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Greater New York Contractors' NEWS



www.accany.org

September 2008

President's Message

LABOR DAY is the unofficial end of the summer, but we all know that the weather stays hot enough to keep us all busy well into September.



Ron Nathan

ACCA held a couple of great events this summer, and I hope you were able to take a break and join us in the fun.

The ACCA Night at the Mets was held on Friday, August 8. The weather was picture perfect and, for many of us, it was the last chance to attend a ball game at Shea Stadium before it is replaced by CitiField. Over 1,100

Turn to President's Message on page 3

You Are Invited To Our SEPTEMBER MEETING

FUEL STRATEGIES

- Cycling (see article on page 11)
- Fuel Card Programs
- GPS Choice

Featuring

Dan Brothers

of Enterprise Fleet Management

(and Greater New York Chapter, ACCA Director)

plus two colleagues with a money-saving presentation on these timely topics. See page 12 for more information.

**THURSDAY, September 4, 2008
at the Westbury Manor**

Cocktails — 5:30 pm; Dinner — 6:30 pm

Followed Immediately by the program

Let us know ONLINE you are coming: www.accany.org

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PRESIDENT'S MESSAGE *Continued from page 1*

tickets were sold at a discount price to ACCA members and their guests. Abco Refrigeration was the major sponsor of the outing and provided souvenir t-shirts and commemorative Shea Stadium/Mets pins to attendees. They also provided pre-game refreshments of Cracker Jack and soda at the entrance gate. Many thanks to Abco for their continued support and generosity at this family friendly baseball outing. As an added bonus, the Mets won!

The 2008 Golf Outing was held at The Hamlet Golf and County Club in Commack on August 18. Interest in this event is growing every year, and we had a large turnout. I am sorry that I was unable to attend this year, but I understand that it was an outstanding outing and a relaxing day for all the attendees. Hope to see you all at next year's Golf Outing.

Please visit our website at accany.org and view the photographs from ACCA's springtime Dinner Cruise. As you will see in the photos, everyone on board had an entertaining evening. The sunset pictures of the Statue of

Liberty, the skyline and bridges are magnificent. Thanks to John DeLillo for being our photographer that night and for posting his pictures on the website for all to enjoy.

We are rapidly approaching the heating season, and ACCA has invited speakers to the September 4 meeting to discuss how you can lower your fuel bills. Dan Brothers of Enterprise Fleet Management will be speaking on the state of fuel costs and their effect upon commercial fleet customers. Dan consults with numerous ACCA members, as well as various other contractor companies throughout the Tri-State area, to specifically target methods to reduce overall vehicle holding costs and life cycle management. He will provide ACCA members with fuel saving strategies and life cycle analysis tools to help impact the bottom line in a positive manner. Dan will be joined by John Meyer of Wright Express who will speak on the benefits of a company fuel card program, and Adam Ross of Vehicle Tracking Solutions who will discuss the benefits and current trends in the GPS industry. With fuel costs at record

Continued on page 4

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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 summer season was an air conditioning contractor's dream come true. Hot, sticky weather with stifling humid nights during June and July led to homeowners reaching out for relief. Impulse buying took hold and getting the units up and running were top priority due to the prolonged heat. But where will this go after the heat leaves and September weather sets in?

Oil prices seem to be dropping but caution in the marketplace and economy are prevailing. As the temperature drops to moderate levels, the phones stop ringing and a near dead silence takes hold. The capital gathered by contractors during this summer's windfall will be fast eroded like a pile of leaves on a fall day being swept away.

Many of my counterparts are drafting strategies to eliminate overtime, cut expenses, reduce overhead and prepare for the worst. The consumer sentiment is sit back, wait to see what happens and try and make ends meet. No discretionary spending at middle class levels is the current economic environment.

The oil to gas marketplace has produced a record amount of inquiries for the utility now known as National Grid Energy or formerly Keyspan Energy Delivery. Consumers are looking to hedge their bets by converting to natural gas especially if their units are old and they are harboring an underground oil tank. Five dollar per gallon quotes for oil could result in laying out a small fortune of \$5000 for a 1000 gallon tank.

Imagine having to fill that 2 1/2 times during an average winter season. The budgeting amount annually could be \$1000 per month! Hey, that's a high end car payment. Could this be the end of middle class America as we know it?

The socially responsible laden media is constantly reminding us of how to think "green" and it is our social responsibility to "Save the Planet," but recently it has all become the "buzz word" of today. In all aspects of marketing, companies are trying to make you think their product will make a significant difference in global warming, as well as other earth saving methods.

We are beginning to border the absurd with the "green" marketing campaign. Listen to the radio and TV and observe how we as consumers are being bombarded with these "green" ideas. Now some HVAC contractors are even jumping on the bandwagon describing how R410A will save the environment. Some have even described R22 as being "illegal" to use. I'm not sure if any consumers are using the Freon in their air conditioning units as spigots, but my last check with the EPA still stated that you need to recover all refrigerants under the Clean Air Act. When "Green" defies common logic then it becomes marketing mayhem.

We kick off our September program with Dan brothers of Enterprise Fleet discussing GPS, gas card services, new leasing rules and, most importantly, fuel strategies. Join us for the programming, collaboration and the networking which puts you back in the driver's seat of your business.

— Anthony N. Carbone



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PRESIDENT'S MESSAGE *Continued from page 3*

highs during this tight economy, this will be information which can make a major impact to your company's productivity. Please be sure to join us at the Westbury Manor on September 4 at 6 PM for this informative meeting.

Energy information supplied by the US Department of Energy is available for your use on the ACCA website. Click on the available links for energy saving tips and to learn more about energy production and sources, prices and trends, the environment and more. Energy efficiency is a hot topic for everyone. Now that school is back in session, energy and the environment will most likely be a popular assignment. There is a special section for students who may need the latest energy information for their school work. Visit accany.org and click on the "Links" tab to access the Energy Department site.

— Ron Nathan




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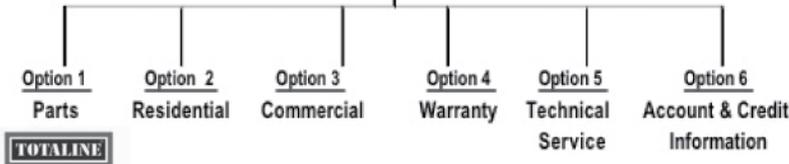


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People & The Workplace

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I-9 Update

The I-9 form is a necessary tool to help employers verify that individuals are authorized to work in the United States. In general, under federal law all employers must retain all employees' completed I-9 forms for three years after they hire an employee or one year after the employment is terminated, whichever is longer. I-9's do not have to be kept for bona fide independent contractors. Strict compliance with protocol can avoid employer sanctions for hiring unauthorized workers, which are provided for under the Immigration Reform and Control Act of 1986. As of March 27, 2008, however, the penalties for non-compliance became significantly harsher.

This federal immigration policy, which affects all employers, could have a significant impact on employer liability.

The penalties for knowingly hiring an undocumented worker will increase from the present range of \$275 to \$11,000

up to the new range of \$375 to \$16,000.

The penalties for document fraud will increase from the present range of \$275 to \$5,500 up to the new range of \$375 to \$6,500.

However, the good news is that the penalties for improper completion of the I-9 Form will remain the same at a range of \$110 to \$1,100.

An amendment to Executive Order 12989, which went into effect June 9, 2008, requires all federal contractors to register with E-Verify. Employers who fail to comply will become ineligible for future federal contractors.

E-Verify is a free program, available to employers in every state, that links to a federal database in order to help employers determine the eligibility of new hires. In most cases, E-Verify will automatically confirm whether an individual is an authorized worker. The U.S. Citizenship and Immigration Services (USCIS) estimates that 92% of applicants are immediately confirmed as eligible for work. Nearly 3 million queries were run in 2007 alone. After an employer completes an I-9 form, the employer submits an electronic query including sections 1 and 2 of the I-9 form. The employer will receive an automated response regarding whether the employee is eligible for work. In what the Department of Homeland Security describes as a few cases, the employer will receive a

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tentative non-confirmation notice. Employers interested in E-Verify can enroll at the Department of Homeland Security Website at the following address: <https://www.vis-dhs.com/EmployerRegistration/StartPage.aspx>.

NOW would be a good time for an I-9 mock audit if you haven't had one done recently. If you are a federal contractor you should definitely have this done as I-9s are part of a routine Office of Federal Contract Compliance Programs audit. Your company can avoid exposure to possible fines, which can add up quickly for incomplete or incorrect information.

II. WARN!

Please note that New Jersey recently passed the Millville Dallas Airmotive Plant Job Loss Notification Act. It is similar to the Federal Worker Adjustment and Retraining Notification Act (WARN), but there are key differences

which create a higher burden on employers. NJ WARN requires an employer who employs 100 or more full time employees to provide advance notice of "termination of employment", "termination of operations", "transfer of operations", or "mass layoff". There must be 60 days notice of adverse action, if at least 50 employees are affected by the above-mentioned circumstances. One significant difference is that NJ WARN has harsher penalties than the Federal WARN. Both statutes award back pay to employees of companies that violate the provisions. But whereas Federal WARN calculates the severance pay on a base of one day of back pay for each day that violated the notice provision, NJ WARN awards back pay differently. NJ WARN does not expressly reduce its penalty for partial compliance. Furthermore, each full time employee is entitled to one

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Continued from page 9

week of severance pay for each year s/he has worked. The severance pay will be the higher amount of the following: either an average of the employee's last three years of employment, or the final rate of compensation that the employee received. This penalty severance is in addition to any other severance employees are entitled to; however, the NJ WARN severance can offset the Federal WARN severance. Also, like Federal WARN, there is nothing in the statute that would appear to prohibit the use of NJ WARN severance to offset the employer's severance. A New Jersey employer that wants to be fully protected itself should carefully consider how best to downsizing operations. This includes careful compliance with the notice requirements listed under New Jersey's WARN statute, as well as noting whether they are covered under the statute, in order to avoid the harsh statutory penalties.

For New York members, there is also an important update. New York State Governor David Paterson signed into law the New York State Worker Adjustment and Retraining Notification Act (NY WARN), on August 5, 2008. Once it becomes effective on February 1, 2009, NY WARN will have a significant impact on New York employers. Like

its federal counterpart, NY WARN seeks to protect workers from unanticipated mass downsizing. Unlike Federal Warn, NY's statute requires 90 days of advance notice, as opposed to 60 days. NY WARN applies to employers who employ more than 50 full time employees, whereas federal WARN applies to employers with 100 or more covered employees. NY Warn also has a different "trigger" for advance notice. An employer must provide notice if: (i) the mass layoff impacts 25 full time employees who represent at least 33% of the workforce; or (ii) the plant closing results in 25 employees losing their positions over a 30 day period. Further, the state law imposes a 90-day advance written noticed requirement in the event of an employer's relocation of all or substantially all of its operations to a location fifty miles or further from the current location. Employers who have operations in New York must be attentive in complying with both federal and state regulations regarding significant reductions in staff size, as mere compliance with federal law will not excuse failure to comply with this new state regulation.

Forewarned is forearmed – all employers should have their existing I-9 forms audited by an outside party and have their staff trained on proper completion of I-9 Forms. As always, if you have any questions please contact me at Abpearl@pmpHR.com. •



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Region II Monies Share To Go To Scholarship Fund

ACCA has decided to dissolve Region II as an administrative level of the parent association. With its dissolution, all monies in the Region II treasury will be dispersed among its chapters, which includes the Greater New York Chapter. Our Board of Directors has approved using those funds for our HVAC student scholarship at Suffolk Community College.

The chapter scholarship was created to attract young, mechanically inclined high school graduates into a career in the HVAC industry. The expected result will be an increase in the skilled workforce available for employment by HVAC contractors. •

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September Meeting To Focus On Reducing Fuel Costs

At the membership meeting on September 4th, Dan Brothers of Enterprise Fleet Management will be speaking on the state of fuel costs and their effect upon commercial fleet customers. Dan consults with numerous ACCA members as well as various other contractor companies throughout the Tri-State area to specifically target methods to reduce overall vehicle holding cost as well as vehicle life cycle management. He will provide the audience with fuel saving strategies and life cycle analysis tools that will help make a major impact to the bottom line.

Dan will be joined by John Meyer of Wright Express who will speak on the benefits of a company fuel card program and Adam Ross of Vehicle Tracking Solutions, who will speak on the benefits and current trends of the GPS industry. As fuel costs continue to rise and the economy tightens, this will be information which can make a major impact to your company's productivity and bottom line results as we round out the calendar year.

The meeting will be on Thursday, September 4, 2008 at the Westbury Manor. Cocktails begin at 5:30 pm. Dinner is at 6:30 followed by the presentation. Make your reservation online at www.accany.org so we know you are coming. •

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ACCA National To “Turn It Up” at 2009 Show

The Air Conditioning Contractors of America (ACCA), the nation's largest association of HVACR contractors, has opened registration for its 2009 Annual Conference and in doing so has announced big changes for the 41-year-old event, which will be held February 24-26, 2009 at the Fort Worth Convention Center in Texas. Full information is available online at www.acca.org/conference/.

“If there's one thing we hate at ACCA, it's resting on our laurels,” said Paul T. Stalknecht, ACCA President & CEO. “While we're very proud of the successful conferences we've held over the past few years, this year we took a look at what we've done, and a look at what else is available in the HVACR industry, and decided that what this industry needs is a good shaking. There's a reason the theme for our 2009 conference is ‘Turn It Up!’”

The first change in 2009 will be the Indoor Air Expo, which will be nearly twice the size as previous years, and will include exhibitors and attendees from the Indoor Air Quality Association (IAQA), which will be holding its annual meeting at the same time ACCA conducts its annual conference. “It makes perfect sense and guarantees an unprecedented floor full of real decision-makers in contracting and IAQ,” Stalknecht said.

But ACCA also took a step back in its program design and went to the experts in putting the conference educational program together -- its contractor members. A groundbreaking new schedule will present workshops, taught by real contractors and real experts, on topics that contractors want to learn about.

“Let's face it, everybody wants to speak at ACCA, and every day I get voicemails from consultants and others who think they have just the ‘perfect’ topic for our conference,” said Kevin Holland, ACCA Vice President for Business Operations. “If we wanted to be like every other conference out there, we'd go ahead and sign them up and quickly fill out the schedule. But we don't want to be just like every other conference out there. Instead we went to our contractor members, with a comprehensive survey, and they told us what they want to learn more about. Then we found real world experts -- contractors and people who work in the trenches every day -- to share their insights on these topics.”

Among the workshops being offered at the 2009 ACCA Conference, as chosen and designed by contractors:

- Front-line Customer Service Strategies
- Hiring the Right People
- Commercial Service Agreements: Key to Success

- (Almost) 50 Ways to Find and Keep Good Employees
- PR Is Not Just for Big Companies: How to Get Free Press
- Managing Your Company with “Team Leaders”
- 10 Years from Now: The Successful Contractor of the “Near” Future
- Taking Your Service Agreement Program to the Next Level
- The Green Consumer: Who They Are, What They Want, and How to Sell to Them
- Strategies for Reducing Callbacks
- Managing Your Vehicles for Lower Costs
- Commercial Service Repair Estimating
- Identifying and Selling “Energy Savings” in Commercial Buildings
- “Cluster” Control: How to Dominate Your Market
- Verifying Quality Installation
- Retrofit Opportunities for the Commercial Service Contractor
- The HVACR Career Path: Building One for Your Employees
- Measuring Customer Satisfaction
- In-house Commercial Service Training
- Energy Analysis for Homeowners
- Performing Energy Audits for Existing Homes
- Maximize Your Profits with Email
- Pricing for Profit
- The Truth About Contracting: What Your Technicians Need to Know Before They Become Your Competitors

According to Stalknecht, “People are tired of the same-old, same-old. And it doesn't work anymore, anyway. The economy is changing, the country is changing, the world is changing -- in fact, everything's already changed and a lot of people haven't realized it yet. It's time that the HVACR industry got the conference it deserves, one that pulls no punches and takes no prisoners but is focused solely on kicking contractors up another level from wherever they are now.”

Early bird registration is now open online, along with further schedule and program information, at www.acca.org/conferenc. •

Statement From Stuart S. Zisholtz, Esq.

Importance of Licenses for Home Improvements

In the past I have written about the necessity of obtaining a home improvement license. For any contractor who is performing home improvement work it is necessary for you to obtain a home improvement license in order to perform work, furnish materials and receive payment.

A home improvement license is obtained through consumer affairs. There is usually a nominal fee and, in certain instances, a simple exam. The failure to obtain this revenue raising license is severe. I have advised the members of the Association on numerous occasions that the failure to obtain a home improvement license may result in your inability to collect any outstanding balance due.

I have seen and represented contractors who were owed hundreds of thousands of dollars and had performed home improvement work at the behest of a friend, colleague, relative, etc. When the job went bad and payment was not received, the defense was raised that the contractor did not maintain a home improvement license. As a result, the contractor was unable to collect even though the cost of obtaining a license was only a few hundred dollars.

In other instances, arguments were made that the contractor was not performing work or furnishing material, but simply coordinating, monitoring and/or supervising the home improvement project. As such, it was argued that they were not the party who needed to obtain a home improvement license since they were not performing the actual work or furnishing the actual materials. In a recent decision from the Appellate Division, First Department, the Court found that a contractor who is providing any services in connection with the home improvement project must obtain a home improvement license. This includes a contractor who is simply coordinating, monitoring and supervising the work.

The ramifications are severe if you do not obtain the license. It is imperative, therefore, that you obtain the license from each and every county and, in certain instances, the local villages and towns. Failure to do so may result in your inability to collect the balance due and owing.

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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