IN THIS ISSUE...




**Air Conditioning Contractors of America**
Greater New York Chapter
123 South Street,
Suite 112
Oyster Bay, NY
11771



# Greater New York Contractors' NEWS

Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org **PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION** JULY 2012

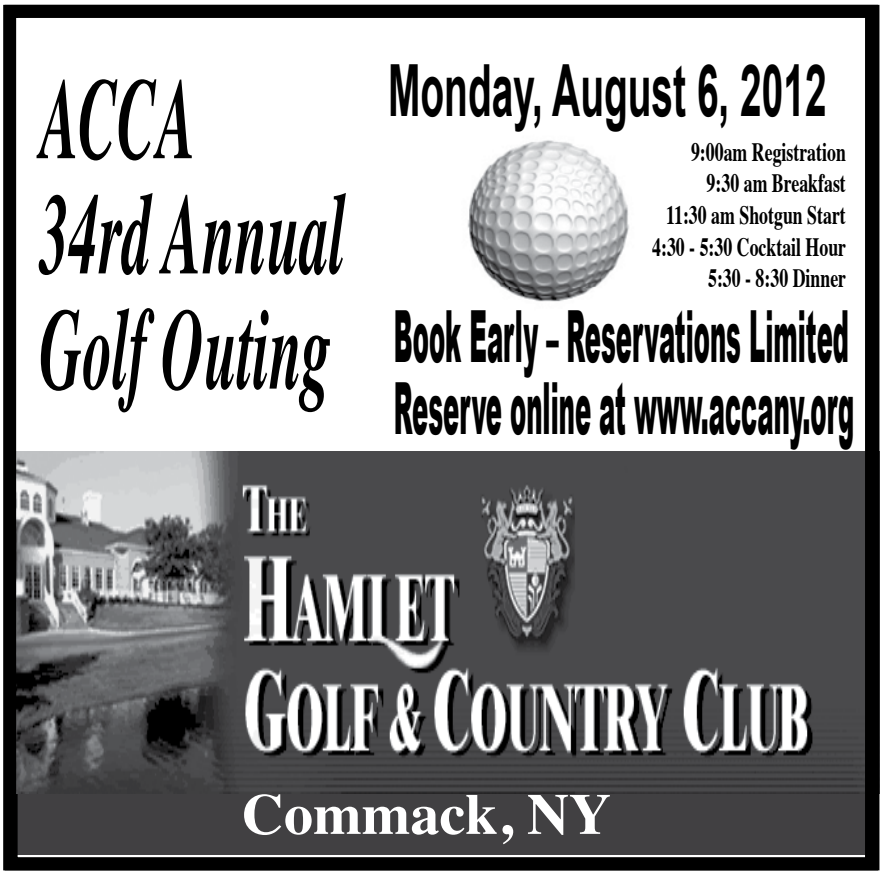

## President's Message

Michael Newman

I guess we can all say that we are happy that we finally got some heat. We wait all year for hot temperatures and it is finally here. I hope everyone has a productive and profitable summer. I am lucky to have found the time to write my message during our busy season.

If you did not make it to the June event you missed out on a great night! We held our networking cocktail party at Il Bacco's in Little Neck. The event took place on the roof top garden as we watched the sunset and a double rainbow while eating great food. Please see

*Turn to President's Message on page 3*




THE GREATER NEW YORK CONTRACTORS' NEWS IS NOT PUBLISHED IN AUGUST. HAVE A GREAT SUMMER. SEE YOU IN SEPTEMBER.

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

## PRESIDENT'S MESSAGE *Continued from page 1*

picture of the double rainbow. Thanks to Anthony Carbone for putting this special night together. Our next major event will be our annual Golf Outing in August at the Hamlet Golf and Country Club in Commack.

This year we will be focusing on increasing the membership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year? Are there any issues or topics you want to hear about this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting! ***— Mike Newman***



# ACCA Greater NY Chapter

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# Editor's Notes

**by Anthony N. Carbone**

ACCA Metro New York will be on its 2-month meeting hiatus for July and August after a great run of programs and events. We have addressed many pertinent topics and current issues that have affected our industry. In addition, we have hosted some fun events such as the Holiday Party, Casino Night, Night at the Mets and the soon to be, Golf Outing.

We are a unique group of owners and operative representatives of our companies who share pertinent information.

In September we begin our monthly programming meetings.

If you receive this newsletter, but have not yet decided to join us, this is your personal invitation from our board of directors to see how important you will find the information and the programs, as well as the events.

Thank you for the support the advertisers give to this newsletter to allow it to be published and widely distributed.

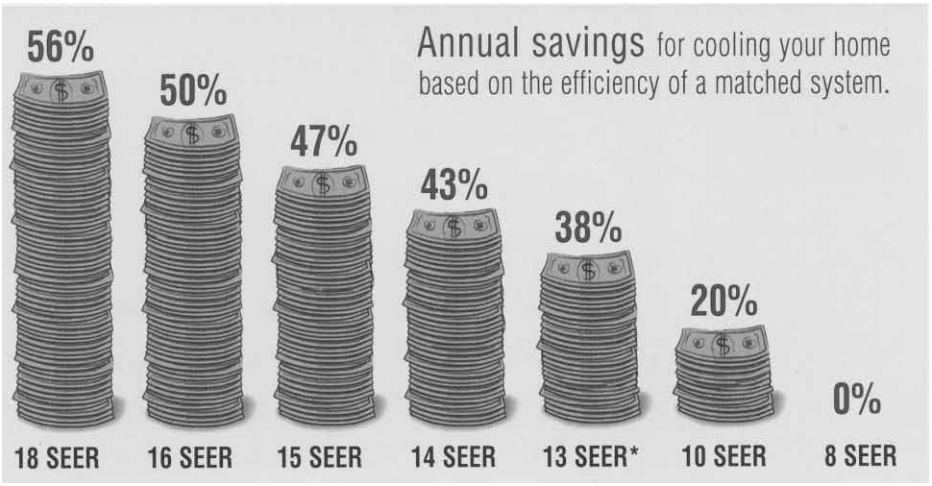
May you all have a safe and prosperous summer.

***—Anthony N. Carbone***

# Making Economic Sense of Air Conditioning SEER Replacement Options

*By John Ottaviano/Air Ideal*

It has been close to 100 degrees in the New York area already. This is the type of weather that older HVAC systems fail in; right when you need them the most. Consumers often are faced with multiple choices when dealing with catastrophic equipment failure and it can be very confusing, especially when consulting several different contractors each with a myriad of options. Choices range from just replacing a failed compressor or fan motor to changing out one side of the system (condensing unit or air handler) to a complete system replacement. Manufacturers have made the decision even harder by reintroducing R22 refrigerant dry-shipped systems back to the market. A consumers choice for the last couple of years was just which R410A system to fully upgrade to. Now, sticking with an old R22 system is back on the table. For many consumers struggling in a down economy, this appears to be an attractive option. This is primarily because swapping out an R22 condensing unit or air handler (or compressor) has the lowest initial installed cost with the least amount of system down time. Hot weather combined with low discretionary savings put aside for emergencies often ends in a poor decision. With the soaring cost of R22 refrigerant, its impending removal from the market and the impact it presents to our environment, there is really only one good economic reason to consider the dry-charge swap out. The reasonable situation for such a decision is that you are low on funds and plan to move in the next year or two, leaving the system upgrade to the next homeowner. However, home inspectors are getting much more HVAC savvy than they used to be and the chances that they will flag an old R22 system as a part of an inspection report are reasonably high.




We have always advised against sticking with an R22 system under any other conditions. Of course, when discretionary income recedes, so does our overall concern for the environment, so appealing to consumer's economic IQ becomes much more important. The next decision one faces is whether or not to install a standard 13 SEER R410A system or push up to a higher SEER level for energy savings and utility rebate incentives. Consumers often ask a contractor how much they will save in energy cost between a 13 and 16 SEER system. When getting multiple replacement quotes, they will also get multiple answers to this question. The only real answer to the question is, "it depends". It depends upon A) your local utility kWh rate, B) your personal usage (i.e., thermostat settings, setback, area of the country, hours of usage), C) future system maintenance and filter replacement and D) the quality of your existing duct design and airflow.

Most consumers want someone or something to help them make this decision because it is an important investment. Hence, the search for a good investment calculator that lays out the true economic difference between the two choices. Many manufacturers have SEER calculators that try to help consumers, but they are all too simplistic because they use default values for utility rates and individual usage. This can make the ultimate savings calculation unrealistically high or low. One of the most comprehensive SEER Savings Calculators is available free in spreadsheet format from the Energy Star web site. This calculator allows you to use defaults by area or cities throughout the United States, but it also allows you to drop in the true values of your local utility rates in the spreadsheet along with maintenance, operating and life cycle costs. It factors in the cost difference between systems (which should include utility incentives), including the effect of programmable thermostats, if chosen. Utilizing such a tool can help consumers to make an educated decision as opposed to an educated guess, as long as all of the correct data is plugged in. "Garbage in, garbage out" as they say in the computer science field. Consumers should make sure that they verify the actual SEER rating of the condensing unit and coil combination by asking their contractor for the AHRI rating certificate or checking the performance rating in *the AHRI Interactive Certification Directory*. •

# ACCA/ABCO NIGHT OUT WITH THE METS

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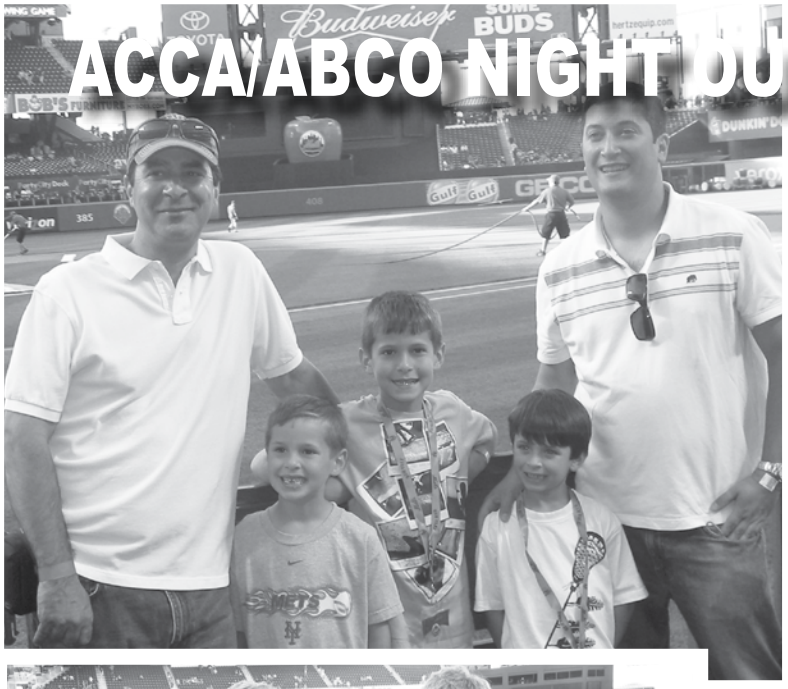
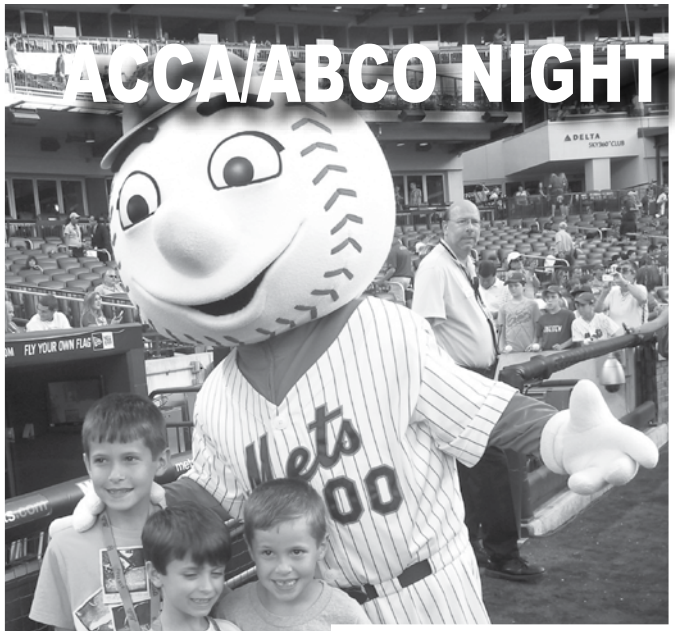
**MORE PHOTOS >>>**

# ACCA/ABCO NIGHT OUT WITH THE METS

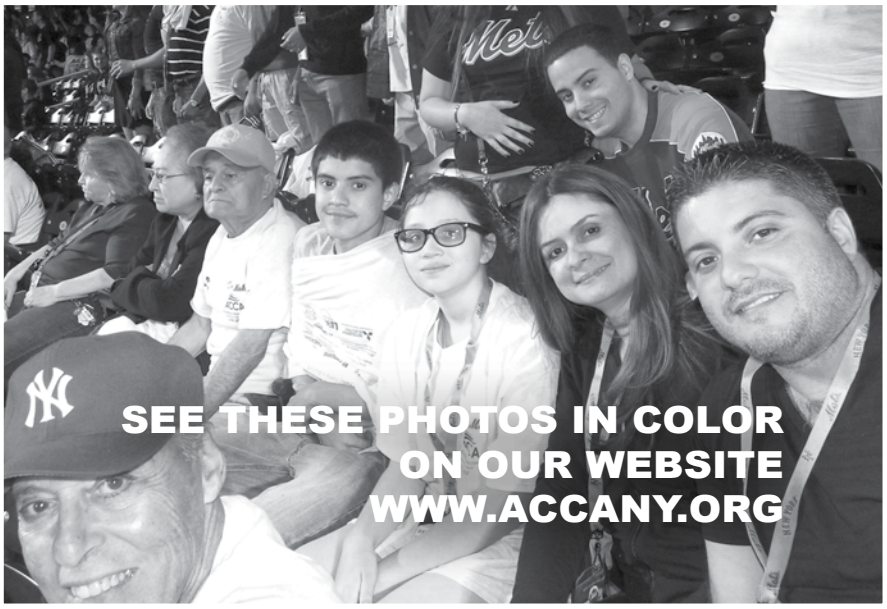





# ACCA/ABCO NIGHT OUT WITH THE METS







# People & The Workplace

*By Alan B. Pearl,*
*Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY*
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## The Use of Arrest and Conviction Records by New York Employers

In New York, as in many other states, employers must be aware that the use of an applicant or employee's criminal conviction record or prior arrest record is severely curtailed by law. The Human Rights Law in New York, as well as Article 23-A of the Corrections Law, prohibit employers from making employment decisions based on criminal background information.

The laws in New York require that both the Human Rights Law and Article 23-A be posted, in a conspicuous place at the employees' worksite. Additionally, a copy of the text of Article 23-A must be provided to all applicants/employees before any criminal record information is obtained by the employer.

Where criminal record information has been obtained by the employer in connection with a post-offer, pre-employment background check, the employer is required to consider several factors before making a hiring decision. Employment may only be denied where there is a "direct relationship" between the criminal conviction and the position sought, or where an "unreasonable risk" to safety and welfare of other employees or the public would result from the employment of the individual. In considering whether either of these circumstances exist, Article 23-A provides eight (8) factors for employers to consider:

- the public policy in favor of encouraging employment of those previously convicted;
- the specific duties and responsibilities of the employment sought or held;
- the bearing the conviction will have on the person's fitness to perform one or more of the duties or responsibilities;
- the period of time which has passed since the offense(s) was committed;
- the person's age at the time the offense(s) was committed;
- the seriousness of the offense(s);
- any information produced in regard to the person's rehabilitation and good conduct (a certificate of good conduct produced by the person is entitled to a presumption, but not in and of itself decisive);
- the legitimate interests of the agency or employer in protecting property, safety and welfare of specific individuals and the general public.

There is a benefit to employers who endeavor to com-

ply with the law. The Human Rights Law provides for a presumption in favor of the employer in any case in which the employer is claimed to have been negligent in hiring or supervising an individual based on their prior conviction of a criminal offense, where the employer can establish that it considered all of the factors set forth in Article 23-A before implementing any employment decision.

Prior convictions and arrests differ from pending cases and pending cases or arrests which occur during the course of the individual's employment may be considered by the employer. To avoid discrimination claims, employment decisions should always have a legitimate basis and be justified by a bona fide business reason.

Finally, all employers who choose to seek criminal record information concerning their employees should inquire on the initial employment application as to whether the individual has been previously convicted of a criminal offense and the details of that offense. The employment application should also include a statement that by their signature on the application, the employee represents that the information contained therein is truthful, and a warning to the employee that any misrepresentation of fact on the application by the employee will lead to denial of the application or termination of employment. In the event an employee is not truthful on their application and the employer later learns of a conviction, the employer will have a legitimate, nondiscriminatory reason for denying the application or terminating the employee, and will not be required to consider any of the factors set forth in Article 23-A.

## The Use of Arrest and Conviction Records Under Title VII of the Civil Rights Act of 1964

Last month the U.S. Equal Employment Opportunity Commission issued an Enforcement Guidance on the use of arrest and conviction records in employment decisions. This new guidance from the E.E.O.C. replaces former guidance and policy statements that are more than 20 years old. According to the E.E.O.C., the use of arrest and conviction records in employment decisions has resulted in the exclusion of a disproportionate number of African Americans and Hispanics from the workplace.

Two types of claims are recognized by the E.E.O.C. arising out of the use of criminal record information by employers: (1) by an employee or applicant-member of a protected class who was rejected because of a criminal conviction where other similarly situated employees or applicants with comparable criminal records were not rejected; and (2) by an employee or applicant, or class of employees or applicants who claim that the employer's policy of screening has a disproportionate effect on a Title VII-protected group. Where the employer fails to establish that the policy or practice is job related and consistent with business necessity, it will be liable for discrimination under Title VII. According to the E.E.O.C. employers may justify a practice of denying employment based on prior conviction(s) by showing (1) the nature and gravity of the criminal offense(s); (2) the time that has passed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought.

According to the Guidance, and consistent with the New York Human Rights Law, an arrest record may not be used to deny employment. However, the E.E.O.C. does allow an employer to make an employment decision based on the conduct underlying the arrest if the individual would be unfit for the position because of the conduct. A decision based on the arrest record of a prospective employee should not be made lightly and consultation with counsel is suggested before an inquiry or the employment decision is made.

Contact me for a copy of the Article 23-A poster, or for guidance on this or any other workplace law topic.

The information and comments contained in this article were prepared by the author for general information purposes and are not to be considered legal advice. •

# Making The Right Choice More Complicated Than Ever

*By Kelly Hiner, Enterprise Fleet Management*

Not that long ago pickup trucks and cargo vans were basically "one size fits all" and making a choice was as simple as finding the lowest price. Today, with more than 100 combinations for pickup trucks and cargo vans, choosing the right vehicle is a lot more complicated and getting the best value requires balancing cost and performance. Often the difference between the lowest price and that of the right size vehicle is 10 percent or less, but costs for maintenance and repairs, poor fuel economy and lower resale value can end up being much greater in the long run.

Selecting a pickup or cargo van should begin with an honest assessment of the weight and volume the vehicle will be hauling, including aftermarket equipment such as bins and ladder racks, as well as the estimated weight of the driver, co-worker sitting in the passenger seat, carry-on toolboxes and other routine variables. Other factors include whether the truck will be driven mostly on the highway, city stop-and-go traffic or off-road, as well as if it will be used for towing.

While today's manufacturer's warranties usually cover everything except normal wear-and-tear items like tires, brake pads and filters, failure to comply with a truck's recommended weight can often end up voiding the warranty on components that fail due to overloading.

Manufacturers determine the GVWR (Gross Vehicle Weight Rating) and tow ratings based on the rating of the axles, body/bed, frame, suspension, tires, engine, transmission, etc. When these are factored in, the manufacturer sets the vehicle's GVWR. Operating a vehicle above the GVWR creates a potential safety hazard by affecting the way the truck handles and stops. It also affects performance and reliability.

Although drivers may be tempted to continue to load materials into their trucks if there appears to be space left in the vehicle, it's important to remember that the frame, suspension, brakes and tires are not designed for weights above the rating the manufacturer has established. Overloading a truck can cause premature mechanical failures on driveline components such as axles, drive shaft universal joints, transmission, and suspension parts and brakes

The easiest way to determine how much weight a vehicle is designed to carry is to subtract its net weight (found in your owner's manual) from the GVWR (usually on a placard on the door jam). The remaining number is the maximum weight the vehicle can safely carry, including the driver, fuel and cargo. Aftermarket accessories and equipment also increase the weight of the vehicle and must be added to the net weight listed in the owner's manual. The best way to check the net weight is to take the vehicle to a certified scale and weigh it as normally loaded with the driver and or passengers.

A good rule of thumb to follow is what most people in the trucking industry refer to as the "80 percent rule." While your truck will certainly be loaded to 100 percent capacity from time to time, the best practice is to generally spec your vehicle to operate at 80 percent of its GVWR. This will reduce the operating costs of your trucks and cargo vans and help extend their service life.

*Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. Visit the company's web site at www.enterprisefleet.com or call toll free 1-877-23-FLEET.* •

**Check our website regularly for the latest information and updates!**
**www.accany.org**

## *Statement From Stuart S. Zisholtz, Esq.*

# Default Judgements

When a corporation is organized, the Secretary of State receives a Certificate of Incorporation which lists the name and address of the corporation and the managing agent. If and when the corporation is sued, the plaintiff can arrange to serve the corporation by serving the Secretary of State. The Secretary of State receives the Summons and sends a copy off by Certified Mail to the address that the Secretary of State has in its file for the corporation. If that address is wrong, outdated and old, the Certified Mail will be returned to the Secretary of State. The corporation may never know about the lawsuit and default. As a result, default judgments are entered because the corporation defaulted and did nothing about the lawsuit.

After a default judgment is entered, the plaintiff has the right to attach any assets it can locate. These assets include bank accounts, inventory, equipment, etc. Many times the corporation becomes aware of the default judgment after the assets have been restrained.

Courts are usually very liberal in vacating default judgments. However, recently the Courts have been rendering decisions holding the corporation accountable for failing to advise the Secretary of State of its new address. This could have major ramifications if the lawsuit involves a negligence action because the insurance company could disclaim coverage. It could also impact the corporation where a contractor is suing for money it claims to be due and owing. If the default judgment is not vacated by the Court, any defenses that the corporation may have are moot. It is vital, therefore, that you confirm your corporate information with the Secretary of State. You can call the Secretary of State or check online at www.dos.state.ny.us.

Never let your lien time expire!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the Association.

*Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200.* •

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