



MondayMonday

Just A Little Grease Makes It Easy

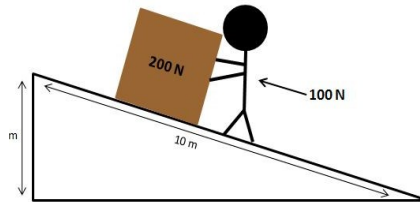
October 31, 2016

We always we knew there would be an issue of *MondayMonday* which would deal with this problem. Well, here it is.

Bicycles are ruining our City. Like cockroaches, they have proliferated on the City's streets to the point where they honestly believe, like cockroaches, that they are a superior species, entitled to use what is not theirs, in ways which imperil the health and welfare of the City's residents. Streets, already choking with work permits inexplicably granted for both sides of the same street, at the same time, and having as much flow as an old lawyer's urethra at 3:00 a.m., are further restricted by something called a "bicycle lane."

A "bicycle lane?" A piece of valuable roadway dedicated to the most conceited vehicle in the transportation family, holding only person, who shares nothing and takes everything. The bicycle does not pay taxes for the road it uses, is not insured, and its driver is not licensed in any way. It obeys no traffic regulations, runs into car doors, car mirrors, pedestrians, small animals and has made the left turn from our majestic avenues a study in homicide. Also, when they fall down (and they do all the time,) since the drivers apparently are not required to wear helmets, it makes the pavement messy.

We hate them, these two-wheeled cockroaches; these users and abusers of the public roadway. We have friends who have been crippled by bicycles who, after flying



through intersections, the wrong way, and against the light, never even stopped after hitting a pedestrian. Why should they? They have neither moral nor financial responsibility to anyone. Like the misanthrope who farts in a crowded theater and then berates the person sitting next to him for coughing too loudly, the bicyclist believes he is forever wronged. We've had enough. It's time to fling our car doors open with abandon and say that we're just fed up and we're not going to take it anymore.

Now, with that off our chest, we move to a small case with a big principle. You will recall that in *Runner v. New York Stock Exchange*, 13 N.Y.3d 599 (2009), the Titans of Eagle Street explained that it wasn't necessary for something to actually fall for Labor Law 240(1) to be implicated. We didn't feel bad about our confusion, because no less than the 2d Circuit had certified the question as to whether a cable reel, being rolled down an incline with a worker "as a counterweight on a makeshift pulley" presents a 240(1) violation when the cable reel is so heavy on the downgrade that it injures the worker's hand. In other words, is such an injury "an 'elevation related injury,'" caused by the direct "effects of gravity" under the Labor Law? *Id.* at 602.

Runner was a marvelous decision which reeked of the clarity of scholarship and writing we had come to ex-

pect from Chief Judge Lippman, who displayed his penchant for writing about the law so that even lawyers could understand it.

The years after *Runner* found the ADs anxiously defining where *Runner* did not apply, lest the "floodgates" of litigation cause the Empire State to founder. And then, last week, along comes Frank Valente, who reaffirms our belief in the virtue of Themis.

Frank Valente slipped and fell on grease that was on planks that were being used (here's the key) "as a makeshift ramp to descend from the top of a building to a scaffold[.]" *Valente v. Lend Lease (US) Constr. LMB, Inc.*, 2016 NY Slip Op 06987 (1st Dep't 10/25/16). The greasy ramp is what led to the scaffold and it was that grease that made the device an inadequate protection "against a risk arising from a physically significant elevation differential," citing *Runner*.

Affirming Justice Schlesinger in Supreme Court, AD1 speaks volumes in this short little gem, even going so far as to make quick work of defendant's argument that Valente could have chosen not to use the greasy planks by using another ramp or "constructing a proper ramp" of his own. The evidence showed that the other ramp "was not long enough to reach the scaffold" and that Valente didn't have time enough to build a longer ramp before "meeting the crane that was approaching to assist in dismantling the scaffold."

Now, don't get all mushy on us. Rest assured that the world will return to its proper tilt by next week, when we'll be railing against the continuing evisceration of the Labor Law and the failure of the courts to protect the worker for whom it was passed.

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