

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BUSINESSES FOR A BETTER NEW YORK,
JEFF VALONE, Individually and as President of
TRY-LOCK ROOFING,
FRANK DeCARLO, Individually and as President of
PARAGON RESTORATION,
BOB YAVICOLI, Individually and in his official capacity as a
representative of RANCH CONSTRUCTION,
WILLIAM ROTT JR., Individually and in his official capacity as a
representative of WILLIAM C ROTT & SON,
TERRY MEHLENBACHER and ROBERT SIGURDSEN,
Individually and in their official capacities as a representatives of
WOODSHIRE HOMES, LTD,
TOM ARIDA, Individually and in his official capacity as a
representative of A BEST ROOFING & SIDING INC.,
RICHARD YOUNG, Individually and in his official capacity as a
representative of YOUNG WATERPROOFING,
GARY STYKE, Individually and in his official capacity as a
representative of ROOFMASTERS ROOFING CO., INC.,
PATRICK A. MARRANO, Individually and in his official capacity
as President of the MARRANO/MARC-EQUITY CORPORATION,
LINDA KRUSZKA, Individually and in her official capacity as a
representative of MAIN STREET INSURANCE AGENCY, INC.,
JOSEPH FLOSS, Individually and in his representative capacity as a
certified insurance counselor for FLOSS AGENCY, INC.,
PHIL HART, Individually and in his official capacity as President of
UNLIMITED ENCLOSURES INC. d/b/a PATIO ENCLOSURES,
TOM NETH, Individually and in his official capacity as President of
NETH & SON, INC.,
ROBERT ZARPA, Individually and in his official capacity as a
representative of SZARPA CONSTRUCTION LLC,
MIKE WASHINGTON, Individually and in his official capacity as
Vice President of IVY LEA CONSTRUCTION INC.,
SCOTT SCHIEDER, Individually and in his official capacity as
President of SCOTT ENTERPRISES,
JOHN DEGROOT, Individually and in his official capacity as a
representative of JND CONSTRUCTION,
LARRY ASH, Individually and in his official capacity as a
representative of RIBCO, LLC,

MICHAEL WOOLLEY and KIM WOOLLEY, Individually and in their official capacities as President and Vice President, respectively, of MAMMOTH CONSTRUCTION SERVICES, INC.,

JAMES CAMARRE, Individually and in his official capacity as Chief Financial Officer of MOLLENBERG-BETZ, INC.,

BOB CORNELL, Individually and in his official capacity as President of CORNELL CONTRACTING, INC.,

WALDEMAR TIEDEMAN, Individually and in his official capacity as President of ROOFING CONSULTANTS,

KEVIN PHILLIPS, Individually and in his official capacity as President of PHILLIPS & SONS CARPENTRY, INC. d/b/a PHILLIPS GENERAL CONTRACTING,

THOMAS FERRY, Individually and in his official capacity as President of FERRY BUILDERS, INC.,

Plaintiffs,

v.

Civil No.

LINDA ANGELLO, in her official capacity as Commissioner of Labor for the State of New York,

HOWARD MILLS, in his official capacity as Superintendent of Insurance for the State of New York,

DONNA FERRARA, in her official capacity as Chairwoman of the Workers' Compensation Board for the State of New York, and

ELIOT SPITZER, in his official capacity as Attorney General for the State of New York,

Defendants.

COMPLAINT

Introduction

1. Plaintiffs bring this action seeking declaratory and injunctive relief under Federal Rule of Civil Procedure 57 and the Declaratory Judgments Act, 22 U.S.C. §§ 2201 and

2202, in order to challenge the constitutionality of two New York statutes, Labor Law §§ 240(1) and 241(6).

2. The action seeks to determine an actual controversy among the parties as is described more fully in this complaint. This action seeks a declaration that the decisions and actions of defendants to enforce § 240(1) and § 241(6) are unconstitutional, because these statutes violate the Commerce Clause and the Equal Protection Clause in the Constitution of the United States. These New York statutes have also been preempted by Congress through the enactment of the Occupational Safety and Health Act of 1970 (“OSH Act”), 29 U.S.C. § 651 *et seq.*, and the regulations thereunder adopted. Plaintiffs further seek an injunctive order directing defendants immediately to cease their enforcement of § 240(1) and § 241(6).

3. By this action, plaintiffs seek declaratory and injunctive relief, together with an award of costs, expert witness fees, and reasonable attorneys’ fees.

Plaintiffs

4. Plaintiff, Businesses for a Better New York (“BBNY”), is a New York not-for-profit partnership formed specifically to challenge the constitutionality of Labor Law §§ 240(1) and 241(6). BBNY’s partners include individual citizens of New York and small businesses which have been affected detrimentally by and harmed deeply through the enforcement of the Labor Law statutes addressed in this complaint.

5. A family business for three generations in Western New York, plaintiff, Try-Lock Roofing (“Try-Lock”), is a New York corporation in the business of installing and

repairing roofs for residential and commercial customers. Try-Lock employees regularly work on construction sites in New York, and they often work at heights. Try-Lock regularly purchases general liability and workers' compensation insurance as part of its business. Jeff Valone is the President of Try-Lock, a citizen of the State of New York, and a citizen of the United States.

6. A small business with a long and distinguished history in Western New York, plaintiff, Paragon Restoration ("Paragon"), is a New York corporation in the business of remodeling and restoring residential and commercial buildings. Paragon employees regularly work at construction sites in New York, and they often are required to work at heights. Paragon regularly purchases general liability and workers' compensation insurance as part of its business. Frank DeCarlo is the President of Paragon, a citizen of the State of New York, and a citizen of the United States.

7. Plaintiff, Ranch Construction, is a New York business specializing in home improvements. Ranch Construction employees regularly work at construction sites in New York, and they often are required to work at heights. Ranch Construction regularly purchases general liability and workers' compensation insurance as part of its business. Robert Yavicoli is the owner of Ranch Construction, a citizen of the State of New York, and a citizen of the United States.

8. Plaintiff, William C Rott & Son, Inc. ("Rott & Son"), is a New York corporation. Rott & Son was established in 1909 and has been providing roofing, siding, and window services for nearly 100 years. Rott & Son employees regularly work at construction sites in New York, and they often are required to work at heights. Rott & Son regularly

purchases general liability and workers' compensation insurance as part of its business. Bill Rott and Dan Rott are the owners of Rott & Son, citizens of the State of New York, and citizens of the United States.

9. Plaintiff, Woodshire Homes, Ltd. ("Woodshire"), is a New York corporation which has been in the home building industry for nearly 20 years. Woodshire employees regularly work at construction sites in New York, and they often are required to work at heights. Woodshire regularly purchases general liability and workers' compensation insurance as part of its business. Robert M. Sigurdson is the President of Woodshire, a citizen of the State of New York, and a citizen of the United States. Terry Mehlenbacher is the Vice President of Woodshire, a citizen of the State of New York, and a citizen of the United States.

10. Plaintiff, A Best Roofing & Siding Inc. ("Best"), is located in North Tonawanda, New York and is a New York corporation in the business of roofing and siding. Best employees regularly work at construction sites in New York, and they often are required to work at heights. Best regularly purchases general liability and workers' compensation insurance as part of its business. Tom Arida is the President of Best, a citizen of the State of New York, and a citizen of the United States.

11. Plaintiff, Young Waterproofing, has operated its business in Cheektowaga, New York for nearly 50 years. Young Waterproofing is in the business of basement waterproofing and foundation repair. Young Waterproofing employees regularly work at construction sites in New York, and they often are required to work at heights. Young Waterproofing regularly purchases general liability and workers' compensation insurance as part

of its business. Dick Young is the President of Young Waterproofing, a citizen of the State of New York, and a citizen of the United States.

12. Plaintiff, Roofmasters Roofing Co., Inc. (“Roofmasters”), is a New York corporation and has provided residential and commercial roofing and sheet metal services in New York for the past 26 years. Roofmasters is in the business of basement waterproofing and foundation repair. Roofmasters employees regularly work at construction sites in New York, and they often are required to work at heights. Roofmasters regularly purchases general liability and workers’ compensation insurance as part of its business. Gary Styke is the President of Roofmasters, a citizen of the State of New York, and a citizen of the United States.

13. Plaintiff, Marrano/Marc-Equity Corporation (“Marrano”), is a Florida corporation that has done business in Western New York for nearly 25 years. Marrano is one of the largest home builders in the Western New York area. Marrano employees regularly work at construction sites in New York, and they often are required to work at heights. Marrano regularly purchases general liability and workers’ compensation insurance as part of its business. Patrick A. Marrano is the President of Marrano, a citizen of the State of New York, and a citizen of the United States.

14. Plaintiff, Main Street Insurance Agency, Inc. (“Main Street”), is a New York corporation in the business of selling insurance. Main Street regularly arranges for the issuance of general liability and workers’ compensation insurance for companies whose workers often work at heights. Main Street’s business has been adversely impacted by the continued

enforcement of these Labor Law statutes. Linda Kruszka is the Chief Executive Officer of Main Street, a citizen of the State of New York, and a citizen of the United States.

15. Plaintiff, Floss Agency, Inc. (“Floss Agency”), is a New York corporation that has been in the business of selling insurance for over 60 years. Floss Agency regularly arranges for the issuance of general liability and workers’ compensation insurance for companies whose workers often work at heights. Floss Agency’s business has been adversely impacted by the continued enforcement of these Labor Law statutes. Joseph M. Floss is the President of Floss Agency, a citizen of the State of New York, and a citizen of the United States.

16. Plaintiff, Unlimited Enclosures Inc. d/b/a Patio Enclosures (“Patio Enclosures”), is a New York State corporation with its principal place of business in Rochester, New York. Patio enclosures is in the business of designing, manufacturing, and selling enclosures, solariums, and conservatories. Patio Enclosures regularly works at construction sites in New York, and its workers often are required to work at heights. Patio Enclosures regularly purchases general liability and workers’ compensation insurance as part of its business. Phil Hart is the President of Patio Enclosures, a citizen of the State of New York, and a citizen of the United States.

17. Plaintiff, Neth & Son, Inc. (“Neth & Son”), is a New York corporation located in Depew, New York. Neth & Son has been in the roofing business for 33 years. Neth & Son employees regularly work at construction sites in New York, and they often are required to work at heights. Neth & Son regularly purchases general liability and workers’ compensation

insurance as part of its business. Tom Neth is the President of Neth & Son, a citizen of the State of New York, and a citizen of the United States.

18. Plaintiff, Szarpa Construction LLC (“Szarpa”), is a New York business specializing in home improvement. Szarpa employees regularly work at construction sites in New York, and they often are required to work at heights. Szarpa regularly purchases general liability and workers’ compensation insurance as part of its business. Robert Zarpa is the owner of Szarpa, a citizen of the State of New York, and a citizen of the United States.

19. Plaintiff, Ivy Lea Construction Inc. (“Ivy”), is a New York corporation specializing in home improvement. Ivy employees regularly work at construction sites in New York, and they often are required to work at heights. Ivy regularly purchases general liability and workers’ compensation insurance as part of its business. Mike Washington is the Vice President of Ivy, a citizen of the State of New York, and a citizen of the United States.

20. Plaintiff, Scott Enterprises, Inc. (“Scott Enterprises”), is a New York corporation specializing in roofing, siding, and trim. Scott Enterprise employees regularly work at construction sites in New York, and they often are required to work at heights. Scott Enterprises regularly purchases general liability and workers’ compensation insurance as part of its business. Scott Schieder is the President of Scott Enterprises, a citizen of the State of New York, and a citizen of the United States.

21. Plaintiff, JND Construction (“JND”), is a New York business providing numerous construction services including siding, roofing, windows, additions, and pole barns. JND employees regularly work at construction sites in New York, and they often are required to

work at heights. JND regularly purchases general liability and workers' compensation insurance as part of its business. John DeGroot is the owner of JND, a citizen of the State of New York, and a citizen of the United States.

22. Plaintiff, RIBCO, LLC ("RIBCO"), is a New York corporation, which for nearly 30 years has provided construction services such roofing, insulation, fireproofing and acoustics to commercial and industrial customers. RIBCO employees regularly work at construction sites in New York, and they often are required to work at heights. RIBCO regularly purchases general liability and workers' compensation insurance as part of its business. Larry Ash is the owner of RIBCO, a citizen of the State of New York, and a citizen of the United States.

23. Plaintiff, Mammoth Construction Services, Inc. ("Mammoth"), is a New York corporation, which provides construction services related to roofing, siding, and windows. Mammoth employees regularly work at construction sites in New York, and they often are required to work at heights. Mammoth regularly purchases general liability and workers' compensation insurance as part of its business. Michael Woolley is the President of Mammoth, a citizen of the State of New York, and a citizen of the United States. Kim Woolley is the Vice President of Mammoth, a citizen of the State of New York, and a citizen of the United States.

24. Plaintiff, Mollenberg-Betz, Inc. ("Mollenberg-Betz"), has been a New York corporation since 1910, and it offers mechanical contracting services. Mollenberg-Betz employees regularly work at construction sites in New York, and they often are required to work at heights. Mollenberg-Betz regularly purchases general liability and workers' compensation

insurance as part of its business. James Camarre is the Chief Financial Officer of Mollenberg-Betz, a citizen of the State of New York, and a citizen of the United States.

25. Plaintiff, Cornell Contracting, Inc. (“Cornell Contracting”), is a New York corporation. Cornell Contracting does general remodeling work. As a result of their work, Cornell Contracting employees regularly work at construction sites in New York, and they often are required to work at heights. Cornell Contracting regularly purchases general liability and workers’ compensation insurance as part of its business. Bob Cornell is the President of Cornell Contracting, a citizen of the State of New York, and a citizen of the United States.

26. Plaintiff, Roofing Consultants, Inc. (“Roofing Consultants”) is a New York Corporation which has provided general construction services in New York for the past 40 years. Roofing Consultants employees regularly work at construction sites in New York, and they often are required to work at heights. Roofing Consultants regularly purchases general liability and workers’ compensation insurance as part of its business. Waldemar Tiedeman is the President of Roofing Consultants, a citizen of the State of New York, and a citizen of the United States.

27. Plaintiff, Phillips & Sons Carpentry, Inc. d/b/a Phillips General Contracting (“Phillips Contracting”) is a New York corporation. Phillips Contracting has been providing general contracting services in New York for the past 16 years. Phillips Contracting employees regularly work at construction sites in New York, and they often are required to work at heights. Phillips Contracting regularly purchases general liability and workers’ compensation

