WINTER BOARD AND COMMITTEE MEETINGS

The Board of Directors of MICA and committees held their winter meetings on January 25 & 26, 2013, in Naples, Florida. The committees that met on January 25th were the Merit Shop, Labor, Promotion & Membership, Safety & Environmental, and the Past Presidents’ Planning Committee.

The Merit Shop and Labor committees reviewed the workloads within the MICA region. They discussed business issues that the insulation contractor is dealing with including the Health Care Act and its impact on businesses.

The Promotion and Membership committee discussed several ways to promote MICA and the insulation industry to the business community. The committee recommended to the Board to expand the table top display session at the Fall 2013 Business Meeting to invite architects and engineers in the greater Omaha business community to attend. The Board was very supportive of this initiative and will begin the planning process to implement the initiative at the Fall Business Meeting.

The Safety & Environmental committee reviewed the application process for the 8th annual “Safety Best Practices” award. The committee agreed to continue to use the grading process that was implemented last year. The committee also agreed to make some changes to the application questions for both the contractor and associate applications. It was noted that the two groups have some unique safety issues that need to be addressed in the application process. Notice of the award application process will be sent to the members in March of this year.

The Past Presidents’ Planning committee met and reviewed MICA’s Vision Statement and Strategic Initiatives. The past presidents are asked to identify and discuss emerging issues facing the insulation industry and the MICA members. As new issues are identified, the past presidents review the vision statement to see if a new strategic initiative needs to be added or existing initiatives removed. No new initiatives were added at this meeting.

The Board of Directors met on Saturday, January 26, 2013. Part of the agenda was to approve the technical programs for the 56th annual spring convention of MICA. This convention will be held June 17 to 20, 2013, at the Waldorf Astoria Naples, in Naples, Florida. The Waldorf Astoria Naples is luxury at its finest. This is one of those unique experiences that you should not miss.

The spring meeting schedule has changed to accommodate those members who wish to be home on Father’s Day. We have moved the convention to begin on Monday, June 17, 2013, instead of on Sunday, Father’s Day. Please note this change and begin now to plan your participation at our 56th annual spring convention.
PRESIDENT’S MESSAGE

TO: THE MICA MEMBERSHIP

HELLO MICA FAMILY,

Hello MICA Family, and Happy 2013. The Christmas and New Year’s holidays are over, and now it’s time to pack up all the decorations and put them in the attic, garage, basement, garbage, wherever it is you store them.....and then work on the New Year’s resolutions. Better eating habits, quit smoking, start exercising, work smarter, go to church more, spend less each month, save more each pay check, any of these sound familiar?

Well, we all probably have done one or more of these in our life, or maybe all of them, or even all of them in the same year. (I commend any of you if you have taken on all of these in one year). Whatever the case, it is that time of the year to think of all of these things and what we can do to become a better person in our own eyes and mind. For those of us who think about these things, the reality is we really are doing this to become a better, a wealthier, or a healthier person, right?

We are really doing this for our own self-worth and/or our own self esteem. Some of us do these things for a month or two and some of us do these for a much lengthier time, but however long the time is, we probably feel much better because we did it.

My 2013 goals are that I would like to do some of the things I mentioned above, but I also want to try and recruit at least one new contractor to become a member of MICA. This really does not sound too difficult, and in all honesty, I really do believe that I will feel really good about doing this because I have experienced the many benefits of being involved in MICA. The new contractor I want to recruit will feel really good about being a member of one of the best regional associations in the mechanical insulation industry. Where else can you go to get up-to-date information on new products or new trends in this industry, or learn from each other in this business than by coming to a Midwest Insulation Contractors Association conference or trade meeting?

I would like to challenge each of you MICA members to make a point to recruit a new member to MICA this year, or at least to invite a new member to attend a MICA meeting so they can see what we are all about. Don’t forget that the MICA Board of Directors has approved a reduced dues incentive for any new contractor member firm that joins our association in 2013. If any of you know of any company that you feel can benefit from joining our association, why not give it a try and recruit them?

Another one of my goals is to become a certified mechanical insulation appraiser this year. I should have done this many years ago, but now it’s time. I know that the educational gain I will receive from this will be a huge benefit to my customers and to my employer. This will make me feel good also because I am doing something to become a better person in my industry. If any of you have any interest in doing the same and are not sure as to how to go about this, just contact MICA or call or email me.

Thanks for reading and I will talk at you all next month.

Regards,

Rich Huseman
President of MICA
WINTER DRIVING - SKIDS

The following article is provided by Ray Pastorius, Sr. Loss Control Consultant with Holmes Murphy.

Good drivers know the special hazards of winter driving, but should be reminded about the danger of skidding when speed is too high. One of the most terrifying experiences of winter driving is to skid. If it happens at a high speed, the result could be a disastrous crash. That is why it is urgent to slow down at the first sign that the road is slick. Most skids can be avoided by simply adjusting to driving conditions and knowing how to recover from a skid.

The experienced driver knows that skids are most likely to occur on curves and turns, so slow down ahead of time to prepare for them. Then, when in the curve, slightly apply power and steer steady with no abrupt change in direction and, especially, no abrupt braking.

Plan ahead of time for lane changes; check your rear view mirror, your blind spots and signal your intentions to traffic behind you. Then, swing over in a long, gradual line. Make the move with the smallest possible steering change and with a light foot on the gas.

If you go into a skid, remember two critical rules — don’t steer against the skid and don’t hit the brakes. Instead, steer in the direction the vehicle is sliding until you feel recovery of traction, then slowly straighten the wheels and keep rolling.

If braking is necessary before rolling traction is recovered, apply the brake pedal carefully so you do not lock the wheels and intensify the skid. You have better control in a skid situation if your vehicle is equipped with anti-lock brakes.

The expert driver is constantly on the lookout for areas that might induce skidding, such as unexpected ice patches or piles of wet leaves, which tend to be found in shady areas or on overpasses. Keep in mind that “wet” ice, warmed by the sun, is twice as treacherous as “cold” ice.

Above all, the expert driver knows that a safe stop on icy or snow-packed roads is a tricky maneuver which requires skill and good judgment. First of all, anticipate stops. Slow down gradually, well ahead of intersections, aware that approaches to stopping places are apt to be polished and slick because of stopping and starting traffic.

(Continued on page 6)
ANNUAL INFLATION ADJUSTMENTS FOR 2013

WASHINGTON — The Internal Revenue Service announced the annual inflation adjustments for tax year 2013, including the tax rate schedules, and other tax changes from the recently passed American Taxpayer Relief Act of 2012.

The tax items for 2013 of greatest interest to most taxpayers include the following changes:

- Beginning in tax year 2013 (generally for tax returns filed in 2014), a new tax rate of 39.6 percent has been added for individuals whose income exceeds $400,000 ($450,000 for married taxpayers filing a joint return). The other marginal rates — 10, 15, 25, 28, 33 and 35 percent — remain the same as in prior years. The guidance contains the taxable income thresholds for each of the marginal rates.

- The standard deduction rises to $6,100 ($12,200 for married couples filing jointly), up from $5,950 ($11,900 for married couples filing jointly) for tax year 2012.

- The American Taxpayer Relief Act of 2012 added a limitation for itemized deductions claimed on 2013 returns of individuals with incomes of $250,000 or more ($300,000 for married couples filing jointly). The other marginal rates — 10, 15, 25, 28, 33 and 35 percent — remain the same as in prior years. The guidance contains the taxable income thresholds for each of the marginal rates.

- The personal exemption rises to $3,900, up from the 2012 exemption of $3,800. However beginning in 2013, the exemption is subject to a phase-out that begins with adjusted gross incomes of $250,000 ($300,000 for married couples filing jointly). It phases out completely at $372,500 ($422,500 for married couples filing jointly).

- The Alternative Minimum Tax exemption amount for tax year 2013 is $51,900 ($80,800, for married couples filing jointly), set by the American Taxpayer Relief Act of 2012, which indexes future amounts for inflation. The 2012 exemption amount was $50,600 ($78,750 for married couples filing jointly).

- The maximum Earned Income Credit amount is $6,044 for taxpayers filing jointly who have 3 or more qualifying children, up from a total of $5,891 for tax year 2012.

- Estates of decedents who die during 2013 have a basic exclusion amount of $5,250,000, up from a total of $5,120,000 for estates of decedents who died in 2012.

- For tax year 2013, the monthly limitation regarding the aggregate fringe benefit exclusion amount for transit passes and transportation in a commuter highway vehicle is $245, up from $240 for tax year 2012 (the legislation provided a retroactive increase from the $125 limit that had been in place).
Since accidents are common in winter, the expert driver makes a double allowance for the sake of safety. First, drive on slippery roads at reduced speed; and second, increase following distance behind the vehicle ahead. This gives an extra space cushion for safe stopping. Tricky traction, as every driver knows, makes a difference between winter and summer driving. So every driver should learn how to get the best possible traction when the road is slippery.

When you drive into deep snow, you may find that stepping on the gas only causes the wheels to spin, with little if any forward movement. In such cases, one should avoid overpowering. A light foot on the gas pedal and a high gear is preferable.

Braking distance depends directly on the kind of contact the vehicle’s tires make with the slippery surface of the road. Your tires should have good tread surface. There will be times that snow tires, and even chains, may be best to help keep your vehicle under control during those blustery winter storms.
WORKING SAFELY IN COLD WEATHER

The following article is provided by Ray Pastorius, Sr. Loss Control Consultant with Holmes Murphy. It is for general informational purposes only, and is not intended as medical or legal advice.

Workers exposed to extremely cold conditions are at risk of serious health problems, including hypothermia, frostbite, loss of body fluids and back injuries. Frigid temperatures can also cause additional pain for sufferers of arthritis and rheumatism. To prevent injuries and illness as a result of winter weather, workers must exercise extreme caution and watch out for the injury and illness warning signs.

Causes of Cold Weather Injuries

According to the Occupational Safety and Health Administration (OSHA), there is no exact temperature at which the environment becomes hazardous. Instead, factors such as low temperatures, wind speed and wetness contribute to cold-induced injuries and illness.

- Exposed skin freezes within one minute at -20°F when the wind speed is five miles per hour (mph), and will freeze at 10°F if the wind speed is 20 mph.
- When skin or clothing is wet, injury or illness can occur in temperatures above 10°F, and even above freezing (32°F).
- When the body is unable to warm itself, hypothermia and frostbite can set in, resulting in permanent tissue damage and even death.

Signs of Injury and Illness

- Uncontrollable shivering
- Slurred speech
- Clumsy movements
- Fatigue
- Confused behavior

Considerations

To reduce the risk of cold-induced injuries, consider the following recommendations:

Layer clothing to keep warm enough to be safe, but cool enough to avoid perspiring excessively.
- Inner layer – synthetic weave to keep perspiration away from the body.
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Watch out for the effects of cold temperatures on common body functions such as:
- Reduced dexterity and hand usage.
- Cold tool handles reduce workers’ grip force.
- The skin’s reduced ability to feel pain in cold temperatures.
- Reduced muscle power and time to exhaustion.

OSHA RELEASES 2013 TARGETED INSPECTION PLAN TO PROTECT FEDERAL WORKERS

WASHINGTON – The Occupational Safety and Health Administration has issued its annual inspection plan of federal agency establishments under its Federal Agency Targeting Inspection Program* directive for fiscal year 2013.

FEDTARG directs programmed inspections of federal agency establishments where a high number of employees have been absent due to injuries they incurred at work.

The directive outlines the procedures for carrying out programmed inspections at these federal worksites. OSHA will inspect all establishments reporting 100 or more cases where a worker is away from work due to injury during fiscal year 2012; 50 percent of those establishments reporting 50 to 99 cases; and 10 percent of those reporting 20 to 49 cases.

The FEDTARG13 directive clarifies how OSHA develops the inspection lists and includes a new standard from U.S Department of Agriculture's Forest Service.

(Continued from page 7)
The inspection targeting program began in 2008 in response to a Government Accountability Office audit report that recommended that OSHA develop a targeted inspection program for federal worksites. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, requires Federal OSHA to “conduct unannounced inspections of agency workplaces when the Secretary determines necessary if an agency does not have occupational safety and health committees; or in response to reports of unsafe or unhealthful working conditions.”

OSHA’s Office of Federal Agency Programs provides leadership and guidance to the heads of federal agencies to assist them with their occupational safety and health responsibilities.

SUBCONTRACTORS CELEBRATE VICTORY LIMITING RISK-SHIFTING IN MINNESOTA

ALEXANDRIA, Va. — In a major victory sought by the American Subcontractors Association on behalf of Minnesota’s subcontractors, the state’s Supreme Court has affirmed limits on risk-shifting based on the state’s anti-indemnity law (Minn. Stat. §337.02).

On Jan. 23, 2013, the Supreme Court of Minnesota reversed an appeals court’s decision that allowed a general contractor to shift liability to a subcontractor for damage caused by a general contractor’s own direction of the subcontractor’s work. “Because we conclude that ECI did not qualify as an additional insured with respect to the pipe damage and that Bolduc cannot be required to indemnify ECI without violating Minn. Stat. §337.02, we reverse,” the high court wrote in its opinion, reversing the appeals court’s decision in Engineering & Construction Innovations, Inc., v. L.H. Bolduc Co., Inc.

In an amicus curiae brief filed on Jan. 13, 2012, ASA urged the Minnesota Supreme Court to overturn the appeals court’s decision and protect construction firms from being forced to pay for damage for which others on construction projects are at fault. “The Court of Appeals erred in its interpretation of the indemnity clause in the ECI/Bolduc subcontract,” ASA wrote. “This Court should correct this error by holding ... that the Bolduc/ECI indemnity clause did not include ECI’s own fault or negligence, but only extended to the fault or negligence of Bolduc for which ECI may be liable.”
L.H. Bolduc was a subcontractor on a sewer and water project. During the construction process, the sewer pipeline suffered damage at the direction of the general contractor. The general contractor repaired the pipeline and then sought reimbursement from the subcontractor and the subcontractor’s insurance company. Both refused.

At trial, a jury sided with the subcontractor, saying the subcontractor was not negligent. After the verdict, a district court also found that the subcontractor was not required to indemnify the general contractor from damages the general contractor suffered due to its own negligence and that the insurer similarly did not agree to provide insurance against anything other than claims arising from the subcontractor’s work or negligence. But on appeal, a court issued a split decision, holding that the subcontract’s indemnity clause required the subcontractor to “both indemnify for another’s negligence and insure that risk.”

The dissenting judge in the case noted that Minnesota’s anti-indemnity statute prohibits the subcontractor from indemnifying the general contractor for its own negligence and concluded that the subcontract did not clearly and unambiguously require that the subcontractor indemnify and insure the general contractor for the general contractor’s negligence.

ASA noted in its brief that Minnesota state legislators and courts enacted the state’s anti-indemnity statute specifically to curtail risk-shifting and make parties responsible for their own — not others’ — mistakes: “The legislative history of Minn. Stat. §337.02 reflects the Legislature’s determination that the prohibition of such broad form indemnity clauses would lead to greater safety in the workplace. The anti-indemnity statute also recognizes the imbalance in bargaining power that exists between contractors and subcontractors, which leads to unfair subcontract terms, including broad form indemnity ... Thus, there is a strong public policy, emanating from both case and statutory law, in favor of making each participant in a construction project responsible for its own negligence or fault.”
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FUTURE MICA MEETING DATES


56th Annual Spring Convention — June, 17 — 20, 2013, Waldorf Astoria Naples, Naples, Florida. [Please note that the convention will begin on the Monday after Father’s Day. This slight change in the schedule is the direct result of member feedback to the Board].

Fall 2013 Annual Fall Business Meeting — October 16 & 17, 2013, Embassy Suites Downtown, Omaha, NE.

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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ON THE HEALTHCARE REFORM HORIZON: TAXES, FEES, AND PENALTIES

The following article is taken from Holmes Murphy’s Employee Benefits Insurance News and Views.

If one thing is for sure, it is that healthcare reform is not cost neutral for anyone. As provisions of the Affordable Care Act (ACA) begin to take effect, employers and individuals alike need to be aware of the taxes, fees, and penalties imposed by different parts of the law. This article highlights some added cost to anticipate in the coming months and years as they relate to the ACA.

Required Fees

Insurers or sponsors of self-insured plans are the parties directly responsible for paying most fees; however, for fully-insured plans, the amount is presumed to be passed down by way of premiums.

Comparative effectiveness fee — For plan years ending after September 30, 2012, a research fee of $1 per covered life will be required of commercial health insurers and self-insured plans. This fee — also known as the PCOR fee — will increase to $2 per covered life in the second year and be indexed from there forward through 2019. Money from this fee will fund the Patient-Centered Outcomes Research Institute, which was established in the ACA to research the comparative effectiveness of medical treatments.

Pharmaceutical Industry Fee and Medical Device tax — Since 2011, the ACA has imposed an annual fee on certain pharmaceutical manufacturers and importers of brand name drugs. In 2013, it establishes a 2.3 percent excise tax on the ‘first sale of use’ of some medical devices. These provisions will impact claim expenses for employers and out-of-pocket costs for individuals.

Taxes & Penalties

“Play or Pay” — 2014 brings the marquee individual coverage mandate and also the “Play or Pay” provision for employers. Under this rule, employers with at least 50 full-time employees that do not offer coverage will be subject to penalties if any full-time employee receives a government subsidy, or premium credit, for health coverage. The penalty is $2,000 per year per full-time employee (excluding the first 30 employees). Employers that do offer coverage, but still have employees receive the premium credit will have a $3,000 annual fine for each employee receiving the credit, up to an aggregate cap of $2,000 per full-time employee. Employers will not be subject to any fine if they offer coverage that satisfies affordability criteria, which is employee-only coverage that is 9.5 percent of W-2 earnings or less.
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ASA AND ASA OF OHIO SUPPORT COURT RULING DISFAVORING ‘PAY-IF-PAID’

ALEXANDRIA, Va. — The American Subcontractors Association and ASA of Ohio urged an Ohio appeals court to affirm a trial court’s decision that a “condition precedent” payment provision in a construction subcontract was not a risk-shifting “pay-if-paid” clause, but rather a “pay-when-paid” clause mandating payment to a subcontractor in a reasonable time for the work it performed.

If the 10th Appellate District Court of Appeals of Ohio affirms the trial court decision in the case of Acoustic Ceiling & Partition of Ohio, Inc. v. Continental Building Systems, it will represent a significant victory for subcontractors across the state.

“‘Pay-if-paid’ clauses are disfavored under Ohio law as well as under the laws of numerous jurisdictions around the country,” ASA and ASA of Ohio wrote in an amici curiae brief filed on Jan. 14. “Courts across this country have recognized that such clauses are harsh and unconscionable and that such terms will often cause an inequitable forfeiture. Courts in Ohio and around the country hold that such forfeiture provisions must be strictly construed and that they must ‘clearly and unambiguously condition payment to the subcontractor on receipt of payment from the owner.’”

Continental was the general contractor on a health club and spa construction project in Union County, Ohio. Continental entered into a subcontract agreement with Acoustic for a portion of the prime contract work. Acoustic completed its work in a timely manner and Continental and the owner accepted the work. By the end of the job, however, Acoustic had not been paid for more than $270,000 and the project owner was insolvent.

The subcontract’s “time of payment” provision stated: “Progress payments to the subcontractor for satisfactory performance of the subcontractor’s Work shall be made no later than seven (7) business days after receipt by the Contractor of payment from the Owner for the Subcontractor’s Work.”

ASA and ASA of Ohio argue in the brief that a reversal of the trial court decision by the appeals court would reverse the appeals court’s “own well-reasoned decision in Evans, Meechwar, Hambleton & Tilton v. Triad Architects, LTD, … where the Court found that ‘pay-if-paid’ clauses work a forfeiture against the subcontractor and as such are dis-

(Continued on page 25)
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favored by the courts. The Evans decision went out of its way to identify specific contract language that is required in order for the prime contractor to work a forfeiture against its subcontractors.”

ASA and ASA of Ohio also noted that another court, in Transtar Electric, Inc. v. A. E. M Electric Services Corporation, recently rejected a more liberal approach that would allow more clauses to be interpreted as “pay-if-paid.” “The Transtar Court, in reviewing language that is less ambiguous than the language in the Continental contract, held that, ‘we find no language sufficient to clearly and unambiguously indicate that the parties intended to transfer the ultimate risk of nonpayment to the subcontractor. Consequently, the clause at issue must be interpreted as a pay-when-paid provision.’”

HELP MICA SOLICIT NEW MEMBER FIRMS

With the new year comes new opportunities to help grow your association. Do you have a prospective member firm that you think would be interested in joining MICA? If so, let us know! Send the contact information to us at mica@tconl.com.

ANNUAL DUES AND ADVERTISING RATES FOR 2013 REMINDER

Contractor member annual dues for 2013 are $675.00. The annual dues for associate members is $475.00. The advertising rates have not increased for 2013. Please contact the MICA office for a copy of the 2013 advertising rates. Advertising in the MICA Messenger continues to be an excellent forum to reach the membership on a monthly basis.

The 2013 membership renewal notices and advertising contracts have been sent out. We are anticipating 100% renewals and look forward to your continued participation in MICA in 2013.

MICA MANUAL — 7TH EDITION

Remember, as a MICA membership benefit, you are entitled to a “member discount” on both the hard copy and online electronic version of this new version. Visit the “Members Only” portion of the MICA website, www.micainsulation.org.
AFFORDABLE CARE ACT TAX PROVISIONS

The Affordable Care Act was enacted on March 23, 2010. It contains some tax provisions that are in effect and more that will be implemented during the next several years. The following is a list of provisions for which the IRS has issued proposed and/or final guidance; additional information will be issued by the IRS as it becomes available.

Update:

The Health Care Law generally has no new impacts to the Form 1040 series for the 2012 returns that individuals may be currently filing. However, if you received a health insurance premium rebate during 2012, check irs.gov/aca under Medical Loss Ratio to see if you are one of the few people who need to include it on your 2012 return.

If you are seeking information about how to obtain health care coverage or financial assistance to purchase health care coverage for you and your family, visit the Health and Human Services website, HealthCare.gov.

Net Investment Income Tax

A new Net Investment Income Tax goes into effect starting in 2013. The 3.8 percent Net Investment Income Tax applies to individuals, estates and trusts that have certain investment income above certain threshold amounts. The IRS and the Treasury Department have issued proposed regulations on the Net Investment Income Tax. Comments may be submitted electronically, by mail or hand delivered to the IRS. For additional information on the Net Investment Income visit the IRS website at www.irs.gov.

Additional Medicare Tax

A new Additional Medicare Tax goes into effect starting in 2013. The 0.9 percent Additional Medicare Tax applies to an individual’s wages, Railroad Retirement Tax Act compensation, and self-employment income that exceeds a threshold amount based on the individual’s filing status. The threshold amounts are $250,000 for married taxpayers who file jointly, $125,000 for married taxpayers who file separately, and $200,000 for all other taxpayers. An employer is responsible for withholding the Additional Medicare Tax from wages or compensation it pays to an employee in excess of $200,000 in a calendar year. The IRS and the Treasury Department have issued proposed regulations on the Additional Medicare Tax. Comments may be submitted electronically, by mail or hand delivered to the IRS.

Small Business Health Care Tax Credit

This new credit helps small businesses and small tax-exempt organizations afford the cost of covering their employees and is specifically targeted for those with low- and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. In general, the credit is available to small employers that pay at least half the cost of single coverage for their employees.

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