

ExecutiveMemo

www.ima-net.org



A newsletter of the Illinois Manufacturers' Association

April 22, 2009

BRIEFLY

Conference Board: Leading Economic Index™ (LEI) for the U.S. declines again

The Conference Board Leading Economic Index™ (LEI) for the U.S. declined 0.3 percent in March, following a 0.2 percent decrease in February, and a 0.2 percent decline in January.

Says Ken Goldstein, Economist at The Conference Board: "The recession may continue through the summer, but the intensity will ease. There have been some intermittent signs of improvement in the economy in April, but the leading economic index and most of its components are still pointing down."

The Conference Board Coincident Economic Index™ (CEI) for the U.S. declined 0.4 percent in March, following a 0.6 percent decline in February, and a 0.9 percent decline in January. The Conference Board Lagging Economic Index™ declined 0.4 percent in March, following a 0.3 percent decline in February, and a 0.2 percent decline in January.

Source: *The Conference Board*

Looking for a trade publication?

Visit www.tradepub.com

If you're looking for a trade publication, you're likely to find it on the Web at www.tradepub.com. The site features an extensive list of free business, computer, and engineering trade newsletters and magazines, all of which you can subscribe to for free. Browse through the extensive list of free business, computer, engineering and trade magazines, white papers, downloads and podcasts to find the titles that best match your interests. Topics include management, marketing, operations, sales, and technology. All are absolutely free to professionals who qualify. For more information, go to www.tradepub.com.

Executive Memo is published semi-monthly for IMA members by the Illinois Manufacturers' Association, 1211 W. 22nd St., Ste. 620, Oak Brook, IL 60523, 630-368-5300.

Editor: Stefany Henson (shenson@ima-net.org).

Reproduction of all or any part is prohibited except by permission of authorized IMA personnel.

Location, location, location . . . the importance of site selection in cost control

by Sarah Banks and Ben Smith

When considering a new facility expansion, you can't underestimate the importance of site selection in controlling costs and maximizing profitability. From customer location, labor cost, and freight, to tax structures, incentive programs, and the cost of real estate, there are a number of important items to consider. Whether leasing, building, or buying, it's important to evaluate each of these considerations when determining your real estate strategy.

The customer is king

The first consideration when planning a facility expansion is to evaluate your strategic business needs — where are your customers located, what are their needs, and how can you plan your location to meet those needs. The next step is to strategically align this business plan with your real estate strategy to identify the optimal location for your new facility.

Your customers are king. It's important to really understand their needs and requirements. If they're used to one-day delivery, and your new location means that they'll be lucky to get shipments in three, it's probably best to re-evaluate. The foundation of any solid real estate strategy is one that's supportive of your overall business strategy.

Labor cost and availability

Aside from customer considerations, labor cost and availability tend to be the most significant factors in site selection, and they vary widely across the United States. While a particular location may offer an excellent pool of inexpensive, unskilled labor — making it a superior location for a warehousing facility — it may not offer the highly skilled, technical workforce required for a research facility.

Moreover, a location with extremely low unemployment rates may pose a challenge when hiring new employees. A general rule of thumb is to identify a labor pool that can provide three quality applicants for each available job.

Another key labor consideration, however, is redundancy. Not all staff will choose to relocate or be offered the opportunity to do so. How long will it take you to wind down operations? How long will it take new staff to get up to speed? How long will you have two sets of staff manning the same positions in two different locations?

The proper mix of cost, quality, and quantity of labor must be a key consideration. This goes back to your customers — they expect a certain level of quality. It's important that the service is seamless.

Freight*

Despite recent declines in the cost of fuel, transportation costs remain an important consideration in location strategy. While rail transport offers the most cost-effective solution, truck and air transport provide higher service levels and reduced transit times. It's important to understand freight requirements before deciding upon a specific site to ensure necessary access to interstates, rail, and airports, as appropriate — a location many miles from the main interstate is not conducive to an operation heavily reliant on truck shipping.

**IMA members receive a discount of up to 29 percent on select FedEx shipping services.*

For more information or to enroll, visit <https://advantagemember.visionary.com/4533/> and enter passcode [VM6MXK].

Other considerations

Finally, there are considerations such as
See **SITE SELECTION**, page 2

IMA'S EXECUTIVE MEMO IS UNDERWRITTEN BY:



EXPLORE YOUR INTERNATIONAL OPTIONS.

Dedicated, in-country global expertise with offices in Monterrey, Mexico and Shanghai, China.

tax structures, incentive programs, real estate costs, and “intangible” requirements.

Tax structures vary by state. Rates for franchise, real, and personal property taxes can vary significantly from location to location. Corporate income tax structures vary greatly as well, and some cities have an additional payroll or inventory tax. In addition, some states are more willing than others to offer tax abatement programs. It’s important to undertake detailed due diligence to determine what the tax impact will be on your business.

It’s also important to leverage any applicable state and local incentive programs. Many states have economic development staff who can offer creative programs to help make locating in their state more affordable. Having someone in your corner committed to your success can be very valuable in this regard.

Finally, real estate costs, school systems, quality of life, and other intangibles do play a role in location strategy. It’s important to consider the quality of life for your employees and their families in each location.

Sarah Banks is a Transportation & Logistics Consultant with Plante & Moran, the 12th largest CPA and business advisory firm in the United States. Ben Smith is an Associate with Plante Moran CRESA, the real estate consulting arm of Plante & Moran which helps companies lease, buy commercial property, build or develop and implement real estate strategies. For more information, visit plantemoran.com.

Illinois Supreme Court ends “Lipke Rule”

The Illinois Supreme Court issued a long-awaited opinion in *Nolan v. Weil-McLain*. In its decision, the Illinois Supreme Court sided with the Illinois Manufacturers’ Association (IMA) and other entities that filed amicus briefs in support of ending the “Lipke Rule” from a 1987 appellate case (*Lipke v. Celotex Corporation*). This rule, which existed in Illinois alone since 1987, prohibited defendants in asbestos cases from introducing evidence of a plaintiff’s exposure to other asbestos products in support a defendant’s contention that other exposure was the sole proximate cause of the illness or injury. In all other states, juries could be informed that the defendant’s product could not have caused the plaintiff’s injuries because the sole proximate cause of the alleged harm was plaintiff’s exposure to another’s product — or often numerous others’ products.

In effect, the Lipke Rule prevented jurors from knowing that the plaintiff worked in a number of high-exposure environments; jurors would only hear of exposure to the defendant’s asbestos-containing product. As a result, jurors were led to believe that the plaintiff was only exposed to asbestos of the non-settling defendant. The IMA filed an amicus brief arguing that the “Lipke Rule” was unfair and one-sided, that it essentially forced defendants into

settlements because they could not adequately defend their interests.

In the *Nolan vs. Weil McLain* case, the Illinois Supreme Court held that its earlier decisions leading to the Lipke Rule had been misinterpreted. The Court overruled the appellate court decisions and the case was remanded for a new trial. The Supreme Court has now definitively decided (unless there is a correction or rehearing) that the defendant is not precluded from presenting evidence of a plaintiff’s other exposures to asbestos. The court’s opinion is a significant step toward bringing fairness and rationality to asbestos litigation in Illinois.

Illinois leads the way in recovery road funds, putting people back to work

According to Governor Pat Quinn, Illinois ranks first in the number of projects and the amount of American Recovery and Reinvestment Act (ARRA) dollars approved by the Obama Administration. So far, Illinois has received funding approval for 249 projects worth \$606 million, more than any other state, according to federal transportation officials. These awarded projects are expected to create and retain an estimated 9,000 jobs.

“Illinois is proud to lead the way in this important recovery effort,” said Governor Quinn. “But this is just the start. Illinois will continue to use stimulus funds to create jobs right now while also investing in the future of our transportation system.”

As of April 17, \$6.5 billion of the \$27.5 billion has been approved nationally in the federal recovery package for highways and bridges. Earlier that week, President Obama announced more than 2,000 transportation projects that won federal approval for stimulus money.

Examples of Illinois projects include \$29 million to replace a bridge and build a new interchange on Interstates 55 and 70 in Madison County and \$5.5 million to resurface a portion of Route 137 in northeast Illinois.

Each state has until June 17 to use the first half of their share of highway funds for “quick-start” projects or risk losing the money.

Visit www.dot.il.gov/stimulus/index.html for a complete list of projects submitted to the U.S. Department of Transportation.

Illinois Manufacturers’ Association 2009 Business Day at the Capitol

WEDNESDAY • MAY 6, 2009 • SPRINGFIELD

Governor Patrick Quinn will speak to IMA members at the Luncheon, 1:00 p.m., Abraham Lincoln Hotel & Conference Center

Lobby your Legislator at the State Capitol after lunch

The Annual Business Day Reception starts at 5:00 p.m. at the IMA Headquarters, 220 East Adams Street

***Manufacturing is in crisis in Illinois!
Don’t miss this opportunity to let your lawmakers know that we cannot afford more taxes and spending balanced on the backs of the business community***

Register TODAY at: <http://www.ima-net.org/bizday09.cfm>

Futures markets terminology

Sounding like Pilates exercises, the terms “Contango,” “Backwardation” and “Flat” are actually financial jargon used to refer to the price of commodities in the futures markets for items such as natural gas and crude oil. Storable commodities exhibit these price conditions. Futures markets allow buyers and sellers to transact prices for future delivery of commodities.

The Henry Hub “futures-contract” trades on the NYMEX (New York Mercantile Exchange) exchange. One contract represents an obligation to buy or sell 10,000 MMBtu’s of Henry Hub Louisiana delivered natural gas for a particular month. A front-month or prompt month contract is the delivery one month into the future. This identifies what the near-term cost expectations are for the price of natural gas. There are also prompt-year calendar contract strips. The prompt-year calendar strips exhibit similar shapes, but are smoother than a monthly curve as “Seasonality,” or the natural rise and fall of prices according to a certain time of year, is taken out of a strip valuation. When charting each successive month’s contract price beyond the prompt month, the prices form a forward curve. A curve can have three shapes and that each shape can tell a natural gas stakeholder about the market outlook. The figure below is the average calendar strips for the NYMEX Henry Hub. This forward curve is “in Contango.”

The gradual upward slope of a futures curve of any non-perishable commodity is normal and is referred to as being “in Contango.” The slope contains the cost of storage, credit and other incidentals like insurance and reflects some extra costs for that future supply guarantee. Steeper Contango occurs when the future spot price is expected to be significantly higher

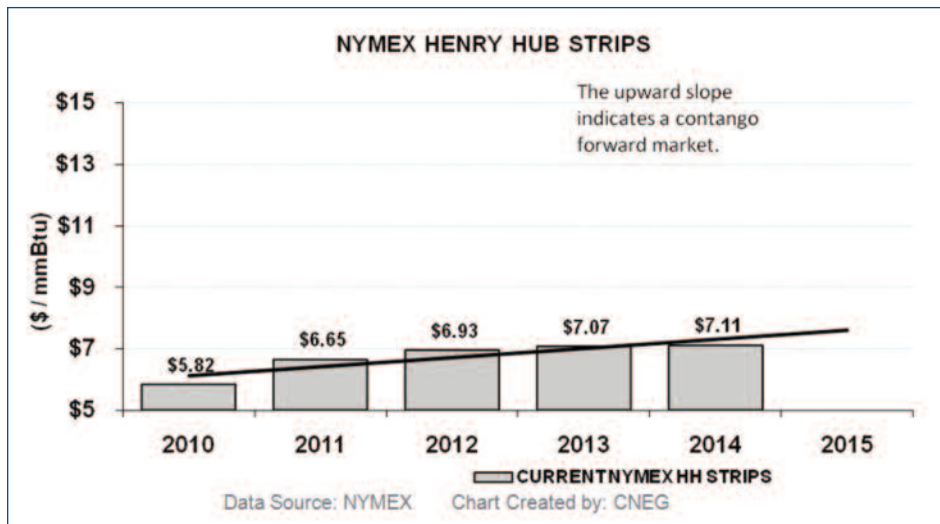
than the present one. This indicates one of two things: either supply is temporarily exceeding demand and is expected to return to normal levels, or supply is at a comfortable level now, but is expected to fall short of demand in the future. In either case, the market for natural gas is expected to be significantly tighter in the future than it is at present.

The opposite situation, in which today’s price is higher than the future price, is called Backwardation. This occurs when present supply concerns outweigh the worries about future supply levels.

A flat curve or a curve with not much slope indicates that market participants are unconcerned or unsure about the future or believe that conditions may only slightly worsen or stay unchanged.

To learn more futures market terminology, contact Constellation NewEnergy Gas Energy Sales Consultant Jeff Abeln at 312-704-8527, or via email at jeff.abeln@constellation.com.

The information contained herein has been obtained from sources which Constellation NewEnergy–Gas Division, LLC (“CNEG”) believes to be reliable. We do not represent or warrant as to its accuracy or completeness. All representations and estimates included herein constitute CNEG’s judgment as of the date of the presentation and may be subject to change without notice. This presentation has been prepared solely for informational purposes. CNEG does not make and expressly disclaims, any express or implied guaranty, representation or warranty regarding any opinions or statements set forth herein. CNEG shall not be responsible for any reliance upon any information, opinions, or statements contained herein or for any omission or error of fact. All prices referenced in this presentation are indicative and informational and do not connote the prices at which CNEG may be willing to transact. This article shall not be reproduced (in whole or in part) to any other person without the prior written approval of CNEG.



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

May 6, 2009

IMA'S BUSINESS DAY AT THE CAPITOL Springfield

Register TODAY at:

<http://www.ima-net.org/bizday09.cfm>

May 7, 2009

From VedderPrice . . .

Employment Law Conference:

Countdown to compliance, Rosemont

Join VedderPrice for their annual Employment Law Conference. As always, this program will offer practical advice for today's busy Human Resources Professionals and In-House Counsel. Registration and continental breakfast take place from 8:00-8:30 am. The conference begins at 8:30 am and adjourns at 11:35 am. Visit www.vedderprice.com/index.cfm/fuseaction/seminars.home/seminars.cfm to register.

May 8, 2009

IMA-MIT Event: Essential Leadership Skills for Newly Promoted & Front Line Supervisors

**DePaul University O'Hare Campus,
3166 S. River Rd., Des Plaines**

This one-day program will prepare your supervisors for a complete change of responsibilities and offer a plan for the challenges ahead. They will come away with a better understanding of what the boss, peers, staff and company expects of them. The invaluable set of tools in this program will prepare supervisors for their important new role providing greater confidence and success.

May 8, 2009

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

The technology of emails, voice mails, text messages and conference calls are eroding the power of a good old face-to-face conversation. This one-day seminar will provide sales professionals with the skill set to maximize consultative sales relationships.

June 3, 2009

IMA Event: Workers' Compensation: New Developments in Illinois — Legislative Update

NIU-Naperville Campus, 8:30-11:00 am

Presented by Robert Hendershot, partner, Evans & Dixon, LLC. Cost: \$65 IMA members, \$85 Non-members. For more information contact: Kimberly McNamara at 800-482-0462, ext. 2109 or email kmcnamara@ima-net.org.

US Tax Court issues taxpayer-friendly decision regarding R&D tax credits

On March 10, 2009, the United States Tax Court issued an opinion regarding Research and Development tax credits (R&D credits) claimed by Union Carbide. Union Carbide Corporation and Subsidiaries, TC Memo 2009-50, Code Sec(s) 41; 174 (hereinafter the UCC Opinion).

The claimed R&D activities centered on a manufacturer that conducted R&D activities in its manufacturing facilities and plants. The opinion covers a broad range of topics pertaining to the R&D tax credit, from substantiation of the underlying R&D credit to establishing a fixed base period and expansion of substantial rights. The vast majority of legal holdings in this case rejected IRS arguments for heightened standards on the R&D tax credit. Although the taxpayer in this case had its credits substantially reduced due to certain improperly included supply costs, this opinion is a victory for taxpayers who are electing to claim the R&D tax credit.

This case is especially important for manufacturers that operate under the mistaken belief that they do not qualify for the R&D tax credit. Such companies are under the impression that the R&D credit only applies to basic research (e.g. research done in universities and laboratories); however, the intent of Congress, and the holdings in this case, further reinforce that the R&D credit is meant for manufacturers to claim with regard to activities that occur at their manufacturing facilities/plants (i.e. "applied research"). In fact, much of the basis for the R&D claim in this case arose from research undertaken for the development and improvement of manufacturing processes. Furthermore, wages were claimed for all types of employees, including engineers, testers, and operators. It bears noting that this is a U.S. Tax Court decision, and significant deference will be given by all courts as the Tax Court is a specialty venue for tax matters, and the judges are appointed based on their tax expertise.

Following are a few of the key pro-taxpayer holdings found in the comprehensive Tax Court Memorandum.

Ding-dong, the discovery rule is DEAD!

Prior to trial, the IRS conceded that the claims would be decided under the current Treasury regulations (TD 9104) and not the prior Treasury regulations that included the Discovery Test (TD 8930). This is of significance as the IRS has been inconsistent in its treatment of the Discovery Test, espe-

cially when auditing R&D Claims from tax years prior to 2004. The instant case involved tax years 1994 and 1995, and furthermore, the amended claims for R&D credits were filed in 1999 before the proposed regulations (eliminating the Discovery Test) were even issued. Again, this is a critical concession, as the IRS has been trying to raise the Discovery Test from the dead, and now appear to have finally accepted the position that it should not be used under any circumstance.

Tax Court gives taxpayers relief on substantiating the R&D Credit

Since the IRS issued its Tier I Directive in April 2007, the IRS has demanded that taxpayers provide contemporaneous documentation to substantiate their R&D tax credit claims. These demands have been made by the IRS despite the absence of legal authority establishing this as a requirement. Throughout the UCC opinion, the Court dismissed IRS assertions that the testimony relied upon was insufficient to substantiate UCC's R&D credits. In fact, the Court accepted oral testimony by UCC employees, 15 years after the R&D activities occurred, and found it to be sufficient to substantiate both the various R&D tax credit claims and the fixed base percentage.

Specific holdings by the Tax Court concluded that:

- Taxpayers were not required to have the same documentation for the base period as it had for the claim years
- Reliance on "informal documentation" such as emails and notes was permissible
- Estimates were permissible in the absence of underlying documentation
- Estimates for a base period company were allowed in the absence of any accounting records for that particular entity

The significance to taxpayers is that IRS examiners have sought to undermine the use of estimates during examination and assert that oral testimony is insufficient. This case should stop the IRS dead in its tracks from using this tactic during examination, as estimates have, once again, been validated for use in quantifying R&D credits and in determining the Fixed Base Percentage for a taxpayer.

This is clearly good news for taxpayers and their advisers as they seek to take advantage of one of the most important incentives for business in the tax code, the R&D Tax Credit.

Contact *alliantgroup* at 800-564-4540 if you would like more information on this legal opinion.

National Small Business Week . . . May 17-19, 2009

The nation's top entrepreneurs will be hailed at the U.S. Small Business Administration's National Small Business Week events May 17-19, in Washington, D.C., marking the 56th anniversary of the agency, and the 46th annual proclamation of National Small Business Week.

More than 100 small business owners from across the country will gather for three days of events at the city's Mandarin Oriental Hotel to be honored for their accomplishments as the nation's leading small businesses. The highlight of events will be the announcement of the National Small Business Person of the Year.

Men and women also will be recognized their involvement in disaster recovery, government contracting, and their support for small businesses. Awards also will be presented to SBA partners in financial and entrepreneurial development, including SCORE Chapter, Small Business Development Center and Women's Business Center of the year.

Small Business Week award winners will meet with top agency officials, congressional representatives and national business leaders. The State Small Business Award Winners and recipients of the Champion and other Entrepreneurial awards are nominated by local trade associations, business organizations and government agencies.

Additional information on the Small Business Week 2009 events is available at www.sba.gov/sbw.

Participate in the IMA's 2009 Compensation Survey . . . Deadline extended to April 30

The Illinois Manufacturers' Association, in partnership with RSM McGladrey, invites you to participate in the **2009 ANNUAL IMA COMPENSATION SURVEY**. Your responses to this survey will be helpful to all manufacturers in the state of Illinois. All participants will receive a **FREE** electronic copy of the survey report. In addition, participants will receive significant discounts on custom reports available only to those who participate in this survey.

To ensure the timely analysis and processing of survey results, participants need to submit their data **NO LATER THAN THURSDAY, APRIL 30, 2009**. If you cannot meet this deadline but still wish to participate, please contact Janie Stanley of the IMA at jstanley@ima-net.org or 800-875-4462, ext. 3020.

To participate now, click on the following link: <https://www.ima-net.org/compsurvey09.cfm>