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Greater New York Contractors' NEWS



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April 2007

President's Message



Ken Ellert

Our March meeting was held at the LaGuardia Marriott on "Sound and Noise". I was very excited to see such a large turnout. Al Fierstein of Acoustilog gave a very informative demonstration of what different levels of sound and noise are and how they impact the environment. He also discussed how these noise levels are mea-

*Please turn to PRESIDENT'S
MESSAGE on page 3*

**NO APRIL MEMBERSHIP
MEETING BUT THERE IS...**

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**THURSDAY, APRIL 18, 2007
WESTBURY MANOR
SEE PAGE 8**

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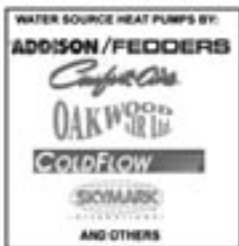


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PRESIDENT'S MESSAGE *from page one*

sured and what effect current and future NYC laws will have on how we install our equipment. I am sure that for most of us that work in NYC this problem has surfaced on many occasions. We all need to be aware of potential problems with noise before installing a system to avoid future complaints and bad relations down the road.

A quick update on health plans - The ACCA Political Action Committee along with a coalition of partner organiza-

tions were able to get association health plan legislation on the floor of the Senate. Association health plans would allow small businesses to band together across state lines to negotiate lower insurance rates, in the same way that Fortune 500 companies and unions do now. Unfortunately, this legislature has been stopped. ACCA will continue to work with the new congressional majorities to push reforms that will lower the high insurance premiums our members are being asked to shoulder. Just by being an ACCA member helps in this fight – there is power in numbers. You are also encouraged to contribute to the ACCA Political Action Committee (PAC) which is in Washington fighting for our members.

Don't forget to mark down Wednesday, April 18th in your calendar. This is our annual Casino Night and it promises to be bigger and better than before. This is a fun filled evening with some great prizes to be given away. We have already received a great response. Send in your reservations to take part in this great event.

Spring is just around the corner and we are gearing up for another summer. I hope that this will be a good and profitable season for all of us and ACCA is there to help. —**Ken Ellert**



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Joe Bonifazio, Chairman

Mark Bedson

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John Ottaviano, Co-Chairman

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Scott Berger

Web Page

Jim Carlson

Editor's Notes

By Anthony N. Carbone

It has come to my attention that many manufacturers have focused their company's marketing strategy to Indoor Air Quality. With the phenomenal marketing success of The Sharper Image, many HVAC manufacturers feel this issue is a primary concern to consumers. The \$500 plus purchase price for room unit, portable-type, air cleaners has brought big profit to this specific part of indoor life.

These products have proven to be the place where consumers will spend additional money when considering the purchase of HVAC equipment. Some manufacturers are up to the 3rd and 4th revision to their mountable air cleaners. Some claim no ozone emission; some are "certified" as being a specific MERV (Minimum Efficiency Reporting Value). Others have included UV germicidal lights with the promise of eliminating the germs in your house. Pleated media filters are now rated to allow you to know how much dust can be removed with each passage of air, also known as HEPA (High Efficiency Particle Arrestor).

In the past, the greater the efficiency or filtration resulted in less air passage through the system, also

known as pressure drop. There are many products to consider but, does the end user understand the meaning of the technical terms? Are they willing to commit to memory the idea of replacing the somewhat expensive filters? The Electronic Ionizer air cleaners of the past used to get washed in the dishwasher or hosed down. Now that was a task.

The redundant cost of continued filter replacement in certainly a boom in revenue stream that is welcome by many contractors who service these pieces of equipment. I can tell you of at least ten incidents where frustrated consumers, who had purchased collapsible media filters with combs to be installed within the pleats, were ready to throw the entire cabinet out the window.

It seems like the good old 1 inch filter is just not in season anymore but, like all trends, what is old may just be new again in the future. Until then, let's see who comes out with the most innovative, particle-removing, germ killing, fresh air breathing filter the industry has ever seen...Hey! Didn't man live in caves for millions of years and roam around outdoors in the dirty wilderness?

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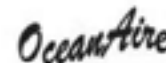
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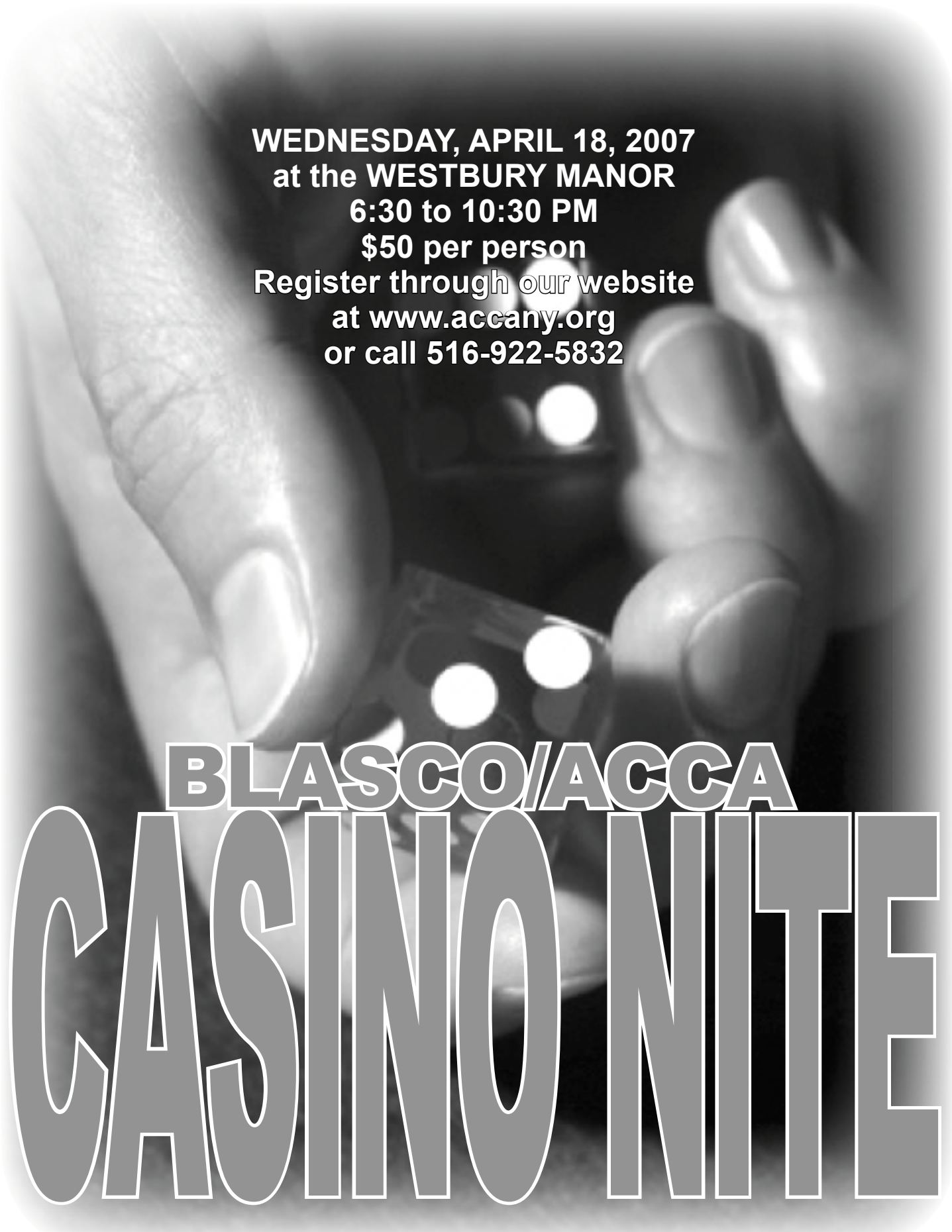
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In New York Metro area, we find ourselves repairing or (even worse), rebuilding pieces of equipment that have out-

lived their usefulness. They are being pushed towards failure. With tenants wanting every square inch, the one-time luxury is being forced out into unacceptable operating conditions. The setback roof, that once had a handful of equipment, is now as congested as our highways at rush hour.

As an industry, we need to be heard. It should be known we are being forced into practices that are contradictory to progressing forward, regarding efficiency and the environment. With all the regulations and agencies to comply with, it is time to recommend the replacement of ozone depleting, environmentally unfriendly, and what can often be classified as junk equipment. Proper space and air passages are a requirement for equipment to run at their rated efficiencies. Without proper regulations, the perpetration of faulty equipment will continue.

Many localities require approval by committee before equipment can be installed. Maybe it is time for our area to follow suit. What's your opinion? (pcaiola@aristair.com) •

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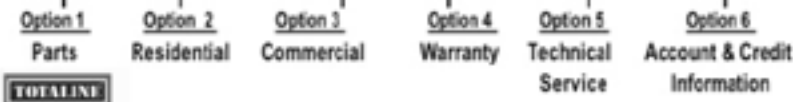
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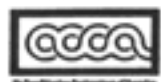
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New Developments In Employment Relations

NEW YORK WORKERS' COMPENSATION REFORM

Governor Eliot Spitzer and state legislative leaders, together with the New York State Business Council and the state AFL-CIO, announced a landmark agreement to reform the state's workers' compensation system. The agreement provides increased benefits for injured workers and reduced costs for employers. Draft legislation has been submitted to the State Assembly and Senate, and includes measures to (i) increase the maximum weekly benefit for injured workers from \$400 to \$600 over the next three years, setting the maximum weekly benefit at two-thirds of the average weekly wage in New York state in the fourth year, and adjusting it annually thereafter; (ii) increase the minimum weekly benefit from \$40 to \$100; and (iii) reduce employer costs by limiting the number of years during which cash benefits will be available in permanent partial disability cases, and by closing the expensive Second Injury Fund -- a Fund that is used by insurance carriers to avoid paying claims and currently financed by assessments passed through to employers. In connection with this reform package, the Superintendent of Insurance has been directed to ensure that savings to employers be reflected in premium rate reductions beginning in the next rate-setting cycle, concluding this coming July. Premium and assessment savings associated with the elimination of the Second Injury Fund is expected to provide significant relief to New York's small business community.

EEOC'S NEW E-RACE INITIATIVE

The Equal Employment Opportunity Commission (EEOC) announced a new national initiative called E-RACE, Eradicating Racism and Colorism from Employment. In fiscal year 2006, more than 27,000 charges of race discrimination were filed with EEOC offices nationwide. Under the new E-RACE initiative, the EEOC will use administrative and litigation procedures to combat and correct employment practices that discriminate against individuals and classes based on race and color; enhance public awareness of the persistence of race and color discrimination in employment through education, training, and outreach; and partner with stakeholders and employer groups to implement best prac-

tices that foster inclusiveness and diversity. According to the EEOC, Race and Sex Discrimination and Retaliation were the most frequently filed cases in fiscal year 2006. The EEOC recovered approximately \$274 million in monetary relief for charging parties during this period. This included \$44 million from litigation and \$230 million from administrative enforcement.

TITLE VII STANDARD EXPANDS RETALIATION CLAIMS UNDER OTHER LAWS

As a result of the recent Supreme Court decision in Burlington Northern & Santa Fe Railway Company v. White, just about everyone is aware by now that retaliation claims are becoming more and more common and more and more costly for employers to defend against.

According to EEOC statistics, in 2005, almost 30% of all of the discrimination charges filed with the agency contained retaliation claims. In 2004, the resolution of retaliation claims by the EEOC resulted in \$90 million dollars in payments from employers.

A retaliation claim under Title VII consists of an adverse action that an employer takes against an employee because he or she has complained of discrimination or harassment. The Supreme Court's decision in Burlington defines "adverse action" as any action taken against an employee who has complained of discrimination or harassment, if that action would dissuade a reasonable employee from making or supporting a charge of discrimination. If the adverse action is close in time to the employee's complaint, it is likely to be considered retaliation.

Since the Burlington case was decided in June 2006, federal courts across the country have applied the standard to Title VII discrimination cases. However, employees are protected from retaliation under several other laws. Recently, the new definition of "adverse action" has been applied to retaliation claims brought under the Americans with Disabilities Act and the Family and Medical Leave Act.

CHANGE IN NEW JERSEY'S LAW AGAINST DISCRIMINATION TO TAKE EFFECT JUNE 17, 2007

On December 16, 2006, Governor John Corzine signed a law amending the New Jersey Law Against Discrimination (LAD) to add "gender identity or expression" to the list of characteristics protected by the law. "Gender identity or expression" is defined in the new law as "having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth." For example, transsexuals -- individuals who seek to live as a member of the opposite sex by changing their physical characteristics, and transvestites -- individuals

who dress and behave similar to the opposite but who do not change their physical characteristics, as well as people who identify themselves as neither specifically masculine nor feminine. In response to this new law, employers should consider updating their New Jersey EEO policies to include "gender identity or expression" in the description of protected categories. EEOC training materials should also reflect this new change in the law.

CHANGES TO THE NEW YORK CITY ADMINISTRATIVE CODE

Penalties for first time violations of New York City's Human Rights Law by employers were recently increased. It was unfortunate that the New York City Council passed these draconian penalties. All the more reason to be careful if your

business is based in the five boroughs of Manhattan.

What does this mean for ACCA's membership? Well, the first thought that is front and center is, When was the last time you conducted supervisory training? If the answer is more than eighteen months ago, you need to address the issue promptly. Second, it brings to mind the need to update your EEO policy on harassment (all forms). Check employee records to see when your policy was last distributed and signed for by each and every employee, including all members of your management team. Third, check your Employee Handbook's table of contents to see that recent topics (e.g. blogging) have been inserted. That's the best preventative advice.

As always, should you have any questions concerning these or any other topics, please do not hesitate to contact Alan Pearl at 516-921-3400, or at abpearl@pmphr.com. •

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Statement From Stuart S. Zisholtz, Esq.

This is the first of a series of articles that will be written on the issue of the American Institute of Architects (AIA) and American Arbitration Association (AAA) for contracts that should be of interest to everyone in the construction field. The number of articles that will be written will depend upon the response that I receive from readers. As it stands now, I anticipate that there should be about six or seven articles, and they will be published in forthcoming issues.

There is an unholy alliance between AIA and AAA.

AAA wormed itself into the AIA contracts so that whenever a contract is written, the AAA becomes the forum for resolution of any disputes. In my opinion this is not only

disastrous to many people in the construction industry, but it is scandalous.

Wherever And Whenever Possible, Stay Away From Both The AIA Contract And AAA. Stay Away, Stay Away, Stay Away.

The AIA Contract

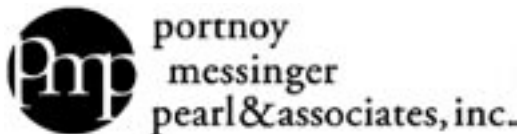
The AIA has prepared three forms of contract. One is between the owner and a general contractor, the second is between the owner and a construction manager and the third is between a general contractor and the subcontractor.

Uniformly throughout all three of these contracts, you have provisions making time of the essence, resolution of disputes before the AAA, and the G.C. subcontract subject to the terms and conditions of the contract between the owner and the G.C.

Each of these points will be discussed in greater detail in this and future articles.

When you go out to bid a job, your concentration and your attention is on the specs, your estimating, your time frame and your payment schedule. You are zeroing in on the issues that pertain to your particular trade. You want the job and you are working hard to get it.

After an enormous effort to bid the job and get it, you can find all of your efforts blown away because the contract is not what you thought it would be or is something that



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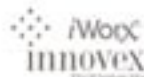
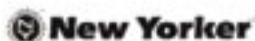
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you should have known or did not.

After all the negotiations are completed, the G.C. slips you an AIA contract. He does not do it intentionally. He might not be dishonest about it and he might not even know what he is doing, but you have an AIA contract. This is to "save time". You knock your brains out to get the job and all of a sudden you are going to "save time".

One of the major pitfalls in the G.C. subcontract is references to the contract between the owner and the G.C. Just as you have a contract with the G.C., the owner has a contract with the G.C. By incorporating by reference the owner's contract with the G.C., you are in effect taking responsibility to comply with the contract between the owner and the G.C., and you have never even seen it and you know nothing about it. Then, when it turns out that there is dispute and you want to assert your rights, the owner-G.C. contract is thrown in your face.

That contract might provide that the architect has to decide all disputes and his decision is final and binding. You never wanted that, but you got it anyway.

That contract might also provide that you have to bring your claim where the owner is located. That could be in Chicago, Philadelphia or Dallas. You never wanted that either.

The contract might provide that if the G.C. defaults, the owner has to pay nothing. You have nothing at all to do with

that. You are not a partner with the G.C. in his deal with the owner. You are doing your work. You are bound by that.

Typically you spend days and possibly weeks estimating a job and putting all your figures together. Do not "save time" by throwing that all out the window on an AIA contract that could have pitfalls and traps all over the place. If there is something in the contract that you do not understand, raise the issue before you sign the contract. If you have the plans and you do not understand them or there was a deviation or some type of aberration, you would certainly call it to someone's attention. Do not be afraid to do the same thing with regard to the contract. There is no "time saving" in letting everything go down the tubes.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and Payment Bond Claims, feel free to contact me or the Association.

Disclaimer - the foregoing statement is for general information and is not intended nor should it be construed or applied to specific instances or specific cases for which the reader is directed to consult his/her private legal advisor.

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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