

LaGuardia Airport Case

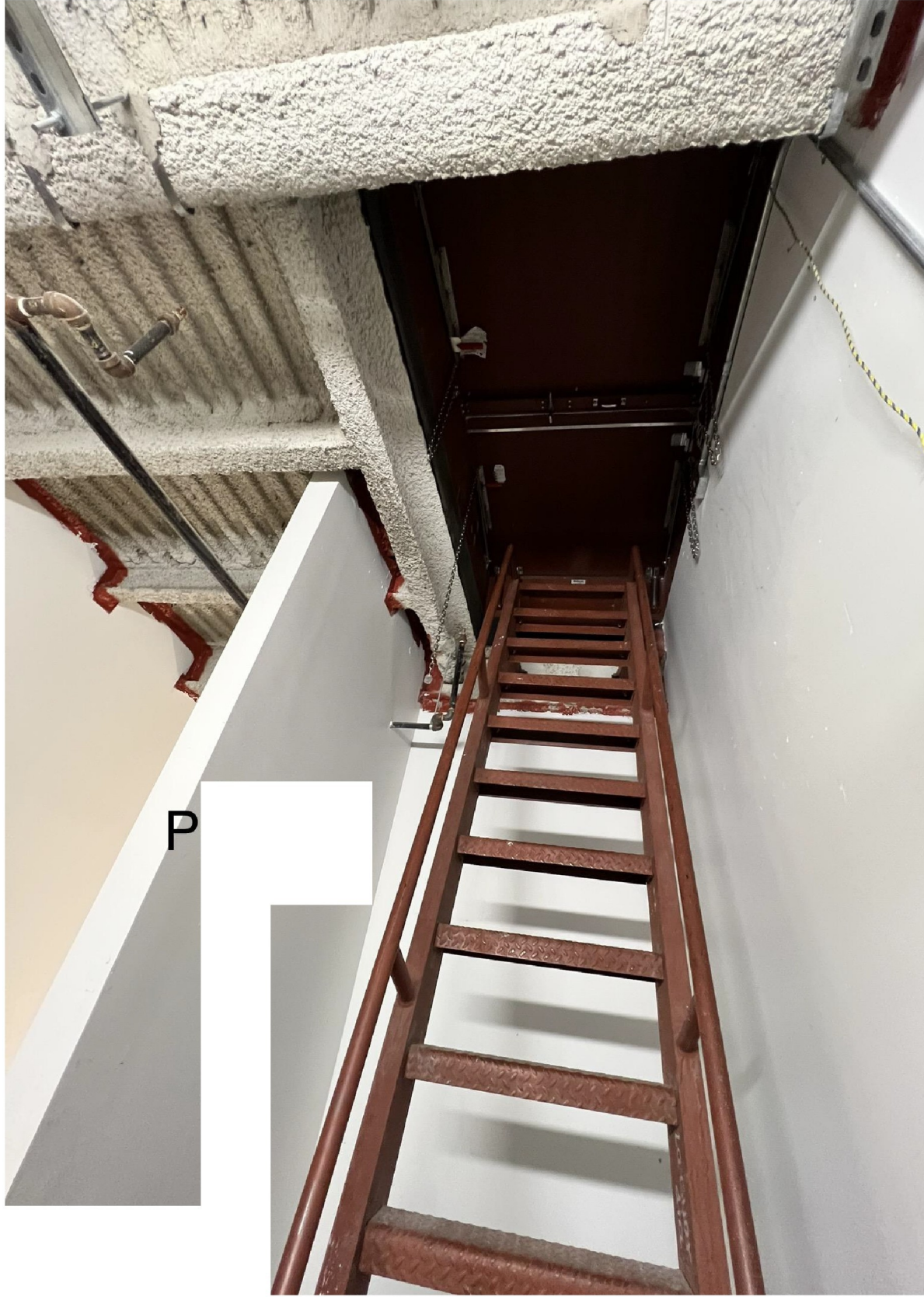
FACTUAL BACKGROUND.

Plaintiff was employed to work on the roof at Delta Terminal @ LaGuardia airport, Terminal C. He accessed the roof via a roof hatch and began certain construction and repair work. After some time, requiring more material to complete his work, Plaintiff returned to the roof hatch to descend. The roof hatch configuration required him to approach the hatch from the side and step over a 15" high curb onto an 11" step at the top of the permanent ladder. Since there was no handrail, he grabbed on to the hatch door for balance and felt the hatch door closing which caused him to lose balance and fall the entire length of the ladder, 12 feet to the floor. He was taken to Elmhurst hospital and sustained severe and permanent personal injuries to his right hand, right knee and right ankle. As well as injuries to his left shoulder and left cheek.

LABOR LAW 240(1)

(1) It is my opinion, to a reasonable degree of professional safety certainty, that the Defendants, as stated under Labor Law 240(1), failed to furnish or erect or cause to be furnished or erected safe access to and from the roof and failed to provide other devices that should have been placed and operated as to give reasonable and adequate protection to the lives, health and safety of all persons employed therein, including the Plaintiff.

(2) The roof hatch in question, manufactured by Bilco, serial #60296271 is a wide two leaf roof hatch. The defendants installed a fixed ladder leading up to the roof hatch at approximately a 70.6 degree angle (see photo #1)





As you climb up the ladder you need to hold on to the stair rail with one hand and



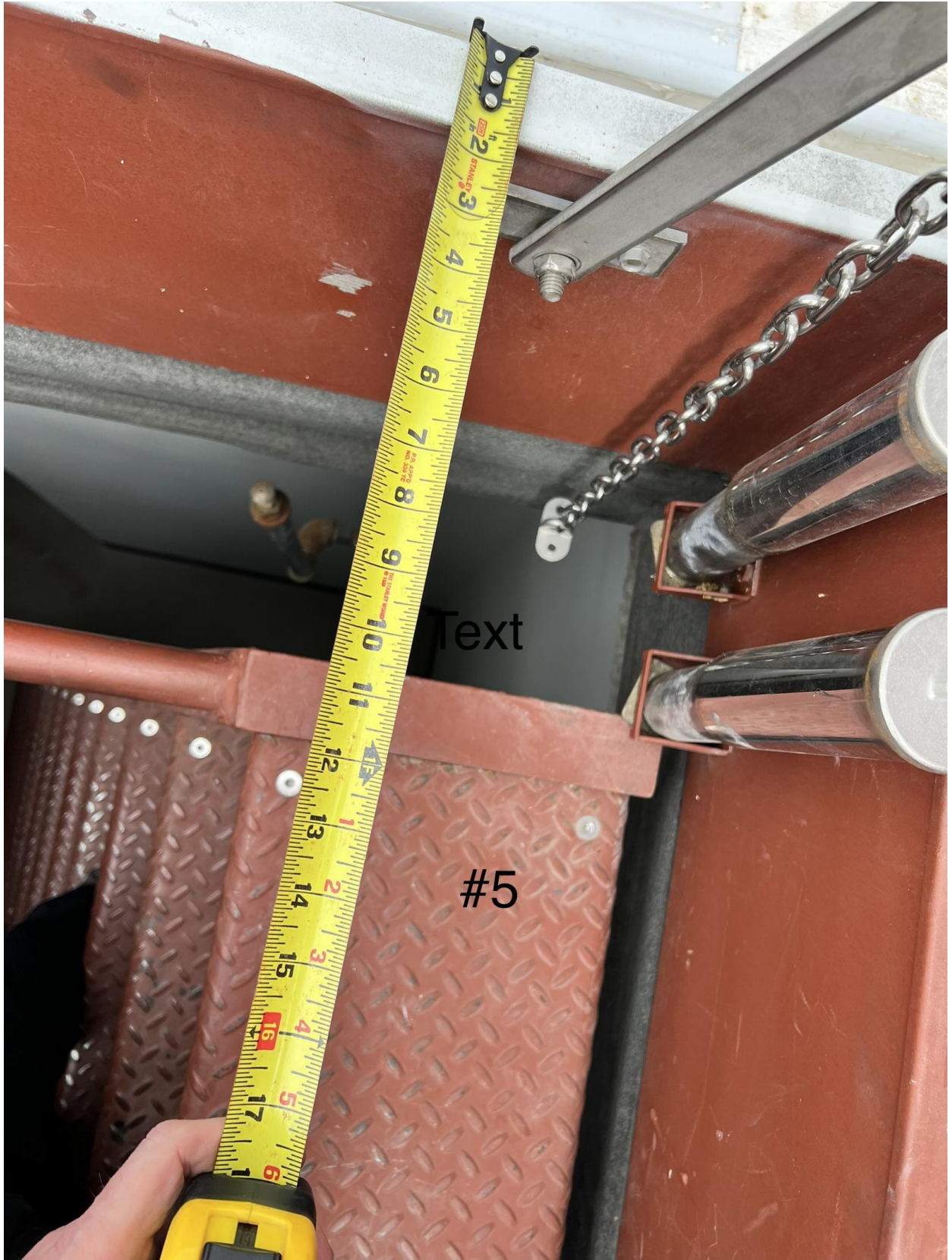
After the left door is open, you can then push open the door to the right. The right door at the top of the ladder does not open to the side to allow for reasonable egress. But rather, it opens directly in front of you in a 90 degree angle acting as a wall blocking any means of egress (Photo #3).





and the door blocking your path straight ahead, you need to somehow turn to your left

and step over an 11" distance from the edge of the top rung to the top of the curb
(Photo #5).



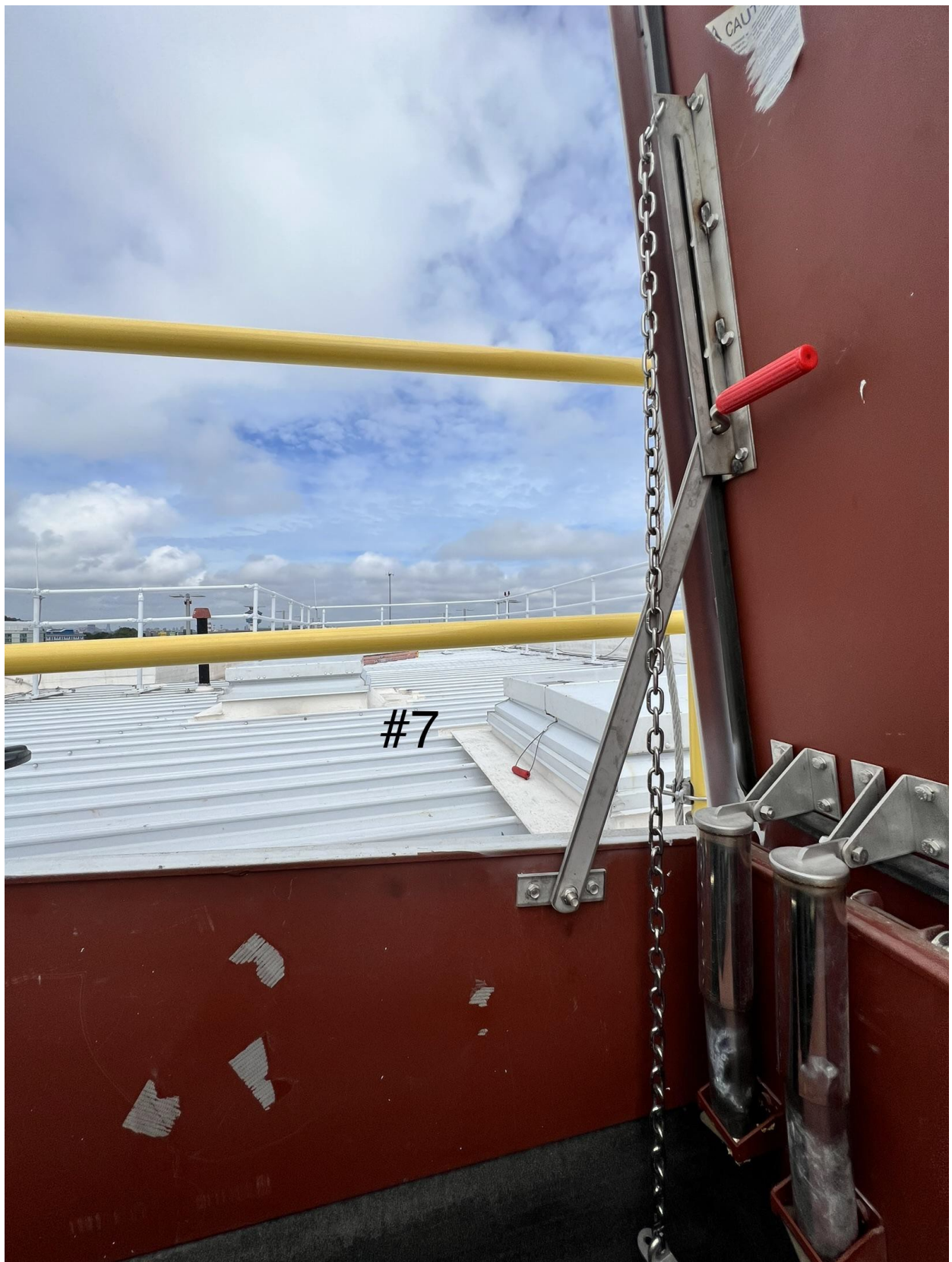
Text

#5





There is no rail to hold on while performing this dangerous twisting move and so ones



that will release the door and the door will close with very little pressure applied.

(1) In my professional opinion roof hatches from manufactures like Bilco can provide safe and convenient access to roof areas by means of an interior ladder, ship stair or service stair leading to a door that opens to the side so that a worker does not have an obstruction in the way. However, this roof hatch configuration, where the hatch doors open directly in front of and block the path of egress, should only be utilized to provide a convenient way to install or remove large pieces of equipment from a building. It should never be used by workers to get on or off the roof. The fact that the defendant allowed this particular roof hatch as a means of egress for workers is a direct violation of Labor Law 240 (1) and a failure to provide reasonable and adequate protection to the lives, health and safety of persons employed. Further, in my professional opinion, the Defendants failure to provide proper and safe means of egress to and from the roof was the direct cause of the Plaintiff's fall from the top of the ladder.

LABOR LAW 241(6)

(1) It is my professional opinion that the Defendants failed to ensure compliance and were in violation of Labor Law 241(6) which dictates that areas in which construction, excavation, or demolition work is being performed must be afforded reasonable and adequate safety precautions. One of the purposes of the Statute is to protect construction workers from elevation related risks. In this case, the Plaintiff's elevation related risk could have been reduced, or completely eliminated, had the Defendants provided proper and safe means of egress to and from the roof and provided Safety equipment.

INDUSTRIAL CODE RULES - NCRR12 § 23-1.5 (a); NCRR 12 § 23-1.7(b) NCRR 12 § 23-1.15(c); ;-NCRR 12 § 23-1.7(iii),

(1) It is my opinion the Defendants failed to ensure compliance with, and thus were in violation of the following Industrial Code Rules:

- **NCRR12 § 23-1.5 (a)** Health and Safety protection is required. The Defendants were required and failed to construct, equip, arrange, operate and provide safe working conditions and failed to provide reasonable and adequate protection for

the persons employed in the roof work including the Plaintiff. "No Employer shall suffer or permit an employee to work under working conditions which are not in compliance with the provisions of this rule."

The proper roof hatch should have been "constructed, placed and operated as to give proper Protection and allowed the Plaintiff a safe method of gaining access to and from the roof. The hatch door should have opened and operated to the side to allow for an unobstructed entry to the roof. The hatch door should have had a mechanism to lock the door while it was open. The Defendants should have installed extension poles, as sold by Bilco, that extend through the hatch door to provide a point to grab onto for support while ascending or descending.

- **NCRR 12 § 23-1.7(b)** Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place *or by a safety railing constructed and installed in compliance with this Part* (rule). Since a roof hatch is considered to be an opening in the roof, it must be protected with proper fall protection starting with a Guard rail around the hatch. Plaintiff has stated that guard rails were not utilized, thus the Defendants were in violation of this critical safety rule. If built correctly as per **Section 23-1.15** this accident could have been avoided.
- **NCRR12 § 23-1.7(iii)(c)** Personal fall arrest system should have been used including a safety harness with Lanyard attached to a secure hook to minimize the risk of falling from elevated heights. In my opinion the Defendants failed to provide safe working conditions by not providing a harness securely anchored that could have prevented Plaintiff falling 12' from the roof to the bottom of the ladder.
- **NCRR 12 § 23-1.16(a)** Defendants are also in violation of this rule by not supplying a harness with Lanyard securely anchored as it states,
" Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of

his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. (c) Instruction in use. Every employee who is provided with an approved safety belt or harness shall be instructed prior to use in the proper method of wearing, using and attaching such safety belt or harness to the lifeline.

CONCLUSION It is my opinion, to a reasonable degree of professional safety certainty, that the failure of the Defendants to furnish or erect or cause to be furnished or erected safe access to and from the roof and failure to provide other safety devices that should have been placed and operated as to give reasonable and adequate protection to the lives, health and safety of all persons employed was in violation of the State of New York Labor Laws and Industrial Code Rules, violation of Federal OSHA regulations, which are good and accepted construction industry customs and practices. The Defendants disregard of the above mentioned laws and regulations was the direct and proximate cause of the Plaintiff's debilitating accident, fall and injuries.