

## **New York State Construction Industry Council (NYSCIC)**

### **Hearing on Commercial Liability Insurance Markets in New York State Testimony of Jack Endryck, Chairman, NYSCIC Submitted to The New York State Insurance Department**

**December 29, 2003**

I would like to thank you on behalf of The Business Council and its affiliate, New York State Construction Industry Council (NYSCIC), for the opportunity to testify at these hearings.

In response to the Insurance Superintendent's call for testimony on the rising costs of commercial liability insurance, The Council feels impelled to highlight the role of sections 240/241 of the state Labor Law in inflating these costs.

New York's construction industry faces an insurance crisis, and one uniquely shortsighted state labor law is largely to blame. Sections 240/241 of the state's Labor Law expose New York's property owners and contractors to unfair liability, make business insurance prohibitively expensive if it's available at all, and drive up everyday costs for taxpayers and all New Yorkers.

This crisis may be a boon to some trial lawyers, but it is a bane for all other New Yorkers. It's time New York followed the common-sense lead of 49 other states and repealed this short-sighted law.

There is no question that the industry is facing a serious situation. Obtaining affordable general liability insurance coverage has been the single most pressing business concern for NYSCIC members over the last three years.

In fact, NYSCIC members have consistently reported that their insurance premiums are spiraling out of control. Some say their insurance costs have increased as much as 500 percent in a single year. Others report one-year increases of 300 percent. Some say they cannot buy insurance at any price.

What's more, construction firms shouldering these higher costs have found their actual insurance coverage shrinking. In fact, many renewal policies have specifically excluded 240/241 issues from coverage.

This leaves our members with fewer and fewer options. Those carriers that remain in New York State offer 240/241 protection only with steadily increasing premiums. This forces consumers to rely on fewer carriers within a "take-it-or-leave-it" market.

This also makes it clear that the issue of commercial liability insurance costs cannot be adequately addressed unless there is a thorough and frank discussion of 240/241.

Carriers understandably hesitate to offer this coverage because liability under 240/241 is extremely broad and unforgiving. New York's courts have upheld this "absolute liability standard," which means property owners and their contractors have no way to defend their actions and their safety records in liability cases that fall under this statute. They are absolutely liable even if they bear no responsibility for the injury.

Offering insurance to an industry that cannot even defend itself is fighting a losing battle. It is no wonder that general liability coverage premiums continue to increase dramatically while fewer and fewer carriers even offer 240/241 coverage.

The damage to industry in New York is indisputable. No other state has a law like this on the books — and that is forcing New York contractors to look for work in other states. Our members report closings, severe financial concerns, and the discontinuation of business operations in New York State.

There are some who argue that there can be no insurance crisis in New York as long as you can buy insurance, no matter what the premium. This is ludicrous. The costs of insurance in New York that are so needlessly inflated by 240/241 impose a new burden on New Yorkers — because it is they, after all, who ultimately pay the inflated costs of construction projects in this state. This burden is especially unwelcome in a state that already endures one of the nation's highest overall tax burden.

New York's construction companies will feel no relief until section 240/241 is reformed. The state's draconian absolute-liability standard must be replaced with a more sensible and balanced negligence-based standard. As long as the law stands as it is, premiums will continue to rise and contractors will continue to leave the state or shut their doors.

The New York State Construction Industry Council (NYSCIC), an affiliate of The Business Council of New York State, Inc., represents a broad-based coalition of construction and construction-related industries. NYSCIC's membership includes both large and small construction firms, design professionals, industry associations and other related professional firms and organizations. These diverse companies thank you for the opportunity to testify on the cost and commercial liability insurance.

NYSCIC looks forward to working with the Superintendent and the Department of Insurance, and any other interests, in addressing this severe crisis facing the construction industry. We stand ready to assist whenever needed.

Thank you.