

## *Is the Pendulum Swinging Toward Defendants on New York Labor Law Claims?* *Insurance Journal*

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*Generally speaking, Labor Law Section 240(1) ("240") imposes strict liability on owners and general contractors for certain height/gravity-related accidents that occur at construction projects.*

*Establishing a height/gravity-related risk should not be enough for a plaintiff to prevail. Under the statute, a plaintiff must also show that he was not provided with a proper safety device and that the lack of a proper device caused the occurrence of the accident. Until recently, courts have looked past this second critical element of 240 claims.*

*However, in a series of recent cases involving plaintiffs who fell from ladders after encountering an electric shock, the Court of Appeals and Appellate Division, First Department have clearly reasserted that plaintiffs have the burden of proving that a gravity-related accident was caused by the inadequacy of the safety device provided.*

*Due to the courts' broad application of 240, plaintiff's attorneys have been successfully taking the position that the mere fact their clients fell from a ladder after being shocked by electricity was sufficient proof, in and of itself, that the ladder was not an adequate safety device for the work being done, establishing their entitlement to strict liability. This position was seemingly validated by the First Department's 2009 decision in *Vukovich v. 1345 Fee, LLC*.*

*In that case, the plaintiff was granted summary judgment on his 240 claim when he fell from an unsecured A-frame ladder after being shocked. Although the decision makes no reference to defect in the ladder at issue, the court held that "it was inadequate to prevent him from falling five to seven feet... after being shocked and was the proximate cause of his injuries," which implies that the mere fact that plaintiff fell proves the ladder was not sufficient to protect him.*

*In January 2016, relying in part upon *Vukovich*, the First Department in *Nazario v. 222 Broadway, LLC*, again upheld summary judgment for a construction worker who sustained an electric shock and fell from an unsecured A-frame ladder.*