

NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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**Minimum Wage Law Summary
Part of the New York State 2013/14
Budget**

Beginning December 31, 2013 every employer shall pay its employees a minimum hourly wage of \$8.00 per hour. On and after December 31, 2014, this minimum wage increases to \$8.75 per hour, and on and after December 31, 2015 to \$9.00 per hour.

If minimum wage may be established to a greater amount by federal law pursuant to 29 U.S.C. § 206, that greater amount shall apply. If another wage is established in accordance with the provisions of the article, that wage shall take precedence.

A modification in the hourly cash wage or meal and lodging credits as applied to food service workers and service employees shall be based on the above increases in the hourly minimum wage and set by an order promulgated by the commissioner provided further that, for the purposes of modifications, the maximum credit for tips in such wage order shall be modified so that such credit, when combined with the cash wage, is equal to the minimum wage.

Any time after the effective date the commissioner shall appoint a wage board to inquire and report and recommend any changes to the wage order governing wages payable to such food service workers and service employees sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order. Such wage board shall make such report and recommendations to the commissioner within six months of its establishment. The commissioner shall act upon such report and recommendations.

**A.G. Schneiderman Announces Arrest Of
Eight Motor Vehicle Inspectors For
Faking More Than 13,000 Inspections In
The Bronx**

*Undercover Investigation Reveals
Employees At Seven Of NYC's Busiest
Inspection Stations Passed Vehicles Without
Conducting Mandatory Safety And
Emissions Reviews Laws Flouted To Certify
Cars That Would Otherwise Fail Tests;
Some Stickers Sold At More Than Four
Times The Legal Cost*

Attorney General Eric T. Schneiderman announced the arrests of eight New York City motor vehicle inspectors who issued more than 13,000 fraudulent inspection certificates to untested vehicles. Each defendant, including several of the companies the inspectors work for, was charged with numerous felony counts for violations of the New York State Vehicle and Traffic Law, penal and environmental laws. The inspectors face up to seven years in prison and thousands of dollars in fines.

“These individuals were trusted to perform state-required inspections specifically aimed at keeping unsafe cars off the road. Instead of performing safety inspections, they took advantage of their expertise and cheated the system,” Attorney General Schneiderman said. “New York’s emissions standards are crucial for ensuring that dangerous pollution isn’t spewed into the air we breathe, and that unsafe vehicles are kept off our streets. These perpetrators will be held accountable for polluting our skies, threatening our children’s health and undermining public safety.”

Every motor vehicle registered in New York State must be inspected annually for safety and appropriate emissions compliance. The defendants were employed at seven of New

York City's busiest DMV-licensed inspection stations, which are legally required to use DMV-regulated equipment and follow standard procedures to conduct inspections.

According to the criminal complaints filed in Bronx Criminal Court, the defendants bypassed these procedures by performing "clean scans," a fraudulent process that substitutes data from a secondary vehicle. The inspector first entered the identification number, model information and license plate number for the vehicle in need of certification. The inspector then connected the DMV computer to a secondary vehicle and used its data to "pass" the safety and emissions tests for the vehicle in need of certification. A fraudulent inspection certificate was issued for the untested vehicle, which would potentially have failed an inspection or was not even present.

Flouting these state requirements permits thousands of substandard vehicles to remain on New York roads, leading to increased safety risks for drivers and the significant degradation of New York air quality. Stations that utilize "clean scans" or simply sell inspection stickers also gain an unfair advantage over law-abiding facilities by substantially decreasing both the amount of time and the cost of employing skilled workers to conduct vehicle inspections.

The Attorney General's office, along with the DMV and the DEC, conducted undercover operations at the seven stations, which are among the busiest DMV licensed inspection stations in New York City, between December 2012 and February 2013. An undercover investigator took a vehicle that was rigged to fail a legitimate motor vehicle inspection to each station and each station provided passing inspection results to the vehicle even though the inspectors

performed minimal or no actual inspection on it. Employees of several stations didn't even perform "clean scans" but rather illegally sold inspection stickers to the undercover investigator without performing any inspection of the undercover vehicle. While motor vehicle inspectors can legally charge up to \$37 for a motor vehicle inspection, all of the inspectors and stations in this case charged significantly higher payments for these fake inspections -- some up to \$150. Together, the defendants faked a total of 13,437 inspections, court documents show.

The Attorney General's criminal prosecution is the result of a joint investigation with the New York State Department of Environmental Conservation (DEC) and the New York State Department of Motor Vehicles (DMV).

New York State Department of Motor Vehicles Commissioner Barbara J. Fiala said, "This action demonstrates that government agencies working together can bring to justice those that are intent on breaking the law, defrauding consumers or polluting the air. The DMV will continue to work with the agencies involved in this investigation to aggressively protect New Yorkers from such fraudulent activity."

New York State Department Of Environmental Conservation Commissioner Joe Martens said, "The vehicle repair shops targeted in this sting operation represent 40 percent of the suspected illegal inspections conducted throughout the state. New Yorkers, particularly those living in our urban settings, should not have to tolerate the polluted air and unsafe vehicle conditions these illegal inspections promote. Individuals that place profit and greed over our health and safety will be brought to justice through the efforts of our State

Environmental Conservation Police investigators and officers, along with DEC program staff, Department of Motor Vehicle staff and the Office of Attorney General Eric Schneiderman. To combat this ongoing problem, I have instructed my law enforcement officers to aggressively pursue illegal inspections to put an end to this reckless activity."

The following individuals were charged today:

1. Micael Compres, 29, of the Bronx, a licensed DMV inspector and employee of All Prestige Muffler Inc., a licensed New York State motor vehicle inspection station located at 1705 Jerome Avenue;
2. Claudon Harriote, 52, of the Bronx, a licensed DMV inspector and employee of East 222 Automotive Inc., a licensed New York State motor vehicle inspection station located at 1135 East 222nd Street;
3. Gustavo Lopez, 30, of Manhattan, a licensed DMV inspector and employee of Washington Motors Inc., a licensed New York State motor vehicle inspection station located at 2106 Washington Avenue;
4. David Nunez, 41, of Manhattan, a licensed DMV inspector and president/owner of Serpro Auto Repair Inc., a licensed New York State motor vehicle inspection station located at 1898 Boston Road;
5. Luis Peralta, 37, of Yonkers, a licensed DMV inspector and president/owner of RapidCar Inc., a licensed New York State motor vehicle inspection station located at 690 Southern Boulevard;
6. Ramon S. Ramos, 59, of Manhattan, a licensed inspector at Cross Bronx Mufflers Inc., a licensed New York State motor vehicle inspection station located at 1677 Jerome Avenue;
7. Victor Ramos, 54, of the Bronx, a licensed DMV inspector and president/owner of All Prestige Muffler Inc., a licensed New York State motor vehicle inspection station located at 1705 Jerome Avenue;
8. Lillian Tapia, 32, of the Bronx, a licensed DMV inspector and employee of Mega Muffler Center Corp., a licensed New York State motor vehicle inspection station located at 1301 Westchester Avenue;
9. All Prestige Muffler Inc., Serpro Auto Repair Inc., and RapidCar Inc., are also charged in this case. These corporations face potentially large fines.

The defendants are all charged with Criminal Possession of a Forged Instrument in the Second Degree, a class D felony that carries a maximum sentence of 2 1/3 to 7 years in prison. Other charges include Issuing a False Certificate, a class E felony carrying a maximum sentence of 1 1/3 to 4 years in jail, and Illegal Issuance of an Emission Certificate of Inspection, an unclassified misdemeanor that carries a fine of \$15,000 per count.

The case is being prosecuted by Assistant Attorneys General Jason P. Garelick and Rajiv Shah of the Environmental Crimes Unit under the supervision of Deputy Bureau Chief for Criminal Prosecutions Stephanie Swenton, Bureau Chief Gail Heatherly and Executive Deputy Attorney General for Criminal Justice Kelly Donovan.

The investigation was conducted by Environmental Conservation Investigator Nicholas Desottele of DEC, Bureau of Environmental Crimes Investigation, under the supervision of Lt. John Fitzpatrick and Major Scott Florence. Investigators Sylvia Rivera, Ismael Hernandez and David Negrón of the New York State Office of the

Attorney General also worked on the case under the supervision of Supervising Investigators Michael Ward, John Sullivan, Deputy Chief Investigator John McManus and Chief Investigator Dominick Zarrella.

The Attorney General recognizes the diligent work of the DEC and DMV staff with whose cooperation the case was developed, particularly James Clyne, DEC's Chief of In-Use Programs Section, Division of Air Resources, and Chris Ayers, DMV's Director of Vehicle Safety Field Services.

The charges are accusations and all defendants are presumed innocent until and unless proven guilty in a court of law.

Hess and Hedge Fund Begin Battling As Key Proxy Vote Nears

The fight between Hess and a major hedge fund escalated a bit this morning with John Hess providing the first salvo in what could be a lively battle in the next 50 or so days.

Hess sent a letter to all shareholders in connection with its annual meeting that will occur on May 16, 2013. The incumbent Hess board of directors urged shareholders to vote for the "highly qualified independent nominees of Hess" on proxy materials that accompanied the missive.

The letter promises continuing initiatives that Hess says will transform the company into a "more focused, pure play exploration and production company."

On the other side of the battle is Elliott Management, an activist hedge fund run by Paul Singer that recently urged shareholders to oust current board members and management thanks to what it calculated

was a poor performance for the integrated energy firm. The hedge fund criticized Hess management and called for the sale of non-core Hess businesses outside of exploration and production in what amounted to an extensive position paper posted on a "Reassess Hess " web site.

Today's letter from Hess accuses Elliott of nominating directors that would be under the hedge fund's control as they dismantled the company and "all but foreclose the prospect of future value creation."

The Hess letter goes on to cite various Wall Street analysts who have praised the transformational plans that Hess proposed after Elliott called for a break-up. The company says that Elliot Management, led by Singer, "has launched an aggressive campaign against Hess and is presenting highly misleading information to the market in an effort to gain support for a flawed agenda that would ultimately dismantle the company."

Singer has offered up an independent slate of directors on the Hess Board.

The sparring between Hess and the hedge fund takes place as Hess looks to spin off all of its downstream operations. The company closed its Port Reading refinery in N.J., and is looking to sell its East Coast terminal operations, as well as divest the 1,300-plus retail stations that bear the family name. While Hess executives haven't specifically identified the avenues for sale of these downstream properties, it is thought that some of the assets could be positioned in a master limited partnership (MLP), which could ultimately supply the retail stations with rents and wholesale mark-ups falling into the MLP tax-exempt structure.

Recent reports indicate plenty of Wall Street interest in the terminals and stations, with Goldman Sachs or an affiliate possibly among those looking to participate in the creation of a MLP. Another name mentioned as a possible suitor is Marathon, which could extend its geographic reach and find additional outlets for robust refinery production if the company pursued the Hess assets.

--Tom Kloza, tkloza@opisnet.com
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NACS: Card Fees Continue to Climb

Total credit and debit card fees in the convenience-store industry hit a record \$11.2 billion in 2012 and surpassed overall c-store profits for the seventh straight year, the National Association of Convenience Stores (NACS) just reported at its annual State of the Industry Summit in Chicago.

At least, the pace of the cost increase slowed last year. Card fees increased 1.5%, much slower than the double-digit increases that were routine over the past decade, the group said.

The passage and implementation of new debit card swipe fees limits played a significant role in reducing escalating card fees, but card fees remain significant. Just looking at motor fuels sales, credit and debit card fees added 5.1 cents to every gallon of gasoline sold at c-stores in 2012, NACS noted.

Beyond card fees, the group said several other expense lines saw increases, led by health insurance costs, which rose 6.3%.

Meanwhile, NACS also said the industry had record sales of \$700.3 billion in 2012, with in-store sales increasing 2.2% to reach a record \$199.3 billion and motor fuels sales increasing 2.9% to a record \$501.0 billion.

The industry's overall sales reflected real growth per store, with sales outpacing the 0.7% increase in the number of c-store locations, according to the NACS/Nielsen Convenience Industry Store Count released in January 2012.

In-store sales growth was driven by double-digit sales gains in several subcategories: alternative snacks, which include meat snacks and health, energy and protein bars (12.2%); liquor, a relatively small subcategory (11.6%); cold dispensed beverages (11.3%); and sweet snacks (10.3%).

Overall, c-store sales represent 4.5% -- or one out of every 22 dollars -- of the entire \$15.68 trillion U.S. gross domestic product.

--Donna Harris, dharris@opisnet.com
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CA Dealership Violates Minimum Wage By Averaging Total Compensation Over Hours Worked Says Appeals Court

An auto dealership cannot avoid paying mechanics and other techs while they wait for work, a California appeals court has ruled in what is a new precedent with implications for all workers paid set rates for specific tasks (not hourly). This potentially affects many shops who are employing techs under piecework compensation plans nationwide.

A class of 108 workers (Gonzalez et al) sued to be paid for the time they were not working but engaged in other activities. The appeals court upheld the trial court's awarding of about \$1.79 M to the plaintiffs.

The auto dealership, Downtown LA Motors, which sells and services Mercedes-Benz automobiles, compensated its mechanics based on a "piece rate" system. The company would pay the employees based on a standard period of time allowed for a repair (flag hours). The pay rate was significantly higher than minimum wage. So, if the job took longer than standard hours, there were enough wages to ensure the mechanic earned more than minimum wage on average.

But the mechanics spent significant time at work NOT performing repairs, such as in training, cleaning, etc. The dealership would calculate the total hours worked vs. the compensation it would pay for flag hours. If the pay rate fell below minimum wage, the dealership would make up the difference. The dealership did not pay a separate hourly rate for non-repair time that would not have been covered under the piece rate.

That's illegal, said the trial court, because the employer's method of compensation violated the minimum wage law. California law does not allow an employer to avoid paying its employees for all hours worked by averaging total compensation over total hours worked in a given pay period.

The main issue is whether the applicable Wage Order (Wage Order 4-2001), requires payment of at least minimum wage for each hour worked, or an average of minimum wage for all hours worked in the work week. The trial court and Court of Appeal, relying on an earlier case, *Armenta v. Osmose, Inc.*

(2005) 135 Cal. App. 4th 314 agreed with the plaintiffs that the former interpretation was correct.

The bottom line is that piece-rate employees must be paid separately for work that does not fall within the scope of the work that is the subject of the piece rate. The non-related hours must be paid at least at minimum wage.

Employers using piecework compensation plans should check with their attorneys

Employers concerned about increased payroll costs may choose to reduce piece rates prospectively, and upon reasonable notice. They should check with their lawyers first regarding how to do this.

While you have your lawyer on the phone, another question may be determining where the piece rate work ends and the non-related work begins. What, exactly, goes into the calculation of the piece rate repair time? If the employer over-cludes non-related work into the piece rate, you risk liability if the work should have been classified as non-related.

The published opinion sets a new legal precedent that could impact pending federal cases such as that against Wal-Mart and Schneider Logistics Inc. and its contractors for failing to pay minimum wage and overtime.

Details on How DTLA Calculated Compensation

Under DTLA's piece-rate system, technicians were paid a flat rate ranging from \$17 to \$32, depending on the technician's experience, for each "flag hour" a technician accrued. Flag hours are assigned by Mercedes-Benz to every task that a technician performs on a Mercedes-

Benz automobile and are intended to correspond to the actual amount of time a technician would need to perform the task. A DTLA technician who completed a repair task accrued the number of flag hours that Mercedes-Benz assigns to that task, regardless of how long the technician actually took to complete it. DTLA technicians accrued flag hours only when working on a repair order.

DTLA calculated its technicians' pay for an 80-hour pay period by multiplying flag hours accrued during that pay period by the technician's applicable flat rate. For example, a technician with a flat rate of \$26 who accrued 150 flag hours in a pay period would earn $150 \times \$26$ or \$3,900.

In addition to tracking a technician's flag hours, DTLA also kept track of all the time a technician spent at the work site whether or not the technician was working on a repair order. At the end of each pay period, DTLA calculated how much each technician would earn if paid an amount equal to his total recorded hours "on the clock" multiplied by the applicable minimum wage. DTLA referred to this amount as the "minimum wage floor." If a technician's flat rate/flag hour pay fell short of the minimum wage floor, DTLA supplemented the technician's pay in the amount of the shortfall. (DTLA also compensated technicians for overtime by taking into account all the time at the work site, including time not spent on a repair order.)

Details on Technicians' (Plaintiffs') experience

Plaintiffs worked eight-hour shifts. During their shifts, plaintiffs were required to remain at DTLA's place of business and had to obtain permission to leave during a shift if they were not working on a repair order. Plaintiffs were also required to clock in

when they arrived for work, clock in and out for lunch, and clock out at the end of their shift.

Plaintiffs regularly did not have repair work to do because there were not enough vehicles to service, according to the complaint. When this occurred, plaintiffs had to remain at work, and those who asked to leave early were told that they needed to stay because customers might come in. Plaintiffs accrued no flag hours during time spent waiting for cars to repair. While waiting for repair work, plaintiffs were expected to perform various non-repair tasks, including obtaining parts, cleaning their work stations, attending meetings, traveling to other locations to pick up and return cars, reviewing service bulletins, and participating in on-line training. They accrued no flag hours while performing these non-repair tasks.

Plaintiffs filed the (instant) action against DTLA claiming that DTLA violated California law by failing to pay technicians a minimum wage during their waiting time--periods of time they were on the clock, but waiting for repair orders or performing other non-repair tasks. Plaintiffs also claimed that technicians terminated from employment during the class period were entitled to penalties under Labor Code section 203, subdivision (a) because DTLA had failed to pay these technicians all the wages they were due upon their termination.

The trial court denied cross-motions for summary adjudication filed by the parties as to whether DTLA technicians were entitled to a separate hourly pay for waiting time in addition to their flag hour pay and minimum wage floor supplement, and the matter proceeded to a bench trial.

The parties presented documentary evidence as well as testimony by class members and expert witnesses regarding the amount of waiting time experienced by class members. Both parties also presented expert testimony as to the amount per pay period that class members either were or were not underpaid.

The trial court issued a proposed statement of decision, to which DTLA objected. After hearing argument on those objections, the trial court issued a final statement of decision on June 20, 2011.

Compensation Awarded

The trial court ruled in favor of plaintiffs, concluding that California law requires class members to be paid for their waiting time between work on repair orders. The trial court found the testimony of plaintiffs' expert to be "credible," and adopted that expert's conclusions that plaintiffs experienced waiting time of 1.85 hours per day on average, that the average amount of unpaid compensation for waiting time per plaintiff was \$27.76 per day, and that in total, plaintiffs lost the amount of \$553,653 in uncompensated time during the class period. The trial court determined that the value of the class's waiting time, including interest, was \$1,555,078 and awarded that sum to plaintiffs. The trial court also awarded plaintiffs penalties in the amount of \$237,840 under Labor Code section 203, subdivision (a) for DTLA's willful failure to pay all wages owed them at the time their employment was terminated. This appeal followed.

A Risky Budget Gimmick Cuomo raids insurance fund

*By E.J. McMahon
New York Post*

Gov. Cuomo is cruising toward his third consecutive on-time state budget, which will no doubt be cited as further evidence that a new era of fiscal responsibility has dawned in Albany. Yet the governor hasn't turned his back on budget gimmickry.

Case in point: Cuomo's proposed withdrawal, over the next four years, of \$1.75 billion from the reserves of the off-budget State Insurance Fund (SIF), which is the leading provider of workers'-comp insurance in New York.

Much as drivers have to insure their cars in case of accident, New York employers must buy workers'-comp insurance to cover on-the-job employee injuries. The nonprofit SIF, which competes with private companies, is supposed to hold premiums as low as possible — so SIF's financial health has an important bearing on the state's overall economic competitiveness.

Cuomo's SIF raid would be a new wrinkle on a maneuver last employed by his father, then-Gov. Mario Cuomo, decades ago.

From 1982 to 1990, a total of \$1.3 billion in supposedly surplus SIF funds were diverted to the state budget. Ever since, SIF's balance sheet has listed that \$1.3 billion as a "contingent receivable" — essentially an IOU backed by no cash.

If that money had remained in SIF's investment portfolio over the past 20 years, assuming even a modest 5 percent return, the fund would now be at least \$2 billion better off. As things now stand, New York's workers'-comp-insurance rates are among the highest in the nation.

State law has flatly outlawed any further raids on SIF since 1996 — but Cuomo's budget would override that provision while

creating an opening for governors to take more money from the fund in the future.

While the original raids were widely viewed as an outright ripoff of temporary SIF surpluses, Cuomo and his budget staff say their proposal is different. This time, they say, they're making it possible for SIF to dispense with part of its cash cushion by legally changing the way the fund must account for "second injury" health and disability claims, which arise when a workplace mishap aggravates an employee's existing physical problem.

Instead of maintaining an enormous reserve to cover all projected future second-injury claims (as SIF has been doing up to now) it will be allowed to charge policyholders for these claims only when the bills come due, on a "pay-as-you-go" basis — a practice already followed by private insurers.

Conveniently, this will free up the existing SIF second-injury reserves for transfer to the state budget.

Who's burned by this deal? The employers who'd already paid into the fund to cover future claims. Their assessments went to build up the reserves that Cuomo will now shift to the state budget. Under the governor's plan, SIF policyholders apparently will pay again to cover those second-injury claims when they do materialize.

That's why Assured Research, a New Jersey-based insurance consulting firm, describes Cuomo's proposal as a "transfer of wealth" to the state government from SIF's customers.

The accounting shift is part of a complex financial restructuring of the workers'-comp

program that's supposed to save money for employers even while raising benefit levels.

Cuomo's budget for fiscal 2013-14, which begins April 1, would earmark \$250 million in SIF cash to finance debt-service savings and \$500 million to underwrite the governor's "transformative capital" program. He wants to tap SIF for another \$1 billion to cover state operating expenses between 2014-15 and 2016-17.

Albany business lobbyists have shrugged at the SIF raid while endorsing the rest of the governor's workers'-comp package. But as Assured Research points out, the deal deserves more critical scrutiny.

Another problem: Compared to other big workers'-comp insurers, New York's SIF makes very aggressive use of an accounting technique ("discounting" of reserves) that makes the fund look financially stronger than it actually is, according to the Assured Research analysis. Then, too, SIF's current "surplus" includes that empty IOU from the state to cover past raids.

Meanwhile, the consulting firm warns, SIF and other workers'-comp insurers could soon face a sharp rise in medical costs that will drain their reserves more quickly than expected. Other analysts, including Moody's Investors Service and A.M. Best, have sounded similar warnings about the industry-wide risk that current workers'-comp reserves will prove insufficient.

In other words, Cuomo couldn't have picked a worse time to pull cash out of SIF, even if the proposed accounting change technically gives him cover for it.

As it happens, next year will mark the centennial of New York's workers'-compensation law. Financially weakening

the state's leading workers'-comp insurer will be a bizarre way of celebrating it.

E.J. McMahon is a senior fellow at the Manhattan Institute's Empire Center for New York State Policy.

Cigarette Excise Taxes Link To Black Market Sales

To reduce the rate of teen smoking, one side of the coin believes that raising taxes on the cost per pack is the answer. Teens are price sensitive, so making the price of cigarettes more expensive will cause them to walk away. States where cigarette prices are high have lower teen smoking rates, while rates are high in states with more affordable prices.

But the other side of the coin — one that refutes the notion of higher cigarette excise taxes as a means to reduce teen smoking rates — makes clear that there is a direct correlation between increased excise taxes on cigarettes and black market sales.

Seventeen years ago, the convenience retailing industry helped form the We Card coalition to train retailers how to prevent underage sales. Before We Card, minors were able to purchase tobacco 76% of the time. Since implementation of We Card, that rate has decreased every year. The most recent Food and Drug Administration data show that after more than 140,000 inspections nationwide, the number has dropped to 5.65%

“Attempts to further this progress through excise tax increases, however, have had negative effects on both tobacco control efforts and responsible retailers. There is a direct correlation between increased excise

taxes and black market sales. ...Tax hikes have caused a nationwide black market for cheap illicit cigarettes. That has led to contraband cigarettes robbing state and federal governments of more than \$5 billion in taxes — about 16% of total federal and state cigarette excise taxes collected annually. In New York, with the highest tax rate in the nation, nearly half the cigarettes sold are contraband,” said Beckwith, adding the source of these contraband cigarettes varies from low-tax states, to Native American reservations, to illegal and counterfeit product smuggled in from overseas.

“In a perfect world, convenience stores would be agnostic about tobacco tax increases. As long as everyone is paying the tax, we all compete on a level playing field. But it is not a perfect world. ...Study after study shows that attempts to socially engineer behavior through increased taxes produce a far different outcome than intended, with the black market the main beneficiary.”

General Counsel Corner

Beware of State Pricing Gouging Laws
By Peter H. Gunst

In the wake of natural disasters like Superstorm Sandy, some retailers — including service station dealers — have been tempted to offset expenses and increase profits by implementing significant price increases. Such price increases can expose them to liability under state price gouging laws. According to one recent survey, thirty-four states and the District of Columbia have enacted price gouging laws. Those jurisdictions include every state east of the Mississippi other than Maryland, Delaware, New Hampshire and Ohio.

Although price gouging laws apply to all retailers, service station dealers are particularly vulnerable to enforcement because their prices are so visibly apparent, and because consumers are particularly sensitive to changing gasoline prices.

Generally, state price gouging laws lack a clear definition of what actually constitutes price gouging. The New York State prohibition, for example, found in §396-r of the State's General Business Law, simply condemns any "unconscionably excessive price," with the court instructed to consider whether the amount of excess is "unconscionably extreme," or whether it constitutes "an exercise of unfair leverage or unconscionable means."

The Virginia prohibition, found in §59.1-527 of the Virginia Code, condemns any "unconscionable price" within an area for which a state of emergency has been declared, and instructs the court to consider whether the price charged "grossly exceeded" market prices during the 10-day period immediately prior to the time of disaster. The New Jersey price gouging statute, found in §56:8-107 of the New Jersey Statutes Annotated, at least contains a statutory benchmark.

It brands as an "excessive price increase" an increase in price that "exceeds by more than 10%" the price at which a product was sold in the usual course of business immediately prior to a state of emergency, unless the price increase is attributable to additional costs imposed upon the seller by reason of the events causing the state of emergency.

Not surprisingly, states have been aggressive in enforcing price gouging laws in response to consumer complaints. Aggressive enforcement allows state enforcement officers to assume the pose of crusaders for

consumer welfare. Moreover, enforcement actions are quite easy for the state to pursue.

In the wake of Sandy alone, New Jersey is expected to subpoena pricing records from over one hundred service station dealers. Moreover, fines can be steep particularly because each consumer sale may constitute an independent violation. The New York statute, for example, permits the court to impose a civil penalty of as much as \$25,000 and to order that restitution be paid to aggrieved consumers.

In sum, price gouging laws contain real teeth. They should not lightly be ignored.

DMV RECORD RETRIEVAL

DMV record retrieval is available to association members and affiliates at a cost of \$12 per record. Additionally, you may order DMV certified paper abstracts of drivers license, vehicle registration, and vehicle title records for an additional fee of \$2 per abstract. Please call 518-452-4367.

ATTENTION INSPECTION STATIONS

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

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

\$afety Group 536

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



DIVIDEND HISTORY

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

DISCOUNT HISTORY

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

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

Lawley
INSURANCE



New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialist since 1914

For Immediate Release:

Net Driven Announces the Release of the Net Driven Service Center

SCRANTON, Pennsylvania, November 30, 2012 - Net Driven is proud to announce the next generation of its interactive auto service guide. The Net Driven Service Center represents a significant upgrade and will be rolled out to all Net Driven websites and mobile sites at no additional cost throughout the month of December 2012. This exciting new module features thousands of new automotive illustrations, hundreds of new service descriptions, online customer quoting and enhanced service scheduling, specials/coupon integration, search engine optimized content and is GPS-enabled.

“The Net Driven Service Center represents our continued commitment to delivering the most cutting-edge effective internet marketing solutions to the automotive industry,” said Pat Sandone, Net Driven Founder and CEO. “We are excited to roll this out to our clients to help them get found online by customers looking for service, educate their customers on what services they need and ultimately sell more.”

The Net Driven Service Center is the latest in a long line of modules that Net Driven provides to its tire and automotive service clients to help them harness the power of the internet to drive more traffic, drive more leads and drive more sales. Other modules include a best-in-class tire catalog with integrated fitment guide, wheel configurator, tire advantage calculator, automotive Q&A, ecommerce solution, and lead management system.

About Net Driven: Founded in 2007, Net Driven is a SaaS (Software as a Service) technology platform designed to provide effective and affordable online marketing solutions exclusively to the automotive industry. The Company focuses on helping dealers increase sales, profits and retention using the internet. Headquartered in Scranton, PA, the Company works with over 3,000 businesses across the United States and Canada. Net Driven’s product is a three step online marketing solution that drives consumers from their living room to a dealer’s showroom and includes internet marketing, Net Driven’s proprietary website solution and comprehensive training, analytics and support. The Company’s technology and content was developed in conjunction with independent dealers and is now available to the industry at affordable prices. Learn more about Net Driven at www.netdriven.com.

For more information, contact:

**Renny Fidlon
VP of Marketing
Net Driven
215-915-6990
rfidlon@getnetdriven.com**

NET DRIVEN
GUARANTEES
CO-OP REIMBURSEMENT

WEBSITES + SEARCH ENGINE OPTIMIZATION

PAY-PER-CLICK MARKETING + SOCIAL MEDIA

1.877.860.2005



sales@getnetdriven.com

Web Solutions to Grow Your Business.

Easy to Use. Cost Effective. Proven Results.

The Internet is the most effective way to get new customers and is the #1 way local consumers find tire dealers (not the Yellow Pages). Over 70% of consumers start their purchase process online and without the right website and Internet marketing program you could be missing out on over 2/3 of all potential new customers.

Get Net Driven today and improve your sales on the Internet! Driven to be great.



INCREASED SALES \$10,000 Per Month

"Net Driven is the first internet company we worked with that really got results for us. After just a few months using their website solution, we were seeing additional sales of over \$10,000 per month."

Jeff Pohlman - Owner, Jeff Pohlman Tire

300 SALES LEADS in the First Month

"We had a website prior to Net Driven's solution and were surprised by the increase in leads we received, it was amazing!"

Marc Gagnon - Retail Manager, The Tire Warehouse

INTERNET MARKETING
DRIVES MORE VISITORS

NET DRIVEN WEBSITE
DRIVES MORE LEADS

CONSULTING & SUPPORT
DRIVES MORE SALES

- Turbo Click
- Turbo SEO
- Social Media Integration
- Directory Management
- Mobile Skin

- Tire Catalog
- Auto Catalog
- Wheel Configurator
- Tire Advantage Calculator
- Auto Q&A

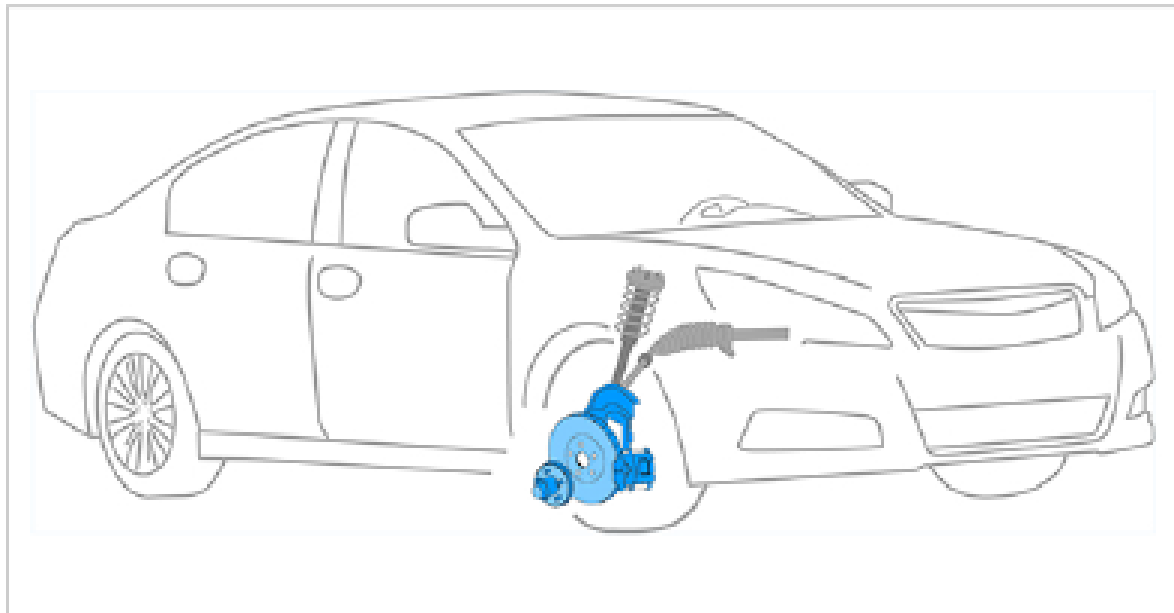
- Analytics
- SEO Reporting
- Service/Support
- One-on-One Training
- Dedicated CRM
- Lead Management

Net Driven. We Drive Customers to You.
1-877-860-2005 | www.netdriven.com | sales@getnetdriven.com

AUTO SERVICES



MORE INFO ON BRAKE JOB, FRONT (DISC)

[Schedule Service](#)[Request Quote](#)

Wheel hub
and bearing



Brake
disc

Brake
shoe

Caliper



Brake
shoe

The split second it takes you to press down on the brake should equal the speed and precision of your brake to force your vehicle to a stop. Simply, you apply the brake, your car stops—immediately. And that's the way it should be. Your brakes should allow stop for any obstacles on the road and then continue on your journey. But sometimes your vehicle's brakes are not as responsive—sluggish, squeaky, and shaky. When your brakes are having difficulty stopping your vehicle, it poses a risk to your safety in the vehicle as you travel. We can offer your brakes the care they deserve so your vehicle can return to the road in peak condition at our Alexandria, Louisiana location. In the case that your front disc brakes are to blame we can accommodate your vehicle's need for brake repair or brake replacement. We are aware of the safety risks that worn brakes can impose on the way your car handles and we can provide you the quality service that you require. We also offer additional services to keep your vehicle in top working conditions in Alexandria, LA, Pineville, LA, and Oakdale, LA.

When you are experiencing issues with stopping safely and efficiently, we can help restore your front disc brakes to their optimal performance. If your front disc brakes are functioning correctly, the friction material on the pad or shoe will squeeze against the rotor or drum when the brake is applied to slow your vehicle to a stop. Over time, the pad or shoe wears thin. The rotor or drum can become worn due to contact and heat. A technique called machining can be performed, which involves scraping or cutting the rotor or drum so it is smooth and true. This can be done within specifications, but if the thickness of the rotor or drum becomes too thin or the surface is too scored or warped, they will need to be replaced. An inspection of your brakes will determine which option will service your front disc brake system best. Whether you need brake repair or brake replacement on your front disc brakes, we can offer you superior care and efficient services. So, if the precision of your front disc brakes is in question, our location at Alexandria, LA will be a dependable and reliable stop on your travels. We will return balance to your worn brake system with our services. Do not wait to schedule your vehicle for the superior brake repair or brake replacement services we can provide. We will restore your vehicle to a safe state for your journey and any obstacle you might face.

Approximate Time: 120 Minutes (Time may vary by vehicle, this is a guide only)

Price Range: [Get Quote for Price](#)
(Estimate Only)

Specials: [\\$20 Off Brake Service](#)

SCHEDULE SERVICE APPOINTMENT

Thank you choosing us to handle your automotive repairs. To schedule an appointment with our service department, please complete the form below. We will confirm your appointment with you by phone and/or email within one business day. **Items marked with an asterisk (*) are required.**

STEP 1 OF 5 - SELECT A LOCATION

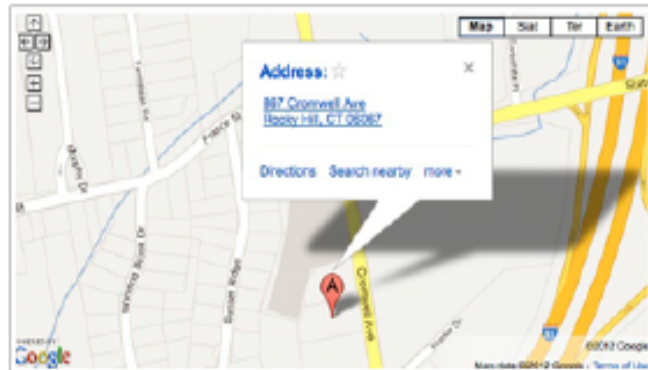
You have selected the following location:

-- Choose a Different Location --

867 Cromwell Avenue
Rocky Hill, CT 06067
(877) 860-2005

Hours

Monday: 7:00 AM - 6:00 PM
Tuesday: 7:00 AM - 6:00 PM
Wednesday: 7:00 AM - 6:00 PM
Thursday: 7:00 AM - 6:00 PM
Friday: 7:00 AM - 6:00 PM
Saturday: 8:00 AM - 5:00 PM
Sunday: Closed



STEP 2 OF 5 - VEHICLE INFO

Please select your vehicle below:

Year: -- Select Year --

Model: -- Select Model --

Make: -- Select Make --

Year: -- Select Option --

STEP 3 OF 5 - SELECT YOUR SERVICE

- | | |
|--|---|
| <input type="checkbox"/> Axle, CV Joint, Driveshaft Repair | <input type="checkbox"/> Heating & Air Conditioning |
| <input type="checkbox"/> Belts & Hoses | <input type="checkbox"/> Lube, Oil & Filter Service |
| <input checked="" type="checkbox"/> Brakes | <input type="checkbox"/> Preventive Maintenance |
| <input type="checkbox"/> Cooling System | <input type="checkbox"/> State Inspection |
| <input type="checkbox"/> Differential Repair | <input type="checkbox"/> Steering and Suspension |
| <input type="checkbox"/> Electric: Electrical and Electronic Systems | <input type="checkbox"/> Tires |
| <input type="checkbox"/> Electrical: Starting, Charging & Batteries | <input type="checkbox"/> Transmission |
| <input type="checkbox"/> Engine: Diagnostics and Performance | <input type="checkbox"/> Wheel Alignment |
| <input type="checkbox"/> Exhaust Systems | <input type="checkbox"/> Wheels |
| <input type="checkbox"/> Four Wheel Drive Systems | |

Please provide us with a short description of the requested service(s):

FREE MONEY

BE A MEMBER OF OUR ASSOCIATION OR AFFILIATES

FILL OUT THIS FORM AND FAX BACK TO US

BUY \$7500 IN PARTS IN ONE QUARTER FROM YOUR **NAPA DEALER**

RECEIVE A REBATE CHECK FOR 2% OF YOUR PURCHASES (MINIMUM OF \$150 REBATE)

PUT THE MONEY IN YOUR POCKET

FREE MONEY

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

FAX this form back to:

518 452-1955

NEVER BUY TERMINAL EQUIPMENT AGAIN! *FOUR CHOICES FOR FREE*



We want you to have the **BEST EQUIPMENT POSSIBLE**, and just like a cell phone dealer offering free cell phones or a satellite TV company offering free dishes, we don't think you should have to pay for it.

GRANY has recently joined Global Payments – EXS to afford fellow members significantly reduced credit card processing rates as well as free equipment. **Members should expect to receive a savings of 10% - 40% in monthly residual credit card processing fees.**

It's difficult to adhere to all of the ever changing requirements needed to receive the lowest rates. Most merchants are penalized with incidental fees, non-qualified fees and surcharges. Global Payments – EXS will take the time to educate you and serve as your advocate as it relates to receiving the lowest processing rates available.

GRANY members are encouraged to receive their complimentary and confidential line-by-line savings analysis from Global Payments – EXS. **Simply fax a recent MC/VISA merchant statement to 518 452-1955.**

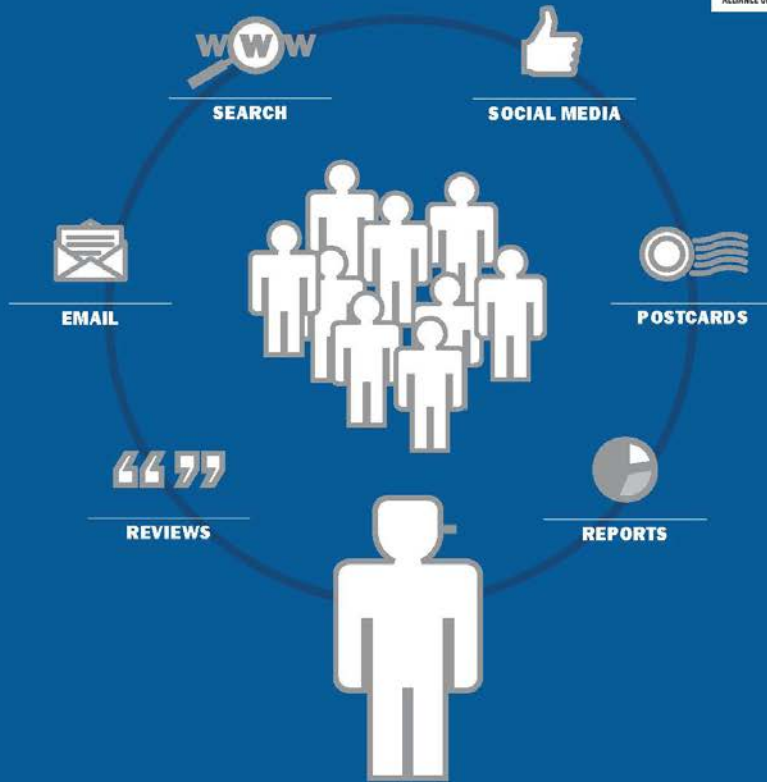
FOUR CHOICES FOR FREE – THE CHOICE IS YOURS!

Global Payments – EXS guarantees that **YOU WILL NOT PAY MORE IN PROCESSING FEES** when taking advantage of our Free Terminal Placement program

**For complete details, please call
John Casazza 518-452-4367**

Program can support these card types

VISA
MasterCard
Discover
American Express



SOCIALCRM: SHOP MARKETING MADE SIMPLE

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

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



Powerful. Intelligent. Simple.

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



SEARCH

GO WHERE NEW CUSTOMERS CAN FIND YOU

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



EMAIL

STAY CONNECTED TO CURRENT CUSTOMERS

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

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



POSTCARDS



SOCIAL MEDIA

IT'S TIME TO GET SOCIAL MEDIA WORKING FOR YOU

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



REVIEWS

GIVE YOUR SHOP A REPUTATION BOOST

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

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



REPORTS

SAY HELLO TO MARKETING CRUISE CONTROL

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

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



Q1 2012

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

TEAMWORKS

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

Other Products available as bundles or individually

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

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

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



Want to get more from your energy provider?



Switch to Energy Plus® and earn Cash Back just for using energy!

\$50 Activation Bonus

after two months of active electric service for your business account*

Earn 3% Cash Back

every twelve months on the supply portion of your business' electric bill*

Sign up

both your business and home today!

No Hidden Fees

We do not charge enrollment fees, monthly service fees, switching fees or cancellation fees.

FREQUENTLY ASKED QUESTIONS

CAN I SIGN UP FOR NATURAL GAS SERVICE?

Yes, Energy Plus offers natural gas service in New York so you can earn even more annual Cash Back and an additional \$25 bonus after 2 months of active service for each gas account you sign up.

WILL MY SERVICE BE INTERRUPTED?

That is the best part! Nothing about the way your service is delivered will change. Your local utility will continue to deliver your energy, read your meter, handle service emergencies, and send your monthly statement.

HOW DOES THE CASH BACK PROGRAM WORK?

After 2 months of active electric service you will earn a \$50 Activation Bonus for each business account enrolled and a \$25 Activation Bonus for each home account enrolled. Plus, after 12 months of active service you will automatically receive your ongoing Cash Back rebate. The ongoing Cash Back earned will be 3% of the supply portion of your business electric or natural gas bill(s) or 2% of the supply portion of your home electric or natural gas bill(s).*

Choose the Green Option to help support wind generated power*

Give Us A Try Today!

EnergyPlusRewards.com/NYSASSRS6131
1.877.770.3372 | Offer Code SER-6131

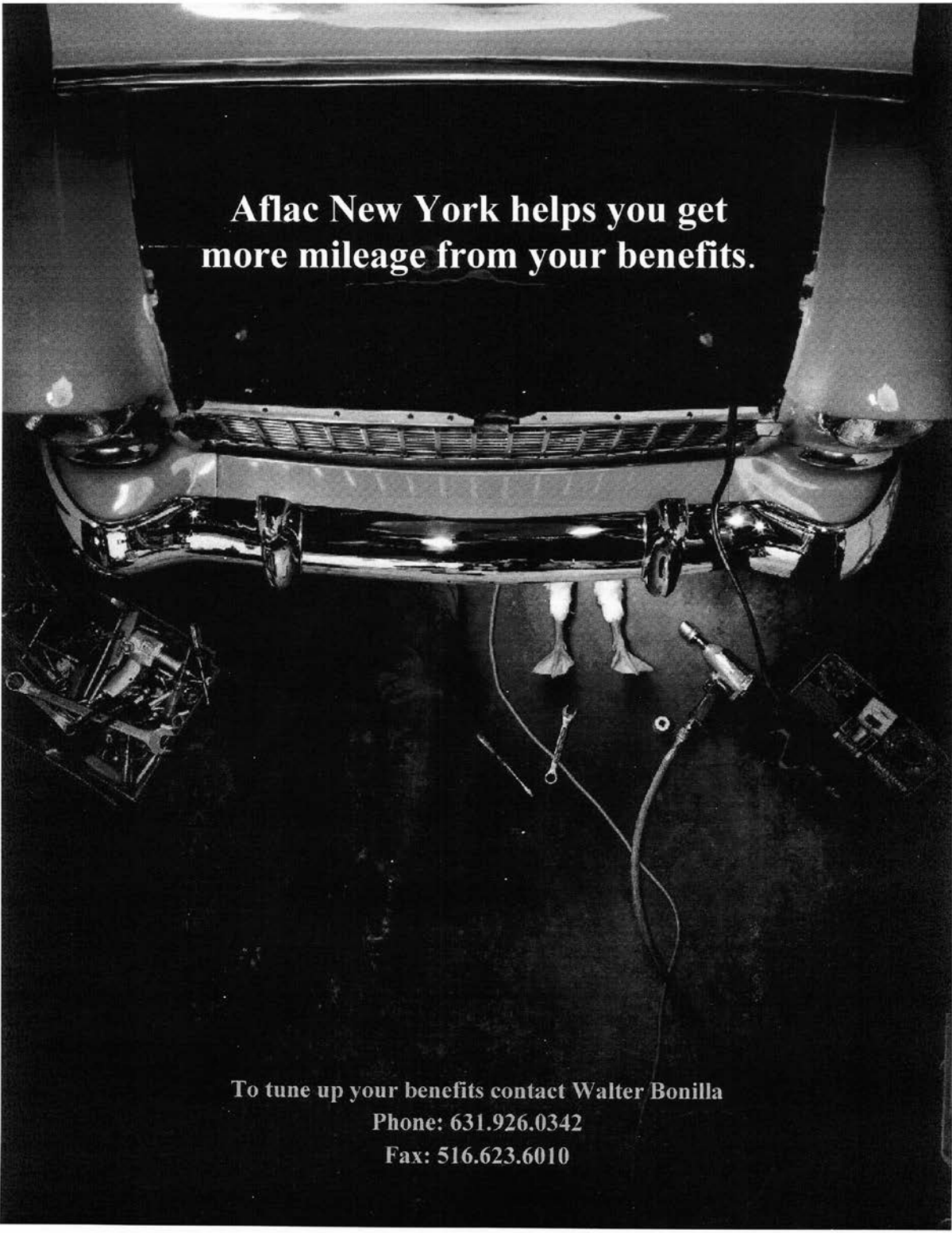
ENERGY PLUS

***Important Offer Details:** Electricity service offer valid for NY residents excluding areas serviced by the Long Island Power Authority (LIPA). Natural gas offer valid for NY residents with heating accounts in areas serviced by Consolidated Edison, National Grid (Keyspan NY), National Grid (Niagara Mohawk), New York State Electric and Gas (NYSEG), Orange & Rockland and National Fuel Gas. Electricity service is provided through Energy Plus Holdings LLC and natural gas service is through its affiliate Energy Plus Natural Gas LLC. Limited-time offer only available to first-time Energy Plus residential and small commercial customers. Previous and existing Energy Plus customers are not eligible. Offer is non-transferable, cannot be combined with other Energy Plus offers or Energy Plus Natural Gas offers, is subject to change or cancellation and is not available for all rate classes, customer types or in all areas. Additional eligibility requirements, terms and conditions may apply. Please see our Terms of Service for full details which can be found online via the web address listed above and in your Welcome Email/Letter. Energy Plus has been deemed an eligible supplier by the NY PSC.

Rewards Information: Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which we have not received a request to discontinue service. Please note, if you enroll both electric and gas accounts, it is possible your services will start on different dates, so your bonuses may be awarded on different dates. Your Cash Back rebate will be mailed automatically after the close of your twelfth billing cycle which means you must have an active Energy Plus account for 12 billing cycles to receive the Cash Back rebate. Account eligibility for a natural gas Activation Bonus requires a minimum of 500 annual therms or ccfs, based on historic usage as estimated by your utility at the time of enrollment.

Green Option Information: If you choose to add the Green Option, you will be charged approximately \$0.01 additional per kWh over Energy Plus' variable electric supply rate and your monthly electricity usage will be automatically offset by an equivalent amount of wind power via Renewable Energy Certificates (RECs).

Energy Plus and Energy Plus Natural Gas are solely responsible for the content of this marketing material and for the selling to, solicitation of, and enrollment of customers for energy supply services. NYSASSRS provides us access to its members as a benefit for members.



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

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



HERE'S HOW AFLAC NEW YORK CAN HELP:

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

THE BEST PART ABOUT AFLAC!

NO DIRECT COST TO YOUR COMPANY

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

OFFERS A WIDE RANGE OF POLICIES

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

POTENTIAL TAX SAVINGS

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

ATTRACTIVE TO YOUR EMPLOYEES

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

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

Walter Bonilla 1.631.926.0342 walter_bonilla@us.aflac.com

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

