

NOZZLE & WRENCH

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OBM has 90 days to review regulations and President Biden to approve, and regulations would take affect 1 year latter. They could also be approved next week!

KIRK'S CORNER

ACTION ALERT for Tobacco Retailers

Food and Drug Administration (FDA) Sends White House Office of Management and Budget (OBM) Regulations for Flavor Ban on Cigarettes & Cigars, Including Menthol



By Kirk McCauley, Director Of Member Relations & Government Affairs

The rule is a tobacco product standard to prohibit the use of menthol as a characterizing flavor in cigarettes and flavor in all cigars. We have not seen a copy of the regulatory rules that were sent for consideration to OBM, but FDA has confirmed 2 sets of regulations have been sent to OBM.

OBM has 90 days to review regulations and President Biden to approve, and regulations would take affect 1 year latter. They could also be approved next week! So now is not the time to procrastinate. I have lifted a form (with permission) from MAPDA alert that was put together by Energy

Marketers of America, which makes sending comments a breeze. Click on [action alert](#)

For those that would like to send an email or text to express in their own words, you can use contacts below. Email gives you an area to print your message, do it with respect but to the point.

White House contact information:

- Text the White House: (302) 404-0880
- Email the White House: <https://www.whitehouse.gov/contact/>
Message Type – Select the President

Banning flavored tobacco products will create a crime wave that will be never ending, punishing manufacturers, wholesalers, and retailers, while at the same time no punishment to users, which will create a huge demand for illicit products. Age verification, content of product, tax collection and safety of purchasers will nonexistent. If history is any indication, prohibition does not work, you only must look at alcohol and cannabis to see the crime, deaths and lives that were destroyed by good intention with unintended consequences.

ACTION ALERT

Continues on page 4

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Baltimore: As of October 1st, plastic bags at point of sale are a no-no and you must charge five cents for paper bags.

Continued from cover

You cannot legislate behavior and expect to work.

[CLICK HERE](#) for talking points

Baltimore County Bag Ban

As of October 1st, plastic bags at point of sale are a no-no and you must charge five cents for paper bags. There are some exceptions so read the law, Baltimore County [website](#). 90 day grace period before fines start.

MAFCAS

The Mid-Atlantic Fuel, Convenience & Auto Repair Show (MAFCAS) was held on 19th & 20th of October at Maryland Live Casino & Hotel.

Thursday

Vendors' day to set up booths and 2 hours for attendees.

Friday

Legislative – Industry Issues Forum – Panel members from MDE Oil Control, Comptroller Enforcement Bureau, Weights and Measures, Maryland Lottery, MAPDA, SSDA-AT, WMDA/CAR Attorney Jim Parsons, Riaz Ahmad – MD convenience stores and lottery, Nasir Cheema DC convenience stores and Lottery, WMDA/CAR President Sandi Weaver – BA Auto, Bruce Spencer – Walt Egers Auto Service, New Jersey Gas, Convenience and Automotive Repair Association (NJGCA). All members were invited to attend and to ask questions of panelists after round table discussion. Panel members were asked to discuss new regulations, frequently seen violations, what's working and what not working in repair, convenience and fueling sectors of our membership.

Not enough space to go over everything but will try to highlight a couple:

Sandi Weaver and Bruce Spencer had a bright outlook on the future of the repair business. The only downside is the critical need for technicians.

Chris Ralston administrator of Oil control program and Tom Walters Chief Compliance Officer talked of Annual Financial Responsibility forms not being timely sent in by UST owners, monthly and yearly walkthrough inspection forms not being filled out and finding stations with no C operating training certificates. All of these forms and more can be found by at [Fact Sheets and Publications \(maryland.gov\)](#).

Weights and Measures has a new chief, Allison Wilkens. Allison said they have been hiring and had a full complement of inspectors for the first time since COVID. They will see you soon.

Chuck Ulm Director of The Field Enforcement Bureau of Comptroller's office talked about what and what was not below cost selling. His example was the Sheetz 4th of July sale and how they consulted with the comptroller's office to make sure it was legal.

John Martin Director Maryland Lottery and Gaming Agency gave us an update on lottery, average lottery agent was paid a little over \$50,000 in agent fees and that includes bonuses for selling big number winning tickets. Seems like if you had room or could make room, you should have lottery terminal. As a side note Maryland Lottery and Gaming contributed \$1.589 billion

dollars to Maryland's income in FY2023. Our members were a big part of that.

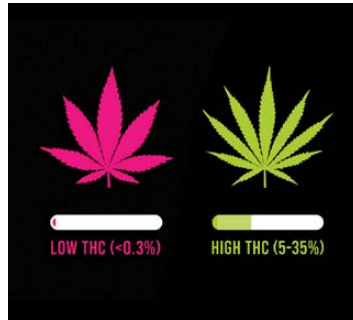
Legality of THC products came up after Washington County Circuit Court Judge Brett R. Wilson issued a preliminary injunction Thursday October 12th, temporarily lifting the restriction until a lawsuit filed by the Maryland Hemp Coalition and other businesses is resolved. Hold on, it does not apply to everyone that wants to sell THC products.

Director of Alcohol, Tobacco & Cannabis Commission (ATCC) Jeff Kelly clarified the ruling. Only businesses that sold these products before July 1, 2023, could now sell those products legally. The law is still in effect for all those that did not sell the product before July 1, 2023. This injunction could last for weeks, months or years. The injunction most likely will be challenged by the state of Maryland.

I wish my crystal ball could tell you how long or the outcome of injunction, but I used up all its power at Maryland Live and I still lost money – LOL.

Original Bill that took effect July 1, 2023

Maryland legislative bills that banned the sale of THC products [HB0556](#) / [SB0516](#) established that any product containing more than 0.5 mg THC per serving and 2.5 mg THC per package, except for certain full spectrum tincture products, may only be sold in a licensed cannabis dispensary. This requirement extends to all THC isomers, including



delta-8, delta-9, and delta-10.

WMDA/Car attorney Jim Parsons talked about pricing in contracts and how it should be worded.

Roy Littlefield IV of SSDA-AT talked about the right to repair bills and different variations of bill. NHTSA has cleared a pathway forward, after opposing. His dad talked about other federal legislation affecting small business.

Joe Ocello, Board President of NJ Association NJGCA, laminated that same issues we are having, are issues in N.J., but the labor issue is worse because there is no self service in NJ. Only state in nation with no self-serve. You must have attendants on gas islands.

Ellen Valentino spoke on our efforts in DC on UST issues and the headwinds we are facing on electrification.

Riaz Ahmad talked on dealers and lottery and how food service in convenience industry is growing fast and profitable.

Nasir Cheema talked about the DC lottery, tobacco flavor ban and UST age issues in D.C. and like all retail, the labor issue.

Trade Show

Our vendor booths were full of goodies and there were deals to be made, trade show attendees started out slow and built up in

the late afternoon. Our vendors did an amazing job.

The chime struck 6 for cocktail hour and it looked like a traffic jam in rush hour. Cocktail hour was excellent, in a two-floor entertainment area. All smiles and chilling, in a unique setting.

The awards dinner, with over four hundred attendees and the hall was over the top and a major upgrade. Digital Signage for sponsors was the best.

CSC Awards, sponsored by fuel suppliers and WMDA/CAR were great with the added graphics the hall provided. The keynote speaker was good and individual awards all were well received.

While we were incredibly happy with the content and panelists in the Legislative Work Group, attendance was poor for a forum where all our members would

have a chance to ask questions and benefit. Same goes for attendance in early afternoon of trade show.

As Swapna was evaluating the good and the need to improve category, one thing became clear in conversations and correspondence from sponsors, vendors, and members Friday daytime was not a good day for assorted reasons, Tuesday Wednesday or Thursday would be better day to attract members during the daytime hours. keep it to a 1 day show with vendors being able to set up the day before if necessary. The consensus was this would improve daytime attendance, while not hurting cocktail hour, awards dinner, or panelist participation in workgroup.

Wishing everyone a safe holiday season!

Kirk ■

FUN FACT

Modern car engines run on air fuel ratio called stoichiometric which is a ratio of 14.7 to 1 by weight. This is 14.7 grams of air to 1 gram of fuel. It takes 9000 gallons of air to burn one gallon of fuel.



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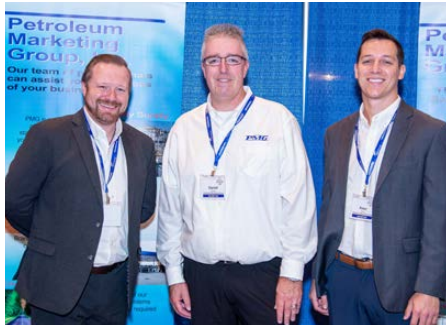
WMDACAR MAFCAS 2023

Mid-Atlantic Fuel, Convenience & Auto Repair Show

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One of the biggest problems that can arise in the context of a sublease is the parking for the subtenant's customers/invitees.

Tips About Subleasing

Brought to you by James L. Parsons, Jr., [Lynott, Lynott & Parsons, P.A.](#)

In order to improve the profitability of a business, or for other practical reasons, an owner or lessee of a motor fuel and convenience store facility may decide to sublease a portion (or perhaps all) of the store. A typical scenario involves the sublease of a portion of the premises to a food vendor, which can include interior space or even an outside area for a food truck. Another common scenario involves the sublease of service bays for a repair shop. Unfortunately, some owners do not use a written sublease, or use a very simple generic form sublease that does not clearly define terms, and then problems arise down the road.

If you are leasing your store and are considering a sublease, the first question to ask is whether your primary lease allows for a sublease. Most gas station and convenience store leases that I have seen allow for a sublease, subject to the consent of the landlord. In this regard, any sublease should provide that the sublease is subject to and conditioned upon compliance with the primary lease. Assuming that your landlord will consent to the sublease, there are several topics that should be addressed in the sublease.

First, the sublease should clearly specify the rental amount and term of the sublease (which cannot exceed the term of the primary lease). The obligations of the subtenant upon the termination of the sublease should also be specified, such as removal of the subtenant's equipment and restoring the subleased premises to the condition that it was in at the sublease commencement date.

Second, the sublease should clearly delineate the area of the premises that is being subleased. The most effective way to accomplish this is to use a diagram showing the area of the subleased premises, which should be attached as an exhibit to the sublease. The diagram can delineate the areas that are for the exclusive use of the tenant, and the areas that are shared. If expenses such as utilities, trash, etc. are to be shared between the store owner and the subtenant, then a list of the shared expenses, along with the subtenant's pro rata share for those expenses, should be spelled out in the sublease. Any expenses in addition to the base rent should be characterized as additional rent.

One of the biggest problems that can arise in the context of a sublease is the parking for the subtenant's customers/invitees. The parking area for the subtenant's customers should be clearly identified in the diagram referenced above, and signage should be installed if possible. This will minimize problems with the subtenant customers parking in front of gas dispensers, or convenience store customers parking in the spaces designated for the subtenant's customers.

Environmental issues need to be addressed if the subtenant is using any hazardous materials. The sublease should clearly delineate the subtenant's



responsibilities with respect to the storage, handling, and disposal of those materials. The maintenance and repair obligations of the subtenant should also be clearly stated. Finally, the sublease should specify any insurance requirements of the subtenant. The insurance requirements in the primary lease can be a source for determining the amount and type of insurance required of the subtenant.

The foregoing is a brief summary of some the important provisions to include in a sublease. Every owner's store can present a unique situation that may also require site-specific provisions. By having these provisions clearly spelled out in a sublease, the store owner can minimize the risk of costly disputes with the subtenant in the future. ■

FUN FACT

The Southland Ice Company opened the first chain convenient store in Dallas Texas in 1927. Later they were named 7-11 which is the largest convenient store chain in the USA.

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Is IP Law Lagging in the Automotive Race?

Challenges Facing the Industry Today

Brought to you by Garcia-Zamor Intellectual Property Law, LLC



Ruy Garcia-Zamor, Attorney at Law

The world is changing at a rapid pace. Intellectual property law is struggling to catch up, and this is impacting any industry where there is a creative effort involved — including the automotive industry. Sometimes it seems that there is something new to consider every month. Artificial intelligence? Self-driving cars or the continued movement toward electric vehicles? Much of this is territory that has cropped up only in the past few years, and there are new innovations happening every day.

So what are some of the IP challenges currently facing the automotive industry? And what can you do about them? Let's dive in.

Patent Eligibility in the Face of AI

“Artificial intelligence” tends to be used in recent conversation as a blanket term for machine learning, generative AI, language models, diffusion models, and other forms of systems being trained to create output that seems intelligent. Naturally, AI is a big part of what is used for the technology of self-driving cars. These cars have to be able to sense movement and avoid traffic collisions without a driver's input. But the use of AI in car manufacturing brings up challenges when it comes to patenting.

Historically, it has been difficult for inventors of any industry to patent AI-related inventions. Section 101 in Title 35 of the US states that inventions which are a “new and useful process, machine, manufacture, or composition of matter” can potentially be patented. But, at least at this point, courts often say that AI doesn't apply.

A SCOTUS ruling in 2014, in the case of *Alice Corp v. CLS Bank*, determined that when the patent is “directed to a law of nature,” it becomes ineligible. This, the ruling claimed, was the case with an attempted AI patent, which was denied. The Federal Court of Appeals upheld the denial of a patent for an automated driveshaft invention in *American Axle & Manufacturing v Neapco Holdings* as recently as July of 2020.

And of course, last year in the Federal Circuit case of *Thaler v. Vidal*, it was ruled that an AI cannot be listed as an inventor as it is not a “human creator.” But even without AI being listed as an inventor, it is possible for AI-assisted inventions to be granted patents or for patents to be granted for AI inventions. As AI is becoming more prevalent, the laws may be updated, allowing for more patents to be eligible. IP attorneys at Garcia-Zamor can help you navigate these complex and changing waters,



...the use of AI in car manufacturing brings up challenges when it comes to patenting.



including the likelihood of your patent being granted.

Updating Designs and Logos When Going Electric

More and more companies in the automotive industry are moving towards electric vehicles, and they want their customer base to know about it. For instance, Volkswagen's GTI line recently changed their trademark so that the I was designed to look like a lightning bolt.

In the automotive industry, these logos don't just go on the promotional material but on the vehicles themselves. That's why it's important for any trademarks for logos, unique designs, and more to be registered. However, you likely won't be able to modify your trademark. Instead, you may need to file a new trademark registration — or more likely, ask your attorneys at Garcia-Zamor to do so for you.

Protecting Trade Secrets

Automotive manufacturers are in a race towards the future. It seems as though every reputable manufacturer is looking for a way to create a fully autonomous vehicle or a more effective electric vehicle. With so much competition out there, it's all the

more important for automotive professionals to protect their trade secrets.

A trade secret is anything that has inherent economic value by nature of not being widely known. Of course there will be members of your company who will need to know the trade secret in order to do their jobs. But you can still take steps to protect your intellectual property. Have the Garcia-Zamor team draft an NDA to keep your trade secrets from spreading to the public. This way, if an employee or former employee does leak your trade secret, you can seek financial recovery. You can also protect your trade secrets by limiting

who has access to that knowledge within your company.

For Any New Intellectual Property Challenges Impacting the Automotive Industry, Turn to Garcia-Zamor

As the automotive industry continues to grow and IP law attempts to keep up, it's important to know what your intellectual property rights are. At Garcia-Zamor, we have over two decades of combined experience in the field of intellectual property. We're ready to help you. Contact Garcia-Zamor today to learn more or to schedule a consultation. ■

FUN FACT

The tubeless tire was patented by P.W. Litchfield of the Goodyear tire company in 1904. It wasn't used in commercial applications until 1954 Packard. Today they are used on almost every vehicle on the road.

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SSDA-AT Submits Testimony for Subcommittee Hearing on Overtime Rule



By Roy Littlefield IV

SSDA-AT is very concerned DOL's proposal will dramatically and negatively impact businesses, nonprofits, colleges and universities, states, cities, towns and public schools as well as the workers they employ and the consumers, students and people they serve.

Moreover, the costs and organizational changes required to comply with the proposal could immediately destabilize an economy that is already facing the dual threats of inflation and recession. Despite many stakeholders conveying these concerns to DOL during listening sessions earlier this year,

the agency is rushing to enact the proposed changes, which could be effective as early as May 1, 2024. At the same time, the Department has failed to provide any evidence that the current regulations, which were last updated in 2019, are failing to protect employees. Instead, DOL relies on a 25-year-old study, two 1982 cases with divergent outcomes, and the current leadership's preference for a test the Department effectively abandoned in 1991. For these reasons, we ask the members of the subcommittee to urge DOL to withdraw its proposal.

The FLSA requires employers track employees' work hours and pay employees at 1.5 times their regular pay rate for every hour worked over 40 in a given workweek. This premium pay is known as overtime pay. The FLSA creates various exemptions from these overtime-pay requirements, including exemptions for executive, administrative and professional (EAP or "white collar") employees. The FLSA tasks DOL with defining and delimiting the terms executive, administrative and professional employees "... from time to time by regulations."

DOL first published such regulations in 1938 and has updated them eight times, most recently in 2019. Under the current version of the regulations, a person must satisfy three criteria to qualify as an exempt white-collar employee: first, they must be paid on a salary basis; second, that salary must be more than the minimum amount DOL has set (currently \$684/week, or \$35,568 annually); and third, their "primary duties" must be consistent with those common to executive, administrative, or professional positions.



The FLSA requires employers track employees' work hours and pay employees at 1.5 times their regular pay rate for every hour worked over 40 in a given workweek.

GOVERNMENT AFFAIRS

On September 9, 2023, DOL proposed increasing the current minimum salary threshold by nearly 70 percent from \$684/week (\$35,568 annually) to a projected \$1158/week (\$60,209 annually). The Department is only providing 60 days to comment on the proposal, despite requests by stakeholders to extend this period, including a request by SSDA-AT and 107 additional organizations and a separate request by 31 associations representing colleges and universities. In addition, DOL is providing employers with a mere 60 days to comply after the final rule is published. As referenced above, given DOL's time tables, we estimate employers will need to comply with these significant changes as soon as May 1, 2024. The Department also has proposed to automatically update the minimum salary requirement every three years.

Below we outline our concerns with the proposal in more detail.

The Comment Period Is Inadequate Given the Scope and Impact of the Rule

Sixty days is simply not enough time for employers and their representatives to collect the necessary data on: 1) which employees will be impacted; 2) what changes the employer may need to make; 3) projected costs for such changes; and 4) what

alternatives DOL should consider that would be less burdensome. Collecting such data is a massive undertaking given that, by DOL's own estimate, the proposal will impact at least 3.4 million employees. As noted above, SSDA-AT sent a letter signed by 107 additional organizations requesting an additional 60 days to comment on the proposal, and 31 associations representing colleges and universities sent a similar request. DOL denied these and other requests for additional time without providing any justification.

Automatic Increases Are Unlawful and Will Exacerbate Current - and Drive Future - Inflation

DOL has proposed updating the minimum salary threshold by pegging it to the 35th percentile of weekly earnings for full-time salaried workers in the lowest wage Census region. These automatic updates are likely unlawful given the FLSA explicitly requires DOL to "define...from time to time by regulations of the Secretary subject to the provisions of [the Administrative Procedure Act]" The Department recognized its lack of authority to index the salary level in its 2004 rulemaking, and it acknowledged as much in the 2015 Proposed Rule, noting that it determined "nothing in the legislative or regulatory history...

would support indexing or automatic increases." The Department was correct in 2004, and nothing has occurred since that time to justify a different conclusion.

More importantly, the automatic increases proposed by DOL will cause dramatic and unpredictable changes to the exemptions over time. This is because DOL's changes to the minimum salary will significantly impact the earnings of full-time salaried workers in the lowest wage Census region—the exact data pool DOL will rely on for the next update. For example, if the rule goes into effect as proposed in 2024 and increases the minimum salary for exemptions to \$60,209, there will be far fewer full-time salaried workers making under that amount in 2027 when DOL performs the next update. Thus the 2024 change will have impacted the 2027 threshold by reducing the number of full-time salaried workers that earn less than \$60,209. This will occur again in 2030, when the 2027 minimum salary threshold necessarily impacts what full-time salaried workers earn and so on. As a result, the minimum salary threshold will quickly ratchet upwards driving wage inflation rather than responding to economic circumstances.

SSDA-AT issued full comments on November 7th. ■

FUN FACT

Robert Bosch developed the oxygen sensor in the late 1960's. Oxygen sensors are used to sense oxygen in the exhaust. They are used in almost every vehicle on the road today.

IRS to Establish Special Pass-Through Organization to Help with High-Income Compliance Efforts



By Roy Littlefield III

As work continues to focus more attention onto high-income compliance issues, the Internal Revenue Service announced plans today to establish a special area to focus on large or complex pass-through entities.

The new work unit will be housed in the IRS Large Business and International (LB&I) division. In addition, the new pass-through area will include the people joining the IRS under the new IRS hiring initiative announced. As part of larger transformation work underway at the IRS, the Internal Revenue Service announced the opening of more

than 3,700 positions nationwide to help with expanded enforcement work focusing on complex partnerships, large corporations, and high-income and high-wealth individuals.

“This is another part of our effort to ensure the IRS holds the nation’s wealthiest filers accountable to pay the full amount of what they owe,” said IRS Commissioner Danny Werfel. “We are honing-in on areas where we believe non-compliance among our wealthiest filers has proliferated over the last decade of IRS budget cuts, and pass-throughs are high on our list of concerns.

This new unit will leverage Inflation Reduction Act funding to disrupt efforts by certain large partnerships to use pass-throughs to intentionally shield income to avoid paying the taxes they owe.

These efforts are consistent with our broader commitment to use Inflation Reduction Act dollars to end the era of historically low error rates for wealthy and large entities, while making sure middle- and low-income filers continue to see no change in audit rates for years to come.”

Following a top-to-bottom review of enforcement efforts, the IRS announced on Sept. 8 the start of a sweeping, historic effort to restore fairness in tax compliance by shifting more attention onto high-income earners, partnerships, large corporations and promoters abusing the nation’s tax laws.

Pass-through organizations, which will be the focus of the new group, includes entities such as partnerships and S-corporations. These groups are not subject to the corporate income tax; instead, income is “passed through” onto the income tax returns of the individual or corporate owners and taxed at their income tax rates.



This new unit will leverage Inflation Reduction Act funding to disrupt efforts by certain large partnerships to use pass-throughs to intentionally shield income to avoid paying the taxes they owe.



INFLATION REDUCTION ACT

Pass throughs are frequently used by higher-income groups and can be complex tax arrangements.

The creation of a new pass-through work group in LB&I is part of the new compliance effort. LB&I Commissioner Holly Paz announced the start of work on the new area today at a speech before a Tax Executives Institute meeting in New York.

“This is an important change we will be making, and we will be working in the months ahead to efficiently and effectively transition to this new group,” Paz said. “This effort will include working inside the IRS as well as working with external partners to ensure this is a smooth transition period for everyone involved.”

IRS will also be coordinating with the National Treasury Employees Union (NTEU) on the effort. Paz said the work group is expected to formally “stand up” sometime late next year, although work involving pass-through areas will continue to intensify in the meantime.

The group will eventually include employees currently in LB&I as well as the Small Business/Self Employed division. IRS employees, no matter if they are just joining the IRS or have years of IRS experience, can expect expanded opportunities for development wherever they are in the agency.

The larger compliance effort, building off work following last

August’s Inflation Reduction Act funding, will center on adding more attention on high-income and high-wealth individuals, partnerships and large corporations that have seen sharp drops in audit rates during the past decade.

The changes will be driven with

the help of improved technology as well as Artificial Intelligence that will help IRS compliance teams better detect tax cheating, identify emerging compliance threats and improve case selection tools to avoid burdening taxpayers with needless “no-change” audits. ■



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Tom Gussen
732-440-0031
tgussen@spragueenergy.com



OIL BUYING PROGRAM

[REIT Lubricants Company](#)
Chevron/Havoline
Jamie Atkinson
800-423-3624 | 443-309-9929 cell
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CONVENIENCE STORE PRODUCTS

[Century Distributors, Inc.](#)
Lori Rodman
301-212-9100
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Century Distributors, Inc.

LEGAL SERVICES

[Lynott, Lynott & Parsons, P.A.](#)
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[H.N.Funkhouser & Co.](#)
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CREDIT CARD PROCESSING

[TalusPay](#)
Dan Cohen
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WEBSITE DESIGN & MANAGEMENT

[Mays & Associates](#)
410-964-9701
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WMDA/CAR LEGISLATIVE & REGULATORY INFORMATION

[WMDA/CAR](#)
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301-390-0900, ext. 114
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Why work with the Wills Group:

We aim to be the preferred choice, working in partnership with our customers to offer superior value.

Key benefits:



Custom solutions
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Industry-leading
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Three ways to work with us:

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- Best and lowest fuel cost
- Guaranteed fuel supply
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- All Self Service benefits
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Wills Advantage

- All Self Service & Flexible Growth benefits
- Management of fuel system upgrades
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