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Legal ALERT!

New York's Highest Court Addresses Whether Strict Liability under Labor Law §240(1) Attaches Where Plaintiff's Injuries are Neither the Result of a Falling Worker nor a Falling Object

In *Runner v. New York Stock Exchange*, the Second Circuit Court of Appeals certified two questions to New York's Highest Court asking it to consider: (1) whether injuries sustained as a result of using a make-shift pulley to move a heavy object down a flight of stairs can be classified as elevation related injuries, directly caused by the effects of gravity implicating the application of Section 240(1) of New York's Labor Law and (2) whether liability can be imposed under Section 240(1) where the injuries are neither a result of a falling worker nor a falling object striking the plaintiff.

The New York Court of Appeals had not previously addressed a case involving an "injury directly attributable to a risk posed by a physically significant elevation differential" where the plaintiff was not injured by a fall or struck by a falling object.

At trial, the evidence showed that Plaintiff sustained permanent serious injuries to both hands while working on Defendant NYSE's premises. In the course of installing a power system, Plaintiff and several co-workers were charged with moving a large reel of wire weighing approximately 800 pounds down a flight of four stairs. The workers constructed a make-shift pulley system by attaching a 10 foot rope to the reel and wrapping the rope around a metal bar spanning a nearby doorway. Plaintiff and two co-workers held the loose end of the rope and attempted to control the speed of the reel's decent down the stairs. They were unable to control the reel as it rapidly descended the stairs. As a result, Plaintiff was dragged toward the make-shift pulley and jammed his hands into the metal bar. Plaintiff lost several fingers as a result of the accident. Expert testimony indicated that the improvised device was inadequate to control the descending reel and that a hoist or pulley should have been used.

The jury returned a verdict for Defendants finding Plaintiff's injuries were not attributable to a gravity-related risk as required by Labor Law §240(1). The District Court set aside the jury verdict concluding, as a matter of law, that moving the reel down stairs was a gravity related risk; that the improvised device was inadequate; and that the use of the inadequate device was a substantial factor in causing Plaintiff's injuries. Therefore, the District Court found Defendants strictly liable under Labor Law §240(1). Defendants appealed to the Second Circuit, which certified the aforementioned questions to the New York Court of Appeals.

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The Court of Appeals initially determined that the characterization of the device used and whether the injuries were the direct result of a fall or falling object were not dispositive in analyzing the applicability of Labor Law §240(1). Instead, the Court noted that “the single decisive question is 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.” The Court of Appeals explained that there is general agreement that Labor Law §240(1) is designed to protect construction workers from “pronounced risks arising from construction worksite elevation differentials.”

Defendants argued that there was not a sufficient elevation related risk under Section 240(1) because the injuries were not a direct result of gravity causing Plaintiff to fall or a falling object to hit Plaintiff. Defendants relied on *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501 (1993), where the Court of Appeals held that hazards covered by Section 240(1) “are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured.” The Court refused to adopt the *Ross* scenarios where a worker is injured by a fall from a height or by being hit by a falling object, as exhaustively defining the statute’s scope. Rather, the Court quoted *Ross* in setting forth the applicable general rule:

Labor Law §240 (1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from **harm directly flowing from the application of the force of gravity to an object or person.**

Following this general rule, the Court of Appeals determined the applicability of the statute in this case did not require that Plaintiff be hit by the reel, but instead required that Plaintiff’s injuries were a direct consequence of gravity acting on the reel. The Court of Appeals agreed with the District Court’s finding that Plaintiff’s injuries were “the direct consequence of the application of the force of gravity to the reel.” The Court also noted that while the elevation differential was only four steps, the weight of the reel coupled with the amount of force that the object was capable of generating over the short descent made the elevation differential significant.

Therefore, New York’s Highest Court answered the certified questions by clarifying the scope of Labor Law §240(1) to impose strict liability where plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential.

This holding represents a modification to existing case law interpreting the statute to now allow the imposition of liability where the falling object did not strike the plaintiff directly as long as the harm to plaintiff directly flows from the application of force of gravity to the object. Additionally, in the future, plaintiffs may attempt to use this ruling to invoke Labor Law §240(1) coverage where they were hurt in avoiding falling or rolling objects. ■

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