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CAN YOU SURVIVE YOUR GOVERNMENT?

By Roy Littlefield

"We have met the enemy and it is us".

While government is intended to protect you and your business, do you sometimes wonder how much easier everything would be if you were not under siege with new laws and burdensome regulations?

Because of the importance of this issue, Murf's Turf has now been moved to Saturday morning this year to give more attendees an opportunity to participate in this lively exchange.

Comptroller and "2014 Small Business Advocate of the Year", Peter Franchot, will join Kirk McCauley and me in a question and answer session moderated by the "younger and better looking" Roy Littlefield. The panel will respond to your questions, such as:

- As more and more members purchase these facilities, why is it a top small business legislative priority to repeal the estate

tax?

- How do I comply with Obamacare when I can't get the same answer from any two "experts" on any aspect of the law?

- What is voluntary tire registration and what do I have to do to avoid a potential fine of \$10,000 per tire I sell because I am not obeying a law I don't know anything about?

If I am using the LIFO accounting system for tax purposes, what impact will it have on my tax bill if it is repealed?

- Congress delayed until next year any decisions on how to fund the new transportation bill. What new sources of revenue are being considered and what impact will it have on my bottom line? What should we do? What can we do?

- Who is pushing the proposal to require you to pay time and a half for work over 40 hours to all managers and assistant

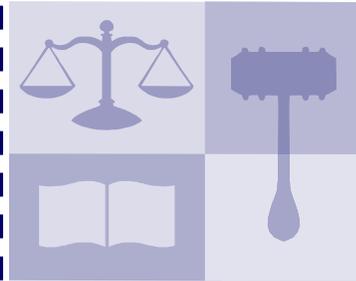


Maryland Comptroller and "2014 Small Business Advocate of the Year"

Peter Franchot

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GENERAL COUNSEL CORNER



The Franchise Industry Receives a Jolt

By Peter H. Gunst, Esquire
pgunst@lawyers.com

On July 29, 2014, the Office of the General Counsel for the National Labor Relations Board gave the franchise industry a real jolt.

The General Counsel's brief press release stated that it had instructed regional directors to pursue complaints of unfair labor practices against not only McDonald's franchisees, who were the direct employers involved, but also against their franchisor, McDonald's USA.

The General Counsel stated that McDonald's USA should be viewed as a "joint employer" bearing responsibility in at least forty-three cases in which complaints had been authorized against franchisees.

Traditionally, the law has treated franchisors and franchisees as independent entities, both in the context of employment law and otherwise.

Beyond question, franchisors and franchisees are separate legal entities, each responsible for managing separate businesses. Many franchisors have blurred the line, however, by micromanaging various aspects of their franchisees' businesses in order to protect their brand image.

The theory behind the General Counsel's directive was that McDonald's had so involved itself in its franchisees' employment practices that it should be deemed to be a "joint employer," with potential liability for its franchisees' labor law violations.

The General Counsel's directive immediately set off a firestorm, eliciting fiery rhetoric not only from franchisors but from franchisee groups as well.

Criticizing the directive, a spokesperson for the International Franchise Association complained that "the livelihoods of hundreds of thousands of independent franchise small businesses are now at risk due to the radical and unprecedented nature of this decision."

That spokesperson predicted that adoption of a "joint employers" standard would diminish the ability of franchisees to make employment decisions, and as a result "the value of [their] businesses" would be deflated."

The triumphant press releases issued by some supporters of the General Counsel's directive reveal why opponents of

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What Can I Do To Protect My Business? Find Out at The Industry Issues Forum!

By: Roy Littlefield IV

If you are a business owner, the “Industry Issues Forum” is a must attend event this year in Ocean City! With an ever-changing industry, there are more questions now more than even on what the future holds for your business.

This year, the forum has been expanded and opened up to the general membership to provide a more comprehensive overview of the issues affecting us on the state and federal level. The forum will take place Friday, September 26 at the Ocean City Convention Center beginning at 1 pm.

With so many hot button issues on the floor for debate, it is essential that we ramp up our legislative efforts this year and unite as an industry against practices and laws that the government is trying to harmfully impose on your small business.

This year we put a particular emphasis on our legislative efforts as we encourage owners to hear from a variety of industry leaders and representatives on issues that will affect your business on a state, and federal level.

The Industry Issues Forum gives dealers and repair shop owners the opportunity to see what issues affect them on the state level such as storm water management, gas taxes, sick leave, tire aging, Stage II, minimum wage, transportation funding, and sales tax on service, safety inspections, and decentralized VEP, to name a few.

In addition to federal issues such as the estate tax, right to repair, highway funding, healthcare, fair labor standards issues, overtime, OSHA regulations and proposals, voluntary tire registration, Keystone XL pipeline, LIFO

repeal, and more.

We will ask: How do these issues affect my business? What can I do to protect my business? What options do we have in the next session? How have other states combatted these issues?

Both service station dealers and repair shops owners should be concerned with the legislative climate. Speakers at the forum include lawyers, representatives from weights and measure, air management personnel, representatives from the Comptroller’s office, API, AAA, distributors, and others from around the country. We must come together as an industry to speak in one powerful voice. Be sure that your business is represented at the industry issues forum.

The issues covered will be important for both service station dealers and repair shops owners in the interest of their businesses. Take the advantage of this rare opportunity to hear directly from industry leaders on a variety of issues that directly affect you and your business.

And don’t forget that following the legislative forum, there will be an educational session on periodic and electronic inspections which will be conducted by industry leaders and the Maryland State Police. Repair shop owners and owners of stations with bays are encouraged to attend.

*****See attached PDF for More
Information on the
Industry Issues Forum*****

Federal Motor Carrier Safety Administrator Anne Ferro Resigns

The American Association of Motor Vehicle Administrators announced last week that Federal Motor Carrier Safety Administrator Anne Ferro would become its next president and CEO. Ferro has held the post of FMCSA leader since President Obama appointed her in 2009. According to a news release, Ferro will leave FMCSA to officially begin at AAMVA on Aug. 25.

Before coming to FMCSA, Ferro served as president and chief executive officer of the Maryland Motor Truck Association between 2003 and 2009. She also served as Maryland's Motor Vehicle Administrator from 1997 to 2003.

"It has been my greatest honor and privilege to serve in President Obama's Administration with the vital mission of saving lives on America's roadways," Ferro said. "The opportunity to become AAMVA's President and CEO is another personal dream come true and I am thrilled to begin working alongside the chief motor vehicle and enforcement officials who deliver safety, service and security to drivers and vehicle own-

ers across North America."

Ferro is credited with raising the bar for commercial motor carrier safety across the country. Under her leadership, FMCSA has implemented key measures, such as limiting the risk of tired truck drivers behind the wheel and prohibiting commercial drivers from texting or talking on hand-held mobile devices while driving. Ferro has strengthened the agency's partnerships with state and local governments to leverage aggressive, data-driven enforcement leading to the most dramatic reduction of industry violation rates in over a decade.

"Anne Ferro's extensive leadership experience, stellar record of advancing motor vehicle safety and enthusiasm for public service make her the ideal choice to lead AAMVA into the future," said AAMVA Chair Jennifer Cohan. "Anne is a former Motor Vehicle Administrator herself and she brings to the position a keen understanding of the top issues on our agenda and what it will require to accomplish them."

Ferro's successor at FMCSA has not yet been named.

See You Soon!!!

SSDA/AT ANNUAL CONVENTION & THE

MEGA

TRADE SHOW

SEPTEMBER 25-27, 2014

Congress Sends President Highway Trust Fund Patch

The Federal Highway Administration will continue to reimburse states for transportation projects without anticipated reductions after the Senate Thursday evening adopted House bill H.R. 5021 that provides enough funds for the Highway Trust Fund to keep the program running through May 2015.

"State department of transportation officials across the country are today relieved that the Highway Trust Fund will continue to support critically needed highway and transit projects through May 2015," said American Association of State Highway and Transportation Officials Executive Director Bud Wright. "More than 660,000 jobs and at least 6,000 state DOT construction projects were at risk had Congress failed to act in time to ensure the solvency of the Highway Trust Fund. But no one should be taking a victory lap. While this short-term patch is an important step, Congress must keep America working and the economy moving forward by passing a long-term surface transportation reauthorization bill that is supported by a sustainable source of funding as soon as possible."

A few weeks ago the House passed H.R. 5021 - the Highway and Transportation Funding Act of 2014 sending the measure on to the Senate. On Tuesday the Senate made two amendments to the House-passed version of H.R. 5021 and sent the bill back to the House for consideration. This amended version of the bill added

just \$8 billion in funding for the HTF and only extended the highway, transit, and highway safety programs through December 19 in an effort to get a long-term highway bill passed before the end of the calendar year (months before the House extension dictates).

On Thursday afternoon, with the start of its annual five-week summer recess looming at the end of the week, the House rejected the amendments made by the Senate and passed the original version of H.R. 5021 by a vote of 272 to 150, which the Senate approved later in the evening by a vote of 81 to 13.

The measure now goes to President Obama's desk for his signature.



U.S. Recovers Over \$2.8 Million in Settlement after Fraudulent Transfer of Assets

Owner of Maryland and Delaware gas stations attempted to transfer assets before agreeing to pay \$2 million penalty for violating underground fuel tank safeguards

The owner of a chain of gas stations located in Delaware and Maryland has paid \$2,889,351 to the United States in settlement of a federal lawsuit filed to undo the owner's fraudulent transfer of assets just prior to agreeing to pay a court-sanctioned \$2 million penalty for violating underground fuel tank regulations.

The government's settlement with Robert M. Duncan, of Dover, Del and several corporate entities under his control, includes the original penalty plus nearly \$900,000 in interest, additional penalties, and attorneys' fees and costs. The Justice Department filed the lawsuit and settlement documents in federal court in Delaware, on behalf of the Environmental Protection Agency.

According to officials from EPA and the Justice Department, this case underscores the government's commitment to protect both the environment and taxpayers from those who attempt to evade responsibility for environmental violations.

"This case involved serious, well-documented violations of regulations that protect our communities from the threats to public health and the environment

posed by underground fuel leaks," said Shawn M. Garvin, Regional Administrator of EPA's Mid-Atlantic regional office. "Allowing Duncan Petroleum to shirk its responsibility would be unfair to countless gas stations and other fuel tank owners who willingly comply with the required safeguards."

"This case should send a clear message that EPA and the Justice Department takes seriously our duty to enforce environmental laws, and pursue appropriate remedies, including monetary penalties, against violators," said Charles M. Oberly III, U.S. Attorney for the District of Delaware. "Defendants who fraudulently convey assets to avoid paying penalties should expect to pay a far greater amount, including additional penalties, interest, and attorneys' fees."

The settlement announced today ends a decade of administrative and judicial proceedings by EPA and the Justice Department against Mr. Duncan, Duncan Petroleum Inc., and affiliated entities.

In September 2004, EPA filed an administrative complaint against Duncan Petroleum, citing violations of federal regulations designed to detect and prevent leaks of petroleum and other hazardous substances from underground storage tanks (USTs) at five Maryland gas stations.

Continued on page 7

U.S. Recovers Over \$2.8 Million in Settlement after Fraudulent Transfer of Assets

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That complaint was settled in a February 2006 consent agreement which imposed a \$65,000 penalty, and required measures to ensure continuing compliance with UST safeguards.

After the company failed to carry out the compliance measures, EPA inspected 13 additional Duncan Petroleum gas stations, documenting UST violations at each facility.

In December 2008, after providing multiple opportunities to settle this matter, the United States filed a civil action against Mr. Duncan and Duncan Petroleum. After two days of jury trial, the claims were resolved in August 2010 by a stipulated order, agreed to by Mr. Duncan, requiring payment of a \$2 million penalty by December 15, 2010.

Mr. Duncan failed to pay the agreed penalty, claiming an inability to pay. After analyzing his financial information, the government discovered that six months prior to trial, Mr. Duncan conveyed assets worth about \$10 million to several LLCs, trusts, and foundations under his control.

In August 2011, the U.S. filed a new complaint against Mr. Duncan and affiliated parties, seeking to void these asset transfers pursuant to the Federal Debt Collection Procedures Act. On the eve of

trial in March 2014, Mr. Duncan stipulated that the United States had sufficient evidence to establish that most of the transfers were fraudulent, and the United States agreed to delay proceedings to permit Mr. Duncan to settle his liability by selling and refinancing assets.

As of August 6, 2014, the United States has received total payments of \$2,889,351.41, which includes \$2 million penalty imposed in 2010, plus interest, as well as attorneys' fees and costs exceeding \$450,000, and daily stipulated penalties exceeding \$300,000.



Maine DOT and Canadian Partners Open International Bridge Months Ahead of Schedule

Recently, Maine Governor Paul LePage joined Canadian officials, along with those from the Maine Department of Transportation, to officially open a new connection between the U.S. and Canada, a project completed two months ahead of schedule.

The ribbon was cut for the \$13.9 million Clair-Fort Kent International Bridge, spanning Clair, New Brunswick and Fort Kent, Maine, which carries more than 1,000 cars and 45 trucks each day. The bridge replaces a functionally obsolete bridge, which spans the St. John River and links Route 1 on the U.S. side with Route 161 in Canada. Maine and New Brunswick are co-owners of the new bridge, as they equally shared the construction costs and will likewise both pay for the maintenance of the structure.

And while the bridge was originally supposed to be open this fall, Maine DOT officials were able to complete the project this week in order to accommodate the 2014 World Acadian Congress, held this year in Maine, New Brunswick and Quebec. The event, which serves as a major cultural event each year between the U.S., Canada, and Europe, is expected to "draw significant cross-border traffic" during the two-week celebration. The early completion relieves traffic wor-

ries for attendees.

"I congratulate all of those who put in so much hard work and dedication to make this bridge a reality," LePage said in a statement. "Last week, Premier Alward and I signed a Memorandum of Understanding that is designed to strengthen relations between Maine and New Brunswick by working together to create jobs and co-operate in areas of trade development, tourism, transportation, energy, culture and emergency preparedness. This bridge represents a vital link for economic opportunity between our two regions for this generation and for many generations to come."

Maine DOT officials said the department is moving on a contract to demolish the old bridge and hope to have the structure completely removed by June 30, 2015.



Five States Receive Federal Grant for Bridge Improvement Projects Utilizing "Cutting-Edge" Technologies

The Federal Highway Administration announced that five states are receiving federal funding through a grant program that supports bridge construction that utilizes innovative technologies.

Louisiana, New Hampshire, Oregon, Pennsylvania, and Virginia have all been tapped to receive a total of \$1.48 million in grant funding through FHWA's Innovative Bridge Research and Deployment (IBRD) program, which seeks to "promote more widespread use of effective and beneficial technologies and applications that are not common practice and encourages states to use these technologies."

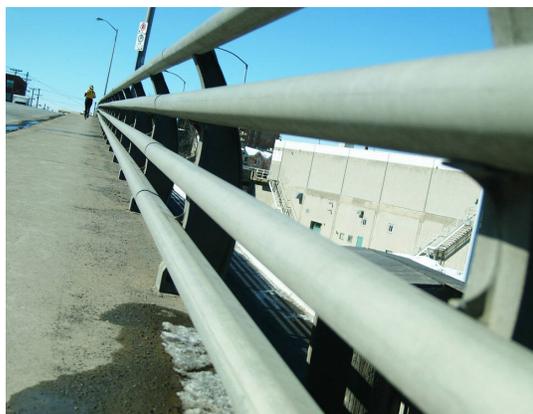
"There are many benefits to advancing new construction and repair techniques like these," said U.S. Transportation Secretary Anthony Foxx in a statement. "From shorter work-related traffic tie-ups to roads and bridges that last longer, grants like these have the potential to help drivers everywhere."

The grants to those five states, ranging from \$250,000 to \$400,000 each, will assist state transportation departments in effectively using new technology for bridge fixes. Those technologies and innovations include the use of accelerated bridge construction and geosynthetic reinforced soils, prefabricated bridge elements and systems, high performance A1010 structural steel, self-

propelled modular transport, and carbon fiber composite cable to replace conventional steel.

"By promoting innovative design, materials and methods to improve construction and repair of our nation's bridges, these grants are one of the many forms of investment in America's infrastructure needs," FHWA Deputy Administrator Greg Nadeau said.

The IBRD program was first established in 2005's surface transportation bill, SAFETEA-LU, as a way to "promote, demonstrate, evaluate, and document the application of innovative designs, materials, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures."





LETTER TO THE EDITOR

Dear SSDA-AT,

The Obama administration is in the process of deciding if additional states get to participate in America's job-creating, economy-growing energy revolution. That's what the federal five-year offshore leasing plan currently under development by the Bureau of Ocean Energy Management (BOEM) essentially boils down to. Although public and political support for offshore development is strong in coastal states like Virginia, North Carolina and South Carolina, there is little these states can do to move forward because the Atlantic Outer Continental Shelf (OCS) is part of the 87 percent of federally controlled offshore acreage that is off limits to energy exploration.

The arguments for opening more offshore areas to exploration and development, in the Atlantic and elsewhere, are strong:

Allowing energy leases in areas in the Atlantic, Pacific, coastal Alaska and eastern Gulf of Mexico could create nearly 500,000 jobs and boost domestic energy production by 3.9 million barrels of oil equivalent per day, according to studies by Wood Mackenzie and Quest Offshore Resources.

Atlantic development alone could create nearly 280,000 jobs, grow the economy by up to \$23.5 billion per year and result in production equal to about 70 percent of current Gulf output, according to Quest. More than 200,000 jobs, \$218 billion in government revenue and 2.6 million barrels of oil equivalent per day are locked away in the Pacific and eastern Gulf of Mexico.

Revised estimates from BOEM peg Atlantic offshore potential at 4.72 billion barrels of technically recoverable oil and 37.51 trillion cubic feet of technically recoverable natural gas. Those numbers are 43 percent and 20 percent higher, respectively, than the last government estimate of the Atlantic OCS done in 2011.

77 percent of American voters support increased production of America's oil and natural gas resources, including 92 percent of Republicans, 80 percent of Independents and 66 percent of Democrats.

Our economy, energy security and geopolitical influence all stand to gain tremendously from the right offshore policies, and decisions BOEM makes now can either limit or expand energy opportunity from 2017 to 2022. More than 200 members of Congress - both Republicans and Democrats - have written Secretary Jewell calling for an expansion of offshore lease sales to areas currently off-limits. The Obama administration should heed their calls - and the overwhelming economic data - and choose energy.

Sincerely,
Jack Gerard
President and CEO
API



CAN YOU SURVIVE YOUR GOVERNMENT?

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- managers who are on salary?
- Will we see more OSHA and MOSH inspections as agencies look to raise money in a time of government budget cuts?
- For the past two years we have participated in hearings on tire aging. Wouldn't a periodic motor vehicle safety inspection program be a better way to address the issue?

What a mess we have in the halls of government on the city, state, and federal levels. It is a personal embarrassment to admit that we are part of the process. The voting booths across America in November 2014 will hold the answer to the question "who are the "winners and losers" in the on-going budget debate.

Until then, we still have to muddle along and speak out for the good of the industry.

This brings me to a serious personal concern - that of government regulation. At times it appears that whenever lawmakers want to get their names in the media, they propose some new restriction or tax on our industry. Proposals impacting on our industry do get the headlines because they affect virtually every citizen in the nation.

A qualitative shift in the nature of U.S. government involvement over the past three decades has given a new coherence to the business circle most actively opposed to it. Industry-specific regulation has usually

developed with some degree of industry cooperation, while general regulation has been far more adversarial in origin and implementation.

At the forefront of these new overarching regulations are the Occupational Safety and Health Administration (OSHA), the Equal Employment Opportunity Commission (EEOC), and the Environmental Protection Agency (EPA), and their ever-growing state counterparts.

Our lawmakers seem to forget at times that the primary aim of all government regulation of the economic life of the community should be not to supplant the system of private enterprise, but to help make it work. Too frequently they turn their back on the advice that President Kennedy offered, and that was..."I do not believe that Washington should do for the people what they can do for themselves through local and private efforts."

We must do a better job individually and collectively of telling our legislators to allow the system to work.

We are experiencing a world-wide desire of people for freedom and for the free enterprise system. Our form of government has been the dream of millions of people throughout the world and yet our government at times seems bent on choking off our very lifeblood...and that is the free enterprise system.

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CAN YOU SURVIVE YOUR GOVERNMENT?

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Most small business operators are frustrated with government involvement in their businesses. To a small businessman, it seems that whenever a bureaucrat gets involved in some aspect of his or her business, the problem becomes more complicated and the solution simply unattainable. When we recently went to EPA to discuss their proposed lead weight ban, I was in an elevator with an EPA official. He told me that he was going to the 8th floor. But instead of pushing the “8” button, he pushed the “5” and then the “3”. How typical!

Government regulation in Washington has required us to become safety and environmental specialists, in fact almost chemists, with an alphabet soup of potpourri of acronyms like TREAD, TPMS, EWS, EPA, OTAG, LEV, NOX, VOX, organic chemicals, oxygenates, MTB, ETB, ethanol, CNG, NPL, M85, E85, RVP, OPRG, SIRA, NAAQS, RCRA and, of course, one of my favorites - LUST.

Definitely tongue twisters but all part of a new fabric of doing business in a changing environment.

The simultaneous rise of government intervention and the fall of company profits suggest the immediate genesis of a rising corporate activism. Greater overall planning, as a result, must be assumed more by business and less by government.

Government at all levels - local, state, and federal - must do everything possible to promote America's ability to compete. Our elected representatives must make the connection between the cost of legislation they are considering and its effect on our efforts to improve America's competitive position.

Every action that they take should be put to a litmus test, and that is: “Will it help or will it hinder our ability to compete as a nation?”

We are out of time and we are out of patience with those officials who have not given the small business community the support it needs for the business community in turn to provide the jobs, the income, the tax revenues, and the opportunities that our nation needs so badly.

We will try to take these challenges on during Murf's Turf on September 27 in Ocean City, in conjunction with WMDA's Convention and Mega Trade Show.

Murf's Turf has been moved to 10am on Saturday and will be held in the Clarion Ballroom, immediately following the Awards Breakfast. There is no fee for this session, and you do not have to attend the Awards Breakfast to attend Murf's Turf.

*****See attached PDF for More Information on Murf's Turf/ Small Businessman's Survival Guide*****

Have You Made Plans Yet?



**September
25 - 27, 2014**

**Ocean City,
Maryland**

**41st
Annual
Convention
and Mega
Trade
Show**



**See the
attached
flyer for
more
information**

2013 Convention Highlights



GENERAL COUNSEL CORNER

Continued from page 2

the directive are so concerned by its potential impact.

One pro-labor commentator pointed to the potential impact for union organization. He wrote:

Until now, employees at each franchise were limited to organizing only the workers at the franchise. This made the long, hard and expensive process of forming a union nearly impossible because it would have to be repeated for each individual franchise. Now unions have a single target in the parent McDonald's corporation and can launch a unified organizing campaign.

In addition, that commentator said that adoption of a "joint employer" rule would make it easier to file national class-action lawsuits to attack employment law violations.

The commentator also emphasized that adoption of a "joint employer" standard should extend beyond the fast food industry, and gave as examples of franchisors at risk Dunkin Donuts, 7- Eleven stores and H&R Block tax preparers.

So how might this affect franchisees in the service station industry? To begin with, all the fuss may be premature. The General Counsel's directive to its regional offices is merely that. It does not have the force of

law, and the proposed standard has not been adopted by the NLRB itself, much less by the courts. The General Counsel has merely thrown down the gauntlet on the issue.

Further, this issue might have had considerably more relevance to the petroleum industry fifteen years ago, before the majors mostly removed themselves from direct supply.

Then there were detailed operating requirements and regular station examinations and evaluations, making franchisors like Exxon and Shell tempting union organization and class-action targets.

The jobbers who have largely replaced refiners as franchisors are less likely to be impacted. Because of their relatively small size they are less likely to be tempting unionization and class-action targets. Moreover, with some very notable exceptions, jobbers are often not as involved in micro-managing as were their predecessors, and thus less likely to be branded as "joint employers."

In any event it will be interesting to see where, if anywhere, all of this leads.

pgunst@agtlawyers.com

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: <http://www.agtlawyers.com/resources/petroleum.html>.



1532 Pointer Ridge Place, Suite G
Bowie, Maryland 20716

Phone: 301-390-0900

Fax: 301-390-3161

E-mail: mgates@wmda.net

2013-2014 SSDA-AT Officers

| | |
|--|--------------|
| President: Peter Kischak, New York | 914-698-5188 |
| 1st Vice President: Fred Bordoff, New York | 718-392-9605 |
| 2nd Vice President: Billy Hillmuth, Maryland | 301-390-0900 |
| Treasurer: Hugh Campbell, Pennsylvania | 724-863-3524 |
| Past President: Dave Freitag, Ohio | 419-217-0870 |

For more information on SSDA-AT, please contact::

Marta Gates, Managing Director

mgates@wmda.net ♦ 301-390-0900 ext. 115

Roy Littlefield, IV, SSDA News Editor

rlittlefield2@wmda.net ♦ 301-390-0900 ext. 137

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