



May 2012

# Dateline NH

a publication of the New Hampshire Automobile Dealers Association

May 22 – Business Conference, Partner Expo, and Annual Meeting see pages 12-13

## Election Season Is On Its Way

### NHADA Will Help You Stay Informed

Daniel Bennett, Vice President of Government Affairs

Although candidates for office in New Hampshire have until mid-June to officially file their paperwork, the election season announcements, and speculations, are already rolling. We already have five declared candidates for Governor. Add the seats for the Executive Council (five), Senate (24), and House

(400), and there could be over 1,000 candidates running for office!

NHADA is preparing to do our part so that you can stay informed and learn more about our state candidates, both incumbents and challengers.

For the House of Representatives and Senate, NHADA will release in late June a legislative scorecard that will look back on

the last two years of each legislator's term in Concord and tell you how they voted on issues of importance to our membership. When we publish the scorecard, read it and share it to make sure your elected official is representing you!

The candidates in the Governor, Executive Council, and Senate races will

*Informed – continued on page 2*

### Unpaid Interns and Volunteers In Your Business – Is That Legal?

Anne Scheer, Esq.

Summer break begins soon; that means students are looking for summer and after-graduation work opportunities. They join many students who recently graduated and who, unfortunately, are still looking for their first job in the field for which they paid the big bucks to get a sheepskin. Many of these

folks trying to get a foot in the door or looking for experience and references for their resume to help sell themselves in what is still a tough job market offer – okay, beg – to volunteer or intern without pay. So you welcome them into your business. But is that legal? Like most legal questions the answer is a resounding, maybe.

#### Private, For-Profit Employers

Unlike public and non-profit sector employers, who can, in many circumstances, allow an individual to work as an unpaid volunteer or intern without running afoul of wage/hour laws, the federal Fair Labor Standards Act (“FLSA”) and state wage laws generally prohibit private,

*Volunteer – continued on page 6*

### George Dykstra Scholarship Awarded

An eager, high-achieving student who also happens to be a Dad and a veteran has received the George Dykstra Outstanding Student Scholarship in automotive technology.



Tobey Manning

Tobey Manning of Epsom received the scholarship in March from the New Hampshire Automotive Education Foundation (NHAEF), the not-for-profit affiliate of the NHADA. His \$2,500 award will help defray costs of attending the Automotive Technology Program at Lakes Region Community College.

Since 2005, the NHAEF has joined with the New Hampshire Charitable Foundation's Medallion Fund in providing financial assistance to promising students who plan to make their careers in automotive technology.

Tobey, married and the father of two, served in the U.S. Army as an infantryman. He plans to become a GM technician – the most qualified in New England, he says. A graduate of Pembroke Academy, he plans to graduate from the LRCC program in 2013. He has studied in the General Motors Automotive Service Education program since last fall.

The scholarship recognizes automotive instructor and long-time education advocate George Dykstra, an original member of the NHAEF Board of Directors. George is retired as the GM ASEP coordinator and now works for the NHADA and the automobile associations of Vermont and Maine. 📌



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*Informed – continued from page 1*

receive a NHADA candidate questionnaire asking them to explain in detail their position on certain issues that range from the gasoline tax to our state's Dealer Bill of Rights and much more.

As we receive responses we will post them on our website, [www.nhada.com](http://www.nhada.com), so that you can learn more about the candidates and ask them about their positions when they come knocking on

your door or speaking at one of your civic organizations or events.

We are pleased to be able to offer these two tools as part of your NHADA membership and to keep you and your staff involved in the political process.

If you have any questions on the legislative scorecard or candidate questionnaire, contact Dan Bennett at 800-852-3372 or or email him at [dbennett@nhada.com](mailto:dbennett@nhada.com).

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Kevin Carnes



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# NHADA Crossover Reception

March 29, 2012

NHADA's traditional crossover reception came on the day of a very busy legislative session.

Upper: (L-to-R) Representatives left to right: June Frazer (D-Concord), Lars Christiansen (R-Hudson), John Hikel (R-Goffstown), Jenn Coffey (R-Andover), Norman Tregenza (R-Silver Lake), Marsha Pelletier (D-Dover).

photo by Nathaniel Stout



Lower left: (L-to-R) Rep. Bill Hatch (D-Gorham), Rep. Mary Cooney (D-Plymouth), Paul and Dennis Gaudet of Autoserv Dealerships.

Photo by Michael Rosenblum



Lower right: (L-to-R) Roger Groux of Honda Barn with Executive Councilor Dan St. Hilaire (R-Concord), Executive Councilor Ray Wiczorek (R-Manchester), and Pete McNamara, NHADA president.

Photo by Michael Rosenblum



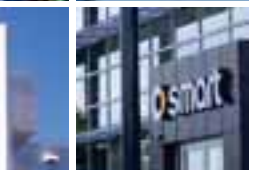
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FROM YOUR AIADA DIRECTOR

# Our Industry Is Experiencing a Comeback



Peggy Proko

Dear Friends,

It is safe to say that our industry is experiencing a comeback. Sales in March – which are considered a bellwether for what dealers can expect through the rest of the year – were up 12.7 percent over last March. International brands occupied an impressive 56.6 percent of the market and were up 12 percent from last month. Domestic brands were up 13.6 percent.

While our businesses are picking up momentum, Congress is more gridlocked than ever. With the 2012 elections just around the corner, legislators aren't finding much they can agree on in Washington, D.C. However, there is some positive news for international brand dealers. Ron Kirk, the United States Trade Representative (USTR), recently expressed support for Japan's inclusion in the Trans Pacific

Partnership (TPP) by asking domestic automakers to drop their opposition to Japan's inclusion. AIADA fully supports Japan's inclusion in the TPP and will continue to do so while both the House and Senate hold hearings on the issue and formal talks are conducted through May.

In labor news, the National Labor Relations Board's (NLRB) new rule that streamlines the union election process took effect in April. Dealers should take note of the changes and how they could impact their employees and business. The NLRB also recently announced plans to roll out a website as part of its drive to inform workers at non-unionized businesses of their rights. As always, AIADA continues to monitor the NLRB's actions and will keep dealers informed of the latest events.

The death tax is another issue dealers frequently grapple with. The current tax rules will expire at the end of this year. As always, the voices of dealers – who, like many small business owners, are impacted by the death tax – are an important part of AIADA's efforts to tackle the issue and steer Congress toward its repeal.

Despite the logjam that Washington appears to be in this spring, dealers must

continue to make their voices heard. I've spoken extensively about the importance of AIADA's role in helping dealers stay informed and engaged as advocates for their businesses and employees. Another part of the equation that some dealers may not be aware of is the Automotive Free International Trade PAC (AFIT-PAC), which actively supports political candidates that are most in line with the free trade interests of international nameplate dealers. During this election year, I encourage my fellow dealers to consider ways they can give to and support AFIT-PAC and its candidates. Visit [AFITPAC.com](http://AFITPAC.com) to learn more.

AIADA's International Auto Industry Summit, set for May 23 and 24 at the Mayflower Renaissance Hotel in Washington, D.C., will provide some of the best information and know-how to effectively advocate on behalf of your businesses. I never miss it. Engaging political speakers like former Mississippi Governor Haley Barbour and the Cook Political Report's Charlie Cook, elected officials, the always-popular Q&A panel with industry executives, and the chance to visit with your members of Congress and their staff on Capitol Hill are just a few of the items AIADA has on tap for attendees. Register today at [AIADA.org/events](http://AIADA.org/events).

As always, I thank you for your support of the industry we all enjoy so much. 🇺🇸

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## Get a Defibrillator, Save a Life

# Deadline for Special Pricing Expires June 30, 2012

Ryan Hale, Health and Safety Consultant

Original article written by Brody Tuite: May 2010 Dateline: NH edition

Protecting employees and customers should be the first priority in any business. Purchasing an Automated External Defibrillator (AED) is a great way to protect your workforce and the public.

The cost of defibrillators has dropped in recent years, giving businesses a first chance to purchase this life-saving tool.

The New Hampshire Bureau of Emergency Medical Services (NH BEMS) is offering extremely favorable pricing through a direct purchase state bid. The Defibtech Model DDU-100 "Lifeline" AED (\$1,400 list price) is available at the single device price of \$735 (including

AED, battery, one set of adult defibrillation pads, carrying case with handle, and warranty). This current direct purchase program is due to expire June 30, 2012.

The vendor (Lifesavers, Inc. of Fairfield, NJ) has also discounted any AED accessories (such as wall cabinets and signs) by 20 percent. Additional discounts also are available if multiple units are purchased.


Current NH AED laws provide AED liability protection for organizations that make AEDs available as well as for individuals utilizing AEDs during an emergency.

Businesses looking to purchase an AED must have employee(s) trained and certified in CPR and AED use. NHADA currently has two CPR and First Aid instructors: Jon Girard and me. The training content provides attendees the basic life-saving skills

as well as practical experience in the use of an AED and is offered to NHADA-WCT members at a low cost of \$15 per student to cover the cost of materials.

Once an AED is purchased, it must be registered with NH BEMS. For those devices placed at "fixed" locations, the site is included in the NH 9-1-1 telephone number database. If your company currently has an AED, please make sure that it is registered with NH BEMS.

For further information please contact Bill Wood, preparedness coordinator at NH BEMS at 603-223-4228, 866-552-2661, ext. 31019 or by email at William.Wood@dos.nh.gov.

With questions regarding an AED purchase, contact me at 800-852-3372 or email me at rhale@nhada.com. 

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*Volunteer – continued from page 1*

for-profit employers from allowing anyone to “work” for them for less than the applicable hourly minimum wage and overtime pay, “work” generally meaning providing services of any kind that benefit the employer. This prohibition includes “volunteers” and “interns.”

Believing that the downturn in the US economy and the resulting high unemployment rate and tight job market might lead employers to take advantage of unemployed individuals, the U.S. Department of Labor (DOL) has repeatedly said over the past few years that it will aggressively pursue employers illegally using unpaid interns stating: “[i]f you’re a for-profit employer... there aren’t ... many circumstances where you can have

an intern... (that isn’t) paid and ... be in compliance with the law.” Be careful with students asking to “volunteer/intern” for school credit and not pay. The fact that the person asking to volunteer/intern will get school credit for the work experience is only *one* of the factors used to determine whether an employer can allow them to “work” as an unpaid intern.

The FLSA has no provisions allowing individuals to “volunteer” their services to private, for-profit employers. However, to allow people to gain experience or learn about a career, the FLSA does allow private, for-profit employers to have unpaid interns/trainees, but only if *all* of the following seven factors are met:

1. What the intern does is similar to training provided in an educational

environment;

2. The internship is for the benefit of the intern;
3. The intern does not displace a regular employee;
4. The intern works under close supervision;
5. The employer receives no immediate benefit from the activities of the intern, and on occasion the employer’s operations may even be impeded;
6. The intern is not necessarily entitled to a job at the end of the internship; and
7. The employer and the intern have a clear understanding that the intern will not be paid.

While the FLSA only allows for-profit

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Volunteer – continued from previous page  
employers to have unpaid interns/trainees if all of the above seven factors are met, courts interpreting this regulation to determine if a person is qualified as an unpaid intern/trainee or should have been paid wages have primarily focused on whether the employer economically benefitted from the arrangement, considering factors such as:

- Has the employer used the intern as a substitute or to supplement its regular workforce?
- But for the intern, would the employer have hired an additional employee or had its existing employees work more hours?
- Did the intern perform routine work done by other employees?
- Was the intern’s work generally no more supervised than other employees? and

- Was the employer dependent on the intern’s work.

A “yes” to any of the above questions is likely to result in the “intern/trainee” being determined to have been an employee, who should have been paid. Misclassifying an individual as an unpaid “intern/trainee” can result in significant wage liability for an employer. In addition it could unexpectedly obligate the employer to pay worker’s compensation and unemployment benefits, as well as subject the employer to fines and legal costs.

While not bullet proof, if an individual later claims wages are due or the DOL does an audit, it is helpful to have a statement from the intern/trainee signed before they begin their internship/training outlining the internship’s purpose and benefit to



Author Anne Scheer, Esq., practices at Devine, Millimet, a silver-level NHADA partner.

them, including their agreement and understanding that the internship will meet each of the FLSA’s seven required factors. Of course, if any time after the arrangement does not meet the seven factors, what actually happened rather than the statement the person signed will control whether they qualified as an unpaid intern/trainee or should have been paid as an employee.

Sometimes things change, and a really great intern may start at some point to function as an employee rather than an intern. If that happens the employer needs to decide if it wants to hire the person and continue them as an employee or end the internship.

The FLSA does have other provisions that under very specific circumstances allow private, for-profit employers to pay young workers, learners, student-learners

Volunteer – continued on page 8

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Scott Rodgers

Volunteer – continued from page 7

and apprentices, and individuals in a school-to-work program less than minimum wage under the School-to-Work Opportunities Act of 1994. An employer paying an individual less than minimum wage under any of these exemptions should check very carefully that the circumstances meet all the requirements of the law under the specific exemption(s) being claimed.

### Public and Non-Profit Employers

The FLSA specifically allows individuals to “volunteer” their services to public employers and non-profit food banks without being regarded as “employee” under this Act. Volunteers are defined as individuals who perform services for a public agency “freely and without pressure or coercion direct or implied from the employer... for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for their services.” However, volunteers can be reimbursed for their expenses, receive reasonable benefits, a nominal fee or any combination of these without losing their status as a volunteer.

Other than non-profit food banks, the FLSA does not specifically state that other private, non-profits can have unpaid volunteers. However, many years ago the United States Supreme Court ruled that the FLSA was not intended “to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another.” Following this guidance in administering the FLSA, the US DOL allows religious, charitable or similar non-profit organizations to accept volunteers’ services from individuals under the same conditions as public employers. In considering whether a person comes under this public

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Volunteer – continued from previous page  
employer/private, non-profit volunteer exception to the wage/hour requirements of the FLSA the DOL looks to see that:

- The individual is paid nothing for their services, except their expenses, reasonable benefits, and/or a nominal fee if the entity chooses to provide these;
- There is a clear understanding between the individual and the entity that the person without any pressure or coercion from the entity is volunteering without contemplation of pay for civic, religious or humanitarian objectives;
- The person does not at other times provide the same services to the same entity for pay.

As stated above with respect to interns/trainees, it's advisable to have each volunteer sign a simple volunteer statement/agreement which clearly states the above points, as well as any reimbursement, benefits or nominal fee that the person will be given.

Interns/trainees and employers can derive great benefits from internships, but be sure if the internship is to be unpaid that it meets the required criteria. Otherwise the person is an employee under the FLSA and must receive all wages required under this act. Public employers and most private, non-profits are free in addition to accept the services of volunteers.

Contact your attorney to discuss any questions you have on the legality of your entity's interns or volunteers or for help drafting intern or volunteer agreements.

*This article is derived from the Devine, Millimet Labor, Employment and Employee Benefits Group's free Friday email alert service. If you want to receive these alerts, please send an email to [employment@devinemillimet.com](mailto:employment@devinemillimet.com).*

## Going, Going, Gone – But Not Forgotten

by John Lambert, Lambert Auto Sales, NHAEF Director and Auction Chair

The 2012 NHADA Online Auction to benefit the New Hampshire Automotive Education Foundation is over; we netted over \$5,700. I would like to thank everyone who bid and who donated. Last month, we listed donors, but two came in after the print deadline. Thank you to 92.5 FM "The River" and Southern Auto Auction for your generous donations. A complete list of donors may be found on the NHADA website. The NHAEF, the not-for-profit education arm of the NHADA, provides seminars and webinars to employees, scholarships to students, and works with both high schools and colleges in support of automotive technology programs.



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# The Prompt Reporting of Injuries Saves Money

Peter Sheffer, WCT Director

National studies have determined that the longer it takes to report a workers' compensation claim, the more costly that claim will be. These studies have been published for decades, and yet employers and NHADA members continue to struggle with reporting claims promptly. Although the NH Department of Labor (NH DOL) requires that the Employer's First Report of Injury be filed within five days of the date of notice of an injury, the best practice is to file the Employer's First Report of Injury on the day of the injury.

Immediate reporting of claims is critical, not only to the cost of the claim, but also to the ultimate resolution of the injury.

NHADA WCT members are participants in a formal managed care program. Injured employees are required to treat within the comp mc managed care network of providers. Injured workers have the right to choose a physician from the network of providers, which is why we encourage the injured employee and/or member to contact NHADA Nurse Case Manager Marta Robbins, immediately after an injury occurs. Marta will discuss the injury with the injured employee and offer choices for the best and most appropriate medical treatment within the comp mc network. This early intervention ensures that the employee has the best chance for a full resolution of symptoms. When the employer knows about the injury immediately, and everyone is able to follow the appropriate protocol, the injured employee has the best opportunity to receive the medical treatment he/she needs to recover fully.

When NHADA members forget to call the nurse case manager, or when the injured employee does not report injuries immediately or seeks treatment outside of the managed care network, claims costs sky-rocket and recovery is delayed

or compromised. These problems can be corrected if NHADA members develop policies and protocols relating to the reporting of injuries. Following these guidelines will help:

- All employees must be notified verbally and in writing that they are participants in a managed care program.
- All new employees must be provided with the NHADA Managed Care for Workers' Compensation brochure.
- All supervisors and managers must be trained and be able to follow the process for reporting injuries.

Additionally, NHADA members should develop a policy to be included in their employee handbook relative to the prompt reporting of injuries, the process for reporting injuries, and a discipline process for late reporting of injuries.

The policy should require that all injuries are reported on the date of injury.

Employees must understand the process for reporting injuries and the penalty for late reporting of injuries, which can delay the processing of claims as the investigation must focus on the

*Reporting – continued on page 19*



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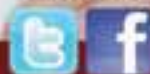


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# **Business Conference Partner Expo Annual Meeting**

**May 22, 2012**

**The Radisson Hotel Manchester**

## **Business Conference**

This is our largest conference to date, with a keynote presentation on customer service and twelve breakout sessions! Be sure to sign up your key personnel to take advantage of top-notch presenters in New Hampshire at an extremely affordable price, and with no out-of-state travel expenses.

- **Driving Your Brand with “Full Throttle” Customer Service**, *Joseph E. Clouatre*
- **Automotive: The Playing Field Has Been Levelled**, *Andrew Price of Polk*  
*(Sponsored by Comcast Spotlight)*
- **Best Practices: Maximizing Your F&I Department’s Profits**, *Ken Carlson, F&I Resources*
- **Employment Law & Social Media**, *Mark Broth, Esq. of Devine Millimet and Jennifer Shea Moeckel, Esq. of Cook, Little, Rosenblatt & Manson, p.l.l.c.*
- **Service Best Practices for Profit Improvement**, *Brad Lawson of NADA 20 Group*
- **The Intelligent Dealer’s Guide to Attracting Customers**, *Tori Morandi of AutoTrader.com*
- **Winning With Mobile: Selling Generation Smartphone**, *Jack Simmons of Cars.com*
- **All About Facebook for Business (2 Sessions – Beginner and Intermediate)**  
*Darcy Knapp of Darcy Knapp Consulting Inc./SEO Web Mechanics*
- **10 New Marketing Strategies for Profit Improvement**, *Erik Radle of Miller Ad Agency*



## **Learn More and Register**

To review the agenda and timeline, learn more about the presentations and the presenters, and register online, please go to: <http://members.nhada.com>.

If you have any questions, please contact Jean Conlon at 800-852-3372 or [jconlon@nhada.com](mailto:jconlon@nhada.com).

## Annual Meeting

Hear from your leadership on the status of NHADA, NHAD Services, Inc. – Insurance and Products Divisions, NHADA Workers' Compensation Trust, and the New Hampshire Automotive Education Foundation.

## Cocktail Reception

Camaraderie between members strengthens NHADA and the automotive retail industry in New Hampshire.

## Distribution of Workers' Compensation Rebate Checks

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## Partner Expo

Don't miss this opportunity to meet more than 50 NHADA business partners, pick up information and giveaways, network, learn how our partners may save you money, sign up for raffle prizes, including a new iPad and cash, all while enjoying refreshments!



Opposite Page: The attendees gave keynote presenter Arnold Sanow rave reviews at the 2011 Fall Business Meeting. Above, clockwise: Members visit booths at the 2010 Fall Business Meeting & Partner Expo; Michael O'Rourke of Tri State Fire Protection talks with members, including Debbie Reed of Bill Dube, Inc. at right; Kristan Gibson of Competitive Energy Services visits with Dick Poulin of Dick Poulin Chrysler Jeep.

## Spotlight on Alternative Fuels

Tim Ball, EnergyNorth Propane

An answer to the search for alternative fuel for automobiles is already here in the expanded use of propane for your vehicle fleet! Propane has been used as an automotive engine fuel for decades, but recent advances in technologies have enabled propane to be used in greater applications with better results than ever before!

**About Propane:** Propane is a hydrocarbon fuel similar to natural gas, with the same clean-burning characteristics but is far more convenient and effective for use as an auto fuel. Ninety percent of the propane used in America is produced domestically, making it an obvious choice to help end our dependency on foreign oil. Propane

as a vehicle fuel source is common worldwide – there are over 15 million vehicles powered by propane, making it the most common alternative fuel in the world!

**A Better Alternative:** While electric and natural gas vehicles are getting “all the press,” there are significant drawbacks that have limited their practicality in the real world. Electric vehicles lose their charge quickly, and for heavy-duty applications such as hauling or delivering, they are impractical because of the long-term lack of power. Natural gas vehicles struggle to overcome range issues, and refueling can take all night. In addition, the infrastructure to run a fleet of either is not in place, and remains a significant hurdle to the

future of the technology.

As compared to compressed natural gas, which is stored in a vehicle at pressures of up to 3000 psi, propane is stored at pressures of under 250 psi. Practically, this means that the storage tank is lighter, and the capacity can be far greater, than that of natural gas. As a result, a propane-powered F-250 with a 50-gallon storage tank can have a range of up to 700 miles, almost triple that of other alternative fuels.

Fleet maintenance costs can be dramatically reduced with propane as the fuel burns far cleaner than gasoline. Engine power, as compared to gasoline, is the same, and does not reduce over time as electric engines do. Mileage does not suffer significantly either, and vehicle range is unaffected. According to the Roush CleanTech, their Ford propane engines have the same horsepower, torque, and towing ratings as the equivalent gasoline engines.

In addition, propane is considerably cheaper than gasoline – up to 40 percent less per gallon! Propane prices are far more stable than gasoline. Because propane is non-toxic, causing no harm to the environment, there is no danger of ground contamination.

**How it works:** Although propane has been used for years as an engine fuel, recent advancements in technology have led to the development of propane engines that have similar performance to gasoline. Newer engines inject liquid propane directly into the engine, eliminating the hard starting issues that existed in older propane engines.

The propane that can fuel your fleet is the same propane that fuels your gas grill, heats your house, powers your generator,

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Propane – continued from previous page  
dries your clothes, and cooks your food. Propane is everywhere – the infrastructure to power your fleet already exists!

While natural gas and electric vehicles take up to eight hours to recharge or refuel, propane refills in minutes, using equipment very similar to traditional gasoline pumps. In addition, a propane-powered vehicle can be refilled at any propane refilling station, which means you can fill your vehicle virtually anywhere.

**How to get started:** Both Ford and General Motors have auto-gas vehicles for sale now, A customer can order propane as their fuel choice, and the propane conversion takes place before the vehicle

is shipped to the dealer.

Servicing the vehicle is convenient as well. For example, Roush CleanTech personnel work closely with the Ford service center to ensure swift resolution of any propane issue, which are found using standard diagnostic tools. Propane vehicles are in service in major metropolitan areas all over the country, and the results have been extraordinary!

Interaction with propane suppliers like EnergyNorth is a key first step. EnergyNorth personnel can discuss options for refilling, provide locations of propane filling stations state-wide. EnergyNorth can provide you more information about making propane-fueled



vehicles your first option in alternative-fuel vehicles.

Propane is domestically produced, easily used, and widely available. With a nationwide infrastructure for

a product that produces more power than gasoline, comparable miles-per-gallon and range, propane is the obvious choice for the consumer, both for fleet vehicles and individual use.

Visit [www.RoushCleanTech.com](http://www.RoushCleanTech.com) for more information regarding this article or testimonials from customers using propane for their fleets, or call EnergyNorth Propane at 603-225-6660. For additional resources, visit [www.PropaneCouncil.org](http://www.PropaneCouncil.org).

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# Census Data May Trigger Attempts To Change Dealer Territory

By Scott W. Ellison, Esq.

Some New Hampshire dealerships are receiving communications from the manufacturers whose motor vehicles they sell, informing the dealerships that there may be changes to the dealer's market area as a result of recently released US Census figures. The 2010 Census figures are said to reflect population shifts and other demographic trends that may cause the manufacturer to assert that it is going to review and evaluate territories granted to dealers.

Any changes proposed to a dealer's territory must be approached very cautiously by a dealer. Sales expectations are based upon the census tracts awarded to a dealer, so increased territory means increased sales expectations. Additionally, tracts located in close proximity to competitors will present more difficulty for achieving sales expectations, than those insulated from competition. Difficulty of travel posed by natural barriers such as rivers or, in New Hampshire, of course mountains, may not be taken into consideration when allocating tracts to dealers. Without doubt no dealer is going to want to see territory taken away.



Author Scott Ellison, Esq., practices at Cook, Little, Rosenblatt & Manson, p.l.l.c., a bronze-level NHADA partner.

In New Hampshire's Auto Dealers' Bill of Rights, NHRSA 357-C:3, III (o) states that it is an unfair method of competition and an unfair and deceptive trade practice in New Hampshire for any manufacturer to change the relevant market area set forth in a dealer's franchise agreement without good cause. It should be noted that "good cause," as defined

in the statute, includes changes in demographics. If a manufacturer desired to change a dealership's market area, for reasons such as changes in demographics, then obviously the language of the dealership's franchise agreement should be examined to see what rights may or may not be reserved to the manufacturer to do so. Even if the manufacturer reserved the right to change the primary market area in its franchise agreement, it still cannot engage in any action which is arbitrary or taken in bad faith. If difficulties such as those addressed in the preceding paragraph are created by a manufacturer's changes to a dealer's territory, the damages may very well outweigh whatever "good cause" the manufacturer is trying to show.

If a manufacturer attempts to change a dealership's relevant market area and the dealership disagrees with such action, then it may file a protest with the New Hampshire Motor Vehicle Industry Board (MVIB), by first class mail or hand delivery. Filing of the protest complaint by the dealership must be accompanied by payment of a \$1,500 filing fee. The dealership must file the original protest, as well as eight copies, with the MVIB and provide a copy directly to all opposing parties (such as the manufacturer). Not later than 45 days after filing, all parties will be required to attend a pre-hearing conference in an attempt to resolve the matter. If those settlement efforts are not successful, then a public hearing will be held on the matter followed by a written order or decision. After the issuance of the written order or decision, any party to the proceeding may apply for a rehearing, and if the rehearing procedure was followed then there are provisions for appeal of a final order to the Superior Court. ▮

Attorney Scott Ellison practices at Cook Little Rosenblatt & Manson p.l.l.c., and counsels automobile dealerships on business and employment issues. Reach Scott at 603-621-7122 or email Scott at s.ellison@clrm.com.



### Getting Started...

Each franchised and independent member of NHADA now has an account created in NADA University and the ability to log in and access the vast array of resources available.

Usernames and passwords have been provided to principal contacts; a form is available for you to identify key personnel to access NADA University's resources.

Contact either Jean Conlon or Lisa Lavoie at 800-852-3372 with any questions or to obtain your username and password.

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# Automobile Dealers Political Action Committee (ADPAC) Contributors

ADPAC, your state political action committee, is an essential part of NHADA's legislative program. To participate in this year's fund drive, visit [www.nhada.com/ADPAC](http://www.nhada.com/ADPAC) and click the "Donate to ADPAC" button.

Thank You!

## Mount Washington: \$2,000 – \$5,000 (maximum allowed by law)

AutoFair Automotive Group	Andy Crews	Peters of Nashua	Peggy Proko
Holloway Buick GMC Cadillac	Scott Holloway	Quirk Buick, Chevrolet NH,	Daniel Quirk
International Cars	Marshall Jespersen	Volkswagen	

## Lake Winnepesaukee: \$1,200 – \$2,000

AutoServ Dealerships	Donna Hosmer	Prime Acura North	Matt McGovern
Honda Barn	Roger Groux		

## Mighty Merrimack: \$1,000 – \$1,200

Concord Nissan, Inc.	Scott Boucher	Littleton Chevrolet/ Crosstown Motors	Ronney Lyster
Ed Reilly Subaru	Ed Reilly	Port City Chrysler Dodge	Frank Brady
Fenton Family Dealerships	Bill Fenton	Port City Nissan	Richard Fecteau
Foss Motors	Larry Foss	Seacoast Volkswagen	Douglas Miles
Holloway Automotive Group	Paul Holloway	Team Nissan/Team Kia	Victoria Marcinkevich
Holloway Motor Cars	Dave Cushman		
Hurlbert Toyota	Roy Hurlbert		

## Great Bay: \$750 – \$1,000

Exeter Subaru David Yanofsky

## Star Island: \$500 – \$750

Bob Mariano Chrysler Jeep Dodge	Bob Mariano	Ford of Londonderry	Alan Melkonian
Contemporary Chrysler	David Hammer	Hilltop Chevrolet	Ron Currier
Dodge Jeep		Keene Chrysler, Inc.	Tracey White
Crest Chevrolet	Chris Weiss	Portsmouth Ford Lincoln/Kia	John Sawyer
First City Motor Sales	Rick Ottino	Seacoast Harley-Davidson	Al Contois
		Souhegan Valley Motorsports	George Mullin

## Nor'easter: \$300 – \$500

Brooks Chevrolet, Inc.	Marc Bigney	McFarland Ford Sales, Inc.	Sue Moynahan
Chuck's Auto Repair LLC	Paul Prunier	Nault's Powersports	Richard M. Nault
Concord Motorsport	Mike Cooney	Nissan of Keene	Chuck Dupler
DiPrizio GMC Trucks Inc.	Charles DiPrizio	Pine Motor Parts	David Chaput
Eurasian Auto Works, Ltd.	Rick Perreault	Prestige Auto Body, Inc.	Dave Ludwig
Flanders & Patch Ford	Thomas Thayer	S.G. Reed Truck Services	Scott Reed
Gary Blake Saab	Gary Blake	Salem 66 Auto Sales	Rick Wunderlich
Granite Ford, LLC	Kevin Donovan	Stratham Tire Inc.	Lionel Labonte
Granite State Tire & Battery	Norman Boucher	Subaru of Claremont	Peter Mans
Gurney's Automotive Repair	Bill Gurney	Subaru of Nashua	Dan Enxing
Hillsboro Ford	Dennis Roberts	Townline Equipment Sales	Robert Marrasso
HK Powersports	Steven Whalley	Weed Family Automotive	Dan Weed
Larson's Auto Service	Toure Larson		
Leons Auto Center/+L AutoBody	Leon Watkins		

## Also Supporting ADPAC: up to \$300

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Auto Barn Inc.	Dexter Royce	New England Motor Car Co., Inc.	CJ Clark
Betley Chevrolet	Jeff Platek	Noyes Volkswagen	Rob Noyes
Clark's Car Care	Tom Clark	P & L Auto Parts, Inc.	Paul Poulin
Gate City Collision Center	Mark Piekarski	Phoenix Auto Body, Inc.	Bob Aranosian
Hampton Ford/Hyundai	Jay McFarland	State Motors Inc.	Greg Grant
Hudson Cycle Center	Rick Wheeler	Tim's Truck Capital	Tim Emery
Husson Motors Inc.	Paul Husson	Troy Auto Sales	Joe Sabolevski
Interstate Used Cars	Jim Zenevitch	Walier Chevrolet	Joseph Walier
Lambert Auto Sales	John Lambert	Wentworth Motor Co., Inc.	Mike Wentworth
Lang's Corner Garage	Paul Chase	Werner Mazda	Bob Werner
		Young's Auto Sales	Alan Young



## Slip/Fall Contest Winners

Photo at left – contest winners: (left to right): Wayne Kimball, Jake Andrews, Jim Goodland, and Greg Guilmette.

Congratulations to Tri City Dodge and Subaru, winners of the NHADA Slip and Fall Prevention Contest.

The NHADA Loss Prevention Department treated the Tri City staff to a buffet luncheon, t-shirts, and free tinted safety glasses for their outstanding effort in snow and ice removal during the winter months of 2011 and 2012.

A special thanks to everyone at Tri City Dodge and Subaru for a job well done this winter!

Loss Prevention would like to encourage all members of the Workers' Compensation Trust to participate in the contest during the upcoming 2012-2013 winter season for a chance to win fabulous prizes!



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Reporting – continued from page 10

reason the injury was reported late and what happened in the time between the alleged injury and the time it was reported. Frequently when injuries are reported late, the injured employee seeks costly medical treatment at a hospital or a provider outside of the comp mc managed care network, or seeks an inappropriate medical provider. Members have control over some aspects of the workers' compensation system. By taking control over those things they can control, members can reduce workers' compensation claims costs. Remember, workers' compensation premium and rebates are directly related to individual members' claims costs.

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**NADA NEWS**

# Renovation Programs Must Be Fair

## NADA: Factory-Mandated Dealership Renovation Programs Must Be Fair, Reasonable and Flexible

There is great and very understandable angst among dealers over automaker programs that require expensive dealership renovations, especially when they appear arbitrary and do nothing to sell more cars or satisfy customers.

The National Automobile Dealers Association helped elevate the current national debate over manufacturer-mandated facility upgrades by commissioning the first-ever facility study.

The study was conducted by Glenn Mercer, a former McKinsey and Company partner and industry consultant, who interviewed a broad range of industry participants. The study, which was independent and fact-based, uncovered three types of store upgrades:

(1) **Expansion** – adding a showroom or service bays to support growth in units in operation, for example. Here the study found that unreasonably high and frequently changing OEM volume forecasts, as well as outdated capacity formulas, can lead to overbuilding and waste. Better, more reasonable forecasting is needed to make expansion investments more

tailored and worthy of dealer support.

(2) **Modernization** – upgrading facilities to contemporary standards in tile, furniture, fixtures, etc. The study showed that many dealers are skeptical of the need to invest such large sums of money because there is an absence of clear, quantified return on investment data. The study asks manufacturers for more competition among vendors and more flexibility in OEM design standards, which would benefit automakers and dealers alike.

(3) **Standardization** – designing the interior and exterior look to ensure that every store selling a given brand looks as much like the other stores as possible. This is the most contentious issue, and while highly standardized facilities make sense when customers move around a lot and are looking for their favorite brand – such as hotels or fast-food places – neither condition applies in automotive retailing. Automaker attempts to homogenize the look of dealerships can be counterproductive. The local market, the local culture, and the local relations between dealers and their customers are more important than a uniform look. That’s why the study strongly recommends that each OEM and

its dealers think through the specific links between standardized appearance, car sales, and customer satisfaction. This is especially true today, when so many communities are using local zoning authority to push back against such uniform looks.

Manufacturers that have not already done so ought to consider establishing facility committees – similar in rigor and requirements to product committees – within their dealer council structures. This could help head off facility value cost issues before they are – literally – cast in concrete.

NADA has presented the study’s findings in face-to-face meetings with a number of manufacturers. Some have indicated they plan to be more flexible. Others say they will do a better job of communicating with their dealers. And still others say they plan to reevaluate their image programs based on the study.

NADA will continue to stress to the OEMs that any image programs must be fair and reasonable and must have the flexibility to accommodate local conditions and resource constraints. (The complete study is available at [www.nada.org/facilitystudy](http://www.nada.org/facilitystudy).)

### NADA Update

#### Consult Your Tax Practitioners Soon About the UNICAP Safe Harbors

On November 9, 2010, the IRS issued Revenue Procedure 2010-44, which created two optional safe harbor methods of accounting for motor vehicle dealerships (including light, medium, and heavy duty truck dealerships). If properly elected and applied, the new safe harbors permit dealers to (i) deduct, instead of capitalize, certain costs related to their

*NADA – continued on page 22*

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NADA – continued from page 20

inventories, and (ii) significantly simplify their computation of these costs (known as their Uniform Capitalization – or UNICAP – computation). If qualifying dealers elect the safe harbor methods of accounting for their first or second tax year ending after November 9, 2010, they may do so without having to consider most of the potential restrictions that apply to automatic method of accounting changes. Consequently, for dealers whose tax year corresponds with the calendar year and who did not elect these methods for the 2010 tax year, they should speak with their tax practitioner soon about whether they should elect the UNICAP safe harbors for the 2011 tax year. The election is made on IRS Form 3115. For more information, consult summaries of the revenue procedure by the IRS Motor Vehicle Technical Advisor (visit <http://bit.ly/HMYjyZ>) and NADA (visit <http://bit.ly/HMYt9s>).

### Dealership Workforce Study Open for Participation

The Dealership Workforce Study (DWS) is now open for participation. The all-new, annual DWS will capture more data and detail than ever before – including retention, tenure, turnover, and hours of

operation in addition to compensation. For the first time, dealers will receive data comparing their dealership with others regionally and nationally within the industry, including solid data to back compensation and benefits decisions. There is no cost to participate. Dealer information is completely secure and the process is streamlined to be quick and easy. Participating dealers will receive their own individualized report plus a Driven management guide summary report. Dealers will also have the option to purchase additional reports. Dealer participation – only NADA and ATD members may participate – will close May 2, 2012.

### EPA Underestimated Emissions Control Costs for Model Year 2004-2010 Heavy-Duty Trucks

NADA and ATD released a new report

March 8 that calls into question the Environmental Protection Agency’s (EPA) cost analysis of emissions control requirements for model year 2004-2010 commercial trucks. The mandates resulted in substantially higher prices for commercial vehicles, depressed sales and delayed the environmental benefits that the EPA originally sought.

### AuctionNet Wholesale Prices Jump for Compact and Mid-Size Cars in March; Large SUVs Down

The influence of the rising cost of gasoline was clearly evident in AuctionNet wholesale performance in March, as compact and mid-size car prices grew significantly above the seasonal norm, while large pickup and SUV prices underperformed the market in general. At a market level, prices relative to February jumped by an average of nearly \$700,

	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>
<b>United States</b>	8.3%	8.8%	8.7%
<b>New England</b>	6.9%	7.9%	*
<b>Connecticut</b>	7.6%	8.5%	*
<b>Maine</b>	7.0%	7.9%	*
<b>Massachusetts</b>	6.5%	7.7%	7.5%
<b>New Hampshire</b>	<b>4.9%</b>	<b>5.7%</b>	<b>5.8%</b>
<b>Rhode Island</b>	10.7%	11.7%	12.1%
<b>Vermont</b>	4.9%	5.6%	*

\* data unavailable at press time

<b>Safety Inspection Results</b>	<b>Mar'12</b>	<b>% of Total</b>	<b>YTD '12</b>	<b>% of Total</b>
Total *	132,302	100.00%	354,687	100.00%
Passed	103,945	78.60%	276,489	78.00%
Corrected	16,018	12.10%	43,691	12.30%
Rejected	7,442	5.60%	20,747	5.80%
Untested	4,897	3.70%	13,760	3.90%
<b>OBD II Inspection Results (1996 and newer)</b>				
Total	115,379	100.00%	313,750	100.00%
Passed	99,226	86.00%	268,889	85.70%
Rejected	11,326	9.80%	31,490	10.00%
Untested	4,827	4.20%	13,371	4.30%

**\* Total numbers include OBD II Inspections**

*Statistics provided by Gordon-Darby*



NADA – continued from page 22

or 4.1 percent (vehicles up to five years in age). Following the trend that began in late February, escalating fuel prices applied pronounced upward pressure to compact and mid-size car prices, with the segments recording gains of 6.9 percent and 5.1 percent, respectively. In a reversal from the positive trend of the previous three months, large SUV prices buckled under the weight of gasoline approaching \$4 per gallon. This being said, prices are still up 1.5 percent for the year even when March's retreat of -0.5 percent is taken into consideration. Prices for luxury vehicles, large pickups, mid-size utilities, and compact utilities grew between 1.7 percent and 4.2 percent. For more information, visit [www.nada.com/b2b](http://www.nada.com/b2b).

**NADA 20 Group  
Accepting Applications**

NADA 20 Group is now accepting ap-

plications for Suzuki Dealer Groups and Honda Fixed Ops Managers.

If you would like more information, please call 800-557-6232, ext. 4.

**Reserve Your Seats in Academy 2012**

Here's the schedule for upcoming classes: Dealer Candidate Academy (DCA):

May 7, June 25, Sept. 10, and Oct. 22. General Dealership Management

Academy (GDM): May 21, Sept. 17, and Oct. 8.

ATD Truck Dealer Academy: June 11.

Department managers may enroll in any individual class week. Call 800-557-6232 for more information and visit [www.NADA.org/nadauniversity/academy](http://www.NADA.org/nadauniversity/academy) to download the schedule and applications.

**NADA U Webinar Wednesdays  
Announced for April and May**

Upcoming Webinar Wednesdays include both MarketINSIGHT and Learning

Hub webinars. MarketINSIGHT webinars are informational. They are open to all participants at no charge and may be viewed live or on demand in NADA U's Resource Toolbox. Learning Hub instructional webinars are available for purchase (\$199) in the NADA U Store. They are included in the NADAvt subscription and may be viewed live or on-demand for two years.

All NADA U Webinar Wednesdays begin at 1 p.m. Here's the schedule:

Presidio Group's M&A Report, MarketINSIGHT, Erin Kerrigan and Alan Haig, May 2;

Loyalty Marketing Essentials, MarketINSIGHT, re:member group, Paul Long, May 16;

Leasing Best Practices, Learning Hub, DealerTrack, May 23; and

Valuation and Wealth Transfer: 2012 Update, MarketINSIGHT, Moss Adams, Diane Anderson Murphy and Sid Tobiason, May 30. ▀

## Title Statistics Report Ending March 31, 2012

New Hampshire Department of Safety, Division of Motor Vehicles

	Mar'12	Mar'11	'12 YTD	'11 YTD
Titles Issued for New and Demo Vehicles:	10,316	8,416	25,128	20,968
Titles Issued for Used Vehicles:	21,372	18,354	53,510	46,954
<b>TOTAL TITLES ISSUED:</b>	<b>31,688</b>	<b>26,770</b>	<b>78,638</b>	<b>67,922</b>
Titles Issued with a Lien:	14,509	11,936	35,269	29,487
Titles Issued with no Lien:	17,179	14,834	43,369	38,435
Salvage Titles Issued:	1,048	1,118	3,174	3,009
Salvage Tags Issued:	209	225	597	498
Titles Issued for Heavy Trucks More than 15 Years Old:	28	36	90	83
Titles Issued for Heavy Trucks 15 Years Old or Less:	129	96	392	323
Titles Issued for Trailers:	628	398	1,454	1,079
Titles Issued for Motorcycles:	1,470	823	2,392	1,491
Titles Issued for Motor Homes:	32	35	87	86

# 2012 NHADA Association Partners

(as of April 23, 2012)

## DIAMOND

Comcast Business Class/Comcast Spotlight

## PLATINUM

F & I Resources  
NHAD Services, Inc. - Insurance  
NHAD Services, Inc. - Products Division

NHADA Workers' Compensation Trust  
WBIN-TV  
WMUR-TV/WMUR.com New Hampshire

## GOLD

Bank of America Merrill Lynch  
Gordon-Darby NHOST Services, Inc.

New Hampshire Union Leader  
O'Connor & Drew, P.C.

## SILVER

Albin, Randall & Bennett  
American Fidelity Assurance Company  
Anthem Blue Cross and Blue Shield  
in New Hampshire  
AutoTrader.com  
Cars.com  
Devine Millimet

Enterprise Rent-A-Car  
Northeast Delta Dental  
Southern Auto Auction  
St. Mary's Bank  
Wells Fargo Dealer Services  
Windward Petroleum/ExxonMobil

## BRONZE

Aftermarket Specialists  
American Financial & Automotive Services, Inc.  
Amy Martineau – Motorists Commercial Mutual  
Auto Auction of New England  
Auto Use  
Bedford Strategies and Solutions  
Bellwether Community Credit Union  
BG Products/Warehouse Distributors of New England  
Clean Harbors Environmental Services  
cm&b  
CompPartners (BOAC, MVOH, SOAC, St. Joseph's B & H)  
Cook, Little, Rosenblatt & Manson, p.l.l.c.  
CUDL Vero  
Curran EasyCare Inc.  
DealerTrack Inc.  
EnergyNorth Propane  
Fairpoint Communications  
G&K Services  
GeoInsight, Inc.  
Global Payments  
G W Marketing Services  
Holmes Law Offices PLLC  
Huntington Auto Finance  
Jewett Automotive Design & Construction  
JM&A Group

JPMorgan Chase Bank  
Lift Works Corp. / Sullivan Tire Inc.®  
Lynnway Auto Auction  
Macdonald Page & Co LLC  
Manheim New England  
Mike's Equipment Repair  
Morgan Stanley Smith Barney  
Nancy Phillips Associates, Inc.  
Protective  
Rath, Young and Pignatelli, P.C.  
Resources Management Group  
Sanel Auto Parts Co.  
ScanPoint  
Seacoast Media Group  
STAPLES® Advantage  
Strategic Benefits Advisors, Inc.  
TD Auto Finance  
Tire Warehouse/Monro Muffler Brake  
TR2 Corp/LSI Industries  
Tri State Fire Protection  
Trivantus, Inc.  
Tyler, Simms & St. Sauveur, CPAs, P.C.  
Willis of Northern New England, Inc.  
Zurich Direct Underwriters

To become a 2012 NHADA Partner, please call Jean Conlon at 800-852-3372.