

NOZZLE & WRENCH

WMDACAR

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- **Employee Awards**
For C-store manager and Repair Shop Manager
- **Community Hero**
- **The Rising Star**
NexGen under 40
- **Women Leaders**

KIRK'S CORNER

WMDA/CAR Customer Service Contest (CSC)



By Kirk Mccauley, Director Of Member Relations & Government Affairs

Inspections have started to 72 locations in Maryland, Delaware, and District of Columbia. WMDA/CAR will travel to every location in 2 states and D.C. at least once totaling 1800 miles in the past few years.

CSC started out in the 80's with cooperation from oil companies naming locations to be inspected and winners honored at our annual convention at a breakfast in Ocean City. Old man Harry

Murphy was the motivation behind the program and would spend countless hours laying out the most efficient routes and miles traveled. (Harry did not have cell phone or GPS) I still have his map books of every county in MD and DE with little stickers on pages to mark locations. D.C., no map book, Harry new D.C. like the back of his hand and operated 2 Exxon's in city before coming to WMDA. Harry was the best!

As the oil companies sold locations, suppliers became our partners in CSC and still are today. We moved out of Ocean City and went to Martins West, changed name to WMDA/CAR Expo and went from breakfast awards ceremony to dinner and awards banquet after Expo trade show. The change was successful with increased participation for years at Martins. This year we are very excited to take our yearly event to Maryland Live Casino at Arundel Mills. We changed the name also.



WMDA/CAR Expo is now called Mid-Atlantic Fuel, Convenience & Auto Repair Show (MAFCAS) at Maryland Live Casino & Hotel at Arundel Mills

This year we will have full booth setups, improved floor space with an opportunity for vendors to fully display their products. On site rooms for those that want to enjoy the day and awards dinner, pull a one arm bandit, and do not worry about driving home.

The show is **free, you just need to register**. Awards dinner has a cost for individual tickets or a table for all your employees. Look at the schedule of events and times, preshow on Thursday, cocktail hour and more! Registration is open at wmdacar.com.

This month I'm on the road doing CSC inspections so I will cut this Newsletter short, but I do hope everyone gets registered and excited as I am about our new venue. Please give me a call if you have any questions 301-775-0221 or kmccauley@wmda.net ■

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Are We Sending the Right Message?



Ken Quasney
Owner, Auto Sense

Like most of our repair shops, we are having a problem finding good Techs. Are we sending the right message to young people planning their future? AI (artificial Intelligence) is going to replace many jobs in the next ten years. We have been witnessing this in the last ten years.

Example: Toll booth attendants, Cashiers (self-check-out), Technical support, Fast food self-serve, Truckers, Computer code writing, Auto workers (assembly plants), parts counter people, graphic design and many more.

This is going to happen at an exponential rate in the future. I'm sure you've heard of Chat GPT. Simply type what you want and Chat GPT will give you an accurate answer in minutes. Chat GPT can also write code for computers one hundred times faster than humans.

Experts claim the trades will be the last to experience replacement by AI. Any job that is routine will be replaced by AI. Trade jobs such as Automotive Technicians, Plumbers, Carpenters, etc. will be the last to be invaded by AI. Imagine if you could a machine drilling out rusted and broken manifold studs or exhaust flanges bolts, draining gas from a fuel tank to replace a fuel pump etc. I think it will take some time before AI can handle those tasks. These are only a few examples. Use your imagination.

So, this begs the question. Are we sending the right message? We should be discussing this at Vocation centers around the state. We should be posting this message on social media. I would recommend posting it or discussing this anywhere people will listen. Experts say white collar jobs will be the hardest hit by AI. Imagine spending \$100,000 dollars on an education and being replaced by AI. Apprentice jobs pay as you learn and will probably be the last to be affected by AI. Let's chat it up out there. Spread the word and remember to live the good life. ■



Experts claim the trades will be the last to experience replacement by AI. Any job that is routine will be replaced by AI.



What was the first car to offer factory Air Conditioning?

(see the answer on page 14)

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MAFCAS 2023

Mid-Atlantic Fuel, Convenience & Auto Repair Show



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Spoliation and the Duty to Preserve Evidence

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

What obligation does the owner of a gas station and convenience store have to preserve evidence related to an accident that occurs on the store premises? “Spoliation” has been defined by the Maryland courts as the “intentional destruction, mutilation, alteration, or concealment of evidence.” *Keyes v. Lerman*, 191 Md. App. 533, 537 (2010). The duty to preserve evidence arises in Maryland after a lawsuit has been filed, or when the filing of a lawsuit is “fairly perceived as imminent.” *Klupt v. Krongard*, [126 Md. App. 179, 199 \(1999\)](#). Often times an injured person’s lawyer will send a “preservation letter” to the party who is allegedly responsible for the injury to require that evidence be preserved for use in upcoming litigation. A recent case out of Louisiana (*Aucoin v. Diaz, LLC*; 2023 WL 4190747) illustrates how the spoliation doctrine can impact a store owner’s ability to defend a claim brought by a customer injured on the store premises.

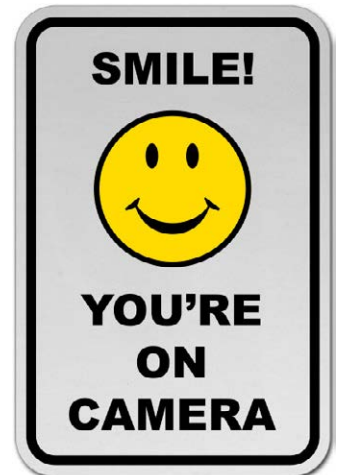
In August of 2019, Mr. Aucoin stopped at Diaz Market, a gas station and convenience store located in Kenner, Louisiana. He parked his vehicle near the car wash and vacuum cleaner intending to clean out his car. According to his lawsuit, when he approached the vacuum cleaner and bent down to reach for the vacuum hose, he struck his head on a piece of metal protruding from a post behind the vacuum cleaner. He claimed that he suffered a concussion and other injuries when he hit his head on the piece of metal. In anticipation of filing a lawsuit, Mr. Aucoin’s attorney sent a preservation letter to Mr. Diaz, the owner of the store, instructing him to “retain, preserve and protect any and all video. . . as well as all records and physical evidence in anticipation of litigation.” Mr. Aucoin and his wife then sued Mr. Diaz, seeking damages for Mr. Aucoin’s alleged injuries.

After the lawsuit was filed, Mr. Aucoin filed a motion for an adverse presumption based upon the theory of spoliation of evidence. The motion claimed that Mr. Diaz had failed to preserve the store’s video surveillance footage from the date of the accident, and the piece of metal that allegedly caused his injuries. The motion also claimed that Mr. Diaz had demolished the car wash portion of the premises a week before Mr. Diaz’s deposition, and when that occurred, the offending metal piece and post were discarded.

In addressing the motion, the Court stated that the theory of spoliation of evidence is based on the doctrine of “adverse presumption,” which allows a jury to presume that the destroyed evidence contained information detrimental to the party who destroyed the evidence unless such destruction is adequately explained. The presumption does not apply when the failure to produce the evidence has a reasonable explanation.

The trial court granted an adverse presumption as to all of the allegedly destroyed evidence, and Mr. Diaz filed an appeal of that ruling. On appeal, the appellate court found that Mr. Aucoin was not entitled to an adverse presumption as to all of the missing evidence, and addressed each item of evidence separately. As to the alleged failure to preserve the video footage, the Court found that by the time that Mr. Diaz received the preservation letter, the time for recovering the video footage would have

“Spoliation” has been defined by the Maryland courts as the “intentional destruction, mutilation, alteration, or concealment of evidence.”





already expired, so there was no adverse presumption available to Aucoin for that evidence. However, as to the failure to preserve the piece of metal, the Court found that Mr. Diaz was on notice that the piece of metal would be relevant evidence in the anticipated lawsuit. Accordingly, the appellate court upheld the trial court's adverse presumption instruction as to the failure to preserve the piece of metal.

In Maryland, the jury instruction applicable to spoliation states that if a jury finds that a party intended to conceal evidence by failing to preserve it, then jurors are required to infer that the party believes that his or her case is weak, and that he or she would not prevail if the evidence was preserved. MPJI-Cv 1:16. And if jurors find that a party's failure to preserve evidence was negligent, then jurors may, but are not required to, infer that the missing evidence would have been unfavorable to the party that failed to preserve it.

The lesson to be learned is that, where an accident occurs on a store premises, and the store owner is on notice that a lawsuit is imminent (which would include the receipt of a "preservation letter" from the injured party's counsel), then the store owner has a duty to preserve the evidence. The failure to do so can seriously impact the defense of a lawsuit against the store owner, especially if a jury finds that he or she intended to conceal the evidence. ■



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DID YOU KNOW?

THIS MONTH IN AUTOMOTIVE HISTORY:

AUGUST 5, 1899 – Henry Ford starts his first car biz, the Detroit Automobile Company

Want to Lead the Charge in the Auto Industry? Protect Your Intellectual Property with Patents!

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



Ruy Garcia-Zamor, Attorney at Law

Innovating minds have always been valued in the auto industry. That's more true than ever as car manufacturers race to find ways to create self-driving cars, sustainable electric cars, and more. It's clear that the auto companies that will lead the charge in today's industry are those with outside-the-box, exciting new ideas. But how can you make sure that your ideas aren't stolen and popularized by the competition? The answer is with patents.

A patent legally declares an invention as your own, to be used by you and your company. Once you've been granted a patent, that official document protects your invention from being used by your competition, or by a former employer, without your consent. There are two types of patents:

- **Utility patents** protect a unique product, machine, or process. In the auto industry, you might patent a certain invented type of engine or a manufacturing process.
- **Design patents** patent a unique design for a product, such as shape, color scheme or other patentable aesthetic features.

Patenting is not only common throughout the auto industry, it's necessary in order to thrive. Depending on your role in the auto industry, you may have many patents out. For instance, big name manufacturer Toyota was granted 3,056 patents in 2022 alone, moving them into the top five on the Intellectual Property Owners Association (IPO) rankings.

How Toyota Protects Their Intellectual Property

Toyota was first established in 1937, a Japanese auto manufacturer who went global in the 1940s after World War II. They have only grown in popularity and authority since then, becoming one of the top auto manufacturers in the world. They are famous for the high quality of their vehicles, both in terms of durability and style. Their cars also tend to have an excellent resale value.

To stay at the top of the industry, Toyota is also constantly innovating. This is why they now have the most granted patents of any auto manufacturing company in the world. Toyota is granted thousands of patents every year. In 2021, they were granted 2,753 patents. That number climbed to 3,056 in 2022. They likely apply for even more



A patent legally declares an invention as your own, to be used by you and your company.



DID YOU KNOW

First Intermittent Wipers Inventor

In 1953 Robert Kearns was celebrating his wedding when a cork from a champagne bottle hit him in the eye. Kearns had vision issues for years after. In 1962 he invented intermittent wipers to his 1962 Ford Galaxie. He drove to Ford headquarters to introduce his invention. The engineers were impressed. They were so impressed, they stole his design and introduced intermittent wipers in 1969. Later in 1976 Kearns disassembled the mechanism only to discover it was exactly like his invention that he patented in 1962. Kearns sued Ford, Chrysler and 25 other car manufacturers and in 1995 he was finally awarded \$30 Million dollars.

patents each year, but these are the patents that are granted.

Recently, they moved up to number four of the IPO's rankings overall. By patenting so many of their new ideas, they ensure that no other auto manufacturer can do exactly what Toyota can do. This is what consistently keeps them at the forefront of the industry year after year.

And you can start to do the same thing with your own auto company.

Why You Should Patent Your Auto-Related Inventions

If you have a terrific auto invention that you plan to share with the world, whether by using it in your business or selling it for someone else to use, it is imperative that you patent it first. A patent will allow you to have exclusive rights to use and reproduce your invention. If it is copied by your competition, you can take legal action against them, as Toyota often does.

There's also a danger in failing to patent your inventions or taking too long to patent your inventions. If you wait to patent, one of your competitors might patent a similar invention themselves. If granted the patent, they can actually sue you for infringing on their patent. You can, of course, argue that your invention came first; you may attempt to challenge the competitor's patent. However, this

can be nigh impossible to protect without a patent of your own.

Applying For a Patent – With Help From Garcia Zamor

Applying for a patent doesn't have to be an intimidating process, not when you partner with experienced and skilled intellectual property lawyers. Garcia Zamor does most of the hard work for you. Here's what the process looks like:

Step #1: Get the Invention

The first step is to invent something or, if you are the CEO of your auto company, have a scientist on your team invent something. This must have:

- Utility
- Novelty
- Nonobviousness
- Enablement

“Nonobviousness” means that the invention should be more complex than something that would simply be common sense. It should not be obvious to non-inventors. It must offer something new or improved to the auto industry.

Step #2: Hire a Garcia-Zamor Attorney

If you don't have an intellectual property attorney already, now is the time. You will need lawyers experienced with IP to help you apply for the patent, research it, and challenge any patent infringement. With 20 years of

combined experience specializing in intellectual property law, Garcia Zamor is happy to help you with your patent needs.

Step #3: The Garcia-Zamor Team Will Research, Draft, and File the Patent Application Working Closely with You to Ensure that the Application is Just What you Want

Next, the Garcia-Zamor team can perform patent research to attempt to identify current patents that match or come too close to your invention. If the search result is positive, the Garcia-Zamor attorneys will draft and file your patent application.

Step #4: Wait While the USPTO Reviews Your Application

Your work here is done! It can take anywhere from 12-32 months from the application of your patent until it is accepted, so you may be in for a long wait. But your attorneys at Garcia Zamor will monitor your application all the way through the process so you don't have to worry. You can relax, knowing that your patent is in good hands and your team at Garcia Zamor will take care of any of your patent needs now and going forward.

[Contact Garcia Zamor today](#) to learn more about how we can help you file your patent application and protect your great auto inventions now and going forward. ■

UST Compliance: What You Need to Know

Brought to you by Randy M. Childs, Spigler Petroleum Equipment

“An owner, an operator, and a person in charge of and underground storage tank (UST) system located in Maryland are required to comply with Code of Maryland Regulations (COMAR) Title 26, Subtitle 10, Oil Pollution Control and Storage Tank Management”

Changes are coming our way

It's hard to believe that the petroleum industry has been doing third party inspections for over 15 years now. It feels like just yesterday that the Environmental Protection Agency (EPA) released new regulations for underground storage tanks (USTs), leaving us to figure out who, what and *how* it was all going to happen to meet compliance. I remember taking my Maryland Department of Environment (MDE) class 15 years ago to obtain my inspectors certification and thinking, “I can do this for all our sites”. You guess it – I was very wrong! At that time, I worked for a company that had about 300 sites, of which a third of those sites we were the responsible party listed above. Long story short, we weren't allowed but I learned a lot about the process and what it was designed to accomplish, how to keep the public safe and provide sustainability to Maryland's environment.

Monthly & Annual Periodic Operation and Maintenance Walkthrough Inspections

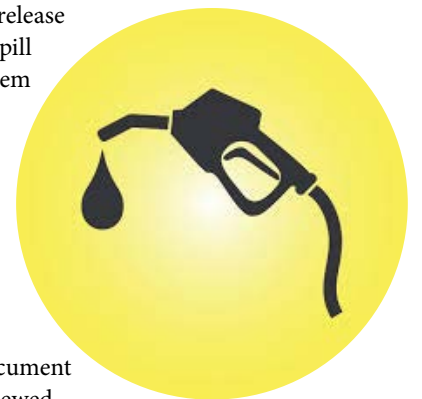
One new change that hasn't been highly publicized is the requirement to perform *Monthly and Annual Periodic Operation and Maintenance Walkthrough Inspections*. I know that sounds like a massive undertaking, but it's fairly simple once broken down. COMAR regulations state that:

“On a monthly basis, check spill prevention equipment, release detection equipment and release detection records. Check spill prevention equipment prior to each delivery if the UST system delivers at intervals greater than 30 days.”

In addition to the monthly onsite inspections, UST operators are required to perform an annual inspection which includes:

“Checking the containment sumps and handheld release detection equipment.”

Handheld release detection equipment includes bailers and tank gauging sticks. Like all other UST compliance requirements in place for Maryland, you are required to document these inspections and retain copies. Copies will then be reviewed during your third-party inspection.



Options for Compliance

If you have read this far, you're probably asking yourself “how do I get this done and stay in compliance”? As a UST owner, operator or person in charge, you have two options:

Option #1: Utilize either the “A or B” Operator at your site(s) to perform the

One new change that hasn't been highly publicized is the requirement to perform Monthly and Annual Periodic Operation and Maintenance Walkthrough Inspections.



inspections in-house. This can be accomplished by utilizing MDE-OCP's form that is available from the following link: <https://mde.maryland.gov/programs/land/OilControl/Pages/factsheetspublications.aspx> or using the PEI RP 900-17 *Recommended Practices for the Inspection and Maintenance of UST Systems monthly and annual forms* (or use a MDE-OCP approved alternative form). It's recommended that pictures are taken during the inspection, as well as storing them electronically for review during your third party inspection.

Option #2:

Utilize your petroleum service company to perform the inspections. At Spigler, Petroleum Equipment, we have "B" Inspectors perform both the monthly and annual inspections for all UST Systems. Spigler's inspection procedures go a step further than required by opening all containment

devices *monthly* to visually inspect for issues. Visual inspections were added to account for the amount of containment sumps that had non-complaint issues when performing the required *annual* inspection. Spigler's process includes site pictures and electronic storage via cloud-based software for quick customer access.

Lastly, if you don't already do so, I would recommend getting on the MDE ADHOC email list. The ADHOC Committee

holds meetings throughout the year between stakeholders like yourself, State Regulators and Manufacturers. These meetings are very informative and will give you a glimpse of future regulations for UST/AST Systems in Maryland as well as spotlighting UST/AST system equipment via manufacturer demonstrations.

Should you need any more information about the required inspections or attending ADHOC please reach out to [myself](#) or [Swapna](#). ■

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SSDA-AT Expresses Concerns Over New Right-to-Repair Pact



By Roy Littlefield IV

SSDA-AT has voiced its apprehension regarding the recently announced right-to-repair pact between the Automotive Service Association, the Society of Collision Repair Specialists, and the Alliance for Automotive Innovation due to several critical factors. While SSDA-AT acknowledges the positive intent and certain aspects of the agreement, it believes that the current pact falls short in adequately addressing the concerns of consumers and protecting their rights.

Foremost among SSDA's concerns is the absence of an enforcement mechanism and the power of law within the pact. Without clear enforcement provisions, the agreement lacks the necessary teeth to ensure compliance, leaving consumers vulnerable to potential exploitation and inadequate protection.

SSDA-AT firmly believes that any meaningful right-to-repair initiative must possess robust enforcement mechanisms to safeguard consumer rights effectively.

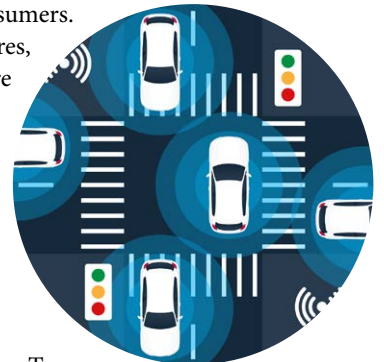
Furthermore, the pact undermines the ongoing efforts in Congress to pass a comprehensive bill that would provide greater protection for consumers. By diverting attention and resources away from legislative measures, the current agreement may inadvertently hinder progress on more encompassing reforms that are urgently needed.

Another critical aspect that the pact fails to adequately address is the issue of telematics. With the increasing prevalence of telematics systems in modern vehicles, it is crucial to establish clear guidelines and regulations that grant consumers access to necessary vehicle data. The current pact falls short in providing a comprehensive framework to address this vital concern.

Moreover, SSDA-AT highlights that the pact does not offer adequate protection to consumers and fails to cover all automakers. To ensure fairness and equal access to repair information and tools, any effective right-to-repair initiative should encompass all automakers, without exceptions. The current pact's limited scope undermines the goal of providing a level playing field for consumers and perpetuates inequalities within the automotive industry.

While SSDA-AT appreciates the spirit and elements of the agreement, it firmly believes that the current pact does not resolve the core issues faced by consumers in the tire industry. Instead, it creates confusion and potential harm, ultimately falling short of meeting the pressing needs of consumers.

SSDA-AT remains committed to advocating for comprehensive right-to-repair legislation that genuinely protects consumer rights, fosters fair competition, and ensures a thriving automotive industry. ■



Foremost among SSDA's concerns is the absence of an enforcement mechanism and the power of law within the pact.

Warren, Markey push NHTSA to Reverse Decision Allowing Car Manufacturers to Ignore MA “Right to Repair” Law



By Roy Littlefield III

United States Senators Elizabeth Warren (D-Mass.) and Edward J. Markey (D-Mass.) sent a letter to Secretary of Transportation Pete Buttigieg and Deputy Administrator of the National Highway Traffic Safety Administration (NHTSA) Sophie Schulman, calling on NHTSA to reverse its course after it sent a recent letter to auto manufacturers, advising them not to comply with Massachusetts’ Right to Repair law.

“NHTSA’s decision to give auto manufacturers a green light to ignore state law appears to favor Big Auto, undermine the will of Massachusetts voters and the Biden Administration’s competition policy, and raise questions about both the decision process and the substance of the decision by NHTSA’s leadership. We are asking NHTSA to explain its rationale for its harmful actions and respect Massachusetts state law by reversing course,” wrote the senators.

Massachusetts’ Right to Repair law requires auto manufacturers who sell cars in Massachusetts to equip them with a standardized open data platform so that owners and independent mechanics can access vehicle telematics data for repairs, maintenance, and diagnostics. The law passed via ballot initiative in November 2020, with nearly three-fourths of Massachusetts residents voting in favor.

Big auto manufacturers spent \$25 million to oppose the initiative and filed suit to stop the law from going into effect weeks after it passed. Two years into a drawn out legal process, a court rejected a last-minute request to block enforcement of the law on May 30, 2023, and Massachusetts Attorney General Andrea Joy Campbell began enforcing the law on June 1, 2023.

Despite this court order, on June 13, 2023, NHTSA’s Assistant Chief Counsel for Litigation and Enforcement wrote a letter to 22 auto manufacturers stating that the Right to Repair law is preempted by the National Traffic and Motor Vehicle Safety Act (Safety Act) and that auto manufacturers’ compliance with Massachusetts law would “conflict with (their) obligations under the Safety Act.”

“It is disappointing that NHTSA’s letter relies on the argument pushed by major automobile manufacturers that there is, in this case, an irresolvable conflict



Big auto manufacturers spent \$25 million to oppose the initiative and filed suit to stop the law from going into effect weeks after it passed.

between maintaining data security and providing independent repair shops with the data they need to conduct repairs. Auto manufacturers have routinely raised safety concerns as a way to ‘change the subject’ and distract consumers from the fact that ‘vehicle repair and maintenance services from independent repair shops keeps the cost of service and repair down,’” continued the senators.

Given these serious concerns, the senators are calling on NHTSA to reconsider its decision and to allow Massachusetts to enforce the will of its voters and protect consumers. They are also asking Secretary Buttigieg and Deputy Administrator Schulman to respond to a set of questions about NHTSA’s letter.

SSDA-AT has been longtime supporters of the Massachusetts Right to Repair law and we support the letter. ■

TRIVIA ANSWER

Answer from page 4 Trivia Question:

.....

The 1940s was a seminal time in the history of automotive air conditioning. To kick-start the decade, Packard became the first automaker to offer factory-installed air conditioning. It was followed closely by Cadillac, which introduced the feature in its 1941 models.

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