An Overview of New York State Labor Law

By: Louis F. Eckert

New York Labor Law statutory scheme, Labor Law §§240, 241(6) and 200, has given rise to myriad legal battles over interpretation of the statute's requirements. There has been an explosion in litigation as well as an explosion in multi-million dollar verdicts. This article is intended as an overview of the current state of New York Lab or Law.

There are three N.Y.S. Labor Law statutes generally applicable in construction accident cases: Sections 200, 240(1) and 241(6). The Legislative intent for the special protections offered to construction workers, as set forth particularly in §§240(1) and 241(6), under Article 10 of the Labor Law, is to "protect workers by placing ultimate responsibility for safety practices at building construction sites upon the owners and general contractors, or their agents, instead of the workers who are not in a position to protect themselves." [1] The duties are non-delegable as to the plaintiff, meaning that the owner and general contractor are liable to plaintiff even if others assumed the responsibility. [2] It has been held that subcontractors become "statutory agents" of the owner and general contractor, and hence Labor Law defendants, if they possess the authority to supervise and control the work. [3]

Labor Law § 200

Labor Law §200 is a codification of the common law rules with respect to negligence actions. This section imposes a duty to use reasonable care and the duty to provide a safe place

---

[1] Zimmer v. Chemung County Center for Performing Arts, 65 N.Y.2d 513 (1985)
[2] Page v. LaBuzzetta, 73 A.D.2d 483 (3rd Dept. 1980).
[3] Russin v. Picciano & Son, 54 N.Y.2d 311(1981).

to work. Elements of notice, actual or constructive, are necessary if the defendant did not create the condition. Unlike Labor Law §240, the plaintiff's negligence could apply to offset any liability to the defendant.

In order for Labor Law §200 to apply, the defendant owner, general contractor or employer must have authority to control the activity bringing about the injury in order for liability to be imposed under Labor Law §200. No liability attaches to an owner or general contractor under common law or Labor Law §200 where the defect or dangerous condition arises from the respective contractor's or subcontractor's methods and the owner or general contractor exercises no supervisory control over the operation.

Labor Law § 241(6):

Labor Law §241(6) imposes vicarious liability upon (1) owners for the negligent failure of contractors and subcontractors their agents and employers, and (2) contractors for the negligent failure of subcontractors to perform the statutory duty that all areas in which "construction, excavation or demolition work is performed shall be so constructed, stored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequent such places." Plaintiff must prove that he was hired to work on the structure.

A violation of the statute results in strict liability, but the liability is not absolute: Plaintiff's comparative negligence is admissible.[4] At the outset of an analysis in this area, the respective at-issue task must involve construction work which includes erection, alteration, repair, maintenance, painting or alterations. The plaintiff or his employer must be hired by the

owner or general contractor to perform construction work on a building. In a recent case, a building manager which operated and managed the subject property was injured when he moved a heavy bag allegedly at the request of a construction worker and the court reasoned that the building manager was not engaged in construction work for purposes of Labor Law §241(b).

The New York Court of Appeals has held that a plaintiff must plead and prove a violation of the Industrial Code. The Code provision must require specific protection and not just restate a general provision of safety.[5] For instance, plaintiff's reliance upon a provision that merely restates the common-law duty to provide a safe working environment will not support a finding of liability.[6] Whether an Industrial Code provision is specific enough to support liability under Labor Law §241(6) has been the subject of extensive appellate review. Below are examples of common cases involving this issue:

A provision of the Industrial Code that has sparked considerable litigation relates to trip and falls while performing work at a construction site. Regulations requiring all passageways and work areas to be kept free from dirt and debris are specific enough to support a 241(6) claim.[7] Regulations requiring work areas to be kept free of scattered tools and materials and from sharp projections supports a 241(6) claim.[8] Regulations requiring guarding of shafts and specifying manner in which they are to be guarded are specific.[9] Regulations requiring proper illumination

---

(. . . continued)

[4] Long v. Forest-Fehlhaber, 55 NY2d 154 (1982).

[5] Ross v. Curtis Palmer, 81 N.Y.2d 494 (1993).

[6] Schwab v. A.J. Martini Inc., 288 A.D.2d 654 (3rd Dept. 2001).

[7] Vieira v. Tishman Const. Corp., 255 A.D.2d 235 (1st Dept. 1998)

[8] McAndrew v. Tennesse Gas Pipeline Co., 216 A.D.2d 876 (4th Dept. 1995).

[9] Paolangeli v. Cornell University, 187 Misc.2d 559 (Sup. Ct. Tompkins Cty, 2001)

are specific enough to support a 241(6) claim.[10] Violations of **OSHA**, alone, are not sufficient to support 241(6) action.[11]

Labor Law § 240

§240 of the Labor law requires all contractors and owners in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure to furnish or erect for the performance of such work, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes which shall be so constructed, placed, operated, maintained to give proper protection to the person performing such work. The statute was designed to protect workers from special hazards presented by gravity-related risks. A §240 violation imposes absolute liability: plaintiff's comparative negligence is not admissible. For instance, plaintiff's failure to lock wheels of rolling scaffold does not preclude a finding of liability. [12]Likewise, a fall from a wall after being told not to walk on wall did not preclude a finding of liability. [13]The plaintiff's alleged intoxication could not be considered a contributing cause of the accident. [14]In §240(1) cases where the employer is a party, a third-party plaintiff (owner, contractor) is permitted to show negligence on behalf of the plaintiff in order to impute such negligence to the employer.

Under this statutory scheme, liability is imposed on an owner or general contractor based solely on their status. Comparative fault principles have no applications to an action governed by Labor Law §240.

Examples of § 240 claims

FALLING OBJECTS

---

[10] Herman v. St. John's Episcopal Hospital, 242 A.D.2d 316 (2nd Dept. 1997).
[11] Fox v.Hydro Development., 222 A.D.2d 1124 (4th Dept. 1995).
[12] Bombard v. Christian Missionary Alliance of Syracuse, 292 A.D.2d 830 (4th Dept. 2002).
[13] Hagins v. State of New York, 81 N.Y.2d 921 (1993).
[14] Tate v. Clancy-Cullen Storage Co., 171 A.D.2d 292 (1st Dept. 1991).

For §240 to apply to a falling object, the plaintiff must show that the object fell because of inadequate hoisting or lack of adequate safety devices.[15] A falling platform hoist that struck the plaintiff falls under §240.[16] Plaintiff while standing on a ladder and removing a window, was struck by falling glass. He did not fall from the ladder and was only cut on the arm. Since the glass was not being hoisted or part of a load that required securing, §240 did not apply.[17]

A plaintiff that was assisting in the delivery of a subway car when the car fell from a crane and struck him, was not covered under §240 since he was not engaged in the erection, demolition, repairing, altering, painting, cleaning, or pointing a structure.[18]

FALLING WORKER

Unloading a truck is not an elevation related risk just because there is a difference in elevation between the ground and the truck..[19] A worker who injured his back while lifting a tank from an underground vault was not covered under §240(1). [20]

Floors or Decking

Collapse of unsecured plywood boards which supported construction worker four stories above ground was a violation of §240(1).[21] A worker who fell from metal decking while pouring concrete for ceiling of structure was covered under §240(1).[22]

Stairways

---

[15] Narducci v. Manhassett Bay Assoc., 96 N.Y.2d 259 (2001).
[16] Jiron v. China Buddhist Assoc., 698 N.Y.S.315 (2nd Dept. 1999).
[17] Narducci, supra
[18] Henneberry v. City of Buffalo, 206 A.D.2d 882 (4th Dept. 1994).
[19] Samuel v. A.T.P. Development Corp., 276 A.D.2d 685 (2nd Dept. 2000).
[20] Fills .v Merit Oil Corp., 258 A.D.2d 556 (2nd Dept. 1999).
[21] Becerra v. City of New York, 261 A.D.2d 188 (1st Dept. 1999).
[22] Clute v. Ellis Hospital, 184 A.D.2d 942 (3rd Dept. 1992).

A permanent stairway is not a safety device within scope of § 240(1).[23] A fall from an interior stairway that occurred when the railing gave way was not an elevation-related hazard.[24] However, a temporary staircase is covered under § 240(1).[25]

Collapsing Structures

A chimney that fell on a worker during demolition was not attributable to elevation differentials to warrant imposition of liability pursuant to §240(1), since worker and chimney were at the same height.[26] The scaffolding law did not apply to accident in which worker fell into open five-foot trench when the earth gave way beneath him.[27]

In order for the absolute liability provisions of this statute to apply, plaintiff must be involved in one of the following enumerated construction activities listed below to recover for a "gravity related" accident:

Demolition – Plaintiff who was demolishing a wall and was struck by a piece of the wall did not fall under §240 since the plaintiff was at the same elevation as the wall. Although demolition is a covered activity, accident was not gravity related.[28]

Altering – Altering a building or structure requires making significant physical change to the configuration or composition of building or structure[29] *Examples*: Installation of satellite communications system on roof.[30] Tuning a satellite dish and running cable into the building. [31]

---

[23] Greso v. Nichter Const. Co., Inc., 267 A.D.2d 1074 (4th Dept. 1999).
[24] Barrett v. Ellenville Nat. Bank, 255 A.D.2d 473 (2nd Dept. 1998).
[25] Frank v. Meadowlakes Development Corp., 256 A.D.2d 1141 (4th Dept. 1998).
[26] Brink v. Yeshiva University, 259 A.D.2d 265 (1st Dept. 1999).

[27] Ozzimo v. H.E.S. Inc., 249 A.D.2d 912 (4th Dept. 1998).
[28] Zdzinski v. North Star Construction, 242 A.D.2d 951 (4th Dept. 1997).
[29] Jablon v. Solow, 91 N.Y.2d 457 (1998).
[30] Tassone v. Mid-Valley Oil Company, 291 A.D.2d 623 (3rd Dept. 2002).
[31] DiGiulio v. Migliore, 258 A.D.2d 903 (4th Dept. 1999).

Running computer and telephone wire while on ladder. [32]Removing and reinstalling a security camera system while on ladder. [33]

Repairing – In order to constitute a repair, there must be proof that the machine or object being worked upon was inoperable or not functioning properly. [34] The replacement of a steam valve pursuant to routine maintenance was not a repair. However, when plaintiff was called to a supermarket to fix a freezer, this was a repair and fell under §240. [35]

Cleaning – The cleaning that is encompassed by Labor Law §240 does not include routine cleaning in a non-construction, non-renovation context. [36]In Machado, the plaintiff fell while cleaning the numbers affixed to the outside of a building. Since this was ordinary, routine maintenance unrelated to any construction or renovation, there was no §240 violation. Similarly, a cleaning company's employee who was injured when she fell from a ladder while cleaning kitchen exhaust system was not covered under §240. [37] However, the cleaning of light fixtures was found to be covered under §240. [38]

Window Cleaning – Routine cleaning of windows for the owner of an apartment in a high rise does not fall under §240. [39]However, the cleaning of windows of a newly constructed condo complex to ready the condos to be shown for sale does constitute a labor law violation.[40]

DEFENSES

---

[32] Weinginger v. Hagedorn, 91 N.Y.2d 958 (1998).
[33] Guzman v. Gumley-Haft, Inc., 274 A.D.2d 555 (2nd Dept. 2000).
[34] Goad v. Souther Electric Inter., 263 A.D.2d 654 (3rd Dept. 1999)
[35] Craft v. Clark Trading Corp., 257 A.D.2d 886 (3rd Dept. 1999).
[36] Machado v. Triad III Assoc., 274 A.D.2d 558 (2nd Dept. 2000).
[37] Williams v. Perkins Restaurants, Inc., 245 A.D.2d 1128, (1999)
[38] Chapman v. IBM,253 A.D.2d 123 (3rd Dept. 1999).
[39] Brown v. Christopher Street Owners Corp., 87 N.Y.2d 938 (1996).

As this statute imposes absolute liability. Defenses are few and they are narrowly construed.

1. **Recalcitrant Worker** – The statutory protection does not extend to workers who have adequate and safe equipment available to them but refuse to use it. The defense can sometimes be used to defend a plaintiff's summary judgment motion. For instance, plaintiff's fall from a broken ladder after being instructed not to use the ladder did not permit defendant to invoke the recalcitrant worker defense since no safety devices were used.[41]

2. **Proximate Cause** – The defect or violation of the statute must be a proximate cause of the accident. If plaintiff was provided proper safety equipment but his actions were the sole proximate cause of the accident, then there is no statutory violation. However, if the defect was a 1% cause, then defendants will bear 100% absolute liability under §240. [42]

ADDITIONAL ELEMENTS OF LABOR LAW §240

In order for the absolute liability provisions of Labor Law §240 to apply, plaintiff must be working on a "structure." "Structure" is loosely defined. A burial vault is considered a structure.[43] Likewise, a pipeline is considered a structure.[44] The Court of Appeals has defined a structure as "any production or piece of work artificially built up or composed of parts joined together in some definite manner."[45] An electrical sign that extended across the facade of the building was considered to be part of the building.[46] Plaintiff who was injured while affixing a

---

(. . . continued)

[40] Cruz v. Bridge Harbor Heights Assoc. 249 A.D.2d 44 (1st Dept. 1998).

[42] Weininger v. Hagedorn, 91 N.Y.2d 958 (1998).

[43] Ciancio v. Woodlawn Cemetery Assoc., 249 A.D.2d 86 (1st Dept. 1998).

[44] Covery v. Iroquois Gas Transmission System, 218 A.D.2d 197, (3rd Dept. 1996).

[45] Lombardi v. Stout, 80 N.Y.2d 290 (1992).

[46] Izrailev v. Ficarra Furniture of Long Island, Inc., 70 N.Y.2d 813 (1987)

3' by 5' "for sale" sign on the building was covered under §240(1) since plaintiff was considered "altering" the building at the time. However, there was no violation where the plaintiff fell in a convenience store while replacing seasonal advertising signs since it did not involve repairing or altering the building.[47] In addition, plaintiff must show he was performing work necessary and incidental to the enumerated activity. Owners and contractors are liable even if they do not control or supervise the work performed. An owner of the building will be held responsible for the injury to the employee of the general contractor, regardless of the fact that the owner did not supervise or control the work. [48]

EXCEPTIONS

Owners of 1 or 2 family dwellings are exempted from the absolute liability provisions of the Labor Law unless they control or supervise the work. Doubts concerning the exception for one and two family dwellings should be resolved in favor of the owner.[49] Owner of a two family residence who rented both units out was not entitled to benefit of homeowner's exception to scaffolding statute since premises became a commercial enterprise.[50]

1. THIRD PARTY ACTIONS

A. Actions Against Employers:

1. Common Law Contribution and Indemnification

---

[47] Cook v. Parish Land Co., Inc.,239 A.D.2d 956 (4th Dept. 1997).
[48] Campanella v. St. Luke's Hospital, 247 A.D.2d 294 (1st Dept. 1998).
[49] Garcia v. Martin, 285 A.D.2d 391 (1st Dept. 2001).
[50] Sweeney v. Sanvidge, 271 A.D.2d 733 (3rd Dept. 2000).

A third party action seeking common law indemnification from an injured party's employer is barred, pursuant to Worker's Compensation Law §11, unless the plaintiff has suffered a "grave injury." This limitation affects all claims arising after September 9, 1996. A "grave injury" is defined in §11 of the Worker's Compensation Law as an injury proven by competent medical evidence, which fails under on or more of the following categories:

- Death
- Permanent and total loss of use or amputation of an arm, leg, hand or foot
- Loss of multiple fingers
- Loss of multiple toes
- Paraplegia or quadriplegia
- Total or permanent blindness
- Total and permanent deafness
- Loss of nose
- Loss of ear
- Permanent and severe facial disfigurement
- Loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

When determining if the injuries alleged fit the definition of a grave injury the Court tends to favor a literal interpretation limiting the injuries that actually fit such a definition.

2. Contractual Indemnification

Parties are generally free to shift exposure from one party to another by contract. While indemnity provisions tend to be similar, the terms of each contract must be read closely because subtle distinctions can significantly alter the outcome.

General Obligations Law (GOL) §5-322.1 precludes an owner or general contractor from seeking indemnity for its own negligence. Where a party has been held statutorily liable under the strict liability Sections of the Labor Law, it will be entitled to enforce contractual indemnity agreements if it is free of negligence. [51] In contrast, where there is a factual issue as to the fault or negligence of the indemnitee, the indemnity agreement cannot be enforced by way of summary judgment, and must await trial and a jury determination of relative fault/negligence. [52]

In a seminal case in the area of the law the Court of Appeals refused to allow the indemnitee to enforce an indemnity agreement where the indemnitee was partially negligent and the agreement was over broad.[53] Essentially, the agreement obligated the indemnitor to indemnify the indemnitee for the indemnitee's own negligence. This means that if a jury found the indemnitee 1% responsible and the indemnity agreement was over broad, the entire indemnity agreement could fail.

In a very recent development, the Court of Appeals, the highest New York State Court, has held that an indemnitee could recover under an indemnity provision to the extent of the indemnitor's liability, regardless of the indemnitee's partial negligence, provided, however, that the indemnification provision contains a savings clause (such as "To the fullest extent permitted by law.."). [54] It should be noted that the ruling in Judlau is limited to the narrow area occupied by the General Obligations Law 5-322.1, which involves contracts involving owners and general contractors on construction projects.

---

[51] Brown v. Two Exchange Plaza Partners, 76 N.Y.2d 172 (1990).

[52] Correia v. Professional Data Management, Inc., 259 A.D.2d 60 (1st Dept. 1999).

[53] Itri Brick & Concrete Corp. v. AETNA Casualty & Surety Company, 89 N.Y.2d 786, 658 N.Y.S.2d 903 (1997)

[54] Brooks v. Judlau 10 NY3d 821 (2008).

(continued . . .)

B. Actions Against Other Contractors:

Where the party against whom contribution or indemnification is sought is not the employer of the plaintiff the "grave injury" standard does not come into play. An indemnification provision against a non-employer contractor is subject to the proscriptions of General Obligations Law 5-322.1 and the "partial indemnification" concept in Judlau.

CONCLUSION

Clearly, litigators must be initially aware of all aspects, provisions, and issues pertaining to applicable sections of the Labor Law. Few areas of practice in personal injury are as complex and understanding the ramifications of the law are as essential to the prosecution or the defense of a case.

Louis F. Eckert is a partner with the firm of Lewis, Brisbois, Bisgaard & Smith, where he practices in the general liability section and specializes in labor law and premises security matters.

(. . . continued)