

# MCA NEWS

Fall 2005

Volume 9 Issue 1



## From The President



# ADDING <sup>more</sup> VALUE TO THE SUPPLY CHAIN

By Sean Sullivan, Stirrett-Johnsen

Many resources and much effort of late have been placed in examining manufacturers' and suppliers' role in the mechanical contractors' value chain. This research has resulted in meaningful discussion and creative new ways for manufacturers, suppliers and contractors to align and integrate services for the benefit of our shared customer base. Now that this branch of our value chain has been embraced and integration of our manufacturer and supplier base is gaining acceptance, "what's next?"

On both the local and national, levels our next impetus needs to include increasing value in our supply chain through improved integration of labor. In order to be successful, labor and management must share an equal passion and similar goals for efficient delivery of services. With the advancement of technology, nearly every industry has experienced steady productivity gains over the past 20 years. Unfortunately, the construction industry has not benefited from the same productivity gains as other industries. Long term, continued complacency over the growing disconnect between productivity and earnings will

result in a smaller and smaller market share for our signatory contractors.

Consider, for example, the population base and the economy in greater King County, which have both doubled in the past 20 years. Compare this with the relatively stagnant growth of plumbers and pipe fitters over the same time period. Examination of areas such as Eastern Washington result in far worse comparisons. Realization that our contractor base is not participating in a proportionate amount of infrastructure to support an increasing population base is disappointing,

It seems that this is a subject that business, as well as labor, have been willing to overlook; in part, I suspect, because our contractors and union trades people have enjoyed a secure, downtown customer base. I think, however, if we continue to keep our sights focused on what we still have, rather than start examining and counting what we have lost, our relevance and market share will continue to decrease in importance and size.

We are fortunate, in this region, to share our market with a labor base and

leadership that places value in innovative recruitment methods and in-depth education. This leadership and the relationship we share, however, provides only for a foundation to survive, not expand, within our region. Innovative measures, such as distance learning, residential program development and merging of geographical areas, represent the start and trend of measures that are required to add value to our supply chain and expand our customer base. Protective measures, such as freezing wages in obscure and distant regions and market recovery, have been necessary and beneficial to ebb the flow of an eroding market. However, in the long term these measures will only prove effective in dealing with symptoms, rather than resolving core problems. Continued measures, such as further softening restrictive work rules, abandonment of ineffective work scope and continuing the trend of merging geographical regions (similar to conditions enjoyed by the sheet metal workers and contractors) will be necessary to improve the odds of serving a broader customer base and adding value to the supply chain. ❌

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# EXECUTIVE Briefing



## LES BON TEMPS ROULENT \*

By Brian Garvey, Executive Vice President

It's hard to believe that 2005 has almost passed us by, and everybody I've talked to is preparing for next year's expected construction boom. Are you ready?

Puget Sound contractors have been very lucky these past few years because we have not experienced a major downturn in our industry like other sectors of the country. The biggest single factor that has protected us during our stagnant national economy is that, unlike other areas, we are no longer dependent on any single economic driver to stimulate growth and create jobs.

It wasn't too long ago that our livelihoods were closely tied to Boeing and the aerospace industry. As Boeing's impact lessened, Microsoft and their related software industry became a stronger component, and about two years ago Microsoft surpassed Boeing as the largest employer in the region.

In addition to these two stalwarts, the bio-tech research and development community blossomed. Couple these three market influences with our expanding "institutional" public owners' projects (prisons, hospitals, schools, libraries, etc.) and it's easy to see why we have enjoyed a relatively stable economy, and also why we are about to enter into a two to three year bull market for our industry.

As we move into what has historically been a slow time of the year (fall-winter), the Local 32 Hiring Hall is already pretty much exhausted. Local 26 is also enjoying high employment levels – and we are not even into next year's backlog yet!

I am proud to say that MCAWW has planned for this market expansion and its corresponding need for more technically qualified personnel by providing educational training for entry level, middle

management and even senior level staff over the past five years. These supervisory training certification programs have been available to employees of any contractor signatory to either the Local 26 or 32 labor agreements. They are extremely affordable, conveniently scheduled and extremely rewarding. They emphasize identifying and understanding the necessary project management and company organizational skills required to succeed as a mechanical contractor and, according to student feedback, they are exactly what is needed.

Because finding, hiring and keeping qualified staff may be the biggest challenge some contractors will face these next few years, I strongly suggest that you look into MCAWW educational opportunities. Classes fill up quickly, so if you have any questions contact Director of Member Services, Robin Cowper at (206) 442-9029 or visit our website at [www.mcawesternwa.org](http://www.mcawesternwa.org).

The other significant employment factor will be the availability of qualified mechanics. Recognizing the need for additional trained journeymen, we have expanded our apprenticeship recruitment efforts. In the Seattle area we have over 300 apprentices currently enrolled – the most ever. The quality of our entry level apprentice applicants continues to exceed expectations. We moved to daytime training two years ago, and it has been very successful. Continued technical training classes for journeymen are also offered and well attended. We have almost reached the point where classroom space is not available for new courses.

We are also currently building a new Local 26 training facility in Burlington.

Lastly, I am extremely proud of MCAWW's commitment to our community through worthwhile charitable causes. In addition

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## PLAYING THE OFFENSE DURING SHOP DRAWING SUBMITTALS

By Arne Hedeem, Hedeem & Caditz

Shop drawings submittal and review is a fundamental part of the construction process. The contract documents -- the drawings and specifications -- do not always detail every aspect of the work. This is particularly true for Division 15 contractors. The submittal and review process poses a risk of delay for contractors and subcontractors. In many instances, the contractor simply cannot proceed with the work until the project owner has approved shop drawing submittal. Subcontractors are particularly vulnerable to delays in the shop drawing approval process because of their lack of contractual privity with the owner. But assuming shop drawings are timely submitted, how much time does a project owner get for shop drawing turn-around? Given that time is of the essence on construction projects, you may be surprised to learn that most contracts don't say.

### King County's General Conditions

KCGC Article 4.4.E provides: "E. The County shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the County to respond to a Submittal until thirty (30) days after the Submittal is received by the County, and then only if failure by the County to respond is unreasonable and affects the Contract completion date." (Emphasis added.)

### Washington State Department of General Administration's General Conditions

GA Article 4.3.B provides: "B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. . . Contractor's submittal schedule shall allow a reasonable time for A/E review. . . . Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and

A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. . . ." (Emphasis added.)

### The AIA A201 Contract

AIA A201 Subparagraph 4.2. provides: "General Conditions of the Contract for Construction," addresses this matter in Subparagraph 4.2.7. "The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review." (Emphasis added.)

### Reasonableness

The concept of "reasonableness" is vague. Moreover, the qualifying language regarding "professional judgment" in the AIA document may give the project architect a quantum of discretion in determining how promptly a submittal should be reviewed and turned around to the contractor. While King County's agreement appears to impose 30 days to turn around requirement for shop drawings, the contractor is only permitted additional time if the "failure by the County to respond is unreasonable and affects the Contract completion date." Subcontractors contracted to the Department of General Administration's general conditions fare no better. On GA projects, the A/E is merely required to "respond to Shop Drawing submittals with reasonable promptness."

Given contract language which merely imposes a reasonableness requirement, courts must wrestle the question of what constitutes a reasonable period of time in the particular set of circumstances before the court. What is reasonable depends on the specific facts in each case. For example, in *Department of Transportation v. Brayman Construction Corp.-Bracken Construction Co.*, 513 A.2d 562 (1986), the court stated that evidence indicated that the normal time required for shop drawing turn-around on a highway project was 10 to 12 weeks. Anything in excess was compensable delay. Ten to 12 weeks would seem like a very slow turn-around for many types of

work. In *Appeal of Azerind, Inc.*, ASBCA No. 34294 (1987), ten to 14 days was considered a reasonable period of time for reviewing a submittal. However, where an owner's agreement with the project architect allowed the architect 15 days for submittal review, 21 days was deemed a reasonable turn-around time for the project owner. *Appeal of C.Walker Construction Co.*, VABCA No. 1527 (1982). The following are additional examples of Court treatment of contractor claims for late shop drawing turnaround and are intended to give the reader an idea of what the contractor is up against.

### Owner Delay

In *Appeal of KEMRON Environmental Services Corp.*, ASBCA No. 51536 (1999), the contract specified a particular brand of fuel storage tank "or equal." However, there was no indication in the contract documents of the features of the specified brand that were considered to be the salient characteristics of the fuel storage tank for purposes of evaluating submittals. The contractor submitted a shop drawing for installation of a tank other than the specified brand. Some details of the drawing were inconsistent with the features of the specified brand. The owner rejected the drawing and required re-submittal. The resulting delay was held to be the owner's responsibility because reliance on undisclosed salient characteristics had flawed and delayed the review process. In another case, the submittal of a shop drawing caused the owner to realize that certain contract specifications were in error. Correction of the problem delayed shop drawing approval by 16 days. This was also deemed to be compensable delay. *Appeal of Malone Construction Co.*, ASBCA No. 41483 (1991).

### Contractor Delay

Contractors have responsibility in the submittal process. Lack of thoroughness in the submittal can justify and even excuse a slow turn-around. In *Appeal of Santa Fe Engineers, Inc.*, ASBCA No. 45523 (1993) the contract specified the level of detail required for shop drawings for a fire alarm system. The contractor's submittal lacked some of the required information. The resulting delay in

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# LEGISLATIVE AND PUBLIC WORKS REPORT

By Ed Kommers, Director of Technical Affairs

• Your public works and contracts hotline has been a success. Over 30 members have called about a variety of issues and approximately six matters are still open and require some form of action. Please call us, even if it is just to alert us to a potential problem on unfair contracts, bid forms, bid listing or rejection of all bids. Our database will be of value in supporting our efforts, even if no action is taken on your particular issue.

• I have been appointed by the Governor as your representative to the Capital Projects Advisory Review Board (CPARB) that was established by statute in the 2005 legislature. Thanks to some intelligent legislators, many of you members, and Larry Stevens, we have this new type of “oversight committee.”

The goals of this task force will be to:

1. Develop and recommend: criteria for alternative contracting procedures; General Contractor qualifications; policies to enhance the quality of capital projects.
2. Make recommendations regarding Alternative Public Works (GC/CM and Design/Build).
3. Evaluate potential other alternative methods including “competitive negotiation” (whatever that means).

We have a long list of changes that need to be made to Capital Projects Procurement in Washington State in order for those projects to effectively spend taxpayer money and efficiently use our members’ resources. I have heard from many of you that GC/CM needs to be changed in order for us to support its renewal in 2007.

Changes that we will be proposing to GC/CM include:

- Establish fair uniform and standard subcontract general conditions
- Require owners to respond to change requests within a particular period of time
- Improve the DRB process to allow representatives selected by the subcontractor and possibly prohibit “informal” DRB’s
- Improve the process or remove the right to pre-qualify subcontractors
- Prohibit incentive provisions tied to MACC contingency
- Design scope packages to limit pre-purchase of equipment and the break-up of mechanical packages
- Encourage effective project coordination and scheduling by the GC/CM
- Allow GC/CM’s to reject all bids for only good cause

Please email me at [edmcaww@qwest.net](mailto:edmcaww@qwest.net) with your comments or suggestions.



## HVAC Engineering

Twenty-five students proudly received their Certificate of Completion on August 25th for the HVAC Engineering class sponsored by MCA of Western Washington. The 30-hour program, conceived and developed by the MCAWW Board of Education, was comprised of twenty-five students from 11 different firms. Surveys showed that the students, whose enthusiasm and dedication never waned throughout the summer, found the curriculum to be highly useful and right on target in terms of applicability to their jobs.

The program was taught by industry professionals who understand the challenges that project managers face when dealing with design issues. Instructors included the course designer Ed Kommers, P.E., MCA of Western Washington; Rick Himmel, P.E., McKinstry Co.; David Malone, P.E., University Mechanical Contractors, Inc.; B Joel Smith, P.E., Hermanson Company; and Steve Woolery, P.E., MacDonald-Miller Facility Solutions.

The MCAWW Board of Education plans to offer ‘HVAC Engineering for Non-Engineer Project Managers’ again in Spring of 2006. For more information, visit [www.mcawesternwa.org](http://www.mcawesternwa.org).

*“Beyond my expectations.” Danny Dallum, Project Manager, ACCO Engineered Systems*

*“... very helpful in real world situations.” Duncan Bagley, Project Engineer, BMWC Constructors*

*“I gained everything out of this class that I hoped to gain.” Wade Bailor, Sr. Project Manager, W.A. Botting*





# The Olympia File



## WORKS IN PROGRESS - LEGISLATIVE ISSUES

By Larry Stevens, MCAWW Lobbyist

Although the Legislature adjourned April 24th, work still goes on and it seems as if many of the session issues are still “works-in-progress!”

The first order of business of the 2005 “interim” was for Seattle to host the National Conference of State Legislatures. This annual conference brings together thousands of state legislators and staff from all over the country. Hopefully, the economic boost for Seattle was substantial. Likely, you never even knew they were here! But issues discussed that week will also likely find their way to Olympia. In fact, some cynics suggest the NCSL is simply big government spreading bad ideas around the country! I think it is fair to say the NCSL attracts Democrat ideas, and another national conference, the American Legislative Exchange Council (ALEC for short) is the conservative counter-part attracting Republican ideas.

Our attempt during the session to achieve some changes in the GC/CM construction process also became work for the interim. **The Capital Projects Review Advisory Board** was created to bring together stakeholders in public works construction to craft recommendations for 2006 and 2007 Legislative sessions. About fifteen members, appointed by the Governor, the Speaker of the House, and the President of the Senate had their first meeting on September 12th. Appointees include representatives of the Department of General Administration, local government, higher education institutions, a general contractor, an architect, an insurer/surety, a building trades member, and two specialty subcontractors – Ed Kommers, representing mechanical contractors, and Rocky Sharp, a NECA contractor. Ed Kommers’ very detailed paper outlining problems with the GC/CM contracting process was requested by the Board to be distributed to all members of the Board and will probably become a focus for action.

Another major issue that was resolved in 2004 -- **unemployment insurance reform** -- became UN-resolved by Democrat/labor action in 2005, creating more work for the “interim.” The earlier reforms reduced benefits, particu-

larly by instituting four-quarter averaging, and sought to create tax equity between stable and seasonal employers. The overall goal was to reduce Washington’s UI costs from 300% of the national average to “only” 200% of the national average. But in 2005, at the urging of organized labor, Speaker Frank Chopp (D-Seattle) and Representative Steve Conway (D-Tacoma) reversed the earlier reforms, and created the UI Task Force to study UI Benefit Equity and recommend changes by the 2007 session. Four business representatives, four labor representatives, four legislators (2 D’s; 2 R’s), and the Assistant Director of Unemployment Insurance will be meeting monthly trying to resolve the differences between labor and management.


Another issue raised its ugly head in the 2005 session and resulted in a recent interim hearing at the Department of Labor & Industries. **Retrospective Rating for Workers’ Compensation** was the issue; the “ugly” was the attempt during the 2005 session to “punish” the Building Industry Association of Washington for using some of its members’ Retro refunds for political action – but not for Democrat political action! The legislators were pretty openly biased, but began backpedaling as soon as the newspapers started making them look bad, and the legislation died. Nonetheless, the Department of Labor and Industries called a meeting to discuss the issues the Democrats and labor were trying to assert during session. The business community, particularly the construction industry, showed up in force and offered compelling testimony, but we may still see this kind of legislation in January.

Probably the major piece of unfinished business is the **9 ½ cent gas tax increase**. The legislature went through pretty complicated procedures to prevent a citizen Referendum that is designed to allow the people to put any legislative enactment up to a popular vote. Because Big Labor and Big Business had come together to pass the gas tax statute with the referendum-defeating “emergency clause,” it took the concerted effort of talk radio and regular old consumers to create and qualify an Initiative to the People. In

about 30 days, over four-hundred thousand signatures were gathered demanding a vote on the gas tax this November. That is probably a record number of signatures on an initiative petition ... in record time! The construction industry is somewhat split on the issue, with those having a direct interest in road construction opposing the anti-gas tax **Initiative 912**, and those with little road construction business -- but lots of trucks full of gas – supporting I-912.

There will also be dueling Initiatives on the November ballot pitting doctors, hospitals, and drug companies against the personal injury/malpractice attorneys. **I-330** is the **medical community’s initiative** -- supported by most businesses – that will limit non-economic damage awards to no more than \$350,000 and limit attorney’s fees. The **trial lawyers’ initiative I-336** would go the other way attacking insurance company rates and doctors who have three malpractice incidents.

Another Initiative you will see on the November ballot would require the State Auditor to do **performance audits of state and local government agencies**. The subject of I-900 has been the subject of many legislative proposals that have never passed. I think many legislators are offended that the State Auditor would be given authority to cross over and audit the performance of another branch of government. Probably a lawsuit brewing here!

The final Initiative is the **anti-smoking initiative. I-901** would prohibit smoking in all public places and all places of employment. It would also prohibit smoking within twenty-five feet of an entrance/exit from a public place of employment. I guess that means only sovereign, Native American establishments would be exempt, and “cigar bars” would have to be smoke-less! 

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# MCA's GOLF TOURNAMENT

## 1st Place



(left to right) David Allen, Marco Navlet, Dave Howe, Jon VonLossow of McKinstry

## 2nd Place



(left to right) Sam Martin, Doug Sipila, Mark Franklin, Ryan McMahan, of Auburn Mechanical

## 3rd Place



(left to right) Paul Robinett, Dean Fox, Knut Nicolaisen of Hermanson Company



On August 26th MCA held its annual golf tournament at Druids Glen Golf Course in Covington. We had a huge turnout with 144 players and 38 sponsors. We would like to thank the golf committee for all their hard work: **Mark Webster - MacDonald Miller Facility Solutions, Kim Johnson - Auburn Mechanical, Ty Baldi - Ferguson Enterprises, Raleigh Parks - Hermanson Company, Marco Navlet - McKinstry Co. - Wade Bailor - W.A. Botting Company** and also **Mark Gauger** and **Lisa Schaefer - MCA of Western Washington**.

Also, thank you to all the participants for helping our MCA student chapters raise \$930 in mulligan sales.



Special thanks go to the following companies for sponsoring MCAWW's 2005 MCA Golf Tournament:

### ATS Automation

Columbia Hydronics Company  
Commercial Application Sales

Consolidated Supply Co.  
D&G Mechanical Insulation, Inc.  
Dorse & Company

### F. Rodgers Insulation, Inc.

Ferguson Enterprises, Inc.

### Grainger

Hedeen & Caditz, PLLC  
Hollabaugh Brothers

### Hudson Bay Insulation

Industrial Communications

### I.S.A.T Seismic Bracing

Johnson-Barrow

Josam Drains proudly represented by:

Bailey Sales & Associates

Keller Supply Company

Magnum Crane

McMorgan & Company

Mechanical Agents, Inc.

Mechanical Sales

Performance Contracting

Proctor Sales, Inc.

Rainier Investment Management

Rosen Supply Co.

Specification Sales

Stacy Plumbing Supply

Star Rentals, Inc.

Trane Company

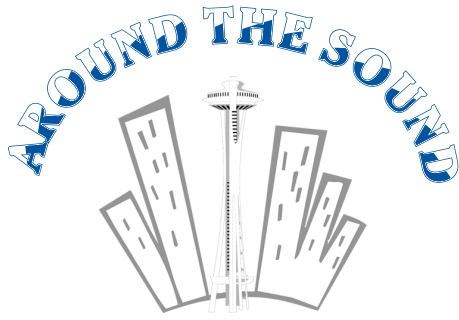
Tyler Pipe

United Rentals

Washington Air Reps

Washington Capital Management

White Cap Pro - Contractor Supply



## Kudos To MCA Members

Congratulations to **Dave Anderson** of **Control Contractors** for being named Employee of the Month in August, 2005. Dave has been with Control Contractors for 14 years and was recognized for his enthusiasm, efficiency and reliability.

**DJC Project of the Week:** The following member firms recently received recognition

in the Seattle Daily Journal of Commerce for performing as the mechanical contractor on a DJC Project of the Week: **Holiday-Parks** (Nathan Hale High Schools Performing Arts Center); **University Mechanical Contractors, Inc.** (Swedish Medical Center Emergency and Specialty Center, Issaquah); **Auburn Mechanical** (UW Conibear Shellhouse); and **McKinstry Co.** (SPORT).

*“Around The Sound” highlights industry news of all kinds. If you have information, such as new projects, awards, staff hires, promotions, or relocations, that can be included in future issues, please send it to Robin Cowper, MCA NEWS editor.*

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## EXECUTIVE BRIEFING

to our significant annual contributions to the Construction Management Departments of WSU, Central WA University and the U.W., MCAWW has made generous donations to the Boys and Girls Club and the Boy Scouts. Just this month your Board also made a \$25,000 gift to a relief fund set up by the MCA of New Orleans for the families of our fellow contractors caught in the aftermath of “Katrina”.

I couldn’t be happier with MCAWW’s accomplishments, and feel that compared to other contractor associations, we are unsurpassed in the benefits that we provide to our members.

Please don’t hesitate to call me at (206) 442-9029 if you need assistance or have a suggestion. We appreciate your support, participation and your ideas.

**\* Let the good times roll!**

# SAFETY FIRST



## Evaluating L&I Through Focus Groups

By **Mark Gauger**  
MCAWW Director of Safety

An Oregon consultant has been hired by the Department of Labor and Industries to prepare a report on their effectiveness, customer service, and strengths and weaknesses. They are reviewing each region, as well as workers compensation claim management, compliance, consulting and the citation appeals process.

After several focus group sessions, which have included stakeholders from both management and labor, it is apparent that none of L&I’s customers are satisfied. A lack of consistency across the board is the most common complaint. At this time, the following areas hold the greatest concerns:

### Top to Bottom Inconsistency

- WISHA Regional Directives (WRD’s) are internal policies on how codes will be enforced. There are approximately 230 WRD’s with each region having their own.

### Enforcement

- Each region has different interpretations

on how the codes will be enforced.

### Training

- There is a lack of training for Compliance and Consulting Officers to enable them to properly review the industries they oversee.

### Citation Appeal Process

- The perception by management and labor is that this is purely a “rubber stamp” process and is completely ineffective.

### Region 2 (King County)

- Over the last several years, there has been an annual employee turnover rate of 50%.

### WISHA Assistant Director Position

- The position has not been officially filled and the Department is on their second interim person holding this position.

These are some of the issues being discussed. Both management and labor are in agreement on most of the problems and inconsistencies within L&I. MCA will continue to monitor the process and its final report, so that our members may continue to have a voice in the outcome.

### Construction Showing A Downward Trend In Accidents

Based on the State of Washington’s own statistics, the construction industry and the specialty trades (plumbing, heating and air conditioning) incident rates have been on a downward trend for the past eight years. The Recordable Accident Incident rate for the construction industry has gone from 17.6 in 1996 to 11.1 in 2003. During that same time, the specialty trades have dropped from 15.2 to 11.1. This trend shows that the construction industry, including both labor and management, are beginning to see results of their efforts in making worksites safer. This has been a joint effort and commitment through training, as well as working together on specific hazardous situations. While we must continue to improve, this downward trend shows our industry’s willingness to address its hazards. Because of this, there have been preliminary discussions with L&I regarding the reallocating some of the 30-40 construction safety inspectors to some of the more dangerous industries. Presently, L&I has approximately 140 inspectors state wide.

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### **G.L. Griffin Company, Inc.**

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### **Hawk Mechanical Contractors**

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*Steve Kralicek, President*

### **Hermanson Company**

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### **Holiday-Parks**

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*Pher Holmberg, President*

*Continued on next page*

# Membership Roster

Continued from previous page

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Mason Evans, President

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## Johnson Controls, Inc.

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Jack Cheetham, Vice President

## McKinstry Co.

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## Metcalf-Grimm Mechanical

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Dave Urwin, President

## Contractor Members

### Pease Piping, Inc.

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### Plumbing Today, Inc.

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Mark Tomingas, Vice President

### Precision Pipe Fabricators, Inc.

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precisionpipe@techline.com  
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### Puget Sound Refrigeration

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### Ramsey Plumbing & Heating

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### Shinn Mechanical

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### Speer Taps, Inc.

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### Stainless Piping Systems

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Steve Stirrett, General Manager

### Superior Tapping, Inc.

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### University Mechanical Contractors, Inc.

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### Williams Mechanical, Inc.

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## Associate Members

### Anvil International

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Steve Brown, NW Mechanical Sales

### Bailey Sales & Associates

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Rick Root, Sales

Continued on page 10

# Membership Roster

Continued from page 9

## Associate Members

### Byrne Specialty Gases, Inc.

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### C.M. Hoskins Company

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### Columbia Hydronics Company

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### Commercial Application Sales, Inc.

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*Brent Lill, Vice President*

### Ferguson Enterprises

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*Ty Baldi, Regional Sales Mgr.*

### Grainger

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### Int. Seismic Application Technology

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### Keller Supply

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### K.J. Barnett Company

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### Magnum Crane, LLC

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*Darrell Slabaugh, President*

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### Performance Contracting, Inc.

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### Puget Sound Pipe & Supply Co.

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### Specification Sales, Inc.

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Fax: (425) 576-0748  
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*Donald Duehn, President*

### Victaulic Co. of America

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www.victaulic.com  
*Steve Baughn, Line Sales*

## IN MEMORIAM

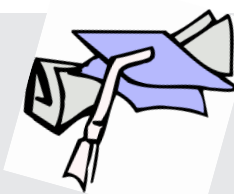
**Don MacKenzie**, president of **K.J. Barnett Company**, passed away as a result of a brain aneurysm on July 23, 2005.

Don was originally born in the Philippines, where he spent the first four years of his life as a POW. Raised in St. Paul Park, Minnesota, he graduated from the University of Minnesota and immediately began his involvement in the industry as a manufacturer's representative in Minneapolis for the American Air Filter company. He was transferred to Seattle in 1972 and in 1981 became president of K.J. Barnett. Apart from his work, Don loved family, friends, golfing and all aspects of the horse racing industry.

Don is survived by his wife of 38 years, Shirley, and their sons Grant (Gretchen), Donald (Nora), and Derek (Kimberly), as well as numerous grandchildren, numerous nieces, nephews and their children.

The family requested that donations be made in memory of Don to Three Rivers Rescue or charity of choice.

# CONGRATULATIONS CMPPM 3 GRADUATES!



On September 22, 2005, the graduates from the MCA Sr. Level Project Manager Training program proudly received their plaque awards and CMPPM 3 designation after twelve months of hard work. The students attended monthly sessions that consisted of advanced, practical training in subjects such as Communications & Leadership, Change Orders, Labor Relations, Insurance/Risk Management, Legal Issues and Financial Management. Leah Gutmann, Kim Johnson, and Mike Knowles received honors for perfect attendance, while Matt Thibeau and Leah Gutmann were MVP award recipients for outstanding participation. Congratulations to all!



**Standing, (l-r):** Patrick Roberts, McKinstry; Don Gilmore, Shinn Mechanical; Matt Thibeau, MacDonald-Miller; Audie Wallace, University Mechanical; Mary Pakinas, University Mechanical; Paul Robinett, Hermanson; Mike Knowles, Automated Controls; Kim Johnson, Auburn Mechanical; Michelle Eppler, Auburn Mechanical; Pat Nassif, Johnson Controls; Stephen Wilson, MacDonald-Miller; Leah Gutmann, BMW Constructors; Ken Hagen, Design Air; Keith Flowers, W.A. Botting. **Kneeling (l-r):** Pat Francis, J.P. Francis; Gordon Pease, Pease & Sons.

## HURRICANE RELIEF EFFORT

Many of our MCA counterparts located in the south experienced a direct hit from Hurricane Katrina. Some of these members have suffered a tremendous impact to their businesses; others have been unable to locate some of their employees. On September 22, 2005, in an attempt to help out our own, Sean Sullivan presented Stanley Berger, President of MCA of America, with a donation from the MCA of Western Washington in the amount of \$25,000. These funds will be applied directly toward helping out affected MCA members.



## LEGAL LINE

the review and approval of shop drawings was therefore held to be the responsibility of the contractor, not the project owner.

In *Twigg Corp. v. General Services Administration*, GSBCA No. 14386 (2000), also involving a fire alarm system, the contractor's initial submittal was stamped "revise as noted." A steady stream of re-submittals and rejections ensued. But the contractor's complaints regarding the process did not persuade the Board that the contractor was delayed because the initial submittal lacked necessary information and the subsequent re-submittals were not responsive to the project engineer's requests for clarification. As a result, the delay was held to be the contractor's responsibility.

### Special Problems for Subcontractors and Suppliers

Subcontractors need to make certain their subcontracts permit recovery for owner caused delay and that they preserve their rights against the owner for delay in shop drawing review. In *U.S. for Use of Seminole Sheet Metal Co. v. SIC, Inc.*, 828 F.2d 671 (11th Cir. 1987), the project architect rejected a shop drawing prepared by the HVAC subcontractor. The subcontractor alleged that the specifications that it relied upon in rejecting the submittal were defective. After some time, the project owner and architect implicitly agreed, approving a resubmittal substantially identical to the initial shop drawing. But the subcontractor was unsuccessful when it sought additional compensation for the delay from the prime contractor. The prime had disclaimed, under the terms of the subcontract, responsibility for the acts or omissions of the project owner or its architect.

### Lessons

As the cases suggest, recovering time and money for owner caused shop drawing review is problematic. Your best defense is a good offense. Prioritize shop drawing submission and schedule shop drawing submission so that it ties to the construction schedule. Plan ahead regarding such shop drawing coordination matters as drafting standards, drawing file coordination, file format, color assignments, drawing sheet sizing, descriptions and dimensions, and electronic file sharing. If a shop drawing is returned, take steps to make sure that your re-submission addresses all clarification requests. Because any claim for late shop drawing review turns on the facts of the particular submittal, do what can be done to make certain that you have no role in late turn around. ☒

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**NEW ADDRESS**

# 2005 CALENDAR OF EVENTS

- November 2:**    **Membership Meeting & Luncheon**  
 Location: Rock Salt Steakhouse  
 Speaker: Stanley Berger, MCAA President
- December 2:**    **MCAAW Annual Holiday Dinner**  
 Location: W Hotel

## MCAAW Board of Education Welcomes New Chair, Members

The MCAAW Board of Education is pleased to welcome a new Chair as well as two new board members. **Brian Acton**, President of BMWC Constructors, officially became the new Chair on August 24, 2005 when **Jack Cheetham**, Vice President of Operations of MacDonald-Miller Facility Solutions, passed the gavel to Brian at the annual Board of Education Planning Retreat. The Board of Education also extends a warm welcome to **Ken Hoving**, General Manager at ACCO Engineered Systems, as well as **Bob Frey**, Vice President of Service Sales at McKinstry Company. The Board truly appreciates the work that Jack Cheetham accomplished during his tenure, and looks forward to continuing to work on many exciting initiatives under Brian's guidance. Meanwhile, Ken and Bob will bring new, fresh perspectives to the Board and its programs.

# STUDENT SUMMIT IN THE EMERALD CITY

The 2005 MCAA Student Chapter Summit has come and gone, but the event has undoubtedly left a lasting impression on the minds of the attendees. Hopefully, to the extent that many of the students are now seriously considering a career in mechanical contracting! The effort began some time ago when Troy



Aichele vied to hold the 2005 Summit in the Emerald City. The excitement grew during the MCAA National Convention in Arizona, where MCAA staff and executives gleaned a great deal of exciting information about Seattle from the Western Washington contingent. The planning truly began in earnest when the MCAAW Academic Relations Committee spent hours planning and configuring tour schedules and logistics in order to translate the vision into a reality. Ultimately, approximately 150 students, faculty, MCA executives and MCAA staff members arrived in Seattle on September 22nd to experience a summit like no other.



The Summit kicked off on September 23rd with each student receiving an attractive welcome bag containing items donated by MCAAW member firms. Following several presentations and a mini student chapter competition, the

long-awaited RFP for the Student Chapter Competition was finally unveiled. The students also enjoyed a fun overview of the mechanical contracting industry presented by David Allen of McKinstry Co.



After lunch, the visitors were organized into eight groups named after regional sports teams and loaded onto 4 large buses, where they proceeded to the Seattle Center. Each group was met by a "referee" and three "trainers," (all member volunteers), who kept the tours running smoothly and ensured none of the visitors got lost. In the end, students, faculty and MCAA folks were in awe of the unique mechanical systems presented by "coaches" at the Experience Music Project, Fisher Plaza / KOMO 4 News, as well as the Seattle Center Central Utility Plant.

Altogether, fifty-two volunteers from the following member firms participated in making the Student Summit a success: ACCO, BMWC Constructors, Holaday-Parks, MacDonald-Miller Facility Solutions, McKinstry Co., Proctor Sales, Trane Company, University Mechanical Contractors, Inc., W.A. Botting.



The day finished with a fun and relaxing dinner sponsored by MCA of Western Washington at the Museum of Flight. Students had a chance to enjoy the exhibits and talk to our members.



Many thanks to all of our member volunteers who made the Student Summit an outstanding success. Your assistance is hugely appreciated... you truly made our local industry as well as the City of Seattle shine!