

NEW YORK - WEST

DISMISSAL - UNIQUE NEW YORK LABOR LAW



Philip M. Gulisano, Esq. and Andrew J. Kowalewski, Esq. of Nash Connors, PC obtained summary judgment in favor of defendants in a unique New York Labor Law

Regarding plaintiff's Labor Law 241(6) claim, plaintiffs argued that the hole was of a sufficient size and depth to qualify as a hazardous opening under Industrial Code 23-1.7(b), and that defendant was liable under Labor Law 241(b) based on a failure to provide a "substantial cover" over the opening or "safety railing" next to the opening. Defendants argued that the opening - the width of a wooden plank, was insufficient for a person to fall through, as demonstrated by the plaintiff merely stepping into the hole up to his knee during the incident. Defendants further argued that the hole depth was insufficient to qualify as a hazardous opening under appellate law because it was 18 inches deep. The panel at the Second Circuit Court of Appeals soundly rejected plaintiff's argument and dismissed this claim, holding that the hole depth was insufficient as a matter of law to qualify as a hazardous opening. As a result, Nash Connors PC obtained a complete dismissal of all claims on behalf of the defendants.

case where plaintiff, a construction worker, claimed he stepped into a hole on a trailer bed caused by a missing wooden plank. Plaintiff alleged that the act of stepping into the hole while assembling a crane met the strict liability standard of New York Labor Law 240. Plaintiff further alleged that defendants violated a New York Industrial Code Regulation based on the hole being a "hazardous opening," and thus were liable under New York Labor Law 241(6).

At issue was whether working on a trailer bed qualifies as an elevated surface, similar to a scaffold, where defendants are strictly liable under Labor Law 240 for any injuries that may occur. The U.S. District Court for the Western District of New York rejected plaintiff's argument, holding that plaintiff's work, although on an elevator trailer bed, was not an elevation-related risk that Labor Law 240 was intended to address. The District Court further rejected plaintiff's argument that an Industrial Code Regulation was violated under Labor Law 241(6), finding that the alleged hole depth of 18 inches does not create a "hazardous opening" under the Industrial Code.

Plaintiff appealed to the Second Circuit Court of Appeals, arguing that (1) Labor Law 240 applies because the use of the trailer bed was the functional equivalent of a scaffold or platform and plaintiff needed to work at that height to perform the task at hand, and that (2) Labor Law 241 applies because the hole in the trailer bed was a hazardous opening because it was large enough for a person to fall through it.

Defendants argued on appeal that the plaintiff was not using the trailer bed as the functional equivalent of the scaffold. Rather, plaintiff was guiding the assembly of the crane with a "tag line" when the incident occurred, which is a job function that could be performed on the ground. Defendants further argued the incident was akin to other appellate case law holding that activities such as unloading a truck do not qualify under Labor Law 240. The panel of three judges at the Second Circuit Court of Appeals unanimously agreed, dismissing this claim and holding that plaintiff was not required to be on trailer to perform the job, and that, as a result, there was no elevated related risk required for strict liability under Labor Law 240.



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