



Construction Litigation Group Secures Appellate Division Win in New York Labor Lawsuit

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The Construction Litigation Group recently secured an appellate decision affirmance for its clients in a New York Labor Law suit. In the case, the plaintiff was struck in the arm by a segment of a drift pin, which was struck by another worker with a sledgehammer. The plaintiff alleged a right forearm injury with surgery to remove fragments and alleged subsequent nerve damage. The plaintiff also sought compensation for these permanent injuries that prevent him from ever returning to work.

Based on the allegation and early work-up we filed a Pre-Answer Motion to Dismiss, successfully demonstrating to the Lower Court that the plaintiff's § 241(6) claim was not applicable given that the subject drift pin did not qualify as an edged tool that was required to be kept sharp pursuant to Industrial Code § 23-1.10(a). Following the lower Court's dismissal of the §241(6) claim, plaintiff appealed to the Appellate Division – First Department.

In opposition to the Appellate Brief, the Respondents' Brief provided additional case law support and photographic evidence illustrating that the subject drift pin did not qualify under the Industrial Code. Specifically, Industrial Code § 23-1.10(a) did not apply to the drift pin and sledgehammer used because they were not and never were edged tools that were required to be kept sharp within the confines of the regulation.

In their decision, the presiding judges relied upon the photo evidence and arguments submitted showing that the drift pin was not sharp or edged and found "the regulation inapplicable to tools that have "flat and/or round edges" (Pol v City of New York, 126 A.D.3d 526, 526 [1st Dept 2015], lv denied 25 NY3d 912 [2015]), and since plaintiff has not submitted any proof showing that the drift pin was a tool with a sharp edge, the claim was properly dismissed."

Credit is due to associate Wayne M. Cox who worked on and argued the appeal before the Appellate Division – First Department, along with partner Scott M. Shapiro and Construction Litigation Group head partner John E. Sparling.

Cullen and Dykman's Construction Litigation Group has now expanded to 38+ full-time attorneys, each of whom are independently trained in construction and safety practices. They each possess a complete working knowledge of the fundamentals of construction law and litigation. Our firm and the Construction Litigation Group strive to remain current with respect to new developments in the law, such as cases impacting the liability of architects and construction managers. For more information on the Construction Litigation Group, please click [here](#).

Practices

- Construction Litigation

Attorneys

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