

SUMMER 2011

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CROSS SECTION

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MICHIGAN LABORERS' TRAINING & APPRENTICESHIP



Grant Charlick, an apprentice program graduate out of Laborers Local 1076 and an employee of Skanska, USA, considers MLTAI and the Construction Craft Laborer apprenticeship program an important part of his professional growth.

Charlick stated, "Having passed a college calculus class I expected that there was very little MLTAI could teach me about math, but with their unique approach to teaching I learned how the mathematic principles I learned in college apply in the real world. College didn't teach me that. Also, the wide variety of subjects taught at MLTAI as well as the variety of experience I've gained as a result of working for a general contractor has prepared me to take advantage of advancement opportunities that could come my way in the future."

INSTITUTE

Michigan Laborers' Training and Apprenticeship Institute provides training to apprentices and journey persons alike. Our instructors have a wide range of field expertise to provide our members with top-notch training using cutting edge technology. Our state-of-the-art training facilities located in the cities of Wayne, Perry and Iron Mountain accommodate on average 2,500 members annually. Courses range from 2 hours to 120 hours in length and include environmental training, construction training, life skills courses as well as on-line courses.

Graduates reaching Journey worker status can be granted college credits at virtually all of Michigan's community colleges.

MLTAI and the Construction Craft Laborers apprenticeship program produce Laborers skilled in their field, dedicated and trained. When Grant was asked what it takes to be a successful Laborer he said, "You have to show up every day in the right state of mind, with a proper attitude and be dependable, punctual and trustworthy. You have to bring your "A" game every day".

Union wages and benefits are among the best in the nation. If great money and benefits are of interest to you, contact a Laborers Local Union in your area or contact Michigan Laborers Training and Apprenticeship Institute.



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Letters to MITA

Dear Keith:

Saw you on Channel 4 news this morning and wanted to say thank you for your efforts in getting the MITA message out. The public in general seems to take our roads, bridges and infrastructure for granted as long as it doesn't affect them personally. Improving and maintaining our roadways will always be a work in progress, and the public needs to be constantly made aware of the requirement for good roads. Keep up the good work.

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Underground Focus

In anticipation of Gov. Rick Snyder's special message on infrastructure in October, MITA has been busy raising the public and political awareness of Michigan's deteriorating systems.

While the ongoing state funding initiative for highways naturally dovetails into this discussion, MITA has made a conscious decision to turn up the heat on policymakers in the area of failing water and sewer systems.

In the spring, MITA announced a "Dirty Dozen" list of counties that had the most sewage discharges into the rivers, lakes and streams. To the surprise of many, state records indicated that municipalities were responsible for dumping 15 billion gallons of sewage in the first four months of the year.

The media coverage was overwhelming, with dozens of radio, television and newspapers covering the story in depth. It also created an ongoing awareness in the media that inadequate sewer infrastructure was continuing to be exploited by the ongoing spring rains.

In addition to public awareness, MITA is working behind the scenes to develop innovative public policy ideas to upgrade Michigan's underground infrastructure. Director of Legislative Affairs, Keith Ledbetter, was appointed to serve on the State Water Pollution Control Revolving Fund Advisory Committee. The advisory committee was created at the urging of MITA last year and mandated by public act. The committee is doing an intensive evaluation of state and local policy on sewer infrastructure and is required by law to issue their final report by August 1, 2011. The committee has been in contact with the governor's advisors who are crafting the governor's infrastructure message and expect that many of the recommendations will be part of the governor's plan.



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Member Profile

POCO, Inc.



(Left to Right) Cheryl Perry, Ron Sternhagen, Paul Kelly, Skip Powelson, Frank Powelson, John Cleaver, Becky Steinmayer, Tom Brown

Here's some little known facts about Poco, Inc., of Canton, a manufacturer and distributor of traffic control signs for the heavy construction industry:

1. Company President Frank Powelson restores vintage British motorcycles.
2. Frank's father, the late Murray Powelson, founded the company in 1964 with a friend by the name of Jack Coler. POCO got its name from a combination of Powelson and Coler.
3. POCO is the oldest company of its kind in Michigan and one of the oldest in the United States.
4. Company Vice President Murray Powelson, Jr., is Frank's nephew and he lives right next door to POCO.

Outgoing and energetic Frank is proud of the new POCO building, which was completed in 2007 on a 60-acre site. The 30,000-square-foot facility includes offices and a manufacturing plant for 50 peak season employees, many of whom have been with the company for over 20 years and are thought of as family. More POCO trivia:

"We are the only independently owned company in the industry that did the NCHRP 350 (National Cooperative Highway Research Program) metal sign stand crash test, passed the test, received a patent for its design, and now sells the sign stands to counties, townships and cities," Frank said.

During the winter months, when staff are repairing equipment and restocking supplies, they also design new equipment, such as an automatic barrel washer, that looks like a mini car wash. The Glarinator 6100 helps install glare screen on temporary concrete barrier at a speed of 20 feet per minute, and the barrel plow relocates drums

(channelizers) from the roadway to the shoulder at a speed of 15 MPH. Other interesting equipment that is used out in the yard is the sand bagger that fills sandbags that are used to secure traffic control signs in place. The equipment and area is affectionately labeled "POCO Beach," and among the current operators is Frank's daughter, Autumn, who recently joined the company and is learning about the business from the ground up. (Frank's high school sweetheart wife of over 30 years, Nancy, is not involved in the business.)

All the equipment POCO has designed and the traffic control signs they manufacture – with as many Michigan made products as possible – have been put to good use through the years on many high profile projects. To name-drop just a couple from 2009: the Gateway entrance to Canada and the "Dodge the Lodge" project. In addition to road construction project work, POCO, under the leadership of Jeff Anderson, handles signage and barricading necessary for special events, such as car races at the Michigan International Speedway in Brooklyn and the Chicago Land Speedway. Past events include the Super Bowl and the All-Star Baseball game in downtown Detroit.

In addition to POCO trivia, unique equipment, and exciting car races, there are the stressful realities of the business, namely specifications. To meet this challenge head on, Frank serves on several committees, including the MITA/MDOT Workzone Operations Committee, and the MITA Traffic Control and Pavement Marking Committee, in addition to the industry wide Bi-Annual Workzone Safety Committee. A sudden change in material requirements can be a great detriment to the company's bottom line, Frank said. For example, if MDOT suddenly changes the degree of reflectivity of material used on road signs, then the materials that were previously purchased can no longer be used because they are not up to spec. This is not good, which is an extreme understatement of the fact.

"When the spec on sheeting is upgraded, we end up having to sit on inventory, which has no place to go," Frank emphasized. "MITA has definitely opened up the lines of communication with MDOT regarding specs."

Frank credits MITA's Director of Technical Services Doug Needham, P.E., with never dodging a phone call when it comes to specifications issues, and Glenn Bukoski, P.E., Vice President of Engineering Services, has been helpful as well.

Frank's relationships with MITA, as well as other MITA members, who may or may not be competitors, in addition to state and local officials, have all played a part over the years in the success of POCO. "It is all about relationships," Frank said. "You can quote me on that one!"



(Left to
Right)
Autumn
Heaton,
Troy Cooley



Tony Ritthaler

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Associate Member Profile



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Brothers Jimmy and Dan Bell take great pride in the operation of Bell Equipment, headquartered in Lake Orion. Jimmy, serving as the company's President, represents the third generation of family ownership. Bell Equipment provides sales, service, parts and rentals of street sweeping and other equipment for the construction industry and municipalities throughout Michigan and Ohio.

Customers include companies that provide street sweeping for a contractor who is handling a large road construction project, for example, while other customers include contractors who choose to buy the necessary equipment directly from Bell Equipment and handle the work themselves. The company also sells their products and services to city and county governments, and to contractors who serve them. There are 21 full-time employees covering the entire state of Michigan, and five employees covering nearly the entire state of Ohio.



The history of Bell Equipment Company began in 1951 when Jimmy's grandfather, Dorman Bell, became the exclusive dealer for Elgin Sweeper Company in the State of Michigan. Shortly after this, Bell was appointed as the Leach Refuse Equipment dealer and quickly became recognized as the premier municipal and refuse equipment house in Michigan. A small shop was opened in the Detroit, which provided sales, service and parts support.

In 1965, Bell Equipment built a new facility in Troy, and Dorm's son, Jim, joined the company. Jim quickly moved up in the service, parts and sales ranks and eventually became the company's first sales manager.

When Dorm Bell retired in 1979, Jim became president and owner of the company. Jim's son, Jimmy, joined the company in 1989 as an outside parts sales representative. He bought the company from his father in 2000, and his brother, Dan, joined the company in 1999.

In 1996, Bell Equipment Company moved its main offices to a new 20,000 square foot sales, service and parts facility in Lake Orion. The facility includes eight drive through service bays, a machine shop and wash bay. The two-level parts room maintains an inventory of approximately \$1 million in replacement parts. A large outside yard allows for stocking all types of equipment available for rental or a quick delivery.

"Today, we employ 26 individuals with an average of 25 years experience in the industry," Company President James (Jimmy) Bell said. "We represent over 20 different manufacturers of environmental equipment. Elgin Sweeper, Addco, Heil Environmental, Epoke and Wausau-Everest are just a few of the quality manufacturers we proudly represent."

To help build on 60 years of successful operation, Bell Equipment is also proud to be a member of MITA.

"Being a member of MITA allows us to surround ourselves with key decision makers, keep up to date on the trends and challenges within the industry, and to network with our target market," Jimmy said. "The major challenge for the industry right now is lack of funding and a decrease in state revenue sharing which typically provides for a substantial amount of a local municipality's annual operating budget. The combination of decreased revenues and the decline of both commercial and residential property values have made this a challenging economy for most of our governmental customers and the contractors who serve them. The economy will stabilize and we are already seeing positive trends in certain sectors. No matter what the economy is doing, one thing is certain: we will continue to follow our mission statement and provide our customers with superior equipment, service, and support."

Bell Equipment Company

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With online communication continually evolving into a dominant point of networking, the capabilities of the MITA website, www.mi-ita.com, are expanding. The site features a growing number of great time-saving tools designed to simplify member business operations. A good example of this is the MITA Jobs Resource Center.

The MITA Jobs Resource Center is the go-to place for advertising open jobs, reviewing posted resumes and downloading industry standard employment applications. This great communication tool makes it easier for the membership to connect with the available job force and offers a quick and efficient means of advertising employment opportunities. One of the key features of the job posting section is that it is free of charge to MITA members and available for viewing by hundreds of potential applicants/ companies.

Getting started is easy! Simply log into the MITA website, select the "Jobs" option (located in the drop down "Members" menu) and select the desired link. If you have any questions, feel free to call the MITA office at (517) 347-8336.



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Mike Nystrom

Relentless Positive Action

As we look back on the first six months of 2011 and forward to the next 18 months of the current legislative sessions, there is more and more hope at MITA that the major shift in the state leadership will in fact bring positive change for the future to not only our industry, but the state of Michigan as a whole.

With infrastructure funding as our top priority, we finally see the solid leadership Governor Rick Snyder has brought to the Capitol and that our goals may actually be aligned with that of the current administration. MITA staff continues to work to aggressively lobby the Legislature, so that there is full recognition of the needs with regard to our transportation network and underground infrastructure.

At his address to the MITA membership on April 20, Governor Snyder hinted at some of his priorities and how they might affect the heavy construction industry as he talked about his administration's motto of "Relentless Positive Action." That motto is similar to the path that we at MITA have followed in this six-year effort to find increased infrastructure investment. We have stayed positive in our messaging, we are willing to give others all of the credit, and we constantly recognize that we must be willing to adjust our goals.

The governor will roll out an Infrastructure Message/Plan in October, which will hopefully outline both short and long-term goals for the future of transportation investment in Michigan. If his current list of accomplishments is any indication, our industry should be excited about this fall message.

The many successes thus far have a positive impact on our industry including a complete overhaul to the Michigan Business Tax that should ultimately offer significant relief to most MITA members. Also included is a reduction in unemployment insurance benefits, which translates into savings long-

term for construction companies in an industry that has historically carried a large percentage of the unemployment insurance burden. Finally, by having the budget process done by June 1, MITA staff can now focus in on many policy issues that have been on the back burner for many years such as: sales tax relief, trucking regulation reform and other areas that will help to promote and protect the heavy construction industry.

For those MITA members who have begun to step out and interact with their elected officials, each of you deserve a big "THANK YOU"! In my 21 years of working in the construction industry, I have never seen a more concerted effort by representatives of the industry to step up and build relationships with policymakers not only here in Lansing, but in Washington as well.

Our most recent MITA Washington D.C. Fly-in had more contractor representatives participating than we have had in the last 10 years. The reports and updates we continually get at the MITA office regarding legislative contacts being made by members of the association is becoming almost a daily routine. The MITA grassroots network continues to expand and can only help our industry in the long-term. If you have yet to get involved, please strongly consider doing so as an investment in your company's future.

MITA staff continues to aggressively represent the interest of the industry, while at the same time we continue to change our tactics with the times to ultimately find success in those efforts that are so important to our industry; in other words, we continue to follow the path of Relentless Positive Action!

If you have questions regarding the MITA legislative activities, or would like to get more involved, please contact Mike Nystrom at mikenystrom@mi-ita.com, or call him at the MITA office 517-347-8336.

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Guess what? OSHA 10 and OSHA 30 classes are not required training by MIOSHA. It seems that many have forgotten that MIO-SHA takes precedence over OSHA in Michigan. Many owners and general contractors are placing an inordinate amount of requests on contractors that just don't make sense by forcing training requirements on contractors, via contract, for types of work they don't perform or are not exposed to. One member that performs pav-

ing was recently required to perform an OSHA 30 for a job in Michigan. By rough estimate I believe that only one third of the training would apply to the work they performed. Another member that performs bores was also recently required to take an OSHA 30, and I believe a similar amount of material applied to the work they performed. OSHA 10 and 30 courses are a roller approach to training. What classes like this do is take contractors away from training on their core exposures by occupying numerous of precious training hours to train on topics that have no bearing on the work that contractor performs. UGH!

However, this seems to be the wave of the future; everyone just seems to chug along, members want to work and don't like to start jobs

Continues on pg. 38



Rob Coppersmith

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Glenn Bukoski, P.E.

Prevailing Wage – 2011 Update

Although MITA and others have conducted a considerable amount of formal training on prevailing wage compliance over the past six years and the industry has grown to be much more knowledgeable about the requirements of prevailing wage provisions, I believe it is important that we remain focused on a few noteworthy topics on this subject.

Truck Drivers

MITA efforts to convince the leadership of the Department of Licensing and Regulatory Affairs (formerly the Department of Labor and Economic Growth), of the need to establish consistent rule interpretations between the federal Davis-Bacon provisions and the state prevailing wage provisions as they relate to truck drivers have yet to bear positive results.

Until we have consistent interpretations, we are forced to abide by, and be confused by, two sets of rules that are drastically different concerning truck driver time covered by prevailing wages. The most significant difference being the lack of recognition of the “site of work” and the “di minimus” criteria by those interpreting state prevailing wage law. The U.S. Department of Labor (USDOL) recognizes both of these definitions as the determining factors for truck driver time that may be covered by federal Davis-Bacon wages. State interpretations of prevailing wage law suggest that truck driver time spent off the site of work (driving to and from the site or work, and off-site travel time to load or unload materials) is covered and subject to state prevailing wages.

MITA members are reminded that on fed-



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erally funded projects material supplier truck driver time driving on the site of work (between the POB and the POE), and time spent sitting in a queue on the site of work waiting to unload or load, may add up to be more than a "di minimus" amount of time (defined as 20 percent of the workweek), and thus that time would be subject to the Davis-Bacon prevailing wage. As the federal regulations hold the prime contractor ultimately responsible for prevailing wage compliance at all tiers, some documentation concerning material supplier trucking activities on the site of work is advisable to refute non-compliance allegations. Keep in mind that any truck driver whose work is dedicated to a specific site of work must be paid prevailing wage for all time spent performing work on that project.

State Prevailing Wage Rate Schedules

If you have a state prevailing wage project you, will note the "road builder" state prevailing wage rate schedules have a new format and look that started in 2010. Different from previous schedules that published an "aggregate rate" (base wage plus fringes) for the straight time, time and one-half, and double time scenarios, the new formatted schedules publish the wage and fringe separately for each of those time scenarios.

One question we often get about the published fringe rates is why, for some trades, the overtime fringe rates are different than the straight time fringe rates. The answer is that for those trades that have a funded vacation and/or holiday fringe, their collective bargaining agreements likely require that the premium time multiplier be applied to that vacation and/or holiday fringe in the overtime scenario.

New Federal Wage Decisions

As you may recall, the USDOL initiated a national wage survey in 2003 for the purposes of updating the federal prevailing wage decisions. The outcomes of this lengthy process have started to be known

with the recent publishing of the updated "building" and "heavy" wage decisions. In reviewing those updated wage decisions, MITA and some of the local trade organizations noted a very disturbing trend. In the "heavy" (underground) decision, we would have obviously expected the wages of the MITA negotiated agreements or other local wages to be the prevailing wages here in Michigan. Unfortunately that did not turn out to be the case. The USDOL has indicated that for the sole purpose of "simplifying the process" they have adopted a policy of only recognizing collective bargaining agreements negotiated by national organizations, and thus have selected the Associated General Contractors of America (AGC) negotiated rates in the "heavy" wage decision. MITA, the Operating Engineers, and the Laborers are aggressively working on formal appeals of the new wage decisions with the goal of getting the "national organizations only" policy reversed.

In closing, we remind every member to remain attentive to the wage decisions and wage rate schedules that are incorporated in the projects you are bidding. As you can see changes are happening at both the federal and state levels, and an undetected error in a federal decision or state schedule could be costly to you.

An Oklahoma experience we don't want to repeat here in Michigan happened recently where the Department of Transportation was forced to reject the bids on millions of dollars of construction because of a mix-up with the wage rates incorporated in those projects. We encourage you to routinely review the wage decisions and schedules in the projects you are bidding and report any inconsistencies you find to us. We can only work on correcting errors when we know about them.

To contact Glenn Bukoski, P.E., e-mail him at glennbukoski@mi-ita.com or call 517-347-8336.

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Director of Safety & Workforce Development



Patrick Brown

Start Planning Fall/Winter Training

The 2011 construction season is more than half over, and it's time to start planning for fall/winter training. MITA is always looking for new ideas and the best way to get workers trained. I am proud to say that many MITA members took advantage of the training opportunities made available. Many general contractors are requiring workers to be OSHA 10 and 30 hour trained, and MITA has seen a major uptick in OSHA outreach training. Although OSHA classes are not required by MIOSHA, an owner or contractor can make it a requirement. The OSHA 10 and 30 hour classes are a good starting point for employers and employees alike, but ongoing training and refreshers are what keep people safe.

When is the last time your company updated its safety and health program? Some of you are probably saying what and why. Well, this is the document that tells workers what to do and how to do it. There is not one MITA member that should have less than a 20-page safety program.

In fact, MITA has generic programs available to its members to use as a starting point. A safety program is one of the first things a MIOSHA safety officer asks for when they come on to a job. They want to know if you are following the rules that you have put in place as a company. This brings up another question. Are your employees familiar with your company safety program? Unfortunately, I have been finding that most are not. I recommend taking parts of your safety program and using it for tool-box-talks. Another tool is the job site analysis (JSA). On the job training is one of the most effective training methods and often overlooked. JSAs serve as a reminder to the entire crew as to what hazards or potential hazards might be encountered and are available on the MITA website.

MIOSHA has applied for federal funds to support night and weekend overtime inspections. So, if you think you can work differently after five o'clock, think differently. As I mentioned earlier, many MITA members took advantage of many training opportunities offered. The best way to measure how effective the training was is to schedule a MITA job site inspection. A MITA representative will come to the job and go over all the things that a MIOSHA safety officer would, without the stress or cost. A full report with color photos will be sent to the employer upon completion. Contact the MITA office (517) 347-8336 today to schedule your inspection.

*Part 10 (Lifting and Digging) Update:
The following information has been provided directly from MIOSHA.*

STATUS OF MICHIGAN ADOPTING FINAL FEDERAL OSHA CRANES AND DERRICKS RULES Revised June 7, 2011

Federal OSHA's Final Rule on Cranes and Derricks in Construction became effective November 8, 2010. MIOSHA continues to work as expeditiously as possible to complete promulgation of revisions to the Michigan CS Part 10 standard to be "at least as effective" as the

Continues on pg. 38

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Emergency Action Plans (EAPs)

Before you get started:

There are five basic safety tips that apply to the entire heavy construction industry. If you practice these five tips, you could make a difference.

- **KNOW YOUR JOB.**
- **BE ALERT.**
- **EXPECT THE UNEXPECTED.**
- **USE GOOD JUDGEMENT**
- **ALWAYS THINK SAFETY.**

These Tool Box Talks have been designed to include all of the information your company should be able to include in a five minute session. MITA suggests that you document this activity with the sign-in sheet that has been provided and keep it on file for future reference.

OSHA's Emergency Action Plan standard (found at 29CFR§ 1926.35) requires a construction company to have a written emergency action plan (EAP) if: A. It has at least eleven employ-

ees; B. Does not already have current written emergency action plan; and C. Falls under a particular MIOSHA standard that requires one, including any one or more of the following:

STANDARD AND PARAGRAPH CITATION	NAME
1926.64	Process Safety Management of Highly hazardous Chemicals (see chapter on this topic in this manual under the title Process Safety Management)
1926.65	Hazardous Waste Operations and Emergency Response (HAZWOPER)
1926.1117(i)	Vinyl chloride (if present in any quality as a liquid or compressed gas. EAP required)
1926.1127(h)	Cadium (if present in any quality,EAP required)
1926.1144(i)	1, 2-dibromo-3-chloropropane (DBCPO (if present in any quantity, EAP required)
1926.1145(i)	Acrylonitrile (if liquid present in any quantity, EAP required – see Subpart Z chapter for information on written plans associated with this regulation) 1926.1147(h) Ethylene Oxide (EtO) (for each workplace where there is the possibility of emergency – see Subpart Z chapter for information on other written plans associated with this regulation)

The written emergency action plan, simply, is the written record of what your company does in emergencies. It should address emergencies that the employer may reasonable expect on the work site. Examples are: fire, toxic chemical releases, floods, etc.

The plan should at minimum, include the following elements:

- Purpose: A statement of the plan's purpose.
- Emergency escape procedure and assignments: The use of floor plans or work site maps which clearly show the emergency escape routes should be included in the emergency action plans.
- Critical operations procedures: To be followed by employees who remain to operate critical operation before they evacuate.

- Employee head count procedures: Procedures to account for all employees after emergency evacuation has been completed.
- Rescue and medical duty assignments: Rescue and medical duties for those employees who are to perform them.
- Fire and emergency reporting procedures: Preferred means of reporting fires and other emergencies.
- Responsible person list: Names or regular job titles of persons or departments to contact for further information.
- Types of emergency evacuations: To be used in emergency circumstances.
- Alarm system: The employer must establish an employee alarm system which complies with § 1926.150(e).

Your employer is an equal opportunity employer and as such welcomes applications from qualified female and minority applicants.

Director of Legislative Affairs



Keith Ledbetter

Legislature in Overdrive to Address Many Long-Standing Issues

In this column at the beginning of 2011, MITA staff predicted a topsy-turvy legislative session this year because of the significant ideological shift and massive turnover during the elections. With over 60 new legislators and one-party control of the legislative process, there is little perceived need for the majority party to compromise on core issues and few obstacles are in their way to slow progress.

The Republican-led Legislature is conducting business at a frenzied pace now that they have balanced the state budget and revamped the state's tax code. MITA strongly supported the successful elimination of the Michigan Business Tax (HB 4361-62) in favor of a six percent profits tax for "C" corporations. Many construction businesses will see a sizeable reduction of

their tax liability, thanks to changes made by state policymakers this year.

With these financial major issues now behind them, policymakers have an opportunity to tackle other priorities on individual legislators' wish lists.

MITA testified in support of legislation (SB 351) that would earmark a portion of the state sales tax on fuel to roads. Currently none of this money is directed to roads. The bill unanimously passed Senate committee. Committee passage sets the stage for a larger debate on reprioritizing existing state revenues to upgrade Michigan's infrastructure without requiring a tax increase.

Legislation to build the New International Trade Crossing (SB 410-411) has been debated recently in Senate committee and throughout



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the media for months. The opposition from certain members has been strong, but MITA believes this would be a tremendous shot in the arm for the industry. The legislation allows for private companies to bid on a public-private partnership to build, operate and maintain a new multi-billion dollar border crossing bridge. As part of the financing, Canada has agreed to provide \$500 million to build and upgrade adjacent infrastructure in Michigan. The bill faces an uncertain future.

MITA has also been working on a bill that would allow sales taxes on conduit or fitting products used in the collection and distribution of water or sewer to be paid on a quarterly basis rather than on a monthly basis. This bill (SB 118) is being supported by MITA and is expected to be signed into law by the publication date of this magazine.

Legislation also expected to be signed into law by publication date is a ban on Project Labor Agreements on public works projects (SB 165). As of this writing, the bill received final approval in the state Senate and is awaiting action in the House.

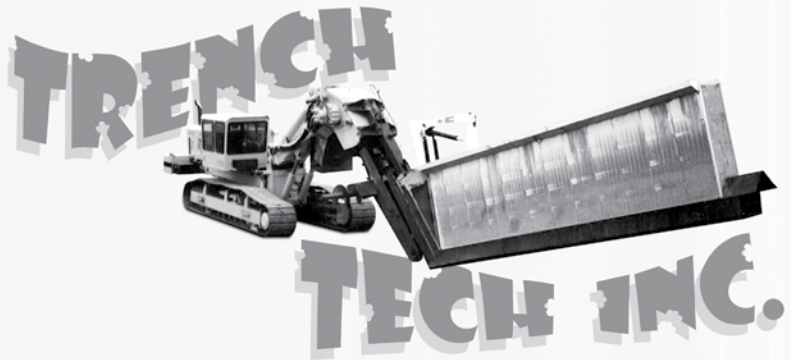
Other bills being considered are:

- HB 4746 and SB 470 that call for relaxed local zoning ordinances for aggregate pits.
- HB 4224-26 and SB 95-97 call for the elimination of prevailing wage on public work. MITA opposes this legislation.
- SB 401 and HB 4730 that are attempting to address prompt pay issues but are being delayed for now as new MDOT bid specification rules have recently been adopted.

MITA is working with Sen. Tom Casperson on drafting legislation extending allowable trailer lengths for lowboys.

MITA staff asks that industry members continue to engage in the legislative process and get to know your elected state representatives and senators. These relationships are critical to ensure that the heavy construction industry has influence in future public policymaking.

To contact Keith Ledbetter, e-mail him at keithledbetter@mi-ita.com or call 517-347-8336.



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Legislative Update

BILLS AT A GLANCE

BILL	SUMMARY	POSITION	STATUS
HB 4091	Amends the Michigan Business Tax Act to provide for a 6% flat tax to certain business entities.	Support, to the extent that it does not impose an additional tax burden on members.	Referred to the Committee on Tax Policy.
HB 4131	Allows for the creation of a public-private partnership agreement and public transportation authority.	Support.	Referred to the Committee on Transportation.
HB 4224 - 4226	Repeals prevailing wage and fringe benefits on state projects.	Oppose.	Referred to the Committee on Oversight, Reform and Ethics.
HB 4262	Restricts the department from entering into a public-partnership agreement on certain roads.	Oppose.	Referred to the Committee on Transportation.
HB 4282	Department of Transportation Budget	Neutral at this time; however, continue to pursue additional and adequate road funding.	Referred to the Committee on Appropriations.
HB 4287	Would not allow project labor agreements on public construction contracts.	Support.	Reported from the House with recommendation for referral to Committee on Commerce.
HB 4326	Amends the Administrative Procedure Act to provide that an agency shall not adopt rules more stringent than the applicable federal standard unless authorized to do so by statute.	Support.	Passed the House and referred to the Senate Committee on Economic Development.
HB 4521	Distribution of a portion of the sales tax into the Michigan Transportation Fund	Support	Referred to the Committee on Transportation.
SB 14	Would repeal the Michigan Occupational Safety and Health Act (MIOSHA).	Oppose.	Referred to the Committee on Appropriations.
SB 66	Would establish a multinational bridge authority.	Support.	Referred to the Committee on Transportation.
SB 77	Would amend the Revised Judicature Act to establish a two-year statute of limitations on actions against architects and professional engineers and a three-year statute of limitations on actions against contractors.	Support.	Passed the Senate and referred to the House Committee on Judiciary.
SB 95 - 97	Repeals prevailing wage and fringe benefits on state projects.	Oppose.	Referred to the Committee on Economic Development.
SB 118	Would amend the general sales tax act to include a person who sells precast concrete products in the definition of "materialperson".	Support the Bill with an amendment that adds, precast concrete products, or conduit or fittings products used in the collection, conveyance, or distribution of water or sewage.	Passed the Senate and the House. House substitute concurred in the Senate.
SB 185	Department of Transportation Budget.	Neutral at this time; however, continue to pursue additional and adequate road funding.	Passed the Senate; passed the House; Senate adopted conference report with immediate effect; presented to the governor on 6/7/11.
SB 351	Provides for the re-distribution of sales tax on gas and diesel.	Support.	Referred to the Senate Committee on Transportation.
SB 401	Provides and modifies progress payments to contractors from the department.	Oppose as currently drafted.	Referred to the Senate Committee on Transportation.



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Students Reinventing Michigan Spearheaded by MITA Member

Jim Shea, of MITA Member Company P.K. Contracting, recently started a new campaign to attract infrastructure funding ideas. The following information explains the competition, and is available along with other details at www.studentsreinventingmichigan.com.

The Students Reinventing Michigan Corporation is sponsoring an annual competition open to all undergraduate students attending Michigan universities, colleges and community colleges. Winners will receive cash prizes. The goal of the competition is to engage students in finding solutions to contemporary problems that face the Legislature and citizens of Michigan. Each year a different and challenging problem that faces our state will be chosen.

The topic for the 2011 competition is: "How the Legislature Can Improve Michigan's Infrastructure with Public Support in These Challenging Times"

Michigan's greatest resource is its young people. Over recent years many of Michigan's sons and daughters who have graduated from colleges and universities have left the state because there are no job opportunities in Michigan. A further terrible result is that parents have seen their families separated by great distances with bright young people losing their roots. Students participating in this competition can help turn this trend around.

Michigan's transportation infrastructure is crumbling. Roads and bridges have been neglected for many years due to inadequate funding. An infrastructure in disrepair is detrimental to Michigan's economy.

Continues on pg. 39



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Director of Technical Services



Doug Needham, P.E.

It was a Success... Over 1,100 Detroit Public School Students At- tended the Construction Science Expo

With the controls of a mini excavator in hand, a high school student stated "This is exactly what I plan on doing after graduation." After speaking with this student, it was learned that he had ambitions for a career in the construction industry but was unsure of how to reach his goal. After his turn at the controls, he made his way over to the Operating Engineers Local 324 display booth and was introduced to the Operating Engineers Apprenticeship Program. This outcome is the reason MITA played a leadership role in the First Annual Construction Science Expo held May 24, 2011 at the Detroit Science Center.

Exposing the youth of today to the vast opportunities in the heavy/highway construction industry is a key part of building the skilled workforce of tomorrow. As children start preparing for life after high school, they need to be aware that the construction industry has progressed over the past 30 years and has moved high tech. With automated grade controls on construction equipment and the increased testing and quality control measures on many of the products installed on today's infrastructure projects, the days of only working a shovel all day are long gone.

The Construction Science Expo daylong event was the result of a partnership including the construction industry, the Black Caucus Foundation of Detroit, Michigan Department of Transportation (MDOT), and the Detroit Public Schools (DPS) with the goal to provide students this hands on experience with the construction industry.

Statistics show that the number of students interested in pursuing careers in design and construction careers is waning. Michigan's Design and Construction Coalition, which MITA is an integral part of, worked with the Black Caucus Foundation of Detroit and MDOT to excite the young students of Detroit about the opportunities that exist in the design and construction industry.

Students selected to take part in this Expo had signed a pledge card at the beginning of the school year to remain drug free and the event was part of the celebration for fulfilling their commitment. With

the understanding that the construction industry is a drug free industry, students were exposed to various skilled trade demonstrations. The demonstrations were provided by the Operating Engineers Local 324, Michigan Laborers Training and Apprenticeship Institute, International Brotherhood of Electrical Workers, Operative Plasterers' and Cement Masons' International Association Apprenticeship & Training Fund, Michigan Regional Council of Carpenters, Sprinkler Fitters UA Local 704, Sheet Metal Local 80, Bricklayers Local 1, and Energy Group Inc. Students also had the opportunity to explore the Roads, Bridges, and Tunnels exhibit at the Detroit Science Center as well as exhibits provided by the Walbridge Joint Venture for Detroit Public Schools, the MDOT TRAC Program and the Black Caucus Foundation of Detroit.

This event was a testament to the positive partnerships and relationships that exist between the construction industry, the Black Caucus Foundation of Detroit, MDOT and DPS. The Michigan Design and Construction Coalition plans to make this an annual event for many years to come.

The Michigan Design and Construction Coalition is comprised of the following organizations:

- American Council of Engineering Companies of Michigan
- American Society of Civil Engineers Michigan Chapter
- Asphalt Pavement Association of Michigan
- Michigan CAT
- Michigan Concrete Association
- Michigan Infrastructure & Transportation Association
- Michigan Laborers-Employers Cooperation & Education Trust Funds
- Michigan Construction Career Council
- International Union of Operating Engineers Local 324

Refer to pages 32 for pictures of this event.

To contact Doug Needham, e-mail
him at douglasneedham@mi-ita.com
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Transportation Enterprise

The Transportation Enterprise is one of 27 Enterprises at Michigan Tech. The Transpor-

Continues on pg. 42



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CONSTRUCTION SCIENCE EXPO

Photos by Andrew Brown

This first annual Construction Science Expo on May 24 at the Detroit Science Center provided students hands on experience to the design and construction industry. Students celebrated their commitment to remaining drug free by providing award winning skits, songs or poetry.

In addition to the sponsors listed below the Detroit Public Schools, the DPS Bond Management Team and the affiliated apprenticeship programs of the Detroit Building Trades provided the students a very valuable experience. MITA's Director of Technical Services, Doug Needham, P.E., provided leadership for the Michigan Design and Construction Coalition, which sponsored the event.

2011 EVENT SPONSORS

The Black Caucus Foundation of Michigan

Michigan Department of Transportation

Detroit Public Schools

Walbridge Joint Venture for Detroit Public Schools

Michigan's Design and Construction Coalition

American Council of Engineering Companies of Michigan

American Society of Civil Engineers Michigan Chapter

Asphalt Pavement Association of Michigan

Michigan CAT

Michigan Concrete Association

Michigan Infrastructure & Transportation Association

Michigan Laborers-Employers Cooperation & Education Trust Funds

Michigan Construction Career Council

International Union of Operating Engineers Local 324



From left to right, Michael Trogan, youth services manager for the city of Detroit Youth Development Commission; Tyrone Washington, youth services manager for the city of Detroit Youth Development Commission; the Honorable KB Stallworth, PhD, managing director for the Black Caucus Foundation of Michigan; Doug Needham, P.E., director of technical services for MITA; and Glenn Bukoski, P.E., vice president of engineering services for MITA.



From left to right: Lee Graham, Operating Engineers Education Center; and Brindley Bryd, Michigan Construction Career Council.



From left to right: Doug Needham, P.E., MITA; Rick Russell, Detroit Science Center; and Don O'Connell, Operating Engineers.



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CONSTRUCTION SCIENCE EXPO





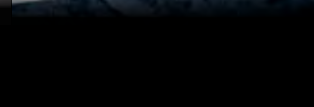
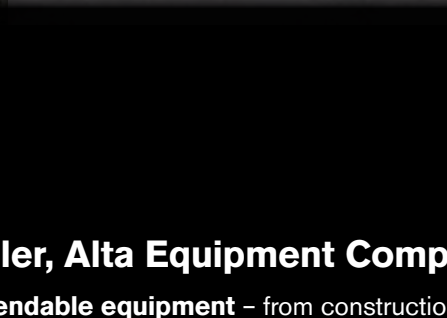
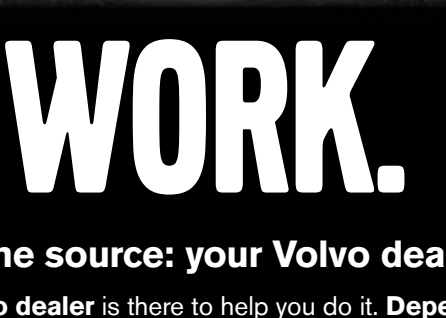
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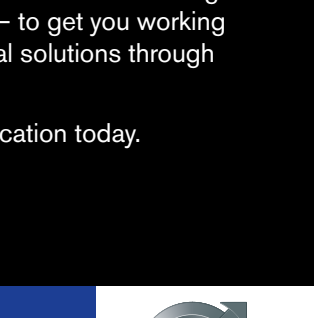
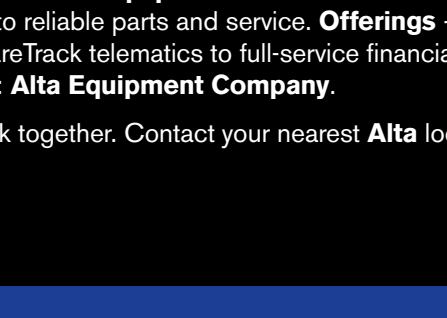
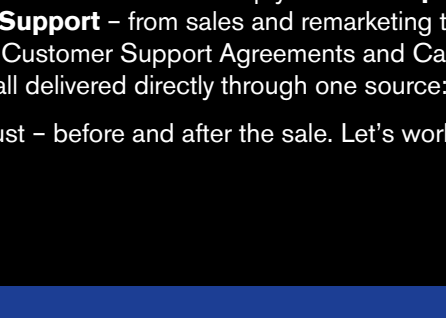
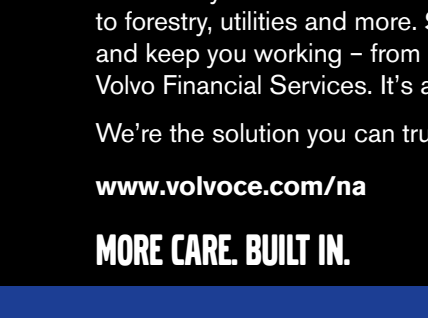
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What Every Contractor Operating Over-the-Road Trucks Needs to Know About Overweight Fines and Other Commercial Violations

By Michael J. Leavitt

Overview

Contractors using trucks over public highways to transport aggregate commodities, ready-mix and heavy equipment, often face significant fines for violating weight limits on city, county and state roadways as well as for equipment defects. These fines under Michigan law can range from a few hundred dollars to more than \$10,000. This article is to alert contractors to some of the laws that commercial vehicles and drivers are subject to.

Weight Violations and Lift Axles

Overweight tickets can be very expensive for a contractor utilizing commercial vehicles.

Tickets calling for fines well in excess of \$10,000 for a single truck, based on weight alone, are issued on a regular basis. Even if a truck is within the allowable gross weight, the fines for an individual axle or axles being overweight can also be in the thousands of dollars. Unfortunately, many motor carrier enforcement officers are not tested in court on how they weigh vehicles. There are many cases when an officer's scales are not properly certified, are not operating properly, or the method a vehicle is weighed causes excessive readings.

If your driver receives an overweight citation, the first thing that you should do is to have the driver write out a short summary why and where the truck was stopped and how the truck was weighed, noting anything that appeared unusual or in error. This is all relevant information that can prepare you to successfully defend against these types of citations.

Vehicles with lift axles have specific protection under Michigan law, pursuant to MCL 257.724a. This section, which your Association and our office helped enact, allows vehicles with lift axles to negotiate intersections, driveways, or turns with the lift axles raised. An enforcement officer must then allow your driver the proper time and distance to drop the lift axles after a turn and allow those lift axles to reach operational pressure before they are weighed to avoid improper or excess fines.

Non-Out of Service/Out of Service Violations

Non-Out of Service Violations

- Also as a result of such legislation non-out of service Violations can be handled without going to court. More specifically, under this Michigan law, if an owner or driver of a commercial vehicle is issued a citation for a non-out of service equipment violation, the court must dismiss the citation if the owner or driver of the vehicle properly provides written proof to the court, within 14 days after the citation date, showing that the defect has been repaired.
- There are still many district courts throughout the State of Michigan that are not familiar with this law. Likewise, many operators of commercial vehicles are not familiar with this law and end up

paying fines and costs for tickets when they didn't have to. If you as a contractor forwards the repair information to the court within this 14 day window by providing repair receipts as well as a short letter of explanation citing the law, MCL 257.955, your case must be dismissed for non-out of service violations and your company's record will not be tarnished such as for insurance purposes.

Out-of-Service Violations.

Unfortunately, out-of-service violations for infractions considered to be serious safety defects¹, have to be handled through the court system and can seriously impact your company's record for insurance and CSA-2010 purposes.

Multiple Citations for the Same Civil Infraction Violation

Under Michigan law, MCL 257.955, owners or drivers of commercial vehicles cannot be issued more than one citation for the same violation of a statute or ordinance regulating the operation of commercial vehicles within a 24 hour period. What this means for example is that if a commercial vehicle is issued an unsecured load violation in one county, it cannot be issued a second unsecured load violation for the same problem in a different county within a 24 hour period.

However, different jurisdictions can issue different commercial vehicle violations to the same vehicle on the same date.

What Training is Required for Enforcement Officers?

Only motor carrier enforcement officers can issue commercial motor vehicle violations in the State of Michigan. These are officers qualified through training to weigh and inspect commercial vehicles for overweight violations and defects.

In order to be classified as a motor carrier enforcement officer pursuant to MCL 257.955, a police officer must have received training equal to the minimum requirements, including any annual training updates, established by the Michigan Department of State Police for an officer of the Motor Carrier Division (which is now the Michigan Traffic Safety Division).

Only after an officer from a local municipality has obtained this type of training can he or she act as a motor carrier enforcement officer under Michigan law.

To issue overweight civil infraction violations a Motor Carrier Enforcement Officer must also be a police officer, peace officer, or authorized agent of the State Transportation Department or county road commission. Recently a Detroit District Court Judge determined the city's weight enforcement ordinance officer was not an official police officer and as a result, citations issued by that officer were determined to be improper and dismissed.

Where Does the Money Assessed for Fines Go?

Civil fines imposed on commercial vehicles such as operated by con-

1. See subsequent section of the article entitled "Where Does The Money Assessed For Fines Go" for a definition of serious safety defects.

Continues on pg. 54



When Third-Party Creditors Try to Intercept Progress Payments

One common problem facing contractors today occurs when third party creditors, such as banks and garnishee-plaintiffs, assert claims to a subcontractor's progress payment or contract balance. Sometimes, it is a lender seeking the money pursuant to its security interest in the account receivable. Other times, it is a judgment creditor seeking the money under a writ of garnishment. They claim a priority interest in the payment, and may even challenge joint checks. Third-party claimants pose a risk to contractors because they may intercept funds intended for second tier and lower subcontractors, suppliers, and fringe benefit funds. If unpaid, these lower-tier entities might make payment bond claims or, if it is a private project, record construction liens, which then have to be bonded off.

This is happening frequently at the present time, and it shows no sign of letting up. The likelihood of a member of your project team becoming insolvent mid-way through a project remains a big risk to every contractor in this state. While the "Great Recession" may be officially over for many parts of the economy, the construction

industry faces a shortage of private sector work and the prospect of fewer public projects due to declining state and local governmental budgets. It is tough out there. And some companies are not going to make it.

Fortunately, several rules of law give contractors, subcontractors, suppliers, and laborers priority claims to construction contract balances. A body of case law developed over the last 100 years grants an equitable lien on the funds in favor of those who supply labor and materials to a construction project, which establishes their priority claim. On private projects, contractors also have a statutory remedy, the Michigan Building Contract Fund Act, more commonly known as the Michigan Builders Trust Fund Act.¹ As its name suggests, the act establishes a trust over construction contract payments, thereby making them the property of the party supplying labor and material to the project, rather than the party which received the payment. Because this act does not apply to public projects, and because the equitable lien case law is often misunderstood, these remedies are imperfect. Even so, contractors facing an aggressive third party claim to an insolvent subcontractor's payment should not back down, because the weight of authority is usually on the contractor's side.

Around the turn of the last century, the United States Supreme Court began a series of cases that applied old rules of equity to contests over construction project proceeds. The series begins with the 1896 case, *Prairie State Nat'l Bank v. United States*,² in which the United States Supreme Court granted a performance bond surety priority over the contractor's lender to contract funds still held by the government. The Court used the ancient doctrine of equitable subrogation to avoid unjust enrichment of the lender. That doctrine allows a party who pays the debts of another to step into the shoes of the satisfied creditor. Because the surety had completed the project for the contractor, it was subrogated to the government and had priority to the contract balance.

The United States Supreme Court extended this rationale to payment bond sureties in the 1908 case, *Henningsen v. United States Fidelity & Guaranty Company*.³ By paying subcontractors and suppliers, the payment bond surety satisfied the obligation of the contractor and became entitled to unpaid contract funds. The *Henningsen* Court expressly referenced an equitable obligation on the part of the governmental project owner to ensure the suppliers and subcontractors on the project get paid, writing, "It paid the laborers and materialmen, and thus released the contractor from his obligations to them, and to the same extent released the government from all equitable obligations to see that the laborers and supplymen were paid."⁴

Continues on pg. 57

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Vice President of Membership Services Continued from pg. 21

with a squabble about training. Many safety professionals buy in because all training is good, right? Personally I think you lose the guys when you cram a bunch of topics down their throats that don't pertain. Many feel that because workers can move to other employers, that there may be a residual effect. Remember it is incumbent on each employer to train and orientate all new employees. I pity the contractor who relies on his competitor's training when an accident has occurred, or heaven forbid a fatal accident. Each employer who hires a new guy should be sure that they work under the direction of a qualified employee; it has been my experience that most new employees over promise on their abilities and under deliver. I may be wrong but MITA often gets to witness the aftermath that hiring on the fly can cause.

Believe me MITA is passionate about training and safety and we work with MIOSHA regularly outside of the appeals process to ensure continuity in areas of enforcement and rule interpretation. We will work diligently to provide classes that members are being asked to have like OSHA 10 and 30 classes, and we will try to make them as interesting as possible considering the subject matter. This doesn't mean I have to agree with the philosophy of the roller approach with regard to training. I personally am proud to watch as our members' commitment to training continues to grow.

With the push for OSHA training coming harder and faster every year, and the discrepancies that exist between MIOSHA and OSHA

Standards, it is leading me to the conclusion that future rule making should just be an adoption of the federal standards. While I like the process of working on standards and debating language, the fact of the matter is many members have dual operations out of state further promoting the concept. I believe an adoption of the federal standard is what is going to happen with the new Part 10. Lifting and Digging Equipment, (Certified Crane Operators) which essentially throws a couple of years of work out the window from the group that was working on the Michigan version. In any instance, MITA will stand ready to promote and provide necessary training to our members. The difficulty with certified crane operators and rigging has been that other areas of the country have been requiring training; and, other elements associated with the standard and Michigan have been in a state of flux with regard to what we might be implementing. This makes it very hard to provide direction to members. Personally, I'd rather wait than point people in the wrong direction. In any event, by the time you are reading this hopefully we will have provided you with all the information concerning this issue. Stay tuned.

To contact Rob Coppersmith, e-mail him at roboppersmith@mi-ita.com or call the MITA office at 517-347-8336.

Director of Safety & Workforce Development Continued from pg. 24

new federal rule.

By law, employers and employees in Michigan are required to comply with the current CS Part 10 standard. It is also important to remember that the revised Michigan standard will ultimately be at least as effective as the new Federal standard. Therefore employers should familiarize themselves with the requirements of the new Federal standard (Subpart CC) as soon as practicable.

Under the provisions of Act 154 of 1974, when serious hazards not covered by the current Michigan CS Part 10 rules are identified, MIOSHA will be required to use the General Duty Clause to address those hazards based on the requirements of Subpart CC.

One specialized class MITA currently has in the works is the rigging and signaling and the possibility of a certified crane operators (CCO) course.

MITA now has the ability through a third party to administer CCO classes and testing. Contact the MITA office for more information.

If you have any questions, contact Patrick Brown at patrickbrown@mi-ita.com or call the MITA office at 517-347-8336.

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The economic impact of a poor infrastructure is clear:

- Companies don't want to locate in states with poor roads and bridges.
- Trucks and cars don't last as long on poorly maintained roads and bridges as they do on good roads and bridges.
- Maintenance costs for vehicles traveling on structurally deficient roads and bridges are higher than those traveling on good roads and bridges.
- Crumbling roads also negatively impact people that own older cars disproportionately.
- Tourism is negatively impacted by a highway system in disrepair.

The list of problems caused by poor infrastructure goes on, but the most alarming effect is that a poor infrastructure results in unnecessary loss of life, debilitating injuries and property damage.

Public officials in the state of Michigan continue to grapple with this problem. Good roads cost money, and studies prove that investments

in our infrastructure pay dividends over time. Unfortunately the majority of Michiganders are unwilling to support increased road funding at this time.

Additionally, most people believe that all of the state's gas tax is currently dedicated to repairing roads and bridges – a misconception that must be corrected if the state is to move forward with addressing this significant challenge.

Another negative impact of inadequate highway funding is that the number of jobs in the highway construction industry has been in decline for many years. The losses are at every level, from laborers to engineers, there seems to be no end in sight to this downward spiral. Providing adequate levels of state highway funding will produce more than 240,000 construction and spin off jobs.

Students Reinventing Michigan

Continued from pg. 29

The following story, written by Marina Csomor, is being reprinted here with permission from the Michigan State News.

Corporation offers money for student ideas

By Marina Csomor | June 5, 2011

A Michigan corporation is sponsoring a competition that will give college students real-world legislative experience while providing the real world with a solution to a political problem.

The Students Reinventing Michigan Corporation is asking undergraduate college students to submit proposals detailing how the state Legislature can best improve Michigan's infrastructure with public support during the current tough economic times.

Infrastructure and its funding are issues on which lawmakers have not been able to agree, said state Rep. Douglas Geiss, D-Taylor, minority vice chair of the House Transportation Committee.

"Many analysts agree on the fact that our infrastructure is in dire need of some upgrades and upkeep, but we haven't been able to come up with a consensus on what to do or how to fund it," he said.

Linda Shea said she and her husband, Jim, decided to fund the competition in order to get college students involved in addressing the issue of infrastructure inadequacies. The couple has noticed roads in Michigan are more damaged than those in many other parts of the country. Bridges in the state are crumbling, and roads are in need of proper and lasting repairs, she said.

"There are a lot of problems in Michigan right now, and we are hoping to use some creative minds to help us solve some of these problems," Linda Shea said.

Because Jim Shea is a contractor and owner of Troy, Mich.-based P.K. Contracting, transportation and infrastructure are important issues to him, said state Sen. Tom Casperson, R-Escanaba, chairman of the Senate Transportation Committee.

"Michigan is his home, and he's seen things crumble," Casperson said. "His thought is, 'Why not try to create a competition among young people — get the greatest minds working on it and come up with a good idea.'"

Students will be able to look at the problem of the state's infrastruc-

ture with fresh sets of eyes, Geiss said.

"They're not bound by what has been done," he said. "They haven't been

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Washington Fly-In 2011

MTT Hits the Streets of Washington to Talk Infrastructure

More than two dozen contractors and members of the Michigan Transportation Team joined forces in May to lobby Congress, urging efforts to upgrade the nation's infrastructure.

Armed with Michigan-specific information, MTT members made the case to every Michigan Congressional office that the state has overwhelming water and sewer, road and bridge infrastructure needs that will continue to exacerbate without increased investment.

Unfortunately, the mood in Washington has been about making major cuts to programs in order to balance the federal budget. While the nation does need to get their financial house in order, it is important that infrastructure be considered

a budget priority. Congressman Paul Ryan's current budget proposal calls for a cut of roughly 40 percent of highway funds for Michigan, which would devastate our ability to maintain the state's roads and bridges.

On the water and sewer side, the recently passed FY

2011 Clean Water Appropriations bill cut Michigan's State Revolving Fund appropriation from \$83 million to \$63 million and cut the Drinking Water Revolving Fund from \$41 million to \$28 million. Over a 20-year period, that will result in \$80 million less in sewer clean ups and \$50 million less in drinking water repairs. MTT urged funding that will sustain our underground infrastructure.

Other issues that were discussed included the pending 3 percent withholding requirement on most federal construction work and the need to address the union pension liability issue.

Groups Taking Part in the 2011 MTT Washington Fly-In:

The Michigan Infrastructure and Transportation Association, Michigan Chamber of Commerce, County Road Association of Michigan, Operating Engineers Local 324, MI Regional Council of Carpenters, Michigan Department of Transportation, Michigan Municipal League, Michigan Association of Counties, Lowe Construction, Wade Trim, Walter Toebe Construction, Edward C. Levy Company, Anlaan Corporation, Goretski Construction, Bacco Construction, Hoffman Brothers Inc, Paradigm 2000 Inc., Barrett Paving Materials, Michigan Paving Materials and Public Affairs Associates.

Washington Fly-In 2011 Attendees

Name	Company
Mike Nystrom	MITA
Scott Bazinet	Lowe Construction
Lester Lewis	Paradigm 2000 Inc.
Brad Stover	Toebe Construction
Rich Studley	Michigan Chamber of Commerce
Doug Rigoni	Bacco Construction Co.
Dick Reynolds	MI Regional Council of Carpenters
Jim Ryan	PAA
Jeff Goretski	Goretski Construction
Nick McCreary	MI Regional Council of Carpenters
Gregg Campbell	Michigan Paving Materials
Rob Mayer	Michigan Paving Materials
Ryan O'Donnell	Anlaan Corporation
Keith Ledbetter	MITA
Tim Mattice	Lowe Construction
Jim Holcomb	Michigan Chamber of Commerce
Arnold Weinfeld	Michigan Municipal League
Sam Houston	IUOE Local 324
Rich Lehman	Edw C. Levy
John Krispin	Barrett Paving Materials, Inc.
Steve Gravlin	Wade Trim
Alex Gravlin	Wade Trim
Chris Hunt	MDOT
Mike Mallos	Hoffman Bros. Inc.
MoReno Taylor	Michigan Association of Counties
Aaron Price	Michigan Paving Materials
Ed Noyola	CRAM





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Students Reinventing Michigan

Continued from pg. 39

subjected to the political dogmas.”

The Students Reinventing Michigan Corporation will be accepting student proposals until Nov. 15. These proposals then will be judged by the chairs of the state’s House and Senate transportation committees, including Casperson.

Although the creators of the best proposals will receive cash prizes — the first-place winner will be rewarded \$10,000, while a student in second place will earn \$5,000 and 10 students in third place each will receive \$500 — students won’t be the only ones likely to benefit from this competition.

Geiss said he imagines the state could see legislation or public policy come from the student proposals — a solution that would benefit all Michigan residents.

“The idea would be to actually do something with this, not just put it on the shelf along with the other myriad of studies done in the last decade,” he said.

Those placing in first and second will be invited to present their plans to a joint hearing of the state Senate and House transportation committees.

Casperson said legislators have been looking for a long-term fix for infrastructure funding in state.

“The young students might come up with an idea we should have thought of a long time ago,” he said. “We better watch out.”

For more information about the competition, visit studentsreinventing-michigan.com.

Michigan Tech University: Transportation Enterprise – Call for Projects

Continued from pg. 31

tation Enterprise is housed in the Civil and Environmental Engineering Department and was started in 2000 as the Pavement Enterprise, emphasizing design, construction, and materials. The Transportation Enterprise has since broadened its focus (and name) to encompass many areas of transportation including highways, bridges, railroads and transportation planning.

Call for Project Ideas and Funding

The success of the Transportation Enterprise (TE) relies heavily on industry partners for both project ideas and financial support. The TE is seeking creative and forward-thinking partners to help set a new standard for engineering education by sponsoring student teams and project ideas. Opportunities are available for sponsoring projects for the 2011/2012 academic year. Program and/or project support can take many forms, including project ideas, financial support, mentorship, scholarships, equipment, and/or guest lecturers. Typical financial support varies from \$5,000 to \$10,000 per year depending on the project scope and staffing requirements. Program advisors can sometimes help secure third party support or cost sharing for good project opportunities.

Benefits for Companies & Industry Sponsors:

- Sponsors get a fresh look at important engineering problems and potential solutions – through the eyes of an unbiased team.
- Sponsors can benefit from unique university facilities and faculty expertise on industrial projects.
- Sponsors receive exposure to the latest tools, techniques and theory from one of the nation’s premier engineering schools.
- Sponsors make first-hand observations of the capabilities of undergraduates in one of the largest engineering schools in the nation.
- Sponsors have the opportunity to gain exposure for your company among talented engineering students with strong technical and business skills.

Deliverables

At the end each semester, every Transportation Enterprise team submits a written report on their specific project



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Member Voice

From time to time we ask MITA members questions about issues of importance to the industry. Some of the answers are then published in this magazine.

that details progress, results and recommendations. The students also make an oral presentation to program faculty and industry mentors and partners. Upon request, they can also give a presentation on-site or via video teleconference to our industry sponsors. Depending on sponsor needs and interests, the program offers a range of publishing options including webinars, trade publications and online. For proprietary work, results can be withheld from publication.

Recent Project Titles

CN/CXT Concrete Railroad Tie Sustainability Assessment, Warm Mix Asphalt Synthesis for Northern States, Complete Streets Transportation Plan for the City of Houghton, Electric Vehicle Charging Infrastructure, Polishing of Carbonate Aggregates, Porous Pavement Alternatives for Boat Launches, Traffic Sign Management and Retroreflectivity, Asphalt Shingles in HMA, Road Intersection Safety Improvements.

Contact Information

We invite you to become an industry sponsor or partner with the Michigan Tech Transportation Enterprise. To learn more about the opportunities and rewards of participating in the Enterprise Program or to discuss possible project ideas, we encourage you to contact:

Dr. George R Dewey,
Associate Professor and Advisor
Transportation Enterprise,
Michigan Technological University
1400 Townsend Drive,
Houghton, MI 49931
(906) 487-2522
gdewey@mtu.edu

The question this time was: Do you feel the recent changes in the Michigan Business Tax and Unemployment Insurance Tax will have a positive effect on your business? Here are a few samples of the responses we received.

Having a concise, understandable business tax will allow companies to more effectively plan. This will instill confidence in moving forward with hiring decisions. I'm sure the changes to the Unemployment Insurance Tax will help with cash flow but I don't know that it is a socially the best move for the residents of the state.

Ralph Picano
Wade Trim

Yes, this is what we need. More programs for business to be able to make a profit.

Scott
Farmer & Underwood

Yes. No more double tax on S corps!


Gary Putrow
Michigan Pipe & Valve

Eliminating the MBT will save my company the equivalent of one well paid full time employee or a few pickup trucks. That is the way I can best describe it to people who don't realize the impact on business.

Mark Smolinski
G2 Consulting Group, LLC



Yes, it will lower our operating cost.

Kevin Brenner
Brenner Excavating, Inc.



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Member News

The Argus Group Company

The Argus Group, a provider of comprehensive safety, industrial hygiene and environmental monitoring products and services, has acquired the Seelaus Instrument Company of Cincinnati, Ohio.

Seelaus sells industrial instruments, provides field service for those products and offers bench calibration of pressure and temperature sensors and gauges. Argus offers similar instrumentation sales and service, but supports these items with a full range of products for its broader mission of safety hygiene and environmental monitoring. Their large scope of products includes gas detection instruments customized fall protection systems, and even basic equipment such as safety signage.

"The acquisition of Seelaus Instrument



Company allows us to provide more service, offer more product options, and bring more depth to their existing customers," said Jay Fitzgerald, chairman of the Argus Group. "Seelaus increases our presence in southern Ohio, northern Kentucky and southern Indiana, enhances our field service capabilities and expands our already formidable line of instrument offerings."

The Cincinnati office of Seelaus will be combined with the Dayton Office of Argus at a new location in Miamisburg, Ohio. In addition Argus maintains sales and service offices at its headquarters in Chesterfield, Mich., as well as in Grand Rapids, Los Angeles, Chicago, Denver Toronto, and Sarnia, Ontario. The Company also offers its products through <http://argus-hazco.com> where customers can review Argus' major catalogs and place orders.

The Argus Group Companies provide products and services specifically designed to help reduce worker injuries, control costs and increase profitability. It focuses on safety products, repair, rental/leasing, consulting, and training. The company consistently combines its full resources to produce comprehensive solutions for customers by offering the best quality, value and service. Established in 1950, the Argus Group serves its customers as a overall resource for occupational health and safety programs and products.

G2 Consulting Group Award

G2 Consulting Group of Troy, Mich., provided geotechnical engineering services for two Southeast Michigan road and sewer construction projects that won 2011 Concrete Wards from the Michigan Concrete Association (MCA).

The Nine Mile Road reconstruction, a rebuild of this four-lane major artery from Harper Avenue to Jefferson Avenue in St. Clair Shores, Mich., won honorable mention in the Urban Arterials greater than 30,000 square yards. Completed in August and September 2010, the project involved 34,000 square yards of new 9-inch and 10.5 inch non-reinforced concrete. Tony Angelo Cement Construction Company of Novi, Mich., was the projects general contractor and Anderson Eckstein & Westrick Inc., its chief engineer.

The Kathy Street Pavement reconstruction, a complete reconstruction of the pavement storm sewer and underdrain of this residential street from Frazho Road to Petrie Avenue in Roseville, Mich., won honorable mention in the Residential Streets category. Tisco Brothers, Inc. of Washington Township, Mich., was the project engineer.

Both projects were commended for completing the rebuilds in phases to minimize disruptions to traffic, residents



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MCA's Concrete Awards honor excellent concrete projects constructed in the previous year and presented annually in February. For more information see miconcrete.org/awards.

G2 consulting Group (www.g2consultinggroup.com <http://www.g2consultinggroup.com/>) is a full-service engineering firm serving Fortune 500 companies, major utilities, property owners, government agencies and leading architectural, engineering and construction firms across the United States. Based in Troy, Mich., G2 also has offices in Brighton Mich., and suburban Chicago.

New Contract

The Michigan Department of Transportation (MDOT) recently awarded a second consecutive three-year "indefinite delivery of services" (IDS) contract to G2 Consulting Group.

The IDS contract allows MDOT staff to call on G2 to provide engineering services for Michigan highway and road projects on an as-needed basis from Jan. 1, 2011, through Dec. 31, 2014, in an amount not to exceed \$4 million over the contract's duration.

MDOT awarded G2 a similar 3-year contract that ended Dec. 31, 2010. The new contract covers the same that MDOT previously prequalified G2 to deliver, including:

- Asbestos investigations
- Aggregate inspection and testing
- Bituminous pavement inspection
- Density testing and inspection
- Engineering assistance
- Geotechnical engineering services
- Portland cement concrete inspection and testing
- Site investigation

In 2008, G2 was one of the first consulting engineering firms to submit information for MDOT's then-new consultant prequalification process.

"Our MDOT prequal assures clients that G2 has the necessary systems in place to provide accurate and precise testing and reports. It all adds up to higher quality information, fewer errors and ultimately, better projects," says Dave Wanlass, the G2 project manager who oversees all G2's MDOT work.

Continues on pg.46



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Project News

G2 Consulting Group is providing geotechnical consulting services and dynamic pile testing on pile foundations for an extensive reconstruction of Fort Street/M-85 between Schaffer and Outer drives in Detroit, Mich., that includes foundations supported by more than 900 piles extending up to 100 feet deep.

The MDOT project involves a complete demolition and reconstruction of Fort Street,

including a viaduct that carries Fort Street over several sets of railroad tracks. Built in the late 1920's, the existing structures have settled significantly due to the site's poor soil.

Foundations for the new bridge structures, retaining walls and roadway surface are supported by more than 900 piles extending up to 100 feet below the finished grade to support the new viaduct system. G2's pile testing program, which includes static load tests and dynamic testing, gave the project engineer the data required to use the highest design factor possible – 80 percent of the ultimate pile capacity – for a cost-effective foundation.

Posen Construction of Shelby Township, Mich., the project's general contractor, hired G2. G2 has provided pile driving analysis (PDA) services for several other Posen projects in the two years since MDOT began requiring the specialized service on certain deep pile foundation construction projects.

PDA involves monitoring the pile driving process with sensitive equipment that measures stresses that occur in the piles and the soils' reactions to the impact. G2's specially trained engineers then evaluate the data to determine the bearing capacity of piles, and recommend a depth to which the piles should be driven for that specific foundation.

"The Pile driving analysis technology compliments our existing geotechnical capabilities for deep foundation consulting and design" according to Noel Hargrave-Thomas PE, geotechnical group leader and founding principal. "We continue to strive to be the 'go-to' resource for engineers and contractors in the underground and infrastructure construction arenas."

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For over 95 years, HRC has been providing consulting engineering and architectural services to municipal, industrial and private clients throughout southeastern Michigan, in addition to servicing various national clients. As a full service multi-disciplined firm, HRC is comprised of over 10 accredited professionals. HRC is an Engineering News Record (ENR) Top 500 Design Firm and Top 50 Trenchless Technology Design Firm whose work has been recognized by numerous prestigious industry awards. HRC has offices in Bloomfield Hills, Grand Rapids, Howell, Detroit, Mt. Clemens, and Delbi. For more information, visit our website at www.hrc-engr.com.



Jane Graham, AIA,

Promotion

Hubbell, Roth & Clark, Inc. (HRC) announced recently that Jane Graham, AIA, has been promoted to Associate. Graham functions as HRC's Industrial Facilities Design Department Head and provides project management and architectural design services, practicing sustainable design principles, for HRC's Archi-

tectural and Industrial Facilities Design Departments. Graham has over 20 years of professional experience including architectural design, construction management, and facilities management. Projects range from municipal facilities design, including water, wastewater and traffic operations centers for Michigan communities, to industrial facilities design for General Motors and Behr America.

Graham previously served as director of facilities for Behr America as well as facility management representative for the Worldwide Facilities Group for General Motors Saginaw Metal Casting Operations. Graham is a registered architect in the states of Michigan and Florida, and holds a bachelor's degree in architecture from the University of Detroit.

Inspecsol Engineering, Inc.

Inspecsol Engineering, Inc., and its parent company (Inspec-Sol, Inc.), are over 650 people providing engineering, testing, and environmental services throughout the United States and eastern Canada. Visit us at www.inspecsol.com.

New Hire

Inspecsol Engineering, Inc. is pleased to announce the addition of J. Art Johnson to its Michigan operation. Johnson joins Inspecsol Engineering with over 30 years experience serving clients with geotechnical engineering, construction materials testing, building science, and environmental services. He previously worked for Soils and Materials Engineers as a Senior Consultant for the last 10 years, overseeing projects in Michigan for government and private industries. At Inspecsol, he will work as a Project manager while promoting all aspects of our services and expanding our presence in west Michigan.

Northern Concrete Pipe Honored by MIOSHA for Seven Years Without a Lost-Time Accident

Long-time MITA Member Northern Concrete Pipe has gone 1.2 million manhours without a lost-time accident on the job.

The company and its employees were honored in May with an award from MIOSHA for a feat that no other heavily hazard-

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Member News

Continued from pg. 47

ous industrial company in the state has accomplished. MIOSHA presented them with a platinum award, which is the highest award the MIOSHA gives for safety and health performance. An article in the Bay City Times quoted MIOSHA Director Doug Kalinowski saying that going so long without an on-the job accident isn't just about having a health and safety culture, but by creating an attitude of take care of the people and they'll take care of the business.

About 10 years ago the company made Tim Phillips a full-time safety director, according to Company President William Washabaugh.

"Safety is the priority regardless of what happens – no short-cuts," Washabaugh is quoted as saying in the Bay City Times. He also said the award speaks volumes for the employees and their families.

Selge Construction Company, Inc.

Selge Construction Company, Inc., of Niles, Mich., is celebrating their 50th anniversary this year. Congratulations!



Southeastern Equipment Co., Inc.

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Southeastern Equipment has been selling, servicing and renting heavy machinery since 1957. The company has eighteen locations throughout Ohio, Michigan, Kentucky, and Indiana. Manufacturers represented by Southeastern Equipment include: Case construction, Kobelco, New Holland Construction, Bomag, Gradall, Etnyre, Vacall Terex, Terex Roadbuilding, Champion, Schwarze, Eagle Crusher, Alamo Industrial Eager Beaver Trailers, Superior Broom, Massey Ferguson, Midland Machinery, Hpac, Kawasaki, Badger Equipment Company, DuraPatcher, Case IH, Fecon, Genie Skytrak, JLG, sullair, and a wide variety of companies that manufacture heavy equipment attachments. For more information, visit their website at www.southeasternequip.com.

New Hire

Jason Miller has joined the company as leasing and rental manager. In his new position, Miller is responsible for expanding rental and leasing sales across all of the company's locations.

"We are pleased that Jason has joined the company," says Charlie Patterson, president of Southeastern Equipment. "He



Jason Miller

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will be traveling with our sales representatives throughout our territory to provide leasing and rental quotes to customers right on the spot."

Miller has nearly 10 years of experience in the heavy equipment industry, with more than half of that time focused in the rental area. He earned his degree in business administration from the University of Mount Union.

Spalding DeDecker Associates, Inc

Established in 1954, Spalding DeDecker Associates, Inc. is an employee-owned and ISO certified consulting engineering and surveying firm specializing in infrastructure, land development, and surveying. With regional offices in Detroit, Plymouth, and Rochester Hills, and field offices in Trenton and Monroe. SDA offers a diverse set of skills to clients who seek solutions to construct and maintain their infrastructure. The firm offers municipal engineering, construction engineering, forensic engineering transportation engineering, land development, landscape architectural, pavement management, and land surveying services.

New Hires

Spalding DeDecker Associates, Inc. (SDA), a regional civil

engineering, landscape architectural, and surveying firm, recently hired a Municipal Engineering Department Manager.

Philip Westmoreland, P.E., will be responsible for all municipal infrastructure improvement projects including water distribution systems, sanitary sewage collection systems stormwater management, road design, pedestrian pathway design, master planning, studies, and site plan reviews. He will also be responsible for project management and business development. He earned a bachelor of science degree in civil engineering from Michigan Technological University and holds a professional engineering license in Michigan. He is an active member of the American Council of Engineering Companies/Michigan (ACEC/MI). With more than 16 years of experience in the industry, he has served as the primary client contact for many municipalities in



Philip Westmoreland, P.E

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southeast Michigan, and has worked extensively with cities, villages, and townships, as well as road agencies and drain commissioners.

Bridge Project Manager

Mark Helinski, P.E., will serve as the project manager responsible for all bridge design for SDA's Transportation Department. Helinski earned a bachelor of science degree in civil engineering from Michigan State University. He holds professional engineering licenses in Michigan, Indiana, Wisconsin and Missouri. He is an active member of the American Society of Civil Engineers and is a past president of the Lansing – Jackson Branch. Helinski has more than 20 years of bridge design, bridge geometric layout, bridge approach geometric layout, retaining wall design, slab design, and foundation analysis



Mark Helinski, P.E.

experience for various states, counties, and local municipalities. He completed numerous specialized training courses and has extensive experience with specialized bridge design software. Mark has produced conceptual, preliminary, and final plans, cost estimates and special provisions for bridges in the MDOT Southwest, Grand, University, Metro and Superior Regions. Mark has also served as a guest lecturer in Michigan State University's civil engineering capstone design class.

Wade Trim

New Hires

Ed Hogan, PE, PMP

Project Manager

Water Resources

Group, Detroit Office

Hogan brings more than 33 years of program and project management experience in the public and private sectors. He specializes in feasibility studies, engineering design and construction, facility operations, business processes improvements regulatory compliance programs and risk reduction strategies.

He previously worked for the Detroit Water and Sewerage Department where he established the Office of program Management Assistance. He holds MS and BS degrees in Civil Engineering from Wayne State University.

Wade Trim (www.wadetrim.com) has more than 330 professional and support staff in 22 offices throughout Michigan and eight other states. They provide engineering, surveying, landscape architecture, planning, operations, and construction services for transportation, water resources, private development and municipal government projects.

James Sabo and Lindsay Boardman

Planning and Environmental Design Group, Detroit

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Lindsay Boardman

of experience in planning and Zoning administration including site plan review, historic preservation review, sign review, capital project management project bidding budget administration, tax increment financing, and economic development. He previously served as the City of Allen Park's DDA Director and as a senior planner for the City of Birmingham. He holds a Master of Public Administration degree with and emphasis on Urban Planning from Eastern Michigan University. Sabo is a key member of Wade Trim's team that is assisting the City of Pontiac with professional planning and building services.

Boardman has experience in Community Development Block Grant administration, Capital Improvement Plans, Industrial Facility Tax Abatements, Consolidated Action Plans, Annual Action plans Analyses of Impediments, Zoning and Ordinance compliance, Industrial and Commercial corridor GIS mapping and Farmers' Markets. She graduated in 2010 from the University of Michigan with a BA in Urban and Regional Studies with specialization in Environment Design and Space.

MITA Member News
Compiled by Andrew Brown

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REPOWER!

Numerous contractors have been receiving engine upgrades via a grant project, established by MITA, with Region Five Federal EPA.



The guys from the Kalkaska CAT get excited about a repower for MITA member Rieth Riley Construction Co.

MITA Receives Top Public Relations Awards

MITA was honored recently with two PACE public relations awards by the Public Relations Society of America (PRSA) at a ceremony in Lansing. MITA's "Pure Pothole Hell YouTube Video," which has been watched by over 105,000 viewers, won the top Pinnacle Award for best video program. An additional Pinnacle Award, in the area of best creative tactic, was received for MITA's "Pure Pothole Devils: Special Legislative Delivery."

To view the videos, visit the video section of www.drivemi.org.

The PACE Awards are presented each year by the Central Michigan Chapter of PRSA. Awards are given to public relations practitioners who successfully address contemporary issues with exemplary skill, creativity and resourcefulness. This year's event was judged by an out-of-state PRSA chapter with special expertise in the award categories.

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What Every Contractor Operating Over-the-Road Trucks Needs to Know About Overweight Fines and Other Commercial Violations

Continued from pg. 35

tractors when issued by cities, townships or villages, under Michigan law, go as follows:

- 70% of the fines are allocated to the city, township or village in which the citation was issued to use as they deem fit in their general budget; and
- 30% is sent to the State to use for the Public Library Fund MCL 257.955

A commercial vehicle issued a commercial civil infraction for a violation of a "serious safety defect", as defined under 49 C.F.R. 390.5 of the Federal Motor Carrier Safety Regulations (brakes, tires, steering, coupling devices, headlights, taillights, brake lights, and certain turn signal violations) can be assessed a fine of up to \$500.00 for each violation pursuant to MCL 480.17b. Fines for these types of violations assessed by a district court are applied solely for State library purposes, except in the case of those assessed by a municipal court which fines are allocated to the political subdivision whose ordinance was violated.

Certain commercial motor vehicle violations are criminal misdemeanors and provide for monetary penalties, which are also allocated to local municipalities as follows:

- 70% to the general fund of the local unit of government in which the citation is issued;
- 30% for State library purposes.

Conclusion

Every contractor whose business uses commercial motor vehicles over the public highways must be aware of the types of violations that can be issued and the related matters described above. These types of fines can rapidly add up to tens if not hundreds of thousands of dollars of unnecessary costs to your company. Most of these violations can be prevented. If not, many can be successfully defended against on a cost-effective basis by counsel experienced with matters of this nature. Contractors using professional assistance to defend against these matters not only save substantial sums of money but alert motor vehicle enforcement officers to the fact that citations issued to their companies or personnel will be carefully scrutinized and if merited vigorously defended against!

This will not only benefit your company from an expense standpoint but also protect its record for insurance and compliance purposes, such as CSA-2010, which has become a day-to-day operational reality for every company operating motor vehicles over the highways.

Sullivan and Leavitt, P.C. has been a leading advocate for the heavy transportation and related industries for over 50 years. Michael J. Leavitt, Esq. heads its Trucking Compliance and Enforcement section. He can be reached at (248) 349-3980, Ext. 208

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Member Outreach Spotlight

Recently MITA member Brad Poggi, principal at Pinnacle Insurance Partners, hosted two separate meet and greets at Pinnacle's Grand Rapids office. The first meeting was held with Senator Dave Hildenbrand (29th Senate District), and included attendees Dave Sturru, Grand Valley Concrete Products, and Steve Waalkes, Michigan Concrete Association. The second meeting was held with Representative Lisa Posthums Lyons (86th House District), and included attendees Kirk Breukink, Reith-Riley; Jason Workman, Kamminga & Roodvoets, Inc.; and Gary Rolls, Pinnacle Insurance Partners and Kent County Commissioner. As Brad is quick to point out, the meetings were quite different from each other, both in the attendance of other MITA members and on the legislators' views on the topics discussed.

While each meeting was different, they did have similarities as well:

- Both legislators were open and receptive to the idea of meeting with a group of MITA member constituents to discuss their issues.
- Neither legislator was an expert on the issues discussed. In fact, neither one of them sits on the transportation committee for either chamber.
- Both legislators provided answers to the questions presented to them, even when the answers

were not likely to be easily received by the attendees.

Speaking with Brad after each of the meetings, he felt the experience of hosting this meet and greet for himself and other MITA members was a beneficial experience, one that he would continue and one that prepared the foundation for a good working relationship with the legislators.

When asked about the experience, he said, "While the responses were not always what I wanted to hear, at least now I know where they stand on the issues important to me and it helps point me in the right direction on the best way to advocate for the industry."

Following these initial meet and greets, Brad and other attendees have been able to follow up and exchange information with their legislator on issues that were raised at the meeting. These interactions allow these MITA members to become trusted resources to their legislators on the issues important to them as members.

If you would like to host a meet and greet for your legislators, please contact Nicole Cook, outreach coordinator at MITA, via email at nicolecook@mi-ita.com or by phone at (517) 347-8336, and she can help plan all of the details for you.

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Next came the 1935 case *American Surety Co. of New York v. Westinghouse Electric Mfg. Co.*⁵ This was a contest between the surety and unpaid subcontractors and suppliers over a contract balance held by the government. Because subcontractors and suppliers remained unpaid after the payment bond was discharged, they had rights to the contract balance superior to those of the surety. The Supreme Court wrote, "A surety who has undertaken to pay the creditors of the principal, though not beyond a stated limit, may not share in the assets of the principal by reason of such payment until the debts thus partially protected have been satisfied in full."⁶ In other words, the subcontractors and suppliers had to be paid in full before the surety could claim priority over them.

A few years after *American Surety*, the Supreme Court released *Martin v. National Surety Co.*⁷ in which the Court, for the first time, expressly recognized an equitable interest held by subcontractors and suppliers in contract retainage funds. The subcontractors' equitable interest led the Martin Court to disregard an illegal assignment of the contract balance to the surety, which was collecting the funds on their behalf. The Martin surety itself recognized its inability to claim the funds due to the lack of full payment to subcontractors and suppliers, which the Court deemed an "equity worthy of recognition."⁸ The surety, however, was entitled to prevail in equity because the funds were to go to be used by the surety to satisfy unpaid subcontractors who performed on the project.

Against this backdrop, the Supreme Court decided the 1962 case *Pearlman v. Reliance Insurance Company*,⁹ in which a bankruptcy trustee sought priority to a contract balance over a payment bond surety that had fully paid subcontractors and suppliers. In *Pearlman*, the Court first reiterated the bedrock subrogation principle that "a surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed" and reaffirmed the vitality of *Prairie State* and *Henningsen*.¹⁰ The Court then held the subcontractors and suppliers had a right to the contract balance:

We therefore hold in accord with the established legal principles stated above that the government had a right to use the retained fund to pay laborers and materialmen; [and] that the laborers and materialmen had a right to be paid out of the fund...¹¹



Thus, *Pearlman* extended the equitable lien granted to sureties by *Prairie State* and *Henningsen* to unpaid subcontractors and suppliers. In the years since *Pearlman*, courts have cemented this concept, holding on several occasions that those who provide labor and materials to a construction project have an equitable lien on the contract balance.¹² This gives them priority over unrelated third parties, such as banks and bankruptcy trustees, who may try to intercept those contract funds.

On private projects, a contractor's best tool for warding off

third parties who try to intercept a subcontractor's contract balance is the Michigan Builders Trust Fund Act. Originally passed during the Great Depression as a means to provide additional protection to subcontractors and suppliers, the act requires funds paid for a construction project to be first used to compensate those supplying labor and materials to it. When the legislature first passed the act, too many contractors used revenue on current projects to pay other debts, leaving their subcontractors and suppliers without an effective remedy for payment.¹³ The legislature addressed this by establishing a statutory trust over any funds paid by any person to a contractor or a subcontractor for labor or material supplied to a project. Upon receiving funds, the contractor or subcontractor becomes a trustee and holds the funds for the benefit of lower-tier subcontractors, suppliers, or laborers. Because the funds are trust assets, the contractor or subcontractor to whom they were paid has no property interest in them; rather, the assets belong to the lower-tier subcontractor, supplier, or labor.¹⁴ Following this, the recipient/trustee of the funds cannot pledge them as collateral, and its creditors cannot reach them unless the creditor provided labor or materials to the particular construction project for which the funds were paid.

For example, in *National Bank of Detroit v. Eames and Brown*,¹⁵ a bank argued its security interest in a contractor's accounts receivable gave

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Legal Issues

Continued from pg. 57

it priority over a subcontractor and supplier to the contractor's contract balance. The Supreme Court disagreed, holding the contractor had no property right in the funds that it could assign to the bank. The Court wrote, "The contractor or subcontractor cannot defeat the purpose of the Act by granting a security interest in those funds held in trust for the materialmen's benefit."¹⁶ Similarly, in *Huizinga v United States*,¹⁷ project progress payments did not have to be paid over to the Internal Revenue Service to satisfy a pre-existing tax liability; rather they had to be paid to the contractor's subcontractors and suppliers. Because the contractor who initially received the funds had no property interest in them, the contractor had no ability or right to forward them to the IRS.

In the event a party who receives funds subject to the act files a petition in bankruptcy, the party's lack of a property interest in the funds also prevents the bankruptcy trustee from getting ahold of them. On occasion, bankruptcy trustees have tried to recover amounts paid to a debtor's subcontractors and suppliers as preferential transfers, which are barred by the Bankruptcy Code. Because the subcontractors and suppliers are trust fund beneficiaries, the trustee has no right to set aside payments to them.¹⁸ The subcontractors and suppliers are entitled to receive their own money, which has merely been held in trust for them.

Under case law construing the Michigan Builders Trust Fund

Act, those whose funds have been wrongfully taken have a civil cause of action against those who have violated the trust.¹⁹ And under the express terms of the act, those who pay the funds, in addition to those who are supposed to receive them, may sue.²⁰ Thus, project owners who pay contractors and contractors who pay subcontractors may sue the recipient of the funds to enforce the trust.

One of the unique remedies granted to trust fund claimants is the right to recover their funds from third party recipients of them if their funds can be traced and if the third party had reason to suspect the funds were subject to the trust.²¹ On occasion this has enabled parties to recover trust funds from commercial lenders who sweep a contractor's bank accounts, scooping up trust funds in the process.²² The rationale for this remedy is, once again, the recipient's lack of ownership of the funds. Because the recipient lacks ownership of the trust funds, the recipient cannot pledge them as collateral to a bank, which, in turn, has no right to exercise any right of set-off against them. The requirement that the funds be traceable and the requirement that the bank who sweeps the account have notice of the funds' trust characteristics limit the opportunities for applying this particular remedy. But in the proper circumstances, it gives contractors a powerful means of ensuring construction project money gets to the proper parties.

The Michigan Builders Trust Fund Act does not apply to public

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projects. While the language of the act does not restrict its application to private work, the Michigan Supreme Court has held on two separate occasions that public projects are exempt from its purview because the payment bond statutes provide sufficient protection to subcontractors, suppliers, and laborers.²³ However, when a third party tries to intercept a subcontractor's progress payment on a public project, the payment bond statutes provide no protection for the prime contractor who posts the payment bond. If the prime contractor is not using joint checks or paying on unconditional waivers from lower-tier subcontractors and suppliers and a third party intercepts the subcontractor's payment, the contractor may pay twice for labor and material, since lower-tier subcontractors and suppliers may still have valid payment bond claims.

A bill introduced in the legislature a few years ago would have amended the Michigan Builders Trust Fund Act to apply to public projects, but it never made it to the main floor of the house or senate for a vote.²⁴ Unless the bill gets reintroduced, or unless the Michigan Supreme Court reverses itself, the Michigan Builders Trust Fund Act cannot be used to prevent public project contract payments from being intercepted by third parties such as banks and garnishee-plaintiffs.

In sum, contractors faced with an insolvency on their project team have strong remedies to protect their payment bonds and to

ensure lower-tier subcontractors, suppliers, and fringe benefit funds get paid. On private projects, the Michigan Builders Trust Fund Act provides an express statutory trust for the benefit of the person making the payment and the parties supplying labor and material to the project. On public projects, the rules are not as crisp, but contractors, subcontractors, and suppliers still have 100 years' of legal precedents at their disposal.

Jeffrey M. Sangster is a principal at Kotz Sangster. He has practiced construction law for over 30 years and is the leader of the firm's Construction Law Practice group. He represents a wide variety of subcontractors, general contractors, and owners in litigation and transactional matters; delay, disruption, and differing site conditions claims; lien and bond litigation; arbitration; and construction contract drafting, analysis, and negotiation. Mr. Sangster graduated from Michigan State University with a B.A., cum laude, in 1975 and obtained his law degree from Wayne State University in 1979. Those with questions about the article are invited to contact him via email at jsangster@kotzsangster.com, or call him at (313) 259-8300.

R. Edward Boucher is a partner practicing in Kotz Sangster's Construction Law Practice group. He has over ten years experience in this practice area and has handled claims involving unforeseen soil conditions, defective workmanship, and delays in the construction of hospitals, casinos, and roadways. He has also rep-

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Legal Issues

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resented contractors and construction industry executives in litigation concerning surety general indemnity agreements and has represented contractors before state administrative bodies, such as the Michigan Gaming Control Board and MIOSHA. For more information, please contact Mr. Boucher by calling him at 313-259-8300 or emailing him at rboucher@kotszangster.com.

(Endnotes)

- 1 MCL 570.151 et seq.
- 2 164 US 227; 17 SCt 142; 41 LEt 412 (1896)
- 3 208 US 404; 28 SCt 389; 52 LEt 547 (1908)
- 4 Henningsen at 410
- 5 296 US 133; 56 SCt 9; 80 LEt 105 (1935)
- 6 American Surety at 137.
- 7 300 US 588; 57 SCt 531; 81 LEt 322 (1937)
- 8 Martin at 590, 596 (citing American Surety, supra, and Jenkins v. National Surety Co., 277 US 258, 266; 48 SCt 445; 72 LEt 874 (1928) (surety cannot enforce indemnity agreement until creditors paid in full))
- 9 371 US 132; 83 SCt 232; 9 LEt2d 190 (1962)
- 10 Pearlman at 136-137, 140
- 11 Pearlman at 141.
- 12 See, e.g., Active Fire Sprinkler Corp. v United States Postal Service, 811 F2d 747, 755 (CA 2, 1987) ("It is not new law that unpaid subcontractors hold an equitable interest in a contract balance owed by a building owner to a general contractor.") and Universal Bonding Insurance Co. v Gittens and Sprinkle Enterprises, Inc., 960 F2d 366, 376 (CA 3, 1992) ("We also hold that once the funds are received by Gittens, they will constitute an equitable trust for the benefit of laborers and materialmen.")
- 13 DiPonio Constr. Co. v. Rosati Masonry Co., 246 Mich.App. 43, 49, 631 N.W.2d 59, 63 (2001).
- 14 B.F. Farnell Company v Monahan, 377 Mich 552; 141 NW2d 58 (1966).
- 15 National Bank of Detroit v Eames and Brown, 396 Mich 611; 242 NW2d 412 (1976)
- 16 National Bank of Detroit at 621
- 17 68 F3d 139 (CA 6, 1995)
- 18 Selby v Ford Motor Co., 590 F2d 642 (CA 6, 1979).
- 19 B.F. Farnell Company v Monahan, 377 Mich 552; 141 NW2d 58 (1966)
- 20 MCL 570.152; In re Kriegish, 275 BR 838, 845 (ED Mich, 2002)
- 21 In re Williams Brothers Asphalt Paving, 59 BR 71 (WD Mich, 1986)
- 22 See e.g., Blair v Trafco Products, Inc., 142 Mich App 349; 369 NW2d 900 (1985)
- 23 Club Holding Co. v Flint Citizens Loan & Investment Co., 272 Mich 66; 261 NW 133 (1935) overruled on other grounds by B.F. Farnell Company v Monahan, 377 Mich 552; 141 NW2d 58 (1966); In re Certified Question, 411 Mich 727; 311 NW2d 731 (1981)
- 24 MITA supported the bill.



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Calendar of Events

(All dates are subject to change and additional events may be added. Please check out the electronic calendar regularly in the events section of www.mi-ita.com.)

JULY 27-31

MITA Summer Conference
Crystal Mountain, Thompsonville

AUGUST 24

MITA Board Meeting
MITA Office, Okemos • 1 p.m.

AUGUST 25

Central Michigan Golf Outing
Eagle Eye, East Lansing • 9 a.m.

OCTOBER 19

MITA Board Meeting
MITA Office, Okemos • 1 p.m.

DECEMBER 9

MITA Board Meeting
Country Club of Lansing • 8:30 a.m.

DECEMBER 9

Central Michigan Holiday Party
Country Club of Lansing • 11:30 a.m.

DECEMBER 16

Western Michigan Holiday Party
McFaddens, Grand Rapids • 11:30 a.m.

DECEMBER 21

Southeastern Michigan Holiday Party
Troy Marriott • 11:30 a.m.

2011 MDOT BID LETTINGS

All bid lettings are downloaded at the MDOT Building (Van Wagoner Building on Ottawa St. in Lansing), second floor.

January 7, 2011	July 1, 2011
February 4, 2011	August 5, 2011
March 11, 2011	September 2, 2011
April 1, 2011	October 7, 2011
May 6, 2011	November 4, 2011
June 3, 2011	December 2, 2011



The children of Greg Pease from Michigan CAT take time out for a photo during the MITA Ski Weekend in January.



The daughters of Leo Remijan from Ajax Paving enjoy the food at the MITA Ski Weekend.

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06/02/2011	Member Voice: Do you feel the recent changes in the Michigan Business Tax and Unemployment Insurance Tax will have a positive effect on your business?
06/02/2011	Did You Know: A Job Site Inspection is Great Protection!
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05/19/2011	Did You Know: You Can Update Your Company's Profile online.
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