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Greater New York Contractors' NEWS



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March 2008

President's Message

It was my pleasure to attend the 40th annual ACCA Conference and Indoor Air Expo from February 4-7 at the Broadmoor Hotel in Colorado Springs, Colorado. The keynote speakers were Steve Farber who presented his message of business success through "Extreme Leadership," and Steve Uzzell who discussed how we might change our perspectives and apply it to our everyday work through "Open Roads, Open Minds."



Ron Nathan

Turn to President's Message on page 3

MARCH MEETING Thursday, March 6th, 2008 LaGuardia Marriott

COLLECTIONS

Join us for an evening filled with "Tips and Strategies" for lowering your receivables and improving your cash flow, as expert Bill Hollis of NCO Group takes us through the business of in-house collections.

— See page 4.



Extra at this meeting! Add employee benefits while reducing fixed bottom line costs!

Ray Kober from Aflac will be speaking about the growing healthcare crisis in the U.S. and how Aflac may be able to help your business at absolutely no cost to your company. Aflac talking ducks will be given out to all who attend.

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

This well-attended conference included numerous workshops, forums and sessions to allow for the presentation and discussion of new ideas in our industry. The Broadmoor Hotel is set at the base of the Rocky Mountains, and we were treated to spectacular service and expansive views. Attractive meeting areas were provided for the contractors, executive directors from national and local chapters and exhibitors.

The workshop "Using the ACCA/ASHRAE Commercial Maintenance Standard to Improve Profits" presented by Ellis Guiles of TAG Mechanical discussed new industry maintenance standards and how we can educate building owners and operators on the value of commercial HVAC equipment maintenance. HVAC contractors profit from educating their customers since the construction costs are a small part of total system costs. It was emphasized that the creation of a baseline, minimum requirements, and a methodology for preventative maintenance is also to the benefit of building owners since wages and productivity of

the occupants represent the highest investment for tenants. When building owners and managers try to save money by allowing poor operations and maintenance of their HVAC systems, tenants will protest by moving out and leaving an empty property behind. Comfort and long term energy costs are now being considered as part of up front costs for new construction, so everyone stands to profit.

Another valuable workshop run by Jack Bartell and Kenny Watson discussed the newly released Manual N 5th Edition. Buildings and materials have changed drastically since the previous Manual N was released over 20 years ago. This 90 minute workshop touched on commercial load calculations, the introduction of advanced procedures, expanded tables and appendixes, new rules and equipment, and provided great insight into the Manual N5 process. This new version has 675 pages, 26 sections, 82 tables and 18 appendixes. To take full advantage of the updated manual, software packages are also being offered for sale. All the updated items are available for sale at the ACCA website www.acca.org. Check it out!

—Ron Nathan

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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.

Improving Collections is Aim of Our March 6th Member Meeting

A special treat that can help improve your company's financial health is in store at our March 6th membership meeting. Mr. Bill Hollis, a collections specialist from business services leader NCO Group, will discuss collections and offer tips and strategies for increasing your cash flow. NCO is the industry leader in providing clients with successful business process outsourcing (BPO) solutions. Since NCO's inception in 1926, the firm's goal has remained constant — to reduce client operating expenses, increase cash flow, and improve their customers' experience. You will have an opportunity to speak with Bill and gain insight-

ful information on successful programs you can put right to work to improve your business' finances. Bill will also be distributing a valuable brochure "101 Collection Tips." Don't be late for this terrific program.

As an added attraction, Ray Kober from Aflac will speak about the growing healthcare crisis in the U.S. and how Aflac may be able to help your business in this regard. Aflac talking ducks will be given out, too.

You'll gain significant business information critical to your company's bottom line at this meeting. Take advantage of it. It's at the LaGuardia Marriott on Thursday, March 6th. Cocktails begin at 5:30, dinner begins at 6:30 and the program follows. •

SPECIAL NOTE FOR PROSPECTIVE NEW MEMBERS! DINNER IS ON US!

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Editor's Notes

By Anthony N. Carbone

With the economy in a virtual free fall, the Federal Reserve is scrambling to prop up the economy by giving marginal homeowners a chance to reset their adjustable rate mortgages to affordable payments to avoid a total crash of the already hurting housing market. There is not a street in America that doesn't have a "For Sale" sign on the front lawn. Everything is for sale. The riches of quick turnovers or "flip" real estate are gone. Even with historical low rates from lenders, many cannot afford the monthly payment combined with the escalating overhead from other directions.

In previous issues, I had predicted that gasoline prices

upward of \$80 a barrel would wreak havoc for the American economy. This is worse than any tax the government could impose. When American families are putting \$110 plus in gasoline, in 2 cars, per week minimal, it creates an inability for discretionary spending. People will begin to make choices...movies or gas...out to dinner or gas... extra clothes or gas. Home energy concerns don't stop at the pump. This problem is also in the household; oil prices and natural gas prices have prompted some to use wood burning stoves, fireplaces and pellet burning boilers. The overall cost of energy is the #1 burden to the United States.

The thought here is the trickle down theory (remember this from the Reagan administration). It is now working in the reverse. What is trickling down is the lack of spending

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and the near frozen economy. People are just waiting to see if they have a job, what is going to cost more next and if they can just afford day-to-day life.

Once upon a time, central air conditioning was a luxury afforded by the wealthy. Then it became more affordable as incomes rose and we became more productive. Air conditioning became a necessity and almost as standard as it is in many cars. These days, it seems people are not going to spend on heating and air conditioning unless it breaks down.

These are changing times. The utility's National Grid attended our February ACCA program, at the Westbury Manor, to describe the vast commercial rebates for energy efficiency programs. Builders cannot ignore the desire for "green building practices." The obsession has brought world focus, including Hollywood-types, to get together with manufacturers to provide environmentally friendly products, buildings and houses. There are incentives out there to lure customers and contractors to consider the use of environmentally friendly products.

How will HVAC contractors survive with less business available and rising expenses? Merger talks are only around the corner...just look next to you!

— Anthony N. Carbone

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President Bush Approves Amendments to the FMLA

Recent amendments to the Family and Medical Leave Act provide for employees to take up to six months of leave to care for a family member who is a member of the Armed Forces, National Guard or Reserves and who is suffering from a serious injury or illness. The law also provides for twelve weeks of leave because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces. Leave pursuant to this section supplements state laws providing for shorter amounts of leave that may only cover spouses of service members.

NLRB Upholds Employers' Right to Limit Employee Use of Company E-mail

The National Labor Relations Board (NLRB) recently

decided that employees have no inherent right to use their employer's e-mail system for union related communications, so long as the employer's restriction on the use of company e-mail lawfully encompasses such communications as part of a more general prohibition. According to the Board, restrictions on the use of company e-mail must meet several conditions to be lawful:

- The restriction must apply to all communications of the same or similar character.
- They must be uniformly applied and enforced, and
- They must be established to achieve a valid business concern.

The Board determined that an employer could regulate



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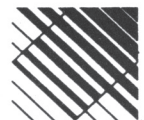
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the operation of its e-mail system by, for example, restricting "all non-business related solicitations," even if charitable, non-business solicitations are carved out as permissible.

The Board's rule may not apply in those rare circumstances where employees have no other means of communicating. Additionally, the Board would not require restrictions on employee usage to apply to the employer as well. Thus, employer anti-union messages would not invalidate a no-solicitation restriction that encompassed pro-union messages.

Calculating Overtime

When two different wage rates are paid to an employee during one workweek, the method for determining the employee's regular rate of pay is based upon the weighted average of all hourly rates paid. The weighted average is determined

by adding all hours worked (including overtime) during the workweek, and dividing that number by the total compensation paid for the week (straight time pay). Overtime compensation is paid to the employee at on-half of the weighted average rate. Example: an employee who is regularly paid \$20 per hour, works 40 hours in a week, and travels 10 hours at a travel rate of \$10 per hour, the 10 hours of overtime is calculated by adding the compensation received at the \$20/hour rate (\$600) to the compensation received at the \$10/hour rate (\$100) and dividing the total (\$700) by the total hours worked (50). Thus, the weighted average of all hourly rates paid is \$14.00 Overtime is due to the employee for 10 hours at a rate of \$7.00 (one half of the weighted average). In this week, the employee is entitled to \$700 (straight time)

Continued on page 12



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People & The Workplace *Continued from page 11*

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EEOC Issues Fact Sheet on Employment Tests and Selection Procedures


On December 3, 2007, the EEOC issued an extensive fact sheet on the application of federal anti-discrimination laws, including Title VII, the ADA and the ADEA, to employer tests and other selection procedures used to screen applicants. The fact sheet is designed to help employers comply with the anti-discrimination statutes. It describes common types of tests including, cognitive tests, personality tests, medical examinations, credit checks, and criminal background checks and provides several best practices for employers to follow:

1. Administer tests without regard to protected category (e.g. age, race, national origin).
2. Ensure tests are properly validated for each specific position.
3. Where the selection procedure screens out a protected group, use an alternate procedure with less adverse impact.
4. Update tests as changes in job requirements occur.
5. Create a specific procedure for the adoption and implementation of tests and selection procedures; do not allow individual supervisor/managers to adopt procedures of their own.



New EEOC Regulation Allows Employers to Coordinate Retiree Health Benefits with Medicare

On December 26, 2007, the EEOC issued a final regulation allowing employers who voluntarily offer retiree health plans, to use plan designs that coordinate coverage with Medicare without violating the ADEA. This rule is the result of a decision by the Third Circuit Court of Appeals requiring employers to spend the same amount of health insurance benefits provided to Medicare-eligible retirees as those provided to younger retirees. The new rule creates a limited exception to the ADEA for purposes of retiree health plans.

As always, should you have any questions or require more information regarding these new regulations, please do not hesitate to contact us at 516-921-3400, or at abpearl@pmphr.com.





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Earth Friendly Fleet Management Practices

By Daniel B. Brothers,
Enterprise Fleet Management

Record-setting fuel prices and ongoing evidence of global warming are making everyone more aware of the need to be more concerned about the environment. For businesses that want to demonstrate their company's commitment to improving the environment, one option is to acquire hybrids and flexible fuel vehicles. But, the reality is that every business with a fleet of vehicles can actually help the environment just by performing regular vehicle maintenance, practicing sensible driving habits, and replacing vehicles at appropriate intervals to take advantage of more fuel efficient technologies.

Often, some of the simplest things can make a significant difference. For example, by reexamining routes, it could be possible to save a few gallons of gasoline every week. This 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. This was demonstrated recently by United Parcel Service (UPS), which announced that the company had significantly lowered fuel consumption by reducing idling time with routes that minimized the number of left turns a driver has to make. In addition, UPS trained its drivers to always turn off their engines when they stop for a delivery, never idling at the curb or in a driveway, even for just a few seconds.

Paying more attention to proper vehicle maintenance also can help reduce fuel consumption. This not only means maintaining recommended tire pressure, checking wheel alignment and having regular oil changes. It also means avoiding the temptation to overload a truck, which can result in poor performance, expensive repairs and frequent downtime in addition to less fuel efficiency.

Maintenance issues that can have a significant affect on fuel consumption include the following:

- Keep tires properly inflated. Under-inflated tires create more rolling resistance on the road, which decreases fuel mileage and shortens tire life due to accelerated 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 acceleration 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.

Replacing older, less fuel efficient vehicles at appropriate intervals also can impact the environment. Knowing when to dispose of older vehicles, a systematic process known in the fleet management industry as "cycling," depends on many factors, such as the time of year, mileage, vehicle type, age and maintenance issues. A cycling program not only ensures vehicles are always in the best possible condition, it helps a company achieve optimum performance and the best resale value, which also directly affects cost savings.

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. •

Statement From Stuart S. Zisholtz, Esq.

I have continuously written and lectured on the importance of reviewing and understanding your contract documents. Many times it is the difference between collecting and not collecting. The following scenario is a perfect example of a subcontractor not reviewing the terms of the agreement before commencing with the work.

In a recent case, a subcontractor was issued a term sheet. The term sheet required the subcontractor to sign the subcontract, permitted the general contractor time to execute the subcontract, and excluded the general contractor from being obliged under the contract or have any liability for work performed or anticipated profits if a fully-executed contract was not returned to the subcontractor.

A fully-executed contract was not forwarded to the subcontractor. The subcontractor claimed that the general contractor verbally agreed upon all of the materials terms of the subcontract, including the price. The subcontractor argued that it was awarded the subcontract and directed to proceed with the work.

After performing work on the project, the general contractor advised the subcontractor that it was not awarded

the subcontract and requested the subcontractor to leave the project.

An action was instituted by the subcontractor against the general contractor to recover the balance due as well as anticipated profits. The general contractor argued that it was entitled to terminate the subcontractor because it had clearly stated its' intention to be become bound under the agreement only after a signed written subcontract was delivered to the subcontractor. Since the term sheet was approved and accepted by both parties, the agreement did not come into effect until such time as a fully executed subcontract agreement was delivered to the subcontractor.

The lower court dismissed the complaint and the Appellate Division affirmed.

The Appellate Division reasoned that the general contractor's conduct after the issuance of the term sheet did not waive or modify the terms of the term sheet, nor did they act as an implied acceptance of the underlying unexecuted subcontract. The Appellate Division found that the term sheet was a pre-contractual notice to the subcontractor and the subcontractor was bound by its terms.

Had the subcontractor reviewed and understood the various terms and conditions of the term sheet and the contract, it would have never commenced with work on

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"Sales & Marketing 101" is the first in a new series of CD training packages from ACCA entitled "The Business Toolbox." Building on the success of the association's recent launch of "HVAC Essentials" CD training in HVAC technical and design principles, "The Business Toolbox" will present computer video training on a variety of fundamental management principles for contractors.

"Sales & Marketing 101" can be ordered online at www.acca.org/store/product.php?pid=266 or by calling 1-888-290-2220. The cost is \$299 for non-members, \$199 for ACCA members. •

the project and been in this situation.

The key is to review and understand each and every aspect of the agreement before you commence with the work.

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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