The Retail Contractor

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NEWSLETTER

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Allocating the Risks Associated With Project Delays

By Peter Strniste, Jr., Esq., Partner, Robinson & Cole LLP

Peter Strniste, Jr.

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…"[1] 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…[2]

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 U.S. 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."[3]

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 the 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.

(*Continued on page 6*)

The Light at the End of the Tunnel

By Anirban Basu, Sage Policy Group, Inc.


Anirban Basu

It's all systems go for the U.S. economy – well – nearly all systems go. Job growth recently has been superb, with the nation adding nearly 3 million jobs last year. Job quality improved with construction, manufacturing, and financial services each chipping in a considerable number of net new jobs. Gas prices plummeted, giving consumers even more spending power. Interest rates have fallen, inducing more borrowing, investing, and spending.

True, with oil prices falling, economic growth in Texas, North Dakota and Oklahoma could slow. For the most part, slumping petroleum prices are good news. The decline in oil prices is partially attributable to disappointing economic news emerging from Europe, China, Russia, Brazil, and a handful of other key markets, but much of this is due to perverse supply dynamics. When prices fall, one expects quantity supplied to decline. Because certain nations are totally dependent upon oil revenues, the response in Russia, Iran, and Venezuela has been to boost oil production to maintain revenues to the extent possible. As prices have fallen, the urgency to produce has intensified, creating oil prices that recently fell below $50/barrel. Most Americans and American businesses benefit from lower oil prices, and this represents a net positive for the U.S. economy even though equity market investors have acquired some jitters over the issue recently. Some of this is logical—a stronger U.S. dollar has helped suppress oil prices—that helps consumers, but also hurts companies that depend upon exports. A stronger dollar can also induce more consumption of imports and makes it more likely that tourists will travel abroad rather than stay home.

Despite all of these complications, the national economy continues to see robust growth. According to the Bureau of Economic Analysis' final estimate, third quarter GDP advanced at a 5% rate on an annualized basis, the strongest growth in 11 years and a significant leap from the initial estimate of 3.5% growth published in October. The upward revision was primarily the result of stronger contributions from personal consumption, nonresidential fixed investment, and private inventory investment. Economists are optimistic that above-trend growth was sustained through the fourth quarter, with the consensus fourth quarter estimate for annualized growth standing at 3.2% as of this writing.

> Though home sales expanded on a monthly basis in September, they were down 1.7% relative to the same month one year ago.

The combination of a stable economy, ultra-low interest rates and the relatively unattractive investment prospects in much of the balance of the world has produced

(*Continued on page 6*)

Register for RCA's Annual Conference, March 13-15: It's a Sure Thing!

RCA's 25th Annual Conference will be held March 13-15, 2015 at the Sands Expo at the Venetian/Palazzo, prior to SPECS 2015.

Friday, March 13, 6:00-8:00pm: Welcome Reception

Saturday, March 14, 8:00am-3:30pm: Conference, including industry roundtable discussions, retailer panel, and keynote presentations by:
Anirban Basu, Chairman & CEO, Sage Policy Group, Inc.
Peter Strniste, Partner, Robinson + Cole

Saturday, March 14, 6:30-11:00pm: RCA's 25th Anniversary Dinner, a special event at TPC Las Vegas

Sunday, March 15, 9:00-10:30am: Owner's Breakfast (invitation only)

RCA members: your first registration is free, additional registrations are $199. **Retailers:** Registration is free. **Architects:** One free registration for each organization; additional registrations are $199. **Nonmembers:** Registration is $299.

Visit retailcontractors.org for a full agenda and registration form.

Conference Underwriters

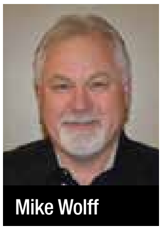
Platinum
Commercial Contractors, Inc.

Gold
Timberwolff Construction, Inc.
Retail Construction Services
Schimenti Construction Company, Inc.
Roche Constructors, Inc.
Acme Enterprises, Inc.

Bronze
Commonwealth Building, Inc.

President's Message

Mike Wolff, President, Timberwolff Construction, Inc.


Mike Wolff

What an honor it is to be at the helm of the Retail Contractors Association during its 25th anniversary year. This is a significant milestone for our organization, and I hope you will join us at our Annual Conference in Las Vegas to celebrate with us.

An article by Bill Winkel, Winkel Construction, Inc., in RCA's May 1991 reported on RCA's first Board meeting, which was held December 18, 1990. Seven elected Board members—David Weekes, Bill Winkel, Joe McLeod, Paul Herbert, Mike Ratner, Dick De Jager, and Guy Thornberg—gathered for a six-hour meeting. They adopted bylaws, approved a logo, drafted a mission statement, and discussed a budget. They approved 12 new members, discussed membership categories, reviewed feedback from a survey, and looked at a draft of a promotional brochure.

Bill's article closes with this:

> "The remainder of the meeting was devoted to discussions of promoting RCA to future members and clients. The Association will participate in supporting and sponsoring educational opportunities in our industry. Through participation in these opportunities we will learn more about how to better service our client's needs. Consequently, we will expand our collective abilities to support their needs. The Association is committed to enhancing the industry's recognition of the professionalism that exists among Retail Tenant Contractors. We also expect to promote the concept of value through the relative worth of hiring professionals at a fair price."

While our industry and how we operate our businesses has seen monumental changes over the past quarter century, just as much has remained unchanged. The RCA leadership is still focused on providing top notch professional development and programs that help our members be more competitive and provide the highest level of service to their customers. This in turn demonstrates to retailers that RCA members can be depended upon for a quality product.

Some of these programs, like our Safety Program, which provides a comprehensive kit of rules and materials for the jobsite, and Scholarship Program, which supports the educational efforts of the next generation of industry leaders, have been around for many years. They are the hallmarks of what this organization offers the industry and our members. Newer programs, like the Home Depot rebate program, which earns members 2% back on purchases, and the Military Service Initiative, which connects veterans with members looking for supers, have become valuable tools to make our members more competitive. Other industry discounts and incentives, like the BlueBook Building & Construction Network and Extended Stay America programs, provide additional benefits to our members' businesses.

With progressive and innovative leaders and members, the RCA has evolved since that first meeting in 1980. I'm proud to be part of this organization and excited to see where the next 25 years takes us.

Mike — mike@timberwolff.com

P.S. We'll celebrate our Silver Anniversary in style with a special event at TPC Las Vegas on March 14. Each Annual Conference registration includes a ticket to the event, which will feature cocktails, seated dinner, entertainment, music and dancing. I hope to see there!

ADVISORY BOARD

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Jason Miller - JCPenney Company

Steven R. Olson - CESO Inc.

Rajnesh Singh - H&M

Larry Tureff - Ulta, Inc.

COMMITTEE CHAIRS

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justin@elderjones.com

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Doug Marion
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dmarion@mrs1977.com

OFFICERS

President - **Mike Wolff**
Timberwolff Construction, Inc.

Vice President - **Robert Moore**
Gray

Secretary/Treasurer - **Brad Bogart**
Bogart Construction, Inc.

Immediate Past President - **Art Rectenwald**
Rectenwald Brothers Construction, Inc.

BOARD OF DIRECTORS

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2018 Justin Elder
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2017 Hunter Weekes
Weekes Construction, Inc.

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PAST PRESIDENTS

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John S. Elder 1995
Ronald M. Martinez 1996
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Michael H. Ratner 1998
Barry Shames 1999
Win Johnson 2000
Dean Olivieri 2001
Thomas Eckinger 2002
James Healy 2003
Robert D. Benda 2004-2006
K. Eugene Colley 2006-2008
Matthew Schimenti 2008-2012
Art Rectenwald 2012-2014

RCA Membership

RCA members must meet and maintain a series of qualifications and are approved by the Board of Directors for membership. They have been in the retail construction business as general contractors for at least five years; agree to comply with the Association's Code of Ethics and Bylaws; are properly insured and bonded; are licensed in the states in which they do business; and have submitted letters of recommendation.

COMPANY	CONTACT	PHONE	STATE	EMAIL	MEMBER SINCE
Acme Enterprises, Inc.	Robert Russell	586-771-4800	MI	rrussell@acme-enterprises.com	2009
All-Rite Construction Co., Inc.	Warren Zysman	973-340-3100	NJ	warren@all-riteconstruction.com	1993
Bogart Construction, Inc.	Brad Bogart	949-453-1400	CA	brad@bogartconstruction.com	2008
Buildrite Construction Corp.	Ian Bannister	770-971-0787	GA	ian@buildriteconstruction.com	2013
Chance Construction Co.	D. Jay Chance	409-787-2615	TX	tellinaw@chanceconstruction.com	2000
Commercial Contractors, Inc.	Kenneth Sharkey	616-842-4540	MI	ken.sharkey@teamcci.net	1990
Commonwealth Building, Inc.	Frank Trainor	617-770-0050	MA	frankt@combuild.com	1992
Crane Construction Company	David Crane	816-324-5951	MO	dcrane@crane-construction.com	2013
David A. Nice Builders	Brian Bacon	757-566-3032	VA	bbacon@davidnicebuilders.com	2011
De Jager Construction, Inc.	Dan De Jager	616-530-0060	MI	dandj@dejagerconstruction.com	1990
Desco Professional Builders, Inc.	John Ridzon	860-870-7070	CT	jridzon@descopro.com	1995
DGC Capital Contracting Corp.	Gerry Ryan	914-664-7244	NY	gryan@dgccapital.com	2013
DLP Construction	Dennis Pigg, Jr.	770-887-3573	GA	dpigg@dlpconstruction.com	2008
E.C. Provini, Co., Inc.	Edmund Provini	732-739-8884	NJ	eprovini@eprovini.com	1992
Eckinger Construction Company	Thomas Eckinger	330-453-2566	OH	tome@eckinger.com	1994
EDC	Christopher Johnson	804-897-0900	VA	cjohnson@edcweb.com	1998
ELAN General Contracting Inc.	Adrian Johnson	619-284-4174	CA	ajohnson@elangc.com	2010
Elder-Jones, Inc.	Justin Elder	952-345-6069	MN	justin@elderjones.com	1990
EMJ Corporation	Ray Caitlin	972-580-1210	TX	RCaitlin@emjcorp.com	2014
Fortney & Weygandt, Inc.	Greg Freeh	440-716-4000	OH	gfreeh@fortneyweygandt.com	2013
Fred Olivieri Construction Company	Dean Olivieri	330-494-1007	OH	dean@fredolivieri.com	1992
Fulcrum Construction, LLC	Mike Arasin	770-612-8005	GA	marasin@fulcrumconstruction.com	2014
Gray	Robert Moore	714-491-1317	CA	ramoore@gray.com	2005
Retail Contractors of Puerto Rico (DBA Greg Construction)	Sean Pfent	586-725-4400	MI	spfent@gregconstruction.com	1996
Hambleton Group Construction	Tito Suarez	787-781-8186	PR	titi@hgcci.com	2014
Hays Construction Company, Inc.	Roy Hays	303-794-5469	CO	r.hays@haysco.biz	2002
Healy Construction Services, Inc.	James Healy	708-396-0440	IL	jhealy@healyconstructionservices.com	1996
Herman/Stewart Construction	Michael Dennis	301-731-5555	MD	mdennis@herman-stewart.com	1995
International Contractors, Inc.	Bruce Bronge	630-834-8043	IL	bbronge@iciinc.com	1995
J. G. Construction	June Grothe	909-993-9393	CA	juneg@jgconstruction.com	1998
James Agresta Carpentry Inc.	James Agresta	201-498-1477	NJ	jim.agresta@jacarpentryinc.com	2013
KBE Building Corporation	Michael Kolakowski	860-284-7110	CT	mkolakowski@kbebuilding.com	1998
Kellogg & Kimsey, Inc.	Charles Kimsey	941-927-7700	FL	ckimsey@kelloggkimsey.com	2013
Kerricook Construction, Inc.	Ann Smith	440-647-4200	OH	ann@kerricook.com	2012
Lakeview Construction, Inc.	Kent Moon	262-857-3336	WI	kent@lvconstruction.com	1998
M. Cary, Inc.	Robert Epstein	631-501-0024	NY	repstein@mcaryinc.com	2014
Management Resources Systems, Inc.	Michael Swaim, Sr.	336-861-1960	NC	mswaim@mrs1977.com	1992
Marco Contractors, Inc.	Martin Smith	724-741-0300	PA	marty@marcocontractors.com	1994
Metropolitan Contracting Co., Ltd.	Jane Feigenbaum	210-829-5542	TX	jfeigenbaum@metcontracting.com	1995
Montgomery Development Carolina Corp.	John Fugo	919-969-7301	NC	jfugo@montgomerydevelopment.com	1999
Murray Costello Construction, Inc.	Murray Costello	239-482-2770	FL	MCCI@MurrayCostello.com	2014
National Building Contractors	William Corcoran	651-288-1900	MN	bill@nbcconstruction.us	2013
Pinnacle Commercial Development, Inc.	Dennis Rome	732-528-0080	NJ	dennis@pinnaclecommercial.us	2012
Prime Retail Services, Inc.	Donald Bloom	866-504-3511	GA	dbloom@primeretailservices.com	2014
PWI Construction, Inc.	Jeff Price	480-461-0777	AZ	lipka@pwiconstruction.com	2003
RCC Associates, Inc.	Beverly Raphael	954-429-3700	FL	braphael@rccassociates.com	1990
R.E. Crawford Construction LLC	Jeffrey T. Smith	941-907-0010	FL	jeffsmith@recrawford.com	2011
Rectenwald Brothers Construction, Inc.	Art Rectenwald	724-772-8282	PA	art@rectenwald.com	1996
Retail Construction Services, Inc.	Stephen Bachman	651-704-9000	MN	sbachman@retailconstruction.com	1998
Roche Construction, Inc.	Thomas Roche	970-356-3611	CO	troche@rocheconstructors.com	2008
Rockford Construction Co.	Thomas McGovern	616-285-6933	MI	tmcgovern@rockfordconstruction.com	2014
Royal Seal Construction, Inc.	Gene Colley	817-491-6400	TX	gene@royalseal.com	1994
Russco, Inc.	Matthew Pichette	508-674-5280	MA	mattp@russcoinc.com	1995
Sachse Construction and Development Corp.	Jeff Katkowsky	248-647-4200	MI	jkatkowsky@sachseconstruction.com	2009
Scheiner Commercial Group, Inc.	Joe Scheiner	719-487-1600	CO	joe@scheinercg.com	2012
Schimenti Construction Company, Inc.	Matthew Schimenti	914-244-9100	NY	mschimenti@schimenti.com	1994
Scorpio Construction, Inc.	Stephen Romeo	609-296-0308	NJ	sromeo@scorpio1.net	1995
Shames Construction Co., Ltd.	Barry Shames	925-606-3000	CA	bshames@shames.com	1994
Shrader & Martinez Construction, Inc.	Ronald Martinez	928-282-7554	AZ	info@shradermartinez.com	1990
Singleton Construction, LLC	Denise Doczy-Delong	740-756-7331	OH	denisedelong@singletoncontruction.net	2012
Sullivan Construction Company	Mike Sullivan	954-484-3200	FL	mike@buildwithsullivan.com	2012
Taylor Brothers Construction Company, Inc.	David Doup	812-379-9547	IN	ddoup@tbcci.com	2014
TDS Construction, Inc.	David Scherer	941-795-6100	FL	inbox@tdsconstruction.com	1994
Thomas-Grace Construction, Inc.	Don Harvieux	651-342-1298	MN	don.harvieux@thomas-grace.com	2012
Timberwolff Construction, Inc.	Mike Wolff	909-949-0380	CA	mike@timberwolff.com	2008
Tom Rectenwald Construction, Inc.	Aaron Rectenwald	724-452-8801	PA	arectenwald@trcgc.net	2010
Trainor Commercial Construction, Inc.	John Taylor	415-259-0200	CA	john.taylor@trainorconstruction.com	2012
Tri-North Builders, Inc.	Randy Danielson	608-271-8717	WI	randy.danielson@tri-noth.com	2015
Triad Retail Construction	Jay Dorsey	281-485-4700	TX	j.dorsey@triadrc.com	2013
Warwick Construction, Inc.	Tony Annan	832-448-7000	TX	tony@warwickconstruction.com	2008
Weekes Construction, Inc.	Chandler Weekes	864-233-0061	SC	cweekes@weekesconstruction.com	1990
Westwood Contractors, Inc.	Mike McBride	817-302-2050	TX	mikem@westwoodcontractors.com	1990
William A. Randolph, Inc.	Tony Riccardi	847-856-0123	IL	tony.riccardi@warandolph.com	2011
Winkel Construction, Inc.	Rick Winkel	352-860-0500	FL	rickw@winkel-construction.com	1990
Wolverine Building Group	Michael Houseman	616-949-3360	MI	mhouseman@wolvgroup.com	2012
Woods Construction, Inc.	John Bodary	586-939-9991	MI	jbodary@woodsconstruction.com	1996

Visit retailcontractors.org

ANNUAL MEETING ATTENDEE — Sent attendee(s) to most recent annual meeting

LEADERSHIP — Past or present RCA Board member

QUALITY — Has met the requirements of RCA's Quality Assurance Program

SAFETY — Uses RCA's Safety Materials

SCHOLARSHIP — Has made a contribution to the RCA Scholarship Program

CDP (Certified Development, Design & Construction Professional) — Has a Certified Development, Design & Construction Professional on staff

LEED AP — Has a LEED AP accredited professional on staff

View the profile of each RCA member company. Click on "Find a Contractor" from the home page to search the member list. Each profile includes relevant information, including the RCA programs in which the member participates. Look for these icons!

Please notify the RCA Office (800-847-5085 or info@retailcontractors.org) of any changes to your contact information.

Allocating the Risks...

(*Continued from page 1*)

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.[4]

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.

[1] *Blake Constr. Co. v. C.J. Coakley Co., 431 A.2d 569, 575 (D.C. Cir. 1981).*
[2] *C&H Electric, Inc. v. Town of Bethel, X07 – CV – 106015518 S (Jun. 15, 2012) (Berger J.).*
[3] *Peter Kiewit Sons' Co. v. Iowa Southern Util. Co., 355 F. Supp. 376 (S D Iowa 1973).*
[4] *AIA Document A201, American Institute of Architects (2007).*

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. Mr. Strniste can be reached for comment at pstrniste@rc.com. Join us at the RCA 25th Annual Conference on March 14 and hear him speak about "Subcontract Defaults & Bankruptcy Issues."

The Light...

(*Continued from page 2*)

surging stock prices. The Dow Jones Industrial Average reached above 18,000 for the first time in history on December 23, 2014 ending the year with 7.5% growth. Other U.S. domestic indices finished the year with two-digit growth rates: the S&P 500 with 11.4% and the Nasdaq Composite with 13.4% growth. Despite the remaining concerns regarding the end of QE3, the spread of ISIL and Ebola, share prices quickly reflated after a near-correction in major financial exchanges.

Perhaps the most upbeat aspect of recent economic performance takes the form of labor market healing. The Bureau of Labor Statistics reported that the nation added 252,000 jobs in December. Over the past year, the nation has added 2.952 million jobs, the strongest year-over-year growth since June 2000. Of that total, nearly a quarter (732,000) was in professional and business service sectors. The list of other rapidly growing employment sectors includes distribution (e.g., retail and wholesale trade), health services, and leisure and hospitality.

The unemployment rate continues to fall. In December, the rate dropped by two-tenths of a percentage point to 5.6%, the lowest rate since June 2008 when the nation was just six months into the recession and on the verge of the global financial crisis. As has been the case during much of the current economic expansion, the decline in unemployment was partially attributable to reduced labor force participation. According to the most recent employment report,

(*Continued on next page*)

273,000 individuals left the job market in December. During the year, however, the nation welcomed more than 1,000,000 net new workers to the nation's workforce. The labor market participation rate continues to hover around a 35-year low of 62.7%, but much of this is due to accelerating retirement attributable both to aging and surging stock prices, which allow more people to comfortably retire.

The owner-occupied housing market refuses to recover robustly. This is incredible. The nation is adding more than 200,000 jobs per month, the stock market is at record highs, unemployment is below 6%, and the 30-year fixed mortgage rate sits at almost precisely 4%. The nation's housing market should be booming. It's not. Though home sales expanded on a monthly basis in September, they were down 1.7% relative to the same month one year ago. Much of the problem revolves around the lack of first-time buyer participation, which reached a 27-year low this year. Normally, first-time buyers account for 40% of all existing home sales. Right now, they aren't even coming close due to a combination of student debt, tougher lending standards, and altered attitudes toward homeownership.

Despite growing momentum in the broader economy and positive signals from the Architecture Billings Index, nonresidential construction spending shrank on a monthly basis in November. Only 5 of 16 sub-categories (lodging, communication, sewage and waste disposal, and highway and street) registered monthly growth in November. The monthly decline in spending, however, does not signify the end of momentum. November's figure would have represented a continuation of nonresidential spending's steady recovery were it not for a sizable upward revision to October's data (+$11.1 billion). Through the first 11 months of 2014, nonresidential spending is up 6.4% from the same point in 2013 and with only December's spending data yet to be revealed, it is a near certainty that yearly nonresidential spending will top the $600 billion mark for the first time in the past five years.

The Conference Board Leading Economic Index along with a host of other leading indicators suggests that the U.S. economy is positioned for a solid year in 2014. Many economists, including Sage's, are predicting roughly 3% growth in 2015. It could end up even better than that, but one needs to account for a few key headwinds, including federal fiscal realities, slower export growth, and diminished capital investment by segments of the U.S. energy sector. Those items will subtract from economic growth along with a handful of more exotic considerations, including the impact of terrorism, cyberattacks, oil company defaults, rising junk bond yields, etc.

Looking Ahead

Inflation will remain low in 2015, which should give the Federal Reserve additional time to be patient. In our estimation, the recent slump in gas prices will end up delaying Federal Reserve action on interest rates for 3 to 6 months, with rate hikes unlike to arrive until the summer of 2015 or perhaps a few months thereafter.

Anirban Basu is Chairman & Chief Executive Officer at Sage Policy Group, Inc., an economic and policy consulting firm in Baltimore, MD. Mr. Basu consults on behalf of numerous clients, including prominent developers, bankers, brokerage houses, energy suppliers and law firms. Join us at the RCA 25th Annual Conference on March 14 and hear him speak give an economic update in his presentation "The Pit and the Pendulum."

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