

MR

MIDWEST ROOFER

IN THIS EDITION

- TRUMP VISITS ADVANCED INDUSTRIAL
- TAX BREAKS FOR NEW PARENTS
- ASPHALT VS METAL ROOFING
- MARIJUANA AND DRUG TESTING
- THE EMPLOYER'S TOOL BUCKET
- ROOFING DAY IN DC 2019



**2018 MRCA
CON • EXPO
HIGHLIGHTS**
PG. 18-33



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December 2018

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2018 MRCA President's Farewell Address

Greg Sprague, MRCA President

My term as the 2018 MRCA President and my service to the MRCA over the past ten years as an Officer and Director is coming to an end. It has been a unique and rewarding experience as well as a tremendous amount of hard work! Over those past ten years I have witnessed tremendous change in this association. I have watched the MRCA transition through three different association management firms and move from a position of strong financial health, to one where I seriously had my doubts if the MRCA would be able to financially survive. Today, the MRCA is back on a strong financial footing thanks to a successful Conference and Expo, increased CERTA revenue and membership dues.

My goal this past year was to increase MRCA membership and the attendance at the MRCA Conference and Expo while maintaining a strong financial position for this association. Thanks to the hard work of the MRCA Officers, Board of Directors, Committee Members, the Advisory Council and MRCA Staff, I am pleased to report that the MRCA attained those goals. The MRCA added 74 new members in 2018 with total MRCA membership currently standing at 540 members. We more than doubled our attendance at the 2018 MRCA Conference and Expo this year in Omaha from the previous year with 1045 contractor members visiting the tradeshow floor. When we include our participating exhibitors, total attendance was between 1500 and 1600 conference attendees! I am also pleased to report that between the YCC Welcome Party and the Foundation Auction, over \$71,000.00 was raised for the MRCA Foundation.

The Roofing Industry is constantly changing and the MRCA will evolve and change right along with it, putting a stronger emphasis on safety, work force training & development, and risk management member benefits. The one thing that doesn't seem to change with the MRCA are the contributions made in time and treasure by those who have volunteered in the past and those who continue to volunteer and serve as the Officers, Directors and Committee Members of this fine association. These people do it for the benefit of the industry in which they make their living and most of them contribute with little or no regard for personal or financial gain. It has been my pleasure to have had the opportunity to serve with these fine men and women and I only hope I have been able to contribute and provide as much value to them over the years as they have provided to me. As I bid you farewell, my last act as the 2018 MRCA President is to leave you with these final thoughts.

The MRCA was, is, and will continue to be, **The Roofing Contractors Advocate!**

Sincerely,
Greg Sprague
2018 MRCA President
Sprague Roofing
gmsprague@spraguerroofing.com

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2019 Incoming President's Message

Kevin Gwaltney, MRCA President

Fresh off our recent convention in Omaha, I wanted to share our successes. The first day's educational programming of Steep Slope University, Young Contractor's Council Roundtable Session, and Software Driving You Nuts hosted by MRCA Women in Roofing were all well attended. The rooms were full and lively debates took place throughout. The Past President's Dinner was sponsored by Independent Roofing and there were over 20 past presidents of the MRCA in attendance. The Young Contractor's Council Fundraiser Welcome Party was a show highlight, and raised over \$6,000 dollars for Tom Osborne's Teammates Foundation. In fact, Tom Osborne, the legendary football coach of the Nebraska Cornhuskers, was the Keynote the following day. Attendees were coached in a lesson on styles of leadership. The tradeshow followed and booth space was sold out thanks to our Exhibitors and Sponsors, and the show floor was full of contractors and salesmen. The MRCA foundation hosted the annual Fundraiser Auction where we raised over \$70,000. MRCA uses these funds to offer scholarships to employees of Member companies and their families, as well as to conduct research studies to improve our industry. Attendance was up this year, and the numbers nearly doubled from the 2017 convention. For those of you that attended our show, I hope you enjoyed the event and thank you for attending. For others, do not miss our 2019 MRCA convention to be held in Overland Park, Kansas on November 20-22nd.

As the gavel was passed to me at our Membership Meeting at the convention, I shared a story about a young childhood memory where I was out checking an ongoing tear off on a local auditorium with my Dad. He knew he would be distracted, so he tied a rope around my waist and tied the rope to an air conditioning unit. Safety first! I decided to do the boy thing and pile up rocks and dirt and throw it in the air. I found out what pitch was that day! Fast forward 15 years: I went to a MRCA convention and I can remember being skeptical of what I was going to find, and what type of people I was going to meet. After all, I was pitch burnt when I was 5 years old. For the past 20 years, I have religiously attended the MRCA convention. I can tell you without a doubt that the people you meet at convention that make up the MRCA membership share similar experiences and have common struggles as I have faced during my career. In some cases, we are competitors, but more importantly we are Roofing Industry colleagues that are learning and understanding new materials, applications and tools. My observation is that we are an association of contractors and associates that are willing to support, educate, and mentor Roofing Professionals. My return on investment of my membership dues is exponential. I encourage all MRCA contractors and associates to take full advantage of their benefits of membership. And if you run across something that you are struggling with, use MRCA as a resource to help solve the problem.

As the Contractor's Advocate, MRCA is a prideful organization. It isn't the "bullshit" that we deal with that keeps us in the industry, but rather a sense of pride in our work that is passed from one generation to the next that keeps us united. During my term as President, we will celebrate this pride and recognize companies for their accomplishments, because that's the whole purpose of membership!

I am honored and humbled to serve this organization as your President. I thank the past leaders of this organization for the firm foundation I find myself on. I pledge to the membership to lead based on the core values of MRCA, that we will remain the "Contractors Advocate," will be relevant and provide exceptional benefits, and will be fiscally responsible.

I look forward to the opportunity to serve this organization. MRCA is ready and available to take your call!
Thank You,

Kevin Gwaltney
2019 MRCA President
Diamond Roofing
kevin@diamond-roofing.com



LEGAL SERVICES PLAN



WHAT IS IT?

The Midwest Roofing Contractors Association has entered into an agreement with the law firm of Auman, Mahan, and Furry to provide the MRCA membership with this unique service.

HOW DO I USE THE PLAN?

Auman, Mahan, and Furry specializes in labor and employment law, discrimination, wage-hour, prevailing wage, workers' compensation, unemployment compensation, construction law, construction claims disputes, government contract disputes, occupational safety and health, pensions, fringe benefits, collective bargaining, litigation, and business law; including taxes and securities. The firm represents numerous business clients and various associations throughout the Midwest, including MRCA.

WHAT IF I NEED ADDITIONAL HELP?

Additional legal services will be offered to members at a preferred hourly fees basis. Court costs, filing fees, and miscellaneous disbursements would be paid for by the member, and itemized by the firm.

WHAT DOES IT COVER?

The primary purpose of this service is to provide MRCA members the opportunity to discuss and identify legal problems, and to resolve general questions and concerns quickly through convenient access to specialized and qualified legal counsel. Each MRCA member is entitled to one 30 minute consultation per month either by telephone, email, or office conference, at no charge. It is understood that these consultations and conferences will be based on existing knowledge of the attorney without further research and analysis. When calling Dunlevey, Mahan, and Furry, please ask for Gary Auman and identify yourself as a MRCA Member calling under the Legal Services Plan.

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UPDATE

Gary Auman, MRCA Legal Counsel

Safety Deserves More Than Lip Service

Were you at the MRCA Annual Convention in Omaha in October? If you were, congratulations; if you were not, you missed a great show and valuable educational opportunities. So, where am I going with this? I am, of course, leading to a discussion on safety. Quite a bit of information was presented at the convention concerning safety. Because of time limitations (something we all have) not everything concerning safety could be covered. I am going to take the opportunity to use this column over the next several issues to speak to safety as it was discussed, and NOT discussed, at the convention. To start, and if I do not get a chance to finish these thoughts in this article, I will continue them in the next article, I want to address some concerns I have with the SHARP Safety Recognition Program. As far as I know, MRCA is one of only two roofing industry contractors' associations that offer the opportunity to their members to have their safety programs graded anonymously. This is done with regards to compliance with OSHA standards, as well as from a common-sense safety perspective. They then receive a detailed letter analyzing the parts of their program that have been reviewed.

For those of you who are members of the MRCA, but not involved in any of the MRCA programs; we do have a safety recognition program. It can provide you with the opportunity to have your safety program reviewed and critiqued by a non-biased appraiser (me). We review your response to eight questions that address important parts of your safety program. Yes, you are required by OSHA to have a written safety program, to do safety training, and to enforce safety on all of your worksites. This includes your office and warehouse areas. Since you are required to have a safety program, why not make it the best it can be? MRCA is giving you that opportunity through our SHARP Safety Recognition Program. Our intention is to rotate some of the questions that are asked each year so that over a period of a few years, all of the critical components of your safety program will have been evaluated.

I have always heard it said that MRCA members take safety seriously. Yet, I would bet that if I asked each member privately about their safety program, less than twenty-five percent would have a safety program that is truly effective. Yes, you have a safety program, but DO YOU, the company owner or president, have ANY idea of what is in it? Do you have any knowledge of whether what is in it is correct, and/or compliant, with OSHA standards? Do you know whether it is being effectively communicated to your employees and,

whether or not, they are being effectively trained? Believe me, you would not be unique if you were not aware of the details of the efforts your company is making in safety.

Quite a few years ago I represented a client in an OSHA investigation. During that investigation the president of the company, in my presence, was asked by the OSHA compliance officer if he would show him his safety program. I asked to see it before it was handed to the compliance officer and I found that it was nothing more than the entire OSHA construction standard. Only it was just reprinted in a slightly different format than it appears in the Code of Federal Regulations. He told me he had paid a third party a considerable amount of money for that "safety program." He admitted to me he had never looked at it and that he did not think anyone in his company had done so either. Yes, he was cited for not having a safety program, but the more important point was that it demonstrated a high level of complacency when it came to safety. It was definitely not at the top of his list of company values or priorities – I wonder if it was even on the list.

How important is safety to you? How important is the safety and well-being of your employees to you? Can you honestly say that you do EVERYTHING you need to do, and should be doing, to ensure that none of your employees get injured while he/she is working for you? The first step on your journey to start putting safety at the TOP of your list of priorities for your company is to take a good long look at your safety program. Take a copy of your safety program home with you next weekend and, instead of watching the football game on Saturday or Sunday afternoon, sit down with your program. Take a pad of paper and give your program an honest review. If you do not feel that you have the knowledge to look at your program critically from a common-sense safety and OSHA compliance standpoint, take the next step and take advantage of the services offered by MRCA, your trade association. If nothing else, start participating in the SHARP Safety Recognition Program in 2019. There were twenty-three participants this year that received a detailed analysis of their responses to the safety questions that were asked and then reviewed. It is not the level of the award that is really important; it is more about learning to be confident about the strengths and weaknesses of each part of your safety program. At the end of the day, the safety of your employees is your responsibility.

Now, I want to digress from the SHARP Safety Recognition Program topic. I feel that I need to take a few minutes to discuss an interpretation OSHA issued on October 11th. At the Omaha Conference we provided a handout with a copy



“ you must also test all employees who were in any way connected to the accident and injury.”

of the OSHA interpretation memorandum itself, as well as our interpretation of it, to all of the conference attendees. But judging from the number of handouts we had left over after the conference, I am going to take the remainder of this column to discuss the contents of that handout and the OSHA interpretation.

The new interpretation memorandum by OSHA announces a partial lifting of the prohibition of mandatory post-accident drug testing, as well as a partial lifting of the prohibition of “rate-based” safety incentive programs. I say “partial” because I feel that OSHA’s new interpretation has some strings attached.

Rate-based incentive programs are based on employees avoiding either lost time or OSHA recordable injuries for a period of time to receive a reward from the employer. OSHA stated in the October 11, 2018 interpretation that employers could maintain such programs, but only if they also do one or more of the following:

- Incentive program that rewards employees for identifying unsafe conditions
- Training program for all employees to reinforce their right to report injuries free of retaliation
- A mechanism for evaluation employee willingness to report injuries

Of course, if you chose to use a rate-based incentive program you still run a risk of an allegation of safety retaliation, even if you implement one of the steps set out above. Personally, I am still troubled by rate-based incentive systems and recommend that if you use an incentive program, you focus on safety compliance, not recordable or lost time injuries.

The second part of the clarification, and the one of probably greater interest, is the one on mandatory post-accident drug testing. Here again OSHA has backed off of the position it took on December 1, 2016 as it interpreted

the new record keeping rule. While some people are interpreting OSHA’s action on October 11th to permit virtually “uncontrolled” mandatory drug testing, I have to respectfully disagree with that position. The new guideline does not explicitly support post-accident drug testing of ALL injured workers, regardless of the reason, for their injuries. If you know that the root cause for the accident could not have been drug or alcohol intoxication, you are still not permitted to require a drug or alcohol test. Going back to the example used before by OSHA, if an employee is mowing the grass outside your office and is stung by a bee and has an allergic reaction, it will be difficult for you to argue that you did not know that drug or alcohol intoxication did not have anything to do with the injury. You are, however, to require drug and/or alcohol testing when the root cause of the accident is in question and drugs or alcohol could have been a contributing factor. In this case, if you are going to do drug and alcohol testing of the injured employee, you must also test all employees who were in any way connected to the accident and injury. You can not use this testing as a way to focus on one troublesome employee with an end goal of being able to terminate that one employee. And, if more than the injured worker tests positive you will have to take the same disciplinary action against all employees who tested positive.

In both situations it is up to you, the employer, to be able to show that you are not administering your program in a way that would deter employees from reporting injuries and illnesses. You will also have to show that you consistently enforce all legitimate work rules. This is part of the OSHA emphasis on requiring a solid safety culture in every company.

In the next issue of MR, I will return to the lessons learned from the responses we received from those contractors who participated in the SHARP Safety Recognition Program. They were willing to open parts of their safety programs for review with the goal of improving their existing safety programs.

DISCOVER THE BENEFITS OF MRCA Membership

The **Midwest Roofing Contractors Association® (MRCA)** is the Contractor's Advocate. With membership spanning 17 states throughout the Midwest, MRCA is dedicated to your needs as a professional contractor. By offering education, safety materials, and business tools, MRCA helps you grow your business, create a safer workplace, and save time and money.

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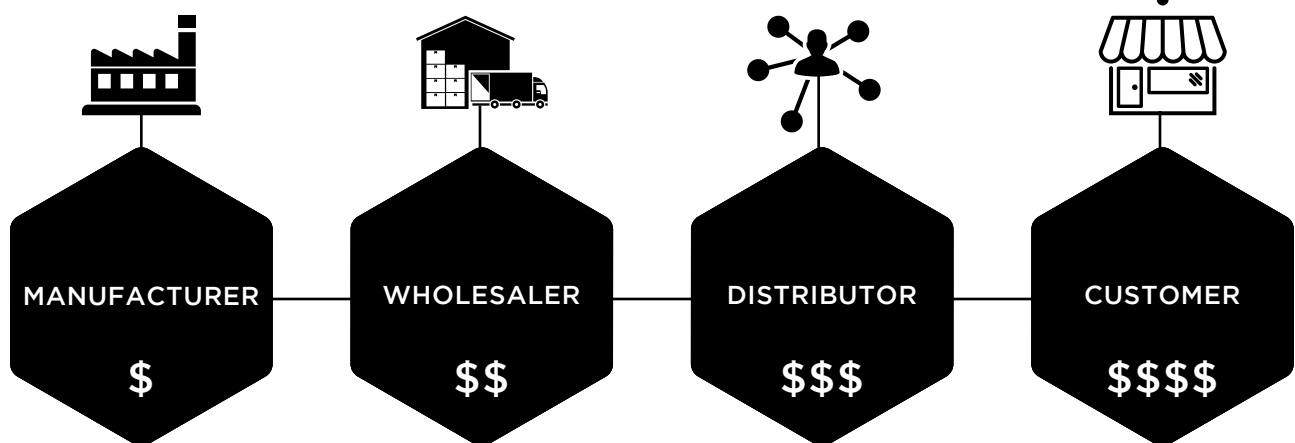
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ON DECK with Morgan



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8 THINGS ABOUT JASON BLICKENDERFER OF ALPHA ROOFING COMPANY, NORA SPRINGS, IA.

- Jason Blickenderfer was first exposed to the roofing industry as a boy. "My father was in the industry and was very active in the Iowa Roofing Contractors Association (IRCA.) He used to take me to the IRCA Summer Meetings in Des Moines when he was on the Board of Directors."
- After a semester at the North Iowa Area Community College, Jason knew college wasn't for him and began his career in roofing. "I spent 10 or 11 years in the field, running a crew of between six and twelve guys before moving up to the role of Superintendent." With a total of just under 20 years in the industry, Jason now owns his company, Alpha Roofing Company, in Nora Springs, IA.
- Jason and his wife of 13 years, Megan, have two sons, Dillon 11, and Lincoln 10. They spend a lot of time coaching the boys' baseball teams and also coaching with the local wrestling clubs, "It's nice to have the opportunity to coach them and spend time with the boys and Megan. Family time is very important to Megan and me."
- Between seasons, Team Blickenderfer can be found going to Iowa Hawkeye wrestling meets and football games together. They also like taking trips, big and small. You can find them as close as the Mississippi River hiking the trails, running together, or visiting family across the US with recent stops in North Carolina, Colorado, and California. "Sometimes we'll golf too when we have free time during baseball season, but that doesn't happen enough!" laughed Jason.
- Megan and Jason spend a substantial amount of time giving back to their community. "We are a part of our community Impact Group that awards scholarships for graduating seniors. Our group hosts a town festival called Buffalo Days, which is a weekend that starts off with a parade, buffalo burger meal, and carnival. In the evening there is dancing and listening to bands." The group also holds fundraisers throughout the year that include: bingo, laser tag, an omelet feed/Easter egg hunt, and 50/50 raffles.
- Another community project that Jason and Megan worked on was the addition of a 2.5 million dollar Aquatic Center. "It took us three years and a lot of time spent writing grants and fundraising, but Nora Springs now boasts a state-of-the-art Aquatic Center complete with a current channel, rock climb wall, log roll, and zero depth entry. It was great to see our community come together to support the Aquatic Center. We were able to create a fun family destination right in our town."
- Following in his father's footsteps, Jason has now served on the IRCA Board of Directors for the past five years and was newly appointed onto the MRCA Board of Directors at the Annual Membership Meeting on Oct. 25, 2018 in Omaha, NE.
- "MRCA has made a difference in my career with the educational programming provided to me at the conference. It continues to help me stay up-to-date on industry trends. The networking is also a big plus. It is nice being able to talk to people outside of my region and the sharing of knowledge has been a huge benefit. Through the friendships I've made, it's nice to be able to talk with people that know the struggles and are also there to celebrate the wins."





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Please contact Diane Schumm directly to get started:

Diane Schumm, Vice President Corporate Services
TekCollect Debt Collection Service

(866) 652-6500
Diane.Schumm@tekcollect.com
tekcollect.com

TekCollect

MEETING NEW CHALLENGES: ASPHALT SHINGLES VS. METAL ROOFING

How solar power, material advances, and natural disasters have reshaped roofing pros and cons.

By Mary Salmonsén

In many ways roofing has not changed in the past 10 years, and may not for another 100. But even small changes to the base expectations for a roof's performance can lead professionals to reconsider the ways they cover new homes.

Since BUILDER's last in-depth look at the pros and cons of metal and asphalt roofing, energy efficiency has remained a top priority for homeowners looking for lower utility bills and builders planning for HERS scores and certifications. Solar panels have become a common sight on American rooftops, and will be required on all new homes in California by 2020. And many high-profile natural disasters, including California's wildfires, Superstorm Sandy, and devastating hurricanes on both coasts have sparked a strong focus on resilient and disaster-resistant products.

In light of this, BUILDER has re-examined a simple and widely asked question – will asphalt or metal work best for my projects? How have asphalt and metal roofing manufacturers upgraded their materials to meet today's standards? Which roofing type will meet my needs for efficiency, or resiliency, or aesthetics? And how will solar panels—or solar shingles—perform against my choice of surface?

With energy efficiency and natural disaster resilience at the forefront of buyers' minds, both the asphalt and metal roofing industries have taken steps in the past decade to enhance their products' performance, as well as emphasize existing advantages. Here's how the two materials have changed – and in some ways stayed the same – since 2010.

Market Share

Asphalt: Asphalt made up 44% of the steep-slope new construction market and 58% of



Courtesy CertainTeed

CertainTeed's Matterhorn Slate metal roofing emulates the look of slate.

the reroofing market in 2015, according to the National Roofing Contractors Association, and comprises 75-80% of the total U.S. steep-slope roofing market, according to the Asphalt Roofing Manufacturers Association (ARMA). Over 12.5 billion square feet of asphalt shingles are manufactured annually, enough to cover 5 million new homes every year, and four out of five homes in the U.S. are roofed with asphalt.

Metal: As of 2017, the most recent numbers available, metal roofing sales made up 10% of the overall roofing market, up from 9% in 2010 but down from 12% in 2016. Steep-slope metal roofing makes up 6% of the new construction market, up from 4% in 2016, and 11% of the reroofing market, down from 14% in 2016. Vertical ribbed panels are the most commonly-used metal roofing type with 67% market share by metal type, followed by shingle/shake/tile/slate metal roofing at 24%.

Other: Other types of roofing with much less market share include tile, slate, and

shake.

Cost and Lifespan

Asphalt: Asphalt is still one of the least expensive roofing material types at \$350-\$900 per square. Asphalt has an average lifespan of 15-20 years, according to the MRA, and ARMA notes that roofs over 20 years old are "prime candidates" for replacement.

Metal: Metal roofing, on the other hand, is one of the most expensive, according to the MRA's material comparisons, at an estimated \$800-\$1,200 per square for vertical seam and \$800-\$1,500 per square for stamped panel. Metal roofing has an expected lifespan of 50+ years.

Other: With an expected lifespan of 50+ years, tile roofing ranges from \$700-\$1000 per square, slate lasts 75 years or more and costs from \$800-\$1,500, and shake from \$800-\$1,500, which has a 30-year lifespan with regular maintenance.



Courtesy TAMKO
 Tamko's Heritage Premium laminated asphalt architectural shingles in Black Walnut.

Aesthetics

Asphalt: The asphalt shingle market has shifted away from traditional three-tab shingles over the last decade to laminated designer shingles, or “architectural shingles.” While these shingles are heavier and more expensive than traditional three-tab roofing, they better emulate the look of other roofing types, including shake and slate.

Across all roofing types, shingles that emulate the look of natural wood shake without the same need for upkeep have grown tremendously popular. “The residential roofing market continues to shift toward laminates,” says Travis VanDaGriff, central district sales manager for TAMKO Building Products. “Laminated asphalt shingles have added dimensionality because of extra layers of fiberglass mat, which create a wood shake-like appearance... Laminated shingle styles are also typically offered with longer warranties and better wind ratings.”

Metal: The metal market has also benefitted from a series of aesthetic advances. A number of manufacturers – including CertainTeed, which introduced metal roofing in 2015 – offer stamped-panel metal shingles in shake, slate, and tile-look profiles. “Metal roofing can look like any other roofing product out there now, both from a shapes perspective as well as a color perspective,” says Renee Ramey, executive director of the Metal

Roofing Alliance (MRA). “We’re no longer pigeonholed. We’ve got anything you want, aesthetically.”

Another aesthetic option is stone-coated steel roofing, which combines a metal base with a stone upper layer that can be made to look like tile, slate, or shake. According to Pete Croft, brand manager of steel roofing at Boral Roofing, most stone-coated steel roofing cannot be identified as metal roofing at a glance. This has provided an inroad to metal roofing adoption in areas where homeowners’ associations restrict its use, citing its appearance.

“It just doesn’t look like a metal roof,” says Croft. “There’s been numerous situations in California and in other states where presentations have been made to associations, and after they get a true understanding of what the finished roof looks like they change their whole perspective on banning metal roofing from their subdivision.”

Resiliency

Asphalt: Manufacturers have improved the product’s impact resistance with the introduction of SBS-modified or “rubberized” shingles. “Innovative uses of asphalt and fiberglass mat as well as the introduction of polymer modification to some shingle lines have made products lighter in weight while at the same time enhancing their wind

and impact resistance characteristics,” says Reed Hitchcock, executive vice president of ARMA. “Maintenance needs vary geographically, but we have seen terrific results from shingles specifically designed with concerns like algae resistance in mind.”

Metal: Following two consecutive years of hurricane destruction and this summer’s devastating wildfires on the west coast, the MRA has increased its efforts to spotlight metal roofing’s resilience.

According to the association, most high-quality metal roofing systems can withstand winds of over 140 miles per hour, the equivalent of an F2 tornado. The roofing carries a Class A fire rating, is “nearly impenetrable” to moisture, and resists impact damage from hail and debris. FEMA recommends its use in fire-prone areas, and Florida’s Monroe County had considered mandates that would have required all new or replacement roofs in the county to be metal following Hurricane Irma.

Material advances in metal roofing include improved coatings and corrosion-resistance. “The substrates have remained the same, but the coatings going over the metal itself have done nothing but improve,” Ramey says. “So from a corrosion perspective, if you’re installing a quality product, then you’re having someone do a quality installation, the corrosion aspect has definitely become less of an issue.”



Courtesy Boral
 Boral Roofing's Cottage Shingle stone-coated steel roofing, shown here in Sage Green, overlays stone on a metal base.

Energy-Efficiency and Green Certification

Asphalt: One of the largest advancements in asphalt is improvements to shingles’ solar reflectance and thermal emittance,



Courtesy Owens Corning

Owens Corning's Duration Designer shingles in Sand Dune, the Owens Corning 2018 Shingle Color of the Year.

collectively the Solar Reflectance Index (SRI). According to ARMA, while the solar reflectance values of conventional shingles range from 0.04 for black to 0.25 for white, the addition of asphalt granules made with new light-reflecting pigments can raise an asphalt roof's solar reflective value up to 0.40.

This "Cool Roofing" is designed to reflect solar energy back into the atmosphere, instead of absorbing it into the building and creating strain on its cooling systems. The association also recommends a balanced attic ventilation system and roof or attic insulation to lower the structure's energy needs.

Metal: Metal roofing's high reflectivity provides up to 30% energy savings over other roofing types, according to the MRA's material comparisons.

Recycling

Asphalt: Asphalt shingle recycling programs have grown over the course of the past decade; as of 2017 there are active recycling programs in 50 major U.S. markets. The Northeast Recycling Council estimates that 50 million tons of asphalt shingle scrap is produced through manufacturing and

tear-offs each year in the U.S., and that recycling 1 ton of asphalt shingle is the equivalent of saving one barrel of oil. The asphalt and aggregate from these materials has been re-used in road construction and maintenance projects across the country.

Metal: According to the MRA, metal roofing projects are generally made of recycled material, and are 100% recyclable at the ends of their lifespans.

Best Choice for Solar

Asphalt: To install a solar rack on an asphalt roof, installers will usually secure stand-off mounts to the roof trusses with lag screws. "Properly installed, asphalt roofing provides an ideal substrate for solar installations," says Hitchcock.

According to Hitchcock, there are products currently in testing that integrate asphalt shingles with solar systems, which would provide both protection and sustainable energy. "As these materials continue to develop, this will be an interesting space to watch," Hitchcock says.

However, as noted by MRA's Ramey, the usable life of a solar panel (around 25 years) is generally longer than the usable life of an

asphalt roof. "If you install a lot of these solar panels over an alternative roofing product, a non-metal roofing product, the roofing product that they're installed on will not last as long as the panels are warranted for," she says. "And what ends up happening is, homeowners have to pull solar panels off to redo their roof, and for a lot of these panels the warranties go void once they're dismantled and have to be reassembled."

Metal: By comparison, according to Ramey, metal roofing's 50+ year lifespan ensures that it will last about as long or longer than the solar panels installed on it. Mounting a solar rack on a metal roof also does not require any roof perforations—installers can affix them to standing-seam metal roofs with non-penetrating seam clamps.

For stone-coated steel, both the MRA and Boral recommend the use of a rail system mount bracket, which also does not require any perforations to the roof, save for one for the solar cable. "On a solar system, when you start mounting holes through the roof to support the legs of the solar system, every hole that you make in that panel tends to be another danger that you've got to flash, which could potentially be a problem down the road," says Croft.

Eric Trump Visits Advanced Industrial Roofing Ahead of November Vote

Nov. 2, 2018 – MASSILLON, Ohio - Just days before the nation's midterm elections, President Donald Trump's son, Eric Trump, visited the offices of Advanced Industrial Roofing, MRCA Vice President and co-owner of Advanced Industrial Roofing, Fred Horner, met with Trump

to discuss the challenges affecting many small businesses across Ohio and the United States.

"It was an honor to have Eric Trump here at our office to discuss tax reform and workforce development. We will never forget the unique opportunity of having the President of the United States' son

here at our office to discuss these critical issues. Despite coming from a famous and political family, Eric was very genuine and down to earth to speak with. I enjoyed his visit and the conversations we had," said Horner of the visit.

Horner has generated interest all the way to Washington for creating an in-house, college accredited, federally certified apprenticeship program to address his workforce development needs. A small business champion, Horner is also building a \$250K addition to Advanced Industrial reinvesting his gains in his business and the local economy.



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Past Presidents' Dinner A Very Enjoyable Time

Each year at the MRCA Conference, all MRCA Past Presidents and their spouses are invited to attend a special dinner held in their honor and in recognition of their past service. This provides an excellent opportunity for the all of the MRCA Past Presidents to get together and talk a little about MRCA past history and discuss MRCA's future.

This year, MRCA Past Presidents' Council Chairman, Mark Langer, followed in his predecessor's footsteps and asked everyone in attendance to give a self-introduction and comment on their term as MRCA President, the Association during their presidency and about MRCA today. This time of reminiscing and sharing turned into a nice evening of good stories and great insights.

Mark Langer thanked everyone for attending and encouraged all of the Past Presidents to join the Past Presidents' Council Meeting scheduled in conjunction with the MRCA Board Meetings. Mark also explained the Board and Committee attendance policy that opens up all of these meetings to the Past Presidents.



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Foundation

With your support the MRCA Foundation raised \$70,000!! Thank You! To everyone involved!

2018 MRCA Foundation Auction Showcasing MRCA's Strong Support of our Industry

One of the more lively traditions of the annual MRCA Conference is the MRCA Foundation Auction Fundraising Event. This year's event turned out some very generous outlaws and some happy-to-give good guys as they entered the "Gateway to the Wild West". Several attendees really got into the spirit of the theme with their very finest western wear! A special auction feature this year was the MRCA Foundation Jail. Sheriff Sprague was happy to escort all of the accused to lockup for a donation to the Foundation. Judge Gary Auman was loyal to the Foundation in finding all defendants guilty and issuing them an immediate jail sentence. Perpetrators were confined to their cell until an additional donation to the Foundation could be made to post their bail. It was oddly enjoyable to see friends and family locked up for a good cause. In addition to the funds raised with all the jailing and bailing, the silent auction and live auction also generated quite a stir. The live auction got kicked up a notch with the genuine auctioneer chant of Tyler Gillum of Plainville Livestock in Plainville, Kansas. Ty brought out the philanthropist in every cowpoke there. Together, everyone was able to rustle up over \$70,000 for the Foundation! It was a down right fantastic sight to see everyone come together once again to show their support of the Roofing Industry.

This event is open to all Conference attendees each year. Come out and see what kind of fun you can have at next year's auction when you're in Overland Park for the 2019 MRCA Conference and Expo.

see more photos on



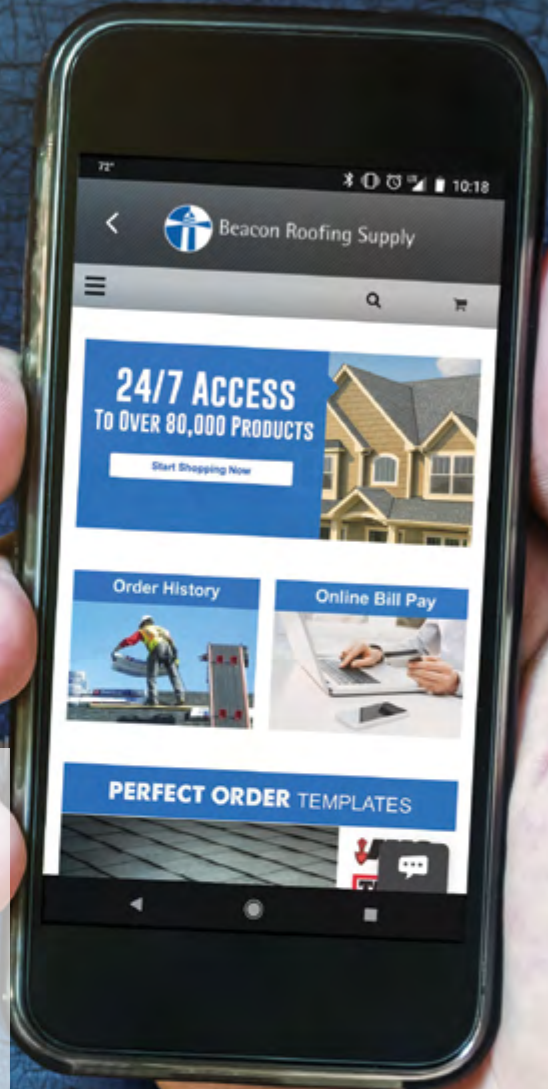
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Congratulations to our 2018 Award Winners

James Q. McCawley Award Winner Ronnie McGlothlin, MRCA Past President

On October 25th, Greg Sprague of Sprague Roofing Co. in Lincoln, NE, presented the most distinguished award MRCA bestows, The McCawley Award.

In recognition of the devotion given in his life to the industry, MRCA established the James Q. McCawley Award, which was first presented in 1969. This award has been presented each year to an individual in recognition for outstanding service to the roofing industry.

This year's recipient was Ronnie McGlothlin of Empire Roofing in Ft. Worth, TX.

Ronnie started in the roofing industry when he was thirteen years old where he quickly learned the trade and was able to move up from day laborer to foreman and then superintendent. In 1982, he started his own company, Empire Roofing. He has grown Empire Roofing from a small mom and pop shop to a \$150 million-dollar company. His dedication to the roofing industry is evident with his approach to running his company. Employees, Clients, and Workmanship are all first on his list. Ronnie still has five of the original employees that began the journey that is Empire today. Ronnie is also very aware of the industry changes, whether it is new products, new applications or new safety designs, and is just as adamant about testing to ensure clients and employees receive the quality they deserve. He believes that if roofing contractors take best practices, we can share and learn from each other for the betterment of the roofing industry.



Service Award Winners

YCC Member

Tracey Donels of K-Post Company

Foundation President

Bob Schenkel of CL Shust Company

Technical and Research Committee

Josh Wolford of R. Adams Roofing, Inc.

Board Director

Jim Peterson of Peterson Roofing, Inc.

Outgoing Board President

Greg Sprague
Sprague Roofing Co.



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Congratulations to our 2018 Sharp Safety and ELITE Award Winners

The Midwest Roofing Contractors Association Safety Program Award recognizes MRCA member companies that have demonstrated a commitment to improving jobsite safety through development, implementation, and enforcement of a safety and risk management program.

Members who apply for this Award submit the answers to a series of questions regarding their program. Their safety plans are reviewed and scored by MRCA Legal Counsel, Gary Auman. All member companies that submit applications will receive a detailed written critique of their safety program from Auman, Mahan & Furry as well as their awards.

This year the application for the Safety Awards Program and the ELITE Contractor program were combined. To become an ELITE Contractor, a firm must earn a Bronze or higher award on their safety program review and meet additional criteria such as being registered or licensed in the jurisdictions in which they perform work, being OSHA Compliant, meeting state insurance, bonding, and workers compensation requirements and they also have to complete eight hours of industry-related continuing education.

The following MRCA Members have attained their safety award and achieved ELITE status.

Platinum Safety Award Winners

Advanced Industrial Roofing
Diamond Everley Roofing Contractors
Gwaltney, Inc. dba Diamond Roofing
K Post Company
Kreiling Roofing Co.
T&K Roofing Co. Inc.
Texas Roof



Gold Safety Award Winners

Delta Innovative Service
Harness Roofing, Inc.
KAW Roofing and Sheet Metal
L. Marshall Roofing & Sheet Metal
Langer Roofing & Sheet Metal
Maxwell Roofing & Sheet Metal
Meade Construction, Inc.
Roof Tech, Inc.
Sterling Commercial Roofing
Zenith Roofing Services, Inc.



Silver Safety Award Winners

C.L. Schust Co. Inc.
Nation's Roof LLC
R. Adams Roofing, Inc.
Roofmasters Roofing & Sheet Metal Co.

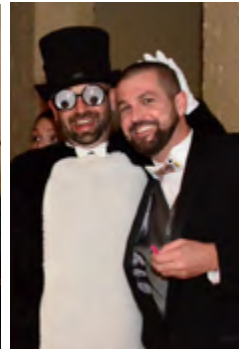


Bronze Safety Award Winner

CIM Roofing, Inc.
Royalty Companies of Indiana, Inc.

YCC Monte Carlo Night

It was opening night at the MRCA Conference. Attendees were all decked out and ready to let the good times roll! The Young Contractors Council was eager to open the doors to their annual Fundraiser Welcome Party. This year we gathered at the Old Mattress Factory in Omaha. "The Matt" is an actual renovated mattress factory that was built back in 1883. It was the perfect place for a Monte Carlo Night to remember. The MRCA party spilled out into the private second floor party room that was filled with casino games, a photo booth, and tons of great company. Everyone enjoyed all the food and drinks they could when they weren't busy playing their best hand or taking a memory-making pic. All entry fees were a donation to the MRCA Foundation. Over \$6,000 was raised for the Foundation, which was record high for the event! The finale was turning in game chips for raffle tickets and everyone had a chance at the slew of fantastic raffle prizes. Everyone went home a winner and ready to take on the next day of Conference. The YCC looks forward to this event every year, and it is certainly one of the highlights of the organization's activities. Be sure to catch the next YCC Fundraiser Welcome Party in Overland Park, Kansas in November of 2019. This is an event that is open to everyone and should not be missed by anyone.



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A First Timer's Perspective as an MRCA Expo Exhibitor

By Matt Cullen, VP of Castagra Products, Inc.

I've done a lot of tradeshows during my 20 years as a sales executive, so I tend to notice the differences between shows really fast. This was my first time exhibiting at the Midwest Roofing Contractors Association Expo in Omaha, so I didn't know what to expect.

I got in the night before to get settled and checked in. When I got to the show, the first thing I noticed was all the right companies and all the right sponsors were there. To me, seeing all the major players at the tradeshow tells me this is a critical roofing show for this region.

Checking in was easy and straightforward, and when I showed up at the booth, everything was there: clean, organized, and ready to go.

Sounds obvious, but I can't tell you how many times this hasn't been the case. Something was missing or done wrong at too many shows. I've seen misspelled signage, missing chairs or tables without skirts. Simple details, but totally necessary because these mistakes delay the set-up process and ruin the flow of the show.

The show floor had about 80 vendors spread out with wide enough space in the aisles so attendees didn't feel cramped. The layout was well planned with key areas marked off and easy to find.

Day one was steady with consistent traffic at the booth. I met some potential strategic partners, who I'll definitely follow up with. Day two was a bit slower, but that's common for a tradeshow because most eager participants race in to see what's new on the first day and don't return unless they have follow-up questions.

The one thing that stood out for me was the friendly atmosphere; everyone was nice and appreciative. They showed they cared. They care about the the participants, sponsors, and exhibitors. Congratulations to the MRCA for a great show.





New parents have their work cut out for them. Not only are they dealing with lost sleep, they also face the extra cost of raising a child. At least there are a lot of potential tax breaks available to them. Check out this list and share it with any new parents you know.

- 1. Child Tax Credit** Tax law changes this year not only double the size of the Child Tax Credit, they make it available to more parents than ever before. The credit increases to \$2,000 from \$1,000 (with \$1,400 of it being refundable even if no tax is owed). Meanwhile, the eligibility phaseout threshold increases sharply to \$400,000 from \$110,000 for married joint filers (and to \$200,000 for single taxpayers).
- 2. Child and Dependent Care Credit** If you pay a nanny, babysitter, daycare or a relative to take care of your child while you and your spouse are at work, you can claim the Child and Dependent Care Credit. It's up to \$1,050 on \$3,000 in expenses for one child and twice that for two or more children. The key is that you and your spouse (if you are married) must both be working, and you can't claim expenses for overnight care.
- 3. Below the kiddie tax threshold** If you have property that produces income, such as bonds, stocks, mutual funds, interest or realized capital gains, you can lower your tax by transferring a certain amount of that income to your children. Why? Your child has a lower tax rate than you do on unearned income. This works up to a certain dollar limit before "kiddie tax" rules come into play.
- 4. Adoption Credit** About 135,000 children are adopted in the U.S. each year. If you are welcoming an adopted child into your family, the Adoption Credit can be claimed on up to \$13,840 in expenses, such as fees, legal counsel and court costs.
- 5. Educational benefits of a 529 plan** There are many provisions in the tax code to help cover the high cost of education. Consider establishing 529 college savings programs for your new addition. While contributions are

made with after-tax dollars, any investment gains are tax-free as long as they're used to pay qualified education expenses. The tax reform passed last year now also allows you to use these funds to pay private elementary and secondary school tuition as well as college

Become Debt-Free

The average household carries \$137,063 in debt, while the median household income is less than \$60,000, according to data from the Federal Reserve and U.S. Labor Department. While it's easy to get into debt, it can be hard to get out. Here are five tips personal finance experts recommend to lower your debt burden:

1. **List and prioritize** Create
 a list all of your debts by amount owed and the interest rate you are paying. Then prioritize your repayment based on one of two strategies:
 - The Avalanche. Focus on paying the debt with the highest interest rate first, to minimize the total interest you'll pay.
 - The Snowball. Focus on paying the debt with the smallest balance first. While this may seem counter-intuitive, it's recommended for those who have difficulty sticking to a repayment plan. The smallest balance gets paid off sooner and then its debt repayments can be devoted to the next debt. This gives you a powerful psychological boost and sense of achievement.
2. **Pay more** Pay
 more than the minimum amount due. Your lender receives more interest income from you if you pay the minimum, but that's not what you want. Think of ways you can increase your income to make the extra payments, such as:
 - Taking a second job or freelancing.
 - Asking for a raise at work.
 - Devoting extra cash to debt repayment, such as your refund check.
3. **Spend less** Review
 your monthly expenses to find things that you can eliminate to increase your debt repayment. You can reward yourself by renewing these luxuries, but only after you've paid off what you owe. You could cut spending on things like:

- Cable TV
- Gym fees
- Restaurants
- Entertainment

4. Downsize and declutter

Not only does it help to spend less, it may also be worth getting rid of what you already have. Consider selling possessions you no longer need, or finding a place to live with lower rent or smaller mortgage payments. Be ready to make some sacrifices in exchange for financial freedom. Things that you may be able to part with include:

- Sporting equipment
- Extra or recreational vehicles
- Electronics, games
- Collectibles

5. Negotiate

It's worth

calling your lenders to see if there's a way to lower your interest rate. They will often do this if you've been a longtime customer with a history of timely payments. In some cases, you can even get them to forgive part of your debt. Also consider using zero-percent balance transfer options with different credit card providers. While these may come with fees, 12 months of no interest can be worth it.

Reducing your debt burden can seem overwhelming, but small steps can yield big results. As always, should you have any questions or concerns regarding your situation please feel free to call SJ Meyer & Associates.

This Article has been provided by SJ Meyer & Associates Accountants and Advisors. SJ Meyer & Associates serves as the Association CPA.



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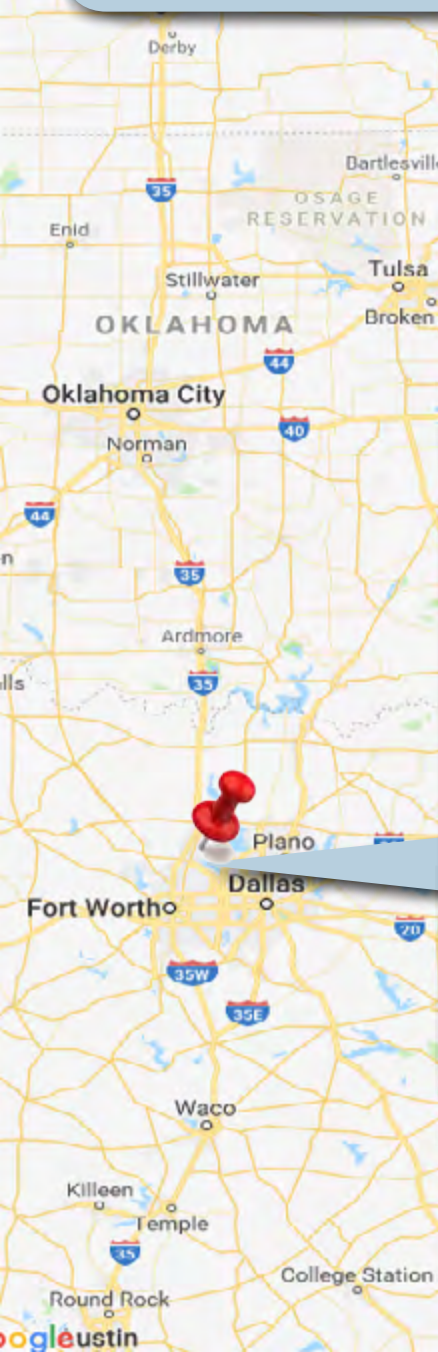
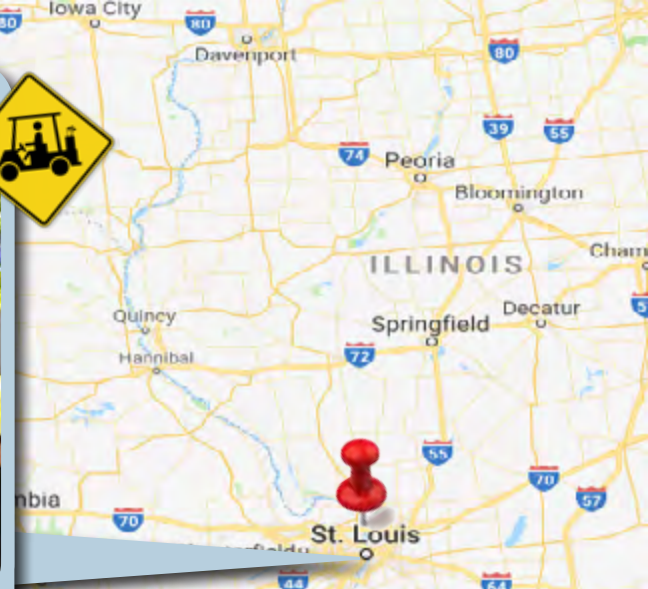
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Roofing and Siding Contractors Association (RSCA)

Annual Golf Tournament

Sept. 26, St. Louis, MO – The Roofing and Siding Contractors Association (RSCA) hosted their Annual Golf Outing at the beautiful Forest Park Golf Course, and it was a HOT one! Many thanks to MRCA Board and Committee Member, Brett Tesson of Tesson Roofing & Exteriors, who represented MRCA. Hurricane Florence tried her best to prevent the MRCA Koozies from arriving, but plane, train and courier finally got them there! Thanks also to Jim Andrews, Executive Director of RSCA, for supporting MRCA. Congratulations to Chris of Shay Roofing on winning the MRCA Cooler!



TEXAS

Roofing Contractors Association of Texas
43rd Annual Texas Roofing Conference

Oct. 11, Grapevine, TX – The MRCA Road Trip 2018 wrapped at the phenomenal Roofing Contractors Association of Texas (RCAT) Annual Tradeshow Oct. 10-12 at the Gaylord Texan Conference Center. MRCA Board Directors, Tracey Donels of KPost and Kelly Lea of Texas Roof Management, manned the MRCA Booth. "I couldn't believe this was the same RCAT that I was at 4 years ago. Totally different feel and vibe. Lots of activity, lots of people, full trade show. Great 1 day show!" said Donels.



Lea was also happy with the event, "Having the opportunity to work the RCAT Trade Show for MRCA, I found it to be a fun and successful show. The crowds were absolutely great. The many conversations with both contractors and manufacturers made this a great experience for all. Sarah Burns has taken this association to another level. Proud to be part of both RCAT and MRCA."

This year marks the 43rd Annual Texas Roofing Conference for RCAT. Many thanks to Sarah Burns, RCAT staff and members for your wonderful Texas hospitality!

Marijuana and Drug Testing

Getting Into The Weeds, Part 2



By Steve Watring of Auman, Mahan & Furry

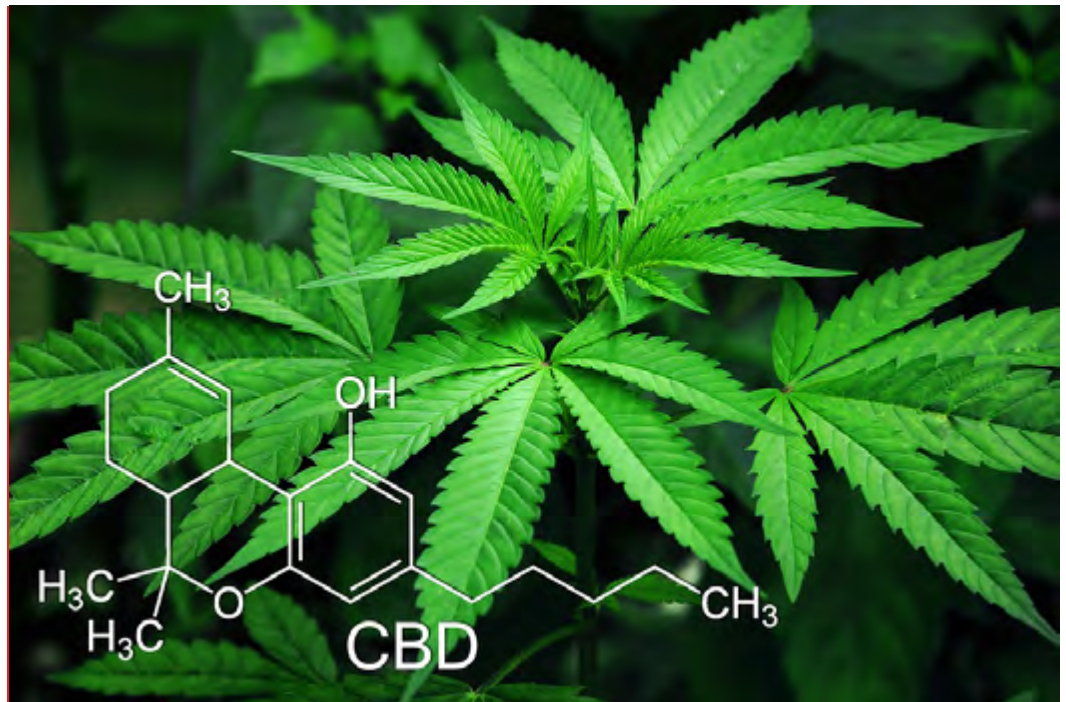
This is an update on an article I wrote last year, in light of the changing legal environment.

Marijuana use is now legal to some extent under the laws of most states and in some municipalities. But marijuana use still is illegal under federal law. What is an employer to do?

In general, an employer can still consider marijuana use, even prescribed marijuana use, to be a violation of its policy. This means that in most states, an employer can refuse to hire or terminate someone for medical marijuana use. Marijuana is a Schedule I controlled substance, meaning that it has no legal uses under federal law. The Americans with Disabilities Act does not protect the current illegal use of drugs. Most state medical marijuana laws do not expressly prohibit an employer from discharging or taking any other adverse action against an employee for using medical marijuana. While almost every adverse employment action carries a degree of risk, the risks here appear to be relatively low in most states.

The United States Department of Transportation and the Department of Health and Human Services have long been the standard bearers in the area of drug testing and have long included marijuana as a mandatory substance to be tested. Even if your company is not directly subject to these regulations, many state and federal laws incorporate by reference DoT and DHHS procedures and requirements.

Said another way, DoT and DHHS regulations often are woven into the fabric of other drug testing laws and regulations. For example, if your company wants to bid or perform on any state or federal government projects that require a drug policy or drug testing, your safest course of action is to include marijuana as a part of your policy



and as one of the tested substances. Compliance with drug policies and drug testing may be a condition to participation in any number of government programs, and those programs generally mandate inclusion of marijuana as a covered substance.

The DoT has repeatedly driven a bulldozer through the idea that users of medical marijuana should get a pass when tested positive. In fact, as recently as June 20, 2017, the DoT updated and re-issued a "Medical Marijuana Notice" reaffirming that use of medical marijuana under state law cannot be considered a valid medical explanation for a positive DoT drug test.

Therefore, if your company is directly covered by DoT regulations, you should not exempt marijuana use under your policy, even if that use is legal under state law. In my opinion, the same thing is true if you are indirectly made subject to those regulations because of other government laws.

If your drug policy is not subject to government regulations, you can choose to exempt marijuana use from your policy. For most employers, I believe that the

better approach is to cover marijuana use. If your policy is worded correctly, you still should have multiple options for how to deal with an employee who tests positive. But if you would rather not treat it as a violation, that is your right.

For DoT testing, any positive result for marijuana must be reported as a positive. For non-DoT testing, once you decide how you want to handle marijuana use under your policy, the next step is to interface with your drug screening company or Medical Review Officer. Otherwise, you are leaving the decision up to them. For example, some drug testing professionals have a policy of reporting a positive medical marijuana test as a negative result absent contrary instructions from the employer. Even worse, you probably won't even know that the employee actually tested positive. The drug testing professional should honor your requests in this regard, at least with respect to medical marijuana. If they won't honor your preferences, find someone who will.

Despite all of the above, it is important that employers understand how quickly the law is changing. There is a growing list of states and cities that to some extent prohibit employers from terminating employees for marijuana use that is legal under state law. Perhaps worse, some state laws are poorly written and ambiguous on the topic.

It is difficult to keep track of these developments without a score card. It has become a whole new area of the law. In fact, I recently heard speakers from the "Cannabis Practice Group" from the lawyers in the San Francisco and Los Angeles offices of a large national law firm. Just this year, the marijuana laws have changed significantly in Arkansas, Missouri, Michigan, and Utah. Like it or not, this is only the beginning.

When we lawyers write articles like this, we usually add some kind of disclaimer saying that the article is for general information and should not be used for legal advice. This usually is just to cover ourselves. This time, please take it to heart. I am going to share some generalities with you to help guide you through this. That is no substitute for sound legal advice based upon the current laws in the states or cities where you have employees. The laws of every state are different, and most are subject to differing interpretations.

In some states, an employer still can treat any marijuana use as a terminable offense even if that use is legal under state law. Even in states where this is not true, you usually don't have to permit employees to use marijuana at work, and you can fire them if they do. In these states, it probably is going to work a lot like consuming alcohol at work. You can fire the employee—but you need to be able to prove it.

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Also, most state laws make clear that you don't have to permit employees to be "under the influence" of marijuana at work. The problem is that, unlike with alcohol, there is no reliable drug test that will prove an employee is under the influence of marijuana at a specific period of time. If your state law says that you still can terminate someone for being under the influence of marijuana, be careful. You better have some good evidence that the employee actually was under the influence based upon observation. A drug test alone won't do it.

Finally, as you read this, there is an ongoing effort to create legal precedent that an employer has the obligation to accommodate medical marijuana under disability discrimination laws. In my view, this largely is an attempt to parse and twist statutory language to arrive at a result that was never intended. But that is what lawyers get paid to do. While I do not think this will work in most states, it already has worked in a few.

So what's an employer supposed to do? Believe it or not, my best practical advice in most situations has not changed. When an employer calls me about an employee that may be using drugs, my starting point is to see if it would be better to address the situation as a performance issue rather than a drug use issue. If you have enough basis to terminate an employee for performance reasons, why muddy the waters? While there are situations where it makes sense to go down the suspicion of drug use route, there are more situations where going down that road is exactly the wrong thing to do. With the uncertainty of the law, this is true now more than ever.

If you think you need to go down that road, you need to check for detours, delays, roadblocks and alternative routes before you start. This means you need to find out what the law is, and get good legal advice on how to proceed. The law is just too unsettled and changing too rapidly to do anything else.

Steve Watring (saw@amfd Dayton.com) is a partner in the labor and employment law group of Auman, Mahan & Furry. He has counseled employers, written articles and given speeches on drugs and alcohol in the workplace since the 1980's. Steve formerly served as chair of the Dayton Chamber of Commerce's Drugs Don't Work Committee. He is a Certified Specialist in Labor and Employment Law. He holds a Preeminent rating from Martindale-Hubbell, and has been recognized as a Super Lawyer.

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ROOFING DAY IN D.C.

2019

You are invited to Roofing Day in D.C. 2019

YOU NEED TO BE THERE!

Roofing Day in D.C. 2019

April 3-4

Hyatt Regency Washington on Capitol Hill

Washington, D.C.

On April 3-4, the roofing industry will come together in Washington, D.C., to meet with members of Congress on Capitol Hill. We will deliver our message about the most important legislative issues affecting the roofing industry and your business, including reducing regulatory burdens and addressing workforce shortages. We need you—and hundreds of fellow roofing professionals from all sectors of our industry—to participate to make sure our message is heard loud and clear. This is a unique and exciting opportunity as we will take over Capitol Hill and speak with one voice as a united industry!

What's included

The event includes a program with speakers and advocacy training beginning at 3 p.m. Wednesday, April 3, followed by a networking reception from 5 to 6:30 p.m. The training will prepare you for how to best communicate with members of Congress and their staffs, and you will be provided with issue papers to present to your senators and representatives. Your Congressional appointments will be scheduled for you; they will start on Thursday, April 4, at 9 a.m. and continue throughout the day. We will have a reception at a Capitol Hill restaurant that evening for those interested in unwinding and sharing stories. All you need to do is show up and join your roofing industry colleagues in delivering our message with one voice!

Who should attend

It's important for Congress not only to hear from company owners and managers but also from frontline workers. This year, we're introducing a special registration rate of only \$25 for roof system installers. We strongly encourage you to bring one or more standout crew members to help share the industry's story during Roofing Day in D.C. 2019. Congress needs to hear from all segments of the industry!

Register now!

Registration for Roofing Day in D.C. 2019 is only \$75 for company representatives and \$25 for roof system installers. **Visit nrca.net/roofingday to register, make your hotel reservations and for more details.** We encourage you to make your hotel reservations now, as we have a limited room block at the Hyatt Regency Washington, and it will sell out. If you have any questions, please call NRCA's Washington, D.C., office at (800) 338-5765.

See you in D.C. April 3-4, 2019!

nrca.net/roofingday

THE EMPLOYER'S TOOL BUCKET

Part 2



By Steve Watring of Auman, Mahan & Furry

For your workers, having the correct tools in their tool bucket helps them get the task done efficiently and professionally. Of course, the worker also needs to know which

tool to use when. It is no different for you, as an employer, when the task is dealing with your employees. You need to fill your "Employer's Tool Bucket" with the tools that you need, and know when and how to use them. This is the second in a series discussing different tools to consider for your Employer's Tool Bucket. Tool #1 can be found in the October 2018 Issue of MR Magazine.

Tool #2--The Covenant Not to Compete

Should I have one in my Tool Bucket?
It Depends

When should I use it? Normally at Time of Job Offer or Promotion/But Other Uses Possible

Where do I get one? Your Employment Law Attorney

What should it include? Protection Against Unfair Competition

When I got up this morning, I was planning on writing this article on something entirely different. Then, on the morning news I heard Clark Howard say that 1 out of 4 employees in the United States are subject to a non-compete agreement. While I don't know if that is true (it seems pretty high to me), it moved this subject to the top of my list for this month's article.

Should you have a covenant not to compete in your Employer's Tool Bucket? Would it be enforceable? When and how would you best use this tool?

A covenant not to compete is an agreement where an employee agrees that they will not compete against you for a certain period of time after they leave your employment. There are all kinds of variations of covenants not to compete. Some are very limited, and some are very broad.

There are many factors that can affect whether a covenant not to compete is enforceable. The

most important factor is one you wouldn't find in any law book. The biggest factor usually is the identity of the judge who will be deciding your case. For example, in my local court, I know one judge that routinely will enforce covenants not to compete, one judge that will find any reason to avoid enforcing them, and other judges somewhere in between these two extremes. Even though they may be enforceable, many judges HATE them and think that they are not fair. In the end, judges are people, and they generally try to interpret the law to reach a result they see as "fair".

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While "fair" is in the eyes of the beholder, at best most judges are only going to enforce the covenant if it is necessary to avoid unfair competition. In general, a covenant is only enforceable to the extent that it is what I call "reasonable x 3." This means that it is reasonable in the geographic scope, the duration, and the type of activity or employment being restricted. Although there are exceptions, it is very hard to enforce a post-employment covenant that is longer than 2 years. If your company or the employee primarily works in one geographic market, it is going to be difficult to enforce a covenant in another market. If your company focuses on commercial customers, it will be difficult to enforce the covenant as to non-commercial customers.

Unlike a lot of areas of the law, the enforceability of covenants not to compete is very dependent upon state law. In some states, the covenants are generally enforceable and a judge can even re-write an unreasonable covenant to make it reasonable and enforceable. In some states, the judge can strike words but can't write in new ones. In some states, the judge can only enforce the covenant as written or not at all. Finally, in some states covenants are so frowned upon that they are for all practical purposes unenforceable in



most situations.

As you probably have figured out by now, for all of these reasons, covenant not to compete litigation is very unpredictable. It also tends to become very expensive very quickly. It will normally involve requests for injunctions, court hearings, legal briefings, depositions, and more court hearings. Unlike a normal case, this usually will all happen over a period of weeks instead of being spread out over many months. Because of the uncertainty involved, the only thing that you really will be sure of is that your attorney will have a very good month financially at your expense.

This is not to say that you should totally avoid covenants not to compete. Just be smart about it. It's a tool that is best used selectively. You are going to have a much better chance of enforcing a covenant against a manager, estimator, or sales person because the argument for unfair competition is stronger. This is particularly true if you can prove that they already have engaged in some bad acts. If they are a real threat to your business, a manager, estimator or the sales person may be worth the fight. On the other hand, it is extremely difficult to enforce a covenant against a laborer who does not pose any special competitive threat. Trying to restrict that laborer's

employment may not be the best use of this tool.

In writing this series, part of my goal is to give you an idea of when you do and don't need to invest in an attorney. You may not need an attorney for some employment tools, such as an employment application. Unfortunately, if you want to successfully implement covenants not to compete in your workforce and make them stick, you may need to involve an employment law attorney. There are just too many ways that things can go wrong with a poorly written or poorly implemented covenant not to compete. I can patch my own roof, but experience suggests that I probably won't do a very good job of it and I will have to call a professional like you sooner or later. Just ask my wife. If it is important enough to you to require an employee to sign a covenant not to compete, it should be important enough to do it right.

© 2018, Stephen A. Watring, Auman, Mahan & Furry. Steve Watring (saw@amfd Dayton.com) is a partner in the labor and employment law group of Auman, Mahan & Furry. He has counseled employers in workplace issues since the 1980's. Steve is a Certified Specialist in Labor and Employment Law. He holds a Preeminent rating from Martindale-Hubbell, and has been recognized as a Super Lawyer.



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