



# LEGAL ALERT

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## New York Supreme Court Decision Affirms “Recalcitrant Worker” Defense

by Christopher J. Hoare, Esq.

*Court finds that owner and general contractor are **not** strictly liable for worker’s fall because evidence indicates that worker was warned not to use the defective ladder and a safe alternative existed at the site.*

The “Recalcitrant Worker” defense to strict liability under NY Labor Law Section 240(1) is alive and well in New York State. In a significant ruling last week in a case defended by Capehart Scatchard, the New York Supreme Court-Niagara County ruled that strict liability under NY Labor Law Sec. 240(1) will not apply to the owner and general contractor in a personal injury lawsuit by a worker who fell from a defective ladder because he was a recalcitrant worker. The jury will now consider evidence that the plaintiff had been warned twice not to use the defective ladder and whether a safe alternative scaffold existed on the construction site at the time of his accident.

The facts of the case are as follows: Plaintiff was installing dry wall at a car wash under construction. Instead of choosing available Baker’s scaffold with locking wheels, plaintiff chose to work with the upper portion of a broken extension ladder he found on the job site that had no rubber safety feet (in violation of OSHA regulations). Plaintiff had been trained by his employer not to use such a ladder in OSHA safety training. He was also warned by two (2) separate supervisors on the day of the accident prior to his fall not to use the defective ladder. A short time later, plaintiff fell from the ladder when the base slipped out from under him and he suffered a career ending injury.

Plaintiff sued under NY Labor Law Section 240(1) which imposes a non-delegable duty jointly upon the owner and general contractor to provide safe ladders, scaffolds, and fall protection when workers are working six feet or more above the floor. Under 240(1), if the defective ladder or scaffolding is a proximate cause of the accident, the owner and general contractor are jointly and severally liable to the injured worker and the comparative fault of the worker is irrelevant and inadmissible.

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Plaintiff filed a motion for partial summary judgment alleging that the violation of 240(1) imposed strict liability on the owner and general contractor and sought to proceed to a damages-only trial. The owner and general contractor opposed plaintiff's motion by developing evidence that plaintiff had been warned twice not to use the defective ladder prior to the accident. The defendants also proved that Bakers scaffolding with locking wheels was present and available to the plaintiff on the day of the accident that would have given him access to the work area in question but that plaintiff chose to use the unsafe ladder instead. Plaintiff alleged that the scaffold was not suitable for the work he was doing that day.

In its opinion denying plaintiff's motion for partial summary judgment on liability, the Court ruled that sufficient evidence was presented by the defendants from which a jury could conclude that the sole proximate cause of the accident was plaintiff's own negligence in failing to obey his safety training and the

warnings not to use the unsafe ladder. The case shall now proceed to a jury trial on all issues including proximate cause and the effect of plaintiff's comparative negligence on his recovery

The key to defending a Labor Law case is thorough and timely accident investigation including what safety equipment and fall protection were present at the construction site as well as the safety training and warnings given to plaintiff by his employer. With the right facts, construction accidents involving defective ladders can be successfully defended, economically resolved, or even won with the right facts. Scaffolding accident cases brought under Labor Law 240 are by no means automatic strict liability against the owners and general contractors of construction sites.

For details and a copy of the full opinion summarized above, please contact Christopher J. Hoare, Esq. or Peter S. Bejsiuk, Esq. of the Construction Litigation Department at Capehart Scatchard. 📧

This Legal Alert was prepared by Christopher J. Hoare, Esq. a member of Capehart Scatchard's Litigation and Transportation Groups. Mr. Hoare focuses practice in railroad litigation. For over 16 years, he has represented Class I and short line railroads in cases involving FELA defense, railroad litigation, retail/owner operator liability, dram shop, construction litigation and accidents, products liability, grade crossing collisions, trespasser fatalities, passenger injuries, collections, property damage, insurance coverage, and other matters.

Capehart Scatchard is the leader in Construction Litigation Defense services in New York, New Jersey, and Pennsylvania. Capehart Scatchard's construction litigation clients include New Jersey Transit, Amtrak, AIG, Liberty Mutual, New Jersey Sports & Exposition Authority, as well as a host of other owners, general contractors, and sub-contractors throughout the Northeastern United States. Capehart Scatchard has offices in Mt. Laurel, New Jersey, Trenton, New Jersey, and Elmira, New York.

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