



Applicability of NY Labor Law §240(1) To a Worker Struck By Overhead Equipment

By Michael J. White



Lately, we have been seeing a trend where plaintiff's attorneys are trying to recover under Labor Law § 240 for injuries to construction workers who have been struck by heavy equipment that had been operating above them on the job site. A recent Appellate Division case clearly holds that Labor Law § 240 does not apply to these types of situations. In particular, in Mohamed v. City of Watervliet, 106 A.D.3d 1244, 965 N.Y.S.2d 637, the Court held that Labor Law § 240 does not apply to a situation where the bucket of a backhoe strikes a plaintiff from above because of its mechanical operation by an allegedly negligent worker and not because of the effects of gravity. In affirming the dismissal of the plaintiff's claim under Labor Law § 240, the Appellate Division held that the accident occurred as a result of its operator jostling the controls, causing the backhoe's properly functioning hydraulic system to lower the bucket. Thus, the Court noted that the evidence submitted by plaintiff, if accepted as true, would establish that "the backhoe bucket crushed plaintiff ... not because of gravity, but because of its mechanical operation by an allegedly negligent co-worker". (citing the decision of Elezaj v. Carlin Constr. Co., 225 A.D.2d 441, 442, 639 N.Y.S.2d 356 [1996], *affd.* 89 N.Y.2d 992, 657 N.Y.S.2d 399, 679 N.E.2d 638 [1997]).

Under these circumstances, the Appellate Division stated that the lower Court had properly dismissed plaintiffs' section 240(1) claim because there was no falling object—"the harm did not flow directly from the application of the force of gravity to an object" (Runner v. New York Stock Exch., Inc., 13 N.Y.3d at 604, 895 N.Y.S.2d 279, 922 N.E.2d 865), but instead was merely caused by the usual and ordinary dangers of a construction site (*see* Toefer v. Long Is. R.R., 4 N.Y.3d 399, 407-409, 795 N.Y.S.2d 511, 828 N.E.2d 614 [2005]). This holding is consistent with the decision in Gasques v. State, 15 N.Y.3d 869, 937 N.E.2d 79, 910 N.Y.S.2d 415 in which the Court of Appeals held that Labor Law § 240 did not apply to a case where the plaintiff's hand was crushed between the scaffold on which he was working and the steel of the bridge because the movement of the scaffold had been caused by one of its motors. Again, the Court of Appeals citing Runner, held that this injury was not the direct consequence of the application of the force of gravity to an object or person. Based upon the foregoing, we would recommend filing a motion for summary judgment to dismiss any Labor Law § 240 claims at the close of discovery in any action that you are handling in which the plaintiff is struck due to the mechanical operation of heavy equipment in the area above where the plaintiff had been working.

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