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November 2012



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**THE FUTURE OF FUEL**

Alternative fuels are becoming increasingly important as consumers' disposable incomes shrink, gas prices rise, fuel efficiency standards and emission requirements are established, and our desire to end dependence on imported oil increases. However, one deciding factor in an alternative fuel's emergence into mainstream use will be the cost of building the infrastructure to support it.

"It's truly a case of the chicken or the egg. What comes first — the infrastructure or the vehicle?" said Norman Turiano, senior manager of fuel marketing, Wawa Inc. "Retailers need vehicles there first so they can build the infrastructure and get the return on investment. Automobile manufacturers want the infrastructure there first to justify building the vehicles. We are slowly moving forward on both fronts, but critical mass has yet to have been achieved."

Each alternative fuel has its own advantages and disadvantages. For example, electric vehicles are the easiest to deploy in terms of access to infrastructure, but not support the business model, he said.

"CNG and LNG have the advantage in domestic abundance, transmission infrastructure and low cost for consumers. Hydrogen appears to have the disadvantages in those areas, but technological advances could change that," Turiano noted. "In fact, we don't know what future advances in technology may still change the landscape. Look at how fracking changed the economics of natural gas in only the last 14 years."

Retailers who yearn to be on the frontlines of the fuels market must be aware of all emerging fuels and understand the geopolitical issues. "To really take

advantage of the future fuels, you have to keep aware of new developments, resolve the issues in advance and be prepared when the opportunity arises to exploit them,” he said.

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### **PROPOSED TIRE BILL**

*Attached is a draft bill that will be introduced in several states next year. It was introduced in New York last year and did not pass. We are looking for the dealer opinions on the bill.*

#### DRAFT - Tire Repair Legislation

##### Permanent Repair of Passenger and Light Truck Tires

It shall be unlawful for an automotive or tire service provider to repair a passenger or light truck tire in a manner not in accordance with [section of proposed law].

##### Definitions:

Automotive Service Provider – [existing state definition, if any]

Tire Service Provider - [existing state definition, if any]

Tire -- A pneumatic passenger or light truck tire intended for use on public roads by motor vehicles with a gross vehicle weight rating of ten thousand pounds or less.

Patch —A component intended by the manufacturer to permanently cover and seal damage to the interior surface (opposite the exterior tread area) of a passenger or light truck tire by application to that tire interior surface.

Rubber Stem - A rubber component intended by the manufacturer to permanently fill and seal damage to the

tread, belts and other plies of a passenger or light truck tire through insertion into a 0.25-inch or less diameter/width puncture, cut or other breach through the tread area of a passenger or light truck tire.

Combination Repair-Unit - A single component comprised of a patch and a rubber stem intended by the manufacturer to permanently perform the functions of separately-applied patch and rubber stem components, as defined above.

##### Permanent Tire Repair Requirements

Automotive and tire service providers shall perform only permanent repairs of passenger and light truck tires in a manner that includes the following steps and criteria;

- The tire is demounted and fully removed from the rim/wheel.
- A visual and tactile inspection is conducted of the tire interior and exterior surfaces.
- A puncture, cut or other breach through the tire tread is repaired using a patch and rubber stem, or a combination repair unit, intended by the manufacturer(s) for such purposes.

Automotive and tire service providers shall not perform repair of passenger and light truck tires that exhibit any of the following conditions

1. Any area of the tread is equal to or less than two-thirty-seconds of one inch (2/32-inch) tread depth.
2. Any puncture, cut or other breach of the tire is through a sidewall or passes through a shoulder/belt edge area.
3. Any puncture, cut or other breach of the tire exceeds 0.25-inch diameter/width.
4. Any patch overlaps (or will overlap, if a repair is attempted) any other patch.
5. Any pre-existing repair that is not in compliance with this [statute/law].

Penalty

An automotive or tire service provider that performs a non-compliant tire repair to a passenger or light truck tire in (STATE) shall be subject to a fine of \$500. (May be adjusted to align with state. law or practice.)

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**A DIFFERENT KIND OF DRIVE-OFF**

Business Insider magazine noted that distracted drivers are increasingly leaving with the gas nozzles attached to their cars.

"I'd say this would happen at least once a month," said Kirk McCauley, who owned a gas station in Beltsville, Maryland, for 31 years. "I've run people down four miles away. They had no idea the nozzle was in there."

According to the U.S. Energy Information Administration (EIA), 41 million people fill-

up their vehicles each day nationwide, so odds are in favor of the occasional hose breakaway.

The reason for most nozzle drive offs: Distracted drivers on a cell phone. Invariably when consumers drive off with the gas nozzle it's because they were on the phone. a point with which McCauley agrees.

"The phone rings, and they get in the car and go," he said.

While gas drive-offs don't pose a significant danger — each pump has a break-away device that detaches the hose if it is pulled with sufficient force, and today's dispensers feature automatic shutoff valves — it still causes impacts the gas station, with a new breakaway device costing up to \$100. But if the nozzle is damaged, the repair could cost up to \$400.

As for those motorists who drove away and

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later realized the nozzle remained in their gas tank, McCauley said many did not come back. "I think some people are scared of getting in trouble," he said.

Those who did return either had contacted their insurance company to settle the bill or paid for the repair out-of-pocket.

"They were embarrassed more than anything," McCauley said.

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## GOING GREEN

Do you claim your products and services are "eco-friendly" or they possess some other environment-related quality? If you do, the Federal Trade Commission (FTC) has released an updated set of what they refer to as their "Green Guides" and you might want to become familiar with them.

Technically, the FTC does not regulate environmental claims. The Green Guides are not regulations. The Green Guides describe the types of environmental claims the FTC may or may not find deceptive under Section 5 of the FTC Act.

Under Section 5, the agency can take enforcement action against deceptive claims, which ultimately can lead to Commission orders prohibiting deceptive advertising and marketing and fines if those orders are later violated. There is no private right of action for enforcing deceptive claim provisions.

The guides apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals. The guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication,

through words, symbols, logos, depictions, product brand names, or any other means.

If you are thinking, "I do not sell my goods and services to consumers and therefore I do not have to worry about this," the FTC notes the Green Guides also apply to business-to-business transactions.

Among the "claims" covered by the guides are General Environmental Benefit Claims; Carbon Offsets; Certifications and Seals of Approval; Compostable Claims; Degradable Claims; Free-Of Claims; Non-Toxic Claims; Ozone-Safe and Ozone-Friendly Claims; Recyclable Claims. Recycled Content Claims; Refillable Claims; Renewable Energy Claims, Renewable Materials Claims; and Source Reduction Claims.

According to the FTC, the Green Guides:

- advise marketers not to make an unqualified degradable claim for a solid waste product unless they can prove that the entire product or package will completely break down and return to nature within one year after customary disposal;
- caution that items destined for landfills, incinerators, or recycling facilities will not degrade within a year, so marketers should not make unqualified degradable claims for these items; and
- clarify guidance on compostable, ozone, recyclable, recycled content, and source reduction claims.
- contain new sections on: 1) certifications and seals of approval; 2) carbon offsets, 3) free-of claims, 4) non-toxic claims, 5) made with renewable energy claims, and 6) made with renewable materials claims.
- do not address use of the terms "sustainable," "natural," and

“organic” either because the FTC lacks a sufficient basis to provide meaningful guidance or wants to avoid proposing guidance that duplicates or contradicts rules or guidance of other agencies. Organic claims made for textiles and other products derived from agricultural products are covered by the U.S. Department of Agriculture’s National Organic Program.

The Green Guides include examples of how the FTC would apply their analyses. The FTC also updated its website to provide additional information on how to understand and evaluate the Green Guides. It can be found at: <http://business.ftc.gov/advertising-and-marketing/environmental-marketing>.

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### **VALERO STOPS SELLING WHOLESALE GAS IN CALIFORNIA**

Gasoline woes continue in California as the largest refiner in the United States stopped sales as prices at the pump continue to climb.

On Thursday Valero Energy Corp. temporarily stopped selling gasoline in California's wholesale market as a string of refinery outages resulted in a regional gasoline shortage.

The lack of gasoline has pushed California's wholesale, or spot, prices of \$4.10 a gallon Thursday, a 39-percent increase from Aug. 6, the day an explosion shut down Chevron Corp.'s 245,000 barrel-a-day refinery in Richmond, Calif. Those prices don't include taxes, transportation and other fees, which typically add another 70 cents or more before the gas reaches the pump, according to Market Watch.

Valero said it will meet its current contracts

to supply gasoline, but won't sell into the spot market. Company spokesman Bill Day told the news outlet resumption of spot sales "will depend on markets and inventories." The company also will continue to supply gasoline to its branded and licensed retail stations in the state, Day added.

As CSNews Online previously reported, gas station owners in the greater Los Angeles area have begun to shut down fuel pumps as wholesale fuel prices reached record levels.

Two months after the fire, Chevron's Richmond facility is only operating at reduced rates. Supplies have been further limited by a weeklong shutdown of a refining unit in late September at Exxon Mobil Corp.'s 149,500 barrel-a-day refinery in Torrance, Calif.

In addition, Phillips 66 said yesterday its 120,000 barrel-a-day refinery in San Francisco was going to reduce production for an unspecified amount of time due to planned maintenance, according to the report.

All the supply issues have led to dramatic swings in gas prices. Gas stations in the Los Angeles area were selling gasoline October 4 for \$4.45 a gallon, on average, up 11 cents from the start of the day at midnight, according to GasBuddy.com.

In San Francisco, motorists were seeing \$4.57 a gallon, on average, up more than 12 cents a gallon, or 2.8 percent since midnight, according to the online site.

"This is a serious problem," Richard Hastings, macroeconomy strategist at Global Hunter Securities, told Market Watch. "Five dollars a gallon is a plausible concept at this point, and it won't be \$5 at the airport filling station -- it will be all over the place."

**SWIPE FEE REFORM GETS  
DAY IN COURT**

One year after going into effect, swipe fee reform landed in federal court yesterday with attorneys for merchants arguing that the Federal Reserve overstepped its bounds by catering to banks instead of doing what Congress instructed in legislation reforming debit card swipe fees.

"Congress was clear about setting reasonable debit swipe fees and ensuring greater competition among card networks. It's also clear that the Fed ignored Congress," said Doug Kantor, an attorney for the merchants who have sued the Federal Reserve in the U.S. District Court for the District of Columbia.

According to the Merchants Payments Coalition and UnfairCreditcardFees.com, the fees charged to swipe both debit and credit cards for purchases total about \$60

billion in revenues for banks and credit card companies, costing U.S. households hundreds of dollars a year. For merchants, swipe fees are the second highest cost for them, after labor. Swipe fees also have tripled since 2004, even while technology has lowered the cost of card transactions, the group said.

Swipe fee reform came with the passage of the Durbin Amendment, part of the Dodd-Frank Wall Street Reform Act. It capped debit card interchange rates for issuing banks with more than \$10 billion in assets at 21 cents per transaction, plus one cent for issuers with an effective fraud prevention system, and 0.05 percent of the volume of transaction, as CSNews Online previously reported.

However, the retail community has long argued the reform did not go far enough. According to the Merchants Payments

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Coalition, the amendment instructed the Fed to set debit swipe fees that are "reasonable" and "proportional" to the banks' costs. The Fed had determined the cost to be 4 cents a swipe.

The group said the banking lobbying convinced the Fed to factor into the costs of running a bank into the fee, rather than focusing on the banks' cost of handling a debit transaction. In addition, according to a release, the Fed also undercut Congress' intent to make the debit card industry more competitive by not allowing merchants to choose among networks to process a sale. As a result, consumers and merchants have not realized the savings they could have, and fees have actually increased for debit card purchases less than \$15.

"In too many instances, swipe fees eat up a merchants' profit," said Kantor.

In response to the final swipe fee reform, several associations filed a lawsuit challenging the Federal Reserve's final rules -- including NACS, the Association for Convenience & Fuel Retailing, the Food Marketing Institute, the National Restaurant Association and the National Retail Federation. All of them are members of the Merchants Payments Coalition, a group of retailers and merchants who are concerned about the rising costs of swipe fees on both debit and credit cards.

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### **SUNOCO STOCKHOLDERS APPROVE ETP MERGER**

Sunoco shareholders have approved a merger between the locally based company and Energy Transfer Partners (ETP) with 97 percent of those voting approving the measure. The final vote came today at a special shareholder meeting in Detroit -- five months after the proposal was announced.

Shareholders owning a total of 69,613,600 shares voted, representing approximately 66 percent of the shares of Sunoco's common stock outstanding as of the record date for the special meeting. In addition, the holders of a majority of the votes cast at the special meeting also approved, on an advisory (non-binding) basis, the proposal regarding specified compensation paid or payable to Sunoco's named executive officers in connection with the merger, according to a joint release.

ETP and Sunoco closed the merger effective Oct. 5. What remains to be seen is what will become of Sunoco's retail network, as CSNews Online previously reported. As recently as two weeks ago, analysts suggested that, in light of the challenges involved in operating profitable gas stations, ETP should sell the 4,900-site network.

Various media reports pointed to possible interest from The Pantry Inc., operator of Kangaroo Express; Alimentation Couche-Tard, operator of Circle K stores in the United States; Global Partners, which runs 800 fuel stops in the Northeast under different brands; and QuikTrip Corp.

Several analysts have also pointed out that Sunoco's retail subsidiary is a not a good fit for ETP's pipeline business and would negatively affect its tax structure as a master limited partnership.

ETP CEO Kelcy Warren admitted in the past his company has received several calls expressing interest in Sunoco's c-store/gas station network. However, he added he is "very comfortable" with owning Sunoco's retail division.

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**JUDGE: OIL SPILL DIDN'T DAMAGE BP FUEL DEALERS ECONOMICALLY**

A federal judge today tossed claims made by BP branded convenience stores and gas stations that alleged the company's 2010 Gulf of Mexico oil spill diminished the BP brand and cost them business.

According to the Associated Press, U.S. District Court Judge Carl Barbier ruled that the fuel dealers' claims against BP plc aren't viable under the Oil Pollution Act of 1990, general maritime law or state law.

Thomas Bleau, a lawyer for the BP dealers, argued during a hearing last month that consumer animosity toward BP following the oil spill tarnished the company's brand name. In addition, Bleau stated that the gas station and c-store owners could not switch the banner under which they operate because they are stuck in long-term contracts with BP.

Judge Barbier, however, ruled today that the BP dealers' allegations "do not state a claim for which relief may be granted." The judge did not rule on whether BP dealers have legitimate claims regarding possible economic losses based on a decline in tourism after the oil spill.

Also, all claims by BP dealers are excluded from the company's proposed settlement of billions of dollars of claims by other businesses and individuals who blamed the spill for economic damages, the news outlet noted.

A BP spokeswoman declined to comment on the ruling when contacted by the AP.

**VERDICT: INDUSTRY WINS HOT FUELS CASE**

In a victory for the oil industry, a federal

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jury in Kansas deciding the "hot fuels" case said all three defendants were not deceptive when they failed to disclose the temperature of fuel sold to retail customers, a legal source attending the trial told Oil Express.

"The Judge will now decide if it is unconscionable, but (it will be) very hard for her to say it is when (the) jury said it's not deceptive," the source said.

If the jury had favored the plaintiffs, some gas stations would be forced to install automatic temperature compensation devices, which could cost an estimated \$2,000 per dispenser.

The case is one of dozens around the country claiming that gas stations charge too much for fuel because the pumps lack automatic temperature compensation (ATC) devices. Plaintiffs charge that oil companies and retailers cheated consumers by retailing motor fuel hotter than the federal standard of 60 degrees Fahrenheit. As temperature rises, fuel expands by volume but not by weight or energy content.

Many large gasoline retailers and major oil companies have been sued in the class action. In the Kansas case, all but three large convenience-store chains -- 7-Eleven Inc., QuikTrip and Kum & Go -- elected to settle.

At this time, many states either don't require ATC at retail or prohibit it, legal sources say.

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### **SHELL DELAYS ARCTIC DRILLING**

Royal Dutch Shell announced yesterday that after a successfully completed series of tests of the first-ever Arctic Containment System, during a final test, the containment dome

aboard the Arctic Challenger barge was damaged.

The company notes on its website that it will be "some days" to repair and fully assess dome readiness: "We are disappointed that the dome has not yet met our stringent acceptance standards; but, as we have said all along, we will not conduct any operation until we are satisfied that we are fully prepared to do it safely."

The time required to repair the dome, along with steps taken to protect local whaling operations and to ensure the safety of operations from ice floe movement, have led Shell to revise its plans for the 2012-2013 exploration program. Shell will forgo drilling into hydrocarbon zones this year. Instead, it will begin as many wells (top holes) as it can this season. The top portion of the wells drilled in the days and weeks ahead will be safely capped and temporarily abandoned this year, in accordance with regulatory requirements.

"We look forward to the final receipt of our drilling permits for the multi-year exploration program upon the successful testing and deployment of the Arctic Containment System," notes Shell.

Also, in the coming days, Shell is expected to begin exploratory drilling in the Beaufort Sea. These operations will follow the conclusion of the fall whale hunt and the anticipated receipt of a top-hole-drilling permit.

"We have tested and assembled drill ships and support vessels, trained personnel, and acquired numerous final approved plans and permits. This exploration program remains critically important to America's energy needs, to the economy and jobs in Alaska and to Shell."

## **DEALER PROTEST UNDER LEGAL SCRUTINY**

The Division of Consumer Affairs for the New Jersey Attorney General's Office is examining Lukoil dealers' protest of the oil company's pricing policies to make sure it complies with state laws against price gouging and price fixing, a spokesman said.

Consumer Affairs received eight complaints from consumers griping that dealers more than doubled their retail price to draw attention to their protest yesterday. State investigators also are looking at the protest to ensure gas shoppers were adequately informed of the price hike before purchasing fuel, the spokesman said.

More than 50 Lukoil franchisees from New Jersey and Pennsylvania raised fuel prices above \$8/gal yesterday to protest Lukoil North America's pricing, and they blasted Lukoil in a press conference.

Sal Risalvato, executive director of the New Jersey Gasoline, Convenience, Automotive Association (NJGCA) said the response was overwhelming. He was even interviewed yesterday by the Russian media, as Lukoil is a Russian company.

"I had a great conversation with the director of consumer affairs," said Risalvato. "Everything is okay."

Customers were complaining about the price, and anyone buying the gas without noticing the price would have been refunded the difference, he said.

"I am confident that no consumers will be cheated," he said.

In a letter to Lukoil dealers, Risalvato said it is important that an employee be present at the pumps to make sure customers don't

accidentally buy the high-priced fuel. Flyers about the protest should be given to every customer pulling up to the pumps, and the price should not be changed more than once within a 24-hour period, he wrote.

The franchisees charge that Lukoil's pricing policies -- particularly zone pricing -- is anticompetitive. The gas station operators say zone pricing can lead to as much as a 25ct/gal disparity between prices for nearby Lukoil dealers.

Lukoil told Oil Express NJGCA is making "misstatements" and encouraging "ill-conceived actions" that harm consumers. The company said it wants a "constructive dialogue" with the dealers.

"We have worked very hard in establishing Lukoil as a premium brand in the U.S. and value our network of independent dealers," wrote Michael Lewis, vice president and general counsel in an e-mail. "The NJGCA's efforts appear aimed at zone pricing, a commercially reasonable practice used by gasoline marketers for many years, which is fully compliant with New Jersey statutes." However, the gas retailers claim Lukoil routinely sells gasoline to its lessees at "higher-than-justifiable" prices. The association and some of its members discussed pricing with Lukoil in August and were told the company could amend its pricing formula within six months.

"We couldn't wait," said Risalvato, explaining that close competitors are often retailing gasoline below the Lukoil dealers' cost. "Dealers are handing in their keys."

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## **ZONE PRICING AND ITS EFFECT ON THE EVERYDAY NEW YORKER**

*This editorial was written by one of our dealer members*

Zone pricing is a practice utilized, first by major oil companies, and then to the distributors who bought into the five boroughs'. Initially zone pricing was used by the majors to help the individual dealer compete with company operated stations. As an example; If a Mobil was next to a company operated Hess, the Mobil stations in that particular market area would get "special pricing" in order not to lose all of their volume to competition. So initially it was used for good. When the majors were directly marketing their products, it was their aim, sell as much gas as possible, and earn 15% on their investment of real estate with improvements, and keep the dealer's whole, so as not to be judged by the public as thieves. Things changed when the cost of gas started approaching three dollars. And then the public's focus on environmental liability of distributing gas became more prominent, {with new regulations, fines, that promoted bad publicity}, the majors decided to separate themselves from the public and sell the direct marketing to Distributors, some local and some from out of state.

Now that the distributors are here, what was used for good, has been turned around and used to raise the price in a particular marketing area, and the one next door, and the one next door to that... giving the ability for the competition to raise their prices in turn. Any Majors left in the marketing area have used the competitions price to raise their own price and beside the price of the barrel going up, zone pricing has dragged the price of gasoline into a skyrocket.

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## **LEGISLATIVE UPDATE**

Our National Affiliate (SSDA-AT) has been very active recently on Capitol Hill with numerous tax hikes. By agreement of the two Leaders waiving filibuster, the Senate on July 25th voted 51-48 to pass S. 3412, the "Middle Class Tax Cut Act of 2012" introduced by Majority Leader Harry Reid, containing President Obama's tax plan extending the Bush tax cuts for all but high earners, increasing the capital gains rate to 20% and eliminating the 15% dividend preference. Vice-President Joe Biden presided over the Senate, prepared to vote in case of a tie.

In prior action, the Senate defeated by 54-45 the Republican alternative, S. 3413, the "Tax Hike Prevention Act," introduced by Senator Orr in Hatch. The Republican alternative would extend the Bush tax cuts for a year, increase AMT relief, and continue full expensing.

WOTC and other tax extenders were not included in the bill. Texts of S.3412 and S.3413 are at [www.thomas.gov](http://www.thomas.gov). House Republicans introduced their tax bill, H.R. 8, the "Job Protection and Recession Prevention Act of 2012" to be voted on shortly.

H.R. 8 was introduced by Ways and Means Chairman Dave Camp and cosponsored by all Ways and Means Republicans, including WOTC cosponsors Congressman Aaron Schock and Congresswoman Lynn Jenkins. A formal mark-up wasn't held.

WOTC and other extenders aren't included in H.R. 8. The bill extends the Bush tax cuts for a year, continues full expensing, expands Coverdell Education Savings Accounts and the Adoption Credit, but reduces the Child Credit and Earned Income Tax Credit and terminates the American Opportunity Credit.

Democrats will be allowed a vote on their alternative plan when H.R. 8 goes to the floor. Democratic Caucus Chairman John Larsen said tax extenders were one of several possibilities for a Democratic bill, but as in the Senate, the core of any Democratic alternative will be the President's proposals on the Bush tax cuts and restoring cuts in the Child Credit, Earned Income Tax Credit, and American Opportunity Tax Credit. The vote in the House on H.R. 8 is expected to be the reverse of action taken by the Senate—Republicans will first vote down the Democratic alternative, then pass a one-year extension of the Bush tax cuts.

The Senate still has a chance to bring up an extenders bill, or Welfare Reauthorization which must be passed by September 30th and could carry a WOTC extension. We are interested also in the Farm Bill which has a September 30th deadline and is WOTC-germane because it reauthorizes Food Stamps and the Food Stamp Work Program and carries tax provisions. We will continue pressing all options through September so WOTC won't be shelved till after the election—HR. 8, Welfare Reauthorization, and the Continuing Resolution are possible vehicles. Crises wait upon no man, so H.R. 8 could become a vehicle for compromise if the economy continues to stagger and financial crisis deepens in Europe. Fed Chairman Bernanke and Treasury Secretary Geithner have been warning Congress a European crisis will spill over to the U.S. financial system. The prospect of another financial shock is scary to a lot of congressmen --and this Congress has proven it needs a dire situation to act. What was that saying about a crisis being something not to waste?

## **WHO BEARS THE LOSS FOR CYBERCRIME – THE BANK OR THE SMALL BUSINESS PERSON?**

General Counsel Corner

*by Peter H. Gunst*

Small businesses are increasingly the target for cybercrime. According to a recent article, hacker attacks average more than 150 per day, with over 30% of those attacks directed at small businesses. Not surprisingly, court decisions about who bears the risk of loss – the small business or the bank that held the targeted account – are starting to appear. Traditionally, banks have had the advantage of drafting the customer agreements governing computer transfers from customer accounts. They could take advantage of the opportunity by salting those agreements with exculpatory language.

Now, many states have enacted Article 4A of the Uniform Commercial Code, which does much to level the playing field. Significantly the U.C.C. requires that the bank's security procedures be "commercially reasonable," and also that the bank prove that it accepted the unauthorized orders "in good faith." Even if those conditions are satisfied, the risk of loss may shift to the bank if the person committing the fraud did not obtain the confidential information required to access the account from an agent or other representative of the customer. In most cases, however, it is an employee of the customer who is fraudulently induced to surrender confidential information.

Two recent decisions reveal that the U.C.C.'s "commercially reasonable" security procedures and "good faith" requirements have real teeth.

In *Patco Construction Co. v. People's*

United Bank, 684 F.3d 197 (1st Cir. 2012), the small business customer appealed from the district court's decision that the bank was not liable for honoring a series of fraudulent withdrawal requests over a period of a week totaling \$588,851.

Ruling in favor of the small business customer and reversing the lower court's decision, the federal appellate court focused on the requirement that the bank's security system be "commercially reasonable."

The bank's security system required its customers to respond to security answers for every transaction involving \$1 or more. Its system also entailed building a "risk profile" for fraud based upon a number of factors, which varied from customer to customer. Despite the security provisions, the cyber criminals managed to penetrate the customer's account, presumably through the use of malware that captured an employee's password and identification information.

The appellate court found that the bank had fatally compromised its security procedures by requiring its customers to respond to challenged questions on even miniscule transactions. As a result of the bank's own requirement, cyber criminals were afforded much more frequent opportunity to capture information necessary to compromise a customer account. Further, the bank's risk profile system provided no additional protection because it did not trigger any additional authentication requirements.

Experi-Metal, Inc. v. Comerica Bank, decided by a federal district court in Michigan, involved a similar scenario. A "phishing" attack resulted in a criminal hijacking of \$561,399 from the customer's account.

In an extensive bench opinion, Judge

Duggan more narrowly interpreted the U.C.C.'s security procedure requirement, refusing to find that a bank is required to provide fraud monitoring with respect to its commercial customers. Nevertheless, Judge Duggan ruled against the bank because it failed to satisfy its burden of demonstrating that it acted in "good faith" in accepting the withdrawal orders.

Specifically, the bank failed to produce evidence sufficient to convince the court that it had acted in good faith "when it allowed overdrafts totaling \$5 million of a single account that usually has a zero balance, particularly where the ten transactions causing the overdrafts were entered repetitively (many in less than a minute of each other) and doing one online session." These decisions demonstrate that a small business owner may have recourse against his or her bank to recover losses resulting from cybercrime. Obviously, however, all businesses must take reasonable efforts to monitor their computer transactions in this era of increasing cybercrime.

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#### **ATTENTION INSPECTION STATIONS**

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other than the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This is a violation that almost always results in revocation.

---



# Quality Nozzle Company

Suppliers of:

## NOZZLES

- Gasoline and Diesel.
  - Vapor Recovery.
  - New and Rebuilt.
  - Replacement Parts for spouts, Bellows, Covers.
  - Swivels.
- Breakaways ( Safety Breaks).



## HOSES

- Vapor Recovery.
  - Diesel.
- Hose Retractors.



## Repairs First !

- Repairs on Nozzles, Hoses and Breakaways vs. Replacement.
- Economical and cost effective.

## Extras

- Paper Towels.
- Toilet Paper.
- Soap & Dispensers.
- Window Squeegees.
- Squeegee Buckets.
- Pump Filters ( installation available )



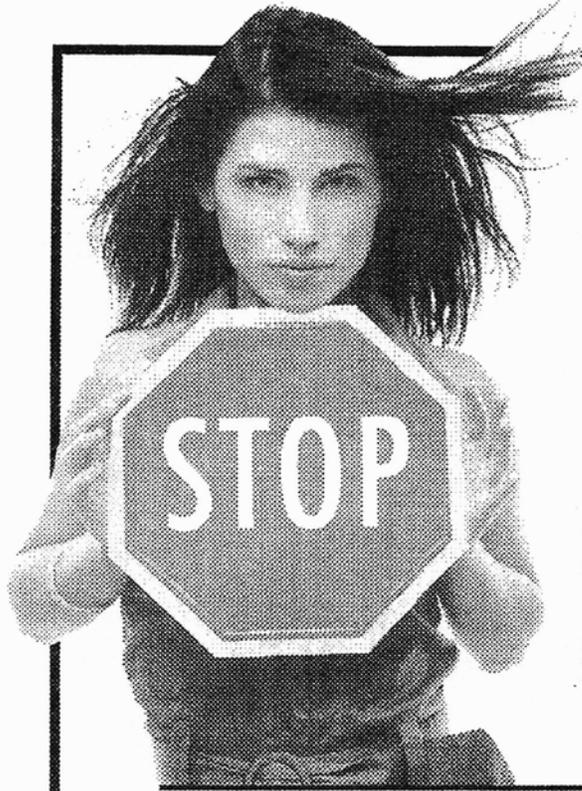
**Quality..... Our name is our promise**

We offer Same or Next day service. Free Delivery and Installation. QNC is Fully insured for Liability and Pollution. We are API Safety Certified. Authorized OPW Repair technicians. QNC is the Primary contractor for Hess, Sunoco Corp, Exxon/Mobil Corp and BP corp. and many others. We offer 1 Year Free onsite warranty service.

**All GASDA Members will receive special discount. (inquire with us.)**

## 1-800-243-0954





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too much  
for garage  
insurance!

**Let GarageGuys save you money.**

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Before you make another insurance payment, call the garage insurance experts at GarageGuys — 800.474.5553.

Visit us online at [www.insuregarages.com](http://www.insuregarages.com) or fax your current policy to 631.424.4533 for an immediate quote!



18 PROSPECT STREET • HUNTINGTON NY 11743

# \$afety Group 536

With a Financial history like this you have  
lots of reasons to smile.



## DIVIDEND HISTORY

35%	2010-2011
35%	2009-2010
35%	2008-2009
35%	2007-2008
30%	2006-2007
30%	2005-2006
25%	2004-2005
22.5%	2003-2004
17.5%	2002-2003
10%	2001-2002
15%	2000-2001
30%	1999-2000
40%	1998-1999

## DISCOUNT HISTORY

25%	2012
25%	2011
20%	2010
20%	2009
20%	2008
25%	2007
25%	2006
25%	2005
20%	2004
20%	2003
20%	2002
20%	2001
30%	2000

Current Group Management took over for the 04-05 policy year  
2008 20 % Discount due to 18% rate decrease

**Lawley**  
INSURANCE



**New York State Insurance Fund**

*Workers' Compensation & Disability Benefits Specialist since 1914*



## Special pricing on merchant services.

An exclusive benefit for New York State Association of Service Stations and Repair Shops (NYSASSRS) — only from Bank of America

### Merchant Services

We're pleased to offer you and other members of your organization some of the industry's most flexible and efficient payment processing options available, along with valuable savings.

#### Specially negotiated discount rates

**Fast access to cash** — with funds deposited into your account as soon as the next business day.<sup>1</sup>

**Point-of-sale payment options** — virtually every point-of-sale payment option — credit, debit, electronic benefits transfer (EBT), gift cards and fleet (WEX and Voyager). And, for check payers, our TeleCheck Electronic Check Acceptance® helps you reduce the risks of accepting checks while minimizing processing costs.

**Internet and telephone payment capability** — for safe, secure shopping, whether online, by phone, by mail or in any card-not present environment.

**Safety and security** — to protect your business and your customers' information. Our systems support you through enhanced security and procedures, which help you comply with card organization rules and regulations.

**Gift cards and loyalty programs** — for reduced costs, and increased loyalty, sales and profits with our simple, user-friendly programs. Our full range of services includes card production, implementation and program interface.

**Terminals and point-of-sale solutions** — a comprehensive variety of affordable terminals and peripherals that offer adaptability for changing needs.

**Payroll cards** — with the security and control of electronic payroll.

**One statement** — and one customer service number for the convenience of your business.

**24/7 technical support** — to answer sudden questions or respond to unexpected needs. Expert help is as close as the web or your phone.

Program can support these card types:



Please contact your Bank of America Merchant Services sales representative at 1.877.899.9123.

<sup>1</sup> After deposit of transactions. Must have a Bank of America Business Checking account. Exceptions may apply. Only valid on Visa®, MasterCard® and Discover® transactions.

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# **GASDA**

Gasoline and Automotive Service Dealers Association

## **HEALTH INSURANCE PROGRAM**

**If you are going without health insurance, you are taking a big risk. Now is the best time to stop exposing yourself to high medical costs. Even if you have insurance, you will want to check how our health insurance programs can better suit your needs. Here are some of the benefits of our program:**

- **Reduced premiums by being a member of our groups.**
- **Programs provided by a variety of providers.**
- **Choose from a wide selection of plans.**
- **Tailor your insurance to best suit your needs.**
- **Participating employees may choose different plans.**

**Let us work with you to find the best program at the best price. We will send you more information, and help you to navigate the selection of plans and options to find the one that is best for you.**

**To find out more information call  
Wayne Bombardiere at (516) 371-6201**



## **GASDA**

### **Legal Service Plan**

GASDA'S legal plan provides for consultation services and representation at hearings. The following are included:

- Representation at one small claims proceeding or one administrative hearing per year. Requests for representation must be received at the association's office 20 days prior to the hearing date.
- One-hour consultation on any single issue relating to a member's business.
- Small claims proceeding ONLY. The first two court appearances are covered under the plan. The third and all subsequent appearances are not covered. If the member wants continued representation, the appearance fee is \$375 per appearance.
- The legal service attorney will provide legal representation or consultation to GASDA members at the rate of \$185 per hour for any issue not included in the legal service plan.

In order to be eligible for Group Legal Service representation, a member's dues in full and all obligations to the Association must be current. For additional information, please call the GASDA office at:

**516-371-6201**

**CIGARETTE SALES TO MINORS  
CLERK CERTIFICATION**  
COMPLIANCE . WITH THE NEW STATE CERTIFICATION OF  
CLERKS WHO SELL TOBACCO PRODUCTS

CERTIFICATION OF A CLERK WHO SELLS TOBACCO PRODUCTS  
*POINT REDUCTION CLASS*

NEW YORK STATE AMENDED ITS POLICY OF ENFORCEMENT FOR RETAILERS WHO SELL TOBACCO. UNDER THE NEW LAW A POINT SYSTEM HAS BEEN ESTABLISHED. EACH VIOLATION OF A TOBACCO SALE TO A MINOR WILL GENERATE A FINE AND TWO POINTS. THREE POINTS AND THE RETAILER'S LICENSE TO SELL CIGARETTES WILL BE SUSPENDED. HOWEVER, IF THE CLERK HAS RECEIVED A CERTIFICATION BY TAKING AN APPROVED SEMINAR, THE VIOLATION WILL RECEIVE ONE POINT.

**THE STATE IS ENFORCING THIS LAW**  
*IN ORDER TO ACCOMMODATE OUR MEMBERS,  
WE ARE CERTIFIED TO PROVIDE THIS TRAINING.*  
*PLEASE NOTE DATES, TIME, AND LOCATION OF THE NEXT SEMINAR*

WHERE:

ASSOCIATION OFFICE  
372 Doughty Blvd, Suite 2C  
Inwood, New York 11096

WHEN:

The First Monday of every month at 2:00 PM  
The Second Wednesday of every month at 10:00 AM

COST:

MEMBERS: \$15.00 - NON-MEMBERS \$30.00

**PLEASE CALL FOR RESERVATIONS AT (516) 371-6201**

**SPONSORED BY: GASDA/LIPDRA**



# Let your energy bill *pay you back*

Enjoy all these great benefits when you switch your energy supplier to Energy Plus®



**\$50 Activation Bonus**  
after two months of active service for your business' electric accounts\*



**Earn 3% Cash Back**  
every year on the supply portion of your business' electric bill\*



**Earn even more Cash Back**  
when you enroll your natural gas account\*



**No commitment**  
when you enjoy the same service without risks, fees, or long-term commitments

► **IS THERE ANY COST TO ENROLL OR CANCEL?**

Not at all! There is no cost to enroll with Energy Plus and you can cancel service at any time without penalty. Give Energy Plus a try risk-free today.

► **FOR YOUR BUSINESS AND HOME.**

Energy Plus provides energy to both homes and businesses throughout New York so you can enroll all your energy accounts. Members with electric residential accounts are also eligible to receive a \$25 Activation Bonus and 2% Cash Back annually on the supply portion of their electric bills. Homes and businesses receive an additional \$25 Activation Bonus and up to 3% Cash Back on natural gas supply charges every year.\* Sign up both your business and home today!

► **NO INTERRUPTION TO YOUR SERVICE.**

The best part is that nothing about the way your service is delivered will change. Your local utility will continue to deliver your energy, read your meter, handle service emergencies, and send your monthly statement. You'll be earning Cash Back while still enjoying the safety and reliability of your current service.



► **HOW DO I EARN CASH BACK?**

Once you select Energy Plus, you will receive a Cash Back rebate check automatically after every 12 months of service. Your Cash Back rebate will be 3% of your annual electricity supply charges for home accounts and 5% for business accounts. Earn even more Cash Back when you enroll your natural gas account. Home accounts receive 2% Cash Back and business accounts receive 3% Cash Back on your annual natural gas supply charges.

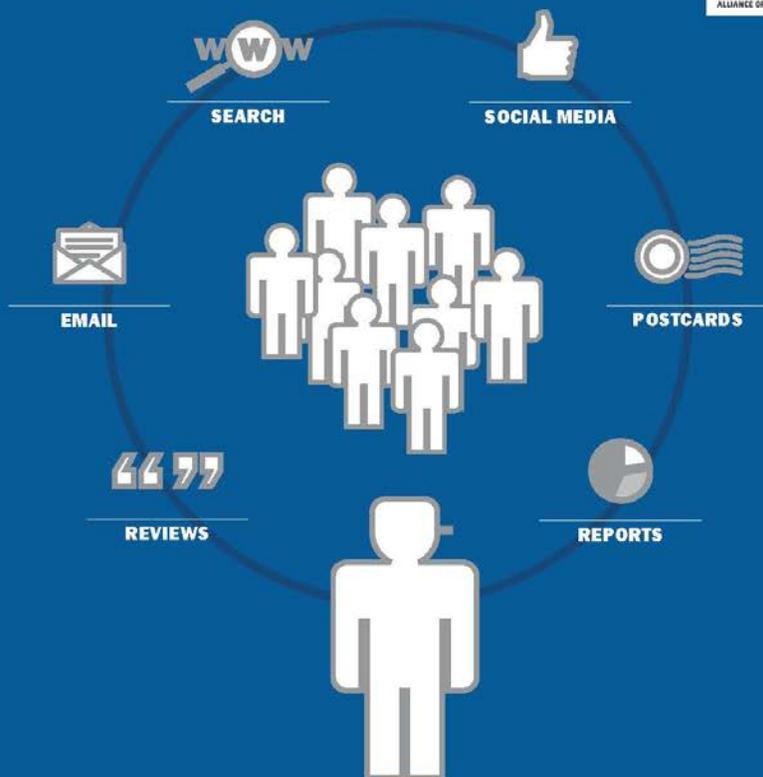


To learn more or enroll, visit this special offer page at [www.EnergyPlusRewards.com/NYSASSRS59](http://www.EnergyPlusRewards.com/NYSASSRS59)

or call **855-388-5274** and mention **Offer Code "SER-0059"**

## ENERGY PLUS

\*If enrolling an electric account, a \$50 Activation Bonus for business accounts or a \$25 Activation Bonus for residential accounts will be awarded after completing 2 billing cycles of active electric service with Energy Plus. If enrolling a natural gas account, a \$25 Activation Bonus check for business accounts or a \$25 Activation Bonus check for residential accounts will be awarded after completing 2 billing cycles of active gas service with Energy Plus. Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which Energy Plus has not received a request on behalf of the customer to discontinue (drop) their service. Please note, if you enroll both electric and gas accounts, it is possible your services will start on different dates - so your bonuses may be awarded on different dates. Members will receive a Cash Back rebate check after every 12 billing cycles of service for active accounts. The Cash Back rebate will be 3% of the annual supply charges per business account and 2% per residential account. Account eligibility for a natural gas Activation Bonus requires a minimum of 900 annual therms or cofs, based on historic usage as estimated by your utility at the time of enrollment. Electricity service is provided through Energy Plus Holdings LLC and natural gas service is through its affiliate Energy Plus Natural Gas LLC. The Energy Plus rate is variable and therefore subject to change each billing cycle. Current and historical rates should not be taken as a guarantee of future rates and Energy Plus makes no warranty, express or implied, regarding specific savings. If you are currently on a Budget Billing plan, your monthly budget billing amount may be adjusted as a result of enrollment with Energy Plus. In addition, your utility may perform a true-up upon enrollment with Energy Plus. Depending on various factors, including season, this true-up could result in a charge, or a credit. Electricity offer valid for NY residents excluding areas serviced by the Long Island Power Authority (LIPA). Natural gas offer valid for NY residents with heating accounts in areas serviced by Consolidated Edison, National Grid (Keyspan NY), National Grid (Niagara Mohawk), Orange & Rockland and National Fuel Gas. Energy Plus reserves the right to discontinue or modify the program and other offers cannot be combined with this offer. Your local utility company will continue to deliver your electricity and/or natural gas, as applicable. Offer not valid for government entities.



# SOCIALCRM: SHOP MARKETING MADE SIMPLE

**AASP Members Receive  
\$15/month off SocialCRM**

Includes new SocialCRM sales and upgrades of existing eCRM customers to SocialCRM. It does not include a discount on new sales of the eCRM product level.



Please Contact Your AASP Sales Representative  
to Schedule a Mitchell 1 Presentation



SEARCH

## GO WHERE NEW CUSTOMERS CAN FIND YOU

Our Customer Review System allows your customers to create reviews of your service, which are automatically verified as authentic customer reviews. These reviews, with keywords added to optimize performance, create Search Engine-friendly links – driving your search visibility upwards, where new customers can find you.



EMAIL

## STAY CONNECTED TO CURRENT CUSTOMERS

Turn first-time customers into loyal, profitable customers automatically. Mitchell 1's Social CRM integrates seamlessly with your shop management system, calculating mileage history and combining that with specific maintenance schedules to determine next recommended services. Includes:

- Email matching with your customer database
- Ongoing automatic email service reminders
- Target market promotions
- Customizable large-format postcards, artwork, and logos



POSTCARDS



SOCIAL MEDIA

## IT'S TIME TO GET SOCIAL MEDIA WORKING FOR YOU

Your dedicated support agents will set up your Facebook page for maximum word-of-mouth marketing. Compelling content, AutoNetTV™ videos and Customer Reviews will be automatically pushed to your Facebook page on a regular basis to keep your shop visible and your customers engaged. Facebook links will be included in the Thank-You emails and on your customer's personalized vehicle maintenance website, OwnerAutoSite.com.



REVIEWS

## GIVE YOUR SHOP A REPUTATION BOOST

Your customer reviews are posted to the web, complete with Overall Satisfaction Star Ratings, Review Comments, and Recommend scores. The Customer Review System can also verify which reviews are from actual customers, which studies prove are typically higher than unverified reviews. With ReScore, you can ask for a follow up review once you've had the opportunity to resolve a customer concern.

- Automated low score alerts
- Review customer verification
- Links to your shop's website
- Respond to customer reviews



REPORTS

## SAY HELLO TO MARKETING CRUISE CONTROL

Your Mitchell 1 Support Agent will work with you to set up your SocialCRM service and monitor its performance with our extensive Summary Reports. Your support agent will:

- Set up Facebook page and create automatic feeds of video and review content
- Help you choose automatic Email and Postcard campaigns
- Review your Summary Reports and recommend tuning your program for maximum return on your investment
- Help you create coupons and send targeted email blast campaigns



Q1 2012

<u>Manager</u>	<u>Promo Price</u>	<u>AASP Price</u>
Manager, Single User	\$0 S&I <del>\$109/mo</del>	\$99/mo
Manager, Multi User	\$0 S&I <del>\$135/mo</del>	\$125/mo
ManagerPlus, Single User	\$0 S&I <del>\$139/mo</del>	\$129/mo
ManagerPlus, Multi User	\$0 S&I <del>\$175/mo</del>	\$165/mo

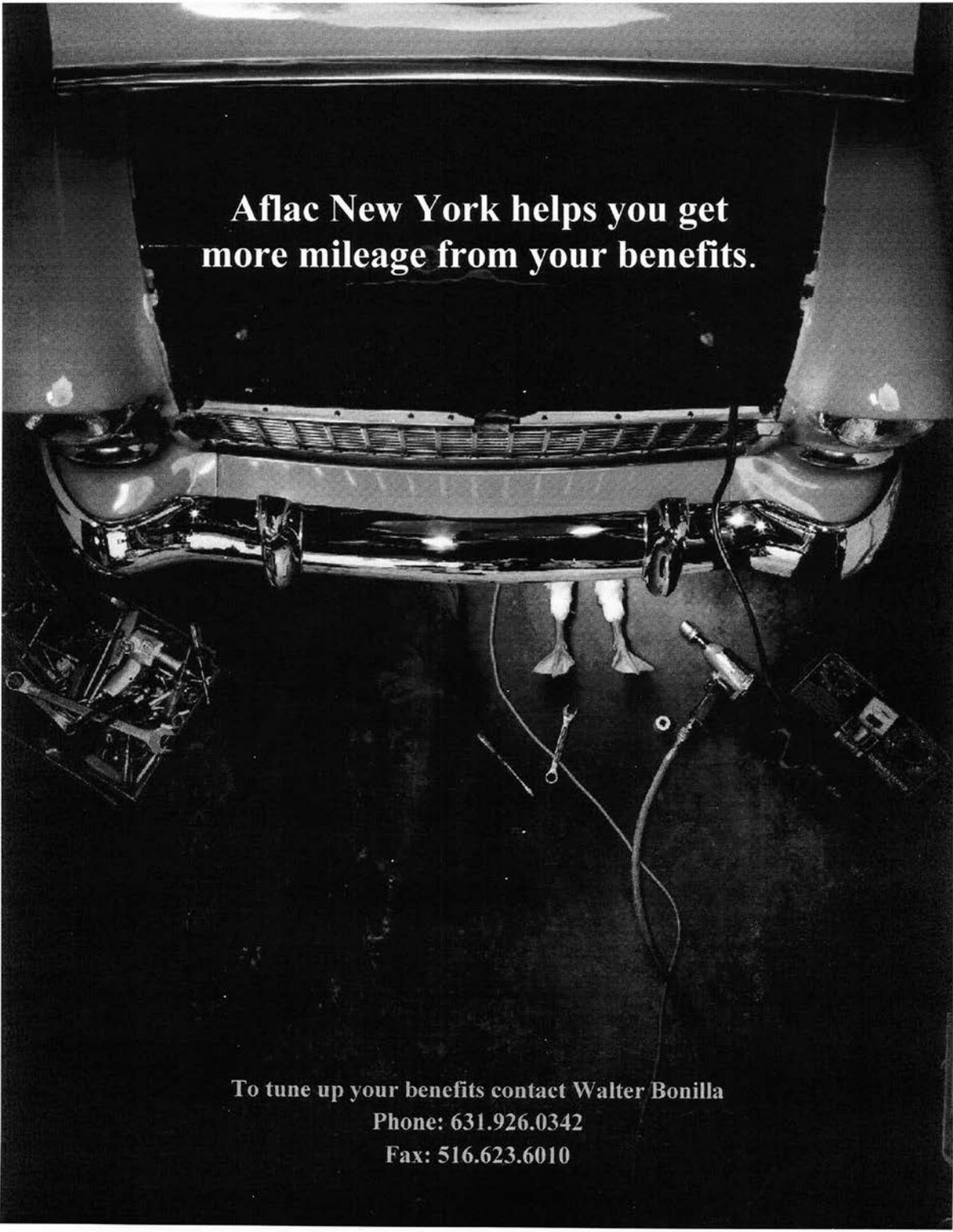
<u>TEAMWORKS</u>		
Manager, Single User w/OnDemand5.com	\$0 S&I <del>\$209/mo</del>	\$199/mo
Manager, Multi User w/OnDemand5.com	\$0 S&I <del>\$259/mo</del>	\$249/mo
ManagerPlus, Single User w/ OnDemand5.com:	\$0 S&I <del>\$239/mo</del>	\$229/mo
ManagerPlus, Multi User w/OnDemand5.com:	\$0 S&I <del>\$295/mo</del>	\$285/mo

Other Products available as bundles or individually

OnDemand5.com	\$0 S&I <del>\$159/mo</del>	\$149/mo
Medium-Truck.net	\$0 S&I <del>\$129/mo</del>	\$119/mo
Tractor-Trailer.net	\$0 S&I <del>\$235/mo</del>	\$225/mo
SocialCRM	\$0 S&I \$199/mo	
<b>SocialCRM - AASP Members Only</b>	<b>\$15.00/mo Off Promo Price</b>	<b>1<sup>st</sup> Quarter 2012</b>

Please contact your local Mitchell1 Representative for more info.  
 To find your local representative, or submit a lead, go to: [www.m1leads.com/aasp](http://www.m1leads.com/aasp)

- Prices should not be shared as an example only. Prices may vary depending on the product needs of the Repair Shop Customer.
- All products come with a 30 day cancellation policy from Mitchell1.
- All products require 12-month agreement. After initial 12 months, each renewal period is 12 months with 30-day guarantee period commencing on renewal date.
- All products offered as software only; customer must provide hardware.
- All products include on-site training and installation.
- Network set up, installation and installation of all multi-user products is the responsibility of customer. Obtaining the services of a Network Professional to set up the network and install all multi-user products is highly recommended.
- Promotional pricing ends March 31, 2012.



**Aflac New York helps you get  
more mileage from your benefits.**

To tune up your benefits contact Walter Bonilla  
Phone: 631.926.0342  
Fax: 516.623.6010



## HERE'S HOW AFLAC NEW YORK CAN HELP:

Many industries-like specialized auto repair and customization-require highly skilled talent that is not easy to find and retain. Great benefits are a top priority for these talented professionals when considering where to work. With Aflac New York, you can provide a wide range of benefits that gives them coverage in the areas they need most, and with a brand they know and want. You can attract and retain new talent by providing the kind of benefits they'd expect from a bigger company, helping your business stand out from the crowd.

### THE BEST PART ABOUT AFLAC!

#### NO DIRECT COST TO YOUR COMPANY

Aflac New York's insurance policies are paid entirely by your employees; therefore, adding value to your employee benefits plan without incurring direct costs.

#### OFFERS A WIDE RANGE OF POLICIES

Aflac New York offers a wide range of policies that can help cover health events from accidents to hospitalization. You choose the ones that are best for you, your employees, and your business.

#### POTENTIAL TAX SAVINGS

Aflac New York's tax-advantaged plan allows employees to use pre-tax dollars to pay for certain benefit costs, through a Section 125 cafeteria Plan. This plan may also reduce your FICA taxes, helping you counterbalance the challenges you face in today's economic environment.

#### ATTRACTIVE TO YOUR EMPLOYEES

Aflac New York insurance complements your major medical insurance to help you create a more attractive employee benefits package. Our wide range of policies is designed to provide cash benefits to your employees if they become injured or sick. With Aflac New York policies, there are no deductibles, copayments, doctor networks, or pre-authorization requirements.

Join the 16,500 companies\* that Already include Aflac New York as an essential part of their benefits package. Find out more:

Walter Bonilla 1.631.926.0342 [walter\\_bonilla@us.aflac.com](mailto:walter_bonilla@us.aflac.com)

American Family Life Assurance Company of New York (Aflac New York)



## The NAPA Major Account Program

\*\*\* **FREE MONEY GIVEAWAY** \*\*\*



Want to put more money in your pocket  
and do nothing more than you do now?



You already buy parts and supplies for your business so why not buy from NAPA and earn 2% rebate!

The Association and NAPA developed a complete, competitive supply program designed to boost your backroom profits and meet your customer needs. Here's what it includes:

### BENEFITS TO ASSOCIATION RETAILER

<b><u>Quality</u></b> Products that meet or exceed OEM specifications	<b><u>Consistent</u></b> Nationwide Parts Warranty
<b><u>Customized</u></b> Pricing -Reduced Parts Costs	<b><u>Availability</u></b> -Up to 342,000 Part Numbers
<b><u>Improved</u></b> Inventory Turnover	<b><u>Broader</u></b> Inventory Coverage
<b><u>Less</u></b> Downtime -Higher Gross Profitability	<b><u>Obsolescence</u></b> Protection
<b><u>Increased</u></b> Field Contacts -700 Factory Representatives	<b><u>Tailored</u></b> Local Inventories
<b><u>Consistent</u></b> Manufacturers Throughout Our System	<b><u>Recognized</u></b> Consumer Brand
<b><u>More</u></b> Effective Shop Inventory -Reduced Investment and Higher Productivity	
<b><u>Prolink</u></b> Internet based catalog, 24/7 parts availability and pricing	

### PROFIT PLAN

Very competitive pricing on NAPA Premium and Value Line products  
Special quarterly stocking incentives  
Quarterly product discounts to enhance competitive pricing during key selling seasons  
Discount on electronically ordered parts from participating stores  
Prompt payment discount terms (2% 10, Net 20)

### A BRIEF LOOK AT NAPA

Since 1925, NAPA (**National Automotive Parts Association**) has helped businesses expand their parts coverage and maximize turnover and ROI. They offer an unparalleled package for people, products and programs to increase your productivity:

More than 5,800 **NAPA AUTO PARTS** Stores Nationwide

- Strategically located Distribution Centers servicing all 50 states
- Computerized inventory control linked to your station
- Highly trained Factory Reps.
- Training for you and your employees

(O V E R)

Now...what do you have to do to participate in the NAPA Program? It's easy. You just have to:

- Register in **NAPA** Major Account Program with the Association
- Stock a minimum of four product lines
- Designate **NAPA** as first call supplier, and
- Purchase a minimum of \$7,500 per quarter (Average \$2,500 per month)

It couldn't be easier so why not join today. **No risk**...if you don't meet the quota you just don't receive the rebate, nothing lost....but additional profit could be gained!

Name of Your Business:		
Business Address Street:		
City:	State:	Zip:
Phone:	Fax:	E-mail:
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	

FAX this form back to:  
518 452-1955