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# Greater New York Contractors' NEWS



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March 2011

## President's Message



Michael Newman

**S**now, snow and more snow has been the theme for this winter. With record snow fall and extreme temperatures I am sure this has been a busy heating season for most. The snow has definitely presented a challenge in responding to emergency service calls, however being in the emergency business that we are in, our primary objective is to get the job done while working through these challenges in a safe manner. No excuses... just do the work.

This month ACCA received the trade ally customer loyalty award for

*Turn to President's Message on page 3*

## March Membership Meeting

**Negotiating  
Contract  
Terms**

**Thursday  
March 3rd**

**Indemnification**

**See details  
inside on  
page 6**

**Hold  
Harmless  
Agreements**

**LaGuardia Marriott**  
**Cocktails at 5:30 pm; Dinner at 6:30 pm**  
**Register Online at [www.accany.org](http://www.accany.org)**

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**PRESIDENT'S MESSAGE** *Continued from page 1*

participation and support of LIPA events. It was my honor to accept this award on behalf of ACCA. We will present this award to our ACCA members at the next meeting. We are proud of our organization and the work we do.

The February meeting featured Rich Chiarello of Sandler Training. He discussed issues to help our business and grow our profit margins during this poor economy. We will definitely use the advice that he provided to us in closing more business.

This year we will be focusing on increasing the membership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year? Are there any issues or topics you want to hear about this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting! — *Mike Newman*

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# Editor's Notes

by **Anthony N. Carbone**

**U**nrest in Egypt is just another piece of the pie regarding the turmoil in the middle east. For more than 40 years the United States' dependence on oil has created uncertainty in the energy markets. The oil embargo of the 1970's was the first taste of things to come.

This last round of havoc has caused many residential and commercial clients to consider converting from oil to gas. A tremendous influx of calls has been placed by consumers inquiring about the cost, the process and the rebates which are available for these conversions.

With people staying home more and choosing not to travel, many have considered making sure they have reliable and efficient heating and cooling systems.

Our dependency on foreign energy sources and the fact we have not been more proactive in finding alternatives to oil can be a debatable issue amongst many scholars. The public's interest peaks when their pockets get hurt. As oil prices drop and discretionary money is not evaporating into the gas tank, consumers tend to forget about alternative funds.

It is predictably inevitable that this tinderbox will go off in the Middle East one day and a lot of scrambling will go on by our politicians as our economy will tank with sky rocketing oil prices.

For us, as contractors, it is precipitating calls and potential jobs that are keeping our companies busy compared to this time last year. This situation in conjunction with a brutal winter makes the wheels of our HVAC companies turn.

Join us in March to gain the knowledge you can't afford to be without. — *Anthony N. Carbone*



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# Negotiating Contract Terms



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## Thursday March 3rd

# Indemnification

Will Matlin, a partner with the law firm of Hoffman & Roth, LLP, will discuss these issues and answer your questions.

# Hold Harmless Agreements

- *Creating an indemnification agreement that protects your company*
- *Avoiding indemnification agreements that place liability on your company for the negligent acts of others*
- *Partial indemnity and what that means to you*
- *Changes in New York Labor Law Sections 240(1), 241(6) & 200 and how they affect you*
- *Certificates of Insurance and what they mean to you*

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## From ACCA National

### **Residential Sales Forum To Be Held In April**

ACCA will hold its third annual National HVACR Residential Marketing & Sales Forum on April 4 & 5 in Arlington, Virginia.

For the third annual event, ACCA and its co-presenting partner, HVACR Business magazine, have developed an exciting new program featuring five of the most successful contractors in America, covering four of the most important topics in sales and marketing.

Among the topics being covered in this interactive two-day forum are:

#### **The Culture**

Want more (profitable) sales? It starts with your company's culture. Jackson & Sons, Inc. in Dudley, North Carolina, will give you valuable insight into how to compensate and incentivize your employees, how to treat them, and how to structure your business, and develop and implement strategy (not just goals).

#### **The Customer**

Waiting for your phone to ring is like throwing darts at a dartboard while wearing a blindfold. Hobaica Services in Phoenix, Ariz., will share tips that will help contractors figure out who their true potential customers are, how to find them, and how to attract them.

#### **The Close**

A successful close doesn't just happen at the end of your conversation. It begins before the conversation starts, showing customers how to say "yes" when you want them to. Isaac Heating & Air Conditioning in Rochester, N.Y. will explain how to take a customer's objections and use them to close the sale, while building a case for the customer to accept the experience.

#### **The Connection**

Closing a sale to one customer, once – it's hardly worth the bother! Peaden Air Conditioning, Heating & Plumbing in Panama City, Fla., will share techniques to turn customers into lifetime clients by building a strong connection through service programs, community outreach, and referral rewards.

The panel-style forum along with the new "rapid roundtables" will be moderated by industry veteran Larry Taylor, trailblazing president of AirRite Air-Conditioning Company in Fort Worth. As master of ceremonies, Taylor will tie the discussion together, ensure plenty of interaction, and help attendees get all their answers questioned (and their answers questioned).

A special keynote presentation from HVAC sales guru Drew Cameron will help you discover the hidden weaknesses that sabotage salespeople's performance. He will help you

remove the shackles to your success and leverage maximum top line sales and drive bottom line profit performance.

Sharon Roberts will also help you figure out how your non-verbal communications affect your company and translate what your actions mean and show you how to close more sales by controlling your message, during her powerful closing presentation.

“The 2011 RMSF is not like any other event offered in the HVACR industry,” says Kevin Holland, ACCA senior vice president business operations & membership. “We have brought in some of the best contractors from all over the country to give participants the ‘inside scoop’ into what they have done to grow their businesses and makes them more profitable. Couple that with two powerhouse sessions from leading sales and marketing trainers, and contractors won’t be able to find this caliber of training anywhere else.”

Contractors registered for the Residential Marketing & Sales Forum can stay an extra day and participate in the annual Washington Fly-In for no additional charge. The Fly-In takes place on April 6, and gives contractors that opportunity to make a difference for their business, the industry, and our nation by meeting with their Congressman and Senators.

Full program details and registration are available online at [www.hvacsalesforum.com](http://www.hvacsalesforum.com) or call Vickie Ellis at 703-824-8856. Registraton is \$495. Space is limited; once the room is full, registration will close. •

## ACCA’s Quality Installation Standard Updated

The updated ANSI/ACCA 5 QI – 2010 Standard (HVAC Quality Installation Specification) is now available in print form from the ACCA Online Bookstore. As a service to the industry, ACCA also makes the QI Standard available as a free, downloadable PDF at [www.acca.org/quality](http://www.acca.org/quality).

The QI Standard was updated in 2010 in response to stakeholder-requested changes. New sections on ventilation and hydronics were added, extensive edits and clarifications were incorporated, geothermal systems were specifically mentioned, additions made to the definitions, and updates made to the bibliography.

Newly-revised to support the 2010 QI Standard are the Technicians Guide for QI and the homeowner and building owner Checklists. Visit [www.acca.org/quality](http://www.acca.org/quality) for more information on these items. To assist those doing field verifications on equipment installed to the ACCA 5 QI – 2010 Standard, the ANSI/ACCA 9 QIvp Standard (HVAC QI Verification Protocols) has been updated and will be released in February 2011 for an ANSI public review period; the QIvp Standard is expected be available later in 2011. •



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## People & The Workplace

By Alan B. Pearl,

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### Don't Let Snow Days Blindside Your Pay Practices

2011 brought record snowfall across the country and required many businesses to either have snow days or delayed openings. As a result, many employers are wondering how to approach the difficult issue of paying their employees without violating the Fair Labor Standards Act.

The most-common question: Do employers have to pay employees for snow days? The U.S. Department of Labor has provided guidance via several Opinion Letters on this matter. Generally, there should be a two step analysis that employers engage in: 1) Is the employee exempt or non-exempt? 2) Is the office open or closed?

If an employee is exempt from overtime, then the general rule of thumb is that the employee must be paid

his or her full salary for any week in which he or she performs any work, regardless of the number of days or hours worked. Of course, there are certain exceptions to this general rule, which will be discussed below. If an employee is non-exempt (i.e., employed on an hourly basis) the employee is required to be paid only for time worked, regardless of whether the office is open or closed.

Next, the answer to the question of whether the office is open or closed, affects only exempt employees. If the office is open, but there is transportation difficulty, fear of driving in weather conditions, etc., causing an exempt employee to voluntarily elect not to come in at all, then the employer may deduct a "full day" absence from the employee's salary. Keeping in mind, of course, that the employee does not perform any work from home.

In the event the office is closed, meaning that the employer officially shut down operations due to inclement weather and instructed employees to not come in at all, the employer is still obligated to pay all exempt employees their full salary. Simply put, no deductions can be made if exempt employees are "ready, willing and able to work," but there just happens to be no work available. Employers must always be mindful of the "full day" rule. If an exempt employee is absent from work for a partial day, the employer cannot deduct for any partial day absence and can only deduct for an actual "full day" missed. This would apply if there was a delayed opening; in this case the employer must compensate the exempt employee for the full day of work.

The FLSA does not prohibit employers from asking both exempt and non-exempt employees to use personal, sick, or vacation time for missed hours or days due to a "snow day." The simplest way to avoid confusion about this subject is to have a clearly written and communicated policy. Most of all, snow days can create conflict between employees and management. It is crucial to factor in employee morale when factoring in whether to compensate employees for missed work when the office is closed. Employers are allowed to be more generous than what the



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FLSA requires, but they should also be mindful of setting precedent.

This office can help develop an inclement weather/emergency policy, as well as analyze the complicated issue of whether employees are exempt or non-exempt.

### Can an Employee Sue the Company For Discriminating Against a Loved One?

The U.S. Supreme Court recently expanded Title VII's anti-retaliation provision to include relatives, friends, and close associates of a discrimination claimant. This issue will become a matter of concern especially where employees maintain a personal relationship with a co-worker.

In Thompson v. North American Stainless, decided in January of this year, the Supreme Court allowed an employee to proceed with his claim that he was retaliated against because his fiancé filed a sex discrimination charge against their mutual employer.

The Plaintiff's fiancée filed a charge with the Equal Employment Opportunity Commission alleging that her supervisors discriminated against her based upon her gender. Approximately three weeks after the employer was notified of the charge by the EEOC, the Plaintiff was terminated on the grounds of "poor work performance." The Plaintiff then filed his own EEOC charge, claiming that his termination amounted to retaliation for the filing of

his fiancé's EEOC charge.

What is unique about the Plaintiff's claim is that he was alleging that the employer terminated him in order to retaliate against his fiancée for filing a charge of discrimination. According to the Court's decision, Title VII's anti-retaliation provision must be construed to cover a broad range of employer conduct and to prohibit any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." The Court found that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired. The case will proceed to trial.

All employers know that it is unlawful to retaliate against employees who have filed claims of discrimination with administrative agencies. However, what is important to for employers learn from this case is that their actions will be scrutinized not only with respect to the claimant, but also those closely around them.

Portnoy, Messinger, Pearl and Associates can help you further understand the topics discussed in this article, and adapt your internal HR policies accordingly. Of course, any questions about the above topics can be addressed to me at [ABPearl@pmphr.com](mailto:ABPearl@pmphr.com). •



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## Is Your Medium Duty Truck Overloaded?

By Kelly Hiner/Enterprise Fleet Management

Many times, truck owners will continue to load materials into their truck if there appears to be space left in the vehicle. But a truck's capacity is often not what it seems, and many business owners are not aware of the fact that overloading a truck can cause premature mechanical failures and safety related problems. Mechanical failures from overloading can be severe or minor, but even minor damage can turn serious and be costly to repair if it is left unattended.

There are two measurements to look at when determining how much a truck can be loaded. The first is the gross axle weight rating (GAWR). The GAWR designations for medium duty trucks are determined by the weakest link in the truck's suspension system, which is made up of the axle assembly, housing, springs, wheels and tires. The component with the lowest or lightest weight rating will determine the GAWR, and your truck will have a GAWR for both the front and rear axles.

The second number to consider is the gross vehicle weight rating (GVWR). GVWR is determined by the sum of both the front and rear axle ratings (GAWR), or the truck's frame or braking system. The component that has the lowest or lightest rating – be it the sum of the front and rear axle, or the frame or braking system, will determine your truck's GVWR.

It is generally easy to determine your truck's GAWR and GVWR, as most vehicles will have this information readily available, most often on a placard on the doorjamb, which also indicates the tire ratings. Once you have determined what both of these rating are, it is important to pay close attention to both when loading your vehicles. But it is also important to understand that cargo weight is not the only consideration when determining how much weight your truck can handle.

You also need to pay close attention to where you position the load and its weight distribution. Consider the following example.

A truck has a GVWR (sum of the rear and front axle) of 25,000 pounds. The GAWR of the front axle is 7,000 pounds, and the GAWR of the rear axle is 18,000 pounds. If the truck is loaded to 23,000 pounds overall, you might think there is room for another 2,000 pounds because the overall capacity (GVWR) is 25,000. However, this may not be the case. If 20,000 pounds are loaded on the rear axle, that axle is overloaded by 2,000 pounds.

In this instance, the driver can solve the problem by simply repositioning some of the load. If you think your truck may be overloaded or improperly loaded, weigh the front and rear axles individually. Compare those readings to your truck's posted GAWR. Then add the front and rear readings to determine the gross vehicle weight and compare it to the posted GVWR of the truck. This will ensure a safe truck, keep your repair and maintenance costs to a minimum, and ensure the safety of others.

A good rule of thumb to follow is what most people in the trucking industry refer to as the "80 percent rule." While your truck will certainly be loaded to 100 percent capacity from time to time, the best practice is to generally not load it more than 80 percent. This will reduce the operating costs of your truck, and help extend its service life. The most important aspect to know about overloading your truck is that it can adversely affect the way it handles, stops and performs, and can cause premature wear on driveline components such as axles, suspension parts and brakes. But by educating yourself about your truck's ratings and how they relate to each other, you can take a little more of the guesswork out of how long your truck will suit your needs down the road. •

*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](http://www.enterprisefleet.com) or call toll free 1-877-23-FLEET. •*

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## ***Statement From Stuart S. Zisholtz, Esq.***

### **Mechanic's Lien Foreclosure and Jury Trial**

Each month I write articles for the Association indicating the importance of filing a mechanic's lien to protect your interests. If done properly, the filing of a mechanic's lien can be a beneficial tool in collecting payment.

If after filing the mechanic's lien you do not receive payment, the next tool available to you is to commence a foreclosure action.

As I have indicated in the past, a mechanic's lien foreclosure action is similar, in certain instances, to a mortgage foreclosure. The purpose behind the mechanic's lien foreclosure action is to sell the real estate in order to satisfy the mechanic's lien.

Since the action to foreclose on the mechanic's lien is equitable in nature, New York State Lien Law does not permit a jury trial. Instead, the contractor is compelled to pursue its claim by having the case tried before a judge, an arbitrator or a referee.

If no mechanic's lien is filed or you decide to pursue the claim under a theory of a breach of contact, unjust

enrichment or quantum meruit, then you are entitled to a jury trial unless your contract waives it. In those instances, the claims are deemed an action at law even though they are seeking the same amount of money and allege very similar allegations as a mechanic's lien foreclosure action.

Recently, in an action pending in the Supreme Court, New York County, a judge rendered a decision that indicated that where the parties are foreclosing on a mechanic's lien and seeking a breach of contract or unjust enrichment as well, the contractor can have a jury trial for the claims asserted separate from the foreclosure action. This includes a counterclaim for back charges and offsets asserted by the Owner.

Under ordinary circumstances, however, you should be aware that you are not entitled to a jury trial when foreclosing on a mechanic's lien.

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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## Johns Manville Introduces EQ Line of Air Handling Products

*New Line of Fiber Glass Air Handling Products Helps Architects, Mechanical Engineers and Contractors Create Safer, Healthier and More Comfortable Interior Spaces by Reducing Overall Formaldehyde Exposure*

Johns Manville (JM), has announced the launch of an entirely new line of fiber glass air handling products: JM EQ. The industry's most comprehensive line of air handling products, JM EQ (Environmental Quality) products contain a Formaldehyde-free™ resin for improved indoor air quality, deliver outstanding noise attenuation and thermal efficiency performance and integrate EPA-registered anti-microbial agents that protect them against mold development.

Products in JM's EQ line of air handling products include:

**Spiracoustic Plus™** EQ round duct liner system: Specifically engineered to provide excellent acoustical and thermal performance in round air ducts of virtually any size. Spiracoustic Plus EQ replaces the need for expensive double-wall insulation systems in round ducts.

**Linacoustic®** EQ fiber glass duct liner: A flexible duct liner insulation made from strong glass fibers bonded with a Formaldehyde-free resin for exceptional acoustical and thermal performance.

**EnviroAire™** EQ fiber glass duct board: A fiber glass

duct board produced from strong glass fibers bonded with a Formaldehyde-free resin, EnviroAire EQ substantially outperforms other duct systems, offering superior acoustical and temperature control performance.

**Microlite®** EQ fiber glass duct wrap insulation: A lightweight fiber glass blanket-type insulation designed for excellent temperature control.

JM anticipates rolling out EQ products later this year. For a healthier and safer environment, products in the line contain a Formaldehyde-free resin, which reduces overall formaldehyde exposure. And for commercial buildings the entire line will be GREENGUARD Children and Schools SM certified, which means they meet stringent certification standards for indoor air quality.

For more information on JM's new EQ line of air handling products, visit [www.specjm.com/EQ](http://www.specjm.com/EQ).

### On The Move/ People In the News

If you are "on the move" or your company is doing something that will be of interest to other members, let us know. We'd like to publish it. Email the information (photo too if available) to Don Gumbrecht at [dgumbrecht@aol.com](mailto:dgumbrecht@aol.com).



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