

Legislative History for Connecticut Act

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Labor and Public Employees 16-22, 46-50, 51-59 (a)		
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H-425

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1986

VOL. 29
PART 1
1-364
INDEX

kbb

14

House of Representatives

Wednesday, March 12, 1986

to the Committee on Appropriations.

ACTING SPEAKER TAYLOR:

So ordered.

CLERK:

Favorable Report of the Joint Standing Committee on Labor and Public Employees, House Bill No. 5103, AN ACT CONCERNING COLLECTION OF MONEYS OWED THE SECOND INJURY AND COMPENSATION ASSURANCE FUND. The committee has met, feel the bill ought to pass, but first be referred to the Committee on Judiciary.

ACTING SPEAKER TAYLOR:

So ordered.

CLERK:

Favorable Report of the Joint Standing Committee on Labor and Public Employees, Substitute House Bill No. 5106, AN ACT CONCERNING COMPLIANCE WITH WORKERS' COMPENSATION INSURANCE REQUIREMENTS. The committee has met, feel the bill ought to pass, but first be referred to the Committee on Appropriations.

ACTING SPEAKER TAYLOR:

So ordered.

CLERK:

Favorable Report of the Joint Standing Committee on Labor and Public Employees, House Bill No. 5290, AN

kbb

15

House of Representatives

Wednesday, March 12, 1986

ACT CONCERNING THE CIVIL LIABILITY OF ARCHITECTS AND ENGINEERS UNDER THE WORKERS' COMPENSATION ACT. The committee has met, feel the bill ought to pass, but first be referred to the Committee on Judiciary.

ACTING SPEAKER TAYLOR:

So ordered.

CLERK:

Favorable Report of the Joint Standing Committee on Education, House Bill No. 5297, AN ACT CONCERNING SCHOOL CONSTRUCTION GRANT PAYMENTS. The committee has met, feel the bill ought to pass, but first be referred to the Committee on Appropriations.

ACTING SPEAKER TAYLOR:

So ordered.

CLERK:

Favorable Report of the Joint Standing Committee on Labor and Public Employees, Substitute House Bill No. 5383, AN ACT CONCERNING TRANSFERS TO SUITABLE WORK FOR INJURED EMPLOYEES. The committee has met, feel the bill ought to pass, but first be referred to the Committee on Judiciary.

ACTING SPEAKER TAYLOR:

So ordered.

H-435

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1986

VOL. 29
PART 11
3808-4180

kok

15

House of Representatives

Monday, April 28, 1986

Those voting nay	4
Those absent and not voting	17

SPEAKER VAN NORSTRAND:

The bill is passed in concurrence with the Senate.

CLERK:

Page 4, Calendar No. 423, House Bill 5290, File No. 458, AN ACT CONCERNING THE CIVIL LIABILITY OF ARCHITECTS AND ENGINEERS UNDER THE WORKERS' COMPENSATION ACT. Favorable report of the committee on Judiciary.

REP. RUDOLF: (139th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Jacob Rudolf.

REP. RUDOLF: (139th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER VAN NORSTRAND:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark, sir?

REP. RUDOLF: (139th)

Mr. Speaker, this bill deals with when construction workers are injured on the job, they are prohibited under the workers' compensation act from suing

kok

16

4125

House of Representatives

Monday, April 28, 1986

their employer for damages, however, --

SPEAKER VAN NORSTRAND:

Excuse me, sir. Will the House please come to order. Will the House please come to order. You have the floor, sir.

REP. RUDOLF: (139th)

Thank you, Mr. Speaker. When construction workers are injured on the job they are prohibited under the workers' compensation act from suing their employer for damages. However, they may sue anyone else directly or indirectly involved in the construction project. This bill before the House would limit liability suits against architects and engineers to only accidents caused by design defect. This would help control deep pocket awards and I move passage.

SPEAKER VAN NORSTRAND:

The question is on acceptance and passage. Will you remark?

REP. RYBAK: (66th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Michael Rybak.

REP. RYBAK: (66th)

Thank you, Mr. Speaker. Through you, Mr. Speaker,

kok

17

House of Representatives

Monday, April 28, 1986

one question to Rep. Rudolf.

SPEAKER VAN NORSTRAND:

Please frame your question, sir.

REP. RYBAK: (66th)

Thank you, Mr. Speaker. Through you, Mr. Speaker to Rep. Rudolf, I notice on lines 90 through 96 of the file copy, it allows the worker to bring suit for negligence in design by the architect. My question to you is would it also include negligence in the supervision on the job since architects are both design -- are charged in many contracts with both design as well as supervision on the job.

SPEAKER VAN NORSTRAND:

Rep. Rudolf.

REP. RUDOLF: (139th)

To the best of my knowledge, Mr. Speaker, I don't think that supervision would be included in this.

SPEAKER VAN NORSTRAND:

Rep. Rybak.

REP. RYBAK: (66th)

Thank you, Mr. Speaker, that answers my question.

SPEAKER VAN NORSTRAND:

Will you remark further on the bill.

REP. LOONEY: (96th)

Mr. Speaker.

kok

18

4127

House of Representatives

Monday, April 28, 1986

SPEAKER VAN NORSTRAND:

Rep. Martin Looney.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, the clerk has an amendment LCO No. 3468, may the Clerk please call the amendment and may I be permitted to summarize it.

SPEAKER VAN NORSTRAND:

The gentleman is attempting to offer an amendment. You may or may not be interested. We would have little opportunity to peak your interest because I don't think he could be heard. Would the Clerk please call LCO 3468 designated House Amendment Schedule "A".

CLERK:

House Amendment Schedule "A"LCO 3468 offered by Rep. Frankel and Rep. Looney.

SPEAKER VAN NORSTRAND:

The gentleman seeks leave of the chamber to summarize. Is there objection? You have the floor, sir.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, what this amendment does it addresses the problem of municipalities caught in the kind of crossfire between contractors and architects and conflicting statutes of limitations. We currently have in our statutes, Mr. Speaker, a seven year

kok

19

House of Representatives

Monday, April 28, 1986

statute of limitations for actions against architects and engineers involving deficiencies in design and planning contract administration and so on. What this amendment would do is ensure that that seven year statute would apply and that a shorter statute such as the three year general negligence standard or the six year statute on contract matters would not be superimposed on the statute regarding architects.

This is to correct a problem that was highlighted, Mr. Speaker in the case of Sivitello v. The City of New Haven decided by the Appalet court earlier this year. I move passage of the amendment, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The question is on adoption. Will you remark? Will you remark? If not, all in favor indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER VAN NORSTRAND:

All opposed indicate by saying nay.

The ayes have it. House "A" is adopted and ruled technical.

House of Representatives

Monday, April 28, 1986

House Amendment Schedule "A".

In line 1, insert "Section 1."

After line 102, insert the following:

"Sec. 2. section 52-584a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) [Notwithstanding any provision of the general statutes, no] NO action or arbitration, whether in contract, in tort, or otherwise, (1) to recover damages (A) for any deficiency in the design, planning, contract administration, supervision, observation of construction or construction of an improvement to real property; (B) for injury to property, real or personal, arising out of any such deficiency; (C) for injury to the person or for wrongful death arising out of any such deficiency, or (2) for contribution or indemnity which is brought as a result of any such claim for damages shall be brought against any architect or professional engineer performing or furnishing the design, planning, supervision or observation of construction or planning, supervision or observation of construction or substantial completion of such improvement.

(b) Notwithstanding the provisions of subsection (a) of this section, in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the seventh year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than eight years after the substantial completion of construction of such an improvement.

(c) For purposes of subsections (a) and (b) of this section, an improvement to real property shall be considered substantially complete when (1) it is first used by the owner or tenant thereof or (2) it is first available for use after having been completed in accordance with the contract or agreement covering the

kok

21

House of Representatives

Monday, April 28, 1986

improvement, including any agreed changes to the contract or agreement, whichever occurs first.

(d) [Nothing in this section shall be construed to extend the period prescribed by the laws of this state for the bringing of any action.

(e)] The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring action."

SPEAKER VAN NORSTRAND:

Will you remark further on the bill as amended by House "A"?

REP. RUDOLF: (139th)

I would move adoption as amended, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The question is on adoption and passage. Will you remark further?

REP. TABORSAK: (109th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Lynn Taborsak.

REP. TABORSAK: (109th)

I'd like to oppose passage of this bill. I think that what we're doing here is interfering with an

kok

22

4131

House of Representatives

Monday, April 28, 1986

individual's right to sue for personal injury that may occur because of negligence of a professional. I think the general assembly later this week is going to address the whole area of tort reform. And what we're seeing here is a piecemeal approach. It's bad public policy to take just one particular group and exempt them from liability. Let's address it in tort reform. Let's address the whole question of liability and not just extend this exemption to our architects and design professionals.

SPEAKER VAN NORSTRAND:

Will you remark further on the bill as amended.

REP. O'NEILL: (98th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Francis X. O'Neill, Jr.

REP. O'NEILL: (98th)

To clarify something for the previous speaker, this has nothing to do with negligence on the part of the architect or the engineer. If the architect or engineer is negligent, you can still sue.

SPEAKER VAN NORSTRAND:

Will you remark further on the bill as amended?

If not, staff and guests please come to the well of the

kok

23

House of Representatives

Monday, April 28, 1986

House, the machine will be opened. Clerk, please announce the pendency of a roll call vote for the benefit of the members not presently in the chamber.

CLERK:

The House of Representatives is now voting by roll. All members please return to the Chamber immediately. The House of Representatives is voting by roll. All members please return to the Chamber immediately.

SPEAKER VAN NORSTRAND:

Have all the members voted? Please check the board to determine if your vote is properly recorded. If so, the machine will be locked and Clerk, please take a tally.

REP. THORP: (128th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. David Thorp.

REP. THORP: (128th)

Mr. Speaker, I'm not quite awake yet. In the affirmative.

SPEAKER VAN NORSTRAND:

Rep. David Throp of the 89th, in the affirmative.

REP. TIFFANY: (36th)

In the affirmative, Mr. Speaker.

kok

24

House of Representatives

Monday, April 28, 1986

SPEAKER VAN NORSTRAND:

The gentleman from the 36th, Mr. John J. Tiffany,
in the affirmative. Clerk please announce the tally.

CLERK:

House Bill 5290 as amended by House "A".

Total number voting	140
Necessary for passage	71
Those voting yea	110
Those voting nay	30
Those absent and not voting	11

SPEAKER VAN NORSTRAND:

The bill as amended is passed.

The chair at this time would entertain points of
personal privilege or announcements.

REP. CHASE: (120th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. J. Vincent Chase.

REP. CHASE: (120th)

Thank you, Mr. Speaker. Mr. Speaker with us today
in the Well of the House we have a distinguished former
member of this body. I'd like to introduce former State
Representative William Smythe from the Town of Stratford
who served in this body from 1956 to 58 and from 1970 to

S-249

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1986

VOL. 29
PART 1
1-323
INDEX

March 12, 1986

64

Government Administration and Elections.

Public Safety, House Bill 5801, AN ACT CONCERNING INDEMNIFICATION OF POLICE PERSONNEL ASSIGNED BY MUNICIPALITIES TO THE STATEWIDE NARCOTICS TASK FORCE. Referred to Judiciary.

Public Safety, Substitute House Bill 5022, AN ACT SPECIFYING A MINIMUM NUMBER OF AUTHORIZED POSITIONS FOR THE REGULAR STATE POLICE FORCE. Referred to Appropriations.

Labor and Public Employees, House Bill 5103, AN ACT CONCERNING COLLECTION OF MONIES OWED THE SECOND INJURY AND COMPENSATION ASSURANCE FUND. Referred to Judiciary.

Labor and Public Employees, House Bill 5106, AN ACT CONCERNING COMPLIANCE WITH WORKERS' COMPENSATION INSURANCE REQUIREMENTS. Referred to Appropriations.

Labor and Public Employees, House Bill 5290, AN ACT CONCERNING THE CIVIL LIABILITY OF ARCHITECTS AND ENGINEERS UNDER THE WORKERS' COMPENSATION ACT. Referred to Judiciary.

Education, House Bill 5297, AN ACT CONCERNING SCHOOL CONSTRUCTION GRANT PAYMENTS. Referred to Appropriations.

Labor and Public Employees, Substitute House Bill 5383, AN ACT CONCERNING TRANSFERS TO SUITABLE WORK FOR INJURED EMPLOYEES. Referred to Judiciary.

End of Agenda #2

LUCILLE F. URBAN
SENATE TRANSCRIPTIONIST

S-257

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1986

VOL. 29
PART 9
2910-3313

Regular Session
May 2, 1986

129
jgt

SENATOR SMITH:

Mr. President.

THE CHAIR:

Senator Smith.

SENATOR SMITH:

Yes. Could we go to page 9, calendar 601 and then if the Clerk would call in order after that, calendar 608, 611 and 444.

THE CLERK:

Page 9, calendar 601, House Bill 5290, File 458. An Act Concerning The Civil Liability Of Architects And Engineers Under The Workers' Compensation Act. (As amended by House Amendment Schedule "A").

Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Hampton.

SENATOR HAMPTON:

Thank you Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

In concurrence with the House, Senator? Do you care to remark?

SENATOR HAMPTON:

Yes, Mr. President. This bill provides that third party civil actions may not be brought by individuals against architects or engineers or their employees for injuries suffered on a construction

Regular Session
May 2, 1986

130
jgt

project if injuries are compensatable under the workmans' compensation act. House Amendment "A" adds the provision changing the statute of limitations to seven years in cases where the statute of limitations were fewer than seven years to apply for civil actions against architects and engineers. Mr. President, this bill as amended in the House was passed on consent and if there are no questions I would move it to the consent calendar.

THE CHAIR:

Will you remark further on the bill? Is there any objection to placing this item on the consent calendar? If not, so ordered. Mr. Clerk, will you please call the next item?

THE CLERK:

Page 10, calendar 608, Substitute for House Bill 5032, File 625. An Act Extending Connecticut Transit Bus Service. (As amended by House Amendment Schedule "A").

Favorable Report of the Committee on Appropriations.

THE CHAIR:

Senator Kenneth Hampton.

SENATOR HAMPTON:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

In concurrence with the House. Thank you Senator. Care to remark?

Regular Session
May 2, 1986

3107

165
jgt

THE CHAIR:

Please give your attention to the Clerk who will announce all those items that were referred to the consent calendar.

THE CLERK:

Page 5, calendar 565, Substitute for House Bill 5952. Page 7, calendar 591, Substitute for House Bill 5482. Page 9, calendar 601, House Bill 5290. Page 10, calendar 608, Substitute for House Bill 5032, calendar 611, Substitute for House Bill 5397. That's it.

THE CHAIR:

Any changes or omissions? Machine is open. Please record your vote. Has everyone voted? Senator Morano. Senator Avallone. Senator Consoli. Has everyone voted? Machine is closed. Clerk, please tally the vote. Result of the vote, 33 yea, 0 nay, the consent calendar is adopted. Senator Morano, do you wish to be recorded?

SENATOR MORANO:

In the affirmative, Mr. President.

THE CHAIR:

The record will so note. Senator Benson.

SENATOR BENSON:

Mr. President, at this time, an item that we voted on the consent calendar, on calendar No. 565, Substitute for House Bill 5952, insofar as this matter must be referred to the House, I would ask that the rules be suspended for the purpose of immediate transmittal to the House.

JOINT
STANDING
COMMITTEE
HEARINGS

LABOR AND
PUBLIC
EMPLOYEES
1-419

1986
INDEX

16
kkw

LABOR

February 18, 1986

REP. O'NEILL (continued)
the public hearing over. We'll have a five minute recess and begin at exactly ten minutes of for the public portion.

MR. JAMES LAWLOR: I'm James Lawlor, I'd like to speak in his place. And with your permission I'd like Judy Edwards, who has signed up, to speak second to join me at the table so we can answer questions that we're both attuned to at the same time and speak to the same issues. If that's all right.

REP. O'NEILL: That's okay.

MRS. JUDY EDWARDS: My name is Judy Edwards and I'm Executive Director of The Connecticut Society of Architects and we are the statewide society for architects. And our membership includes 800 people. We're the local chapter of The American Institute of Architects.

We urge you to support Raised Bill 5290 which would include architects under the umbrella protection from workers' comp.

Anytime construction workers are injured on the job, they cannot sue their employer because of workers' compensation protection, but they can sue anyone directly or indirectly involved in the project. And because of that, architects are often brought into litigation or a cause of action that they shouldn't even be involved in. It's allowing another way for people to get into the deep pocket phenomenon.

Passage of this bill will not take away any rights of workers, because architects will still be held accountable for any negligence in design. This bill will give protection to architects that they rightly should have. According to the professional liability agent and professional liability defense attorney I spoke with recently, with suits arising from on-site workers' injuries, in most cases, the architect is not being held liable. Thus, these legal actions which have been needlessly causing architects harrassment, loss of time away from their work because they are required to duplicate documents in their defense, it also causes

MRS. EDWARDS (continued)

them loss of money because they have to pay out their deductibles to help defend them, and it also causes claims to be filed against their policies, their professional liability insurance policies.

MRS. Passage of 5290 would be a positive step toward stabilizing professional liability insurance. It would discourage unnecessary filing of claims and thus encourage more companies to become willing to take on the risk of insuring the desing professional.

MR. JAMES LAWLOR: I'm James Lawlor, I'm in architectural practice in West Hartford and am registerd in New York, Massachusetts and Rhode Island as well as Connecticut. I'm also a member of the Board of Directors for the national AIA.

We're extremely interested in liability insurance and the insurance that affects our practice. Workmens' compensation happens to be something which is taking up about 10% of the claims against our liability insurance nationally. At the present time there are only two insurance carriers which will write liability insurance, new insurance in Connecticut, for our architects and engineers. And one the problems is frivolous lawsuits.

At the present time workmens' compensation laws were designed as a result of the industrial revolution to protect workers from injury and health hazards created on the worksite. They were also created an obligation for employers to pay for that insurance. And with that obligation also came the right to be free from suit against those same injuries.

Unfortunately, in the construction industry, contractors, architects (inaudible) from their employers, but architects, engineers, owners, other third parties, suppliers are not protected. Some of the examples of the lawsuits that have been brought up against architects at the present time I think will show that this is aimed at eliminating or at least reducing frivolous lawsuits. It is no way do we wish to reduce or to eliminate the due process from our negligent acts

MR. LAWLOR (continued)

we hopefully do not commit on a regular basis. But this is (inaudible) frivolous suit and not those of negligence.

Judy has some examples that I would like to have her cite to you.

MRS. EDWARDS: These are typical kinds of accidents that happen, and they are real. They are the first three that came off the top of the head of the professional liability insurance agent I spoke to. He could have come up with many more had he taken the time to look through the files, but these just came to his mind quickly.

The first example was with a welder who was killed when he was cutting a tank apart. And he continually put his head through a certain section even though he had been told not to several times. And there was an injury, he was killed. His estate could not sue the employer, but they could sue everyone else involved in the project and they did including the design professional who was not found liable. But he still had to (inaudible).

The second example was an on-site worker who fell off a scaffolding on the exterior of a building. His estate could not sue the employer, again, but did sue everyone else, the design professional included, and the design professional was not found liable.

The third example I might offer to you is a painter who was working on a ceiling of a gymnasium. He fell off a scaffolding, was injured, and he brought suit against the architect, as well as others, and the architect was not found negligent.

MR. LAWLOR: I think an important part of an understanding of the construction process is the architect and the engineers, the design professional has a contract with the owner to design a building and prepare documents for a contractor to build a concept the actual building from. The contractor then has a contract with the owner. The architect or the engineer does not have an active part in the supervision, the direction, phasing,

19
kkw

LABOR

February 18, 1986

MR. LAWLOR (continued)
scheduling, ordering of materials or the placement of men on the construction site. The design professional is not a part of that process.

This legislation would recognize that. We would be given the same protection that under the full umbrella and the laborer, the worker on the site would still be protected by the laws of workmens' compensation. At the present time I pay workmens' compensation, my employees are protected from injury or health hazards they may have on the job and then I am also protected from suit. This would extend that suit to the workplace and the construction site.

If you have any questions--

REP. O'NEILL: Yes I have. Thank you very much. In line 70, 71 of the bill has "or any employee of a construction design professional who is assisting or representing the construction design personnel under the performance of professional services is acceptable." So that in addition to architects and engineers, you would be adding on other people, such as a draftsman possibly, secretary.

MR. LAWLOR: My secretary very seldom goes to the job. But in the--during the--

REP. O'NEILL: Well, let's rephrase that then. The secretary who might be erroneously transcribing some information which would be implemented in the job.

MR. LAWLOR: Possibly, yes. I don't see how that would happen, but yes. During the construction process, architects and engineers visit the site on a basis depending on the scheduled construction to see how the work is progressing, to see if it's progressing in accordance with working drawings and specifications as the owner's representative. But at that time they do not direct or tell workers or the contractor how or what to do and where to do it.

REP. O'NEILL: Any further questions? Representative Adamo.

20
kkw

LABOR

February 18, 1986

REPRESENTATIVE ADAMO: Sir, you quoted three or four states that you are also registered in, are you given this protection in those states?

MR. LAWLOR: I'm not sure which states have those at the present time. This particular law is modeled after a law is--it has been--

MRS. EDWARDS (speaker inaudible).

REP. ADAMO: Thank you.

REP. GELSI: Mr. Chairman.

REP. O'NEILL: Representative Gelsi.

REP. GELSI: Your architects and design people though do make up the total specifications of a new building? When they're inspecting a site, I assume they're looking for, they're not responsible for, but they are responsible that the specs are followed, they are responsible that the building is being to the specifications the owner is paying for, is that correct?

MR. LAWLOR: We're responsible for reporting to the owner any deviations or anything we notice that is not in conformance with those specifications and drawings. But we have no authority over the contractor, his sub-contractors or his labor force. Only as a representative of the owner, to report to the owner where we see contract obligations not being met.

REP. GELSI: There's a construction site going on and the architect finds they're using an improper mix on concrete and doesn't report that, would that architect still have some responsibility if that wall then fell down and hurt 20 people?

MR. LAWLOR: If the architect knew that that concrete--

REP. GELSI: And didn't report it.

MR. LAWLOR: If that architect knew that the concrete was not up to the appropriate design mix and did not report it, yes.

REP. GELSI: If he didn't report it, I would assume that he would be found not guilty and he would (inaudible) performing the duties of his job.

MR. LAWLOR: Yes.

REP. GELSI: But if this bill is passed the way you want it, he would be excluded even if he was guilty in not reporting.

MR. LAWLOR: No. Because that would be an act of professional negligence covered by our errors and omissions. And that's one of the things that I want to stress, that this is not in any way a bill proposed to eliminate or shelter us, protect us from negligent acts that we create in the performance of our profession. This is to eliminate or reduce the frivolous suits which we are not necessarily a responsible party, such as the examples that Judy read to you.

REP. GELSI: Thank you.

REP. O'NEILL: Any further questions? Thank you very much.

Mr. R. Bartley Halloran.

MR. R. BARTLEY HALLORAN: Thank you Mr. Chairman, my name is Bart Halloran and I'm the President of Connecticut Trail Lawyers Association. And I'm here to address three bills.

First of all, as to the 5290, which was just addressed. I'd like to point out that although they claim this has nothing to do with--it will affect only frivolous suits, and, as a lawyer, now reading that that (inaudible) frivolous suits, it seems to apply to every type of suit.

In these days we seem to hear a lot of stories and examples rather than facts and figures as to what these problems are. I would just point out that for every story they have there are just as many stories the opposite way of injured workers very seriously hurt by the negligence of people who are now looking for immunity. Out of my own personal experience, I'd just

MR. HALLORAN (continued)

cite you, in East Hartford when the cinema collapsed, paralyzing my client and killing someone else, we discovered that the architect who had supervisory powers at that ignored the fact that the roof was not put on or the walls braced, and there were two very serious injuries there. So, the right for immunity as I understand it under workers' compensation is based on the fact that you might have to pay workers' compensation.

I've testified several times before the Judiciary Committee in an attempt to eliminate the principal employer defense which is part of workers' compensation. Under principal employer a general contractor at a site does have an immunity from being sued. The reason that he has an immunity is that under our law if a sub-contractor does not have workers' compensation insurance, the general contractor would have to pay workers' compensation.

The architects are asking for immunity without the responsibility and rights without responsibility. I think that that's totally inappropriate and should not be allowed by this Committee.

Secondly, I'd like to address the question of scarring. HB 5098 Commissioner Arcudi pointed out a problem which I would just cite and I'll be very brief. It says that an employee is receiving or is eligible to receive compensation. I've done a great deal of workers' compensation work, that's about probably a third of my practice. It's been my experience that in all scarring cases, at least a year goes by from the date of the infliction of the scar before a scarring award is made. The reason for that is obvious, if you try to evaluate a scar too soon, the award is going to be very much larger. So that I think the problem of "is receiving" is language that's going to create nightmares in workers' compensation. The intention is to say has received or has been eligible or will be eligible for benefits to eliminate the very minor scarring awards, for instance somebody nicking their hand, and receiving medical treatment and receiving no affirmative disability, takes no time

MS. JOYCE WOJTAS: Good afternoon, members of the Labor Committee. My name is Joyce Wojtas and I am Director of Legislative Relations for the Connecticut Construction Industry Association and I'd like to speak briefly on Raised Committee Bill 5107 concerning workmens comp insurance requirements for contractors on public works contracts. I'm not addressing the state licensing portion of this bill but on state contracts, to the best of my knowledge, especially (inaudible) contracts, any contract (inaudible - too far from mike). There are investigations addressed to workers comp. A sworn statement has to be filed right now for every contract right now based on a public act that was passed last year. My only concern with the bill is that a statement from the Treasurer (inaudible) could possibly delay the award or contract. Currently, from the time a bid is opened until the time it is awarded, it is a 45 day period and in addition to that, (inaudible) review of the Transportation Accountability Board. That's another 30 day period. We get very concerned when we see anything that will cause additional paperwork or possibly delays.

I don't know if there is a better way to get around it. Maybe there are violators in the Treasurer's office (inaudible) notice can go out to the awarding agency, such as with DOT and the Public Works --

REP. O'NEILL: -- You have no -- you're not against the concept of the bill, just the way the (inaudible) --

MS. WOJTAS: -- Right, the possibility -- because of what we go through now to be qualified and all the statements that are currently filed, I don't know whether this is going to be (inaudible) and currently you have to provide sufficient evidence to the awarding authority and I can't really speak to public works contracts other than highway and bridge construction so I would hope the committee would possibly get in touch with the agency involved, the major agencies involved, (inaudible).

REP. O'NEILL: Thank you. Are there any further questions?
Robert Heller.

HB 5290

MR. ROBERT HELLER: My name is Robert Heller and I speak on behalf of the Connecticut Engineers in Private Practice, CEPP of which I am President. CEPP is an organization of Connecticut engineering firms, most of whose area of

MR. HELLER: (continued)
practice is construction related.

By way of introduction, let me say that engineers are suffering greatly in the present liability and insurance crisis. This is the same crisis which is --

SEN. HAMPTON: -- Excuse me, I'm sorry, Bob. I almost said welcome to the clan.

MR. HELLER: We're here -- we're perhaps not as visible, but anyways those of you who have heard doctors and lawyers, and as a group, insurance has become unavailable or prohibitively costly, and riddled with exclusions. A litigious society has made law suits brought almost against design professionals, most without merit, so common that almost half the firms are likely to have a claim brought against them this year.

I am here today to ask you to consider favorably the alleviating of one of our problems, the situation where design professionals are unfairly victims of claims for accidents completely outside their responsibility. In a typical case, Balagna vs. Van Doren, Kansas, 1983, an unshored trench in violation of safety laws, collapses and a construction workman is killed. The widow is entitled to the benefits provided under the state unemployment compensation law. This exonerates the contractor/employer from any further liability. The widow then files suit against the design engineer. The engineer understood his construction phase responsibility to be seeing that the completed facility was what his plans and specifications intended. He had no responsibility or authority for job safety, and was not empowered to stop the job. Win or lose, and he lost, it cost him and his insurance company a considerable sum.

Workers compensation laws can be made to deal with this and I think you have done a great deal in that direction. The Oklahoma law was mentioned, I believe (inaudible) to the one you're considering. It would provide that in such instances the design professional stands in the same shoes as those of the contractor; the firm is equally not subject to suits for damages over and above an amount paid under the workers compensation law system. It is hoped that our state will amend its workers compensation law to provide its practicing engineers with necessary relief.

REP. O'NEILL: Thank you. I just have a question. Suppose, for the sake of discussion, it could be proven that the architect or the engineer was grossly negligent resulting in a serious injury.

MR. HELLER: I don't think that we have a problem with that at all. Let me describe to you the traditional way an investigation is written. It's written so that the contractor assumes full responsibility for job safety and for the progress of the work. The engineer, on the job site, (inaudible) quality control (inaudible). He's responsible for that. If it were otherwise, if the engineer role was suspended (inaudible) and his role (inaudible) conceivably he would have to assign one man to every worker, maybe more than one, if one went off to get a piece of equipment that was necessary for the (inaudible) and have to send someone along with him to make sure he didn't walk under a crane or fall into a ditch. That's how serious that sort of thing becomes.

Now Kansas, in this case, when it happened or after it happened obviously went and looked to people like you to do something about it, if it's not reasonable to expect that type of additional responsibility and liability (inaudible). I don't know if I answered your question.

REP. O'NEILL: In a way but let me ask another question. Let's take the Mianus River Bridge, for example, all right and let's say there was a flaw in the design of that particular bridge by an architect and let's assume that I, as a state employee, who is crossing it and it's part of my job and it fell down. Wouldn't I have a right to sue you for liable?

MR. HELLER: I think the law would allow for (inaudible). I would say yes.

REP. O'NEILL: My only recourse then would not just be workmens' compensation?

MR. HELLER: To cover that situation, of the job situation when the engineer is drawn into the thing, then simply because the injured party feels that workmens' comp is not sufficient (inaudible).

REP. O'NEILL: Thank you. Rep. Belden.

REP. BELDEN: I read the file copy here and I think that (inaudible) stepped out of bounds of what this is trying to

REP. BELDEN: (continued)

do and I just wonder if you care to comment on where the (inaudible) role of project manager or (inaudible) where we have a construction firm and (inaudible).

MR. HELLER: In that particular case I don't think that the (inaudible) before us should apply. There are some engineering firms that act, as you described, as construction managers and when -- in that case, if their loyalty is such, if your contract is with the owner (inaudible) engineering type functions (inaudible). If it was extended, as in some cases it is, to essentially (inaudible) then they would be as a contractor (inaudible) so all we are asking is that we be considered in the same way the contractor is considered because he has to (inaudible).

REP. BELDEN: If you're in fact the construction manager for the job you have some obligation to insurance, job site, (inaudible). What this file does here before us is to take all that liability away from the (inaudible).

MR. HELLER: If I understand --

REP. BELDIN: -- You still have the workmens' comp.

MR. HELLER: The contractor also has the (inaudible) for that situation. The question, does a construction manager or an engineer (inaudible), does he act as policeman? Must he go out there and police the site? (Inaudible) the responsibility of the person who signs the contract who says I am the person responsible for job safety to be responsible for it. This is what a contractor does. He's responsible for job safety.

REP. RUDOLPH: Having served on many, many school building committees at the municipal level it has always been, to my knowledge, the architect so that's the subcontractor. That was years ago. I don't know about today. Who's responsibility would it be if he picks a subcontractor?

MR. HELLER: I'm just not aware of any (inaudible). That is not the traditional way of (inaudible). There's no way today, if you're talking about school systems (inaudible) election of contractor, either through open bidding or proposal --

REP. RUDOLPH: -- Let me give it to you hypothetically then.

REP. RUDOLPH: (continued)

I hire an architect and I tell him he's responsible and I want him to hire the contractor and the subcontractor. I'm going to hold him responsible for the entire project. What are we going to do about it?

MR. HELLER: I can't speak for that (inaudible). I have been (inaudible) would say an engineer. I would not likely sign a contract saying that he's going to be responsible for the safety of the job (inaudible). That's an effort he cannot fully control because he cannot step (inaudible).

REP. O'NEILL: Rep. Gelsi.

REP. GELSI: I totally disagree with you. That may happen with a small engineering firm of one or two people. Major, major engineering firms also cover clerk of the works and the one major project that I can think of that we did some \$50 million worth on in the Town of Enfield were the sewer jobs and that clerk of the work is responsible. I also remember the contracts that we signed with the major engineering firm. They weren't responsible for nothing except collecting their 15% and designing the project and whatever the payroll was. All right, (inaudible) blame anyone for 15% of \$50 million but there are some problems. Let me ask you to think of a question that hasn't been asked today.

How many engineering firms have been sued in the State of Connecticut last year, the year 1984-85?

MR. HELLER: I don't have the figure for the BIC Pen. I mentioned in my remarks that (inaudible) but I believe 41% were last year.

REP. GELSI: Well, I'm surely not concerned with what happens in Kansas or Oklahoma or California and I think if we really need this type of legislation, I think we've got to know what the problem is in the State of Connecticut.

MR. HELLER: I would be glad to try and develop the figures, if I can for this thing.

REP. O'NEILL: The committee would appreciate it. Any further questions? Thank you, Mr. Heller. John Olson.

MR. JOHN OLSON: Thank you, Mr. Chairman. My name is John Olson. I represent the Connecticut State (inaudible)

MR. OLSON: (continued)

Construction Trades Council. I'd like to speak on three bills today, shortly, because most of its been said. In regards to bill 5107, I would like to support this bill because it's a bill to in fact look for compliance and (inaudible) a law that is already on the books in the State of Co-necticut. I see nothing wrong with passing legislation to correct any (inaudible) that may be out there (inaudible) the laws that we already have on the books.

Bill number 5098, "An Act Concerning Workmens' Compensation Benefits Scars". I have a personal example of a man in construction, of how this bill was counterproductive between what it was intended to do. I had a man who was cut severely on the job. It was a (inaudible). He was paid by the employer for half a day. He took one day off himself and was back on a Monday. He was very concerned about the scar. He wasn't concerned about receiving workmens' comp. He was very busy and he liked (inaudible) a normal paycheck. Most people, believe it or not, do not want to collect unemployment workmens' compensation (inaudible). This was an example. I think this gentleman, who was concerned about that scar, if in fact I (inaudible) I would have said to him if you're that concerned about the scar, you better consider going to the doctor and make sure that you can't come back for light duty. I mean how do you determine light duty? In the construction industry (inaudible) problems with light duty. Light duty he could get with the cooperation of a contractor. Generally speaking when someone's hurt, working for a contractor, a contractor will somehow or another (inaudible) light duty and then the man (inaudible). So there are a lot of grey areas there and I think it pushes people to the point of possible abuse of the law (inaudible).

Third piece of legislation, bill 5290, in regards to civil liability (inaudible) under workmens' compensation, I asked some of the same questions that were raised earlier. I brought them up earlier. I find it quite unusual that we're reacting to a situation where I heard that there were only three cases that were cited earlier in the State of Connecticut and I personally have been on construction jobs for 17 years. I've been a business manager, I'm involved with a lot of business agents around the State of Connecticut and I've never heard of any engineer or (inaudible) architect (inaudible) under workmens' compensation. I don't know

MR. OLSON: (continued)
where it's happening. I haven't seen it in the State of
MS. Connecticut. Again, I don't have the statistics to back
this up. I may well (inaudible) myself, and third, I
think that the part where we have engineers, we're finding
a major change in the construction industry today. It's
not only engineers, but contractors, large contractors
that are turning into managers and they define themselves
as engineers or architects who present the -- let me give
you an example, The Hyatt Hotel being built down in
Greenwich. I think Bosco has 30 employees on the job
that are just engineers, architects, gophers and everything
else that you have there. You know, what's going to happen
with the construction -- are they on the construction site
or are the employees (inaudible) on the site if you get
(inaudible)? I feel that whatever we're trying to do with
the legislation, if we're trying to correct something, fine
but if we see no clear need, I would hope that this committee
would not see fit to make anymore legislation. Thank you.

REP. O'NEILL: Thank you. Anybody have any questions? Thank
you, Sir. Faith St. Claire.

MS. FAITH ST. CLAIRE: Good afternoon (inaudible). My name is
Faith St. Claire. I'm the Executive Director for the
Connecticut Society of Professional Engineers and
Connecticut Engineers in Private Practice. I speak to you
on bill 5290, "An Act Concerning the Civil Liability of
Architects and Engineers Under the Workers' Compensation
Act", which gives equal treatment to the design professional
in that it limits their liability to only accidents caused
by design defect.

As the law currently reads, the engineer and the architect
are held responsible for work they are not required, or
have not contracted to do. There are suits arising every day
against the design professional whose only job entailed the
design of the project, not the construction inherent
safeguards to on-site safety. The cost of defense, and the
time lost in that defense, places an unfair and discrimi-
natory burden on the design professional, and adds to the al-
ready horrendous problem of professional liability insurance.

We urge the committee to take Joint Favorable action on
House Bill 5290. If I may, Mr. Chairman, speak to a couple
of (inaudible) before --

53
kpp

LABOR

February 18, 1986

REP. O'NEILL: -- For the next two and a half minutes?

MS. ST. CLAIRE: Certainly. The bill which stresses very strongly that it limits the engineers or architects liability to think that (inaudible) their purview. It absolutely says that in the case of a design defect in (inaudible) is responsible and can be sued. When you talk about if an architect is hired to hire the construction people and everything else, we might then go back to the owner who hired the architect. Where is that responsibility?

The case is -- very seldom does that happen, if it happens at all. (Inaudible) you hire people within the same work of the business or industry structure. The architects and engineers are responsible for the designing of the project. They are responsible to make sure that the bridge does not fall down through an error in design, or that a building does not collapse or that something within a building doesn't collapse. That is their responsibility and as such, they are rightfully liable should that design be defective. The contractor, on the other hand, is responsible for the actual construction of the project and again, all of the safety mechanisms that go into place during that construction period. He deals with construction everyday. He knows all the laws that deal with construction and OSHA and the safety factors and he is again, responsible in that area.

If there's an engineer or architect on the job, as you suggested, generally they are an employee of the firm that is doing the contracting and as Bob Heller suggested, covered under the Workers' Comp law because the contractor is excluded. In terms of --

SEN. HAMPTON: -- May I ask a question, Mr. Chairman.

REP. O'NEILL: Sure.

SEN. HAMPTON: She ran out of steam and I wanted to help a little but isn't it true though, Faith, that the architect is the ultimate boss on the job?

MS. ST. CLAIRE: No. The ultimate boss on the job in terms of construction is the general contractor. He hires all the subs. It is only the architect or the engineer's responsibility to be sure that the design is being built,

MS. ST. CLAIRE: (continued)
that it is being built in accordance with the specifications of the design. That is why an engineer or an architect may go out to make sure that he specifies certain materials, for example, that they haven't been substituted without anybody's knowledge because they might cause a collapse.

SEN. HAMPTON: If the architect goes to the job and sees something going on that is not in the plans, he has the authority to stop the job. Right? I'm seeing heads go up and heads go down.

MS. ST. CLAIRE: No, he goes to the -- all his responsibility is to go back to the owner and say just a minute, this is what I have found and then it is really the owner's responsibility to determine whether he wants to (inaudible) the general contractor to him.

SEN. HAMPTON: In a great number of cases, turn-key operations, and the owner may be some guy in Oshkosh that cares less, and he says to the architectural firm of X, Y & Z, this is what I want. It's your (inaudible). When you get it finished bring me the key. Isn't the architect then the sole --

MS. ST. CLAIRE: -- (Inaudible) that responsibility, certainly he's responsible. Now, doesn't he become (inaudible) --

SEN. HAMPTON: -- Does he go out of the role of being an architect or does he -- what role does he assume?

MS. ST. CLAIRE: No, he does not go out of the role of the architect or engineer. Again, he's on the job to be -- to see that the things that are being done are in accordance with not only the design but with what the owner has contracted to do. The actual safety on the job, in terms of the case that was illustrated where essentially (inaudible) against all safety regulations. That is not his -- he's concerned with the actual structure. It is not -- it would be a physical impossibility for one or even a team of design professionals to inspect every safety department. It's like -- it would be the same as going into a plant and -- like Rep. Gelsi said, it would be like going into a plant whereby you put people in charge of (inaudible) because not everyone can be in there watching and the general contractor has that responsibility for the safety of the construction site. Now, here again, we are not

MS. ST. CLAIRE: (continued)
(inaudible) here again, we have not eliminated the liability of the professional. We are just saying that if he has designed something, and it is then out of his hands, why, when everyone else is covered under the workers' comp laws, should there be an opened case against the engineer or the architect for (inaudible) as you've all heard in the (inaudible).

REP. O'NEILL: Rep. Rudolf.

REP. RUDOLF: I'm going to say, I'm going to ask a question first, maybe you have the answer. In the case of the high hotel collapse, the reports were that the architects and the engineers were responsible for that hotel. A tragedy. I'm not so sure, Mr. Chairman, where the line of responsibility begins and ends because I'm going to again go back to what I originally said about school building construction, and every meeting that we called for a work change, we dealt specifically with one person, and that was the architect.

Now where is that responsibility? Did he order the contractor, or did the contractor receive a direct order from us, which we had no dealings with. (inaudible)

MS. ST. CLAIRE: Here again, and they came to the highest, to the best of my knowledge, there was a change in the (inaudible) that took place. That perhaps, and again, I do not speak as an authority nor a judge and jury, (inaudible) but perhaps it might effect (inaudible) for not going back and looking at the specs at another time. But that is a design responsibility, to make sure those specifications are being followed and to check these things out. Again, if a worker injures himself by falling into a ditch, or if he trips over a pail and falls off a girder, this has nothing to do with the design. It has to do with simple safety rules and regulations, and that is why we stress we do not want to negate the design protection's responsibilities. We are simply (inaudible) and should stay there (inaudible) where it does not belong, that they are being discriminated against because the contractors who hire all the subcontractors, incidentally, general contractors and are responsible for these simple, basic things, don't have any (inaudible)

REP. ADAMO: Mr. Chairman, a brief question.

REP. O'NEILL: Oh, Rep. Adamo. I'm sorry.

REP. ADAMO: Is it not true though, let's say, an employee who's injured on the job sues an architect. And collects. Would he not have to pay back the workers' compensation payments because it's a third party involved. There's no real double recovery. You know, he doesn't collect twice. If you collect from a third party on a compensable injury, worker's comp is going to be reimbursed.

MS. ST. CLAIRE: That is correct, unless they bring in the pain and suffering, which then falls and this is where it, what happened.

REP. ADAMO: But nonetheless, he has to pay back the workers' comp.

MS. ST. CLAIRE: Yes.

REP. ADAMO: Okay.

REP. O'NEILL: Rep. Belden.

REP. BELDEN: Someone testified before (inaudible). I really would like to see some case history where in fact, suits have been filed exclusive and outside the parameters of workers' comp.

ROBERT HELLER: (More than two speaking at once-inaudible) What I thought the question to be was, and (inaudible) not specifically on the basis of what you describe. When I point figures of 41%, and saying that they're going to be projected to 50%, the, I'm referring to all liability (inaudible) and including ones which (inaudible)

We're not talking about that. What we're talking about this particular thing. I tried to research it as quickly as I could for this meeting and I went through as many (inaudible) that in many cases recently, there have been a lot of (inaudible) it would cost engineers money to defend. Engineer's not going to have enough money to defend. But we have not been successful. However, (inaudible) is because alternately, they brought that

57
kpt

LABOR

February 18, 1986

MR. HELLER: (continued)
one in Kansas which they warned us, and we have to deal with that situation and it could happen here in Connecticut tomorrow or the next day.

REP. O'NEILL: Might I ask if both the engineering association and the architect's association could get together and give us some figures prior to the time that we're required to JF this particular bill.

MR. HELLER: Yes. That bill is isolated now.

REP. O'NEILL: Information concerning these (inaudible- more than one speaker talking without regard to the other)

MS. ST. CLAIRE: (inaudible) speak to a couple attorneys, trial lawyers who are involved with this who are for what we are trying to do rather than be opposed to it and who have said that there's any number of suits that (inaudible) in the State of Connecticut. They don't necessarily, they're not won necessarily, but they are brought and the cost of the (inaudible) and the time, and of course what it also does is raises the workers' comp premium in terms of (inaudible) that are not involved.

REP. O'NEILL: Let's see what we can get (inaudible) Any other questions? Anybody here wants to say something germane to what we were talking about? Yes, sir.

JAMES LAWLOR: I'd like to clear up a couple Rep. Rudolf's questions. I'm an architect and primarily, as you,

REP. O'NEILL: Just for the benefit --

MR. LAWLOR: Jim Lawlor. I spoke earlier. I'm an architect registered in Connecticut. (inaudible) The primary (inaudible).

But basically, the architect's role, he's hired first by the building committee, in case of schools, by the owner in case of a private client, by Pratt & Whitney (inaudible). The architect then puts together a consulting team, usually a structural engineer, a mechanical and electrical engineer, possibly a landscape architect, civil engineer, and works with the building client to form a program and to form a building and design that

MR. LAWLOR: (continued)

will meet the requirements of that particular owner. After this is done, the next part of the process is to create the specifications and working drawings of this team. Normally in public work (inaudible) project is this. That project is put out to bid. The contractors bring in their prices based on those working drawing the specifications, and then the contractor primarily uses the lowest bidder in public work who is qualified to do the work, then signs a contract with the owner.

The architect has a contract or in some cases where the engineer is the design professional (inaudible) has a contract with the owner. The contractor has a contract with the owner, so that the responsibility for a contractor is directed to the owner.

During the process of building, when changes in the work occur unforeseen, site conditions, that require changes or changes orders in the work, the architect then acting as the owner's representative, or the engineer, solicits from the contractor, prices and recommendations (inaudible) brings those back to the owner, explains those to the owner, recommends to the owners whether they think those prices and those changes are appropriate, and then may process the paper work for the owner, as the owner's contract and the owner signs them.

REP. RUDOLF: Does that recommendation jeopardize them?

MR. LAWLOR: Usually, the work is based on the design requirements or the specification requirements of the architect, so the work that he has done is design absolutely (inaudible). And I think one of the things that complicates the issue is we have a lot of people who have designed (inaudible), we have construction management. As far as I know Morgante is a general contracting firm which has gone into construction management on the legislative office building. There are architects, and there are engineers who do design build but when an architect or an engineer does design build and signs a contract with the owner to provide them a product, not providing a service, a professional service, they're providing a product, they hire people to build the building. They are then covered under the umbrella worker's compensation in regard to the (inaudible). So they are then protected.

MR. LAWLOR: (continued)

It is when we provide strictly a professional service, which the majority of people, my insurance company will not insure me if I go into design build. They feel that I'm a professional. Design service is what I'm trained to do, that's what I should be doing.

When we act strictly as a design professional is when we're looking for the protection from the dangers that happen on the site that we have no control. The (inaudible) improperly placed scaffold, the improper phasing of the work, that requirement for a worker to go out onto a steel beam when an improper netting is placed. Those kinds of things that we do not have control over.

Negligence for design we do not want (inaudible). That is what we're trained to do. That is what we professionally are supposed (inaudible).

REP. RUDOLF: So that when the general contract is hired by the owner, is there a proviso that places the entire responsibility on him?

MR. LAWLOR: Yes. What I'd like to do is send you copies of an example of an owner/architect contract and if the engineer could send an engineer contract, and also an owner/contractor contract as an example. And DAS and DOT in the state can also provide you with contracts that they use, and we'll show you where the responsibility and the line is brought.

When an architect or an engineer becomes a design builder and provides, and contracts to provide a product, then he's gotten himself into a different field. He may be the designer, and therefore he's held negligent for his design error.

When he is also the contractor, then he's under the umbrella of workmen's compensation. But that's complicated.

REP. O'NEILL: We thank you very kindly, sir. We appreciate it. Thank you everybody. The meeting is over.