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Deconstructing the Construction Industry: the Effects of Labor Law 240/241 on the Home Building Industry in New York State

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Deconstructing the Construction Industry: The Effects of Labor Law §240/§241 on the Home Building Industry in New York State

By

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Chapter I

Introduction

New York State is known for being progressive in numerous legislative areas ranging from healthcare to affordable housing. However, when it comes to the subject of tort reform, lawmakers in Albany have been dragging their feet for some time. One area where New York State is clinging to archaic legislation is Employer liability, more specifically, New York State Labor Law Sections 240-241. These sections of New York’s Labor Law impose a strict liability standard on business owners in any case involving a gravity related injury. Simply put, these two sections deny a business owner the ability to provide any evidence in his or her defense when he or she is named as a defendant in a 240-241 lawsuit. In essence, the only matter left to discuss is the terms of settlement.

Over the past few decades, we have become an increasingly litigious society. Regardless of the level of frivolity of the lawsuit, an individual need not look very far to find an attorney willing to take on the case. Juries are becoming alarmingly willing to hand out cash awards to plaintiffs by the truckload. It has become ingrained in the mind of many American workers, that getting hurt is synonymous with getting paid. Not to say that the workers in question are inherently bad, however, they are simply succumbing to this new social norm.

The letter of the law, especially §240/§241 “give the litigant every opportunity and motive for exaggerating his symptoms. The worse his symptoms, the more he will get. In my experience, litigation gives rise to symptoms far more frequently than symptoms give rise to litigation. What happens is this: A person discovers that he has been the victim of some potentially actionable negligence,
whereupon his symptomatology begins to expand like ink on blotting paper. Ours being an age of information, the process is often speeded up by access to the Internet, with its myriad websites established by advocacy and self-help groups. The litigant, formerly healthy, rapidly succumbs to every kind of unprovable ailment: headache, loss of concentration, dizziness, depression, lack of energy, indifference to pleasure, anxiety, and so forth. Within a comparatively short time, even an active, vigorous, and intelligent person can be reduced to a gibbering wreck. When a man says that his whole life has been ruined by some trifling incident or accident, I know — without having to ask — that I am in the presence of litigation" (Dalrymple, 2003).

There was a time when a large settlement was not necessarily a huge setback to a company, as they would simply rely on their insurer to pick up the bill. Sooner or later, this was bound to catch up to the insured in the form of an insurance crisis. Many sectors of society have experienced some level of insurance difficulty. However, none have felt the impact that the New York State construction industry is currently faced with.

This is not a problem that has just jumped up and reared its ugly head. Industry advocates have been lobbying for a reform of Labor Law Sections 240-241 for several years, warning of the possibly devastating effect these statutes could have upon the insurance markets on which their constituencies so desperately rely. The New York State Builders Association has been working to reform these sections of the law for the last 15 years, each time running into political roadblock after political roadblock. The issue has finally built up to a boiling point where individual business owners are faced with increases in their insurance premiums approaching 1000%, if they are lucky enough to find a company willing to write a policy.
Research Question

What is the perceived effect of Labor Law §240 and §241 on the residential construction industry in New York State?

Subsidiary Questions

- Would the introduction of a culpable-conduct standard into §240 and §241 cause a lapse in jobsite safety?
- Would this amendment to the law rejuvenate the struggling liability insurance market?
- Has the current insurance crisis had an adverse effect on the home building industry in New York State?

Purpose of the Study

The author will address these questions with a study focusing on the original intent of the law, its legislative history, reviewed literature and original research on this topic. The author believes it is necessary to examine the evolution of worker safety legislation and tort reform in order to develop new legislation which would be mutually beneficial for employers and employees alike.

Objective

The author’s objective for this project is to develop a comprehensive document to be used in tort reform efforts by building advocacy groups. The current state of the liability insurance market in New York State is extremely limited for individuals in a
construction related industry. Business owners are experiencing increasing difficulty in procuring a liability insurance policy by an insurance carrier authorized to sell insurance in New York State. Upon finding a carrier who is able to write a policy, business owners are realizing premium increases ranging from 300-1000%. This harsh reality is forcing a number of builders and contractors either out of New York or completely out of business.

The home building industry is an important part of New York State’s economy. Tens of thousands of jobs are dependant on this industry. In order to ensure a competitive marketplace that provides affordable housing for all New Yorkers, the legislature must provide a business friendly environment.

Limitations

Labor Laws §240 and §241 are relevant to all construction in New York State. The scope of this study, however, focuses primarily on the residential construction industry.

Definition of Terms (Rupp's Insurance & Risk Management Glossary, 2002)

Absolute Liability - Liability for injury to others without regard to fault or negligence, arising from inherently dangerous activities (which may have economic or social value). It also may apply to defective or unreasonably dangerous products, provided the product reaches or affects the injured person without having been altered by another. Some states also impose strict liability for some violations of criminal law or public policy.
Culpable Conduct – conduct deserving of blame or censure as being wrong, improper or injurious.

Comparative Negligence - The apportionment of fault when both the plaintiff and the defendant contributed to a loss by failing to exercise the required degree of care. Damages for the plaintiff are decreased in proportion to his or her own negligence.

Contributory Negligence - An injured person's failure to exercise due care, which along with another person's (the defendant's) negligence, contributed to the injury. A common law defense, originating in England, that one who negligently harms another cannot be found liable.

Prima Facie - Evidence that by itself establishes the claim or defense of a party if it is not rebutted or contradicted.
Chapter II

Legislative History

It has always been the intent of the Legislature to protect the individuals who work in the construction industry. The roots of Labor Law §240 date back to 1885 when the original statute, Labor Law section §18 was enacted. This statute imposed criminal liability upon anyone knowingly or negligently providing a scaffold, hoist, stay, ladder or other mechanical contrivance that failed to provide proper protection to workers building, repairing, altering or painting a home, building or structure” (Lustig, 1999).

The original text of this statute specifically stated:

*Any person employing or directing another to do or perform any labor in erecting, repairing, altering or painting of any house, building or other structure within this state who shall knowingly or negligently furnish or erect, or cause to be furnished for erection...such unsuitable or improper scaffolding, hoists, stays, ladders, or other mechanical contrivances as will not give proper protection to the life and limb of any person so employed or engaged, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not to exceed Five Hundred Dollars, or imprisonment in a county jail for not less than thirty days or more than six months, or by both such fine and imprisonment, in the discretion of the court.*

Violators of this early statute were punished by a fine up to $500 and a jail term ranging from 30 days to six months.

Early Amendments

Obviously, the framers of this statute were understandably concerned with worksite safety. However, they felt the need to go further in 1897, when an amendment was written to address the fact that §18 had not accomplished the level of participation which they had originally intended. The new amendment was landmark, as it essentially
transformed §18 into what would become §240(1). The amendment deleted the words "knowingly or negligently", thus imposing the current absolute liability standard.

However, the statute was still a work in progress. "In response to the almost routinely successful assertion of assumption of the risk and contributory negligence defenses in actions brought under Labor Law §18, the legislature, through two separate enactments [L. 1902, Ch.600 §3 and L. 1909, Ch. 36 §202], modified these defenses. As evident to the legislature, the protection intended under Labor Law §18 (as well as other worker protection sections) had been subverted by the absolute bar to liability under the assumption of the risk defense which included risks unavoidably assumed by the nature or location of the work or awareness of the particular risk that came to fruition" (Lustig, 1999).

Assumption of Risk is defined as: "Knowing of a dangerous condition, a person voluntarily exposed himself to the risk that resulted in injury. It is a common law defense, which was widely used in employee injury cases prior to the enactment of workers' compensation laws. The theory was that an employee implicitly assumes all of the ordinary and usual risks of a job, but workers' compensation laws abolished the defense" (Rupp's Insurance & Risk Management Glossary, 2002). Contributory Negligence is defined as: "An injured person's failure to exercise due care, which along with another person's (the defendant's) negligence, contributed to the injury. A common law defense, originating in England, that one who negligently harms another cannot be found liable if the injured person himself was negligent in the slightest degree. This defense was often used by employers in suits brought by injured workers. Workers'
compensation laws made the defense inapplicable to claims for compensation; it is available only if an employee waives his compensation claim and instead sues an employer in tort” (Rupp's Insurance & Risk Management Glossary, 2002).

“Under the resulting statute, Labor Law § 202, the employee’s continuation of work at the same location after learning of the risk was no longer either an assumption of that risk or contributory negligence as a matter of law. Both defenses remained viable as fact issues which turned upon the specific knowledge of the worker as to the risk and the reasonableness of the worker’s conduct relative to the specific risk that resulted in the injury. The evolution towards true strict liability began here” (Lustig, 1999).

The amendments of 1902 and 1909 merely relaxed the applicability of the assumption of risk and contributory negligence defenses. However, the courts were still interpreting the assumption of risk defense too loosely. In order to decrease the number of non-judgments in jobsite injury cases, the courts decided to yet again amend the law in 1910. This amendment would abolish the assumption of risk defense altogether. The text of the amendment of 1910 is as follows:

In an action brought to recover damages for personal injury...owing to any cause, including open and visible defects, for which the employer would be liable but for the hitherto available defense of assumption of risk by the employee, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom shall not be, as a matter of fact or as a matter of law, an assumption of the risk therefrom.

“In the landmark case of Quigley v. Thatcher, 207 N.Y. 66 (1912), the Court of Appeals recognized Labor Law §18 as establishing a policy of comprehensive worker protection and, as such, ‘...Undoubtedly is to be construed as liberally as may be for the
accomplishment of the purpose for which it was thus framed..." id., at 68. In Quigley the defendant/general contractor was held liable for injuries resulting from a defective scaffold notwithstanding the fact that he had expressly disclaimed any responsibility for its safety to his subcontractor, plaintiff's employer" (Lustig, 1999). Furthermore, the burden of proof in the contributory negligence defense was shifted to the defendant as a result of the amendment of 1910.

The Birth of 240

In 1921, Labor Law §18 was renumbered as Labor Law §240 and the language was changed to include cleaning and pointing as protected activities. New York State Labor Law §240 places the duty of providing a safe work environment for all individuals engaged in height-related construction on the general contractor. The statute provides that all contractors and owners must furnish adequate safety devices for employees involved in building, demolition, painting, cleaning and other areas of construction work.

Specifically, the law states:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing a building or structure, shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed, and operated as to give proper protection to a person so employed (Lustig, 1999).

With the exception of the renumbering and the slight modification of the language, not much else changed in regard to the application of the statute. It was not until a case came before the courts in 1948, that the statute underwent any significant changes in application or interpretation. In the case of Koenig v. Patrick Construction
Corp., the Court of Appeals essentially made the contributory negligence defense non-applicable in §240 cases. "Relying upon the firm principle that a plaintiff's carelessness is no bar to his/her recovery under a statute which imposes liability regardless of negligence, the Court reasoned that, if Labor Law §240 liability is not dependent upon a defendant's negligence, the cause of action may not be defeated by a plaintiff's lack of care" (Lustig, 1999). This would represent the most significant extension of protection, and the transition into what has become the true absolute liability standard as it remains today.

In 1969, the New York legislature made two significant changes to Labor Law §240. The phrase "contractors and owners and their agents" replaced "a person employing or directing another". This provided a drastic expansion of possible defendants in a §240 liability case. Furthermore, the word directing was removed from the end of paragraph 1. This would now relieve the plaintiff of the burden of proving that he/she was significantly involved in the work which produced the injury (Lustig, 1999).

In 1980, the legislature passed an amendment conditionally exempting owners of one and two-family homes from §240 liability suits. The conditional exemption can only be applied when the owner of the home contracts for, but in no way supervises or directs any of the work being performed. However, if the homeowner in any way participated in the work being done, said owner was subject to the terms of liability stated in §240.

The last significant amendment made to §240 came a year later, in 1981, when design professionals who did not participate in the work being performed were found to be outside the scope of §240 liability lawsuits.
Workers' Compensation

"Workers' Compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses" (Legal Information Institute, para. 1).

New York State adopted the Workers' Compensation Act in 1910, as a result of two separate events. The first was the findings of Wainwright Commission in 1909 and the second, a tragic industrial fire occurring in 1911.

Jonathan Mayhew Wainwright, a New York City lawyer, was commissioned by Governor Charles Hughes in 1909 to lead an investigation into employers' liability and workmen's compensation. The ensuing report, issued in 1910, "Recommended closing loopholes in existing liability statutes and called for mandatory liability in certain industries. The Wainwright Commission called for a dramatic break with common law notions of negligence and a decisive shift toward making employers responsible for workplace accidents (Barry, Wainwright, Thatcher and Symmers, para. 3-4). Following the recommendations of the Wainwright Commission, New York State put into place the Workers' Compensation Act of 1910. New York was the first state to enact such legislation.

However, this act was found to be unconstitutional by the New York State Court of Appeals. Nonetheless, the second event, a 1911 fire at a garment factory in New York City pushed voters to pass a new law, the Workers' Compensation Act of 1914. The
Triangle Shirtwaist Company was a textile factory in New York City. On March 25, 1911, a fire broke out on the eighth floor of the Asche Building. Unsafe working conditions and building design prevented many workers from safely exiting the building. Over 140 women and children perished in the factory fire, sparking public outcry for increased regulation of fire codes and labor laws. Many say this was the catalyst for the Workers’ Compensation act of 1914 (Triangle Factory Fire, Para. 1-3).

Dole v. Dow

No court case in New York State history has had as much an effect on tort law as that of Dole v. Dow. Prior to this landmark decision, a worker who received compensation under Workers’ Compensation law would lose his right to sue his employer for negligence. However, the court’s decision in Dole v. Dow would change that, opening the door for unprecedented employee injury litigation.

In this case, a worker died as the result of inhaling chemical fumes while cleaning a grain silo at his place of employment. Since workers’ compensation law stated that his estate could not sue the employer due to the exclusivity clause contained in the statute, the employee’s wife filed suit against the manufacturer of the chemical cleaning agent, Dow Chemical Corporation. In turn, Dow Chemical Corporation filed suit against the injured employee’s employer to recover any losses suffered in litigation. This circumvented the exclusivity clause contained in the Workers’ Compensation Act.

However, the Dole v. Dow decision would later be repealed with the New York State Employment, Safety and Security Act. This legislation, signed into law by Governor George Pataki, made several changes to the current state of workers’
compensation in New York. The reform act repealed Dole v. Dow for all but grave injuries, which came as a huge relief to employers, many of whom had suffered losses as the result of third-party lawsuits.

**Occupational Safety & Health Administration**

In 1970, Congress passed the Occupational Safety & Health Act to address a growing number of work related injuries. This was defined as “An act to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes” (Occupational Safety & Health Act of 1970).

“The role of OSHA is to develop and enforce workplace safety standards, offer compliance assistance, training and education. OSHA standards are based on recommendations from its research arm, NIOSH, the National Institute for Occupational Safety and Health. Regulations are concerned with numerous safety hazards, including fires and explosions, dangerous machinery, moving and lifting equipment, noise, heat stress, vibration, ergonomic factors, and chemical exposures. OSHA’s track record reports a 40% reduction in the illness and injury rate, and a 50% reduction in fatalities since 1971, in light of an increase in employment from 56 million to 105 million in the same time period. However, OSHA is often criticized for overzealous enforcement of rules that burden management with excessive costs and regulations. In light of this reputation, and most probably an overburdened caseload and staff, OSHA has recently initiated voluntary compliance programs that reduce or eliminate the number of inspections required to assure compliance with regulations” (Slocum, 2000).

**Reform Opposition**

With the tightening of workers’ compensation laws and the implementation of programs like OSHA, it could be surmised that archaic legislation such as §240 and §241
would no longer be necessary. However, reform advocacy groups face a very powerful foe in the New York State Trial Lawyers Association (NYSTLA). The NYSTLA has lobbied extremely hard, spending hundreds of thousands of dollars annually in order to ensure that §240/§241 remain on the books, unchanged. With the current interpretation of these statutes, insurance companies are likely to settle out of court rather than go to trial for the simple fact that in most cases they don’t have a viable defense against §240/§241 claims. NYSTLA publicly claims that their desire to maintain §240/§241 on the books unchanged is founded on the principles of worker safety. They claim that any amendment to these sections of the labor law would take away any special considerations for elevation-related injury, and that safety would suffer. However, proponents of reform argue that regulatory agencies like OSHA have shown success in drastically decreasing the number of work related injuries and fatalities since its inception on 1970.

The opposition to §240/§241 will argue that the current statute allows for numerous viable defenses for a truly innocent contractor. They will argue that when a worker is actually at fault through his/her own refusal to comply with safety regulations and use proper supplied safety equipment, the so called “recalcitrant worker” defense can successfully be applied. Courts in New York have repeatedly asserted that “While the Legislature has sensibly acted to protect workers from a failure by owners or contractors to supply equipment or for supplying faulty equipment, the statutory protection does not extend to workers who have adequate and safe equipment available to them but refuse to use it. (Segalla, 1994). However, as case law has shown, this viable defense has little chance, if any of application in the courts.
Case Law

A prime example of this is the case of Gordon v. Eastern Railway Supply, Inc., _N.Y. 2d _, 606 N.Y.S.2d. 127 (1993). In this case, Mr. Gordon was injured as the result of a fall which occurred while sandblasting and using a ladder instead of a scaffold. The following facts were held to be true:

1. Two scaffolds were available on the worksite.

2. The employee handbook distributed to each employee unequivocally stated that ladders were not to be used for sandblasting.

3. Plaintiff was instructed during training never to use a ladder for sandblasting.

4. Plaintiff was observed using a ladder on more than one occasion and told not to do so because it was unsafe.

5. Plaintiff attended a safety meeting where he was instructed not to use a ladder.

6. Plaintiff admits he knew a ladder was unsafe and a scaffold was safer.

7. Plaintiff admitted on this occasion he chose to use a ladder because he could get the job done quicker.

The appellate division held in a 5-1 decision that simply providing equipment and giving instructions or guidelines as to the use of such equipment does not relieve the owner/contractor of liability in a §240/§241 case. In fact, the court’s decision stated that in order to fulfill the statutory duty, the owner/contractor must furnish, place and operate said devices as to give proper protection. However, in requiring that the owner oversee
that the available safety device is actually put in place and properly used places a burden of absolute supervision, a standard which the courts have repeatedly asserted that they did not intend to impose under §240 (Segalla, 1994).

The Gordon case is a prime example of the courts' refusal to accept any viable defense to a §240 lawsuit. While in principle, the recalcitrant worker defense does exist, it is rarely if ever successfully applied. The following cases are additional examples of futile attempts at mounting a recalcitrant worker defense.

- Stolt v. General Foods Corp., 81 N.Y.2d 918 (1993). Plaintiff had been instructed not to use a "broken" ladder unless someone else assisted. Plaintiff climbed the ladder anyway and was injured when he fell. The court held the recalcitrant worker defense had no application where no adequate safety devices were provided. Here there was mere instruction.

- Hagins v. State of New York, 81 N.Y.2d 921 (1993). Plaintiff was injured when he fell from an unfinished abutment which he had repeatedly been told not to walk across. It appears no safety devices were provided him in that instance.

- Laurie v. Niagara Candy, Inc., 188 A.D.2d 1075 (4th Dept. 1992). Plaintiff while not using the safety belt and tie line that he was wearing, fell from a ladder. The court refused to apply the recalcitrant worker defense because no proof was offered that he was told to use it under the circumstances in which he fell.

- Lickers v. State of New York, 118 A.D.2d 331 (4th Dept. 1992). The court held that the defendants established only that there was a scaffold available in the sandhouse and that the plaintiff had attended several safety meetings that included
not sandblasting from a ladder. They held that the defense was not applicable here because there was mere instruction.

- Donovan v. City of Buffalo, 185 A.D.2d 703 (4th Dept. 1992). Plaintiff fell from an elevated worksite and at the time was not wearing a safety belt or lanyard which he knew were available on the project site. The court did not apply the defense because the owner and contractor's duty is not satisfied by merely making safety devices available on site and there was not any proof that the plaintiff refused to use said devices.

- Koumananos v. State of New York, 141 A.D.2d 189 (3d Dept. 1988). Plaintiff was injured when struck in the head with a cable causing plaintiff to fall from a ladder. Plaintiff was not using a safety helmet which was available on site. The court in refusing to apply the defense noted that there was no evidentiary showing that the plaintiff "deliberately" refused to use a hard hat.

- Murray v. Niagara Frontier Transportation Authority, et al., _A.D.2d_ 607 N.Y.S.2d506 (4th Dept. 1993). Plaintiff fell 25 feet while cutting a steel bank around a bundle of lumber. A piece of lumber struck him in the chest causing him to fall. A safety line had been installed eight feet from roof's perimeter and safety belts were available on site. Court refused to apply recalcitrant worker defense because there was no evidence that the plaintiff refused to use this safety device. (Segalla, 1994)
Proposed Legislation

The proposed amendments to §240/§241 in no way try to preclude an injured worker from entering into litigation against his/her employer. The amendments simply require proof of negligence on the part of the employer. The amendments would also allow introduction of evidence showing culpable conduct on the part of the injured employee. The proposed amendment would require that safety devices and training in the use of such devices be provided at the expense of the employer. The following is the sponsor’s memo for the proposed legislation:

**TITLE OF BILL:**
An Act to amend the Labor Law, in relation to the use of scaffolding and other devices for use by employees and to repeal section 241-a of such law and subdivision 8 of section 1602 of the Civil Practice Law and Rules relating thereto

**PURPOSE OR GENERAL IDEA OF BILL:**
This bill would clarify the duties and obligations of contractors, owners, and employees regarding protection devices and equipment for construction workers.

**SUMMARY OF SPECIFIC PROVISIONS:**
Subsection (1) of Section 240 of the Labor Law is amended to require certain contractors and owners and their agents (1) to provide construction workers devices and equipment of the type necessary to give reasonable protection to workers employed on the construction site; and (2) when such devices and equipment are provided, to construct, place, and operate such devices and equipment as to provide reasonable protection to those workers.

Former subsections 2 and 3 of Section 240 are repealed. Two new provisions are added. As amended, subsection (2) states that if a contractor or owner complies with applicable state and federal health and safety regulations, their compliance shall be **PRIMA FACIE** proof of compliance with subsection 1. As amended, subsection 3 conforms section 240 with section 1411 of the Civil Practice Law and Rules.

Section 241 is amended to conform with Section 240 as amended. Subsections 1-5 and 7 are effectively repealed. Subsection 6 becomes subsection 1; subsections 2 and 3, as amended, conform with subsections 2 and 3 of section 240.
Section 241(a) is repealed. Subdivision 8 of Section 1602 of the CPLR, as enacted by Chapter 682 of the Laws of 1986, is repealed.

JUSTIFICATION:

These amendments are necessary as a result of a Court of Appeals decision misinterpreting the clear legislative intent of Section 240. See ZIMMER V. CHEMUNG COUNTY PERFORMING ARTS, 65 N.Y. 2D 513 (1985) BLAND V. MANOCHERIAN, 66 N.Y. 2D 452 (1985). Indeed, in the ZIMMER decision, Chief Judge Wachtler, in a dissenting opinion, appealed for legislative reform of Section 240.

These decisions by the Court of Appeals have held that a contractor or owner is liable for virtually any injury suffered by construction workers on a job site, regardless of whether the contractor or owner had done everything they should have done to protect the worker from injury and regardless of whether or not the injury was caused by the worker's own negligence. These decisions have made contractors and owners insurers of workplace safety, and in essence have made them a second source of worker's compensation for workers who suffer injuries on the jobsite.

The theory of strict liability advanced by the Court of Appeals' decisions has resulted in a substantial increase in the number of civil suits filed against contractors and owners. These lawsuits can only exacerbate the liability insurance crisis faced by construction industry employers. Without legislative relief, construction firms employing thousands of workers will be unable to find affordable insurance and will be forced to shut their doors. As Chief Judge Wachtler observed in ZIMMER, the ultimate victims of the current statute may be the very workers it was designed to protect: "Because I read the statutory policy underlying Labor Law Section 240 as encouraging owners and contractors to provide safety devices where possible, and not to provide insurance coverage to their employees (who are already covered by workers' compensation), I respectfully dissent, AND URGE THE LEGISLATURE TO AMEND THE STATUTE AND MAKE THIS INTENT MORE CLEAR (emphasis added). The imposition of insurers liability on owners and contractors will not further the goal of protecting workers because the absent devises cannot protect them. It will, however, hurt the building industry and perhaps cost those already adequately protected workers their jobs."

This bill is designed to remedy the obvious problems with the Court of Appeals interpretation of Section 240 noted by Chief Judge Wachtler. It would impose a negligence liability standard on contractors and owners, rather than the insurers' liability imposed by the Court of Appeals. It would also provide guidance to contractors and owners who must comply with a confusing array of federal, state, and local building codes and regulations by making compliance with the federal OSHA regulations
PRIMA FACIE evidence of compliance with Section 240. It would also promote workplace safety by making workers responsible for their own culpable acts.

Finally, it would be a significant step towards alleviating the serious liability insurance problems confronting both the construction industry and, ultimately, all those whose livelihoods depend upon a vigorous construction industry.

As additional justification, the Governor's Liability Commission in July, 1986, reviewed the equity and implications of this law in regard to liability issues in general and urged the law be amended in a fashion similar to that proposal. Specifically, it recommended:

"Sections 240 and 241 of the Labor Law be amended to impose tort liability on owners and contractors for failure to provide construction site safety devices only in cases where they are adjudged to be negligent, and to diminish all verdicts by the amount of the employee's own culpable conduct. If any is found." (Volker, 2001).

Efforts to reform these sections of the labor law have been active since 1985. Every year, the proposed bill dies in the legislature, either stalling in committee or being voted down. The closest it has come to being passed was in 1996 when it was included in the omnibus workers' compensation reform package. However, it was negotiated out of the bill in the final hours before the bill went to vote.

Public officials, building advocacy groups and insurance coalitions stress that the time for change is now. "The concept has been around for awhile, but now the situation is in crisis because there is a lack of markets and the costs are rising. That has created some urgency to change the law," said Michael Barrett, legislative representative for the Independent Insurance Agents Association of New York, based in Syracuse" (Ruquet, 2001).

New York State Builders Association Executive Vice President, Phillip LaRocque, echoed Mr. Barrett's sentiments. "Hardest hit, LaRocque said, are small to mid-sized contractors who cannot absorb the increases. He said that some 550 companies
have seen their coverage canceled by traditional carriers because of the situation. How
do you underwrite if there is unlimited liability?" (Ruquet, 2001)

Non-renewal and limited availability of liability products has become a reality for construction company owners over the past year. "American Protection Insurance Co. sent out non-renewal notices to contractors on August 9, citing as reasons 'an unacceptable loss experience and unavailability of reinsurance (Korman, 2002)." The market has hardened to the point that there are very few companies left in New York willing to write a liability insurance policy for a builder. Liability insurance carriers are either raising their rates to astronomical levels or pulling out of the New York market. It has gotten to the point where it is no longer economically viable for them to remain in the construction-liability industry (Mazzucca, 2002).
Chapter III

Purpose of Survey

The intent of developing the survey was to assess the perceptions of individuals involved in the building industry in regards to Labor Law §240/§241 and its overall influence on jobsite safety. Additionally, if the situation were to remain unchanged, the author wanted to discover the propensity of these business owners either to leave the building industry or move their business out of New York for a more business friendly climate. The author found in reviewing the literature that there were two very distinct viewpoints present, those for reform and those against reform. Conducting the survey gave the author the ability to work directly with those affected by the statutes in question, and gain first hand knowledge of effects of the current law.

Design of Survey

The survey included a list of ten statements that were measured using the Likert Scale: a survey system utilizing a five-point rating. The rating system consisted of five separate responses: SA (Strongly Agree), A (Agree), N (Neutral), D (Disagree) and SD (Strongly Disagree). Each statement in the survey took a stance on the current climate of the construction industry in New York State. The author's intention was to elicit either a positive or negative response in respect to the effects of Labor Law §240/§241 on construction companies and other related businesses.

Survey Sample

The goal was to survey at least 50 individuals involved in a construction-related field in order to formulate empirical data relevant to this study. Each of these individuals
was a member of the New York State Builders Association, thus having proximate
knowledge of the statutes in question and the current climate of the construction and
insurance industries in New York. The survey was handed out at the annual Board of
Directors and General Membership meeting held on December 6, 2002 at the Roosevelt
Hotel in New York City.

The author gave a brief overview of the project and distributed the survey to those
in attendance. Additional surveys were given to local association executives with the
intent of reaching members who were unable to attend the annual meeting. The bulk of
the surveys were collected on site, however several were sent in at a later date by those
who were not in attendance at the meeting.

The respondents came from a diverse background both geographically and
demographically. A wide variety of occupations were represented, covering general
contracting, remodeling, banking/finance, insurance, sub-contracting and supply chain.

Respondents came from all across New York State; however, the author broke the
state down into four regions or tiers. Region 1 covers Schenectady, Albany and Northern
New York. Region 2 covers Rockland County Builders Association and Builders
Association of the Hudson Valley. Region 3 covers Queens County Builders and
Remodelers Association, Long Island Builders Institute, Associated Builders and Owners
of Greater New York, and Building Industry Association of New York City. Region 4
covers Niagara County Builders Association, Buffalo/Niagara Builders Association and
Rochester Home Builders Association. Region 5 covers Home Builders Association of

Additionally, several economic sectors of the industry are also represented, ranging from those respondents who do $100,000-$300,000, $300,000-$500,000, $500,000-$700,000, $700,000-$1,000,000 and over $1,000,000.
Chapter IV.

Analyzing Results of the Survey

<table>
<thead>
<tr>
<th>Question #</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neutral</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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</thead>
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<tr>
<td>1</td>
<td>25 = 46.5%</td>
<td>29 = 51.9%</td>
<td>2 = 3.6%</td>
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<td>10 = 17.9%</td>
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<td>20 = 35.8%</td>
<td>2 = 3.6%</td>
<td>0 = 0%</td>
<td>0 = 0%</td>
</tr>
<tr>
<td>4</td>
<td>1 = 1.8%</td>
<td>1 = 1.8%</td>
<td>1 = 1.8%</td>
<td>20 = 35.8%</td>
<td>33 = 59.1%</td>
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<td>1 = 1.8%</td>
</tr>
<tr>
<td>9</td>
<td>1 = 1.8%</td>
<td>0 = 0%</td>
<td>4 = 7.2%</td>
<td>19 = 33.8%</td>
<td>32 = 57.3%</td>
</tr>
<tr>
<td>10</td>
<td>46 = 82.3%</td>
<td>10 = 17.7%</td>
<td>0 = 0%</td>
<td>0 = 0%</td>
<td>0 = 0%</td>
</tr>
</tbody>
</table>

Quantitative Results With Questions

Statement 1. Usually, general contractors take reasonable measures to ensure jobsite safety.

For this statement, 25 respondents strongly agreed that contractors take reasonable measures to ensure jobsite safety; 29 respondents agreed with the statement, 2
respondents took a neutral position, 0 respondents disagreed with the statement and 0 respondents disagreed with the statement.

Since an overwhelming majority of the respondents (96.4 percent) either strongly agreed or agreed with this statement, we can conclude that it is the strong belief among the responding members of the New York State Builders Association that in general, contractors are taking reasonable measures to ensure jobsite safety.

**Statement 2. Typically, workers correctly utilize safety devices available on jobsites.**
For this statement, 16 respondents strongly agreed that workers correctly utilize safety devices available on jobsites, 24 respondents agreed with the statement, 10 respondents took a neutral position, 6 respondents disagreed with the statement and 0 respondents strongly disagreed with the statement.

Again, a majority of the respondents (71.5 percent) either strongly agreed or agreed with this statement, we can conclude that it is a strong belief among the responding members of the New York State Builders Association that typically, workers correctly utilize safety devices available on jobsites.

**Statement 3. In recent years, the increase in advertising of personal injury attorneys has contributed to the growing number of construction site related lawsuits.**
Thirty-four respondents strongly agreed that the increase in advertising of personal injury attorneys has contributed to the growing number of construction site related lawsuits, 20
respondents agreed with this statement, 2 respondents took a neutral position on this statement, 0 respondents disagreed with this statement and 0 respondents strongly disagreed with this statement.

A large majority of the respondents (96.4 percent) either strongly agreed or agreed with this statement, it can be concluded that there is a strong belief among the responding members of the New York State Builders Association that the increase in advertising has had a definite impact on the number of construction site related lawsuits.

Statement 4. Most builders can easily absorb increases in their insurance premiums by incorporating the cost into their job quotes.

One respondent strongly agreed with the statement that most builders can easily absorb increases in their insurance premiums by incorporating the cost into their job quotes, 1 respondent agreed with this statement, 1 respondent took a neutral position on this statement, 20 respondents disagreed with this statement and 33 respondents strongly disagreed with this statement.

A large majority of the respondents (94.9 percent) either strongly disagreed or disagreed that most builders can easily absorb their insurance premium increase by incorporating the cost into their job quotes. Thus, it can be concluded that there is a strong belief among the responding members of the New York State Builders Association that insurance premiums must come down in order for construction companies to remain prosperous.
Statement 5. The combination of the slumping economy and the increasing liability insurance premiums will chase smaller volume builders out of the industry.

Thirty-five respondents strongly agreed that the combination of the slumping economy and the increasing liability insurance premiums will chase smaller volume builders out of the industry, 20 respondents agreed with this statement, 1 respondent took a neutral position, 0 respondents disagreed and 0 respondents strongly disagreed.

Since an overwhelming majority of respondents (98.2 percent) either strongly agreed or agreed with this statement, it can be concluded that it is a strong belief among the responding members of the New York State Builders Association that “The combination of the slumping economy and the increasing liability insurance premiums will chase smaller volume builders out of the industry.”

Statement 6. Introduction of a culpable conduct standard into §240-§241 would result in a noticeable lapse in jobsite safety.

One respondent strongly agreed that the introduction of a culpable conduct standard into §240-§241 would result in a noticeable lapse in jobsite safety, 1 respondent agreed with this statement, 3 respondents took a neutral position, 18 respondents disagreed and 33 respondents strongly disagreed.

Since the large majority (91.3 percent) either disagreed or strongly disagreed with this statement, it can be concluded that there is a strong belief among responding members of the New York State Builders Association that introduction of a culpable
conduct standard is a very viable option and would not greatly decrease worker safety on
jobsites.

Statement 7. There has been a noticeable decline in the number of carriers offering
liability insurance policies over the last five years.
Forty-one respondents strongly agreed that there has been a noticeable decline in the
number of carriers offering liability insurance policies over the last five years, 15
respondents agreed with this statement, zero respondents took a neutral position, zero
respondents disagreed and zero respondents strongly disagreed.
Since 100 percent of the respondents either strongly agreed or agreed with this
statement, we can conclude that it is the strong belief of the responding members of the
New York State Builders Association that there has been a noticeable decline in the
number of carriers offering liability insurance policies over the last five years.

Statement 8. If the current liability insurance situation were not remedied, I would
consider taking my business out of state.
Seven respondents strongly agreed that if the current liability insurance situation was not
remedied that they would consider taking their business out of state, 14 respondents
agreed with this statement, 32 respondents took a neutral position, two respondents
disagreed with this statement and one respondent strongly disagreed.
The majority (57.3 percent) of the respondents took a neutral stance, while 37.6 percent either strongly agreed or agreed that they would consider relocating their businesses out of state if the current situation were not remedied.

Statement 9. The Legislature has taken a "common sense" approach when voting on the proposed Safe Place to Work legislation.

One respondent strongly agreed that the legislature has taken a "common sense" approach when voting on the proposed Safe Place to Work legislation, zero respondents agreed with this statement, four respondents took a neutral position, 19 respondents disagreed and 32 respondents strongly disagreed.

Since a large majority (91.1 percent) either disagreed or strongly disagreed with this statement, it can be concluded that there is a strong belief among responding members of the New York State Builders Association that the Legislature has yet to take a "common sense" approach to voting on proposed Safe Place to Work legislation.

Statement 10. One of the biggest obstacles facing proponents of labor law reform is the seemingly limitless funds available to the powerful lobbies such as the New York State Trial Lawyers Association.

Forty-six respondents strongly agreed that one of the biggest obstacles facing proponents of labor law reform is the seemingly limitless funds available to the powerful lobbies such as the New York State Trial Lawyers Association, 10 respondents agreed with this
statement, zero respondents took a neutral position, zero respondents disagreed and zero respondents strongly disagreed.

One hundred percent of the respondents either strongly agreed or agreed with this statement. It can be concluded that it is a strong belief of the responding members of the New York State Builders Association that powerful lobbies such as the Trial Lawyers Association are the biggest obstacle in overcoming the current situation.

**Cross Tabulations**

In order to give further insight into the results of the survey, the author has performed cross tabulations, designed to show how different demographics responded to different questions. First, the author will examine the relation between volume and the response to survey statement 8; “If the current liability insurance situation were not remedied, I would consider taking my business out of state.”

In examining the responses to the statement “If the current liability insurance situation were not remedied, I would consider taking my business out of state” cross referenced with each sector of volume, the author determined the propensity to leave is

**Figure 1 - Volume vs. Tendency to Relocate Business**

<table>
<thead>
<tr>
<th>Volume</th>
<th>Relocate</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Total</th>
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<tr>
<td></td>
<td>SA</td>
<td>A</td>
<td>N</td>
<td>D</td>
<td>SD</td>
<td></td>
</tr>
<tr>
<td>$100,000 - $300,000</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td></td>
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<td>$300,000 - $500,000</td>
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<td>$700,000 - $1,000,000</td>
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<td>6</td>
<td>1</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>&gt;$1,000,000</td>
<td>3</td>
<td>7</td>
<td>21</td>
<td>1</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>14</td>
<td>32</td>
<td>2</td>
<td>1</td>
<td>56</td>
</tr>
</tbody>
</table>
directly related to the volume of the builder. In the volume range $100,000 - $300,000, 50 percent of the respondents either strongly agreed or agreed that they would consider taking their business out of state. The remaining 50 percent took a neutral stance on the statement.

In the $300,000 - $500,000 volume range, 66.7 percent of the respondents agreed that they would consider taking their business out of state. The remaining 33.3 percent of the respondents took a neutral stance.

In the $500,000 - $700,000 volume range, 50 percent of the respondents either strongly agreed or agreed that they would consider taking their business out of state. Twenty-five percent of the respondents took a neutral stance while the remaining 25 percent strongly disagreed.

It is not until the $700,000 - $1,000,000 volume range where the author saw that the majority (60 percent) of the respondents took a neutral stance, while 10 percent disagreed with the statement and 30 percent of the respondents either strongly agreed or agreed that they would consider taking their business out of state.

Likewise, in the greater than $1,000,000 volume range, the majority (65.6 percent) of the respondents took a neutral stance, 31.2 percent either strongly agreed or agreed, and 3.1 percent of the respondents disagreed with the statement that if the current liability situation was not remedied, they would consider taking their business out of state.
Figure 2 – Region vs. Tendency to Relocate Business

<table>
<thead>
<tr>
<th>Region</th>
<th>SA</th>
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<th>N</th>
<th>D</th>
<th>SD</th>
<th>Total</th>
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<td>6</td>
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<td>13</td>
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<td>Hudson Valley/Rockland</td>
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<td>2</td>
<td>11</td>
<td>1</td>
<td></td>
<td>16</td>
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<td>2</td>
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<td></td>
<td>9</td>
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<td>Buffalo &amp; Rochester</td>
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<td>3</td>
<td>1</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>CNY/Southern Tier/Tompkins Cortland</td>
<td>1</td>
<td>3</td>
<td>6</td>
<td>1</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>14</td>
<td>32</td>
<td>2</td>
<td>1</td>
<td>56</td>
</tr>
</tbody>
</table>

In examining the responses to the statement "If the current liability insurance situation were not remedied, I would consider taking my business out of state" cross referenced with the local region of each respondent, the author is attempting to show the shift in attitude from one region to another regarding the likelihood of a business owner to relocate to another state. The total response to this statement shows 40.4 percent of the respondents either in strong agreement or agreement with this statement. A majority of the respondents (57.1 percent) took a neutral position while only 5.4 percent either disagreed or strongly disagreed. When examining the responses by geographic region, the author was able to determine that respondents located in the Northern New York region (Albany, Schenectady and Northern New York Locals) were much more apt to relocate, with 53.8 percent either in strong agreement or agreement with the statement in question and the other 46.2 percent taking a neutral stance.
Conversely, the Hudson Valley/Rockland region saw only 25 percent of the respondents in either strong agreement or agreement, 68.8 percent take a neutral stance and 6.3 percent in disagreement.

The Long Island/New York City region had 33.3 percent of the respondents either strongly agree or agree that they would consider taking their business out of state. The remaining 66.7 percent of the respondents took a neutral stance on the statement.

The Buffalo/Rochester region had 42.9 percent of the respondents either strongly agree or agree that they would consider taking their business out of state if the current situation were not remedied. Similarly, 42.9 percent of the respondents took a neutral stance with the remaining 14.3 percent disagreeing with the statement.

The Central New York/Southern Tier/Tompkins Cortland region had 36.4 percent of the respondents either strongly agree or agree that they would consider taking their business out of state if the current situation were not remedied. The majority of this region (54.5 percent) took a neutral stance while the remaining 9.1 percent strongly disagreed with the statement.
Figure 3 – Classification vs. Tendency to Relocate Business

<table>
<thead>
<tr>
<th>Region</th>
<th>SA</th>
<th>A</th>
<th>N</th>
<th>D</th>
<th>SD</th>
<th>Total</th>
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<td>General Contractor</td>
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<td>9</td>
<td>18</td>
<td>2</td>
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<td>35</td>
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<tr>
<td>Sub Contractor</td>
<td></td>
<td>2</td>
<td>1</td>
<td></td>
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<td>3</td>
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<td>Remodelor</td>
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<td>14</td>
<td>32</td>
<td>2</td>
<td>1</td>
<td>56</td>
</tr>
</tbody>
</table>

In examining the responses to the statement “If the current liability insurance situation were not remedied, I would consider taking my business out of state” cross referenced with the classification of the respondent, the author is attempting to draw a connection between industry sector and likelihood to relocate given the present situation.

In the classification of General Contractor, 40 percent of the respondents either strongly agreed or agreed that they would consider relocating to another state if the current situation were not remedied. The majority (51.4 percent) took a neutral stance, 5.7 percent disagreed and 2.9 percent strongly disagreed with the statement.

Of the subcontractors, 66.7 percent of the respondents agreed with that they would consider relocating to another state if the current situation were not remedied. The remaining 33.3 percent of respondents took a neutral stance.
Of the Remodelors, 100 percent agreed that if the current situation were not remedied they would consider relocating their business to another state.

In the insurance and banking industries, 100 percent of the respondents took a neutral stance. The author feels that this is due solely to the nature of their industry; that only a small percentage of their business lies within the building industry, thus relocation would not be fiscally prudent.

Of the suppliers surveyed, 33.3 percent of the respondents strongly agreed that they would consider relocating their business if the current situation were not remedied. The remaining 66.7 percent took a neutral stance on the issue. Unlike the insurance and banking industries, some suppliers rely almost exclusively on contractors for the bulk of their business. A steady decrease in number of customers, would subsequently force these suppliers to either tap another market sector or move their business.

**Survey Conclusions**

Sections 240-241 of the New York State Labor Law evoke a great deal of emotion in all involved parties. After all, they are statutes that have a direct impact on the ability of thousands of individuals to make a living. When developing the survey, the author carefully chose statements which he knew would the respondents would feel very strongly about on either end of the Likert scale. Having worked very closely with contractors for almost two years, often dealing with the issue of §240/§241, the author had certain expectations in terms of the responses elicited. After conducting the survey and tallying the results, many of the author’s expectations were supported.
First, contractors generally feel that general contractors generally take reasonable measures to ensure jobsite safety. In conducting several face-to-face interviews with contractors, it could be concluded that with the skilled labor shortage, the last thing a contractor can afford is to lose a valuable member of his or her crew. In fact, many confess that they now are going above and beyond the mandated safety standards in order to lessen the chances of worker injuries.

The second validation was the attitude among the respondents regarding the relation between the increase in the advertising of personal injury attorneys and the growing number of construction site related lawsuits. With over 95 percent of the responses lying in either SA (Strongly Agree) or A (Agree), it reinforced the author’s notion that the construction industry generally blames the attorneys for driving up the number of lawsuits.

Another validation was the general feeling that powerful lobbies, mainly the NYSTLA (New York State Trial Lawyers Association) and their seemingly bottomless bank accounts are largely responsible for §240/§241 remaining intact for so many years. With 100 percent of the respondents answering either SA or A to statement 10, it is clear how the construction industry feels about this issue.

Perhaps the biggest revelation in the results of the survey is the neutrality of the respondents in respect to relocating their business if the current situation (§240/§241) is not remedied. While the author did not come in with an expectation as to whether the responses would slant to one side or the other, it was expected that the majority of the responses would fall either to the left or right, as opposed to the 57.3 percent who took a
neutral stance. From this, it can be concluded that while this is a very grave situation, it has yet to come to the point where people are fully committed to uprooting their professional and personal lives and relocating to another state.
Chapter V

Conclusions and Recommendations

We are now a critical time in the New York State construction industry. Contractors are going out of business at a rate never before seen in New York. Liability insurance costs are at an all-time high. And it is no coincidence that personal injury lawsuits are also at an all-time high. Frivolous lawsuits are no longer the exception; they are becoming increasingly more common. And while §240/§241, once very necessary statutes, have a place within New York State’s labor laws, the absolute liability clause gives these frivolous lawsuits the foundation to come to fruition.

In the review of literature it was determined that §240/§241 arose out of necessity. At that time there was no recourse or compensation for a worker injured on the job. There was no true governing body which would develop and enforce standard safety practices. In essence, there was no watchdog like OSHA to protect workers from the careless, even negligent acts of a general contractor. Sections 240/241 offered that protection for workers. The statute was developed to ensure that safety was an issue on the job.

However, with the rise of governing bodies like OSHA, the relief offered through workers’ compensation and the development and ease of use of new safety devices, the standard of absolute liability established in §240/§241 is not only no longer a necessity, it is ruining the industry. There is a reason that all 49 other states have removed or at least amended §240/§241-type statutes; in today’s legal climate, they give rise to frivolous
lawsuits, thusly forcing liability insurance carriers either out of state or causing premiums to skyrocket.

The current proposed legislation appears to be founded on good common sense, and attempts to make certain compromises with what would be in the interests of the worker, and even that of the trial lawyer. The proposed amendments require that a contractor and owner provide on-site safety devices and equipment necessary to provide reasonable protection to those conducting work on the job site. Furthermore, the owner and/or contractor is also required to provide instruction as to the proper use of such equipment as well as to assemble, place and operate said equipment as to provide reasonable protection to workers.

Two new sections are added to state that if the contractor complies with all safety standards and regulations as determined necessary by the applicable state and federal health and safety regulations, their compliance shall be enough evidence of compliance with the above amendments.

However, the proposed legislation is only the first step to instituting the necessary changes in order to reverse or repair the damage that has been done as a result of years of inaction by the New York State Legislature. Well thought out legislation has been proposed before, only to go down in a vote or as happened with the workers' compensation reform package, be struck out of the language of the larger bill at the last minute. What it has come down to is the power and financial strength of the trade unions and trial lawyers. In order to see the proposed amendments come to fruition, a common ground must be found with these two powerful lobbies. While concessions have been
made in the proposed legislation, it will be difficult if not impossible to replace the
prospect of unlimited rewards as the result of the current absolute liability clause.

The strong grassroots lobbying campaign launched by the New York State
Builders Association has made some significant strides, progress that has not been seen in
years. With the situation as dire as it currently is, Legislators have no choice but to see
the financial damage this piece of legislation is doing in their home districts. The
constituents have spoken; the only question that remains is whether or not their collective
voice can be heard over the money spent by the opposition to keep this law intact.
Appendix A

Overview

This survey is being conducted for a Thesis project in order to receive a Master of Arts in Corporate and Public Communications. The research topic is to examine the effects of Labor Laws 240-241 on the construction industry in New York State. All responses will be kept confidential. If you wish to know the results of this survey, a presentation of research will be given on May 1st, 2003 in the Walsh Library at Seton Hall University in South Orange, NJ. If you are unable to attend, please contact the author and a copy of the thesis will be sent to you.

Please return completed forms to:

David Hay
201 Branch Brook Drive
Belleville, NJ 07109
(973) 271-4686
haydavid@shu.edu
<table>
<thead>
<tr>
<th>Statement</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Usually, general contractors take reasonable measures to ensure jobsite safety.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>2. Typically, workers correctly utilize safety devices available on jobsites.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>3. In recent years, the increase in advertising of personal injury attorneys has contributed to the growing number of construction site related lawsuits.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>4. Most builders can easily absorb increases in their insurance premiums by incorporating the cost into their job quotes.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>5. The combination of the slumping economy and the increasing liability insurance premiums will chase smaller volume builders out of the industry.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>6. Introduction of a culpable conduct standard into section 240 of the labor law would result in a noticeable lapse in jobsite safety.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>7. There has been a noticeable decline in the number of carriers offering liability insurance policies over the last 5 years.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>8. If the current liability insurance situation is not remedied, I would consider taking my business out of state.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>9. The Legislature has taken a “common sense” approach when voting on the proposed Safe Place to Work legislation.</td>
<td>SA A N D SD</td>
</tr>
<tr>
<td>10. One of the biggest obstacles facing proponents of labor law reform is the seemingly limitless funds available to the powerful lobbies such as the New York State Trial Lawyers Association.</td>
<td>SA A N D SD</td>
</tr>
</tbody>
</table>
Your demographic information will be used as a cross-reference point in the empirical analysis of the survey results. Please answer any, all or none of the following questions.

**Personal Information**

Please check off next to the classification which closest describes your profession:

- General Contractor
- Sub-Contractor
- Remodelor
- Insurance
- Banking/Finance
- Supplier
- Other

Your company’s annual revenue is generally:

- $<100,000
- $100,000 - $300,000
- $300,000 - $500,000
- $500,000 - $700,000
- $700,000-$1,000,000
- > $1,000,000

To which local association(s) does your company belong?

____________________________________

____________________________________


