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Diverse Group Pushes to Reform State's Scaffold Law

By Bill Morris

➤ **JASON SCHICIANO IS** a man on a mission. As president of Tarrytown-based Levitt-Fuirst Associates insurance brokerage, Schiciano drove to Albany on May 15, determined to add his voice to the chorus that has spent years trying to persuade the legislature to modify the state's so-called Scaffold Law.

That law, the only one of its kind in the nation, has been interpreted by the courts to place "absolute liability" on the contractor and property owner when a worker suffers a gravity-related injury while working on a building. The effect is that co-op and condo boards who do not get adequate indemnification clauses in their construction and building maintenance contracts can be held liable for millions of dollars in damages – even if the injured worker was drunk or failed to use safety equipment. Schiciano estimates the law also adds at least 10 percent to co-ops' and condos' insurance premiums – and probably "considerably" more.

"It was an excellent day," Schiciano told Habitat after returning from Albany, where he joined 100 other people from some 75 organizations in lobbying legislators under the guidance of the Lawsuit Reform Alliance (LRA) of New York.

Schiciano and a team of contractors met with half a dozen legislators to present their case. It was Schiciano's third trip to the capital for LRA's annual lobbying push on the issue, and he came away convinced that attitudes are changing. "I feel like each time I've gone up," he says, "more of the legislators are aware of the situation and they have a better understanding of the issues. The law as currently written adds tremendous insurance costs to projects, which



are passed on to the residents in co-ops, condos, and rental properties."

Tom Stebbins, executive director of LRA, insists that his group is not trying to repeal the Scaffold Law. Instead, the group is backing bills in both chambers of the legislature that would replace the law's imposition of "absolute liability" with a standard of "comparative negligence."

"It's not a crazy reform," Stebbins says. "We're saying that the standard of liability that applies to all injuries in New York State should be the same standard for gravity-related injuries. If an injured worker can prove that the property owner or contractor was negligent, by all means let them sue. But the liability should be proportionate to the fault."

The LRA, Stebbins adds, has the backing of 75 organizations, ranging from contractors and construction companies to the Conference of Mayors, the Association for Affordable Housing, and

Habitat for Humanity. A prime backer of the existing Scaffold Law is the New York State Trial Lawyers Association, along with various construction trade groups, and the New York Committee on Occupational Safety and Health.

It might seem counterintuitive for an insurance broker to push a reform that would likely increase competition among insurers and reduce premiums for consumers. Not so, according to Schiciano. "In other states that reformed this law," he says, "construction and development increased as a result. My commissions might go down, but my business would go up."

Though he's optimistic, Schiciano has seen enough of Albany's inner workings to also be realistic. He noted that one state senator who has the strong backing of labor unions was an unlikely convert to the cause. "This continues to be a very heavy lift," Schiciano says, "especially in an election year." ■