

IS "BRING YOUR GUN TO WORK DAY" COMING?

The Illinois Manufacturer

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Spring 2009



Time to go green: Turn environmental regulations into competitive advantages for your company

**U of I President B. Joseph White:
"American manufacturing is an
incredible success story"**

**Green business solutions . . .
Reduce your footprint**

**Tax incentives you can use to cut
costs and improve energy efficiency**



This ad was provided by the Illinois Manufacturers' Association... people who still make things in this state, and would like to keep it that way.



Big Union Bosses think that she doesn't deserve the right to a secret ballot...

...and they want YOUR Congressman to help them take it away.

A secret ballot is one of the hallmarks of our democracy. But big union bosses are trying to pass legislation that could strip millions of American workers of their right to vote in private in workplace elections when decisions on union representation are made. Their initiative is called "Card Check," and it's only one of the many onerous elements of the so-called *Employee Free Choice Act*. Since some Illinois congressmen's campaigns received lots of help from big union bosses last fall, you can bet labor will be calling in their IOUs when it comes time to vote for Card Check later this year.

Call these Illinois Members of Congress and ask them to vote NO on "Card Check." And let them know that you're watching...



Dick Durbin
U.S. Senator
(312) 353-4952



Roland Burris
U.S. Senator
(312) 886-3506



Bill Foster
14th Cong. Dist.
(630) 406-1114



Debbie Halvorson
11th Cong. Dist.
(815) 726-4998



Melissa Bean
14th Cong. Dist.
(847) 517-2927

Spring 2009

Time to go green: Turn environmental regulations into competitive advantages



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As environmental regulatory pressures grow, many companies are starting to see that these regulations can be an opportunity to reduce costs and address operating deficiencies, in a sense killing two birds with one stone.

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Mission Statement

The object for which the Illinois Manufacturers’ Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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Share your company news with IMA . . .

News information, press releases and articles may be sent to Stefany Henson, Editor and Director of Publications, Illinois Manufacturers’ Association (IMA), 220 East Adams Street, Springfield, IL 62701, or email: shenson@ima-net.org.



Help defeat card check legislation NOW



Polling reveals that only about 16 percent of the nation supports Card Check, while a whopping 72 percent oppose it.

At the turn of the century, a number of pundits predicted that a key issue facing Americans and people all over the world was privacy. So influential was the growth and expansion of the Internet becoming in everyday life, they wrote, that alarms were sounding about the threat of identity theft and protecting the right to privacy.

Today in Washington, DC, privacy is under attack. Big union bosses, fresh from lavishing more than \$250 million on candidates in the last election, are bent on collecting I.O.U.s by demanding Congress pass and President Obama sign the so-called Employee Free Choice Act — often called Card Check. This legislation attacks privacy by denying workers the right to a secret ballot in elections to determine whether or not workers wish to unionize their workplace.

Battle lines have been drawn between powerful unions with millions to spend and employers whose numbers are diminishing and whose resources are scarce. But we know this is a battle we must win to protect our workers and their rights.

It's interesting to note that proponents of "card check" have not cited any specific problems with current laws that have been on the books for more than 70 years. Those laws require that, for the most part, unionization elections be conducted through a secret ballot. Under "Card Check," the unions want to return to the days when "friendly persuasion" was used to recruit members to their nascent organizations.

Even more onerous are provisions in the bill that mandate binding arbitration if a contract is not agreed to within 120 days of a new bargaining unit being formed. Can you imagine the equity of a contract decided by a federal bureaucrat?

Polling reveals that only about 16 percent of the nation supports Card Check, while a whopping 72 percent oppose it. And that percentage is even greater in union households. These polls measured more than 80 percent in union-household opposition to Card Check in some areas of the Midwest.

So what's this move by big labor unions really about? Plain and simply, it's money. Workers have it . . . union bosses want it.

It's no secret that union membership has been on a downward trend for decades. Even here in Illinois, union membership now stands at less than 15 percent. And when there are fewer union members, there's less in union dues collected.

Frankly, the EFCA is Big Labor's unabashed effort to increase its revenues by authorizing the same strong-arm organizing tactics they last used in the 1920s. The bosses are convinced that by saying that their bill only streamlines the unionization process, the pliable Congress they paid for in 2008 will acquiesce.

These are dangerous times for business owners and workers alike and sitting on the sidelines waiting for somebody else to do something is an unacceptable response. Every manufacturer and their employees need to act today to make sure our Congressional delegation knows how repugnant the EFCA is to American workers. Unless we do that, the only voices our elected officials will hear are those of hired surrogates brought in to sing the union verse and chorus.

It's a siren's song that assures us of bliss but really only lures us into dangerous waters.

Let's protect our rights and the rights of our workers. Get involved before it's too late. It all begins with a simple phone call to your member of Congress. You'd be surprised how loud our collective voice becomes when you take the time to let your opinion be known.



Manufacturing

SUCCESS

What's behind success?

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While Illinois burns . . .

Legend has it that the emperor Nero, the fifth and final ruler of the Julio-Claudian dynasty, played the fiddle while Rome burned in the great fire of 64 A.D. While historians have largely debunked this myth, the phrase “while Rome burns” is now used to describe those who seemingly occupy themselves with unimportant matters and neglect priorities during a crisis.

In case Governor Quinn and our legislators have not checked lately, I would like to take a minute and let them know that Illinois and its economy are in crisis. Our state is literally burning to the ground before our very eyes. The Illinois Manufacturers’ Association and our member companies need to know that our elected officials will stand up and take action now instead of watching our great state burn before our eyes.

While our state has lost more than 175,000 jobs since the beginning of 2008, including nearly 39,000 manufacturing jobs, Illinois lawmakers have been busy with critical state

issues like passing a resolution asking that Pluto be restored to “full planetary status” and creating a law to legislate how people must “anchor or secure” a soccer goal.

Children are graduating from high school every year without the necessary skills to compete in today’s economy and manufacturing companies are having a difficult time finding qualified workers. Instead of focusing on accountability and improving a school system that receives record funding levels every year, Illinois lawmakers are focusing on truly critical priorities like passing laws mandating that the “operation of all-terrain vehicles” be taught in social studies or American government! By the way, other lawmakers want to mandate that our students know about the “Pontian Greek Genocide” and “deportation of Mexican-Americans during the Great Depression.”

Illinois’ unemployment rate is 7.9 percent and rising. Every day companies are making tough decisions that include layoffs and belt-tightening

measures just to be able to keep the doors open one more day. States like Missouri, Colorado, Ohio and Louisiana are working toward passage of comprehensive job creation and retention packages to help stimulate the economy while Illinois appears focused on raising taxes and imposing new costly regulations on employers.

Governor Pat Quinn was presented with a golden opportunity to change the direction of our state when he assumed the reigns as the state’s chief executive officer earlier this year. After years of failed leadership and poor fiscal management, Illinoisans were clamoring for changes to reverse the downward spiral that has sent employers running for greener pastures.

To our dismay, Governor Quinn’s first budget speech showed a blueprint for disaster. Reading the 482 page budget book is like reading the specs for the S.S. Titanic. The backbone of Governor’s Quinn’s plan is a 50 percent increase in the state’s income tax for both individuals and corporations. Businesses in Illinois would pay a whopping 9.7 percent income tax when including the corporate personal property replacement tax.

Quinn further proposed tripling the personal exemption from \$2,000 to \$6,000 meaning that families earning \$24,000 or less would pay NO income taxes while every family earning \$56,000 or less would pay less in income taxes. However, all other families and individuals with no dependants would get socked with paying hundreds and thousands of dollars in new taxes. Robin Hood would be proud.

Governor Quinn further advocated for the elimination of several key tax incentives that help employers create jobs and investment in

see **ILLINOIS BURNS** page 24



Manufacturing is in crisis in Illinois. Please take time from your busy schedules and plan to attend the IMA's Business Day on May 6 in Springfield. This is OUR opportunity to gather en masse and show legislators that we cannot afford more taxes and spending balanced on the backs of the business community. Labor unions and other tax eaters are already asking lawmakers for even more money so our mission is critical. Log onto www.ima-net.org/bizday09.cfm and register today. It's never been more important.

Mark Denzler is Vice President of Government Affairs and Membership for the Illinois Manufacturers’ Association. Mark can be reached at 217-522-1240, extension 3008, or mdenzler@ima-net.org.

Value Based Plan Design . . . A promising innovation in group health benefits

When employers are looking for new ideas about how to save on their group health benefits (and, honestly, when is that not the case?) they invariably look to the same place first: plan design. “What can we change?” they ask themselves, and each other. “There must be a way to contain these costs.” And that is where they may very well be making their first mistake. Employers must learn to stop thinking of their group health plan in terms of cost containment and instead think of it as asset management. That’s the message in the latest, and most effective, concept of benefit management today: Value Based Plan Design.

What is Value Based Plan Design?

It’s a new approach that emphasizes outcomes, individual by individual, and not just in terms of dollars spent. It is built on the concept of reducing costs by removing the barriers to effective care to increase the chances of those positive outcomes as guided by the employers’ own data. In short, it’s a fresh way of designing benefit plans that work.

Two of the proselytizers of Value Based Plan Design are Jack Mahoney, MD and David Hom, of Pitney Bowes. Dr. Mahoney, the corporate medical director, and Hom, Vice President of H.R. Initiatives at the company, have been spreading the word that health is an investment. And it’s an investment in the most valuable asset any organization has: its human capital.

Recent years have seen the rise of consumer driven health care models, pushing additional responsibility for costs onto employees and their families. But is this growing trend doing any good? Higher deductibles and co-pays may in fact prove to be counter-productive if they create a

barrier to effective care. Value Based Plan Design calls for a shift in the focus, demanding that the employees using the health plan be viewed as true human resources. That human capital requires proper investment and once overall group health is redefined as an investment, employers can go about managing that key asset and not just dollars.

Too often, employers view their health plan expenditures only in terms of the direct costs: what is spent on medical care and treatment, and pharmacy benefits. To get the big picture, they must also consider the indirect costs: absenteeism, presenteeism, disability and the serious costs associated with those. It’s a real “tip-of-the iceberg” scenario, whereby the unseen health-related productivity costs represent up to 75 percent of the full cost of poor employee health.

The progressive benefits manager will recognize that it is therefore a matter of managing health for greater value. In other words, it does little

good to shift the costs of care and pharmaceuticals to the employees if the higher costs keep the employees from getting the treatment they need. The cost of not getting that treatment is greater because that leads to those higher indirect costs.

What, then is the first step?

Health begins with the individual, and the individual must be engaged, and take responsibility for his own health. It is plainly clear that lifestyle choices such as whether to use tobacco and/or alcohol, and whether to maintain a healthy diet and exercise are much bigger factors than genetics. And early detection of disease is always critical in treatment for conditions such as colorectal cancer and diabetes. Individuals with chronic conditions and low medication compliance rates have high probability of moving to a higher cost tier within one year. Similarly, individuals with no exposure to the health care system are at a high risk of becoming

see **HEALTH BENEFITS** page 26



Heritage-Crystal Clean offers ESP services

Complete facility environmental needs evaluation at NO COST to IMA members

IMA member and affinity partner Heritage-Crystal Clean (HCC) not only has a full line of parts cleaning and industrial wastes service, but they also have ESP. No, not quite extra sensory perception but instead, a program designed to lessen the burdens that accompany environmental activities.

Environmental Solutions Partners, ESP for short, is a unique approach to evaluate waste generation processes and management in an effort to provide a sole source environmental vendor who utilizes the latest technology available.

Initially, ESP, consisting of HCC environmental experts, performs, **at no cost to IMA members**, a complete facility evaluation to identify needs and ensure that the company is using best environmental practices.

Following the evaluation, ESP prepares a full report which includes all environmental findings; an implementation plan; and pricing for recommended HCC services.

Further benefits of the service include monthly billing to meet customer budgetary needs, a year-end report detailing all ESP activity, proper management of all waste streams, assisting in waste minimization, ongoing communication with HCC

and the assurance that environmental services and concerns are being met.

HCC, the second largest and fastest growing company of its kind in the United States, is the IMA preferred vendor for parts cleaning and industrial waste disposal services. Along with ESP, HCC offers other innovative programs such as reuse, their Certificate of Assurance and the HCC Aqua Filtration Service (AFS).

HCC began a rapid expansion in 1999 and discovered that many manufacturing operations rely heavily on aqueous based fluids used in parts and floor cleaning. As a result of using these fluids, operators experienced problems such as equipment wear, operating downtime and waste disposal — costing the manufacturer money.

With that in mind, HCC developed AFS to provide a continuous, reliable, maintenance-free aqueous fluid management system to help companies achieve lower disposal costs and better product quality, while reducing labor exposure, lowering both chemistry purchases and labor costs as well.

Furthermore, the AFS system provides continuous removal of the causes of most spent aqueous fluid problems — particle contamination and tramp oil. Through a

unique filtration technology that removes these contaminants, AFS recycles the fluid and extends the life of your baths, reducing downtime, machine wear, operator exposure and the volume of spent fluids that require expensive disposal.

The aforementioned HCC expansion continues today and there are now over fifty branch service locations in the country with seven covering the entire state of Illinois.

Several IMA members are currently taking advantage of the ESP program, AFS and/or the reuse option offered by HCC. Quite a few more IMA members are benefitting from the IMA-member only pricing discounts on all HCC products and services. If you do not need HCC's ESP program, AFS or reuse, but do have environmental services needs, HCC can assist you . . . from floor-to-ceiling.

To learn more about HCC's products and services and the **IMA-member pricing discounts** available, contact Jim Skelton, HCC Trade Association Manager, at 847-783-5100 (Office), 630-333-5901 (Cell), email: jim.skelton@crystal-clean.com or the IMA's Mark Frech at 217-522-1240, ext. 3022, email: mfrech@ima-net.org. ■

Crystal Clean Will Help You Go Green

... And Guarantees To Lower Your Environmental Services Cost



Crystal Clean is the fastest growing parts cleaning and industrial waste services provider in the United States.

Is your shop faced with increasing challenges? Do you wish you could lower your cost, increase your quality of service and have more peace of mind? Crystal Clean, your IMA Affinity partner can help.

- Parts Cleaning Services (Solvent And Aqueous)
- Waste Minimization
- Drum Waste Management
- Environmental Audits
- Crystal Cat™ Absorbent Products And Services
- Water Filtration Services And Management
- Manifest and Label Preparation


Crystal Clean®

Check out our website;
www.crystalclean.com or
call 877-938-7948 and ask for
Jim Skelton for further information
on our services and special IMA
member only discounts and pricing

Green business solutions help reduce your footprint and appeal to environmentally aware consumers

Making smart energy choices now is more critical than ever, both from a budget perspective and from an environmental one. As the awareness of green solutions spreads, more and more consumers are looking for environmentally sound practices for their personal use, as well as for the businesses they support. But what is “green power” and how can it impact your organization?

“Green power,” also known as “clean or renewable energy” refers to energy that is generated from sources naturally replenished by the sun, wind, rainfall and/or organic matter or processes. These energy sources have in some cases been developed in response to mounting global concerns about the impacts of fossil fuel consumption — including harmful emissions and more. Wind, solar and hydroelectric power produce near zero emissions of greenhouse gases and no harmful pollutants.

Adding green power to your energy portfolio

Consumers, businesses, and organizations may purchase green power in order to support continued development of clean energy, help reduce the environmental impacts of conventional electricity usage (such as harmful emissions) and reduce our collective dependence on energy imports — including fossil fuel.

Investing in Renewable Energy Certificates (RECs) is a common way for businesses to do this. Constellation NewEnergy defines a REC as representing the technological and environmental attributes of one megawatt hour (MWh) of electricity generated from a renewable energy source and delivered to the power grid.

There are many business reasons for purchasing RECs. Here is a

breakdown of four popular reasons.

1. RECs that your company purchases can be used to offset carbon emissions associated with your electricity consumption and simultaneously support investment in renewable energy generation.
2. When your business purchases a REC, it is purchasing the environmental benefit of one MWh of renewable electricity delivered to the electricity grid. These transactions encourage development of more green power.
3. You can choose RECs that support a specific type of renewable energy source, such as wind or hydroelectric power.
4. RECs are sold independently from electricity, essentially making them much easier to buy. Even better, RECs can be purchased from any location where renewable energy is produced, and can be based on

any percentage of your electricity (MWh) usage.

Some consumers recognize the value of environmentally responsible business practices. RECs provide an opportunity for your business to show a commitment to sustainability, while reducing your carbon footprint in a transparent, understandable way.

Determining your company's carbon footprint

By definition, a “carbon footprint” refers to how many tons of carbon dioxide (CO₂) and other greenhouse gas (GHG) your business activities, including your energy consumption, release into the atmosphere.

Currently there are many tools designed to help calculate (or approximate) your company's carbon footprint, taking into account the basic operational needs of your

see **FOOTPRINT** page 10



Scott Lewis is Sales Director for Constellation NewEnergy, a leading competitive energy supplier for commercial and industrial customers that serves the Illinois manufacturing industry. He can be reached at scott.lewis@constellation.com.

Tips on smart energy consumption for your business

1. **LOCALIZED POWER.** Construction of on-site renewable generation for businesses is another viable and potentially profitable means of limiting dependence on fossil fuels and ensuring reliability of power supplies.
2. **DEMAND RESPONSE.** Commercial and industrial customers that demonstrate an ability and commitment to curtailing at least 100 kilowatts of electricity can sign up to participate in an ISO (Independent System Operator) Demand Response Program. Businesses that participate agree to reduce their usage for a specific period of time to make more energy available on the regional grid. This helps prevent blackouts. Once enrolled, businesses earn payments for participation.
3. **IMPROVED HVAC SYSTEMS.** Proper maintenance of heating, ventilating and air conditioning equipment can maximize these systems' efficiency for the long term.
4. **COMPACT FLUORESCENT LIGHTBULBS (CFLs).** If you aren't using CFLs in your property, it's time to make the switch. Each CFL saves approximately 330kWh over its lifetime—a reduction of about 400 pounds of CO₂ and other pollutants. CFLs also generate 70 percent less heat than standard bulbs, reducing some demand on your air conditioning system. Other simple measures to reduce energy use caused by lighting include installing occupancy sensors for offices and corridors, and motion sensors on exterior parking lots and security lighting. (Source: Previously published in *New England Hotel* magazine, March/April 2008)
5. **ENERGY STAR EQUIPMENT.** Energy Star offers several energy-efficient office equipment solutions that may be eligible for tax breaks in addition to saving on electricity costs. An Energy Star labeled computer, for example, uses 70 percent less electricity than a standard model, and in sleep mode, the same computer will use only four watts or less. Spending time in this lowpower mode not only saves energy, but increases the life of the machine overall.

(Source: U.S. Department of Energy, *Energy Efficiency and Renewal Energy* website: http://www1.eere.energy.gov/consumer/tips/home_office.html)

FOOTPRINT

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organization. To tailor your results even further, you can also solicit carbon footprint appraisals from companies that specialize in measuring the environmental impact of very specific operational parameters.

Everyday business practices contribute, in part, to the greenhouse gas emissions that could be associated with climate change — practices ranging from heavy manufacturing processes to heating and air conditioning usage to employee commutes. Some are unavoidable. But others can present opportunities for improvement.

Taking the time to analyze your carbon footprint is a first step in determining not only where your biggest environmental impact currently lies, but in setting goals for your commitment to sustainability.

Charting a green energy path for your business

Businesses are recognizing that using green energy can be not only an effective long-term strategy that is good for the environment, but it also resonates well with consumers who are increasingly looking to businesses with environmentally-sound business practices.

If you are interested in learning how your business can successfully leverage green power solutions, and how to make sensible energy purchasing decisions that underscore your corporate commitment to the environment, please visit www.newenergy.com. ■

Business Day 2009

Wednesday • May 6, 2009 • Springfield

**Luncheon: 12:00 noon • Abraham Lincoln Hotel
& Conference Center • 701 East Adams**

Register TODAY at <http://www.ima-net.org/bizday09.cfm> — Sponsorship opportunities available.

Legislative Reception: 5:00-8:00 pm • IMA headquarters parking lot • 220 East Adams

For information, contact Kimberly McNamara at 800-482-0462, email kmcnamara@ima-net.org.

Get your free electricity quote at <http://www.newenergy.com>

Tax incentives manufacturers can use to cut costs and improve energy efficiency

The Internal Revenue Code provides three tax incentives to encourage the environmentally sustainable use of energy: the energy-efficient commercial building property deduction; the alternative fuel credit; and the qualified alternative fuel vehicle refueling property tax credit.

Manufacturers should consider these tax incentives when they evaluate the cost savings they can realize by improving the environmental sustainability of their energy usage.

Energy-efficient commercial building property deduction

Internal Revenue Code allows a deduction for all or part of the cost of energy-efficient commercial building property placed in service after December 31, 2005 and before January 1, 2014.

Energy-efficient commercial building property includes:

1. Interior lighting systems;
2. Heating, cooling, ventilation and hot water systems; and
3. The building envelope.

To qualify as energy-efficient commercial building property, a qualified professional must certify that building improvements will reduce the total annual energy and power costs of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more when compared to a similar reference building that meets minimum specified energy standards described in Standard 90.1-2001, Energy Standard for Buildings Except Low-Rise Residential Buildings, of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America.

The deduction is the lesser of: (1) the cost of the energy-efficient com-

mercial building property placed in service during the tax year or (2) \$1.80 per square foot of the building space, reduced by all deductions claimed with respect to the building in any prior tax years.

If the overall 50 percent energy reduction standard is not satisfied, but improvements to one of the three energy-efficient commercial building property types described above reduce energy usage by 16 2/3 percent, then the cost of the improvements to that particular subsystem may also be deducted in the tax year placed in service. However, the deduction is limited to 60 cents per square foot of building space less total deductions claimed in prior tax years.

The deduction is claimed by the taxpayer who is entitled to depreciate the property (e.g., the owner of the building or a lessee who pays for and installs the property). Improvements to a residential rental building qualify for the deduction if it has four or more stories above ground level.

The basis of any property gener-

ating a deduction must be reduced by the amount deducted and depreciation may not be claimed on any amount that is deducted under this provision.

Alternative fuel credits

A \$0.50 per gallon alternative fuel credit can be claimed by a producer or user of alternative fuel for use in a motor vehicle or motorboat. In the case of a nonliquid fuel, the credit is based on the gasoline gallon equivalent of such fuel.

The purchase of alternative fuel that is delivered in portable containers for use in a forklift (e.g., propane), is eligible for the credit.

A business that produces an alternative fuel mixture for sale or use in its business may also be eligible for an alternative fuel mixture credit. An alternative fuel mixture is a mixture of taxable fuel (gasoline, diesel or kerosene) and alternative fuel. To qualify for this credit, the mixture must be sold or used as a fuel.

see **TAX INCENTIVES** page 12



TAX INCENTIVES

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Alternative fuels include: liquefied petroleum gas (e.g., propane), compressed natural gas (CNG), liquefied natural gas, liquefied hydrogen, liquid fuel derived from coal (including peat) through the Fischer-Tropsch process, liquid fuel derived from biomass, and P Series Fuels (as defined under section 13211(2) of title 42 of the United States Code). Alternative fuel does not include ethanol, methanol, biodiesel, or renewable diesel.

A business must be registered by the Internal Revenue Service (IRS) in order to take the alternative fuel or alternative fuel mixture credit. Application for registration is made on Form 637.

The alternative fuel credit must first be taken on Schedule C of Form 720 to reduce any taxable fuel liability for alternative fuel and CNG. The alternative fuel mixture credit must also be taken first on Schedule C of Form 720 to reduce any taxable fuel liability for gasoline, diesel fuel, and kerosene. Any excess alternative fuel credit and alternative fuel mixture credit can be claimed on Schedule C of Form 720 or Form 4136.

A taxpayer must include the credit in gross income if the cost of the fuel (including excise tax) was claimed as a deduction.

Alternative fuel users should maintain the following records for each tax period the credit is claimed:

1. Gallons purchased and used;
2. Purchase dates;
3. Names and addresses of suppliers and amounts purchased from each supplier;

4. Nontaxable use for which the fuel was used; and
5. Gallons used for each nontaxable use.

Qualified alternative fuel vehicle refueling property tax credit

The American Recovery and Reinvestment Act of 2009 increased the qualified alternative fuel vehicle refueling property tax credit for qualified non-hydrogen-related property to 50 percent of the cost of qualified property placed in service by the taxpayer during tax years beginning in 2009 and 2010. The maximum dollar amount of the credit for such non-hydrogen-related property which is subject to an allowance for depreciation increases to \$50,000. The maximum credit amount for non-hydrogen-related property not subject to an allowance for depreciation increases to \$2,000 for these tax years. The \$50,000 and \$1,000 credit limits apply to each location where qualified alternative fuel property is installed.

The Energy Tax Incentive Act of 2008 added the qualified alternative fuel vehicle refueling property credit to encourage fuel distributors to develop more alternative refueling locations. The credit allowed was 30 percent of the cost of qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the tax year. The maximum dollar amount of the credit that could be claimed in any one year was \$30,000 for property subject to an allowance for depreciation and \$1,000 for all other property.

Qualified alternative fuel vehicle refueling property is any property (other than a building or its structural components) used to store or

dispense alternative fuel into a motor vehicle fuel tank, but only if the storage or dispensing is at the point where the fuel is delivered into the tank.

For purposes of the alternative fuel vehicle refueling property credit, an alternative fuel must meet one of the following tests:

1. At least 85 percent of the volume of the alternative fuel must consist of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas or hydrogen.
2. At least 20 percent of the volume of the alternative fuel must consist of biodiesel, and it must also include diesel fuel and/or kerosene.
3. For vehicles placed in service after October 3, 2008, electricity is an alternative fuel.

For hydrogen-related property placed in service after December 31, 2008, and before January 1, 2011, the credit percentage remains 30 percent. However, the maximum dollar limitation of the credit for such property, if it is subject to an allowance for depreciation, is increased to \$200,000. The credit is claimed on Form 8911.

Conclusion

Adopting environmentally sustainable manufacturing processes is not only good for the environment but can lead to significant cost savings. Manufacturers looking to implement energy-efficient building improvements and alternative fuel usage should assess the benefits of the tax incentives for their specific situation. ■

The Illinois Manufacturer

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Contact Stefany Henson, 217-522-1240, ext. 3017, or email shenson@ima-net.org

Editorial focus of remaining 2009 issues: Summer—Energy Issues; Fall—Innovation/Technology; Winter—Healthcare/Human Resources

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The ten commandments of handling franchise dealer and distributorship litigation

In these turbulent economic times, companies who distribute through franchisees, dealers or distributors need to guard against the potential that they may become embroiled in litigation. It is more essential than ever that the independent entities that represent you in various channels of distribution adhere to standards which build your brand and reputation. Tough times also require difficult choices to be made which may not benefit individual franchisees, dealers or distributors but which benefit the economic health of the company or the balance of your distribution channel.

A little advance planning can assist you in implementing the changes that you need to make to your business. No matter what industry is involved, a list of best practices can be reduced to ten simple guidelines. By adhering to these practices or adapting them to your specific business model, your dealer or wholesaler relations will be improved even when litigation does not occur. Litigation can be avoided or favorable outcomes enhanced. Taking steps to avoid litigation risk is just good business.

One must recognize the unique aspects of franchise or distributor litigation. No matter what the financial impact of the individual dispute, franchise and distributor litigation are among the hardest fought and most important cases facing your company. For a company, the outcome of litigation may determine its ability to carry out business plans across the entire franchise or distribution system. For example, a simple cleanliness and appearance case at one location may threaten a company's ability to carry out an ambitious or expensive remodeling, upgrade or image effort as to all units. Non-compliance by even one franchisee or distributor can effect a company's

ability to dictate image, quality or service across all outlets. The outcome of such litigation is important not only to the participants but to all the other franchisees or distributors within the system who operate under your trademark or business model.

On the other side of the equation is a franchisee's or distributor's entire life's work or business. The "but for" of non-compliance by the franchisee with your business plan or policies is often termination. Litigation must be conducted in an atmosphere with all the sympathies that accompany the importance of the case to both parties. The time to level the playing field of sympathies is not after a dispute occurs but by following best practices now — the ten commandments.

The ten commandments

I. There are only two issues in every franchise or distributor dispute:

- *The trademark; and*
- *Credibility — who is telling the truth.*

The bedrock of this type of dispute starts and ends with your trademark and business model. This is

what the Company shares with all franchisees or distributors who comply with company policy. By establishing that the actions of the non-compliant franchisee threaten the good name of the company or its trademark, the playing field is leveled. The dispute must be seen from the perspective of the consumer and your other distributors. If the company is seen as only protecting its trademark and good name and not merely as punitive in its relation with one or more franchisees, then its goal is reached. In order to wrap oneself in the trademark, the company must be able to show that it has made consistent efforts over time to build its brand and its network. If the sudden concern for your trademark or goodwill only started with this particular defendant, much of the high ground will be sacrificed. The concern for the trademark and business model must be one that has been long held, well communicated and enforced consistently over time.

see **COMMANDMENTS** page 28



Go “green” with special financing incentives

Have a goal of going green? Small businesses are now eligible for larger loans to make that goal a reality.

Many business owners fear it will cost them too much money to adopt more eco-friendly practices. However, nationally, small businesses spend an average of \$60 billion on energy each year. This equates to large energy bills and possibly an increase in global warming from gas emissions. Small businesses can actually cut up to 30 percent of their energy needs without sacrificing their quality or comfort, resulting in a significant improvement in both their financial bottom line and the quality of our atmosphere. In fact, small businesses can actually improve the performance of their facilities while reducing energy costs. Another benefit . . . eco-friendliness can result in significant federal tax savings.

In addition, more and more consumers are adopting a green lifestyle and are specifically looking for products and manufacturers that fill that niche. According to the Organic Trade Association's Manufacturer Survey, the organic industry grew by 21 percent to reach \$17.7 billion in consumer sales in 2006. Over the last decade, sales of organic products have increased by an average of 20 percent, and this rate is expected to remain steady. It is important for businesses to recognize this trend as a growing business sector and make the switch to environmentally friendly goods and services.

How can I become more energy efficient?

Many projects will require little or no expense. Some simple energy efficient opportunities include turning off the lights and equipment when not needed, regularly changing or cleaning filters, switching to compact fluorescent light bulbs, using ceiling fans, plugging air leaks with weather stripping, and adjusting the thermostat.

However, there are more significant projects that may require capital. These types of improvements would


include adding energy efficient appliances, replacing transportation fleets with hybrid vehicles, installing energy efficient windows and doors, using wind and solar power, and re-designing buildings to reduce the use of non-renewable resources. Small businesses can take advantage of special financing incentives to make significant capital improvements including extensive plant/office renovations, or new construction, to increase energy efficiency overall.

What kind of special financing incentive is available?

The U.S. Small Business Administration recently amended the Small Business Investment Act, which provides three new energy efficiency goals for its 504 Fixed Asset Financing loan program. The 504 loan program was established over 25 years ago by the U.S. Small Business Administration and is designed to promote economic development by helping small businesses get affordable, long-term, fixed rate financing for capital improvement projects. Recently, the SBA expanded loan eligibility criteria for the 504 loan program to include energy efficiency projects in order to assist small business owners with their goal of going green.

How does the 504 loan program work?

The 504 program works in conjunction with local banks to allow small business owners to receive up to 90 percent financing for the acquisition, construction, improvement, or expansion of commercial property or for acquiring heavy machinery or equipment. The program essentially consists of three key elements: 50 percent of the projects total cost is provided by a lending institution, usually a bank; 40 percent is provided through the 504 loan program; and 10 percent equity is provided by the borrower. (Start-up businesses and single purpose facilities require a slightly higher equity contribution.)



**by Marcia Abner,
Vice President,
Small Business Growth Corporation**

How much can be financed?

The SBA normally limits the 504 portion of the loan to \$1.5 million, but that amount is increased to \$2 million for those projects that incorporate sustainable design into their facilities. In addition, small businesses generating renewable energy such as solar, biomass, hydropower, ocean thermal, geothermal, and wind are eligible to finance their project with up to \$4 million from the 504 loan program. Keep in mind; qualification for the 504 does not require that the company generate renewable energy as their primary business activity, just as a method of meeting their own energy needs.

With the down economy, should I wait to make capital improvements?

Not at all. There is a lot of talk out there that business lending has frozen. While there has been a decline, business owners don't need to become discouraged because there are programs available to assist them. In fact, use of the 504 loan program has become increasingly important as a source of long-term financing since traditional sources of money have declined in recent months. The program was actually designed to provide small businesses access to capital that might not otherwise be available through conventional means.

see **FINANCING** page 15

FINANCING

Cont. from page 14

While energy improvements are good for a business' long-term bottom line, what will it do in the short term if a lot of cash is put into the project? Won't that put too much strain on cash flow?

The 504 loan program actually preserves working capital by requiring only a 10 percent down payment . . . slashing the equity contribution to half of what conventional financing requires. Therefore, capital is preserved for the daily operation of the business. The added benefit of a 20-year fixed interest rate . . . it helps businesses manage their bottom line.

Who do I contact about getting 504 financing?

The SBA authorizes Certified Development Companies (CDC) to administer the 504 loan program throughout the United States. The CDC then partners with your lender

to offer the 504 financing package. More than 260 CDC's operate the program nationwide, and each state has at least one. Call your lender and tell them you are interested in the 504 loan program or go to www.growthcorp.com for more information.

Where can I get more information about energy efficiency?

For an extensive amount of information about energy efficiency go to www.business.gov. The site identifies projects offering the biggest payback, as well as state programs and financial incentives available to help your business achieve its goals. In addition, they have ideas for becoming more energy efficient, statistics from consumer research studies, money-saving tips, calculators, and additional methods of implementing sustainable business practices.

Overall, the 504 loan program is worth considering for borrowers who need to make any new capital improvements or expand an existing facility. If those plans also include moving toward energy-efficiency,

the program has been tailored to meet those needs as well. In the end, becoming energy efficient can really save businesses some serious green, both now and long-term.

Marcia Abner is Vice President of Small Business Growth Corporation, a Certified Development Company. Her company focuses exclusively on providing 504 loans and she is an expert in assisting lenders and small businesses with 504 financing. Contact her at 217-787-7557 or read about the program at www.growthcorp.com.

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Time to go green: Turn environmental regulations into competitive advantages

by Steve DeBruyn, CPA, Managing Partner,
Clifton Gunderson LLP

All the grumbling and complaining in the world will not make environmental regulations go away. Some seem to have been created without consideration to costs, financial impacts or the ability of smaller companies to implement them. Nevertheless, the cat has been out of the bag for decades now, and manufacturers need to accept the burden of regulation, along with the cost.

That does not mean that meeting environmental regulations has to be an exercise in compliance that has no benefits to the company. In fact, a positive spin on compliance, as well as proactive environmental initiatives, can give one manufacturer a competitive advantage over others who do nothing.

A cost of doing business

What is the real cost to manufacturers of environmental regulations? A 2005 study by the Small Business Administration reported that the average small business with fewer than 20 employees pays \$3,296 per employee to meet environmental regulations. Businesses with up to 499 employees pay just over \$1,000 per employee, and those with 500 or more employees pay about \$710 per employee.

Many of the more vocal groups pressure state and federal governments to “do more” to address environmental issues. For government, that is often a green light to create tougher regulations and performance standards for manufacturers. Typically, that means higher costs for manufacturers, and ultimately, higher consumer prices for virtually all goods and services.

Two birds, one stone

As environmental regulatory pressures grow, many companies are starting to see that these regulations can be an opportunity to reduce costs and address operating deficiencies, in a sense killing two birds with one stone. If companies look at regulations as one part of a larger process improvement program, many environmental programs can in fact have a positive impact on the bottom line.

Environmental goals and goals for improved efficiency are not just compatible; in many cases they can even improve profitability. For example:



- When implemented, guidelines for reducing natural gas usage will also lower energy costs.
- More efficient motors used in the production process translate into lower electricity costs.
- Early involvement of environmental and energy experts in the design of new or expanded facilities can, in many cases, accelerate implementation and lower costs.
- Planning a new facility to meet certain energy use standards can have positive tax implications.

Admittedly, there are some green goals that seem past the point of being laughable. There are groups advocating stricter controls on the release of methane gas from farm animals, and stricter controls on the VOCs (volatile organic chemicals) released when bakeries allow dough to rise in the bread making and baking process.

However, if this silliness is pushed aside, some of the basic goals of environmental regulations are not in opposition to a well designed and efficiently operating facility. When regulations require greater efficiency, everyone wins.

- Environmental groups get lower energy use, fewer pollutants and reduced greenhouse gas emissions.
- The public gets a cleaner environment, due in part to the efforts of manufacturers.
- The manufacturer reduces costs by using energy more efficiently.

Energy audits reveal challenges and opportunities

Some investments may be necessary to migrate to updated technologies and equipment, but manufacturers typically do not have to go it alone. Energy companies in some states have teamed up with state and local governments to underwrite the cost of helping manufacturers become more efficient.

State and federal agencies, public utilities, and a host of private firms will perform an energy audit to determine how a facility can reduce energy consumption. Typically, an audit

looks at the major energy-using systems, like lighting, heating, air conditioning, water heating, refrigeration and production equipment.

The energy audit team may also look at efficiency loss due to a lack of insulation, poorly sealed doors and outdated windows. Office space, which will have entirely different energy issues, should be included in the energy audit.

An energy audit can help determine where efficiencies can be gained without substantial investment. For example, an audit may reveal hundreds of incandescent light bulbs that could be replaced with energy-efficient compact fluorescent lights (CFLs). The investment is relatively small, but the savings could be substantial over the life of the bulbs.

In addition to cost savings, there is publicity value in any actions taken to improve energy efficiency. In today's "think green" business environment, companies have many opportunities to raise awareness in the marketplace and with other stakeholders.

Incentives for installing or upgrading energy-efficient technologies

Anyone who claims that energy efficiency is too expensive has probably never visited the Database of State Incentives for Renewables and Efficiency (www.dsireusa.org). This site lists nearly 600 rebate programs from public utilities and state government agencies nationwide, plus nearly 100 loan programs. Whether for commercial or residential energy users, all of these incentives are aimed at reducing consumption.

In some states, cash rebates and incentives are available for installation or upgrading with energy-efficient technologies, whether it involves replacing existing equipment or purchasing new.

Examples of energy-efficient equipment eligible for rebates when used in manufacturing and heavy industry include reflective window film, premium T-8 and T-5 lamps and electronic ballasts, T-5 fixtures, reflectors with delamping, high efficiency light emitting diode (LED) exit signs, occupancy sensors, com-

pact fluorescent reflectors and night covers for refrigerated display cases.

Energy efficiency measures typically eligible for incentives include (but are not limited to) the upgrading of air compressors, no air-loss drains, cycling air dryers, stack economizers, lighting and occupancy sensors.

Tax deduction for energy-efficient construction

One federal government incentive designed to spur the growth in energy-efficient construction was recently extended through 2013 by the Emergency Economic Stabilization Act of 2008. It is a package of tax deductions that give commercial property owners generous allowances for the construction or renovation of energy-efficient commercial buildings. Originally passed in 2005, these deductions can generally still be claimed for previous years by filing an amended return.

Under the tax law, the owner of

the tenant pays for the energy-saving upgrades.

The energy savings must be achieved by building or renovating any one of three building systems — the envelope (exterior walls, floor, roof, doors, windows, etc.), interior lighting, or heating, cooling and hot water systems. If the building does not meet the 50 percent energy savings requirement, it could qualify for a partial deduction of 60 cents per square foot if energy costs are reduced by 16.7 percent, or as low as 10 percent.

Special rules for lighting make it easier to qualify for a partial deduction. To the extent that there is a reduction in wattage of 40 percent, a deduction of 60 cents per square foot is available and certification requirements are streamlined.

To qualify, commercial buildings must be located in the U.S., and the energy-efficient property must be placed into service from Jan. 1, 2006, to Dec. 31, 2013.

Fast facts . . .

- Since 1973, the industrial sector has grown by more than 60 percent, but it has required only about 15 percent more energy.
- On average, the commercial sector uses about 60 percent of its electricity for lighting.
- Incandescent bulbs convert only 10 percent of electricity to light; the other 90 percent is converted to heat.

Source: The Need Project, Secondary Energy Infobook, 2007

Best practices . . .

The U.S. Department of Energy Industrial Technologies Program provides U.S. industry with a variety of energy management tools, including best practices for corporate executives, plant managers and technical staff. To learn more, visit . . .

www1.eere.energy.gov/industry/bestpractices


a commercial building can qualify for a 60 cents to \$1.80-per-square-foot credit for buildings that are constructed or renovated to save 50 percent or more on total annual energy costs compared to Standard 90.1-2001 of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE). A building tenant may also qualify if

One step at a time

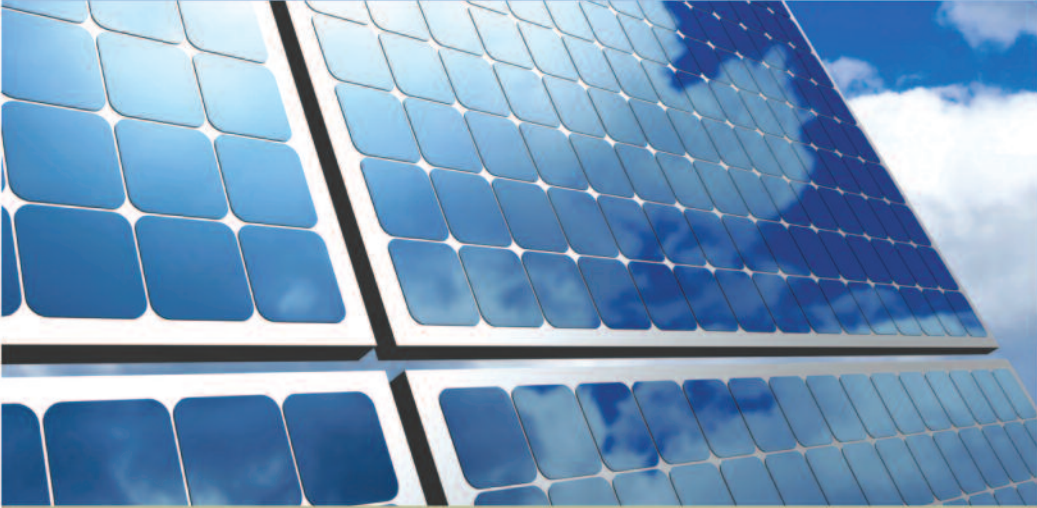
Environmental issues will not be resolved over night, nor can inefficient equipment and manufacturing processes be upgraded or replaced without careful planning of time, resources and capital. As with any initiative, energy-saving efforts

see **GO GREEN** page 25

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Is “Bring your GUN to work day” coming? Protecting your workplace from gun violence

Despite the struggling economy, stores around the country are reporting an interesting phenomenon: gun sales keep going up. Some attribute this trend to anticipated tightening gun control under the Obama presidency; others to fears and stresses stemming from the increasingly tough economic times. Whatever the cause, growing gun sales have employers taking note. And understandably so. The past year's developments in the national gun debate have raised serious questions about an employer's continued ability to protect its workplace and its employees from the dire consequences of gun violence.

Recent developments in the gun debate

In June 2008, the Supreme Court issued a much anticipated, controversial decision in *D.C. v. Heller*, which put an end for now to the ongoing controversy about whether the Second Amendment guarantees the right to bear arms to private individuals, or if it is meant only to extend to the police, military personnel, and other members of state militias. Holding that the Second Amendment's protections indeed extend to private individuals, the Court struck down as unconstitutional a D.C. ordinance that prohibited handgun possession in private homes.

Since the Supreme Court ruling in *Heller*, many municipalities' gun possession bans have come under fire. For example, the decision has led to a steady chipping away at the restrictive gun laws in Illinois, with the suburbs of Wilmette, Evanston, Morton Grove and Winnetka recently repealing their handgun bans. Other locales are expected to follow suit, whether on their own, or through judicial enforcement.

Though *Heller* did not address whether individuals have a Constitutional right to possess weapons in the workplace, employers would be wrong to write the decision off as inconsequential. In confirming Second Amendment protection to individuals possessing guns in their homes, *Heller* raises the important question of whether such protection could and should extend to the individuals who wish to bring guns to work. The pro-gun lobby has

argued that the answer should be “Yes”; and not without success.

Since *Heller*, a number of state legislatures — most recently, Louisiana and Florida — have joined the ranks of numerous other states that have brought or attempted to bring firearms as close as they have ever been to the workplace: the company parking lot. Alaska, Kentucky, Kansas, Minnesota, Mississippi, Georgia, Nebraska, and

see **GUN VIOLENCE** page 27



David B. Ritter is partner and Chair of, and **Sonya Rosenberg** is a member of the Labor and Employment Practice Group of Chicago-based law firm and IMA member Neal, Gerber & Eisenberg LLP. David can be reached at 312-269-8444 or dritter@ngelaw.com. Sonya can be reached at 312-827-1076 or srosenberg@ngelaw.com.

University of Illinois President B. Joseph White: “American manufacturing is an incredible success story”

The state of manufacturing in the current economic crisis and education as a key to America's future prosperity were the twin topics of University of Illinois President B. Joseph White's keynote address at the annual luncheon meeting of the Illinois Manufacturers' Association.



“In general, American manufacturing is an incredible success story — for consumers, employees and shareholders. More Americans need to understand this, and take pride in it,” White declared. As for education, he said: “Properly educating our children and young adults is a big subject. I think America's future depends on it.”

White connected with the audience, including members of the IMA board of directors, because he has been in their shoes. Before becoming U of I president in 2005, White was on the faculty of the University of Michigan for nearly three decades, including 10 years as dean of the business school, and he spent a six-year hiatus from academia as a senior executive of Cummins Engine Co. in Columbus, Ind.

“IMA members and others in the audience sat up and took notice that Joe White has been steeped in Midwestern values of entrepreneurship, innovation, work ethic and quality, and that he has not lost touch with those principles,” said IMA President Gregory W. Baise. “His remarks were insightful and inspirational.”

White's speech to a capacity audience at the Hotel Intercontinental in Chicago last December has been posted at the U of I website, www.uillinois.edu/president/speeches/2008/dec05.ima.cfm, and it was reprinted in the business section of the *Champaign News-Gazette* newspaper.

White, 61, is a native of Detroit who was raised in Kalamazoo, Michigan. He earned his bachelor's

degree in international economics from Georgetown University in 1969 and an MBA from Harvard University in 1971. He returned to Michigan and earned a doctorate in business administration from the University of Michigan in 1975. In addition to his work at Cummins Engine, his private sector experience included a stint on Wall Street after 9/11 to help rebuild a financial services firm devastated by the terrorist attack. He is a director or trustee of several companies and has served on the boards of two health-care systems.

“We are meeting at a time of real crisis in the U.S. and Illinois economies. Your companies, having successfully weathered many changes in the last quarter century, are once again going through a profoundly difficult period,” White told the IMA audience. And he told of his own experience from his time at Cummins in an early 1980s recession that at the time was the worst since the Great Depression.

Immersed in plant closings, layoffs and pay reductions, White said he was feeling sorry for himself when the Cummins chairman, Henry Schacht, took him aside and said: “Joe, you look like you have the weight of the world on your shoulders. That's a problem, because you're an officer of this company. We've made a big bet on you, and people are watching. So here are two things to remember. First, business will get better. And second, worry on your own time. One of your responsibilities is to inspire confidence in others. So put your

shoulders back and be a leader.”

It was good advice and proved to be accurate, White said. “Of course, it's what we all need to do in these hard times,” White added.

White said manufacturing in the first decade of the new century faces several challenges, including one of misperception generally and another having to do with governmental relations.

“These days, it's fashionable — but superficial and, frankly, stupid — to regard manufacturing as somehow yesterday, unimportant, largely gone from the American economic scene,” White said. “Contrary to popular opinion, the U.S. today remains the world's most prolific manufacturer — accounting for one-fifth of world manufacturing value-added and producing two and one-half times more output than those much celebrated Chinese factories.”

In Illinois, despite the loss of 250,000 manufacturing jobs since 1998, manufacturing remains the single largest contributing sector in Illinois' economy at 13 percent of the gross domestic product, he said, and employment is projected to be 640,000 workers through the year 2014. That is twice as many as financial services and transportation/logistics sectors, and about the same as the health-care workforce. “Good jobs paying on average \$55,000 per year plus health-care and retirement benefits,” White said. “Each manufacturing job in Illinois creates more than three and one-half additional jobs.”

The dissonance between the

(continued on next page)



IMA Chairman Ron Bullock congratulates winners of raffle prizes at the 2008 IMA Annual Luncheon. Giles Miller (left) of Phoenix Closures won the Mini Gator Utility Vehicle, donated by Deere & Co. Attorney James Spizzo of Vedder Price (above) was the recipient of a popcorn machine donated by C. Cretors & Co. Mike Smyrniotis of Precision Stamping Products (lower



left) won the wine basket donated by Diageo Co. Cherie Cavazos of RSM McGladrey and Marc van Thillo of ExxonMobil each won two RT airline tickets which were donated by American Airlines and United Airlines. van Thillo donated his pair of tickets to the Make-A-Wish Foundation.



RIGHT: IMA President Gregory W. Baise (left) and IMA Chairman Ron Bullock (right) present Rick Szalach of Exxon Mobil Refining & Supply Co. with a legacy award honoring the company's 75 years as an IMA member. For a complete list of legacy award recipients, turn to page 25.

RIGHT: IMA Chairman Ron Bullock presents former state Representative Ruth Munson (R-Elgin) with a legislative award for her role as a co-founder of the Illinois Legislative Manufacturing Caucus.



LEFT: IMA affinity partner Heritage-Crystal Clean's Jim Skelton (center) and Ed Guglielmi (right) explained their products and services to IMA members during the reception held prior to the annual luncheon.

perception and the reality of manufacturing in the U.S. and Illinois is attributable to at least two factors, White said.

"People equate manufacturing with job loss. But they don't distinguish between jobs lost for a good reason — specifically, productivity improvement — with jobs lost for regrettable reasons, like loss of market share and international outsourcing. American manufacturing, like American agriculture, is fundamentally a long-arc story of astounding improvements in productivity and quality, something to be celebrated," he said.

"A second reason for confusion about manufacturing's role in America is that troubled companies grab the headlines while thousands of truly great manufacturing companies — including household names like Caterpillar, Deere, Boeing and Kraft, and successfully reborn companies, like those in the steel industry — just quietly go about their business," White said. "In the minds of many people, 'manufacturing' equals 'troubled.' Just the opposite should be true."

And there is work to do in removing regulatory and other barriers to manufacturing, White noted. "I know what you look for: hospitable communities, reasonable taxes with competitive incentives, an educated and motivated workforce, a sensible litigation environment and supportive public leaders and legislators," he said. "There is an awful lot to do on this checklist in Illinois. Whether we can get it done, and done soon, is my biggest concern about manufacturing's future in our state."

White's "special passion" as CEO of the \$4.2 billion-a-year U of I enterprise is education. "A well educated workforce is vital for manufacturers. You need employees with reading, math and problem-solving skills, as well as integrity and good judgment," White said. "We know that the returns on education for the individual and society are enormous. There is a high positive correlation between education level and lifetime earnings, and a strong negative correlation between education level and lifetime unemployment."

Noting the millions of people who drop out of school and the number of high school diploma

see **JOE WHITE** page 25

Women business leaders honored by Anti-Defamation League of Chicago

Honored this year by the Anti-Defamation League of Chicago are two women from IMA-member companies. Susan Lichtenstein, chief legal officer of Baxter International Inc. and IMA Board member Marsha Serlin, founder and CEO of United Scrap Metal Inc. were recognized as women business leaders at the League's annual fundraising event held recently in Chicago. The Anti-Defamation League, founded in 1913, combats anti-Semitism and other forms of bigotry. It provides education programs, including training law enforcement in how to recognize and confront hate crimes.

Marsha Serlin has supported this dinner for years because it was created to honor women who are outstanding in their fields, who give back to the community and who support the philosophy of the ADL. Serlin serves on many boards and also co-chaired the campaign to build a Ronald McDonald House at the new Children's Memorial Hospital.



Castings from Chicago Magnesium Casting Company a factor in water landing of US Airways flight 1549

Chicago Magnesium Casting Company, an IMA member since 1962, is a foundry in south suburban Chicago producing quality complex aerospace magnesium and aluminum castings since 1953. It is one of six foundries in North America in this niche market. The company has experienced double digit growth over the past five years supplying castings for commercial and military markets. Castings are made for aircraft from regional jets to the Airbus A380 and military programs from the AH64 Apache Helicopter to the next generation of fighter, the F-35 Joint Strike Fighter.

"If you fly, you are almost certainly depending on a Chicago Magnesium casting, whether it be the main jet engines fuel pump or the APU engine," according to Richard Burnett, President of Chicago Magnesium Casting Company and a member of the IMA's Small Manufacturers Council.

The 110 dedicated employees don't have the luxury of physically seeing their work, since it covered by the structure of the aircraft. However they certainly know the importance of their work, especially when it is responsible for safely controlling the aircraft in an emergency, such as happened in New York on January 15th, in the water landing of US Airways flight 1549 on the Hudson River. The company makes the aluminum gearbox casting for the Airbus A320 auxiliary power unit (APU).

"The generators that routinely provide electricity weren't available because they are driven by the aircraft's engines — which weren't putting out sufficient power after apparently having ingested several geese. But the plane's auxiliary power unit — made by Honeywell International Inc. — was operating during the descent and gave the pilot full use of the jet's flight-control system," according to a spokesman for the National Transportation Safety Board.

Source: Wall Street Journal Jan. 20, 2009.



Caterpillar hosts online community for power generation professionals

In December, Caterpillar Inc. created a new Power Generation Online Community, an interactive forum where consulting specifying engineers and other power generation professionals can exchange ideas and best practices. The online community can be accessed at www.catelectricpowerinfo.com/connect. Past experience purchasing or working with Cat® Power Generation equipment is not required to participate and there are no regis-

tration fees.

"The goal of the online community is to provide a place where users can find answers to questions and interact with their peers," said Dave Lucas, Manager of Marketing Communications, Caterpillar Electric Power Division. "Caterpillar is hosting the forum, but the primary goal is to help people in our industry connect with each other around the clock and around the world."

The section spurring the most activity is power generation sustainability, featuring discussions on topics including alternative fuels and emissions requirements. Other topics such as site design, standards and regulations and system components are also fueling conversation. Users who cannot find an existing topic of interest to them can easily initiate a new discussion by creating a new thread. Caterpillar plans to expand its online communities to include other applications in the future.

To interact with other power generation professionals in Cat's online community, register at www.catelectricpowerinfo.com/connect.



Deco Manufacturing Company expands facility

IMA member Deco Manufacturing Company has had a successful 2008. To better serve their customers, Deco expanded their facility, adding 6,000 square feet to the fabrication shop and moved into new offices last September. In addition to the new offices they have a new and improved climate-controlled quality room for the CNC machinist. The new quality room will help ensure customers are getting the highest quality parts possible.

Deco was also a gold sponsor for the Association of Facilities Engineering (AFE) Chapter 126's golf outing last August to raise money for "engineering the future" scholarships.



Baxter recognized among Global 100 most sustainable corporations

Baxter International Inc. was recently recognized among the Global 100 Most Sustainable Corporations in the World and released a new Code of Conduct, reinforcing the company's commitment to the highest standards of business ethics and integrity. Baxter was also featured in the new book *Green Biz: 50 Green, Profitable Companies Reveal Their Strategies and Successes* for its leadership in sustainability.

Baxter's Round Lake, Illinois research and development facility received a 2008 Illinois Pollution Prevention Award for Continuous Improvement. For the past 22 years, the Illinois Sustainable Technology Center has worked with the Illinois government to recognize businesses and organizations in the state that have successfully reduced the generation of gaseous, liquid and solid waste. The Round Lake facility was recognized for a number of successful environmental projects developed during 2007 to increase energy efficiency, reduce waste, conserve water, restore habitats, and improve air quality. To date, project results have included energy savings of 366,000 kilowatt hours per year, the restoration of 10 acres of Baxter-owned land to its natural features, and the conservation of approximately 910,000 gallons of water per year.

Several other Baxter regions and locations received recognition for their efforts to advance diversity and environmental initiatives.

Baxter's commitment to sustainability spans three decades. The company is included in the Dow Jones Sustainability Index and has been recognized by Innovest Strategic Value Advisors as one of the Global 100 Most Sustainable Corporations in the World, by Corporate Responsibility Officer magazine as one of the 100 Best Corporate Citizens and by the U.S. EPA as a Performance Track Corporate Leader.



IMA Board Member LeRoy Hagenbuch (Philippi-Hagenbuch, Inc., Peoria) attended President Obama's State of the Union address in Washington, D.C. as a guest of Illinois Congressman Aaron Schock (R-18). While in D.C., Hagenbuch (left next to Congressman Schock) had the rare opportunity to climb the inner dome of the Capitol and take in one of the best views of the Washington historic landscape. "The Capital Dome really consists of a dome inside a dome," said Hagenbuch. "We climbed up between the two domes and exited just below the top of the Capital where the pictures were taken."



Souls4Souls is your "green" choice for gently worn work boots and safety shoes

Shoe charity invites manufacturers and related industries to encourage employees to recycle their gently worn safety footwear

Souls4Souls Inc., the organization dedicated to giving away footwear to the needy worldwide, is a "Green" choice for gently worn work boots and safety shoes. The charity is actively looking for safety footwear to donate to people in need, whether the shoes come directly from manufacturers or employees who are required to wear safety shoes.

Many shoes that are discarded can be cleaned up and donated, and other shoes thrown out are brand new. "Thousands of employees are required to wear footwear that meets standards set up by the Occupational Safety and Hazard Association," said Wayne Elsey, Founder and CEO of Souls4Souls. "Instead of throwing away shoes because they no longer fulfill OSHA requirements, people can donate them to us. These shoes would be very useful to someone else," Elsey said.

Souls4Souls can provide collection boxes and flyers for companies where employees are required to wear safety footwear, and the shipping costs for sending the shoes to Souls4Souls warehouses is tax-deductible. Companies interested in the program can visit www.souls4souls.org.

Elsey said that Souls4Souls is working hard to reduce the number of shoes that are filling up American landfills. It is estimated that over 300

million pairs of shoes are discarded every year in the United States alone. Elsey said that if these shoes were lined up heel to toe, they would stretch from L.A. to New York and back over twenty times.

By donating their shoes, people will lessen the "footprint" left on the environment. The Souls4Souls program gives people the opportunity to "go green." "Not only can people feel good about helping the environment," added Elsey, "but they can feel good about helping less fortunate people through the gift of shoes."



The S & S Hinge Company acquires the continuous hinge manufacturing assets of Beehler Corporation

February 3, 2009 - The S & S Hinge Company of Bloomingdale, Illinois has acquired the continuous hinge manufacturing assets of Beehler Corporation of Mountain Grove, MO. The acquisition will provide additional capacity for the product range that S & S Hinge currently manufactures. As part of its growth strategy, S & S Hinge will enhance its commitment to its customer base with "value-added products and services" and the Lean Business Systems implementation begun in 2004. Competitive pricing, short lead times, inventory management systems, 100 percent defect free parts, and the "customer needs-based" philosophy will continue to propel the S & S Hinge Company into a leadership position in the

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North American continuous hinge market place.



Illinois Manufacturers' Association champions skills certification system for production workers

Manufacturing remains a vital part of the Illinois economy and the need for high skilled workers continues. Experts say some 30,000 new manufacturing workers will be needed each year for the next ten years to replace the retiring baby-boomer generation. "Despite the current recession, we are facing a 'pipeline' crisis," says Ron Bullock, Chairman of the Illinois Manufacturers' Association Board of Directors.

In response to this challenge, on January 26 the IMA concluded an agreement with the nationally recognized Manufacturing Skill Standards Council (MSSC). This agreement gives the IMA exclusive rights to distribute and take the lead in marketing the MSSC Certification System in Illinois. This agreement builds on a September 2008 IMA Board resolution that encourages its 4,000 members to take MSSC certificates into account in their recruitment and hiring processes.

The MSSC is an industry-led training, assessment and certification system focused on the core competencies needed by the nation's workers in all production occupations in all sectors of manufacturing. The nationwide MSSC Certification

System, based upon federally-endorsed national standards, offers both entry-level and incumbent workers the opportunity to demonstrate that they have acquired the foundational knowledge and basic technical skills needed in the high-growth, technology-intensive jobs of the 21st century — the agile "Industrial Athlete of the Future."

The MSSC awards certificates to individuals who pass MSSC assessments in the four critical functions of production — Safety; Quality Practices & Measurement; Manufacturing Processes & Production; and Maintenance Awareness. Individuals who pass all four assessments are certified as a full MSSC-Certified Production Technician (CPT). MSSC also offers training courses, MSSC Instructor Certification Training, Assessment Center Certification Training, and a "Diagnostic Tool" that benchmarks a company's production workforce against national standards.

"MSSC credentials offer Illinois manufacturers an opportunity to reduce recruitment costs, eliminate remedial training costs, and attract a motivated workforce," states Leo Reddy, MSSC CEO. "MSSC's industry-recognized credentials also allow high schoolers, college students, workers, and career changers to demonstrate that they possess the core skills and flexibility needed to keep pace with technological change in both current and future industries."

IMA President & CEO Gregory W.

Baise adds, "The fact that the MSSC Certification System applies to all our members, irrespective of their industry sector is particularly appealing. We believe that our agreement with MSSC can help keep Illinois at the forefront of the nationwide effort to build a workforce with the advanced manufacturing skills required for U.S. manufacturers to compete effectively in the global economy."



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Join the U.S. Department of Energy (DOE) Industrial Technologies Program on Thursdays from noon to 1:00 p.m. Central time for free Webcasts covering a variety of topics to help you improve your company's energy efficiency. Visit www1.eere.energy.gov/industry to register.



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ILLINOIS BURNS

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Illinois. Apparently the Governor doesn't value R&D jobs that average more than \$70,000 per year because he called for the elimination of the Research & Development Credit. He wants to eliminate the Manufacturers Purchase Credit and prohibit employers from using tax

credits for more than fifty percent of their tax bill.

But the Governor did go out on a limb and ask for spending reduction of 1.5 percent in a \$53 billion state budget. I guess he doesn't read the newspaper and realize that manufacturers across the state are slashing costs by 10 or 20 percent just to stay afloat. I would suggest the novel approach that our Governor and state lawmakers try and run the state like a business — show some leader-

ship and make tough spending decisions instead of asking the taxpayers for a bailout. Maybe we need IMA members to "adopt a legislator" and bring them into manufacturing facilities so they can see how the real world works.

I'll get off my soap box for now but I sure hope that Illinois doesn't burn all the way to the ground while the Governor and state legislators are engrossed in celebrating High School Bass Fishing Month in May. ■

GO GREEN

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should be launched with a plan of action and specific goals based on industry benchmarks. Most government and private incentive programs also include specific goals that must be met in order to qualify.

Manufacturers often find themselves being pegged as the culprit in global environmental problems, and government regulations are intended to address what is perceived as the

source. With the assistance of public and private incentives, manufacturers have the opportunity to improve efficiency, save money, demonstrate environmental responsibility and become part of the solution. ■

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JOE WHITE

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recipients who don't attend or graduate from college, White lamented that the U.S. has fallen from No. 1 globally in the college graduation rate of its citizens to number eight in the world. "This is disastrous for America's future, including the manufacturing sector," White said.

The University of Illinois plays a major role in educating talented Illinoisans to assume a role in the workforce, to become innovators, to commercialize new knowledge and to become leaders. The university educates 70,000 on campuses in Urbana-Champaign, Chicago and Springfield, and it annually awards 18,000 undergraduate, graduate and professional degrees. U of I research and technology parks in Chicago and Urbana partner with major employers for economic development. Business schools at all three campuses have specialized offerings of importance to manufacturing.

The U of I is a powerful economic engine for the state of Illinois. Economists in the university's Institute for Government and Public Affairs established that each year the U of I system produces more than \$13 billion in direct and indirect economic impact on the state, including the creation of 150,000 jobs.

The university's Board of Trustees felt this wasn't enough and has launched an online Global Campus with the goal of providing affordable, high quality baccalaureate completion degrees for well-qualified people across Illinois and beyond for whom education on a residential

campus is out of reach, White said. He noted that the U of I Global Campus is working with the IMA to develop an online degree program in manufacturing management.

"How deep is our commitment to manufacturing at the University of Illinois?" White asked. "It's fair to say it is in our DNA. When Lincoln signed the Morrill Act in 1862, he gave rise to America's land-grant

universities, including the University of Illinois in 1867. Our purpose from the beginning was to educate, conduct research and do outreach for the benefit for two key industries in our state: manufacturing and agriculture.

"One hundred-forty years later, we do much more, but our core mission continues." ■

IMA's Annual Luncheon, December 5, 2008, Chicago Legacy award recipients included . . .

100 year IMA members:

AT&T

Alexander Lumber Company

75 year IMA member:

**Exxon Mobil Refining
& Supply Company**

50 year IMA members:

Ajax Tool Works, Inc.

Nipp's Machine Shop, Inc.

Ford Printing, Inc.

Casting Impregnators, Inc.

G.C. America, Inc.

Resinite Corporation

25 year IMA members:

**Towne Machine & Tool
Company, Inc.**

Hansen Plastics Corporation

Precision Brand Products

Ronken Industries, Inc.

Toyal America, Inc.

William Horn Structural

Steel Company

**Hennig Advanced Machine
& Engineering**

Battery Builders, Inc.

Master Spring & Wire

Form Company

McIntyre Group, Ltd.

Johnson Tool Company

Thybar Corporation

EMCO Chemical

Distributors, Inc.



HEALTH BENEFITS

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high cost claimants within three years. So individuals must become engaged in this process, and incentivized to take better care of themselves. It is up to the employer to create an environment where the individual is accountable.

Plans must be designed, then, with that engagement in mind. That means encouraging low cost (or no cost) health screenings and preventative care. It means providing first dollar coverage for routine medical care. It means encouraging compliance with treatment plans by making drugs more affordable. It means eliminating front-end deductibles. Removing these barriers to effective care is critical for the plan's success.

Think of the employee who is considering a screening, but who faces a high co-pay and must schedule time away from work in order to do it. Chances are he won't because of the costs, in time and money, to him. Value Based Plan Design recommends onsite screenings instead. Yes, there is the additional initial cost, but consider the value created in eliminating the need for more costly treatment later.

Consider the big cost-drivers: diabetes, asthma, and hypertension. The difficulty in treating such conditions is that in many cases, the patient does not "feel sick" most of the time. As a result, compliance to treatment plans becomes a real problem, especially when high deductibles and tiered pharmacy benefits mean that the patient does not comply with the course of treatment that will make him well. Because of this lack of compliance, the patient's condition worsens, leading to far costlier treatment.

What makes more sense: giving the employees better access to brand name prescriptions and checking constantly for compliance, or creating a barrier that will lead to the far greater expense of dialysis, in the case of the diabetic, or more emergency room visits for the asthmatic? There is much greater value in managing the condition than in managing the initial cost. Managing conditions means fewer ER visits, fewer

hospitalizations, fewer hypo or hyperglycemic episodes, and a huge reduction in short term disability.

So what does it take to get the employees to share the new vision, and buy in? As Hom and Maloney say, "Carrots work better than sticks." Penalties are simply not a viable means of change. Instead, they say, people respond to incentives. Penalties often create an atmosphere of mutual suspicion, and cause employees to withdraw from the process. (Think of the smoker who would prefer to hide his smoking than to participate in smoking cessation programs out of a fear of being penalized.)

What kind of incentives work?

Value Based Plan Design says that employers should encourage their employees to maintain or acquire positive health habits by providing

It is plainly clear that lifestyle choices such as whether to use tobacco and/or alcohol, and whether to maintain a healthy diet and exercise are much bigger factors than genetics.

them with credits that accumulate over time, giving them additional flex dollars, for example, if they succeed over a period of time in their compliance. When the individual himself invests, it creates an atmosphere where all feel that they are paying their fair share.

The idea therefore is to manage health, not disease. Making all the stakeholders share this vision is vital. Providers, employees and the employer all must be on the same page, with everyone aware of the goal. Transparency is also needed so that everyone involved see the true costs.

To achieve this goal, data is the key. After all, if the focus of Value Based Plan Design is to be on finding value based on outcomes, then those outcomes must be measured. The difficulty in addressing this issue, however, is the fragmentation in the system, disconnects between providers, employers, pharmacy benefit managers, payors. This lack of integration makes the big, com-

plete picture more elusive.

This fragmentation makes the employers' choice of benefit administration partners crucial. Self-funded employers must choose their third party administrator not only for their accuracy and turnaround times, but also for their reporting capability, clinical focus, predictive modeling expertise, and IT superiority. And from a clinical perspective, the TPA must go well beyond the standards of case management, utilization management, disease management, and wellness. They must be able provide the support that makes greater compliance happen; they must be able to track those outcomes; they must be able to report the findings in a clear and integrated manner, and they must be able to do the analytics.

That's a tall order for any TPA, and one that can be filled only by those with the most robust combination of on-staff nurses and state of the art technology. Collecting as much data as possible is a first step. Employers must ask their administrators to establish a baseline profile and then begin the task of data integration: medical claims including physician and hospital visits, Rx, labs and diagnostics, absenteeism and disability with census data. From there they must look for patterns of utilization. They must construct a framework for the whole continuum of care, and not just work on the large claims as so many do. Only a TPA with the right combination of IT and clinical capabilities can adequately check for and report compliance with treatment plans and medications for chronic conditions. (Setting benchmarks is essential.) Measurement and adjustment over time must be ongoing.

A powerful data analysis tool such as NavigatorMD is a great asset for such analysis. With NavigatorMD, finding gaps in treatment, doing predictive modeling and health risk profiling, and measuring the program's effectiveness are easily integrated and reported.

Employers looking for cost savings have already been embracing Value Based Plan Design and its principles. It's a persuasive argument, as Mahoney and Hom have said: "Shift the perspective; create value by leveraging human capital. ■

GUN VIOLENCE

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Oklahoma already have similar laws on their books. And over a dozen other states — Alabama, Arizona, California, Indiana, Montana, New Hampshire, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and Wisconsin — are considering or have considered parking lot gun laws. Most recently on February 9, a parking lot gun bill was introduced in Texas. If passed, this bill will go in effect in September of this year.

For the most part, parking lot gun laws are similar in content. They generally provide that employers may not prohibit employees who legally carry handguns from keeping them locked in their cars parked on company parking lots. Some laws reach further and prohibit employers from asking their employees about whether they have guns locked in their cars, or taking disciplinary action against those employees who do.

The Courts' say in the gun debate

Parking lot gun laws have met significant resistance in the courts, most of it initiated by employers concerned about workplace gun violence. None have succeeded thus far, though in one state — Oklahoma — employers did come close.

In *ConocoPhillips Co. v. Henry* (N.D. Okla. 2007), a group of employers challenged Oklahoma's parking lot gun law, arguing that it impermissibly conflicted with the federal Occupational Safety and Health Act (OSHA), which, in its general duty clause, requires employers to maintain a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees." 29 USC § 654(a). The district court agreed and, reasoning that it would be impossible for employers to comply both with OSHA's safety mandate and their state's parking lot gun law, held the state law preempted and unenforceable. *ConocoPhillips Co.* was appealed to the Tenth Circuit Court of Appeals. On February 18, the Tenth Circuit overruled the district court, holding that "OSHA has not indicated in *any* way that employers should prohibit firearms from company parking lots" and that

Oklahoma's parking lot gun statute was legitimate and enforceable.

Another recent case, *Bruley v. Village Green Mgmt* (M.D. Fla. Dec. 9, 2008), has helped shed some light on the meaning and the reach of *Heller* and state parking lot gun laws. Bruley lived in the apartment complex where he also worked as a leasing agent. Late one night, Bruley heard "a desperate cry" for help, and took his gun out of his apartment to help a tenant who had been shot in a leg. Though Bruley did not use his gun, his employer fired him the next day for possessing a firearm on company property. Bruley alleged that his termination defied *Heller* and contravened Florida's parking lot gun law. The court disagreed. It found *Heller* inapplicable for its lack of discussion of firearm possession in the

Despite what any parking lot gun law may say, there is currently no law that prohibits private employers from banning weapons *inside* the actual workplaces, adopting policies to this effect, and disciplining individuals who violate such policies.

workplace. The court also rejected the application of Florida's new parking lot gun law to the case, reasoning that the state law reaches only to the parking lot, and does not extend *inside* the workplace.

What employers can do to protect the workplace

Though *Bruley* is an important case, it cannot and will not protect an employer from gun violence. To the extent possible, employers need to take their own, affirmative steps to protect themselves. Despite what any parking lot gun law may say, there is currently no law that prohibits private employers from banning weapons *inside* the actual workplaces, adopting policies to this effect, and disciplining individuals who violate such policies. In fact, courts have upheld employers' actions to this effect. The following

checklist can be used to gauge where you stand and what steps you can take to protect your workplace:

- ✓ **Know your state law(s).** If you are in a state that requires employers to grant parking lot access to guns, do not implement policies that prohibit such access. If your state does not have a parking lot gun law, you can, at least for now, maintain a broad policy prohibiting guns, including in your parking lot.
 - ✓ **Implement strong "no guns at work" and monitoring policies.** Employees should know that you take workplace safety seriously and that being discovered with a gun at work will cost them their jobs. Your policies should make clear that employees have no expectation of privacy in their work areas, and that these are subject to search at any time, without notice.
 - ✓ **Review and reinforce security measures.** Depending on the individual needs of your workplace, this may mean, among other things, requiring access codes/security badges for entry, hiring or adding security personnel, and/or installing metal detectors at the entrances.
 - ✓ **Are your EAP initiatives up to par?** Consider providing anger management training and emphasizing your other EAP initiatives to help boost morale and remind employees that they can seek support and help, if and when needed.
 - ✓ **Pay attention.** Finally, effective workplace security requires constant vigilance by all employees. Employees should feel comfortable bringing any suspicious or inappropriate workplace conduct to the immediate attention of a manager, and management, in turn, should be trained to react swiftly and effectively when any worrisome situations arise.
- We are living in stressful times. When large-scale layoffs are everyday news and tensions are running high, employers cannot afford to ignore the new parking lot gun laws and their implications. Though employers' ability to prevent gun violence is somewhat limited, taking smart, preventative measures now can prove to make the difference in keeping your workplace and your employees safe. ■

COMMANDMENTS

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Secondly, every franchise or distributor case seems to pit the franchisee's actions or inaction against the policies of the company. You will be faced with arguments that not all franchisees have been treated equally with regard to enforcement of your policies. The franchisee will try to paint the problems you raise as insignificant or due to causes beyond the franchisee's control. The defendant often blames the company for causing conditions that led to the infraction. The credibility of company witnesses and that of the franchisee in establishing these conflicting arguments are paramount.

II. Whenever possible, be the plaintiff

- *Be proactive and file an action as a plaintiff — franchisor.*

The Company should bring suit rather than waiting for the franchisee to file suit. In most cases, the parties' dispute reaches a level where the prospect of litigation is clear. Although counter-intuitive, experience shows that being proactive usually reduces the time and cost involved with most disputes. It also postures a case differently when the company seeks a declaratory judgment that its termination is proper, rather than responding to a claim of wrongdoing brought by its distributor. It is also interesting to note that franchisees can often find a lawyer to file a case on a contingent fee basis but usually find it more difficult to obtain counsel to defend a suit brought by the company on that basis. Suits are often handled much more efficiently if the franchisee is paying costs for defending the case instead of prosecuting on a contingent fee basis.

III. Update your franchise or distributor agreements regularly

- *History does repeat itself — learn and profit from experience and the case law.*

Many companies are operating with different agreements for different franchisees or distributors depending upon which form of agreement they originally signed. Others have not updated their form contracts for years and are operating

on written agreements which may not reflect current practices or law. Often programs, rental rebates, special pricing, promotion dollars or other ways of operating that have developed over time are not even covered by your agreement. In order to change methods of delivery, pricing, hours of operation or other terms, flexibility must be built into one's agreement.

Over the years, case law in your industry or related industries may suggest best practices that should be incorporated in your documents. Make sure that your documents include the potential for future changes. For example, your docu-

When termination or non-renewal is finally required, you may consider a termination that can be cured before an effective date by full compliance. Make the franchisee choose termination over compliance.

ments may permit assignment by your franchisee but not the company. You may carry three grades of product and desire at some point to distribute four or two. Is it clear you have the right to make such changes? Anticipate the unforeseen by building choice into your documents.

IV. Train your field people

- *Problems occur where "the rubber hits the road,"*
- *Train your franchisees or distributors*

The focus of disputes often centers on the relationship or actions taken by your company's field people in connection with the franchisee. Franchisees often claim they didn't follow a procedure because they were never told or trained until the dispute arose. Allegations of "bad blood" or personal animosity by the field representative are common. A good training program or at least intermittent training of both field people and franchisees can avoid "misunderstandings." Good

communication can often avoid or blunt arguments related to specific acts or statements made by field personnel.

Training of field people and the franchisees or distributors also helps to promote uniformity. Training materials and workshops are also evidence of the company's concern for its trademark and policies. In today's marketplace, most companies have fewer field people who cover much larger areas. Tenure of field representatives is often much less than the historical average. Training and communication can sometimes compensate for these changes.

V. Communicate, communicate, communicate

- *When policies, procedures, standards or changes in marketing plans are well communicated, they are more often easily enforced.*

Bad news and change are never well received, but if properly communicated a lot of emotion can be taken out of the equation. If you are going to make big changes, tell franchisees what challenges the company faces. Tell them changes in policies and procedures are under study to meet the challenges. When announced, make sure the changes are announced to each franchisee. Consider the method and the messenger. No one likes to hear second hand or after others have already been apprised. Good communication is probably the most important aspect of successful change.

For example, if the company has too many franchisees or distributors, it may need to make changes. The problem may be solved geographically. It may require a look at minimum size of distributor, i.e., 1,000,000 units or greater. The central problem may cause other challenges. For example, poor service, high overhead, slower delivery, etc. By correcting one problem — too many franchisees — you may be able to address a host of other issues that need improvement system wide. Through communication you can deliver the rationale for the needed change and signal to the entire network that change will result in a better system although after a difficult transition.

Communication can also be used
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COMMANDMENTS

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to correct past deficiencies. For example, if image issues have been neglected and the company recognizes this, communicate a new goal and a reasonable time line for compliance. This way, your new found vigor for enforcement is not plagued by the past inaction.

Sometimes the simple act of having a personal visit or phone call from field people before announcements by mail arrive can make all the difference. Good communication can often blunt some of the personal feeling that often causes franchisees to react, too often by filing litigation.

Finally, you should consider what role technology can play in your communication. Contracts, company policies, codes of conduct, and other important information can be placed on a web site. This information can be reissued from time to time as a reminder. This does not displace the need for more personal communication, but it can centralize some portion of communication and eliminate total reliance on field people as the only vehicle to communicate and document your efforts.

VI. Maintain, create and reissue important franchise and contract documents — maintain uniformity

- *Statements of franchisee or distributor policy.*
- *Maintenance policies.*
- *Image or cleanliness standards.*
- *Procedures for approval of assignment.*

Uniformity is another key aspect of enforcing one's policies and protecting your good will. A central argument by most franchisee litigants is to paint any given dispute as a personal one and not really related to the policy the company is trying to enforce. A franchisee always attempts, if possible, to point to other franchisees committing the same acts without consequence.

It is advisable, where possible, to put major policies or standards in written form. Contracts themselves may not adequately spell out what is expected in the areas of maintenance or image. If you only have a standard assignment clause in your contract, you may want to consider procedures for approval of assignment. Do you allow assignees who are multi-branded? Do you have minimum financial criteria? What are the factors

you will or might consider to reasonably withhold consent to assignment?

Also consider, where appropriate, a franchisee or distributor policy or code of conduct. This is just another way to communicate what is expected. No doubt, when a dispute erupts, the problem franchisee will have violated one or more of your standards. Such policies are also a good place to make clear that a franchisee or dealer has a right to appeal or discuss with other managers the actions or directives of the lower level field personnel. Having a formal chain of command can help avoid claims of personality disputes with a field person or claims of poor communication.

VII. When given enough rope, a truly bad franchisee will hang himself

- *Give ample notice, not just statutory or contractual notice when possible.*
- *Give second notices or second chances, where possible.*
- *Consider sending the same warning or message by different people.*
- *Use the statement of dealer rights or contract as a tool, i.e., get it initialed.*

A truly recalcitrant franchisee or distributor, like the tiger, usually doesn't change his stripes. Be sure to document all defaults and give ample time for compliance. Another great fact in these situations is to be able to show that the franchisee was given ample time and several chances to comply. When termination or non-renewal is finally required, you may consider a termination that can be cured before an effective date by full compliance. Make the franchisee choose termination over compliance.

VIII. Separate the message of compliance from the threat of termination

- *Try not to discuss lease, franchise, or contract termination or non-renewal at the same time you are seeking compliance.*
- *Avoid the appearance of pre-text.*

Often in hindsight the request for compliance and the threat of termination or non-renewal become intertwined. For example, a discussion of pricing on the same visit as a discussion of termination for lack of cleanliness and appearance becomes a threat to terminate if suggested pricing is not followed when litigation later ensues. Consider sending different messages from different parties and at distinctly different times. Sepa-

rate your communication seeking compliance from the communication of consequences for non-compliance.

IX. Contact your legal department or outside counsel early — document, document, document

One of the best ways to minimize the potential for litigation or to increase your chances for success is to engage counsel early to assure proper procedures are followed in notifying and counseling the franchisee on compliance issues. A good rule of thumb is never to raise termination with a franchisee or distributor before raising this possibility with counsel.

A central issue in most cases revolves around whether the issue raised by the company to justify termination is bona fide or whether it is merely a pre-text for getting rid of the troublesome distributor. If the requests for performance get intertwined with communication of the penalty for non-compliance, it may be difficult to avoid the conclusion that the distributor has been threatened. It may be difficult for the company to focus on the real issue of non-performance. Do not discuss consequences until an adequate record has been made that the distributor has been notified of non-compliance.

X. It's the trademark stupid!

- *In all you do, stress that termination is for the good of the brand and for the thousands of other franchisees, distributors and the consumer.*

A judge or jury often cares less about either the company or the particular franchisee than they do about other good franchisees and the consuming public who are affected by the dispute.

If the focus of your efforts is to build your brand and protect the profitability of your business for yourself and your distributors, you are not only preparing for potential litigation but are taking steps to strengthen your business. Remember that litigation is a dispute viewed through the lense of hindsight. Actions which you take which seem reasonable today can be seen in the rear view mirror as insufficient. The Ten Commandments is an attempt to assure that the actions you take which are necessary to protect your business cannot be twisted if you find yourself justifying those actions in future litigation. ■

New IMA members

Blackman Kallick, LLP
Chicago

Evans & Dixon, LLC
St. Louis, MO

First Bank Lake County
Grayslake

Frontier Supply Chain Solutions, Inc.
Bolingbrook

Lower 48 Freight Brokers, LLC
Lincoln

Plante & Moran, PLLC
Chicago

Rutland Fire Clay Company
Jacksonville

IMA & MIT 2008 Calendar of events

April 14, 2009

Powered Industrial Vehicle Incident Prevention — Lewis & Clark Community College, 600 Troy Road, Nelson Campus, LeClaire Room, Edwardsville, 1:00-3:00 PM
Since October 1, 2003, 50 employees in Illinois have been killed by powered industrial vehicles (PIV). These machines are used for material handling needs in many industries. OSHA and the Illinois Department of Commerce and Economic Opportunity hosts a FREE seminar to learn how to combat PIV hazards. Learn how to protect your company and avoid costly injuries and OSHA enforcement. Contact: Tom Monroe, 618-468-3500

April 15, 2009

Powered Industrial Vehicle Incident Prevention — Illinois Central College, North, 5407 N. University St., Arbor Hall Auditorium, Peoria, 9:00-11:00 AM
(See program description above.)
Contact: Ellen George, 309-999-4580

April 15, 2009

IMA-MIT Event — Assertive Skills: Communicating With Authority & Impact DePaul University O'Hare Campus
A one-day workshop that will provide professionals at all levels with easy-to-implement techniques to increase communication and listening skills. Participants will learn to communicate positively, respond productively and improve work relationships.

April 20, 2009

IMA-MIT Event — ISO 9001: 2008 Revisions — Decatur Conference Center & Hotel, US Highway 36, Decatur
This one-day program addresses potential effects of the recent changes to ISO 9001 and proposes practical strategies for company compliance. The revisions to ISO 9001 will be reviewed and compared with the 2000 standard. Participants will gain a basic understand-

ing of the new requirements. All employees need to understand these changes to facilitate company-wide compliance.

April 21, 2009

IMA-MIT Event — ISO 9001: 2008 Revisions — DePaul University, 150 W. Warrenville Road, Naperville
(See program description above.)

April 21, 2009

Selling is Everyone's Job Reception and Dinner — Drury Lane, Oak Brook Terrace, 5:30-9:00 PM
The Metals Service Center Institute and the IMA are teaming up with other great local organizations to bring you an evening of Jeffrey Gitomer, a great CPAE Speaker Hall of Famer who will share his selling secrets and strategies. You and your entire organization are encouraged to attend. Regardless of your title, at the end of the day, everyone is a salesperson. \$125 per person. Contact: Kate Johnson, 847-485-3006, kjohnson@msci.org. More Information: www.msci.org/EventCalendar/details.aspx?EventID=477&cat=99999

April 24

IMA-MIT Event — Time Management & Personal Effectiveness Skills DePaul University O'Hare Campus, 3166 River Rd., Des Plaines
A full-day workshop identifying the essential personal effectiveness skills needed in today's fast paced environment, and focusing on applying these key skills utilizing the process you choose (paper based, e-tools or both). This powerful combination (skills and tools) will result in immediate and dramatic improvements in planning and achieving short and long term goals; prioritizing daily activities; making effective decisions; delegating with confidence; using creativity; planning and executing productive meetings; and achieving balance in key areas of your life.

April 29, 2009

Powered Industrial Vehicle Incident Prevention Carle Foundation Hospital, The Forum at Carle, 611 West Park Street, Urbana, 9:00-11:00 AM
(See first program description in column one.)
Contact: Larry Krause, 217-403-8770

May 5, 2009

IMA-MIT Event—Effective Presentation Skills — DePaul University O'Hare Campus, 3166 S River Rd., Des Plaines
Today's business presenter must know how to create and articulate a clear and concise message, respond to questions in an effective and logical manner, and create and use compelling visual aids. This interactive, energetic workshop will provide the business presenter with all of the necessary skills required to deliver a winning presentation. The workshop will introduce and reinforce these skills by having the participant deliver three videotaped presentations.

May 6, 2009

Small Manufacturers Council Meeting IMA office, Oak Brook
Call 630-368-5300 for more information.

May 6, 2009

BUSINESS DAY IN SPRINGFIELD State Capitol, Springfield
Join hundreds of your fellow manufacturers for Business Day 2009. It's a critical time in Springfield as lawmakers grapple with a \$9 billion budget shortfall and union bosses and trial lawyers force anti-business legislation through the General Assembly. But you can make a difference in helping defeat legislation and insist on responsible government. Watch this space and special email announcements for more details. SPONSORSHIPS ARE AVAILABLE.
Contact: Mark Denzler, 800-875-4462, ext. 3008, email: mdenzler@ima-net.org

Visit <http://www.ima-net.org/calendar.cfm> or <http://www.ima-net.org/MIT/open.cfm> for more information, pricing, etc., and a more complete listing of IMA and IMA-MIT offerings. Questions? Contact Janie Stanley at 800-875-4462 ext. 3020, email: jstanley@ima-net.org.

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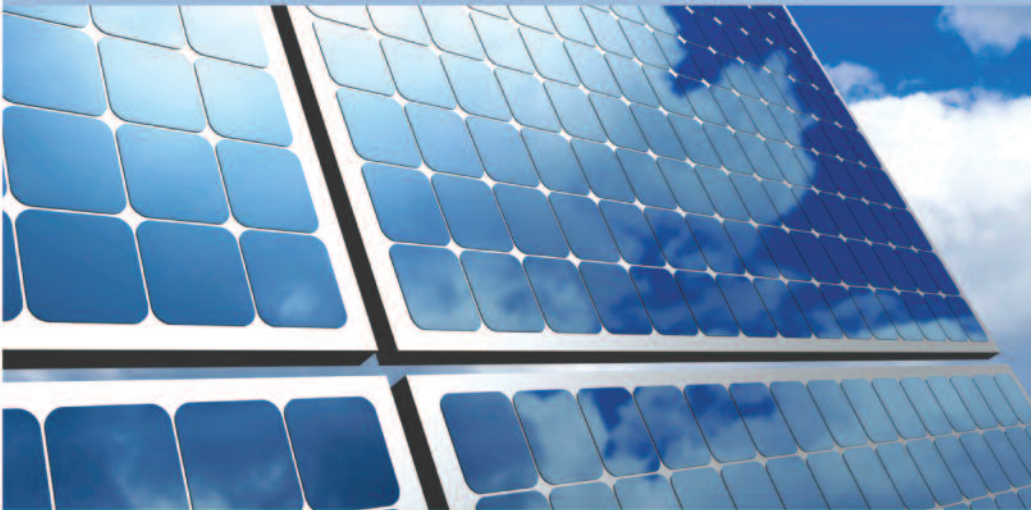


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