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Case seeks to declare labor laws unconstitutional *Statute holds contractors, property owners responsible for employee injury*

by Paige Palmateer, Journal Staff

10/20/06: SYRACUSE — A landmark case has been filed concerning New York State labor laws §240(1) and §241(6), which hold a contractor or property owner absolutely liable for worker injury, even if the employee's injury is solely his own fault.

Filed in the Buffalo United States District Court on Oct. 6, plaintiff Businesses for a Better New York (BBNY) claims labor laws 240 and 241 are unconstitutional, because they violate the Commerce Clause and Equal Protection Clause in the Constitution of the United States.

BBNY — a not-for-profit partnership formed specifically to challenge the labor laws — includes 24 individuals who also represent a variety of construction companies.

The case heralds a new chapter in the ongoing debate over labor laws 240 and 241 (better known as the scaffold law), says Kevin Hunt, a partner in the Syracuse-based Sugarman Law Firm.

"This is the first case I am aware of in recent times seeking to have the precedent declared unconstitutional," Hunt says. The essentially constitutional argument states that labor laws 240 and 241 are unfair compared to other states (which don't have the statutes) and that the labor laws are being applied unfairly to New York State business owners.

Under the current statute, employers, contractors, and property owners are responsible for employee injury, even if employees don't use safety equipment. The absolute liability associated with labor laws 240 and 241 allows employees to sue the contractor and property owner regardless of fault.

The labor laws were instituted in 1885 to protect workers who fell from skyscraper scaffolding, says Bruce Barry, an external communications specialist with the Independent Insurance Agents and Brokers of New York, Inc. (IIABNY).

Today's Occupational Safety and Health Administration regulations and workers' compensation afford employees adequate protection, Barry adds.

A classic case in Western New York is the farmer who rented a chunk of his land to a billboard company. Both the farmer and corporation were held liable, when a billboard company employee sustained injuries.

Employers in the building industry see labor laws 240 and 241 as costly obstacles to doing business in New York State, because the statutes cause insurance premiums to rise.

"Our biggest concern is that New York State contractors will lose job bids because of the additional expense of 240 and 241 on insurance premiums," Barry says.

He adds that the law affects premiums to the point it could make statewide contractors uncompetitive if out-of-state contractors also bid.

Hunt, who has represented owners and contractors, says his Auburn-based office is involved in 25 labor-law cases on a regular basis.

In recent years, he has seen an evolving trend in which more cases are decided in favor of owners and general contractors. Courts are more willing to look at the conduct of employee plaintiffs.

The trend started with a case decided in the New York Court of Appeals on Dec. 23, 2003. In *Rupert Blake v. Neighborhood Housing Services of New York City, Inc.*, Blake failed to hook the ends of his extension ladder to a building and fell off the ladder.

The case was thrown out of court because Blake's conduct was found to be at fault and not the ladder, Hunt says. The Blake case set precedent for similar cases, such as *Timothy Cahill v. The Triborough Bridge and Tunnel Authority*, in which Cahill failed to tie off a safety line, injured himself, and was found to be at fault.

To date, union and legislative support of the labor laws has defeated IABNY efforts to repeal the statute.

In 1996, Governor Pataki introduced workers'-compensation reform, which would have capped unlimited permanent-partial disability and counteracted the statute. However, labor laws 240 and 241 remained unchanged.