

## NEW YORK

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### FEATURED VERDICT

#### Worker/Workplace Negligence

Scaffold accident  
caused disabling  
injuries, laborer claimed

**Verdict \$3,587,064**

*Aguaiza v. Manhattanview  
Terrace Inc.*

Bronx County Supreme Court

**Plaintiff's Attorney** Stephen H. Jacobson;  
Jaroslawicz & Jaros LLC; New York

**Defense Attorney** Robert S. Bonelli;  
Law Offices of Michael E. Pressman; New York

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## NEW YORK CITY

## BRONX COUNTY

## FEATURED VERDICT

**WORKER/WORKPLACE NEGLIGENCE**

Labor Law — Workplace — Workplace Safety — Slips, Trips &amp; Falls

**Scaffold accident caused disabling injuries, laborer claimed****VERDICT** \$3,587,064  
**ACTUAL** \$3,500,000**CASE** Julio Aguaiza v. Manhattanview Terrace, Inc., No. 21054/15  
**COURT** Bronx Supreme  
**JUDGE** Joseph E. Capella  
**DATE** 1/24/2019**PLAINTIFF**  
**ATTORNEY(S)** Stephen H. Jacobson, Jaroslawicz & Jaros LLC, New York, NY**DEFENSE**  
**ATTORNEY(S)** Robert S. Bonelli, Law Offices of Michael E. Pressman, New York, NY

**FACTS & ALLEGATIONS** On Feb. 17, 2015, plaintiff Julio Aguaiza, 43, a laborer, worked at an apartment building that was located at 34-43 Crescent St., in the Astoria section of Queens. Aguaiza was painting a ceiling. During the course of his work, he fell off of a wheeled scaffold. He fell a distance of some six feet, and he landed on a cement floor. He claimed that he suffered injuries of his back, his head, his neck and a shoulder.

Aguaiza sued the premises' owner, Manhattanview Terrace Inc. The lawsuit alleged that Manhattanview Terrace negligently failed to provide a safe workplace. The lawsuit further alleged that Manhattanview Terrace's failure constituted a violation of the New York State Labor Law.

Aguaiza claimed that the accident was a result of the scaffold having shifted beneath him. He claimed that the device's wheel-locking mechanism failed. He also contended that the scaffold was unsafe in that its work platform lacked railings. Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Aguaiza was not provided the proper, safe equipment that is a requirement of the statute. Plaintiff's counsel also contended that Manhattanview Terrace failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

Labor Law §§ 240(1) and 241(6) are not applicable to accidents that occur during routine maintenance or work that does not involve a significant alteration of a building. Defense counsel contended that Aguaiza's accident occurred during an act of routine maintenance and therefore was not subject to Labor Law §§ 240(1) and 241(6).

Plaintiff's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

**INJURIES/DAMAGES** *arthroscopy; concussion; decreased range of motion; discectomy; epidural injections; fracture, T3; fracture, T4; fracture, T5; fracture, T6; fracture, T7; fracture, glenoid fossa; fracture, transverse process; fracture, vertebra; glenoid labrum, tear; head; headaches; herniated disc at C3-4; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L5-S1; laceration; microdiscectomy; rotator cuff, injury (tear)*

Aguaiza was retrieved by an ambulance, and he was transported to a hospital. He underwent application of stitches that closed a laceration of his head.

Aguaiza ultimately claimed that he suffered a concussion, a fracture of his left, nondominant shoulder's glenoid fossa, which is the shoulder's socket, a tear of the same shoulder's glenoid labrum, a partial tear of the same shoulder's rotator cuff, fractures of transverse processes of his T3, T4, T5, T6 and T7 vertebrae, and herniations of his C3-4, C5-6, C6-7 and L5-S1 intervertebral discs. He claimed that his concussion produced residual headaches.

On Nov. 5, 2015, Aguaiza underwent arthroscopic surgery that addressed his left shoulder. On Feb. 8, 2017, he underwent a microdiscectomy, a minimally invasive procedure that involved excision of a portion of his L5-S1 disc. He also underwent administration of epidural injections of steroid-based painkillers, which were directed to his lumbar region. His spine's fractures healed without treatment.

Aguaiza claimed that he suffers constant residual pain, that he suffers residual diminution of his range of motion, and that his residual effects prevent his resumption of work. He has not worked since the accident. Aguaiza's expert orthopedist opined that Aguaiza's left shoulder will develop residual arthritis that will necessitate replacement of the shoulder during the next 15 years, that Aguaiza must undergo fusion of the spine's L5-S1 level, and that Aguaiza requires lifelong physical therapy.

Aguaiza sought reimbursement of a workers' compensation lien, recovery of past medical expenses, recovery of a total of \$1.4 million to \$1.6 million for future medical expenses, and recovery of unspecified damages for past and future pain and suffering.

The defense contended that Aguaiza suffers merely mild residual effects of his injuries.

Shortly before the delivery of summations, the parties negotiated a high/low stipulation: Damages could not exceed \$3.5 million, but they had to equal or exceed \$500,000.

**RESULT** The jury found that Aguaiza's damages totaled \$3,587,064.07, but Aguaiza recovered the stipulated limit: \$3.5 million.

**JULIO**

**AGUAIZA** \$85,564 past medical cost  
 \$500,000 past pain and suffering  
 \$1,001,500 future medical cost (30 years)  
 \$2,000,000 future pain and suffering  
 (30 years)  
 \$3,587,064

**INSURER(S)** AmTrust Financial Services Inc.

**TRIAL DETAILS** Trial Length: 4 days  
 Trial Deliberations: 4 hours  
 Jury Vote: 6-0 (damages for past medical expenses and past pain and suffering;  
 5-1 (damages for future medical expenses and future pain and suffering)  
 Jury Composition: 3 male, 3 female

**PLAINTIFF**

**EXPERT(S)** Eial Faierman, M.D., orthopedic surgery, Bronx, NY  
 Suzanne Reid, life-care planning, Syracuse, NY

**DEFENSE**

**EXPERT(S)** Michael J. Carciente, M.D., neurology, Brooklyn, NY  
 Ronald L. Mann, M.D., orthopedic surgery, Yorktown Heights, NY

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Harmony Birch

**WORKER/WORKPLACE NEGLIGENCE**

Labor Law — Workplace — Workplace Safety

## Work site's trench a hazard, injured carpenter claimed

**SETTLEMENT** \$2,550,000

**CASE** Norma Douglas v. Sherwood 48 Associates Sherwood Equities, Inc., Renaissance Hotel Operating Company & Belcor Builders Inc., No. 302851/08

**COURT** Bronx Supreme

**JUDGE** Doris M. Gonzalez

**DATE** 6/6/2018

**PLAINTIFF**

**ATTORNEY(S)** Erin K. Hurley, Lipsig, Shapey, Manus & Moverman, P.C., New York, NY

**DEFENSE**

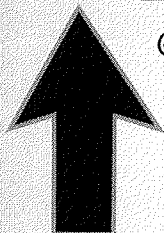
**ATTORNEY(S)** Jeffrey K. Van Etten, Perry, Van Etten, Rozanski & Kutner, LLP, Melville, NY

**FACTS & ALLEGATIONS** On July 18, 2007, plaintiff Norma Douglas, 46, a union-affiliated carpenter's apprentice, worked at a renovation site that was located at 714 Seventh Ave., in Manhattan. During the course of the day, Douglas attempted to relocate a wheeled scaffold that was supporting two workers. While backpedaling and pulling the scaffold, Douglas inadvertently stepped into a trench. The scaffold also rolled into the trench. Douglas' left foot was pinned by the scaffold, and she claimed that she suffered injuries of her left knee and her left leg. Douglas further claimed that, while pushing the scaffold out of the trench, she suffered injuries of her back.

Douglas sued the premises' owners: Sherwood 48 Associates; Sherwood Equities Inc.; Sherwood 48 Operating Co., L.P.; and JK 48, LLC. Douglas also sued one of the premises' tenants, Renaissance Hotel Operating Co. Inc., and the renovation project's general contractor, Belcor Builders Inc. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

Douglas claimed that open trenches were a commonly encountered hazard at the work site. She claimed that thin plywood shields were customarily laid across the trenches, but that the plywood often broke and was not replaced. Douglas' counsel contended that the open trench constituted a violation of New York Codes, Rules, and Regulations title 23, part 5.18(h), which specifies that, in work settings, a wheeled scaffold's relocation must be performed on a surface free from obstructions or openings. Douglas' counsel contended that the violation established that the defendants failed to provide or ensure reasonable and adequate protection, as required by

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