

Vol. 43, No. 3 (518) 869-9800 September 2025

# Young Professionals Donate \$1,800 to Ronald McDonald House



Matthew L. Schunck, MBA, CIC from Ten Eyck Insurance and Nate Pannucci, CPA from Teal, Becker and Chiaramonte, CPAs, PC hand over \$1,800 check to Ronald McDonald House representatives.

In early August, NESCA's Young Professionals Committee presented the Ronald McDonald House Charities of the Capital Region with a check for \$1,800 to enable the organization to purchase a new stove and commercial vacuum cleaner.

Since 1982, the Albany Ronald McDonald House has served more than 17,000 families from across the country and around the world. The House is the cornerstone of RMHC of the Capital Region, providing a home away from home — free of charge — for families with children facing serious medical issues. Staffed primarily by volunteers and supported entirely

by generous donors, the Ronald McDonald House offers much more than home-cooked meals and a comfortable place to stay. They help families face the burdens of childhood illness in a loving, compassionate environment where they can rest without having to worry about anything but their child's recovery.

NESCA's Young Professionals, established in 2013, is a group of "younger" (roughly 21-40) NESCA members, 2<sup>nd</sup> generation company owners, and young management-level employees of NESCA members who want to become more active in the association, gain exposure within the construction industry and business community at large, and network with other young professionals involved in the commercial construction industry. Since its inception, the Young Professionals Committee has engaged in several community service projects at Northern Rivers, and has made donations to the Wounded Warrier Project and the Regional Food Bank of Northeastern New York, all from funds raised in connection with NESCA Young Professionals Mixers.

# Mark Your Calendar!!

NESCA's 44<sup>th</sup> Annual Trade Show Sponsored by Marshall & Sterling Upstate

> Thursday, October 9, 2025 The Century House Route 9, Latham 4:00 – 8:30 p.m.

See the latest in construction industry technology, equipment, products, and services while networking with construction industry peers!

More information to come!



#### PRESIDENT'S MESSAGE

Hopefully, everyone had a safe and enjoyable summer and I look forward to seeing everyone at our upcoming events this fall.

During the summer months, NESCA officers, committees and staff have been busy planning the coming year's activities including upcoming membership meeting programs, educational seminars and courses, young professionals' activities, legislative initiatives, and special events.

Speaking of special events, NESCA has two of its most popular events coming up in September and October. On September 8th NESCA will hold its annual golf outing at Colonie Golf & Country Club in Voorheesville. This event sold out in a matter of weeks, and we have a total of 248 golfers participating in the morning and afternoon flights. The Golf Outing is an excellent opportunity to connect with fellow members and their guests, and everyone always has a great time. On October 9th, NESCA will hold its 44th annual Trade Show at the Century House in Latham. The Trade Show offers our members, particularly our suppliers and service providers, the opportunity to exhibit your products and services to the general subcontractors, developers, A/E firms and owner representatives in the Capital Region. Over the last 43 years, the NESCA Trade Show has grown into one of the most focused construction industry trade shows in the Northeast. In recent vears Trade Show attendance has been fantastic with an average of more than attendees representing companies coming through the doors. I hope all NESCA members are making plans to attend.

Members were recently alerted to the fact that NESCA's legislation that would clarify retainage on private commercial projects is limited to no more than five percent (5%), and which was passed by the Senate and Assembly in June, will soon be delivered to the Governor for her consideration. All members were asked to prepare a letter of support for this legislation on your company letterhead, and to send it back to the NESCA office. A sample letter was included for your convenience. The plan is for NESCA's lobbyist Greg Serio to handdeliver our members' support letters in bulk to the Governor as a means of showing how widespread the support for this bill is. This legislation will significantly benefit all subcontractors and suppliers engaged on private commercial and industrial construction projects located in New York State. The more letters of support we can generate from our members, the greater the chance Governor Hochul will sign our bill. So, if you haven't done so yet please take a few minutes of your time to send NESCA your support letter.

Finally, I'd like to thank the more than 80% of NESCA's members who

have already paid your 2025-26 membership dues investment. And I encourage those who haven't yet paid your dues to do so as soon as possible so that NESCA may continue to provide our many member benefits and services to all members.

Joe Jerkowski, President

# NESCA NEWSLETTER

Published monthly by the
Northeastern Subcontractors
Association, Inc.
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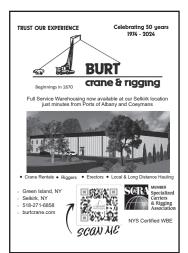
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#### **COUNSEL'S MESSAGE**

Subcontractors are frequently presented with subcontracts containing a clause waiving damages arising from delay in completion of the contract work. Such clauses are enforceable and places the burden on the subcontractor to demonstrate a legal exception to enforcement exists and is applicable to the facts presented.

In evaluating whether delay damages may be recovered when a No Damage for Delay Clause exists, it must first be determined whether the cause for the delay was contemplated at the time the contract was signed. If the delay was not contemplated, then damages are recoverable as long as the delay is substantive.

If the potential for a delay in performance contract contemplated under the contract the next analysis is whether there exists a legal exception to the clause. Those exceptions are whether there has been active owner's interference performance of the abandonment, willful or negligence, fraud or bad faith or breach

of a fundamental obligation of the contract.

Generally speaking, meeting the requirements of these exceptions is not easy and amplified contractual language increasing the burden to substantiate the exception makes it exceedingly more difficult.

Damages incurred as a byproduct of an owner's or a third-party subcontractor/materialmen delay, without fault of the claimant, resulting in the acceleration of work in the form of additional labor, additional work hours etc. to meet the contract completion date may be compensable.

There are also circumstances in which a subcontractor may encounter conditions creating constructive acceleration resulting in additional costs for which they may be compensated.

Elements of a constructive acceleration may occur when excusable delay exists, and the subcontractor was ordered to perform additional work impacting the critical path of the work. Did the owner have knowledge of the excusable delay or extra work and that it impacted the critical path? Did the owner fail or refuse to grant the contractor's request for additional time? Was there communication from the owner which could be construed as an acceleration directive? Were there communications alluding to potential assessment of liquidated damages or contractual termination which created an urgency in the contractor to accelerate the work? And did the contractor take action to accelerate the work as a result of the owner's communication? If these facts exist, a claim for constructive acceleration damages may be supportable.

Subcontractors must also be aware that prime contract terms, which flow down to the subcontractor, frequently seek to eliminate entitlement for compensation for acceleration costs. The subcontractor must review their subcontract and demand elimination of provisions requiring out of sequence work or acceleration when the subcontractor did not create the conditions requiring additional work.

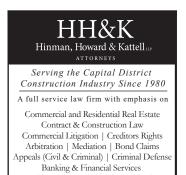
Walter G. Breakell, NESCA Legal Counsel

# Reminder - COVID Paid Sick Leave Has Ended

Just a reminder to members that July 31st marked the end of mandatory COVID Paid Sick Leave. More than 5 years after it had been enacted, the nation's last remaining COVID mandate sunset on July 31, 2025. New York employers are no longer required to provide additional paid sick leave to individuals impacted by the COVID virus.

NESCA members should not confuse COVID Paid Sick Leave with New York's permanent paid sick leave law, which was also enacted in 2020. The permanent paid sick leave law is still in effect and requires:

- Employers with 4 or fewer employees in any calendar year and a net income of one million dollars or less in the previous tax year must provide each employee with up to 40 hours of <u>unpaid</u> sick leave in each calendar year.
- Employers with 4 or fewer employees in any calendar year and a net income of greater than one million dollars in the previous tax year, or between 5-99 employees in any calendar year, must provide each employee with up to 40 hours of <u>paid</u> sick leave in each calendar year, and
- Employers with 100 or more employees in any calendar year must provide at least 56 hours of <u>paid</u> sick leave in each calendar year.

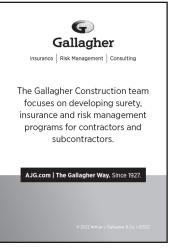


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## **NESCA Thanks Members for Additional Contributions**

Thank you to all members who have paid your 2025-26 membership dues. A special thank you is reserved for the following members who have made voluntary Sustaining Dues, NESCA PAC, and Scholarship Fund contributions:

# **Sustaining Dues Contributions**

#### Leadership Team (\$500)

Arold Construction Co. ★ Ashley Mechanical ★ Encon Services & Supply LHV Precast ★ Maximum Security Products ★ New Castle Asphalt Stone Bridge Iron & Steel ★ Troy Ironworks

# Patron Group (\$250)

Absolute Fire Protection ★ Alliance Masonry ★ Alltek Energy Systems ★ BPI Piping Builders Installed Products ★ CDE Electric ★ Commercial Interiors ★ Warren W. Fane HMA Paving & Contracting ★ Chip Kronau Construction & Equipment William M. Larned & Sons ★ Merit Apprenticeship Alliance John M. Mullins Rigging & Hauling ★ CD Perry ★ Walter S. Pratt & Sons RBM Guardian Fire Protection ★ Rommel Fence ★ Star Roofing & Restoration Three D Rigging & Construction ★ E.W. Thompkins ★ Wood Pro 2 Installers

# **Sustaining Member (\$100)**

AFSCO Fence Supply ★ Armistead Mechanical ★ Associated Lightning Rod Carver Construction ★ Concrete Cutting & Breaking ★ Crisafulli Mechanical EMCOR Services New England Mechanical ★ EMI Guide Rail Patrick DiCerbo/Northwestern Mutual ★ GlasSolutions ★ Gorick Construction Henderson-Johnson ★ K HM ★ Medina Insulation ★ T.P. Monahan ★ N.E.P Glass Schupp's Line Construction ★ Vamco Sheet Metal

#### **PAC & Scholarship Fund Contributions**

AFSCO Fence Supply ★ Absolute Fire Protection ★ Armistead Mechanical AMC Construction & Management ★ Architectural Glass & Metal Arold Construction Company ★ Ashley Mechanical ★ The Asphalt Doctor Bacon Companies ★ B&B Plumbing & Heating ★ BMI Supply Builders Installed Products ★ Burt Crane & Rigging ★ CDE Electric Commercial Interiors ★ Crisafulli Mechanical ★ Cristo Demolition Patrick DiCerbo/Northwestern Mutual ★ Encon Services & Supply EMCOR Services New England Mechanical ★ Warren W. Fane ★ William Halpin Harbour Roads ★ Henderson-Johnson ★ KHM

Chip Kronau Construction & Equipment ★ LHV Precast ★ M.V.P. Construction Mackey Electric ★ Maeda Construction ★ Martino Tile ★ Maximum Security Products Medina Insulation ★ Merit Apprenticeship Alliance ★ Metal Supermarkets ★N.E.P Glass New Castle Asphalt ★ Northway Tile ★ OGGI Concrete Forms & Accessories Oneonta Block ★ C.D. Perry ★ Pompa Bros. ★ Rommel Fence Savignano Construction Services ★ Slavik & Company ★ Star Roofing & Restoration Stone Bridge Iron & Steel ★ Thorpe Electric Supply ★ Three D Rigging & Construction E.W. Thompkins ★ Troy Ironworks ★ Valley Sealing and Striping Welby, Brady & Greenblatt

# **Calendar of Events**

# September 4, 2025

Board of Directors Meeting Century House, Latham, 6 pm

# September 8, 2025

41st Annual Golf Outing Colonie Golf & Country Club

# **September 18, 2025**

Young Professionals Mixer Trick Shots, Clifton Park, 6 pm

#### **October 2, 2025**

Board of Directors Meeting Century House, Latham, 6 pm

# October 9, 2025

44<sup>th</sup> Annual Trade Show Century House, Latham, 4 pm

#### October 21, 2025

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

## **November 13, 2025**

**Board of Directors Meeting** Century House, Latham, 5 pm

# **November 13, 2025**

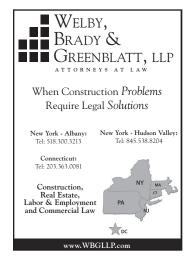
NESCA Membership Meeting Century House, Latham, 6 pm

## **November 18, 2025**

Notary Public Seminar Building Industry Center, 12 noon

# **Milestone Member Anniversaries**

Crisafulli Mechanical, LLC 30 Years





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