

## What's new?

Project: **buybuy Baby**  
 Location: **1745 Deptford Center Road**  
**Deptford, NJ**  
 Size: **25,000 Sq. Ft.**  
 Type: **New Store**  
 Project Manager: **Billy Collins**  
 Superintendents: **Jim Wetzel**  
**Robert Miller**



Project: **Petco**  
 Location: **650 Main Ave**  
**Norwalk, CT**  
 Size: **6,893 Sq. Ft.**  
 Type: **New Store**  
 Project Manager: **John Taberna**  
 Superintendents: **Dan Zupsansky**  
**Tom Schimenti**



Project: **Harmon Face Values**  
 Location: **1765 Deptford Center Road**  
**Deptford, NJ**  
 Size: **5,875 Sq. Ft.**  
 Type: **New Store**  
 Project Manager: **Billy Collins**  
 Superintendent: **Wilfred Wyman**



Project: **Panera Bread**  
 Location: **330 Fifth Avenue**  
**New York, NY**  
 Size: **6,830 Sq. Ft.**  
 Type: **New Restaurant**  
 Project Managers: **Billy Collins**  
**Charles Esteves**  
 Superintendents: **Ronald Wrensen**  
**James Scarpone**



Project: **Bed Bath & Beyond**  
 Location: **1755 Deptford Center Road**  
**Deptford, NJ**  
 Size: **25,000 Sq. Ft.**  
 Type: **New Store**  
 Project Manager: **Billy Collins**  
 Superintendent: **Dan McGraw**



## Coming Soon!

Schimenti Construction is pleased to begin building Aritzia's new store at the Westchester Mall in White Plains, New York.

The 5,500 square foot build-out will feature a polished concrete floor and a custom storefront system being fabricated in Vancouver. This is Schimenti Construction's first opportunity to work with Aritzia, a Canadian based women's

clothing company which already has locations on 5<sup>th</sup> Avenue, SOHO, Paramus and The Short Hills Mall.

Aritzia's design philosophy extends to their stores with use of high-quality natural materials, ambient lighting, and luxuriously warm finishes that make for a casual, lounge-like atmosphere. Each store is individually designed, with no two stores the same.



# Annual Meeting Focuses on the Power of Culture



At Schimenti's 2014 annual meeting, held at Doral Arrowwood Conference Center in Rye Brook, NY, participants were encouraged by speakers and one incredible artist to look at situations in a different way in order to truly see the big picture.



After a welcome by President, Matthew Schimenti, the day's special guest, Dan Dunn, presented a dynamic performance called Paintjam; as seen on numerous news shows worldwide and a featured performer on The Ellen DeGeneres Show, Jimmy Fallon, Super Bowl pre game show, and The CBS Early Show. Dunn painted on a rotating canvas at a furious pace with both hands. As he worked, it was difficult to decipher exactly what he was painting until suddenly, he spun the canvas a certain way, added particular details, and a large-scale painting of a familiar face or structure emerged: Ray Charles, the Statue of Liberty and the Brooklyn Bridge. Later in the day, Matthew Schimenti drew a parallel between Paintjam and Schimenti's work, saying that both are creative, fast, unique and require high energy.

The keynote speaker was Randy Nemchin, a management consultant at FMI Corporation, who talked about the power of culture—or shared values—within a company. Quoting “the simplest definition of culture is what happens when the manager leaves the room,” Nemchin stressed that in order for a company like Schimenti to continue to grow, it must always be improving its culture. Rather than focusing on difficulties and competing with other employees, workers in a thriving company culture will visualize what needs to be done, prioritize steps to get there, and then do whatever is necessary to create success and client satisfaction.



Executive Vice President, Joseph Rotondo, next presented a review of Schimenti's performance in 2013 and a forecast for 2014. Showing another increase in annual billings last year, the company performed substantial work for Target, Kohls, Bed Bath & Beyond and Zara, among numerous other retailers.

## CONTENTS

### WINTER 2014

ANNUAL MEETING FOCUSES ON THE POWER OF CULTURE .....	1
EMPLOYEE PROFILE .....	2
SCHIMENTI BUILDS UNDER ARMOUR NYC .....	3
UPCOMING EVENTS .....	3
WHAT'S NEW? .....	4
COMING SOON! .....	4

### Schimenti Construction Company

650 Danbury Road  
 Ridgefield, CT 06877  
 914.244.9100

622 Third Avenue  
 New York, NY 10017  
 212.246.9100

www.schimenti.com

Schimenti Construction Company

650 Danbury Road  
 Ridgefield, CT 06877  
 914.244.9100

622 Third Avenue  
 New York, NY 10017  
 212.246.9100

www.schimenti.com

Without passion  
 you don't have energy,  
 without energy  
 you have nothing.

- Donald Trump

[Annual Meeting Focuses on the Power of Culture continued from page 1]

Rotondo also highlighted many new clients with projects underway, significant marketing efforts in 2014, including an enhanced website and increased use of social media.

Matthew Schimenti returned to the podium to tie the day's themes together. He introduced new initiatives and objectives for 2014 and discussed how Schimenti's culture and focusing on the big picture will drive continued growth and excellence. Schimenti's management team then responded to questions from employees.

The day culminated with the presentation of employee recognition and service awards. Among the employees honored for service anniversaries were John Colonnese (20 years), Christopher Harding (15 years), Arkadiusz Ziemkowski and Wieslaw Lokaj (10 years), and Jean D'Agostino and Miroslaw Cieslinski (5 years).



## Schimenti Construction Builds Under Armour New York City Store

Schimenti Construction Company is in the midst of building its first project for athletic apparel-maker Under Armour to create the company's New York City store, due to be completed in April 2014.

Located at 583 Broadway in SOHO, the project is a complete gut and rebuild that will create almost 13,000 sq. ft. of retail space on two levels, as well as 8,000 sq. ft. of stock room and offices. While Under Armour operates Factory House stores in the metropolitan area, this is the first of its premium Brand House stores in New York City.

The project features a dramatic steel-clad and glass staircase, which is being fabricated by Amuneal, a long-time Schimenti collaborator. The work also requires a complete replacement of all mechanical systems, including four new indoor air-cooled split units and associated ductwork.

Schimenti is replacing the electrical systems and installing new LED lighting throughout the sales floor, as well as replacing the bathrooms on the sales floor to make them ADA-compliant. The site, formerly occupied by Esprit, is a historical cast-iron building under the jurisdiction of the Landmark Preservation Commission.

"We are following an accelerated construction schedule of just twelve weeks," said Schimenti Project Manager, Doug Deptula. "To keep everything on target, we are working closely with Under Armour on design development and cost estimating throughout the project."

The project architect is FRCH Design Worldwide of Cincinnati, Ohio and the design architect is ATI Architects and Engineers, headquartered in California.

## Schimenti is On the Road Again! Our Upcoming Events & Corporate Travel



**RCA's 24th Annual Meeting**  
March 7th - 9th, 2014

The Retail Contractors Association is a national organization of high caliber retail contractors united to provide a solid foundation of ethics, quality and professionalism within the retail construction industry.



**50th Annual SPECS Event**  
March 9th - 12th, 2014

SPECS (Store Planning, Equipment, Construction Services) is a 50 year old event attended by retail and food service corporate executives involved in the planning, design, construction and maintenance of stores and restaurants nationwide.



**ISCS RECON 2014**  
May 18th - 20th, 2014

RECon is the global convention for the shopping center industry and provides networking, deal making and educational opportunities for retail real estate professionals from around the world. With over 34,000 attendees and 1,000 exhibitors it is the largest industry convention, making it an unparalleled opportunity to do a year's worth of business in just three days!

### Employee Profile

**Anthony Saoulidis**

asaoulidis@schimenti.com

**Project Manager**



Not only is variety the spice of life for Schimenti Project Manager, Anthony Saoulidis, it is the spice of his career and what he likes most about the construction industry.

through these challenges and feel a sense of pride when a difficult project is successfully completed."

At Schimenti, Anthony is responsible for the ultimate success of each project under his management. He manages job costs, plans and monitors project execution and acts as liaison to the team, while keeping all team members motivated and ensuring good communication, decision making and problem solving.

Anthony added, "My role allows me to touch all aspects of the project, from the financials to the bricks and mortar. I enjoy working with our field personnel and the opportunities to learn that each project offers."

Anthony joined the Schimenti team in April 2012 after graduating from the New York Institute of Technology with a bachelors of science in Architectural Technology. While there, he studied construction management, with courses in contract management, construction supervision and real estate fundamentals.

When not working, Anthony enjoys spending time with family and friends.

"In construction, no two days are the same," said Anthony. "Each day brings a new set of challenges. I enjoy working

# Allocating the Risks Associated with Project Delays

By: Peter Strniste, Jr., Esq.<sup>1</sup>



Retail construction is no stranger to the inherent costs associated with project delays. Retailers, like all owners, rely upon construction professionals to estimate the duration of a project so that associated hard and soft costs can be quantified and properly budgeted. The majority of retail construction projects today consist of renovations to an existing store or space. It is very difficult for designers on such projects to account for and incorporate all existing conditions into their drawings and specifications. Also, as with any project, it is very difficult at the onset to predict weather, labor conditions, the availability of raw materials and other factors that might have an impact on a project's duration. These unknowns often result in unanticipated project delays, acceleration or other impacts. One District of Columbia judge said that "except in the middle of a battlefield, nowhere must men coordinate the movement of other men and all materials in the midst of such chaos and with such limited certainty of present facts and future consequences as in a huge construction project..." But, when the duration of a project extends beyond what was originally contemplated, all of the parties in the construction pyramid suffer unanticipated costs; which can and should have been addressed and allocated within the construction contracts.

There are many different ways to allocate and transfer the risks associated with project delays within a construction contract. Two of the most common provisions for doing so are "No Damages for Delay" clauses and "Liquidated Damages" provisions.

"No Damages for Delay" clauses typically protect an owner from increased costs resulting from construction delays by restricting a contractor's ability to recover for overhead, general conditions and other extended duration costs attributable to delays for which the contractor is not responsible. This provision limits a contractor's remedy for delay to an extension of the completion date. A typical "No Damage for Delay" clause reads, in part:

Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time shall be the sole remedy of the Trade Contractor for any (1) delay in the commencement, prosecution nor completion of the work, (2) hindrance or obstruction in the performance of the work, (3) loss productivity, or (4) other similar claims whether or not such delays are foreseeable, contemplated, or un-contemplated...

These clauses are enforceable in most states unless the contractor can establish that the party seeking to invoke the clause "actively interfered" with the contractor's ability to complete its work. There are volumes of treatises and case law throughout the United States attempting to define "active interference" but it is generally considered "some affirmative, willful act, in bad faith, to unreasonably interfere with [the contractor's] compliance with the terms of the construction contract."

In today's economy, "No-Damages for Delay" clauses are often found in construction contracts alongside "Liquidated Damages" provisions which protect and compensate the owner for project delays caused by the contractor.

A "Liquidated Damages" clause sets, or liquidates, the amount of damages, usually on a per diem basis, that the owner will recover for project delays attributable to the contractor. Generally, damages can be liquidated if the actual injury to the owner is uncertain or difficult to ascertain and the amount set is reasonable. Such clauses will not be enforced if the clause operates as a penalty. In other words, if no rational basis exists between the owner's actual damages and the amounts recoverable under the clause, a court will likely refuse to enforce the clause. A typical clause reads:

The damages to the Owner from a delay in achieving Substantial Completion of the Work

are difficult or impossible to ascertain with certainty. As such, in the event that the Contractor fails to achieve Substantial Completion of the Work by each of the Substantial Completion Dates described within the Contract Documents, then the Contractor shall pay to the Owner as compensation and not as a penalty, the sum described below for each calendar day that Substantial Completion of the Work is not achieved. Contractor and Owner agree that such sum is a reasonable approximation, as of the date of this Contract, of the damages to the Owner resulting from a delay in achieving Substantial Completion of the Work (the "Liquidated Damages"). Contractor shall pay the applicable amount of Liquidated Damages to the Owner upon demand, and Owner may deduct all Liquidated Damages owed by Contractor from any monies which may then be due or subsequently become due to Contractor under this Contract.

It is agreed that these Liquidated Damages are the Owner's sole and exclusive remedy as it relates solely with respect to delays in the Contractor achieving Substantial Completion of the Work. Contractor and its surety or sureties, if any, shall continue to remain liable to Owner until all such liabilities are satisfied in full.

Another clause that affects the ability of both a contractor and owner to recover damages attributable to construction delays is a "Waiver of Consequential Damages" provision. Many form agreements, including the American Institute of Architects' A201 General Conditions and B101 Architect – Owner Agreement, contain a mutual waiver of these types of consequential damages. The A201 provides:

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

There are also many owner and project specific form agreements that contain only a waiver of consequential damages in favor of the owner or no waiver at all leaving the design team, contractor and its subcontractors exposed to considerable damages when a project does not finish on time.

It is crucial in today's economy for all project participants to have an open and informed discussion about unanticipated delays at the commencement of every project and to allocate the risks and costs knowingly and accordingly within the Contract Documents.

<sup>1</sup> Peter E. Strniste, Jr, Esq. is a Partner with the law firm of Robinson & Cole LLP in Hartford, CT. He dedicates his practice to the representation of construction professionals and project owners and developers. Robinson & Cole LLP is a full service law firm with offices in Connecticut, Boston, New York, Providence and Florida. The author can be reached for comment at pstrniste@rc.com

<sup>2</sup> Blake Cosntr. Co. v. C.J. Coakley Co., 431 A.2d 569, 575 (D.C. Cir. 1981).

<sup>3</sup> C&H Electric, Inc. v. Town of Bethel, X07 – CV – 106015518 S (Jun. 15, 2012) (Berger J.).

<sup>4</sup> Peter Kiewit Sons' Co. v. Iowa Southern Util. Co., 355 F. Supp. 376 (S D Iowa 1973).

<sup>5</sup> AIA Document A201, American Institute of Architects (2007).



**Peter E. Strniste, Jr. | Robinson & Cole LLP**

280 Trumbull Street | Hartford, CT 06103 | Direct 860-275-8339 | Fax 860-275-8299