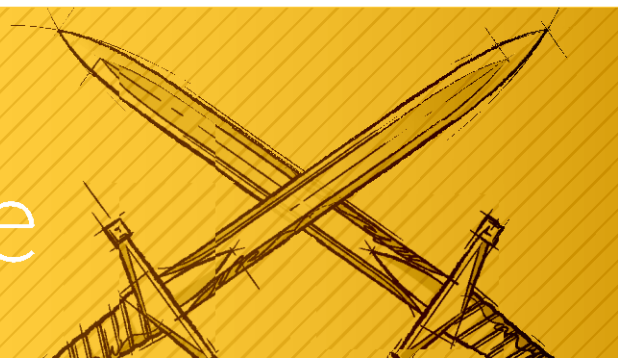
NEW AND NOTEWORTHY FOR

Insurance Defense



The First Department Holds Plaintiff's Fall off Flat Bed Truck During Unloading/Hoisting Satisfies Both Falling Worker and Falling Object Tests for Labor Law 240(1) Liability

Plaintiff was employed at the renovation of a family court building in Manhattan. He was in the process of unloading bundles of wall panels off of a flat bed truck that were to be used for the building's facade. Each bundle was approximately 10 feet long, 4 feet wide and 10 feet tall. They had been delivered to the site on a flat bed truck.

Plaintiff was instructed by his supervisor to climb on top of the bundles, attach each bundle to a crane and make sure the bundles stayed apart. When plaintiff asked his supervisor for a ladder, he was told that a ladder was not necessary and that he should climb up on the bundles. Although plaintiff told his supervisor he did not like being on top of the bundles without a ladder because there was no way to get out of there, he was not provided with a ladder.

Thereafter, plaintiff climbed on top of one of the bundles, which was approximately 10 to 11 feet off the flat bed surface and 15 to 16 feet above the ground. He needed to work on the top of the bundle so as to attach the chokers to the corners of the bundles to make sure the bundles did not interfere with one another while they were being hoisted. During the crane's lifting of one of the loads, one the tag lines "got slack" and the bundle began to swing toward the plaintiff. The plaintiff retreated as far as he could, looking for an escape route, but the bundle hit him and knocked him to the street below.

First, the court held that the plaintiff established the absence of a ladder was the proximate cause of the accident. The plaintiff had requested a ladder and explained to his supervisor that without a ladder he had no way to get down and that made him uncomfortable. The plaintiff also testified that when the bundle started swinging towards him, he moved away. However, because there was no ladder, he had no way to get off the bundles.

The court also stated that defendant was also independently liable under Labor Law §240 for failing to provide a secure method for hoisting the bundles. The plaintiff suffered harm as a result of the direct consequence of the application of the force of gravity to the bundle that was being hoisted.

The undisputed evidence established that after the bundle was lifted, one of the tied lines got slack, causing the load to swing toward the plaintiff. Thus, the court held, plaintiff established that the hoisting method was inadequate to prevent harm and he was entitled to summary judgment on his Labor Law §240 claim.

The court found absolutely no merit to the defendant's contention that the plaintiff's accident was the result of an ordinary danger of a construction site. They noted that plaintiff's fall from a height of 15 to 16 feet above ground constitutes precisely the type of elevation related risk envisioned by the statute.

The court also rejected the argument that there was any view of the evidence which established that plaintiff's own acts or omissions were the sole proximate cause of the accident. It specifically stated that whether plaintiff was hit by the swinging bundle or jumped to get out of the way, it cannot be said that he was the sole proximate cause of his injuries.

Naughton v. The City of New York, Petrochelli Construction, 94 AD3d 1 (1st Dept.), February 23, 2012.

Please contact Wendy A. Scott, Esq., (716) 853-3801, should you wish to discuss this case or have other legal matters for which you are seeking counsel.