**PJI 2:216. Injured Employee – Statutory Negligence – Safe Place to Work**

[*The following charge should be used in cases involving claims against owners for allegedly defective or unsafe conditions on the work premises*]

**As you have heard, the plaintiff AB claims that the defendant CD, the owner of the workplace, violated section 200 of the New York State Labor Law and thereby caused injury to AB. Under section 200 of the Labor Law, the workplace where AB was working was required to be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places."**

**AB claims that CD violated the Labor Law by [***state plaintiff's contentions***]. CD claims [***state defendant's contentions***].**

**As the owner of the workplace, CD owed a duty to workers to use reasonable care to make the area where work was being performed, as well as the areas on the property that led to and from that area, reasonably safe. CD's duty included the obligation to correct any unsafe condition that CD created, as well as any unsafe condition that was known to CD or to any of CD's employees. CD was also obligated to conduct reasonable inspections to detect any unsafe conditions and to correct any unsafe conditions that could have been discovered through such inspections. Finally, CD was obligated to correct any unsafe condition that existed for so long that, in the use of reasonable care, CD or CD's employees should have known of its existence.**

**In deciding whether CD violated section 200 of the Labor Law, you will first consider whether the workplace was unsafe and, if so, whether the unsafe condition resulted from CD's failure to use reasonable care to provide a safe workplace.**

**If you decide that the workplace was not unsafe or that the unsafe condition did not result from any failure by CD to use reasonable care, then you will find for CD [***add where appropriate:*** on this issue].**

**If you decide that the workplace was unsafe and that the unsafe condition resulted from CD's failure to use reasonable care and, further, that the unsafe condition was a substantial factor in causing AB's injury, you will find for AB [***add where appropriate:*** on this issue].**

[*The following charge should be used in cases involving claims against general contractors for allegedly defective or unsafe conditions on the work premises*]

**As you have heard, the plaintiff AB claims that the defendant CD, the general contractor, violated section 200 of the New York State Labor Law and thereby caused injury to AB. Under section 200 of the Labor Law, the workplace where AB was working was required to**

**be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places." AB claims that CD violated the Labor Law by [***state plaintiff's contentions***]. CD claims [***state defendant's contentions***].**

**As general contractor, CD owed a duty to workers to use reasonable care to make the parts of the workplace that were under its control reasonably safe. This duty extended to the ways of getting to and from the workplace that were within CD's control.**

**CD's duty included an obligation to correct any unsafe condition that CD created or that existed in areas within CD's control and that were known to CD or to any of CD's employees. CD also had a duty to conduct reasonable inspections of the work areas within its control, to detect any unsafe conditions and to correct any unsafe conditions that could have been discovered through such inspections. Finally, CD had an obligation to correct any unsafe condition in the areas within its control that existed for so long that, in the use of reasonable care, CD or its employees should have known of its existence.**

**In deciding whether CD violated section 200 of the Labor Law, you will first consider whether the workplace was unsafe and, if so, whether the unsafe condition [***state where appropriate***: was created by CD, was in an area that was within CD's control] and resulted from CD's failure to use reasonable care [***state where appropriate***: to keep the workplace safe, to correct the unsafe condition after CD or its employee knew or, in the use of reasonable care, should have known of that condition].**

**If you decide that the workplace was not unsafe or that the unsafe condition was not [***state where appropriate***: created by CD, in an area that was within CD's control], then you will find for CD [***add where appropriate:*** on this issue].**

**If you decide that the workplace was unsafe and that the unsafe condition was [***state where appropriate***: created by CD, in an area of the workplace that was within CD's control], then you will go on to consider whether the unsafe condition resulted from CD's failure to use reasonable care in making or keeping the workplace safe, and whether such failure was a substantial factor in causing AB's injury.**

**If you decide that the unsafe condition did not result from CD's failure to use reasonable care in making or keeping the workplace safe or that such failure was not a substantial factor in causing AB's injury, then you will find for CD [***add where appropriate***: on this issue].**

**If you decide that the unsafe condition did result from CD's failure to use reasonable care in making or keeping the workplace safe and that such failure was a substantial factor in causing AB's injury, then you will find for AB [***add where appropriate***: on this issue].**

[*The following charge should be used in the First, Third and Fourth Departments for cases involving claims against owners or general contractors where the claim arises from allegedly unsafe means or manner of work*]

**As you have heard, the plaintiff AB claims that the defendant CD, the [owner of the workplace, general contractor] violated section 200 of the New York State Labor Law and thereby caused injury to AB. Under section 200 of the Labor Law, the workplace where AB was working was required to be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places."**

**AB claims that CD exercised supervisory control over the work that resulted in (his, her) injury and that CD violated the Labor Law by [**_state plaintiff's contentions_**]. CD claims [**_state defendant's contentions_**].**

**A (property owner, general contractor) who exercises supervisory control over the work owes a duty to workers to use reasonable care to make the means and manner of work reasonably safe. This duty includes an obligation to correct any unsafe methods, practices, materials or equipment used in the work if the (property owner, general contractor) knew or, in the exercise of reasonable care, should have known of the unsafe practices or equipment.**

**A (property owner, general contractor) exercises supervisory control when it actually manages, directs or oversees the manner in which the work that led to the injury was performed. A (property owner, general contractor) does not exercise supervisory control by merely having the general responsibility or power to monitor safety conditions at the worksite.**

**In deciding whether CD violated section 200 of the Labor Law, you will first consider whether CD exercised supervisory control over AB's work. If you decide that CD did not exercise supervisory control over the work that led to AB's injury, then you will find for CD [**_add where appropriate:_ **on this issue]. On the other hand, if you decide that CD did exercise supervisory control over the work that led to AB's injury, then you will go on to consider whether the methods, practices, materials or equipment used in AB's work were unsafe and, if so, whether CD knew about or, in the exercise of reasonable care, should have known about that unsafe [*state as appropriate*: method, practice, material or equipment] and failed to use reasonable care to prevent or correct it.**

**If you decide that the [**_state as appropriate_**: method, practice, material or equipment] used in AB's work was not unsafe or that CD did not know or, in the exercise of reasonable care, could not have discovered the [**_state as appropriate_**: method, practice, material or equipment] or that CD did not fail to use reasonable care to prevent or correct the [**_state as_

*appropriate*: **method, practice, material or equipment] , then you will find for CD [***add where appropriate:* **on this issue]. However, if you decide that the [***state as appropriate*: **method, practice, material or equipment] used in AB's work was unsafe, that CD knew or, in the exercise of reasonable care, should have known about the unsafe [***state as appropriate*: **method, practice, material or equipment] and that CD failed to use reasonable care to prevent or correct the [***state as appropriate*: **method, practice, material or equipment], then you will go on to consider whether the unsafe [***state as appropriate*: **method, practice, material or equipment] was a substantial factor in causing AB's injury.**

**If you decide that the unsafe [***state as appropriate*: **method, practice, material or equipment] equipment used in AB's work was not a substantial factor in causing AB's injury, then you will find for CD [***add where appropriate:* **on this issue]. On the other hand, if you decide that the unsafe [*state as appropriate*: method, practice, material or equipment] used in AB's work was a substantial factor in causing AB's injury, then you will find for AB [***add where appropriate:* **on this issue].**

**[***The following charge should be used in the Second Department for cases involving claims against owners or general contractors where the means or manner of work were allegedly unsafe***]**

**As you have heard, the plaintiff AB claims that the defendant CD, the [owner of the workplace, general contractor] violated section 200 of the New York State Labor Law and thereby caused injury to AB. Under section 200 of the Labor Law, the workplace where AB was working was required to be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places."**

**AB claims that CD had the authority to supervise or control the work that resulted in (his, her) injury [***state plaintiff's contentions***]. CD claims [***state defendant's contentions***].**

**A (property owner, general contractor) who has the authority to supervise or control the performance of the work owes a duty to workers to use reasonable care to make the means and manner of work reasonably safe. This duty includes an obligation to correct any unsafe methods, practices, materials or equipment used in the work if the (property owner, general contractor) knew or, in the exercise of reasonable care, should have known of the [***state as appropriate*: **method, practice, material or equipment] .**

**A (property owner, general contractor) has the authority to supervise or control the work that resulted in an injury when it has the power to direct the way that the work is conducted or decide which tools and equipment should be used.**

**In deciding whether CD violated section 200 of the Labor Law, you will first consider whether CD had the authority to supervise or control the work that resulted in AB's**

**injury. If you decide that CD did not have the authority to supervise or control the work that led to AB's injury, then you will find for CD [***add where appropriate:*** on this issue]. On the other hand, if you decide that CD did have the authority to supervise or control the work that led to AB's injury, then you will go on to consider whether the methods, practices, materials or equipment used in AB's work were unsafe and, if so, whether CD failed to use reasonable care to prevent or correct the [***state as appropriate*****: method, practice, material or equipment] that it knew about or, in the exercise of reasonable care, should have known about.**

**AB claims that CD violated Labor Law § 200 by [***state plaintiff's contentions*****]. CD claims [***state defendant's contentions*****]**

**If you decide that the methods, practices, materials or equipment used in AB's work were not unsafe or that CD did not know or, in the exercise of reasonable care, could not have discovered the unsafe methods, practices, materials or equipment or that CD did not fail to use reasonable care to prevent or correct the hazard, then you will find for CD [***add where appropriate:*** on this issue]. However, if you decide that the methods, practices, materials or equipment used in AB's work were unsafe, that CD knew or, in the exercise of reasonable care, should have known about the [state as appropriate: method, practice, material or equipment], and that CD failed to use reasonable care to prevent or correct the [***state as appropriate*****: method, practice, material or equipment], then you will go on to consider whether the methods, practices, materials or equipment were a substantial factor in causing AB's injury.**

**If you decide that the [***state as appropriate*****: method, practice, material or equipment] used in AB's work was not a substantial factor in causing AB's injury, then you will find for CD [***add where appropriate:*** on this issue]. On the other hand, if you decide that the unsafe methods, practices, materials or equipment used in AB's work were a substantial factor in causing AB's injury, then you will find for AB [***add where appropriate:*** on this issue].**

**Comment**

*[See also Introductory Statement to this division.]*

**Caveat 1**: In charging causes of action based on Labor Law § 200, care should be taken to distinguish between injuries resulting from unsafe premises conditions and those resulting from the contractor's methods, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323.

**Caveat 2:** The pattern charge regarding owners' and general contractors' liability for injuries arising from the means and manner of the work reflects the view that, in this class of cases, an owner or general contractor may be held liable under Labor Law § 200 only if it actually controlled or supervised the work, see O'Sullivan v IDI Constr. Co., 7 NY3d 805, 822 NYS2d

745, 855 NE2d 1159; Narducci v Manhasset Bay Assocs., 96 NY2d 259, 727 NYS2d 37, 750 NE2d 1085; Comes v New York State Elec. and Gas Corp., 82 NY2d 876, 877, 609 NYS2d 168, 631 NE2d 110; Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYS2d 49, 618 NE2d 82; Lombardi v Stout, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117; Allen v Cloutier Constr. Corp., 44 NY2d 290, 405 NYS2d 630; 376 NE2d 1276. However, relying on Comes v New York State Elec. and Gas Corp., supra, and Rizzuto v L.A. Wenger Contracting Co., 91 NY2d 343, 670 NYS2d 816, 693 NE2d 1068, the Second Department has held that the authority to control or supervise the work is sufficient, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323. Thus, in cases tried within the Second Department, the charge must be modified accordingly.

**Caveat 3:** The pattern charge assumes that there is no triable factual dispute as to whether the injury occurred in a place of work or on a way or approach thereto, Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507. If such a factual question exists, the pattern charge must be modified to address that issue

Based on Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYUS2d 49, 618 NE2d 82 Lombardi v Stout, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117; Allen v Cloutier Constr. Corp., 44 NY2d 290, 405 NYS2d 630; 376 NE2d 1276; Gasper v Ford Motor Co., 13 NY2d 104, 242 NYS2d 205, 192 NE2d 163; Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507; Gasques v State, 59 AD3d 666, 873 NYS2d 717; Snyder v Gnall, 57 AD3d 1289, 870 NYS2d 562; Wynne v B. Anthony Constr. Corp., 53 AD3d 654, 862 NYS2d 379; Lane v Fratello Construction Co.,, 52 AD3d 575, 860 NYS2d 177; Weinberg v Alpine Improvements, LLC, 48 AD3d 915, 851 NYS2d 692; Verel v Ferguson Electric Constr. Co., 41 AD3d 1154, 838 NYS2d 280; Wolfe v KLR Mech., Inc., 35 AD3d 916, 826 NYS2d 458; Carelli v Demoro-Grafferi, 121 AD2d 673, 504 NYS2d 441 (citing PJI);. The portion of the charge that is to be given in cases tried within the Second Department is based on Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323; Peay v New York City School Constr. Auth., 35 AD3d 566, 827 NYS2d 189. A proper charge under Labor Law § 200 must instruct the jury as to the owner's duties under that statute and any defenses available to the owner, Rosas v Ishack, 219 AD2d 633, 631 NYS2d 417; Carelli v Demoro-Grafferi, supra. As to proximate cause, see PJI 2:70 and Comment. The charge must distinguish between the obligation of the subcontractor and the general duty of the owner and the general contractor to provide a safe place to work, Grillo v St. Luke's Hospital Center, 37 AD2d 566, 322 NYS2d 346.

Labor Law § 200 codifies an owner's, employer's and general contractor's common-law duty to provide workers with a reasonably safe place to work, Comes v New York State Elec. and Gas Corp., 82 NY2d 876, 609 NYS2d 168, 631 NE2d 110; Long v Forest-Fehlhaber, 55 NY2d 154, 448 NYS2d 132, 433 NE2d 115; Allen v Cloutier Const. Corp., 44 NY2d 290, 405 NYS2d 630, 376 NE2d 1276; Gasper v Ford Motor Co., 13 NY2d 104, 242 NYS2d 205, 192 NE2d 163; see Soskin v Scharff, 309 AD2d 1102, 766 NYS2d 248; Brasch v Yonkers Const. Co., 306 AD2d 508, 762 NYS2d 626; Rosen v McGuire & Bennett Inc., 189 AD2d 966, 592 NYS2d 477. This

charge and comment deal with Labor Law § 200(1). Where plaintiff relies upon both § 200 and § 241(6), each section must be separately charged and the jury given a special verdict sheet that requires a specific determination as to each theory, Zalduondo v New York, 141 AD2d 816, 529 NYS2d 881. For a charge and comment on Labor Law § 241(6), see PJI 2:216A. For the differences between Labor Law §§ 200(1) and 241(6), see Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYS2d 49, 618 NE2d 82; Lombardi v Stout, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117; Lagzdins v United Welfare Fund-Security Division Marriott Corp., 77 AD2d 585, 430 NYS2d 351; see also Zalduondo v New York, supra; Simon v Schenectady North Congregation of Jehovah's Witnesses, 132 AD2d 313, 522 NYS2d 343. One important difference is that the exemption from liability for owners of one- and two-family homes who do not control the work is unavailable as a defense to a Labor Law § 200 claim, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323. For a detailed discussion of the exemption, which is applicable in actions under Labor Law §§ 240(1) and 241(6), see Introductory Statement to PJI 2:216, IV. Exemption for One and Two Family Dwellings.

Labor Law § 200 claims fall into two broad categories: those involving injuries arising from allegedly defective or dangerous premises conditions and those involving injuries arising from the manner in which the work is performed, Chowdhury v Rodriguez, 57 AD3d 121, 867 NYS2d 123; Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323. In the former class of cases, property owners may be held liable under Labor Law § 200 if the owner either created the dangerous condition or had actual or constructive notice of the condition, Ortega v Puccia, supra; see Espinosa v Azure Holdings II, LP, 58 AD3d 287, 869 NYS2d 395. General contractors may also be held liable for unsafe premises conditions if they created or had actual or constructive notice of the condition and also had control of the place where the injury occurred, Wynne v B. Anthony Constr. Corp., 53 AD3d 654, 862 NYS2d 379; Lane v Fratello Construction Co., 52 AD3d 575, 860 NYS2d 177; Weinberg v Alpine Improvements, LLC, 48 AD3d 915, 851 NYS2d 692; Verel v Ferguson Electric Constr. Co., 41 AD3d 1154, 838 NYS2d 280; Wolfe v KLR Mech., Inc., 35 AD3d 916, 826 NYS2d 458; see Murphy v Columbia University, 4 AD3d 200, 773 NYS2d 10.

In contrast, in cases arising from the manner in which the work was performed, the Court of Appeals has held that the owner or general contractor may be liable only if it exercised supervision or control of the work that led to the injury, O'Sullivan v IDI Constr. Co., 7 NY3d 805, 822 NYS2d 745, 855 NE2d 1159; Narducci v Manhasset Bay Assocs., 96 NY2d 259, 727 NYS2d 37, 750 NE2d 1085; Comes v New York State Elec. and Gas Corp., 82 NY2d 876, 877, 609 NYS2d 168, 631 NE2d 110; Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYUS2d 49, 618 NE2d 82 Lombardi v Stout, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117; Allen v Cloutier Constr. Corp., 44 NY2d 290, 405 NYS2d 630; 376 NE2d 1276; see Rizzuto v L.A. Wenger Contracting Co., 91 NY2d 343, 670 NYS2d 816, 693 NE2d 1068 (general contractor that controlled coordination of work potentially liable where negligent performance of that activity could have been substantial factor in causing injury); see also Persichilli v Triborough Bridge and Tunnel Auth., 16 NY2d 136, 262 NYS2d 476, 209 NE2d 802 (owner has no duty to supervise the method of contractor's or subcontractor's work). However, the Second

Department has held that the proper test for owners' and general contractors' liability for injury arising out of the manner and means of the work is whether the defendant had the authority to control the work, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323; see Gasques v State, 59 AD3d 666, 873 NYS2d 717. For a more detailed discussion of the case law regarding the test for owners' and general contractors' liability under Labor Law § 200 for the means and manner of the work, see "Accidents Caused by Means or Manner of the Work," infra.

Comparative negligence applies for apportionment of liability, CPLR 1411; Long v Forest-Fehlhaber, 55 NY2d 154, 448 NYS2d 132, 433 NE2d 115; Karian v Anchor Motor Freight, Inc., 144 AD2d 777, 535 NYS2d 175. The doctrine of primary assumption of risk has no application to a Labor Law § 200 claim, Walter v State, 235 AD2d 623, 651 NYS2d 704. However, the owner is not liable for the consequences of plaintiff's unforeseeable decision to proceed with the work without the helper plaintiff had requested and whom the owner had supplied, Simon v Schenectady North Congregation of Jehovah's Witnesses, 132 AD2d 313, 522 NYS2d 343. There is no liability under Labor Law § 200 where plaintiff's act of jumping out of a stalled elevator six feet above a lobby floor after the elevator's doors had been opened manually was an intervening and superseding cause, Egan v A.J. Const. Corp., 94 NY2d 839, 702 NYS2d 574, 724 NE2d 366; see Weingarten v Windsor Owners Corp., 5 AD3d 674, 774 NYS2d 537. Nor is the owner liable for the "extraordinary" decision by a worker to clear a blockage in a harvester while the machine was still running, Gokey v Castine, 163 AD2d 709, 558 NYS2d 308. Foreseeable intervening misconduct will not serve to supersede liability under Labor Law § 200, when the danger presented by such misconduct is a matter of common experience, Ciancio v Woodlawn Cemetery Ass'n, 249 AD2d 86, 671 NYS2d 466.    .

## I. Accidents Caused by Unsafe Premises Conditions

A . In General

At common law an employer had a duty to provide the employees with a safe place to work, Hess v Bernheimer & Swartz, Pilsener Brewing Co., 219 NY 415, 114 NE 808; Rolnick v 25th Ave. Bldg. Corp., 27 AD2d 844, 278 NYS2d 45; Robinson v Avella, 10 AD2d 130, 197 NYS2d 557. The first sentence of § 200(1) codifies the common-law duty and extends it to the owner of a work site, Jock v Fien, 80 NY2d 965, 590 NYS2d 878, 605 NE2d 365; Long v Forest-Fehlhaber, 55 NY2d 154, 448 NYS2d 132, 433 NE2d 115; Allen v Cloutier Const. Corp., 44 NY2d 290, 405 NYS2d 630, 376 NE2d 1276; Gasper v Ford Motor Co., 13 NY2d 104, 242 NYS2d 205, 192 NE2d 163; Nowak v Smith & Mahoney, P.C., 110 AD2d 288, 494 NYS2d 449; Monroe v New York, 67 AD2d 89, 414 NYS2d 718. The duty is twofold: to make and keep the place of work safe, Zucchelli v City Const. Co., 4 NY2d 52, 172 NYS2d 139, 149 NE2d 72; Employers Mut. Liability Ins. Co. of Wis. v Di Cesare & Monaco Concrete Const. Corp., 9 AD2d 379, 194 NYS2d 103.

The common-law duty codified in Labor Law § 200 is not limited to construction work or construction workers, Beadleston v American Tissue Corp., 41 AD3d 1074, 839 NYS2d 283, and applies to workers engaged in manufacturing processes, Jock v Fien, supra, as well as to workers engaged in maintenance functions, Agli v Turner Const. Co., Inc., 246 AD2d 16, 676 NYS2d 54; see Paradise v Lehrer, McGovern & Bovis, Inc., 267 AD2d 132, 700 NYS2d 25.

However, an owner has no duty under Labor Law § 200 to a cable technician who is on the premises without the owner's knowledge and whose presence would be a trespass but for Public Service Law § 228(1)(a) (prohibiting landlords from interfering with cable installers), Wildman v Jensen, 59 AD3d 165, 872 NYS2d 450 (citing Abbatiello v Lancaster Studio Assocs., 3 NY3d 46, 781 NYS2d 477, 814 NE2d 784).

The statute does not create a cause of action irrespective of negligence. The duties it imposes "are governed by the generally applicable standards of the prudent man, the foreseeability of harm, and the rule of reason," Employers Mut. Liability Ins. Co. of Wis. v Di Cesare & Monaco Concrete Const. Corp., 9 AD2d 379, 194 NYS2d 103; Abram v Lyon Steel Rigging Corp., 111 AD2d 291, 489 NYS2d 281; Monroe v New york, 67 AD2d 89, 414 NYS2d 718; see Hammond v International Paper Co., 161 AD2d 914, 557 NYS2d 447.

The duty to provide a safe place to work includes the detection of dangers discoverable by reasonable diligence, Lunde v Nichols Yacht Sales, Inc., 143 AD2d 816, 533 NYS2d 130; Kennedy v McKay, 86 AD2d 597, 446 NYS2d 124; Lagzdins v United Welfare Fund-Security Division Marriott Corp., 77 AD2d 585, 430 NYS2d 351; Monroe v New York, 67 AD2d 89, 414 NYS2d 718; Bass v Standard Brands, Inc., 65 AD2d 689, 409 NYS2d 724. An owner who supplies a defective or unsafe ladder, scaffold or other device can be liable under Labor Law § 200 if it caused the dangerous condition or had actual or constructive notice of the condition, Chowdhury v Rodriguez, supra; Artoglou v Gene Scappy Realty, 57 AD3d 460, 869 NYS2d 172; see Higgins v 1790 Broadway Assoc., 261 AD2d 223, 691 NYS2d 31.

An owner or general contractor who created a dangerous condition on the premises may be held liable for a worker's resulting injuries, Goad v Southern Electric Int'l, Inc, 304 AD2d 887, 758 NYS2d 184 (question of fact existed as to defendant's liability under Labor Law § 200 where plaintiff submitted evidence that defendant had previously cut and improperly welded railing that collapsed and caused plaintiff's injury); see Higgins v 1790 Broadway Associates, 261 AD2d 223, 691 NYS2d 31. Where the injury arises out of a defective condition on the premises, an owner may be held liable if it had actual or constructive knowledge of the unsafe condition even if it did not supervise or control the work, Espinosa v Azure Holdings II, LP, 58 AD3d 287, 869 NYS2d 395; Beadleston v American Tissue Corp., 41 AD3d 1074, 839 NYS2d 283; Singh v Young Manor, Inc., 23 AD3d 249, 804 NYS2d 65; Griffin v New York City Transit Auth., 16 AD3d 202, 791 NYS2d 98; Murphy v Columbia Univ., 4 AD3d 200, 773 NYS2d 10; Bonura v KWK Associates, Inc., 2 AD3d 207, 770 NYS2d 5. A general contractor that did not supervise or control the work may also be held liable for an unsafe premises condition if had actual or constructive notice of the condition and control of the place where the injury occurred, Wynne v B. Anthony Construction Corp., 53 AD3d 654, 862 NYS2d 379; Lane v Fratello Construction Co.,, 52 AD3d 575, 860 NYS2d 177; Weinberg v Alpine Improvements, LLC, 48 AD3d 915, 851 NYS2d 692; Verel v Ferguson Electric Constr. Co., 41 AD3d 1154, 838 NYS2d 280; Wolfe v KLR Mech., Inc., 35 AD3d 916, 826 NYS2d 458; see Murphy v Columbia University, supra. Where the defective or dangerous condition was not created by defendant owner, notice, actual or constructive, is necessary, Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507; Karian v Anchor Motor Freight, Inc., 144 AD2d 777, 535 NYS2d 175; DeTommaso v M.J. Fitzgerald

Const. Co., 138 AD2d 341, 525 NYS2d 632; Rosenbaum v Lefrak Corp., 80 AD2d 337, 438 NYS2d 794; Miller v Perillo, 71 AD2d 389, 422 NYS2d 424; Monroe v New York, 67 AD2d 89, 414 NYS2d 718; Forbes v Alvord & Swift, 44 AD2d 538, 353 NYS2d 749.

The courts have held that there is no duty to protect the employee against defects or dangers that are readily observable by reasonable use of the senses, considering the employee's age, intelligence and experience, Musillo v Marist College, 306 AD2d 782, 762 NYS2d 663; see McLean v Studebaker Bros. Co. of New York, 221 NY 475, 117 NE 951; Panetta v Paramount Communications, Inc., 255 AD2d 568, 681 NYS2d 85; Reynolds v Fisher, 220 AD2d 968, 632 NYS2d 704; DeLong v State Street Associates L.P., 211 AD2d 891, 621 NYS2d 172. However, in England v Vacri Construction Corp., 24 AD3d 1122, 807 NYS2d 669, the court held that the open and obvious nature of a dangerous condition absolves the owner and general contractor only of the duty to warn and does not relieve them of the duty to provide a reasonably safe workplace, see Barberio v Agramunt, 45 AD3d 514, 845 NYS2d 128; Roosa v Cornell Real Property Servicing, Inc., 38 AD3d 1352, 831 NYS2d 784; Tulovic v Chase Manhattan Bank, N.A., 309 AD2d 923, 767 NYS2d 44; Waszak v State, 275 AD2d 916, 713 NYS2d 397; see also Verel v Ferguson Elec. Const. Co., Inc., 41 AD3d 1154, 838 NYS2d 280 (duty to warn of open and obvious condition). The England and Tulovic courts noted that their rulings reflected the change in the common law occasioned by MacDonald v Schenectady, 308 AD2d 125, 761 NYS2d 752, and similar decisions. The England court went on to note that, although the McDonald line of cases did not involve Labor Law § 200 claims, the holdings of those cases should be applied to cases arising under Labor Law § 200 because the statute was intended to codify common law principles. Thus, the court held in Tighe v Hennegan Construction Co., 48 AD3d 201, 850 NYS2d 417, that a subcontractor that controlled the work out of which an electrician's injury arose was not absolved of liability merely because the hazard, i.e. debris accumulated as a result of the demolition, was readily observable, at least where the hazard was not inherent in the electrician's work. Applying its holding in Sun Ho Chung v Jeong Sook Joh, 29 AD3d 677, 815 NYS2d 641, in the Labor Law § 200 context, the Second Department has held that a worker injured as a result of a work site condition that was open and obvious and not “inherently dangerous” cannot recover for a violation of that statute, Dinallo v DAL Electric, 43 AD3d 981, 842 NYS2d 519 (worker tripped over jack assembly three feet high, 30 inches wide and 30 inches deep).

There is no duty to protect an employee from dangers arising from a defect that he or she was hired to repair, Hudson v Brookfield Const Co., 24 NY2d 811, 300 NYS2d 589, 248 NE2d 445; Kowalsky v Conreco Co., 264 NY 125, 190 NE 206; Mullin v Genesee County Electric Light, Power & Gas Co., 202 NY 275, 95 NE 689; Hansen v Trustees of Methodist Episcopal Church of Glen Cove, 51 AD3d 725, 858 NYS2d 303; Contrera v Gesher Realty Corp., 1 AD3d 111, 766 NYS2d 200. Similarly, a worker responsible for sweeping and mopping the area could not recover for injuries sustained when he slipped on a food substance in that area, Jackson v Board of Education of City of New York, 30 AD3d 57, 812 NYS2d 91; see Imtanios v Sachs, 44 AD3d 383, 843 NYS2d 569 (no recovery where janitor employed by cleaning service tripped on debris in area employer was responsible for keeping clear; hazard of tripping on debris inherent in janitor's work). In Dumoulin v Oval Wood Dish Corp., 211 AD2d 883, 621 NYS2d 705, the

court held that defendant owner did not expose plaintiff to an unreasonable risk of danger because the dead tree that fell on him was a hazard inherent in the logging activity that plaintiff performed.

In Widera v Ettco Wire and Cable Corp., 204 AD2d 306, 611 NYS2d 569, the court held that an employer had no duty to protect the unborn infant child of an employee for injuries resulting from the employee-father's exposure to chemicals at the work site. Similarly, in Matter of New York City Asbestos Litigation [Holdampf v A.C. & S., Inc.], 5 NY3d 486, 806 NYS2d 146, 840 NE2d 115, the Court of Appeals held that an employer had no duty to protect an employee's spouse from exposure to asbestos dust from laundering the employee's work clothes.

B . Accident Site

The duty extends only to employees and conditions at the work place, Greer v Ferrizz, 118 AD2d 536, 499 NYS2d 758. The pattern charge assumes that there is no dispute that the place of injury was at the work site.

The place of work is a flexible concept defined not only by the location but by the circumstances of the work to be done, Holgerson v South 45th Street Garage, Inc., 16 AD2d 255, 227 NYS2d 195, aff'd, 12 NY2d 1011, 239 NYS2d 134, 189 NE2d 628; see Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507; Hoffmeister v Oaktree Homes, Inc., 206 AD2d 921, 615 NYS2d 177; Brogan v International Business Machines Corp., 157 AD2d 76, 555 NYS2d 895; Lindgren v Tugboat Dalzellable, Inc., 25 AD2d 683, 269 NYS2d 92, aff'd, 31 AD2d 599, 296 NYS2d 533, rev'd on other grounds, 26 NY2d 455, 311 NYS2d 495, 259 NE2d 916. The lack of proximity between the place of the accident and the precise location of the work is not dispositive of Labor Law liability for injuries to workers handling construction materials and equipment, see Bloomfield v General Elec. Co., 198 AD2d 655, 603 NYS2d 606.

Owners or general contractors are responsible for the places of work provided by them and the ways and approaches to such places of work, Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507; Tilkins v Niagara Falls, 52 AD2d 306, 383 NYS2d 758; Enea v Kuhn, Smith & Harris, Inc., 39 AD2d 908, 332 NYS2d 913; Brennan v Concrete Const. Corp., 38 AD2d 639, 326 NYS2d 892; see also Mustacchia v Lafayette Nat'l Bank, 26 AD2d 558, 271 NYS2d 130, aff'd, 20 NY2d 810, 284 NYS2d 703, 231 NE2d 289 (plaintiff must show that area was necessary as passageway). This responsibility runs to employees of a subcontractor, White v Long Island Lighting Co., 32 AD2d 792, 302 NYS2d 463; see Torrie v Virtuoso Bldg. Co., Inc., 58 AD2d 982, 397 NYS2d 260. The duty to provide a reasonably safe work place includes the roadway on the owner's premises used to transport tanks from the location where delivered by the supplier to the installation site, Brogan v International Business Machines Corp., 157 AD2d 76, 555 NYS2d 895, as well as an area between the building under construction and a construction trailer, Foster v Spevack, 198 AD2d 892, 605 NYS2d 706, and a walkway designated by the owner for workers reporting for work, Zito v Occidental Chemical Corp., 259 AD2d 1015, 688 NYS2d 307. It does not, however, include the public sidewalk the control and maintenance of which are a municipality

responsibility, at least when the employer has committed no affirmative act rendering the sidewalk unsafe, Moore v Suburban Fuel Oil Service, Inc., 22 AD2d 827, 255 NYS2d 230, aff'd, 16 NY2d 647, 261 NYS2d 82, 209 NE2d 122.

Whether the injury occurred in a place of work or on a way or approach thereto may constitute a question of law, Chaney v New York City Transit Authority, 12 AD2d 61, 208 NYS2d 205, aff'd, 10 NY2d 871, 223 NYS2d 502, 179 NE2d 507. If on the facts of a particular case it does not, the pattern charge must be modified to address that issue.

## **II.** Accidents Caused by Means or Manner of the Work

A . In General

In Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYS2d 49, 618 NE2d 82, the Court of Appeals stated that, where the accident arose out of the means or manner in which the work was performed, a worker cannot recover against an owner or general contractor under Labor Law § 200 unless the party to be charged "exercised" some supervisory control over the work. This analysis, which requires actual exercise of control, has been repeated in numerous Court of Appeals decisions, O'Sullivan v IDI Constr. Co., 7 NY3d 805, 822 NYS2d 745, 855 NE2d 1159; Narducci v Manhasset Bay Assocs., 96 NY2d 259, 727 NYS2d 37, 750 NE2d 1085; Lombardi v Stout, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117; Allen v Cloutier Constr. Corp., 44 NY2d 290, 405 NYS2d 630; 376 NE2d 1276, as well as many Appellate Division decisions, Kwang Ho Kim v D & W Shin Realty Corp., 47 AD3d 616, 852 NYS2d 138; Fisher v. WNY Bus Parts, Inc., 12 AD3d 1138, 785 NYS2d 229; Mitchell v. New York Univ., 12 AD3d 200, 784 NYS2d 104; Carney v Allied Craftsman General Contr., 9 AD3d 823, 780 NYS2d 441.

Additionally, the Court of Appeals has stated that "an implicit precondition to the duty to provide a safe place to work is that the party to be charged have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition," Russin v Louis N. Picciano & Son, 54 NY2d 311, 445 NYS2d 127, 429 NE2d 805; see Rizzuto v L.A. Wenger Contracting Co., supra; Comes v New York State Electric and Gas Corp., 82 NY2d 876, 609 NYS2d 168, 631 NE2d 110. Thus, an employee of a general contractor could not recover under Labor Law § 200 from the prime contractors who had been retained by the owner, were not in privity with the general contractor and had no authority to control the activity producing the injury, Russin v Louis N. Picciano & Son, supra.

There are many Appellate Division decisions holding that an owner or general contractor may be liable under Labor Law § 200 only if it exercised supervisory control of the work that led to the injury, Snyder v Gnall, 57 AD3d 1289, 870 NYS2d 562; Kwang Ho Kim v D & W Shin Realty Corp., 47 AD3d 616, 852 NYS2d 138; Buckley v Columbia Grammar and Preparatory, 44 AD3d 265, 841 NYS2d 249; Capasso v Kleen All of America, Inc., 43 AD3d 1346, 842 NYS2d 798; Fisher v. WNY Bus Parts, Inc., 12 AD3d 1138, 785 NYS2d 229; Mitchell v. New York Univ., 12 AD3d 200, 784 NYS2d 104; Carney v Allied Craftsman General Contr., 9 AD3d 823, 780 NYS2d 441. Others have referred both to the exercise of supervisory control and the

authority to control as touchstones of liability under Labor Law § 200, Perrino v Entergy Nuclear Plan 3, LLC, 48 AD3d 229, 858 NYS2d 428; Norman v Welliver McGuire, Inc., 48 AD3d 945, 851 NYS2d 310; McLeod v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints, 41 AD3d 796, 839 NYS2d 164; Peay v New York City School Construction Authority, 35 AD3d 566, 827 NYS2d 189. Finally, some Appellate Division decisions refer only to the "authority" to control the work when discussing owners' and general contractors' Labor Law § 200 liability for unsafe work methods, Vukovich v 1345 Fee, LLC, __ AD3d __, __ NYS2d __, 2009 WL 1046268; Kajo v. E.W. Howell Co., 52 AD3d 659,861 NYS2d 105; Allen v Telergy Network Services, Inc. 52 AD3d 1094, 860 NYS2d 299; Alfonseca v Van Tag Construction Corp., 39 AD3d 266, 833 NYS2d 458. The Second Department has explicitly held that the proper test for owners' and general contractors' liability for injury arising out of the means and manner of the work is whether the defendant had the authority to control the work, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323; see Gasques v State, 59 AD3d 666, 873 NYS2d 717. The Ortega court rejected the principle that the actual exercise of control over the work is required to impose liability on an owner or general contractor. It should be noted that the Second Department's analysis in Ortega pertains to an owner or general contractor's potential liability under Labor Law § 200 and not to the separate question of the applicability of the "homeowners' exemption" to liability under Labor Law §§ 240(1) and 241(6). For a detailed discussion of the homeowners' exemption, see Introductory Statement to PJI 2:216, IV. Exemption for One and Two Family Dwellings.

B. Owners

An owner may be held liable for injuries sustained by the employees of a subcontractor stemming from the subcontractor's negligence where the owner supervised or controlled the equipment or safety procedures, Gregory v General Electric Co., 131 AD2d 967, 516 NYS2d 549. The mere retention of inspection privileges or the right to review safety does not constitute such direct control over the work area of an independent contractor as to impose liability upon the owner, Perri v Gilbert Johnson Enterprises, Ltd., 14 AD3d 681, 790 NYS2d 25; Ramos v State, 34 AD2d 1056, 312 NYS2d 185; see Dumoulin v Oval Wood Dish Corp., 211 AD2d 883, 621 NYS2d 705. The retention of general supervisory power by the owner also does not render the owner liable for the contractor's negligence in maintaining the contractor's equipment on the owner's premises, even though the owner's supervisory employees had knowledge of the unsafe practice, Ortiz v Uhl, 39 AD2d 143, 332 NYS2d 583, aff'd, 33 NY2d 989, 353 NYS2d 962, 309 NE2d 425; see also Leahy v Botnick, 35 AD2d 898, 315 NYS2d 700. In contrast, the owner may be held liable where it devised detailed construction and safety guidelines to be followed by the contractor and closely supervised and inspected the work, Shaheen v International Business Machines Corp., 157 AD2d 429, 557 NYS2d 972, or where it maintained control over budgetary matters, had an employee on-site as the main construction supervision and had been notified of problems with the structure whose failure led to the accident, Foote v Lyonsdale Energy Limited Partnership, 23 AD3d 924, 805 NYS2d 163. Offering a general explanation of the job requirements and providing equipment such as a ladder or broom to the plaintiff does not constitute supervision or control in the performance of the work under Labor Law § 200,

Douglas v Beckstein, 210 AD2d 680, 619 NYS2d 396; Stephens v Tucker, 184 AD2d 828, 584 NYS2d 667. However, an owner who provides defective equipment may be liable for the resulting injuries if it caused the defect or had actual or constructive notice of it, Artoglou v Gene Scappy Realty Corp., 57 AD3d 460, 869 NYS2d 172; Chowdhury v Rodriguez, 57 AD3d 121, 867 NYS2d 123; see Higgins v 1790 Broadway Assoc., 261 AD2d 223, 691 NYS2d 31.

The owner's mere presence at the job site is not sufficient to create liability, Rivera v Ambassador Fuel and Oil Burner Corp., 45 AD3d 275, 845 NYS2d 25; Lysiak v Murray Realty Co., 227 AD2d 746, 642 NYS2d 350. Although the owners reviewed the progress of the work and participated in selecting the design of the house, the materials to be used and the layout of the landscaping, such activities did not rise to the requisite level of direction and control so as to bring them within the ambit of Labor Law § 200, Richichi v Construction Management Technologies, Inc., 244 AD2d 540, 664 NYS2d 615; nor did liability arise from the owner’s actions, on one occasion, of moving and assembling a scaffold that was not provided by the owner, Ortega v Puccia, 57 AD3d 54, 866 NYS2d 323;.

C. Contractors

A contractor who provides general supervision and coordination of the work site will not be held liable if it does not control or direct the plaintiff's work, Vasiliades v Lehrer McGovern & Bovis, Inc., 3 AD3d 400, 771 NYS2d 27. Thus, one of five prime contractors having only authority and responsibility to coordinate and direct progress of work by the others, with no power of supervision or control over the manner of work or safety precautions taken by the others, is not liable for the dangerous condition created by one of the others, particularly since the owner had its own project superintendent with such power, id; see also Russin v Louis N. Picciano & Son, 54 NY2d 311, 445 NYS2d 127, 429 NE2d 805; Karian v Anchor Motor Freight, Inc., 144 AD2d 777, 535 NYS2d 175; Nowak v Smith & Mahoney, P.C., 110 AD2d 288, 494 NYS2d 449; Pantori v Welsbach Corp., 43 AD2d 517, 348 NYS2d 767, modified, 34 NY2d 812, 359 NYS2d 47, 316 NE2d 333; Hamill v Foster-Lipkins Corp., 41 AD2d 361, 342 NYS2d 539. A subcontractor's use and operation of its equipment while assisting a general contractor's work does not constitute authorization for the subcontractor to supervise, direct or control the activity when the subcontractor does not have the authority to correct unsafe conditions or to control the general contractor's activity, Rice v Cortland, 262 AD2d 770, 691 NYS2d 616; see Ryder v Mount Loretto Nursing Home Inc., 290 AD2d 892, 736 NYS2d 792. An architect who has agreed to perform solely architectural services is not liable under Labor Law §§ 200, 240 and 241(6), Houde v Barton, 202 AD2d 890, 609 NYS2d 411.

Absent supervisory control over the injured employee's work, a contractor's notice of the injury-producing condition is not sufficient to impose liability for the employee's injury, Buckley v Columbia Grammar and Preparatory, 44 AD3d 263, 841 NYS2d 249. Furthermore, evidence that a general contractor had general supervisory responsibility for the project is not sufficient in the absence of proof that the general contractor controlled the manner or method of work in which the plaintiff was engaged at the time of the accident, DeSimone v Structure Tone, Inc., 306 AD2d 90, 762 NYS2d 39. However, where there is evidence that the contractor had control over the methods of the subcontractors and other worksite employees in the sense that the

contractor had the ability to coordinate the work activity of its subcontractors and the owner, had the capacity to exclude the owner from working in the area, or had the authority to direct either its subcontractors or the owner to not engage in an operation while another potentially hazardous activity was taking place within the immediate area, the contractor could be found liable under Labor Law § 200, Rizzuto v L.A. Wenger Contracting Co., Inc., 91 NY2d 343, 670 NYS2d 816, 693 NE2d 1068.

The fact that the general contractor agreed in its contract with the owner to “supervise” the work is not, by itself, sufficient to establish that the general contractor actually supervised or controlled the work, Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 601 NYS2d 49, 618 NE2d 82; Gray v Balling Const. Co., Inc., 239 AD2d 913, 659 NYS2d 630. However, the existence of such a contractual undertaking may create an issue of fact as to control, even where the general contractor disclaims actual supervision of the subcontractors, Ross v Curtis-Palmer Hydro-Electric Co., supra. Observing work and reporting safety violations do not, without more, indicate authority to supervise, control or direct an activity, Decotes v Merritt Meridian Corp., 245 AD2d 864, 666 NYS2d 763.

A contractor that did not exercise supervision and control over the injured employee's work cannot be held liable merely because it had the responsibility to monitor job site safety or perform safety-related tasks, O'Sullivan v IDI Construction Co., Inc., 7 NY3d 805, 822 NYS2d 745, 855 NE2d 1159. The same principle applies to a contractor hired to comply with New York City Administrative Code § 27- 1009(d), which requires the designation and presence of a site safety coordinator on specified construction projects, Hughes v Tishman Construction Corp., 40 AD3d 305, 836 NYS2d 86. Even a contractor's awareness of the specific condition that caused the accident is not, without more, sufficient to impose liability on the contractor under Labor Law § 200 or common-law negligence principles, Burkoski v Structure Tone, Inc., 40 AD3d 378, 836 NYS2d 130. Further, the authority to stop work for safety reasons is not a sufficient basis to impose liability on a contractor, Hughes v Tishman Construction Corp., supra; Peay v New York City School Construction Authority, 35 AD3d 566, 827 NYS2d 189; Dalanna v New York, 308 AD2d 400, 764 NYS2d 429; Custer v Cortland Housing Authority, 266 AD2d 619, 697 NYS2d 739; Ricotta v Praxis Biologics, Inc., 265 AD2d 878, 695 NYS2d 845; Buccini v 1568 Broadway Associates, 250 AD2d 466, 673 NYS2d 398; but see Shaheen v Hueber-Breuer Construction Co., Inc., 4 AD3d 761, 772 NYS2d 156 (question of fact on issues of contractor's supervision and notice where contractor had authority to stop work for unsafe conditions, had previously inspected scaffolding and was “watch[ing]” injured worker's employer because of prior injury). In Hughes v Tishman Construction Corp., supra, the First Department stated that its earlier decisions in Brennan v 42nd St. Development Project, Inc., 10 AD3d 302, 781 NYS2d 335, Bush v Gregory/Madison Ave., LLC, 308 AD2d 360, 764 NYS2d 262, Freitas v New York City Transit Authority, 249 AD2d 184, 672 NYS2d 101, and Gawel v Consolidated Edison Co. of New York, Inc., 237 AD2d 138, 655 NYS2d 351, which reached a contrary conclusion, are not consistent with the overarching principle that liability for common law negligence or violation of the duty imposed by Labor Law § 200 is imposed only on a general contractor or construction manager that controls the manner in which the plaintiff performed his or her work.

D. Agents and Others

A supervising engineer who is in control of the work and has charge of the project for the owner owes the same duty as does the owner to provide a safe place to work, Persichilli v Triborough Bridge and Tunnel Authority, 21 AD2d 819, 251 NYS2d 733, modified on other grounds, 16 NY2d 136, 262 NYS2d 476, 209 NE2d 802; see also Hamill v Foster-Lipkins Corp., 41 AD2d 361, 342 NYS2d 539. But an inspection engineer owes no duty to provide a safe place to work unless it has control over the work being performed, Becker v Tallamy, Van Kuren, Gertis & Associates, 221 AD2d 1014, 634 NYS2d 282; Carter v Vollmer Associates, 196 AD2d 754, 602 NYS2d 48; Hamby v High Steel Structures, Inc., 134 AD2d 884, 521 NYS2d 926. Nor is a company that furnishes security guards subject to the statutory duty imposed by Labor Law § 200 for an injury suffered by one of its employees in a client's premises, absent evidence that the security company had control over the premises or was under a duty to clean or inspect the premises, Gomes v Revere Sugar Corp., 140 AD2d 582, 528 NYS2d 646. A party who merely employs a construction consultant at a work site is not liable under Labor Law § 200 because general supervision and presence at the work site to check on the progress of the work and compliance with building specifications does not constitute sufficient control or supervision, Gielow v Rosa Coplon Home, 251 AD2d 970, 674 NYS2d 551; see Nevins v Essex Owners Corp., 276 AD2d 315, 714 NYS2d 38.

Westlaw. © 2008 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.NY PJI 2:216END OF DOCUMENT