



NEW AND NOTEWORTHY FOR Insurance Defense

Plaintiff's Fall through an Attic Access Door within Ambit of Labor Law §240(1).

At the time of the accident, plaintiff was removing asbestos in the attic of a building. Plaintiff gained access to the attic by using a ladder and climbing through a hole that had been opened to the area for the purpose of asbestos removal. The attic floor contained an access door which was a downward opening door intended to be used only to gain access from the first floor to the pipes, valves, etc. that were contained in the attic. Plaintiff did not see the door, as it was covered by plastic. Plaintiff was injured when the access door opened downward, causing him to fall approximately 12 to 13 feet below. The court held that there was no genuine issue of fact as to whether it was foreseeable that the door, which was not intended for use as the floor, but instead intended only to enable one to reach up from the floor below, would fail when walked on by plaintiff. This, the court held is "especially so where plaintiff was unaware of the door and therefore could not take any steps to avoid it." Thus, it was held that plaintiff was entitled to summary judgment on his Labor Law §240 claim.

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.

Restrepo v. Yonkers Racing Corporation Inc., Appellate Division, 1st Dept. (April 16, 2013).