IN THIS ISSUE...

Air Conditioning Contractors of America

Greater New York Chapter
229 South Street,
Oyster Bay, NY
11771

RETURN SERVICE REQUESTED

Greater New York Contractors' NEWS

Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org **PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION** APRIL 2010

President's Message

Anthony N. Carbone

MARCH STARTED OFF WITH A FEW 50-DEGREE DAYS that melted the snow from February 25, 26, the fourth largest snowstorm in New York City history. The warm days caused many people to think of spring…and air conditioning. This could be a well-needed head start for HVAC contractors who have had a tough time with the current economy and the lack of business.

Turn to President's Message on page 3

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

PRESIDENT'S MESSAGE *Continued from page 1*

I consider this a great time to evaluate a business and make decisions on cleaning out the old way of doing business. Trim away the fat. Many companies do things a certain way because that is how they have always done them. That is a great recipe for making your company irrelevant. The HVAC contractors who ignored the computer and decided to stay with handwritten ledger cards and customer index cards found they no longer could compete in a fast moving business environment. Inevitably, they will phase themselves out.

The HVAC contractor who prospered from 1980 to 2007, learned to grow as the greatest economic expansion in the U.S. economy took place — more trucks, more employees, more overhead, more extras, more jobs. Efficiency really didn't matter because as fast as you could do one job the next would be coming in. If your outfit is geared to operate at this pace, then the fuel to feed the fire must be there. If it isn't, the fire will certainly go out.

I believe, from my conversations with other contractors at our monthly ACCA meetings, that a transition period for many contractors is here. Some will revamp their operations according to what is needed and important. Some will decide the overhead and responsibility is not worth the margin of profit that results after the reverse auction bidding is over.

The changes in our industry are not only in our economy but in our procedures as well — refrigerant changes, rebates, permits, stimulus programs, insurance requirements, licenses, minimum efficiencies, quality of technicians. The end result will be lean survival of the fittest contractors. Are you one of them?

Try your luck at our fabulous CASINO NIGHT…! You can see if you have what it takes to gamble with us!

— Anthony N. Carbone

Check the ACCA national website, www.acca.org, regularly for up-to-date information on our industry.

ACCA Greater NY Chapter

Officers

President
Anthony N. Carbone, *Systematic Control - 516-482-1374*

President Elect
Mike Newman, *Standard Refrigerator - 718-937-0490*

Treasurer
Marc Soffler, *Dynaire Corp - 516-248-9320*

Secretary
Al Trudil, *Almore Corporation – 631-345-6050*

Past-President
Ron Nathan, *County Fair A/C Corp. - 516-997-5656*

Executive Director
John F. DeLillo, *516-922-5832*

Directors

Brian Aull, *Atlantic Contracting & Specialties Corp. - 631-563-6510*
Steve Bergman, *Twinco Supply Corporation - 631-547-1100*
Roy Bernheimer, *Cascade Water Services - 516-932-3030*
James Carlson, *Michael James Industries (MJI) - 631-231-3434*
Ken Ellert, *Comfort Tech Mechanical* - 718-932-2444
John Ottaviano, *Air Ideal - 516-873-3100*
Greg Singer, *Martack Corporation - 516-998-1000*
Richard Staiano, *National Compressor Exchange - 718-417-9100*
Joe Stranieri, *Industrial Controls Distributors - 212-947-3100*
Harvey Stoller, *Airdex – 718-646-7200*

Advisory Council

Robert Berger (retired)
Mark Bedson, *Brinco Mechanical Services – 516-378-2277*
Thomas Cleary (retired)
Anthony Cutaia, *Air Ideal – 516-873-3100*
John J. Fanneron, *BP Air Conditioning Corp. – 718-383-2100*
Michael Gelber, *Stan Gelber & Sons – 516-538-0040*
Gene Klochkoff, *Cascade Water Services – 516-932-3030*
Lauren Larsen, *Power Cooling – 718-784-1300*
Michael O'Rourke, *BCC Best Climate Control – 631-218-8022*
Brandon Stone, *All Weather Temperature Control - 631-842-8777*
James Stone, *All Weather Temperature Control – 631-842-8777*
Brian Svedberg, *BCC Best Climate Control – 516-981-1008*

Committees

Advertising/Newsletter
Anthony Carbone
Donald Gumbrecht & Co.

Baseball Outing
Scott Berger
Nick Terran

Casino Night
Jim Carlson

Golf Outing
Ken Ellert

Holiday Party
Anthony Carbone

Membership
Ron Nathan

Political Action
Anthony Carbone

Scholarship
John Ottaviano

Trade Show
Rich Staiano
Steve Bergman

Web Page
Roy Bernheimer

Try This At Your Own Risk

By Greg Singer
Martack Corporation

Try this at your own risk.

Visit and negotiate at a major furniture store say, 6 times over the course of a few months. Make sure to use up considerable time of the sales staff and don't hesitate to the pick their brains for the latest ideas and trends. Show them all the competitors' pricing, and knock their numbers down to rock-bottom. When you are convinced you have bled them as much as possible, place the order. Here are your terms:

Deliver, assemble and install the living room set in the next few days.

There will be no deposit, and in fact, you need at least 30 days to get the money flowing, but don't be surprised if no funds materialize for 60 days. The ink on our currency has become very sticky lately and the money just doesn't flow like it used to.

Don't expect much money at first. Everyone knows that there is an extensive break-in period for sofas and ottomans these days, and if the expected comfort level cannot be established, the family that will establish the "percentage of satisfaction" is not likely to approve further payments until such time as the deficiencies are remedied.

In any event, the family will hold back 10 percent until they are prepared to issue a "certificate of comfort and satisfaction".

I think we would all realize that finding a furniture retailer that would agree to these terms is about zero. Who would do business under such onerous terms? The answer is we would, and we do it every day.

I really have no idea when and where the payment protocol that exists in the construction industry today started. What is clear is that it is based on a tremendous level of mistrust directed at contractors. Clearly, whether by design or by circumstance, it shifts a large portion of the burden of financing the project onto contractors and sub-contractors who are historically weak in the working capital department to begin with.

I've often gotten into this debate with contractors and developers. We all know that as difficult as it can be to get paid on a regular basis, final payment can be almost impossible. We've all seen the wording in contracts stating that "final payment will only be made after issuance of a final acceptance letter" by the architect. But have you ever seen one? I recently brought this point up to a very large and seasoned GC who laughed, and agreed, that in his 30 years in the industry he could never remember actually seeing one. I've been at this over 30 years and no one has ever presented me with one.

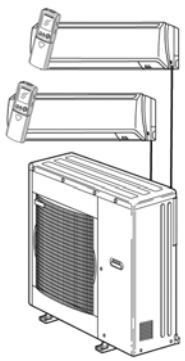
I write this article today, coincidentally, having received notice from my attorney that a 3½ year old claim against a developer for $129,000 has tentatively settled after opening court appearances. No, not for the full amount. There was little justification for them not paying. The reason was that they figured they could get away with it. The documents in the case brought to light the fact that they earned around $16 million on the loft conversion project. I had to reach for a box of Kleenex I was so touched by the hardship they had to endure.

Can contractors, developers and owners keep getting away with these payment practices? Do we have to constantly knuckle-under to these tactics, payments delays, and be made to feel that we have a lot of gall to be asking for our money?

We have met the enemy, and it is us. •

What Do You Think About WEBINARS?

Some love 'em. Some hate 'em. Some don't think they have time for 'em. And some have simply never tried 'em. ACCA National has a successful online webinar program called Comfort U. Our Chapter is considering offering some too. Let us know your thoughts. Call the Chapter office at 516-922-5832.



Understanding Manufacturers' Recalls and Technical Service Bulletins

By Kelly Hiner/Enterprise Fleet Management

With recent news headlines about vehicle safety recalls, it is important to understand the differences in terminology for recalls versus technical service bulletins (TSB), both of which are issued to detail a fix for a known concern and may include certain limitations. While both warrant attention, there are distinct differences.

Recalls are Mandatory

A motor vehicle recall is a process that involves recalling vehicles that are found to have a manufacturing problem that can cause an emissions or safety issue. These can range from a minor mechanical defect like a malfunctioning ignition system or vehicle sensor, to problems with the suspension or brake systems, as well as major engine or driveline failures.

The recall system for motor vehicles in the United States, enacted in 1966 by the Department of Transportation's National Highway Traffic Safety Administration (NHTSA), allows the NHTSA to issue vehicle safety standards and to require manufacturers to recall vehicles that do not meet these standards or have safety-related defects.

After an issue is determined the NHTSA gives manufacturers the opportunity to announce recalls voluntarily. If this does not happen, the NHTSA has the authority to announce a mandatory recall. When a recall is issued, voluntary or mandatory, the manufacturer must correct the defect to meet Federal safety standards at no cost to the customer.

Sometimes a motor vehicle recall is for a simple and minor situation, while others can represent serious safety hazards. Safety-related defects may exist in a group of vehicles with the same design or manufacturer, or items of equipment with the same type and manufacturer. Because many of today's vehicle models share certain parts, the effect of one component on the safety or emissions of many vehicle models is more common than ever.

TSBs are Voluntary

Because not every chronic vehicle problem is a safety

or emissions issue or results in a recall, the manufacturers have developed TSBs. Since the TSB is not a recall, the manufacturer has no obligation to notify customers or make the repair at no cost.

It is important note that warranty coverage limits policies are not altered by a TSB. Warranty coverage limited are determined by the applicable warranty.

Thousands of bulletins are issued each year by car manufacturers with up-to-date factory fixes for difficult to diagnose problems such as rough idles, intermittent stalls, hard starts, and all varieties of shakes, rattles and clunks. Information usually includes recommended service procedures to improve a vehicle's performance, reduce future breakdowns or provide details for a factory authorized modification.

More often than not, only a portion of the production run of a certain make, model, and year vehicle is affected by a motor vehicle recall or TSB. To verify whether a vehicle is involved have a dealer's service department run the vehicle VIN through the manufacturers data base.

Information issued in a TSB always is intended for use by trained, professional technicians with the knowledge, tools and equipment to do the job properly and safely. Because professional technicians are trained to understand conditions that may be particular to some vehicles, procedures should never be attempted by do-it-yourselfers.

Owners Have Time Limitations

Under certain conditions manufacturers are required to provide reimbursement for certain costs incurred by owners to remedy a safety defect prior to a recall, but there are specific closing dates for eligibility and documentation of costs is required for reimbursement. In addition, there may be limitations based on the age of the vehicle. In order to be eligible for a no cost remedy, the vehicle cannot be more than 10 years old on the date the defect or noncompliance is determined. However, since the safety risk still exists, owners are encouraged to remedy the safety problem at their own expense.

For questions concerning TSBs or motor vehicle recalls, contact your local dealer for assistance.

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. •

CHECK US OUT! In an effort to be more environmentally friendly, we are alerting you, our members and counterparts from our industry, to be aware that the *ACCA Greater New York Contractor News* is available on our website www.accany.org.

So if you are using your computer and need to know what is happening at ACCA , check us out there!

You will have the industry edge!

People & The Workplace

By Alan B. Pearl,
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

Pop Quiz- Americans with Disabilities Act

Employers are frequently faced with employee health issues that affect their performance in the workplace. However, the Americans with Disabilities Act ("ADA") requires certain protocol which can include reasonable accommodations. The failure to act properly could create liability on behalf of the employer-in the following situations, what would **you** do?

• A company is interviewing for an open position and it is revealed by an applicant that he is a recovered drug addict. The company's internal policy prohibits the hire of such individuals-is this a legal policy?

• A company is looking to contract with an independent contractor and a favorable candidate is selected. Only after entering into contract negotiations is it revealed that the candidate has sickle cell anemia. The hiring director tells the applicant that they are unable to accommodate his schedule and refuses to enter into contract with him. Can independent contractors pursue claims of employment discrimination?

• An employee undergoes knee surgery and is out from work on medical leave for several weeks. Can the employer require the employee to undergo a physical capacity evaluation before returning to work from medical leave?

• An employee requests to be moved to a sunnier work area because of her Seasonal Affective Disorder-must the employer accommodate this request? What kind of accommodation must be granted?

• One of an employer's truck drivers seems uncharacteristically withdrawn and depressed. His supervisor wants to refer the employee for a psychological evaluation on the basis that this test is job related and consistent with business necessity-can the supervisor do this?

• An employee who works as a driver reveals that he is currently taking medication to treat a disability. The employer is concerned that this might impair his ability to safely operate a motor vehicle and voices his concerns with the employee. The employee then offers to take a driving test to demonstrate his ability to drive safely. Must the employer allow this test as a reasonable accommodation?

Don't wait until you're on the spot; learn how to answer these questions now. Contact this office at ABPearl@pmphr.com or check our website at www.pmphr.com for a discussion of the answers.

Age Discrimination in the Workplace

This office has previously advised ACCA members on numerous factors to consider in conducting a reduction in force. The Age Discrimination in Employment Act ("ADEA") should be of critical concern for employers. Fortunately for employers, the EEOC has proposed redefining a key defense available to employers facing claims by employees the ADEA. The new standards would amend the EEOC's "Differentiations Based on Reasonable Factors Other than Age" regulation by identifying new criteria for establishing the "reasonable factor other than age" defense in age discrimination cases. Most claims of discrimination are brought under a "disparate treatment" model: the plaintiff alleges that the employer *intentionally* took action against him because of age. An employer may be found liable for discrimination based on its use of policies that disproportionately affect a particular protected class in an adverse way based on age. The EEOC's recent proposal contains a number of factors for determining whether an employer's practice or policy is "reasonable." These include:

1. whether the employer took steps to assess the adverse impact of its employment practices on older workers,
2. the extent older workers may be harmed by the policy, and
3. whether other options were available to the employer.

The EEOC's proposed regulation demonstrates that the agency expects employers to assess carefully their policies, the impact their policies would have on older employees and alternatives that would avoid or materially reduce age-related adverse impact. This office will keep you apprised on the status of these regulations and how they might affect reduction in force strategies.

New NY State Labor Law Notices

Last November the DOL Issued a form for all new employees to sign reflecting their hourly wage or salary. After much criticism the form has been substantially revised. The DOL has now created seven forms! One of the seven forms must be signed by any new employee at the time of hire and by a representative of your company. Which form is required depends on the person's exempt status and/or the basis upon which the individual is paid (e.g. hourly, piece rate, project rate, etc.) If you have not incorporated the use of one or more of these seven forms I suggest you do so immediately. The penalty for not having completed a form is cause for monetary concern. You can

obtain copies of the forms from me at ABPearl@pmphr.com, or via first class mail. Questions concerning the forms can be answered by any one of our staff-feel free to call 516-921-3400. Happy holidays to one and all. •

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.

March 4th Meeting

A large turnout of ACCA members met with representatives from JP Morgan Chase and the New York Business Development Corp. to discuss financing available to HVAC Contractors. The meeting was held on March 4, 2010 at the LaGuardia Marriott. The April Meeting will be preempted by the highly anticipated annual Casino Night on April 8th at the Westbury Manor.

Statement From Stuart S. Zisholtz, Esq.

More About Lien Waivers

Recently, I wrote an article pertaining to lien waivers. I emphasized the importance of the lien waiver and the various ramifications associated with it.

I advised each of you that when a lien waiver indicates "Full and Final Waiver of Lien" it is considered a release and prevents any future claim by the subcontractor for money due on the project.

In a decision addressing a waiver of lien, the Supreme Court, New York County, found that a contractor who entered into an agreement with a construction manager for a city project was precluded from recovering a balance due to various waivers and releases of lien executed by it during the course of the project.

Specifically, the lien waivers executed by the contractor stated that:

"The undersigned does hereby waive and release all liens, demands, claims or rights of lien of the undersigned..."

In addition, the undersigned does hereby forever release, waive and discharge PMS and NYCHA for any and all causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims and demands whatsoever in law or equity..."

The law is clear that lien waivers which incorporate the language above are deemed to be releases and constitute a complete bar to any action for the recovery of a balance due.

It is essential, therefore, that you understand the ramifications associated with signing a lien waiver. A lien waiver is essentially an escrow agreement. If the lien waiver is delivered to the owner and payment is not made, the lien waiver is void and unenforceable. If, however, you execute a lien waiver with similar language as set forth above and receive payment, then there is consideration and a release would be enforceable.

It is imperative, therefore, you understand the documents you are executing during the course of a project. It will be a very expensive educational process if you sign

lien waivers and ultimately waive your right to any future money for work performed.

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. •

Make a habit of checking the ACCA Chapter website at www.accany.org