



LEGISLATIVE POSITION

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PIANY supports comparative negligence for Labor Law cases

PIANY supports establishing a comparative negligence standard in suits involving Labor Law Sections 240 and 241, so evidence may be heard concerning acts or omissions that may have contributed to a worksite injury.

Memorandum in support of: A.2946-a – by M. of A. Morelle

AN ACT to amend the civil practice law and rules, in relation to the applicability of certain provisions with respect to persons injured in the use of scaffolding and other devices for use by employees.

Sections 240, 241 and 241-a of the New York Labor Law impose an absolute liability standard upon property owners and general contractors for workers injured at their job sites. Absolute liability exists when liability is imposed for a breach of duty, without affording access to the customary legal defenses. In the case of New York Labor Law, damages are paid by property owners and/or general contractors regardless of fault, since a determination of liability does not consider possible culpability by the injured worker.

This absolute liability provision has led recently to an increase of lawsuits. With no leverage in these suits, defendants are under pressure to settle with plaintiffs. At the same time, they are under pressure to expand the litigation to draw in anyone else that might be compelled to share some of the damages. This type of litigation marked New York as a state with a legal climate that is unfriendly to business.

Another result has been extreme difficulty in obtaining liability insurance for certain businesses, especially contractors and certain property owners. Where insurance is available, frequently exclusions apply that could leave our member's clients exposed to uninsured claims. Some of these contractual exclusions are difficult to identify, so busy contractors (and those they do business with) may not be aware that they lack specified coverage. The presence these exclusions in their policies may mean they have breached their construction contracts, as well as being exposed to financial ruin.

A.2946-a would permit the introduction of evidence concerning a worksite accident that may shed light on whether the conduct of an injured worker might have contributed to the incident. The courts could consider whether

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such factors as alcohol or drug use, failure to use available safety devices or comply with safety instructions, or a criminal act performed by the worker may have helped cause the accident. We believe this step could encourage more systematic attention by employers to worksite safety. It would mean that, in Labor Law cases, there would be an inquiry into whether employers provided safety devices and training. Currently, the liability imposed by law is the same whether or not they do so.

PIANY believes that the absolute liability imposed upon owners and general contractors by these sections is antiquated, dating to a time when no substantive safety standards existed. In fact, the major Labor Law provisions involved in this problem pre-date the state's Workers' Compensation Law. Their continuing co-existence with workers' compensation significantly undermines the intent of the workers' compensation system to provide the sole remedy for job-related injuries.

Therefore, we urge lawmakers to act favorably on this bill in the interest of restoring the "sole remedy" principle to workers' compensation, heightening the attention of both employers and workers to compliance with safety procedures and improving New York's business climate.