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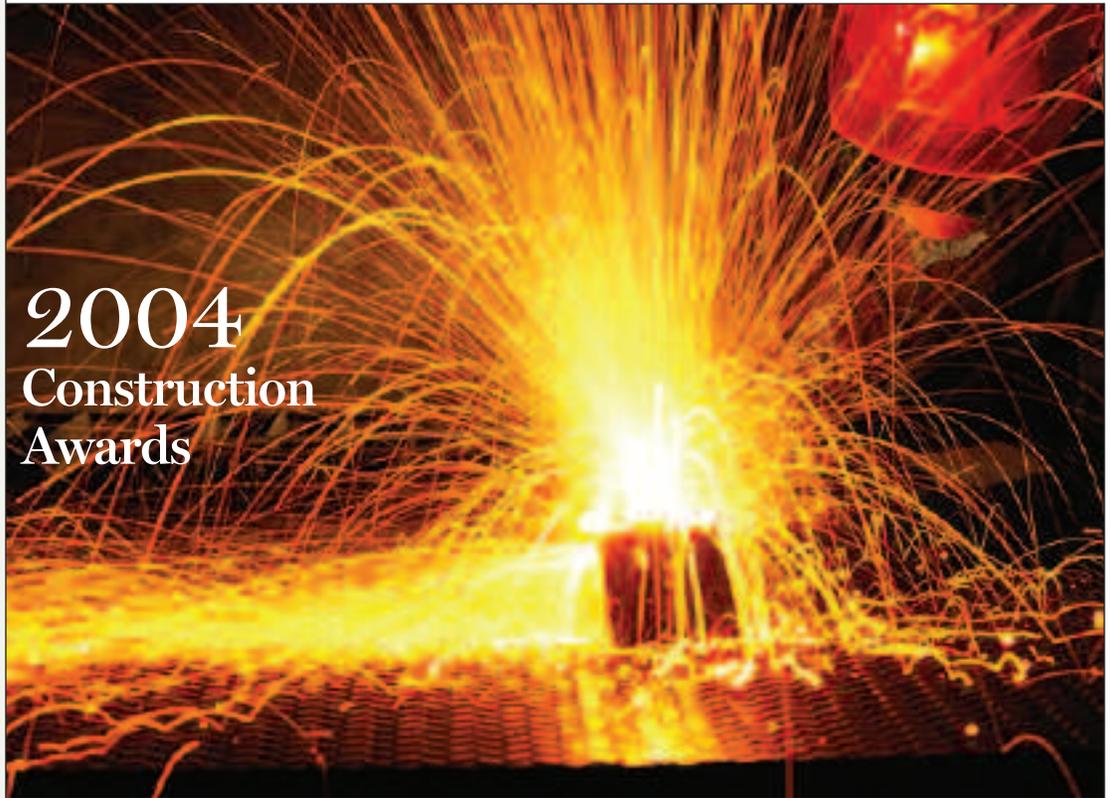
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## 2004 Construction Awards

**The officers and directors of the Subcontractors Trade Association are proud to announce the winners of the 2004 Construction Awards as follows:**

- *The Silver Shovel* goes to Edward Malloy, President of the Building & Construction Trades Council of Greater NY and Louis Coletti, President & CEO of the Building Trades Employers Association, who together represent the Construction Industry Partnership (CIP). These organizations bring together the construction industry's preeminent management and labor groups in New York City.
- *The Builder of the Year* goes to Vincent Iannelli Jr., Vice President and Thomas Iannelli, Secretary & Treasurer of Iannelli Construction.
- *The Subcontractor of the Year* goes to Gary Segal, President of Five Star Electric Corp.
- *Lifetime Achievement Award* goes to John Cavanagh, former CEO of Amec Construction Management.
- *Public Official of the Year* goes to William C. Thompson, Jr., Comptroller City of New York.

*Congratulations to all the honorees.*



**"Super Quote"**

With the Super Bowl taking place on February 1, 2004 maybe we should take a little wisdom from one of the greatest coach the game has ever known Vince Lombardi:

"The price of success is hard work, dedication to the job at hand, and the determination that whether we win or lose, we have applied the best of ourselves to the task at hand"

The Coach must have been a subcontractor at sometime in his lifetime.

**SAVE THE DATE**

*Saturday, May 15th*

**2004  
CONSTRUCTION  
AWARDS**

# President's Message: Partner or Perish



GREGORY FRICKE, JR.

**THE FOLLOWING** President's Message came across my desk from my counterpart in Akron, Ohio Larry Griebel; and after reading this message I thought I would share it with you.

**"Partner or Perish — is One Unnecessary?" Together we can open so many doors...**

What is an association? I believe an association to be a gathering of people with similar interests and goals. This get-together should not only be between the members within a specific industry or association but it should extend to an all-around alliance between similar associations. The reason for any trade association to exist is for the purpose of mutual improvement of the industry that its members are involved in.

The world as we know it today is a much smaller place and seems to grow smaller everyday. You turn on the morning news and from half way around the world you are watching a live report of

Sadam Hussein's capture. If you think about how much the world has changed since you were a child, think about how much the world will change in the lifetime of your children. During the past 100 years, you have observed four generations of networks. The 1st generation was the "Electric Network" with the invention of electric power and the telephone. The 2nd generation was the "Electronic Network" of radio and television. The 3rd generation was the "Digital Network" of the internet and wireless communication. The internet has become the information highway and even more incredible just at our finger tips. The world indeed has grown much smaller. We are now in the 4th generation of "organization Networks". I believe that the old rules and roles will no longer be adequate.

In the new generation of Association Alliances lies the hidden potential for co-creative breakthroughs, making these alliances the perfect vehicle for improvement and advancement. The theme of this emerging era will be cooperation, co-creation and connectivity. What is the potential? IMAGINEERING the engineering of whatever we can image. Creativity, people, technology and machines will all link and the networked organization will beat traditional associations, hands down. Cooperation will become the complete advantage because it makes REGEN-

ERATION possible.

Let's start with defining partnering as I perceive it. Partnering can result in any a number of benefits such as within itself a strong relationship among its members or outside itself as an alliance of associations in pursuit of a common goal. In both cases the creation of networking opportunities is amazing. Association once grew by one of two ways; grass roots up, or one member at a time. Today association grow through alliances-all kinds of joint ventures and partnering thus creating new Organization Partnering and alliances are the quickest way to grow an association and to achieve common goals for the entire organization

There is a down side you immediately think to yourself and you are right. There will most certainly be conflicts and contrasts. But in fact, the greater the contrast, the greater the potential. Great energy comes from great tension between opposites. If two people in the same room think alike, "One is Unnecessary". Personally I do not know of any association I belong to that is "unnecessary". Although they do not agree on all issues, they more often than not do agree on the same goals.

I would like to see the world through the windows of others. The decision to adopt the multifaceted partnering model is not always easy. It is unfortunate that many associations are encumbered with person flexing their

personal and sometimes hidden agenda. Is it possible in association life to have cooperation? Absolutely. Working with others for a mutually beneficial solution is what should be at the foundation of any association. Partnering is the redeemer necessary to successfully carry an association to new heights of success in serving its industry. It affords these associations leverages to become increasingly involved in an array of causes aimed at advancing common goals.

Many non-profit associations have come to recognize that the best way to ensure professionalism, cost-effectiveness, and continuity of service is through an alliance of other associations. The prosperity and growth of each entity depends on the other. If we can partner with other resources the information highway becomes an interstate of information.

\* \* \*

As Larry has so eloquently indicated above, the many advantages of partnering, just look at our own experience with our fellow association such as ESSA (Empire State Subcontractors Association), STAC (Specialty Trades Association Council) and BTEA (Building Trades Employers' Association) which has enabled our association to pass 34 different pieces of legislation in the last 27 years. So talk to your trade association and ask them to think about partnering with STA. ■

## 2004 Standard Mileages Rates Set

**THE IRS RELEASED** the optional standard mileage rates to use for 2004 in computing the deductible costs of operating an automobile for business, charitable, medical or moving expense purposes.

To reduce a recordkeeping burden, the IRS also announced that taxpayers who use no more than four vehicles at the same time for business purposes may use the standard mileage rate, starting in 2004. Last year those using more than one vehicle at a time could not use the standard rate at all, leaving them to track the actual expenses for each vehicle.

"With this change more than 800,000 businesses will become eligible to use the standard mileage rate," said IRS Commissioner, Mark W. Everson. "this reflects our ongoing interest in reducing the burden for businesses to comply with the tax laws."

Although many taxpayers may still claim actual vehicle expenses for various reasons, the IRS estimates that small businesses will save 8-10 million hours a year in recordkeeping with this expansion of the standard rate option.

A taxpayer may not use the

standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS), after claiming a Section 170 deduction for that vehicle, or for any vehicle used for hire.

Beginning January 1, 2004, the standard mileage rates for the use of a car (including vans, pickups, or panel trucks) will be:

- A) **37.5 cents a mile for all business miles driven, up from 36 cents a mile in 2003.**
- B) **14 cents a mile when computing deductible medical or moving**

**expenses, up from 12 cents a mile in 2003.**

- C) **14 cents a mile when giving services to a charitable organization.**

The standard mileage rates for business, medical and moving purposes are based on an annual study of the fixed and variable costs of operating an automobile. The primary reason for mileage rate increases is the rise in fuel prices during the study period, which ended on June 30, 2003. The charitable standard mileage rate is set by law. ■

**LEGAL LOG**

**DESIGN DELEGATION**

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



JAY KUSHNER, ESQ.

ONCE AGAIN THE SERIOUS AND perplexing issue of “design delegation” has reared its head. Slightly over a year ago, STA published an encouraging report which indicated that procedures were in place which finally addressed and clarified the problem. However, we were soon to be disappointed.

In 1996, after a great deal of confusion and controversy, Section 29.3(b) of the Rules of the Board of Regents was specifically amended to address and clarify the conditions under which a licensed architect or engineer may delegate the performance of

design services to another licensed architect or engineer through an unlicensed third-party, such as a contractor or subcontractor. After the amendment the NYS Education Department appointed an Industry Advisory Council to help develop guidelines and procedures to deal with possible abuse of the Regents Rule.

The principal licensed architect or engineer can, under the Regents Rule, delegate to a licensed architect or engineer hired by a subcontractor, specifically designated work ancillary to the major components of the project. The Regents Rule requires the principal architect or engineer to review and approve (or disapprove) the design submitted by the subcontractor for conformity with the applicable specifications and to determine that the design prepared by the subcontractor’s architect or engineer conforms to the overall project design and can be integrated into it.

Notwithstanding what appears to be clear rules, Empire State Subcontractors Association, Inc. (“ESSA”) of which STA is a member, has reported that the principal architects and engineers are failing to approve delegated design work. Instead ESSA reports that the principal design firms are stamping shop drawings with limited terms such as “no exceptions taken” and “reviewed only for loads imposed upon structure”.

ESSA, whose current President is STA’s former president Arthur Rubinstein (Skyline Steel), has complained to the Education Department that Regents Rule 29.3(b) is being routinely violated and provided documentation on several projects. After a year of discussions with the Education Department, the Department determined in one instance that the Regents Rule was being violated and directed the engineering firm to approve the design submitted by Skyline Steel, but with respect to a second similar

instance determined that the engineering firm had not violated the Regents Rule.

ESSA President Arthur Rubinstein has decided to challenge the Department’s determination of “no violation” in the second instance which has left the issue of design delegation once again in confusion and uncertainty. This issue should be finally resolved.

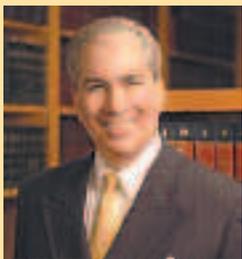
Abuse of the Design Delegation Rule causes uncertainty not only for steel fabricators but for STA members in many trades. We agree with ESSA and Arthur Rubinstein that clarification and certainty is vital in this area.

“No exception taken” is not the equivalent of “approved” and “reserved only for loads imposed upon the structure” is too limiting to be considered the equivalent of “approved”.

ESSA requests that Chapter members make moderate contributions to Empire State Subcontractors Association at 6 Airline Drive, Albany, New York 12205 to help defray the cost of this important legal challenge. Arthur Rubinstein and ESSA deserve our support. ■

**INDEMNITY NOT ENFORCEABLE**

*By Henry L. Goldberg, Esq.*



HENRY L. GOLDBERG, ESQ.

**AGREEMENTS TO INDEMNIFY PARTIES FOR THEIR OWN NEGLIGENCE IS NOT ENFORCEABLE**

In the course of negotiating contracts, parties are often faced with demands to indemnify other parties upstream in the construction food chain. Owners may demand of contractors, and contractors, in turn, of subcontractors, language asserting that a party will provide “complete and total” indemnification against any

and all claims for injuries or property damage “regardless of fault or cause.” What is the effect of such “comprehensive indemnification” clauses under New York Law?

Fortunately, there are limits to a party’s exposure in the face of such provisions. Section 5-322.1 of New York’s General Obligations Law provides, in effect, that any language in a contract to provide construction services purporting to indemnify a party for their own actual negligence is void and unenforceable as against public policy. In other words, while an owner or GC can require a subcontractor to indemnify them for the actions of the subcontractor, its agents or even unrelated third-parties, they cannot force it to assume responsibility for the acts of the owner or GC itself.

It should be noted that a contractor can be required to purchase insurance indemnifying other persons for their own negli-

gence; this is not against public policy and is actually encouraged. Accordingly, insurance requirements and/or “additional insured” provisions are not affected by this provision and will be enforced by New York courts. Also, the statute does not prevent an owner or general contractor from passing along liability which is purely vicarious in nature, and not the result of their actual negligent actions, such as statutory liability under Labor Law ‘ 240(1) or 241.

Recent case law involving Labor Law ‘ 240 illustrates the interplay between the statutes when dealing with site accidents. In *Celia Gomez v. The National Center for Disability Services Inc.*, 762 N.Y.S.2d 51 (1st Dep’t June 12, 2003), the owner sought to be dismissed from a construction accident lawsuit prior to trial based upon a contractual indemnification clause contained in the subcontract between the general

contractor and the injured worker’s subcontractor/employer. The owner asserted that it was not negligent, and that any liability on its behalf was purely pursuant to the strict liability provisions of Labor Law 240(1) or 241(6). However, based upon evidence of notice to the owner of drainage problems on the site’s roof which allegedly led to the plaintiff’s injuries, the court held that there was a possibility that the owner could be found negligent in its own right, aside from the statutorily created strict liability. As a result, the question of the enforceability of the indemnity agreement was deferred to the trial, and the owner was compelled to establish at trial that it did not actually contribute to the accident’s causation.

Similarly in *Osman Tulovic v. Chase Manhattan Bank, N.A.*, 2003 N.Y. App. Div. LEXIS 11095 (2d Dept. October 27, 2003), the court declined a pre-trial motion to strike a contractual indemnity provision in a

*Continued on page 5*

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January 19, 2004

Subcontractors Trade Association  
 570 Seventh Avenue  
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 Attn: Mr. Ronald Berger  
 Mr. Greg Fricke

Dear Friends,  
 Words cannot express my gratitude for your prayers and words of support. I have received many cards and phone calls from members of the Subcontractors Trade Association. Flowers and cards are important to a successful recovery; however it was your prayers and words of encouragement which enabled me to recover. I look forward to thanking each of you personally in the near future.

Thank you all!!

Sincerely,

Michael Mazzucca

*Mike —  
 Glad you are  
 feeling better.  
 From all of us  
 at the STA.*



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## Having Problems Getting Paid on Private Sector Jobs?

**IF YOU HAVE A RECENT CONTRACT** entered into after January 14, 2003 on a project where the total cost exceeds \$250,000.00; if the contract is not for residential construction of one, two, or three family dwellings, residential tract development of 150 units or less; residential projects of 9,000 square feet or less; and residential projects of fewer than 150 units that get public financing from HUD. Why not consider when we are not paid on time; to just stop work, drop everything and roll away from the project until the progress payments (plus additional costs for stopping work) arrive.

Dealing with slow payment is not as simple as the fire safety message, "STOP, DROP, and ROLL", but stopping work can be a critical, effective tool when properly wielded, since the New York State's Construction Contracts Act Section 756-b (b) provides you with the right to do so.

You may be apprehensive about stopping work, but think about sending a letter informing the Owner & the GC or CM that you are considering doing so. Don't be nervous; Remember that most GC & CM preserve their right to stop work for delayed owner payments in their agreement with the owner, and all but one of the major model contract documents that deal with the relation between the owner and its general contractor/ construction manager, contain provisions dealing with the option or right to stop work.

So think positive and act in your own behalf. Remember there is nothing wrong with "WORK WHEN PAID." ■

**INDEMNITY**

*continued from page 3*

cleaning service's contract with respect to an accident where the contractor's employee tripped on the exposed rebar on a loading dock that was being renovated. The court reasoned that, because the owner could theoretically be found fault free, despite the open and obvious defect, it would decline to resolve the issues of liability and the contractor, like the owner in the Gomez, case, must wait for an apportionment of fault at trial.

These recent appellate cases illustrate that attempts to shift liability on a construction site through the use of indemnity agreements will be carefully scrutinized by the courts, with an eye towards finding the parties which were actively negligent. Owners and general contractors seeking to enforce all encompassing indemnities against subcontractors will only succeed if they can establish that they were completely free of active negligence in a given incident, and that their only liability was based on strict or vicarious statutory liability. If a party is potentially responsible for an occurrence due to its own negligent acts (or omissions) any enforcement of an indemnity agreement would have to wait until an apportionment of fault at trial.

Accordingly, it is vital to carefully scrutinize the facts and circumstances of each case and the respective parties' potential "contribution" to the causation of an accident, before agreeing to indemnify another party and assume its defense.

If the indemnified individual is liable solely because of statutorily created vicarious liability (such as an owner of a vehicle driven by another), then that indemnified individual can enforce the indemnity clause. However, if the party is also liable for its own contributing acts, or omissions, then, pursuant to the General Obligations Law, it cannot enforce such clauses. ■

# FYI: William C. Thompson



The 42nd Comptroller of the City of New York, William C. Thompson, Jr., took office on January 1, 2002. A lifelong New

Yorker, Comptroller Thompson is the son of a judge and public school teacher and is the proud product of New York City public schools.

As Comptroller, Bill Thompson serves as New York City's chief fiscal officer. The mission of the office is to ensure the financial health of New York, and the Comptroller wields an enormous array of powers. They include auditing all City agencies, managing close to \$74 billion in City pension funds, overseeing the City's issuance of debt, registering and monitoring all City contracts with outside vendors, approving all City legal settlements, and enforcing prevailing wage laws. Since taking office, Thompson has established himself as a vigorous fiscal watchdog, safeguarding the city's finances while aggressively seeking savings and rooting out fraud and abuse.

Comptroller Thompson has served as a strong voice for New Yorkers in the debate over how the City should tackle the fiscal challenges it faces. He produced

the most exhaustive and definitive measure of the devastating economic fallout from the Sept. 11, 2001 terrorist attacks, and he has repeatedly called on the Federal and State governments to provide the City its fair share of financial aid. The Comptroller is also investing in New York City by committing millions of dollars to build affordable housing in low- and moderate-income neighborhoods through his Economically Targeted Investment program.

At a time when the City is grappling with massive budget deficits, the Comptroller's aggressive audit program has revealed more than \$55 million dollars of actual and potential savings in the City's operations. And Comptroller Thompson, citing "glaring deficiencies" in the Metropolitan Transportation Authority's disclosure of its finances, ordered an unprecedented audit of New York City Transit to determine the true state of its books.

In the wake of the corporate scandals that have engulfed the nation's financial markets, Comptroller Thompson has emerged as a leader in the fight for critical reforms. This year alone, he targeted 88 different companies with shareholder resolutions on a wide range of crucial issues, including executive compensation, director elections, and

the impact of corporate behavior on the environment and human rights. Comptroller Thompson is also waging a national campaign demanding that companies establish a process to respond to shareholder proposals that win a majority of votes.

Bill Thompson attended PS 161, Hudde Junior High School and is a graduate of Midwood High School in Brooklyn. He graduated from Tufts University and, upon his return to New York in 1974, joined the staff of a congressman, whom he eventually served as Chief of Staff.

In 1983, Thompson was appointed Brooklyn's youngest-ever Deputy Borough President by Brooklyn Borough President Howard Golden.

In 1994, Thompson was appointed to the New York City Board of Education as its Brooklyn Member and in 1996, began the first of five consecutive terms as its President. During that period, Thompson's leadership brought unprecedented educational reforms and progress. Thompson also served as a Senior Vice President for Public Finance at an investment-banking firm in the early 1990s.

Bill Thompson lives in Bedford-Stuyvesant, Brooklyn, with his wife and daughter. ■

## Comptroller Thompson Delivers Clutch Hits In The Game of Prevailing Wage

### BOX SCORE

2003 UNDERPAYMENT ASSESSED	\$ 2,552,755.83
2002 UNDERPAYMENT ASSESSED	\$ 1,433,927.16
2003 UNDERPAYMENT COLLECTED	\$ 1,680,876.07
2002 UNDERPAYMENT COLLECTED	\$ 1,361,340.28
2003 PENALTY ASSESSED	\$ 329,854.80
2002 PENALTY ASSESSED	\$ 108,701.37
2003 PENALTY COLLECTED	\$ 151,791.49
2002 PENALTY COLLECTED	\$ 84,792.51
2003 NEW CASES FILED	160
2002 NEW CASES FILED	157
2003 CASES RESOLVED	176
2002 CASES RESOLVED	150
2003 DEBARRED CONTRACTORS	Five
2002 DEBARRED CONTRACTORS	Six



It looks like the Comptroller is improving his batting average. Way to go. How about that sport fans?

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Alan Nathanson, Vice President

Robert Samela, Treasurer

Gary Segal, Secretary

Ronald S. Berger, Executive Director

**UPCOMING EVENTS**

**Executive Committee Meeting**

February 5, 2004

**Board of Directors Meeting**

February 11, 2004 — 3:00PM

**General Membership Dinner Meeting**

February 11, 2004 — 5:30PM

**Construction Industry Partnership  
Seventh Annual Winter Conference**

February 22-25 2004, Hollywood FL.  
Westin Diplomat Resort & Spa