

# CONSTRUCTION CONTRACTOR MAGAZINE

SPRING 2025



**GATO FLOORING:** COMPREHENSIVE  
SOLUTIONS FOR FLOORING, WALLS, AND WINDOWS

## ON THE INSIDE:

**CONTRACTS: A GUIDE TO MANAGING RISKS**

**COMMON CONSTRUCTION ACCOUNTING  
RISKS AND HOW THEY CAN BE PREVENTED**





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## TABLE OF CONTENTS

### | 4 DIRECTOR'S MESSAGE

### | 6 GATO FLOORING

Comprehensive Solutions for Flooring, Walls, and Windows

### | 11 SHEATS & BAILEY

Lien Law Trusts: More Value Than A Mechanic's Lien?

### | 12 LOVELL SAFETY MANAGEMENT

Legislative Session 2024- Workers' Compensation Bills

### | 14 DANNIBLE & MCKEE

Common Construction Accounting Risks and How They Can Be Prevented

### | 16 OneGroup

Contracts: A Guide to Managing Risks

### | 18 SBE STATE OF CONSTRUCTION

"Piggybacking" Misapplications by Public Owners A New York Court's Decision to Remedy the Practice



## ON THE COVER

### GATO FLOORING



# SPRING 2025

## EXECUTIVE DIRECTOR'S MESSAGE

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**W**ith the emergence of Spring comes an abundance of opportunities and challenges for the Builders Exchange (SBE). Although 2024 was by all accounts a successful year, thanks to the tremendous support of our member contractors and efforts by the SBE staff, 2025 will present both opportunities and challenges.

New opportunities will derive from the Mohawk Valley region, where SBE has engaged employers in that market, and welcomed over 100 contractors into their new home for construction-related membership services and benefits. Delivering education and safety training, e-plan room services, networking events and other membership benefits remains a top priority.

Innovation and new features to the e-plan room will drive future enhancements member contractors will find not only to be efficient but will open new marketing and sales opportunities. Scope specific content marketing will be launched within the e-plan room in late 2025, providing contractors, suppliers and manufacturers' representatives with new lead and sales opportunities.

2025 will offer challenges, centered around the ever-changing construction landscape, and continued legislative and bureaucratic impediments. Two issues that will continue to impact contractors and project owners alike will be the lack of skilled labor and the sky-rocketing cost of labor. And it remains to be seen what impact tariffs may have, on a short-term basis, on the cost of imported construction materials.

In this edition of Construction Contractor Magazine, our feature story is on Gato Flooring, headquartered in Utica, New York. Gato Flooring is a New York State Certified Women Business Enterprise company, providing flooring and window solutions throughout upstate New York. SBE is pleased to have Gato Flooring as our feature story, and we welcome other members from the Mohawk Valley to take advantage of the opportunity to be showcased in the region's only construction industry magazine.

I remain excited about the future of the central and upstate New York regions, and the unlimited potential of our member employers to build the many ambitious projects anticipated over the next decade. While the transformation of central New York has already started, the best is yet to come!

Yours truly,

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

**Earl R. Hall**  
Executive Director



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# GATO FLOORING:

## COMPREHENSIVE SOLUTIONS FOR FLOORING, WALLS, AND WINDOWS

By Martha Conway

Deborah Saltis, Sofia Gato, Sheena Rodriguez, Lori Benedetti Back Row Left to Right Robert Mykel, Anthony Hardy, Jessie Underwood, Marcos Estrada, Anthony Cappelli, Adam Saltis

**S**ofia Gato's journey in the flooring industry began when she arrived in the United States from Portugal and took a position as an administrative assistant at a flooring company. What started as a job soon became a passion, igniting her ambition to build something of her own. Fourteen years later, Gato Flooring, LLC, stands as a testament to her vision – a certified Woman-owned Business Enterprise that transcends the role of a typical contractor. It is a company built on expertise, reliability, and an unwavering commitment to excellence. Today, Gato Flooring serves a diverse clientele, including educational institutions, municipal buildings, healthcare facilities, commercial kitchens, laboratories, and other specialized spaces across New York state and the greater Tampa Bay Area.

"Our team is very strong and knowledgeable," Gato said. "We're not just installers; we're problem-solvers. Whether a client needs a complete buildout or simply the right materials for their project, we deliver solutions tailored to their needs."

With extensive experience in new construction and renovations, Gato Flooring offers full installation services while also acting as a trusted supplier of materials for contractors. This dual capability allows the company to adapt to a wide range of project demands, ensuring clients receive precisely what they require, executed with precision and care.

Gato's philosophy centers on doing the job right the first time.

"We want potential customers to understand that we pour effort into every installation to ensure there are no callbacks, no punch lists, no lingering issues," she explains. "That's our primary objective. We're meticulous – some might even say overly particular – because quality matters."

This dedication has earned Gato Flooring a reputation for reliability and attention to detail, qualities that resonate with clients who value durability and performance in their built environments.



## FLOORING DESIGN: BALANCING PURPOSE AND AESTHETICS

When it comes to flooring, Gato stresses the importance of aligning design with functionality.

"Before making decisions about flooring, walls, or window treatments, clients must first consider the purpose of the space," she said. "That's the cornerstone. Too often, aesthetic is prioritized – beautiful designs that catch the eye – but if they don't serve the space's practical needs, they're doomed to fail."

This pragmatic approach ensures every project delivers not only visual appeal, but also long-term utility.

Gato Flooring offers an extensive array of flooring options to accommodate a wide range of needs in diverse building environments. Beyond conventional carpet and tile, the company provides specialized solutions: acoustic flooring for sound-sensitive environments, artificial turf for recreational spaces, concrete and engineered wood for durability, and polished concrete or quartz for a sleek, modern finish. For fitness centers or indoor sports facilities, Gato Flooring supplies resilient surfaces designed to withstand heavy use.

"We have something for every need," Gato said, emphasizing the versatility of her offerings.

In addition to flooring materials, Gato Flooring provides essential interior accessories – wall base, trim, adhesives, cleaners, and transition pieces – to ensure seamless integration and a polished final result. This comprehensive approach simplifies the process for clients, offering everything they need under one roof.

## SPECIALIZED WALL SOLUTIONS: ENGINEERED FOR PERFORMANCE

Gato Flooring's expertise extends beyond floors to include advanced wall solutions tailored to highly specialized environments. The company specializes in hygienic PVC wall cladding, a critical component for spaces requiring sterile or seamless conditions, such as laboratories, healthcare facilities, and commercial kitchens.

"Our team is certified to install these walls with major manufacturers such as Altro and Gerflor," Gato said. "These walls aren't like standard drywall or fiberglass-



Vernon Verona Sherrill (VVS) Cafeteria



Vernon Verona Sherrill (VVS) Library



Family Medicine Waiting Room



Liverpool Library

reinforced panels. They're purpose-built materials, engineered to meet stringent hygiene and durability standards." Unlike traditional finishes, hygienic cladding resists impact, inhibits bacterial growth, and maintains integrity in high-moisture or high-traffic areas.

For clients undertaking combined flooring and wall projects, integrating these systems streamlines construction and enhances functionality. The compatibility of flooring and wall materials allows for a unified installation process, reducing seams and potential weak points.



Production Team: Left To Right, Robert Mykel: Warehouse Manager, Jessie Underwood: Operations Manager, Anthony Hardy: Installer, Anthony Cappelli

It also eliminates the problems associated with trying to retrofit these systems after the fact.

Beyond functionality, Gato Flooring offers customizable wall panels that blend practicality with creativity. "We can reproduce custom images or artwork onto durable panels," Gato said. "These are vibrant, long-lasting designs available in various formats to suit specific client needs."

This option appeals to businesses or institutions aiming to make a statement using their branded graphics in a corporate lobby or educational institutions using murals in a school, while ensuring the robustness required for commercial use.

## WINDOW TREATMENTS: ENHANCING EFFICIENCY AND STYLE

The scope of Gato Flooring's expertise doesn't end with floors and walls; the company also provides premium window treatments that elevate function, form, durability, and beauty. Offerings include blinds, shades, drapes, and shutters, each designed to optimize light control, reduce energy costs, and enhance privacy.

"These aren't just decorative," Gato emphasizes. "They're engineered to manage heat, glare, privacy, and insulation, all while complementing the space's unique aesthetic."

Available in a wide range of styles and materials, these treatments cater to diverse tastes, from minimalist designs to bold, statement-making installations. This





Office Staff: Left to Right, Sheena Rodriguez: Project Manager, Adam Saltis: Executive Assistant, Deborah Saltis: Finance Manager



Sales Team: Left to Right, Lori Benedetti, Marcos Estrada, Sofia Gato: Owner

holistic approach – addressing floors, walls, and windows simultaneously – positions Gato Flooring as a one-stop solution provider, capable of transforming entire interiors with cohesive, high-quality professional results.

## FLOOR PREPARATION: THE FOUNDATION OF SUCCESS

A successful flooring installation hinges on meticulous subfloor preparation, an area where Gato Flooring possesses unparalleled proficiency. The business invests in state-of-the-art materials, tools, and equipment to assess, prepare or repair subfloors, addressing issues such as cracks, unevenness, or moisture infiltration before installation begins. The preparation process may involve cleaning, leveling, grinding, sealing, or replacing plywood to meet manufacturer specifications. Moisture, in particular, poses a persistent threat; undetected during installation, it can lead to significant damage later. Gato Flooring mitigates this risk through rigorous inspection, testing, and remediation to ensure a stable, durable base.

"Our goal is a flawless foundation," she said. "That's what guarantees longevity."

## COMMITMENT TO EXCELLENCE

At the heart of Gato Flooring's operations is a dedication to exceeding customer expectations.

"We have an excellent, professional and well-trained team to ensure project success and consistent, top-tier results," Gato said, explaining that this commitment to pursuing perfection often manifests in added value for clients. "It's our way of showing we care about their experience and the outcome."

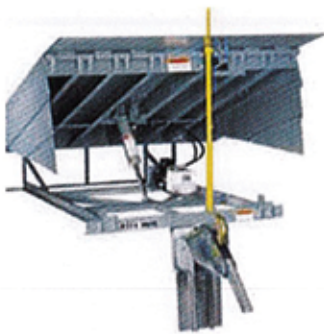
In addition to being a certified New York State Woman-owned Business Enterprise, Gato Flooring is a certified WBE with the Port Authority of New York and New Jersey, as well as a certified Disadvantaged Business Enterprise.

Headquartered at 839 Broad St., Suite 2, Utica, and with a second location in Tampa, Fla., at 8270 Woodland Center Blvd., Suite 101, Gato Flooring serves all of New York state and the Tampa Bay region. Offices are open from 7 a.m. to 4 p.m.

"Though the company focuses exclusively on commercial projects, walk-ins are welcome," Gato said.

**For more information,  
visit [gatoflooring.com](http://gatoflooring.com) or  
call 315.790.5508.**





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# LIEN LAW TRUSTS: MORE VALUE THAN A MECHANIC'S LIEN?

**L**ien Law Trusts can be more powerful than a mechanic's lien and can help you get paid when you take on a construction project. When a contractor doesn't get paid, one of the first things they can do is get a mechanic's lien in place. A lien can be a valuable tool to enforce the right to get paid. However, a mechanic's lien can come with a minefield of problems and expenses. An alternative for companies to consider is Lien Law Trusts.

In common law, a trust is created when one party seeks to protect assets. A parent might set up a trust for their child. The parent is the grantor and the child is the beneficiary. The parent might designate an attorney, bank or some other representative to manage the trust.

A trustee is charged with legal responsibility for taking care of the beneficiary, which is a duty of trust and fidelity. Their motive must always be in the best interests of the beneficiary, not themselves. If they take money from the trust, they are responsible, and in some cases can be charged with larceny under the Penal Law.

This concept of a trust between a trustee and beneficiary applies to construction projects in New York. In NY, a contractor that receives payment on a project becomes trustee of those funds. As a trustee, the contractor must apply the trust fund assets for the trust purposes before the contractor applies the money to its own overhead or profit. Trust purposes include payment

of subcontractors, vendors, and labor. If the trustee/contractor uses trust funds for some purpose other than the payment of trust fund obligations, then the contractor may have diverted trust funds.

A diversion of trust funds can carry serious legal implications, like personal liability for the individuals that were knowingly diverting trust funds. The corporate form does not protect these individuals from personal liability. Strong public policy reasons encourage the liability of corporate principals and officers who knowingly and willfully participate in the diversion. They have taken money that belongs to another and spent it in violation of the trust. A diversion of trust assets can be a criminal larceny. A diversion of trust assets can be criminal because the diverting trustee has taken funds which are not its property and applied them for some purpose other than those defined by statute.

The New York trust fund statutes permit an unpaid beneficiary to demand a complete accounting from its trustee. The accounting must be verified under oath, and provide a detailed analysis of all trust fund assets received by the general contractor. The accounting will include a detailed check-by-check analysis of all payments made with trust fund assets. They require that each check be identified, together with the check number, date, payee and payee's address. Discovery in trust fund litigation should include a complete report from the contractor's cost accounting

system. These are programs where contractors enter all costs assessed against a project. Cost accounting programs will show labor dollars paid, materials purchased and application of project funds to overhead. Overhead may include a contractor's general conditions such as the project site trailer, site storage facilities, vehicles dedicated to the site and project manager. Remember that a trustee must first apply trust funds for payment of the beneficiaries. A trustee which takes trust assets to pay its overhead or profit may be diverting trust assets. The information contained in a complete job cost accounting report can be beneficial to the subcontractor or vendor.

Whenever a subcontractor or vendor is unpaid, they should consider utilizing the trust fund statute. ■

*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.*





# LEGISLATIVE SESSION 2024- WORKERS' COMPENSATION BILLS

**ANNETTE MALPICA,**

**VP CLAIMS & LEGAL COUNSEL, LOVELL SAFETY MANAGEMENT CO., LCC**

**F**our workers' compensation bills were passed by the NYS Senate and Assembly during the 2024 legislative session. Once a bill is passed by both chambers, the bills must be presented to Governor Hochul by December 31, 2024. The Governor has the option to 1) sign 2) veto or 3) request chapter amendments to the bill. As of December 22nd, the Governor has signed two bills and vetoed two bills. We anticipate that the bills that were signed will increase benefits, resulting in higher costs for all NYS employers and in some situations, decrease the incentives to return to work.

## **2024 WORKERS' COMPENSATION BILLS SIGNED INTO LAW:**

**Bill A.5745/S.6635** – Amends WCL §10(3)(b) to eliminate the case law requirement that mental stress injuries be based on work-related stress that is materially and substantially greater than that experienced by similarly situated workers.

*"Where a worker files a claim for mental injury premised upon extraordinary workrelated stress incurred at work, the board may not disallow the claim upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment."*

Bill A.5745/S.6635 was signed by Governor Hochul on December 6, 2024, subject to chapter amendments.

As written, A.5745/S.6635 would expand the statutory carve out that applies to police officers, firefighters, and emergency medical technicians who filed a claim for mental injury premised upon extraordinary work-related stress to include all

employees. In 2017 the NY legislature, in recognition of the high standard required by the statute for mental stress claims, and the occupational hazards/exposures experienced by first responders during emergencies, removed the restriction that a mental stress claim had to be greater than the stress sustained by a similar worker. As written, the 2024 bill would treat all workers in a manner similar to first responders and would prevent employers from defending claims for mental injury by demonstrating that an employee was not exposed to stress that was greater than that experienced by other employees. Employees will still have to have experienced "extraordinary" stress. The onus to determine what qualifies as "extraordinary," a standard that is not defined by statute, will be placed on Law Judges.

The chapter amendments to A.5745/S.6635 were released on January 9 to the public under a new bill number A.1677/S.0755. The chapter amendments sought to clarify the psychiatric(DSM)diagnoses that would be covered under the new legislation and placed specific work-related parameters as to what incidences meet the "extraordinary workrelated stress" standard.

The three psychiatric diagnoses covered under this new law include: post-traumatic stress disorder (PTSD), acute stress disorder, and major depressive disorder. For these specific diagnoses, claimants will not have to demonstrate that the stress experienced at work was "greater than that experienced by a similar worker" to qualify for workers' compensation benefits. In addition, A1677/S.0755,

contains language that mandates a causal nexus between the work-related stress to a distinct work-related event or events directly related to employment occurring during the performance of the employee's job duties. A.1677/S.0755 becomes effective 180 days after it becomes law.

In 2022, the New York Compensation Insurance Rating Board (NYCIRB) hired an actuarial firm to review the impact of a similar mental stress bill that was passed by both chambers (A.2020-A/S.6373-B) and its impact on NY carriers and employers. Based on NYCIRB's analysis, the Governor vetoed the bill. In veto memo 191, the Governor noted that the mental stress bill comes with "significant cost," that was "imprecise" to measure. In order to overcome the Governor's concern, the legislature negotiated the chapter amendment language noted above to control costs to her satisfaction.

**Bill A.1204-A/S.9462-A** – Amends WCL §13(b) to permit treatment by Licensed OT/PT Assistant.

*"Under the direction and supervision of an authorized occupational therapist, occupational therapy services may be rendered by an occupational therapy assistant. Under the direction and supervision of an authorized physical therapist, physical therapy services may be rendered by a physical therapist assistant."*

The OT/PT bill was signed by Governor Hochul on September 27, 2024. This bill (or similar bills) has been present in every legislative session since 2013. Currently, OT/PT therapy assistants are not permitted to render care under



WCL §13. This bill will allow OT/PT assistants who are licensed by the NY State Education Department to render services to claimants under the supervision of an authorized OT/PT. This bill will become effective on the 13th day after it becomes law. We believe that the impact of this bill will be minimal, since workers' compensation authorized OT/PT therapists are currently using assistants to help render care to claimants.

## 2024 WORKERS' COMPENSATION BILLS VETOED BY GOVERNOR:

Bill A.1219-A/S.1974-A – Amends WCL §13(1) to add a new paragraph that would permit claimants to utilize a non-network pharmacy provider upon a finding of eight factors.

*"[A] claimant shall not be required to obtain prescribed medicines through a pharmacy with which the employer or carrier has a contract and may obtain prescribed medicines from a pharmacy of his or her choice when..."*

Bill A.1219-A/S.1974-A was vetoed by the Governor on December 13, 2024. In her veto memo, Governor Hochul mentioned that: 1) the bill would increase litigation resulting from factual disputes associated with the eight factors that would permit the claimant to utilize a non-employer network pharmacy 2) the bill would add "bureaucratic" steps to the Workers' Compensation Board (WCB), and 3) the bill if signed would delay benefits to the claimant. A few examples of the eight factors that would permit the claimant to go out of the employers' contracted pharmacy network for medications are:

**Employer** or carrier refused to provide payment for the prescribed medication and the claimant is unable to obtain the medication from the contracted pharmacy within 72 hours.

**Employer** or carrier or network pharmacy failed to respond to reauthorization request

**Medications** were previously authorized; however, the employer

or carrier denies reauthorization because the medical guidelines do not support reauthorization

### An IME disagrees with reauthorization

In the veto memo, the Governor mentioned that WCB will be issuing regulations to address the intent of A.1219-A/S.1974-A. The proposed regulation can be found at [www.wcb.gov](http://www.wcb.gov). The regulations will require that the employer or carrier notify the claimant that they may use a non-network pharmacy when the employer or carrier objects to medications for sites of injury that have not been accepted or established by the WCB. The regulations will be published in the State Register on December 31, 2024. Carriers and employers will have 60 days from publication to submit their comments to the WCB. For Lovell clients we do not see this as a major issue since NYSIF already provides firstfill pending establishment or acceptance of the claim. It is also important that employers and carriers are reminded that if signed, this bill would roll back the pharmacy cost benefits that employers negotiated in the 2007 Reform Legislation.

Bill A.6832-A/S.6929 – Amends WCL §13-a to allow for treatment costing less than \$1,500 without the need for pre-authorization. The bill will also prevent carriers and employers from using the Medical Treatment Guidelines (MTG) to deny any treatment not within the Guidelines.

*"Such list of pre-authorized procedures (MTG) shall not prohibit varied treatment, nor shall the list be used as a basis to deny treatment not contained therein."*

*"Any special diagnostic tests, x-rays examinations, magnetic resonance or other radiological examinations or test costing more than one thousand five hundred dollars performed by a provider who is not a member of the carrier's, selfinsured's or state insurance fund's diagnostic network...shall be entitled to payment at the negotiated network rate."*

The Governor vetoed A.6832-A/S.6929, the Medical Treatment Guideline (MTG) bill on 11/22/2024. In Veto Message No. 62, she noted that this bill dismantles the standard of care contained in the Medical Treatment Guidelines. The veto message also emphasizes that the Medical Treatment Guidelines were premised on evidence-based medicine to create a uniform standard of care that would serve to improve medical outcomes to injured workers while also reducing disputes regarding whether treatment is necessary and appropriate. The MTG has also been credited with reducing costs to the workers' compensation system. As for treatments greater than \$1500, the veto message noted that the carrier will be required to obtain an IME, which would cause further delays to treatment that is currently authorized without any litigation in 94% of prior authorization requests.

A.6832-A/S.6929 was the most impactful of all the bills that were passed by the legislature during the 2024 legislative session. This bill would essentially dismantle the MTG and the Prior Authorization Request (PAR) process that the WCB spent years and millions of dollars to create as part of the comprehensive Business Process Reengineering (BPR), which included PAR and OnBoard. If signed, this bill would have opened the door to dramatically increased costs for employers if providers advanced questionable medical treatments. In addition, the cost of litigation would increase significantly as employers and carriers sought to limit unwarranted medical costs. We do not need to go far into the past to recall the abusive submissions of hundreds of bills by certain medical providers for treatments that were questionable and, in some cases, injurious to claimants.





# COMMON CONSTRUCTION ACCOUNTING RISKS AND HOW THEY CAN BE PREVENTED

ROBERT C. REEVES, CPA, CFE, Dannible & McKee, LLP

**T**he construction industry has experienced a significant amount of growth post-pandemic. While increased job activity is a positive, several risks have become more prevalent, which could negatively impact job performance if overlooked. Implementing efficient accounting practices can prevent companies from experiencing deteriorating margins and assist in mitigating the following common risks, helping companies gain a stronger understanding of bidding processes and projected job performance.

**1** **Inaccurate Cost Estimates:** With numerous jobs available for bid, construction industry experts face a rising risk of inaccurate cost forecasts. Poor estimates lead to underbidding and cost overruns. Contractors should use detailed, line item estimates for each job site activity, including labor, materials, and equipment hours. These costs should be continuously evaluated and adjusted as the project progresses and work scopes change. Regular evaluation of estimates and comparison of budgeted to actual costs enables accurate forecasting of the job's trending performance and helps refine estimates in future projects.

**2** **Overhead Overlook:** Overhead costs are a notable expense in the construction industry. Fixed overhead costs, such as office rent or insurance, are straightforward to account for, whereas variable overhead costs, such as labor burden, repairs and maintenance, and advertising, can fluctuate and be easily overlooked. Common pitfalls include not considering indirect costs and overhead during the bidding process and not allocating these costs to the work-in-process schedules on a timely basis when evaluating a job's performance. To prevent overhead overlook, companies should utilize a variety of formulas to allocate indirect costs and overhead. Allocation formulas most commonly used

include, but are not limited to:

- **Allocate indirect costs and overhead based on direct labor;**

- **Allocate indirect costs and overhead based on material costs; and**

- **Allocate indirect costs and overhead based on equipment use.**

Tracking construction project costs is already time-consuming without factoring in overhead and direct costs. However, it is crucial for companies to understand and track the difference between direct, indirect, and overhead costs on each job, starting from the bidding stage and on a continuing basis as projects progress.

**3** **Increased Market Prices:** Post-pandemic, the construction industry has faced extreme cost volatility. Since 2020, average hourly wages have risen approximately 17%, and overall construction input costs have surged by 40.7%. Costs throughout the industry are expected to continue increasing for the foreseeable future, requiring companies to take into consideration and adjust their budget and bidding processes accordingly. They can even look for other avenues to help mitigate inflationary costs, including:

- **Requesting deposits to purchase and store materials before construction of a project begins.**

- **Incorporating percentage change clauses in contract agreements that allow cost overruns from price increases to be billed back to the project's owner.**

**4** **Cash-Flow Overruns:** Rising costs can also lead to cash flow shortages, which can create materials and equipment delays. When materials and equipment have delayed deliveries, companies may need to postpone projects, which can have various negative impacts. To prevent this, companies should

establish strong budgeting and accounting estimates of cash flows. Estimating when certain milestones will be met will help you develop and track a proposed payment schedule and provide a good idea of how cash inflow will correlate with cash outflow on jobs.

**5** **Out-of-Scope Work:** It is inevitable that construction projects will face unexpected changes, such as poor weather, last-minute changes, punch list items and job add-ons. It is essential to consider and account for out-of-scope work during the bidding process and when forecasting the project's expenses and performance. Project managers should maintain open communication with the accounting department to continuously compare actual costs with estimates throughout the life of the project. Identifying lower-than-expected margins early provides management time and justification to refuse extra work or work with the project's owner to find a suitable middle ground. Having strong accounting procedures and controls, such as budgeting, tracking job performance, accurate cost allocation, cash flow projection, and many more, helps mitigate these risks and their negative impact on job performance and a company's bottom line. Paying attention to the numbers and prioritizing the accounting and financial aspects of jobs can be a crucial factor in increasing margins and advancing your company's success.

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# CONTRACTS: A GUIDE TO MANAGING RISKS

BY KIRSTEN SHEPARD, CIC, CISR ELITE, SENIOR RISK MANAGEMENT CONSULTANT – CONTRACTUAL RISK TRANSFER, ONEGROUP

**A** contract is a formal agreement between two or more parties that creates binding obligations to perform or refrain from certain actions. While contracts establish these obligations, they also introduce potential risks to your organization. Therefore, each time your organization enters into a contract, it should:

- **EVALUATE** the risks the agreement may pose
- **DECIDE** whether to accept or transfer those risks
- **DETERMINE** the method of financing those risks, be it through your organization or the contractor

It's crucial to scrutinize the terms of any contract thoroughly. While some contracts may appear to contain standardized language, they could include commitments your organization should avoid. We recommend a detailed review to anticipate potential scenarios affected by the contract, such as:

- **SCOPE OF WORK:** What will the contractor be responsible for?
- **POTENTIAL LOSSES:** What types of losses might occur?
- **FINANCIAL IMPACT:** What's the "worst-case scenario" in terms of financial loss?
- **PROTECTION MEASURES:** How can you safeguard your organization?

Particular attention should be paid to clauses like Limitation of Liability, Hold Harmless, Indemnity, and Insurance. These clauses can obligate you to indemnify another party for property or liability losses. Should you find a contract's provisions unfavorable, we advise seeking legal counsel.

Transferring risk to other entities helps manage and reduce losses. When

feasible, your organization should endeavor to transfer risk through contractual agreements. For example, you might require a vendor to assume all liability for a product they sell to your organization, a term typically embedded in the contract. Your ability to transfer risk often depends on your bargaining power and the nature of the business involved.

## HOLD HARMLESS AND INDEMNITY AGREEMENTS

Hold harmless and indemnity agreements are essential tools for risk transfer. These may be labeled as hold harmless, waiver and release, save harmless, or indemnity agreements within a contract. Always read contracts meticulously, as these terms can be included without explicit labeling.

In a hold harmless agreement, one party agrees to assume the liability of another. Although often used interchangeably, hold harmless and indemnity agreements differ in the scope and manner of risk transfer. Hold harmless agreements typically pertain to claims between the contracting parties, such as property damage or consequential losses like lost income. These agreements often accompany indemnity agreements because third parties may still file negligence claims against any involved party.

Indemnity agreements shift the responsibility to cover third-party claims. They ensure one party (the indemnitee) can seek reimbursement from another (the indemnitor) for losses, claims, and expenses related to third-party damage claims. A well-crafted indemnity agreement should clearly outline the allocation of responsibilities.

## INSURANCE AS A RISK FINANCING METHOD

Requiring contractors or service

providers to purchase insurance is a practical way to finance loss payments. However, insurance has its limitations and exclusions. For instance, professional liability policies may only cover the insured's negligence.

When transferring risk, ensure the other party understands the transfer and has the financial resources or suitable insurance to cover potential losses. An indemnity agreement does not absolve your organization from liability; rather, it mandates that the other party covers related costs. If the indemnitor lacks financial stability or insurance, your organization may still be liable.

Including your organization as an additional insured on the contractor's liability policy offers several advantages:

- **DEFENSE AND COSTS:** The insurer must defend and cover your organization's defense costs if sued.
- **OBLIGATIONS:** The insurer remains obligated regardless of the named insured's financial status.
- **PERSONAL INJURY COVERAGE:** Typically included under general liability.

However, additional insured status is not a replacement for a hold harmless and indemnity agreement, as insurance policies have limitations and may not cover all claims.

Combining hold harmless and indemnity agreements with insurance provides comprehensive financial security for your organization.

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# “PIGGYBACKING” MISAPPLICATIONS BY PUBLIC OWNERS

## A NEW YORK COURT’S DECISION TO REMEDY THE PRACTICE

**EARL R. HALL** EXECUTIVE DIRECTOR - SYRACUSE BUILDERS EXCHANGE

**O**ver the past few years, some public owners have taken the position that piggybacking is permissible for public work construction projects, capital improvements and other public works contracts associated with conventional construction projects.

To provide context, piggybacking is a permissible means for municipalities or other public entities (i.e., public schools) to purchase “apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies...” In short, it may be proper for the purchase of “things,” but not construction. Utilizing “piggybacking” in lieu of the competitive bidding process is permissible only if certain conditions have been met; however, none of those conditions include public works construction or capital improvement projects to infrastructure or buildings.

Public works, public works contracts and public works projects include construction or repair projects undertaken by the public owner or municipality on their infrastructure or building project. Public works construction projects are subject to New York State’s competitive bidding laws consistent with General Municipal Law (GML) Article 5-A. Article 5-A includes Wicks Law (Section 101) and competitive bidding of public works construction projects (Section 103).

Piggybacking is intended for the purchase of specific classes of “things,” such as apparatus, materials, equipment, and supplies, as well as service contracts related to those specific things. It does not include public works, public works contracts or public works projects, which the court has interpreted to mean “construction” or “repair projects” undertaken by municipalities which are clearly distinct in nature and scope from apparatus, materials, equipment, and supplies.

A recent case against the Board of Education of the Maine-Endwell Central School District; the Maine Endwell Central School District, Judge Oliver N. Blaise, III determined such piggybacking application and usage on a \$64 million capital improvement project for the school district’s various buildings and facilities was impermissible. The court determined that, in this case, the contract to be piggybacked should have been let in a manner consistent with GML 103, and requiring sealed bid, public advertising of projects and awarded to the lowest responsive and responsible bidder. Finally, the court determined that the use of the word “vendor” for piggybacking purposes means suppliers of apparatus, material, equipment, supplies, and services related thereto, as opposed to ‘contractors’ seeking to erect, construct, reconstruct or alter buildings...”

The construction industry, including contractors throughout New York State, remain optimistic that future misapplications of the piggybacking provision by public owners will be diminished as a result of this 2025 court decision, as New York’s public bidding laws defined in GML 103 cannot be circumvented on public works construction projects which the courts have defined.

*Source: Daniel J. Lynch, Inc.; Kelly Lynch Individually, and as a Taxpayer; Slavik & Co. Inc.; George J. Slavik, Jr. Individually and as Taxpayer; Andrew R Mancini Associates, Inc.; Louis N. Picciano & Son, Inc. and William H. Lane Incorporated against Board of Education of the Maine-Endwell Central School District; the Maine Endwell Central School District; and Smith Site Development. Broome County Clerk February 13, 2025.*





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