

NORTH CAROLINA CONSTRUCTION NEWS

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in devastating floods**

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Publisher's Viewpoint



Mark Buckshon, publisher

Hurricane Florence will challenge North Carolina's construction industry like few events in recent history, though I am confident that the state's AEC community will rise to the immense rebuilding and recovery challenges.

Rebuilding, of course, will make the already extremely tight labor supply even more critical. Data from an Associated General Contractors of America (AGCA) survey indicates that, before the storm, 98 percent of contractors were reporting trouble finding tradespeople. That near universal shortage – among the highest in the U.S. – obviously won't improve when disaster recovery work adds to the scarcity.

However, the cliché that crisis equals opportunity and the industry's spirit, determination and hard work provides meaningful hope that everything will work out well in the end; as contractors and tradespeople experience some relief when the Christmas season approaches. Certainly, there will be some prosperity from all the work to be completed.

This issue also includes our annual Top 10 Construction Law firms feature. It isn't easy to pick the Top 10, but I think you'll find a representative group of law practices that truly consider the construction industry to be their highest priority, working to represent their clients' interests while they help to resolve disputes (or prevent them from occurring in the first place.)

As always, I welcome your comments and suggestions. You can reach me by email at buckshon@ncconstructionnews.com or phone at (888) 627-8717 ext 224.

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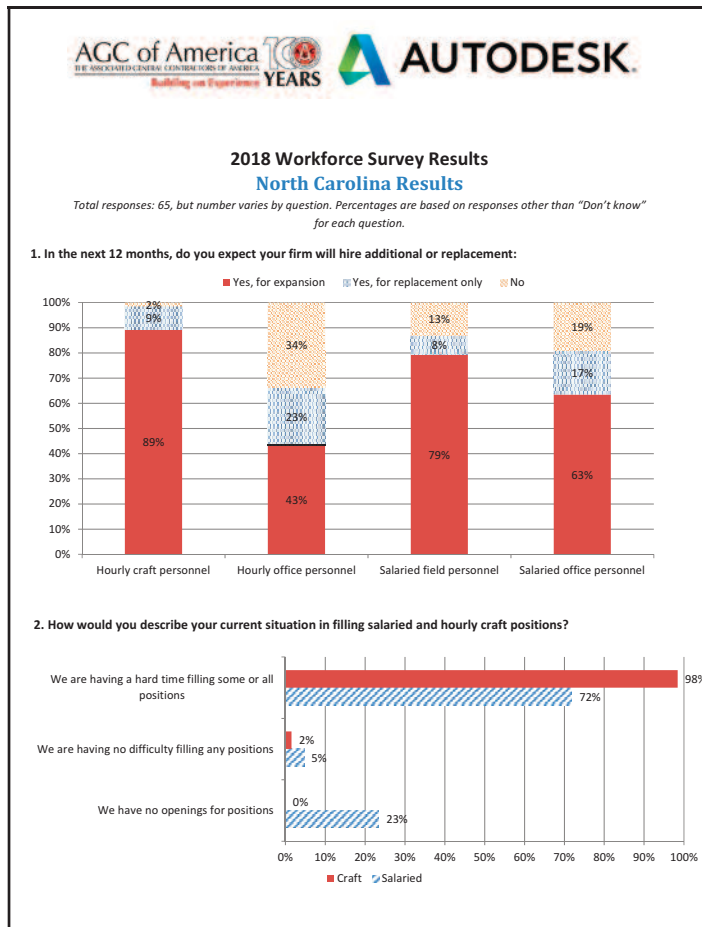
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LABOR SHORTAGE:

98 percent of NC contractors are having trouble finding qualified trades workers

North Carolina Construction News staff writer

A widespread labor shortage is pushing up construction through most of the country, the Associated General Contractors (AGC) of America and Autodesk reports in a survey, and the problem is especially acute in North Carolina.



An incredible 98 percent of the state's contractors said they "are having a hard time in filling some or all positions" for business expansion. And a significant majority (72 percent) are having trouble finding workers for "replacement only".

Nationally, the survey shows that 80 percent of 2,552 U.S. construction companies indicate they are having difficulty hiring construction workers. This is an increase from 70 percent in 2017.

The labor shortage is especially severe for sheet metal workers, roofers and drywall installers, where 100 percent of the businesses surveyed say they have found it is comparatively difficult to find workers from last year. The labor shortage is less acute for salaried positions, but 57 percent say they are having trouble finding project managers and superintendents.

AGC-Autodesk workforce survey results for North Carolina

On a national level, "What was striking was how universal the difficulty was filling craft positions," AGC chief economist Ken Simonson told reporters in a conference call. "Now they're saying no, our bench is empty."

Simonson said the construction industry is investing in more advertising and workforce training and seeking more government funding as it tries to attract more workers. It is also pushing for immigration reform that encourages skilled workers to be allowed legally to enter the U.S.

"You can't just call back someone who was laid off a few years ago," Simonson said. A challenge is educating prospective workers that construction isn't a "dirty, dead-end career."

Some construction workers can earn six figures a year without a college degree, based on federal average wage data, AGC reported.

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At least 35 killed in devastating floods

Construction opportunities ahead as recovery bill to be between \$38 and 50 billion – or more

North Carolina Construction News staff writer

As North Carolina's death toll from Hurricane Florence reaches 35 (there are additional fatalities in South Carolina), and flooding continues in Wilmington and other coastal and inland communities, how much will the rebuilding cost, and how will it affect the state's construction economy?

Moody's Analytics estimates overall storm damages could reach \$38 and \$50 billion – more than double earlier estimates. Much of the money will ultimately flow to contractors and builders, especially in the residential sector, though the exact impact on the construction industry is still uncertain.

"We were close to \$10 (billion) on Friday (Sept. 14), CNBC quoted

Moody's Analytics chief economist Mark Zandi as saying. "The flooding is more extensive than we had anticipated and the storm was slow moving. It hung over the Carolinas a lot more than was expected."

Moody's says Florence is among the top seven costliest hurricanes ever recorded.

While the storm wasn't extremely strong in wind strength, coming ashore as a Category 1, its rainfall set a record, surpassing Hurricane Floyd in 1999.

"These estimates are based on the information available, and there is a high probability that Florence's costs will be revised significantly higher with added information on inland flooding," Moody's said in an earlier report.

The damage is unlikely to impact



large home builders, with home buying activity simply being pushed further into the future, not stopped altogether.

"After three to six weeks of sales disruption due to clean up and electricity and infrastructure restoration, sales should return to positive year-over-year levels by year end," JMP Securities analyst Peter Martin wrote in a research note. "Given enhanced building codes for new homes, we expect most damage to occur to legacy existing homes, which should create improved long-term demand for housing."

Martin said that is what happened last year after hurricanes Harvey and Irma in Texas and Florida. The damage caused some concerns in the resale market, as potential buyers feared hurricane damage.

"I expect builders to say, we're going to have some cleanup expenses," Martin said in a published interview. "A couple of houses are damaged, but we'll defer closings."





“We are thankful that as far as we know, none of our employees have been injured during the storm and subsequent flooding over the past few days, however many have damaged homes and some have been displaced by the flooding,” he said.

While the storm didn’t severely harm North Carolina’s biggest metropolitan centers of Charlotte and Raleigh/Durham, thousands of homeowners and many businesses experienced the extreme flooding in several communities.

As an example, the North Carolina Military Business Centre (NCMBC) reported that its costal offices, including Wilmington, Jacksonville, Havelock and Moorehead City, had to close because of the flooding. As

Building material prices may rise, in part because of increased demand, supply disruptions, and (only indirectly related to the hurricane), President Trump’s tariffs on imported products, including Canadian soft-wood lumber.

As an example, Louisiana-Pacific Corporation said that its engineered wood operations in Wilmington have been temporarily shut down, which suffered some damage during the storm.

LP says 149 employees work at the Wilmington plant, among 700 people at three locations in the state. The company’s operations in Roaring River and Roxboro were not impacted by the storm.

“Our thoughts and prayers are with those impacted by this storm, especially our employees,” LP CEO Brad Southern said in a statement.



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NCDOT seeks emergency contractors for Hurricane Florence recovery

North Carolina Construction News staff writer

The North Carolina Department of Transportation (NCDOT) has put out a call for emergency contractors to help with the flood relief and recovery.

Qualifying criteria include:

- Must own preferred equipment for emergency responses
 - Prequalification is required. Please visit: <https://connect.ncdot.gov/business/Prequal/Pages/Subcontractor.aspx>
 - Insurance is required (Worker's Comp and General Liability) – can purchase for time needed
- Work categories include:
- 0050 – Hauling (Not Asphalt)
 - 0055 – Hauling (including Asphalt)
 - 0200 – Clearing & Grubbing
 - 0210 – Removal & Demolition
 - 0310 – Pipe Installation
 - 1105 – Traffic Control
 - 1651 – Tree Removal & Landscaping
 - 6000 – Debris Removal
 - 6010 – Cut & Shove
 - 0099 – Other (Can include Bridge Repair)

For more information, contact Jenine Stevenson phone (984) 365-0628, email: jstevenson@ncdot.gov; or Christy Thaxton: Phone: (984) 365-0641, email: cwthaxton@ncdot.gov

Meanwhile, if your home or business has been damaged by Florence, you can begin the Federal Emergency Management Agency (FEMA) registration process by calling (800) 621-FEMA or visiting www.disasterassistance.gov.

well, NCMBC's inland offices in Fayetteville and Goldsboro were closed.

NCMBC says it isn't certain yet of the status of the annual Southeast Region Federal Construction, Infrastructure and Environment Summit scheduled for Oct. 24 and 25 in Wilmington.

"The NCMBC staff has connected with staff members of the Wilmington Convention Center, on their well-being but not on the state of the convention center or the hotels, etc.," NCMBC said in a release. "Once the Convention Center and hotels have the ability to access damages, within the next week, we will provide an update on the summit."

"For now we are planning to move forward until told otherwise."



CAGC encourages members to support Hurricane Florence recovery efforts

North Carolina Construction News staff writer

The Carolinas Associated General Contractors (CAGC) has invited members to support and lead in the Hurricane Florence recovery effort.

"As one Carolina, we are both saddened and at a loss by the devastation Hurricane Florence has left behind," CAGC said in a statement. "In North Carolina alone, enough rain was dumped to cover the state of Texas with four inches of water."

"We sincerely hope that you and your loved ones are safe and sound – and that all your businesses and livelihoods get up and running again quickly in North and South Carolina."

"As an organization supporting the improvement of the quality of life in the Carolinas, we want to assist our members, as well as the construction industry, as we all work together to rebuild and overcome this damage that no doubt will run into the billions of dollars."

"At a time like this, it is good to see everybody pulling together as one Carolina," CAAG board chair Paul Mashburn said.

"Our thoughts and prayers are with you all," CAGC said.

CAGC provided the following list of reputable organizations collecting funds to support the recovery efforts.

NC Disaster Relief Fund <https://governor.nc.gov/donate-florence-recovery>, text "Florence" to 20222

One Carolina Shirts Supporting Habitat for Humanity: <https://palmettoshirtco.com/>

Red Cross: <https://www.redcross.org/donate/hurricane-florence-donations.html> (Google is matching up to \$1 million), text "RED CROSS" to 90999 to make a \$10 donation

United Way: <https://www.unitedway.org/recovery/hurricane-recovery-fund>

Save the Children:

<https://www.savethechildren.org/us/what-we-do/emergency-response/hurricane-florence?vanityurl=hurricane-florence>

Cajun Navy Relief:

<https://www.paypal.me/cajunnavyrelief>

Humane Society of the United States:

https://secure.humanesociety.org/site/Donation2?df_id=24266&24266.donation=form1&src=web_ws_ea_rf_florence_091318_id93480558



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IN THE COURTS

California man pleads guilty to \$1.9 million Appalachian State University construction invoice fraud

North Carolina Construction News staff writer

Prosecutors say a man has pleaded guilty after he created a fake company and posed as a construction company worker to steal almost \$2 million from Appalachian State University in Boone.

The U.S. Department of Justice says Ho Shin Lee of Los Angeles pled guilty in federal court to money laundering.

Lee was arrested in California earlier in the year and charged with 14 counts.

According to allegations contained in the indictment, on or about Nov. 18, 2016, Lee applied to the Secretary of the State of California to register Royce Hub Trading, Inc. as a California corporation, claiming that it was in the business "general merchandise."

Lee represented himself to be the chief executive officer, secretary, and chief financial officer of Royce Hub Trading. The indictment alleges that on or about Nov. 23, 2016, Lee opened a bank account with a Los Angeles financial institution in the name of Royce Hub Trading, Inc. Lee claimed to be president of Royce Hub Trading and was the sole account holder.

Court documents indicate that in 2016, Appalachian State University awarded a contract to Rodgers Builders to build a new health sciences building. On or about Dec. 2, 2016, an employee at Appalachian State received an email from an unidentified individual purporting to be D.M., an employee of Rodgers Builders.

The e-mail was sent from accounts@rodgersbuildersinc.com. The legitimate e-mail address for Rodgers Builders was "rodgers-

Architect's rendering of the Appalachian Beaver College of Health Sciences building, under construction by Rodgers Builders



builders.com." The fraudulent e-mail contained a direct deposit form and instructions to change Rodgers Builders' previously submitted banking information to Lee's newly opened bank account.

The indictment alleges that the Appalachian State employee changed the payment information as directed by the fraudulent e-mail, and on or about Dec. 8, 2016, a payment of approximately \$1,959,925.02 intended for Rodgers Builders by Appalachian State was directed to the bank account controlled by Lee.

According to the indictment, on or about Dec. 12, 2016, Lee received the fraudulent proceeds, and quickly transferred the funds through a series of financial transactions out of his bank account, knowing that the

transactions were designed to conceal the nature, location, source, ownership, and control of the money.

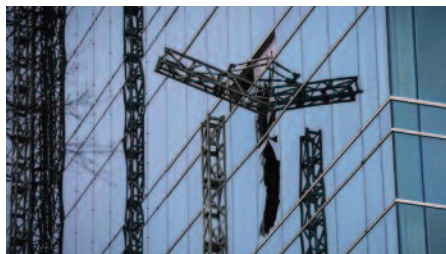
Lee was charged with 14 counts of money laundering. The maximum penalty for the each charge is 20 years in prison and a \$500,000 fine.

The university has recovered the bulk of the money. On Jan. 24 this year, U.S. Attorney Murray announced that \$1,542,442.33 would be distributed to Appalachian State, following successful civil forfeiture proceedings against money seized from bank accounts controlled by the alleged fraudster.

Three companies to pay \$84,000 in fines for 2015 Raleigh scaffolding accident

Three companies will pay a total of \$84,000 in fines for violations related to a deadly 2015 scaffolding accident in Raleigh that killed three workers and seriously injured a fourth.

The state levied the biggest fine against Associated Scaffolding for the most serious violations. The fines were initially set at \$152,000, but the company challenged the penalty and



The accident scene in 2015 (WRAL-TV)

a judge reduced the amount owed to \$70,000.

The other companies, Jannawall and Juba Aluminum, each paid their \$4,200 fines but, as part of the settlement, the labor department changed the violation from serious to "other."

Jose Erasmo Hernandez, 41, and Anderson Almeida, 33, of Durham, with Jose Luis Lopez-Ramirez, 33, of Clinton, fell to their deaths March 23, 2015, at the Charter Square construction site at South and Fayetteville streets. Elmer Guevara, 53, was treated for serious injuries.

While the safety violation case has been closed, a lawsuit is still pending by Guevara and the three victims' families against several companies associated with the project.

That lawsuit alleges general contractor Choate Construction rushed the scaffold dismantling, which forced Associated Scaffolding, Inc. to load sections of the scaffolding as

it was taken down onto the platform with the workers. The platform was supposed to hold no more than 2,500 pounds, but it was carrying more than 4,200 pounds when it fell, the lawsuit asserts.

The men, and part of the platform they were standing on, fell several stories when one of the tracks snapped off the scaffold while it was being dismantled, according to published reports.

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Leadership, innovation and construction industry commitment results in recognition and insights

North Carolina Construction News staff writer

How do you select the top 10 North Carolina construction law practices?

The question is much easier to ask than to answer. We took into account several qualities in determining which practices should be included in the list, including: The number of lawyers focused on construction law, published work and articles relating to the industry, and leadership roles within the Construction Law Section of the North Carolina Bar Association (NCBA), as well as within relevant specialized construction associations.

It's hard enough to figure out which practices should be on this Top 10 list, so we won't try to rank them in any sort of hierarchy. Accordingly, this listing is alphabetical.

Conner Gwyn Schenck

This well-established firm concentrates its practice on construction law and serving the construction industry. Through 11 lawyers in offices in Raleigh and Greensboro, Conner Gwyn Schenck PLLC serves a wide range of sectors in the industry. Firm members have extensive experience and have leadership roles in construction law and construction industry organizations.

Several lawyers at Conner Gwyn Schenck are licensed professional engineers and one is a registered architect. The lawyers at Conner Gwyn Schenck regularly speak at professional, trade and client-focused organizations, and have written numerous articles and publications on construction law. They are the authors of *North Carolina Construction Law*, a treatise published by Thomson Reuters.



Johnston Allison & Hord PA

Attorneys in the Johnston Allison & Hord Construction Practice Group serve clients throughout the Southeast, but primarily in North and South Carolina, with experience in construction arbitration, mediation and litigation. Notably, Charlotte-based attorney B. David Carson is the immediate past-chair of the NCBA's Construction Law Section. Carson and other attorneys from the practice have served on industry boards, authored textbooks on North Carolina construction and employment law, OSHA regulations and construction claims.

Lewis & Roberts

Lawyers at this Raleigh-based practice have more than 50 years of combined experience serving North Carolina's AEC community. Lewis & Roberts provides "common-sense, results-oriented, cost effective guidance at every junction of a construction project, from contract drafting and negotiation, to real-time project counseling, to formal dispute resolution when claims can't be resolved at the project level." The firm's clients include local and regional general contractors, specialty subs, private owners, engineering firms, and bonding companies.

Lewis & Roberts focuses on seeking resolutions to legal challenges before they need to go to court. However, if the matter cannot be settled without litigation, its attorneys have "the construction knowledge and trial experience needed to achieve results in mediation, arbitration and litigation."

Lawyer Matt Bouchard is currently secretary of the NCBA's Construction Law Section.

Nexsen Pruet

Nexsen Pruet is one of the Carolinas' largest law firms. Its comprehensive and extensive construction law team can also draw on other specialists for complex cases. It has offices in Charlotte, Raleigh and Greensboro, as well as Charleston, Columbia, Greenville, Hilton Head and Myrtle Beach, SC.

Nexsen Pruet lawyers have broad industry experience. They can handle pre-construction planning, bid packaging, project financing, litigation, including multi-party and complex construction related litigation in state and federal courts, mediation and arbitration proceedings, mechanics' liens and bond claims, and surety and insurance matters, as well as many other challenging issues.

Practice group leader Harper Heckman (also office managing partner of the Greensboro office), is a Fellow in the American College of Construction Lawyers. The construction team of Nexsen Pruet is ranked as a national tier one firm by *US News & World Report* "Best Lawyers."

The construction team offers regular seminars for the construction industry.

Parker Poe Adams & Bernstein LLP

Partner Robert Jason Herndon is chair of the NCBA's Construction Law Section, leading approximately 600 full and part-time construction lawyers throughout the state. The practice has extensive capabilities within construction and development law.

Shumaker, Loop & Kendrick, LLP

Shumaker is a 260 lawyer firm with offices in Charlotte, North Carolina, Charleston, South Carolina, Toledo and Columbus, Ohio, Tampa and Sarasota Florida and Bloomfield Hills, Michigan. The construction lawyers at Shumaker represent all participants on commercial construction projects, including lenders, owners, developers, general contractors, subcontractors, sureties and suppliers. The Shumaker construction law attorneys have substantial experience on all types of commercial construction projects, whether private, city, county, state or federal construction projects, and many different types of project delivery systems.

That experience covers, among other things, licensing, competitive bidding, bid mistakes and bid disputes, contract drafting and negotiation, change order disputes, delays, acceleration, differing site conditions, defective work claims, construction claims, liens and bonds. The Shumaker construction law attorneys have successfully prosecuted and defended construction disputes in both litigation and arbitration proceedings throughout the United States.

Spilman Thomas & Battle PLLC

Bryan G. Scott based in the practice's Winston-Salem office, is the current vice-chair of the NCBA's Construction Law Section. Spilman,

Thomas & Battle also has offices in Pennsylvania and West Virginia.

Its attorneys have experience in utility projects involving power plants, natural gas facilities, and sewer pipelines, as well as other infrastructure projects, such as roads, bridges, tunnels and overpasses.

Young Moore and Henderson, P.A.

This Raleigh-based practice's construction lawyers focus on knowing their clients and the construction industry, combining an interest in alternative dispute resolution concepts with a recognition that, if it is necessary to fight all the way to trial, the best strategy is to truly know and understand the client's circumstances before embarking on the legal journey.

Lawyers Jay Tobin and Bob deRosset focus on construction law within the 40-lawyer practice. See story page 13.

Wall Templeton & Haldrup, P.A.

Wall Templeton Attorneys has offices in Raleigh and Charleston, SC, with an extensive construction law focus.

Founding shareholder Keith Coltrain has been recognized for six consecutive years as one of The Best Lawyers in America – a listing first published in 1983 in the leading national publication for attorney referrals.

The practice represents clients from all industry perspectives, including owners, sureties, insurers, contractors, subcontractors, designers and suppliers. "The issues we tackle are numerous – construction and contract disputes, acceleration and delay claims, risk assessment and avoidance, abandonment claims, disruption claims, consequential damages, insurance coverage disputes, economic and catastrophic loss, employment, debt collection," the practice says in a statement.

Some of Wall Templeton's attorneys have engineering backgrounds and real-world experience in the construction industry, meaning they can truly understand the issues from practical as well as legal perspectives. (See story page 12.)

Ward and Smith P.A.

This practice has a strong construction industry focus, with a scheduled half-day Sept. 30 industry-related conference in the Research Triangle Park (RTP). Among other topics, three Ward and Smith attorneys will present on legal topics such as construction-related employment law, including piece-rate compensation, the top five things to avoid to minimize contract risk, and best practices for dealing with government investigations.

For more information, see <https://www.wardandsmith.com/2018-construction-conference>.



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WALL TEMPLETON & HALDRUP:

Solid experience and leadership define construction law priorities

North Carolina Construction News special feature

It is easy to see why Wall Templeton has become one of the Top 10 construction law practices in the Carolinas.

However, it is more challenging to single out a single lawyer for recognition because the practice's strength is reflected in the achievements of several exceptionally qualified lawyers specializing in construction law.

We invited a practice spokesperson to provide further details, and she responded with the observation that "our attorneys have consistently been recognized by their peers as being elite and taking leadership positions in the field."

Among other recognitions, here are some highlights:

Morgan Templeton: Best Lawyers in America since 2011; Charleston, SC's 2017 "Lawyer of the Year". He is a member of the American Board of Trial Advocates.

Graham P. Powell: 2018 Charleston Business Magazine's Legal Elite, also designated in the Best Lawyers in America for 2018-2019.

Keith Coltrain: 2013 recipient of the Carolinas Associated General Contractors (CAGC) Build With the Best Pinnacle Award; 2013-2014 chair of the Construction Law Section of the NC Bar Association, current co-chair of the NC Bar Association Construction Law Section/CAGC Joint Committee; Business North Carolina's Legal Elite – 2012-2018; Best Lawyers in America – 2013-2018.

Neil Haldrup: Testimony before the South Carolina General Assembly on statute of repose revisions, which resulted in the statute of repose being reduced from 13 to eight years, as well as on proposed changes to the mechanics' lien laws. He has also been listed in The Best Lawyers of America since 2015.

William Silverman: Former chair of the Construction Practice Group for the North Carolina Association of Defence Attorneys and listed in NC's Legal Elite for 2014 and 2016.

Trey Watkins: Past-president of the SC Defence Trial Attorneys Association's Young Lawyers.

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Without singling out specific lawyers, the spokesperson offered some basic observations about the practice.

"We are experienced, responsive and develop client-driven results," she said. "When our clients face a problem, we are available to listen and respond to their needs. We use our considerable experience to identify the risks and propose solutions and we keep our clients updated and involved until the problem is resolved."

"We focus on understanding the client's particular needs and desires and then we plan a course of action that will best satisfy the client. We are ready to resolve a problem without lengthy, costly and uncertain litigation but are always ready to go to court if the client wants to establish a reputation of winning."

"In short, when clients have a problem, we use our experience to create a timely and client-driven solution."

Wall Templeton focuses primarily on dispute resolution - "whether it be payment issues, delays, construction defects or product failures," the practice says. "Several of our attorneys, however, also handle a substantial amount of front-end work in negotiating contacts and advising clients with regard to risk management."

The practice represents contractors, subcontractors, sureties, insurance companies and, on occasion, owners, designers and suppliers.

For more information,
see <https://www.walltempleton.com>.

YOUNG MOORE AND HENDERSON ATTORNEYS

Jay Tobin and Bob deRosset focus on knowing clients and construction industry in resolving legal challenges

North Carolina Construction News special feature

Construction lawyers Jay Tobin and Bob deRosset from Young Moore and Henderson in Raleigh say they appreciate the importance of knowing their clients and the industry in resolving a diversity of legal challenges.

Both believe that new alternative dispute resolution approaches could help to reduce litigation costs and achieve better results, but neither is afraid to fight hard for their clients and try cases when necessary.

deRosset focuses primarily in construction, business, and product liability law. He finds satisfaction in working with clients who build and create real things. "So much time in the legal world, we work with documents and abstract ideas," he says. "I enjoy the opportunity to see ideas become physical objects in the real world, and to be part of that process."

He understands the importance of industry relationships, and the fact that often contractors "simply don't have a choice about what they sign or agree to," but says if they can understand the legal implications of their contracts, "they can make a better decision about whether to proceed or not."

As an example, often contractors engage in joint ventures to "pool resources to take on large projects, mitigate risk, and do things they couldn't ordinarily do on their own." But it is important to ensure the joint venture relationship doesn't saddle a participant with problems from a partner gone bad.

In at least one case, deRosset was able to pursue his client's claim against all parties to a joint venture and take advantage of the joint venture relationship to pursue the party with the deepest pockets, even though that party erroneously believed it could not be liable for the outcome of the project.

deRosset is also part of an effort to introduce collaborative law to the construction industry in North Carolina. In collaborative dispute resolution, parties work through their own legal counsel to "arrive at a solution that is based on their joint interests in having a resolution, rather than one party winning or losing."

This collaborative approach can be ideal for the construction industry, where parties often have an ongoing relationship and might want or need to work together in the future, deRosset says.

In the collaborative process, parties agree to share all relevant and pertinent information "without the necessity of resorting to the discovery process" and they agree to consider using joint expert consultants.

At the outset, both sides enter into a written agreement to work in good faith to resolve the dispute without court intervention. The agreement provides that if the parties cannot work out a solution collaboratively, then they

will find new lawyers to take the matter to court. The agreement also provides for confidentiality of communications exchanged during the collaborative process. This helps ensure that the lawyers and clients have a strong motivation to negotiate a good faith settlement, and provides confidence that the initial attempt to work things out will not be used against them if the matter must proceed to traditional litigation. Collaborative dispute resolution can also allow parties to rapidly resolve issues at a lower cost than traditional litigation.

Jay Tobin says another alternative dispute resolution model, "rolling mediation," can also be effective in resolving disputes.

In this approach, the parties agree at the outset to hire a mediator who would work as a kind of "special master," focusing on expert testimony. The experts for each side get together to figure out common ground and to try and narrow the dispute. The goal is to "see if they can come up with some kind of consensus."

"If the experts can reach consensus on the cause of the problem, the parties can be in a better position to figure out a resolution to the dispute. If the parties can agree early on, then everyone can agree to a solution before legal costs spiral out of control."

However, Tobin says there are times when he believes clients need to go all the way to trial.

In one case he tried, his client received claims from 20 separate homeowners asserting they experienced cracking because of blasting operations.

But Tobin knew his client was careful in its practices, through using seismic studies and planning to avoid any damage to surrounding structures. When experts inspected the houses, they discovered inconsistencies that proved the cracks did not arise from the blasting. So he and his client agreed to try one of the 20 claims as a bellwether case. They won a total defense verdict, and ended the threat from the remaining claimants.

Tobin says in 27 years of practice, he has learned that it is vital to spend time and really know his clients. "You have to sit down and meet clients in person," he said. "It is a mistake to do it all by emails, phone calls, and document review." The in-person connection helps Jay ensure important issues are not ignored, and it allows him to really understand the story behind the litigation.



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New rules on renewing and canceling your Notice to Lien Agent

Luke J. Farley, Sr.
Conner Gwyn Schenck PLLC

When you're in a payment dispute as a contractor, your greatest leverage can be your right to file a lien on the project, so anytime there are changes to the North Carolina lien law, it's important to take note. The biggest change to the law in the last 20 years was the establishment in 2013 of the lien agent system and the LiensNC.com website to support it. Come this fall, those laws will change again.

The state legislature recently added new rules for renewing and canceling a "Notice to Lien Agent," one of the key document filings under the 2013 law. These changes take effect on Oct. 1. This article provides a refresher on the original lien agent law, highlights and explains the upcoming changes, and suggests some best practices to help you comply with the new law.

Since 2013, project owners have been required to appoint a lien agent for private projects where the cost of the project was \$30,000 or more. The lien agent is a title insurance company that receives information about the identity of potential lien claimants who've supplied labor or materials to the project. After the lien agent is appointed, subcontractors and suppliers are then responsible for filing (yet another) document, the Notice to Lien Agent, which includes the potential claimant's contact information and a description of the project.

The lien agent process creates a registry of potential lien claimants on a project and puts the owner on notice of the existence and identity of subcontractors and suppliers that might be owed money. This, in turn, allows the owner to be sure subcontractors and suppliers have been paid by the general contractor and obtain the appropriate lien waivers at



the end of the job. The lien agent system is meant to avoid the so-called "hidden lien" problem that arises when the lien isn't filed until after the project is finished. Owners bear a risk that they'll pay a general contractor and learn only later the general contractor hasn't been paying its subcontractors and suppliers down the chain.

Filing a Notice to Lien Agent has become an important part of protecting your lien rights. The best practice is for all subcontractors and suppliers to electronically file the notice through the LiensNC.com website for every project that meets the \$30,000 threshold. While filing a Notice to Lien Agent on every project may seem time consuming and expensive, the benefits generally out-

weigh the costs. Not filing a Notice to Lien Agent can result in losing your lien rights, which in a payment dispute are usually your greatest leverage.

The most important change coming to the lien agent process is that your Notice to Lien Agent will now expire after five years if you don't renew it. In light of this change, you may need to develop a system to track when your notices expire. This could be something as simple as an Excel spreadsheet.

As a practical matter, the new expiration date may not be much of an issue unless you're involved with a big project that takes years to finish. Most projects don't have a lifespan greater than five years. If, however, you have a need to keep your Notice

to Lien Agent alive beyond the initial five-year term, you can renew it once for one additional five-year period. If you have to renew your notice, you need to do it before the original notice expires. If you allow a notice to expire, you can't renew it afterward.

Does the new five-year expiration period apply to old notices? The legislation doesn't say whether it applies retroactively to notices filed before Oct. 1. If you have on-going projects for which you haven't yet been paid, the safest course of action would be to figure out which notices are about to expire and file a renewal. Remember though for retroactivity to be a concern you'd need to have filed your Notice to Lien Agent sometime back in 2013, so again it won't be an issue for most projects.

The second major change to the lien agent process is a new obligation to cancel your Notice to Lien Agent if the project is a one or two-family dwelling. The new cancellation requirement seems meant to ensure that houses, which are often sold soon after they're finished, will have totally clean title at the time of sale with nothing in the public record to suggest otherwise.

If you've filed a Notice to Lien Agent on a house project, the new rules require you to cancel your notice within a "reasonable amount of time" after receiving final payment. That phrase isn't defined in the statute, but prudence dictates that you shouldn't cancel the notice until the final check clears and you know the funds are good. After that, it's probably best not to wait more than thirty days to cancel your notice.

The law doesn't specify the consequences if you don't cancel in a timely fashion, but it's not worth finding out. The most convenient way to cancel the notice is through the LiensNC.com website and convenience here is crucial, since canceling your notice is now another administrative task to deal with. Remember, though, you have no obligation to cancel your notice unless the project is a one or two-family home. For all other types of projects, just allow the notice to expire automatically on its own.

The last change worth mentioning won't surprise anyone in the construction industry. Like the cost of labor and materials, the cost to file a Notice to Lien Agent is going up, though the culprit here isn't a tariff or a skilled labor shortage. The filing fee for a one or two-family house has gone from \$25 to \$30, a 20 percent increase. The filing fees on all other types of projects are increasing from \$50 to \$58, a 16 percent increase. The fee increases could be especially costly for anyone doing high volume residential work, like subcontractors and suppliers working for large tract home builders. An extra \$5 per notice per house could add up quickly.

The new rules on renewing and canceling Notices to Lien Agent don't make any fundamental changes to the lien agent system,

but they could dramatically affect your lien rights under some circumstances and they add new costs and administrative burdens.

There are probably more tweaks coming. Adding a lien agent to the mix was the biggest change to North Carolina lien law in decades, so you can expect that the state legislature will continue to fine tune the law as the construction industry gains more practical experience working with lien agents.

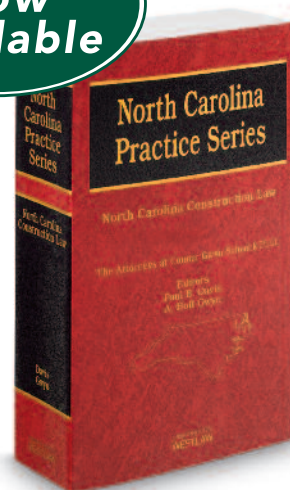
Luke J. Farley, Sr. is a construction and surety lawyer in the Raleigh office of Conner Gwyn Schenck PLLC. His practice focuses on contract disputes, lien and bond claims, and licensure of contractors and engineers. He can be reached at lfarley@cgspllc.com or by phone at (919) 789-9242.

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Publix to build \$300M distribution center in Greensboro

Publix plans to build a new distribution center in Greensboro.

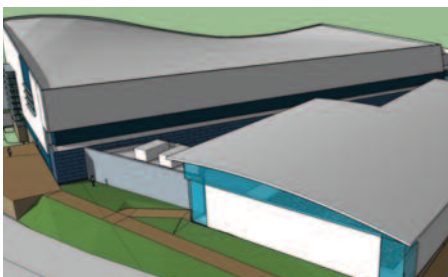
The company will invest \$300 million to develop a 350-acre area in East Greensboro. The investment could bring as many as 1,000 new jobs to the region.



“Publix recognizes North Carolina’s commitment to helping businesses and employees thrive, and they trust our workers to fill up to 1,000 new jobs,” North Carolina Gov. Roy Cooper said in a statement. “We will keep making sure our workforce has the capacity to excel and meet the needs of Publix and other quickly growing businesses in North Carolina.”

Construction is expected to be completed by 2022.

Construction to begin on \$8 million Greensboro Aquatics Center expansion



The Greensboro Aquatics Center is preparing to start construction on its \$8-million expansion project.

The center held a groundbreaking ceremony on September 6 to mark construction of a second building that will house a new pool – the facility’s fourth pool.

In July, the Greensboro City Council unanimously voted to approve an \$8.2-million bid from Shelco Construction to build a new pool at the Greensboro Aquatic Center. The new

pool will connect to the existing GAC and provide 19 additional short course lanes and eight long course lanes. It will serve a myriad of uses, including providing increased pool time/swimming lanes for members, clubs and high school teams.

Construction is expected to be completed in June of next year.

Distribution firm begins construction of \$2.5 million expansion in Mebane

Brooks Distribution Services is investing \$2.5 million to expand its central hub in Mebane, the Triad Business Journal has reported.



Construction is underway on a 250,000-sq.-ft. expansion of the company’s 90,000-sq.-ft. home office located in Mebane at 2267 U.S. 70, Brooks Distribution vice-president Bill Wallace told the Journal.

The building is expected to be completed by the end of the year.

Construction begins on \$14M Randolph Community College Allied Health Center



Located on Pine St., the new \$35-million building will accommodate the company’s 650 associates currently working in the twin buildings at 223 West Nash St. or elsewhere in Wilson, BB&T said in a statement.

The new facility will be built on property BB&T currently owns, located directly behind the towers on West Nash St. and bordered by Pine and Broad streets.

BB&T expects to begin site work on the project before year-end and construction to take place throughout 2019 with an opening date yet to be determined.

On Aug. 23, Randolph Community College in Asheboro held a groundbreaking ceremony for the new Allied Health Center, the Courier Tribune reports.

The college is building a two-story, 45,000-sq.-ft. facility that will be home to the associate degree in nursing, radiography, medical assisting and emergency medical services programs.

The \$14.5-million project calls for the construction of an L-shaped building that will be equipped with video capture capabilities. The facility will be equipped with a simulated health care community, a simulated hospital with an ICU room, a maternity room, nursing stations, radiography labs, exam rooms and much more. It will also be home to a simulated apartment for home health care and for emergency services training, according to the Tribune.

The architect for the building is Little Diversified Architectural Consulting, while the general contractor is Charlotte-based Clancy and Theys Construction Co.

Construction – which started August 27 – will take approximately 18 months to complete. The RCC plans a ribbon cutting in early 2020.

\$46.8 million plus Stonewall Apartments project takes shape in Charlotte

Construction is underway on the 522,359 sq. ft. mixed-use 650 Stonewall Apartments project in Charlotte.

The 302-unit project on a 2.6 acre site developed by Proffitt Dixon is expected to be completed by the spring of 2019. Work started after the developer secured \$46.8 million in construction financing in 2017.



Charlotte-based Archer Western Contractors (Walsh Group) is overseeing construction, while Axiom Architecture and McVeigh & Mangum, both also of Charlotte, are serving as the architect and electrical engineer, respectively.

Wayne J. Griffin Electric, Inc., from Holliston, MA is the electrical subcontractor. Griffin says in a statement it will be installing three 4,000-amp switchboards, site lighting, duct banks, floor boxes, lighting controls, and emergency lighting. The Griffin team will also be responsible for installing all meter centers, as well as electrical distribution and a turn-key fire alarm system.

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CAGC announces 2019 directors slate

The Carolinas Associated General Contractors (CAGC) Board of Directors nominations committee, led by committee chair Ron Brown, State Utility Contractors, Inc., has announced its slate for the 2019 term. Nominated directors are:

Chair: Ron Brown, State Utility Contractors, Inc.

Chair elect: Casey Schwager, Sloan Construction Company, Inc.

Treasurer: Charlie Wilson, C. T. Wilson Construction Company

Vice-chair: Mark Johnnie, Balfour Beatty

Immediate past chair: Paul Mashburn, Mashburn Construction Co., Inc.

CAGC president and CEO: Dave Simpson, Carolinas AGC

Building division chair: Dean Wilson, Hood Construction

Utility division chair: David Stike, Sanford Contractors

Highway division chair: Jonathan Bivens, S. T. Wooten Corporation
Specialty division chair: Barry Wells, SimplexGrinnell

Supplier/service division chair: Robert Coon, Scott Insurance

Directors at large
Sam Young, Young & McQueen Grading Co., Inc.
Greg Hughes, Contract Construction, Inc.
Ty Edmondson, T. A. Loving Co.

Appointed director
Melvin Williams, S&ME, Inc.
Traci Strickland, Eldeco, Inc.

New ABC Carolinas president/CEO looks forward to growth, new partnerships

The recently appointed Associated Builders and Contractors (ABC) of the Carolinas president/chief executive officer says she is looking forward to expanding the group in 2019 with outreach and enhanced member services. The chapter is celebrating its 20th anniversary.

"I have begun implementing best practices in internal policies and procedures, association operations management, development and delivery

of quality programming and information, and prospective member identification," Angela Latino wrote in a recent memo.

She started her new job on June 1 after moving from the New Orleans area.

"The chapter started off the year with change and transition, and we're now well on our way toward better addressing the needs of our current members, enhancing the value of your company's investment in ABC, and securing the potential for expansion in 2019," she wrote. "At the beginning of the year, our Board of Directors came together to face a challenging task of hiring a new chapter president/CEO after a term of 16 years with the same person. I understand this challenge firsthand because before moving to North Carolina in May, I helped my former board begin the transition of my departure after 10 years with that ABC Chapter."

"My plan is to have our team be the driving force in building consistency and professionalism in every service provided as part of the chapter's strategic plan. I will utilize my own experience to help create a framework for developing community partnerships to target new, cutting edge opportunities for our membership in the areas of craft, safety, and management education," she writes.

She says she encourages members to participate in the annual Excellence in Construction Awards gala in November.

"We have a chapter record of 93 "Intent to Submit" project entries, so every contractor, supplier, and associate member will have the chance to join us in acknowledging these accomplishments while having the time to get to know your ABC colleagues in an atmosphere of celebration," she wrote.

"Our plate is full, but I am thankful and confident we are ready for this evolution, and ready to take on the next 20 years . . . we are proving the old adage that the whole is greater than the sum of its parts because we are working together as ONE chapter in two great states!"

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