

## Hazardous Substances/Bodily Injury Claim: New York Court Addresses Potential Liability of Engineering Inspection Subcontractor



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

03/12/2018

The Supreme Court (Appellate Division) New York addressed in a March 7th decision whether a lower court properly granted summary judgment to a subcontractor performing engineering inspection services on a highway construction project related to a bodily injury claim. See *Cathy Marl, et al. v. Liro Engineers, Inc., etc., et al.*, 2018 WL 1178363.

The alleged injuries were associated with soil excavated in connection with the highway construction project that may have been contaminated with hazardous waste.

The Plaintiffs were employees of a general contractor on a highway construction project undertaken by the New York State Thruway Authority.

The general contractor had entered into a contract with Defendant Conrad Geoscience Corp. (“Conrad”). Conrad’s responsibility included preparation of environmental safety plans required by the New York State Department of Environmental Control since the highway project involved a landfill that was known to be contaminated by hazardous waste. In addition, the New York State Thruway Authority entered into a contract with the Defendant Liro Engineers, Inc. (“Liro”) to perform engineering inspection services on the project.

The Plaintiffs are stated to have worked at the highway construction project driving and filling the dump trucks with soil from the area of the landfill between December 2003 and March 2004. They are stated to have complained of dizziness and were taken to a hospital for treatment.

An action was commenced against Liro and Conrad to recover damages for bodily injuries. The allegations included exposure to, and injury by, caustic substances in the soil which they were excavating in connection with the construction project and not being provided the proper protective equipment.

The Plaintiffs moved for summary judgment on causes of action alleging violations of Labor Law §§ 200 and 241(6) against Liro. Liro and Conrad separately moved for summary judgment dismissing the Complaint in so far as asserted against each of them.

The lower Court granted Liro’s Motion for Summary Judgment, dismissing the cause of action alleging common-law negligence and a violation of Labor Law § 200. The Court held that LIRO established, prima facie, that it lacked the authority to supervise the work to a sufficient degree to impose liability under a theory of common-law negligence or under Labor Law § 200.

The lower court also granted Liro's Motion for Summary Judgment, dismissing the labor law § 241(6) cause of action, noting that it was based upon an alleged violation of Industrial Code (12 NYCRR) § 12-1.4(b), which could not serve as a predicate for liability under this provision. It further held that violations of the Occupational Safety and Health Act standards do not provide a basis for liability under Labor Law § 241(6).

The Appellate Court upheld the lower court's decision, dismissing the Complaint, noting:

Conrad submitted evidence that, as the entity charged with creating environmental safety plans, it exercised no supervisory authority at the highway construction project work site and owed no duty of care to the plaintiffs. In opposition, the plaintiffs failed to raise a triable issue of fact.

[A copy of the decision can be downloaded here.](#)