

**THE SECOND WAVE OF OPPORTUNITY IN CHINA**

# **THE ILLINOIS Manufacturer**

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Winter 2012

**IMA Board  
Chairman  
Michael  
Holewinski**

**Illinois Workers'  
Compensation Reform  
Chicagoland sports  
teams "go green" with  
Constellation Energy**



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# Winter 2012



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by Andrew C. Speciale, HeplerBroom LLP

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*On the cover . . . IMA Board Chairman Michael Holewinski in the showroom of Ace Industries, his company in Chicago, Illinois.*

*The Illinois Manufacturer is underwritten by Constellation Energy, Inc.*

## 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.

### Chairman

Michael Holewinski

### President

Gregory W. Baise

### Editor

Stefany J. Henson

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### Share your company news with IMA . . .

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# Strengthen the Manufacturing Renaissance



As this Manufacturing Renaissance occurs, policy makers need to recognize that economic studies show that every direct manufacturing job indirectly supports the creation of three additional jobs.

The noted light at the end of the tunnel brightened this year after the Illinois Department of Employment Security and Bureau of Labor Statistics reported that Illinois gained nearly 12,000 manufacturing jobs in 2011. While this relatively small job growth does not mean that we should pop the cork on the champagne, we are heartened that it represents the first time since 1998 that the industrial sector added jobs in Illinois over a twelve-month period of time. Nationally, manufacturing has been a bright spot in the economy, adding 50,000 total new jobs last year despite some slowdowns affiliated with supply shortages caused by natural disasters around the world.

Statistics from the Institute for Supply Management seem to bear out the growing confidence among manufacturing companies that grew at the fastest pace in seven months. They reported a PMI in January 2012 of 54.1 percent, a full one percent higher than December's seasonally adjusted reading of 53.1 percent. A ranking above 50 percent means that manufacturers are increasing their growth and expansion of the overall economy. ISM also reported a nearly three percent surge in new orders that represents the 33rd consecutive month of growth.

As this Manufacturing Renaissance occurs, policy makers need to recognize that economic studies show that every direct manufacturing job indirectly supports the creation of three additional jobs. It is imperative that Governor Patrick Quinn and members of the General Assembly realize the critical importance of the manufacturing base in Illinois, a base that employs 575,800 workers and contributes the single largest share — 12.4 percent — of the state's Gross Domestic Product. Manufacturers offer high-quality jobs that pay middle class wages with health care and retirement benefits — jobs that must be targeted for expansion.

The Illinois Manufacturers' Association is proposing an aggressive Capitol Battle Plan in 2012 that takes aim at strengthening the manufacturing sector in order to take advantage of this industry surge. Our plan contains many components including:

- Elimination of the state's five percent sales tax on electricity and natural gas used by manufacturing companies. Outside of personnel, energy costs are a significant strain on budgets. We are pleased that Governor Quinn adopted part of our program and advocated for elimination of the tax on natural gas during his State of the State Address.
- Create a new Manufacturing Tax Credit based on "qualified production activities income" that will virtually eliminate the income tax on all manufacturing companies over a three-year period of time.
- Reform and extend Illinois Enterprise Zones that are located in ninety-seven communities across the state. The IMA plan calls for a long term extension of current zones, creation of new economic development zones, and enlarges the current zones so that companies can take advantage of these economic development incentives that are scheduled to begin expiring in 2013.
- Modernize the Research & Development tax credit and make it permanent. Companies engage in long-term planning and need to be able to rely on a stable tax climate. While the IMA led the successful charge in December to extend the current tax credit until 2016, we still need a modern credit that will stimulate all research activities conducted in Illinois.
- Repeal the current Manufacturers Purchase Credit and replace it with a simpler sales tax exemption for production-related tangible personal property that includes items used in pre-production material handling, quality control, inventory control, storage, staging, and packaging.
- Utilize stackable career credentials to ensure that manufacturers have a pipeline of qualified workers as more than 300,000 baby boomers are set to retire.
- Enact real and meaningful reform of the Illinois pension systems that are underfunded by \$85 billion. While the General Assembly passed an IMA-supported measure reforming pensions for new workers, they failed to address pensions for current workers. The IMA strongly supports a new three-tiered pension program that allows each employee to choose a plan and pay the actuarially-required contribution.

*(Continued on page 8)*



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## The good, the bad and the uncertain



In 2011, the Illinois Manufacturers' Association led multiple efforts that improved Illinois' business climate including a reform of the Workers' Compensation system expected to save employers well more than \$300 million annually . . .

**D**espite the glut of bad news that permeated the airwaves around the United States in 2011, manufacturing in Illinois actually showed a glimmer of hope with the net creation of more than 15,000 jobs. This happened despite a state unemployment rate that grew by nearly a full percentage point to 10 percent, well above the national average. While these are not earth-shaking numbers, our state's industrial sector employment is at the highest level since May of 2009. As a major economic engine in Illinois, manufacturing contributes the single largest share — nearly 13 percent — of the state's Gross Domestic Product and directly employs 575,000 workers in addition to hundreds of thousands of workers indirectly tied to manufacturing. It is very clear that lawmakers in Springfield and Washington D.C. need to stimulate and nurture the manufacturing base if they hope to kick start our nation's economy and create hundreds of thousands of jobs every month.

In 2011, the Illinois Manufacturers' Association led multiple efforts that improved Illinois' business climate including a reform of the Workers' Compensation system expected to save employers well more than \$300 million annually according to the National Council on Compensation Insurance. Our efforts led to the extension of the Research & Development tax credit and partial reinstatement of the Net Operating Loss provision that had been suspended by the previous General Assembly. Hundreds of manufacturing companies will see easier and streamlined EPA air permitting requirements while additional thousands will no longer be required to obtain permits under a comprehensive overhaul championed by the IMA. Finally, the IMA participated in Unemployment Insurance negotiations that will reduce employer tax bills by \$405 million beginning in 2013 while preserving another \$1.2 billion in federal FUTA tax credits. All of these actions will have a real and meaningful impact on your company's bottom line.

Despite this positive news on the legislative front and encouraging jobs numbers, we face many serious challenges that will determine whether Illinois' manufacturing sector will continue to grow and add jobs, or reveal that 2011 was merely a blip on the radar. While we cannot control the growing financial crisis in Europe, there are several steps that must be taken in Illinois if we want to continue improving the state's economy and make it attractive for job creators. These include:

**Manufacturing Tax Credit:** The IMA is championing a new tax incentive designed to significantly reduce income taxes paid by all manufacturing companies. The credit, phased in over a three-year period of time, will be tied to "qualified production activities income" as defined in the Internal Revenue Code. It will be available to corporations, subchapter S corporations, estates, trusts, LLCs, and partnerships.

**Enterprise Zone Extension:** Without action by the Governor and General Assembly, Illinois' ninety-seven enterprise zones are set to begin expiring in 2013. These economic development zones contain specific tax provisions including a sales tax exemption on building materials and a utility tax exemption for companies in these areas. In 2011, enterprise zones saw \$2.5 billion in investment and the creation or retention of 24,000 jobs.

**Balance the State Budget:** Despite the massive \$7 billion income tax increase opposed by the IMA, Illinois' financial position today is more precarious than before the tax hike passed the General Assembly. Illinois faces a backlog of nearly \$8 billion in debt that includes old bills owed vendors, deferred Medicaid reimbursements and corporate tax refunds dating back to 2008. While the Democrats claimed that the income tax increase was "temporary" and set to expire in 2015, it is very clear that it will be politically difficult to reduce the income tax rate if the state remains in debt.

**Reform Pensions:** Illinois' five public pension systems are underfunded by more than \$80 billion and the cost hangs over the heads of Illinois taxpayers like the sword of Damocles. While pension changes have been made for new state employees, the Governor and General Assembly need to also reform the pension system for current state workers. Without changes, the annual pension payment is expected to increase from \$4.3 billion in 2011 to \$5.9 billion in

*(Continued on page 8)*

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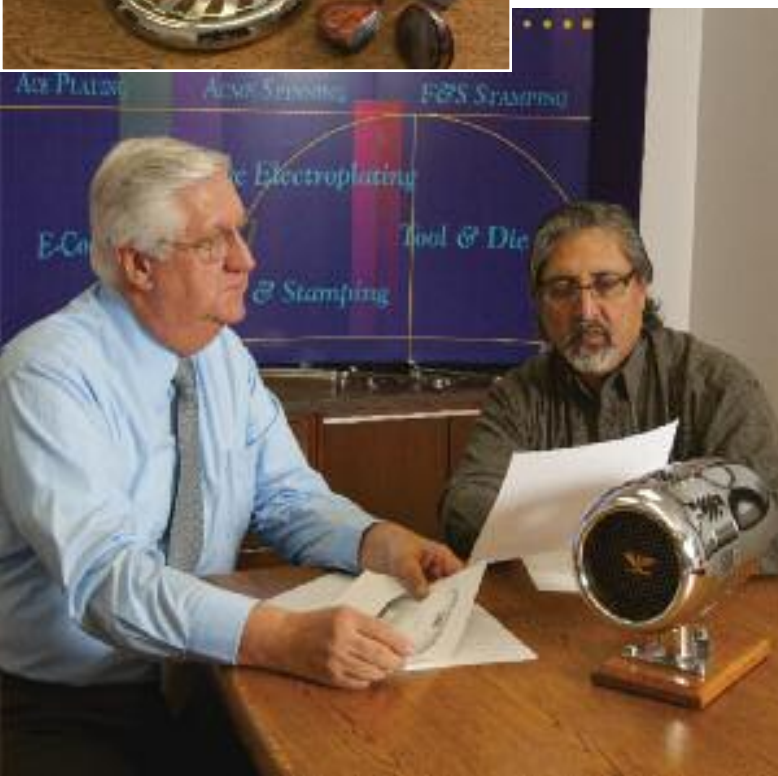
# Welcome new IMA Board Chairman Michael Holewinski

IMA's recently inducted Board Chairman Michael Holewinski is the President of Ace Industries, a Chicago-based manufacturer and metal finisher. Ace Industries evolved from the Ace Plating Company, which was started in 1962 by Mr. Holewinski's father, Stanley. Mike Holewinski took over as President in 1988 and, subsequently, steered the company through a series of synergistic acquisitions. As companies were acquired and combined, the array of products and services that Ace Industries offered increased dramatically. Acquisitions were made in the areas of metal spinning, metal stamping and tool making. Concurrently, Ace expanded into powder coating and e-coating. Most recently, in 2011, Ace Industries acquired Barnes Plating, a 100 year old metal finishing company. As a result of these activities, Ace has transformed itself into a company that provides a wide range of services to its customers and produces a diversified product line.

Products manufactured by Ace Industries include the

sirens mounted on top of emergency vehicles, cymbals purchased by drummers in the bands of musicians like Prince and John Cougar Mellencamp, and the

A few of the numerous items manufactured by Ace Industries (left) and the sirens used on emergency vehicles around the country (below).



Ace Industries Vice President David Flores (left) with Mike Holewinski. Flores is an advisory board member of the Precision Metal forming Association, another association in which Ace Industries actively participates.

“red kettles” used by the Salvation Army during their holiday fund raising drive. Other interesting items include urns, which are powder coated metal to look like marble and metal golf clubs also powder coated to look like “woods.”

Mike hopes to further elevate the IMA's influence in Springfield during his term as chairman. “My objective is to continue to support the ongoing initiatives of the IMA, and continue to raise the profile of the organization in terms of our advocacy in Springfield. Secondly, I think education will be a major and continuing focus of the IMA's efforts this year. And, recruiting new companies is a goal,” he said. “

“We've gone through some tough economic times and many companies have been contracting. However, the economy is starting to turn a corner, markets are improving and I think we have a good story to tell,” Holewinski continued.

During Mike Holewinski's tenure at Ace Industries, the company has also maintained a leadership role on environmental issues. Ace received the Chicago Metropolitan Water Reclamation District's Pollution Prevention Award, the Illinois Governor's Award for Pollution Prevention and the USEPA Silver Award for its commitment to environmental excellence.

Holewinski has a long history of civic, political and business involvements. At age 25, he was elected to the House of Representatives in the Illinois General Assembly. During his two terms in office, he sponsored and passed into law a number of major pieces of legislation. He received “Best Legislator” recognition from the *Chicago Sun-Times*, *Chicago Magazine* and the Independent Voters of Illinois. During this time he also served on the Illinois Commission on Children, the Statewide Health Coordinating Council and was Chairman of the Committee on Illinois Government. Mike served as Administrative Assistant to Mayor Harold

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## PRESIDENT'S REPORT

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Illinois is staring into a financial abyss. The state is \$8.5 billion in debt. This debt includes more than \$600 million in corporate tax refunds dating back to 2008. Pensions are severely underfunded and the state's required pension payment grows from \$4.3 billion this year to \$5.9

billion in three years when the "temporary income tax" is scheduled to sunset.

Governor Quinn and the General Assembly need to get back to the basics and realize that you cannot tax and spend your way to prosperity. The only way for Illinois to get back on track is to allow the private sector to flourish, creating new jobs and more tax revenue for state coffers while making tough, but necessary, cuts in spending.

When they look at our agenda, many people will say we can't afford it. I say we cannot afford not to prime the pump and grow manufacturing jobs in Illinois. ■



## LEGISLATIVE REPORT

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2014, an increase of nearly forty percent that will draw precious resources away from education, transportation, and public safety.

### Workforce Development:

Nearly 300,000 manufacturing workers will retire over the next decade. It is critical that our education system is prepared to keep the pipeline full of students who will be able to meet

the needs of today's manufacturing companies. The IMA, and our Education Foundation, are spearheading this effort that includes leading the STEM program and rolling out stackable, Manufacturing Skills Standards Certifications in more than a dozen community colleges across Illinois. Our Foundation is providing grants to students and teachers and recruiting manufacturing companies to provide funding and internships.

The year 2012 will be critical as we strive to create a stronger economy in a politically charged environ-

ment where, in addition to the Presidential election, every seat in the Illinois General Assembly and U.S. Congress are up for election. We appreciate your investment in the IMA and look forward to working to make positive changes in the year ahead. ■



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# The NLRB weighs in on social media and employers should pay attention

The social media phenomenon has taken the world by storm; it is now a large part of mainstream life and has become the modern day “water cooler.” Employers cannot ignore social media since their employees are online every day using these technologies. In 2011, one of the surprising legal developments in this area was that the National Labor Relations Board (“NLRB”) became involved in a significant way. Because an employee’s online posts to social media sites that are critical and/or derogatory about his/her working conditions may qualify as protected concerted activity, employers may unknowingly violate the National Labor Relations Act (“NLRA”) if they restrict the employee’s use of social media or discipline the employee for his/her activities. In addition, an employer may come under NLRB scrutiny if it maintains a social media or handbook policy that prohibits, or reasonably can be construed by employees to prohibit, the exercise of the employees’ rights under the NLRA. All employers, and especially those with a non-union workforce, should be aware of the NLRB’s rulings and advice in this area.

As an initial matter, the NLRB has ruled that employers are generally prohibited from taking disciplinary action when employees discuss and post critical comments that either address mutually held workplace concerns (i.e., wages, hours, working conditions, company policies, etc.), or seek to obtain employee support regarding such concerns. For example, in the first decision of its kind, an NLRB administrative law judge (“ALJ”) held in *NLRB v. Hispanics United of Buffalo* that the employer violated the

NLRA when it terminated five employees for posting critical comments about their working conditions in response to an employee’s Facebook post. Some of the employee’s co-workers responded and further criticized their working conditions. In finding that the Facebook posts constituted protected concerted activity, the ALJ reasoned that employees have the “right to discuss matters affecting their employment amongst themselves.” Because the employees were not engaging in this expression solely on their behalf, but rather to defend themselves against another employee’s accusations, the employer violated the NLRA by discharging them.

In September, 2011, another NLRB ALJ found protected concerted activity

in *Knausz BMW*, when the employee of a car dealership posted remarks on Facebook criticizing the company. The employee posted two different messages on Facebook. One message contained photos of a promotional event at the dealership and the employee’s comments criticizing the quality of the food and beverages offered to the dealership’s potential customers. The other message detailed how a customer drove a Land Rover into the pond in front of the dealership and included pictures of the vehicle in the pond. Although the employee removed the posts at his employer’s request, he was fired soon after.

The ALJ found that the Facebook post regarding the sales event consti-

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## SOCIAL MEDIA

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tuted protected concerted activity because it related to the employees' shared concern that the poor quality of the food and beverages offered at the event could impact their compensation. Even though the employee was the only one that brought his complaints on Facebook, the ALJ deemed the posting equivalent to an individual employee bringing a group complaint to the attention of management, which was protected concerted activity. Despite finding the sales event posting to be protected under the NLRA, the ALJ nevertheless concluded that the employee was properly discharged for mocking the Land Rover incident, which was unprotected activity under the NLRA. As in *Hispanics United*, the ALJ next turned to the company's Employee Handbook and found policies that required employees to be respectful and prohibited them from participating in unauthorized interviews or responding to outside inquiries to be overly broad, and possibly infringing upon the employees' rights to discuss their working conditions with union representatives or lawyers.

As these decisions certainly indicate, the NLRB is seriously considering the employees' complaints about being disciplined for engaging in protected concerted activity on-line, which will be held to the same standards as allegations regarding in-person protected concerted activity. Fortunately, the NLRB has determined that not all employee statements and postings about employers on social media sites constitute protected concerted activity under the NLRA. In several advice memoranda, the NLRB's Office of General Counsel ("OGC") made clear that when the postings do not address common workplace concerns, are not directed to other employees, or do not attempt to obtain employee support or action relating to such concerns, they generally are not protected.

For example, in the advice memorandum issued in *Rural/Metro*, the OGC found the employer did not violate the NLRA when it terminated an employee for posting Facebook messages about the employer on a U.S. senator's page in violation of the employer's business conduct policy.

While the messages indicated her disagreement with how emergency services were handled in the state and her dissatisfaction with the employer's cap on wages, the OGC concluded that the employee did not engage in protected concerted activity. Even though the employee had discussed wages with other employees in response to the announcement of the wage cap, the employee had not discussed her Facebook post with any other employees, there had been no employee meetings or any plan to initiate group action regarding the wage cap, and she had not been trying to bring her complaints to the attention of management. As a result, the OGC recommended the dismissal of the charge.

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... because an employer does have the right to maintain their corporate image and public reputation as well as manage its workforce, a well-written and up-to-date policy as well as thoughtful disciplinary action will ensure the proper balance between protecting the employer's rights and at the same time respecting employees' rights ...

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The same was true in *JT's Porch Saloon and Eatery*, where the OGC concluded that the employer did not violate the NLRA when it terminated an employee for his Facebook posting that referenced the employer's tipping policy and expressed dissatisfaction with his wages in response to a question from a non-employee. The post also referred to the employer's customers as "rednecks" and that he "hoped they choked on glass as they drove home drunk." The OGC found that the employee did not engage in any concerted activity. Although the Facebook post concerned the terms and conditions of his employment, the post was not protected because he did not discuss the post with any of his co-workers either before or after he wrote it, and none of his co-workers responded to the post, nor was there any

evidence that the posting was a logical outgrowth of a conversation the employee had taken part in with a co-worker months earlier about how the tipping policy "sucked."

More recently, in the advice memorandum issued in *Schulte*, the OGC found that the employer did not violate the NLRA when it discharged an employee for referring to his job title as a "fucktard" in response to a LinkedIn invitation from a supervisor in the firm's IT department. The employee's post was considered by the employer to be in violation of the company's electronic communication policy which prohibited the posting of "obscene, defamatory, harassing or abusive" material to any person or entity associate with the company. Because the employee's activity did not qualify as concerted activity, the termination was proper.

The common thread present in all of these advice memoranda is that while the subject matter of the employees' postings must relate to the terms and conditions of employment, of equal importance is that such communication seeks to initiate co-worker response or group action, or is done in concert with other employees. In addition, while critical or disparaging, the comments need to remain within the bounds of common decency and should not unlawfully harass or defame the employer or any person or entity associated with it.

In addition, to safely navigate the social media mine field, employers must also make sure that their social media and other corporate policies will not unreasonably "chill" employees in the exercise of their rights under the NLRA. In other words, even when a social media policy is not used as grounds for discipline, the mere maintenance of such policy may receive unwanted attention from the NLRB if the employees reasonably can construe the policy to restrict their ability to communicate about their workplace concerns on social media sites.

On August 18, 2011 and January 24, 2012, in a lengthy memoranda to all Regional Directors discussing all of the social media cases considered by its office to date, the OGC identified those provisions in the employers' social media policies that it deemed overbroad and in violation of the NLRA. Most of the provisions

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# The second wave of opportunity in China

**W**hen I arrived in China in January of 1997, the country was the seventh largest economy in the world. Today it ranks second, lagging only the United States in economic clout. Much has changed in China over those fifteen years. I'm reminded of a newly-constructed two-lane highway we frequently traveled from Shanghai to Suzhou in 1997. That highway passed through picturesque landscape, lined with farms that in autumn were darkened by the dense smoke of burning rice stalks. Today, a four-lane expressway, lined with the factories of companies from all over the world, links Shanghai to Suzhou.

In 2009 China reached number one in annual automobile sales and, in 2010, China sold over 17.2 million vehicles, compared with U.S. sales of 11.5 million. Equally spectacular is the growth in its road system — with the first expressway built in 1988 and now, at year-end 2011, China has over 53,000 miles of expressways — second only to the United States' 57,000 mile system.

Chinese GDP growth is projected at seven and eight percent respectively in 2012 and 2013, compared to projections of U.S. growth under three percent for the same time period. As foreign companies continue to recognize the growth opportunities in China, the amount of direct investment in China grew from an average of 12.5 percent annually from 2001 through 2010 and, at midyear 2011, had exceeded 2010 investment by 19.8 percent.

Young Chinese consumers are moving toward a more Western-oriented lifestyle and want their own apartments, cars and the latest phone or other electronic gadget. Latest projections put the Chinese middle class at over 640 million by

2025, roughly double the current total U.S. population.

Dramatic growth, across all economic facets of China, indicates opportunity unmatched globally.

## Changes in the business environment

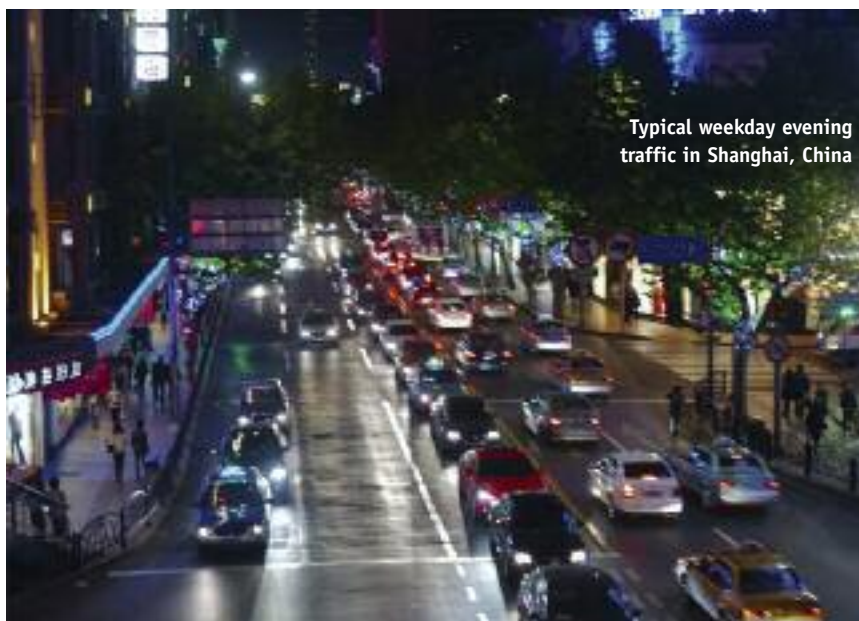
Prior to my arrival in China, most foreign companies partnered with Chinese entities to create joint ventures in China. This was due, primarily, to government regulations and lack of access to the Chinese market. Now, the most popular business structure is a wholly-owned foreign subsidiary with no Chinese partner. In 2001, when China joined the World Trade Organization, I began to see the gradual reduction of import tariffs and, about 2005, foreign businesses were allowed to engage in buying and exporting Chinese-manufactured items when, in the past, they had been required to pay a formal trading company to conduct this type of business.

There has also been significant change in labor mobility and cost. In

the late 1990's, employees were primarily found in the local community. In the 2000's, professional and skilled employees come from all over China and factory labor, typically from the poorer parts of the country. With a more mobile work force, comes higher employee turnover, which grew to as high as 25 percent in recent years. The minimum wage has increased over 10 percent per year in the last few years and many economists expect wages to double over the next five years. Other costs, such as raw materials, have also increased in line with global price inflation.

With the east coast of China the first geographic location that western companies focused on when starting their Chinese operations, this region's cost structure is now higher than that of the central and western parts of China. Many companies already in China, or new entrants to the Chinese market, are looking

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Typical weekday evening traffic in Shanghai, China

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# Chicagoland sports teams “go green” with Constellation Energy

*Chicago's great sports franchises have been stepping up their green game in the past year, with a helping hand from Constellation Energy*

Constellation, a longtime energy supplier to thousands of Illinois businesses, sponsored the first “green” games in 2011 for the Chicago Bears, Chicago Cubs and White Sox. Constellation will continue its clean energy initiatives this year by sponsoring green games for the Chicago Blackhawks on April 1 and the Chicago Bulls on April 2, and by supplying power to the United Center. Constellation currently powers Wrigley Field as well as the Bears’ Halas Hall Team Offices and Practice Facilities.

Constellation’s “green” option recognizes the growing environmental sustainability movement in both the business and public sectors. The company purchases Green-e Energy certified renewable energy certificates (RECs) to match the electricity use on game day. The RECs represent the environmental benefits of electricity generated by wind — essentially avoiding a fixed amount of carbon dioxide emissions.

“We know that businesses are demanding more tools to enhance their energy efficiency and environmental sustainability initiatives,” said Bruce Stewart, chief marketing officer for Constellation Energy. “Using

RECs to avoid greenhouse gas emissions is an especially good approach for Chicago’s storied sports franchises because it has the additional benefit of raising awareness among their fans.”

The Bulls and Blackhawks reflect that drive for better environmental performance.

“Through our new relationship with Constellation Energy, we’re now in a position to work with a national industry leader as we continue to look for ways to improve our environmental performance and to educate our fans about the importance of energy conservation,” said Michael Reinsdorf, president and chief operating officer of the Chicago Bulls. “One of the first activations of this valuable partnership is the Bulls Go Green Game on April 2. We look forward to working with Constellation Energy on this event and other fan-focused initiatives.”

“Constellation’s greening of the Chicago Blackhawks game on April 1 supplements several of our team’s environmental efforts,” said Chicago Blackhawks Executive Vice President Jay Blunk. “We take pride in working together with Constellation and the United Center on this initiative.”



Constellation sponsored the Cubs’ first green game last April.



When Constellation serves as a proud sponsor of those Blackhawks and Bulls “green” games in April, it will also be an opportunity for fans to learn more about the growing trend to shop and save on home electricity, just as consumers shop for internet or phone service.

The opportunity for Illinois residential consumers to reduce their electric rate by choosing a competitive electric supplier is particularly attractive the first half of 2012, Stewart said.

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White Sox Third Baseman Mark Tehen

## GO GREEN

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Constellation, for example, sent direct mail offers to 1.5 million Illinois residents in January offering home electric rates that may be up to 22 percent lower in the Ameren service territory, and 18 percent lower in ComEd's service territory. Consumers may also shop for electricity at [home.constellation.com](http://home.constellation.com) and buy 50 or 100 percent green (wind) energy.

Almost 262,000 homeowners and renters in Illinois have taken advantage of residential electric savings opportunities in the past year, according to the Illinois Commerce Commission. The ICC offers residential electric customers a consumer education website, [PlugInIllinois.org](http://PlugInIllinois.org), to review suppliers' electric supply

offers, as well as the "Price to Compare" information for ComEd and Ameren Illinois.

Choices for Illinois residential electric consumers began opening up in late 2010 when the ICC authorized a consolidated billing procedure that enables competitive suppliers to bill customers through the existing bills handled by ComEd and Ameren.

"Consolidated billing simply ignited an incredibly competitive market for retail electric choice in Illinois, and residential and small commercial customers are reaping significant benefits," said Kevin Wright, president of the Illinois Competitive Energy Association.

"Illinois, when compared to other states that offer residential electric choice, just took off like a rocket for Constellation in 2011," said Stewart. "I think that's due, in part, to the

high level of emphasis placed on consumer education, among both residential and business customers, and the region's environmental sustainability initiatives."

He said Constellation's expansion into the residential market is a logical extension of the company's long-standing leadership role in the Illinois business and public sector energy market; Constellation has been providing electric and natural gas service to thousands of the state's largest employers, schools, hospitals and municipalities for more than a decade.

Chicago has adopted a Climate Action Plan which encourages the city, its residents and businesses to reduce greenhouse gas emissions by 25 percent below 1990 levels by 2020. That commitment to environmental sustainability is also evident among federal government agencies in Illinois, and throughout the nation, which strive to meet a presidential executive order to reduce federal-wide greenhouse gas emissions 28 percent by 2020.

Stewart said the individual, team and community commitment to the environment came through loud and clear when Constellation teamed up with Chicago's sports teams. When Constellation sponsored the White Sox' first green game, for example, the White Sox Volunteer Corps, Sox players and Constellation employees teamed up to plant four trees and place mulch at a playground at Armour Square Park, across the street from the ballpark.

When Constellation Energy sponsored the first "Environment Friendly Game" Nov. 20 at Soldier Field to help the Bears Launch its "Save Da Planet" initiative, Bears' linebacker Nick Roach got personally involved in a local elementary school environmental project.

And when Constellation sponsored the Cubs' first green game last April, Stewart dusted off his non-marketing pitching skills by throwing out the first ball.

"I scored a minor personal victory by getting the ball over the plate and the Cubs scored a much more important one by avoiding 54,000 pounds of carbon dioxide emissions." ■



Constellation sponsored the White Sox' first green game on April 30, 2011. The White Sox Volunteer Corps, Sox players and Constellation employees teamed up to plant four trees and place mulch at a playground at Armour Square Park, across the street from the ballpark.

**Constellation is the endorsed supplier for the IMA Energy Program, providing electric power and natural gas supplies to hundreds of IMA member companies, and in 2011 expanded services it had offered IMA members for the past decade. New services include residential electric choice with the potential to benefit more than 600,000 Illinois manufacturing workers. Employees of IMA member companies residing in ComEd and Ameren service areas are eligible for residential electric supply plans that provide competitive rates and include green energy options. Details can be found at [www.home.constellation.com](http://www.home.constellation.com) (promotional code = IMAoffer11). For more information regarding the IMA Energy Program for commercial and industrial enterprises, please visit [www.constellation.com/IMA](http://www.constellation.com/IMA).**



# Illinois Workers' Compensation Reform

**A**fter numerous failures, the Illinois legislature finally passed workers' compensation reform on May 31, 2011, the last day of the legislative session. Governor Quinn signed the bill into law on June 28, 2011. The new components of the law are important for every employer to know. Below are 10 reforms you should be aware of.

1. A 30 percent reduction in the medical fee schedule. Prior to reform, services were reimbursed at 76 percent of charges. That figure has been reduced to 53.2 percent. This is expected to result in the biggest cost savings for employers. Even though the fee schedule has been reduced, that does not mean that unreasonable fees cannot be challenged.
2. Arbitrators are now required to consider AMA Guidelines as one of five factors (age, occupation, future earning capacity, and evidence of disability in medical records) when determining permanent disability (applies to accidents after September 1, 2011). This is also another potentially huge cost savings measure. The AMA Guidelines generally dictate lower percentages of disability than the precedent at the Illinois Worker's Compensation Commission.
3. Employers can use preferred provider programs (PPPs) approved by the Illinois Department of Insurance (effective June 28, 2011).
  - a. If the employer does not have a PPP, the employee has a right to choose two treating doctors and anyone they are referred to, which is the same as the current law.
  - b. If the employer does have a PPP:
    - i. The employee can opt out of the PPP in writing after reporting an injury and

choose one treating provider and anyone they are referred to;

- ii. The employee can opt in to the PPP and choose two treating providers in the PPP and anyone they are referred to.

The PPPs give the employer greater control over the injured employees medical treatment by ensuring that they are being seen by the best physicians who yield the best results. If an employee does not want to use the PPP, they are limited to only one choice of physician. The Department of Insurance is currently accepting applications for PPP approval. To date, the Department of Insurance has approved three PPPs: CorVel Healthcare Corporation, Coventry Health Care Workers' Compensation, Inc., and HFN, Inc.

Additionally, The Illinois Workers' Compensation Commission has

approved language to provide employees of notice of the employer selected Preferred Provider Program. This form language should be given to the employee as soon as the employer is made aware of a work injury. The form can be found on the IWCC's website under "Other Forms" at <http://www.iwcc.il.gov/forms.htm>.

Employers can also issue an advance notice of the existence of a PPP on a voluntarily basis. However, even if this advance notice is given to all employees, the official form discussed above must be issued in a timely manner soon after the employee gives notice of a work injury.

4. Permanent disability awards for carpal tunnel injuries due to repetitive trauma are capped at a maximum of 28.5 weeks (15 percent loss of use of the hand). "Clear and convincing evidence" can increase the maximum award

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# New environmental laws will impact manufacturers in 2012

By Dave Scriven-Young

As 2012 begins, new environmental laws passed by the Illinois General Assembly will impact the way that manufacturers do business. Those new laws deal with electronics recycling and the purchase or acquisition of corrosive and caustic acids. Manufacturers will also enter 2012 on a positive note, after the Illinois Supreme Court published its recent opinion restricting the ability of citizens groups to appeal certain decisions of the Illinois Pollution Control Board.

## New electronics recycling requirements

Electronics manufacturers that sell products in Illinois face new recycling requirements and fines for potential violations under a major overhaul of the Electronic Products Recycling and Reuse Act (the "Act") that Governor Quinn signed into law.

Electronic products are the fastest growing portion of the solid waste stream. As consumers buy the newest gadgets on the market, many consumers do not use electronics recycling programs and instead try to dispose of their obsolete electronics in their regular household trash. In 2007, three million tons of electronic products became obsolete, but only 14 percent of those products were recycled. The problem is that many of these products contain lead, mercury, cadmium, hexavalent chromium, and other materials that may pose a risk if sent to a normal landfill.

The Act was designed to establish a statewide system for recycling or reusing electronic products discarded from residences by requiring electronic manufacturers to participate in the management of discarded and unwanted electronic products. In general, the Act requires that manufacturers of electronics (1) register with the Illinois Environmental Protection Agency ("IEPA"), (2) recycle or reuse a certain percentage of electronics sold in Illinois, (3) submit a yearly report to IEPA on its recycling and reuse efforts, and (4) maintain consumer education programs designed to inform customers of proper disposal policies for electronic products. Effective January 1, 2012, the Act bans the disposal of certain electronic products in landfills.

Senate Bill 2106, sponsored by Senator Susan Garrett (D-Lake Forest) and Representative Daniel Bliss (D-Evanston) expands the types of electronics sold at retail that are subject to the Act. The electronics covered by the act now include: computers (including tablet computers), computer monitors, televisions, printers, electronic keyboards, facsimile machines, video cassette recorders (VCRs), portable digital music players, digital video disc players (DVDs), video

game consoles, electronic mice, scanners, digital converter boxes, cable receivers, satellite receivers, digital video disc recorders (DVRs), and small-scale servers.


The new law increases recycling and reuse requirements for manufacturers of these products that are sold in Illinois. In 2012, manufacturers will be required to recycle or reuse 40 percent of the total weight of the electronic products they sold in 2010. In 2013 and beyond, manufacturers will be required to recycle or reuse 50 percent of the total weight of the electronic products they sold during the calendar year two years before the applicable program year. To determine the manufacturer's annual recycling or reuse goal, the manufacturer must use its own Illinois sales data or its own national sales data proportioned to Illinois' share of the U.S. population.

The new law also increases the civil penalty for violations of the Act from \$1,000 to \$7,000 for each violation. An additional civil penalty not to exceed \$1,000 is also imposed for each day the violation continues.

IEPA will now have additional enforcement authority. For example, IEPA will now have the authority to enforce the Act by administrative







citation. This streamlines the enforcement process because, prior to this change, IEPA could only refer violations of the Act to the Attorney General for enforcement. To challenge an administrative citation issued by IEPA, manufacturers must file a petition with the Illinois Pollution Control Board for review within 35 days after being served with a copy of the citation. If the manufacturer fails to file a petition, the manufacturer will be deemed to have violated the Act and the appropriate civil penalty will be imposed.

In addition to enforcement and the imposition of fines, IEPA publishes on its Website a list of manufacturers of electronics that failed to register, file complete reports, or meet recycling and reuse requirements.

With this new law, electronics manufacturers can expect more and quicker enforcement of recycling and reuse requirements. IEPA no longer has to request that the Attorney General take action before enforcement can begin. Instead, IEPA can issue its own administrative citations. Electronics manufacturers should develop a plan for the landfill ban as well as the changes to the recycling and reuse requirements contained in the new legislation.

### **New restrictions on the purchase or acquisition of corrosive and caustic acids**

Chemical manufacturers and other businesses that purchase chemicals will face new hurdles and potential fines relating to corrosive and caustic acids, under two changes made to the Illinois Criminal Code that went into effect on January 1st. These changes were apparently made as a result of incidents last year in which acid was used as a weapon to harm people.

The first change is codified at 720 ILCS 5/12-37 and generally makes it unlawful for any person knowingly to have in his or her possession or to carry about certain corrosive and caustic acids in delineated quantities, including hydrochloric acid, sulfuric acid, nitric acid, carbolic acid, oxalic acid, any salt of oxalic acid, acetic acid, hypochlorous acid, potassium hydroxide, sodium hydroxide, silver nitrate, ammonia water, and ammonium hydroxide. Importantly, there

are exemptions for certain categories, provided that the product is not used to threaten, intimidate, injure, or cause distress to another. For example, an exemption is provided for "persons while engaged in the legitimate commercial manufacture, distribution, storage, or use of the specified substances." There is also an exemption for "commercial or consumer products that contain any of the specified substances" including batteries. A violation of this law is punished as a Class 4 felony.

The second change, codified at 720 ILCS 5/12-38, restricts the purchase of the corrosive and caustic acids. A person seeking to purchase those substances must, prior to taking possession: "(1) provide a valid driver's license or other government-issued identification showing the person's name, date of birth, and photograph; and (2) sign a log documenting the name and address of the person, date and time of the transaction, and the brand, product name, and net weight of the item." Any violation "is a business offense for which a fine not exceeding \$150 for the first violation, \$500 for the second violation, or \$1,500 for the third and subsequent violations within a 12-month period shall be imposed."

These new laws, akin to the restrictions placed on the purchase of certain cold medicines, may impact the sales of certain chemical manufacturers and the availability of these substances for purchase by other businesses.

### **Illinois Supreme Court limits appeal rights of citizens groups**

On a more positive note for manufacturers, the Illinois Supreme Court published its recent opinion in *Sierra Club v. Illinois Pollution Control Board*, restricting the ability of citizens groups to appeal certain decisions of the Illinois Pollution Control Board.

The history of the case is that, in 1989, the IEPA issued a permit to Peoria Disposal Company ("PDC") to operate a waste stabilization facility near Peoria for the storage and treatment of hazardous and nonhazardous waste. In 2008, PDC filed an adjusted standard petition, asking the Illinois Pollution Control Board to

delist (i.e., exclude from the hazardous waste regulation) certain residue generated from PDC's treatment of electric arc furnace dust. There was a public hearing on the petition, during which several opposition citizens groups provided testimony and written comments. Following the public hearing, the Board issued a 103-page order granting PDC a delisting adjusted standard, subject to several conditions. The citizens groups filed a petition for review of the Board Order, and an intermediate appellate court ruled that the Board's order was correct.

The citizens groups filed an appeal to the Illinois Supreme Court. Instead of reviewing the Board's order on the merits, the Court first reviewed whether the citizens groups had standing to appeal the Board's order in the first place. The Court held that the citizens groups did not have standing, and it dismissed the appeal. Specifically, the Court ruled that an order granting an adjusted standard is not a "rule or regulation promulgated by the Board" that could be appealed by the citizens groups under the Illinois Environmental Protection Act. The Court found significant that the adjusted standard was an individualized exception to a regulation, and that the Board's order was adjudicatory in nature, not regulatory.

Citizens groups have been very active in opposing industry requests for adjusted standards, and the Illinois Supreme Court decision does not limit their participation in the process. Once the Board rules, however, the decision says that the process cannot be extended by appeals from those groups. ■

### **About the author**

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## HOLEWINSKI

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Washington from 1983 through 1987. In that capacity, he chaired the Mayor's Public Safety and Regulatory Subcabinet. Mike left his position with the City of Chicago shortly after Mayor Washington's death and began his odyssey into the world of manufacturing with his first acquisition, a metal spinning company.

Over the ensuing years, he consolidated manufacturing operations into a single 100,000 square foot facility in the Kedzie Industrial Tract on Chicago's southwest side. He served as President of the Kedzie Tract Industrial Association and played a leadership role in rebuilding the infrastructure of the industrial area. In 1990, Mike was appointed by Mayor Richard Daley to the Chicago Economic Development Commission. In October of 2011, he was appointed by Governor Patrick

Quinn to the Illinois Gaming Board.

Mike and his wife Mary live in the Portage Park community in Chicago. They have two children, a daughter Ann, deceased, and a son, Jeffrey. Jeffrey teaches manufacturing at Purdue University and also serves as the Manufacturing Specialist for the Purdue Manufacturing Center. His research includes automated manufacturing systems and wind turbine technology. ■

## WORKERS COMP

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to 57 weeks (30 percent) (effective June 28, 2011). As with medical bills, simply because this award is capped does not mean that carpal tunnel cases should be accepted carte blanche. Carpal tunnel causation is very difficult to prove and we recommend vig-

orously disputing these cases when appropriate.

5. Wage differential payments are capped at age 67 or five years, whichever is later, rather than for life (applies to accidents after September 1, 2011). Prior to the reform, a worker was given wage differential benefits for the remainder of their life. This provision will clearly result in cost savings.
6. If drugs or alcohol are involved,

the burden of proof shifts to the employee to prove compensability. No compensation is awarded if an employee's intoxication is the proximate cause of injury or if at the time the employee incurred the injury, the intoxication constituted a departure from the employment. While drug and alcohol cases are not exceptionally common, these reforms will allow employers to genuinely fight these cases.

7. Utilization review is the only method to dispute the reasonableness and necessity of treatment (for treatment rendered or proposed to be rendered after September 1, 2011). The reforms also strengthened the utilization review process by forcing the arbitrators to comment on the utilization review in any decision they make.
8. Governor Quinn replaced 11 arbitrators.
9. Arbitrators are required to be Illinois-licensed attorneys (except for previously serving arbitrators who were reappointed).
10. There will be at least three arbitrators at each venue. This will lighten the case load for the arbitrators and allow cases to move through the system faster.

We feel that this is a good step towards reforming one of the most anti-business workers' compensation systems in the country. While not going far enough (for example, not strengthening the causation burden of proof), it does represent a significant move in the right direction. Obviously, the impact of these changes are unknown. As the practice begins to adapt to these changes, we will be sure to keep you updated. ■



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# New markets tax credit financing available for manufacturers

**T**he federal “new markets tax credit” (“NMTC”) program incentivizes private investment capital (in the form of either debt or equity) to manufacturers that (a) otherwise cannot obtain traditional financing, and (b) are located in qualifying urban and rural “low-income communities” (which is liberally defined to include roughly 40 percent of the United States).

Generally, the seven-year NMTC program provides manufacturing borrowers with several non-traditional and flexible financing terms almost always consisting of significant below-market interest rates and forgiveness of approximately 20 percent of total principal at the end of seven years. Additionally, terms often provided include: (a) equity; (b) equity-equivalent financing; (c) debt with equity features; (d) subordinated debt; (e) lower than standard origination fees; (f) longer than standard period of interest-only loan payments; (g) higher than standard loan to value ratio; (h) longer than standard amortization period; (i) more flexible borrower credit standards; (j) nontraditional forms of collateral; (k) lower than standard debt service coverage ratio; and (l) loan loss reserve requirements that are less than standard.

The program offers substantial flexibility (and can further reduce cost of capital) by being part of a sophisticated “capital stack” that can consist of tax-exempt or taxable bond financing, tax-increment financing, grants, SBA programs, HUD programs, historic tax credits, renewable energy tax credits and a plethora of other types of financing and subsidies depending on the nature of manufacturer’s operations or the facility being financed.

A manufacturer is more likely to

receive NMTC financing if it can demonstrate that applicable low-income community is particularly distressed and will have substantial direct and indirect community impact such low-income community (as well as surrounding low-income communities) and low-income persons.

Factors used to determine whether a low-income community is “particularly distressed” include: Such communities are often characterized by: (a) with poverty rates greater than 30 percent; (b) with unemployment rates at least 1.5 times the national average; (c) designated as Federally designated Empowerment Zones, Enterprise Communities or Renewal Communities; (d) SBA designated HUB Zones; (e) federally designated Brownfields redevelopment areas; (f) encompassed by HOPE VI redevelopment plan; (f) federally designated Native American or Alaskan Native areas, or redevelopment areas

by the appropriate Tribal or other authority; (g) federally designated medically underserved areas; (h) affecting “targeted populations” (such as women and minority-owned businesses, low-income persons or low-income customers; (i) designated a “high migration rural county”; (j) enterprise zone programs or other similar state/local programs targeted towards particularly economically distressed communities; (k) designated as non-metropolitan; and (l) counties for which FEMA has (A) issued a “major disaster declaration,” and (B) made a determination that such county is eligible for both “individual and public assistance,” provided that the initial investment will be made within 24 months of the disaster declaration; and (m) certain other “distressing” characteristics that the manufacturer can otherwise demonstrate.

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## FINANCING

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The following are examples of typical direct and indirect community impacts: Such community impact includes: (a) creating or maintaining jobs for low-income persons or residents of low-income communities; (b) increasing wages or incomes for low-income persons or residents of low-income communities; (c) financing or assisting businesses owned by residents of, or otherwise committed to remain in, low-income communities; (d) financing or assisting minority- or women-owned businesses, or businesses owned by low-income persons; (e) financing or assisting businesses (including non-profit organizations) or real estate projects that provide childcare, health care, educational or other benefits to low-income persons or residents of low-income communities; (f) facilitating wealth-creation or asset accumulation (such as home ownership) by low-income persons or residents of low-income communities; (g) providing goods and services to low-income persons or residents of low-income communities; (h) creating environmentally sustainable outcomes; (i) facilitating or assisting real estate businesses which will provide rent reductions, more flexible credit standards or lease provisions to businesses owned by low-income persons or residents of low-income communities, or that provide goods and services to low-income persons or residents of low-income communities; and (i) otherwise resulting in other community impacts.

The typical NMTC financing involves (a) a borrower (such as a manufacturer); (b) a tax credit investor (typically a regional or national bank; (c) a "leverage" lender (typically, a regional or national bank, which is often affiliated with the tax credit investor); and (d) a community development entity (a "CDE"). A "CDE" is the facilitator of the NMTC financing because the CDE is the transaction participant affiliated with another CDE (known as the "Allocatee") that was awarded an allocation of NMTCs from the Community Development Financial

Institutions Fund (the "CDFI Fund"), which is administered by the US Treasury Department. CDEs have service areas that can be national, multistate, state (such as Illinois), or local (such as the City of Chicago). CDEs have the principle purpose is to serve or otherwise benefit low-income communities or targeted populations, and facilitating NMTC financing fulfills such purpose. Additionally, CDEs may have an allocation of Illinois NMTCs which provide further benefits to manufacturers.

The tax credit investor typically is the sole member of a newly created investment fund that is the recipient of the leverage lender's loan in order to "leverage" the tax credit investor's equity investment in the investment fund. Specifically, the investment fund uses (a) the tax credit investor's equity contribution, and (b) the proceeds of the loan provided by the leverage lender to make an equity contribution to the Sub-CDE. It is that investment upon which the 39 percent NMTC is determined. The tax credit investor is able to get all of such NMTCs without having to put up its own capital for the entire amount that is used by the investment fund to invest in the CDE.

The demand for NMTC financing exceeds the supply of available NMTC financing. Therefore, it is critical that a manufacturer be proactive in seeking such financing.

Due to transaction costs and underwriting requirements (a) the typical NMTC real estate financing is between \$5 million and \$20 million (but can be as high as \$40 million), and (b) the typical NMTC financing for business financing is between \$5 million and \$10 million (but can be as low as \$250,000). The steps for a manufacturer to obtain NMTC financing are:

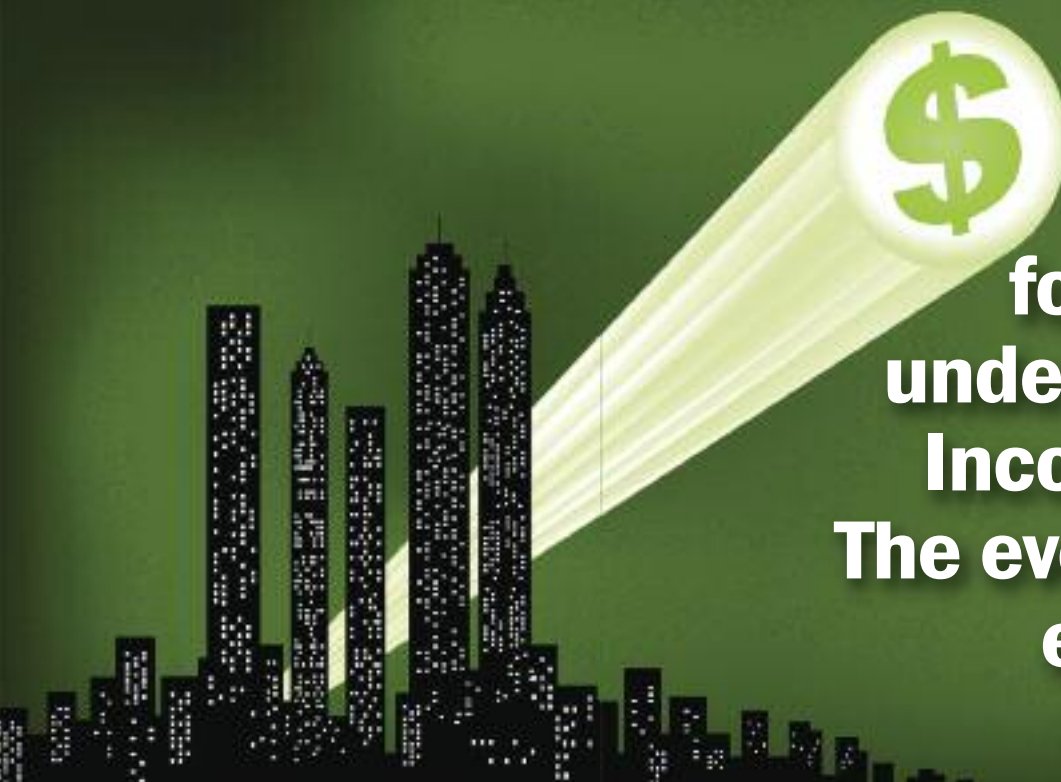
1. Qualifying manufacturer's operations or facility, including (a) identifying the census tract in which the project or business will be located to determine if the census tract is in a low-income community; (b) NMTC financing can only be used to provide a financing short fall (as opposed to provide better financing), or if it can be shown that the manufacturing business or facility

would not otherwise be located in a low-income community, be substantially carved back in scope, be substantially delayed or otherwise not economically feasible (hence, "but for" the NMTC financing, manufacturing business or facility would not be feasible in the low-income community); and (c) the manufacturing business is in need of immediate funds or the manufacturing facility is "shovel-ready."

2. Identify all sources and uses of project or business financing in order to determine any short fall in financing, and obtain commitment letters from any source of financing other than those described in #5. The leverage lender, tax credit investor and CDE will want to see that all other sources of financing are lined up.
3. Each transaction underwrites differently; however, generally, the NMTC financing requires the following guarantees: (a) construction completion guaranty; (b) operating deficits guaranty; (c) environmental indemnification; (d) tax credit recapture guaranty; and (e) in today's credit environment, in addition to a mortgage, a guaranty on the NMTC financing itself (either by an affiliate or principals of the borrower or any other credit-worthy source, including a letter of credit, the USDA, FHA, HUD).
4. Complete CDE intake form, which includes (a) providing an executive summary; (b) sources and uses of funds; (c) low-income community distressed characteristics; and (d) direct and indirect community impact.
5. Obtain commitment letters/term sheets from (a) the leverage lenders; (b) the CDE; (c) the tax credit investor.

After the seven-year NMTC financing period, (a) the borrower will refinance the senior NMTC loan, and (b) the tax credit investor is expected to sell, at a substantial discount, its ownership interest to the investment fund to the borrower or an affiliate thereof thereby effectively forgiving the subordinate NMTC loan. ■





# Deductions for net losses under the Illinois Income Tax Act: The ever-changing environment

By Andrew C. Speciale

**B**enjamin Franklin is turning over in his grave! Dr. Franklin, the oft-quoted purveyor of the phrase, “[I]n this world nothing can be said to be certain, except death and taxes,” may have been prescient about the existence and imposition of taxes. However, the State of Illinois has ensured that, as far as corporate income taxation is concerned, Dr. Franklin’s comments cannot be interpreted to reflect any type of certainty in the amount of such taxes from tax year to tax year.

In an effort to stem the tide of an endless sea of red ink concerning its finances, the State of Illinois took drastic actions in January, 2011, in an attempt to increase revenue. These changes touched on virtually all facets of Illinois’ income taxation (including personal, trust, and estate income taxation). Corporate taxpayers were not spared capture from the net cast by the state.

Public Act 96-1496, enacted on January 13, 2011, but effective as of January 1, 2011, increased corporate income tax rates from 4.8 to 7 percent for tax years beginning on January 1, 2011, with decreases in the corporate income tax rates scheduled to take effect for tax years beginning on January 1, 2015 (from 7 percent to 5.25 percent) and again for tax years beginning on January 1, 2025 (from 5.25 percent to 4.8 percent). These corporate income tax rate increases, the first in 21 years, coupled with the personal property tax replacement tax, increased the

total combined corporate income tax rate to 9.5 percent through tax years ending December 31, 2014.

In addition to the 45.83 percent increase in the corporate income tax rates, Public Act 96-1496 also modified a corporate taxpayer’s ability to carryover net losses to offset income in future tax years. The remainder of this article will discuss the historical treatment of net losses under Illinois law, examine the 2011 changes resulting from Public Act 96-1496, and examine the further changes made for tax years beginning January 1, 2012. These myriad of changes involving just a single provision of the Illinois Income Tax Act (the “Act”), the deduction for net losses, demonstrates the inherent uncertainty regarding the State of Illinois’ corporate income taxation structure.

## Historical treatment of net losses

The Act does not provide a definition of the term “net losses.” Rather, the Act merely provides that if the calculation of a corporation’s income in accordance with the provisions of the Act results in a loss, then such losses may be treated in accordance with Section 207(a) of the Act governing the type of income tax deductions that may be available as a result of such net losses. Prior to the year 2000, Illinois treated the deduction permitted for net losses under Section 207 of the Act with reference to Section 172 of the Internal Revenue Code (the “Code”), the federal statute concerning the applica-

tion of “net operating losses” for federal income tax purposes.

The result of the Act’s incorporation by reference of Code Section 172 caused some minor fluctuations in the treatment of Illinois net losses; however, those fluctuations were contained within a more certain deduction scheme. Generally, Section 207 of the Act permitted the taxpayer to either (i) to carry the net loss back a certain period of time, offsetting taxable income earned in prior tax years and applying for a refund of taxes paid or (ii) to carry the net loss forward a certain period of time, offsetting taxable income in future tax years. For example, for an Illinois net loss incurred for tax years prior to August 6, 1997, the taxpayer could elect to carry its net loss back to the three prior tax years or to carry forward the net loss to the fifteen subsequent tax years. As a result of a change in Code Section 172, an Illinois net loss incurred in a tax year prior to December 31, 1999 and on or after August 6, 1997, the taxpayer could elect to carry an Illinois net loss back to the two preceding tax years or forward to the subsequent 20 tax years.

For tax years beginning January 1, 2000, Illinois decoupled from Code Section 172’s carry back/carry forward regime; however, Illinois adopted the same two tax year carry back and 20 tax year carry forward rules that existed prior to the decoupling. Illinois’ independent regime

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## OPPORTUNITY IN CHINA

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across a spectrum of locations, attempting to balance cost elements with access to good transportation and skilled labor.

### Change in China leads to business model review

With opportunities in China changing dramatically, companies currently operating there are re-evaluating their strategies, relationships and operations to enhance their Chinese operations' return on investment. Companies that came to China to set up low-cost manufacturing for exporting products to U.S. markets have seen profits erode, as costs have increased. China's economic situation today indicates that it's time to re-evaluate strategies and strengthen implementation plans.

My team has seen, firsthand, how American companies are dealing with change in China. Here are two approaches used by companies that have developed successful strategies:

#### **Business Model #1: Upgrading operations and management**

In 2006, an American company first formed a joint venture with a Chinese company to manufacture auto components for their global customers, who had factories in China. The manufacturing facility was located in the central part of China, which has one of the lowest minimum wage levels in the country. By 2008, the joint venture faced increasing customer orders and delivery requirements. To meet the needs of their customers, the joint venture installed modern equipment with a higher finished-product yield, developed a preventative maintenance program for the entire factory, established metrics to track progress and tracked the performance of each work cell. They also hired new department heads, which had strong leadership skills, experience working in a modern manufacturing company and were good communicators.

Two years after beginning this strategic initiative, the joint venture is performing to expectations and their customers are satisfied with timely, high-quality delivery. Because managing a joint venture can be very different from an American company's traditional busi-

ness model, it requires a management team — in both the corporate home office and at the joint venture site — that understands Chinese business practices and is effective at communicating with all parties; Chinese and American management as well as the factory staff.

#### **Business Model #2: Utilizing American advisors to improve Chinese vendors' operations**

An American market leader in the manufacture and sale of outdoor cooking equipment established a component and finished-product sourcing operation in China with 20-25 different vendors. In the period from 2000 through 2010, material and labor costs increased, causing the price paid by the American company to increase as well.

To address these issues, the company hired its own staff in China, who acted as consultants, working in the vendor's factories. They helped vendors improve processes and upgrade equipment and quality systems, along with assisting in the required employee training. This

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. . . American companies have a wide range of business strategy options and alternative business models for creating a successful business in China . . .

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resulted in almost 100 percent on-time deliveries and a significant reduction in the number of customer quality complaints. It also stabilized purchase prices for the American company. The end result was a win-win situation — the vendors reduced their cost and the American company had less volatility in pricing — leading to happy customers and increased sales.

Whether currently operating in China or looking at China for the first time, American companies have a wide range of business strategy options and alternative business models for creating a successful business in China, including:

- Export products or services from the United States to China
- Source products or components from China to the United States or other global destinations

- Manufacture in China and export to the U.S. or other markets
- Manufacture in China for the Chinese and/or Asian market
- A combination of the above
- Asian partner for your U.S.-based operation

#### **Opportunity linked to strong planning**

Today, China offers American companies an extremely appealing global growth opportunity. Chinese government policy and economic activity is aligning to shift its position from the "world's export factory" to increased domestic consumption. In March of 2011, the Chinese government passed the Twelfth Five-Year Plan with goals supporting a rebalancing of its economy, shifting emphasis from investment toward consumption and from urban and coastal growth toward rural and inland development. These goals encourage foreign investment in modern agriculture, high-tech and environmental-protection industries.

American companies of all sizes — no matter their current relationship with the Chinese market — can find new or additional opportunity in China and Chinese companies eager to discuss and evaluate alternatives for long-term cooperation. Whether updating your plans or evaluating a new business, you should: assess your current situation, collect market intelligence, prepare feasibility plans, develop your strategy, and produce business and implementation plans.

There's a well-evolved economic revolution occurring in China that offers real and dynamic opportunity to companies willing to take the time and invest the resources in understanding how to do business there. It's not easy to get accurate information or be culturally attuned to doing business in China. The Chinese will present all the reasons why you should invest in their country, but you need subtle and nuanced insights to be able to sift through the data to make informed business decisions. Your company can study the Chinese market itself, through a potentially arduous networking process, or it can shorten the learning curve by utilizing the expertise and advantages of strategic partners who know China and have strong relationships already in place, avoiding the risks of moving in a sub-optimal business direction. ■



# New rules for employers who use noncompete agreements

**C**onsider this scenario: One day your two best salespeople walk into your office and hand you their resignations. Immediately you are concerned because these two employees know all of your customers, your pricing strategies, your operating methods, your existing products and even your new products in R&D. They know every detail of your business plan because they helped you develop it. And they tell you they've started up their own business, which will directly compete with you. A couple of weeks later, you learn they have been calling on your customers and soliciting your employees to join them.

Hopefully you protected yourself from this situation with a "noncompete" agreement (or similar "restrictive covenant") that your employees signed when they worked for you promising not to compete with you or solicit your employees for a reasonable time after they left your company. But are your noncompete agreements still enforceable after the Illinois Supreme Court's recent decision in *Reliable Fire Equipment Co. v. Arredondo*? The answer might surprise you.

In *Reliable Fire* (Case No. 2011-IL-111871), the Illinois Supreme Court examined a case nearly identical to the one described above. There, two of Reliable's sales people signed noncompete agreements during their employment, which prohibited them from competing with Reliable or soliciting its employees in Illinois, Indiana or Wisconsin for one year after their employment

ended. After learning that the two former salespeople had started their own competing business and were calling its customers and soliciting its employees, Reliable brought a lawsuit to stop the employees from competing in violation of their agreements. However, instead of validating Reliable's agreements, the lower courts held that Reliable's noncompete agreements were unenforceable, and the former salespeople were allowed to continue competing. Reliable appealed the case all the way up to the Illinois Supreme Court, which issued a landmark opinion that will change the

way courts look at noncompete agreements.

In its decision, the Supreme Court made two points that are very important for employers. First, the Court reaffirmed the long-standing principle that for a noncompete agreement to be enforceable, it must be "reasonable," which means that it cannot be more restrictive than necessary to protect the employer's "legitimate business interest." This point is significant because earlier cases had held that courts only needed to consider whether noncompete

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## DEDUCTIONS

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existed until tax years beginning on January 1, 2004, when Illinois put into place Section 207(a)(3) of the Act, which eliminated the potential to carry back a net loss to past tax years. Instead, the Act only permitted the taxpayer to carry forward the net loss to the subsequent 12 tax years.

### 2011 changes to the Illinois Income Tax Act

The well-publicized budgetary crisis that existed (and continues to exist) in the State of Illinois that led to the increase in the corporate income tax rates in January 2011, also pushed the state to seek other revenue-generating avenues. Given the historic propensity for changing the Act's treatment of deductions for net losses, it is not surprising that the treatment for the deduction of net losses would be a target for change.

In Public Act 96-1496, Section 207(d) of the Act was amended to suspend the ability of a corporate taxpayer to carry forward a net loss for tax years ending after December 31, 2010, and prior to December 31, 2014. The 12-year carry forward scheme in place since January 1, 2004, was not eliminated; however, the ability of corporate taxpayers to recognize carry forward deductions for net losses was delayed. Any tax year for which the net loss carryover deduction is suspended does not count as a "taxable year" for the purposes of calculating the 12-year net loss carryover period.

### 2012 ushers in a new round of changes

In response to the general outcry from the business community (including the Illinois Manufacturers Association) after the enactment of Public Act 96-1496, the State of Illinois once again altered the net loss deduction carry forward regime. This change undoubtedly benefited the corporate taxpayer.

Public Act 97-636 reduced the duration of the absolute suspension of the net loss deduction from four years to two years. Under Public Act 97-636, the complete suspension of

the net loss deduction only applies for tax years beginning January 1, 2011, and ending prior to December 31, 2012. For tax years ending on or after December 31, 2012, and prior to December 31, 2014, taxpayers may carry forward net loss deductions in an amount not exceeding \$100,000.

As with the 2011 changes, Section 207(a)'s 12-year carry forward of the net loss deduction is still maintained. Any tax year for which the net loss deduction is suspended or for which such deduction is limited to \$100,000 does not count as a taxable year for the purposes of Section 207(a)'s 12-year carry forward limitation.

### No certainty for businesses and disparate treatment among similarly situated taxpayers

As the history of the State of Illinois' treatment of the corporate deduction for net losses illustrates, the last several years have been anything but certain. This lack of consistency and uncertainty about what future iterations of the Act may contain prohibits businesses from engaging in meaningful long-term tax planning. If businesses cannot accurately predict their potential liabilities, then businesses may make an adverse decision about locating within a given jurisdiction.

Not only does the ever-changing landscape for the treatment of the deduction for net losses impact the certainty of the tax environment for Illinois businesses, but the system adopted by Public Act 97-636, although clearly benefiting the corporate taxpayer, leads to potentially disparate treatment of similarly situated corporate taxpayers.

Consider, for example, the following: Two companies are considering investments in Illinois operations. The first company is a startup company (or a cyclical manufacturing company), that will generate a substantial tax loss in the first year of operations. The second company is a company that is expected to generate steady income over its life.

The chart below sets forth the taxable income and associated tax liability for each company for the first two years of operations. The chart also contemplates the application of Illinois' current net loss deduction regime in which the net loss deduction carry forward for the 2013 tax year is capped at \$100,000.

Because of the limitation on the availability of a carry forward deduction for net losses, the startup company will not obtain the full benefit of its first year operating loss in the calculation of its tax liability for its second year. The result is that two companies, earning the same amount of income over the course of two years, have drastically different tax liabilities. Of course, the counter argument is that once the startup company fully utilizes its net loss carry forwards after any limitations have expired, the two companies will have the same tax liability (assuming their total net income is the same). However, given the historical uncertainty of the availability of a carry forward deduction for net losses, it cannot be readily assumed that the startup company will be able to fully utilize such carry forwards. If history is an indicator of the future, then the startup company's ability to utilize net loss carry forwards is subject to the whims of the State of Illinois' revisions to the Act.

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	Startup Company	"Steady" Company
<b>Taxable Income, Year 2012</b>	<b>(\$400,000)</b>	<b>\$100,000</b>
<b>Tax Paid (7%)</b>	<b>-0-</b>	<b>\$7,000</b>
<b>Taxable Income, Year 2013</b>	<b>\$600,000</b>	<b>\$100,000</b>
<b>Net Loss Deduction</b>	<b>(\$100,000)</b>	<b>-0-</b>
<b>Taxable Income after Net Loss</b>	<b>\$500,000</b>	<b>\$100,000</b>
<b>Tax Paid (7%)</b>	<b>\$35,000</b>	<b>\$7,000</b>
<b>Total Income After two Years</b>	<b>\$200,000</b>	<b>\$200,000</b>
<b>Total Taxes Paid</b>	<b>\$35,000</b>	<b>\$14,000</b>



# Highlights from the Illinois Manufacturers' Association 2011 Annual Luncheon . . .



Illinois State Comptroller Judy Baar Topinka (left) and 2010-2011 IMA Chairperson Janice Christiansen.



Winner of the "basket of spirits" donated by Diageo was Tony Siebert of United Scrap Metal.



Winner of the airline tickets donated by American Airlines was Mike Hugdahl of Corn Products.

## IMA CEO Gregory W. Baise presented IMA Board member Marsha Serlin, CEO of United Scrap Metal, with an award in recognition of the company's 25 years as an IMA member.



IMA CEO Gregory W. Baise presented IMA Board member Marsha Serlin, CEO of United Scrap Metal, with an award in recognition of the company's 25 years as an IMA member.



IMA affinity partner Constellation Energy presented the IMA with a "Green" award. Energy used at the event was wind-generated. Pictured from left: Greg Baise; Roger Tarras, Constellation Energy; Janice Christiansen; John Oroni, Constellation Energy and newly installed IMA Board Chairman Michael Holewinski.

### Other 2011 IMA Annual Luncheon raffle winners:

- Jonathan Hill of Phillippi-Hagenbuch won the Gator donated by Deere & Company.
- Cathy Asta of Olsun Electronics Corporation won the popcorn machine donated by Cretors.
- Mark Biel, Executive Director of the Chemical Industry Council of Illinois won the airline tickets donated by United Airlines.



Jim O'Donnell of Camcraft, Inc. (center) accepted a plaque for second runner up in the medium sized manufacturers category of IMA's 2011 Manufacturing Miles competition. Dr. Tere Garate of the Illinois Department of Public Health (right) also attended the luncheon.

### IMA member Deere & Company's 175th anniversary

This year, 2012, marks the 175th anniversary of Deere & Company, which began when company founder John Deere successfully manufactured and marketed the self-scouring plow in 1837.

"John Deere revolutionized agriculture and he made farming in the tough soil of the U.S. Midwest a productive and profitable venture," said Samuel R. Allen, chairman and chief executive officer of Deere & Company.

Deere had moved from his home in Vermont to start a small blacksmith shop in Grand Detour, Illinois. He later moved the business to Moline, Illinois, where the world headquarters is still located. The company was incorporated as Deere & Company in 1868. From the one-man shop at its inception, Deere currently has more than 60,000 employees worldwide.

John Deere is a leading manufacturer of agricultural and forestry equipment as well as a leader in construction and turf care equipment. Additionally, Deere is a world leader in precision irrigation.

"John Deere instilled four core values in his company," Allen said. "Today John Deere employees still deliver on the important values of integrity, quality, commitment, and innovation and we believe these values have been the key to the longevity of our enterprise."

Recognition of the 175th anniversary began recently when the John Deere Foundation made a \$175,000 grant to help fund Feeding America's Backpack Program that provides children with nutritious food they might need over a weekend. Since 2007, the John Deere Foundation has been an active supporter of Backpack programs in several communities where Deere has facilities.

Various Deere business units around the globe will recognize the special anniversary with citizenship activities that will have a positive impact in communities where John Deere employees live and work.



### Bison chairman joins National Workforce Solutions Advisory Board as founding member

Ron Bullock, Chairman of Bison Gear and Engineering, and former IMA Chairman, has joined the National Workforce Solutions



Advisory Board as a founding member. Already an active participant in fostering progressive growth, education and training in the manufacturing workforce, Mr. Bullock's goal is to ensure that the U.S. remains a competitive player in the 21st century.

Sponsored by ACT, Inc., the National Workforce Solutions Advisory Board is leading a national effort to build a common framework that links education and workforce development, aligns workforce development with industry needs and matches individual skills with employer requirements. Ron will work with other board members to build partnerships for community-based workforce development solutions.

Mr. Bullock currently serves as Vice Chair of the NAM Manufacturing Institute, serves on Illinois' P-20 Council and chairs the IMA Education Foundation. Going forward, Ron hopes that his participation in this venture will lead to a renewed interest in American manufacturing.

"There are great careers available in manufacturing and the boomer train is leaving the station. We need a more robust pipeline to fill our needs, and ACT's Certified Work Ready Communities program is a wonderful grass roots solution," Bullock commented.

The Board's inaugural chairman is the Honorable Sonny Perdue, Governor of Georgia from 2003 to 2011, whose vision to link education and workforce development together led to the creation of Georgia Work Ready, which included Georgia's innovative Certified Work Ready Communities model.

Learn more about sponsor ACT at [www.act.org](http://www.act.org).



### IMA members receive awards for achievements in environmental protection

Twenty five Illinois companies and organizations have been honored for their significant achievements in protecting the environment, helping sustain the future and improving the economy. The Governor's Sustainability Awards were presented by the Illinois Sustainable Technology Center (ISTC) during a luncheon in Champaign on October 27th, 2011. ISTC is a unit of the Prairie Research Institute at the University of Illinois.

Since 1987, ISTC has presented Governor's awards to organizations in Illinois that have demonstrated a commitment to environmental excellence through outstanding and innovative sustainability practices. Organizations who are winning for the first time received the Sustainability Award. Those organizations that have won in past years and are continuing their environmental efforts are awarded a Continuous Improvement Award.

"These businesses and organizations have shown that it is possible to create and maintain conditions under which people and the environment can exist in productive harmony, and fulfill the social and economic requirements of present and future generations," said Manohar Kulkarni, ISTC Director.

IMA members who received the 2011 Governor's Sustainability Award include:

**Continuous Improvement Award:**  
Harris Corporation, Quincy, Illinois  
**2011 Governor's Sustainability Award (first time winners):**

Ameren Illinois ActOnEnergy

Business Program, Peoria, Illinois  
Cabot Corporation, Tuscola, Illinois  
Solberg Manufacturing,

Itasca, Illinois

Information on the 2012 Governor's Sustainability Awards program is available at the IMA Energy & Environment Blog, <http://www.ima-net.org/energy-environment-blog>.







Tarmec-Hill Fastener Corporation celebrated 25 years of membership in the Illinois Manufacturers' Association. IMA Director of Membership Julie Starsiak (left) recently presented an award to Vice President Bob Tumminaro (right) and Michael A. Walters, Production Manager (center), at Tarmec-Hill Fastener Corporation in Rock Falls, Illinois. Tarmec-Hill Fastener Corporation has recently been acquired by IMA member MacLean-Fogg Company.

### Philippi-Hagenbuch, Inc. expands license agreement to include collection of real-time data

LeRoy G. Hagenbuch, Chairman of Philippi-Hagenbuch, Inc., recently announced that he and Hitachi Construction Machinery/the HCM Group, which includes Hitachi Truck Manufacturing company and Wenco International Mining Systems Ltd., ("WENCO") have expanded their existing license agreement to include collection of real-time data.

Under the agreement, LeRoy G. Hagenbuch grants HCM a nonexclusive license in the United States and Canada to utilize the technology represented by these patents to produce HCM products.

Established in 1969, Philippi-

Hagenbuch, Inc. is a supplier of custom off-highway haulage solutions and based out of Peoria, Illinois, with equipment in more than 30 countries. For more information about IMA member Philippi-Hagenbuch, Inc., visit their website at: <http://www.philsystems.com>.

Information about Hitachi Construction Machinery and Wenco can be found at their respective websites: <http://www.hitachi-c-m.com/> and <http://www.wencomine.com>.



### Inland Private Capital Corporation president honored by major real estate publication

Inland Private Capital Corporation (IPC Corp.) recently announced that Patricia DelRosso, president of IPC Corp., has been recognized in the second annual *Midwest Real Estate News* Hall of Fame for 2011. This honor is given to the most important men and women working in the commercial real estate industry throughout the Midwest.

"For over 27 years, Patricia has been an invaluable asset to Inland Private Capital Corporation and its affiliates and I can't think of anyone who deserves this honor more," said Brenda Gujral, chief executive officer of Inland Real Estate Investment Corporation, IPC Corp.'s parent company. "Her continued business innovations, coupled with her dedication to client service, have helped to make IPC Corp. the successful organization it is today."

DelRosso was chosen for the Hall of Fame because of her hard work and constant innovations within IPC Corp., formally known as Inland Real Estate Exchange Corporation. Under her leadership, the company became the largest in the industry.

Inland Private Capital Corporation is based in Oak Brook, Illinois, and is part of The Inland Real Estate Group of Companies, Inc., an IMA member company, which is comprised of independent legal entities.

In addition, Inland Bank has been applauded by Senator Dick Durbin (D-IL) for being the first community bank in the nation to adopt the Pew disclosure form. The form outlines all the basic checking

account terms and conditions in a concise easy-to-read one-page format. The Oak Brook, Illinois-based Inland Bank has eleven branches in the Chicagoland area.



### Scott Stainless Steel, Inc., purchases new facility

After almost 25 years at its previous location, Scott Stainless Steel, Inc., moved to a larger and more efficient office. The new facility in Northbrook doubles Scott's space and provides ample room for expansion.

IMA member Scott Stainless Steel, Inc. needed the additional space to grow, and it is growing. With solid supply relationships, the company is looking to hire additional people to expand its customer base.

Customers include metal stampers, roll formers, OEM's and metal distributors. Many customers have worked with Scott for decades. Scott Stainless Steel, Inc., distributes flat rolled stainless steel, coil and sheet.

The company began operating in 1953. Larry Scott, the founder's grandson, currently serves as president. Larry has been in the business since 1984 and has been president since 1992. Scott prides itself on its long term customer and supplier relationships and its bright and dedicated employees.



### Manufacturing technology orders up 66.4 percent for 2011

December U.S. manufacturing technology orders totaled \$519.98 million according to AMT — The Association For Manufacturing Technology and AMTDA, the American Machine Tool Distributors' Association. This total, as reported by companies participating in the USMTO program, was up 12.2 percent from November and up 12.7 percent when compared with the total of \$461.48 million reported for December 2010. With a year-to-date total of \$5,508.81 million, 2011 was up 66.4 percent compared with 2010.

These numbers and all data in the report are based on the totals of actual data reported by companies participating in the USMTO program.

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"USMTO finished its strongest year in more than a decade as manufacturing led the U.S. recovery into 2012," said AMT President Douglas K. Woods. "The 67 percent increase is nearly 20 points higher than forecasters predicted, which is great news in terms of reducing the foreign trade deficit. Manufactured goods represent more than 65 percent of trade, so the rise of U.S. manufactured products will help reduce our reliance on imports and support growth in exports."

The United States Manufacturing Technology Orders (USMTO) report, jointly compiled by the two trade associations representing the pro-

duction and distribution of manufacturing technology, provides regional and national U.S. orders data of domestic and imported machine tools and related equipment.

Analysis of manufacturing technology orders provides a reliable leading economic indicator as manufacturing industries invest in capital metal-working equipment to increase capacity and improve productivity.

U.S. manufacturing technology orders are also reported on a regional basis for five geographic breakdowns of the United States. Midwest Region manufacturing technology orders in December stood at \$178.83 million, 19.8 percent more than the November

total of \$149.3 million and up 11.1 percent when compared with December 2010. At \$1,849.55 million, the 2011 year-to-date total was 81.6 percent more than the comparable figure for 2010. Manufacturing technology orders in the Central Region in December totaled \$115.01 million, down 10.1 percent from November's \$127.96 million and down 6.7 percent when compared with the December 2010 figure. The \$1,472.77 million year-to-date total was 69.6 percent higher than the total for the same period in 2010.



## IMA's 2011 Manufacturing Miles competition

Participants in the 2011 IMA Manufacturing Miles competition accumulated nearly 350,000 miles between October 1, 2010 and October 31, 2011. More than 4,000 manufacturing workers at 33 IMA member companies participated.

During the 118th IMA Annual Luncheon in Chicago on December 2, 2011, Great Kitchens of Romeoville, Eaton Electrical of Lincoln and Peacock Engineering of Geneva were crowned champions of the small, medium and large manufacturer categories, respectively, and were made eligible for up to \$10,000 in merchandise and services to continue their wellness efforts. In addition, Carl Cox of Eaton Electrical was recognized as the top individual participant for his accumulation of 9,098 miles over the 12 months of competition.

IMA's Manufacturing Miles is a Wellness in the Workplace competition underwritten by a grant from the Illinois Department of Public Health. Whether by walking, running, cycling or any other form of exercise that could be measured in miles, the program was designed to forge lifestyle and



Participants from IMA member company Great Kitchens, Inc., of Romeoville accepted a plaque for being "Champions" in the small manufacturers category of IMA's 2011 Manufacturing Miles competition. Pictured from left: Greg Baise; Barb Parks; Dr. Tere Garate, IDPH; Janice Christiansen and Catherine York.

behavioral changes leading to a healthier workforce and healthcare cost savings for employers.

Numerous studies have shown the significant positive effects that wellness programs bring to the workplace. Studies show:

- Nearly 60 percent of employers' after-tax profits are spent on health benefits. An estimated 25-30 percent of companies' medical costs are spent on employees with excess health risk. That contrasts to three decades ago when only seven percent of corporate profits paid for health costs.
- Employer spending on health promotion and chronic disease prevention is a good business investment. Programs have achieved a rate of return on investment ranging from \$3 to \$15 for each dollar invested with savings realized within 12 to 18 months.
- Addressing risk factors early can make a difference. For example, \$5.6 billion in heart disease costs could be saved if one-tenth of Americans began a regular walking program.

It's never too late to begin a Wellness in the Workplace program, and there are several ways to implement a program without disruption of plant operations. For more information, contact the IMA's Jim Nelson (jnelson@ima-net.org), or your company's health insurance carrier. ■

### 2011 IMA Manufacturing Miles top contenders

#### Large manufacturer category (500<)

Champion: Peacock Engineering Company LLC, Geneva — 47,578 miles  
1st Runner Up: AIT Worldwide Logistics, Inc., Itasca — 8,057 miles  
2nd Runner Up: Otto Engineering Inc, Carpentersville — 3,287 miles

#### Medium manufacturer category (150 – 500)

Champion: Eaton Electrical, Lincoln — 81,137 miles  
1st Runner Up: Corn Products International, Belford Park — 28,929 miles  
2nd Runner Up: Camcraft Inc, Hanover Park — 23,020 miles

#### Small Manufacturer category (>150)

Champion: Great Kitchens Inc, Romeoville — 71,946 miles  
1st Runner Up: HD Electric Company, Waukegan — 23,363 miles  
2nd Runner Up: Dentsply Rinn, Elgin — 13,033 miles

#### Individual Recognition

Carl Cox, Eaton Electrical, Lincoln — 9,098 miles  
Janusz Ksel, Camcraft Inc., Hanover Park — 7,759 miles  
Chris Mecker, HD Electric Company, Waukegan — 5,417 miles



## SOCIAL MEDIA

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were found overbroad because they could have prohibited conduct protected by the NRLA and did not specifically define or give examples of the conduct the employer legitimately sought to prohibit. And here is some good news for the employers; as long as a social media policy is narrowly tailored to protect the employer's legitimate business needs

and contains disclaimer language informing the employees that the policy is not intended to interfere with any applicable federal or state laws or with the employees' rights under the NLRA, it seems that the policy has a good chance of withstanding the NLRB's scrutiny. As a result, employers (both union and non-union) should once again carefully review their social media and other corporate policies to ensure that they set clear guidelines for employees and are not so broad as to interfere with an employee's rights

under the NRLA.

Navigating these social media issues is no easy task. However, because an employer does have the right to maintain their corporate image and public reputation as well as manage its workforce, a well-written and up-to-date policy as well as thoughtful disciplinary action will ensure the proper balance between protecting the employer's rights and at the same time respecting an employee's right to discuss legitimate issues on social media websites. ■

## NEW RULES

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agreements were reasonable as to time (months/years an employee cannot compete) and territory (area of the state/country where the employee cannot compete). The Court rejected these earlier decisions and ruled that employers must show that they have a "legitimate business interest" justifying the competition restriction that they seek to impose on their employees, and therefore, more must be considered than just time and territory.

Next, the Court changed how employers must prove that they have a "legitimate business interest." For nearly four decades, courts had looked to whether the restrictions on competition were necessary to prevent employees from appropriating

either (a) the employer's confidential information; or (b) its near permanent customer relationships. In *Reliable Fire*, however, the Court held that it will no longer look at any particular factor as "conclusive" in determining the scope of an employer's legitimate business interest. Instead, now it will consider the "totality of the facts and circumstances," examining each employment situation and noncompete agreement individually. While the factors in the earlier test may still be considered, they are now no more than guides. This new approach relies more on the uniqueness of each business rather than satisfying a particular formula — a fact which the Court seemed to acknowledge when it wrote that, "the same identical contract and restraint may be reasonable and valid under one set of circumstances, and unreasonable and invalid under another set of circumstances."

While it remains to be seen exactly how courts will apply the new "totality of the circumstances" test, courts will be looking closely at non-compete agreements to verify that the restrictions on employees are no greater than necessary. Overbroad or outdated agreements that are no longer consistent with an employer's market footprint or an employee's actual access to sensitive information may be deemed unenforceable, leaving employers without any protection against competing employees using the employer's own confidential information. Following the Illinois Supreme Court's decision in *Reliable Fire*, employers may wish to re-examine their noncompete agreements to ensure the restrictions fall within the scope of their legitimate business interests. For more information on this subject, employers should contact the authors. (See bottom of page 23.) ■

## DEDUCTIONS

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Further, developmental stage companies often generate significant net losses early in their operations. Similarly, cyclical manufacturing companies often generate substantial net losses depending upon the ebbs and flows of their business cycle. To limit the ability of such companies to use their net losses to the fullest extent possible to offset future income is to take away an important benefit that serves to level the playing field among all taxpayers. Such a limitation can stifle business investment.

Obviously, the preceding example is over-simplified as it assumes

that state income tax decisions are the only drivers in a business's decision to locate in Illinois. While this is likely not the case, certainty in the tax laws and equal treatment of similarly situated taxpayers is an important factor in establishing a more stable environment for the State of Illinois' businesses.

### Conclusion

As evidenced by the State of Illinois' ever changing treatment of the deduction allowed for net losses, certainty in the determination of a corporation's Illinois income tax liability has definitely taken a back seat to Illinois' attempts to rescue itself from its financial malaise. Businesses crave certainty. The absence of certainty leads to not only disparate

treatment among similarly situated taxpayers but also to a less accommodating business environment. Hopefully, the State of Illinois will recognize and rectify the inequities inherent in the constant retooling of the deduction for net losses. If it does, then Dr. Franklin's words will finally obtain their full meaning, and the State of Illinois' tax environment will have become certain. ■

### About the author

Author Andrew C. Speciale is a member of the Business and Corporate Law Practice Group of the law firm HeplerBroom, LLC. Andrew may be reached at 618-307-1280 or [acs@heplerbroom.com](mailto:acs@heplerbroom.com). HeplerBroom, LLC is an IMA member company.

## New IMA members

### **AJ ANTUNES & COMPANY**

Carol Stream, IL

### **DRIV-LOK, INC.**

Sycamore, IL

### **EDUCATIONAL DATA SYSTEMS, INC. (EDSI)**

Dearborn, MI

### **HEALTHLINK**

St. Louis, MO

### **HENDRICKSON/BOLER**

Joliet, IL

### **INSURANCE PARTNERSHIP AGENCY OF ILLINOIS, INC.**

Centralia, IL

### **IPLASTICS, LLC, DBA**

**ILLINOIS VALLEY PLASTICS**

Washington, IL

### **JOSTOCK & JOSTOCK, PC**

Chicago, IL

### **MAUI JIM, INC.**

Peoria, IL

### **MICHAEL R. MURPHY & ASSOCIATES, LTD.**

Springfield, IL

### **NTN BEARING CORPORATION OF AMERICA**

Mount Prospect, IL

### **PRACTICAL HR**

Schiller Park, IL

### **PRINCIPAL MANUFACTURING CORPORATION**

Broadview, IL

### **SCHULZE & BURCH BISCUIT COMPANY**

Chicago, IL

### **THE PLASTICS INDUSTRY TRADE ASSOCIATION**

Washington D C

### **TOPCO ASSOCIATES, LLC**

Skokie, IL

### **UNGARETTI & HARRIS**

Chicago, IL

### **UNION PACIFIC RAILROAD**

Chicago, IL

### **UNLAND COMPANIES**

Pekin, IL

### **UNYTITE, INC.**

Peru, IL

### **WILLIAMS-MANNY, INC.**

Rockford, IL

## 2012 Calendar of events

### **MARCH 2012**

**March 2, 2012**

#### **IMA-MIT Event: Consultative Selling Skills for Sales Professionals**

DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am-4:45 pm.

Get the tools you need to develop great working relationships by attending this event.

**March 15, 2012**

#### **IMA-MIT Event: Effective Presentation Skills**

DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-5:00 pm.

Public speaking and/or presenting to others do not need to cause "high anxiety" or be your "worst nightmare". No matter what the subject, deliver the message with poise and power. Learn the key skills, techniques and methods that will help you create memorable presentations delivered with power and passion.

**March 21, 2012**

#### **IMA Breakfast Briefing: Employee Discipline & Discharge Without Fear**

Ditka's Restaurant, 2 Mid America Plaza, Suite 100, Oakbrook Terrace, 8:00-11:00 am

Join your peers and John Klages with Quarles & Brady

for this interactive "How To" Primer. Topics covered will include: Employee Rights, Employee Duties, Strategies for Disciplining Employees, Considerations when Investigating Inappropriate Conduct and Performance-Related Cases and Guidelines to Avoid the Appearance of Unfair Treatment.

**March 23, 2012**

#### **IMA-MIT Event: Strategic Planning & Goal Setting Skills**

DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-5:00 pm.

Effective strategic planning and thinking skills combined with the ability to set compelling and achievable goals are at the core of all successful leaders. Forward-looking strategy formulation can become a key competitive differentiator and provide a clear "road-map" and path for success.

### **APRIL 2012**

**April 2, 2012**

#### **IMA-MIT Event: Assertive Communication Skills; Communicating w/Authority & Impact**

DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-4:45 pm.

At the core of effective communication is the ability to communicate "assertively"; using skills that

portray us as trust worthy, confident, credible, direct and results oriented. Skills that translate into far better outcomes and goal achievement.

**April 10, 2012**

#### **IMA-MIT Event: Project Management Skills for Non Project Managers**

DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-5:00 pm.

Regardless of your job title, you can make a meaningful contribution by successfully leading others through the key project stages of initiating, planning, delivering, monitoring and completing; delivering the project on time and within the budget.

**April 18, 2012**

#### **IMA Breakfast Briefing: Protect Your Bottom Line — Critical Steps for Manufacturers**

Ditka's Restaurant, 2 Mid America Plaza, Suite 100, Oakbrook Terrace, 8:00-11:00 am

Do you have a plan in place in the event of a man made or natural disaster causing damage to your property, including business interruption? Katherine Smith Dedrick and Andy Plunkett from Childress Duffy will discuss what steps you should take including liability claims and changing regulations.

Visit <http://www.ima-net.org/calendar-of-events> for information, pricing, registration, etc., related to all IMA special events and IMA-MIT training events.

**The Illinois Manufacturer is underwritten by Constellation NewEnergy**



# Quarterly Economic Update



The recovery from the twin shocks of higher oil prices and factory supply line disruptions has given recent growth a boost, led by reviving auto production and sales. But we continue to expect a return to somewhat disappointing growth this year. Although the expansion's resilience is evident in stronger job gains, policy efforts have been unable to calm financial headwinds completely, while lingering imbalances in some sectors are preventing a broad-based rebound in activity.

The Fed has signaled that policy likely will continue supporting financial conditions with the use of communications strategy. We expect an imminent change in interest rate guidance, pushing out expectations of the first rate hike well beyond 2013. The possible introduction of a formal inflation target could serve as an anchor for credibility in the event a deteriorating outlook warrants renewed balance sheet expansion. Short of that, implementation of QT is continuing and there is a growing chance of additional MBS purchases. Fiscal policy still presents a wild card, but we are anticipating full-year extensions of payroll tax relief and long-term jobless benefits in Q1. Retrenchment among state and local governments remains a drag on income and employment, although its intensity may begin to wane.

Inflation has begun to retreat noticeably in high-frequency headline and core measures as earlier shocks have dissipated. This has buoyed growth, especially where temporary bottlenecks had been a source of price pressure. Business pricing plans have eased and with a slack job market, wage growth remains slow and consumer resistance to higher prices is widely evident. Lower inflation this year could provide an added degree of freedom for Fed policymakers weighing the costs and benefits of additional accommodation.

To discuss how this data can impact your business please call:

Peter Molrano  
VP Commercial Banking  
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Risa Davis  
VP Commercial Banking  
312-627-3323  
risa.davis@citi.com

## United States — Economic Forecasts, 2011F-2013F

United States — Economic Forecasts, 2011F-2013F					2011		2012				2013	
		2011F	2012F	2013F	3Q	4QF	1QF	2QF	3QF	4QF	1QF	2Q
GDP	SAAR				1.8%	2.8%	1.7%	1.7%	2.0%	2.1%	1.0%	1.7%
	YoY	1.7%	1.9%	1.9%	1.5	1.6	1.9	2.0	2.0	1.9	1.7	1.7
Domestic Demand	SAAR				2.7	1.1	1.7	1.3	2.0	2.1	0.6	1.6
	YoY	1.8	1.7	1.7	1.8	1.4	1.7	1.7	1.5	1.8	1.5	1.6
Consumption	SAAR				1.7	2.4	1.9	1.6	2.2	2.4	1.1	1.8
	YoY	2.2	1.9	1.9	2.0	1.7	1.7	1.8	2.0	2.0	1.8	1.9
Business Investment	SAAR				15.7	2.7	6.0	4.0	4.1	4.1	4.7	3.9
	YoY	8.6	6.0	4.3	9.1	7.6	8.6	7.0	4.2	4.6	4.2	4.2
Housing Investment	SAAR				1.3	9.4	9.3	10.9	13.8	15.9	17.4	18.3
	YoY	-1.5	9.3	15.9	1.4	3.0	6.0	7.7	10.8	12.6	14.6	16.3
Government	SAAR				-0.1	-4.8	-1.9	-2.1	-1.5	-1.4	-5.6	-2.9
	YoY	-2.2	-2.1	-2.6	-2.4	-3.0	-1.9	-2.2	-2.6	-1.7	-2.7	-2.9
Exports	SAAR				4.7	6.0	3.5	3.8	4.6	4.9	5.1	5.0
	YoY	6.9	4.5	4.9	6.0	5.5	4.5	4.6	4.5	4.3	4.8	4.9
Imports	SAAR				1.2	2.4	3.0	3.4	4.2	4.0	3.8	4.1
	YoY	4.8	2.9	4.1	2.1	3.3	2.0	2.6	3.2	3.7	3.9	4.0
CPI	YoY	3.2	1.7	1.7	3.8	3.3	2.4	1.8	1.3	1.4	1.5	1.7
Core CPI	YoY	1.7	2.0	1.7	1.9	2.2	2.2	2.1	1.9	1.8	1.7	1.6
Unemployment Rate	%	9.0	8.5	8.4	9.1	8.7	8.6	8.5	8.4	8.3	8.4	8.3
S&P 500 Profits (US\$ Per Share)	YoY	18.1	1.8	4.5	13.0	15.1	9.4	4.2	-2.6	-3.1	-0.8	4.2

Notes: F: Cit forecast, YoY: Year-to-year percent change, SAAR: Seasonally adjusted annual rate

Sources: Bureau of Economic Analysis, Bureau of Labor Statistics, I/B/E/S, Treasury Department, Wall Street Journal and Citi Investment Research and Analysis

	Forecast End Period						
	Current	1Q 12	2Q 12	3Q 12	4Q 12	1Q 13	2Q 13
US							
Policy Rate (Fed Funds) End Quarter	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3-Month Libor	0.57	0.57	0.80	0.86	0.70	0.75	0.60
2 Year Treasury Yield	0.22	0.27	0.30	0.36	0.45	0.55	0.70
10 Year Treasury Yield	1.86	2.00	2.10	2.26	2.46	2.56	2.70
30 Year Treasury Yield	2.91	3.10	3.25	3.40	3.55	3.65	3.70
2-10 Year Treasury Curve	163	173	180	190	200	200	200
30 Year Mortgage Yield	3.91	4.00	4.06	4.10	4.26	4.30	4.70

Source: Citi Investment Research and Analysis

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We all want the same thing: affordable, reliable, clean, and secure sources of energy. The good news is that we know how to get there, and we're already on the way. Energy markets are increasingly competitive. New Smart Grid technologies are making energy use more efficient. Investments in nuclear, solar, wind, and natural gas will more cleanly provide electricity for homes and businesses today, and for the cars and trucks of tomorrow. At Constellation Energy, we understand the challenges. And we're delivering the innovative energy solutions that are helping our customers succeed and our communities prosper.

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