

**CONSTRUCTION SITE  
PERSONAL INJURY LITIGATION  
SECOND EDITION  
2018 REVISION**

NEW YORK LABOR LAW §§ 200, 240(1), 241(6)

**EDITOR-IN-CHIEF**

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**AND THE**

**GOLDBERG SEGALLA**

**CONSTRUCTION**

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## PREFACE

In the current environment, where representatives of the construction industry, the insurance industry and workers injured on construction sites, including their counsel, are debating whether the New York Labor Law §§ 200, 240(1) and 241(6) and relevant regulations need to be completely changed or modified, the Court of Appeals and various Appellate Departments continue to grapple with, dispute the meaning of and refine these statutes and regulations.

In this second edition of *Construction Site Personal Injury Litigation*, the authors, who are members of the New York State Bar Association, have updated the traditional concepts and analyzed the changes in interpretation that have occurred over the past several years. Further, as appropriate, the authors have discussed the various arguments made and positions taken by the parties to construction site personal injury litigation and considered those that have been accepted and/or rejected by the courts.

Again, it is an honor for us, as members of the New York State Bar Association and legal profession, to provide the practitioners and the courts with our insight and discussion.

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to staff counsel in 2000. Since returning, Mr. Masler joined the automobile team and handled a caseload consisting of automobile and general liability actions for approximately two years, and then returned to his position on the Appellate team. Mr. Masler shepherded a number of internal publications, including as Editor-In-Chief of the *Tort and Insurance Law Summaries* and as founder and editor of the *Labor Law Digest*. Since January 2005, Mr. Masler has sat as an arbitrator, presiding over small claims cases in Queens County Civil Court. He has lectured at many CLE and CE seminars for attorneys, claims professionals, and insurance brokers. He is the author of several articles that have been published in various legal publications, including two law review articles published in the *Brooklyn Law Review* and the *Mississippi College Law Review*.

**WILLIAM T. O'CONNELL, ESQ.**

William T. O'Connell is a partner at Goldberg Segalla and a leader of its Appellate Practice Group. He concentrates his practice in the areas of appellate practice, construction site litigation, products liability, commercial litigation and general defense litigation. He has successfully defended property owners, construction companies and product manufacturers in complex litigation in both federal and state courts, with a special emphasis on New York Labor Law litigation. Mr. O'Connell has briefed and argued numerous appeals in the Appellate Division, First and Second Departments, two federal circuit courts, and multiple appellate courts in other states, including Ohio, Pennsylvania, and Wisconsin. He frequently lectures and drafts legal updates on appellate practice and construction litigation for bar associations and law schools.

**DANIEL R. SANTOLA, ESQ.**

Daniel R. Santola is a senior partner and co-founder of Powers & Santola, LLP, based in Albany, New York, with offices in Syracuse and Rochester. His practice is limited to the representation of catastrophically injured individuals, the field of law in which he has more than 40 years trial experience. Mr. Santola received his B.A. from the State University of New York at Buffalo and his J.D. from Albany Law School. Both he and his firm have consistently received the top rating by *U.S. News & World Report* and *Best Lawyers*. He is a frequent lecturer for numerous bar associations, academic and professional institutions on various topics related to personal injury law. He is the author of the book *Litigating Construction Accident Cases in New York*, published by Thomson Reuters as well as several book chapters on various topics in the field of personal injury law. Mr. Santola is past president of the New York State Trial

## CONTRIBUTOR BIOGRAPHIES

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Lawyers Association (Capital Region Affiliate), the Albany County Bar Association, the Capital District Trial Lawyers Association and the American Board of Trial Advocates, New York Capital Region.

### **HONORABLE PETER B. SKELOS**

The Honorable Peter B. Skelos retired from the New York State Supreme Court, Appellate Division, Second Judicial Department, in the summer of 2015 after more than 11 years of service. Since that time, he has been a partner in the law firm of Forchelli Deegan Terrana LLP, where he chairs the appellate practice group and practices with the litigation group. He was designated a Super Lawyer in Appellate Practice in 2017. Justice Skelos is a neutral mediator and arbitrator with National Arbitration and Mediation. He has been voted a top ten mediator and arbitrator in the *New York Law Journal* Annual Reader's Survey. He has authored numerous articles and is a regular lecturer in CLE programs throughout the New York metropolitan area. Justice Skelos was first elected to the New York State District Court, Nassau County, in 1995, and served there until his election to the New York Supreme Court for the Tenth Judicial District in 1998. He was reelected in 2012. From 2003 until his elevation to the Appellate Division, he also served on the Appellate Term of the Supreme Court for the Second and Tenth Judicial Districts. Before joining the bench, Justice Skelos practiced law in the law firms of Liotti and Skelos and Hayt, Hayt and Landau and was a Deputy Nassau County Attorney. He received his B.A. degree from Emory University in 1977 and a J.D. degree from Fordham University in 1980.

### **J. DANIEL VELEZ, ESQ.**

J. Daniel Velez focuses his practice on defending high-profile retail and food industry corporations, insurance companies and landowners in a wide variety of litigation, including slip/trip and fall accidents, construction accidents, assaults, and motor vehicle accidents. Mr. Velez represents numerous Fortune 500 clients, handling all aspects of each matter from inception through completion, including depositions, conducting mediations and arbitrations, managing trials, and formulating winning defense strategies for large caseloads.

Mr. Velez's prior experience also includes representing various clients in criminal matters, including building, fire, and environmental code violations. He also draws on experience from inside the insurance industry. Before entering private practice, he held a graduate internship with a firm serving as in-house counsel for one of the nation's largest automobile insurers where he drafted summary judgment motions and deposition

reports and assisted with various research projects. He also gained valuable behind-the-bench insight into judicial decision-making and oral advocacy through his experience as a judicial intern to the Honorable Sallie Manzanet-Daniels in New York State Supreme Court, Bronx County.

Mr. Velez attended Hofstra University School of Law where he served as President of the Latino/a Law Student Association and served on the Dean's Minority Affairs/Strategic Planning Committee.

**ANDREW ZAJAC, ESQ.**

Andrew Zajac is a member of McGaw, Alventosa & Zajac in Jericho, New York. He joined the firm in 1990, at which time he was asked to head the newly organized Appeals Unit. Since that time, the unit has handled appeals for numerous firms throughout the state involving issues concerning construction accidents, insurance coverage, premises and automobile liability, medical malpractice and products liability. Prior to joining McGaw, Alventosa & Zajac, Mr. Zajac was in private general practice, where he handled a wide range of matters, including complex commercial litigation, real estate and business transactions, and trusts and estates. Thereafter, he practiced personal injury defense and insurance litigation for three years. Mr. Zajac has argued in every appellate court in New York State, and his name appears on numerous reported decisions. He has lectured at many CLE and CE seminars for attorneys, claims professionals, and insurance brokers. He is the author of several articles that have been published in various legal publications. Mr. Zajac is a past President of the Defense Association of New York (DANY). He is currently a member of DANY's Board of Directors, as well as the co-chair of its Amicus Curiae Committee. In 2012, he received DANY's James S. Conway Lifetime Achievement Award.

**RACHEL ZUCKER, ESQ.**

Rachel Zucker is an associate in Goldberg Segalla's Global Insurance Services Practice Group. Ms. Zucker graduated *cum laude* from the University at Buffalo Law School, after serving as associate and then editor of the *Buffalo Law Review*, president of the Jewish Law Students Association, and vice president of The Family and Children's Law Society. Ms. Zucker was also a member of the Buffalo Public Interest Law Program and the Animal Law *Pro Bono* Clinic.