OMA Vice-Chair, Mike Homan of Wayne Builders Supply, Visits BGSU as a Judge for the Architecture Program’s 10th Annual Competition

BOWLING GREEN, OH – On November 13, 2018, 24 students in Architecture Materials and Systems class took on the challenge to explore the methods of the practical concrete masonry fields and its culture of design that applies to the concrete masonry material the CMU’s. Specifically, this year’s theme, “UN/balance” investigated the architectural potential to deliver meaning through formal gesture, detail, and environmental analysis according to the competition creator Hannah Dewhirst, an Instructor of Architecture at the Bowling Green State University.

Now in its 10th year, the competition started with six teams of four students. After presenting their designs, a jury made up of faculty of the School of the Built Environment chose three projects to be built full-scale out of six. “This is the most popular project in our architecture program,” Andreas Luescher, a Professor and Chair of Architecture at BGSU said. “Instead of us lecturing, students can go out and touch the materials. What’s great is the simplicity of the concrete block. It doesn’t have to be fancy, just lifting a block and stacking it. It’s a very intuitive and tangible experience.”
OMA Under New Management
A Message from
Greg Schuerman, OMA Chairman

I hope everyone is enjoying the holiday season.

Josh Naragon accepted a position with Oberfields and will no longer serve as the Executive Director for Ohio Masonry Association. I would like to thank Josh for his years of service with OMA and to wish him the best of luck in the future. He will be greatly missed.

Moving forward OMA will be managed by The Association Office and Executive Director, Bob Pope. Many of you may already know Bob through his 35 years of construction industry association management including the MCAD and MID. OMA will keep the phone number, but the address has changed. It’s on the OMA website or call for assistance.

Until we can find an in-house person, OMA will be teaming up with BIA and IMI for OMA Lunch & Learns. You may still call the office or email info@ohiomasonry.org with Lunch & Learn requests.

OMA will now be offering an exciting new membership benefit with a Legal Services Plan and will be partnering with Gary Auman of Auman, Mahan & Furry. Read more on page 5.

As the year draws to a close, I would like to wish everyone Happy Holidays and New Year.

Greg Schuerman,
OMA Chairman
PCC Masonry, Inc.

MARK YOUR CALENDARS

ICON-Xchange B2B Meetings/Expo
February 15-16, 2019
NCMA’s Annual Convention
Held in conjunction with ICON-Xchange
February 12-16, 2019
Hilton Orlando Lake Buena Vista
Hotel Orlando, Florida
Registration is now open. Visit www.ncma/events.org for more info.

2019 NCMA Midyear Meeting
August 6-9, 2019
Hyatt Regency, Seattle, Washington

INDUSTRY UPDATE FROM NCMA

The industry witnessed President Trump sign into law the Concrete Masonry Products Research, Education and Promotion Act on October 5, 2018.

The Act authorizes a commodity checkoff program that could generate the funding necessary for our industry to successfully implement, develop, and manage programs needed to grow market share in today’s competitive construction environment.

What does it mean for the industry and concrete block manufacturers?

Get answers at informative CMU Checkoff sessions held at the NCMA Annual Convention on February 14, 2019 from 1:30-5:00 pm. Topics include:

- The goals of the CMU Checkoff Program
- How it would operate
- How your company can get involved to support success in an industry referendum

A Concrete Masonry Check-off program will support the growth of the industry by educating designers, contractors, and installers as well as regulators, students, and owners about how to best take advantage of what concrete masonry has to offer. It will provide for significant and sustained research and development for existing and evolving concrete masonry products and systems, and it will enable the industry to better promote the product’s benefits. The check-off program will leverage the combined strength of the entire concrete masonry industry while supplying the necessary funding to support industry initiatives and coordinate promotion at the local, state, regional and national levels.

MCAA Convention at the World of Concrete/World of Masonry
January 22-25, 2019
Seminars January 21-25
Las Vegas Convention Center
Las Vegas, Nevada
Learn more and register at www.masoncontractors.org/convention
2018 ELECTION RECAP

As expected, the 2018 mid-term elections races were competitive. Midterm elections historically have resulted in losses for the party of the President sitting in the White House. The narrative dominating the news cycle was how big would the “blue wave” be and would that translate here in Ohio? After the results were calculated late into the night, it’s apparent that while nationally the wave was choppy, here in Ohio the water stayed mostly calm as the GOP had a great election night.

STATEWIDE

Governor
With nearly $30 million spent on the race for governor, Republican Mike DeWine beat Democrat Richard Cordray by a margin of 50.6% to 46.4%. Governor-Elect DeWine took advantage of his strong name ID throughout the campaign. His message of continuing to build upon Ohio’s economic progress that has been made the last 8 years under Republican control also worked well throughout the state especially in the outer-suburbs and rural areas of Ohio.

Attorney General
In the race for Attorney General, current State Auditor Dave Yost’s beat Democrat Steve Dettelbach 52-46%. Yost’s name ID and message against Issue 1 most likely helped him get across the finish line first.

Secretary of State
In a race many were saying could switch party control, Democrat State Representative Kathleen Clyde came up short in her contest against Republican State Senator Frank LaRose as Ohio’s top campaign official by a margin of 51% to 47%.

Auditor
In the closest contest for statewide office and another race democrats believed was there for the taking, former Senate President Keith Faber (R) bested former Congressman Zack Space (D) 50% to 46%.

Treasurer
Voters elected Republican State Representative Robert Sprague over Rob Richardson 53.5-46.5%.

OHIO GENERAL ASSEMBLY

House of Representatives
The Ohio House will continue to be led by Republicans but their majority became smaller with the apparent loss of 5 seats. A handful of races may be close enough for a recount though. If none of those races are overturned, the margin of Republican control in 2019 will be 61-38. Democrats were able to win seats in a handful of suburban districts especially in Franklin County seats where Dr. Beth Liston (23rd House District), Mary Lightbody (21st House District) and Allson Russo (24th House District) all defeated their Republican opponents. Casey Weinstein in Summit County and Cuyahoga County, Democrat Phil Robinson also won their races.

Senate
The Senate Democrats lost another seat as Michael Rulli defeated John Boccieri 52.5-47.5% in the 33rd Senate District (Youngstown). This pickup now expands the Republican majority in the Ohio Senate to 25-8. House of Representatives.

US CONGRESS

House of Representatives
Nationally the wave did manage to wash away the Republican control of Congress and gives the majority of the House back to the Democrats. It appears that Nancy Pelosi will once again hold the Speaker’s gavel. However, in Ohio, incumbency has its privileges and was too difficult for any challenger to overcome. In the higher profile races, Republican Congressman Troy Balderson (12th Congressional District) and Congressman Steve Chabot (1st Congressional District) defeated their Democratic challengers.

In the only open Congressional seat (16th Congressional District) vacated by Jim Renacci, Anthony Gonzalez easily beat his Democrat opponent Susan Moran Palmer.

Senate
Incumbent Sherrod Brown was elected to his third term in the U.S. Senate by defeating challenger Congressman Jim Renacci by a vote of 53%-47%. Although Brown was the lone bright statewide spot for Democrats, the margin of this victory was not as wide as many predicted. Nationally, Republicans were able to defend many seats and they will maintain a majority in the next legislative session. It is worth noting that many national political analysts believe that Senator Brown could be potentially be part of the Democrat Presidential ticket in 2020. Ohio is an important state to win and Brown has shown his ability to connect with Ohio voters.

ISSUE 1
Voters overwhelmingly defeated a constitutional amendment aimed at lowering the penalties for lower level drug possession offenses by a 65% to 35% margin.
OSHA has re-interpreted its prohibition of mandatory post-accident drug testing and injury-prevention incentive programs. Previously, OSHA had completely barred them under 29 CFR 1904.35(b). Now, OSHA states that they may be permitted under limited circumstances. On October 11, 2018, OSHA issued a Memo slightly softening its position regarding workplace safety incentive programs and post-accident drug testing. That Memo supersedes OSHA's previous interpretation of 29 CFR 1904.35(b) to the extent that the previous interpretation conflicts with the October 11, 2018 Memo.

Employers – before you rejoice – read the new October 11, 2018 Memo carefully. While that Memo clarifies and somewhat changes OSHA's previous interpretation of 29 CFR 1904.35(b), OSHA still does not allow programs that punish injured workers, or that discourage employees from reporting work-related injuries and illnesses. Moreover, not much has changed with regard to post-accident drug testing. If you read the October 11, 2018 Memo, you should pay close attention to the language in the first section and we quote: "In addition, evidence that the employer consistently enforces legitimate work rules (whether or not an injury or illness is reported) would demonstrate that the employer is serious about creating a culture of safety, not just the appearance of reducing rates." (emphasis added).

In other words, employers need to able to show that whatever action they are taking, either with regards to a rate-based incentive program or post-accident drug testing, the ONLY goal of these programs is to develop and promote a culture of safety in the workplace.

**POST ACCIDENT DRUG TESTING**

OSHA had previously entirely banned mandatory post-accident drug testing, but now states that post-accident drug testing is permitted to "evaluate the root cause of a workplace incident that harmed or could have harmed employees." In other words, post-accident drug testing is permitted when the root cause of an accident is in question, and drugs or alcohol could have been a contributing factor. In that case, employers may investigate the root cause by drug testing all employees involved without regard to whether they were actually injured. OSHA states that all employees who contributed to the accident should be tested – whether injured or not.

With this new guidance, OSHA does not explicitly support post-accident testing of all injured employees, regardless of the reason(s) for their injuries. If the root cause of the accident is known, and drug or alcohol use could not have reasonably been a contributing factor, post-accident drug testing may still violate 1904.35(b).

**DISCIPLINARY ACTION**

Notably, the October 11, 2018 Memo does not address the discipline of injured employees who are found to have violated a company safety policy. Nothing has changed on that front. Employers can and should continue to discipline any employee who violates a safety rule, regardless of whether the employee was injured. Again, employers must be careful to ensure that the disciplinary program is enforced equally and consistently against injured and non-injured employees alike.

In short, Employers have always been permitted to maintain post-accident drug policies and incentive programs that do not deter injury reporting or punish injured employees. The October 11, 2018 guidance clarifies how employers can implement those programs in a manner that would not violate 1904.35(b). It remains up to employers to ensure their programs are not administered in a manner that would deter or punish injury reporting. Please note, this Memo does not affect employers operating in state-OSHA program states. Thus, if you operate in a state-plan state, you will need to comply with the anti-retaliation regulations effective in that state.

**INCENTIVE PROGRAMS**

With regard to incentive programs, OSHA now says that rate-based incentive programs (i.e. programs that withhold a prize or bonus because of a reported injury) are permissible "as long as the employer has implemented adequate precautions to ensure that employees feel free to report an injury or illness." Certainly, this is a change from the previous total prohibition against such programs - but it comes with conditions.

If an employer implements a rate-based incentive program, it must also implement one or more of the following programs to "counterbalance" the potentially deterrent effect of the rate-based incentive program:

- An incentive program that rewards employees for identifying unsafe conditions;
- A training program for all employees to reinforce their right to report injuries free of retaliation;
- A mechanism for evaluating employee willingness to report injuries.

OSHA notes that merely stating that employees are encouraged to report injuries free from fear of retaliation is not adequate to counterbalance the deterrent effect of a rate-based incentive program.

Click now to read the OSHA Memo.

This article was prepared by Gary Auman of Auman, Mahan & Furry

OMA Legal Counsel

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OMA Legal Counsel
NEW OMA Member Benefit

What is it?

The Association has entered into an agreement with the law firm of Auman, Mahan & Furry to provide the OMA membership with this unique service.

What does it cover?

Auman, Mahan & 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 OMA.

How do I use the plan?

The primary purpose of this service is to provide OMA 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 OMA member is entitled to one consultation per month either by telephone 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 Auman, Mahan & Furry, please ask for Gary Auman and identify yourself as an OMA Member calling under the Legal Services Plan.

What if I need additional help?

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

How do I contact Auman, Mahan & Furry?

Gary Auman
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110 North Main Street, Suite 1000
Dayton, OH 45402
(937) 223-6003
gwa@amfdayton.com

SAVE THE DATE

OMA Annual Golf Outing
Thursday, May 23, 2019
Golf Club of Dublin
10:00 AM Shotgun
Registration opens January

800-443-6779
www.ohiomasonry.org