IN THIS ISSUE...

1 President's Message
1 March 1st Meeting Topic
4 Editor's Notes
6 Ottaviano - Price of R-22 Soars
7 March 1 Meeting Discription
7 Casino Night Promotion
8 Pearl - A Year In Review
10 Enterprise- Residual Values
14 Zisholtz - Pre-Selected Subcontractors

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

RETURN SERVICE REQUESTED

Greater New York Contractors' NEWS

Air Conditioning Contractors of America
Greater New York Chapter

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

President's Message

Michael Newman

I want to thank everyone for the amazing attendance we had for the February meeting. We were honored to have Paul Stalknect, President and CEO of ACCA National visit our chapter. He discussed a variety of national and local initiatives and opportunities offered by our organization. He also promoted the ACCA national convention which will be held in March at the Paris hotel in Las Vegas.

We also had the opportunity to meet representatives from Suffolk Community College. Our local chapter has been contributing to a scholarship in the Suffolk Community College HVAC program. We met the two recipients of the scholarship at the meeting. ACCA

Turn to President's Message on page 3

Thursday, March 1 Meeting

GETTING YOUR MONEY!

- **Collecting Aged Receivables**
- **Resolution of Disputes through Mediation, Arbitration and Litigation**

And more...see page 7.

LaGuardia Marriott
Cocktails at 5:30 pm; Dinner at 6:30 pm
Register Online at www.accany.org

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*

is doing what we can to attract people to the HVAC industry.

The program for the March meeting is very simple and can be summed up in one sentence. Show me my money. Please come and learn more.

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

Officers

President
Mike Newman, *Standard Refrigerator - 718-937-0490*

President-Elect
Al Trudil, *Almore Corporation – 631-345-6050*

Treasurer
Marc Soffler, *Dynaire Corp - 516-248-9320*

Secretary
Brian Aull, *Atlantic Contracting & Specialties Corp. - 631-563-6510*

Past-President
Anthony N. Carbone, *Systematic Control - 516-482-1374*

Executive Director
John F. DeLillo, *516-922-5832*

Directors

Steve Bergman, *Twinco Supply Corporation - 631-547-1100*
Roy Bernheimer, *Cascade Water Services - 516-932-3030*
James Carlson, *Michael James Industries (MJI) - 631-231-3434*
Ken Ellert, *Comfort Tech Mechanical* - 718-932-2444
Ron Nathan, *County Fair A/C Corp. - 516-997-5656*
John Ottaviano, *Air Ideal - 516-873-3100*
Greg Singer, *Martack Corporation - 516-998-1000*
Richard Staiano, *National Compressor Exchange - 718-417-9100*
Joe Stranieri, *Industrial Controls Distributors - 212-947-3100*
Harvey Stoller, *Airdex – 718-646-7200*

Advisory Council

Robert Berger (retired)
Mark Bedson, *Brinco Mechanical Services – 516-378-2277*
Thomas Cleary (retired)
Anthony Cutaia, *Air Ideal – 516-873-3100*
John J. Fanneron, *BP Air Conditioning Corp. – 718-383-2100*
Michael Gelber, *Stan Gelber & Sons – 516-538-0040*
Gene Klochkoff, *Cascade Water Services – 516-932-3030*
Lauren Larsen, *Power Cooling – 718-784-1300*
Michael O'Rourke, *BCC Best Climate Control – 631-218-8022*
Brandon Stone, *All Weather Temperature Control - 631-842-8777*
James Stone, *All Weather Temperature Control – 631-842-8777*
Brian Svedberg, *BCC Best Climate Control – 516-981-1008*

Committees

Advertising/Newsletter
Anthony Carbone
Donald Gumbrecht & Co.

Baseball Outing
Scott Berger
Nick Terran

Casino Night
Jim Carlson

Golf Outing
Ken Ellert

Holiday Party
Anthony Carbone

Membership
Ron Nathan

Political Action
Anthony Carbone

Scholarship
John Ottaviano

Trade Show
Rich Staiano
Steve Bergman

Web Page
Roy Bernheimer

Editor's Notes by Anthony N. Carbone

The February program for New York ACCA was one to remember. We had the honor of our National President, Paul Stalknecht in attendance from Arlington, Virginia. He spoke to our membership regarding current issues effecting our industry and the far reaching power of ACCA in regards to speaking to manufacturers as well as contractors to understand what is changing and in what direction we as an industry are moving toward. The equipment manufacturer's relationship with ACCA National has become strong with open lines of communication with Paul Stalknecht at the helm as President.

There are times where manufacturers are unaware of what is happening in the field and with these lines of communication and good business rapport, Paul Stalknecht has added relevance and credibility through out our organization.

We also had the pleasure of awarding the two recipients of our ACCA Annual Scholarship to two students of Suffolk Community College. The Dean of Suffolk Community College provided us with an incite of the working of Suffolk Community Colleges HVAC program and professor Eugene Silverstein's academic efforts. We should all be proud of this scholarship program headed up by our own Mike O'Rourke – Best Climate Control and John Ottaviano – Air Ideal.

The US Environmental Protection Agency (EPA) has provided a punch in the eye to contractors and consumers when it comes to the Phase out of R-22 refrigerant. Apparently "industry stockholders" conferred with the US EPA to reduce production allocations due to a surplus of inventory of R-22 refrigerant. Only 86% of allocated production of R-22 was actually used in 2010. Therefore, requesting a behind the scenes last minute, closed door, clandestine decision to proceed with a reduction of allocation between 11-47%.

At the end of January 2012, a massive price increase of 30lb cylinders of R-22A went from $130-$160 a drum to $300-$360 a drum. With all manufacturers and suppliers stating that a limited amount of refrigerant per company would be allotted. This is the biggest contrived farce ever to hit the HVAC community. As of 2011 the US EPA back peddled in the production of R-22 condenser units realizing there was a need for replacement units of outdoor condensers since their life expectancy in considerably shorter than indoor air handlers. Production of R-22 dry condenser (no refrigerant) were allowed to be produced again.

While many "cowboy" operations ran rampant with the bonanza of scaring the public and HVAC consumers into abandoning their existing indoor equipment for the NEW "R-410A" refrigerant equipment, a "lets throw the baby out with the bath water" selling mentality. Contractors were assuming this was a great selling opportunity for new R-410A systems in a slow economy. One problem….there was no money and many consumers backlashed after they got the facts.

At this point, many contractors are trying to prepare a strategy to combat this latest move…..Some contractors have used the word "price gouge" regarding suppliers restraining from selling and raising prices inordinately as a concerted effort to profiteer. As alternative refrigerants are being considered and a thorough understanding of these allocations and their impact are sorted out, we as contractors are left to communicate this information to our clients. I'm sure some contractors will begin to use "The Fear Factor" to sell new equipment……Stay tuned, this is a serious topic. •

Price of R-22 Refrigerant Soars After EPA Reduces Allocations

by John Ottaviano/Air Ideal

When the 25C Tax Credits were in place in 2010 allowing a $1500 Federal Tax Credit (on top of utility rebates) to upgrade to a 16 SEER high efficiency system with R410 refrigerant, consumers in the northeast rushed to the opportunity to upgrade their systems and switch to environmentally friendly refrigerant from R-22. However, last year those tax credits were reduced to $300 per system and demand fell off steeply. This year, they were not renewed at all and the lack of incentives combined with the deepening recession has pretty much squelched most consumer demand to switch out older refrigerant 22 systems. The EPA has just made that decision a very costly one, especially for those with consistent system leaks who will be looking for a "top-off" instead of replacing their old system.

According to Charlie McCrudden, ACCA Vice President of Government Relations, "the EPA controls the production of HCFCs, including the refrigerant known as R-22, through allowances that limit how much each gas manufacturer and importer can produce or import in a given year. Under the implementation of the Montreal Protocol, the production and use of R-22 is slowly being phased out. In August 2011, the EPA proposed to adjust the allocations in place for the years 2012-2014. This adjustment was necessary because of a lawsuit filed by two HCFC producers who had completed a legal trade of allocations that EPA had failed to recognize in its allocations released in 2009. The EPA consulted with industry stakeholders before proposing to reduce the annual allocations. In gathering information used to develop the August 2011 allocation adjustment, EPA found that there was an oversupply of R-22 in the marketplace, partly evident by a lack of demand, increased reuse of R-22, and low wholesale prices. In fact, in 2010, producers of R-22 only utilized 86% of their allocations. A trade organization representing the manufacturers and importers of R-22 supported these claims, and advocated for a 20% reduction in allocations for 2012-2014. By the end of 2011, EPA had yet to finalize its adjustment proposal for the 2012-2014 allocations. But EPA did release a subsequent version of the August 2011 adjustment proposal on December 30, 2011, one that proposed to reduce the allocations for 2012-2014 between 11-47%. Without a finalized adjustment rule, the producers and importers of R-22 were stuck in a legal limbo – on January 1, 2012, they did not have the authority to manufacture or import R-22."

As a result, the price of R-22 has skyrocketed by as much as 40% in the last few weeks and contractors have not been able to fill standing orders on skids at originally quoted prices. Consumers with with older R-22 systems will be paying considerably higher per pound prices if they cannot be convinced to upgrade their systems. It is inevitable that R-22 refrigerant prices may pass R410A prices later this year.

For more on the R-22 refrigerant phase-out and how it affects consumers go to http://t.co/bwdQ7yw1 (via twitter). •

March 1st Meeting Is About Getting Your MONEY!

Concerned with getting paid the legal ramifications? Then you won't want to miss our March 1st meeting when the Greater New York Chapter, ACCA will turn the podium over to two distinguished attorneys, well versed in business finances and litigation involved in getting you your money.

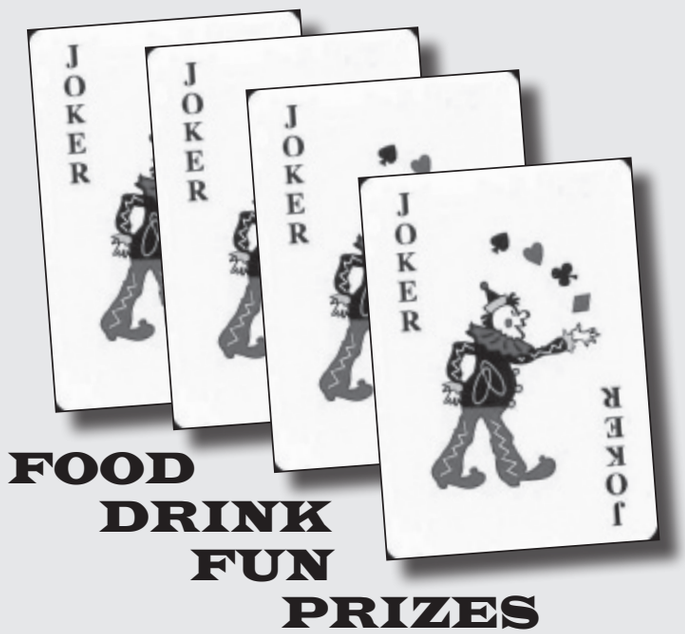
Marvin L Schecter, Esq. and Michael D. Ganz Esq., attorneys with the law firm of Tunstead & Schecter of Jericho, will speak on ***"Collecting Aged Receivables,"*** including the required documentation, and ***"Resolution of Disputes through Mediation, Arbitration and Litigation."***

Marvin Schecter will draw on more than 40 years of experience performing legal services for a cross section of the construction industry. He is a former civil engineer. He has lectured extensively to contractors and management groups and has taught construction law at N.Y.U. and the City College School of Technology.

Michael Ganz has been engaged in all phases of complex commercial litigation primarily in the construction law specialty, representing owners, contractors, subcontractors and sureties. He is currently in-house counsel for the Suffolk County Electrical Contractors Association. In additon to his J.D. he holds a B.S. in Mechanical engineering. He has authored numerous articles for ACCA, ASHRAE, NYCSTA and SCECA.

When it comes to your business, you want to know where the money is. These two legal professionals can offer you a wealth of information. Be there on Thursday, March 1, 2012 at the LaGuardia Marriott. Cocktails at 5:30 pm, dinner at 6:30 followed by the presentation. Reserve online at www.accany.org.

YOU'RE INVITED!



FOOD
DRINK
FUN
PRIZES

ACCA's CASINO NITE

Thursday
April 5th
at Westbury Manor
6:30 to 10:30 PM • $60pp
R.S.V.P. at www.accany.org

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

A Year In Review

2011 presented many novel issues that were discussed in this column. A brief history may be in order. Starting in January 2011, I wrote about employer social media policies and the NLRB. The problem remains in 2012, since no doubt you have heard many stories concerning company's misuse of the internet to invade the privacy of their employees. The question of course is whether there is an invasion of privacy, if an employee places personal information on a social media, such as, Facebook for the world to see. We also wrote about I-9 verification and the need to have up-to-date forms or face stiff penalties. In February we reviewed legislative changes that occurred in 2010 with special emphasis on payroll tax reduction relief and the forthcoming wage theft prevention legislation that would be effective on April 11th. Our prediction that the WTPA would lead the parade of cases in 2011 and 2012 was right on target. More about that later.

In March 2011, I wrote about not letting snow days blindside your pay practices and can an employee sue their employer for discriminating against "a loved one." Neither topic hit the scoreboard for 2011. In April 2011, I wrote about anti-Union sentiment taking place in politics. We felt that one or more states would adopt a right to work law. This came true as Indiana recently passed a right to work law, which of course, as you know, prohibits collective bargaining agreements from including a mandatory Union membership provision.

In May 2011, I wrote about the cats paw theory of liability for discrimination and whether or not a supervisor, who unwittingly supports a discriminatory act, can bind his/her employer under the **claw back** theory of liability. I also mentioned that Labor Law §195 and the WTPA would take affect and what effect it would have on employer practices if forms LS-54 through LS-59 were not completed annually. In July 2011, I wrote about an HVAC company being charged with discrimination by the EEOC and the EEOC's ramping up of personnel to enforce Title VII of the Civil Rights Act. In October's newsletter, I wrote about new posting requirements for employers with special emphasis on the new NLRB poster which the President ordered to be part of federal contractor and private employer practice, effective November 14, 2011. So far this matter has been postponed until April 30, 2012. I also commented that harassment by female supervisors is on the increase.

In the November newsletter I talked about NYC changes in religious accommodation rules. This is a major change in the law under the NYC code; it differs in many respects from State and Federal FEP laws. I also commented that anti-bullying policies should be a part of everyone's handbook. Finally, in my December column, I wrote about how employers should handle bonuses, vacation and holiday pay governed by §195 of the Labor Law. I listed the numerous pitfalls in conducting holiday parties where alcohol was consumed so employers should take care as to avoid liability.

In sum, 2011 was the year of the Wage and Theft Prevention Act (WTPA), since no other statute comes even remotely close to the amount of litigation that was spawned by this statute. Simply put, the state needs money and the Act, while designed to prevent improper pay practices, indirectly, is a revenue producing statute. Why so? Because of the penalties imposed by the Department of Labor in accordance with the WPTA; these fines can be stiff and non compliance with the statute no longer carries a 25% liquidated damage assessment - now it's 100%! The state needs revenue and the Department of Labor is moving ahead to enforce WTPA.

Why Pepsi Cola Settled with the EEOC

Enough of wage statutes, let's talk for a moment about Pepsi-Cola, who recently revised an overly broad criminal background investigation policy, which has been found to be unlawful. Pepsi had to provide training to its employees and pay over $3 million to settle the EEOC charge that their policy violated Title VII. The EEOC noticed that over 92 million Americans have a criminal history. Use of a criminal record when not job related is a violation not only of that statute, but of the Corrections Law in the State of New York. As the EEOC stated "the majority of arrests in a given year are for relatively minor non-violent crimes…only 4% were considered serious violent crimes, such as murder, rape, robbery and aggravated assault," but what often happens is that many people are arrested but never convicted and that is held against them. For convictions to be relevant as a bar to hire, an employer must consider that nature and gravity of the offense, the time that has passed since the conviction, and the nature of the job. Simply put, it is a job relatedness test. Conducting broad criminal background investigations in excess of seven (7) years often times leads to dire consequences for employers. So Pepsi-Cola will have to supply the EEOC with regular reports on its hiring practices and conduct Title VII training for hiring personnel and all

of its managers over the next two years. In New York, the Corrections Law governs the denial of employment to individuals. If a person has a criminal background history, **seven questions** should be answered to discern whether or not an individual is disqualified from a position because of a criminal record. I would be pleased to elaborate on the criteria should that situation arise and a candidate presents himself/herself for employment and acknowledges, truthfully, that they have a criminal record.

HR Audit Time

One final point: when was the last time you checked your employment application form? Does is contain pertinent questions with regard to the job or does it contain questions designed to reveal impermissible information? It is suggested that this year you review your employment practices policies and especially interviewing documentation. Let's be assured that 2012 isn't a year that a government agency causes you to spend funds unnecessarily defending unfair practice charges of any type.

As always, should you have any question concerning the contents of this article, please contact me at ABPearl@pmphr.com. •

What's Next for Residual Values?

By Kelly Hiner, Enterprise Fleet Management

Businesses that have a fleet of vehicles may be feeling better than they have in years. In addition to residual values that have improved significantly since hitting bottom in 2008, the automotive industry has shown five years of steady improvement. So what's next for residual values?

The answer depends on analyzing many variables, including worldwide economic conditions, consumer preferences, and the health of the automotive industry, as well as unpredictable global events such as the 2011 tsunami in Japan, which resulted in several months of historically strong sales prices for cars and trucks.

While it is virtually impossible for businesses to control these factors, it is possible to control the remarketing process to maximize residual values when leasing a fleet of vehicles, regardless of market conditions. A good way to begin is by working with a professional fleet management company that has experience navigating the complexities of the remarketing process and can provide suggestions on what vehicles have the least amount of risk.

Residual values are estimated predictions made by experts on what a new car or truck is going to be worth in a specified period of time, generally from two to four years. The values are important because they play a key role in calculating monthly lease payments.

A monthly lease payment is calculated using the difference between the actual acquisition cost, including all incidental charges, and the predicted residual value of the vehicle. The higher a vehicle's residual is set, the lower the monthly payment will be.

Both open-end and closed-end leases consider residuals. With an open-end lease, customers share in the value or risk of the vehicle at the end of the lease. In a closed-end lease, the business is not held responsible at the end of the lease for the difference between the vehicle's residual value and sale price. Because of the lack of residual responsibility by the customer, this lease type is also known as a "walk-away" lease.

In addition to establishing the proper residual values when a vehicle is being acquired, it's also important at the end of the lease to have access to the sales channels that can drive the best possible resale price for vehicles, regardless of the mileage pattern or physical condition. A professional fleet management company that utilizes sales channels such as franchise and independent dealers, physical and online auctions, and other sales channels offers the best exposure for your vehicles.

The "perfect storm" that occurred several years ago

to create a soft market for used vehicles is not likely to happen again. At that time, ongoing new vehicle incentives combined with an uncertain economy, high unemployment and flat new vehicle transaction pricing created an untenable situation. Manufacturer bankruptcies contributed to the fall of the economy as well. Since then, manufacturers have undergone dramatic changes in an effort to improve profitability, including reducing overall production, eliminating many new vehicle incentives and focusing on high demand vehicles that sell well. •

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 the ACCA national website, www.acca.org, regularly for up-to-date information on our industry.

Statement From Stuart S. Zisholtz, Esq.

Pre-selected Subcontractors

Sometimes an owner will agree to award a contract to a particular contractor only if the contractor agrees to utilize certain subcontractors or suppliers. While it may be nice to have the owner pre-select specialty subcontractors, many times there are potential risks in utilizing the assigned subcontractors.

For instance, if the assigned subcontractor is required to supply equipment to be installed by the general contractor, the contractor should state exactly what the subcontractor is supplying and in what manner the general contractor understands the type and amount oflabor that will be required. This will prevent future disputes and misunderstandings.

In addition, the contract between the general contractor and the subcontractor should confirm that there is no gap in the work. The scope of work should be reviewed before bidding to make sure the agreements do not omit any detailed information as to the obligation of each and every party.

It is also vital for the general contractor to understand the ramifications which may exist in the event the subcontractor fails to complete its contract. Many times, owners will look to the general contractor to remedy the subcontractor's work in the event the subcontractor fails to perform. The general contractor needs to carefully consider how to manage this potential risk.

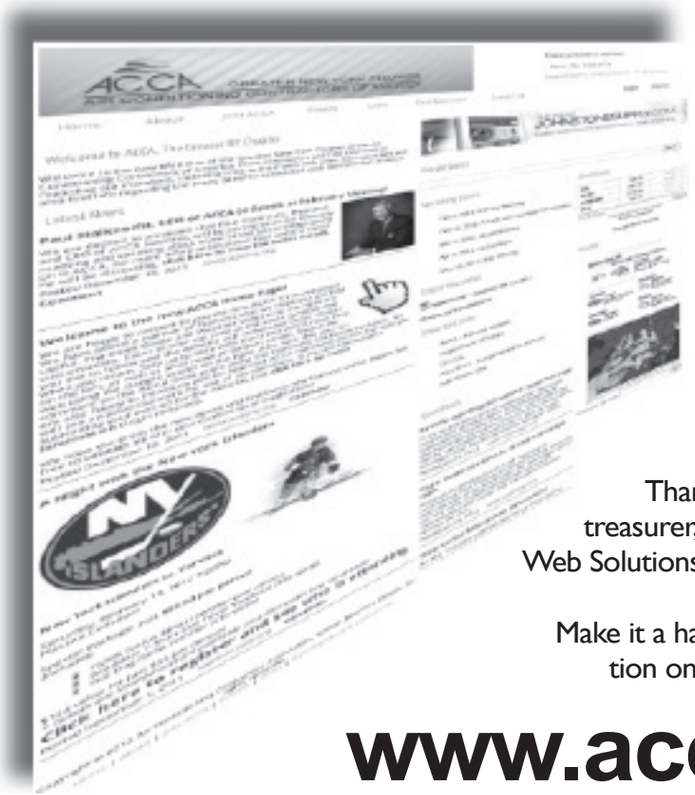
Moreover, if the contract between the general contractor and owner contains a liquidated damage clause, the general contractor needs to insure that the subcontractor agreement also contains a similar clause. The subcontractor's deadline should be sufficiently in advance of the general contractor's deadline so that the general contractor can complete whatever remaining work needs to be performed within the allotted time for performance set forth in its contract with the owner.

There are many other issues which may arise in the event the owner directs that the general contractor utilize pre-selected speciality subcontractors. The key aspect, however, is to insure that the general contractor is properly protected in the event there is an issue with the subcontractor.

Never let your lien time run out!

For a free copy of our Fourth Edition 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. •



Visit our newly redesigned website!

Thanks to Marc Soffler of Dynaire Corp., our ACCA treasurer, who worked with Mike McCloy of Twin Harbor Web Solutions to redesign a clean, easy to use, and informative website for our organization.
Make it a habit to go there frequently for the latest information on chapter activities, and up-to-date-industry news.

www.accany.org

Check the ACCA national website, www.acca.org, too!