



NEW AND NOTEWORTHY FOR Insurance Defense

Second Department finds Question of Fact whether Plaintiff's Failure to Follow Instructions was Sole Proximate Cause of her Accident.

Plaintiff was a demolition worker on the first floor of a building. While picking up demolition debris, the floor underneath her collapsed and she fell to the basement below. On motion, plaintiff met her burden to establish liability on Labor Law §240(1) by submitting evidence that the floor where the accident occurred was unstable and she was not provided with any safety devices, despite the potential elevation risk. In opposition, however, third-party defendant raised a triable issue of fact by submitting the affidavit of the co-owner supervising the work site which stated that the area where plaintiff fell had been cordoned off because the floor was unstable. It also stated that he specifically told plaintiff several times not to enter this restricted area, the last time being 30 minutes before the accident. Plaintiff denied that any area of the work station had been cordoned off and that she had been warned not to enter. The court held that owner's affidavit raised a triable issue of fact as to whether plaintiff's actions were the sole proximate cause of her alleged injuries.

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.

Godoy v. Neighborhood Partnership Housing Development Fund Company, 104 AD3d 646 (2nd Dept. 1 March 6, 2013).