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

No. 239 SSM 33
Dallas M. Grove,
Appellant,
v.
Cornell University, et al.,
Respondents.

Submitted by John A. Collins, for appellant.
Submitted by John L. Perticone, for respondents.

MEMORANDUM:

The judgment appealed from and the order of the Appellate Division brought up for review should be modified, without costs, by denying defendants' motion for summary judgment seeking dismissal of plaintiff's Labor Law § 240 (1) claim and, as so modified, affirmed.

Triable issues of fact exist as to whether defendants failed to provide an adequate safety device to plaintiff in violation of Labor Law § 240 (1) or whether plaintiff's conduct was the sole proximate cause of his injuries.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, judgment appealed from and order of the Appellate Division brought up for review modified, without costs, by denying defendants' motion for summary judgment on plaintiff's Labor Law § 240(1) claim and, as so modified, affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 18, 2011