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Greater New York Contractors' NEWS



www.accany.org

April 2008

President's Message

I would like to thank everyone who attended our March meeting. The turnout was terrific, and attendees were presented



Ron Nathan

with informative and interesting guest speakers. Stewart Zisholtz spoke about mechanics' liens and provided handouts on the subject. AFLAC representative Ray Kober discussed disability protection offered through his company. Bill Hollis from NCO Receivables Management Solutions was pres-

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PRESIDENT'S MESSAGE *Continued from page 1*

ent to talk to us about collections. He provided members with a handout entitled "101 Credit and Collection Tips and Techniques." Many thanks to all our speakers for taking the time to educate our ACCA members.

Spring is just around the corner. I am sure we are all gearing up for a busy, successful season. In addition to providing invaluable educational and professional information to our members, the Greater NY ACCA Chapter is planning activities that are guaranteed to provide you with fun and relaxation.

Feeling lucky? We will kick off the entertainment with Casino Night on April 3. This has been a popular event in the past for all members and their adult guests, whether experienced gamblers or not. Friendly casino dealers will instruct you on the rules of your chosen game. Be prepared for some lively trivia contests in addition to casino table games. Use your supplied ACCA play money to gamble stress free, and turn in your winnings at the end of the night for some chances to win numerous prizes. Join us at the elegant Westbury Manor on Jericho Turnpike in Westbury, NY on Thursday, April 3 from 6:30 to 10:30 pm for an evening of food, drinks, fun and prizes. The cost is \$50 per

person. Register online at www.accany.org or call 516-922-5832. Hope to see you there!

Anthony Carbone is arranging for a Greater NY ACCA Chapter evening dinner cruise for Thursday, June 12. Our excursion will depart from Port Washington, cruise along the fabled gold coast of Long Island, and travel past the magnificent Manhattan skyline and the inspirational Statue of Liberty. This is sure to be an evening to remember! Details will follow in a future newsletter.

Also on our agenda is a Mets game scheduled for Friday, August 8. Anyone who has ever attended this event will tell you how enjoyable it is. Let's Go Mets – see you at Shea Stadium!

Remember to keep up to date on the latest information about our chapter by accessing www.accany.org. There are links to local and national ACCA programs and services important to you, your business, and your customers. You can also find calendar items, register for programs, and view photos from past events. We welcome all qualified contractors to join our organization. Our association gains strength as our numbers increase so we may protect and promote our contractors and their interests, and provide them with beneficial services. Please tell your associates about the great value of being a member of the Greater NY ACCA Chapter. — **Ron Nathan**

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Chapter Sponsors DeLillos In Disney Half Marathon

Executive Director John DeLillo, running with his daughter Christina and son John, were our representatives at the Disney Mini Marathon January 12 in Orlando, Fl. The Greater New York Chapter contributed \$1,000 to sponsor our runners in the event which benefited the Leukemia and Lymphoma Society. Nationally some \$5.3 million was raised over the two-day annual Disney Marathon Weekend, which includes a full

marathon as well as the mini.

We are proud of the DeLillos who gave their energy and carried the New York ACCA banner in this worthwhile charitable event.

In small photos, clockwise from left, John, Christina, John Jr. as they crossed finish line. Larger photo is of their group, Team JSR, which raised a total of \$48,000.



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Editor's Notes

By Anthony N. Carbone

The monthly ACCA Metro New York programs are drawing large attendance these days. For March, at the LaGuardia Marriott, we had multiple speakers. First, Ray Kober did an associate presentation for the company he represents, which is AFLAC. This employee sponsored pre-tax additional insurance protection has had great marketing success with the AFLAC duck.

The following speaker was cash flow expert Bill Hollis, of NCO Group. He systematically detailed methods of collecting outstanding balances using his strategy for proven results. Executive Director John DeLillo added you must train your clients to understand what's expected of them when receiving your bills. And, if all else fails, our newsletter contributor, Stuart Zisholtz, followed up by describing how the lien laws will persuade your clients to pay their debts with a little help from

the judicial system.

The value of this 90-minute presentation of quality speakers is only available at the Greater New York Air Conditioning Contractors of America. The cocktail hour alone is an opportunity to see how others in our industry are experiencing the impact of this recession economy. We are in an economic downturn, as I had previously described, and the shake out will be real and long lasting. If you are asleep at the wheel during this economic storm, you may find yourself in a ditch, with no way out.

Some of the seasoned contractors are describing these times to be as bad as 1972. Some contractors were just children in 1972 and are wrestling the first real change of business, combined with a change in refrigerant, replacement of equipment and an emphasis on energy efficiency and environmentally friendly "green" products. These are changing times. Can you afford not to attend our monthly meetings? Well, you might be able to afford it, if you win big at our 3rd Annual Casino



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Night at the Westbury Manor.

Heads Up

Recently, at our last Board of Directors meeting, I presented a mailing that was sent to my office by KeySpan Home Energy Services. Instead of soliciting homes, though, they were trying to attract small business for service agreements. They introduced it as “The Premium Plus Service Plan” 24/7 Call Center, Parts & Labor Protection with equipment discounts.

Now I have been writing and criticizing this utility subsidiary for many years. They have impacted the residential contractor due to their lack of transparency between the regulated utility (KeySpan Energy Delivery) and its service arm subsidiary with the near identical name and logo (KeySpan Home Energy Services). Many commercial contractors didn’t feel the loss of business or the confusion the consumer was experiencing because the strategy wasn’t to pursue small business accounts.

Well, when I presented this at our last Board of Directors meeting, many were quite surprised and are now concerned. Some have even been contacted by their commercial clients with questions about those offerings.

With the recent sale of KeySpan Energy to London-based National Grid, I had thought the strategy would be to concentrate on the sale of the natural gas commodity and begin to push away or potentially sell the subsidiary to another company. Instead, a shift in corporate strategy from what I can see is to further pursue and alienate the independent contractor.

The official name change will begin in April 2008 to National

Grid. Let’s see what other agendas will be unveiled in the months to come. So if your Mom & Pop small commercial customers start asking questions about “KeySpan,” know it’s because they just received a mailing from the behemoth utility...subsidiary!

— Anthony N. Carbone



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By Alan B. Pearl,

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I would like to be optimistic and report only positive news to the ACCA membership. However, at times, the news to be reported is not positive – the following warnings speak only of increasing penalties, assessments and fines. This is one of those times that the latter subjects are of interest to all employers, whether small, medium or large corporations.

Increased Penalties for Violations of Immigration Laws

On March 27, 2008, a new regulation will take effect increasing the penalties against employers who violate federal immigration laws. Under the Immigration Reform and Control Act of 1986 (IRCA), employers who violate employment eligibility requirements are subject to civil

penalties. Employers are subject to fines for knowingly employing undocumented workers, failing to comply with the requirements for employment eligibility verification forms (I-9 forms), discriminating against job applicants or employees on the basis of their nationality or citizenship status, and for document fraud. Under the new rule, civil penalties for knowingly hiring an undocumented worker will increase from the present range of \$275 to \$11,000 up to the new range of \$375 to \$16,000, and the penalties for document fraud will increase from the present range of \$275 to \$5,500 up to the new range of \$375 to \$6,500. The penalties for improperly completing the I-9 form remain the same at a range of \$110 to \$1,100. Best practices: review I-9's for accuracy and store them separately from



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Crackdown on Misclassified Workers

Last October, Governor Spitzer announced an initiative that New York State would aggressively pursue employers who pay employees "off the books," and who misclassify employees as "independent contractors" in order to avoid payroll costs such as unemployment insurance taxes and workers' compensation premiums. Since then, there has been a state-wide crackdown on employers. State investigators have uncovered \$19 million in unreported wages and \$3 million in underpayments to employees. These underpayments result in substantial revenue losses to the government, both in the form of income tax withholding and unemployment insurance taxes. Penalties for the misclassification: back taxes,

back wages, unpaid workers' compensation premiums, and additional penalties. California has its own initiative – just last month the Department of Labor raided every car wash in each large city to check for violations including I-9 violations. It is time to take this issue seriously.

Business Expense Reimbursement Plans

Under IRS regulations, employers are allowed to reimburse their employees for business-related expenses, such as tools and equipment, on a tax-free basis if they meet certain requirements. In order for a reimbursement to be tax-free, the employer must make the reimbursement under an "accountable plan." There

Continued on page 10



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People & The Workplace

Continued from page 9

are three requirements for the plan: (1) the expense must have a business connection, meaning that it was incurred in the course of performance of the employee's job; (2) the employee must adequately account for the expense within a reasonable period of time, i.e. produce a receipt; (3) the employee must return any excess payment within a reasonable period of time. Unless these three requirements are met, reimbursements made to employees for "business expenses" are treated as additional wages, subject to all employment taxes. The IRS recently issued an announcement addressing tool reimbursement plans, stating that many of the plans being marketed currently do not meet the three requirements of a tax-free plan. According to the IRS the plans are designed and operated in a way that recharacterizes the employees existing pay as a "reimbursement" for tools, merely to generate tax savings for both the employee and employer. Employers who provide reimbursement to their employees for tools used in connection with the performance employee's job should make sure their "plan" meets these three qualifications. If the plan does not meet these requirements, employers are subject to back taxes, penalties and interest on the payments made to employees that should have been treated as wages.

Exempt and Non-exempt Employees

Finally, I revisit a subject that is once again at the top of the litigation list in 2008, as it was in 2007; are your employees properly classified as exempt or non-exempt under the wage and hour laws? In this article, I will start with proposition #1 and in succeeding articles, outline the rules of exempt vs. non-exempt employees.

Proposition #1

If you pay by the hour, you must pay for overtime hours, regardless of the employee's job duties. Illustration: if you pay your office manager hourly (admittedly, a person who holds this job title is exempt), you owe him or her time and a half for all hours worked in excess of 40 hours a week. Why? The office manager's compensation structure fails to meet the salary basis requirement of the administrative exemption because they are paid on an hourly basis.

If you have any questions or concerns regarding any of the articles, or if you would like a copy of PMP's Exempt Status and Independent Contractor questionnaires, please do not hesitate to contact Alan Pearl at (516) 921-3400 or abpearl@pmphr.com.

This issue reviews employment law issues. It is designed to provide accurate and informative information, but should not be considered legal advice. •

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James Pappas, Named Crohn's & Colitis Foundation Man of the Year

The Board of Trustees of the Crohn's & Colitis Foundation of America, Inc. (CCFA), Long Island Chapter, has announced that James A. Pappas (Jamie), the Chapter's Immediate Past President and longtime advocate, will accept the 2008 Man of the year Award at its Spring Gala, May 9, 2008 in the Grand Ballroom of the Garden City Hotel. Mr. Pappas is president and COO of P.J. Mechanical. Always an outstanding event, this year's Gala, promises to break all records for attendance as the philanthropic community of Long Island's Gold Coast and New York City's Real Estate and Construction industries prepare to fete one of their favorite sons.

For information about the Gala, call 516-222-5530. •



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Record-setting fuel prices are making everyone more aware of the need to be more cost conscious. But for businesses with mid-size fleets, soaring fuel costs have added significantly to operating expenses. As a result, companies must take a harder look at how they can increase efficiencies by reexamining routes and paying more attention to reducing fuel consumption through proper vehicle maintenance and operation.

Sometimes the simplest things can make a difference. And even saving just a few gallons of gasoline every week can add up to a substantial savings at the end of the year when multiplied by the number of vehicles in a company's fleet.

In addition to maintaining recommended tire pressure, checking wheel alignment, having regular oil changes and driving sensibly, it can help to transport large items inside the vehicle instead of using roof-mounted racks, which can increase wind resistance and require more fuel.

Get more miles per gallon by remembering the following:

- Keep tires properly inflated. Under-inflated tires create more rolling resistance on the road, which decreases gas mileage and shortens tire life due to improper wear. Since tire pressure changes with temperature, you should check and adjust pressure when the tire is cold and when the vehicle has been sitting for a couple hours. Because information printed on the tire's sidewall may not be the optimum pressure for your vehicle or driving situation, the most accurate places to find out about proper tire pressure is on a label inside the driver's door or in your vehicle's owner manual.
- Check wheel alignment periodically. Misalignment can be caused by hitting potholes, curbs and bumps, worn steering or suspension components and deterioration from aging of suspension parts. Not only does misalignment increase rolling resistance and reduce fuel efficiency, it also causes additional wear and tear on tires. Wheel alignment should be checked every 12,000 miles or once a year, whichever comes first.
- Select the right oil for your engine. Using the correct viscosity oil is important because higher viscosity oils create greater resistance to the moving parts of the engine and require more gas. Changing oil every 3,000 to 5,000 miles not only is a good maintenance policy, but it is also good for fuel efficiency. Extended oil change intervals cause engine sludge, which also decreases efficiency and fuel mileage.
- Adjust driving style to save gas. Smooth, steady ac-

celeration from a stoplight or stop sign uses fuel more efficiently than quick "jack rabbit" starts. Drivers also can increase fuel efficiency by shifting to higher gears at the lowest practical speed for standard transmission and accelerating gently with an automatic transmission. If vehicles are equipped with overdrive and/or cruise control, these should be used when appropriate. Also, making sudden starts and stops, revving the engine and excessive idling significantly lowers gas mileage. And, according to a United States government Web site, www.fueleconomy.gov, "each 5 mph you drive over 60 mph is like paying an additional \$0.15 per gallon for gas."

- Remove excess weight. Using roof-mounted racks and keeping unnecessary items in your vehicle, especially heavy ones, increases rolling resistance. The U.S. government estimates that an extra 100 pounds in your vehicle can reduce your mpg by as much as 2 percent, based on the percentage of extra weight relative to the vehicle's weight, which affects smaller vehicles more than larger ones. A good rule of thumb is, when possible, to carry large items inside the trunk or vehicle, and remove items when you don't need to carry them.

The high price of gas is not likely to be coming down anytime soon and that means it is more important than ever to do all you can to help reduce fuel consumption, increase fuel efficiency and save money.

Daniel B. Brothers is an Account Executive for Enterprise Fleet Management in New York and is a member of the Board of Directors of the Greater New York Chapter of ACCA. He can be reached at 516-739-5487.



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Statement From Stuart S. Zisholtz, Esq.

Mechanic's Liens and Private Payment Bonds

As all of you know, there are two types of construction Mechanic's Liens, private improvement and public improvement.

In a private improvement project, the lien owner's property is placed in jeopardy when you file a lien. If you are a general contractor, you attach the owner's property. As a subcontractor, you attach the owner's property but only indirectly and only to the extent that the owner may owe money to the general contractor. The ultimate result is a Judgment in Foreclosure and the sale of the owner's property.

In a public improvement project, the target is any money that is being held by the governmental agency for the account of the general contractor. A general contractor has a claim against the municipality or governmental agency, and the subcontractor has a claim only for whatever money the government may owe to the general contractor. The ultimate target is not the property owned by the municipality such as a school or a police station or hospital, etc., but the monetary balance that the governmental

agency is holding for the account of the general contractor.

What do you do in a situation where the municipality owns the land but the building that goes up on that land is owned privately. We had that case with the Marriott Hotel in Uniondale. Mitchell Field was a U.S. Government airport that was "sold" after World War 11 to Nassau County with the proviso that Nassau County is never to relinquish or divest itself of the property.

The Marriott Hotel was built on Mitchell Field and we had a Mechanic's Lien for some \$670,000 because the developers of the Marriott Hotel failed to make payments. The project was financed by the Industrial Development Administration (IDA), which was the nominal owner of the facility only for the purposes of getting financing.

We did not file the lien but some other lawyer did and named Nassau County as the owner of the property. That lien was discharged on the ground that the lien was improperly filed against a piece of property belonging to the County of Nassau.

The Court knocked out the lien and that was affirmed by the Appellate Division. Ultimately, however, we were able to collect because there was a private payment bond.

Now we have other situations, such as the renovation of property in the City of New York, where the City of New York owns the property and leases it to a private developer. This took place in the Times Square area where Tishman leased the property from the City and in turn sublet it out to three of four



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separate entities of the Loew's Corporation. Five corporations away from the City of New York, a Loew's subsidiary entered into agreement to do construction and all of those liens were knocked out because the City owned the property, notwithstanding that there was no money coming out of the City, there was no exposure of liability to the City and there was not a possibility that the City could in any way be damaged.

To correct that inequity, our learned legislators in Albany created an amendment to the Lien Law that provides as follows:

"Where no public fund has been established for the financing of a public improvement with an estimated cost in excess of \$250,000, the Chief Financial Officer or public owner shall require a private entity for whom the public improvement is being made to post, or cause to be posted, a bond or other form of undertaking guaranteeing prompt payment of monies due to the contractor, his or her subcontractors, and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement"

The law became effective on November 18, 2004.

In effect, this law attempts to create a situation that existed with the Marriott Hotel in Uniondale, except that with the Marriott hotel the bond was filed voluntarily. To any one who does business with a tenant of a municipality this amendment offers a modicum of relief. It does not authorize the filing of a

Mechanic's Lien which, in itself, is strange because the Lien Law provides that a lessee is also considered an "owner".

In any event, I caution everyone to make sure that when you sign a contract you find out if there is a bond and get a copy of the bond. That will solve a lot of problems and save a lot of grief later on if there is a falling out among the parties.

Never Let Your Lien Timer Lapse Or Expire!

For a free copy of a pamphlet pertaining to Mechanic's Liens or payment bond claims, feel free 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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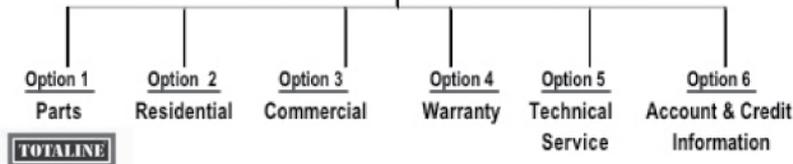
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