



## Labor Law 240: Among the most controversial laws in New York

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Labor Law 240, as I have previously written, is among the most controversial laws in New York. To some, such as the Plaintiff's Bar, it is a vital protection afforded to workers. To others, such as the construction and insurance industries, it is an onerous burden which increases the cost of doing business in New York and slows down the economy.

Once again, the Court of Appeals had an opportunity to set the boundaries of Labor Law 240. In *Fabrizi v 1095 Avenue of the Americas, LLC et al*, 2014 NY Slip Op 1206, the court was posed with the question of whether a coupling, which an expert claimed was inadequate, that fell on the plaintiff, constituted proper protection as required by Labor Law 240(1).

Labor Law 240(1) requires owners and contractors to provide proper protection to those working on a construction site. It imposes absolute liability where the failure to provide such protection is a proximate cause of a worker's injury.

In order to prevail on a Labor Law 240(1) case the plaintiff "must demonstrate that at the time the object fell, it was either being "hoisted or secured" or "required securing for the purposes of the undertaking." An object simply falling is not sufficient, the plaintiff must demonstrate that the object fell because of the "absence or inadequacy of a safety device."

In this case, a construction conduit fell on the plaintiff's hand. In order for plaintiff to work on the day of the accident, previously installed conduits, and other items had to be removed. The required area was disassembled by plaintiff. Plaintiff left a piece of the conduit "dangling by the compression coupling near the ceiling." Just fifteen minutes later, while plaintiff was working in the area, the compression coupling failed. The compression coupling was not being used as, and was never intended as, a safety device. When it fell on Plaintiff, it was no longer being used for its intended purpose. Prior to Plaintiff disassembling the area, which plaintiff was required to do as part of a change order, the coupling was being used for its intended purpose.

Plaintiff contended that the compression coupling was a safety device which failed. Supreme Court granted partial summary judgment on liability. The Appellate Division denied the motion for summary judgment holding that plaintiff failed to establish that the failure to provide a safety device was a proximate cause of his accident.

The Court of Appeals determined that Plaintiff's argument that the compression coupling was a safety device under Labor Law 240(1) would extend Labor Law 240(1) to a place the Court was not willing to go. The item that failed was never intended to be a safety device. It was intended to be, and used as, a support device for the conduit plaintiff disassembled.

The dissent argued that the failure to provide support to the dangling conduit, in addition to the compression coupling which failed, would place the case within the anticipated area covered by Labor Law 240(1). The question, according to the dissent, is not whether a compression coupling is

a safety device, but whether a safety device should have been used. In the dissents view, the majority decision places an undue burden on plaintiffs which frustrates the purpose of the Labor Law. Welcome news to many in New York State.

Last time I wrote about Labor Law 240(1), it was about the State Legislature failing to make any changes to what has become a one of a kind burden to the construction industry in New York. New York is the last state to have a scaffold law, which was enacted in the 1880s, that places absolute liability on potentially innocent parties, that had nothing to do with an accident, simply because they own a piece of real estate. While the legislature may not be willing to change the law, it seems like the court is at least refusing to extend the reach of this law.

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