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Greater New York Contractors' NEWS



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June 2011

President's Message

If you did not make it to the May event you missed out on a very informative meeting! Bill Hopler of Honeywell spoke about flow meters. He



Michael Newman

demonstrated how to select and install the right flow meter and we were able to view the BTU meters that were on display. We thank Joe Stranieri of Industrial Controls for putting together the technical seminar.

We also held our Night out with the Mets at Citifield sponsored by Abco Refrigeration Supply Corp. It was an amazing night because the Mets finally won a game. We would like to thank the baseball outing committee and Abco

Turn to President's Message on page 3

ACCA JUNE MEETING



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PRESIDENT'S MESSAGE *Continued from page 1*

for putting together a fun time!

This month we will have our June meeting cocktail party at Louie's Oyster Bar and Grille located at 395 Main Street on the water of Port Washington. It will be an event to relax, network and take a little break from our summer operations to cool down. The event will be on June 2nd at 6:30. I hope to see everyone there.

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

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

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

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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**

The world can now breathe a sigh of relief knowing the terror mastermind Osama Bin Laden has been killed in a United States raid on a Pakistani compound. It took nearly ten years to ascertain the exact whereabouts of this elusive Al-Qaeda leader. The uncertainty of his whereabouts or existence haunted the public due to the potential next plot or terror plan.

You ask what is the impact to our HVAC industry?

Anytime uncertainty, such as a potential terror threat exists, it adds another degree to the decision process. Should we buy this or wait and see what happens. In my own experience, I had found that in the last four weeks, I have received many calls from clients to pull dormant estimates and revalue and revise them. The psychological impact to some allows them to believe it's just the right time to spend...it may be a good time to come off the sidelines. This

may be a false sense, but if the "consumer feels good the economy will march on." People want to get back to normal. With other internal U.S. pressures such as high gasoline prices and rising food prices, where is the comfort? Well, without a vacation and no travel plans, the best comfort is being home with a big screen TV and a comfortable, cool house or a reliable, efficient heating system. Many businesses have trimmed so much fat and excess that profits are coming in at record numbers. This opens the door to do needed replacements and repairs.

Let's capitalize on these times and hope the next plot never comes to fruition and GOD BLESS THE UNITED STATES OF AMERICA.

Join us on June 2, 2011 at Louie's Oyster Bar in Port Washington at 6:30 pm.

— *Anthony N. Carbone*



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Contractors' Short-Term Outlook Remains Positive

The April Contractor Comfort Index (CCI) shows that contractors continue to have a positive outlook for short-term growth in 2011. The Air Conditioning Contractors of America (ACCA) began measuring contractor attitudes toward short-term economic growth with the CCI in February 2010.

For April 2011, the CCI is 69. The results also show that contractors are feeling more confident in April 2011 than they were 12 months earlier when the CCI was 65.

The CCI is calculated based on a survey of the association's contractor members, who are asked how positive they feel about new business prospects, existing business activity, and expected staffing decisions in the short-term future. Weighted and averaged into one number, a CCI of 50 or above reflects anticipated growth.

The CCI is released prior to the start of each month; the next index number will be released during the last week of May. •

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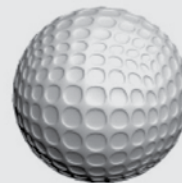
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On May 5th, Bill Hopler of Honeywell presented a technical seminar at our May membership meeting. The subject was Flow Meters. Thanks to Joe Stranieri of Industrial Controls Distributors for arranging this interesting and informative presentation.

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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

Beware of the DOL's Trendy iPhone App

Have any of your employees complained about not receiving overtime? Even if they have remained silent, there could be trouble on the horizon for employers. A new smartphone application ("app") was released by the Department of Labor ("DOL") in May and encourages employees to track the hours they work. The DOL's new app plays upon the popularity of the iPhone in a bid to draw employees' attention to wage and hour laws and increase complaints against employers who do not accurately pay overtime.

The DOL's new app creates a virtual spreadsheet that lets employees independently track the hours they work and determine the wages they're owed. Users can view a summary of their work hours in a daily, weekly, and monthly format and select an option to email it. In addition, the app also features links to sections within the DOL's website on wage laws. Although the app is available only in English and

Spanish, it is anticipated that the DOL will create a larger variety of language versions in the coming months. The app is free and, as of now, only compatible with the iPhone and iPod Touch. However, the DOL has stated on its website that it will explore updates that could enable similar versions for other types of smartphones, such as Android and BlackBerry, as well as include other functions such as recording tips, commissions, bonuses, deductions, holiday pay, pay for weekends and shift differentials.

Employees could foreseeably use this app as the basis of a federal or state wage and hour lawsuit seeking unpaid overtime or spread of hour wages. Even worse for employers, an employee could submit the data to the DOL and potentially launch a company-wide DOL audit. Not only could an employer potentially be liable for backwages and unpaid overtime, but they could also be subject to state and federal penalties. As discussed in previous ACCA articles, New York's Wage Theft Prevention Act recently instituted strict penalties for the failure to accurately pay wages including misdemeanor criminal convictions for employers.

All employers should track attendance for all workers, whether they are exempt or non-exempt. Any questions regarding the requirements of employers to keep time records or the penalties for the failure to do so can be directed to this office.

Employees' Use of PDA's at Home and Overtime

Many employers offer their employees PDAs so that they can remain in better contact with the employer or its clients. However, this has raised the question of when the work day begins and ends, and whether non-exempt employees must be compensated for this time. In a recent victory for employers, the U.S. Court of Appeals for the Second Circuit, held that employers do not need to compensate employees for their commute to and from work when they perform work at home.

Under the Fair Labor Standard Act ("FLSA") the "continuous workday" rule refers to time spent traveling *after* the workday has begun; in many circumstances, such time is compensable. For example, if an employee reports to work at a central office, completes necessary paperwork, then immediately drives to his



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or her first work assignment, the time spent traveling is compensable work time, as is time spent traveling between customer locations. However, ordinary time spent commuting from home to and from work is not compensable.

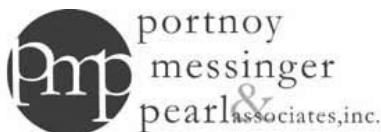
In a recent court case, an employee sued his employer under the continuous workday theory in order to recover compensation for his commute time. The plaintiff was responsible for merchandising and marketing products located in his territory. The stores were 20 minutes to three hours from his home by car. He did not report to a central office; instead he worked from a home office and commuted to the various stores from home. The employee was issued a PDA by his employer and was required to record the time he entered and exited a store. In order to report that information, he would electronically synchronize his PDA with his employers server when he arrived at home. Significantly, there was no particular time that he had to synch his PDA, and it took less than a minute to complete this task. However, he also read and responded to company e-mail, checked voicemail, reviewed sales reports, and prepared for his store visits. The employer required employees to record time spent performing these activities, and it paid for the time spent completing them.

The plaintiff sued his employer under the theory that he should have been compensated for his entire day, starting with his commute and lasting until he finished work at home, pursuant to the FLSA's "continuous workday" rule. He claimed that his workday began when he checked e-mail, voicemail, and performed other tasks before he left home and that the workday did not end until he completed work-related tasks after he returned home at the end of the day.

The Second Circuit affirmed the dismissal of the plaintiff's commute-time claims, and clarified that the general rule "is and always has been" that under the FLSA, ordinary home-to-job-site travel is not compensable. It then held that the plaintiff was not required to perform the administrative tasks immediately before leaving home, or immediately after returning home; instead, he was given flexibility in completing these tasks. Therefore, the time spent commuting after the tasks were performed did not make his commute time compensable. The Court explained that the plaintiff, for example, could have woken up early to complete the administrative tasks, and then gone to the gym before beginning his commute to the first assignment. If his performance of administrative tasks at home began the continuous workday, the plaintiff's time spent at the gym would also be compensable. The fact that the plaintiff may have *chosen* to perform the tasks immediately before and after his commute did not mean that the employer had to pay for the commute.

Looking forward, employers should make clear to employees who work from home, whether they are reviewing and responding to e-mail, voicemail, or performing other tasks, that this work need not be performed at any specific time, particularly immediately before or after their commute home. Of course, any time spent actually working must be paid.

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



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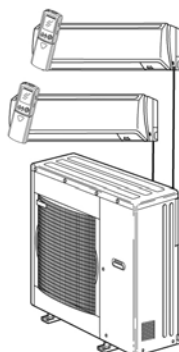


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"Green" Paint Technology is Good for Environment

By Kelly Hiner/Enterprise Fleet Management

No matter what color a vehicle is when it enters a collision center for repairs, it's likely to come out "green" now that waterborne paint has become the industry standard. Formulated to significantly reduce solvent emissions known as volatile organic compounds (VOC), the coating material in waterborne basecoats is suspended in water instead of being dissolved in solvents.

The solvent in automotive coating thins pigment solids for smooth and even application and then evaporates. Waterborne coatings contain water as the main solvent, but also contain other solvents, such as glycol ethers, to improve application. These coatings are ideal primers because they have great resistance to heat and abrasion and provide excellent adhesion.

Most vehicle manufacturers have been using waterborne paints for some time. Therefore, when a vehicle needs to be repainted, the basecoat color match, metallic control and ability to blend colors with waterborne paints make it easier to match the color and quality of the original paint. Improved coverage also requires less paint, which impacts cost.

In addition, since waterborne paint contains lower VOC than solvent, it is easier to control the air quality inside a shop or spray facility. While standard safety equipment is still required, the harsh odors associated with solvent-borne paint are virtually eliminated, improving the air quality and

protecting the health and safety of employees.

Using waterborne paint is just one of the ways collision centers are embracing more proactive environmental practices. They are also sending technicians to training courses to increase awareness of ways to minimize pollution, handle hazardous waste correctly, and comply with a range of federal and state environmental regulations.

Fleet managers have a choice when selecting a collision center and it's important to make an informed decision. As today's collision centers continue to upgrade, professionalism is evident in everything from the facilities that are clean, brightly illuminated and equipped with the most up-to-date tools and technologies to workers who are well trained in new techniques and materials.

As always, be sure to check out a collision center's qualifications by asking about advanced technician training from a national organization such as the Inter-Industry Conference on Auto Collision Repair (I-CAR) or the National Institute for Automotive Service Excellence (ASE). Paint system manufacturers also typically provide training on their products and quality collision centers will generally provide a warranty on the work done at their facility.

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. •

Reminder —

2011 Education & Energy Efficiency Expo Will Be Held June 22nd at Leonard's

The Greater New York Chapter, ACCA, in conjunction with National Grid, Con Edison, the Master Plumbers Council and PHCC will hold the 2011 Education & Energy Efficiency Expo at Leonard's of Great Neck on June 22, 2011 from 3 pm to 8:30 pm.

For information and registration contact the ACCA office at 516-922-5822. •

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LIPA
Long Island Power Authority

Statement From Stuart S. Zisholtz, Esq.

Prompt Payment Act Amended

In the past, I discussed a recent piece of legislation entitled Prompt Payment Act. The Prompt Payment Act was initially passed to benefit subcontractors and try and remedy a gaping hole in the construction industry which placed most of the financial risk on the subcontractors. However, the Statute was poorly written, contained numerous loopholes and was rarely used.

Recently, however, certain amendments to the Prompt Payment Act have made it slightly more beneficial to the subcontractor.

Under the revised and amended Act, a subcontractor can seek an expedited arbitration if the general contractor or owner fails to remit payment timely. Thus, if the parties are unable to resolve their dispute, the subcontractor may, after 15 days notice, refer the dispute to arbitration. The rules of arbitration are identical to the rules that apply an arbitration clause existed in the contract. For the reasons stated in past articles, I am not in favor of arbitration. An arbitration proceeding is not appealable and the rules of evidence do not apply.

Furthermore, the revised and amended Act requires an

owner to make payment on an interim or final invoice within 30 days of receipt. This differs from the prior version of the Act which required payment within 30 days unless the parties agreed otherwise. Again, the Legislature attempted to close a loophole in the Statute by directing payment to the contractor in an expedited fashion.

With respect to payment by the general contractor to the subcontractor, the Act requires that payment be made within 7 days of the general contractor receiving funds from the owner. This clause is vital because the general contractor cannot hold the funds indefinitely or for an extended period of time.

While there are additional changes to the Act, these changes seem to be the most significant and important. However, because of the unwillingness of many parties to proceed to arbitration, the Act is not used as often as it should be.

Never let your lien time run out!

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

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



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