President Jeff DeGraaf and his wife, Jan, wish to extend a warm MICA invitation to you to join them as our association engages in “Working Together to Improve our Industry”. One of the key benefits of belonging to MICA is your ability to work with fellow members to improve your business acumen and to better your industry. Come and participate as we share ideas at our annual convention this June 17 – 20, 2012, at the four-star, four-diamond Omni Interlocken Resort, in Broomfield, Colorado. Our 55th Annual Spring Convention will be a special event, and one that you do not want to miss!

Indulge yourself in luxury at the Omni Interlocken Resort. Come prepared for some special pampering during your stay. We have reserved a block of rooms at the Omni. Our convention rate is $159 per night plus tax, single or double occupancy. It is highly suggested that you book your hotel reservations now! Call the reservations office at 800-843-6664 and ask for the Midwest Insulation Contractors Block, Reference Number 15300035702. Please note that we have blocked a limited number of rooms. If you wait until the last minute to reserve your room, you run the risk that our block will be filled, and the hotel will not have any additional rooms available. As we have stated in the past, if you reserve your hotel room now, you can always cancel it later, but you may not be able to reserve a room if you wait too long. We will be monitoring our block and making room adjustments accordingly. Our block of rooms will be released on May 15, 2012, but if you wait until May 15th, the block of rooms will be filled, and we may not be able to accommodate your needs.

The Board of Directors is most excited about the technical topics and speakers for the spring convention. The topics and speakers were selected to help educate and inform you on a variety of industry topics pertinent to our current business climate. A list of presentations and speakers is as follows:

- “NIA Update”, by Mr. Rick Smith, NIA President 2012 - 2013.
- “Corrosion on Jacketing”, by Jim Young, ITW Insulation Systems.
- “Vapor Retarders” – by Gordon Hart P.E., Artek Engineering, LLC, Shrewsbury, MA.
- “Polyisocyanurate Foam – Application & Methods”, A Panel Presentation by Associate Members of MICA.
- “Leadership – an FMI Perspective” – by FMI Representative, FMI, Denver, CO.
- “OSHA Update and Pending Legislative Bills in Congress”, by Mr. Gary Auman, MICA Legal Counsel, Dunlevey, Mahan, & Furry, Dayton, OH.

We will have three concurrent forums dealing with member issues. We will have a union contractor forum, an open shop contractor forum, and an associate member forum all running simultaneously. This approach allows more of the members to participate in craft issues without being part of a formal committee.

In June, we will recognize those companies that participated in our seventh annual “Best Practices in Safety” Award. This award was established to formally recognize our member firms’ efforts in safety and safety practices. This year, we have made significant changes to the “Best Practices in Safety” Award program. We are no longer going to recognize a winning company’s safety program. Rather, as a way of encouraging greater

(Continued on page 4)
PRESIDENT’S MESSAGE

TO: THE MICA MEMBERSHIP

March marks the beginning of spring and a renewal of growth and activity. I am amazed at how early spring has come to the Midwest. My lawn is in need of mowing, Jan’s flowers are blooming, and my allergies have kicked into high gear a month earlier than normal!

Spring is a special time of the year. The trees, flowers, and plants are budding and growing new leaves and shoots. People seem to be nicer and happier with the warmer days and abundance of sunshine. Even the construction industry seems to have new growth; and there are more jobs to bid, but the competition is still keen.

I am excited about the spring and the new and continued activities within MICA. The June convention is only a little over two months away, and I have only two more newsletters to write! I am excited about the spring convention. The technical topics and speakers that we have assembled for the June meeting are excellent. You will be pleased with the amount of information and education that you will receive by your participation at the spring convention. Registration packets have been mailed to you and copies are available to download from the MICA website. I urge you to register early and reserve your room at the resort now. Our block will fill quickly, and you may not be able to get a room at the resort if you delay.

Our list of speakers is highlighted in this newsletter, but I would like to draw special attention to the presentation by our legal counsel, Gary Auman. Gary provides us with an OSHA update at both our spring and fall meetings. We all too often overlook the wealth of information that Gary provides to us. His presentation alone is worth more than the cost of the meetings in total. His advise and recommendations regarding OSHA requirements have been a God sent to my company. If for no other reason, you should attend the spring convention just to hear Gary. He has provided us another glimpse of what is to come from OSHA in his article in this newsletter. His article is a must read, and after you read it, you will be registering for the convention just to hear his update.

Another benefit of the spring convention is the “Best Practices in Safety” award. If you complete the application for the safety award, your company’s safety program will be evaluated for its quality and completeness. You will also have the opportunity to hear from your fellow members regarding their best practices in safety. Another “must attend” session at our spring convention.

If you cannot tell by now, I am pretty excited about the June convention, and I want to share that excitement with you. Please join me in Broomfield, Colorado, June 17 to 20, 2012.

The MICA family has suffered a great loss with the death of Bob Anderson earlier this month. Bob was very active in MICA and a Past President of the association. I was not a contemporary of Bob’s, but I was fortunate to have interacted with Bob at MICA meetings. I was always impressed by Bob’s willingness to share his knowledge of the insulation industry with his fellow members. He never considered me a threat to him as a non-union contractor. He always treated me as an equal, as a professional. He exemplified the qualities of fairness and openness to all members of our industry association. I hope that I can continue his legacy during my time with MICA. Our prayers and sympathies go out to his wife, Emma, his daughters, and to his extended family.

Sincerely,

Jeff DeGraaf,
MICA President
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participation so more members can reap the benefits of the awards program, we will be using a grading system that recognizes each applicant’s achievement in developing a quality safety program. With this new system, companies will not compete against each other for awards. Instead each applicant will try to achieve the highest award level where multiple applicants can receive the same award level. This change in the award level will not change the judging process.

The Board of Directors feels that each presentation will add value to your understanding of the technical topics discussed. You will come away from the convention more informed and better prepared to successfully manage your business. The registration fee is $450.00 for the first attendee from a member company. Registration for a second attendee from a given company is reduced to $425. Registration for all additional attendees is $400 per attendee. The registration fee is $825.00 for the first member and spouse registered from a member company. Registration for a second registered couple from a given company is reduced to $800. Registration for all additional registered couples is $775 per couple. This year we have included a children’s registration for the **Welcome Reception** and **Farewell Brunch** events only. The fee is $75.00 per child. The Board is delighted to offer this new incentive for multiple attendees from member companies. The benefit of joining an association comes from participating in association activities.

The fourteenth annual “Mick Van Horn Memorial Golf Tournament” is set for Monday afternoon, June 18, 2012, at the Omni Interlocken Golf Club. We have a lunch cookout beginning at 12:00 p.m. followed by a shotgun start at 1:00 p.m. Enjoy golf as it was meant to be played at this stunning, links-style course. This year’s fee is $150.00 per golfer, which includes a lunch, cart, green fees, complimentary use of practice and range area, and of course, prizes. Please read the golf registration carefully. Payment for golf must accompany the registration fee. Please complete the golf portion of the registration form as fully as possible, especially the handicap information. This is essential for us to properly match the foursomes. **You need to register for the golf tournament by May 25, 2012.**

The program also affords you ample time for fun and relaxation and to interact with your fellow contractors and distributors. We have the traditional opening evening **Welcome Reception**. This year’s reception is sponsored in part by the contributing associate members. We will feast on hors d’oeuvres, libations, and friendships. We will honor **Ray Stucken Schmidt** with Systems Undercover, Inc. with the “**William R. Heaston Outstanding Member**” award. Ray exemplifies the virtues reflected in Bill Heaston and of his selfless service to MICA and the insulation industry. The recognition ceremony will take place during our Tuesday evening gala.

You received a formal spring convention registration packet earlier this month. Your cooperation in **completing the pre-registration material early** and making your hotel reservations **early** is most appreciated. Your promptness helps us to plan a

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(Continued from page 1)

(Continued on page 5)
better, more efficient and effective convention for you. We ask that you complete and mail your registration material along with payment to the MICA office no later than May 25, 2012. It is MICA’s policy to refund 90% of your registration fee if we are notified prior to June 1, 2012. Make plans to bring your family to the MICA convention and extend your business to include some quality family time. Now is the time to plan for your participation at MICA’s 55th annual spring convention. Make your hotel reservations today by calling the Omni reservation line at 800-843-6664. Please join Jeff, Jan, the entire Board of Directors and fellow MICA members in Colorado, June 17 – 20, 2012, for our annual spring convention and be a part of “Working Together to Improve our Industry”.

MICA SAFETY PROGRAM REVIEW AND AWARD

This article was written by Gary Auman, MICA Legal Counsel, Dunlevey, Mahan & Furry

MICA has always understood the importance of safety on the job site. As a result of this, MICA implemented a safety award program seven years ago. The MICA Board asked me again to prepare some comments for your consideration as to the value of participating in our safety award program. If you don’t have a good plan for getting a job done, the outcome is going to be less than satisfactory. I believe, as you should that this applies to safety - good safety performance starts with a good safety program.

(Continued on page 10)
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I titled this article as I did because this is more than a safety award program, it is a safety program review. Try to analogize having your safety program reviewed annually to other things that you do in your life to ensure that your company’s equipment operates as intended. For those of you who passed your fiftieth birthday, I am sure that you have been advised by your family physician to have an annual or bi-annual physical. Your doctor recommends this, because he is aware that as you get older you become more prone to some of the physical problems that are connected with aging. You take a physical to make sure you have an early warning of anything that needs to be addressed before it becomes a significant problem.

In your business, I would be surprised if any of you do not perform preventive maintenance on the equipment that you depend on to be successful as a contractor. In addition, you most likely perform other preventive maintenance such as tire rotation, etc., in order that you can avoid any significant problems.

Well, your safety program is also an integral part of your business. It too can deteriorate with age and lack of use. It too needs preventive maintenance to avoid catastrophic failure. When a safety program fails you, someone can get seriously injured or killed. Or, you can be confronted with an OSHA inspection and find out through the citations issued that your safety program is not what you thought it was and is not as effective as it needs to be.

You could pay hundreds or even thousands of dollars to have a safety consultant review your safety program. Through the MICA safety program review and awards opportunity, you can have portions of your safety program reviewed, and receive written comments from individuals who have a wealth of experience in dealing with safety issues. You will receive valuable feedback from the reviewing panel with regard to those aspects of your program which are in the competition, and you will receive recognition from MICA for your achievement in developing a quality safety program.

When you look at the MICA safety program review and awards opportunity, you have to agree that there is absolutely no reason why you should sit on the sidelines while other members of MICA, some of whom are your competitors, take advantage of this MICA member benefit. Take a few minutes, pull out the application, complete it, and send it in to MICA’s general counsel with your check so that it is received in time for the review committee to take a look at it and provide you with their valuable comments concerning the effectiveness of your safety program.

REMEMBER — The application submittal deadline is April 16, 2012. Your completed application form must be received by the end of the business day on April 16th. The application form is available from the MICA office. Just call or e-mail us, and we will send you a copy of the application form.
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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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THE PASSING OF BOB ANDERSON

Robert Anderson, 37th President of MICA passed away March 17, 2012, at age 66. Bob is survived by loving wife Emma; daughters Austina, Jennifer, Shelley, and Amanda; stepchildren Danya, Ron; 11 grandchildren; brothers Tom and Jim. Bob died surrounded by his loving family and friends. Memorials in Bob’s name are preferred.

Bob officially started his MICA career by attending the spring convention in 1968. He became active in committees during the late 1970s and early 80s. Bob was active on MICA’s Board of Directors and served on practically every committee of MICA during his time with MICA. His father Ed served as MICA’s 22nd President in 1978 – 1979. Bob followed his dad’s lead and was MICA’s 37th president. He actively participated on MICA’s Technical Committee. He served on the editorial Board of the 4th, 5th and 6th editions of the National Commercial & Industrial Insulation Standards Manual. Bob has his imprint firmly planted in the manual. For those of us who served with Bob on these revision committees, have fond memories of the many discussions (arguments) with Bob on proper insulation installation practices and terminology. The best discussion that I can recall was between Bob and Mick Van Horn over the wording of “rigid wrap” vs. “rigid wrap around”. I am sure that they have renewed the discussion. Bob was instrumental in the revision of the specification section of the manual and helped to make it more pertinent for the insulation contractor.

Bob not only served MICA but he was actively involved at the local and national level. Bob served as MICA’s representative on the National Insulation Association’s (NIA) Board of Directors for six years and was active in the Thermal Insulation Contractors Association (TICA) of the Twin Cities. The members of TICA presented Bob with the “Distinguished Service Award” for his outstanding contribution to the mechanical insulation industry and many years of leadership in the Thermal Insulation Contractors Association and the Heat Frost and Thermal Insulation Education Fund.

Bob was employed by Nyco, Inc., in Inver Grove Heights, Minnesota, where he was an estimator/project manager. Bob and his wife Emma enjoyed boating and golf in their spare time. His respect for the MICA family was deeply etched within him. For those of us who knew Bob, he will be missed. The MICA family of members is saddened by his passing. We have lost a true friend.

HERE WE GO AGAIN!

This article was written by Gary Auman, MICA Legal Counsel, Dunleavy, Mahan & Furry

On March 12, 2012, Richard E. Fairfax, the Deputy Assistant Secretary for OSHA issued the above noted memorandum to all regional Administrators and Whistleblower Program Managers. This memo takes OSHA discrimination (11(c)) violations to a level which most employers have not anticipated. From this action it appears that OSHA is continuing to take enforcement actions which make it increasingly difficult for you to run your business.

I think most employers have been aware for years of the whistleblower protection afforded employees who make a complaint to their employer or to OSHA regarding safety hazards in their workplace. This protection is afforded to all employees under Section 11(c) of the Occupational Safety and Health Act. That section clearly states that:

“No person shall discharge or in any manner discriminate against any employee because such employee has filed or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by
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such employee on behalf of himself or others of any right afforded by
the Act.”

What many didn’t realize is that OSHA had taken that pretty obvious
language and developed and finalized a regulation under 29 CFR
1904.36 that extends the protection of Section 11(c) to an employee
reporting a work-related fatality, injury or illness. Title 29 CFR
1904.36 states:

“Section 11(c) of the Act prohibits you from discriminating against an
employee for reporting a work-related fatality, injury or illness. That
provision of the Act also protects the employee who files a safety and
health complaint, asks for access to the Part 1904 records, or otherwise
exercises any rights afforded by the OSH Act.”

It appears that OSHA, when it adopted 1904.36 had identified an area
in which it perceived employees were without protection. While most
states have workers’ compensation laws that prohibit discrimination
against any employee who files a safety and health complaint, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OSH Act.

Quite frankly the OSHA enforcement of discrimination complaints
brought by employees who have felt that they were discriminated
against because they reported a workplace injury has been occurring
for several years now. Mr. Fairfax’s memorandum serves to bring
the matter home. Of course one issue that is not addressed in his memo is
the potential for double jeopardy to an employer who is sued by an
employee under a state’s workers’ compensation discrimination law
and also to respond to an OSHA discrimination complaint brought
by the same employee.

In his memorandum, Mr. Fairfax outlines four actions by employers
that he believes have the potential of being discriminatory.

In the first of four numbered paragraphs in his memo Mr. Fairfax ad-
resses situations in which employers have policies that may result in
the termination of an employee who has too
many injuries, based on the rationale that such an employee is obvi-
ously not complying with job safety rules; if he/she were complying
they would not suffer as many injuries. Such a policy may be defensi-
ble, but such a defense could be costly, especially if you are the “test”
case, and of course the outcome cannot be guaranteed. After all no
employer can watch every employee all the time, so injuries may occur
with no witnesses to assist in establishing the cause of the injury. To
make such repeated injuries part of your safety enforcement program

(Continued from page 18)

(Continued on page 26)
should still be viable if it is created and administered carefully with all efforts being made to treat the employee fairly and protect his/her rights.

The second and third points in the memo are somewhat similar. The situation stated in point two is when an employer disciplines an employee for violating a work-rule concerning the time and manner he reported his injury. I am very troubled by this point because many employers, in complying with 1904.35(b) have set up procedures for reporting injuries and illnesses and automatically challenge any report that does not follow the established procedure. Is Mr. Fairfax telling us that such actions will now be prohibited? So, an employer can no longer consider a six week, or a six month delay in reporting an injury suspicious and as grounds for denying the employee’s workers’ comp claim? Are employers to be challenged by OSHA and forced to undergo an OSHA discrimination investigation because they treat such a claim differently than one filed in a timely manner by an employee? Don’t forget, Mr. Fairfax has not defined “disciplined;” so as far as the employee may be concerned anything is fair game.

The third point made in the memo is similar to the second point. This one involves disciplining an employee if he/she is injured as the direct result of violating an employer safety rule. In both of these situations Mr. Fairfax is implying that the employer may use the rule violation as a “pretext” for taking action against the employee. In both cases he implies that such conduct by the employer will be the subject of close scrutiny by OSHA. While in his third point he indicates that vague rules will be “carefully” investigated, with care being given as to how the employer applies the rule in situations where it may have been violated, but which violation did not result in any injury.

OSHA frequently talks about the “chilling effect” an employer’s actions may have on an employee reporting unsafe conditions in the workplace. In other words, if an employee has to be concerned that his/her report may result in disciplinary action against them, they are not likely to report unsafe conditions, which could expose themselves and other employees to injuries. Perhaps Mr. Fairfax should be taken to task for the “chilling effect” his memo may have on employers in maintaining an effective safety program. Recently an administrative law judge upheld a willful violation against and employer finding that among other things the employer did not have an effective disciplinary program. Recently an administrative law judge upheld a willful violation against and employer finding that among other things the employer did not have an effective disciplinary program.

After a safety program is developed and carefully communicated to all employees; and after employees have demonstrated their knowledge of those rules and have been retrained and had their knowledge reinforced by repeated safety training; the only tool the employer has left to achieve consistent compliance with the program is consistent enforcement. But, how many employers are going to be willing to put their necks on the chopping block of an OSHA discrimination investigation when they are confronted by the kind of OSHA discrimination enforcement guidelines outlined in this March 12th memo?

I hope this memo does not dissuade you from continuing with your efforts to provide a safe workplace for all of your employees. After all, that is what safety is all about. Under these somewhat ambiguous guidelines you have just been given a new challenge to run a safe worksite or plant and to make sure all employees are on board with your safety program. Some of the things you need to do include the following:

1. Be sure all of your safety rules are specific and provide definite requirements.
2. Be sure you effectively communicate your safety rules to your employees.
3. Be sure to ascertain the knowledge of your employees in the safety rule in which they have been trained.
4. Be sure to have a detailed, definite and easily understood (by all employees) safety enforcement program.

5. Be sure your safety enforcement program has been effectively communicated to all of your employees.
6. Be sure your safety program is enforced consistently; you cannot afford to make exceptions.
7. Don’t shy away from issuing discipline when an employee suffers an injury because he/she violated a safety rule.
8. Before you issue discipline for any safety violation be sure you have done a thorough and effective investigation.
9. Be sure the reasons for issuing discipline following an injury are consistent with your enforcement program.
10. Be sure to document the circumstances leading to the discipline.
11. Retain all disciplinary records so they are available to demonstrate that you are consistently enforcing your safety program in both accident and non-accident situations.
12. Don’t be afraid to discipline, but be sure you can demonstrate that may discipline is for a legitimate violation of company work rules.

In his last point Mr. Fairfax touches on a practice more employers are embracing as a means to encourage compliance with the company safety rules – incentives. For a few years OSHA has been discussing different types of incentive programs. OSHA has fairly consistently criticized incentive programs which use recordable injuries, lost time injuries or injuries in general as the cornerstone to incentivize employees. In fact several years ago OSHA’s concerns with such incentive programs were addressed in the failed ergonomics standard. But, in his memorandum, Mr. Fairfax suggests that incentive programs linked to the elimination or reporting of injuries may be raised to the level of potentially discriminatory conduct.

The memorandum states that “Incentive programs that discourage employees from reporting their injuries are problematic because, under section 11(c), an employer may not “in any manner discriminate” against an employee because the employee exercises a protected right, such as the right to report an injury.” The implication to this statement is that if you fail to award an incentive to an employee or his/her work group because he/she reports an injury, you are engaging in unlawful discrimination. In fact later in the same paragraph Mr. Fairfax says just that. So, now you need to be concerned that if you use an injury report based incentive program, you may generate an OSHA discrimination investigation if an employee or a group of employees is denied an incentive because one of them reported an injury.

I have counseled against such incentive programs in the past, but not due to the potential for discrimination. My concern is that such a program could, because of peer pressure, cause an employee to work hurt; especially if the incentive is good enough.

Imagine for example, an employer promises to award all employees on a team a bomber jacket if there are no OSHA recordable injuries for the first half of the year. One employee suffers a recordable injury 30 days before the end of the time period, but doesn’t say anything and works hurt for 30 days so everyone gets the jacket. After the jackets are awarded he/she reports the injury, which has gotten worse for lack to treatment. So, everyone gets their jackets and the employer has a workers’ comp claim in which the costs have tripled because of the injured employee’s actions. Now OSHA is telling us that in addition to getting a more expensive workers’ comp claim, the employer might also have engaged n discriminatory conduct.

If you have an injury reporting based incentive program you should give serious consideration to modifying it to a program based on safety performance. Incentive programs are tools for an employer to achieve better safety compliance from its employees. At this writing they are in no way required by either the Act or the OSHA standards. In light of this, you could also eliminate your incentive program. This is a pretty drastic step, but one that Mr. Fairfax now forces some of you to consider because of his heavy handed interpretation and overly broad application of section 11(c). Again this administration has demonstrated a lack of understanding of what it takes to run a business to make a profit. OSHA and Mr. Fairfax seem to be expanding on some statutory language beyond the intention of the statute to remedy a situation that may exist with a minority of all employers. By doing so he has exposed good employers who only want to insure a safe workplace to their employees to the potential of significant costs in responding to unsupported and even frivolous claims of discrimination just because an employee does not get a coffee mug because he

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