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**DA VANCE: GRAND JURY RECOMMENDS SIGNIFICANT CHANGES TO
PREVENT WORKERS' COMPENSATION INSURANCE FRAUD**

*Empanelled at Request of Manhattan DA's Office, Grand Jury Finds Evidence of Workers' Compensation
Insurance Premium Fraud Costing New York Nearly \$500 Million Annually*

Report Released on 103rd Anniversary of Greenwich Village Triangle Shirtwaist Factory Fire

Manhattan District Attorney Cyrus R. Vance, Jr., today announced that a New York State Supreme Court Grand Jury has issued a report examining the vulnerability of New York's workers' compensation insurance system to fraud and misuse. The Grand Jury's report stemmed from investigations by the District Attorney's Money Laundering and Tax Crimes Unit into false information provided to the New York State Insurance Fund in connection with applications for, and audits of, workers' compensation policies.

"Workers' compensation insurance provides critical protection to both workers and their employers," said District Attorney Vance. "The widespread premium fraud detailed by this Grand Jury Report is deeply troubling and underscores the critical need to reform the workers' compensation system. My Office's Tax Fraud and Money Laundering Unit will continue to pursue those who cheat the system, but the best protection for New York's workers is a system that is itself protected from fraud and abuse."

New York's Workers' Compensation Law dates back more than 100 years, and is closely associated with the tragic Triangle Shirtwaist Factory fire of March 25, 1911. The fire, which was the largest workplace tragedy of the time, killed 146 people when a fire broke out in a crowded Greenwich Village garment factory. With insufficient means of warning or escape, most of those who died were young immigrant workers. Those who survived had no workers' compensation law to protect them, and while some recovered nominal payments through civil law suits against the factory's owners, most were left with no way to recover medical expenses or lost wages.

Today, New York's Workers' Compensation Law provides a needed safety net for employees who are injured in the work place, while also protecting employers from law suits

that could lead to economic ruin. Workers' compensation insurance in New York is approximately a \$6 billion per year business, with nearly 40 percent of the workers' compensation market handled by the New York State Insurance Fund.

The Manhattan District Attorney's Office investigated incidents of insurance premium fraud that give wrongdoers an improper competitive advantage over law-abiding businesses, and deprived vulnerable workers of needed protections and benefits, while also costing New York State and City substantial revenue.

New York law requires every employer obtain worker's compensation insurance. An individual employer's premium is based on each covered employee's job classification, as determined by the New York Compensation Rating Board. A rate for a relatively safe job may be as low as two cents for each \$100 of payroll, whereas the rate for a more inherently dangerous job could be as much as \$35 for each \$100 of payroll. This system, which requires employer self-reporting, is easily abused by unscrupulous employers who misclassify employees. Employers can easily lie about what work a particular employee performs, for example, reporting a roofer as a clerical worker, and thus paying a significantly lower premium. More egregious is fraud where an employer misclassifies a worker, who is required to be insured under the system, as an independent contractor, who is rather an employee.

Taking into account a June 2013 report of the Fiscal Policy Institute and other estimates, New York City's construction industry in 2011 cost the City and State approximately \$500 million based on worker misclassifications. The largest component of the loss was unpaid workers' compensation premiums, with personal income tax, withholding, unemployment insurance, and various other business taxes accounting for the remainder.

Premium fraud affords wrongdoers an improper competitive advantage over all law-abiding businesses, makes workers vulnerable by depriving them of important protections and benefits, and deprives New York State and New York City of substantial revenue. Every lost dollar must be made up by a dollar increase somewhere else, usually by a cost-shifting phenomenon that affects us all. Every law-abiding employer is a victim of this criminal conduct, as is every hard-working employee, every consumer, and every honest taxpayer.

Since 2013, the Manhattan District Attorney's Money Laundering and Tax Crimes Unit recovered approximately \$4.8 million from criminal defendants who pleaded guilty to defrauding New York State by violating the Workers' Compensation Law. Overall, premium fraud generates an unfair business environment in which honest business owners cannot compete with rogue employers and are either forced out of the market or dissuaded from entering it in the first place. This Grand Jury was empaneled to make recommendations to stem the tide of abuse.

The recommendations proposed by the Grand Jury, designed to assist in early detection of premium fraud, improve compliance and enforcement efforts, deter cheating, and ensure fair and equitable treatment of all policyholders, fall into four general categories:

- **Increased Penalties** to ensure that sentences are proportionate to the magnitude of the fraud. Under current law, a defendant faces no

more than a class E felony whether the amount of the fraud is \$1,000 or \$100,000. The Grand Jury recommends:

- Gradating the Workers' Compensation Law and relevant criminal statutes based on monetary thresholds;
 - Amend relevant provisions of the Penal Law, such as the money-laundering statutes and the enterprise-corruption statute, to include Workers' Compensation Law felonies as possible predicate felonies.
- **Increased Transparency** by overhauling the application process used by employers and the audit procedure of the policyholder.
 - Design a uniform workers' compensation insurance application that will be submitted electronically to the Workers' Compensation Board;
 - Require vigorous audits by all insurance carriers, ensuring that employers pay the correct premium; and
 - Issue every employee a Workers' Compensation Insurance card for the employee to present when seeking medical services or prescription drugs in connection with a job-related injury or illness.
 - **Broader Data Collection and Collaboration** to increase dissemination of information in the hands of those charged with investigating and prosecuting fraud.
 - Create an integrated database to combat workers' compensation insurance fraud, including all application, audit reports, and certificates of insurance; and
 - Create a real-time database of information from commercial check cashers available to the Workers' Compensation Board.
 - **Broader Education** for employees and the community at large about the workers' compensation system and its value to the public, so that everyone is better able to protect the system from fraud.
 - Employers should know their obligations under the system;
 - Community recognition about the negative effects of premium fraud; and

- o Employees should be encouraged to invoke their rights under the system.

Assistant District Attorney Gilda Mariani, Chief of the Money Laundering and Tax Crimes Unit, presented the investigation to the Grand Jury, under the supervision of Executive Assistant District Attorney David Szuchman, Chief of the Investigation Division. Assistant District Attorney Amyjane Rettew, Appellate Counsel to the Investigation Division, and Eleanor Rettew, Paralegal in the Money Laundering and Tax Crimes Unit, assisted with the report.

District Attorney Vance thanked the following for their assistance in the investigation: New York City Mayor's Office of Data Analytics, New York State Insurance Fund, New York State Department of Labor, and the New York City and State Departments of Taxation and Finance for their assistance in the investigation.

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