

# May Membership Meeting



*Congresswoman  
Nydia M. Valezquez*

*Chairwoman,  
House Committee on  
Small Business*

...see details on page 4

**THURSDAY, MAY 1, 2008  
at the LaGuardia Marriott**

**Cocktails — 5:30 pm; Dinner — 6:30 pm  
Followed Immediately by the program**

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*Mr. Lichtenstein’s presentation will be in addition to our other scheduled guest, Congresswoman Nydia M. Valezquez, Chairwoman, House Committee on Small Business.*

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**IN THIS ISSUE...**

- 1 President's Message
- 1 May Meeting Promo
- 4 Congresswoman To Speak
- 6 Editor's Notes
- 8 Pearl - Exempt & Nonexempt Issues
- 11 Statue of Liberty Dinner Cruise
- 12 Casino Night Photos
- 14 Zisholtz—Mechanic's Lien Exaggeration

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# Greater New York Contractors' NEWS



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May 2008

## President's Message

FEDERAL RESERVE CHAIRMAN BEN BERNANKE recently acknowledged that a US recession is possible. As contractors, we need



Ron Nathan

to formulate plans to help us weather deteriorating economic times. Some interesting ideas were presented by Steve Howard of the ACT Group at a Trane/Wallwork Group dealer meeting held in March 2008.

The HVAC industry sells necessary consumer goods. Despite a possible recession, consumer spending in our industry should remain strong

Turn to President's Message on page 3

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

if we tailor our sales to meet specific industry needs. According to Steve Howard, we could use this economy to develop marketing techniques that stress customized comfort, innovative equipment and quality service. Comfort has become a basic need which people will not be without at work or home. Our customers may become more price-conscious, but a wise contractor will stress the advantages of an excellent IAQ system in terms that relate to the consumer. These benefits could include less sick time for employees due to allergens in a building, or the decreased maintenance and utility rates associated with an investment in new equipment.

On a lighter note, I hope you were able to join us for our largest Casino Night turnout to date on April 3rd. The air was full of laughter and shouts as ACCA members and their guests gambled "funny money" for the chance to win electronic goodies, gift certificates and an enormous LCD TV. M&M Entertainment provided authentic style casino tables staffed by engaging dealers. A magician performed card tricks and "how did he do that?" slight of hand disappearances for small groups of guests at dinner tables. We feasted on hot and cold

hors d'oeuvres and a delicious dinner buffet, followed by a large assortment of pastries and cookies. Many thanks to Committee Chairman Jim Carlson, John Delillo, and Kelly Ronzetti for all the time and work they put into this event to make it such a rousing success. I would also like to thank our sponsors Blasco Supply, American Universal, Zisholtz & Zisholtz, B & F Johnstone, Enterprise Fleet Services, National Compressor, Amerisc, LIPA, Twinco Supply, and ABCO Refrigeration for their generous support to make this wonderful evening possible.

Remember to register for our upcoming Dinner Cruise. We will leave from Port Washington on Thursday, June 12 at 6:30 pm for an evening of music and food while enjoying a wonderful view of Manhattan and the company of ACCA associates and guests. Our sponsors include Keyspan/National Grid, Wallwork Group, and ABCO Refrigeration. If you have never experienced a relaxing dinner cruise before, this is your golden opportunity. We may even spot Gilligan's Island! Check the Greater NY ACCA website for details and to sign up for this event. Please don't forget to include your spouse or date. Come aboard – We're expecting you! — **Ron Nathan**

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# Congresswoman Nydia Velazquez, Champion of ACCA Issues, To Speak at May Meeting

On Thursday, May 1, our members will have an exceptional opportunity to meet and hear Congresswoman Nydia M. Velazquez, Chairwoman of the House



Committee on Small Business, when she addresses our May membership meeting.

Representative Velazquez has a history of support for our industry and has been an outstanding champion of the interests of HVACR contractors within the Congress.

As recently as last summer, she, along with Representative Steve Chabot, Ranking Member of the House Committee on Small Business, petitioned the House Energy and Commerce Committee to amend pending legislation authorizing the Secretary of Energy to allow regional standards for heating and cooling products. Together, Reps Velazquez and Chabot pointed out the negative impact such regional standards could have; impairing small businesses in the Heating, Ventilating, Air Conditioning, and Refrigeration industries as well as the

customers they serve.

Representative Velazquez has always been willing to hear the contractor's point of view and has supported most, if not all, of the bills that would benefit our member contractors.

Attending this meeting will not only provide you with an informative and valuable lesson in Congressional action, it will offer all members an opportunity to encourage Ms. Velazquez in her efforts on our behalf, and to thank her for her hearings on the issues of health care costs, strengthening small business loan programs and reducing regulatory burdens for entrepreneurs, as well as her sponsorship of legislation H.R. 2389, *The Small Energy Efficient Business Act* (SEEBBA) providing loans, education, and investment to small firms to make energy efficient improvements, including their HVACR systems.

The meeting will be held on Thursday, May 1, 2008, at the LaGuardia Marriott. Be sure to get there early for the cocktails. Cocktails are at 5:30 pm. Dinner is at 6:30 pm, followed immediately by the program. Let us know you are coming via our website; [www.accany.org](http://www.accany.org). •



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# Editor's Notes

By Anthony N. Carbone

## Who Knows What's Next?

The long awaited end of winter and the spring season is certainly being welcomed by local HVAC contractors. The perfect storm of a mild winter, high fuel costs and a looming recession has placed many contractors in a virtual economic hole.

The economy was always moving ahead when consumer spending kept continuing or rising despite falling housing prices. Once consumer confidence dropped out and a near collapse of the equity markets, many took their money off the table and a "wait and see" attitude has taken hold.

Reduced usage and consumption due to recession has not created a glut of oil or gasoline. Prices continue to stay high and may even reach the \$4 a gallon price by Memorial Day. This is defying the laws of supply and demand. It will inevitably cause inflation and has evidently curbed discretionary spending.

The strategy set forth by the individual contractors will be a key to staying solvent and not running up expenses. If you continue to do business as you have in the past, you may find it will be too late to adjust. These changing markets have made pricing jobs tricky. Increased equipment and overhead costs make it prohibitive to quote as in the past. Yet there is scarce work, so the pressure of super competitive pricing to consumers has cut margins to razor thin. Many more contractors are bidding the same jobs and consumers are real-




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**Governmental Energy Concerns**

We are currently working with Charlie McCrudden, Director of Government Relations at ACCA National, in Arlington Virginia. ACCA National has asked us to host Nydia Valazquez, United States House of Representatives, Committee of Small Business Chairwoman of Congress. We are welcoming her to discuss Section 104 legislation, regarding the regional variations in heating and cooling standards. The impact of such standards could impair small businesses. It would also force manufacturers to create regional specific products. This is important information, which Ms. Valazquez has stood up for small businesses.

Unfortunately, these topics, at governmental levels, are critical for us as contractors. Come and ask questions and

meet Nydia Valazquez. She has stood up for contractors. Support this meeting and attend, as it will make a difference for each of us. — *Anthony N. Carbone*

**In Memoriam**

**Richard Scheinfeld**

The officers, directors and members of the Greater New York Chapter, ACCA extend sincere condolences to the family of our colleague Richard Scheinfeld of Cascade Water Services on his passing.



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# People & The Workplace

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## Exempt And Non-Exempt Issues - Part II

Last month, I revisited the “exempt/non-exempt” issue. In Proposition #1, I illustrated why an office manager who is paid on an hourly basis (and not a salary basis) does not qualify for the FLSA’s administrative exemption and must be paid overtime. This month, I offer proposition #2 and #3.

### Proposition #2

If you reduce an employee’s pay for partial day absences, you must pay for overtime, regardless of the employee’s job duties. Illustration: even if you pay your managers a weekly salary, if their pay is subject to deductions for partial day absences, they will not meet the salary basis test of the executive exemption.

### Proposition #3

Even though you pay an employee a weekly salary, you may still be required to pay for overtime. Illustration: A manager who does not supervise at least 2 full-time employees, or who performs mostly non-exempt work (e.g. manual

tasks), does not meet the duties test of the executive exemption and will not be exempt from the overtime requirements of the FLSA.

### CASE LAW UPDATE

Liability for overtime compensation is a growing concern. Especially in New York, where the Second Circuit recently ruled that a temporary staffing agency must pay overtime to the nurses it placed in various hospitals, even though it did not authorize, supervise or know about the overtime work until it was completed. The court found that the temporary staffing agency was an employer, for purposes of the FLSA, and that since it knew that the nurses sometimes worked unscheduled overtime, it had an opportunity to comply with the law by paying overtime compensation and taking affirmative steps to prevent the nurses from work ingunscheduled overtime hours.

The court held that an employer may not avoid its ob-



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ligations under the FLSA where an employee voluntarily performed unscheduled overtime work, because the employer nevertheless permitted the work and is presumed to have the power to prevent work they do not wish to be performed.

**NEW YORK SOCIAL SECURITY NUMBER PROTECTION LAW NOW IN EFFECT**

Last October, I reported that New York State passed legislation to protect the private information of both consumers and employees. The law, which was passed in response to the identity theft crisis, is relevant to employers because many employment documents contain SSNs, drivers' license numbers, bank account numbers and credit or debit card information.

As of January 1, 2008, the New York Social Security

Number Protection Law went into effect. This law prohibits (1) the intentional communication of an individual's SSN to the public, whether by oral, written or electronic means; (2) the printing of an individual's SSN on any card or tag required for access to products, services or benefits; (3) the transmission of SSNs over the internet unless the connection is secure or the SSN is encrypted; (4) the use of SSNs as passwords to gain access to internet sites; (5) the use of SSNs in mail correspondence. These prohibitions may not be waived; that means, you may not enter into an agreement with an employee where the employee grants you rights otherwise proscribed by this law. The penalties for noncompliance include monetary fines that range from \$1,000 to \$250,000.

Our recommendation: first, identify where the company  
*Continued on page 10*



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## People & The Workplace

*Continued from page 9*

records SSN information and how those documents are stored; second, determine whether employee or customer SSNs are being used for identification purposes, and third, ensure that if employees must use their SSN to access the company's intranet (server), a password, PIN or other authentication code is required as well.

Training management to comply with this new law is essential to avoid penalties and protect your employees' personal information. If you are unsure about how to comply with the law, as always, please do not hesitate to contact us at 516-921-3400, or at [abpearl@pmpmr.com](mailto:abpearl@pmpmr.com).

This article reviews employment law issues. It is designed to provide accurate and informative information, however it should not be considered legal advice. •

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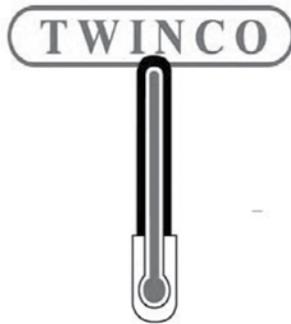
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## Tuesday, May 6th

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## ***Statement From Stuart S. Zisholtz, Esq.***

### **Mechanic's Lien Exaggeration**

Exaggeration of a Mechanic's Lien has very serious consequences and it keeps cropping up all the time. Given a situation where owners or general contractors are becoming more brazen and onerous in their relationship to the subcontractors, the tendency is for the subcontractor to try to "get even" by trying to "sock it" to the owner or the general contractor. Never, and I say Never, let your emotions run wild and permit you to do that.

In one particular instance that we have, for example, there is a claim for about \$500,000 between the contractor and the owner in a direct relationship. The owner in a so-called settlement meeting with a straight face offered \$10,000. The contractor went berserk! He wanted to lien the job for \$500,000. Portions of the \$500,000 were lienable and portions were questionable. To lien the job for \$500,000 and get hit with a claim for exaggeration of a lien would be counter-productive. The lien was filed for the lienable amount and a breach of contract claim was instituted for the rest. This slammed the door shut to any possible claim for exaggeration of the lien and protected the contractor since he was dealing directly with the owner anyway.

The penalty for exaggeration of a lien is the reduction

of the amount awarded by the amount of the exaggeration. If you have a lien for \$100,000 that is willfully exaggerated and you are awarded \$70,000, the \$30,000 spread is reduced from the \$70,000 and your recovery is \$40,000. From that you are charged legal fees which could be \$25,000, and you will wind up with \$15,000. Similarly, if you have a lien for \$100,000 and it is exaggerated by \$60,000, that \$60,000 will be deducted from the \$40,000 and you will owe the owner \$20,000 plus legal expenses. The penalty for exaggeration, therefore, is very severe and must be avoided at all costs. This does not mean, however, that failure to prove the full value of your lien is a willful exaggeration, but that is for another article. Suffice it to say, however, for purposes of this article that a willful exaggeration means throwing things into the lien that do not belong there and are not legitimate. It does not mean that if you have a lien for \$100,000 and can only prove \$90,000 that you willfully exaggerated unless the \$10,000 is obviously non-lienable items.

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. •*

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Applications are only open for the Safety Masters Club once a year, and are being accepted until May 9, 2008 for activities in the 2007 calendar year. Applications and instructions for submission are available online at [www.acca.org/safetymasters/](http://www.acca.org/safetymasters/).



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