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## Air Conditioning Contractors of America

Greater New York Chapter  
123 South Street,  
Suite 112  
Oyster Bay, NY  
11771

# Greater New York Contractors' NEWS



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DECEMBER 2013

## President's Message



Al Trudil


The coldness is upon us... hopefully we are all prepared for what's in store for us. We were lucky enough to have two speakers at our November meeting along with a terrific turn out. Mr. George Geannakakos, Regional Sales Engineer for LG and Beth Fagin from Alan Pearl and Associates were our speakers. Mr. Geannakakos gave a presentation about VRF systems and controls. Beth Fagin gave us some informative information about the Affordable Care Act such as some of us offer our employees' health insurance that could be considered

*Turn to President's Message on page 3*



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**PRESIDENT'S MESSAGE**

*Continued from page 1*

"Cadillac" coverage (I thought it was Volkswagen coverage myself) and the government is currently working on what the penalties should be for that coverage. The federal insurance marketplace computer program still has a lot of problems that they are trying to solve. Beth believes there will be some changes to the system but it is going to take a while for that to happen.

December 12 will be our Holiday Gala at The Chalet in Roslyn. Don't forget to bring your toy for our "Toys For Tots" collection. Hope to see all of you there.

—Al Trudil

**ACCA Directors at Work at a Recent Board Meeting. Join Them!**



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## Editor's Notes

by Anthony N. Carbone

Another year is closing out for us at the Air Conditioning Contractors of America. This year we exceeded our goals for providing interesting program topics with top quality informative speakers. This combined with valuable networking sessions has had to result in greater business growth for those who were smart enough to participate and attend.

In addition, we have had great social events such as the Golf Outing, Night at the Mets, the Cocktail Party and our Holiday Gala.

This year's Holiday Gathering is reformatted to a cocktail party with passed hors d'oeuvres at the newly renovated Chalet in Roslyn, Long Island. We hope you can join us for an informal time to

catch up with counterparts and their families and co-workers.

The business environment continues to expand as contractors are finding more work as the budgets are coming back to HVAC replacements and repairs. The stock market and job market continue to expand.

We all look forward to another prosperous year within our industry and hope you will decide to join us for more informative, industrial news and interesting times.

I would like to wish all of our readers a Happy Holiday season and prosperous New Year for 2014.

— Anthony N. Carbone



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## Homeserve Completes Acquisition Of National Grid Energy Services' Service Contract Business

HomeServe announced the further expansion of its operations and the development of its business by completing the previously announced acquisition of National Grid Energy Services LLC' (NGES) service contract business, an unregulated subsidiary of National Grid.

The acquisition significantly expands the business, adding over 196,000 customers and 339,000 contracts to its existing 626,000 customers and 827,000 contracts.

### HomeServe To Use National Grid Energy Services Brand Name

HomeServe also entered into a marketing agreement with National Grid USA to use the National Grid Energy Services name. This allows HomeServe to use the National Grid Energy Services brand to market home assistance policies to over 5m households across National Grid's US service area. The agreement allows HomeServe to continue to develop its service business and significantly increases its footprint of households in the US to over 20 million.

Jonathan King, HomeServe USA Chief Executive Officer, said: "This is a transformational acquisition for HomeServe, bringing us a long term marketing opportunity to over 5m households, a significant increase in customers and contracts and a high quality group of employees. It accelerates our growth in the US and further establishes us as the leading provider of home emergency solutions to utility customers with over 1.1 million contracts."



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The NGES Service Contract Business provides heating, cooling and water heater maintenance services to customers across Massachusetts, New Hampshire, New York and Rhode Island.

Charlie Connell, NGES Vice President commented, "We want our customers to know that this transaction will be transparent for them and will not alter the service they've received from National Grid Energy Services. HomeServe's core business is the provision of the same types of service as National Grid Energy Services, and they have a long successful track record of providing quality appliance service to millions of customers in the US and Europe."

Connell added that the sale does not involve, nor does it affect National Grid's regulated electricity and natural gas delivery businesses that serve customers in New England and New York, and that it enables National Grid to sharpen its focus on its core energy delivery business. •

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## Major Natural Gas Expansion Underway in New York Metro Region

By John Ottaviano, Air Ideal

There will be a significant increase in the volume of natural gas being brought to the New York Metro region as a result of multiple pipeline expansion projects from the Marcellus shale region. Several distribution pipelines will be put into service this winter. According to the US Energy Information Administration, the pipelines will bring "3.5 billion cubic feet per day (Bcf/d) of additional capacity to New York/New Jersey and Mid-Atlantic markets". In addition to this, the Federal Energy Regulatory Commission granted permission to Spectra Energy to put into service a new pipeline that has been run to Manhattan from New Jersey to bring additional natural gas from Marcellus to the city. The expansion will provide enough energy for Con Edison to heat about 2 million additional homes.

National Grid also appears to be expanding its gas distribution on Long Island. For the fiscal year 2013, which ended March 31, the utility added 8,815 new commercial and residential customers. Because of the lack of natural gas main expansion on Long Island, only about 43 percent of Long Island businesses and residents use natural gas as a primary

fuel. As demand continues to grow, the utility has undertaken an \$83 million expansion project that will install 1.6 miles of new pipeline under the Rockaway Inlet, connecting parts of Queens, Brooklyn and Long Island to existing natural gas lines. "We're making large infrastructure investments," said Kenneth Daly, president of National Grid New York. "You have to build out the network, which we're doing."

## ACCA's Manual S Out For Second ANSI Public Review

The Air Conditioning Contractors of America Educational Institute (ACCA-EI) Standards Task Team (STT) announces a second (2nd) American National Standards Institute (ANSI) public review period for the "BSR/ACCA 3 Manual S - 201x, Residential Equipment Selection" as a revised and redesignated industry standard. The 45 day public review period started on November 1, 2013 with a comment period deadline of December 16, 2013.

This revised standard provides procedures for selecting and sizing residential comfort cooling and heating equipment. The standard has been divided into two parts - a 'normative' portion that details the selection/sizing criteria and an 'informative' portion that provides discussion, guidance, and example problems related to procedure intent and use.

A review version of the proposed Second Edition of Manual S (dated 1 October 2013), and the public review response form, can be downloaded from [www.acca.org/industry/ansi-standards](http://www.acca.org/industry/ansi-standards). •



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## People & The Workplace

By Alan B. Pearl,  
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY  
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

### Bullying in the Workplace

The revelations of hazing in the NFL are bringing to light the larger problem of bullying in the workplace. A number of states, including New York, are now considering legislation to tackle the problem. Whether employees work in an office, the factory floor, or on the job site, bullying can be a serious problem for both employees and employers. The problem may be more prevalent than once thought. In a 2011 study by the Society for Human Resource Management more than half of all companies surveyed reported incidents of workplace bullying. Yet, despite this, only 43% of companies have an anti-bullying policy in their employee handbooks.

New York is now close to passing legislation addressing the issue of workplace bullying. If so, New York would be the first state in the country to pass comprehensive anti-bullying legislation. The bill, known as the Healthy Workplace Bill, would make it unlawful for employees or employers to subject another employee to malicious conduct that sabotages or undermines the targeted person's work performance. The bill would also forbid retaliation against employees who complain about workplace bullying or those that help the complainant. For an employee to prevail on this claim they would have to demonstrate that the bullying caused demonstrable physical or mental harm. This includes, shame, humiliation, stress, loss of sleep, severe anxiety, depression, post traumatic stress disorder, reduced immunity to infection, gastrointestinal disorders, hypertension, and pathophysiologic changes that increase the risk of cardiovascular diseases. Such impairment would need to be well documented and verified by a medical or psychological expert.

If passed this law could subject employers to greatly increased liability. While the bullying employee would be directly liable for his or her action, the employer may be held vicariously liable. However, the law would include two

defenses for employers: (1) When it exercises reasonable care to prevent and promptly correct the abusive conduct, and (2) when negative employment decisions are consistent with legitimate business interests, or the employee's poor performance, illegal or unethical activity.

Whether the Healthy Workplace Bill passes or not, employers should be cognizant of potential bullying in the workplace, and should consider inserting policies in their handbooks. If you need any questions about workplace bullying, and how it should be addressed please give me a call.

### New Medical Certification Requirements for Commercial Drivers

The Federal Motor Carrier Safety Administration (FMCSA) released new regulations which provide new guidelines and requirements for commercial driver medical exams. In the past drivers could obtain their medical certifications from a family doctor. Now, the driver must be given a medical test by a certified medical examiner listed in the National Registry database. These changes will go into effect on May 1, 2014.

All commercial drivers must pass a Department of Transportation medical exam at least once every two years to maintain a valid medical certificate. Without a valid medical certificate drivers cannot legally drive a commercial motor vehicle. The medical exam is comprehensive, and includes tests for cardiovascular disease, respiratory and muscular functionality, and vision and hearing acuity. According to FMCSA guidelines, if a driver has a serious disqualifying medical condition their commercial license will be suspended.

FMCSA regulations only apply to interstate drivers. This includes drivers who cross state lines, or carry goods that have crossed state lines. However, New York State has its own requirements for medical certification of commercial drivers. Employers should check the NYS DMV website to make sure their drivers are receiving the proper certifications.

If you need any assistance with regards to this or any other employment related matters please contact me at [Abpearl@pmpHR.com](mailto:Abpearl@pmpHR.com) or (516) 921-3400. •

## Accident Management for Companies with Medium-Size Fleets

By Carl Grady, Enterprise Fleet Management

In a typical fleet, 20 percent of the drivers will be involved in some type of loss in any given year. Whether the damage is a cracked windshield or the vehicle is a total loss, it's important not to learn by "accident" that what initially seems like "low cost claims management" may not actually be low cost. In the long run, it could end up costing a lot more with more expensive repair bills, longer downtime while the vehicle is out of service, and lower resale value if not repaired to the highest quality standards.

Properly managing accident costs is more likely to happen when working with a fleet management company whose repair team has completed technical training courses in collision repair. Such programs are offered by the Inter-Industry Conference on Auto Collision Repair (I-CAR). A not-for-profit international training organization dedicated to improving the quality, safety and efficiency of auto collision repair, I-CAR provides training in estimating, as well as various technical aspects of collision repair.

Getting the most satisfaction when a claim is settled begins with the initial estimate. Estimators who have completed

I-CAR training not only are skilled at inspecting and analyzing collision damaged vehicles, they're well prepared to provide the most comprehensive repair plan to ensure the highest quality service at the lowest possible price.

Sometimes, when the I-CAR trained estimator is part of the customer's professional fleet management team, a decision may be made not to fix a vehicle. With access to all information about the customer's fleet, determining factors can include everything from how much money is still owed on the lease, to the vehicle's resale value, as well as the length of downtime and cost of renting a temporary replacement vehicle.

When the decision is made to repair a vehicle, knowing that all of the work is necessary and will be done correctly also depends on having the best possible relationship with the collision repair center. This includes monitoring repairs on a regular basis, keeping the customer apprised of hidden damages discovered and documenting the work is being done on the vehicle, especially additional repairs that may affect the final cost and/or length of downtime.

Working with collision repair professionals who are part of a fleet management company can also have other advantages for business owners. For example, the fleet management company may pay all repair expenses directly to the repair center and bill the customer as part of the lease agreement. This relieves the business owner from needing to track and monitor repair invoices or issuing checks to reimburse drivers for any repair expenses paid by them personally. In addition, the fleet management company can maintain any loss history reports with details of all aspects of any claims.

Managing vehicle accidents is a complicated business that requires experience and expertise to ensure timely handling of claims and quality vehicle repairs at the lowest possible cost. For businesses with medium-size fleets, the best advice is to partner with a fleet management company that can handle claims with minimal driver involvement; provide one-call service with a dedicated claims adjuster; locate repair facilities anywhere nationwide; handle all payment terms for repaired vehicles; easily arrange replacement vehicles; and dispose of totaled vehicles timely and efficiently. The bottom line, as always, is to get drivers back on the road as quickly as possible.

Carl Grady is Regional Sales Manager for Enterprise Fleet Management in Albany and can be contacted at 973-709-2441. Carl is supported by an experienced team of veteran mechanics and accredited Automotive Service Excellence (ASE) technicians to serve the fleet maintenance needs of businesses with mid-size fleets. In addition to maintenance management programs, Enterprise's services include vehicle acquisition, fuel management and insurance programs, as well as vehicle registration, reporting and remarketing. Visit the company's web site at [www.efleets.com](http://www.efleets.com) or call toll free 1-877-23-FLEET. •

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# Statement From Stuart S. Zisholtz, Esq.

## Recovering Legal Fees

One of the questions repeatedly asked by prospective clients is whether they are entitled to recover legal fees in connection with their litigation. My response is routinely no except in limited circumstances.

Legal fees are recoverable in litigation if there is a particular statute which is being relied upon in the litigation or if the parties contractually agreed to the recovery of legal fees. In the first instance, there are limited statutes which address the recovery of legal fees. Specifically, General Obligation Law § 5-322.3 requires the filing of a payment bond in a private project where the work exceeds \$100,000. The statute continues by stating that any owner who fails to file such payment bond shall be liable for the reasonable attorney's fees, as determined by the Court, if the Claimant is successful in bringing an action or proceeding on the bond.

Another example is New York State Finance Law § 137(3)(b) which allows for the payment of reasonable attorney's fees in a public project where the defense interposed was without substantial basis in law or fact. The recovery of legal fees is discretionary under the statute due to the fact that there must be a finding that the defense interposed was without substantial basis in law or fact.

Aside from the two statutes, most claims seeking recovery of legal fees are based solely on the contract between the parties. Legal fees are recoverable if the agreement permits the recovery of legal fees. There must be language in the agreement that states that if contractor is required to engage an attorney to collect the outstanding balance, that the contractor will be entitled to recover reasonable attorney fees. Without this terminology, or without relying upon the two statutes pertaining to payment bond claims, you will not be able to recover legal fees. It is essential that you incorporate the appropriate language in your contract prior to executing it.

While attempts can be made to recover the full amount due, including accrued interest, in order to offset the costs of the legal fees, it is not a guarantee and should not be relied upon. My suggestion is that you incorporate language in your contract to allow for the recovery of legal fees in the event a claim is necessary.

Never let your lien time run out!

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. •*



**ACCA Meeting November 7th. Good Turnout. Good Food. Top Speakers (Affordable Care Act; LG Indoor VRF Heat Pump). Great Evening!**



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