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# Greater New York Contractors' NEWS



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July 2007

## President's Message



Ken Ellert

Spring is almost over and to me it was perfect. A day or two of hot weather followed by a week of cool weather. Just enough of a reminder to our customers that summer is approaching and time for us to properly perform our services. But for those who just depend

Please turn to **PRESIDENT'S MESSAGE** on page 3

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The Greater New York Contractors' News Does Not Publish In August.  
Don't Forget *The Annual Night Out With The Mets* on Friday, July 13th and *The ACCA 29th Annual Golf Outing* on Monday, August 20th At The Hamlet Golf & Country Club In Commack.  
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**PRESIDENT'S MESSAGE** *from page one*

on the weather, ACCA can be a great resource for marketing and management information that can make you more independent of the whims of the weather gods. Our chapter is in the process of setting up two Business Management training programs. Each is a full day seminar and is a must for anyone in a management position. One course is on Sales & Marketing and the other is on Financial Management. Details will be coming soon.



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As a member of ACCA you also have 24/7 access to exclusive specialists who are at your service. At their web site, you can find answers to technical problems and legal issues. You can participate in their surveys on topics from technician compensation and benefits to health insurance and see how you compare to other companies. Our company just participated in an online seminar on marketing that provided some very valuable tips that we have already implemented. ACCA is more than just another logo to put on your web site. It has the resources to help you and your company be more than it is. For those of you that receive this newsletter and are not current members, you can join online at [www.acca.org/join](http://www.acca.org/join)

Don't forget – the annual NY Mets baseball night is July 13, 2007. Ticket requests must be in by June 20th. Also the golf outing on August 20, 2007 at the Hamlet Country Club in Commack. These events sell out quickly so either register at [www.acca.org](http://www.acca.org) or send in the application forms that have been e-mailed to your office.

Have a great summer and I hope to see many of you at the next event. — **Ken Ellert**

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| <i>Attendance (Membership)</i><br>Dan Brothers, Chairman<br>Joe Bonifazio<br>Jim Carlson | Roy Bernheimer<br>Joe Bonifazio<br>Ken Ellert<br>Harry Espino<br>Nick Terran | Paul Caiola<br>Donald Gumbrecht & Co.  |
| <i>Baseball Outing</i><br>Peter Arbeeny, Co-Chairman<br>Scott Berger, Co-Chairman        | <i>Holiday Party</i><br>Harvey Stoller, Chairman<br>Anthony Carbone          | <i>Political Action</i><br>Anthony Carbone, Co-Chairman<br>John Ottaviano, Co-Chairman |
| <i>Charitable Works</i><br>John Ottaviano  | <i>Monthly Meetings</i><br>Joe Bonifazio, Chairman<br>Mark Bedson            | <i>Sponsorship Task Force</i><br>Scott Berger  |
| <i>Coupon Book</i><br>Roy Bernheimer<br>Steve Bergman                                    |  | <i>Web Page</i><br>Jim Carlson   |

Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other

professional or 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

## Editor's Notes

By Anthony N. Carbone

As a change from the usual, our ACCA metro New York chapter decided to change its venue to Cafe on the Green in Bayside, (formerly Rudolph Valentino's residence), for its June monthly meeting. As always, in June, attendance, due to the severity of the weather, is speculative.

This meeting was a well attended cocktail and networking meeting and the members had an opportunity to meet each other, discuss not only the business interests, but also spoke of some of their personal interests. These meetings present opportunities.

I have decided in this issue to provide an article written by Ira Ravitz and Joe Mascia of NY Mist. This is a unique service offered by one of our members, who happened to attend our June meeting. In addition, directly from Iraq, LIPA's Ted Cecchini recently emailed some interesting tent cooling equipment. Investing time with our members can reveal some interesting information.

It's worth meeting with ACCA members. Check out our new website at ACCANY.ORG to see who is attending our next meeting. I wish you a healthy and most prosperous summer season!

— Anthony N. Carbone

## Introducing Air Conditioning for Air Conditioners

### A relatively new member, NY Mist, has brought about a new idea

*A maxed-out air conditioner is not a happy one.*

Air conditioners are working harder these days. Many AC plants that were adequate for their rated loads twenty years ago are now operating at maximum too much of the time. Increased loads have been brought about by increased use of computers, increased density of personnel, and for all we know, global warming. As such, air conditioners have longer run cycles, not just on the hottest, muggiest summer days, but often from May into September.

In extreme heat, many conventional air conditioners will increase energy consumption, be shut down or will fail due to excessive ambient loads on the condensing coil. Engineers have attempted to solve this problem by spraying the coil with city water only to find out that this causes calcification and

deterioration of the coil. Calcification reduces the heat transfer efficiency and increases operating costs.

*NY Mist can take a load off*

The answer is a hi-tech, state-of-the-art pre-cooling system from NY Mist.

The system, driven by 1,000 pounds per square inch of pressure, produces billions of water droplets as small as 10 microns (that's very small; 10 millionths of a meter) in diameter. These microscopic water droplets then flash evaporate, reducing the ambient temperature in the immediate area.

This process, known as thermal dynamics, is effective because water requires energy to evaporate (600 calories of heat is needed to evaporate 1 gram of water).

Experience has shown that the system is an energy saving device that can reduce electrical consumption and not damage the condenser coils.

NY Mist systems offer simplicity and convenience in one piece of equipment. The single-unit design combines a high-pressure water mist pump, a state-of-the-art reverse osmosis unit, a temperature controller and a final water sterilizing UV purifier, as well as all necessary controls. These comprise indication gauges and electronically controlled sensors, including timers, humidistats and thermostats allowing for effective pre-cooling without excessive moisture. Single connections for power, water and drainage allow this equipment to be easily and quickly installed with a minimum of effort and time.

To increase power output and efficiency in air-cooled condensers, NY Mist high-pressure fog is applied at the condenser coil air inlet. By reducing this cooling air temperature by up to 35°F (18°C), the efficiency can increase by as much as 40 percent.

This is accomplished because the cooler air intake reduces the compressor load, the head pressure unit cycling and the resulting energy required to operate the unit. Added benefits include increased equipment life and reduced operating costs. High head pressure "shut downs" are virtually eliminated.

By using an integrated reverse osmosis and UV water treatment unit, deposits and corrosion are eliminated at the coil face. Sensors and relays ensure that the NY Mist system only operates when required, minimizing water usage and operation time.

In addition, the cooler air from the fog system will extend the time delays between start ups thereby prolonging the operational life of the unit.

And, by coupling the system to the condenser coil unit, the system will only turn on when the A/C unit is under heavy ambient loads.

To discuss this further with Joseph Mascia of NY Mist, contact him at [mascia@nymist.com](mailto:mascia@nymist.com). •

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## Member Training Classes

**As Part Of Our Ongoing Efforts To Assist Members To Advance The Quality And Profitability Of Their Businesses, The Greater New York Chapter ACCA Will Present Two Business Management Training Programs This Fall. Dates Will Be Announced.**

### **HVACR Financial Management 101**

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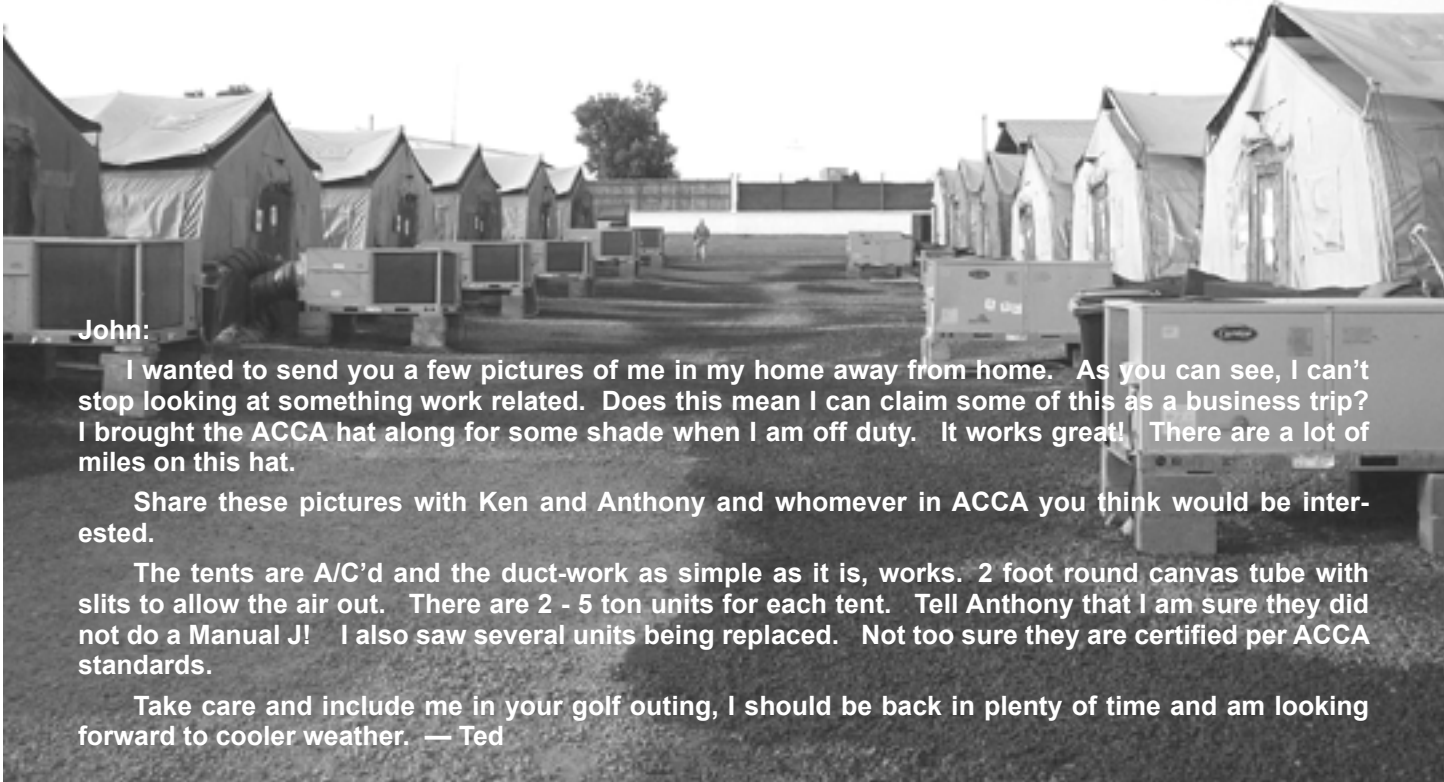
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# Photos from Iraq from LIPA's Ted Cecchini



John:

I wanted to send you a few pictures of me in my home away from home. As you can see, I can't stop looking at something work related. Does this mean I can claim some of this as a business trip? I brought the ACCA hat along for some shade when I am off duty. It works great! There are a lot of miles on this hat.

Share these pictures with Ken and Anthony and whomever in ACCA you think would be interested.

The tents are A/C'd and the duct-work as simple as it is, works. 2 foot round canvas tube with slits to allow the air out. There are 2 - 5 ton units for each tent. Tell Anthony that I am sure they did not do a Manual J! I also saw several units being replaced. Not too sure they are certified per ACCA standards.

Take care and include me in your golf outing, I should be back in plenty of time and am looking forward to cooler weather. — Ted





# Welcome New Member

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## Associate Member Membership Levels

The Greater New York Chapter, ACCA offers a variety of Associate Membership Levels, each featuring certain benefits. Choose the Level that meets with your needs and call the ACCA office at 516-922-5832.

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# People & The Workplace

By Alan B. Pearl,  
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY  
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Website: www.pmpHR.com

## FAVORABLE SUPREME COURT DECISION ON EQUAL PAY

One of the hottest areas in litigation in the past 5 years has focused on pay disparity (equal pay for equal work). The government is, of course, interested in the subject and they monitor pay compliance of federal contractors through the Office of Federal Contractor Compliance Programs (OFCCP). However, in private industry where no public contracts are involved, the issue has been largely left to private litigants to file claims of equal pay violations under Title VII and the Equal Pay Act.

There were an array of decisions in various federal courts across the land with regard to the statute of limitations for the filing of such discriminatory pay claims. The matter, at least for the moment, has been resolved by the Supreme Court in the Ledbetter decision. In this 5-4 decision the Supreme Court held that an employer's determination setting of an employee's wage rate, and not the issuance of a paycheck based on that decision, triggers Title VII's deadline to file an administrative charge based on the pay practice. The import of the holding

is that employees must file a Title VII discriminatory pay claim within 180 days (or 300 days in certain states) after the discriminatory pay decision has commenced. The Supreme Court rejected a harsh rule that had been advanced by the Equal Opportunity Commission and plaintiff's counsel that allowed the plaintiff to relate back to by gone years when the pay practice started.

Lilly Ledbetter claimed that her salary was determined annually based on her supervisor's ranking of her performance and that her performances review typically placed her at the bottom of the ranking. Subsequently she received small salary increases. Because of these small increases she filed a claim with the Equal Opportunity Commission and the case advanced its way through the administrative process into the court system and ultimately to the Supreme Court. In affirming an appellate Federal court by the narrowest of majorities (5-4) the court stated that a pay setting decision like a termination or demotion is a discreet act forming the basis of a Title VII claim. Such a discreet act triggers the 180 day (or in some states 300 days) filing period. So don't wait to file your claim.

What does this mean to ACCA employers? It means that the employers scored a victory and that for the moment discriminatory pay claims have to be filed promptly in order to be processed. However, this victory may be short lived as at least 4 Senators (Kennedy, Harkin, Clinton and Mikulski – all democrats) have announced that they will introduce legislation to overturn the decision to permit equal pay claims on a much

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broader basis. There seems to be some support in the House of Representatives where representatives DeLauro, Miller and Norton have also announced plans to introduce legislation limiting if not overruling the Ledbetter decision.

What should ACCA members do? Pay practices should be analyzed by your labor relations professional to see that there are objective reasons for any disparity in pay between males and females. While this sounds like a time consuming chore, it really isn't. Checking to see if there has been any inadvertent disparity will alleviate concerns in the future should the Congress enact legislation overturning Ledbetter. As always, litigation is to be avoided. An ounce of prevention is worth a pound of cure.

**LOVE CONTRACTS**

I recently read an article in Newsday discussing this topic that has been floating around for some years but never really acted upon. What is the Topic? Love Contracts! What is a Love Contract? Well, Love Contracts are often associated with senior executives and management officials when couples are asked to acknowledge that they are parties to a welcomed relationship; that they understand the company's sexual harassment policy; they understand not to act inappropriately at work and they know whom to tell if the relationship veers into harassment or terminates. In the nineties such contracts were known as consensual relationship agreements now they are called "Love Contracts".

If you ask a professional for advice on the use of "Love Contracts" they will probably tell you they should be executed as the need arises rather than imposing them under a blanket company policy. I agree. It would seem that such agreements are preferable to trying to ban workplace relationships altogether; that is something that is just not doable in this day and age. The fact is that in recent studies anywhere from 43% to 59% of replying parties say they have dated someone at work.

One final thought on Sex Harassment Claims in the Workplace. The statistics from the Equal Opportunity Commission seem to indicate a decline in the number of such claims being filed with the agency. From a high of 15,836 claims in 2000 the EEOC reports that in 2006 only 12,025 such claims were filed. I choose to believe that this is a function more of employers adopting strong zero tolerance policy, restating these policies annually and through supervisory training in the workplace. If you haven't had Supervisory training in the past eighteen (18) months, I suggest you are overdue.

**FEDERAL MINIMUM WAGE INCREASE FOR 2007**

Effective July 24, 2007, the federal minimum wage will increase from the current \$5.15 per hour to \$5.85 per hour. Obviously, employers in states with minimum wage require-

*Continued on following page*

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### People in the Workplace

*From preceding page*

ments above the federal minimum wage, like New York, will not be affected by this change. This increase, the first in 10 years, will be followed by two more increases over the next two years.

- \$6.55 per hour, effective July 24, 2008
- \$7.25 per hour, effective July 24, 2009

Employers in the following states, that don't already have a higher minimum wage than the federal requirement, must prepare to increase wage rates to meet the new federal requirements. Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

All employers subject to the Fair Labor Standards Act's minimum wage provisions must post, and keep posted, a notice explaining the Act in a conspicuous place in all of the employer's establishments. If you have any difficulties obtaining a copy of the poster containing the Act's newest provisions, please contact Portnoy Messinger Pearl & Associates at (516) 921-3400.

As always, should you have any questions about the issues raised in this article, please email me at [abpearl@pmphr.com](mailto:abpearl@pmphr.com), or call me at 516-921-3400. See you at the Golf outing! •

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## Statement From Stuart S. Zisholtz, Esq.

This is the fourth in a series of articles that are being written with respect to the unholy alliance between American Institute Of Architects (AIA) and American Arbitration Association (AAA).

In my last article I advised everyone reading these articles to stay away from arbitration. This applies not only to the AIA contracts, but to any contract. Arbitration is a creature that has come about because of the overwhelming pressure brought on the courts. They just cannot handle the volume that exists.

You never want arbitration, except for limited isolated circumstances. As I indicated previously, many of these arbitrators

are wanna be flunkies who cannot find any other income from any other source. This is not to malign all the others. There are some very substantial and good arbitrators.

You do not want arbitration for the following reasons:

1. Aside from the fact that the arbitrators might not know what they are doing, they do not have to tell you what they are doing. At one arbitration, a sheet rock wall was cracked open to look at the supporting beams. When I asked what they saw, they told me it was none of my business. How can you represent someone with a response like that?

2. There is limited or no discovery. If someone sues you for \$400,000, you want to know why. You want to be able to have depositions, a bill of particulars or an explanation as to how that amount is calculated and why. What did you do wrong for \$400,000? You do not get that right in arbitration.

3. If the arbitrators are dead wrong, and they do not know what they are talking about, you have no right to appeal.

4. If an arbitration award is contradictory and makes no sense, it does not matter. The award stands. As an example, we had a situation where somebody instituted an arbitration proceeding claiming \$300,000. A month or two later they changed it to \$500,000 and ultimately they changed it to \$800,000. Why \$300,000? Don't know. Why \$500,000? Don't know. Why \$800,000? Don't know. Ultimately, the case went to arbitration and it took 29 sessions over a period of about two years. We put



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in a counterclaim for \$50,000 representing the balance due on the contract.

The "brilliant arbitrators" came down with an award for \$112,000 against our client and offset that with \$50,000 from the balance of our contract. It takes a brain surgeon or a rocket scientist to figure out that if we did our job completely, so as to justify collecting \$50,000 for the rest of the contract, how could we possibly be at fault for \$112,000? No explanation was given. The result was that there was a finding against us for \$62,000 without any explanation by the arbitrator.

We had insurance for negligent work; the insurance company was willing to pick up whatever costs were involved. The alleged \$800,000 was part of 36 different items ranging anywhere for \$250 for door knobs to \$105,000 for gym floors. The insurance said "give me a breakdown" and we will pay the claim. The arbitrators did not bother and refused to do it. How they arrived at \$112,000 is a mystery. They never provided a basis to substantiate the \$112,000. The result was that nobody got paid.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and Payment Bond Claims, feel free to 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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