

# Manhattan Prosecutors Go After Builders on Construction-Site Safety

Charges are being brought, but firms say the work has inherent dangers



A construction site at 360 Neptune Avenue in Coney Island this week. PHOTO:CLAUDIO PAPAPIETRO FOR THE WALL STREET JOURNAL

By **CORINNE RAMEY**

**0 COMMENTS**

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As construction accidents have surged, Manhattan prosecutors are pushing to bring criminal charges against builders they say have sacrificed worker safety for profits.

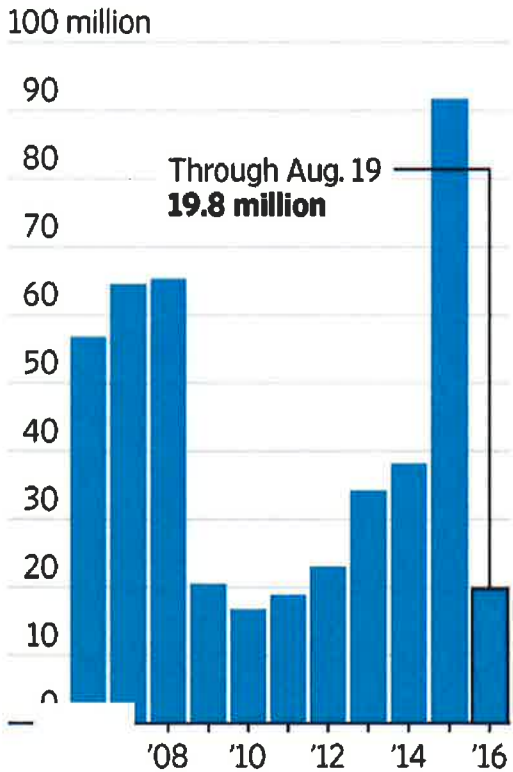
That effort was on full display one afternoon at the Manhattan district attorney's office where prosecutor Diana Florence gathered a group of worker advocates and foreign-consulate representatives around a conference table. As the guests sipped coffee and nibbled on pastries, Ms. Florence and a colleague stressed the importance of photographing unsafe construction sites, truthfully reporting injuries and speaking to investigators, who they said wouldn't turn in undocumented workers.

“Our workers are our witnesses and our victims,” Hildalyn Colón-Hernandez, an immigrant-affairs coordinator in the district attorney’s office, told the group.

## In Harm’s Way

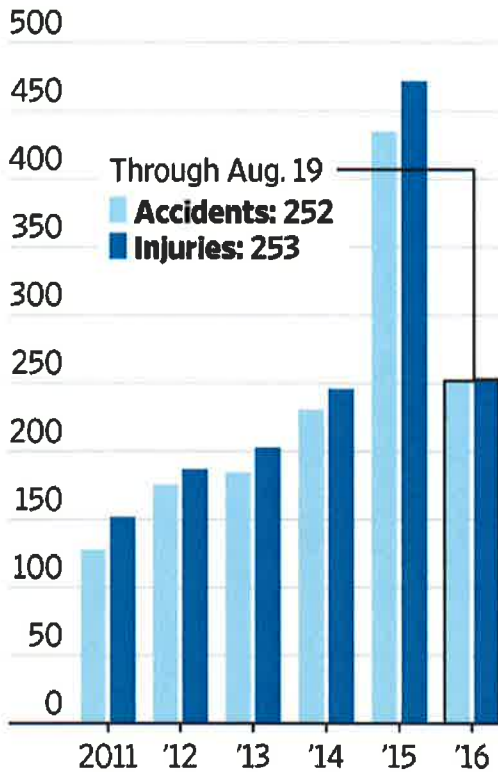
Manhattan prosecutors say increased construction in New York City has led to unsafe conditions for some workers.

### Square feet of new construction



Source: New York City Department of Buildings

### Construction accidents and injuries



THE WALL STREET JOURNAL.

A construction boom in New York City has created what Manhattan District Attorney Cyrus Vance Jr. says is an environment where builders are incentivized to cut corners. Last summer his office, the city’s Department of Investigation and other agencies formed a task force to investigate not just worker deaths, but also fraudulent safety inspections, bribery and other crimes they say can create unsafe conditions. The district attorney’s office has since sought to build and prosecute cases around such crimes.

Those efforts got a boost in June when a general-contracting firm, Harco Construction LLC, was [convicted of manslaughter](#) in the death of Carlos

Moncayo, a worker killed in 2015 when a trench collapsed at a construction site in Manhattan's Meatpacking District. It was the first manslaughter conviction in the office's recent push and prosecutors say it established that a firm managing a project can be held criminally liable for a worker's death, even if that person isn't its direct employee.

"It's the shorthand for all the trials that have come and will come," Ms. Florence said of what she refers to as "the Moncayo case."



A building under construction on Ninth Avenue in Manhattan, as seen this week. Harco Construction LLC was convicted of manslaughter in the 2015 death of a worker who fell in a trench that collapsed at the site. The company is appealing. *PHOTO: KEVIN HAGEN FOR THE WALL STREET JOURNAL*

Ronald Fischetti, an attorney for Harco, said the firm was confident the verdict would be overturned on appeal.

The conviction, and prosecutors' broader efforts, have rattled the construction industry. Some are privately concerned about a rush to hold companies criminally liable for inherently dangerous work, while publicly they have distanced themselves from Harco and other companies they see as outliers.

"The fact that a corporation was convicted did send a bit of a shock wave through the industry generally," said J. Bruce Maffeo, a criminal defense

attorney who participated in a construction-company seminar about the verdict.

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There were 92 million square feet of new construction in 2015, up from 19 million in 2011, according to the city's Department of Buildings.

During that same period, accidents more than tripled, from 128 in 2011 to 435 in 2015. There have been five construction-related deaths so far this year, compared with 12 last year and eight in 2014, data show.

Representatives of the industry have said they do everything possible to prevent accidents, but that the very nature of construction is dangerous.

Some have said Harco is a bad actor and doesn't represent the larger industry. Louis Coletti, president and chief executive of the Building Trades Employers' Association, wrote in a letter to the judge that his members are "sick and tired of contractors like Harco defining the public perception" of company concerns about worker safety.

To call Harco a "bad actor" simply isn't true, said Mr. Fischetti, Harco's lawyer. While the firm did have prior city safety violations, such warnings are typical of companies in the industry, he said.

Industry representatives say another complicating factor is the intertwined responsibilities of companies, contractors, subcontractors and workers.

"The way we're structured in the industry makes it difficult to figure out who the culprit is," said Raymond McGuire, general counsel to the Contractors' Association of Greater New York Inc., a trade group.

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Past attempts to bring manslaughter charges in construction accidents have been largely unsuccessful. The Manhattan district attorney's office, under [Robert Morgenthau](#), charged three site supervisors and a subcontractor in the 2007 deaths of two firefighters at the former Deutsche Bank building in lower Manhattan. All were acquitted of manslaughter, and a subcontractor was convicted of a misdemeanor.

The office also brought manslaughter charges following two separate crane collapses in 2008. One, on East 51st Street, killed seven, and the other, on East 91st Street, killed two.

In both cases [all parties were acquitted](#) of criminal charges.

Pending cases with manslaughter charges include the [people allegedly involved](#) in the [East Village building explosion](#) and that of a worker who died on a Neptune Avenue construction site in Brooklyn, which was brought by the Brooklyn district attorney's office. "There will be more cases like that to come," said Department of Investigation Commissioner Mark Peters.



Prosecutor Diana Florence, center, led a discussion last month on construction fraud. *PHOTO: KEVIN HAGEN FOR THE WALL STREET JOURNAL*

Ms. Florence said she has given 23 presentations to more than 780 workers since January, and that when she talks about Mr. Moncayo's case, many of them say they never knew such accidents could be a crime

She said she is pursuing more construction cases, but carefully choosing where to bring charges.

"In my heart of hearts, I think, 'That's criminal,'" she said, of some of what she sees and hears from workers. "But my heart of hearts is not evidence."