

# The Contractors Critic

Reporting on Safety, Productivity and Honesty in the Construction Industry

## KBK SERVICES, INC./TRI-STATE MECHANICAL, INC., AN ABC MEMBER Continuing legal and safety problems

### KBK Services continues to flout federal safety laws

KBK Services, Inc.'s most recent brush with Occupational Safety and Health Administration (OSHA) officials occurred in March 2006 at a jobsite on Boundry Rd. in Boyd, Wisc. OSHA reports indicate that KBK was fined \$900 for a serious violation of federal

safety laws pertaining to fall protection (*Inspection #307040667*).

Not surprisingly, in the two years prior to the March 2006 inspection, KBK was cited for violating the same fall protection laws *twice*.

In both August 2004 and 2005,

the company was fined a total of \$2,325 for two "serious" violations of those laws (*Inspection #307039933 and Inspection #307038356*).

The most detailed of KBK's safety violations occurred earlier in 2004 in Medford, Wisc.

An OSHA inspector found three serious violations of safety rules and laws during the hour-long inspection.

Initial fines totaled \$4,075, including a single \$2,500 violation for using a "rough terrain lift ... to move workers up and down from the 22' roof with the workers ... standing on a pallet on the *Safety laws cont'd on page 3*

### Lawsuits land KBK in court, again

Further discovery efforts have revealed three more lawsuits filed against KBK Services and Kontny family members: two lodged; one closed.

Most recently, Beverly J. Stenberg filed suit against KBK Services, a Kontny family-member and their insurance company over an automobile personal injury claim, records show.

Stenberg v. Integrity Mutual Insurance Company, KBK Services and Heidi Sokolich-Kontny filed in Ashland County Wisconsin Circuit Court on Sept. 26, 2006.

Stenberg noted she lived on North East Echo Lake Road in

Mercer, Wis. at the time the case was filed.

The case remained open as of mid-June 2007, according to available court records (*Case #2006CV000133*).

Earlier in 2006, the owner of Ross Peterson Construction in Hurley, Wis. filed suit against KBK over a contract dispute.

*Ross Peterson v. KBK Services* was filed in Iron County Wisconsin Circuit Court on Jan. 19, 2006.

No further details were immediately available, but the case appears to still be open court records indicate (*Case #2006CV000002*).



**For more on KBK's OSHA history, see chart on page 7**

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# 'What we have here is a failure to communicate'

*The Contractors Critic* has reported at length upon the criminal convictions and civil infractions and lawsuits of the notorious Kontny family of Ashland, Wis.

These penal matters have included felony convictions, misdemeanor crimes, traffic violations, parking infractions, civil lawsuits and other assorted government code violations in assorted local, state and federal jurisdictions.

How much has the public benefited from all this? Not much apparently.

King Kenneth and his Lady Joann are out of prison and back in business, with Prince Chris Kontny being the donkey officially pulling the royal cart.

And no one seems to notice. A cynic might suspect that one of two factors, or both may be in play here, i.e.:

- 1) either the Ashland public does not care to protect itself from the Kontnys and their several business operations, or
- 2) they have been able to reach a certain "accommodation" with one or more public officials willing to open the public purse to crooks like the Kontnys

Such things do happen. Pick up at random any newspaper and you'll likely find a report supporting such suspicions.

There is no public offense, whether large or small, that a Wisconsin government agency can't

overlook if circumstances provide.

Consider this entry in The Dotted Line gossip column in the October 2005 issue of Wisconsin Builder magazine: "KBK Services Inc., Ashland, will construct a new wastewater-treatment facility in Boyd after winning a \$3.17 million contract for the job."

This juicy contract was obtained while both the Bonnie and the Clyde of the flourishing criminal coupling of Kenneth P. and Joann L. Kontny were still serving the probation period imposed as one of the penalties of a

ment plant project we are talking about here is not a huge facility, certainly.

"Two full time employees operate the waste water treatment plant and public water system," the village website reports.

But \$3 million and change isn't chump change, either. Especially for a town that reports a current population of 672 and for KBK Services, which reported annual sales of \$1.7 million in 2006, according to Dun & Bradstreet.

You'd think someone would have asked what could have been going on



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*The Kontny family's penal matters have included felony convictions, misdemeanor crimes, traffic violations, parking infractions, civil lawsuits and other various government code violations in assorted jurisdictions.*

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July 2000 conviction for tax fraud.

The town fathers of Boyd ("A proud Highway 29 community") describe their community government and how it conducts business this way at their civic website:

"The Village of Boyd is governed by the village president and six trustees, all of which are elected positions. The Village board meets on the 2nd Monday of each month at 7:00pm. Board meetings are open to the public, and the agenda is published in the *Stanley Republican*.

"Village Board Meeting Agenda's (sic) and Committee Meeting Agenda's (sic) are posted at the Village Hall, Boyd Post Office, Northwestern Bank in Boyd, and Denny's Bowl & Bar. Agenda's (sic) are posted at least 24 hours prior to the meeting."

The \$3.17 million wastewater treat-

in the minds (or into the pockets) of the village president and his six trustees when they handed a public works project to two wise guys just out of the slammer from a conviction for financial crimes.

Their conviction sprang from what court watchers at the time termed, "an incredible web of illegal activity."

But this was the bustling village of Boyd where the criminal past of a major contractor on the town's largest project did not rise to a level of concern sufficient to trouble the minds of the good ol' boys enjoying their evening beer down at Denny's Bowl & Bar.

Besides, the entertainment schedule for August, 2007 calls for a youth softball tournament, a Lions Club men's softball tournament and a corn feed and street dance are scheduled. Those in

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# Communicate

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themselves are enough to think about it.

Then, too, maybe somebody's baby needed a new pair of bowling shoes about the same time the sewage contract was let.

*The Contractors Critic* also has provided readers with the conclusions that certified psychiatrists, psychologists and medical investigators have reached in examining individuals with apparently similar psychopathic and anti-social behavior patterns.

Students of the Diagnostic and Statistical Manual of Mental Disorders (most often referred to as the DSM-IV, or the DSM-IV-TR) and psychologists have an apt mnemonic device, or memory trick, for recalling what to look for in diagnosing such behavior. It is CORRUPT. (See box below.)

Actually, there are more people running around, "doing business" in the U.S. quite unencumbered by any sense of conscience than one might suppose. Or so Harvard experts have reported.

In her book, *The Sociopath Next Door* (Broadway publishers, 2005), Harvard instructor Martha Stout, Ph.D. explores sociopathic behavior.

## CORRUPT

- C - cannot follow law
- O - obligations ignored
- R - remorselessness
- R - recklessness
- U - underhandedness
- P - planning deficit
- T - temper

She offers interesting tips on how to spot a typical sociopath, thereby avoiding being victimized by them.

"Sociopaths comprise four percent of the population, which essentially is one out of every twenty-five people. While the prison population has its fair share of sociopaths, many if not most sociopaths are on the streets because their "crimes" are not recognized by the criminal justice system. As a result, the remaining ninety-six percent of us encounter sociopaths on a regular basis even though we are typically not aware of it," book reviewer Shannon Bingham cites.

According to Stout, "It is difficult for most of us to envision what a sociopath really is because we cannot relate to a person who does not have a conscience," Bingham reports.

Quite apart from whatever the well-documented personality problems the Kontnys may have, it is interesting to note that in Wisconsin, a small government agency awarding a contract may pocket the difference between the amount it receives for a project and the amount it spends and later redirect the remainder to purposes of its own choosing.

Suppose, for instance, that a small town in Wisconsin were to receive a grant of, say, \$2 million to make needed repairs on its aging wastewater facility.

## Safety laws

cont'd from front page

forks and hanging on to the backstop."

To compound matters, the lift operator was untrained, adding an additional fine of \$875.

Another fine of \$700 was imposed for violations of appropriate "Wiring

Further suppose that this little town puts out a call for bids and quickly receives from three separate competing contractors.

Imagine the bids come in at \$2 million, \$1.5 million and \$1 million to do the same work.

The current prevailing theory of good governance has it that if the town decides the \$1 million bidder would do as good a job as the \$2 million bidder, it may give the job to the \$1 million bidder.

The same theory – and the Wisconsin government code – provides that after accepting this suspiciously low half-price bid the town fathers can later divert the leftover sewer money to pay for other things, such as the employee payroll, as well as their health and retirement plans.

It would be wrong for readers to leap to the conclusion that there may be a blatant conflict of interest embedded in this "prevailing theory of good governance."

Instead, we leave it to those upon whom this crystal clear fact apparently has not yet dawned to resolve that question

However, it might be worthwhile to repeat here an old sheriff's observation that, "A crime occurs only if it is reported."

methods, components, and equipment for general use."

The fines were subsequently negotiated down to \$2,445 in an informal settlement agreement signed May 27, 2004 by company president, Chris Kontny (*Inspection #300254976*).

# Lawyers cite Tri-State case as example of bad practice

Wisconsin courts resolved the legal mess surrounding a \$12 million “science building” construction project Northland College in Ashland, Wis. in 2004.

But the legal rulings flowing out of the complicated case of *Tri-State Mechanical Inc. v. Northland College* have achieved something of a life of their own since then.



Among other things, lawyers in the construction industry are now citing Tri-state’s case as a quintessential example of how not to be doing business these days.

“Many states have statutes that void contract provisions requiring a contractor to waive his lien rights before construction begins or receipt of

payment (and even these statutes may not apply to a lien waiver executed during the course of a job). However, there are no similar statutes applicable to construction claims. Parties are free to contract, release and waive claims as they deem appropriate or, as is often the case, based on what they can get another party, knowingly or unknowingly, to sign.,” attorney Stephen M. Phillips  
*Bad practice cont’d on page 5*

## Tri-State tangled in legal mess with college

*Reprinted from The Contractors Critic, KBK Services/Tri-State Mechanical edition #2*

Proven peccadilloes have shadowed the Kontnys, raising their ugly heads from time to time in the many civil suits in which Tri-State has been ensnared.

Most notable is the complex multi-party, multi-layered, multi-suit, still-pending legal nightmare that followed the surprise collapse in 2001 of the Frank Tomlinson Company, a major Ashland contracting firm.

The Tomlinson tale is a woe-begone story of gullible college officials, an unfinished \$12 million science building, misplaced trust, outright fraud and a slew of liens and lawsuits relieved only by the occasional comic scene of corporate grave looters grappling over the remains.

The sleaze is shocking, but helps explain how the business environment in an all-American town can produce a mayor and a sheriff

so shameless they would genuflect before a federal judge to plead mercy for old pals who happen to be tax fraudsters.

Here, pieced together from court documents and news accounts, is the story of the ill-fated Larson-Juhl Center for Science and the Environment.

The story broke in early 2001 as the Milwaukee Journal Sentinel reported to regional readers that Northland College, an environmental liberal arts college in northern Wisconsin with about 800 students, “has been served with liens totaling nearly \$900,000 against its new... science building.”

College Vice President Harold Vanselow, Jr. predicted at the time that the sum could rise to \$1 million as more liens were filed with the Ashland County Circuit Court by subcontractors who had done work on the center, but had not been paid by the general contractor, Tomlinson.

The largest lien of all was the one Tri-State slapped on the college for \$409,144.

“The college could have protected itself by requiring a payment bond,” the reporter noted, but they didn’t.

“Vanselow said college trustees thought they could save the \$75,000 to \$100,000 a bond would have cost and put that money into equipment for the science building.”

A noble motive indeed – provided it wasn’t also colored with a desire to save the general contractor the anguish of having to prove its financial reliability at an inopportune time.

“The trustees reached that decision based on a number of reasons, [Vanselow] said, including the fact that the late Paul Tomlinson, former owner of the  
*Legal mess cont’d page 5*

## Legal mess

*cont'd from page 4*

construction company [and father of current owner, Stephen Tomlinson], was a trustee himself," the Journal Sentinel reported March 7, 2001.

"They're certainly kicking themselves up and down" over that decision, Vanselow added.

"A legal wrecking ball is winding up to smash what's still left of Tomlinson Construction," reported Wayne Nelson of BusinessNorth.com.

The collapse of the 100-year-old company came as a surprise, Nelson said, with the accompanying legal battle made all the more distressing because Paul Tomlinson had been a "Northland graduate, trustee and benefactor... [and a] community and church leader ... [who] died in January [2001] as the company's problems were becoming public.

In any event, Northland College filed a lawsuit May 15, 2001 in Ashland County Circuit Court alleging it was defrauded when Tomlinson improperly charged \$1.1 million in labor and materials to the [center] completed on [the] campus last fall."

The college further accused Tomlinson of diverting the \$1.1 million to other projects it was performing.

The civil suit by the college also invoked the Theft by Contractors Law, a Wisconsin criminal allegation that makes it a felony for a contractor to use payments for any-

thing until subcontractors and suppliers have been paid.

Stephen Tomlinson shut the firm down, "sold or returned equipment to lenders ...and moved to Hudson, Wisconsin... [to become] an estimator for a suburban St. Paul contractor."

Meanwhile, the lawsuits, cross-suits, complaints and cross-complaints started flying.

Tri-State first entered the legal arena in this particular scandal when it filed a lien against the college in November 2000 (*Lien #2000ML000004*).

The lien led to further actions including one whose mere title illustrates how convoluted the entire mess was: *Tri-State Mechanical, Inc. and Roffers Construction Company, Inc. v. Northland College, Veit Disposal Systems, Northwoods Paving Company, Wynn O. Jones & Associates, Inc. and Forslund Building Supply, Inc. v. Northland College v. Frank Tomlinson, Co. and Stephen Tomlinson (Case #2001CV000047)*.

In a nutshell, Tri-State placed a lien against Northland College naming intervening contractors. The college responded by claiming it had a waiver of lien signed by JoAnn Kontny. In essence, the Kontnys argued that the lien waiver the college was citing was invalid. The Kontnys then presented other purported lien waivers, both signed by JoAnn Kontny.

*Legal mess cont'd page 6*

## Bad practice

*cont'd from page 4*

wrote in the June 2005 issue of *Professional Roofing*.

"There are many court cases where an owner fully pays the general contractor; the general contractor did not pay a subcontractor; and the subcontractor is not able to recover its fees because the subcontractor executed a waiver that was not conditioned on receipt of payment. This is what occurred in the 2004 Wisconsin case *Tri-State Mechanical Inc. v. Northland College*.

"In the *Tri-State Mechanical* case, the subcontractor was required to furnish a properly executed release and waiver of liens as a condition precedent to the accrual of the subcontractor's right to final payment. The subcontractor completed its work and submitted the required waiver. The owner paid the prime contractor the full \$5 million contract price, but the prime contractor never paid the subcontractor. The prime contractor went out of business. The subcontractor filed a mechanics lien. The trial court ruled the subcontractor could not maintain a lien claim because of the lien waiver even though a Wisconsin statute voids a contract provision requiring a contractor, subcontractor or material supplier to waive lien rights or a claim against a payment bond before being paid.

"On appeal, the appellate court again found against the subcontractor. In an April 2004 decision, the Wisconsin Court of Appeals stated:

*Bad practice cont'd on page 6*

# Bad practice

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'A subcontractor facing a void construction lien waiver provision has a choice: it can either tender a lien waiver prior to being paid or refuse to do so until it is paid. By giving the subcontractor a choice, the legislature has essentially made a policy decision that endorses whatever course of action the subcontractor takes.'

"Here, the court reasoned, the subcontractor chose to accept the risk of nonpayment. The subcontractor effectively had waived his construction lien by furnishing the unconditional final lien waiver even though he was not paid," Phillips explained to his readers.

*The Contractors Critic* wrote extensively about this troubled construction project in an earlier issue.

The Northland College project was marred by personal tragedy, business failures, a rash of suits and cross-suits among the contractors and subcontractors, work quality problems with minor contractors and suppliers – all leading to a lot of unnecessary legal work and expenses.

It is easy in hindsight to note that much of this pain could have been avoided had the main contractor, Tomlinson Construction, had not encountered its own problems and then compounded them by subcontracting with Tri-State Mechanical and the Kontnys.

That they didn't was brought to light in court when the Kontnys' criminal records were entered as evidence in the civil lawsuits that had arisen.

That story has been reprinted on page 4 for the readers benefit.

# Legal mess

cont'd from page 5

At that point, lawyers for Northland College moved to admit the two Kontnys' criminal records into evidence on the grounds it was relevant to their credibility as truthful witnesses.

"The Kontnys were convicted only two and a half years ago of a crime of dishonesty. Their trial was about a month before Ms. Kontny signed one of the lien waivers in question and shortly before she began serving a twenty-seven-month federal prison term," Northland attorneys argued in a document filed February 18, 2003.

It continued, "The Kontnys' credibility is an important issue in this case. The original \$122,332 lien waiver at issue, which was provided to Northland, bears Ms. Kontny's original signature, the original notary stamp, and is unconditional. The other (presented by the Kontny's) is a copy bearing Ms. Kontny's signature, is not notarized and is marked 'conditional,' which means it is conditioned on actual payment."

"Without calling the original lien waiver in Northland's files an outright forgery, that is what Tri-State has implied... Tri-State persists in promoting its theory that the unconditional lien waiver was tampered with or is a forgery, then, Northland should be permitted to examine Ms. Kontny, whose signature

appears on both lien waivers about her role in signing the waivers," the motion stated.

It appears the college's attorneys were telling the judge that they suspected that — upon realizing that Tomlinson was going belly-up — the Kontnys may have created the second lien waiver document to cloud the original lien waiver so as to enhance their chances of collecting. Which, if true, would be a highly questionable act.

Over a period of two years parties and attorneys in this messy scandal made a total of 116 filings and appearances before three different judges before the case was closed in March 2003 with Circuit Court Judge Patrick Madden dismissing Tri-State's claims and those of cross claimant Wynn O. Jones. Madden concluded that the lien waivers signed by subcontractors were valid, in part because they had apparently signed them only to induce Northland to pay Tomlinson.

Elaborating on this aspect of the subcontractors' shenanigans in his ruling on Jones in particular, Madden noted that arguments by businesses that participated in such dodges failed based on the legal theory known as "unclean hands."

"Under the 'unclean hands' doctrine, a party may not seek relief in equity from things that are the fruit of that party's own wrongful or unlawful course of conduct," Madden ruled.

# OSHA

The following is a *partial* listing of OSHA violations issued against KBK Services and Tri-State Mechanical. The violations reflect initial citations and fines. The amounts may have been reduced, bargained down or deleted at later dates.

## KBK Services, Inc. violations:

<u>Inspection #</u>	<u>Date</u>	<u>Location</u>	<u>Violation(s)</u>	<u>Fine</u>
307040667	3/22/06	314 Boundary Rd., Boyd, WI	1 serious	\$ 900
307039933	8/15/05	Memorial Med. Center, Ashland, WI	1 serious	\$1,125
307038356	8/12/04	Third & Sanborn, Ashland, WI	1 serious	\$1,200
300254976	4/22/04	Progressive Ave., Medford, WI	3 serious	\$4,075
300250610	3/20/01	224 2 <sup>nd</sup> Street; Medford, WI	1 other	
300245396	5/21/97	Visitor Center, Hwy 2, Ashland, WI	1 serious	\$1,500

## Tri-State Mechanical, Inc. violations:

<u>Inspection #</u>	<u>Date</u>	<u>Location</u>	<u>Violation(s)</u>	<u>Fine</u>
102468238	5/12/93	Mellen School addition, Mellen, WI	1 serious	\$1,000
103520102	10/28/92	New Lac du Flambeau Elementary School, Lac du Flabeau, WI	1 other	
103522967	6/24/92	hc1, Manitowish Waters, WI	3 serious	\$1,350
103139853	6/26/91	Middle School, Ashland, WI	2 serious	\$1,000
102472347	1/30/91	Elementary School, Medford, WI	1 other	
103139820	8/15/90	School Job, Port Wing, WI	1 serious	\$180
103136420	6/30/89	3 <sup>rd</sup> St., near 17 <sup>th</sup> Ave. W., Ashland, WI	3 serious	\$3,760
101670230	8/1/88	Collection Project, Grand View, WI	3 serious, 1 other	\$780
101671568	12/2/87	Memorial Med. Center, Ashland, WI	2 other	
101064152	7/15/87	Physical Ed. Bldg., Menomonie, WI	1 other	
101733533	2/18/87	Elementary School, Medford, WI	2 serious, 1 repeat, 2 other	\$1,740
101661189	8/8/86	Scribner St., Spooner, WI	1 other	\$80
101065340	3/4/86	Bayfield Swim Pool, Bayfield, WI	2 other	
100111632	1/7/86	Bay Area Civic Center, Ashland, WI	1 repeat	\$80
002492940	6/18/85	309 Poplar, Hurley, WI	1 serious	\$160
001324391	10/30/84	County Building, Ladysmith, WI	1 serious, 3 other	\$80
001324367	10/23/84	Chippewa Manor, Chippewa Falls, WI	2 other	
014327936	9/8/83	940 Whelen St., Medford, WI	2 other	
014378764	7/22/83	Lawrence Ave., Park Falls, WI	2 other	
014384994	3/31/83	502 2 <sup>nd</sup> St., Ashland, WI	1 other	
014384820	1/6/83	Kalmar Clinic, Eagle River, WI	1 other	
014358816	11/13/80	Northland College, Ashland, WI	1 repeat, 1 other	\$60
014374714	8/19/80	N. Airport Rd, Phillips, WI	1 serious	\$180

## Source Notes

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### LITIGATION:

**Beverly J. Stenberg v. KBK Services.** Case #2006cv000133; Filed 9-26-06; Ashland County Circuit Court, WI.

**Ross Peterson vs. KBK Services.** Case #2006cv000002; Filed 1-19-06; Iron County Circuit Court, WI.

**Tri-State Mechanical and Roffers Construction Co., Inc. v. Northland College, et al.** Case #2001cv000047.

**Tri-State Mechanical v.s Northland College.** Lien #2000ML000004; November 2000.

### OSHA:

Inspection #307040667

Inspection #307039933

Inspection #307038356

Inspection #300254976

### ARTICLES:

**Dotted Line. KBK to contract wastewater-treatment facility, Boyd.** October 2005, WI Builder magazine.

<http://www.wibuilder.com/>

**“When you submit payment requests, release language becomes crucial.”** Stephen M. Phillips, June 2005, Professional Roofing Magazine. <http://www.professionalroofing.net>

### MISCELLANEOUS:

**Village of Boyd, WI.** <http://www.partner29.com/boyd/government.html>

**Antisocial Personality Disorder,** Wikipedia. [http://en.wikipedia.org/wiki/Antisocial\\_personality\\_disorder](http://en.wikipedia.org/wiki/Antisocial_personality_disorder)

**The Sociopath Next Door: The Rutless Versus the Rest of Us-book review.** Shannon I. Bingham, 2005, <http://www.curledup.com/sociopat.htm>

## Corporate Information

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*The information contained in The Contractors Critic does not reflect a complete history of the business practices of KBK Services, Inc. and/or its related companies. LASER is publishing information that contractors do not and will not publish about themselves. LASER has relied on the public record to present this information to the public in an effort to promote safety, productivity, and honesty in the Construction Industry. KBK Services, Inc. has been given the opportunity to review this material for errors and inaccuracies.*

*As of publication, KBK Services, Inc. has not made any suggestions or refuted any of the information in this publication.*

*LASER, Inc. will continue to seek and publish additional data.*

*For more information, please contact James Wilson at (530)846-6352 or online at [laserinc@laser-inc.com](mailto:laserinc@laser-inc.com)*

*Visit LASER's website at [www.laser-inc.com](http://www.laser-inc.com)*