



THE READY-MIXER



Enriching • Inspiring • Empowering

Virginia Ready-Mixed Concrete Association Newsletter

February 2009



Infrastructure In Stimulus Plan

President Barack Obama's \$787 billion economic stimulus plan pumps money into health care, renewable energy development and our nation's infrastructure and will hopefully slow the economy's downward spiral. But as President Obama himself said, the bill is only the first step in our economic recovery.

According to John Shaw of the Portland Cement Association (PCA), additional funding for transportation and infrastructure is needed to directly address our deteriorating roads and bridges.

"There are many commendable portions of the economic stimulus bill, but there is still much work to be done," Shaw, PCA's senior vice president of government affairs, said. "The best way to get America working again is through the most measurable metric—road and bridge construction."

PCA studies report that infrastructure funding creates jobs on both an immediate and long-term basis in all areas of the economy. For every 10 construction jobs created by a project, the community gains 17 additional jobs that stay in the region.

Repairing our nation's infrastructure will not only add jobs, but can put money back in the pockets of motorists. According the 2009 American Society of Civil Engineers Report Card for America's Infrastructure, Americans spend 4.2 billion hours a year stuck in traffic at a cost to the economy of \$78.2 billion, or \$710 per motorist. Additionally, congestion on our crowded roadways contributes 27.2 million tons of carbon dioxide

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VA Councils Target Parking Lots

by: **J. Keith Beazley**
Director of Industry Services
& **Derek Breen**
Communications Coordinator

"Our industry has two options in this slowing economy," says Carlos Cardounel of Titan Virginia Ready Mix, "Continue to fight for a share of the shrinking ready-mixed concrete market, or work together as an industry to grow the market. At the top of this list has to be displacing asphalt paving with both traditional concrete and pervious concrete."

VRMCA regional advisory council chairs agree, so each council is committing to a comprehensive, year-long strategic marketing plan for converting parking lot projects to concrete.

"As always, we will be marketing all of the products in our industry," says VRMCA Executive Director Doug Easter. "However, all of our councils across the Commonwealth will be pushing commercial and residential parking lots and driveways."

"Our combined effort will demonstrate to the designers that concrete parking lots are affordable and in the long run a far better product," says Jim Simons, of Capital Concrete.

Easter said this initiative came out of councils wanting "to make a difference for our members in the next twelve months during these tough economic times."

The Central Virginia Concrete Advisory Council (CVCAC) has already formed a special committee to develop a specific strategy to identify projects, decision makers and target projects in their region. The committee will include ready mixed producers, suppliers, and a VRMCA coordinator.

"The committee will identify local projects and market concrete to architects and engineers while the project is still in the early planning stage," says CVCAC Chairman Wayne Bracey, of Ready Mixed Concrete.

They will utilize marketing tools developed by the NRMCA, including their

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Save the date!



*VRMCA Spring
Convention*

May 17-19, 2009

*The Homestead
Hot Springs, VA*



Visit the Virginia Ready-Mixed Concrete Association Website at www.vrmca.com

Concrete Helps New Fire Station Achieve LEED Status



by: **Bob Nablo**
Director of Industry Services

After two years of planning, design and construction, the new prototype fire station for the City of Roanoke is open and operating. Southwest Virginia Concrete Advisory Council (SWCAC) members have been involved in the process from the very beginning, and while the new station does not include all of the concrete from the original design, it is still a concrete showplace. The facility

has achieved LEED Silver status and is continuing to work toward LEED Gold certification. This is the first LEED certified municipal building for the City.

Architect Steve Sunderman of RRRMM Architects in Roanoke initially designed the station as a tilt-up building with heavy-duty concrete paving for the fire and rescue vehicles, exposed concrete floors for the living and office areas and pervious concrete paving for the parking area. Unfortunately, the constricted site discouraged tilt-up builders, but the rest

of the project went ahead as planned. SWCAC members consulted on the paving design and contributed funds toward the pervious concrete installation.

In late January the Southwest Virginia chapter of the James River Green Building Council toured the facility, with several members of the SWCAC attending. Sunderman – current chairman of the local Green Building Council chapter – pointed out the various “green” components and systems incorporated in the building and paving, including the pervious concrete paving and the 10,000 gallon stormwater-runoff storage tank under the parking area. Visitors were also impressed with the very attractive stained concrete floor used throughout the building. Sunderman noted each of the LEED points earned during the construction process, including the use of local materials, recycled materials and light reflectivity provided by ready-mixed concrete.

The SWCAC will receive mention on a plaque permanently installed in the building. It is anticipated that local schools will frequently tour the station, giving the Council added attention. The Council also hopes to use the stained concrete floors and the pervious paving in local promotion efforts, and expects the City of Roanoke to use this prototype in future new construction as older fire stations are replaced. ❖

Stimulus Infrastructure

(continued from page 1)

emissions each year.

U.S. Transportation Secretary Ray LaHood has created a team at the U.S. Department of Transportation (DOT) to ensure that economic recovery funding is rapidly made available for transportation infrastructure projects and that project spending is monitored and transparent.

The Transportation Investment Generating Economic Recovery (TIGER) team, is composed of officials from across the Department’s operating administrations and offices. The team is co-chaired by Lana Hurdle, deputy assistant secre-

tary for budget and programs, and Joel Szabat, deputy assistant secretary for transportation policy.

“We created the TIGER team to make sure that DOT’s portion of recovery funding goes out to states and localities as quickly as possible in order to immediately create jobs and strengthen our economy and transportation systems,” Secretary LaHood said.

The team will develop reporting standards to accurately track money as it is being spent and ensure that all accountability requirements are being met.

The Department’s chief economist and Performance Management Office will coordinate with the Office of Management and Budget and other White Office offices on the performance measures

that will be used to track job creation and other indications of the impact of each infrastructure investment.

Shaw stresses keeping the states and local agencies accountable for the money that has been allocated to them is vital to moving the economy forward. “The Administration has recognized the importance of transparency and accountability for the programs within the bill. Our infrastructure must be constructed with the highest quality materials that reduce future maintenance and ensure durability,” Shaw said. “By investing properly we can free up more money for states and communities to use for vital services like schools and police.” ❖

Pavement Initiative

(continued from page 1)

Concrete Parking Lot Design Service, Concrete Pavement Analyst, and Building Under Design (BUD), a web-based service which enables local promoters to obtain information on local construction projects long before plans and specifications have been made public.

Though the Northern Virginia Concrete Advisory Council (NVCAC) plans to use BUD as a key part of their marketing strategy, along with other tools such as Ohio RM's Parking Lot Design Assistance Program and CPA software, some members have expressed reservations.

NVCAC Chairman Kevin Terry, of Vulcan Construction Materials, says, "We need to be certain that projects that BUD has listed on their reports are actually in the 'design' phase."

"I think we all realize that the BUD program can be a valuable tool," says VRMCA Advisory Council Chairman Larry Bullock, of Boxley Materials Company. "But we need to continue using our regular sources at the same time."

Both the Southwest and Blue Ridge Concrete Advisory Councils are combining the BUD program, the design assistance offer, and NRMCA's Concrete

Paving Analyst software to find—and secure—new work. Members have agreed to aggressively pursue architectural and engineering companies in their region—especially those with currently listed projects.

SWCAC Chairman Frank Caldwell, of Chandler Concrete, is encouraged by the enthusiasm, but says he doesn't want the meetings to be just 'feel-good' sessions. He wants "to make designers realize that we are serious about getting more concrete paving into the community." Members have already talked with the Blue Ridge AIA and two AE firms about scheduling these meetings.

BRCAC Chairman Buddy Murtaugh, of Rockingham Redi-Mix, made similar suggestions at the February council meeting in Staunton. While the Blue Ridge area has fewer large-company offices, there are many smaller AE firms who do local design work. These smaller companies may be easier to convince of the advantage of "free" design assistance, and many of them have already attended other dinners and seminars offered by the council.

The regional councils each began the year with a goal of targeting two paving jobs per month to increase concrete paving's market share, to supplement the softness in the marketplace of



residential and commercial projects and increase overall production of ready mixed concrete.

"I am a little concerned about the goal," says Terry. "Given the fact that we, as a council, do not have strong relationships with many Civil Engineers, coupled with the current market conditions in Northern Virginia. . . I'm concerned about an expectation of submitting 24 projects per year."

"I think we are being a little aggressive to suggest that each Council will submit two plans a month," says Easter. "But, if each Council could average one job, then we will have tracked and submitted plans on sixty jobs over the course of the year. This should give us a good indication on whether we can be competitive in this market." ❖

VIRGINIA READY-MIXED CONCRETE ASSOCIATION 2009 MIXER TRUCK ROADEO

AUGUSTA COUNTY GOVERNMENT CENTER IN VERONA, VA
SATURDAY, APRIL 18, 2009



BRING YOUR KIDS!

Register online at VRMCA.com

SCHEDULE

- 9:30 AM Driver Registration
- 10:00 AM Written Exam
- 10:30 AM Magic Show for the Kids!
- 10:30 AM Walk thru of Course with Drivers & Judges
- 11:00 AM Lunch
- 11:30 AM Pre-trip Inspection/Driving Competition Begins
- Kids Activities Begin
- 3:00 PM Awards Presentation

VRMCA/ESI Partnership Pitches Concrete to Civil Engineers

by: Hessam Nabavi
Director of Industry Services

As the gap narrows between the price of asphalt and concrete, VRMCA/NVCAC is determined to change the decision maker's paradigm about paving. To most civil engineers paving still means asphalt. One way we are trying to change this mindset is by partnering with The Engineers and Surveyors Institute (ESI). ESI offers accredited classes to their members that provide Professional Development Units (PDU) for continuing education. Executive Director Terrance Ryan and Director of Education & Programs Denis Gulakowski have welcomed this partnership and NVCAC is very excited about the opportunity to work with them on this training and are exploring future collaborations.

The February 12 class was well received by participants. Attendees consisted of professional engineers from



private engineering firms and various counties in northern Virginia. The class is a practical application, hands-on workshop that has enabled design engineers to perform hard surface paving analyses and determine optimal cost-effective materials selections for pavement design project. During the 3-hour course, Phil Kresge, Senior Resource Director with NRMCA, discussed the properties of concrete and asphalt, their similarities and their major differences. He trained students on the use of CPA software, and wrapped up the class by talking about

the possibilities and the tools that are available through VRMCA and NRMCA to assist engineers in their projects.

The Engineers and Surveyors Institute is a nonprofit Virginia corporation formed in December of 1987 to promote a public/private partnership devoted to improving the quality of engineering plans and the process by which they are approved. ESI training programs strive to improve the design and approval process, to maintain current practice education for private and public professionals, and to improve communication throughout the land development industry. Membership consists of engineering and surveying firms practicing land development in Virginia, local jurisdictions, the Virginia Department of Transportation, public utility agencies, and organizations producing products for the industry.

VRMCA is grateful for Phil's ongoing support and assistance. ❖

Chandler Concrete Achieves Huge Safety Milestones

Chandler Concrete Company, Inc. has reached two impressive safety milestones: working one million consecutive hours without a lost time injury, and completing a twelve-month period with no lost time injury. Also impressive is Chandler's dramatic decrease in the total injury frequency rate from 10.4 in 2001 to only 1.96 in 2008.

"I am very proud of these accomplishments," says Company President Ted Chandler. "They reflect the importance that our company and all of our employees put on working and driving safely while performing their jobs."

"Safety is taken very seriously at Chandler Concrete Company," says Steve Jones, Director of Human Resources and Safety. "We believe that our safety training and performance is some of the best in the industry."

In 2007, the company hired a full time Corporate Safety Manager, Ken Waegerle, CSP. Previously this role had been combined with Human Resources or Environmental and Safety.

"I had worked with Steve (Jones) at Guilford Mills," says Waegerle. "We

tried to get together at Chandler sooner, but our timing was off."

Last August Waegerle met with plant managers and asked why they thought the company was doing so well at improving safety. "What they indicated is the fact that the weekly safety training programs are going deeper, more and better training. We've gotten more aggressive on our return-to-work programs and claims management, too. Maybe the most important thing is employees getting an opportunity to see the bigger picture, as far as safety goes. I would say that Ted Chandler's support and focus on safety performance has been the key to our ongoing success and our management team has responded as well. In each week weekly staff meeting; managers provide a detailed report and update on all injuries and vehicle incidents."

Despite his tendency to give most of the credit to his co-workers, Waegerle's careful examination of every accident, regardless of severity, detailed facility inspections and employee coaching have surely contributed to Chandler's success.

The biggest lesson he has learned since joining Chandler is not to think too small. "We got to this milestone much quicker than I ever anticipated."

Moving forward, Chandler will be updating and revising corporate policies and training commensurate with that. "We'll be developing regional safety committees to have more local input," says Waegerle, "And placing a high emphasis on personal accountability." In addition to all his work for Chandler, Waegerle serves on the VRMCA Safety Committee.

Chandler Concrete Company was originally founded as a concrete contracting firm, just after the war in 1946, by R.F Kirkpatrick. In 1973, Tom Chandler purchased the ready mix business from Kirkpatrick and Chandler Concrete Company has continued as family owned and operated for over 32 years. ❖

(You can read more about Chandler Concrete's successful safety program in the March/April edition of Concrete in FOCUS.)

SPECIAL SECTION: 2009 Industry-Related Legislation

VRMCA lobbyists are monitoring the following legislation currently before the 2009 Virginia General Assembly, which convened January 14, 2009. Members are encouraged to provide feedback to legislators by calling the General Assembly's toll-free constituent viewpoint hotline at (800) 889-0229.

HB 1587 Real ID Act

Provides that the Commonwealth will not participate in the compliance of any provision of the federal Real ID Act that would compromise the economic privacy or biometric data of any resident of the Commonwealth. Patrons: Marshall, R.G., Athey, Gilbert, Morgan and Peace; Senator: Cuccinelli. Passed House, Passed Senate

HB 1622 Weight limits for gravel trucks

Repeals the July 1, 2009, sunset on the statute granting trucks hauling gravel, sand, or crushed stone no more than 50 miles from origin to destination in counties that impose a severance tax on coal and gases the same weight limits prescribed for coal trucks. Patron: Bowling. Incorporated by Transportation (HB1752-Carrico).

HB 1661 Motor fuels tax

Converts the rates of taxation on motor fuels from cents per gallon to percentage rates. The percentage rates shall be calculated by the Commissioner of the Division of Motor Vehicles. Patron: Scott, J.M. Left in Finance.

HB 1669 Income tax, state

Provides that the Commonwealth shall return to cities and counties 50 percent of the growth in income tax collections for each city or county. The amounts returned shall be expended for school construction costs and transportation needs of the cities and counties. Patrons: Albo, Rust and Frederick. Left in Appropriations.

HB 1752 Weight limits for gravel trucks

Extends until July 1, 2010, the sunset on the statute granting trucks hauling gravel, sand, or crushed stone no more than 50 miles from origin to destination in counties that impose a severance tax on coal and gases the same weight limits prescribed for coal trucks. Patron: Carrico. Passed House, Passed Senate (with substitute).

HB 1759 Transportation Capital Projects Bond Act of 2009

Authorizes the Commonwealth Transportation Board to issue bonds in an aggregate amount not to exceed \$4.81 billion for specific transportation projects throughout the Commonwealth. Patron: Marshall, R.G. Left in Appropriations.

HB 1846 Motor fuels tax

Eliminates the current seventeen and one-half cents per gallon motor fuels tax and replaces it with a 5% sales and use tax, while retaining the collection of the replacement tax at the "rack" or terminal where the current cents per gallon tax is collected. Patron: Lingamfelter. Left in Finance.



HB 2075 Overweight/oversize vehicle permits

Provides that violation of terms and conditions of excessive size and weight permits shall not invalidate the weight allowed on such permit unless various provisions are met. Patron: Scott, E.T. Passed House, Passed Senate.

HB 2130 Supplemental Highway Construction Fund

Allocates 10 percent of the annual growth in general fund revenues to highway construction. Patron: Miller, J.H. Left in Appropriations.

HB 2185 Weight limits for gravel trucks

Extends for two more years the July 1, 2009, sunset on the statute granting trucks hauling gravel, sand, or crushed stone no more than 50 miles from origin to destination in counties that impose a severance tax on coal and gases. Patron: Phillips. Incorporated by Transportation (HB1752-Carrico).

HB 2194 Motor fuels tax

Increases the motor fuels tax by \$0.10 per gallon, minus \$0.01 for each \$0.20 that the average price of gasoline exceeds \$3.00. The tax will be indexed every two years beginning July 1, 2010, by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction. Patrons: Watts; Senator: Ticer. Left in Finance.

HB 2206 Budget Bill

Requires the Governor to include in his Budget Bill funding for transportation in the biennium in an amount equal to at least 10 percent of the amount by which the projected general fund revenues for the biennium exceed the general fund revenues of the immediately previous biennium. Patron: Frederick. Left in Appropriations.

HB 2231 Parking

Adds pickup and panel trucks to the list of vehicles that Fairfax and Prince William Counties and Clifton, Herndon, and Vienna may prohibit from parking on streets in areas zoned for residential use. The bill also eliminates population bracket circumlocutions and names the specific localities to which those brackets were intended to apply. Patrons: Marsden and Plum. Tabled in Transportation.

HB 2250 Severance tax

Adds sand, marl, and gravel to the list of items on which localities may impose the severance tax. Patron: Barlow. Left in Finance.

HB 2311 Courthouses

Allows localities to assess an additional three dollar fee as part of the costs in each civil, criminal, or traffic case to be used solely for the construction, renovation, or maintenance of a courthouse. Patron: Melvin. Passed Senate, Passed House.

HB 2319 Overload and overweight permits

Revises the fees for vehicle overload and overweight permits to conform to recommendations of the Virginia Transportation Research Council. Patron: Marshall, R.G. Passed by in Transportation.

HB 2577 Highway noise abatement

Requires that whenever the Commonwealth Transportation Board or VDOT plan for or undertake any highway construction or improvement project and such project includes or may include the requirement for the mitigation of traffic noise impacts, consideration shall be given to the use of noise reducing design and low noise pavement techniques. Patrons: May, Albo, Iaquinto, Orrock and Rust. Passed House and Senate.

HB 2622 Salem Highway Construction District Transportation Revenue Fund

Provides funds for transportation in the Salem Highway Construction District by allocating revenue attributable to a portion of economic growth due to or facilitated by the Inland Port in Montgomery County. Patrons: Marshall, D.W., Poindexter, Merricks and Griffith. Incorporated into HB 1579.

HJ 770 Virginia's Transportation Needs

Creates the Commission on Virginia's Transportation Needs to look at transportation needs in Virginia and alternatives

for planning and financing Virginia's transportation system. Patrons: May, Albo, Hall, Rust, Toscano and Valentine. Left in Rules.

SB 1041 Fuels taxes

Adjusts fuels taxes each year on April 1 by the percentage increase in the Corporate Average Fuel Economy (sales volume weighted), Total Fleet (the CAFE) for the immediately preceding calendar year over the CAFE for calendar year 2008. Patron: Hanger. Left in Finance.

SB 1048 Temporary vehicle registrations and overload and overweight permits

Revises the fees for temporary vehicle registrations and vehicle overload and overweight permits. Patron: Miller, Y.B. Pursuant to Senate Rule 20 (L).

SB 1498 Motor fuels tax

Replaces the current fuels tax on gasoline, gasohol, and diesel fuel with a tax that is a percentage of the wholesale price of a gallon of self-serve unleaded regular gasoline. The percentage shall be established by the Commissioner. Patron: Barker. Left in Finance.

SB 1532 Motor fuels tax

Changes the tax on fuels sales in Northern Virginia such that the tax would be collected by distributors at the time of making fuels sale to retail dealers located in Northern Virginia. The rate of the tax would also be changed from 2 percent to 2.1 percent. Patron: Saslaw. Passed House, Passed Senate.

SB 1534 Central Virginia Regional Transportation Authority
Creates an authority to include the County of Chesterfield and the City of Richmond, and may also include other localities in the Richmond region. The Authority shall have powers related to transportation infrastructure improvements and additional revenue authority to meet the purposes of the transportation authority. Patron: Watkins. Passed Senate, in Counties, Cities and Towns.

SJ 347 Constitutional amendment; right to work

Provides that any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and an illegal combination or conspiracy. Patrons: McDougale, Blevins, Cuccinelli, Hanger, Hurt, Martin, Newman, Norment, Obenshain, Quayle, Ruff, Smith, Stolle, Stosch, Stuart, Vogel and Wampler. Passed by indefinitely in Privileges and Elections.

There are a number of online resources available on the official Virginia General Assembly website (<http://legis.state.va.us/>) to assist you in taking an active role in the legislative process. Contact your representative about a particular issue before the Legislature takes action on it. ❖

2009 Annual Virginia Concrete Conference “COUNT ON CONCRETE: THE STRONG INVESTMENT”

**Sheraton Park South Hotel, Richmond, VA
March 4-5, 2009**

This year's Conference provides an annual forum for the exchange of information and technology transfer with focus on concrete pavements and structures, as well as concrete materials. Emphasis will be placed on technical advancements/improvements and the viability of concrete for transportation applications. Industry and government experts will join us to share their knowledge and experiences in their field of expertise.

The Conference is being hosted by the American Concrete Pavement Association Mid-Atlantic Chapter, the Virginia Chapter of ACI, the Virginia Ready-Mixed Concrete Advisory Council, the Precast Concrete Association of Virginia, the Virginia Department of Transportation and the Federal Highway Administration. Don't miss this opportunity to network with the industry's leading professionals as you learn about the latest developments in concrete, pavements and bridges - topics include: Construction Materials Economic Trends, Alternate Bids for Concrete and Asphalt Pavements, I-64 at Battlefield Blvd. Concrete Paving and End Result Specifications Project Updates. Please join us and learn why you should "Count on Concrete: The Strong Investment."

For more information contact Keith Beazley at 804-347-7003 or email keith.beazley@comcast.net.

Build it with Concrete



VIRGINIA READY-MIXED CONCRETE ASSOCIATION
**SOUTHWEST VIRGINIA
ADVISORY COUNCIL**

Contributing Members:



Employee “Forced Change” Law

The Senate has just confirmed California Rep. Hilda Solis as President Barack Obama’s labor secretary, giving the agency a decidedly pro-worker tilt after years of business-friendly leadership under the Bush administration.

Her background as a fierce advocate for organized labor makes her a favorite of union leaders eager to wield more clout after years on the sidelines. At the top of their list is the Employee Free Choice Act (EFCA), which opponents argue would be more appropriately called the Employee Forced Choice Act.

The VRMCA, along with the NRMCA, has been working diligently with the congressional delegation to try to defeat EFCA. In the previous Congress, EFCA passed the House of Representatives but was narrowly blocked in the U.S. Senate. Another round of action in Congress is expected soon.

The EFCA would take away a worker’s right to a federally supervised private ballot when deciding whether or not to join a union. It would replace the private ballot with a biased and inferior process called “Card Check” that allows a union to organize if a majority of workers simply sign a card. Under this system, the workers’ votes are made public to the employer, the union organizers and

co-workers.

Trading federally supervised private ballot elections for a card check process undermines the privacy of individual workers. Secret ballots are the only way to protect an individual’s freedom to choose without subtle or overt coercion. Secret ballot elections should not be replaced with an unfair process that removes rights from workers and puts them in the hands of union bosses.

This legislation would also impose an artificial timeline for when the first labor contract must be reached when a union is certified. Under this system, a federal arbitrator could dictate the terms of a contract, including wages, benefits and work rules. In the likely event that a first contract cannot be reached in 120 days, employees would have no say regarding the terms of their first contract.

Government arbitrators should not undermine the employee-employer relationship, which is the foundation of collective bargaining.

It is important to contact your elected officials now and urge them to oppose card check legislation that strips away the basic democratic rights of employees and employers. ❖

NRMCA Promotion Achievement Award

Rolland Johns is First Recipient of NRMCA Promotion Achievement Award

Concrete and cement industry veteran Rolland Johns has been selected as the first to receive the new NRMCA Lifetime Achievement Award for Promotion. This award recognizes excellence in concrete promotion on behalf of the entire industry. He was selected from among NRMCA member nominations by representatives of the NRMCA Promotion Committee.

Now retired, Johns began his career with Master Builders in 1971 and worked for many years in marketing for South-down and then Cemex. He has always

been a staunch supporter of concrete pavements and a tireless advocate for increased promotion activities through his involvement with NRMCA, PCA, ACPA and ICFA. Johns attended every regional promotion meeting in the U.S. for one four-year period – 18 meetings per year!

Those who have heard him speak in public forums know that there are few people as passionate and caring about concrete promotion – the industry gained a great deal from his efforts over his long and active career. The award will be presented to Johns on Tuesday, March 17, during the NRMCA Annual Convention in Orlando. ❖

Top 10 Reasons to Fight EFCA

1. The Employee Free Choice Act (EFCA) is fundamentally incompatible with protecting the interests of individual liberty and the principles of a sound democracy.
2. EFCA would take away a worker’s right to a federally supervised private ballot when deciding whether or not to join a union.
3. EFCA would roll back the clock on our own workplace elections by abolishing federally protected private ballots at a time when our nation spends tremendous resources to foster and support free elections around the world.
4. EFCA would replace the private ballot with a biased and inferior process called “Card Check” which allows a union to organize if a majority of workers simply sign a card. Sadly, to get workers to sign the cards, union organizers could approach workers almost anywhere, even at their homes.
5. Under Card Check workers’ choices are made public to the employer, the union organizers and co-workers.
6. Card Check tramples the privacy of individual workers who should not have to reveal to anyone how they exercise their right to choose whether to organize with their coworkers in a union.
7. Card Check is unreliable. Union organizing manuals have long cautioned organizers that a worker’s signature on a union card does not mean that he or she wants to join a union or will vote for the union in the election.
8. Labor activists allege that employers file baseless objections giving them more time to subject worker to anti-union intimidation. These claims are simply false. Over 94 percent of organizing elections take place within eight weeks after organizers have filed a petition with the National Labor Relations Board!
9. Labor activists contend that EFCA would protect workers’ freedom to freely choose to join a union. However, workers’ best defense against harassment and intimidation by either a union or an employer is a secret-ballot election in which neither knows how any individual worker voted.
10. Contrary to labor activist claims, Zogby polling shows that 71 percent of union members believe that the current private-ballot process is fair, versus only 13 percent who disagree. ❖

Please send your announcements and press releases to: derek.breen@easterassociates.com.



The Impact of the Lilly Ledbetter Fair Pay Act

Do You Have the Relevant Documents to Defend a Wage Compensation Claim that is Based on a 2000 Promotion?

By John G. Kruchko and Kathleen A. Talty

After several Congressional attempts, the Lilly Ledbetter Fair Pay Act was passed by Congress and President Obama, in his first official act, signed the bill into law on January 29, 2009. While the facts underlying the Fair Pay Act involved a claim of alleged unfair compensation that was based on sex, the Fair Pay Act is not restricted to pay claims based solely on the basis of sex. Rather, discriminatory compensation claims can be based on sex, age, race, national origin and disability. It is expected that the amendment will result in an influx of lawsuits alleging discriminatory compensation claims. In order to maximize an employer's defenses to such claims, employers will have to dramatically alter their paperwork retention and documentation practices.

While the Fair Pay Act is described by some as restoring the law to where it was prior to the U.S. Supreme Court's 2007 decision, that characterization is not entirely accurate. At the time that the *Ledbetter* case came before the Supreme Court, the provisions of the Civil Rights Act of 1964 ("Title VII") required that administrative claims of wage discrimination, as well as any claim of employment discrimination, must be filed within 300 days, or 180 days if the incident occurred in a state without a fair employment practice agency, of when

the alleged discriminatory compensation decision took place. This time limitation was intended to avoid the filing of employment discrimination charges years after an alleged incident, on which the claim was premised, took place. In the *Ledbetter* case, the plaintiff discovered the alleged disparity in her pay rate in comparison to male counterparts years after the alleged unfair pay decision was made. Therefore, the Supreme Court ruled that, because the plaintiff failed to file the administrative charge of unfair compensation within 180 or 300 days of when the pay practice occurred, her claim was untimely. While the impact of the Supreme Court's decision in the *Ledbetter* case was perceived as harsh in view of the fact that pay decisions are typically made in a confidential manner and that Ms. Ledbetter only discovered the alleged pay disparity at the time of her retirement, which was decades after the alleged pay disparity was implemented, the near and far reaching effects of the Fair Pay Act on employers will be substantial.

Under the Fair Pay Act, each time an employee receives a new paycheck or other benefit check the 300-day time period to file a pay discrimination charge can be triggered, regardless of how much time has passed since the original pay decision was made. This is so because the Fair Pay Act amended Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the American with

Disabilities Act and the Rehabilitation Act of 1974 to provide that the charge filing periods are triggered: "*when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.*" The new law also applies to all claims of compensation discrimination which were pending on or after May 28, 2007, which was the date the U.S. Supreme Court issued the *Ledbetter* decision.

While the Fair Pay Act revises the time period within which an administrative employment discrimination charge alleging compensation discrimination can be filed, the Act did not alter the back pay recovery time period. The back pay period for plaintiffs alleging discriminatory compensation is limited to the two years preceding the date the administrative charge was filed.

Although the back pay period is still limited to the two-year period preceding the date the administrative charge was filed, it is expected that the defense of such claims will likely encompass a much broader span of time. For example, if a woman files a compensation discrimination charge on February 1, 2009 and claims that the alleged pay inequity that is represented in her paychecks is the result of a denial of promotion that took place a year earlier, the employer's defense of the 2009 charge will include the decision making/selection process that took place when the promotion action

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was taken. That set of facts should not be too difficult to defend. If, however, the 2009 compensation charge involves contentions that the supposed pay inequity was the result of a promotion denial that took place some 5 or 7 years earlier, the employer's defense will of necessity require consideration of a much broader period of time and a time period wherein it is very likely that relevant documentation no longer exists. In such cases, an employer's ability to fully defend allegations that are asserted in the charge will be severely hampered.

Prior to the Fair Pay Act, employers typically retained personnel documents for three years following an employee's separation and the same retention period usually applied for payroll and related compensation records. Now, however, it will be necessary for employers to alter greatly those paperwork and documentation record practices in order to maximize available defenses to compensation discrimination claims. As a result of the Fair Pay Act, all personnel decisions that affect wages or salaries will be potentially subject to challenge. Thus, employers will need to retain the documentation that substantiates such actions.

Going forward it is strongly recommended that employers adopt specific policies and practices dealing with all types of compensation decisions, ranging from those made when an employee is first hired and including all subsequent compensation decisions. All personnel decisions, whether directly or indirectly related to compensation, must be thoroughly documented and justified, and the documentation supporting the decision must be retained indefinitely. Therefore, if an employer selects a white female for a promotion to a management position and a Hispanic male is denied the same promotion, the specific documentation related to the white female's selection over the Hispanic male must be retained. Generally, the reasons supporting the decision to award one candidate a promotion over another or to compensate one employee at a higher rate of pay are attributable to quantifiable differences in work experience, education, etc.

If, in the example noted above, the reason that the white female was awarded the promotion was due to the

fact that she had five years of management experience and a MBA while the Hispanic male only had two years of management experience and was pursuing a Masters degree, the documents substantiating those factors need to be retained. Similarly, if several employees are hired at the same time for a Research position and a 37-year old candidate is offered a starting salary that is \$2,500.00 more than a 45-year old candidate for the same position, the objective factors which resulted in the decision to compensate the younger candidate at a higher rate of pay need to be documented and retained. That documentation will be essential if the 45-year old employee contends, at a much later date, that he is the victim of discriminatory compensation practices and the difference in pay is the result of the initial salary classification that was allotted to the individual when he was first employed.

While the Fair Pay Act is regarded by supporters as a "fairness" measure, its adoption places additional obligations on employers. All compensation-related decisions must be fully analyzed and thoroughly documented before implementation with the understanding that the employer may be required to defend, at some later date, before an administrative agency or in court, the objective, non-discriminatory basis for the compensation decision.

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VRMCA at Tech Career Fair

The latest Career Fair for the Virginia Tech Building Construction Department was held in mid-February, and several members of the Southwest Virginia Concrete Advisory Council (SWCAC) attended to talk with students about careers in the ready-mixed concrete industry. VRMCA Advisory Council Chairman Larry Bullock and SWCAC members Robert Marek, George Kuhn and Bob Nablo discussed the current economic situation and job prospects for the future with BC underclassmen and graduating seniors.

Building Construction Department Head Yvan Beliveau told members that the number of students continues to grow, and that he is pleased with both the quality of the students and the interest of industry personnel. Several BC faculty members visited the VRMCA booth and encouraged association members to visit the department at any time. They also mentioned that the lab portion of the new building is almost ready to open, and that a ribbon-cutting day would be announced in the spring. ❖



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