

Who's on the Hook?

Part 2: Litigation and Insurance
Issues in Construction Accident
Cases

MATERIALS BY

Andrew Smiley, Esq.

Rosa Feeney, Esq.

—New York State—
ACADEMY
OF TRIAL LAWYERS

Live Streamed
November 6, 2024
1pm via Zoom

MITCHELL R. KAHN, ESQ.

Hearing Officer, New York County

Mitchell R. Kahn, Esq. is a seasoned litigator who practiced law for more than 30 years. He dedicated his practice to representing clients in personal injury cases, regularly appearing in the courtrooms of all five boroughs, as well as Nassau, Suffolk, Westchester, and Rockland counties. As a full-time neutral for NAM, Mr. Kahn applies his extensive experience when hearing mediations to aid in the fair and expedient resolution of cases.

Mr. Kahn has handled all aspects of Labor Law 240 and 241 cases and has successfully mediated numerous multi-million-dollar catastrophic personal injury matters, including those related to accidents involving construction, premises liability, slip and fall, ladder/scaffolding, elevator, and automobile matters. He has also settled cases involving traumatic brain injuries, birth injuries, defective products, lead poisoning, and wrongful death. Mr. Kahn is frequently used by numerous New York City high profile law firms to negotiate their catastrophic cases.

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Individual Mediator
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Areas of Experience

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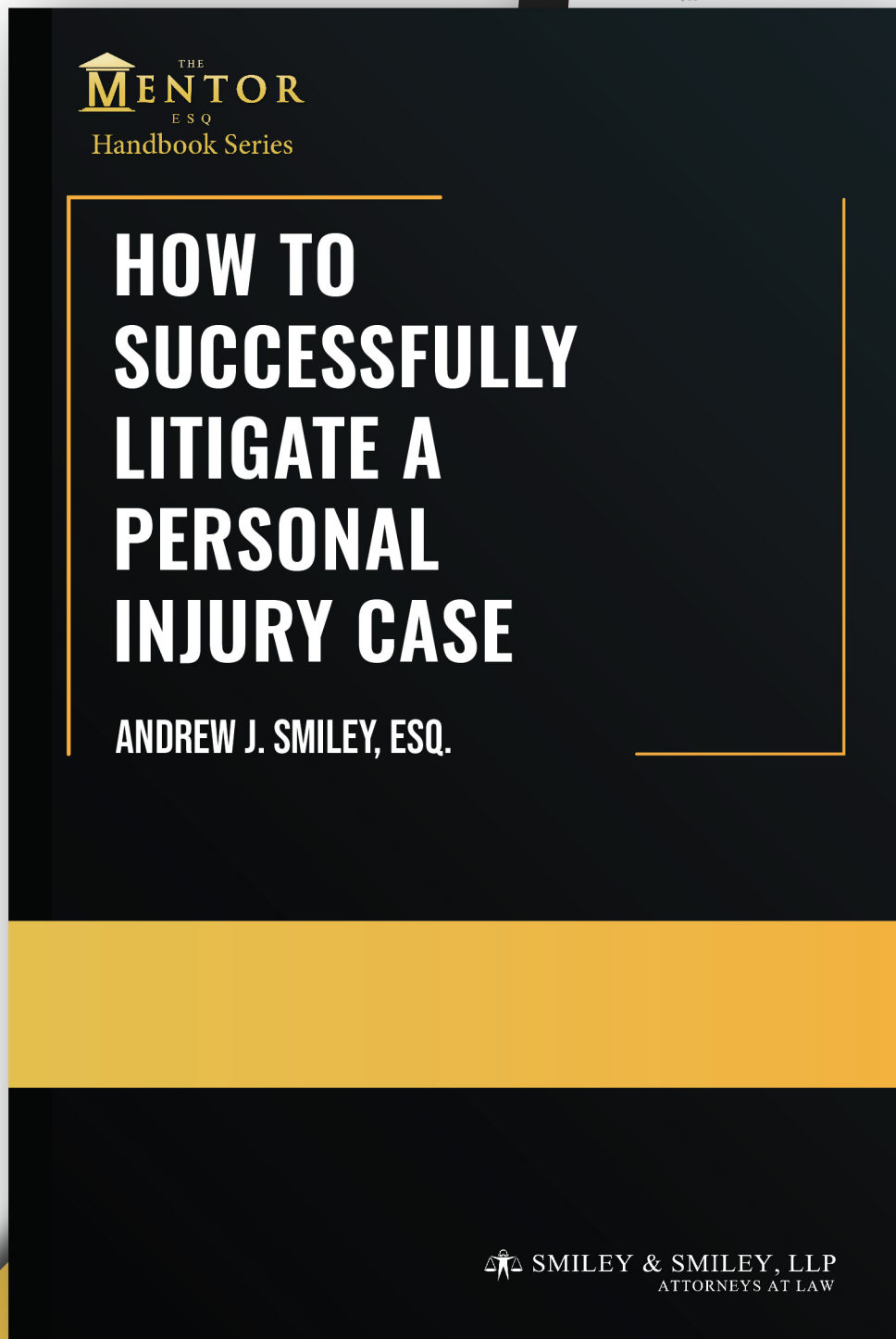
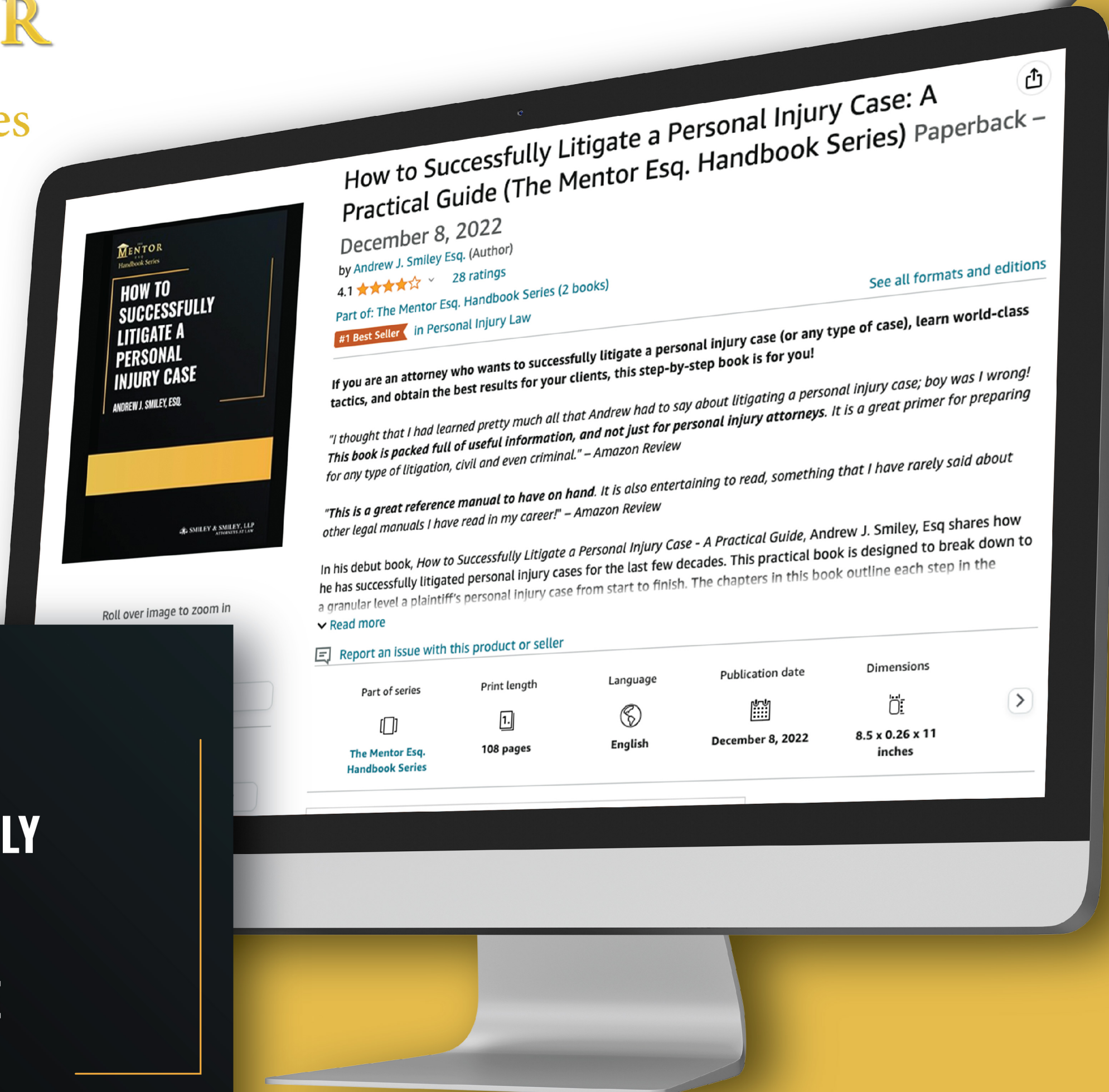
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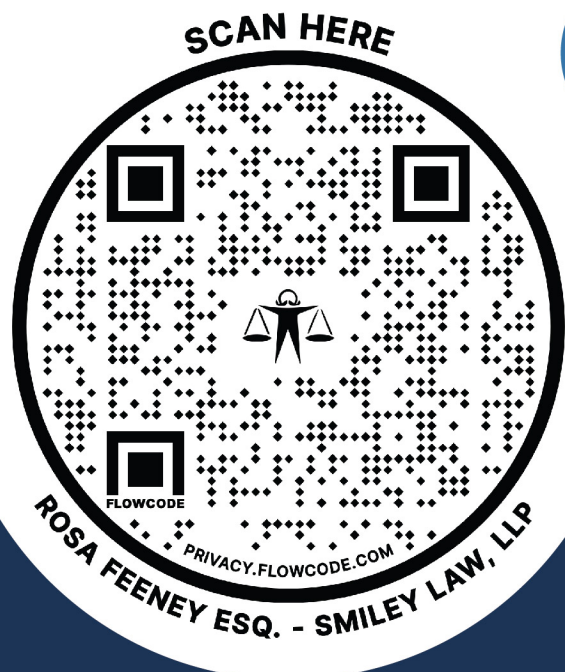
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CURRICULUM VITAE

Education:

·Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

·Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

Andrew J. Smiley, Esq. Curriculum Vitae, Page 3

- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors & Legal Counsel

Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

Continuing Legal Education (CLE) Presentations:

(75) *Introducing Evidence and Impeaching Witnesses*, Office of The New York State Attorney General – Legal Education and Professional Development, September 26, 2024

(74) *Walking the Line: Settlement Negotiation Skills & Ethics*, New York State Academy of Trial Lawyers, July 9, 2024

(73) *Novel Negligence Cases – Part 2: How to Successfully Litigate Dram Shop Cases*, New York State Academy of Trial Lawyers, June 5, 2024

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023

Andrew J. Smiley, Esq. Curriculum Vitae, Page 4

- (66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023
- (65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023
- (64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023
- (63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023
- (62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023
- (61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023
- (60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023
- (59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023
- (58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022
- (57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022
- (56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022
- (55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022
- (54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022
- (53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022
- (52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022
- (51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022
- (50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

Andrew J. Smiley, Esq. Curriculum Vitae, Page 5

Continuing Legal Education (CLE) Presentations Continued:

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

(47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

(46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

(45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

(44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

(43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

(42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

(41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

(40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

(39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

(38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

(37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

(36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

(35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

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Continuing Legal Education (CLE) Presentations Continued:

(34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

(33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

(32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

(31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

(30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

(29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

(28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

(27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

(26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

(25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

(24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

(23) *Presenter on Evidence, 2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

(22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

(21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

(20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

(19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015

(18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

Andrew J. Smiley, Esq. Curriculum Vitae, Page 7

Continuing Legal Education (CLE) Presentations Continued:

- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances

Fox News Channel

- The O’Reilly Factor
- What’s Happening Now with Martha McCallum

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- America's News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

High-Performance Driving Events, Lime Rock Drivers Club, Porsche Enthusiast, Sim Racing, Tennis, Lego, Cooking, Yoga





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ABOUT

ROSA M. FEENEY

Rosa M. Feeney, Esq., a Partner and Chair of the Insurance and Risk Division at Smiley & Smiley, LLP has been in private practice for over 30 years with a focus on policyholder and plaintiff insurance coverage matters. She serves as an insurance coverage consultant to insurance policyholder's, plaintiffs and attorneys who face insurance issues in personal injury and property damage cases.

Ms. Feeney has successfully handled a multitude of cases from inception and provides end-to-end services, from pre-litigation consultancy, to review, analysis, negotiation, litigation, arbitration and mediation to resolve disputes. She has also litigated numerous Construction, Labor Law, Business owners, Automobile, Homeowner, Life and Disability Insurance cases and serves as lead counsel on several New York State litigations in the State and Federal Courts. Having worked on behalf of insurance carriers for over 20 years and now concentrating on policyholder and plaintiff's insurance coverage matters, she brings a unique perspective and insight to insurance coverage disputes. She has facilitated countless settlements and mediation involving injury claims where insurance issues are involved.

Ms. Feeney is a frequent lecturer on a variety of topics for the NYS Trial Academy as well as other esteemed institutions.

Her areas of Specialization in Insurance Coverage Litigation including:

Construction and Labor Law

Commercial Insurance Coverage issues

Motor Vehicle Insurance Coverage Issues

including general liability, property damage (1st & 3rd party)

Rideshare Insurance Issues

Uninsured/Underinsured coverage;

Homeowner Insurance coverage issues,

Life Insurance issues

Personal Injury

Disability Insurance

Ms. Feeney, through the Mentor Program at Smiley & Smiley, LLP offers free one-on-one's with other attorneys, insurance broker, property owners, construction industry professionals and many more.

To book your appointment visit:

<https://calendly.com/rosa-feeney-esq-availability>

[NY CLS Labor § 200](#)

Current through 2022 released Chapters 1-500

New York Consolidated Laws Service > Labor Law (Arts. 1 — 40) > Article 7 General Provisions (§§ 200 — 219-g)

§ 200. General duty to protect health and safety of employees; enforcement

1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.
2. If the commissioner finds that any machinery, equipment, or device in any place to which this chapter applies is in a dangerous condition, or finds that any area to which this chapter applies is in a dangerous condition, he may attach a notice to such machinery, equipment, or device, or post a notice in such area warning all persons of the danger. Such notice shall prohibit the use of such machinery, equipment, or device or prohibit further work in or occupancy of such area until the dangerous condition is corrected and the notice is removed by the commissioner. Upon receipt of a written notification from the employer that the dangerous condition has been corrected, the commissioner shall make a reinspection within ten working days, and if the commissioner finds that the dangerous condition has been corrected, he shall remove the notice. The filing with the board of a petition for a review of the validity and reasonableness of the commissioner's order pursuant to [section one hundred one](#) of this chapter, shall not stay further proceedings; provided, however, that the board, in its discretion, may upon application of the petitioner stay further proceedings. The board shall grant or deny such application for a stay within seventy-two hours after the filing of the application.
3. Whenever a notice is attached or posted as provided in subdivision two of this section, the attorney general may institute a proceeding to enjoin the use of such machinery, equipment, or device or to enjoin further work in or occupancy of such area. Such proceeding shall not be stayed by the filing with the board of a petition for a review of the validity or reasonableness of a commissioner's order pursuant to [section one hundred one](#) of this chapter.
4. In the exercise of his powers to protect the health and safety of employees the commissioners shall, in municipalities which have accepted the applicability of the state building construction code, enforce the provisions of such code in factories, mercantile establishments and places of public assembly with respect to: (a) sanitation and health facilities; (b) guarding against and minimizing fire and industrial radiation hazards; (c) safety of vertical transportation; and (d) adequacy of exits.

History

Add, L 1921, ch 50, eff March 9, 1921, with substance transferred from former § 20–b; amd, L 1962, ch 450, § 1, eff Oct 1, 1962; L 1964, ch 370, § 1, eff Oct 1, 1964; L 1978, ch 337, § 1, eff Oct 17, 1978.

Annotations

Notes

[NY CLS Labor § 241](#)

Current through 2022 released Chapters 1-500

New York Consolidated Laws Service > Labor Law (Arts. 1 — 40) > Article 10 Building Construction, Demolition and Repair Work (§§ 240 — 242)

§ 241. Construction, excavation and demolition work

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

1. If the floors are to be arched between the beams thereof, or if the floors or filling in between the floors are of fireproof material, the flooring or filling in shall be completed as the building progresses.
2. If the floors are not to be filled in between the beams with brick or other fireproof material, the underflooring shall be laid on each story as the building progresses.
3. If double floors are not to be used, the floor two stories immediately below the story where the work is being performed shall be kept planked over.
4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over, except spaces reasonably required for proper construction of the iron or steel work, for raising or lowering of materials or for stairways and elevator shafts designated by the plans and specifications.
5. If elevators, elevating machines or hod-hoisting apparatus are used in the course of construction, for the purpose of lifting materials, the shafts or openings in each floor and at each landing level shall be inclosed or fenced in on all sides by a barrier of suitable height, except on two sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edges of such shafts or openings.
6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.
7. The commissioner may make rules to provide for the protection of workers in connection with the excavation work for the construction of buildings, the work of constructing or demolishing buildings and structures, and the guarding of dangerous machinery used in connection therewith, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.
8. The commissioner, as deemed necessary, shall promulgate rules designed for the purpose of providing for the reasonable and adequate protection and safety of persons passing by all areas, buildings or structures in which construction, excavation or demolition work is being performed, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith. The provisions of this subdivision shall not apply to cities having a population of one million or more.

NY CLS Labor § 241

9. No liability for the non-compliance with any of the provisions of this section shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers, architects or landscape architects arising under the common law or any other provision of law.

10. Prior to advertising for bids or contracting for or commencing work on any demolition work on buildings covered under this section except agricultural buildings as defined in regulations promulgated by the commissioner and except buildings the construction of which was begun on or after January first, nineteen hundred seventy-four, all owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall conduct or cause to be conducted a survey to determine whether or not the building to be demolished contains asbestos or asbestos material as defined in [section nine hundred one](#) of this chapter. Such surveys shall be conducted in conformance with rules and regulations promulgated by the commissioner. Information derived from such survey shall be immediately transmitted to the commissioner and to the local governmental entity charged with issuing a permit for such demolition under applicable state or local laws or, if no such permit is required, to the town or city clerk. If such survey finds that a building to be demolished contains asbestos or asbestos material as defined by [section nine hundred one](#) of the [this] chapter, no bids shall be advertised nor contracts awarded nor demolition work commenced by any owner or agent prior to completion of an asbestos remediation contract performed by a licensed asbestos contractor as defined by [section nine hundred one](#) of this chapter.

History

Add, L 1969, ch 1108, § 3, eff July 25, 1969; amd, L 1909, ch 36; L 1921, ch 50; L 1974, ch 754, § 1; L 1980, ch 670, §§ 2-4, eff June 30, 1980; L 1981, ch 241, § 2, eff June 15, 1981; L 1989, ch 520, §§ 13, 14, eff Feb 11, 1990.

Annotations

Notes

Repeal Notes:

[1962] Repealed § 241 provided standards for construction and demolition work for the purpose of preventing industrial accidents.

[1969] The provisions of [section two hundred forty-one](#), which was repealed by this act, dealing in the safe work practices in construction, excavation and demolition work are contained and substantially strengthened in the new [section two hundred forty-one](#) contained in this act.

Prior Law:

Former § 241, add, L 1962, ch 450; repealed, L 1969, ch 1108, § 2, eff July 25, 1969.

Prior § 241, add, L 1921, ch 50, with substance transferred from § 20; amd, L 1938, ch 657, § 6, L 1947, ch 683, §§ 4-7; repealed, L 1962, ch 450, § 2, eff Oct 1, 1962.

* The bracketed word has been inserted by the Publisher.

[NY CLS Labor § 240, Part 1 of 2](#)

Current through 2022 released Chapters 1-500

New York Consolidated Laws Service > Labor Law (Arts. 1 — 40) > Article 10 Building Construction, Demolition and Repair Work (§§ 240 — 242)

§ 240. Scaffolding and other devices for use of employees

1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

No liability pursuant to this subdivision for the failure to provide protection to a person so employed shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers or architects or landscape architects arising under the common law or any other provision of law.

2. Scaffolding or staging more than twenty feet from the ground or floor, swung or suspended from an overhead support or erected with stationary supports, except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein, shall have a safety rail of suitable material properly attached, bolted, braced or otherwise secured, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.

3. All scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use.

History

Add, L 1921, ch 50, with substance transferred from former §§ 18, 19; amd, L 1947, ch 683, §§ 1–3, eff April 7, 1947; L 1962, ch 450, § 2, eff Oct 1, 1962; L 1969, ch 1108, § 1; L 1980, ch 670, § 1, eff June 30, 1980; L 1981, ch 241, § 1, eff June 15, 1981.

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End of Document

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TIAGO GOMES-BRAGA,

Civil Action No.: 1:22-CV-01827-ALC

Plaintiff,

-against-

PLAINTIFF'S REQUEST FOR
INSURANCE DISCLOSURE

OMNIBUILD CONSTRUCTION INC.; HOST
HOTELS & RESORTS INC.; VORNADO REALTY TRUST;
and HMC TIMES SQUARE HOTEL, L.P.,

Defendants.
-----X

Plaintiff, TIAGO GOMES-BRAGA, through his attorneys, SMILEY & SMILEY, LLP, pursuant to F.R.C.P. Rule 34, requests that the defendant, OMNIBUILD CONSTRUCTION INC. ("Omnibuild") respond to the following within 30 days of the date of this demand:

REQUESTS FOR PRODUCTION:

- (1) Defendant, shall, within twenty (20) days, serve proof of the existence and contents of any insurance agreements that may apply to this action as follows:
- (i) All primary, excess, and umbrella policies.¹
 - (ii) A complete copy of any policy, contract, or agreement, including, but not limited to, declarations, insuring agreements, conditions, exclusions, endorsements.
 - (iv) Insurance claims handler's name and e-mail address;

¹ This demand also includes all contracts or agreements issued by private or publicly-traded stock companies, mutual insurance companies, captive insurance entities, risk retention groups, reciprocal insurance exchanges, syndicates, including, but not limited to, Lloyd's Underwriters as defined in section six thousand one hundred sixteen of the insurance law, surplus line insurers, and self-insurance programs sold or delivered within the state of New York insofar as such documents relate to the claim being litigated.

(v) The total limits available under any policy, taking into account any erosion or offsets to the limits; and

(vi) Any certificates of insurance in which OMNIBUILD is an insured or additional insured, referable to the subject work site.

PLEASE TAKE FURTHER NOTICE, that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.

Dated: New York, New York
May 15, 2023

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
122 East 42nd Street, 39th Floor
New York, New York 10168
(212) 986-2022
rfeeney@smileylaw.com

By: *Rosa M. Feeney*
ROSA M. FEENEY

VIA E-mail to:

[REDACTED]

[NY CLS Work Comp § 11](#)

Current through 2024 released Chapters 1-443

New York Consolidated Laws Service > Workers' Compensation Law (Arts. 1 — 11) > Article 2 Compensation (§§ 9 — 35)

§ 11. Alternative remedy.

1. The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys, exercise persons, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

For purposes of this section the terms "indemnity" and "contribution" shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

For purposes of this section "person" means any individual, firm, company, partnership, corporation, joint venture, joint-stock association, association, trust or legal entity.

The liability under this chapter of the New York black car operators' injury compensation fund, inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with article six-F of the executive law to black car operators, as defined in such article, whose injury arose out of and in the course of providing services for a central dispatch facility, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment. The liability under this chapter of a central dispatch facility, as defined in article six-F of the executive law, that is a registered member of the New York black car operators' injury compensation fund, inc. that shall be limited

NY CLS Work Comp § 11

to remaining a registered member in good standing of such fund and any statutory penalty, including loss of immunity provided by this section, resulting from the failure to become or remain a registered member in good standing of such fund, except, however, that such central dispatch facility shall be subject to the provisions of section one hundred thirty-one of this chapter and shall be liable for any payments for which it may become responsible pursuant to such section or pursuant to section fourteen-a of this article.

The liability under this chapter of the New York independent livery driver benefit fund, inc. shall be limited to: (i) securing the payment of workers' compensation coverage to cover those matters required by article six-G of the executive law for independent livery drivers, as defined in such article, whose injury arose out of and in the course of providing covered services for a livery base, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment.

2. Determination by the board shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

History

Add, L 1913, ch 816; amd, L 1914, ch 41, § 1; L 1914, ch 316, § 2; L 1916, ch 622, § 2; L 1922, ch 615, eff July 1, 1922; L 1976, ch 68, eff Sept 1, 1976; [L 1990, ch 346, § 8](#), eff Jan 1, 1991; [L 1996, ch 635, § 2](#), eff Sept 10, 1996; [L 1999, ch 49, § 4](#), eff June 24, 1999; [L 2007, ch 169, § 6](#), eff July 3, 2007; [L 2008, ch 392, § 9](#), eff Jan 1, 2009; [L 2017, ch 59, § 8](#) (Part SS), effective April 10, 2017; [L 2022, ch 835, § 3](#), effective December 30, 2022.

New York Consolidated Laws Service
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SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

122 EAST 42ND STREET
39TH FLOOR
NEW YORK, NEW YORK 10168

WWW.SMILEYLAW.COM
FAX: (212) 697-4689

September 26, 2024

VIA CERTIFIED R.R.R. & FIRST-CLASS MAIL

[REDACTED] Consulting, Inc.
[REDACTED]
Brooklyn, New York 11220

[REDACTED] Casualty Insurance Company
[REDACTED]
Goldsboro, North Carolina
NewClaims@[REDACTED]

[REDACTED] Group
[REDACTED] Insurance Company
[REDACTED]
[REDACTED]
New York, New York 10018

VIA CERTIFIED R.R.R. & FIRST-CLASS MAIL

[REDACTED] Group, US
P.O. Box 469016
San Antonio, TX 78246

RE: [REDACTED] *Chen v* [REDACTED] *Construction Corp.*
Index#: 5 [REDACTED]
Your Insured: [REDACTED] Consulting, Inc.
CGL Policy: [REDACTED] Casualty Insurance Company
Policy No.: [REDACTED] Eff. 9/25/2020 to 9/25/2021
Excess Policy: [REDACTED] Insurance Company
Policy No.: [REDACTED] Eff. 9/27/2020 to 9/325/2021
DOL: 6/30/2021
Our Client: [REDACTED] (Owner)

Dear Sir/Madam:

This firm has been retained as coverage counsel by [REDACTED] (“Owner or 439”) in connection with the above-referenced claim arising from alleged injury to [REDACTED] (“Plaintiff” or “Chen”) while performing work at [REDACTED] Road, Brooklyn, New York.



SMILEY LAW

██████████ Corporation (“Lati”) was the general contractor on the site. ██████████ Consulting, Inc. (“██████████” or “your insured”) was a subcontractor at this location. We write to demand that ██████████ Casualty Insurance Company (“ACIC”) assume the defense and indemnification of 439 in the above referenced action under the ACIC liability policy issued to ██████████ under policy number ██████████ with effective dates of September 25, 2020, to September 25, 2021. (“The ACIC policy”)

Similarly, we tender to the excess carrier, ██████████ Insurance, who provided an excess policy of insurance to ██████████, policy number ██████████, effective September 27, 2020, to September 25, 2021 (“the ██████████ policy”), and seek to confirm that it will follow form to the ACIC policy, and insure 439 on a primary and non-contributory basis.

Premised upon the contractual relationship between the parties, 439 is an additional insured entitled to primary and non-contributory coverage under the ACIC policy and therefore, ACIC has an immediate obligation to assume 439’s defense in ██████████ (“the litigation”). Accordingly, 439 requests that ACIC acknowledge said obligation and assume 439’s defense and indemnity in the litigation without reservation. Furthermore, 439 seeks confirmation that the ██████████ policy will follow form and indemnify 439 in the event that any potential judgment is not satisfied by the underlying ACIC policy.

439’s position is based upon a review of the allegations found in the Complaint in the Litigation, (Ex A). Reliance upon these documents does not suggest or otherwise imply that the allegations are evidentiary or proven, but rather, support the trigger of coverage owed to 439.

The Contract

All three parties, 439, ██████████ and Lati entered into a contractual agreement where they agreed to terms of work to be completed on the premises. (Ex B) Annexed thereto was an Owner Insurance Agreement which provides the requirements of defense and indemnity. It states in pertinent part:

1. **Indemnity.** In consideration of the contract for work entered into by the Owner and Contractor, and to the fullest extent permitted by law, the Contractor shall defend and shall indemnify, and hold harmless, at Contractor's sole expense, all entities the contractor is required indemnify and hold harmless, **the owner of the property**, and the officers, directors, agents, employees, successors and assigns of each of them from and against all liability or claimed liability for bodily injury or death to any person(s), and for any and all property damage or economic damage, including all attorney fees, disbursements and related costs, arising out of or resulting from the work covered by the contract **to the extent such work was performed by or contracted through the Contractor or by anyone for whose acts the Contractor may be held liable, excluding only liability created by the sole and exclusive negligence of the indemnified parties. This indemnity agreement shall survive the completion of the work specified in the contract for that work.**
2. **Insurance.** The Contractor shall procure and shall maintain until final acceptance of the work, such insurance as will protect all entities the Contractor is required to indemnify and hold harmless, the property owner, and their officers, directors, agents and employees, for claims arising out of or resulting from Contractor's work under the contract, whether performed by

the Contractor, or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. Such insurance shall be provided by an insurance carrier rated "A-" or better by A.M. Best and lawfully authorized to do business in the jurisdiction where the work is being performed.

2. 1. The Contractor's insurance shall include contractual liability coverage and additional insured coverage for the benefit of the Contractor, property owner and anyone else the property owner is required to name (as set forth in the schedule below) and shall specifically include coverage for completed operations. The insurance required to be carried by the Contractor and any subcontractors shall be PRIMARY AND NON-CONTRIBUTORY. With respect to each type of insurance specified hereunder, the Contractor's and property owner's insurances shall be excess to Owners insurance.
- 2.2. The Contractor warrants that the coverage provided under the commercial general liability policy shall be written on an "occurrence" basis with coverage as broad as the Insurance Service Office Inc.'s commercial general liability coverage form and that no policy provisions shall restrict, reduce, limit or otherwise impair contractual liability coverage or the Contractor's, property owner's (or others as required and as listed below) status as additional insured.
- 2.3 Not less than five (5) days prior to commencement of the work and until final acceptance of the work, contractor shall provide Owner with certificate(s) of insurance evidencing the required insurance coverage with the limits stated below or elsewhere in the contract documents. The Contractor shall provide Owner thirty (30) days written notice of a change or cancellation in coverage. In addition, all insurance policies shall state that the insurer will provide Contractor thirty (30) days prior written notice of a change or cancellation in coverage.
- 2.4 Unless otherwise stipulated in the contract, the Contractor shall maintain no less than the limits specified for each of the following insurance coverages:
 - a) Commercial General Liability using an industry standard unmodified coverage form including contractual liability with minimum limits of \$1,000,000 each occurrence, \$2,000,000 products-completed operations aggregate and \$2,000,000 aggregate with either a per project or a per location endorsement for property damage and bodily injury;
 - b) Comprehensive Automobile Liability insurance with minimum limits of

\$1,000,000 combined single limit each accident, including bodily injury and property damage liability;

- c) Workers' Compensation and disability benefit insurance including Occupational Disease in the minimum amounts as required by the jurisdiction where the work is performed.

- d) Umbrella Liability Insurance with a limit of \$2,000,000 per occurrence and general aggregate of \$2,000,000. For scaffolding, demolition, and excavation contractors, Umbrella Liability Insurance with a limit of \$5,000,000 per occurrence and general aggregate of \$5,000,000 is required.

2.3. The Contractor and his insurer shall waive all rights of subrogation against the property owner and any other indemnified party, except as respects Worker's Compensation insurance.

2.4. **If Contractor engages a subcontractor, it is the affirmative duty of the Contractor to ensure that any subcontractor or sub-subcontractor complies with the insurance and indemnification requirements of this Agreement.**

List of Indemnified Parties and Additional Insureds:

██████████

██████████, Brooklyn, NY 11213

██████████

██████████, Brooklyn, NY 11213

██████████

██████████, Brooklyn, NY 11225

In addition to the written language of the contract requiring both contractor and sub-contractor defend and indemnify 439, the Certificate of Insurance demonstrates that ██████ Building Consulting, Inc. maintained the requisite insurance required by this provision and that the owner was in fact listed as certificate holder but also listed as an “*additional insured*” in the policy (Ex. C). Stated in the alternative, 439 was/is ACIC’s and ██████’s insured under the policy of insurance

for this job location. Accordingly, they must assume the defense and indemnification under the policy forthwith, and such coverage must be afforded on a primary, and non-contributory basis.

Failure to acknowledge this tender will result in the commencement of Declaratory Judgment action, seeking a declaration from the court regarding the obligations to 439 owed under the ACIC and [REDACTED] policies. To avoid the necessity of this action, kindly forward your position within ten (10) business days.

In connection with this tender of coverage, 439 further requests disclosure of the relevant policy of insurance issued to [REDACTED] and any other policies known by ACIC and [REDACTED] related to this event. It is further requested that you provide any and all copies of purchase orders, or agreements or contracts between or amongst the parties be disclosed. Please provide this information within (ten) business days.

Thank you for your prompt attention to this matter.

Very Truly Yours,

Smiley & Smiley, LLP
Attorney's for 439 [REDACTED]
28 Liberty Street
6th Floor
New York, NY 10005
P: 212.986.2022 x 109

[REDACTED]

[REDACTED]



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NYSCEF CASE

-----X

████████████████████ CORP.
Plaintiff,

Index No.:

-against-

The basis of venue is
plaintiff's address

PELEUS INSURANCE COMPANY, MERCHANTS
MUTUAL INSURANCE COMPANY, ██████████
YORK, INC., ██████████ WINDOWS, INC. AND
██████████ LOPEZ

SUMMONS

Defendants.

-----X

To The Above-Named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November____, 2024

Yours, etc.,

By: _____
████████████████████

28 Liberty Street
6th Floor
New York, NY 10005
SMILEY & SMILEY, LLP
New York, NY 10168
(212) 986-2022 x 105

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

██████████ DRIVE CORP.
Plaintiff,

-against-

PELEUS INSURANCE COMPANY, MERCHANTS
MUTUAL INSURANCE COMPANY, ██████████
YORK, INC, ██████████ WINDOWS, INC.
Defendants.

-----X

Index No.:

**VERIFIED
COMPLAINT**

Plaintiffs, ██████████ (hereinafter collectively “██████████”)

by and through its attorneys, SMILEY & SMILEY, LLP, as and for its Verified Complaint, alleges upon information and belief as follows:

INTRODUCTION

1. This is an action for declaratory judgment pursuant to N.Y. CPLR §3001, which seeks this Court’s determination that PELEUS INSURANCE COMPANY (“PELEUS”) and MERCHANTS MUTUAL INSURANCE COMPANY (“MERCHANTS”) must defend and indemnify ██████████ in a pending personal injury action commenced by ██████████ Lopez, against ██████████, in the Supreme Court of the State of New York, County of Bronx, under Index #: ██████████.

2. An actual controversy exists among the parties making a declaratory judgment action necessary.

THE PARTIES AND JURISDICTION

3. ██████████ was and is a domestic corporation with offices in New York, New York.

4. At all times hereinafter mentioned, Defendant, PELEUS, was and is a foreign insurance company duly authorized to issue policies of insurance within the State of New York, including the policy at issue herein.

5. At all times hereinafter mentioned, Defendant MERCHANTS was and is a domestic insurance company duly authorized to issue policies of insurance within the State of New York, including the policy at issue herein.

6. [REDACTED] was and is a domestic corporation with offices in New York, New York.

7. [REDACTED] was and is a domestic corporation with offices in New York, New York.

8. [REDACTED] and [REDACTED] are named only as necessary parties.

THE UNDERLYING ACTION

9. [REDACTED] Lopez, commenced an action against [REDACTED], in the Supreme Court of the State of New York, County of Bronx, under Index #: [REDACTED]. (hereinafter "Underlying Action") (EXHIBIT)

10. Thereafter a Third-Party Complaint was commenced by [REDACTED] against [REDACTED] and [REDACTED], asserting their rights to common law indemnification, contribution, contractual indemnification, and failure to procure insurance. (EXHIBIT)

11. The Underlying Action alleges personal injuries sustained by [REDACTED] Lopez when he was performing work at [REDACTED], New York, New York on March 12, 2019 (hereinafter "Project"), as an employee of [REDACTED].

12. The complaint alleges that [REDACTED] violated Labor Law Sections 200, 240 and 241(6).

13. Prior to March 12, 2019, [REDACTED] entered into a contract with DPC for the performance of services for the project at [REDACTED], New York, New York. (the “Contract”) (EXHIBIT).

14. [REDACTED] thereafter entered into a subcontract with [REDACTED] for the performance of services. (EXHIBIT)

15. Said Contracts require [REDACTED] and [REDACTED] to defend and indemnify [REDACTED] and to provide primary and non-contributory insurance coverage.

16. Said Contracts require [REDACTED] and [REDACTED] to procure contractual liability insurance and additional insured coverage for [REDACTED].

17. Upon information and belief PELEUS issued a Commercial General Liability policy to [REDACTED] under a policy number ending in [REDACTED] with effective dates of June 27, 2018, to June 27, 2019, with policy limits of \$1,000,000/occurrence.

18. Upon information and belief MERCHANTS issued a Commercial General Liability policy under policy number ending in [REDACTED] and a Commercial Umbrella Liability Policy under policy number ending in [REDACTED] with effective dates of October 25, 2018, to October 25, 2019, with policy limits of \$1,000,000 and \$5,000,000 per occurrence, respectively.

19. [REDACTED] is an Additional Insured under the PELEUS and MERCHANTS policies of insurance.

20. On October 2, 2019, [REDACTED] tendered the defense of the Underlying Action, to PELEUS and MERCHANTS.

21. PELEUS and MERCHANTS have refused to acknowledge their obligation to indemnify [REDACTED] on a primary and non-contributory basis.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ARCH

22. Plaintiff repeats, reiterates and realleges each and every allegation as set forth in paragraphs designated “1” through “21” with the same force and effect as if more specifically set forth at length herein.

23. The Contract between [REDACTED] and [REDACTED] and [REDACTED] requires that [REDACTED] and [REDACTED] add [REDACTED] as Additional Insureds on a primary and non-contributory basis.

24. [REDACTED] qualifies as an Additional Insured under the PELEUS and MERCHANTS policies for the claims in the Underlying Action on a primary and non-contributory basis.

25. PELEUS and MERCHANTS owe defense and indemnification to [REDACTED] in the Underlying Action and has wrongfully failed to provide [REDACTED] with a defense in the Underlying Action.

26. PELEUS and MERCHANTS have an obligation to defend and indemnify [REDACTED] in the Underlying Action and have therefore breached their obligations to [REDACTED] under the PELEUS and MERCHANTS policies.

27. The insurance coverage for [REDACTED] under the PELEUS and MERCHANTS policies are primary and non-contributory.

28. PELEUS and MERCHANTS have an obligation to reimburse Plaintiff and [REDACTED], its insurance carrier, for all fees and expenses incurred in defending [REDACTED] in the Underlying Action.

29. Plaintiff has therefore been damaged by Defendants failure to assume their obligations under the policies of insurance.

30. By reason of the foregoing, there is an actual controversy existing between Plaintiff and Defendants with regard to the obligations of PELEUS and MERCHANTS under their policies of insurance.

31. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment declaring:

- a. That PELEUS and MERCHANTS are obligated to defend and indemnify [REDACTED] in the Underlying Action on a primary and non-contributory basis;
- b. PELEUS and MERCHANTS must take over the defense of [REDACTED] in the Underling Action and reimburse Plaintiff and [REDACTED], its insurance carrier, for all attorney's fees, costs and expenses incurred and continuing to be incurred in defending the Underlying Action;
- c. For such other and further relief as this Court deems just and proper.

Dated: New York, New York
November_____, 2024

[REDACTED]

ATTORNEY VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF SUFFOLK)

 ██████████, ESQ., an attorney admitted to practice in the Courts of the State of New York, affirms that the following statements are true under penalties of perjury:

 Affirmant is the attorney of record for the plaintiffs in the within action. Affirmant has read the foregoing COMPLAINT, knows the contents thereof, and that the same is true to affirmant’s own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that those matters affirmant believes it to be true.

 This verification is made by affirmant and not by the plaintiffs because the plaintiffs are not located in the county wherein your affirmant maintains an office.

 The grounds of affirmant’s belief as to all matters not stated upon affirmant’s knowledge are as follows: Statements of said plaintiffs, office records, and affirmant’s general investigation into the facts of this case.

Dated: November____, 2024
New York, New York

████████████████████

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