

ExecutiveMemo

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A newsletter of the Illinois Manufacturers' Association

January 5, 2010

BRIEFLY

Quinn chooses Manuel "Manny" Flores to head ICC

Gov. Patrick Quinn has chosen Chicago Alderman Manuel "Manny" Flores as the new head of the Illinois Commerce Commission (ICC). Flores replaces Blagojevich appointee and former Rockford mayor Charles E. Box, whose term is expiring. The appointment requires state Senate confirmation.

Flores is a former assistant Cook County state's attorney and ex-aide to U.S. Rep. Luis Gutierrez.

The five-member ICC regulates interstate motor carriers and rail, bus and barge transportation; sets rates for privately owned electric, natural gas, telephone, water and sewer companies; regulates intrastate rates of property motor carriers; inspects railroad crossings and tracks, and railroad cars carrying hazardous materials.

Additional SBA recovery lending programs will support \$4.5 billion in lending

President Obama signed the U.S. Department of Defense (DOD) appropriations bill which included \$125 million to continue through February 28, 2010, the enhancements made possible through the American Recovery and Reinvestment Act (ARRA) to SBA's two largest loan programs. The SBA estimates the additional funding will support \$4.5 billion in small business lending.

The extension included in the DOD bill authorizes the higher guarantee levels through Feb. 28, 2010. The fee relief is authorized until this additional funding is exhausted or the end of the fiscal year, whichever comes first. As was the case in November, SBA will transition into a queue system as the funds start to wind down in order to ensure the maximum simulative effect of the programs and disbursement of funds.

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Christiansen elected Chairman of Manufacturers' Association

Janice Christiansen, president of J.C. Schultz, The Flag Source in Batavia, Illinois, has been elected Chairman of the Board of Directors for the Illinois Manufacturers' Association (IMA). Christiansen is the first woman to be elected chairman of the venerable 116-year old organization. She succeeds Ron Bullock of Bison Gear and Engineering of St. Charles, Illinois who chaired the IMA in 2008 and 2009.

"The election of Janice Christiansen to the chairmanship reflects the growing number of women who have ascended to head manufacturing companies across the U.S.," said Greg Basie, IMA president and CEO. "Janice is a testament to the tenacious battles women have fought to not only smash the glass ceiling that had prevented them from entering the top echelons of business, but to lead companies of all sizes and in all sectors with distinction."

Christiansen is the only woman president of a full line flag and banner manufacturing company in the U.S. Born in Springfield, Illinois, she grew up in Chicago. She graduated from Michigan State University and attended DePaul Law School while working in the notes receivable department of Walter

E. Heller Commercial Finance. After joining J.C. Schultz, The Flag Source in 1975, she worked in various leadership capacities following the untimely death of her husband in 1985 becoming company President in 1990, a title she has held for two decades. J.C. Schultz, The Flag Source employs 70 workers.

Christiansen is the recipient of numerous awards including the George Washington Award for excellence in her industry in 2004. She has also received the LUCI award for Women in Business in 1998 and the Manufacturing Counts award from IIT and Chicago Manufacturing Center in 1999.

"Manufacturers in Illinois are facing truly challenging times," says Christiansen. "From an economy that threatens the very existence of many manufacturers to a state legislature that continues to spend money it doesn't have and a federal government bent on treating American businesses as an endless source of money. It's clear our work is cut out for us.

"The IMA will continue to be the voice of Illinois business in Springfield. We will work with lawmakers to make Illinois a destination economy for manufacturers and restore Illinois' reputation as an international leader in manufacturing."

Contemplating a capital transaction? Now may be a good time to consider a value optimization assessment

Acquisition, sale of a business or division, generation succession and liquidity-focused distributions are capital transaction strategies used by successful businesses. Often, little planning is undertaken in advance of implementing these strategies. This can lead to suboptimal results, even when a transaction is successfully closed.

The economic slowdown and tight credit markets have slowed all forms of capital transactions. This provides an excellent opportunity for companies con-

templating a capital transaction to implement a process that will improve the positioning for and outcome of the strategy. P&M Corporate Finance, the investment banking affiliate of Plante & Moran, has designed a program to assist companies with this process: the Value Optimization Assessment (VOA).

How does it work?

The VOA program will provide your company with a set of recommendations

See **VALUE OPTIMIZATION**, page 2

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EXPERIENCE RESPONSIVENESS.

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that, when implemented, will increase the likelihood of successfully completing a capital transaction. It's composed of a three-step process that typically takes 8-10 weeks to complete.

Considerations may include evaluating:

- The value of the business today and a gap analysis that quantifies the financial performance improvements required to achieve enhanced value outcomes.
- The available credit capacity of the business under alternative capital structures. This can be instrumental in evaluating ownership transition or growth through acquisition strategies.
- A summary of opportunities to improve the positioning of the business for a successful capital transaction. The evaluation includes management organization, financial reports and metrics, key operating considerations and trend analysis.

What are the benefits?

First and foremost, a VOA helps business owners determine the worth and/or credit capacity of the business compared to owner expectations. These are often two very disparate figures. This is particularly important knowledge for a sale situation where owners are looking to take liquidity out of the company in order to retire. A VOA will let owners know if their expectations are reasonable and provide the data to drive strategic initiatives to bridge any gaps that exist. Effective strategies take time to implement and produce results; early identification of value gaps enables any disparity to be addressed in a sustainable, non-disruptive manner.

Second, a VOA will flag considerations that may increase buyer/investor perception of risk and provide recommendations to eliminate these risks. The high level operational assessment includes a review of management team depth and continuity, intellectual property exposures, and financial metrics and recommendations to consider in addressing any gaps. Potential deal structure implications resulting from the analysis are also assessed.

In conclusion

A VOA helps business owners contemplating a capital transaction consider their personal and business objectives based on specific ownership objectives, strategic direction, and financial characteristics. For more information about how a VOA can help your business, contact Scott George, Managing Director at Plante Moran, at scott.george@pmcf.com or 312-602-3613.

Immigration enforcement increases dramatically — employers beware!

Although the Obama administration has indicated that it supports comprehensive immigration reform, the administration has moved to aggressively enforce the existing laws. The focus, however, has changed to targeting employers rather than undocumented workers.

Since July 2009, U.S. Immigration and Customs Enforcement ("ICE") has issued over 1,650 subpoenas to businesses notifying them that they have been targeted for in-person inspections of their I-9 Employment Eligibility Verification Forms. By contrast, in all of fiscal year 2008, ICE issued only 503 similar notices to employers. John Morton, Assistant Secretary for ICE, stated that the nationwide effort was a first step in ICE's long-term strategy to address and deter illegal employment by focusing on employers rather than on undocumented workers. Although ICE indicated that the targets will be business activities that "affect critical infrastructure," many of the targeted companies fall outside this description.

If an employer receives one of these subpoenas, the organization will be given only three (3) to five (5) days to provide a long list of documents, including original I-9 Forms and employee rosters. The subpoena may also request copies of the following documents: monthly payroll reports, state unemployment insurance quarterly tax reports; quarterly wage detail reports; federal quarterly tax statements (IRS Form 941); federal tax Form 1099 for all independent contractors; immigration petitions previously filed; the organization's articles of incorporation, business license and most recent annual report; and the organization's policies and procedures regarding immigration compliance.

Fines for simple "paperwork" violations (failing to complete and retain I-9 Forms) can range from \$110 to \$1,100 per employee — even if the employee is a U.S. citizen! Civil fines for employing unauthorized workers range from \$375 to \$16,000 per employee, and criminal fines and penalties are even more severe. On December 30, 2009, the U.S. Attorney's office levied a fine of \$4.5 million on Pilgrim's Pride, a poultry producer, in addition to requiring that the company establish an immigration compliance policy.

Most recently, Illinois employers have been the targets of a separate enforcement policy. U.S. Citizenship and Immigration Services ("USCIS") has begun making unan-

nounced "site visits" to workplaces and administrative offices of companies employing foreign nationals, particularly if the employer has sponsored employees for "H-1B/Specialty Occupation" status. The USCIS Fraud Detection and National Security unit ("FDNS") is conducting these site visits to detect fraud, and has an annual budget of over \$42 million for this purpose. These site visits are being conducted on a random basis, but the number of visits has increased exponentially in the past several months. One USCIS Service Center alone announced that it has transferred approximately 20,000 cases to the FDNS unit for site visits. Illinois employers that have already been "visited" operate in a broad range of industries, including manufacturing. Additionally, a number of industries not historically targeted for enforcement have been subject to these random site visits, including banking and financial services; higher education; health care (including large medical centers); consulting; and high tech.

Generally, FDNS assessors visit a workplace with no prior notice and do not need a subpoena. They will arrive at the location and ask to speak with human resources personnel, the foreign national worker and the worker's supervisors. Most questions relate directly to the information submitted by the employer when applying for immigration benefits, in order to confirm its accuracy. FDNS assessors have asked to review previously submitted immigration petitions, Labor Condition Applications ("LCAs"), W-2 records and pay stubs for the employee in question. Employers may request that counsel be present for these site visits, but the assessor may be unwilling to reschedule if the attorney is not available at that given time. Any significant compliance issues detected may result in follow-up field investigation by ICE, and any wage violations based on the data submitted with the LCA may be shared with the Department of Labor. USCIS may also revoke the employee's employment authorization if the employer or employee is found to have violated the terms or conditions of the petition, or if statements in the petition are found to be inaccurate.

In order to be prepared for a government audit or site visit, we recommend that employers take the following steps:

- Identify your "go-to" in-house counsel/immigration attorney to contact in the event you receive a subpoena or site visit.
- Review your Immigration Compliance Policy to ensure that it provides accurate instructions for I-9 completion; follow-up to make sure that the Policy is being enforced.

See **IMMIGRATION**, page 3

- Ensure that you or your attorney have complete copies of all immigration petitions and applications filed on behalf of your employees, as well as all public access records required to be maintained.
- Advise your H-1B employees and their supervisors that an FDNS assessor may arrive to conduct a site visit.
- Audit your I-9 records. If you make any changes to the I-9 Forms, clearly indicate the date of correction, as I-9 Forms are signed under penalty of perjury.
- Review your agreements with temporary staffing agencies to ensure that the agreements require the agencies to comply with all applicable immigration laws.
- If you don't have an Immigration Compliance Policy, have your counsel draft a Policy, and assist in implementing it. Internal compliance with an Immigration Policy will help you to avoid civil fines and criminal prosecution, as well as mitigate damages in the event the government plans to pursue an action against the organization.

Author Gabrielle Buckley is a Shareholder and Chair of the Business Immigration Practice Group with the Chicago-based law firm, Vedder Price PC. She can be reached at 312-609-7626, or by e-mail at gbuckley@vedderprice.com.

Opinion: Can 2010 be a prosperous New Year without manufacturing?

Author Mark C. Tomlinson is the Executive Director and General Manager of the Society of Manufacturing Engineers

As January rolls around each year, we tend to make resolutions with every intention of keeping them. By February, however, most have faded away.

But if we want manufacturing to emerge from what some call a Depression and support the nation's economic recovery, then we need to go beyond the annual New Year's Resolutions, and set a number of things into action.

Recent activity from the White House is encouraging — the naming of Ron Bloom as senior counselor on manufacturing policy, top manufacturers meeting with the President and the recent release of *A Framework for Revitalizing American Manufacturing* — indicate the rising importance of manufacturing.

However, if we are to have a prosperous and more hopeful 2010, manufacturing must be on the forefront of economic

See **PROSPEROUS NEW YEAR**, page 4

DATES OF NOTE

More information/events may be found at <http://www.ima-net.org/calendar.cfm> and <http://www.ima-net.org/MIT/open.cfm>
Email: jstanley@ima-net.org

January 21, 2010

IMA Breakfast Briefing — TRIPLE PLAY: EFCA, Remaining Union Free, and Managing the Campaign to Control Your Plant

Ditka's Restaurant, Two MidAmerica Plaza, Oakbrook Terrace — (see ad, this page, lower left)

January 22, 2010

IMA-MIT Event: Time Management and Personal Effectiveness, DePaul University O'Hare Campus, 3166 S River Rd, Des Plaines

There is no easy or simple solution for employees dealing with an ever increasing workload. The bottom line for most organizations is the work "must" get done in a timely manner and get done right. Increasingly, organizations are looking to provide a "lifeline" for their employees and equip them with the skills and knowledge to manage their personal effectiveness in order to dramatically improve their productivity while coping with the resulting stress.

January 27, 2010

IMA-MIT Event: Sales Skills for Non Sales Professionals — DePaul University O'Hare Campus, 3166 S River Rd., Des Plaines

This one-day workshop has been specifically designed to help non-sales personnel realize, and take advantage of, sales opportunities as they occur.

February 9, 2010

IMA-MIT Event: World Class Negotiating Skills, DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines

This interactive, one-day workshop will consider both the selling and purchasing aspect of business negotiations. It will provide effective solutions and settings in which to practice negotiating skills. Attendees will learn how to formulate strategies, overcome potential difficulties and apply proven principles to make business transactions more productive for all involved.

February 18, 2010

IMA Breakfast Briefing — Managing & Closing Workers' Compensation Claims in a Cost Effective Manner

Mon Ami Gabi—Oak Brook Center Mall (SE corner), Oak Brook— (see ad, this page, lower left)

February 24, 2010

IMA-MIT Event: Strategic Planning and Goal Setting — DePaul University O'Hare Campus, 3166 River Rd, Des Plaines

Effective strategic planning and thinking skills combined with the ability to set compelling and achievable goals are at the core of all successful leaders and help to establish the foundation for sustainable business success. The ability to develop winning business strategies and then take those strategies from plan to action (or to rethink them on short notice) sets true leaders apart from their peers. Forward-looking strategy formulation can become a key competitive differentiator and provide a clear "road-map" and path for success.

IMA IMA Breakfast Briefings 2010 . . .

TRIPLE PLAY: EFCA, Remaining Union Free, and Managing the Campaign to Control Your Plant

Thursday • January 21, 2010 • 8:30-11:00 am

Ditka's Restaurant, Two MidAmerica Plaza, Oakbrook Terrace — presented by James Spizzo and Larry Casazza, Vedder Price PC

◆ **EFCA Employers Free Choice Act ("Card Check")**
Congress is poised to enact the broadest labor reform legislation of the past 75 years. If enacted, the legislation will drastically change the current labor organizing process. Learn the likely impacts on employers.

◆ **Maintaining a Union-Free Workplace**
Learn how to recognize and respond to early warning signs of union activity and use positive employee relations to maintain union-free status.

◆ **Opposing Union Organizing Campaigns**
Learn how to best position your company to respond to union organizing efforts. Discussions will include the advantages and disadvantages of unionization from the employee perspective, early warning signs of union activity, recommended steps that employers can take at various levels with an emphasis on campaign development, supervisory training, and employee meetings. The option of a 25th-hour speech and post-election activity is also explored.

Managing and Closing Workers' Compensation Claims in a Cost-Effective Manner

Thursday • February 18, 2010 • 8:00-11:00 am

Mon Ami Gabi Restaurant, Oak Brook Center Mall (SE corner) Oak Brook — presented by Richard Lenkov, Bryce Downey & Lenkov LLC

Workers' compensation costs are skyrocketing nationwide. Part of that increase is because the number of workers' compensation claims involving more than 30 days away from work increased by 15 percent in the past four years. The more complex the claim, the more money employers are spending.

These costs can spiral out of control unless they are managed effectively. This session will give you the practical tools necessary to effectively handle your workers' compensation claims and close them, in the most cost-effective manner possible.

You will learn how to: avoid claims in the first place and to properly handle injuries when they first occur, conduct early and thorough investigations without ever retaining an attorney, manage vendors and reduce their costs, reduce attorneys' fees and expenses, move injured workers from collecting benefits back to work, know when it is more cost effective to settle vs. trying a case, use litigation tools to your advantage, leverage a claimant's past medical history to your advantage, and get money back via subrogation.

REGISTER ONLINE at: www.ima-net.org

Cost per session: \$60 IMA member ◆ \$85 non-members

Questions? Contact Kimberly McNamara at kmcnamara@ima-net.org or 630-368-5300, Ext. 2109

discussions — not just inside the Beltway, but across the country.

Five resolutions for getting back to making things

America — and Americans — should resolve to:

- ◆ Change the manufacturing discussion to one that focuses on looking forward rather than backwards. Let's move beyond the loss of repetitive assembly-line jobs, to helping the nation understand that the U.S. manufacturing sector continues to be the world's largest, and by itself, represents the ninth largest economy in the world.
- ◆ Explain how manufacturing is in a transformative period where productivity is increasing rapidly, and requires a highly trained workforce. Emphasize that the industrial sector offers societal benefits from creating wealth through research, innovation and product development which result in higher paying jobs.
- ◆ Find ways to open up lines of credit to small and medium manufacturers. Otherwise, manufacturers who survived the recession may find themselves failing during the recovery and costing the nation even more manufacturing jobs. Many of these companies are receiving purchase orders, but are struggling to find the capital to invest in the equipment and workers they need to sustain them through the development process.
- ◆ Equip laid-off manufacturing practitioners with 21st-century skills. Even though there's been a loss of five million manufacturing jobs in the past decade, a recent survey revealed that one-third of manufacturers still can't find qualified, high-skilled employees for the jobs that are available. Let's get these people retrained so they can respond to change and become a more agile workforce.
- ◆ Develop a self-sustaining energy policy. While it's great to see the support of alternative energy initiatives, we cannot count on one energy sector to support all our needs. The U.S. needs to evaluate all the sectors — from wind, solar, geo thermal and nuclear, to the traditional oil and gas — so that industry can figure out innovative ways to fill in the gaps.

To ensure a prosperous New Year — and new decade — U.S. manufacturing must be at the center of our economic recovery, or we run the risk that it plays out like a well-intended New Year's resolution — an idea without a well thought out plan.

Chicago Business Barometer™ climbed

The Chicago Business Barometer™ showed expansion for the third consecutive month, extending a generally improving leading economic indicator since March 2009. Employment marked its third month of improvement, trailing by a single month the improving trend in new orders and order backlogs. Order backlogs marked the first month of expansion in over a year. Prices paid expanded for four out of the past five months, while a modest slowing in the rate of expansion of supplier deliveries reinforced an overall positive report.

The December report continued to build on the generalized strengthening since 2009's March low (31.4) in the Chicago Business Barometer. The behavior of the three month moving average of each of the seven (seasonally adjusted) measures of business activity provided its own signal of strength. In early stages in the economic recovery, where we are now, one would expect new orders to be rising faster than production dragging order backlogs along in their wake . . . and such is the case revealed in the December Report. Moreover one would expect, under these

circumstances, inventories to be drawn down and . . . inventories continue to be drawn down. This combination of increasing demand both in an increasing number of businesses and more rapidly than supply, should result in the return of some modest pricing power to the market . . . and such seems to be the case as an increasing prices paid index was reported in December. Finally, to complete a logical foundation for the December edition of the Chicago Report, supplier deliveries should be slowing (and thus the index of supplier deliveries rising) . . . again the survey results meet a series of consistency tests. While consistency is not always a test for reasonableness, consistency does provide us an opportunity for you to accept, even warmly welcome, the December issue of the Chicago Report pointing firmly toward continued improvement in economic conditions, albeit at a slow to moderate pace. Certainly little support can be found in the Chicago Report for a double-dip recession, much less an imminent return to the likes of the 2007-2009 period.

Source: ISM—Chicago, Inc. and Kingsbury International, Ltd. The CHICAGO BUSINESS BAROMETER is a trademark of ISM—Chicago, Inc.

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