

# CONSTRUCTION CONTRACTOR

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WINTER 2021

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MATTESSICH IRON

ON THE INSIDE

INFINITY NORTHEAST

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## TABLE OF CONTENTS WINTER 2021

- 4 WINTER 2021 EXECUTIVE DIRECTOR'S MESSAGE
- 5 SBE STAFF, OFFICERS, AND BOARD OF DIRECTORS
- 6 **MATTESSICH IRONWORKS**
- 11 INFINITY NORTHEAST, INC: BUILDING PLAN OR BUILDING A CAREER
- 14 FIVE STAR EQUIPMENT OPENS NEW SYRACUSE FACILITY
- 15 RENEWED CALLS FOR NY LABOR LAW REFORMS | THE CONSTRUCTION EXPERTS
- 16 LIKE FATHER, LIKE DAUGHTER. STEEL SALES, INC., A SECOND-GENERATION COMPANY, BUILDS ON CUSTOMER TRUST
- 18 STARTING WITH THE END IN MIND: GOAL-BASED WEALTH MANAGEMENT
- 21 A NEW FRAMEWORK FOR SERIOUS INJURY AND FATALITY (SIF) PREVENTION
- 24 THE LIEN LAW - HOW IT CAN HELP YOU GET PAID
- 26 THE DISSEMINATION OF TIMELY AND CRITICAL INFORMATION
- 28 LEADING FRAUD THREATS IN THE CONSTRUCTION INDUSTRY
- 30 ADVERTISERS INDEX WINTER 2021

### On the Cover:

Shop foreman and Grenada combat Army veteran Kevin Ormsby pierces a component in preparation for galvanized finish.



# EXECUTIVE DIRECTOR'S MESSAGE

## WINTER 2021

Last year at this time the construction industry was preparing to embark on one of the most highly anticipated construction years this region of New York has ever seen. The significant number of projects planned for 2020 was driven by an advantageous blend of public and private dollars, assuring 2020 would be a year to remember.



And was it ever – but for all the wrong reasons. Nobody would have predicted the COVID-19 pandemic would occur and have such unimaginable consequences on our state and country. While construction was determined to be “essential” in New York, and many construction industry-related employers enjoyed a good year financially, the negative impact the coronavirus had on businesses and people in general was severe.

As we end 2020 and begin the new year, the second wave of the coronavirus is taking its toll, however, there is an end in sight with the development of multiple vaccines. The new year brings renewed optimism that in 2021 many of the liberties and securities we citizens of this great nation took for granted will emerge once again. Our economy, while wounded, will begin to recover. The human interactions we have sorely missed during the past year will blossom again.

2020 will be remembered as an extraordinary year, with each person having their own story to tell. From business owners, employees, first responders, schoolteachers and priests, no one was immune from the significant disruptions COVID-19 caused.

The Syracuse Builders Exchange is grateful to have played a role in communicating items of importance to our members and your employees throughout the pandemic. The continued dissemination of information to the industry will remain our number one priority.

Thank you for supporting the Syracuse Builders Exchange, but most importantly thank you for your trust. It remains a privilege to service such a diverse group of construction industry employers and your employees.

Wishing you all a happy, healthy and prosperous New Year, I remain

*Yours Truly,*

A handwritten signature in black ink, appearing to read 'Earl R. Hall', written in a cursive style.

**Earl R. Hall,**  
**Executive Director**



# CONSTRUCTION CONTRACTOR

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The Syracuse Builders Exchange was founded on April 30, 1872, and was known as the Builders Board of Trade. In 1900, the organization changed its name to the Syracuse Builders Exchange. The Syracuse Builders Exchange is the largest Builders Exchange in New York State, serving 985 diverse member firms, and is affiliated with the Building Industry Employers of New York State. As the oldest Builders Exchange in the United States, the Syracuse Builders Exchange has evolved over the past 145 years to become the regional industry leader in gathering and disseminating of important construction information to construction industry employers.

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# MATTESSICH IRONWORKS

SERVICE-DISABLED, VETERAN-OWNED BUSINESS,  
AND PROUD MEMBER OF THE LAST GREAT INDUSTRIAL TRADE

MARTHA CONWAY



Curved stair, rails and structural opening at Batavia Downs Casino. This work was completely designed, detailed, fabricated and installed by staff members of Mattessich Ironworks.

**M**attessich Iron, LLC, a New York state-certified service-disabled, veteran-owned business (SDVOB), was founded in 2008 by now 39-year-old Michael Mattessich.

Mattessich said his love of metal work developed from working on old muscle cars and motorcycles with his father. In 2018, Mattessich Iron was named Central New York's third-largest service-disabled veteran-owned business by the CNY Business Journal.

Born and raised in Baldwinsville, Mattessich graduated Baker High School and enrolled in the United States Military Academy at West Point. After graduation, his military assignments took him to Missouri and Georgia.

He spent downtime sharpening the skills he learned while working with dad. He started with Harley Davidson frames and components and moved to welding and machining for local motorcycle dealers, restaurant

kitchen maintenance, construction equipment repairs and service calls to Fort Benning when contractors needed steel.

After serving two tours of duty in Iraq, leaving his military service with the rank of captain and an injured hip, Mattessich took his combined education, construction experience and love of metal-working back to Baldwinsville in April 2008. He founded Mattessich Iron, LLC, now located at 1484 Route 31, Memphis.

Mattessich started out with a 4,000-square-foot fabrication shop. He upgraded equipment and vehicles and started hiring well-versed welder/fabricators. The first projects were ornamental repairs, some mechanical repairs and equipment repairs.

“A lot of repair work and some construction,” Mattessich said. “It was daunting but also exciting and refreshing after leaving the military.”

He started out on his own.

“I added two people the first year, and two more after two years,” Mattessich said. “Once I gained a few employees, I used the Syracuse Builders Exchange to find public bid opportunities. I phased out repair work and equipment modification, leading me to the commercial and industrial fields where I wanted to be.”

Mattessich employs a full-time mechanic, multiple field crews and runs a night shift during the busiest times. Critical to the smooth operation of the business and project rollout is his management team including himself, wife and vice president Danielle Mattessich and Operations Manager Kelly Ormsby, an Army veteran.

“He’s a 40-year steel man, and I had an inclination he could fill our newly created operations manager role,” he said.

Danielle graduated from State University of New York Environmental Science and Forestry with a Bachelor of Science degree in 2011.

“After graduation, I was hired by a local company as a project manager/environmental scientist, where I specialized in groundwater remediation clean-ups,” Danielle said. “While at the environmental company, I also worked on meth lab clean-ups for the NSYDEC and train derailments for CSX. As much as I enjoyed the field, I decided to make the move to Mattessich Iron in 2013.”

She said the creation and follow-through of company systems and policies are major focus areas for her.

“These have ranged from human resource policies and contract administration to operational policies such as



**Founder and President Mike Mattessich, an Iraq combat veteran with the U.S. Army, surveys progress at most jobsites daily.**

inventory tracking and product shipment,” she said, adding that when she joined Mattessich Iron, Mike was finding the work, estimating, managing each project and recruiting the talent. “At first, our priority was to use my accounting and project management background to set up systems and start developing answers to the ‘how-to’ questions to streamline processes.

“Today, I play defense in operations by maintaining efficiency and tracking costs. I also create the company’s annual budgets and manage monthly finances.”

“Danielle brought a heightened level of planning and organization to the business,” Mattessich said. “Her professional background in environmental contracting has improved the company’s efficiency in legal considerations, human and business resources, manpower and financial matters.”

Ormsby said he started his career at Solvay Iron.

“I started as a second-shift foreman in the fabrication shop and worked my way up to president of the company,” Ormsby said. “I have done it all – from sweeping the floors to signing the checks – and I believe



Pictured from left are crew leader Mike Perez and connector Jim Ormsby inspecting a tube brace at the Wellwood Middle School addition in Fayetteville.



Welder/fabricator Nick Kenney installs holes in channel members for the renovation of the Binghamton Armory.



Welder/fabricator Gary Durant, a Navy veteran, details a beam bound for the East Lake Commons project in Oswego.



Connector Travis Richardson, a Marine Corps veteran, installs bar joist reinforcements at the Fremont Elementary School addition in East Syracuse.

that no job is more important than the other: They all must work in harmony.

“I was a shop supervisor, field supervisor, director of operations, vice president and president. In 2004, I started Ormsby Iron Works, Inc., and ran my company until the economy fell in 2009. I closed the company in 2010, went back to Solvay Iron until it closed in 2013, then started Ormsby Iron, LLC, and ran that until I had a stroke in 2016. After recovering, I came to Mattessich in March 2019.

“I have multiple welding certifications, I have a CDL tractor-trailer and crane operator license.”

Ormsby is the operations manager and chief estimator.

“I put together 90 percent of all projects we quote,” he said. “I also hire out-source detailers, process shop and field drawings and schedule shop production. I perform project management until the job hits the field. Mike Mattessich takes it from there. He takes care of all field meetings, field measuring and field troubleshooting.

“Mike and Danielle Mattessich are the most honest and willing people I’ve ever worked with,” Ormsby said. “They are the first to accept fault and reason for every issue the company faces and work through the problem with the source. Their willingness to listen to their employees, take all the information and make the best decision for the company tells me Mattessich Iron will be around for years to come.

“With the path Mattessich Iron is on, I see the company being the go-to fabricator-erector in Central New York, taking the lion’s share of the market for this area for structural and miscellaneous steel.”

Mattessich said Ken Millward, maintenance mechanic, keeps the

vehicles, trucks, lift assets and machinery in good working order, and performs periodic maintenance on shop machinery.

“He also makes site visits to fix equipment in the field,” Mattessich said.

Mattessich said things may be humming now, but in the beginning, it took many bids to start landing jobs and building relationships with general contractors.

“In 2017, we moved to our new facility, complete with two floors of newly built offices, inventory and break room space,” Mattessich said. “The original offices and plant floor were too crowded, and the existing property didn’t allow for expansion.”

He said the new shop floor expanded from 4,000 square feet to 14,000 square feet, providing more workspace and room for machinery to help keep up with the growing number of projects.

“We added a maintenance department, in-house estimator, in-house drafters with 3D capability and increased our project manager positions to offer greater efficiency, capability and quality for our customers,” he said.

He credits his top-notch staff; how does he find them?

“Generally, I interview everyone,” Mattessich said. “Our employees are the most important facet of the business. Talent is good, but I think attitude is more important than talent. You can train anyone to bolt, weld or run a forklift, but you can’t train attitude. I look for positive, team-oriented people who have a good work ethic.

“I’m also proud to employ a number of veterans,” Mattessich said. “Our employees are the backbone of the business.”



Mattessich said the military taught him not to ask subordinates to do anything he wouldn't do himself.

"I work hard to make sure employees don't feel out of place with something we ask of them," he said. "Our people are our most important resource. We can rent or buy anything we need, but not our staff. They are running the machines and equipment. They are making the business a success."

Mattessich said he tries to talk to every employee at least once every week in the field, shop, and office.

"It's really important to me that our team members get the attention they deserve and our appreciation for what they are doing for our group," he said. "I ask them in the field and in the plant if there is anything, any equipment, that will help them do a better job. Do they need anything more to work better in the field, fabricate better, improve quality control?"

"I talk with our mechanic to find out what's giving him problems and get those things replaced. I try to get out and help with installs during our busiest months. It helps maintain team cohesiveness."

Mattessich said shop fabricators receive the steel from the mill and cut, drill, bend, weld, polish or paint the material following shop drawings and construction prints.

Mattessich Iron provides complete design and fabrication of all ferrous and non-ferrous metals, offering in-house design, fabrication, finishing, delivery, and installation of all work, performing private and public work in all but the most remote corners of New York state.

Mattessich is well-versed in structural steel and miscellaneous metals fabrication, including – but not limited to – beams, columns, decking, ladders, stairs, handrails, bollards, mezzanines, catwalks, and general weld repairs, more specifically:

- Designing: AutoCAD 2-dimension, Advanced Revit 3-dimension, delegated

design review, stamped engineer review and AISC standard connections and calculations

- Metal Joining: GMAW (MIG), GTAW (TIG), SMAW (ARC), brazing and soldering

- Reducing: Plasma cutting and oxy-fuel cutting up to 1-1/4" thick, bandsaw cutting up to 18" x 22", shearing up to 3/8" thick by 12 feet long, 110-ton hole punching up to 1-1/4" thick

- Shaping: Metal turning, 300-ton press brake forming up to 3/4" thick on a 12-foot bed, threading, tube and pipe bending and notching

- Finishing: Timesaver drum polishing up to 36" wide; painting, powder coating; galvanizing and anodizing

"Field crews receive the end product and maneuver it to the work area and use forklifts, cranes, material lifts, chainfalls, winches and other rigging devices to erect each item," he said. "They assemble pieces according to erection drawings and contract plans."

He said a typical job runs from \$2,000 to \$2 million.

Looking forward, Mattessich is considering automating beam and column work by adding CNC machines and possibly having to expand the plant and office space and increase field crew members.

"I think operations could still use improvement," Mattessich said. "Now that we have quality heightened and procedures established, we have the luxury of focusing on streamlining and automating."

Mattessich said the project of which he is proudest is Batavia Downs Casino.

"We did a spiral staircase with a structural circular cutout and two-sided picket rails around the opening" he said. "It was a product of my own design, detailing, layout and eventually installation, and the result was that it all went together almost perfectly."



Maintenance mechanic Ken Millward pulls a delivery truck into the maintenance building for service.



Connector John Carroll welds a moment connection at the Wellwood Middle School addition in Fayetteville.



Crew leader and former Marine Eric Drewel end-preps a beam at the Fremont Elementary School addition in East Syracuse.



**A four-level tube steel stair with stainless steel mesh rails designed in collaboration with the architect at SUNY Brockport's Lathrop Neff hall addition.**

He also is proud to be part of bringing to life a national-level facility: National Veterans Resource Center in Syracuse.

"It makes me proud as a veteran to have bid and executed a project that is for veterans, military personnel and those training to join the military," Mattessich said.

He said another proud moment was completion of Mattessich's part of the work in building LeMoyne College's stadium.

"We did that during one of the first years in business," he said. "I felt like I was in over my head, but I was working with a general contractor I was comfortable enough with to join the project. We worked great together."

Mattessich said he has been lucky; the pandemic has not affected his company's supply or workload.

"We chose to shut down operations for several weeks until the state could provide us with guidance," he said. "I wanted to keep our employees safe. I am skeptical about budget impacts on projects a year or two out; schools, prisons, government buildings, colleges, apartment complexes and most other commercial and industrial entities will likely maintain reduced mid-term budgets."

Mattessich said though he is a hands-on supervisor, his responsibilities have shifted greatly since his boots hit the ground 12 years ago.

"We started with keeping our heads above water and then moved toward more long-term planning," he said, adding that he'd like to expand Mattessich's presence in the North Country and Southern Tier regions, paying close attention to bid invitations from qualified general contractors there and developing competitive quotes.

"I want to exit my career having built a national-level fabricating business," Mattessich said when asked about what legacy he wants to leave. "I want to have a positive impact on the central New York community. I thought success would mean after 10 years or so, I would have five employees and be fortunate enough to be able to pay the bills."

Twelve years out, Mattessich Iron employs 30 to 40 people throughout the year and is on track to do \$7 million in sales this year.

"We are a service-disabled, veteran-owned business seeking invitations to bid from qualified general contractors, designers and owners in order to establish a successful working relationship with superior service," he said, adding that in 10 years, he would like to capture 20 percent market share for steel fabrication in central New York and the surrounding regions.

For more information, contact Mattessich Iron at 315.638.1419 or visit [mattessichiron.com](http://mattessichiron.com).



**Mattessich Ironworks team.**

# BUILDING PLAN OR BUILDING A CAREER

DONNA TUPPER, INFINITY NORTHEAST, INC. WANTS THE YOUNGER GENERATION TO CONSIDER CONSTRUCTION AS A CAREER

MOLLY ENGLISH-BOWERS

**I**t may surprise some that the “construction worker” ranks third on Indeed.com’s projection of in-demand jobs for the next five years. But not Donna Tupper. The President and Owner of Infinity Northeast Inc. wants to spread the word that construction is a rewarding career.

“It’s a great industry,” Tupper said. Our conversation took place while Tupper was driving to Syracuse from North Carolina where Infinity Northeast is commencing development projects. “There’s a lot of opportunity in construction and the younger generations may not know this.”

With 36 years of experience in the industry, Tupper is making it her mission to inform young men and women about those opportunities. “My goal is to reach all younger generations, not gender- or ethnic-specific.” She has spoken at groups including Small Business Administration Women in Construction, New England Regional Council of Carpenters, and Girls World Expo.

The latter is a 21-year-old national program that aims to connect girls to resources and partners in their communities to help them realize their potential. Syracuse has been a host to the organization in 2018 and 2019 and Tupper spoke, hoping to inform and educate those in attendance. “The girls come to look at opportunities that are available,” she said. “If you have no idea about construction, how would you know the



Donna Tupper, President, Owner, Infinity Northeast, Inc

opportunities that are out there? We try to explain what is out there and the vast avenues for girls to become involved in the construction industry.”

According to the Bureau of Labor Statistics, about 68 percent of high school students attend college, but 40 percent of those do not graduate, leaving a lot of time wasted and money owed. In addition, 37 percent of currently employed college grads are doing work for which only a high school diploma is required. It is that population Tupper wants to reach.

“Kids don’t know that construction opportunities really exist,” she said. “It’s as strong as the medical industry. The demand for medical facilities and housing is not going to diminish, regardless of politics. For those who find themselves unemployed during this difficult time, if you put in a little hard work, you will be financially stable with a solid career. Have no fear and take a chance in construction.”

Locally, trades are primarily taught at BOCES. Trade schools teach hands-on skills for specific careers, such as welding, auto mechanics, plumbing and carpentry. Among the benefits of a trade school education is the reduced time it takes to graduate, more affordable tuition costs, smaller class sizes, hands-on training, and job placement services.



Resorts World Catskills, Monticello, New York

## Career Change

Even though Tupper's degree is in science, she took a chance on a new career after the birth of her first daughter. With limited options for childcare and a husband that often worked out of town, she considered her options.

"I quit my job and went into housing management for real estate companies," she said. She began cleaning houses that had been vacated by traveling executives while they worked in Central New York. "The properties were vacant, and I could bring my daughter with me while I worked," she said.

Real estate companies began asking Tupper if she could do more than clean; she started out painting, then flooring, doors, and woodwork. "I had an all-girl crew and we worked afternoons and evenings. That was 36 years ago," she said. "It was gradual, and I had a lot of challenges with men. I was blonde and 22 when I started, and they thought I was naïve and inexperienced. Now, after years of hard work, I do not have to prove myself to anyone, and I do not take every project that I am offered. I work with a number of clients that believe in the professionalism and respect of the industry."

Tupper is the president and sole owner of Infinity Northeast, incorporated in 2008. She is a member of the Syracuse Builders Exchange and a signatory to Northeast Regional Council of Carpenters Local 277. Infinity Northeast Inc. is also a New York State and Tennessee Certified WBE (Women-owned Business Enterprise). The main office is located at 6090 E. Taft Road, North Syracuse, with satellite offices in Murfreesboro, TN., Naples, FL., Orlando, FL., and on Thompson Road in Syracuse.

The office in Tennessee has made it possible for Tupper's oldest daughter, Jessica T. Graham, to work for her mother as Senior Project Manager. She is educated in law and previously worked for the state of Tennessee. "She left her job and has been working with me for a number of years," Tupper said. Tupper's middle daughter, Stephanie K. Baker, is the Director of Human Resources and Union Benefits. She is educated in mental health and, also left her career to work with her mother.

It is vital to Tupper the employees and subcontractors of Infinity Northeast, are members of trade unions, such as Carpenters Local 277. For that reason, if she were to take on an apprentice, he or she would need to join the union. "I would have no problem having them learn

in-house." The in-house trade work includes architectural, mill work and finish carpentry. Tupper hires subcontractors for other trade work when contracted as a general contractor.

After working in the field for nearly four decades, Tupper has discovered what she enjoys building. "I like repetitive work—casinos, high-end hotels, military barracks," she said.

Among Infinity Northeast's projects are: SUNY Upstate Health and Wellness Center, Syracuse, NY; Athenex Pharmaceutical Manufacturing, Dunkirk, NY; Resorts World Catskills, Monticello, NY; Del Lago Resort, Tyre, NY; and Seneca Nation Cultural Center, Salamanca, NY. Infinity also did the rigging and set-up for Woodstock '94, located in Saugerties, NY.

She has also ventured into the latest in upscale family fun, "multi-tainment" centers containing bars, restaurants, movie theaters, high-end bowling alleys, laser tag and the like. "Ten years ago I did a research study for the Oneida Nation that found that if there is a gambler in the family, if you want them to come and stay at the resort, you need something for the other individuals in the family." Tupper is associated with the development of UltraStar Multi-tainment and pursuing an interest in IRL Companies, which purchases distressed shopping malls throughout the United States to renovate and re-create their usage.



Resorts World Catskills, Monticello, New York

One reason Tupper was driving back from North Carolina was she had checked in on UltraStar, multi-tainment facilities in Cherokee and Murphy, both in the western mountains of the state. "I am pursuing the owner of Resorts World Catskills to put in a multi-tainment center. It's close enough to New York City to attract customers and it would eliminate or reduce children being in areas of a casino where they shouldn't be."

Tupper is in the process of purchasing land in North Carolina to construct single-level, high-end housing for ages 55-and older. "These homes are for people who are looking to buy a single-level structure with a couple of bedrooms and no maintenance, in a gated community" she said. "I have decided I am done with Central New York weather and my work can be performed anywhere."

Then there is the medical field, for which construction work will always be in demand. "I am in the planning stages of owning and developing a medical center in Naples, FL. Owner-Development is the highest level you can go in the building construction industry." Given Tupper's track record, she will succeed. "I never sit still."

But she is also looking toward the future when she will retire and hand over the company to her daughters. "I'm 58 years old," she said. "If my daughters allow it, I will drop dead working, because this is what I love to do. I love the industry, but I needed something more for future stability. My plan is to find property, develop projects and own them. That's how I'm going to survive. I don't want my children to worry about the future and having to support me or the stability of the company."

At the same time, Tupper realizes the next generation needs to be exposed to construction as a career, especially as professionals near retirement age. "Most of my crew is over the age of 40," she said. "I love my industry and I have huge passion for it. I don't want to market my company; I want to market my story so maybe other people and younger generations will consider getting into the business. Anybody can start a company, you must work hard, stay focused and if it's something you enjoy, it's not like work. The money will just come."

"Always remember, Be Honest, Be Kind and Live Life with Integrity."

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# FIVE STAR EQUIPMENT OPENS NEW SYRACUSE FACILITY

**November 10, 2020:** Bill Farrell, CEO of Five Star Equipment, is pleased to announce the opening of the company's brand-new facility located at 5835 East Taft Road in Syracuse, New York. The facility opened for business on November 9.



The 25,000 square foot facility incorporates state-of-the-art design features geared towards maximizing efficiency and service capabilities for its customer base. Situated on eight acres, the building features an expansive showroom/reception area with parts counters, offices for sales and administrative functions, multimedia training room, a break room with adjacent outdoor patio, parts warehouse with garage door access for receiving and parts dispatch, an eight bay service area equipped with four 10-ton overhead cranes and a separate wash bay. The new facility provides sales, rentals, parts and service throughout central New York State, including Seneca, Cayuga, Onondaga, Oswego, Madison, Oneida and Herkimer Counties. The branch is home base for two road service vehicles and 20 employees.

Key Syracuse branch personnel include: General Manager, Dave Kreis; Service Manager Rob Hecox; Sales Manager Scott Hinman; Sales and Rental Coordinator Valerie Smith, who has been with the company for 27 years; and Corporate Parts Manager Pam Huckaby.

The construction of the Syracuse Branch is part of the company's long-term strategic growth plan, as it celebrates its 40th anniversary this year, which includes either new facilities or upgrades at all its locations. Five Star Equipment operates seven locations in 57 counties throughout Western New York and Pennsylvania.

Five Star CEO Bill Farrell stated "this new facility is about more than just bricks and mortar, it's about commitment. Commitment to our customers, our



community and our employees. Five Star Equipment is committed to providing world-class equipment brands like John Deere and Hitachi and backing these brands with outstanding customer support. This new facility in this strategic marketplace equips us to do just that."

The company was established in 1980 when founders Frank Gallo and Bill Bochicchio, Sr. acquired the John Deere Construction & Forestry dealership in the Scranton, Pennsylvania area. Five Star Equipment is the authorized dealer for John Deere, Hitachi, Topcon and Bomag, and offers products from a number of additional lines, including Eager Beaver and Trail King trailers. The company also offers a wide range of attachments and equipment for applications in construction, forestry, municipal maintenance, and pipeline industries.





# RENEWED CALLS FOR NY LABOR LAWS REFORM THE CONSTRUCTION EXPERTS

BRETT FINDLAY & JOHN SCHMITT, ONEGROUP

**N**ew York State's construction industry workers are all too familiar with NYS Labor Law sections 240 (commonly referred to as "Scaffold Law"), 241, and 200.

On September 29, 2020, a group of more than 75 organizations of contractors and trade groups wrote a letter to Governor Andrew Cuomo calling for removal of the absolute liability standard in these Labor Laws. The call to action is not to repeal the law(s) or change any of the safety provisions within, only to reform the absolute liability portion.

In recent years, calls for reform have revolved around the interpretation of strict or absolute liability under section 240. NY Labor Law section 240 imposes strict or absolute liability on owners, general contractors, and their agents - whether or not they supervise or control the work. The plaintiff's own negligence does not furnish a defense. It is still necessary for the injured worker to show that the statute of NY Labor Law section 240 was, in fact, violated, and that such violation of the law was the proximate cause of the plaintiff's injury. The reform efforts have been to acknowledge and recognize the negligence of the injured worker that exists in other NY Labor Law sections, such as 241 and 200. NY Labor Law sections 240 and 241 read similarly, and neither addresses the comparative negligence of the plaintiff/injured worker. (It is worth noting, though, that Labor Law section 240 has been interpreted by the courts differently than 241.)

As of now, the only viable defense under NY Labor Law section 240 is the "recalcitrant worker" defense. Under this interpretation, the owner, general contractor, or their agent, as a defendant, has no liability if they can prove that the plaintiff/injured worker:

- a. Had adequate safety devices available on the jobsite.
- b. Knew that the safety devices were available and that the injured worker was expected to use them.
- c. Chose for no good reason not to utilize the safety measures or equipment.
- d. Would not have been injured had they not made that choice.

However, the lack of governmental support and the financial strength of the Trial Lawyers Association have thus far been successful in halting reform momentum.

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They argue that any potential change to the existing laws (which were enacted to protect the construction workers of NY) will diminish or discourage the safety efforts of construction companies. This claim was proven untrue in Illinois in 1995, though, in the construction workers' "Structural Work Act." Additionally, NY Labor Law sections 240 & 241 were enacted in 1885, prior to the development of federal workplace safety standards like OSHA for the construction industry.

According to Blossfield, there are financial benefits to reform as well. The referenced letter claims that the potential reform would free up millions of dollars in state and municipal budgets, hundreds of millions in infrastructure costs and release an estimated \$200M per year in education budgets.

Labor Law reform could impact the insurance marketplace. Inflated insurance costs and limited marketplace availability for NYS contractors have been partly created by NY Labor Law sections 240 and 241. It is significantly more difficult for construction companies in NY to obtain adequate insurance coverage and subsequently protect their business. Some insurers have refused to insure clients in New York because of the Scaffold Law, and those that remain have consistently increased their rates to insure the risk.

For a more detailed summary of the reform calls, please reference an article written by Elizabeth Blossfield, East Region Editor of the Insurance Journal:

[www.insurancejournal.com/news/east/2020/10/08/585902.htm](http://www.insurancejournal.com/news/east/2020/10/08/585902.htm).

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# LIKE FATHER, LIKE DAUGHTER

## STEEL SALES, INC., A SECOND-GENERATION COMPANY, BUILDS ON CUSTOMER TRUST

TAMI SCOTT

**W**hen Brenda Westcott was a young girl, she was engaged in her father's business — but only after hours. And only for recreational purposes. Once the doors were closed for the day, she'd enjoy the space as her very own indoor skate park. Aside from her time zipping around the facility on four wheels, her interest was nil. Little did she know that as an adult, her father's business would become her passion, her purpose, and eventually her own — just as it was her dad's during his prime.

Entrepreneur Donald Westcott founded Westcott Steel Co., now a second-generation steel fabrication company, almost 50 years ago in Sherburne, NY, where it still produces today. His daughter joined him in 1988.

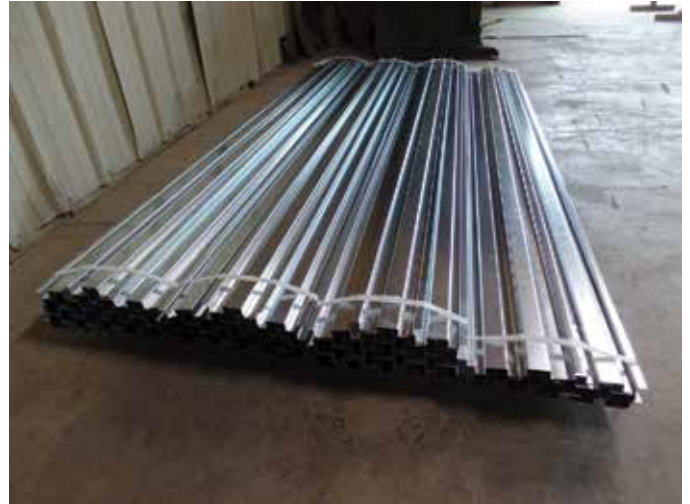
"After I graduated high school and I was not ready to go to college, my father insisted I come work with him," she said. "This was the best decision I have ever made."

Just nine people (including Westcott) comprised the business then; she was charged with accounting. "The first task I tackled was to computerize all bookkeeping, sales, and inventory processes in the business," she said.

From there, Westcott focused on expanding her knowledge and hands-on experience about steel products, welding procedures, and job estimation within the company.



**Brenda Westcott with Westley (grandson and anticipated future president of Steel Sales)**



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"It was challenging being a woman in a man's world at the time, but as I continued to learn, our customers came to respect my knowledge regardless of my gender."

Over the years, the Westcott family business evolved from being a manufacturer of metal products such as wood stoves and garbage dumpsters to the fabrication and erection of grandstand/bleachers and metal buildings throughout New York, Pennsylvania, and other northeastern states.

In 1991, the company began stocking steel, stainless, and aluminum products to distribute to its wide and varied customer base of contractors, agri-businesses, maintenance departments, municipalities, aggregate industries, other welder/fabricators, and the general public.

Two years later, the father/daughter duo developed a succession plan for Donald's retirement and for Brenda's desire to continue the family tradition of working with steel but not managing field erection crews. Hence, the creation of Steel Sales, Inc., designed to focus strictly on distribution and custom fabrication of metal in-house only.

"From the inception of Steel Sales, Inc., it was known between my father and me [that] the business would become fully owned and operated by me within 10 years," Westcott said. "By January 2001, my father had stopped all daily involvement in Steel Sales; his focus and desire were solely on his lease/build company."



## Operating as a WBE/DBE Company

A year after acquiring Steel Sales, Inc., in 2002, the New York State Department of Economic Development granted Steel Sales, Inc. certification as a Women Business Enterprise (WBE). In 2015, the New York State Department of Transportation certified the business as a Disadvantaged Business Enterprise (DBE).

Before, during, and since these designations, Westcott has grown the business and made significant changes. She has expanded the product line to include more than two million pounds of steel, stainless, and aluminum in a variety of structural shapes, pipe/tube, sheets, and plates in stock.

Its fleet of trucks and outside sales team serves 18 surrounding counties. Its estimating team, in addition to its inside sales team, provides takeoff services for larger jobs and in-house AutoCAD and SolidWorks shop approval drawings.

The company has a little more than doubled in size, from employing just 14 people in 2001 to a current number of 30. Its gross sales have quadrupled in the last 10 years.

Though Donald has long since retired, his daughter, mindful of the insight he gained and shared, implemented his savvy business spirit.

"My father taught me to work hard, always keep a "never give up" attitude, and be willing to change based on the needs of the customers you serve," Westcott said. "I believe our reason for success and what sets us apart from our competition is staying focused on customer service. Our experienced, hardworking team makes this their No. 1 priority every day regardless of the size of the customer."

## Services Abound

Due to the company's diversified customer base, it offers a unique combination of fabrication abilities and quality products. Specifically, it's equipped to shear  $\frac{1}{2}$ " x 12' mild steel, saw up to 18" x 20", roll  $\frac{1}{2}$ " x 8' mild steel,



**Stainless Steel Platform and Railings**

and bend  $\frac{1}{2}$ " x 12' mild steel. It also offers a variety of punching, drilling, milling, and welding services — by certified welders — of all metals, along with pipe threading for  $\frac{1}{2}$ " to 4" pipe and rebar bending from  $\frac{3}{8}$ " up to 1  $\frac{1}{2}$ " diameter. The company also has a High Definition CNC plasma table 8' x 24' with the latest True Hole technology.

Customers can also count on Steel Sales, Inc as an authorized Wearparts center for Hardox™, a premium wear plate; a distributor of ADS™/Hancor™ plastic culvert pipe, drainage pipe, sewer pipe, stabilization fabric, and septic changers; CONTECH™ metal culvert pipe, multi-plate pipe arches, and aluminum box culvert; and TENCO™ plow parts. It also offers metal roofing/siding from ABC™ with a large choice of colors and grades, cut to an exact, customized length.

In 2010, it introduced a product line including sander chains, tire chains, snowplow blades, snow plow wear parts, and construction edges. The sander chains are fabricated at the Sherburne facility with one-week maximum lead times.

## Its Mission is Simple

Westcott describes the Steel Sales, Inc. mission as simple: "Build and Maintain Long-Term Relationships with Our Customers." This is achieved through trained, motivated, and friendly staff members who are dedicated to serving the company's entire customer base.

"Every day is a challenge and no two days are the same, which is what I enjoy," she said. "I intend to continue our constant improvements and continue to answer our customers' needs with my outstanding team, which is my family, not just employees, for many years to come. We are all passionate about serving those who keep us going."

For more information please visit [www.steelsalesinc.com](http://www.steelsalesinc.com)



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# STARTING WITH THE END IN MIND: GOALS-BASED WEALTH MANAGEMENT

MICHAEL T. VALENTI, INSTITUTIONAL CONSULTANT/SENIOR VICE PRESIDENT,  
GRAYSTONE CONSULTING, MORGAN STANLEY

Life is a series of choices, and when it comes to your wealth, the choices you make today could have far-reaching or unexpected effects on your financial life. To help ensure you can achieve the future you envision, you need a long-term plan. But before you can create that plan, you need to know where you want to go.

In the past, wealth management was virtually synonymous with investment management. But today, an increasing number of Financial Advisors and firms have moved toward a more modern approach to managing wealth: Goals-based wealth management.

Goals-based wealth management helps you manage your wealth to achieve your goals, rather than to achieve an arbitrary rate of return. This approach to wealth management helps give you a more accurate picture of where you stand in relation to your most important aspirations and what you will need to do to make those aspirations a reality.

## Benefits of Goals-Based Wealth Management

Because it is based on your unique goals, a goals-based wealth management strategy is custom-designed to fit your circumstances. In addition, goals-based wealth management can help you:

### 1. Develop a comprehensive view of your wealth.

Rather than just focusing on your investment portfolio, goals-based wealth management takes a holistic view of your wealth, including your current income, future earning potential, retirement plan(s), and Social Security, as well as your current liabilities and future expenses.

### 2. Integrate tax efficiency into your overall wealth management strategy.

Goals-based wealth management incorporates tax smart strategies into the wealth management process from the beginning—smart asset location when making investment decisions and intelligent withdrawal techniques when it comes time to liquidate to meet financial needs.

### 3. Tailor risk management to your preferences.

Goals-based wealth management defines risk in terms of the probability of achieving your goals, not just in terms of market volatility.

### 4. Make more informed financial choices.

When you have a comprehensive view of your wealth, you have a greater sense of clarity and control over your financial life.

### 5. Feel more confident about your investment decisions.

Measuring success by your progress toward your goals, rather than against market benchmarks, can help prevent emotional investment decisions.

## Putting Goals-Based Wealth Management into Practice

An experienced Financial Advisor can help you implement a goals-based approach to wealth management using a disciplined four-step process. The first—and often the most important—step is discovery, an honest, open conversation about your goals and your entire financial picture. In the second step, your Financial Advisor works with you to assess various scenarios and advise on appropriate strategies designed to help you meet your goals. Once you have agreed on a personalized wealth strategy, your Financial Advisor recommends a combination of accounts and products that will help you meet your goals and needs. Finally, as time progresses, your Financial Advisor will periodically review your financial situation with you, making adjustments according to your needs, life events and changing market conditions.

If you're ready to stop chasing returns and start focusing on what really matters to you, talk with a Financial Advisor about how you can put goals-based wealth management into action.

### Disclosures

Article by Morgan Stanley and provided courtesy of Morgan Stanley Financial Advisor.

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# A NEW FRAMEWORK FOR SERIOUS INJURY AND FATALITY (SIF) PREVENTION

SUSAN GEIER FAHMY, VICE PRESIDENT, DIRECTOR OF SAFETY & HEALTH SERVICES,  
LOVELL SAFETY MANAGEMENT CO., INC.

An effective safety and health program can reduce costs, improve the quality of work and increase employee morale. Companies spend a great deal of time and resources on improving safety, yet the most important safety events, serious injuries and fatalities, still occur with disappointing regularity. Why? For years, safety professionals have claimed that a reduction in the frequency of overall incidents would reduce the number of serious injuries. Recent studies have proven what many of us know through experience: reducing the frequency of incidents does not necessarily eliminate serious injuries.

Many organizations have now been placing more of a focus on Serious Injury and Fatality prevention (SIF). The theory behind the traditional “Safety Pyramid” claims that if we reduce incidents at the “base” of the pyramid (minor injuries), we will reduce incidents at the top of the pyramid (serious injuries). However, not all employee injuries have the potential to become serious or fatal. For years, safety professionals have been focusing on all injuries, when recent studies have shown that a limited number of incident types have the potential to be a serious injury or fatality.



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By identifying and focusing on those incidents which have the highest potential to result in a serious, life-altering injury we are in a better position to prevent them. When an incident that results in a serious injury happens, we cannot assume that the circumstances underlying that injury were unique. The set of variables that led up to the serious event, in most cases, happened previously with minimal consequences. For example, employees's fall all the time, yet only some of those falls become serious injuries.

The rate of serious injuries and fatalities in the past number of years hasve, and continues to be, plateaued or leveled-off. Many organizations have implemented effective safety and health programs. They have identified and corrected the physical hazards, have acquired the proper personal protective equipment and have trained their employees. Yet, serious injuries are still occurring. We hear it from our risks all the time. They have a good safety program in place and had gone years without a workers' compensation claim and then experience a very serious, high cost claim. They are frustrated as to what they could have possibly done to prevent it.

## Classifying, Tracking and Analyzing SIFs

Classifying an incident or a near-miss as an actual or potential SIF is the first step in the process. Lovell Safety Management Co., LLC manages the Construction Industry workers' compensation safety group. Therefore, we can analyze and trend the types of injuries our group members experience. We have found that lifting injuries, as a result of carrying heavy materials without mechanical assistance, along with slips, trips and falls, were the most frequently reported Workers' Compensation claims. These results are supported by the Bureau of Labor Statistics most recent report (2018) which indicated that NAICS 23600 – Building Construction – experienced the following (by frequency of lost time incident):

<b>Overexertion:</b>	<b>36%</b>
<b>Slips, trips and falls:</b>	<b>34%</b>
<b>Struck by:</b>	<b>21%</b>
<b>Cuts:</b>	<b>21%</b>
<b>Motor Vehicle:</b>	<b>6%</b>

As we have stated, frequency does not always result in severity. In our construction industry safety group, the most serious and expensive workers' compensation claims were falls from heights and ladders; employees in work zones being struck by vehicles and by material falling from above. The Bureau of Labor Statistics also finds that nationally, in construction, the most frequent SIFs are falls from heights, excavation cave ins and over exertion.

## Preventing SIFs

Serious injuries and fatalities can be prevented through better hazard recognition. When workers are better able to observe and take in the details of their work environment, they have a heightened ability to pinpoint hazards that may pose a threat to their health and safety. Investigating near misses can be helpful. A word of caution, treating all minor incidents and near misses as if they have the potential to result in SIF can divert attention away from incidents that have the most potential for more serious injuries. Taking a targeted approach can successfully protect workers and improve safety.

**There are several significant SIF precursors that occur in construction operations.**

- Working from heights or ladders
- Working in traffic – inadequate work zone protection
- Short duration jobs
- Non-routine work, change in plans
- Unsecured tools and materials overhead

Employers should provide training to workers to identify and thereby eliminate potential SIFs. This training will help employees to be proactive in preventing life-threatening and life-changing incidents before they occur.

Using these recommendations and the new model for SIF prevention can help organizations improve their safety program. While the construction industry, as a whole, should be proud of the overall reductions in non-fatal injuries, there is still work to be done to prevent and eliminate serious injuries.

Susan Grier Fahmy, CSP, is Vice President, Director of Safety & Health Services at Lovell Safety Management Co., LLC. You may contact Lovell Safety Management at 1-800-5-LOVELL or visit online at [www.LovellSafety.com](http://www.LovellSafety.com).



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# THE LIEN LAW – HOW IT CAN HELP YOU GET PAID

JASON BAILEY, ESQ., SHEATS & BAILEY, PLLC

**H**ardly a week passes that our firm is not contacted to file a lien on a project in upstate New York or in New York City. A lien can be an effective device to protect your interest in getting paid. It is not the only legal tool, but it is a good tool short of a lawsuit, to secure an interest in the project that you worked on. This article will provide a few things you need to know about liens.

You can file a lien if you performed work on or supplied materials to improve a project. The private improvement lien attaches to the real property. When you lien a public improvement you are not liening the real property that you improved, your lien attaches to the money held by the public owner for the project.

On a commercial project a private lien must be filed within eight months after the last date that you worked (or provided materials) on the project. If the project is a residential project, then you have four months. On a public project your lien must be filed within 30 days of completion and acceptance of the project. If you go beyond the statutory period, it is too late to file a lien.

Your lien lasts one year from the date of filing. The lien terminates upon expiration. On commercial and public projects you can get a one-year extension by filing a renewal, thereafter you need to seek Court permission to extend the lien.

A lien can be a particularly effective tool if the contractor you worked for is insolvent or bankrupt. By filing the lien against the property or against the project funds you will typically obtain an interest in that project that you may utilize in the event of a bankruptcy or insolvency. A lien is not a guarantee of payment; however, it is certainly a good way to let an owner or contractor who does not pay you know that you intend to protect and pursue your rights.

The Lien Law provides other tools to get you paid. One tool is the Lien Law Trust Fund Statute in Article 3-A of the Lien Law. The Lien Law says that project proceeds paid from an owner to a contractor or a contractor to a subcontractor are trust funds. Those funds must be used first to pay subcontractors, suppliers and others who have contributed to the project. If a contractor or subcontractor (or in some instances an owner) spends

project funds for purposes other than payment of project debts, then that owner or contractor may have diverted trust assets. This can have very serious consequences. The consequences can lead beyond liability of the corporation you may have worked for. The consequences can include personal liability to owners and officers of the owner or contractor. A lender that provided lending or a line of credit to a contractor may also be liable for diversion when the lender takes project proceeds to pay back its debt from the contractor.

You can find out if the upstream contractor or owner diverted funds by sending them a Lien Law Section 76 demand. That demand requires them to provide a full project accounting. Essentially, they must detail every dollar received and every dollar spent. They must provide that information in a detailed verified statement within ten days of receiving the demand. The response allows you to figure out exactly what happened to every penny on the project. The failure to respond to the demand can result in a judgment being obtained against the company.

We settled a case for a group of six of our subcontractor clients who worked for a contractor that became insolvent. We used the Lien Law Trust Fund Statute to obtain settlement from the owner and from the lender. That settlement exceeded the amount of our client's claims. The Trust Fund Statute can be a very good tool to put pressure on a non-paying owner or contractor.

For 25 years our firm has been providing training for the Syracuse Builders Exchange and other builder exchanges throughout New York State. The training includes a more detailed class on liens and payment bond claims. Contact your local builder's exchange to obtain a schedule for classes.

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 if you are facing a nonpayment situation.

For more information on liens or a consultation on specific issues, you may contact Jason Bailey, Esq. at Sheats & Bailey, PLLC, a law firm dedicated to serving the construction industry. 315-676-7314, [JBailey@TheConstructionLaw.com](mailto:JBailey@TheConstructionLaw.com).



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# THE DISSEMINATION OF TIMELY AND CRITICAL INFORMATION COMMUNICATING WITH THE CONSTRUCTION INDUSTRY DURING THE COVID-19 PANDEMIC

EARL R. HALL, EXECUTIVE DIRECTOR

**M**onday, March 16, 2020 was not a normal day. Shoulder surgery was scheduled for 8:00 AM followed by two days of in-home recovery. COVID-19 would alter my plans and those of millions of New Yorkers as governmental mandated shutdowns and executive orders were now dictating how society functioned – the Syracuse Builders Exchange (“SBE”) staff included.

Like most businesses, SBE staff began working from home on March 18, 2020. For the next 3 months our employees continued to work remotely, interacting with our members and their employees while continuing to deliver important services the construction industry has expected for the past 148 years.

## Interpreting Executive Orders

While staff worked remotely, I worked from the office to field the endless phone calls and emails from contractors while also addressing the ever-changing executive orders coming out of Albany. With the support of SBE’s attorney, Ed Sheats at Sheats & Bailey, we debated the meaning of poorly written executive orders to decipher what was permissible and what was not. The industry was confused and through this unique collaboration SBE was able to provide interpretations and guidance to the industry via live, interactive webinars.

## Understanding New Laws and Acts

As it was determined that construction was an “essential business” with most of the regional projects exempt from Governor Cuomo’s executive orders, SBE’s shift turned to disseminating information regarding various governmental Laws and/or Acts specific to COVID-19: From the Paycheck Protection Program (“PPP”), to the Families First Coronavirus Response Act, to the New York State Emergency Paid Sick Leave Act. With expert legal assistance from Sheats & Bailey, SBE was able to distribute timely information and provide multiple avenues of assistance to employers, including identifying their legal obligations.

At the same time, contractors struggled to understand the contractual obligations they had to general contractors and/or project owners, interpreting financial

and insurance related issues and how to bid future projects during a pandemic. SBE was again there to assist our member employers thanks to the collaborative efforts with our team of attorneys at Sheats & Bailey, and the experts at OneGroup for the financial and insurance-related matters.

## Delivering Education and Safety Training

SBE’s commitment to education and safety training is not new. Although our classroom was shuttered, we launched a series of safety training classes virtually. In addition to our normal education and safety training classes, SBE partnered with OSHA to deliver consistent communications both in written format and virtually.

The barrage of webinars associated with COVID-19 related issues was intended to inform the industry on items of importance. Many of the subject matters were confusing, such as the paid sick leave and family medical leave acts originating from Washington, D.C., or Albany. It was not uncommon to have hundreds of our members on live or pre-recorded webinars as the industry turned to the SBE as a trusted resource.

## Daily Briefings

Each day SBE delivered an email to our entire data base, updating members and their employees on the important items of the day. From executive orders or laws emanating from Albany or Washington, to OSHA bulletins or safety initiatives to jobsite mandates, SBE disseminated information to our members. Some days would have live webinars, emails, or both. No matter the circumstance, the information was always available at [www.syrabex.com](http://www.syrabex.com) under our COVID-19 Update section.

## New Policies and Procedures

As businesses began to slowly reopen in June and employees returning to work, it became evident new policies and procedures would need to be implemented both in the office and on the job site. SBE produced a COVID-19 safety poster to be posted on job sites and in the office. In addition, we provided reopening safety plan templates to be amended specific to each business, along with company policies and procedures regarding

employee safety within the office and job site. Following CDC guidelines, these numerous new policies and procedures were distributed in Word format so members could customize the document to meet their business environment.

## A New Era

The regional construction industry has reacted admirably to the pandemic, adopting new job site procedures, implementing enhanced safety measures, adding CDC recommended best practices, in addition to maintaining their commitment to general construction job site safety protocols for all employees. Contractors built special wash stations, distributed personal protective equipment, posted COVID-19 related instructions and warnings, and revised “toolbox talks” all on a moments notice. There will be many lessons learned from this pandemic which contractors will utilize long after COVID-19 is gone.

## Value in Your Association

2020 was a year unlike any other I have seen in my 28 years at SBE. As Executive Director, too often I focus on managing the organization and staff, strategizing on how to best implement a new initiative, research and development and long-term planning for the organization. This year brought me back to my grass roots – interacting

with our members. I particularly enjoyed speaking on the phone with hundreds of our member employers, listening to their concerns, answering questions, and providing assurance that this, too, shall pass.

Like our member firms, I remain proud of SBE's efforts to continue to do our jobs during the pandemic. While our business and services were temporarily interrupted by COVID-19, SBE has so far persevered. In addition to reopening the SBE classroom, it is my hope that at some point in 2021, SBE will slowly begin hosting the many networking and social events our members enjoy.

The strength of SBE was on display in 2020. From our employees, to our industry teammates and to our entire membership I say “thank you” for your commitment to New York's oldest and largest construction industry Association.

COVID-19 has brought out the best in many of us. We all have experienced acts of kindness, compassion and understanding by those we love and those we work with. We have witnessed the amazing efforts of our first responders – police officers, nurses, firefighters, doctors, etc. as they risk their lives to help and protect others. Let us all hope that 2021 brings an end to COVID-19 and returns the security and freedoms we have enjoyed as Americans.



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# LEADING FRAUD THREATS IN THE CONSTRUCTION INDUSTRY

BRIAN W. JOHNSON, CPA, CFE, CCIFP, DANNIBLE & MCKEE, PARTNER

**T**hree components that are generally present for occupational fraud to occur—pressure, opportunity, and rationalization—may rise in periods of economic hardship (such as a global pandemic), according to the Association of Certified Fraud Examiners (ACFE). With reduced hours and/or pay, furloughs, layoffs, lower household incomes and other personal and professional stressors, these components could be exacerbated resulting in an increased risk to businesses.

According to the 2020 ACFE Report to the Nations on Occupational Fraud and Abuse, the typical organization loses 5% of its revenue to fraud and abuse and the median loss for construction industry frauds investigated was \$200,000. Fraud in the construction industry is prevalent due to the lack of strong internal controls, segregation of duties in accounting functions, the number of parties involved in projects and the overall complexity of construction projects. Understanding and recognizing the most common types of fraud schemes in your industry is essential to designing appropriate controls to guard against the most significant threats. Some of the leading fraud risks to be aware of include the following:

## 1. Corruption Schemes

According to the ACFE report, corruption is the most common fraud scheme in the construction industry, representing 47% of cases. Corruption includes conflict of interest, bid rigging, bribery, collusion, illegal gratuities, invoice kickbacks and economic extortion. Corruption can occur at any phase of the construction project, during planning, design, sourcing materials or subcontractors, construction, operation, and maintenance. Common conflict of interest schemes occur when an employee gives a discount or takes a higher bid due to some relation or friendship with the customer or vendor. A bribe usually occurs when something of value is offered to corruptly influence the actions of another, most commonly to influence a contract award or the execution

of a contract. Kickbacks occur when undisclosed payments are made by vendors to employees when purchasing materials or equipment.

## 2. Cash Larceny and Check Tampering Schemes

Cash larceny and check tampering schemes together represent 30% of cases and can be committed through the misuse of company credit cards, unauthorized wire transfers, forged maker, forged endorsement, or through altering the payee on a check. Cash larceny can start with thefts from petty cash, however, over time can build to larger amounts. Cash skimming, which is another 13% of cases, is the theft of cash before it is recorded in the books which can be committed by not fully reporting contracts for cash and checks, change orders performed for cash that are not properly written up and are collected by the employee, or through material sales or equipment rentals for cash.

## 3. Financial Reporting Schemes

The occurrence of fraudulent financial reporting has increased over the past couple of years in the construction industry, now representing 25% of cases. This scheme involves the falsification of the company's financial statements. This can be committed through improper timing of receipts and disbursements, reporting fictitious revenue, improper asset valuations, unrecorded liabilities or expenses and improper disclosures. Various pressures and a lack of high-level controls within the organization could lead to financial statement fraud.

## 4. Billing Schemes

At 22% of cases, billing schemes include creating a fictitious shell company and purchasing materials and supplies for personal use on the company account. For a shell company scheme, an employee will create a shell company (ghost company) as a vendor, from which nonexistent services or materials are purchased. The

employee will then submit fraudulent invoices and collect funds paid for their personal use. Without the proper segregation of duties, such a scheme could remain undetected for years.

## 5. Non-Cash Schemes

Non-cash schemes (13% of cases) include misuse of company trucks or equipment, asset requisitions and transfers. Fraud of inventory and other fixed assets can occur when an employee uses a company vehicle for personal use, the personal use of small tools or large equipment, or removal of valuable scrap materials on the job site. These schemes are most common, as there is an opportunity for the scheme, and dishonest employees tend to rationalize the misuse of assets more easily than schemes where physical cash is taken.

## 6. Payroll Schemes

Payroll schemes (13% of cases) include setting up ghost employees, falsifying wages or commissions. Similar to the shell company scheme, a payroll clerk

could set up a new employee or reactivate a terminated employee. The payroll clerk will then receive the fictitious employee's paycheck and cash the check for personal use. In other cases, an employee that submits hour reports to an outside payroll service could add extra hours to his hours worked prior to submitting the report for processing.

Now more than ever, it is important to create a robust code of conduct and proactively enforce internal controls to strengthen security and mitigate major risks of loss. In addition, construction business owners, as well as their project managers, foremen and superintendents, need to vigilantly watch for fraud and employee theft.

Brian W. Johnson, CPA, CFE, CCIFP, is an audit partner with 35 combined years' experience providing audit and accounting services to both private and publicly traded domestic and foreign companies. For more information on fraud risks and how Dannible & McKee can help you minimize the risk of loss you may contact them at 315-472-9127 or visit online at [www.dmcpas.com](http://www.dmcpas.com).



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Driver's Village.....30

Five Star Equipment.....20

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Mullen Industrial Handling Corp.....23

OneGroup.....*Inside Back Cover*

Sheats & Bailey, PLLC .....19

Steel Sales Inc.....29





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