

## Airconditioning, Refrigeration and Mechanical Contractors Association of Southern California, Inc.

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## ALERT

First Quarter 2008



### Board of Directors

**Phil Evans**, President  
Wittler-Young Service Co.

**Robert Lake**, Vice-President  
EMCOR Service  
Mesa Energy Systems, Inc.

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Southern California

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**Joe Urban**, Board Member  
Air-Ex Air Conditioning, Inc.

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### Office Staff

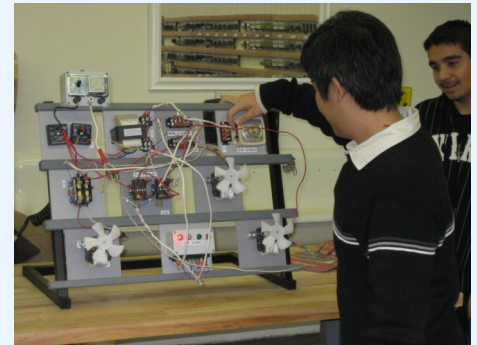
**Rose Bayus**, Office Manager  
**Debbie Sawhill**, Special Projects

[www.arcamca.org](http://www.arcamca.org)

## High School Vocational Program Sees Success in 2007!

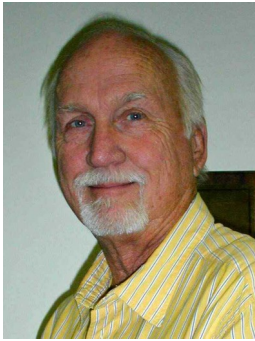


Student Hoke Lee reviews his HVAC control system with San Gabriel High School instructor Vic Sandoval.



The **ARCA/MCA** Southern California and Union Local 250 HVACR program at San Gabriel High School has completed its first semester. The fourteen students in the inaugural program are receiving instruction of an HVACR curriculum developed by the Industry's JJATC training program. The students will be available to intern this summer with Association members companies. Company's interested in participating in the program should contact the Association office.





**During 2007**, we as an industry saw growth in our manpower requirements. **ARCA/MCA Southern California** has been working with District Council 16, including local unions, and P.I.P.E., (Piping Industry Progress and Education) to recruit additional manpower for our contractors. We had a report at our Association's annual meeting from Tom Morton, the P.I.P.E. HVACR industry recruiter.

Tom provided information about his involvement at local high schools, community colleges, trade schools, job fairs and trade shows. This ongoing recruiting program has provided an additional avenue to attract new and experienced individuals to our contractors.



San Gabriel High School advisor Brad Walsh with class instructor Vic Sandoval and **ARCA/MCA** board members Dick Sawhill and Phil Evans.

**The students** participating in our industry HVACR vocational program at San Gabriel High School will begin the intern placement process in February with participating contractors. I had an interesting classroom visit in December, and I must say the excitement amongst the students was contagious.



**ARCA/MCA** board president Phil Evans with Michelle Villa of EMCOR Service Mesa Energy Systems, class instructor Vic Sandoval and school advisor Brad Walsh.

**On February 1, 2008**, the **ARCA/MCA Southern California** office will mail to each member contractor the annual manpower forecast survey. The results of this survey are used by the union's organizers and recruiters at the District Council and the local unions throughout Southern California to assist individual contractors in obtaining the additional manpower they require. Your participation in this survey is important. Many contractors use their own methods to recruit and fill their manpower needs, and these recruiting efforts by the union are not meant to replace those existing programs. In fact, the individual contractor programs have been very successful. The future growth of the industry will require various methods of recruiting for both new and experienced employees.

*Phil Evans, president*

***New information is always being provided on the Current Events icon of the ARCA/MCA Southern California website. Recent articles posted are:***

- **Project Home Again**
- **The Federal Ethics requirements**
- **The newly revised I-9 Employment Eligibility Verification Form**

The website Current Events did have a timely notification to "Employers Impacted by Wildfires," provided by Littler Mendelson. This article has since been moved to the Littler Legal News on the "Articles page".

**The 2008 Industry Calendar has been posted on the Calendar page of the website.**

Be sure to check our website [www.arcamca.org](http://www.arcamca.org) for industry updates.



## BEAR AND BULL MARKETS

**Have you ever wondered** where these two symbols of the U.S. stock market originated? Bear markets represent a prolonged decrease in the market, while bull markets represent prolonged upward trends. These two equally forceful creatures of the animal kingdom are synonymous with these two diametrically opposed market trends.



**The symbol of the bear** may have been the inadvertent result of stock manipulations by a London-based company in the early 1700's. The South Sea Company had many years of prosperity before its failure due to gross mismanagement. The stock had been sold and resold many times before it became worthless. As a result, England's economy and stock market became volatile, and an era of speculation was ushered in. Brokers known as "bearskin jobbers" began to sell skins before the animals were caught. This short-selling caused downward pressure on prices which journalists termed a "bear market".



**The symbol of the bull** may have come from the way it confronts its prey. The bull thrusts its horns up into its opponent. While a bear stands on its hind legs and swipes its arms downwards. Is it because these fierce opponents were pitted against each other in sporting events due to their opposite fighting styles? Whatever the reason, these symbols have been used to describe the U.S. markets since the late 1800s.

Miller, Kaplan, Arase & Co., LLP

## U.S. DEPARTMENT OF LABOR ISSUES NEW MULTIEMPLOYER PENSION PLAN DISCLOSURE REQUIREMENTS

The U.S. Department of Labor (DOL) has issued proposed regulations implementing the new multiemployer pension plan disclosure requirements enacted in the Pension Protection Act of 2006. After December 31, 2007, multiemployer pension plans must implement broad new disclosure accommodations for plan participants, beneficiaries, unions representing those workers, and contributing employers under proposed rules issued by the DOL's Employee Benefits Security Administration (EBSA) and published in the September 17, 2007 issue of the Federal Register (pages 52, 527 and following).

**The proposed rules** set out the requirements for plan administrators to furnish, within 30 days of receipt of a written request from covered employees/participants, beneficiaries, unions, or contributing employers, copies of: 1) periodic actuarial reports (including sensitivity testing) that have been in the plan's possession for at least 30 days; 2) a quarterly, semi-annual, or annual financial report prepared by the plan investment manager/advisor of other fiduciary ...

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## Former Secretary of State to Open MCAA 2008 Convention in Palm Springs, CA



MCAA is pleased to announce that the *Honorable Madeleine Korbil Albright*, the first female Secretary of State of the U.S., known nationally and internationally as one of America's most accomplished women in recent history, will address *MCAA 2008* at the *Opening General Session* on Monday, March 3. From an early life marked by flight from political oppression to one that represents the achievement of personal and professional ideals, Secretary Albright is an example of what one person can achieve in an environment that encourages success. Born in Czechoslovakia during the tumultuous period before World War II, Secretary Albright and her family fled their country to escape Nazism and then Communism for freedom in the United States.

Dr. Albright currently advises organizations around the world on building strategic partnerships, political and regulatory risks and crisis management.

Visit [www.mcaa.org/mcaa2008](http://www.mcaa.org/mcaa2008) for detailed program information and to register using our convenient online service.

## ***ACTION ON BREACH OF WARRANTY LOOSES***

### ***(THE IMPORTANCE OF DOCUMENTATION)***

*By Sam K. Abdulaziz (Abdulaziz, Grossbart & Rudman)*

***Lawyers have a saying that the three D's are very important in a contract. Namely, Document, Document, Document. This is highlighted by the case we are going to discuss. The major issue in the case was about what made up the contract.***

*In early 1997, Craig Podesta (Podesta) contacted a nursery about purchasing Howard trees. Stuke Nursery Co. Inc. (Stuke) sent a written purchase proposal to Brititalia Ventures (Brititalia, who was Podesta's farming company), which was dated February 19, 1998. The proposal required each of the categories of 14,000 Howard trees to be sold, and it listed the sale conditions. Brititalia submitted a check to Stuke for over \$175,000, with a note indicating that February 19, 1998, invoice was paid in full. Stuke delivered 14,000 trees to Brititalia in April along with delivery receipts that were signed by Brititalia's orchard foreman.*

*Later, it turned out that approximately 5,000 of the 14,000 trees that were delivered, were not Howard trees. Not surprisingly, a lawsuit came about.*

*The parties argued back and forth over discussions and papers and whether all or any part were part of the contract, and more specifically which papers were part of the contract. The parties also argued as to whether the course of conduct between the parties themselves were part of the contract.*

*The jury found for Brititalia based on the agreement of the parties. The jury found that there was an agreement between the parties as well as an implied warranty. Brititalia was awarded a substantial reward.*

*The court was required to determine the "meaning" of the contract. Or at least what made up the contract.*

*Stuke claimed it was not responsible for any harm because it limited its representations regarding the trees and it eliminated any implied representations for any particular purpose. Stuke stated that the sale of the trees was "as is."*

*The Appellate Court agreed that some of the Stuke documents did encompass "other" documents and did contain certain warranty disclaimers and "as is" provisions. However, the court also stated that the jury could reasonably find that those were not the actual contract documents. More importantly, the court held that there was evidence that Stuke had assured Podesta it had corrected its problems at its Nursery and Stuke had acknowledged its responsibility for delivering trees of the correct type.*

*The court found that there was substantial evidence to support the jury's findings. This included the back and forth discussion of things that were and were not in writing during the course of the parties conduct.*

*The important lesson of this case is to let people know that **if something is important to you, put it in writing.** It will then be very hard for the other side to argue differently. It is hard to have a judge or jury determine that if a contract specifically calls out "red," that what the parties really meant to say was that it should have been "green."*

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at [info@agrlaw.net](mailto:info@agrlaw.net). On the Internet, visit our Website at [www.agrlaw.net](http://www.agrlaw.net) *Brititalia Ventures v. Stuke Nursery Co., Inc.* C.A. 3<sup>rd</sup>, No. C047837, July 10, 2007 California DAR 10461



## ***MSCA Conference Welcomes New Chairman Russ Borst of Hurst Mechanical***

***MSCA'S Annual Educational Conference took place in  
Colorado Springs October 14-17, 2007 with record attendance!***

A graduate of Ferris State University, Russ has been involved in the Mechanical Contracting business for 20 years. He currently manages and supervises his companies Service Department which has 34 field employees and 5 support staff personnel. His areas of capabilities and expertise include: HVAC Service Management, HVAC systems design, temperature controls/DDC, project management, and energy audits for commercial building, churches, and schools.

He looks forward to his coming year as chairman and is proud to be a part of this growing organization. He is especially excited about working with members from all around the country, supporting all of the MSCA programs and services and continuing a strong partnership with the UA.



**Russ Borst**, incoming chairman of the MSCA Board of Managers with outgoing chairman **Wayne Turchetta**

## ***New MSCA Officers and Board***

Vice Chair **Jeff McCoy** (Mechanical, Inc., Freeport, IL) and Treasurer **Dave Bavisotto** (Illingworth Corporation/ An EMCOR Company, Milwaukee, WI).

MSCA also announced the appointment of **Mike Belcher** (P1 Group, Lenexa, KS) and **Robert Lake** (EMCOR Service/Mesa Energy Systems, Irvine, CA) to its nine-member Board of Managers. Belcher also serves on MSCA's Labor Relations Committee, while Lake is a member of MSCA's Marketing/ Membership Committee. Board of Managers members serve three-year terms and are selected by an MSCA Nominating Committee that looks for dedicated and committed MSCA leaders.

**Russ Borst**, whose term as MSCA Board of Managers' Chairman will last one year, is vice president of the service department at Hurst Mechanical in Belmont, MI, and president of Quad City Mechanical, a plumbing contractor in Belmont, MI.

*(Continued from page 3)*

(if the plan has had the report for a minimum of 30 days); and 3) a copy of any application to the Treasury Department for an amortization schedule extension. The plan may charge copying and delivery costs, but electronic transmission is encouraged. Plan administrators may be subject to penalties of up to \$1000 per day for failure to meet the disclosure requirements.

**Plans must provide** the information to entitled individuals not more than once per year. Comments are due on the proposed regulations by October 15, 2007. These new disclosure requirements follow relatively new annual pension plan funding notices required by the 2004 pension legislation. In addition, ERISA already requires a complete list of reporting requirements in the EBSA reporting and disclosure guide (<http://www.dol.gov/ebsa/pdf/rdguide.pdf>). Multiemployer pension plans must provide free general information to contributing employers regarding withdrawal liability; plans may charge fees/expenses for providing detailed withdrawal liability information and calculations for individual employers.

**...provided by MCAA**



## Upcoming Events for 2008

### January

- 1 ARCA/MCA office closed
- 8 8:00 am ACRT Appeals Committee
- 8 9:00 am ACRT Delinquency and Benefits Committees
- 9 8:00 am SCPT Administrative and Delinquency Committees
- 10-11 Association Executive Council (AEC)  
Peer Group Meeting (Florida)
- 14-16 IFEBP Training Conference (Las Vegas, NV)
- 29 9:00 am Inland Refrigeration Benefit Funds Board of Trustees

### February

- 7 10:00 am ARCA/MCA Board of Directors Meeting
- 11 12:00 pm Inland Refrigeration Training JAC Meeting
- 12 8:00 am ACRT Investment Committee
- 12 10:00 am ACRT Board of Trustees
- 13 8:00 am SCPT Appeals Committee
- 13 9:00 am SCPT Board of Trustees
- 18 ARCA/MCA office closed

### March

- 2-6 MCAA 2008 Annual Conference (Palm Desert, CA)
- 11 11:00 am Service Manager Roundtable
- 19 8:00 am SCPT Finance Committee
- 27-30 Association Executive Council (AEC)(Savannah, GA)

## MSCA Star Qualified Companies

ACCO Engineered Systems  
Glendale, CA

Air-Ex Air Conditioning, Inc.  
Pomona, CA

Allison Mechanical  
Redlands, CA

Barr Engineering  
Santa Fe Springs, CA

Cal-Air, Inc.  
Whittier, CA

Emcor Service/Mesa Energy Systems  
Irvine, CA

Thermalair, Inc.  
Anaheim, CA

United A/C Service Co., Inc.  
Yorba Linda, CA

Wittler-Young Service Company  
Los Angeles, CA

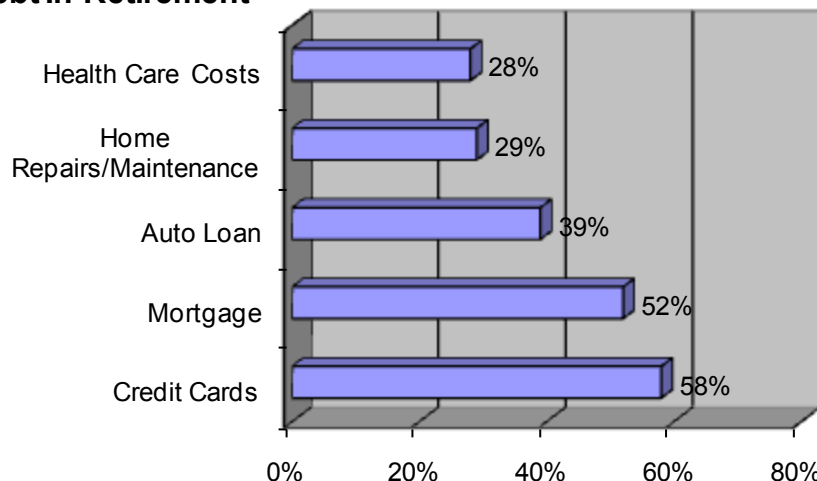


*Effective January 1, 2008,  
the Internal Revenue Service has increased their mileage  
reimbursement from 48.5 cents per mile to 50.5 cents per mile.*

*Submitted by Miller, Kaplan, Arase & Co.*

### Debt In Retirement

USA TODAY 12/19/07



**Major sources of debt in retirement: About one in three 62-75 year olds surveyed have or expect to have debt after retirement.**

Source: Financial Freedom survey of 1,129 retired and pre-retired adults age 62 to 75.  
Margin of error +3 percentage points. Multiple responses allowed.

## Mission Statement

### ARCA/MCA Southern California

The Mission of the Airconditioning, Refrigeration and Mechanical Contractors Association of Southern California, Inc. (ARCA/MCA Southern California) is to exceed the expectations of the Association's member companies. The Association will provide a link of communication that will address, advance, and inform the Association membership of the latest updates on legislation, technology, and issues pertinent to the Airconditioning, Refrigeration and Mechanical Contracting Industry. The success of the Association in achieving this Mission is to be based on integrity and loyalty to its members. We will strive to be diligent and flexible by supplying services the membership needs to be competitive in an ever-changing business environment.