

# Cast in Stone

Summer 2010



President's Message,

After listening to the dismal July jobs report this week on CNBC it became apparent to me, as the commentators were musing over unemployment filings maintaining 9.5% and effective unemployment holding at 16.8%, the road to economic recovery and return to growth is again stalling. This almost seemed counter intuitive to me given how many companies reported better than expected earnings. What I came to realize as I sat there nursing a bad foot listening to all this is that the consumer is really the key in this third and hopefully final leg of the recovery. With unemployment remaining high, consumers confidence has to be at very low levels. Households across the US are either spending little, retiring debt or saving money - mine included! This entrenchment of the consumer, I believe, is the final piece to fall on this recession before real recovery begins. To remind folks this recession began with the housing market falling apart, homeowners defaulting on loans and then the banking system coming close to failure drying up business operating loans nationwide. The nature of this recession and Washington's reaction to it has finally filtered down to the consumer.

However, most disturbing to me as CNBC was going through the business of the day, was the simultaneous announcement by Congress that the Senate passed a \$ 26 billion plan to keep Medicaid going for 6 more months (\$16 billion) and for another state government bailout for essential services (\$10 billion). Part of this new \$26 billion dollar spending plan, will be paid out of the federal highway trust fund - a \$2.2 billion rescission in state held highway contract authority balances. The "Jobs Report" noted that nationwide construction jobs fell another 11,000. Aside from the Medicaid issue, I guess the only logical conclusion is that Congress is willing to sacrifice more private construction jobs for state workers. This is not good news for our industry. At the time of this message I do not know what the impact to Oregon will be.

Washington is not pro business and they have no idea how to get us out of this economic downturn. Throwing money at the public sector was an absolute dismal failure, in my view, even though the

highway industry got a small percentage of it. The best thing Washington could do is simply get out of the way and let the private business sector work through this uncertain period and allow the consumer time to absorb their debt and begin spending again. I do not believe that recovery will truly begin until the consumer returns to a financial position where he or she is gainfully employed, has his or her financial balance sheet in order and begins to feel comfortable in the direction the country is headed.

It seems counterproductive to restoring consumer faith to again see Government raising taxes and spend huge deficits to promote public sector jobs. It cannot be too much to ask for the public sector to share in the sacrifice. But more importantly, the cost of government is not sustainable. Until the private sector gets its footing, tax receipts will continue to fall or be at levels unable to support the cost of government. Unfortunately, this leaves public employees' jobs at risk. I believe that until government goes through the same winnowing processes, as painful as it is, that the private sector has just gone through, that the burden of government will keep the economy weak for years to come. This message does not seem to be resonating with those in charge!

## The 2010 Excellence in Concrete Award Program Winners:

### Bridge Category:



*15 South Medford  
Interchange*



*15 Beltline Flyover*

**"For every complicated problem, there's a simple solution... and it's wrong!"**

Umberto Eco

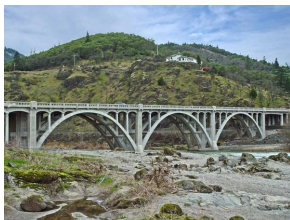


Back in the early days of Saturday Night Live, Dan Ackroyd and Jane Curtin used to engage in a mock dialog satirizing the talking heads on TV news shows. While I won't go as far as Dan Ackroyd would, I do have to say that I think Rich has oversimplified.

Blaming everything on the Government might be a useful fundraising tool, but it's definitely an oversimplification of a complicated problem. It would be equally correct to blame everything on Wall Street. If I may indulge in a little partisanship here (even though I'm not a Democrat any more), there are those who conveniently forget that the periods when the federal deficit expanded fastest were during the Reagan and "W" administrations.

I agree with Rich that the government can't simply spend our way out of a recession, and that Washington, D.C., Salem, Sacramento, and most other capitals will have to think hard about the size of government we can afford. We are further burdened by the vast amount of resources tied up in entitlements (including some, such as Medicare and Social Security, that I find I have an increasing personal interest in as I near retirement). In many instances, there is no right choice about what to do.

However, I am not so certain that the solution is for Washington to "simply get out of the way and let the private business sector work through this uncertain period and allow the consumer time to absorb their debt and begin spending again." There is no question that without government intervention the situation would have been incalculably worse than it is now. Imagine where we might be if the capital markets

**Commercial Category:***bSide6***Craftsmanship Category:***Portland Zoo  
Predators of the Seregeti***Historical Bridge Category:***Myrtle Creek Bridge***Mixed Use Category:***The Meridian***Parking Category:**

had been allowed to stumble into complete disarray. If nothing else, the federal bailout maintained some semblance of order.

I do tend to look with some concern about the policy choices that have been made in the wake of the housing collapse. The prevailing wisdom seems to be that if we inject enough cash back into the system the ship will right itself, the breezes will blow from the right direction and we'll get moving again. The Bush Administration's solution (which Obama followed up) was to give money to the banks...who sat on it, except what they paid in bonuses to executives. The Obama solution seems to be to prop up the floor of the social safety net by extending unemployment benefits and partially filling the shortfalls in state budgets. More prudently, they have acted to mitigate the effects of wholesale foreclosures by working to refinance some of the upside-down mortgages. However we got into this mess, it is in nobody's interest - not banks or borrowers, not even taxpayers - to dump millions of homes onto an already-depressed housing market.

However, this all seems like plugging the leaks in an antiquated dike. We tend to forget that President Obama himself stated in his inaugural that it would take a long time to repair the damage done to our economic system. While it may be politically expedient to some to create the expectation of a quick fix, that hardly seems to me to be in the best interests of American business or the American taxpayer.

Although the President appears to understand that we have arrived at a point where we need to re-examine some of the fundamental underpinnings of our economy, it's questionable whether he will be able to withstand enormous pressure and act appropriately. Here in Oregon the Legislature and the Governor chose to raise taxes as a short-term expediency and probably to the long-term detriment of all Oregonians. The pressures both from within and from outside the President's core constituency may similarly force him toward similarly politically expedient policies.

We have become a society that functions by consuming wealth rather than creating it. For the last 60 years or so growth has largely been fueled by our increasing appetite for consumer goods. Yet for the past 20 years or so America's real wages have declined, meaning that for the last generation at least, the rising standard of living has been debt-financed. Further, we have reached the end of the era of abundant and therefore low-cost natural resources. I believe we are groping toward a new and more sustainable economic model in which growth is not crucial to our well-being. In any event - and for a variety of reasons - we will likely see an across-the-board lowering of our standard of living.

I believe that President Obama's goal has been - and continues to be - to buy time for our economy to accomplish this transition in a relatively stable fashion. The alternative, probably, is 1931, when the fires burned bright across the hobo jungles of America. I don't know if he will be



*Sunnyside Parking Garage*

**Paving Category:**



*Bowyers Market Place*

**Privately Funded Category:**



*George R White Library*

**Publicly Funded Category:**



*Clackamas County Developmental Service Building*

successful, or if this is even possible and the collapse is inevitable. In my view, these are desperate times. I cannot say for sure that the President has done the right thing - only time will tell - but it is certainly true that things would have been a hell of a lot worse had he done nothing.



**Fred Kamph - OCAPA Chairman**

The summer construction season is quickly coming to an end. Many are still wondering when the economy will start to turn around. I do know the economy will improve, I just don't know when; hopefully sooner than later!

As our industry is fighting a poor economy, we are continually in a battle with different government agencies that do not have our best interests at heart. First on my list is MSHA. Their unreasonable citations and inconsistent inspections have created an adversarial relationship with producers. Our accident rates and statistics compared to other industries prove that their heavy handiness is unnecessary as well as unjust. Hopefully this may enable us to work with legislators to make reasonable and meaningful changes.

While MSHA is at the top of my list, other issues such as DEQ and NOAA all require our attention. The importance of OCAPA in these times cannot be overstated. While we all support OCAPA monetarily and many are involved in different ways, we need to communicate to our employees the importance of the issues facing our industries. Let them know how their livelihood is affected and the importance of voting wisely.

As an organization we want only what is fair and reasonable. In times like these, we need to band together and commit our time and resources to achieve the goals that will sustain our industry for the future.

**Tilt Up Category:**

*Spirit Mountain Casino  
Expansion*

**Utility Category:**

*Sunset Reservoir*

## **CONTRACTOR WORK SHOP**

August 31st, 2010  
Wilsonville, Oregon  
8:30AM-10:30AM Discussion

**Do you have contractors working at your mine site?** If so, please inform them of this free informational meeting designed to better educate, organize and prepare them to meet the compliance requirements of MSHA. The meeting will be conducted by the Small Mines Division of MSHA and will be held in Wilsonville, Oregon.

## **Aggregate Producers Feel the Heat as MSHA Enforcement is on the Rise**

Regulators are under intense pressure to tighten workplace safety regulations and impose tougher penalties on violators, following several recent fatal coal mine disasters. Tensions are high between industry and lawmakers, as they seek to strike a balance between addressing workplace safety concerns and imposing costly-sometimes economic "death knell"-requirements on contractors in order to encourage workplace safety.

The Mining Safety and Health Administration (MSHA) has broad jurisdiction, ranging from expansive coal mining operations on the East Coast to small family-owned gravel quarries in Oregon. Although coal mining in Pennsylvania is dramatically different from aggregate production in Oregon, local operators are subject to the same stringent MSHA regulations.

But MSHA's rules offer little guidance to operators. It is impossible to distinguish operational and enforced requirements necessary for compliance in a quarry setting as opposed to subsurface coal mine operations. The lack of specific guidance gives MSHA unfettered discretion to enforce safety rules, which makes citations a near certainty during inspections.

In addition, operators are concerned that the enforcement climate has become too focused on the quantity and gravity of citations, rather than on a cooperative effort to create safer work environments. They have accused MSHA of operating with performance metrics that include secret enforcement quotas. MSHA denies these allegations.

Fatalities continue to occur despite increase in citations and penalties: recent data compiled by an Oregon industry group suggests that even with the recent surge in citations since 2006, there has not been an effective or measurable redirection in workplace injuries or fatalities.

### **How Should Mine Operators Comply?**

MSHA's penalty structure imposes serious consequences on operators with multiple violations, no matter how trivial each citation may be. Operators must be diligent in their efforts to provide safe workplaces, to comply to current MSHA regulations, and to prepare for a tougher enforcement regime. To avoid the severe civil and criminal penalties imposed by current MSHA regulations and prepare for new reform, operators must:

1. Educate Workers on MSHA's "Rules to Live By." MSHA recently published a new fatality prevention initiative that focuses on 24

**What is an Independent Contractor?**

Independent contractor means any person, partnership, and corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine.

**Types of services Contractors Provide:**

Electrical testing, repair, installation, Gold Recovery Services, Portable Plant Operations (Crushing and Sizing materials), Drilling and Blasting, Construction of mine facilities, Equipment service or repair (for 5 consecutive days or frequently to show a pattern), Tire Repair, Excavation or earthmoving activities involving mobile equipment, (Interplant haulage, Plant to plant haulage), Equipment installation such as crushers and mills, Demolition of mine facilities, Construction of dams, Mine development, Utility Services (on mine sites)

**How will the meeting be conducted?**

Discussion will be approximately 1 - 1 ½ hours. Contractors will then be given a comprehensive binder and assisted individually by one of the Small Mines staff in reviewing the binder and assisting with any other needs. Contractors may leave and schedule an appointment for later in the

frequently cited standards, 13 of which are for metal/nonmetal mining.

2. Study the MSHA handbook series. Recent citations have been issued in Oregon for violations that may not otherwise fall under the "common sense" test. Operators should study the MSHA handbook series that is available at

<http://www.msha.gov/READROOM/HANDBOOK/HANDBOOK.HTM>. The handbooks provide very specific information that may be used by inspectors to identify MSHA violations in a quarry.

2. Report accidents to MSHA immediately. Operators who do not notify MSHA of an accident that has "reasonable potential to cause death" can face up to \$60,000 in penalties. Train your workforce on the procedures to call for help and contact MSHA in the event of an emergency.

3. Give the inspector documents only upon request and a showing that it is required by law. If an inspector requests records, ask which rule requires the document to be produced. Most records do not have to be produced at the inspection, and a reasonable time is allowed for production of documents to MSHA after the inspection. Some records do not have to be produced at all.

4. Remedy unsafe conditions as soon as they are discovered. Operators face significant penalties for failure to abate a hazard that has been cited by an inspector. Even if a citation is contested, if a subsequent inspection cites the same unsafe conditions, the prior citation will be used to show that the operator was on notice and could provide a basis for an "unwarrantable failure" citation.

5. Don't argue with the inspector. An argument with an inspector is ineffective and most times detrimental and can lead to an inflamed inspector's increasing the gravity of a citation. Always remember that anything you say can and will be used against you in court, while silence is not an admission and can never be used against you. Save your arguments for the contest of the citation after you have time to organize your legal arguments.

6. Don't lie. Lying provides MSHA with a basis for criminal prosecution. This extends to oral statements as well as falsified documents.

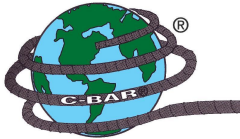
7. Contest a citation if it is unfounded, no matter how minor the penalty. You have a constitutional right to due process. If you have a valid reason to contest a citation, contest it. Even if the citation involves only a few hundred dollars, it could mean a total mine shutdown if multiple citations are issued over time.

8. Continue educating workers and site visitors on the law. Make sure

week at their convenience.

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**NEW Member:**  
**Marshall Composite  
Technologies**



**MARSHALL COMPOSITE SYSTEMS, LLC**  
SALEM - Marshall

Composites, LLC celebrated the grand opening of its Salem facility and worldwide training center at 3:30 on July 6, 2010, and welcomed United States Senator Ron Wyden as a guest speaker for the ribbon cutting ceremony.

Marshall Composites, a recognized name in the composites industry, has opened a manufacturing plant to produce C-BAR, a composite alternative to traditional steel re-bar. C-BAR is a proprietary fiber-reinforced polymer with one and a half times the tensile strength of steel, with one-quarter the weight. C-BAR has been tested, approved and certified for use in all concrete applications, with several key advantages, primary being that it is completely resistant to rust and corrosion - the major cause of structural failure with traditional steel re-bar.

every person on the site has access to a copy of the MSHA laws, the MSHA Program Policy Manual, and the MSHA Handbook. Moreover, your workforce should have a thorough understanding of the standards and how they apply to a worksite.

With new MSHA reform in the pipeline, it is important to know the current law and how new legislation will impact your operations. If a citation is issued on a worksite, contact your attorney to discuss options to avoid significant civil and criminal penalties.

Katie E. Jeremiah is an attorney in Jordan Schrader Ramis's Dirt Law® practice group. She assists clients in matters involving construction and mining law. Katie graduated from OregonStateUniversity with a Bachelor of Science degree in construction engineering management and from Lewis & ClarkLawSchool with dual certificates in environmental law and business law. You can reach Katie at 503.598.5539 or by email at [katie.jeremiah@jordanschrader.com](mailto:katie.jeremiah@jordanschrader.com).

**[EPA says 'no' to Ash Grove on mercury, but Durkee plant's future might be saved anyway](#)** (click here to read the article)

**Grandfathered Plans &  
Health Care Reform**  
by William P. Russell,  
CHC, HIA Senior Associate - CFP Inc.

The Health Care Reform Act, which is now being referred to as the "Affordable Care Act," was signed into law on March 23, 2010. Supplemental provisions, the "Reconciliation Bill," were enacted on March 30, 2010. This new federal law will soon require group health plans to comply with an array of new minimum benefit standards. However, requiring changes to be made to a plan is contrary to the pre-enactment promise of the Obama administration that "people who like their current coverage can keep it." As a compromise, the law, as ultimately passed by Congress, holds that a plan that was in effect on March 23, 2010, and which stays in effect without change, will be exempt from certain provisions of the new legislature.

The IRS, along with the Departments of Labor and Health and Human Services, recently issued interim regulations providing guidance on the scope of the exemption accorded to so-called "grandfathered health plans." Unfortunately, the regulations are purposely designed to discourage employers from reducing benefits or shifting rising costs to

This means that structures made with C-BAR will have a dramatically increased lifespan and will cost far less over time.

Located at the Salem Advanced Technology Center (SATC), the Marshall plant will serve as the worldwide training center for technicians learning to operate the C-BAR machinery as new plants are established. Much of the equipment for future plants will be manufactured in the Willamette Valley, using local fabricators. The Salem facility employs up to 20 people. The SATC campus is also home to Oregon Ballistic Laboratories, LLC, Composite Materials Research and Development, LLC, and laboratories and production facilities for High Impact Technologies, LLC of Tigard, Oregon. The synergies achieved by these companies has enabled the establishment of the latest company, Marshall Composites, LLC.

The opening of the Marshall facility was a unique collaborative effort, combining private resources, lottery money from the Marion County Economic Development Advisory Board and assistance from the Oregon Economic and Community Development Department, through the Governor's Strategic Reserve Fund. Each of these partners came together with the common goal of creating

employees. In addition, merely purchasing a new insurance policy or changing carriers after March 23, 2010, will cause a plan to lose its grandfathered status (unless subject to a collective bargaining agreement).

Many employers may conclude that the advantages of maintaining a plan's grandfathered status is outweighed by the need to modify the design of the plan to reduce costs. In support of this fact, the Department of Health and Human Services (HHS) has projected that by 2013, as few as 36% of large plans, and 20% of small plans, will remain grandfathered.

The interim final rules issued on June 14, 2010 provide that a group health plan or health insurance coverage no longer will be considered a grandfathered health plan if a plan sponsor or an issuer makes any of the following changes:

- Eliminates all or substantially all benefits to diagnose or treat a particular condition.
- The plan increases a percentage cost-sharing requirement (such as coinsurance) above the level at which it was on March 23, 2010.
- The plan increases fixed-amount cost-sharing requirements other than copayments (e.g., a \$500 deductible or a \$2,500 out-of-pocket limit) more than the maximum percentage increase identified by the rule.
- The plan increases fixed-amount cost-sharing requirements for copayments more than the allowed amount.
- A group health plan or group health insurance coverage decreases the employer's contribution rate by more than five percentage points below the contribution rate on March 23, 2010.
- A plan makes certain changes with respect to annual or lifetime limits.

#### Policies Sold After March 23, 2010

Any policies sold in the group and individual health insurance markets to new entities after March 23, 2010, will not be grandfathered health plans even if the health insurance products sold to those subscribers were offered in the group or individual market before March 23, 2010.

Example: A group health plan not maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer X on March 23, 2010. For the plan year beginning Jan. 1, 2012, the plan enters into a new policy with Issuer Z. In this example, for the plan year beginning Jan. 1, 2012, the group health insurance coverage issued by Z is not a grandfathered health plan

family wage, traded sector jobs. These grants helped pay for the capital construction and engineering to get the facility production-ready.

### OCAPA Scholarship Winner:



### MacKenzie Garton

*"Thank you for selecting me as your scholarship recipient! I'm sorry I missed your annual conference as it would've been nice to meet all of you in person.*

*As such, I have included a picture of what I was doing at that time. In the picture, myself and another student are measuring a gravity fed water system in Tanzania which our club is looking to construct a treatment system for. I thought you might get a kick out of the rebar finishing too! Anyway, I just want to let you know that I truly appreciate your generosity in my journey to further my education. With your help, I can graduate without the stress and worry of financial instability.*

*Thanks again!  
MacKenzie Garton"*

Mackenzie is Civil Engineering student at the Oregon Institute of Technology

because the policy issued by Z did not provide coverage on March 23, 2010.

Thus a change in insurance carriers will eliminate grandfathered status.

#### Disclosure Required to Maintain Grandfathered Status

To maintain status as a grandfathered health plan, a plan or health insurance coverage (1) must include a statement, in any plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or health insurance coverage believes that it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act and (2) must provide contact information for questions and complaints.

#### Documentation Required to Maintain Grandfathered Status

To maintain status as a grandfathered health plan, a plan or issuer must also maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered health plan. Such documents could include intervening and current plan documents, health insurance policies, certificates or contracts of insurance, summary plan descriptions, documentation of premiums or the cost of coverage, and documentation of required employee contribution rates. In addition, the plan or issuer must make such records available for examination. The plan or issuer must maintain such records and make them available for examination for as long as the plan or issuer takes the position that the plan or health insurance coverage is a grandfathered health plan.

#### Collective Bargaining Agreements

In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements ratified before March 23, 2010, the coverage is a grandfathered health plan at least until the date on which the last agreement relating to the coverage terminates. Thus, before the last of the applicable collective bargaining agreement terminates, any health insurance coverage provided pursuant to the collective bargaining agreements is a grandfathered health plan, even if there is a change in issuers (or any other change) during the period of the agreement.

This provision only applies to insured plans maintained pursuant to a collective bargaining agreement and not to self-insured plans. After the date on which the last of the collective bargaining agreements terminates, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered health plan coverage is made in accordance with other group health plans.

#### Required Actions by Employer

The accompanying chart has been prepared to indicate the provision of

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OCAPA Staff

Save The Date!

health care reform, the time frame for employer action and what action is needed.

For assistance in managing your health care plan and making sure your all your employee benefit plans are in compliance with applicable provisions, contact Bill Russell of CFP at 888-588-2988 ext. 312 or via e-mail at [billr@cfpinc.net](mailto:billr@cfpinc.net).

OCAPA - Annual Meeting Awards



KC Klosterman, *Eugene Sand & Gravel*, receiving the **Chairman's Award** from Bob Short, CalPortland



Dorian Kuper, Kuper Consulting, receiving the **Environmental Stewardship Award** for **Bernard Smith**, *West Lake Consultants*, from Rich Angstrom, President of OCAPA.



Paul Hribernick, *Black Helterline, LLP*, receiving the **Associate of the Year Award** from Rich Angstrom, President of OCAPA.





Steve Frey, *Knife River*, received the **Rocky Award**.

OCAPA ANNUAL  
MEETING

June 23 - 25, 2011 at

Seventh Mountain  
Resort  
Bend, Oregon

*Mark Your Calanders  
Now!*

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