



LEGISLATIVE MEMO
CONTACT: WALTER PACHOLCZAK
VICE PRESIDENT OF GOVERNMENT AFFAIRS
T (518) 456-1134
WPACHOLCZAK@AGCNYS.ORG
WWW.AGCNYS.ORG

MEMORANDUM OF SUPPORT

BILL: S.8413-A (Breslin) / A.8981-A (Weprin)

SUBJECT: Stop Construction Insurance Fraud – Improve Worker Safety

DATE: February 1, 2024

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies supports S.8413-A (Breslin) / A.8981-A (Weprin) which establishes the crime of staging a construction site accident.

Recent reporting has uncovered unscrupulous individuals and their accomplices engaging in fraudulent staged construction site accidents. Insurance fraud schemes jeopardize worker safety and often involve a highly complex and coordinated effort by multiple individuals to defraud consumers, New York State, municipalities, school districts and other governmental entities. Fraud also further exacerbates a construction liability insurance market already in crisis and further drives up the cost of public and private construction projects.

A March 1, 2024, complaint filed in the United States District Court for the Eastern District of New York describes a separate and distinct enterprise in which defendants conspired to commit multiple counts of mail and/or wire fraud, grooming and steering claimants towards a plurality of defendant medical providers, and specific Workers' Compensation law firms. The cumulative efforts of defendants to infiltrate community organizations and courses intended to instruct workers in OSHA safety, to purchase ambulatory surgery centers in order to provide safe havens for the unnecessary injections and surgeries necessary to maximize recovery on the series of claimant enterprises listed herein and others, all of which necessarily revolve around the submission of fraudulent bills and medical reports via the U.S. mail and/or electronically in the streams of interstate commerce underscore the nature of the overarching enterprise, though its full contours and extent are not known at this time.

As described in the complaint, worker safety was repeatedly compromised by uncertified OSHA trainers unable to readily identify common OSHA regulations with which an OSHA certificate holder should be familiar. The unscrupulous trainers conspired to utilize their access to Spanish-speaking individuals who do not possess more than rudimentary knowledge of English under the guise of providing OSHA training to preemptively solicit individuals who would become claimants in fraudulent enterprises.

Who pays for insurance fraud?

- Exploited Workers – Criminal enterprises exploit workers by selling dangerous fraudulent OSHA training and construction site safety courses. Untrained workers are most at risk of injury or death because of criminal enterprises staging construction site accidents.
- Taxpayers – Construction of housing and building renovation projects for taxpayers costs more because fraud drives up insurance premiums.

- Business – Big, medium, and small businesses all struggle to procure and pay for the high cost of commercial general liability and workers' compensation insurance. It is well documented that New York's high insurance costs have a disproportionate negative impact on undercapitalized MWBE small businesses.
- New York State – All construction projects in New York State cost more because of the highest in the nation rates and few insurers providing commercial general liability insurance.
- Municipalities – Municipalities are either self-insured or purchase liability insurance. Costs for municipalities include payout of claims and judgments, risk management, and legal counsel. These costs are the burden of all taxpayers.

Insurance fraud drives up the cost of the following insurances on construction projects:

- Commercial General Liability – Massive tort claims alleging violations of sections 240 and 241 of New York's Labor Law are the key contributing factor why New York State has the highest costs in the nation for commercial general liability insurance and an extremely limited number of insurers providing coverage; and
- Workers' Compensation – New York has the 2nd highest workers' compensation insurance costs in the nation. All businesses pay for workers' compensation fraud.

AGC NYS commends the sponsors of this bill because insurance fraud hurts all New Yorkers and jeopardizes worker safety. Therefore, AGC NYS supports S.8413-A (Breslin) / A.8981-A (Weprin) and urges the Legislature to approve this bill.