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# Greater New York Contractors' NEWS



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May 2007

## *President's Message*



Ken Ellert

The ACCA national convention was held last month in Orlando, Fl. For any of you who were fortunate enough to attend experienced two days packed with workshops that included tips on marketing, cash flow, enhancing your website, hiring the right people and much more. In addition, there was the exposition hall

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



## MAY MEETING

**“Chimney Design &  
Combustion/ Ventilation  
Air Requirements for  
Gas-Utilization Equipment”**

*Presented by*

**Brian W. Ryglewicz**

**Chimney Design Solutions, Inc.**

*—see details on page - -*

**Thursday, May 3, 2007  
LaGuardia Marriott  
Cocktails 5:30 pm; Dinner 6:30 pm**

**Let us know you are coming online  
at our website: [www.accany.com](http://www.accany.com)**

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**PRESIDENT'S MESSAGE** *from page one*

where many of the top vendors had elaborate displays to show us what they have coming up in the near future. I also found it very helpful to be able to compare one company's material or equipment against their competitors. As this was my second convention, it was great to see many of the same people from last year and share what has happened in our lives, not only in business, but what has taken place outside of the work place. This event is truly worthwhile and I encourage you to try and



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attend one in the future.

I am looking forward to next year's conference and expo being held at the Broadmoor Hotel in Colorado Springs, CO., February 5-7, 2008. I have been to the hotel and it is magnificent. It is one of the few 5 star hotels in the states and ACCA has been able to make excellent arrangements for the event.

ACCA is always providing many valuable ways to help in managing your business. At present, they are conducting a survey on "Labor and Payroll Expenses." See how you compare with other companies. You can take part in this survey by copying the following link. <http://www.zoomerang.com/recipient/survey-intro.zgi?p=WEB226AG9X2QU2>. If you don't want to copy the address here, you can find it at [www.acca.org](http://www.acca.org). You cannot get the results of the survey unless you participate.

For any of you that have never been to their website, and those that have not used it for some time, you will find it very worthwhile.

Don't forget it's not too late to sign up and attend "Casino Nite" this year promises to be bigger and better than before.

—Ken Ellert

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# Editor's Notes

By Anthony N. Carbone

The merger of KeySpan Energy and London-based National Grid has recently received the blessing of LIPA. The key here is not the fact that LIPA is the regulatory overseer of Long Island's electrical grid, but that KeySpan maintains the electrical grid for LIPA. Therefore, it would be necessary for LIPA to come to an agreement that would allow National Grid to assume this contract.

It was stated that a \$91 million synergy savings will occur for this merger. National Grid also agreed to spend \$100 million for environmental efficiency upgrades at KeySpan's Northport and Port Jefferson power stations and \$12 million for a joint energy efficiency program with LIPA for electric and gas customers. My guess is this may include rebates as they provided in the past.

Unions for KeySpan's Long Island employees were assured the merger would not result in layoffs. Richard Kessel said the agreement would bring \$236 million in benefits and services to LIPA customers. In addition, Kevin Law, who will succeed Richard Kessel as Chairman, also endorsed the agreement.

The \$7.3 billion buyout scheduled to be completed this summer still needs PSC approval. The PSC has questioned the benefits for consumers. Senator Charles Schumer has voiced his opinion stating the merger would shortchange Long Island electric consumers.

The bottom line on this, in my opinion, is this was an exit strategy for Robert Catell, CEO of KeySpan, and the top brass

of KeySpan (formerly Brooklyn Union). The boys from Brooklyn found an opportunity that provided spectacular wealth (a/k/a golden parachutes). While other energy companies and utilities have skyrocketed in per share prices, KeySpan has floated at \$41/share for 12 months due to the buyout price. Many of the blogs have criticized this merger.

Another obstacle has been the union support by Local 97 President, David Falletta and the union's consultant, Richard Koda. The pair argued that the proposed merger could cause service to deteriorate if staffing were reduced and could make it harder for the PSC to regulate the utility because of National Grid's foreign ownership.

National Grid has agreed to give pay raises to its 3210 unionized employees across upstate New York in return for union support. Under the contract extension, which is not to expire until March 2008, workers of the International Brotherhood of Electrical Workers Local Union 97 would receive 3% per year for three years.

Hey...what about the rates? How does the synergy help the rates, the surcharges, and the cost of the commodity? Let's talk about the real bearers of this news, the "rate payer."

As far as independent contractors are concerned, we would like to see programs that work in partnership with contractors to extend the grid of natural gas with cash rebate programs, not free equipment and confusion in the marketplace. National Grid doesn't operate a "Home Energy Services" business that lends confusion to the consumers. We hope this new ownership brings a different philosophy to working with contractors... stay tuned. — *Anthony N. Carbone*



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**The Acca May 3rd Membership Meeting Will Feature**

**“Chimney Design & Combustion/ Ventilation  
Air Requirements  
For Gas-Utilization Equipment”**

*Presented by*

**Brian W. Ryglewicz**  
**Chimney Design Solutions, Inc.**

DATE: May 3rd, 2007 7:00 PM  
Marriott LaGuardia NYC

This presentation will clarify the national venting categories for gas-utilization equipment while explaining the proper protocols for ensuring that the chimney systems are designed to maximize safety and efficiency. In addition, the pertinent national, state and local venting codes and chimney design standards will be presented. Combustion and ventilation air requirements will also be presented.

Brian W. Ryglewicz, President of Chimney Design Solutions, has been involved with chimney design and the applicable codes since 1997. For five years, Mr. Ryglewicz was an engineer for the leading manufacturer of chimney draft technology equipment and has since worked with consulting engineers, architects and Design/Build contractors in the New York City Metropolitan Area. Mr. Ryglewicz is currently serving on the Mechanical/HVAC/Boiler Technical Committee for NYC's Model Code Program.

In 1999, Mr. Ryglewicz was a guest member for the assessment of NFPA 54-2002 (ANSI Z223.1). Furthermore, Mr. Ryglewicz is a current and active member of the American Society of Heating Refrigeration and Air-conditioning Engineers (ASHRAE), the International Code Council (ICC), and the National Fire Protection Association (NFPA).

Join your fellow contractors for a professionally presented evening filled with important information at the LaGuardia Marriott on Thursday, May 3rd, 2007.

Cocktails begin at 5:30 PM. Dinner follows at 6:30 and the presentation will begin at 7:00 PM.

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# Swell Power

## The next wave of clean energy will be breaking near you

By Megan Michelson

Here's one more reason to pray for surf: Wave energy from U.S. waters could someday meet 7 percent of the country's current electricity demand, according to the Electric Power Research Institute, a Palo Alto, California - based nonprofit. That's roughly the same amount produced by all of our hydroelectric dams.

But unlike dams, wave-energy converters, which harness wave motion to generate electricity, are installed either on the seafloor or as floating buoys miles offshore, meaning that they generally can't be seen from land and don't disrupt the environment.

While Europe has had wave systems online since 2003, they're just reaching the U.S., with projects slated for Hawaii, California, Washington, Rhode Island, and Oregon, where New Jersey-based Ocean Power Technologies has filed an application to install enough 50-ton buoys to power 50,000 homes. Too bad Vegas is so far from the ocean. •

## HVACR Labor & Employment Summit Scheduled for October 2007

ACCA has announced that it will hold a symposium on labor and employment law for HVACR contractors this fall. The HVACR Labor & Employment Summit will be held October 4 & 5 in New Orleans.

Finding and keeping good employees – and managing them while complying with the numerous laws that govern employment – is a key challenge for today's contracting businesses. During this day-and-a-half summit, contracting business owners and managers will learn how to reduce their liability risks while also providing a workplace environment that attracts the right kind of employees.

The workshops will be presented by Adams & Reese, one of the nation's leading law firms in the labor and employment arena, in an entertaining and enlightening format that will give contractors tools they can put into place in their business right away.

The summit will be held at the Hotel Monteleone in the French Quarter of New Orleans. Registration for the event is \$495 for ACCA members and \$595 for non-members. Register at [www.acca.org/training/legal](http://www.acca.org/training/legal) or call Vickie Ellis at 703-824-8856. •



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## Driving Along In Your Automobile. . . Curbing The Strain Of Vehicle Loss

By Daniel B. Brothers,  
Enterprise Fleet Management

In a typical vehicle fleet, 20 percent of the drivers will be involved in some type of loss in any given year, be it a small windshield breakage, or the total loss of a vehicle. When loss is involved in these types of circumstances, it is especially valuable for the business to have an experienced fleet manager handling the situation. Here is a unique perspective from a fleet manager on the handling of loss and processing of claims.

### Initial Incident

Most lease customers are given a designated phone number to use in the event an incident should occur. Often this is a toll-free call. Generally, when a customer calls with an incident, an initial report of the accident is taken. Safety is the most important issue, so it is important to know how many people and/or vehicles were involved, if there are any injuries and if emergency medical assistance is needed. After determining that everyone is OK, the fleet manager can decide with the customer what is the next best step to take, be that emergency roadside assistance, towing, body shop, rental car or a combination of those options.

### Minimizing Costs

Once the customer is back on the road, the fleet manager can begin processing the accident to ensure that the vehicle gets the highest quality service at the lowest possible price. This can start with making sure those reviewing the damage on the vehicle are qualified technicians in the specified damaged area. For example, for body repair damage, the technician should be trained in auto estimation and body repair. For mechanical damage, it is best to work with technicians who are ASE Certified. Both will be helpful in ensuring that the proper repairs are done with safety at the forefront, with the highest quality workmanship and at the most cost-effective price. It may also be possible for the technician to flag any warranty work that should be included as well.

Furthermore, a fleet management company may maintain a nationwide network of repair facilities that can be recommended to customers. Having these relationships can enhance the fleet manager's ability to work closely with the body shops on behalf of the customer, with advantages

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such as being able to compare pricing to ensure they are competitive and monitoring repairs to control downtime, as well as setting up rentals, monitoring rental invoices and ensuring the overall quality of the repairs.

**Maximize Subrogation**

In the unfortunate event of damage to or loss of a vehicle, customers who have paid for vehicle insurance want the piece of mind that they will be taken care of promptly and professionally. Companies with fleet managers who handle this for them appreciate having someone on their side working with all parties involved in the filing of that claim on their behalf. A fleet manager who is trained in subrogation can aggressively analyze each and every claim to determine the likelihood of collecting and providing customers with an accurate picture of the situation.

When processing a claim, fleet management companies will also typically obtain all the legal information that will assist in the collection process for the customer. These items might include police reports, vehicle registrations and insurance information. Ultimately, fleet managers want to minimize the collection time for their customers, and they do this by staffing trained subrogation experts who pay uncompromising attention to each claim.

**Risk Management Reporting**

Because fleet management companies work so closely

with their customers' losses, they are actually the best resource to their customers for risk management. So at Enterprise, we believe in keeping to our commitment to excellent customer service by not only making our loss control staff and reports available to our customers, but also helping them understand their losses. Furthermore, sharing loss data at first report in an easy-to-read, easy-to-understand format with the customer is an invaluable way of keeping the lines of communication open, and keeping customers informed.

*Daniel B. Brothers is an Account Executive for Enterprise Fleet Management in New York. He is also a Director of the Greater New York Chapter, ACCA. He can be reached at 516-739-5487. •*



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## What Consumers Don't Know About Central Air Conditioning Could Hurt Them – ARI

**Consumers advised that improperly matched split AC systems can increase power bills, reduce comfort**

Arlington, VA —The Air-Conditioning and Refrigeration Institute (ARI) is advising homeowners facing the purchase of a new high-efficiency cooling system not to make the mistake of only replacing the broken outdoor unit of their two-part system. While it may be a less expensive option, they will likely find this short-term fix results in greater expense and frustration down the road.

After a new government law went into effect last year that raised the minimum efficiency of central air conditioning systems by 30 percent, the cost of these systems increased as well. The increased cost of high-efficiency systems may tempt homeowners to skimp on the expense and just replace the broken outdoor unit to save money.

The problem with this decision is that the two parts of a split air conditioning or heat pump system – the indoor (coil) unit and outdoor (condensing) unit -- are specifically designed to work together as a coordinated “team” to provide top performance and maximum efficiency and comfort.

“Replacing only one of the two units will not achieve a higher efficiency, and could in fact reduce the system’s capacity and efficiency to cool a home by up to 40 percent,” said Stephen Yurek, president of ARI, an organization that independently tests and certifies the efficiency of cooling systems. “What this means is that the system may not be able to keep up with the thermostat setting and run constantly. This will result in higher power bills because the system will have to work harder and run longer to keep the house cool.”

Consumers need to ask their air conditioning installers to provide proof that the split cooling systems they are installing are properly matched to achieve their certified energy-efficiency ratings. This proof may be either an ARI Reference Number, which is assigned to every ARI Performance Certified™ system or a Certificate of ARI Certified Performance, which contains its reference number as well as the system’s certified efficiency ratings. An ARI Reference Number can be entered into ARI’s free online Directory of Certified Product Performance at [www.aridirectory.org](http://www.aridirectory.org) to verify the system’s certified energy efficiency ratings.

ARI is offering consumers a free brochure that explains the importance of a properly matched system. Consumers can obtain a free “Perfect Match” brochure by sending a self-addressed, stamped envelope to ARI Perfect Match, 4100 N. Fairfax Drive, Suite 200, Arlington, VA 22203. The brochure also can be downloaded for free from ARI’s Web site at [www.ari.org](http://www.ari.org) and click on “Consumers.” •

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### PMP Potpourri

#### Driving While Talking

Sometime ago, I mentioned that employers could be liable to third parties for an accident caused by employees who were using the employer's cell phone while driving. That prediction has come to pass. A Pennsylvania court recently awarded a half a million-dollar verdict, finding an employer liable for an accident caused by a broker who allegedly was driving and talking on his cell phone. This broker accidentally dropped the phone, bent down to get it, ran a red light and killed a motorcyclist. This incident illustrates the need to ensure that your company has a written policy requiring anyone using a cell phone, while "on the job" to pull over to the side of the road while they talk or use a hands free device. That is the law in some states, including New York.

#### Changes to I-9 form

Your office manager needs to be advised that the employment illegibility verification form (I-9) for new hires has now been revised. Employers are unable to accept the following documents in support of eligibility for employment:

1. Certificate of US citizenship (form N-560 or N-561);
2. Certificate of naturalization (form N-550 or N-570);

3. Unexpired re-entry permit (form I-327); and
4. Unexpired refugee travel documents (form I-571).

A new hire may show another document that wasn't previously listed on the original I-9 form. This document is called an employment authorization document (form I-766). Expect to see more of form I-766 in the future since use of these employment authorization documents (EAD's) will increase rapidly.

#### Employee Free Choice ?

Recently, there has been discussion in the halls of Congress focused on the Democratic majority attempt to pass the "Employee Free Choice Act". The EFCA legislation, if enacted, would fundamentally alter the balance of labor relations in the United States in favor of unions. On March 1, 2007, the House of Representatives, despite all attempts to weaken or defeat the EFCA legislature, passed the controversial measure 241 to 185. Thirteen Republicans voted with the overwhelming Democratic majority.

Identical legislation is expected to be proposed by the Senate Health Education Labor Committee very shortly. The AFL-CIO's Director of Legislation stated that he is optimistic that the bill will be introduced in the system with at least 50 co-sponsors. Business associations including the US Chamber of Commerce, are expected to engage in strong lobbying efforts to counter Senatorial support. What does the proposed legislation say? Essentially, its provisions would strip workers of the right to a secret ballot election in deciding whether to unionize. The secret ballot election has been the mainstay of the National Labor Relations Act since it was enacted in 1947. Signed cards will be used to determine a union's majority status.

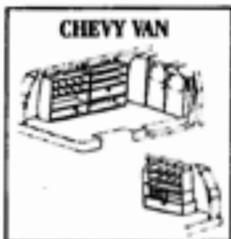


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While many ACCA members currently have unionized segments of their work force, it is important to remember that employees, except supervisors, are entitled to organize for representational purposes. Thus, it would be imprudent to dismiss this proposed legislation. ACCA members employ other classifications (e.g. drafts persons; estimators; administrative support etc.) who have the right to select a bargaining representative. ACCA members should consider the potential affects of this legislation on their total individual work force. HR 800 would result in not only stripping workers of their fundamental Democratic right to a supervised private ballot election; it would also change the ground work for collective bargaining and impose harsher penalties for unfair labor practices committed by employers (but not unions). The battle over HR 800 and its Senate counterpart will receive front-page headlines this coming month. Understand what it means to your business and react accordingly.

**FLSA Revisited - Telecommuters**

In last month's edition, I wrote about the Fair Labor Standards Act requirements, and the misclassification of employees. I pointed out that the administrative exemption is not as broad as one might think. Key victories by employee groups representing auto insurance claims adjusters in California have recently been crushed by a recent decision by an appeals court holding that insurance claims representatives are indeed exempt employees. The case arose out of the classification of "telecommuters". What are telecommuters? Telecommuters are employees who primarily work from home. The facts concern a company which denied home based medical claims processors overtime and mileage compensation for travel to and from mandatory meetings dur-

ing the work day. While I don't believe that ACCA members employ telecommuters, beware that the breath of administrative exemption is not as wide as it formerly was. Recently, there has been a rise in the number of suits regarding overtime. In one such litigation, concerning Walmart, the court has certified a class of 1.25 million employees. Walmart and other big box companies generate adverse publicity resulting in a heightened sense of awareness in the business community that FLSA lawsuits are dangerous.

If you have an employee who works at home, we suggest that you sign a written formal agreement about the working hours and conditions. This will not be an employment contract for a specific duration! However, it is an outline of the obligations that the work at home employee has including a procedure to all management to keep track of hours of work. If you do not have that format, embodying terms of the work at home employee, you will find that they can present convincing arguments to the Labor Department on just how many hours they worked and how many hours they weren't compensated for. The format should include information about hours of work and such items as: who owns the computer equipment, what happens if someone slips and falls at home, and whether or not mandatory meetings should be attended in person or by teleconferencing.

We believe that telecommuting related litigation is likely to grow. With fluctuating workweeks and "home care" issues on the rise, this is an area of greater concern.

As always, should you have any questions about the issues raised in this article, please communicate with me at [abpearl@pmp.hr.com](mailto:abpearl@pmp.hr.com) or call me. •

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# Statement From Stuart S. Zisholtz, Esq.

This is the second in a series of articles that are being written with respect to the unholy alliance between American Institute of Architects (AIA) and American Arbitration Association (AAA).

The last article indicated that there are certain pitfalls and traps with respect to signing a contract which incorporates, by reference, the owners contract with the G.C. Contract. This article will refer to another clause in the AIA contracts calling for time of the essence.

Time of the essence is a cut throat clause. It means that come hell or high water, whether you are alive and well, or sick and on a death bed, you have to finish that

job within the time frame set forth. If you do not do that, severe penalties can be exacted.

Never ever permit a time of the essence contract to be incorporated into your contract. This applies whether it is AIA or any other contract.

If you get a late delivery of materials, if there is a snow storm, if there is a strike, if there is a terrorist attack, etc.; your head rolls if you do not meet the time is of the essence schedule. I am aware of "force majeure" which is an act of G-D, etc., but in the ordinary run of the mill situations, time of the essence is strictly construed and used against you.

If you absolutely, positively and unequivocally cannot get out of the time of the essence contract, then you have to put limitations on damages. You cannot lose \$100,000 because you are a day late.

You must know up front what you were getting into and what you are getting out of. Do not think that if you do not discuss it and it is not put into the contract that it will go away. That is kidding yourself and putting your head in the sand. Talk it out up front before you get involved.

If you need time of the essence in the contract, provide the limitations of liability if you do not meet the deadline. At the same time, provide for a bonus if you bring the job in earlier. It works both ways.

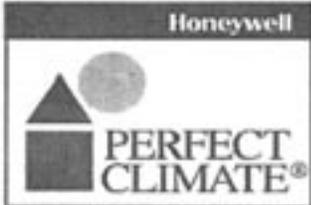


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If you are going to lose \$100 a day or \$500 a day as a penalty, then you want that \$100 a day or \$500 a day for bringing the job in sooner.

You also have to clearly define what time of the essence means, i.e., your job or interference by the G.C. or interference by the owner, or failure of the other trades to keep up, etc. You have to know where you stand and any ambiguities can come back to haunt you later on.

Just remember the cardinal principal of contracts is that it has to be clear and each side knows what he or she has to do and what he or she gets in return. Believing it will go away is fool's gold.

Never let your lien time run out.

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

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

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

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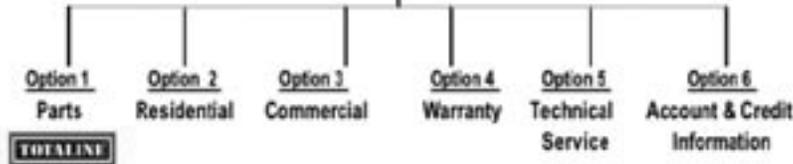
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