



Vol. 41, No. 10

(518) 869-9800

April 2024

## Meet the Estimators/ Purchasing Team Event

### Sponsored by Marshall & Sterling Upstate

Thirty of Northeastern New York's leading commercial general contractors will be represented at NESCA's April 11<sup>th</sup> "Meet the Estimators/Purchasing Team" event at the Century House in Latham. Each contractor will have its own well-identified table manned by several representatives for NESCA members to meet, visit with and learn more about the type of work they do, project delivery systems they use, current projects in the pipeline, and how they bid their work. This year's event will again include both the general contractors' estimators and the people responsible for "buying the project out". The event will be a fantastic networking opportunity for everyone involved and will provide NESCA members with a chance to "put a face to the name" of people you may periodically interact with but rarely see in person!

Food stations will be positioned throughout both ballrooms. After a registration/reception period (6:00-6:30), the food stations will open at 6:30, so members may have a drink, help themselves to some food, and begin your visits with the contractor representatives. Members are encouraged to bring brochures and other information about your company along with business cards to leave with the general contractor representatives. Members are also encouraged to speak with the representatives from all 30 contractors. If possible, bring multiple people from your company to the event to "spread out" and visit with all the general contractors.

NESCA will be selling 50/50 tickets to benefit several scholarship funds including the Roger H. Jones NESCA Scholarship and two endowed scholarship funds NESCA maintains with Hudson Valley Community College.

Every year this event continues to grow in popularity, and last year total attendance was nearly 500. The feedback we consistently receive from the participating general contractors as well as from subcontractors and suppliers who attend is overwhelmingly positive. The food is great and it's a lot of fun, so mark your calendars and don't miss out on your opportunity to attend this year!

## Bill Introduced to Establish the Crime of Staging a Construction Accident

Legislation has been introduced that would make staging a construction worksite accident a class E felony in New York to combat an increase in staged accidents on construction sites. Sponsored by Senator Neil Breslin and Assemblyman David Weprin, the bill is intended to crack down on a growing form of insurance fraud: using staged construction worksite accidents to file false insurance claims. This legislation is modeled after a law enacted in 2019 that created criminal penalties for people who stage a car accident for the purposes of insurance fraud.

The filing of fraudulent insurance claims has become more prevalent in recent years and has had a significant impact on the cost of not only a contractor's Workers' Compensation Insurance, but also on the cost of general liability insurance due to Section 240 of the Labor Law, New York's infamous "Scaffold Act". These increased insurance costs ultimately lead to higher construction costs.

Meanwhile, one insurer is fighting back claiming in a new lawsuit that construction workers across the state are faking falls in a scheme to commit fraud. The insurer, Tradesman Program Managers, filed a RICO lawsuit in federal court alleging wide scale fraud involving alleged construction site injuries. Tradesman has been investigating these alleged fake falls for more than a year and began the investigation when it noticed its overall Workers' Compensation payouts were increasing exponentially.

The lawsuit claims that eight doctors, their practices and various other medical professionals preyed upon primarily Spanish-speaking immigrants to engage in the fraud and that they profited from it. The lawsuit also alleges that four lawyers and their firms were involved as well.

Tradesman stated, "We believe that outside organizations have created, aided and/or have perpetrated staged accidents and unnecessary medical treatments. These staged accidents and unnecessary medical treatments have resulted in the exposure of billions of dollars to our customers". Tradesman says it has received what it believes to be more than 650 fraudulent claims over the last four years.



## PRESIDENT'S MESSAGE

As I mentioned last month, the lack of qualified workforce is a major industry concern. Last month's membership meeting featured a presentation by representatives of the Northeast Construction Trades Workforce Coalition. I thought the presentation was very interesting and the speakers did a great job letting NESCA members know what they can do to help their cause. The coalition is targeting our area's youth and trying to make connections early on in a child's life. Their mission is to educate, inspire and connect people in pursuit of a rewarding career in the trades, driving economic growth while building and sustaining our communities. NESCA supports the coalition's mission and encourages members to support the future of the industry.

Coming up on April 11<sup>th</sup>, NESCA will be hosting its annual "Meet the Estimators/Purchasing Team" event at the Century House. Thank you to Marshall & Sterling for once again sponsoring this event. This is one of our most popular events, typically attracting up to 500 attendees. This year, 30 general

contractors have confirmed their participation. It's a great networking opportunity for all involved and provides NESCA members the chance to put a face to the name of the estimating and purchasing staff of the participating general contractors. This event also presents a great opportunity to bring non-member subcontractors and suppliers and acquaint them with all that NESCA has to offer.

NESCA's Young Professionals Committee has put together an exciting educational series. Beginning on April 2<sup>nd</sup> the 6-program series of professional development seminars is intended to help young management-level employees of NESCA, AGC-NYS and ECA members to build a solid foundation of knowledge in the "business side" of the construction industry. Registration materials were sent to members in March, and we've received a great response. Topics to be offered will include:

- April 2<sup>nd</sup> - Insurance
- April 16<sup>th</sup> - Employment/HR
- April 30<sup>th</sup> - Accounting
- May 14<sup>th</sup> - Bonding
- May 28<sup>th</sup> - Banking
- June 11<sup>th</sup> - Construction Law

NESCA will be holding its spring Mid-Hudson region membership meeting on April 17<sup>th</sup> at Coppola's Italian Bistro in Hyde Park. On May 16<sup>th</sup> we'll be holding our spring Binghamton region membership meeting at McGirk's Irish Pub in Binghamton.

April 24<sup>th</sup>-26<sup>th</sup> will be the dates for this year's National Subcontractors Alliance (NSA) annual conference to be held in Louisville, Kentucky. NESCA will have a contingent of its officers and board members in attendance.

Finally, be on the lookout for the update forms for the 2024-25 NESCA Membership Directory which will be sent

to members in mid-April. This will be your opportunity to make changes and update your company information in the Directory. I also encourage you to purchase an advertisement in the NESCA Directory, because ad revenue is what pays for the Directory's printing and distribution to general contractors and design professionals.

**Robert L. Kind, President**

## NESCA NEWSLETTER

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## COUNSEL'S MESSAGE

This month's newsletter will address the subject of work acceleration when a subcontractor's work is behind schedule and acceleration of work is necessary to catch up to the completion date.

Work acceleration can be accomplished by working overtime and weekends, adding additional labor, adding additional and more efficient equipment plus changing methods and means of performance by performing work out of sequence. While these actions may recover time they also may not. Work acceleration frequently increases costs significantly due to fatigue, inefficiencies, and inability to work in proper sequence. The critical question to be answered when addressing imposition of work acceleration is who will be responsible for the costs.

If the prime contractor, or its subcontractor, is responsible for the schedule delay then it is responsible to the owner for the costs of acceleration of the work to complete the work as close to the completion date as possible

and will absorb the acceleration costs absent mitigating factors.

If the Owner directs timely completion of the work earlier than scheduled, or on the specified completion date, despite the occurrence of excusable events for delay, then the contractor would be entitled to recovery of its acceleration costs.

Many prime general contractors no longer self-perform contract work to be completed and thus the cause of delayed performance rests with another subcontractor or materialmen. In those circumstances the general contractor will be held liable for the acceleration costs of the subcontractor who could not commence its work until much later than originally scheduled due to the performance delay of another subcontractor.

It is critically important to recognize the above information are general principals of construction contract law. The contract terms and conditions frequently seek to alter the above responsibilities. Contract provisions excluding damages for delay, interference or obstruction are frequently relied upon to circumvent prime contractor liability. Similarly contract provisions allowing the prime contractor to direct work performance out of sequence at no cost from that contained in the schedule represents another method.

Subcontractors can mitigate their exposure to acceleration costs by negotiating the above provisions out of the subcontract. They should also insist upon a clause relieving them from maintaining the schedule for their work if all preceding trades do not complete that work at the same time, duration and schedule found in the initial subcontract. If the subcontractor is obstructed from performing as scheduled, then it is either entitled to a contract time extension or recovery of costs incurred due to acceleration of its work.

It is recognized that a directive to accelerate its work requires the subcontractor to initially absorb acceleration cost and become subject to threats of contract termination should schedule recovery not be accomplished. The schedule recovery is rarely accomplished due to a variety of factors.

It is imperative for a subcontractor to protect itself from unreimbursed acceleration costs by negotiating out of the subcontract clauses which unilaterally grant the prime contractor authority to compel acceleration of the work without the obligation to reimburse costs.

It is also recognized that a scheduling consultant may need to be engaged to prepare a defense to the acceleration directive and assist in recovery of acceleration costs. This is why a subcontract clause entitling the subcontractor to recovery of attorney fees in the event a prime contractor breaches its contract obligations is important.

*Walter G. Breakell, NESCA Legal Counsel*

## Question of the Month

**Q.** My company performs sitework on commercial construction projects. I understand that I have up to eight months after my last performance or work to file a lien for unpaid amounts due. Unfortunately, my lien rights often expire before retainage being held by the contractor is due to be released. How can I protect myself?

**A.** Well, you're in luck. In 2011 NESCA drafted legislation amending the Lien Law that allows subcontractors to essentially re-open their lien rights and file a lien for unpaid retainage up to 90 days after the date retainage was due to be released.

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6 Northway Lane, Suite 202  
Latham, NY 12110  
518-357-4488

[jfrank@adirondackcombustion.com](mailto:jfrank@adirondackcombustion.com)

Contact: John Frank

### North Country Contracting

82 Tiplady Road  
Salem, NY 12865  
518-260-4351

[emily@nccmillwork.com](mailto:emily@nccmillwork.com)

Contact: Emily John

### SQH, LLC

110 Excelsior Ave.  
Saratoga Springs, NY 12866  
518-584-9180

[leddy@sqhinc.com](mailto:leddy@sqhinc.com)

Contact: Louise Eddy

### Upstate Spray Foam Insulation

122 South Street, Suite B  
West Winfield, NY 13491  
315-822-5238

[billy@upstatesprayfoam.com](mailto:billy@upstatesprayfoam.com)

Contact: Billy Gibson

### USI Insurance

3 Lear Jet Lane  
Latham, NY 12110  
860-212-3121

[connor.fitzgerald@usi.com](mailto:connor.fitzgerald@usi.com)

Contact: Conor Fitzgerald

## NESCA Membership Milestone Anniversaries

**Dells' Plumbing, Heating & Air Conditioning, Inc. – 10 Years**

**Fire, Security & Sound Systems, Inc. – 15 Years**

**JJP Slip Forming, Inc. – 20 Years**

**R.S. Masonry – 25 Years**

**Associated Lightning Rod Co., Inc. – 35 Years**

**Robert H. Finke & Sons, Inc. – 35 Years**

**Arold Construction Company, Inc. – 40 Years**

## Toys for Tots Requesting Warehouse Space

Capital Region Toys for Tots, currently the largest Toys for Tots campaign in the country, has contacted NESCA asking if any NESCA members have warehouse space they would be willing to donate. Specifically, the organization needs a minimum of 5,000 square feet of space with a loading dock for use year-round. If you can assist Capital Region Toys for Tots please contact Shelby Kleniewski at [shansen@capitalregiontoysfortots.org](mailto:shansen@capitalregiontoysfortots.org).

## Last Call for Roger H. Jones Scholarship Applications

NESCA members are reminded that the NESCA Educational Foundation has several Roger H. Jones NESCA scholarships (\$1,000 - \$1,500) available for the 2024-25 academic year for students enrolled in or about to be enrolled in a construction-related program of study at an accredited two-year or four-year college or university. Application forms are available at the NESCA office.

## Be on the Lookout for Directory Update Forms

In April, NESCA will begin preparing the 2024-2025 reprint of the NESCA Membership Directory as well as updating member information on the NESCA website at [www.nesca.org](http://www.nesca.org). The Directory is a valuable service provided to members of NESCA, and is mailed to regional general contractors, architectural/engineering firms, and local and state contracting agencies for their use and reference. NESCA members also utilize the Directory extensively when looking for particular construction products or services. In addition, the general contracting community routinely utilizes the Directory and also the "Find a Sub" section on NESCA's website when searching for subcontractors and suppliers. To ensure that NESCA has the latest up-to-date information about your company, when you receive the update forms please complete and return them to the NESCA office promptly. Members are also encouraged to place or renew an advertisement in the Membership Directory. The ads are extremely visible, and the Directory is distributed to over 1,500 general contractors, subcontractors, architects, engineers, and public contracting agencies.

## Calendar of Events

**April 4, 2024**

*Board of Directors Meeting*  
Century House, Latham, 6 pm

**April 11, 2024**

*Meet the Estimators Event*  
Century House, Latham, 6 pm

**April 17, 2024**

*Mid-Hudson Membership Meeting*  
Coppola's, Hyde Park, 6 pm



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