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www.paconstructors.org 3
Funding Issues Begin to Bubble Up Again

Faced with the expiration of a $400-million subsidy from the Turnpike for public transportation, the Wolf Administration is beginning to set the stage for replacing that revenue.

PennDOT Secretary Leslie Richards, during the Associated Pennsylvania Constructors Fall Conference, outlined the Commonwealth’s transportation funding needs, asserting that the $3.5-billion annual-funding gap calculated in 2010, will have more than doubled by 2020 unless policymakers act. She pegged the annual gap in funding for Interstates and non-Interstate NHS roadways in the Commonwealth at between $1.5 and $5 billion.

What happened to the new 2013 funding? First, Act 89 only addressed about two-thirds of the funding gap. The cost of materials is going up. And despite the gradual rollback in the amount of revenue diverted from the Motor License Fund to support State Police operations, the diverted amount is still well more than $700 million.

Since 2001, PA has diverted about $9 billion from the Motor License Fund. That would have paid for thousands of highway improvements and bridge replacements. In fact, the diverted amount in 2018 alone would have paid for resurfacing almost 4,000 lane miles of roadway, or to design, replace, and maintain almost 500 bridges for the next 25 years. So, while the public’s perception is that there’s a lot of highway work going on, there’s also a lot of highway work NOT being done because of the revenue being diverted.

What’s the answer? If PA accelerated the rollback of diverted money and started more quickly using that money as it was intended, we could start meeting our infrastructure needs without increasing gasoline taxes.

Also, Gov. Wolf recently said he supports changing the transportation funding method to relieve the burden on the Turnpike. The combination

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CONTINUED ADVOCACY WILL BE CRITICAL AS NEW LEGISLATURE ARRIVES

by Robert E. Latham, CAE, APC Executive Vice President

Keeping Up the Political Pressure Gets Results
This past October, the legislature gave final approval, and Governor Wolf signed into law, Senate Bill 172, marking a culmination of years of hard work by the transportation construction industry. SB 172 will establish a five-year Automated Speed Enforcement Pilot Program in Pennsylvania work zones.

SB 172 truly represents an historic and landmark achievement in Pennsylvania. It is believed Pennsylvania will become only the third state in the nation to have an automated speed enforcement system in work zones (Maryland and Illinois have programs currently in place). Once law, there will be an 18-month process for PennDOT and the PA Turnpike Commission to issue an RFP, secure a vendor, and put the program in place. However, it is expected that neither agency will need the 18 months to implement this process, so the program may be implemented in a much faster timeline, hopefully, during the 2019 construction season.

Highlights of the legislation are as follows:
- Cameras can be deployed in work zones on any highway listed on the Federal Highway System, including all Interstates and the PA Turnpike
- The system can only be deployed in active work zones where workers are present
- Fines can be generated for speeding in excess of 11 mph over the posted speed limit
- A first-offense warning was added by the House, but repeat violations will be $75 and $150 for third and subsequent violators

Once again, the political activism of our association leaders working with our allies has paid off. Just as with Act 89, the historic 2013 comprehensive transportation funding plan, steadfast work with elected officials by contractors, engineers, and our industry partners got the job done. Please visit the APC website (www.paconstructors.org) to view a brief video recapping this great effort.
of two legislative measures – one in 2007 and the other in 2013 – provided for a $450-million subsidy to public transportation and resulted in toll increases every year. The Turnpike has greatly increased its debt. Under the funding arrangement, $400 million of the subsidy will disappear by 2023 at the latest. A lawsuit filed by an independent truckers’ organization could hasten the subsidy’s demise.

“I think there’s bipartisan support for actually taking a look at that, because I think we all recognize that’s unsustainable,” the governor said. “People using the turnpike are paying too much. The turnpike really is driving business away.”

Moving the needle on these two issues will require a lot of hard work.

New Faces Everywhere
APC recently took some time to analyze how many representatives in the House and Senate are still left when the Act 89 vote was taken. The numbers are alarming, especially in the House and one that if you look at the seniority list it’s entirely possible that there will be a Transportation Committee chairperson who did NOT vote for Act 89. Here’s how it shakes out …

HOUSE (203 total members)
• 108 total members were here when Act 89 was passed … that’s only 53%
• Only 55 voted for the bill (30 Republicans and 25 Democrats) … that’s only 50% of what’s left and 27% overall

SENATE (50 total members)
• 33 total members were here when Act 89 was passed … that’s 66%
• 27 voted yes for the bill (16 Republicans and 11 Democrats) … for 82% of what’s left and 54% overall

Text 52886 & Enter APC to Become Part of APC’s new Advocacy Action Team!
To help with this effort, APC is launching a new mobile phone-based grassroots lobbying system. It will use smartphone technology to communicate through text messages, send emails directly to legislators, connect with legislators via Facebook and Twitter, and even call lawmakers with the patch-through calling tool. Simply address a text message to 52886 and enter APC in the message. See the accompanying ad (page 7) to learn how you can use your smartphone to make our voices heard even louder in 2019.

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Do you want to be a part of the largest, highway construction advocacy network in PA? Then you don’t want to pass up this opportunity to sign up today.

APC has launched a new tool to better enable our industry to collectively communicate with our elected officials on the policy issues and legislation that matter to us the most. You will become a part of a group that will advance the issues that are critical to the highway construction industry.

Text APC to 52886
EARLY SNOW CAN’T STOP THE 40TH ANNUAL APC/PENNDOT FALL SEMINAR

Despite an early 7-inch November snowfall, the enthusiasm at the 40th Annual APC/PennDOT Fall Seminar was vibrant and strong.

More than 1,400 attendees descended on Hershey over the course of three days to network with colleagues, view the latest industry trends in the exhibit hall, and attend educational sessions.

The APC/PennDOT Fall Seminar is the largest highway construction conference in the Commonwealth. The event started Wednesday, November 14, with the opening of the exhibit hall where more than 140 booths enabled attendees to interact and forge new business partnerships.

Thursday’s General Session kicked off with the Harrisburg John Harris High School ROTC Color Guard presenting the American Flag and singing the National Anthem.

APC President Max Hemp then opened the morning program with a look back of how the Fall Seminar has evolved over 40 years and introduced APC Executive Vice President Bob Latham to make a presentation on the organization’s 2019 strategic plan.

Highlighting Latham’s remarks was a summary video of how the industry collectively and successfully advocated for the passage of Senate Bill 172, which will allow for automated speed enforcement in highway work zones. The enactment of SB 172 culminated years of hard work by the entire highway construction and design industry.

Latham then introduced American Road & Transportation Builders Association (ARTBA) executive Rich Juliano, who made a special lifetime achievement award presentation to John McCaskie. McCaskie recently retired from Swank Construction Company. (See article on page 18).

The opening session continued with Keynote Speaker Lynn Lancaster, who discussed how employees should recognize and work with the generational differences within their workforce.

The morning concluded with PennDOT Secretary Leslie Richards outlining the Commonwealth’s transportation funding needs, informing that the $3.5 billion annual funding gap calculated in 2010, will have more than doubled by 2020, unless policymakers act. She said public transportation funding is the Commonwealth’s most-pressing transportation need.

As the day continued so did the snow but that didn’t stop attendees from taking full advantage of the educational sessions in the afternoon and evening.

Friday continued to provide worthwhile experiences with several in-depth project overviews of the now completed Pennsylvania Turnpike’s I-95/I-279 Interchange and PennDOT’s State Route 30 Landslide Remediation Project in Allegheny County. The conference closed with the traditional 2019 capital plan presentations by PA Turnpike Commission Chief Engineer Brad Heigle and PennDOT Deputy Director for Highway Administration George McAuley.
APC will continue to hold this annual event so you don’t want to miss the 2019 APC/PennDOT Fall Seminar scheduled for November 20-22 in Hershey.
The Associated Pennsylvania Constructors (APC) in coordination with PennDOT and FHWA is conducting a study to determine how e-Construction and Partnering concepts complement one another to result in higher quality construction projects.

The study will identify the state of workforce preparedness for e-Construction and Partnering among the PennDOT, PA Turnpike, and contractor and consultant communities. In advance of the survey, a workshop was conducted during the APC Future Leaders of Industry (FLI) to gather initial feedback on the preparedness of the workforce from the industry and state agency perspectives.

During the workshop, the roughly 70 attendees were divided into five- and eight-person groups. The groups were asked to discuss specific questions related to e-Construction and Partnering.

The three questions regarding e-Construction were:
- If you were going to promote the use of e-Construction in your organization, what would you need to know?
- If you were going to promote the use of e-Construction in your organization, what impediments do you foresee?
- What apps would be most helpful on the jobsite?

Overall, cost was the most-common discussion topic, followed closely by access, functionality, and training. Other frequent responses were connection issues; how to handle changing technology, equipment, and software. Safety was another notable topic discussed by two groups.
Groups expressed concern about the possible distraction of using an iPad or mobile phones on an active construction site.

Attendees responded that relationships are of paramount importance on the jobsite, and e-Construction can be an impediment to relationship building if there is a heavier reliance on electronic communication through email and text messaging. Daily face-to-face communication is encouraged to overcome the impediment, along with the use of a project-resolution process among the project team, including inspectors and foremen.

Learning from Successful Leaders
This past summer, past participants were asked how APC could make the conference more valuable to them. Their response was, “Develop a program where participants will be able to speak with contemporary leaders in the field who will share the learning and lessons on charting a career path in the context of changes in the industry.” In other words: “We want to hear from and meet successful people and learn how they did it.” We heard them and then we delivered.

Attendees heard testimonies to perseverance and relationship building from Tim Rice, of Hempt Brothers Inc.; Daniel J. Hawbaker of Glenn O. Hawbaker Inc.; Bradley J. Heigel, chief engineer of the PA Turnpike Commission; Lea Nadler of Susquehanna Civil Inc.; Melinda Peters of RKK Engineers; George McAuley, deputy secretary for PennDOT’s Highway Administration; and Jennie Granger, deputy secretary for PennDOT’s Intermodal. APC thanks those leaders for sharing their thoughts with the next generation of innovators.
INTRODUCING NEW APC BOARD MEMBERS

Joseph M. Martosella III is assistant vice president and general counsel of Buckley & Company Inc. He joined Buckley in February 2016 and worked alongside his grandfather (former APC Board of Directors member, Risk Allocation Committee member and a James J. Skelly Award winner), Joseph M. Martosella Sr. for the final 2 1/2 years of his distinguished 70-year career with the company. Joe is the son of current Board member Joseph M. Martosella Jr., and currently serves on APC’s Risk Allocation Committee. He is a graduate of Villanova University with degrees in Finance and Marketing, as well as a graduate of Villanova University School of Law.

Ali Mills is executive vice president of Plum Contracting Inc., a full-service Highway and Bridge Contractor headquartered east of Pittsburgh in Salem Township. Mills joined Plum Contracting in May 2006, working with the president and chief estimator, where she was exposed to the daily construction events that drive the business. After working many different roles since then, Mills settled into her current role as executive vice president in 2015, and runs the business side of the company.

Mills is the first woman to be elected to the Constructors Association of Western Pennsylvania Board of Governors & Executive Committee, where she is still currently serving.

Steven J. Reed is the operations manager/secretary for Mekis Construction Corp. located in Fenelton. He started his career as a summer intern in 2002, while attending Penn State University. Upon completion at Penn State he started as a field engineer in 2004. He then moved up to superintendent and project manager. In the spring of 2018 he took his current position.

He also is on the board of the Pittsburgh Chapter of ACI and is on the Labor Committee of CAWP.
Michael J. Sis is the senior construction manager for Pennsy Supply Inc. He is responsible for Pennsy’s construction operations in Central and Northern Pennsylvania. He joined Pennsy in 2011, transferring from another CRH company in Boise, Idaho. In 2008, Sis was an internal construction practices consultant for CRH. In 2005, Sis started with a local CRH company as an intern and worked his way to project manager.

He is a 2005 graduate of Boise State University, with a degree in construction management. Sis attained his MBA from Lebanon Valley College in 2015.

Sis also serves as a board member to the Pennsylvania Asphalt Paving Association. He serves as management co-chair and trustee to the Pennsylvania Heavy and Highway Pension and Health and Welfare Funds.

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We experienced the changing of the guard last October when I took the helm from AECOM’s Matt Cummings and became your new ARTBA chairman during the association’s National Convention in New York City.

ARTBA also experienced change as Pete Ruane retired November 1 after 30 years – the longest tenured president and CEO in the association’s history – and 21-year association veteran Dave Bauer became the new CEO on January 1.

And we see changes with the new Congress that resulted from November’s midterm elections.

One thing isn’t changing, however. And that’s our constancy of purpose.

ARTBA remains laser-focused on its core mission of transportation construction market development and protection.

As part of my agenda, ARTBA is working to:
• Achieve a permanent Highway Trust Fund Solution by pressing the new Congress and President Trump to act ASAP on a sustainable Trust Fund fix that provides the necessary revenue to help ensure future market stability and significant market growth.
• Ensure passage of an infrastructure investment package that includes a major transportation component and emphasizes significant new investments in the National Highway Freight Network.
• Lay the groundwork for the next surface transportation bill. While simultaneously pursuing the two items above, ARTBA will lead the policy discussion and frame the debate for the scheduled 2020 reauthorization of the FAST Act.

Pursuing all of these goals will require continued membership support for the Transportation Makes America Work (TMAW) program to fund robust advocacy activities, educate the many new members of Congress about the value of transportation investment, and pursue necessary litigation to defend against efforts to delay highway and transit improvements. We’d ask your firm to consider financially supporting TMAW in 2019.
Another key priority is building on the success of my two predecessors – David Zachry and Matt Cummings – with the ANSI-accredited Safety Certification for Transportation Project Professionals (SCTPP) program. In a major recent development, the Texas Department of Transportation became the first agency in the nation to endorse the program and commit 500 agency employees to sit for the certification exam in fiscal year 2019. We are working to bring the program to more project workers, supervisors, foremen, owners, planners, designers, and inspectors. The aim is to have thousands of more “eyes” to the task of identifying and mitigating potential hazards for workers and motorists commonly found in transportation work zones – skills identified through the certification exam.

As you can see, we’ve got a full plate. We’ve rolled up our sleeves, put our hardhats on, and leaned into these tasks. I look forward to working with all ARTBA members to get the job done!

LANE’S FIRST ARTBA CHAIRMAN

Bob Alger is the second leader of The Lane Construction Corporation to become ARTBA chairman. Nearly 80 years ago Lane President, William R. Smith took the wheel of the association at its 28th annual meeting in 1931.

Attendees at that 1931 St. Louis convention discussed a $12-billion road construction program, split equally between the federal government and then 48 states, to relieve the massive unemployment of the Great Depression.

John S. Lane started the Connecticut-based company in 1890, as a stone-crushing operation for railroads and streets. The firm quickly expanded its operations throughout New England and New York state.

By the Great Depression, Lane had paved more than 1,400 miles of roadway, becoming one of the largest highway contractors on the East Coast.

In 2016, Lane was acquired by Salini Impregilo Group, a global construction contractor specializing in hydro and dams, railways, metro systems, roads, and motorways.

DAVE BAUER IS NEW ARTBA CHIEF

Dave Bauer became the new ARTBA president/CEO effective January 1. He succeeded Pete Ruane, who retired October 31 after 30 years of service, the longest tenured head of the 116-year-old Washington D.C. organization.

Long-time ARTBA Executive Vice President & Chief Operating Officer William D. Toohey Jr., who has been with the association 34 years, is assisting in the transition process. He has announced his intention to retire in April 2019.

Bauer joined ARTBA in 1997, and previously served as executive vice president of Advocacy.
“Dave Bauer’s encyclopedic knowledge of transportation policy issues, his non-partisan approach, and his strong relationships with the staff, the association’s membership, and its industry coalition partners make him the right person to lead ARTBA,” said David Zachry, CEO of the Zachry Corporation, an international construction firm based in San Antonio, Texas. “Dave earned this position with his enthusiasm, energy, and plan for the future.” Zachry chaired the search committee charged with finding the association’s new top executive.

The unanimous decision of the association’s board of directors was announced in October at ARTBA’s National Convention, held in New York City.

“I am humbled and energized by this new opportunity,” said Bauer. “While this is a personnel change for the association, it is not a mission change. ARTBA will continue its aggressive advocacy work to grow and protect the nation’s transportation infrastructure market to meet the demand for safe and efficient mobility.”

Bauer, as head of ARTBA’s Government Relations team, directed the association’s lobbying, grassroots initiatives, policy development, regulatory engagement, political fundraising, and disbursements. He played a key leadership role in the passage of four major federal highway and public transit investment laws: TEA-21 (1998), SAFETEA-LU (2005), MAP-21 (2012), and the FAST Act (2015).

Bauer accepted an “Industry Partner Award” on ARTBA’s behalf from the Renewable Fuels Association in 2005, that recognized his work to help ensure ethanol-blended motor fuel is appropriately taxed to support federal Highway Trust Fund investments. The policy reform boosted revenues for transportation programs by more than $2 billion per year.

“After a rigorous search process, Dave Bauer was clearly the best choice to lead ARTBA’s outstanding staff,” 2019 ARTBA Chairman Bob Alger, president and CEO of Connecticut-headquartered Lane Construction Corporation, said. “His passion and unwavering commitment to advancing ARTBA’s mission will help drive his – and the association’s – success.”

Prior to joining ARTBA, Bauer spent seven years on the personal staff of U.S. Senator Mark O. Hatfield (R-Ore.). Originally from Oregon, Bauer graduated from Willamette University in 1990 with a B.S. in economics. He earned a master’s in business administration degree from
The George Washington University in Washington, D.C. He and his wife, Julie, and two sons, Davis and Josh, reside in Alexandria, Va.

MATT JEANNERET NEW ARTBA COO

Matthew J. Jeanneret assumed the role of ARTBA executive vice president and chief operating officer effective Nov. 1, 2018.

Jeanneret, who joined ARTBA in 1998, as director of Public Affairs, had been serving as the association’s deputy chief operating officer since last January. As ARTBA’s senior vice president of Communications and Marketing over the past decade, he led its award-winning external communications initiatives aimed at building political support for increased transportation infrastructure investment in the past four federal highway and transit program authorization laws.

Since 2005, Jeanneret has also served as the ARTBA Transportation Development Foundation’s (TDF) executive director. In this role, he raised more than a half-million dollars for the Lanford Family Highway Worker Memorial Scholarship Program, which helps the children of those killed or permanently injured on the job attend college. He played a key role in the development and 2016 launch of the TDF’s “Safety Certification for Transportation Project Pro Professionals™” program, which was accredited in 2018 by the American National Standards Institute.

“Matt’s 20 years of accomplished service have well prepared him for this new role,” said William Toohey, Jeanneret’s predecessor. “Over that time, he has been instrumental in the success of the association’s Advocacy, Safety, Education and Member Services programs. Matt is a proven leader, effective manager and has a deep commitment to the association’s mission, membership, and staff.”

Jeanneret earned the Certified Association Executive (CAE) designation in 2005 from the American Society of Association Executives (ASAE), a credential held only by 5 percent of those in the field. He is a 2009 graduate of the U.S. Chamber of Commerce’s Institute for Organization Management (IOM), a four-year, non-profit leadership program.

In 1992, he received a presidential appointment to serve as a spokesman for the U.S. Department of Justice in the administration of George H.W. Bush. He began his career in 1989 as a legislative aide to now retired U.S. Senator Alan K. Simpson (R-Wyo.).

Jeanneret has a B.A. from Boston College and an M.A. from George Washington University in Washington, D.C. He and his wife, Elizabeth, reside in Arlington, Va.
John McCaskie formally received the 2018 Nello L. Teer Jr. Award from ARTBA’s Contractors Division at a November 15 event in Hershey. The presentation came during the 40th Annual Fall Seminar held by APC, ARTBA’s state chapter. The annual award recognizes an outstanding advocate for the nation’s transportation contractors. It is named for ARTBA’s 1959-60 chairman, whose family owned one of the most-prominent highway contracting firms in the Southeast U.S.

McCaskie’s volunteer leadership roles have been diverse. Most notably, he served as an APC officer for many years, culminating as president in 2003-2004. He chaired APC’s Risk Allocation Committee and was a respected leader within the Contractors Association of Western Pennsylvania.

On the national level, John McCaskie co-chaired ARTBA’s Bridges & Structures Committee and served on its Board of Directors for nearly 15 years. In 2008, the Transportation Construction Coalition – comprised of about 30 national organizations – needed a witness to testify before the U.S. Senate Transportation Appropriations Subcommittee on the critical issue of Highway Trust Fund solvency. McCaskie did so, representing the national coalition with his usual combination of passion and civility, and helped spur Congress to action that year.

As McCaskie recalled during his acceptance remarks, he spent his 50-year career working for two, family-owned Pennsylvania firms, W.P. Dickerson & Son and Swank Construction Company. He retired as Swank’s chief engineer at the end of 2017. John and his wife, Rose, remain in the area and plan to continue attending industry events through his role as an APC emeritus director.
Detwiler Receives ACPA’s Hartmann-Hirschman-Egan Award

A tireless industry advocate, Donald Detwiler received the American Concrete Pavement Association’s (ACPA) Hartmann-Hirschman-Egan Lifetime Service Award during the association’s 2018 Annual Convention in Ft. Lauderdale, FL. The award recognizes individuals, companies, and organizations for unparalleled commitment, dedication, participation, and leadership in the concrete pavement industry. The award was presented by 2018 ACPA Board of Directors Chairman Chuck Niederriter, who serves as the chief operating officer of Golden Triangle Construction Company Inc. and is APC’s current vice president.

Detwiler served as chairman of the ACPA Board of Directors in 1979. Instrumental in the establishment of the Northeast Chapter in 1987, which was the first affiliated Chapter of ACPA, Detwiler then served as the first chairman of the ACPA Northeast Chapter. He was APC’s 1983-84 president and served on the APC Executive Committee for many years. He is a Life Member of the APC Board of Directors and currently serves the industry as a representative to the Pennsylvania Transportation Advisory Commission, which helps established critical transportation policy in the Commonwealth.

The Hartmann-Hirschman-Egan Award is the most-coveted honor presented by the ACPA. The award, which was first presented in 1968, is named in honor of Harold W. Hartmann, Robert E. Hirschman and Edward A. Egan. Hartmann served as the ACPA secretary-treasurer from 1964-1974; Hirschman is recognized for his service as 1967 ACPA chairman and secretary-treasurer, which he served from 1975-87; and Egan served as the 1986 ACPA chairman secretary-treasurer from 1988-2007.

The first recipient of the ACPA lifetime honor was James W. Johnson, inventor of the slip-form paver.

Robert Hirschman, who was chairman of L.S. Lee Inc. among other business interests, served as a Life Member of the APC Board of Directors, was APC’s president in 1965-66 and ARTBA chair in 1985.
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Nearly 80 years ago, a group of highway contractors came to an agreement that, as a group, they would be more effective in developing good working relationships with the soon-to-be-generated Pennsylvania Turnpike Commission and formed the Associated Pennsylvania Constructors (APC). The incorporators of the APC created a Mission Statement that has remained to the present:

- Advocate for adequate funding for Pennsylvania’s transportation needs
- Foster a positive partnership between governmental agencies and officials, and APC Members based on trust and integrity
- Promote quality in the design and construction of transportation systems

Throughout the years, APC committees, liaison meetings with PennDOT and other officials, education programs, and networking opportunities have been at the heart of fulfilling that mission. Years ago, almost all of our communication was face-to-face with members making the drive to Harrisburg to meet with each other or government officials.

One of the challenges of a membership organization in a state the size of Pennsylvania is keeping in touch with members as far flung as Erie to Chester. While APC holds meetings in each PennDOT District, not all members access these sessions.

After a couple years of due diligence, the APC Board approved a technology upgrade to facilitate interactive video conference and webcasting by APC for its members. This new facility will greatly “up our game” when it comes to member engagement. The beauty of the facility will be APC’s ability to hold video “face-to-face” meetings with small groups or more than 100 members at a time. Just some of the planned video sessions include:

- Staff updates on legislation and other issues of importance
- Remote committee meeting attendance such as Bridge or Risk Allocation Committees
- EEO-DBE compliance meetings
- Training on new PennDOT processes
- “Face-to-Face” with the Secretary or Deputy Secretary
- Interactive interviews with key legislators
- Interaction with tech colleges and engineering schools
- Opportunities for Associate Members to provide education programming (e.g. legal, regulatory, insurance)
- Career development webinars and speakers
- Grassroots call-to-action sessions

Look for the schedule of video sessions to be posted on the APC website at www.paconstructors.org.
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PENNDOT/INDUSTRY WINTER SCHOOLS

APC has been working with PennDOT to organize the Winter School programs for the districts throughout the Commonwealth. Below are the listed dates for the 2019 Winter School programs. Please check the APC website for more information as it becomes available. If interested in registering for any of the listed Winter Schools, check the PennDOT Training Calendar for registration information. If you have any additional questions, contact Aaron Hoover at APC (ahoover@paconstructors.org).

WINTER SCHOOL DATES

District 1: February 19, 20 & 21 (Industry Feb. 19 & 20)
District 2: February 13 & 14
District 3: January 25
District 4: February 5, 6 & 7 (Industry Feb. 5)
District 5: February 19, 20 & 21
District 6: February 12 & 13
District 7: January 30 & 31
District 8: February 5
District 9: January 22
District 10: January 16, 17 & 18 (Industry 16 & 17)
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The End of the Economic Loss Doctrine?

by James W. Kutz, Esquire, McNees, Wallace & Nurick LLC

A recent landmark decision issued by the Pennsylvania Supreme Court, Dittman v. UPMC, creates significant additional liability exposure for all employers and could signal the end of the Economic Loss Doctrine in Pennsylvania.

The case arose when several employees of UPMC filed a class action Complaint alleging that a data breach had occurred that resulted in substantial personal and financial information being disclosed for approximately 62,000 UPMC employees and former employees. The plaintiffs further alleged that the stolen data, much of which included information employees were required to provide as a condition of their employment, was used to file fraudulent tax returns on behalf of certain employees, which resulted in actual damages. Accordingly, the plaintiffs filed suit in the Court of Common Pleas of Allegheny County.

One of the employees’ primary theories of liability was that UPMC was negligent in safeguarding their personal and financial information, and that UPMC had a duty to prevent the information from being lost, stolen, or otherwise disclosed to unauthorized persons. Essentially, the employees argued that UPMC had a common law “duty of care,” which permitted the employees to bring a claim for simple negligence against UPMC. UPMC filed Preliminary Objections to the employees’ Complaint, arguing primarily that the employees had no viable cause of action in Pennsylvania for negligence because the employees sought only “economic” damages, and did not argue that they suffered physical injury or property damage, and thus the Economic Loss Doctrine barred the Complaint. The “Economic Loss Doctrine” is a common law legal principle that has been applied by Courts for many decades that largely prevents parties from bringing suit under a negligence theory for solely economic damages. As will be discussed in detail below, the Supreme Court’s decision in Dittman effectively eviscerates this Doctrine in Pennsylvania.

Before the Supreme Court heard the case, the two lower courts had ruled in favor of UPMC. Initially, the Trial Court granted UPMC’s Preliminary Objections and ruled that:

1. An employer does not have a duty to safeguard employees’ personal information
2. The Economic Loss Doctrine barred the claims of the employees because they had only alleged pecuniary losses, as opposed to property damage or personal injury

The Superior Court affirmed that decision, and the employees appealed to the PA Supreme Court. The Supreme Court ultimately overturned the lower court’s ruling, and found that the Economic Loss Doctrine did not bar the employees’ negligence claim against UPMC. Rather, the Court found that UPMC owed a duty of due care to its employees to use reasonable care to safeguard their personal sensitive data, and to the extent that negligence and damages could ultimately be proved at a trial on remand, that UPMC would be potentially liable for same. The overall impact of the Dittman decision is far reaching, not only for those involved in the highway construction industry, but for all employers. First, the Court effectively created a common law duty of all employers to protect personal information. If employers do not take reasonable safeguards to protect confidential information, they could be subject to a negligence claim by their employees. While employers can never fully protect themselves from being sued, prudent employers should fully evaluate the impacts of this decision, and consider what reasonable steps it can take to protect the private information of their employees. While this area of the law will continue to evolve, to defend against negligence claims, employers may be required to show that they took steps such as hiring external firms to analyze data security, adequately training their employees, making sure firewalls are in place, etc., to argue that they were not “negligent” in the event of a data breach. Employers should also consider discussing this case with their liability insurance carriers to determine whether they have coverage in the event they are sued on a negligence claim due to a security breach that compromises data. In an environment like the highway construction industry, where personal information such as certified payrolls is routinely sent to others, an employer’s duty to reasonably safeguard that type of information is unclear, but once again appropriate safeguards should be considered.

The second significant issue to consider following the Dittman decision is whether the Economic Loss Doctrine has any continued viability in Pennsylvania. It is axiomatic that one party can always file suit against another party with which it has a contractual relationship to seek economic losses. However, when a party has no direct contract with another party, its ability to bring a direct suit against that entity for purely economic damages has previously been extremely limited.
The most common "noncontractual" cause of action that one party can bring against another is a claim for simple negligence. First-year law professors often tell their law students that the tort of "negligence" can be summed up in four words: "duty, breach, causation, damages." In Dittman, the Supreme Court focused heavily on the "duty" part of this analysis, as, without such a duty, one cannot prevail on a claim for negligence.

Most negligence claims are brought because everyone has certain common law duties to others to not be negligent. The Court in Dittman emphasized the longstanding premise that when an actor's "affirmative conduct" is involved, "he is generally under a duty to others to exercise the care of a reasonable man to protect them against an unreasonable risk of harm to them arising out of the act." In other words, even if one does not have a contractual relationship with another, he or she still has certain "duties" to others.

When personal injuries or property damage are involved, it is not unusual for a plaintiff to allege that a number of defendants were negligent in causing their injuries. However, before the Dittman decision was issued, it was very difficult for a plaintiff to allege a negligence theory to seek purely "economic" damages against the party that it believed caused it harm but with which it does not have a contract, because the Economic Loss Doctrine barred such claims. Notably, the one primary exception to the Economic Loss Rule prior to the Dittman decision was set forth by the Pennsylvania Supreme Court in Bilt-Rite Contractors, Inc. v. The Architectural Studio (2005) in which the Court allowed a direct cause of action against a design professional for solely economic damages because it ruled that the design professional had made "negligent misrepresentations" on which the plaintiff contractor was permitted to rely. The Bilt-Rite decision created a narrow exception to the Economic Loss Doctrine by allowing, in certain circumstances, design professionals to be sued directly by those with whom they had no direct privity of contract because designers are in the business of providing professional information for pecuniary gain.

Following the Supreme Court's decision in Bilt-Rite in 2006, the Court subsequently refused to extend the Bilt-Rite decision to situations involving mistakes by utility firms. In Excavation Technologies v. Columbia Gas (2009), the Court denied a claim by a contractor for purely economic losses (such as idle time, delay costs, etc.) due to the utility firm's failure to properly mark its facilities. In that case, the Court found that because utility firms were not in the business of providing information to contractors for pecuniary gain, the contractor's claim for "negligent misrepresentation" should be dismissed.

While it is somewhat unclear from the face of the Supreme Court's decision in Dittman, the Dittman decision seemingly eliminates the Economic Loss Doctrine in Pennsylvania. Indeed, the Court appeared to indicate in its Opinion that had the plaintiffs in Excavation Technologies brought a simple "negligence" claim rather than a "negligent misrepresentation" claim, that the contractor may have prevailed on their direct claim against the utility. Essentially, one can now bring a negligence claim against any entity that owes he or she a duty to protect them against an unreasonable risk of harm, irrespective of the Economic Loss Doctrine. The Court in Dittman noted that the key inquiry will be to determine if a "duty" is owed to another, irrespective of whether there is a contractual relationship.

The practical effect of the Dittman decision is that it has opened the floodgates for significantly more lawsuits, not only with respect to data breaches but with respect to many other contractual settings involving third parties. In the highway construction industry, there are now many scenarios in which the Pennsylvania Supreme Court has at least created a significant question as to whether direct liability exists for simple negligence in a situation where there is no privity of contract. Several questions that arise in the highway construction industry following the Dittman decision include:

- Can a contractor now file a direct lawsuit against a utility firm for negligence, either for mismarking their facilities, and/or for simply failing to show up when they had previously promised to do so in a certain time period, if the losses are solely economic?
- Can a contractor now bring a direct claim against a consultant inspection firm working for PennDOT (either working at a manufacturer's plant or in the field), for negligent inspection that allowed a defective product to be shipped to the jobsite and/or installed on a project?
- What steps should a prime contractor take to protect personal information, not only for its own employees, but for the payroll information it receives from subcontractors?
- Does the Dittman decision create any additional liability for public owners given the existence of governmental immunity statutes, and if not will the General Assembly act to expand a public owner's liability for tort claims?
- Does the Dittman decision create additional liability for design professionals beyond what Bilt-Rite already provides?

In summary, the Dittman decision is one of the most significant decisions recently issued by the Pennsylvania Supreme Court, as it not only creates significant potential additional risks for employers, but also creates additional legal theories that can be brought to recover damages from those arguably responsible for the harm.
Brayman Receives AGC Innovation Award

Advanced Construction Robotics (ACR) and its integration partner Brayman Construction Corporation have been awarded the Associated General Contractors of America (AGC) Inaugural Innovation Award at the AGC Centennial celebration held in Washington, D.C., last October, for their autonomous rebar-tying robot, TyBot. TyBot is commercially available and uses robotics and AI technology to improve the industry’s productivity in bridge construction projects.

The Innovation Award encourages trailblazers within the industry to provide solutions to the challenges affecting construction. These challenges include labor shortage and lack of diversity, technology advancements, jobsite safety, sustainability, and project complexity. While applicants were judged on their ability to address one of these challenges and the long-term positive effects on the industry, TyBot is an innovation that addresses them all.

TyBot is a reliable, flexible, and scalable solution set to augment and reduce the labor need in the most critical path activity in bridge deck construction–rebar tying. TyBot is the first of many autonomous products ACR has in the works to lead the long-term transformation of the construction industry towards enhanced productivity, improved safety, increased profits, and reduced schedule risk.


Gannett Fleming Wins National ARTBA Award

Gannett Fleming won the American Road & Transportation Builders Association (ARTBA) 2018 Glass Hammer Award for its Connected Women at Gannett Fleming™ employee resource group.

ARTBA gives the award to a company in the transportation construction industry that has innovative programs to engage and encourage female leaders. Connected Women co-founder Judy Hricak, CPSM, CiPP, vice president and chief communications officer, received the award on behalf of the firm during ARTBA’s national convention in New York City.

“I am grateful to ARTBA for recognizing the hard work of the Connected Women founders, steering committee members, and Connected Ambassadors from across the firm,” said Bob Scaer, P.E., Gannett Fleming chairman/CEO, “These women are laying a foundation that will serve all employees of Gannett Fleming – both men and women – for years to come.”

Connected Women began in 2017 with the mission to create a culture that empowers, supports, and mentors women to achieve career and personal success at Gannett Fleming. Nearly 70 women currently serve as Connected Ambassadors, leading local initiatives to fulfill that mission such as fundraising for charities that serve women, networking events, and professional development. In 2018, the group launched Connected Allies, an avenue for all employees to become more involved and help make Gannett Fleming a best-in-class firm for ally ship.
HRG Announces Leadership Promotions, Organizational Changes

Herbert, Rowland & Grubic Inc. (HRG), an employee-owned, full-service civil engineering firm, has announced leadership promotions and organizational changes as part of a strategic succession planning initiative. Effective January 1, Jason A. Fralick, P.E., assumed the position of president. The current President & CEO Robert C. Grubic, P.E., will remain with the company as CEO and chairman of the board, allowing him to focus on HRG’s long-term vision and strategic objectives.

In addition, Grubic will continue to support the company’s clients and participate in all phases of project development. Grubic has been with HRG for 45 years and has served as president & CEO for the past 29 years. Based in Harrisburg, HRG has expanded to strategic locations throughout Pennsylvania and West Virginia under Grubic’s leadership.

Fralick, who joined the company in 1991 as an intern, has held various leadership positions and served clients across all of the company’s geographic markets and service areas. A native of Dauphin County, Jason currently serves as Western Region vice president, which includes locations in State College, Lewisburg, Pittsburgh and Morgantown, W.Va.

As president, Fralick will lead HRG operations and supervise the development and implementation of the company’s strategic business plans. His responsibilities also include initiatives that encompass employee development, marketing and business development, as well as financial and administrative operations.

HRG’s leadership team will also include the newly created position chief operating officer, which will be filled by Andrew M. Kenworthy, P.E. Currently serving as Eastern Region vice president, Kenworthy has spent 23 of his 25-year career with HRG. As Eastern Region vice president, he oversees HRG’s locations in Harrisburg, York and Shippensburg. As COO, Kenworthy will direct all technical and project delivery operations and oversee all HRG locations.

Brian D. Emberg, P.E., who has served the company for 30 years, will continue as senior vice president, a position he has held for the last seven years. In his role, Emberg will focus on strategic business development and client engagement.

In addition, HRG has also elevated marketing to a higher level in the organization to reflect its integral role throughout the company and in accomplishing short- and long-term goals. Corporate Marketing, led by Ryan A. Albright, will report directly to the president.

Bruce A. Yerger will continue as chief financial officer and vice president of Administration, a position he has held for the last 10 years.

The company’s succession plan is comprised completely of internal employees who have a long history with the company, which Grubic attributes to the quality and strength of the HRG team and its commitment to developing and promoting from within the organization. In addition, members of the leadership team, including Grubic, Fralick, Kenworthy, and Emberg, will continue to serve clients.
IBTTA Elects Compton as Second Vice-President

The International Bridge, Tunnel and Turnpike Association (IBTTA) has announced the election of Mark Compton, chief executive officer of the Pennsylvania Turnpike Commission, as the association’s 2019 second vice-president.

The election took place in October during the association’s 86th Annual Meeting & Exhibition in Baltimore. The meeting brought together more than 800 transportation leaders from 20 countries to discuss innovative practices, policies, technologies, funding options, and business models helping to transform mobility for drivers.

“I am delighted to have the support of my colleagues from around the globe to serve in this leadership role. In the Commonwealth of Pennsylvania, we have accomplished a great deal to provide our customers with safe, efficient travel across our 552-mile system. I hope to share my experience with others in the industry as well as to bring other best practices home to Pennsylvania,” said Compton.

Compton will serve as second vice-president of IBTTA for one year, which began January 1. He will become the first vice-president in 2020, and president in 2021.

Compton began serving as CEO of the Pennsylvania Turnpike Commission in 2013. A professional with nearly two decades of public- and private-sector experience in transportation, administration, and construction, he holds a Bachelor of Science degree from Penn State University. He previously served as PennDOT’s deputy secretary of Administration, overseeing eight bureaus within the agency. Before joining PennDOT, Compton worked for American Infrastructure, a heavy civil construction company headquartered in Worcester. Prior to that, he worked in various public and private operations, focusing largely on transportation, construction, and economic development.

Meeks Named President of TRC’s Infrastructure Sector

TRC, a leading provider of end-to-end engineering, consulting, and construction management solutions fueled by innovative technology, announced that Parker Meeks has been appointed president of its Infrastructure Sector. Meeks will be responsible for strategic growth, customer acquisition and business development.

Meeks has deep expertise driving both capital project execution and ambitious strategic growth programs across the design/construction landscape, supporting a range of projects and capital programs worth up to $10 billion.

Meeks holds a Bachelor of Science in electrical engineering from Columbia University and an MBA from Rice University’s Jones Graduate School of Management.

Dutton Retires After Making Deep Impact in Foundation Industry

Ben Dutton retired from Equipment Corporation of America (ECA) in December after more than 43 years climbing through the ranks within the leading distributor of foundation construction equipment. His large personality and commitment to serving others have left a mark throughout the global foundation industry.

Dutton started as a sales engineer at ECA in 1975, and quickly advanced to the role of Philadelphia Branch Manager at age 29. He spent many years as executive vice president of Sales and Marketing before eventually being promoted to president.

Although stationed in ECA’s Philadelphia office, his influence extended from the U.S. to Canada to Europe as the firm strategically expanded products, manufacturers, and markets. Dutton worked closely with CEO Roy Kern and his father Al to mold ECA into the global leader in foundation equipment it is today. The peak of his impact came in the mid-1990s when he worked with Roy to orchestrate ECA’s expansion into the international drilling market.

Dutton’s industry accomplishments include serving as president of the Delaware Valley Associated Equipment Distributors (AED) Board of
Directors, and a member of the Executive Committee of the Association of Drilled Shaft Contractors/International Association of Foundation Drillers (ADSC-IAFD). In addition to his board responsibility at ADSC-IAFD, Dutton held the position of Associate Member chairman, co-chair of the Education Committee, chairman of the Supervisory Personnel Training Institute, and chairman of the Management Personnel Training Institute. Dutton was a charter member of the Deep Foundations Institute (DFI) at its founding and remained active over many years with various committees. He also supported other associations, including the Piledriving Contractors Association (PDCA), Associated Pennsylvania Constructors (APC), and Utility and Transportation Contractors of New Jersey (UTCA).

I-95 Reconstruction Project Receives Green Vision Award
The PENJERDEL Council announced that PennDOT’s Interstate 95 Reconstruction Project was given the Green Vision Award at the organization’s 63rd annual awards luncheon in November.

The I-95 Corridor Reconstruction is being developed with a number of features intended to respect the needs and potential of the Philadelphia neighborhoods alongside the interstate, as well as the natural environment. From carefully relocating where on-and-off ramps touch down on the city street grid; to a highway geometry that will relieve congestion and improve air quality; to installing noise barriers with clear panels to not block views; to the first-use of LED lighting on a Philadelphia city street; to well-lit public spaces underneath structures; PennDOT’s Elaine Elbich is leading a team of engineers and planners who are working with local neighbors and major stakeholders alike to design and build an interstate that in every way is superior than the one it replaces.

One of the most visible features of this new I-95 stretch is the surrounding landscape that is being engineered to control storm water runoff. What goes by various names – such as rain gardens, bios wales, and SMPs – are being carefully placed and designed to ensure rainwater coming off the I-95’s concrete surface is detained long enough to not overwhelm the city drainage system without creating unsightly and unhealthy pools of standing water.

This effort will help improve the water quality of the Delaware River. Green infrastructure is still evolving and the I-95 team is working with Temple University and Villanova University in research to lead the way toward the next generation of storm water management. That’s the environmental science purpose behind this major infrastructure improvement. And just as important is the enhancement of the beautiful landscapes in the project area. The care put into neighborhood landscapes tells the City of Philadelphia, residents, cyclists, and passers that they matter to PennDOT as much as the motorists driving on the interstate above. This project and this team have earned its recognition for the Green Vision Award.

For more than five decades, the PENJERDEL Council has been the region’s key business advocacy group, encouraging a regional focus on development throughout northern Delaware, southeastern Pennsylvania, and southern New Jersey. PENJERDEL is dedicated to informing and educating the business community in the tri-state region by leading and supporting issues and projects affecting infrastructure, mobility, sustainability, and growth. By educating members about pending issues and bringing them together with key business leaders, local, state, and federal officials, the academic community and stakeholders, PENJERDEL seeks to gain consensus and organize groups to achieve positive results.
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