



# THE BASESHEET

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## GREETINGS FELLOW ARCA MEMBERS:

What another great convention, and great group of people! I want to thank all of you for your participation and enthusiasm, it seemed like everyone was having a great time, especially those winning at the casino!

As the new ARCA year begins we have a lot to be excited about. There is a renewed energy we seem to be experiencing with new members, and our newly formed committee to involve our younger members of the industry. These folks (40 and under) are already beginning to breathe new life into ARCA and with this committee we expect to see much more excitement, energy and activity this year. And our thanks to Jason Kills of Roofing Consultants who has stepped up to chair the committee.

Our primary focus this year will be to strengthen members' engagement in ARCA while continuing to increase and welcome new members. There were a few non-member guests at convention who will be joining already! And, if I didn't emphasize enough why ARCA is such a remarkable association I want to now. It is YOU, the members. Many of us are competitors (contractors and associate members), however we also a group of business people who take pride in what we do, we support one another, volunteer when needed and help other companies and individuals develop. We know how busy everyone is and we can't thank you enough for every hour(s) you put in. After the Saturday Annual Awards and Installation Dinner concluded there were a number of people who came to discuss some really great ideas. We will discuss these in the coming weeks. This is the camaraderie and professionalism I referred to.

Other emphasis will be on working hard to 'tame' the regulatory beast by continuing to engage in the legislative arena. We meet monthly and provide our input, concerns and ideas to our Legislative Coalition, ASCC (Arizona State Contractors Coalition). This includes OSHA. According to an OSHA Trade Release (10/4/16) OSHA is proposing 18 changes to its record keeping in an attempt to 'Modernize OSHA standards'! If new fall protection regulations aren't enough they are working hard on silica exposure and I bet dollars to donuts we can expect more.

The ICA (Industrial Commission of AZ) along with ADOSH has developed a Roofing Alliance. ARCA not only supports this initiative but will be maintaining a database that tracks employee's safety training and issues cards for employees to carry with them. This came about from a few concerned ARCA member companies whom we thank. Read more about the alliance in this month's Base-sheet. ***This is one area where your engagement is requested and the benefit will directly affect your company.***

I would like to thank all of those who are already supporting ARCA with volunteering and membership/sponsorship commitments, and invite more member employees to get involved and continue to help us grow and get stronger.

Sincerely,

Rhonda LaNue, Lyons Roofing  
President, Arizona Roofing Contractors Association

**F Y I** - After many years of minimal to zero use, **ARCA is eliminating its toll-free phone number, 1-877-335-ARCA (2722).** You may continue contacting us at our main phone number, 602-335-0133.

# Legislative Update



## **STATE OF ARIZONA:**

ARCA along with other construction trades (operating as the AZ State Contractors' Coalition) will continue to lobby the legislature on Transaction Privilege Tax (TPT) reform. Major opposition continues to come from the League of Cities and Towns which continues to float complicated alternatives to the simplified "point of sale" being pursued by our coalition. With a third of the legislature expected to turnover due to term limits or retirements we will start educating the newcomers immediately after the elections. We also have legislation drafted for workforce development initiatives as our industry faces a long term labor shortage and will pursue some indemnity reform issues. If Proposition 205 (legalizing marijuana) passes it will create a plethora of problems for employers trying to maintain a drug free / safety conscience workplace and throw a monkey wrench into the current constructive discharge processes. Obviously we would want our concerns regarding workplace safety to be considered when any new regulations are promulgated.

## **FEDERAL:**

### **Workforce Development**

The House approved legislation (H.R. 5587) supported by NRCA to reform career and technical education (CTE) programs on a bipartisan vote of 405-5. The bill includes recommendations from NRCA and allied groups that are designed to make CTE programs more responsive to employers' workforce development needs in the future. H.R. 5587 provides for more effective engagement between employers and educators in CTE program development; expands opportunities for work-based learning; and promotes the development of industry-recognized credentials. It also increases authorized funding for CTE programs, starting at \$1.13 billion in fiscal year 2017 and increasing to \$1.21 billion in 2022. NRCA believes this legislation will provide new opportunities for roofing contractors to address their workforce needs through improved CTE programs. A Senate committee attempted to move forward with similar legislation in September, but key senators failed to come to an agreement. Given the short amount of time remaining in the 114th Congress, NRCA is pushing for the Senate to approve the House-passed bill during the upcoming "lame duck" session of Congress.

### **OSHA Record-keeping Regulation**

NRCA is working to mitigate a new problem with a regulation issued by the Occupational Safety and Health Administration (OSHA) that requires employers to submit injury and illness records to the agency so they may be posted online for public inspection. In implementing the regulation, OSHA officials believe the risk of retaliation against workers for reporting injuries is so great there must be a limitation of mandatory post-accident drug and alcohol testing, despite the fact that this tool is widely used by employers to promote a safe workplace. The preamble to the final regulation expresses OSHA's opposition to mandatory post-accident

testing, but the actual text is silent about its permissibility, thus creating uncertainty among employers regarding how the policy will be enforced. NRCA opposed this regulation and testified before Congress to outline member concerns regarding how it negatively will affect safety in the roofing industry. NRCA now is working with Rep. Phil Roe (R-Tenn.) and other lawmakers to send a letter to OSHA that highlights the safety benefits of post-accident testing; expresses concern regarding procedural flaws in the regulation; and urges OSHA to reconsider the policy.

### **Paid Sick Leave Regulation**

The Department of Labor released its final rule mandating federal contractors to provide paid sick leave to all employees who work on or in connection with a covered federal contract, including contracts governed by the Davis Bacon Act. Under the final regulation, employees will be allowed to accrue one hour of paid leave for every 30 hours worked on or in connection with a covered contract and only be allowed to use this time while working on a covered contract. Employees will not accrue any hours while working on private contracts. The rule allows employees to accrue up to 56 hours of paid sick leave during the year, and an employee is eligible to roll over a maximum of 56 hours to the following year. Employees can use paid sick leave for a variety of reasons, including recovering from a personal illness or injury; medical appointments; taking care of a family member; and purposes resulting from being the victim of domestic violence, sexual assault or stalking, or to assist a family member who is such a victim. NRCA filed comments opposing the rule based on feedback from members who said the rule would increase labor costs, affect the bidding process and be a compliance burden. Federal contractors should review their current leave policy and prepare for the new requirements, which take effect Jan. 1, 2017.

### **Regulatory Reform Legislation**

In recent years, many of the Obama administration's regulatory initiatives have been challenged in the courts, and several have been overturned. Given the likelihood of further litigation regarding existing and future regulations, the House of Representatives passed H.R. 3438, the Require Evaluation before Implementing Executive Wishlists Act, introduced by Rep. Tom Marino (R-Pa.). This legislation would block "high impact rules" (those estimated to cost more than \$1 billion annually) from taking effect until all related court challenges are settled. This legislation would help businesses save money and time that would be expended to become compliant with a new regulation despite the fact that it is later overturned by the courts. President Obama issued a veto threat of H.R. 3438 and only a handful of Democrats joined virtually all Republicans in supporting the measure. NRCA continues to explore avenues such as H.R. 3438 to achieve real regulatory reform to provide relief for its members, but achieving bipartisan consensus in a divided government is proving highly elusive. 🏠

## **TW METAL AND TILE UNDERLAYMENT SELF-ADHERING SHEET MEMBRANE**

TW Metal and Tile Underlayment is well suited for application under metal and mechanically fastened tile roofs where prevention of water penetration is required. This flexible self-adhering rubberized asphalt sheet membrane withstands high-temperature conditions up to 250°F. It can also be left exposed for up to 120 days before application of the metal or tile roof. TW Metal and Tile Underlayment is made with a polymer film on the surface and a treated release film for easy application.

# TW METAL AND TILE UNDERLAYMENT

## SELF-ADHERING SHEET MEMBRANE

### IMPORTANT

This product features a skid resistant and tear resistant surface. This feature does not serve as a substitute for following all proper fall protection procedures in accordance with OSHA regulatory requirements— including the use of personal fall protection devices when working on a roof. Applicator safety is of utmost importance.

### USES

TAMKO® TW Metal and Tile Underlayment is well suited for application under metal and mechanically fastened tile roofs where prevention of water penetration is required.

### FEATURES AND BENEFITS

- Textured surface provides enhanced skid resistance
- Nonremovable selvage film for stronger lap adhesion
- Strong fiberglass reinforcement adds stability during installation
- Split treated release film eases installation
- Meets ASTM D 1970 for nail sealability of self-adhering roofing underlayments
- High-temperature resistance up to 250°F
- Can be left exposed for up to 120 days before application of finished roof
- ICC-ES ESR-2531

### LIMITATIONS

- Membrane should not be applied to damp, frosty or contaminated surfaces
- Membrane should not come into contact with products containing coal-tar pitch
- Membrane should not be used in application with PVC roofing or other products that contain tackifiers, plasticizers or processing oils
- Best applied at temperatures of 40°F and higher

### GENERAL APPLICATION

Apply TW Metal and Tile Underlayment from low to high point in shingle fashion so that laps will shed water. Overlap edge seams 4 inches. End seams should be overlapped 6 inches and staggered. Where necessary, the membrane may be unrolled and cut into 10- to 15-foot lengths. Align membrane on lower edges of roof. Remove release film from membrane and press into place. Roll lower edges firmly with a hand roller. "Broom in" installed membrane using an industrial flat broom or squeegee. Bear down on installed membrane with the broom or squeegee to ensure total, even adherence to substrate.

Care should be taken not to damage the surface when brooming.

### VALLEY APPLICATION

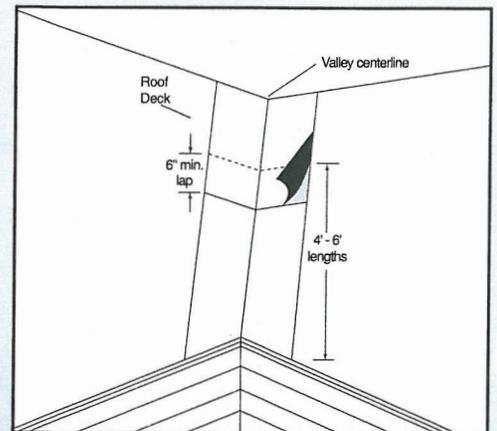
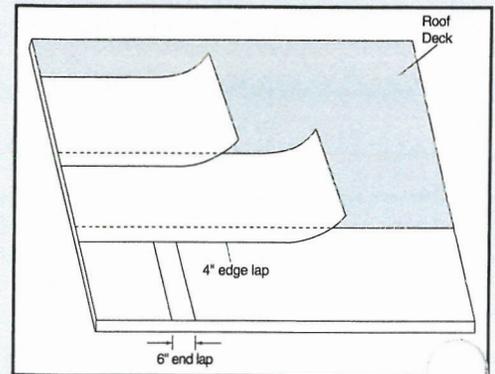
Where necessary the membrane may be unrolled and cut into 4- to 6-foot lengths. Peel the release film and center sheet over valley or ridge. Drape and press sheet into place, working from the center of the valley or ridge outward in each direction. For valleys, apply membrane starting at the lowest point and work upward. Overlap all sheets a minimum of 6 inches. Use TW Metal and Tile Underlayment on "closed valley" applications only. Do not leave membrane permanently exposed. Cover with roofing materials.

Provide ventilation when using TW Metal and Tile Underlayment over the entire roof deck. For information on proper application, contact your architect, building contractor, building materials supplier or TAMKO.

### PRODUCT DATA\*

	2 Squares
Roll size	200 sq. ft.
Roll dimensions	39-3/8" x 61'
Thickness	75 mil
Rolls per pallet (37" x 47")	20 rolls

\*All values stated as nominal.



## BUILDING PRODUCTS FOR THE PROFESSIONAL

Tiles can slide during roof loading and until properly fastened. In order to protect TW Metal and Tile Underlayment from damage, care must be taken to ensure stability of stacked tiles. Fasteners and batten strips must be used when installing tiles over TW Metal and Tile. TAMKO requires the fastening of every tile in addition to mortar, adhesive or foam, regardless of the slope. These are TAMKO's minimum requirements. State and local regulations may contain additional requirements.

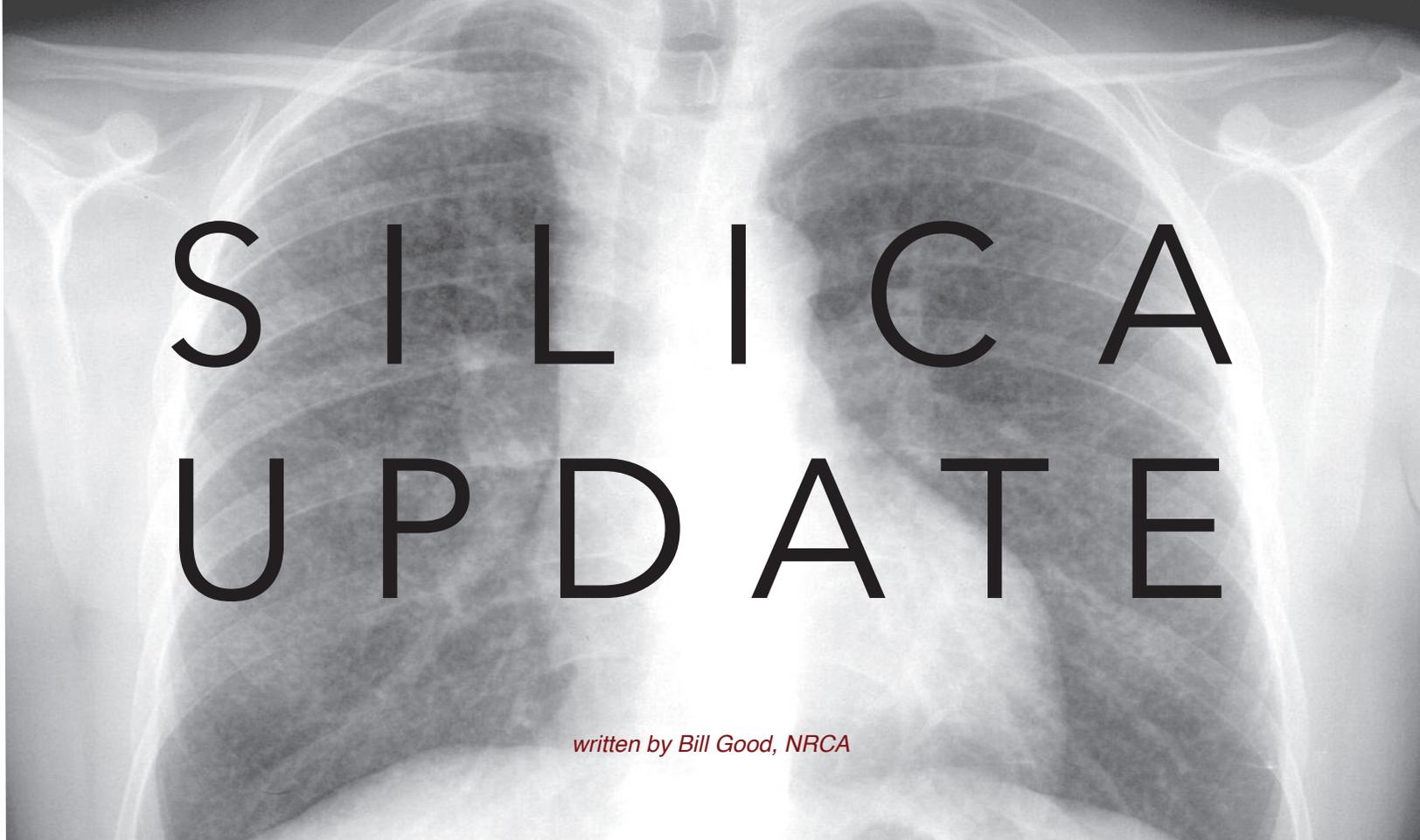


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# SILICA UPDATE

*written by Bill Good, NRCA*

In March 25, the Occupational Safety and Health Administration (OSHA) issued a long-anticipated final rule on occupational exposure to crystalline silica. Silica is a naturally occurring element found in a host of construction materials, most notably in concrete. In the roofing industry, where I earn my living, silica is found in such other products as concrete and clay roof tiles, mortar and even slate.

During the rulemaking process, my employer, the National Roofing Contractors Association (NRCA), commented and testified in opposition to the rule, for two important reasons.

First, we argued that the new exposure limit of 50 micrograms per cubic meter — measured on an eight-hour, time-weighted average basis — is so low that it is virtually impossible to take measurements on a construction job site that will be accurate. Second, we argued that the supposed health benefits of the rule are far outweighed by the new safety risks it imposes.

The rule is written so that an employer who chooses to use “wet” cutting methods when handling products containing silica, along with providing dust masks to workers who may be exposed, will be deemed to be in compliance. On the surface, this seems like a reasonable approach, but consider what it means for the average roofer.

When tile roofs are installed, the tiles must be cut to fit precisely the shape of the roof, for all of the obvious reasons. That cutting is commonly done on the roof, to ensure a perfect fit and to minimize the number of trips workers must make up and down ladders.

Roofers today are required to wear harnesses with lanyards (for fall protection reasons) when they are on the roof so they are already at risk for tripping. Now they are expected to use a wet saw, which weighs significantly more than a saw without attachments and requires a hose, to do that same work.

The risk of tripping is therefore effectively doubled, or worse, with the introduction of water on the roof's surface. And what makes matters even worse is that the wet dust that accumulates during this process will discolor the tiles, as well as other parts of the home or building it comes in contact with.

The alternative for a roofing contractor is to make an initial determination as to whether his or her employees will be exposed at a new “action level” of 25 micrograms per cubic meter — an exposure one-tenth of OSHA's current levels. And if that small amount of exposure is present, then a whole series of compliance measures come into play: conducting training, providing medical surveillance for the employees, keeping medical records for an extended period of time, prohibiting others from having access to the work area and

on and on.

If all of this sounds vaguely familiar, it is because it is remarkably similar to the approach OSHA took with occupational exposure to asbestos some 25 years ago. Our industry spent literally millions of dollars to comply with that rule, despite the fact that asbestos was only used in roofing products where it was fully encapsulated and thus posed virtually no risk to roofing workers.

As with OSHA's asbestos rule, the new silica rule imposes massive new regulatory requirements designed to limit exposure to a substance that poses very little risk to roofing workers. And worse, the new rule significantly increases the risks of trips, slips and falls, which in the roofing industry can be deadly.

And while we are not aware of a single case of a roofing worker contracting silicosis, we know that roofers had 71 fatal falls in 2014.

Still, the outcome with the asbestos rule was sadly predictable: Even 25 years later, roofing contractors are facing civil suits from workers who are convinced — or have been convinced — their lung cancer or mesothelioma was directly attributable to working on roofs.

One contractor is currently facing a suit brought by the estate of a man who worked for the roofing company, as best they can determine, for a total of two weeks in the 1960s as an independent contractor. With the new silica rule, we can expect more of the same.

And there is one other outcome that is rarely talked about, but is equally insidious. It is that the increased pile of regulations that employers — and especially small employers — must deal with has accelerated the development of a black market, where employers are willing to risk getting caught, pay their workers in cash and thereby have a huge advantage in a marketplace that is often driven by being the lowest bidder.

Those contractors know that OSHA simply doesn't have the resources to inspect every small residential construction project; they also know OSHA inspectors are not anxious to climb ladders at someone's home to conduct a proper investigation.

So the cheaters get away with it while the professional contractors — those who try in good faith to comply with complicated and unnecessary rules — wind up being penalized. And what makes that even worse is that a large number of employees of the black marketeers are undocumented workers, who often don't get paid even the minimum wage and certainly receive no benefits. Yet the black marketeers have become a force in the market.

Unfortunately, the future with the silica rule is also all too predictable. Large contractors — those with deep pockets — will become OSHA's target. They will be forced to take elaborate steps to be in compliance with the new rule, and fined heavily if they are not. Rather than enforcing the rule evenly, OSHA will elect to make examples of a few companies, with the goal of frightening others into complying.

Roofers will get hurt, by tripping and getting tangled up in all the equipment that will be on rooftops. And plaintiffs' attorneys will be waiting in the wings, advertising to find people who might have respiratory issues and might have worked around silica at some point in their lives.

And the cost of a new roof will go up, unless the homeowner hires someone in the black market. Then, when one of those workers gets hurt on the job, the homeowner will be brought into the ensuing litigation, as well.

What is most disturbing about all of this is that the industry's safety and health resources could be put to much better use — conducting training, for example, or working to prevent the most commonly occurring accidents and injuries, which involve musculoskeletal stresses.

According to the Centers for Disease Control, the number of silica-related deaths in the U.S. has gone from 1,157 in 1968 to 101 in 2010, the last year for which the CDC has records. It says the decrease is attributable in large measure to improvements in mine safety.

And yet we will face the wrath of OSHA as we try valiantly to comply with yet another complicated, expensive and arguably more dangerous rule. 🏠

## ARCA Underwrites Silica Study

The new silica rules promulgated by OSHA allow for the use of "objective data" which can be collected by third parties. To that end ARCA has joined with NRCA in their effort to collect clinical justified data. Many of OSHA's claims when they ramrodded the Legislation through Congress cannot be substantiated. We suspect that many of the exposure limits will be below the "Permissible Exposure Limit" (PEL) threshold.

ARCA's Executive Committee approved \$7,500 to help in the data collection effort. In the near future we will also be requesting select members conduct particulate tests when cutting. 🏠

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## ADA Violations: What to Do If You Are Sued

*If your business is sued for violating ADA standards, don't be too quick to settle a lawsuit that you might be able to win.*

*By George King*

As though making a profit is not difficult enough in normal circumstances, many businesses are seeing a relatively new and growing threat in the form of serial lawsuits alleging violations of the Americans with Disabilities Act (ADA).

News reports and public records in Maricopa County show hundreds of lawsuits filed in 2016 alleging that the defendant (usually a property owner) has violated the ADA by failing to have ADA-compliant signs for handicapped parking spaces.

These lawsuits are almost identically worded and are filed by various similarly named “advocacy” groups.[1] ([URL <http://lang-klain.com/pdf/ada/redacted-complaint.pdf>]View) a typical suit [1], together with [URL <http://lang-klain.com/pdf/ada/redacted-discovery.pdf>] discovery [1] that is also usually served with the suit.) Even though the Arizona Attorney General has [URL] <https://www.azag.gov/sites/default/files/Motion%20to%20Intervene.pdf> moved to intervene in these suits [1], in order to have them dismissed as groundless and abusive, there is no indication that the suits will abate in the near future.[2]

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If you are a property owner, you may ask: Is there anything I can do to avoid being targeted by one of these suits? If I receive a demand letter, should I simply pay the \$7,500 typically demanded in these lawsuits, or should I fight it? In general, the answers are these: Yes, you can take steps now to reduce the chances of falling victim to one of these lawsuits. If you are sued by one of the ADA advocacy groups, you should probably fight it. Back-

ground Typically, the property owner is sued for technical violations of ADA standards for handicapped parking signs. These signs were often compliant when installed, but are now non-compliant because the standards were changed in 2010.

Specifically, these recent lawsuits allege that the property owner violated the ADA (as well as a similar state statute) by (a) not placing its handicapped parking signs at a sufficient height and (b) not indicating that certain spaces are “van accessible.” These specific ADA standards come from a government document, 2010 ADA Standards for Accessible Design.

These lawsuits take advantage of an apparently little-noticed change in the 2002 ADA Accessibility Guidelines that the 2010 Standards replaced. Under the 2002 guidelines, there was no fixed height for handicapped parking signs. Instead, the signs were required to “be located so they cannot be obscured by a vehicle parked in the space.”[3] The same section of the 2002 guidelines also required that the signs be visible to drivers: “Signs designating parking places for disabled people can be seen from a driver’s seat if the signs are mounted high enough above the ground and located at the front of a parking space.”

The 2010 ADA Standards, which became mandatory on March 15, 2012, require that handicapped parking spaces be at least 60 inches above the finish floor or ground surface, measured from the bottom of the sign.[4] This change meant that many handicapped parking signs that met the 2002 ADA Guidelines were now in violation of the

2010 ADA Standards. Although property owners can often take advantage of a “grandfather” provision that protects previously compliant signs, such protection evaporates as soon as a property owner re-stripes its parking lot. Non-Compliance Lawsuits Given this little-noticed technical change, it has been easy for the advocacy groups to find non-compliant signs. Once the signs are identified, a lawsuit is filed (apparently without warning or notice), demanding compliance and seeking attorneys’ fees and costs. The plaintiff group also typically serves discovery, demanding answers to a host of questions about the property owner’s business and practices relating to parking and other accessibility issues.

If the property owner contacts the plaintiff, the typical response is to demand compliance and payment of a significant sum, such as \$7,500, as contained in sample complaint linked above. Practical business owners, faced with the choice of litigation or a quick - though pricey - settlement, might opt for settlement, which of course is the likely goal of this batch of lawsuits. Lawsuit Avoidance If you own property with handicapped parking spaces, go to your parking lot and measure the distance between the bottom of the handicapped sign and the ground or floor. Also check to make sure you have at least one van-accessible handicapped space, with a sign to that effect. If the bottom of your sign is less than 60 inches from the floor or ground, or if you do not have a “Van Accessible” sign, you are at great risk of becoming the victim of this recent wave of lawsuits.

A good resource for parking compliance issues is the Channel 15 News website. But because the ADA covers far more than just parking lots, you would be well-served to hire a professional to ensure that your entire property fully complies with all of the most recent ADA guidelines. Fighting the Lawsuit The fact that you might have a non-compliant sign does not mean that you are automatically liable, or that, even if your business is liable, an advocacy group plaintiff actually has a valid claim against you.

Even if you raced out to your parking lot and hired a licensed contractor to bring your signs into compliance, your business may have already been sued. Do not despair, however, because there are a number of defenses to these recent lawsuits.

Fixing the Problem. Your first line of defense is to fix any legitimately identified ADA compliance issues. As noted above, it would not be surprising that your handicapped parking signs are too low. The plaintiff has argued (and will continue to argue) that merely fixing the problems will not make the lawsuit “moot” and therefore subject to dismissal. However, even if not entirely successful, your prompt, good-faith effort at compliance should dramatically reduce your company’s exposure to an award of costs or attorneys’ fees. (The entity plaintiff apparently does not claim actual damages, and the typical individual plaintiff - if one is named - may never have visited your property).

Legal Standing. The second line of defense is to chal-

lenge the plaintiff’s standing. Although these plaintiff groups’ strategies are constantly evolving, typically they allege that one of their members is handicapped, visited the property, and intends to visit the property again. If challenged, the plaintiff may have a hard time making that argument stick, especially in light of recent news reports suggesting that the supposedly handicapped individual did not actually have a disability.

Right to Attorneys’ Fees. A third line of defense is to challenge the plaintiff’s right to recover attorneys’ fees. In the current wave of lawsuits, sometimes the plaintiff claims that it is entitled to fees under a state statute that does not apply to cases filed by private individuals.

Insurance Coverage. There is hope that certain insurance policies may cover these ADA claims, both to provide a defense and potentially to cover some or all of any ultimate award. The most promising avenue for coverage appears to be Third Party Coverage under an Employment Practices Liability policy; however, little case law exists on this very new coverage issue, so it is impossible to predict with certainty whether coverage exists.

In any event, if you decide to fight the suit, and if your business is a corporation or an LLC, you must have a lawyer represent the entity in Superior Court. Unless you are an attorney, you cannot represent the company, and, if you try, you are likely to face a default judgment. Conclusion ADA compliance is important legally, and important to a decent and inclusive society. But laws passed with the best of intentions can be misused, which is what is happening now with these serial lawsuits aimed at unknown and easily corrected violations.

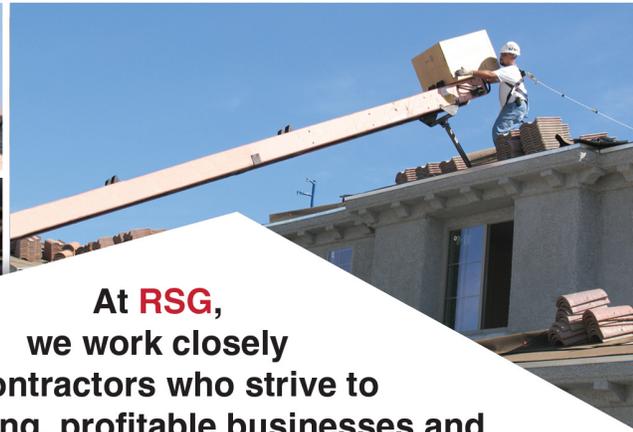
Avoid being a victim of an abusive lawsuit by bringing your parking lot, and the rest of your facility, into ADA compliance as soon as possible. If, despite your best efforts, you are sued by one of these plaintiff groups, do not assume that your only option is to pay an extortionate sum to avoid litigation. Consult a lawyer right away to see what defenses you have, and also to see what options are currently (and may become) available given the recent actions of the Arizona Attorney General’s Office. Finally, notify your insurance carrier immediately after receiving a demand or a lawsuit. 🏠

[1] *These groups include: “Advocates for Individuals with Disabilities Foundation, Inc.,” “Advocates for Individuals with Disabilities, LLC,” and “Advocates for American Disabled Individuals, LLC.” As of this date, only the first two of these entities are authorized to do business in Arizona, and it is not clear that the third entity even exists, in Arizona or elsewhere.*

[2] *At the time this article was written, the Attorney General’s motion to intervene had not yet been decided.*

[3] *ADA Accessibility Guidelines § 4.6.4.*

[4] *2010 ADA Standards § 502.6.*



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## 2016 Convention

The Arizona Roofing Contractors Association (ARCA) held its 47th Annual Convention and Election of 2017 Board of Directors on October 8th at Casino Del Sol in Tucson, AZ. Special awards recognizing the Roofer of the Year and Associate Member of the Year were announced.

**Roofer of the Year: Gorman Roofing Services, Phoenix, AZ** - Award accepted by Larry Miller, Vice President, for strict adherence to workmanship standards, exemplary ethics in all business dealings, corporate citizenship, and integrity and conduct that reflects positively on the roofing industry.

**Associate Member of the Year: APOC** - Accepted by Rene Lujan, AZ Territory Sales Representative, for underwriting of worker safety training, corporate citizenship, and long standing support to improve the quality of roofing products and workmanship performed for AZ consumers.

**Committee Chair of the Year: Bryan Hill of WRECORP** accepted this award for his years of dedication and leadership in coordinating the highly successful New Pathways Charity Bowling Tournament.

**Volunteer of the Year: Deanna Mergener of Touchdown Sportswear** was awarded for her outstanding work coordinating silent auction at both New Pathways Bowling and the Annual Convention. 





## Scott Morgan (Tamko Building Products) is Presented Lifetime Member Award

ARCA Presents Lifetime Member Award to Tamko Representative Scott Morgan.

ARCA has awarded less than a dozen Life Memberships in the 46 years of its charter. The Life Member distinction is provided solely with Board of Directors approval. This honor is bestowed only to those individuals who have served the ARCA in extraordinary ways. Scott has volunteered and taken leadership roles in numerous ARCA events and committees for over 15 years and has always exhibited the highest level of respect for the association, its members, and for the ARCA Code of Conduct. Scott is an ambassador for our association and his integrity and conduct always reflects positively on both ARCA and the roofing industry in general

We are extremely proud to announce that Scott Morgan of Tamko Building Products has been awarded the prestigious distinction as a Life Member at the annual meeting held at the Casino del Sol in Tucson, AZ on October 8, 2016. 🏠



## ARCA Awards "Honorary Membership"

Honorary membership status has only ever been awarded to one individual in ARCA's 47 year history

as an organization. Bill Good, NRCA Executive Vice President was the second recipient of this distinction at the Annual Meeting in Tucson. In recognizing Bill, John Plescia, from Star Roofing cited his outstanding career of advocacy, and raising the standards of professionalism on behalf of the roofing industry world wide. After 42 years at the helm of NRCA Bill will be retiring in June 2017. 🏠

## ARCA Creates New Committee

Over the years it has been mentioned that ARCA needs to tailor more activities to our younger / emerging leaders and stay current with new communication technologies utilized by the younger members. President **Rhonda LaNue** has responded to this request by creating the **Young Professionals Committee**. The concept is so new that might not even be the actual name of the committee – that will be up to the participants to decide. Board member **Jason Kill**, from **Roofing Consultants of AZ** has agreed to chair this new endeavor. Their mission—evaluate how ARCA communicates and interacts with emerging generations and make recommendations to the Board on how to attract, develop and retain the under 40 segment of our membership. 🏠

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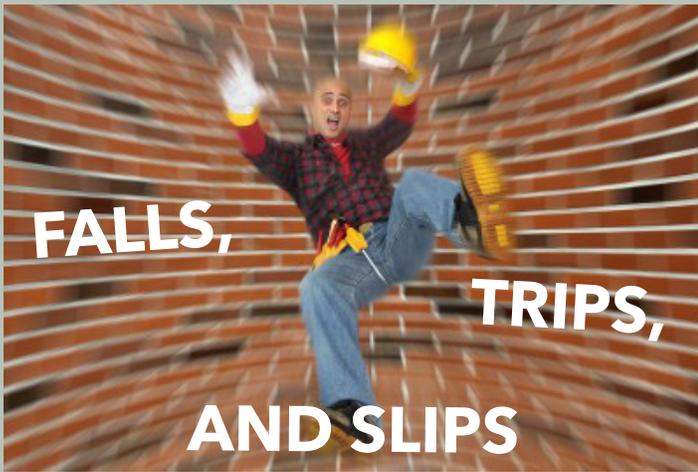
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Falls are a persistent hazard found in all occupational settings. A fall can occur during the simple acts of walking or climbing a ladder to change a light fixture or as a result of a complex series of events affecting an ironworker 80 feet above the ground. According to the 2009 data from the Bureau of Labor Statistics, 605 workers were killed and an estimated 212,760 workers were seriously injured by falls to the same or lower level.

The highest frequency of fall-related fatalities was experienced by the construction industry, while the highest counts of nonfatal fall injuries continue to be associated with the health services and the wholesale and retail industries. Healthcare support, building cleaning and maintenance, transportation and material moving, and construction and extraction occupations are particularly at risk of fall injuries.

NIOSH studied the stability of mast climbers during a fall arrest condition through physical testing. More testing to investigate anchored mast climber conditions, worker posture, and material handling hazards is scheduled. Circumstances associated with fall incidents in the work environment frequently involve slippery, cluttered, or unstable walking/working surfaces; unprotected edges; floor holes and wall openings; unsafely positioned ladders; and misused fall protection. Federal regulations and industry consensus standards provide specific measures and performance-based recommendations for fall prevention and protection. However, persistent unsafe practices and low safety culture across many industries define steady fall injury rates year after year.

Fall injuries constitute a considerable financial burden: workers' compensation and medical costs associated with occupational fall incidents have been estimated at approximately \$70 billion annually in the United States [NSC 2002]. Many countries are facing the same challenges as the United States on fall injury in the workplace. The international public health community has a strong interest in developing strategies to reduce the

toll of fall injuries.

Successful reduction of fall injury and fatality rates requires continued concerted efforts of regulators and industry leaders, professional associations and labor unions, employers and employees, safety professionals and researchers in enhancing the work environment, implementing new effective fall prevention and protection technologies, and improving the work safety culture through continuous education of the workforce. NIOSH, as the leader in occupational safety research, plays a key role in these complex fall-injury prevention efforts. 



## 2nd Annual Open House / Back to School Drive

'Thank you' to everyone that joined us yesterday for the 2nd Annual Open House and Back to School Drive on August 11. Our theme was education and we were proud to introduce the 2016 Arizona Roofing Industry Foundation Scholarship Recipients. We had three recipients in attendance – Virginia Martin, Stephanie Miller and Julianna Starkweather.

Everyone was generous in their school supplies and monetary donations. Members of the National Junior Honor Society assisted with shopping and sorting the supplies that was distributed to Tumbleweed Center for Youth Development, StreeLiteUSA and a Title 1 school in the Phoenix area. Rhonda Pearman joined in on the efforts and shopped in the Tucson area with school supplies donated to the Pima Prevention Partnership.

To learn more about the Arizona Roofing Industry Foundation visit <http://www.azroofingfoundation.org/>. 

## New Arizona Independent Contractor Law is of Little Value to Contractors, Subs

*In passing a law that formalizes independent contractor status, the Legislature made it largely irrelevant to Arizona's construction industry.*

*By Kevin Estevez and Lori Guner*



A new, well-publicized state law that went into effect August 6, 2016, provides guidelines for creating a lawful independent contractor relationship.

Unfortunately, the recently enacted A.R.S. § 23-1601 generally excludes licensed contractors and subcontractors.

The statute provides guidelines for companies in other industries to create a “rebuttable presumption” of a lawful independent contractor relationship, by, among other things, having a worker complete a “Declaration of Independent Business Status.” But Subsection C provides that the statute does not apply to general contractors and subcontractors unless they are “contracting with an independent contractor to perform services that do not require a license pursuant to [A.R.S.] Title 32, Chapter 10,” which governs contractors.

This means that generals and subs are likely able to use the newly created “Declaration of Independent Business Status” only to create the presumption of independent contractor relationships with workers that do not actually perform construction work (e.g., office workers and support staff, circumstances permitting).

When considering whether to hire a construction worker as an independent contractor, contractors and subs should instead consider the guidelines and requirements explained in the Arizona Registrar of Contractors (ROC) [URL [https://roc.az.gov/sites/default/files/files/sps102\\_independent\\_contractors\\_and\\_employees.pdf](https://roc.az.gov/sites/default/files/files/sps102_independent_contractors_and_employees.pdf)] Substantive Policy Statement 102. They should also be mindful that a construction worker hired as an independent contractor must be properly licensed by the ROC. 

## ARCA Joins the AZ OSHA Alliance Program

ARCA along with ten of our largest members have become signatories to create and participate in the Alliance Program. The fledgling effort will support OSHA's strategic goals by developing Alliance agreements and implementing project plans that emphasize raising awareness of OSHA's rulemaking and enforcement initiatives, and offering opportunities for roofing contractors to participate in the rulemaking process. Initial efforts will revolve around fall protection training and compliance. A new card will be developed certifying an employee's successful passage of a fall protection class tied to a stepped disciplinary action plan taken against employees who fail to comply. Alliances provide a forum for employers and workers to work together to resolve workplace safety and health issues. This is an entirely new concept and process in Arizona and the roofing industry is the first trade to form an Alliance. We will keep you informed as this effort develops and specific program requirements and expectations are clarified. 

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# Beware of "No Damages for Delay" Clauses

*Arizona law bans no-damages-for-delay clauses in prime contracts relating to public projects, but not to private contracts.*

*By Kevin Estevez*

Arizona's construction laws generally allow contractors to recover monetary damages arising out of delays caused by the project owner (or by the general contractor, if the damaged party is a subcontractor).

For protection against delay-related damages, some owners and general contractors may try to add "no damages for delay" clauses to their agreements. Given the potentially severe financial impact these provisions can have on the parties who are asked to accept them, no-damages-for-delay provisions should be fully understood and carefully considered before signing a contract.

## **Not Enforceable in Public Prime Contracts**

Some states have barred or restricted the use of no-damages-for-delay clauses, and others have created common law exceptions to their enforceability.

In Arizona, the enforceability of a no-damages-for-delay provision generally depends on whether the contract pertains to a public or private project. Under Arizona law (A.R.S. §§ 34-221(F) and 41-2617), those clauses are unenforceable in prime contracts on public projects. In fact, in a 2012 case, *Technology Const., Inc. v. City of Kingman*, the Arizona Court of Appeals held that, despite the existence of a no-damages-for-delay clause, the City was liable for the delays it caused based on § 34-221(F).

## **Enforceable on Private Projects**

In contrast to public projects, Arizona law does not prohibit no-damages-for-delay clauses in contracts on private construction projects. Moreover, Arizona has a strong preference for upholding parties' freedom to contract. Thus, no-damages-for-delay clauses are likely generally enforceable in Arizona in private construction contracts.

Even on private projects, though, enforceability in Arizona might not be absolute. Other states have carved out exceptions, and in the right circumstances Arizona courts might be inclined to adopt them.

For example, in a 1986 New York case (*Corinno Civetta Construction Corp. v. City of New York*), the court

ruled that a no-damages-for-delay clause would not preclude a damaged contractor's right to recover for delays:

- caused by the other party's bad faith or "willful, malicious or grossly negligent conduct";
- that were "so unreasonable that they constitute an intentional abandonment of the contract"; or
- resulting from the other party's breach of a "fundamental obligation of the contract."

## **Conclusion**

The exceptions listed above are speculative, and contracting parties should not assume that they offer any reliable protection in Arizona. Instead, for contracts on private Arizona construction projects, contractors (in contracting with an owner) and subcontractors (in contracting with a general contractor) should assume that Arizona courts will enforce a clear and well-written no-damages-for-delay clause. Thus, it is critical for contractors and subcontractors to identify and carefully consider such provisions before signing a contract. Failure to do so could be financially disastrous.

Click here to read the more detailed article on which this summary is based. <http://www.lang-klain.com/publications/constructionadvisor/no-damages-for-delay-clauses.htm> 



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# TPT Update

By James G. Busby, Jr., The Cavanagh Law Firm



Arizona, along with Alabama, Colorado, and Louisiana, is one of four states that allows municipalities to administer their own sales taxes.

## ***Sales Tax Simplification Promised and Delayed***

To simplify the sales tax reporting process, the Arizona Legislature passed a bill in 2012 that required the Department of Revenue to implement a central online portal by January 1, 2015, that would permit taxpayers who are required to pay municipal sales taxes that are not collected by the department the option of reporting and paying the taxes using the portal.<sup>1</sup> In 2013 the Legislature passed a more comprehensive sales tax reform bill.<sup>2</sup>

The portal and Arizona's other sales tax reforms were to take effect January 1, 2015. Some of the changes did go into effect on that date, such as Arizona's cumbersome new rules governing the taxation of construction contractors and the rule that prevents municipalities from initiating a sales or use tax audit unless the company is engaged in business in only one municipality or the municipality is authorized by the department to conduct the audit.

However, the most important simplifications — those that would have required the department to issue all municipal sales tax licenses, process all municipal sales tax returns, and receive all municipal sales tax payments — did not go into effect on January 1, 2015, as planned because the department's computer system was not ready to accommodate the changes. Rather, those important reforms were delayed — first until January 1, 2016, and then indefinitely — although the department now believes its computer system will be ready to accommodate those changes beginning this fall.

## ***New Tax Forms and Location-Based Reporting Now Required***

On June 29 the department announced that Form TPT-

1, the state's long-standing sales, use, and severance tax return, will not be accepted for reporting periods beginning on or after June 1, 2016.

Businesses that only have one location in Arizona and only report to one taxing jurisdiction in Arizona may use Form TPT-EZ. The department refers to that as a simplified form. While it is simplified compared with the new Form TPT-2, it is comparable to the department's old form, Form TPT-1.

Businesses with more than one location in Arizona or that report to more than one Arizona taxing jurisdiction must use Form TPT-2. Taxpayers now must report their gross receipts and deductions separately for each business location in Arizona and for each reporting jurisdiction. Thus, for example, a business that operates two separate retail stores in Arizona is now required to report the gross income and deductions for each store separately, even if the stores are located in the same municipality.

## ***Electronic Reporting Now Required by Some***

The department encourages all businesses to file their sales tax returns electronically at [www.aztaxes.gov](http://www.aztaxes.gov). As of July 1, 2016, businesses with two or more locations in Arizona are required to file Form TPT-2 electronically.

## ***For Now, Non-Program Cities Still Collect Their Own Taxes***

Although the instructions for Form TPT-EZ and Form TPT-2 indicate that all city taxes should be reported on those forms, a June 29, 2016, email from the department clarified that it will not begin collecting taxes for the state's 14 non-program cities until sometime this fall.

Accordingly, for now, taxpayers must continue reporting taxes directly to Arizona's non-program cities using the separate forms required by each city. Arizona's non-program cities are Apache Junction, Avondale, Chandler, Douglas, Flagstaff, Glendale, Mesa, Nogales, Peoria, Phoenix, Prescott, Scottsdale, Tempe, and Tucson.

## ***Practice Tip***

To help taxpayers and tax professionals familiarize themselves with Arizona's new reporting requirements, the department set up a page on its website with links to tax reporting guides, forms, tax rates, deduction codes, information concerning location-based reporting, and more. The department also published instructional videos on its YouTube channel. 

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Jason Johnson, 916-373-9912

## Upcoming Events

### october

**OSHA 30-Hour Training in Phoenix (English)** Oct 28 - Nov 18  
ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 7:00am-3:30pm

### november

**Construction Career Days** Nov 3-4  
5636 East McDowell Rd Phoenix 8:00am-2:00pm

**Tile Roofing Installer Certification (Phoenix)** Nov 9  
ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 8:00am-4:00pm

**OSHA 10-Hour Training in Tucson (English)** Nov 10-11  
Mahoney Group (5330 N. La Cholla Blvd., Tucson) 7:00am-12:00pm

**OSHA 10-Hour Training in Tucson (Spanish)** Nov 10-11  
Mahoney Group (5330 N. La Cholla Blvd., Tucson) 12:30pm-5:00pm

**Dinner Meeting (Tucson): How to Understand You Financial Statements** Nov 15  
Li'L Abner's Steakhouse, 8501 N. Silverbell Road, Tucson 4:00pm

**Dinner Meeting (Phoenix): How to Understand You Financial Statements** Nov 16  
Doubletree Suites, 320 N. 44th Street, Phoenix 4:00pm

### december

**OSHA 10-Hour Training in Phoenix (English)** Dec 1-2  
ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 7:00am-12:00am

**4th Annual Holiday Party** Dec 99  
ARCA Office Courtyard (Between the North and South Buildings), 4745 N. 7th Street, Phoenix 4:00pm-6:00pm

**OSHA 10-Hour Training in Phoenix (Spanish)** Dec 15-16  
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## Membership/Marketing Committee (continued)

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## Nominations & Elections Committee

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## Registrar Of Contractors Committee

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## Sponsorship Committee

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## Technical Committee

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## Young Professionals Committee

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## ARCA/ARIF COMMITTEES

### Charity Bowling Phoenix Committee

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### Charity Bowling Tucson Committee

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### Sporting Clays Committee

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SECTION 7 MARKETING

VERDE INDUSTRIES