



## State Of Safety



Welcome to this month's issue of *State of Safety*, a newsletter from The St. Paul Travelers focused on construction risk control issues. This month's newsletter contains a feature article *raising issues not only for Scaffolding contractors but for all contractors in general.*

An archive of past newsletters can be found by **logging in** to the Risk Control Customer Web site at

<http://www.stpaultravelers.com/riskcontrol>

### Our Safety Academy for Construction

We have designed our Safety Academy to offer a variety of risk solutions for the safety challenges you face in the construction industry.

The following are some of the upcoming classes offered in June through St. Paul Travelers Safety Academy, free of charge for all St. Paul Travelers customers, agents and brokers.

- Construction Defect Awareness
- Crisis Management
- Excavation and Confined Space
- Fall Protection
- Managing Subcontractors
- Managing Hispanic Construction Workers
- Mobile Crane Management
- Professional Crane Operator Program
- Rigging
- Safety Accountability
- Scaffolding Safety
- Site Sense - Professional Development for Supervisors

For more information about dates and locations, please check our online schedule at:

[http://www.stpaul.com/www-sfm-is-risk-control/training/all\\_training.html](http://www.stpaul.com/www-sfm-is-risk-control/training/all_training.html)

or call 877.SAFE.223.

## Indictment for Unsafe Act May Flag Increasing Trend Toward Criminal Sanctions

### Increasing Focus on Criminal Sanctions

In January of this year, the owner of a scaffolding company was sentenced to at least 3 ½ years in prison for the deaths of five workers when an "illegally constructed scaffold" collapsed. The Manhattan State Supreme Court judge presiding over the case called the incident a "tragic certainty" rather than an accident. The judge said she was sentencing the scaffold owner to 3 1/2- to 10 1/2-year sentence to reflect "the magnitude of the tragedy" and as "a deterrent." "This sentence will, I trust, serve as a warning to others who, in pursuit of their own economic interests, care to be cavalier about the lives of others," the judge said. The judge also criticized OSHA for being "astonishingly ineffectual" in protecting workers' lives.

"This sentence will, I trust, serve as a warning to others who, in pursuit of their own economic interests, care to be cavalier about the lives of others," said New York State Supreme Court Judge Rena Uviller.

A number of developments have been evolving increasingly over the past few years around responsibility and liability for jobsite safety that bear serious messages for construction and other industries. With the indictment and sentencing in this present case, the first message is that contractors can face criminal charges for "willful" disregard for the safety of their workers. The second revolves around recent and growing criticism of OSHA for its failures to bring to the Department of Justice for prosecution "willful violations" of OSHA regulations that result in the deaths of workers. This criticism was the subject of a recent three-part series in the New York Times, and it has not gone unnoticed. As a consequence, there now is a movement for legislation that could increase OSHA penalties for the "willful" acts of contractors and other employers where deaths occur, including imposing up to 10 years in prison. OSHA also is beginning to train its compliance inspectors in criminal investigations. While clearly "the stick" approach to safety is like hitting the child with no long term nurturing in the right or desired behaviors, the message is clear. There is a groundswell of concern for a greater need to prosecute and bring to justice "bad actors" who disregard the lives of others.

In 2001, California signed into law AB 1127, which, among other things, expanded civil and criminal liability under Cal-OSHA for employers who negligently or knowingly violate California workplace safety rules. Under the law, safety violations resulting in a worker's death or permanent or prolonged injury/disability may carry fines for individuals of up to \$1 million and jail sentences of up to three years. Corporations would be exposed to fines of as much as \$5 million. Similar developments are also seen globally. In Canada, recently-passed changes to the Canadian

Criminal Code can hold organizations and individuals criminally liable if they fail to take reasonable steps to prevent workplace accidents. And, in Great Britain, a “corporate killing bill” recently was introduced into Parliament to address job-related deaths and punish companies “whose reckless actions cost lives.”

**The Scaffolding Issues**

In April 2002, OSHA cited three contractors for violations, carrying \$159,350 in penalties, following an investigation into a Manhattan scaffolding collapse accident at a building undergoing restoration. The collapse resulted in the death of five workers and injuries to ten others. The three contractors included the general contractor (GC) on the project, the scaffolding contractor, and a demolition and masonry restoration subcontractor. At the time of the collapse, approximately 16 workers of the masonry subcontractor were working on the scaffold. Some were using jackhammers to remove the brick façade, while on other levels, workers were applying a parge coating (a layer of cement) to the walls that had already been stripped of the brickwork in anticipation of the laying of new brickwork.

The GC had hired the scaffolding company to build the scaffolding. The bulk of the penalties, \$146,600, were levied against the scaffold contractor. Among other charges, the scaffold contractor was cited with two alleged willful violations for the erection of a scaffold that violated scaffold safety rules and for erecting a scaffold not designed by a professional engineer. OSHA defines a willful violation as one committed with an intentional disregard of, or plain indifference to, the requirements of the Occupational Safety and Health Act. Serious citations also were proposed for failure to train workers on the hazards. Serious citations carrying a proposed penalty of \$3,000 also were proposed against the GC for not providing falling object protection and failure to brace scaffold frames. The mason contractor was cited with proposed penalty of over \$9000 for failure to train its workers on the hazards of working on scaffolds.

**The Indictment**

In September 2003, the scaffold contractor pled guilty to a single count of second-degree manslaughter. Originally, he had been charged with five counts of second-degree manslaughter

and four counts of assault for injuries to other workers. Although he pleaded guilty to a single manslaughter count, he acknowledged responsibility for all the “reckless” deaths and injuries. “I was aware that the scaffolding was potentially dangerous,” the contractor told the judge.

He admitted to designing the scaffold himself, even though he had no engineering background and had no license. He also admitted to not knowing the load capacity and conceded he had not had a licensed engineer inspect the structure as required by the NY city building code. The scaffold was holding three times its capacity when it gave way.

**Manufacturer Specifications and OSHA Requirements**

OSHA recognizes that manufacturer’s design/erection guidelines are critical and should be adhered to. Erectors and users of scaffolding should erect and load them in accordance with manufacturer's design criteria. In the absence of such manufacturer's criteria, OSHA expects that a qualified individual, such as a registered professional engineer, should design the system to meet the 4:1 safety factor. Manufacturer’s guidelines and/or professional engineering drawings should be available for review. Scaffolding should be inspected before each shift by a qualified competent person to ensure the system satisfies the manufacturer’s specifications, 4:1 safety factor, and OSHA requirements. Applicable OSHA requirements include:

**1926.451(a)(1)**

Except as provided in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (g) of this section, each scaffold and scaffold component shall be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it.

**1926.451(f)(3)**

Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity.

**1926.451(f)(7)**

Scaffolds shall be erected, moved, dismantled, or altered only under the supervision and direction of a competent person qualified in scaffold erection, moving, dismantling or alteration. Such activities shall be performed only by experienced and trained employees selected for such work by the competent person.

**1926.452(i)(8)**

Scaffolds and scaffold components shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

Section L, under 451 of the standard also offers important information regarding the definition of “qualified person” as it applies to scaffolding operations.

**“This indictment is a strong message to employers and employee alike that violations of worker protection laws will not be tolerated. The deaths and injuries suffered by the workers were a preventable tragedy... We are determined to take whatever steps are necessary to ensure that safety and health protections for all workers are vigorously enforced.”**  
 U.S. Secretary of Labor, Elaine Chao



**Local Building Codes**

NY City's building code requires a licensed engineer or architect design any scaffold rising above 75 feet. The 13-story scaffolding was approximately 160 feet high from bottom base plate to the top. In addition, the investigation further revealed that although the contract between the general contractor and the scaffold contractor required that a professional engineer design the scaffold, no such review ever took place. Erection of the scaffold began on October 5, 2001 and was completed on October 16th and the masonry work began that same

day. The scaffold collapsed on October 24, 2001. Prosecutors said the scaffold contractor had cut corners to save \$3,000.

**In fiscal year 2003, the #1 most violated standard in the construction industry was "General Requirements for All Types of Scaffolding (1926.451)." There were 9476 violations, carrying over \$9.1 million in penalties. General contractors, scaffold contractors and all other subs who work on or around scaffolds should be aware of their responsibilities for safe scaffolding operations, including training on associated hazards under OSHA, applicable local building codes, and manufacturer specifications. Just as importantly, contractors should be serious about all safety across the board on all jobsites.**

For more information about this or other Risk Control topics, including a safety management system, contact your local Risk Control consultant or the RC Connection<sup>SM</sup> at 800.332.3232. You also can e-mail us at [Ask-STA-Risk-Control@stpaul.com](mailto:Ask-STA-Risk-Control@stpaul.com) or visit <http://www.stpaultravelers/riskcontrol>.

**Resources and Classes Available on Scaffolding**

An estimated 2.3 million construction workers, or 65 percent of the construction industry, work on scaffolds frequently. Protecting these workers from scaffold-related accidents may prevent some of the 4,500 injuries and 50 deaths every year, which cost American employers \$90 million in workdays lost. In a recent BLS study, 72 percent of workers injured in scaffold accidents attributed the accident either to the planking or support giving way, or to the employee slipping or being struck by a falling object. All of these accidents can be controlled.

**OnLine Scaffolding Information**

- St. Paul Travelers offers guides and other information on scaffolding on its Customer website for Construction. Log in at <http://www.stpaul.com/www-sfm-is-risk-control/products/construction.html> Search for "scaffold" in the Products Database.
- OSHA's website offers a site dedicated to scaffolding for construction at <http://www.osha.gov/SLTC/constructionscaffolding/index.html>
- OSHA also offers an \*eTool on scaffolding at <http://www.osha.gov/SLTC/etools/scaffolding/index.html>  
The eTool provides safety checklists for specific types of scaffolds, and identifies hazards and controls. At this time only Suspended Scaffolds and Supported Scaffolds are available. *\*eTools are web-based training guides on occupational safety and health topics. They are not copyrighted and are available for public distribution.*

**The St. Paul Travelers Safety Academy**

The St. Paul Travelers Safety Academy offers a 4-hour course on Scaffolding to its customers in English and, in some locations, in Spanish. The course, designed for workers working on or around scaffolding, provides an overview of the hazards and controls associated with supported scaffolds. Practical examples of good and bad systems, as well as system usage, will be reviewed. Every participant will receive pertinent reference material. The course covers basic concepts in:

- Base support
- Capacities
- Erection and dismantling
- Fall protection

**Read more about our scaffold training at** <http://www2.stpaul.com/riskcontrol/rcereg.nsf/WebInfo> under "Scaffolding." Customers can use the registration form available on this site to register online. A listing of other safety training topics offered through the Safety Academy also is available on this site by date, location or course title.



**Read News Releases on other fines for OSHA Scaffolding Violations**

- [Scaffolding Hazards at Texas WorkSite Bring OSHA Citations And Fines Totaling \\$59,850.](#) OSHA News Release, (2003, November 12), 2 pages. A pipe insulation installer's alleged failure to protect workers from falls and other scaffold-related hazards at a Nursery, Texas construction site has resulted in proposed penalties of \$59,850 from OSHA.
- [Masonry Contractor Fined \\$117,500 for Scaffolding Hazards in Dallas, Texas.](#) OSHA News Release, (2003, August 12)

**Additional Information Online**

For more information about accident investigation, other topics, products or resources, customers, agents and brokers with a St Paul Travelers ID and password may access the **customer-secured** portion of our Risk Control Web site by logging in to <http://www.stpaultravelers.com/riskcontrol>

Log in to the customer **Construction products** page or 'Search All Products' for additional information at: [http://www.stpaul.com/www-sfm-is-risk-control/products/construction\\_products\\_log\\_in.html](http://www.stpaul.com/www-sfm-is-risk-control/products/construction_products_log_in.html)

**No Online login ID and Password? It's Simple.**

**Customers** who don't have an ID and password can use the following link to submit a request for login credentials: [http://www.stpaul.com/www-sfm-is-risk-control/login\\_request.html](http://www.stpaul.com/www-sfm-is-risk-control/login_request.html)

**Agents and brokers** should go through their Agency Security Administrator for an ID and password and then access the site directly from the Agent/ Broker page at: <http://www.stpaultravelers.com/agents/index.html>. Scroll down to the "Agency Resource Center" at bottom of screen.

***We welcome your ideas and comments.***

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contact your local  
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