



# TOOL TALK

A Publication of the Michigan Tooling Association

## From Rob's Roost

by: Rob Dumont, Managing Director

### GREAT RESPONSE!

The February **Tool Talk** included a request for input from members on the question of including advertising with the mailing of our monthly publication.

Typically a request for input has been yielding a very low response rate. I am very pleased to report that this most recent request resulted in 195 replies. That translates into an increase in the rate of response of about 550%.

And, by the way, 134 favored the inclusion of advertising while 61 respondents were opposed.

One obvious result in your responses was that I had created some confusion as to what I intended to do with the advertising. First, let me say the intent was not to make advertising available to the members. MTA has had a number of inquiries from non-members seeking to get our membership list so they might "mine" that list for leads in selling their product(s) or service(s). It has been the policy of the MTA not to give out the membership list and that policy remains intact today.

Should someone want to "mine" our members I thought by including their materials in the mailing we would permit them to get to the membership once and not become pests in the process. At the same time, since weight is a factor in mailing (a single page brochure on normal stock would not add significantly to the weight) we could charge

a per piece fee per envelope mailed and set the fee so that we recover all additional costs and some of the "usual" postage we use in any event to mail **Tool Talk**.

Several of you properly addressed the issue of "stuffing" the envelopes. MTA has, effective with the February mailing of **Tool Talk**, established a relationship with the city of Farmington Hills and one of the vocational institutions in the city, whereby the envelopes are stuffed and sealed and returned to us for mailing free of charge. Thus the "labor costs" of the Tool Talk mailing have been substantially reduced, regardless of the advertising issue and the addition of advertising will not have any meaningful impact in that regard. MTA will occasionally treat the staff of student staffers to pizza and soda as that tradition has grown with others using the service.

Certainly, going forward, MTA can and will control the process because MTA can and will set the price. This is not a business activity for us in terms of marketing a service. We are simply making an opportunity available to those who care to utilize it.

In terms of the membership taking advantage of the opportunity, clearly if a member wants to distribute material in this manner, the member should not have to go beyond compensating MTA for its actual additional costs.

### Inside This Issue

- Page 2 Law Talk - Buyer Beware
- Page 3 From the Desk of Gary Wood
- Page 4 Safety Talk with Safe-T-Rex
- Page 5 Welcome New Members  
Legislative Update
- Page 6 MTA Agency News
- Page 7 Economic Talk
- Page 8 The Marketplace  
Inflation Talk - CPI Figures for January

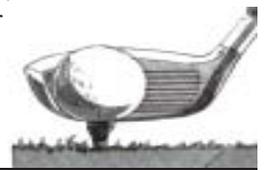
### MTA Calendar of Events - March

*NOTE: All seminars & training programs this month are being held at the MTA Training Center in Farmington Hills unless otherwise noted.*

- 15 Deadline for sending in items for **Tool Talk**
- 19 MTA Board of Directors meets
- 19 **Safety Seminar** - Required MIOSHA Training  
8:00 am - 11:30 am (Reservation form enclosed)
- 20 MTA Workers' Comp Fund Board of Trustees meets

#### MTA's 68th Annual Golf Party Announcement

The ball has started rolling for our 2003 Golf Outing, but it hasn't left the tee yet. Watch in the next editions for dates and times.



---

## Law Talk

by: George S. Fish, Esq. and Theodore W. Seitz, Esq.  
Raymond & Prokop, P.C., Southfield

### BUYERS BEWARE

The Uniform Commercial Code (the “Code”) governs the sale of goods between merchants. The Code mandates that a buyer of goods provide reasonable notice of breach when that buyer has accepted goods and later claims that those goods are defective. UCC 2-607(3); MCL 440.2607(3). The failure to follow this simple rule can be serious. If the buyer of the goods fails to provide the required notice, the buyer’s claim for damages for breach of the parties’ contract could be barred as a matter of law. This article highlights the law in Michigan regarding this notice requirement and points out what aggrieved buyers can do to properly pursue their claims.



panel was then sold to an automotive manufacturer. Some time after the vehicles were in the marketplace, field problems developed. There was no question that our client was well aware of the field problems as it was involved in determining the root cause of the failures. There was also no question that the buyer failed to provide notice to our client of the alleged breach of contract. As a result, the Court dismissed a multimillion-dollar claim against our client, even though the client was well aware of the field failures. This case clearly demonstrates the importance of providing unequivocal notice of breach to sellers of allegedly defective products.

#### Contractual Provisions

The Code allows parties to agree upon a manner for performing their contractual obligations. UCC 1-102(3); MCL 440.1102(3). Thus, as with any contract, it is important to carefully examine such obligations as they relate to the requirement of providing notice of breach. For example, buyer and seller may agree that all notices required under a contract must be provided in writing, directed to a particular address or facsimile number. Such provisions ensure that the appropriate decision makers within organizations are properly apprised of the requisite facts.

Importantly, courts are willing to enforce parties’ agreements regarding the method of performance. Thus, it is critical that buyers who believe that they received deficient goods comply with the notice provision contained in their contracts. If those provisions are not closely followed, that is another area in which a court may bar a buyer’s claim of breach of contract.

#### Conclusion

When addressing an issue of potential breach in the supply of a good, it is necessary for the buyer to carefully review its contract. The buyer must ensure that it is complying with all of its contractual duties in providing notice of the breach to the seller. Further, the buyer must be sure to communicate that the seller is actually in breach of its agreement. It is not enough for the buyer to just make the seller aware of the problem. If the buyer of a defective good does not follow these basic guidelines, the court may bar what otherwise may be a valid claim for breach of contract.

#### The Notice Standard

Courts interpreting the Code’s notice requirement have explained that it has multiple purposes. First, the provision of notice prevents surprise to the seller of the allegedly defective good and allows the seller an opportunity to make recommendations how to cure the problem. Second, notice allows the seller of the good a fair opportunity to investigate and prepare for litigation. Third, the provision of notice opens the way for settlement of claims through negotiation between the buyer and seller. Finally, fourth, the notice requirement protects a seller of goods from stale claims and provides certainty in contractual arrangements.

Michigan courts have been strict in enforcing the requirement that buyers provide reasonable notice of breach. It is not enough that a buyer simply notifies a seller that it is having difficulty with the goods in question. Rather, the seller must be notified that the buyer considered the seller to be in breach of their contract. Some courts even go so far as to state that the purpose of the notice is to advise the seller that the seller must meet a claim for damages. *K&M Joint Venture v. Smith International, Inc.*, 669 F.2d 1106 (6th Cir. 1982).

Raymond & Prokop, P.C. was recently involved in a case that highlights the importance of providing notice of breach. We represented the seller of a product whose goods were incorporated into a door panel. That door

---

## From the Desk of Gary Wood

*Administrator MTA Workers' Comp Fund*



### Spring is on the way!

I, for one, cannot wait. This winter has seemed to be colder than usual and grayer than usual. What a welcome relief to think that March 21<sup>st</sup> is right around the corner!

Every season has its own challenges and I was reminded of that last week when we had a rare 45 degree day and the snow melted. Foolishly, I left my boots in the truck and proceeded to get out at the mailbox. As soon as my toasty warm shoe leather hit that 7:00 p.m. glaze of refrozen snow, I was on my backside in a flash landing on my elbow with an unceremonious crash a microsecond before the ample weight of my mid-section slammed my hip to the pavement and gravel before I slid under the truck!

Needless to say, I was not expecting this result. So, what is the moral of the story? Even a good day can turn bad in an instant when you do not pay attention to the details.

Virtually every traumatic incident the Fund has experienced has been the result of an unthinking moment, a forgotten safety warning, or an unforeseen physical condition. Be careful, all it takes is a second of inattention to really get hurt.

### Loss Control

The re-formed loss control department with Bill Hoke in charge has turned the corner from the “fire-fighting” that was being done as the result of the changes in staffing to a planned and coordinated program. The staff has recently doubled in size by the addition of Ray Duff in the metropolitan Detroit area.

Those of you that have met Ray will recognize the experience and capabilities he brings to the position with thirty years experience in the pro-active support of loss control. We are happy to have him on board and look forward to reviewing his synopsis of the conditions he is encountering at the Fund members’ locations. This “fresh” set of eyes has already shown me the value of his professionalism on the visits we have conducted to date.

The Fund has authorized the utilization of an outside firm to conduct testing as required by the members for air

quality and sound levels. The use of an outside firm that specializes in this testing should provide timely and accurate results to any of your inquiries. There is an insert in **Tool Talk** that should be kept in your files as a reference should you need this service.

The rejuvenated “New Employee Training Center” has come alive with a new program for Fund members. The training program will cover the following issues:

- ❖ Hazard Communication;
- ❖ Personal Protective Equipment;
- ❖ Hazardous Energy Control Procedures;
- ❖ Industrial Lift Truck Operators; and
- ❖ Overhead and Gantry Cranes.

There is an additional insert in **Tool Talk** with all of the details of the first program.

The Trustees encourage your input on the loss control process. It remains their intention to continue to provide superior loss control service to every member of the Fund. Plans include additional seminars and possible staff increases as the needs of the members are articulated to the Fund’s staff.

If you have any requests, please contact Bill Hoke or Gary Wood, at 248-488-1172, exts. 1104 & 1316 respectively.

### Claims Activity

The Fund has experienced a slight increase in claims activity since the first of the year. This could be a seasonal fluctuation, but may be an indication that more people are back at work from this long economic slump that you have endured.

The claims staff, managed by Donna Motley, is in the office from 7:30 a.m. to 5:00 p.m. Monday through Friday. We have attempted to schedule a person qualified to handle your questions at all times during office hours. If you have an emergency after hours, make sure you leave a voice mail message so they know that they need to contact you first thing in the morning.

There are situations that occur which require notification to MIOSHA; the faster we know about your emergency, the quicker we can deal with reporting requirements and control the situation.

Many more situations do not require MIOSHA notification but demand rapid reporting to the Fund. If you have a claim in your facility, it is imperative that we receive the Form 100 within 24 hours (one business day). We can control treatment on claims for the first ten days of the injury. How can we control and assure appropriate treatment if we do not know about the claim until ten or more days have elapsed?

The timely reporting of claims is imperative to save the Fund, and ultimately the Fund members, the money that could be wasted on unnecessary or unrelated medical expenses. There is also the question of sending injured employees to an approved clinic; if possible send your employees to a facility that is in the PPOM network. This one thing, **you could do**, saves the Fund an additional ten percent beyond the savings already afforded under the state mandated "fee scheduling" of provider bills.

## New WCF Members

The Trustees, staff and members extend a warm welcome to the seven new members that joined the Fund in January. They are:

**Dearborn Sphere**  
**Efficiency Production**  
**Griffin Tool**  
**Paramount Boring**  
**Prince Industries**  
**Stewart Manufacturing**  
**Whitehall Industries**

The Fund is always seeking new participants and we welcome the opportunity to quote workers' compensation for both Michigan Tooling Association members and prospective members.

If there are ever any questions about the operations of the fund, please give us a call at 248-488-1172.

**True story:** A company trying to continue its five-year perfect safety record showed its workers a film aimed at encouraging the use of safety goggles on the job. According to Industrial Machinery News, the film's depiction of gory industrial accidents was so graphic that twenty-five workers suffered minor injuries in their rush to leave the screening room. Thirteen others fainted, and one man required seven stitches after he cut his head falling off a chair while watching the film.

## Safety Talk with Safe-T-Rex

*By: Julie Callaway, Chief Operations Officer  
BDN Industrial Hygiene Consultants, Inc.*

BDN Industrial Hygiene Consultants was established in 1980 as a firm dedicated to preserving human health and the environment through the use of industrial hygiene procedures. From the beginning, BDN's primary goal has been to provide the highest quality industrial hygiene and environmental services available. Our motivation, experience and personal commitment to each client have placed BDN at the leading edge of our industry.

Since BDN's inception we have completed projects in the following areas:

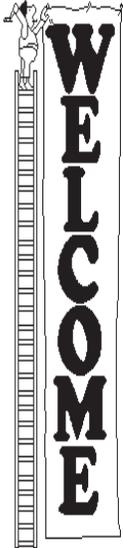
- ❖ Asbestos & Lead Air Monitoring
- ❖ Lead-based Paint Surveys
- ❖ Biological Sampling
- ❖ Chemical Air Monitoring
- ❖ Indoor Air Quality Investigations
- ❖ Noise Monitoring
- ❖ Safety & Health Training
- ❖ Ventilation Studies

Each month BDN will highlight a particular MIOSHA Regulation or subject area. If you have a particular topic you would like to see addressed in the newsletter, please contact us. If you should have any questions regarding safety and health in your facilities please call either Bill Hoke at 248-488-1172 ext. 1104 or BDN at 1-800-968-0123.



## Welcome New Members!

We would like to take this opportunity to welcome the following new members to the Michigan Tooling Association.



- ❖ **Erdman Machine Company** of Whitehall, specializing in industrial processing;
- ❖ **Griffin Tool Inc.** of Stevensville, specializing in trim dies, jigs & fixtures and special machinery;
- ❖ **PMR Industries, Inc.** of Kimball, specializing in machine repair parts, industrial machine replacement parts, machine units & assemblies built to customers' prints, and custom machining services; and
- ❖ **Stewart Manufacturing LLC** of Spalding, metal machining specialists.

## Legislative Update

by: *Judy Augenstein,*  
*Legislative Consultant, Lansing*

The Michigan legislature has started work on the 2003-04 legislative agenda. House and Senate committee assignments have been made and committees are holding organizational meetings. One of the first issues to be addressed by the legislature and Governor Granholm is the \$134 million deficit in the school aid fund. The Governor has presented a plan to cover the school aid fund shortfall which House and Senate leaders have accepted. The next budget issue will be the \$1.62 billion shortage for 2003-04. The 2003-04 budget is short monies to maintain existing programs; three quarters of which is in the general fund, which pays for Medicaid, prisons, universities, welfare and aid to local governments. Governor Granholm will present her budget recommendations in early March outlining her plan to address the 2003-04 budget issue.

Governor Granholm is expected to name a commission that will be led by former Governor William Milliken and former Attorney General Frank Kelley to oversee policy on land use development and controls in the state. The

commission will be called the Smart Growth Commission. Environmentalists are hailing the move as a first step towards controlling land use.

The Red Cedar Coalition, a new tax increase coalition, held their first meeting in late January. The group is led by the Michigan Education Association and includes colleges, the Michigan Municipal League, a variety of other education groups, the corrections officers' union and welfare advocates. The principal interest of the group is to seek tax increases as opposed to cutting spending. The group plans to make specific recommendations to Governor Granholm. Ideas on the table include extending the sales tax to services; increasing the income tax; other tax increases are being studied.

On February 5<sup>th</sup>, Governor Jennifer Granholm delivered her first State of the State. Governor Granholm laid out her agenda and vision for Michigan. She stated that we have challenges ahead, especially in regards to the budget, that we also have opportunities to reinvent Michigan government.

The Governor put a special focus on education and the need to place increased emphasis on children beginning from birth, and that 85% of a child's brain is developed by the time they get to preschool. Michigan's intermediate school districts will be called on to redefine their mission to ensure the state's smallest children get educational assistance and that parents know how to help them. She also focused on the importance of reading to children, encouraged the legislature to require 40 hours of community service as a graduation requirement and provided for loss of drivers' license for students who are chronically truant.

The governor is committed to create a Technology Tri-Corridor that will encourage development with the Life Sciences Corridor, the automotive industry, and industries related to homeland security. She will be forwarding an Executive Order for budget cuts for this fiscal year to the legislature as soon as possible. She will present her budget for fiscal year 2004 in early March.

Rep. Jack Minore, D-Flint has introduced HJR C. Elected officials subject to term limits would see their limit extended under a constitutional amendment. HJR C requires two-thirds majorities in both houses of the Legislature to be placed on the November 2004 ballot for approval; representatives could serve 12 years instead of six. It would extend the eight year limit to 12 years on senators, governors, lieutenant governors, secretaries of state and attorneys general.

---

# MTA Agency News

by: *Mark Tyler, General Manager*  
*MTA Insurance Agency*

## Fortis Dental Program Renewal

The Michigan Tooling Association Dental Program renews on April 1, 2003. We are finishing our second full year with Fortis Benefits and the feedback has been fantastic.

We strive to bring you, the members of the MTA, a low cost, high quality program that may not be available to you anywhere else. With that in mind, our program continues to outperform the marketplace in both benefit levels and costs.

Last year the average dental program in the marketplace increased over 15%. The MTA program increased only 7% while maintaining our quality benefit levels.

This year the average cost in the marketplace for a quality dental program is over 20% higher than the MTA's. These competing programs are now increasing at an average of 18.5%! The gap in cost between the MTA program and the general marketplace is getting wider by the month.

I am extremely pleased to announce that our increase this year will only be 9.5%, effective April 1, 2003. We are maintaining a pricing level that is almost 30% below our competition, allowing our members to continue to provide their employees a cost effective, high benefit level dental program.

We want to thank those companies enrolled in our dental program for their continued support. Without your support and loyalty we would not be able to continually provide this type of quality program. This is what the Michigan Tooling Association is all about. We look forward to another very successful year in 2003 and look forward to your continued participation.

If you are not currently enrolled in our dental program, please give me a call at 248-489-8505.

## Health Care 2003

by: *Karl Albrecht*  
*Action Benefits Company, Southfield, Michigan*

The last couple of years have been pretty tough due to the economy as well as the heavy pressure on our clients due to rate increases. The year 2003 looks to be a difficult one as well; however, there are some positive signs presenting themselves. Although the economy isn't making any decisive moves into positive territory, there are some signs that it is beginning to improve. Unfortunately, on a worldwide basis, most economies are continuing to struggle and, in some cases, get worse.

On the health care front we are seeing a lot of mixed signals as well. Blue Cross Blue Shield continues to work hard to control costs via their doctor and hospital contracting process, yet costs continue to rise.

Nationally, politicians are starting to hear the rumblings of concern over health care and jumping on the health reform bandwagon. Former Vice President, Al Gore, is the latest, stating that we need a universal health care system similar to Canada, but uniquely American. This sounds suspiciously similar to Hillary Clinton's plan from ten years ago that promised all the benefits with none of the pain. Unfortunately, basic economics states you cannot have a plan that pays for everything and yet is affordable.

Health care is like no other consumer commodity. It has an almost unlimited demand. A doctor could medically justify performing some sort of procedure (moles, aches, pains, etc.) on every single American alive today. We all want to be healthy. We all want to look out for our health. Unfortunately, when it comes to health care, it has never been proven that more is better and therein lies the inherent problem - where do you draw the line?

Politicians don't want to wade into this quagmire of lawsuits, patient advocate groups, consumer groups, etc., all claiming that more should be done. On the flip side are consumers who are literally priced out of the market. In many ways, due to the dynamics that exist, the only options available for a consumer are to purchase the best health care in the world (real expensive), or go without coverage.

Americans have been trained that if you go into the doctor's office and the \$45 office visit is not covered, you have bad health insurance. This is a mindset that must, one way or the other, be changed, whether directly by the government or through the free market system. We need to begin educating our customers on this issue as it is coming back to the forefront.

In addition, we need to build support and encourage the companies we do business with to aggressively negotiate to help control health care costs, whether this is with doctors' groups, hospitals or pharmacies. The health care provider acts as a fiduciary for us and it is important for them to take that position seriously. They also need to recognize as the price goes up, a family's ability to afford health care is stripped away from them.

The area/industry pool of the Blues has experienced double-digit rate increases for a number of years in a row. These rate increases have been a result of increased utilization and higher provider costs. Many of us have read about the high profile effort by the Blues to keep those costs down by diligently negotiating with providers on behalf of BCBSM members, including initiatives to steer utilization through product design, disease management programs, and a strong push to encourage generic drugs over brand name.

All of these efforts are part of a serious commitment to be sure that everything is being done on all fronts to avoid the type of rate increases we have seen lately.

*Action Benefits is an authorized Managing Agent for Blue Cross Blue Shield of Michigan and Blue Care Network, that the MTA Insurance Agency utilizes for enrollment of new members companies and benefit changes.*

## Economic Talk

by: Mike Dana, CEO Dana Investment Advisors

### Between Iraq and a Hard Place

The economy that is. The threat of war with Iraq has put a damper on consumer and business spending. This on top of an already weak economic recovery. Once the Iraq situation is at least known (it looks like war), that uncertainty will be out of the way.

Then we can deal with the hard place. That would be the Fed. Do they have any weapons with which to stimulate the economy? Yes, they do, and the answer is **not** interest rates. Cutting interest rates from here will not help (witness Japan). However, the Fed can buy T-bonds or print money. Printing money does not seem to be a realistic approach at this time. President Bush has more weapons (not just military) at his disposal to stimulate economic growth, and he is using them. All we need is for Congress to wake

up, stop posturing and take action. Job creation is a big part of the answer.

The media is not helping matters. They continue to report "the sky is falling." One has to dig deep behind the negative headlines to see signs of an impending economic recovery. We are still somewhat concerned about the threat of deflationary pressures brought about by high debt, overcapacity, sluggish demand and high productivity.

Why high productivity? Because it is high productivity that makes corporations more efficient. However, during the 1990s employment costs got out of control. Now companies are going through massive restructuring which unfortunately has resulted in continued layoffs. That is exactly why we need programs to stimulate new business to employ those workers laid off from the cost cutting companies. We see signs of this happening more and more frequently.

Now we are seeing state governments taking similar action to curb their spending during the past decade. If only the federal government would catch on. They continue to deride the tax cut as the road to ruin for the economy.

A final word on the inflation/deflation controversy. Some are looking at the rise in commodity prices (mostly gold and oil, but also copper and even beef), and proposing inflation. Rising prices are not the cause of inflation. An increase in the money supply is the real cause. The rise in commodity prices is an indication that investors are moving from financial assets to real assets (include houses here also).

The deficit hawks are flapping their wings furiously. The deficit of course is a concern, but an economic recovery along with federal cost cutting will return the U.S. to a surplus. Congress needs to be looking beyond the noses of their faces to see how the tax proposal and other economic stimulus plans will work. Another plus for deficit spending is that it puts a lid on government spending. Whenever we show a surplus, Congress will find some irrelevant program to spend it on, and it is usually something irreversible.

The stock market continues to be buffeted by mostly negative news. However, stock prices are not reacting as much as in the past. This is good news as it indicates a bottoming pattern for stock prices. We continue to be cautiously optimistic; however, we do not expect a repeat of the 1990s.

