

# NEWYORK LABOR LAW UPDATE

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# NEW YORK LABOR LAW UPDATE

- PART I: Applicable Statutes- Labor Law Sections 200, 241(6) and 240
- PART II: Recent Appellate Division Cases

# Part I: Applicable Statutes- Labor Law Sections 200, 241(6) and 240

1

Section 200-  
Codification of  
Common Law  
Negligence.

2

Section 240- The  
Scaffold Law a/k/a  
The Legislature's Gift  
to Construction  
Workers (and the  
plaintiff's bar!)

3

Section 241(6)-  
Violations Based on  
NYS Industrial Code.

# 1. Applicable Statutes- Labor Law Section 200

- A. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places.
- B. A codification of common law negligence principles
- C. Applies to more than just construction workers
- D. Two categories:
  - 1- defect in the premises
  - 2- defect in work/equipment.



- E. Comparative negligence is a defense



## 2. Applicable Statutes- Labor Law Section 240(1)

All contractors and owners and their agents, **except owners of one and two-family dwellings who contract for but do not direct or control the work**, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

2. Applicable Statutes- Labor Law Section 240(1)

- A. Strict liability: no comparative fault and no Article 16 apportionment
- B. One and two-family home exception
- C. Accident must involve one of the protected activities
- D. Work must be on a building or structure
- E. Gravity-related risks



## 2. Applicable Statutes- Labor Law Section 240(1)

- A. Two broad categories: falling worker and falling objects
- B. But not all falling workers and not all falling objects
- C. Sole proximate cause- *Blake* decision: difficult to prove
- D. Recalcitrant worker- also difficult to prove



### 3. Applicable Statutes- Labor Law Section 241(6)

All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, **except owners of one and two-family dwellings who contract for but do not direct or control the work**, shall comply therewith.





### 3. Applicable Statutes- Labor Law Section 241(6)

- A. Non-delegable duty. Liability of owner and GC not based on fault but on existence of regulatory violations.
- B. The Industrial Code- specific sections must be pleaded and proven. Not all sections establish liability- general v. specific.
- C. Comparative negligence is a defense.



## PART II: Ten Recent Cases-

Some things to consider:

1. Who was involved?
2. Where did it happen?
3. What were they working on?
4. What were they doing?
5. What were they working with (or without)?
6. Who was telling them what to do?
7. Who had the authority to tell them what to do?
8. What could possibly go wrong here?

APPELLATE DIVISION, FIRST DEPARTMENT

*Toussaint v Port Auth. of NY & New Jersey,*  
\_\_\_AD3d\_\_\_, 2019 NY Slip Op 04302 [2019]



Is an Industrial Code section requiring a “power buggy” to be operated by a “designated person” sufficiently specific to impose liability under Section 241(6)?

- What’s a “power buggy”?
- Who is a “designated person”?
- Bookmark this web site:  
<https://labor.ny.gov/workerprotection/safetyhealth/sh23.shtm>
- Vigorous dissent by Judge Tom- going to the Court of Appeals?

APPELLATE DIVISION, SECOND DEPARTMENT

*Quizhpi v S. Queens Boys & Girls Club, Inc., 166 AD3d 683 [2d Dept 2018]*

Roof collapsed while plaintiff was removing asbestos.

- Claims under Sections 240 and 241(6)
- Pretty straight-forward case, so why are we looking at it?



The court applied *Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898, 101 NE3d 366 [2018] and granted SJ on the 241(6) claim, notwithstanding the defendants' comparative negligence defense.

## APPELLATE DIVISION, FIRST DEPARTMENT

*DeMercurio v 605 W. 42nd Owner LLC, 2019 N.Y. App. Div. LEXIS 3544*

Slip and fall on protective brown paper, covered with “green dust”.

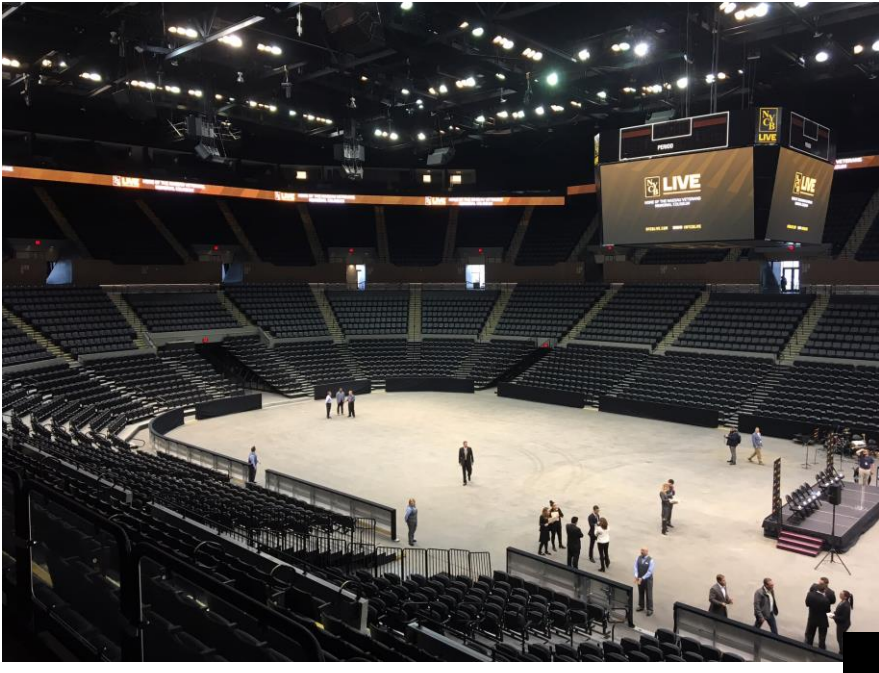
- On LL 200 claim: means and method or dangerous condition case?
- AD said dangerous condition- rev'd prior dismissal of LL 200 and C/L negligence.
- Is “green dust” a “foreign substance” under Section 23-1.7(d) of the Industrial Code ?
- YES!



Court found that the “green dust” was NOT an integral part of the work that the plaintiff was performing at the time of his accident.

## APPELLATE DIVISION, SECOND DEPARTMENT

*Wass v County of Nassau, 2019 N.Y. App. Div. LEXIS 4724*



Plaintiff was working on light fixtures at the Nassau Coliseum

- Routine maintenance or repair?
- “Tightening or replacing lightbulbs” – obviously “routine maintenance”
- But “more labor intensive work performed on other lighting poles” found to be a “repair” under LL 240
- So questions of fact found on all 4 of plaintiff’s causes of action here: LL 200, C/L negligence, LL 240 and LL241(6)

## APPELLATE DIVISION, SECOND DEPARTMENT

*Daeira v Genting N.Y., LLC, 2019 N.Y. App. Div. LEXIS 4730*

Plaintiff fell through a glass floor at a construction site.

- LL 200, 240 and 241(6): plaintiff has to be permitted or suffered to work on a building or structure AND has to have been hired by someone to work there
- Plaintiff here was hired to work at a separate project; NOT at the project where the accident occurred.
- Have to read lower court decision to fully appreciate this case.
- The contracts were the key here; separate contracts for separate projects.

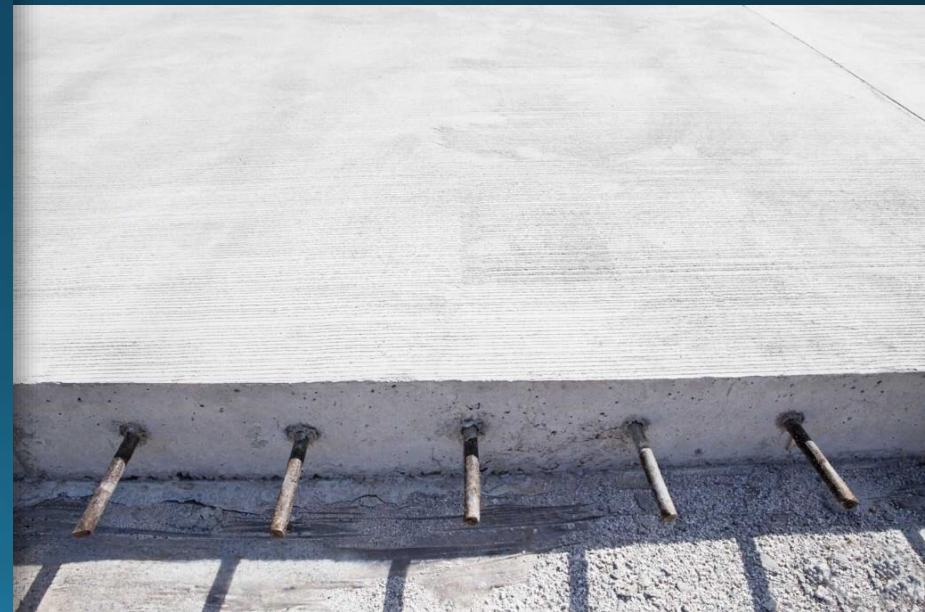


## APPELLATE DIVISION, FIRST DEPARTMENT

### **Mitchell v Caton on the Park, LLC, 167 A.D.3d 865**

Plaintiff tripped and fell when his pants leg was caught on rebar protruding from concrete at construction site.

- LL 241(6) claim alleged violation of IC 23-1.7(e): Tripping and other hazards
- Also LL 200 and C/L negligence
- On these facts, the IC section was found to be inapplicable because the rebar was said to be an integral part of the work being performed.
- LL 200 and C/L negligence claims also dismissed because neither of the defendants, the owner and GC, controlled the means or methods of the work that the plaintiff was performing. Also showed that they did not create the condition alleged and did not have notice of same.



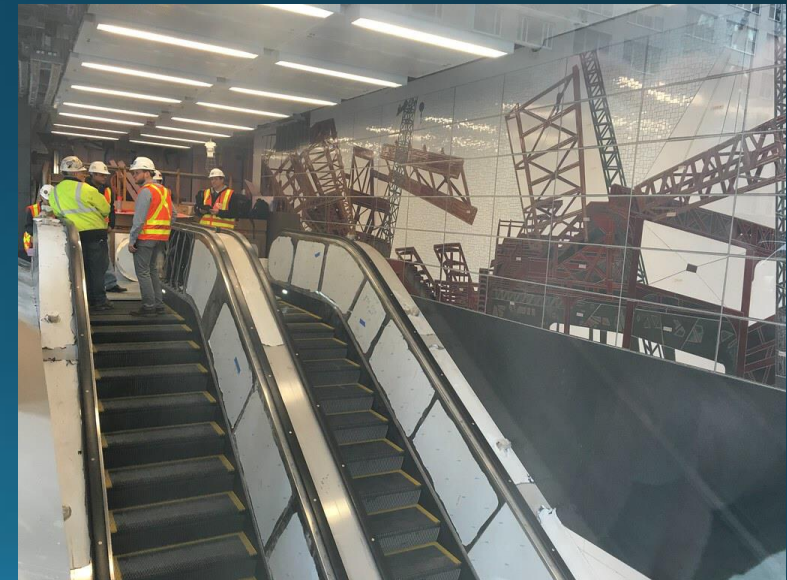


## APPELLATE DIVISION, FIRST DEPARTMENT

*Aspromonte v Judlau Contr., Inc., 162 A.D.3d 484*

Plaintiff leaned on a railing that gave way and as a result, he claims to have fallen 25 feet down a shaft.

- Plaintiff moved for SJ on LL 240; made a *prima facie* showing of entitlement to judgment under that statute.
- BUT...motion was denied by lower court; denial AFFIRMED by AD, 1<sup>st</sup> Dep't.
- Defendant relied on affidavits of 2 experts: neuro-radiologist and a biomechanical engineer. Injuries inconsistent with a fall from height.
- Court found that “there is a triable issue of fact as to whether plaintiff fell in the manner he claims, precluding summary judgment in his favor”





## COURT OF APPEALS

*Somereve v Plaza Constr. Corp., 31 N.Y.3d 936*

Plaintiff was using a “prime mover” to lift a pallet of bricks from the ground to the work platform of a scaffold. The load of bricks tipped forward and the plaintiff was “ejected” from the “prime mover”

- Ct. of Appeals held that SJ on LL 240 had been granted prematurely, as there were still 2 non-party depositions outstanding
- Have to read the AD, 1<sup>st</sup> Dep’t decision, especially the dissent, which questioned if the case involved “a risk arising from a physically significant elevation differential” and also if there were questions of fact on sole proximate cause. Ct of Appeals did not rule on either of those issues.
- Case was remanded and both sides just recently filed SJ motions.



## APPELLATE DIVISION, FIRST DEPARTMENT

*Colon v Third Ave. Open MRI, Inc., 2019 N.Y. App. Div. LEXIS 4107*



Plaintiff was asked by MRI facility owner to investigate and fix a leak coming from the ceiling of an MRI exam room. Defendant gave the plaintiff the ladder, from which plaintiff later fell. Repair or routine maintenance? Lower court decision discusses influencing factor: .

- Does the activity result in a significant physical change?
- Amount of time the work will require
- Length and complexity of the project
- Component replacement or adjustment necessitated by normal wear and tear- routine maintenance.
- *cf. Soriano v St. Mary's Indian Orthodox Church of Rockland, Inc., 118 AD3d 524, 526-527, 988 N.Y.S.2d 58-* replacing wired glass panels in skylight in church steeple found to be repair and LL 240 applied

## APPELLATE DIVISION, FIRST DEPARTMENT (some time this Fall)

### *Mikeshina v. Tishman Construction & Atlantic Scaffolding*

\$28 million scaffolding system at the Javits Center, built by Atlantic for Tishman. Plaintiff, a union painter, was walking up set of scaffold stairs- lifeline got caught on end of handrail on scaffold stairs and plaintiff fell on to steps of scaffold stairs.

- LL 240 dismissed- fell ON to the scaffold, not off of it.
- LL 241(6) dismissed- no applicable Industrial Code sections.
- LL 200 and C/L negligence both dismissed- no defect found in the scaffold
- OSHA provision: "The ends of stair-rail systems and handrails shall be constructed so that they do not constitute a projection hazard."
- OSHA violation will NOT support a LL 241(6) claim- has to be an IC Section.
- But an OSHA violation can be some evidence of negligence, on LL 200 and C/L negligence claims.



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THANK YOU FOR ATTENDING  
AND...



LET'S GO YANKEES

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