

Up^{to}Speed

LADA'S QUARTERLY NEWSLETTER

LADA LEGISLATIVE UPDATE

2021 REGULAR SESSION IS UNDERWAY!

NADA STATE DIRECTOR MESSAGE

MARK HEBERT

LADA LEGAL COUNSEL

CLAUDE REYNAUD

ISSUE #8
MAY 2021



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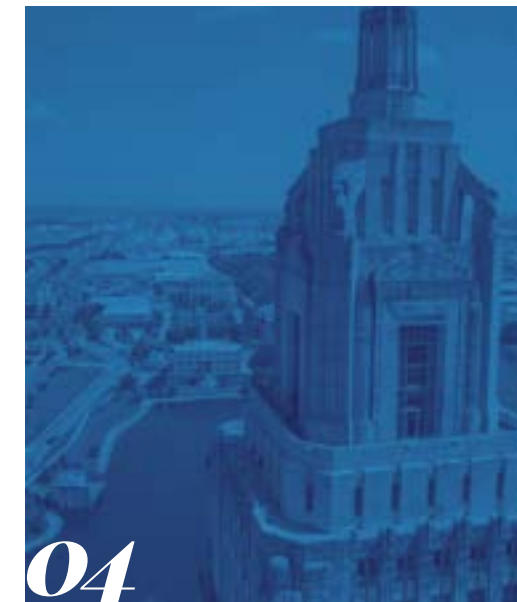
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LADA.ORG

CHECK IT OUT ONLINE



MESSAGE FROM THE PRESIDENT

THE 2021 LEGISLATIVE SESSION IS HERE!

WILL H. GREEN
LADA PRESIDENT | LADA-SIF FUND ADMINISTRATOR

We are well underway into what has been a very fast-moving Legislative Session, with 697 House bills and 243 Senate bills filed for this fiscal session, that will be dominated by tax and budget related matters. A top priority of the business community is **HB 199** by **Speaker Clay Schexnayder (R-Gonzales)**, which intends to create a streamlined state and local sales tax collection system to end our state's antiquated and overly-burdensome practice to having each parish collect and administer its own local sales taxes. **HB 199** is a Constitutional Amendment that, if passed, will require a vote of the people.

LADA is monitoring close to 100 bills, including several instruments related to the inventory tax and the inventory tax credit, with the most notable being **SB 158** by **Sen. Bret Allain (R-Franklin)**. **SB 158** phases out the inventory tax over several years while allowing the locals to get back some Industrial Tax Exemption money and certain General Fund dollars as a trade-off. We will be closely monitoring **SB 158** and other good tax policy instruments and working with the authors and leadership to help pass these measures.

In coordination with LADA's Board of Directors and LADA's Legislative Sub-Committee, we have filed two priority bills this session: **SB 67** and **HB 502**. **SB 67** by **Sen. Rick Ward (R-Port Allen)** will increase the current documentation fee a dealer



may charge a consumer for credit investigation, compliance with federal and state law, preparation of the documents necessary to perfect and satisfy a lien and other functions from \$200 to \$425. We know the financial burden regulatory compliance has on the automotive industry, and as a result, we have filed **SB 67** to help offset some of these costs. At the time of publication, **SB 67** is expected to go to the Senate floor for a vote before we hope it moves to the House.

Our second priority bill, that reached the House floor the week of publication, is **HB 502** by **Rep. John Stefanski (R-Crowley)**. **HB 502** clarifies and streamlines the process by which a dealer can establish and increase the rates for which they are reimbursed by the manufacturer or distributor for parts and labor.

Both **SB 67** and **HB 502** are important pieces of legislation that will help improve our franchise system and offset the heavy regulatory burden placed on you. Your voice and experience is key to getting these bills across the finish line, so please stay informed and lend your voice as they move through the process! For the latest up-to-date information on LADA's Legislative efforts at the Capitol, please subscribe to our emails where we send Legislative Alerts with TAKE ACTION notices and updates on priority legislation.

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Amy Casey - Director of Operations, Dealertrack

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Timothy H. Scott
tscott@fisherphillips.com

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Mark Hebert, 2021 NADA State Director

NADA STATE DIRECTOR MESSAGE



I would like to thank you again for the privilege to serve and represent the dealers in Louisiana as your NADA State Director. What a year 2020 was. The Coronavirus pandemic had an impact on all our lives. Dealers were resilient and managed to make 2020 a successful year.

We look forward to 2021 being back to normal but the reality is there is a new normal. Then we had severe winter storms affect us in the South and that along with a shortage of microchips we find ourselves struggling to have enough new vehicles to sell. We do not know how long it will be to rebuild inventories, but dealers are enjoying robust used car sales due to the shortage of new vehicles.

As vaccinations continue, more Americans will feel comfortable getting out in public and test-driving

vehicles. Economists are predicting a strong new vehicles sales year, so with low inventories there will be record turns of dealer's inventory.

NADA is always there for the dealers. NADA and LADA fought to make sure new car dealers were classified as essential businesses so that we could continue to service and sell vehicles during the pandemic. NADA continues to fight for dealer issues in Washington. I have been extremely impressed with the team at NADA and please know that they are there for you.

Stay safe, stay strong, and stay united! We are stronger together.

CALL FOR SPEAKERS

SAVE THE DATE: 2022 Call for NADA Show Speakers opens April 12, 2021

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GET THE MOST FROM YOUR LADA MEMBERSHIP

Are you taking full advantage of your LADA membership? We offer a wide array of services to help carry out our mission of promoting the automotive trade and enhance the operations of our member dealers. From access to our on-retainer labor & legal counsel to staying connected with your industry peers to equipping your staff with our new Accelerate Educational Series, LADA is here to be an extension of your dealership or company and help you grow and succeed.



Legislative Representation

We are your voice in both state and national legislative issues. Through its various contacts, our staff works to monitor the ever-changing landscape of governmental relations. Areas include, and are not limited to, titles, taxes, leasing, insurance, and dealer licensing.

Will Green
LADA
wgreen@lada.org



On-retainer CPA

With over 60 years of service to auto and truck dealers, Hannis T. Bourgeois provides a wealth of experience to handle special accounting and tax needs for dealerships. The HTB team is ready and at your service to provide timely and tested planning strategies and advice.

Glen M. LaBorde, CPA
glaborde@htbcpa.com

Stephen M. Huggins, CPA
shuggins@htbcpa.com



Workers' Compensation

As a member of LADA, you have access to our top of the line workers' compensation program. The LADA-SIF leads the industry with low rates, low expense ratios, and consistent surplus returns, with over \$90 million in member distributions payable returned to the members since the Fund's inception in 1982.

Jean Robert
Risk Management Services
jrobert@rmsla.com



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.

Timothy Scott
Fisher & Phillips LLP
tscott@fisherphillips.com

Claude F. Reynaud, Jr.
Breazeale, Sachse & Wilson,
L.L.P.
claudio.reynaud@bswllp.com



Networking & Events

LADA hosts and participates in many in-person and virtual 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
kcarver@lada.org

IS THE LMVC THE EXCLUSIVE JURISDICTION TO HEAR DEALER COMPLAINTS WITH THEIR OEM’S?

As Federal jurisprudence currently stands, licensed franchisees (dealers) cannot sue manufacturers in Federal District Court for alleged violations of the Louisiana Motor Vehicle Franchise Act (“LMVFA”) (La. R.S. 32:1251, *et seq.*). The Louisiana Motor Vehicle Commission (the “Commission”) has, according to these cases, exclusive jurisdiction over these dealer claims. However, La. R.S. 32:1261A(1)(v) and (vi) provides: It shall be a violation of this Chapter:

- (1) For a manufacturer, a distributor ...
* * *
(v) ... to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States .
..
(vi) To waive the right to a jury trial.

Given these very clear statutory prohibitions against manufacturers, including preserving a dealer’s right to seek relief in the duly constituted courts of this state or the United States, and to have a jury trial in either one of those courts, it is incredible that the decision of *Crescent City M Dealership d/b/a Crescent City Mazda v. Mazda Motor of America, Inc.*, issued on September 22, 2000, and then affirmed by the Fifth Circuit in

2001, determined that dealers do not have a private right of action under the LMVFA to assert claims in court against manufacturers. The court contrasted the LMVFA with the Louisiana Unfair Trade Practices Act (“LUTPA”) that specifically authorizes a private right of action under that Act. Before this decision, it was generally understood that the Commission and courts of appropriate jurisdiction had concurrent jurisdiction. Often, courts would voluntarily stay their proceedings pending the exhaustion of remedies before the Commission. The above case changed that, and since then, dealers’ suits against Honda, Volvo Trucks, Volkswagen, Nissan, GM and Hyundai have all been dismissed by federal district courts. If one looks at La. R.S. 32:1259 and 1260, there is a delineation of the powers of the Commission. It can fine licensees who have violated the rules and regulations, and it can ask a district court for injunctive relief, stopping some allegedly improper activity. There is no provision in the LMVFA that a dealer or manufacturer can seek damages for violations of the Act before the Commission, and courts have routinely recognized that the Commission is without jurisdiction to award damages.

The opinions issued in the *Crescent City Mazda* line of cases offer a little more insight than did the original Mazda opinion. A dealer does have

a private right of action against a manufacturer if the dealer’s claim arises from alleged violations of the LMVFA, and the complaint is filed at the Commission. Further, if the dealer’s grievance against a manufacturer is based on other causes of action, i.e., breach of contract, detrimental reliance, negligence, unjust enrichment, a LUTPA violation, or a violation of federal dealer protection laws, a federal court will exercise its jurisdiction to hear those claims, while at the same time, dismiss the included LMVFA claims for lack of standing. When these distinct causes of action seek monetary damages, certain courts have cited, as another reason to exercise jurisdiction, the fact that the plaintiffs are seeking a remedy (damages) that the Commission cannot provide. Finally, if a claim is couched as something other than a LMVFA claim, but is indistinguishable from or directly related to a LMVFA claim, a court may dismiss it and direct the dealer back to the Commission.

The question remains as to whether a federal court will deny standing to a dealer who sues for damages based on a ruling by the Commission that found a manufacturer in violation of LMVFA laws. Because the Commission lacks the authority to award damages, it would be unconscionable for a court to deny standing to a dealer in this situation. As of now, this scenario has yet to be tested. Neither has a court spoken on the applicability of the *Crescent City Mazda* holding to suits filed by consumers against dealers based on alleged violations of the LMVFA. There is also no case law discussing suits by manufacturers against dealers alleging violations of the LMVFA.

If the Act does not provide a private right of action for dealers to sue thereunder in a federal court, presumably, there is no private right of action in favor of manufacturers and consumers to sue either.

Remarkably, the above-quoted provisions of the LMVFA, that prohibit a manufacturer from preventing a dealer from filing suit in a court of law or from requesting a jury trial, have not been cited in these opinions as arguments by dealers to avoid dismissal of its suit. Clearly, these statutes envision the dealer’s right to file suit in court and to get a jury trial, or in other words, have a private right of action under the LMVFA. The *Crescent City Mazda* opinion has created an absolute bar to dealer access to courts, when the statutory scheme of the Act never intended one.



Claude Reynaud, Jr. Partner
Breazeale, Sachse, & Wilson
LADA Legal Counsel



Jeanne Comeaux, Partner
Breazeale, Sachse, & Wilson
LADA Legal Counsel

Risk Management Services & The Louisiana Auto Dealers' Association Self-Insurers' Trust Fund (LADA-SIF) are here to help with your dealership's workers' compensation claims needs!

Since 1998, Risk Management Services, LLC (RMS) has employed dedicated claim adjusters to keep our Dealer Members informed of their claim activity every step of the way. Our adjusters accomplish this by establishing a close working relationship with you, our Dealer Members. This helps produce effective communication, efficient claim management, a mutual understanding of the claim process, and our common goal—a prompt return to work by the injured employee.



To learn more about the Program that was created for the members of the LADA,
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SCAN ME

THE 2021 ANNUAL CONVENTION IS RIGHT AROUND THE CORNER!

The LADA Annual Convention is back! After taking a year off in 2020, we are planning an exciting (and safe) agenda for our dealers and associates.

We are packing our bags and going to The Cloister at Sea Island, Georgia, where you'll be amazed at how its Forbes Five Star accommodations make you feel right at home. Surrounded by the river, saltwater marshes, and the sea, you will not get tired of the stunning views and countless recreational activities The Cloister offers. If you missed our 2021 Board Chairman's interview

with Tommy Harvey on why he chose The Cloister as our summer destination, flip back to the 1st Quarter *Up to Speed* to get a glimpse of just how special this property is!

Our agenda is jam packed featuring our line-up of industry experts, the LDS Mix & Mingle, a day of Cloister activities, and more! Registration is still open, and sponsorship opportunities are available. Contact your LADA staff if you have any questions, and we hope to see you in Sea Island!

MEET THE SPEAKERS



TIMOTHY H. SCOTT
PARTNER, FISHER & PHILLIPS LLP

KEYNOTE SPEAKER | JUNE 18, 2021
How the Biden Administration will Impact Employers



ALAN HAIG
PRESIDENT, HAIG PARTNERS

GENERAL SESSION | JUNE 17, 2021
The Future Looks Bright, but Different than Today



DAVID CIAMBELLA
PRESIDENT & CEO, THE RAWLS GROUP

GENERAL SESSION | JUNE 17, 2021
Succession Planning: Perpetuating your Legacy
NEXTGEN LUNCHEON | JUNE 17, 2021
Respecting the Past and Preparing for the Future

AGENDA

Wednesday, June 16, 2021
3:00 PM Registration
4:30 PM LADA Board Meeting
6:30 PM Welcome Party

Thursday, June 17, 2021
8:30 AM Opening Session Breakfast
9:00 AM Opening Session
Alan Haig, Haig Partners
David Ciambella, The Rawls Group
12:00 PM NextGen Luncheon
12:00 PM LADA-SIF Trustee Meeting
7:00 PM Mix & Mingle Hosted by The LDS Group

Friday, June 18, 2021
9:00 AM Annual Meeting Breakfast
9:30 AM Meeting of the Membership
10:45 AM Keynote Speaker
Tim Scott, Fisher & Phillips, LLP
12:00 PM Not Into Golf Luncheon
12:00 PM Golf Tournament, Retreat Course
Transportation NOT provided; box lunches provided; tee time @ 1:00

Saturday, June 19, 2021
9:00 AM Day at the Beach & LADA Sponsored Activities
6:15 PM Kids' Night Out
6:30 PM Chairman of the Board's Cocktail Reception
7:30 PM Chairman of the Board & Dealer of the Year Banquet

Sunday, June 20, 2021
7:00 AM Farewell Breakfast

Events and times are subject to change



2021 REGIONAL MEETINGS: BACK IN FULL FORCE

Our 2020 Regional Meetings fell at the onset of the COVID-19 pandemic in March 2020 and unbeknownst to us was the last time we would gather together before locking down in quarantine. LADA Labor Counsel Tim Scott only briefly touched on this novel virus and the talk of a nationwide shutdown was just looming on the horizon. Fast forward one year, and the coronavirus-related news is featured on the frontpage, above-the-fold daily. Conversations focused around “have you had it yet?” and “I still cannot smell or taste!” are commonplace. Simple family gatherings or trips to the grocery store are no longer taken for granted. And Zoom etiquette is now second nature for even the least tech-savvy folks of our population. Well, maybe.

The 2021 Regional Meetings paved the way for our LADA dealers and associates to gather in person once again. In an eerie chain of events, the 2020 Regional Meetings wrapped up our in-person events as we knew it, and the 2021 Regional Meetings are kicking off a new way to gather safely together.

Our panel of industry experts traveled across the state mid-March visiting dealers in Shreveport, Lafayette, Baton Rouge, and Metairie. New this year, was a virtual option offered to those not yet comfortable with traveling or who missed the

LADA roadshow in their town. The attendance at each meeting sent the message loud and clear that our dealers are ready to safely gather again and that our dealers care about the state of our industry and what’s to come with the 2021 Legislative Session and newly elected Biden Administration.

Without these regional grassroots meetings, our LADA staff and special guest speakers would not receive the invaluable feedback that we get from the dealers at these events, which we in turn use to plan out our year to serve you better.

We extend a big thank you to our speakers: Claude Reynaud, Breazeale, Sachse & Wilson; Tim Scott, Fisher & Phillips; and Jean Rob  rt, Risk Management Services.

We could not have done it without our incredible sponsors who give their time and resources year after year to help LADA drive value to our memberships.

And last, but certainly not least, thank you to our dealers for joining us and participating in the 2021 Regional Meetings!



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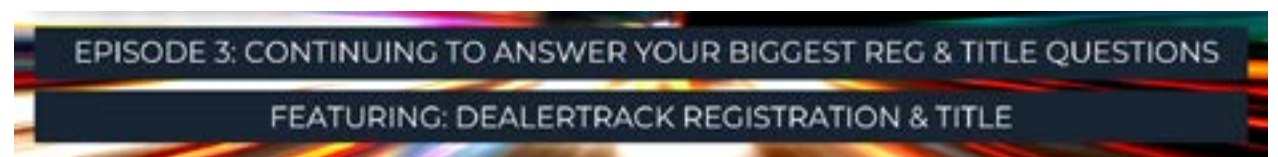
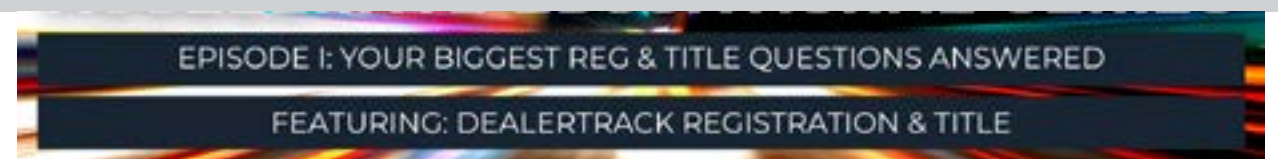
With the holidays upon us, let's work together so we can get back to the life we love in Louisiana. Wear a mask now to protect yourself, your family and neighbors—so we can party later!

Learn more about ways to protect yourself at bcbsla.com/covid19



Let LADA help you accelerate into 2021 with our NEW educational webinar series. Throughout the year, we will offer you and your staff numerous opportunities to hear from industry experts across all sectors. Don't sit idle and let your business lag behind in growth and expertise.

Follow LADA on Facebook and watch your inbox for alerts on webinars offered throughout the year.






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We are active members of the following Automotive Organizations:

- Louisiana Automobile Dealers Association (LADA), so when a member dealership needs assistance, Hanniss T. Bourgeois is there to help.
- Auto Team America (ATA), a network of 11 CPA firms that serve over 2,000 auto dealerships nationwide. This gives us the chance to network and collaborate with other firms that know auto dealers as well as we do and add value to our clients' businesses.

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Up to Speed

LADA'S QUARTERLY NEWSLETTER

2021 Advertising Rates

(price per issue)

SIZE / LOCATION	1x	4x*
Back Cover	\$ 1,750.00	\$ 1,400.00
Inside Front Cover	\$ 1,250.00	\$ 1,000.00
Inside Back Cover	\$ 1,250.00	\$ 1,000.00
Full Page	\$ 900.00	\$ 720.00
1/2 Page Vertical	\$ 700.00	\$ 560.00
1/2 Page Horizontal	\$ 700.00	\$ 560.00
1/4 Page Vertical	\$ 500.00	\$ 400.00
1/4 Page Horizontal	\$ 500.00	\$ 400.00

* 20% discount per issue if you make an Annual Advertising commitment (purchase 4 ads in the same calendar year). Promotion deadline January 31.

** Please make checks payable to LADA.

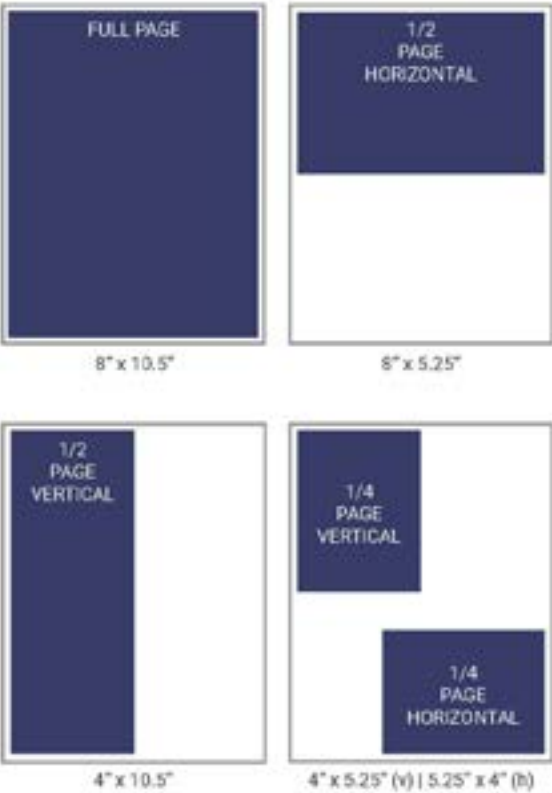
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Print Advertising Specifications

- Advertising is reserved for LADA members in good standing.
- All artwork must be supplied at 300 dpi.
- High res PDF and JPEG files are accepted.
- All color artwork must be in CMYK mode. RGB mode artwork will be converted to CMYK mode for printing, which will result in a color shift.
- Ad images should not exceed dimensions listed on this form
- Submit artwork to kcarver@lada.org

Artwork Specifications

(standard publication format 8.5" x 11")



Artwork Deadlines

- Quarter 1 Issue: January 29
- Quarter 2 Issue: April 16
- Quarter 3 Issue: July 30
- Quarter 4 Issue: October 22

Contact Information

COMPANY

CONTACT

PHONE

EMAIL

WEBSITE





Breazeale, Sachse & Wilson is proud to serve
as General Counsel to Louisiana Automobile
Dealers Association.



BREAZEALE, SACHSE & WILSON, L.L.P.
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Scott N. Hensgens, *Managing Partner*