



**CONSTRUCTION SITE
PERSONAL INJURY LITIGATION
THIRD EDITION**

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

**EDITOR-IN-CHIEF
THOMAS F. SEGALLA, ESQ.
AND THE
GOLDBERG SEGALLA
CONSTRUCTION
PRACTICE GROUP**

NEW YORK STATE BAR ASSOCIATION

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PREFACE

This Third Edition of *Construction Site Personal Injury Litigation* was written during an unprecedented year where our country, and especially New York, saw challenges to the health, safety, and wellbeing of our communities. As a testament to the fortitude and dedication of our fellow members, the New York State Bar Association came together to author this practice guide for the Labor Law practitioner.

In this edition, our authors have updated traditional concepts and analyzed the changes in interpretation that have occurred over the past few years and the impact that the pandemic has had on the relevant statutory sections. Taking into account some of the challenges noted above, the authors have discussed the various positions taken and arguments furthered as advocates in construction personal injury litigation. Looking to the future and the changes faced by practitioners, the authors have provided various practical suggestions that help in the analysis and litigation of various perspectives.

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 discussions.

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Julian D. Ehrlich is Senior Vice President-Claims at AON Construction Services Group where he is part of national claims leadership. Previously he was claims counsel for AIG Construction Risk Management Group in New York City, advising claims technicians on issues of litigation management, coverage, legal liability and litigation/trial strategy. Prior, he practiced for 17 years in the areas of construction accidents, premises liability, miscellaneous professional liability, products liability, insurance coverage, errors and omissions and automobile cases. He has lectured on related topics for various bar and trade associations and has authored numerous articles on Labor Law liability and coverage issues. He is admitted to practice in the state courts of New York and Connecticut and in the federal district courts of Connecticut and the Southern and Eastern Districts of New York. Mr. Ehrlich graduated *cum laude* from the State University of New York at Albany and from Pace University School of Law, where he was co-founder and editor of the *Pace International Law Journal*. He is Past President of the Defense Association of New York and is a member of the NYSBA, the Defense Association of New York (DANY) and the Defense Research Institute (DRI).

ROSS MASLER, EsQ.

Ross Masler joined staff counsel at McGaw, Alventosa & Zajac in August 1990 and was a member of the Appellate team at the firm for three years. He handled appeals in the Appellate Division of New York State and the New York Court of Appeals and wrote a brief to the United States Supreme Court. Mr. Masler then left for private practice for four years, but returned 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 pub-

lished in various legal publications, including two law review articles published in the *Brooklyn Law Review* and the *Mississippi College Law Review*.

KELLY A. MCGEE, ESQ.

Kelly A. McGee is a partner at Goldberg Segalla, working out of the Manhattan office. She is Co-Chair of the Construction Personal Injury Group and Women In Construction Group. Practicing civil defense work for over 20 years, Ms. McGee specializes in construction site accidents and the New York Labor Law. She has extensive experience in litigating high-exposure cases from inception through trial.

Ms. McGee has published articles on the New York Labor Law, conducted webinars, and presented at seminars to audiences of construction clients, insurance carriers, and attorneys. In addition to leading in the firm's construction groups, Ms. McGee is the Co-Editor of Goldberg Segalla's Labor Law Update, which examines the latest Appellate Court decisions on Labor Law and construction site accidents. Ms. McGee has also co-authored the Goldberg Segalla Labor Law Primer, which highlights key topics, current issues, and defenses for litigants and clients. Ms. McGee is a graduate of SUNY Stony Brook and earned her law degree from Touro Law School. Ms. McGee has also held the position of Adjunct Professor at CW Post Long Island University teaching Civil Procedure in its ABA-certified Paralegal Program.

KATHLEEN M. MURPHY, ESQ.

Kathleen M. Murphy is an associate in Goldberg Segalla's General Liability Practice Group, focusing on general liability analysis and litigation, as well as construction litigation and real estate and title litigation. She has been recognized by *Super Lawyers* and *The Irish Echo Newspaper* for her accomplishments both in her current role and for her former work as a prosecutor.

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.

KELLY C. O’CONNOR, ESQ.

Kelly C. O’Connor is a partner at Goldberg Segalla. She is an experienced workers’ compensation attorney who regularly appears before the New York State Workers’ Compensation Board on behalf of her clients, who she defends in a wide range of claims. She also focuses a significant portion of her practice on issues involving occupational safety and health law, including advising and representing employers in connection with OSHA inspections, investigations, and enforcement actions. Ms. O’Connor has extensive experience questioning witnesses, taking depositions, drafting pleadings, negotiating settlements, and more. She has also researched, written, and submitted legal briefs to the Third and Fourth Appellate Divisions.

MICHAEL RUBIN, ESQ.

Michael Rubin is chair of Goldberg Segalla’s national OSHA and Worksite Safety practice group. A Certified Safety Professional (CSP), Michael focuses his practice on issues involving occupational safety and health law. He advises and represents employers across multiple industries and around the country in connection with OSHA inspections, investigations, and enforcement actions. He also develops and audits safety programs and policies and counsels employers on related risk-management strategies. He has hands-on experience managing accident investigations—including those involving multiple fatalities—and regularly represents employers before, during, and after the OSHA inspection process. Mr. Rubin regularly contests citations on behalf of employers and negotiates for the withdrawal and/or settlement of citations. With nearly 20 years of litigation experience, Mr. Rubin is a skilled trial attorney who engages in litigation before the Occupational Safety and Health Review Commission. In addition to his OSHA practice, he defends owners and contractors through trial in high exposure construction actions alleging violations of the New York Labor Law, including the “Scaffold Law.”

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 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. Justice Skelos is of counsel to 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 and 2018. Justice Skelos is a neutral mediator and arbitrator with National Arbitration and Mediation. In 2020, for the fifth consecutive year, he was voted a top ten mediator and arbitrator in the *New York Law Journal* Annual Reader's Survey and was named a *National Law Journal* Alternative Dispute Resolution Champion. 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.

THEODORE W. UCINSKI, ESQ.

Theodore W. Ucinski is a partner at Goldberg Segalla, Co-Chair of their Construction Personal Injury Group, and has an AV+ rating from Martindale-Hubbell. Mr. Ucinski has more than two decades of experience defending and litigating high exposure premises liability and labor law cases through to, and including, trial.

Mr. Ucinski is a frequent speaker at legal organizations as well as webinars on emerging and topical issues in the general liability and construction arenas. He is the Co-Editor of Goldberg Segalla's *Labor Law Update*, which examines the latest developments regarding New York's Labor Law and construction site accidents. Additionally he contributes articles to a variety of publications including the *New York Law Journal*. Mr. Ucinski received his B.A. degree *cum laude* from Fordham University in 1995 and a J.D. degree from the Elizabeth Haub School of Law in 1998.

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 chair of its Amicus Curiae Committee. In 2012, he received DANY's James S. Conway Lifetime Achievement Award.

DEREK M. ZISSER, ESQ.

Derek M. Zisser is a partner in Goldberg Segalla's Trucking and Transportation, General Liability, and Construction groups with nearly a decade of experience litigating high exposure labor law, premises liability,

and transportation matters. Among his accolades, Mr. Zisser has been named as a *Super Lawyers* Rising Star and to the *Best Lawyers in America's* “Ones to Watch” list for Personal Injury Litigation—Defendants. Mr. Zisser is an assistant editor of Goldberg Segalla’s *Labor Law Update*, which examines the latest developments regarding New York’s Labor Law and construction site accidents. He received his bachelor’s degree from Hofstra University and his juris doctor from the Touro College Jacob D. Fuchsberg Law Center.