IN THIS ISSUE...

Air Conditioning Contractors of America
Greater New York Chapter
123 South Street,
Suite 112
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** November2010

President's Message

Anthony N. Carbone

October's meeting at the LaGuardia Marriott was extremely well attended with over 50 people. The interest our membership showed was extraordinary.

Umar Khokhar was introduced to us at ACCA by Jim Herlinger of United Refrigeration. I had reached out to Jim looking for his expertise regarding the changing world of refrigerants and his vast knowledge of compressors. Jim immediately said "I have an expert for you at National Refrigerants. His name is Umar Khokhar and he is based out of

Turn to President's Message on page 3

November 4th Meeting

LEWSAN
Building Code Consultants

Diane Murdison will discuss

- Permit Filing & Expediting
- DEP Certified Asbestos Investigators' Questions and Answers You Need to Know
- Violation Dismissal Process

CAN YOU AFFORD TO MISS THIS INFORMATION??

At the
WESTBURY MANOR
Cocktails at 5:30 pm; Dinner at 6:30 pm
Followed by the presentation.
Register Online at www.accany.org

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*

Philadelphia, Pennsylvania." I spoke with Umar and explained that we were looking for a presentation regarding the state of refrigerants today and the transition process to R410A. Umar agreed to prepare a presentation and drive more than 3 hours from Philadelphia at no charge to ACCA.

For the 50 people who attended, it was an extremely informative and well organized presentation. In the 16 years I have been associated with ACCA, I will say it was remarkable to see the interest and attentive behavior our group showed to Umar's information.

The board of directors, the membership and I would like to extend our gratitude To Jim Herlinger of United Refrigeration and Umar Khokhar for investing their time and expertise into our organization. It is professionals like this who allow us to continue to grow and demonstrate our validity and dedication to our industry.

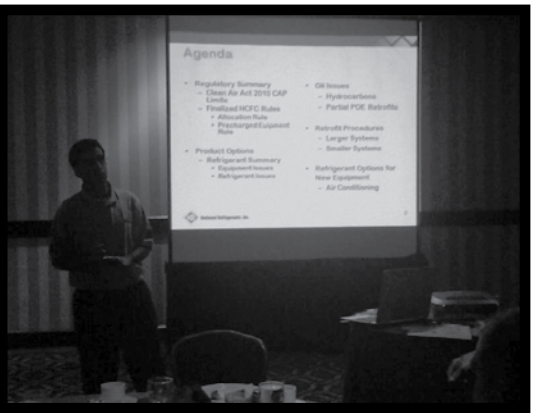
Please join us in November at the Westbury Manor for our monthly program meeting. Don't forget this year's holiday party on December 2nd! It's going to be a memorable one and includes an hour and half of cocktails featuring Westbury Manor's famous Seafood Boat!!!! Catch up with friends and socialize with the leaders of our industry!!!!

— Anthony N. Carbone

ACCA Greater NY Chapter

NEAR RECORD CROWD

SOME 50 MEMBERS ATTENDED THE CHAPTER'S OCTOBER 7TH TECHNICAL PRESENTATION ON REFRIGERANTS.



Photos by Anthony N. Carbone

Nat Grid, LIPA Relations Unveiled

by Claude Solnik
Long island Business News

An audit by New York State Comptroller Tom DiNapoli found National Grid shortchanged the Long Island Power Authority by hundreds of thousands of dollars in one case, paid millions in penalties for failing to meet customer service standards and reaped millions more for exceeding other standards.

The audit, released today, opened a wide window into the complex, sometimes strained relationship between LIPA, a public authority, and National Grid, which supplies the authority with the bulk of its power and manages its transmission grid.

The audit also allowed ratepayers to look deep inside contracts, revealing numerous million dollar penalties and incentives - and a case where LIPA sought to declare National Grid in default of its management contract due to poor service.

The audit revealed that LIPA faulted National Grid for not meeting performance standards three years in a row from 2006 to 2008, triggering million-dollar fines and an option to dissolve its management service contract.

"LIPA declared National Grid to be in default, which would have allowed LIPA the option of canceling the contract," the audit stated. "National Grid contested the default and the parties negotiated a settlement plan."

The two reached a settlement this February, under which National Grid paid LIPA $2 million and agreed to double future annual penalties to $2 million. Auditors found National Grid's customer satisfaction scores exceeded guidelines in 2009, escaping a potential $2 million penalty.

The settlement, according to the audit, also required National Grid to improve Long Island staffing,, establish an employee culture improvement plan for customer service and link executive compensation directly to improved customer satisfaction.

If National Grid was hit with penalties, the audit revealed it raked in many more millions in incentives for exceeding the amount of power it's required to have available under its power supply agreement.

When National Grid exceeded the minimum in power required in 2007, 2008 and 2009, it obtained the maximum $1 million annual incentive.

LIPA in 2009 also indicated National Grid received about $2.2 million in incentives for obtaining fuel for less than the monthly target for fuel prices.

While auditors didn't question the incentives, they found National Grid didn't properly report revenue from the sale of emission credits through Environmental Protection Agency audits, depriving LIPA of $309,878.

Power plants are required to operate within certain pollution standards. If they exceed the minimum standards, they can sell

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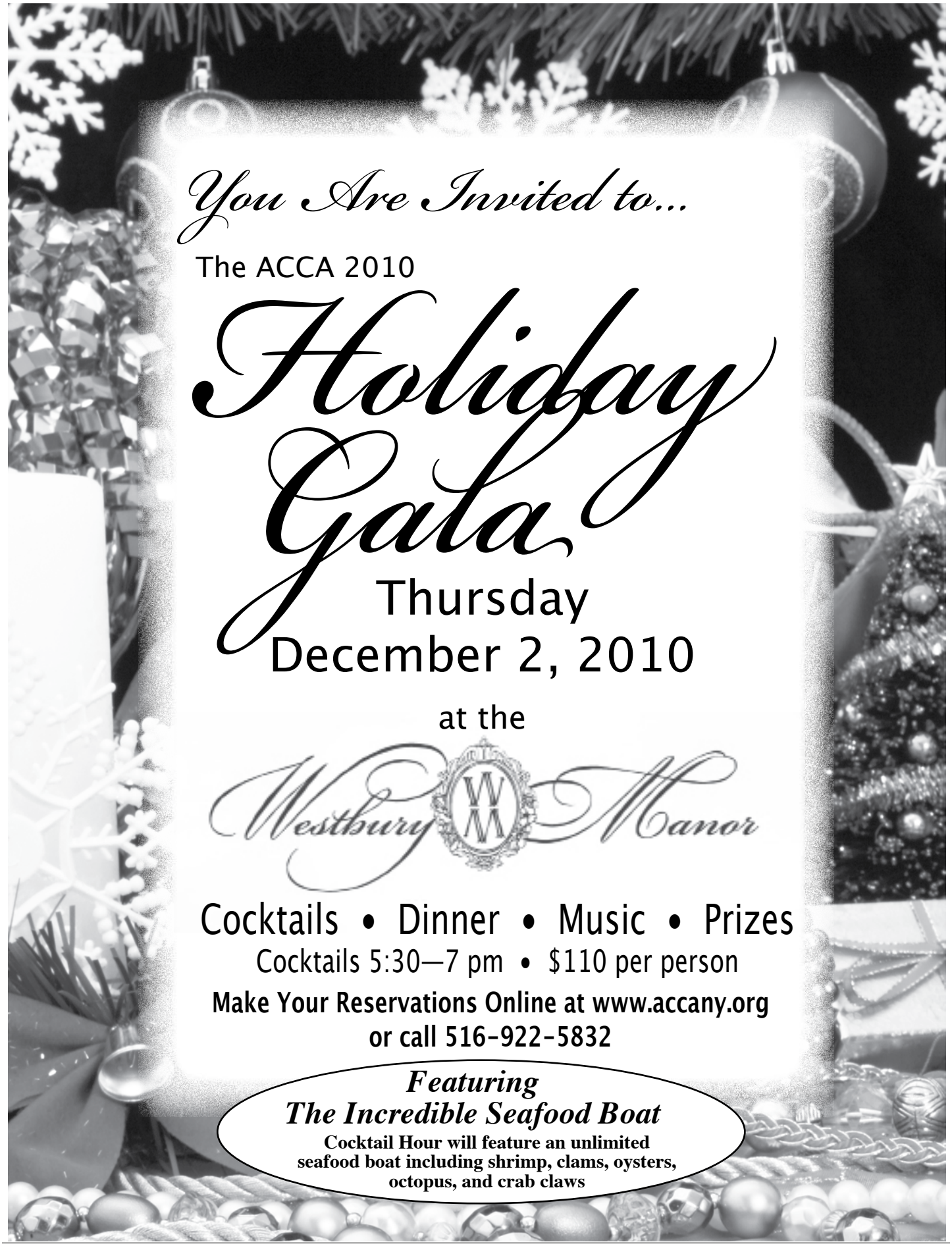
You Are Invited to...
The ACCA 2010
Holiday Gala
Thursday
December 2, 2010
at the
Westbury Manor
Cocktails • Dinner • Music • Prizes
Cocktails 5:30—7 pm • $110 per person
Make Your Reservations Online at www.accany.org
or call 516-922-5832
Featuring
The Incredible Seafood Boat
Cocktail Hour will feature an unlimited
seafood boat including shrimp, clams, oysters,
octopus, and crab claws

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

Texting and Driving-OSHA Is Watching

This office has previously warned ACCA members about the risk of employer liability for employee accidents caused by cell phone use. In many instances, employers are liable through a theory of "respondeat superior" when employees cause accidents while texting or using their cell phones while driving. Recently, there has been an additional form of liability created for when employers fail to prevent employees from engaging in this activity can also incur substantial civil penalties.

The Occupational Safety and Health Administration ("OSHA") has sought to expand the reach of the General Duty Clause to include regulating distracted driving. Currently, the General Duty Clause states that employers "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees." Essentially, OSHA is cracking down on distracted driving because this conduct jeopardizes the safety of drivers as well as their passengers.

OSHA has now instituted a policy wherein if the agency receives a credible complaint for certain conduct, OSHA will investigate and potentially issue citations and penalties to end this practice. Prohibited conduct can include situations where an employer requires texting while driving or where an employer organizes work so that texting is a practical necessity. The latter arises when employees receive and respond to multiple e-mails or texts from clients each day, especially when rapid response time is required, and who frequently or occasionally travel during work time as part of their duties.

Most importantly, OSHA will begin citing employers that "create incentives that encourage or condone" texting while driving. Employers that do not "condone" the practice may still receive citations if the agency concludes that an employer that expects fast responses to calls or e-mails thereby "encourages" employees who are driving to respond to texts or e-mails, instead of using a hands-free device or pulling off the road.

Employers can most effectively protect themselves from this enforcement effort by implementing and enforcing strong policies against the practice of texting while driving. Employees should be required to sign a policy explicitly stating they agree not to text while driving during work time, either as part of an employee handbook or when they receive any company-issued cell phone or texting device. Further,

any employees found to be texting while driving during work time should be disciplined, up to and including termination.

Portnoy, Messinger, Pearl and Associates can help you review your current policies to see if they are effective, as well as assist in drafting new policies that can achieve employer protection in this area.

Paycheck Fairness on the Forefront

The wage gap between male and female workers has been a hot button issue in President Barack Obama's administration. Renewed focus on a recently re-introduced bill, the Paycheck Fairness Act ("PFA") may have been prompted by Obama's public endorsement of the Act this past July after it failed to be passed in 2009. Now, the Senate has re-submitted the PFA and placed this bill on the legislative calendar. If passed, the Act would expose employers to significant liability if they pay equally qualified male and female employees at different levels for the same work.

A similar statute, the Equal Pay Act of 1963 (EPA), is already in existence. However, the EPA only prohibits employers from paying women less than men for performing the same or "substantially equal" work in the same "establishment," except for specific reasons.

Under this new law, the PFA would require that employers meet a higher burden. Employers would be required to demonstrate that any pay differential is based on a "bona fide factor other than sex, such as education, training, or experience" and that the pay differential is "consistent with business necessity," among other requirements. Further, the legislation would expose businesses to unlimited compensatory and punitive damages and weaken the EPA's procedural requirements for class action litigation.

This office will keep ACCA members updated on the status of this currently pending litigation. Until it is passed or vetoed, now is a good time to review internal pay practices to evaluate whether there are any disparate pay practices in place that could open you to liability.

Portnoy, Messinger, 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. •

National Grid, LIPA Relations

Continued from page 6

emission credits. Revenues by contract were slated to be split between LiPA and National Grid.

LIPA said that from 2007 to 2009, National Grid obtained $29.4 million by selling these credits, remitting two thirds of that to LIPA. The authority said National Grid didn't promptly report some sales, but did remit the additional $309,878 after the Comptroller identified the shortfall.

"LIPA will ensure that it receives its full share of proceeds from the sales of emissions credits in a more timely manner going forward," LIPA said in its response, "and has enhanced its procedures to coordinate as such."

LIPA on April 16 received its full share of proceeds from the sale of these credits for 2010, according to the authority.

But DiNapoli said LIPA needs to be vigilant or risk not receiving money it's due. "Millions of Long Islanders rely on LIPA," DiNapoli said in a written statement. :"LIPA has been adequate in its monitoring of National Grid's performance. But we shouldn't set the bar at adequate. LIPA must continue to monitor the existing agreements closely and make sure Grid makes all the appropriate payments."

DiNapoli's audit found there is "a need for closer oversight" to assure that proper payments are made.

The audit also found that LIPA receives monthly reports from National Grid regarding performance, verifies information through independent sources and takes appropriate follow-up actions when necessary.

National Grid's three 15-year contracts for management service, including LIPA's day-to-day operations, power supply and management are set to expire in 2013.

DiNapoli said any new contracts must include "meaningful benchmarks and performance standards and impose real financial penalties for substandard performance." "The penalties for failing to meed benchmarks must be sufficient to ensure the highest quality service for LIPA ratepayers." DiNapoli said.

LIPA in 2008 paid National Grid about $1.8 billion under its three agreements, including $906 million for power and fuel, $274 million for capital projects and $666 million for other services. •

Overloading Is Problem For Medium Duty Trucks

By Kelly Hiner/Enterprise Fleet Management

While it seems harmless to continue to load materials into a truck if it appears to have enough space, the capacity is often not what it seems. Many business owners are not aware that overloading a truck can cause premature mechanical failures and safety related problems. Mechanical failures from overloading can be severe or minor, but even minor damage can turn serious and be costly to repair if left unattended.

There are two measurements to look at when determining how much a truck can be loaded.

· GAWR – gross axle weight rating is determined for medium duty trucks by the weakest link in the truck's suspension system, which is made up of the axle assembly, housing, springs, wheels and tires. The component with the lowest or lightest weight rating determines the GAWR. There is a GAWR for both the front and rear axles.

· GVWR – gross vehicle weight rating is determined by the sum of both the front and rear axle ratings (GAWR), or the truck's frame or braking system. The component that has the lowest or lightest rating – either the sum of the front and rear axle or the frame or braking system – determines the truck's GVWR.

It is generally easy to determine your truck's GAWR and GVWR because most vehicles display this information on a placard on the door jamb alongside tire ratings. In addition to paying close attention to both ratings when loading a vehicle, it's also important to understand that cargo weight isn't the only consideration when determining how much weight the truck can handle. Other key factors include how the load is positioned and weight distribution.

For example, consider a truck that has a GVWR (sum of the rear and front axle) of 25,000 pounds. The GAWR of the front axle is 7,000 pounds, and the GAWR of the rear axle is 18,000 pounds. If the truck is loaded to 23,000 pounds overall, you might think there is room for another 2,000 pounds because the overall capacity (GVWR) is 25,000. However, this may not be the case. If 20,000 pounds are loaded on the rear axle, that axle is overloaded by 2,000 pounds. The solution in this instance would be to simply reposition some of the load.

When there's a concern that a truck may be overloaded or improperly loaded, weigh the front and rear axles individually. Compare those readings to the truck's posted GAWR. Then add the front and rear readings to determine the gross vehicle weight and compare it to the posted GVWR of the truck. This will ensure a safe truck, keep repair and maintenance costs to a minimum, and enhance safety.

A good rule of thumb to follow is what is commonly referred to in the trucking industry as the "80 percent rule." While a truck may from time to time be loaded to 100 percent capacity, the best practice is not to load it more than 80 percent. This will reduce the operating costs and help extend its service life.

The bottom line is that overloading a truck can not only adversely affect the way it handles, stops and performs, it can cause premature wear on driveline components such as axles, suspension parts and brakes. By understanding more about a truck's ratings and how they're interrelated the better it will perform down the road.

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. •

Going, Going, Gone?

by John Ottaviano

The 25C energy efficiency tax credits that were initiated via the American Recovery and Reinvestment Act are due to expire on December 31st, 2010. Although Geothermal and Solar credits will remain available until 2016, all of the conventional heating and cooling high efficiency tax credits are about to disappear. You would think that there would be a massive last minute rush of consumers trying to retrieve their $1500 bonus prior to the deadline, but we have not really seen that in our market. That is not to say that these credits haven't created a stimulus. On the contrary, the combination of these credits with a hot summer season has created a replacement system volume bump during the cooling season. In fact, it does not appear that a single residential system replacement was not tied to utility rebates and tax credits. Therefore, it is a good assumption that consumers were well aware of these credits and were invested in the value they created by subsequently lowering the net installed cost of a qualifying high efficiency system.

If this is the case, then why not free up some more under-utilized ARRA funds to continue the program? HARDI, the HVAC Wholesalers' trade association, has been lobbying to do just that. You can support their effort by visiting their lobbying effort web site at www.savehvacjobs.com. This site will automatically fill in an email form for you, find your legislators contact information and send personalized emails from you in support of an extension of the legislation.

Economic signs are still not all that positive. There is always the possibility of a double dip recession and/or a much longer recovery. Although the tax credits available in the ARRA program may not be the best way to stimulate more HVAC replacements and increase energy efficiency, they are the best vehicle available to us at the moment. Your support is a vote towards a more energy efficient future and your own bottom line. •

Statement From Stuart S. Zisholtz, Esq.

Surety Must Be NYS Licensed

On a regular basis, our office receives calls to file mechanic's liens for general contractors, subcontractor, suppliers, etc. In addition to the services we perform for the lienors, we also get multiple calls from general contractors, subcontractors, owners, etc., disputing claims and requesting guidance as to how to remove a mechanic's lien filed by someone else.

There are multiple ways in which a mechanic's lien could be discharged or vacated. A mechanic's liens valid for one year and will expire as of right if not renewed. This option requires the owner, general contractor, etc. to wait an entire year to sere whether the lienor commences a foreclosure action or renews the mechanic's lien.

Another method requires the owner or general contractor to serve a Notice to Foreclose on the lienor forcing the lienor to commence a foreclosure proceeding or suffer the harsh remedy of having his lien removed. If he commences a foreclosure action, he will mostly likely file a Notice of Pendency which will extend the lien for three years. If he does not commence a foreclosure action, an application may be filed with the Court seeking to vacate the mechanic's lien.

Another option available to the owner or general contractor is to bond the mechanic's lien. In this scenario, the bond replaces the real property as the asset. When bonding the mechanic's lien, collateral must be posted and the bond is issued in an amount of 110 percent of the lien.

In a recent decision, a general contractor sought to bond a mechanic's lien filed by a subcontractor by utilizing a surety company unauthorized to do business within the State of New York. Initially, the Clerk of the Court discharged the lien when the bond was filed.

However, the Appellate Division found that the County Clerk erroneously discharged the lien based upon a false certification by the surety that it was authorized to do business in New York. Since the3 procedures of the Lien Law must be strictly followed, the discharge of the lien without a Court

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Thermo Hydronic Corporation
141-40 224th Street
Laurelton, NY 11413
phone 718-528-3450 fax 718-525-6816
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Harold Stair

Order violated the provisions of the Lien Law and the Court was empowered to reinstate the mechanic's lien.

It is imperative, therefore, that if you are seeking a surety bond to discharge the mechanic's lien that you utilize a surety that is licensed to do business within the State of New York. Otherwise, Your ability to do so may be futile.

Remember, never let your lien time expire!!

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. •