February Newsletter

WVADA
WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

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2021 Annual Dealer Convention

Legislative Update

We are 16 days into the legislative session and bills are moving at a record pace. The COVID pandemic has both House and Senate worried that an outbreak may occur, forcing a pause in the legislative session. Thus, leadership of both chambers are holding marathon meetings to push through their legislative agenda. WVADA is very fortunate to have our primary bill as one of Senate leadership's priorities, SB 5.

S.B. 5 – Relating to claims arising out of the WV Consumer Credit Protection Act, passed out of the Senate Judiciary Committee yesterday and will be read a first time on the Senate floor tomorrow. The bill will be on second reading on Monday and third reading on Tuesday. If the bill has a majority of votes on Tuesday, then the bill will pass the Senate and head to the House. The House should receive the bill on Tuesday where it will be reference to House committees. Currently, we are working on getting the bill singled referenced to House Judiciary.

Johnnie Brown testified yesterday to the full Senate Judiciary Committee. Johnnie did a great job defending the merits of this bill, and WVADA greatly appreciates all of his hard work on this!

Here is list of positives contained in S.B. 5 passed out of the Senate Judiciary Committee:

- Clarified the basis on which plaintiff's attorney can recover attorney fees, and included a requirement that the Court look at the amount involved, and the amount of the plaintiff's recovery.
- Increased from 20 days to 45 days the dealers ability to respond to a settlement demand letter from a consumer prior to the consumer being able to file suit.
- In addition to the requirement of the cure offer, we created a brand new section on Offers of Settlement, which will allow a dealer to make up to three offers of settlement, even after a suit is filed.
- The cure offer language remains the same and cuts off attorney fees from the date of the cure offer if the consumer's recovery does not exceed the cure offer at trial.
- The offers of settlement are important because if a fair offer of settlement is made, and consumer recovers **less than 75% of that offer, plaintiff's attorney fees and costs are cut off from the date of the offer of settlement.** Importantly, if this occurs, **the dealer also has the chance to recover its attorney fees and costs from the date of the offer of settlement under certain circumstances**.
- **The new offer of settlement provision also gives prevailing parties (both consumers and dealers) the right to seek fees and costs for frivolous claims that are asserted**.
- If eventually passed by the House of Delegates and signed by the Governor, it will become effect for all suits filed after its effective date.

S.B. 277 – Relating to COVID Liability – which prohibits civil actions for any loss, damages, personal injury, or death arising from COVID against any individual or entity, including businesses. This bill does not preclude an employee from filing a claim for workers' compensation benefits, nor does it preclude a product liability claim wherein it is shown there was actual malice, or reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others.

Business and Occupation (B&O) Tax Bill

This bill was submitted to bill drafting by the Senate Finance Chairman, Eric Tarr on February 16. Bill drafting is very behind, mainly due to the fact that more bills have been introduced already this year than all of last session, and we are only 16 days into the session. Once this bill is introduced I will keep everyone posted. I spoke to Chairman Tarr today and he stated that he was going reach out to legislative services and see if he could "fast track" the bill for introduction. This bill is going to be a tough uphill battle and I will be calling on dealers for their help.

Other Issues we are monitoring:

- As of now, there have **NOT** been any bills related to direct sales (aka Tesla). We hope to keep it that way
- **S.B. 325**/**H.B. 2737** – Eliminating the requirement for motor vehicle state inspections
- Elimination of State Income Tax – awaiting the Governor to introduce the bill

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ATTENTION MEMBERS: NONDEDUCTIBLE DUES FOR 2020

The nondeductible portion of the regular member dues to WVADA for 2020 is 47.79%.

The nondeductible portion only applies to regular member dues – associate and subscriber dues are fully deductible.

Welcome New Members!

archall
architects

Our team is forever anchored in the value of hard work, and we're passionate about blending craft with creativity, adaptability and collaboration. Over the last four decades, we've built client-company relationships that last because of the tradition of dedication set forth by Mike and John. We look forward to continuing that tradition, and creating a project that is as important to us as it is to you.

The Milby Group is committed to providing the best automotive aftermarket products and training available in today's marketplace. We take pride in coaching your current staff and building on their skills to reduce staff turn over. We promise we will never sacrifice the time-honored qualities of character and integrity for our own gain.

Va. Dealers Pivot on Emissions Rules

The Virginia Automobile Dealers Association is supporting state legislation that would impose California's vehicle emissions standards and zero-emission vehicle mandates after initially opposing a similar measure last year and asking lawmakers to delay action on emissions rules until 2022. Virginia's House Bill 1965 — passed by the Senate last week and expected to be signed by Gov. Ralph Northam — adopts the more stringent auto pollution rules set by the California Air Resources Board and requires automakers to provide increasing percentages of ZEVs to their franchised dealers starting with the 2025 model year.

Click here to continue reading

Source: Automotive News

Lawsuits Tossed Challenging West Virginia Gov. Jim Justice's COVID-19 Executive Orders

CHARLESTON — Seemingly closing the books on legal efforts to overturn Gov. Jim Justice's executive orders during the COVID-19 pandemic, two federal courts dismissed challenges to the governor's authority under states of emergency.

U.S. District Judge Robert Chambers issued a judgment order Tuesday dismissing a lawsuit filed by Andrew and Ashley Stewart, owners of Bridge Cafe and Bistro in Putnam County.

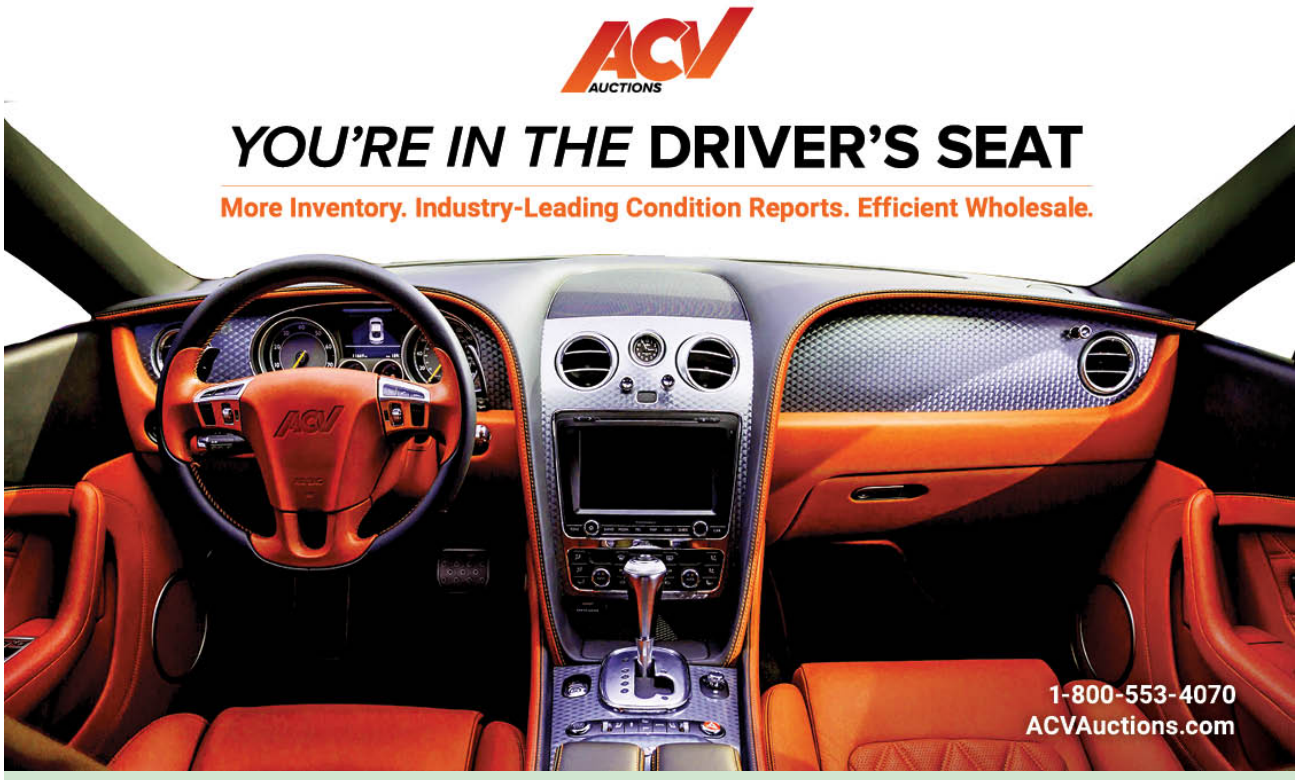
The Stewarts challenged as being unconstitutional Justice's executive orders requiring the wearing of face masks or coverings in the indoor public places and business reopening guidelines released in May. Chambers dismissed the lawsuit with prejudice, meaning that the case cannot be filed again on the same grounds. *"Although the court understands that the stay-at-home order and mask mandate have burdened many in the community, the orders are neither arbitrary nor unreasonable,"* Chambers wrote. *"The governor consulted with public health officials, relied on data provided by credible sources, and collaborated with other public agencies to protect the public from a virus that has already killed thousands of West Virginians. Therefore, the court finds that there is a rational basis for the orders and that they bear a real and substantial relation to this public health crisis."*

The Stewarts on Sept. 15 filed a complaint against the state, the Putnam County Commission and an employee of the Putnam County Health Department. They

argue in previous court filings that their right to free speech under the First Amendment was violated after a social media post on their business' Facebook page saying they would not enforce the mask executive order resulted in the scrutiny by the Putnam County Health Department. They also argue the act of not wearing a mask is politically protected speech.

Justice issued his first COVID-19 mask mandate by executive order on July 7, which requires people to wear face masks or face coverings in all indoor public buildings. The order was amended Nov. 13 to require masks indoors even when people can socially distance from others, though the order has exceptions. Justice issued an executive order March 23 requiring residents to remain at home except for essential services to slow the spread of the coronavirus. At the end of April, Justice released guidelines though his Comeback Plan for business reopening rules.

The decision by Chambers follows a decision by the U.S. Court of Appeals for the Fourth Circuit that granted a motion for voluntary dismissal Jan. 27 for a court case brought against Justice by 30 Morgantown businesses and individuals. The businesses, represented by Wheeling attorney Martin Sheehan, filed a motion Jan. 25 to appeal an order by U.S. District Judge John Bailey, who on Jan. 6 granted a motion to dismiss the case on behalf of Justice and the city of Morgantown.



Federated Insurance Claim of the Month

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Claim of the Month — Could it happen to you?

A customer purchased a $52,000 vehicle, with $10,000 down. After writing the check and going through the financing process for the remainder, she drove the vehicle off the lot. The dealership later discovered the check was written from a closed account and the information the customer provided for financing was false. The dealership couldn't contact the customer, and the vehicle was never recovered.

CLAIM AMOUNT: $52,000
As an honest business owner, you'd like to think that everyone you deal with is trustworthy. But unless you implement policies that help prevent theft by deception, your dealership may be more susceptible to some very damaging scams. Consider these tips for helping protect your business from false-pretense schemes:

- Verify customers have sufficient funds to cover checks before accepting them.
- Finalize financing before releasing vehicles.
- Complete partial credit applications on cash deals.

Scammers are always coming up with new ways to get victims to part with their property, so you can never be too cautious. If a customer is behaving in an unusual way, use your instincts and rely on the procedures that you have created to help protect yourself.

Federated Mutual Insurance Company is recommended by 20 state and national auto dealer associations and buying groups for customized insurance programs and value-added risk management services, such as mySHIELD℠, the Risk Management Resource Center, and the Federated Employment Practices Network®. Visit **federatedinsurance.com** or **contact your local marketing representative** for resources you can use to create or enhance your own risk management program.

This article is for general information and recommendations for risk prevention only and should not be considered an offer of insurance or legal or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate, any or all risk of loss. Coverage will be determined by the facts of the claim and the terms of your policy, if approved for issue. The information herein may be subject to, and is not a substitute for, any laws or regulations that may apply. All products and services not available in all states. Qualified counsel should be sought with questions specific to your circumstances and applicable laws. © 2021 Federated Mutual Insurance Company.

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Check under the Hood. Is there performance and reliability? What about your business? Just as you want your automobile to take you safely where you want to go, you need your law firm to guide your business through the variety of legal challenges, internally or externally, with performance and reliability.

Let Pullin, Fowler, Flanagan, Brown & Poe trial attorneys handle the diverse checklist of legal issues your business is confronted with. One law firm creates less confusion and a better understanding of your business – leading to continuity of knowledge for representation. ***It's all under one name.***

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Certain State Tax Treatment Of PPP Loan Forgiveness And Deductibility Of Expenses

February 16, 2021

By: **Robert G. Tweel**, **Rebecca G. M. Krehbiel**, and **Cassee Layne Vivian**

Federal Treatment of PPP Loan Forgiveness and Deductibility of Covered Expenses

One of the largest relief programs contained in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") passed March 27, 2020, was the Payroll Protection Program ("PPP"), which provided forgivable loan assistance to companies seeking to maintain their payroll during the COVID-19 pandemic. The CARES Act excludes the forgiveness of PPP loans from the federal gross income of recipient companies. While the IRS initially prohibited the deductibility of expenses paid for with PPP loan funds in IRS Notice 2020-32, Congress reversed this decision by statute in the Consolidated Appropriations Act, 2021 ("CAA"), at the end of 2020. Thus, federal law now allows covered expenses paid with PPP loan funds to be deductible for federal income tax purposes.

State Income Tax Treatment

While federal income tax treatment of PPP loan forgiveness and the deductibility of covered expenses is now clearer, state income tax treatment of these two issues is far less so. Generally, with regard to

federal tax legislation, state conformity depends on whether the state automatically conforms with the latest version of the Internal Revenue Code ("IRC"), "rolling conformity", or whether the state only conforms with a version of the IRC as of a specific date, "static conformity." With the state income tax treatment of PPP loan forgiveness and the deductibility of covered expenses, however, the provisions of the CARES Act which address the treatment of PPP proceeds do not explicitly amend the IRC. So even in rolling conformity states, the state legislature may need to act separately to confirm whether they will adopt federal treatment of PPP loan forgiveness and expense deductibility.

Below is an explanation of the current status of state income tax treatment of PPP loan forgiveness and expense deductibility at the state level for states in which we have offices:

West Virginia
West Virginia is a static conformity state and is in conformity with federal definitions of income as of January 1, 2020. The West Virginia Tax Department, however, has not issued detailed guidance on how it will be treating PPP loan forgiveness or expenses. The legislative session began in West Virginia on February 10, 2021, and is scheduled to end April 10, 2021. West Virginia adopts an update bill every legislative session for personal income tax and corporate income tax, and we anticipate that this legislative session's update will address taxation of PPP forgiveness. However, until this update is adopted, taxpayers have been directed by the WV Tax Department not to file their state returns if they are reporting PPP forgiveness. Accordingly, until these bills are passed taxpayers will have to wait to file their returns until April. This delay could prove difficult for flow-through entities whose returns are due March 15, and they will need to file extensions to appropriately wait to file their returns. These extensions will also then delay the returns of any K-1 recipients of the flow-through business.

Read More

NADA Releases New Guide on Buying and Selling Dealerships

NADA has added to its suite of learning products a newDriven guide that provides a comprehensive overview of key planning considerations when buying and selling automobile and truck

dealerships. A Dealer Guide to Buying and Selling a Dealership applies the planning considerations to each phase of the buying and selling process and includes a detailed checklist of action items for both buyers and sellers. The guide was prepared for NADA by nationwide buy/sell experts Alan Haig and Erin Kerrigan.

Mike Alford
Chairman, Regulatory Affairs Committee

Capital Automotive™

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Success doesn't just happen; it takes practice, dedication, and hard work. And behind every successful team, there's a knowledgeable coach who keeps them focused on the game plan and provides the training and support they need to win. When you partner with Capital Automotive, that's exactly what you get—the right tools to increase profits year after year with the flexibility to adapt to your unique market, and a winning coach to support your success.

Take a few moments to assess the strength of your program.

FLEXIBILITY		
I can customize products to increase sales	❑ Yes	❑ No
My provider is easy to work with	❑ Yes	❑ No
I have a formal plan to increase PVR	❑ Yes	❑ No
I have a fully integrated menu, reporting capabilities, and compliance tools	❑ Yes	❑ No
PARTNERSHIP		
My PVR is routinely in the top 5 of my 20 group	❑ Yes	❑ No
My F&I Manager and provider coordinate on live customer deals	❑ Yes	❑ No
My F&I provider delivers candidates for my F&I department	❑ Yes	❑ No
Measurable performance standards are in place	❑ Yes	❑ No
TRANSPARENCY		
I see consistent investment returns on reinsurance	❑ Yes	❑ No
I see underwriting profits from all of my products	❑ Yes	❑ No
I understand my reinsurance fee structure	❑ Yes	❑ No
I can use various reinsurance structures with my provider	❑ Yes	❑ No
I can direct cash flow to meet my needs	❑ Yes	❑ No

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IN THE COMMUNITY

TIME DEALER OF THE YEAR

Congratulations to JR Toothman with

Toothman Ford for being nominated as West Virginia's Time Dealer of the Year! Thank you for all that you do in the community!

BILL COLE AUTOMALL

When St. Mary's Cancer Center (SMCC) added new infusion bays, plus began providing treating for HIMG infusion patients; there was a large increase in patients coming to the SMMC campus. Due to COVID and restrictions on valet parking, an immediate need to provide transportation for all the patients coming from our parking garages and lots was identified.

When Bill learned about the need, he stepped up and provided our SMMC a brand new patient transport vehicle. St. Mary's Medical Center (SMMC) is deeply grateful to Bill for providing a great ride for all our patients!
2nd photo with leadership-
Names L-R in leadership picture:

David Sheils, Vice President Support Services SMMC, Todd Campbell, CEO SMMC, Bill Cole, Kristi Arrowood, Director of Foundations, Aynessa Mondlak, Director of Cancer Center, Stacey Coles, SMCC secretary, and Amanda Fannin, SMCC RN.

GRAND OPENING FOR PREMIER NISSAN

Congratulations to Andrew Cognac with Premier Nissan for his grand opening for his local dealership expanding his businesses in the Morgantown area! This is a great opportunity for bringing more jobs in the area! Thank you for you all do in the community!

GRAND OPENING
GRAND OPENING
GRAND OPENING

Forms for WVADA 2021 Convention

- WVADA Registration Form
- Greenbrier Room Reservation Form
- Sponsorship Form

- Exhibitor Registration Form

Visit WVADA's COVID-19 Resource Page