

NOZZLE & WRENCH

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INSIDE THIS ISSUE:

- >> Estate Tax Repeal Plans
- >> FMLA and Workers' Compensation
- >> Buyer (And Seller!) Beware

Maryland greenhouse gases come from on road vehicles. They plan on addressing that with an aggressive plan to electrifying public transportation, including state vehicles, and for 30% of vehicles sold by 2030 to be plug in electric.

KIRK'S CORNER

Carbon Manifesto



By Kirk McCauley,
Director Of Member
Relations &
Government Affairs

Maryland Department of Environment releases new plan to reduce Green House Gas emission. You can go to the link and view entire plan by clicking on to [Plan](#) in second paragraph of news release. The plan still includes TCI as outlined on page 190 (249 Pages total) in this carbon manifesto.

With legislative sessions going on I have not had the time to read all. This is what I have looked at: MDE says 40% of Maryland greenhouse gases come from on road vehicles. They plan on addressing this with an aggressive plan to electrifying public transportation, including state vehicles, and for 30% of vehicles sold by 2030 to be plug in electric.

How they plan on pushing buyers to that 30%, electrifying their own fleet, and paying for it? I have a suspicion it lies in the Transportation Climate Initiative (TCI) part of this.

TCI is modeled after a California program that limits the amount of fuel that can be sold. A gallon of fuel has a Metric ton of carbon equivalent and 1 metric ton = 1 allowance. Allowances are sold at auction by the state and the number of allowances goes down every year. Basically, oil company are bidding to be allowed to sell a limited amount of their own fuel in the state. California calls this a Cap & Trade program.

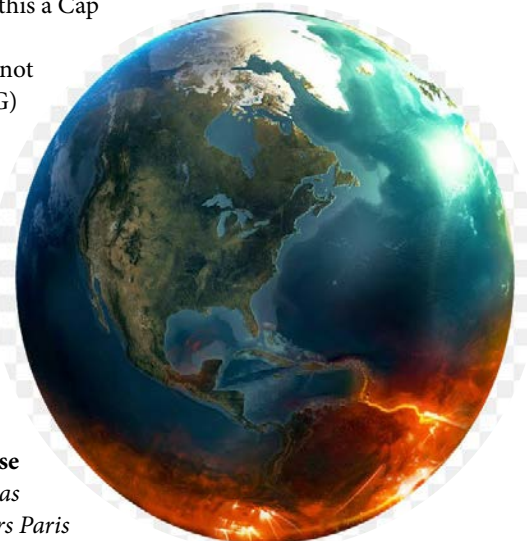
The program has been very controversial and has not delivered expected reduction in greenhouse gas (GHG) even though it was started in 2013. Gas prices at the pump are considerably higher than surrounding states. The program has brought in a lot of money and some questions now about how that money is being spent.

Link to TCI program - <https://www.transportationandclimate.org/tci-p>

Maryland Releases Bold New Plan To Achieve Climate Goals

Maryland Department of Environment News Release
State Pursues Ambitious Goal to Reduce Greenhouse Gas Emissions by 50% by 2030 as Nation Officially Re-enters Paris Climate Accord

BALTIMORE (Feb. 19, 2021) – The Maryland Department of the Environment (MDE) has released a comprehensive plan that sets a clear and unifying



Continues on page 4

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The Greenhouse Gas Emissions Reduction Act calls for a reduction of emissions of 40% by 2030 (from 2006 levels), while pursuing more ambitious goals recommended by the independent, bipartisan Maryland Commission on Climate Change.

Continued from page 1

path for the state to dramatically reduce greenhouse gas emissions that contribute to climate change, while also growing jobs and the economy for Marylanders.

The 2030 Greenhouse Gas Reduction Act (GGRA) Plan, which MDE is submitting to Governor Larry Hogan and the Maryland General Assembly, meets – and exceeds – the goals required under current state law.

The Greenhouse Gas Emissions Reduction Act calls for a reduction of emissions of 40% by 2030 (from 2006 levels), while pursuing more ambitious goals recommended by the independent, bipartisan Maryland Commission on Climate Change. The newly released GGRA Plan calls for a new goal of 50% reductions by 2030. The 2030 GGRA Plan also includes a longer-term goal of net-zero GHG emissions by 2045.

“This plan is ambitious and achievable, bold and balanced with over 100 actions that underscore the urgency for real and lasting climate solutions,” said Maryland Environment Secretary Ben Grumbles. “Maryland’s long standing leadership is shown by being ranked the No. 1 state in the nation in reducing greenhouse gas emissions while growing the economy, according to the World Resources Institute. As the United States rejoins the Paris Agreement, the Hogan administration intends to keep the momentum going in Maryland with a bipartisan plan that builds upon our success and adds new measures across all sectors of the economy and levels of government.”

After incorporating feedback on the 2019 draft plan from the public and stakeholders as required by law, MDE and partner agencies established new climate solutions addressing GHG emissions from electricity generation, transportation, building energy use, natural gas infrastructure, and natural and working lands. MDE’s emissions analysis shows that the implemented 2030 GGRA Plan will come very close to achieving a 50% reduction by 2030 without accounting for anticipated new federal government policies to reduce emissions. As the Biden administration takes action to address climate change through federal policies – including rejoining the Paris Agreement today – Maryland expects to be able to achieve a 50% reduction in greenhouse gas emissions by 2030.

The plan incorporates a comprehensive set of

over 100 programs and measures to reduce greenhouse gas emissions. These include investments in energy efficiency and clean and renewable energy solutions, clean transportation projects and widespread adoption of electric vehicles, planting more than seven million trees, and improved management of existing forests and farms to capture and contain more carbon in trees and soils.

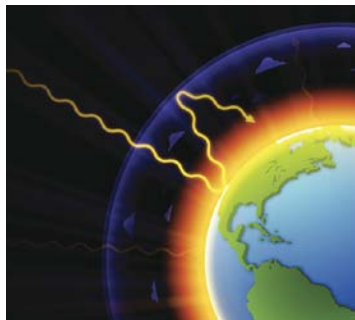
It also supports new industries and technologies and “green” jobs by encouraging investment in the modernization of electricity, transportation and buildings sectors, the largest sources of GHG emissions in Maryland. MDE estimates as much as \$5.3 billion in increased economic output in the state by 2030, and the creation of more than 6,000 jobs as a result of these proposals.

The major elements of the plan also include thoughtful implementation of programs and measures that address environmental and climate justice, recognizing that disadvantaged communities can be disproportionately affected by climate change and environmental pollution. In addition to mitigating the impacts of climate change by reducing greenhouse gases, the plan will improve public health by reducing air pollutants that contribute to ground-level ozone and fine particle pollution. It also will improve water quality through reductions in nitrogen pollution to the state’s waterways, including the Chesapeake Bay.

MDE developed the plan in coordination with nine state agencies and the Maryland Commission on Climate Change’s Greenhouse Gas Mitigation Working Group, Science and Technology Working Group, Adaptation and Resiliency Working Group, and Education, Communication, and Outreach Working Group, as well as extensive input from citizens and stakeholders. The Maryland Climate Change Commission working groups were instrumental in modeling scenarios based on current science for the plan. Under the GGRA law, MDE will provide a progress report to the General Assembly next year, and the General Assembly will then act to maintain the goals, revise them, or let them expire in 2023.

Legislative Report – Action Alert

The first three bills will affect all members, the next four only tobacco retailers, one lottery bill and one carbon tax bill that will affect all



members. The last bill is a bill from Attorney General that would open most our members to environmental litigation from the state. Call or email me if you have any questions.

Bills marked Emergency would take effect the day they are signed into law. Emergency bills take a three – fifth (3/5) majority to pass both chambers.

As of this morning None of these bills have passed, you can still be part of the outcome by emailing your senator and delegates. Simple and takes no more than 5 minutes start to finish. Link and directions at the bottom of this email.

Labor and Employment Bills

SB211/HB375

Multi-layered bill that would add significant cost to business. Employee would be eligible for 12 weeks of sick or family leave after working 17 weeks and in some cases 24 weeks. Effective date 10/1/21.

SB486/HB581 – Essential Workers Protection Act

- \$3.00 dollars an hour or \$120 a week per full time employee at min wage.
- 17 days of leave on top of what they have now = \$1,598 per employee at min wage plus 10%.
- Could refuse to work for a variety of reasons.



SB727/Hb1326 – Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave.

- When an emergency is declared by Federal, state or county Gov. this law would kick in for that location.
- Full time employee ,112 hours of sick & safe leave in addition to leave he currently entitled to. Part time is also affected depending on hours an employee works.
- This is an emergency bill which would go into effect immediately and would be retroactive if COVID emergency is still in effect. But do not just think COVID, this law could kick in if a snow emergency were declared by a county.

Tobacco Legislation

- **SB410/HB1011** would give tobacco Regulation authority to local authorities, county, and city.
- **SB378** would give Baltimore City Regulation authority Effective date 10/1/2021 for both bills.
- **Sb177/HB134** Would ban all flavored tobacco and ESD products.- Emergency Bill.
- **SB 273** Restrict sales of ESD products to vape shops only. Effective date 7/1/21.



Lottery

HB 553 – Authorize Lottery to be sold online. Effective 7/1/2021

Fossil Fuel Climate Legislation

HB33/SB76 – Charges a fee per ton Carbon Dioxide Equivalent.

Up-Date - Killed in committee

Non-transportation fuel would be \$20.00 a ton and go up \$5.00 a year until it reached \$60.00 in 2031 and then stay at that rate. Electric, propane, coal, and natural gas . Heat/cooling and flipping burgers on the grill would all cost more.

Transportation fuel would be taxed at \$10.00 a ton and go \$3.00 a year until it reaches \$37.00 in 2031 and then stay at that level.

Basically, it would be between 10-12 cents a gallon on gas and diesel the first year. It also prohibits passing increases on to end user. Your customer is end user; you are stuck with increase in cost.

The bill also adds fees to new vehicles depending on miles per gallon rating. Effective 7/1/2021

SB524/HB739

Multidefendant Oil and Hazardous substance Pollution Cases

This is a bill put in by the attorney general to Broaden

Contact your Maryland state senator or delegate and email, go to above website, click on members, top left hand side, click on find my representative and then click on look up. Enter address and zip.

Continued from page 5

the scope and to include Multidefendant in same action.

In 2017 Maryland Office of Attorney General (OAG) filed suit against major oil companies, starting with Exxon for using MTBE in their gas. It must not be going well because he wants to include non-oil companies in litigation and assign comparable negligent to each defendant. We think this is a carrot to Exxon to lessen their share and maybe they would settle. But guess who that would open for action by OAG office? Well, we can start with supplies, gas haulers and retail service station dealers.

This is not restrictive to MTBE, in future litigation this could include any chemical pollution, oil, cleaning liquids, brake clean, paints and on and on.

Retroactive to any pending

legal action on effective date and moving forward. Effective date 7/1/2021.

Read all these bills by going to <https://mgaleg.maryland.gov/mgawebiste/> and putting the bill number in the search window.

Contact your Maryland state senator or delegate and email, go to above website, **click on members**, top left hand side, **click on find my representative** and then **click on look up**. Enter **address and zip**. This will bring your state senator and delegate up, on the bottom of the list.

It helps all members when you take 5 minutes to voice your concern about a certain bill that you oppose. We oppose all the bills I have listed and there is more bills WMDA/CAR is tracking but these are the most important.

With COVID 19 protocol, email is the way business is being conducted along with virtual platforms. **You as a business owner can be more effective this year than ever before.**

Tell the legislators what you think of a bill and how COVID has affected our business, we need more help – not costly legislation that could affect the viability of your business moving forward.

Link to tobacco tax increase and information on floor tax
https://marylandtaxes.gov/forms/Tax_Publications/Tax_Bulletins/Tobacco_Tax_Bulletins/bl_tt78.pdf

Link to sales tax bulletin - Save up to \$9,000 dollars March - April and May sales tax returns
<https://www.marylandtaxes.gov/RELIEFAct/docs/2.16.21-748am-RELIEF-Act-Tax-Alert.pdf> ■



SAVE THE DATE

20 WMDA/CAR Annual Charity Golf 21

JUNE 8, 2021 ★ RENDITIONS GOLF COURSE

WMDA SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION

CAR Council of Automotive Repair

The poster features a green background with a white silhouette of a golfer in mid-swing. Above the golfer are three stars. The text 'SAVE THE DATE' is in large white letters on the left. The event title 'WMDA/CAR Annual Charity Golf' is in a white banner across the middle, flanked by the numbers '20' and '21'. Below the banner is the date and location 'JUNE 8, 2021 ★ RENDITIONS GOLF COURSE'. In the top right corner are the logos for WMDA and CAR.

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Extended Warranties



By Sandi Weaver
BA Auto Care, Inc.

I write articles for a very small local publication each month and last month I wrote about extended warranties. I listed the pros and cons of purchasing one and the variety and difference in coverage between companies. Having dealt with these companies on behalf of our customers for years, I have a very low opinion of them. They don't cover all repairs/systems, they don't cover the complete cost and they cost a fair bit of money up front. I've always been of the mindset to save the money you'd spend on the extended warranty and use it whenever a large repair is needed. Well, I just recently purchased a new car and guess what? I bought the extended warranty.

I went into the finance office knowing I would not buy the extended warranty but what changed my mind was partly the finance person and partly because of the Honda I wrote about back in September with camera issues. The finance person said with all the sensors on this vehicle, you'll want the extended warranty. That's when I flashed back to our customer who had two cars with sensor and camera problems. I know our technicians can fix, replace and calibrate what is needed when the time comes but do I want to pay the \$800+ for that new sensor plus labor? Paying out of pocket the first time I need a sensor or camera, sure. But when more start to fail, not when I can get an extended warranty that will pay my technicians to fix the problem and cover the cost of the part for the same price as the warranty itself. The cost of the warranty was less than the cost to replace a camera so what did I have to lose? I'll let you know in about 3-4 years if I made the right decision but for now, I have peace of mind which is why most people buy extended warranties.

Being a shop owner, dealing with these extended warranty companies is challenging. Here are 4 tips we've put into place to smooth out the process.

Tips for working with extended warranty companies and your customers

Set expectations: Make sure your customers know what to expect from the warranty company, what they should expect from you and how you handle the warranty company and what they are expected to do.

Don't back down: If or should I say when the warranty company tries to low ball you or asks you to lower your labor rate, don't back down. No one works for free or for less than they are worth. If the warranty company won't pay, the person who bought the warranty should pay the difference.

Same goes for the quality of the parts. It's our reputation that's on the line if something fails, not the warranty company. Do the work as you would for any other job.

Educate your customers extended warranties and advise them on which ones are better to work with, offer the best coverage and work with them to find the right fit, if they are set on a warranty.

One positive we've noticed in recent years is being able to process a claim online. No need to wait on hold forever, we can show the customer exactly what the warranty company is willing to pay and what (usually crappy) parts they want us to use. Most of us don't turn customers away that have extended warranties, but if you are, I hope this article will help you when you and if you decide to start. ■



They don't cover all repairs/systems, they don't cover the complete cost and they cost a fair bit of money up front.



Having a Voice – Representing Our Members

Our Industry is facing not only the overwhelming effects of COVID-19 but issues that affect the core of our business.

- Maryland, Delaware, and District of Columbia belong to the Transportation Climate Initiative (TCI) with a goal of reducing carbon fuel use up to 30% by 2030.
- New cars manufactured are installing telematics in vehicles that only send information to their dealerships – no option to the car buyer.
- Ban on menthol cigarettes (already a law in Massachusetts)
- California bans gas powered cars by 2035.
- Baltimore council member wants to ban new service stations in the city.

This sounds like a Steven Spielberg horror movie, but these are real issues that face our industry!

These issues will be or already are in the legislative process and will affect every business WMDA/CAR represents. Outside and inside sales, and car count in our shops. Legislators are looking to raising funds for their next election. They are also looking at supporters who provide those funds and support their efforts.

We are working hard to protect our members and associates and your contributions are essential to that process. The devastating effects of COVID -19 and combining that with real legislative issues that affect all our members is difficult to absorb but they are a real danger to our businesses.

Now is the time to support the WMDA PAC and protect your business.

We suggest \$150 per location however, any amount is welcome. Please send contributions to:
WMDA PAC
1532 Pointer Ridge Place, Suite F
Bowie, MD 20716

You may direct any questions about legislation to Kirk McCauley at kmccauley@wmda.net.

Your fellow business owners and PAC officers,
Rick Agoris, PAC Chairman
Riaz Ahmad, PAC Treasurer



CONTRIBUTION RULES:

1. Maryland currently is in a 4-year election cycle which began January 1, 2019 through December 31, 2022.
2. No individual or corporation can contribute more than \$6,000 to any single candidate or a state PAC over the 4-year election cycle. (The maximum contribution to the WMDA PAC cannot exceed \$6,000 in total during this cycle.)
3. Your contribution to WMDA PAC can be a personal or corporate check. Political contributions are not considered a business expense or tax deductible.

Training and Info as a Result

Ken Quasney, Owner of Auto Sense Auto Repair & Tire Center.

Hello everyone, I had Gary Smith (DiagNation, <https://diagnations.com/our-instructors/gary-smith/>) at our shop last week and found out some really good info I thought I would share. We were having problems with the on-board computers reporting misfires in the wrong cylinders and I asked Gary to give a refresher on E-Misfire with our ATS scope. Before the class started, Gary informed me that most of the time these issues are caused by a rotating part replaced on a vehicle and the Technician did not perform a Cam/Crank relearn. We had a 2007 Honda Pilot with this issue in the shop at the time. Perfect scenario. The vehicle was reporting a #5 misfire. We hooked up the scope, installed the transducer in the tail pipe, set the scope for the right vehicle and back probed #5 cylinder and found #6 had a solid misfire and also #'s 4 & 5 were reporting misfires. We checked Coil Primary and Injector waveforms and all looked good. We installed a transducer in the spark plug hole to verify compression and all was good. Gary suggested we relearn the cam/crank or synchronize the cam and crank through the scanner. Bingo! The misfire was gone. The look on our faces must have been priceless.

Here's what we learned, when replacing any rotating part on a car or truck. The Technician should perform a cam/crank relearn. Only takes a few minutes on a scan tool. Some vehicles do not require cam/crank relearn or a better word would be synchronization. If your scan tool has the feature on it for that vehicle then the procedure should be done after replacing ANY rotating part on the car or truck. This would include:

Serpentine Belt, Water Pump, A/C Compressor, Alternator, Power Steering Pump, Any Pulley or Tensioner, Timing Belt/Chain, Torque Converter or any other part that rotates with the engine.

Take a minute to think about this. Imagine a client has their vehicle in for service and you replace a serpentine belt for maintenance. A week later they call and say, "Since you replaced my Serpentine belt my engine runs rough". I'll bet your first thought will be – What would replacing a Serpentine belt have to do with a rough running engine? Well, now you know. If I didn't see this with my own eyes, I might be hard-pressed to believe it. I DO NOW!

Another little tidbit: I would guess most Technicians use a big hammer to free a tie rod from the knuckle when replacing an Outer Tie Rod or Ball Joint. DON'T DO IT. If the vehicle has electric power steering you may have to buy a new Rack Assy. There are two primary sensors, drivers and a module in these vehicles. Smack the end of the knuckle and Tie Rod or Ball Joint can destroy these components and you get to buy a new Rack. THEY ARE NOT CHEAP! ■



When replacing any rotating part on a car or truck. The Technician should perform a cam/crank relearn.



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...an employee could receive workers' compensation benefits to replace lost wages, while at the same time having health benefits maintained under the FMLA.

FMLA and Workers' Compensation – Common Questions Answered

The federal Family and Medical Leave Act (FMLA) and state workers' compensation laws may both cover an employee who suffers a serious health condition while on the job. The Department of Labor (DOL) has issued revised regulations that implement the FMLA. Though the interplay between the FMLA and workers' compensation leaves was addressed within those regulations, a number of DOL letter rulings have also clarified the interaction of these laws.

This AmeriTrust CONNECT Risk Insights will answer common questions regarding employee leaves that qualify for protection under both the FMLA and workers' compensation laws.

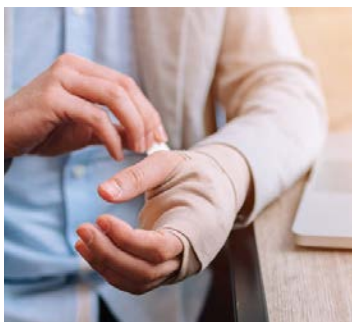
Does FMLA leave run concurrently with a workers' compensation absence?

The employee's FMLA leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a "serious health condition." Thus, an employee could receive workers' compensation benefits to replace lost wages, while at the same time having health benefits maintained under the FMLA. However, if appropriate, the employer must be sure to designate this leave as FMLA-qualifying leave and must give notice of the same to the employee. If the employer fails to designate this leave as FMLA leave, the employee may still be entitled to FMLA leave once the workers' compensation absence has ended.

Can an employer require an employee to substitute accrued paid leave if the employee is on workers' compensation and FMLA leave?

Since the workers' compensation absence is already considered paid leave, the FMLA provision for substitution of the employee's accrued paid leave for unpaid FMLA leave does not apply. More specifically, if the employee has elected to receive workers' compensation benefits, the employer cannot require the employee to substitute any accrued paid leave for any part of the absence that is covered by the payments under a workers' compensation plan. However, an employee is also precluded from relying upon the FMLA's substitution provision to insist upon receiving both workers' compensation and accrued paid leave benefits during such an absence. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan or workers' compensation benefits, such as in the case where





a plan only provides replacement income for two-thirds of an employee's salary.

What benefits is an employee entitled to while on concurrent workers' compensation and FMLA leave?

If the employer designates the workers' compensation absence as FMLA leave, then the employee is entitled to all employment benefits accrued prior to the date on which the leave commenced. The FMLA does not entitle the employee to the accrual of any seniority or employment benefits during any period of FMLA leave, nor to any right, benefit or position of employment other than that to which he or she would have been entitled had the employee not taken the leave. Thus, an employee on FMLA leave does not accrue seniority or employment benefits during the absence by operation of the FMLA. Nevertheless, in addition to the group health benefits guaranteed under the FMLA, an employee on FMLA leave, whether paid or unpaid, may be entitled to additional benefits while absent, depending on the employer's established policy for providing such benefits

when employees are absent on other forms of leave.

How may an employee on concurrent workers' compensation and FMLA leave pay for group health coverage? For other non-health benefit premiums?

An employee who is receiving payment as a result of a workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking unpaid FMLA leave.

It is important that the employer make such arrangements with the employee in advance of the leave or shortly after the leave begins since the FMLA provision for recovery of the employer's share of health insurance premiums does not apply. That is, the FMLA statute only authorizes the recovery of the employer's share of insurance premiums that are paid to maintain coverage for the employee under a group health plan during any period of unpaid leave. Leave taken pursuant to a workers' compensation plan is not unpaid leave within the meaning of the FMLA.

Likewise, an employer will also want to make prior arrangements

for employee payment of other non-health benefit premiums when an employee is receiving payment as a result of a workers' compensation injury and is simultaneously taking unpaid FMLA leave. Again, neither the FMLA statute nor its regulations provide for the employer's recovery of any such premiums paid during a paid leave as opposed to during an unpaid leave.

What may an employer do if it questions the adequacy of a medical certification?

If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to have direct contact with the employee's workers' compensation health care provider, the employer may follow the workers' compensation provisions. That is, the employer may have direct contact with the employee's health care provider in the manner in which the workers' compensation statute provides. Further, the revised FMLA regulations also provide that an employer can contact an employee's health care provide to



If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light-duty job, the employee may decline the employer's offer of a light-duty job if it is not the same or is not an equivalent job to the job the employee left.

authenticate or obtain clarification of the medical certification, so long as the employer has first given the employee a chance to cure any deficiencies.

Is an employee required to return to a “light-duty” job when it is not the same job or is not equivalent to the job the employee left?

If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light-duty job, the employee may decline the employer's offer of a light-duty job if it is not the same or is not an equivalent job to the job the employee left. However, as a result of turning down such light-duty job, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the FMLA entitlement is exhausted. Additionally, when the workers' compensation benefits cease, the employee may elect or the employer may require the use of accrued paid leave.

If the employee accepts the light-duty position in lieu of FMLA leave or returns to work before the FMLA leave entitlement ends, the employee retains the right to the original or to an equivalent position. However, the period of time employed in a light-duty assignment cannot count against FMLA leave entitlement. The right to restoration is held in abeyance during the period

of time the employee performs a light-duty assignment. That right is not unlimited and ceases at the end of the applicable 12-month FLMA leave year.

Restoration is dependent on the employee's ability to perform the essential functions of the same or equivalent position at the end of FMLA leave.

What happens to an employee on concurrent workers' compensation and FMLA leave once the FMLA leave entitlement has run out?

If the employee is unable to return to work or is still in a light-duty job after the FMLA leave entitlement has run out, the employee no longer has the protections of the FMLA and must look to the workers' compensation statute or to the federal Americans with Disabilities Act (if the employee is a “qualified individual with a disability”) for any further relief or protections.

Please contact your AmeriTrust CONNECT team if you have workers' compensation + FMLA questions. ■



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...in the sale of a gas station (or other) business, the prospective buyer will almost always request the seller to provide financial information regarding the revenues and profitability of the business.

Buyer (And Seller!) Beware

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

As part of the due diligence process in the sale of a gas station (or other) business, the prospective buyer will almost always request the seller to provide financial information regarding the revenues and profitability of the business. To increase the marketability (and the asking price) of the business, a seller may be tempted to provide such information in a light that is more favorable than the actual performance of the business. A recent decision out of Pennsylvania shows how a seller's misrepresentations as to profitability and other matters can backfire and subject the seller to liability for compensatory and even punitive damages.

In the case of *Sajid v. Ijaz*, 828 Fed.Appx. 831 (2020), Mr. Ijaz (the seller) placed an advertisement in the *Urdu Times* listing the "urgent sale" of a gas station located in West Chester, Pennsylvania. The ad described the gas station as a "highly profitable business . . . with excellent monthly income" that was "available for immediate sale." The gas station was actually owned by Mr. Ijaz's wife, and the business operated pursuant to a third party lease that required the landlord's consent for any sublease.

Mr. Sajid (the buyer), a limousine driver who worked in New York, saw the ad and contacted Mr. Ijaz, and they agreed to meet at the station to discuss a potential sale. As part of the discussions, Ijaz showed Sajid what he represented to be receipts from previous years' sales, showing convenience store revenue ranging from \$1,200 to \$1,400 per day. He also told Sajid that the station sold almost 3,000 gallons of gasoline per day resulting in about \$1,200 in daily profit. He did not disclose to Sajid that the business was subject to a third party lease that required the consent of the landlord for any sublease or assignment.

Sajid ultimately agreed to purchase the gas station and convenience store (including the c-store inventory, fuel in the ground, and equipment) for \$45,000. After Ijaz collected the payment, he told Sajid that his attorney would prepare a written agreement to memorialize the sale. In the meantime, Sajid operated the gas station for about a week. While Sajid was operating the store, Ijaz presented him with the written agreement, which stated that Sajid would not own the business but instead would be an independent contractor. Sajid refused to sign the agreement, and a few days later, Ijaz advised Sajid that he no longer wanted to sell the business. He advised Sajid that he would return the money within two days, but he failed to do so. Sajid moved back to New York, where he remained unemployed for a couple of months, and Ijaz then placed another advertisement in the *Urdu Times* for the sale of the gas station.

Sajid then sued Ijaz, alleging fraud, breach of contract, and other claims. After a trial before a judge, the court entered judgment in favor of Sajid for \$106,000, including \$50,000 in punitive damages based upon the fraud claim. Sajid appealed the decision to the U.S. Court of Appeals for the Third Circuit, which ultimately affirmed the trial court's decision.

The appellate court agreed with the trial court's finding that Sajid had proven by clear and convincing evidence that Ijaz committed fraud under Pennsylvania law





based on his misrepresentations as to his intentions to sell the gas station. The court noted that the advertisement only mentioned a sale (as opposed to an independent contractor relationship), and that Ijaz did not inform Sajid of the lease restrictions until after the sale was complete and Sajid had taken possession of the station. The appellate court also agreed with the trial court's finding that Sajid had proven that Ijaz's statements as to the profitability of the station were fraudulent. Ijaz had claimed that the station would generate \$1,200 to \$1,400 per day in convenience store sales, but the c-store only grossed between \$130 and \$150 per day during the week that Sajid operated the store. Ijaz's decision to re-advertise the sale after going through the transaction with Sajid was another factor that showed fraudulent intent on the part of Ijaz. These facts supported the findings that Ijaz's statements as to profitability were false, and that Ijaz intended to mislead Sajid. The appellate court also upheld the award of \$50,000 in punitive damages, ruling that the evidence supported the trial court's finding that Ijaz exhibited "conscious disregard of the harm" caused to Sajid. In support of this ruling, the court relied on the facts that Ijaz knew that Sajid would leave his job in New York based upon

the sale of the gas station, and that Ijaz reposted the advertisement after the sale to Sajid did not go through.

There are valuable lessons to be learned by prospective sellers and buyers from the *Sajid* case. A prospective seller should be sure that any financial information, or other representations that are provided to the buyer, are materially accurate. It is also not advisable to "hand over the keys" to the buyer before a contract is signed and the sale is properly consummated. On the buyer's side, payment of the sales price should not occur until a proper contract is signed, due diligence is completed, and the parties proceed to closing. It is highly recommended that both sides enlist the services of experienced counsel in the connection with the transaction. While there will be costs associated with such services, those costs will likely pale in comparison to the expenses associated with litigation that may arise if the parties do not properly protect themselves before and during the transaction. The dispute that was the subject of the *Sajid* case may have been avoided had both parties obtained sound legal advice before the payment was made and the seller "handed over the keys" to the buyer. As the saying goes, "an ounce of prevention is worth a pound of cure." ■

WMDA/CAR Maps Out Estate Tax Repeal Plans



By Roy Littlefield IV

WMDA/CAR being represented by SSDA-AT has been working to help add as many cosponsors as possible before introduction of the Death Tax Repeal Act and we thank the groups that have signed on so far to our coalition letter supporting the bill.

While we've yet to see what form it will take, we expect that Democrats with control of Congress and the administration will at a minimum propose rolling back some of the estate tax relief from the Tax Cuts and Jobs Act this year.

In his campaign tax plan, President Biden proposed reverting to 2009 law for estate and gift taxes – a unified \$3.5 million exemption and 45% rate, which would triple the number of families subject to the death tax according to CBO.

Last Congress, Senate Democrats proposed an infrastructure package partly funded by rolling back the TCJA doubling of the estate tax exemption and in 2019 House Democrats passed a disaster relief package partially funded by rolling back the TCJA estate tax improvements. In our estimation that makes this “tax the rich” pay-for easy for Democrats to take back off the shelf.

As you all know, moderate Senate Democrats, including Sens. Manchin and Sinema, will play an outsized role in determining what tax increases can pass the Senate through budget reconciliation.

Both Sens. Manchin and Sinema have supported full repeal of the death tax in the past. We worked hard to secure Senator Manchin's death tax repeal pledge which we've already shared again with his staff, along with our coalition letter supporting repeal.

SSDA-AT will be calling on both of these Senators and other moderate Democrats to reject any tax package that reverses the estate tax relief in the Tax Cuts and Jobs Act.

WMDA/CAR is gearing up to oppose other potential tax hikes that make it harder for family businesses to pass to the next generation.

Our SSDA-AT priorities for 2021 include not only opposing death tax hikes and supporting repeal but pushing back against many of these more creative ways to hike taxes on successful family businesses.

SSDA-AT Priorities for 2021

- Oppose any roll back in estate, gift, and generation skipping taxes
- Oppose any stealth death tax hike via the elimination of section 2704 valuation adjustments for family businesses, through both legislation and regulations
- Oppose a new capital gains tax due at death, taxing capital gains as ordinary income, and new “wealth taxes”
- Oppose the elimination of or changes to step up in basis law



...moderate Senate Democrats, including Sens. Manchin and Sinema, will play an outsized role in determining what tax increases can pass the Senate through budget reconciliation.

GOVERNMENT AFFAIRS



- Oppose any technical changes to the estate tax that make it harder for family businesses to plan for succession
- Continue to support full and permanent death tax repeal legislation through our allies Senator Thune and Congressmen Jason Smith/ Sanford Bishop
- Support legislative efforts the make the Tax Cuts and Jobs Act individual tax changes permanent

We will continue to work on this and other pressing issues.

So far in 2021, SSDA-AT has met with the following members of Congress on webcam:

Sen. Tim Kaine (D-Va.); Rep. Jason Smith (R-Mo.-8); Rep. Sanford Bishop (D-Ga.-2); Sen. Ben Cardin (D-Md.); Sen. Chris Van Hollen (D-Md.); Rep. Jamie Raskin (D-Md.-8); Rep. David Trone (D-Md.-6); Rep. Andy Harris (R-Md.-1); Rep. John Sarbanes (D-Md.-3); Rep. Kweisi Mfume (D-Md.-7); Rep. Steny Hoyer (D-Md.-5); Rep. Anthony Brown (D-Md.-4); Rep. Dutch Ruppersberger (D-Md.-2); Sen. John Thune (R-S.D.); Rep. Van Drew (R-N.J.-2); Rep. Sam Graves (R-Mo.-6); Sen. Tom Carper (D-Del.); Rep. Peter DeFazio (D-Ore.-4); Rep. Tim

Burchett (R-Tenn.-2); Rep. Nicole Malliotakis (R-N.Y.-11); Rep. Steve Scalise (R-La.-1); and Sen. Mitch McConnell (R-Ky.).

SSDA-AT also looks forward to the opportunity to collaborate with the newly appointed Department of Transportation

Secretary Pete Buttigieg on important highway transportation initiatives to ensure roadway investment is a top priority, make roads safer and less congested and advance the interests of the industry. ■



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Telematics Report Language



By Roy Littlefield III

Joining with 7 other national associations representing the automotive aftermath, SSDA-AT has written to the Senates Appropriations Committee regarding the telematics report language in the FY2021 THUD appropriations legislation (see next page for letter).

SSDA-AT cited the strong support of the Right to Repair November 2020 victory in Massachusetts.

SSDA-AT urged the committee to propose national legislation to require vehicle manufactures to provide control of mechanical data to vehicle owners and permit repair

shops to access mechanical data directly from their vehicles.

Such legislation will allow owners continued access to the competitive repair industry, providing consumer choice based on price, location, and quality of choice.

SSDA-AT looks forwards to working with congress, the National Highway Traffic Safety Administration, and automakers to ensure the safety of vehicles and consumers rights to vehicle repair data.

Associations' Background:

Auto Care Association:

The Auto Care Association is the voice of the \$380 billion plus auto care industry. We provide advocacy, educational, networking, technology, market intelligence and communications resources to serve the collective interests of our members. Auto Care Association serves the entire supply chain of the automotive aftermarket: nearly 3,000 member companies that represent 150,000 businesses in the industry that manufacture, distribute and sell motor vehicle parts, accessories, tools, equipment, materials and supplies, and perform vehicle service, maintenance and repair.

Automotive Aftermarket Suppliers Association (AASA):

The Automotive Aftermarket Suppliers Association (AASA) connects suppliers of aftermarket parts, chemicals, tools, diagnostics, and technologies to what matters – including industry analysis, peer forums, customer and technology trends, global insights, and government advocacy. Since 1904, AASA's sole purpose is championing the North American aftermarket industry and advocating for the growth of a profitable, innovative, and influential supplier community. Learn more about how AASA connects members to what matters at aftermarketsuppliers.org.

Automotive Oil Change Association (AOCA):

The Automotive Oil Change Association (AOCA) is a non-profit trade organization representing over 4,800 auto maintenance centers throughout the United States, Mexico, Canada, and many other countries around the world. The association was founded in 1987 to represent the convenient automotive service industry, and its mission is to provide its members with the business tools, resources, and education



Joining with 7 other national associations representing the automotive aftermath, SSDA-AT has written to the Senates Appropriations Committee regarding the telematics report language...

The Honorable Richard Shelby
Chair, Senate Appropriations Committee United States Senate
Washington, DC 20510

The Honorable Susan Collins
Chair, Subcommittee on Transportation, Housing and Urban
Development and Related Agencies
Senate Appropriations Committee United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member, Senate Appropriations Committee
United States Senate Washington, DC 20510

The Honorable Jack Reed
Ranking Member, Subcommittee on Transportation, Housing and
Urban Development and Related Agencies Senate Appropriations
Committee United States Senate
Washington, DC 20510

Dear Chairman Shelby, Ranking Member Leahy, Chairwoman Collins, and Ranking Member Reed,

We are a diverse coalition of stakeholders in the motor vehicle repair and maintenance sector. On behalf of our collective industries, we are writing to share our thoughts on the Senate draft of the FY2021 Transportation, Housing and Urban Development (THUD) Appropriations bill, telematics, and Right to Repair efforts in Massachusetts.

Thank you for noting the current debate over telematics by including language in the explanatory statement for the THUD bill which encourages the National Highway Traffic Safety Administration (NHTSA) to work with stakeholders on this issue. We welcome the opportunity to work with NHTSA and other agencies to demonstrate to the Agency, Congress, and other parties that the independent aftermarket can access vehicle data safely and securely. Technology that ensures the cybersecure access to data for owners and their authorized repair shops already exists, and the independent aftermarket continues to lead and innovate on this front.

In addition to thanking you for the language in the THUD bill, we call your attention to the overwhelming Right to Repair victory that took place in Massachusetts on behalf of vehicle owners in the commonwealth. We urge the authorizing committees within Congress to consider federal legislation similar to the Massachusetts referendum in the 117th Congress. On November 3rd, a ballot referendum (known as Question 1) in Massachusetts passed by a tremendous margin (75 percent to 25 percent), demonstrating the determination of the commonwealth's citizens to have access to their vehicles' repair data. The initiative will require vehicle manufacturers to provide control of mechanical data to vehicle owners and further permits owners to authorize repair shops to access mechanical data directly from their vehicle. This will allow owners continued access to the competitive repair industry, providing consumer choice based on price, location, quality of work and other factors.

We are concerned about and disagree with vehicle manufacturer claims that allowing the independent aftermarket and repair industry access to vehicle generated data is a safety risk. Consumers rely on regular maintenance and service, as well as repair of their vehicles, to ensure that their vehicles are a safe and reliable mode of transportation. The current average age of a vehicle on the road is almost 12 years. The industries we collectively represent are committed to ensuring the safety of vehicles we service and have decades of experience doing just that.

In closing, we thank you for the THUD report language and reiterate our request for the authorizing committees within Congress to act in the next session to institute a federal standard for vehicle data access consistent with what was passed in Massachusetts. This can be done in such a way that sets cybersecurity requirements for vehicle manufacturers that ensure safety without unduly preventing a competitive repair market. This issue is of significant consequence to consumers across the country, and we believe policymakers and stakeholders must take a holistic approach to the issue. We look forward to working with you, NHTSA, the automakers, and all other parties to ensure and protect the safety of vehicles and consumers rights to vehicle repair data.

Thank you in advance for your attention and please feel free to reach out to Aaron Lowe (aaron.lowe@autocare.org) or any of the organizations on the letter should you have any questions.

Sincerely,

Auto Care Association
Automotive Aftermarket Suppliers Association
Automotive Oil Change Association
Coalition for Auto Repair Equality

The CAR Coalition
MERA-The Association for Sustainable Manufacturing
Service Station Dealers Association
Tire Industry Association



to professionally and successfully deliver convenient automotive oil changes and other preventive maintenance services.

Coalition for Auto Repair Equality (CARE):

The Coalition for Auto Repair Equality (CARE) is an industry trade association whose membership includes major national auto parts retailers and distributors like Advance Auto Parts, AutoZone, NAPA, and O'Reilly Auto Parts.

CAR Coalition:

The CAR Coalition is composed of leading companies, associations and insurers committed to providing consumers with a cost effective and transparent auto repair process.

The Association for Sustainable Manufacturing (MERA):

MERA - The Association for Sustainable Manufacturing is the remanufacturing and sustainability division of MEMA. With roots in the transportation industry, MERA represents the interests of the broader remanufacturing community across industry sectors. The organization is a network of manufacturers, suppliers, universities, and professional services firms that promote the economic, environmental, and product performance benefits of remanufacturing and similar forms of sustainable manufacturing.

Service Station Dealers of America (SSDA-AT)

Service Station Dealers of America and Allied Trades (SSDA-AT) is a national association composed of individual and state affiliate associations representing service station dealers, repair facilities, car washes, and convenience stores. For over 57 years, SSDA-AT has worked for the betterment of its members as a voice on Capitol Hill, with federal regulators, with the media, in the courts, and with suppliers.

Tire Industry Association (TIA)

The Tire Industry Association (TIA), with 100-year history representing all segments of the national and international tire Industry, is the leading advocate as well as instructor in technical training of tire service technicians. ■



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