

**New York State Trial Lawyers Association
New York Committee on Occupational Safety and Health
ACORN
New York Immigration Coalition
Make the Road by Walking**

For release:
Thursday
June 16, 2005

**Study Documents Dangers of Construction Work in
New York; Finds Hazards and Serious Injuries
Especially Afflict Immigrant Workers and Workers at Elevated Heights**

Results of Over 2,500 OSHA Construction Site Inspections Analyzed



NYSTLA President Shoshana T. Bookson at the June 16th Press Conference

A comprehensive analysis of the results over 2,500 U.S. Occupational Safety and Health Administration (OSHA) construction site inspections in New York, released

today, documents the immense dangers construction workers face daily -- especially immigrant workers and those who work at elevated heights such on scaffolds and roofs.

The analysis, *Lives in the Balance -- Immigrants and Workers at Elevated Heights at Greatest Risk in Construction*, prepared by the New York State Trial Lawyers Association (NYSTLA) and issued by NYSTLA, the New York Committee for Occupational Safety and Health (NYCOSH), the Association of Community Organizations for Reform Now NY (ACORN), Make the Road by Walking, and the New York Immigration Coalition, reviewed all construction site inspections conducted in the state during 2003.

The review found that the overwhelming majority of inspections uncovered serious violations of OSHA safety standards. Violation rates were especially high in New York City and in construction work at elevated heights such as on scaffolds; nearly one-third of all OSHA construction violations in the state were of OSHA's scaffolding or fall protection requirements – more than for any other standard. A separate review of accident inspections found that since 2001, immigrants were the victims in half the accidents in the state and two-thirds of accidents in New York City in which a worker was killed or at least three workers were hospitalized.

NYSTLA president Shoshana T. Bookson said,

“Our study underscores the reasons the Legislature should not repeal the worker protection the ‘scaffold law,’ Section 240 of the Labor Law. Repeal would shift ultimate responsibility for ensuring safe working conditions on scaffolds and roofs from owners and general contractors to the workers themselves, many of whom are recent immigrants who speak little or no English and who are in no position to press their bosses on safety.”

Bookson also noted that immigrant workers are frequently not named on workers compensation policies and lack health insurance, leaving the scaffold law as their only

practical source of recompense if they are injured at the worksite because required safety equipment was not provided.

Joel Shufro, Executive Director of NYCOSH, a non-profit safety and health educational organization said,

"Construction is one of the most dangerous industries and working at heights is one of the most dangerous aspects of construction. OSHA inspection data shows that contractors violate fall prevention regulations on a routine basis. More than 25 construction workers in New York State die in falls each year. Labor Law 240 provides construction contractors with a strong incentive to follow safety regulations and develop programs to prevent falls. Without it, the death toll would certainly be even higher."

Bertha Lewis, Executive Director of ACORN, said,

"How many more studies do we have to do before employers take this seriously, how many more maimed bodies do we have to see before OSHA takes this seriously, how many more lives have to be lost before the Legislature which is supposed to protect all workers in New York takes this seriously? Maybe it is just a case of mind over matter. None of the employers or politicians *mind* what happens to immigrant workers, because to them, *they don't matter!*"

Margie McHugh, Executive Director of the New York Immigration Coalition, an umbrella policy and advocacy organization for over 150 groups in New York State that work with immigrants and refugees, said,

"The high rate of immigrants injured on the job is outrageous. This study shows that we need to strengthen, not repeal workplace protections for immigrant workers. Immigrant workers work for the lowest pay and under the most dangerous conditions. It is despicable that we would consider repealing the scaffold law at a time when OSHA should be doing more to prevent injuries and deaths of immigrants on the job."

Deborah Axt, Legal Director, Make the Road by Walking, said,

"It is truly tragic the extent to which immigrant workers risk their health and their lives every day to keep the United States' economic machine grumbling along. Much more severe penalties and more effective enforcement mechanisms are urgently needed."

In addition to retaining the scaffold law, *Lives in the Balance* recommends more rigorous OSHA construction safety rule enforcement; hiring of more OSHA compliance

officers who speak the same languages as immigrant workers; and much more extensive construction worker safety training, especially in English, Cantonese and other languages spoken by immigrant workers.

Lives in the Balance quotes lawyers who represent immigrant construction workers about the dangers confronting immigrants who work at elevated heights; they noted that frequently scaffolding is substandard or “home made,” railings are missing, workers on sloped roofs are not “tied off” with proper harnesses, and barricades are not erected around open stairwells.

Major findings of *Lives in the Balance*

- **Safety violations were widespread and serious.** Nearly two-thirds of the inspections found at least one violation of an OSHA safety standard. In construction trades like roofing and masonry, violations rates exceeded 80% and multiple violations at a single site were very common. OSHA classified virtually all of the violations as “serious” and frequently assigned them the agency’s highest “gravity” score. For example, nearly two-thirds of worker fall protection violations among general contractors of multi-family housing were “10s,” the most serious on a 1-10 scale.
- **Inspections in New York City were substantially more likely to find violations than were inspections elsewhere in the state.** For example, over 80% of inspections in Brooklyn, Manhattan and the Bronx found violations compared to 62% statewide and 50% upstate, and each inspection that found violations in these boroughs found substantially more violations than did inspections elsewhere -- 4.49 violations per inspection in Manhattan, the Bronx and Brooklyn, 3.36 statewide and 2.86 Upstate. Some of the highest violation rates were among New York City multi-family residential building general contractors -- an 87% rate in Brooklyn, for instance.

The higher rates in New York City reflect the widespread employment of undocumented workers and day laborers in the city’s construction industry, especially at smaller, non-union construction sites. Since these workers often speak little or no English and fear employer reprisals if they complain to the authorities about safety lapses, they are often left to work without the appropriate safety equipment and in violation of correct safety procedures. This is reflected in widespread OSHA safety standards violations and accidental injuries.

- In 2001, OSHA began to record whether or not a construction accident victim primarily spoke a language other than English at the worksite. Since then, **foreign-language speakers were the victims in 48% of accident inspections statewide and 67% in New York City in which a worker was killed or at least three workers were hospitalized overnight.** Immigrants were the victims in 11 of the 13 such accidents in Queens, the county with largest proportion of immigrant residents in the state. Clearly, immigrant workers suffered disproportionately because of widespread OSHA safety violations.

Lives in the Balance describes some of the recent preventable deaths of immigrants working at elevated heights, such as Jian Quo Shen (an un-buttressed concrete foundation collapsed on him in Elmhurst, Queens); Angel Segovia (a balcony roof being illegally built in Bay Ridge Brooklyn collapsed), day laborer Manuel Falcon (fell off a roof of a Queens house having been given no protective cord or belt), and an unnamed Mexican day laborer (overloaded scaffolding collapsed at an Upper Eastside brownstone undergoing renovation).

- **Violations of the scaffolding and fall prevention standards, which protect workers at elevated heights, accounted for nearly one-third of all violations (1,586 of 5,312) of OSHA construction safety standards.** There were especially large numbers of serious accidents in masonry and roofing work, and half of the inspections of masonry and roofing accidents found serious violations of either the scaffolding or fall protection general safety requirements. Roofing-siding-sheet metal and masonry contractors – occupations where workers spend much of their time at elevated heights -- accounted for over one-quarter of the violations found in accident inspections. In 17 of the accidents since 2001 with immigrant victims, OSHA found multiple violations of its scaffolding and/or fall protection standards; most of these accidents were fatal.