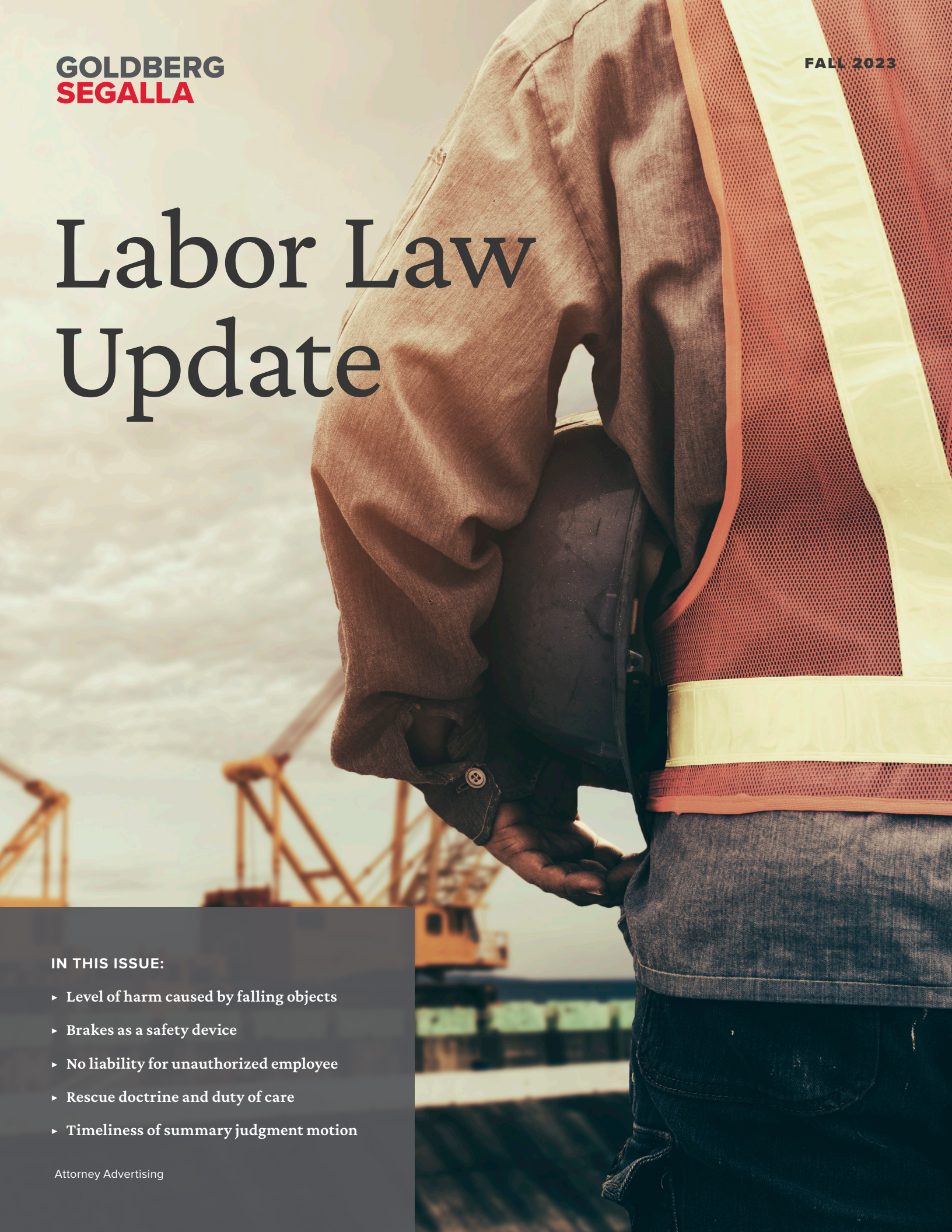
GOLDBERG SEGALLA

FALL 2023

Labor Law Update



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- Level of harm caused by falling objects
- Brakes as a safety device
- No liability for unauthorized employee
- Rescue doctrine and duty of care
- Timeliness of summary judgment motion

Attorney Advertising

Goldberg Segalla *Labor Law Update*

FALL 2023

Goldberg Segalla's *Labor Law Update* keeps clients informed about significant changes and cases involving New York's Labor Law. Cases are organized by court and date. If you have any questions about cases reported in this Labor Law Update or questions concerning Labor Law §§ 200, 240(1) and 241(6) in general, please contact Theodore W. Ucinski III or Kelly A. McGee.

IN THIS ISSUE

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EDITOR'S NOTE

As an initial matter, we experienced a bit of an anomaly with the Third Department. Typically, there are a number of Labor Law decisions that we report on. However, for this reporting period, our research reveals that the Third Department decided only one Labor Law construction case; *Barnhardt v. Richmond Rosetti,* which is discussed herein. It appears that the Third Department spent the first term of 2023 primarily working on Labor Law cases involving Sections 590 and 620, which address employees' rights to benefits.

In a case of first impression for the First Department they were required to determine whether the Rescue Doctrine could apply to a worker who brought suit under Labor Law § 241(6). In *Leonard v. The City of New York*[1] the court applied Labor Law § 241(6) to a rescuer and as part of their decision examined whether a rescuer under the Rescue Doctrine was entitled to the protections of the Labor Law. We have all heard the expression, "danger invites rescue," but what happens when that rescuer is injured while putting themselves in danger voluntarily? Where an actor voluntarily puts themselves in danger it necessarily cannot be a result of a defendant's negligence. Even more perplexing is whether this tenet of law allows an injured worker who is attempting to save a coworker to recover under the Labor Law when injured in the course of the rescue. In *Leonard*, a trench collapsed upon one of the plaintiff's coworkers. One of the steel beams that were supporting the trench fell four to five feet onto the plaintiff's coworker's leg. When the worker cried out, the plaintiff immediately jumped into the trench and attempted to lift the steel beam off his coworker. As he did so, he felt a big pop in his back and passed out. The plaintiff filed suit against the City of New York, alleging a violation Labor Law § 241(6) premised upon Industrial Code §§ 23-4.2(a) and 23-4.4(a), (b), (c) and (f). The defendant, the City of New York, took the position that the plaintiff was not directed to lift the beam and, as a result his decision to do so, was the sole proximate cause of his injuries. In opposition, the plaintiff argued the Rescue Doctrine and alleged under the doctrine a wrong to his coworker was a wrong to him.

The First Department noted that the Second Department refused to apply the Rescue Doctrine and allow recovery under a Labor Law § 240(1) claim, but in their decision the Second Department specifically noted an injured worker was not foreclosed from pursuing the claim under common law negligence or "other sections of the Labor Law."[2] The First Department next looked to the Fourth Department and their decision which noted an issue of fact as to whether a worker could recover under the Rescue Doctrine under Labor Law § 241(6).

In reaching the conclusion that the Rescue Doctrine does apply to Labor Law § 241(6) claims, the First Department specifically noted that workers who observe a coworker in peril may feel a heightened obligation to assist that coworker with whom the rescuer may have a bond of shared experience and endeavor. Furthermore, since the statute is designed to encourage owners and contractors to comply with the state's industrial code, by protecting all workers placed at risk by non-compliance with the Industrial Code, it is logical to extend that protection to workers who seek to rescue their coworkers. The court left the decision as to whether the workers' rescue attempt was a "reasonable course of conduct at the time" to the finder of fact.

Please note Goldberg Segalla has a number of construction-related publications, blogs, and rapid response teams. For more information, please refer to the back page of our update or contact us directly.

As always, we hope you find this edition of the Labor Law Update to be a helpful and practical resource. If you have any questions about the cases or topics discussed or have any feedback on how we can make the *Labor Law Update* more useful, please do not hesitate to contact us.

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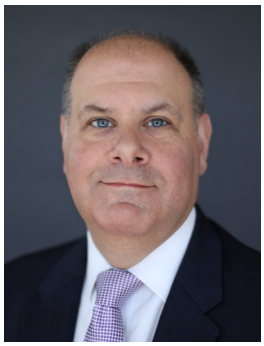

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1 216 A.D.3d. 51 (1st Dep't) May 11, 2023

2 Del Vecchio v. State of New York, 246 A.D.2d 498 (2d Dep't 1998)

TOPICS: *Prime contractor, General contractor, Supervision and control*

CELENTANO V. CITY OF NEW YORK

212 A.D.3d 456
January 12, 2023

The plaintiff's decedent, an HVAC mechanic, sustained injuries when he tripped over a concrete cinderblock at a construction site. ZHL, referred to as the general contractor and prime contractor on site, argued that it was not a general contractor within the meaning of the Labor Law as it had no duty to maintain the overall safety of the worksite. The record established that ZHL was a prime contractor, under a prime contract with the City of New York for general construction work, and had no authority over other contractors or their subcontractors. It was further found that ZHL did not cause the decedent's accident. Although its work required the use of cinderblocks, ZHL left the jobsite four months prior to the accident and there is no evidence connecting ZHL to the particular cinderblock at issue. As such, all claims including cross-claims for contractual indemnification against ZHL were dismissed.

PRACTICE NOTE: In defending Labor Law claims, determine the roles of the parties via contract and scope of work to determine applicability of the statute.

TOPICS: *Scaffold, Safety railings, Safety device, Lanyards*

MENA V. FIVE BEAKMAN PROPERTY OWNER, LLC

212 A.D.3d 466
January 12, 2023

The plaintiff was power washing paint from a façade of a building while standing on a scaffold when he fell through a 48-inch gap between the scaffolding planks and the building. He established his entitlement to summary judgment under Labor Law § 240. The plaintiff provided testimony that he was not provided with a harness or other safety device, and his expert's opinion concluded that even if a harness had been provided, there were no anchors to tie off. It was undisputed that the defendants did not install any safety railings on the building side of the scaffolding. With regard to the scaffolding company, the court properly denied its motion for summary judgment, dismissing the third-party complaint and cross-claims against it for contribution and common-law and contractual indemnification. There is no evidence as to whether the scaffolding company negligently erected the scaffold.

PRACTICE NOTE: Labor Law § 240 will be found if a plaintiff falls from a scaffold that was not properly placed or properly appointed for safe performance of work.

TOPICS: *Labor Law § 241(6), Conflicting evidence, Causation*

RUIZ V. ROOSEVELT TERRACE CO-OP, INC.

212 A.D.3d 487
January 17, 2023

While performing demolition work in an underground parking garage, the plaintiff was electrocuted. The plaintiff stated that the electrocution occurred when his jackhammer came in contact with an electrical conduit affixed in a concrete column. The electricity in the underground parking lot was supposed to be turned off while demolition work was being performed, and the presence of a live electrical conduit would have been a violation of Industrial Code § 23-1.13(b)(3) and (4). However, there was evidence in the record that suggests that the electrocution resulted from a loose wire that struck the plaintiff's leg. Due to conflicting evidence, the court found a triable issue as to how the plaintiff's injury came about, and he was not entitled to partial summary judgment on his Labor Law § 241(6) claim.

PRACTICE NOTE: Conflicting evidence regarding how the accident occurred will raise a genuine issue of a fact precluding a Labor Law finding.

TOPICS: *Labor Law § 240 defect, Evidence*

SOTELO V. TRM CONTRACTING, LP

212 A.D.3d 488
January 17, 2023

The plaintiff, who fell into a ditch that was covered with a tarp-like material while on his way to the bathroom, was granted summary judgment on Labor Law § 240. Testimony of the plaintiff's employer, the defendants' project manager, and post-accident photos submitted by the defendants did not adequately establish the absence of a ditch at the time of the accident and, therefore, were insufficient to raise a triable issue of fact. Further, the defendants failed to raise an issue of fact as to the plaintiff's sole proximate cause of his accident. The defendants contend that the plaintiff chose to use a bathroom further away from his workstation and attempted to cross over the ditch without first inspecting the covering that had replaced the plank before stepping on it. However, these circumstances still demonstrate that the plaintiff's accident was a result of the absence of a safety device and raise only an issue as to the plaintiff's comparative negligence, which is not a defense in Labor Law § 240.

PRACTICE NOTE: Presentation of evidence that contradicts the existence of a defect will not defeat a summary judgement motion when the plaintiff establishes the cause of accident.

TOPICS: *Labor Law § 240(1), Summary judgment, Issues of fact, Burden of proof*

GONCALVES V. CITY OF NEW YORK

212 A.D.3d 502
January 19, 2023

The plaintiff's motion for summary judgment on Labor Law § 240(1) was denied when he moved prior to any depositions being held and based merely upon his testimony at his Municipal Law 50-H hearing, in which he testified he was struck by a rolling pipe but did not know what caused the pipe to start rolling. The court found that the plaintiff did not meet his burden of proof of establishing that the alleged incident was the type of gravity-related event contemplated by the Labor Law. Further, the motion was premature since discovery was outstanding.

PRACTICE NOTE: Even though a plaintiff may have a valid case for summary judgment, aggressive prosecution may prove unhelpful when critical discovery is outstanding.

TOPICS: *Labor Law § 240(1), Summary judgment, Safety device, Gravity related*

ARIAS V. 139 E. 56TH ST. LANDLORD, LLC

212 A.D.3d 517
January 24, 2023

The plaintiff was injured while using a chain saw to cut wood beams on the roof of a building. When the chain saw became stuck, he was caused to fall. At the time, the plaintiff was wearing a harness and retractable lanyard, but sustained injuries when his head struck an adjacent beam. He also sustained shoulder and back injuries when the harness and lanyard engaged, preventing him from striking the floor below. The Appellate Division found that the plaintiff was entitled to summary judgment on Labor Law § 240(1). In spite of the fact that safety devices were provided and worked properly, they did not prevent the plaintiff from sustaining injuries as a result of the effects of gravity.

PRACTICE NOTE: Even if safety devices that are contemplated in the Labor Law are provided and properly used, if the plaintiff sustains injuries because of the effects of gravity and the safety device does not provide proper protection, there may be a Labor Law finding.

TOPICS: *Labor Law § 240(1), Summary judgment, Issues of fact, Burden of proof*

SANGARE V. 985 BRUCKNER BLVD. HOUS. DEV. FUND CORP.

212 A.D.3d 547
January 24, 2023

The plaintiff was injured while he was cleaning when a scaffold that was located above where he was working collapsed and fell upon him. The plaintiff moved for summary judgment after he was deposed but before any defendant depositions or non-party discovery was held. The court awarded summary judgment to the plaintiff on Labor Law § 240(1) even though discovery was outstanding. The court noted the outstanding discovery was the deposition of defendants' own witnesses and no non-party discovery was noted or contemplated. Further, the court noted that causation of the injuries was a matter of damages and not a matter of credibility that bears upon liability.

PRACTICE NOTE: Unlike the *Goncalves* case noted earlier, here the plaintiff had conclusive proof based upon his deposition testimony that a violation of Labor Law § 240(1) had occurred.

TOPICS: *Labor Law § 240(1), Summary judgment, Issues of fact, Burden of proof, Gravity related*

TAOPANTA V. 1211 6TH AVE. PROP. OWNER, LLC

212 A.D.3d 566
January 26, 2023

The plaintiff was injured while he and a coworker were lifting a glass and metal door, which was estimated be 300 lbs., into the back of a truck. As they lifted, the door was too heavy for the plaintiff and fell, pinning his hand and severing a finger between the door and ledge of the truck. The defendants came forward with an affidavit from the plaintiff's foreman, who did not witness the accident, but averred that the door only weighed about 100 to 120 lbs. and no lifting device was needed to place the door within the truck. The court found that this was a gravity-related incident under Labor Law § 240(1), in which the plaintiff was not provided with a safety device to protect him from the effects of gravity. They noted the affidavit was unpersuasive given that the weight of the door was sufficient to cause enough damage to sever a finger.

PRACTICE NOTE: The simple act of lifting something into a truck can be found to violate the Labor Law where the item weighs enough to travel a short distance and cause significant harm.

TOPICS: *Labor Law § 240(1), Summary judgment, Issues of fact*

VEGA V. METROPOLITAN TRANSP. AUTH.

212 A.D.3d 587
January 31, 2023

The plaintiff and his coworkers were asked to move a section of steel track which was 15- to 18-feet long and weighed several hundred pounds. Since they did not have the proper equipment to do so in the confined space they were working within, they improvised and built a handle on one end by mounting a piece of electric pipe perpendicular to the track and holding it in place with wire. They then took other pieces of the same type of pipe and wedged them under the track to create a system where they could pull the handle and have the track slide on the rolling pipes beneath it. The plaintiff was injured when the makeshift handle broke and he was caused to fall back onto a pile of cut rails. The plaintiff's motion for summary judgment on Labor Law § 240(1) was denied as issues of fact existed as to whether a safety device could be used in this situation, whether the workers were engaged in lifting, and whether the rail required securing.

PRACTICE NOTE: In a case with a complicated fact pattern, focus on what events or conduct actually caused the plaintiff's injuries.

TOPICS: *Labor Law § 240(1), Summary judgment, Gravity related, Ramp, Buggy, Brakes*

PACHECO V. TRUSTEES OF COLUMBIA UNIV. IN THE CITY OF N.Y.

213 A.D.3d 415
February 2, 2023

The plaintiff was awarded summary judgment on Labor Law § 240(1) when he was ejected from a buggy he was operating. The facts established that the plaintiff was operating the buggy and driving down a ramp when he ran over debris. The brakes failed, which caused the buggy to lose control and eject the plaintiff. The court found that the buggy itself, as well as the brakes, were safety devices which failed to protect the plaintiff against a gravity-related risk of transporting debris and materials down a sloped ramp.

PRACTICE NOTE: The First Department's finding that brakes are a safety device seems contrary to the devices enumerated within this section of the Labor Law.

TOPICS: *Labor Law § 240(1), Summary judgment, Gravity related, Ordinary construction hazard, Industrial code, Labor Law § 241(6)*

CONNOR V. AMA CONSULTING ENGRS. PC

213 A.D.3d 483
February 14, 2023

The plaintiff was injured when a two-foot wide by eight-foot high single piece of sheet rock tipped over and fell no more than three feet onto the plaintiff. The plaintiff's motion for summary judgment on Labor Law § 240(1) was denied, as the court found that this was an ordinary construction-related hazard. The court noted this falling object traveled a short distance and was not something that could generate a significant amount of force in a short distance. The plaintiff also sought to amend his bill of particulars to add additional industrial code violations to support his Labor Law § 241(6) claim via a cross motion when the defendants moved to dismiss the violations that had previously been pled. The court did not allow for the amendment, noting the plaintiff violated a prior court order and had ample time to amend the pleadings prior to motion practice.

PRACTICE NOTE: It is rare for the court to find something to be an "ordinary construction hazard." However, in reading the decision, there is a note of frustration in the court's decision based upon counsel's manner of handling the motions.

TOPICS: *Labor Law § 241(6), Tripping hazards, Industrial Code § 23-1.7(e)(2), Labor Law § 200, Credibility issues and indemnification*

ROMANO V. NEW YORK CITY TR. AUTHORITY

213 A.D.3d 506
February 14, 2023

The plaintiff, an employee of a non-party general contractor, sustained injuries when he stepped and fell on a piece of electrical conduit lying on the floor while cleaning debris at the jobsite. The court correctly granted the plaintiff summary judgment on the Labor Law § 241(6) claim, based upon the owner's violation of Industrial Code § 23-1.7(e)(2). The owner was not entitled to dismissal of the plaintiff's Labor Law § 200 and common-law negligence claims as constructive notice of the accident-producing condition remained an issue of fact. Testimony regarding which defendant owned the subject electrical conduit causing the fall, and whether the conduit was open and obvious, presented factual and credibility issues that could not be determined on a summary judgment motion.

PRACTICE NOTE: To make out a Labor Law § 241(6) claim, the plaintiff must establish that the owner or general contractor violated a sufficiently specific industrial code and that such violation was the proximate cause of the plaintiff's injuries.

TOPICS: *Labor Law § 240(1), Fall down stairs, Lack of safety device*

CABA V. 587-91 THIRD OWNER, LLC

213 A.D.3d 520
February 16, 2023

The plaintiff sustained injuries when moving a heavy spray paint machine down a flight of stairs. While carrying the machine with his foreman, the plaintiff was walking backwards and missed a step, causing him to fall back 13 steps. Because the plaintiff's foreman directed him to work on an elevated work platform, the stairway, the defendants were required to provide the plaintiff with an adequate safety device for the task of carrying the paint machine down the stairs. The First Department upheld the lower court's Labor Law § 240(1) finding because the absence of a safety device was the direct cause of the plaintiff's injury.

PRACTICE NOTE: The stairway where the plaintiff was directed to work was considered an elevated platform pursuant to the Labor Law. Thus, the defendant violated Labor Law § 240(1) by failing to provide an adequate safety device for the task of carrying a heaving paint machine down the stairs.

TOPICS: *Labor Law § 240(1), Falling object, Labor Law § 200, Hearsay evidence*

MALAN V. FSJ REALTY GROUP II LLC

213 A.D.3d 541
February 16, 2023

The plaintiff, a concrete laborer, was granted summary judgment on his Labor Law § 240(1) claim after being struck by a 10-foot section of cement hose that was allegedly dropped by a worker from an open second-floor level of building under construction. A cement pour had just taken place on the second floor when the plaintiff took a ladder down from the second floor and was hit by the object just as he was stepping away from the ladder at ground level. The plaintiff's case was not dependent on whether he had observed what hit him, or whether the object in question "was dropped or fell in another manner." The plaintiff was not in a "drop zone" when injured, and the project manager and owner testified that the object should not have been dropped. The First Department vacated the lower court decision, reinstated the Labor Law § 240(1) claim, and granted the plaintiff summary judgment on the Labor Law § 240(1) claim.

PRACTICE NOTE: In a Labor Law § 240(1) falling objects case, the success of the plaintiff's case does not depend on whether he saw what hit him or if the object "was dropped or fell in another manner" when the plaintiff was not in a "drop zone" and there is testimony that the object should not have been dropped.

TOPICS: *Covered person, Enumerated activity, Labor Law § 200, Notice, Supervision and control*

DEJESUS V. 935 BRONX RIV. AVE., LLC

213 A.D.3d 552
February 21, 2023

The lower court correctly found that the plaintiff, an auto salesperson who occasionally engaged in property management type duties at the request of his employer's principal, was not a covered person under Labor Law § 241(6) or § 240(1). The plaintiff's employment did not involve the performance of construction, alteration, demolition, or similar labor, and the company he worked for did not regularly undertake enumerated duties under the Labor Law. In addition, at the time of the accident, the plaintiff's employer had directed him only to videotape the premises vacated by a tenant and not to perform tasks concerning the condition of the premises. Thus, work being performed by the plaintiff at the time of his accident would not constitute demolition or alteration of the premises.

PRACTICE NOTE: "Covered work" as proscribed by the Labor Law is defined as construction, alteration, demolition, or similar labor.

TOPICS: *Labor Law § 240(1), Sole proximate cause, Recalcitrant worker defense*

FRANCIS V. 3475 THIRD AVE. OWNER REALTY, LLC

213 A.D.3d 555
February 21, 2023

The plaintiff was entitled to summary judgment on his claim pursuant to Labor Law § 240 (1). His deposition testimony established that a proximate cause of his injury was the unsecured planks of an outrigger scaffold, which collapsed when he stepped on it with his boss, causing them to fall approximately 16 feet to the ground. The court found that the defendants did not raise a triable issue of fact as to whether the plaintiff was the sole proximate cause of his injuries. Since the statutory violation of a defective scaffold was a proximate cause of the accident, the plaintiff cannot be the sole proximate cause of his accident and the defendants cannot avail themselves of the recalcitrant worker defense.

PRACTICE NOTE: Where the plaintiff's testimony establishes that a statutory violation of a defective scaffold – a violation of Labor Law § 240(1) – was the proximate cause of his accident, the defendants cannot prevail on a recalcitrant worker defense.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Ladder, Water pipe, Elevation-related risk*

LINDSAY V. CG MAIDEN MEMBER, LLC

213 A.D.3d 604
February 23, 2023

The plaintiff was entitled to summary judgment on his Labor Law § 240(1) claim because he established through his testimony that he fell from an unsecured, wet A-frame ladder while trying to close a leaking water valve. The First Department held that it was the plaintiff's work that exposed him to an elevation-related risk, against which the defendant failed to provide proper protection. Further, the First Department found that the plaintiff was entitled to partial summary judgment on his Labor Law § 200 claim, holding that even though there was no evidence of supervision of the "means and methods of work," the evidence was clear that it was the defendant's workers that broke the pipe, causing the dangerous condition which led to the accident.

PRACTICE NOTE: Where evidence of lack of supervision is apparent, a defendant can still be liable under Labor Law § 200 where there is evidence that the defendant created the dangerous condition.

TOPICS: *Labor Law § 241(6), Labor Law § 240(1), Elevator, Indemnification*

GARCIA V. 13 W. 38 LLC

214 A.D.3d 408
March 2, 2023

The plaintiff was injured when assisting with the repair of an elevator. The plaintiff was found not to be an employee of the defendants nor a statutory agent, as the defendants had no supervisory control over the work being performed when the injury occurred. Further, the defendants were not liable to the plaintiff under the Labor Law because the plaintiff was not an employee or agent of the defendants. The plaintiff was brought to work on the job by an employee with no authorization to hire or supervise.

PRACTICE NOTE: Defendants are not liable for an unauthorized employee under the Labor Law when a non-supervisory employee secretly hired the plaintiff.

TOPICS: *Labor Law § 240(1), Issues of fact, Sole proximate cause*

HERNANDEZ V. 46-2428TH ST., LLC

213 A.D.3d 451
March 9, 2023

The plaintiff testified that he fell from an unsecured extension ladder leaning against the wall while demolishing a platform inside an office of a building owned by the defendant. He was working with his coworkers and his foreman. The foreman denied that the events occurred as described by the plaintiff. The First Department upheld the Supreme Court's denial of the plaintiff's summary judgment motion as the conflicting evidence raised a question of fact as to the manner in which the accident, if any, occurred.

PRACTICE NOTE: Conflicting testimony regarding how and if an accident occurred creates a question of fact sufficient to preclude summary judgment in the plaintiff's favor on a Labor Law § 240(1) claim.

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Industrial code, Elevator pit*

DEVITA V. NYY STEAK MANHATTAN, LLC

214A.D.3d 477
March 14, 2023

The plaintiff was injured when he tripped in an alleged poorly lit passageway and fell into an elevator pit. The plaintiff's Labor Law § 241(6) claim survived as he raised an issue regarding a violation of Industrial Code §§ 23-1.7(e) and 23-1.30. The plaintiff's testimony established that he tripped over debris in a work area passageway that was dimly lit, and then into the elevator pit.

PRACTICE NOTE: In order to maintain a Labor Law § 241(6) claim, the plaintiff must establish violation of a sufficiently specific industrial code that was the proximate cause of plaintiff's injury.

TOPICS: *Labor Law §§ 240(1) and 241(6), Industrial Code § 23-6.1(h), Beam*

FUNDUS V. SCAROLA

214 A.D.3d 479
March 14, 2023

The plaintiff was injured when removing a 12-foot-long steel beam while dismantling a movie set. The First Department affirmed the lower court finding that a question of fact exists due to conflicting testimony of the plaintiff and his coworkers. The plaintiff testified to seeing the beam starting to spin as it was being lowered, even though tag lines were being used to stabilize the beam from spinning. The plaintiff alleges he was struck while he was trying to stop the beam from spinning and hitting his co-workers. However, the supervisor testified that tag lines were not used, and the beam was never spinning. The conflicting testimony raised an issue of fact as to whether a violation of the Industrial Code § 23-6.1(h) was a proximate cause of the injury or whether the accident was the plaintiff's own unauthorized conduct of moving under the beam while it was being lowered.

PRACTICE NOTE: Conflicting evidence regarding the cause of the plaintiff's accident will raise issues of fact and denial of a summary judgment motion.

TOPICS: *Labor Law § 240(1), Falling object*

IUCULANO V. CITY OF NEW YORK

214 A.D.3d 535
March 21, 2023

The plaintiff was injured when components of a recently installed sidewalk shed fell on top of him. The plaintiff testified that, prior to the accident, he had just helped raise the components into position. The plaintiff's foreman provided an affidavit stating that the components fell as they were being lifted with braces, as one of the plaintiff's coworkers lost his grip at the base. The court granted summary judgment in favor of the plaintiff on his Labor Law § 240(1) claim. In doing so, the court found no issues of fact on either the nonexistence (under the plaintiff's version of events) or inadequacy (under the foreman's version of events) of the safety devices involved in the plaintiff's accident.

PRACTICE NOTE: The court noted that the fact that the plaintiff's coworker may have lost his grip when the accident occurred was irrelevant, as people are not considered safety devices under Labor Law § 240(1).

TOPICS: *Labor Law § 240(1), Falling object, Contractual indemnification*

SPERO V. 3781 BROADWAY, LLC

214 A.D.3d 546
March 21, 2023

The plaintiff was injured when he was struck by a waterlogged plywood board that measured eight feet by six feet and weighed between 60 and 100 lbs. The board was attached to a door header with a single screw, but came loose due to a gust of wind. The court granted the plaintiff summary judgment on his Labor Law § 240(1) claim. The court also denied the owner defendant's motion for summary judgment on contractual indemnification against a subcontractor. Because the evidence established that the general contractor was solely responsible for the erection of the board, and the subcontractor's indemnification language limited its liability only to its own negligent acts or the acts of another entity for which it would be liable, the provision had not been triggered.

PRACTICE NOTE: In granting summary judgment, the court evaluated deposition testimony, photographic evidence, as well as expert opinion. In doing so, the court found that the plaintiff was struck with significant force given the weight of the board, the height differential, and the gust of wind. Therefore, the board constituted a load that required securing for the undertaking.

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Enumerated parties, Integral to work*

BALBUENA V. 395 HUDSON N.Y., LLC

214 A.D.3d 586
March 30, 2023

The plaintiff was performing janitorial services when she tripped over allegedly uneven Masonite boards that had been laid over a hallway floor to protect the carpet. In deciding the defendants' motions for summary judgment, the court noted that the alleged accident was caused by a defective premises condition, rather than the means and methods of the work. Therefore, liability depended on whether the owner or contractor created or had actual or constructive notice of the allegedly hazardous condition. The moving defendants either placed the Masonite boards on the floor or performed frequent inspections of the hallway prior to the accident. The court denied the defendants' motions for summary judgment as to Labor Law § 200, finding issues of fact as to whether they either created the alleged defect in placing the boards, or had actual or constructive notice of any defects during the inspections. The court also noted that it did not matter whether the plaintiff was within the class of workers protected under the Labor Law for the purposes of the § 200 claim, as that statute did not contain such limitations. The court dismissed the plaintiff's Labor Law § 241(6) claim, however, finding that the plaintiff was not a protected worker under the statute.

PRACTICE NOTE: In dismissing the plaintiff's Labor Law § 241(6) claim, the court noted that even if the plaintiff was within the protected class of workers, the Masonite boards were an integral part of the construction work and did not constitute a tripping hazard.

TOPICS: *Labor Law § 240(1), Ladder, Comparative fault, Sole proximate cause*

MELENDEZ V. 1595 BROADWAY LLC

214 AD.3d 600
March 30, 2023

The plaintiff was using an unsecured extension ladder to descend from a sidewalk bridge when it slid and collapsed under him, causing him injury. The court granted the plaintiff summary judgment on his Labor Law § 240(1) claim. In doing so, the court found that any failure by the plaintiff to check the locking mechanism for the ladder to ensure that it was tied off amounted to comparative negligence and was not applicable to Labor Law § 240(1). Further, the plaintiff's failure to ask coworkers to hold the ladder while he descended did not make him the sole proximate cause of his accident, as the plaintiff's coworkers could not be considered safety devices as contemplated by the statute.

PRACTICE NOTE: While the plaintiff testified that there were seven witnesses to his accident, the court noted that summary judgment could have been granted even if he were the sole witness. Nothing in the record refuted the plaintiff's account of the accident nor called into question his credibility.

TOPICS: *Labor Law § 241(6), Industrial code violation*

FISCHER V. VNO 225 W, 58TH ST, LLC

215 A.D.3d 486
April 18, 2023

The plaintiff was injured after falling from an elevated plywood platform that ran from an exterior hoist of a building into a mechanical room. The court denied the plaintiff's motion for summary judgment on his Labor Law § 241(6) claims based upon violations of Industrial Code §§ 12 NYCRR 23-1.22(b)(2) and 23-5.1. As for the alleged violation of § 12 NYCRR 23-1.22(b)(2), the court found that the record failed to show that the platform was a runway or ramp intended for the use of "persons only." As for the alleged violation of § 12 NYCRR 23-5.1, the court noted that there was no evidence that the platform served as the functional equivalent of a scaffold. The court dismissed the plaintiff's Labor Law § 240(1) claim, finding that even under the plaintiff's version of the accident, he only fell a distance of from one and a half to two feet. This distance was not a physically significant height elevation to trigger Labor Law § 240(1).

PRACTICE NOTE: Although the defendant's affirmative defense of comparative fault was dismissed for failing to oppose the plaintiff's motion for summary judgment on the issue, the court noted that the defendant did not cite anything in the record that established that the plaintiff may have been at comparative fault in causing his own accident.

TOPICS: *Labor Law § 240(1), Scaffold*

MEJIA V. SUPER P57 LLC

215 A.D.3d 491
April 18, 2023

The plaintiff was injured when he fell from a scaffold. The court denied the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim and granted the defendants' motion to dismiss the claim. The court noted that the defendants established that the scaffold was provided with proper guardrails and was undamaged after the alleged accident. Therefore, there was no violation of Labor Law § 240(1).

PRACTICE NOTE: The plaintiff was unable to recall how he fell from the scaffold and could provide no evidence that his fall was caused by the lack of a safety device. The court noted that any finding of a violation of Labor Law § 240(1) would be purely speculative.

TOPICS: *Labor Law § 240(1), Safety device, Sole proximate cause*

SANCHEZ V. WALTON AVE. REALTY ASSOC. LLC

215 A.D.3d 506
April 18, 2023

The plaintiff was injured when he fell from two unsecured A-frame ladders while installing pipe and electrical lines from interior refrigeration units to compressors in a courtyard. The First Department held that the plaintiff was entitled to summary judgment on his Labor Law § 240(1) claim as it was undisputed that the only safety devices supplied to him were inadequate protection to perform the installation while at elevation. The defendant owner failed to raise an issue of fact that the plaintiff was the sole proximate cause of his injuries.

PRACTICE NOTE: Where it is established that a plaintiff was not provided with an adequate safety device, a defendant cannot avail itself of the sole proximate cause defense.

TOPICS: *Labor Law § 200, Means and methods, Relation-back doctrine, Vicarious liability, Res Ipsa Loquitur*

ESTEVEZ V. SLG 100 PARK LLC

215 A.D.3d 566
April 25, 2023

The plaintiff was injured when an infrared sensor was not functioning and the doors to an elevator closed on him as he was entering the elevator. The First Department held that the plaintiff was entitled to amend his complaint to add additional entities that were united in interest with the owner defendant even though the statute of limitations had expired, as they were closely interrelated, centrally controlled, and represented to the public as a single organization. With regard to Labor Law § 200, the court held that to the extent the plaintiff's claim was based on the manner and means of the plaintiff's work, the owner established that it only had general supervisory authority over the site and did not control the manner in which the plaintiff's work was being performed. However, to the extent liability was based on a dangerous condition, as the elevator owner they had a non-delegable duty to ensure the elevator was kept in a reasonably safe condition even though they entered into a full-service maintenance contract for maintenance and repair of the elevators. So, the owner was not entitled to summary judgment. The contractor was not entitled to summary judgment on the common-law negligence claims as there was evidence that if the sensor was functional, it would have prevented the plaintiff's accident from happening. The court held that the contractor could be held liable under the doctrine of *res ipsa loquitur*. The court held that the plaintiff's Labor Law § 241(6) claims were properly dismissed as the industrial code regulations relied on only set general safety standards, which are insufficient to sustain a Labor Law § 241(6) claim.

PRACTICE NOTE: Property owners and their agents are vicariously liable for injuries sustained as a result of their subcontractors' negligence, regardless of whether they had notice of any defects.

TOPICS: *Labor Law § 200, Labor Law § 241(6), Slip and fall*

BRUNET V. JP MORGAN CHASE BANK N.A.

216 A.D.3d 423
May 4, 2023

The plaintiff was injured when he slipped and fell on ice on a public sidewalk adjacent to the defendant's building while performing construction work. The First Department upheld the lower court's finding of summary judgment in the defendant's favor on the Labor Law § 200 and common-law negligence claims because it established that it owed no duty to maintain the public sidewalk. Further, the defendant did not cause or create the condition because the work being performed was not to the exterior of the building and the defendant did not make special use of the sidewalk. The plaintiff failed to raise a triable issue of fact. The dismissal of the Labor Law § 241(6) claims was also upheld as the sidewalk and the work at the premises did not fit into any of the claimed industrial code regulations.

PRACTICE NOTE: Generally, an owner or lessor has no duty to maintain a public sidewalk adjacent to their premises.

TOPICS: *Labor Law § 240(1), Comparative negligence*

SANCHEZ V. MC 19 E. HOUSTON LLC

216 A.D.3d 43
May 4, 2023

The plaintiff was injured when he slipped and fell from an unsecured and temporary wooden ladder while carrying eight rolls of wire. The First Department held that the plaintiff established partial entitlement to summary judgment with his testimony that the ladder suddenly shifted and slid down. The defendant's unsworn accident report prepared by a site safety manager relied on in opposition did not raise an issue of fact. It stated that the plaintiff slipped on one of the rungs of the ladder, and the court held that it did not contradict the plaintiff's testimony. An email from the project manager to the plaintiff's employer stating that the plaintiff slipped off a ladder similarly did not contradict the plaintiff's testimony and was inadmissible hearsay. Photos relied on by the defendant in opposition were not authenticated by any witness. That the plaintiff was carrying rolls of wire in his hand while on the ladder was not a defense as the court found that, at most, it established comparative negligence.

PRACTICE NOTE: Comparative negligence is not a defense to Labor Law § 240(1).

TOPICS: *Labor Law § 240(1), Elevation-related risk, Sole proximate cause*

CANTRE V. BLDG OCEANSIDE LLC

216 A.D.3d 451
May 9, 2023

The plaintiff alleged that he was hit in the back of his ear by a pipe while he was bending down. The pipe allegedly came from a "debris cart" that the plaintiff had placed about 10 pipes into in order to transport them to an elevator. The First Department held that there were issues of fact sufficient to deny summary judgment on the plaintiff's Labor Law § 240(1) claim as to whether there was an elevation-related risk and whether the plaintiff was the sole proximate cause of the accident. The plaintiff testified that he chose to place all of the pipes in the cart at the same angle where they stuck out five feet. The general contractor's superintendent and a site safety expert relied on by the defendants opined that this method created an obvious risk that the cart would tip over. There was also evidence that the plaintiff was not authorized to place pipes in the cart.

PRACTICE NOTE: Liability arises under Labor Law § 240(1) only where the plaintiff's injuries are the direct consequence of an elevation-related risk that they are not properly protected against.

TOPICS: *Labor Law § 241(6), Rescue doctrine, Sole proximate cause*

LEONARD V. CITY OF NEW YORK

216 A.D.3d 51
May 11, 2023

After a trench wall collapsed and a coworker became caught under a heavy steel beam, the plaintiff responded by climbing into the trench and trying to lift the beam off his coworker. Injured in his attempt to lift the beam, the plaintiff alleged violations of Labor Law § 241(6). It was undisputed that the industrial regulations governing the configuration and shoring of trenches relied on by the plaintiff were sufficiently specific to support a Labor Law § 241(6) claim, and that the defendants violated the provisions. The defendants argued that the plaintiff was the sole proximate cause of his accident since he was not directed by anyone in authority to lift the beam, and that his injury occurred after the trench failed and, therefore, the plaintiff's injuries did not arise from a violation of the industrial code. The plaintiff argued that the rescue doctrine applied to his claim and, as such, a wrong to his coworker was a wrong to him for which the defendants were liable. The First Department reversed the lower court and held that the rescue doctrine can apply to claims under Labor Law § 241(6), but it was for the finder of fact to determine whether the plaintiff's rescue attempt was a reasonable course of conduct at the time.

PRACTICE NOTE: The rescue doctrine establishes a duty of care toward a potential rescuer where a culpable party has placed another person in a position of imminent peril which invites a third party, the rescuing plaintiff, to come to the aid of the imperiled person. There must be more than a mere suspicion of danger to the life of another but the attempted rescue only needs to be a reasonable course of conduct at the time and the danger does not need to be as real as it appeared.

TOPICS: *Labor Law §§ 240(1) and 241(6), Prima facie case, Sole proximate cause*

RIVERA V. SUYDAM 379 LLC

216 A.D.3d 495
May 11, 2023

The plaintiff, a construction worker, was injured when he fell from an unsecured ladder when the ladder shifted as he attempted to place a wooden beam onto the platform of the scaffold that was used to access the roof area. The plaintiff also testified that he was required to stand on the top rung of the ladder because the ladder was too short to enable him to reach the platform. The plaintiff established his *prima facie* entitlement to partial summary judgment on Labor Law § 240(1) as he was

able to show that the ladder did not provide adequate protection for his work; he was not required to prove that the ladder was defective. In opposition, the defendants raised triable issues of fact regarding whether the plaintiff was the sole proximate cause of his injuries by introducing the testimony of the site superintendent. The site superintendent testified that he instructed the plaintiff and his coworkers to use the scaffold's built-in ladder instead of the A-frame ladder, and that he instructed them on the morning of the accident to tie off and use the fall protection equipment provided. It was also held that Industrial Code § 23-1.23(b)(4)(ii), which requires a ladder's footings be firm, was inapplicable since there was nothing in the record that indicated that the ladder had problems with its feet or that the ladder's footing rested on a slippery or unsafe surface.

PRACTICE NOTE: Plaintiffs need only show that a ladder provides inadequate protection, and not that the ladder was defective, to establish their *prima facie* entitlement to summary judgment. Evidence that a plaintiff was instructed to use different equipment and personal fall protection can raise a triable issue of fact regarding whether the plaintiff was the sole proximate cause of his/her accident.

TOPICS: *Labor Law § 240(1), Prima facie case, Falling from an alleged de minimis height*

RUIZ V. PHIPPS HOUSES

216 A.D.3d 522
May 16, 2023

The plaintiff was injured when a heavy scaffolding pole fell on his head and shoulder while performing construction. A coworker of the plaintiff was trying to hold the pole upright but could not do so because it was not secured. The plaintiff established his *prima facie* entitlement to summary judgment on Labor Law § 240(1) since the evidence showed that his injuries were caused by the defendant's failure to secure such pole from falling, and flowed directly from the application of the force of gravity to the pole. Contrary to the defendant's position, the pole fell from a distance that was not *de minimis* as the pole was made of iron and was able to generate a large amount of force during its descent.

PRACTICE NOTE: The distance an object falls will not be considered de minimis when such object is heavy and can generate a large amount of force.

TOPICS: *Labor Law § 200, Labor Law § 241(6)*

CABRAL V. ROCKEFELLER UNIV.

216 A.D.3d 527
May 18, 2023

The First Department found that the defendants, who were found liable pursuant to Labor Law § 241(6), adequately pled a cause of action in their third-party complaint for common-law indemnity against the third-party defendant. The First Department, however, found that the third-party claim for contribution was correctly dismissed since one held liable solely on account of the negligence of another has a claim for indemnification and not contribution.

PRACTICE NOTE: A party found liable due to the negligence of another party can seek indemnification from such party, but not contribution.

TOPICS: *Labor Law § 200, Labor Law § 241(6), Industrial Code § 23-1.7(d)*

PONCE V. CITY OF NEW YORK

190 N.Y.S.3d 350
June 6, 2023

The First Department reversed the lower court's ruling which granted the defendant's motion for summary judgment regarding the plaintiff's Labor Law § 200 and § 241(6) claims. The First Department found that since the defendant failed to address the alleged fact that its employees were not at the project on the morning of the accident, the defendant failed to make a *prima facie* showing that it did not have actual or constructive notice of the icy condition on site. Additionally, such icy condition was not a hazard inherent to the plaintiff's work since his work was limited to inside structures and not to remedy ice in the area between the buildings where he slipped and fell. Regarding Labor Law § 241(6), the First Department found that the lower court correctly dismissed the plaintiff's Labor Law § 241(6) claim since the location of the plaintiff's fall, which he described as an open area, was not a walkway or pathway so as to implicate Industrial Code § 23-1.7(d).

PRACTICE NOTE: An affidavit or other documentary evidence is necessary to support a defense that the defendant had no notice of the condition based upon the defendant not being present at the site prior to the accident. To implicate Industrial Code § 23-1.7(d), the accident must occur on a walkway or pathway.

TOPICS: *Labor Law § 200, Notice*

CAVEDO V. FLUSHING COMMONS PROP. OWNER, LLC

191 N.Y.S.3d 400
June 22, 2023

The defendants were not entitled to summary judgment regarding the plaintiff's Labor Law § 200 claim since the defendants offered no evidence from their personnel as to when the location of the accident was last inspected and/or cleaned of all debris. The plaintiff's testimony that the workspace "seemed" clean was too equivocal to establish the defendants' *prima facie* entitlement to summary judgment. Such statement was also insufficient to establish that the defendants lacked actual or constructive notice of the alleged hazardous debris condition.

PRACTICE NOTE: To establish that a defendant did not have notice of an allegedly dangerous/hazardous condition, an affidavit or documentary evidence is necessary to establish when an area was last inspected and/or cleaned.

TOPICS: *Labor Law § 240(1), Covered work, Routine maintenance*

MANFREDONIA V. 750 ASTOR LLC

191 N.Y.S.3d 404
June 22, 2023

The plaintiff, an HVAC worker, was injured when falling from an extension ladder. He was entitled to summary judgment on his Labor Law § 240 claim by submitting deposition testimony showing that he was on site to repair a drain pipe on an HVAC unit when the extension ladder he was using collapsed as he descended. The owner and tenant failed to prove that the

plaintiff was performing routine maintenance rather than repair work as the plaintiff explained in testimony of the work he planned to perform. Work tickets were prepared only after work was performed and the plaintiff's accident prevented him from completing one. As such, the absence of a work ticket showing that the repair, as described by the plaintiff, was subsequently performed by another service tech did not call into question the plaintiff's credibility.

PRACTICE NOTE: Documentary evidence is needed to establish whether the plaintiff performed routine maintenance or repair work.

TOPICS: *Conditional contractual indemnification*

MCKINNEY V. EMPIRE STATE DEV. CORP.

2023 N.Y. App. Div. LEXIS 3413
June 22, 2023

Tishman, the general contractor, was entitled to conditional summary judgment on its contractual indemnification claim against United States Roofing since the indemnification provision was triggered because the plaintiff, a United States Roofing employee, was injured during the performance of his work. The First Department explained that conditional summary judgment was appropriate because the record established that Tishman's negligence, if any, was not the sole proximate cause of the accident, and the extent of the indemnification would depend on the extent to which any negligence by Tishman was found to have contributed to the accident. Tishman was not entitled to summary judgment on its contractual indemnification claims against Atlantic Hoisting and ADCO because it had not yet been determined whether the plaintiff's accident arose out of or resulted from the acts or omissions of Atlantic Hoisting or ADCO.

PRACTICE NOTE: When an indemnification provision is triggered, a party is entitled to conditional contractual indemnification when such party's negligence, if any, was not the sole proximate cause of the accident.

TOPICS: *Labor Law § 240(1), Scaffold, Stairs*

KRARUNZHIV V. 91 CENT. PARK W. OWNERS CORP.

212 A.D.3d 722
January 18, 2023

The plaintiff, a mason and painter, was injured while carrying a bucket of glue after tripping over a rug-covered decorative metal building fixture located at the top of a set of stairs, which caused him to fall in front of the steps to a lower scaffold. The scaffold stairs lacked a handrail. The Appellate Division upheld the Supreme Court's dismissal of the plaintiff's Labor Law § 240(1) claim against the building owner because the injury resulted from a hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance. The court found that there was no indication that the scaffold/stairs did not allow the plaintiff to complete his work at a height. Further, the court found that the rug-covered metal fixture was not the risk which brought about the need for the scaffold and stairs in the first place. Rather, the plaintiff's injuries were the result of the usual and ordinary dangers at a construction site.

PRACTICE NOTE: Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no § 240(1) liability exists.

TOPICS: *Labor Law § 241(6), Industrial Code § 23-1.7(e)(1)*

STEWART V. BROOKFIELD OFF. PROPS., INC.

212 A.D.3d 746
January 18, 2023

The plaintiff commenced an action alleging violations of Labor Law § 241(6) premised upon Industrial Code § 12 NYCRR 23-1.7(e)(1), which requires owners and general contractors to keep all passageways free from obstruction which could cause tripping. The Appellate Division upheld the Supreme Court's granting of summary judgment to the defendants because the plaintiff failed to demonstrate that the area where he fell was flanked by piles of construction materials such that it could be considered a passageway. The court further found that the affidavit submitted by the plaintiff was inconsistent with earlier testimony and appeared to be tailored to indicate that he was walking in a narrow passageway to bring the case within the scope of this provision of the industrial code.

PRACTICE NOTE: Where liability under Labor Law § 241(6) is premised upon an alleged violation of § 12 NYCRR 23-1.7(e)(1), there must be evidence that the plaintiff's injury took place in a site that could be considered a passageway.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Sole proximate cause, Labor Law § 241(6), Industrial Code § 23-1.22(b)(2) and (4)*

CALLE V. CITY OF NEW YORK

212 A.D.3d 763
January 25, 2023

The plaintiff alleged that while exiting an excavation, he stepped on a wooden cross brace which collapsed and caused him to fall five to six feet to the bottom of the excavation. The Appellate Division reversed the decision of the Supreme Court and granted summary judgment to the City of New York on the plaintiff's Labor Law § 240(1) claim. The Appellate Division held that the plaintiff was the sole proximate cause of his injuries because he stepped on a wooden cross brace which was not intended as a walkway, rather than use one of the ladders which were provided, and which he was instructed to use for that purpose. Additionally, the Appellate Division held that summary judgment should have been granted on the plaintiff's Labor Law § 241(6) claim because Industrial Code § 12 NYCRR 23-1.22(b)(2) and (4) were inapplicable to this matter as the cross brace did not constitute a ramp constructed for the use of persons. Finally, the Appellate Division held that the plaintiff's Labor Law § 200 claims should have been dismissed because the defendant demonstrated that the plaintiff's injuries were caused by his own conduct, rather than a dangerous or defective condition.

PRACTICE NOTE: Where an individual traverses an area not intended as a walkway and fails to use equipment as instructed, that individual may be the sole proximate cause of their own injuries.

TOPICS: *Labor Law §§ 240(1) and 241(6), Enumerated activity, Routine maintenance*

NOONEY V. QUEENSBOROUGH PUB. LIB.

212 A.D.3d 830
January 25, 2023

The plaintiff, a maintenance employee of the Queensborough Public Library, sued the City of New York as the owner. The plaintiff had been tasked with replacing five or six water-damaged ceiling tiles. The plaintiff was injured when the A-frame ladder he was using moved unexpectedly during his descent. The ladder had been placed against the top of a nearby doorframe in closed position due to insufficient space. Labor Law § 240(1) requires a plaintiff to establish that he or she was injured during the erection, demolition, repair, alteration, painting, cleaning or pointing of a building/structure. Labor Law § 241(6) requires a plaintiff to establish that he or she was injured during construction, demolition, or excavation. The Appellate Division reversed the Supreme Court's granting of summary judgment to the city, holding that the city failed to establish that the plaintiff was performing routine maintenance at the time of the accident under Labor Law §§ 240(1) or 241(6).

PRACTICE NOTE: A plaintiff must demonstrate that the work performed falls within the type outlined in Labor Law §§ 240(1) and 241(6), and mere routine maintenance will not attach liability under these sections.

TOPICS: *Sole proximate cause, Labor Law § 240(1), Labor Law § 241(6), Amendment pleadings*

CASTANO V. ALGONQUIN GAS TRANSMISSION, LLC

213 A.D.3d 905
February 22, 2023

The plaintiff was securing pipes onto a flatbed trailer with a "choker" strap when a pipe lifted by a CAT excavator was dropped on his leg. The plaintiff then commenced a lawsuit alleging violations of Labor Law § 240(1) under the "falling object" theory. The Appellate Division reversed the lower court's granting of summary judgment to the defendant, holding that there were triable issues of fact as to whether the plaintiff was the sole proximate cause of his injuries,

and whether the pipe fell because of the absence or inadequacy of a safety device. The Appellate Division also reversed the lower court and permitted the plaintiff to amend his pleadings post Note of Issue to identify a specific applicable industrial code provision where there is a showing of merit, no new factual allegations, no new theories of liability, and no prejudice to the defendant.

PRACTICE NOTE: Summary judgment will be denied where there is a triable issue of fact as to whether a plaintiff is the sole proximate cause of his or her own injuries.

TOPICS: *Labor Law § 240(1), Gravity-related risk, Summary judgment*

ORTEGA V. FOURTRAX CONST. CORP.

214 A.D.3d 666
March 1, 2023

The plaintiff, an employee of a subcontractor, was injured while he and his coworkers were using a dolly to transport sheetrock across the floor. The accident took place when the dolly and the sheetrock tipped over and fell onto the plaintiff. The plaintiff claims a violation of Labor Law § 240(1) in that his accident was a result of a gravity-related risk. The court upheld the Supreme Court's dismissal of the plaintiff's Labor Law § 240(1) cause of action, finding that the plaintiff's injuries were not caused by a gravity-related risk within the scope of the statute.

PRACTICE NOTE: The extraordinary provisions of Labor Law § 240(1) extend only to a narrow class of special hazards and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity; such as transporting sheetrock on a dolly.

TOPICS: *Labor Law § 240(1), Elevation-related risk, Hole in floor, Summary judgment*

BALFE V. GRAHAM

214 A.D.3d 693
March 8, 2023

The plaintiff alleges that he sustained injury while installing ductwork in the basement of a construction site when he stepped backwards into a hole that had been cut out of the basement's concrete floor to allow for the installation of an ejector pump. The plaintiff commenced an action alleging violations of Labor Law §§ 200, 240(1) and 241(6). The court upheld the Supreme Court's dismissal of the plaintiff's Labor Law § 240(1) cause of action, holding that the plaintiff's accident – stepping back into a cut out hole – was not the result of an elevation-related hazard encompassed by the statute.

PRACTICE NOTE: Here, the Second Department adhered to its holding in *Ortega v. Fourtrax Const. Corp.,* 214 A.D.3d 666, in determining that Labor Law § 240(1) does not encompass any and all perils involving a gravity-related risk, and would not expand upon the narrow set of hazards covered by this statute.

TOPICS: *Labor Law § 240(1), Gravity-related risk, Fall from a height, Ladder, Admissible evidence, Hearsay, Summary judgment*

MORA V. 1-10 BUSH TERM. OWNER, L.P.

214 A.D.3d 785
March 15, 2023

The plaintiff alleges that he sustained injury as a result of an accident that occurred when the ladder he was standing on was struck by a pipe, which caused the plaintiff to fall over. The plaintiff commenced a cause of action alleging a violation of Labor Law § 240(1). At the conclusion of discovery, both the defendant and the plaintiff moved for summary judgment on the issue of Labor Law § 240(1). The court upheld the Supreme Court's granting of the plaintiff's motion for summary judgment relating to Labor Law § 240(1), as the evidence showed that the ladder in question was not properly secured to a stable object and was not chocked or wedged in place. While the defendant cited to evidence in the form of an affidavit and deposition testimony to argue that the plaintiff's accident was caused by him not following proper instructions and that the ladder was indeed secured, the court held that this evidence was inadmissible, as it was in the form of an unsworn affidavit and based upon testimony from a witness who did not have firsthand knowledge of the facts asserted.

PRACTICE NOTE: To successfully oppose a plaintiff's motion for summary judgment based upon the Labor Law, a defendant must present clear and admissible evidence in proper form.

TOPICS: *Labor Law § 240(1), Premature, Outstanding discovery, Summary judgment*

RAGOONANAN V. 43-25 HUNTER, LLC

214 A.D.3d 831
March 15, 2023

The plaintiff was injured at a worksite when he fell from a scaffolding that collapsed. The plaintiff commenced an action alleging a violation of Labor Law § 240(1). The plaintiff filed a Note of Issue, but indicated that the deposition of the defendants' representative remained outstanding. The defendants' representative was deposed four months later. Two months after the deposition, the plaintiff moved for an extension of time to file a motion for summary judgment relating to his Labor Law § 240(1) claim. The court upheld the denial of the plaintiff's motion for an extension of time. In doing so, the Second Department held that the plaintiff failed to demonstrate that this outstanding discovery was essential to the motion for summary judgment. Going further, the court chastised the plaintiff for waiting two months after the completion of the defendants' deposition to seek such an extension of time.

PRACTICE NOTE: The time to file a motion for summary judgment may not be extended under CPLR 3212(a) absent a satisfactory explanation for the untimeliness constituting good cause for the delay. Courts have consistently adhered to this rule, as illustrated under *Brill v. City of New York,* 2 NY3d 648 (2004).

TOPICS: *Labor Law § 240(1), Falling object, Elevation-related risk, Issues of fact*

JIN KIL KIM V. FRANKLIN BH, LLC

214 A.D.3d 857
March 22, 2023

The plaintiff was injured when he was struck by a falling bag of tile cement mix at a construction site. The bags were being handed one-by-one from one employee on the first floor to another employee on the first floor, who, in turn, handed the bags down through an opening in the ground of the first floor to a third employee in the basement, who was standing on a five-gallon bucket. The plaintiff was standing on the basement floor when the third employee failed to properly receive the bag as it was being sent from first floor to the basement and, as a result, the bag fell through the opening and struck the plaintiff's left knee. The plaintiff commenced an action under Labor Law § 240(1). The defendants moved for summary judgment seeking dismissal of the plaintiff's Labor Law § 240(1) claim, arguing that the plaintiff dropped the bag on his own knee. In affirming the denial of the defendant's motion for summary judgment, the Second Department held that the defendants failed to eliminate triable issues of fact as to how the accident occurred and whether the plaintiff's injuries resulted from the type of hazard contemplated by Labor Law § 240(1).

PRACTICE NOTE: In order to obtain summary judgment on a claim of Labor Law § 240(1), a defendant must eliminate all triable issues of fact and establish that the accident was not the result of an elevation-related risk contemplated by the statute.

TOPICS: *Labor Law §§ 200 and 241(6), Supervision and control, Demolition, Proximate cause, Summary judgment*

REYES V. SLIGO CONSTR. CORP.

214 A.D.3d 1014
March 29, 2023

The plaintiff, a construction worker, claims that he was bending over to pick up debris inside a house when a piece of wood became dislodged from a wall and struck him on the head. The plaintiff then commenced an action against the owner and general contractor of the project, alleging a violation of Labor Law §§ 200 and 241(6). The general contractor commenced a third-party action against the plaintiff's employer, a subcontractor on the job. Following discovery, the general contractor and subcontractor moved for summary judgment, seeking dismissal of the plaintiff's Labor Law claims. The plaintiff crossed-moved for summary judgment on the issue of liability against the general contractor on his Labor Law § 200 claim. The Supreme Court granted the defendants' motion dismissing the plaintiff's Labor Law §§ 200 and 241(6) causes of action, and denied the plaintiff's cross-motion for summary judgment on his Labor Law § 200 claim against the general contractor. The Second Department held that the lower court properly granted summary judgment to the general contractor and subcontractor relating to the plaintiff's Labor Law § 200 claim, as there was no evidence that the general contractor's involvement went beyond overseeing the progress of the work and maintaining the right to fire a subcontractor. However, the court held that summary judgment on the plaintiff's Labor Law § 241(6) claim should have been denied, as the defendants failed to establish that the demolition work was not a hard hat job and that the plaintiff's lack of head protection did not play a role in the injuries sustained.

PRACTICE NOTE: Mere general supervisory authority at a worksite for the purpose of overseeing and inspecting the progress of the work is insufficient to impose liability under Labor Law § 200. To prevail on a Labor Law § 241(6) claim premised upon a violation of 12 NYCRR 23-1.8(c)(1), a plaintiff must establish that the job was a hard hat job and that the plaintiff's failure to wear a hard hat was a proximate cause of injury.

TOPICS: *Collateral estoppel, Workers' compensation, Employer*

VELASQUEZ-GUADALUPE V. IDEAL BLDRS. & CONSTR. SERVS, INC.

216 A.D.3d 63
April 19, 2023

The plaintiff sustained personal injuries during the collapse of a building under construction and filed a lawsuit against the building owner, the general contractor, a subcontractor, and the owners of the neighboring property claiming violations of Labor Law §§ 200, 240(1), and 241(6). The plaintiff also filed a claim with the Workers' Compensation Board (WCB) that determined, contrary to the plaintiff's allegations, that the subcontractor was the plaintiff's employer and awarded the plaintiff workers' compensation benefits. The Appellate Division did not allow cross-claims against the employer-subcontractor to stand, holding that controversies regarding the applicability of the Workers' Compensation Law rest within the primary jurisdiction of the WCB, including issues as to the existence of an employer-employee relationship. Therefore, the determination of an "employer" status determined by the WCB cannot be challenged in a plenary ac-

tion, even if a party did not participate in the WCB proceedings. The court, however, allowed a cross-claim against the employer-subcontractor for a breach of an oral agreement to procure insurance. The court held that the Workers' Compensation Law § 11(1) does not shield an employer from liability for contractual obligations and that an agreement to procure insurance is not an agreement to indemnify or hold harmless. Moreover, an agreement to procure insurance does not need to be in writing to be enforceable.

PRACTICE NOTE: An entity determined by the Workers' Compensation Board to be the claimant's employer is shielded by the Workers Compensation Law §11(1) from third-party claims for contribution and indemnification, unless the claimed injury is a "grave injury" or the employer expressly agreed in writing to indemnification. However, an agreement to procure insurance may be enforced by third parties against the claimant's employer because it is not the same as an agreement to indemnify/hold harmless and does not need to be in writing.

TOPICS: *Labor Law § 240(1), Ladder, Fall, Elevation-related risk, Proximate cause, Summary judgment*

ANDRADE V. BERGEN BEACH 26, LLC

215 A.D.3d 722
April 23, 2023

The plaintiff sustained injury when he fell from a ladder while delivering masonry supplies on a construction site. The plaintiff commenced an action against the owner and general contractor, asserting a violation of Labor Law § 240(1). The plaintiff moved for summary judgment on the issue of liability under Labor Law § 240(1), and the Supreme Court denied the motion. In affirming the denial of plaintiff's motion, the Second Department held that the plaintiff failed to establish a prima facie entitlement to judgment on this issue, as there were triable issues of fact as to whether Labor Law § 240(1) was violated and whether such a violation was the proximate cause of the plaintiff's injuries.

PRACTICE NOTE: To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries.

TOPICS: *Statutory agent, Owner, Contractor, Supervision and control*

BONKOSKI V. CONDOS BROS. CONSTR. CORP.

216 A.D.3d 612
May 3, 2023

The plaintiff allegedly sustained an injury when he fell into an obscured manhole at the premises under construction. He filed a legal action against the building owner, the general contractor, and a plumbing subcontractor, alleging violations of Labor Law §§ 200, 240(1), 241(6), and common law negligence. The Appellate Division affirmed the decision of the Supreme Court, holding that the defendant-subcontractor was entitled to a dismissal of the claims under Labor Law §§ 240(1) and 241(6) against it since it established that it was not an agent of either the owners or the general contractor at the time of the alleged injury. In particular, the evidence showed that the defendant-subcontractor had limited supervision responsibilities and left the worksite several weeks prior to the alleged accident having completed its work to the satisfaction of the general contractor and a town inspector.

PRACTICE NOTE: Labor Law §§ 240(1) and 241(6) apply only to contractors and owners and their agents. An entity may be held liable as an agent of the owner or the general contractor for these Labor Law violations only if there is a showing that that entity had the authority to supervise and control the work that subsequently caused the injury.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Agency*

LOCHAN V. H & H SONS HOME IMPROVEMENT, INC.

216 A.D.3d 630
May 3, 2023

The plaintiff commenced this action against the owner of the building, claiming violations of Labor Law § 240(1) for the injuries he allegedly sustained when he fell from an unsecured ladder while painting in the building. The court held that the plaintiff is entitled to summary judgment on the issue of liability on the Labor Law § 240(1) cause of action because he established the *prima facie* case by submitting evidence showing that on the day of the incident he was working at the premises standing on an unsecured ladder that slid and caused him to fall. In opposition, the defendants failed to raise a triable issue of fact as they did not submit any evidence of the plaintiff's failure to use or misuse of an adequate safety device. The court similarly denied the defendants' cross-motion as the defendants failed to offer any evidence, and thus establish their *prima facie* case, to show that the plaintiff was the sole proximate cause of the accident, a recalcitrant worker, or a volunteer.

PRACTICE NOTE: The plaintiff claiming violations under Labor Law § 240(1) must establish its prima facie case by demonstrating that the defendant violated the statute and that the violation was a proximate cause of the plaintiff's injuries.

TOPICS: *Labor Law § 240(1), Summary judgment, Burden of proof*

MANFREDO V. MARVIN & MARIO CONSTR., INC.

216 A.D.3d 634
May 3, 2023

The plaintiff was injured when working on a construction project at the property owned by the defendants. The defendants were entitled to summary judgment dismissing the Labor Law §§ 240(1) and 241(6) causes of action as they were exempt from liability under these statutory provisions as owners of a one- or two-family dwelling. The defendant sufficiently established that their property was used solely for residential purposes and the work performed by the plaintiff was related to the residential use of the premises. The plaintiff failed to raise a triable issue of fact in opposition to the defendants' motion.

PRACTICE NOTE: Owners of a one- or two-family dwelling are exempt from liability under Labor Law §§ 240(1) and 241(6) unless they directed or controlled the work being performed or their premises were used solely and entirely for commercial purposes.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Exemption, Summary judgment*

I.P. V. BONILLA

216 A.D.3d 805
May 10, 2023

The plaintiff allegedly suffered an injury when he fell from a ladder while repairing a hole in the roof of a neighboring garage, which was not a part of the construction project where the plaintiff was employed. The plaintiff commenced this action against the owners of the garage, alleging violations of Labor Law §§ 200, 240(1) and 241(6) as well as common law negligence. The court granted the defendant's motion for summary judgment dismissing all causes of action against him. The defendant sufficiently demonstrated that he did not request or authorize the work on the garage and did not know the plaintiff or his employer. The plaintiff failed to raise a triable issue of fact in opposition to the defendant's motion.

PRACTICE NOTE: To recover under the provisions of the Labor Law, the plaintiff must establish that he was hired by the owner, the contractor, or their agent to perform the work on a building or a structure.

TOPICS: *Labor Law § 240(1), Recalcitrant worker, Sole proximate cause, Summary judgment, Burden of proof*

SANTIAGO V. HANLEY GROUP, INC.

216 A.D.3d 833
May 10, 2023

The plaintiff allegedly suffered an injury after falling from the roof of a single-family house while working on a construction project. He and his wife commenced a legal action against the general contractor, claiming violations of Labor Law § 240(1). The court granted the plaintiffs' summary judgment on the issue of liability on the Labor Law § 240(1) cause of action. The court held that the plaintiffs met their burden of proof by demonstrating that the defendant-contractor failed to provide appropriate safety devices mandated by Labor Law § 240(1). In opposition, the defendant failed to raise a triable issue of fact as to whether it made adequate safety devices available for work at elevation. Similarly, the defendant failed to present sufficient evidence to show that the plaintiff was a recalcitrant worker or the sole proximate cause of his injuries. Furthermore, the defendant did not demonstrate that the plaintiff was aware of the location of safety devices and was expected to use them.

PRACTICE NOTE: To defeat a plaintiff's summary judgment on the issue of liability on the Labor Law § 240(1) cause of action, the defendant must, in opposition, raise a triable issue of fact as to whether the plaintiff was the sole proximate cause of his injuries or was a recalcitrant worker.

TOPICS: *Labor Law § 240(1), Gravity-related risk, Elevation differential*

GONZALEZ V. MADISON SIXTY, LLC

216 A.D.3d 1141
May 31, 2023

The plaintiff allegedly suffered an injury while working on a construction project when a 300 lb. compressor fell into a two-foot deep trench, causing injury to his foot. The plaintiff and his wife commenced a legal action against the owner of the premises, alleging a failure to provide appropriate safety devices to protect against gravity-related hazards under Labor Law § 240(1). The plaintiffs claimed that his injury resulted from an elevation differential within the purview of Labor Law § 240(1). The Appellate Division reversed the Supreme Court's decision denying the plaintiffs' summary judgment motion. The court reasoned that, despite the relatively short distance from which the compressor fell, its substantial weight and the force it generated were sufficient enough to be considered not *de minimis*. Thus, the injury was a direct result of the application of a gravity-related force.

PRACTICE NOTE: To establish that an injury is a consequence of a gravity-related hazard, it is crucial to consider not only the elevation differential but also the weight and force generated by the falling object responsible for the injury.

TOPICS: *Contractual indemnification, General Obligations Law § 5-322.1*

FELIZ V. CITNALTA CONSTR. CORP.

217 A.D.3d 750
June 14, 2023

The plaintiff was injured when a lead sprinkler pipe fell on him. After he commenced an action against the general contractor and the construction manager, the general contractor impleaded the plaintiff's em-

ployer on the cause of action of contractual indemnification. The plaintiff was granted summary judgment on the issue of liability, and then a jury trial was held on the issue of apportionment of fault among the defendants. The jury found that the general contractor and the construction manager were each 50% at fault. Thereafter, the general contractor moved for summary judgment against the plaintiff's employer and sought indemnification for 50% of the settlement amount paid to the plaintiff. The general contractor argued that 50% of the settlement amount represented the portion of the settlement not attributable to its own negligence. The court upheld the Supreme Court's decision to grant the general contractor's summary judgment motion. The court held that the indemnification provision at issue for indemnification "to the fullest extent permitted by law" did not purport to indemnify the general contractor for its own negligence, but rather limited indemnification to the percentage of fault not attributable to the general contractor. Thus, the indemnification provision did not violate General Obligations Law §5-322.1 and was enforceable.

PRACTICE NOTE: General Obligations Law §5-322.1 permits a partially negligent general contractor to seek contractual indemnification from its subcontractor so long as the indemnification provision does not purport to indemnify the general contractor for its own negligence.

TOPICS: *Labor Law § 240(1), Issues of fact, Sole proximate cause, Summary judgment*

ACEVEDO V. PSM LONG IS. CORP.

217 A.D.3d 813
June 21, 2023

The plaintiff, employed by a siding contractor hired by the defendants, was injured at a construction site where a new single-family house was being built. The plaintiff testified in his deposition that he was preparing to install siding on the exterior of the house while standing on the 15th rung of an extension ladder, which his employer had set up. While he was driving a nail with a hammer above a second-story window, the ladder tilted to one side, causing the plaintiff to lose his balance. To avoid falling to the ground as he was losing his balance, plaintiff jumped down onto a plank, which was at a level approximately three feet below the ladder rung on which he was standing, and was approximately 14 or 15 feet above the ground. The plaintiff testified that when emergency personnel straightened the ladder in order to rescue him from the plank, he noticed that one of the nails that should have prevented the ladder from tilting to the side was missing. The Supreme Court denied the plaintiff's summary judgment on the issue of liability on the causes of action alleging violations of Labor Law §§ 240(1) and 241(6). On appeal, the court partially reversed the Supreme Court's decision, and held that the plaintiff's injuries were proximately caused by a violation of Labor Law § 240(1), based on his deposition testimony that he was working on a ladder which tilted, causing him to lose his balance and jump to the plank below. The court further held that the defendants' argument that the plaintiff leaned to one side while he was working and that he jumped off the ladder as it began to tilt was insufficient to raise a triable issue of fact as to whether the plaintiff's actions were the sole proximate cause of his injuries.

PRACTICE NOTE: A laborer does not have to fall off a ladder to the ground for Labor Law § 240(1) liability to attach. Injuries occurring as a consequence of attempting to avoid a fall can also result in liability under the statute. Additionally, the mere fact that the plaintiff jumped off the ladder does not necessarily suggest that his action was the sole proximate cause of the accident.

TOPICS: *Labor Law §§ 240(1) and 241(6), Industrial Code §§ 23-1.7(b)(1)(i) and 23-1.7(e)(1), Contractual indemnification*

CASTRO V. WYTHE GARDENS, LLC

217 A.D.3d 822
June 21, 2023

The plaintiff tripped at a construction site after stepping into a gap between the top step of a staircase and the landing. The plaintiff alleged violations of Labor Law §§ 240(1) and 241(6) as it was predicated on a violation of Industrial Code §§23-1.7(b)(1)(i) and 23-1.7(e)(1). The court held that the plaintiff's injuries did not fall within the purview of Labor Law § 240(1) since the accident did not occur as the result of an elevation-related or gravity-related risk and since the plaintiff was using the staircase as a passageway. With respect to Labor Law § 241(6), the court held that § 23-1.7(b)(1)(i) of the industrial code is inapplicable, because the gap in which the plaintiff tripped was too small for a worker to completely fall through. The court upheld the Supreme Court's decision to grant the plaintiff's summary judgment motion on the issue of liability for the violation of Industrial Code § 23-1.7(e)(1), which relates to tripping hazards, since the plaintiff's deposition testimony established that the gap at the top of the stairs caused him to fall. The court also held that the plaintiff's employer's summary judgment motion to dismiss the general contractor's third-party action should be denied since, based on a contract between them, the employer must indemnify the general contractor against all liability, and therefore triable issues of fact exist as to whether the employer was required under the contract to indemnify the general contractor. The court upheld the Supreme Court's decision to deny the general contractor's summary judgment motion against the company that installed the staircase because, even though the installer of the staircase was required to indemnify the general contractor for injuries arising out of work performed by the staircase installer, the indemnification excluded liability created by the sole and exclusive negligence of the indemnified parties, and it was unclear who was required to provide safety coverings for the gap that caused the plaintiff's accident.

PRACTICE NOTE: A fall that does not occur as a result of elevation-related or gravity-related risk would not trigger liability under Labor Law § 240(1). Further, Industrial Code § 23-1.7(b)(1)(i) would not apply when a gap is too small for a worker to completely fall through. However, a mere tripping condition is enough to trigger liability under Industrial Code § 23-1.7(e)(1). Additionally, the right to contractual indemnity is not the same in all cases. It will depend upon the specific contract terms, which may be very broad or narrow in defining the circumstances giving rise to indemnity, as well as the parties whose acts and omissions may trigger indemnity.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Fall off a ladder*

PANFILOW V. 66 E. 83RD ST. OWNERS CORP.

217 A.D.3d 875
June 21, 2023

The plaintiff was injured after falling off a ladder. The plaintiff established the defendants' liability pursuant to Labor Law § 240(1) by demonstrating that his injuries were proximately caused by the defendants' failure to satisfy their nondelegable duty to provide him with a safe and adequate ladder necessary for him to perform his elevation-related work. The defendants were granted summary judgment under Labor Law § 200 by demonstrating that they did not create nor have actual or constructive notice of the condition that the plaintiff alleged caused his injuries, and that they had no authority to supervise or control the means and methods of the plaintiff's work.

PRACTICE NOTE: This is a prime example of classic application of Labor Law §§ 200 and 240(1).

TOPICS: *Labor Law § 240(1), Ancillary work, Industrial Code § 23-1.7(f)*

RAMONES V. 425 COUNTY RD., LLC

217 A.D.3d 977
June 28, 2023

The plaintiff was loading equipment from the worksite onto the roof of a van. While attempting to tie down the equipment with rope, ladders slipped off, and he and the ladders fell to the ground. The court reversed the Supreme Court's order granting summary judgment to the defendants, holding that the plaintiff's role in loading the van with equipment used for work at the site was ancillary to the work performed, and therefore protected under Labor Law § 240(1). In addition, the defendants failed to demonstrate that climbing on the van's roof was not necessary to the task of securing the equipment on the van's roof. However, the court upheld the decision to deny the plaintiff's cross-motion for summary judgment pursuant to Labor Law § 240(1) because liability is contingent upon the failure to use or the inadequacy of a safety device and, therefore, triable issues of fact exist as to whether the plaintiff's fall resulted from the lack of an adequate safety device. Lastly, the court held that Industrial Code § 23-1.7(f) is inapplicable because the van's roof was not a working level above ground requiring a stairway, ramp, or runway.

PRACTICE NOTE: Labor Law § 240(1) may apply while performing work secondary to the construction work, such as removing equipment that was used for work at a construction site.

TOPICS: *Labor Law § 240(1), Proximate cause, Summary judgment*

CORREA V. 445 OCEAN ASSOC., LLC

218 A.D.3d 435
July 5, 2023

The plaintiff injured his wrist while carrying a roll of tar paper down an extension ladder, from one level of the roof to a lower level, when he dropped the roll and grabbed the ladder to prevent himself from falling. The plaintiff was granted summary judgment by the Supreme Court on the issue of liability pursuant to violation of Labor Law § 240(1). The court held that the plaintiff could not have used a pulley on the worksite to raise or lower heavy materials because he could not operate it without a second person and because his foreman instructed him to use the extension ladder, which was not an adequate device for lowering the rolls.

PRACTICE NOTE: The mere existence of a machine at the worksite that could have assisted the plaintiff with carrying materials does not relieve the defendants of liability pursuant to Labor Law § 240(1) when the plaintiff was not able to operate the machine and when he was instructed by his foreman to use a ladder to perform the work.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Issues of fact, Summary judgment*

GAMEZ V. NEW LINE STRUCTURES & DEV., LLC

218 A.D.3d 446
July 5, 2023

The plaintiff fell through a hole from the sixth to the fifth floor, approximately 10 feet, while working in a building under construction. The plaintiff established a violation of Labor Law § 240(1) based on his testimony that there were no anchor points or lifelines to which he could tie off his fall protection harness, and based on evidence demonstrating that the hole he fell through was improperly guarded and insufficiently covered in violation of OSHA regulations 29 CFR 1926.501(b)(4)(i) and (ii). However, the defendants raised triable issues of fact as to whether there was a statutory violation since their witnesses testified that there was a Miller System and rebar available for the plaintiff to tie-off his fall protection harness. Therefore, the court held a triable issue of fact exists as to whether the plaintiff was provided adequate protection. Further, the court denied the plaintiff's Labor Law § 241(6) cause of action by holding that triable issues of fact exist as to violations of Industrial Code §§ 23-1.7(b)(1)(i), which applies to hazardous openings and requires that such an opening be guarded by a cover, and 23-1.16(b), that requires tail lines and lifelines to be provided to laborers, since the defendants argued that the plaintiff was in charge of covering and securing the hole which he fell through, and since the defendants' presented evidence that there were two tie-off points available for plaintiff within four to five feet of the subject hole.

PRACTICE NOTE: The court will look to see if the plaintiff was provided with a safety device that is appropriate for his work when determining a Labor Law case.

TOPICS: *Labor Law § 241(6), Labor Law § 200, Industrial code violation*

DYSZKIEWICZ V. CITY OF NEW YORK

218 A.D.3d 546
July 12, 2023

The plaintiff alleged he was injured when he slipped and fell down stairs while working on a renovation project. The plaintiff allegedly slipped and fell on a clear sticky liquid on the top step going down from the second floor to the first floor of the project while carrying demolition material. He fell down 13 steps. The plaintiff had traversed the stairway five to ten times prior to his fall. The Supreme Court granted the defendants' motion for summary judgment as to Labor Law § 241(6) predicated upon violations of Industrial Code 12 §§ NYCRR 23-1.7(e) and 23-2.1(b), and denied the de-

fendants' motion for summary judgment on Labor Law § 241(6) predicated upon violations of §§ 23-1.7 (d) and 23-3.3(e). The Supreme Court denied the plaintiff's motion for summary judgment on Labor Law § 200 and common law negligence. The matter proceeded to trial, and a jury rendered a verdict in favor of the defendants, finding that they did not violate §§ 23-1.7(d) or 23-3.3(e). The court upheld the Supreme Court's dismissal of the plaintiff's Labor Law § 241(6) claims predicated upon violations of §§ 23-1.7(e) and 23-2.1(b), holding that the defendants established that the plaintiff fell as a result of a slipping hazard rather than a tripping hazard. Moreover, § 23-1.7(e)(2) was rightfully dismissed by the trial court as inapplicable to the facts in this case because the code applies to "working areas" and the plaintiff was in a staircase, which is a "passageway," at the time of the accident. The Appellate Division found that there was no basis for disturbing the jury's verdict of no cause of action.

PRACTICE NOTE: Where the plaintiff claims that he fell in a passageway, an industrial code section relevant to "working areas" will not apply.

TOPICS: *Labor Law § 200, Inherent risks, Negligence*

SERPAS V. PORT AUTHORITY OF NEW YORK & NEW JERSEY

218 A.D.3d 620
July 12, 2023

The plaintiff claims that he was injured while retrieving a pipe from a hard stand on a construction project at the Delta Airlines terminal at John F. Kennedy Airport. The plaintiff was caused to slip and fall as a result of stepping on a grease-covered rebar dowel. The defendants moved for summary judgment to dismiss the Labor Law § 200 claim. The trial court denied the defendants' motion. The Appellate Division upheld the Supreme Court's denial of summary judgment to the defendants because the defendants "failed to eliminate all triable issues of fact as to whether the lubricated, grease-covered rebar dowel and the placement of the pipe on the raised hard stand constituted dangerous conditions, whether the defendants had actual or constructive notice of these conditions, and whether climbing onto and stepping down from the hard stand while retrieving the pipe was an inherent risk of the injured plaintiff's work." While affirming the denial of summary judgment to the defendants, the Appellate Division recognized that a defendant's duty under Labor Law § 200 and common law negligence standards does not extend "to hazards that are part of, or inherent in, the very work the employee is to perform or defects the employee is hired to repair." The Appellate Division reiterated the rule that a defendant's duty to an injured plaintiff does not extend to conditions or defects "that may be readily observable by the reasonable use of the senses, having in view the age, intelligence and experience" of the worker. Nevertheless, the Appellate Division found questions of fact on these issues.

PRACTICE NOTE: Hazards that are readily observable and/or inherent risks of the injured plaintiff's work may not be sufficient to make out a Labor Law § 200 or common law negligence claim.

TOPICS: *Labor Law § 200, Labor Law § 241(6), Industrial code violation, Labor Law § 240(1), Enumerated activity, Demolition*

ESTRELLA V. ZRHLE HOLDINGS, LLC

218 A.D.3d 640
July 19, 2023

The plaintiff was injured when he was removing damaged carpeting and flooring from a property adjacent to the premises under construction. The neighboring premises where the plaintiff was working had flooded as a result of renovations in the premises under construction. The plaintiff entered the premises to retrieve a tool and fell through a temporary plywood floor. The trial court denied the defendant's motion for summary judgment as to Labor Law § 200, but granted the defendant's motion for summary judgment as to Labor Law §§ 240(1) and 241(6). The Appellate Division affirmed the denial of the defendant's motion for summary judgment as to Labor Law § 200 because "the defendant failed to establish, *prima facie*, that it did not create or have notice of the allegedly dangerous condition." The Appellate Division affirmed the trial court's grant of summary judgment to the defendant on Labor Law § 241(6) because the industrial code relied upon by the plaintiff dealt with "demolition work," which is defined as "the work incidental to or associated with the total or partial dismantling or raising of a building or other structure." The Appellate Division found that removal of carpeting and flooring did not fall within this definition. The Appellate Division reversed the trial court's grant of summary judgment to the defendant on Labor Law § 240(1), and granted the plaintiff's motion for summary judgment. The court found that the plaintiff was involved in construction work in a construction site and that his fall was a result of an elevation-related risk wherein no safety devices were provided. The defendant attempted to raise a question of fact by submitting "uncertified hospital records," which set forth a conflicting statement of how the accident occurred. The Appellate Division held that hearsay may be considered in opposition to a motion for summary judgment, but it is "insufficient to raise a triable issue of fact where, as here, it is the only evidence upon which opposition to the motion was predicated."

PRACTICE NOTE: Hearsay evidence may not be utilized to defeat a motion for summary judgment if it is the only evidence relied upon. A defendant may be entitled to summary judgment on Labor Law § 241(6) claims predicated upon a code dealing with "demolition work" if the plaintiff was not engaged in work that strictly meets the definition of such work.

TOPICS: *Common law indemnification, Contractual indemnification, Workers' Compensation Bar, Grave injury*

SKROK V. GRAND LOFT CORP.

2023 N.Y. App. Div. LEXIS 3862
July 19, 2023

A third-party defendant moved for summary judgment seeking dismissal of contractual and common law indemnification claims. Third-party defendant asserted that it could not be held liable for common law indemnification or contribution as the plaintiff's employer pursuant to the Workers' Compensation bar to such claims (Article 11 of the Workers' Compensation Law), where the plaintiff did not sustain a grave injury. The Appellate Division reversed the trial court's denial of the third-party defendant's motion for summary judgment on this issue on the

grounds that the plaintiff's bill of particular set forth no grave injury and there was no dispute that the third-party defendant was the plaintiff's employer. The Appellate Division, however, affirmed the trial court's denial of the third-party defendant's motion for summary judgment on the contractual indemnification and insurance procurement claims because there were issues of fact as to whether a master subcontract agreement covered the subject project, or whether the project on which the plaintiff was injured was governed by a standalone contractual agreement.

PRACTICE NOTE: A plaintiff's employer will not be held liable under common law indemnification or contribution where the plaintiff did not sustain a "grave injury."

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Falling object*

CRUZ V. 451 LEXINGTON REALTY, LLC

2023 NY App. Div. LEXIS 3925
July 26, 2023

The plaintiff was injured when clearing debris from the first floor of a building that was being demolished when ductwork attached to the first floor ceiling became detached on one end and fell approximately one and a half feet, causing dirt and debris particles to fall into the plaintiff's left eye. At the time of the accident, the plaintiff had removed his protective eyewear in a designated "safety zone." The plaintiff moved for summary judgment on Labor Law § 240(1) and Labor Law § 241(6). The Supreme Court granted the cross-motions of the defendants to dismiss the plaintiff's §§ 240(1) and 241(6) claims. The Appellate Division affirmed the Supreme Court's order granting summary judgment to the defendants and denying summary judgment to the plaintiff holding that, in a falling object case, the plaintiff "must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purpose of the undertaking." The court found the ductwork was part of the pre-existing building structure and was not being actively worked on at the time of the accident, and was not an object that required securing for the purpose of the undertaking. The court also found that the nature and purpose of the work being performed at the time of the accident did not pose a significant risk that the ductwork would fall. To the extent that the partially demolished condition of the building created a general risk of falling objects, the court found that this is not the sort of risk that the extraordinary protections of Labor Law § 240(1) were designed to address, citing *Narducci v. Manhasset Bay Assoc.,* 96 N.Y.2d at 268. The court further affirmed the trial court's dismissal of the plaintiff's Labor Law § 241(6) claim because the code relied upon, § 22 NYCRR 23-1.7(a), did not apply to the facts of the case, and the Labor Law § 200 claim because the defendants did not exercise any supervision or control over the method or manner of the plaintiff's work.

PRACTICE NOTE: In a falling object case, the defendant is entitled to summary judgment when the object was not being hoisted or secured or required securing for the purpose of the undertaking. A general risk of falling objects on a demolition project is not a risk that triggers the protections of Labor Law § 240(1).

TOPICS: *Labor Law § 240, Ladder, Summary judgment*

BARNHARDT V. RICHARD G. ROSETTI, LLC

216 A.D.3d 1295
May 11, 2023

The plaintiff brought an action for violation of the Labor Law and common law negligence against the property owner-defendant, as well as the owner of defendant Next Level Detailing LLC after sustaining injuries when falling from a ladder while installing surveillance cameras in the ceiling of an office. The plaintiff was using a 20-foot exterior ladder and was caused to fall when the feet of the ladder slipped out. It was undisputed that the plaintiff's work on installing surveillance cameras was a protected activity under Labor Law § 240(1). The Appellate Court confirmed that the plaintiff's use of his own equipment, including the ladder, does not preclude liability under Labor Law § 240(1). Additionally, the court pointed out there was no evidence to establish that the plaintiff was recalcitrant in deliberately refusing available safety devices, and testimony by the defendants' representative that there was "available rope somewhere in the warehouse" was insufficient to establish that such safety equipment was available, visible, and in place at the worksite for the plaintiff's use. The court also determined that the evidence was insufficient to establish that the plaintiff was at fault for his fall, as the defendants' reliance on the plaintiff's diagnosis of vertigo was purely speculative and insufficient to create a question of fact.

PRACTICE NOTE: When a worker injured in a fall was provided with an elevation-related safety device, the question of whether that device provided proper protection within the meaning of Labor Law § 240 (1) is ordinarily a question of fact, except in those instances where the unrefuted evidence establishes that the device collapsed, slipped or otherwise failed to perform its function of supporting the worker and his or her materials. Additionally, a plaintiff using his or her own equipment on a job site does not preclude liability under Labor Law § 240(1).

TOPICS: *Common law negligence, Labor Law § 200, Stairs, Actual notice, Constructive notice*

COLLVER V. FORNINO REALTY, LLC

213 A.D.3d 1129
February 3, 2023

The plaintiff brought a personal injury action for injuries sustained when he was descending a staircase that collapsed under him while working on a construction project owned by the defendant. The plaintiff's accident occurred just shortly after another worker on the site removed a wooden block that had been screwed into the floor at the base of the staircase at issue to secure it. At the time of the accident, screws that should have been in place to secure the top of the staircase were absent. The defendants moved for summary judgment, arguing that they did not have actual notice of any dangerous condition of the staircase. However, the lower court denied the defendants' motion, to which the defendants appealed. The court determined that the defendants established they did not have actual notice of any dangerous or defective condition related to the staircase by submitting evidence that, prior to the accident at issue, defendant Michael Fornino was unaware that the staircase was missing screws. Defendant Fornino had used the stairs the night before the plaintiff's fall, and did not observe any missing screws, nor did he notice any "bounce" in the stairs, which would have been indicative of missing screws. The court also found the defendants established that they did not have constructive notice of the dangerous or defective condition of the staircase by submitting evidence that (1) the owner-defendants did not have any employees that worked on the construction site where the plaintiff allegedly fell; and (2) evidence that the alleged dangerous condition of the missing screws "did not exist for a sufficient length of time before the accident to permit" the defendants to discover or remedy the condition. The court determined that the defendants established that they did not create the dangerous condition that caused the plaintiff's alleged accident. Overall, the Appellate Division determined that the plaintiff failed to raise a triable issue of fact on constructive notice or actual notice, or that the defendants created the dangerous condition.

PRACTICE NOTE: A property owner must establish that it did not create or have actual or constructive notice of the alleged dangerous or defective condition in order to obtain summary judgment.

TOPICS: *Common law negligence, Labor Law §§ 200 and 241(6), Electrocution, Contractual indemnification*

CARPENTIERI V. 1438 S. PARK AVE. CO., LLC

215 A.D.3d 1236 (4th Dept.)
April 28, 2023

The plaintiff commenced this Labor Law action, seeking damages for injuries he sustained from an electric shock from an exposed live wire he was working with while performing a remodeling job at a grocery store. The owner and lessee of the property jointly moved for summary judgment to dismiss the plaintiff's complaint. A third-party defendant cross-moved to dismiss the third-party complaint against it. The plaintiff also cross-moved for summary judgment against the defendants on Labor Law § 241(6), which was premised upon two violations of the industrial code that protects workers from electrocution. The Supreme Court granted the defendants' motion. At the Appellate Division, the third-party defendant argued it met its initial burden of establishing that the plaintiff was negligent by working on the live wire without first contacting his supervisor or shutting off the power to that line, and that such negligence was the sole proximate cause of the plaintiff's incident and damages. The court noted that there may be more than one proximate cause of an injury and that, here, the third-party defendant failed to establish that even if the plaintiff's actions were negligent, that the defendants' violations of the industrial code related to electrocution were not a "substantial factor in bringing about the injury." The Appellate Division determined that the lower court properly denied the defendants' motion for summary judgment against the third-party defendant for contractual indemnification. Moreover, the court determined that the indemnification agreement between defendants IPL was not enforceable to cover the plaintiff's accident, as the said agreement was executed two months after the plaintiff's accident. The court provided that an indemnification agreement may only be applied retroactively when (1) the agreement was made as of a date prior to the accident; and (2) the parties intended the agreement to apply as of that prior date.

PRACTICE NOTE: There may be more than one proximate cause to a plaintiff's injury. An indemnification clause between two parties may only be applied retroactively so as to cover a plaintiff's incident if (1) the agreement was made as of a date prior to the accident; and (2) the parties intended the agreement to apply as of that prior date.

TOPICS: *Excavator, Common law negligence, Labor Law §§ 200, 240(1) and 241(6)*

VICKI V. CITY OF NIAGARA FALLS

215 A.D.3d 1285
April 28, 2023

The plaintiffs commenced suit sounding in violation of Labor Law and common law negligence, seeking damages for injuries the plaintiff sustained while working on a sewer replacement project pursuant to a contract executed by and between defendant Niagara Falls Water Board (Board) and the plaintiff's employer, Niagara Mohawk Power Corporation. At the time of the accident, the plaintiff was using an excavator to disassemble a manhole shield. Before the plaintiff began to remove the first side panel of the shield, his supervisor removed securing pins from both sides of several spreader bars, contrary to normal procedure. As the plaintiff began to separate the first side panel, one of the unsecured spreader bars fell into the cab of the excavator, seriously injuring the plaintiff. The defendants moved for summary judgment to dismiss the plaintiffs' complaint, and the plaintiff moved for partial summary judgment on Labor Law § 240(1). The lower court granted the plaintiff's partial summary judgment motion with respect to Labor Law § 240(1). On appeal, the court determined that the lower court properly granted the plaintiff's partial summary judgment motion on the issue of the Board's liability under § 240(1), as the plaintiff sufficiently established that the Board was the "owner" of the worksite where the plaintiff was working and was injured, and that the Board's violation of § 240(1) was the sole and proximate cause of the plain-

tiff's injuries. The court explained the matter involved an elevation risk with regard to spreader bars, which were elevated above the ground at the time of the accident, and which "required securing for the purposes of the undertaking." The plaintiff established that the spreader bar was not deliberately dropped at the time of the accident, but rather it fell at a time when neither the plaintiff nor his supervisor wanted it to fall. The court determined that the evidence submitted by the plaintiff established that the harm caused by the spreader bar "flowed directly from the application of the force of gravity to the object."

PRACTICE NOTE: Sole proximate cause of a plaintiff cannot be established where the conduct that injured the plaintiff involves another's participation and/or instruction.

TOPICS: *Labor Law §§ 200 and 241(6), Common law negligence, Routine construction risks, Contractual indemnification*

VEGA V. FNUB, INC.

2023 NY App. Div. LEXIS 3634
June 30, 2023

The plaintiff commenced this Labor Law and common-law negligence action against the defendant and a third-party plaintiff, seeking to recover damages for injuries he sustained. At the time of the accident, the defendant was the general contractor for a project consisting of the construction of a new building, and the third-party defendant was the masonry subcontractor. The defendant commenced a third-party action against the masonry subcontractor for contractual indemnification, and the third-party defendant asserted a counterclaim for indemnification from the defendant. The plaintiff was operating a buck hoist, which is an elevator affixed to the outside of a building under construction, and was transporting both workers and materials in the buck hoist. There was a two- to four-inch gap between the building and the buck hoist, and when the buck hoist stopped at a building level, the plaintiff was required to place a metal plate over that gap before anything heavy or with wheels was moved on or off the buck hoist. The accident occurred when the plaintiff took the buck hoist to the eighth floor of the building, and an employee of the third-party defendant attempted to roll an electric pallet jack onto the buck hoist without waiting for the plaintiff to put down the metal plate. The wheels of the pallet jack became stuck in the gap, causing debris to fall off the pallet jack. The plaintiff used an angle iron as a lever to try and push the pallet jack upward and out of the buck hoist. The angle iron "gave way," the pallet jack shifted back down, and the plaintiff slipped on some of the fallen debris and was injured. The plaintiff moved for partial summary judgment on liability on his causes of action for violation of Labor Law §§ 240(1) and 241(6), to which the defendant cross-moved for summary judgment, requesting dismissal of plaintiff's complaint as well as summary judgment as it pertained to contractual indemnification against the third-party defendant. The third-party defendant also cross-moved for summary judgment to dismiss §§ 240(1) and 241(6) against it, as well as dismissal of the third-party action brought by the defendant. The Appellate Court determined that dismissal of the plaintiff's § 240(1) claim was proper, for the plaintiff's injuries resulted from a routine workplace risk of a construction site and not an elevation-related risk to which the statute applies. Thus, liability under § 240(1), which is only applicable to elevation-related risks, could not be imposed on the defendant.

PRACTICE NOTE: Where the alleged defect or dangerous condition arises from the contractor's methods and the owner or general contractor exercises no supervisory control over the operation, no liability attaches to the owner or general contractor under the common law or under Labor Law § 200. A contractual indemnification clause will be enforceable where it is proven that an effective indemnification agreement was in place at the time of the accident, that the party seeking enforcement of the clause was free from negligence with regard to a plaintiff's accident, and that a plaintiff's accident arose out of the work of the party who has agreed to indemnify.

TOPICS: *Labor Law §§ 200 and 241(6), Common law negligence, Enumerated activity*

ROSS V. NORTHEAST DIVERSIFICATION, INC.

2023 NY App. Div. LEXIS 4042
July 28, 2023

The plaintiff brought suit in claims for violation of Labor Law and common law negligence, seeking damages for injuries he allegedly sustained while he was working as a concrete finisher for a third-party defendant on a project to install concrete sidewalks and pavement at an elementary school owned by the defendant third-party plaintiff. The defendant and third-party plaintiff was hired by the owner as the general contractor, and Northeast subcontracted with Militello for the sidewalk work. The owner asserted cross-claims against Northeast for contractual and common-law indemnification and, in a third-party action, Northeast and Hamburg sought, inter alia, contractual indemnification. While performing that work at the elementary school, the plaintiff allegedly slipped and tripped on a stone and fell into an eight- to twelve-inch deep trench that had been cut into the blacktop to allow the installation of a curb, thereby causing the plaintiff to sustain various injuries. The Appellate Division determined that the lower court erred in dismissing the defendants' summary judgment motion to dismiss the plaintiff's cause of action for violation of Labor Law § 240(1) on the basis that the statute applies only to the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." Here, it was established that the plaintiff's work involved only the demolition and restoration of a sidewalk at the school, and thus § 240(1) was inapplicable to impose liability. The court further explained this holding by providing that "[a]lthough plaintiff argues that the court properly determined that § 240(1) is applicable because the sidewalk work was part of a larger construction project, the plaintiff and his employer had no other role in the project and the sidewalk work constituted a separate and distinct phase of the overall project."

PRACTICE NOTE: Where a plaintiff's work involves only the demolition and restoration of a sidewalk, Labor Law § 240(1) – which concerns buildings or structures – is inapplicable.

TOPICS: *Labor Law §§ 200 and 241(6), Common law negligence, Sole proximate cause*

VERDUGO V. FOX BLDG. GROUP, INC.

2023 NY App. Div. LEXIS 4074
July 28, 2023

The plaintiff, a carpenter, brought suit to recover damages for injuries he sustained when he fell while installing roof trusses on a building as part of a commercial construction project. On the day of the accident, the roof trusses were raised two at a time by a crane to the plaintiff, whose duties included securing the trusses to the frame of the building approximately 13- to 14-feet above the ground while wearing a body harness with a four-foot-long lanyard. The plaintiff was injured after the crane cable became entangled with a truss, which was unsecured, and upon which the plaintiff was standing, causing the truss and the plaintiff to fall to the ground. The Appellate Court determined that the defendants did not establish that the plaintiff was the sole proximate cause so as to dismiss the plaintiff's claim for Labor Law § 240(1) and, instead, a triable issue of fact was raised by the submitted deposition testimony as to whether adequate safety devices were readily available that the plaintiff knew he was expected to use but for no good reason chose to do so, causing an accident, and whether the plaintiff would not have been injured had he not made that choice. The Appellate Court provided to establish that the plaintiff was the sole and proximate cause of the accident and subsequent alleged injuries, the defendants must demonstrate that the plaintiff (1) had adequate safety devices available; (2) knew both that the safety devices were available and that [they were] expected to use them; (3) chose for no good reason not to do so; and (4) would not have been injured had [plaintiff] not made that choice. Additionally, in evaluating such a defense of sole and proximate cause, it is well settled that the failure to follow an instruction by an employer or owner to avoid unsafe practices does not constitute a refusal to use available, safe and appropriate equipment.

PRACTICE NOTE: Contrasting deposition testimony about whether a plaintiff had adequate safety devices available to him or her; plaintiff knew that such devices were available to him and her; plaintiff knew they were expected to use such available safety devices; and plaintiff chose not to use such devices for no good reason; and that such caused the plaintiff to become injured, will raise an issue of fact with regard to imposing liability under Labor Law § 240(1).

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THOMAS MORE BUCKLEY AND THEODORE W. UCINSKI III NAMED VICE CHAIRS OF THE CONSTRUCTION PRACTICE

Goldberg Segalla partners Thomas More Buckley and Theodore W. Ucinski III have been elevated to vice chairs of the firm's Construction Litigation and Counsel practice.

Tom represents businesses in complex commercial litigation matters, including construction defect, construction injury and death, and the defense of professional liability and licensing board actions faced by architects, engineers, and other professionals. He also defends clients against catastrophic personal injury and death claims, unfair trade practice claims, and business and contractual disputes.

Ted is an experienced litigator in the state and federal courts of New York and New Jersey, handling labor law, multi-party construction defect litigation, and high-exposure personal injury matters. He draws on over 20 years of experience representing clients such as the Port Authority of New York and New Jersey, as well as major developers and owners with holdings throughout the five boroughs.

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WEBINAR SERIES

CONSTRUCTION

Labor Law Update: Fall 2023

Tuesday, December 12, 2023
12 PM ET/9 AM PT

Theodore W. Ucinski and Kelly A. McGee

In this webinar, Goldberg Segalla partners Theodore W. Ucinski and Kelly A. McGee will discuss the basics of NY Labor Law §§ 240(1), 241(6), and 200 as well as Court of Appeals and recent Appellate Division cases of interest. It's geared towards anyone who needs to know the fundamentals of Labor Law as well as the advanced practitioner who wants an update on recent decisions.

WHO SHOULD ATTEND:

- Insurance Professionals
- Insurance Brokers
- Construction industry professionals who would like a better understanding of NY Labor Law and its ramifications for their profession

ATTENDEES WILL LEARN:

- The basics of New York Labor Law
- The theory behind the most prominent Court of Appeals cases
- The current state of the law, with a discussion of some of the recent Appellate Division cases

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