (46 m²) is evaluated by dividing the total interior square footage of floor area per level by 500 ft² (46 m²).

29.5.1.3.2 Where dwelling units include great rooms or vaulted/cathedral ceilings extending over multiple floors, smoke alarms located on the upper floor that are intended to protect the aforementioned area shall be permitted to be considered as part of the lower floor(s) protection scheme used to meet the requirements of 29.5.1.3.1.

29.5.2 Required Occupant Notification.

29.5.2.1 Fire-warning equipment used to provide required or optional detection shall produce audible fire alarm signals that comply with 29.5.2.1.1 or 29.5.2.1.2.

29.5.2.1.1* Smoke and Heat Alarms. Unless exempted by applicable laws, codes, or standards, smoke or heat alarms used to

Where to Locate the Required Smoke Alarms. Fifty-three percent of home fire deaths were reported between 11:00 p.m. and 7:00 a.m. Persons in sleeping areas can be threatened by fires in the remainder of the unit; therefore, smoke alarms are best located in each bedroom and between the bedroom areas and the rest of the unit as shown in Figure A.29.5.1 (b). In dwelling units with more than one bedroom area or with bedrooms on more than one floor, more than one smoke alarm is required, as shown in Figure A.29.5.1 (c).

In addition to smoke alarms outside of the sleeping areas and in each bedroom, Chapter 29 requires the installation of a smoke alarm on each additional level of the dwelling unit, including the basement. These installations are shown in Figure A.29.5.1 (d). The living area smoke alarm should be installed in the living room or near the stairway to the upper level, or in both locations. The basement smoke alarm should be installed in close proximity to the stairway leading to the floor above. Where installed on an open-joisted ceiling, the smoke alarm should be placed on the bottom of the joists. The smoke alarm should be positioned relative to the stairway so as to intercept smoke coming from a fire in the basement before the smoke enters the stairway.

Are More Smoke Alarms Desirable? The required number of smoke alarms might not provide reliable early warning protection for those areas separated by a door from the areas protected by the required smoke alarms. For this reason, the use of additional smoke alarms for those areas for increased protection is recommended. The additional areas include dining room, furnace room, utility room, and hallways not protected by the required smoke alarms. The installation of smoke alarms in kitchens, attics (finished or unfinished), or garages is not normally recommended, because these locations occasionally experience conditions that can result in improper operation.

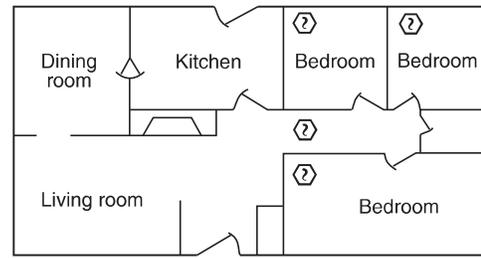


FIGURE A.29.5.1(b) Smoke Alarm Should Be Located Between Sleeping Area and Rest of Dwelling Unit, as Well as in Each Bedroom.

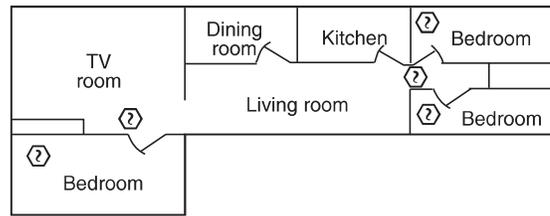
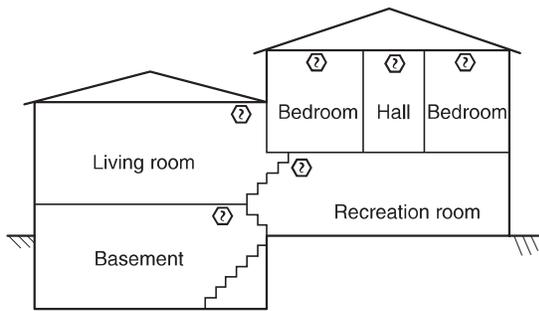


FIGURE A.29.5.1(c) In Dwelling Units with More Than One Sleeping Area, Smoke Alarm Should Be Provided to Protect Each Sleeping Area in Addition to Smoke Alarms Required in Bedrooms.



Ⓢ Indicates required smoke alarm

FIGURE A.29.5.1(a) Split Level Arrangement.

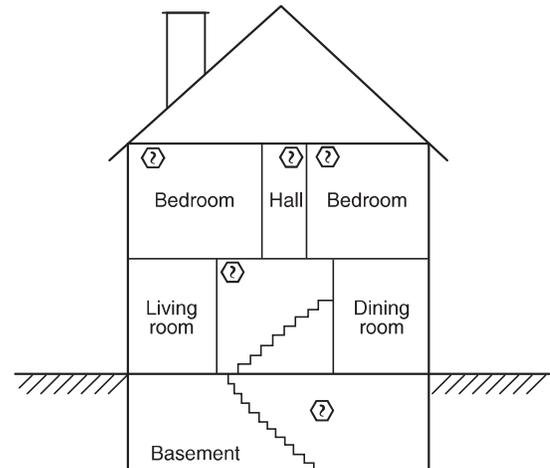


FIGURE A.29.5.1(d) Smoke Alarm Should Be Located on Each Level in Addition to Each Bedroom.

A.29.5.1.1 Occupancies where smoke alarms are typically required include residential, residential board and care, or day-care home. The term *residential occupancy* is defined in 3.3.243 and includes one- and two-family dwellings; lodging or rooming houses; hotels, motels, and dormitories; and apartment buildings. The term *residential board and care occupancy* is defined in 3.3.242 and includes both small and large facilities. NFPA 101, *Life Safety Code*, specifies a small facility to be one with sleeping accommodations for not more than 16 residents. The term *day-care home*, defined in 3.3.60, is a specific category of day-care occupancy. It should be noted that applicable laws, codes, or standards might include conditions that

could impact the applicability of these requirements. The local authority should be consulted for specific details.

A.29.5.1.1(1) The term *sleeping room* applies to several occupancies including: one- and two-family dwellings; lodging or rooming houses; hotels, motels, and dormitories; apartment buildings; residential board and care facilities; and day-care homes. The term *guest room*, defined in 3.3.120, is an accommodation that includes sleeping facilities. It applies in the context of hotel and dormitory occupancies.

A.29.5.1.1(2) The term *dwelling unit* is defined in 3.3.81 and applies to one- and two-family dwellings and dwelling units of apartment buildings (including condominiums).

A.29.5.1.1(5) The term *guest suite* is defined in 3.3.121, and the term *living area* is defined in 3.3.143.

A.29.5.1.3.1 The requirements do not preclude the installation of smoke alarms on walls in accordance with 29.8.3.3. Some building configurations, such as division of rooms and open foyers or great rooms, dictate that alarms be located so that they do not cover distinctly separate 500 ft² (46 m²) areas but rather provide overlapping coverage relative to this spacing requirement.

A.29.5.2.1.1 Fire-warning performance is improved when all alarms are interconnected so that alarm notification is achieved throughout the occupiable areas. In some cases for existing construction, interconnection of alarms is specifically exempted by jurisdictional requirements. This allowance takes into consideration the cost of hard-wired interconnection.

A.29.5.2.2 One of the common problems associated with smoke alarms and detectors is the nuisance alarms that are usually triggered by products of combustion from cooking, smoking, or other household particulates. While an alarm for such a condition is anticipated and tolerated by the occupant of a dwelling unit through routine living experience, the alarm is not permitted where it also sounds alarms in other dwelling units or in common use spaces. Nuisance alarms caused by cooking are a very common occurrence, and inspection authorities should be aware of the possible ramifications where the coverage is extended beyond the limits of the dwelling unit.

A.29.7.2 The UL listing for smoke alarms addresses two categories of these devices: one for applications where sensitivity testing is not required (UTGT), and one for applications where sensitivity testing is required (UTHA). Refer to the testing requirements for these devices in Chapter 14.

A.29.7.4 The linear space rating is the maximum allowable distance between heat detectors. The linear space rating is also a measure of detector response time to a standard test fire when tested at the same distance. A higher rating corresponds to a faster response time. This Code recognizes only those heat detectors with ratings of 50 ft (15.2 m) or more.

A.29.7.4.2 A heat detector with a temperature rating somewhat in excess of the highest normally expected ambient temperature is specified in order to avoid the possibility of premature response of the heat detector to non-fire conditions.

Some areas or rooms of the dwelling unit can experience ambient temperatures considerably higher than those in the normally occupied living spaces. Examples are unfinished attics, the space near hot air registers, and some furnace rooms. This fact should be considered in the selection of the appropriate temperature rating for fixed-temperature heat detectors to be installed in these areas or rooms.

A.29.7.7.7 Such input and output devices include, but are not limited to, relay modules, notification appliances, phone dialers, system control units, heat detectors, and manual fire alarm boxes.

A.29.7.8.2.1 For RF waves traveling along the earth surface, the signal power loss (in dB), L_p , can be calculated using the following plane-earth propagation loss model:

$$L_p = 10 \log \left[\frac{D_p^4}{h_{TX}^2 h_{RX}^2} \right] \quad (\text{A.29.7.8.2.1a})$$

where D_p represents the distance between the transmitter and receiver and h_{TX} and h_{RX} are the heights of the transmitter and receiver, respectively, above the earth.

The plane earth propagation model is a practical simplification and requires that $h_{TX}, h_{RX} \ll D_p$. It reflects the average expected attenuation due to distance of the RF carrier for a stationary set of radios with an essentially clear line of sight. It predicts maximum communications range only in the UHF band (300 MHz to 3 GHz) and is not dependent on frequency.

Inside a building, the model can be expanded to determine the total path loss, L_T , which includes the plane earth loss, L_p (equation A.29.7.8.2.1a), and the loss due to the building materials in the propagation path, L_b , as follows:

$$L_T = 10 \log \left[\frac{D_p^4}{(h_{TX} h_{RX})^2} \right] + L_b \quad (\text{A.29.7.8.2.1b})$$

If an equivalent open area test distance D_{EOAT} is defined as follows:

$$L_T = 10 \log \left[\frac{D_{EOAT}^4}{(h_{TX} h_{RX})^2} \right] \quad (\text{A.29.7.8.2.1c})$$

then D_{EOAT} can be shown to be:

$$D_{EOAT} = 10^{\frac{-L_T}{40}} \sqrt{h_{TX}} \sqrt{h_{RX}} = D_p \cdot 10^{\frac{L_b}{40}} \quad (\text{A.29.7.8.2.1d})$$

The D_{EOAT} function is used to calculate a test distance required to verify the functional range of wireless alarm products. As noted above in the right side of equation A.29.7.8.2.1d, the function represents two factors — one that describes the attenuation of a radio frequency signal due to plane earth propagation path loss (D_p), and one that describes the dwelling material losses (L_b) in the signal's propagation path. It is the combination of dwelling loss and propagation path loss that is used in the calculation of the test distance D_{EOAT} . The losses are expressed in dB, and the unit for distances is meter.

In reviewing average home sizes, a reliable (indoor) communication of 100 ft (30.5 m) is adequate for a majority of dwellings, based on an average house size of 2200 ft² (204 m²) [National Association of Home Builders]. Construction materials of a home (walls and floors) can attenuate an RF signal, with the RF signal being attenuated more at higher frequencies [Stone, 1997]. Communication specifications for devices of this type are typically specified as open field (no obstructions) test distances, and not in terms of attenuation. Therefore, the standard specifies a minimum open area test distance, D_{EOAT} , that the RF products must communicate. This distance is equal to 100 ft (30.5 m) (the longest straight line distance within a majority of homes) plus an additional distance that is equivalent to the attenuation of four walls and two floors (the most straight line obstructions in a majority of homes). The additional distance varies depending on the operating frequency of the product. Formulas for calculating D_{EOAT} are included below, along with examples for a number of different frequencies. These criteria are expected to yield reliable indoor communications at 100 ft (30.5 m) when used inside a majority of dwellings.

The building attenuation factor, L_b , represents the maximum attenuation value of typical floors and walls within a ma-

Title 27: Construction and Maintenance

Chapter 1: Building Code

Article 11: Occupancy Group J—Residential

§ 27-265 Occupancy group J-2.

Shall include buildings with three or more dwelling units that are occupied for permanent residence purposes as defined in subparagraph (a) of paragraph eight of subdivision a of section [27-2004](#) of the housing maintenance code.

Article 6: Smoke Detecting Devices

§ 27-979 Smoke detecting devices; where required

(a) On and after January first, nineteen hundred eighty-two, all dwelling units within occupancy group J-1 and occupancy group J-2, except such units which contain operational automatic wet sprinkler systems pursuant to article four of this subchapter, and dwelling units in buildings within occupancy group J-3 shall be equipped with approved and operational smoke detecting devices as hereinafter provided. Buildings within occupancy group J-1 may, in the alternative, be equipped with a line-operated zoned smoke detecting system with central annunciation and central office tie-in for all public corridors and public spaces, pursuant to rules and regulations promulgated by the commissioner. The commissioner may, upon good cause shown, extend the period of compliance for occupancy groups J-1 and J-2 to June thirtieth, nineteen hundred eighty-two.

(b) Approved and operational smoke detecting devices shall be installed in mechanical rooms, electrical switch gear rooms and electric and telephone closets over seventy-five square feet in gross floor area in all buildings in all occupancy groups.

§ 27-981 General requirements for smoke detecting devices.

a. All smoke detecting devices required to be provided and installed pursuant to this article shall either be accepted pursuant to rules and regulations promulgated by the commissioner or be listed by a nationally recognized independent laboratory that maintains periodic inspections of production of listed equipment and whose listing states that the equipment meets nationally recognized standards. To meet the requirements of this article, such laboratory shall be one which maintains a periodic follow-up service of the devices to ensure compliance with the original listing.

b. No device shall be deemed to be in compliance with the provisions of this article unless it is of either the ionization chamber or photoelectric type. Such devices shall be in compliance with the requirements of reference standard RS 17-11 and shall be installed in a manner consistent with the requirements of reference standard RS 17-12 except that devices within occupancy group J-1 shall be installed pursuant to rules and regulations promulgated by the commissioner.

REFERENCE STANDARD RS 17–12

ANSI/NFPA No. 74–1989—Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment, as Modified. The following Sections of this standard are modified to read as follows: 1–1 Scope. Covers the requirements for the proper selection, installation, operation and maintenance of fire warning equipment for use within dwelling units or rooming units.

1.2.6 The installation of wiring and equipment shall be in accordance with the New York City Electrical Code.

2-1.1.1 Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units, in Occupancy Groups J-2 and J-3, and in Basements and Basement Recreation Rooms in Occupancy Group J-3.

Smoke detectors shall be installed within the sleeping area of hotel or motel units, rooming units or studio dwelling units in Occupancy Group J-1.

4-5.5 Each smoke detector shall have an integral test means to permit the occupant to check that it is operational. A continuous power display indicator light is recommended.

4-2.1.4 A smoke detector installed to protect a sleeping area in accordance with 2-1.1.1, shall be located outside the bedroom but in the immediate vicinity of the sleeping area, except as set forth for rooming units.

5-2.1.6 Smoke detectors shall be located on or near the ceiling, and within fifteen feet of all rooms used for sleeping purposes in J-2 or J-3 occupancies. In all dwelling units, with multiple levels, when any level has only one means of egress, the dwelling unit shall be provided with smoke detectors on all levels.

5-2.1.6.1 If ceiling mounted, the closest edge of the detector shall be a minimum of four inches from any wall.

5-2.1.6.2 If wall mounted, the closest edge of the detector shall be a minimum of four inches and a maximum of twelve inches from the ceiling.

Chapter 2: Housing Maintenance Code

§ 27-2004 Definitions

8. (a) A class A multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this subparagraph, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more, and a natural person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit.

§ 27-2045 Duties of owner and occupant with respect to installation and maintenance of smoke detecting devices in class A multiple dwellings.

Editor's note: *this § 27-2045 has been repealed and reenacted by [L.L. 2016/157, 12/6/2016, eff. 5/1/2019.](#)*

a. It shall be the duty of the owner of a class A multiple dwelling which is required to be equipped with smoke detecting devices pursuant to section 907.2 of the New York city building code or sections [27-978](#), [27-979](#), [27-980](#) and [27-981](#) of the 1968 building code to:

(1) provide and install one or more approved and operational smoke detecting devices in each dwelling unit and replace such devices in accordance with article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York. Such devices shall be installed at locations specified in reference standard 17-12 of the 1968 building code or section 907.2.10 of the New York City Building Code, as applicable.

(2) post a notice in a form approved by the commissioner in a common area of the building informing the occupants of such building (i) that the owner is required by law to install one or more approved and operational smoke detecting devices in each dwelling unit in the building and to periodically replace such devices upon the expiration of their useful life in accordance with article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York and (ii) that each occupant is responsible for the maintenance and repair of such devices and for replacing any or all such devices which are stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit with a device meeting the requirements of article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York.

(3) replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the prior

occupant prior to the commencement of a new occupancy of a dwelling unit with a device meeting the requirements of article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York.

(4) replace within thirty calendar days after the receipt of written notice any such device which becomes inoperable within one year of the installation of such device due to a defect in the manufacture of such device and through no fault of the occupant of the dwelling unit.

(5) keep such records as the commissioner shall prescribe relating to the installation and maintenance of smoke detecting devices in the building, including records showing that such devices meet the requirements of article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York, and make such records available to the commissioner upon request.

b. Notwithstanding the provisions of subdivision a of section [27-2005](#) of article one of this subchapter and subdivision c of section [27-2006](#) of article one of this subchapter, it shall be the sole duty of the occupant of each dwelling unit in a class A multiple dwelling in which a smoke detecting device has been provided and installed by the owner pursuant to the provisions of section 907.2 of the New York city building code or sections [27-978](#), [27-979](#), [27-980](#) and [27-981](#) of the 1968 building code to:

(1) keep and maintain such device in good repair; and

(2) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit with a device meeting the requirements of article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York.

c. Except as otherwise provided in paragraphs three and four of subdivision a of this section and article 312 of [chapter 3](#) of [title 28](#) of the administrative code of the city of New York, an owner of a class A multiple dwelling who has provided and installed a smoke detecting device in a dwelling unit pursuant to this section shall not be required to keep and maintain such device in good repair or to replace any such device which is stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit.

d. The occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed pursuant to this section shall reimburse the owner a maximum of twenty-five dollars, or a maximum of fifty dollars where a combined smoke and carbon monoxide detecting device is installed, for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement.

e. For the purposes of this section, the term "class A" multiple dwelling shall include garden-type maisonette dwellings constructed before April eighteenth, nineteen hundred fifty-four and the term "garden-type maisonette dwellings" shall be defined as any dwelling project consisting of a series of dwelling units which together and in their aggregate are arranged or designed to provide three or more apartments, and are provided as a group collectively with all essential services such as, but not limited to, house sewers and heat, and which are operated as a unit under single ownership, notwithstanding that certificates of occupancy were issued for portions thereof as private dwellings.

NEW (CURRENT)

§ 28-701.2 Enactment of the New York City Building Code.

The *New York City Building Code* based on the 2003 edition of the International Building Code published by the international Code Council, with changes that reflect the unique character of the city and amendments that bring it up to date with the 2009 edition of such International Building Code

310.1.2 Group R-2.

This occupancy shall include buildings or portions thereof containing sleeping units or more than two dwelling units that are occupied for permanent residence purposes as defined in subparagraph (a) of paragraph eight of subdivision a of section [27-2004](#) of the *New York City Housing Maintenance*

Code. Such occupancy shall be subject to the *New York State Multiple Dwelling Law*. This group shall include, but not be limited to, the following:

Adult homes or enriched housing with 16 or fewer occupants requiring supervised care on a 24-hour basis in the same building, provided that the number of occupants per dwelling unit does not exceed the definition of a family

Apartment houses

Apartment hotels (nontransient)

907.2.11.1 Smoke alarms in Groups R-2, R-3, and I-1.

Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, and I-1, regardless of occupant load at all of the following locations within all dwelling units:

1. On the ceiling or wall outside of each room used for sleeping purposes within 15 feet (4572 mm) from the door to such room.
2. In each room used for sleeping purposes.

May 1, 2024

FOIL REQUEST

New York City Fire Department
Bureau of Legal Affairs
9 Metrotech Center, 4th Floor
Brooklyn, New York 11201

Re: Place of Incident: Apartment J, Elgar Place,
Bronx, New York 10475
Date of Incident: January 1, 2024

Dear Sir/Madam:

This office represents John Smith who sustained serious personal injuries as a result of a fire which occurred on January 1, 2024 in Apartment J at Elgar Place, Bronx, New York 10475.

Pursuant to the Freedom of Information Act, would you please furnish me with the Fire Marshall's report, which should include the following:

1. Fire Incident Report prepared by the assigned Battalion Chief;
2. Interview sheets;
3. 1045 Reports;
4. Photographs;

If you have any questions, please do not hesitate to contact me.

Thank you for your cooperation and courtesies herein.

Very truly yours,

ANDREW J. SMILEY

Fire Department New York Incident Report

Incident Reviewed By

Reviewer 903082 - SCALONE CHRISTOPHER D. Battalion Chief
Date 01/28/2017

Incident

Incident # 2-0211-0
Status Closed
Incident Date/Time 01/11/2017 07:28:25
Incident Type 111 - Building fire
Box# 4369
Address 140 ELGAR PL J 14 Bronx
Apartment/Suite J
Floor 14
Borough 2 - Bronx
Action Taken1 11 - Extinguishment by fire service personnel
Rescued (civilians) 2
Evacuated (civilians) 0
Detector U - Unknown
Mixed Use 40 - Residential use
Property Use 429 - Multifamily dwelling

Resources

Unit Responsible for Report: BC53

Unit Type 92 - Chief officer car
Action Taken1 81 - Incident command
Dispatch Date/Time 01/11/2017 07:28:41
Enroute Date/Time 01/11/2017 07:29:12
Cleared Date/Time 01/11/2017 09:04:45
Unit Report By 903082 - SCALONE CHRISTOPHER D. Battalion Chief
Narrative
Incident Narrative
Incident number 01/11/2017-2-0211-0
On Wednesday, January 11, 2017 at 07:28 hours the following units were dispatched to a report of a building fire. The incident location is street address 140 ELGAR PL Apt. J Bronx NY. 10475.

Primary incident actions taken are as follows:

Unit Responsible for Report: BC53

Actions taken - extinguished

The Times for Incident #01/11/2017-2-0211-0 are as follows:
Signal: Time: By Order Of:
10-7507:34 Capt Demartini
Total Time of Incident - 03:44:57

Upon arrival Units operated as follows:

BC15 arrived at 07:41 hours and cleared at 09:54 hours.
Actions taken - Fire Sector Supervisor

L061 was dispatched at 07:28 hours and cleared at 10:04 hours.
Actions taken - Search of fire apartment 14J. removed unconscious female occupant

BC53 was dispatched at 07:28 hours and cleared at 09:04 hours.
Actions taken - Incident Command

L051 arrived at 07:34 hours and cleared at 10:09 hours.
Actions taken - Assisted search on fire floor

E062 arrived at 07:37 hours and cleared at 09:39 hours.
Actions taken - Stretched 2nd line assisted by E79

E089 arrived at 07:40 hours and cleared at 09:04 hours.
Actions taken Assisted 1st line stretched-

E038 was dispatched at 07:28 hours and cleared at 11:13 hours.
Actions taken - Stretched first line , operated in fire apartment . 2nd victim male found by Lt Leiber

E079 arrived at 07:39 hours and cleared at 08:40 hours.
Actions taken -Assisted stretch of 2nd line

L047 arrived at 07:46 hours and cleared at 08:22 hours.
Actions taken - Fast truck

RS03 arrived at 07:44 hours and cleared at 08:04 hours.
Actions taken - Search upper floors

E061 arrived at 07:38 hours and cleared at 10:34 hours.
Actions taken -

L041 arrived at 07:45 hours and cleared at 08:46 hours.
Actions taken - Stood fast

L058 was dispatched at 07:34 hours and cleared at 07:35 hours.
Actions taken -

SB01 arrived at 08:12 hours and cleared at 08:12 hours.
Actions taken -

RB01 arrived at 08:04 hours and cleared at 08:10 hours.
Actions taken -

Unit Responsible for Report: BC53

AM02 was dispatched at 07:34 hours and cleared at 07:37 hours.
 Actions taken - take action other

DC07 arrived at 07:50 hours and cleared at 09:10 hours.
 Actions taken -

BC13 arrived at 07:51 hours and cleared at 09:31 hours.
 Actions taken -

BC26 arrived at 07:55 hours and cleared at 09:26 hours.
 Actions taken -

L050 arrived at 07:43 hours and cleared at 09:41 hours.
 Actions taken -

E088 arrived at 07:50 hours and cleared at 09:05 hours.
 Actions taken - CFR Engine

E090 arrived at 07:46 hours and cleared at 09:12 hours.
 Actions taken -

L033 arrived at 08:00 hours and cleared at 09:27 hours.
 Actions taken -

RA01 was dispatched at 07:53 hours and cleared at 09:39 hours.
 Actions taken -

FC01 was dispatched at 07:55 hours and cleared at 07:55 hours.
 Actions taken -

CB10 was dispatched at 07:56 hours and cleared at 08:22 hours.
 Actions taken - take action other

Reporting Member: 903082 CHRISTOPHER D SCALONE
 Unit Responsible: BC53

Fire

Residential Units	1
Buildings Involved	1
Acres Burned	1
Cause of Ignition	5 - Cause under investigation
Case	20029
Area Of Origin	141 - Living room, family room, den, common room
Heat Source	UU1 - Heat source under investigation
Item First Ignited	UU - Undetermined
Condition on Arrival	3 - Flame and Smoke Showing
Factor Contributing To Ignition1	UU - Undetermined
Equipment Involved Type	UUU - Undetermined

Fire	
Equipment Involved Power	UU - Undetermined
Equipment Involved Portability	2 - Stationary
Mobile Property Involved	None
Structure	
Structure Type	1 - Enclosed building
Building Type	1 - Fireproof Structure
Building Status	2 - In normal use
Floors Above Grade	35
Floors Belows Grade	0
Building Length	190
Building Width	150
Story of Fire Origin	14
Fire Spread	2 - Confined to room of origin
Building Type	1 - Fireproof Structure
Stand Pipe System Type	1 - Wet
Stand Pipe System Operation	1 - Standpipe serviceable and used
Stand Pipe System Present	Yes
Detector Presence	1 - Present
Detector Type	U - Undetermined
Detector Power	U - Undetermined
Detector Operation	U - Undetermined
AES Presence	1 - Present
AES Type	U - Undetermined
AES Operation	U - Undetermined
Stories Minor Flame	1
Stories Significant Flame	0
Stories Minor Smoke	1
Stories Minor Water	1

		FIRE INCIDENT REPORT BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201							
BFI JOB NUMBER		20029 2017							
Arrest	No	Highest Alarm	All Hands	Photos Taken	No	Juvenile Involved	No	DNA	No
Incident Location		140 ELGAR PLACE, 10475 Bronx							
Incident Date		Incident Time		Incident Borough		Community Board #		BFI Command Reporting	
1/11/2017		07:28		Bronx		10		North	
F.D. Box No.		Batt. Responsible for Reporting		Incident Precinct		Complaint Number		Day of Week	
4369		15		045				Wednesday	
Response Code				Weather					
10-41				10-45 Multiple WARM					
Incident Classification									
Occupied				MD Residential Structure					
Vehicle Information									
Plate No.		State		VIN Number		Make		Type	
Owner of Vehicle				Company					
Address									
Structural Information									
Stories		33		Material		Fireproof Structure		Size	
								170 X 290	
Owner of Structure				Address of Structure Owner					
Riverbay Corporation				140 Elgar Place, Bronx, NY, United States					
Occupant or Tenant of Incident Location				Occupied/Used As		Company Name			
Stanley Williams				Residence					
Date of Arrival at Incident		Time of Arrival		Fire Marshal Assigned					
1/11/2017		08:46		Jacob Gershen					
Numerical Cause Code				Cause of Fire					
300				Smoking (Cigarette/Cigar)					
Description (Specify if Accidental)							Multiple Points of Origin		
careless discard of smoking materials							No		
ORIGIN AND EXTENSION									
<p>Examination shows fire originated inside subject premises on the 14th floor, in apartment 14 J, in the living room, approximately 10 feet north of the South wall, approximately 12 feet east of the West wall, approximately 1 foot above floor level, in combustible materials (plastic bag/trash). Fire extended to all 4 walls, ceiling, and contents within. Fire further extended north to the foyer. Fire and the byproducts of incomplete combustion further extended to the persons of Stanley Williams (DOB: [REDACTED]) and Renna Williams (DOB: [REDACTED]). Fire was thereto confined and extinguished.</p> <p style="text-align: center;">Date <u>JUL 05 2017</u> Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business.</p> <p style="text-align: center;">FIRE MARSHAL _____ N.Y.C.F.D.</p>									
Signature of Assigned Investigator				Fire Marshal Tax Registry Number		Investigator Assisting			
Jacob Gershen <small>This is a secure digital signature generated by the system</small>				919005		Robert Moore			
SFM Name Printed				SFM Signature		Date		Case Closed	
Owen Williams <small>This is a secure digital signature generated by the system</small>				Owen Williams		1/24/2017		Yes	

		10-45 REPORT BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201				
Incident Location			Incident Borough	BFI Job No.		
140 ELGAR PLACE Bronx 10475			Bronx	20029 2017		
Incident Date and Time		Box No.	C.B.#	BFI Command Reporting		
1/11/2017 7:28 AM		4369	10	North		
FM Assigned			Building Size-up Occ. Class			
Jacob Gershen			170 X 290 Occupied			
10-45 Code	Code 2	Name	RENNA WILLIAMS			
House No.	140	Street Name	ELGAR PLACE	Borough		
Date of Birth		Age		Sex	Female	Race
Nature of Injury	SMOKE INHALATION					
Hospital Removed to:	BX, HOSP25 JACOBI MEDICAL CTR			Date of Death		
Cause of Incident	300 Smoking (Cigarette/Cigar)			Time of Death		
Was Alcohol Contributory? No Were Drugs Contributory? No Was Form DSS 221 -A Forwarded? No Did a Child Abuse Arrest Occur? No Child Left Alone? No Was Injury Intentional? No						
Date <u>Jul 05 2017</u> Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business. FIRE MARSHAL N.Y.C.F.D.						
Smoke Detector	Present Not Operational	Window Bar	Not Present	Window Gate	Not Present	
Smoke Detector Comments						
Pct No.		61 No.		Aided Report No.		
Comments						
[REDACTED]						
ME Doctor Name				ME Case No.		
ME Cause of Death						
Signature of assigned Investigator			FM Tax Registry No.	Investigator Assisting		
Jacob Gershen			919005	Robert Moore		
This is a secure digital signature generated by the system						
SFM Name Printed				SFM Signature		
Owen Williams				Owen Williams		
				This is a secure digital signature generated by the system		

		10-45 REPORT BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201				
Incident Location			Incident Borough	BFI Job No.		
140 ELGAR PLACE Bronx 10475			Bronx	20029 2017		
Incident Date and Time		Box No.	C.B.#	BFI Command Reporting		
1/11/2017 7:28 AM		4369	10	North		
FM Assigned			Building Size-up Occ. Class			
Jacob Gershen			170 X 290 Occupied			
10-45 Code	Code 2	Name STANLEY WILLIAMS				
House No.	140	Street Name	ELGAR PLACE	Borough	Bronx	
Date of Birth		Age		Sex	Male	Race BLACK
Nature of Injury	BURNS AND SMOKE INHALATION					
Hospital Removed to:	BX, HOSP25 JACOBI MEDICAL CTR			Date of Death		
Cause of Incident	300 Smoking (Cigarette/Cigar)			Time of Death		
Was Alcohol Contributory?		No		<p style="text-align: right;">Date <u>JUL 05 2017</u></p> <p>Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business.</p> <p style="text-align: center;">FIRE MARSHAL</p> <p style="text-align: right;">N.Y.C.F.D.</p>		
Were Drugs Contributory?		No				
Was Form DSS 221 -A Forwarded?		No				
Did a Child Abuse Arrest Occur?		No				
Child Left Alone?		No				
Was Injury Intentional?		No				
Smoke Detector	Present Not Operational	Window Bar	Not Present	Window Gate	Not Present	
Smoke Detector Comments						
Pct No.		61 No.		Aided Report No.		
Comments						
ME Doctor Name				ME Case No.		
ME Cause of Death						
Signature of assigned Investigator			FM Tax Registry No.	Investigator Assisting		
Jacob Gershen			919005	Robert Moore		
This is a secure digital signature generated by the system						
SFM Name Printed				SFM Signature		
Owen Williams				Owen Williams		
				This is a secure digital signature generated by the system		

	INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201		
BFI JOB NUMBER	20029 2017		
Incident Location	140 ELGAR PLACE Bronx 10475	Borough	Bronx
Incident Date and Time	1/11/2017 7:28 AM	Inc Prec Num	045
BFI Command Reporting	North	C.B.#	10
Fire Marshal Assigned	Jacob Gershen	Date of Report	1/11/2017
		Complaint No.	
PEDIGREE			
Name	Ricardo Collazo	Alias	911 caller
		DNA Sample	No
Address			DNA Result
			No
Phone	Home	Bus.	Cell
DOB	Race	Gender	Male
			Occupation
<p>On 1/11/17 at approximately 8:40 PM Donovan interviewed Ricardo Collazo via telephone. He stated in sum and substance that he saw smoke and flames coming from what he thought was the 13th floor windows, with the far left windows having the flames. He also stated that the windows looked open. He then stated that he called 911. He offered no other information at this time.</p>			
<p>Date <u>JUL 05 2017</u></p> <p>Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business.</p> <p>FIRE MARSHAL</p> <p>_____</p> <p>N.Y.C.F.D.</p>			
Signature of assigned Investigator		FM Tax Registry No.	Investigator Assisting
Jacob Gershen		919005	Robert Moore
<small>This is a secure digital signature generated by the system</small>			
SFM Name Printed		SFM Signature	
Owen Williams		Owen Williams	
		<small>This is a secure digital signature generated by the system</small>	

	INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201		
BFI JOB NUMBER	20029 2017		
Incident Location	140 ELGAR PLACE Bronx 10475	Borough	Bronx
Incident Date and Time	1/11/2017 7:28 AM	Inc Prec Num	045
BFI Command Reporting	North	C.B.#	10
Fire Marshal Assigned	Jacob Gershen	Date of Report	1/11/2017
		Complaint No.	
PEDIGREE			
Name	Jennifer Kenneally	Alias	911 caller
		DNA Sample	No
Address	140 Elgar NY, New York		DNA Result
			No
Phone	Home	Bus.	Cell
DOB	Race	Gender	Female
			Occupation
<p>On 1/11/17 at approximately 8:45 FM Donovan interviewed Jennifer Kenneally via telephone. She stated in sum and substance that smoke was filling her apartment and she saw smoke out her windows. She then stated that she called 911. She offered no other information at this time.</p> <p style="text-align: center;">Date <u>JUL 05 2017</u> Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business. FIRE MARSHAL N.Y.C.F.D.</p>			
Signature of assigned Investigator		FM Tax Registry No.	Investigator Assisting
Jacob Gershen		919005	Robert Moore
<small>This is a secure digital signature generated by the system</small>			
SFM Name Printed		SFM Signature	
Owen Williams		Owen Williams	
		<small>This is a secure digital signature generated by the system</small>	

		INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201							
BFI JOB NUMBER		20029 2017							
Incident Location		140 ELGAR PLACE Bronx 10475			Borough		Bronx		
Incident Date and Time		1/11/2017 7:28 AM			Inc Prec Num		045		
BFI Command Reporting		North		C.B.#		10	Date of Report	1/11/2017	
Fire Marshal Assigned		Jacob Gershen		Complaint No.					
PEDIGREE									
Name		Lorrie Gully		Allas		911 caller		DNA Sample	No
Address		[REDACTED]						DNA Result	No
Phone		Home		Bus.		Cell		[REDACTED]	
DOB		Race		Gender		Female		Occupation	
<p>On 1/11/17 at approximately 846 FM Donovan interviewed Lorrie Gully via telephone. She stated in sum and substance that she was outside and heard glass break, she then looked up and saw fire and smoke from the windows. She also stated that she thought it was the living room window as she used to live in co-op city. She offered no other information at this time.</p>									
<p>Date <u>JUL 05 2017</u></p> <p>Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business.</p> <p><u>FIRE MARSHAL</u> N.Y.C.F.D.</p>									
Signature of assigned Investigator				FM Tax Registry No.		Investigator Assisting			
Jacob Gershen				919005		Robert Moore			
<small>This is a secure digital signature generated by the system</small>									
SFM Name Printed						SFM Signature			
Owen Williams						Owen Williams			
<small>This is a secure digital signature generated by the system</small>									

		INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201					
BFI JOB NUMBER		20029 2017					
Incident Location		140 ELGAR PLACE Bronx 10475			Borough		Bronx
Incident Date and Time		1/11/2017 7:28 AM			Inc Prec Num		045
BFI Command Reporting		North		C.B.# 10		Date of Report 1/11/2017	
Fire Marshal Assigned		Jacob Gershen		Complaint No.			
PEDIGREE							
Name		Allas		DNA Sample		No	
Address				DNA Result		No	
Phone		Home		Bus.		Cell	
DOB		Race		Gender		Occupation	
<p>At approx 0945 hours, on 01/11/2016, Renna Williams, occupant of 140 Elgar Place, Apartment 14J, was interviewed by Fire Marshal George Snyder in the emergency room of Jacobi Hospital. Ms Williams stated in sum and substance she has lived at the subject premises for approx 40 years. Ms Williams further stated at approx 0630 hours, on 01/11/2016, she woke up, went into the living room, sat on the couch in front of the window, smoked 2 cigarettes, and colored in her adult coloring book when her ashtray dropped to the floor. Ms Williams further stated she picked up the ashtray but left the cigarette butts on the floor in front of the couch and then began to knit. Ms Williams further stated she decided to go lay down in her bedroom but prior to doing so she picked up the cigarette butts on the floor and disposed of them in a small plastic bag used for garbage on the side of the couch. Ms Williams further stated she believed the cigarette butts were out prior to placing them in the garbage. Ms Williams further stated she was laying in her bed for approx 15 minutes before waking up to a odor of smoke. Ms Williams further stated she exited her bedroom, encountered heavy smoke in the apartment hallway began to yell for her brother, who she meet in the hallway and they proceeded together towards the apartment door to exit. Ms Williams further stated due to heavy smoke and heat she had difficulty finding the apartment door before blacking out. Ms Williams further stated she believes she has 3 smoke detector in her apartment but does not remember hearing any of them prior to the fire. Ms Williams had no further information regarding this fire, at this time.</p>							
Date <u>JUL 05 2017</u> Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business. FIRE MARSHAL N.Y.C.F.D.							
Signature of assigned Investigator				FM Tax Registry No.		Investigator Assisting	
Jacob Gershen				919005		Robert Moore	
SFM Name Printed				SFM Signature			
Owen Williams				Owen Williams			

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This is a secure digital signature generated by the system

	INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201	
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BFI JOB NUMBER	20029 2017		
Incident Location	140 ELGAR PLACE Bronx 10475	Borough	Bronx
Incident Date and Time	1/11/2017 7:28 AM	Inc Prec Num	045
BFI Command Reporting	North	C.B.#	10
Fire Marshal Assigned	Jacob Gershen	Date of Report	1/11/2017
		Complaint No.	

PEDIGREE							
Name	Victor Leeber		Alias		DNA Sample	No	
Address						DNA Result	No
Phone	Home		Bus.		Cell		
DOB		Race		Gender	Male	Occupation	Leutenant

On January 11th, 2016 at approximately 0830 hours, Commander Randall Wilson interviewed Lt Victor Leeber, Engine 38, group 20, in front of the fire building. Lt Victor Leeber stated in sum and substance that he was the first due engine and upon arrival, observed that the fire apartment's window had already vented. He and Engine 38 took the elevator to the 12th floor and walked up to the 13th floor and hooked up to the standpipe. He then proceeded to the 14th floor, encountered a medium smoke condition in the hallway and met Ladder 61 who was in the process of forcing the apartment entrance door. As Ladder 61 entered the apartment a 10-45 code was transmitted and the victim was handed off to Ladder 51. He further stated that he and his crew advanced the line into the apartment and he then found an unconscious victim sitting in the foyer adjacent to the closet that was removed and handed off to Ladder 51. He stated that his company advanced the line into the living room and extinguished the fire.

Date **JUL 05 2017**
 Pursuant to CPLR 2307 (b) I hereby
 certify this to be a true copy of
 original Fire Department record
 kept in the regular course of
 business. **FIRE MARSHAL**

 N. Y. C. F. D.

Signature of assigned investigator	FM Tax Registry No.	Investigator Assisting
Jacob Gershen <small>This is a secure digital signature generated by the system</small>	919005	Robert Moore
SFM Name Printed		SFM Signature
Owen Williams		Owen Williams <small>This is a secure digital signature generated by the system</small>

	INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201	
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BFI JOB NUMBER	20029 2017		
Incident Location	140 ELGAR PLACE Bronx 10475	Borough	Bronx
Incident Date and Time	1/11/2017 7:28 AM	Inc Prec Num	045
BFI Command Reporting	North	C.B.#	10
Fire Marshal Assigned	Jacob Gershen	Date of Report	1/11/2017
		Complaint No.	

PEDIGREE							
Name	Edward Ryan		Alias		DNA Sample	No	
Address						DNA Result	No
Phone	Home		Bus.		Cell		
DOB		Race		Gender	Male	Occupation	Captain

On 1/11/17 at approximately 11:20 hours, FM Donovan interviewed Captain Ryan, of the second to arrive ladder company, L-51 via telephone. He reported in sum and substance that members of L-61 passed members of L-51 a female victim who was struggling to breathe. He then reported that members performed chest compressions and proceeded to bring the victim to the floor below. He then reported that members of E-38 passed his members a second victim who was burnt and bleeding. He then reported that this victim was also brought to the floor below. He then reported that both victims were placed into an elevator and brought down.

Date JUL 05 2017
Pursuant to CPLR 2307 (b) I hereby
certify this to be a true copy of
original Fire Department record
kept in the regular course of
business.
FIRE MARSHAL
N.Y.C.F.D.

Signature of assigned Investigator	FM Tax Registry No.	Investigator Assisting
Jacob Gershen	919005	Robert Moore
<small>This is a secure digital signature generated by the system</small>		SFM Signature
SFM Name Printed	Owen Williams	
Owen Williams	<small>This is a secure digital signature generated by the system</small>	

		INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201						
BFI JOB NUMBER		20029 2017						
Incident Location		140 ELGAR PLACE Bronx 10475			Borough		Bronx	
Incident Date and Time		1/11/2017 7:28 AM			Inc Prec Num		045	
BFI Command Reporting		North	C.B.#	10	Date of Report		1/11/2017	
Fire Marshal Assigned		Jacob Gershen		Complaint No.				
PEDIGREE								
Name		Charles DeMartini		Alias		DNA Sample	No	
Address						DNA Result		No
Phone		Home			Bus.		Cell	
DOB			Race		Gender	Male	Occupation	Captain
<p>On 1/11/2017 at approximately 08:50 hours, FM Gershen interviewed Captain Charles DeMartini L-61 on the sidewalk in front of subject premises. Captain DeMartini stated in sum and substance, he is the Captain of Ladder 61 of the FDNY and was working as such at the time of occurrence. He further stated, his company was first due and it was necessary for them to force entry into the fire apartment. He further stated, he found the first victim, a female, approximately 3 to 4 feet inside the doorway in the apartment's foyer. He further stated, the victim was removed to the stairs and handed off to members of Ladder 51. He further stated, the second victim, a male, was found and removed by members of Engine 38. He further stated, victim number 2, the male, was about 5 to 6 feet inside the apartment, partially inside of a closet. He further stated, the fire appeared to be in the living room to the left of the living room entrance. He further stated, he did observe the presence of smoke detectors, however he never heard any of them sounding.</p>								
<p>Date <u>Jul 05 2017</u> Pursuant to CPLR 2307 (b) I hereby certify this to be a true copy of original Fire Department record kept in the regular course of business.</p> <p>FIRE MARSHAL _____ N.Y.C.F.D.</p>								
Signature of assigned Investigator				FM Tax Registry No.		Investigator Assisting		
Jacob Gershen				919005		Robert Moore		
<small>This is a secure digital signature generated by the system</small>						SFM Signature		
SFM Name Printed						Owen Williams		
Owen Williams						<small>This is a secure digital signature generated by the system</small>		

	INTERVIEW SHEET BUREAU OF FIRE INVESTIGATION, FDNY 9 MetroTech Center, Brooklyn, NY 11201	
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BFI JOB NUMBER	20029 2017		
Incident Location	140 ELGAR PLACE Bronx 10475	Borough	Bronx
Incident Date and Time	1/11/2017 7:28 AM	Inc Prec Num	045
BFI Command Reporting	North	C.B.#	10
Fire Marshal Assigned	Jacob Gershen	Date of Report	1/11/2017
		Complaint No.	

PEDIGREE			
Name		Allias	
		DNA Sample	No
Address			DNA Result
			No
Phone	Home	Bus.	Cell
DOB	Race	Gender	Occupation

On 1/11/2017 at approximately 08:25 hours, FM Gershen was assigned BFI job #20029

The following resources were utilized throughout this investigation: Incident History Report, NYFIRS, NYC MapPortal, EBF-4

Computer search shows no previous BFI jobs at this location.

FM Donovan performed 911 callbacks, Interviews conducted.

FM Snyder performed victim interviews and interviews of physicians attending to associated victims.

FM Gershen and Commander Wilson performed FDNY interviews.

FM Gershen observed subject premises with fire damage to living room and contents within.

FM Gershen observed smoking materials in the form of lighters, matches, and various packs of cigarettes.

FM Gershen observed 3 smoke detectors:
 1 in each bedroom and 1 in the main hallway. The smoke detector in the northern most bedroom had been removed from the wall mount and placed on a shelf prior to the fire. None of the aforementioned smoke detectors showed any signs of functionality.

FM Gershen had fire scene photographed by FDNY BFI Photo Unit photographer DePrizio. 22 photos taken. FM DePrizio generated a sketch of the fire scene as well.

FM Gershen released fire scene to Co-Op City Police Department officer Brooks, shield #4641 at approximately 11:05 hours.

Canvass for video surveillance and/or additional witnesses proved negative.

After conferring with the undersigned supervisor, it is recommended that this case be closed and re-opened pending the discovery of new and pertinent information.

CASE: CLOSED

ACCIDENTAL

Date JUL 05 2017
 Pursuant to CPLR 2307 (b) I hereby
 certify this to be a true copy of
 original Fire Department record
 kept in the regular course of
 business.
FIRE MARSHAL

 N. Y. C. F. D.

Signature of assigned Investigator	FM Tax Registry No.	Investigator Assisting
Jacob Gershen <small>This is a secure digital signature generated by the system</small>	919005	Robert Moore
SFM Name Printed		SFM Signature
Owen Williams		Owen Williams <small>This is a secure digital signature generated by the system</small>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SARAH WILLIAMS, as Guardian of the Person and Property
of STANLEY WILLIAMS,

Plaintiff,

Civ.

-against-

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN
REALTY, LLC,

Defendants.

-----X
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN
REALTY, LLC,

Third-Party Plaintiffs,

-against-

JERMAINE B. WILLIAMS, as Administrator of the Estate
of RENNA WILLIAMS,

SECOND AMENDED
COMPLAINT

Third-Party Defendants.

-----X
RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN
REALTY, LLC,

Second Third-Party Plaintiffs,

-against-

WALTER KIDDE & COMPANY INC., WALTER KIDDE
FIRE SUPPRESSION, INC., KIDDE FIRE PROTECTION,
INC., UNITED TECHNOLOGIES CORPORATION, UTC
FIRE & SECURITY CORPORATION, UTC FIRE &
SECURITY AMERICAS CORPORATION, INC., THE HOME
DEPOT, INC., HOME DEPOT, USA, INC., and WALTER
KIDDE PORTABLE EQUIPMENT INC.,

Second Third-Party Defendants.

-----X

Plaintiff, SARAH WILLIAMS, as Guardian of the Person and Property of STANLEY WILLIAMS, by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, RIVERBAY CORPORATION, DOUGLAS ELLIMAN PROPERTY MANAGEMENT and DOUGLAS ELLIMAN REALTY, LLC, hereinafter alleges at all times, upon information and belief, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to U.S.C. Section 1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars as to the plaintiff, exclusive of interest and costs.

2. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

THE PARTIES

3. Plaintiff, SARAH WILLIAMS, as Guardian of the Person and Property of STANLEY WILLIAMS, is a citizen of the State of Virginia, domiciled and residing at.....

4. On the 28th day of April, 2017, the plaintiff, SARAH WILLIAMS, was appointed Guardian of the Person and Property of STANLEY WILLIAMS, by Order of Judge Kelly O’Neill, Justice of the Supreme Court, New York County (under index number).

5. Defendant, RIVERBAY CORPORATION (hereinafter referred to as “RIVERBAY”), was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having a place of business at 2049 Bartow Avenue, Bronx, New York 10475.

6. Defendant, DOUGLAS ELLIMAN PROPERTY MANAGEMENT (hereinafter referred to as “DOUGLAS ELLIMAN PROPERTY”) was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having a place of business at 675 3rd Avenue, New York, New York 10017.

7. Defendant, DOUGLAS ELLIMAN REALTY, LLC (hereinafter referred to as “DOUGLAS ELLIMAN REALTY”), was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office in the County of Nassau, State of New York, located 90 Merrick Avenue, East Meadow, New York 11554, for acceptance of service.

AS AND FOR A CAUSE OF ACTION

8. Plaintiff repeats, reiterates and realleges each and every allegation of the complaint marked “1” through “7” with the same force and effect as if more fully set forth herein at length.

9. Defendant, RIVERBAY, was the property manager of the apartment building located at 140 Elgar Place, Bronx, New York 10475.

10. Defendant, RIVERBAY, was the owner of the apartment building located at 140 Elgar Place, Bronx, New York 10475.

11. Defendant, DOUGLAS ELLIMAN PROPERTY, managed the apartment building located at 140 Elgar Place, Bronx, New York 10475.

12. Defendant, DOUGLAS ELLIMAN REALTY, managed the apartment building located at 140 Elgar Place, Bronx, New York 10475.

13. Defendant, RIVERBAY, its servants, agents and/or employees managed, operated, maintained, supervised, inspected, repaired and controlled the premises known as 140 Elgar Place, the County of Bronx, City and State of New York, and the various portions thereof, including apartment 14J of the aforesaid premises, and had possession of said premises.

14. Defendant, DOUGLAS ELLIMAN PROPERTY, its servants, agents and/or employees managed, operated, maintained, supervised, inspected, repaired and controlled the premises known as 140 Elgar Place, the County of Bronx, City and State of New York, and the various portions thereof, including apartment 14J of the aforesaid premises, and had possession of said premises.

15. Defendant, DOUGLAS ELLIMAN REALTY, its servants, agents and/or employees managed, operated, maintained, supervised, inspected, repaired and controlled the premises known as 140 Elgar Place, the County of Bronx, City and State of New York, and the various portions thereof, including apartment 14J of the aforesaid premises, and had possession of said premises.

16. On January 11, 2017, at approximately 6:30 AM., while the plaintiff, STANLEY WILLIAMS, was rightfully and lawfully asleep in apartment 14J located in the aforesaid premises, he was awakened to find the living room of said apartment to be engulfed in flames.

17. The defendants, their agents, servants and/or employees, were negligent in failing to properly own, operate, control, inspect, maintain and supervise the apartment building located at the aforesaid premises; in causing and permitting an unsafe and hazardous condition to exist in the aforesaid premises; in failing to have adequate and proper fireproofing material in the aforesaid apartment; in failing to provide fire/smoke detectors in good working condition; in failing to properly maintain, inspect, and repair and/or replace the aforesaid fire/smoke detectors; in failing and neglecting to timely and properly inspect the aforesaid fire/smoke detectors; in failing and neglecting to provide warning to the plaintiff as to the dangerous, hazardous and unsafe condition then and there existing; in utilizing a defective fire/smoke detector; in failing to install carbon monoxide detectors; in failing to install the appropriate number of fire/smoke detectors; in failing to install appropriate fire, carbon monoxide and smoke detectors in the living area; in failing to

properly install the fire/smoke detectors; in failing to adequately test the installed fire/smoke detectors; in failing to properly mount the fire/smoke detectors; in failing to properly activate the fire/smoke detectors; in failing to follow the manufacturer's instruction as to the proper method of installing, mounting and activating the fire/smoke detectors; in improperly mounting and installing the fire/smoke detectors by the use of double-sided tape; in violating various city, state and national fire safety codes including, but not limited to, Title 27 of the Construction and Maintenance Code of the City of New York and the NFPA National Fire Alarm and Signaling Code; in failing and neglecting to take the proper and necessary measures which would have insured the plaintiff's safety; in failing to provide the plaintiff with a safe means of escaping the flames that engulfed his apartment; in suffering, causing and permitting the plaintiff to be in a position of danger; in negligently and carelessly causing and allowing the hazardous and unsafe condition to exist; in subjecting said plaintiff to unusual and unnecessary hazards and danger; in failing to employ adequate and sufficient help to inspect and/or replace said fire/smoke detectors; in causing, suffering and permitting the defective fire/smoke detectors to remain in the aforesaid premises which brought about the injury of the plaintiff in the fire at the aforesaid premises; in departing from good and accepted fire safety procedures and standards; in creating a trap; in creating a nuisance, and in being reckless and careless.

18. The defendants had actual and constructive notice of all of the foregoing.

19. The defendants' conduct was wanton, willful and reckless with a complete disregard for the life and safety of the plaintiff, as well as others similarly situated and constitutes gross negligence.

20. By reason of the foregoing, plaintiff claims punitive and exemplary damages.

21. As a result of the carelessness and negligence of the defendants as aforesaid, STANLEY WILLIAMS, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

22. STANLEY WILLIAMS, in no way contributed to the foregoing, and his injuries were solely due to the negligence and carelessness of the defendants.

WHEREFORE, the plaintiff, SARAH WILLIAMS, as Guardian of the Person and Property of STANLEY WILLIAMS, demands judgment against the defendants, RIVERBAY CORPORATION, DOUGLAS ELLIMAN PROPERTY MANAGEMENT and DOUGLAS ELLIMAN REALTY, LLC, as follows:

- a. a judgment awarding compensatory damages to the plaintiff in the sum of \$30,000,000.00 (THIRTY MILLION AND 00/100 DOLLARS);
- b. a judgment awarding punitive and exemplary damages to the plaintiff in the sum of \$90,000,000.00 (NINETY MILLION AND 00/100 DOLLARS);
- c. pre-judgment interest;
- d. post-judgment interest;
- e. costs and expenses;
- f. all such other relief, whether at law or in equity, to which plaintiff may be entitled.

Dated: New York, New York
March 12, 2019

Respectfully submitted,
/s/ Andrew J. Smiley
Andrew J. Smiley, Esq.(AJS-2924)
Smiley & Smiley, LLP
122 East 42nd Street
Suite 3900
New York, NY 10168
(212) 986-2022
asmiley@smileylaw.com
www.smileylaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Civil Action #:
SARAH WILLIAMS, as Guardian of the Person and Property
of STANLEY WILLIAMS,

Plaintiff,

-against-

PLAINTIFF'S
FIRST SET OF
INTERROGATORIES

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN
REALTY, LLC,

Defendants.

-----x

PLEASE TAKE NOTICE, that pursuant to Rule 33 of the Federal Rules of Civil Procedure, the plaintiff, SARAH WILLIAMS, as Guardian of the Person and Property of STANLEY WILLIAMS, by her attorneys, SMILEY & SMILEY, LLP, hereby requests that verified answers to the following interrogatories be provided within 30 days of the date hereof.

A. DEFINITIONS:

1. "You," "your" or "defendant" refers to any defendant.
2. These interrogatories are continuing in nature throughout the course of the litigation of the above-captioned matter. Accordingly, if at any time information requested herein becomes known to either defendant, such information is to be forwarded to counsel for the plaintiff.
3. "The accident" or "plaintiff's accident" refers to the accident in which Stanley Williams was injured on January 11, 2017 as a result of a fire in apartment 14J, located at 140 Elgar Place, Bronx, New York 10475.
4. "Smoke alarm" or "smoke alarms" refer to the smoke alarms recovered from Apt. 14J after the accident.

INTERROGATORIES

1. Identify:
 - (a) Manufacturer, make and model of the smoke alarms;
 - (b) Date of purchase of the smoke alarms;
 - (c) Date of installation of the smoke alarms.

RESPONSE:

2. State if the smoke alarms were ever tested or inspected by the defendants or their agents or anyone on behalf of the defendants from: (1) the date of purchase to the date of installation and (2) the date of installation until the accident.

RESPONSE:

3. Identify the installer(s) of the smoke alarms, including the name of the company and name of the person installing the smoke alarms.

RESPONSE:

4. State if the defendants or their representatives provided user manuals or other literature for the smoke alarms to residents of Apt. 14J or other residents of 140 Elgar Place.

RESPONSE:

5. State if the smoke alarms were hardwired or battery operated.

RESPONSE:

6. State where the smoke alarms were purchased.

RESPONSE:

7. State the purchase price of the smoke alarms.

RESPONSE:

8. Identify by name, company, title and address, the person who removed the smoke alarms from the apartment following the accident.

RESPONSE:

9. Identify by name, company, title and address, who has handled the smoke alarms from the date of the accident to the present time.

RESPONSE:

10. Identify by name, company, title and address, who has inspected and/or tested the smoke alarms from the date of the accident to the present time.

RESPONSE:

11. Identify by name, company, title and address, any lab or testing facility retained by, or on behalf of, the defendants to test the smoke alarms.

RESPONSE:

Dated: New York, New York
October 6, 2017

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

By: _____
ANDREW J. SMILEY (AJS/2924)

TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Civil Action #:
SARAH WILLIAMS, as Guardian of the Person and Property
of STANLEY WILLIAMS,

Plaintiff,

-against-

RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN
REALTY, LLC,

Defendants.

PLAINTIFF'S FIRST REQUEST
FOR DOCUMENT PRODUCTION
PURSUANT TO RULE 34

-----x
Plaintiff, SARAH WILLIAMS, as Guardian of the Person and Property of STANLEY
WILLIAMS, through her attorneys, SMILEY & SMILEY, LLP, pursuant to F.R.C.P. Rule 34,
requests that the defendants, RIVERBAY CORPORATION, DOUGLAS ELLIMAN
PROPERTY MANAGEMENT, and DOUGLAS ELLIMAN REALTY, LLC, respond to the
following within 30 days of the date of this demand:

A. DEFINITIONS:

1. "Picture" or "Photograph" mean any form of the recordation of a visual sight,
including, but not limited to, photographs from cameras, cell phones, smart phones and iPads.
2. "The accident" or "plaintiff's accident" refers to the accident in which Stanley
Williams was injured on January 11, 2017 as a result of a fire in apartment 14J, located at 140
Elgar Place, Bronx, New York 10475.
3. "Smoke alarm" or "smoke alarms" refer to the smoke alarms recovered from Apt.
14J, located at 140 Elgar Place, Bronx, New York 10475, after the accident.

B. REQUESTS FOR PRODUCTION:

1. Produce the smoke alarms recovered from Apt. 14J following the accident.

2. Produce a “chain of custody” affidavit for the smoke alarms.
3. All records, documents, mailings, announcements, email, etc., regarding the turnover to Douglas Elliman Property Management, in 2016, the management of 140 Elgar Place, Bronx, New York 10475.
4. Any and all minutes of the Board of Directors for 3 years prior to the accident herein.
5. Any and all invoices or contracts for the purchase of the smoke alarms installed by the defendants or their agents in Apt. 14J prior to the accident.
6. Provide all correspondence, invoices and contracts with any and all entities hired by the defendants herein to install smoke alarms in 140 Elgar Place.
7. Produce and provide copies of any and all photographs, slides, videotapes or motion pictures in defendant’s custody or control depicting the scene of the accident and of the plaintiff. If no such photographs are in the possession, custody or control of any parties you represent in this action, state so in the sworn reply to this demand.
8. Statements of the plaintiff whether oral, written, taped, stenographic, signed or photographic, in the custody or possession of the defendants.
9. Any and all witness statements of the defendants, their servants, agents and/or employees whether oral, written, taped, stenographic, signed or photographic, in the custody or possession of the defendants.
9. Any and all accident reports of the defendants made in the regular course of business.
10. Any and all records and reports of prior fires in Co-op City buildings for five (5) years prior to the accident herein.

11. Copy of the Fire Marshall's report, including the Fire Incident Report; interview sheets; 1045 Reports; and photographs.

12. Any and all building violations reports for 140 Elgar Place, Bronx, New York 10475 for five (5) years prior to the accident herein.

13. All notices, memos and correspondence from the defendants, or their agents, sent to residents of 140 Elgar Place prior to the accident pertaining to installation, replacement and or maintenance of smoke alarms.

14. Any and all correspondence between defendants and Renee Williams and Stanley Williams.

15. Complete liability insurance policies, including all excess or umbrella policies, applicable to the accident herein.

16. Produce all correspondence, including recall notices, the defendants received from the manufacturer of the smoke alarms installed in Apt. 14J before the accident.

17. A copy of the mortgage agreement/contract between Riverbay Corporation (Co-op City), Wells Fargo and of New York Housing Preservation and Development

18. A copy of any and all records relating to the installation, maintenance, repair, replacement, testing of the smoke alarms in Apt. 14 J before the accident.

19. A copy of any and all Certificates of Installation filed with the City of New York Housing Preservation and Development (Division of Code Enforcement) after the installation, maintenance, repair, replacement or testing of the smoke alarm in Apt. 14 J, prior to the accident.

Dated: New York, New York
October 6, 2017

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

By: _____
ANDREW J. SMILEY (AJS/2924)

TO:

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SARAH WILLIAMS, as Guardian of
the Person and Property of
STANLEY WILLIAMS,

Plaintiff(s),

- against -

Civil Action No.17-cv-4397

RIVERBAY CORPORATION, DOUGLAS
ELLIMAN PROPERTY MANAGEMENT,
and DOUGLAS ELLIMAN REALTY,
LLC,

Defendant(s).

-----X

122 East 42nd Street
New York, New York

December 21, 2017

9:56 a.m.

DEPOSITION of JACOB GERSHEN, a
Non-Party Witness in the above-entitled action,
was taken pursuant to Subpoena, at the above time
and place, held before a Notary Public within and
for the State of New York.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the respective
parties herein, that the sealing, filing, and
certification of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to form, are reserved
to the time of trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed and sworn
to before any officer authorized to administer an
oath, with the same force and effect as if signed
and sworn to before the Court.

* * *

2 J A C O B G E R S H E N, the Witness, after having
3 been first duly sworn by a Notary Public of the
4 State of New York, was examined and testified
5 as follows:

6 EXAMINATION BY

7 MR. SMILEY:

8 Q Please state your name for the
9 record.

10 A Jacob Gershen.

11 Q Please state your address for the
12 record.

13 A 410 A Murray Avenue, Bayside, New
14 York. Don't know the zip.

15 MR. SMILEY: Mark these.

16 (Whereupon, documents were
17 marked as Plaintiff's Exhibits 1 and
18 2 for identification, as of this
19 date, by the reporter.)

20 Good morning,
21 Fire Marshal Gershen. Thank you for
22 appearing today. Are you here in
23 response and in compliance with a
24 subpoena that was served upon the
25 fire department requesting that you

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Gershen 5

appear?

THE WITNESS: Yes.

MR. SMILEY: My name is Andrew Smiley. I represent Sarah Williams, who is a sister and guardian of Stanley Williams. He was one of the people that were in the fire that was responded to which is the subject of the subpoena and the reports we're going to discuss today. On behalf of Stanley Williams, I extend thanks for you and the fire department's efforts to rescue them.

I know you brought your file that we're making a copy of to review, but before we get into that just basic background from you.

Q What is your current position?

A I'm a fire marshal with the FDNY assigned to Citywide North Command at the address that was provided.

Q Generally, what are your duties as a fire marshal?

A My duties as fire marshal are to

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investigate and identify the cause and origin of fires that occur within the borough of the Bronx, borough of Queens, and borough of Manhattan from 110th Street on north. And then to deem the fires either accidental or incendiary. If they are, in fact, incendiary, lead an investigation and hopefully, eventually an arrest or conviction of those perpetrators that are responsible for committing the crime of arson, be it first degree all the way through fifth degree.

Q Are there other fire marshals that have the same duties as you within the same geographic region that you just described, or are you the only one?

A No, there's several. On any given day there are at least two, as many as six or more. But throughout the City, I would put numbers probably somewhere in the neighborhood of forty maybe.

Q For how long have you been a fire marshal?

A Just over two years.

Q Can you tell me, generally, prior to that what positions you have held with the FDNY?

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A Fireman. I was a firefighter for nine years.

Q Prior to being a firefighter?

A Prior to being a firefighter I was a heavy equipment operator. I had a ton of jobs. I was an electrical apprentice, landscape and tree work.

Q Did you have to undergo any additional training to be a fire marshal other than the training you received as a firefighter?

A Yeah. To become a fire marshal from firefighter is a promotional exam. Then, obviously, you score well enough, you are offered the promotion. And then you attend a bare minimum of fourteen-week fire marshal training course which covers everything from cause and origin to penal law, the police procedure, and the fire marshal academy takes place mostly on Hooper Street in Brooklyn, also, some at the police academy. Then we do several courses at other satellite locations on different types of fires and self-defense and weapons training, et cetera, et cetera.

Q Any additional training other than

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that fourteen week program to be a fire marshal?

A Not required, so to speak, but we are offered, and most people do take them. I took several of them, more specified courses or specialized. I'm sorry -- courses in, for instance, electrical fires, car fires, use of accelerants.

Q Through your training experience, do you have an expertise in determining how long it takes for fires to go from when a fire starts in an apartment, such as this case, until it's a full blown fire?

A It's not an exact science. But we certainly do have extensive training in determining, for instance, how long it takes to burn through a type of wood or a certain size wood. What to look for to tell the direction of travel, and how long it must have burned in a certain area before it could have gotten onto that area. Again, it's not an exact science, and other things come into factor.

Q I am going to ask you today some questions regarding smoke alarms. Did you have any training through FDNY to become a fire

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marshal in purpose, function, use of smoke detectors or residential smoke alarms?

A We do but nothing extensive. Very -- not vague but, basically, this is a smoke detector; this is a battery-powered smoke detector; this is hardwired smoke detector. This one will continue working under these conditions; this one will not.

Q Are you aware of what the general premises of why and how smoke alarms are supposed to function in residential apartments?

A Yes.

Q Can you tell me what your understanding is of that?

A You have two different types of smoke detectors. Obviously, you have photoionization and then the other one escapes me, the exact term. Basically, --

Q Photoelectric?

A Photoelectric and then you have photoionization. One essentially determines what is in the air and then activates on that. The other one sort of determines the clarity of the air. So it's not really determining what it is

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Gershen 10

that's in the air, just the clarity of the air.
Then you have battery powered one and a hardwired
one. That's sort of self-explanatory. The one
runs on battery; the hardwired one is hardwired
into the building's electrical systems.

Q Do you have any training in how
advanced notice smoke alarms are supposed to give
to people prior to the need for, let's say, the
fire department to respond?

A No, I don't.

Q Let's take a look at the fire
incident report records that I had marked
collectively as Plaintiff's Exhibit 1 for
identification. I would like to go through these
and ask you some specific questions containing
the notes.

MR. CARNEY: Can I get a copy?

MR. SMILEY: Here you go.

Q First, generally speaking, can you
tell me, were you involved in the fire
department's response to a fire that took place
on January 11th, 2017 at 140 Elgar Place in the
Bronx?

A Yes.

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Gershen 11

Q Can you tell me in the scheme of the responders from the fire department, what was your role within the response to this fire?

A My role within the response was to respond to the fire scene after the fire had been put under control. Then to survey the scene and conduct my investigation as to where the fire, where the fire's point of origin was, why the fire started, and who, if anyone, was responsible for starting said fire.

Q As far as the paperwork goes or at least the incident report packet we marked as Plaintiff's Exhibit 1, did you have a role in overseeing the production of the finalized fire report in some way?

A Of this report here, no. So up until page 1, 2, 3, 4, so those first four pages, I have no part in this. I can view them, but I do not enter any information. I don't influence any information that's entered. This is what we call the NYFIRS.

Q Knifers, as in like a knife to cut something?

A No. Not an abbreviation, a --

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Gershen 12

Q Acronym?

A Acronym: NYFIRS. I believe that's New York Fire Incident Reporting System. But don't hold me to that.

Q Okay.

A The actual fire incident report, yes. That is one hundred percent my doing, and that's without outside influence. This is from my investigation and my finding.

Q That's starting, in this packet we marked --

MR. CARNEY: Page 5.

Q The fifth page. And it has a stamp on it saying "Pursuant to CPLR." Then it says "Fire marshal," that would be representing you as the fire marshal?

A Correct.

Q From this page up until the last page of this packet that has marked as Plaintiff's Exhibit 1 for identification, this is all the report you generated?

A Correct.

MR. CARNEY: Is this a complete copy of the report you generated?

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Gershen 13

THE WITNESS: Is this a complete copy?

MR. CARNEY: Yes. You can take your time and look through it.

THE WITNESS: I believe it is. Let me take a look. (Perusing.) It is complete. The only thing missing, which may be my oversight, is usually I include a page which just identifies the building owner. I don't see that here. That may have been -- I don't always do it. So it may not be in this report. Aside from that, yes, it's complete.

Q I would like you to go to the last page of this packet. Am I correct this page seems to be a summary of everything that was done as far as leading to the preparation of the report?

A Correct. These are my investigator notes.

Q Just going through this, it identifies the following resources. It says, "The Incident History Report."

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A Correct.

Q "The NY First, the NYFIRS; the NYC map portal; and EBF-4;" do you see that?

A Correct.

Q The Incident History Report, what is that?

A That is what I referred to earlier as the look-ups.

Q Let's mark it just so we're clear for the record.

MR. SMILEY: The fire marshal gave us a packet of materials we have now copied. Let's mark that collectively as Exhibit 3.

(Whereupon, a document was marked as Plaintiff's Exhibit 3 for identification, as of this date, by the reporter.)

Q The Incident History Report, referring to your packet of Exhibit 3, can you tell us what that is?

A So the Incident History Report is a chronological run down of our FDNY dispatcher's report from the moment they receive the 911 call

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Gershen 15

until the close of the incident.

Q That's identified in Exhibit 3 entitled "Incident History Report," looks like the first listed entry is at 07:28:25, where it says, "Location of Alarm Box FT of Elgar PL/CO-OP CITY"?

A That's correct.

MR. CARNEY: That's the sixth page in on that exhibit.

A The whole packet is Exhibit 3.

MR. SMILEY: Let the record reflect that's the sixth page in of Exhibit 3, which happens to be a double-sided exhibit.

Q So let's start with the Incident History Report. Then I'll come back to the other items that you referenced.

Is this Incident History Report what indicates how the fire department became aware of this fire?

A Yes.

Q Can you explain what this means, this first entry that's at 07:28:25?

A Location of alarm box front of FD.

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FD means front of Elgar Place, meaning the address/Co-op City, which is the housing development, if you will.

Q What does that mean, the reference to the alarm box? Does that mean the alarm box was somehow activated?

A No, it does not. In, I guess, fire department terminology, a box -- this comes from years and years ago. It did refer to -- without getting too complicated. In the old days, they had on all the corners a pole station out in the street. If this building were on fire, you would run outside, pull the box, you'd speak into the speaker. There's a building on fire. Where is the building, sir? 122 East 42nd Street. That box covered a certain geographical area. So that alarm box covered, let's say, this side of East 42nd, two City blocks, for instance. Those boxes are now sort of gone by the wayside. So they still say box. If you look in the upper right-hand corner, box 4369-1. That sort of gives you an -- like an overview of where the box is, if you will, where the address is. So it's sort of giving you a heads-up it's in this area.

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Gershen 17

And then more specific would be front of Elgar Place, house number 100, et cetera.

Q How did the FDNY become aware of this fire?

A If you go down -- so looks as if they got this fire from a 911 call, from the number (347)964-6525.

Q You are referencing that at line 07:28:57?

A Correct. If you go up to 07:28:45, it says you have a male caller, that's ML, "States large thick smoke coming from windows."

Q Is that referenced in the handwritten notes that are on the bottom-right corner of this page?

A No. That is -- the handwritten notes on the bottom right-hand corner of the page are from a second 911 caller from (929)243-6181.

Q Are these your notes, your hand notes here?

A These are not. These notes are from the assisting fire marshal on that day who was my partner on the day, Fire Marshal Donovan.

Q So all this information on this first

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page of the Incident History Report, is it fair to say that's sort of the starting process, getting the location information and what these 911 callers are stating about it?

A Yes. Also, what units were assigned and what time they arrived on scene.

Q Up at the top right-hand corner it says "Alarm levels, 7-5 (All Hands alarm)." What does that mean?

A That's fire department code for -- so signal 75 means you have a working fire or other emergency. But for the most part, it means you have a working fire. So you have a major emergency and everyone responds in emergency mode, and you get what's called the full assignment, which would be three engines, two trucks, and a chief.

Q As a lay person, I've heard terms such as two-alarm fire, three alarm, four alarm, where I believe the higher the number indicates the greater severity of fire; is that correct?

A Correct.

Q Was this identified by that type of number?

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A Yes. This was a, basically,
one-alarm fire.

Q What does that mean as far as
severity of the fire, if anything?

A It means the fire can be handled or
brought under control by three engines, two
trucks, and one chief with no need for additional
resources.

Q Now, on this page, there's seems to
be a line up from the first male caller, cell
phone number starting 347 with a date of 1/11/17,
at 8:39LM. Would that be someone's note
referencing to leave a message for this person?

A Correct.

Q Now, is Fire Marshal Donovan making
these notes?

A I believe so.

Q On the top right of the page where it
says, "Occupants: Renna and Stanley." Do you
see that?

A Correct.

Q Do you know where that information
was obtained?

A I don't. I do not know.

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Gershen 20

Q Can we turn over to the next page of the Incident History Report, please, back side of what we were just looking at of Exhibit 3. By the way, on the top of both of these pages, top left, "Alarm sources, UCT/911;" what does that mean?

A So UCT is a system that FDNY uses and has been using for probably two or three years now. I don't know what UTC stands for. It's -- I don't even know the purpose of it. But, basically, when a caller calls 911, it goes into the UTC system and it spits out a ticket at the responding fire houses. House watch, it's called, where they have a computer that prints out a ticket for your runs. UCT provides the information where you are going; what to expect; any special considerations for dangerous conditions, et cetera.

Q Now, looking down on this page, the second page now of the Incident History Report, at 07:29:28, it states, "UCT Comment FC STS sees black smoke coming from a window;" do you see that?

A Yes.

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Q Can you tell me what that means?

A That means that the female caller states sees black smoke coming from window. The woman that called 911, this is what she's telling the dispatcher. This woman, if I am not mistaken, is from -- I was going to say comes from the number above, but I believe that's a male caller. Could be from the number seen on line 7:29:30, which there are several of, you'll see (929)243-6181.

Q All of these phone numbers listed throughout the incident report would all be 911 calls?

A Correct.

Q Is that common in the response to a fire, the fire department receives multiple 911 calls?

A Yes.

Q Was the fact that there was black smoke coming from a window of any significance from a firefighting perspective when you're approaching a scene with that?

A Yeah, sure. There's sort of a saying in the fire department: White smoke friendly;

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Gershen 22

black smoke unfriendly. So if it's black smoke from a window, that's a pretty sure sign that there's a working fire in that apartment or that building.

Q Does that give you as an investigator any information as to how long a fire may have been underway for by the time it gets to black smoke out of an apartment window?

A No.

Q Can we go now to the third page, page 3, of the Incident History Report? Again, the handwritten notes are referencing another 911 call there?

A Correct.

Q When you look down towards the bottom of the page at 07:30:18, there's a reference to Verizon Wireless. Do you know what that's about?

A I believe that means that the 911 caller is calling from a phone that is routed through Verizon Wireless.

Q Go to page 4. Again, are these notations including additional 911 calls with handwritten notes referencing the content of those calls?

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A Correct.

Q By the way, if there's anything else of significance as we're going through these incident reports that you found to be significant that carried over into your incident report, please point that out to me. Anything on that page, page 4?

A No.

Q Let's go to page 5. Again, this is referencing two more 911 calls?

A Correct.

Q Looks like might even be three. There's one with a line through it at 7:30:57?

A That is more than likely just a repeat of a previous number. You will see the numbers, if you look back, have a tendency to repeat themselves.

Q The handwritten notes, would these still be Fire Marshal Donovan's notes?

A Correct.

Q At some point, does this incident report, will it indicate when a fire responder arrived at the scene?

A Yes, it will. If you go back to the

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look on page 9 of the Incident History Report, four lines up from the bottom, that's 07:34:36, you will see "Ladder 051 1084 MDT," that means on the scene. MDT is, I believe, stands for Mobile Data Transmission. Every rig has a computer in it, it has a button on it, a 1084 button. When you respond on scene, you would hit 1084. That tells the dispatcher you are on scene. You are there. The other units that didn't go to 1084, it could very well have been that they pulled up, they saw they had a job, and in their hurry to get off the rig and go fight the fire, they never pushed the button. So the dispatcher calls them. The chauffeur, the driver of the rig, may have picked up the radio and said, yeah, we're there and hung up. He's now acknowledged they're on scene but didn't acknowledge via MDT.

Q Is that a type of acknowledgment made as an entry in some code or some other way in the incident report? In other words, the base that's taking all this information down speaks to the chauffeur?

A I don't know. If so, it could be how it says "acknowledged ATS," however, part of me

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believes that not only because you have Ladder 61
acknowledging ATS, Ladder 51 acknowledged MDT.
As far as I know, the way I read that is they are
saying we're on our way. They're not saying we
got there.

Q You're referring to which company?

A Both. Ladder 51 on 07:28:53, says
"acknowledged MDT."

MR. CARNEY: Where?

THE WITNESS: Page 1.

A 07:28:53, says "Ladder 51
acknowledged MDT." That to me means Ladder 51
has received information there's a fire
somewhere. They pressed 10-4, tells dispatcher
message received; we're on our way.

Q This incident history report has all
these times and data. This is all a dispatcher
typing all this stuff in as it's happening?

A Correct.

MR. CARNEY: As you look at
this, you see they were notified at
7:28:41 seconds. It would be very
unlikely they got there in twelve
seconds.

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Gershen 27

THE WITNESS: Yes. Unless they're notified while they're already out of quarters. This is 7:28 a.m. Unless they were responding back to quarters from another run or out on some other administrative duty, they generally would not be able to get there within fourteen seconds.

Q I would like to draw your attention to page 8 of the incident report, please. The reference to the cell phone number that has the handwritten notations on the right; do you see that?

A Yes.

Q Again, that would be all Donovan's writing as far as you know?

A Yes.

Q Says here in the handwritten note next to the phone number, "Windows broke and black smoke." Do you see that?

A Yes.

Q The fact that the windows broke, does that give any additional information as to what

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is going on within regarding the fire?

A Sure. Different windows have different fail times. That is telling you that you have a good fire going in there because the fire has created enough pressure in the apartment to cause that window to fail.

Q Generally speaking, how long would it take in a situation like this where a fire that started from cigarette remnants to build to a point where the windows are breaking in an apartment?

A In this day and age with the type of furniture we have and whatnot, I would say it could be as short as two minutes or less.

MR. CARNEY: Is that a guess, or is that something you know for sure based on the information you have?

THE WITNESS: That's a guess. It's very hard to say without knowing was it a double-pane window, single-pane window, was it a thermal pane, what type of window it was.

MR. CARNEY: Also, the square

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Gershen 29

footage of a room and all that comes into play?

THE WITNESS: Sure. Intensity of the fire, other -- we call it the flow paths. In other words, in this room, it's pretty locked up tight. If that door was open, now the fire has somewhere else to go. It doesn't need to break a window.

MR. CARNEY: To be clear, if you are going to guess, let us know. We're taking notes. It would be helpful. Typically, we tell people not to guess. But you are not represented by counsel. I can't direct you anyway. If you want to approximate, that's fine too. Just let us know when you're doing it.

Q So we're clear, did you form an opinion as to how long this fire took from the time it started until the time it was put out?

A I did not.

Q Do you have any idea whether it was anywhere from an hour to two minutes or in

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between, any sense?

A Again, just to be clear, this would be an approximation. I would say from the point the cigarette was placed. I don't know if I'm supposed to say anything. Certainly less than an hour.

Q As far as less than an hour, forty minutes, half an hour, two minutes?

A Again, this is purely a guess. I would say somewhere in the neighborhood of ten minutes to half an hour.

Q Looking on the back page, page 18, the notes written there, can you give me any idea as to who wrote those notes?

A (Perusing.) Again, I am going to assume because it's on the same packet from Fire Marshal Donovan.

Q Are you able it to read his writing? Would you rather read those notes for us?

A Sure.

Q Go ahead, just slowly, please.

A Starting on the top right, you have Captain Ryan, Ladder 51, January 11th 2017, 11:15 hours. Then you have captain of Ladder 61,

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Gershen

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a male. Dragged that victim into the same elevator as the member of Ladder 51 did. And they took that body to the floor below as well.

Q Looks like it says passed to EMS below that with it scratched out.

A Yes.

Q Do you know what that is about?

A Eventually, the victim would have been passed off to EMS. Why Donovan crossed that out, I don't know.

MR. CARNEY: Quick question.

When you said found female with DeMartini, was -- then you thought that was brother. Could it be breathing?

THE WITNESS: Yes. It very well could be. That's probably what it is.

Q Before we move on from the Incident History Report, is there anything contained within this incident report that references your personal involvement?

A Yes. Well, not my personal involvement, but the involvement of my bureau.

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On page 17, actually, before that, let's go back to -- on page 16, line 7:57:18.

Q Yes.

A Says, secondary notification of four, borough of Fire Investigation. At that point the dispatchers would have notified our bureau that they have a job that is going to require our presence.

Q Is it fair to say by the time you responded to the location, Stanley and Renna had already been taken away?

A Correct.

Q And the fire was put out completely?

A Correct.

Q Now, going back to the last page of Plaintiff's Exhibit 1 that we were looking at where you indicate what you utilize for the investigation. The first was the Incident History Report which we just completed addressing; the NYFIRS, that is the four pages on the top of Plaintiff's Exhibit 1?

A Correct.

Q Then you have NYC Map Portal?

A Correct.

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Q Can you tell me what that is and if that's part of Exhibit 3?

A NYC Map Portal is not a part of Exhibit 3. All NYC Map Portal is is a computer program in which I can look at the building from a bird's-eye view, not like a satellite image, just like a map view that I can determine which direction the front of the building is facing, surrounding streets, surrounding buildings. That's it.

MR. CARNEY: Does it also locate fire hydrants for you?

THE WITNESS: I don't think so.

Q Then you referred next to the EBF-4. Is that part of Exhibit 3?

A It is.

Q Is that the top part of Exhibit 3?

A I believe so. I don't know. Yes.

Q Can you tell us how many pages the EBF-4 is and what it is?

A That's three pages. First two pages are double-sided. The third page single-sided. That is an electronic run down of the units that responded and how those units are staffed.

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Q In fighting a fire, are there generally certain units that are the ones to go in first?

A Yes.

Q Which units are those?

A The ladder companies, generally. This is not set in stone. Generally, the ladder units go in first. They are responsible for forcing entry into the building, forcing entry into the fire or apartment, searching for life and fire. Then the engine extinguishes the fire.

Q The ladder companies don't take part in extinguishing the fires?

A Not really. You'll see on this exhibit, for Ladder 51, for instance, the bottom line is Can, it says. That ladder company, firefighter carries, I believe, two-and-a-half-gallon water fire extinguisher. If the fire is small enough and can be brought under control with their extinguisher, then they do so. Generally, in a 1075, that's not the case. They can use that to, say, hold back the flames while someone else goes past the flames to rescue a victim. But aside from that, there's

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not much fire suppression efforts, if you will,
from the truck companies.

Q In addition to the ladder and engine
companies I see in this EBF-4, I see next a
listing of battalions?

A Yes.

Q Could you tell me what the battalions
are?

A The battalions are the lowest level
chief that arrives on scene and becomes the
incident commander until a higher ranking chief
arrives on scene. Then they assume the role of
incident commander.

Q So battalions are scene controllers?

A Correct.

Q Then it says, rescue battalion?

A Yes.

Q What do they do?

A The rescue battalion is another
battalions chief who is a little bit more
specialized, will sort of quarterback rescue
efforts, will monitor and advise on building
conditions. In other words, if the building is
in danger of collapse. It's just another

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battalion chief with a little bit more specialized training in certain fields.

Q So battalions as opposed to when, as laypeople, we see big fire trucks going around, the battalion is a fire vehicle --

A A Ford Excursion, Chevy Silverado, a pickup truck.

Q And there's usually two people in it?

A Yes. You have the driver, the battalion aide, and the chief.

Q Got it. We see other units listed on the last two pages. There's something identified as a division. Someone identified as a squad. What are those?

A So division is one step higher chief, a division chief. It's just one step higher than a battalion chief. Rescue 3 and Squad 61 are both firefighting units. They both will be in a form of firetruck. They are just more specialized units that mostly specialize in rescue efforts.

Q So have we now looked at everything you are referencing on the last page of the incident report regarding the resources you

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utilize, being the Incident History Report, the NYFIRS, NYC Map Portal, and the EBF-4?

A Yes.

Q I'd like to stay on this page, then, and continue down. It states a computer search shows no previous BFI jobs?

A Bureau of Fire Investigations.

Q Can you tell me what that means?

A That just means that -- so when I get assigned a job at any building, any address, any location, I will go into the computer and I'll do a search for the past five, ten years, however many years to see if there have been any other fires at that location that have been investigated by the Bureau of Fire Investigation, basically, to establish, is there a pattern here; is there something going on? Is somebody trying to burn the place down? Has this place been subject to four fires in the last six months? Because, obviously, that's a red flag. No address should have four fires in six months. If they do, something is going on.

Q Was what referencing this specific building or the complex of buildings within Co-op

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City?

A Should be referencing this building.

Q Would that also mean that there was no prior fires reported at the building, in that period of time?

A No. That just means that there were no prior fires reported that warranted an investigation by the Bureau of Fire Investigation.

Q Next where it says FM Donovan performed 911 callbacks, interviews conducted; do you see that?

A I do.

Q Is that what we saw on the Incident History Report?

A That being said, if we can go back, I would correct myself and say that those notes were probably written by Fireman Donovan and not by Fire Marshal Moore.

MR. SMILEY: Off the record.

(Whereupon, a discussion was held off the record.)

Let the record reflect that we made a change in the transcript to

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reflect that this witness has previously indicated he thought some notes were made by Rob Moore. Based on the last answer, they appear to be made by Fire Marshal Donovan. The transcript should now reflect Fire Marshal Donovan's name in its place.

MR. CARNEY: That is on consent. And just for clarity, this all references the hand notes on incident history?

THE WITNESS: (Non-verbal response.)

MR. SMILEY: Which is part of Exhibit 3.

Off the record.

(Whereupon, a discussion was held off the record.)

Q Sir, other than the handwritten notes that we saw in the Incident History Report, would there be any other reports actually documented of the interviews with the 911 callers? Either handwritten, audio recording, anything like that?

A Not by me. I believe if one wanted

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to, you can request the 911 tapes from the dispatcher. Then they will furnish a disk, a CD with the actual calls on those disks.

Q The fire department maintains the calls, the 911 calls, the audio?

A I don't know how long. They do maintain them for some time.

Q Would the FDNY have recorded the conversations between Fire Marshal Donovan and those 911 callers?

A No.

Q Do you know if Fire Marshal Donovan would have separately typed up notes from the conversation or audio recorded those conversations or memorialized those interviews with the 911 callers in any way other than the handwritten notes we've seen?

A He wouldn't record them. If you look on that -- whatever exhibit. I'm sorry. I don't remember what part of the exhibit it is.

Q Exhibit 3?

A Exhibit 3. You will see on page 1 he hand wrote, "Will put this in after review." Which basically means that -- and I do not recall

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if I had him put them in for me or not.
Basically, what that means is I have a bunch of
paperwork and interviews to enter into the
computer. He's basically saying this is the
interview that I got. This is the way I'm going
to put it in the computer. If that's okay with
you, I'll put it in for you. Generally, I tell
guys don't worry about it. I'll take care of it.
I don't recall whether or not he entered it into
the computer or if I entered it into the
computer.

Q Now, going back to the last page of
Exhibit 1. The next line, it talks about Fire
Marshal Snyder performed victim interviews and
interviews of physicians attending to associated
victims. Do you see that?

A Yes.

Q Were those recorded anywhere? Be it
the victim interviews or the interviews of the
physicians attending to the victims?

A They were not. And I believe both
victims were injured gravely enough that there
was no interview conducted with the victim
really. Fire Marshal Snyder spoke to the

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attending physician, got a run down of the victims' injuries and conditions, and that was it.

Q Is that recorded anywhere as far as the extent of their injuries and their conditions?

A Should be.

Q Is that recorded anywhere other than in Plaintiff's Exhibit 1?

A No.

Q Next line. Fire Marshal Gershen, that would be you, Commander Wilson performed FDNY interviews; do you see that?

A Correct.

Q Would those interviews be recorded anywhere other than in Exhibit 1?

A No.

Q Next it talks about Fire Marshal Gershen, that being you, sir, observed subject premises with fire damage to living room and contents within.

A Correct.

Q I would like to now talk about your observations when you arrived at the scene. Do

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you have a recollection without -- before we look at any photos, as you sit here today, knowing that you responded to many fires, of responding and observing this particular fire?

A Yes.

Q Can you tell me what your initial observations were upon arrival?

A So you enter through the front entrance doorway. If I recall correctly, directly in front of you would have been the kitchen. To your right is the hallway, on the wider side, that opens into a living room. After two, three feet of entering into that hallway, you have a closet on your right-hand side. There may have been another door to a smaller closet. Don't recall completely. In that living room, if you're now standing, facing into the living room, to your left would have been, I believe, some type of shelving. Following that wall around, you'd have a fairly large sofa. Then there was windows behind that sofa, may have been a sunroom type thing, once you pass that sofa, sort of behind the sofa. But I don't recall if it was a sunroom or a sliding glass door. But I remember

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just vaguely there being something like that over there. Also in that room, I remember seeing a, like a walker. Whoever was in that room was disabled. Then various debris that had been strewn about by the fire department.

Q Did you see the bedrooms?

A I did see them. They weren't part of the fire area, so I didn't pay real close attention to them. I went in and observed -- I don't recall. Observed, yeah, nothing of note.

Q I see later on this page we've been looking at, the last page, of Exhibit 1 that Fire Marshal DePrizio generated a sketch of the fire scene. Is that contained in Exhibit 3; do you have a copy of that sketch at all?

A I do not with me. It may be with that photo log. It's not?

Q No. We didn't see the sketch with the photo log.

A I don't have that with me.

Q Is that something that would be maintained within the FDNY file on this?

A Yes.

MR. SMILEY: We requested that

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specifically.

MR. CARNEY: You requested the whole file or just that?

MR. SMILEY: I am going to request a copy of the whole file and request the sketch as part of that.

Q Is there an officer's name in charge of housekeeping these types of files that I can send my request to as opposed to the general freedom of information request?

A I don't know who it would be. I can make a phone call and find out.

Q Maybe at the break, we'll do that. Thank you.

MR. CARNEY: I have a sketch. I don't know where it came from.

MR. SMILEY: Let's mark this as Exhibit 4.

(Whereupon, a sketch was marked as Plaintiff's Exhibit 4 for identification, as of this date, by the reporter.)

Q Sir, I am going to hand you what has been marked as Plaintiff's Exhibit 4 for

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identification. It's a sketch that defense counsel has provided us today. I ask if you take a look at that, if that seems to fairly and accurately represent what you recall to be the layout of the apartment when you responded to the scene?

A It does. I would just correct myself in my previous statement that what is listed here as the dining area, which is off the kitchen, I referred to as the kitchen. I do recall in that dining area was a small table with two or three chairs around it. So the kitchen was off to the left.

MR. CARNEY: Is it fair to say this depiction has refreshed your recollection?

THE WITNESS: Yes.

Q Is this a copy of the sketch maintained by the fire department?

A I believe. I think probably not, only because the fire department sketches usually will -- they won't have labels like linen, pantry. And they usually don't list square footage. They list dimensions. This wall was

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35 feet; this wall was 25 feet, et cetera, et cetera. They also depict the location of the victims.

Q Looking at this Exhibit 4, this diagram, which has labels for the various rooms, when you responded, can you tell us which rooms you recall observing that were affected by this fire?

A Yes. It would be the foyer and the living room.

Q What about the dining area and kitchen?

A No. They had smoke damage but no fire damage.

Q Did you determine in your investigation where the fire originated?

A Yes.

Q Where did it originate from?

A The fire originated -- so here's north. I would call -- I can show you. (indicating) Here you had a sofa. On this arm of the sofa would be where the fire originated.

Q I am giving you a red pen. If you can put with your initials an O with a circle

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around it to represent where the fire originated.

A (Witness complies.)

Q With a circle around it and your initials there. Thank you. In black there was, previously when I handed this to you, an X with a circle. Do you know what that represents on here?

A I don't.

Q Where you indicated the fire to have originated, can you tell me what the basis of your opinion was if that's where the fire originated?

A Sure. So in our investigation, in my investigation, I basically determined a few things. One of them, one of the first things determined is the lowest point of burn. In other words, where the fire reached it's lowest point. Then I go from there and there's something called a V pattern which is areas of burn and smoke damage that essentially point to an area, to that point of lowest burn, the point right to it. Then I reconstruct the room as it was set up before the fire. Then sort of go from there. In doing so, where I have placed the O with the

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circle around it, was the -- if you were sitting on the sofa, the right-hand arm of the sofa. On that arm of the sofa was determined to be a plastic grocery bag full of cigarette butts and other paper towers and other combustible material. It was determined that in that bag, someone had placed a cigarette butt that was believed to be -- assuming, believed to be extinguished. It was not fully extinguished. It ignited the combustible materials in that bag which, in turn, ignited the sofa and other surrounding contents.

Q As far as flames of the fire, do you know what parts of the apartment were affected by fire flames as opposed to smoke?

A It's going to be this living room and the contents within and possibly some of the foyer.

Q Were all four walls of the living room hit by fire flames?

A I don't recall. But I believe so I don't recall. I have to look at the pictures.

Q We'll look at the pictures if that will help you as well. So when you entered into

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the foyer, that's how you entered the apartment;
correct?

A Correct.

Q You walked towards the right-hand
side?

A Correct.

Q Into the living room?

A Correct.

Q The main areas of your investigation
were the living room and the foyer; is that
correct?

A Correct.

Q Did you find anything of significance
relating to the fire in the dining area?

A No. Like I said, smoke damage, no
fire damage. If I could go back?

Q Yes.

A Thinking about it now from memory, I
believe there was not much fire -- I would say
not all four walls were damaged by fire. I
believe there wasn't a terrible amount of fire
damage. It was mostly smoke that filled the
apartment and that did the most damage. Because,
again, this is recalling from memory. For

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instance that entire sofa was not destroyed by fire. Some of it was. Not like everything in the room was burned to ashes.

Q Take a look at the photographs I've given you which is Plaintiff's Exhibit 2. And if you look at the cover page of this, it indicates: "Fire scene unit photo cover sheet." Do you see that? It has your name as the assigned fire marshal.

A Yes.

Q Take a look and if you could confirm for me that these are the photos that were taken as part of your investigation of this fire.

A (Perusing.) Yes.

Q Is it fair to say these are photographs taken as part of your investigation on behalf of the fire department?

A Yes.

Q Were you there when these photos were taken?

A Yes, I was.

Q Fire Marshal DePrizio actually shot these photos?

A Yes.

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Q Do these photos help you in
recollecting your investigation?

A Yes.

Q So we can all be on the same page
with the photographs, just identifying counting
from the front: First, second, third, fourth,
fifth, can you find for me the photograph that
shows the origin source?

A So this would be photo number, I
guess, photo number 10 would be the photo that I
would say most clearly depicts the point of
origin.

Q Can you show that to us so we can see
which one it is?

A (Indicating.)

MR. CARNEY: There are other
photos that show this same scene. Is
this the one that most closely --

THE WITNESS: Yes.

Q Can you orient us and tell us what
we're looking at in this photo?

A What you are looking at on this
photograph is the east wall of the living room
and the northeast corner of the sofa which would

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be the right armrest, if you were sitting on the sofa.

Q Indicating or orienting it to Exhibit 4.

A It would be like this. (indicating)

Q You would line up the -- let's not try. It won't make sense on the record. This is representing the living room area near where the orange circle you wrote would be?

MR. CARNEY: Can we label this as Plaintiff's Exhibit 2A so we have it clear?

MR. SMILEY: Call this 2A.

(Whereupon, a color photocopy of a photograph was marked as Plaintiff's Exhibit 2A for identification, as of this date, by the reporter.)

Q So looking at 2A, can you tell us, please, what we're looking at as you recall from your investigation?

A As I recall from my investigation, we're looking at the burned up sofa in the living room and the corner of the living room, what

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Gershen

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would be the northeast corner of the living room where there was other fire debris.

Q Looking at this picture, I see there appears to be a lot of debris towards the left side of this photograph on the ground; do you see that?

A Yes.

Q Do you know whether all that debris was all over the floor like that prior to the fire or whether that occurred as a result of either the fire or the extinguishing of the fire?

A I believe that was a result of the extinguishing efforts.

Q Can you explain for me how it happens that when a fire is extinguished that it looks like an apartment gets tossed, so to speak? When you look at these photographs, it looks like there's a lot of stuff all over the place. Please explain.

A When the first due truck enters the apartment, most of the time you can't see your hand in front of your face. So you are essentially operating blind as you are making your searches of the perimeter of the room, which

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is how you search a room in zero visibility conditions. A lot of times, anything you come upon that is not bolted down, you are trucking. Get this out of my way. You are not throwing it. And you're not throwing it anywhere with any sort of strategic purpose. Just get this out of my way as you're conducting your search. That contributes to the mess and the mayhem. Then once the line, the firefighting hose, is introduced into the equation, you're introducing a stream of water that is upwards of 250 gallons per minute. So you can imagine, it's hitting everything in its path with incredible force, enough to blow things all over the room, out the windows, create a substantial mess.

MR. CARNEY: It would knock a regular human being down; correct?

THE WITNESS: Clearly.

Q I know noticed in Exhibit 2A and through other of the photographs we're looking at that a lot of the surfaces seen to have a grayish color to them. Can you explain how that comes about?

A Well, the grayish color, a lot of it

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is smoke stains, smoke stains mixed with the water, smoke stains the wall leaving soot on the wall, and the water mixes with it and turns it more gray than black. It runs down the wall. If you -- in the same photo, if you will see the whiter areas where it's almost like pockmarked, if you will. That would indicate heat and fire.

Q So does that indicate, looking at 2A, areas where there was actual flame?

A Yes.

Q Can you identify that looking at this photo in words, as best you can, where it shows the flames were?

A Sure. It would be along those walls you see. The higher that you go on the wall, the more white you'll see, which will indicate higher heat, more flame. There's some evidence of flame and what we call oxidation on the heater cabinet that is covering the radiator. Then there's obviously evidence of flame on the structural members of the sofa and the debris of the contents on the floor.

Q Next to the sofa here, it looks sort of like a frame that's pretty black; do you see

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that?

A Yes. That's the frame, yes.

Q Do you know what that is?

A Looks like the structural members of the sofa or other love seat.

MR. CARNEY: Prior to taking the photograph, did you move the sofa into that position?

THE WITNESS: Yes.

MR. CARNEY: Where had it been before, if you recall?

THE WITNESS: Tossed about in the room. Through interviews, I believe -- no. Yes. Through interviews. Through interviews of the first due truck company, they told us where the sofa was before they picked it up and tossed it.

MR. CARNEY: When you say "us," they talked directly to you?

THE WITNESS: Yes.

MR. CARNEY: Do you recall who spoke to you at that time?

THE WITNESS: In looking back

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Gershen

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at my notes, it would be
Captain Charles DeMartini of Ladder
61.

Q Captain DeMartini told you the
location of the sofa prior to it being tossed?

A Yes.

Q Do you know at what point
Captain DeMartini responded to the apartment?

A Sorry?

Q Do you know what point Captain --

A He was the first due truck.

Q Was he one of the first people
actually inside the apartment responding?

A He was probably the first person. If
not the first person, he was 6 inches behind the
first person.

Q Did Captain DeMartini tell you what
the condition of the apartment appeared to him to
be when he entered it as far as level of
visibility, smoke, flames, that type of thing?

A Vaguely. He didn't say, oh, you know
it was zero visibility and this is the flames.
He did say where the flames appeared to be
issuing from, what area of the room.

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Gershen 60

Q Can you turn to the page that has a photograph that appears to be a long shot of the hallway?

A (Perusing.)

MR. SMILEY: Mark this, also.

(Whereupon, a color photocopy of a photograph was marked as Plaintiff's Exhibit 2B for identification, as of this date, by the reporter.)

Q Looking at this photograph, do you see how the walls and the ceilings seem to have the gray color?

A Yes.

Q What is that from?

A That dark line about halfway up the left-hand side wall would be as the smoke banks down from the ceiling down, that would be about the level to where the smoke got.

Q If you were standing there at the time the smoke was there, would the smoke be from that level up or that level down?

A That level up, approximately. Maybe a little lower.

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Gershen

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Q Is it fair to say that at some point during the fire, that the smoke had filled this entire hallway?

A Absolutely.

MR. CARNEY: When he says filled the hallway, he means from top to bottom.

A My apologies. It would not have filled necessarily top to bottom. It probably would have, but from that line on the wall to the top would have been so thick, you couldn't see your hand in front of your face. Below that line would have been smoky, but it would have been a haze, if you will, the entire length of the hallway from, let's say, 3 feet from the floor to the ceiling. Yes. It would have been charred completely.

Q Using Exhibit 4, the diagram for reference, do you know what direction we're looking at?

A Looking north.

Q Looking at 2B forward where you see the end of the hallway, would be towards what is indicated as the master bedroom?

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Gershen 62

A Correct.

Q If both of the residents of the apartment, Renna and Stanley, had come out of their bedrooms, they would have been coming towards us in the photograph depicted as 2B?

A Correct.

Q Can you now turn to this photograph? We'll mark this also.

MR. SMILEY: Mark as 2C.

(Whereupon, a color photocopy of a photograph was marked as Plaintiff's Exhibit 2C for identification, as of this date, by the reporter.)

Q Looking at what we marked as Exhibit 2C, I believe this corresponds when looking at the index of all these photos on the last page as number 17, closeup smoke detector bedroom 1. Sorry. Number 19, closeup smoke detector bedroom 2.

A I believe that's correct. No, no.

Q Bedroom 1. Number 17.

A Yes.

Q That would be referencing?

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Gershen 63

A Master bedroom, I believe.

Q I believe it's bedroom 2 on Exhibit
4?

MR. SMILEY: Go off the record.

(Whereupon, a discussion was
held off the record.)

Q From an off-the-record discussion,
Fire Marshal Gershen is not certain as to which
bedroom we're looking at on 2C. That being said,
we're not going to try and clarify. We're just
going to talk about what's observed. Looking at
2C, do you see the fire alarm?

A I do.

Q Do you recall when you responded to
the scene seeing this?

A Yes.

Q Is it part of your fire investigation
to look at and observe, first of all, if there
are smoke alarms in a unit?

A Yes.

Q Why is that part of your
investigation?

A Well, we determine if there are smoke
alarms present. If the smoke alarms were present

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Gershen

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and operational or present and nonoperational,
that will lend some credence as to how the
occupancy department was alerted there was a
fire. And how they reacted when learning of the
fire.

Q So whenever you respond to a fire,
you look to see if there's a fire/smoke detector
present?

A Correct.

Q You look to see if it's operable at
the time?

A Yes.

Q Do you also look to see if it had
activated when the responders arrived at the
fire?

A No. We only ask in our interviews of
the responding units, did you hear smoke
detectors when you entered the apartment or at
any time during your operation?

Q In your experience, if a smoke
detector is functioning and operable, when the
units, the first responding fire personnel,
responds to a fire, are those smoke detectors
usually going off at that time?

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Gershen

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A If they're present and operational,
yes.

Q Do you know how smoke detectors work
in that whether or not they are supposed to
continue sounding throughout a fire?

A Yes.

Q Are they supposed to?

A Yes.

MR. CARNEY: Is there anything
that can stop them from operating
continuously throughout a fire?

THE WITNESS: Aside from human
intervention, I don't believe so. I
suppose the battery could die during
operation. Aside from a battery
dying or some form of human
intervention, not that I know of.

MR. CARNEY: What about if the
smoke becomes so strong?

THE WITNESS: I don't believe
so.

Q Do smoke alarms, to your knowledge,
have any fire retardant materials such as so they
don't burn?

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Gershen 66

A Not to my knowledge.

Q If you look at the smoke detector in photograph 2C, do you see how it appears to be somewhat warped on the wall?

A Yes.

Q Do you know why that happens?

A High heat.

Q Do you have an expectation as to whether it was functioning and still would have sounded even in light of that high heat?

A I believe it would have.

MR. CARNEY: What is the basis of that?

THE WITNESS: It doesn't look damaged to me beyond operation, and I have seen in my experience several smoke detectors that were damaged far worse and that were still just functioning fine. And, also, it appears to me that the internals of the smoke detector would not be damaged. Whereas, this is just the plastic covering would be, has melted. In other words, underneath

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Gershen 67

this plastic covering, you have a motherboard with diodes and relays and the electrical components of the smoke detector.

MR. CARNEY: Did you ever take the cover off to observe that motherboard?

THE WITNESS: Of this one, no, I didn't.

Q Looking at this photograph on 2C, do you see the same grayish color on the smoke detector and on the walls and ceilings?

A Yes.

Q Does that indicate to you there was smoke within this room?

A Yes.

Q Does it indicate that the smoke rose to the level of where the smoke detector was?

A Yes.

Q Do you know how long it would take for smoke to travel from the origin where you indicated in the living room on Exhibit 4 to have smoke within either the master bedroom or bedroom 2 such that it would rise to the walls and

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Gershen 68

ceilings in those bedrooms?

MR. CARNEY: Objection.

A I can't say. It would be purely speculation. There's way too many outside factors. What windows were opened; what windows were closed, you know, air density, humidity. I really can't say.

Q Looking at 2B, which was the hallway photograph, are you able to determine what the floor material in that hallway was? In other words, was it hard, was it carpet?

A I am not able to determine from the photograph. But I recall correctly, it was tile. Don't know whether it was linoleum tile, but some sort of hard floor.

Q Does it make a difference as far as the speed within which fire or smoke can spread in a fire like this, as to whether or not it would have been tile, carpet, or a hard material? In other words, does smoke or fire spread faster in one material versus another?

A I would say smoke, no; fire, yes. If the floor was burning, obviously, a tile floor is not going to burn with the intensity or rapidity

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Gershen

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that a nylon carpet would.

Q Back to 2C, the photograph with the smoke detector on it. Do you know if that was inside one of the bedrooms or outside the door of one of the bedrooms?

A If I recall correctly, it was inside. But I really can't be a hundred percent certain.

Q The next photograph --

MR. CARNEY: As you are looking at fire detector in 2C, did you at any point try to set the alarm off manually to see if it was working?

THE WITNESS: No.

Q And following up on that, as part of your assessment as to whether or not a smoke detector is operable when you arrive at a scene other than listening for audible sound, do you take any other steps to assess the functionality of a smoke detector?

A Yes. Usually we will -- I don't recall doing this in this instance. But, usually, we'll push the test button. If it's still mounted on the wall, we'll push the test button to see if it's operating. If it's not

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Gershen 70

operating, we'll take it off the wall and will check for batteries, see if there are batteries in it at all. If there were batteries in it, we don't really test the batteries. That's usually the extent of checking for batteries and checking to see if it's operable or not.

Q Am I correct that you didn't do any testing of any smoke detectors within this apartment?

A That's correct.

MR. CARNEY: Did you at any point check to see if any of the smoke detectors had been disabled manually?

THE WITNESS: Other than visually, we didn't. This smoke detector, for instance, I didn't open it and look to see if there were batteries. From memory, I don't think I did, or to see if it was disabled in some other way. Sometimes we do do that. A lot of times visually. It's not uncommon practice for the first due

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Gershen 71

firefighting companies to come in and
some guy says I am sick of hearing
this thing. And he takes his pallet
tool like a baseball bat, swings the
thing clear off the wall and sends it
to next week.

MR. CARNEY: That's because
their focus is to put out the fire?

THE WITNESS: Or the fire is
done and now they're doing overhaul
and this thing is beeping in their
ear. I don't want to hear this thing
anymore.

Q In your report, again, going back to
this last page of Exhibit 1, it states,
"Fire Marshal Gershen observed three smoke
detectors: One in each bedroom and one in the
main hallway. The smoke detector in the
northernmost bedroom had been removed from the
wall mount and placed on a shelf prior to the
fire."

A If I would stop you one second. That
will confirm what you were saying earlier.

MR. CARNEY: Can I see where

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Gershen 72

you are at?

MR. SMILEY: In the middle of
the very last page of the fire
incident report.

Q Does that refresh your recollection
as to whether or not the photograph we've been
discussing as 2C, whether that would be bedroom 2
on the diagram?

A It does. And that would lead me to
believe that, yes, the smoke detector in 2C is
from bedroom 2. Let me check. Yes. So that
would lead me to believe the smoke detector in 2C
is that of bedroom 2 and not of the master
bedroom.

Q By reading this, does it refresh your
recollection that the smoke detector is actually
within bedroom 2, the one that you see on 2C?

A Yes.

Q Then the photographs, thereafter, of
the smoke alarm showing on the shelf, that would
be the one in the master bedroom?

A Correct.

Q You indicate none of the
aforementioned smoke detectors showed any sign of

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Gershen

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functionality?

A Yes.

Q Sorry. If it's sort of repeating it, what would be the basis of your statement that none of those three smoke detectors showed any signs of functionality?

A That would mean that we did push the test button and either -- and probably I don't recall. We probably, once they didn't activate, we probably removed them from the wall, checked them for batteries, then put them back on the wall where they were found for the photos.

Q Do you know who would have done that? Would that have been you or Captain DeMartini?

A No. That would have been me or DePrizio or another fire marshal at the department at the time. I don't recall who it was.

MR. CARNEY: Do you recall specifically yourself doing it?

THE WITNESS: I don't.

Q Going to the photograph that shows what looks like a bracket on the wall without a smoke detector on it, can you look at that one

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Gershen 74

for a moment?

MR. CARNEY: You indicated that that notation had indicated that there had been testing done of the alarms?

THE WITNESS: I don't know if I would go as far as to call it testing. Yes. They probably pushed the test button, nothing happened, they took off the wall, said, okay, there's no battery in here, put it back on the wall.

MR. CARNEY: Where would be the notation for that kind of finding?

THE WITNESS: There would be mental notations. It wouldn't be any sort of --

MR. CARNEY: This particular notation, who made this? Is this yours?

THE WITNESS: Yes.

MR. CARNEY: What was the basis of this notation?

THE WITNESS: I don't follow.

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Gershen 75

MR. CARNEY: In other words, when you put the notation, you don't have a specific recollection of doing the test?

THE WITNESS: I don't now. When I wrote the report, if I said I did it, that means I did it. That note would have been made forty-five minutes, half an hour after doing it.

MR. CARNEY: Does the note indicate you did the testing? That's what I am trying to get clarity on.

THE WITNESS: I mean, yes. The note just indicates that I checked them for functionality. In my checking for functionality, it would have been pushing the test button, okay, these don't work, take it off the wall, looking into the back of it. Of course it doesn't work, there's no battery in it. Or if it was hardwired smoke detector -- but, again, from memory, they were not. They were not hardwired. Said

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Gershen 76

there's no battery, so, obviously, it wasn't working, put it back up.

MR. CARNEY: What was the reason it wasn't working; did you make a determination?

THE WITNESS: I did not. If I made a determination, I didn't convey that in my notes. I don't recall at this time.

Q In your experience, have you come across smoke alarms that have a ten-year sealed lithium batteries?

A I have but not out in the field, not very often.

Q Do you know if these smoke detectors or at least two of the three of these smoke detectors were the type that had a sealed back with a ten-year battery within it?

A I don't think so but I don't recall well enough to say definitively.

Q Moving now to D.

MR. SMILEY: Mark that.

(Whereupon, a color photocopy of a photograph was marked as

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Gershen 77

Plaintiff's Exhibit 2D for
identification, as of this date, by
the reporter.)

Q Fire Marshal, we're looking now at
what we marked as Exhibit 2D. Do you know what
is depicted in that photograph?

A Looks to be a mount for a smoke or CO
detector.

Q Do you know if it appeared that way
upon your arrival within the unit, or was
something taken off of that by you or anybody on
your team prior to that photograph?

A It appears to be -- well, by looking
at the photograph, it appears that someone took
something off there, only because it's fairly
clean. It doesn't look like there been -- that's
what we call a protected area. In other words,
doesn't look like that was subject to smoke
damage, like something was covering it. Who took
that, was something taken off there, I can't say.

Q I want you to assume for the moment
that that is some type of mounting bracket for a
smoke detector. If you were to assume that, are
you able to tell based on your experience as to

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Gershen 78

whether or not this smoke detector was on that bracket at the time of this fire, or whether it was off of that bracket at the time of the fire?

A Again, it would be purely an assumption. To me it looks like -- it's tough. It looks as if a smoke detector would have been on there at the time of the fire only because, like I said previously, that mount itself doesn't look like it suffered much smoke damage, like it was a protected area. The only reason I would say that a smoke detector was not on there at the time of the fire would be, if there was a smoke detector, the protected area would be circular in nature where the entire protected area was beneath a certain smoke detector. I can't say definitively one way or the other.

Q Is it fair to say you can't say definitively one way or another whether or not the detector was taken off of that mounting bracket before or after the fire?

A I can't say.

Q Do you have any recollection of removing a smoke detector off the wall from the master bedroom when you went there?

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Gershen 79

A I don't recall removing anything off
the wall.

MR. CARNEY: If you look at
Plaintiff's Exhibit 1, that last page
where you had been reading
previously. "The smoke detector in
the northernmost bedroom had been
removed from the wall mount and
placed on a shelf prior to the fire."

THE WITNESS: Correct.

MR. CARNEY: Can you tell me
what the basis of that was?

THE WITNESS: If you look at
the picture of the smoke detector on
the shelf, when I picked up that
smoke detector off of that shelf,
there was very clearly, without
question, a protected area beneath
that smoke detector. In other words,
this room is covered in dust from the
smoke and the soot. When I picked up
that smoke detector, there was no
soot at all underneath that smoke
detector. So during the fire, that

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Gershen 80

smoke detector was sitting on that shelf, no question.

MR. CARNEY: So based upon that, was the fire as far as you could tell by looking at the photograph you were just looking at, had that smoke detector been removed prior to the fire?

THE WITNESS: I can't say that the smoke detector that was on the shelf was the smoke detector that was there. I can't say definitively. If you want to make that assumption that the smoke detector that was on the shelf was removed from that bracket, sure. I can't tell you. There may have been a whole other smoke detector that was taken off there and discarded somewhere else. And the smoke detector on the shelf was from -- you understand what I am saying?

MR. CARNEY: Got it.

Q In your experience, if the spoke

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Gershen 81

detector was sitting on a shelf and not mounted on a wall, and it was otherwise activated and functioning, would that go off during a fire such as this?

A Yes. Assuming the batteries were in place.

Q Do you have any recollection of testing the smoke detector that was on the shelf as you sit here today?

A I don't have a recollection of testing it. I do recall that there were no batteries in it, which would essentially tell you it was inoperable.

Q Do you know as you sit here today if that one had a sealed battery or not?

A It did not.

MR. CARNEY: Read that back.

(Whereupon, the requested portion was read back by the reporter.)

Q Do you know if the type of smoke detector that was on the shelf was the same type of smoke detector that we see on Exhibit 2C?

A I can't say. Same style?

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Gershen

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Q Yes.

A Yes. As far as model number,
manufacturer, and whatnot, I can't say.

Q But what do you mean by same style?

A In other words, round, circular in
nature, you know, pancake style, if you will.
And I'll stop there.

Q If you look at this one, you see how
there's -- the one on 2C, see how there's a
square on the right side of the circle? Looks
like a square image. It says, "Always on;" do
you see that? It's on the circle. (indicating)
I'll show you my copy.

A Yes.

Q Do you know if that same square, that
same design was on the one on the shelf?

A I don't.

Q I would like to draw your attention
to --

MR. CARNEY: Let's step outside
for a second.

(Whereupon, a brief recess was
taken.)

Q Is it fair to say when you make the

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Gershen 83

reference in your note of the incident report on the last page of Exhibit 1 that none of the aforementioned smoke detectors showed any signs of functionality? That's based upon your having both looked at them and pressed a test button on them to come to that conclusion?

A Yes.

Q In all those instances, you either noticed that the test button didn't work and/or there was not a battery?

A Yes. I don't, again, I don't completely recall what I did on that day or which ones I pushed the buttons on. But, yes, all were checked for functionality and if I'm reading here that none showed any signs of functionality, than that was determined either by noticing there was no battery or by pushing the test button or by seeing it smashed on the floor.

Q It would have been something more than just noticing that there was no sound?

A Yes, absolutely.

MR. CARNEY: To be clear --
hold on.

MR. SMILEY: Wanna mark that?

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Gershen 84

MR. CARNEY: As part of your investigation of testing functionality, do you determine the cause of the lack of functionality?

THE WITNESS: No further than seeing if there's a battery. If there's a battery in it, and it's still not functioning, I am not going to say, oh, well -- I am not going to go any further. In other words, I'm not going to take the battery out and see if the battery works in something else and then say, okay, well, the smoke detector didn't work but it had a good battery. So it's not working because of X. I'm just going to say, it's present and not operational. I'm not going to do any further testing to determine why it wasn't working. I'm just going to determine pretty much if it's working or not then that will be the end of it.

MR. CARNEY: Thank you.

MR. SMILEY: Mark this.

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Gershen 85

(Whereupon, a color photocopy of a photograph was marked as Plaintiff's Exhibit 2E for identification, as of this date, by the reporter.)

Q Now, looking at 2E, do you see what appears to be a smoke detector on the ceiling of this photograph?

A Yes.

Q Would this be, based on the log, the hallway?

A Yes.

Q First of all, do you know if that smoke detector was it of the same type being the same make and model as the other two smoke detectors that you looked at that were in the bedrooms?

A I don't know.

Q Do you know if this one you observed to see whether or not it was functioning or not?

A I don't recall but just judging by looking at it, I will say it wasn't functioning at the time the pictures was taken.

Q How can you tell that just by looking

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Gershen

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at this photo?

A It's been damaged.

Q Do you know if it was damaged by the fire or prior to the fire?

A I don't know.

Q Do you know if this one would have been taken off the wall by you or anybody within the FDNY at the time that you went to investigate?

A It was not taken off the wall by me. Whether it was taken off the wall by somebody else, I can't say but I would say probably not.

MR. CARNEY: You said the wall?

MR. SMILEY: Ceiling.

Q Last photograph I would like to look at at the moment appears to be the overall hallway facing south, which is the last picture before you get to the photo log in Exhibit 2. I believe it's the only long hallway shot, other than the one we previous marked as 2.

A The entrance doors are open in the photograph; this one?

Q Yes. Let's call this 2F, which I believe is the opposite vantage view of 2B. 2B

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Gershen 87

was looking north; this one is looking south; is that correct?

A Photograph 21.

MR. SMILEY: Mark that.

(Whereupon, a color photocopy of a photograph was marked as Plaintiff's Exhibit 2F for identification, as of this date, by the reporter.)

Q Now, looking at 2F, am I correct that this is the southbound view which would be the view coming from the master bedroom heading towards the foyer?

A Correct.

Q Would this be the vantage point that the residents of this apartment would have if they were leaving their bedrooms trying to leave the apartment at the time of the fire?

A Correct.

Q And the dark line on the right side is that smoke line you referred to earlier that would have been at that level and up?

A Yes.

MR. CARNEY: Looking at that

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photograph, there's an extra dark area in the middle of the photograph. Is that because of the photograph itself or what is depicted in that? I can't make it out.

THE WITNESS: I really can't say. Maybe because of the photo, maybe because the density of the smoke may have been greater at that end of the hallway.

MR. SMILEY: Looking at the original now as opposed to a copy.

THE WITNESS: You're talking about how it gets darker here?

MR. SMILEY: Indicating in the photograph all the way in the back what looks to be the end of the hallway.

MR. CARNEY: Dead center.

THE WITNESS: I am going to say that's because of the flash of the camera. It is possible that since the point of origin was in the living room that the smoke may be denser in

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Gershen

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this area.

MR. CARNEY: Thank you.

Q We can put the photos to the side unless you need them later to help you respond to any additional questions later.

Were there any sprinklers within this unit?

A Not that I recall.

Q Do you know if there were any smoke alarms within any of the common areas of that building?

A Outside of the apartment?

Q Yes.

A I don't know.

Q Is that something you look for when you do your investigations to see whether there are any additional smoke alarms outside of the residence?

A It's something that we may notice in passing through the building, but it's not something we specifically look for.

Q If the smoke alarms had been working at the time of this fire, are they generally heard in the hallway outside of an apartment?

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Gershen

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A Yes.

Q Did you look to see if there was any
sprinkler system in the hallway outside of the
apartment or anywhere within the building?

A I didn't look but just judging on the
size and type of building, I am going to assume
that they, that -- actually, I'll stay with I
didn't see.

Q Do you review fire plans for
buildings, fire safety plans that buildings file?

A No.

Q Was the entry door to the apartment
the only means of egress available to the
tenants' to escape the fire?

A I don't recall. But I would assume
that it probably was being that it was a
fireproof building.

Q Were there any fire escapes outside
any of the windows of this unit?

A I don't recall. Again, I am going to
assume not because it's a fireproof structure.

Q Can you tell me what the significance
is of a building being a fireproof building
relative to whether or not there's fire escapes

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Gershen

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or other --

A So in New York City, fireproof structure is a poured concrete structure, if you will. Or not necessarily poured, could be block construction. It was a concrete structure, so the structure itself is fireproof. It does not burn. So, essentially, when you get a fire in the apartments of these fireproof buildings, it's not what is considered a structure fire really. It's a contents fire. The building is not burning. It's the contents of the building that are burning. In most cases in New York City, these fireproof structures don't have fire escapes.

Q How does that allow for a tenant to escape a fire if it's burning within their own unit then if they only have the front door, so to speak?

A I guess it doesn't. Their means of egress is out the front door of their apartment. And then they've got several means of egress out of the building once they're in the public hallway. In their own apartment, I guess that would be their only means of egress.

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Gershen

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Q In your training, did you come to learn as to what, if any, effectiveness smoke alarms have shown with regard to giving sleeping residents sufficient notice to exit an apartment prior to the effects of a fire or smoke can take place?

A Yeah. They are without question effective and essential, if you will, to early detection and ultimately, survival.

Q Why is that or how is it that they can perform that function?

A They, obviously, admit a, without sounding dramatic, ear piercing tone that anyone in the normal state of sleep would awake to. And then they also nowadays have an audible voice accompanying that tone that says, fire, fire, or carbon monoxide or alerts you to what type of emergency that is alerting you to.

Q Do you know generally what will activate a smoke alarm when a fire such as the one that occurred in this instance starts?

A It's going to be the smoke itself. Whether -- I can't say what it is about the smoke that activates the alarm. I'm not familiar with

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Gershen 93

that. The presence of smoke or presence of carbon monoxide will trip the alarm and cause it to activate.

Q Do you have an opinion based on your experience as to whether or not if the smoke detectors in the bedrooms were operable, functioning, given the location of where the fire started in the living room that they would have reacted to the smoke in sufficient time for the tenants to escape the apartment prior to suffering from any affects?

MR. CARNEY: Objection.

A I can't say. That's, again, depending on what windows are open. I really can't say. If you've got a whole bunch of open windows in this room, smoke may never reach the master bedroom and this room could be -- it could be fully involved in fire and you could have little to no smoke at this end of the apartment. If you have high pressure out here and low pressure outside if the windows were open. Really can't say.

Q What if the windows were closed in there? What, if any, affect would that have?

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A Again, it's still hard to say. But assuming all windows are closed, assuming this is a sealed apartments, I'm going to say that, yes, these smoke activators would more than likely activate before you had a fully involved fire in this room. Again, this is purely speculation.

Q Do you know generally which alerts sleeping people first to the presence of a fire whether it be the odor or a smoke alarm sounding?

A Assuming there's a smoke alarm present and operational, without question, smoke detector.

MR. CARNEY: Can you read that back?

(Whereupon, the requested portion was read back by the reporter.)

Q Did you speak with any representatives of the building like management or ownership of the building regarding the fact that you found smoke detectors to be non-operable?

A No.

Q Do you recall speaking with any

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Gershen

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building representatives at all in connection with your investigation of this fire?

A Can I consult my notes?

Q Yes.

A I don't think so. But I spoke to Co-op City Police Officer Brooks, but it was not about the investigation. We left the scene to Officer Brooks and had a conversation in passing. But nothing about the smoke detectors or the fire investigation itself.

Q In your investigation in the apartment, did you find any materials to be significant as far as their combustibility? Like any gas canisters or anything that would be an accelerant to a fire?

A No.

Q Were there gas lines into this apartment?

A I am assuming there was probably a gas line to the stove in the kitchen. Again, assumption. I didn't investigate to see if there was -- whether it was an electric stove or gas stove or anything of that nature.

Q As far as your investigation, there

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Gershen

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was no gas explosion or any type of accelerant?

A No.

Q Do you know how long it would take for an ember from a cigarette in a garbage can to turn into actual flames and fire?

A No. I can't put a number on that.

Q Do you know what the process is as far as whether in this situation cigarette embers in a trash bag would cause smoke first or whether it would cause fire first?

A Cause smoke first.

Q Do you know which windows in the living room blew out from the fire?

A If I am not mistaken, these were the only windows. So you have -- I can't tell you how many individual windows were in this bank of windows. I can't tell you which window in that bank of windows blew out first. I can tell you it was in this bank of windows, first one to fail.

Q Looking at the diagram on Plaintiff's Exhibit 4 behind where you indicated the origin of the fire was, there appears to be a line which you've been indicating would be the row of

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Gershen

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windows along that wall?

A Correct.

Q Am I correct, sir, that that would be the only location of windows in the living room that the other two walls of the living room were solid?

A Correct.

MR. CARNEY: The windows, again, were behind the sofa?

THE WITNESS: Yes.

Q Have you learned in your training how long it takes for a fire to develop enough carbon monoxide that it would have an effect on a resident in an apartment?

A Not any set number, no.

Q Was there any evidence that Stanley Williams in any way caused this fire?

MR. CARNEY: Objection.

A No.

MR. CARNEY: Was there any evidence that he didn't cause the fire?

THE WITNESS: No.

Q In other words, the investigation

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Gershen 98

that you did, did anything come about in your investigation that indicated that Stanley Williams somehow had any involvement in the cause of this fire?

A No.

Q Other than the documents that we marked as exhibits and looked at here today and other than the sketch which I believe you indicated would exist and the 911 tapes maintained by the FDNY, are there any other filed materials you are aware of that are in existence with the fire department relating to this fire we have not referenced by way of discussing or marking as exhibits here today?

A No.

Q In your field in the fire department, did you ever work with someone named Jean West?

A Not that I recall.

Q Do you know who that is?

A No.

Q Did you ever work with or know someone named John Tingatella? (phonetic)

A No.

MR. SMILEY: Off the record.

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Gershen 99

(Whereupon, a discussion was held off the record.)

MR. CARNEY: I have one question.

EXAMINATION BY

MR. CARNEY:

Q Did your investigation determine the cause of the fire?

A Yes.

Q What was the cause?

A Careless discard of smoking materials.

Q Through your investigation, did you come to learn who, in fact, carelessly discarded the materials?

A I believe it was, that we believe that it was Ms. Renna Williams.

MR. CARNEY: Off the record.

(Whereupon, a discussion was held off the record.)

MR. SMILEY: Few more things.

EXAMINATION BY

MR. SMILEY:

Q On the back side of Exhibit 3,

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Gershen 102

there was a wooden box next to the couch. The window had already failed by the time they had made entry.

Q What is your understanding of what that means, "failed"?

A The window broke. Fire created enough pressure to make that window burst. Lower left-hand corner says, "Woman disabled." That's my notation saying that I learned that the woman, 10-45, the female 10-45, was a disabled woman. It says "45s in pajamas." That just means both fire victims, both 10-45s, were found in their pajamas. That's the manner in which they were clothed. "Plastic bag with cigarette butts." That's what I found in the area of origin. To the right of that it says in LR circled, that's living room. Approximately "10 feet north of south wall, 12 feet east of west wall, and approximately 1 foot above floor level, in combustible material (carpet.)

Q What does that mean?

A It means that the fire essentially started, the first thing to ignite, if you will, would be the combustible material, would be

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Gershen 103

carpet. So, basically, I'm saying that there was a plastic bag with cigarette butts in it. One of the cigarette butts was not completely extinguished. It smoldered in that bag with other debris, probably melted through the bag, fell to the carpet, ignited the carpet, the fire took off from there.

Q In Exhibit 1, the second to last page of your report, it references your interviewing Captain DeMartini?

A Yes.

Q Is that what these notes on the back page you just read us from Exhibit 3 are from?

A Yes.

Q So you were writing this down on the sidewalk outside of the building?

A Yeah. Making -- jotting down quick notes.

Q Did you know Captain DeMartini prior to this?

A No. I had seen him in passing. I never conversed with him.

Q On your incident report, if you go to the second page of where your incident report

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Gershen

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starts, in the comments section, it's blacked out, do you know what was there? What is blacked out?

A I don't.

Q It looks like this one page references Renna Williams. What is this document generated for usually?

A This is just like a victim synopsis basically saying, identifying who the victim was; what their nature of injury was. That's it.

Q Would it be fair to say that within the fire department, the original of this would have whatever comment is there and not blacked out?

A Yes.

Q Is that something you would have put in as a comment?

A Yes.

Q As you sit here today, do you have any idea of what type of stuff you generally put there?

A I don't know. I may have put she was disabled and found in pajamas, something of that nature. I have no idea what I wrote.

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Gershen 105

MR. CARNEY: Why would they
black that out?

THE WITNESS: I don't know.
Age, date of birth. I don't know why
any of it is blacked out. I don't
know who blacked it out.

Q And the page right after that appears
to be the page for Stanley Williams. And, again,
similar locations are blacked out. Any idea what
you normally would put there, the type of
comments you make?

A Again, it would have been something,
maybe that he was in his pajamas, possibly maybe
something about where he was found. I have no
idea.

Q Is it fair to say that any comments
you would have made in your report relating to
either Stanley or Renna would not have been based
on your first-hand knowledge? That would have
been information you got from someone else?

A Yes.

Q Prior to your response to investigate
this fire, were you involved in any capacity
within the fire department in going to Co-op City

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Gershen 106

and doing any kind of fire drills with the residents of those buildings?

A No.

Q Did you ever perform any inspections of any of the buildings in Co-op City to check for codes?

A We don't do that.

MR. SMILEY: I have nothing further unless perhaps a followup.

MR. CARNEY: I am good.

(Continued on next page to include jurat.)

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Gershen 107

MR. SMILEY: Thank you. Again,
we really appreciate your time and
coming in and being patient and
responding to our questions. If I
may, as a resident of the City of New
York, I appreciate you being a person
out there on behalf of all of us
fighting and protecting us. Thank
you.

(Time noted: 12:20p.m.)

JACOB GERSHEN

Subscribed and sworn to
before me this ____ day
of _____, 20__ .

NOTARY PUBLIC

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Gershen

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Gershen

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CERTIFICATION

I, KRISTA HOLFORD, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That, JACOB GERSHEN, the witness whose examination is hereinbefore set forth, was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.



KRISTA HOLFORD

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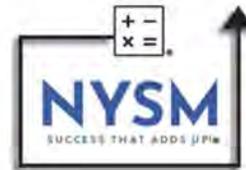
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