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Greater New York Chapter
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Greater New York Contractors' NEWS



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MAY 2009

President's Message

If we had no winter, the spring would not be so pleasant; if we did not sometimes taste of adversity, prosperity would not be so welcome.



Ron Nathan

~Anne Bradstreet

WELCOME TO SPRING 2009 AND ALL THE CHALLENGES, CHANGES AND GROWTH OPPORTUNITIES it will hold for our industry. One of the benefits of being an ACCA member is access to a wealth of information on the ACCA national homepage. Of particular

Turn to President's Message on page 3

You Are Invited To Our MAY MEETING!

The Sierra Club And Support For Energy Efficiency



Frank Morris, Chairperson of the Long Island Sierra Club will speak on his organization's green advocacy and support for energy efficiency within the political arena. Outlining common goals with ACCA, Mr. Morris will discuss a sharing of information between our organizations for mutual benefit. Join us for this very important presentation.

A PRESENTATION WILL ALSO BE MADE BY NATIONAL COMPRESSOR EXCHANGE

THURSDAY, MAY 14, 2009
at the LaGuardia Marriott

Cocktails — 5:30 pm; Dinner — 6:30 pm
Followed Immediately by the Program

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PRESIDENT'S MESSAGE *Continued from page 1*

interest this month is information on HVAC Tax Credits in the 2009 Stimulus Package. There is an easy to understand summary of the new credits, a complete spreadsheet of qualified equipment, and a comprehensive section of frequently asked questions.

Be sure to check out acca.org for another valuable service of your membership. "Ask the CFO" and "Ask a Tax Attorney" are offered through partnerships with a CPA and tax attorneys. These links contain numerous articles on financial management and tax issues with ACCA members in mind. There is also priority member service accessible for you to submit your questions or comments via email to ACCA on a wide range of subjects listed in a drop down menu.

I have a wonderful reason to celebrate this spring with the arrival of Alexander Nathan DeStefano to my family. My daughter and son-in-law welcomed Alex in March, and my wife and I are thrilled to be first time grandparents. I'll be happy to show you photos if you have an hour or so to spare!

Our annual Casino Night was held April 2 at The Westbury Manor. We had a terrific turnout for this exciting event. Many thanks to Jim Carlson, Nick Terran, and John DeLillo

and his staff for the hard work and dedication that went into making this evening such fun. Casinos by M&M provided the authentic equipment and friendly dealers that make Casino Night such a popular affair.

Frank Morris of the Sierra Club will be a guest speaker at our May 14 meeting to be held at the LaGuardia Marriott. The Sierra Club is a nonprofit member-supported, public interest organization that promotes conservation of the natural environment by influencing public policy decisions -- legislative, administrative, legal, and electoral. They strive to slow global warming through education, involvement and activism. The Sierra Club has developed the Cool Cities program to promote efficient use of energy and renewable sources while reducing carbon emissions. Please join us for what promises to be an informative and timely presentation. — **Ron Nathan**



CONGRATULATIONS!
 A first Grandchild for
Mr. & Mrs. Ron Nathan
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Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or

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.

Editor's Notes

By Anthony N. Carbone

Many companies have survived this economic "perfect storm" by slimming down and shedding expenses. Will they be able to handle the work that will soon come from hot temperatures and humid weather?

The word "busy" is going to be relative. A company with 25 trucks may not be busy, but will be able to handle the work that would hopefully come from those hot days. A company with ten trucks may be inundated, because they may be unable to handle the magnitude of work, which comes all at once. This may result in a windfall for other companies.

These are difficult times for companies laden with overhead. It is survival of the fittest now. All contractors are seeking the silver bullet to close the sale. Many are using the stimulus energy tax credits to lure potential buyers in. A \$1,500.00 federal tax credit can bring homeowners to the table, and with many people staying local, here is an opportune time to be comfortable.

Strangely enough, my claim is backed up by retailer Best Buy's news that large flat screen television sales went through the roof! Hopefully, we have hit bottom,

and customers will tire of the austerity mode.

Once again, we must all tip our hats to Jim Carlson of Michael James Industries, for being in charge of the annual Casino Night at the Westbury Manor. Every year this event gets more interesting, and attendance and participation grows. This organization is made up of "Captains of our Industry," who are willing to volunteer their time, offer opinions and ideas, to create a meaningful and relevant business network group. Thank you, Jim Carlson.

We are also proud to add Marc Soffler of Dynaire Corporation to the Board of Directors. Marc's experience and professionalism will bring added value and new ideas to our group. In addition, we have the honor of having Greg Singer of Martack Corporation, John Ottoviano of Air Ideal, and Harvey Stoller of Airdex, rejoin the Board of Directors to add years of experience and wisdom to ACCA's Greater New York chapter.

Step up and join us in forging ahead in our ever changing industry. The results to you personally and to your business will be immeasurable.

— Anthony N. Carbone



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ACCA Releases Quality Verification Standard

The Air Conditioning Contractors of America (ACCA) Educational Institute has released a new standard for determining whether or not an HVAC system has been installed properly. The "HVAC Quality Installation Verification Protocols" (QIVP) have been approved by the American National Standards Institute as a national standard.

HVAC systems have a large impact on home energy costs. One step to reducing these costs is to verify that HVAC systems have been installed in accordance with ACCA's ANSI standard for "HVAC Quality Installation Specification." The QIVP explains how to conduct this verification and establishes the minimum requirements to evaluate HVAC system installations.

The QIVP's requirements include minimum sampling rates, evaluation procedures, and documentation. It also defines the primary roles and responsibilities for the main participants in the verification process -- Contractors, Verifiers, and Administrators.

QI verification efforts may be implemented by trade associations, municipalities, utilities, equipment manufacturers, or groups of HVAC contractors seeking to dif-

ferentiate themselves.

The standard is available for purchase online or by calling 888-290-2220. For more information about ACCA's Quality Installation and Quality Maintenance programs, visit www.acca.org/quality or contact Glenn Hourahan at glenn.hourahan@acca.org. •

ACCA Turns It Up in Texas

Record Year for Attendance at Conference

FORT WORTH, Texas — Those who attended the 41st annual Air Conditioning Contractors of America (ACCA) Conference in Fort Worth, Texas, were pleasantly surprised in the Lone Star state. With talk of an economy on the downturn, one might have expected a lower turnout at the typically well-attended ACCA national convention.

However, according to Kevin Holland, the association's vice president, "Even before the beginning of the event, we knew that pre-registrations were over the top — it was a record year for attendance."

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goers was the positive buzz around the show. Certainly, many contractors admitted to hunkering down a bit with a tougher economy as they implement austerity measures in their businesses, but the general sense was one of optimism for the HVACR industry. Larry Taylor of AirRite A/C in the host city said, "We are putting more effort into our core business right now. We are making sure we take very good care of our primary customers."

Held in conjunction with the ACCA Conference was the Indoor Air Expo, co-sponsored by ACCA and the Indoor Air Quality Association (IAQA), which also held its 12th annual meeting at the same time. Over 2,300 people attended this year's expo, which contained nearly 300 booths.

Letters to the Editor

Please fax your comments or experiences that you would like included in our monthly newsletter. Send it in, hand write if you like. We will print it and see what others think. Fax...516-829-5472.



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People & The Workplace

By Alan B. Pearl,

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Beware Of New Cobra Requirements

In February of 2009, President Obama signed the American Recovery and Reinvestment Act ("ARRA"). One aspect of ARRA is that it provides reductions in premiums for individuals and additional opportunities to elect continued group health coverage under COBRA for employees who became eligible as a result of an involuntary termination of employment between September 1, 2008, and December 31, 2009. Employers will need to understand the new administrative requirements, especially those of which engaged in a reduction in force in the previously listed time period, or are currently contemplating such reductions.

In general, the Omnibus Budget Reconciliation Act of 1985 ("COBRA") statute gives workers who lose their health benefits the ability to continue their health benefits provided by their group health plan for limited periods of time under certain circumstances. These circumstances include volun-

tary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. COBRA generally requires that group health plans sponsored by employers with 20 or more employees in the prior year offer employees and their families the opportunity for a temporary extension of health coverage (called continuation coverage) in certain instances where coverage under the plan would otherwise end. Thus, ARRA will have a significant impact on employers with **less than 20 employees**, as they fall within the coverage of ARRA.

ARRA provides qualified individuals with a 65% government subsidy for up to nine months of the premiums paid for health care coverage under COBRA.

Subsidy Reimbursement:

The most significant impact on employers is the subsidy requirement. A qualified individual who pays 35% of the premium due will be treated as having paid the full amount of the premium. If the employer is the entity to which payments are made, the employer must file a claim for reimbursement of the remaining 65% of the premium. The entity is treated as if the amount to be reimbursed had been paid by the entity as payroll taxes. If the reimbursement due exceeds the entity's payroll tax liability, the excess is credited or refunded in the same way as an overpayment of payroll taxes. ARRA also

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provides that if any qualified individual pays the full amount of his or her COBRA premium for the first period or the immediately subsequent period following enactment to which the premium reduction applies (generally, March and April 2009), the entity to which premiums are payable must reimburse 65% of the premium to the individual or provide the individual with a credit towards one or more future premium payments. The entity to which premiums are due will then be reimbursed in the manner described above.

Eligibility:

To be eligible for the 65% COBRA continuation premium subsidy, individuals must:

- be employees involuntarily terminated between September 1, 2008, and December 31, 2009;
- be eligible for COBRA continuation coverage; and
- elect COBRA coverage under the normal or special election rules added by ARRA.

Election Period:

Employees involuntarily terminated between September 1, 2008, and February 17, 2009, and who do not have an election of COBRA continuation coverage in effect on February 17, 2009, are provided a 60-day special election period in which they (and their qualified beneficiaries) may elect COBRA coverage. If an individual elects coverage during this period, coverage begins after the election is made (and does not reach back to the date of termination). However, the special election does not extend the maximum period of COBRA coverage beyond the period under the applicable COBRA regulations that would have applied if COBRA coverage had been elected when originally available.

New Notification Requirements for Employers and Group Health Plans:

Plan administrators are required to provide notice about the reduction in premiums to individuals who have a COBRA-qualifying event during the period from September 1, 2008, through December 31, 2009.

- The notice must be provided to *all* employees (and family members) who have *any* COBRA-qualifying event during this period, *regardless* of the reason for the qualifying event. The individual must apply for the reduction. The decision as to whether the individual is eligible for the reduction is made by the plan administrator.

- The notice must be provided even if the individual currently does not have COBRA coverage – either because he or she previously declined COBRA coverage or because the individual had elected COBRA coverage and subsequently discontinued the coverage (typically by ceasing to pay the premiums).

- The notice should include the following elements:

- A description of the subsidy

- A description of the extended election period available to subsidy-eligible individuals who do not have a COBRA coverage
- A description of the individual's obligation to inform the plan if he or she becomes eligible for Medicare or another group health plan
- Forms necessary to establish eligibility for the subsidy
- Contact information for the plan administrator
- A description of alternative COBRA coverage options if the employer elects to provide

Plan administrators may provide notices separately or along with notices they provide following a COBRA-qualifying event. Employers interested in model notice package should contact this office. This notice must be provided by April 18, 2009. Employers who have questions about how ARRA affects them should contact this office for guidance.

Supreme Court Holds that Collective Bargaining Provisions to Arbitrate ADEA claims are Enforceable

The Supreme Court last week settled the issue of whether

Continued on following page

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Workplace from page 9

Collective Bargaining Agreements could call for mandatory arbitration of age discrimination complaints. The decision, *14 Penn Plaza LLC v. Peypett*, rejected lower court decisions that found that arbitration was not required.

The plaintiffs, members of the Service Employees International Union, sued their employer for age discrimination. The Collective Bargaining Agreement (“CBA”) required union members to submit all claims of employment discrimination to binding arbitration. The Plaintiffs proceeded to file a complaint with the Equal Employment Opportunity Commission. Both the District Court and the Second Circuit denied the employer’s motion to compel arbitration, per the terms of the CBA. The Supreme Court overruled the lower decisions.

The Court found that the ADEA does not remove this particular class of grievances from the National Labor Relation Act’s control. Thus, CBA provisions which mandate arbitration over employment related discrimination claims, including ADEA claims, are fully enforceable.

This is consistent with other jurisdictions which have held that private contractual agreements, between employers and employees, to arbitrate claims of discrimination are enforceable.

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

Stimulus Funding for Schools Provides Energy Efficiency Opportunities: ASHRAE

As school boards and superintendents across the United States look to utilize economic recovery stimulus funds, projects focused on improving energy efficiency can result in long-term savings for school districts. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) notes that the *Advanced Energy Design Guide for K-12 School Buildings* can help in achieving that efficiency.

The American Recovery and Reinvestment Act provides significant funding and financing opportunities to modernize, renovate, and repair public schools. Under the “State Fiscal Stabilization Fund,” up to \$48.3 billion can be allocated to schools. An additional \$25 billion in eligible bonds also have been authorized.

ASHRAE and other leading building industry organizations have developed the *Advanced Energy Design Guide for K-12 School Buildings* to provide recommendations for achieving 30 percent energy savings over the minimum code requirements of ANSI/ASHRAE/IESNA Standard 90.1-1999. According to ASHRAE, estimates show that a full 16 percent of school districts’ controllable costs is spent on energy.

Details on the stimulus funding for educational facilities can be found on the Department of Education’s Recovery page (www.ed.gov/policy/gen/leg/recovery). Copies of the

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Advanced Energy Design Guide for K-12 School Buildings are available for free download at www.ashrae.org/freedaedg or print copies may be ordered from the ASHRAE Bookstore at www.ashrae.org.



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High Voltage Hybrids Require High-Skilled Service

By Kelly Hiner, Group Sales Manager for Enterprise Fleet Management in New York. She can be contacted at 973-709-2499.

Hybrids can be a great value based on fuel costs, maintenance and repairs, insurance costs, depreciation, financing rates and taxes against price and reliability over a period of five years.

But as businesses continue to add hybrids to their companies' fleet, they are finding that servicing these high-voltage power vehicles requires special attention. From jacking and lifting vehicles to replacing battery packs and fluids, manufacturers of hybrids encourage owners to strictly adhere to the guidelines provided in the owner's manual and to have their vehicles serviced only by technicians who are properly trained and certified.

Hybrids are different. Because a hybrid car uses both a gasoline engine and an electric motor powered by high-voltage batteries, there are unusual features under the hood. For example, there are few if any belts to check and electrically assisted steering can be used instead of a traditional hydraulic power steering pump. In addition, hybrid transmission fluid, which needs to be checked, is very different than that used in conventional transmissions.

To further understand the different service requirements of hybrids, carefully read the manufacturer's repair manual. Compared to most gasoline powered vehicles, some additional checks and inspections must be performed on hybrids. And, it's even more important to pay attention to details, such as the proper weight engine oil, hybrid specific coolant and transaxle fluid, and correct tire pressure. Even the refrigerant oil used in the air-conditioning systems must be special oil, which has less ability to attract moisture compared to the traditional oil used in a 12 volt system.

A hybrid vehicle's cooling system also requires special

attention. Because electronic modules for the electric motors run hot, hybrid vehicles have dedicated cooling systems for these components. There's also a dedicated air circulating system to cool the batteries. Filters for these systems need to be checked regularly and replaced when needed for the system to operate properly. Cars.com recommends that hoses, clamps and coolant level of the electronics cooling system be checked periodically and the system serviced according to the manufacturer's specified intervals. The power electronics cooling system designed to cool the hybrid electronics system includes a radiator, circulation pump, reservoir and connecting hoses.

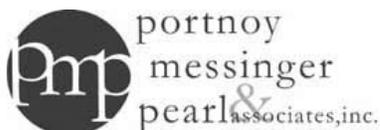
But that's not all. The system that cools the battery and electronic components for hybrids also has a filter that needs to be checked and serviced on a regular basis. These unique features are among the reasons that hybrid owners need to rely on specially trained technicians to insure proper care of their vehicles.

On the other hand, routine maintenance for hybrids is not that different from regular vehicles. Scheduled maintenance includes the usual oil and filter changes, checks of transmission fluid and engine coolant levels and condition, as well as service at the recommended intervals. In addition, regularly inspecting brakes, rotating tires and checking tire inflation, wipers, filters and fluids are necessary to keep your hybrid vehicle performing at peak efficiency.

Arrange Service with Qualified Shops

Hybrids present special challenges to service technicians. Technicians must be careful when jacking and lifting hybrid vehicles to prevent damaging the high-voltage cabling underneath the vehicle. Similarly, technicians need to know that during routine service such as oil changes or any type of service, the ignition system should be disabled to prevent the engine from starting unexpectedly, causing expensive damage or injury.

Hybrids' powerful and large battery packs, which can sometimes weigh as much as 250 pounds, also require special attention. Compared to a 12 volt system for a regular car, a hybrid's electrical system can present more



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hazards. Cables that routinely carry more than 200 volts and connections to drive motors that can carry up to 650 volts, which can be dangerous if not handled properly. As a precaution, high voltage wiring is encased in bright orange casing.

Technicians who are trained to work on hybrids are knowledgeable about the unique high-voltage power systems and how these affect the vehicle. They also are familiar with the proper equipment, tools, and procedures when working on these specialty vehicles, as well as the safety precautions.

Hybrids continue to attract the interest of businesses because of their environmental and fuel efficiencies. When it comes to servicing your hybrid it is best to have the work done by specially trained technicians to keep your vehicle operating at peak efficiency. •

Reminder: New Form I-9 Took Effect April 3rd

After a delayed implementation, the new Form I-9 took effect on April 3, 2009. Employers must use the new Form I-9 for all new employees hired on or after April 3. The new form is available on the U.S. Citizenship and Immigration Services (USCIS) website along with an updated version of the I-9 Handbook for Employers.

What's new?

DHS made several changes to the I-9 regulations and to the Form I-9. The following are the most notable updates:

- Expired documents are no longer acceptable.
- U.S. nationals and U.S. citizens have separate status boxes in Section One.
- Legacy Employment Authorization Cards and Temporary Resident Cards are no longer acceptable.
- Documents have been added as acceptable evidence of identity and of employment authorization.

In addition, DHS has issued a new I-9 Handbook for Employers. Like the new Form I-9, employers are encouraged to review the new Handbook.



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Statement From Stuart S. Zisholtz, Esq.

Exaggerated Mechanic's Liens

It has to be made crystal clear that the failure to prove everything in a Mechanic's Lien does not necessarily mean that the Mechanic's Lien is exaggerated. An exaggeration exists when someone deliberately and intentionally increases the amount due.

The classic case that was held to involve an exaggerated lien was a small matter where somebody was greedy and stupid. The contractor had an item of material that cost \$110 or so, and when he submitted the bill, he put a "1" in front of the \$110 and made it \$1,110. That was deemed a willful and deliberate exaggeration of a mechanic's lien. Where you add hours, juggle around time sheets or equipment or materials, etc. you run into a situation where you can be found to have exaggerated your lien.

Recently, the Appellate Division, First Department, came down with a decision finding an exaggeration of a mechanic's lien and imposing damages in the sum of \$243,000. The Court stated that the exaggeration was willful and intentional since the lienor claimed to be owed almost seven times the amount actually due and owing.

This is in sharp contrast to a legitimate lien that cannot be fully established. If you file a lien for \$100,000 but because

of poor bookkeeping, absent records, legitimate arithmetic errors, inability of witnesses to recall, etc., you can only prove \$90,000 that is not an exaggeration of a Mechanic's Lien. In today's day and age, virtually every response to a foreclosure action brings up the issue of exaggeration of the Mechanic's Lien. Many people who defend foreclosure actions throw in the defense as a knee-jerk reaction to the foreclosure, but have not the vaguest idea of how to go about establishing it or proving it. Nevertheless, it is important to avoid an exaggeration of a lien because someone may get lucky and find out how to do it at the last minute or get the assistance of a judge who might find the exaggeration on his own.

The important thing, therefore, is to keep accurate and complete records, maintain a paper trail, and err on the side of caution. Where there is a possibility that something is not lienable, do not include it. Reserve those issues for a law action which could be maintained in the same foreclosure proceedings.

Never let your lien time run out.

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