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TOP PLAINTIFF LAWYERS

Skylight falls at epidemic levels: Turning point for consumer safety

By Bruce A. Broillet

While preparing to land at an airport recently, I was looking out the window and felt a mixture of sadness and hope. We were flying over warehouse after warehouse — large gray buildings with expansive flat roofs. My sadness was not because of the warehouse buildings, or the roofs, but because of the totally preventable danger each of those buildings had — unprotected skylights. I had not known until I started handling these cases that people falling through unprotected skylights is one of the most serious fall problems in America.

Falls through skylights typically involve a flat roof. Often, there are multiple skylights on the flat, accessible roof. Many of the roofs have rooftop equipment such as air conditioning units or satellite dishes. Workers may have to work on the roof around the skylights.

People might be on these roofs for any number of reasons and, whenever they are, they are exposed to the skylights. While some skylights are guarded or protected in some way, many are not. Predictably, people trip or slip or, through some other mechanism, interact with the unprotected skylight. Often, the unprotected skylight does not have the strength to hold the person's weight. The person falls through the skylight to concrete which might be located two, three or more floors below. The consequence of the fall typically is either death or catastrophic injury.

Falls through unprotected skylights are nothing new. The problem has been so serious and so frequent that the U.S. Department of Labor began keeping statistics on skylight fall deaths decades ago. Significantly, these statistics only record skylight falls involving workers, not the general population, and only as to falls resulting in death. Skylight falls involving non-workers are not included.

Skylight falls resulting in paralysis, brain injury, or other injuries, are not included either. Thus, when assessing the magnitude of the problem in America, the statistics kept by the government are conservative.

The repeated occurrence of these incidents demonstrates that the danger is not obvious to people on the roof. While they may be aware a skylight is present, they do not recognize that it is essentially a hole in the roof. The skylights are large and usually translucent. They seem to be quite substantial. They do not seem to be dangerous.

But there is a big caveat. While some manufacturers make stronger skylights, many skylights from other manufacturers start out too weak to support human weight. Moreover, whether it starts out as a strong skylight or a weak one, the plastic in the skylights tends to degrade over time due to the effects of ultraviolet light from the sun. What may have started out as a sturdy skylight, and many do not, becomes brittle over time. Worse yet, it is difficult even for a trained professional to identify by visual inspection which skylights can hold human weight, and which cannot.

By the early 1970s, safety publications began to discuss the burgeoning problem of skylight falls. As the number of skylights used to light buildings grew, the number of falls grew as well. The literature discussed various ways to protect skylights including guards or cages over the skylights, bars under the skylights which would catch people if they fell through, and guardrails around the skylights. In other words, the risks posed by this problem and various solutions have been known and published for at least half a century.

Because of the prevalence of this danger, and consistent with the principle that necessity is the mother of invention, companies came into existence as early as 1971 whose business it was to build and sell permanent

guarding for skylights. These companies demonstrated that the problem of skylight falls could be virtually eliminated with proper guarding. The literature from these companies confirms that skylight plastic degrades, the danger exists, the falls are foreseeable, the problem is serious, and the solution is available.

Those who defend against skylight fall cases argue that only a small percentage of skylights are guarded. The literature from the guarding companies, however, lists some of their customers including: General Motors, Georgia Pacific, Motorola, Southern California Edison, Sherwin Williams, General Electric, International Paper, Goodyear, Alcoa, Chrysler, Federal Department of Transportation, city of Columbus, Ohio, Home Depot, Kimberly Clark, Kraft Foods, University of Connecticut, Xerox, Edwards Air Force Base, city of Escondido, California. And the list goes on. Since all of the guarding companies are profit-making enterprises, how could they have been successful in business if no one was buying their product?

So, how do we get to a point where all such skylights are guarded as they should be?

There is an analog from the past. A century ago, foot-actuated punch presses were regularly chopping off workers' fingers and hands. Workers would accidentally hit the foot pedal while their hand was placing a part inside the press. The problem was so pronounced that the federal government began keeping statistics on those accidents. And engineers responded, a century ago, by developing two-hand controls to replace foot pedals, thereby ensuring that hands were outside the press when it was actuated.

It seemed like such a simple solution in the 1920s. But, incredibly, press manufacturers made the two-hand control safety devices optional. Purchasers, wanting to save money, bought the less expensive foot-

actuated variety of punch press. The amputations continued. Then, in the 1960s, the product liability lawsuits began. Trial lawyers across America started holding the press manufacturers accountable. The payouts grew and grew as jury after jury told the manufacturers that unprotected foot-actuated presses were defective in design. Gradually, press manufacturers discontinued foot-actuated presses and started selling only presses with two-hand controls. At a deposition in the 1980s, I asked an engineer for one of the major manufacturers why it was that his company had discontinued foot-activated punch presses. His answer was simple: There were just too many lawsuits.

We may now be at a similar inflection point in history but this time involving skylight safety. The more that the plaintiffs' bar across America holds different kinds of defendants accountable, the more likely it is that the epidemic of skylight falls will become as distant a memory as the dangers of foot-actuated punch presses. And that is why, as I looked out the airplane window, my sadness was tempered with hope — with the belief that the plaintiffs' bar can, as it has on so many issues for so many years, move us all in the direction of safety. ■

Bruce Broillet is a partner at the Santa Monica plaintiff's firm Greene, Broillet & Wheeler, LLP. He specializes in business litigation, wrongful death, personal injury, products liability, and professional malpractice.

