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GET READY!

To paraphrase “Now is the Time for all Good Men to Come to the Aid of Their Company”. This is the time of the year when many of us will be sitting down to prepare our strategy for the forthcoming year. We are asking you to think of not only next year, but the next decade as we are entering into a period of the greatest growth in the history of the construction industry in NYC.

Commissioner Patricia Lancaster of the NYC Department of Buildings recently stated that there will be “\$36 billion in construction in New York City over the next 10 years, and that’s in addition to the City’s ‘normal’ average of \$ 16 billion a year”.

It is our belief that the growth of the amount of construction will be even greater over the next 10 years when you take into account the “Public Infrastructure” work coming out of the following public agencies:

- Department of Environmental Protection \$20 billion
- Metropolitan Transportation Authority \$27.3 billion
- NYC Housing Authority \$1.4 billion
- Port Authority of NY & NJ \$12 billion
- NYC School Construction Authority \$13.5 billion

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State Spending Rising at Three Times the Inflation Rate

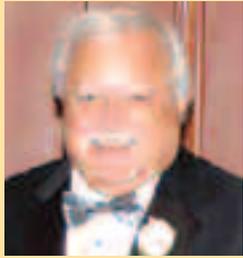
STATE CONTROLLER ALAN HEVESI has reported that state spending in New York rose 32 percent from 2000 to 2004, an increase that was three times the rate of inflation. The state’s debt is also increasing rapidly, and rose nearly 20 percent to \$47 billion, in the fiscal year ending March 31, 2004. Public health (\$1,893 per resident) and education (\$ 1,530 per resident) make up the largest areas of state spending. ■

Get Involved!

Support the STA —
contact our office to
offer a lending hand.

* * * * *

President's Message: Don't Miss the Boat



FRED LEVINSON

September 29, 2004

Dear Members:

If you didn't attend our last two dinner meetings shame on you.

These two meetings featured Mysore Nagaraja (MTA) Larry Silverstein (Silverstein Properties) and Joe Farro (NYCHA).

Mysore did a power point that kept 140 attendees quiet for more than 40 minutes, He explained the MTAS Capital Program over the next five years which will spend \$27.3 billion. How could we top that program?

Bring in Larry Silverstein to explain the World Trade Center (WTC) redevelopment project which has already started with 7 WTC and will be complete in full by 2012. He and the other agencies redeveloping the WTC site will spend over \$15 billion, create 10,000 construction jobs annually and over 100,000 permanent jobs when completed. Amazing the troops stayed quiet again.

As an additional feature Joe Farro of NYCHA came with the four CMs doing their work to present a 1.4 billion program. Not a peep was heard from the audience.

The programs are getting more and more exciting. Don't miss the next one or you may miss the boat. Announcements will be going out soon.

Very truly yours,

Fred Levinson
President

STA Committees

STA Committee Listings with their respective chairman:

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Insurance & Bonding:	Robert Spadaccia	914-769-2220
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LEGAL LOG

THE NEW YORK LIEN LAW — SECTIONS 8, 39 AND 39A

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



JAY KUSHNER, ESQ.

Sections 8, 39 and 39(a) of the New York Lien Law — Important provisions of which subcontractors should be aware of.

SECTION 8 OF THE NEW YORK Lien Law is a useful provision which subcontractors, as well as laborers and materialmen, may use to their advantage.

Under the provisions of Section 8 of the Lien Law, upon a demand in writing, a statement of the terms of the contract between the owner and the contractor, pursuant to which a real property improvement is being constructed, and of the money due or to become due thereunder must be furnished to subcontractors and others performing labor or furnishing materials for such contract.

If, within thirty days of such written demand, the owner refuses or neglects to furnish such statement or falsely states the terms of such contract or the amount due or to become due thereon, a subcontractor or materialman who has not been paid the amount of its claim against the contractor after obtaining a judgment will be entitled to payment from the owner for the loss sustained by the subcontractor by reason of such refusal, neglect or false statement and a mechanic's lien filed for labor performed and/or materials furnished by such subcontractor shall exist to the same extent and be enforced against the owner as if the labor performed and the materials furnished by the subcontractor had been directly performed for and furnished to the owner.

Accordingly, Section 8 may not only result in the transmittal of important information to the

The price to be paid for an exaggerated lien may be very high indeed and subcontractors are well advised to be prudent and accurate when exercising their mechanic's lien rights.

subcontractor, it may enhance the opportunity of receiving its payment at the project.

Sections 39 and 39(a) are also important provisions affecting subcontractors who should be aware of the severe consequences imposed by these sections upon subcontractors who are not careful in asserting liens for money due to them. These two sections deal with mechanic's liens which are wilfully exaggerated.

Section 39 of the New York Lien Law provides that in any action or proceeding to enforce a mechanic's lien upon a private or public improvement or in which the validity of the lien is at issue, if the court finds that a lienor has wilfully exaggerated the amount for which he claims a lien as stat-

ed in his notice of lien, the lien shall be declared to be void and no recovery shall be had thereon. The lienor shall not have the right to file any other or further lien for the claim and any subsequent lien filed thereon may be vacated upon application to the court on two day's notice. Consequently a wilful exaggeration of lien may result in the loss of lien rights under Section 39 of the Lien Law and Section 39(a) provides that where the court has declared the lien void for wilful exaggeration, the party filing such lien shall be liable in damages to the owner or contractor and the owner or contractor may recover the cost of a bond given to discharge the lien, attorneys fees to secure the discharge of the

lien and an amount equal to the difference by which the amount claimed to be due or to become due as stated in the notice of lien exceeded the amount actually due or to become due. Consequently, the price to be paid for an exaggerated lien may be very high indeed and subcontractors are well advised to be prudent and accurate when exercising their mechanic's lien rights. The penalty may not only invoke a loss of lien rights but, as indicated, may also result in extra costs to the lienor who wilfully exaggerated its lien claim. ■



FYI

1) Starting with the November issue we will be featuring a member's company each month. If you would like to have your company featured in the Subcontractor News, please submit an article on your company via e-mail to tanyc.berger@verizon.net.

2) We also want to open our newsletter to our membership, and starting with the November issue we will have a Letter to the Editor column. Letters to the Editor should be submit via e-mail to stanyc.berger@verizon.net, to get in the current monthly issue your letters must be submitted by no later than the 15th of the month. So let the letters flow.

3) We are also asking City, State and Federal agencies as well as other construction associations to submitted articles on their organizations for publication in our newsletter.

4) If you have any thoughts with regard to how we can make our newsletter more interesting and informing, please let us know.

CROTON WATER PLANT

It's a done deal reports Frank McArdle of the General Contractors Association that the last hurdle has been cleared and the construction of a water filtration plant for the Croton Water Supply System will be built under the Mosholu Golf Course in Van Cortlandt Park.

As part of the agreement more than \$220 million generated from water and sewer revenue will be spent on improvements to Bronx Parks over the next five years.

More than 20 neighborhood parks and playgrounds will be renovated with new play equipment, comfort stations, seating areas, fencing and landscaping. Regional recreation facilities, including ball fields, running tracks and tennis courts will be reconstructed or built throughout the borough. The Parade Grounds at Van Cortlandt Park will be reconstructed with new athletic fields, sod and drainage. Playgrounds, a track field, senior area and skate park will be reconstructed at Williamsbridge

Oval Park. Waterfront parks will be developed along the Long Island Sound, East River and Harlan River.

New waterfront space, including a Greenway link, will be developed at Pelham Bay Park, and environmental work will include the restoration of lagoons and salt marshes at Pugsley Creek Park and Soundview Park. Major sections of the Bronx Greenway, including the Hutchinson, Bronx River and Soundview to Ferry Point sections, will be completed.

Work will include the restoration of existing parkland — including improving pathways and public access to parks and the waterfront, as well as transforming underutilized property into new parkland in areas with little open space. A new pedestrian bridge over the Bronx River Parkway and Bronx River will connect Shoelace Park and Muskrat Cove. ■



UNCLE SAM'S HOLIDAY PRESENT FOR CONTRACTORS

By Daniel A. Castellano, CPA, Managing Partner



DANIEL A. CASTELLANO

SO YOU ARE A CONTRACTOR approaching the end of your tax year and you wonder if purchasing a holiday toy, for instance a backhoe, Bobcat, truck, machine, computer, etc. will help you to save on taxes. The answer is a resounding YES, as long as you put your new toy in service by December 31, 2004. The reason for this is simple — it's call Bonus Depreciation.

The Bonus Depreciation incentive arose after the September 11 attacks and it's intent was to spur spending to help the economy rebound.

The Bonus Depreciation incentive arose after the September 11 attacks and it's intent was to spur spending to help the economy rebound. Bonus depreciation is not additional depreciation but rather a tremendous acceleration of depreciation which is tax deductible. In fact, for companies that spend up to \$400,000 for qualifying fixed asset purchases with a useful life of 7 years, the total depreciation to be taken in the first year amounts to an astonishing 71% of the related asset's cost. This

applies to assets purchased outright or financed. In fact, financing is the better option since the first year tax savings is greater than the out of pocket cost for that year — you are receiving a free holiday present — courtesy of Uncle Sam!

But it get's even better. This accelerated depreciation is for income tax purposes only — you still get to depreciate the asset for financial statement purposes under normal depreciation rules, which are much less. Therefore, you are able to benefit from a siz-

able income tax benefit while still preserving the highest working capital and equity for financial statement purposes, to enhance your bonding and banking credit.

But hurry up and place your orders now. This "interest free" loan from Uncle Sam is set to expire on December 31, 2004. If your tax advisor has not explained this benefit to you by now, consult with them immediately or give us a call. ■

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FULL/FINAL WAIVER OF LIEN CAN PRECLUDE FURTHER PAYMENT

By Terence J. Burke, Esq.



TERENCE J. BURKE, ESQ.

IN TRI-STATE ENVIRONMENTAL Contracting, Inc. v. PT&L Contracting Corporation, et al. (March 2, 2004), the Supreme Court of New York, Appellate Division, First Department addressed an issue concerning a full and final waiver of lien. Plaintiff subcontractor executed five waivers and receipts for payments on the job. The final waiver denominated "Full and Final Waiver of Lien" signed by the defendant contractor and dated October 5, 2001, stated that plaintiff had accepted the amount of \$847,711.60 as "a full and final payment" and "make no further claim of any nature for additional

The lesson to be learned from this case is that subcontractors should pay particular attention to lien waivers and acknowledgements of payments which they are signing in exchange for payments on the job.

compensation for this project".

The original contract price was \$800,000. Defendant contractor made 16 payments against 13 invoices, and plaintiff executed five waivers. The first dated February 16, 2001 acknowledged a payment of \$20,000 and was denominated "Full and Final Waiver of Lien", but, unlike the October 5 full and final waiver, stated that plaintiff's work had not been completed. The next two waivers, dated March 26 and April 19, 2001, executed before plaintiff had completed its work, acknowledged payments of \$13,578.06 and 26,000, were denominated "Partial Waivers of

Lien", waived any liens for work performed up to their respective dates and, unlike the waivers denominated as full, did not say that plaintiff would "make no further claim of any nature for additional compensation." The fourth waiver, dated August 27, 2001 after plaintiff had completed its work, acknowledged a payment of \$20,000 and was denominated partial; the fifth waiver, which was the final waiver dated October 5 acknowledged the payment of \$847,711.60. The plaintiff subcontractor argued that additional payments made after the February waiver, although denominated as final, established the parties

past practice and could be considered to show that the October 5 waiver was intended merely as a receipt for partial payment. The court rejected this argument distinguishing the fifth and final waiver as not containing any language evincing an understanding that further payments were to be made.

The lesson to be learned from this case is that subcontractors should pay particular attention to lien waivers and acknowledgements of payments which they are signing in exchange for payments on the job. Any waiver indicating that it is a final waiver and an acknowledgement of full payment for the project will preclude the subcontractor from recovering any further payments he claims are due on the job. ■



New Overtime Rules May Affect Certain Employees

AS MANY NESCA MEMBERS may now know, effective August 23, 2004, employers are required to comply with new employee overtime provisions issued by the United States Department of Labor under the Fair Labor Standards Act (FLSA). The new regulations have made changes as to which employees may be exempt from the payment of overtime.

Given these new regulations, it is highly advisable that all members take a fresh look at which employees are entitled by law to overtime pay under the FLSA. The FLSA requires that covered employees be paid overtime at one and one-half the employee's regular rate of pay for all hours worked over 40 in a workweek.

The determination as to whether your jobsite labor is entitled to overtime should not be a problem for most NESCA members because the overtime exemptions do not apply to manual workers (such as construction workers) no matter how highly paid they might be. In other words, your jobsite labor is always entitled to overtime pay if they work more than 40 hours in a workweek.

The regulations become more complicated when applied to employees working in the office.

Given new regulations, it is highly advisable that all members take a fresh look at which employees are entitled by law to overtime pay under the United States Department of Labor under the Fair Labor Standards Act (FLSA).

Section 13(a)(1) of the regulations provides exemptions for certain bona fide executive, administrative, professional and outside sales employees. For these types of employees to be exempt from overtime pay, they must meet certain tests regarding their job duties and be paid no less than \$455 per week (\$23,660 annually). Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the regulations.

To qualify for the administrative employee exemption, for example, all of the following tests must be met:

- The employee must be compensated on a salary or wage basis at a rate not less than \$455 per week.
- The employee's primary duty must be the performance of

- office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

In other words, an employer can't simply say that an inside office employee (such as a secretary or bookkeeper) is "salaried", and therefore not entitled to overtime. Both the minimum salary and job duties tests must be applied before making such a determination. Failure to perform these tests for your employees could cost your company significantly in back pay owed down the road.

Detailed information about the new overtime provisions can be found at www.dol.gov/fairpay. ■

Get Ready!

continued from page 1

Now let's take into consideration the following: Hudson Yards with the New York Sports Convention Center (NYSCC) and also Bruce Rater's Atlantic Terminal, and how about Larry Silverstein plans for the Development of the World Trade Center site a long with the work being planned by the Lower Manhattan Development Authority at this site. Then throw Columbia University's billion dollar expansion plans into the mix. The future for the construction industry real looks bright.

So as they say on Monday Night Football are you READY!

Now is the time to sit down with your accountant and polish up your financial statement and meet with your banker to review your line of credit. Look over your organization staffing and review your plans for manpower needs. Also don't forget to look over your equipment needs and make those purchases before the BONUS DEPRECIATION from the IRS runs out December 31, 2004. ■

HOW TO IMPROVE A SUBCONTRACTOR'S CASH FLOW

By Howard Chernin, Senior Vice President, Quantum Corporate Funding, Ltd.



HOWARD CHERNIN

There's a tremendous need for alternative methods of financing construction deals. And there's no better method than factoring. Factoring is quickly becoming the alternative financing method of choice in the construction industry.

In the construction business, one of the worst things that can happen is for a project to stop in its tracks. The result is delays, increased costs — and very dissatisfied customers.

Why not borrow from a bank? As most subcontractors know, this option has severe restrictions. Banks generally insist on securing assets equal to a minimum of three times the amount of the loan. Another problem is that borrowing additional money requires renegotiating the loan — or even starting the process all over again with a different lender. In addition, a borrower must meet monthly payment obligations, which may be difficult or even impossible. Then there's the fact that banks are often reluctant to help finance subcontractors.

Given these realities, there's a tremendous need for alternative methods of financing construction deals. And there's no better method than factoring. Factoring is quickly becoming the alternative financing method of choice in the construction industry. More and more, bankers and accountants are referring subcontractors to qualified, experienced factors like Quantum Corporate Funding, Ltd. — the largest construction factor in the United States. As an experienced factor, Quantum can help a subcontractor survive financial setbacks and bankruptcies quickly and simply by financing their receivables.

Factors like Quantum are also valuable resources to contractors and subcontractors because we can help improve their cash flow so they can pay their suppliers, their payroll, and their taxes. This enables businesses in construction to purchase supplies and equipment and increase their labor force in order to keep

their businesses afloat in times of economic difficulty.

There are many advantages. With factoring, a subcontractor does not have to borrow money, he makes no monthly payments, and he can control his cash flow by exercising total control over how much he factors and how often. Perhaps most important is the fact that the money can be available as quickly as in 24 hours.

An example is a subcontractor in the Midwest. He was working on a large commercial development project, and he desperately needed an infusion of cash. Because he'd never worked with a factor before, he anxiously asked us about points, the percentage he would be charged to factor, and how soon he would be able to receive the monies that were critical to keeping his business running. Quantum determined that the subcontractor would be able to receive an advance, under a no term contract and with no credit risk, equivalent to 60 percent of a single invoice totally \$100,000, or a sum of \$60,000 in cash that would be wired directly to his bank account.

The subcontractor agreed to pay four percent of the total for the first 30 days as a fee on the \$100,000. In other words, he would pay \$4,000 to factor a \$100,000 invoice for one month. He would receive the balance of the money — \$36,000, or \$40,000 minus the \$4,000 fee — upon receipt of the funds due toward payment of the invoice. He therefore received \$60,000 plus \$36,000, or a total of \$96,000 for his \$100,000 invoice.

Because this particular subcontractor had no experience with factoring, he was reluctant at first. Yet he realized that he was operating in an extremely competitive

market, as are most contractors and subcontractors. Further analysis of his financial situation revealed that his gross margin was 18 percent and that his annual overhead was \$150,000. The subcontractor commented that if he had access to "unlimited funds," he could double his business from \$2 million in annual sales to \$4 million. He admitted that he was turning away business because he simply did not have the cash flow to handle it.

At Quantum, we recognized that his situation was all too familiar. We asked him if doubling his sales would mean doubling his overhead. His answer, as we expected, was "no." In fact, he calculated that the extra \$2 million in sales would only cost him an additional \$50,000 in overhead expenses.

Once the subcontractor looked at the numbers, he understood how he could benefit from factoring. Without factoring, he made \$360,000 gross profit on \$2 million in sales. But by factoring 100 percent of his receivables, he only had to factor \$2 million out of a project \$4 million in sales in order to generate a gross profit of \$720,000. His annual cost for factoring was \$80,000.

Factoring with Quantum Corporate Funding helped this subcontractor grow his business by taking advantage of work opportunities he would have otherwise been forced to say no to. He was also able to receive volume discounts offered by suppliers, which resulted in even greater financial benefit.

For businesses involved in construction, factoring can be the ideal way to stay in the race — or to grow dramatically. Factors like Quantum do not buy retention, meaning monies are with-

held by the owner until a project meets the owner's satisfaction. What we do is supply cash — cash that can help contractors and subcontractors meet their payroll, tax, and insurance needs, pay their suppliers, and receive greater discounts from them. As a construction "specialist," Quantum offers other services that are valuable to contractors and subcontractors. We provide bank-to-bank wire transfers, we require no long-term contracts, we factor as many invoices as required, we cut paperwork by not requiring financial statements, and in some cases, we can provide funding in 24 hours.

When your banker says "no" and you've fallen below the radar screen, an alternative financing company who thinks outside the box will often say "yes." ■

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UPCOMING EVENTS

Executive Committee Meeting

December 14, 2004

Board of Directors Meeting

December 14, 2004 — 5:30PM

Design: Edward P. O'Dell, Inc.

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