

ONLY IN NEWSDAY

How an old law, new

More construction workers are staging fake accidents, industry advocates say

ONLY IN NEWSDAY

BY ROBERT BRODSKY
robert.brodsky@newsday.com

Some Long Island builders and contractors are blaming the rising costs of new construction not only on the escalating costs of steel and concrete but on the soaring price of commercial insurance.

They place blame on what they contend is a growing number of construction workers recruited and trained to stage fake construction accidents for big insurance payouts.

These staged — and often unwitnessed — accidents are designed to exploit a 140-year-old law exclusive to New York that places the blame squarely on owners and contractors in the event of construction site falls.

The law gives contractors and commercial property owners virtually no legal defense in the event of an accident, even in cases of worker negligence, so each fall can quickly blossom into expensive legal fees, medical bills and cash payouts to the alleged victim.

"It impacts whether you're building a school, a hospital, a commercial building," Michael Florio, chief executive of Long Island Builders Institute, a non-profit trade association, said of the so-called Scaffold Law.

While many of the expenses are incurred by private construction firms and their clients, New York taxpayers also are paying an estimated \$785 million annually in costs that trickle down from publicly funded projects, including school construction, bridge and rail projects, according to the Nelson A. Rockefeller Institute of Government, an Albany think tank.

For example, Willis of New York, which provides insurance and risk management services to the construction industry, said the Scaffold Law added \$200 million-\$400 million in additional insurance costs to one of its projects — the reconstruction of the structure now known as the Governor Mario M. Cuomo Bridge that was com-

pleted over the Hudson River in 2018.

Construction industry advocates contend the law increasingly is being exploited by unscrupulous people, who, often working in concert with medical providers and law firms, file false lawsuits from staged accidents in which workers pretend to be injured on job sites, generally in scenarios involving ladders or scaffolds.

The precise numbers of allegedly staged accidents are hard to pinpoint, but critics point to a significant increase in lawsuits in recent years involving people accused of staging accidents as part of what they say are vast criminal rings. A key problem, critics say, is that anyone allegedly caught staging an accident is faced with an A misdemeanor, an offense that at most leads to a year in jail.

Now legislators in Albany are pushing multiple proposals that would allow prosecutors to charge people who allegedly stage an accident with a felony.

Opposition to change

But there is significant resistance to the changes from influential groups who say this is a ploy by contractors to leave low-wage workers on some of the most dangerous job sites in the country with little financial recourse if they're legitimately injured on the job.

The New York Committee for Occupational Safety and Health, a nonprofit with offices in Hauppauge that advocates for workplace safety, contends the law keeps workers safe by holding employers and property owners liable for unsafe conditions.

The group released a March 4 report that found construction fatalities statewide increased 48% from 50 deaths in 2022 to 74 in 2023 — including seven on Long Island.

"Almost three out of every four incidents could have been prevented," Charlene Obernauer, NYCOSH's executive director, said in an interview. "But at the same time, New York City is one of the most dangerous places to be a construction worker, because they're working



Haugland Group's Sean Grubert cited "a ripple effect" affecting many tied to Scaffold Law exploitation.

A 140-year-old state law

is playing a role in spiking the cost of new construction statewide, according to some local contractors and builders, who cited the soaring cost of commercial insurance.

The so-called Scaffold Law holds commercial property owners and contractors completely responsible for falls at construction sites, even in cases when the worker was negligent.

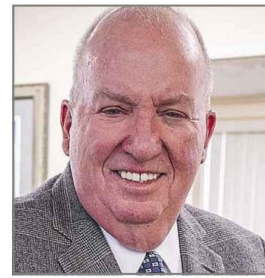
Critics argue the law is being exploited by those who stage fake accidents for hefty payouts, while supporters contend it holds contractors accountable for unsafe work conditions.

from heights in ways that workers in most other cities in the United States are not."

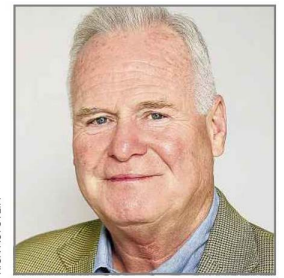
The issue also pits developers against trial lawyers, two influential groups in Albany.

'A ripple effect'

Figures on how many defendants have faced misdemeanor charges in New York due to such alleged scams were not available from the state Office of Court Administration, according to a spokesman, who said such cases



Insurance broker James Sutton calls the law a "hidden tax."



Republican Assem. Michael Fitzpatrick wants to amend law.

are combined with other insurance fraud offenses.

Sean Grubert, vice president of environmental health and safety at Haugland Group, a Melville-based contractor, said his company's insurance premiums have increased in recent years, largely due to what he sees as growing exploitation of the Scaffold Law. Those additional costs, he said, ultimately get passed on to the customer.

The company works on projects such as highway repaving, overhead and underground electrical distribution and sewage treatment plant repairs.

"Because parts of the system are, in essence, broken, it winds up being a ripple effect that impacts many of us," Grubert said.

Officially known as New York Labor Law 240(1), the Scaffold

Law holds commercial property owners, employers and contractors fully liable for accidents on construction sites, including falls or objects dropping from high places that injure workers. Workers aren't required to prove in a lawsuit that contractors or property owners were negligent — only that they sustained an injury involving "gravity."

The law applies to the owners of commercial properties such as apartment complexes and residential subdivisions, but not to the owners of one- or two-family homes unless they're acting as contractors or managing their construction or renovation projects.

General contractors who employ workers for projects on one- or two-family homes such as building, demolition, painting or other repairs or alter-

scams can cost lives



The old Governor Malcolm Wilson Tappan Zee Bridge, with parts of Governor Mario M. Cuomo Bridge.

“Almost three out of every four incidents could have been prevented. But at the same time, New York City is one of the most dangerous places to be a construction worker, because they’re working from heights in ways that workers in most other cities in the United States are not.”

— Charlene Obernauer, NYCOSH’s executive director

ations also can face Scaffold Law claims.

The law traces back to 1885 when there were few federal and state regulations to protect scaffold workers, who increasingly were getting injured on the job. At the time, many states nationwide had similar measures.

But laws in every state except New York were repealed or amended in the 20th century. In 1995, Illinois was the latest state to repeal its law.

Building and insurance industry experts said staged construction site accidents are seen predominantly in New York City, but increasingly on Long Island.

Some large contractors have seen a 200%-300% increase in Scaffold Law litigation against them in the past two to three years, according to the New York City Special Riggers Association, which represents people working on scaffolds, platforms and vertical lift devices.

Depending on the nature of the alleged injuries, settlements in Scaffold Law lawsuits

can reach tens of millions of dollars, according to attorneys who litigate these claims.

Federal lawsuits in New York

Last year, Ionian Re, a business that provides insurance to insurance companies, filed a pair of federal racketeering lawsuits in the Eastern District of New York against four law firms, five medical providers and dozens of people who filed claims under the Scaffold Law.

The claims allege the law firms recruited and groomed people, in some cases non-English speaking immigrants, to stage construction accidents and file fraudulent lawsuits and workers’ compensation claims. In many cases, the lawsuits allege, the accidents occurred on the final day of a construction project and when there were no witnesses.

The Ionian lawsuits, filed in October and November, contend the defendants “orchestrated a widespread fraud scheme” to exploit the Scaffold Law and make multimillion dollar claims for de-

bitating injuries from nonexistent accidents.

The suits allege law firms employed runners who recruited people to work at construction sites and stage accidents, before sending the alleged victims to preferred medical facilities to receive expensive and unnecessary treatment for ailments that those behind the lawsuits contend were bogus.

The November lawsuit documents a dozen allegedly staged construction accidents in which each of the injured workers either had family ties or knew each other through personal friendships or by working together.

“These relationships provided the conduit for such defendants to communicate, plan, and engage with each other and the plaintiff law firms in a scheme to defraud construction companies, their insurers, and the state of New York,” the November suit states.

In response to the suits, one law firm withdrew as counsel in hundreds of Scaffold Law cases,

including six of the cases named in the civil litigation, court records show.

Attorneys for the defendants described the allegations as “frivolous” and contend they make “unsubstantiated” allegations not supported by law. Medical providers, meanwhile, contend they only provided needed care for patients and were unaware of any fraud.

Merrick-based attorney Dan Johnston, who isn’t part of the cases but has defended several businesses against Scaffold Law claims, including on Long Island, said the problem is getting worse.

“Most of the claims that are triggering the actual payouts are bogus,” Johnston said, “or they’re trumped up to be something significantly more than they are by people treating it like a lottery.”

Legislative proposal

Assemb. Michael Fitzpatrick (R-Smithtown) recently reintroduced legislation that would amend the law to prevent workers who may have been impaired by drugs or alcohol, or who failed to follow safe work practices, from being guaranteed lawsuit damages following an accident. Adding a “comparative negligence standard,” he said, allows good-faith contractors the ability to defend themselves.

“It’s simply not fair because it becomes a license to steal, in a sense, for these people that stage accidents,” Fitzpatrick said. “When 49 other states have a comparative negligence standard and we don’t, that tells you something is wrong.”

Critics of the law in the construction and insurance industries contend previous efforts to amend the statute failed to pass in Albany following a blitz of lobbying from the New York State Trial Lawyers Association, a professional group of plaintiffs’ lawyers, along with the Building and Construction Trades Council of Greater New York. The latter is an umbrella group of building and construction trade unions that represents more than 100,000 tradespeople in New York City. Neither group responded to requests for comment.

A spokesman for Gov. Kathy Hochul said she’d review any changes to the law approved by

State Senate and Assembly lawmakers but otherwise declined to comment.

High insurance rates

Mike Elmendorf, president and CEO of the New York chapter of the Associated General Contractors of America, said the Scaffold Law is “making it very difficult to get insurance for construction activity in New York, because most of the carriers that write this type of liability coverage have fled the New York market.”

An April 2024 report by the New York Civil Justice Institute, a nonpartisan research organization, found construction insurance costs statewide represent 12.5% of a typical commercial project’s cost — the highest in the nation — compared to about 2.5% in nearby states like New Jersey, Connecticut and Pennsylvania.

However, Obernauer, the head of the New York Committee for Occupational Safety and Health, said the state’s construction industry continues to show post-pandemic growth while insurance rates are determined by factors including regional and company-based safety records.

“Employer responsibility does improve safety. When employers bear responsibility for accidents, they invest more in safety measures, training and proper equipment. And our belief is, it does reduce accident rates over time,” she added of the Scaffold Law.

But James Sutton, an East Islip-based insurance broker who works with the Island’s construction industry, describes the Scaffold Law as a “hidden tax” on New Yorkers who inherit the higher costs.

And with fewer companies willing to provide construction insurance, costs for businesses such as his have gone up considerably, making it nearly impossible to remain in operation, he said.

Sutton estimates that, on average, policies for builders in New York cost 40%-50% more than in neighboring states such as Connecticut or Pennsylvania. One of his clients — a mid-size contractor — now pays in excess of \$500,000 for liability coverage annually, he said.

“It’s adding tremendous cost to the system,” he said.