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Greater New York Contractors' NEWS



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NOVEMBER 2009

President's Message

HAPPY
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ALL!



Ron Nathan

We have so much to be grateful for in this wonderful country. As you gather with your friends and family to celebrate this great American holiday, consider this quote from the late President John. F. Kennedy: As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.

Robert Meehan of Lennox was

Turn to President's Message on page 3

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Thursday, December 3rd 2009 – See Page 8

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PRESIDENT'S MESSAGE

Continued from page 1

our guest speaker at the October meeting. He spoke about the use of social networking sites such as Facebook and Twitter in a business setting. He also discussed optimizing company websites through the use of these pages. You can connect with ACCA members and other professional HVACR community members through Linked In, Facebook and Twitter. Robert thoroughly explained the potentially great value of networking sites to a business.

Alan Pearl of Portnoy, Messenger, Pearl and Associates, Inc. will be the speaker at our November meeting. Alan is an extremely knowledgeable source for all questions concerning Human Resources and a valued member of our association. Bring your questions regarding any facet of employment, and you will receive accurate and complete answers. Please join us for what promises to be an informative evening.

The December Holiday Party details will be announced soon. As usual, our Holiday Party will be a lavish affair with fabulous food and entertainment in a beautiful venue. Good spirits, conversation and generous raffles will abound. Attendance numbers in the last couple of years have been wonderful, and we hope to continue that

tradition this year. If you have not been able to attend a Holiday Party in the past, please consider joining us this year. We ask attendees to bring a new, unwrapped toy for the Marine Corps Toys For Tots Program. It is a wonderful way to share your holiday spirit! The toys are presented to representative US Marines during the evening. Please continue to check our website for further details and check your mailbox for your invitation.

ACCA's Annual Golf Outing for 2010 will be held on August 16 at the Hamlet Golf and Country Club in Commack. If your golf game is anything like mine, it's never too early to start practicing! This event regularly sells out, so be sure to reserve your spot early. —**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.

Editor's Notes

By Anthony N. Carbone

Our October programming meeting at the LaGuardia Marriott was well presented by Lennox Industries District Manager, Robert Meehan. Robert provided valuable and pertinent information on how to keep your company relevant when it comes to your "electronic storefront," your website. Without a doubt, your company can no longer ignore the importance of a user-friendly site that provides information to your customers. Today's consumer is no longer going into their closet and pulling out the yellow pages to find you. They are going to internet search engines. Search engine optimizations are words no HVAC business can ignore...unless they want to become ignored.

The information derived from services which provide your company with data of who is "clicking on your site," is marketing information that will allow

you to survive. Bidding on key words through search engines like Google allows you to put a marketing budget in place at specific times. You can drive business to your site by paying or bidding for keywords for specific time frames. This flexibility allows you to maximize your marketing budget as needed.

Ignoring these digital times will almost certainly put you back to the stone age with Fred Flintstone. If you wanted to experience an important presentation, it was at ACCA's October meeting.

Thank you, Robert Meehan, for providing our industry organization with important and insightful information. You have added necessary value to your fellow colleagues at ACCA.

The ACCA Board of Directors wants to invite you to our Holiday Party this year. It is a time to catch up on the year's events. This year was a challenge to many contractors and suppliers alike. Please join us. The networking and socializing are sources of information you won't find anywhere else!

— Anthony N. Carbone



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Chapter's SCCC Endowment

Working for the Future of Our Industry

By John Ottaviano

According to the Bureau of Labor Statistics, HVAC professions are expected to grow at an average pace between 2009 and 2016 and wages for HVAC professionals are supposed to remain fairly stable. How can we convince young high school graduates about the opportunities in the HVAC profession and where will our youthful work force receive its preliminary training. The only three accredited associate HVAC programs in the state of New York are located at Suffolk County Community College in Brentwood, Monroe Community College in Rochester and the New York City College of Technology in Brooklyn. Beyond that there are only vocational technology schools like Apex, TCI and Branford and union apprenticeship programs. However, none of the vo-tech and union schools will provide the core curriculum skills required to advance like science, math, engineering and business.

Suffolk County Community College is now home to the state's largest HVAC program. SCCC offers students the choice between a three-and-a-half year associate's degree and a 2-year certificate program. Students in the HVAC/R programs take courses in diagnostics and computer applications, with participants in the associate's degree program attending intensive lab sessions and an internship their final semester. On Wednesday,

September 2, 2009, SCCC celebrated the grand opening of their new Workforce Development and Technology Center located on the Michael J. Grant Campus in Brentwood.

The 18,000 square-foot building has been designed to meet "Gold" LEED certification. Created by the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED), sets construction standards for energy efficiency, sparing water usage, and other healthful and nonpolluting attributes. LEED certification is only awarded to the top 25 percent of environmentally responsible buildings. The construction of the new Workforce Development and Technology Center has been made possible through funding from Suffolk County and New York State.

The Workforce Development and Technology Center includes state-of-the-art laboratories, classrooms and office space. The laboratories are dedicated for use with Heating, Ventilation, Air Conditioning and Refrigeration and a variety of renewable energy programs including solar, geothermal and weatherization training. "In addition to creating a state-of-the-art environmentally conscious facility, we are offering environmentally conscious programs," said George Gatta, Jr., interim president of Suffolk County Community Col-

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lege. "Students within this building will receive an advanced, high quality education and will be prepared to provide direct and immediate support to regional businesses in need." The HVAC/R program will allow students to be trained in today's newest, most energy-efficient technologies and will also pro-



SUNY Chancellor Dr. Nancy L. Zimpher, SCCC Interim President, George Gatta, Jr., elected county officials, business leaders and college administrators attended a ribbon-cutting ceremony for SCCC's new "green" Workforce Development and Technology Center at the Michael J. Grant Campus in Brentwood.

vide regional HVAC/R technicians the opportunity to upgrade and enhance their skills. In the Greater New York area, there is a growing demand for HVAC/R workers and, in fact, many students in the program are gaining employment before they even complete their training.

As you have read here or overheard at our meetings, the Greater New York Chapter has provided its support to this new program and facility by endowing the new Greater New York Chapter of ACCA Scholarship for outstanding high

school graduates to pursue a degree in HVAC technology. This scholarship has been created in order to attract young, mechanically inclined high school graduates into a career in the HVAC industry and to help increase the skilled labor pool for member contractors. The chapter has, to date, provided approximately \$15,000 in funds to establish this scholarship which will be renewable for qualifying candidates. The first scholarship was awarded to Tom McGinley from Plainedge High School. Tom graduated with a 90 average and is very excited about the opportunities that the new program presents for him.

Eugene Silberstein, coordinator of the college's HVAC/R program, has invited us to tour the new facility and to provide information about the degrees and courses provided in HVAC/R. The GNY Board of Directors has decided to convene our chapter meeting in January or February at the Workforce Development and Technology Center so that all of our members can see what it has to offer in the form of training for both our current and future employees. Please look for the exact date on our website and in next month's newsletter and come out and support SCCC's efforts and those of your ACCA chapter. •

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.

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Swine Flu, You, and Your Employees

Flu Season is a common illness that routinely affects workforce productivity. However, with the recent arrival of H1N1 or "Swine Flu," the seriousness of the flu has become elevated. During a flu pandemic, employers have a key role in protecting employees' health and safety as well as limiting the negative impact to the community. Swine Flu is expected by the Center for Disease Control ("CDC") to peak starting in October. As such, employers should review their internal policies so that they are prepared with answers and a plan to cope with potential flu outbreaks. Below is a discussion of potential legal liabilities relating to Swine Flu, as well as a list of suggested strategies.

Occupational Safety and Health Act ("OSHA")

OSHA requires an employer to provide a safe

working environment. Although OSHA does not have a clause that addresses Swine Flu specifically, the General Duty Clause requires that an employer protect its employees against "recognized hazards" to safety or health which may cause serious injury or death.

Under the Act, the employer may also have additional legal obligations to the employees of *another* employer who may come to the workplace and may potentially be exposed to the hazard. OSHA may utilize its authority under the "multiemployer workplace doctrine" to issue citations to the host employer when personnel of *another* employer are exposed. OSHA will expect the responsible employer to develop a program based upon a "hazard assessment" of potential exposure at the worksite such as conducting employee awareness training, developing procedures, including the use of personal protective equipment, developing a means of reporting infection, as well as full documentation.

Family and Medical Leave Act ("FMLA")

The FMLA requires employers who have more than 50 employees to provide up to twelve (12) weeks of unpaid leave to a qualified employee who has a "serious health condition." An employee is also eligible under the FMLA in the event of a "serious health condition" affecting its spouse, child or parent(s).



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If an employee contracts the Swine Flu, this disease will most likely be considered a "serious health condition" under the FMLA warranting the unpaid leave. Similarly, if an employee's parent, spouse or a child contracts the disease, this will likely be a qualifying event entitling the employee, with physician's documentation, to utilize leave time to care for such an immediate family member.

Americans with Disabilities Act ("ADA")

The ADA provides certain protections to employees who have disabilities but who are otherwise qualified to perform the essential functions of their jobs. Typically, a disability is an impairment which substantially limits one or more of the major life activities of an individual which is chronic in nature. As such, Swine Flu by itself does not implicate the ADA, as it is not a chronic disability. However, employers should note that the ADA may *become* a factor if the employee develops a disability as a result of the disease.

Premises Liability

Under general common law principles in most jurisdictions, a property owner or tenant who allows third parties to enter upon its premises for business or related purposes owes these individuals a duty of "reasonable care" to protect them against hazards at the premises. In the case of Swine Flu, if the property owner is aware that there are infectious persons at the premises who may create a health hazard to these third party entrants, there may be a duty to warn such third parties, or to prevent access to certain facility areas. In the event that the building ventilation system or washroom facilities may become contaminated with Swine Flu, the tenant may have an obligation to prevent such contamination through enhanced measures.

Recommended Employer Action

Most importantly, the CDC recommends that any individual who has Swine Flu should not return to work until 24 hours after their fever has broken. Failure to do so drastically increases the risk that Swine Flu will be

spread to other employees. Employers should also:

- Review human resources policies to make sure that policies and practices are consistent with public health recommendations and are consistent with existing state and federal workplace laws;
- Establish hygiene protocol to ensure workspaces are kept clean, especially communal areas such as kitchens or break rooms;
- Have an understanding of your organization's normal seasonal absenteeism rates and know how to monitor your personnel for any unusual increases in absenteeism through the fall and winter;
- Develop other flexible leave policies to allow workers to stay home to care for sick family members or for children if schools dismiss students or child care programs close;
- Explore whether you can establish policies and practices, such as flexible worksites and flexible work hours. Ensure that you have the information technology and infrastructure needed to support multiple workers who may be able to work from home; and
- Identify essential business functions, essential jobs or roles, and critical elements required to maintain business operations. Plan for how your business will operate if there is increased absenteeism.

Now is the time to establish a plan to cope with potential Swine Flu outbreaks. For a more in depth discussion of the issues raised in this article, as well as a review of your internal policies and handbook, Portnoy, Messinger, Pearl & Associates can provide a wide range of guidance. As always, should this article raise any questions, please feel free to contact me at ABPearl@pmphr.com. •

On The Move/ People In the News

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Tires, Treads and Trust

By Kelly Hiner,
Enterprise Fleet Management

Selecting the right tires for vehicles in your fleet is an important decision. Driver safety, vehicle performance and fuel efficiency over thousands of miles are all affected by this decision. But choosing the right tires for different vehicles and different driving conditions can be more than just a little confusing.

A good place to start is by understanding all the different sidewall markings on a tire. In addition to the tire brand and model names, basic information may include the tire's dimensions, production date, materials used internally to reinforce the rubber, and maximum inflation pressures and loads. More detailed information may indicate a manufacturer's certification that the tire meets various industry standards and/or any government regulations.

One of the most important markings is the tire size designation, which is indicated by a letter or letters that identify the type of vehicle and/or type of service for which the tire is intended.

For example, tire sizes beginning with a P are generally designed for passenger vehicles such as cars, minivans, sport utility vehicles and light duty pickup trucks (typi-

cally one-quarter and one-half ton load capacity). If the first letter is a T, that signifies that the tire is a temporary spare, space saver spare or mini spare and should be used only for a short time.

The letters LT have a different meaning depending on whether they appear at the beginning of the tire size designation or at the end. If they appear at the beginning, it signifies that it is a light truck-metric size designed to be used on vehicles that are capable of carrying heavy cargo or towing large trailers, such as medium and heavy-duty pick-up trucks, sport utility vehicles and full-size vans. On the other hand, a tire that ends with LT indicates a wider, oversized tire designed for carrying heavy cargo and towing trailers or to drive over loose dirt or sandy surfaces.

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Another important marking is the uniform tire quality grading (UTQG), which provides information regarding tread wear, traction and temperature. Basically, the higher the number, the longer the tread will last. Tire traction, based on the tire's ability to stop on wet concrete and asphalt, is rated AA, A, B or C, with AA at the top of the scale. The traction rating has nothing to do with the tire's cornering ability. Finally, tire temperature ratings of A, B or C measure how well the tire dissipates heat and how well it handles heat buildup.

However, it is not uncommon for there to be differences in UTQG ratings within a given tire design. In addition, each tire manufacturer has its own philosophy about UTQG ratings. Therefore, it is important to be cautious when comparing ratings because they may not be "apples to apples".

Finally, choosing between all-season tires and touring tires can also be confusing. All-season tires, one of the most cost effective tire types, are designed to provide a smooth ride, long wear and adequate traction in dry and wet weather conditions. Touring tires, designed for late model luxury vehicles and available in all-season and summer treads, feature a combination of enhanced performance

and excellent ride and handling characteristics with slightly lower profiles and wider tread. Neither of these may be suitable in snow-belt areas during the winter months.

All tires may be black and round, but that's where the similarities stop. With most tires being replaced every three to five years, resulting in approximately 200 million replacement tires purchased each year, there is no doubt that it is very important to get a grip on understanding what tires will do the best job for your vehicles.

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 or call toll free 1-877-23-FLEET. •

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Statement From Stuart S. Zisholtz, Esq.

Claims Against Corporate Principals

Many times when I meet with a potential client who is seeking to recover money due for work performed and materials furnished, the conversation comes up about whether a claim can be brought against the principals of the corporation in their individual capacity.

Under ordinary circumstances, a corporation is formed for the purposes of avoiding personal liability. A corporation acts as a shield to prevent the principals of the corporation from being exposed to personal liability for the debts incurred by the corporation.

Under the Lien Law, there are limited circumstances where the Legislature enacted statutes to allow claims to be asserted against the individuals of a corporation. Specifically, the Lien Law allows for personal liability where there is a diversion of trust funds. These claims must be brought in a timely fashion and are difficult to prove.

Where there is no diversion or the time sought to bring an action for diversion of trust funds has expired, the question is whether a party can sue the individual principals of a corporation for breach of contract, unjust enrichment, etc. The answer to that question is, under ordinary circumstances, no.

A court will pierce the corporate veil and permit the im-

sition of personal liability in order to avoid fraud or injustice. This does not mean that a simple breach of contract action, while it may appear to be an injustice if you do not get paid, does not warrant the imposition of personal liability.

There has to be complete domination by the owners of the corporation which resulted in the fraud or wrongdoing that ultimately constituted an abuse of the privilege of doing business in corporate forum. What this means is that the individual must be acting in a way that would appear as though the individual and the corporation are one and the same. The individual could be held personally responsible if he had made false representations to induce a subcontractor to perform which ultimately resulted in damages to the subcontractor.

As you can see, it is not a simple task to impose personal liability on an individual of a corporation. However, if you have checks issued by the individual or if you have a personal guarantee, then a direct claim against the individual can be achieved.

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.

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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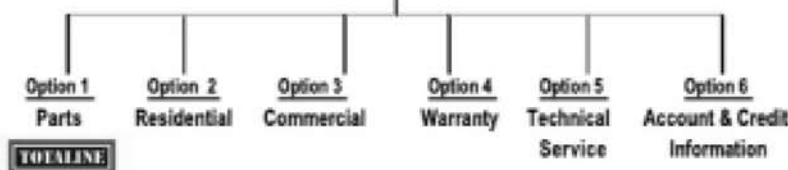
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