On behalf of the Officers and Board of Directors of the Mid-West Insulation Contractors Association, we wish to extend to all of you a Merry Christmas, Happy Hanakah, and a most joyous and prosperous new year!
PRESIDENT’S MESSAGE

TO: THE MICA MEMBERSHIP

Thanksgiving marked the beginning of the holiday season. We are now in the midst of this season with Christmas upon us and the New Year only a week away!

Christmas is a time for all of us to reflect on how we treat others. We are called upon to reflect on our Christian values in whatever form our faith takes us.

“Do unto others as you would have them do unto you”, has always seemed a common sense value to me. Putting this value into practice in our personal and professional lives seems like a “no brainer”, yet we do not always follow through on this.

When we see terms of net 30 on our purchase invoices and when we bill our customers with net 30 terms, it would be so beneficial to all of us if we did “do unto others...”. But it is so easy to justify why we wait to pay our invoices and why we get upset with our customers who don’t pay on time.

“Love thy neighbor as thyself”. This is a little more difficult to put into practice. There are times where we don’t always “love ourselves”, especially when we don’t “do unto others...”. But if we truly try to be a “better” person and like who we are, it is easier to “like” others with whom we interact.

The Christmas season is the time for us to really reflect upon who we are as individuals and how we react to others around us in our personal and professional lives. This is not so easy to do this time of year. We have presents to buy, parties, to attend, and business activities to complete by year-end that seem to take up all of our time.

But we need to remember what life is really about. We need to remember to “love thy neighbor” and to “do unto others”. And if we do, we may find 2012 to be a very good year for us.

Jan and I truly do wish you and your family a most Merry Christmas, and a very joyous and prosperous New Year.

I am looking forward to our continued relationships next year as part of the MICA family. Hopefully, I will see you in Key West, Florida at the winter meetings in January!

Sincerely,

Jeff DeGraaf,
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WASHINGTON - U.S. Transportation Secretary Ray LaHood announced a final rule that employs the latest research in driver fatigue to make sure truck drivers can get the rest they need to operate safely when on the road. The new rule by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) revises the hours-of-service (HOS) safety requirements for commercial truck drivers.

“Trucking is a difficult job, and a big rig can be deadly when a driver is tired and overworked,” said Transportation Secretary Ray LaHood. “This final rule will help prevent fatigue-related truck crashes and save lives. Truck drivers deserve a work environment that allows them to perform their jobs safely.”

As part of the HOS rulemaking process, FMCSA held six public listening sessions across the country and encouraged safety advocates, drivers, truck company owners, law enforcement and the public to share their input on HOS requirements. The listening sessions were live webcast on the FMCSA Web site, allowing a broad cross-section of individuals to participate in the development of this safety-critical rule.

“This final rule is the culmination of the most extensive and transparent public outreach effort in our agency’s history,” said FMCSA Administrator Anne S. Ferro. “With robust input from all areas of the trucking community, coupled with the latest scientific research, we carefully crafted a rule acknowledging that when truckers are rested, alert and focused on safety, it makes our roadways safer.”

FMCSA’s new HOS final rule reduces by 12 hours the maximum number of hours a truck driver can work (Continued on page 5)
within a week. Under the old rule, truck drivers could work on average up to 82 hours within a seven-day period. The new HOS final rule limits a driver's work week to 70 hours.

In addition, truck drivers cannot drive after working eight hours without first taking a break of at least 30 minutes. Drivers can take the 30-minute break whenever they need rest during the eight-hour window.

The final rule retains the current 11-hour daily driving limit. FMCSA will continue to conduct data analysis and research to further examine any risks associated with the 11 hours of driving time.

The rule requires truck drivers who maximize their weekly work hours to take at least two nights’ rest when their 24-hour body clock demands sleep the most - from 1:00 a.m. to 5:00 a.m. This rest requirement is part of the rule’s “34-hour restart” provision that allows drivers to restart the clock on their work week by taking at least 34 consecutive hours off-duty. The final rule allows drivers to use the restart provision only once during a seven-day period.

Companies and drivers that commit egregious violations of the rule could face the maximum penalties for each offense. Trucking companies that allow drivers to exceed the 11-hour driving limit by 3 or more hours could be fined $11,000 per offense, and the drivers themselves could face civil penalties of up to $2,750 for each offense. Additionally, states will suspend a driver’s commercial driver’s license (CDL) after two or more serious traffic violations. Commercial truck and bus companies that allow their drivers to use hand-held cell phones while driving will face a maximum penalty of $11,000. Approximately four million commercial drivers would be affected by this final rule.

―This final rule represents a giant leap for safety,‖ said FMCSA Administrator Anne S. Ferro. “It’s just too dangerous for drivers to use a hand-held cell phone while operating a commercial vehicle. Drivers must keep their eyes on the road, hands on the wheel and head in the game when operating on our roads. Lives are at stake.”

While driver distraction studies have produced mixed results, FMCSA research shows that using a hand-held cell phone while driving requires a commercial driver to take several risky steps beyond what is required for using a hands-free mobile phone, including searching and reaching for the phone. Commercial drivers reaching for an object, such as a cell phone, are three times more likely to be involved in a crash or other safety-critical event. Dialing a hand-held cell phone makes it six times more likely that commercial drivers will be involved in a crash or other safety-critical event.

In September 2010, FMCSA issued a regulation banning text messaging while operating a commercial truck or bus and PHMSA followed with a companion regulation in February 2011, banning texting by intrastate hazardous materials drivers.

―Needless injuries and deaths happen when people are distracted behind the wheel,‖ said PHMSA Administrator (PHMSA) is the latest action by the U.S. Department of Transportation to end distracted driving.

“When drivers of large trucks, buses and hazardous materials take their eyes off the road for even a few seconds, the outcome can be deadly,” said Transportation Secretary Ray LaHood. “I hope that this rule will save lives by helping commercial drivers stay laser-focused on safety at all times while behind the wheel.”

The final rule prohibits commercial drivers from using a hand-held mobile telephone while operating a commercial truck or bus. Drivers who violate the restriction will face federal civil penalties of up to $2,750 for each offense and disqualification from operating a commercial motor vehicle for multiple offenses. Additionally, states will suspend a driver’s commercial driver’s license (CDL) after two or more serious traffic violations. Commercial truck and bus companies that allow their drivers to use hand-held cell phones while driving will face a maximum penalty of $11,000. Approximately four million commercial drivers would be affected by this final rule.

WASHINGTON - U.S. Transportation Secretary Ray LaHood announced a final rule specifically prohibiting interstate truck and bus drivers from using hand-held cell phones while operating their vehicles. The joint rule from the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) is the latest action by the U.S. Department of Transportation to end distracted driving.

“Needless injuries and deaths happen when people are distracted behind the wheel,” said PHMSA Administrator
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Cynthia Quarterman. “Our final rule would improve safety and reduce risks of hazmat in transportation.”

Nearly 5474 people died and half a million were injured in crashes involving a distracted driver in 2009. Distraction-related fatalities represented 16 percent of overall traffic fatalities in 2009, according to National Highway Traffic Safety Administration (NHTSA) research.

Many of the largest truck and bus companies, such as UPS, Covenant Transport, Wal-Mart, Peter Pan and Greyhound already have company policies in place banning their drivers from using hand-held phones.

To learn more about the U.S. Department of Transportation’s efforts to stop distracted driving, please visit http://www.distraction.gov

(Continued from page 5)

ASA AND ASA OF CALIFORNIA SUCCEED IN KEEPING COURTS FROM ‘DEFINING AWAY’ SUBS’ BOND RIGHTS

ALEXANDRIA, Va. — ASA and ASA of California are celebrating an appeals court’s ruling that custom prefabricators are subcontractors entitled to payment protections under California law. On Dec. 5, California’s 3rd Appellate District Court of Appeals upheld a lower court’s ruling that a pre-fabricator of custom components is indeed a “subcontractor” entitled to mechanic’s lien and payment bond rights under California law.

“This ruling rightly recognizes that off-site custom prefabricators are not substantively different from other subcontractors in a way that justifies denying the payment assurances established by law,” said 2011-12 ASA President Kerrick Whisenant, Cornerstone Detention Products Inc., Tanner, Ala. “As specialty trade contractors continue to do more work off-site, it is vital that their lien and bond rights remain protected.”

On July 29, 2011, ASA and ASA of California filed an amici curiae, or “friends of the court,” brief in Eggers Industries v. Flintco, Inc. They argued that if the appeals court overturned the lower court’s ruling, “Such a ruling would create uncertainty in the construction industry, place a restriction on the ability of subcontractors to further subcontract out their work, and negatively affect the trend of off-site prefabrication, manufacturing and modularization work in the construction industry which benefit
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FUTURE MICA MEETING DATES

2012 Winter Board and Committee Meetings — January 26 & 29, 2012, DoubleTree Grand Key Resort, Key West, Florida.


Fall 2012 Annual Fall Business Meeting — October 17 & 18, 2012, Embassy Suites Downtown, Omaha, NE.

56th Annual Spring Convention — June, 2013, Location to be Determined.

MICA MEMBER ADDRESS/INFO. UPDATES

Be sure to inform the MICA office of any changes or corrections to your listing for either the MICA Directory, e-mail correspondence or mailing address. Even if you update your company listing on the MICA website, please inform the MICA office of the changes. We try to be as current as possible with your help.
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all concerned from project owners to lower tier subcontractors and material suppliers.” The general contractor and the surety sought to overturn the trial court’s ruling on appeal.

In the underlying case, the general contractor on a public works project contracted with a vendor to provide custom wood doors. The vendor then contracted with pre-fabricator Eggers to specially manufacture the doors and related products according to detailed shop drawings. As required by California law, Eggers recorded a “Preliminary 20-day Notice” before it manufactured and delivered its custom doors. During the course of the project, the vendor failed to pay the pre-fabricator for its work. After the vendor became insolvent, the pre-fabricator filed a claim on the project’s payment bond and then filed suit for the money owed.

At trial the general contractor and surety argued that Eggers was a “second-tier material supplier” and not entitled to recover on a public works payment bond. The trial court ruled that the vendor was indeed a “subcontractor” because it agreed to perform a “substantial specified portion of a work of improvement” in accordance with the construction contract’s plans and specifications. As a result, Eggers was a proper claimant on the public works payment bond.

E. Scott Holbrook and Stephen M. Indergand, Crawford and Bangs LLP, Covina, Calif., prepared the brief for ASA and ASAC. ASA—Capital City Chapter member attorneys Bill Porter and Conor McElroy, Porter Law Group, argued the case in the court. ASA’s Subcontractors Legal Defense Fund paid the fees associated with the filling, with additional support from the Window and Door Manufacturers Association. The SLDF supports ASA’s critical legal activities to protect the interests of all subcontractors and is funded solely by contributions. SLDF funds are invested in precedent-setting cases across the country.
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ED SORE RETIRES FROM VENTURE TAPE

Venture Tape announces that Ed Sore, National Insulation Sales/Product Manager, will be retiring at the end of December 2011. Ed has had a long and prosperous career in the insulation industry spanning over 43 years. Learning the industry from his father, Ed began his career in 1968 with tools in Local 12. He has been with Venture Tape for 28 years, beginning as their first full time sales rep. Ed has been the Venture Tape National Sales/Product Manager for the Insulation Division since 1993. Through the years, Ed has been active in various industry organizations. He served on the board of NIA and proudly served as a President of the Associates Committee as well.

Thankfully, Ed will not be leaving the industry. He will be starting an independent sales rep agency, Ed Sore Products, and will represent the Venture Tape-GTA-NHT, Inc. product line as well as others in the New England region and eastern Canada. Please join us in wishing him well in his new endeavor and many more successful years.

ASA, ASA–GREATER KANSAS CITY AND ASA–MIDWEST COUNCIL DEFEND SUBCONTRACTORS’ LIEN RIGHTS

ALEXANDRIA, Va. — On Dec. 13, the American Subcontractors Association, ASA–Greater Kansas City and ASA–Midwest Council asked the Supreme Court of Missouri to overturn an appeals court’s decision that could dramatically diminish the value of construction subcontractors’ lien claims.

―Mechanic’s liens are a critical payment assurance for subcontractors, long recognized by Missouri law,‖ said 2011-12 ASA President Kerrick Whisenant, Cornerstone Detention Products Inc., Tanner, Ala. ―ASA is a unified voice defending against threats that would reduce the value of subcontractors’ liens.‖

ASA, ASA–GKC and ASA–MWC filed an amici curiae, or “friends of the court,” brief in Bob DeGeorge Associates, Inc., KD Christian Construction, Co., v. Hawthorne Bank, arguing that the “Court of Appeals’ holding that a purchase money deed of trust has priority over a previously-filed mechanic’s lien unjustly favors one of three competing public policies at issue in this case: promoting (Continued on page 25)
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purchase money financing,” and “is a significant change in the law and contradicts the plain meaning of Missouri statutes as they have been understood and applied by the construction industry (and the banking industry as well) for decades.” In Missouri, under the “first spade rule,” a contractor’s mechanic’s lien attaches at the time the project work first begins.

In the underlying case, an owner contracted with DeGeorge to remodel a building. DeGeorge later subcontracted some of the work to KD Christian. After its attempts to recover payment were unsuccessful, DeGeorge filed a mechanic’s lien on the property. The next day, Hawthorn Bank recorded its deed of trust with the county — 31 days after the project was complete. KD Christian also filed a mechanic’s lien on the property. At trial, the bank argued unsuccessfully that its mortgage was superior to the mechanic’s liens filed by the general contractor and subcontractor, but on appeal the court sided with the bank. The Builders’ Association of Kansas City joined ASA and its chapters in the filing. ASA member attorney Lee Brumitt, Dysart Taylor Lay Cotter & McMonigle, P.C., Kansas City, Mo., prepared the brief for ASA, ASA–GKC and ASA–MWC. ASA’s Subcontractors Legal Defense Fund paid the fees associated with the filing, with additional support from the Builders’ Association of Kansas City. The SLDF supports ASA’s critical legal activities to protect the interests of all subcontractors and is funded solely by contributions. SLDF funds are invested in precedent-setting cases across the country.

DOE RESEARCHERS ACHIEVE IMPORTANT GENETIC BREAKTHROUGHS TO HELP DEVELOP CHEAPER BIOFUELS

Washington D.C. – Researchers at the U.S. Department of Energy’s (DOE’s) Joint BioEnergy Institute (JBEI) announced a major breakthrough in engineering systems of RNA molecules through computer-assisted design, which could lead to important improvements across a range of industries, including the development of cheaper advanced biofuels. Scientists will use these new “RNA machines”, to adjust genetic expression in the cells of microorganisms. This will enable scientists to develop new strains of Escherichia coli (E. coli) that are better able to digest switchgrass biomass and convert released sugars to form three types of transportation fuels – gasoline, diesel and jet fuels.

“This is a perfect example of how our investments in basic science innovations can pave the way for future industries and solutions to our nation’s most important challenges,” said Energy Secretary Steven Chu. “This breakthrough at the Joint BioEnergy Institute holds enormous potential for the sustainable production of advanced biofuels and countless other valuable goods.”

A breakthrough with E. coli could make it cheaper to produce fuel from switchgrass or other non-food biomass plants to create advanced biofuels with the potential to replace gasoline. While the work at JBEI remains focused on the development of advanced biofuels, JBEI’s researchers believe that their concepts may help other researchers to develop many other desired products, including biodegradable plastics and therapeutic drugs. For example, some researchers have already started a project to investigate how to use the “RNA machines” to increase the safety and efficacy of medicine therapies to treat diseases, including diabetes and Parkinson’s.

Biological systems are incredibly complex, which makes it difficult to engineer systems of microorganisms that will produce desired products in predictable amounts. JBEI’s work, which will be featured in the December 23rd issue of Science magazine, is the first of its kind to set up and adjust a RNA system in a predictable way.

Specifically, researchers focused their design-driven approach on RNA sequences that can fold into complicated three dimensional shapes, called ribozymes and aptazymes. By using JBEI-developed computer-assisted models and simulations, researchers then created complex RNA-based control systems that are able to program a large number of genes. In microorganisms, “commands” that are sent into the cell will be processed by the RNA-based control systems, enabling them to help develop desired products.

One of the major goals of synthetic biology is to produce valuable chemical products from simple, inexpensive and renewable starting materials in a sustainable manner. Computer-assisted models and simulations like the one JBEI developed are essential for doing so. Up to this point, such tools for biology have been very limited and JBEI’s breakthrough in applying computer assisted design marks an important technical and conceptual achievement for this field.
BOARD SETS DUES AND ADVERTISING RATES FOR 2012

At its October meeting, the Board of Directors of MICA approved MICA’s operating budget for 2012. In its deliberations, the Board voted not to increase the annual membership dues and advertising rates for 2012. The Board is very cognizant of the current state of the economy and wants to keep MICA affordable to all current and prospective members. This is the second year in a row that the Board has not increased the dues structure.

Contractor member annual dues for 2012 remains at $650.00. The annual dues for associate members is $450.00. The advertising rates have not increased for 2012. Please contact the MICA office for a copy of the 2012 advertising rates. Advertising in the MICA Messenger continues to be an excellent forum to reach the membership on a monthly basis.

Your 2012 membership renewal notices were mailed to you earlier this month. We are anticipating 100% renewals and look forward to your continued participation in MICA in 2012.

NEW TAX GUIDE HELPS PEOPLE SAVE ON THEIR 2011 TAXES

WASHINGTON — Taxpayers can get the most out of various recovery tax benefits and get a jump on preparing their 2011 federal income tax returns by consulting a newly revised comprehensive tax guide now available on IRS.gov.

Publication 17, Your Federal Income Tax, features details on taking advantage of a wide range of tax-saving opportunities, such as the American opportunity credit for parents and college students, and the child tax credit and expanded earned income tax credit for low- and moderate-income workers. This useful 303-page guide also provides more than 5,000 interactive links to help taxpayers quickly get answers to their questions.

Publication 17 has been published annually by the IRS since the 1940s and has been available on the IRS web site since 1996. As in prior years, this publication is packed with basic tax-filing information and tips on what income to report and how to report it, figuring capital gains and losses, claiming dependents, choosing the standard deduction versus itemizing deductions and using IRAs to save for retirement.

Besides Publication 17, IRS.gov offers many other helpful resources for those doing year-end tax planning. Many 2011 forms are already posted, and updated versions of other forms, instructions and publications are being posted almost every day. Forms already available include Form 1040, short Forms 1040A and 1040EZ, Schedule A for itemizing deductions and new Form 8949 for reporting sales of stocks, bonds and other capital assets.

IRS ANNOUNCES 2012 STANDARD MILEAGE RATES, MOST RATES ARE THE SAME AS IN JULY

WASHINGTON — The Internal Revenue Service issued the 2012 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2012, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 55.5 cents per mile for business miles driven
- 23 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The rate for business miles driven is unchanged from the mid-year adjustment that became effective on July 1, 2011. The medical and moving rate has been reduced by 0.5 cents per mile.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs as determined by the same study. Independent contractor Runzheimer International conducted the study.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.
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