



CandD CONSTRUCTION TORT LITIGATION GROUP SECURES SUMMARY JUDGMENT ON PLAINTIFFS' LABOR LAW 240 CLAIM

August 3, 2017

On July 21, 2017, Cullen and Dykman secured summary judgment dismissing Labor Law 240 in a complex Labor Law action involving damages claimed to be in excess of \$ 4 million. The trial court held that falling from stilts while installing sheetrock could not be a gravity-related claim cognizable under Labor Law 240 since the stilts themselves were the proper protection for the work that was being conducted. This result can be attributed to the Firm's Construction Tort Litigation Group.

The plaintiffs in this matter alleging that the plaintiff was permanently injured when he tripped over a piece of electrical piping while using taper construction stilts. The plaintiff claimed to have sustained fractures that required multiple surgeries, that he was permanently disabled and has not worked since the accident.

The plaintiffs commenced an action against the construction manager and ownership entities. The plaintiffs' alleged that the defendants violated provisions of the New York State Labor Law, including violations of the strict liability statute, Labor Law Section 240(1), (well-known as the "Scaffold Law") a statute designed to protect construction workers from certain elevation-related risk hazards.

Section 240(1) imposes liability on contractors and owners and a finding of a violation of the Scaffold Law results in strict liability regardless of individual fault and, accordingly, does not allow defendants to introduce evidence as to comparative fault at the time of trial.

In defending the owner and construction manager, we elicited testimony from the plaintiff early on in discovery and before any of the defendant depositions wherein he admitted that the stilts did not cause the incident and that the incident was instead caused by the plaintiff's act of stepping on electrical piping. Relying on the plaintiff's deposition testimony, we moved for summary judgment on the basis that the accident was not caused by an "elevation-risk" within the purview of Labor Law 240. We successfully argued that the accident arose from the act of stepping on piping, which had nothing to do with the protection afforded under the statute and the proper protection was provided by the stilts.

The New York Supreme Court agreed with our distinction and discounted the plaintiff's testimony seeking to create an issue of fact as the stilts involvement and held that the incident was not caused by an "elevation-risk" within the context of the Scaffold Law. As a result of this decision, the construction manager and ownership

defendants now have avoided substantial exposure and can rely on comparative fault issues to significantly limit the risk in this case. The case was primarily handled by Scott Shapiro, a partner in the Construction Tort Litigation Group.

For more information on the Construction Tort Litigation Group, please click [here](#). To see the decision, please click [here](#).