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# Greater New York Contractors' NEWS



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## President's Message

**O**ur last ACCA monthly event was our roundtable discussion which is always a well attended event. The topics discussed were Software, Screening & Hiring New Employees, Social Media, Technology and Parking tickets. As always, there was tremendous energy in the room that night and lively discussion. We also had our Golf outing which was a huge success. The weather was great for an October day. I learned during my first time on a golf course that golf is a sport which you can love and hate at the same time! Get ready for the Holiday party which will be on December 1<sup>st</sup> at the North Hills Country Club where



Michael Newman

*Turn to President's Message on page 3*

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**PRESIDENT'S MESSAGE** *Continued from page 1*

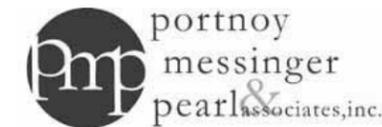
we will be finishing out the year and my first year as President.

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 holiday party! I hope everybody has a Happy Thanksgiving!!

— **Mike Newman**



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## Editor's Notes

by Anthony N. Carbone

### PERMITS TO DO WORK

Permits to do work is in the interest of the property owner, whether it be commercial or residential. It also insures the safety of future owners who may purchase these properties. They are also a significant stream of revenue for many townships and incorporated villages. Nassau and Suffolk counties are unique compared to the five boroughs of New York City which falls within one Building Department.

In some Nassau County towns there are nine incorporated villages with nine Building Departments with different rules and different requirements. Many require that you possess a specific plumbing license to do gas work within there township or village. Reciprocal licenses are accepted and recognized for the town (such as North Hempstead) but within the town each village requires its own license application. This is quite a convoluted set up

but.....allows as annual stream of revenue to these small Building Departments.

With all these requirements to do work you would think it would discourage non-licensed/un-insured contractors... but instead it allows them to fly under the radar and entice customers to do job work without the need to file proper documents as per local codes. Is also reduces these marginal contractors expenditures and allows for low out of the garage pricing or back of the truck pricing as compared to contractors who work within the guidelines.

When work is abundant it is less noticeable because the thrust by the consumer is to find someone who can do the work, but as work is sparse it also allures consumers to look for cheaper pricing.

One contractor recommended that a limited plumbing license for HVAC contractors be implemented so that gas lines can be attached to furnaces, boilers and water heaters, and the elimination of some of the bureaucracy can take place.

What are your experiences and opinions regarding this matter????? — Anthony N. Carbone



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**U**ndaunted by the weather washout in August, ACCA's golfers came out in force for the 33rd Annual tee off on October 24th at The Hamlet Golf and Country Club in Commack, NY. This time the weather cooperated and from early morning until on into the evening, our annual classic offered breakfast, golf, dinner, prizes and of course, the great camaraderie this event is famous for among our members.

Game highlights included the winner of the Pitch-off, Bill Mahoney, and the Lowest Score foursome; Frank DeMartino, Stephen Grieco, Anthony Martillotti and Lance Eagel.

It was a wonderful day and the Greater New York Chapter ACCA thanks all our great sponsors and contributors.

# 33<sup>rd</sup> ANNUAL 2011 ACCA GOLF OUTING

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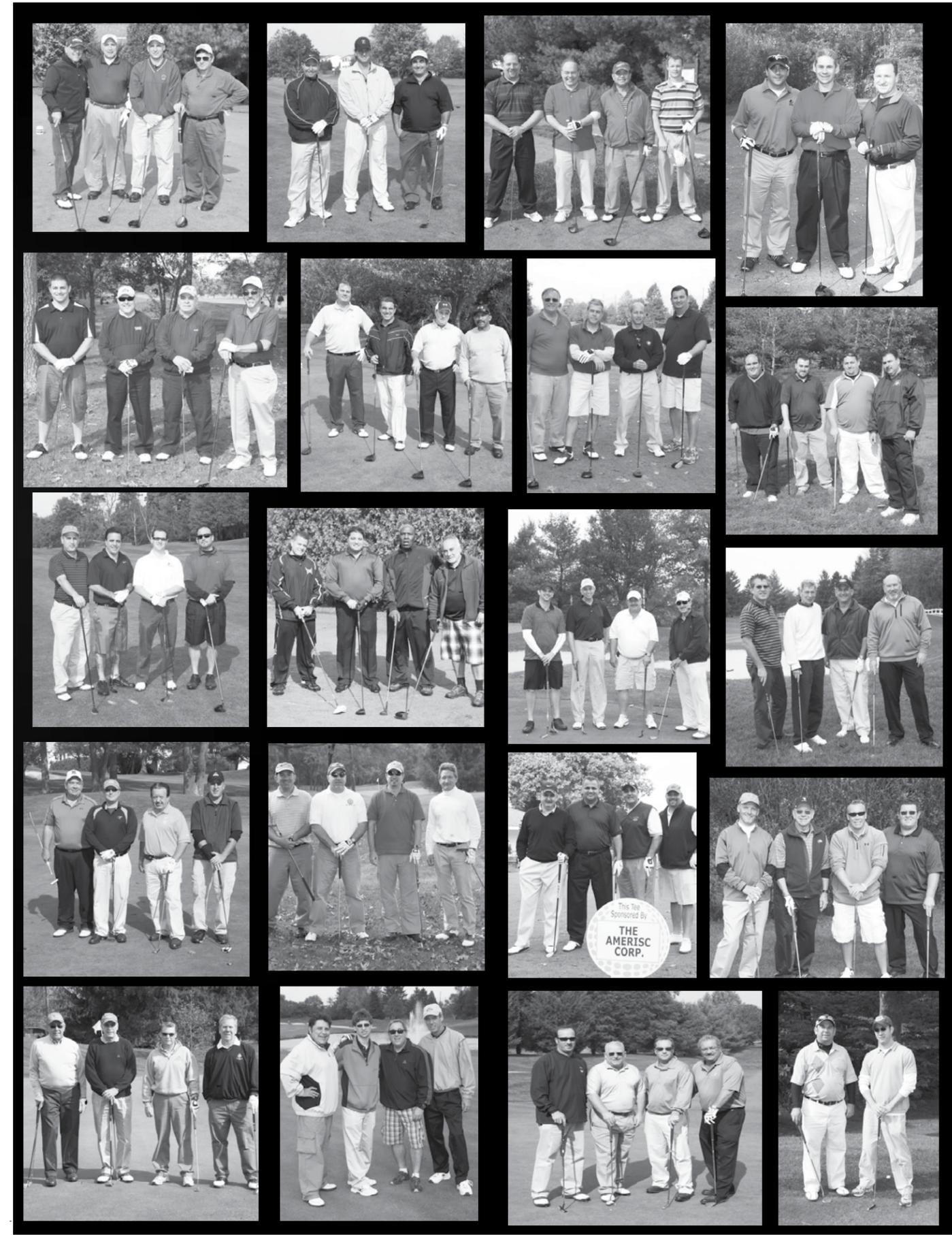
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## People & The Workplace

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### Bad Weather

'Tis the season for bad weather and if the October snow storm in the tri-state area was any indication of what's to come, employers need to be aware of pay policy issues. In New York, employers must provide "call-in pay" to hourly workers who arrive at work and the employer directs the employee to end his/her work shift early for lack of work. A common scenario is where inclement weather prevents the employer from opening shop but the employee without any word from the employer arrives at the workplace ready to work. Another is when the inclement weather forces the shop to close early. In such cases, where the employee had no prior notice and where the employer cuts the employees shift early, employees are due "call-in pay" for at least 4 hours or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum wage rate. If the employee works over 4 hours and his/her shift is cut short, the employee must be compensated for hours actually worked.

### Bonuses

Employers should distinguish bonus payments and commissions in a written statement. Bonuses that are discretionary are not considered part of weekly wages for purposes of overtime. Commissions are wages. Employees who do not customarily receive commissions may misconstrue them as bonuses. Employers cannot vary this wage payment without notice and acknowledgement from the employee. For this reason, it is essential to comport with NYS law that requires all employers to obtain written acknowledgement from each of their employees stating their rate of pay and any other forms of remuneration including commissions. These forms are called for by "Section 195" of the NY Labor Law. Additionally, if the employee should receive commissions, that employee must, under New York law, have a written commission agreement setting forth the rate and terms of commissions with the employer.

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## Vacation and Holiday Pay

This is also the season when employees use their vacation time and look forward to holiday pay. As a reminder, if an employer agrees to pay or provide such benefits, the employees must be given the benefit or payment within thirty days of when they are due. These agreements will be strictly enforced against the employer. Other benefits and wage supplements that fall under this umbrella include expenses, health, welfare and retirement benefits and separation pay. Thus, employers need to provide clear written policies in addition to the wage notice required by Section 195.

### Holiday Parties

Not only do holiday parties hosted by employers demonstrate appreciation of employees, they also keep tradition alive and boost company morale. However, every large gathering brings attendant risks and concerns. Several employee-related lawsuits suggest ways employers should protect themselves. These steps will assist employers or party hosts in avoiding legal pitfalls:

1. Employees should be reminded, prior to the event, that it is a **professional gathering** in honor of work well done rather than to celebrate a religious event.
2. **Choose the venue wisely.** Firms with multiple operations or departments should issue instructions describing suitable venues for year-end parties. Employees have brought suits against firms



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whose local offices have held parties at inappropriate locations, such as those considered sexually offensive or discriminatory.

**3. Check accessibility.** Before choosing a party venue, make sure it's accessible to any employees with disabilities or special needs.

**4. Restrict alcohol consumption.** Work with the caterer, restaurant, or bar to limit the number of alcoholic beverages served to employees. Use drink tickets to help control consumption. If the party includes a cash-bar, provide free non-alcoholic drinks for designated drivers.

**5. Employers should strongly encourage people to drink responsibly.** The employer/host should not give someone who is drunk more alcohol.

**6. Assess ability of attendees to get home safely.** Appoint a company supervisor to consider whether an employee or other attendee can drive or otherwise get home safely, and make appropriate travel arrangements for them if necessary.

**7. Brief supervisors.** Remind supervisors that office parties are an extension of the workplace and they need to respond to discrimination or harassment situations as they would during the course of business. Provide a brief overview to supervisors of company policies regarding the party, alcohol, and sexual harassment.

**8. Employers should never provide alcohol or access to alcohol to employees, interns or volunteers under the age of 21.**

**9. Investigate all complaints.** Failure to respond to complaints can lead to greater liability than what results from the alleged misconduct. Don't dismiss any complaints associated with the company's holiday party without conducting a prompt and thorough investigation and taking remedial action if warranted.

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**10. Avoid business purpose** by (1) not offering compensation for attendance; (2) having attendance be voluntary; and, (3) limiting the number of clients.

## Happy Holidays

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## Chapter Donates \$1,000 to "Lead The Way" Fund

The Greater New York Chapter, ACCA has donated \$1,000 to Lead the Way Fund.

Lead the Way Fund, Inc. is a non-profit organization established to raise funds in support of disabled U.S. Army Rangers and the families of Rangers who have died, have been injured or are currently serving in harm's way around the world. Lead the Way Fund, Inc. will provide spouses and children of deceased, disabled or active duty Rangers with assistance for health and wellness programs and other services determined to be vital to the family's well-being. •



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## Warranty & Responsibility

By Kelly Hiner/Enterprise Fleet Management

Businesses with a fleet of vehicles could save thousands of dollars each year in repair expenses just by reading and following the recommendations spelled out in the warranty booklet that comes with every vehicle. But all too often the warranty booklet stays tucked away unopened in the glove compartment until the business finds out that the warranty will not be honored by the manufacturer due to negligence or lack of required preventative maintenance. And, by then it's too late.

Each manufacturer's warranty is different and even the same manufacturer's warranty can vary year to year, so it's important to stay up-to-date especially as new vehicles are added to a company's fleet. What may have been covered previously may either no longer be covered or required intervals for preventative maintenance may have changed.

If the vehicle's warranty booklet is lost or misplaced, it may be possible to access the information on the manufacturer's website. Most, if not all, manufacturers also have a toll free number that you can call to order an additional booklet. Although there may be a small charge for the booklet, it is a lot less expensive than not qualifying for warranty coverage on an expensive repair.

Working with a professional fleet management company that is familiar with every manufacturer's warranty can help a business stay up-to-date with required maintenance schedules that comply with the manufacturer's recommendations. In addition, because each and every receipt for work done on a vehicle may be documented and recorded by the fleet management company, if a dispute arises over warranty coverage, having a comprehensive detailed record makes a huge difference.

The most common warranties are bumper-to-bumper and powertrain. Bumper to bumper covers a majority of the vehicle's components, including air conditioning, but not maintenance and wear-and-tear items such as brake pads, alignments and fluid replacement services; powertrain covers everything from the engine and transmission-transaxle-transfer case to front-wheel and rear-wheel drive assemblies.

In addition to other warranties that may cover emissions and safety components, sheet metal corrosion and rust-through, there may be provisions for roadside assistance, towing for mechanical breakdown, and transportation assistance if a vehicle is not operable and must be kept overnight for warranty repairs.

However, coverage can be denied if the manufacturer's recommended maintenance is not completed or if there are other signs of neglect or abuse. For example, in addition to regular oil changes, it's just as important to check the oil level in your vehicle's engine on a regular basis. Similarly, it's important to understand that a vehicle with extended idle times requires oil changes at much shorter intervals than generally recommended.

The bottom line is that the quickest and easiest way for a business to avoid paying for unnecessary repairs or those that may already be covered by a manufacturer's warranty is to be familiar with the warranty coverage for every vehicle in its fleet, require drivers to adhere to all recommended maintenance schedules, and document with receipts work done on every vehicle.

*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](http://www.enterprisefleet.com) or call toll free 1-877-23-FLEET.*

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## Statement From Stuart S. Zisholtz, Esq.

### Contracts and Lien Time

Where a contract is entered into and this becomes especially applicable for material suppliers, there is an occasion when not all of the materials can be delivered at the same time. If a contractor orders sheet rock, for example, for a 26-story building that is being constructed, it is foolhardy and ridiculous to expect 26 floors worth of sheet rock to be delivered at the same time. As a result, the agreement is usually made that the materials will be delivered as called for by the contractor or the owner.

You might have to build two floors at one time, three floors at another time, etc.

Where there is one contract for the delivery of all of the materials for the building, the claim is lienable from the very first day, even if the lien time extends beyond the eight-month period. Thus, you have the one contract dated February 1. Your lien time would ordinarily run out September 30.

If you were making deliveries pursuant to that one contract in October, November and December, etc., you have a right to lien the job for the entire delivery going back to February.

What happens when there is not one contract but, instead, multiple orders from the owner or contractor for materials? Is the

supplier required to file multiple mechanic's liens for each order or can he file one lien for all of the separate orders?

It used to be that the supplier was required to file multiple liens for each order. The concept was that the supplier who received an order for sheetrock on February 1 did not know he was going to get another call on July 15 for more sheetrock. Each order was independent of each other.

The Courts, however, have held that where there is an "open account", the lien time starts to run from the last order. How the Court's define an "open account" is unclear. If the supplier did not expect a call for more materials on July 15, is the account still an "open account"? These issues will ultimately have to be litigated in the future. In the meantime, get your lien filed as soon as you can to protect your interests.

#### NEVER LET YOUR LIEN TIME EXPIRE!

For a free copy of a pamphlet pertaining to payment bond claims and mechanic's liens, please contact me or the association.

We recently completed our 4th edition of our pamphlet "Mechanic's Liens: What's it all about?". Please contact us if you would like a free copy.

*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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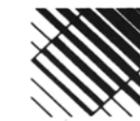
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