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Greater New York Contractors' NEWS



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MARCH 2013

President's Message



Al Trudil

Our Insurance Panel meeting in February was very informative, some good information was learned by all. I would like to thank FOA & Sons and Newbridge Insurance for their participation. I hope everyone has survived "Nemo", the blizzard of 2013, in good shape. I know for me personally we didn't see a snow plow until late of Sunday --my town was one of the lucky ones who got 33" of snow. Sure hope that the ground hog is right and spring will be around the corner. —*Al Trudil*

Thursday, March 14th Meeting

65% of Business Owners
Haven't Decided Their Course
of Action

Regarding Health Care Reform!

What Is Your Plan?

**See Details of this Important Meeting
on Page 13**

LaGuardia Marriott

Cocktails at 5:30 pm; Dinner at 6:30 pm

Register Online at www.accany.org

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Editor's Notes

by **Anthony N. Carbone**

February's meeting at the Westbury Manor was about the ins and outs of purchasing insurance for your HVAC company. A panel of experts, which included: Greg Reddock of FOA Insurance, John Glantzman and Joe Texiera of Newbridge Coverage provided a detailed discussion of the questions you should be asking your agent who provides coverage for your property and liability needs.

The questions and answer session brought pertinent questions to the forefront for the experts and revealed surprising answers. These types of discussions can't be found through casual conversations, only at ACCA formulated programs. A special thanks to NewBridge Coverage and FOA Insurance, who support the organization throughout the year.

The first big snowstorm hit the metropolitan area on February 8th dumping anywhere from 12"-30" inches of snow onto the metro New York and Long Island region. The local news casters hyped it up so much it instilled a wave of fear among the population. It caused some hysteria in the food stores and gas stations. The fear that was remembered from hurricane Sandy is still at the forefront of many people's minds. A crazy term, used by many merchants was "white gold." Snow and blizzards mean money for some sectors of the economy.

I hope to see you at our March meeting where you will get invaluable information that others in our industry only can envy. — *Anthony N. Carbone*

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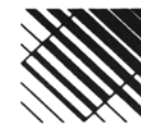
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WiFi Enabled Thermostat Wars Disrupt Complacency

By John Ottaviano – Air Ideal

The patent battle that has unfolded between Honeywell and its upstart competitor, Nest, is well documented, but it has also forced Honeywell to innovate instead of resting upon its current product offerings and leaving the competition to its legal legions. The Nest learning thermostat has become a tech media darling because of its simple design, ease of use and installation, and non-proprietary WiFi connectivity. Unlike Honeywell's Redlink product line, the Nest thermostat does



not require a proprietary router or gateway. It simply uses the already available WiFi network

to connect to Nest servers. Previously, if one wanted a Honeywell wireless system with WiFi connectivity and control via the internet, they had to purchase and install the Redlink bundle including gateway, as well as wireless FocusPRO thermostat. Now Honeywell has developed their own WiFi thermostat from the FocusPRO line that can connect directly through your wireless internet router and be controlled via your PC, smartphone or tablet. According to Honeywell's literature, the FocusPRO TH6320WF1005 "installs just like standard FocusPRO models, so you'll breeze through the familiar installation. After that, it's just a simple matter of a few easy steps to set up the remote access for use with a computer, smartphone or tablet. All the homeowner needs is access to their home network, and a computer or device with access to mytotalconnectcomfort.com. The connection is quick and easy."

The most surprising revelation is the pricing of the WiFi FocusPRO. It is currently on the market at less than half the cost of Nest (\$249 at their site) at about \$115. The big difference is how they are going to market. Honeywell has prominently printed on their installation instructions,

"Must be installed by a trained, experienced technician" whereas Nest continues to market their easy installation to all do-it-yourself homeowners (or those willing to pay \$119 for Concierge install). Honeywell has priced their product in such a manner that the installed cost by a qualified technician at a one hour street rate would be competitive with the installed cost of a Nest learning thermostat with professional concierge installation through their site or affiliates (\$368).* However, Honeywell continues to hedge their bets by selling a touchscreen DIY model through big box stores (see RTH8580WF literature) for around \$150.

Of course, this begs the question "are the two products comparable?" Honeywell's literature touts the following WiFi capabilities for owners via the internet:

- View and change their HVAC system settings (Heat, Cool, Off, Auto, Fan, EM Heat)
 - View and set the temperature
 - Access multiple thermostats if the system is zoned
 - Access multiple locations if more than one system is connected
 - Receive temperature alerts via e-mail or app
 - Get automatic upgrades as new features are available
- Schedule remotely via the web

What you will not currently get from the WiFi FocusPRO that the Nest Learning Thermostat offers are:

- A learning mode that does not require programming and allows you to set your own temperatures and then creates an auto-schedule over time
- Motion sensors that detect unoccupied situations to set back to "Auto-Away mode" for deviating schedules
- Balanced operation for radiant floor heating
- "Airwave" which continues to run in fan mode to utilize evaporator coil temperature for further dehumidification and energy savings
- A web enabled "Energy Report" that allows you to track potential energy savings

Filter reminders

Although not tested head-to-head by the writer, it is assumed that energy savings may be higher with Nest because of the Auto-Away function that will alter from a preset schedule via built in motion sensors to create more setback opportunities. However, if you are only looking for web enabled remote control of your system and aren't interested in other applications, then Honeywell may have struck a balance between cost and functionality. This might particularly appeal to second homeowners who just want to monitor a vacation home and get temperature alerts, landlords who want to monitor tenants and non-tech types

who simply want to raise or lower the temperature before they get home or after they leave.

It may appear that a price war could brew in the future and that Nest may have to lower their retail point as economies of scale allow. Recently, Nest was available at Lowes for \$198. CNN/Money recently took Nest to task for its price point, (see video), because it claims the Nest hard material costs were only \$69, but CNN neglected to include the soft cost of design, financing and hard cost of assembly labor and logistics. Nest might be better served by increasing their tech rich features by adding increased value via software features like home security monitoring through its motion sensing capabilities, which has been rumored by some for the future. Honeywell, on the other hand, has always kept its eye on the profit motive and they may have bigger fish to fry as they pursue smart grid technology and demand side programs in their recent venture with Opower. Honeywell may well be more concerned with the higher profit margins that can be gleaned in local utility demand side conservation programs than in the battle for the lower margin DIY and home automation markets. Only the future will tell.

**In full disclosure, we here at Air Ideal are Nest Concierge and Certified installers. We also sell and install Honeywell products. •*

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February 7th Meeting

ACCA members gathered at the Westbury Manor on February 7th to hear a panel of Insurance Executives including Greg Reddock of FOA Insurance, John Glantzman and Joe Texiera of Newbridge Coverage discuss a variety of important topics relative to our HVAC businesses. The March meeting will be held March 14th. Topic to be announced.

RSES Adds Hydronics to NATE Exam

Originally published: 01.29.13 by HVACR Business Staff

Refrigeration Service Engineers Society (RSES) has added a new title to the *Preparing for the NATE Exam* series.

The *Hydronics* manual is 146 pages and includes the following topics: introduction to hydronic heating; boilers; near-boiler piping system components; piping systems; controls; pumps; installation and maintenance; and fossil fuel-fired hydronic systems. The manual is printed on recycled paper and features full-color graphics that clarify important details.

Hydronic heating systems are becoming more popular in both residential and light commercial applications. Due to their high efficiency, quieter operation and design

flexibility, demand for these systems is on the rise. There are some differences between gas and oil as the fuel source, and those differences are noted so that the technician and installer wishing to become NATE-certified can prepare for either the Hydronics-Gas exam or the Hydronics-Oil exam.

“The Hydronics title—RSES’ fifth book in the *Preparing for the NATE Exam* series—also includes review questions and an appendix with answers to ensure an individual understands the information presented. Also, creation of an instructor CD to accompany the manual is underway and is expected to be released later in 2013,” explains RSES Marketing Manager Kim Heselbarth.

Additionally, *Core Essentials*, *Air Conditioning and Heat Pumps*, *Gas and Oil Heating*, and *Air Distribution* are available titles in the *Preparing for the NATE Exam* series. An additional title in commercial refrigeration is currently in development.

The full manual series is designed to give heating, ventilation, air conditioning and refrigeration technicians and installers the tools they need to be successful in mastering the key concepts required to pass the North American Technician Excellence examinations.

For more information: www.rses.org/store. •



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Better Than Reimbursing Drivers

By Kelly Hiner

For those who wonder how much better it could be to provide company vehicles rather than reimburse drivers who use their own vehicles, it's easy to count the ways: improved cash flow, reduced overall operating costs, improved safety, enhanced driver morale and more professional company image. Each of these factors is significant independently; together they present a compelling case.

A recent analysis for a company that has 80 drivers who average 15,000 to 20,000 miles per year, indicated that about \$100,000 a year could be saved by switching from reimbursing drivers to providing company-owned vehicles. Although the calculation was based on a combination of hard costs—lease terms, monthly payments, maintenance and insurance—and fuel savings generated by having a fleet of uniformly fuel-efficient vehicles, soft costs also were a factor. For example, while some drivers were operating older cars that were not very reliable, resulting in more downtime, others were driving vehicles that were not very fuel-efficient. In addition, for those in competitive industries, employee-owned vehicles did nothing to enhance the professional image of the company they represented, which impacts awareness among potential customers and prospective employees.

The advantages of company-owned vehicles begin with acquiring vehicles that are the right size, include all appropriate safety features and have uniform fuel efficiency. Establishing a separate line of credit for vehicle purchases through a full-service fleet management company can eliminate the need to tap existing lines of credit to fund a rapidly depreciating asset. In addition, fleet management professionals can help ensure that vehicles are replaced at appropriate intervals to achieve optimum performance and resale value.

Operating costs can also be minimized with a company-

owned fleet. A managed maintenance program can monitor and ensure regular service checks, examine invoices, and arrange the most economical, timely and high-quality repairs for fleet vehicles. This program also can yield maximum warranty benefits, rebates, price breaks and other opportunities to minimize expenses. For example, a fuel card program can automatically monitor fuel purchases and mileage for each vehicle, while giving drivers maximum access to the most convenient fueling stations.

In today's competitive marketplace, great looking vehicles are good advertising. In addition to promoting the company's professional image in traffic and at job locations, having great looking cars can enhance employee satisfaction, which impacts retention as well as attracting the most qualified applicants when there are openings.

There are several options to reimburse an employee for using his or her own car on the job—actual cost, standard mileage rate, fixed or variable allowance. However, a comprehensive cost analysis could show that none of these methods is as cost effective or efficient as providing company-owned vehicles.

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. •



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Additional Protections for the Unemployed in New York City

New York City's unemployment rate is higher than the national and state average. In an effort to remedy this problem, the New York City Council recently passed a bill that, if signed into law, will make it illegal for employers with four or more persons to discriminate against unemployed individuals. The legislation will prohibit employers from basing an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment. Moreover, the legislation will prohibit employers from publishing any advertisement for a job vacancy in New York City that states that being currently employed is a job requirement or qualification or that unemployed

individuals will not be considered for employment.

Fortunately for employers, the bill contains a number of exceptions. For example, under the legislation, an employer may consider an applicant's unemployment if there is a substantially job-related reason for doing so. Furthermore, the legislation permits an employer to consider circumstances surrounding an applicant's separation from prior employment. Significantly, the legislation does not prohibit employers from considering any substantially job-related qualifications, including but not limited to: a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience, nor does it prohibit publishing an advertisement which sets forth any substantially job-related qualifications, including but not limited to, the aforementioned qualifications.

Mayor Bloomberg has vowed that he will veto the bill once it is presented to him to sign. However, the Speaker of the City Council has indicated that she has the votes to override the veto. For updates on the progress of this legislation, please feel free to contact me.



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Differences Between the New York State and New York City Human Rights Laws

It is perhaps no surprise that New York City's discrimination and harassment laws are more favorable to employees than similar federal and state laws. One recent case, *Hernandez v. Kaisman*, highlights this important point. In *Hernandez*, a New York State appellate court ruled that an employer who allegedly sent out a number of "mildly offensive sexual" emails and engaged in other inappropriate conduct was not liable for creating a hostile work environment under the New York State Human Rights Law because his behavior was not sufficiently severe and pervasive.

Despite this ruling, the court held that the Plaintiffs may be able to prove a claim based on the same behavior under the New York City Human Rights Law. The court explained that an amendment to the City Human Rights Law made it clear that the Law is to be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of [the City Human Rights Law] have been so construed." As such, the court ruled that it would only dismiss the Plaintiffs' City Human Rights claim if it found that this was "a 'truly insubstantial case' in which [the employer's] behavior cannot be said to fall within the 'broad range of conduct that falls between 'severe and pervasive' on the one hand and a 'petty slight or trivial inconvenience' on the other." Ultimately, the court found that dismissal of Plaintiffs' City Human Rights Law claim would be inappropriate because [the employer's] "comments and emails objectifying women's bodies and exposing them to sexual ridicule, even if considered 'isolated'" fell within this range.

Because the City Human Rights Law has been construed so liberally, employers should exercise extra care in ensuring that their workplaces are free of discriminatory and harassing behavior. PMP can assist your company in developing strategies to do so.

20th Anniversary of the FMLA

It's the 20th anniversary of the Family and Medical Leave Act (FMLA). This milestone marks the perfect time for employers to review their FMLA policies.

As with all government legislation, there is a burden of record keeping on the employer. Employers must issue FMLA paperwork for employees within a set time, track the time out and make decisions as to whether the reason for the leave does, in fact, qualify under the Act.

To assist already heavily burdened HR departments, PMP has added an FMLA Administration service. PMP's cost-effective service takes the guess-work off the employer as to whether an employee's request is covered under FMLA; PMP issues and track all necessary paperwork as well as the leave time itself. •

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Statement From Stuart S. Zisholtz, Esq.

Understanding The Bonded Lien

There has been a great deal of misunderstanding, miscommunication and misinformation circulating with respect to a bonded lien.

When a mechanic's lien is bonded it replaces the property and the lienor is guaranteed payment under the bond if he proves a valid lien. It is probably the best thing that a lienor can do. If the contractor or the owner goes into bankruptcy, becomes insolvent or otherwise goes under, the mechanic's lien is still good and the bonding company picks up the tab.

I have been told by various people on various occasions that their lawyers advised them that once the lien is bonded you cannot ever collect. It is the exact opposite. I have also been told that the bonding company gangs up on lienors, etc. This is also incorrect.

In a recent decision, however, a major blunder took

place. In that case, a lien was filed and the bond was posted. Thereafter, the parties agreed to go to arbitration. The blunder was that it agreed to go to arbitration if the parties dropped the mechanic's lien foreclosure action. By dropping that action, the bond was cancelled automatically. As a result, the parties had to go to arbitration and the benefits of the bond were totally annulled. You never want to do that.

What should have happened in that instance is the bond should have been transferred over to the arbitration proceedings if the lienor established its right to a recovery. The bond would have backed it up.

Never let your lien time run out!

For a free copy of our 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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