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Greater New York Contractors' NEWS



www.accany.org

FEBRUARY 2010

President's Message



Anthony N. Carbone

JANUARY 2010 BEGAN WITH our board meeting at the La Guardia Marriott. Most of our board members attended and pledged their support for our organization to bring great achievements and new ideas to the Greater New York Chapter of ACCA.

I am asking you the readers and members of our industry organization to participate and get involved. Attend our

Turn to President's Message on page 3

February 4th Membership Meeting

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PRESIDENT'S MESSAGE *Continued from page 1*

monthly programming meetings; share your experiences.

We will be having a roundtable discussion this month regarding current software service applications; their strong points and their weaknesses; the state of the art service platforms compared to older written programs, with their inherent limitations. The digital age has lent itself to new products and more data at our fingertips. Handheld devices like those of Fed Ex and UPS are entering our industry. We will have an industry discussion and comparison to what makes the most sense.

The economy is still swinging like a pendulum and although many economists are predicting an upswing, a lot

of contractors are saying installations are quiet and service continues to thrive. **BIG TICKET ITEMS** are being scrutinized and the decision process to proceed with installations is stringent.


Oil prices continued to rise this past month, putting the squeeze on the consumer and causing more distress at the gas pump. Generally high oil prices will put a damper on disposable income so the double dip recession may be around the corner.

Stay tuned and attend our February meeting at the Westbury Manor!

Thank you for supporting our Chapter.

— Anthony N. Carbone

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




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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.

Leaders Wanted

By John Ottaviano

It is difficult to comprehend that I have been a member of ACCA for over 20 years now. Back in 1988, we were meeting at the Hofstra University Club in Hempstead and our biggest concern was how to disguise profit margins to the IRS. I was one of the “newbies” back then trying to hide my all-too-apparent lack of experience while picking up tips and HVAC business expertise from the “old-timers”. It seemed like everyone who was anyone in the industry was a member of ACCA and attended the local meetings and the world was our oyster. I just needed to learn how to open it and survive. Back then, we had members clamoring to be on the Board and take leadership positions as officers and we held annual elections.

Well, times have certainly changed. Now we are all learning how to survive in much less profitable times. The pie has shrunk. Unitary equipment shipments continue to diminish, building has all but disappeared and this has really become a service oriented market. We are all scrambling to be more competitive and to stay abreast of the newest technologies that will hopefully allow us to move forward as an industry. We have weathered the onslaught of the utilities and big box stores. We have proven that the public conglomerates that were eating their way down the food chain were a short-lived fad created by funny money and too unwieldy to negotiate the contracting world nimbly. However, ACCA has become even more relevant in our daily survival as contractors. This can be evidenced by our increase in membership over the years. In fact, I would hasten to say that my local ACCA affiliation and my participation for many years in a Mix Group are both important reasons why we as a company are still here today.

In stark contrast to the Greater New York Chapter’s membership enrollment, leadership participation has waned. No longer are there new members seeking to be active in chapter governance or to push the industry forward on a local basis. Our Executive Director, John Delillo, has put us in a great position financially and has done what he can to maintain a viable membership base, but he cannot force members to be

active participants for their own well-being. I will have held a position on the board or as an officer for 20 years as of 2010 and I must admit that I do not have the same passion and youthful energy that I once had. I have stayed on the board, as have others, because there is no one stepping forward to fill the leadership void and push the chapter and local industry forward to bigger and better things. I understand that many are in “survival mode”, but there is no better time than now to step up and help this chapter. We have the pulpit and the finances to bring change, make enhancements and really help bring a positive image to the HVAC contracting field, but we need good men and women with leadership skills to volunteer for roles to do so.

My hat is off to Anthony Carbone for stepping up to become interim President (again) to fill the void, but such a step should not be necessary. If you are reading this article, you know that HVAC contracting has been good to you and your family. It has provided for you and others and we need your involvement to make sure it continues to do so. Volunteerism is important and this is a great venue to hone your leadership skills, make important networking relationships and give back to your industry. It really does not take a lot of time and the rewards are numerous. Please consider giving John Delillo a call at 516-922-5832 (accany@yahoo.com) to get more involved. ACCA needs your talent and your leadership. —*John Ottaviano*

New Bulletin on Filtration

ACCA has released the latest in its series of technical bulletins for members.

Technical bulletins are provided to ACCA members at no cost and cover a variety of topics related to system design, installation, and maintenance.

The bulletin, called “Filtration—A Primer,” explores the basics of filters, including how HVAC equipment modifications are often required when a filter change results in increased system pressure drop through increased filter resistance.

Filters are designed to remove particulate contaminants from the air. While most airborne particles are harmless, some—like microorganisms, droplet nuclei, and spores from fungi—can cause allergic reactions or illness in some people. However, most HVAC systems are designed to utilize basic filtration aimed at protecting coils and heat exchangers from relatively large dust particulates. For environmental and occupant health concerns, a higher level of filtration needs to be included in the system design.

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

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Watch Out For Warranties

By Kelly Hiner/Enterprise Fleet Management

Controlling maintenance and repair costs for a fleet of vehicles is a challenge for any business. In addition to trying to secure the most economical, timely and high-quality repairs, it is important to avoid paying for unnecessary repairs or those that may already be covered by a manufacturer's warranty.

Being familiar with the warranty coverage for every vehicle in your fleet not only helps to maximize driving performance, it can make a difference in determining whether certain repairs qualify as warranty work and where the vehicle is sent for repairs. Unfortunately, warranty information, which is usually included in the vehicle owner's manual, is too often stored away in the glove box until there's a problem – when it may be too late.

Manufacturer's warranties usually cover everything except normal wear-and-tear items like tires, brake pads and filters. In addition, vehicle neglect or abuse, as well as failure to complete and maintain detailed records of regularly scheduled maintenance can jeopardize the warranty.

Warranty coverage can vary by manufacturer, as well as by year and model. For example, although most warranties run three years or 36,000 miles, whichever comes first, other warranty coverage can be four years or 50,000 miles, or more. A good place to begin to understand warranties is by becoming more familiar with some of the definitions and coverage breakdowns:

Basic Warranty – Limited to a specified length of time or mileage, such as "12 months or 12,000 miles, whichever comes first," the warranty covers the costs of most repairs or adjustment a vehicle might need because of defects in materials or workmanship.

Bumper-to-Bumper Warranty – For most makes, this warranty covers a majority of the vehicle's components with the exception of maintenance and wear items such as brake pads, alignments and fluid replacement services.

Powertrain Warranty – Covered components generally include everything from the engine and transmission-transaxle-transfer case to front-wheel and rear-wheel drive assemblies. However, this coverage can be voided if the manufacturer's recommended maintenance is not completed.

Air-Conditioning Warranty – The sealed portion of the factory installed air-conditioning system may carry its own warranty under

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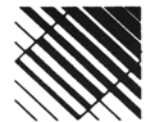
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the basic warranty or bumper-to-bumper coverage. Parts covered usually include the compressor, condenser, evaporator core, orifice tube, accumulator, all A/C lines and O-rings.

In addition to the above, other warranties may cover emissions and safety components, sheet metal corrosion and rust-through. Additional provisions sometimes are made for roadside assistance, towing for mechanical breakdown, and transportation assistance if a vehicle is inoperable and must be kept overnight for any warranty repairs.

Most manufacturer warranties have separate mileage and time parameters for different parts of the vehicle. This can mean that the same vehicle has a "bumper to bumper" or full warranty for one time or mileage period, while the powertrain or rust-through protection and emissions system may be covered for a longer time period.

The bottom line is that while all manufacturers offer warranties, there can be wide variations in coverage. Being familiar with the vehicle's warranty will not only save you money when a repair has to be made, it can end up saving you time by being able to schedule the repair when it is most convenient for your business.

A comparison chart of various manufacturers' warranties is available at www.enterprisefleet.com by clicking on the link under the My Library section for the "Vehicle Fleet Preview Guide."

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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When Employers Can Safely Discharge Individuals Out On Leave of Absence

Many employers mistakenly believe that they have to provide disabled employees with an indefinite leave of absence when they have a medical emergency. Adding to the confusion is that employers are aware of federal and state laws that grant employees certain rights, but aren't sure what they require. Generally speaking, whether an employer can terminate an employee who is out on an **indefinite** leave of absence depends on which statutes apply to the employer.

ADA

So long as employees are not covered by the Family Medical Leave Act ("FMLA"), employers can terminate employees in many situations without violating the Americans with Disabilities Act ("ADA"). The ADA covers employers


with 15 or more employees. In general, the ADA prohibits employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

The ADA requires employers to provide "reasonable accommodations" in many situations. However, recent case law indicates that a request for an indefinite leave of absence is not a reasonable accommodation under the ADA.

In a very recent case, the Plaintiff was diagnosed with ovarian cancer approximately two days after starting a new job. The Plaintiff's doctor was not able to tell the company when she would be able to return to work, due to her course of treatment which included chemotherapy. The employer terminated her because they needed to fill the position. The Plaintiff sued, and argued that under the ADA the employer should have granted her an indefinite leave of absence as an accommodation. Ultimately, the court found against her because she could not show that she could perform the essential functions of the job, either with or without accommodation. The Court took the position that an indefinite leave of absence was not a reasonable accommodation that employer are required to offer.

FMLA

The FMLA applies to employers that have more than



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50 employees. Employees are eligible when they have been employed by the employer for a least 12 months and worked at least 1,250 hours. In general, the FMLA allows eligible employees to take up to 12 weeks of unpaid leave each year for, among other things, caring for a serious medical condition. In addition, the majority of employees who take FMLA leave are entitled to reinstatement. However, the FMLA also does not permit an indefinite leave of absence.

Workers Compensation

Like many states, New York has an anti-retaliation statute which protects employees who file for Workers Compensation benefits. This statute states that employers shall not discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him.

However, New York does not require that employers keep the position open if an employee is out on workers compensation leave. **If** the employer needs to fill the position due to **business necessity**, the employer is allowed to fill the position. Please keep in mind that if the replacement is not a necessary business decision, this will support an inference that the employer retaliated against the employee for filing for Workers Compensation benefits.

Employers should have a clear understanding of which laws apply-and what they require-before granting or denying

leave. Often differences between Federal and State rules may vary the conclusion reached. All cases are fact sensitive. For more guidance on this issue, contact this office.

Electronic Communications Can Save the Day by Supporting Terminations

Lawsuits alleging discrimination among terminated employees are on the rise. Although employers may have a legitimate reason for the termination, it would often be difficult to prove. Many situations involving insubordination or employee misconduct would be difficult to prove on behalf of the employer. But now that much of workplace communication is conducted over e-mail, voicemail, text, and instant message, this creates an electronic trail that the employer can take advantage of.

For example, the Plaintiff in Ptomey v. Texas Tech University alleged that she was terminated because of her age. Her employer argued that the Plaintiff was terminated for misconduct. To support its position, the employer was able to submit into evidence several e-mails from work colleagues that had been collected over the years. These emails detailed complaints from coworkers and described various incidents which demonstrated the employer's ultimate position that the Plaintiff was terminated because of insubordination, not her age.

Conversely, employers should remember that e-mail
Continued on following page

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PEARL *Continued from preceding page*

retention is a two-way street. E-mail and other electronic communication should always remain work appropriate. Oftentimes employees will e-mail each other “funny” e-mails that contain risqué content. Employees that retain these e-mails can later use them as evidence of a hostile work environment. These seemingly harmless e-mails can result in significant liability when the person sending them is a manager or supervisor. Specifically, employers may be held liable if the employer should have known of the conduct and failed to take immediate and appropriate corrective action.

It is important to have a very strong IT policy in relation to email and internet usage, as well as a progressive disciplinary structure for violations. It is also equally important to create an e-mail retention infrastructure so that old correspondences can be stored safely and accessed easily.

Of course, if you have any questions regarding this article, you can reach me at ABPearl@pmphr.com. •

Mike Newman To Be Feted As Rising Star



MIKE NEWMAN

Michael Newman, Director of Operations for Standard Refrigerators, Inc. and President-Elect of the Greater New York Chapter, ACCA, will be presented with the Rising Star Award by the Rising Stars Networking group at the organization’s event on Thursday, February 4, 2010.

The affair will be held at the Queens Theatre in the Park. At 5 pm with the award presentation at 7 pm.

For information on tickets, expo tables and sponsorship/participation call Maria at 718-224-5863, ext 206.

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Statement From Stuart S. Zisholtz, Esq.

Understand Discharge Bonds

One of the options available to a General Contractor or an owner when a Mechanic's Lien has been filed on the property is to arrange for a discharge bond to be procured by a surety company. The discharge bond takes the place of the real estate and permits the project to proceed or allows the owner to release funds to the General Contractor.

After a discharge bond is filed with the Clerk of the Court, the lienor must institute an action within one year to foreclose the Mechanic's Lien. When instituting the foreclosure action, the lienor must name the surety company as a necessary party to the lawsuit in order to collect from the surety company if the lienor establishes a valid Mechanic's Lien.

In a recent decision by the Appellate Division, First Department, a subcontractor established a claim against the General Contractor and the surety awarded it \$261,000 including pre-judgment interest in the amount of \$162,000 for a total sum or approximately \$425,000.

The Appellate Division, First Department modified the award of approximately \$425,000 by reducing the award against the surety company to \$288,000 representing the face amount of the discharge bond. The Court specifically held that the surety was not in default and, therefore, cannot be

compelled to pay the full amount of prejudgment interest. Instead, the surety was obligated to pay the face amount of the discharge bond which capped its liability at \$288,000. The subcontractor was entitled to collect the full amount of \$425,000 from the General Contractor, but only \$288,000 from the surety.

Under ordinary circumstances, I would not subject you to the legal ramifications associated with the intricacies of the law. However, many of you utilize various attorneys or services to file a Mechanic's Lien. Often you receive a copy of a discharge bond and never review it or do anything about it.

A discharge bond is an agreement which could be detrimental to your ability to collect all sums due including accrued interest. If the discharge bond does not incorporate all pre-judgment interest, then you will only be entitled to collect



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from the surety company the face amount of the bond.

Many times litigation could drag on for a number of years and the cost associated with pre-judgment interest could be substantial. Therefore, you must review the discharge bond and confirm that the language set forth in the discharge bond incorporates pre-judgment interest.

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. •

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