



# Slingmakers

Issue No. 104

Fall/Winter 2004

**Cascade Rigging Inc.**  
6110 N. Cutter Circle, Suite  
Portland, OR. 97217  
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## Letter From The President

With our Presidential election now behind us we can only hope that bipartisan politics will prevail and both parties will work toward a united cause. It must be noted that by President Bush winning the election with 52% of the majority vote and with the Senate having 55 Republican seats out of 100 and the House of Representatives winning with 53% of Republican seats we should see for the first time in a long time a true look at the democratic process at work.



Our own election of the Officers and Directors of the AWRP has also just occurred. With the slate of new Officers and the addition of five new Directors I feel we have a dynamic and inspiring group. Mike Wallace of Loos and Company, our incoming Vice President, brings with him 8 years of experience on the Board and over 20 years in the business. Anne Renfroe, of J.C. Renfroe and Sons, serving as our Secretary brings with her in her second year on the board, both extensive management skills as well as the wisdom and charm of the South. Craig Hayward of The INDUSCO Group serving as our Treasurer, adds his skill from management and sales in filling out our incoming Officers

With the finale of the transition of Cardon Management to JAGwire Management your Board of Directors can now focus entirely on Association needs and projects. Our Technical/Testing Committee under the guidance of Don Pellow will now have the opportunity to re-establish itself as our number one prioritized working committee. Our Membership Committee, headed by David Johnston of CM, will now be Co-Chaired by Cindy Morley of Russel Metals of Ontario, Canada, adding a new force for pushing for Canadian membership. Brad Fowler, our

Insurance/Legal Resource Chairman, with the help of Jeff Gilbert, will work on tracking down those members who do not keep the association updated on Proof of Liability Insurance. Anne Renfroe, our Secretary and Communications Chairwomen, will survey our membership and report back this year your wants, wishes, and the direction you want your Association to head into the future. Teresa McGee and Andrew Hall will head up our Program/PIE Committee. I am looking forward to these two new Directors to add new life and ideas to this very important committee. As we move ahead into this year the balance of your committees will work for the continued enhancement of your association.

Our fall meeting in San Diego, California was a great success with over 415 registered members. The location, agenda, programs and hotel were enjoyed by all. I do apologize for the weather that Bruce Yoder, our Tournament Chairman, called in. His golf game hasn't been good lately so he thought he would just rain us out.

In the future we will be meeting in Scottsdale, Arizona, April 17-20, 2005 and we go to historic Boston, Massachusetts from September 25-28, 2005 for our fall meeting and PIE Exhibition. Both these meetings should be of diverse interest and well attended by our members.

Please keep in mind that our Association is only as strong as the core of volunteers remains vigilant. Willing members who give their time and effort are the ones who keep this organization on a continued growth pattern. We continue to seek out members who will volunteer and serve our organization so we may continue to represent the world as the leading Association of our Industry.

Bob Cushman,  
President, AWRP

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**SLEEVE:** Wire rope passed through sleeve.



**SLEEVE & PLUG:** Strands fanned out to insert plug.



**SLEEVE, PLUG & SOCKET:** Plug driven in and strands closed to apply socket.



**COMPLETED ASSEMBLY:** With socket applied, twisted strands are visible through inspection hole.

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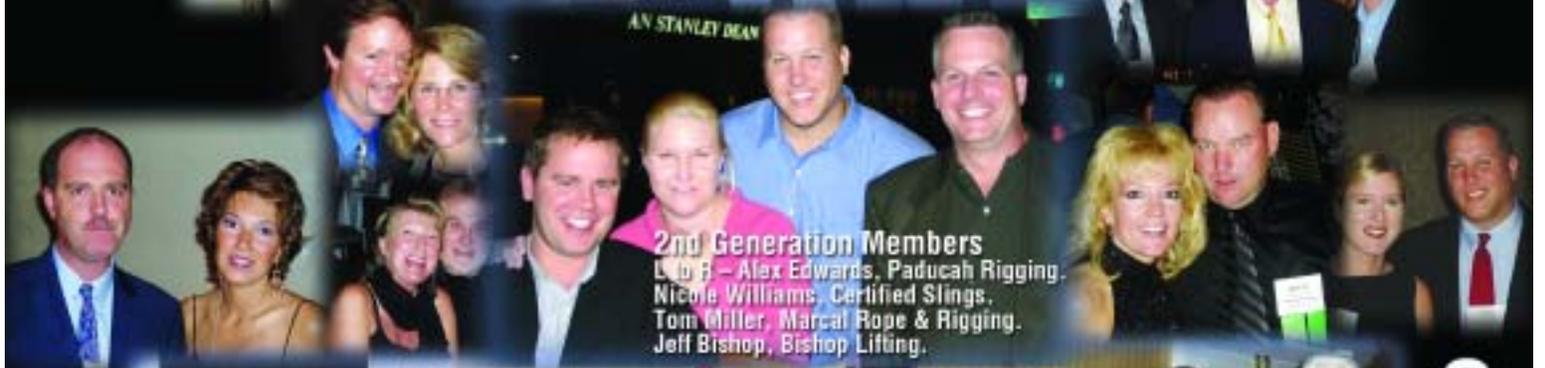


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 Joe Roberts, Roberts Calibration, Craig Hayward, Infasco Group,  
 President Mark Metz.



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 Nicole Williams, Certified Slings,  
 Tom Miller, Marcal Rope & Rigging,  
 Jeff Bishop, Bishop Lifting.



**Outstanding Safety Achievement Awards**  
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 American Drill Boring, Harry Coulter, Innac Corporation, Roger Marlar,  
 Southern Wire Corp, Rick Takowski, Safety Sling Company

**Retiring Directors**  
 L to R - Jeff Bishop, Bishop Lifting Products, Ted Sullivan,  
 Kelly Wife Rope, Mark Kowalick, Liftex Corp, President Mark Metz.



**- AWRF Staff**  
 L to R - Dolores Tuczak, Barbara Gilbert, and Neil Gilbert.



**New Martin Spike Club Members**  
 L to R - Brad Fowler, D&M Wire Rope, Frank Becker,  
 American Wire Rope, Gary O'Rourke, Slinder-Resource.

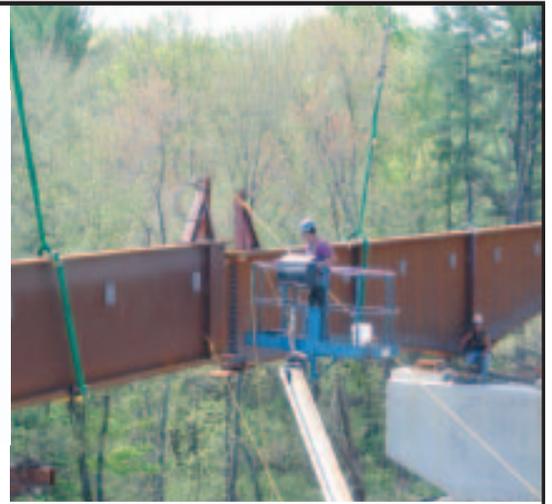


**Outstanding Safety Achievement Awards**  
 L to R - Ann Renfro, J.C. Renfro & Sons, Peter Friedrich, Industrial Magnetics,  
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# INDUSTRY TECHNICAL ASSOCIATION

## WRTB LAUNCHES WEBSITE

The Wire Rope Technical Board (WRTB) is pleased to announce the formal launch of its website. The site is hosted by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, and can be accessed at [www.domesticwirope.org](http://www.domesticwirope.org).

The WRTB is an association of engineers from companies that account for the vast majority of the steel wire rope produced in the United States. The Board, headquartered in Alexandria, Virginia, is organized in pursuit of several critical aims, including the development of engineering and scientific knowledge relating to wire rope, the establishment of technological standards for military, governmental and industrial use, and the extension of wire rope uses through the dissemination of technical information to equipment manufacturers. The following U.S. manufacturers are WRTB Members: American Wire Rope Company, Rosenberg, TX; Bridon American Corporation, Wilkes Barre, PA; Continental Cable Company, Hinsdale, NH; Loos & Co., Inc., Pomfret, CT; Wire Rope Corporation of America, Inc., St. Joseph, MO; and Wirerope Works, Inc., Williamsport, PA.

The WRTB website provides information about the Board and links to the websites of the member-companies. It also allows visitors to purchase materials handled by the WRTB, including the *Wire Rope Users Manual*, which is recognized worldwide as a leading technical publication regarding the design and specifications of steel wire rope.

The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers is the leading voice of the U.S. steel wire rope industry, and its members likewise account for the vast majority of steel wire rope production in the United States. The Committee's website contains a wealth of information regarding the member-companies (again, with links to the websites of these domestic manufacturers), the commercial and qualitative benefits of domestically-manufactured steel wire rope, and country-of-origin marking requirements for imported wire rope.

The Committee and the WRTB are proud to represent domestically-manufactured steel wire rope, "The Machine That Made America."

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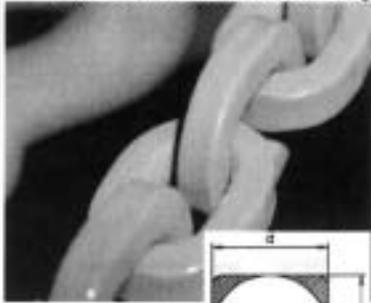
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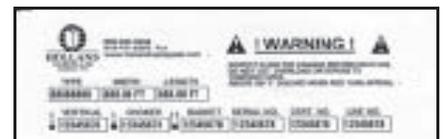
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# GOVERNMENT AFFAIRS COMMITTEE REPORT



By  
J. Barry Epperson,  
Legal Counsel and Chairman,  
Government Affairs Committee

*Mark your calendars now for the March 18, 2005 AWRP Government Affairs Committee briefing to be hosted by the U. S. Chamber of Commerce at their headquarters in Washington, D.C. All AWRP members are welcome and we extend a special invitation to the Association leadership to include officers, directors and past presidents. Plan to arrive the previous day, visit with your Congressmen and enjoy a group dinner. A block of rooms will be reserved. Details to follow.*

## THE PRESIDENT AND CONGRESS

The return of the current administration with an unquestionable popular mandate in combination with conservative gains in the Senate and House of Representatives bodes well for the U.S. business environment for at least two more years. President Bush's commitment to such programs as tort reform, tax simplification and health care for associations mirrors some of the perennial objectives of the AWRP government relations agenda. Accordingly, 2005 and 2006 should be years of GAC proactivity with concentration on swing votes and little call for obstruction. While the President is not concerned about re-election nuances and is free to be more aggressive with his domestic agenda, we must not forget the need for a supermajority of 60 votes in the U. S. Senate for every bill sent to the White House. At this juncture we can only hope that Mr. Bush's initial gesture of bipartisanship coupled with the presidential veto power will trump the ever-present tendency toward stalemate. Experience has taught us to expect a few party line abdications on critical floor votes, so if Senate Majority Leader Bill Frist (R-TN), moves his agenda forward with diplomacy, it should be feasible in most instances to achieve the 60 votes needed for cloture in the upcoming Congressional session C particularly in light of the appointment of Harry Reid of Nevada, considered to be a moderate, as Majority Leader of the Democratic Party.

## 55 - 44 - 1

The Republican gain of four Senate seats on November 2<sup>nd</sup> circumscribing the defeat of Democratic Leader Senator Tom Daschle of South Dakota has bolstered Republican hopes of ending the gridlock that plagued much of the administration's legislative program and certain judicial appointments. On election day, Republicans took six Democratic seats, while losing two of their own, giving them a 55-44 edge with one Democratic-leaning Independent. The resulting nine new Senators are as follows: Ken Salazar, 49 (D-CO); Mel Martinez, 58 (R-FL); Johnny Isakson, 59 (R-GA); Barack Obama, 43(D-IL); David Vitter, 43 (R-LA); Richard M. Burr, 48 (R-NC); Tom Coburn, 56 (R-OK); Jim DeMint, 53 (R-SC) and John Thune, 43 (R-SD).

## THE NEW LOOK OF CONGRESS

According to the *Washington Times* the 109<sup>th</sup> Congress will look slightly more like the real America, with more women, Hispanics and African-Americans, including the first black man to enter the Senate in a quarter century. In addition to Senator-Elect Barack Obama, only the third black person ever to be elected by popular vote to the Senate, newly elected Senators Ken Salazar, and Mel Martinez, will become the only Hispanic-Americans in the Senate. The House will see the arrival of Bobby Jindal, (R-LA), the son of immigrants from India and only the second Indian-

American to serve in Congress. There will be 65 women in the 435-member House in the next Congress, including Democratic Leader Nancy Pelosi plus 41 other Democrats and 23 Republicans, up five from the current Congress. The Senate will continue to have 14 women. Senator Lisa Murkowski (R-AK), narrowly survived a tough election challenge, but the other four women up for re-election C Democrats Blanche Lincoln of Arkansas, Barbara Boxer of California, Barbara Mikulski of Maryland and Patty Murray of Washington C won handily. The Congressional Black Caucus boosted its representation in the House by three, to 40, all Democrats. That includes such veterans as Charles Rangel (D-NY), top Democrat on the Ways and Means Committee and John Conyers (D-MI), senior Democrat on the Judiciary Committee. Cuba-born Marinez was Housing and Development Secretary in the Bush administration before his successful run for the Senate seat in Florida, while Salazar replaced the retiring Colorado Republican Ben Nighthorse Campbell, the only American Indian in the Senate. With Campbell's departure and the defeat of Rep. Brad Carson (D-OK), in a Senate bid, the only American Indian in Congress is Tom Cole (R-OK), a member of the Chickasaw Nation. There are also five Asians in Congress: Hawaii's Democratic Senators, Daniel Akaka and Daniel Inouye and three Democratic Representatives C Michael Honda and Bob Matsui of California and David Wu of Oregon. According to a *Congressional Quarterly* survey, the Senate in the new Congress will again be dominated by lawyers, with 58 attorneys, while 32 listed "public service" and 30 specified "business" on their resumes. In the House, 163 members list public service, 162 business and 160 law in their backgrounds. The House will have 128 Roman Catholics, 36 Presbyterians and 26 Jewish Representatives, while the Senate will have 24 Roman Catholics, 14 Presbyterians and 11 Jewish Congressmen.

## DEMOGRAPHICS

Although total voter turnout was up approximately 15 million from the record set four years ago, fewer than one in ten individuals between the ages of 18 and 24 showed up at the polls, making up essentially the same proportion of the electorate as in the previous presidential election. Additional trends may be discovered by making a county by county voting study. Look for a color coded map of the United States with counties roughly delineated. Note which presidential candidate won the electoral votes from each state and then observe the configuration of the counties where a majority voted for the other candidate. In certain states you will undoubtedly recognize patterns or cohesive groupings of dissenting voters, i.e., rural versus urban, etc.

## CONCLUSION

Currently the U. S. Congress has convened for a lame duck session during which they will deal with three important issues: appropriations, increasing the national debt ceiling and responding to the findings of the 911 Commission by invoking reforms within our covert intelligence networks. The Senate also has a final opportunity to address H. R. 4571, The Lawsuit Abuse Reduction Act of 2004, which passed the House by a margin of 229-174 on September 14, 2004. As this business unfolds, the White House is redesigning the Cabinet which will have a new look with the departures of Secretary of State, Colin Powell (to be replaced with National Security Advisor, Condoleezza Rice); Education Secretary, Rod Paige; Agriculture Secretary, Ann Veneman; Energy Secretary, Spencer Abraham; Commerce Secretary, Don Evans and Attorney General, John Ashcroft.

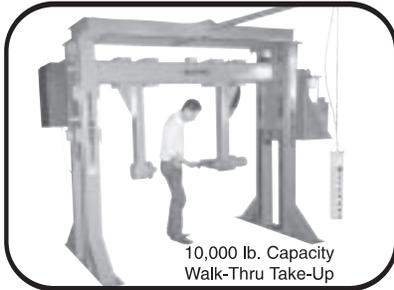
As always your Government Affairs Committee at AWRP is mindful of the adjustments required to deal with new combinations of personalities and philosophies in Washington. As we formulate our legislative agenda for the 109<sup>th</sup> Congress and our administrative objectives at the Department of Labor and elsewhere on Capitol Hill, we will look to the solid advice and consent of the leadership and members of the lifting, rigging and load securement industry.

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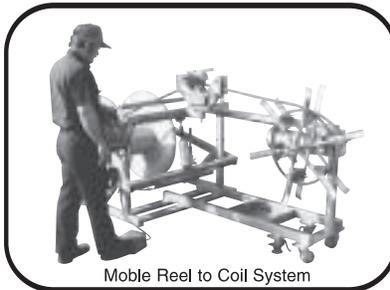
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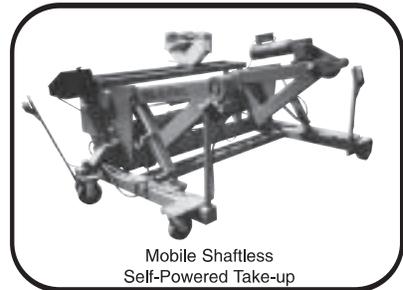
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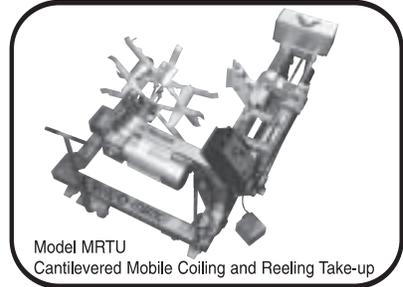
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Self-Powered Take-up



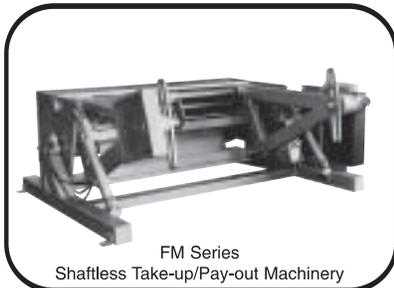
Shaftless Rim Drive Take-up



HSS 751 with Coiler



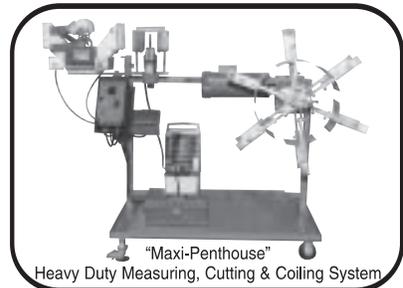
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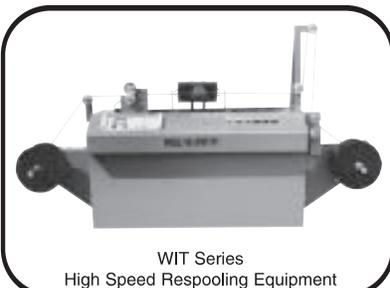
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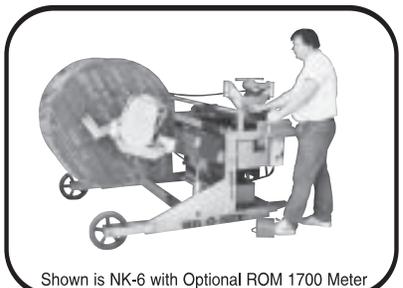
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# LAEDC ECONOMICS CORNER

- U.S. economic growth has slowed somewhat but activity in the wire-rope related sectors continues high.
- Economic growth has accelerated around the globe. Will it continue?

## U.S. Economic Situation

After growing at a stellar 4.5% pace in 2004, U.S. economic growth will settle down in the 3.5% range during 2005/2006. Changing household spending patterns account for the different dynamics. Sales of housing related durable goods will follow trends in home sales, which are extremely strong at the moment but expected to ease in 2005 and 2006. Several domestic automotive manufacturers are utilizing enormous purchase incentives in order to maintain sales and reduce inventories. These efforts haven't been especially successful; so production cuts have been scheduled over the winter. LAEDC does not expect this situation to improve much in the near term.



Business spending for new plant and equipment has strengthened markedly in 2004. Mostly, this reflects improved profitability and temporary tax incentives, though cutting costs is still important. Firms have been investing primarily in high tech equipment and software. However, demand for other types of equipment also has improved, with manufacturers reporting higher orders for construction and agricultural machinery, heavy trucks, and railcars. Oil and natural gas drilling and production levels also have risen in response to markedly higher energy prices.

U.S. housing markets have peaked. Mortgage rates have not risen appreciably yet, but they will in 2005/2006. As they go up, residential construction and sales are likely to fall off moderately. Private nonresidential construction reached bottom in 2004—finally. Retail, office, and commercial buildings will lead the recovery phase, followed by industrial. Power plant construction, still in a downtrend, is a notable laggard. Squeezed by state/local budget constraints, government construction will grow slowly in 2005 but should improve in 2006. Surging prices of construction materials continue to cause problems for project bidders and developers alike.

U.S. foreign trade soared in 2004. Measured in constant dollars, imports surged by almost 10% in 2004 while exports increased by about 9%. U.S. imports will rise at a slower pace in 2005, but exports will accelerate. Both trends reflect the decline in the U.S. dollar on foreign exchange markets and also better economic conditions in the rest of the world (see article below).

Demand for many types of goods increased faster in 2004 than most business firms—and economists—anticipated. Sales and production have accelerated noticeably. Also, U.S. manufacturers, wholesalers, and retailers all have been rebuilding inventories to support the higher level of sales. As firms' stocks reach desired levels, production growth will taper down toward the pace of incoming orders.

The Transportation Services Index (TCI<sup>1</sup>) for Freight has been at record levels in 2004. Large volumes of all kinds of goods are being carried by trucks, railroads and airplanes between the nation's ports, manufacturing plants, distribution centers, warehouses, and retailers. Firms in the transportation industries expect the current high activity levels will carry through 2005. However, the rate of growth should moderate as inventory re-stocking winds down.

## GLOBAL ECONOMIC FORECAST

The global economy in 2004 is growing at the fastest pace since 2000 (and before that 1988). China and the U.S. are the primary locomotives of growth in the world today, with other nations following behind. For example, Japanese exports of high-tech and industrial equipment to China have soared, pulling the rest of the economy along. All three nations import large quantities of raw materials, so it's no wonder material prices soared in 2004. Nations that supply these products also are experiencing higher growth. Chile and Brazil are exporting metals and other materials, while OPEC, Mexico, Russia, and non-OPEC oil producers are shipping all the oil they can produce.

U.S. economic growth is set to slow down during 2005, moving from 4.5% in 2004 to 3.6% in 2005. Lower light vehicle output and a slowdown in housing-related markets account for most of the deceleration in growth. However, U.S. exports will accelerate, reflecting faster growth in the economies of its trading partners and the decline of the dollar on foreign exchange markets.

China's economy in 2004 is surging ahead at a rapid 9% clip. After several years of torrid growth, the nation's infrastructure has become severely strained. The Chinese government has selectively tightened economic policy by ordering banks to reduce lending to specific industries (including construction and steel) and raising interest rates. Vehicle sales and private construction have slowed sharply. China has suddenly become a net exporter of long steel products, though it continues to import sheet steel. The economy is expected to slow some in 2005, though how much is still an open issue; current GDP forecasts range from 7% to 8.5%.

The world's primary global economic locomotives are slowing down. What will happen in the back of the train? The answer varies by region:

The Japanese economy is growing again. After years in the doldrums, GDP will increase by about 3% in 2004, the best performance since 1996. The initial growth driver was a surge in exports to China. In addition, efforts to restructure the banking system and other industries are showing results, reducing the bad news-good news quotient and boosting consumer and business confidence. However, Japan's economy will grow more slowly in 2005 because of declining

**Table 1**  
**FACTORS INFLUENCING WIRE ROPE DEMAND\***

	2002	2003	3q04
Real GDP Growth	2.2	3.1	3.9
Manufacturing Production	-0.5	0.1	5.9
Manufacturing & Trade Sales	1.4	2.4	5.8
Goods Trade Deficit (\$2000)	542.1	585.6	661.4
Vehicle Sales (Mils, SAAR)			
--Cars (Domestic)	5.9	5.5	5.3
--Light Trucks (Domestic)	7.6	7.8	8.5
--Medium/Heavy Trucks	0.3	0.3	0.4
Construction:			
--Housing Starts (Mils)	1.71	1.85	1.97
--Private Nonresid Bldgs	-13.0	-6.9	6.3
--Gov't Bldgs & Infrastructure	6.7	2.8	2.0
Bus. Equipment Spending			
--High Tech & Software	-4.2	12.0	13.6
--Other Machinery	-6.8	0.0	11.8
Freight Transportat'n Index	3.0	2.4	5.1
Oil & Gas Rigs Running	830	1,032	1,229

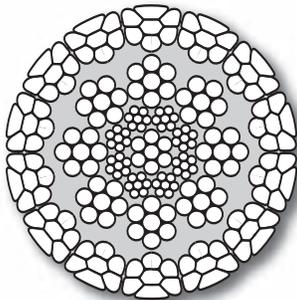
\*Percent change from previous year unless otherwise noted.



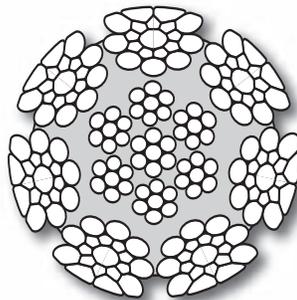
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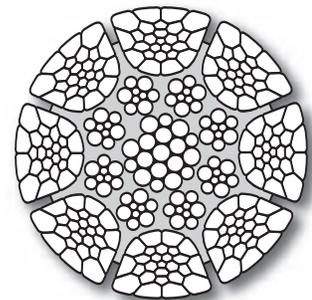
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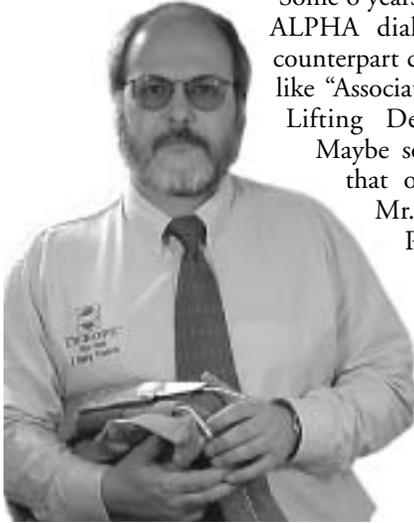
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# INTERNATIONAL RELATIONS



Some 6 years ago AWRF had a brief ALPHA dialog with it's German counterpart called F.S.A., something like "Association of Wire Rope and Lifting Device Manufacturers".

Maybe some of you remember that one of their members, Mr. Dieter Stauske from Pfeifer in Germany, gave a presentation at our Quebec Meeting about architectural designs in the construction industry. Because of the natural language barrier, by 1999 that dialog had ceased to exist.

Then, a couple of months ago, I got a call from Cees Boer President of Van Beest. He ask me if I would be willing to give a presentation at a FSA Meeting which was about to be held in Slidrecht, Holland at the Van Beest Plant. One of reasons he did ask me was that I have no language barrier to overcome so I could do a presentation to the German association in the German language about our North American AWRF, the US and Canadian wire rope market in general, and our voluntary system of writing an adopting consensus standards. Mark Metz, then AWRF President, immediately agreed to that I could officially act as AWRF liaison to introduce our trade association to the members of FSA.

That meeting was held on November 24/25, 2004 in Slidrecht. I did a presentation on AWRF, including it's history ( I took the picture of our founding 'fathers' as printed in Slingmakers), policies, type of management. I also developed a set of graphs which showed each and every AWRF Committee as well as a break out graph to introduce our Technical Committee, it's functions and sub-committees. Furthermore I presented some of the achievements of our Technical Committee and a selection of testing and product evaluation projects we had completed in the past. The last part of my 3 tier presentation was dedicated to introduce the most important standards writing organizations for our product lines in North America (ASME, ASTM, API, AIST, ANSI, NIST, Cordage Institute, WSTDA) Now then, does everyone of YOU knows what each of the organization does and how they differentiate themselves from each other ?

This FSA Meeting was a so called "Manufacturer's Meeting" that is, once a year a member manufacturer has the chance to

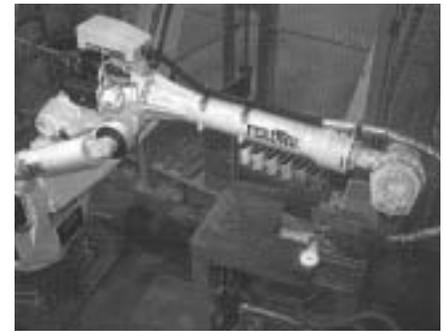


organize a meeting for FSA, to introduce it's company, and to present a speaker with an interesting topic (that was me).

FSA is a much smaller organization than AWRF with about 30 member companies which MUST be a wire rope fabricator (all located in Germany) plus 9 Associate Members which are suppliers to the industry (like Van Beest is, but also Crosby, Gunnebo, Talurit etc.) A total of about 65 attendees showed up, 20 'regular' sling shop members and 8 'Associates'; this was, according to FSA officials, a record number.

The meeting started with a cocktail reception and dinner in an old bunker like contraption build halfway into a dike and included a ballad singer and some entertainment. To describe this as 'different' would be the understatement of the week. As all was paid for, including the drinks, everyone can imagine how it sounded later that evening when 60 Germans started singing in unison! That's 'bonding' the European way. Instead of having entertainment, they WHERE the entertainment (hello Dennis Worswick).

The next day we had an extensive tour of the Van Beest shackle manufacturing plant. This plant is ultra modern with robots making shackles from start to finish. After the tour I gave my presentation.



FSA was established shortly after the ends of WWII in 1947 in the city of Hamburg, Germany. It remained a typical North German association up until the late 1980's when, under the chairmanship of Herman Pfeifer, it was expanded to include all of Germany and all of the German wire rope sling shops. I my self had been in member of that organization from the mid '70's to 1989.

Aside from many common goals we do share with the FSA there are some important and remarkable differences:

- a) All their members are required to obtain the ISO 9000 certification level. Without that ISO Certification you can not become a member. How did they introduce this in midstream? When this became mandatory a large portion of their members had already been certified. The members which had not been certified were given a grace period plus their membership went into 'dormancy' until they could present their ISO certification. Their main reason to implement such a measure was simply to ensure that all FSA Members were on the same quality level or, that FSA members had achieved a certain quality level mandated by their trade organization. We might want to think about this.
- b) In order to join FSA you must have been in business for at least 2 years.
- c) The membership fees are based on the number of employees.
- d) They have developed unified 'Terms of Sales and Delivery' which every member is encouraged to use in their business.
- d) They have a, non structured, way of dealing with companies which 'low ball' prices in the marketplace.

*Continued on page 21*

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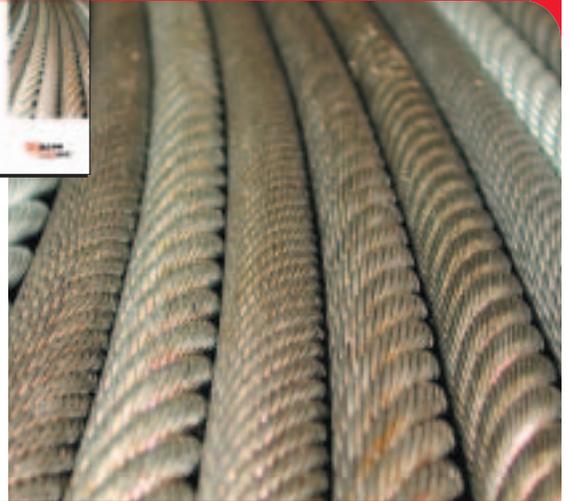
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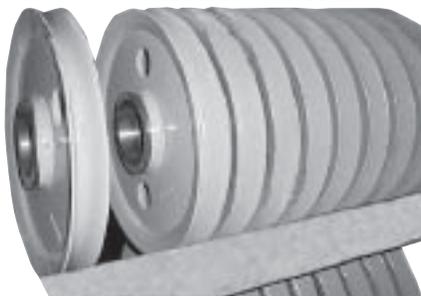
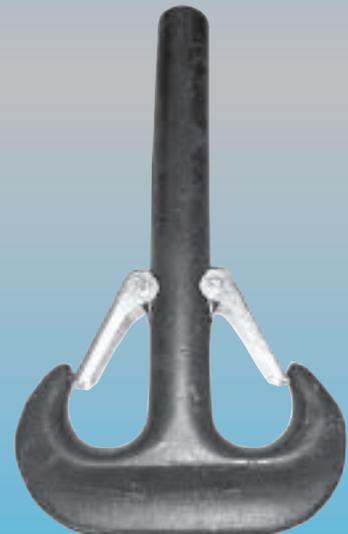


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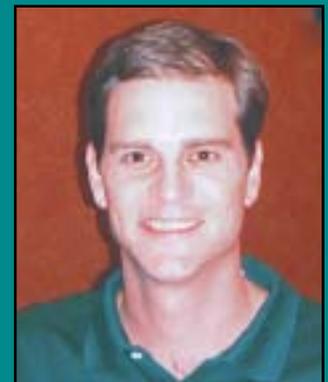
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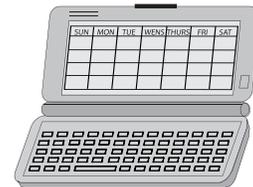


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## A.W.R.F. CALENDAR



**2005**

- January 17, 18** B30 San Antonio, Texas
- January 28, 29** Board of Directors Meeting  
Palm Springs, California
- February 17, 18** AWRP Technical Meeting  
Scottsdale, Arizona
- March 15, 16** B30.9, Dallas, Texas
- March 18** Government Affairs Briefing Washington D.C.
- April 17-20** AWRP General Meeting  
Double Tree Paradise Valley Resort  
Scottsdale, Arizona
- June 7** TC 96 Cranes, Baltimore, Maryland
- June 8, 9** Wire Rope Technical Board  
Kenwood Club – Maryland
- September 25-23** AWRP Fall General Meeting  
PIE  
The Boston Park Plaza Hotel  
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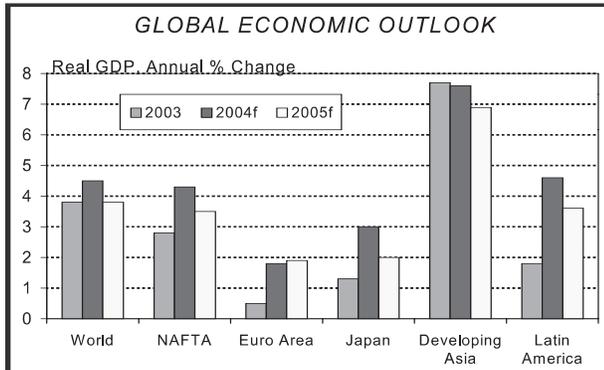
## LAEDC ECONOMICS CORNER

Continued from page 13

exports to China. Still, higher spending by business firms and households should provide enough support to achieve 2% growth.

A similar outcome is in store for South and Central America, especially nations that export to the U.S., China and Japan. In Chile, Brazil, and Mexico, the local economy accelerated nicely in 2004—to about 4%—but will slow to 3% — 3.5% during 2005 as exports ease.

Growth in Canada and the Euro Area nations also rose in 2004, reflecting both improved domestic spending and increased exports. However, the Canadian dollar and the Euro have appreciated



markedly, which will reduce their competitiveness in foreign markets. Still, rising domestic demand (spending by private firms and citizens) should provide an offset. Canada's economy will grow by about 3% in 2004 and 2005, while growth in the Euro Area will remain under 2%.

NOTE: what does this forecast imply for prices of industrial commodities, especially steel? Activity in some steel using sectors of the U.S. and China (like automotive manufacturing and construction) dropped in the latter part of 2004. The slowdown likely will carry over into early 2005. Also, distributors' inventories of most steel products appear to have reached comfortable levels. Both factors—plus an increase in steel imports coming to the U.S.—resulted in lower spot prices for some steel products during the fourth quarter.

Overall steel demand will continue to rise in the U.S. and China during 2005, though the extra demand from inventory re-stocking will be much reduced. However, the dollar's decline suggests that steel imports into the U.S. have had their day and may well decline. And steel input costs—scrap, iron ore, and metallurgical coal—will be higher. Thus, while steel product prices may well decline from their 2004 peaks in 2005, they are unlikely to fall back as fast as they rose in 2004. Thus, on average, prices for most steel products will be higher—perhaps a lot higher—in 2005.

*This material was prepared by the Los Angeles Economic Development Corporation:*

*Nancy D. Sidhu, Vice President & Senior Economist*

*Candice Flor, Research Project Manager*

*1 Transportation Services Index (TCI) measures the month-to-month changes in services provided by the for-hire transportation industries, including railroad, air, truck, inland waterways, and pipeline.*

## INTERNATIONAL RELATIONS

Continued from page 15

e) They develop 'Suggested Retail Price Lists' for the industry and encourage members to sell according to these suggested price levels.

f) FSA gets actively involved in Anti-Dumping procedures.

They have developed common procedures for inspecting chain-, wire rope-, and fiber rope slings. I have a copy of them (in German language). They also publish an up-to-date list of all relevant EN Standards.

We have now established a much better and closer contact with FSA as we ever had in the past. I made a special note on that that AWRF would encourage a European wide organization of the sling and rigging industry. As it stands right now there are no known similar associations in other European countries, aside from LEEA in England. One of my last words of my presentation revolved around that I suggested to establish a European type FSA/AWRF like Association which can deal not only with the respective 'National' bodies but more importantly with the future European Legislation in Brussels. Wouldn't it be a great idea if our Wire Rope, Lifting and Load Securing Industry could, one day, speak with a unified North American AND European voice and make ourselves heard to all regulatory bodies? As Martin Luther King once said: I have a dream!

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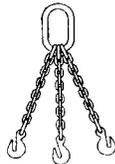
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PREPARED BY BETTY BECHTEL, MICHAEL SANTO, AND SAM STARRITT  
3rd Quarter DUFFORD, WALDECK, MILBURN & KROHN, L.L.P. 2004

#### "DON'T TOUCH THAT GUN!" ACCOMMODATING A PERCEIVED DISABILITY

Edward had been grumpy at work for some time. When confronted by his supervisor with co-worker complaints about his rudeness, Edward responded by yelling at his supervisor and making profane and threatening remarks. Edward was immediately suspended without pay. His employer learned that Edward told his counselor that same evening, "I understand why people go postal," and talked of "smoking people, going postal, and having the means to do it." Edward, you see, was a policeman and carried a gun as part of his job.

Two days later, the employer told Edward he must undergo a psychological examination with its psychologist, Dr. Finley. Dr. Finley concluded that Edward was suffering from a major depression and should not carry a firearm for at least three months. She advised that Edward could work around firearms, but not carry one.

Edward accepted this diagnosis and asked to be given a job in the radio room where he would not have to carry a firearm. But his employer felt it was unsafe for Edward to even be around guns and offered him, instead, an unpaid medical leave until he was released to carry a gun again. All Edward had to do was apply for the medical leave. When Edward failed to do so, he was fired. And then, you guessed it, Edward sued his employer under the Americans with Disabilities Act ("ADA").

How could this employer's actions violate the ADA? Edward was rude; he threatened to "go postal;" the doctor said don't let him carry a gun when his job required him to carry a gun. He was offered time off to accommodate his depression. Please tell us the employer wins this lawsuit.

No can do, said the 3rd Circuit Court of Appeals in the case of *Williams v. Philadelphia Housing Authority Police*, 380 F.3d 751 (3rd Cir.(Pa.) 2004). The court considered these facts and found that a jury could reasonably conclude that the employer "perceived" Edward as disabled and failed to "reasonably accommodate" his perceived disability. The employer didn't accept its doctor's advice that Edward could safely work around guns, making him unable to work in any police position. As perceived, Edward's mental impairment disabled him from performing a whole class of jobs.

The court held that if an employer denies employment because it perceives that the employee can not perform an essential function

of the job, the employer must prove that this perception is correct. A "good faith" erroneous belief is not good enough. And time off without pay is not a reasonable accommodation where there are vacant positions that the employee is, in fact, qualified to perform.

According to this decision, an employer must reasonably accommodate a person who is not disabled but who is perceived as disabled. In so ruling, the 3<sup>rd</sup> Circuit adopted the 1st Circuit's interpretation of the ADA. Decisions in four other Circuits, the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup>, have reached contrary conclusions. The 10<sup>th</sup> Circuit, which governs Colorado, has not yet addressed this issue.

Holding that an employer must reasonably accommodate a person who is only perceived as disabled leads to the bizarre result that a person who is impaired but not disabled has no right to an accommodation, while a person who is not impaired but perceived as disabled must be accommodated. Ultimately, it is up to the U.S. Supreme Court to shed some reasonableness on this issue.

Another disturbing aspect of this decision is that the employer's offer of time off without pay was not accepted by the court as a reasonable accommodation due to the existence of suitable vacant positions. Under the Family and Medical Leave Act, if the employee can not perform his regular job fully or on an intermittent or reduced schedule basis because of a serious health condition, the employer can require the employee to take unpaid FMLA leave rather than switching the employee to a vacant or modified position. Extending the 3rd Circuit's decision to an FMLA situation where the serious health condition is also a "disability" or a "perceived disability," the employer would violate the ADA by requiring the employee to take unpaid FMLA leave if there were vacant positions available for which the employee was otherwise qualified.

Lesson: The employer in this case might have avoided the whole ADA issue if it had fired Edward initially for being rude, profane and threatening his supervisor (assuming he was employed at-will and the employer did not have a practice of tolerating such conduct by others). But once the employer delved into Edward's mental status, sent Edward to its psychologist, and received the psychologist's opinion, it needed to follow the psychologist's advice, or find a more credible doctor with a different opinion. An employer's belief or fear that an employee is mentally or physically unsafe to perform an essential job function will generally not prevail over contrary expert medical opinion.

#### HOW GROSS IS GROSS?

Under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA"), an employer with 20 or more employees, who maintains a group health insurance plan, is required to provide for the continuation of insurance coverage by covered employees and beneficiaries following the occurrence of a qualifying event for 18 to 36 months, depending on the nature of the qualifying event. One of the qualifying events is an employee's termination, unless the termination is due to the employee's gross misconduct. In that situation, an employee has no COBRA rights. Which brings us to the question — how gross is gross?

Unfortunately, the Act does not provide any definition of the term "gross misconduct," nor does it provide any basis for how an employer is to determine whether an employee's conduct meets this standard. Employers are left with reviewing court decisions to see what actions meet the "gross misconduct" standard.

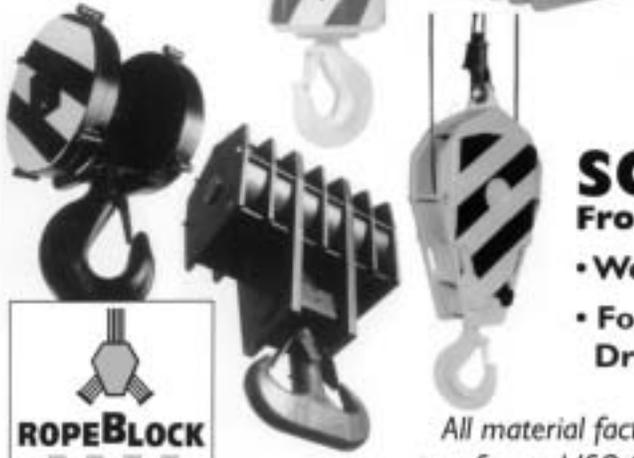
In *Karby v Standard Prods. Co.* (DC SC 1992), the Court determined that an employee's failure to disclose to his employer his ongoing conflict of interest with various suppliers constituted gross misconduct. The employee's conduct included having a financial interest in a major supplier, having paid exorbitant prices for

*Continued on page 27*

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# Wirerope Works, Inc.

## Press Release

The Sunbury Plant of Wirerope Works, Inc. suffered a fire, which started in the early morning hours of December 15, 2004. No one was in the plant at the time and there were no injuries associated with the fire. The fire was contained to just over half of the Rope Mill #1 building. The cause of the fire is unknown. There is substantial damage to the building and the equipment in the building. Currently there are twenty-two employees of Wirerope Works, Inc. at the Sunbury site. The fire did not affect a major part of the plant, including Rope Mill Building #2, and the Wire Mill Building. All of the Sunbury employees have been reassigned to work with equipment in those unaffected areas.



## PEOPLE REMEMBERED

### Lois B. (Brady) Samsel

Lois B. Samsel (nee Brady), age 69. Loving wife of 45 years to Frank J.; loving mother of Kathleen S. Petrick (Stewart), F. Michael (Joan), Marybeth S. Allen (John), Christopher P. (Carol) and Barbara S. Secilior (David); dear "Nan" of Jacob, Marissa and Nathan Samsel, and Douglas and Gayle Petrick; sister of Barbara Glover (Douglas); sister-in-law of Alberta Surman. Passed away Saturday, Oct. 30, 2004. Family suggests memorials to St. Malachi or St. Augustine Hunger Centers.

### Al Rubin

Al Rubin, age 80. Loving husband of 26 years to Jean Rubin. Loving father of Barbara and stepson Ron. Grand father of 5. Founding father of Associated Wire Rope Fabricators (AWRF). Retired from Jack Rubin and Sons August of 1995. Served in the Army Air Corps during WWII in Italy for 3 years. Passed away Sep. 20, 2004 in Palm Springs, California.

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The fact of the matter is serious tripping accidents happen every day. Accidents are especially likely when hazards rest in the path that people normally walk. To avoid problems:

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2. Keep any drawers in the work areas closed when they're not in use.
3. Keep tools, materials, cords cables, and boxes off the floor.

### Three steps to win over safety complainers:

No matter how well you do with your safety training and enforcement, there will probably always be a few people who complain about safety. Some will complain you're not doing enough. Others will say you're overdoing it. Either way, don't just blow them off. They might have something worthwhile to contribute.

### Here are three steps you can take to help win over safety complainers:

1. Enlist their help. When people bring safety complaints to you, don't let the conversation end without asking them what they'd do to solve the problem. Then, see if they are willing to help fix it.
2. Explain safety efforts. Let complainers know all that's being done. Point out the posters; show them memos, tell them about meetings. It'll round out their understanding.
3. Bring them along. Next time you do a safety walk-through; bring them along so they can see the effort you personally put in to spot workplace hazards.



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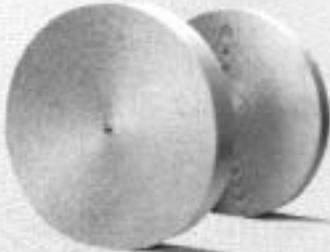
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products and machinery from certain suppliers, having a “cozy relationship” with certain other suppliers, at one of which the employee’s son worked during school vacations, having accepted no-interest loans from suppliers, and having had his mortgage payments made by a supplier. Now, that’s gross. In another case, a court determined that an employee’s assault of another employee at the workplace constituted gross misconduct. *Zickafoose v. UB Services, Inc.*, 23 F. Supp. 2d 652 (S.D. W. Va. 1998). Gross again.

But the conduct need not shock the conscience to be gross misconduct. In *Bryant v. Food Lion Inc.*, (D.S. . C. 2000), a grocery store employee’s refusal to clean a dairy case each week, as instructed, constituted “gross misconduct” in light of the employee’s experience and repeated oral and written warnings. In another case, cash handling irregularities, invoice irregularities, and the failure to improve the performance of one of the employer’s stores was seen as “gross misconduct.” *Avina v Texas Pig Stands, Inc.* (WD Tex 1991). The use by a grocery store employee of stamps unlawfully obtained from the employer in order to get a number of turkeys offered by the employer in exchange for such stamps was considered theft, and constituted gross misconduct in *Burke v American Stores Employee Benefit Plan* (ND Ill 1993).

But be careful. Courts are not always supportive of an employer’s claim that it terminated an employee for gross misconduct. For example, an employer’s termination of an ingredients mixer at a food preparation plant because of her failure to add an ingredient on one day was not due to “gross misconduct.” *Lloyd v. Hanover Foods Corp.* (D. Del. 1999). And an employee’s termination because of an employer’s good-faith belief that the employee had committed disability fraud was not gross misconduct because the employee had not actually engage in fraud. *Kariotis v Navistar Intern. Transp. Corp.* (7<sup>th</sup> Cir. 1997). Finally, Courts often reject an employer’s claim that the employee was terminated for gross misconduct when it appears that the employer asserted the defense solely because the employer failed to timely provide the employee the necessary COBRA. See *Paris v F. Korbel & Bros., Inc.* (ND Cal 1990).

**Practical Tip:** Do not label conduct that is merely sloppy, negligent or incompetent as “gross misconduct.” Termination for theft, fraud, violent, obscene or unlawful conduct warrants denying COBRA benefits for gross misconduct, but be sure you can prove that the conduct in question happened. If you deny COBRA benefits for gross misconduct, make sure that you notify the employee of this decision in writing, citing the conduct that led to this determination. Be ready to defend your decision!

### “I KNOW NOTHING!”

In response to reference requests from prospective employers, many employers adopt Colonial Klink’s mantra from Hogan’s Heros, “I know nothing!” Considering the increased litigation resulting from negative references, if you are not leery about giving out information that will prevent employees from getting a job, you should be. Consider these recent cases.

In the first case, Ms. Jute sued her former employer, Hamilton Sundstrand, claiming that Sundstrand retaliated against her for assisting a fellow employee with a lawsuit alleging gender discrimination, and for filing her own EEOC charge after she was laid off. How did it retaliate? By giving her prospective employer a negative reference, allegedly preventing her employment. The employee claimed that while two of her ex-supervisors had favorable things to say about her, the third only commented that he “could not discuss [the employee] because she had a lawsuit against the company.” Ms. Jute also alleged that when she contacted the hiring company she noted to the interviewer that she

had a pending lawsuit against her former employer, and the interviewer responded, .... that sums up what I heard.”

Employers and ex-employers cannot legally take adverse employment actions against employees because they participate in or file a claim under Title VII, the ADA or ADEA. A false reference can qualify as an “adverse employment action.” The Court noted that to establish a retaliation claim where the purported adverse employment action is a false reference, a plaintiff must come forward with evidence “that the statements of the former employer caused or contributed to the rejection by the prospective employer.” Fortunately, for Sundstrand, Ms. Jute had no such evidence. She was unable to establish that the prospective employer based its decision not to hire her on any of the statements made by Sundstrand’s supervisors. Although one referred to her pending charges as the reason he could not comment, she was interviewed after this comment was made and there was no evidence that it was a factor in her rejection. Consequently, the Court dismissed her claim. *Jute v. Hamilton Sundstrand Corp.*, 2004 WL 1326301 (D.Conn, 2004)

Yes, Sundstrand won, but it probably spent a truck load of money and time defending this claim that might have been avoided had Sundstrand not given information about Ms. Jute’s employment beyond dates of employment and position held. Mentioning her EEOC charge was a definite no-no. It allowed Sundstrand to be sued for retaliation.

Unfortunately for Colorado employers, the Sundstrand decision did not occur in our state. In Colorado, the most recent negative-reference case is *Hillig v. Rumsfeld*, 2004 WL 1909460, in which the employer was held liable for retaliation in violation of Title VII, because of a negative reference it gave an employee who had previously filed a discrimination claim against the employer. The Hillig Court noted that the longstanding rule in Colorado is to “liberally define the phrase ‘adverse employment action’” and not limit the term to simply “monetary losses in the form of wages.” The Court went on to explain that “any act by an employer that does more than de *minimis* harm to a plaintiff’s future employment prospects can, when fully considering ‘the unique factors relevant to the situation at hand,’ be regarded as ‘an adverse employment action,’ even where plaintiff does not show that the act precluded a particular employment prospect.” Basically this permits a plaintiff to prove her claim of retaliation by establishing “speculative harm.”

Although this case certainly appears to lower the bar in Colorado for a plaintiff’s claim of liability based on a negative reference, it should be noted that this case also proves the long-established maxim: bad facts make bad law. The plaintiff was able to show that when she applied for a promotion within the company after she had filed an EEO charge, her supervisors gave “very strong negative feedback,” said that she “had performance problems at work,” and characterized her as a “shitty employee.” These statements were made even though the employee’s performance evaluations were devoid of any negative performance issues. Further, at the conclusion of her two interviews with the prospective employer, both interviewers had commented, prior to receiving the reference statements from the former employer, that the employee was “a perfect fit for the position.” Then, when questioned at trial as to why they didn’t hire her, one of the hiring supervisors stated that he was concerned that her fingernails were too long to effectively type. This “defense” probably lost considerable weight after the plaintiff testified that she always kept her fingernails short.

**Practical Tip:** Give only dates of employment and position held — that’s it, unless you get a release, signed by the employee, requesting you to provide information to the prospective employer

and waiving all claims the employee might otherwise have against you for providing this information, acknowledging that the information may be negative, and agreeing to pay the costs and reasonable attorneys fees you incur if claims are brought against you as a result of complying with this request.

### SEVERANCE AGREEMENT MAYBE RETALIATORY

Joe Draft has been working for XYZ for quite a while. Sadly, despite his satisfactory job performance, Joe is about to lose his job because XYZ is restructuring and, in that process, XYZ will eliminate Joe's department. For his years of good services, XYZ has offered to give Joe 50 hours of severance payment for each year of employment with XYZ.

Of course, XYZ isn't thrilled about the prospect of being sued by Joe, and other members of his department, after giving them generous severance pay. XYZ doesn't want its severance pay to fund a lawsuit against it. So, XYZ puts in its severance agreement a clause that the employee cannot file a charge of discrimination with the EEOC or file a lawsuit against XYZ if the employee accepts the severance payments. After reviewing the agreement, Joe tells XYZ that the provision preventing him from filing a charge with the EEOC is retaliatory; although, he's got no problem with the provision that states he can't file a lawsuit against XYZ. Because of this, Joe tells XYZ that he won't sign it unless they change the agreement. XYZ tells Joe that the agreement is the agreement — no changes. Joe files a retaliation claim with the EEOC because of the language in the severance agreement and the EEOC sues XYZ for retaliation. Is this possible?

In *EEOC v. SunDance Rehabilitation*, 328 F.Supp.2d 826 (N.D. Ohio, 2004) the EEOC brought a lawsuit on behalf of an employee who faced a situation similar to Joe's. The EEOC claimed that the provision in the agreement preventing the filing of a charge with the EEOC made the agreement retaliatory *per se*. The EEOC argued that while similar provisions waiving the right to file a lawsuit or bring claims are lawful, the right to file charges with the EEOC cannot be waived. The Court agreed. It based its decision on the EEOC's duty to conduct investigations and serve the public by enforcing the provisions of Title VII, the ADEA, and other federal employment laws. And "an employer and an employee cannot agree to deny the EEOC the information it needs to advance this public interest."

Don't misunderstand—it is lawful and wise for an employer to require that terminated employees waive their right to file "claims" or lawsuits and collect damages against the employer in exchange for receiving a discretionary separation package. But including a provision in the severance agreement that prevents the employee from filing a "charge" with the EEOC could expose the employer to a retaliation lawsuit by the EEOC, if the 10<sup>th</sup> Circuit or Colorado courts follow this Ohio decision.

### Q&A

Q. *Yesterday, I called Jimmy into my office to question him about some missing petty cash. He refused to talk to me unless I allowed his co-worker to also sit in. Do I have to let him invite a co-worker to our meeting? We are not unionized.*

A. A few months ago, the answer would have been "yes." In 2000, the NLRB ruled that even non-union workers have the right to a co-worker witness at any meeting with management that the employee reasonably believes may lead to discipline or discharge.

But on June 15, 2004, the NLRB reversed itself and no longer requires an employer to allow employees who are meeting with management for disciplinary reasons to demand the presence of a co-worker at the meeting. Union employees still have the right to be represented by their union at the a disciplinary meeting, upon request.

Q. *The manager of our warehouse earns \$400 per week salary, plus an inventory-control incentive bonus that varies depending on the value of lost goods, but averages another \$150 per week. He has hiring and firing authority over seven other employees and manages the department. We consider him an "exempt" executive and don't pay him overtime. Is this OK?*

A. Not after August 23, 2004, when the new fair pay regulations became effective. These regulations require that the employee receive a guaranteed salary of at least \$455 per workweek in order to be exempt from overtime. Although your manager typically makes more than this amount, less than \$455 is received as a guaranteed salary. A fluctuating commission, bonus, or other incentive pay does not satisfy the salary-basis requirement. You need to raise the base salary to this minimum.

Q. *Pauline was fired for being late to work 10 days in a 30 day period. She provided no reason for her tardiness. We gave her two written warning and let her go when she reported 45 minutes late the last time, claiming that her alarm didn't go off. She applied for unemployment and we have received papers to complete from the State. But she already has another full-time job? So why respond?*

A. If she becomes unemployed again within the next year after filing for unemployment, your company's tax account could be debited to pay a portion of her benefits, unless you establish that her termination from your company was her own fault. Completing the State forms now and returning them in a timely manner will allow the State to make a ruling in your favor and prevent a charge to your account for a later job loss.

Q. *Our receptionist likes to eat her lunch at her desk. Although not required to work, she often takes business calls during this 30-minute unpaid break. Is this a problem?*

A. Yes. She must be paid for a working lunch, even if the work is not required, so long as you have reason to know that she is working. The company is accumulating a liability for unpaid wages and, potentially, unpaid overtime because of these working lunches. If you do not want to pay for this time, require her not to work during lunch.

Prepared by Betty Bechtel, Michael Santo, and Sam Starritt

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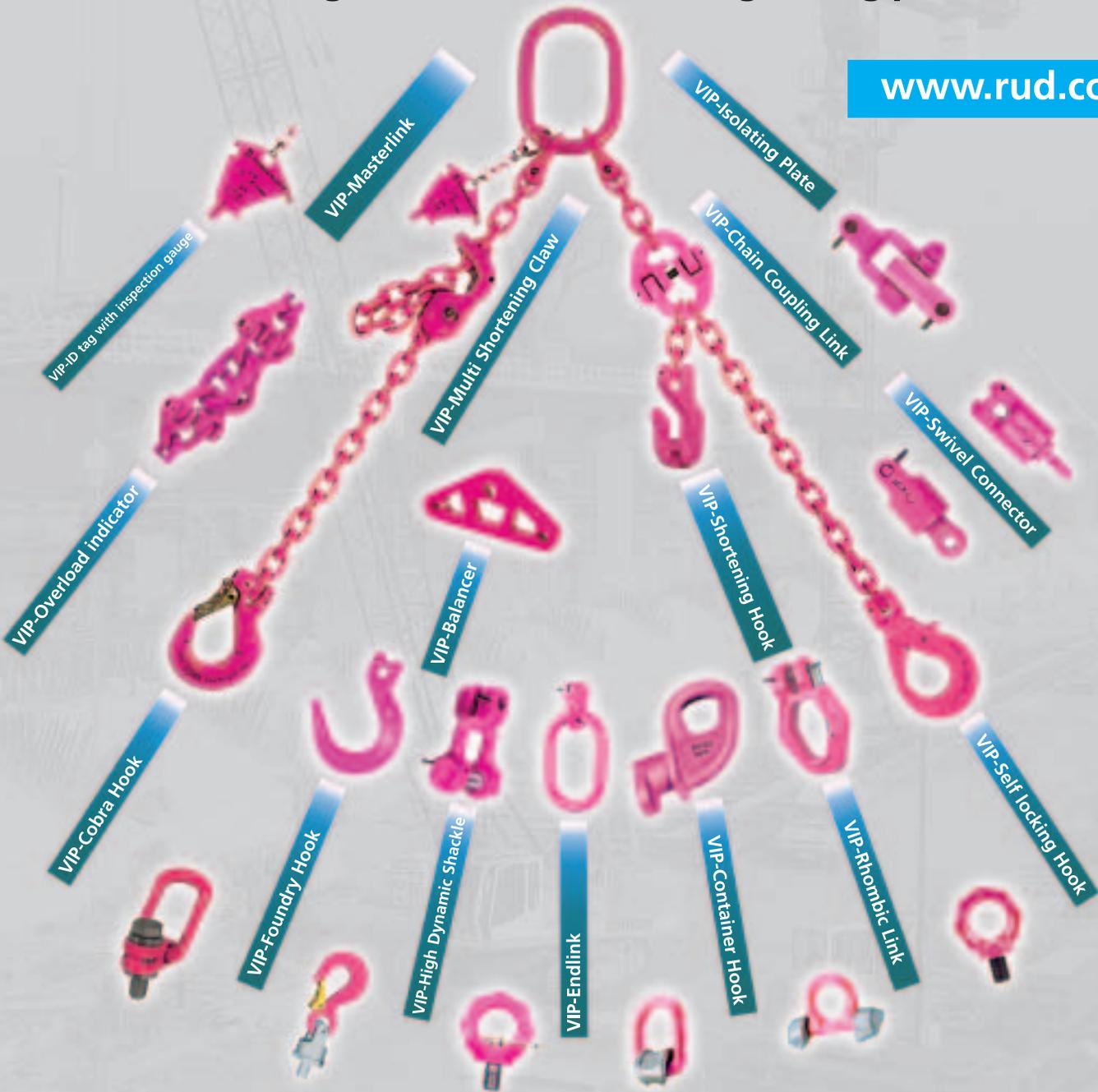
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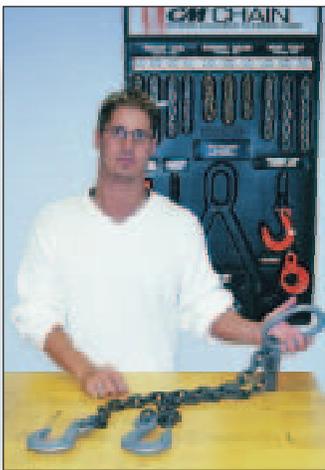
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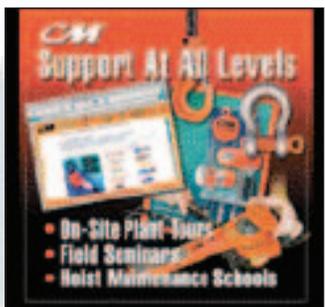


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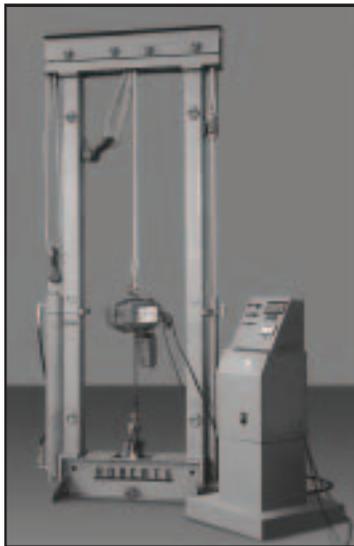


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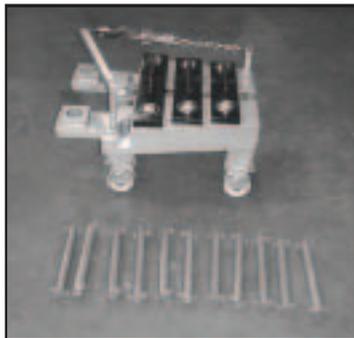
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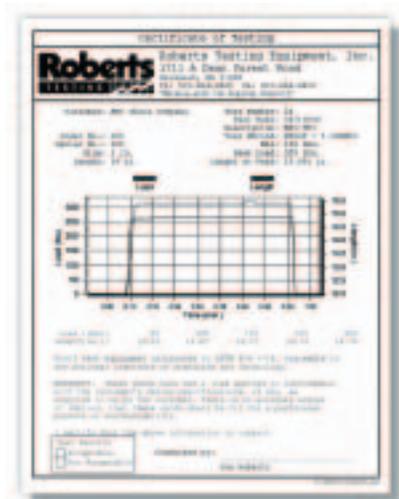
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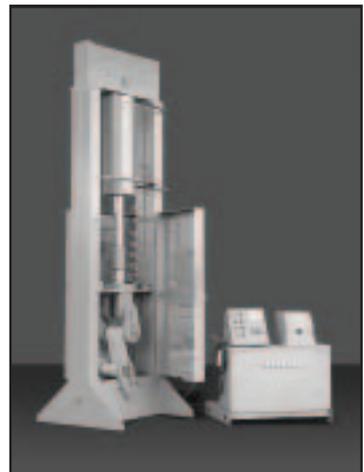
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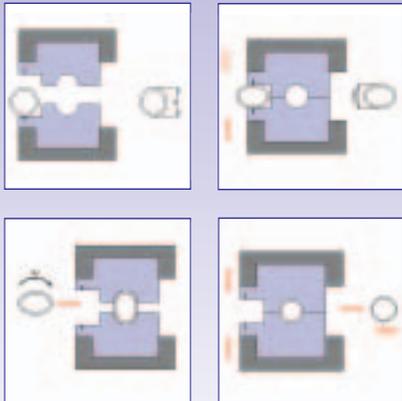


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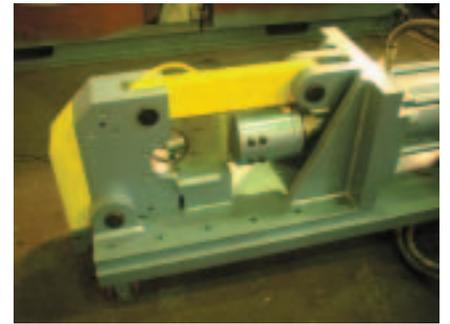
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