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ON THE ROAD

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Message From Executive Director Sal Risalvato

Understanding the true value of NJGCA

I've been at NJGCA for seven years, and as an organization, we have always endeavored to offer money-saving programs and valuable benefits to our members. While this process has not always been easy, my staff has gotten pretty good at recruiting Member Benefit Partners and negotiating exclusive programs for our members. At the moment, NJGCA has 45 Member Benefit Partners (MBPs) in over 30 areas of service, ranging from Accounting Solutions to Video Security.

I have been struggling to understand why **ALL** of our members aren't considering NJGCA MBPs before calling someone else to solve their business needs. I understand that people have loyalties to certain vendors that they may have used for a long time, but you owe it to yourself to consider NJGCA's recommended vendors and service providers, because they have a proven track record, and many of your fellow NJGCA Members can testify to the level of service and professionalism that they have seen our MBPs exhibit.

One of the most important reasons that you should do some research about the NJGCA Member Benefit Partners is because these vendors **SUPPORT** this organization and our mission to serve our members. Many of them will provide NJGCA Members will exclusive savings that they do not offer to anyone else, and they take their mutually beneficial relationship with NJGCA very seriously. These vendors recognize that as an NJGCA Member, your opinion is important, and they want to provide you with the best service and quality. The recommendations and referrals that come from NJGCA and our Members are integral to the success of our Partners, and these vendors work hard to ensure that they will continue to receive NJGCA's "stamp of approval."

In case that wasn't enough to convince you, I created an exercise to illustrate **how much money a business could save using a number of NJGCA Member Benefit Partners**. This imaginary station has four multi-product dispensers, a two-bay garage and a small c-store. On payroll at this location is an owner/manager, two full-time mechanics, and four part-time gas attendants/c-store employees. It would pump 75,000 gallons per month at \$3.25/gallon, for monthly gasoline sales that total \$243,750.

But, before we get to the savings, I want to mention two more things to you.

GENERATORS:

I'm frequently frustrated, trying to make our members understand the value of maintaining their membership in NJGCA. In the aftermath of Hurricane Sandy, NJGCA scored a huge victory by preventing a statewide generator mandate, which would have required every single gas station in the State of New Jersey to install a back-up generator in case of a power outage. As an organization, NJGCA was instrumental in opposing these mandates and suggesting a program that provided incentives or grants to gas stations. The current Retail Fuel Station Energy Resiliency Program being administered by the New Jersey Economic Development Authority does just that -- offering grants of up to \$65,000 to gas stations meeting certain requirements (*Note: important information for anyone who applied for a Generator Grant is located on page 15*).

I feel like I'm the only one to recognize how monumental this is. True, if you are a lessee dealer, the burden wouldn't really fall on

you (it would fall on your landlord), but you can be sure that the landlord would recoup those costs from you one way or another. Our research shows that generators would cost a minimum of \$20,000, but in some cases over \$50,000. I'm not here to toot my own horn; **I just want you to realize the importance and the value of your participation in this organization**. I cannot achieve these victories without my members behind me. I'm not a superhero that can just go down to Trenton and demand things. Our strength is in numbers, and I have to have a membership behind me. That's why I am so offended (and you should be, too) by your competitors who avoid becoming members of NJGCA and allow **you** to carry the weight of supporting this organization. But, that being said, **you do have to support this organization or there won't be anyone here to fight for you**.

MEMBERSHIP MEETINGS:

When I first joined NJGCA as a station owner in 1978, there was a meeting held for members in every county, every month. These were social events, and members looked forward to coming out and having a beer with their colleagues and getting an update from the organization. These meetings were attended by 100 people or more, but as it became more difficult for people to find the time to come to these meetings, attendance declined, and we combined 4-5 counties together for regional meetings, which we held twice a year. I continued that practice for the first two years that I was here as Executive Director, but I began to rethink the usefulness of these meetings, since it was very difficult for business owners to spend a full day at work and then give up an evening at home with their families to attend an NJGCA meeting.

However, I wish to endeavor to get back, in some way, into the routine of having meetings so that perhaps we can share more information and speak face to face. You will see (*on page 6*) that we've got some meetings planned. We've tried to make it convenient for everyone around the state. These meetings will provide you with the opportunity to meet other people in your industry, and have a nice dinner at a reasonable price. You can attend as many of these meetings in different locations as you would like.

I have also been looking into putting together some other seminars and programs that we will host in various locations around the State, and I hope you will consider attending. We want to use this opportunity for you to meet the Member Benefit Partners that are supporting this organization, as well as your colleagues in the industry. Again, we hope that you will attend one or all of these events, and I hope that you will consider becoming more active and involved in NJGCA.

Also, please see the article that I wrote regarding cheating and Workers Compensation. I usually don't contribute more than my opening editorial, however I've had much to say for a long time on this issue and felt compelled to pen a second piece in this edition of *On The Road*.

MEMBERSHIP IN A STRONG TRADE ASSOCIATION IS THE BEST INVESTMENT YOU CAN MAKE!

Please turn to page 16 to see how utilizing just some of NJGCA's Member Benefit Partners can save you thousands of dollars!



This quarter, instead of the US DOL Q&A section, we feature an article by NJGCA Member Benefit Partner Mark Tabakman, a partner at the law firm Fox Rothschild LLP.

Mark Tabakman, Partner with Fox Rothschild LLP, is a highly skilled labor and employment attorney who handles both union and non-union matters for employers across the country. Mark has extensive wage-hour experience and has represented more than 200 clients before the US and NJ Departments of Labor on independent contractor, misclassification, working time, child labor and other issues. He writes a blog on wage hour issues (<http://wagehourlaw.foxrothschild.com>) and has defended numerous class actions under federal and state law.

GENERAL PRINCIPLES OF COMPLIANCE WITH WAGE-HOUR LAWS

The general rule under the federal Fair Labor Standards Act ("FLSA") and New Jersey law is that employers must pay overtime to non-exempt employees who actually work over forty hours a week at a rate of one and one-half times the employee's regular rate of pay. Employees must be paid for all hours of work, which includes all times they are on duty. Under the FLSA, for a meal or break period not to be counted as on duty time, the meal period must be at least thirty (30) minutes, the employee must be completely relieved of all duties. The New Jersey DOL adds the further requirement that employees must have the ability to leave the premises, as well as being relieved of all duties.

Under both federal and state law, employers are required to maintain, among other things, records of hours worked by non-exempt employees, on a daily and weekly basis. The precise manner in which such records must be collected is not specified. Thus, the employer is free to utilize a time clock, sign-in sheet, or any system which will ensure that accurate records are maintained. In this regard, the records should also indicate the time taken for lunch. For example, an employee punching a time clock should punch in at the beginning of his shift, punch out for lunch, punch back in when he returns from lunch and then punch out at the end of his shift. In this manner, controversies concerning the length of the shift or "actual" working time will be eliminated. If a NJ employer has employees who work on fixed schedules, it may keep a record showing that schedule (which the employees should initial off on) and then note when the employee works more/less than the schedule indicates (and pay accordingly).

The employer must also maintain a record of the rate that the employee is being paid and that rate, as well as hours worked each day and week and any overtime hours, must be reflected on the pay stub given to the employee on each

pay day, as well as in the employer's records. Note: As of January 1, 2014, the minimum wage in NJ is \$8.25 per hour, so all NJ non-exempt workers who are hourly paid must receive that as a minimum.

Most importantly, employees may not be directed to, for example, punch out, as if they were finished for the day, but nevertheless continue working, for labor "budget" or "cost" reasons. Neither should any manager direct an employee not to report legitimate overtime hours that have been worked either at the direction of a supervisor or with his permission. Note that the FLSA specifically provides that hours of work which are "suffered" or "permitted" are to be counted as compensable working time. It is certainly allowable, however, to mandate that no employees work overtime (or through lunch) without receiving supervisory approval, but once that approval is given, the hours must be properly and accurately recorded and paid at the overtime rate. Further, employees cannot legally waive their right to overtime or "agree" not to be paid overtime at the proper rate. In short, if the hours have been worked, the employee(s) must be properly paid

In sum, my recommendations are:

- Keep accurate records of hours worked, including requiring employees to punch out and back in for breaks and lunches and maintain these records for six years for NJ employees;
- Pay overtime properly (e.g. time and one-half for hourly workers and half-time for salaried, non-exempt workers) for all overtime hours that have been approved, directed, or tacitly allowed to be worked;
- Instruct all supervisors, especially first and second-line supervisors, to never direct that employees punch out, but nevertheless keep working, or not to record legitimately worked overtime (or straight-time hours);
- If overtime is not currently being properly paid, it should be properly paid from this time going forward, in order to reduce possible exposure.
- Ensure that all employees classified as exempt from overtime meet the duties and salary tests under federal and state law by conducting an audit of these positions and classifications by outside counsel.

Rather than risk a possibly costly audit (e.g. back wages, penalties, fees) by the state or federal Department of Labor, I also recommend that an internal, self-audit be done of all compensation and payroll practices to make sure they are in compliance with all major aspects of wage-hour law.

Please contact me if you need further information. ■

Contact: Mark Tabakman, Partner
Phone: 973.994.7554
Email: MTabakman@foxrothschild.com

NJGCA Spring Membership Meetings:

FEATURING 4 GREAT PROGRAMS FOR OUR MEMBERS

1. *NJGCA update on issues important to your business*
2. *Learn how to increase profits on gasoline and diesel sales*
3. *Learn how to increase sales in your repair shops*
4. *Learn how to increase profits on motor oil sales*

North Jersey:

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Best Western Plus

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Central/South Jersey:

Tuesday June 3, 2014

Clarion Hotel

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6:30 - 9:00 PM

BACK BY POPULAR DEMAND!!

It's been several years since we have conducted regional meetings with members. **YOU** have asked NJGCA to bring these meetings back!

We've put together a strong program which has made businesses more efficient and successful, helped business owners earn maximum profits, saved NJGCA Members thousands of dollars, and increased customer retention and satisfaction.

Bring your spouse, your employees, enjoy a nice dinner and come away learning something you did not know before!

Bring along an **OWNER** of a gasoline service station, auto repair shop, or convenience store, *not currently an NJGCA member*, and receive a coupon for a free drink for **YOU** and **YOUR GUEST**.

With just \$30 and 3 hours of your time, you will take the first steps in building a stronger business.

To register, please visit www.njgca.org and click on "Spring Dinner Meetings"

Pricing Strategy Discussions: Should You Lower Prices First?



In this article, Profit Outdo shares a few calculation techniques to help fuel retailers refine a pricing strategy for maximum profit.

Does Lowering Your Price Increase Your Sales Volumes?

Oil companies love to tell retailers to be aggressive in their pricing, because it will increase sales volumes and drive more customers to the c-store or auto-repair facilities of the retail site. But that assumes that all the other gas stations in the area will just sit back and let you lower prices without matching your prices. How often does that happen?

Rule #1: If you lower your price and all the competing gas stations around you lower their price to match you, then your volume will not increase!

All you would have done is lower everybody's margins and profits, but total sales volumes will remain the same as before.

Are You Sure That When You Lower Your Price Competitors Will Not Follow?

If rule #1 is true, then you should only consider lowering prices when you are sure that at least some of your competitors will not lower their prices in response to you. Typically, that will happen only if your lower price is "acceptable" to them – not so low that their customers will switch to your station. For example, some stations may have a rule that they will be the lowest-price station in your area. If your new price will be lower than theirs, they will match your new price. Another rule of thumb is that if a competitor lowered his price first, and you are only following his lead, then the competitor is not likely to respond by lowering his price even more.

By How Much?

If, after you lower your price, no competitor lowers price, then your volume will rise. However, by how much? The accurate way to do that is to run your historical sales data through a statistical analysis that compares sales volumes to prices of both your station and your competitors. If you can't do that, you can make a rough estimate by thinking about how much your sales volume would fall if you were to INCREASE your price today. Most retailers who have been running a station for some time will have a "feel" for what that number is.

For example, let's say you feel that if you increased your price by 4 cents (and no competitor changed their prices), you would lose 10% of your customers and sales volume. It would probably be safe to say that the reverse should be true – if you lowered your price by 4 cents and no competitor changed his prices, your sales volume would go up by 10%.

But, that is your "best-case" scenario. In the real world, you have many competitors. Any time you lower your prices, the odds are that one or more of them will lower their price in response, as well. Let's expand our earlier example and say that there are 4 stations near you that compete for your customers. One of them lowers their price 4 cents, and now you are thinking, "if I lower my price 4 cents, my sales volumes will go up 10% compared to what my volumes would be if I just keep my current

price." However, that would only happen if NONE of the other competitors followed your lead and lowered their prices, as well. Unfortunately, the three competitors that had not yet lowered their prices will see that you and the other station have lowered prices, so they are more likely to follow you down. You will end up gaining back only the customers you would have lost to the first competitor that lowered its price. You would not gain any volume from the other three competitors that will follow you down.

This brings us to rule #2.

Rule #2: Lowering price affects sales volumes less than you think, unless absolutely none of your competitors will follow lowering their prices.

So, before you consider lowering prices for volume, remember the effect of "partial price matching."

What will happen to profits?

Even if sales volumes go up a lot because you lowered your price, is it good for your profits? Let's go back to our earlier example, and say that if you don't change your price, you will sell 4,000 gallons at a margin of 20 cents per gallon. Your gross profit on the fuel would be:

$$4,000 \text{ gallons} \times \$0.20 \text{ per gallon} = \$800$$

Assuming the best-case scenario where no competitor follows your price down, your sales volume would go up by 10% to 4,400 gallons. But your margin would go down by 4 cents per gallon, so now your gross profit on fuel will be:

$$4,400 \text{ gallons} \times \$0.16 \text{ per gallon} = \$704$$

Oops! You lose almost \$100, even in the best case! Some of you may say: "yes, but I have a store on the premises, and the additional 400 gallons in fuel volume will result in \$200 in additional sales in the store." Let's say that happens, and that your average margin in the store is 25%. Your store's gross profits will go up by:

$$\$200 \times 25\% = \$50$$

That's still not enough to make up for the \$96 lost in fuel profits. That brings us to rule #3:

Rule #3: In today's hyper-competitive gasoline retailing environment, increased sales volumes from lower prices seldom make up for the reduced margins.

About the Authors

Profit Outdo Corp provides data, analytics and consulting services that gasoline retailers can use to increase profits through better pricing. It collects and analyzes the daily selling prices of fuel in over 100,000 retail locations nationwide, together with the daily rack costs in selected terminals. Our services range from Daily Pricing Surveys and Dashboards of competing stations, to Custom Pricing Study Consulting Engagements, and even Multi-Station Daily Pricing Recommendations Analytics, all designed to improve profitability. For more information, contact Debbie or email us at: consulting@ProfitOutdo.com.

HORROR HIGHLIGHT

Six Weeks Without Phone Service

By: Jacy Lance

On Thursday, March 6, 2014 an NJGCA member contacted our office with a serious problem: the phones at her family's business had been dead for over a month! This all started in late January, 2014. When the phones inexplicably went dead, Verizon was called, and the business owners were told that there was moisture in the power supply on the property. It could not be fixed quickly because it would require traffic control, so the business owners were told to wait until the following weekend. However, nobody ever returned.

Almost daily, phone calls were made to AT&T (who leases the Verizon lines). Each time, the response was the same. "It will be fixed tomorrow by 4:00PM. Here is your ticket number." This continued for about a month, and the entire time, ALL lines were down -- the main phone, emergency phone, U-Haul/Hertz phone, and the credit card line. The business owners were promised hand-held devices (phones and credit card machine), but they were never delivered.

Finally, the owners called Weights and Measures, at which point John McGuire, Enforcement Supervisor, encouraged them to reach out to Channel 7 News (7 on Your Side) and also to call NJGCA. Here at the office, NJGCA staff made multiple phone calls to both AT&T and Verizon. Verizon initially claimed that there was an outage in the area, but clearly, no other businesses had been affected. A Verizon Supervisor then confirmed that they were waiting on a part, but she indicated that since the lines are being rented through Teleport/AT&T, AT&T would have to call Verizon to address the issue and get it resolved.

NJGCA staff then embarked on a mission to contact AT&T. An AT&T Supervisor was able to find out that the problem

was a Cable Failure, the part was on order, and the best repair date was 3/31/14. The problem was that the existing cable was copper and it needed to be transitioned to fiber-optic. NJGCA Staff explained that 3/31 was not acceptable; these people had been asking for help for over a month. The AT&T Supervisor was also informed that Channel 7 had been contacted about this ongoing situation and they were very interested in pursuing this story. The Supervisor indicated, "some work is scheduled to be performed today at the central office in that area but it may not fix the problem."

Meanwhile, the family continued to contact anyone that would listen. While NJGCA Staff made progress with AT&T and Verizon, the business owners spoke with their representative in the State Legislature, Assemblyman John DiMaio. In an email from the business owner to NJGCA staff on Tuesday, March 11, the owner wrote:

Thank you for continuing to investigate this problem for us. It's amazing how fast this was resolved, even without the necessary "part on order," once other parties besides us began to apply pressure. Assemblyman DiMaio's office called me back yesterday stating that they made contact with several individuals on Friday, and got two trucks out there Friday evening to have phone lines operating on Saturday AM! Yes, we were thrilled, but also as you know the damage is done and we will not be able to cover the cost of our next gas delivery. I will continue to reach out to the Board of Public Utilities and follow-up on our complaint. I'll let you know what progress is made, if any! Thank you again for your time and interest in this matter.

After 6 weeks of trying, the problem was fixed in five hours. It took a combination of advocacy efforts by NJGCA, Weights and Measures, and a State Legislator, to finally give this problem the attention it deserved. However, we fear this might be too little, too late... the station was essentially out of business for over a month.

We wanted to share this story with members as a reminder to **reach out to NJGCA whenever you have a problem, large or small**. Even if we can't directly solve the problem for you, there are many resources that we can suggest, and we will work with you until the issue is resolved! ■

**Does Your Service Station Have Environmental Problems?
Are You Subject to a Lawsuit or Environmental Cleanup?
Has Your Insurance Company Denied Your Environmental Cleanup Claim?**

We have located and enforced the following insurance proceeds on behalf of New Jersey clients:

- \$500,000+ to remediate gasoline service stations in New Brunswick and Milltown, New Jersey
- \$12,000,000 to pay for cleanup and cost of recovery action for a dry cleaning manufacturer.
- \$11,000,000 to pay for cleanup and defense costs associated with the Passaic River litigation.
- \$7,750,000 to pay for cleanup costs associated with a defunct manufacturing plant

Beyond Insurance: We assist in the remediation and negotiations with State and Federal Agencies and seek reimbursement for our clients against third parties in cost recovery actions.

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WORKERS COMPENSATION CHEATING

By: Sal Risalvato

This article is long overdue, and I have thought about writing it several times during the past few years, but I thought it important now, and I do not want to delay this message any longer. In fact, the ramifications of the following paragraphs are serious enough that you can expect to see more on this from me in the future.

Because I was one of you, and I owned a gasoline service station and auto repair shop for 23 years, I am well aware of how things are done, how employees are paid, how cash is handled, and how payroll information is fudged in order to save premium dollars. Since liability insurance and Workers Compensation insurance are both based on the overall payroll of a business, it is not uncommon for business owners to misrepresent their payroll figures and also the classification of their employees.

There is a combination of issues at work here. For those employers who pay employees under the table with cash or pay employees partially with unreported cash, there is not only an issue with insurance fraud, but there is a huge issue with the United States and New Jersey Departments of Labor. For several years, NJGCA has used this publication to keep you aware of all the efforts that are being made to change the culture in our industry as it relates to paying our employees and reporting our payroll. The United States Department of Labor has had a task force in New Jersey for several years, and has pledged to visit every gasoline service station and auto repair shop in the State before they leave, no matter how long it takes. I have reported to you that they are using surveillance techniques prior to entering your place of business and conducting an audit.

You all should be aware of the excellent program that NJGCA has sponsored for almost 40 years, which enables members to participate in a Workers Compensation insurance pool that provides a dividend at the end of the premium year based on the total claims of our members. As awesome as this program is, it is still subject to the regulations set by the State of New Jersey. The State dictates the rates for workers compensation to all insurance companies who cover employers in the state. No matter who you call, every insurance company will quote you the exact same rate.

All Workers Compensation insurance companies conduct audits of a business payroll, usually on an annual basis, to determine that the correct amount of premium has been paid. Premium dollars are based on a rate set by the State and also the proper classification of employees.

In every gasoline service station, pump attendants, auto technicians working in the shop, service writers (basically anyone who works on the premises who is not locked in a clerical office or never sets foot in the shop for any reason), all have the same classification, and are subject to the same rate (**\$7.23**). It is not uncommon for owners to try to claim service writers, or even themselves, as clerical workers. However, in neither case is the criteria met that

enables them to be classified as clerical, and therefore the rate that is paid based on their salaries should be the same as a pump attendant or an auto technician. No exceptions.

It is understandable why the owner of the business may want to classify a service writer, or even himself, as clerical because there is a huge difference in the rate paid on their salaries to cover the cost of Workers Compensation insurance. There is also a separate rate that is used to classify convenience store workers, but it can only be used ***if a worker never has to walk out to the pumps for any reason or into the repair shop for any reason.*** Even a clerical worker that from time to time drives a customer back home should be classified at the same rate as a gas attendant or auto mechanic (**\$7.23**). The rate for a convenience store clerk (**\$3.25**) is in between the highest rate for a pump attendant (**\$7.23**) and the lowest rate for a strictly clerical bookkeeper (**\$0.25**).

Below are the most recent rates per \$100 of payroll set by the State of New Jersey.

- **Classification 8397:** Automobile Garage, Repair Shop and Parts, Drivers -- **RATE \$7.23**
- **Classification 8387:** Automobile Service Station and Drivers: the following phraseologies are cross referenced to this classification: Gasoline station, rubber tire dealer, storage battery service, brake service or muffler installation -- **RATE: \$7.23**
- **Classification 8393:** Auto body repair. Applies to the repair of metal automobile bodies and light panel truck bodies, includes upholstery and painting -- **RATE \$4.17**
- **Classification 8006:** Store Grocery -- **RATE \$3.45**
- **Classification 8810:** Clerical -- **RATE \$0.25**

You can see the big difference in rates, which makes it understandable that some business owners try to misclassify some of their employees. They wish to obtain a more favorable rate. However, many times this is picked up in an annual audit, which will drastically increase the premium for the upcoming year.

And then of course there is always the case of the business owner who drives around in a Mercedes, and lives a lavish lifestyle, yet claims his salary is only \$30,000 a year. Yes, there are many business owners who seriously struggle to keep their doors open and legitimately have a very low salary. The laws of the State of New Jersey require that a business owner must show (for the purposes of rating Workers Compensation premiums) a minimum of \$30,000 per year. For those that are fortunate to make much higher salaries, the laws also state that a business owner does not have to show (for the purposes of Workers Compensation premiums) more than \$123,000 per year, no matter how much he does make.

It is laughable some of the payroll schemes that are presented to auditors that simply cannot hold up to any real test. Your business can't be open 24 hours a day, seven days a week, and only have an annual payroll of \$50,000. The amount of hours would require triple that amount, if employees are to be paid properly and withstand an audit from the United States Department of Labor. Workers Compensation insurance companies are not stupid. They know when a business is cheating and trying to take advantage of them.

Unfortunately, those that report their payroll honestly are the ones who get cheated. Every year, the State of New Jersey evaluates the rate that must be charged and every year, it is raised. If everyone properly reported their payroll and classified their employees properly, then the rates for everyone would be much lower. In the end, the State determines the rates based on the amount of claims in the industry compared to the premiums that were collected for the previous year.

One of the craziest things I've heard from members is that they now have a payroll company that automatically deducts their Workers Compensation premium each week when their payroll is calculated, and are no longer subject to a payroll audit. The crazy part is that the payroll company sells them their service based on a falsehood. The payroll company may tell you that if you use their Workers Compensation insurance company and have the premiums deducted automatically each week, that you will never encounter an annual audit. This is bull!

Any insurance agent or payroll company that games your business by permitting you to under-report your payroll or improperly classify your employees knows that eventually you will be audited and it will catch up with you. The proper way to evaluate the cost of the Workers Compensation premiums is to accurately and honestly report your total payroll, and to honestly represent the true classification of all employees, including the true payroll and classification of YOU, the owner. If you want to compare apples with apples, it makes sense to ask several agents that represent different insurance companies to quote you based on accurate payroll and classifications.

You will find that when you do compare apples to apples, NJGCA's program, through its partnership with Meadowbrook, is far superior to any other program that you can get into. Remember, the State of New Jersey sets the rates for all insurance companies, but only Meadowbrook will evaluate all of the claims made by NJGCA members and return a dividend based on the success and safety record experienced in the previous premium year. ***NJGCA has returned a dividend to members in 35 of the last 37 years.*** In recent years, dividends have amounted to 5% to 7% of the premium paid. ***Most members received checks that totaled more than \$500!***

Once again, I want to caution that misrepresenting your payroll and mis-classifying employees is dangerous and illegal. ***At the end of this article, I am including the actual statement that every business owner signs when applying for Workers Compensation insurance.***

I have seen too many instances when the owner of a gasoline service station got into some hot water because of improperly reporting payroll. What happens when a gas attendant working for cash off the books gets hit by a car driven by a customer while pumping gas? How can the owner of the business put in a claim with the Workers Compensation insurance company when the employee has been working but does not appear on the company payroll records? Most business owners quickly answer this question by saying that they will put in a claim and simply state that the employee just began employment at the location. WRONG! That's called insurance fraud!

What happens when the Workers Compensation insurance company conducts an investigation? (Which is very likely if they will have to pay out a lot of money for medical bills and employee compensation). What happens when the insurance company interviews other employees? Or customers? Or even interrogates the injured employee himself? Is it likely that all of these people will falsify their answers in order to keep the owner of the business out of hot water? No, it is not! Why? Because it will be explained to them while being questioned that there are laws that have harsh penalties for those who interfere with, or provide false information in the course of, an investigation.

One of the best horror stories that I often use is a perfect example of an unanticipated dumb accident that caused a gas station owner tremendous hardship. The owner of a gas station employed an illegal alien, paying him cash off the books to pump gas at night. One night, after the employee locked up and was walking home, he realized that he had left something behind at the gas station. He began the long walk back, and while making the final crossing of the street in front of the gas station, he was hit by a car. The employee had serious injuries and was hospitalized. What do you think the employee did when he realized he was to be faced with paying monumental medical bills? He insisted that the business owner file a claim through his Workers Compensation insurance.

Since the employee was being paid cash off of the books this incident opened up a very big can of worms. Who do you think became responsible for paying those monumental medical bills? Who do you think was in hot water with the Department of Labor for not reporting the payroll associated with this employee?

These are examples that are not hard to believe. There are too many people in our industry who don't play by the rules and try to get away with paying lower Workers Compensation premiums by falsifying payroll records and by mis-classifying their employees. When it is eventually picked up in an audit, they try to solve the problem by changing insurance companies, hoping to get away with fraudulent reporting for as long as possible before switching companies again.

Unscrupulous insurance agents are always eager to indicate that the insurance company they represent does not conduct audits, or a payroll processing company may indicate that if you sign up with their Workers Compensation program you will not be subject to an audit. This is false! Eventually, you will be audited and your premiums will be adjusted accordingly.

Because such an effort is being made by the Department of Labor to change the culture in our industry, it is important for me to bring this to your attention. ***Please review the following statements that must be signed when applying for Workers Compensation insurance.*** I am sure that you understand the point that I am trying to make. ■

Section 14 is the certification that you, as the business owner, must sign when applying for Workers Compensation

14. APPLICANT CERTIFICATION

I HEREBY ACKNOWLEDGE THAT I HAVE FULLY READ THE INSTRUCTIONS RELATED TO THE COMPLETION OF THIS APPLICATION AS WELL AS ABOVE STATEMENTS AND PERSONALLY CERTIFY THAT THE FOREGOING STATEMENTS AND INFORMATION CONTAINED IN THIS APPLICATION ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND, THAT I, AS AN OWNER/OFFICER, AM FULLY AUTHORIZED TO SIGN THIS APPLICATION ON BEHALF OF THE APPLICANT, AND TO BIND THE APPLICANT. I UNDERSTAND THAT UNDER NEW JERSEY CRIMINAL LAW, INSURANCE FRAUD IS PUNISHABLE BY UP TO TEN (10) YEARS IMPRISONMENT AND FINES UP TO \$150,000, AS WELL AS CIVIL PENALTIES AUTHORIZED BY THE NEW JERSEY INSURANCE FRAUD PREVENTION ACT. IF THIS APPLICATION FOR COVERAGE REPRESENTS AN ELECTRONIC SUBMISSION FOR COVERAGE, I FURTHER ACKNOWLEDGE RECEIPT OF COPIES OF ALL INSTRUMENTS RELATING TO SUCH SUBMISSION, INCLUDING THE INSTRUCTIONS FOR COMPLETING APPLICATION, THE FULLY COMPLETED APPLICATION AND ADDENDUMS AND THE AUTHORIZATION FOR RELEASE OF FUNDS AND CERTIFICATION.

I UNDERSTAND THAT, AS THE APPLICANT, THE INFORMATION PROVIDED HEREIN IS MATERIAL AND WILL BE RELIED UPON BY THE COMPENSATION RATING & INSPECTION BUREAU, AS WELL AS BY THE DESIGNATED INSURANCE COMPANY, TO PROVIDE THE REQUESTED INSURANCE AND WILL BE USED TO CALCULATE MY PRELIMINARY WORKERS' COMPENSATION PREMIUM.

I ALSO UNDERSTAND THAT I HAVE A CONTINUING OBLIGATION TO PROMPTLY NOTIFY THE DESIGNATED CARRIER OF CHANGES IN:

- THE KIND OF WORK CONDUCTED BY THE BUSINESS
- THE SIZE OF AND/OR CLASSIFICATION OF OUR WORKFORCE
- THE AMOUNT OF REMUNERATION
- THE BUSINESS OWNERSHIP OR BUSINESS STRUCTURE
- CHANGE OF MAILING ADDRESS AND/OR PRINCIPAL PHYSICAL LOCATION

I AGREE TO MAKE AVAILABLE ALL RECORDS NECESSARY FOR A CARRIER OR RATING BUREAU AUDIT AND TO PERMIT THE AUDITOR OR OTHER REPRESENTATIVE TO MAKE A PHYSICAL INSPECTION OF OUR PREMISES/OPERATIONS. I UNDERSTAND THAT FAILURE TO DO THIS MAY RESULT IN TERMINATION OF THE COVERAGE PROVIDED, CIVIL PENALTIES AND/OR CRIMINAL PROSECUTION.

IT IS FURTHER UNDERSTOOD THAT IF THERE IS WORKERS' COMPENSATION LIABILITY UNDER THE LAW(S) OF ANY OTHER STATE(S), OTHER ARRANGEMENTS MUST BE MADE.

IN ACCORDANCE WITH NEW JERSEY LAW, IF I/WE INTENTIONALLY UNDERSTATE OR CONCEAL REMUNERATION, OR MISREPRESENT OR CONCEAL EMPLOYEE DUTIES, SO AS TO AVOID PROPER CLASSIFICATION FOR PREMIUM CALCULATIONS, OR MISREPRESENT OR CONCEAL INFORMATION PERTINENT TO THE COMPUTATION AND APPLICATION OF AN EXPERIENCE RATING MODIFICATION FACTOR, I/WE SHALL BE SUBJECT TO CIVIL PENALTIES AUTHORIZED BY THE NEW JERSEY INSURANCE FRAUD PREVENTION ACT, AS WELL AS PROSECUTION UNDER THE CRIMINAL LAWS OF THIS STATE.

PRINT APPLICANT NAME AND TITLE	NJ DRIVER'S LICENSE # OR NJ MVC ID #
APPLICANT'S SIGNATURE	DATE

Section 15 is the certification that the producer must sign when filing the application for Workers Compensation

15. PRODUCER CERTIFICATION

DESIGNATED LICENSED PRODUCER, IF ANY (INCLUDE ADDRESS)	FEDERAL EMPLOYER ID #/SOCIAL SECURITY NUMBER
	TELEPHONE NUMBER

I HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE INSTRUCTIONS RELATED TO THIS APPLICATION AND HAVE FULLY EXPLAINED THE RULES AND PROCEDURES OF THE NEW JERSEY WORKERS' COMPENSATION INSURANCE PLAN TO THE APPLICANT. I UNDERSTAND THAT INTENTIONAL MISSTATEMENT OF INFORMATION IN THIS APPLICATION MAY SUBJECT ME TO PENALTIES AS ARE PROVIDED BY LAW INCLUDING, BUT NOT LIMITED TO LOSS OF LICENSE.

I FURTHER UNDERSTAND THAT UNDER NEW JERSEY CRIMINAL LAW, INSURANCE FRAUD IS PUNISHABLE BY UP TO TEN (10) YEARS IMPRISONMENT AND FINES UP TO \$150,000 AS WELL AS CIVIL PENALTIES AUTHORIZED BY THE NEW JERSEY INSURANCE FRAUD PREVENTION ACT. I FURTHER CERTIFY THAT I HAVE WITNESSED THE APPLICANT'S SIGNATURE TO THIS APPLICATION.

IF THIS APPLICATION FOR COVERAGE REPRESENTS AN ELECTRONIC SUBMISSION FOR COVERAGE, I CERTIFY THAT I HAVE WITNESSED THE APPLICANT'S SIGNATURE TO THE "AUTHORIZATION FOR RELEASE OF FUNDS AND CERTIFICATION" AND THAT THE APPLICANT HAS RECEIVED COPIES OF ALL INSTRUMENTS RELATING TO SUCH SUBMISSION, INCLUDING THE INSTRUCTIONS FOR COMPLETING APPLICATION, THE FULLY COMPLETED APPLICATION AND ADDENDUMS AND THE AUTHORIZATION FOR RELEASE OF FUNDS AND CERTIFICATION.

PRINT PRODUCER'S NAME AND TITLE	PRODUCER'S NJ LICENSE #	NATIONAL PRODUCER NUMBER
PRODUCER'S SIGNATURE	DATE	

Legislative Roundup



Important Issues impacting your business!

By: Eric Blomgren

216th New Jersey Legislature

A quick technical note -- as we discussed in January's OTR, a new legislative session began on January 14, 2014. Every bill that did not pass both houses of the Legislature and get signed into law has expired, and will have to start the long legislative process all over again.

The new session sees a new Speaker of the Assembly, Vinnie Prieto of Hudson County. There are also seven new members joining the Assembly. Members of the Assembly will next face re-election in 2015 and members of the state Senate will face re-election in 2017.

Right to Repair

In the last few months, we have continued to see significant progress in the fight for Right to Repair. As you know, in November the various sides in the fight finally came to an agreement and passed a final Right to Repair law in that state. In order to keep up pressure on the manufacturers to agree to a national Memorandum of Understanding (MOU) that would bring R2R to the entire US, the New Jersey Assembly passed its R2R bill on December 19th. It sailed through on a bipartisan basis, 58-15.

On January 23rd, a national MOU was finally signed between the manufacturers and some representatives of the independent repair industry. This now extends some Right to Repair provisions to every independent repairer in the US, including here in NJ.

Here is what was agreed to: for passenger vehicles Model Year 2002 and newer, the manufacturer is going to be required to sell the same diagnostic and repair information it makes available to their dealers. They must sell the access on a daily, monthly, or yearly subscription basis on fair and reasonable terms. They will also have to sell the same diagnostic tools, both to independents and to the aftermarket companies who will make their own versions for retail sale.

Beginning in Model Year 2018 (3 years from now), you will be able to access every passenger motor vehicle's OBD and repair info using a basic PC, connected using standard interfaces. As protections for manufacturers, the information necessary to reset an immobilizer will not be made available, nor will access to certain telematics info (unless that info is needed to make a repair).

Right to Repair is a battle for the survival of independent repairers that NJGCA has been fighting for many years now, and it's great to see a big victory in the fight. NJGCA has no doubt that our efforts here in New Jersey played a key role in forcing the manufacturers to come this far.

However, we also do not believe that this war is won. For one, a MOU does not have the force or the permanency of a law, and that is why we plan to push the Legislature to make the principles of Right to Repair permanent.

We also want to go beyond what was agreed to in the MOU. It had been our understanding that the point of the MOU was to have one program of Right to Repair for the entire US, instead of 50 different programs for each state. Instead what we have is one system for Massachusetts and one, less inclusive, system for the other 49 states. The MA law includes protections for most heavy duty vehicles, the MOU specifically excludes them. NJGCA believes that the principles of Right to Repair need to be expanded to cover as many types of vehicles as possible, we plan on fighting to be at least as expansive as MA, if not more so. We will keep you updated as this fight continues on.

Credit Card Fees

NJGCA was pleased to see the introduction of a new bill that we believe will be effective in lowering credit card fees. Credit card fees are now one of the biggest expenses for any retailer, for some businesses they are even more expensive than labor costs. The bill, sponsored by Assemblymembers Paul Moriarty (D-Gloucester) and Alison McHose (R-Sussex), is the result of months of work by NJGCA and other groups representing other retailers. Right now, Visa and MasterCard effectively set the interchange fees that all banks charge retailers for the use of credit cards. The way this bill would work is that the retailer would have the freedom to process a credit card transaction over any network you choose. This means that a Visa card could be processed by the Discover network. In practice, most retailers would choose to process every transaction over whatever the cheapest network is. This will force the credit card companies to lower their fees so that retailers will send transactions over their network.

The basic idea is the same one used a few years ago for long distance phone calls. The laws were changed so that no matter who your phone provider was, you could have another company handle your long distance calls. The result was the cost of long distance calls fell from dollars per minutes to cents per minute. We hope to get this bill before the Assembly Consumer Affairs Committee, which our sponsor chairs, in the coming months. This will be a difficult fight as the big banks and credit card companies will fight to protect the bottom line, so be ready to answer our calls to action!

Rewards Program Changes

Ever since January 2012, when the NJGCA supported bill allowing loyalty programs that can be redeemed for discounts on gas became law, we have seen more and

more brands of gas offer these programs. While some programs have worked out well, others have not. The primary offender is BP's program. When the original bill was passed, it was done so with the understanding that stations would not bear any of the cost of the program. Unfortunately, due to a quirk with the way the language was written, some companies have been able to pass on a cost to the stations. In BP's case, they force retailers to pay 2.5 cents of the 5 cent reward. NJGCA has been working with Asw. Celeste Riley (D-Cumberland) to craft a bill that will fix this problem (A-1985). We are working with other trade associations to iron out any potential issues so that this bill will be able to move through as cleanly as possible. If you have a station that is involved in any other kind of rewards programs and are being forced to shoulder some of the cost, either for each transaction or through some sort of monthly fee, please let us know by emailing Eric@njgca.org so that we can work to eliminate it.

E-Cigarette Taxes

The Budget Proposal unveiled by Governor Christie for FY 2015 called for a new tax on the sale of e-cigarettes. Electronic cigarettes have exploded onto the tobacco marketplace over the last few years, and many smokers are switching to them because they are widely seen as a healthier alternative to smoking. Senators Vitale (D-Middlesex) and Codey (D-Essex) have introduced S-1867, which would institute a huge new 75% tax rate on e-cigarettes and their components. This tax would be crushing to small businesses, especially the brick and mortar retailers, as many consumers will simply buy online from out of state. Most retailers find the profit margins on e-cigarettes to be higher than they are on traditional cigarettes.

It is important to note that e-cigs are currently subject to the sales tax, and their sale is prohibited to those under the age of 19. The whole point, we are told, behind the high tax rates for tobacco products is that they are unhealthy. But e-cigs, like nicotine gum, are increasingly being used as a healthy alternative, or as a first step in quitting altogether. If you sell e-cigs, please head to the Legislative Action Center at www.njgca.org to send an email to your legislator asking them to oppose this plan before it crushes this new industry and hurts consumers, small businesses, and the public health.

Prepaid Phone Registration

In February, the Assembly Consumer Affairs Committee was scheduled to vote on A-1433, a bill which would require that retailers of prepaid cell phones, which many c-stores sell, would be required to record a variety of information about the purchaser of such a phone, including a copy of their driver's license, and then keep the records for two years. These phones, commonly called "burners" are often used by criminals to avoid police wiretaps, which is exactly why police want to have more access to consumer information. In addition to a regulatory burden, this bill raises important privacy concerns since it would make it virtually impossible for anyone to make truly

private phone calls. Its effectiveness is also questionable since any organized crime operation would presumably be able to obtain fake IDs anyway. The bill was pulled from committee before a vote could be held, but the Chairman indicated it would be up for discussion again sometime this year.

Internet Lottery

We fear that we may soon be fighting against internet lottery again. A new bill, which allows people to purchase lottery tickets online or from their phones, has been introduced. The bill, A-2703/S-586, is sponsored by Assemblymen Troy Singleton (D-Burlington), Ralph Caputo (D-Essex), and John Burzichelli (D-Gloucester); and Senator Dick Codey (D-Essex). Members can head to the Legislative Action Center on www.njgca.org to instantly send a message in opposition to this proposal to the sponsors.

Internet lottery has seen some troubling advancements in other states. Illinois and Georgia currently allow it, and Minnesota is testing it out. Michigan and Kentucky are moving to start online lottery in the next two years. Colorado, however, has been moving a bill through its Legislature that would expressly ban internet lottery because of the harm it would do to small businesses. Yes, the same Colorado that has legalized marijuana wants to ban internet lottery.

Mandatory Paid Sick Leave

As expected, the bill requiring every business give employees paid sick leave was reintroduced in this session. We've told you before about how egregious this proposal is, how it would require even part-time hourly workers to be given paid leave, and that leave could be used not just when they're sick but when a member of their family is sick as well. It also carries over from year to year. As expected, it has been reintroduced this session. The concept of mandating paid sick leave has also received the endorsement of the new Assembly Speaker, Vinnie Prieto (D-Hudson). Additionally, a similar yet less egregious version has gone into effect in Jersey City and will go into effect in Newark in late May.

Minimum Wage

While the fight to increase the minimum wage seems have calmed in New Jersey following the constitutional amendment that made it \$8.25 an hour, on the federal level it's a different story. President Obama has called for the federal minimum wage to be increased to \$10.10 an hour and many Democrats have taken up the fight. Polls show many voters support this move, although their passions on this issue run wide but not very deep. The nonpartisan Congressional Budget Office came out with a report saying that such an increase would eliminate about 500,000 jobs nationwide. While it seems highly unlikely that Republicans in Congress would support such a dramatic increase, there may be room for a compromise that raises the wage to \$9 an hour.

Zone Pricing

Last year, we managed to get a ban on zone pricing passed by two Committees. Unfortunately, time ran out on us during the last session to get the bill passed by either house during the lame duck session, despite broad and bipartisan support on the issue. At the last minute, the big oil companies were able to raise sufficient doubts in the minds of some retailers that this bill would be helpful. Some station owners in the cheaper zones were concerned that if zone pricing were eliminated, they would see higher prices. We continue to believe that their fears were misguided and that the oil companies simply wouldn't have been able to afford to stay in business if they jacked up everyone's prices (after all, there is nothing that prevents them from doing this right now). Moreover, the largest chunk of NJGCA members is no longer directly affected by zone pricing as a result of our victory with Right of First Refusal a few years ago. At this time, NJGCA does not plan to move forward with legislation on zone pricing.

Gas Tax

New Jersey is one of the most expensive and most taxed states in the nation. One of the only places where the state has an advantage is the gas tax, which has not been raised since 1988. Between inflation and fewer gas sales because of better gas mileage, the revenue that comes in from the gas tax doesn't come close to paying for our roads. In February, Speaker Prieto indicated that he would be supportive of an increase in the gas tax. However in March a poll of public opinion showed that 65% of voters oppose an increase.

Since then, Senator Lesniak has introduced a bill, S-1865, which would raise the gas tax 5 cents a year for 3 years, for a total increase of 15 cents. The current NJ gas tax is 14.5 cents, so this would be an effective doubling of the tax. This increase will hurt stations throughout the state, but especially those located near the borders, who get a large percentage of their business from motorists fleeing the higher taxes of Pennsylvania and New York. The higher cost of fuel will make its way throughout the supply chain, leading to higher costs not only for fuel deliveries but also deliveries of nearly every other product you sell. A 15 cent increase also means an extra \$1,275 burden every time you get a delivery of fuel.

Election 2014

Due to many factors, including redistricting, New Jersey's congressional delegation has seen little change over the past decade. This year will be very different however. Three of our twelve congressmen will not be running for reelection this year. In the 1st District, Rep. Rob Andrews (D) stepped down in February. He served the district, based in Camden and Gloucester Counties, since 1990. The presumptive Democratic candidate to succeed Andrews is state Senator Donald Norcross, who is the sponsor of the Senate version of Right to Repair. This is a strongly Democratic district in which President Obama won roughly two-thirds of the vote in both of his elections.

In the 3rd District, Rep. Jon Runyan (R) is retiring after only 4 years in office. His district, which is composed of large portions of Burlington and Ocean Counties, is one of the most competitive in the nation and will be heavily targeted by both parties this November. President Obama won 52% and 51% of the vote in 2012 and 2008, respectively; although President Bush won 53% in 2004. On the Democratic side, Burlington County Freeholder Aimee Belgard is the leading candidate and has gained some support from national Democratic groups. The Republican field is wide open. Former Randolph Mayor Tom McArthur has moved into the district and won the recommendations of high profile members of the county parties. Steve Lonagan, who lost to Sen. Cory Booker last November, has also moved to the district and is running, as are several other local officials.

Representative Rush Holt (D), from the 12th District, also announced his retirement. Rep. Holt, a scientist, has served the district since 1999. This Central Jersey district is comprised mainly of portions of Mercer and Middlesex counties, as well as some areas of Somerset and Union counties. Like the 1st, it is heavily Democratic and voted overwhelmingly for President Obama. The Democratic primary is already looking very competitive, with three members of the Legislature running for the seat: Senator Linda Greenstein (Middlesex), Assemblywoman Bonnie Watson Coleman (Mercer), and Assemblyman Upendra Chivukula (Somerset).

At the top of the ticket this year is the race for US Senate. Cory Booker won the special election for the seat last October, and now is looking to win a full 6-year term. Republicans have had trouble finding a candidate to run after several legislators all turned down the race.

This year's primary election will be held on June 3rd, if you are a registered Democrat or registered Republican, please remember to go vote!

NJGCA PAC

We have exciting things planned to grow NJGCA's Political Action Committee (PAC) and to grow the influence your business wields in Trenton. We plan to have up to four fun and interesting events this year, including shooting events, box seats at a baseball game, and a fishing trip. We expect this to be the year that EVERY member steps up and contributes by going to at least one event. We have also set up online donations. Right now you can go to www.njgcapac.org to donate online with a credit card. With a simple click you even set up automatic monthly payments in whatever amount you choose. NJGCA recommends every member sign up to contribute \$10 a month automatically. \$10 is the cost of lunch, and it's only once a month. A little contribution can go a long way, so please step up today. ■

GENERATOR GRANT PROGRAM REMINDERS:

This program is designed **only** to power your fuel dispensers, Point of Sale systems, required lighting and signage and safety systems/equipment.

- Installing a generator larger than needed could make you ineligible for reimbursement.
- Do not hire a contractor until after you sign a grant agreement with the State.
- Do not allow **any work** to begin until the grant agreement is signed.
- Do not start the **municipal** permitting process until grant agreement is signed.
 - Even after preliminary and supplemental applications receive approval and a scope of work is submitted, you are **still** not necessarily guaranteed any grant money until the grant agreement is executed and signed by both parties.

After completing the project, and before the station owner can be reimbursed, there will be a strict review process, which includes:

- Municipal Permits and Inspector Reports
- Contractor's Certified Payroll (**CONTRACTOR MUST PAY PREVAILING WAGE**)
- Site Plan Approval

ARE OIL PRICES SUCKING YOU DRY?

TAKE ADVANTAGE OF THE GREAT PROGRAM THAT **PPC LUBRICANTS HAS PUT TOGETHER ESPECIALLY FOR NJGCA MEMBERS.**

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- **CONSUMER INCENTIVES AND PROMOTIONS**

NJGCA Members report saving over \$2,000 / year

Contact Gene Nace
Phone: (717) 215-7253
gnace@ppclubricants.com



STOP SPENDING, START SAVING!

NJGCA is thrilled to have the opportunity to promote our Member Benefit Partners and provide our members with the best, money-saving programs in the industry. Keep reading to see how you can save your business thousands of dollars!

Let's start with the most obvious: **Health Coverage**. It's a no-brainer, especially with ObamaCare coming in... Why wouldn't you want to enjoy the same benefits that over 400 other NJGCA members already receive? In this scenario, our imaginary business has 3 full-time employees. The owner/manager has his wife and children on a family policy and the two full-time mechanics are single. **Association Master Trust** has a wealth of plan options available to NJGCA members, and their prices include prescription coverage! For our imaginary business, AMT's most popular plans would range between a low of \$1,450/month to about \$2,900/month depending on deductible, co-insurance and co-pay selections. Let's take an average of **\$2,200/month**, for a total of **\$26,400** per year. In addition to the low premiums that **Association Master Trust** offers, AMT also returns money to plan holders on premiums that have been charged are in excess of the claims that have been. All other health insurance companies would send this money back to their stockholders, but at AMT the plan holders are the stockholders. For the past two years AMT has also provided a 4.5% dividend to all business owners enrolled in the plan. At our imaginary business, that would result in an additional savings of **\$1,188/year**. If you insure more people, or choose a more expensive plan, and your premium is higher, you can expect even higher returns! Keep in mind, **this dividend is being returned after you have already paid lower premiums than you would have with other health insurance companies!**

Liability Insurance: Many small businesses have loyalties to local insurance agents/agencies and simply accept their premium renewals each year and pay them without a second thought. However, there are over 1,500 gasoline service stations and repair shops in the State of New Jersey that are saving money and getting better insurance coverage through **The Amato Agency**. Amato has crafted a program that members with a good claims history can participate in and share savings that are generated by the whole group by returning a dividend to members. NJGCA members who have chosen to look past their old loyalties and have given Amato the opportunity to provide a quote for their business' liability insurance have saved over **\$2,000 per year**, and many of these members now also insure their personal vehicles and their homes, and have formed new loyalties to a new agent, Amato. Many were surprised that the agent to whom they were so loyal in the beginning was not giving them the best quotes, and was actually taking advantage of their loyalty. This won't happen with Amato, because The Amato Agency supports NJGCA and our members, and values the referrals that NJGCA provides as the result of our strong relationship and mutual respect.

Workers Compensation: Using a payroll figure of \$200,000/year for our imaginary business, Workers Compensation expenses would be about \$10,000/year. With **Meadowbrook**, NJGCA has returned between 5-7% dividend to members participating in our Safety Program, based on the amount of claims that participants in the Safety Program have made. At the \$10,000 average premium, that's between **\$500-\$700 in a returned dividend, annually**. NJGCA and Meadowbrook have returned excess premiums in the form of dividends to members in 35 of the last 37 years. Now that's a great track record!

Gas Price Analytics: **Profit OutDo** offers products and services that make it instantly easier for you to understand the pricing realities of the industry and make adjustments to your own prices to increase profitability! They have developed a computer analytics program that will aggregate information like your wholesale and retail gasoline prices, your current margins, and the volume that you pump, to analyze your profitability and suggest price adjustments that will drive profits up. Profit OutDo analyzes your volume and margins in real-time, each day, and compares it to competitors' prices, so that you can have a better understanding of your local competition and the realities of the industry in your community. Their service provides critical information about the best prices that you can post out on the street on any given day to maximize your profits and your volume. What Profit OutDo does is novel, it's revolutionary, and it could turn the industry upside down!

Increasing your Repair Business Profitability. The **Automotive Training Institute** runs a program that our members rave about. It is not just a money-saving program, it is a complete overhaul of your business. ATI provides management and consulting services through one-day owners events and an all-inclusive 30-month Re-Engineering Program. NJGCA members currently participating in the program, and those that are alumni, have seen their businesses boom while partnering with ATI. ATI focuses on helping businesses achieve profits where they might not have thought to look before. One member took his shop from a 3-man crew to a 7-man crew in the 2¹/₂ years that he participated in the program. Others indicated that by implementing just one of ATI's recommendations at their shops, they have brought in up to an additional **\$70,000 per year** by making one simple change to the way they do business. While the cost of enrolling in ATI's program may seem like a huge investment, NJGCA members currently participating in the program have no doubt that you will make back your money, and more, while learning techniques and strategies to keep your business profitable and ahead of the curve for years to come. Whether you need training, coaching or a state-of-the-art business model, ATI has the systems to help make the changes you want right away.

Motor Oil and Lubricant Suppliers: A shop goes through hundreds of gallons of oil each month. Imagine being able to buy your lubricants cheaper, in addition to receiving a rebate, AND increase your customer retention through consumer incentives and promotions. NJGCA has an MBP who does just that! Our members have reported saving over **\$2,000/year** in their lubricant purchases, in addition to increasing their customer base and keeping their customers coming back. **Why pay more when NJGCA has partnered with lubricant suppliers that will make your experience, and your customer's experience, so much more enjoyable!**

Uniforms: NJGCA members that rent their uniforms from **Unifirst** report saving between \$35-40/week as a result of being enrolled in the uniform program that Unifirst has created for NJGCA members. That's up to **\$2,000 per year** that you could be saving on your uniform rentals. If you are a member of NJGCA, and you rent uniforms, but you don't use Unifirst, you are just throwing money away!!

NJDEP Compliance: As an NJGCA member, this imaginary station can choose from 5 different companies to perform testing and help station owners comply with NJDEP's ever-changing and burdensome regulations. Any one of these companies will provide members with competitive rates that will not only save **\$200-\$400 a year**, but by using the services offered by these companies and allowing these experts to cover your needs, *you will save thousands in avoided penalties.*

Here is something that I want you all to consider... No matter how good you are and how long you have been doing this, you are a human being. We don't know everything, and we make mistakes. Think of the simple mistakes that you might make in other aspects of your business... However, if you accidentally overlook something in this area, the regulations are unforgiving and the penalties are costly, so it pays to have one of these professionals looking out for you.

Prescription Eyeglasses and Contact Lenses: As an NJGCA member, our imaginary business is entitled to an exciting benefit offered by *Coastal Eyewear*. Between your family AND the families of your employees, there have to be 3 or 4 people that either wear eyeglasses or use contact lenses. The first testimonial here at NJGCA found that the exact same set of contact lenses from Coastal Eyewear were **\$80 less expensive** than the discount national supplier that was used previously, and **\$120 less than the optometrist**.. and that's an \$80.00 savings on just ONE order!

This is an easy benefit that you can share with your employees!! You access the program from the Members Only section of the NJGCA website. Your employees should appreciate the savings that you are providing for them. You don't have to buy the glasses for them, just get them access to this program so that they can save the money themselves. As long as they are working for you they can still participate!

Energy Savings: Energy bills for NJGCA members typically range from about \$600/month to \$5,000/month, depending on if they have a c-store and how many refrigeration units are in the store. NJGCA members participating in the *TMP Energy Program* have reported, and can testify to, saving 10% or more each month on their energy bills. So, even if you have an electric bill that's on the low end of the spectrum, that's still a savings of **\$720/year**.

Credit Card Processing: Remember, our imaginary business sells 75,000 gallons a month. If 70% of gas purchases are made by credit card, your **credit card sales would be over \$170,000/month** and over **\$2 million per year**. Assume that processing fees are typically 2.5%. Switching to *FirstData Corporation* could bring your processing fee down to **2.0%**. What will that save you? Paying a 2.5% processing fee would equal \$4,250/month, \$51,000/year. At 2.0%, the FirstData fees would be \$3,400/month, \$40,000/year. By switching to FirstData, you could save your business over **\$10,000/year** in credit card processing fees! Again, this is just in gasoline sales. *Imagine how much more you could save when you add c-store sales and repairs to this number!*

In addition to the 11 areas highlighted in this article, NJGCA has Member Benefit Partners that specialize in many other products and services that can help you run a more efficient and successful business! We make a huge effort to introduce you to quality MBPs who will truly *partner* with you and provide you with all the tools that you need to be successful.

As you can see from this simple exercise, doing business with NJGCA's MBPs can save you *double* or *triple* the amount of your annual dues, all while giving you the opportunity to support companies that *believe in the NJGCA mission* and are committed to NJGCA's efforts to serve *you!*

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FINISH

Great News for NJGCA Members

Group Health Coverage through NJGCA and Association Master Trust

Unless you're a large business with hundreds or thousands of employees, providing and administering a health benefits plan can be a huge burden. However, if you're a NJGCA member, you can now take advantage of a great group offering through the **Association Master Trust**

NJGCA member companies are eligible for comprehensive self-funded health and dental benefits through Association Master Trust. The Association Master Trust covers approximately 10,000 participants from thirteen trade and member association benefit trusts.

Qualifying NJGCA member firms can now enjoy all of the benefits of network services and modern claims administration. By being a member of AMT you're part of a large group, and have access the same great health benefits plans the big guys do!



*To learn more about AMT's self-funded health
benefits plans call today and ask for Joy
at 973-379-1090 ext. 229
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HORROR HIGHLIGHT

NJDEP and Compliance Testing

Unsuspecting Gasoline Station Operator Becomes a Victim to the NJDEP due to a Compliance Testing Company's Error

In 2007, an NJGCA member was a lessee dealer. Since his supplier owned the property and leased it to him, it was the supplier's responsibility to have the necessary testing performed annually in order to satisfy NJDEP regulations. The supplier contracted with a well known compliance testing company to perform all of the required tests each year.

In 2009, the dealer purchased the property from his supplier. At the time, the proud new owner of his gas station real estate made a decision to continue the contract with the same compliance testing company that his supplier had used. He negotiated a contract for services, and signed the deal. The new gas station owner thought he was making the right choice – keeping a compliance testing company that was familiar with the property and had been previously responsible for the testing at the station for many years.

In August of 2011, the NJDEP conducted a routine "compliance investigation" of the property. The UST registration and air permit were both in order and accurately named the new owner. However, upon checking testing records for the steel Underground Storage Tanks, NJDEP uncovered a test that was missing. The Cathodic Protection Test results were not available. Cathodic Protection Testing of steel tanks is required every three years. The last test result was from 2007, so the next three-year test should have been done during the fall of 2010.

Since it was now August 2011, the test was almost a year overdue.

NJDEP advised the dealer to call his testing company to see if they actually had tested the system but kept the results. When the owners called the testing company they found out that this test was "overlooked." There were no "test results" from 2010. Immediately (within a day) the testing company was on-site, performed the test, and happily gave a passing result to the owners. The owners contacted NJDEP and reported the passing results.

This is when the dealer called NJGCA for help because the NJDEP had advised the dealer that a Notice of Violation would be issued with a penalty for \$10,000.

NJGCA contacted the company that had failed to do the test back in 2010. It was explained that our member had purchased the property in 2009 and continued using the same company in order to avoid exactly what had just happened, a compliance test slipped through the cracks. It was expected that due to their familiarity with the property, and the fact that all of the previous tests had been performed on a timely basis, things would continue seamlessly in order to avoid running afoul of NJDEP. Being a reputable testing company and recognizing their mistake, they took responsibility for the penalty and offered to pay it once the formal paperwork and fines had been issued by NJDEP.

With NJGCA's assistance, the \$10,000 penalty was reduced to \$5,000. What we did not know back in August of 2011 was that this case would continue on for nearly three years before it would be closed. NJDEP never formally issued the reduction in penalty, and all parties simply pushed everything to the back burner.

In April of 2012, the dealer once again contacted NJGCA. He was continuing to work with NJDEP regarding the penalty and was still waiting for paperwork agreeing to the 50% reduction of the original \$10,000 penalty. Emails began circulating between NJDEP, our member, and NJGCA. To complicate matters, the NJDEP employee who was handling the case was being transferred to another department, causing the process to begin all over again.

An NJDEP supervisor was contacted by NJGCA and another request was made for the penalty reduction to be processed. Thankfully, very accurate notes were kept that recorded the details (with dates and times), of all phone calls and emails that transpired between all of the parties involved that were negotiating a resolution. Notes were also made as a reminder when follow-up phone calls or emails would be needed.

Another 18 months would pass before the dealer would hear anything further. In December 2013, the State of New Jersey engaged a collection agency who sent our member a "Delinquent Payment Notice" for the FULL \$10,000 -- completely ignoring the \$5,000 reduction in penalty that had been negotiated by NJGCA. This case was no longer being handled by NJDEP.

Communications began to go back and forth between the dealer and the collection agency with information detailing previous negotiations that had resulted in the \$5,000 reduction in penalty. Our member was holding steadfast to the agreement and the reduction that had been negotiated. Somehow in the process the collection agency determined that the dealer agreed to a compromise and would pay \$7,500. This of course was false.

NJGCA once again contacted the NJDEP supervisor that had intervened and approved the \$5,000 reduction

several years earlier. However, the supervisor now stated that he had no recollection of the case and very few notes to back up the agreed to reduction in penalty. The supervisor claimed that since the dealer had negotiated a compromise with the collection agency that he should just pay the \$7,500. Once again, the dealer remained steadfast and denied making a compromise with the collection agency.

Knowing that all collection agency phone calls are recorded, NJGCA insisted that recordings of any conversations backing up the collection agency's claim that the dealer agreed to a \$7,500 payment should be released. Our requests were ignored.

Fortunately, NJGCA Director of Member Services Debbie Hill, who had negotiated the original compromise several years earlier, still had all of the notes and emails from that negotiation. Both the notes and especially the emails proved that the supervisor had approved the penalty reduction of \$5,000.

Once again, the result of these notes proved to be extremely useful. FINALLY SUCCESS! NJDEP issued the revised and corrected penalty showing the \$5,000 reduction, and ended the intervention of the collection agency. The company who had performed the original test three years earlier and had already agreed to bear the responsibility was now able to step up to the plate and pay the penalty. The case has finally been put to rest. In the end, the dealer (who is a loyal NJGCA member), did not have to bear the cost of any penalty, which is true justice since he had done nothing wrong to begin with. Yes, regulations were violated, but it

was through no fault of his own, and the responsible party did the right thing and accepted the penalty for him. Aside from three years of frustration, aggravation, and a good lesson learned, our member was spared any financial burden.

What can be learned from this episode? First of all, **MEMBERSHIP IN NJGCA IS WELL WORTH THE INVESTMENT!**

Second, it pays to do business with a reputable testing company to meet all of the requirements demanded by cumbersome NJDEP regulations. A less reputable company would likely have skirted the responsibility in this matter.

Lastly, this episode demonstrates how important it is that you take responsibility and keep the proper records and documentation that show the tests that you have contracted for, and the results of each and every test. It is important to maintain this documentation for many years, and it is well worth your while to archive all records that deal with environmental and regulatory issues on your property.

This episode also shows how important it is to document and keep records of all communications between you and any enforcement authorities from the State of New Jersey. You will never know when you are going to need them.

As you will see stated in many NJGCA publications: ***"Membership In A Strong Trade Association Is The Best Investment You Can Make!"*** ■

A Message from Association Master Trust Chief Operating Officer, Harvey Mishkin

Has renewal of your group insurance coverage been denied?

We have recently been advised that the following business classifications may be at risk of losing their group health insurance plans upon renewal:

- two-person businesses whose employees consist of husbands and wives, and
- members of LLCs, Sub S Corporations and others that compensate members via surplus or dividend distribution (via form K-1).

All may face non-renewal of their group health insurance coverage.

It appears that this business structure no longer satisfies the requirements for group health insurance coverage. Instead, these people are being directed to the individual health insurance market or to the federal health insurance exchange (***The Marketplace***) operating in NJ as part of the Affordable Care Act. This unfortunate circumstance has caused much concern, since people that were happy with their previous plan and pricing must now endure change and consider plan options that may or may not satisfy their coverage and cost needs in the insured market.

WE HAVE A SOLUTION... The NJGCA Benefits Trust and its partnership with Association Master Trust (AMT). AMT offers great health benefit plan options, affordable pricing and extraordinary service through its self-funded Benefits Trust.

Active NJGCA members, including those facing non-renewal as discussed above, remain eligible for group health coverage through AMT, and should be able to find a plan that will provide:

1. Similar Benefits and Coverage to their previous plan
2. A Great Price (possibly less their previous plan), and
3. A Great Network of Providers (AMT contracts with Horizon Blue Cross Blue Shield of New Jersey for claim administration and Provider Network Access).

We urge you, and every NJGCA member, to take a look at what AMT has to offer. It's easy. Just contact NJGCA or AMT directly. The AMT staff will walk you through the plan options and help you find the best health plan to satisfy your needs. Call today!

***Association Master Trust
973-379-1090***

Save TODAY with NJGCA Member Benefit Partners!

THE NJGCA MEMBER BENEFIT PARTNER PROGRAM

NJGCA has been working hard to bring you and your business value through our Member Benefit Partners (MBPs). Hopefully you are already taking advantage of many money-saving plans offered by our Member Benefit Partners. In 2014, NJGCA will be producing a new MBP Brochure, which will be mailed to you directly. We are excited about the "new" brochure. In the meantime, we have added some new Member Benefit Partners.

Here is a list of our current MBPs:

4CAST OUTDO CORP - Gas Pricing Strategy Experts
ABLE-TECH - Computers, Financial Management, Video Systems
AFFINITY FEDERAL CREDIT UNION - Credit Union
ALFA-TRONICS - Petroleum Station Services, Specializing in Security for Dispensers
AMATO INSURANCE AGENCY - Business, Garage Liability, Home and Auto Insurance
ARCHER & GREINER - Legal Services
ASSOCIATION MASTER TRUST (AMT) - Health Insurance
ATS ENVIRONMENTAL SERVICES - Tank & Vapor Testing, NJ DEP Compliance
AUTOMOTIVE TRAINING INSTITUTE (ATI) - Education for a More Profitable Business
BATTERY CORP. - Back-Up Power and Site Management Solutions
BELLOMO FUELS - Gasoline and Diesel Suppliers
BRENNAN LAW - Environmental Law Specialists
BUCKEYE ENERGY SERVICES, LLC - Gasoline and Diesel Suppliers
C-3 TECHNOLOGIES - Tank and Vapor Testing, NJDEP Compliance
COASTAL EYEWEAR - Discount Prescription Eye Glasses and Contact Lens Specialists
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD - Legal Services
CROMPCO - Tank & Vapor Testing, NJ DEP Compliance
DANA TANK INSURANCE SPECIALISTS - Underground Storage Tank Insurance
ECO-LOGIC ENVIRONMENTAL - Tank and Vapor Testing, NJDEP Compliance
ENERGY MARKETING PARTNERS, INC. - Gasoline and Diesel Suppliers
ENVIRONMENTAL ALLIANCE, INC. - Environmental Remediation Services
ENVIRONMENTAL & GEOTECHNICAL SERVICES - Environmental Remediation Services
FIRST DATA CORPORATION - Credit Card Processing & Consulting
FOX ROTHSCHILD, LLP - Legal Services
GILL ENERGY - Gasoline and Diesel Suppliers
HAROLD LEVINSON ASSOCIATES - Convenience Store Distributors
HOUGH PETROLEUM - Gasoline and Diesel Suppliers
JW SCOTT - Petroleum Equipment Sales, Service and Repair
KOPA - Efficient Energy Lighting Solutions
LIBERTY / EWING OIL - Gasoline and Diesel Suppliers
MEADOWBROOK INSURANCE GROUP - Workers Compensation Insurance
P3 GENERATOR SERVICES, INC. - Generator Sales, Service and Rentals
P.F.I. INC. / NORTHWEST PETROLEUM - Gasoline and Diesel Suppliers
PPC LUBRICANTS/CASTROL OIL - Motor Oil and Lubricant Supplier
PRESTIGE ENVIRONMENTAL - Environmental Remediation Services
SALOMONE BROS. INC. - Tank and Pump Replacement & Generator Installation and Service
SERVICE STATION VENDING EQUIPMENT - Service Station Vending, Air & Vacuum Systems
SPARK CONTRACTORS - Tank and Pump Replacement & Generator Installation and Service
T & R OIL COMPANY - Gasoline and Diesel Suppliers
TANKNOLOGY - Tank and Vapor Testing, NJ DEP Compliance
TC PETROLEUM - Motor Oil and Lubricant Supplier
TMP ENERGY SOLUTIONS - Discounted Electricity and Natural Gas
TRINITY SOLAR - Solar and Generator Power
UNIFIRST - Uniform Service and Station Supplies



GENERAL COUNSEL CORNER: PART 1

BY PETER H. GUNST, ESQUIRE



Below Cost and Predatory Pricing and Supermarket Discount Programs

Many states have laws prohibiting below cost sales, some limited in scope to gasoline and others generally applicable to various forms of merchandise. In addition, most state antitrust laws generally prohibit predatory pricing that inhibits competition within any identifiable market.

Recent state court litigation in California demonstrates just how difficult it is to use those laws to attack supermarket gas discount programs, even when those programs result in what would appear to be below cost pricing.

The plaintiff in Dixon Gas Club, LLC v. Safeway, Inc. charged that Safeway had engaged in illegal below cost pricing through the use of various discount programs in selling gasoline at its supermarket locations.

Initially, the plaintiff met with some success, obtaining in May 2012 a preliminary injunction prohibiting Safeway from posting prices at its Dixon, California market which were below Safeway's total cost, including the three cent per gallon discount that Safeway provided to its Club Card members.

The plaintiff was less successful at the full trial of its claims last year, which resulted in the court releasing an extensive opinion that dismissed the plaintiff's suit with prejudice.

The court found that the evidence demonstrated that Safeway's retail gasoline price often fell below its actual cost, after figuring in its customer discounts. It concluded, however, that that evidence was insufficient to establish claim for illegal below cost pricing.

That was so, said the court, because Safeway's Grocery Rewards program was intended to boost its grocery sales rather than its gasoline sales.

For that reason, the court said, Safeway could properly charge the cost of its discount program not against its gasoline sales but instead against the cost of its grocery sales. As a result, the gasoline side of Safeway's business was entitled to a credit, which resulted in elevating its gasoline price above its cost of gasoline sales.

The court concluded:
Here the various discounts in question were authored for the purpose of attracting grocery customers; their purpose was to promote grocery sales, and thus they are a "selling cost" of the grocery business, just like grocery advertising is.

In so holding, the court compared Safeway's direct sales of gasoline with partner programs between supermarkets and gasoline retailers, under which a supermarket will reimburse service station operators for honoring price discounts earned by the customer through his or her grocery purchases.

The court reasoned that "no one would argue that the fuel station in such an arrangement is selling below cost because only the customer's payment should be recognized." The fact that Safeway itself was selling the gasoline, the court concluded, simply made no difference.

The plaintiff's fallback position was that even if Safeway's accounting analysis saved it from liability for below cost pricing, its activities were still predatory because of its unfair impact on competition in the marketplace. Plaintiff's argument in effect was that Safeway was "leveraging" its position in one market to harm competitors in a separate market.

Here, the plaintiff's problem was a failure of proof. Such a claim would require detailed economic proof of identifiable geographic and product markets, and a significant impact on competition throughout that market.

Dismissing the plaintiff's anecdotal evidence and its failure to produce any economic expert testimony, the court said:
There are no market definitions, no market share evidence, no market structure analysis, no assessment of the extent or risk of market power; nothing, zip, nada.

The court's ruling is on appeal. It demonstrates, however, just how difficult it is to attack grocery discount plans and the like through state laws that probably never envisioned such relatively sophisticated programs.

*

pgunst@agtlawyers.com
To access more articles by the Service Station Dealers' legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst Thomas, P.C. website at: <http://www.agtlawyers.com/resources/petroleum.html>

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MEMBER SPOTLIGHT INTERVIEW

This issue, we shine our Member Spotlight on Mike Zalis, owner of Green Village Garage.

Start by telling me a little bit about yourself. How and when did you first get involved in the industry?



Back in the '80s and '90s, this location was owned by Eddie Sagendorf, a good friend of former NJGCA Executive Director Jerry Ferrara. My father worked here with Eddie, and from the time I was a teenager, I was here too, pumping gas. In 2000, Eddie retired and my parents, Glenn and Diana, took over. I had just graduated from high school, and I was on my way to Seton Hall to pursue a Business Degree. After graduating from college, I got into the business full-time; first as a mechanic, and then in 2007, I starting to get more involved in the front office and take on more of a managerial role.

In 2008, we transitioned from a franchised location (Sunoco fuel being supplied by Mohawk), to fully independent. This move alone (switching to an independent) increased my fuel volume 40%. We got fuel more regularly, with less constraints, better flexibility, and higher margins.

While this move provided a significant boost to the gas-side of the business, my decision in 2009 to enroll in ATI's 30-month Re-Engineering Program really brought my repair business to the next level. Over the course of the 2½ year program, my repair sales more than doubled, and my business grew from a 3-man shop to a 7-man operation.

Wow, that's incredible! As you know, Automotive Training Institute (ATI) is an NJGCA Member Benefit Partner. What can you tell other shop owners who have been trying to find ways to boost their business?

I would absolutely recommend ATI. I truly cannot say enough good things about them. Their Re-Engineering Program did more for my business than I could ever imagine. Even as an alumnus of the program, my coach has helped me take my business up another notch. I always look forward to my weekly phone call with other ATI participants so that we can bounce ideas off each other and discuss whatever issues we may be facing. Not only does ATI focus on strategies to save money, increase efficiency and identify new revenue streams within the business, but by connecting you with other participants throughout the nation, they provide small business owners the opportunity to benefit from the support of the entire ATI community.

What a valuable service! How else have you seen your membership in NJGCA benefit your business?

I feel the same way about NJGCA that I do about ATI. NJGCA has played an integral part in the continued success of my business. NJGCA has been by my side every step of the way as my business has grown. For example, Debbie helped me get registered as

a PIF. When I hire new guys and they want to attend the Emission Technician Education Program (ETEP) or get certified as Emissions Repair Technicians, NJGCA is right there to make it happen. And as DEP regulations change, NJGCA always helps simplify the process.



College might not have taught me how to run a repair business, but it did help me to realize that I can't run a business on my own. Recognizing when I need help, and knowing where to look to find it -- that's been one of the critical elements of my success. And throughout this whole experience, NJGCA has been one of the most useful tools in my toolbox.

Is there anything that you would like to see NJGCA do more of? How can we continue to improve the services that we offer to Members?

As I mentioned before, I learn something new in each weekly phone call I have with my ATI support group.

I would love the opportunity to have the same types of discussions with my fellow NJGCA members. I think it would really benefit the membership if NJGCA was able to coordinate a couple of informal gatherings so that people could get together and discuss whatever is on their mind. My ATI team includes shop owners from all over the country, who wouldn't be able to provide suggestions on who to call if I need to repair a pump, replace a tank or change suppliers. An NJGCA-sponsored event would provide the perfect forum for all of this valuable information to be shared between local small business owners. (*Editor's note: please see page 6 for a schedule of meetings that NJGCA is hosting this spring.*)

What do you do outside of work? Are you active in local community programs? Do you donate your time or money to any particular causes?

Aside from trying to spend as much time with my wife and two-year-old daughter as possible, I am also the Captain of the Green Village Fire Department, where I've been a member for 10+ years. I am one of the main daytime officers, and since I live locally, I respond to calls in off-hours as well. In addition to donating to Firehouse fundraisers, the shop also works on their equipment and helps with breakdowns.

Finally, as you can see, the shop sponsors a number of local recreational tee-ball teams. Go Mets!



Where do you see the industry going? How do you think it will change in coming years? Are you concerned about any legislative/regulatory issues that might affect your business?

The one thing that I definitely see happening in the near future is more electric cars and more diesel. I would not be surprised by a possible phase-out of gasoline and shift to some sort of alternative fuel. For that reason, I have done some hybrid service technician training myself, and I have mechanics at the shop who have also taken classes focusing on hybrid servicing and repairs.

Speaking of repairs, I have been closely following the Right to Repair issue in Massachusetts and in New Jersey and I think that NJGCA has done a commendable job of advocating for the small business owners on this issue. While I am thrilled that progress has been made, I still see far too much evidence of manufacturers trying to find any roundabout way of pushing out the independent. The reality of the situation is that we exist because dealers do such a bad job... Their customer service is terrible and they price themselves out of the market, at a level that's not even fair to the customers. Without a real solution to address this issue, consumers and independent shop owners will continue to suffer. I know how much progress NJGCA has made on this issue in recent years and I look forward to joining NJGCA's efforts to finally pass a Right to Repair law in New Jersey. ■



RESEARCH STUDY ON CRIME AT GAS STATIONS

You may recall that NJGCA has been working with a Professor at John Jay College and his team of research assistants to conduct a study on crimes committed at gas stations and convenience stores.

The project aims to identify how different variables (such as degree of lighting, types of security, accessibility to major roadways, nearby business establishments, and the surrounding area of the station) make a station more or less vulnerable to crime.

Through this project, NJGCA and the industry will learn how to reduce economic losses due to crime, reduce personal injury and harm associated with crime and violence, improve working conditions and quality of life, and enhance the relationship between gasoline station owners, employees and the police.

This project will rely on participation from stations that have been victims of crime, and stations that haven't been victimized, so that we can make comparisons and draw significant conclusions.

For those who have been victims of crime, we are interested in violent crime (assault, robbery, homicide) and property crime (theft, and vandalism, but not shoplifting).

This is where we need your help! In the next week or so, you should receive our survey in your inbox. Your participation is critical to the success of this project, and we are confident that the study will produce recommendations that will help you protect your business, your profits and your employees.

You will continue to receive updates in the weekly *Road Warrior* emails about this project. Thanks in advance!



Update for Emission Repair Facilities & Technicians

By Debbie Hill

I recently attended a meeting with the New Jersey Department of Environmental Protection, New Jersey Motor Vehicle Commission, Worldwide Environmental Staff, New Jersey Education Providers and Other Stakeholders to discuss proposed 2015 curriculum considerations.

The Emission Technician Education Program (ETEP) program was implemented in 1999 with sections 1-4. In 2003, Section 5 (OBDII) was added, and in 2009, sections 6 and 7 were added (Advanced OBD and Light-Duty Diesel).

The current proposed curriculum under consideration includes the following (NEW Sections to be added):

- ETEP Section 8: Advanced Gasoline Technologies
- ETEP Section 9: Advanced Light Duty Diesel Technologies
- ETEP Section 10: Hybrid/Electric Technologies

Expected Hours of class time required – 24 to 32 hours (32 hours will be the maximum)

The syllabus for the update has not been released, but is expected in the next few months.

Once the syllabus is released, NJGCA will submit a curriculum for approval to the New Jersey Department of Education. NJGCA has participated in the ETEP Education Program (offering Day and Night classes) as an alternative to ASE testing. We also offer discounts to NJGCA members – vs – NON-Members of NJGCA.

The proposed update will take effect in 2015. Emission Repair Technician licenses expire over a five year period. Each licensee will be required to be Re-Certified in the new proposed sections -- 8, 9 and 10 (as listed above) -- prior to the date of renewal of your Emission Repair Technician License.

If you have any questions regarding your Emission Repair Facility License or Emission Repair Technicians License, please call Debbie Hill at NJGCA (973-376-0066) or email: debbie@njgca.org.



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LEGISLATOR THE SPOTLIGHT

NJGCA has seen many legislative successes over the past few years. We'd like to take some time to tell you a little bit about the men and women who have been instrumental in helping your small business prosper.



Assemblywoman Alison McHose

The Honorable Alison Littell McHose has been serving in the state Assembly for over ten years, first taking office in 2003. She represents the 24th legislative district, geographically one of the largest in the state. It comprises the entirety of Sussex County as well as a large portion of Warren County and the town of Mount Olive in Morris County. In November she was reelected to another term by a landslide, receiving more than twice the number of votes as her opponent.

She has long been a member of the Assembly Republican Leadership team, serving as Assistant Republican Whip, Assistant Minority Leader, Deputy Conference Leader, and most recently, Deputy Republican Whip. She is a member of the Appropriations Committee and the Consumer Affairs Committee.

The intersection of politics and family has certainly played a big role in her life. Her grandfather served as state Senate President in 1951. Her mother was Chair of the New Jersey Republican Party and her father was a state senator. In fact, she served in the Assembly at the same time as her father, making them the first father-daughter team to serve simultaneously. In addition to being the first woman to represent her district, she is the first state legislator to give birth while in office. Her husband is a member of the National Guard, currently serving in Afghanistan.

Asw. McHose is a committed conservative voice in the Assembly. Every business struggles day in and day out with the burden of taxes and regulation. Assemblywoman McHose has consistently used her time in office to fight to lift those burdens. She has introduced a bill that would lower the state sales tax from 7% to 6% (New Jersey's sales tax is one of the highest in the nation) as well as a bill to phase out the estate tax. She has even sponsored a bill that would nullify "Obamacare" in New Jersey.

A quick glance at the list of bills she has introduced just in the first few months of this new Legislature makes it clear that she advocates for transparency in all levels of government and is a staunch defender of the Constitution.



Over the last decade or so, top credit card companies have created a virtual monopoly in this country that has allowed them to suffocate small businesses like yours with ever increasing credit card fees.

Thankfully, Asw. McHose has taken the lead on the issue and joined on as a sponsor to A-651, which will return the forces of competition to the marketplace. Businesses and their consumers will benefit by forcing the credit card networks to compete fairly against one another.

NJGCA again thanks Assemblywoman McHose for all her support for the small business owners of this state. NJGCA has more issues before the Consumer Affairs Committee than almost any other committee in the Legislature. We look forward to continuing to work with her for a long time to come. ■

By Jacy Lance



Since our debut in 2007, NJGCA *On The Road* has brought you updates and timely information on changes in the energy and automotive industry. From ordinary, everyday sources of energy like coal and oil; to renewable resources like solar and wind; to advancing alternative energies like hydrogen. We have focused – and will continue to focus – on all of these technologies and how they affect the transportation industry.

Each new issue of *On The Road* will offer our readers news from around the energy/transportation industry, how it may affect the automotive landscape, and your small business. If you have any questions or comments on what you review in these quarterly pieces, please feel free to reach out to NJGCA.

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UPDATE: ELECTRIC VEHICLES AND PLUG-IN HYBRIDS MOST ANTICIPATED ELECTRIC VEHICLES AND PLUG-IN HYBRIDS

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Modern advances in battery design and innovation are making it possible for automakers to allocate serious resources to developing new electric vehicles and bringing them to market. Though a handful of fully-electric vehicles are on the market today, researchers continue to work on improving battery longevity and creating processes that improve vehicle charging times. Plug-In Hybrid Electric Vehicles (PHEV), an intermediate step toward full vehicle electrification, are further blurring the lines between traditional vehicles and Electric Vehicles. This is easily among the fastest-growing, fuel-saving technologies today, and auto technicians will need to be knowledgeable on how these vehicles can safely be repaired.

Electric vehicles and plug-in hybrids are inching closer to the mainstream. Plug-in electric and hybrid vehicle sales nearly doubled in 2013, and EV production worldwide is projected to increase by 67% this year. Almost all automakers have at least one electric vehicle in their portfolios, and some truly amazing options are set to hit the market in 2014-2015. Everyone has their favorites, but there are a number of new EVs and plug-ins that are really generating excitement within the industry.

1. BMW i8 - The highly anticipated BMW i8 plug-in hybrid electric car is entering production in April, with customer deliveries beginning in June. Its electric-only range is decent at 23 miles, but it gets 112 mpg and can go from 0 to 62 mph in 4.4 seconds. It's set to hit the European market first and is reportedly already sold out, so this one definitely tops the list.

2. Tesla Model X - The Tesla Model X crossover offers an all-electric alternative to standard three-row minivans and SUVs. With an 85 kWh battery option that equates to more than 250 miles in range, the Model X can go farther than any other vehicle on our list, and it has some pretty sweet falcon doors, too. With the Model X expected to ship by the end of this year and the mass-market Model E in the works, Tesla is showing no signs of slowing down. Its planned battery "Gigafactory" will support the manufacture of 500,000 electric cars per year and will also produce batteries for energy storage.

3. Volkswagen XL1 - Volkswagen only plans to make 250 of these hand-built, plug-in-diesel vehicles as test units, but the XL1 made the list because of its sleek and smart engineering. The super aerodynamic plug-in gets its name from the fact that it uses less than one liter of fuel to go 100 kilometers (equivalent to 235 mpg). It's also up for World Green Car of the Year.

4. BMW i3 - While not as sexy or sporty as its high-end cousin, the i8, the BMW i3 offers solid range at a reasonable price -- meaning that it may fair well in the mass market. At around \$40,000, the i3 can travel up to 100 miles on a single charge and can go from 0 to 60 mph in 7 seconds.

5. Kia Soul EV - Those who are sold on the boxy car trend are sure to love the forthcoming Kia Soul EV. Set to hit the market late this year, the Soul offers long range for a low price. It is expected to travel 120 miles on a single charge at a reported price of only \$35,000!

6. Volkswagen E-Golf - The standard Volkswagen Golf is one of the most popular small cars in the world, and the E-Golf looks strikingly similar -- except with respect to miles per gallon. The E-Golf is expected to travel 90 miles on a single charge and is Volkswagen's first electric car to hit the mass market.

UPDATE: NATURAL GAS/PROPANE COMPRESSED NATURAL GAS VEHICLES PICKING UP STEAM

Natural gas vehicles (NGV) are not a new phenomenon. Many company and industrial fleets are powered by natural gas. Most of these vehicles can be fueled by two different versions of this fuel: compressed natural gas (CNG) or liquefied natural gas (LNG, also known as propane auto-gas). Both are clean burning and efficient alternatives to gasoline and diesel powered cars. Natural gas powered vehicles are incredibly popular and account for over 12 million vehicles on the road world-wide. CNG and LNG are typically cheaper than gasoline and other motor fuels, while also delivering better profit margins.

This quarter (January-March), the push toward compressed natural gas (CNG) vehicles continued to gain momentum, as major automakers unveiled products and politicians voiced their support for the technology. In February, Chevrolet and Honda renewed their commitments to compressed natural gas. At the Chicago Auto Show, Chevrolet rolled out bi-fuel versions of the 2015 Silverado 2500HD and 3500HD trucks. The bi-fuel setup, which burns CNG and gasoline, will be available on almost all configurations of those trucks. Honda launched the 2014 Civic Natural Gas, which it calls, "the only factory-produced natural gas-powered vehicle from a major automaker."

Ford began rolling the CNG-capable 2014 F-150 truck off the line in November. This vehicle, along with Chrysler's 2013 RAM 2500 CNG, has found a home in the state of Oklahoma's truck fleet. And the rollouts also have political support. Oklahoma Governor Mary Fallin is leading a bipartisan coalition of 22 states seeking to use more CNG vehicles in their fleets. Senator Jim Inhofe (R-OK) has called on Congress to encourage the use of vehicles that run on "America's fuel," and President Obama mentioned the importance of CNG vehicles in his State of the Union Address in January.

Automakers acknowledge that the CNG trend is a small one, but they say it is a sensible one for fleet owners who want to reduce operating costs. Today, compressed natural gas is running at about 40% of the cost of gasoline, according to Jeff Luke, GM's executive chief engineer for trucks. "If you run mostly on natural gas, that's a pretty significant difference. For fleet owners, it can add up."

UPDATE: HYDROGEN/HYDROGEN FUEL CELL CALIFORNIA TO OPEN 68 HYDROGEN FUELING SITES BY 2016

Vehicles powered by hydrogen, one of the most abundant elements in the universe, have long been a focus of automotive engineers. Two types of hydrogen-powered vehicles commonly exist today: an internal combustion engine fueled by hydrogen, or a fuel-cell powered car driven by a hydrogen reaction.

Hydrogen seems to be the perfect fuel. It's the most common, lightest element in the universe, and has the highest energy content per unit weight of all fuels -- three times that of gasoline, according to the fuel-cell technology site Fuel Cells 2000. It is combined with oxygen in a hydrogen fuel-cell to produce electricity, which can then power a battery to run a vehicle. The only byproducts? Water and heat, with power produced quietly and efficiently. You can't get much cleaner and simpler than that.

But of all the alternative fuels out there, hydrogen is the least accessible. There are only nine fueling sites, all in California, and no hydrogen-fuel-cell-powered vehicles currently available for sale to the public. This is despite President George W. Bush's \$1.2 billion investment in the technology back in 2003. Yet hydrogen may soon get a much-needed boost.

California has set an ambitious goal to open 68 hydrogen fueling sites by 2016. And, just announced recently, Kalibrate Technologies Data Solutions -- formerly known as KSS Fuels -- has just been tapped by the federal government to determine potential locations for hydrogen fueling locations in California. Kalibrate, which specializes in petroleum fuels pricing and location analysis, has 20 years' experience building fuel network planning models, and had already surveyed most of the 8,500 gas stations in the state of California on some 80 different data points -- number of fueling positions, lot size, store size, fuel volumes, sales and more. So it brought a lot of real-world knowledge about the existing fueling infrastructure as well as what factors feed into creating a high-volume location.

But how do you forecast a site for a fuel that has not even gotten out of the gate, and for consumers who are not yet even on the road? It will surely be fascinating to watch the site planning process develop over the next 12 months, and to see this fuel alternative become a reality.

UPDATE: ETHANOL / BIOFUELS / BIODIESEL

GROWTH OF E-85 SLOWS TO A CRAWL

Ethanol, bio-fuel and biodiesel are currently in widespread use by consumers around the country. Ethanol is now used in ordinary gasoline in the form of E10 (in some cases E15), which is a motor fuel blend made up of 90% gasoline and 10% ethanol (or 85% gasoline and 15% ethanol). Ethanol is also found in E85, a motor fuel composed of 85% ethanol and 15% gasoline. At its most basic level, ethanol is a form of bio-fuel -- it is a liquid primarily comprised of alcohol derived from biomass.

A recent article in the OPIS Oil Express reported that while E85 is now marketed beyond traditional ethanol territory, the growth in the number of sites offering it has substantially slowed, according to the US Energy Information Agency (EIA). The EIA pointed out that from 2007-2011, the number of E85 sites doubled from 1,229 to 2,442. But from 2011-2013, the number of E85 sites increased only 7%, to 2,625 -- just less than 2% of the approximately 156,000 retail motor fuel outlets in the United States. (OPIS' retail station database puts the number of US stations closer to 130,000, and would therefore make E85 site's share of the population slightly higher than 2%).

The low growth rate for locations that sell E85 is not a good sign, especially after David Whitehart, Marathon Petroleum Corp. director of product supply and optimization, confided to the recent National Ethanol Conference that demand for E85 has been a "disappointment."

Back in 2007, the availability of E85 was focused on five states -- Illinois, Indiana, Iowa, Wisconsin and Minnesota -- where ethanol was readily available. Minnesota currently leads the nation with 336 E85 sites. In recent years, however, the E85 retail network has expanded beyond the Midwest, serving the approximately 5% of the US light-duty vehicle fleet capable of running on E85. Since 2007, New York, California, Colorado, Georgia and Texas have experienced rapid growth of E85, and the Midwest share of the E85 retail market has fallen from 54% to 36%.

In 2007, there were 9 states with no E85 stations, and today there are only two -- Alaska and New Hampshire. ■

TRAINING CLASS SCHEDULE

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NEW JERSEY EMISSION INSPECTOR TRAINING

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Class Date: Wednesday, May 21, 2014

Arrive: 7:00am

Lunch Served: 12:00pm (Pizza and Soda)

NJMVC test: 1:00pm

Class Fee:

• **NJGCA Members** - \$250.00

• **Non-members** - \$300.00

Manuals are included and payment is due upon registration. We accept credit cards.

PLUS: License Fee of \$50.00 - Bring a check made payable to NJMVC

To register, contact Debbie Hill at debbie@njgca.org or call 973-376-0066.



A SHOT IN THE DARK

A customer filling up at a Circle K convenience store in Tallahassee, Florida was the unintended victim of a gunfight that broke out in the parking lot. He sued both Circle K and its gasoline supplier, Shell Oil, for negligence. A federal district court considered the sufficiency of his claim earlier this year in *Cain v. Shell Oil Co. et al.*

The court had no difficulty in finding that the wounded customer could not assert a claim against Shell, which was Circle K's franchisor as well as gasoline supplier. Like many courts before it, the district court decided that a mere franchise relationship is not a sufficient basis for holding a franchisor reliable for its franchisee's negligence.

The customer, in arguing that the franchisor exercised sufficient control over the franchise premises to be held jointly liable, pointed to provisions in the franchise agreement imposing minimum operational standards on the franchisee. The court, however, while conceding that "these conditions may be interpreted to impose some control in the broadest sense over how the store operated," concluded that they did not give Shell control over the specific means utilized by the franchisee to satisfy the contractual standards.

More surprising was the court's treatment of the customer's claim against the franchisee. Circle K argued that, as a matter of law, the shooting was not foreseeable because the customer's injuries were caused by "a freakish and improbable chain of events" that were "utterly unpredictable in light of common human experiences."

Rejecting Circle K's claim to an absolute defense against liability, the court found that the circumstances were sufficient to permit a jury to decide whether Circle K should bear legal responsibility for its customer's injuries.

The court pointed out that the c-store was located in a high crime area, which was particularly dangerous late at night after the neighborhood bars closed.

Further, the Tallahassee police department had contacted Circle K to express concerns regarding the issue of crowd control at the store and its adjoining parking lot. The police department had requested and received permission from Circle K to "basically shut the store down" and "turn the lights off"

when conditions were particularly bad, with the hope that this would discourage a crowd from gathering in the store's vicinity.

Although the police department had not acted on the evening of the incident, the store manager had been warned by an employee on duty of a gathering crowd, but had insisted that the lights remain on and the store remain open.

Based on these circumstances, the court concluded that the customer had "presented sufficient facts for a reasonable jury to find that the shooting was foreseeable and not merely a freakish, improbable, or extraordinary event."

The lesson appears to be clear. A c-store operator has a positive duty to take reasonable steps to avoid the risk of harm to its customers, even if that risk of harm is not obvious or readily ascertainable. It may not be sufficient to argue that a shot in the dark is either a "freakish" or "extraordinary" event.

*

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To access the latest articles by the Service Station Dealer's legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the *Astrachan Gunst & Thomas P.C.* website at:

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