SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

KATHLEEN CLANCY,

Plaintiff,

- against -

SILVERSTEIN PROPERTIES, INC. and TISHMAN REALTY & CONSTRUCTION CO., INC.,

Defendants.

TRIAL/IAS PART 31
NASSAU COUNTY

Index No.: 6958/10
Motion Seq. Nos.: 04, 05
Motion Dates: 11/28/11
01/13/12

The following papers have been read on these motions:

	Papers Numbered
Amended Notice of Motion (Seq. No. 04), Affirmation and Exhibits	1
Affirmation in Opposition to Motion (Seq. No. 04) and Exhibits	2
Reply Affirmation to Motion (Seq. No. 04)	3
Notice of Motion (Seq. No. 05), Affirmation and Exhibits and Memorandum of Law	4
Affirmation in Opposition to Motion (Seq. No. 05) and Exhibits	5
Reply Affirmation to Motion (Seq. No. 05) and Exhibits	6

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Defendants Tishman Realty & Construction Co., Inc. and Tishman Construction Corporation[1] (collectively "Tishman") move (Seq. No. 04), pursuant to 22 NYCRR 202.21(e),

[1]Although Tishman Construction Corporation is not named as a defendant in the caption above, by Short Form Order dated December 1, 2010, this Court, pursuant to CPLR § 602(a), consolidated this action (entitled *Kathleen Clancy v. Silverstein Properties, Inc. and Tishman Realty & Construction Co., Inc.*) with the action entitled *Kathleen Clancy v. Tishman Construction Corporation*. The caption of this action was never amended. Nonetheless, it is clear that there are three defendants in this action: to wit, Silverstein Properties, Inc., Tishman Realty & Construction Co., Inc. and Tishman Construction Corporation.

for an order striking the Note of Issue in this action and directing that all outstanding discovery be completed. Plaintiff opposes the motion.

Defendants Tishman further move (Seq. No. 05), pursuant to CPLR § 3212, for an order granting them summary judgment and dismissing the Verified Complaint in this action. Plaintiff opposes the motion.

This action arises from an accident that occurred on March 4, 2008, at the construction site of One World Trade Center in the County, City and State of New York. Plaintiff, a surveyor employed by non-party Garden State Engineering, Surveying and Planning of New York, P.C. ("Garden State"), alleges that she sustained injuries as a result of tripping and falling on a raised piece of plywood at the World Trade Center Freedom Tower work site (hereinafter referred to as the "Site").

Defendants Tishman were the construction manager of the building at the Site.

By stipulation dated August 23, 2011, plaintiff has discontinued her action against defendant Silverstein Properties, Inc.

As best as can be determined from the papers submitted herein, the facts are as follows:

On the date of the accident, plaintiff was employed as an "instrument person" by Garden State. *See* Defendants Tishman's Affirmation in Support (Motion Seq. No. 05) Exhibit E p. 10. She stated that her duties and responsibilities at the Site included carrying and setting up instruments, field work, climbing ladders, walking the job site and establishing traffic verse points. *Id.* She stated that when she started work with Garden State in December 2007, her supervisor was Luigi Morsella ("Morsella"), an employee of Garden State. *Id.* at pp. 18-19. She stated that she would receive her work assignments through Morsella. *Id.* at p. 20. Plaintiff

testified that, on the day of her accident, upon checking in with Morsella, she learned that the work she was to perform that day was to set out the survey points within the Site. *Id.* at p. 89.

Plaintiff also stated that when she first started working at the Site, she attended weekly safety meetings held by Garden State. *Id.* at pp. 21-22. She stated that she wore a hardhat, a tool belt and a reflective vest at all times while on the Site. *Id.* at pp. 24-25. She also stated that would wear a harness or belt when necessary, including when she was working on the edge of a building. *Id.* at 25. According to plaintiff, the hardhat was provided by defendants Tishman (*Id.* at pp. 25-26), the reflective vest was provided by Garden State and the tool belt belonged to her. *Id.* at p. 26. Plaintiff testified that, in 2006 or 2007, she took Occupational Safety and Health Administration classes that encompassed general safety at a construction site for which she received a certificate. *Id.* at pp. 79-80. She also stated that, before she started working at the Site, she took required safety courses specific to working at the Site. These courses, she recalled, were either provided by Garden State or defendants Tishman. *Id.* at p. 80. Upon completion of said courses, she was given a card, as well as a sticker for her hardhat. *Id.* at 81.

Plaintiff testified that Garden State primarily conducted all of their work out of a van located on the site. This is where Garden State's personnel and equipment were located. *Id.* at pp. 26-27. She stated that Garden State would also make use of a trailer provided by the "super." This trailer was also made available for use by people other than Garden State employees. *Id.* at pp. 27-28.

Plaintiff testified that she would report to and advise Morsella as to the progress of her work during the course of the day. *Id.* at pp. 28-29. Morsella was the foreman for Garden State at the Site. *Id.* at p. 82. She stated that if she thought that there was an unsafe job condition, she would speak to an assistant supervisor with defendants Tishman. *Id.* at p. 32.

With respect to the subject accident, plaintiff testified that she tripped and fell at approximately 8:00 a.m, on March 4, 2008, at the Site. Specifically, she testified that she was walking from a "setup point" to "lay out a point." *Id.* at pp. 40-41. At the time of her fall, she was carrying, with both hands, a tripod and a bucket of tools. *Id.* at p. 41. She stated that the accident happened "below ground level," an area that she described as being mostly open to the sky. *Id.* at p. 44. She testified that she tripped over plywood, approximately "four by six" in size. *Id.* at p. 45. She stated that this was not the only piece of plywood in the area and that there were others which abutted each other to form a ramp. *Id.* at pp. 97-98.

Plaintiff stated that the accident happened in the Freedom Tower, below street level. She testified that there were approximately four to six levels below street level at the Site at the time of the accident (*Id.* at p. 87), but that her accident took place approximately two to three levels below street level. *Id.*

With respect to the actual happening of the accident, plaintiff testified that her "toe (on her left foot) got caught on the edge of the plywood sticking up" and she tripped and fell. *Id.*. She testified that she had not seen that piece of plywood upon which she fell before her fall. *Id.* at p. 59. She stated that she had walked down this same path "several times, daily" before her accident. *Id.* at p. 60. She testified that it was after her fall when she first observed that the plywood, over which she tripped, was raised. *Id.* at p. 96. The area where she fell consisted of more than one piece of plywood, all of which were abutting each other. *Id.* at p. 97. These pieces of plywood were placed all over a ramp that she traversed right before her fall. *Id.* at p. 98. The ramp was constructed of the plywood (*Id.* at p. 99), including the piece of plywood upon which she fell. *Id.* at pp.120-121. She testified that, at the time of the accident, she was walking down the ramp. *Id.* at p. 121. The piece of plywood upon which she fell was the last piece of plywood on the ramp. *Id.* at p. 122. She stated that she had walked on this ramp before the date of the

accident. *Id.* at p. 99. The plywood ramp was covered over with a layer of dirt. *Id.* at pp. 119-120.

Plaintiff testified that there were other people in the vicinity of the accident when she fell. *Id.* at p. 47. Two laborers helped her up after her fall. *Id.* at p. 50. She was unable to walk to the point that she had to lay out. *Id.* Plaintiff went to the Site nurse and, at the nurse's direction (*Id.* at p. 103), she ultimately walked with a co-worker to New York Downtown Hospital. *Id.* at pp. 50-51.

Plaintiff testified that, after the accident took place, she returned to the Site from the hospital and spoke with Morsella, as well as with the supervisor at defendants Tishman, regarding the accident. *Id.* at p. 56. She stated that she had also informed Morsella of the accident before her visit to the hospital. *Id.* at p. 106.

In bringing this suit, plaintiff advances three causes of action: violations of Labor Law § 241(6), violations of Labor Law § 200 and common law negligence. Her Labor Law § 241(6) claim is predicated upon alleged violations of New York State Industrial Code provisions 12 NYCRR §§ 23-1.7, 23-1.7(b), 23-1.7(b)(1); 23-1.7(d); 23-1.7(e), 23-1.7(e)(1), 23-1.7(e)(2), 23-1.7(f), and 23-2.1.

Upon Motion Sequence No. 05, defendants Tishman seek summary judgment and dismissal of plaintiff's Verified Complaint in its entirety.

To grant summary judgment, the court must find that there are no material, triable issues of fact, that the movant has established his or her cause of action or defense sufficiently to warrant the court, as a matter of law, directing judgment in his or her favor, and that the proof tendered is in admissible form. *See Menekou v. Crean*, 222 A.D.2d 418, 634 N.Y.S.2d 532 (2d Dept. 1995). If the movant tenders sufficient admissible evidence to show that there are no

material issues of fact, the burden then shifts to the opponent to produce admissible proof establishing a material issue of fact. *Id.* at 420.

Labor Law § 200 and Common Law Negligence

Labor Law § 200 is a codification of the common law duty of an owner or general contractor to provide and maintain a safe construction site. *See Comes v. New York State Elec. & Gas Corp.*, 82 N.Y.2d 876, 609 N.Y.S.2d 168 (1993). That is, Labor Law § 200 claims fall into two broad categories: those involving injuries arising from allegedly defective or dangerous premises conditions and those involving injuries arising from the manner in which the work is performed. *See Chowdhury v. Rodriguez*, 57 A.D.3d 121, 867 N.Y.S.2d 123 (2d Dept. 2008); *Ortega v. Puccia*, 57 A.D.3d 54, 866 N.Y.S.2d 323 (2d Dept. 2008). It is evident that plaintiff's claims in this action – *i.e.*, a trip and fall accident over a piece of plywood that was allegedly "sticking up" – fall under the former class of cases. Thus, to prevail on such a claim, plaintiff must show that defendants Tishman either created the dangerous condition or had actual or constructive notice of the condition. *See Ortega v. Puccia, supra*; *Slikas v. Cyclone Realty, LLC*, 78 A.D.3d 144, 908 N.Y.S.2d 117 (2d Dept. 2010).

Although a construction manager, such as defendants Tishman, is generally not considered a contractor responsible for the safety of the workers at a construction site pursuant to Labor Law §§ 200 and 241(6) (*Rodriguez v. JMB Architecture, LLC*, 82 A.D.3d 949, 919 N.Y.S.2d 40 (2d Dept. 2011)), where, as in this case, it has effectively been delegated the authority and duties of a general contractor, or if it functions as an agent of the owner of the premises (*Walls v. Turner Constr. Co.*, 4 N.Y.3d 861, 798 N.Y.S.2d 351 (2005); *Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 311, 445 N.Y.S.2d 127 (1981)), it may nonetheless become responsible under Labor Law § 200 and/or § 241(6).

Here, based upon the papers presented for the Court's consideration, the Court finds that the evidence establishes that defendants Tishman were indeed charged with the authority of a general contractor or owner. Specifically, the testimony of Anthony Fedor ("Fedor"), defendants Tishman's Senior Safety Manager at the Site at the time of plaintiff's accident, confirms that he oversaw the safety of workers at the Site and walked said Site every day. *See* Defendants Tishman's Affirmation in Support (Motion Seq. No. 05) Exhibit F pp. 7-8, 10, 65. Further, Fedor confirmed that, to his knowledge, there were no general contractors for this project and that defendants Tishman were the sole construction manager on the job. *Id.* at pp. 10-12. Further Fedor testified that, as a Site Safety Manager, defendants Tishman indeed had the authority on the job to "stop work" if either of them observed a dangerous condition. *Id.* at pp. 20-21.

Although overall responsibility for the safety of the work done by workers, a duty to supervise and enforce general safety standards at the work site, and the right to stop work if a safety violation is noted, may be insufficient to charge the defendant with that degree of control required to find liability under common law negligence or Labor Law § 200 (*Singh v. Black Diamonds, LLC*, 24 A.D.3d 138, 805 N.Y.S.2d 58 (1st Dept. 2005); *O'Sullivan v. IDI Constr. Co., Inc.*, 28 A.D.3d 225, 813 N.Y.S.2d 373 (1st Dept. 2006) *affirmed* 7 N.Y.3d 805, 822 N.Y.S.2d 745 (2006)),where, as in this case, the evidence is undisputed and clear that there was no general contractor at the Site and that defendants Tishman were the sole construction manager at the Site that day, this Court finds that defendants Tishman indeed fall under the ambit of Labor Law §§ 200 and 241(6). *See Walls v. Turner Constr. Co., supra*; *Aragona v. State of New York*, 74 A.D.3d 1260, 905 N.Y.S.2d 237 (2d Dept. 2010).

Thus, on their instant motion for summary judgment and dismissal of plaintiff's Labor Law § 200 claims, defendants Tishman bear the burden of establishing that they neither created the defective or dangerous condition which allegedly injured plaintiff, nor did they have actual

or constructive notice of same. *See Ortega v. Puccio*, *supra*; *Slikas v. Cyclone Realty, LLC*, *supra*.

In that regard, by submitting and relying upon, *inter alia*, plaintiff's testimony and the expert affidavit of John P. Coniglio, the current Executive Vice President of Operations of Occupational Safety & Environmental Assoc., Inc. (*see* Defendants Tishman's Affirmation in Support (Motion Seq. No. 05) Exhibit H), this Court finds that defendants Tishman have established their *prima facie* entitlement to judgment as a matter of law. There is no evidence on this record that defendants Tishman caused or placed the pieces of plywood in the ramp position, that they did so to create a "lip" over which the plaintiff or any other individual could fall or that they actually or otherwise intended to create a tripping hazard. *See Knight v. Certified Oils*, 239 A.D.2d 391, 658 N.Y.S.2d 337 (2d Dept. 1997).

Further, defendants Tishman have established that the alleged defective condition over which plaintiff fell was not "visible [or] apparent [or that it] exist[ed] for a sufficient length of time prior to the accident" such that they could have discovered or remedied it. *See Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 501 N.Y.S.2d 646 (1986). Indeed, plaintiff's own testimony establishes that she walked down the pathway several times daily and never saw the piece of plywood sticking up.

In light of defendants Tishman's showing of entitlement to judgment as a matter of law, the burden shifts to plaintiff, as the party opposing the motion, to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial. *See Alvarez v. Prospect Hospital,* 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

In opposition, counsel for plaintiff baldly and conclusively states that "Tishman failed to submit any evidence in any form as to when the subject ramp, or accident piece of plywood that was a component of the ramp, was last inspected" and that "Tishman fails to offer any evidence

regarding any particularized or specific inspection of the plywood ramp in the area of Clancy's fall on or before the date of Clancy's accident." *See* Plaintiff's Affirmation in Opposition (Motion Seq. No. 05) ¶ 73. Not only are these assertions unsubstantiated by the record, but the Court notes that plaintiff has failed entirely to oppose defendants Tishman's motion for summary judgment with respect to plaintiff's Labor Law § 200 and common law negligence claims with any evidentiary proof in admissible form. *See Zuckerman v. City of New York,* 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

Specifically, Anthony Fedor, the Director of Safety for defendants Tishman, testified at his deposition that he would walk the job site on a daily basis and that if a condition was discovered, he would note it in his site safety manager's log. *See* Defendants Tishman's Affirmation in Support (Motion Seq. No. 05) Exhibit F pp. 65-66. Further, the record contains evidence of defendants Tishman's daily reports which show that the area where the alleged incident occurred was cleaned one day before the incident and also on the day of the incident. *See* Defendants Tishman's Reply Affirmation (Motion Seq. No. 05) Exhibit A.

In light of plaintiff's failure to present a triable issue of fact, defendants Tishman's motion for summary judgment and dismissal of plaintiff's Labor Law § 200 and common law negligence claims is hereby **GRANTED**. Said claims are herewith dismissed.

Labor Law § 241(6)

Labor Law § 241(6) imposes a non-delegable duty upon owners and general contractors to provide reasonable and adequate protection and safety for their workers. *See Russin v. Louis N. Picciano & Son, supra.* In order for a defendant to be liable under Labor Law § 241(6), a plaintiff must establish that the defendant violated a specific Industrial Code provision that is applicable to the circumstances of the accident and demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the

circumstances of the accident. *See Ross v. Curtis-Palmer Hydro Elec. Co.*, 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993); *Zimmer v. Chemung County Performing Arts*, 65 N.Y.2d 513, 493 N.Y.S.2d 102 (1985). In order to impose liability under Labor Law § 241(6), the Industrial Code regulation at issue must contain "concrete specifications" and those that establish general safety standards through the use of general descriptive terms, such as "adequate," "effective," "proper," "safe," or "suitable," cannot be used as a basis for a § 241(6) claim. *See Ross v. Curtis-Palmer Hydro Electric Co.*, *supra* at 504-505.

In support of their claim that plaintiff did not sustain an injury as a result of defendants Tishman's alleged breach of its non-delegable duty to provide reasonable and adequate protection and safety under Labor Law § 241(6) (*Russin v. Louis N. Picciano & Son*, *supra*), defendants Tishman submit the expert affidavit of John P. Coniglio, a safety and workplace professional and the current Executive Vice President of Operations of Occupational Safety & Environmental Assoc., Inc., a company that specializes in among other things, safety engineering, workplace safety evaluation, technical analysis, on-site safety management and training. *See* Defendants Tishman's Affirmation in Support (Motion Seq. No. 05) Exhibit H. Although expert testimony on the question of whether a certain condition or omission constitutes a violation of a statute or regulation is permitted (*Dufel v. Green*, 84 N.Y.2d 795, 622 N.Y.S.2d 900 (1995); *Roux v. Caiola*, 254 A.D.2d 182, 679 N.Y.S.2d 53 (1st Dept. 1998) *lv denied* 93 N.Y.2d 803, 689 N.Y.S.2d 16 (1999)), the determination as to applicability and meaning of the law, including whether a particular condition or omission was in violation of a statute or regulation, is the province of the court. *See Spence v. Island Estates at Mt. Sinai II, LLC*, 79 A.D.3d 936, 914 N.Y.S.2d 203 (2d Dept. 2010); *Penta v. Related Cos.*, 286 A.D.2d 674, 730 N.Y.S.2d 140 (2d Dept. 2001).

Notably, in opposition to defendants Tishman's motion for summary judgment, plaintiff argues that only 12 NYCRR §§23-1.7(e)(1) and (e)(2) constitute a predicate for her Labor Law § 241(6) claim. Indeed, counsel for plaintiff "concedes (in his Affirmation in Opposition) that 12 NYCRR Sections 23-1.7, 1.7(b), 1.7(d), 1.7(f), 2.1, 2.1(2), 1.7(b)(1), 1.3, and 2.1(a), previously pled by CLANCY as the predicate to her Labor Law Section 214(6) [sic] claim, do not apply to the facts at bar." *See* Plaintiff's Affirmation in Opposition (Motion Seq. No. 05) ¶ 83.

With respect to plaintiff's contention that defendants Tishman violated Industrial Code provisions 12 NYCRR §§ 23-1.7(e)(1) and 23-1.7(e)(2), the Court finds that there remain questions of fact that cannot be determined at this juncture. Specifically, Industrial Code 12 NYCRR §§ 23–1.7(e) refers to "tripping and other hazards" where subsection (1) specifically deals with "Passageways" and subsection (2) deals with "Working areas." 12 NYCRR §§ 23-1.7 (e)(1) and (2) read as follows:

(e) Tripping and other hazards.

(1)Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

(2)Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

As to § 23-1.7(e)(1), while the Court is persuaded that the plywood ramp that plaintiff was traversing at the time of the subject accident was a "passageway" inasmuch as it was a part of a designated walkway on the job site leading to an area where she worked (*Aragona v. State of New York, supra*; *Bopp v. A.M. Rizzo Elec. Contrs., Inc.*, 19 A.D.3d 348, 796 N.Y.S.2d 153 (2d Dept. 2005), there remains an issue of fact as to whether the "sticking up" piece of plywood was "an obstruction[] or condition[] which could cause tripping." *See Bongiovanni v. KMO-361 Realty Associates*, 268 A.D.2d 365, 702 N.Y.S.2d 263 (1st Dept. 2000); *Kerins v. Vassar Coll.*, 293 A.D.2d 514, 740 N.Y.S.2d 400 (2d Dept. 2002). Neither defendants Tishman, nor their expert, address the issue of whether the "sticking up" piece of plywood constituted a tripping hazard within the meaning of 12 NYCRR 1.7(e)(1). Instead, counsel for defendants Tishman argues that § 23-1.7(e)(1) is inapplicable because plaintiff was injured in an open area of a construction and not a passageway. This is factually unfounded.

Similarly, § 23-1.7(e)(2), which requires owners and general contractors to keep "[t]he parts of floors, platforms and similar areas where persons work ... free from accumulations of dirt and debris ... insofar as may be consistent with the work being performed," also presents issues of fact as to whether the raised plywood which allegedly caused plaintiff's injuries constituted a tripping hazard. *See O'Sullivan v. IDI Constr. Co., Inc., supra*; *Smith v. New York City Hous. Auth.*, 71 A.D.3d 985, 897 N.Y.S.2d 232 (2d Dept. 2010).

Accordingly, defendants Tishman's motion for summary judgment and dismissal of plaintiff's Labor Law § 241(6) claim is hereby **DENIED**.

Defendants Tishman's motion (Seq. No. 04) for an order striking the Note of Issue in this action on the basis that discovery has not been completed is also hereby **DENIED**.

The Note of Issue may be vacated pursuant to New York Court Rules § 202.21(e) if the following circumstances are present:

> Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in any material respect. *** After such period, ***no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. ***

That is, a timely motion to vacate the Note of Issue pursuant to 22 NYCRR § 202.21(e) need only demonstrate in what respects the case is not ready for trial. *See Mosley v. Flavius*, 13 A.D.3d 346, 785 N.Y.S.2d 742 (2d Dept. 2004); *Audiovox Corp. v. Benyamini* 265 A.D.2d 135, 707 N.Y.S.2d 137 (2d Dept. 2000). However, if the party seeking discovery moves to compel such discovery after the twenty (20) day period provided by 22 NYCRR 202.21(e) has expired, the more stringent standard under 22 NYCRR 202.21(d) requiring the movant to demonstrate unusual or unanticipated circumstances *and* substantial prejudice must be met.

In this case, plaintiff filed the Note of Issue and Certificate of Readiness on October 18, 2011. Defendants Tishman's instant motion (Seq. No. 04) to strike the Note of Issue was filed on November 15, 2011. No Affidavit of Service has been provided to the Court as to when the Note of Issue and Certificate of Readiness were served upon defendants Tishman. Having said that, plaintiff also fails to oppose defendants Tishman's motion to strike the Note of Issue on the grounds that the motion is made outside the "20 days" limit set forth in the statute. Accordingly, for the purposes of this Court's determination, this Court herewith interprets defendants Tishman's motion as having been timely made.

Therefore, the provision which controls here is 22 NYCRR § 202.21(e) which requires defendants Tishman's mere showing that the case is not trial ready. The claim of lack of trial readiness in this case, however, is premised upon defendants Tishman's claim that it has not

received authorizations for plaintiff's medical providers, including plaintiff's primary care physician (with whom plaintiff has been treating for ten years and underwent arthroscopic shoulder surgery in January 2007), as well as records pertaining to plaintiff's car accident in which she sustained a laceration to her left wrist. Additionally, defendants Tishman claim that since plaintiff is advancing a claim for loss of wages in this action, they are entitled to plaintiff's W-2 records and wage records from 2005 to present.

Since plaintiff has indeed provided the requested authorizations in response to defendants Tishman's instant motion and since defendants Tishman have also been provided with the W-2s and an Affidavit of plaintiff that she did not work from 2009 till date, defendants Tishman's claim of lack of trial readiness is unfounded. Accordingly defendants Tishman's motion (Seq. No. 04) to strike the Note of Issue pursuant to § 202.21(e) is hereby **DENIED**. *Cf. Amoroso v. City of New York*, 66 A.D.3d 618, 887 N.Y.S.2d 163 (2d Dept. 2009).

The parties' remaining contentions have been considered and do not warrant discussion.

In conclusion, defendants Tishman's motion (Seq. No. 04), pursuant to 22 NYCRR 202.21(e), for an order striking the Note of Issue in this action and directing that all outstanding discovery be completed is hereby **DENIED.**

Furthermore, with respect to defendants Tishman's other motion (Seq. No. 05), defendants Tishman's motion for summary judgment and dismissal of plaintiff's Labor Law § 200 and common law negligence claims is hereby **GRANTED**. Said claims are herewith dismissed. However, defendants Tishman's motion for summary judgment and dismissal of plaintiff's Labor Law § 241(6) claim is hereby **DENIED**.

All applications not specifically address are hereby **DENIED**.

All parties shall appear for Trial in Nassau County Supreme Court, Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, on April 12, 2012, at 9:30 a.m.

This shall constitute the Decision and Order of this Court.

ENTER:

DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
March 29, 2012