



SPRING 2016

# CROSS SECTION

**Cipparrone Contracting, Inc.**

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**Enterprise Fleet Management**

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They may also be reached at (517) 347-8336.

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Mike Nystrom

## EXECUTIVE VICE PRESIDENT

The passage of road funding last year was a great achievement for the industry, a huge milestone in a long, arduous journey. To commemorate the hard work that has been done, and to salute the hard work that will always continue on behalf of Michigan's entire infrastructure in the future, MITA has commissioned a bronze statue of a construction worker that will be permanently placed outside the MITA headquarters in Okemos. For details, read the article on page 22.

MITA is also beginning another journey in the underground arena. The Underground Spotlight on page 18 highlights the Governor's new 21st Century Infrastructure Commission, to which I was appointed by the Governor. I am proud to have been chosen to represent our industry on this important effort. One of the immediate goals of the commission will be to make recommendations on how to allocate the initial \$165 million that was recommended in the Governor's budget for the new Infrastructure Fund.

We at MITA are hopeful that the entire Legislature will continue to support the Infrastructure Fund. We asked one legislator, State Senator Jim Stamas, to discuss his legislative priorities (see page 26.) As chair of the Joint Committee on the Flint Water Public Health Emergency, Senator Stamas has spent a great deal of time reviewing information on infrastructure, which is obviously a plus for our industry.

In addition to funding priorities, MITA continues to focus on safety issues by sponsoring Work Zone Awareness Week in April. A story on page 28 highlights a press conference, attended by MITA staff and Andy Thelen of Toebe Construction. In another article that focuses on safety, Glenn Bukoski, P.E., MITA's vice president of engineering services, writes on page 15 about MDOT taking another step "Toward Zero Deaths" (TZD) with new sheeting requirements for traffic channelizing devices.

By the time this magazine goes to press, the 2016 construction season will be in full swing. Here's hoping it is a safe and prosperous year for everyone!

MIKE NYSTROM  
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## Cipparrone Contracting Inc.

**C**ipparrone Contracting, Inc., was established in 1994 by a father and son team, Ralph and Gabriel Cipparrone, and the company has steadily built a foundation as a concrete contractor by being committed to its values.

Headquartered in Southfield, with an equipment maintenance facility in Dearborn, the company started out as a concrete sidewalk contractor in the City of Detroit and grew into a road construction contractor with an emphasis on concrete patching for governmental street and highway projects. Along with the concrete patching operation, Cipparrone Contracting also provides excavating and slip-form curb paving services.

“A dedication to our core values – quality, service and integrity – has allowed us to expand from a small concrete contracting company into a medium scale civil construction firm,” said Ralph, who serves as company president.

Vice President Gabriel said that

by shifting focus to road/highway rehabilitation projects for governmental agencies, including MDOT, the company survived the economic downturn of 2008 and tripled in size. This shift began in 2005 when Gabriel saw a need for infrastructure improvement in Michigan, so he began investing and expanding.

“Our strategic capital investment in equipment as well as service and capability expansion has helped us become a player in the concrete patching sector of the road construction industry,” Gabriel added.

Current road construction projects include the high profile I-275 & I-696 Highway Project with Toebe Construction LLC., and the Metro Airport Road Rehabilitation Project with Ajax Paving Industries, Inc., The walls of Cipparrone Contracting’s office are decorated with many photos of past projects. Those projects include:

- M-59 patching and resurfacing from I-75 to Crooks with Ajax Paving Industries, Inc.



- I-94 patching and resurfacing from M-14 to US-23 with Cadillac Asphalt, LLC.
- US-24 Telegraph to Orchard Lake Road as Prime Contractor.
- Mound Road and Macomb County concrete patching projects as Prime Contractor.

Robert Hallerman, project manager/estimator, said he enjoys



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**Ralph (Nello) Cipparrone – President**  
**Gabriel Cipparrone – Vice President**  
**Robert Hallerman – Project Manager/Estimator**  
**Sherri Haney – Office Manager**  
**Joe D'Agostino – Superintendent**

*MITA Member Since 2014*



That team includes 30-35 peak season employees, according to Office Manager Sherri Haney. Sherri effortlessly handles the office functions, including contract administration, payroll, employee issues, office management, and making the day-to-day operations of the company as stress-free as possible.

Through the years, Cipparrone Contracting has developed long standing relationships with general contractors, private companies, municipalities, county agencies and MDOT. With a dedicated and qualified professional staff, from management to field personnel, Cipparrone Contracting has maintained its first-class reputation, with assistance from MITA at various levels, including safety training.

"We have a reputation for meeting project schedules and always providing customer satisfaction to our clients," Gabriel said. "We recognize no other way!"

the daily challenges of coordinating schedules in order to handle multiple projects to the complete satisfaction of prime contractors and owners. Joe D'Agostino, superintendent, added that he focuses on maintaining traffic safety on jobsites, especially with regard to MDOT night work.

"Projects are puzzles and we enjoy putting the puzzles together, including all aspects of jobs from bidding to building," Robert said. "We like every part of our work,

which involves coordinating with good people, from contractors, to owners, to municipalities.

Ralph added: "We take pride in maintaining a first-class equipment fleet and immaculate maintenance facility. These are trademarks of our company."

In addition, Cipparrone Contracting is efficient and stands by all of their

work, Gabriel said, as they partner with good subcontractors to maintain job schedules.

"We remain dedicated to providing the highest quality construction products and services to our clients," he said. "This commitment to excellence is an integral part of our organization and is carried through by every member of our team."





## Enterprise Fleet Management

**F**inding the time and resources to track and control fleet vehicle operating costs is difficult for many businesses. Hundreds of transactions take place over the course of a vehicle's lifecycle, including fuel, maintenance and all the administrative costs of payables and billing. For optimal results, every vehicle expense needs reporting oversight from personnel who can determine if the action being taken is appropriate and at the right cost.

Enterprise Fleet Management – an affiliate of Enterprise Holdings, Inc., the largest car rental company in the world – has helped companies reduce their fleet operating expenses for nearly 60 years. With one of the nation's largest service departments, Enterprise Fleet Management has been recognized with the Automotive Service Excellence (ASE) "Blue Seal of Excellence" award for high-quality automotive repair and service for 19 consecutive years, an industry record.

Enterprise Fleet Management

operates a network of more than 50 fully-staffed offices across North America, providing local service to businesses, government agencies and organizations with medium-sized fleets of 20 or more vehicles, as well as to those seeking an alternative to employee reimbursement programs. The company manages more than 430,000 cars, light- and medium-duty trucks, and service vehicles in the U.S. and Canada.

### MITA Partnership

In January, MITA and Enterprise Fleet Management launched a new affinity program that allows MITA members to streamline their fleet, improve cash flow, optimize operations and take advantage of special savings.

"We're able to consolidate the buying power of MITA's business members as one entity to achieve better discounts for all MITA members," said Erik Diana, account executive for Enterprise Fleet Management in Michigan.

From acquisition and risk management, to maintenance and remarketing, Enterprise Fleet Management operates as a one-stop shop, providing MITA members with quick, easy and personal access to a local account team who can handle all day-to-day fleet needs. Twelve MITA members were already leveraging these services through Enterprise prior to the launch of the new affinity program. Now, they're enjoying even more perks.

Some of the new benefits and discounts MITA members can now enjoy through Enterprise Fleet Management include:

- Factory ordering, manufacturer and volume incentives when adding new vehicles to their fleet;
- Additional savings on maintenance repairs;
- Fuel rebates up to 5 cents per gallon, with access to more than 90 percent of U.S. retail fuel stations; and



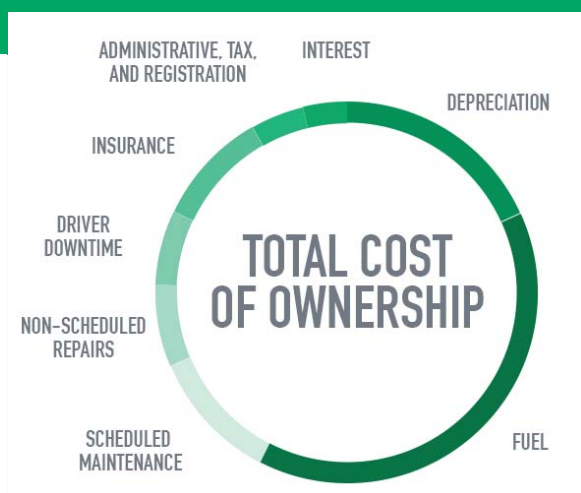


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- In addition, Enterprise Fleet Management offers a variety of flexible fleet leasing and financing options. “We take the time to understand each customer’s operating needs, and we use that information to customize an attractive fleet financing program that reduces expenses and maximizes capital,” Diana added.

### ENTERPRISE FLEET MANAGEMENT TIMELINE

- 1957** Founded as Executive Leasing Company with a fleet of seven cars.
  - 1962** Executive Leasing Co. adds a rental car business division with a fleet of 17 vehicles. The company also starts a Car Sales division.
  - 1969** Executive Leasing expands beyond St. Louis and changes its name to Enterprise Leasing.
  - 1989** Company’s name changes from Enterprise Leasing to Enterprise Rent-A-Car to reflect the enormous growth of its rental car business.
  - 1992** Enterprise’s leasing division becomes Enterprise Fleet Management, focusing on serving businesses with small- to mid-sized fleets.
  - 1997** Becomes first fleet management company to win the Automotive Service Excellence (ASE) “Blue Seal of Excellence.”
  - 2004** Manages fleet of 135,000 vehicles.
  - 2005** Manages fleet of 150,000 vehicles.
  - 2008** Launches comprehensive environmental platform.
  - 2009** Enterprise Holdings is created as the parent corporation for its growing portfolio of car rental and transportation services.
  - 2010** Enterprise Fleet Management is financially restructured to become an affiliate of Enterprise Holdings. Opens its first location in Canada.
  - 2013** Manages fleet of 250,000 vehicles.
  - 2014** Manages fleet of 300,000 vehicles.
  - 2015** Announces investment in information technology solutions, totaling \$100 million.
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# Problem Solver

## Missing Density Testing Results

Nearing the end of a perimeter road construction project at a major airport facility, a MITA contractor member received a letter from the owner's engineer informing them that a section of the new road built on a significant fill had settled and that they were expected to make the necessary corrections at their costs. Believing the fill section was constructed in full accordance with the contract specifications, the contractor contacted MITA for help.

After MITA's engineers reviewed the contract documents, it was clear and evident that the engineer had full responsibility for density control on the project. Through discussions with the contractor, they further learned that the engineer had employed "proof rolling" as the method of density control in the fill areas that had settled.

Working together, MITA's engineers and the contractor crafted a letter to the owner citing the engineer's responsibility for density control and requesting copies of all the density test results for the fill section in question. Not surprisingly, the owner's engineer was unable to produce copies of any density tests results.

With the help of legal counsel recommended by MITA, the contractor moved quickly to present their case to the owner and establish that the engineer was in fact at fault for his failure to perform the appropriate density testing as the fill section was constructed. Soon after, MITA received the following note from the contractor member, "Your help clearing up the contract language and the specifications and helping us with our position, and the involvement of the legal counsel you recommended, brought this potentially costly issue to a painless end."

## New MITA Members

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## MDOT Takes Another Step “Toward Zero Deaths”

**M**DOT took another safety initiative step that will help reach the goal of “Toward Zero Deaths” (TZD) with their April 7, 2016 letter to MITA announcing the new sheeting requirements for traffic channelizing devices. TZD is a statewide safety campaign involving the Governor’s Traffic Safety Advisory Commission, MDOT, Michigan State Police, and many other agencies, with the goal of implementing proven safety strategies and initiatives that influence driver behavior and improve roadway travel safety. When MDOT’s new sheeting requirements are implemented on drums and 42-inch channelizing devices, it is expected they will create safer work zones to protect workers, the traveling public, and support the TZD campaign.

The new Type IV sheeting that will be required on drums and 42-inch channelizing devices is expected to significantly enhance work zone delineation during conditions of low light, such as early morning and dusk hours, especially when it is cloudy, rainy or foggy. As driver reaction time is a key factor directly related to work zone safety, studies have found that improved reflective sheeting can increase distance visibility, providing up to 2.5 seconds of additional driver

**MITA supports MDOT’s move to this increased visibility sheeting that will improve work zone delineation. Work zone safety should be the highest priority for everyone in our industry, with the goal that the motoring public and our workers all arrive home safe and alive every day.**

reaction time when traveling at 55 MPH. Since approximately 35 percent of state trunkline and 32 percent of all roadway work zone crashes have historically occurred during poor weather events and low light conditions, improved driver visibility and the resultant additional reaction time should reduce the potential of traffic crashes in our work zones.

For over two years, MDOT, MITA and our temporary traffic control suppliers have worked collaboratively on implementing a number of pilot projects, constructively debating the pros and cons of materials and applications, and ultimately developing specifications, pay items and a deployment transition plan. The agreed transition plan is based on the average service life of the channelizing devices and is intended to allow for a smooth transition, allowing the suppliers time to upgrade

their inventory of devices over a typical replacement cycle.

Details of the transition plan are:

- April 2016 – MDOT announcement and industry notification of transition timeline
- Projects let on/after October 1, 2017 – new sheeting required on all “I” routes
- Projects let on/after October 1, 2018 – new sheeting required on “BR”, “US”, and “M” routes
- Work and projects let on/after October 1, 2019 – new sheeting required on all MDOT let projects, including local agency projects, maintenance, utility and permit work

Contractors may implement the new Type IV sheeting on drums and 42-inch channelizing devices prior to the dates specified above, as an “equal to or better than” substitution, at no additional cost to MDOT.

During the transition timeframes, no intermixing of drums and 42-inch channelizing devices with the new sheeting and previously specified sheeting on the same project will be allowed. However, the intermixing of drums and 42-inch channelizing devices with fluorescent sheeting of the same grade from different manufacturers will be allowed.

MITA supports MDOT’s move to this increased visibility sheeting that will improve work zone delineation. Work zone safety should be the highest priority for everyone in our industry, with the goal that the motoring public and our workers all arrive home safe and alive every day.



To contact Glenn Bukoski, P.E., email him at [glennbukoski@mi-ita.com](mailto:glennbukoski@mi-ita.com) or call the MITA office at 517-347-8226.



## What is Coming Down the Pipe in 2016

As we roll into the 2016 construction season, we are faced with new changes and challenges, namely with the new OSHA regulations that have come into effect since the end of the 2015 season. Many changes have developed at both the federal and state levels. At the federal level, which truly effects the entire scope of both federal and state OSHA programs, we have the new Construction Confined Space Standard, and the new Crystalline Silica in Construction and General Industry. At the state level we have the new Part 10 Cranes and Derricks along with the new Part 15 Excavators, Hoists, Elevators, Helicopters and Conveyors.

As many may know or have been following, the new Construction Confined Space Standard has been in effect since the end of October 2015 here in Michigan. Many of the issues that have brought lawsuits at the federal level have not been clarified, with the inability to get any clear interpretation from enforcement on some of the simple matters. There were many lawsuits that were filed against the new confined space rule. All but one has been settled and MIOSHA is slowly rolling out their guidance and CET training programs. MITA has been hard at work with a grant from MIOSHA CET to build a new Confined Space in Construction App that assists site supervisors in the identification and classification of confined spaces and permit required

confined spaces. The phone app will allow supervisors to safely and cor-

rectly set up personnel, equipment and job sites for entry. Along with the new technology, MITA is working hard to create two levels of training, both geared towards the requirements and those responsible. The first level of training is for all employees, making sure that awareness of the hazards of permit and non-permit confined spaces are recognized and the proper precautions are taken. The second level of training is geared for the qualified or competent person, in order to assure that everything meets the requirements of the standard. Lastly, as you read this, MITA will have published our Confined Space Safety Policy for the membership along with the correct form that foremen can use to document that all inspections and precautions have been taken.

The new silica standard in construction and for general industry will go into effect on June 23, 2016, but construction employers must comply with all requirements of the standard by June 23, 2017 and general industry employers by June 23, 2017. The reason for the gap is quite simple: the one year delay will allow for any lawsuits to be heard and settled before implementation, a lesson learned from the confusion and legal issues that arose from the new Construction Confined Space Standard that was passed last year. The new standard requires employers to limit worker exposures to respirable crystalline silica and to take other steps to protect workers. The new standard allows for some flexibility for employers when it comes to their controls that best limits exposure to the permissible exposure limit (PEL) in their workplaces; employers covered by the standard are

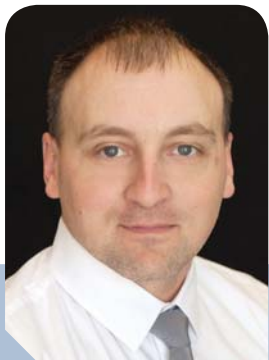
required to:

- Establish and identify a written exposure control plan.
- Designate a competent person to implement the written exposure plan.
- Offer medical exams, including chest X-rays and lung function tests, every three years for workers who are required by the standard to wear a respirator for 30 or more days per year.
- Provide training to workers on the types of operations that result in silica exposure and ways to limit exposure.
- Keep records of workers' silica exposure and medical exams.

Other regulatory updates are in the form of updates and modifications to the crane and excavator standard. MIOSHA Part 10 Cranes and Excavators has been updated and also split into two separate standards. There were multiple reasons for the split of Part 10 Cranes and Derricks along with Part 15 Excavators, Hoists, Elevators, Helicopters and Conveyors. The main reason was for clarity when it came to MIOSHA enforcement and to better protect the members from erroneous MIOSHA citations. Throughout the appeals process, there was a trend of citations that were either not cited under the correct rule or cited a rule that does not apply at all. One of the takeaways is to be sure that cranes are remaining outside 20 feet from energized overhead lines and excavators remain 10 feet from energized overhead lines.

Finally, the biggest changes have not been fully decided or finalized in regards to MIOSHA's day-to-day business. As many may already know, OSHA is expanding their reach in ways to make enforcement more severe.

*Continues on pg. 17*



To contact Matt McClintick, email him at [mattmcclintick@mi-ita.com](mailto:mattmcclintick@mi-ita.com) or call the MITA office at 517-347-8336.

This means that OSHA is in the process of implementing both their new citation history along with penalties. OSHA is increasing the amount of time that they can go back and hold prior citations against an employer in order to write more repeat citations. This means instead of a three year history, there will now be a five year history. In regards to MIOSHA, they can prove that they are more effective than OSHA while remaining at a three year history, but for MITA members that travel out of Michigan to OSHA states, they will be held to the 5 year history if they were to receive citations.

One of the largest and possibly most troubling developments is the increase in monetary penalties that will be implemented at the federal level beginning on August 1, 2016. The maximum penalties for all citations will be increasing 78 percent. This means that a serious violation that had a maximum penalty of \$7,000 will now increase to \$12,460. A willful serious violation that had a maximum penalty of \$70,000 will increase to \$124,600. Each year from here on out, OSHA will be able to increase the penalty each year to reflect the Consumer Product Index (CPI) or better known as the monetary rate of inflation. In discussions that MITA has held with MIOSHA, it is unclear if or even how they will implement the new penalties. MITA has been hard at work in discussions with MIOSHA to show what is and is not needed when it comes to citation penalties and history. This is an ongoing situation in which MITA will be highly involved and a part of to keep the membership informed and represented.

As an industry and association, we have and continue to make great strides in safety, nothing to be taken lightly for sure! Be sure to take a look at all matters of your company safety program and be sure to check that all employees have been adequately trained to the levels required by the work they are performing. As always, MITA is here to help with any questions or needs to continuously improve employees, companies and the industry.



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# The New 21st Century Infrastructure Commission

**D**uring his State of the State address in January, Governor Rick Snyder announced the formation of a few new state commissions to tackle some of the recent on-going issues in our state. Because of the crisis occurring in Flint with their water system, the governor announced a new Michigan 21st Century Infrastructure Commission. Governor Snyder recently signed the Executive Order officially forming the commission.

The commission will consist of 27 members in total. The governor has appointed 15 members, 4 members are appointed by the legislature; 1 selected each by the Speaker of the House, the Majority Leader in the Senate, the Minority Leader in the House and the Minority Leader in the Senate, and the remaining 8 will automatically be the directors of 8

different departments in the state including MDOT and MDEQ.

We anticipate that this newly formed Commission will be the centerpiece of public policy regarding our state's infrastructure for decades to come. The executive order by Governor Snyder lists 15 separate areas and goals for the commission to consider and the body will be at a very strenuous pace over the course of the next several months. A major goal of the commission is to put into place policies that will allow the state and communities to coordinate their infrastructure needs in an efficient and collaborative manner. Often times when a community reconstructs a road, they may not have the resources to invest in the underground infrastructure at the same time and have to tear up that same roads just a few short years

later. The Commission will consider ways to incentivize communities to think progressively when making overall decisions on their needs.

The Governor has just announced his appointments and one of his recommendations is MITA Executive Vice-President Mike Nystrom. Mike is being recognized for his many years of knowledge and expertise of the heavy construction industry and will provide some much needed wisdom in all facets of infrastructure construction for the commission. Governor Snyder selected Mr. Nystrom as one of the key individuals on the Commission that brings experience in not only the heavy construction industry but also as someone who understands how to serve and facilitate a commission of this magnitude.

*Continues on pg. 19*

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## UNDERGROUND SPOTLIGHT

*Continues from pg. 18*

One of the immediate goals of the commission will be to make recommendations on how to allocate the initial \$165 million that was recommended in the Governor's budget for a new Infrastructure Fund. In addition, the commission will establish the foundation of policy and funding for Michigan's infrastructure for decades to come and MITA will be on the ground floor of those decisions.

Additionally, Governor Snyder has appointed to serve as chair of the commission long time MITA member Evan Weiner, chief operating officer and executive vice president of Edw. C. Levy Co. Evan's vast experience in the industry as well as his many positions on various boards across the state gives him a unique perspective to serve as the chair of this important Commission.

The full commission can be viewed at the state's website. The advisory body within the Executive Office must present an infrastructure assessment and its recommendations no later than November 30, 2016 and members will serve terms expiring at the pleasure of the Governor.

## LETTERS TO MITA

Dear Mike:

Thanks for all that you did to make my retirement tribute a success. I will never forget what you did. I look forward to much more success with MITA and AGC!

Bart Carrigan  
AGC

Dear Mike:

Congratulations on your recent appointment to the Governor's 21st Century Infrastructure Commission. Your knowledge and background is a great asset to the commission. Well done.

Anne Coursey  
Champagne & Marx Excavating, Inc.

Dear Mike:

Congratulations on your appointment to the Governor's 21st Century Infrastructure Commission. Keep them in line and check the water.

Joanne Manatine  
Association Benefits Company

Dear Mike:

I just read the email about your appointment to the Governor's Infrastructure Commission. That's incredible news.

Congratulations!

Erik A. Diana  
Enterprise Fleet Management

Dear Mike:

Congratulations Mike! Looks like quite an honor to be selected by the Governor for the Infrastructure Commission.

Jamie Lemke  
Give 'Em A Brake Safety

Dear Mike:

Congratulations on being named to the Governor's Infrastructure Commission. It is nice to see your name among all the dignitaries and grey hairs that are on the committee. It reminds me of the young man that was looking for a start with the Builders Exchange many years ago and looks to me like we made the right decision. Keep up the good work.

David Chapman  
David Chapman Agency



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# Spring 2016 MITA PAC Update

By Mariam Robinson

2016 is almost half over, but we are off to a good start on achieving one of the major goals of this year, thanks to the support of members like you. The original goal was to increase the presence and support of the MITA PAC by the end of the year. Your continued support is so important, and it is absolutely critical that each and every MITA member understands the role they play in the effectiveness of this association, as well as the industry as a whole, when they choose to contribute to

the MITA PAC.

Without the support of everyone, we cannot move forward as an industry, and we cannot have a strong impact at the state Capitol. Below you'll find a list of MITA PAC donors from the last 12 months, which will include 2015 and 2016 donors. We want to sincerely thank each and every person on this list, not only for your donation, but also for your wisdom to look ahead and for your understanding of the need to invest in the MITA PAC now to see results in the future.

**Please be aware that this list is only as current as the date the magazine went to print. If you donated to the MITA PAC between that date and now, your name will appear in the next issue. We appreciate your understanding, and we thank you for your support.**

If you have any questions or concerns regarding the MITA PAC, please email Mariam Robinson, MITA Outreach Coordinator, at [mariamrobinson@mi-ita.com](mailto:mariamrobinson@mi-ita.com) or call her at 517-347-8336.

| First Name | Last Name   | Company                              | Amount      | First Name | Last Name  | Company                           | Amount     |
|------------|-------------|--------------------------------------|-------------|------------|------------|-----------------------------------|------------|
| Joe        | Dunigan     | Dunigan Bros.                        | \$2,000.00  | Ron        | Acciavatti | Pamar Enterprises, Inc.           | \$2,500.00 |
| Keith      | Rose        | Rieth-Riley Construction Co., Inc.   | \$5,000.00  | Angie      | Greenslade | Old Republic Surety Group, Inc.   | \$100.00   |
| Nathan     | Vohwinkle   | Michigan Pipe & Valve - Lansing      | \$2,500.00  | Mark       | Campbell   | GM & Sons, Inc.                   | \$500.00   |
| Rod        | Mersino     | Mersino Management                   | \$200.00    | Karl       | Schweitzer | GM & Sons, Inc.                   | \$1,000.00 |
| Ron        | Measel      | Ace Cutting Equipment                | \$1,000.00  | Tom        | Larabel    | Ferris State University           | \$300.00   |
| Rachel     | Snyder      | BCT Benefits                         | \$1,000.00  | Frank      | DiPonio    | DiPonio Contracting, Inc.         | \$2,500.00 |
| Andrew     | Ross        | Utility Contracting Co., Inc.        | \$200.00    | Pete       | Scodeller  | Scodeller Construction, Inc.      |            |
| Scott      | Bazinet     | Lowe Construction Co.                | \$2,000.00  |            |            | & Fonson Companies, Inc.          | \$1,000.00 |
| Edward C.  | Levy        | Edw. C. Levy Co.                     | \$1,000.00  | Heather    | Cunningham | Lounsbury Excavating, Inc.        | \$450.00   |
| Robert     | Wilson      | Mid Michigan Materials, Inc.         | \$200.00    | Jeff       | Stover     | Toebe Construction, LLC           | \$1,000.00 |
| Kevin      | Brenner     | Brenner Excavating, Inc.             | \$500.00    | Brian      | Olesky     | Pamar Enterprises, Inc.           | \$250.00   |
| Rinaldo    | Acciavatti  | Pamar Enterprises, Inc.              | \$500.00    | Chad       | Listerman  | CL Trucking & Excavating          | \$2,000.00 |
| B. Thomas  | Stover      | Toebe Construction, LLC              | \$1,000.00  | Mike       | Kavanagh   | Cardinal Fabricating, Inc.        | \$500.00   |
| Gary       | Merkey      | Jackson-Merkey Contractors, Inc.     | \$750.00    | Anne       | Coursey    | Champagne & Marx Excavating, Inc. | \$2,000.00 |
| Steve      | Jackson     | Jackson-Merkey Contractors, Inc.     | \$750.00    | Christine  | Davis      | Champagne & Marx Excavating, Inc. | \$1,000.00 |
| Lester     | Lewis       | Paradigm 2000                        | \$200.00    | Fred       | Meram      | F.D.M. Contracting, Inc.          | \$2,500.00 |
| Tom        | Wagenmaker  | Anlaan Corporation                   | \$2,000.00  | Brian      | Dodds      | D & R Earthmoving, L.L.C.         | \$500.00   |
| Dan        | Eriksson    | Hoffman Bros., Inc.                  | \$7,500.00  | Derrick    | Arens      | Anlaan Corporation                | \$100.00   |
| Anne       | Coursey     | Champagne & Marx Excavating, Inc.    | \$1,500.00  | Nate       | Wagenmaker | Anlaan Corporation                | \$100.00   |
| Hugh       | Brennan     | Service Construction, Inc.           | \$250.00    | Bruce      | Morren     | Nagel Construction                | \$400.00   |
| Doug       | Kaltz       | M.U.E. Incorporated                  | \$1,000.00  | Tom        | Wagenmaker | Anlaan Corporation                | \$2,000.00 |
| Tom        | DiPonio     | Jay Dee Contractors, Inc.            | \$10,000.00 | Irene      | Zannis     | Seaway Painting, L.L.C.           | \$100.00   |
| Jack       | Dykstra     | Jack Dykstra Excavating, Inc.        | \$1,000.00  | Donn       | Ellis      | CSI/Geoturf                       | \$150.00   |
| Chris      | Shea        | P.K. Contracting, Inc.               | \$2,000.00  | Ryan       | O'Donnell  | Anlaan Corporation                | \$2,000.00 |
| Aden       | Shea        | P.K. Contracting, Inc.               | \$500.00    | Jim        | Urban      | Butzel Long                       | \$250.00   |
| Bradley    | Stover      | Toebe Construction, LLC              | \$1,000.00  | Eric       | Morris     | HNTB Michigan, Inc.               | \$200.00   |
| Mike       | Peake       | Action Traffic Maintenance           | \$1,000.00  | Robert     | Hentkowski | Dan's Excavating, Inc.            | \$500.00   |
| Tom        | Peake       | Action Traffic Maintenance           | \$1,000.00  | Jim        | Doescher   | Dan's Excavating, Inc.            | \$1,000.00 |
| Bob        | Jones       | Toebe Construction, LLC              | \$1,000.00  | Malcolm    | Chartier   | M. L. Chartier, Inc.              | \$2,500.00 |
| Brian      | Hoffman     | Hoffman Bros., Inc.                  | \$5,000.00  | Irvin      | Rupersburg | Dan's Excavating, Inc.            | \$500.00   |
| Lucas      | Fleischmann | MI Pipe & Valve, Inc.                | \$500.00    | Dennis     | Rozanski   | Dan's Excavating, Inc.            | \$500.00   |
| Bob        | Adcock      | Angelo Iafate Construction Company   | \$4,000.00  | Jason      | McLelland  | VTC Insurance Group               | \$250.00   |
| Dave       | Sturris     | Grand Valley Concrete Products       | \$750.00    | Terry      | Griffin    | VTC Insurance Group               | \$250.00   |
| Mike       | Malloure    | C.A. Hull Co., Inc.                  | \$5,000.00  | Mike       | Miller     | VTC Insurance Group               | \$500.00   |
| Dale       | Klett       | Klett Recycle, Inc.                  | \$2,000.00  | Joe        | Goodall    | Dan's Excavating, Inc.            | \$500.00   |
| Ron        | Measel      | Ace Cutting Equipment & Supply, Inc. | \$1,000.00  | Brad       | Poggi      | HUB International                 | \$500.00   |
| Brent      | Gerken      | Gerken Paving, Inc.                  | \$400.00    | Amy        | Hall       | Ebony Construction Co., Inc.      | \$500.00   |
| Brandie    | Meisner     | M&M Excavating Co., Inc.             | \$500.00    | Denny      | Scully     | Mape's Insurance Agency           | \$250.00   |
| Ken        | Nowicki     | M&M Excavating Co., Inc.             | \$500.00    | John       | Zito       | Zito Construction Co.             | \$250.00   |
| John       | Landrie     | M&M Excavating Co., Inc.             | \$500.00    | Lee        | Johnston   | Johnston Contracting, Inc.        | \$1,000.00 |
| Dave       | Pytlowany   | AIS Construction Equipment Corp.     | \$1,200.00  | Jack       | Dykstra    | Jack Dykstra Excavating, Inc.     | \$1,000.00 |
| Darrell    | Kaltz       | Kaltz Excavating Co., Inc.           | \$1,000.00  | Nick       | Baker      | Anlaan Corporation                | \$2,000.00 |



## WINTER 2016: MITA PAC UPDATE

| First Name | Last Name  | Company  | Amount      |
|------------|------------|--|-------------|
| Doug       | Walls      | Eagle Excavation, Inc.                                       | \$10,000.00 |
| Bob        | Nobbs      | Edw. C. Levy Co.   | \$500.00    |
| Paul       | Navetta    | Dan's Excavating, Inc.                                       | \$1,000.00  |
| Virgil     | Klebba     | Dan's Excavating, Inc.                                       | \$1,000.00  |
| Jacquie    | Katterman  | Katterman Trucking, Inc.                                     | \$300.00    |
| Brian      | Schember   | Dan's Excavating, Inc.                                       | \$1,000.00  |
| Paul       | Hurley     | Guy Hurley, LLC  | \$1,000.00  |
| Lynn       | McGregor   | Guy Hurley, LLC  | \$1,000.00  |
| Leslie     | Loftus     | Veritas Benefits Group, LLC -<br>Division of Guy Hurley, LLC | \$100.00    |
| Ron        | Wey        | Pro-Tec Equipment  | \$500.00    |
| Dan        | Fredendall | OHM Advisors   | \$250.00    |
| Chris      | Peyerck    | Dan's Excavating, Inc.                                       | \$6,000.00  |
| Kurt       | Shea       | P.K. Contracting, Inc.                                       | \$500.00    |
| Mark       | Madden     | Guy Hurley, LLC  | \$1,000.00  |
| John       | Kloet      | Upper Peninsula Concrete Pipe Co.                            | \$750.00    |
| Katie      | Darrow     | Darrow Bros. Excavating, Inc.                                | \$150.00    |
| Kevin      | McNeilly   | Spartan Barricading & Traffic Control                        | \$500.00    |
| Kenneth    | McNeilly   | Spartan Barricading & Traffic Control                        | \$500.00    |
| Tom        | Pratt      | Milbocker & Sons, Inc.                                       | \$1,000.00  |
| J.W.       | Fisher     | Fisher Contracting Company                                   | \$1,000.00  |
| Rod        | Mersino    | Mersino Dewatering, Inc.                                     | \$2,000.00  |
| John       | MacInnis   | JRM Consulting, LLC  | \$100.00    |
| David      | Maas       | Diversco Construction Co., Inc.                              | \$1,500.00  |
| Troy       | Broad      | Elmer's Crane & Dozer, Inc.                                  | \$5,000.00  |
| Paul       | Marsh      | Peninsula Prestress Co.                                      | \$300.00    |
| David      | Marsh      | Peninsula Prestress Co.                                      | \$300.00    |

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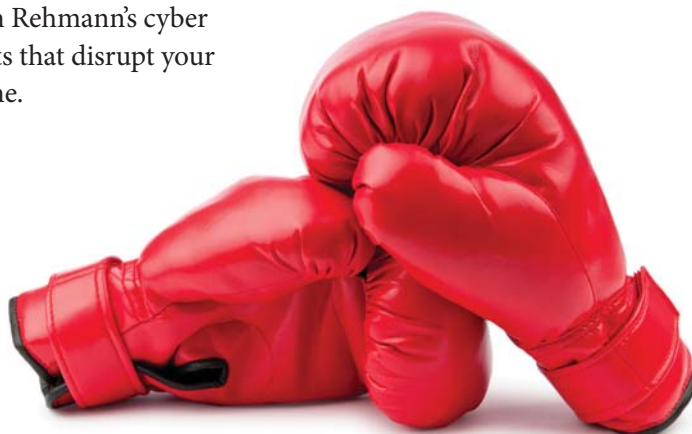
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## Did You Know?

# MITA Commissions Commemorative Infrastructure Funding Statue



The passage of road funding in November of 2015 was a huge feat for the entire heavy/highway construction industry. It marked a huge milestone in a journey that has been long, hard and anything but smooth sailing. To commemorate that period in MITA member history, as well as the ongoing hard work, dedication, energy and resources that will go into improving Michigan's infrastructure, MITA has commissioned a statue!

The statue will be cast in bronze and will stand 6 feet tall outside the MITA headquarters in Okemos, once completed and installed. It will be an industry worker, dressed in full contractor clothing, complete with a hard hat and vest, and he will look like

he is walking to a job site. It will stand as a symbol of the industry's timelessness and the hard work that is constantly being done to secure permanent long-term infrastructure funding solutions.

The dedication inscription will read: *"Dedicated to the contractor in all of us. A reminder of all the hard-working hands that are focused on building Michigan's infrastructure for the next generation."*

We are encouraging members to contribute to the success of this statue and everything that it will stand for. For a \$1,000 donation, you will get your name printed on a bronze plaque inside the MITA building, thanking you for your gift. For a \$3,000 donation, your name will go on a plaque and you will receive



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a small replica of the statue for your home or office. Please consider making a donation today!

The statue is being created by Bernadette Zachara-Marcos, who is a Michigan-based sculptor and a member of the Sculptors Guild of Michigan. Bernadette has been doing commissioned sculptures since the early 1970s. Her work can be seen at many locations across Michigan.

Questions regarding the statue or about making a donation can be directed to Mariam Robinson, MITA Outreach Coordinator, at [mariamrobinson@mi-ita.com](mailto:mariamrobinson@mi-ita.com) or by calling 517-347-8336.



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# Outreach Spotlight

## Let's Highlight Those Job Sites!

By Mariam Robinson

**T**hough it's hard to believe, winter is finally over, and we can now shift our focus to the important road, bridge and underground projects getting underway across the state of Michigan. It's time to start thinking about which of your job sites should be grabbing everyone's attention, particularly the attention of members of the legislature.

Job site visits are an excellent way

for members to showcase their skills in the heavy/highway construction industry. Job sites are also always a hub of hard work, ingenuity and long-term improvements. They are evidence of the honest work that helps to keep our roads drivable, our bridges viable and our pipes sustainable.

Legislators typically work with a lot of numbers and even more hypotheticals on a daily basis. It's hard for

them to imagine the work that goes into building a road, a bridge or an underground pipe system. It's even harder for them to wrap their heads around the high dollar amounts associated with these important pieces of our overall infrastructure system. They like knowing dollar amounts, but they don't like to commit to them. When they can see firsthand just what goes into a \$1 million project or a \$5 million

*Continues on pg. 46*

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# State Senator Jim Stamas (R-36th District)

**Q: How has your background as an owner and operator at your family's restaurant business helped prepare you as a leader in both chambers of the Michigan Legislature?**

**A:** The real world experience of managing a budget and being a job provider gives me insight when considering how to spend taxpayer dollars and what policies support an environment in which small business can thrive. I truly believe small businesses are the backbone of our communities and our economy.

Being a small business owner also gives me unique insight into customer service. As elected officials, our primary responsibility is to our constituents. My job is to represent and communicate the needs of my neighbors and the

communities I represent.

**Q: What legislative priorities do you have?**

**A:** My priorities are based on my life experiences and my district. I am a father, a small business owner and a veteran. I also chair the appropriations subcommittee on General Government.

As chair of the Joint Committee on the Flint Water Public Health Emergency, I have spent a great deal of time reviewing information on infrastructure, the state civil service bureaucracy and the current emergency manager law. In the coming weeks, the joint committee will make recommendations regarding how we can prevent a crisis like the one in Flint.

The issues in Flint resonate with

me because of concerns in one of my own communities. I have residents who are learning their water may be contaminated by PFC from firefighting foam used at the Wurtsmith Airforce Base. We need to raise awareness about infrastructure and safety across the state.

**Q: When do you believe the State Legislature will enact substantive changes to how we pay for our transportation system?**

**A:** This is one of our most pressing issues and a top priority to me. I would like to see us pass parts of this plan and begin a discussion with the Senate within the next few weeks. The House Republican plan is now in committee and will be discussed and receive public input soon. That will help us improve the plan and find a stronger

## About State Senator Jim Stamas

State Senator Jim Stamas was elected to his first term in the Michigan Senate in November 2014, representing Alcona, Alpena, Arenac, Gladwin, Iosco, Midland, Montmorency, Oscoda, Otsego and Presque Isle counties.

Stamas has been elected to be the Assistant Majority Floor Leader for the 98th Legislature. He also has been selected to serve on the following committees:

- Appropriations
- Agriculture and Rural Development subcommittee
- General Government subcommittee – Chair
- Economic Development and International Investment
- Health Policy
- Joint Committee on Administrative Rules – Chair
- Natural Resources
- Michigan Competitiveness – Vice Chair

- Legislative Council
  - Library of Michigan Board of Trustees
- EDUCATION**

Stamas holds a bachelor's degree in business administration from Northwood University and an associate's degree in business management from Delta College.

### PROFESSIONAL

Stamas is the owner and former general manager of Pizza Sam's, the eatery in Midland the Stamas family has owned for more than 50 years. Prior to running the family business, Stamas was self-employed as a realtor and was project manager at Case Systems.

### PUBLIC OFFICES AND AFFILIATIONS

Before serving in the Senate, Stamas served three terms as State Representative and two terms as Midland County commissioner. He also was a Midland Township trustee from 1997-2004 and has served on the boards of the Midland Downtown Development Authority, Midland Downtown Business Association and Midland County Planning Commission.

### PUBLIC SERVICE

Stamas served his country honorably in both the U.S. Army and the Michigan National Guard. As a member of the Michigan House of



Representative, in recognition of Jim's effectiveness and leadership, his colleagues elected him Majority Floor Leader for the 96th and 97th Legislatures. As Majority Floor Leader, Stamas was charged with setting the overall agenda and direction for the House of Representatives.

### PERSONAL

Jim and his wife, Marsha, have been married for more than 30 years and have a daughter and a son.





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# MITA Sponsors Work Zone Awareness Week

**M**ITA was among construction industry groups across the state and nation who are joining forces this week to increase public work zone awareness.

MITA's Vice President of Industry Relations, Rachelle VanDeventer, P.E., helped kick off the week during a press conference which was held at the Michigan Department of Transportation

(MDOT) Brighton maintenance facility on April 11. In addition to VanDeventer, Andy Thelen from Toebe Construction LLC, officials from

MDOT, the Michigan State Police, American Traffic Safety Services Association and other groups spoke about roadway safety and innovations in transportation.

"The construction industry often works in less than favorable conditions, including being exposed in work zones to an apathetic driving public," VanDeventer said. "The public tends to focus on the inconvenience of work zones during their commute and not on the safety of the people who are making their daily commute possible."

VanDeventer added that according to recent national statistics, driver and vehicle passengers accounted for 82 percent of work zone fatalities.

This fact led to the national campaign theme: "Don't be that driver!" Drivers were reminded to not text, talk on the phone, eat or groom while they are driving to ensure that everyone arrives home safely every day. The public was also encouraged to show their support and wear orange on Wednesday, April 13, and share their photos on social media with these hashtags:

#Orange-forSafety  
#NWZAW.

"We need the driving public to step up to the challenge and no longer engage in any behavior that could cause a distraction in work zones," VanDeventer

said. "If we all work together, we can make highway work zones in Michigan safe for everyone."

Other sponsors of Work Zone Awareness Week included MITA members: Ajax Paving Industries, Inc., C. A. Hull Co., Inc., Consumers

Energy and Give 'Em a Brake Safety. In addition, the following organizations are sponsors: Nite Beams, MDOT Worldwide, Local 517M of the Service Employees International Union, American Traffic Safety Services Association, Semco Energy and Operating Engineers.



*MITA's Vice President of Industry Relations, Rachelle VanDeventer, P.E., and Andy Thelen, of Toebe Construction LLC, were among the speakers at at Work Zone Awareness Week press conference in April.*

## BEWARE of Consequential and Liquidated Damages

By R. Edward Boucher and Jacqueline C. Kaltz, Kotz Sangster & Wysocki P.C.

Consequential damages and liquidated damages generate more conflict than almost any other issue in contract law. For starters, they are unpleasant subjects: they concern the cost of a broken agreement. It is common for parties not to want to address the unpleasant subjects during the honeymoon phase of a commercial relationship, and thus, parties often gloss over them. However, this often leads to an even more unpleasant surprise when the contract is breached, and the consequential or liquidated damages clause determines the remedy. Sometimes the remedy seems completely disproportionate to the harm caused by the breach. In more cases, the remedy was misunderstood by one of the parties at the beginning of the contract, yet is being imposed against it. In short, consequential and liquidated damages pose a risk. Similar to all contractual risks, contractors must understand it, must negotiate their best position (if the contract is negotiable), and must mitigate the risk with sound business management practices.

### I. Background On Contract Damages

The purpose is to put the injured party in as good a position, as it would have been in, had the contract been properly performed by awarding it all costs that naturally and probably result from the breach.<sup>i</sup> Michigan common law divides these costs into two categories: direct damages, which “naturally and ordinarily follow the breach” and consequential damages, which “ensue, not necessarily or ordinarily, but because of special circumstances.”<sup>ii</sup> Both direct and consequential damages are necessary to fully compensate it because the innocent party entered the contract with the intention of receiving the full

benefit of its bargain,

This sounds simple enough, but the costs associated with the full benefit of the bargain are frequently difficult to foresee when the contract is first formed. The cost of the “full benefit” may also be too large, or more than one party wants to bear. To avoid uncertainty, and to respect the parties’ freedom to fashion their own business affairs, Michigan law allows parties to agree upon the consequence of a broken promise and determine the damages for a breached contract within the contract itself.

Thus, when the law holds the breaching party responsible for its failure to perform a contract by imposing a judgment for damages, the law will impose whatever costs are necessary to provide the innocent party with its side of the deal – whether that bargain is for liquidated damages, limited damages, or the “natural and ordinary” damages and “special circumstances” damages that flow from the breach.

### II. What Are Consequential Damages?

Since the mid-1800s, courts in most states have used the concept of foreseeability to define the two types of damages and to limit what a party could claim as the benefit of its bargain.<sup>iii</sup> Direct damages have been defined as those that “flow according to common understanding as the natural and probable consequences of the... breach of contract itself.”<sup>iv</sup> These losses are considered the natural results of the breach because they accord “with the common experience of ordinary persons.”<sup>v</sup> In other words, direct damages are what the parties would expect to result from a given breach.

On the other hand, consequential damages have been defined as “those that do not arise naturally or ordinarily

from a breach of contract, but which arise because of the intervention of special circumstances.”<sup>vi</sup> They usually result from an event acting in conjunction with the breach. Consequential damages are still proximately caused by the breach, but, under general rules of contract law, are only recoverable if the special circumstances or the other event was foreseeable by the party in breach when it made the contract.<sup>vii</sup> In other words, consequential damages are a distant, yet foreseeable, cost of a broken contract.

Michigan uses these definitions and basic rules of recovery.<sup>viii</sup> In practice, however, unless the damages suffered by a party were unforeseen by the breaching party due to an unknown circumstance, were too speculative to be stated with certainty, or were excluded by the parties’ agreement, courts rarely label damages as direct or consequential in their written opinions. Most of the time, injured parties simply get awarded sums to cover their losses.<sup>ix</sup> However, the few cases in which courts have classified different costs resulting from breached construction and government-supply contracts provide useful guidelines to contractors seeking to manage project risk.

### A. Delay and Its Resulting Damages

When a project is delayed, extended general conditions are commonly regarded as direct damages. For example, in *Synsil Products Inc v Wayne Brothers*,<sup>x</sup> the parties’ contract contained a mutual waiver of consequential damages. The owner that delayed the project sought to dismiss the contractor’s claim for extended general conditions, arguing that such costs were barred by the waiver. The court disagreed and permitted the claim to go forward.

*Continues on pg. 36*



# Where Has Your MITA Hat Been Lately?

MITA members enjoyed fun in the sun during the MITA Management Conference in March, thanks to the lovely environment of Los Cabos, Mexico. Stay tuned for details concerning the March 9-18, 2017 MITA Management Conference in Kauai, Hawaii.



Lance Binoniemi of MITA, Scott Bazinet of Lowe Construction and Mike Nystrom of MITA.



Scott Bazinet of Lowe Construction and Rob Coppersmith of MITA.



Doug Walls and bride-to-be Christy hang out with MITA Board Member Patrick Dunigan.



MITA Board Member Jack Dykstra and Give Em' A Brake's Marc VanTil soak up the sun.



David Marsh and Paul Marsh of Peninsula Prestress Company and Tom Peplinski of D.J. McQuestion & Sons.



Al McQuestion of D. J. McQuestion & Sons and Vance Johnson of Central Asphalt.



Whale watching with Anlann's Derrick Arens and Jake Ike of Ridgemoor Supply.



# DBE PROFILE:

## Jonny Heinz Landscaping LLC

*Cari Berkobien, of Jonny Heinz Landscaping LLC, talked with us about the company.*

*For more information, please call 989-781-2264.*

**J**onny Heinz Landscaping started with the late John B. Heinz in the mid 80's. It grew from the back of a pickup truck and a trailer to 12 heavy duty work trucks, dump trucks, pickups, equipment and trailers. The last 30 years of business have been a ride for my family, from the "Boss" passing away roughly 10 years ago, to the current boss, Cindy, who is my mother. Cindy, having worked side by side with Jonny for years, took the reins after his passing, through the time period that the economy was hit, to being able to bring life back into the company and make it stronger with a woman's perspective. My mother taught my sister and myself what true hard work is like and that "we can do it."

### Specialties

We have grown tremendously, from a small family landscape business to a growing commercial, residential, professional lawn fertilizer application, tree spraying, snow plowing and salting, MDOT & DBE certified

company. Seasonally we have anywhere from 10-15 employees at times when the projects are in full force, and an additional 4-5 office personnel. We are located in Saginaw, west of M-46 and I-75.

### Past Projects

Past projects include years of residential and commercial accounts, landscaping, snowplowing, and permeable paver parking lot for Right Way Automotive in Taylor. Other projects include large tree planting and restoration/hydro seeding for MDOT projects for prime contractors, including Milbocker & Sons, Inc., Rieth-Riley Construction, J. E. Kloote Contracting, Michigan Paving Materials, Hardman Construction and Kennedy Excavating, just to name a few.

Being in MDOT has really broadened our horizons and has enabled our employees to heighten not only their own professions and talents but to make a decent living while working in neighboring communities, towns and cities that are trying to make a difference as well. They do so by making it happen with the state by doing upgrades and fixing roads and bridges and many other construction attributes MDOT has.

We have also handled projects in

the business sector, including retirement homes, apartment complexes, banks, offices of physicians and accountants, plus residential work.

As far as the MDOT side goes, we have explored half of Michigan through newly added rail trails, that enhance people's lives and get them out on adventures. We have actually met some pretty interesting people when we are doing the finishing touches with landscaping and restoration projects and they do let us know what a great job the construction crews did and that they are glad everyone's gone!

### Current Projects

These projects are popping up fast in both residential and commercial landscaping, fertilizing, lawn mowing and cleanups as well as MDOT projects. As the weather pops, so do the green MDOT Binders we use in the office. Learning new procedures and paperwork for individual projects is both challenging and rewarding. We have projects that are top on the list for spring planting of conifers on the Sprinkle Road Project and at M-37 and I-94, as well as top soiling and grading projects that include hay mat, hydro seeding, fertilizing, landscaping and watering/ cultivating.

*Continues on pg. 32*



### What do you like about the industry?

The construction industry has taught us a lot of lessons. Being certified in MDOT and DBE has allowed us to grow as a company and as individuals. Learning new processes and applications has made us more patient than ever. It's a lot of scheduling, re-scheduling, weather watching, working with prime contractors, engineers, labor/construction workers and the roads of Michigan.

Meeting new people and seeing new sights, being able to put a green carbon footprint on a lot of neat and pleasant neighboring Michigan roadsides has been a blessing for our business -- not only to our employees and their families but to the communities when we plant "new growth." That's where it starts. "You plant, you will be blessed." It's an exhilarating feeling when you accomplish some of these projects, complete them on time, with no hitches. It takes a lot of time, overtime, all your time, construction and planning and re-planning and so many men and women in the industry to pull off such a project as Sprinkle Road in Kalamazoo. Milbocker & Sons,

Inc., did an amazing job, the foreman's, the inspectors, MDOT, company office personnel for paperwork, payroll, emails, blueprints, time sheets to traffic control, bridge builders, road builders, asphalt layers and our crew/landscapers. It looks beautiful!

When you go for rides on the Michigan highways and roadways, you drive on the smooth new roads, beautifully arched concrete/ metal bridges and ramps, nice roadside grade, straight pin stripping, bright green new signage and straight poles, measures perfectly to plan, and did I mention the green grass and beautifully landscaped roadsides with pines, trees, plants and grass to grow for years to come? It's neat to be able to be a part of a project so intricate and well planned out. Thank you Michigan. We love our state.

### How does being a member of MITA help you?

Being a MITA member has been interesting. We are definitely appreciative of the resources available and ready to use and for the contacts that have allowed us to use more of the MITA circle for projects. MITA provides beneficial

information when certain subjects arise and we need answers. They also offer classes to benefit the office personnel and management. Thank you MITA!



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## Florence Cement Company, Inc. Celebrates 50th Anniversary

Florence Cement Company, Inc., of Shelby Township, celebrated their 50th Anniversary on Friday, March 18, with a grand celebration. Congratulations!



Florence Cement's founder, Giuseppe "Joe" Pittiglio, was memorialized for the event by a Detroit artist.



Pasta anyone?



Photos surround the dining area to depict jobs throughout the proud history of Florence Cement Company.



The grandchildren and their fathers are all working hard to ensure another 50 years. From left to right in the front: Angelo Lanni and Mike Pittiglio. From left to right in the back: Angelo Lanni Jr., Doreen Lanni and Mike V. Pittiglio.



Special logo to celebrate the anniversary.



Cake complete with lights!

*Photos by Maria Lisa Photography*



## G2 Consulting Group, LLC

[www.g2consulting.com](http://www.g2consulting.com)



"Renewable energy projects including wind and solar power will provide significant opportunities in the construction services industry for the foreseeable future," says Mark Smolinski, P.E., a partner at G2 Consulting Group, a Troy-based geotechnical, environmental and construction services firm doing construction projects around the country.

Smolinski made the remarks as G2 Consulting announced that it's been retained by Aristeo Construction for consulting services at the Pinnebog Wind Park in the Michigan thumb region. G2 is also working on behalf of First Solar on installation sites in Virginia and Texas, adding to past projects completed in Michigan, Indiana, North Carolina and California.

"Solar and wind projects face complex engineering challenges," says Dave Wanlass, P.E., project manager. "Developing these renewable projects requires a thorough understanding of soil, subsurface conditions, and the environment to ensure facilities are built both structurally and environmentally

sound. In addition, these facilities often require infrastructure improvements - collection lines, substations, new or expanded roadways and access points - where G2 can also play a major role."

The Solar Energy Industries Association (SEIA) estimates that over 2,100 major solar projects are currently in operation or being developed in the U.S., accounting for over 48 gigawatts of capacity. "We expect to see the pace of these projects continue as clean energy becomes a larger portions of the overall global energy mix," Smolinski says.

DTE Energy's Pinnebog Wind Park is expected to produce 60 MWs of energy when it's operational in 2017. G2 has been retained by Aristeo Construction, EPC Contractor, to provide services including soil erosion and sedimentation control inspections, environmental consulting and cultural/historical resources consulting. the firm has a range of land development and remediation capabilities.

G2 Consulting has assisted First Solar in the development of a number of sites across the United States by providing geotechnical expertise on foundation design in a wide variety of subsurface conditions. Efficient design for these foundations quickly multiplies financial benefits as hundreds of panels are constructed.

In January, G2 hired Patrick Bell, P.G. (Professional Geologist), a 20-year industry veteran who has worked on more than 4,000 environmental projects throughout North

America, to help manage G2's expanding project portfolio.

"What makes these wind projects particularly interesting is their scale," says Bell. "Many projects cover vast tracts of land with complex environmental, ecological, and cultural resource conditions that need to be fully evaluated to determine project feasibility and possible plan modifications. G2 has a great history of working in the renewable energy industry and a strong team in place to satisfy clients and earn more of this work."

For more information on G2 Consulting Group, visit [www.G2consultinggroup.com](http://www.G2consultinggroup.com).

## Southeastern Equipment Co., Inc.

[www.southeasternequip.com](http://www.southeasternequip.com)

Southeastern Equipment recently launched a new website that features enhanced search and navigation, revised mobile interface, expanded customer and salesman resources, contemporary design, and an improved user experience.

In addition to new equipment, customers can request quotes for equipment service, rentals, and parts and have access to an online parts catalog for easy access to parts for their equipment. The site also features an improved way to search and purchase used equipment.

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**Philip A. Rasor, Jr., P.E.**

New Hire: Philip A. Rasor, Jr., P.E., vice president and director of engineering.

With 30 years of experience in the engineering industry, he will oversee and grow Spalding DeDecker's municipal, transportation, land development and construction engineering operations.

**Superior Asphalt, Inc.**  
[www.superiorasphalt.com](http://www.superiorasphalt.com)

Lansing Asphalt recently underwent a re-branding under the Superior Asphalt, Inc., umbrella. Lansing Asphalt is now known as Superior Asphalt, Inc. – Lansing Division.

Superior Asphalt was founded in Grand Rapids in 1983 and has been in business for over 30 years. With an outstanding reputation providing asphalt services to the West Michigan and Mid-Michigan area, the company also manufactures asphalt at the two newest plants in Michigan, located in Caledonia and Lansing.

With commitment to the individuals, communities, businesses and municipalities that they serve, both plants are operated by highly-skilled staff that manufacture first-rate products for every customer and job. Both facilities are equipped with state of the art testing laboratories, which are MDOT and federally certified for quality control. Our professional asphalt lab technicians are trained in the latest advancements in mix design and every ton of asphalt produced is formulated specifically to meet individual project needs for clients.

For customer clarity and branding of the business, it was decided that the company would merge the name at the Lansing plant with their parent company, Superior Asphalt, Inc. In this way, they will provide a single, well-known and established identity across the company.

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Similarly, an owner who had waived consequential damages was awarded extended financing costs but denied compensation for a higher interest rate in *Roanoke Hospital Association v Doyle & Russell, Incorporated*.<sup>xi</sup> The court explained that extended interest payments were direct damages, but the higher interest rates were consequential damages, and therefore subject to the waiver:

Ordinarily, delay in completion requires an extension of the term of construction financing. The interest costs incurred and the interest revenue lost during such an extended term are predictable results of delay and are, therefore, compensable direct damages... Increases in interest rates are not caused by delays in completion of construction contracts. Rather they

are caused by variable pressures and counter-pressures affecting supply and demand in the money market... For that reason, increases in interest rates are 'special circumstances.'<sup>xii</sup>

Material escalation costs are properly considered consequential damages. In *Gardner Displays Company v United States*,<sup>xiii</sup> a military contractor, supplying latex maps, saw the price of latex soar during a period of government-caused delays. The parties' contract did not contain a waiver of consequential damages, and the contractor sued to recover the increased cost. The court acknowledged that the contractor's damages could be said to have been caused by the Korean War, which triggered the latex price inflation, instead of by the government's delay. But the court

concluded the cause of the material cost increases is not as important as their foreseeability. Because the parties foresaw material price increases, the soaring cost of latex was recoverable as consequential damages.

Finally, most courts agree that an owner's lost profits resulting from a delay in the completion of its project are consequential damages. Because the owner's ability to operate its completed project at a profit depends on other events in addition to its construction, such as its marketing plan, lost profits are properly considered a special circumstance of the owner.<sup>xiv</sup> In fact, a judgment for \$14.5 million against the contractor in *Perini Corporation v Greate Bay Hotel & Casino, Inc.* to compensate the owner for lost profits on a project that completed three months behind schedule is often said to have been the motivation behind writing a mutual waiver of consequential damages into the American Institute of Architect's A201 general conditions, the most commonly used form in the construction industry.<sup>xv</sup>

## B. Waivers of Consequential Damages

Today, most owner-issued construction contracts require the contractor to waive its consequential damages. However, the cases above illustrate the wide variety of costs that can be considered "consequential damages." There is no set definition of them in any state's case law. As one court wrote, "the precise demarcation between direct and consequential damages is a question of fact."<sup>xvi</sup> Because of this, stronger waiver clauses will include examples of the costs that are being released. For example, the Michigan Department of Transportation's ("MDOT") standard specification lists the contractor's consequential damages among the unrecoverable costs in the event of a delay claim. MDOT's waiver includes examples of the costs barred by the clause:

**G. Unrecoverable Costs.** The Contractor is not entitled to compensation for costs not specifically allowed or provided for in this subsection includ-



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ing, but not limited to, the following:

2. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.<sup>xvii</sup>

Contractors seeking to limit their exposure to subcontractors' claims should include similar language in their subcontract forms.

Today most credit applications issued by material suppliers also include a waiver of consequential damages. However, these typically do not define the prohibited costs. This unfortunate trend has resulted in a tremendous volume of litigation over the scope of such waivers, with each case being decided on its unique facts. Parties buying and selling goods who agree to waive consequential damages would be wise to include examples of the costs that are subject to the waiver. More importantly, the parties should

become aware of and understand the risks that they may be exposed to in the event the goods fail to meet contract requirements.

Finally, prime and subcontractors seeking to limit their exposure to an owner's delay costs by negotiating a waiver of consequential damages should identify the costs that are being released. The waiver in the AIA A201 general conditions provides a good model, as it lists the owner's loss of use and lost rent as damages that are subject to the waiver.

### III. What Are Liquidated Damages?

Many construction contracts fix a specific amount of damages an owner may recover in the event the contractor fails to complete the project by the scheduled date.<sup>xviii</sup> Such a provision is generally referred to as a liquidated damages clause because the clause *liquidates*, or makes certain, the damages the owner will recover for the delay. For example, the contract would

stipulate an amount that the contractor would owe for each calendar day past the agreed upon completion date for which work remains incomplete. Parties might consider liquidated damages when the harm is difficult to estimate at the time of contracting.

Michigan law enforces these clauses. However, the liquidated figure must be a reasonable estimate of the actual damages the owner would sustain for the delay.<sup>xix</sup> Liquidated damages that exceed this estimate or that over-compensate the owner will be regarded as a penalty and will not be enforced.<sup>xx</sup> Contractors reviewing – or contesting – liquidated damages provisions should therefore examine the actual costs incurred by the owner before acquiescing to the assessment of them, as this inquiry may support an objection to the reasonableness of the amount. Similarly, the owner should be able to show how it derived the number at the time of contracting.

### A. Public Works Projects

*Continues on pg. 38*

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Of course, if liquidated damages must approximate the actual damages sustained by the owner for delay, one might ask how liquidated damages can be enforced on a public works project in those particular situations where the owner incurs no readily identifiable cost for a delay.

The Michigan Supreme Court addressed this back in 1901 in what has become one of the nation's leading cases on the subject. In *Whiting v Vil-*

*lage of New Baltimore*, the contractor failed to construct an electric railway through the village, which assessed liquidated damages. Even though the village incurred no monetary damages as a result of the contractor's failure, the Court upheld the clause because of the inconvenience suffered by the public. The Court wrote:

It may be conceded that the city, in its corporate capacity, suffered no damages by failure to build the road;

but the contract was made by the corporate officers for and in the interests of the inhabitants....<sup>xxi</sup>

As a result of this case, a public owner need not incur a monetary loss before it can obtain an award of liquidated damages. Modern courts have used the *Whiting* case to conclude the governmental body is a trustee for its citizens. Liquidated damages provisions are the "only method by which the city can obtain anything like and adequate compensation for the loss and damage sustained by the public."<sup>xxii</sup> Indeed, part of MDOT's liquidated damages provision almost repeats this verbatim, as it says a component of a project's liquidated damages provision represents "the inconvenience to the public, maintenance of detours, and other items that have caused an expenditure of public funds due to the Contractor's failure to open to traffic or complete the work within the contract time."<sup>xxiii</sup>

## CONCLUSION

Whether consequential damages and liquidated damages are good or bad depends on a party's perspective. The law is, after all, a two-edged sword. Thus, when entering into a contract it is important to understand the project risks, to negotiate the best deal possible, and to manage the risks actively, acknowledging that the law will impose whatever costs are necessary to provide the innocent party with the full benefit of its bargain – whether that bargain is for liquidated damages, limited damages, or the direct and consequential damages that flow from a breach.

<sup>i</sup> *Corl v Huron Castings, Inc.*, 450 Mich 620 n.7; 544 NW2d 278 (1996); *J.D. Hedin Construction Company v United States*, 408 F2d 424 (Ct Cl, 1969), *Lane v Kindercare Learning Centers, Inc.*, 231 Mich App 689, 692, 588 NW2d 715 (1998) (defining scope of recoverable damages)



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Continues on pg. 50



## Efficiency Production and Zito Construction Work Together on Pipeline Project

By James McRay

In the wake of the Flint water crisis, a huge spotlight has been turned on infrastructure in American, and specifically, the country's miles-long network of aging underground water pipes. While there are new short term efforts to bring fresh water into Flint, plans have been in the works for several years that should provide a long-term solution.

In 2013, ground was broken on the Karegnondi Water Authority (KWA) pipeline, a multi-year water intake pipeline project that will bring raw water 75 miles from Lake Huron west along the I-69 corridor through Michigan's Sanilac, Lapeer, St. Clair, and Genessee counties; including servicing the City of Flint.

The \$285 million project—years in the making—has many parts: a new state-of-the-art water intake facility which bores 6,000 feet into Lake Huron, two water treatment plants, plus three new pump stations. But even with all the peripheries, the KWA pipeline project is just that; a pipeline.

In 2013, Zito Construction, headquartered in Grand Blanc, Michigan, was contracted by the KWA to install 36 inch diameter steel Class 150 pipe along an approximately 14-mile stretch of the main line from Genessee to Lapeer County. That completed in 2014, the Authority again awarded Zito an approximately \$18 million contract to install 68,500 linear feet of much larger 60 inch diameter spiral steel transmission pipe across parts of Lapeer County.

Zito began the second portion of the pipeline in April 2015. With such a distance to cover, Zito is installing extremely long 50 foot joints of pipe. The more than 1,600 jumbo pieces of pipe are being placed in an open cut trench ranging from 5 to 25 feet deep. Because the trench is deeper than 5 feet, a trench protection system is required. And therein lies the biggest challenge for the

veteran underground utility contractor.

### Big pipe, big trench shoring challenge

There are only so many ways to shore a trench and still be able to install pipe 50 feet long, with soil conditions typically being the primary factor driving the choice of trench protection system.

"Ground conditions along the pipeline can best be described as 'sandy to swampy,'" said Jeremy Drielick, Sr. Engineering Technician with Rowe Professional Services Company, the engineering firm responsible for Zito's second portion of the KWA pipeline. "And that about covers it."

"Because of the ground conditions, we knew we couldn't slope the trench and not take out the whole road in some places," said John Zito, President of his namesake company. "If we could have sloped it we might have moved along faster, but sloping or some kind of shoring just wasn't economical. We knew we were going to need a (trench) box. A very big trench box."

### Trench shielding and shoring manufacturer Efficiency Production provides "easy" solution

Even with the trench protection system decided, Zito still faced many challenges. The question still remained, how do you install 50 foot sticks of pipe in a trench box? For help, Zito turned to their go-to source for underground safety-related equipment—Mid-Michigan based Efficiency Production, the nation's leading manufacturer of trench shielding and shoring.

"It's actually not as hard as you might think," assured Mike West, Efficiency Production's Vice President of Engineering. "We've built several custom trench shields in the past exactly for the same purpose, installing joints of pipe 50 feet or longer. The key is designing a

box with enough pipe clearance so the contractor can angle the pipe into the box and under spreader arches."

### Custom trench boxes with hi-clearance arches provide plenty of room for pipe install

Efficiency's solution is accomplished by using two trench shields with custom high-clearance arches instead of spreader pipe on the abutted ends of the boxes.

"The shields we built for Zito, however, are different in that the lead box is so much longer than the trailing box," said West. "What you end up with is a lot of space to get the pipe into the front box and under the arches, and then just enough space in the second box to shield the connection work."

Zito's custom trench shields are a combination of a HDHT12-842 steel trench shield with 12 inch thick sidewalls, 8 feet high, and 42 feet long; adjoined with an XLD-816 steel trench shield with 4 inch thick sidewalls, 8 feet high and 16 feet long. Each box has a hi-clearance arch on one end that are abutted to each other, and the boxes are secured together with shackles for easy pulling through the trench. The opposite end of each trench shield has 9 foot spreaders to match the overall width of the arches.

The result is a trench shield almost 60 feet long with more than 11 feet of pipe clearance; plenty of room for Zito's excavator operator and crew to angle the spigot end of the pipe into the connected boxes and up to the bell end of the installed pipe. The pipe is then tack-welded and heat shrink wrapped on the outside before a welding crew from Utah-based subcontractor National Welding traverses the inside of the pipeline to permanently weld all the joints from the inside.

*Continues on pg. 42*

the industry putting more pressure on itself than is necessary?

WHAT DO YOU THINK?

# MITA MEMBER VOICE: WE WANT YOUR OPINION!

Have you seen a turnaround in commercial and residential work, and is this a market that you see help the industry rebound now and in the future?

As the construction industry rebounds, workforce issues seem to be a major concern. What unique steps are you taking to recruit workers?

A systemic industry-wide issue that we identified a couple years ago has recently been highlighted during a MDOT EEO audit, in which we participated. The construction industry is facing an aging population issue. We need to train and hire a young, diverse generation of men and women. In a recent article in an Electrical Contracting magazine, statistics show in 2010 the average age of a lineman is 54 years old. In 2015, statistics show a decreasing number of applicants to the electrical apprenticeship training program and an increasing number of individuals who drop out once accepted. With this data, less people are applying and even fewer are voluntarily or involuntarily completing the apprenticeship program. It is a responsibility

of employers to promote training and hiring of minorities and women, however there are very few applicants in the apprenticeship programs. The industry and potential applicants could benefit from events in which employers, unions and other organizations can promote the opportunities within the trades.

Andrea Rau  
Rauhorn Electric

I believe that industry should be working on more ways to partner with high schools, colleges & trade schools to promote talent hiring and retention.

Jane Anstett  
Give 'Em a Brake Safety

Safety in the work zones, mainly speed. The work has to be done, and not every job has a barrier wall to protect the workers. We need to highlight the concerns and tell them the penalties for speeding. The industry has to tell the story on how safe they do the work, but need to keep people at safe speeds since they will be frustrated with more work the industry does.

Tom Horton  
Centurion Agency

*Continues on pg. 41*

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It needs to be understood that the lack of investment in infrastructure has far reaching consequences for the economy, as well as investment in equipment, technology and talent. The engineering talent that designed iconic structures and highways is retiring and has not been able to pass on knowledge to the next generation because the projects aren't being designed or built. Structural design experience for long span structures can best be found in Europe and Asia, for instance. Plants capable of manufacturing materials for these structures have also closed.

Theresa Petko  
AECOM

Employment is a major factor in driving economic recovery and sustainability. The contractor, construction, construction materials

and supplier network throughout this state are key ingredients to providing good paying jobs and helping to stimulate and ensure economic growth. MITA and its members are and have been a tremendous advocate of employee development and in offering significant employment opportunities for a diversity of people. I would like to see MITA's upcoming public relations campaign emphasize our investment in employee development and the ongoing opportunity for excellent employment career paths.

Bill Hodges  
Michigan CAT

Highlight how providing safe, clean drinking water is foundational to American standard of living. And of equal importance how collecting, treating and returning waste water to the

ecosystem is instrumental to good health.

Gary Merkey  
Jackson Merkey

I think the general public needs to become more aware of the rapidly deteriorating civil infrastructure, whether it's roads, water systems, sewers or the electrical grid. These systems in general are old and must be maintained, replaced and improved. Funding has to be allocated for this work. We can't expect to make the needed improvements with the current funding. People will have to understand this before governmental agencies can even begin to make it happen.

Ralph Livingston  
Raymond Excavating

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"The box is working well," said Zito. "Our record is 11 sticks of pipe in one day. Yeah, the box is working very well." Zito is anticipating being finished installing this section of the pipeline by June 2016.

#### **Zito employs fleet of heavy equipment for project**

To wrangle both the big pipe and the big combined trench box into and through the trench, Zito has a fleet of equipment on site, including:

- Cat 345D, Cat 349EL, Cat 375L, and 390F excavators;
- Cat 966G and Cat 950G front loaders;
- A Volvo A35G dump truck;
- John Deere 450J and Cat D3 bull dozer;
- A couple of smaller trench boxes;
- Dewatering equipment from Mersino Equipment Rental; and
- A couple of Efficiency Production Stone Mizer bedding box

The new KWA pipeline will supply treated and untreated water to the municipalities of the region, industrial customers, agribusinesses, rural agriculture developments, and residential commercial

light and heavy manufacturers. The boundaries of the water supply will encompass over 2,400 square miles and over a half million people.



*Zito is installing 50 foot long sections of 60 inch diameter steel spiral-weld pipe 13 miles along the main transmission line of the KWA pipeline project. The boundaries of the new water supply will encompass over 2,400 square miles and over a half million people.*



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# MITA Staff Member Receives Award

The Michigan Society of Association Executives (MSAE) announced the four winners of their 2016 Rising Leaders Award this week, and we are pleased to announce that MITA's Outreach Coordinator, Mariam Robinson, is among the winners.

MSAE selects winners each year who exemplify the leadership necessary to succeed in the association world. MSAE's Rising Leaders are under the age of 35 or are within their first five years working in the association or hospitality industries.

MITA is proud to see Mariam's hard work and dedication recognized by others. Way to go, Mariam!



Mariam Robinson

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dollar project, their perspectives shift, and they gain a deeper understanding of the magnitude of what the industry is trying to accomplish for the benefit of the entire state.

As a MITA member, this is an excel-

lent opportunity for you to shine and to demonstrate on your own terms just how important the work that you do is. MITA members are cornerstones of the Michigan economy, and the legislature, as well as the entire state, should be

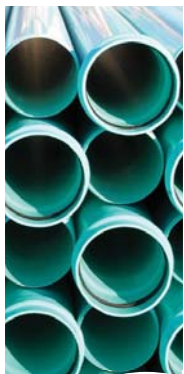
aware of that. The work that you do creates jobs, makes traveling safer, keeps drinking water cleaner, allows food to be delivered on time and ensures that emergency personnel can do their jobs efficiently and without added danger. These are important aspects of everyone's daily lives, and your role in that shouldn't be taken lightly.

Take advantage of the opportunity to showcase your work and how it is making Michigan great again. If you are interested in hosting a legislative site visit, please contact Mariam Robinson, MITA Outreach Coordinator. She can be reached at [mariamrobinson@mi-ita.com](mailto:mariamrobinson@mi-ita.com) or at 517-347-8336. She will handle all logistical details, as well as the task of inviting legislators to your job site on the pre-arranged day and time. Don't hesitate to sign up, because we want to shine a spotlight on your hard work this summer!

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## TMAW is Also the Vehicle Driving ARTBA's Legal and Regulatory Advocacy Programs

By Pete Ruane, ARTBA president

**B**eware the ideoles of May—plus a day.

As May 16 drew near, ARTBA was watching for a potential surge in regulatory activity by the Obama Administration. Federal regulations not finalized by that date are subject to the Congressional Review Act and could be struck down by the next Congress or president in January 2017, according to a February report by the Congressional Research Service. The deadline could further prompt the Democratic Administration to use the regulatory process to achieve policy goals that are objectionable to the Republican-controlled House and Senate.

### Silica Regulations

There are some signs that an uptick in regulatory activity is already underway. One example is the March 24 release of the Occupational Safety and Health Administration's (OSHA) rule regarding worker exposure to crystalline silica. While OSHA contends the regulations are necessary to improve worker protection from exposure to silica dust, ARTBA has warned the agency's proposal is flawed and threatens the safety of highway crews and motorists.

In both regulatory comments and face-to-face meetings, ARTBA has explained that OSHA used both outdated data and a faulty economic analysis in reaching the new

standard. Specifically, OSHA relied on studies from 1930 - 1960, thus ignoring the successes of modern technology that have dramatically reduced silica exposure in work zones. ARTBA also stated the agency may be doing more harm than good by requiring workers to wear respirators in hot environments, potentially exposing them to heat stroke and stress.

A second indication of increased regulatory activity is the Equal Employment Opportunity Commission (EEOC) proposal to increase reporting requirements for numerous employers, including contractors working on federal-aid construction projects. Currently, all private contractors with 100 or more employ-

ees working on such projects must report data reflecting the ethnicity, race, and gender of their employees through the "EEO-1" form. EEOC's Feb. 1 proposal would require those employers to report salary and number of hours worked for employees as well.

The proposal raises numerous issues, including anticipated administrative and project costs associated with this additional regulatory burden. Other areas of concern may include the lack of context for these salary records, since the required reports will not include information on the employees' seniority, education level or performance. Finally, because of recent large-scale breaches

*Continues on pg. 51*







## Partnership Announcement

**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.

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- Access to 700 dedicated remarketing professionals with net returns up to 10%
- Savings through negotiated incentives on 2017 model year vehicles

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ii *Ruggles v Buffalo Foundry & Mach. Co.*, 27 F2d 234, 235 (1928); *Performance Abatement Services, Inc. v Lansing Board of Water and Light*, 168 FSupp2d 720, 741 (2001)

iii See, *Hadley et al. v Baxendale et al.*, 9 Exch 341, 355; 156 E.R.; 1854 WL 7208 (1854)

iv id

v Restatement (second) of Contracts §351, comment b.

vi *Chestnut Hill Development Corporation v Otis Elevator Company*, 739 FSupp 692, 701, (D Mass, 1990)

vii *Restatement, supra, Applied Data Processing*, at 509.

viii *Kewin v Massachusetts Mutual Life Ins. Co.*, 409 Mich 401, 295 NW2d 50 (1980) (citing rule of *Hadley v Baxendale, supra*), *Performance Abatement, supra*.

ix See Restatement (second) Contracts, §347, comment c ("The terms used to describe the type of loss are not, however, controlling, and the general principle is that all losses, however described, are recoverable.")

x *Synsil Products Inc v Wayne Brothers, Inc.*, USDC South Carolina Case No. 06-2415; Slip Copy 2007 WL 3274741.

xi *Roanoke Hospital Association v Doyle & Russell, Incorporated*, 215 Va 796; 214 SE2d 155 (1975)

xii *Roanoke* at 215 Va 796, 802 – 803.

xiii *Gardner Displays Company v United States*, 171 Ct Cl 497; 346 F2d 585 (1965)

xiv See e.g., *Perini Corporation v Grete Bay Hotel & Casino, Inc.*, 129 NJ 479, 498, 610 A2d 364 (1992) overruled on other grounds by *Tretina Printing, Inc. v Fitzpatrick & Assoc.*, 640 A2d 788, 135 NJ 349 (1994) (awarding owner \$14.5 million in lost profits as consequential damages)

xv Dehmler, *Mutual Waiver of Consequential Damages: The Contractor's Perspective*, 18 Construction Law 4, 7 (Jan, 1998).

xvi *KSW Mechanical Services v Johnson Controls, Inc.*, 992 FSupp2d 135, 146 (ED NY, 2014)

xvii Michigan Department of Transpor-

tation 2012 Standard Specifications for Construction, §109.07.G.2

xviii *Wickwire et al, Construction Scheduling Preparation Liability & Claims*, §14.03

xix *In re Construction Diversification, Inc.*, 36 BR 434, 436 (ED Mich, 1983).

xx Id.

xxi *Whiting v Village of New Baltimore*, 127 Mich 66, 71; 86 NW 403 (1901)

xxii *Melwood Construction Corp. v State of New York*, 126 Misc.2d 156160; 481 NYS2d 289 (1984)

R. Edward Boucher has been a construction lawyer for over 20 years representing owners, contractors, subcontractors, and suppliers on a wide variety of legal issues. To contact Ed, email him at [rboucher@kotsangster.com](mailto:rboucher@kotsangster.com) or call Kotz Sangster & Wysocki P.C.'s Detroit Office at 313-259-8300.

Jacqueline C. Kaltz is a construction and commercial lawyer with over five years of hands-on experience in the construction industry. To contact Jacqueline Kaltz, email her at [jkaltz@kotsangster.com](mailto:jkaltz@kotsangster.com) or call Kotz Sangster & Wysocki P.C.'s Detroit Office at 313-259-8300.

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of confidential data entrusted to the federal government, this collection of proprietary salary information may raise security and privacy concerns also.

#### **Waters of the U.S.**

Finally, federal litigation continues over one of the largest regulatory efforts under the current administration, the efforts of the United States Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) to expand the current definition of “waters of the United States.” Currently, federal jurisdiction extends only to “navigable” waters and adjacent wetlands, however, under a new EPA rule the government’s reach would extend to all waters of the United States.

For transportation construction, this raises a disturbing scenario where federal jurisdiction would reach roadside ditches as soon as they fill with water. This, in turn, could lead to increased permitting burdens and opportunities for project opponents to stop transportation improvements through frivolous litigation. ARTBA and other trade associations and states have sued to stop the rule from being implemented. As this issue of “Transportation Builder” goes to print, the rule is stayed nationwide while the litigation proceeds. It could take years to resolve the issue.

With these and other regulatory efforts still underway, it is important to recognize the role of ARTBA’s “Transportation Makes America Work” (TMAW) program in helping to protect the market. TMAW contributions directly help support ARTBA’s efforts to litigate against federal regulatory overreach, as well as our efforts to join other associations in coalitions who seek legislative relief when federal agencies attempt to enact burdensome rules.

While May 16 is a significant date for regulatory activities in this Administration, other rules and proposed rules will continue to be issued on

May 17 and thereafter. ARTBA always keeps a close eye on this activity. We take pride in ensuring the voice of the transportation construction industry is heard during all regulatory discussions. Your generous TMAW donations help immensely in this effort.

To those who have given to TMAW:

Thank you for your generosity and support! If you have not yet made a TMAW donation – please consider doing so and helping ARTBA continue to protect our industry.

For more information, contact [ngoldstein@artba.org](mailto:ngoldstein@artba.org).

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Mike Kline of Consumers Concrete and Matthew Smith of Clark Hill were all smiles during the MITA European Hunt, which was held at Dunn Creek recently as a DREW Foundation fundraiser.

# 2016 CALENDAR OF EVENTS

## JULY

1# -2'Ä.7A?>Ä+>:8Ä/BA:=9  
Twin Lakes Golf Course, Oakland  
28 - 31 -2'Ä1B<<7?Ä)>=87?7=57  
Crystal Mountain, Thompsonville  
"9% -2'Ä(>4?6Ä.77A:=9  
Crystal Mountain, Thompsonville  
9:00 a.m.

## AUGUST

"\$ -2'Ä7=A74:Ä+>:8Ä/BA:=9  
Eagle Eye Golf Club, East Lansing

## SEPTEMBER

" -2'Ä(>4?6Ä.77A:=9Ä  
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Palazzo Grande, Shelby Township  
5:30 p.m.

## DECEMBER

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9:00 a.m.  
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11:30 a.m.  
!# 37@A7?>Ä +>:64CÄ04?AC  
The Waldron Public House, Grand Rapids  
(formerly McFadden's)  
11:30 a.m.  
!\$ .7A?>Ä +>:64CÄ04?AC  
Somerset Inn, Troy  
11:30 a.m.



For more information on MITA events  
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# 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.

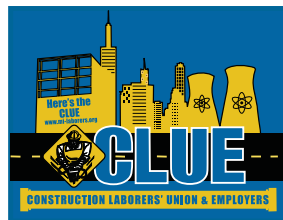


Kimberly Dohn completed the course recently and commented:

"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](http://www.mi-laborers.org)



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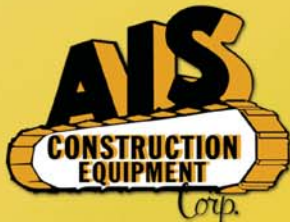
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