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Greater New York Contractors' NEWS



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MARCH 2014

President's Message



Al Trudil

Due to the upcoming snow storm and freezing rain the board felt it better to postpone our February 13th meeting and move it to February 20th. The weather is supposed to be in the 40's so we should have no problems with the new date.

This winter seems like it has lasted forever and it just doesn't want to go away. It's hard to think about air conditioning while we are still shoveling snow and digging trucks out of snow banks. We are all starting to get calls from our suppliers about Freon for the season so we must move forward

Turn to President's Message on page 3

March 6th Meeting

Residential Generator Market

Rick Hennig

V.P. Power Generation Systems

Scott Matalevich

of American Universal

QuoteExpress Estimating Software

Christian DeBaldo

Quote Software, Inc.

See Details on Page 7

LaGuardia Marriott

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

Register Online at www.accany.org

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PRESIDENT'S MESSAGE

Continued from page 1

and start thinking about the cooling season.

March 17-20 will be ACCA 2014 Conference in Nashville, TN. This is a show that should not be missed, with great information and speakers. You can find all the details online at www.acca.org.

On April 3rd we will be having our Casino Night at the Carlyle at the Palace located in Plainview. This will be a great night, Jim Carlson and his committee have put together some great prizes and entertainment so don't forget to RSVP at www.acca.org.

Be safe out there. — *Al Trudil*

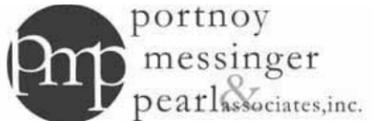
ACCA Directors at Work at a Recent Board Meeting. You Can Join Them!



Work goes on at February 20th Board meeting.

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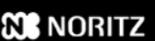
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technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

Editor's Notes

by Anthony N. Carbone

Our meeting, on February 20th, 2014, at Diletto's Restaurant in Westbury, Long Island was of great interest if you send out any correspondence via email or text.

Dr. Richard Atkins of *Improving Communication*, a professional communication expert provided our organization with a first rate explanation of how to send out emails and/or texts. The words not to use and the appropriate words to begin with. Many questions were answered and relevant examples were provided. There were examples of severe mistakes that could cost your company money. Some companies have lost jobs due to mistakes in their communication and using wrong words. Can your company afford to lose money due to communication errors?

I will recommend that if your company employs – (i.e. sales or office staff) and can use expert training, contact Dr. Richard Atkins at (516) 317-2900 to set up a private presentation for your company. It will be well worth it.

We are working hard to provide interesting, relevant programs that add value to your company. In addition, our social network gatherings provide you with a chance to keep your fingers on the pulse of what is really happening in the marketplace.

Keep attending and bring associates. — **Anthony N. Carbone**

JOHN F. DELILLO

Certified Public Accountant

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Membership Meeting

Two Valuable Presentations on Thursday, March 6th

Rick Hennig, V.P. Power Generation Systems, and Scott Matalevich from American Universal will present their program originally scheduled for our February meeting but postponed. Topics include an overview of the residential generator market in our area, products and services that American Universal provides to their dealers, best practices related to selling and properly applying generators, and dealer training and programs available for authorized sales and service dealers.

Also presenting will be **Christian DeBaldo, speaking about his company's QuoteExpress Estimating Software**, a powerful custom Cloud connected software solution for ductwork and HVAC contractors who need a simple to use tool to estimate labor hours and material costs for ductwork, pipe, and fittings.

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Greater Liability for Family Owned Businesses

There are many advantages and disadvantages to having a family business. While some of the most successful companies in America are family owned, such as Wal-Mart and Ford, business disputes in these companies have the potential to tear families apart, and business downturns affect whole families. Adding to these concerns, a recent federal court decision in New York leaves family businesses at a greater risk of liability from discrimination suits.

The case, Dillon v. NED Management, Inc., was brought after a female employee was terminated after she complained about the owner's father-in-law sexually harassing her. The employee brought suit for discrimination, retaliation, and for hostile work environment in violation of Title VII of the Civil Rights Act of 1964. Typically, for a company to be held vicariously liable under Title VII for the unlawful actions of an employee, that employee must be a supervisor of the plaintiff. For Title VII purposes an employee is a supervisor if he can

effect a "significant change in employment status," such as hiring, firing, and failing to promote.

In this particular case, the father-in-law was not a supervisor under Title VII. The court, however, still found the company vicariously liable for his actions. The court reasoned, that even though he had no direct supervisory power over the plaintiff, he could still take "tangible employment actions" against her. The court found that "the marital relationship included a strong influence by the husband on his wife and her son, the owner of the family company, equivalent to supervisory power."

Under this decision a company can be held liable for unlawful statements or actions performed by a member of the owner family, even if that family member has no supervisory authority. Thus, family businesses need to be extra careful about the conduct of family members around employees. Complaints by employees about family members should be taken seriously and should be followed by appropriate remedial measure.

NLRB Proposes "Quickie Election Rule"...Again

In an attempt to streamline the union election process the NLRB has issued a proposed rule which would seriously expedite the union voting process. The details of the proposed rule are not yet clear. The Board simply alludes to "streamlining pre-election procedures." However, it is likely that the rule

will be similar, if not identical, to the rule first proposed in 2011, the so called "Quickie Election Rule."

Under the 2011 rule a hearing was to be held within seven days, down from the prior fourteen days, of the filing of a petition; voter eligibility determinations were to be deferred to post-election challenges, as opposed to pre-election challenges; appeals to the NLRB's ruling in directing an election must wait until after the election; and post election disputes must be heard within 14 days of the election. These proposed rules would substantially limit the amount of time between when a recognition petition is filed and when a union election occurs.

Employers have found this time to be essential in challenging unionization efforts. Employers often use this time to hire labor relation consultants to educate employees about the effects unionization could have on the company and their jobs. With the passage of this rule we may see a substantial increase in the number of successful union campaigns.

The 2011 rule was stymied by court decisions holding that the Board did not have the proper quorum to finalize new rules. Now with a full board it seems likely that this rule is heading towards passage. If your company has any labor relations issues, or if you have any questions about this new rule, please feel free to contact me.

Medium Sized Businesses Given More Time to Implement Obamacare

The employer mandate is arguably the most controversial aspect of the Affordable Care Act, or "Obamacare." The mandate requires that all employers with 50 or more full time employees provide affordable health insurance to those employees. Failure to abide by this law will result in federal penalties.

Originally the employer mandate was to take effect on January 1, 2014. However, due to the ambiguity of the law, the mandate was pushed back to January 1, 2015. Well, employers have been given yet another reprieve. The mandate will now be implemented in two phases. The first applies to employers with 100 or more full time employees. After January 1, 2015 these employers will be required to provide insurance to at least

70% of their workforce, and 95% by January 1, 2016. In phase 2, employers with between 50-99 employees will have to offer affordable coverage to 95% of employees by January 1, 2016.

This gives medium sized businesses another year to prepare for these changes. However, companies, big and small, should not procrastinate when it comes to this law. Major changes in healthcare reforms are currently taking place which affect all businesses. Portnoy Messinger Pearl & Associates has a team of Obamacare experts which are prepared to address your questions and concerns.

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



John P. Hanley

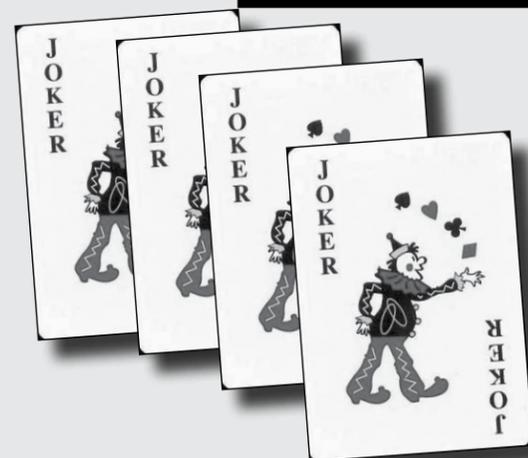
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Statement From Stuart S. Zisholtz, Esq.

“No Damage For Delay” Clause

Construction projects can be long and tedious. Numerous delays, changes, etc., can extend a project for months and sometimes years.

A delay claim is recoverable in certain circumstances. Many contracts contain a “no damage for delay” clause which could prevent a recovery by a contractor against the owner for delays. If, however, the contract does not contain a “no damage for delay” clause, then a party may be able to recover damages for delays.

In order to recover for such a claim, the contractor must prove specific damages. You must show the additional costs associated with the delay, that the contractor did not cause the delay, that the damages are real and that the parties could have expected to incur such damages at the time the contract was executed. If these items are established, then the contractor may be able to collect from the owner for damages sustained by the delay.

The other question is whether a contractor is responsible to the owner when the job is extended for an inordinate amount of time. Can an owner recover from a contractor lost profits for delays caused by the contractor? The Court’s have held that an owner must demonstrate that at the time the construction contract was executed, the parties contemplated an economic loss as a potential basis for damages in the event of delays. To do this, the contract must have a time

of the essence clause. The contract should also have a clause setting forth the expected damages in the event the contract is not completed by the specified date. While a contract may have a completion date, it must state that time is of the essence. Incorporating a completion date in the contract does not, by itself, make time of the essence.

In addition, the owner must establish with reasonable certainty its lost profits. Speculation is not enough when proving lost profits. The owner must be able to establish real damages when attempting to collect lost profits.

NEVER LET YOUR LIEN TIME RUN OUT!

For a free copy of a pamphlet pertaining to payment bond claims and mechanic’s liens, please 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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ACCA Publishes Technical Bulletin On ANSI/ASHRAE 62.2-2013 Ventilation Compliance

ACCA has published a new Technical Bulletin entitled “Ensuring ASHRAE 62.2-2013 Ventilation Compliance for Residential Structures.”

This technical bulletin is particularly important for contractors who are currently following ASHRAE 62.2-2010, because ASHRAE made major modifications to its latest update ANSI/ASHRAE 62.2-2013 Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings. The Technical Bulletin covers the changes in three parts:

Part 1 covers requirements for every new home under construction or for existing homes when HVAC systems are being added.

Part 2 covers ventilation designs (new and add-on applications) that have variable or intermittent operation.

Part 3 covers some of the additional considerations that may, or may not apply to varied applications.

Additionally, there is an Appendix, which summarizes

various mechanical equipment approaches for meeting the ASHRAE 62.2 requirements, and highlights the advantages and disadvantages associated with each approach.

ACCA technical bulletins may be downloaded by members at www.acca.org/bulletins. For more information, contact ACCA’s Donald Prather at donald.prather@acca.org.

Contractors Feeling Positive About Short-Term Growth

The January Contractor Comfort Index (CCI) shows that contractors are continuing to have a positive outlook about short-term growth. ACCA began measuring contractor attitudes toward short-term economic growth with the CCI in February 2010.

For January 2014, the CCI was 69. The CCI also shows that contractors are feeling better about short-term growth than they were 12 months earlier when the CCI was 60.

The CCI is calculated based on a survey of the association’s contractor members, who are asked how positive they feel about new business prospects, existing business activity, and expected staffing decisions in the short-term future. •



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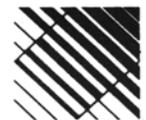
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