

LAW UPDATE:

New York Court of Appeals Expands Application of Labor Law §240

Owners and contractors are reminded again by the New York Court of Appeals of the importance of provision and use of appropriate safety devices for workers during the construction, renovation or alteration of premises in New York State. Recently, in response to two certified questions from the U.S. Court of Appeals for the Second Circuit, the New York Court of Appeals, the state's highest court, has held that §240 of the New York Labor Law applied where a worker's injuries were caused directly from "the application of the force of gravity to the object." *Runner v. New York Stock Exchange, Inc.*, 2009 WL 4840213 (N.Y. Dec. 17, 2009). Labor Law §240 had previously been held by the Court of Appeals to apply strict liability for worker injuries under the "falling worker" or "falling object." Now the Court has expanded potential liability pursuant to Labor Law §240 to risks from worksite elevation differentials.

The facts in the *Runner* case were not disputed. The New York Stock Exchange (NYSE) had engaged a contractor to install an uninterruptible power system on its premises. The contractor directed the plaintiff, Victor Runner, and other workers to move a large reel of wire, weighing some 800 pounds, down a set of four stairs. To prevent the reel from rolling freely down the stairs, Runner and his co-workers were instructed to tie one end of a ten-foot rope to the reel, then to wrap the rope around a metal bar placed horizontally across a door jamb on the same level as the reel. While other workers pushed the reel down the stairs, Runner and his two co-workers were acting as counterweights and held the loose end of the rope. As the reel descended, Runner was pulled into the metal bar and his hands were jammed against it.

Runner subsequently brought an action against NYSE for violations of the Labor Law in the U.S. District Court, Southern District, New York. At trial, the court instructed the jury that NYSE could not be held liable unless the plaintiff's injuries were attributable to a gravity-related risk. The jury returned a verdict for NYSE, and the court granted the plaintiff's motion to set aside the verdict, finding, as a matter of law, that "the movement of the reel presented a gravity-related risk", that "an adequate safety device had not been used to manage the risk", and "that the failure had been a substantial factor causing plaintiff's injuries."

NYSE appealed. Thereafter, the Second Circuit certified questions to the New York Court of Appeals, specifically, the Second Circuit asked whether, under the facts of the case, Runner's injury was "an elevation related injury" that was "directly caused by the effects of gravity" and whether liability could be imposed for an injury caused by "neither a falling worker nor a falling object." The New York Court of Appeals rephrased the issue to "whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential."

Labor Law §240, imposes strict liability upon contractors, owners and their agents for failure to provide to workers appropriate safety devices, such as scaffolding, hoists, ropes, or ladders, as proper protection from gravity related injuries. The Court stated that the statute's general purpose is "to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction worksite elevation differentials."

NYSE argued that the accident was not sufficiently elevation-related because gravity did not act directly on the plaintiff or on an object that fell on him. Rejecting this argument, the Court noted that, although Labor Law §240 applies to "falling worker" and "falling object" cases, its scope was broader and applied in situations where the injury occurred due to the "the application of the force of gravity to the object." The Court found Runner's injuries were caused by the application of gravity to an object, specifically, the reel of wire. The Court also noted that the elevation differential, though short, was significant given the weight of the reel and the force its uncontrolled descent created. The Court further stated that if the plaintiff was on the other end of the stairs and the reel had hit him and caused the same injuries, Labor Law §240 would clearly apply. The Court concluded "there appears no sensible basis to deny plaintiff the same legal recourse." Accordingly, the New York Court of Appeals answered its question in the affirmative and determined that "the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential."

Based on the New York Court of Appeals' answer, the Second Circuit affirmed the lower court's conclusion that the defendants were liable under Labor Law §240, as a matter of law, for the plaintiff's injuries because "the application of the force of gravity ...caused the plaintiff's hands to be severely injured... ." *Runner v. New York Stock Exchange*, No. 08-0653-cv, 2010 WL 10908 (2d Cir. Jan. 5, 2010).

*Submitted by Loretta A. Redmond, Quirk and Bakalor, P.C.
January 29, 2010*