

=====  
This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
-----

No. 156  
Wanderlei Gasques, et al.  
Appellants,  
v.  
State of New York,  
Respondent.

Jay L. T. Breakstone, for appellants.  
Michael J. Lenoff, for respondent.

MEMORANDUM:

The order of the Appellate Division, insofar as  
appealed from, should be affirmed, with costs, and the certified  
question answered in the affirmative.

Claimant Wanderlei Gasques was injured while repainting  
the inside of a leg of the Kosciuszko Bridge, using a "spider

scaffold." His hand was injured when it became caught between the scaffold and the leg of the bridge, while the scaffold was ascending.

With respect to claimants' Labor Law § 240 (1) cause of action, the parties agree that Gasques's hand was crushed because the scaffold continued to move, under the impetus of one of its motors, while his hand was trapped between an external motor control on the scaffold and the steel of the bridge. This injury was not the direct consequence of the application of the force of gravity to an object or person (see Runner v New York Stock Exch., Inc., 13 NY3d 599, 604 [2009]; Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 500-501 [1993]). Therefore claimants' Labor Law § 240 (1) claim was properly dismissed.

Claimants' Labor Law § 241 (6) cause of action was also properly dismissed because it is based solely on 12 NYCRR 23-1.5 (c) (1), which requires that machinery or equipment used by employees be "in good repair and in safe working condition." It is well-established that, in a Labor Law § 241 (6) claim, the rule or regulation alleged to have been breached must be a "specific, positive command" (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 349 [1998], quoting Ross, 81 NY2d at 504). 12 NYCRR 23-1.5 (c) (1) does not set forth a specific standard of conduct and therefore cannot serve as a predicate for a Labor Law § 241 (6) claim.

\* \* \* \* \*

Order, insofar as appealed from, affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 21, 2010