



# CONSTRUCTION INDUSTRY EDITION

## How To Avoid The 24 FAMILY BUSINESS “TRAIN WRECKS”



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## How To Avoid Family Business “TRAIN WRECKS”

We weren't surprised by our meeting with Andy.\* We had seen it many times before. Andy and his brother Al had founded and built a very successful construction company thirty-five years ago. Double A Construction Company\* had operations across the region which had consistently produced significant year-to-year profitable net cash flow until the past few years.

Andy and Al had started their company with a big dream and a lot of heart. Together with their colleagues, they wanted to help build communities and build families. Which is exactly what they did. You might say they had a very successful first Three Quarters in their business careers. But they had been losing the Game in their personal Fourth Quarter.

### “Train Wrecks” In The Making That You Want To Avoid

Al had died unexpectedly in a construction accident two years earlier. Losing his brother and long time partner was hard enough for Andy.

**Overstated and Underfunded:** Unfortunately, after working through the Probate Court, Andy was still paying off the purchase of Al's stock to his widow. Their Buy-Sell Agreement's outdated and incorrect formula had overstated the Company stock price, and they had never insured the buy-out obligations. And even the overstated price wasn't enough for Al's widow to support the lifestyle she and Al had been living.

**Unclear Successor Status:** This was all taking a toll on Andy. Andy had decided recently that he was ready to transition from the Company. He wanted to get this done soon. Paul, his second-in-command, had been a big part of the team for the past fifteen years. Andy was hoping Paul could carry this forward. So, Andy was introduced to us by Sally, one of his Trusted Advisors.

**Different Viewpoints:** As we began to visit with Andy and Sally, it became obvious Andy and Paul clearly had very different views about the future.

**“Fair” Price:** Andy had assumed Paul would purchase the business from him at a full fair price (which Andy needed to meet his retirement needs). Paul thought much of the ownership should be bonused to him (or sold at a bargain price) based on his fifteen years of dedicated service. However, they had never really discussed this in any detail.

**Perishable Business Model:** Paul also believed the company's Business Model strategy had become the victim of Andy's recent short-term thinking. If he was to be Andy's successor, Paul wanted to know the Company would be primed to endure for a long time.

**Ship Jumping:** In addition, Paul had recently been approached by a competitor to take a key position and ownership stake with that company, which Paul was giving strong consideration to. The Company had recently lost a key supervisor to the same competitor, who was now soliciting Paul and some of the Company's other supervisors and customers to jump ship with him.

**Declining Profit:** Andy had also been talking to possible outside buyers but so far no one was interested. This was largely because their profit margin, on time/on budget performance and construction backlog value were not good.

**Tax Hit:** He was also not happy about the projected tax hit to him on the sale due to their “C” corporation tax status.

**Divorce Disaster:** Andy and Al had never brought Paul in as a partial owner. They had held back on stock ownership with Paul due to the disaster from Andy's son's divorce. Andy and Al had awarded stock to Andy, Jr. several years earlier due to his work with the Company. Then they had to pay a high price to buy it back when the Divorce Court had awarded half of his stock to Andy Jr.'s wife. Andy Jr. left the company because of the mess he had caused.

**Lost Financial Clout:** The bank and construction bond surety company were posing additional, justifiable concerns. Double A's Balance Sheet didn't look great with the debt to Andy Jr.'s ex and Al's widow. And Paul did not have the financial clout to buy the Company or to provide the collateral needed to support Double A's line of credit or bonding needs.

**Outlook Fading:** What happens when you and your partner (and now your possible successor) haven't dealt with each others visions soon enough? And what happens when the great business you thought you had built is starting to fade and just isn't of interest to potential buyers?

### Your “Fourth Quarter” Planning

Ideally, a business owner's future personal “Fourth Quarter” will occur on your terms and timetable. However, sometimes foreseeable (but ignored) events and unforeseen events (such as unexpected death or disability or the loss of key employees or a Business Model that is faltering) will frustrate your best laid plans.

This is why we deploy what we call “Fourth Quarter” Planning. “Fourth Quarter” Planning is a mindshift which Family Business Leaders have been asking us to design and put into place with them. It is a belief in the need to “begin with the end in mind” if you really intend to be and stay successful. In other words, you must think in terms of your personal “Fourth Quarter First” (and don't wait for the “Two Minute Warning” or Overtime).

This addresses both your planned, foreseeable growth and future exit, as well as back up plans in case of an unexpected owner, partner or key employee death, disability, departure, dispute, divorce or business downturn.

**“Begin with the end in mind.”**

Stephen Covey  
Best Selling Author of  
*The 7 Habits of Highly  
Effective People*



So... What do you want to see?  
Family Business Leaders tell us  
they most want to achieve:

- Profitable Growth for our business
- Wealth Protection for what we're building
- Lifestyle Continuity for us and our family
- Personal Freedom on our terms

Family Business Leaders tell us  
they most want to avoid:

- Train Wrecks

### “Are We A Family Business?”

Yes—if Any Of These Apply ☒

- |  |   |
|--|---|
| <input type="checkbox"/> Presently family owned with a family CEO or President | <input type="checkbox"/> In our Company Culture, we see all of our colleagues as family       |
| <input type="checkbox"/> Family owned with a non-family CEO or President       | <input type="checkbox"/> Presently owned by more than one family                              |
| <input type="checkbox"/> Already multi-generation                              | <input type="checkbox"/> More than one family member involved in Company Leadership           |
| <input type="checkbox"/> Developing a possible family successor                | <input type="checkbox"/> Intend to become multi-generation                                    |
| <input type="checkbox"/> Intend for my family to own in the future             | <input type="checkbox"/> Family owned now, but could sell to ESOP, outside buyer or employees |

**Family Businesses = 90% of All U.S. Businesses**

(U.S. Bureau of the Census)

“Every business is a family business. To ignore this truth is to court disaster.”

Michael E. Gerber,  
Author of “The E-Myth Revisited”



## CONTINUED BUSINESS SUCCESS

## AVOID THE 24 "TRAIN WRECKS" = "FOURTH QUARTER" PLANNING

It is more than just succession, estate and exit planning. It is the deliberate, adaptable and customized process for working with you and your family and colleagues to continue to profitably build your business. And to do this while at the same time working towards a successful future transition and eventual exit from your company. This is accomplished while also addressing how to protect what you're building and how to take control of your legacy.

Many Family Business Leaders have heard us say that our job is to "look into the future" with you. And then work together collaboratively - with your Trusted Advisor Team - on what is needed to avoid foreseeable pitfalls and to achieve the incredible results you want.

That is the essence of "Fourth Quarter" Planning. To look ahead. To see it coming. To avoid Train Wrecks. To timely deploy what's needed to keep the promises you've made to yourself, your family, your colleagues, your stakeholders, your customers and your communities.

### A Better Outcome For You, Your Family and Your Team

Our Fourth Quarter Game Plan Program is built around 4 Powerful Playbooks. Business owners have to make many decisions to stay successful. This program has 24 "Main Plays" that you can deploy to stay successful for the whole game.

What could Andy and Al have done differently to achieve much better results? What Plays could they have deployed?

#### From The Profit Playbook:

- They could have established a Profit Strategy Team to keep Double A strategically fine-tuned and in a Business Model position to overcome marketplace disruption, to improve profitability (and sellability) and to enhance Paul's leadership development.
- They could have deployed a Performance Target Incentive Program for their project supervisors (tied to construction projects completed on time and within budget) to help retain them and improve performance. Nonsolicitation protections would have been built in.

#### From The Protection Playbook:

- They could have updated the pricing and terms in their Buy-Sell Agreement to more closely reflect family business and construction company pricing and terms. For example, given the construction nature of the business, the pricing method could have favored a book value method, adjusted by equipment value, WIP, and the impact of holdbacks on receivable collections.
- They could have enabled Paul to earn some stock ownership (or equity appreciation right) over time using a Two Phase Rolling Vesting Plan (with the stock subject to its own Buy-Sell Agreement). With this Paul could begin early on to be thinking as an owner and colleague. This would have also given him enough partial ownership which could make his overall Company purchase bankable.

#### From The Estate Playbook:

- They could have used the Family Bloodline Opportunities Trust to hold the stock of Andy's son so they weren't forced to buy it back in his divorce.
- They could have established Revocable Living Trusts with Family Business protections and re-titled their stock into their Trusts to avoid Probate Court.

#### From The Succession Playbook:

- They could have elected to be an "S" corporation which (due to basis build up or single level tax) would have reduced the income tax on a Company sale.
- They could have established (and been investing in) a Deferred Compensation Agreement pursuant to a Personal Financial Plan for Andy and Al, to take some of the pressure off of their heavy reliance on Company stock price for retirement.
- They could have funded their Buy-Sell Agreement and Deferred Compensation Agreement with the right Life Insurance portfolio fit to better assure they had the right cash at the right time.

### Your "Fourth Quarter Game Plan"

None of us want to let down those who depend on us. We all want to keep the promises we have made to ourselves, to our families, to our colleagues, to our stakeholders, to our customers and to our communities.

This all begins with understanding what you value most. And then moving ahead with speed, clarity and purpose to deploy what's needed to stay successful for the whole game.

\* While this example is real, we've changed the actual names, business details, and personal details so that no specific person or business can be identified.



## "What Types of Construction Industry Companies Have You Personally Worked With?"

### Overall Construction Companies

- General Contractor
- Design-Build
- Construction Management
- Design-Assist
- Turn-Key Project Development

... which have built the following types of Facilities:

- Residential Single Family
- Residential Multi-Family
- Sports Facilities
- Transportation Terminals
- Technology Facilities
- Retail Facilities
- Tenant Improvements
- Industrial Water
- Specialty Chemicals
- Mining Facilities
- Science Facilities
- Power Facilities
- Water/Wastewater
- Highways & Bridges
- Office Buildings
- Industrial Complexes
- Education Facilities
- Hotels
- Hospitals
- Manufacturing
- Special-Use Facilities
- Mineral Processing
- Food & Beverage
- Advanced Manufacturing
- Oil, Gas & Chemical
- Pipelines
- Rail Lines
- Airport Runways

### Specialty Trade & Subcontractors

- Structural Steel Contractor
- Framing Contractor
- Masonry Contractor
- Glass and Glazing Contractor
- Roofing Contractor
- Siding Contractor
- Electrical Contractor
- Plumbing, Heating and Air-Conditioning
- Building Finishing
- Painting and Wallcovering
- Drywall and Insulation
- Site Preparation
- Water and Sewer Line Construction
- Power and Communication Line Construction
- Cold Storage Installation
- Structural Steel Erection
- Concrete Reinforcing
- Concrete Cutting
- Deck Builders
- Stadium Repairs
- Millwright Construction
- Utility Construction
- DOT/Highway Infrastructure Repairs
- Parking Garage Repairs
- Industrial Restoration and Coatings
- Masonry Restoration
- Marine Terminal Construction
- Drag Line and New Mine Construction
- Mechanical and Electrical
- Security Systems
- Door Installation
- Silo Construction and Restoration
- Roofing and Waterproofing
- Soil Stabilization
- Concrete Repair
- Home Remodeling
- Waste Disposal
- Sewer Systems
- Clean Water Systems
- Drainage
- Water Main Construction
- Concrete Foundation Construction
- Excavation and Site Development
- Roller Compacted Concrete Paving
- Demolition and Excavation
- Oil Field Casing Installation
- Interior Design
- Asphalt Paving
- Concrete Paving
- Underground Boring
- Trenching
- Conduit Pull
- Utility Placement and Repair

### Construction Industry Support

- Construction Bonding
- Cement Manufacturer
- Stone Fabrication
- Sand and Gravel Production
- Construction Financing
- Engineering and Architectural
- Well Drilling
- Energy Management
- Data Center Assessments
- Portable Dredging

## Next Step

To learn more about the 24 "Train Wrecks" that are destroying the success of family businesses in the Construction Industry or to check Nick's availability to design and deploy a "Fourth Quarter" Game Plan with you, your spouse, your CEO, your President, your partners, your colleague, your mentor, your parents or your client, please contact him at (402) 633-1489 or [nniemann@McGrathNorth.com](mailto:nniemann@McGrathNorth.com).

## Results Not Wanted



## Results Wanted



## Results Achieved By



## What Is The Financial + Personal Cost of Being Too Late or Out of Time?

## What Is The Financial + Personal Value of Each Great Play Deployed In Time?

### Inspired By Excellence. Committed To Your Success.

For over 60 years we have been working with our nation's food companies, farmers and ranchers to feed people better. We have been working with contractors and companies to build better and more affordable homes and new business facilities.

We have been working with technology companies to develop new ideas that improve lives. We have been working with inventors, startup companies and health care providers to develop patented medical devices, leadership teams and joint ventures that save lives. We have been working with energy companies to help fuel our homes and the businesses we all rely on.

We have been working with bankers, key partners, manufacturers and transportation companies to finance, produce and deliver better products to communities around the world. We have been working with family business pioneers and their other trusted advisors to transform, grow, carry on and transition the family business dream, the backbone of our great country.

We have been working with our community leaders to improve our cities and our schools. We have been working with our elected leaders to improve the business climate to create and attract new and better jobs for families.

For over 60 years, this has been the McGrath North Law Firm.

Working quietly behind the scenes closely with the talented leaders of great organizations around the world to make lives better.

Working together. Working stronger. Working faster. Working better. Overcoming Roadblocks. Avoiding Train Wrecks.

Inspired by excellence. Committed to your success.

Our diverse team isn't waiting for the future. We are helping to produce new, incredible, sustainable results right now.

We invite you to join us as we move quickly ahead towards the next 60 years.



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### What We Do

We "look into the future" with Family Business Leaders to design and deploy what's really needed for you, your family and your colleagues to win the whole game.

### Why We Do It

Because we believe in the greatness of the Family Business dream.

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