Falling from Ladder While Cleaning Product During Manufacturing Process Is Not Among Protections Offered by "Scaffold" Law

So frequent is the effort of § 240(1) of the Labor Law to see itself in Court of Appeals print that it may one day face

indictment on some kind of anti-trust violation. The statute is cited in passing in our prior note just above on the *Vega* case, but no mere passing reference can satisfy this voracious statute. Hence – before space in this Digest edition runs out – § 240(1) asserts itself once again in a starring role in *Dahar v. Holland Ladder & Mfg. Co.*, 18 N.Y.3d 521, 941 N.Y.S.2d 31 (Feb. 21, 2012). Alas, it earns no award for its performance. In a unanimous opinion, the Court finds it inapplicable to a worker injured when he fell from a ladder while at his job.

Known as the "scaffold" law, § 240(1) is described by the Court in *Dahar* as "one of the most frequent sources of litigation in the New York courts" because "it imposes liability [for personal injury] even on contractors and owners who had nothing to do with the plaintiff's accident". It requires them to provide physical protections for those working at elevations and if a violation of the statute is found to cause the injury, the contributory fault of the injured person becomes, as the Court describes it, "irrelevant".

The plaintiff (P) in this case was injured when he fell from a ladder "while cleaning a product manufactured by his employer". The product was a seven-foot-high steel module designed for installation at a nuclear waste plant to provide support for pipes. P claimed his fall from the ladder as a § 240(1) violation, but it fails. The Court says that P "was not engaged in an activity the statute protects".

The basic aim of the statute is to protect workers in the construction industry. The Court acknowledges that it has not limited the statute to work at construction sites alone, but that as far afield as the statute may have been carried in prior decisions – and as numerous as our Digest treatments may have been in reporting these far-afield cases – the Court says it has

> never ... gone as far as plaintiff here asks us to go – to extend the statute to reach a factory employee engaged in cleaning a manufactured product.

The statute includes "cleaning" among other activities covered, but all of the activities relate to work being done on a "structure" and a mere "manufactured product" can't qualify as a "structure", says the Court, especially in view of the statute's fundamental objective of protecting workers at construction sites.

To adopt plaintiff's argument, writes the Court in an opinion by Judge Smith, would mean that

> [e]very bookstore employee who climbs a ladder to dust off a bookshelf; every maintenance worker who climbs to a height to clean a light fixture – these and many others would become potential Labor Law § 240(1) plaintiffs. We decline to extend the statute so far beyond the purposes it was designed to serve.