

# Up *to* Speed

LADA'S QUARTERLY NEWSLETTER



NOVEMBER 2020 | **ISSUE #6**

2020 GOLF & SHRIMP FEAST  
**EVENT HIGHLIGHTS**

LEGAL CORNER | FISHER & PHILLIPS  
**COVID-19 MISCONCEPTIONS**

NADA PAC CHAIR MESSAGE  
**JOEL P. OUSTALET, 2020 CHAIR**

SAFETY COMPLIANCE CORNER | KPA  
**COSTLY OSHA VIOLATIONS**



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# MESSAGE FROM THE PRESIDENT

WILL H. GREEN

LADA President | LADA-SIF Fund Administrator



As 2020 comes to a close, there is a lot we can reflect on. We began on a high note with LSU winning the National Championship and meeting together with members at our in-person regional meetings. There, our industry partner experts and I presented lofty goals both from a legislative standpoint and from an association standpoint. We discussed our plans to continue to defend the franchise system and grow the association through our many in-person events. That seems like a lifetime ago...

We all know shortly thereafter a global pandemic was declared as COVID-19 affected both the health of our citizens and businesses. Our industry in particular was in a brief state of flux as LADA fought to make sure our Louisiana dealerships sales and service departments were deemed essential.

While ultimately deemed essential, our industry has still faced many challenges in providing a safe environment for employees to work and customers to get reliable transportation, despite dealing with supply chain disruptions.

We tried to balance the, at times, overwhelming and uncertain nature of the CARES ACT and PPP funding mechanisms with sending timely updates and resources to provide answers to our valued members. NADA and our other industry partners and experts joined with us and offered additional numerous resources, which, when pooled together, helped put together the pieces of what otherwise was a complicated puzzle.

This year we have navigated many uncharted waters causing our board to establish new goals and directions

for the association all with the same focus in mind: promoting the automotive trade through the enactment of legislation and policy that benefits and protects our industry, employees and customers.

We passed key legislation that allows us to help offset the increased costs associated with keeping service customers vehicles clean and sanitized, while defeating numerous tax increases. We helped pass legislation designed to lower Louisiana's high insurance costs, as well as legislation that will help protect businesses from COVID-19 related suits.

As if a global pandemic wasn't enough, Louisiana was hit by five named storms, one of which was the strongest to reach Louisiana's coast in 150 years. These storms once again reminded me of the unwavering spirit and generosity of our dealer community as I was flooded with phone calls and emails from all over the state and country asking where to donate supplies and money.

Enough reflection. There is a time to look in the rear-view mirror, but you have to transition to looking in the windshield if you're ever going to get where you need to go. There is no one more ready and motivated than your LADA board and staff to turn the page on 2020 and make 2021 the best year yet.





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*Amy Casey - Director of Operations, Dealertrack*

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# WE HAD A GREAT ROUND OF GOLF & A 2ND ROUND OF DISTRIBUTION CHECKS

A GREAT DAY WAS HAD BY ALL.

The LADA-SIF and RMS delivered over 50 distribution checks during the 2020 Golf Tournament & Shrimp Feast.

With this second round of Distributions, the LADA-SIF has returned approximately \$3.6 Million in 2020 which brings the total of Distributions to members in excess of \$94 Million.

.....

For additional information regarding the LADA-SIF and your workers' compensation program, contact:



Contact: Jean Robert  
Email: [jrobert@rmsla.com](mailto:jrobert@rmsla.com)  
Phone: (504) 837-3100  
Toll Free: (800) 351-RISK (7475)

RMS & THE LADA-SIF LOOK FORWARD TO  
SEEING YOU AT THIS EVENT NEXT YEAR!



## UPTOSPEED











# **NADA PAC 2020 STATE CHAIR MESSAGE**

JOEL P. OUSTALET

NADA's Political Action Committee (NADA PAC) is a vital part of NADA's advocacy on Capitol Hill. NADA PAC receives voluntary personal contributions from dealers and managers of NADA-member dealerships and contributors to pro-business candidates for the US House and Senate.

NADA PAC is one of the largest business trade association PACs in the country and is the only PAC representing the interest of all franchised dealers of new cars and trucks. Louisiana dealers and managers have always been generous and we continue to be fortunate to have great representation in both Congress and the Senate.

I would be remiss without thanking Carroll Dantin for his leadership in being our NADA PAC State Chair for many years. I also want to thank the LADA Board and Leadership for allowing me the honor of leading as we move forward as your new NADA PAC Chair.

The many challenges of our business will always remain at the forefront of our fight. I want to thank all of you who contribute to the fight and challenge others to consider giving.

If you have any questions please do not hesitate to contact me personally or the NADA PAC staff in Washington. They can be reached at [nadapac@nada.org](mailto:nadapac@nada.org) or 202-627-6755.





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# COVID-19 & EMPLOYMENT LAW UPDATES

In the wake of COVID-19, employers face a plethora of federal, state, and local laws and guidelines, which are principally aimed at slowing the spread of the virus. With new rules came new potential pitfalls for employers. We have seen more than 800 employment lawsuits stemming from COVID-19 filed across the country. The cases cover a wide range of COVID-19 topics, but most are based on issues stemming from leave requests pursuant to COVID-19. With COVID related litigation on the rise, employers should remember a few important points as the pandemic continues:

## Your Employees May Be Entitled to Leave

The FFCRA, passed in response to COVID-19, requires qualifying employers to employees paid for certain COVID related reasons through December 31, 2020. Leave is required for employees who are quarantined pursuant to a federal, state, or local government order or advice of a healthcare provider and/or experiencing COVID-19 symptoms and seeking a medical diagnosis or who are unable to work because of a bona fide need to care for a quarantined individual or to care for a child whose school or child care provider is closed or unavailable. Refusing to provide employees with the mandatory paid leave or taking adverse action against them for requesting such leave can leave employers exposed to extensive litigation. Before taking action on an employee requesting or taking leave, employers should determine their obligations under the law.

## A Negative Test Is Not a 'Silver Bullet'

If an employee is required to quarantine due to COVID-19 symptoms or a positive test, a negative test does not shorten that individual's quarantine time. Even if an employee tests negative after testing positive, that employee should still follow CDC guidelines and doctor

guidance before returning to work. Allowing an employee to return prematurely could subject employers to future liability if others can connect their infection to that decision.

## Notify Appropriate Employees of a Confirmed Case

As employees continue to test positive, employers must be sure to notify the right employees while maintaining confidentiality. Those individuals who came into close contact with the individual under the CDC's 6-15-48 close contact guidance must be notified. In addition, employees who work in the same department or workspace as the confirmed positive case who "might" have had any contact with the infected individual should also be informed of the situation while maintaining confidentiality.

## EMPLOYEE PROTECTIONS: THE BOSTOCK DECISION

Title VII of the Civil Rights Act of 1964 provides protection for individuals from discrimination, retaliation, and harassment based on their race, color, religion, sex, and national origin. Individuals cannot be treated adversely because of their membership in a protected class. But, one question had been unsettled for some time: whether Title VII covers LGBTQ discrimination. While many state and local laws already provided protections for the LGBTQ community, it was unclear whether federal law provided those protections. In *Bostock v. Clayton County*, the United States Supreme Court concluded that discrimination based upon an individual's sexual orientation is, in fact, prohibited by Title VII.



## LEGAL CORNER

Bostock addressed three separate lawsuits (Bostock, Zarda, and Stephens) from around the country that had been consolidated into the Supreme Court appeal. Gerald Bostock was a child welfare services coordinator for a juvenile court system who was terminated after his employer learned that he was playing in a homosexual recreational softball league. Before he was terminated, Mr. Bostock experienced disparaging comments at work regarding his sexual orientation. Donald Zarda was a skydiving instructor who believed that he was terminated because of his sexual orientation, despite his employer's assertion that he had been terminated for violating company policy. The third plaintiff was Aimee Stephens, who was originally born male. She was terminated two weeks after informing her employer that she planned to transition from male to female. All these individuals were confronted with the same question of whether Title VII provided them with protections with all experiencing different results in courts throughout the country.

In a 6-3 opinion, the Supreme Court explicitly applied Title VII to cover sexual orientation discrimination. Justice Gorsuch wrote the majority opinion and succinctly stated, "[a]n employer who fires an individual merely for being gay or transgender defies the law." In reaching its conclusion, the majority stated that when an individual discriminates against someone based on their sexual orientation or gender identity is because of that person's sex at birth. As an example, the Court discussed how a male and a female could both be attracted to a male. If the male was discriminated against for pursuing or engaging in a relationship with the male, but the female was not, the Court reasoned that the individual's sex was the only reason for the discrimination. Had the male been born a female, he would not have been discriminated against because of his sexual orientation. Therefore, the male

was being discriminated against because he was a male, which qualified as sex discrimination according to the Court. As such, the Court determined that discrimination under Title VII based on "sex" includes sexual orientation or gender identity.

The Court, however, did not provide blanket protection to all LGBT individuals. Both the majority and the dissenting justices recognized that religious institutions might be exempted from the prohibition under certain circumstances. The Court specifically reserved issuing any judgment on how religious-based explanations for otherwise discriminatory conduct will be addressed.

For more information on either of these topics, please reach out to **Tim Scott** ([tscott@fisherphillips.com](mailto:tscott@fisherphillips.com)) or **Andrew Baer** ([abaer@fisherphillips.com](mailto:abaer@fisherphillips.com)).





Our attorneys can help you steer through the labor laws affecting the car business. Since 1943, we have been the labor lawyers of choice for automobile dealers. Fisher Phillips is dedicated to helping the members of the Louisiana Automobile Dealers Association with their labor and employment legal matters. We're driven to help you succeed.



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# TOP 3 AUTOMOTIVE OSHA VIOLATIONS: WHAT THEY COULD COST YOU

AMANDA RAWLS, KPA

What are you doing to avoid the most common Occupational Safety and Health Administration citations? The top three violation categories for auto dealers, collision, and repair shops are:

- Hazard Communication (1910.1200)
- Respiratory Protection (1910.0134)
- Powered Industrial Trucks (Forklifts) (1910.0178)

The number of citations in fiscal year 2019 show that dealers are far from perfect (see graphic). Unfortunately, many dealers are failing to mitigate the greatest sources of risk. There are still too many preventable incidents that cause needless injuries, illnesses, and—in some cases—deaths.

In addition, the fines for businesses may be significant. OSHA penalties can exceed \$13,000 for serious violations and the fine for a willful or repeated violation can be 10 times as much!

Those are just the direct costs. Dealerships that don't adequately address common workplace hazards can expect to pay hundreds of thousands—even millions—in indirect expenses, such as:

- Workers' compensation claims from people who are injured on the job;
- An adjusted experience modification rate which can affect your worker's compensation premium;
- Lost productivity during and after an incident;
- Lowered workforce morale due to fear and uncertainty around risk areas which can impact employee retention and ultimately sales;
- Hours of labor spent identifying and mitigating the issue;

- The cost of cleaning and replacing equipment that's out-of-date, damaged, or broken;
- Legal and compliance fees;
- Lost business from negative publicity and reputational damage.

Of course, the true costs of a safety violation are incalculable, and no one can assign a monetary value to an employee's life. Suffice it to say, it's in your best interest to bring your annual number of injuries and illnesses to zero. Fortunately, avoiding an OSHA citation isn't as complex or cost-intensive as many people think. Small steps can save you a lot of money—and even save a life. *Discover more at [www.kpa.io](http://www.kpa.io)*







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Will Green  
LADA  
wgreen@lada.org



## On-retainer CPA

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Glen M. LaBorde, CPA  
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Stephen M. Huggins, CPA  
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Jean Robert  
Risk Management Services  
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## Stay in the Know

LADA keeps you on the forefront of issues that affect our industry. Dealer Alerts, Legislative Updates, and Legislative Alerts are just a few communications you will see from our office that provide important and relevant information to your business.

Katherine Carver  
LADA  
kcarver@lada.org



## On-retainer Labor & Legal Counsel

Many questions may arise as more regulations and mandates affecting your businesses are put in place, especially in today's climate. As an LADA member, you have access to our on-retainer labor and general counsels.

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tscott@fisherphillips.com

Claude F. Reynaud, Jr.  
Breazeale, Sachse & Wilson,  
L.L.P.  
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## Networking & Events

LADA hosts and participates in many events throughout the year where you can network with old friends and build relationships with dealers and associates from across the state. Regional Meetings, the Annual Convention, and the Golf Tournament & Shrimp Feast are our biggest events that you can look forward to annually.

Katherine Carver  
LADA  
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*Be on the lookout for your 2021 LADA dues renewals!*



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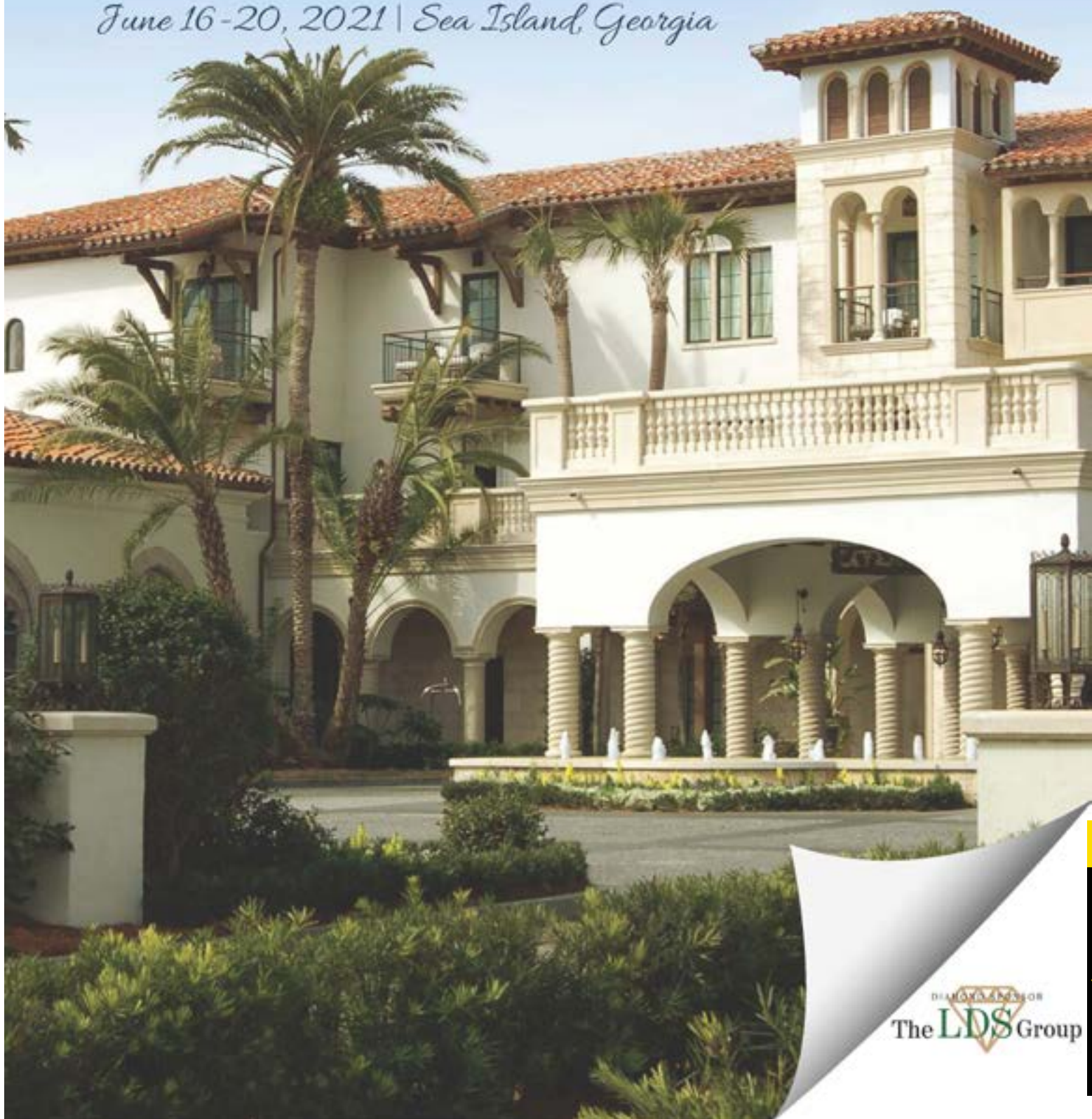
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as General Counsel to Louisiana Automobile  
Dealers Association.



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