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## President's Message



The AEC has always been an organization that not only provides timely information for our member contractors and supply houses, but also sponsors events that are educational, fun and supportive of our members, their families and the young people in our communities.

There has been a whirlwind of activities in the past couple of months.

From May 30 to June 1, we hosted the 65th Annual AEC Spring Seminar in Hershey Pennsylvania. This event brought AEC members, their families and guests to this wonderful resort. On the first night of the seminar, our industry lobbyist Ken Riddett spoke at the business meeting about legislation in Albany that impacts our members (see his article in this newsletter). Mr. Riddett served for over 30 years as an attorney for the New York State Senate, including as Counsel to the Senate Majority for the last 10 years. Following that presentation, we had a boisterous family party featuring a face painter, carnival games

for kids, a strolling magician, a balloon artist and a glimmer tattoo booth. A good time was had by all. Special thanks to Ace Wire & Cable, Colonial Electric Supply, Colony Hardware, Cool Insuring Agency, Cooper Electric Supply, GKY Industries, HEFTI, L.B. Electric Supply, Monarch Electric, Montana Datacom, the NYS-AEC and Wesco Distribution for sponsoring this family fun night.

On Saturday, our members and families enjoyed visiting Hershey Park, which is dedicated to preserving the legacy of Milton S. Hershey, the chocolate-maker and philanthropist. In the evening, the AEC held the first ever Silent Auction to benefit the AEC Electrical Scholarship & Educational Fund. Thanks to the generosity of the donors and the participants, we raised over \$9,000 for scholarships for high school seniors with financial need and apprentices who wish to continue their studies in the electrical industry. AEC members also enjoyed a Glow Blacklight Theme dance party.

On June 18, the AEC Electrical Scholarship & Educational Fund held the 43rd Annual Scholarship Awards Dinner at the Inn at New Hyde Park. Since 1972 the Fund has helped young people achieve their

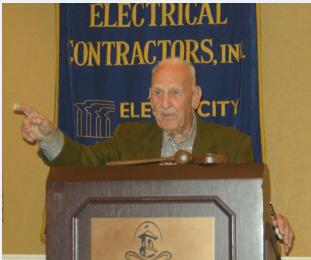
## President's Message Continued

goals in the electrical field. As the scholarship recipients gain the skills they need with our support, they become productive members of our industry. Some may even become the next generation of contractors! We were fortunate this year to be able to honor two long-time industry leaders at the Dinner: Sandra Milad Gibson, President of Milad Contracting Corp, and John Broxmeyer, Regional Manager of Cooper Electric Supply/Leviton Robbins. Both exemplify the ideals of the electrical industry. This year, we raised over \$70,000 and were able to provide scholarships to four new high school students, maintain our support for our previous recipients who are continuing their college education

and make financial awards available to five Local Union #3/IBEW apprentices. Between 1996-2014, the Fund awarded over \$701,000 to high school students, college students studying in the electrical field and electrical apprentices. About 200 people attended the 2014 Scholarship Dinner in support of this worthy cause. We are very proud to continue the tradition of supporting education in our industry.

Sincerely,  
Carol Kleinberg  
President

## AEC Spring Seminar 2014 | SNAP SHOTS



AEC Attorney Leonard Taubenblatt



Tony Caulo



Kids enjoying Family Fun Night



Hershey's Milk Chocolate



NECA Lobbyist Ken Riddett at the Business Meeting



Children playing a game



Barry Teger and family

## 50th Anniversary of the JIB Educational & Cultural Fund

This month, members of the AEC Board of Directors celebrated the 50th Anniversary of the JIB Educational & Cultural Fund of the Electrical Industry at the Long Island Education Center. The event included several roundtable discussions on the future of the industry with Business Manager Christopher Erikson and other officials from Local Union #3/IBEW.



Dawn & John Mannino, John Pinto and  
Dan Hernandez



Tony & Doreen Caulo, Gussie & Steve Anzalone  
and Carol Kleinberg

# From the Desk of Jeffrey Elmer, AEC Executive Secretary



We were very pleased with the applicants to the AEC Electrical Scholarship & Educational Fund this year. With so many excellent essays, it was difficult to decide the winners. Following are brief excerpts from compositions submitted to the AEC from several of the deserving high school seniors and apprentices who won our scholarships this year. When you read them, I am sure you will agree that the future of our industry is in good hands.

## **Shameer Hussain – AEC 2014 Honoree John Broxmeyer scholarship (4 year award)**

*High School for Construction Trades, Engineering and Architecture, completed internships at ACE Mentoring and Tishman Construction, will be attending the New York Institute of Technology*

I am so attached to electrical engineering because I am able to use my advanced math skills to solve difficult problems while also being able to work hands on. The moment I started High School, I knew that I wanted to be an electrical engineer and that there was nothing or no one that was going to stop me from reaching my dreams. I like to think of myself as an electron that is moving though a circuit, overcoming the resistors and reaching the end of the path.

## **Devon Hoyte - AEC 2014 Honoree Sandra Milad Gibson scholarship (4 year award)**

*Brooklyn Technical High School, successful scholar-athlete, captain of the school wrestling team, will be attending NYU Polytechnic School of Engineering*

Super Storm Sandy opened up my eyes to respect the forces of nature and the importance of planning and saving for the future and emergencies. A career in Electrical Engineering will allow me to work alongside great minds that improve and develop the wonderful devices and equipment we rely on every day. I want to become a part of society that continues to push the limits on what is possible.

## **Augustina Casapao – 1st Year Apprentice**

Keeping traditional tradesmen skills and values, along with the willingness to adopt new progressive methods involving the most up to date technology will surely enhance our electricians' skill level, increasing productivity on the job, which in turn makes them more marketable. With all the methods to improving productivity in any industry, it begins with the individuals wanting to advance themselves, which in

turn positively affects the overall quality of work.

## **Joseph Ryals- 2nd year Apprentice**

There are times when clients may decide to update their electrical plans. Sometimes, there may be a 'lost in translation' problem between the client, contractor and foreman in regards to when plans are updated verses the 'time window' for job completion. The blueprints don't arrive in time, the window for electrical completion is closing and other trades have work to do in the same area...Utilizing the newest smart device technology, pictures and real time communication along with blueprint apps with real-time updates could provide the solution.

## **Michael Konwissarz- 3rd Year Apprentice**

It is very important that union contractors keep up with any new job practices that can give us a leg up in our struggle with non-union contractors. In my three years as an apprentice until now, I have seen better tools being used as well as new wire pulling methods that make us more efficient workers. As a very proud Local #3 electrician, when I become a journeyman I want to know that when I say we are the best in the world, that I can back up my words. There are forever changing practices and techniques on the job and it is our responsibility to keep up with them.

## **Daniel Higgins- 4th Year Apprentice**

Tasking the apprentices you have working and having faith in them to come through on tasks given to them can greatly increase productivity. One technique that I believe is a time saver is to have the apprentices prepare and layout material for the day as I do on my project. Each day I survey the job and make a list of the materials needed. I gather the material and lay out pipe and fitting as far ahead of my journeymen as possible. I then take an inventory to see what we are running low on. Finally, I join the crew and help with the installation. I believe that productivity is high because I am preparing the day for the journeymen and properly tracking the inventory required.

## **Matthew Gramazio- 5th Year MIJ**

A feature that could prove very efficient along with digital prints would be a live interface with the design firm in charge of the job. If we could have instant access to the designer via a video stream, information could be relayed effortlessly. We would no longer have to wait for the chain of information to flow from the field to office via email or snail mail. It is important for us to stay up to date with the technology available to continue to be competitive in our field. Tablets and mobile devices are entering all parts of the workforce and it is important for us to embrace this and allow it to improve our work.

# What You Need to Know to Comply with Government MWDBE Program Requirements

By Elyse C. Ruzow, President, Ruzow & Associates, Inc.



Criminal cases involving construction companies violating federal, state and local MWDBE regulations have received a lot of attention recently due, in part, to the significant prosecutions and fines being levied by the government. *How do you stay out of the government's cross hairs?*

All construction contractors that do work on public or publicly funded projects are required to adhere to Minority, Women and Disadvantaged Business Enterprise ("MWDBE") program requirements. MWDBE programs typically require contractors to meet certain goals concerning the amount of work that must be subcontracted to contractors and suppliers owned by women, minorities and disadvantaged groups. Whether your company is hired directly by a government agency, a construction manager or a general contractor, you will be required to submit and follow a Minority, Women Business Enterprise ("MWBE") or Disadvantaged Business Enterprise ("DBE") plan. It is crucial that your plan is based on use of legitimate MWDBE subs and suppliers.

How do you know if the MWDBE you are using is legitimate? Although this may seem like an easy question to answer, that is not always the case. Some MWDBE companies may be legitimate, in that they have employees, a warehouse, equipment and other signs of legitimacy but may agree to act as a "pass through" on a particular job. For example, a legitimate WBE supplier may have a warehouse full of copper, conduit and wire. Therefore ordering those supplies and receiving credit for them would be allowable. However, if your company needed lighting and the WBE does not normally sell lighting, your company may not negotiate a lighting order with a lighting supplier and ask them to send the invoice to your WBE conduit and wire supplier and have her invoice you in order to receive WBE credit for the lighting. That is a pass through scenario. MWDBEs must perform a "commercially useful function" to be deemed legitimate by the government.

An MWDBE firm performs a "commercially useful function" when (i) the firm is responsible for performing a specific portion of the contract or purchase order; (ii) the firm carries out its obligations on the contract or purchase order by actually performing, managing and supervising the work involved; (iii) the firm performs work on a contract or purchase order that is normal for its business; (iv) the firm performs the work itself, rather than further subcontracting a portion of the work that is greater than would be expected by normal industry practices; and (v) the firm is adding value by performing the work themselves, rather than being an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of MWDBE participation. In other words, an MWDBE contractor is deemed to be performing a commercially

useful function if the MWDBE is responsible for executing the work by actually performing, managing and supervising the work. In the case of suppliers, suppliers are deemed to be performing a commercially useful function when the order for supplies is placed with the MWDBE firm and the MWDBE firm has stock in their own warehouse and/or has a distribution agreement with the manufacturer, and orchestrates the shipping of the supplies. When an MWDBE acts merely as a "pass through" they are NOT performing a commercially useful function.

All companies should also have a corporate compliance policy in place to ensure that its employees are acting in a responsible manner. Having such a policy can even be a mitigating factor if your company is accused of MWDBE fraud. In fact, in April, a Connecticut construction company was assessed \$2.4 million in fines to settle fraud allegations stemming from a "pass through" scenario. What was notable about that case is that when the company discovered the fraud, it corrected it and initiated a comprehensive compliance program. Due to the remedial measures taken by the firm, it received a non-prosecution agreement and none of the principals or employees were criminally prosecuted.

- Being proactive about compliance with local, state and federal MWDBE program regulations can save your company millions of dollars in fines and legal fees.
- Be sure that your MWDBE subcontractors and suppliers do the work you hire them to.
- Go to your MWDBEs' place of business and verify their legitimacy before hiring them.
- Certification by government agencies is NOT enough to avoid prosecution. In fact, City agencies put the onus on the contractor to ensure that the certified MWDBE company is legitimate and performing a commercially useful function.

If you cannot meet your MWDBE goal on a particular job, request a waiver. Be sure any communication you have in connection with reducing your stated goal is in writing.

Navigating these rules and regulations can be tricky. Be sure that you have a clear understanding of what is required of you before committing to a goal and be sure you can fulfill that goal using legitimate MWDBEs. Violating government MWDBE programs can, at a minimum, be costly and in the worst case, subject your company to criminal prosecution.

*Elyse Ruzow founded Ruzow & Associates in 2014 after an 18 year career at the New York County District Attorney's Office. Ruzow & Associates provides clients with expert consulting services on matters involving corporate compliance, construction fraud and internal investigations. The firm also provides integrity monitoring services. For more information call (212)335-0409.*

# We're the NYS Government & We're Here to Help... Your Bottom Line!

NYSERDA, New York State Energy Research and Development Authority, is a public benefit corporation responsible for promoting and funding clean energy and energy efficiency initiatives throughout New York State.

Electrical contractors are eligible for various types of NYSERDA assistance, including:

- Wage Subsidies: for example, NYSERDA has a program whereby it will pay the eligible training costs of up to \$15,000 per employee to address skills gaps. So if for example you get a commercial retrofit job and one of your electricians has never done this type of work, NYSERDA can provide you with a wage subsidy for the on-the-job training. Therefore, you would be reimbursed for the cost of teaching job-specific skills to Local #3 journeymen or apprentices.
- Funding opportunities for your organization and your customers

- Financial assistance for the installation of solar PV, energy-efficient commercial lighting, wind turbines, etc.
- Ability to promote your business on NYSERDA's website as an Approved Contractor

In order to participate in the programs, you need to be on NYSERDA's approved list of contractors. These programs are:

- Commercial Lighting Program
- Photovoltaic (PV) Installer Program
- Wind Installer Program

The application process is not complicated and there is no cost involved. Most importantly, there is a person on the staff of the NYS Labor Management Cooperation Committee, funded by our industry, who can walk you through the paperwork and the process until you are on the approved list. Contact Jeff Elmer in the AEC office at 718.752.0800 or email [jelmer@aecnyc.com](mailto:jelmer@aecnyc.com) for more information.

## Paid Sick Leave Law: Who is Covered & Who is Not

A new law requires businesses with more than five employees to provide up to five days of paid sick leave per year to employees working in New York City. The law went into effect on April 1, 2014.

As mentioned in our last AEC newsletter, the AEC's collective bargaining agreement with Local Union #3/IBEW contains specific language EXEMPTING covered unionized employees from this new law's mandate: "By the parties agreeing to this provision, they expressly waive the provisions of any New York City 'Paid Sick Time Act' or comparable legislation that may be enacted by any local, state or federal government on the basis that comparable benefits are provided to the employees covered by this collective bargaining

agreement in the form of paid days off."

However, if your company has a confidential employee or another employee who is not covered by a Local Union #3/IBEW collective bargaining agreement, that employee is entitled to paid sick leave, assuming your shop has a total of five (5) or more workers (whether field or office employees).

Employers with less than 5 employees must provide unpaid sick leave as per the new law.

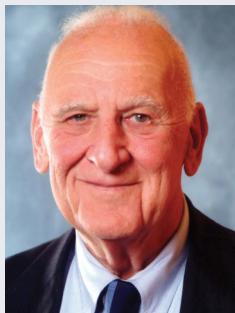
Guidance from the NYC Department of Consumer Affairs (DCA) and a summary of the law can be found at [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave).

## BAM! NYC Comptroller Debars Non-Union Electrical Firm for Kickbacks at the Brooklyn Academy of Music

Last month, New York City Comptroller Scott Stringer debarred Mackey Reed Electric, Inc. and its owner Dawn Bechtold for five years for willfully underpaying prevailing wages and supplement to two electricians for work performed at the Brooklyn Academy of Music ("BAM") and the Fort Washington Armory. The total violation was \$150,826.55 including statutory interest and a civil penalty. After a hearing, the Comptroller also determined that the contractor falsified payroll records and illegally forced an electrician to kickback

\$28,500 in cash from periodic supplemental benefit checks. In response to a jurisdictional challenge by Mackey Reed Electric, the Comptroller found that the BAM and the Fort Washington Armory projects were public works subject to prevailing wage requirements. The Department of Design and Construction contracted and paid for renovations at both facilities. BAM and the Fort Washington Armory are properties owned by the City of New York and leased to not-for-profit corporations for the benefit of the general public.

# Liquidating Agreements By Leonard Taubenblatt



It is well settled under New York law that since there is no privity of contract between a subcontractor and an owner (or the owner's construction manager/agent), a subcontractor cannot sue an owner for damages caused by the owner's dereliction of duties. The concept of "privity" refers to a contractual relationship (in this case, between the subcontractor and owner or its representative). This, of course, presents a quandary to a subcontractor who incurs damages resulting from an owner's erroneous plans and specifications. Thus, in order to bridge the gap resulting from a lack of privity of contract, New York law has long permitted what are referred to as "Liquidating Agreements." A Liquidating Agreement permits a contractor to bring an action to collect unpaid claims on behalf of the contractor's subcontractors.

See, *Morse/Diesel, Inc. v. Trinity Indus., Inc.*, 875 F. Supp. 165, 174 (S.D.N.Y. 1994) ("Liquidation Agreements are commonly employed in the New York construction industry as a means to apportion liability among owners, general contractors and subcontractors, among whom such efforts are otherwise hindered by a lack of contractual privity.")

There are three basic requirements for a Liquidating Agreement. They are:

1. The imposition of liability upon the general contractor for the subcontractor's increased costs, thereby providing the general contractor with a basis for legal action against the owner
2. A liquidation of liability in the amount of the general contractor's recovery against the owner
3. A provision that provides for the "pass-through" of that recovery to the Subcontractor. *Bovis* at 69-70; *Helena Assocs., LLC v. EFCO Corp.*, 2008 WL 2117621, at \*9 (S.D.N.Y. May 14, 2008); *North Moore St. Developers, LLC v. Meltzer/Mandl Architects, P.C.*, 23 A.D.3d 27, 32, 799 N.Y.S.2d 485, 489 (1st Dep't 2005)(citing *Bovis*). Significantly, the Liquidating Agreement "need not take any particular form." *Helena Assocs.*, 2008 WL 2117621, at \*9.

The validity of a purported Liquidating Agreement was challenged and upheld in the recent case of *KSW Mechanical Services v. Johnson Controls, Inc.*, 2014 U.S. Dist. LEXIS 1671 (E.D.N.Y. Jan. 6, 2014). In that case, the plaintiff, a contractor on a building project in New York, agreed to purchase from Johnson Controls, pre-assembled air handling units. Johnson Controls manufactured and shipped the goods to New York. However, the units were not shipped and delivered in pre-assembled fashion. As a result, the plaintiff put Johnson

Controls on notice that it intended to pass on to the latter all costs associated with assembling the units and correcting other deficiencies. Those costs included significant fees and expenses incurred by the plaintiff's subcontractors.

Johnson Controls moved for dismissal on that portion of the plaintiff's claims based on the fees and expenses incurred by its subcontractors. It alleged a lack of privity between it and the subcontractors. It also challenged the validity of the liquidating agreements between the plaintiff and its subcontractors. The court quickly disposed of the lack of privity argument holding that New York permits liquidating agreements in order to allow contractors to recover unpaid sums on behalf of their subcontractors. The agreements in question stated, "KSW acknowledges liability to [the named Subcontractors] and does hereby liquidate such liability as hereinafter provided, and agrees to submit the Claim to [Johnson Controls]." The court held that the agreement constituted a valid Liquidating Agreement since KSW admitted liability to its subcontractors for damages arising from Johnson Controls' alleged breach of contract, agreed to liquidate the liability it recover for them and obligated itself to pass its recovery from the defendant to its subcontractors.

The court cast aside the defense that the Agreements lacked an admission of liability. The court observed that KSW expressly stated that it acknowledged liability. Johnson Controls further claimed that the Agreements were invalid since the damages claimed in the litigation were greater than stated in the Agreements. The court held that this contention was immaterial too since the Agreements concerned the unpaid balance of the subcontractors' claims only. The court observed that the amount claimed in the litigation was higher since it included amounts previously paid by Johnson Controls to the plaintiff. The court held that there is no requirement that the plaintiff assert only the subcontractors' claims during litigation; rather it was free to assert its own claims too.

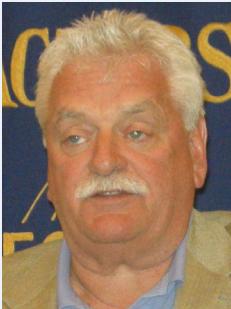
It is also noteworthy that the Court held that there is no requirement in a liquidating agreement to pass along 100% of a recovery. Instead, "liquidating agreements that provide for the pass through of only a portion of a recovery may nevertheless be valid."

It is critical that the contractor admit contractual liability in the liquidating agreement. Absent such a finding, a claim will be dismissed. Indeed, in reversing a lower court decision, the Third Department held that there is no such thing as an implied Liquidating Agreement.

In sum, in order for your Liquidating Agreement to survive a court challenge, be certain it is in writing and satisfies the 3 prerequisites discussed above.

# Report from Albany

By Ken Riddett, Lobbyist, New York State Council of NECA Chapters



Every session seems to be a little different in Albany. In the last five years we've had three Governors, control of the Senate flipped after forty years of Republican control only to flip back two years later and now we have a Senate run by a coalition since the Republicans did not win enough seats in last year's election to have a majority. Thirty-two seats are needed for a majority and they got thirty-one. Even though the Democrats got thirty-two, they could not reach an agreement on how to organize.

The Republicans partnered with the five member so-called Independent Democrat Conference that broke away from the Democratic conference and formed a coalition to run the Senate.

The session started out this year with much tension between the Legislature and the Governor due to the Governor impaneling a Moreland Act Commission to investigate public corruption since the legislature did not enact his anti-corruption package in 2013.

As is required by the State Constitution, the Governor presented his executive budget in late January. He called for legislation effecting women's reproductive health, campaign finance reform including public financing of campaigns, corporate and estate tax reform, universal pre-K and ethics reform as well as tax credits, a real property tax freeze and elimination of the 18 – A energy assessment.

Since certain Court of Appeals decisions in the late 90's, the governor holds much sway in the budget negotiations and can force the Legislature to take up much of his agenda. This year, without a lot of argument, the budget was adopted on time for the fourth year in a row.

The governor as expected got much of what he wanted; a budget that holds spending growth below 2% for the fourth consecutive year. It also includes:

- A real property tax freeze if local governments keep tax increases low
- An accelerated phase-out of the 18-A energy assessment
- Universal statewide pre-kindergarten
- A \$2 billion Smart Schools Bond act, which if approved by the voters in November will provide for classroom technology, broadband infrastructure and new pre-K classroom space.

The Governor also agreed to disband the Moreland Act Commission.

The State adopted a ten year capital plan, which will spend \$21.3 billion in this fiscal year (\$9.4 billion state and \$11.9 by public authorities), which is slightly more than last year.

The Governor sought to expand the Design-Build law, which was enacted on a temporary basis after Super Storm Sandy and is due to

expire in December, to include all counties, cities, towns and villages with a population exceeding fifty thousand. His proposal would have made the law permanent. The Governor subsequently amended the bill to just extend the law; however, the legislature did not come to an agreement on Design-Build.

The Governor chose not to pursue WICKS reform, unlike last session after having had both houses of the legislature reject his proposal. For the last few years, there has been little appetite in the legislature to do anything on WICKS and neither house has shown any interest so far this year. Unless the Governor puts it on the table, no action will be taken. It will surely come up next session, however.

While it was rumored that the Governor would include Scaffold law reform in his budget, even though he did not, the issue received much public debate and will undoubtedly come up again.

The Legislature finished this year's session on June 20. There was no doubt that legislators wanted to get out of town and go about getting re-elected.

With all two hundred thirteen members of the legislature and all four statewide elected officials up for election in November, the session was dominated by election-year politics. It was unlikely that many controversial items would be taken up.

The most controversial issues of any consequence left undone were campaign finance reform, women's health and Scaffold law reform.

The Governor then came under significant criticism from the progressive wing of the Democrat Party for failing to enact meaningful public financing of elections and for not working hard enough to regain Democratic control of the Senate. The Working Families Party had threatened to not give him their line, which polls will show would significantly reduce his overall votes. In late May, they met and, after much wrangling, gave him the line after he agreed to work to gain a Democrat majority in the Senate.

While the Senate coalition of Republicans and Independent Democrats seemed to be holding, a few days after the session ended, the Independent Democrat Conference, at the urging of the Governor, the Working Families Party and Mayor de Blasio agreed to leave their coalition with the Republicans and join with the Senate Democrats after Election Day.

The Senate races this fall will be messy with both Republicans and Democrats looking to get back into power.

While it is unlikely that the Legislature will return prior to Election Day, depending on what the makeup of the legislature looks like after Election Day, there is a strong likelihood that they will reconvene in late November or December. Traditionally everything could be on the table.

## Association of Electrical Contractors, Inc.

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John Mannino  
*Executive Vice President*  
Andrew Drazic  
*First Vice President*  
Sandra Milad Gibson  
*Second Vice President*  
Prakash Kapadia  
*Financial Secretary//  
Treasurer*  
Joseph Barbaro  
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Parag Kapadia  
Kory Kleinberg

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George Cecala  
Matt DeAngelo  
Edward Rothowski

### General Counsel

Leonard Taubenblatt

### Executive Secretary

Jeffrey Elmer

\*Denotes Past Presidents

## AEC 2014 Meeting Schedule

The next AEC General Membership meeting will be held on Wednesday, September 17, 2014. We will have dynamic speakers Michael Johnston and Marco Giamberadino from the NECA National Office on Safety in the Workplace and Political Action in Washington, D.C.

### 2014 Board Meetings

September 3  
October 1  
(Nominating Committee)  
November 5  
December 3

### 2014 General Meetings

September 17  
November 19  
December 6  
(Annual/Elections/Holiday Party)

All dates are subject to change.

Investment and Finance Committee meets one hour prior to each Board Meeting.  
Scholarship Committee meets one hour prior to each Membership Meeting.

## Association of Electrical Contractors, Inc.

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