

CONSTRUCTION CONTRACTOR

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SPRING 2022

GLASS DOCTOR OF SYRACUSE HAS A CLEAR ADVANTAGE OVER THE COMPETITION

GLASS ON THE INSIDE

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CASE STUDY: CAUGHT WITH HIS
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AARON LOOK, OWNER, GLASS DOCTOR OF SYRACUSE



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Executive Director's Message Spring 2022

The spring construction season has started, and with such comes the renewed optimism for a strong construction year in upstate New York. Many contractors have invested in education and safety training during the winter months. In addition, many employers have utilized the Syracuse Builders Exchange's education and safety training programs to supplement their company's training of employees.

As construction industry employers are aware, the safety and well-being of your employees is paramount. Employees are an employer's greatest asset. The construction industry in general is a dangerous profession, evident by data from the Bureau of Labor Statistics (BLS).



The BLS recently reported on 2020 statistics for construction and mining fatalities in New York State (excluding New York City). Tragically, 2020 saw the third highest death rate in the past decade, with 40 fatalities. Of those, 16 were from "falls, trips, slips", eight "exposure to harmful substances" and nine from "contact with/from objects".

A recent study by the Center for Construction Research and Training included construction workers who were interviewed regarding their mental health in 2019 and again in 2020. The survey showed nearly 43% reported feeling more anxious or depressed in 2020. Of those workers almost half (46%) were under age 55.

Some of the brave men and women who build, demolish, and renovate upstate New York's buildings, roads and bridges also struggle with mental health issues. While the construction industry focuses on the importance of education and safety training, I encourage employers to remain proactive and vigilant when it comes to the overall health, safety and well-being of employees.

Looking ahead, providing mental health solutions and resources to employees will become a vital component of an employer's health, education and safety training program. I applaud the efforts of our industry, specifically construction contractors, to provide employees with a full complement of health, education and safety training programs which remain in the best interest of the overall well-being of those who work in the construction industry.

Yours truly,

A handwritten signature in black ink, appearing to read "Earl R. Hall". The signature is fluid and cursive, written over a white background.

Earl R. Hall
Executive Director



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GLASS DOCTOR OF SYRACUSE HAS A CLEAR ADVANTAGE OVER THE COMPETITION

BECCA TAURISANO



Aaron Look, Owner of Glass Doctor of Syracuse and Watertown has been in the glass business for 22 years, first working for a local glass company and then starting his own business in 2004. With two locations in Syracuse and Watertown, Glass Doctor performs full-service glass work for home, auto, and commercial customers either in their shops or onsite with a fleet of mobile glass vans. A locally owned and operated company, Glass Doctor prides itself on creating both a family-friendly workplace and an exceptional customer experience.

Family First Work Environment

One of Look's main goals as an entrepreneur is to create a business where his employees are happy, and that means putting them and their families first. "I don't want to own a business where there is no community,"

says Look, "the reason I wanted to be an entrepreneur was to employ people, give them a career, and put them in a position that's good for them."

Glass Doctor follows a Code of Values which includes Respect, Integrity, and Customer Focus. These values inform how they operate and how their employees conduct themselves on and off the job. By creating an environment where employees feel respected and valued, Look says they will enjoy coming to work. "If your employees are happy, then your customers will be happy too."

Frank Watson, Director of Sales and Marketing for Glass Doctor has been with the company since 2019. Watson says Look understands the importance of family because it's important to him as well. In fact, Look's mother Katie has been working at Glass Doctor in billing and accounting for the past six years.

Look maintains an excellent relationship with his 14 employees by going out on jobs when they need an extra pair of hands. He also will work with employees to make sure their schedule meets the needs of their families, such as getting home in time to be with their children after school. "He focuses on the future and wants his employees to be healthy and happy," says Watson, "and in return, his employees work hard for him."

Specialized Knowledge and Expertise

Look prides himself on having the best people for the job. "We use the term specialist instead of technician," says Look. Expertise is at the core of being a specialist and Glass Doctor employees are trained to answer any question a customer may have. If an employee does not know the answer immediately, Look says, someone in the organization will. All Glass Doctor specialists focus either on flat glass or auto glass and while a job may require someone to cross over to another area, they try to keep specialists within their area of expertise. "The lead specialist on any job is an expert," says Watson, "we only hire the best."

The Right Tools for the Job

In order to do a job right, Look believes you must have the right tools. Glass Doctor specialists can do a job onsite using mobile flat glass and mobile auto glass vans.



Matt Bollinger uses a vacuum to prep a windshield replacement



Installation of a new windshield

The vans are mobile workstations, completely stocked with all the supplies a specialist needs to complete the job successfully.

Auto glass vans are equipped to do work on the road, but Look says, he does not send his specialists out in challenging weather conditions. "I am not going to put my employees in an environment where they can't perform their job properly," Look says. In instances of heavy rain, snow, or extreme cold, customers can bring their vehicle to the Syracuse or Watertown shops to have work done, or specialists will come to their home or business if they have a garage. "We can do work inside our shop or in their garage. We can supply heat if we go to a customer site and we bring all the tools we need. We try to accommodate our customers as best as possible," says Look.

Glass Doctor's flat glass vans are set up with lighting, work benches, and heaters. Specialists can work right inside the van, regardless of weather. "We have the newest technology and our specialists have the best tools," says Watson.

Exceptional Customer Experience

Look's second goal as a business owner is to provide Glass Doctor customers with an exceptional customer experience, which begins with excellent communication over the phone and continues when the Glass Doctor specialist arrives at the job site. All of Glass Doctor's vans are fully wrapped with company branding and are clean and presentable. Glass Doctor specialists are in full uniform and wear a badge to easily identify them. Specialists are also drug tested and background checked. The specialist will lay down a branded Glass



Gabby Driughn and Matt Bollinger confer on a customer account

Doctor doormat and put on boot covers before entering a home. “Our service starts on the phone, but where we really shine is when we are in the house,” says Look.

Watson says every Glass Doctor specialist is a sales representative for the company. “They are the ones doing face to face with customers and contractors. We understand the importance of doing a great job, doing it on time, and if there is an issue, we address it and make it go away.” Solving problems for customers is a key part of how Glass Doctor operates. “If we are supposed to complete a job today, we have to deliver when we promise a certain time frame. Delivering the product on time is as important as a fair price,” says Watson.

Look wants his customers to be 100% satisfied with the end result, calling customers personally to thank them for their business and see if there are any issues he can help resolve. “I can’t sleep at night if someone is upset with our work,” says Look. That customer focus is essential to Glass Doctor’s company culture. “It’s great to have growth,” Watson says, “but the key to growth is to retain the customers you already have. It goes back to making a commitment, doing what you promise, and following through. You have to keep those customers happy that made the phone ring in the first place.”

A Clear Advantage for Home, Auto, and Business

Glass Doctor specialists are able to customize and install glass products for home, auto, and business customers. For homeowners, they make tabletops, design and install frameless and semi-frameless

showers, insulated glass units, foggy glass, glass handrails, and replace windows and glass doors. “When a customer breaks a window,” says Look, “they think they have to replace the entire window. In reality, they might just be able to replace the glass and that can save them time and money.”

Glass Doctor Specialists do all auto glass, windshield glass, door glass, back glass, and ADAS calibration for cars, fleets, and trucks. Glass Doctor guarantees their windshield replacement for one year, something that sets them apart from their competitors. “If we replace a windshield for you and something happens to it, whether it’s a day later or 364 days later, we will replace it for free,” Look says.

In the last five years, the auto industry has changed remarkably and in the next five years, Look predicts at least 90% of new vehicles will have Advanced Driver Assistance System (ADAS) features. ADAS features include auto assist, lane departure, and forward collision alert, for example. These features are controlled by a camera behind your rearview mirror, says Look, and when a car windshield is replaced, the camera has to be uninstalled and remounted after the work is done. “When you reinstall the camera,” says Look, “you need to ensure it is recalibrated so that the safety features will work properly. We can do ADAS recalibration in house, so drivers do not have to go to the dealership after their windshield is replaced.”

For business customers, Glass Doctor specialists install glass for storefronts, tabletops, commercial doors and provide lock repair and maintenance, emergency service, and board ups. For large office and commercial buildings or apartment buildings, Glass Doctor offers an apartment



advance measuring service. Look explains that large commercial buildings have many of the same window size. “We measure them and manufacture some in advance, so when a window is broken, we can go and replace them same day, instead of having to wait a week or more to have one made,” Look says.

Building the Future for Glass Doctor

The home shower business is Look’s next focus, hoping to double or triple his business in the next year or two. “We come right to your home with samples and provide a full CAD drawing of what the shower would look like. There is so much customization that is possible with shower glass,” says Look.

A recent project included 70-80 showers for the lofts at 300 East Washington Street in Syracuse. “We are available to work with contractors and builders when they need to build out showers or mirror work,” says Look.

Since 2020, Look says they have experienced 600% growth in their business. Look attributes their massive growth to hard work and the right employees. Things have been going so well, they are considering opening a third location in Utica.

Watson says, “Glass Doctor supplies the best technology, the best tools, new vans, and safety protocol



Glass Doctor also specializes in flat glass application like the shower door above.

for specialists going into people’s homes. We take the extra steps to make people feel comfortable and want to do business with us.”

Glass Doctor has locations in Syracuse and Watertown. For more information, visit glassdoctor.com/syracuse-ny.

Sarah Arnold, Insurance Agent and Glass Doctor Customer

Sarah Arnold is a Glass Doctor customer and an insurance agent. When Arnold and her husband were building a home, she chose Glass Doctor to build her glass showers. “They were fairly and competitively priced. They are easy to work with and educated me on all the glass



options available. I was extremely impressed when the owner came to do the install himself. It’s clear that they want every customer to have a great experience.”

Arnold says any time she has an insurance client in need of glass repair whether auto or home, she doesn’t hesitate to refer them to Glass Doctor. “They are professional, timely, and clean,” she says, “Glass Doctor is great to work with.”



KEY CONSIDERATIONS IN VALUING A CONSTRUCTION COMPANY

DEBORAH E. FINCH, CPA/ABV, CVA, CDA, DANNIBLE & MCKEE, LLP

As the owner of a construction company, there are many possible reasons for needing to know the value of your business. Whether you are contemplating a sale or merger, planning for internal ownership succession, considering gifting stock to family members, or obtaining financing, determining what your company is worth is one of the first steps in the process. Just as importantly, understanding how your company is valued can provide valuable insight into the measures that you can undertake to enhance the value of your business over time.

Traditionally, there are three primary approaches to valuing a business

- Market-based approaches, which look to transactions involving the sale of similar companies in the same line of business in order to derive multiples of sales, earnings or other metrics to apply to the company to be valued.
- Asset-based approaches, which value a business based on the fair market value of its assets less its liabilities.
- Income-based approaches, which value a business by looking to the future earnings or cash flows it is expected to generate in the future.

Market-Based Approach

Since most construction companies are closely held businesses, obtaining information on transactions that have occurred in the market can prove difficult. So too can obtaining the necessary information to determine the true comparability between two construction companies before applying valuation multiples under the market approach. As a result, most valuations of construction companies focus on either the asset approach or the income approach.

Asset-Based Approach

For construction companies with significant equipment and facilities, such as a highway contractor, the asset-based approach may yield the highest value in a transaction. In addition, since many heavy equipment

contractors are required to be the low bidder on many of their contracts, they are often poor candidates for employing an income-based approach.

In determining value under an asset approach, the company's financial assets, such as accounts receivable and unbilled contracts in process are revalued based on the amount that is likely to be realized in cash. Similarly, tangible assets are revalued to their fair market value based on the current cost to acquire or reconstruct a replacement asset of comparable utility. After determining the fair market value of the company's financial and tangible assets, the existing liabilities of the company are subtracted from this value, resulting in the entity's Adjusted Book Value.

In some instances where significant intangible assets value may exist in addition to the value of the company's "hard" assets, these intangible assets may also be separately valued and added to the Adjusted Book Value. Examples of intangible assets include contract backlog, name recognition/reputation, a trained and loyal workforce, and strong client and vendor relationships. These intangible assets are generally reflected as "goodwill" in the context of a business valuation. Valuing the goodwill component of a construction company is generally accomplished through an income approach such as the capitalization of earnings.

Income-Based Approach

For general contractors or specialty contractors with fewer assets and a higher reliance on credit, the income-based approach is generally preferred. This approach to valuation is based on the company's expected future annual returns to an investor. Where reasonable future cash flows of the company can be projected, these future cash flows are converted into current value. This is accomplished by discounting the future cash flows to today's dollars using a discount rate based on the risk inherent in an investment in the company. In essence, the discount rate reflects a safe

rate of return, plus an additional return that will compensate the investor for the risk of achieving the projected future cash flows.

As an alternative to discounting future cash flows, historic earnings or cash flows can be adjusted and capitalized. Where earnings are used in lieu of cash flows, the earnings measure most often utilized is EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization). Regardless of the measure used, the company's historic earnings or cash flows must be "normalized" in order to reflect the benefit stream an investor can expect to receive in the future. Typical normalization adjustments include owner's compensation and fringe benefits, related party transactions, and nonrecurring or extraordinary items. Once an average annual earnings stream has been determined, this amount is converted into value by dividing it by a capitalization rate (a derivative of the discount rate) that reflects risk and future growth.

As you can see, there is no single approach or simple formula to valuing a construction company. Just as every construction company is unique, so too must the analysis

of the company be in order to select the best valuation approach, discount or capitalization rate and other valuation adjustments. Engaging a professional with the experience and expertise in valuing entities in the construction industry is critical to arriving at the true value of your company.

Deborah E. Finch, CPA/ABV, CVA, CDA, is a tax partner at Dannible & McKee, LLP, a public accounting firm with offices in Syracuse, Binghamton and Albany. The firm has specialized in providing tax, audit, accounting and advisory services to the construction industry since its inception in 1978. Debbie has extensive experience providing business valuation and succession planning services. For more information on this topic, you may contact her at dfinch@dmcpas.com or (315) 472-9127 x160.



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THE CRITICAL ROLE OF APPRENTICESHIP AND CTE PROGRAMS IN THE CONSTRUCTION INDUSTRY

EARL R. HALL, EXECUTIVE DIRECTOR SYRACUSE BUILDERS EXCHANGE

Labor shortages continue to plague the construction industry both regionally and nationally, with such issues happening long before the COVID-19 pandemic. Although the pandemic has increased the shortage of workers, the long-term solutions to solving the labor shortage in construction remain complex. Two such solutions which have proven to be effective are the apprenticeship programs offered via the many local building trade unions and the Career and Technical Education programs offered by local school districts.

There is a renewed focus on apprenticeship and training programs by the trades across upstate New York. Apprenticeship programs combine classroom and industry-related instruction provided by the union, with on-the-job learning provided by employers. All apprenticeship programs are registered with the New York State Department of Labor and governed by a Board of Trustees which include both employer and union representation.

Capital investments into new or existing apprenticeship and training centers can be seen right here in central New York. The North Atlantic States Regional Council of Carpenters Local 277 built a state-of-the-art training center in 2018 in Syracuse. During 2021, the union recruited 250 apprentices and new journeymen/women into the union. As a result, the union is planning to expand the training center to not only accommodate the new apprentices, but to provide the delivery of additional training and education.

Apprenticeship programs remain attractive to young men and women as they provide a career pathway without having to incur debt to pay for the training and education. The “learn while you earn” concept is a delicate balance of providing apprentices with required training and on the job work. As a trustee on many of these Funds, I see firsthand the immediate benefit of this model for both the career-minded apprentices and those employers who hire them.

Pre-apprenticeship programs attract candidates who may explore the construction industry at a very

elementary level while deciding if it is a career for them, and if so, what trade is of most interest. In central New York the Syracuse Builders Exchange has partnered with Syracuse Build’s Executive Director Christopher Montgomery to place those students who graduate from their pre-apprenticeship program. Graduating students may be placed directly into the workforce with a construction industry employer or may be placed into one of the many union apprenticeship and training programs to further develop their careers.

Career and Technical Education (“CTE”) programs have increased in high schools throughout upstate New York. As a member of the Syracuse City School District’s CTE advisory board, I witness the impact such programs have on impressionable, young students who see themselves entering their chosen career upon graduation from high school. Although the Syracuse City School District’s CTE program was the first of its kind in upstate New York, the model developed by the Syracuse City School District is now being reviewed and considered by other school districts.

While construction, welding and electrical are just a few of the career pathways offered by the CTE program, new offerings such as Construction Management will be delivered to students in September 2023 when the new STEAM (science, technology, engineering, and mathematics) school opens in downtown Syracuse. The Construction Management curriculum is being developed by a committee of executives of construction management companies from throughout central New York.

While no one solution will solve the labor shortage issues plaguing the construction industry, initiatives such as apprenticeship and pre-apprenticeship programs, and CTE programs in high schools provide employers with optimism that the next generation of construction worker is actively being recruited. The question is, will there be enough workers to fill all the positions anticipated over the next few years? Most likely not.



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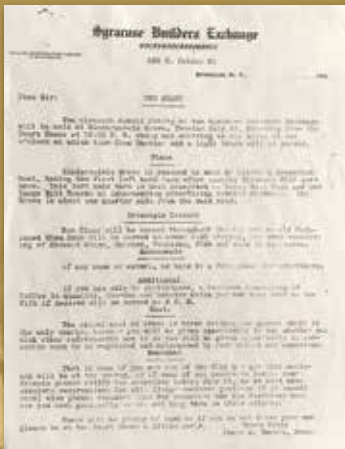
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SYRACUSE BUILDERS EXCHANGE 150 YEARS



The Syracuse Builders Exchange Clambake began prior to the 1920s according to an Invitation Letter dated sometime in the 1920s referencing it as the Eleventh Annual Outing at Hinderwadels Grove. The SBE Clambake (aka The Builder Bake)

was held at Hinderwadels for over 100 years until Hinderwadels closed their doors in 2019. Never to be deterred, the Clambake found a new home in 2019 at the NYS Fairgrounds. Unfortunately, due to Covid-19 restrictions and precautions the Clambake was cancelled in 2020 and 2021. Moving forward into 2022 the once known Clambake is being rebranded (The Bake).



The Clambake as held in the early days thru today is the largest networking event for the SBE and the largest gathering of construction industry employers, employees, and friends in upstate New York.

Syracuse Builders Exchange participating in the 100-year anniversary parade celebrating the birth of the City of Syracuse. The Syracuse Centennial Parade (1948) went down Salina Street in the heart of Syracuse with many office workers enjoying the parade from their office windows.



The Bowling League (1951 – 1988/89) boasted a 48-team league in the early days and was billed as the largest construction industry league in upstate New York.



NETWORKING & SPECIAL EVENTS



The CNY Builders Show began in 1952 and was Sponsored and Managed by the Syracuse Builders Exchange in the early years.

Meet the Generals (2014 to date) offers the opportunity for member firms to network with general contractors and each other every March.



Career Day (2007 to date) provides high school students the opportunity to network with industry employers and learn about the careers available in the construction trades.



CNY PUBLICATIONS

First published in 2009, Construction Contractor highlights member companies/owners and columnists to introduce themselves in print, networking by the written word.

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CASE STUDY: CAUGHT WITH HIS HANDS IN THE TILL?

**ANNETTE MALPICA, VICE PRESIDENT,
DIRECTOR OF CLAIMS & LEGAL COUNSEL, LOVELL SAFETY MANAGEMENT CO., LLC**

In recent years, employers have seen a rise in the number of claims for work-related occupational repetitive stress injuries (“RSI”). Occupational diseases, unlike accidents, which occur suddenly and unexpectedly, usually develop over an extended period. The increases in occupational RSI claims were most notable after the 2007 Workers’ Compensation Reform legislation set in motion increases in the weekly rate of compensation, from \$400 in January 2007 to \$1063 a week as of July 1, 2021. It is not uncommon for RSI claims to be filed by employees who claimed no lost time from employment, continue to work without any limitation, and require minimal medical treatment. The cost of RSI claims ballooned post reform. NYCIRB’s State of the System 2021 Report found that permanent partial disability (“PPD”) claims accounted for over 73.4% of losses, even though they represented only 18.6% of the claims filed in 2021.

The RSI case of JT is not unusual. JT, a laborer for a construction company, filed an occupational disease claim in 2019, after being terminated from employment. He alleged RSI to both elbows, hands, and bilateral carpal tunnel due to jackhammering and shoveling. According to his doctor, the injuries occurred within two months of the claimant’s employment. The claimant never received any treatment, surgery or lost any days from work during his employment since the diagnosis of occupational injuries occurred post-termination. He is seeking \$145,000 in a schedule award. The Workers’ Compensation Board (“WCB”) must determine whether the claimant’s conditions meet the legal requirements for an occupational disease entitling him to a schedule loss of use award (“SLU”).



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Repetitive Strain Injuries as Occupational Disease

Workers' Compensation Law § 2(15) defines an "occupational disease" as "a disease resulting from the nature of employment and contracted therein." Occupational diseases that meet this legal standard are compensable under the WCL. In *Goldberg v. 954 Marcy Corp.*, 276 N.Y. 313 (1938), New York's highest court defined an occupational disease as:

[c]onditions to which all employees of a class are subject, and which produce the disease as a natural incident of a particular occupation, and attach to that occupation a hazard which distinguish it from the usual run of occupations...

Occupational RSI are often diagnosed as: carpal tunnel, tendinitis, bursitis, or cubital tunnel syndromes. Symptoms range from pain or tenderness, stiffness, or joint restriction, tingling or numbness, cramping and swelling of the extremity.

Claimants who had established RSI claims may be entitled to permanent partial disability or, SLU awards. The skyrocketing cost of SLU awards was an area of contention that the 2017 Reform legislation attempted to address by requiring updated Impairment Guidelines.

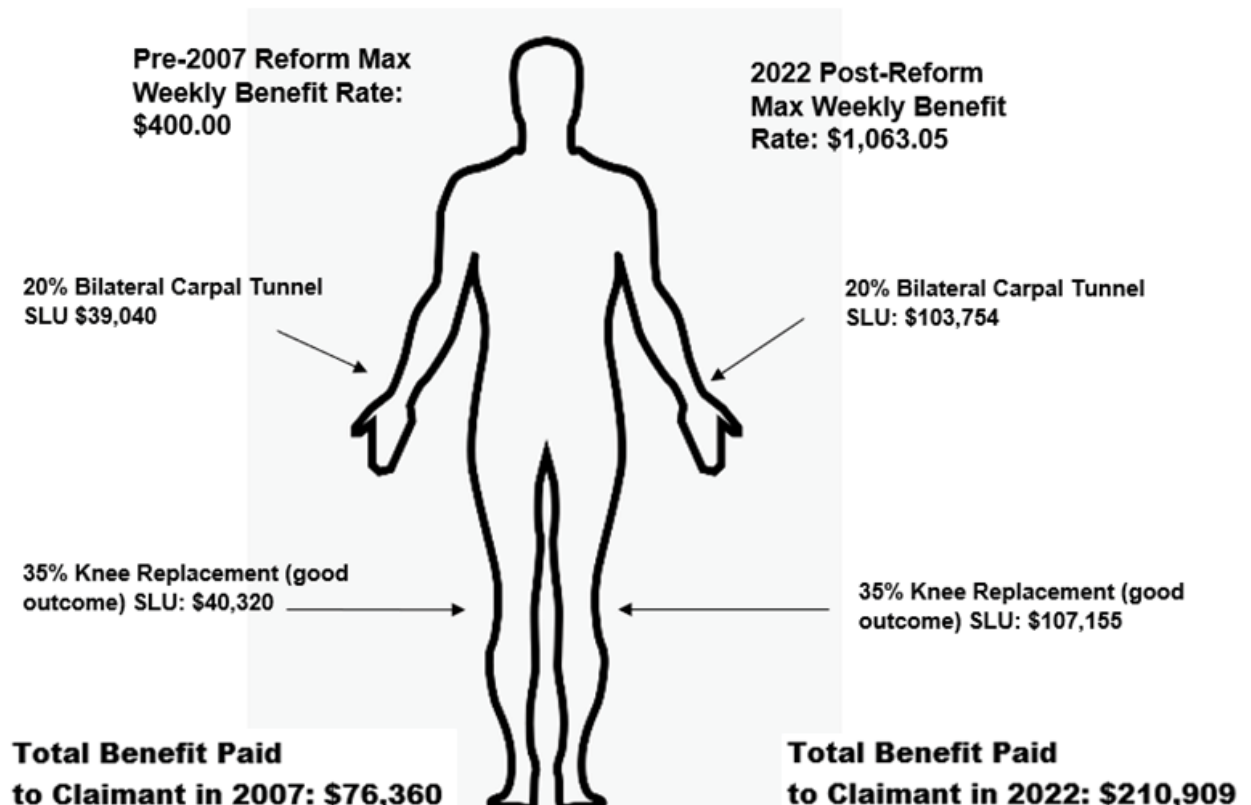
The 2017 Reform Legislation and Skyrocketing Cost of SLU

The 2017 Reforms directed the WCB to create new SLU impairment guidelines (the prior guidelines were issued in 1996) to reflect "advances in modern medicine that enhance healing and result in better outcomes." Unfortunately, the 2017 Guidelines represent a missed opportunity to modernize the system. The new guidelines produced SLU outcomes comparable to the 1996 Guidelines with some clarification regarding ranges of motion and other special considerations. The Guidelines, however, lacked objective measurements, were subject to manipulation and failed to adequately reflect medical advancement in treatments. Had such factors been considered, they would have often resulted in findings of minimal or no permanent loss to a claimant's earning capacity.

As for JT, whether he was caught with his hands in the till or ultimately awarded a SLU based on his disability, one thing is for certain - the ever-skyrocketing costs of occupational RSI.

Annette Malpica R.N., Esq, is VP, Director of Claims & Legal Counsel at Lovell Safety Management Co., LLC. For more information on workers' compensation, contact Lovell at 1-800-5-LOVELL or visit online www.Lovellsafety.com.

Comparison of SLU Award Pre-2007 Reform v. Today





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ONEGROUP & SYRACUSE BUILDERS EXCHANGE GROWING TITANIUM TOOLBOX PROGRAM

**BRETT FINDLAY, VICE PRESIDENT,
BUSINESS & CONSTRUCTION RISK, ONEGROUP**

Recently, Syracuse Builders Exchange Executive Director Earl Hall announced that OneGroup and the Syracuse Builders Exchange were further developing their risk management program, the Titanium Toolbox. The Exchange Agency, a wholly owned subsidiary of the Syracuse Builders Exchange, transferred their health, dental, disability and life insurance benefits for clients to Syracuse-based OneGroup Risk Management and Insurance.

For over 40 years, the Syracuse Builders Exchange provided benefits insurance to its members through The Exchange Agency. The Exchange Agency ceased operation in January and all policies and services were transferred to OneGroup, a leading benefits, HR, insurance, and risk management firm.

The relationship between the Syracuse Builders Exchange and OneGroup has been developing since 2017 and was formalized in 2018. During that timeframe, through a number of employees' dedicated efforts, OneGroup was invited to provide Syracuse Builders Exchange members with property, casualty, and other risk management insurance services.

At the time of Hall's 2022 announcement, the relationship has only grown further. The program now offers those same business insurance services alongside a host of others, including but not limited to:

- Property / Casualty (Business Insurance)
- Human Resources Consulting & Support
- Workers' Compensation
- Contractual Risk Transfer guidance
- Employee Health, Dental & Life Insurance
- Risk Management
- Disability Insurance
- Wealth Management / Retirement

- Benefits Consulting
- Plus, a significant number of additional resources

This developing partnership was founded upon a mutual respect and understanding for client and member service and appreciation. "The Association is always seeking to provide the best possible services and value to our member employers," said Hall. "I and the board felt that the time was right to partner with a company that could offer broader and more in-depth risk management related services to meet our members' ever more complex needs."

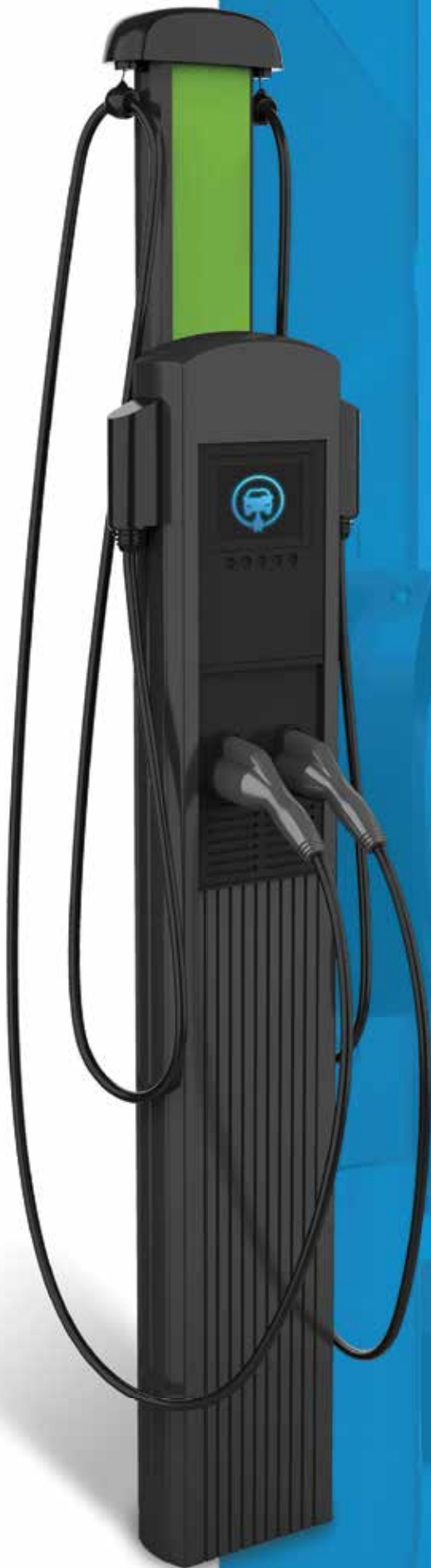
"We are pleased to have chosen a local company with significant resources to serve the needs of our 940 member employers," continued Hall.

"OneGroup had proven themselves to be a valued partner with the bench strength and expertise our members require."

This new partnership will enhance Syracuse Builders Exchange's value to its members and will allow members additional access to far more valuable services. This also provides a tremendous opportunity for OneGroup to help many more companies in the construction industry, an area of specialty for our agency. OneGroup is thrilled that the Syracuse Builders Exchange placed their trust in us to provide the highest level of attention, service and value to its members.

For more information on the Titanium Toolbox Program, you may contact Brett Findlay at 315-280-6376 or BFindlay@OneGroup.com.



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ARE YOU CORRECTLY CLASSIFYING EMPLOYEES AS EXEMPT FROM OVERTIME? IF NOT, IT COULD COST YOU.

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Both the NY Minimum Wage Act and Fair Labor Standard Act, (“FLSA”), requires employers to pay employees overtime (OT) at the rate of 1 1/2 times their regular rate of pay if they work over 40 hours in a week, unless said employee is exempt from overtime. When is an employee exempt from being paid OT? Only administrative, executive, professional and computer employees who pass a salary basis test and salary level test are exempt from OT. Here is how the administrative, executive, professional and computer employees are defined.

Executive: To qualify for the executive employee exception, the employee must perform the following duties:

- The employee’s primary duty is the management of the enterprise.
- Customarily and regularly directs the work of two or more employees.
- The authority to hire or fire other employees.
- The employee’s recommendations as to the hiring, firing, advancement, promotion of other employees have particular weight.
- Customarily and regularly exercises discretionary powers.
- The employee is paid a weekly salary at the NYS minimum salary level identified below.

Administrative: Employees must perform the following duties:

- The employee’s primary duty consists of the performance of office or non-manual field work directly related to management policies or general operations.
- Customarily and regularly exercises discretion and independent judgment.

- Regularly and directly assists an employer or another employee employed in a bona fide executive or administrative capacity.

- The employee is paid a weekly salary at the NYS minimum salary level identified below.

Professional Employee: To qualify for this exemption, the employees must perform the following duties:

- The employee’s primary duty consists of the performance of work that:
 - Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, OR
 - Is original and creative in a recognized field of artistic endeavor and produces a result that depends primarily on the invention, imagination or talent of the employee.
- The consistent exercise of discretion and judgment.
- Is predominately intellectual and varied in character as opposed to routine work.
- Is of such character that the output produced cannot be standardized.
- No minimum salary level is required under NYS law; therefore, the Federal salary level of \$684.00/wk. applies.

Computer Employee: NY follows the FLSA requirements for the computer employee exemption. FLSA state a computer employee is exempt if paid a minimum salary of \$684.00/wk. and has a primary duty that consists of:

- Applying system analysis procedures to determine system specifications, OR

- Designing, developing, creating, or testing computer systems or programs related to user or system design specifications and/or machine operating systems.
- Generally, a help desk employee does not meet the qualifications for the computer employee exemption.

If your employees fit in one of the above exemptions, you must then determine if they pass each of the two tests below.

Salary Basis Test: The employee is paid a predetermined amount each week. The amount of pay may not be reduced based on a variation in the quality of work or number of hours worked.

Salary Level Test: It requires employees to be paid a minimum statutory defined salary to be considered exempt from OT. FLSA requires a minimum weekly wage of \$684.00/wk., whereas NYS requires a minimum weekly wage of \$1,125.00/wk. if located in NYC, Nassau, Suffolk and Westchester Counties and \$990.00/wk. for the rest of NYS.

Failure to pay OT is wage theft under NYS' Wage Theft Act. Penalties for withholding OT pay can include double the amount that should have been paid in OT wages and up to triple the amount if found a willful violation, plus interest, attorney fees and up to a \$20,000.00 fine. In addition, officers of the employer who knowingly allow nonpayment of OT due an employee will be guilty of a misdemeanor for the first offense and a felony for a second offense within six years.

Employers should review all employees identified as exempt to ensure employees have not been misclassified. Common exemption problems encountered by employers include a) labeling all salaried employees as exempt without regard to the actual work duties performed and salary paid; b) professional employees who exclusively perform unprofessional work, unrelated to their degree; c) docking salaried workers for missed time. Misclassifying employees as exempt can be a costly mistake.

For more additional information or assistance contact Diana Plue at Sheats & Bailey, PLLC, Tel: (315) 676-7314.

The information provided in this article is not intended to serve as specific legal advice for any particular situation. Competent legal and experienced counsel should be consulted.

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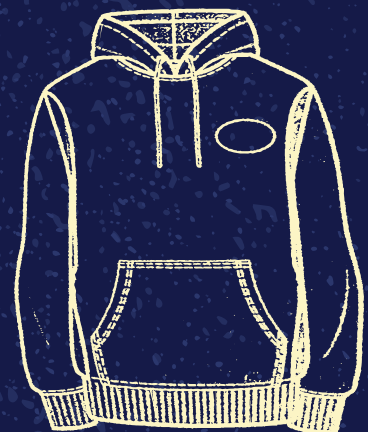
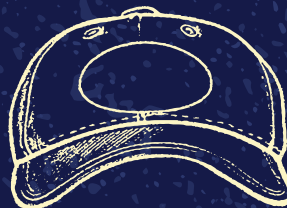
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