

CONSTRUCTION**Labor Law — Accidents — Scaffolds and Ladders****Parties debated scaffold's link to worker's injuries****MEDIATED
SETTLEMENT****\$900,000**

CASE Radhames Ramirez v. Marine Estates LLC and Plaza Construction Corp., No. 29957/07

COURT Queens Supreme

NEUTRAL(S) Michael McAllister

DATE 4/28/2010

PLAINTIFF

ATTORNEY(S) Adam M. Orlow, The Orlow Firm, Flushing, NY

DEFENSE

ATTORNEY(S) Ernesto O. Gimeno, Fiedelman & McGaw, Jericho, NY

FACTS & ALLEGATIONS On Dec. 7, 2006, plaintiff Radhames Ramirez, 50, a union-employed painter, worked at a construction site that was located at 55 W. 25th St., in Manhattan. Ramirez was painting a ceiling, and his work necessitated his use of a scaffold. Ramirez claimed that one of the scaffold's bars broke beneath his feet while he was climbing off of the scaffold. He did not fall, but he contended that he sustained injuries of his shoulders.

Ramirez sued the project's general contractor, Plaza Construction Corp., and the premises' owner, Marine Estates LLC. He alleged that the defendants violated the New York State Labor Law.

Ramirez claimed that the scaffold's wooden bars were broken and rotten. He contended that the defendants should have provided a sturdier structure that was composed of metal or some other more permanent material. Ramirez's counsel claimed that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Ramirez was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel challenged Ramirez's credibility. He contended that Ramirez's medical records and workers' compensation documents included Ramirez's claim that he had slipped off of the scaffold.

INJURIES/DAMAGES *arthroscopy; torn labrum; torn rotator cuff; torn supraspinatus tendon*

Ramirez claimed that he would have fallen off of the scaffold, but that he was able to grab one of its bars. He contended that he sustained trauma that produced a tear of his right shoulder's supraspinatus tendon, which is an element of the rotator cuff, and tears of his left shoulder's rotator cuff and labrum.

About 12 months after the accident, Ramirez claimed that he was suffering residual injuries that prevented his performance of his work duties. He underwent arthroscopic surgery that addressed the injuries of his left shoulder, but he contended that he suffers ongoing residual injuries that prevent his resumption of his painting duties.

Ramirez sought recovery of his past and future lost earnings and damages for his past and future pain and suffering.

RESULT Ramirez's counsel moved for summary judgment of liability. Judge Bernice Siegal denied the motion, and Ramirez's counsel appealed. During the pendency of the appeal, the parties negotiated a settlement, which was established via the guidance of mediator Michael McAllister. The defendants' insurers agreed to pay \$900,000.

INSURER(S) Chartis Inc. for both defendants

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Priya Idiculla