

# The Contractors Critic

*Reporting on Safety, Productivity and Honesty in the Construction Industry*

KBK SERVICES, INC./TRI-STATE MECHANICAL, INC., AN ABC MEMBER

## Tax Fraud, Perjury & Criminal Convictions

### Tri-State owners convicted of tax fraud in federal court, sentenced to jail and fined

The Kontny family, which owns Tri-State Mechanical, Inc. and whose members have been listed as agents of KBK Development, Inc. and KBK Services, Inc., is a colorful clan indeed.

Their checkered histories almost make bank robbers Bonnie and Clyde Barrow look like Main Street Rotarians by comparison.

Over the years this hard-working group has earned criminal convictions in federal court, punitive actions by

multiple federal agencies, judicial notice of dishonest acts, numerous civil suits sought against them in state courts and – at least for K. Christopher Kontny — an extraordinary number of traffic citations for hurtling down residential streets at highway speeds.

Friends? They can't have

many. This group and its members have been collectively and singly hauled into court for allegedly 1) defrauding the U.S. government, 2) lying on the witness stand, 3) cheating their employees, 4) stiffing their suppliers and contractors and, in at least one instance, 5) causing a person to fear for his personal

*Tax fraud cont'd pg 2*

#### Inside the Issue

*Tax fraud cont'd.* . . . . .2-3  
*Broke employees.* . . . . .3  
*Court trouble.* . . . . .4-5  
*Sleaze.* . . . . .5-7  
*Lawsuits.* . . . . .7-8  
*Right & wrong cont'd.* . . .8  
*Driving record.* . . . . .9  
*OSHA.* . . . . .10  
*LASER praised.* . . . . .11  
*Source Notes.* . . . . .12  
*Corporate Information.* . .12  
*LASER Information.* . . . .12

#### RIGHT AND WRONG:

#### Tri-State still unclear on concept

They say a crazy person is someone who keeps repeating an unsuccessful experiment over and over to see if he still gets the same results. Or, as they say: "I don't understand it. I've sawed this board three times and it's still too short!"

A search of the Wisconsin Circuit Courts suggests Tri-State and the Kontnys might want to reevaluate their

situation.

Records show that Tri-State has been hauled before a judicial magistrate a whopping number of times in one capacity or another. And that doesn't include the many traffic citations issued to K. Christopher Kontny of KBK in Bayfield County Circuit Court alone – seven of them for speeding. (*See box inside pg 6*)

*Right & wrong cont'd pg 8*

# Tax fraud

*Cont'd from pg 1*

safety.

Where should we begin?

Tri-State was first incorporated in 1975 with its corporate headquarters located at 1212 Lake Shore Drive East, Ashland, Wisconsin. The two principals listed are 54-year-old Kenneth P. Kontny and 53-year-old Joann L. Kontny.

A recent Dun and Bradstreet search showed Tri-State reporting 15 employees and annual sales of about \$1.2 million.

KBK — located at 1120 Lake Shore Drive East, Ashland, Wisconsin — was first incorporated in 1978. It lists the current president as K. Christopher Kontny (hereafter, “Christopher Kontny”).

What’s KBK worth? Depends on whom you ask. Dun and Bradstreet reports KBK’s annual sales at about \$98,000, with two employees. Westlaw estimates KBK sales at between \$2.5 million and \$4.9 million, with about 20 employees.

Christopher Kontny, 32, is also listed as the registered agent for a “KBK Development, Inc.,” according to Westlaw.

Kenneth P. Kontny — the same Kenneth P. Kontny as in Tri-State — was previously listed as the registered agent for KBK.

Lisa Ann Harrison, a.k.a. Lisa Ann Kontny, is listed as secretary for KBK.

The importance of such

details becomes clear when we examine the trials and tribulations of Tri-State.

Tri-State has been beset with serious legal woes, criminal and civil, leading to hard time in prison and financial penalties. As reported by the U.S. Internal Revenue Service Criminal Investigation Tax Fraud Alert:

“On May 21, 2000, Kenneth and JoAnn Kontny were convicted of conspiring to file false payroll tax returns and fraudulent payroll tax returns. Kenneth Kontny was sentenced to 32 months in prison and ordered to pay a fine of \$60,000. JoAnn Kontny was sentenced to 27 months in prison and ordered to pay a fine of \$50,000.”

**“Kenneth and JoAnn Kontny were convicted of conspiring to file false payroll tax returns and fraudulent payroll tax returns. Kenneth Kontny was sentenced to 32 months in prison and ordered to pay a fine of \$60,000. JoAnn Kontny was sentenced to 27 months in prison and ordered to pay a fine of \$50,000.”**

The alert went on to state, “Kenneth and JoAnn Kontny (husband and wife) owned Tri-State Mechanical Contractors Inc. (TSM) located in Ashland, Wisconsin. Tri-State Mechanical Inc. performed plumping (sic), heating, ventilation, and air conditioning work on local government buildings and

schools. The Kontnys devised a scheme to evade the payment of employment taxes on the overtime wages of their employees. Employees were instructed to record their regular hours (40 hours per week) on time cards and record their overtime hours on a separate piece of scratch paper. Tri-State Mechanical employees were paid straight time rate for overtime and no payroll taxes were withheld.”

The article finished, “The regular wages were input into the payroll system and reported on their payroll tax returns (Forms 941.) The employees were paid their regular hourly wages with a computer generated payroll check. Overtime wages were paid using a manu-

ally generated check. The manually generated checks were falsely coded in the general ledger as “material expense” so that a deduction could be claimed for the overtime wages. From the last quarter of 1993 through the end of 1994, the defendants failed to report approximately

*Tax fraud cont'd on pg 3*

# Tax fraud

Cont'd from pg 2

\$113,000 in overtime wages. The tax loss was approximately \$57,535.”

At the time of sentencing U.S. District Court Judge John Shabaz severely reprimanded the Kontnys, adding enhancements to their penalties for, among other things, lying on the witness stand.

“The judge said with regard to Kenneth Kontny’s testimony that there was no doubt that he had committed perjury,” Assistant U.S. Attorney John Vaudreuil told an *Ashland Daily Press* reporter.

Knowing the type of company the Kontnys keep adds a lot to this seamy tale.

For example, Ashland Mayor Lowell Miller appeared at the sentencing to “plead on behalf of the citizens of Ashland for leniency” for the Kontnys.

Miller must have meant those Ashland citizens who happened to have profited by bilking Tri-State employees out of tens of thousands of dollars of overtime pay.

And Ashland Sheriff Mike Hanson asked Shabaz to go easy on Kontnys, because “I’ve known these folks for over 30 years; they are both excellent people.”

You must have to do a lot to get arrested in Ashland. Unless, of course, you don’t happen to be a long-time pal of Sheriff Hanson.

## Tri-State employees unable to pay their everyday bills

One of the best ways to know if a company is paying a living wage or offers medical benefits to its employees, may be judged by how often creditors are forced to garnish the workers’ wages to obtain payment of everyday bills.

### For example:

Nemec Insurance Company sued Tim Beeksma in Ashland County Small Claims Court on December 8, 1997 seeking \$281, with Tri-State named as garnishee. (Case #97SC000359)

Nemec Insurance Co. sued Byron A. Anderson in Ashland County Circuit Court on July 23, 1997 for an unpaid judgment of \$404.60 with Tri-State named as the garnishee. (Case #97SC148)

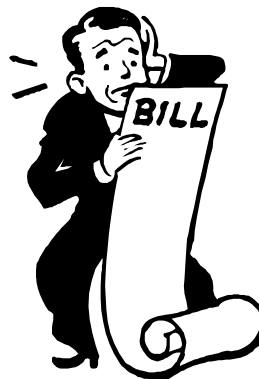
Grandview Hospital of Ironwood, Michigan sued Scott L. Libertoski of Wakefield, Michigan in Ashland County Circuit Court for an unpaid judgment of \$1,397.37 with Tri-State named as the garnishee. The hospital subse-

quently obtained on May 3, 1995 a default judgment in Gogebic (Michigan) County District Court against Tri-State in the amount of \$1,179.35 on the grounds that Tri-State had failed to properly disclose the court-ordered garnishment to Libertoski. (Case #96CV042; 994-51-GC)

Ford Motor sued Allan V. Berg in Ashland County Circuit Court on October 14, 1993 for an unpaid judgment of \$3,876.15. (Case #93CV264)

Rick Egan sued Brandon Welty of Washburn, Wisconsin in Ashland County Circuit Court for failure to pay an open charge account and obtained a money judgment for \$360, with KBK named as the garnishee. (Case #01SC000124)

Julie Pagac of Washburn, Wisconsin sued Tim Beeksma in Ashland County Circuit Court on December 12, 1995 for not paying rent. A judgment was obtained January 29, 1996 in the amount of \$3,151.75, heat or lights, with Tri-State named as the garnishee. (Case #95SC000328)



# ‘Excellent people’ in state court trouble, too

During the same period in the mid-1990s when the Kontnys were trying to stay out of federal prison, the Kontnys and Tri-State were also duking it out with the Wisconsin state Attorney General’s Office in a state court in another wage-cheating scandal.

Capping a lengthy audit and investigation by the Wisconsin state Department of Workforce Development (DWD), the state Attorney General on January 29, 1997 filed a civil prosecution in Ashland County Circuit Court alleging that beginning in January 1993, the Kontnys had failed to pay proper wages to 11 of its employees.

The state sought to recover some \$145,000 in real wages due, and another \$145,000 in penalty wages.

At the same time the state DWD informed the Kontnys it was considering “the possibility of debarring your firm ... including KBK, from performing any work, either as a prime contractor or subcontractor.”

According to contemporary news accounts, the wage dispute centered around Tri-State work on state-funded projects. Workers asserted that the Kontnys were not paying prevailing wages set by the state. They also



complained overtime was not paid as required.

State investigators determined that the amounts owed to the 11 workers “ranged from a low of \$2,681 to a high of \$25,962,” according to news accounts.

When the suit was filed Kenneth Kontny told news media he planned to sue officials and former Tri-State workers who called for the wage investigation, claiming that they owed him money.

“I’m a fair man,” Kenneth Kontny contended. “If I felt I was wrong, I would have settled this.”

All that tough talk notwithstanding, the Kontnys agreed in September 1997 to pay its aggrieved employees some \$90,000 in gross back wages. (*Case #97CV006*)

## Meanwhile...

While all this progressed through the state and federal courts during the mid and late 1990s, the Kontnys were busy trying sneak around corners elsewhere.

For example, the Wisconsin Secretary of the Department of Workforce Development Linda Stuart was drawn into a controversy over whether Kenneth and JoAnn Kontny were secretly attempting to circumvent legal debarment proceedings against Tri-State.

Concerned workers and their agents reported that they believed Tri-State was having KBK – believed to be owned by the Kontnys’ two children — surreptitiously bid on jobs with the clandestine intention of having Tri-State actually do the work.

Around that same period of time, National Labor Relations Board (NLRB) investigators caught the Kontnys using illegal means to thwart Tri-State employees from exercising their right to unionize, court records and news reports indicated.

The Kontnys and Tri-State were charged in early 1995 by the NLRB with improper and illegal anti-union activities against the Plumbers and Steamfitters Local 11 and Sheetmetal Workers Local 10, with the NLRB seeking a rare “10(j)” injunction against such activities.

The improper actions alleged between October 1994 and January 1995 were: 1) illegally threatening employees and job seekers with personal harm, 2) physically assaulting at least one worker for supporting unionization, 3) coercing employees not to participate in a labor organization, 4) firing senior employees, 5) threatening to shun supporting unionization, 6) bribing some employees and intimidating or

*Court trouble cont’d on pg 4*

## Court trouble

Cont'd from pg 3

otherwise harassing others not to support participating in collective bargaining and 7) allegedly attempting to interfere with a union election.

Pickets were posted at a job site where Tri-State was a subcontractor during this period. Emotions escalated

and tempers flew. The Kontnys' hard-line battle against paying prevailing wages became so heated and testy that a picketer was run over by a large truck operated by another contractor, Frank Tomlinson Company, a firm which would later figure prominently in state courts, along with Tri-State. (See below)

On August 25, 1995 Wiscon-

sin U.S. District Judge Barbara A. Crabb ruled that the employees provided "ample evidence to show [the Kontnys] engaged in other unlawful practices" and granted the injunction, ordering the Kontnys to refrain from interfering with workers right to bargain. (Case #95-C-0392-C) (NLRB Case #18-CA-13445, #18-CA-13444 and #18-CA-013453)

### Sleaze 4 sale

## Tri-State embroiled in multiple civil suits

These proven peccadilloes have shadowed the Kontnys ever since, 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 woebegone 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

“The college could have protected itself by requiring a payment bond...”

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

*Sleaze cont'd on pg 6*

# Sleaze

Cont'd from pg 4

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 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 Janu-

ary [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



Northland College's Larson-Juhl Center for Science and the Environment. Photo courtesy of Northland College.

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 anything 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.

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

*Sleaze cont'd on pg 7*

# Sleaze

Cont'd from pg 6

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 waver 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.

## Other civil lawsuits

Tri-State filed suit in Ashland County Circuit Court on October 10, 2002 against Fisher Scientific Company LLC, seeking \$7,043.18 in a dispute over whether credit should be allowed for two returned pumps.

In a counterclaim, Fisher said it refused to allow credit on the grounds the two were “*returned to us in used condition.*” (*Their emphasis*)

“Both units were returned with holes, dents, duck (sic) tape and oil on them. We can not resell these units,” Fisher objected in a April 12, 2001 letter to Tri-State.

That case remained open, as of July 28, 2003, court records showed. (*Case #02CV127*)

Chicago Blower Corp filed suit in Ashland County Circuit Court on February 20, 1996 alleging non-payment of \$2,336 by Tri-State. At total money judgment of \$2,512.08 was ordered March 6, 1996. (*Case #96-SC-035*)

The State of Wisconsin prosecuted Tri-State in Bayfield County Circuit Court in a traffic citation filed April 26, 1999 for “non-registration of an auto,” with Tri-State pleading

*Lawsuits cont'd on pg 8*

# Lawsuits

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*Cont'd from pg 7*

no contest with bond set at \$122.90. (*Case #99TR000691*)

DJ & DJ Inc. filed suit March 15, 1995 in Dane County Circuit Court against Tri-State seeking \$7,056.99, and obtaining a money judgment in that amount from Tri-

State and JoAnn Kontny on October 3, 1995. (*Case #95CV000677*)

On October 8, 1990, Tri-State obtained a judgment in the amount of \$1,503.12 from Arnold Kneeland of Grand View, Wisconsin. (*Case #90SC000224*)

The Wisconsin Department of Revenue filed suit on February 10, 1998 seeking \$9,386.21 in

delinquent taxes from Tri-State, with satisfaction of that payment recorded on May 6, 1998. (*Case #98TW000025*)

The State of Wisconsin prosecuted a traffic citation in Bayfield County Circuit Court against Tri-State March 9, 1995 for non-registration of an auto with a bond of \$89.80 forfeited. (*Case #95TR000289*)

# Right & wrong

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*Cont'd from pg 1*

The Kontnys may not be the only people in Wisconsin whose ability to learn from past mistakes is impaired. It seems the good folks Johnson Controls, Inc. had to sue Tri-State four times before it dawned on them that doing business with the Kontnys was not going to be easy.

Johnson Controls, Inc. filed suit in Ashland County Circuit Court October 20, 1994 against the Northland College, Tri-State and Wayne Nasi Construction for non-payment of \$30,600 for installing natural gas boilers at Wheeler Hall at the college.

The college responded claiming that intervening actions by the other defendants (Tri-State and Nasi) relieved it of any duty in the complaint and asked the court to dismiss the case and on November 28, 1994, Judge Robert E. Easton did exactly that. (*Case #94CV231*)

Johnson Controls sued Tri-State on September 13, 1995 in Ashland County Circuit Court for non-payment of \$4,979.36 plus interest, for goods and services rendered. Tri-State was ordered on November 14, 1995 to pay Johnson Controls a total of \$5,261.07.

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**Tri-State was ordered on November 14, 1995 to pay Johnson a total of \$5,261.07.**

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The order was eventually satisfied, but not before Johnson garnished Tri-State's checking account at M&I National Bank of Ashland in the amount of \$5,419.23. (*Case #95CV106*)

It was back in court a month later on October 12, 1995 to file a civil complaint naming Frank Tomlinson Company, Tri-

State and Our Lady of the Lake Church as defendants in a case alleging Johnson Controls was owed a balance of \$4,283.60 to complete payment for installing "certain temperature controls, stats, valves, and a compressor and drier with starter." (*Case #95CV118*)

Then came 1996 and another lawsuit by Johnson Controls against Tri-State trying to get the Kontnys to pay the outstanding balance— plus costs— totaling \$2,218.66 for a matter relating to the installation of temperature controls at the Memorial Medical Center.

On January 15, 1997, an attorney for Johnson Controls certified the sum as finally paid.

There is no way of knowing for sure whether Johnson Controls is still doing business with Tri-State – but we do know from the public record that it has sued the Kontnys' company in Ashland County after that last bill was paid.

# K. Christopher Kontny's scofflaw driving record

K. Christopher Kontny's first traffic ticket was issued February 16, 1994. It was for exceeding a 55 mile per hour (m.p.h.) speed limit by 20-24 m.p.h. He was 22-years-old at the time. His home address of record indicated he was living with his parents.

He pleaded no contest and was found guilty on March 21, 1994. No penalty or fine was imposed. (Case #94TR000278)

Christopher Kontny was back in traffic court the next year after being issued a speeding ticket on March 22, 1995. Question is, did the cop recognize the technique or perhaps the vehicle? Because the father, Kenneth P. Kontny had been cited for speeding the day before March 21, 1995. Both were for going 11-15 m.p.h. over the posted 55 m.p.h. speed limit.

Again, Christopher Kontny pleaded no contest and was found guilty on April 24, 1995. (Case #95TR 000418 and Case #95TR000373)

Apparently unrepentant Christopher Kontny continued to disregard all those helpful traffic safety signs dotting Bayfield County roads. He was again ticketed for traveling up to 10 m.p.h. over the 55 m.p.h. limit on August 15, 1995. As before, he pleaded no contest and was found guilty September 18, 1995. Again: no fine, and no penalty

(Case #95TR001595)

Five days later on September 23, 1995, Christopher Kontny was issued a fourth citation, this time for failing to wear mandatory seat belts. Again he pled no contest. Again he was found guilty as charged. Again no penalty.

(Case #95TR001933)

If a pattern of personal arrogance in the face of public laws seems to seem to be developing here, careful readers need only recall that Ashland Sheriff Mike Hanson spoke up for long-time pals Kenneth and JoAnn Kontny at their sentencing in federal court for tax fraud. The lawman told the judge he had known the couple for 30 years and they were "excellent people." So, from official statements made on the public record we already know the Kontnys enjoyed a cozy relationship with law enforcement in Ashland County. It appears the Kontny family may have had a well-placed friend or two on the Bayfield County Circuit Court, as well.

Two years passed before some judge got fed up with Christopher Kontny's driving habits and fined him. His first actual penalty came after he was issued his fifth speeding ticket on April Fool's Day, 1997. He pleaded no contest to going 16-19 m.p.h. over the 55 m.p.h. limit. This time, however, he was fined

\$141.50. Imagine his shock! (Case #97TR000527)

On August 16, 1998 Christopher was cited for operating without a valid license (amended from violating an occupational license restriction). It appears he may have been driving a big rig without the proper license. (Case #98TR001782)

To make a long story short, Christopher Kontny's driving habits and open contempt for the law continued unabated. He was subsequently cited twice more for driving up to 19 miles over the 55 m.p.h. limit (Case #99TRR000294; Case #02TR000339)

As a postscript, it should be noted that Christopher Kontny has proved a multi-talented multi-offender inasmuch as he was also cited for the rather exotic offense of "illegal widening of waterway." (Case #99FO000031)

While no specific "guilt" can be attributed to father or son, we can say without fear of contradiction that Tri-State as a business collectively was also cited twice for "non-registration of auto:" once on February 28, 1995 and once on March 29, 1999. (Case #95TR000289 and Case #99TR000691)



# OSHA

*The following is a partial list of KBK Services and Tri-State Mechanical's OSHA history.*

## **KBK Services, Inc. violations:**

Inspection #	Date	Location	Violation(s)	Fine
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:**

Inspection #	Date	Location	Violation(s)	Fine
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 Flambeau, 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 Medical Center, Ashland, WI	2 other	
101064152	7/15/87	Physical Education Building, 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	End of 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, Marquip Office, Phillips, WI	1 serious	\$180

# LASER: Praised by Faint Damnation

*Jim Pease apparently never tires of reminding HVAC contractors that the best way to respond to LASER's criticisms is to straighten their act. In a 2003 issue of the ABC of Wisconsin newsletter, Mr. Pease reiterated his expensive advice that, "The best preparation for LASER is for an employer to get its house in order."*

"Damned by faint praise" is a timeless expression summarizing the tactic of praising someone so modestly as to cast doubt on both the sincerity and intent of the compliment. How LASER has had the good fortune of experiencing the reverse: it seems we've been "praised by faint damnation."

We point to a recently discovered opinion column by Jim Pease published way back on June 13, 2001 in the Wisconsin-based construction industry news organ, *The Daily Reporter*. (More later on this tardy discovery.)

Officials of the construction companies we report on sometimes criticize LASER. By and large, we ignore them. The occasional complaint is only to be expected, considering the natural antipathy between the watchdog and the watched. After all, the alert bulldog can generally rely on poor reviews from the cat burglar.

If the criticism has merit — happily a rare occurrence — we respond. Otherwise, we ignore them.

However, in this case, because Mr. Pease's article is so unintentionally complimentary to LASER's goals and services, we think it deserves special mention.

In his article, Mr. Pease first lays out his premise: research organizations — also known as "think tanks" — compile data on specific issues, analyze the data, write reports and distribute them to concerned parties.

Mr. Pease, who is affiliated with construction industry management, concludes that some of these groups are "pro-union," because the final reports issued are not always flattering to non-union construction employers. He calls these reports, "attacks."

You can tell by the title, "Are you ready for LASER?" he is particularly worried about us.

He correctly points out that the information we collect on companies includes:

- complaints, citations, charges and

lawsuits involving the employer

- claims that prevailing wage obligations have not been met
- Fair Labor Standards Act, tax, licensing and safety violations
- criminal activities; names and addresses of current and former employees
- past and present clients
- a list of all hazardous or toxic materials used
- copies of all financial statements,

“The best preparation for LASER,” Mr. Pease says, “is for an employer to get its house in order.”

profits and losses, liabilities and inventories of vehicles and equipment

- environmental permits issued to or applied for by the employer
- complaints of poor workmanship, delays, mistakes and overruns on job sites
- breakdowns of all minority employees versus nonminority employees by craft, man-hours, hourly wage, health benefits and pension benefits
- reports of fires, accidents and injuries
- bankruptcies of the employer or any of its owners or officers
- violations of immigration laws

"An example of one of these pro-union research organizations is already operating on the borders of Wisconsin and may soon be operating within the state. It's called Labor and Safety Employer Research or LASER," Mr. Pease warns.

Mr. Pease's implied argument seems to be that the mere act of broadcasting facts taken from the public record to the wider community so informed decisions can be made is somehow reprehensible.

Reprehensible, perhaps, in the same way a watchdog barking at a midnight prowler constitutes a public nuisance because we also wake the neighbors.

"Attacks by these research groups can be very insidious because a targeted employer may not know the attack is occurring," Mr. Pease alleges.

He goes on to claim that, "Organizations like LASER hide behind a shroud of secrecy."

Mr. Pease is not being entirely frank here. He knows that, in the interests and spirit of fairness, accuracy and full disclosure, LASER has a strict policy of

providing notice well in advance of everything we expect to report about the employer. We give the parties ample time to respond and, if necessary, point out any errors that may have been made.

Mr. Pease reveals this later in his article when he advises his construction industry readers to make sure they "Carefully review LASER's correspondence..."

Those most interested in maintaining secrecy are clearly the employers with all those "complaints, citations, charges and lawsuits" hidden in their closets.

And here we'd like to point out the sweet irony of Mr. Pease's accusation. We only learned about his article in May 2003, two years after it was first published in the construction industry newspaper.

Had he followed our policy of open disclosure in the interests of fairness and accuracy, we would have gotten a letter from him and a copy of his article several weeks before June 1, 2001. But that is water under the bridge.

Where we take the greatest pleasure in Mr. Pease's left-handed compliments is in his final recommendation to construction employers on dealing with what he ominously calls, "The threat of LASER."

**"The best preparation for LASER," Mr. Pease says, "is for an employer to get its house in order and to avoid the type of conduct that LASER can use in an apparent effort to destroy an employer's reputation. An employer should develop and maintain a serious safety program designed to eliminate violations of all safety laws. Pay practices should be administered to strictly comply with federal and state wage and hour laws and federal, state and local prevailing wage laws. Violations of environmental, immigration, labor and employment, taxation and other business laws should be avoided. And, positive personnel practices that encourage a diverse work force that is treated with respect should be developed and implemented by the employer. If these things are done, LASER won't have anything to write about."** (*emphasis added*)

We wholeheartedly agree. It is, indeed all they have to do.

So in the final analysis, it appears LASER may have had some influence upon the construction industry over the last decade — and that impact seems to be for the good. Of that we are proud.

Mr. Pease, we offer you our belated thanks. And, please keep up the good work.

# Source Notes

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**State of Wisconsin v. Tri-State Mechanical, Kenneth P. Kontny and JoAnn L. Kontny.** Case #97 CV 006. 1/29/97.

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**Chicago Blower Corp. v. Tri-State Mechanical, Inc.** Case #96-SC-035. 2/20/96.

**Johnson Controls, Inc. v. Frank Tomlinson Co., Inc., Tri-State Mechanical, Inc., et al.** Case #95 CV 118. 10/12/95.

**Johnson Controls, Inc. v. Tri-State Mechanical, Inc.** Case #95 CV 106. 9/13/95.

**Tri-State Mechanical, Inc. and Plumbers & Pipefitters, Local Union No. 11.** Case #18-CA-13445, Case #18-CA-13444, Case #18-CA-13453. 8/28/95.

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**Judy Pagac v. Tim Beeksma.** Case #95SC328. 12/12/95.

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## TRAFFIC CITATIONS:

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**State of Wisconsin v. Tri-State Mechanical.** Case #1999TR000691. 4/8/99. Bayfield County. Case #1995TR000289. 3/9/95. Bayfield County.

## OSHA:

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## Corporate Information

### KBK Services, Inc.

1120 Lake Shore Dr. E  
Ashland, WI 54806

Telephone: (715) 682-3002

K. Christopher Kontny, President  
Lisa Ann Harrison, Secretary



## LASER, INC.

LEGAL AND SAFETY EMPLOYER RESEARCH

654 Kentucky St, Gridley, California 95948 Ph. 530-846-6352

The information contained in *The Contractor's 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 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@manznet.com](mailto:laserinc@manznet.com)

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