

# NOZZLE & WRENCH



AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION

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## INSIDE THIS ISSUE:

- >> A Supervisor's Role in Workers Compensation
- >> Future-Proof Your Service Department
- >> The Small Business Tax Fairness Act

*Timely delivery of products from gasoline to computer chips and everything in between makes for a guessing game.*

## KIRK'S CORNER

# Double Whammy



By Kirk Mccauley,  
Director Of Member  
Relations &  
Government Affairs

**Labor and product shortage** are changing the way we do business. From cashiers to truck drivers, employees are hard to come by. Timely delivery of products from gasoline to computer chips and everything in between makes for a guessing game. Used vehicles are up an average of \$3,000 over pre-pandemic and new car lots look like they are going out of business. Recreational vehicle – forget it.

The federal unemployment subsidy expired September 4th which should help the labor problem. Governor Hogan tried to stop the federal payment in July but a federal judge in Baltimore ruled against it. It will take months to get labor and supply back to near normal and that's if the block heads that refuse to get vaccinated change their ways or go live on an island. School age kids going back to classes along with day care centers reopening should all help moms and dads get back to work.

The truck driver shortage is another problem all together and especially the critical shortage of licensed CDL drivers with hazmat endorsements. The hazardous driver shortage has caused runouts and suppliers are doing everything they can to hire drivers by offering high wages, paid insurance, and liberal leave but the theme continues "have truck – need drivers."

It is critical under these conditions that you keep a close eye on products you sell and availability. As the supply chain problem persists and prices skyrocket you need to price accordingly. Economists use the words elastic and inelastic when describing pricing products, you sell from the gas island to the convenience store or parts you sell in repair shop. If a price increase for a product decreases demand, then your pricing model is elastic. A price increase that does not reduce demand would be inelastic. These elasticity theories get a little too complicated for me. I'm old and old fashioned.

The simple way is to track costs and keep your percentage of profit no matter what your cost is. Labor costs are increasing dramatically and need to be factored into pricing for product and shop labor rates. Bottom line is inflation here and it's only going to get worse. Take the time to build or buy a software model for pricing that



*Continues on page 4*

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Connect with us!



*October 26, 2021, will be the Expo date at Martins West... The Expo is free, as is the CAR Workshop. But you must register*

*Continued from page 1*

is repeatable and simple. It does not have to be fancy and it's good to experiment to see what is elastic and inelastic. Sometimes less is more when it comes volume and how you price. I have seen too many dealers selling mega gallons of fuel and having little to show for it except pumps that are worn out and empty pockets.

### **Massachusetts Telematics**

Automakers will have to wait a little longer to find out whether they will be required to comply with the required changes to installed telematics systems beginning with model year 2022 (MY22) vehicles that Massachusetts voters imposed through a November 2020 ballot initiative. The Alliance for Automotive Innovation challenged the Massachusetts law in federal court in Boston and, after a trial this summer,

Judge Douglas Woodlock advised that he would rule by August 20 on the Alliance's request to enjoin enforcement of the new law. On Monday, August 16, however, he alerted the parties that he did not anticipate issuing a decision until September 20, 2021.

### **Expo - Customer Service Contest - Awards Dinner 2021**

October 26, 2021, will be the Expo date at Martins West, and I look forward to seeing all of you there. Put it in ink that you will reserve that day and evening for catching up on technology and equipment on display, food and drinks, the awards dinner in the evening and a special keynote speaker, Secretary of Commerce and Republican candidate for Governor, Kelly Schulz, John Eichberger executive director of Fuel Institute on outlook for

carbon fuel and Aaron Stokes of Shopfix Academy.

With this speaker line up and awards I expect dinner tickets and tables to sell out. Don't wait, Martins can only hold so many, and we have been sold out last two Expo's.

Our CAR committee has put together a two hour "Conversation with Industry Leaders" and Aaron Stokes of Shopfix Academy will speak. The workshop is noon until 2pm and is free. Lunch will be provided. This is for repair facilities and bayed stations.

The Expo starts at 2pm and runs until 6pm. The Expo will have food islands and bar.

**The Expo is free, as is the CAR Workshop. But you must register so we have a count.**

Dinner tickets/tables can be purchased by contacting Swapna, at [ssripada2@wmda.net](mailto:ssripada2@wmda.net) or call 301-390-0900 or buy online.

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The Customer Service Contest this year will be sponsored by all our suppliers and Parts Authority. We will have both traditional and Halal food, deserts galore and drinks, high test and regular, or leaded and unleaded.

This year we will cut down on the number of locations in each category and add a new award, "Giving Back to the Community" One award for members and one award for associates or suppliers. Honoring our own for giving back to the community in these unprecedented times will be a delight. Any member that would like to be considered for giving back to community award should contact Swapna at [ssripada2@wmda.net](mailto:ssripada2@wmda.net)

### **Maryland department of Environment Oil Control Program (MDE-OCP)**

This month I will be meeting with MDE, and I would like to know if there were any subjects our member would like clarification on or any questions you might have on UST's, pumps, compliance with regulations. Contact me at [kmccauley@wmda.net](mailto:kmccauley@wmda.net)

In talking with MDE oil Control these 2 violations come up more than you would think.

Operator training certificates, specifically class C for at least one person on site or an A or

B certified operator on site. C-operator is also site specific, must have separate certification for each station he/she might work

Unmanned facilities, leaving pumps on at night.

MDE sees these violations often. Training C-operators is simple and quick. There is no excuse. Every employee working on site should have that certification.

You must have written permission from MDE to operate unmanned facility and only card lock and member location have that written permission. See link fact sheet below and form for C-operator. MDE will have a table at the Expo for open discussion also.

**Fact sheet on unmanned facility**  
[HOW TO CREATE A FACT SHEET \(TOPIC TITLE\) \(maryland.gov\)](#)

**Class c operator training form,** that will be his/her certification, sign by trainee and trainer [https://mde.maryland.gov/programs/LAND/OilControl/Documents/MD\\_ClassC\\_Form\\_Revised\\_6.9.17\\_1pg.pdf](https://mde.maryland.gov/programs/LAND/OilControl/Documents/MD_ClassC_Form_Revised_6.9.17_1pg.pdf)

WMDA/CAR has been asked by Delaware Department of Natural Resources and Environmental Control (DNREC) to send this notice of changes to regulations on

"Solvent cleaning and Drying". This will mainly affect automotive repair locations and body shops.

### **From Delaware Natural Resources & Environmental Control (DNREC)**

We are pleased to announce that the final amendments to 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*; Sections 33.0 "Solvent Cleaning and Drying"; have been published in the August 2021 Delaware Register of Regulations. Information about the amendments, including the Secretary's Order, are in the current issue of the Delaware Register of Regulations <https://regulations.delaware.gov/register/august2021/index.shtml>.

More can be seen at <https://dnrec.alpha.delaware.gov/air/permitting/under-development>, including a short version of Regulation 1124, with the 14 pages revised (click on Section 33 in the bottom Note).

In addition, the hearing record for the Public Hearing held on December 2, 2020 can be found at <https://dnrec.alpha.delaware.gov/events/public-hearing-solvent-cleaning-and-drying-regulations/>. If you have any questions, please contact Renae Held at 302-739-9402 or [renae.held@delaware.gov](mailto:renae.held@delaware.gov). ■

# In Conversation with Industry Leaders



By Sandi Weaver  
BA Auto Care, Inc.

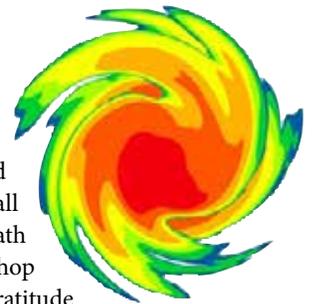
**Wow, am I excited for this year's Expo.** We've added a little something extra for our repair shops and service stations with bays! We will have Aaron Stokes of Shop Fix Academy, Pedro Leyton from Part Authority and Gary Smith of DiagNation as the industry experts at the In Conversation with Industry Leaders – 12pm-2pm at Martins West (see sidebar below).

The goal of the Conversation is to discuss the hot issues within our industry and see what's coming down the line for us. We want to hear from our members too! We are all experts at different things and can learn so much from each other.

Have a question? This is the place to ask it!

## Ida

As I sat down to write my monthly article for Nozzle and Wrench, what's left of Hurricane Ida is raining down outside. I just received the text message that my children's schools are closing 3 hours early. My first thought is, great, now I have leave work to be home for them. And who else is going to need to leave the shop to care for their kids? Will all the work that's supposed to go today get done? Then I took a deep breath and realized I should be counting my lucky stars my kids, house and shop and those of my employee's are probably going to be ok. A feeling of gratitude came over me. I'm lucky that Covid didn't take my shop down this past 19 months like it has for others. I'm grateful to have an amazing and dedicated staff who can handle just about anything thrown at them. And lucky our shop wasn't wiped out by a hurricane like those in Louisiana. Then came the empathy and what can I do to help those affected by hurricane Ida? Frederick had so much rain, their streets flooded and schools are two hours late going in today and they had a heck of a time getting kids home yesterday. The Annapolis area had a tornado tear through destroying homes and businesses. While it's too early to know who has been affected, I know I want to help and I'm hoping you all do too. ■



**Aaron Stokes** is a 22-year veteran of the automotive repair industry, who uses his experience to help other auto repair shop owners build successful businesses. Through Shop Fix Academy, he provides innovative management coaching and training based on the knowledge he acquired growing the automotive repair chains, Eurofix and Autofix.



**Gary Smith** brings over 30 years of experience in the automotive training and marine industry and is highly experienced in training technicians in identifying and solving engine and fuel system problems.



Gary's unique style of training has built a solid reputation for helping service advisors perform by helping them to understand how vehicle systems work and how to use that information to present an honest and credible sale to the consumer.

## In Conversation with Industry Leaders

Exclusively for Auto Repair Businesses; Lunch Included

Register today!

WMDA/CAR EXPO  
October 26, 2021  
12pm - 2pm

# WMDA/CAR ANNUAL EXPO & AWARDS DINNER 2021

**Tuesday, October 26, 2021**

MARTIN'S WEST, 6817 DOGWOOD ROAD, BALTIMORE, MD

**In Conversation with Industry Leaders | 12 pm - 2 pm**  
*(Exclusively for Auto Repair Businesses; Lunch Included)*

**Expo | 2 pm - 6 pm** *(Light lunch available 2:30 pm-4:30 pm)*

**Cocktail Reception | 5 pm - 6 pm**

**Awards Presentation & Dinner | 6 pm - 8 pm**  
*All American buffet and Halal options will be available.*

**Social Hour & After Party | 8 pm - 9 pm**



## FREE EXPO ADMISSION (2:00 p.m. – 6:00 p.m.)

- I will attend the Expo. Please list names below:  
*(Expo is Open to anyone in the automotive, c-store, service station and repair industry)*

Primary Contact: \_\_\_\_\_ Business Name: \_\_\_\_\_  
 Guest Name: \_\_\_\_\_ Guest Name: \_\_\_\_\_  
 Guest Name: \_\_\_\_\_ Guest Name: \_\_\_\_\_

## AWARDS DINNER TICKETS (6:00 p.m. – 9:00 p.m.)

- Individual Tickets ..... \$65 x # \_\_\_\_\_ = \$ \_\_\_\_\_  
 Table of 10 ..... \$600 x # \_\_\_\_\_ = \$ \_\_\_\_\_

## CONTACT INFORMATION

Company: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
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**Total Amount Due \$** \_\_\_\_\_  
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 Checking box is my Electronic Signature and payment authorization

# Workers' Comp Insights

## *A Supervisor's Role in Workers' Compensation*

Brought to you by AmeriTrust CONNECT

**Supervisors play an essential role** in ensuring a company's efficiency and success. They are responsible for handling the everyday situations that help a business remain functional. Further, supervisors are also an [integral part](#) of workplace safety programs. Such programs utilize risk management techniques to keep employees safe on the job, thus reducing workers' compensation costs.

Employers who are not incorporating their supervisors within their workers' compensation programs are missing out on a valuable opportunity. After all, supervisors can help prevent employee injuries and subsequent workers' compensation claims from occurring by promoting workplace safety programs, as well as support claims in action by assisting employees upon their return to work following an injury.

This guidance outlines ways that supervisors can help proactively limit workers' compensation claims and keep the claim process running smoothly when an employee comes back to work after getting injured.

### **Proactive Claim Prevention Methods**

Supervisors spend a significant amount of time with employees. Although supervisors have their own job tasks to complete, they should always have safety on their mind. Supervisors are some of the most influential people within a company when it comes to promoting a positive safety culture.

Most employees will follow the example set by their supervisors. That is, if a supervisor is showing a disregard for safety in the workplace, then there's a high likelihood that other employees will start displaying those same behaviors. As such, it is important that supervisors show their employees how important safety is. They can do so by incorporating safety initiatives within their everyday routines.

Specifically, supervisors should call out employees' poor workplace behavior and provide them with feedback on how to do a job correctly and safely. In doing this, supervisors can promote and display a safe work environment, which will eventually trickle down to employees – instilling a positive and safe work culture across the company.

Supervisors should take note of any unsafe behaviors that employees are exhibiting and use these instances as training opportunities. Supervisors can discuss these behaviors with employees right as they occur, or use them as topics for daily toolbox talks.

A positive safety culture in the workplace has been proven to reduce the risk of employee injuries. According to the [Occupational Safety and Health Administration](#), studies have shown that company engagement in safety programs reduces injury and illness rates significantly.

Supervisors who participate in and encourage employees to practice safe work habits will help limit instances of injury and illness, leading to a reduction in workers' compensation claims and related costs. That being said, it is important for employers

*Supervisors are some of the most influential people within a company when it comes to promoting a positive safety culture.*





to hire supervisors who believe in and promote a safe work environment. In addition, employers should train their supervisors in safety management and make it a part of every employee's performance evaluation.

### **Supporting Claims in Action**

Although employees typically consult their employer or the HR department for a workers' compensation claim (depending on how large the company is), supervisors can play an important role in the investigation of a claim and in an injured employee's experience when they return to work.

Employers should use supervisors to help in the investigation of a workers' compensation claim. Supervisors understand each employee's job task and are able to break down the sequence of events enough to understand what the employee was doing or should not have been doing when the injury occurred. Supervisors can be vital to understanding how an injury occurred, what the cause of the injury was and how to mitigate any more issues moving forward.

Supervisors understand the ins and outs of which tasks need to be completed and usually have a good gauge of the abilities required for different job roles.

Supervisors can help employers or HR leaders determine adequate transitional tasks for an employee to get them back to work after an injury. In particular, supervisors can be a great resource for finding light-duty work for a returning employee.

Supervisors can also help with monitoring employees when they return to work. A supervisor should have daily communication with the returning employee in order to identify any issues that may arise (e.g., instances of pain or discomfort while performing job tasks). From there, these issues can be rectified, preventing the returning employee from stepping backward in their recovery process or experiencing new injuries. Having supervisors engage in such monitoring protocols can ensure injured employees properly recover and successfully transition back into their roles, keeping workers' compensation claims from becoming more severe and – subsequently – expensive.

Another benefit of having supervisors work closely with employees who are returning to work post-injury is that doing so provides such employees with a sense of care from their employer. If supervisors are regularly checking in on their recovering employees to confirm that things

are going well, these employees will feel as though their employer is genuinely concerned about their recovery. Happy, supported employees tend to enjoy work and resume their original job roles quicker than those who have negative experiences with workers' compensation claims.

Overall, having supervisors be involved with company safety programs and support employees throughout the return-to-work process are cost-effective ways to reduce workers' compensation claims and related costs. Supervisors are the eyes and ears of a company, and involving them in these areas can only benefit the company – promoting efficient operations, a positive work culture and a successful workers' compensation program. ■

*Contact your AmeriTrust CONNECT team today for additional workers' compensation resources at (800) 726.9006 or get a quote at [www.ameritrustconnect.com/association/wmda](http://www.ameritrustconnect.com/association/wmda).*

*This Work Comp Insights is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel or an insurance professional for appropriate advice. © 2011, 2019 Zywave, Inc. All rights reserved.*

# Future-Proof Your Service Department for Busy Seasons

Brought to you by Netdriven

**Fifty-three percent of gross profit** for the average dealership is generated through the service department<sup>1</sup>. While this number may differ for your business, no doubt you are well aware of the crucial role your service department plays in your revenue. While independent auto businesses have been plagued with uncertainty over the last several months, we continue to see a demand for automotive services and products, which means that busy seasons will continue to roll in.

To ensure your business is prepared for future busy seasons, we encourage you to future-proof your service departments by employing digital solutions that help you keep pace with customer demand without sacrificing your quality of work or your peace of mind.

## Offer Digital Customer Service Outlets

Shoppers connect with your business long before they set foot in your store. Providing digital communication channels creates sustainable communication that begins the moment a prospect interacts with your business and continues through the entirety of the shopping journey.

We recommend providing a variety of digital communication tools for two reasons: (1) so that shoppers can use their preferred channel and (2) to ensure that, no matter where they are in the buying journey, shoppers have an easy way to contact your business. Some of our favorite digital communication channels include:

**Texting** is the most versatile communication channel because shoppers and business owners alike can leverage it anytime and for anything. New prospects can submit questions or request an appointment; customers can ask post-sale questions and you can follow up with recent buyers, send appointment reminders and request feedback.

**Live chat** lives on your website as an instant connection to your support team. Imagine a new or returning customer has a question and visits your website – they instantly can message your team by clicking the live chat module. Unlike phone and email, the nature of live chat promises a rapid response to messages sent during your hours of operation.

**Direct messaging** on social media sites like Facebook, Instagram and Twitter is popular among younger generations of consumers, who often use social media instead of visiting the business website. Make sure you're reaching these



*Providing digital communication channels creates sustainable communication that begins the moment a prospect interacts with your business and continues through the entirety of the shopping journey.*

<sup>1</sup> [DealerSocket's Dealership Action Report](#)



shoppers by actively monitoring your direct messaging platforms and replying quickly to any messages, as you would for a phone call, email or text.

### Invest in a Dynamic Service Scheduling Tool

Even if your business thrives on phone calls and drop ins, we recommend implementing an online service schedule tool to accommodate the increasing number of shoppers who conduct the majority of their interactions online. By integrate a digital service schedule tool with your website, you can capture a higher number of leads and receive their information directly in your system. Furthermore, a dynamic service schedule tool will allow you to send appointment reminders by text and email so that you can boost customer retention and be notified if their plans change.

### Create Clarifying Content

Studies show that customers perceive automotive service centers as expensive. However, when customers are provided with sufficient information about price range and quality of work, they are willing to pay 10-15% more<sup>2</sup>. Clear up misconceptions for your customers by creating content

<sup>2</sup> Cars.com

such as blogs, social media posts and videos that demonstrates your dealership's expertise, quality guarantees and pricing structures. Transparency is a valuable sales tactic, and giving your shoppers a 360-degree view of your service process can save you trouble down the road.



### Provide Seamless Payment Options

Consumers want and expect flexibility when it comes to making a payment. Improve customer satisfaction by providing a seamless, user-friendly payment system that allows shoppers to submit payment naturally

without needing to wait in long lines or, in some cases, even set foot in the store. Depending on the preferences of you and your shoppers, your payment options may include online pre-payments, paying through an app or third-party transaction or using a link sent via text.



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### Send Out Feedback Surveys

Don't just take our advice – get feedback straight from the source by sending surveys to recent customers. These surveys don't have to be long and in-depth. They can comprise of a short list of valuable questions, such as:

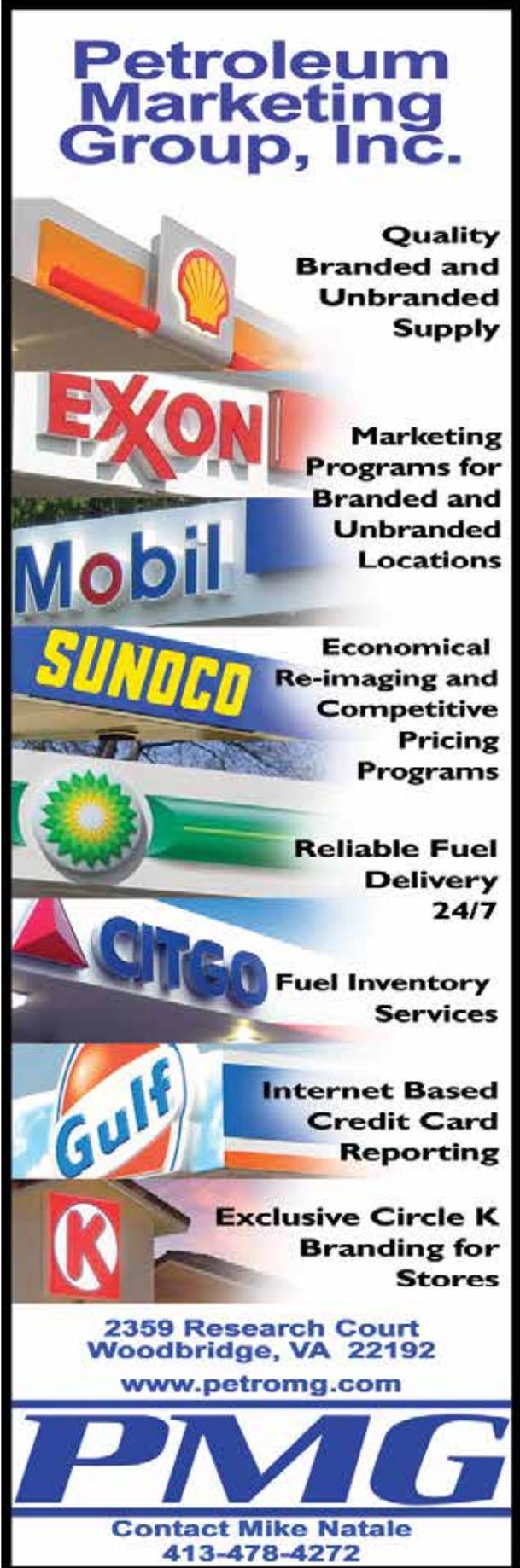
- What did you like about your experience?
- What did you NOT like about your experience?
- How can we improve your next appointment?
- Would you recommend us to a friend/colleague? Why or why not?

In order to improve your service department and implement a proactive strategy, it's important to know your strengths and weaknesses in how well you meet customers' needs.

### Drive Awareness of Your Service Center

Before they can even interact with your service team, shoppers need to be aware that your service department exists. With powerful social media tools or by partnering with a team of social media experts, you can employ a social listening strategy to identify shoppers who are in need of service or who are dissatisfied with previous service departments. With that, you can launch targeted ads to notify these shoppers that your business carries the services and quality care that they need.

All across the spectrum of business, we will continue to see a steady progression toward digital. Not only will digital services help your business stay relevant, you may also find these streamlined, automated systems to be life-saving during busy seasons, when your team is stretched thin to meet demand. Digital systems help prevent small but important customer touchpoints from falling through the cracks – helping you retain customers and sales opportunities. ■



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Contact Mike Natale  
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# Potential Liability for Selling Gasoline to Intoxicated Persons

By James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

**Can a gas station owner be held civilly liable** for selling gasoline to an intoxicated person? Courts in at least two states have answered that question in the affirmative. In a recent decision, the Supreme Court of New Mexico held that a gas station owner could be held liable under a theory of negligent entrustment for the sale of gasoline to an intoxicated driver (*Morris v. Giant Four Corners, Inc.*, 2021 WL 3046715 N.M. July 19, 2021).

In the *Morris* case, a man named Andy Denny had been drinking and drove his vehicle until it ran out of gasoline near Tohatchi, New Mexico. Denny and his passenger, both of whom were intoxicated, then walked to a gas station in Tohatchi to purchase gasoline. Since there were no empty gas cans for sale, Denny decided to purchase a gallon of water and empty it to fill it with gasoline. Initially, the store clerk refused to sell to Denny and his passenger because they were intoxicated, but the clerk ultimately relented and sold Denny the gallon of water and a gallon of gasoline. Denny and his passenger then walked back to their vehicle, and after filling the tank with the one gallon of gasoline, drove back to the gas station to purchase another nine gallons of gas. Denny then drove away from the gas station, and dropped off his passenger. He then returned to the highway, and while driving on the highway his vehicle crossed the centerline and collided with the oncoming vehicle of Marcellino Morris. Morris was killed in the collision.

An officer who responded to the accident scene observed signs that Denny was intoxicated, and that he was repeatedly dozing off. Denny was administered a breathalyzer test, and blew a .08 BAC. About four hours after the accident, a blood sample showed that Denny's blood alcohol concentration was .176. Denny was arrested for driving while under the influence, vehicular homicide, and driving left of center.

Morris's personal representative filed suit in federal court against the gas station owner alleging several claims, including negligent entrustment. The case made its way to the United States Court of Appeals for the Tenth Circuit, which referred the case to the New Mexico Supreme Court to decide the question of "whether a vendor of gasoline has a duty to refrain from selling gasoline to a driver it knows or should know is intoxicated." The New Mexico Supreme Court had not previously addressed this question, so it was a case of first impression.

Under the theory of negligent entrustment, a person may be liable for supplying a "chattel" (an item of property other than real estate) to another person whom the supplier knows or has reason to know will use it in a manner involving unreasonable risk of physical harm to himself or others. This type of claim typically arises where a person supplies a vehicle (i.e., car keys) to another



*Can a gas station owner be held civilly liable for selling gasoline to an intoxicated person?*



*...how should a gas station operator know when not to sell gas to a customer? Is the gas station employee required to intervene in a pay at the pump sale?*



person that the supplier knows or should know is intoxicated. The New Mexico courts had previously recognized a duty to refrain from supplying a vehicle to an intoxicated person, and the court in the *Morris* case found that the same logic supports a duty to refrain from supplying gasoline to a vehicle being driven by an intoxicated person. In reaching its decision, the court reviewed public policy considerations related to the sale of alcohol, including the “dram shop” law in New Mexico. Under “dram shop” laws, a person who supplies alcohol to another person that the supplier knows or has reason to know is intoxicated may face civil liability for damages for harm resulting from supplying the alcohol (e.g., a car accident).<sup>1</sup> The court also considered the fact that there is no law in New Mexico that prohibits the sale of gasoline to an intoxicated person. Despite the absence of such a statutory provision, the court found that “[p]roviding gasoline to an intoxicated driver is like providing car keys to an intoxicated driver,” and that liability under a negligent entrustment theory would therefore be consistent with New Mexico law.

The court also reviewed cases from California and Tennessee. In the two cases from California, the earlier decision had found no liability for selling gas to an intoxicated driver, but a later unpublished case did find liability. The Tennessee case, decided in 2005, also found that selling gas to an intoxicated driver could support liability under a theory of negligent entrustment. Tennessee, like New Mexico (and unlike Maryland), has a dram shop law. The court found the Tennessee case to be persuasive, but added that a gas station operator must have an opportunity to identify a driver as “so intoxicated as to pose a danger to the motoring public” before liability would be imposed. The majority of the court concluded that a gas station operator could be held liable under a theory of negligent entrustment for selling gasoline to a driver that the gas station operator knows or has reason to know is intoxicated.

One of the judges on the New Mexico Supreme Court disagreed with the majority’s decision, and wrote a strong dissent, explaining the three reasons why she could not agree with the decision. First, the courts had never applied the

theory of negligent entrustment to a commercial transaction such as the sale of gasoline. Allowing negligent entrustment claims that arise from commercial transactions to proceed could result in a restraint of trade, and could also result in discrimination claims by customers who are refused the sale of fuel. The dissenting judge noted that five other states (Texas, Alabama, Florida, Kansas, and Michigan) have rejected claims of negligent entrustment in the context of commercial transactions. Second, the public policy against DWI does not support extending liability for DWI related injuries to sellers of non-alcoholic products. The dissenting judge pointed out that the sale of gasoline to Mr. Denny violated no law, as no statute prohibited the sale. The third reason is that the decision of the court lacks guidance and creates uncertainty. Among the unanswered questions raised by the dissenting judge were: how should a gas station operator know when not to sell gas to a customer? Is the gas station employee required to intervene in a pay at the pump sale? What if the person buying the gas is the passenger in the vehicle? What

<sup>1</sup> Maryland and Virginia are two of a relatively few number of states that do not presently have dram shop laws, but in a relatively recent case, Maryland has recognized social host liability for adults allowing minors to drink alcohol in their homes. *Kiriakos v. Phillips*, 448 Md. 440 (2016).

about “walk up” customers? And how far does potential liability extend? If an auto repair shop sells a new car battery to an intoxicated person, does that subject the auto repair shop to potential liability?

As shown by the dissent in the *Morris* case, extending liability for the sale of gasoline to intoxicated persons could result in any number of unintended consequences. Any number of businesses that provide services and products that allow vehicles to operate could face potential liability. As of this writing, there is no reported decision in Maryland addressing this legal issue. It is quite possible that the courts in Maryland would not decide the *Morris* case in the same way, because Maryland does not currently allow for dram shop liability (but does recognize social host liability). In any event, gas station operators should be aware that courts from at least two states (Tennessee and New Mexico) have allowed plaintiffs to sue for damages under a negligent entrustment theory based upon the sale of gasoline to an intoxicated person. Whether such cases will be allowed to proceed in Maryland in the future remains to be seen. As with several of the other legal issues that I have addressed in recent columns, providing proper training to employees on this subject and making sure that adequate insurance is in place provides the best protection should such a cause of action be recognized locally in the future. ■



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# Government Affairs Update



By Roy Littlefield IV

**In August, WMDA/CAR** being represented by SSDA-AT took part in a Family Business Coalition meeting to discuss the current state of play on infrastructure and a larger tax bill being developed which could include several harmful tax hikes on small businesses. We will continue to coordinate our strategy for pushing back against capital gains due at death or the “double death tax”. At the meeting SSDA-AT spoke with Josh Jackson, Deputy Chief of Staff for Congressman Adrian Smith to discuss the step up in basis. We also spoke with Kathryn Chakmak, Legislative Assistant, Congressman Jason Smith about an update on death tax efforts in the House. SSDA-AT also got insight at the meeting from Jim Neil, Policy Director, Leader McConnell and James Williams, Legislative Assistant for Senator Thune. The estate tax and other small business taxes remain on the forefront for SSDA-AT.

On August 1, the 2,702 page bipartisan infrastructure legislation was officially released providing \$550 billion in spending above budget baseline over five years. Shortly after releasing the bill Majority Leader Chuck Schumer (D-NY) offered the Sinema-Portman amendment as a substitute for the House passed H.R. 3684, “The INVEST in America Act.” The amendment is now SA 2137.

Time is of the essence with the current surface transportation reauthorization set to expire on September 30. Failure to act promptly could halt important road and bridge projects and will further disrupt America’s economic recovery.

#### Funding:

The proposal includes \$110 billion in spending above baseline to address the aging infrastructure needs of the nation’s roads and bridges. \$55.48 billion will be for Federal Highway Administration contract authority (included in the EPW bill) and \$55.52 billion will be for one-time general fund guaranteed appropriations.

FHWA Highway Trust Fund Contract Authority in SA 2137 (Including ER):

- FY22 - \$58.2 billion
- FY23 - \$59.5 billion
- FY24 - \$60.8 billion
- FY25 - \$62.0 billion
- FY26 - \$63.4 billion
- Total = \$304 billion

Additionally, the bill includes a \$118 billion general fund transfer to the Highway Trust Fund. \$90 billion will be deposited into the Highway Account and \$28 billion will be deposited into the Mass Transit Account. This transfer was expected as a Highway Trust Fund fix remains elusive.

The bipartisan infrastructure agreement includes \$27 billion over five years for a competitive grant program to assist with the repair and replacement of deficient and outdated bridges and ease the national bridge repair backlog and also includes \$5 billion over five years for a state formula program for EV charging infrastructure deployment.



*Failure to act promptly could halt important road and bridge projects and will further disrupt America’s economic recovery.*

# GOVERNMENT AFFAIRS

After a lot of back and forth on the transit title the bill also gives a sizable increase to transit spending providing a 43% increase from the 2015 FAST Act. Transit will receive almost \$70 billion over five years.

Furthermore, the infrastructure package would distribute a lot of the money via the US Department of Transportation through discretionary programs. It looks like these competitive grant programs could total over \$180 billion.

SSDA-AT will continue to provide updates to its members as the process moves forward.

In August, SSDA-AT signed onto a letter to the Senate on infrastructure agreement. SSDA-AT believes the bipartisan infrastructure agreement represents an opportunity to provide meaningful economic and quality of life enhancements to communities across the country and to build for the future. The investments made in the Senate package would facilitate long overdue repairs and improvements to our public transportation systems. The bipartisan measure would have far-reaching benefits. The investments would create new jobs through project construction in the short term, and provide improved safety, mobility, and quality of life for decades to come. Taken together, the range of improved outcomes for all residents and businesses would help ensure a sound recovery from the COVID-19

pandemic. By including a five-year reauthorization of federal highway, public transportation, and passenger rail programs, the agreement would also ensure states and localities have much-needed funding and policy certainty to proceed with planned projects. These programs are currently operating under an extension set to expire Sept. 30, underscoring the need for prompt Senate action.

During the month, SSDA-AT signed onto a joint letter to Congress opposing the Greenbook account reporting proposal. SSDA-AT wrote to express our concerns and opposition to a Treasury Department proposal that would require financial institutions to report to the IRS on the deposits and withdrawals of all business and personal accounts, as well as transfers between accounts of the same owner. We support the goal of improving tax compliance to collect appropriate tax revenues due. We object to the broad, untargeted nature of the Treasury proposal. Collection of

comprehensive financial account data to determine tax liability must be narrowly targeted. Treasury's indiscriminate, blanket data collection would be unsupported by any reasonable suspicion of tax evasion. In the past, Congress has passed legislation to address concerns regarding unreasonable Treasury audit techniques.

We anticipate a busy fall with federal legislation. We will continue to keep you up to date.

After postponing our annual meeting in 2020 due to the coronavirus pandemic, SSDA-AT is moving full speed ahead with plans to have our annual meeting during the 2021 SEMA Show Nov. 2-5 (Tuesday- Friday) in Las Vegas.

The SSDA-AT Annual Meeting will be on Thursday, November 4, 2021 at the Las Vegas Convention Center Room S-116 (South Hall) 3150 Paradise Road, Las Vegas, NV 89109 from 9:30 AM- 12:00 PM. Contact me for more details! All WMDA/ CAR members are invited to attend! ■

## WMDA is HIRING!

We are looking to hire an Administrative Assistant. Position will be Part-time and Temporary (Sept.-Oct.).

Good phone skills, knowledge of MS Office is a must and QuickBooks experience will be an advantage.

If interested, please contact Swapna Sripada at [ssripada2@wmda.net](mailto:ssripada2@wmda.net).



# The Small Business Tax Fairness Act



By Roy Littlefield III

**On July 20, 2021**, Senate Finance Committee Chairman Ron Wyden (D-OR) introduced the Small Business Tax Fairness Act (S.2387). This proposal would usher in significant changes, most detrimental, to the current 20% deduction for qualified business income for pass-through entities (also known as the 199A deduction).

The 199A deduction arose from the 2017 Tax Cuts and Jobs Act (TCJA) and was intended to give some parity on tax rates between C Corps and the pass-through entities. Unlike the TCJA's provisions for C-corporations,

which are permanent, the 199A deduction will sunset at the end of 2025. Since its introduction, SSDA-AT has been advocating for Congress to improve upon, and make permanent, the 199A deduction.

In short, the 199A deduction provides a deduction equal to 20% of “qualified business income” (QBI) from a pass-through entity – sole proprietorships, partnerships, LLCs (that have elected to be treated as partnerships for tax purposes) and Sub-S corps. Besides its temporary status, the biggest shortcoming with 199A is that it includes special (less advantageous) rules for “specified service business” providing a phased out deduction that is only available if the taxpayer’s taxable income is below a certain threshold that is adjusted annually for inflation (in 2021 the thresholds are \$429,800 or less for married filing jointly, \$214,925 or less for married filing separately, or \$214,900 or less for single filers and the full deduction is available if income is \$329,800 or less for married filing jointly, \$164,925 or less for married filing separately or \$164,900 or less for single filers). A “specified service business includes any trade or business described in Internal Revenue Code Section 1202(e)(3)(A) which includes health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investing, investment management, trading or dealing in securities, commodities, etc. or where the principal asset of such trade or business is the “reputation or skill of one or more of its employees.” In a last minute deal when the law was passed, engineering and architecture was removed from this definition for purposes of 199A. For pass-through entities that are not specified service businesses, the 199A deduction is available regardless of the taxpayer’s taxable income but may be subject to limits based on the business’ W-2 wages or capital. The 199A deduction is currently available to trusts and estates. Of course, the rules governing 199A and how to calculate the amount of the deduction are far more complicated than this brief summary.

If enacted as proposed, Senator Wyden’s Small Business Tax Fairness Act would, among other more minor or technical changes, do the following:

- Remove the special rules and limits applicable to specified service businesses



*This proposal (Small Business Tax Fairness Act) would usher in significant changes, most detrimental, to the current 20% deduction for qualified business income for pass-through entities*



(as described above) so that the specified service businesses are eligible for the same deduction as other pass-through entities. While SSDA-AT has significant concerns about certain other parts of the bill, this change is something that SSDA-AT has long been advocating for and would be a welcome development for service based small businesses and their owners.

- Begin to phase out the deduction for taxpayers with taxable income over \$400,000 with a full phase out for taxpayers with taxable income over \$500,000. The \$400,000 phase out is intended to comport with President Biden's promise not to raise taxes on households with income under \$400,000. These thresholds would be the same for both single and married taxpayers, thus placing married taxpayers at a disadvantage, and limiting the number of business owners eligible for the deduction. In explaining his motivation for this section, Senator Wyden stated that "while small business owners with incomes under \$200,000 are 80 percent of taxpayers claiming the deduction in number, 52.4 percent of the federal government's expenditure for the deduction pads the pockets of millionaires and billionaires." Of course, SSDA-AT knows that there is a big difference between billionaires and small business owners who have a combined



- household income over \$400k and will advocate to significantly increase any phase out threshold.
- Require that, in order to claim the 199A deduction, married taxpayers must file joint returns.
- Modify and simplify the way that the 199A deduction amount is calculated. In 199A's current form, the deduction is equal to the lesser of (i) the taxpayers "combined QBI amount" or (ii) 20% the taxpayer's annual taxable income less net capital gains. Under current 199A, calculating "combined QBI amount" requires that individual calculations be made as to each qualified trade or business from which the taxpayer receives income and is structured so that the deduction amount may be reduced based on the taxpayer's W-2 wages and the basis of qualified property held by the business. In other words, the existing 199A calculations are complicated. Under the Tax Fairness Act, the deduction would simply be equal to 20% of the lessor of (1) the taxpayer's QBI, (2) the phase out threshold (\$400,000), or (3) the

taxpayer's annual taxable income reduced by net capital gains. The tax fairness act would eliminate the need to make separate calculations as to each business as well as phase outs or further calculations for taxpayers with taxable income under \$400,000.

- Provide that the 199A deduction can only be claimed by "individuals" and expressly preclude trusts and estates from claiming the deduction.

Notably, the Small Business Tax Fairness Act would not make 199A permanent or change its existing December 31, 2025 sunset date.

The principles set forth in the Small Business Tax Fairness Act were not included in President Biden's latest budget proposal. However, during the 2020 campaign, Biden did state his support for limiting or eliminating the 199A deduction for high income taxpayers and it is very possible that some of all of the provisions in this proposal may make their way into the upcoming "social infrastructure" bill. This is particularly true because this bill would be a short-term revenue raiser with the Tax Foundation estimating that it would raise \$114 billion in four year period before 199A is set to sunset.

SSDA-AT will continue to monitor this bill and advocate to make 199A permanent, to eliminate the distinction for specified service businesses and to increase any proposed phase out thresholds. ■



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*Governor, Attorney General and Comptroller, along with delegates and senators are up for election in Maryland.*

- ▶ **Ban on menthol cigarettes** in District of Columbia means there will be copycat bills in Maryland and Delaware this year.
- ▶ California **bans gas powered cars** by 2035, will MD, DE, or DC be next?
- ▶ Baltimore council members want to **ban new service stations** in the city, ban plastics, Styrofoam & sugary drinks. They have shut down many retailers with pad locks on doors, blaming business for crime. Police are telling our retailers you are on your own, hire security guards. They need to focus on crime, not plastic bags. The absurdity of actions like this underscores the need for new legislators.
- ▶ Labor and employee bills in all three jurisdictions would add thousands of dollars in **payroll cost** per year. While we have been successful in stopping or amending most bills, they will all be back this year.
- ▶ **Right to Repair** – New cars manufactured are installing devices in vehicles that send information over wireless networks to dealerships automatically.
- ▶ Maryland **delegate Brooke Lierman** who is running for comptroller says “planting 5 million trees would cut down on crime.” Do we want this delegate as our comptroller?

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