



The Second Department this week clarified the scope of a general liability business insurance policy that covers a particular premises, holding that no coverage exists for what the business's employees do when travelling within the scope of employment outside of the covered premises. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

FIRST DEPARTMENT

LABOR LAW, GRAVITY RELATED INJURY

Szczesiak v Ery Tenant LLC, 2026 NY Slip Op 00600 (1st Dept Feb. 05, 2026)

Issue: Does Labor Law § 240(1) apply when a worker falls from a height following an electric shock?

Facts: "Plaintiff[,] an electrician, was injured at a construction site on September 11, 2019, when he fell from a 10-foot A-frame ladder as he was troubleshooting nonfunctioning ceiling lights." The plaintiff was shocked by live wires in a ceiling electrical box and fell from the ladder on which he was standing, after "the ladder immediately 'moved, wobbled, shifted, and fell'" following his electrical shock.

Plaintiff brought a Labor Law § 240(1) claim, and following discovery, moved for summary judgment, arguing that "that he was exposed to a height-related risk when he performed work on an unsecured and defective ladder 11 feet above ground and that the ladder, which moved, wobbled, shifted and fell, was an inadequate safety device. Plaintiff further argued that defendants should have provided him with either a Baker scaffold or scissor lift with railings, which would have prevented him from falling and protected him in the course of his work." Defendant opposed, arguing "that merely falling from a ladder does not establish a violation of Labor Law § 240(1). They alleged that the ladder was secure and did not require any tethering, and that it was only tipped over because when plaintiff was shocked he lost his balance, and as he fell he reached for the ladder and pulled it over. They further alleged that there are questions of fact as to whether the ladder provided proper protection that should be resolved by a jury."

"Supreme Court denied plaintiff's motion, finding that by submitting the affidavit of plaintiff's foreman, stating that the wires were live after employees had been instructed to turn off the electricity, defendants created an issue of fact as to whether plaintiff was the sole proximate cause of the accident."

Holding: The Appellate Division, First Department reversed, holding that "when a worker falls from a ladder after receiving an electric shock, to be entitled to the protections of Labor Law § 240(1), he must establish that the ladder was defective, or that 'the ladder failed to provide proper protection' . . . [T]he intent is not to carve out from the protection of section 240(1) of the Labor Law all elevation-related falls following electrical shocks." Here, the Court held that plaintiff satisfied that standard by demonstrating that the ladder he was offered to perform the elevated work was defective. "Plaintiff's deposition testimony and the photographs provided clearly demonstrate that the ladder, which was the only one available for the work plaintiff was required to perform, had two bent and curved crossbeams and worn rubber feet. The general contractor's corporate safety manager confirmed that the ladder was defective when he stated at his deposition that if he had observed a ladder with the damage depicted in the photographs, he would have replaced the ladder and taken it out of service. Even if the ladder had been stable, this would have been no impediment to a claim under section 240. Plaintiff submitted evidence that the ladder was an inadequate safety device because it failed to provide adequate protection against the gravity-related risk inherent in the work he was performing. Plaintiff testified that when he removed his hand from the wires that shocked him, the ladder immediately 'moved, wobbled and shifted,' establishing that it failed to adequately support and protect him from the gravity-related risk."

Contrary to Supreme Court's holding, plaintiff's failure to turn off the electricity prior to performing the work, at best, "constituted comparative negligence, which is not a defense to a Labor Law § 240(1) claim." Thus, the court held, plaintiff demonstrated that he was entitled to partial summary judgment on liability.

SECOND DEPARTMENT

CONTRACTS, INSURANCE LAW

Normile v DB Ins. Co., Ltd., 2026 NY Slip Op 00788 (2d Dept Feb. 11, 2026)

Issue: Does the language of the subject general liability business insurance policy obligate the insurer to provide coverage for bodily injury that allegedly occurred in the course of the insured's business, but not as a result of operations at or otherwise related to the covered premises that are specifically identified in the policy?

Facts: After a bike delivery driver collided with the plaintiff following a food delivery, the restaurant by which the driver was employed filed an insurance claim with its general liability insurance business policy carrier, defendant DB Insurance Co., however, disclaimed coverage for the accident and resulting lawsuit, citing to a policy exclusion that limited "coverage . . . to claims of 'bodily injury, property damage, personal and advertising injury, and medical expenses arising out of . . . [t]he ownership, maintenance or use of the premises . . . and operations necessary or incidental to those premises.' The policy identified the covered 'premises' as 305 Union Street in Brooklyn, the apparent location of the insured's restaurant." Because the accident occurred one city block away from the restaurant while the driver was returning from the food delivery, and not at the listed premises, defendant denied coverage.

After plaintiff obtained a \$500,000 judgment against the restaurant, which was unpaid, plaintiff commenced this action against defendant under "Insurance Law § 3420(a)(2) . . . to recover the unsatisfied amount of the judgment." Following cross motions for summary judgment, Supreme Court granted plaintiff's motion and denied defendant's motion.

Holding: The Appellate Division, Second Department reversed, holding that "under the language of the insurance policy at issue here, the insurer was not obligated to provide coverage to the insured and, thus, is not required pursuant to Insurance Law § 3420(a)(2) to satisfy the outstanding amount of the judgment in favor of the plaintiff and against the insured in the underlying action." The Court explained, "in interpreting the language used in the policy—which, as relevant, limits coverage to claims of bodily injury 'arising out of . . . operations necessary or incidental to the premises'—there are both spatial and circumstantial concerns at play. While coverage might not exist where a covered premises bears only slight or no relation to the alleged incident, coverage may exist where, for example, a bodily injury was caused by an allegedly defective condition in a space that was appurtenant to a covered premises and that had to be traversed in order to access the covered premises. We thus reject the insurer's formalistic interpretation of the relevant language, which would allow an insurer to deny coverage any time an incident does not occur at an expressly identified covered premises. We adopt an interpretation of the policy language that requires a review of the alleged incident and its spatial and circumstantial connection to the covered premises. Coverage must be afforded to the insured under this language where the incident takes place in a location that has a direct relationship to the covered premises and where the circumstances of the incident relate in some way to the nature of the covered premises itself, not just the business that is operating out of the covered premises."

Here, the Court held, the incident that happened one block away from the restaurant and did not relate to the covered premises itself, as required under the language of policy. "There is, thus, a glaring difference between an insurance policy that insures against losses arising from operations necessary or incidental to a business, which would ostensibly include all claims of bodily injury arising from an employee's negligence while that employee is acting within the scope of his or her employment for the business, and a policy that insures against losses arising from operations necessary or incidental to a premises, which include claims of bodily injury that must have some premises-based connection to the covered premises. Here, the insurance policy at issue covered only those damages that arose from the operations 'necessary or incidental' to the premises, which is a narrower category of coverage."

THIRD DEPARTMENT

TORTS, VICARIOUS LIABILITY

Deitrich v Binghamton Rd. Elec., LLC, 2026 NY Slip Op 00557 (3d Dept Feb. 5, 2026)

Issue: May a party be held vicariously liable for the acts of its retained independent contractor?

Facts: Defendant sold a prefabricated shed to a customer and retained "St Mary & Sons Transport LLC (hereinafter St Mary) for the shipment of the shed from the place of construction to the purchaser's home," because it was an oversized load. As St Mary was transporting the shed along public roads, the driver came upon an ongoing highway construction site in the Village of Malone. As the driver was negotiating the site, the shed struck the plaintiff, who was working at the site, causing severe injuries.

Plaintiff sued defendant, alleging that it was negligent in loading the shed onto the St Mary's trailer, and that it was vicariously liable for St Mary's and the driver's negligence. Defendant moved for summary judgment, arguing that "it owed no duty to plaintiff as it took no part in the loading or transport of the shed and was not liable for the actions of St Mary — and, thereby, Rousell — as St Mary was an independent contractor. Plaintiff opposed the motion arguing that ACS was vicariously liable for the actions of St Mary given the inherently dangerous nature of transporting an oversized load but did not contest the classification of St Mary as an independent contractor of ACS. Supreme Court denied the motion, finding that there was a triable issue of fact as to whether St Mary had negligently transported the

shed, and that, relevant to ACS, the transport of an oversized load was an inherently dangerous activity for which ACS could not delegate liability.”

Holding: The Appellate Division, Third Department reversed, holding that defendant could not be held vicariously liable for St Mary’s and the driver’s negligence. The court explained, “St Mary was an independent contractor of ACS and, as a general rule, a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent contractor’s negligent acts. Certain exceptions exist to this general rule, however. These exceptions include, as is relevant here, where the employer has assigned work to an independent contractor which the employer knows or has reason to know involves special dangers inherent in the work or dangers which should have been anticipated by the employer.” Indeed, “[a]n actor who hires an independent contractor to do work that the actor knows or should know involves an abnormally dangerous activity is subject to vicarious liability for physical harm when the abnormally dangerous activity is a factual cause of any such harm within the scope of liability (Restatement [Third] of Torts § 58). Thereunder, an activity is abnormally dangerous if: (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and (2) the activity is not one of common usage.”

Although whether work is inherently dangerous is typically a question of fact for the jury, the Court held, “no view of the facts presented on this motion supports the conclusion that the trucking of the oversized load in question was an inherently dangerous activity because there was not a significant risk of harm if reasonable care were exercised by those involved — namely, [the driver]. Plaintiff alleges that his injuries resulted from [the driver] failing to take notice of his surroundings on one side of the vehicle and crossing the line separating lanes of travel. This ordinary incident of negligence — i.e., failing to appropriately observe one’s surroundings — is not inherent in the trucking of oversized loads and could have been avoided with the exercise of reasonable care. Demanding though it may be, the activity of transporting oversized loads on public highways — successfully accomplished countless times daily — does not involve that sort of inherent risk for the nonnegligent driver and is simply not an inherently dangerous activity so as to trigger vicarious liability.” Therefore, because defendant did not have any “reason to anticipate that special dangers would arise from the transportation of the shed by a non-negligent contractor, a nondelegable duty did not arise and [defendant] may not be held vicariously liable for the purported negligence of St Mary as an independent contractor.”

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