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Construction NEWS



Vol. 36 No. 3

MARCH 2020

\$1.50

Contractors Applying 'Best Practices' to Protect Workers, General Public from Virus Spread

By GEORGE DRAPEAU III

TARRYTOWN, NY—The construction industry is doing all it can to protect the general public from the spread of COVID-19. Operating under the notice to proceed from Gov. Andrew M. Cuomo on March 18, construction crews are pressing forward with infrastructure renewal projects as well as building programs in the downstate region.

Contractors and suppliers expressed hope that key personnel and crews can continue to deliver their projects to public and private owners. On Fri., March 20, all nonessential employees have been ordered to work from home, by order of Gov. Cuomo, starting Sun., March 22.

Businesses that violate the governor's order will be subject to fines or forced closure, the governor said, adding, "This is not life as usual."

Construction continues to operate as an essential service under an executive order issued by Gov. Cuomo in mid-March. Except for occasional projects, which have been slowed or delayed due to staffing shortages or proximity to quarantined communities, employers



Construction is 'Essential'

A third state executive order issued by Gov. Andrew Cuomo on March 20, designating the industry as an "Essential Business," directed contractors and suppliers to proceed. Crews like those working on the White Plains Hospital on March 17 are showing up fit for duty, and public agencies are planning to continue with bid lettings for projects.

Photo Credit/DAVID ROCCO

and leaders of organized labor are taking each day as it comes.

The operations of heavy civil and utility contractors continue to push

ahead to protect and upgrade water resource and utility sectors. Electrical workers throughout the region are climbing into bucket trucks and

onto lift equipment to ensure telecommunication service remains uninterrupted. Heavy construction highway crews are still reporting to work on interstate, state and local projects to maintain and improve mobility in the region.

"Construction work is continuing—we're hoping for the best, but we're planning for the worst to ensure everyone is safe, protected and productive," said John Cooney, Jr., executive director of the Construction Industry Council of Westchester & Hudson Valley, Inc. "Crews are showing up fit for duty, and public agencies are planning to continue with bid lettings for projects, even if work-arounds to accommodate social distancing, are ironed out."

Mr. Cooney added, "But the manner in which the industry is now working can only be described as hyper-attentive to changing conditions. There are so many moving parts and all the parts are moving all the time. But the one thing I do know is that we're taking the threat of contracting the virus as seriously as is humanly possible."

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Medline, Amazon Warehouse Projects Advance; Firms Expect to Employ Up to 1,000 Tradesmen

By JOHN JORDAN

MONTGOMERY—Two major warehouse-distribution facilities in this Orange County community valued at more than \$200 million should begin construction in earnest soon that will employ between 700 to 1,000 members of the Hudson Valley Building Trades.

One of the more controversial commercial projects in Orange County secured a key approval on March 8 that will likely facilitate groundbreaking on the \$120-million distribu-

tion facility later this spring.

The Montgomery Planning Board approved Medline Industries' Final Environmental Impact Statement on its 1.3-million-square-foot distribution facility. The Planning Board must now approve a findings statement for the project. Medline then must secure site plan approval before construction can commence. If those approvals are obtained, a total of more than 2.3 million square feet of industrial warehouse space will be under construc-

tion, valued at more than \$200 million.

Recently, Bluewater Property Group was granted approvals by Montgomery and incentives by the Montgomery Industrial Development Agency for its plan to build a 1,015,740-square-foot fulfillment center for Amazon that has been estimated to cost approximately \$85 million to build. Construction is imminent on that project.

Medline, a global healthcare

products firm headquartered in Indianapolis, is looking to move operations from Wawayanda, NY where it has outgrown its facilities there. Medline has sold the Wawayanda site to Morgan Stanley.

Medline spokesman Jesse Greenberg said that Medline has committed to grow its workforce from 340 to 700 employees in five years.

"We are obviously very excited to have received our final

approval of our Final Environmental Impact Statement," Mr. Greenberg said. "We have been working with the town for quite a long time in taking a lot of stakeholder input during that period and work with the community and make the project something that would benefit Medline and the community the best."

He said Medline would be submitting to the town an approval. Please turn to page 14



A rendering of Medline's new facility to be built in Montgomery in Orange County.

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Westchester Plans to Take on \$25M Memorial Field Project

MOUNT VERNON, NY—Westchester County Executive George Latimer is hoping to move forward with a \$25-million plan to make significant improvements to the once-iconic Memorial Field here.

The County Executive briefed members of the Mount Vernon City Council in February on plans for the project that have been forwarded to the Westchester County Board of Legislators for review.

The project would involve the addition of an NCAA regulation football field that would also be suitable for soccer, lacrosse, and field hockey; an NYSPHSAA certified eight-lane track; seating accommodations for 3,900; a Skateboard Park; three tennis courts; modern locker rooms and public restrooms.

“The City of Mount Vernon is entering a new phase in its rich history and the county is proud to be a partner in it. These plans show a willingness on our end to work cooperatively with the city and we look forward to moving forward together,” Westchester County Executive Latimer said.



Memorial Field, Mount Vernon (FILE PHOTO)

Mount Vernon Mayor Shawn Patterson-Howard said, “Mount Vernon is taking its place at the table again in Westchester County. We are committed to strengthening our partnerships and the plans to build Memorial Field are the beginning of a new day for Mount Vernon.”

She added, “Together with the City Council, Assemblyman Gary Pretlow, County Legislator Lyndon Williams and other officials we will get this done. I remain committed to working with

County Executive Latimer, his team and the County Board of Legislators to move Mount Vernon forward.”

For the plan to be finalized, the New York State Department of Environmental Conservation must still sign off on any contaminated soil remediation, the city must remove boulders and debris under the existing tennis structure and a new agreement must be approved by the Mount Vernon City Council and the County Board of Legislators. If all needed approvals are received by April

2020, the county can break ground in May and be ready for Mount Vernon Knights High School Football in the Fall 2021, county officials stated.

In November 2008, the City of Mount Vernon and Westchester County settled on an inter-municipal agreement where the county would renovate Memorial Field for the people of Mount Vernon. After almost 12 years of regression from this point, city officials and the county are now eager to move forward with this long-delayed restoration project.

Memorial Field Reconstruction Bid Due April 1

WHITE PLAINS—The Westchester County Department of Public Works reported on March 16 in its *Westworks* publication that it is putting out to bid the long-delayed reconstruction project at the Memorial Field complex in Mount Vernon, NY.

The DPW estimates that the project is valued between \$20 million to \$23.5 million. Bids are due on April 1. A bid inspection was held on March 12. Mandatory attendance was required.

The contract (20-506) consists of providing all necessary labor, material and equipment required to rehabilitate the Memorial Field Stadium.

The work includes redevelopment of a synthetic turf multi-sport athletic field, grandstands for 3,900 spectators, all-weather eight-lane running track, renovated tennis courts and a skate park. Additional facilities include an entry plaza, ticket booth, concession stand, restrooms, a press box, fencing, landscaping and associated utility infrastructure.

Interested contractors are directed to the Special Notice regarding Project Labor Agreement (PLA).

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The Jobs of Tomorrow

“Live” demonstrations of various craft union activities, including plumbing, welding, masonry, carpentry and metal work, were presented at the Hudson Valley Construction Career Day for high school students, staged at the Rockland Community College Field House in Ramapo, NY on Fri., March 6. Students from the Hudson Valley witnessed a welding demonstration by Pete Marcyan of Ornamental Ironworkers Local 580. Mr. Marcyan is an instructor in the Union’s apprenticeship program.



Michelle Polhamus, second from right, counselor at Beacon High School, and Devin Declerk, right, of Plumbers and Steamfitters Local 21 of Peekskill, N.Y., with students from Beacon High School in Beacon, N.Y.

550 Hudson Valley Youths Learn Job Skills At 21st Annual Construction Career Day

SUFFERN, NY— More than 550 local high school students met with experts in the Building Trades to engage in skill-development activities and learn about dozens of job opportunities at the premier industry-sponsored career exposition in the Hudson Valley.

Students from five counties filled the Rockland Community College Fieldhouse in Suffern on March 6 to gain firsthand experience of the craft trades and discuss the advantages of apprenticeship training. Union representatives and private-sector companies from across the Hudson Valley region worked with the teens to take part in hands-on skill-building demonstrations such as welding, carpentry, soldering and more.

Hosted by the Construction Industry Council of Westchester & Hudson Valley, Inc., (CIC) and the Building Contractors Association of Westchester & The Mid-Hudson Region, Inc., (BCA) Hudson Valley Construction Career Day is designed to reinvigorate the industry’s labor force with young talent. The event is marking its 21st year of supporting tomorrow’s workforce.

“Apprenticeships offer youths an opportunity to learn critical skills in the trades and prepare them to land good-paying jobs right in their communities,” said Matthew Pepe, executive director of the CIC and BCA. “We’re expecting to see significant investments in infrastructure at the federal level, which will mean even more opportunities for growth in our region’s building and construction industries. We’re proud to be a part of this important effort to strengthen our workforce, invest in our communities and benefit our overall economy.”

Rockland County Executive Ed Day praised the Construction Career Day program. “I am proud to again be here hosting Construction Career Day,” he said. “All too often, schools put value on college and don’t put good value on the trades. The trades offer a tremendous op-

tion for our young people.”

Assemblyman Colin Schmitt (R-99th District) described the

trades as “the backbone of the middle class.”

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Mason Cantamessa, left, journeyman at the International Union of Bricklayers and Allied Craftworkers Local 1 of Queens, N.Y., demonstrates masonry skills with a student from Rochambeau Alternative High School in White Plains, N.Y.



Adrian Hernandez, right, of Heavy Construction Laborers Local 60 of Hawthorne, N.Y., demonstrates a jackhammer with students from Rochambeau Alternative High School in White Plains, N.Y.

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Driving Our Region's Prosperity

Business Panel Presses Need For Expanded Route 17 Project

By JOHN JORDAN

WALLKILL, NY—Some 100 business and community leaders from Orange and Sullivan counties gathered on Feb. 26 to discuss current and future development in the region and the need to improve mobility on the heavily-traveled Route 17 corridor.

The event, which was entitled "Driving Our Region's Prosperity: Mobility as a Catalyst for Economic Development," was held at West Hills Country Club in Wallkill and was hosted by 17-Forward-86, the coalition advocating for a third lane east and west on Route 17 to enable future designation as Interstate 86.

"We're so pleased to have so many of our colleagues join us today," said Michael Lawler, director of 17-Forward-86 and partner of Checkmate Strategies. "This impressive showing demonstrates the growing support for widening Route 17, to ensure our infrastructure is able to handle the added capacity from the many significant investments in our region."

He noted that coalition's efforts to have the state spend \$500 million to build the third lane on Route 17 is in high gear as discussions with the State Leg-



Orange County Executive Steve Neuhaus said the economic development activity in the pipeline in Orange and Sullivan counties necessitate construction of a third lane on Route 17.

islature and Governor Andrew Cuomo go on in earnest during budget negotiations.

Mr. Lawler moderated a diverse panel with representatives of business, economic development, health care and law enforcement who all agreed improving mobility is paramount to the safety, quality of life and economic well-being of the Hudson Valley region.

"With so many exciting developments underway in our region, we simply cannot wait any longer to make this critical upgrade to Route 17," said Maureen Halahan, president

and CEO of the Orange County Partnership and who serves as co-chair of 17-Forward-86. "There is tremendous support for this project and we must move forward."

Ms. Halahan pointed to LEGOLAND New York, which is building a \$350-million theme park off Route 17 in the Town of Goshen and is expected to open July 4.

Also in Goshen, Amy's Kitchen is constructing a 390,000-square-foot factory where the organic, vegetarian food maker plans to employ approximately 700 people. These

and other projects in Orange and Sullivan counties are expected to attract millions of visitors to local roads—further necessitating the need for a third lane on Route 17.

Ms. Halahan noted that some communities that are seeing increased traffic are beginning to look at building moratoriums as a means to put the brakes on commercial growth in their communities.

She noted that there are a lot of people who want to stop growth. "Without this road under construction going forward, we are going to see moratoriums" Ms. Halahan said, noting that at present there are 52 hotels in Orange County, seven of which are under construction, six of which are being built from Woodbury Common in Central Valley to the Sullivan County line.

Orange County Executive Steven Neuhaus spoke to the assemblage about the critical importance of expanding Route 17 and noted that the project has not been acted on despite decades of discussion by federal and state politicians.

"I think that the elected officials have not prioritized this, or it would have happened by now," Mr. Neuhaus said. He later noted, "Every year we kick this down the road and it gets more expensive."

The County Executive pressed business leaders to continue to advocate for the third lane on Route 17. He believes that the governor will agree to move forward with the project and expects after the November election that a federal infrastructure bill will be enacted by Congress.

Having the Route 17 expansion approved and prioritized by New York State will only benefit the project and keep the momentum going for the project and the economic development the expansion will bring to the region, he noted.

Joining Ms. Halahan on the panel were Marc Baez, president and CEO, Sullivan County Partnership and co-chair, 17-Forward-86; Scott Batulis, president and CEO, Greater Hudson Valley Health System, Middletown; Chief Deputy Dennis Barry, Orange County Sheriff's Office; David Kohlasch, general manager, Kartrite Resort and Indoor Water Park, Monticello; and Randy Resnick, owner, Bernie's Holiday Restaurant, Resnick and Penguin Energy, and Liberty Market, Sullivan County.

"This is a crucial point in our campaign to widen Route 17," said Mr. Baez. "We cannot afford to keep kicking this project down the road. This is critical for our region ... for our future." He noted that in addition to its growing tourism

sector with the Resorts World Catskills casino resort, Kartrite Resort and Indoor Water Park and Bethel Woods, there are currently five or six inquiries from developers looking to locate major distribution facilities in Sullivan County.

Mr. Batulis pointed to the rapid growth of the health system and expansion plans for Orange Regional Medical Center, noting that "we need the infrastructure to support that growth." He also cited the importance of mobility on Route 17 for the 100,000 patients who visit the emergency rooms annually. "Every minute counts—there is no time for delay."

Chief Barry agreed, adding that, as first responders, officers see first-hand the dangers traffic tie-ups pose. "When we're dealing with life-or-death situations, seconds matter. We need to ensure our first responders are able to move quickly and freely, and improving mobility along Route 17 will help in those efforts."

The threats of traffic also take a toll on visitors, who continue to flock to the Sullivan Catskills for its beauty and offerings but dread the stop-and-go trip. "At our restaurants, the talk around the table tends to be traffic-related," said Mr. Resnick. "This project is a long time coming. And it's not just for Orange County—it's for Sullivan County, too. It's about two counties working together for a common good. This is our future."

The Kartrite, which opened in April 2019, has already exceeded expectations in terms of visitors. "We've hosted 200,000 guests and this year we'll probably double that," Mr. Kohlasch said. "This project is critical for our long-term success."

17-Forward-86 members have been engaging state legislators to secure funding in the Department of Transportation's upcoming capital plan to implement recommendations in a 2013 capacity study issued by NYSDOT. The 2013 study, funded with \$1 million secured by U.S. Sen. Chuck Schumer, found that congestion on Route 17 will worsen and development in the region necessitates an additional lane/added capacity. The DOT's next capital plan is expected to begin April 1, 2020 and be funded by state and federal funds.

In May 2019, the DOT issued a request for expressions of interest for an engineering firm to begin a scoping and preliminary review process and later selected the firm WSP to undertake the review. The work is part of a \$5-million Planning and Environmental Linkage study (PEL), which includes identifying priority locations and conducting environmental

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NYS DOT - Region 8

Bid Letting Date: April 9, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264229
PIN# 80PS05

Project Description: Westchester Co., pedestrian safety improvements to signals etc. in the City of New Rochelle and the Villages of Mount Kisco and Port Chester.

Bid Deposit: 5% of Bid (~ \$125,000.00)

Goals: DBE: 5.00%

Bid Letting Date: April 23, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264245
PIN# 804811

Project Description: Columbia Co., HWP Route 203 pavement resurfacing in Columbia County.

Bid Deposit: 5% of Bid (~ \$75,000.00)

Goals: MBE: 12.00%, WBE: 18.00%

NYS DOT - Region 10

Bid Letting Date: March 26, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264242,
PIN# 081007

Project Description: Nassau, Suffolk Cos., bridge cleaning at various locations in Long Island.

Bid Deposit: 5% of Bid (~ \$375,000.00)

Goals: DBE: 3.00%

NYS DOT - Region 11

Bid Letting Date: March 26, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264181
PIN# X80658
FA Proj.# Z230-X806-583

Project Description: Queens Co., rehabilitation of Astoria Boulevard Bridge over Bronx Queens Expressway East Leg in New York City.

Bid Deposit: 5% of Bid (~ \$750,000.00)

Goals: DBE: 14.00%

Bid Letting Date: March 26, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264197
PIN# X73161
FA Proj.# Z001-X731-613

Project Description: Kings Co., Gowanus Expressway steel repairs and ramp deck replacement in New York City.

Bid Deposit: 5% of Bid (~ \$1,500,000.00)

Goals: DBE: 14.00%

Bid Letting Date: April 23, 2020

Brian DeWald, PE
Assistant Director of Construction
New York State Department of Transportation
50 Wolf Road, Albany, NY 12232
(518) 457-9688

Contract# D264301
PIN# XM2047

Project Description: Richmond Co., 2.1 miles of asphalt concrete rehabilitation on Interstate 278 in New York City.

Bid Deposit: 5% of Bid (~ \$375,000.00)

Goals: MBE: 12.00%, WBE: 18.00%

NYS Thruway Authority

Bid Due Date: March 25, 2020

Contract: TANY 20-3B/D214773

Project Description: steel repairs to Brookside Road Bridge at MP 74.17 in Ulster County.

Goals: MBE- 3% WBE- 5% SDVOB- 1%

Bid Deposit: \$40,000.00

Westchester County DPW

Bid Due Date: March 25, 2020

Contract: 12-517-Rev. (\$100.)

Title: Cellular Bulkhead Rehabilitation – Phase III & IV, Yonkers Joint Wastewater Treatment Plant, Yonkers, NY.

Description: The work under this contract consists of providing all necessary labor, material and equipment required for the rehabilitation of the Phase III and Phase IV portions of the cellular bulkhead which includes rehabilitation of structural support systems, painting, concrete encasement work and installation of cellular bulkhead protective coatings. Work also includes all site restoration including pavement, curbs, walkways, fences, guiderails, underground piping, utilities, and stone riprap as required.

Bid Estimate Range: \$7.2 million to \$8.2 million. MANDATORY

Pre-Bid Inspection: Held on March 10, 2020. MANDATORY attendance was required. Bids will be rejected from Contractors not in attendance at this meeting, or those who failed to sign the attendance sheet.

Contact: John Coelho, 914-995-5144

Bid Due Date: March 25, 2020

Contract: 16-502 (\$100.)

Title: Exterior Repairs – Phase IV, Michaelian Office Building, White Plains, NY.

Description: The work under this contract consists of providing all necessary labor, material and equipment required to perform exterior building repairs including reconstruction of parapet walls, repair and replacement of structural steel beams and columns, re-pointing of brick masonry along with installation of new lintels, flashings and copings.

Bid Estimate Range: \$2.7 million to \$3 million.

Mandatory Pre-Bid Inspection: Scheduled for 10:00 a.m., March 17, 2020; meeting at 5th Floor Conference Room 527, 148 Martine Avenue, White Plains, NY. MANDATORY attendance is required. Bids will be rejected from Contractors not in attendance at this meeting, or those who fail to sign the attendance sheet.

Contact: Adam Kaplinski, 914-995-3991

Bid Due Date: April 1, 2020 (Date Change)

Contract: 20-500 (\$100.)

Title: Aircraft Deicing Fluid Collection System Improvements and Apron Reconstruction at Terminal – Contract 5, Westchester County Airport, Towns of Harrison and North Castle and Village of Rye Brook, NY.

Description: The work under this contract consists of providing all necessary labor, material and equipment required to install new under drains and closed drainage collection system components. Work also includes reconstruction of the concrete apron at the Terminal.

Bid Estimate Range: \$16.75 million to \$17.25 million.

Mandatory Pre-Bid Inspection: Held on March 3, 2020. MANDATORY attendance was required. Bids will be rejected from Contractors not in attendance at this meeting, or those who failed to sign the attendance sheet.

Contact: James Antonaccio, 914-995-6343

Bid Due Date: April 1, 2020

Contract: 20-506 (\$100.)

Title: Memorial Field Complex Reconstruction, City of Mount Vernon, NY.

Description: The work under this contract consists of providing all necessary labor, material and equipment required to rehabilitate the Memorial Field Stadium. This work includes redevelopment of a synthetic turf multi-sport athletic field, grandstands for 3,900 spectators, all-weather 8 lane running track, renovated tennis courts and a skate park. Additional facilities include an entry plaza, ticket booth, concession stand, restrooms, a press box, fencing, landscaping and associated utility infrastructure. Note: The Contractor is directed to the Special Notice regarding Project Labor Agreement (PLA).

Bid Estimate Range: \$20 million to \$23.5 million.

Mandatory Pre-Bid Inspection: Held on March 12, 2020. MANDATORY attendance was required. Bids will be rejected from Contractors not in attendance at this meeting, or those who failed to sign the attendance sheet.

Contact: Susie Ghabour, 914-995-2693

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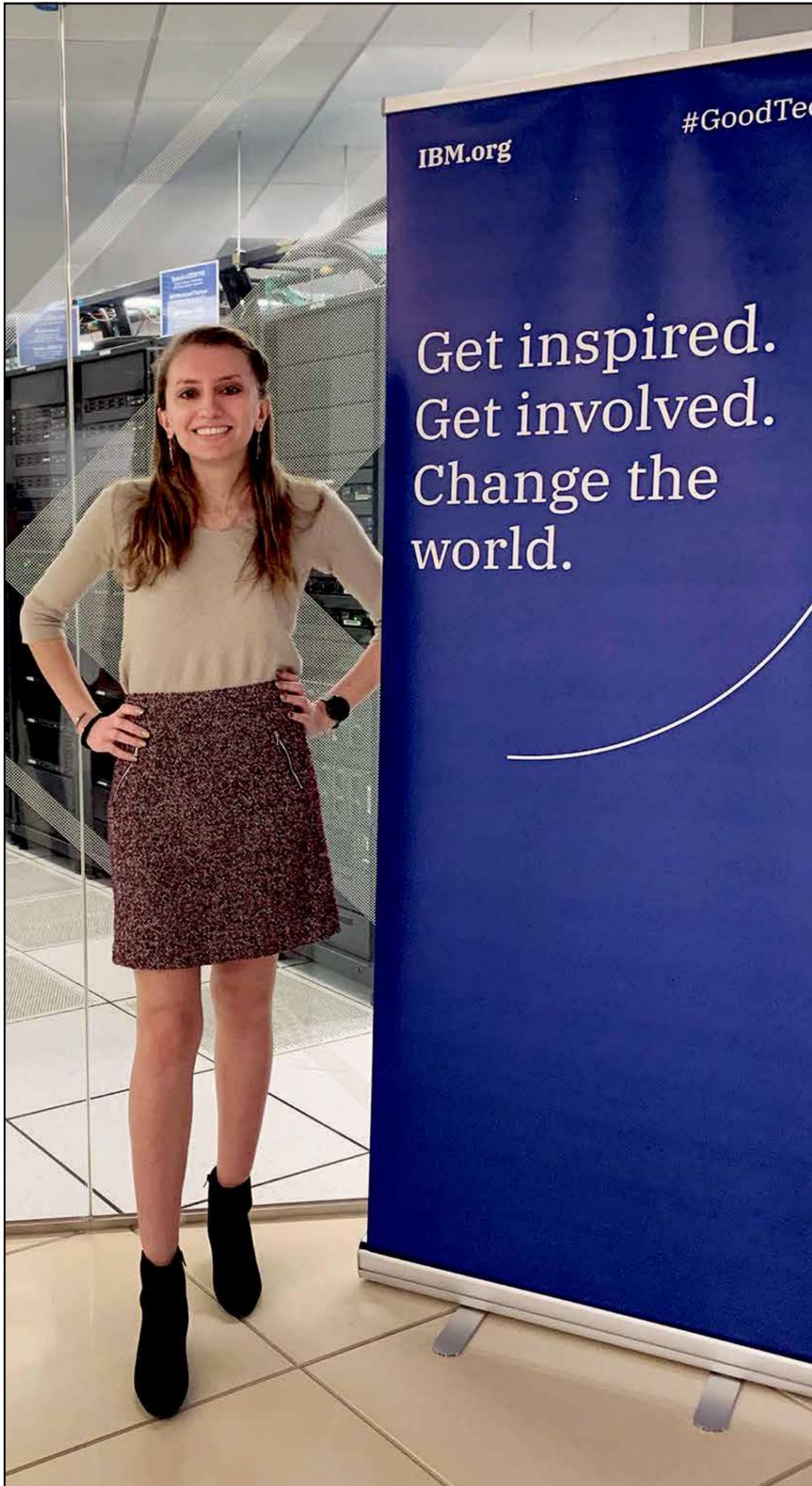
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EDUCATION
B.S. in Industrial Engineering, 2017;
MBA, 2019
Rensselaer Polytechnic Institute, Troy, NY
Favorite subject:
Supply Chain Analytics

QUOTE
“While still in school, a foreman at a company where I was an intern asked if my boyfriend was doing my physics homework.”

ON THE CHOICE OF PROFESSION
My dad is an engineer, plus I was always good at math and science.

WORDS OF WISDOM
Find a good mentor and read a lot in the professional journals.

GREATEST ACCOMPLISHMENT SO FAR
I enrolled at RPI at age 17 and graduated in three years, then received my MBA at 22.

GOAL
In five years I would like to be in Global Sales.

OUTSIDE INTERESTS
I enjoy biking, reading works in my professional field, plus historical novels. Also, I am currently in training for a half marathon.

Researcher and Writer—Alan Kennedy

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Attorney's Column

Failure to Comply with Required Notice of Claim Dooms Claims

By THOMAS H. WELBY, P.E., ESQ. and GREGORY J. SPAUN, ESQ.

Construction contracts, like other contracts, are meant to define the relationship between the parties to the contract. With the exception of certain provisions, which have been held to violate public policy (pay-if-paid, pre-emptive lien waivers, indemnification of a party for its own negligence, etc.), contracts will generally be enforced as written. The principle was once again underscored by an appellate court in the recent case of *Redwing Construction Co., Inc. v. Sexton*, with regards to a notice of claim provision.

Background

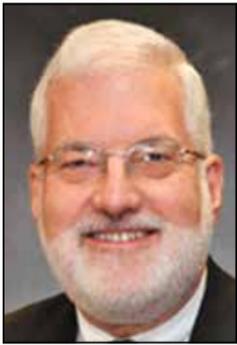
In July 2012, Martin Sexton retained Redwing Construction Co. to build a house on Upper Saranac Lake, NY. The contract contained a provision requiring the service of a notice of claim of "any controversy or claim arising out of or related to the contract" as a precondition to the commencement of a lawsuit.

The house was finished a year later, and a payment dispute arose. In order to secure its payment, in August 2013, Redwing filed a mechanic's lien. Redwing then commenced a lawsuit asserting claims for breach of contract, unjust enrichment and to foreclose its mechanic's lien. Shortly thereafter, the house was destroyed by fire. Accordingly, when Mr. Sexton answered the complaint, he asserted a counterclaim against Redwing for negligence, alleging that Redwing's negligent design and/or construction of the chimney caused the fire.

Once the parties served their respective answers, they each moved for summary judgment on their claims. Among the issues raised by the parties was the failure by Redwing and by the owner to comply with the contractual notice of claim requirement. The trial court granted both motions and dismissed both the contractor's claim and the owner's counterclaim, citing the parties' failure to serve the notices of claim required by the contract prior to their assertion. Redwing appealed, but the owner did not.

Decision

On appeal, Redwing argued that because final payment had not been made, its obligation to serve a notice of claim never arose. The appellate court dismissed that argument, citing the contractual provision requiring the punch list to be complete before the owner's obligation to make that payment arose. As Redwing had communicated to the owner in a job closeout memorandum that it would perform no punch



claim because the closeout memorandum did not contain all of the information required by the contract, did not specifically state that it was a pre-suit notice of claim, as required, and was not served in the manner specified.

Comment

The Redwing case is a reminder that in most circumstances, contractual conditions precedent will be strictly enforced. Clearly, one of the parties was the primary author of the contract that contained the notice of claim provision, and yet both parties lost their claims based on the failure to comply with that condition. Instead of a shield against a surprise claim,

list work until it received that payment, it was unable to rely on the lack of a final payment to relieve it of its obligation to have filed a notice of claim before having filed the lawsuit. The court also rejected Redwing's argument that its job closeout memorandum served as the "functional equivalent" of the contractual notice of

In order to secure its payment, in August of 2013, Redwing filed a mechanic's lien. Redwing then commenced a lawsuit asserting claims for breach of contract, unjust enrichment, and to foreclose its mechanic's lien. Shortly thereafter, the house was destroyed by fire.

the provision here was literally a sword—a double-edged one, at that—which doomed both claims. While there have been certain circumstances where slight variances from contractual notice of claim provisions are tolerated, one cannot count

on those type of circumstances to salvage a clear failure to comply with such a requirement. Accordingly, contractors would be well advised to follow such contractual conditions precedent to the letter so that you are

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From left, Anthony Ascencao of Heavy Construction Laborers L.U. 60, Tom Smith of NYS LIUNA, Louis Picani and Dominick Cassanelli of Teamsters L.U. 456, Janice and Robert Cheverie and Beth Cheverie of NYS Laborers' LECET Fund, Karen Zedda of CIC and Jay Fragoso of Laborers L.U. 60.



Former linebacker and NFL Hall of Famer Andre Tippett of the N.E. Patriots and CIC President Ross Pepe.



From left, Gerry and Lisa Argenio, Paul and Karen Taphorn of D.A. Collins Companies, John and Susan Cooney of CIC and Audrey Pellicano and Ross Pepe of CIC.



From left, Peter and Patti Mazzari of Danella Construction Corp., Anthony Ascencao and Jay Fragoso of Heavy Construction Laborers L.U. 60., Olga Sullivan, Lisa Rodorlico and George Gottuso of Hill International, and Jack Frazier of American Global.



From left, Lillian & Thomas Welby of Welby, Brady & Greenblatt, LLP.

Construction NEWS

PHOTO GALLERY

Hudson Valley Construction Industry Partnership



MID-WINTER MEETING

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Armand E. Sabitoni

LIUNA General Secretary-Treasurer

A second-generation Laborer, Mr. Sabitoni now holds one of the highest offices of the Laborers' International Union of North America (LIUNA). He discussed the ad hoc effort to strengthen Laborers training programs, opening the door to job opportunities. He continues to serve as New England Regional Manager, representing more than 60,000 members across the six New England states, as well as most of New York State.

He briefly discussed workers' health and safety, pensions and investments, and then focused the majority of his speech on the need to advance community outreach, political action and social media campaigns. He serves as Treasurer of the Laborers'



Political League.

"We have to be sophisticated in how we do things," he told the audience. "We do classes in activism, to become part of coalitions. If a group is bringing 300 people to a meeting, we need to bring 400," he explained. "Over the past 25 years, politicians on a national and local level have allowed groups to command bigger voices than organized labor. We've got to change that and become more active. Social media, is important to stay ahead, to get ahead of the opposition. Our postings need to get out first, ahead of our opponents... We need to be on social media as much as we can so that our projects can go forward, so that they're not held up."

Pat Purcell, Jr.

NYS LECET

Pat Purcell serves as president of the New York State Laborers Employers Cooperation and Education Trust. Among the many legislative priorities he discussed with HVCIP members and guests were current campaigns to expand New York State Public Works and currently proposed legislation that would implement photo enforcement to ticket those speeding in work zones.

"Work zone accidents, injuries and fatalities are rising every year, and photo speed enforcement in work zones is a common-sense solution to this serious problem," he said. During the last legislative session in Albany, New York State took action



to protect children by authorizing school zone speed cameras, he noted. "It's now time to do the same for our hardworking members. The men and women of the Laborers' Union are someone's mother, father, son, daughter and friend. The bottom line is they are somebody's loved one, and they deserve to be valued and protected."

He said work-zone speed cameras have proven to be effective. "We won't stop advocating until this important legislation becomes a reality. Our members' hard work is what keeps New York State moving forward—we owe them this basic protection."

Michael Grella

CEO of Grella Economic Development 4.0 Partnership Strategies

As an attorney and advisor to private developers and public corporations, Mr. Grella discussed expanding opportunity and prosperity in upcoming economic development programs in the context of public policy. He called for a commitment to environmental conservation, energy efficiency and sustainable business practices.

"People want to know why their taxes proffered to public agencies are being reallocated to fund billions of dollars to benefit companies—many of whom in some cases pay little or no



income taxes themselves—or used to help offset the incentives awarded to private enterprises for building in their communities," he said.

He used several case studies that illustrated where taxpayers funded risky projects that did not provide a substantial return on investment to their state and community. "The next generation of economic development policy needs to tackle a broader set of socioeconomic concerns such as diversity and inclusion as well as addressing economic inequality. And, of course, paying living wages and benefits," he concluded.

James W. Cahill

President of the New York State Building & Construction Trades Council

Mr. Cahill discussed legislative action programs underway in 2020. These include renewed efforts to expand New York State guidelines to set minimum pay levels for the construction trades. Among them are revisions to legislation (named for its sponsor Assemblyman Harry Bronson) that would broaden the scope of projects that receive financing from taxpayers in the form of IDA grants or other economic development subsidies for private sector development. "We've been meeting with (Gov. Andrew Cuomo's office) to level the playing field for all contractors," he told HVCIP attendees.

**Murray Richman, Esq.**

Defense Attorney

Criminal Law defense attorney Murray Richman has represented numerous high-profile cases and political personages, and has probably tried more cases than any other single practitioner in the City of New York, he admits. He recently served as media commentator for the Harvey Weinstein case, offering his observations on Court TV. He told the audience that the new era of #MeToo is now part of the culture and that sexual behavior, mores and attitudes in the workplace must evolve with the times.

Mr. Richman has been the subject of many magazine articles including an extended profile in *The New Yorker Magazine*, a *New York Times* profile, and he has appeared as a commentator on many television shows. He has appeared at National Conferences of Union and Employee Benefit Funds as a lecturer for the past 20 years. He has earned the nickname, "Don't Worry Murray."

**Jonathan Cerrito, Esq.**

Of Counsel Cohen, Weiss and Simon LLP

Jonathan Cerrito reviewed the impact of the opioid epidemic and the challenges it poses for employers, unions, plan sponsors and fiduciaries. "Everyone knows that construction is among the most dangerous occupations in the country; now, based on opioid abuse and overdose statistics, it's also among the deadliest," Mr. Cerrito said. He noted that a five-year state study found that nearly a quarter of overdose deaths were comprised of workers in the construction industry. The report revealed that construction workers were six times more likely to die from an opioid overdose than other workers.

"The opiate epidemic now kills approximately 200 Americans each day, wreaking havoc across all sectors of society and in virtually every zip code in the country," he said. Medical professionals have long stated that there has never been a more serious drug or public health crisis in the United States.

"While the number of opioid-related deaths in New York State counties, excluding New York City, dropped for the first time in a decade in 2018, the opiate epidemic is an equal-opportunity killer because of the scope of lives lost and the lives ruined every day," Mr. Cerrito added. "Based on recent industry-specific data, construction is the most common occupation of those affected by opiate addiction with ongoing staggering costs of every type."





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Medline, Amazon Warehouse Projects Advance

Continued from page 1
ceptance letter of the FEIS with a final findings statement expected to be issued in early April. A meeting is scheduled on March 30 with the Planning Board in connection with the project.

However, he said the approval of the FEIS was considered the largest obstacle facing the project.

The company had filed an application for incentives with the Montgomery Industrial Development Agency. Some Montgomery residents, as well as State Sen. James Skoufis criticized the award of any incentives for the Medline project.

At a hearing in August of 2019, Sen. Skoufis testified that the Planning Board should “make it clear to these folks that they need to get their hands out of the pockets of Montgomery residents. Our message should be loud and simple: ‘pay your damn taxes.’”

Medline subsequently withdrew its application with the Montgomery IDA, but expects to receive approximately \$15

million in tax exemptions under New York State’s 485B program.

L. Todd Diorio, president of the Hudson Valley Building & Construction Trades Council, said he was pleased that Medline secured its FEIS approval. At present he believes the site work and concrete work have been awarded to union contractors. At deadline, no other work has gone out to bid, he added.

Mr. Diorio said that Medline has been working with the union trades, although it opted out of securing IDA incentives, which would have required a majority of the work be performed by local trades.

In terms of the Amazon warehouse project, while there is no PLA with the building trades, Mr. Diorio said, “Right now about 85% of the work is going to be contracted out union and we are working on the other 15%.”

He added, “So, we are hoping that the project will be about 90% union. There are a couple of specialty trades that there are issues with, but they are working very closely with us.”

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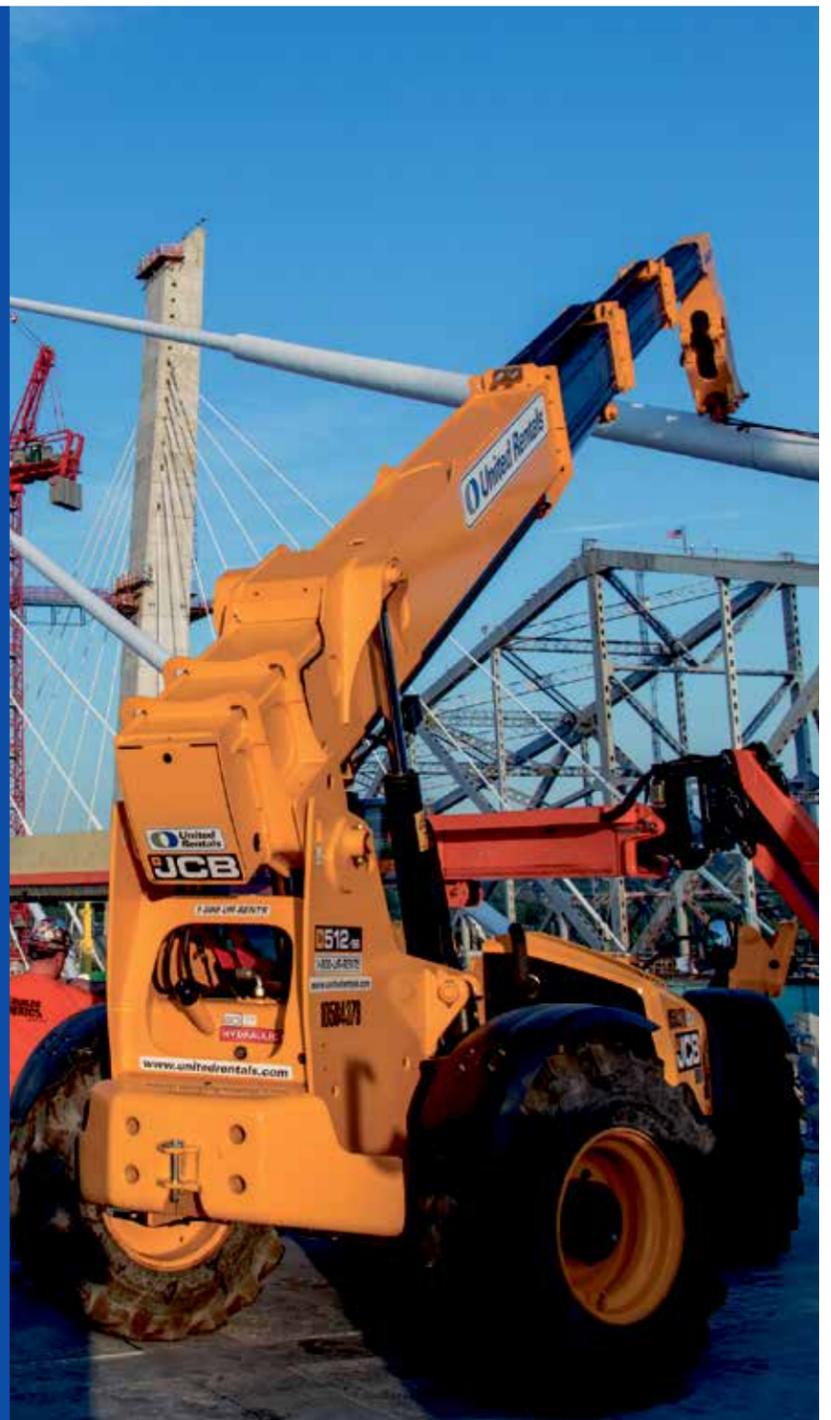
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Safety Watch

Dangerous Drywall Installation Draws OSHA Citation

By GEOFFREYS. POPE, ESQ.

This month's case attests to the willingness of construction workers to work under dangerous conditions, and clarifies a couple of doctrines you should be aware of, with respect to the OSHA Act's construction standards.

In *Secretary v. Keenan, Hopkins, Schmidt and Stowell Contractors*, the employer was a subcontractor on new construction at a Lockheed Martin campus in Colorado. Its employees were using an aerial lift to perform framing work and drywall/densglass installation 60 to 80 feet above grade. The lift had two tubular metal guardrails, which encompassed the floor of the basket.

As of the date of OSHA's inspection, two employees, Mr. Ruiz and Mr. Rojas, had been working for eight days installing drywall to the upper levels of the exterior of the building. They were supervised by two foremen.

The work being done was unusual—the building's structural I-beams were exposed, and the drywall/densglass had to be installed by reaching through or around the exterior beams and duct work. Because the distance from the lift basket was sometimes as much as three feet to four feet, the installers often had difficulty reaching where they were to install the drywall while standing inside the basket.

Upon instructions of their supervisors, the two men installed self-retracting lanyards to the steel beams above their basket, and moved freely between the basket and the I-beams, in order to have the best vantage point to carry out the installation. This involved sometimes standing on an I-beam, and at other times standing with both feet or one foot in the bucket, or one foot or both feet on the basket railing.

Each sheet being installed weighed about 40 pounds, and required between 20 and 25 screws to affix it. Each sheet took about 10 to 15 minutes to install. Mr. Rojas stated that he and Mr. Ruiz each had to climb out of the basket about three times per hour, and performed tasks taking about five minutes before returning. As they climbed up on the guard rails, the basket often swayed or moved, which Mr. Rojas likened to the sensation of being on a boat. Both workers said their supervisors approved their being on the basket rails, as long as they were tied off. "The only thing [the employer] wanted there," Mr. Ruiz testified, "was the job done."

Fortunately, Mr. Ruiz and Mr. Rojas did not suffer a fall. Their employer was cited, however, for a "Serious" OSHA violation,



when the compliance officer saw how they were working to install the drywall.

The standard cited prohibits sitting or climbing on the "edge" of the boom lift's basket, and requires that employees always stand firmly on the floor of the

basket. The employer timely contested the citation, and the matter went to trial before an Administrative Law Judge.

As always, to establish the violation the Secretary had to prove, by a preponderance of the evidence, that (1) the cited standard applied to the facts; (2) the employer failed to comply with the standard; (3) employees were exposed, or had access to, the hazard covered by the standard; and (4) that the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition.

Applicability of the standard was easily found, as the parties agreed that Mr. Ruiz and

purposes of the standard cited.

The ALJ rejected the employer's argument that Subpart M, the act's general fall protection standards, should be applied, instead of Subpart L (which embraces the standard cited). Subpart M, the ALJ found, might apply to those times while the men were working while standing on an I-beam, but at other times, while they worked from the basket (even while inappropriately standing on the guardrails) the Subpart L aerial

The ALJ also cited an OSHA Letter of Interpretation that specifically addressed whether an employee is allowed to stand on the guardrails of an aerial lift basket to work, if properly tied off. "The answer for aerial lifts," this letter found, "is no."

Mr. Rojas had been engaged in "construction work," and that the lift was an "aerial lift" for

lift safety regulations applied. In so doing, the ALJ applied

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A rendering of the Lionsgate movie studio to be built at the iPark Hudson complex in Yonkers.

Yonkers Movie Studio Gets Preliminary Project IDA OK

YONKERS—At its Feb. 19 session, the Board of Directors of the Yonkers Industrial Development agency granted preliminary approval of proposed financial incentives for a movie studio complex to be built at the iPark Hudson complex here.

The incentives are in connection with the \$60-million first phase of the studio complex for Lionsgate motion picture company. The approximately 109,000-square-foot development, which would be built on the parking lot of the iPark Hudson complex, will include 70,000 square feet of studio space and 38,600 square feet of ancillary spaces. The project is anticipated to create between 285 to 420 full-time permanent jobs as well as 400 construction jobs.

The overall \$100-million Lionsgate studio project was announced in September 2019 by Lionsgate and partner Great Point Capital Management.

Great Point Capital Management, a media-focused investment fund run by Robert Halmi and Fehmi Zeko, announced it had signed a letter of intent with global content leader Lionsgate last year to build the new production facility in Yonkers. Lionsgate would be a long-term anchor tenant and investor in the studio complex. As anchor tenant, Lionsgate will have naming rights to the studio.

The new facility will be located in the heart of the iPark Hudson campus, owned by National Resources of Greenwich, CT, which is an investment partner and will be the developer of the complex. iPark is a 24-acre technology and office campus, home to Mindspark (an IAC company), The Energy Project, Hudson Global, Kawasaki Rail Car, various city and state agencies as well as UNO, a 100-micro unit building.

“According to the industry experts, a lot of the talent wants to be in the New York metro area and Yonkers fits very well into this model. We think this project will have a transformational effect on the downtown of Yonkers,” said Joseph Cotter, president and CEO of National Resources in his presentation to the IDA Board.

He estimated that the development will create approximately \$65 million annually in economic development due to the additional companies that will relocate to service the studios, such as caterers and production people.

“We are very excited to have this transformative project in our downtown. This development will position the City of Yonkers as the New York area’s premier filming destination,” said Yonkers Mayor Mike Spano who serves as Chairman of the Yonkers IDA.

The Yonkers IDA also granted preliminary approval of financial incentives to Waverly Properties, Inc., owner of Westchester Metal Works, for an \$8-million expansion of its operations in the city. The company plans to relocate its operations to a new 20,000-square-foot facility at 1100 Saw Mill River Road in Yonkers.

The company, which is a metals manufacturer and fabricator, is currently located at 55 Knowles St. in the Ludlow section of Yonkers.

Westchester Metal Works, which employs 30 Yonkers residents, said it plans to add 22 more employees at the new larger facility. In order to move to the new location. The company needs to remove debris and concrete slabs at the site, which it estimated would cost \$4 million.

Construction of the new facility is expected to create approximately 100 construction jobs, the YIDA stated.

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Family Business Forum

Planning Your Succession Through a Third-Party Sale

By STEVEN GOLDSTEIN, CPA, PFS

When family members, employees, co-owners or other business stakeholders are not able or driven to carry on the legacy of your business after you retire, it may be time to start planning your succession via a third-party sale. Even if retirement is a distant event, there may come a time you want to sell off part of your business to a third party to liquidate assets, plan your estate or meet a variety of other financial or business goals.

Selling to a third party adds complex issues to your succession plan, such as how to retain key employees, minimize business interruption, maximize sale value and minimize tax obligations. Additionally, it takes time to get your company ready. Generally speaking, it can take from two years and up to five years, depending on the complexity of the business.

Fortunately, working closely with tax, legal and business advisors who specialize in the construction space, there are ways to approach this option strategically, as these two clients found out.

Finding the Right Advisor

The first client, a commercial plumbing contractor with more than \$140 million in revenues, learned a hard lesson about the importance of having the right advisors on their side when it comes to selling its business. As in any major transaction, the success of a third-party sale will rely heavily on the right data, advice, execution and understanding of your industry and its intricacies.

In this case, the investment banker could not rely on the historical financial statements prepared by the company's long-time sole practitioner. The client needed advice on the historical weak financial statements and lack of audit support, including problems that were compounded by the lack of sophistication of the company's internal accounting department. As a result, advisors were required to go back and re-audit two prior years, adding not only another \$150,000 of audit fees, but also—even more costly—additional time that delayed the closing of the transaction.

Approximately \$4 million of adjustments to net income from prior periods was uncovered. In addition to the financial statement re-statements, much time was spent analyzing the prior period's tax returns and discovering some overlooked tax elections that are very unique to the construction industry. When all was said and done, the transaction was consummated with the owners successfully selling off 78% of the company. But the false start cost them



significant time, money and aggravation.

Making a Case For Your Business

Another client, a minority/women-owned business

enterprise (MWBE) general contractor and construction manager, was recently looking to sell a portion of her business and liquidate some assets. She had specific goals in mind, and a third-party sale was the best way to accomplish them.

Before approaching potential buyers, the GC needed to create a "teaser" document that provides a high-level overview of the organization and gauges initial interest in a potential acquisition or merger. The MWBE status was an important detail to include upfront in this document. The

advantages could be a very attractive component of the sale, especially for a potential

Selling to a third party adds complex issues to your succession plan, such as how to retain key employees, minimize business interruption, maximize sale value and minimize tax obligations. Additionally, it takes time to get your company ready.

buyer looking to diversify, but the status could pose certain challenges that would rule out other potential buyers right away.

Identifying Potential Buyers

In this case, the challenge was that the owner was trying to sell less than 100% of the company. Because she wanted to retain ownership in part of the business, a successful transaction would require that the potential buyer would be open to acquiring 49% of the business so that the selling owner would retain the other 51% ownership as required to continue as

a certified MWBE. Even if you are not an MWBE, your teaser should disclose your entity structure. **Please turn to page 18**

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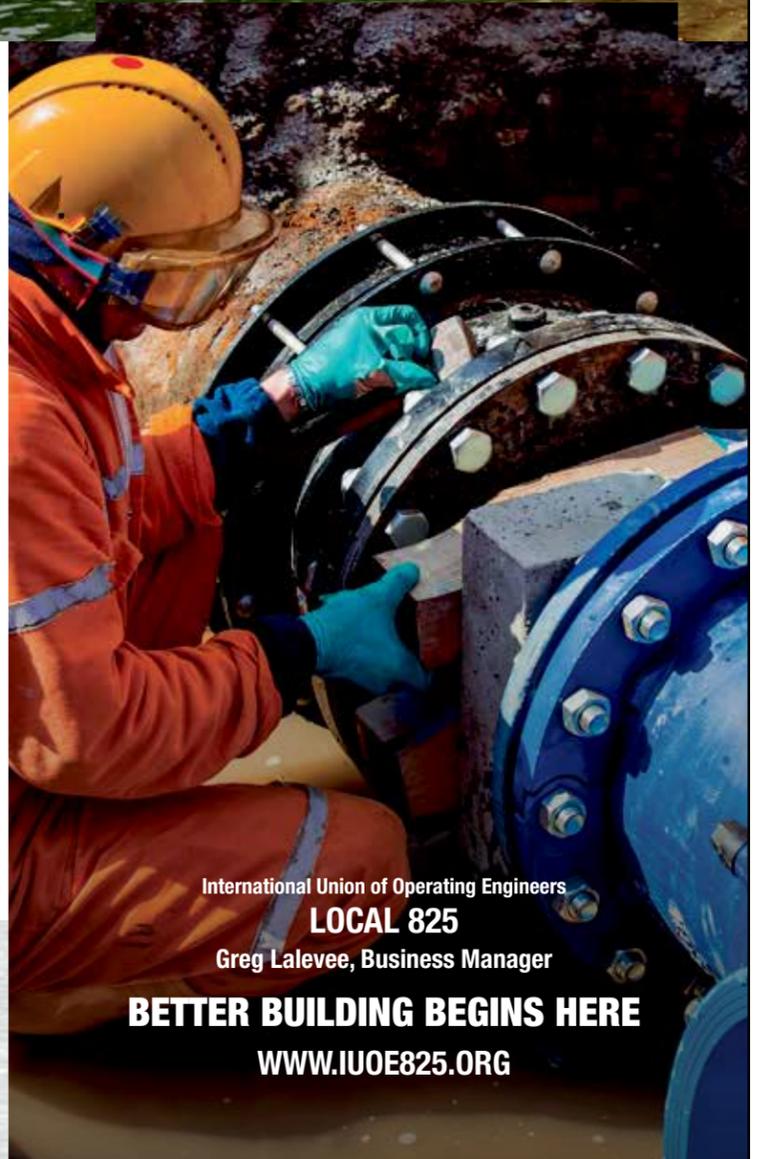
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Family Business Forum

Continued from page 17

and related benefits to ensure you are attracting the right buyers. For example, construction companies are currently an attractive option for private equity firms that are looking to diversify their portfolios, but these buyers are typically only interested in certain entity structures with specific financial characteristics.

Similarly, if you are a union shop selling to another union shop, it is imperative to understand withdrawal liability implications and potential impact on the deal. There are collective bargaining and other commitments that must be taken into consideration before you can consider a potential buyer. These should be disclosed upfront in the teaser.

Establishing Sale Value

As the talks with potential buyers got more serious and the due diligence process began, we helped both clients develop their QofE (Quality of Earnings) reports. This analysis determines and ultimately supports the historical and sustainable EBITDA (Earnings Before Income Tax Depreciation and Amortization). Since most companies are valued and sold based on certain multiples of EBITDA, this analysis becomes very crucial to the seller. This is also the baseline used to perform a business valuation.

As negotiations progressed, business valuations were performed by both the sellers and the buyers. Depending on what your potential buyer is willing to accept, this may be either a full evaluation of the company's

value performed by a valuation specialist or a "calculation of value" which is less in scope but acceptable in certain situations. It is often in the best interest of the seller to undergo a full valuation regardless of the buyer's requirements. Although more costly, it is a more reliable way to maximize and demonstrate the company's full value.

Anticipating Buyer Issues

You can help move the due diligence process along more smoothly and efficiently by providing your potential buyer with additional documentation that would not necessarily be included in the teaser or QofE report. These include the contractor's WIP, backlog, receivables and debt. Compiling photographs and brief descriptions of significant projects your business has completed will also help provide the buyer with the scope and quality of your company's capabilities.

Even without the motivation of a sale or other transaction, it just makes good business sense to keep these records well-maintained, which is another advantage to working with external advisors, particularly construction-focused professionals who know your business and the industry.

About the author: Steven Goldstein, CPA, PFS is a Construction Partner and the Westchester Market Leader at Grassi, a leading provider of advisory, tax and accounting services to the construction industry. Mr. Goldstein is based in the firm's White Plains office and can be reached at sgoldstein@grassicpas.com or (212) 223-5034.

Construction Career Day

Continued from page 4

"Now, more than ever, we need to ensure young New Yorkers benefit from the trades," Rep. Schmitt said. "This offers our youth a way to really have that perfect 'American Dream' life."

Also in attendance were Yonkers Mayor Mike Spano, representatives of Sens. David Carlucci (D-38th District) and James Skoufis (D-39th District) and other local leaders who also applauded the initiative.

In the building and construction trades, registered apprenticeship programs provide participants with a high-quality, portable and nationally recognized credential that certifies occupational proficiency in the construction industry. Programs follow a "learn-while-you-earn" model, as participants obtain wages that are graduated upward as the apprentice accumulates greater skills and experience on the job.

Students looking to qualify for bona fide apprenticeship opportunities will be expected to have a high school diploma or equivalent GED. There are more than 20 trades represented among the building and construction trade unions. For information about apprenticeship programs and job opportunities, visit <https://cicbca.org/resources/>.

For information about CIC, visit www.cicnys.org or call Matthew Pepe, 914-631-6070, matthew@cicnys.org.

The Construction Industry Council of Westchester & Hudson Valley, Inc., is a professional trade organization, representing more than 600 contractors, suppliers, consultants and other professionals who service the construction and building industries. The CIC maintains day-to-day contact with local and state government officials. CIC members own and manage much of the region's infrastructure and institutional facilities.

The Building Contractors Association of Westchester & The Mid-Hudson, Inc., provides fast, reliable information to its members on virtually every subject related to building construction. Its primary mission is to improve conditions by negotiating labor agreements with local trades; lobbying local, state and federal governments to secure capital spending and beneficial laws; dispersing information about public and private bid lettings and awards; educating industry members on the latest requirements of laws, rules and regulations affecting daily operations and providing networking opportunities for members.



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A rendering of RXR Realty's 26 and 28 Division St. in New Rochelle.

RXR Nabs Financing For N.R. Hi-Rise Project

By JOHN JORDAN

NEW ROCHELLE, NY—Designated developer for the City of New Rochelle RXR Realty has secured a \$131.2-million construction loan for its 28-story, mixed-use apartment tower at 26 South Division Street here.

Capital One reported on Feb. 20 that it served as the lead bank for the construction loan for the ground-up development of 26 South Division. The sponsor—RXR Realty—secured a 42-month interest-only floating-rate loan that has two extension options.

26 South Division St. will feature 352 market-rate apartments, ranging from studio to one- two- and three-bedroom apartments with a valet parking garage, lounge, co-working space, speakeasy, and more than 12,000 square feet of retail. An adjoining tower at 28 Division St. is also planned by RXR Realty.

The development is a major component of RXR's redevelopment plan for the city, which also includes RXR's 360 Huguenot St. property, which opened this past summer. Construction on 26 South Division St. begin in October 2019, according to RXR Realty's website.

"At a time when prospective renters face difficult trade-offs between quality housing and ease of commute, New Rochelle is a natural extension of the transit-oriented story that has developed in places like Long Island City, portions of Brooklyn, and Jersey City," said Prithvi Mohan, a vice president with Capital One's Commercial Real Estate team which closed the transaction. "We are excited to be part of the broader redevelopment of New Rochelle and proud to be working with RXR, given their expertise and commitment to this market."

In 2015, the City of New Rochelle and RXR outlined more than 12 million square feet of new development downtown, of which RXR has approximately 2.3 million square feet of development rights. The Downtown Rezoning Plan will include a mix of residential, retail, restaurant, office, hospitality and other institutional space. The rezoning is one of the largest and most significant economic development initiatives in Westchester County history.

Bloomberg first reported earlier this week that Colony Capital, which has offices in New York City and Los Angeles, had sold its more than 27% stake in RXR Realty to Dyal Capital Partners of New York City. No financial terms of the deal were disclosed.



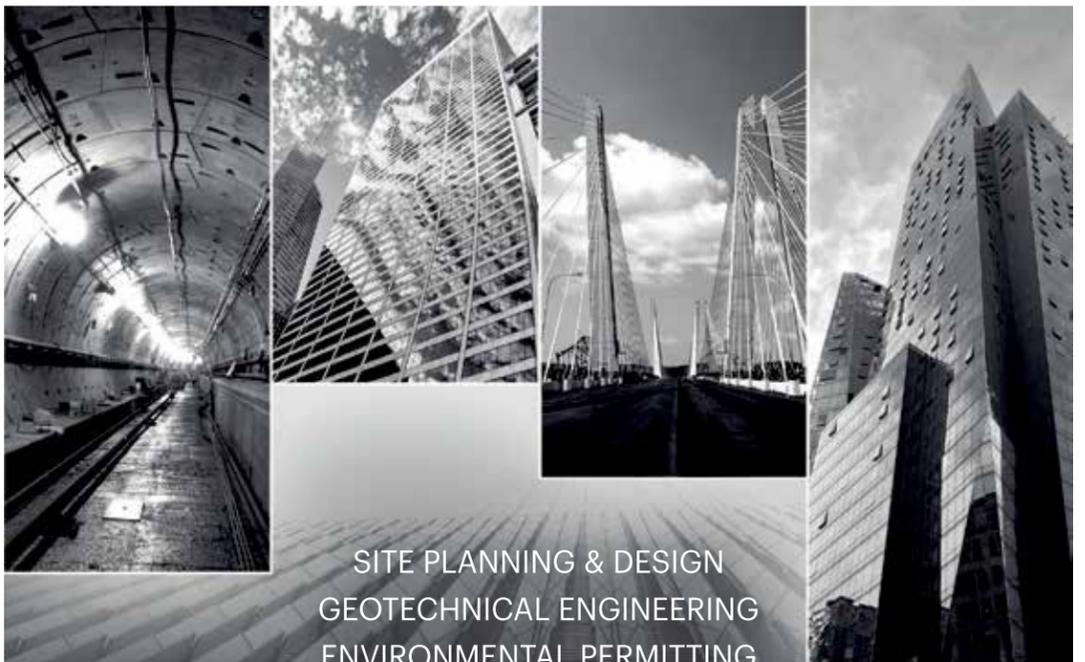
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Financial Management

Billion-Dollar Megaprojects Are on the Rise

By PHILLIP ROSS, CPA, CGMA, PARTNER

They're really big, and they're really, really big business. Megaprojects—large-scale and often high-profile construction projects that cost \$1 billion or more—are taking the industry by storm.

When compared with “standard” projects, megaprojects are a different animal. They have ambitious objectives, lengthy lead times, amplified complexity and intense stakeholder involvement. Consequently, they come with bigger risks of delays, cost overruns, conflicts and even lawsuits.

Driving Factors

In the United States alone, more than 670 megaprojects are currently in the planning stages, according to a 2019 report from construction industry consultants FMI. The organization expects total U.S. construction put in place on megaprojects to exceed \$2.5 trillion, reaching more than \$350 billion per year (roughly 20% of total construction spending) over the next decade.

Population growth in urban areas is driving the need for increasingly complex projects addressing infrastructure,



housing, energy and more. Project owners are rolling smaller jobs into larger projects to take advantage of financing and operational opportunities given through public-private partnerships and other alternative project delivery methods.

Questions to Ask

When considering whether to bid on a megaproject (including bidding for a portion of the work as a subcontractor) you'll have much to discuss with your executive team and external advisors.

Here are a

Few Questions to Ask

What's our acceptable risk profile? Identify the risks your construction company is will-

ing to take on. These include:

- Technological factors (expensive upgrades, steep learning curve for management and staff),
- Scope creep and scheduling difficulties,
- Cost and inflationary factors,
- Strain on labor availability and human resources staff, and
- An unstable political climate possibly affecting job support and funding.

Ideally, risk should be spread equitably among project partners and stakeholders.

Are the owners and your direct clients stable and trustworthy? With so many megaprojects becoming available, there may be multiple owners soliciting bids for similar type projects. Bid for owners who are financially solvent and have strong track records of ethical behavior. From there, prioritize those who can clearly define the project and articulate how they plan to construct it.

Who will our partners be? Successful megaprojects operate under a one-team, collaborative approach. The best

partners will complement your company's skills and resources; prioritize open communication and have similar goals, values

The organization expects total U.S. construction put in place on megaprojects to exceed \$2.5 trillion, reaching more than \$350 billion per year (roughly 20% of total construction spending) over the next decade.

and management styles. You should probably pass on the job if you don't think you'll be able to work well with any of the other parties involved.

Do we have the right team in place? Successfully delivering megaprojects requires a coordinated internal project management approach. You'll need experienced project managers and talented team players who will last through the job.

Everyone must be on the same page and ready to rise to the inevitable challenges of a large, lengthy and complex project.

Do we have the right technology? Megaprojects are technology driven. You'll likely be communicating with other parties via a collaborative software platform, and the job itself may very well involve a building information modeling (BIM) system. Consider your company's aptitude and equipment capabilities for advanced forms of technology.

High Risk, High Reward

Megaprojects are high-risk, high-reward propositions. Even if your construction business isn't quite ready to participate in one, it's a good idea to monitor megaproject activity in your market and observe its impact on your local economy and supply chain.

About the author: Phillip Ross, CPA, CGMA is an Accounting and Audit Partner and Chair of the Construction Industry Group at Anchin, Block & Anchin, LLP. For more construction industry thought leadership and content, log on to www.anchin.com.

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Turnbridge Equities Proposes 1.24M SF Distribution Center in the South Bronx

NEW YORK—Real estate investment firm Turnbridge Equities reported on March 2 it had completed a 14.2-acre assemblage in the South Bronx, where it will build the four-story, 1.24-million-square-foot Class-A, Bronx Logistics Center.

The New York City-based firm stated the last-mile distribution facility will offer direct tractor-trailer ramp access to three levels, van access to the fourth level, 1,400 parking spaces, and a rail spur giving tenants an option to connect to CSX Transportation freight lines at the nearby Oak Point Rail Yards.

Because of the large site and topography, Bronx Logistics Center will be one of the very few buildings in the United States that offers separate, dedicated truck ramps to the various levels, Turnbridge officials stated.

The 1.24-million-square-foot distribution facility, which is located in an Opportunity Zone, will be the largest multi-story distribution facility in the region and the only one that provides a rail transport option. Bronx Logistics Center will also include electric charging stations, dedicated car-pool areas, and

an extensive rooftop solar panel system.

“We acquired the last of five parcels in December and plan to break ground later this year,” said Turnbridge Equities managing Principal Ryan Nelson. “We are excited to be moving forward quickly, given the incredibly tight market and surging demand for Class-A distribution space in New York City.”

The Bronx Logistics Center, at 980 East 149th St., will be located less than two miles from the Hunts Point Food Distribution Center. It is just off the Bruckner Expressway, less than 10 minutes from Manhattan’s Upper East Side. LaGuardia Airport lies just across the East River via the Bronx Whitestone or Triboro/Robert F. Kennedy Bridges, and JFK International Airport is only a 20-30-minute drive.

“The site is ideally situated to serve the entire New York City region’s 20 million people, including those in Manhattan, the boroughs, Westchester and northern New Jersey, and will accommodate a very large workforce via public transit,” Mr. Nelson said.

Turnbridge estimates that the Bronx



A rendering of the 1.24-million-square-foot Bronx Logistics Center in the South Bronx.

Logistics Center will be operational in 2022.

The Bronx Logistics Center will offer market-leading access, with levels one through three each containing dedicated drive-in access ramps for trucks and 17 dock doors per floor. The top level will be accessed by 14 drive-in ramps for vans and automobiles. Floor plates will average 250,000 square feet, with clear heights of 24 to 28 feet throughout. The layout

and abundant loading doors and parking will permit one or more tenants per floor, each with dedicated loading areas. A combination of surface, structured and rooftop parking will accommodate more than 1,400 vehicles.

Turnbridge Equities is a New York City-based, privately held full-service real estate investment and development firm, with additional offices in Los Angeles, Washington, DC, Miami and Austin.

Contractors Applying ‘Best Practices’ to Protect Workers, General Public from Virus Spread

Continued from page 1

The construction industry is making every effort possible to keep workers and the public safe and to mitigate COVID-19 transmission risk on the job site. The industry is working under the policy of if you’re sick at all, stay home; if you’ve been in contact with someone with the coronavirus, stay home and get tested. And if you came into contact with someone rumored to have the virus, call before you report to work to determine next steps.

Speaking to CONSTRUCTION NEWS on Fri., March 20, one major contractor in the region announced that 50% of company’s office staff will begin working remotely, on a rotating basis, starting Mon., March 23. His team members, which include corporate legal and safety professionals, spelled out their provisions and protocols for the shop/yard staff, salaried field employees, and the strict protocols for the many union crews on projects in the region.

The company is also “distributing comprehensive job hazard analysis notices to our subcontractors and vendors detailing its ‘zero-tolerance policy’ to drive home the point that if they have folks on-site that are symptomatic or feeling ill they need them to stay home,” the company’s legal counsel said.

The executive order from the governor on March 20 amended the requirement that all employers undertake workforce reductions (from 75% the previous day to 100%); Gov. Cuomo again excluded

construction activity from this edict because it is considered an “essential business.” Until further notice, therefore, the industry is exempt from this executive order to enforce workforce reductions.

A veteran safety director in the downstate heavy-highway industry, who preferred to remain anonymous, noted that the health risks his work crews experience are different from other industries and sectors. “The majority of our work is isolated from the public; they do not have access to our work locations. We’re not working in the city like a building contractor. We’re spread out.”

He said his company is sending daily reminders of personal hygiene require-

“Teamsters are going to work each day in municipalities, cleaning the buildings and picking up sanitation. They’re the ‘unsung heroes,’ cleaning city hall, town halls, nursing homes and health-care facilities.”

—Louis A. Picani, Teamsters L.U. 456

ments. “If the work requires the worker to be in a respirator then we make sure the individual is fit tested for the respirator for the task at hand,” he related.

He also cautioned about the widespread images of disposable dust masks. “For one, it sends a false sense of security, and if you wear a dust mask all day when you go to take it off whatever might be on the filtration of the mask

you’ve now put it on your hands.” He characterized his company’s safety policy efforts as “vigilant enforcement.”

On Wed., March 18, construction activity continued in the New York downstate region, with bucket trucks, cranes and crews showing up on both low-rise and hi-rise projects as well. “The work is ongoing,” said Jeff Loughlin, Business Manager of Operating Engineers 137 of Briarcliff Manor, NY. “But it’s very serious, and on construction sites everyone is mindful of ‘Best Practices’ to mitigate risk and halt the spread of the virus. So far, we’re all reporting for work healthy and we are taking extensive precautions to protect our crews and their families.”

In the Mid-Hudson region of Orange County, a major asphalt installer, Argenio Brothers, Inc., in New Windsor, NY on Thurs, March 19 said, “So far, the business is continuing,” according to company principal Genaro Argenio. “The supply chain has been slightly interrupted and our ability to get materials has been hampered, but we’re trying to push forward.”

Mr. Argenio said he has worked extensively with his professional advisors, OSHA and industry experts to ensure that all the pronouncements required to inform and protect

workers and the general public have been followed.

“I spent two days examin-

“Crews are showing up fit for duty and public agencies are planning to continue with bid lettings for projects, even as work-arounds to accommodate social distancing are ironed out.”

—John Cooney, Jr., Construction Industry Council

ing OSHA directives, speaking to lawyers and insurance professionals to ensure we got the verbiage right. We have to be very careful as managers and owners to be extremely accurate and direct when we communicate with our employees,” he said.

Mr. Argenio applauded Gov. Cuomo for designating construction an essential business to continue when other industries have been told to halt operations. “Construction being exempt from stoppage is the right thing to do. That’s where the money starts, and the economy starts—at the ground level. Good infrastructure is essential to maintain our quality of life.”

Another leader of organized labor, Louis Picani, president of Teamsters Local 456 in Elmsford, NY, reported only a mild slowdown of employment in his union local, which he attributed to seasonal adjustments of work in the building and construction industries and not necessarily related to precautions to stem the spread of the COVID-19 virus.

“The public sector has altered work scheduling in the municipalities, towns, cities

and villages, which is the front line of efforts to protect residents,” he said. “So yes, there has been a slight drop off in hours worked. Construction is slowing down, but that’s typical for this time of year during the late winter season.”

He said the Teamster local is in contact with state officials in Albany and with other trade locals to increase training to qualify his members to handle hazardous materials.

“We have been in touch with the Governor’s office to be certified to collect and transport hazardous materials—those red bags that are placed outside. These materials need to be picked up and delivered properly to certified facilities.”

He added, “Teamsters are going to work each day in municipalities, cleaning the buildings and picking up sanitation. They’re the ‘unsung heroes,’ cleaning city hall, town halls, nursing homes and health facilities. Yes, let’s salute the public officials and the health care workers for the great work they’re doing. But let’s not forget the unsung heroes who are putting themselves at risk every day.”

As of March 21, the statement from NYSDOT issued earlier in the week—that to combat the spread of COVID-19, nonessential NYSDOT employees will work from home until further notice, and that “All highway maintenance and active construction projects will continue as planned”—remained the operative and most current directive to the construction industry.

LOW BIDS

Transit Construction, Bove Industries Win NYSDOT Projects in Metro, Lower Hudson Valley

ALBANY—The New York State Department of Transportation recently announced the selection of seven apparent low bidders for work in the New York City and Hudson Valley regions.

Fleetwash Inc. of Fairfield, NJ was the lower of two bidders at \$1,629,888.00 for cleaning, washing and sealing bridges at various locations in Columbia, Dutchess, Orange, Putnam, Rockland, Ulster and Westchester.

Metroexpress Services Inc. of Long Island, NY was the lowest of four bidders at \$3,224,530.21 for maintenance cleaning on various highways throughout New York City.

Bove Industries Inc. of Setauket, NY was the lowest of six bidders at \$8,195,000. for safety improvements on Grand Central Parkway, between Francis Lewis Blvd. and 188th St. in Queens.

Coastal Contracting Corp. of Huntington

Station, NY was the lowest of six bidders at \$2,894,742.24 for sign panel replacement, various locations in New York City's Bronx, Queens and Richmond Counties.

Transit Construction Corp. of Yonkers, NY was the lowest of seven bidders at \$1,798,000. for storm water basin repairs on the Saw Mill River and Farragut parkways in Westchester.

Gorick Construction Co. Inc. of Binghamton, NY was the lowest of three bidders at \$548,486. for 2020 scour project for nine bridges throughout region in Chenango, Delaware, Otsego and Sullivan Counties.

Emerald Tree Shrub Care Inc. of New Rochelle, NY was the lowest of three bidders at \$445,918.40 for biennial roadside vegetation management for Columbia, Dutchess, Orange, Putnam, Rockland, Ulster and Westchester.

Anjac, Champion Firms Win Westchester DPW Projects

WHITE PLAINS—The Westchester County Department of Public Works recently announced the selection of two apparent low bidders for work at facilities in Westchester.

Anjac Enterprises of Brooklyn, NY was the lowest of three bidders at \$6,999,000. for

replacement of heating units and ventilation fans, central maintenance facility in Yonkers.

Champion Maintenance of Fairfield, CT was the lower of two bidders at \$452,934. for pavement sweeping and litter removal services at Playland Park in Rye, NY.

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Safety Watch

Continued from page 15

a doctrine you should be aware of concerning OSHA standards. Namely, that if there is doubt concerning the applicability of a specific standard, versus a more general one, the OSH Review Commission has consistently held that the specific standard prevails.

The ALJ-cited precedent that consistently found that working from the "edge" of an aerial lift includes the guardrails encompassing the lift basket. The ALJ also cited an OSHA Letter of Interpretation that specifically addressed whether an employee is allowed to stand on the guardrails of an aerial lift basket to work, if properly tied off. "The answer for aerial lifts," this letter found, "is no." Thus, the cited regulation applied to the work being performed, and its terms were found to have been violated.

Employee exposure was readily found as, over a period of days, Mr. Ruiz and Mr. Rojas had "repeatedly and consistently climbed on, stood on, and worked from the guardrails" of the lift basket, to perform their installation work.

As for employer knowledge, that element does not turn on whether the employer understood the condition to be a violation of the OSH Act, but whether it was aware of the condition constituting the violation. The knowledge of a corporate employer can be established by showing that one or more supervisory employees knew, or should have known, of the non-complying conduct of a subordinate.

In the case under discussion, the violative condition

was "open, obvious, and in plain view," and recurred time after time, over a period of days. The employer's supervisors, although not proved to have specifically observed Mr. Ruiz and Mr. Rojas standing or climbing on the lift rails, either knew or should have known of the persistent violative conduct.

The ALJ affirmed the Compliance Officer's finding that the violation was "Serious," notwithstanding some controversy as to how far the two workers would have fallen, had they slipped before their lanyards arrested their fall. The ALJ found that a slip, fall or swing of even two feet to three feet by either employee could have resulted in him striking the steel I-beam, the exterior of the basket, or falling in between the basket and the I-beams and suffering head injuries, broken limbs or other serious harm.

Turning aside a perfunctory (and probably ill-advised) attempt by the employer to establish the seldom successful affirmative defense of "unpreventable employee misconduct," the ALJ affirmed the citation and the penalty proposed.

Even if tied off, therefore, employees need to be trained not to work while standing on the guardrails of a bucket lift, or to step on the guardrails to move between the bucket and a working surface nearby.

About the author: Geoffrey S. Pope, Esq. is counsel to the construction law firm of Welby, Brady & Greenblatt, LLP. The articles in this series do not constitute legal advice, and are intended for general guidance only.

Attorney's Column

Continued from page 11 not in the position of having to later argue, like Redwing, that they don't apply.

About the author: Thomas H. Welby, an attorney and licensed professional engineer, is General Counsel to the Construction In-

dustry Council of Westchester & Hudson Valley, Inc., and is the founder of the law firm of Welby, Brady & Greenblatt, LLP, with offices located throughout the tri-state metropolitan region. Gregory J. Spaun, an attorney and a partner with the firm, co-authors this series with Mr. Welby.

Business Panel Presses Need For Expanded Route 17 Projects

Continued from page 6 assessments and preliminary engineering. Funding for the PEL study was committed as part of the state's 2018-2019 budget.

17-Forward-86 was established in August 2018 by a dedicated group of advocates who support the widening of Route 17. The coalition comprises more than 200 members of economic development groups, construction trades, tourism groups and energy companies

who share a common vision for expanding the capacity of Route 17 to strengthen the economic well-being of the Hudson Valley and Sullivan Catskills.

The Construction Industry Council of Westchester & Hudson Valley, Inc., and the Building Contractors Association of Westchester & The Mid-Hudson Region, Inc., of Tarrytown are both members of the 17-Forward 86 coalition.

To learn more, visit www.17Forward86.org.

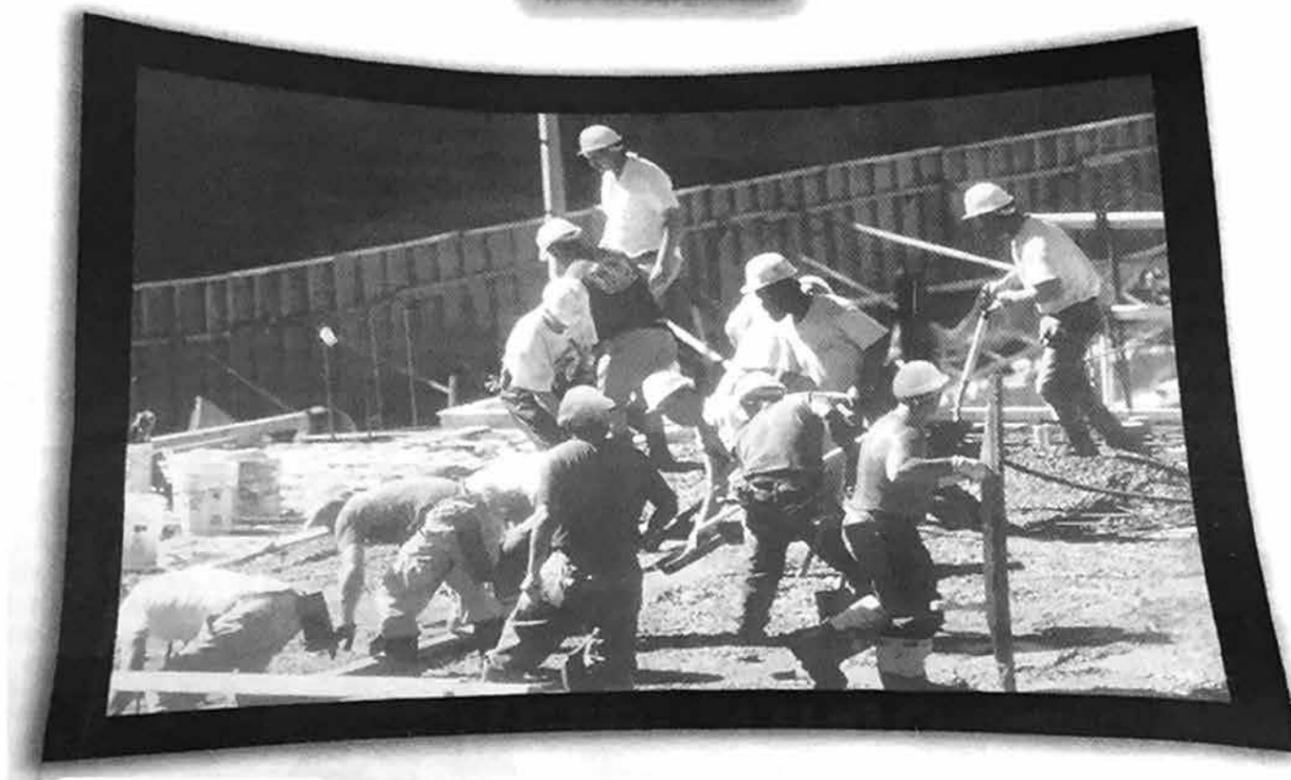
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