



FALL 2017

CROSS SECTION

PAGE 8: Member Profile: Velting Contractors, Inc.

PAGE 10: Associate Member Profile: Centurion Insurance Agency

PAGE 34: Member Milestone Project

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COVER PHOTO: Photo courtesy
of Velting Contractors, Inc.



CONTENTS

- | | |
|--|---|
| 5 Executive Comment | 24 Legislative Questions and Answers |
| 8 Member Profile | 26 ARTBA News |
| 10 Associate Member Profile | 28 MITA Legislative Site Visit |
| 13 New MITA Members | 29 Member Voice |
| MITA Calendar of Events | 30 Member News |
| 16 Underground Spotlight | 34 Member Milestone Project |
| 17 Did You Know? | 44 Vice President of Engineering
Services Comment |
| 18 MIOSHA Fines Potentially on the Rise | 50 Legal Issues |
| 19 Director of Workforce Development
Comment | 61 MITA Members Giving Back |
| 20 Outreach Spotlight | 64 MDOT News |
| 21 MITA PAC Update | |



Photo courtesy of Hoffman Bros., Inc. See details on page 16.

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Mike Nystrom

As the 2017 construction seasons begins to wind down, MITA continues to focus on what we do best: looking out for the interests of our members. The Legal Issues article on page 50, written by attorneys at Butzel Long, discusses in detail how utility companies use the Miss Dig Act when it benefits them, but refuse to compensate contractors for their own negligence and fault. Regarding another important issue, MITA staff members Lance Binoniemi, Rob Coppersmith and Matt McClintick joined forces on page 18 to discuss the possible rise of MIOSHA fines due to pending legislation that

Executive Vice President

mirrors federal OSHA fines. Stay tuned to your MITA e-bulletins for more details in the future as MITA stays on top of this situation, including meeting with the legislator who proposed this legislation.

As you know, MITA is increasing our efforts in the workforce development arena, and we are pleased to share a question and answer article on page 24 provided by Rep. Ben Frederick, the chairman of the House Workforce and Talent Development Committee. Rep. Frederick makes excellent suggestions regarding how MITA members can work with the legislature to attract more talent and avoid a workforce shortage in the future. Also, please see MITA's Workforce Development Update, written by Ken Bertolini, Director of Workforce Development, on page 19. The article summarizes progress he has made during his first three months with MITA.

In order to honor hardworking MITA members, we recently introduced the MITA Member

Milestone Project. Check out the articles, photos and ads beginning on page 34 that pay tribute to members who are celebrating important anniversaries this year. If you have an anniversary coming up soon, please let us know by emailing nancybrown@mi-ita.com.

We are always encouraging MITA members to get actively involved in the issues that relate to their day to day work, such as the City of Detroit's draft Bulk Solid Material Ordinance. Please read on page 44 the comments by Glenn Bukoski, P.E., Vice President of Engineering Services. His article is very similar to a letter I sent to all members in July about the draft ordinance. Industry issues related to the draft ordinance are still unresolved, and we have updated the relevant information and are again calling for your support and action.

If you have any questions about the ordinance, or anything else, please call the MITA office at 517-347-8336. We are only a phone call away. 📞



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Velting Contractors, Inc., focuses on private commercial site development in the West Michigan area.

Velting Contractors, Inc.

Velting Contractors Inc., a site development company based in Wayland, Mich., has been in business for nearly a century. In 1921 the company was founded by William Velting, Sr., when he started digging out basements under houses that just had cellars. He would jack up the house, excavate the dirt out and pour new walls and floor, then gently remove the jacks after it was complete.

The company is now under the leadership of the third generation, with the fourth generation also involved. President Scott Velting, grandson of William, credits long-

term company survival on staying the course, especially throughout the last recession. Although the threat of that recession is past, the memories are still there, along with a strong faith in God and gratitude for his blessings.

In 2008, before the recession hit, Velting Contractors had 75 employees and a stellar year of work doing site grading, underground utilities and foundation excavation. Work dried up, business volume dropped, profits were non-existent. By 2011, the company was down to a small group of employees. In a bold move, they stepped out in faith and

decided to close their equipment shop, auction all of their equipment and buy new equipment. The equipment had something that is now near and dear to Scott's heart: dealer maintenance.

"The dealers take care of it," is the way Scott summarized the benefit of buying new equipment as opposed to keeping and maintaining old equipment. "It means no more headaches with equipment. You still needed a dealer to diagnose the problems with our old equipment, so it just made sense and it saves us having to have a full-time maintenance department."

Other tough decisions were made in 2011 to survive the recession, Scott recalled.


"Our salaried workers took pay cuts, and we did not guarantee hours for employees," said Scott, who is joined in operating the company by his son, Kyle, who serves as vice president; his brother Kevin, secretary/treasurer; and non-family member Brad Waayenberg, vice president of estimating, who recently returned to the company. "Fortunately, we kept the team together and today things are much better. We are back up to 20 employees, and we recently moved from Kentwood to a new location in Wayland. We are thankful how the Lord has blessed us!"

Following its restructuring in 2011, Velting Contractors began focusing on private commercial site development in the West Michigan area. Prior to restructuring, they did more public and MDOT work. But they began to no longer see the pricing benefit where there are multiple bidders vying for one project.

"We aren't looking to be the low-bidder in a large crowd," Scott said. "We have been around a long time, and what we want to focus on is making sure that our customers are well taken care of. Cheap isn't necessarily best. We like to be the best at what we do."

Other blessings he counts every day include seeing his son coming up through the business and the relationships he develops with his customers. "And all the

employees who stayed with us during the tough times really contributed to bringing us back," Scott said. "I can't emphasize that enough. We have enough business today to keep us busy and it is fun again compared to 2008-2012, the really tough times of no profit. The Lord has done great things!"

Those great things, of course, include his family: his wife of 42 years, Donna; his son, Kyle; his daughter, Kelly;  six grandchildren. Donna contributes her organizational skills once a week by helping with payroll and accounting, a sign that those days

of everyone pitching in to help out continue to have a positive effect on the company, even now that the threat of the recession has passed.

When Scott is not focused on running the company, he is involved on the board of a local soil erosion group which provides training in this field. Scott is a certified professional soil erosion and sediment control specialist. He also finds time to be involved with the Ada Bible Church, work on his lawn, and engage in fine woodworking projects, including



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www.velting.com

Member of MITA since 2005

(Velting Contractors became a member of the Western Michigan Division of Associated Underground Contractors (AUC) in 1990, and Scott Velting served on the board. AUC is the predecessor to MITA.)

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Continued on page 56



*Tom Horton, president of
Centurion Insurance Agency.*

Centurion Insurance Agency

The mission of Centurion Insurance Agency in Okemos is simple: Keeping claims down, keeping costs down, and keeping customers happy.

Risk management is the key to Centurion's success in keeping their customers happy. They see their

role as an outsourced risk manager. Tom Horton, owner and president of Centurion, explained, "GM, DOW, and MSU all have risk management departments. We fill our customers' void by working with them to manage their daily exposures, and when bad things happen, being

sure to help manage the claims."

A key focus for the industry, Tom said, is keeping a company's workers' compensation experience modification factor down. Ability to bid work can depend on keeping that mod factor low.

"When an employee is



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injured,” he said, “following a plan to get that employee back to work is the only way to limit the impact the claim has on the mod. If you can keep the claim as medical only, you then realize a 70 percent reduction of the claim value used in the modification calculation. If an insurance company pays one dollar of lost wage, you lose that 70 percent.”

As the outsourced risk manager, Centurion helps implement a comprehensive return to work program designed to keep a simple back strain claim

medical only. A simple strain can have a couple of MRIs at a couple of grand a piece, Tom said, and then add physical therapy to the mix, and a medical only claim can easily be \$10,000 or more. So, paying the employee \$2,000 for light duty work can save thousands when the 70 percent is applied to just medical bills.

“Just saying you will bring them back is a start,” Tom said, “but having a plan to follow from the moment you get the call is what we help develop.”

Centurion’s template program starts with an authorization to treat. This is a simple form that the medical provider receives that is intended to open up the flow of communication. Getting a customer to complete the work capabilities section of the authorization to treat gives details of just what an employee is capable of doing in a light duty job. To round out the program, Centurion helps develop a list of light duty jobs that can match the work capability that a doctor says an employee can perform.

“Having a light duty job for an employee to go to on day one,” Tom said, “allows you to get them back to work without the insurance company paying one dollar of lost wage. That one dollar paid

stops that 70 percent reduction. That one dollar of wage could keep you off a bidder’s list.”

Horton has been a fixture at MITA events over the years. He joked that when he first opened his agency in 2005, he put on his business card, “Peddler.” Having a good sense of humor is what Tom is known for and at the MITA events big laughs seem to come from his side of the room.

“The agency is a fun place to work,” says Joan Showalter, account manager for Centurion. “But the great sense of integrity, dedication and partnership that we have with our clients, is what I’m most proud of.”

Centurion has a unique and simple approach to the process of quoting a new client. “Finding the right coverage is half the job,” Tom said. “We recognize that running a business comes with risk. Our goal is to identify those risks that keep you up at night, then come up with strategies that will help you get your rest.”

Centurion uses a process they created named Risk Guard. This process allows Centurion to identify risk, understand how a company manages risk, and

Continued on page 45



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CALENDAR OF EVENTS

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December 2017

8 MITA Board Meeting
Country Club of Lansing | 9 a.m.

8 MITA Central Holiday Party
Country Club of Lansing | 1:30 a.m.

12 MITA Western Holiday Party
The Waldron Public House
Grand Rapids | 1:30 a.m.

14 MITA Metro Holiday Party
Somerset Inn, Troy | 11:30 a.m.

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Underground Project Spotlight

Hoffman Bros., Inc.



Hoffman Bros., Inc.— Angling Road Sanitary Sewer and Reconstruction Project in Portage.

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Angling Road Sanitary Sewer and Reconstruction Project

Exact Location of Project in Portage:

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Project Contractor:

Hoffman Bros., Inc.

Project Partners:

City of Portage—Owner
Abonmarche—Consultant Engineer

Major Sub-Contractors:

- Rathco Safety Supply—Traffic Control/ Permanent Signs
- J.L. Milling, Inc.—Pulverization
- T&D Contracting—Concrete
- Michigan Paving & Materials—Asphalt
- Michigan Pavement Markings—Pavement Marking
- Natural Environmental Reclamation Concepts, Inc.—Slope Restoration

Estimated Project Cost:

\$1,301,757

Estimated Project Timeline:

Start: 5/20/17 Complete: 9/15/17

Brief Description of Project:

0.76 miles of asphalt reconstruction with 5,400 feet of new sanitary sewer

Unique Characteristics of the Project:

3,600 feet of the sanitary sewer installation was at a depth of 25 feet. ⚠️

MITA has a Lien Law Packet Available for Members

MITA has a Lien Law Packet to help members navigate the intricacies of private and public projects. Visit www.mi-ita.com, click on MITA Quick Links, scroll to the fourth row, and click on the second icon: Lien Law Forms. Now you will have access to the following information:

Private Projects

1. **Construction Lien Law Forms:** download the Lien Law Packet to make filing a construction lien easier.
2. **Non-MDOT Bond Claim:** download the How To Guide, sample forms and letters for non-MDOT Bond Claims.

Public Projects

1. **MDOT/Public Works Sworn Statement/Lien Waiver Forms:** Download the forms packet that can be used in administering downstream flow of payments.
2. **MDOT Bond Claim:** Download the How to Guide, sample forms and letters for an MDOT Bond Claim. ⚠️

As always, if you have any questions regarding the Lien Law Packet, please call the MITA office at 517-347-8336.

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MIOSHA Fines

Potentially on the Rise

By MITA Staff Members Lance Binoniemi, Rob Coppersmith and Matt McClintick

For a few years now, the Federal Occupational Safety and Health Administration (OSHA) has been telling states that they need to adopt certain elements of the federal OSHA program into their own state programs. The threat of withholding federal dollars and even forcing states into the federal program and eliminating their state programs have been made as well. To their credit, the Michigan division, MIOSHA, has delayed implementing changes to align with the federal programs for a few years now with pressure continuing to build as each legislative session passes without any action.

One of the largest changes that OSHA is mandating that states make is increasing fines for violations to match federal levels. In 2015, Congress passed changes to the Federal Civil Penalties Adjustment Act that requires OSHA to increase its maximum penalties by the cost of living adjustment since the penalty levels were last adjusted in 1990. This would equate to an approximate increase in fines by over 80 percent in Michigan, and each subsequent year maximum penalties would have to be increased by the cost of living adjustment by January 15th. Obviously this is something that MITA has concerns with.

Legislation has been introduced in Michigan to mirror the federal OSHA fines by Senator Rick Jones who stated that, "This legislation

is essential to keeping MIOSHA in our state and not having the federal government take over." Michigan is one of 26 states with an OSHA-approved state plan, and worst-case scenario if Michigan does not comply with the new federal regulations, it could lose its state plan and the federal OSHA plan will take control, and alongside the new federal fine structure.

Through our own research, it doesn't appear to be as cut and dry that either the federal government or the state government would like us to believe. There are several states that have a hybrid program that adopts some of the federal OSHA rules but also have their own state specific regulations to cover public state and local government workers that the federal government have given approval for.

While there are pros and cons to having a state program in Michigan, MITA and its members have worked very closely with MIOSHA to come to reasonable solutions to issues that occur on job sites. It is recognized that these penalties would be the statutory maximum penalties, although MIOSHA and OSHA often propose penalties that are significantly lower after application of penalty adjustment factors for size of company, good faith, history and other factors. The concern is that a future MIOSHA administration could disregard the currently used formula of credits for

calculating penalties thus resulting in a monumental jump in citation penalties.

Additionally, there is a larger problem that exists that revolves around this entire issue. MIOSHA has roughly 14 Construction Safety Officers and has an objective of hiring up to 19 total. The sole purpose of these officers is to inspect construction sites in Michigan. According to information obtained from the Federal Bureau of Labor and Statistics, this activity covers approximately 160,000 employees who work in construction, or approximately 11,500 employees for every one Safety Officer. Conversely, MIOSHA has approximately 25 Safety Officers that oversee 604,000 employees in the manufacturing industry. This equates to approximately 24,000 employees for every one Safety Officer, much more skewed than the construction industry.

MITA will work with the bill sponsor as well as the committee that the legislation was referred to in order to get a better understanding on the actual threat of losing our state program, but also where there might be some areas in which we can continue to protect our members. If you have any questions, please contact Lance Binoniemi, MITA's Vice President of Government Affairs, at 517-347-8336 or email him at lancebinoniemi@mi-ita.com. 🚧



Ken Bertolini

To contact Ken Bertolini, email him at kenbertolini@mi-ita.com or call the MITA office at 517-347-8336.

Well, after three months and nearly 10,000 miles, we have only begun to scratch the surface of the workforce development needs for our state and industry. I have enjoyed traveling and becoming re-acquainted with our majestic state and all that summer has to offer after being away for 10 years. From downtown Detroit, Southfield, Grand Rapids, Washtenaw, Mackinac Island, all the way to Marquette, and all points in-between; it has been a fast start!

Much of the summer concentration has been learning what training is currently offered for our members, as well as beginning to establish in-roads to new training opportunities. I have also been active in reaching out to other workforce development personnel where there is overlap between their organizations and ours. It is important to ensure that our interests are represented in new and current workforce endeavors. What has surprised me is how positive other workforce development representatives have

MITA Workforce Development Update

By Ken Bertolini

been! The overriding attitude has been “welcome to the club, we need all the help that we can get, and if it benefits the construction industry as a whole it’s a good thing!”.

We now have MITA representation in programs promoting and training high school students including the Detroit Workforce of the Future: Construction Job Shadow/Career Readiness Program (DTW/CRP), Access for All, ACE (Architecture, Construction and Engineering) Mentor Program of Michigan, the Construction Science Expo, and Mi Career Quest-East.

There has also been a strong push towards community colleges and their training/certificate program departments. Meetings are currently being held to help establish Highway Construction and Heavy Equipment classes through Grand Rapids Community College. GRCC will serve as a model with the intention of having other community colleges across the state able to adopt a similar model. Washtenaw Community College has already shown great interest in providing classes that will benefit MITA members. Initial contact has also been made to Lansing Community College and Oakland Community College. The community college model envisioned can provide additional training to current employees as well as sparking interest in students attending the schools and not yet in our industry. MITA will reach out to

other community colleges as well. If there is one in particular that you would like us to contact sooner than later, please contact me.

As the school year begins, there will be an effort to get into high schools to meet with counselors and make presentations to students showing the benefits that a career in infrastructure can provide. Brochures will be made and handed out. The idea is to also offer local member companies names that are in the area and the type of work that they do. If you have a person who is around 25 years old or younger that you feel would be a good “success story,” please send me their information and background. It would be useful to show what kind of job satisfaction and economic security approximately six to seven years in our industry can yield.

Additional items in the pipeline include: working with Michigan Career Pathways which is the governor’s professional trades committee, meetings in the Grand Rapids region with the National Association of Women in Construction (NAWIC), researching training reimbursement and funding available to contractors through the state and federal government, continued discussions with the Michigan Rehabilitation Services department, career fairs, and reaching out to veteran and training programs helping to connect veterans with employers.

Continued on page 53

The Numbers Don't Lie:

Fix MI State Continues To Generate Infrastructure Awareness Statewide Through Successful Michigan Infrastructure Fund Mini Campaign

By Mariam Robinson, Director of Strategic Affairs



Mariam Robinson
Director of Strategic Affairs

Since the end of 2016, the MITA-sponsored Fix MI State campaign to raise awareness for the massive unmet infrastructure needs across Michigan has been steadily generating public attention and recognition statewide. With a strong combination of social media prowess, the use of the Phone2Action advocacy platform, and a healthy dose of traditional earned media, the Fix MI State campaign was able to positively impact the Michigan legislature's decision to restore

the Michigan Infrastructure Fund in June of 2017. This was a huge feat for the members of MITA and the campaign as a whole.

To understand how the mini campaign had such a huge impact in such a short span of time, let's take a quick look at the pieces that came together to make the restoration of the Michigan Infrastructure Fund possible. Phone2Action, an advocacy platform that MITA recently invested in, gave Michigan voters the ability to easily contact their legislators via email, phone and social media channels from the comfort of their smart devices. 582 advocates from nearly every state House and Senate district attempted to contact their legislators. These advocates directly communicated with lawmakers 1,146 times over the five short weeks during which Michigan voters were specifically targeted to take action. These numbers are impressive for a first-time campaign, and they indicate that the Phone2Action platform is an extremely effective tool to garner support for a legislative issue.

In addition to the use of Phone2Action, a 30-second digital

ad calling on the legislature to restore the Michigan Infrastructure Fund was created and distributed, a press conference was held to notify the public and the Capitol community, and multiple radio and TV interviews were scheduled for MITA's Mike Nystrom and Lance Binoniemi to inform the public what was at stake. In those five weeks of the targeted campaign, over 10 earned media opportunities were produced to

Continued on page 49

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FALL 2017: MITA PAC UPDATE

First Name	Last Name	Company	Donation
Darrell	Kaltz	Kaltz Excavating Co., Inc.	\$1,000.00
Doug	Kaltz	M.U.E. Incorporated	\$5,000.00
Tom	Wagenmaker	Anlaan Corporation	\$5,000.00
Gary	Merkey	Jackson-Merkey Contractors, Inc.	\$750.00
Steve	Jackson	Jackson-Merkey Contractors, Inc.	\$750.00
Aden	Shea	P.K. Contracting, Inc.	\$500.00
Joe	Cook	Pro-Tec Equipment	\$250.00
Dan	Eriksson	Hoffman Bros., Inc.	\$7,500.00
Michael	Peake	Action Traffic Maintenance	\$500.00
Timothy "Mike"	Peake	Action Traffic Maintenance	\$1,500.00
Tom	Peake	Action Traffic Maintenance	\$1,500.00
Chris	Shea	P.K. Contracting, Inc.	\$2,000.00
Karl	Schweitzer	GM & Sons, Inc.	\$1,000.00
Kurk	Schweitzer	GM & Sons, Inc.	\$150.00
Mark	Johnston	Ajax Paving Industries, Inc.	\$5,000.00
Mike	Malloure	C. A. Hull Co., Inc.	\$7,500.00
Christopher	Churches	M&M Excavating Company	\$500.00
Thomas	Larabel	Ferris State University	\$300.00
Brandie	Meisner	M&M Excavating Company	\$500.00
John	Landrie	M&M Excavating Company	\$500.00
Ken	Nowicki	M&M Excavating Company	\$500.00
Angie	Greenslade	Old Republic Surety Group, Inc.	\$125.00
J.W.	Fisher	Fisher Contracting Company	\$2,000.00
Tom	Wagenmaker	Anlaan Corporation	\$2,000.00
Ron	Measel	Ace Cutting Equipment	\$1,000.00
Pete	Scodeller	Scodeller Construction, Inc.	\$2,000.00
Dave	Pytlowany	AIS Construction Equipment Corp.	\$2,500.00
Ed	MacKenzie	E. T. MacKenzie Co.	\$5,000.00
Evan	Weiner	Edw. C. Levy Co.	\$1,000.00
Jim	Urban	Butzel Long	\$100.00
Jack	Dykstra	Jack Dykstra Excavating, Inc.	\$1,000.00
Bob	Nobbs	Edw. C. Levy Co.	\$500.00
John	Zito	Zito Construction	\$500.00
Doug	Walls	Eagle Excavation, Inc.	\$2,500.00
Dennis	Scully	Mapes Insurance Agency	\$200.00
Katie	Darrow	Darrow Bros. Excavating, Inc.	\$150.00
Brad	Lubahn	Brad Lubahn & Sons Heavy Underground LLC	\$500.00
Brian	Hoffman	Hoffman Bros., Inc.	\$5,000.00
Remi	Coolsaet	R. L. Coolsaet Construction Company	\$500.00
Sean	Morrissey	GM & Sons, Inc.	\$200.00

First Name	Last Name	Company	Donation
Tom	Horton	Centurion Insurance Agency	\$200.00
Rod	Mersino	Mersino Dewatering, Inc.	\$1,000.00
Nicholas	Baker	Anlaan Corporation	\$2,000.00
Jacque	Katterman	Katterman Trucking, Inc.	\$300.00
Eric	Morris	HNTB Michigan, Inc.	\$200.00
Daniel	Fredendall	OHM Advisors	\$300.00
John	MacInnis	JRM Consulting	\$200.00
Dave	Maas	Diversco Construction Co., Inc.	\$1,500.00
Marc	Van Til	Give 'Em A Brake Safety	\$500.00
Brent	Gerken	Gerken Paving, Inc.	\$500.00
Brian	Olesky	Pamar Enterprises, Inc.	\$500.00
Brad	Poggi	HUB International	\$250.00
Jeremy	Lemke	Give 'Em A Brake Safety	\$1,000.00
Dan	Cortis	Cortis Brothers Trucking & Excavating	\$500.00
Andrew	Ross	Utility Contracting Co.	\$250.00
Doug	Kaltz	Kaltz Excavating Co.	\$1,000.00
Ed	Levy, Jr.	Edw. C. Levy Co.	\$1,000.00
Dennis	Rozanski	Dan's Excavating	\$250.00
Paul	Navetta	Dan's Excavating	\$500.00



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continued from page 21

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Alan	Chandler	VTC Insurance Group	\$500.00
Robert	Wilson	Mid Michigan Materials	\$200.00
John	Kloet	U.P. Concrete Pipe Co.	\$1,000.00
Kevin	Brenner	Brenner Excavating Inc.	\$500.00
Dale	Klett	Klett Recycle, Inc.	\$2,000.00
Derrick	Arens	Anlaan Corporation	\$100.00
Rinaldo	Acciavatti	Pamar Enterprises, Inc.	\$1,000.00
Robert	Adcock	Angelo lafrate Construction Company	\$2,000.00
David	Turner	C. A. Hull Co., Inc.	\$2,500.00
Brian	Schember	Dan's Excavating	\$500.00
Chad	Listerman	CL Trucking & Excavating, LLC	\$2,000.00
John	Lepien	CL Trucking & Excavating, LLC	\$500.00
Edward	Shaffer	EJD Transport	\$500.00
Darrell	Kaltz	Kaltz Excavating Co.	\$6,000.00
Jim	Kloote	J. E. Kloote Contracting, Inc.	\$1,000.00



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Rep. Ben Frederick (R-OWOSSO)



Rep. Ben Frederick

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Q: How has your background working as staff within the Michigan Legislature as well as your time serving in local government helped you as Chairman of the Workforce and Talent Development Committee in the House of Representatives?

A: I have come to appreciate both of those roles a great deal in my current work. My legislative staff experience in the House and Senate over the past 14 years has given me great familiarity with the legislative process. This becomes a great advantage in the term limits era. I was able to begin my work in earnest on behalf of my district from day one and have already had success navigating legislation to the Governor's desk within a few short months. Serving as the nonpartisan

mayor of a small town through times of both recession and recovery instilled within me the importance of problem solving and working with people of all backgrounds to develop meaningful solutions. I continue to carry that approach of reaching across the aisle in my present work as the workforce challenges facing our state are hardly partisan problems.

Both of these roles also allowed me to develop relationships with employers and educators and to grow in my understanding of workforce shortages.

Q: What legislative priorities do you have for the 2017–2018 term?

A: My central priority remains the recruitment and retention of employees to meet the workforce challenges facing our state. Aligning our educational system to meet the needs of employers remains a multifaceted problem.

Another priority is addressing the solvency of our local governments related to their retirement and health plans. In particular, I want to ensure a solution which does not approach the problem in a one-size-fits-all manner to minimize intervention in local governments who are engaging in sound fiscal management.

I also would like to continue exploring the problems facing agriculture related to transferring

farms to the next generation of farmers. High entry costs and waning interest in farming by many young people have made things extremely difficult.

Q: In your opinion, what do you think is the biggest challenge facing Michigan in recruiting talent in the workplace?

A: An absence of basic job skills (often called “soft skills” such as showing up on time, passing drug tests, prioritizing and appreciating the importance of a job) combined with continued negative perceptions of professional trades on the part of many parents and some in the education community. There is still a prevailing assumption that a four year degree and the debt such a degree often carries is the only way to ensure a successful future. Many parents, including my own, watched as manufacturing left our state and naturally look to push their children toward what is believed to be a more secure and prosperous opportunity.

The simple truth, however, is that modern trades careers are not only highly technical and well-paying, but carry little or no debt while offering immediate employment opportunities. This information needs to be better communicated to parents, school counselors and even some of our workforce development partners.

Continued on page 47

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What has Happened with U.S. Bridges Since the Minneapolis Bridge Collapse?

August 1 marked the 10th anniversary of the I-35W bridge collapse in Minneapolis. The bridge was classified as “structurally deficient” and was undergoing repair at the time.

The American Road & Transportation Builders Association (ARTBA) has looked at federal government data to see what progress has been made in repairing the nation’s bridges in the

decade since the collapse. States have devoted significant resources to bridge work, ARTBA says.

The value of bridge construction increased 39 percent, from \$23.2 billion in 2007 to \$32.3 billion in 2016, according to the U.S. Census Bureau. During the same time period, highway and street construction activity increased just eight percent, from \$54.6 billion to \$59.2 billion.

Despite the ramp up in

investment, it has not been enough to keep up with the nation’s bridge needs.

In 2016, there were 55,710 structurally compromised bridges, a 24.5 percent reduction compared to the 73,817 back in 2007, according to ARTBA’s analysis of the U.S. Department of Transportation’s National Bridge Inventory database.

Continued on page 60

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Fleet Management Partnership

Michigan Infrastructure Transportation Association (MITA) Members are now eligible for savings through the Enterprise Fleet Management Affinity Program for the 2016 model year.

Enterprise is a full-service fleet management business that helps MITA members streamline their fleet, improve cash flow and optimize operations every step of the way. From acquisition and risk management, to maintenance and remarketing, Enterprise provides MITA members with quick, easy and personal access to a local account team who will handle all of the day-to-day fleet needs.

MITA member benefits and discounts:

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Legislative Site Visit

MITA Legislative Site Visit: Thanks to Kurt Davatellia of Toebe Construction LLC for hosting a MITA Legislative Site Visit August 22 at the U.S. 12 project in Ypsilanti. Toebe's work involves road and bridge improvements that are part of MDOT's autonomous vehicle project. Thanks also to the legislators and MITA staff who took time to learn more about the project. 🚧



From left to right in the group photo: Kurt Davatellia, Toebe Construction; Rob Coppersmith, MITA; Rep. Michael Webber; Senate Transportation Committee Chairman Tom Casperson; Rep. Julie Alexander; House Transportation and Infrastructure Committee Chairman Triston Cole; Matt McClintick, MITA; Rep. Brett Roberts; and Lance Binoniemi, MITA.

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MEMBER VOICE

In a recent Member Voice survey during early August, MITA members responded to the following question: How do you think President Donald Trump is doing? Here are some of the answers we received in no particular order.

He has good ideas for business growth and allowing the middle class to succeed, but he can't seem to get the parties to work together. He needs to figure out how to get his plan accomplished.

Jeff Schierbeek
Quality Precast

Fine job. I'm optimistic at this point.

Brian Ball
We Can Digit

Good!

Brian Dodds
D.R. Earthmoving

Agree with some policy, but disagree with most including him personally.

Great!

Jim Vaughn
Modern Concrete

.....

The whole process seems chaotic. The truth seems difficult to find from either side. The level of dysfunction seems to be slowing down business decisions, which is what I think is the biggest problem.

Kurt Siebenaller
UHY

.....

Great, especially with the left, including the news media constantly nagging at him and attempting to bastardize all of the good that he is attempting to do.

Kina Kocsis 🇺🇸



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Efficiency Production Inc.

www.efficiencyproduction.com

*Trinity Shoring Products, Inc.,
Acquires Efficiency Production, Inc.*

Trinity Shoring Products, Inc., through a subsidiary, recently acquired all substantial assets of Efficiency Production, Inc. Trinity will continue to operate the 46-year-old trench shielding and shoring manufacturer under their primary name, Efficiency Production.

Trinity Shoring Products current operates within the trench shoring and shielding market under the brands of Pro-Tec Equipment and GME, which Trinity acquired in a 2004 merger. Efficiency Production will continue to operate separately under its current brand name with no changes in personnel or point-of-contact for customers. Additionally, the acquisition will have no effect on the business operations or personnel at Pro-Tec or GME.

"Efficiency Production is one of the country's leading trench shoring manufacturers, and we are very excited to bring their strong brand name and manufacturing capability into Trinity Shoring Products' family of businesses," said Joe Zylman, president of Trinity Shoring Products. We believe this acquisition is a positive step in positioning both Efficiency and Trinity for continued growth and product innovation."

Efficiency Production's operations will be overseen by Rod Austin, the company's previously titled vice president of sales now general manager. "Our number one goal is to make this transition as seamless as possible for dealers and customers," Austin said. "We are very pleased with the level of understanding our new owners have for the needs of our customers, and our intent is to

continue our high level of customer support."

Assuming the head of Efficiency's sales department IS Al Baron, with the new title of national sales manager. Baron has been a shoring specialist in the company's special operations shoring division for the past four years.

Efficiency's North American and international dealer partners were sent notices in July that all design and engineering support, as well as slide rail installation assistance will remain the same as before the acquisition. All customers were advised to continue communicating with their existing Efficiency Production sales and rental representative.

All manufacturing operations will remain at the company's 655 Hull Road, Mason, Mich. headquarters. Efficiency's toll-free number, 800-552-8800; business phone number, 517-676-8800; and fax number, 517-676-0373, remain the same. The company's website address, www.efficiencyproduction.com, also will not change, though all personnel will now have an email addressed composed as first.last@trin.net.

Efficiency Production remains "America's Trench Box Builder™," and no product names or branding will alter under Trinity Shoring Products' administration. Any technical or engineering documents such as P.E.-stamped tabulated data will remain valid with existing documentation.

Trinity Shoring Products, Inc., is a wholly owned subsidiary of Dallas-based Trinity Industries, Inc. Trinity is a publicly traded, multi-industry company that owns a variety of market-leading businesses in the industrial, energy, transportation

and construction industries. Visit www.trin.net for more information.

G2 Consulting

www.g2consultinggroup.com

*G2 Consulting Flies Drones
to Clients' Advantage*

If drones can deliver burritos for Chipotle and goods for Amazon, what other business uses might these unmanned aircraft serve in today's world? One local business that's been an early adopter of drone technology is finding out.

G2 Consulting Group, a Troy-based geotechnical and environmental services firm, has been flying drones over and around its clients' construction sites to provide a clearer, more comprehensive view of a project's scope and progress.

G2 Consulting Principal Noel Hargrave-Thomas is an FAA licensed drone pilot who started flying drones "just for fun" in 2014 and soon recognized how helpful they could be in providing overhead visual inspections of potential and actual job sites. As a result, G2 Consulting became one of the earliest businesses to use drones to assist clients in visualizing their projects.

"We've used our drones on projects like telecomm towers and commercial buildings to improve job safety. We can fly close to existing structures and audit them for a number of issues without having to send a climber up," Hargrave-Thomas says. "This enables significant cost savings to building owners while helping to determine the exact scope of work required."

In addition to documenting construction projects, the drone footage also gives clients a much

better understanding of work site progress because they're actually able to see everything that's occurred, Hargrave-Thomas says.

He describes mapping construction sites on a daily basis to provide 3D model of the site and creating scaled 2D mosaic imagery that contractors use to document progress and material usage. New 3D cameras can provide aerial 360-degree access footage to show clients what their project will look like and how it will fit into the surrounding environment. There are also drones with upward pointing cameras that enable project managers and their clients to visually inspect the bottoms of bridges, overhangs and indoor roofing as well as thermal imaging cameras for roof inspection and facility energy audits.

Drone technology is evolving so quickly that Hargrave-Thomas

believes their future uses are almost limitless. On a recent site, he programmed a drone to follow an exact flight grid. By repeating the same flight weekly, G2 was able to create a detailed time-lapse video of the construction process.

"All of these innovations will enable us to better serve our clients' needs by giving them a more complete understanding of their projects while also reducing costs and improving outcomes," Hargrave-Thomas says. "Drones are becoming an increasingly important tool in the construction engineering business. I'm glad we've developed this expertise."

Hubbell, Roth & Clark, Inc.

www.hrcengr.com

Hubbell, Roth & Clark, Inc., (HRC) has opened an office in Jackson, the eighth location for the

102-year-old Bloomfield Hills-based civil engineering firm.

Located at 401 S. Mechanic Street, Suite B, the new office offers full-service civil engineering and provides services to municipal, industrial and private clients.

"HRC has had the privilege of working in Jackson for many years, said Nancy Faught, HRC executive vice president. "We are delighted to have the opportunity to continue servicing local clients from our new home as members of the community."

HRC is a full-service consulting engineering firm providing planning, design and construction engineering. Projects include roads, bridges, stormwater, water and wastewater treatment projects, traffic engineering, GIS, architectural,

Continued on page 32



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Continued from page 31

surveying, materials testing, plan review services and grant funding assistance. In addition to Bloomfield Hills and Jackson, HRC has offices in Delhi Township, Detroit, Grand Rapids, Howell, Kalamazoo and Lansing.

RBV Contracting, Inc.

www.rbvcontracting.com

Linda McMahon, head of the U.S. Small Business Association (SBA) and voice of small businesses on President Trump's Cabinet, met Detroit-headquartered, minority owned contracting firm RBV Contracting on July 26 at their Brush Park City Modern development site in Detroit. The trip was part of McMahon's nationwide SBA Ignite Tour, which focused on listening to business owners; educating about SBA's services for access to capital, mentoring and federal contracting; advocating for entrepreneurs; and driving economic growth with small businesses.

"The mission of the SBA of the SBA is to help small businesses grow, create jobs and help our economy thrive," McMahon said. "Over the next two years, I will literally be on the move. 'I want to get to know small business owners and entrepreneurs across America and learn about the obstacles they face while growing a business. I also want to encourage entrepreneurs to tap into SBA resources for start-up and growth solutions.'"

With the help of the SBA, RBV Contracting has increased its revenue by 98 percent and has grown its team to 31 employees during the past six years. The firm became HUBZone certified in March

2012 and 8(a) certified in December 2013. Since becoming certified, RBV Contracting has received three HUBZone contracts, all of which have been instrumental in the firm's growth. This year, RBV was recognized as one of Michigan's 50 Companies to Watch and the Government Contractor of the Year by Michigan Celebrates Small Business.

"We started RBV in March 2011, while the City of Detroit was in possibly its worst economic state, ever," said RBV Contracting Vice President Jim Foucher. "The guidance and education that the Small Business Administration provided our team during our beginning phase was crucial to our long-term success. We would not be where we are today without the support of the SBA."

RBV primarily looks to hire Detroit and HUBZone residents, in order to contribute to the city's comeback and to provide local jobs. According to the

Bureau of Labor Statistics, Wayne County is currently experiencing a 7.0 percent unemployment rate, which is the county's lowest rate in years. Professional and business services had the largest increase in annual employment out of all employment sectors within Detroit, adding a total of 18,400 jobs to the city since September 2015. Specifically, jobs within the technical services industry, such as RBV Contracting, added nearly 11,000 jobs to the city since September 2015, alone. This increase equates to a 5.3 percent rise in employment within the professional and business services supersector.

"Detroit has always held a special place in our hearts and we knew that there was no other place for our business," Foucher said. "Part of our business strategy is to continue to invest in local talent and invest money in the local economy. We're proud to hire people who call Detroit home." ▲

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Rauhorn office, shop and mechanic staff posed for a photo during the groundbreaking ceremony.



Rauhorn Electric Inc., Breaks New Ground

Rauhorn Electric Inc., held an official groundbreaking ceremony August 21 at the site of their new headquarters in Bruce Township. Here's a brief Q & A with Andrea Rau, vice president of internal operations.

1. Where is your new headquarters going to be located?

14140 33 Mile Road in Bruce Township, which is about 13 miles from our current location on 23 Mile Road in Macomb. Thirteen years ago we built our current building, which is 34,000 square feet and sits on a 20 acre parcel of land. The Macomb building has been sold; however, we will remain there until the 33 Mile Road location is complete.

2. What is the new project size?

Three buildings, with approximately 53,000 square feet total for all three, on 23 acres of land.

3. What made you decide to build a new building?

Rauhorn is quickly outgrowing storage and manageable work space at the 23 Mile location. As the business grows, so do our needs. As we plan for the future, it



Three generations of the Rau Family: From left to right: Anthony Rau, president and son of Del and Gloria, holding his youngest daughter, Alessandra Rau; Anthony's wife, Candice Rau, with eldest daughter, Giuliana Rau; Gloria Rau, treasurer; Del Rau, CEO, holding Anthony's middle daughter, Stella Rau; Andrea Boron, vice president and daughter of Del and Gloria Rau, holding son, Christian Boron; and Josh Boron, Andrea's husband.

is evident that raw land becomes harder and harder to find in our area. Therefore, we determined it was time to build a new building.

4. What will the new building have that is different from what you have now?

The new location, with three buildings instead of one, will allow Rauhorn to expand our office space and create the proper space needed for warehousing and

fleet maintenance. The additional buildings will allow for greater enclosed storage space, a larger maintenance garage with shop cranes and a new office layout to provide a more efficient work space.

5. Project timeline?

Construction began on August 22, and our goal is to be fully operational in the new building by the Spring of 2018. 🏗️

MITA Introduces Member Milestone Project

Some of the most interesting stories about MITA members surround the details of when member companies were founded, usually by grandfathers or great-grandfathers, who started their construction businesses on a shoestring budget.

MITA will begin recognizing these important milestones in the evolution of our members with commemorative ads and articles in this fall edition of the magazine.

This time around we are recognizing the following companies, who let us know about their anniversaries and in some cases allowed us to contact their suppliers

for possible ads. We also let the general membership, and current magazine advertisers know about their anniversaries in case they wanted to submit an ad.

Hoffman Brothers, Inc.
(celebrating 70 years of business)

Strain Electric Co.
(celebrating 70 years of business)

Rowe Trucking LLC
(celebrating 10 years of business)

TTL Associates
(celebrating 90 years of business)

Mack Industries, Inc.
(celebrating 85 years of business)

If you are interested in being recognized for your anniversary in the future, please contact MITA's Director of Communications and Cross-Section Magazine Editor Nancy Brown at 517-347-8336 or you can email her at nancybrown@mi-ita.com.

The following is information that several companies were able to provide us by press time. Congratulations to Hoffman Brothers Inc., Strain Electric Co., Rowe Trucking LLC, TTL Associates and Mack Industries, Inc.! 🚧



Hoffman Brothers, Inc. Celebrates 70 Years in Business

Brief Company History: Hoffman Bros. was founded in 1947 during the post-war building boom. In the years since, they have grown in size as well as capabilities and have taken on larger and more complex projects.

Specialties: Earthmoving, road building and underground construction.

Employees: Over 150.

Key to Success: Giving customers first class quality workmanship and delivering their projects on time. 🚧

Hoffman Brothers, Inc.,
I-94 excavation project.





Strain Electric Co. Celebrates 70 Years in Business

Brief Company History: Strain Electric Co. President Todd Strain's grandfather, Les Strain, started the business in 1947 after being the chief electrical inspector for the City of Grand Rapids for a number of years. Todd's father and uncle took over the company

in the late 1960s, after serving their time in the armed services. In the 1970s, the company was wiring malls and Meijer stores, and in the late 1970s they became involved with city, county and MDOT work with traffic signals, freeway lighting and drawbridges. In 2007, Todd's Dad retired and he took over the business.

Specialties: Traffic signals, freeway lighting, drawbridges, outside plant fiber, heavy industrial service work and underground infrastructure.

Employees: 25

Key to Success: Treat your customers and employees with respect and be willing to go the extra mile for both of them. ⚠️



Mack Industries, Inc. Celebrates 85 Years in Business

Brief Company History: Mack Industries traces its roots to 1932, when John Mack purchased a convertible burial vault/septic tank mold to launch a business during the Great Depression. Mack initially grew into a diverse business that included builder's supply for the small town of Valley City, Ohio. Vault delivery trips to Cleveland returned with brick, block and supplies to sell locally. In 1958, Dick Mack fully took over the precast portion of the business. Starting off with two employees, he doubled the business several times over while developing the Mack team to support the growth. During the 60's the company developed capability in various tanks, utility vaults and package wastewater treatment systems. In the 70's the company added drainage products such as manholes, also adding Youngstown and Toledo precast locations, Ready Mix and Trucking capability. In the early 80's Mack's Florida Plant began operations and Box Culvert was added. The 90's attracted a third generation of the Mack family along with expansion into Michigan and Akron Ready Mix. The 2000's brought expansion into Prestress Hollowcore Floor Plank, Sound Wall and a new location near Raleigh, N.C. Mack recently acquired two additional locations in



Sister and Brother Betsy and Howard Mack.

Michigan along with the capability to provide prestressed products like bridge beams, commercial walls, building products and parking decks. The team concept of Mack continues today with sister-brother Betsy Mack Nespeca, President-CEO; and Howard Mack, VP, General Manager of the White Lake Plant leading the company in step with a strong Mack Management and Sales team.

Specialties: Drainage, highway, walls, bridges, buildings and environmental.

Employees: 550

Key to Success: Teamwork is the key; it takes every person working together to come through for our customers and to keep striving to improve operations and service levels so our products and relationships are lasting and strong. ⚠️

MITA Summer Conference 2017

Thank you to all the sponsors and participants for this year's summer conference on Mackinac Island. From the golf, to the dinners, to the sunset cruise under the Mackinac Bridge and much more, MITA members had a blast. Stay tuned to your MITA bulletins for details about next year's summer conference.



MITA members took a sunset cruise under the Mackinac Bridge during the summer conference on Mackinac Island in July.



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The Mattice family is all grins for the conference.



Karl and Heather Schweitzer of GM & Sons, Inc. partake on the porch of the Grand Hotel.



Former MITA Board President Tom Wagenmaker (Anlaan Corporation) holds his granddaughter on the grandest of porches during the MITA Summer Conference at the Grand Hotel.



Mike and Julie Malloure of C.A. Hull Co., Inc., enjoying dinner on the lawn.



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MITA Summer Conference 2017



Cooper and Terry Erickson of Michigan CAT having a father son moment.



Bob and Jennifer Jones of Toebe Construction LLC in the spotlight!





Another highlight of the MITA summer conference: MITA Board President Jim Doescher (Dan's Excavating) and his wife, Kelly, provided private carriage rides. Chris Shea (PK Contracting) was one of many happy riders. Jim and Kelly's horses, Alex and Merrick, enjoyed showing off their talents.



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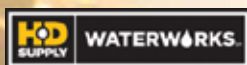
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MITA's 2017 Golf Outings

Another MITA Golf Outing season has come and gone, and now it is time to make sure we thank all the sponsors who made the outings possible. Thank them with your business if you can. Thanks, also, to all the golfers who participated in the outings this year. Stay tuned to your MITA bulletins for details about next year's outings.





Glenn Bukoski, P.E.

To contact Glenn Bukoski, email him at glennbukoski@mi-ita.com or call the MITA office at 517-347-8336.

Many MITA members have done business in the City of Detroit for over 100 years. We have employed citizens of Detroit and invested in the City through business endeavors in a myriad of activities from road and bridge construction to supplying high quality construction materials and producing asphalt and ready-mix concrete. Our industry has a long, documented history of conducting our affairs in the best interests of the environment, our employees and the communities we serve. Our members believe it is important to repay the communities that support us by operating safe and environmentally sound businesses while sharing success with worthy charitable causes, several of which directly benefit Detroit residents.

As many in the Detroit area know, back in 2013 there was a dust emission event that resulted from the mismanagement of petroleum coke on a dock on

City of Detroit Bulk Solid Material Ordinance

(This article is essentially a reprint of the letter MITA's Executive Vice President, Mike Nystrom, sent to all MITA members in July about the very concerning City of Detroit draft Bulk Solid Material Ordinance. Since industry issues related to the draft ordinance are still unresolved, we have updated the relevant information and are again calling for your support and action.)

the Detroit River. This led to efforts by the City to determine the appropriate way to avoid certain dust emissions. As a part of the City's efforts, many City Council members met with representatives of the construction materials industry to learn about our member's business operations and the regulatory environment in which we operate. Our members welcomed the opportunity to educate the Council and their staffs to ensure that the new ordinance would achieve health and environmental goals without unfairly impacting businesses that are necessary to rebuilding the infrastructure of the region.

The construction materials that our members manage, which are critical to the redevelopment of the City, are thoroughly regulated by the state and federal government.

The City of Detroit drafted a Bulk Solid Material Ordinance that defines Bulk Solid Materials as sand, gravel, iron and steel slag, limestone and asphalt millings.

The costly regulations proposed in the current draft would force our members to shut down dock operations and incur significant capital and operating costs to comply.

Our conservative cost analysis suggests that implementation of these onerous and indefensible regulations could result in a 25-50 percent increase in construction material costs, including concrete and asphalt, particularly because of increased transportation costs.

These unnecessary regulations on construction materials will increase Detroit's already inflated construction costs, which are among the highest in the nation, and impact the fate of projects in the City of Detroit. This, in turn,

Continued on page 58



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Centurion Insurance Agency

Continued from page 11

then communicate that to the underwriter during the quote process. The better a company looks to an underwriter, the better price they will give. The more Centurion knows, the better they can make a company look.

"We look at what a company is currently doing to mitigate or avoid risk," Tom said, "but we also open opportunities to help them make improvements with some of our strategies and template programs. We are looking for companies to partner with that agree that managing risk and keeping claims down, keeps cost

down and keeps everybody happy."

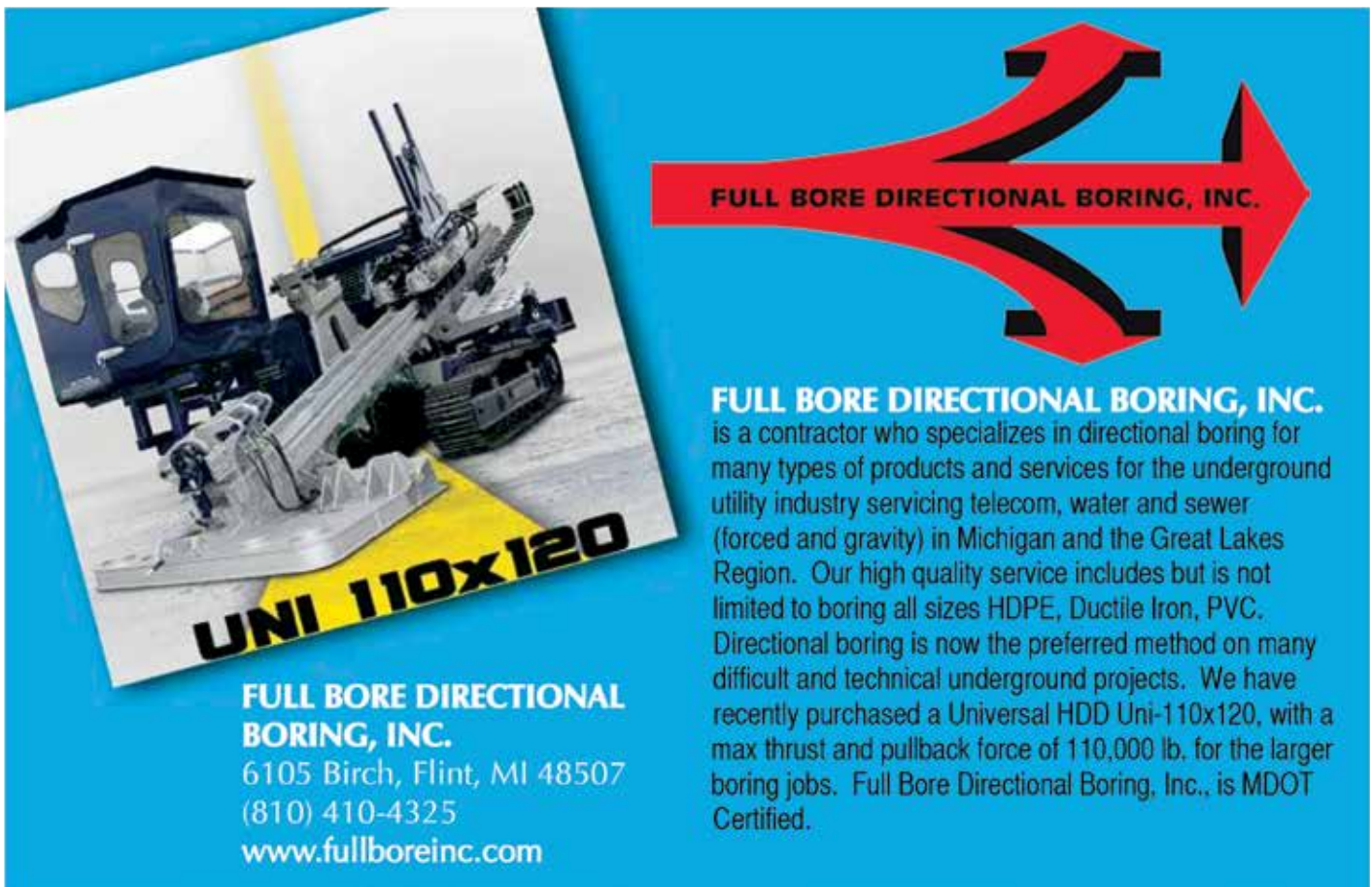
The focus on risk management is recognized by the insurance companies that Centurion represents. "Our consistent low loss ratio with our carriers is a point of pride," Tom said, "but also helps us get the attention needed to get the best price. Centurion takes their time to really understand how a company manages risk. The submission to the market is more than getting the current commodity pricing. When an underwriter receives our submission, they have a clear picture of what an account does

to avoid claims. The Risk Guard process is supported by the insurance companies because they agree that in implementing risk management programs, a business will become healthier and safer."

MITA is a conduit that is helpful for the insurance industry, Tom said, because they allow Centurion to give input on issues relating to insurance and bonds that are specific to contracting.

"Without MITA, I don't know how the insurance industry could have a voice to effect changes,"

Continued on page 46



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Centurion Insurance Agency

Continued from page 45

Tom said, “I have really enjoyed working with Glenn Bukoski over the years. Together we have had fun making some real changes in how MDOT addresses bonds and insurance-related issues. We have saved MDOT a lot of money by getting them to look at alternatives, and saved some major headaches for MITA members by stopping some of their “better” ideas from becoming reality.”

Over the years Centurion has been helpful to MITA in resolving insurance-related issues that contractors face, Tom added. For example, in the past Tom worked with MITA to help gain approvals from MDOT, the Department of Management and Budget, and the Attorney General on a proposal that allowed contractors an alternative to the Owners and Contractors Protective (OCP) liability policy that MDOT required. He has also helped MDOT DBE companies learn about bonding.

When asked his thoughts on the effects the two recent hurricanes will have on the insurance industry, Tom said he thinks that we will see the same effects we saw after Hurricane Sandy hit the east coast.

“Property will become a focus again,” he said. “After Sandy, the insurance companies made the condition of a roof a real issue. I also see that there will be a focus on co-insurance when it comes to both buildings but also contractor’s equipment. Co-insurance explanation: The insurance company expects you to insure property to its replacement value. When you don’t, the policy has a condition that penalizes you for underinsuring the damaged property. This is the co-insurance provision, and it’s simple. If you are only insuring something for half its value and the co-insurance terms require you to insure it for 90 percent of its value, you will only get about half of the money

to repair the damaged property. If it is totaled, you will be short on cash to get it replaced.”

Tom added that pricing may see a little pressure. The real issue will be underwriting to get the proper premium to match the true exposure.

“On the claims side, I believe they will start enforcing the co-insurance terms that the industry has been known to be lax in enforcing,” Tom said. “What should a company do? Look at your equipment values. These values have changed as the equipment market has improved, and you want to be sure those values are what you would need to have at the point of claim. Be sure your roof is in good condition, because they will include that in their inspections. Don’t be surprised if they want a new roof on the old shed out back in order to continue providing coverage.” 🏠



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Continued from page 24

Q: *As infrastructure projects grow over the next several years, how can we get more young people interested in the heavy construction industry?*

A: We need to engage students at a younger age. We are heading toward disastrous shortages should additional federal dollars for infrastructure come to fruition. I have been working actively with both union and non-union operations to develop additional partnership strategies within our K-12 education system. Apprenticeship-ready and industry-relevant content is being rolled out to schools as more and more employers are now providing equipment and grants to rebuild school shop programs. Innovations in the prison system and focus on returning veterans are also helping to fill the ranks in our construction trades, but far more needs to be done.

Q: *As Workforce and Talent Development Chair, what policy initiatives can we collectively work towards in helping attract more talented workers to Michigan?*

A: Active promotion of the state's Going Pro marketing campaign will help to change negative perspectives about the professional trades. Speaking with current tradesmen about their interest in teaching in a K-12 setting will maximize new flexibility afforded trades professionals in this critical

shortage area. Reaching out to local high schools, ISD tech and career centers as well as higher education to integrate curriculum and training strategies will help our state build a strong foundation for these opportunities. A thorough review of the Skilled Trades Training Fund is also necessary to ensure that employers are being well-served by this targeted program.

Q: *What are your thoughts or comments on your relationship with MITA and the heavy construction industry?*

A: During my 15 years of involvement in the legislative process, I have found MITA to be both engaged and instructive in their outreach on the challenges facing our state. Their advice has always been timely and has helped to prioritize the importance of infrastructure to Michigan's economy. Simply put, without heavy construction and sound infrastructure, we cannot expect to achieve the next level of economic prosperity no matter how favorable our overall business climate may be. Employers need to deliver their products effectively and efficiently and heavy construction is the backbone of commerce.

Q: *How can our MITA members better advocate for their industry and work with*

the legislature in finding solutions to attract more talent to avoid a workforce shortage in the future?

A: I welcome this question as MITA members should strive to continue in a lead role addressing workforce challenges. I think there has been too much of an assumption that our overburdened educational system alone can get the job done. Our state's career-based education was initially built upon partnerships with employers and the next chapter of sustainable programs will only succeed if employers are actually engaged. MITA members should work with their local workforce agencies and schools to ensure proper industry-aligned content which meets their current and future needs. Those who may wish to consider teaching should explore the possibility of bringing their real-world experience to the classroom, particularly in the K-12 setting. Apprenticeships should remain a central opportunity for future workers and engage students at younger ages. Emphasis on soft skills job training in the workplace and employers being willing to consider hiring graduates of at-risk youth job placement as well as our prison-based programs will truly change lives. Legislators should also be hearing from

Continued on page 56

Productivity in Construction

Implemented in 2012; the Michigan Laborers' Training and Apprenticeship Institute has developed a Laborers' Productivity Training Course. In today's competitive environment it is critical that the highest level of productivity be achieved in all aspects of a project. The Michigan Construction Laborers' Union recognizes this need and is leading the way to a more productive workforce by including this training in our Apprenticeship Program and offering the class to our Journeymen as a skills enhancement course.



Kimberly Dohn completed the course recently and commented:

"I was fortunate to be among the first to participate in the Laborers' Productivity Training Course. I am very passionate about the training that was

offered and I feel that ALL laborers will benefit from participating in this course. The skills developed during training will aid them in their daily and future endeavors. I believe that the skills taught throughout this course are invaluable to a person with aspirations of bettering themselves and/or their position in life and it provides real tools to make those things happen.

I am currently employed in a management support position in the construction industry and I feel confident that the skills I learned from the Laborers' Productivity Training Course have prepared me to successfully deal with the challenges that occur on a daily basis. Since completing the course I feel more prepared and I know that the knowledge I acquired has improved my performance and ability to make a positive contribution on any job site."



Michigan Laborers' Training and Apprenticeship Institute
11155 S. Beardslee Road, Perry, MI 48872-9774
517-625-4046 www.mi-laborers.org



The Numbers Don't Lie

Continued from page 20

raise awareness for the need for the Michigan Infrastructure Fund.

Last, but not least, the

distribution of fact graphics and the 30-second digital ad through multiple social media platforms

helped to drive home the point that the Michigan Infrastructure Fund was critical to moving the state's infrastructure investment needs forward. Over the course of the mini campaign, there were 899,847 total impressions and 2,154 link clicks at a cost of \$0.55 per click on Google. On Facebook, there were 2.1 million total impressions, 613,416 people were reached, 20,353 people clicked links to go to the Phone2Action form, and over 33,023 people spent 10 or more seconds watching the 30-second ad.

If this is what the campaign can produce and achieve in five weeks, imagine how effective it will continue to be as it educates and informs the public about Michigan's massive unmet infrastructure needs. If you're not already following Fix MI State on Facebook and Twitter, please do so today. If you're looking for information or videos, please check out the official website at www.fixmistate.org. The more you share the information, the more effective the campaign will be long-term in helping the industry achieve our infrastructure goals. 🚧



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"Heads We Win, Tails You Lose"

How Utility Companies Use the Miss Dig Act When It Benefits Them, But Refuse to Compensate Contractors for Their Own Negligence and Fault

By Paul M. Mersino and Michael C. Decker of Butzel Long, P.C.

In 2013, thanks to MITA's continuous efforts on behalf of the industry, Public Act 174—the "new" Miss Dig Act—was signed into law, amending and replacing the previous Miss Dig Act. The law clearly defines the responsibilities of all parties involved with underground construction for avoiding damages and accidents that stem from striking underground utilities. At the time, there was a feeling of great cooperation and understanding between the utility companies and the construction industry, believing that the days of fighting over

issues surrounding underground utilities were behind us.

Under the Act, if a contractor does not follow the Miss Dig requirements and strikes a utility company's line, the contractor must pay the utility company for any damages that the utility company incurs in repairing the line and addressing the issue (not to mention potential fines, penalties, and citations it may face). But if the utility company violates any portion of the Act by mismarking or failing to mark its line and the contractor then strikes an unmarked or mismarked line,

then the utility company is liable to the contractor for any damages that the contractor incurs.

It is supposed to go both ways. The hope was that all parties would work together on such issues, given their shared interest in damage prevention. Unfortunately, this has not always come true.

Instead, many utility companies attempt to enforce the Act when it suits them and ignore the Act when it does not. If their utility lines are damaged because of a contractor, that contractor had better pay up. But if the contractor is damaged because of the utility company's actions or inactions, many utility companies essentially tell the contractor that the contractor must sue to get anything out of them, and even then they will drag it out so long that it will cost the contractor more to win than it would to just walk away. To add insult to injury, many utility companies will even send an invoice to the contractor, demanding that the contractor pay the utility company for damaging its line, even when it was the utility company's fault. As the title of this article says, many utility companies take the stance that "heads we win, tails you lose."





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And this is not merely our opinion. This is what at least one major utility company representative has said under oath. In a recent deposition, a corporate representative for one major utility company admitted her company always seeks to recover damages from the contractor when the contractor is at fault, but, to her knowledge, her company has never paid a contractor for damages stemming from her company's violation of the Miss Dig Act or its negligence. For the utility companies, it is a one way street.

Common Defenses Raised by Utilities to Avoid Paying Contractors

While litigating Miss Dig cases over the past several years, we have seen utility companies raise several defenses in order to avoid having to pay a contractor. Sometimes they argue that it was actually the contractor who was negligent by, for example, digging outside of their work area. Sometimes utility companies will even argue that because they—the utility company—do not know where all of their own underground utilities are, they are not responsible for not properly marking them. Some utility companies incredibly contend that they cannot mark what is not known (even if it is their own lines), so the contractor should pot hole to find unknown utility lines even if the contractor has no reason to believe any are present. And, it seems, many utility companies

are coming up with new creative defenses all the time to avoid liability under the Miss Dig Act.

Here are some more common arguments being raised by some utility companies:

We didn't mismark our utilities, our staking company did—take it up with them.

In more than one case that we have handled or are aware of, utility companies have tried to avoid responsibility for mismarking or failing to mark their lines by saying it is not their fault, but rather is the fault of the staking company they hired to stake their lines. They argue that the contractors should bring claims against those third-parties who did the staking on the utility company's behalf, because it is those third-parties who were negligent in failing to properly mark the facilities, and therefore, the contractor should seek recovery from *them*.

This argument is wrong for several reasons. First, the Miss Dig Act expressly says that “**a facility owner or facility operator** shall respond to a ticket . . . , shall mark the location of each facility . . . , [and] shall provide notification to the notification system using positive response.” MCL § 460.727. It is the utility company (referred to in the Act as “a facility owner or facility operator”) who is mandated to do so and it is they who have the legal responsibility. Simply because a utility company hires a third-party to do its work and carry out its obligations does not mean

that the utility company is not responsible when those obligations are not properly carried out. A utility company may be permitted to contract out its work, but it may not contract out the liability it has toward contractors under the Act.

Second, contractors have no relationship with the third-party staking companies. In fact, the contractors usually will not even know who, if anyone, the utility companies hired to do the staking. If there is any contract for the staking companies to perform such work, those contracts will likely be between the utility companies and the staking companies; the contractors are not a party to those contracts, and thus have no relationship with the staking companies. If a utility company thinks that liability lies with one of its third-party agents or subcontractors, it is the utility company who can attempt to recover from them. Contractors have no such obligation.

Even if this argument were accepted, the utility companies are still responsible for the actions or omissions of their agents and representatives. It is well settled under Michigan law that principals, such as the utility companies in this scenario, are responsible for the actions of their agents or representatives. So even under this flawed theory, the utility companies still would not be off the hook.

If the utility companies think that the staking companies

Continued on page 52

Heads We Win, Tails You Lose

Continued from page 51

they hired to do the staking are at fault, then *they* can take that up with the company they hired. But do not listen to a utility company that says that you—the contractor—must take up your claims with the staking companies. Your claim under the Miss Dig Act is against the utility company if the utility company's lines were not properly marked.

The prime contract had a no-damages-for delay clause, so the contractor can't seek delay damages from the utility company.

Another defense that we have

encountered a utility company raising in Miss Dig litigation has been for the company to assert that, because the contract between the owner of the project (such as a municipality) and the contractor contains a no-damages-for-delay clause, the contractor cannot seek delay damages from the utility company. That is not so. Such contract clauses have no effect on statutory claims against the utility companies.

Most municipal contracts have no-damage-for-delay clauses stating that if a contractor is

delayed in its work, it can only seek an extension of time from the owner, but cannot seek any monetary damages for any delays in its work. For example, a contract may have language that says something such as: "If the Contractor is obstructed or delayed in the prosecution or completion of the work, he may be entitled to an extension of time, but shall have no claim for damages for any such obstruction or delay." In other words, the contractor's

Continued on page 54

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MITA Workforce Development Update

Continued from page 19

I'm proud to be a member of team MITA and look forward to serving you. It has been a pleasure introducing new organizations to MITA and our mission of helping to build a better infrastructure for all of Michigan, and getting to know people and organizations that already know and respect MITA and our industry. I have also enjoyed getting to know you, our members, through various functions this summer. If you would like additional information on any of the above topics, can provide me with organizations and contacts, or have ideas that could benefit our workforce development ramp-up, please contact me by phone or email at 517-347-8336 or kenbertolini@mi-ita.com. 🏠



Students celebrated their graduation from the Access for All program in Detroit by doing three days of alley cleanup in Detroit during the month of June. Ken Bertolini, MITA's director of workforce development, is involved in the program, which is a Detroit-based, free, nine-week apprenticeship readiness program. It is designed to prepare high school students for successful application into one of several trade apprenticeships.



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Heads We Win, Tails You Lose

Continued from page 52

only recourse against the owner is additional time to complete its work (which, of course, can be important to avoid liquidated damages), but it cannot seek any delay damages from the owner.

Some contracts even attempt to expressly allocate the risk of encountering underground utilities to the contractor. For example, such contracts may contain language such as, “Contractor acknowledges that the unexpected presence and location of existing underground utilities and resulting conflicts with such utilities are ordinarily encountered and Contractor will be responsible for any such conflicts.” Even if such clauses were enforceable by an owner (which we debate and have previously written on in this publication), this is a risk allocated between the contractor and the owner as between those two parties.

But we have now experienced utility companies trying to argue that they—the utility companies—can rely on these no-damages-for-delay clauses in contracts between the owner and the contractor. They argue that they are third-party beneficiaries of these contracts, and therefore, benefit from the protection that these clauses give the owner. They often make this stretch in part by pointing to clauses such as those above that state that contractors

should anticipate underground utilities and to protect against any damage to such facilities.

This entire line of argument is false and misleading. First and most fundamentally, this argument would completely eviscerate the Miss Dig Act. If this argument were followed, any time a contract between an owner and a contractor has a no-damages-for-delay clause (which is often), a utility company would be free to not abide by the Act, to not properly stake its utilities, and to not concern itself with such matters at all. In fact, the utility company could just blow off the Miss Dig call ticket altogether, so long as the contract between the owner and the contractor has a no-damages-for-delay clause.

But this would contradict the express language of the Act. It makes no sense from either a legal or public policy point of view. It is not a proper defense.

From a legal standpoint, what is in the contract between the project owner and the contractor has *nothing* to do with the utility companies. The contract provisions noted above allocate the risk **as between the project owner and the contractor**. What those parties agree to has no bearing on the utility companies, nor can the utility companies attempt to seek shelter behind such contracts because they are not parties to those contracts.

Michigan case law is clear on this point. MCL § 600.1405 states that someone is only a third-party beneficiary if they are one “for whose benefit” the contract was entered. The Michigan Supreme Court has stated that a “person is a third-party beneficiary of a contract only when that contract establishes that a promisor has undertaken a promise directly to or for that [third-] person.”¹ “By using that modifier ‘directly,’ the Legislature intended to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompass a third party, directly referred to in the contract, before the third party is able to enforce the contract.”² None of these scenarios apply to the question at hand. The contracts between the owners and the contractors were not made *for the benefit* of the utility companies. Nor do the clauses listed above directly refer to them. They cannot, therefore, attempt to escape liability behind such clauses.

In another case that we have handled for a MITA member, a utility company argued that, because the prime contracts refer generally to underground utilities or the possibility of underground utilities being encountered, the benefit of those contracts is somehow conferred upon them. But again, the Michigan Supreme

Court has been clear, stating that “the mere fact that a third person would be incidentally benefitted does not give him a right” under the contract.³ “An incidental beneficiary has no rights under the contract.”⁴

In other words, a third-party beneficiary is an express, intended, and direct beneficiary of a contract. Under this standard, the utility companies are not third-party beneficiaries of the type of contract clauses quoted above. And even if they were, the owner and the contractor cannot, between themselves, enter into an agreement that excuses a third-party utility company

from performing duties that the Legislature mandates it to perform because excusing a statutorily imposed duty would be against public policy. These arguments are no reason for a contractor to back down from a utility company.

The contractor never sought delay damages or extensions of time from the project owner, so they cannot seek delay damages against the utility company.

Another attempt that some utility companies make to avoid paying delay damages for their failure to properly comply with the Act is to argue that, because

the contractor did not submit a delay claim to the owner of the project, the contractor cannot claim delay damages against the utility companies.

Whether or not a contractor submits a delay claim to the project owner has nothing to do with the Act. The Act permits a contractor to recover when a utility company has caused it delay damages by not properly following the Act. Nothing in the Act requires a damaged contractor—as a condition precedent—to first seek an extension of time from the

Continued on page 59



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Continued from page 47

MITA members regularly to identify state policies which hinder such partnerships.

I appreciate greatly the invitation to participate in Cross-Section Magazine!

District

State Rep. Ben Frederick was first elected to the Michigan House of Representatives in November 2016. He represents the 85th District, which includes Shiawassee County and Brady, Brant, Chapin, Chesaning, Fremont, Jonesfield,

Lakefield, Maple Grove, Marion and Richland townships in Saginaw County.

Committees

Rep. Frederick serves as chair of the House Workforce and Talent Development Committee and as a member of the Commerce and Trade, Local Government and Agriculture committees.

Professional

Prior to his election to the Legislature in 2016, Rep. Frederick served as a legislative staff member for 14 years in both the Michigan House and Senate, including time as chief of staff to former state Sen. Roger Kahn, M.D., of Saginaw. Locally, Ben served on the Owosso City Council since 2007 and was city's youngest mayor, holding that office for seven years.

Affiliations

Rep. Frederick has been active in numerous organizations over the years including Saginaw-Shiawassee Habitat for Humanity, Welcome Home Veterans Inc., the Friends of the Shiawassee River and the Shiawassee Regional Chamber of Commerce. Ben was named a Chamber Citizen of the Year in 2012 and a "Champion for Life" by The Pregnancy Resource Center of Shiawassee County in 2015.

Personal

Ben is married to his high school sweetheart Lydia, who works as a behavior specialist serving children with special needs. Ben and Lydia reside in the city of Owosso and have two children attending Owosso Public Schools. 🏠

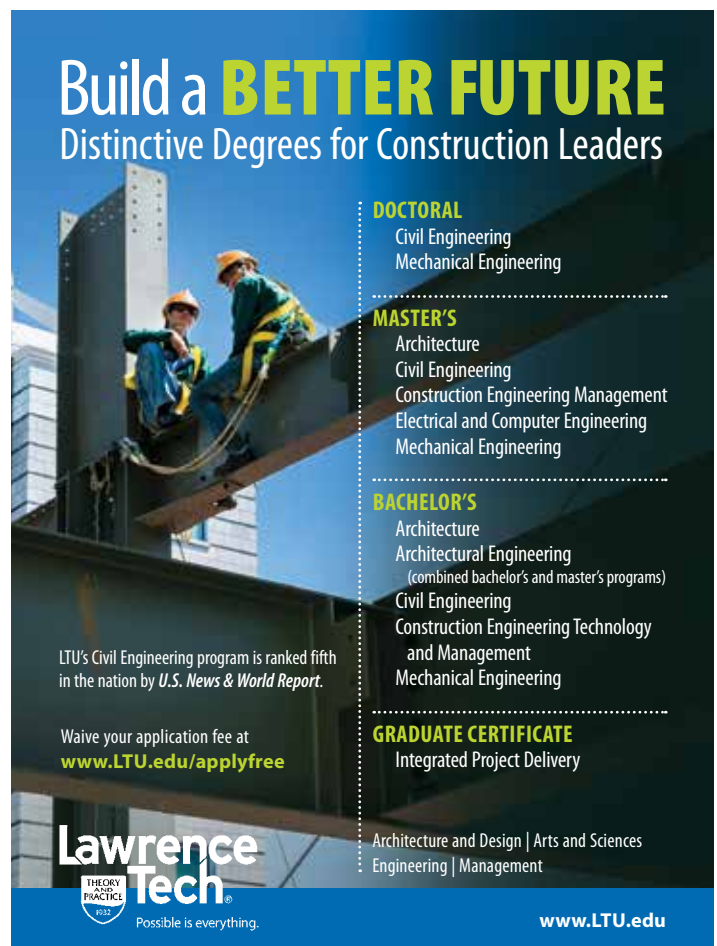
MEMBER PROFILE

Velting Contractors, Inc.

Continued from page 9

intricately detailed construction equipment he keeps displayed in his office. One of the biggest things he is involved in outside of work is working in the children's program in the Grand Rapids Evening Men's Bible Study Fellowship. The company also likes to give back to the community, such as providing the underground utilities in 2015 for a family campground in Hart, and in 2016 in Wyoming Mich., Velting Contractors provided the same service for a faith-based adult home for the disabled. Scott has also been to Africa on construction mission trips.

"It is really a blessing that I am third generation and my son is fourth generation," Scott said. "The Lord has given us so much, and we try to help others and give back." 🏠



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City of Detroit Ordinance

Continued from page 44

will eliminate certain projects, decrease employment in the City and dilute the effectiveness of taxpayer dollars in publicly funded works. As proposed, this ordinance would be an economic disaster at a time when the City is finally moving toward a redevelopment vision that we all share.

No other major city in America regulates construction materials in this manner. Both Chicago, Ill. and Oakland, Calif. have specifically excluded construction materials from ordinances written to regulate petroleum coke.

It was expected that the City Council would vote on the draft Bulk Solid Material Ordinance by the end of July, but fortunately that vote did not take place. The City Council Health and Safety Committee has indicated that they have received suggested language changes for consideration; however, at the time of this writing, a new draft of the ordinance has not been produced.

A coalition including industry, organized labor and numerous associations that support business have actively lobbied the City Council and the Mayor's office to halt this regulatory overreach.

As we anticipate that the City Council will not be taking formal action on this ordinance until sometime later this fall,

we urgently request that you join our efforts to halt unfair regulation of construction materials in the City of Detroit. Please write, call or meet with members of the City

Council and the Mayor's office and deliver this simple message: "Exclude construction materials from the City's new Bulk Solid Materials Ordinance." 🚧

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Continued from page 55

project owner. Nor is there any requirement that, for a contractor to recover under the Act, it must have brought any claims against the project owner. This argument is wrong and the utility companies cannot point to any authority to support such arguments.

There are numerous reasons why a contractor may not submit delay damage claims or seek extensions of time from a project owner. But contractors have the right to recover damages arising from a utility company's negligence regardless of whether they bring

claims against the project owner. Indeed, if the contractor did recover damages from the owner and then sought to bring a claim against a utility company, the utility company would undoubtedly argue that the contractor is precluded from seeking the same damages from them. But the fact is that the Miss Dig Act states that when a contractor is damaged by a utility company for not following the Act, the contractor is not precluded from bringing suit to recover from the utility company. Period.

A contractor may or may not

have grounds to seek an extension of time from a municipality. But this is irrelevant. Even if a contractor does not seek extensions of time in such instances, it still might have incurred actual damages (e.g. idle equipment costs and additional labor costs) because of the utility company's negligence. These damages are recoverable from utility companies under the Act. Whether or not a contractor submitted a delay claim or sought an extension of time from the project owner is irrelevant to

Continued on page 62

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Minneapolis Bridge Collapse

Continued from page 26

At current pace, it would take more than three decades to replace or repair all of them,

according to ARTBA Chief Economist Dr. Alison Premo Black, who conducted the analysis.

A long-term infrastructure

Continued on page 66

Structurally deficient bridges, by state 2007 to 2016										
Rank		State	2007			2016			change in number of structurally deficient bridges	% change in structurally deficient bridges 2007-2016
% change in number of structurally deficient bridges, 2007 to 2016	reduction in number of structurally deficient bridges, 2007 to 2016		number of bridges	number of structurally deficient bridges	structurally deficient bridges as % of total inventory	number of bridges	number of structurally deficient bridges	structurally deficient bridges as % of total inventory		
9	9	Alabama	15,881	1,941	12.2%	16,098	1,229	7.6%	-712	-36.7%
35	42	Alaska	1,229	165	13.4%	1,488	144	9.7%	-21	-12.7%
48	49	Arizona	7,387	187	2.5%	8,154	214	2.6%	27	14.4%
26	22	Arkansas	12,534	1,031	8.2%	12,871	811	6.3%	-220	-21.3%
5	2	California	24,189	3,249	13.4%	25,431	1,388	5.5%	-1,861	-57.3%
32	31	Colorado	8,374	585	7.0%	8,682	497	5.7%	-88	-15.0%
38	41	Connecticut	4,175	361	8.6%	4,214	338	8.0%	-23	-6.4%
51	48	Delaware	856	21	2.5%	877	43	4.9%	22	104.8%
2	45	District of Columbia	245	25	10.2%	245	9	3.7%	-16	-64.0%
30	37	Florida	11,664	307	2.6%	12,313	256	2.1%	-51	-16.6%
12	15	Georgia	14,563	1,048	7.2%	14,835	700	4.7%	-348	-33.2%
6	33	Hawaii	1,117	148	13.2%	1,132	64	5.7%	-84	-56.8%
49	50	Idaho	4,104	359	8.7%	4,445	411	9.2%	52	14.5%
36	18	Illinois	25,998	2,532	9.7%	26,704	2,243	8.4%	-289	-11.4%
18	10	Indiana	18,494	2,069	11.2%	19,245	1,533	8.0%	-536	-25.9%
41	20	Iowa	24,776	5,230	21.1%	24,184	4,968	20.5%	-262	-5.0%
17	8	Kansas	25,464	3,007	11.8%	25,013	2,151	8.6%	-856	-28.5%
31	23	Kentucky	13,639	1,370	10.0%	14,265	1,157	8.1%	-213	-15.5%
44	38	Louisiana	13,342	1,788	13.4%	12,915	1,739	13.5%	-49	-2.7%
46	46	Maine	2,387	356	14.9%	2,450	352	14.4%	-4	-1.1%
24	32	Maryland	5,128	396	7.7%	5,321	308	5.8%	-88	-22.2%
29	27	Massachusetts	5,019	590	11.8%	5,171	483	9.3%	-107	-18.1%
15	11	Michigan	10,923	1,757	16.1%	11,156	1,234	11.1%	-523	-29.8%
14	14	Minnesota	13,067	1,158	8.9%	13,355	800	6.0%	-358	-30.9%
13	6	Mississippi	17,007	3,108	18.3%	17,068	2,098	12.3%	-1,010	-32.5%
16	5	Missouri	24,071	4,476	18.6%	24,468	3,195	13.1%	-1,281	-28.6%
42	40	Montana	4,982	489	9.8%	5,276	465	8.8%	-24	-4.9%
45	39	Nebraska	15,475	2,396	15.5%	15,334	2,361	15.4%	-35	-1.5%
8	43	Nevada	1,705	52	3.0%	1,933	31	1.6%	-21	-40.4%
22	30	New Hampshire	2,364	400	16.9%	2,486	304	12.2%	-96	-24.0%
27	26	New Jersey	6,448	757	11.7%	6,730	609	9.0%	-148	-19.6%
10	24	New Mexico	3,850	407	10.6%	3,973	258	6.5%	-149	-36.6%
37	21	New York	17,361	2,161	12.4%	17,462	1,928	11.0%	-233	-10.8%
25	12	North Carolina	17,783	2,281	12.8%	18,099	1,790	9.9%	-491	-21.5%
34	28	North Dakota	4,458	765	17.2%	4,400	661	15.0%	-104	-13.6%
11	7	Ohio	27,999	2,950	10.5%	28,284	1,942	6.9%	-1,008	-34.2%
7	1	Oklahoma	23,528	5,928	25.2%	23,053	3,460	15.0%	-2,468	-41.6%
28	29	Oregon	7,318	531	7.3%	8,118	429	5.3%	-102	-19.2%
21	3	Pennsylvania	22,325	5,972	26.8%	22,791	4,506	19.8%	-1,466	-24.5%
47	47	Rhode Island	748	171	22.9%	772	192	24.9%	21	12.3%
19	17	South Carolina	9,221	1,297	14.1%	9,358	964	10.3%	-333	-25.7%
39	34	South Dakota	5,924	1,224	20.7%	5,849	1,147	19.6%	-77	-6.3%
20	16	Tennessee	19,838	1,335	6.7%	20,123	998	5.0%	-337	-25.2%
4	4	Texas	50,272	2,250	4.5%	53,488	900	1.7%	-1,350	-60.0%
3	25	Utah	2,851	244	8.6%	3,039	95	3.1%	-149	-61.1%
1	13	Vermont	2,712	535	19.7%	2,766	155	5.6%	-380	-71.0%
23	19	Virginia	13,418	1,214	9.0%	13,892	935	6.7%	-279	-23.0%
43	44	Washington	7,686	410	5.3%	8,178	392	4.8%	-18	-4.4%
50	51	West Virginia	7,007	1,073	15.3%	7,217	1,247	17.3%	174	16.2%
40	35	Wisconsin	13,798	1,308	9.5%	14,230	1,232	8.7%	-76	-5.8%
33	36	Wyoming	3,030	403	13.3%	3,128	344	11.0%	-59	-14.6%
		TOTAL	597,734	73,817	12.3%	612,079	55,710	9.1%	-18,107	-24.5%

Data from the 2016 National Bridge Inventory ASCII files, released in January 2017 by FHWA.

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MITA Members Giving Back

Southeastern Equipment Works With Case to Support Team Rubicon

Southeastern Equipment Co., Inc., recently donated two rental machines, both TR310 compact track loaders equipped with grapple buckets, to use in cleaning up the Herman Kiefer Hospital complex and neighborhood in Detroit, as part of a Team Rubicon effort.

Team Rubicon is a veteran-led disaster response organization that deploys teams globally to provide assistance and relief to affected communities. Its heavy equipment operators are trained as part of a partnership with CASE that began in November 2015.

Over 100 volunteers and training personnel were brought in to help local residents improve properties in the area as part of Operation Joe Louis, an urban blight response project.

"We are always looking for ways to give back to our communities and provide equipment to assist with important projects," said Charlie Patterson, president at Southeastern Equipment. "We were very happy to help with the CASE and Team Rubicon project to revitalize the Detroit neighborhood."

The CASE TR310 track loaders provided by Southeastern Equipment were used to manage debris in the areas designated for improvement. They were useful for the removal of fallen or dangerous trees, trash, overgrowth, and the consolidation of debris and refuse. Crews also operated the equipment to demolish several garages and other small buildings that were beyond repair.

Southeastern Equipment, Inc., has been selling, servicing and renting heavy machinery since 1957. The company has 18 locations throughout Ohio, Michigan, Kentucky and Indiana. For more information, visit www.southeasternequip.com. For details about Team Rubicon, check out www.teamrubiconusa.org. 🚧



Southeastern Equipment Co., Inc., recently donated equipment to help clean up a neighborhood in Detroit, as part of a veteran-led disaster response organization.

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Continued from page 59

whether it can recover under the Act. Contractors have no obligation to do so before proceeding against the utility companies.

Contractors Can—and Have—Prevailed on Miss Dig Act Claims

While a utility company may raise the objections noted above—and many more—it does not mean that it is right. Nor does it mean that it will prevail. We have represented many contractors in many Miss Dig Act cases that have not only overcome these objections, but have prevailed and

been paid by the utility companies.

In one such case, the contractor fully complied with every aspect of Miss Dig, yet the utility company failed to properly mark its utilities. When the contractor struck one of its unmarked lines, the utility company's argument was that because its own records did not show that there was an underground line in the designated work area (i.e., the utility company did not know where its own lines were), it must have been the contractor who was negligent. All of the evidence made it clear

that it was, in fact, the utility company's fault. Nonetheless, the utility company not only rejected the contractor's claims, but actually sued the contractor for the repair costs. Ultimately, we defeated the utility company's claims, were able to win every dollar of delay damages for the contractor on its counterclaim, and were even able to recover all of its attorneys' fees and costs as well. While recovery of attorneys' fees cannot be expected to always happen, it was a complete

Continued on page 67

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Matt Chynoweth

Matt Chynoweth recently accepted a new position as the director of MDOT's Bureau of Bridges and Structures. He is a graduate of Michigan State University with a bachelor's degree in civil engineering, and Wayne

Meet Matt Chynoweth:

MDOT's Director of Newly Created Bureau of Bridges and Structures

State University with a master's in structural research engineering. Matt began his career with MDOT in 2003 as the Metro Region bridge engineer, and served as the Detroit TSC development engineer, Bay City TSC manager, engineer of Bridge Field Services, and is currently the deputy Metro Region engineer. He is a registered professional engineer, and the Michigan bridge lead for the Gordie Howe International Bridge. Matt brings more than 10 years of managerial experience, with a focus on development and mentoring staff. In addition, he

is a member of the AASHTO Subcommittee of Bridges and Structures (chairing their technical committee on FRP composites), the American Segmental Bridge Institute, the Lawrence Technological University Civil Engineering Advisory Board, and the MDOT/MITA Bridge Operations Committee. He managed the Zilwaukee Bridge CM/GC Bearing Replacement Project and development of MDOT's Accelerated Bridge Construction Policy. His office will be located in the Operations Field Services Building on Old Lansing Road. 🚧

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Minneapolis Bridge Collapse

Continued from page 60

package from Congress and a permanent revenue solution to the Highway Trust Fund would help states make greater progress on fixing the nation's deteriorating bridges, Black says. Federal investment supports over half of all state highway and bridge construction programs.

The challenges will only continue to grow in the future. The average age of a structurally deficient bridge in the U.S. is 67 years, compared to 39 years for non-deficient bridges. In 2007, the average age of a structurally deficient bridge was 60 years, compared to 34 years for non-deficient.


To help ensure public safety, bridge decks and support structures are regularly inspected for deterioration and remedial action. They are rated on a scale of zero to nine—with nine meaning the bridge is in “excellent” condition. A bridge is classified as structurally deficient and in need of repair if the rating for a key component is four or below.

While these bridges may not be imminently unsafe, they are in need of attention.

The states with the biggest decrease in the number of structurally deficient bridges in the last 10 years: Oklahoma (2,458), California (1,861), Pennsylvania

(1,466), Texas (1,350), Missouri (1,282), Mississippi, (1,010), Ohio (1,008), Kansas (856), Alabama (712) and Indiana (536).

States with an increased number of deficient bridges include: West Virginia (174), Idaho (52), Arizona (27), Delaware (22) and Rhode Island (21).

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Continued from page 62

victory for the contractor.

In a more recent case in Macomb County Circuit Court, a contractor was forced to sue a utility company that refused to pay *any* of its damages claims, despite having tens of thousands of dollars' worth of claims from several projects over time. The utility company raised several defenses, but primarily argued that: (1) the contractor's claims were against the third-party staking

company, not the utility company and (2) the no-damages-for-delays clauses in the prime contracts with the municipalities barred any claims against the utility company. After a lengthy discovery period, the parties attended an Alternative Dispute Resolution hearing with a panel of three distinguished construction attorneys. While the panel's recommendation is not binding precedent on future cases, the panel made clear that

they were not buying the utility company's arguments and issued an award in the contractor's favor for the majority of its damages. The utility company ultimately cut a check to the contractor.

We have also represented contractors facing MIOSHA charges for injuries or accidents caused by utility companies not properly marking their underground

Continued on page 68

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Continued from page 67

utilities. In a recent MIOSHA hearing, an Administrative Law Judge ruled that a contractor who had complied with all of the requirements of the Act should not be held liable for an OSHA safety violation when that contractor struck an unknown underground utility that was not properly staked by the utility company's third-party staker. While this was a new twist to Miss Dig litigation, this was a very important win for the contractor, to say the least.

These are only a few examples of successes we have seen MITA contractors have at negotiating

claims, litigating claims, and even taking matters through trial.

Conclusion

It should be noted that not all utility companies act the same way and every case is different. And MITA continues to be out in front of these issues on behalf of the industry. The Michigan Damages Prevention Board also does as much as possible to clarify disputed issues. Many issues noted above, however, will only be resolved through further litigation. It will be up to contractors to stand up to the utility companies and force them to compensate

contractors for Miss Dig violations or to risk being brought into court. With strategically initiated lawsuits, courts may be forced to address the arguments noted above and rule upon them, setting precedent that forces the utility companies to properly abide by the Act and to compensate contractors for damages incurred due to the utility companies' errors and omissions.

Contractors also should not sit on their claims. Contractors often wait until multiple claims accumulate against a utility

Continued on page 70

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Continued from page 68

company before pursuing damages. Waiting to prosecute multiple claims that have accumulated over several years, however, raises the risk that earlier or older claims may be more difficult to prevail on or to prove. Being aggressive with the utility company may be your best route. Submit notices of your damages and claims to the utility company as soon as possible after you are delayed or damaged. And if the utility company denies your claim, do not abandon the claim. Being

aggressive may not only help you resolve the present issue, but it may set precedent for future issues as well by showing the utility company that you are not going away and you will not roll over.

If you have a case to pursue, it just may be time to tell the utility companies that this time, you intend to win by enforcing the Act precisely as it was intended. ⚠

Paul Mersino and Michael Decker are attorneys in Butzel Long's Construction Litigation Group and have successfully litigated against the biggest utility companies in the state. Paul can be contacted at 313-225-7015 or mersino@butzel.com. Mike can be contacted at 517-372-4928 or at: decker@butzel.com.

¹ Koenig v. South Haven, 460 Mich. 667, 677, 597 N.W.2d 99 (1999).

² Schmalfeldt v. North Pointe Ins. Co., 469 Mich. 422, 428, 670 N.W.2d 651 (2003).

³ Kammer Asphalt v. East China Twp., 433 Mich. 176, 190, 504 N.W.2d 635 (1993)

⁴ Greenlees v. Owen Ames Kimball Co., 340 Mich. 670, 676, 66 N.W.2d 227 (1954).



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