

Lawsuit Reform Alliance
of New York

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Lawsuit Reform Alliance of New York

Testimony to the New York Senate Majority Coalition

Regarding Regulatory Reform in the Construction Industry

September 25th, 2013

Thomas B. Stebbins, Executive Director

Members of the Majority Coalition:

Thank you for the opportunity to provide testimony on regulations and laws which strangle job growth and drive up local taxes in New York.

The Lawsuit Reform Alliance of New York is a non-partisan, non-profit association of businesses, professionals, doctors, growers, membership organizations, and taxpayers dedicated to reform of the legal system in order to foster a better business climate, promote job growth and address the growing cost of lawsuit abuse. Our members represent a diverse cross-section of the state's economic base, and employ thousands of New Yorkers statewide.

Easily the most burdensome and detrimental regulation in New York is Labor Law sections 240 and 241, commonly referred to as the "Scaffold Law." This statute imposes upon contractors and property owners a standard of absolute liability for all elevation-related injuries.

We support the complete elimination of absolute liability in favor of a standard of comparative negligence, as is the case in every other state, and in virtually all other areas of New York's civil justice system. At the absolute minimum, this standard should be applied in cases of gross negligence, intoxication, or failure to use safety equipment, as proposed in SB.111 and AB.3104.

The Scaffold Law Imposes Substantial Costs on the Construction Industry

New York's construction industry currently employs over 300,000 workers and is an important engine for the creation of middle class jobs and economic growth. In its current form, the Scaffold Law imposes substantial costs, chilling the growth of the industry. In recent years, insurance premiums have increased dramatically, as much as 20% for practice policies.¹ Moreover, many insurance carriers are electing to leave the General Liability market entirely, or mandating exclusions for Scaffold Law claims.² Rising premiums and higher deductibles mean employers must spend resources on insurance rather than hiring employees and bidding on jobs. This puts New York companies at a disadvantage against competition from out of state.

The Scaffold Law is a Barrier to the Participation of M/WBE Firms

Minority and Women-Owned Business Enterprises (M/WBE) are an important part of New York's economic engine, and barriers to their growth should be eliminated. Governor Cuomo has set a goal of 20% of state contracts to be filled by M/WBE's, approximately double the current ratio.³ However, given the insurance climate due to the Scaffold Law, this will be difficult to achieve among M/WBE construction contractors. A report by the Building Trades Employers Association identified the Scaffold Law as a major impediment to the growth of small

¹ Willis Group. "Construction Practice Blueprint." October, 2012.

http://www.willis.com/documents/publications/Industries/construction/Blueprint_October_2012_FINAL.pdf

² Green, Meg. "Mass Withdrawal of Construction Liability Writers in NY Traced Back to Scaffold Law." AM Best. 03 October, 2012.

³ Press Release: "Governor Cuomo Issues Executive Order Establishing Minority and Women Owned Business Enterprise Team." 17 February, 2011. <http://www.governor.ny.gov/press/021711minority-women-ownedbusiness>

contractors, most notably M/WBEs.⁴ In just one year, rising costs and reduced competition has nearly doubled premiums for Owner-Controlled Insurance Programs (OCIPs),⁵ which are a critical lifeline for many M/WBE firms, particularly in New York City. Due to rising costs, it is unlikely that the public authorities which currently offer OCIPs to MWBE contractors will be able to continue to do so. The loss of these programs will force hundreds of M/WBE firms to seek insurance coverage in the marketplace, which will prove prohibitively costly, if not impossible. This will jeopardize the viability of many M/WBE firms.

The Scaffold Law Increases the Cost of Taxpayer-Funded Capital Projects

Capital projects are a significant and essential function of the state and municipal governments. Many capital projects, such as maintenance and repair of existing structures cannot be delayed or eliminated without creating substantial future costs or compromising governments' ability to effectively fulfill essential functions. The absolute liability standard imposed by the Scaffold Law creates substantially higher costs for every taxpayer-funded construction project. Pure premium costs for construction projects in New York are the highest in the nation by over 300%.⁶ According to the Insurance Services Office, bridge and elevated highway construction liability loss costs in New York City are equivalent to 74.7% of payroll costs, compared to 15.7% and 11.0% in Chicago and Los Angeles respectively.⁷ The costs associated with the Scaffold Law are clearly illustrated by the New York City School Construction Authority's recent calculation that the law is currently costing the Authority \$75 million annually – enough to build 2-3 additional schools.⁸ Reforming the Scaffold Law would reduce the cost of capital projects, significantly benefitting taxpayers.

The Scaffold Law Imposes Direct Costs on Taxpayers When Public Defendants are Sued

Taxpayers bear the cost of the Scaffold Law directly when governments, agencies, and authorities are sued under this statute. The Scaffold Law's standard of absolute liability makes defending such a suit extremely difficult or impossible, even if the injured worker's own negligence significantly contributed to the accident. In an average year, New York's municipalities, excluding New York City, pay at least \$1 billion for lawsuits and legal judgments, including increased liability under the Scaffold Law.⁹ In 2012, 16 of the 30 highest legal settlements in New York were a result of the Scaffold Law, and of these, fully 25% were against public entities.¹⁰ These costs, in addition to the associated liability insurance costs, have a significant effect on taxpayers.

⁴ Building Trades Employers Association of New York City. A Blueprint for the Successful Growth of Minority and Women-Owned Construction Companies. 2005

⁵ Willis Group. "Construction Practice Blueprint." October, 2012.

http://www.willis.com/documents/publications/Industries/construction/Blueprint_October_2012_FINAL.pdf

⁶ Insurance Services Office (ISO) Data. General Liability Loss Costs by State/Region. 2010 Data.

⁷ *ibid.*

⁸ Chaban, Matt. "Builders, Insurers Stepping up Effort to Dismantle Scaffold Law." Crain's New York Business. 17 March, 2013

⁹ Creswell, S and Landon-Murray, M. *Assessing the Fiscal Impact of Lawsuits on New York State Municipalities*. Rockefeller College of Public Affairs and Policy, Program on Local and Intragovernmental Studies. October, 2011.

¹⁰ "Top New York Settlements 2012." ALM VerdictSearch.

Reforming the Scaffold Law Would Create Jobs and Stimulate the Economy

Reforming the Scaffold Law would lower the cost of insurance by reducing direct liability costs and making the insurance market more competitive by incentivizing carriers to re-enter the market. Lower insurance costs would allow businesses to grow, spur job creation and investment, and increase tax revenue. Historical evidence supports this assertion - following repeal of the Scaffold Law in Illinois in 1995, construction insurance loss costs fell by 91% over 5 years.¹¹ Employment increased by 54,000, or 25%, over the following 7 years, while construction fatalities declined by 26%.¹² Moreover, the reduced cost of construction would allow a higher level of investment in public capital projects, creating a substantial number of jobs. It is estimated that for each \$1 billion in additional spending on nonresidential construction would support approximately 28,500 jobs.¹³

New York remains the only state in the nation with an absolute liability standard for elevation related construction injuries. New York's construction industry and taxpayers can no longer afford this burdensome, outdated, and ineffective law. We respectfully urge the Senate Majority Coalition to consider eliminating the Scaffold Law's standard of absolute liability in favor of the more equitable standard of comparative negligence.

Thank you,

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¹¹ Data provided by Insurance Services Office, Experience-based loss costs for classes with significant elevation exposure.

¹² United States Bureau of Labor Statistics. Survey of Occupational Injuries and Illnesses (SOII). 1995-2010 Data.

¹³ Fuller, Stephen S., PhD. Testimony presented to the U.S. House of Representatives Committee on Transportation and Infrastructure Regarding Ensuring an Effective Economic Recovery Package. 22 January, 2009.

<http://www.agc.org/galleries/advy/090122%20T%20and%20I%20hearing.pdf>

APPENDIX

Figure 1.

Impact of Scaffold Law repeal in IL on construction employment and fatalities

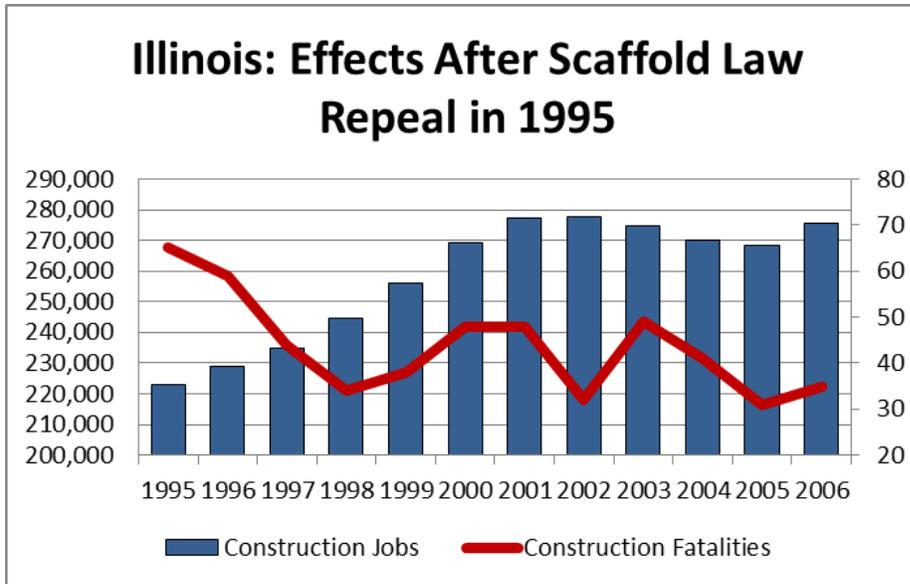
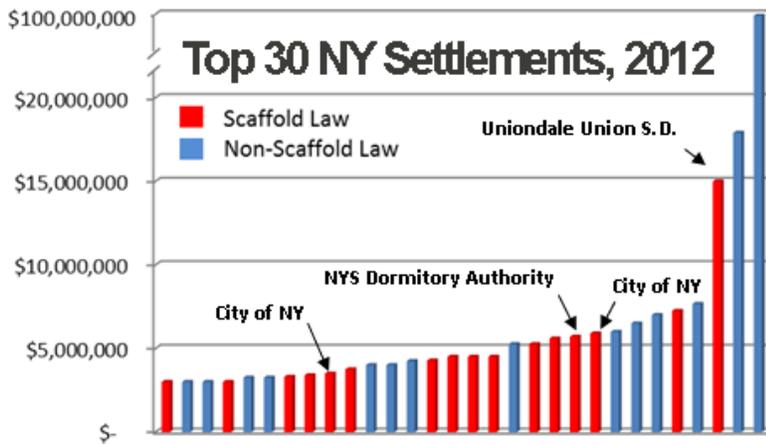


Figure 2.

Scaffold Law settlements and public entity defendants

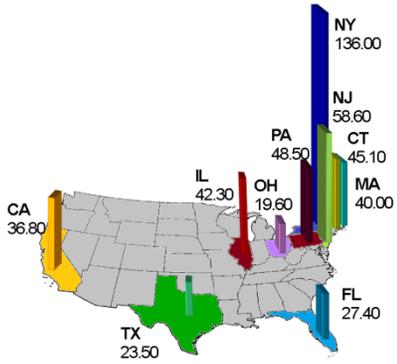


Source: ALM VerdictSearch

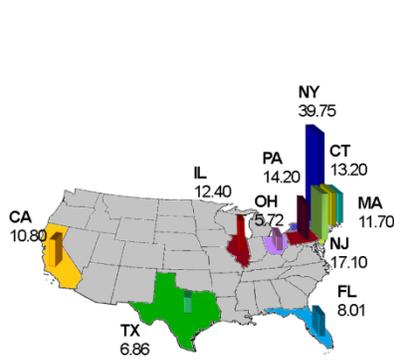
Figure 3.

ISO base loss costs for construction categories affected by the Scaffold Law

ISO Base Loss Costs, 2012
Bridge/Elevated Highway Construction



ISO Base Loss Costs, 2012
Concrete Construction



ISO Base Loss Costs, 2012
Structural Metal Construction

