

CRCA TODAY

WINTER 2018

The Magazine
of Roofing and
Waterproofing
in Illinois
and Beyond

CRCA Trade Show & Seminars

3 Cs of Surety

OSHA Citation Defense—
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FEATURES

35th Annual Trade Show & Seminars— “Roofing Week in Chicago—35 Years Strong!”	5
Meet the New Boss . . . Scott Mugno Nominated to Be the Next leader of OSHA.....	7
Roof Talk—CRCA Member Spotlight.....	9
Surety Bond Basics.....	11
Unforeseeable Employee Misconduct Defense to an OSHA Citation.....	19
Industry News	22
CRCA Contractor Members	26
CRCA Associate Members	29
Industry Calendar.....	31



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35th Annual Trade Show & Seminars— “Roofing Week in Chicago—35 Years Strong!”

By Troy Wormley

As the Chicago Roofing Contractors Association’s 2018 President, I invite you to attend and participate in the CRCA Trade Show and Seminars, January 18-19, 2018. As CRCA Attendees and Exhibitors will tell you, this show continues to deliver quality education and the best in Roofing and Waterproofing Exhibitors. Best of all, CRCA’s Exhibit Hall and Seminars on Thursday afternoon and Friday are FREE!

CRCA continues to provide a venue for all Roofing and Waterproofing Contractors, Consultants, Manufacturers, Architects, Specifiers, Building Owners and Managers and Building Code Officials to expand their knowledge in technology, safety, products and services, all aimed at developing the highest level of Professionalism. In addition to the CRCA Trade Show & Seminars, I invite you be active in our industry by joining CRCA as a member and volunteering for a CRCA Committee.

CRCA’s Trade Show & Seminars continues to build on its national reputation for cutting edge programming through the hard work of Trade Show Committee Members Rod Petrick, Greg Dedic, Matt Adler, Dave Good, Greg Johnson, Jason Peterson, Ryan Petrick, Ross Ridder, Tony Roque and Matt Wehrle. On behalf of CRCA’s Trade Show Committee and Board of Directors, a big thanks to the Exhibitors and Sponsors for helping make this event a continual success.

The 2018 theme, “Roofing Week in Chicago—35 Years Strong”, sets the tone for the CRCA’s Education Sessions beginning with Wednesday’s Chicagoland Women in Roofing and Emerging Leader Committee’s forum “Defining Career Path Strategies”. Thursday’s CRCA Roofing Industry Breakfast will give attendees a sample of the full range of all educational programming. Seminars begin Thursday afternoon and continuing Friday. Come learn about Ventilation & Balance, Litigation from a Roofing Industry Perspective, ICE & Employee Verification (I-9 Compliance), Safety, Insurance Claims Navigation, Structural Lightweight Concrete and ending with important Code Updates. CRCA’s wide-ranging seminars and exhibits are geared for those who install Steep and Low Slope Roofing, those that spec it, those that regulate, those that manage and more.

This year’s CRCA Trade Show Committee’s goal is to offer the educational resources for attendees to develop best practices which will ultimately provide building owners and managers the best roof, waterproofing, insulation and/or air barrier that can be found anywhere. Register online today at www.CRCA.org. See you in January! 🏠



Troy Wormley, W.B.R. Roofing Company, Inc.
2018 CRCA President



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Meet the New Boss . . .

Scott Mugno Nominated to Be the Next leader of OSHA

By Frank J. Marino, CSP



Frank J. Marino, CSP

Just 280 short days after President Trump took office, the new leader of OSHA has finally been nominated. On October 27th, 2017 President Trump nominated Scott Mugno, who is currently serving as Vice President for Safety, Sustainability and Vehicle Maintenance at FedEx Ground.

If confirmed, Mugno would take over the position at OSHA from Loren Sweatt, who has been serving as the acting assistant secretary of labor since July 24th of this year. According to an article published in the December issue of *Safety & Health*, Mugno has worked at FedEx since 1994, joining the company as a senior attorney. From February 2000 to December 2011, he was managing director of corporate safety, health, and fire prevention until his promotion to Vice President (*Safety & Health*, 2017).

Mugno also has served on several American Trucking Association committees and is the chairman of the American Transportation Research Institute's Research and Advisory Committee. "Scott is a very familiar face to ATA, having been a longtime and active member in our organization," ATA president and CEO Chris Spear said in a press release on October 27th. "Throughout that whole time, he has been a strong and committed voice for safety and responsibility. He is an outstanding choice to lead OSHA, and I look forward to working with him after his swift confirmation" (*Safety & Health*, 2017).

But not everyone is as supportive as the ATA. Jordan Barb, who was Loren Sweatt's predecessor, points out several areas of concerns with Mugno's approach. These concerns include Mugno's support for "sunset provisions"

(meaning some of OSHA regulations should have fixed time period until they are discontinued). Barb also points out that Mugno, who is the current OSHA subcommittee chairman of the US Chamber of Commerce's Labor Relations Committee, which has been noted as a regulatory opponent, filed suit against OSHA's Improved Tracking of Workplace Injuries and Illnesses final rule in January (*Safety & Health*, 2017).

According to a source, Mugno addressed jail time for safety violators, regulations, making citations public and more at his confirmation hearing before a U.S. Senate committee on December 5th, 2017. The two-and-a-half-hour hearing shed no light on Mugno's positions on regulations such as injury/illness reporting or silica. Mugno would not commit to changing OSHA's press release policy and did not give a firm answer on whether the Department of Labor should avoid contracts with companies that are health and safety violators. The nominee supported expansion of OSHA's Voluntary Protection Programs which recognize employers that have implemented effective safety and health management systems. Mugno also expressed support for the role organized labor has played in workplace safety.

Sen. Patty Murray (D-WA), ranking member of the Senate's Health, Education, Labor and Pensions Committee, wanted to know how Mugno will protect workers. In an October 30 press release, Murray said Mugno "has spent his entire career working for big business, so I look forward to hearing how he plans to stand up for workers and continue OSHA's active role in deterring corporations from endangering workers' health and safety." (*Safety & Health*, 2017). Time will tell if she received the answer she was looking for.

Effective health & safety programs have benefits far beyond OSHA compliance, a concept that should not be lost in this discussion on who's next to head OSHA. No

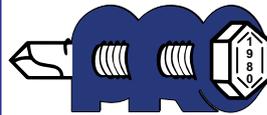
matter what happens with the confirmation, contractors should measure their expectations of the impact Mugno may have on their day to day operations. I will admit that going from a democratic administration to a republican administration is a significant swing in perspective and approach. But then again, politics can be a funny thing. Maybe Pete Townsend, of the famed rock group, *The Who*, said it best:

Meet the new boss . . . same as the old boss. 🎸

References:

National Safety Council, Safety & Health, December 2017

Frank J. Marino is a partner at Safety Check, Inc. He can be reached at fmarino@safetycheckinc.com. Safety Check has been serving CRCA Members as CRCA's Safety Consultant for over fifteen years.



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Roof Talk—CRCA Member Spotlight



Editor's Note: Each Issue of CRCA Today will feature individual CRCA Members and the products and services they offer. Watch for more information in upcoming issues!

Company: Pro Fastening Systems, Inc.

Location: Arlington Heights, Chicago (Ink Smith branch), Indianapolis, Milwaukee

Business Founded: 1980

Number of Employees: 37

Joined CRCA: 1982

What services does your business offer?

PRO stocks fasteners, adhesives, sealants, repair tapes, and just about any other fastening product you'd come across on a commercial jobsite. Getting quality materials to your job when you need them is our day-to-day business.

What distinguishes PRO is the extra value we bring to our customers. PRO offers infrared roof scans, custom in-house fastener painting, productivity tools and fastening systems to make your jobs more efficient. On top of that, we are very experienced! Between inside sales, outside sales and management we have a combined 350 years of fastener, adhesive and sealant knowledge to help give our customers the right advice.

Where do you see your business in 5-10 years?

We'll continue to strive to be at the forefront of fastening technology. We'll also continue to bring in "fresh faces" to help us grow as a value added supplier to the CRCA contractors. As our industry grows with technology, PRO is committed to finding ways to use technology to help our customers succeed.

What is the best business memory to date?

It's hard to pin-point just one but winning the CRCA Associate of the Year in December, (for the second time), certainly ranks up there. Being the first supplier to bring automated fastening to the market place—first the Accudrive and then the Accutrak Systems, are two of our best memories. Those labor saving tools helped launch our company and saved our customers a lot of labor on jobs like Fox Valley Mall, (thanks, George) and McCormick Place, (thanks Jay).

How did you learn about the CRCA?

It's been a long time, but it probably came from being recruited by one or more of our CRCA customers.

If you attend CRCA events, can you describe a benefit of attendance?

It helps us stay connected with our core customers and at the same time gives us a chance to meet new faces.

What value does CRCA membership bring to you?

It keeps us on top of the hot topics in the industry and helps us adjust our product lines to stay relevant to what's important to our customers.

What advice would you give a new CRCA member?

Get involved, CRCA is a great trade association. Go to meetings, functions and outings. Socialize with your peers and trade technical information—there's a lot to be learned.

Is there anything additional that you would like to add that was not asked/mentioned?

Over the years Pro has been an exhibitor in a lot of different trade shows. We have been an exhibitor in every single CRCA Trade Show going all the way back to the first one at the Westin O'Hare. By far, the CRCA Trade Show is the best show for us and should not be missed by anyone in the industry. 🏠

Editor's Note: Pro Fastening is one of the 20 out of the 135 Exhibitors in the January 18/19, 2018 CRCA Trade Show & Seminars that have participated for all 35 years!



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Visit the NRCA booth to learn more about NRCA membership
and how we can help your business thrive in 2018.



Surety Bond Basics

By Bryan Adams, CRIS and Brien Spoden



Bryan Adams, CRIS



Brien Spoden

It was the project they wanted. Having completed similar, profitable work before, XYZ Roofing knew they could be successful on this job. However, the project required a surety bond, and XYZ hadn't performed work requiring bonds in the past. While this contractor didn't want to walk away from the work, they also didn't know where to begin.

What Is a Surety Bond?

Understanding the basics of surety bonds can help a contractor establish a relationship with a surety, create new work opportunities, and improve the overall financial position of the company. There are multiple types of bonds that most contractors need to conduct business. When working with unions, there are Wage and Welfare Bonds, and when working for a city or village, there are License and Permit Bonds (known as Commercial Surety Bonds). Bonds that require a more thorough pre-qualification process are Bid, Performance, and Payment Bonds (known as Contract Surety Bonds). The need for contract surety bonds is often seen on public projects to act as a protection for taxpayers who are inevitably funding the work. They can also be required on private work to satisfy lenders or the owner of a project who seek the guarantee afforded by these products.

Unlike insurance, which is a two-party contract between a contractor and the insurance company, contract surety bonds are three-party instruments. The bonding company (SURETY) guarantees a project owner (OBLIGEE) the successful performance of a project by a contractor (PRINCIPAL). Before the above-mentioned

Performance Bond is needed, the contractor is often required to post a Bid Bond at the time of bid. The Bid Bond guarantees that a contractor has been pre-qualified by a surety and assures that the low bidder will enter into the contract and provide the required Performance Bond. Included with the performance guarantee is a Payment Bond, which assures the owner that the contractor will pay their laborers, subcontractors, and suppliers. Should a claim arise, the surety may intervene to remedy the default, essentially "standing in the shoes" of the contractor.

Surety Qualification

Before making a guarantee on behalf of a contractor, the surety looks to understand key elements of the operation such as ownership experience, financial health, and construction ability. Without this in-depth analysis of the contractor, a surety won't provide the bond, the same way a bank wouldn't provide credit if there was no financial ability to repay. A closer look at these elements of a surety bond relationship will provide insight as to why they matter to a surety, and how to improve these metrics for a better surety relationship. The fundamental approach to surety qualification is known as the "Three C's," which are *Capital, Capacity, and Character*. A contractor can demonstrate they meet these qualifications by accomplishing the following:

Three Cs of Surety

- ▶ Capital
- ▶ Capacity
- ▶ Character

- **Assemble a professional team.** A contractor can begin by working with a knowledgeable surety agent, who can help them navigate through the ins-and-outs of surety bonding and act as an

intermediary between the contractor (PRINCIPAL) and the bonding company (SURETY). Then, establishing a relationship with a construction-oriented CPA will enhance the credibility and accuracy of financial reporting. Surety companies value contractors that have sufficient financial measures such as equity, working capital, positive cash flow, and low debt levels to support their bonding needs. The ability to provide a credible financial statement substantiating these numbers and work-on-hand measures goes a long way. A contractor should also establish a good banking relationship to demonstrate they have sufficient cash and available borrowing power. These examples of *Capital* give the surety confidence that the company has a positive financial condition and solid professional relationships.

- **Ensure personal financial condition is in good shape.** As an extension of the previous *Capital* examples, the presence of personal net worth in the form of liquidity (cash, stocks, cash value of life insurance) and/or unleveraged (un-mortgaged) real estate will only strengthen a contractor's case for surety credit. Some surety companies will assign credit to personal net worth to help support a surety program. Often, owners of contracting entities are expected to sign a personal

guarantee (Indemnity Agreement). This assures the surety that the contractor will complete bonded obligations, even if it requires the use of personal assets to help finance the operations. In addition, it is important that contractors ensure their personal credit is favorable. In the eyes of the surety, a contractor who exhibits conservative personal financial practices is likely to manage their company in a similar manner, and vice versa.

- **Take pride in workmanship, reputation, and relationships.** This should go without saying for all contractors, but it is of the utmost importance to those that desire surety support. Contractors must be prepared to provide references demonstrating their *Character*. Surety companies put a lot of weight on a contractor's character, as it gives them assurance that the contractor has good integrity and will stand behind their work. Good indicators of positive character include items like job, supplier, and banking/credit references.
- **Start small and progress into larger projects.** Surety companies want to see contractors gain bonding experience with smaller projects and work their way up to larger single jobs and aggregate programs. One of the biggest risks a contractor can take is chasing a project that is much

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larger than anything previously accomplished. Even though a contractor may be financially strong, many factors will impact the ability to successfully complete a project. The job may be taken to stretch for new revenue goals, and unforeseen consequences of bringing in new and less experienced workers can be impactful. If unanticipated problems occur when a contractor is over *Capacity*, it can affect not only the single bonded job, but other work-on-hand. Surety companies also want to understand a contractor's plan for managing larger projects, and the experience of those doing the work. If there are new elements to a project, it is helpful to have a clear rationale on why the project is being undertaken.

- **Establish financial and operational continuity plans.** Surety companies want to know that contractors have identified a plan for experienced key employees to take over individual projects and the business operations if the owner is unable to do so. The surety is providing a guarantee that each bonded contract will be successfully completed, and the surety wants to ensure that the contractor can accomplish this internally. In addition, ownership transfers can often put a significant financial burden on a company when an owner dies suddenly or otherwise decides to leave the business. If a contractor plans to transition ownership to a new party (next generation, for example), it will be beneficial to involve the surety in the transition plan.

In Conclusion

Contracting is a risky endeavor, and surety companies underwrite contractors to determine the amount of surety credit for which they qualify. Following these basic steps is a good starting point when considering bidding and performing bonded work. A professional team should guide contractors through the process of verifying financial position, understanding work-on-hand, and the ability to secure future bonded work. The process is not an exact science. One contractor's needs may differ significantly from another depending on factors such as scope of work as well as single job size and aggregate program. Performing work on bonded projects doesn't guarantee that a contractor will be more profitable. However, the ability to pursue bonded work can lead to new opportunities, create new business relationships, and position the company for a successful future. 🏗️

Bryan Adams is a Risk Management Specialist with CRCA Member Firm, DSP Insurance Services in Schaumburg, Illinois. In his 3rd year at DSP, he works with middle market businesses to provide Insurance, Bonding and Employee Benefit solutions. He serves on the CRCA Emerging Leaders Committee and the Contracts and Insurance Committee. He also Co-Chairs the Safety and Insurance Committee for the ASA (Association of Subcontractors and Affiliates). Adams received his Construction Risk Insurance Specialist (CRIS) designation in 2016, and is now working towards his CPCU (Chartered Property Casualty Underwriter) certification. He can be reached at badams@dspins.com.

Brien Spoden is a Contract Underwriter with Merchants Bonding Company's Chicagoland office in Lisle, IL. Merchants, headquartered in Des Moines, IA, exclusively focuses on surety bonds and writes bonds in all 50 states. In his 5th year with Merchants, Spoden works with insurance/surety agencies in IL, WI, and MN to underwrite contractors and establish surety relationships. He is actively pursuing his AFSB (Associate in Fidelity and Surety Bonding) designation. He can be reached at bspoden@merchantsbonding.com.

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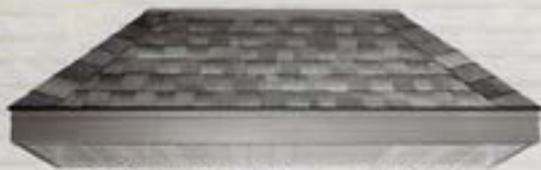
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“Roofing Week in Chicago - 35 Years Strong”



Thursday, January 18, 2018

9:00-11:00 am

CRCA Roofing Industry Breakfast “Roofing Week in Chicago - 35 Years Strong”

The 2018 CRCA Roofing Industry Breakfast panel sets the stage for two days of great education! Industry Leaders Matt Dupuis, Mark Graham, Tom Hutchinson, Brian Must, Dennis Runyan, Chris Thomas and Wade Tutt will give brief insights into their Thursday afternoon and Friday programs. Topics include Limiting Liability for Roofing Professionals, Roofing & Concrete Moisture Issues, Low Slope Commercial Insurance Claims, Employee Eligibility I-9 Forms & Compliance, Safety and Roofing Technical & Code Updates.

Crystal Ballroom/French Rooms, BREAKFAST PRE-REG REQUIRED—Walk In’s welcome at Exhibits and Seminars Breakfast is Free to Specifiers, Roof Consultants, Building Owners & Managers and Building Code Officials. Nominal Charge for Contractors, Manufacturers, Suppliers and Distributors.

CRCA Thursday Afternoon Seminars - Free to all

12:30-2:00 pm – “Ventilation & Balance, Residential Focus”. Paul Scelsi, Air Vent, Inc., provides insight into vent specifications including size and type, the International Residential Code requirements and more during this hard charging updated program. Don’t miss this popular speaker!

2:45-4:00 pm – “Roofing & Litigation Perspectives Panel”. Join Industry Experts Brian Must, Esq., (Metz Lewis Brodman Must O’Keefe LLC), Roof Consultant Tom Hutchinson (Hutchinson Design Group) and Roofing Contractor Dennis Runyan (Dryspace, Inc.) as they unravel ways from their perspectives to keep you out of court. Regardless of which role you play, this program has answers on technical issues to protect you and your company from liability.

2:45-4:00 pm – “I-9 Employee Eligibility Forms & Compliance – How Ready Are You?”. With current administration position on immigration, don’t be caught short. All companies need I-9 Forms from all employees on file. Contractor, Supplier and Consultant Office Staff, this session will prepare you for U.S. Immigration & Customs Enforcement (ICE) audits. Don’t be caught liable for huge fines if your paperwork is not in order. Chris Thomas, Esq. (Ogletree Deakins) will present.

Friday, January 19, 2018

CRCA Friday Seminars - Free to all

7:00-9:00 am – “Roofing Industry Safety & Silica Standard Education”. Presented by the CRCA Safety Committee, Frank Marino, CSP (Safety Check Inc.) and Safety Expert John Newquist, CSP (Newquist Safety-formerly with OSHA) provide in depth education about issues affecting roofing safety. This review will include OSHA fiscal year inspection data and the new OSHA Silica Standard. Geared for Roofing Company Owners, Foremen, Superintendents, Field Workers and other Roofing Professionals.

7:45-8:45 am – “Benefits of Using an Insurance Claim Adjuster”. Wade Tutt (Paramount Adjusters) will present on benefits of using an expert adjuster to handle insurance companies when roofing losses occur on commercial buildings. Contractors, Consultants, Specifiers, Building Officials and Building Owners will benefit as he connects the dots between the loss, claims navigation and more.

9:30-10:30 am – “Structural Lightweight Concrete – Proceed with Caution”. Have you roofed over it? Worked with it? Is it dry or wet? Who knows? Using data from research partially funded by CRCA, Matt Dupuis, PhD PE (SRI) will share current findings on how Structural Lightweight Concrete (SLWC) affects roofing – both short and long term – after the roofing contractor is off the project. There are brand new research results from testing conducted fall, 2017 in this important technical program.

11:15 am-12:15 pm – “Roofing Technical Issues – Can You Comply?” Mark Graham, (NRCA Vice President of Technical Services) will present important roofing technical issues including what to expect in the new 2018 International Codes, the 2021 International Energy Code development process and other key technical issues that affect roofing contractors, consultants and design professionals’ delivery of a functioning roof assembly to the building owner or manager. Don’t miss this fast paced and informative seminar!

THURSDAY EXHIBIT & SHOW HOURS

11:00 a.m. - 5:00 p.m.

Cash Lunch 11:30 am-2 pm

FREE Exhibits & Seminars, except BFST.

FRIDAY EXHIBIT AND SHOW HOURS

9:00 a.m. - 1:00 p.m.



35th Annual Trade Show & Seminars
January 18 & 19, 2018
Drury Lane Trade Conference Center, Oakbrook Terrace, IL
Thursday, January 18, 11 am to 5 pm, Friday, January 19, 9 am to 1 pm
FREE SHOW ADMISSION

35th ANNUAL CRCA TRADE SHOW & SEMINARS - EXHIBITOR LISTING

***Exhibitors in Red Indicate those exhibiting all 35 years!**

- | | | |
|--|---|--|
| <p>A & D Products -3
 A.C.T. Metal Deck Supply -302
 ABC Supply Co. Inc. -606,705
 ACH Foam Technologies -112
 Alco Products, LLC -701
 Allied Building Products, Corp. -506,605
 APOC Roof Coatings & Underlayments -310
 Architectural Building Solutions -107
 Arvinyl Laminates LP -208
 ASA Chicago -L3
 Atlas Roofing -808,809
 Barge Terminal Trucking, Inc. -213
 Berridge Manufacturing Company -23
 Big Rock Supply -10,11,32,33
 Bitec Inc. -305
 Bitumar Inc. -211
 Blue Ridge Fiberboard, Inc. -507
 Bone Roofing Supply -35,36
 Castle Metal Products -16
 Cedar Shake & Shingle Bureau -34
 CERTA Training Program -L2
 CertainTeed -513
 CHEM LINK -104
 Chicago Metal Supply -806,807
 Chicagoland Roofers JATC / Local #11 -706
 Chris Industries, Inc. -6,7
 Classic Gutter Systems LLC -405
 Columbia Green Technologies -811
 Cordeck -412
 Chicagoland Roofing Supply -818
 Comprehensive Roofing Solutions:
 - Cant Products -408
 - Slimguard -408
 - Kingspan Light & Air -408
 - MFM Building Products -410
 CSI Chicago -L4
 DA Sales & Marketing:
 - Chutes International -114
 - Cor-A-Vent -114
 - Flame Engineering -114
 Dataforma -24
 DaVinci Roofscapes -812
 DECRA Roofing Systems, Inc. -816
 DERBIGUM Americas, Inc. -201
 Disposal Alternatives -313
 Division 7-23 Group, LLC MW -105
 D-MAC Industries Inc. -203
 DURAPAX -214</p> | <p>Duro-Last Roofing, Inc. -39
 EcoStar LLC -505
 Emergent Safety Supply -804
 Eplay Inc. -512
 ER Systems -401
 EverRoof -609
 FCS Rfg. Software (Encite Dev. Gr.) -406
 FlashCo -22
 Gaco Western -40
 GAF -1,2
 Garlock Chicago -312,314,411,413
 GCP Applied Technologies -17
 Gemco Roofing & Building Supply -25
 Geocel - Uniflex Products -111
 Georgia-Pacific Gypsum -37
 Giuffre Midwest -702
 Gulfeagle Supply -403
 HAPCO INC. -212
 Henry Company -612
 Houseworks Daylighting Solutions, LLC -805
 Hunter Panels -106
 ICP Adhesives & Sealants, Inc. -409
 IKO -510
 Industrial Cork Co., Inc. -101,103
 Inland Coatings -810
 Insulation Solutions, Inc. -613
 Insulfoam -511
 International Leak Detection -306
 JJ Superior Metal Inc. -38
 Johns Manville -4,5
 Karnak Corporation -42,43
 Kemper System America -210
 Lakefront Roofing Supply -12,13
 Lakeshore Recycling Systems -303
 Leister Technologies -311
 LiveRoof -304
 Lomanco, Inc. -18
 Malarkey Roofing Products -703,704
 McElroy Metal -716
 MEP Insulation Recycling -508
 Mid-States Asphalt -607
 Midwest Diversified Products Inc. -204
 Midwest Roofing Supply -714
 Midwest Siding Supply -20
 Mule-Hide Products -708
 NRCA -L1
 Nord Bitumi / Nordtec -205
 North Coast Roofing Systems -801,802,803</p> | <p>Novagard Solutions -21
 OMG Roofing Products -8,9
 Omni Ecosystems -707
 PAC-CLAD / Petersen -28,29
 Pinnacle Sales
 -American Roofing Services -309
 -Marathon Roofing Products -307
 Polyglass USA -710,712
 Portals Plus/Milcor-Hart & Cooley Inc. -202
 Pro Fastening Systems, Inc. -30,31
 Progressive Materials, LLC -404
 Quality Building Supply -814,815
 R.M. Lucas Co. -14,15
 RAINDROP Gutter Guard System -501
 Richards Building Supply -509
 RK Hydro-Vac, Inc. -709
 Roofmaster Products Company -301
 Royal Adhesives & Sealants -26,27
 Runnion Equipment -614,713
 S.J. Mallein Co. -608,610
 Safety Check Inc. -41
 Safety Rail Company -206
 SFS -207
 Sharkskin Roof Underlayments/KBP, LLC -308
 Sheet Metal Supply LTD. -718
 Sika Sarnafil -711
 Sno-Gem, Inc. -19
 SOPREMA -102
 Southwind RAS LLC -209
 TAMKO Building Products, Inc. -402
 Tarco -503
 Titebond -817
 TRS Group / The Brush Man -611
 TRUFast -110
 USG Securock Roofing Solutions -108
 Vac-It-All Services, Inc. -700
 Velocity Roof Vac Service -407
 VELUX Skylights -514
 Versico Roofing Systems -414
 Walter Payton Power Equipment, LLC -113
 Wausau Tile Inc. -109</p> |
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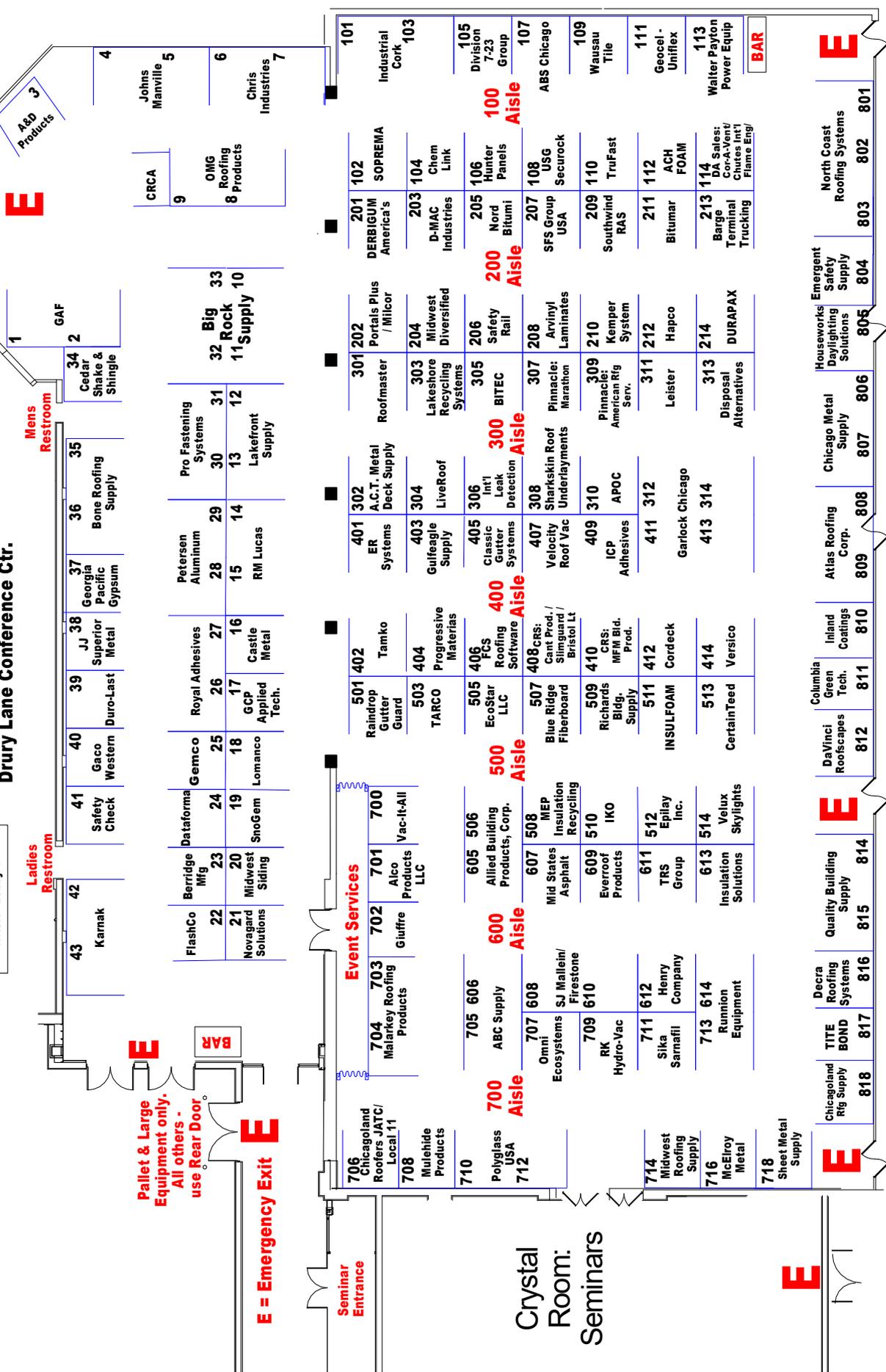
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2018 CRCA Trade Show & Seminars EXHIBIT HALL FLOOR PLAN

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 CSI CHICAGO - Lobby 4
 NRCA - Lobby 1

Entrance to Drury Ln. Theater
 *Safety Seminar
 Registration Pick Up
 Trade Show Floor Entrance



See Reverse side for Emergency Plan

E

Unforeseeable Employee Misconduct Defense to an OSHA Citation

By Philip Siegel



Philip Siegel

A contractor who has established, implemented and enforced a safety program may be able to defend successfully an OSHA citation based upon the defense of unforeseeable employee misconduct. The Occupational Safety and Health Review Commission and the U.S. Circuit Courts of

Appeal recognize that employee misconduct may be a valid defense to an OSHA violation.

Contractors have successfully been able to defend themselves against OSHA liability in many cases based upon showing “unforeseeable,” “unpreventable” or “isolated” employee misconduct. The unforeseeable employee misconduct defense is primarily geared toward violations over which employees have individual control. The rationale in support of the employee misconduct defense is that the employee’s misconduct was *unpreventable* or *unforeseeable* or was an *isolated* incident, atypical of the contractor’s normal operations. Even though there has been a violation of an OSHA regulation, the contractor will be able to avoid liability if he can show that the contractor’s conduct is such that he is entitled to rely upon the employee misconduct defense.

In order to be able to rely on the employee misconduct defense to vacate an OSHA citation, an employer must satisfy four requirements that have been enunciated in decisions rendered by the Review Commission to show that the employee misconduct occurred despite the employer’s efforts to require safe work practices. If any one of the four requirements is lacking, the defense fails and the contractor will be liable. If a contractor is committed to safety and avoiding OSHA liability, the contractor can reduce the likelihood of accidents and potential OSHA liability by actively managing his or her company in such a way that each of the four requirements are satisfied.

The four requirements that a contractor must show in order to vacate an OSHA citation based upon employee misconduct are:

1. The contractor established work rules to prevent the violation from occurring;
2. The contractor adequately communicated the work rules to employees;
3. The contractor took steps to discover violations of its work rules; and
4. The contractor effectively enforced its rules and took action when there were employee violations.

Contractor Established Work Rules to Prevent the Violation

The first requirement to invoke the employee misconduct defense is for the contractor to show that it adopted work rules, consistent with OSHA requirements, that were intended to prevent the violation for which the contractor has been cited. The Review Commission has defined a work rule as “an employer directive that requires or proscribes certain conduct and that is communicated to employees in such a manner that its mandatory nature is made explicit and its scope clearly understood.” There is no requirement that the work rule be written, but the rule must be clear and protect against the specific hazard addressed by the standard. The work rule must be designed to foster compliance with the cited standard and should not be general and open to interpretation.

The best practice is for a contractor to develop specific written work rules that are distributed to each employee in a safety manual and orally reviewed from time-to-time at job site meetings or tool-box talks. A contractor is likely to meet this requirement by adopting a safety program in accordance with OSHA regulations applicable to the contractor’s operations.

Contractor Adequately Communicated the Rules to Employees

The second requirement is to communicate the work rules

to employees. The contractor must be able to show that the employee, whose conduct was in violation of the contractor's work rules, had previously been told of the work rule. This requirement can be satisfied by conducting for all employees regular safety training programs that cover the OSHA regulations most applicable to the work being performed. Every employee must be provided safety training prior to being allowed to work. Periodic training should be conducted to make sure that employees are reminded of the contractor's safety program and work rules. Safety videos are an excellent means to communicate work rules. Contractors must emphasize to all employees, and especially foremen and superintendents, that compliance with fall protection rules is required at all times and that safety should not be compromised to increase productivity.

Contractor Took Steps to Discover Violations

The third requirement—that the employer take steps to discover violations—can be satisfied by the contractor's conducting regular job-site monitoring to check that the safety rules are being followed. There is no rule that job-site monitoring be conducted with any particular frequency. The employer must establish that it exercised reasonable diligence in detecting workplace hazards. The criteria will be satisfied if the contractor can show that it took reasonable steps to determine whether its jobs were being run in compliance with safety rules. If there is little correlation between the work rules and what takes place regularly in the field, the employee misconduct defense

will fail. An effective safety program requires "a diligent effort to discover and discourage violations of safety rules by employees." A failure to discover a safety violation that occurs in a short period of time is not evidence that the employer was not diligent in its effort to discover violations.

Contractor Effectively Enforced the Safety Rules and Took Disciplinary Action When Violations Were Discovered

A contractor can meet the fourth criteria by establishing and enforcing a disciplinary program directed at employees who do not follow the safety rules. First, a disciplinary program should be established and communicated to all employees. When an employee is seen violating the work rules, the employee must be disciplined. Often, the key to establishing the employee misconduct defense is proving that the employer has a regularly enforced disciplinary program for safety violations. If employees feel free to violate work rules, there is not unforeseeable or isolated employee misconduct.

Disciplinary action could include verbal and written reprimands, suspension, demotion, removal from a safety incentive or bonus program and termination. Written evidence of disciplinary actions taken should be maintained by the contractor to show that the contractor enforced its safety rules and took disciplinary action against employees who did not follow the rules. Formal records of the disciplinary action should be maintained indefinitely. The disciplinary program should be structured

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as a progressive program so that an employee who continues not to abide by company safety rules receives a harsher penalty, culminating in termination of employment. If the contractor has not disciplined the employee whose misconduct led to the citation and there is little evidence of prior disciplinary action within the company, the employee misconduct defense will not be accepted.

Several factors can negate the employee misconduct defense, such as placing an untrained employee on the job or failing to provide the needed safety equipment.

Supervisor Misconduct

When the employee who is involved in the violation of a safety rule is a supervisor, the proof of unpreventable employee misconduct is more rigorous and the employee misconduct defense is more difficult to establish. A supervisor’s conduct is imputed to the employer and the supervisor has the duty to protect the safety of employees under his supervision. In addition, the “fact that a supervisor would feel free to breach a company safety policy is strong evidence that the implementation of the policy is lax.”

“When the alleged misconduct is that of a supervisory employee, the employer must also establish that it took all feasible steps to prevent the accident, including adequate instruction and supervision of its supervisory

employee.” The Review Commission has held that the failure to give specific instructions on how to accomplish a job can amount to a lack of reasonable diligence.

Nevertheless, there have been cases where contractors have been able to rely upon the employee misconduct defense, even though the employee who engaged in the misconduct was a supervisor, by showing compliance with the four criteria.

In *L.R. Willson and Sons, Inc. v. OSHA*, 18 BNA OSHC 1129, 134 F.3d 1235 (4th Cir. 1998), the Review Commission concluded that because a supervisory employee committed the violation, knowledge of the violation should be imputed to the employer and the employer bore the burden of establishing that it had made a good faith effort to comply with the fall protection standards. The Fourth Circuit Court of Appeals reversed this decision and held that OSHA bore the burden of proving that the supervisory employee’s actions were neither unforeseeable nor unpreventable. 

Philip Siegel is a partner and shareholder with the firm Hendrick, Phillips, Salzman & Siegel, P.C., whose practice focuses on labor and employment matters within the construction industry. Philip has an undergraduate B.B.A. from the University of Michigan, and he obtained his law degree from Emory University School of Law. Philip can be reached at either (404) 469-9197, or via e-mail at pjs@hpslaw.com.

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Industry News

By CRCA Staff

CRCA's Annual Awards Dinner Recap—CRCA celebrated 2017's Volunteer Accomplishments Friday, December 1, at The Drake in Oak Brook. CRCA honored several CRCA Member Industry Leaders including:

- Knickerbocker Roofing and Paving Co.—Roofing Contractor Safety Award
- Pro Fastening Systems—Associate Member of the Year
- Greg Johnson, Bone Roofing Supply—Award of Excellence
- John Lanzendorf, Combined Roofing—CRCA's Highest Honor, the Clyde Scott Award



2017 CRCA Award of Excellence Recipient Greg Johnson congratulated by his family (CRCA Photo)



2017 Gold Medal Safety Recipient—Knickerbocker Roofing & Paving (CRCA Photo)



2017 Recipient John Lanzendorf is congratulated by 2015 Clyde Scott Award Winner Bill Lynch. (CRCA Photo)



2017 Associate of the Year—Pro Fastening (CRCA Photo)

CRCA Member attendees were very generous donating over \$2,500 in gift cards to benefit the Community Nurse Health Center in LaGrange. Check out the CRCA Awards Dinner page at http://crca.org/crca_events/banquet.htm to see the whole story.



Philip Siegel

CRCA December Webinar Recap—

Attorney Philip Siegel, a partner at NRCA's outside counsel Hendrick, Phillips, Salzman & Siegel, covered OSHA's multi-employer worksite doctrine in great detail. His program also focused on the safety duties required of each type of employer on a multi-employer worksite. Additionally, the unforeseeable employee misconduct defense to an OSHA citation for when the roofing contractor is cited as the exposing

employer was covered. Watch for more webinars in 2018. For our building official, architect and roof consultant friends, CRCA is an ICC Preferred Provider, an AIA CES provider, and has been approved by ALA and RCI over the years for various educational programs. Check out Siegel's article in this issue of *CRCA Today*.

Chicago Area Chapter – Roof Consultants Institute (CAC-RCI) holds a yearly education day and annual meeting. This year's program, January 17, covers Roofing/Waterproofing Testing, Window Condensation Problems, a CRCA Update, ASCE 7-16's new requirements for rooftop equipment and air barrier specs. Interested? There's a reception too. Register at www.CAC-RCI.org.



CRCA's Chicagoland Women in Roofing & CRCA's Emerging Leaders Committees to present a career growth forum at the 2018 CRCA Trade Show & Seminars. The January 17th, 3-5 pm seminar and round table discussions will feature Steve Ritter, well known Business Coach. Register at www.CRCA.org today!



CRCA Trade Show & Seminars—Here we are, the 35th Trade Show & Seminars at Drury Lane, Oakbrook Terrace. This year's show has cutting

edge educational programming, over 135 exhibits and much more. Send your personnel office staff this year to see the seminar on Employee Eligibility (I-9) forms and ICE Audits by Chris Thomas (Ogletree Deakins.) Don't miss the panel on roofing litigation with Tom Hutchinson, (Hutchinson Design Group), roofing contractor Dennis Runyan, (Dryspace, Inc.) and attorney Brian Must, Esq., steep slope ventilation with Paul Scelsi, (Air Vent Inc.), low slope insurance claim adjusting by Wade Tutt, (Paramount Adjusters), structural lightweight concrete by SRI's Matt Dupuis and roofing code and technical issues with NRCA's Mark Graham. It's a great lineup. Register today at www.CRCA.org.

Helping to build the future: ISO donates to ICC Training Program—With the construction industry struggling to find skilled workers, code professionals are stepping forward and demonstrating their commitment to training the next generation of building and code officials. Insurance Services Office, Inc. (ISO), a Verisk Analytics business, recently donated \$3,500 to the ICC High School Technical Training Program (HSTTP) after hearing Program Liaison Jim Elwood present during this year's ICC Annual Conference in Columbus, Ohio.

CRCA Participating in IL IECC Adoption—CRCA's Past President George Patterson and Executive Director Bill McHugh participated at the Illinois Advisory Council organization meeting helping to develop the process for adoption. When it comes to insulation and air barriers, there were no major changes in 2018's codes. Even if IL Adopts the 2018 version of the 2018 International Energy Conservation Code, the minimum continuous R-Value required is R-30—same as the 2015 Code.



ICC Code Action Committees Meeting—The ICC Building Code Action Committee (BCAC), Sustainability/Energy Code Action Committee, (SEHPCAC) and Fire Code Action Committee (FCAC) met in early December to get Fire and Building Code change proposals from these groups ready for submission. Under BCAC, the vegetative roof section has some changes that will be submitted. ICC's Code Development Process starts with hearings in April.



ASHRAE & ICC to Publish IECC and 90.1 in a Single Source—With energy efficiency remaining high on the national and global construction agenda, ICC and ASHRAE have collaborated to release the 2018 International Energy Conservation Code (IECC) and ANSI/ASHRAE/IES Standard 90.1-2016: Energy Standard for Buildings Except Low-Rise Residential Buildings. By compiling the complete text of the 2018 IECC and ANSI/ASHRAE/IES Standard 90.1-2016, this joint resource offers users a convenient publication that contains the latest requirements for energy efficiency in a single volume to provide the information needed to achieve optimal energy conservation in both residential and commercial construction.

FM urges FM 4880 Be Used for Exterior Building Cladding

—In a very recent press release, FM Global urges that FM 4880 be used for exterior building cladding. It was found that there are buildings in the USA that have combustible exterior cladding. The International Code Council published a perspective paper in response to a *Wall Street Journal* article on the issue. Check out the perspectives. <https://www.iccsafe.org/news-announcements/combustible-exterior-wall-cladding-systems-an-icc-perspective/>. The National Association of State Fire Marshals is discussing the topic as well.

NIBS Annual Conference—The National Institute for Building Sciences Annual Conference and Expo features several programs on safe exterior cladding systems as well as tall wood buildings. Both have been in the news lately because of the United Kingdom Grenfell Tower Fire and wood buildings that have burned to the ground either during construction or after construction. Both topics will likely result in further research and likely building code change proposals for the 2021 ICC Code Development Cycle. www.NIBS.org.



CRCA & City of Chicago Crane Ordinance

—Did your crane operator take the Chicago Crane Licensing Exam and not pass? Are you frustrated? The Chicago Roofing Contractors Association office receives calls from roofing contractors and distributors about the Crane Operator Licensing written and practical exams. Exams are managed by the City and Local 150 Operators Union. If your operators have an issue with the exam, please forward the specific issues in writing to CRCA’s Office at info@CRCA.org. The City has asked us to continue to report if roofing contractors have been harassed or treated unfairly. We can’t promise miracles, but we will follow up with the City with your issue and get an answer while registering the roofing industry’s objections.



Runnion Equipment Photo

NRCA offers Education—The NRCA is offering the CERTA Train the Trainer Authorization Education in Rosemont, IL April 5 and May 17. Need the CERTA training sooner? Head to New Orleans February 5. Visit www.NRCA.net for info or call 866-ASK-NRCA.

NRCA’s March DC Fly In—In the early 1970’s, NRCA & CRCA’s leadership starting visiting leaders in Washington DC and now it’s an annual event. This year, NRCA CEO Reid Ribble is challenging us to “do it up big”. He’s looking for 1,000 roofing industry professionals to descend on Washington DC to advocate for regulatory reform (OSHA, etc.), immigration, tax reform, and other roofing related items. In October, CRCA leaders including Past President Rod Petrick, 2017 President George Patterson, Former Board Member Alex Hernandez, and other CRCA Members met legislators in Washington D.C. You can bet that CRCA’s leaders will be there for the big program in 2018.

CRCA Members & Rooftop Maintenance—CRCA Members get it that buildings need maintenance to run like a clock. Roofs get forgotten since they are not glamorous nor front and center . . . until they leak. Many building owner and manager publications such as www.Facilities.net/roofing continue to promote rooftop surveys and continual building maintenance in daily E-blasts. Contractors, consider joining a building owner association to become a valued resource to building owners and managers. Building owners, visit CRCA’s Member List to find the best roofing contractors, equipment and materials to keep roofs maintained. http://crca.org/crca_membership/mlist.asp



CRCA & NRCA Membership Brings Value—We, at CRCA, support and work together with NRCA on codes, standards, technical initiatives and much more. CRCA Members participate in programs such as the Future Executive Institute, Executive Management Institute, National Committees and others.

If you are not a member at NRCA, consider joining at www.NRCA.net. Not a CRCA Member? Download a membership application at http://crca.org/crca_membership/contractor_ap.htm. NRCA and CRCA Membership Dues pays for advocacy work at the City of Chicago, State of Illinois, OSHA, ASTM, the International Code Council and many other organizations.



The Polyisocyanurate Insulation Manufacturers Association (PIMA) announced on November 13th that Dr. Marcin Pazera has been installed as the new Technical Director. With an engineering background and 16 years of experience in the building, construction and insulation industries, he will coordinate all technical-related activities within PIMA. Congratulations Dr. Pazera!



Roofers Coffee Shop—Check out this cool resource. There's a lot of information on this site, www.RoofersCoffeeShop.com.

CRCA Growing—CRCA, a 140-year old association keeps growing. CRCA added 33 new members in 2017 with member retention at about 95%. Most associations are lucky to get to 80-85% retention. CRCA's value to members continues to bring new companies in and keep members engaged. "Thanks to all CRCA Members—Contractors and Associates—for a great year", stated George Patterson, 2017 President. 2017 CRCA Membership Committee Chairs Bob Prette and Troy

Wormley reported, "CRCA Membership growth in Steep and Low Slope Contractors is strong and is a credit to CRCA's Board and Committee Actions over the past several years."



CRCA Membership Co-Chair Troy Wormley and Diane Horvat, Atlantic Coated Papers, a new Associate Member. (CRCA Photo)

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- A-1 Roofing Co.**.....(847) 952-3600
- Active Roofing Co., Inc.**.....(773) 238-0338
- Adams Roofing Professionals, Inc.**.....(847) 364-7663
- Adler Roofing and Sheet Metal, Inc.**.....(815) 773-1200
- Advanced Roofing & Woodworking, Inc.**.....(630) 231-7663
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- Air Pressure Damp Proofing**.....(847) 394-4100
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