

IN THIS ISSUE...

- 1 President's Message
- 1 Baseball, Golf Reminder
- 4 Editor's Notes
- 6 Driven To Distraction
- 8 Night Out With Mets Promo
- 9 Golf Outing Promo
- 10 Pearl - Cope Without Layoffs
- 15 Zisholtz - Strike Out Arbitration Clause

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Greater New York Contractors' NEWS



www.accany.org

JULY 2009

President's Message

Our Greater New York Chapter of ACCA's networking cocktail party held on June 10 was a great success. The interest shown and the number of attendees was



Ron Nathan

terrific, and everyone seemed to be taking advantage of the casual setting at Louie's Oyster Bar and Grille to meet new people and exchange information. We hope to make use of this networking concept again in the future since it did prove to be such a popular option for a monthly meeting format.

The National Grid and LIPA Educational and Energy Efficiency Trade

Turn to President's Message on page 3

The Greater New York Contractors' News does not publish in August. Our next meeting will be September 10th at the Westbury Manor.

Don't Forget the Chapter's
*Night Out With The Mets On
Friday, July 10th, Sponsored in large part by
ABCO Refrigeration Supply Corp.*



*The ACCA 31st Annual
Golf Outing is on Monday, August 17th at
The Hamlet Golf & Country Club in Commack.*

Register Online At www.accany.org.

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

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PRESIDENT'S MESSAGE *Continued from page 1*

Expo held on Wednesday, June 3 at the Hilton Long Island in Melville was well attended, and the consensus was that this was a highly successful and educational event.

Coming up on Friday, July 10, will be our annual Night at the Mets at the new CitiField. I hope you have already reserved your seats, because tickets for this evening of baseball have already sold out. Our sponsor for the game is ABCO Refrigeration Supply Corp. Look for the ABCO truck before the game and pick up your complimentary gift.

The ACCA Golf Outing will be held at the Hamlet in Commack on August 17. Please visit our website at www.acca.org for more details and to sign up for your spot in this enjoyable day of golf, food, friends and fun!

Mark your calendars to attend the 2nd Annual National HVACR Service Managers Forum and the 6th Annual Commercial Contracting Roundtable to be held at the Hilton Riverside in New Orleans on October 1 and 2. Last year's Forum drew a wide variety of participants including service managers, company owners, service and installation personnel, and operation managers and allowed them to meet, network and learn from each other in a friendly environment. A series of all-new workshops will educate attendees in successful leadership and management techniques, energy services, green retrofitting and

many other topics relevant to the new opportunities and challenges of the HVAC industry. Please visit the ACCA website at www.acca.org for more information.

No matter how busy we are at this time of the year, the economy is foremost in our minds. People at all walks of life are finding it difficult to pay their bills. What can you do to successfully collect the debts owed to your company? There are some steps you can take in an attempt to settle an account before having to turn it over to a collection agency.

Before contacting someone who owes you money, be sure you have reviewed all the relevant paperwork and made notes for yourself of major points you want to stress. Have all the information readily available for reference during your conversation with the debtor. Be sure you contact the decision maker of the company and maintain a professional attitude at all times. Stay in control of the conversation. Be clear why you are calling and what you expect as a result of your phone conversation. Some flexibility may be required to reach a solution to which you can both agree. If a payment schedule is decided upon, be very specific as to dates and amounts. Take notes of all conversations and be sure to include names, dates and specifics. If your debtor does not follow through on your agreement, those notes will help you recover your money if you have to make a legal claim or file with a collection agency.

—Ron Nathan

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Editor's Notes

By Anthony N. Carbone

It's been a long time since those two 90 degree days hit the New York metropolitan area in late April. It looked like the HVAC industry would get a greatly needed shot in the arm. Phones were ringing and the slow gradual start to the season seemed to be out of the question; instead, all units were being turned on simultaneously. A deluge of no A/C calls were flowing in. Limping units of 2008 were being put to rest.

Then came spring...then came spring...and then came the clouds, cool weather and the rain...and the rain. Well it rained 20 out of 24 days in June. The temperature remained cool, mostly 56 degree evenings and 66 degree day temperatures. This lack of sun and heat put all HVAC contractors into a holding pattern. We were waiting and sitting with equipment ready to be pulled from our warehouses.

Now in the northeast, everyone is aware we really only have a 10 week season of intense heat with most emphasis at the beginning of the season. We

hope many will fret over the early heat and succumb to the pressure of brutal weather to put in central air. Well this year many were hedging their bets and waiting this out. With a lean uncertain economy, many have chosen to hold on to their money and do nothing. This will certainly collapse many marginally capitalized companies. With overhead costs mounting and a trickling flow of income, this is the recipe for trouble.

Well, as many of our financial advisors have stated, "recessions are efficient." Recession combined with a slow, dwindling summer season; this could be the equivalent of "the perfect storm."

It was a pleasure to see so many new faces at our cocktail party at Louie's Oyster Bar in Port Washington for our June meeting. It was a great opportunity to compare thoughts and experiences with associates from our industry. I want to wish all of you a prosperous summer season and may the summer begin...soon... **Anthony N. Carbone**

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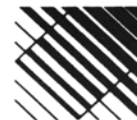
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Good Drivers Are Driven to Distraction

By Kelly Hiner, *Enterprise Fleet Management*

Driving performance is affected more by cell phone use than previously realized according to a recently released study from the National Safety Council's Journal of Safety Research. But for commercial drivers who must frequently deal with distracting activities as part of their job, the results are particularly noteworthy.

The study notes that for commercial drivers, in-vehicle tasks can affect safety, as well as drivers' perceptions of their own performance. The study also outlines the steep costs to employers of off-the-job crashes due to distractions, compounded by a nationwide increase in the length of daily commutes.

Forty-one drivers participated in the study by demonstrating their abilities in three key areas: lane keeping, speed control, and quick response to a changing traffic light. First, they demonstrated these abilities while performing relatively easy tasks such as recalling, adding and repeating simple numbers. Next, they demonstrated their abilities by performing more complicated activities such as developing and asking yes-or-no questions to identify objects while driving.

The study concluded that drivers are not aware of their own performance loss due to distractions. Specifically, "results showed that the more difficult activity reduced driving safety more than the easier one. Yet, they also showed that drivers did not recognize one activity as more difficult than the other and estimated no difference between the activities' affect on their driving abilities."

National Safety Council President and CEO Janet Froetscher specifically identified cell phone use while driving as one of the most urgent safety issues. In January 2009, the National Safety Council (NSC) became the first national organization to suggest a total ban on cell phones while driving. The NSC based its decision on scientific estimates that "cell phone use while driving contributes to 6 percent of crashes – or 636,000 crashes, 330,000 injuries, 12,000 serious injuries, and 2,600 deaths each year. The same research put the annual financial toll of cell phone-related crashes at \$43 billion."

According to Froetscher, hands-free devices don't make cell phones any safer based on several studies indicating that the principal risk is the cognitive distraction. "Studies also show that driving while talking on a cell phone is extremely dangerous and puts drivers at a four-times greater crash risk," Froetscher stated.

The study, led by William J. Horrey of the Liberty Mutual Research Institute for Safety, based in Hopkinton, Mass., is available by entering the title "Journal of Safety Research, Volume 40, Issue I" at www.sciencedirect.com.

Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. •

Revised "Understanding Manual D" Released By ACCA

The Air Conditioning Contractors of America has released a new edition of its most popular computer video training package, "Understanding Manual D."

"Understanding Manual D" is a 5-CD computer video training package that explains airflow and duct design principles in plain English, using real world examples to help people apply proper design principles for residential duct systems.

ACCA has now released a completely revised version of this popular training package, incorporating new elements from the 2009 5th edition of Manual D. "Understanding Manual D" now covers such additional concepts as installation of flexible duct, with emphasis on the negative effects of sag and compression; and duct system efficiency in regard to duct shape and material.

"Understanding Manual D" is split into five parts, allowing the user to stop and start at his own pace, and each disc includes appropriate handouts for easy printing and review. The program is taught by noted industry trainer Jack Rise, known nationwide for his ability to make complex technical concepts easy to understand.

Already used by hundreds of contractors, schools, utilities, and distributors, the new edition of "Understanding Manual D" is now available for purchase online at www.acca.org/hvacessentials/ or by calling 888-290-2220. •

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How To Cope Without Lay Offs

Many employers are struggling in the current challenges of the economy. Employers are facing difficult cost-cutting decisions on a daily basis in an effort to survive. However, there are many advantages to looking at choices other than reductions in force (RIF). Layoffs can take a toll on employee morale, because management becomes an adversary. Further, employers could lose valuable and time tested employees.

While a workforce reduction certainly is an alternative for many employers, it is an unpleasant option that takes an economic and emotional toll. Workforce reductions often require the company to provide employees with notice required by statute or contract. In addition, employers often spend a significant amount of money in severance payments to employees who are included in the workforce reduction. In addition, carelessly planned RIF's may create liability under discrimination statutes, thus squandering important resources such as time and money to defend claims.

It is important for employers to see that there are alterna-

tives to workforce reductions. Many of these options allow employers to accomplish some or all of their economic goals without taking a measure as extreme as reducing their workforce. These alternatives include:

- Limiting overtime;
- Reducing work hours of non-exempt employees;
- Temporary furloughs; and
- Shared work programs.

Eliminating Overtime

Pursuant to federal and state laws, nonexempt hourly employees must be paid 1.5 times their regular rate for hours worked in excess of 40 hours per week. Therefore, an option for employers looking to cut costs without reducing their workforce is to prohibit employees from working overtime hours. To the extent that an employer does not already have such a policy in place, the employer should implement a policy prohibiting employees from working overtime without prior written authorization from the company. The employer then needs to make sure that its managers strictly enforce this policy. The unused overtime hours can be transferred to other employees who need the work in order to have a full work week.

If the employer's workforce does not work a lot of overtime hours, then the employer may want to consider reducing its employees' regular hours. For example, an employer seeking to reduce labor costs might reduce the hours of its workforce by

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10% to 20% in order to keep its employees gainfully employed, albeit at reduced pay. Prohibiting overtime and reducing work hours will allow an employer to cut costs while keeping its entire workforce employed. This will allow the employer to remain prepared when the time comes to increase production, and to maintain employee morale by avoiding a RIF.

Reduction in Compensation

Employers may be surprised to hear that employees may not put up too much resistance to a slight pay reduction. With careful crafting, the employer can present it as a strategy to avoid layoffs and keep departments together. When faced with the choice of having their pay reduced by a certain percentage or losing their job, most employees will choose the former.

Before implementing a compensation reduction program, the employer should carefully analyze its payroll and set reasonable goals. Although employees may be willing to accept a single round of salary reductions, the employer runs the risk of alienating its workforce and giving employees an incentive to jump at the first opportunity to work elsewhere if the employer miscalculates its payroll reduction goals and is required to implement multiple compensation reduction programs.

Temporary Furloughs

A temporary furlough is a short period during which an employee is required to take an unpaid leave of absence. The employee remains an active employee of the company, but is not required to report to work during the furlough and is not paid during such time. A furlough can take a variety of different forms. For example, some employers require employees to take furloughs in daily or weekly increments. Some companies shorten the employees' work week to three or four days.

Furloughs have been commonplace in certain industries during economic downturns, including retail and manufacturing. Temporary furloughs can provide employers with a number of benefits. Employers can save a substantial amount in payroll costs and related expenses. They also can avoid the expense of providing employees with the severance payments commonly offered in a workforce reduction. In addition, employers can keep their skilled workers at a reduced cost as opposed to losing those workers permanently through a layoff.

Finally, by keeping their employees through the use of furloughs, employers can remain prepared to take advantage of an increase in demand by having numerous experienced and well-trained employees ready to resume a full-time schedule.

Shared Work Program

Some states, like New York, encourage optional shared work programs. Rather than laying off a percentage of the workforce to cut costs, an employer can reduce the hours and

wages of all or a particular group of employees. The employees whose hours and wages are reduced can receive partial unemployment insurance benefits to supplement their lost wages.

To participate in New York's Shared Work Program, an interested employer designs a Shared Work plan and completes and submits an application to the Unemployment Insurance Division in Albany, New York. The plan can cover the employer's total workforce, a particular shift or shifts, or a work unit or units. Applications should be submitted at least two weeks but not more than four weeks prior to the proposed effective date.


Any New York employer who has five or more full-time employees and who with any predecessor has been liable for unemployment insurance purposes for at least four completed calendar quarters may apply to participate in the Shared Work Program. The employer's plan must meet the following basic requirements:

- The employees' hours and wages must be reduced at least 20% but not more than 60%.
- Only full-time employees who normally work between 35 and 40 hours per week are eligible to participate.
- The employees' fringe benefits cannot be reduced or eliminated.
- The plan cannot exceed 53 weeks.
- The employer cannot hire additional full-time or part-time employees for the work group covered by the plan.
- If the employees are covered by a collective bargaining agreement, the collective bargaining agent must approve the Shared Work plan.
- The plan must be in lieu of a layoff of an equivalent percentage of employees.


Caution Called For

Obviously hiring freezes and attrition in the workforce are also available. Regardless which options an employer chooses in its attempt to reduce costs, an employer must abide by the applicable federal, state and local employment laws. Whether implementing a temporary furlough, reducing working hours or reducing compensation, many legal issues can arise.

As always, should this article raise any questions, please contact me at ABPearl@pmphr.com. •





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Trane Named Overall Best Brand of Chiller

On the basis of Frost & Sullivan's independent research, *2008 U.S. HVAC Contractors' Choice: Which Manufacturer Passes the Test*, Trane emerged as the overwhelming leader in the chiller product category among U.S. HVAC contractors.

Frost & Sullivan surveyed 200 full-time HVAC contractors who perform non-residential jobs to measure HVAC equipment manufacturer preferences. Among the U.S. HVAC contractors surveyed, 63 percent were full-time installers, while 21 percent owned HVAC businesses. Nearly four out of ten (37 percent) worked exclusively on non-residential projects, while the rest work on both residential and non-residential projects. The majority surveyed reported that they perform 10 or more jobs in a month (46 percent), which includes both complete (18 percent) and partial installation (82 percent) of HVAC systems.

“Roughly seven out of ten U.S. HVAC contractors ranked Trane as a top chiller brand,” says Frost & Sullivan Project Manager, Krishnendu Roy. “While 71 percent voted Trane as one of the top three chiller brands, what is significant is that 40 percent ranked Trane as the number one chiller brand – a 29 percent lead over the nearest competitor.”

According to the company, a positive reputation, coupled



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with loyal customers, is what positions Trane as a leader. Of the 36 percent of U.S. HVAC contractors' who reported using Trane chillers for non-residential projects/installs, all agreed that Trane was one of the top chiller brands.

The largest proportion of those surveyed said that the manufacturer's sales person is the most important source of information when deciding on purchasing an HVAC component (80 percent). Interestingly, 22 percent made independent decisions for buying an HVAC component, while 56 percent reported that the decision for HVAC brand were jointly decided along with their customers. Thus, it appears that HVAC contractors have strong influences in choosing brands of HVAC components.

The Frost & Sullivan HVAC Contractors' Choice Award is conferred on a company that has demonstrated excellence. The recipient has distinguished itself through its proactive strategies that position it to emerge or continue as an industry leader.

The Choice Awards measure the best brands based upon the highest brand perception index (BPI) score. The BPI is calculated by multiplying the weighted mean score and loyalty index score. Award recipients must have BPI scores of 10 or greater. Trane received a 10 BPI score for Overall Best Brand of Chillers.

Frost & Sullivan's Best Practices Awards recognize companies in a variety of regional and global markets for demonstrating outstanding achievement and superior performance in areas such as leadership, technological innova-

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Statement From Stuart S. Zisholtz, Esq.

Strike Out Arbitration Clause

Many of you know how much I despise arbitration and have been counseling every client never to sign a contract containing an arbitration clause. The reasons for that, from a legal point of view, are that you are subject to the whims and idiosyncrasies of an Arbitrator.

The ordinary rules of evidence do not apply in an arbitration. If a contractor writes you a letter telling you he is the greatest guy in the whole world and has the best mechanics, etc., even if they are the dregs of the earth, the letter is admissible in an arbitration for "whatever it is worth." What that means and how it is applied is unknown to everyone.

An arbitrator does not have to explain his decision while a judge in the Supreme Court has to set forth findings of fact and conclusions of law. A judge has to break down the various aspects of the claim and explain how much is applicable to this and how much is applicable to that.

A judge's decision is appealable. An Arbitrator's decision is not. In the most unusual and unique situation, an arbitration award will be modified or reversed.

Finally, the cost for Arbitration far exceeds the cost for the

Supreme Court. They are not even in the same ball park.

Recently, I participated in an arbitration. The Arbitrator, who was a licensed architect, stated that he had been involved in various arbitrations as a claimant. The Arbitrator believed that arbitration was horrible since his knowledge and expertise did not justify his ability to rule in every construction case. He stated that if you win, you think the Arbitrator is great. If you lose, the Arbitrator is terrible.

The reality of the situation is that arbitration is terrible no matter how you look at it. If you win, it may be you were lucky or capable of proving your case satisfactorily. If you lose, however, it is highly unlikely you will be able to vacate the decision.

The moral of the story is that the next time you see an A.I.A. contract or any contract specifying arbitration, strike it.

NEVER LET YOUR LIEN TIME RUN OUT!

For a free copy of a pamphlet pertaining to payment bond claims and Mechanic's Liens, kindly contact me or the association.

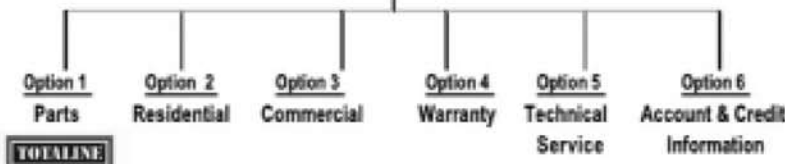
Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200. •

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