

Partner Don Derrico & Associate John Arias Secure Defense Verdict at Trial in Construction Case

CONTACTS

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Donald Derrico, Office Managing Partner of Westchester & Buffalo, and Associate **John Arias** won at trial on a complex construction claim. Our client retained a General Contractor (“GC”) to rebuild their outdoor parking structure, which involved removing and replacing the concrete decking. The plaintiff alleged two years after the construction was complete, she fell as she got out of her car when she stepped into a depressed expansion joint. The contractor’s carrier agreed to defend and indemnify the owner under a reservation of rights (“ROR”). The ROR was premised upon an allegation that the accident was due to the incorrectly installed expansion joint between the concrete slabs and a failure by the owner to maintain the premises properly.

The plaintiff sued the owner (our client), the General Contractor, and a subcontractor who installed the expansion joints between the concrete decking. Derrico was hired to try the case when a pre-trial mediation failed. Immediately thereafter, the plaintiff decided to discontinue against the GC and Sub, which left our client as the only remaining defendant. The plaintiff did so because he believed that all he had to do was prove that a defect existed regardless of who created it. However, at trial, Derrico successfully argued that the cause of the accident was the construction defect, and maintenance had nothing to do with it. This was significant because dismissing the improper maintenance claims invalidated the ROR and afforded the client owner full indemnity from the GC’s carrier.

If the jury determined that the owner was partially at fault for failing to maintain the premises properly, that

finding would sever the indemnity obligation of the GC's carrier. The jury deliberated for approximately one hour and found that the accident was caused by a negligently constructed expansion joint. The client and their carrier were delighted with the result.