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### Air Conditioning Contractors of America

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Chapter  
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# Greater New York Contractors' NEWS



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SEPTEMBER 2012

## President's Message



Michael Newman

I cannot believe that the summer is coming to an end and we are getting ready for September. We are already seeing the back to school sales. I wish it was July every month of the year.

This month, ACCA had our annual golf outing at the Hamlet Country Club in Commack. We had around 100 golfers this year and it did not rain this time. I always find it ironic that we are in the air conditioning business and we have our golf outing during the summer. I guess it is always good to

*Turn to President's Message on page 3*

## September 6th Meeting



# SAVING LIVES In The Workplace!


## A GUIDE TO FIRST AID AND CPR

Mike Barry, a veteran of 40 years in the Fire Service, head instructor for Firefighter's Solutions, Suffolk County Fire Academy Instructor and President of the Fire Chief's Associates of Suffolk County, will discuss CPR in the office, along with defibrillators, and examine the question: Are you covered by the Good Samaritan Act?


This is a "Don't Miss" meeting for contractors and their staffs.

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Cocktails at 5:30 pm; Dinner at 6:30 pm  
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### PRESIDENT'S MESSAGE

*Continued from page 1*

take a break, try to hit some golf balls and then get back into dealing with the summer heat. I would like to thank our sponsors, the golf committee and all the participants for a great day. At the event, ACCA made a donation to the Make a Wish Foundation. I was honored to make the presentation to the Make a Wish Foundation which grants wishes to children with life threatening medical conditions. Thanks again to everyone!

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**



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## Editor's Notes

by Anthony N. Carbone

Welcome back to ACCA after a memorable record-breaking summer season of heat and repressive humidity that left many people very uncomfortable. This wonderful weather coming out of a mild winter season was a blessing to many HVAC contractors. Any systems that were limping along surely saw their demise with this season's constant brutal weather. It spurred many retro fit replacement units to be installed. Also, many who were able to survive without air conditioning previously, buckled to the heat and scrambled to find contractors not already booked to install a new central air system. Timing is everything, to say the least, when planning to install a new system.

Not many contractors were willing to commit their labor to 140 degree attics for new installations. Some contractors whispered to me that they were so busy, they turned away less profitable and undesirable work. The days of being picky have been rare for a long time for HVAC contractors. One contractor told me he leaves open slots in his schedule specifically for his clients, as he expects emergency repairs. He claimed these are sure sales with little speculating by the clients because there is a trusting relationship in place already. Why alienate your clients with long waits for installations and possibly lose them to another contractor? It is an interesting

philosophy during this economic climate. Maintaining your clientele is more skillful than seeking new business. Customer service and response time is essential during these extreme temperatures and humid days.

Another important area is being responsive to the elderly and sick clients who have medical conditions. Some can't survive without air conditioning. This is a very important responsibility bestowed upon HVAC contractors. People will live without heat in the winter and be less upset than they are if their air conditioning doesn't work.

Many clients can become irate without air conditioning. We provided a special call area just to walk some clients through the process of checking their circuit breakers first before dispatching a service technician. Every move by a technical service team needs to be scrutinized for logistics, technical capability of the technician and the validity of the call. Communication from the technician to the dispatcher is crucial and also the information being conveyed by the client to the dispatcher must be carefully dissected. If you fail to do this, it can cost you precious time and a huge amount of money.

Join us in September to welcome all of our fellow contractors and suppliers and share your stories of a big season!!!

Welcome Back to ACCA! — *Anthony N. Carbone*

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## Protecting Your Interests as a Contractor Through Proper Documentation

By Michael D. Ganz, Esq.

It is axiomatic that in a construction related dispute, the party with the most complete paper paperwork wins. While not always true, the preparation and maintenance of documentation is crucial to both avoiding and winning disputes.

As an initial point, correspondence is the most frequently utilized documentation. Correspondence should be direct and it is good practice to number each outgoing correspondence to ensure a complete record. If correspondence is responsive to other correspondence, meeting minutes, etc., these documents should be explicitly referenced and attached. Electronic correspondence is utilized more and more with some construction projects relying exclusively on e-mails. E-mails are generally discoverable in litigation and they should have the same formality as correspondence. This attorney had conducted discovery in numerous cases and is still surprised at the nature of some e-mails between contractors, owners and design professionals which includes very personal information, profanity and other items best left out of the e-mails. The maintenance of communications is extremely important. For example, each piece of correspondence should be maintained in a chronological file. If a letter or e-mail addresses multiple change orders, it is good practice to place a copy of the letter or e-mail in each change order file so that each change order file has every communication associated with it.

Photographs are often used to provide a powerful visual representation of an issue. The photographs should be signed by the photographer, dated and annotated with the location and nature of the photograph. Similarly, a videotape should be properly narrated with the videographer's identity, date, location and nature of the issues in the video.

It is also good practice to prepare contemporaneous memorandums of issues that arise and which are not the subject of correspondence.

Meeting minutes provide a detailed account of a project whether in design or construction. Meeting minutes should always provide that an attendee who knows that the meeting minutes record an incorrect statement position than actually occurred at the meeting may object and clarify the minutes within a short time frame, typically a few days.

This attorney had encountered numerous examples of a meeting attendee at a future disposition stating "I know the meeting minutes state this but that was not agreed to at the meeting." However, the individual's position is undermined because of never contemporaneously clarifying the meeting minutes.

Of course, oral directions are large part of the construction industry. It is good practice to confirm the oral direction in either a letter or e-mail. "If it is not written it never occurred is an unfortunate product of being involved in disputes.

*Michael D. Ganz, Esq., is an attorney with the law firm of Tunstead & Schecter of Jericho, N.Y., specializing in construction law. He has authored numerous articles for ACCA, ASHRAE, NYCSTA and SCECA. He can be reached at mdg@tslawyers.com.*

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# 34th ACCA GOLF OUTING





## People & The Workplace

By Alan B. Pearl,  
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### Avoiding Political Differences In The Workplace

With the next presidential election right around the corner, employees may become increasingly vocal about their views concerning the political process and candidates. Employees may wish to discuss a presidential debate with their colleagues or confirm their support for a particular candidate. While casual conversations among employees during the workday are an important means of building a positive workplace culture, political discussions may also create tension among employees. So, how can Employers avoid toxic situations stemming from political debates in their own workplace?

First, it is important to note that some states, including New York, have statutes that protect an employee or job applicant from being discriminated against for engaging in political activities. New York law prohibits an Employer from refusing to hire, employ, discharge or otherwise discriminate against an individual because of his or her lawful political activities

outside of working hours, off the employer's premises and without use of the employer's equipment or property. Political activities are defined as "running for public office, campaigning for a candidate for public office, or participating in fundraising activities for the benefit of a candidate, political party, or political advocacy group." While New York law does not protect employees who campaign during work hours it does protect an employee from being discriminated and retaliated against because he/she volunteers for political campaigns, attends political rallies and fundraisers, and places a candidate's promotional campaign sign on the front yards of their home, even if these activities conflict with the employer's business and political objectives.

Heated debates resulting from the upcoming presidential election may also add a new dimension to workplace bullying and harassment. Employees who openly parade their political views create an uncomfortable, and potentially hostile, workplace environment, especially for those who have a different view. The detrimental effects can linger in the workplace, which can damage both productivity and morale. Employers, therefore, should review behavior and conduct they expect of their employees, during work time, and educate supervisors that unwelcome political discussions are not allowed. Employers should also implement and enforce policies regarding computer, internet, email exchange between employees and outside

persons. These policies should explicitly advise employees that they may only use the Employer's computers, internet, email and other technological devices for business-related purposes and that the employer has the right to monitor its employees' electronic activities.

To prevent employees from engaging in political activities at work, Employers should adopt and enforce a non-solicitation and no-distribution policy. These policies will prohibit employees from soliciting support for or distributing literature regarding non-work related activities and organizations, including political candidates. An employer's non-solicitation and no-distribution policy will ban employees from, among other things, displaying campaign posters at work, distributing political leaflets, soliciting donations for political candidates, and wearing campaign paraphernalia at work. Of course, the policies must be enforced uniformly, to prohibit all forms of solicitation and distribution that are non-work related.

During a presidential election, many employees will ask to vote during their regularly scheduled work day. While federal law does not require Employers to grant employees paid time-off to vote, most states, including New York, require the Employer to allow employees time to vote. In fact, in New York, an employee must be paid up to two hours to vote, unless polls are open for four consecutive hours outside of the employee's normal work day.

Employers should also be careful about expressing their political views to employees. Although Employers may want to communicate neutral messages such as encouraging employees to vote on Election Day, Employers should resist the temptation to include subtle messages that promote a particular party or candidate. Employees who disagree with an Employer's political views may be able to assert a "retaliation" claim if they suffer an adverse employment decision following the election. Rather, Employers should attempt to minimize political discussions in the workplace to prevent political discrimination claims and reduce workplace conflict.

#### Fall (Believe it) Is Around The Corner

As we enter the Labor Day weekend and beyond we start to think about the workplace after all the vacation time has been utilized. But what happens if an illness or injury befalls an employee in October and no LWOP is available? Is FMLA available? What are the alternatives available to this valued employee in these difficult times? Answer – it depends on your policies that should be available in printed format in your HR Department for employees to read and utilize. If you are of the belief all this can be learned from the office manager think again! The office manager is not usually an HR expert. What is the remedy you ask? Consult your HR Professional (PMP I hope) for our Fall Refresher Course for your Office Manager, Supervision and Senior Management. Training is the best investment a company can make in these very litigious times.

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### Study: Generation X Less Concerned About Climate Change

Only about 5% of members of "Generation X," persons now 32 to 52 years old, are "alarmed" and 18% "concerned" about climate change, according to a new survey by the University of Michigan and reported by ASHRAE. Two-thirds of respondents to the survey said they "aren't sure" climate change is happening and 10% said they "don't believe" it's occurring.

The survey of 3,000 adults cites climate change's complexity, pressing economic concerns and "issue fatigue" as reasons for the lack of concern. It finds educated adults tend to be more concerned about the issue. It also finds partisan differences; nearly half of respondents who identified themselves as liberal Democrats were "concerned" or "alarmed" compared to zero percent of conservative Republicans. •

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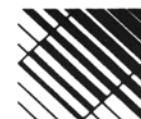
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## Steering Around Stumbling Blocks for Ordering New Vehicles

By Kelly Hiner

When it comes to ordering new vehicles, business owners want to make sure they obtain the most competitive prices with the maximum available discounts, rebates and incentives. For businesses with mid-size fleets, this can be especially challenging due to the many stumbling blocks they can encounter on everything from ordering the right model with the right specifications, to receiving the most incentives, to selecting a fleet-minded dealership where vehicles can be drop-shipped.

That's why using a fleet management company for acquiring vehicles is a best practice that can save a business both time and money. In addition to planning ahead to take advantage of various price protection guarantees on all models, a fleet management company may be able to help anticipate and manage supplier shortages or logistic delays that could affect a timely delivery.

Using a fleet management company to order vehicles from the factory can have many additional benefits. Based on our own clients' experiences, businesses that order vehicles, rather than purchase from available dealer stock, save an average of 6.3 percent per vehicle. Other benefits include the following:

- Prices sometimes increase throughout the model year. Orders placed early will receive initial model year pricing and may include early order incentives if offered by the manufacturer.
- Ordering early, it is easier to obtain preferred vehicles, even if demand for those vehicles is high.

- You can work with the fleet management company to customize vehicles, ensuring that they meet the specific needs of your business, rather than purchasing a vehicle that has been built using more standard retail specifications. This also saves cost on the back end by cutting down on the purchase of after-market equipment.

- Aftermarket equipment can be installed prior to delivery of the vehicle, ensuring a complete work-ready vehicle at pickup time.

- You will generally also get a reduced price because you have ordered the proper vehicle specifications and colors upfront, rather than having to add options once vehicles are received.

- You typically are able to designate shipment date windows, based on your needs.

Ordering vehicles directly from the manufacturer requires six weeks to three months lead time for delivery. Increased lead time may apply to limited production models. Factors that can make a big difference in ensuring a timely delivery include having a strong relationship with the manufacturer and submitting orders that are complete and accurate. Changing specifications or a drop-ship location after an order has already been submitted can impact the production and delivery time of the vehicle.

Vehicles usually can be drop-shipped to any location in the country, and working with a fleet management company to select a fleet-minded dealership can make a difference in controlling expenses and creating a positive delivery experience.

### Cycling Program Manages Acquisition and Disposal

Just as important as knowing when to order new vehicles is knowing when to dispose of older vehicles, a process known in the industry as "cycling." Companies with commercial fleets know that negotiating the best buy on the front end is one way to manage costs, but money saved on the back end can also have an effect on your bottom line. Other factors can also influence when to cycle a vehicle out of a fleet, including the appearance of the vehicle, mileage, wear and tear, resale value and current market conditions.

Acycling plan saves money because of factors like future maintenance, and can also improve a fleet's fuel economy because newer vehicles generally get better gas mileage. It can also help maintain the business' professional image, as well as improve driver satisfaction and safety. The automotive manufacturers continue to make improvements to vehicle safety and fuel efficiency.

The bottom line is that planning ahead when it comes to both the makeup of a company's fleet and knowing when to acquire and dispose of vehicles can not only save time, but can really make a difference to the business' overall financial well being.

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](http://www.enterprisefleet.com) or call toll free 1-877-23-FLEET. •



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## Statement From Stuart S. Zisholtz, Esq.

### Mechanic's Liens and Bankruptcy

I have written in the past about the need to file a mechanic's lien when an owner or a contractor files a petition in bankruptcy. In addition to filing a mechanic's lien, many times it is necessary to file a Proof of Claim.

Essentially, a Proof of Claim is a written statement setting forth your claim against the debtor. It is filed with the Bankruptcy Court and in certain specific instances, the debtor's claims agent.

Recently, a question arose about who can sign the Proof of Claim. A client wanted to file a Proof of Claim on behalf of his mother and had durable power of attorney for his mother. In other instances, counsel for the creditor is requested to sign the Proof of Claim on behalf of the creditor. Pursuant to the Federal Rules of Bankruptcy Procedure an agent, attorney or proxy can sign a Proof of Claim without having a power of attorney.

Although the law permits an attorney to sign a Proof of Claim on behalf of the creditor that does not mean that they

always should sign on behalf of the creditor. In a recent case in Texas, the Court almost disqualified an attorney who signed his client's Proof of Claim. The Court admonished the attorney for signing the Proof of Claim because the attorney may become a necessary fact witness at his client's trial. The Court recommended that the client execute the Proof of Claim.

Similarly, there are many attorneys, agents or proxies who execute mechanic's liens on behalf of the lienor. Having an attorney, agent or proxy execute a Mechanic's Lien is something that should be avoided at all times when representing a client. The possibility exists that the attorney, agent or proxy could be disqualified for signing a Mechanic's Lien and verifying the information contained within the lien as being true and accurate.

Never let your lien time run out!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, do not hesitate to 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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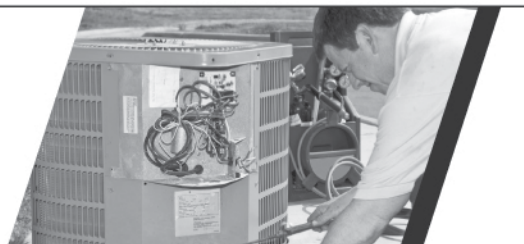
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