

Stonberg Secures Summary Judgment in NYC Case: No Evidence of Negligence or Labor Law Violation

In the aftermath of the 9-11 attacks, plaintiff's job was to excavate and expose gas mains feeding the fires at Ground Zero so mechanics working for the utility company, Consolidated Edison of New York ("Con Ed"), could cap them and stop the flow of gas feeding the fires. Plaintiff was employed by Roadway Contractors, a subcontractor to Con Ed. On September 20, 2001, the day of the accident, Con Ed supervisors asked plaintiff to report to a particular location to assist in exposing a buried gas main. Time was of the essence as a crane would have to pass over the area in a few hours and the road had to be restored by then.

When plaintiff reported to the scene, the Con Ed supervisor told plaintiff what had to be done. Plaintiff then grabbed his gas powered handheld saw and started cutting a conduit blocking access to the gas main, as directed by the Con Ed supervisor. Sparks from his cutting operation ignited gas apparently leaking from his saw, engulfing his reflective safety vest in fire. Plaintiff sustained third degree burns over 40% of his body. He was hospitalized in a burn center for over a month where he underwent multiple surgical procedures.

Plaintiff sued Con Ed alleging negligence and violations of New York's Labor Laws. KSLN was retained to represent Con Ed as an additional insured under Roadway Contracting's general liability policy of insurance. Plaintiff also sued John Deere, the saw manufacturer, alleging strict product liability causes of action. Upon the completion of discovery, Mike Stonberg, managing attorney in our New York City office, moved for summary judgment seeking dismissal of all claims against Con Ed. Plaintiff argued that Con Ed was negligent and violated Labor Law § 200 because it directed and supervised plaintiff's work. While there was ample evidence to support plaintiff's position, Stonberg argued that Con Ed did not direct or supervise *the means and methods* of how plaintiff performed his work. The Trial Court agreed with Mike's position and dismissed the negligence claim.

Plaintiff also alleged a violation of Labor Law § 241(6) in his complaint, but failed to timely cite any Industrial Code sections that were allegedly violated. We argued that plaintiff abandoned the claim. In an effort to resuscitate this claim against Con Ed, co-defendant John Deere cited to various sections that arguably were violated. The Trial Court held, however, that the provisions relied on by John Deere were not factually applicable to our case. Mike also argued that John Deere lacked standing to assert a Labor Law violation as it was not a member of the class intended to be protected by the Labor Law, construction workers.

Plaintiff and John Deere both appealed this decision. The Appellate Division, First Department, issued its decision on May 5, affirming the dismissal of all claims against Con Ed. After two failed mediations and a demand that remained at \$3,000,000, our carrier client (that had the primary and excess coverage) was able to take down a very large reserve.