2014 CLM LONG ISLAND CHAPTER
SCAFFOLD LAW ROUNDUP HANDOUT PART I

INTRODUCTION TO THE 2014 "SCAFFOLD LAW" ROUNDUP

Section 240(1) of New York's Labor law is known as its "Scaffold" Law. It is unique among Labor Laws in requiring a finding of strict liability against Owners and General contractors who run afoul of its provisions. Under the Scaffold Law, a worker's own negligence which contributes in part, or nearly entirely, to his accident, counts for nothing. Even if the Owner or General Contractor did nothing wrong and had now knowledge of the condition which caused Plaintiff's injuries, they may be held strictly liable under the Scaffold Law. It reads, in pertinent part:

> *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.*

The law operates in practicality as a form of insurance for workers at job sites, (although the Court's bristle at this characterization). While New York Labor Law Section 240(1) is informally called the "Scaffold" law, it might as easily be called the "Gravity" law since its stated objective is to protect workers from the risks of falling themselves or of falling objects, risks which the Court's call "elevation-related risks".

INTERPRETATION AND EFFECT

New York Court's interpret the Scaffold Law's intent this way "Section 240 is intended to place the ultimate responsibility for building practices on the owner and general contractor in order to protect the workers who are required to be there but who are scarcely in a position to protect themselves from accidents," it is "to be liberally construed to achieve this purpose", and it "impos(es) a non-delegable duty upon owners and general contractors to provide safety devices to protect workers from elevation-related risks, with liability attaching where violation of that duty proximately causes injuries."

THE LAST 100 APPELLATE DIVISION DECISION AND THIS OUTLINE

New York Appellate Courts hand down a hundred or more Scaffold Law decisions a year. Given the complexity of modern construction practices and business relationships, it is not surprising that whether or not a Defendant is exposed to finding of liability under the Scaffold Law can be difficult to predict. A number of arcane rules and nuanced interpretations have grown up around the Scaffold Law, and decisions frequently rest on some pretty fine splitting of hairs.

This course examines the last hundred Scaffold Law decisions handed down by the Appellate Courts, and is organized to provide a framework that can help predict whether or not a case on your desk will result in a finding of liability against your Defendant pursuant to New York's Scaffold Law.

FRAMEWORK

When the last hundred Appellate Division Scaffold Law decisions are analyzed, it is seen that over ninety percent of them turn on the same six issues, and add up to the questions of Who am I? What was the Plaintiff doing? What exactly went wrong? Do I have another way out? The issues these cases turned on are these:

Ownership or Authority: Was the Defendant the kind of entity responsible under the Scaffold Law, such as a Deed owner or, as is frequently litigated, a company with or without authority to control the work at the jobsite.

Activity: Was the Plaintiff was engaged in an Activity protected by the Scaffold Law, such as Demolition, or, as is frequently litigated Repairs or Commercial Cleaning as opposed to Routine Maintenance.

Hazard: Was the accident the Plaintiff suffered the kind of Hazard protected by the Scaffold Law, such as an accident involving a Falling Object and, as is frequently litigated, whether the nature of the accident involved a sufficient "Height Differential".

Device: Did the accident happened because of the absence of one of the Devices anticipated by the Scaffold Law, or because of a Device's inadequacy or even, as is frequently litigated in the case of Ladders which suddenly move, presumed inadequacy.

Causation: Was the Plaintiff's own negligence the sole proximate cause of his accident, defeating a Scaffold Law claim, for instance in situations which are frequently litigated where he ignored specific safety instruction.

Indemnification: If a Defendant is Statutorily liable, will he be able to enforce an indemnification agreement against another entity down the line, arguing, as is frequently litigated, that whoever actually failed to provide the kind of protection required by the Scaffold Law has the kind of culpability that amounts to negligence in triggering standard indemnification agreements.

1. OWNERSHIP

Frequent litigation in this area turns on the labels which Plaintiff's try to paint Defendant's with, arguing that the name "General Contractor" or "Construction Manager" add up to instant Scaffold Law Exposure. In fact, labels mean little.

> *The label given a defendant, whether "construction manager" or "general contractor," is not determinative - core inquiry is whether defendant had the "authority to supervise or control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition" Construction manager lacked the requisite authority to control the activity which brought about worker's injury when he fell from an unsecured ladder while installing insulation in the ceiling of the home*, Myles v. Claxton, 2014 WL 840645 (N.Y.A.D. 2 Dept., 2014)

Frequent litigation also involves the "Homeowners" exemption to Scaffold Law exposure in cases involving one or two family homes, where the rule is:

> *Labor Law § 240(1) and § 241(6) contain identical language exempting from the statutes owners of one and two-family dwellings who contract for but do not direct or control the work" This homeowner's exemption "was enacted to protect those who, lacking business sophistication, would not know or anticipate the need to obtain insurance to cover them against absolute liability"* Pavon v. Koral 113 A.D.3d 830, 979 N.Y.S.2d 401, 2014 N.Y. Slip Op. 00491

Medina v. R.M. Resources107 A.D.3d 859, 968 N.Y.S.2d 533 (N.Y.A.D. 2 Dept.,2013) 54

Defendant established it was not an owner, contractor, statutory agent or with authority to control work.

Morato–Rodriguez v. Riva Const. Group, Inc 2014 WL 814204 (N.Y.A.D. 1 Dept., 2014) 2

Status as a Tenant is not a shield to 240(1) if Tenant directed and controlled the work.

Pavon v. Koral 113 A.D.3d 830, 979 N.Y.S.2d 401, 2014 N.Y. Slip Op. 00491 11

Single Family Home owner who owned a Real Estate Development business may may have exercised direction or control over renovations.

Thomas v. Benton 977 N.Y.S.2d 336, (N.Y.A.D. 2 Dept 2013) 20

Subcontractor established that it did not have authority to supervise or control the work involved in Plaintiff's accident.

In re 91st Street Crane Collapse Litigation 112 A.D.3d 477, 976 N.Y.S.2d 376, (N.Y.A.D. 1 2013) 22

New York City established through deed transfer records that it was not a Record Owner

Youseff v. Malik 112 A.D.3d 617, 977 N.Y.S.2d 53 (N.Y.A.D. 2 Dept.,2013) 24

Single Family Homeowner was exempt from lialibty where he did not control or direct work.

Rodriguez v. Coalition for Father Duffy, LLC112 A.D.3d 407, 976 N.Y.S.2d 51, (N.Y.A.D. 1) 25

Lease or license from City gave gthe ticket stand defendant responsibility to supervise work necessary for its license creating exposure under New York's Scaffold Law.

Ortega v. Liberty Holdings, LLC 111 A.D.3d 904, 976 N.Y.S.2d 147, (N.Y.A.D. 2 Dept.,2013) 29

Defendant established it was not a deed owner but did not establish a lack of occupancy, control or special use.

Bombard v. Pruiksma 110 A.D.3d 1304, 975 N.Y.S.2d 183 (N.Y.A.D. 3 Dept.,2013) 38

Homeowner Exception. Relevant inquiry is degree to which owner actually supervised method and manner of work.

Myles v. Claxton, 2014 WL 840645 (N.Y.A.D. 2 Dept., 2014) 1

Even though denoted a Construction Manager, this Defendant without authority to control the work involved in Plaintiff's accident was not exposed under New York's Labor Law.

Soho Plaza Corp. v. Birnbaum 108 A.D.3d 518, 969 N.Y.S.2d 96,(N.Y.A.D. 2 Dept.,2013) 52

Cooperative Corporations are exposed as New York Scaffold Law defendants for work being done in apartments that are part of the cooperative they own

Custer v. Jordan 107 A.D.3d 1555, 968 N.Y.S.2d 754, (N.Y.A.D. 4 Dept.,2013) 59

Out of Possession Vendor still retained title to Single family home before delivery of deed and retained responsibility under New York's Labor Law.

Mathews v. Bank of America 107 A.D.3d 495, 968 N.Y.S.2d 15, (N.Y.A.D. 1 Dept.,2013) 60

Air Testing Subcontractor did not have authority to supervise Asbestos removal work.

Alvarez v. Hudson Valley Realty Corp.107 A.D.3d 748, 966 N.Y.S.2d 686, (N.Y.A.D. 2 Dept.) 61

Ownership and Authority: Defendant demonstrated that it was an Abutting Owner without authority over work.

Westgate v. Broderick107 A.D.3d 1389, 967 N.Y.S.2d 285 (N.Y.A.D. 4 Dept.,2013) 63

Homeowner Exception. Not limited to Title Holder but also applies to person with interest in the property

Mondone v. Lane 106 A.D.3d 1062, 966 N.Y.S.2d 164 (N.Y.A.D. 2 Dept.,2013) 65

Homeowners did not direct or control work but merely displayed typical homeowner interest.

Parise v. Green Chimneys Children's Services, Inc. 106 A.D.3d 970, 965 N.Y.S.2d 608 69

Residential home on commercial property served no business use and was thus exempt.

2. ACTIVITY

What work the Plaintiff was actually engaged in when his accident occurred is central to any analysis of a Scaffold Law Claim. Not all actives are Protected or "Covered" Activities.

A 240(1) Claimant must prove he was Permitted or suffered to work on a building or structure, hired by someone - owner, contractor or their agent to work at the site, ***and had been engaged in a "covered activity".*** *Section 240 is intended to place the ultimate responsibility for building practices on the owner and general contractor in order to protect the workers who are required to be there but who are scarcely in a position to protect themselves from accidents," and it is to be liberally construed to achieve this purpose.* Gallagher v. Resnick 107 A.D.3d 942, 968 N.Y.S.2d 151, (N.Y.A.D. 2 Dept.,2013)

A highly litigated question in this area concerns whether the activities a Plaintiff was engaged in were in fact Protected "Repair" or "Cleaning" activates, or unprotected activities constituting "Regular Maintenance" or routine.

There was insufficient evidence regarding whether the plaintiff's task was "routine, in the sense that it [was] the type of job that occurs on a daily, weekly or other relatively-frequent and recurring basis as part of the ordinary maintenance and care of commercial premises" Collymore v. 1895 WWA, LLC 978 N.Y.S.2d 367 (N.Y.A.D. 2 Dept.,2014)

Dos Santos v. Consolidated Edison 104 A.D.3d 606, 963 N.Y.S.2d 12 96
A factor in whether activity constitutes Maintenance vs. Repairs is whether the activity, here pumping out after a floor, was occasioned by an isolated event or recurring condition.

Amendola v. Rheedlen 125th Street, LLC, 105 A.D.3d 426, 963 N.Y.S.2d 30 (N.Y.A.D. 1 Dept. 2013)
Hanging Window Shades does not amount to "altering" within the meaning of the Labor Law.

Bodtman v. Living Manor Love, Inc.105 A.D.3d 434, 963 N.Y.S.2d 35 (N.Y.A.D. 1 Dept.,2013.) Drilling holes to hang a "For Sale" sign only created minor changes was not an alteration as anticipated by the Scaffold Law

Vasquez v. C2 Development Corp.105 A.D.3d 729, 963 N.Y.S.2d 675 (N.Y.A.D. 2 Dept.,2013.) Moving Light Fixtures from one place to another did constitute a protected activity.

Konaz v. St. John's Preparatory School 105 A.D.3d 912, 963 N.Y.S.2d 337 (N.Y.A.D. 2 Dept., 2013)
Replacing Fluorescent Light Ballasts is routine maintenance not a protected activity.

Probst v. 11 West 42 Realty Investors, LLC106 A.D.3d 711, 965 N.Y.S.2d 513 (N.Y.A.D. 2 2103)
Commercial Window Cleaning is a protected activity.

Melski v. Fitzpatrick & Weller 107 A.D.3d 1447, 967 N.Y.S.2d 304, (N.Y.A.D. 4 Dept., 2013) Working on a boiler replacing components due to normal wear and that equals Maintenance vs. Repair and is not a Protected activity.

Gallagher v. Resnick 107 A.D.3d 942, 968 N.Y.S.2d 151, (N.Y.A.D. 2 Dept.,2013) 55
Climbing to take measurement is a Task Ancillary to construction work and is a Protected activity.

Hull v. Fieldpoint Community Ass'n, Inc 110 A.D.3d 961, 973 N.Y.S.2d 334 (N.Y.A.D. 2 2013) Cleaning

Gutters was incidental to regular maintenance and thus not a Protected activity.

<u>Sobenis v. Harridge House Associates of 1984</u> 111 A.D.3d 917, 976 N.Y.S.2d 113 (N.Y.A.D. 2 2013)
Annual Servicing of Air Conditioning System was Routine Maintenance and thus not a Protected activity.

<u>Juett v. Lucente</u> 112 A.D.3d 1136, 977 N.Y.S.2d 426 (N.Y.A.D. 3 Dept.,2013) 21
Removing Trees in Parking Lot was work ancillary to expanding a parking lot which did not constitute a building or structure, and so was not a Protected activity.

<u>Collymore v. 1895 WWA, LLC</u> 978 N.Y.S.2d 367 (N.Y.A.D. 2 Dept.,2014) 14
Activity: Labor Law The activity of "Cleaning" as anticipate by the Scaffold Law is not frequent recurring and routine maintenance

<u>Simon v. Granite Bldg. 2, LLC</u> 2014 WL 553567 (N.Y.A.D. 2 Dept.) 7
Actiivity: The act of ariving at work, even if a protected activity was to be done there, is not itself a protected activity.

<u>DeJesus v. 888 Seventh Ave. LLC</u> 2014 WL 700415 (N.Y.A.D. 1 Dept. 2014) 4
Activity: Caulking Operating a Scaffold for Caulkers engaged in a protected activity was necessary and ancillary to their work and thus itself a protected activity.

3 HAZARD AND RISK

Fundamentally the Scaffold Law is intended to address the risks of falling objects and falling workers.

> *The purpose of the scaffold law is to protect against 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 scaffold law applies when the falling of an object is related to a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured.* <u>Flossos v. Waterside Redevelopment Co</u>., L.P.108 A.D.3d 647, 970 N.Y.S.2d 51 (N.Y.A.D. 2 Dept.,2013)

Not every object that falls, however, creates a Scaffold Law claim. The law requires that the object be in the process of being hoisted or set in place, or that it should have been secured in place “for the purpose of the undertaking” often invoked when something comes crashing down during demolitions or repairs.

> *Not every object that falls on a worker gives rise to the extraordinary protections of Labor Law § 240(1) To recover, a plaintiff must show that, at the time the object fell, it was being hoisted or secured, or “required securing for the purposes of the undertaking”,And show that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute”* <u>Maldonado v. AMMM Properties Co</u>.107 A.D.3d 954, 968 N.Y.S.2d 163, (N.Y.A.D. 2

Dept.,2013)

The fall needs to be attributable to the failure or inadequacy of one of the Scaffold laws enumerated devices.

> *In a section 240(1) "falling object" case, worker must demonstrate that the object fell ... because of the absence or inadequacy of a safety device of the kind enumerated in the statute"*
> Fabrizi v. 1095 Ave. of Americas, L.L.C., 2014 WL 641523 (N.Y.), 2014 N.Y.

A frequently litigated issue involves very heavy objects that fall or tip over from basically the same level the Worker is on. In such a case the requirement of a "height differential" gives way to an assessment of how much force the object could generate even traveling a short distance.

> *A differential "cannot be viewed as de minimis, (when) given the weight of the [wall] and the amount of force it was capable of generating, even over the course of a relatively short descent"*
> Zarnoch v. Luckina112 A.D.3d 1336, 977 N.Y.S.2d 521, N.Y.A.D. 4 Dept 2013

Rodriguez v. DRLD Development, Corp.109 A.D.3d 409, 970 N.Y.S.2d 213, (N.Y.A.D. 1 2013) 47
Risk: Falling Object. Leaning Sheetrock. Height Differential Leaning against the wall and resting atop blocks of wood approximately two feet high, a sufficient height differential to implicate § 240(1)'s Protections

Humphrey v. Park View Fifth Ave. Associates LLC 979 N.Y.S.2d 317, 2014 N.Y. Slip Op. 12
Risk: Falling Object : Beam fell from above from unknowns source. Height Differential not diminimus give force.

Garcia v. Neighborhood Partnership 980 N.Y.S.2d 6 (N.Y.A.D. 1 Dept.,2014) 15
Risk: Collapse A plaintiff in a case involving collapse of a permanent structure must establish that the collapse was "foreseeable"

Zarnoch v. Luckina112 A.D.3d 1336, 977 N.Y.S.2d 521, N.Y.A.D. 4 Dept 2013 18
Risk: Falling Object. Height Differential Exterior Wall being raised cannot be viewed as diminimus, given the weight of the wall and the amount of force it was capable of generating
26

Risk: Falling Object. Roof Membrane falls only 1.5 fee but still a "significant elevation differential given its substantial weight of between 600 and 800 pounds, and powerful force it generated when it fell"

Verdon v. Port Authority of New York 111 A.D.3d 580, 977 N.Y.S.2d 4 (N.Y.A.D. 1 31
Risk: Intervening Cause and Forseeability. it was foreseeable that skip box would strike wooden mid-rail as it was hoisted by a crane and moved on and off the platform

Matthews v. 400 Fifth Realty LLC 111 A.D.3d 405, 974 N.Y.S.2d 370 (N.Y.A.D. 1 Dept.,2013) 34
Risk: Falling Object Secured for Purposes of Undertaking. Grates being set up for welding weres part of work of construction project in which worker was engaged and was required to be secured for purposes of that undertaking,

Paredes v. 1668 Realty Associates, LLC110 A.D.3d 700, 972 N.Y.S.2d 304 (N.Y.A.D. 2 43
Risk: Falling Object: Lowered Bucket fell because of absence or inadequacy of safety device.

Fabrizi v. 1095 Ave. of Americas, L.L.C., 2014 WL 641523 (N.Y.), 2014 N.Y. 5
Falling Object A "Compression Coupling" that failed and caused a pipe to fall was not one of the devices anticipated by the Labor Law.

Ross v. DD 11th Ave., LLC 109 A.D.3d 604, 971 N.Y.S.2d 304 (N.Y.A.D. 2 Dept.,2013) 46
Falling Object. Securing Concrete Forms preparoty to their removal should have been "Secured for Purposes of Undertaking" and would not have been "Contrary to Objectives of the Work"

Mercado v. Caithness Long Island LLC 104 A.D.3d 576, 961 N.Y.S.2d 424, (N.Y.A.D. 1 2013) 98
Falling Object. Should prevent falling tools with netting
Flossos v. Waterside Redevelopment Co., L.P.108 A.D.3d 647, 970 N.Y.S.2d 51 (N.Y.A.D. 2 2013) 49
Falling Object. A Piece of Ceiling that fell during painting was not an object that needed to be Secured for Purpose of Undertaking

Maldonado v. AMMM Properties Co.107 A.D.3d 954, 968 N.Y.S.2d 163, (N.Y.A.D. 2 2013) 56
Falling Object. Glass Pane that was part of structure being demolished was not object that need to be Secured for purpose of undertaking

Saber v. 69th Tenants Corp.107 A.D.3d 873, 968 N.Y.S.2d 103, N.Y.A.D. 2 Dept.,2013) 57
Falling Object. A mirror that fell while being removed, (not demolished) may have been an object that should have been Secured for purpose of undertaking

Carey v. Five Bros., Inc. 106 A.D.3d 938, 966 N.Y.S.2d 153, 2013 N.Y. (N.Y.A.D. 2 2013) 66
Risk: Falling Worker. Falling through penetration of a partially open manhole was not a Scaffold Law risk

Moncayo v. Curtis Partition Corp.106 A.D.3d 963, 965 N.Y.S.2d 593 (N.Y.A.D. 2 2013) 67
Risk: Falling Objects. Bagged Debris were not in the process of being hoisted or secured

Marrero v. 2075 Holding Co. LLC 106 A.D.3d 408, 964 N.Y.S.2d 144 (N.Y.A.D. 1 D 2013)
81
Risk. Falling Objects. Height Differential. Tipping of A Cart cart containing drywall and two 500–pound steel beams to tip over and fall on his calf and ankle was a protected height differential

Restrepo v. Yonkers Racing Corp., Inc.105 A.D.3d 540, 964 N.Y.S.2d 17 (N.Y.A.D. 1 2013) 88
Risk.: Collapse and Falling worker. Forseability It was foreseeable that the door, which was not intended for use as a floor, but instead intended only to enable one to reach up from the floor below, would fail when

traversed upon by plaintiff.

4. DEVICE

It is often overlooked in Scaffold Law claims, frequently by the Courts themselves, that liability under this law should be dependent on a showing that a specific device, a Scaffold, a Stay, a Lift or a Ladder, was absent or inadequate and thus one of the causes of the accident.

> *Liability involving falling objects is dependent on whether worker's task creates an elevation-related risk of the kind that the safety devices listed the statute protect against; that is, protection does not encompass all perils connected in some tangential way with the effects of gravity, but to accidents in which the protective device has proved inadequate to shield the worker from harm directly flowing from the application of the force of gravity to an object or person* Mohamed v. City of Watervliet 106 A.D.3d 1244, 965 N.Y.S.2d 637 (N.Y.A.D. 3 Dept.,2013)

> *Contemplated hazards covered by scaffold law are those related to effects of gravity where protective devices are called for either because of a difference between elevation level of required work and a lower level or difference between elevation level at which worker is positioned and higher level of materials or load being hoisted or secured* Nicometi v. Vineyards of Fredonia, LLC 107 A.D.3d 1537, 967 N.Y.S.2d 563 N.Y.A.D. 4 Dept.,2013.

A highly litigated issue in this area concerns accidents that happen when a worker falls from a ladder. In truth the rule itself is simple. If the only reasons the worker fell is because he lost his balance, it is not a Scaffold Law claim, if, however, he fell because the ladder suddenly moved then presumptively the ladder itself was inadequately erected or secured.

> *When a plaintiff falls off the ladder because he or she lost his or her balance, and there is no evidence that the ladder from which the plaintiff fell was defective or inadequate, liability pursuant to the scaffold law does not attach; to impose liability under such circumstances would make a defendant an insurer of the workplace, a result which the Legislature never intended in enacting the scaffold law* Hugo v. Sarantakos 108 A.D.3d 744, 970 N.Y.S.2d 245 (N.Y.A.D. 2 Dept.,2013)

Nicometi v. Vineyards of Fredonia, LLC 107 A.D.3d 1537, 967 N.Y.S.2d 563 N.Y.A.D. 4 Dept.,2013. Device: Stilts. Question of Workers Neligence in slip on ice in Stilts. 58

Gory v. Neighborhood Partnership Housing 979 N.Y.S.2d 314, 2014 N.Y. Slip Op. 00457 13

Device Scaffold Equivalent. Stairway stripped of walls during demolition.

Singh v. City of New York 977 N.Y.S.2d 914,N.Y.A.D. 2 Dept 16
Device: Ladder triable issues of fact as to whether the subject ladder was inadequately secured and whether the injured plaintiff's actions were the sole proximate cause of the accident Causation. Workers Negligence

Portes v. New York State Thruway Authority 112 A.D.3d 1049, 976 N.Y.S.2d 232, (N.Y.A.D. 3 Dept.,2013) 23 Device: Suspension Cable. Workman's Negligence still not shown inspite of instruction not to walk on.

Carrion v. City of New York 111 A.D.3d 872, 976 N.Y.S.2d 126 (N.Y.A.D. 2 Dept.,2013) 27
Device: Ladder Placed atop tipping scaffold is a Labor Law claim.

Hai–Zhong Pang v. LNK Best 111 A.D.3d 889, 976 N.Y.S.2d 139, (N.Y.A.D. 2 Dept.,2013) 28
Device: Ladder Tipping Ladder is a Labor Law Claim

Hoffman v. SJP TS, LLC 111 A.D.3d 467, 974 N.Y.S.2d 450 (N.Y.A.D. 1 Dept.,2013) 32
Device: Scissor Lift was inadequate when it left a 3 foot gap after being positioned.

Mutadir v. 80-90 Maiden Lane Del LLC 110 A.D.3d 641, 974 N.Y.S.2d 364 (N.Y.A.D. 1 Dept.,2013) 35
Device: Makeshift Ladder Causation. Workers Negligence not established where knowledge of available ladders not shown.

Palacios v. 29th Street Apts, LLC 110 A.D.3d 698, 972 N.Y.S.2d 615 (N.Y.A.D. 2 Dept.,2013) 42
Device: Fire Escape being used as short cut not a Labor Law Safety Device.

Hugo v. Sarantakos108 A.D.3d 744, 970 N.Y.S.2d 245 (N.Y.A.D. 2 Dept.,2013) 48
Device: Ladder. Not a Labor Law Case if Plaintiff merely loses his balance.

Degen v. Uniondale Union Free School Dist. 2014 WL 623931 (N.Y.A.D. 2 Dept.), 6
Device: Ladder Not a Labor Law Case if Plaintiff merely loses his balance.

Mayo v. Metropolitan Opera Ass'n 108 A.D.3d 422, 969 N.Y.S.2d 39, (N.Y.A.D. 1 Dept., 2013). 53
Device: Fixed Ladder. Inadequate where Plaintiff had to use both hands to open hatch breaking "Three Point Contact". Hatch.

DelRosario v. United Nations Federal Credit Union 104 A.D.3d 515, 961 N.Y.S.2d 389, (N.Y.A.D. 1 Dept.,2013) 103
Device. Ladder. Hit by live wire is a Scaffold Law Claim.

Keenan v. Simon Property Group, Inc 106 A.D.3d 586, 966 N.Y.S.2d 378, (N.Y.A.D. 1 68

Dept.,2013)
Device; Ladder Defective Steps cause loss of balance

Mouta v. Essex Market Development LLC106 A.D.3d 549, 966 N.Y.S.2d 13, (N.Y.A.D. 1 Dept.,2013) 70
Device: Scaffold defective when plywood platform being dismantled from below. Causation. Conflicting Proof on Workers Negligence

Fanning v. Rockefeller University 106 A.D.3d 484, 964 N.Y.S.2d 525 (N.Y.A.D. 1 Dept.,2013) 74
Device: Ladder If Ladder Suddenly moves, it is a Labor Law claim.

Mohamed v. City of Watervliet 106 A.D.3d 1244, 965 N.Y.S.2d 637 (N.Y.A.D. 3 Dept.,2013) 75
Device: Backhoe Bucket. Lowering because it was activiated by joystick not a Scaffold Law Claim because not gravity related. Risk: Object Activated Mechanically

Ross v. 1510 Associates LLC 106 A.D.3d 471, 964 N.Y.S.2d 514 (N.Y.A.D. 1 Dept.,2013) 76
Device: Ladder. Uneven Floor.

Ramirez v. Metropolitan Transp. Authority 106 A.D.3d 799, 965 N.Y.S.2d 156 (N.Y.A.D. 2 Dept.,2013) 77
Device. Scaffold. A breaking plank on a Catwalk, which is a scaffold functional equivalent, is a labor law claim.

Smith v. Nestle Purina Petcare Co.105 A.D.3d 1384, 966 N.Y.S.2d 292 (N.Y.A.D. 4 Dept.,2013) 83
Device. Ladder. Stepping off onto Risk. Debris not a Scaffold Law claim

Vail v. 1333 Broadway Associates, L.L.C. 105 A.D.3d 636, 963 N.Y.S.2d 647 (N.Y.A.D. 1 Dept.,2013.) 84
Device: Baker's Scaffold inadequate when shiting and without guardrails. Workers Negligence. Failure to Hydarate Indemnification. Purchase Order Not Retroactive

Estrella v. GIT Industries, Inc. 105 A.D.3d 555, 963 N.Y.S.2d 110, (N.Y.A.D. 1 Dept.,2013) 87
Device: Ladde. A Ladder that suddenly moves is a Labor Law claim.

Esteves–Rivas v. W2001Z/15CPW Realty, LLC 104 A.D.3d 802, 961 N.Y.S.2d 497 (N.Y.A.D. 2 Dept.,2013) 102
Device. Ladder. If only reason for accident is that the Worker lost his balance it is not a Labor Law Claim

Bellreng v. Sicoli & Massaro, Inc.108 A.D.3d 1027, 969 N.Y.S.2d 629, (N.Y.A.D. 4 Dept.,2013) 51
Device: Roof not Scaffold Equivalent Causation. Workers possibly Negligent in Ignoring Lifelines

5. CAUSATION: Worker Negligence as Sole Proximate Cause

Under New York's Scaffold Law, a Workers Contributory Negligence is not a Defense, per se, nor will an apportionment of liability be made upon a finding of Negligence. The exception is in situations where the Workers own Negligence was the "Sole Proximate Cause" of his accident. This exception is frequently referred to as the Recalcitrant Worker rule, given the number of cases which involve Workers expressly ignoring safety instructions and refusing to use Safety Devices.

> *Decedent "alone defined the task at hand, chose the methods and means to be used," and made the decisions that led to the accident.* Kerrigan v. TDX Const. Corp.108 A.D.3d 468, 970 N.Y.S.2d 13, (N.Y.A.D. 1 Dept.,2013)

> *A plaintiff's negligent conduct in failing to use an available and adequate safety device which is the sole proximate cause of the accident will relieve a defendant of liability.* Cioffi v. Target Corp, 2014 WL 715169 (N.Y.A.D. 2 Dept. 2014)

> *Scaffold Law, imposes non-delegable duty upon owners and general contractors to provide safety devices to protect workers from elevation-related risks, liability attaches where violation of that duty proximately causes injuries; conversely, where plaintiff's own actions are the sole proximate cause of the accident or injury, no liability attaches under statute and where plaintiff has adequate safety device readily available that would have prevented accident, and for no good reason chooses not to use it, statute does not apply* Barreto v. Metropolitan Transp. Authority 110 A.D.3d 630, 973 N.Y.S.2d 636 (N.Y.A.D. 1 Dept.,2013)

Thompson v. Sithe/Independence, LLC 107 A.D.3d 1385, 967 N.Y.S.2d 279, (N.Y.A.D. 4 Dept., 2013) Causation:Worker's Negligence. Conflicting evidence on device availability. Device. Lift and Safety lines 62

Gould v. E.E. Austin & Son, Inc. 980 N.Y.S.2d 198 (N.Y.A.D. 4 Dept., 2014) 8
Causation: Proximate Cause. Question of whether injuries related.

Rauls v. DirecTV, Inc. 113 A.D.3d 1097, 977 N.Y.S.2d 864, N.Y.A.D. 4 Dept.,2014 17
Causation: Workers Negligence Stepping out in violation of instructions. Ownership. Contractor. Satelite TV Company

Barreto v. Metropolitan Transp. Authority 110 A.D.3d 630, 973 N.Y.S.2d 636 (N.Y.A.D. 1 Dept.,2013) 36
Causation:Workers Negligence. Present when worker disregarded supervisor's instruction.

Gove v. Pavarini McGovern, LLC 110 A.D.3d 601, 973 N.Y.S.2d 617 (N.Y.A.D. 1 Dept.,2013) 37
Causation:Workers Negligence. Not present when foreman directs the manner of performance.

Dias v. City of New York 110 A.D.3d 577, 973 N.Y.S.2d 210 (N.Y.A.D. 1 Dept.,2013) 39
Causation: Workers Negligence. Contrary to Purpose of Work Device. Metal Sheeting

Cioffi v. Target Corp, 2014 WL 715169 (N.Y.A.D. 2 Dept. 2014) 3
Causation:Workers Negligence. Not present when worker chooses ladder at his discretion.

Kerrigan v. TDX Const. Corp.108 A.D.3d 468, 970 N.Y.S.2d 13, (N.Y.A.D. 1 Dept.,2013) 50
Causation: Workers Negligence Sole Proximate Cause. "Decedent alone defined"

Clavijo v. Atlas Terminals, LLC 104 A.D.3d 475, 961 N.Y.S.2d 113 (N.Y.A.D. 1 Dept.,2013) 104
Causation. Workers Negligence. Need proof of knowledge of safety devices

6. INDEMNIFICATION

If a Defendant is Statutorily liable, will he be able to enforce an indemnification agreement against another entity down the line, arguing, as is frequently litigated, that whoever actually failed to provide the kind of protection required by the Scaffold Law has the kind of culpability that amounts to negligence in triggering standard indemnification agreements.

> *Marlite's lease obligated it to indemnify Atlas for any losses resulting from its (Marlite's) breach of any covenant or condition of the lease or from any carelessness, negligence or improper conduct on its part. This indemnification obligation is triggered by Marlite's sending plaintiff to work on a mezzanine under construction on which the floor beams were only partially covered, some with ceiling tiles, without safety equipment.* Clavijo v. Atlas Terminals, LLC 104 A.D.3d 475, 961 N.Y.S.2d 113 (N.Y.A.D. 1 Dept.,2013)

> *A court may render a conditional judgment on the issue of contractual indemnity, pending determination of the primary action, the one seeking indemnity need only establish that it was free from any negligence and may be held liable solely by virtue of statutory or vicarious liability.* Van Nostrand v. Race & Rally Const. Co., Inc. 979 N.Y.S.2d 638 (N.Y.A.D. 2 Dept.,2014)

Clavijo v. Atlas Terminals, LLC 104 A.D.3d 475, 961 N.Y.S.2d 113 (N.Y.A.D. 1 Dept.,2013) 105
Indemnification. 240(1) violation equals fault sufficient to trigger indemnification obligation

Town of Amherst v. Hilger 106 A.D.3d 120, 962 N.Y.S.2d 837 (N.Y.A.D. 4 Dept.,2013) 99
Indemnification. Stgate Insurance Fund is exempt from certain direct actions.

Britez v. Madison Park Owner, LLC 106 A.D.3d 531, 966 N.Y.S.2d 7 (N.Y.A.D. 1 Dept.,2013) 71
Indemnification. Subcontractors scope of work in failing to provide safety device.

Van Nostrand v. Race & Rally Const. Co., Inc. 979 N.Y.S.2d 638 (N.Y.A.D. 2 Dept.,2014) 9
Indemnification Ownership Subcontractor