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Construction Litigation Group Secures Summary Judgment on Major New York Construction Lawsuit

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The Construction Litigation Group has secured a complete dismissal of a New York Labor Law personal injury suit where the injured Plaintiff claimed 5 surgeries, over $3 million in lost wages and a total damages claim including pain and suffering of over $6 million dollars. The suit was brought by an ironworker Plaintiff represented by Sacks and Sacks who was allegedly injured during a fall at the construction project. This successful result avoided both a lengthy and costly trial and is an extremely rare but wonderful complete win in the difficult New York Construction Labor Law practice area.

In Ferguson v. Durst Pyramid, LLC and Hunter Roberts (Index No.: 161274/2014), Plaintiff, an ironworker, was working on a steel curtain wall system at a high-rise building in Manhattan, New York. He claimed to have been injured due to not being provided with the proper protection for his work. He claimed he had to use a plastic bucket to climb the crane. The inverted bucket kicked out and the Plaintiff fell to the floor below sustaining serious injuries. He sued the owner Durst Pyramid and the construction consultant manager Hunter Roberts Construction Group, L.L.C. as defendants.

Plaintiff claimed that his supervisor directed him to use the bucket. Through subpoenas and non-party discovery, the supervisor was deposed and claimed he did not direct the Plaintiff to use the bucket. Moreover through the use of satellite photography, department of building records and an expert, it was established that the crane had not one, not two but three separate access points to safely alight the crane and didn't need to use the bucket. Had he accessed any one of the three access points, he would not have fallen to the floor below.

With respect to damages, the Plaintiff alleged that he had sustained a rotator cuff tear, as well as other minor tears and fractures. Plaintiff claimed that the injuries required five separate surgeries (including total left hip replacement) and that he would need future surgical intervention. Plaintiff's claim for lost wages exceeded $4,000,000.

Following oral argument in New York Supreme Court, County of New York, the Court rendered a written decision denying Plaintiff's motion, granting Defendants' motion, and dismissing Plaintiff's claims. In its decision, the Court agreed with the Defendants argue that the use of and fall from an inverted bucket was not the type of height-related case encompassed by Labor Law 240(1). Further, the Court found that the fact that alternative access points existed in multiple locations was not a denial of protections but merely an inconvenience.

Credit is due to associate Kristy Eagan who worked on the motion, along with partner Mike Cordrey who argued the motion and both were supervised and overseen by the Hunter Roberts Construction Group Partner Scott M. Shapiro.

Cullen and Dykman's Construction Litigation Group has now expanded to 28 full-time lawyers who each are independently trained in construction and safety practices. They each have a complete working knowledge of the fundamentals of construction law and litigation. We strive to remain current with regard to significant new developments in the law, such as multiple prime contracting, architect's and construction manager's liabilities cases. For more information on the Construction Tort Litigation Group, please click here. A of the copy Ferguson decision can be found at the following link: FERGUSON-DECISION

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