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The 2004 Construction Awards Dinner Dance was a GREAT night!

EVERYONE HAD A GOOD TIME and was singing the praise of the event. People actually took the time to call the office Saturday night and Sunday morning on their way home and left messages on our answering machine. Monday morning the telephone was ringing with more compliments and praise. Our staff appreciated the compliments and all the calls, but the real credit belongs to the chairman of the dinner dance Mr. Fred Levinson, All the Honorees for their help and support, and special thanks to the staff of Russo's on the Bay and the Doug Winters Band. So thanks to you all from the attendees of the MAY 15, 2004 a night to be remember.

And the winners are... (left to right) Louis Coletti, Thomas Iannelli, William C. Thompson, Jr., Charles J. Krobot, Jr., John A. Cavanagh, Gary Segal and Vincent Iannelli, Jr.

29.3%

**29.3% what is it, what does it mean?
Well let me tell you.**

It is the amount that the COMPENSATION INSURANCE RATING BOARD (CIRB) is asking the State of New York Insurance Department to approve and increase employers' average workers compensation by. Superintendent Gregory V. Serio has only until July 15, 2004 to make his recommendation to the Governor, so lets get those letters into the Superintendent at:

State of New York
Insurance Department
Empire State Plaza, Agency Building 1
Albany, NY 12257
ATTN: Superintendent Gregory V. Serio

RESERVE TODAY FOR
2004
STA GOLF OUTING
Monday, August 2nd

Members' Message: Thanks for the Memories



GREGORY FRICKE, JR.

Members' Message to the President:

AS THE OLD BOB HOPE THEME GOES "Thanks for the Memories". But all kidding aside, how can the association say "Thank You" for ten years of dedication from your position as Secretary, through all the chairs of all the committees held in our organization to finally presiding as President. How do we compensate someone who has given so much of himself without any monetary reward? Let's just say we appreciate that you will be turning over the reins of our organization to our next President in better shape than you received them.

Because of your leadership our organization is in a stronger financial position than ever before. And together with the accounting principles you instituted, we should remain strong well into the future.

You leave us with a lasting legacy of your contributions to our Legislative Program and the founding of PAC. These contributions have helped our industry facilitate many of its accomplishments over the past decade.

During your tenure, our membership has grown as has the influence of this organization. By revising the *Subcontractors News*, you have improved the communication within our industry.

We realize that you are only stepping down from the position of President and will continue as Chairman of our Membership Committee, a member of our Legislative Committee, a member of our Insurance & Bonding Committee and the Secretary of Empire State Subcontractors Association. So this is hardly a "goodbye."

To paraphrase Winston Churchill "never has so many owed so much to one individual".

We wish you Good Luck and God Bless from your fellow members of the STA. ■

STA Committees

STA Committee Listings with their respective chairman:

Business Practice Interchange (BPI) & Networking:	Robert Samela	201-939-6866
Insurance & Bonding:	Robert Spadaccia	914-769-2220
Dinner Dance & Journal:	Fred Levinson	718-961-9600
Membership Committee:	Greg Fricke	212-244-8878
Legislative:	Arthur Rubinstein	718-417-0600
Public Agencies:	Larry Roman	914-776-8000
Program & Education:	Monet Milad	917-767-8057
School Construction Authority (SCA):	Fred Levinson	718-961-9600
Architects & Engineers:	Ron Berger	212-398-6220
Business Development:	Jerry Liss	718-728-0600

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LEGAL LOG

DESIGN DELEGATION — ONCE AGAIN

By Jay Kushner, Esq. — Goldberg & Connolly, STA Legal Counsel



JAY KUSHNER, ESQ.

IN THIS COLUMN, we recently discussed the issue of Design Delegation and, in particular, how Rule 8 NYCRR §29.3(b) of the Board of Regents was administered and interpreted by the New York State Education Department. As we reported, Arthur Rubenstein, former STA President and currently the President of the Empire State Subcontractors Association, Inc. (“ESSA”) and the head of Skyline Steel Corp., challenged the way primary design professionals such as architects and engineers delegated their primary function of review and approval to a secondary design professional through an unlicensed third-party (such as a contractor or subcontractor who retained its own architect or engineer to

assist in the performance of the contractor's or subcontractor's work).

In particular, Mr. Rubenstein objected to the use by the primary design professional of a stamp on submitted drawings that ambiguously stated “No Exceptions Taken” and “Reviewed Only for Loads Imposed Upon Structure”, when the Regents rule provides that primary design professionals are required to “review and approve” the design submitted by the secondary design professionals and determine whether the design of the secondary design professional “conforms to the overall project design and can be integrated into such design.” The ambiguous evaluation (“No Exceptions Taken and Reviewed Only for Loads Imposed”) appears inadequate to fulfill the requirement of “review and approve.” It is apparent that all kinds of problems could rear its head, injecting uncertainty in the evaluation of the design and possibly giving rise to problems in the approval process, and ultimately resulting in problems in the areas of insurance and payment.

Mr. Rubenstein's quest for unambiguous approval was

brought to Court by way of an Article 78 proceeding seeking to compel the Board of Regents to require the State Education Department to properly administer and enforce the Rule as written.

whether in future litigation in a variety of circumstances, “No Exceptions Taken” will be deemed the legal equivalent of “Reviewed and Approved”. There seems to be no reasonable or logical reason why the State

It is apparent that all kinds of problems could rear its head, injecting uncertainty in the evaluation of the design and possibly giving rise to problems in the approval process, and ultimately resulting in problems in the areas of insurance and payment.

Mr. Rubenstein argued that unambiguous “review and approval” was required for the public safety and that the State agencies failure to insist upon unambiguous “review and approval” was arbitrary and capricious and should not be permitted.

Unfortunately the issue has not been resolved. The Court accepted the State agencies argument that unless a specific exception is noted, “it is considered approved”. It remains to be seen

agencies should permit a Design professional to determine for itself whether it will “review and approve” or be allowed to hedge its bet by the ambiguous employment of language when clear and certain language such as “Reviewed and Approved” should be the language of choice and clarity.

The industry must be heard on this important issue to prevent the abdication of responsibility by the bureaucracy. ■

Wrap-Up Insurance Industry Alert

Some private developers are asking on jobs where the owner has provided wrap-up insurance for the subcontractors for recalculation of the insurance credit given by them at the time of bid; based on an audit of the subcontractor's actual labor cost after the job was completed.

The question “May an owner or a contractor change the cost of insurance premiums by increasing the credit applied to a bid to be paid by a contractor or subcontractor under a wrap-up insurance policy covering a non-public entity project when the contract between the owner or contractor and the contractor or subcontractor has a clause that the policy is subject to audit and

that the premium cost will be adjusted later to reflect such actual audited figures?”

Was put to the State of New York Insurance Department's Office of General Counsel: The following opinion was issued on April 20, 2004, “No. It is impermissible to increase the credit applied to a bid to account for an audit increase in the wrap-up insurance premium, even if the

contract expressly permits such an adjustment, pursuant to N.Y. Ins. Law article 2505 (McKinney 2000).”

So if you are asked to provide this additional insurance credit, just inform the person making the request that it is in violation of article 2505 of the NYS Insurance Law regardless of what the contract says. Knowledge is power use it wisely. ■



29.3% *Continued from Cover*

On Monday June 28, 2004 both Robert Samela & Ron Berger on behalf of the STA & ESSA gave testimony under oath at the State of New York Insurance Department public hearings on proposed workers' compensation rate increase.



The following is the testimony of Robert Samela:

"The current high cost of Workers' Comp insurance in NY State is already forcing many companies to consider relocating jobs to other areas in an effort to reduce costs.

This potential job loss means that there will be less employment in the construction industry in NY.

The construction workers in NY are a great part of the middle class, and loss of their jobs will be destructive to the financial well being of the State. The construction industry is, and has for years been one of the largest economic engines of this great state. Without jobs, this economic engine will stop.

For the last half dozen years, we have been faced with and have suffered through massive increases in the cost of our workers' compensation insurance costs through a combination of manual rate increases and changes in the various discounts and assessments levied. These cost increases have far outpaced general cost of living increases. Further increases are unconscionable and unwarranted. If further cost increases are required, it must mean that the system is broken, and if that is the case, it must be fixed not further funded.

- We, in NY currently have the 2nd highest claim cost in the US.
- We in NY currently pay Workers' Comp costs that are 72% above average on a per case basis.
- Our Workers' Comp rates are among the highest in the nation.
- We need relief from the high rates we currently pay, not further double digit increases in our already high costs. If this requires reform, we must consider reform before we consider additional increases.



Ron Berger's testimony is as follows:

"My name is Ronald S. Berger and I am the Executive Director of the Subcontractors Trade Association (consisting of approximately 350 subcontractors and suppliers) and also representing the Empire State Subcontractors Association (consisting of 1000 subcontractors and suppliers). It is our belief that there should not be any rate increase in Workers' Compensation rates without a revision in section 240 and 241 of the Labor Law commonly referred to as the "Scaffold Law". This law makes owners, contractors and subcontractors absolutely liable for worksite injuries regardless of worksite

safety programs, employee negligence or any other factors in the injury. No other state imposes such absolute liability in these cases.

Our members and insurers say the law in the last five years has driven insurance costs up, in some cases by a factor of 10. In fact some contractors and subcontractors, especially upstate, have reported being unable to get general liability insurance at any cost because of this law. There are bills being sponsored in the NYS Senate & Assembly which would change the absolute liability standard to one of contributing negligence for employers that provide appropriate safety training and equipment.

Thank you for giving me this time to speak." ■

Both Bob and I have done our job and the rest is up to you, so let's get those letters to the Superintendent of Insurance in and make sure that they do not increase Workers' Comp.

PEOPLE IN THE NEWS

Darrell W. Harp Joins Goldberg & Connolly As Counsel

Goldberg & Connolly, a leading construction law firm in the New York metropolitan area, is pleased to announce that Darrell W. Harp, formerly General Counsel and Assistant Commissioner for Legal Affairs to the New York State Department of Transportation, (NYS-DOT) has become Counsel to the firm.

Mr. Harp enjoys a national reputation for both leadership and innovation in public highway contracting. His extensive experience in heavy/highway construction will provide Goldberg & Connolly

clientele with yet additional and exceptional insights into the "ins and outs" of the New York State DOT and its contracting program. In announcing Mr. Harp's affiliation, Henry L. Goldberg, managing partner stated, "Darrell is a giant in the field of heavy/highway construction law. He literally "wrote the book", having developed and drafted most of the NYS-DOT contract innovations over the last quarter century and, in fact, many of the statutory and regulatory changes as well."

He has been a champion for and has helped to institutionalize the concept that fairness actually provides a win-win equation for both the NYS-DOT and its contractors. In this regard, he established

innovative contracting practices such as "A + B bidding", "lane rental" and incentive/disincentive contract procedures. He was instrumental in formulating extensive revisions to Section 100 of the NYS-DOT Standard Construction Specifications. During his long tenure with the State, Mr. Harp participated actively in virtually every major NYS-DOT contract claim dispute.

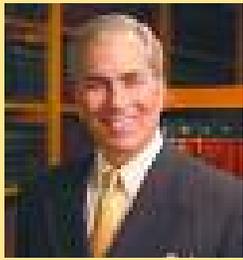
In private practice, he has served the needs of the public and private contracting communities with regard to contract claims, contract administration and highway/bridge related disputes. He is also regularly called upon by heavy-highway construction trade associations on legal and regula-

tory issues. He recently won the landmark City of Peekskill case on behalf of the CIC by obtaining an injunction preventing the improper regulation of construction vehicles by a local municipality. He is also a leading expert on the NYS-DOT's overweight vehicle permitting regulations including the "grandfathering" and transference of "divisible weight" permits for construction vehicles.

Throughout his career he has published numerous articles on transportation and heavy-highway construction law related matters, many of which will soon be available on Goldberg & Connolly's website at www.goldbergconnolly.com. ■

WHAT DOES VENDEX SAY ABOUT YOUR COMPANY AND YOU?

By Henry L. Goldberg, Esq.



HENRY L. GOLDBERG, ESQ.

FOR SEVERAL YEARS, the Mayors Office of Contracts (“AMOC”) has been operating a computerized Public Access Center¹ to provide interested parties with onsite access to the City’s automated Vendor Information Exchange System (AVENDEX@). VENDEX procedures require all contractors (and subcontractors) on public contracts to complete Business Entity and Principal questionnaires before a contractor will be awarded a job. The system was established in 1987 and automated in 1990 pursuant to New York City’s Administrative Code² and designed to inform a contracting agency whether a contractor or subcontractor, in addition to being the lowest responsive bidder, is also a “responsible” bidder, entitled to awarded a public contract. Responsibility, in the context of public bidding, encompasses issues such as integrity and past performance, and is a broad enough topic on its own to be the subject of another article to appear in the near future.

MOC has now made the revised VENDEX Questionnaires available “online.” See www.nyc.gov/vendex. Currently, the Public Access Center has only two computer terminals at its offices, available on a first come, first served basis. Public contractors would be well advised to periodically check their own company’s VENDEX data for accuracy and currency. Public contractors can also call MOC with any additional questions at (212) 341-0933 and/or fax number (212) 788-0093, Attn: Annette White.

The following reports and documents are available on the VENDEX system:

Standard Reports

- Business Profile for an Entity
- Complete Caution List (by request)
- Select Caution List
- Contract Performance Evaluation Reports
- Minority/Women Companies Awarded Contracts
- Entities Related to a Business (Parents, Subsidiaries, Principals and Affiliates)
- Total Contracts for One Object Code (Budget Sub-Category) (by request)
- Total Contracts for One Agency and/or Vendor (by request)

Documents

- Business Entity Questionnaire
- Not-For-Profit Organization Questionnaire
- Principal Questionnaire
- Subcontractor Questionnaire (As of July 1, 2004, MOC is no longer accepting anything but the Vendor Questionnaires and the Principal Questionnaires.)

A search can be made using the vendor’s name, contract number, procurement ID number or the company’s address (if located in New York City).

The Public Access Center also provides information to the public from the OASIS system, which is maintained by the City Comptroller’s office. OASIS contains copies of contracts between the City and its vendors. Members of the public are not allowed to view complete contracts, but for a fee they can request that sections of a contract be copied and made available. Information not available at the Public Access Center, such as past performance evaluations and “caution” warning documentation can be obtained through statutory Freedom of Information Law requests.

Many contractors have long complained that VENDEX procedures are overly rigid and unduly onerous. VENDEX has humorously been likened to “Roach Motel” — once information goes into the Vendex system, it never comes out. Sometimes often stale or misleading infor-

mation is carried in VENDEX, and unless strong, affirmative action is taken to correct or eliminate it, there are no procedures for purging the system. In partial response to such problems, the New York City Charter Revision Commission conducted a series of open meetings and hearings to investigate the process. It concluded that many of the complaints were valid

The Commission, however, did not propose specific changes. Rather, it sought to compel the

G&C Commentary:

In any event, contractors should remain aware of precisely what it is, or is not, of record in their own VENDEX listing. It’s at least as important as assuring the accuracy of your personal credit rating, perhaps more so. Keeping abreast of this public information - both about your own company and about others - is often essential.

On these pages we have warned of the potential for abuse of the VENDEX system by public

Many contractors have long complained that VENDEX procedures are overly rigid and unduly onerous. VENDEX has humorously been likened to “Roach Motel” — once information goes into the Vendex system, it never comes out.

Mayor and the Comptroller to begin substantive discussions regarding reformation of the procurement process and rationalization of the VENDEX system. Although NYC Charter amendments mandating change were rejected by voters this past November (2003) in the most recent election, it appears that the Mayor’s office has responded positively to the Commission’s proposal. It has released a report outlining the Mayor’s future plans regarding contract procurement reform. Specifically, the report notes that the Mayor is in favor of allowing contractors to address and correct problems in their past VENDEX listings in such areas as integrity, financial capability and contract performance. We encourage the Mayor and the Comptroller to implement VENDEX reform as soon as possible.

agencies seeking to discredit a contractor. (See, “Agency Abuse of NYC Vendex B Is There a Constitutional Right of Protection?” G&C Blueprint Summer 2003). Contractors should take every opportunity to use their right of access to public documents. The only way to protect against VENDEX abuse is to be aware of the content of your own company’s report and to move aggressively, if need be, to assure its accuracy.

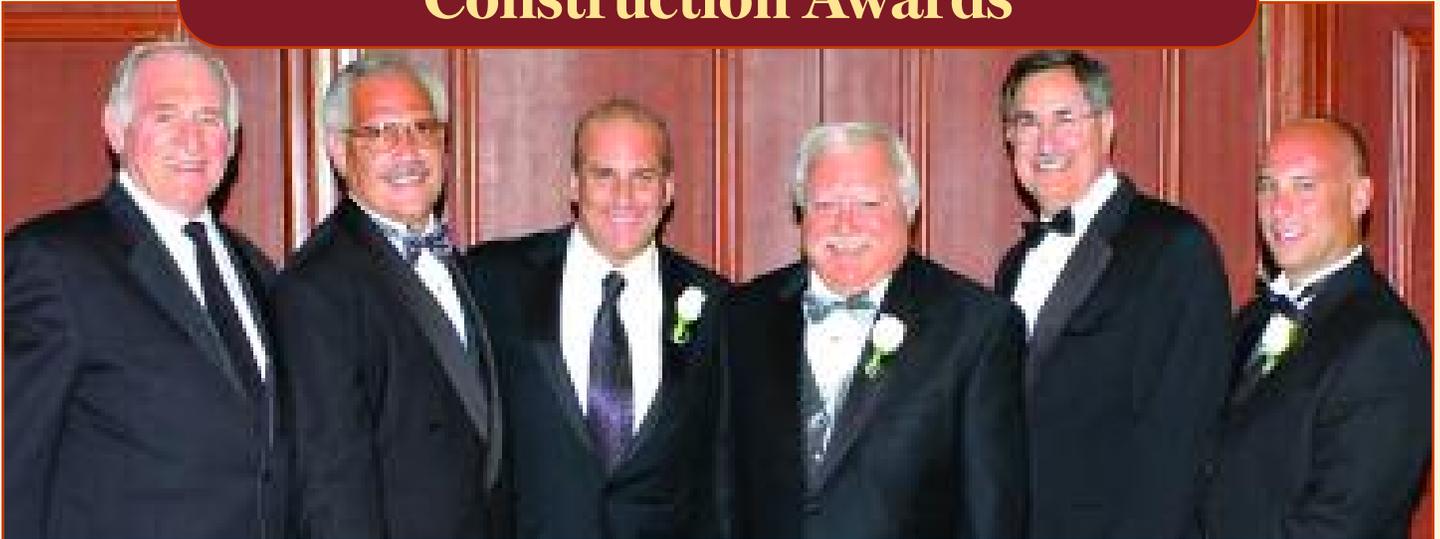
It should also be noted that the current administration’s use of VENDEX is markedly different from that under the prior administration, which clearly had less of a business and more of a prosecutorial mindset. MOC can be, and now should be, a valuable resource for any public contractor. Let’s hope that that is the ultimate outcome of any proposed changes. ■

¹ *The Public Access Center is at 253 Broadway, in Manhattan, and is open Monday through Friday, from 9:30 a.m. to 5:00 p.m.,*

² *New York City Administrative Code §6-1161.2*

2004

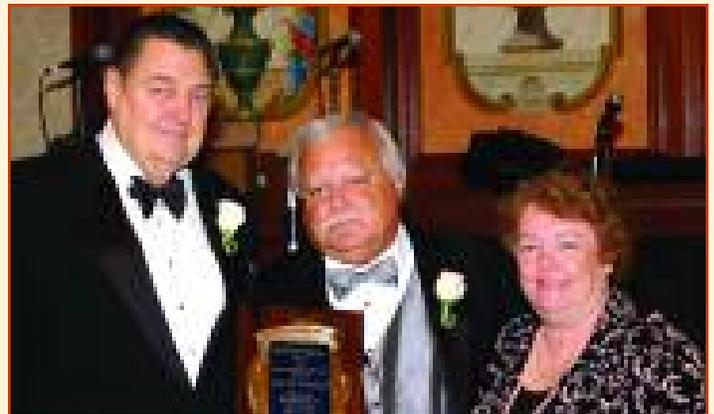
Construction Awards



STA Officers (left to right) Ron Berger, Alan Nathanson, Gary Segal, Fred Levinson, Robert Samela & Greg Fricke



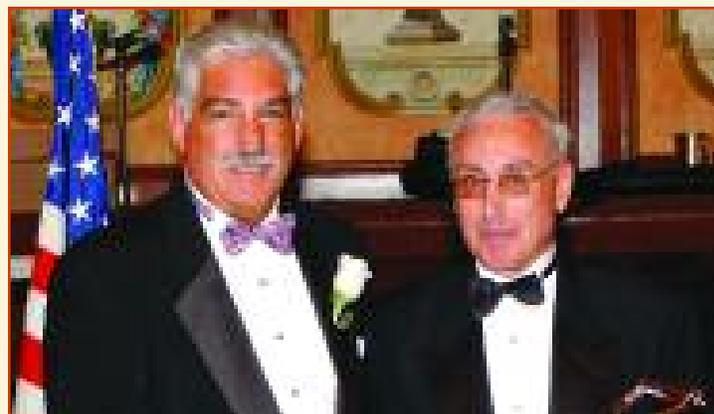
Public Official of the Year
Comptroller William C. Thompson, Jr.



The Michael Mazzucca Lifetime Achievement Award
(left to right) Awardee John A. Cavanagh, Fred Levinson & Presenter Mary Mazzucca



Presentation of the Builder of the Year Award
Awardee Thomas Iannelli, Presenter Alan Nathanson & Awardee Vincent Iannelli, Jr.



Presentation of the Silver Shovel Award
(left to right) Awardee Lou Coletti & Presenter Larry Weiss



Presentation of the Subcontractor of the Year Award
(left to right) Presenter Larry Roman & Awardee Gary Segal



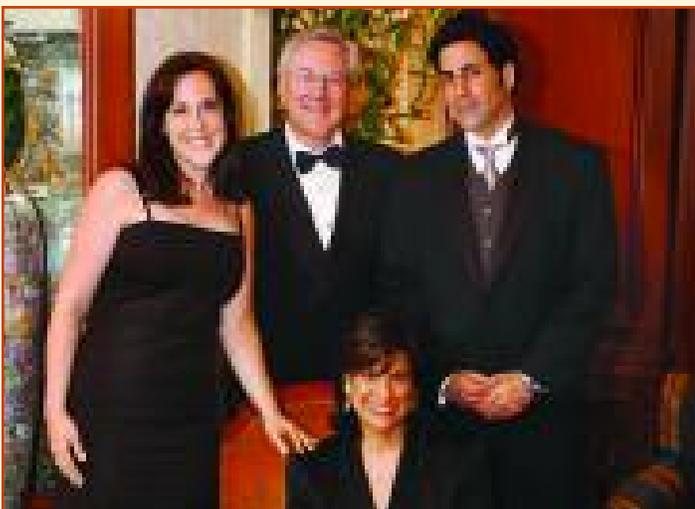
Presentation of Special Founders' Award
(left to right) Presenter Greg Fricke & Awardee Charles J. Krobot, Jr.



The Iannelli Family



The Gary Segal Family



The Charles J. Krobot Family



*President Greg Fricke opening the Festivities
& Welcoming the Attendees*

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Fred Levinson, Vice President

Alan Nathanson, Vice President

Robert Samela, Treasurer

Gary Segal, Secretary

Ronald S. Berger, Executive Director

UPCOMING EVENTS

Golf Outing

August 2, 2004

Executive Committee Meeting

September 9, 2004

Board of Directors Meeting

September 14, 2004 — 5:30PM

General Membership Meeting

September 29, 2004 — 5:30PM

Design: Edward P. O'Dell, Inc.

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