



## **THE SCAFFOLD LAW STRIKES AGAIN**

by Paul Orlandoni, Broker / *O&S Insurance Group*, August 22, 2020

. . . What's happening in the city now more than ever due to . . . antiquated laws called Labor Law 240 and 241, also known as the Scaffold Law – is that companies insuring buildings and contractors have come up with broad exclusions and limitations that are designed to protect them from having to defend and indemnify co-ops, condos, and building owners as additional insureds. There are certain exclusions that exist both on the buildings' policies and on the policies of contractors doing the work in co-ops and condos. This is because the Scaffold Law holds building owners and general contractors liable for any gravity-related injury to a worker, even if the worker is at fault. In [a recent] case of [a] co-op where the worker was injured, there was an exclusion in the policy. If the broker or the board had conducted a thorough examination, they could have, at the minimum, asked the insurance carrier to get rid of that exclusion.

[S]ettlements are piercing the \$1 million limit, and as a result a lot of insurance companies are including these exclusions and endorsements on policies, and sometimes they're being overlooked. If they're noticed by the broker, then there can be a dialogue with the insurance carrier to push back and have these exclusions reviewed and mitigated or taken out of the policy altogether.

. . . Boards in New York – the last state with a scaffold law – need to make sure they have a competent insurance broker, someone who handles hundreds of buildings and is working every day in real estate in the city. The core competence should be in real estate in all phases of development. It's very important that proper risk transfer is conducted and that the board is fully aware of what's taking place. This is especially true if a shareholder or unit-owner is getting work done in his or her unit. Is there an alteration agreement? Is the co-op corporation or the condo association listed as an additional insured on the contractor's policy? Is the contractor's insurance any good? It's important to take a look at that insurance. Simple rule of thumb: If a contractor working in New York City has a \$5,000 policy, you can be fairly certain it does not cover claims under the Scaffold Law. These are very expensive policies, and the contractors should be paying for it due to their massive exposure under the Scaffold Law.

. . . Boards need to be absolutely sure that the insurance is in place before the work begins. It's approximately 10 times more expensive to insure any construction-related activity inside New York City than outside the city. And it's all related to the Scaffold Law, because the potential losses are so severe.