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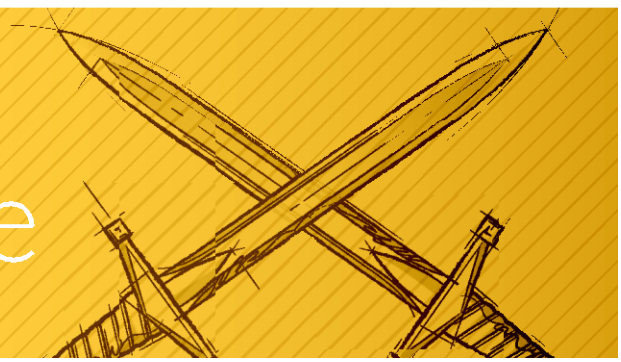

Court of Appeals Declines to Apply Labor Law §240(1) To Cleaning a Structure at a Manufacturing Plant

While recognizing that it has rejected the idea that Labor Law §240(1) applies only to work performed at constructions sites, the Court declined to extend the application of the statute to encompass cleaning a manufactured structure at a manufacturing plant.

The product at issue was a steel "wall module" manufactured at a plant in Western New York. The module was at least 7 feet high and manufactured by plaintiff's employer. Its customer, the defendant, was purchasing the module for installation in a nuclear waste treatment facility where it was to be attached to a building wall as support for pipes. After fabricated, the module had to be cleaned before it was shipped to the purchaser. Plaintiff was standing on a ladder provided by his employer when, according to him, the ladder broke and fell to the ground. Plaintiff sued the purchaser of the wall module, as well as his employer's landlords, stating both were contractors and owners. Defendants denied these claims, but the Court stated that it did not reach that issue because it held that plaintiff was not engaged in an activity protected by the statute.

Plaintiff's argument was simple: That he was "cleaning" and the wall module he was cleaning was a "structure." The broad definition given by the court for "structure" is "any production or piece of work artificially built up or composed of parts joined together in some definite manner". This Court held, however, that plaintiff's argument was too simple and would lead to an expansion of Labor Law §240 that the case law does not support and that the Court was convinced the legislature "never intended."

In reaching its decision, the Court acknowledged the legislative history of the statute and the fact that the first version was enacted in the 1800s in response to "wide spread accounts of death and injuries in the construction trades." It also acknowledged that the statute is found in Article 10 of the Labor Law which is entitled "Building Construction, Demolition and Repair Work." Nonetheless, the Court acknowledged that it has rejected the argument that Labor Law §240 applies only to work performed on construction sites. Basically, it stated that in interpreting the word "cleaning", it has consistently held that it is not limited to cleaning that is "part of a construction, demolition or repair project." In reviewing the history of their cases on cleaning, the Court noted that in every case except one, the cleaning issue has involved cleaning of the windows of a building. The exception, *Gordon v. Eastern RY. Supply* involves the cleaning of a railroad car. The Court stated, however, that even in window cleaning cases, it has not extended the statute's coverage to all window cleaning, noting that routine household window washing is not covered.

In discussing their decision, the Court stated that upon their review of all published cases, they have not found a single case in their Court or in the Appellate Divisions in which a worker recovered under the statute for an injury suffered while cleaning a product in the course of a manufacturing process. The Court stated that these injuries can hardly be stated to be uncommon. Thus, they infer that it has been generally and correctly understood that Labor Law §240 does not apply to cleaning in the course of the manufacturing process. The Court acknowledged the fact that to apply Labor Law §240 to this fact situation would result in a slippery slope. The statute would be expanded to encompass virtually every cleaning of every structure in the broadest sense of the term. Thus, the court held, it will not extend Labor Law §240(1) so far beyond the purposes the statute was designed to serve.

Dahar v. Holland Ladder and Manufacturing Company, Greenbull Inc., Hanes Supply, Bexal Corporation, -NY3d- February 21, 2012.