



NEW AND NOTEWORTHY FOR Insurance Defense

Fourth Department upholds Labor Law 240(1) Liability for Planks Dropped on Plaintiff's Head.

Plaintiff and co-worker were in the process of raising planks from the lowest level of a scaffold to a higher level, approximately 20 inches below the lowest level. The lowest level was approximately three and half feet above the ground. The co-worker was balancing himself between the scaffolding frame and one of the outriggers. He lifted the end of the planks while plaintiff knelt on the ground and attempted to move another outrigger. The co-worker lost his balance, let go of the planks and dropped them on plaintiff's head. The court held that Labor Law §240 was violated because the safety device at issue in this case, the scaffolding frame, was not constructed, placed and operated to give plaintiff proper protection, as it was inadequate to protect him from the "foreseeable risk that his co-worker might drop planks onto him." In addition, the court held that its conclusion that plaintiff established a matter of law that defendants violated §240 necessarily precludes a finding that plaintiff's conduct was the sole proximate cause of his injury. It was also noted that although plaintiff was instructed to stay under the scaffold frame during the process of raising the plank to a higher level, he cannot be deemed to be a recalcitrant worker by virtue of his failure to abide by that instruction.

If you wish to discuss the content of this legal update further, or have a matter that requires legal counsel, please contact Wendy A. Scott, at (716) 853-3801, or WAScott@kslnlaw.com.

Miles v. Great Lakes Cheese of New York, 103 AD3d 1165 (4th Dept. February 1, 2013).