

Insurance Insights

by Ken Furst and Jason Schiciano
Levitt-Furst Associates



A Review of the Winners and Losers in New York State's "Scaffold Law Game"

YONKERS

Most Impact readers are familiar with the premise of the 100+-year-old Scaffold Law (a/k/a New York Labor Law 240/241), which, as explained by scaffoldlaw.org, "imposes Absolute Liability" for elevation-related injuries on contractors and property owners engaged in construction, repair, or demolition work.

Absolute Liability means that the contributing fault of an injured worker, such as failure to use provided safety equipment or gross negligence, is virtually irrelevant in court. What you may not realize is that the Scaffold Law has detrimental effects on every membership group within The Builders Institute (BI)/Building and Realty Institute (BRI), as well as the communities in which we live and work.

Sheldon Silver, in his former role as New York State Assembly Speaker, was a powerful protector of the law, which, according to spokesmen for the state's general business sector, financially benefited him, and his fellow attorney colleagues (read last Impact issue, Vol. 14, No. 4 Dec/Jan With Sheldon Silver Out of the Picture, Does Scaffold Law/Lawsuit Reform Have a Chance?).

The start of the 2016 New York State Legislative Session - the first in 21 years to open without Silver as Speaker - brought renewed hope that the Scaffold Law might finally stand a chance of being repealed, or at least reformed.

Only a short time into the new legislative year, there are new concerns about current Assembly Speaker Carl Heastie's ties to a supporter of trial lawyers, raising concerns that Heastie, like Silver before him, will block Scaffold Law Reform.

Does reform ever stand a chance? While the real estate and construction industries continue to live with this archaic law as it languishes in political purgatory, let's review the big winners, and big losers, in the "Scaffold Law Game."

WINNER—New York Trial Lawyers: Plaintiffs' attorneys for injured workers reap millions of dollars in legal fees by initiating lawsuits citing the Scaffold Law for their clients' claims of huge monetary damages against property owners and contractors. Because of the law's "Absolute Liability" standard, defendants often have no choice but to settle these cases, resulting in all but guaranteed big pay-days for the plaintiffs' attorneys, who typically work on contingency, knowing that Scaffold Law case victories are almost always a "sure thing" in the "game."

WINNER—Negligent Injured Workers: Few would deny the right of an injured worker to collect monetary damages when the injury results from the negligence of a supervising contractor or property owner. However, when an injured worker can collect monetary damages - up to millions of dollars - even when the worker's gross negligence (failure to use provided safety equipment, intoxication, ignorance of safety rules, etc.) is a contributing factor to the injury, the "game" is unfair.

WINNER—Pro-Scaffold Law Politicians: Like so many things, politics is fueled by money. The Scaffold Law represents a financial windfall to injured workers (mostly the union workers who build the big New York projects) and trial lawyers. So, these beneficiaries make

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Co-op and Condo Corner is Back!

By Diana Virrill, Chair, The Cooperative and Condominium Advisory Council (CCAC)

HASTINGS-ON-HUDSON

Welcome back to Co-op and Condo Corner!

Readers of IMPACT were fortunate from the early 1980's to last year to have this column issue updates on key matters affecting the local co-op and condo sector.

Herb Rose, a noted consultant for many co-op and condo boards throughout the New York metropolitan area, authored those reports. His columns were magnificent, to say the least. His expert reports will be hard to follow. We wish him well in his future projects.

Mr. Rose was a member of the Board of Directors of The Cooperative and Condominium Advisory Council (CCAC) from the early 1990's to 2015. His guidance and reviews were extremely valuable to the CCAC and its parent organization, The Building and Realty Institute (BRI).

In an effort to keep the key updates flowing to our readers - and to members of the CCAC, the BRI and all of its component associations - this column will now have rotating authors. Most of the reports will be from members of the Board of Directors of the CCAC.

Since I am chair of the CCAC, I have been selected to issue the first report. I thought a good place to start would be to remind our readers and members of the local building and realty sector about our association.

The CCAC is a building and realty industry membership organization. We represent more than 300 co-ops and condos in the Westchester and Mid-Hudson Region. Since being formed in 1979, our association has provided our members with a series of valuable membership benefits. They include:

Networking - Belonging to the CCAC means meeting other board members from co-ops and condos in the Westchester and Mid-Hudson Region. It means exposure to new ideas and experiences from your peers, as well as advice from experts. As a member, you'll also belong to the BRI, providing access to its considerable sources and contacts within the real estate and building community.

Insurance - Membership in the CCAC allows you access to New York State Workers' Compensation Group 530. More than 500 co-ops and condos are members of the group, which helps cut the high costs of compensation insurance. Other insurance services are available through our insurance manager, Levitt-Furst Associates. Members should feel free to call the CCAC at (914) 273-0730 for further information.

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From the Editor's Desk

Hanley's Highlights

by Jeff Hanley

Associate Director, Building and Realty Institute (BRI), "Impact" Editor

ARMONK

So, what do you think of our new look?

You've probably noticed, by now, that our publication has been completely redesigned. We are happy with the new design. We also hope that you are. The revised format is a joint product of our staff and of Roher/Sprague Partners of Irvington, our new production consultant.

The revision is another example of how the Builders Institute (BI) is marking the 70th anniversary of its formation throughout 2016. Our association is marking that anniversary with a series of events, programs and initiatives.

The highlight of that commemoration will be our 70th "Birthday Party" on Thursday, Apr. 21, 6 p.m. to 10 p.m., at The Glen Island Harbour Club in New Rochelle. The event will mark the long and distinguished history of the BI-BRI. Members of our organization will soon receive additional information on the party, which promises to be a memorable occasion.

Accordingly, a Page One Report in this issue provides a historical overview of our association and its growth into one of the most well-known and influential business membership groups in New York. The BI-BRI has more than 1,400 members in 14 counties of New York. Our members are involved in virtually every sector of the building, realty and construction industry. The Page One Report reviews the growth of our group from its inception on Feb. 11, 1946 to the present. And what a period of growth it has been!

Other reports in this issue include:

The return of Co-op and Condo Corner, a popular piece for members of our organization's Cooperative and Condominium Advisory Council (CCAC). Diana Virrill,

chair of the CCAC, authored the piece. The report will have rotating contributors from members of the CCAC's Board of Directors in our future issues.

A report on the Feb. 11 General Membership Meeting of the BI-BRI. The meeting examined the continuing calls of the business sector for reforms to New York State's "Scaffold Law." More than 70 members of the local building, realty and construction industry attended the event at The Crowne Plaza Hotel in White Plains. A panel of business, building, realty and construction industry representatives examined what they termed as the many negatives of the "Scaffold Law" and its corresponding destructive effects on the business sector.

An overview in Counsels' Corner for members of our association's Apartment Owners Advisory Council (AOAC). The summary reviews the new requirement of the New York State Homes and Community Renewal Agency (HCR) which mandates that Owners and Managers of Emergency Tenant Protection Act (ETPA) properties must now file their Annual Operations and Maintenance Cost Surveys (O&M's) on-line. The analysis was prepared by Finger & Finger, A Professional Corporation. The firm, based in White Plains, serves as chief counsel to our organization and its component groups.

Reports from The National Association of Home Builders (NAHB) and The National Association of The Remodeling Industry (NARI) on the current state of the building and remodeling industries.

A summary from Maggie Collins, our organization's new Director of Membership, on the series of membership initiatives and programs that the BI-BRI is producing.

A report on Chappaqua Crossing - termed by project officials as "a one-of-a kind development combining

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New York's "Scaffold Law" has Damaging Effects

Negatives Examined at Meeting of The Building and Realty Institute (BRI)

by Jeff Hanley, Impact Editor

WHITE PLAINS

The continuing call of the business sector for reforms to New York State's "Scaffold Law" was the topic of the February 11th General Membership Meeting of The Builders Institute (BI)/Building and Realty Institute (BRI).

More than 70 members of the local building, realty and construction industry attended the event at The Crowne Plaza Hotel in White Plains. A panel of business, building, realty and construction industry repre-

sentatives examined what they termed as the many negatives of the "Scaffold Law" and its corresponding destructive effects on the business sector.

Representatives of the building, realty, construction and business sectors have stressed that the "Scaffold Law" holds contractors and property owners absolutely liable in a lawsuit for injuries to workers, even if they had nothing to do with the plaintiff's accident.

"The Board of Trustees of our association has identified the 'Scaffold Law' - otherwise known as the 'Absolute Liability Law' -

as one of its highest priorities for reform," said Albert Annunziata, executive director of the BI-BRI. Annunziata served as moderator of the program.

He added: "This law is the only remaining law, in the only remaining state (New York) in the U.S. that literally affects everyone involved in building, construction and remodeling - whether they be contractor or client alike. The cost of this 'Absolute Liability Law' is in the billions. It is a huge cost - through exorbitant insurance premiums up-front, and 'the sky's-the-limit insurance settlements' of lawsuits. Everyone pays and nobody truly wins!"

Annunziata said that the BI-BRI will continue its efforts in leading other business groups in the Westchester and Mid-Hudson Region to stress the "urgent need for reforms" to the "Scaffold Law."

"We have worked closely with the Construction Industry Council (CIC), The Building Contractors Association (BCA) and The Business Council of Westchester in coordinating the proper responses and actions of our respective industries to this troublesome law, and the vital need to reform it," Annunziata said. "We will aggressively monitor all developments related to this issue."

Tom Stebbins, executive director of The Lawsuit Reform Alliance of New York State, was the keynote speaker at the program. Matt Pepe, executive director of the CIC/BCA and Jason Schiciano, a principal of Levitt-Fuirst Asso-



Tom Stebbins, executive director of The Lawsuit Reform Alliance of New York, is pictured while addressing the Feb. 11 General Membership Meeting of the BI/BRI. The meeting reviewed the efforts of New York's business community that are calling for reforms to the state's "Scaffold Law." Stebbins was the keynote speaker at the event, which drew more than 70 members of the local building, realty and construction industry.



Jason Schiciano, a principal of Levitt-Fuirst Associates, is pictured on the right while addressing participants at the Feb. 11 General Membership Meeting of The Builders Institute (BI)/Building and Realty Institute (BRI). The meeting reviewed the efforts of New York's business community that are calling for reforms to the state's "Scaffold Law." Levitt-Fuirst Associates is the Insurance Manager for the BI-BRI and its component associations. Albert Annunziata, executive director of the BI-BRI, is pictured on the left, at the podium.



Matthew Pepe, executive director of The Construction Industry Council (CIC) and The Building Contractors Association (BCA), was a panel member at the Feb. 11 General Membership Meeting of The Builders Institute (BI)/Building and Realty Institute (BRI). The meeting, attended by more than 70 members of the local building, realty and construction industry, reviewed the efforts of New York's business community that are calling for reforms to the state's "Scaffold Law." Pepe is pictured, on the left, during his presentation.

Photos by Jeff Hanley

ciates, also served as panel members. Levitt-Fuirst Associates is the Insurance Manager for the BI-BRI and its component groups.

The BI-BRI is a building, realty and construction industry membership organization. The association has more than 1,400 members in 14 counties of New York State. Members of the BI-BRI are involved in virtually every sector of the building, realty and construction industry. The organization is marking the 70th anniversary of its formation throughout 2016.

The "State of Membership" for the BRI: Hello from the BRI's New Director of Membership

By Maggie Collins

ARMONK

Hello Members and Readers of Impact!

As your new Director of Membership I'd like to introduce myself and give you an idea of what my mission is here at BI/BRI and what it is I bring to it in order to accomplish the mission. But first I'd like to say just how delighted I am to be here. I first became acquainted with the BRI three years ago while attending a League of Women Voters meeting on Affordable Housing where I met Albert Annunziata. Soon after I had the opportunity to work for the Association on an ad-hoc basis, primarily at your General Membership Meetings.

As for my mission, first and foremost, I am here to increase membership. That is the bottom line. How will I do this? There are several components to it. One is organizing and sponsoring special events devoted to attracting prospective members in our industry/sector.

Another chief component is the Communications realm. I will be considering a wider publicity platform that informs and reinforces who we are and what we do.

As I write this, the newly designed *Impact* is taking shape and here you are reading it which brings me to advertising. Our sea-

soned Journalist and Editor-in-Chief, Jeff Hanley, will now have someone devoted to that side of *Impact* and his many talents can concentrate exactly where they are needed. You will see changes to our website as well. We are looking at a wealth and variety of initiatives which will gradually unfold and be implemented, or not, depending on their perceived efficacy. They are all geared to the satisfaction of our membership as well as increasing our numbers. This State of Membership column will keep you informed on all things membership, so don't miss it!

Perhaps you are wondering what experience I bring to this mission to accomplish it. Sales and marketing comprises most of my working life. Most recently I worked for the National Opinion Research Center at the University of Chicago conducting an exhaustive and comprehensive study of Medicare in Westchester County. Before this, I worked for the United States Census Bureau. Both of these experiences gave me the knowledge, understanding and appreciation of how raw data is scrutinized, analyzed and transformed into information which drives effective public policy decisions. In fact, in learning about the BRI, I fully understand how advocacy for our industry is a vital responsibility of this association and it has performed very effectively in this role for 70 years, and counting.

My sales and marketing efforts began at the *Atlanta Journal Constitution* in Atlanta, GA where I spent many years in advertising sales. I then worked for Harper & Row, Publishers in the College Textbook Division where I called on professors at colleges promoting textbooks for their consideration. In academia, the word is "Adoption" not "Sales"!

A long career in sales ultimately taught me some important things: to Listen. And to respond with a solution, in a candid, helpful and compassionate manner. I've been fortunate in my professional life to really enjoy the work.

I'd like to say that my colleagues here at the BRI headquarters are truly wonderful to work with. There is vitality and dynamism in the air. A great deal of work occurs and is accomplished everyday here in Armonk. Without the welcoming spirit and help of Albert Annunziata, Jeff Hanley, Margie Telesco, Office Manager and Jane Gill, Comptroller, and so many of our generous members, these first weeks would have been a much harder road. A positive spirit of 'can do' pervades and I look forward to the bright road ahead!



Astorino Announces County IDA Incentives for Local Developments

\$30 Million in Private Investment

WHITE PLAINS

Westchester County Executive Rob Astorino recently announced that Westchester's Industrial Development Agency (IDA) has approved support for a new 21-unit rental apartment building in Mamaroneck's Transit Oriented Development (TOD) Zone.

Officials said the \$6.53 million project will create 40 construction jobs and six permanent jobs. The project, which is being developed by Comstock Residential Contracting, LLC of Briarcliff Manor, is designed to attract millennials from New York City to live and work in Westchester.

The building includes 2,500 square feet of commercial space, as well as two affordable residential units, officials added.

A White Plains Project

Officials also announced that the IDA recently approved a bond issuance that will allow the White Plains Housing Authority (WPHA) to convert a 95-unit public housing development to a Section 8 affordable housing community.

The \$23.5 million project will create 35 construction and permanent jobs. Located at 120 Lake Street, the Lakeview Apartment Community is nearly fully occupied and has a substantial waiting list, officials said. The WPHA, which owns the 85,150-square-foot building, has received approval from the U.S. Department of Housing and Urban Development (HUD) to convert the building to Section 8 housing, officials added.

A new tax credit entity - Lakeview Apartments LLC - will acquire the property from the WPHA. Repairs and renovations to the 95 units will take about 12 months to complete, spokesmen said.

"The support approved by the Westchester IDA will help move forward \$30 million in private investment in rental housing, while creating more than 80 construction and permanent jobs," said Astorino. "We are particularly pleased to see transit-oriented development projects, such as the one in Mamaroneck that are targeted to young professionals."

Background

The IDA is a public benefit corporation created in 1976 for promoting and encouraging economic development in the county, primarily through assisting in the creation or retention of jobs, officials said.

The IDA is also empowered to issue taxable and tax-exempt bonds for organizations meeting federal and New York State guidelines. There is no financial risk to the county, or to county taxpayers. The obligation for repaying the debt rests solely with the organizations, spokesmen said.

Any corporation or small company looking to access the low-cost and tax-exempt project financing made available through the IDA should contact Bill Mooney, director of the office of economic development, at (914) 995-2943. Those interested may also use the email address of billmooney@westchestergov.com.

A Review of the Winners and Losers in New York State's "Scaffold Law Game," Continued from p. 2

political donations to lawmakers who are supportive of the law, and against reform, in order to keep "the game" going.

LOSER—Property Owners: The Scaffold Law makes property owners absolutely liable for elevation-related injuries to workers. Property owners buy liability insurance policies, to transfer the Scaffold Law risk to insurance companies, which end-up paying often huge Scaffold Law judgments or settlements. As a result, insurance premiums for property owners in New York - commercial landlords, apartment landlords, as well as condominium associations, and cooperative apartment corporations - are substantially higher than in the 49 other states that do not have the Scaffold Law. In the game of Monopoly, when a player lands on your property, you get paid. In the "Scaffold Law Game," when a lawsuit lands on your property, you (or your insurance company) do the paying.

LOSER—Developers and Construction/ Building Services Contractors: Property owners, and their insurance companies can often transfer responsibility for paying Scaffold Law claims to the developers and contractors building their properties, or the contractors serving and maintaining their properties. Contractors that use subcontractors employ similar risk-transfer methods. Developers, contractors, and subcontractors

are the primary players in the "Scaffold Law Game," and have to pay (big insurance premiums) to play. Developer and contractor insurance in New York is the most expensive in the country, and hard to get (since most insurance companies opt not to participate in New York's risky "Scaffold Law Game," given the huge downside risk).

LOSER—New and Small Contractors: Because of the exorbitant claim payouts associated with the Scaffold Law, most of the short list of insurance carriers for construction contractors in New York will only write policies that exceed a certain minimum premium (insurers don't want to write a \$2,500 liability policy, and then be exposed to a \$1,000,000 Scaffold Law Claim). Minimum premiums can be \$100,000 or more (for contractors working in New York City),

making it almost impossible for new or small contractors to do business in New York.

LOSER—Tenants and Homeowners: The Scaffold Law results in higher costs to build and maintain buildings and homes in New York, so rents - for commercial and residential tenants alike - are higher, and the cost to purchase and own a home is higher. Tenants and homeowners are typically unknowing participants in the Scaffold Law Game.

LOSER—Municipalities, Schools and Taxpayers: Despite no profit motive, municipalities and school systems cannot avoid the "game," because they require contractors to build infrastructure. The Scaffold Law makes it more expensive to build and maintain roads, bridges, public transportation, schools, etc., which contributes in part to the higher taxes that New Yorkers pay as compared to residents of other states.

What About the Insurance Companies?

Many think that, with the high premiums that insurance companies collect to insure players in the "Scaffold Law Game," the insurance companies must be big "winners" in the "game," too. Not exactly. Millions

What you may not realize is that the Scaffold Law has detrimental effects on every membership group within The Builders Institute (BI)/ Building and Realty Institute (BRI), as well as the communities in which we live and work.

of dollars paid in Scaffold Law claims each year make it difficult to be profitable in the construction insurance sector. If you question this, ask yourself the following: if insurance companies are getting rich from insuring the Scaffold Law players, then why are there so few

insurance companies willing to participate in the New York "Scaffold Law Game?"

Not all building and contractor liability insurance protects against Scaffold Law claims. For more information on the proper insurance to play the "Scaffold Law Game" in New York, call your insurance broker, or Levitt-Fuirst Associates, at (914) 457-4200.

Editor's Note: Levitt-Fuirst Associates is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region. Jason Schiciano of Levitt-Fuirst participated in the Feb. 11 General Membership Meeting of the BI-BRI that focused on the Scaffold Law topic. A report on that meeting can be found on page 3.

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