

INSIDE THIS ISSUE:

Legislative Update	1, 13, 14
General Counsel Corner	2, 17
Be Heard in Ocean City!	3, 12
House Passes Short-Term Highway Fix	4, 16
Delaware DOT Gets Green Light	5
Ethanol Mandate: Going Up?	6
Maryland SHA Expands Life Saving Program	7
Kentucky Town Opens Filling Station to the Public	8, 9
Letter to the Editor	10
Speedway: FTC Says Yes to Hess	11

LEGISLATIVE UPDATE

By Roy Littlefield

SHORT-TERM HIGHWAY FUNDING

The House passed the Highway and Transportation Funding Act of 2014 (HR 5021) which would provide a temporary solution to the impending insolvency of the Highway Trust Fund. As previously reported, the Highway and Transportation Funding Act of 2014, sponsored by Ways and Means Committee Chairman Dave Camp, raises funds for the Highway Trust Fund through pension smoothing and an increase to customs user fees.

In an unexpected development, President Obama gave a tepid endorsement of the Republican sponsored bill. Although the White House continued to express its support for a long term solution to the Highway Trust Fund funding issue, the President urged Congress to pass the short term fix.

On the other side of the Hill, Senate Finance Committee Chairman Ron

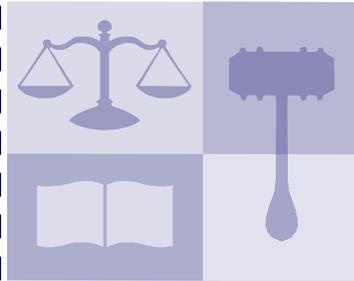
Wyden and Ranking Member Orin Hatch have negotiated their own proposed legislation titled the Preserving America's Transit and Highway (PATH) Act of 2014. The PATH Act would, like the House bill, raise funds through pension smoothing and an increase to the customs user fees but would also include other revenue raising changes to the tax code. The PATH Act was reported out of the Senate Finance Committee on Friday, July 11, however, no date has yet been set for the Senate to vote on it. Particularly in light of the President's endorsement of the Highway and Transportation Funding Act of

2014, there is a good chance that the Senate will simply move to pass the House bill and save the additional measures in the PATH Act for a future proposal aimed at a more long term fix. Senators Wyden and Hatch have indicated that they are invested in passing major tax reform in the latter part of 2015. However due to some recent



Continued on page 13

GENERAL COUNSEL CORNER



Reconsideration Considered

By Peter H. Gunst, Esquire
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“ True, a disappointed litigant ... may file a motion for reconsideration. But, as that case shows, it may not get him very far. ”

A recent Petroleum Marketing Practices Act case decided in New York illustrates the extent to which federal judges are hostile to efforts to second-guess their decisions.

True, a disappointed litigant such as the service station dealer in *Scarsdale Central Service v. Cumberland Farms, Inc.*, may file a motion for reconsideration. But, as that case shows, it may not get him very far.

In the *Scarsdale Central Service* case, Cumberland, the dealer's supplier and landlord, advised the dealer that it had received a third-party offer to purchase the service station premises, and offered the dealer a right of first refusal as it was required to do under § 2802(b)(3)(D)(iii) of the PMPA. The options given the dealer were either to accept the terms of the third-party contract offer or to face nonrenewal of its lease and supply agreement.

The dealer filed suit under the PMPA attacking the sufficiency of Cumberland's offer. Cumberland responded, after the term of the dealer's franchise agreement had expired, by seeking a preliminary injunction requiring the dealer to vacate the service station premises so that it could go forward with the sale of the property to the third party.

In a decision issued on March 7, 2014,

the court granted Cumberland's motion and rejected the dealer's contentions that the right of first refusal offered it failed to satisfy the requirements set forth in the PMPA because the down payment term was different and because Cumberland was also requiring the dealer to enter into a mutual termination and release agreement covering the dealer's previous operation of the service station.

The court noted that the change in the down payment term in fact benefited the dealer, and concluded that the dealer could have negotiated away the requirement that it relinquish any preexisting claims that it may have had against its supplier.

On March 25, 2014, the dealer submitted a motion for reconsideration raising the further argument that Cumberland's right of first refusal offer did not comply with the PMPA because it required the removal of underground storage tanks, fuel pumps and other property associated with the pumping of gasoline as a condition of sale. Significant authority supported the dealer's contention that offering a dealer a right of first refusal that would require the removal of tanks and pumps will not pass muster under the PMPA.

In *Roberts v. Amoco Oil Company*, 740 F.2d 602 (8th Cir. 1984), a federal appeals court reversed the grant of summary judgment.

Continued on page 17

Be Heard this Year in Ocean City! Participate in the New Events!

By: Roy Littlefield IV

With so many hot button issues on the floor for debate, it is essential that we ramp up our legislative efforts this year and unite as an industry against practices and laws that the government is trying to harmfully impose on your small business. This year's Convention and Mega Trade Show will put a particular emphasis on our legislative efforts as we encourage owners to speak out and participate in our many events.

This year the "Industry Issues Forum" will be the new name of the traditional "Legislative Workgroup" with an expanded and more comprehensive overview of the issue affecting us on the state and federal level. The forum will take place Friday, September 26 at the Ocean City Convention Center beginning at 12:30pm.

The Industry Issues Forum gives dealers and repair shop owners the opportunity to see what issues affect them on the state

level such as storm water management, gas taxes, sick leave, and tire aging to name a few. In addition to federal issues such as the estate tax, right to repair, highway funding, healthcare, and more. We will ask: What options do we have in the next session? How do these issue affect my business? How have other states combated these issues?

The issues covered will be important for both service station dealers and repair shops owners in the interest of their businesses. In addition, attendees will have the opportunity to hear from attorneys, staff from the Comptroller's office, industry leaders, and representatives from other states to compare legislation and predictions for the next election and legislative session.

Continued on page 12



2013 Legislative Workgroup



Delaware DOT Gets Green Light for Additional \$30 Million in FY2015 Transportation Funding

The Delaware Department of Transportation will have \$30 million in new revenue to work with next year, thanks to a plan authorized by the Delaware General Assembly's Bond Bill Committee.

Recently, the Bond Bill Committee approved DelDOT's authority to increase weekend tolls at two toll plazas – Biddle and Dover – located on the mainline of Delaware 1, though tolls charged at the on and off ramps to Delaware 1 would not be affected. That increase at those two toll plazas will raise the toll for each passenger vehicle from \$2 to \$3. Additionally, the committee authorized DelDOT to leverage that new toll revenue, which officials believe will bring in an extra \$10 million each year, against \$20 million in new borrowing.

This new funding would be set aside for specific purposes – \$2 million would be tapped for the Municipal Street Aide Program, while DelDOT's pay-

ing program would receive the remaining \$28 million.

"While \$30 million in new revenue is only a fraction of our agency's original funding request for the next fiscal year, everyone seems to now agree we need more revenue so we can invest in our infrastructure," DelDOT Secretary Shailen Bhatt said in a statement.

"Because these additional funds will not be dedicated to new project construction, we will really need to work together as a state over the next year to figure out how we will fund our long-term transportation needs; the problem is not going away."

While the Bond Bill Committee authorized this measure, DelDOT can raise tolls on its own authority under state law. The vote by the committee, however, "made clear that DelDOT would not be acting unilaterally or without the appropriate consultation with the state legislature."



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House Passes Short-Term Highway Trust Fund Fix, Transportation Leaders Await Senate Action

The House of Representatives passed a roughly \$11 billion short-term Highway Trust Fund bill that would fund the account through May 2015. The measure, which also extends highway, transit, and highway safety program reauthorization through the end of next May, had last week passed out of the House Ways and Means Committee and on Tuesday passed the House by a vote of 367-55.

House Ways and Means Chair Dave Camp (R-MI) spoke on the House floor before the vote, expressing his desire to get the measure passed and focus on a long-term solution for the HTF.

"A long-term solution would be my preference, and an important feature of my tax reform discussion draft would provide enough revenue to maintain the solvency of the Highway Trust Fund for eight years. In the meantime, I hope all Members of Congress can work on a longer-term solution by the end of May next year," Camp said. "It is time to act now. State transportation departments have already started delaying or stopping certain highway projects to prepare for the fact that funding may fall short. Americans across the

country deserve to see less gridlock on the roads and from their elected Representatives. These policies are straightforward, and have a history of bipartisan, bicameral support."

While the House was working on its bill last week, the Senate Finance Committee passed its own \$10.8 billion short-term HTF fix. It is not yet clear when the Senate will have a full

chamber vote on any of the HTF proposals from its members, though various news outlets (including this piece from the Wall Street Journal) are reporting that Senate Majority Leader

Harry Reid (D-NV) could take up the House's measure next week. However, when the Senate does take up the House measure it will likely consider several amendments proposed by members. These include a possible amendment by Sen. Ron Wyden (D-OR) to strike the House HTF funding package and replace it with the package approved by the Senate Finance Committee last week. Sen. Barbara Boxer (D-CA), chair of the Senate Environment and Public Works Committee, is also



Continued on page 16

Ethanol Mandate: Going Up?

White House adviser John Podesta has indicated the administration plans to raise the amount of ethanol and other biofuels that must be blended into the nation's fuel supply, Sen. Al Franken (D-Minn.) said recently.

The Environmental Protection Agency's proposed draft on blending volumes, which was released late last year, cut the amount of biofuels that refiners would need to mix into their fuels. The plan represented the first time the agency had lowered the target from the previous year.

While the primary focus of Thursday's meeting between Podesta and Senate Democrats was on biodiesel volumes, Franken said the adviser mentioned that the final blending mandates would likely be higher than what the EPA had initially proposed.

"I believe the numbers will be bigger and that's based not only on conversations with [Podesta] but my conversations with EPA Administrator Gina McCarthy," Franken said. "He certainly led us to believe there will be higher numbers in each piece of it than was in the preliminary [Renewable Fuel Standard]."

Franken said Podesta told the senators that the release of the final rule "will be imminent."

"We were all making the case that the preliminary RFS rule put out by the EPA is unacceptable," Franken said on a call with reporters after the meeting with Podesta.

A main point of contention is the biodiesel levels set in the EPA's proposal. The EPA kept 2013 levels in place for the biodiesel blend requirement, but senators like Franken, Sen. Heidi Heitkamp (D-N.D.) and Sen. Sheldon Whitehouse (D-R.I.) want the threshold to be raised.

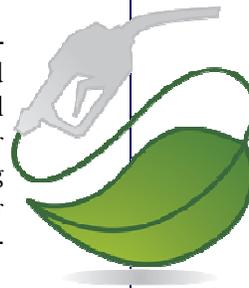
The agency set biodiesel at 1.28 billion gallons, but the industry and lawmakers want the EPA to set the blend volume at 1.8 billion gallons in the final 2014 rule.

Franken argued that setting the blending threshold too low would discourage investments and put biodiesel producers out of business.

The proposed draft for the 2014 renewable fuel mandate was considered a victory for oil companies, who cheered the retreat in blending volumes.

If the EPA does increase levels in the final rule, they will likely face severe pushback from the oil industry, which argues increasing amounts of biofuels mixed into the fuel supply damage cars, engines, and more.

"Speculation doesn't help protect consumers against unsafe requirements for ethanol in gasoline," said American Petroleum Institute spokesman Carlton Carroll. "There's a growing consensus among members of Congress and consumer, food, and industry groups that the RFS is unworkable and needs to be fixed as soon as possible."



Maryland State Highway Administration Expands Life Saving Highway Patrol Program

A program to assist those in trouble on Maryland's highways has expanded, now able to help more people experiencing vehicle issues on the state's roadways and potentially saving more lives.

The Coordinated Highways Action Response Team (CHART) program will now run seven days a week and 24 hours a day on highways in the Baltimore and Washington metro areas. The incident management program seeks to "improve real-time operations of Maryland's highway system through teamwork and technology" by assisting stranded motorists and supporting police with traffic control, according to the Maryland State Highway Administration (SHA). Last year, CHART helped more than 26,500 motorists experiencing vehicle issues and helped police control traffic at almost 17,500 incidents on the state's highways. In terms of financial benefit, SHA reported that CHART saved drivers about \$1 billion in fuel and delay costs, prevented about 225 secondary crashes, and cut delay for drivers by 28.4 million vehicle hours in 2012.

"One of the most dangerous speeds along a highway is zero—a collision between a stopped vehicle and another traveling 55 mph or more is catastrophic. Our emergency patrols assist stranded motorists and get them out of harm's way," said SHA Administrator Melinda Peters in a statement. "The 24-7 expansion allows us to quickly respond to after-hours and weekend incidents as well as change flat tires and jump-start vehicles. The patrols are a wonderful customer service and more importantly, a critical safety program."

CHART operates through a joint effort between Maryland Department of Transportation/SHA, the Maryland Transportation Authority, and the Maryland State Police. State Farm sponsors the CHART emergency traffic patrols.

In addition to the expanded hours, SHA officials said the administration will install 74 new traffic cameras through the next two years as an incident management tool. The expanded patrol and new cameras will receive \$15 million in financial support from SHA.



Kentucky Town Opens Filling Station to the Public

Somerset's city hall ventured into the retail gas business Saturday, opening a municipal-run filling station that supporters call a benefit for motorists and critics denounce as a taxpayer-supported swipe at the free market.

The Somerset Fuel Center opened to the public selling regular unleaded gas for \$3.36 a gallon, a bit lower than some nearby competitors. In the first three hours, about 75 customers fueled up at the no-frills stations, where there are no snacks, no repairs and only regular unleaded gas.

The mayor says the station was created in response to years of grumbling by townspeople about stubbornly high gas prices in Somerset, a city of about 11,000 near Lake Cumberland, a popular fishing and boating haven.

The venture got a thumbs-up from customers who let their vehicles reach near-empty in anticipation of the city-run station's opening.

"I'm tickled to death that they're trying to do something," Ed Bullock said as he filled up his car. "I'm glad they made the investment."

The venture unnerved local filling station and convenience store operators suddenly competing with the city in this Republican stronghold. Critics said the government has no business imposing itself into the private sector, and one store owner branded it as socialism.

Mayor Eddie Girdler, however, is standing firm

behind the idea of the city-run station. The canopied station on the outskirts of this southern Kentucky town was converted from use by government vehicles into one that can also cater to anyone looking to fill their tanks.

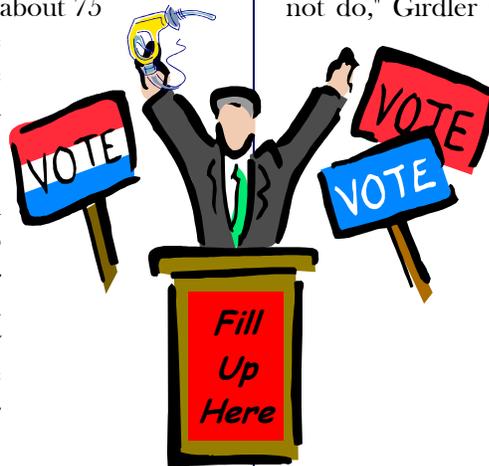
"We are one community that decided we've got backbone and we're not going to allow the oil companies to dictate to us what we can and cannot do," Girdler said. "We're going to start out small. Where it goes from here we really don't know."

The amount charged motorists will be based on an average regional price for gas, and will include a small markup to cover costs, the mayor said. The city isn't out to make a profit, he said. Instead, the goal is to lower gas prices and lure more lake visitors into Somerset, he said.

Four nearby stations in Somerset were selling regular unleaded for \$3.39 a gallon Saturday. The prevailing price in town had been in the mid-\$3.40s per gallon late in the week, said Melody Price, office manager at Somerset Fuel Center.

Duane Adams, a convenience store owner in Somerset, sees the city's station as a slap in the face that could hurt his business.

"They've used the taxpayer money that I have paid them over these years to do this, to be against us," he said. "I do not see how they can't



Continued on page 9

Kentucky Town Opens Filling Station to the Public

Continued from page 8

see that as socialism."

Other retail groups, including the Kentucky Petroleum Marketers Association, urged other municipalities not to follow suit. "If milk got too high, are you going to build a dairy?" said Ted Mason, executive director of the Kentucky Grocers Association and Kentucky Association of Convenience Stores.

Girdler, a Republican in his second term, said the city isn't looking to put anyone out of business.

"We don't care if we don't sell a drop of gasoline," he said. "Our objective is to lower the price."

George Wilson, the town's economic development business coordinator, said gas prices in Somerset are often 20 to 30 cents a gallon higher than in neighboring towns. Many lake visitors fuel up elsewhere, costing Somerset millions of dollars in retail sales, Girdler said.

Several customers at the city's station said they had no objections to the city's investment as long as it moderates gas prices in town.

"I'm glad somebody finally got some sense and lowered the prices," said Patty Gossett.

Another customer, Samir Cook, said he hopes the city-run station drives down prices.

"As long as I can get gas cheaper, that's really what I care about," he said.

Adams, the convenience store owner, disputes the city's claim that Somerset gas prices trend well above the regional average. The Kentucky Petro-

leum Marketers Association said there have been many times in recent months when Somerset's gas prices dipped below the surrounding area.

Dan Gilligan, president of the Petroleum Marketers Association of America, said a staff attorney involved in the industry since 1973 could not recall another city getting into the retail gas business. The National League of Cities said it was unaware of another U.S. city with such a venture. Somerset had several built-in advantages in starting the venture, the mayor said.

The city is purchasing gas from a hometown supplier, Continental Refining Co. The city purchased a fuel storage facility for \$200,000 a few years ago. Now, up to 60,000 gallons of regular unleaded gas can be stored there for the retail business.

The city spent less than \$75,000 to convert the fueling center into a retail operation, the mayor said. Much of the investment went to upgrade pumps and add computer software to handle credit card purchases.

He doesn't expect the venture to cause a drain on the city's \$64 million budget, and said the intent is to have it break even.

The station features 10 nozzles for public use and is open for credit card purchases nearly around the clock.

"It's been carefully thought out," the mayor said.





LETTER TO THE EDITOR

Dear SSDA-AT,

“Support for Keystone XL pipeline is almost universal.” The headline from the Washington Post says it all. The new Pew poll behind the headline categorized Democrat-leaning respondents into four groups, and support for KXL was at a level of 60 percent or greater in three of the four groups – including among those who strongly favor developing alternate energy sources. As the Post put it, “What the new poll shows is that even left-leaning voters who see themselves as environmentally conscious, pro-wind and pro-solar don’t believe that Keystone runs contrary to that ultimate goal.”

It’s been a year now since President Obama indicated his approval would be based on two conditions: 1. A determination that the pipeline is in the national interest. 2. Evidence that the project will not “significantly exacerbate the problem of carbon pollution.” No fewer than five State Department assessments over the course of almost six years have concluded that oil sands will be developed regardless of KXL and the pipeline would have no significant effect on the environment. As for the national interest, the benefits of Keystone XL speak for themselves:

42,100 jobs supported during the pipeline’s construction phase throughout the U.S., paying a total of \$2 billion to workers

\$3.4 billion contributed to U.S. GDP

\$3.1 billion in construction contracts and materials supported in the U.S.

With KXL, crude imports from Canada could reach 4 million barrels a day by 2030 – twice what we currently import from the Persian Gulf

Approving KXL and other smart policies would allow the U.S. to meet 100 percent of our liquid fuel needs from stable North American sources within 10 years

These are just a few of the points outlined in an API-led letter to Secretary of State John Kerry urging approval on behalf of an array of more than 40 organizations representing construction workers, the energy industry, manufacturers, truckers, engineers and suppliers.

Since the initial KXL permit application was filed in 2008, more than 10,000 miles of oil and natural gas pipeline have been built in the U.S. – enough pipe to cross our country nearly four times. The 90-day National Interest Determination period that began when the fifth State Department assessment was finalized in January should have long since passed.

Large majorities of American voters agree Keystone XL is good for America, and the administration has more than enough evidence to approve the pipeline immediately and put America’s labor forces back to work this construction season.

Sincerely,
Jack Gerard
 Jack Gerard
 President and CEO, API



Speedway: FTC Says Yes to Hess

Marathon Petroleum Corp. has received notice from the Federal Trade Commission (FTC) that it concluded its review of the acquisition of [Hess](#) Retail Holdings LLC gas station and convenience store network by its [Speedway](#) subsidiary, MPC president and CEO Gary R. Heminger said during the company's second-quarter 2014 earnings call on July 31.

"We continue to believe that there is significant opportunity to leverage the best of both businesses--Hess fuel sales volume with Speedway's industry-leading merchandise sales per store," he continued. "We believe this acquisition will be a source of long-term value to MPC and provides for enhanced strategic opportunity for the business over time."

MPC and Speedway are preparing to close the Hess deal later this year.

The \$2.874-billion acquisition, announced in May, will result in Speedway growing to more than 2,700 stores in 23 states, Heminger said.

For the quarter, MPC reported earnings of \$855 million, compared with \$593 million for second-quarter 2013.

"We had an outstanding quarter, with our focus on top-tier operational performance across the MPC refining, marketing and transportation system continuing to yield excellent results," said Heminger. "Our integrated system operated very well, enabling us to efficiently meet consumers' needs and capture higher product price realizations in the markets where we do business."

The Refining & Marketing segment in-

come from operations was \$1.26 billion in second-quarter 2014, compared with \$903 million in second-quarter 2013.

Speedway segment income from operations was \$94 million in second-quarter 2014, compared with \$123 million in second-quarter 2013.

Speedway's merchandise sales, as well as the margin percentage realized on those sales, were higher in second-quarter 2014 compared to second-quarter 2013. It experienced a lower gasoline and distillate gross margin and higher operating expenses associated with an increase in the number of Speedway stores compared to 2013. The gasoline and distillate gross margin per gallon decreased 4.56 cents, from 17.38 cents in second-quarter 2013 to 12.82 cents in second-quarter of 2014.



Be Heard this Year in Ocean City! Participate in the New Events!

By: Roy Littlefield IV

Continued from page 3

Following the legislative forum, there will be two educational sessions - for repair shop owners and owners of stations with bays will find their questions answered concerning Electronic Inspections, which will be conducted by Captain Nelson of the Maryland State Police.

At the same time owners who have c-stores will be able to attend an interesting seminar titled "Game On: Taking on Top Tier Competition", conducted by Darlene Nascimento of Dash-In.

On Saturday, the Murf's Turf Town Hall Meeting will be showcased at a new time and location and will take place immediately following the Awards Breakfast at the Clarion Hotel at 10 am. This session will feature an open discussion panel with Comptroller Peter Franchot and Executive Vice President Roy Littlefield. The discussion will be titled "The Small Businessman's Survival Guide" and will cover topics such as the estate tax, minimum wage, healthcare, wage and hour disputes, the gas tax, sick leave, and more.

This forum will give those in attendance the opportunity to ask questions directly to the Comptroller and Roy on issues and concerns you have with the current business climate. Questions can be written in at the event or submitted beforehand by sending an email to rlittlefield2@wmmda.net. This event will give attendees a unique opportunity to interact with a senior ranking and highly respected elected official who has

always looked out for the interests of our industry.

Following the small business panel, we will hear from Bob Aenchbacher our keynote speaker from Castrol. Bob will talk about the future of repair shops and improvements that can be made to increase your profitability. Aenchbacher has worked for Castrol for more than 26 years and has been the General Manager for US installer sales since 2011. The topic of his discussion is titled, "Winning in Service Repair and Industry Trends."

The issues that will be discussed are important because they affect the livelihood and prosperity of your business. Join the rest of the industry in standing up to laws and practices that are harmful to your business. When we come together and speak in one voice we are stronger than trying to fight these issues alone!

We must continue to fight on the state and federal level to show legislators that SSDA-AT and the state associations still have a strong and powerful force. Help yourself, your business, and your fellow dealers this year by attending the legislative and educational programs in Ocean City!



LEGISLATIVE UPDATE

Continued from page 1

moves of US companies to other countries, we anticipate renewed interest in reform of the international corporate tax system sooner than later.

THE SENATE'S TURN - EXPIRE ISSUES

As noted, the House passed H.R. 5021, Highway and Transportation Funding Act of 2014, and sent it to the Senate for final action.

The White House says it will accept the House bill, however the President called on Congress to pass a long-term highway bill similar to one Senator Barbara Boxer has ready to go in the Senate.

Senator Boxer chairs Senate Commerce, Science, and Transportation Committee which has original jurisdiction over a long-term bill; the Finance Committee is responsible for funding it.

Senator Majority Leader Harry Reid could:

- Accept the House bill H.R. 5021 as received;
- Amend the House bill with the Boxer bill;
- Amend the House bill with the bipartisan Wyden-Hatch highway bill approved by the Senate Finance Committee;
- Attach EXPIRE to any of the above and vote on passing it as part of a Sen-

ate amendment to H.R. 5021.

If the Senate votes to amend the House bill, it would be returned to the House for final action.

At this point, Senator Reid has made no decisions.

Our efforts are aimed at bringing together a bi-partisan group of senators, a “gang of ten” committed to work for passage of the original EXPIRE bill without amendments. We’ve approached Republican Senators Grassley, Roberts, Moran, Portman, Coats, Chambliss, Hoeven, and Collins to join the Republican side, which several Democrats are ready to join if the Republican side comes together. We’re asking Senator Grassley to take the lead forming the Republican side, so far with no commitment by the Senator. We believe five of the eight aforementioned Republicans are ready to join “the gang” and make the sixty votes to pass EXPIRE, either as an amendment to H.R. 5021 or as a stand-alone bill—our last chance before adjournment. It’s critical that we reinforce our efforts in our contacts with these senators—what we’re asking them to do is commit to vote for cloture when EXPIRE comes to the floor. The matter is urgent and important, all must weigh in!

ITC Update

Although it did not have to until August 1st, the U.S. International Trade Commission voted 6-0 to advance the United Steelworkers petition for anti-dumping and countervailing duties on consumer tires

Continued on page 14

LEGISLATIVE UPDATE

Continued from page 13

imported from China.

Chinese tire producers and importers and outraged with the decision and are complaining that some companies in the U.S. have already begun cancelling orders.

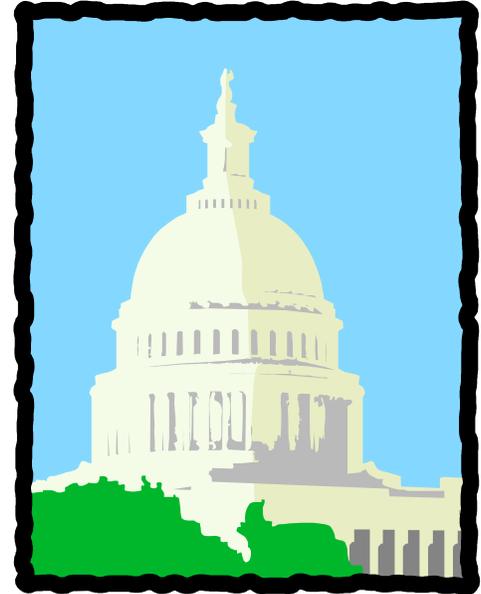
A final decision on countervailing duties is due by Dec. 1, and on antidumping duties by Feb. 17, 2015. Final decisions by the ITC are not scheduled to come until Jan. 15, 2015, on countervailing duties and March 31, 2015, on antidumping duties.

USW International Secretary-Treasurer Stan Johnson said, “While relief was in place, billions of dollars in investments were made by firms producing tires in the U.S. in new plant and equipment. But, China’s targeting of our industry has injured our members. They work hard and play by the rules and all they want is a fair chance to compete. They deserve to have our nation’s trade laws aggressively and faithfully enforced.”

The proposed policies will place tariffs of 60.15% and 25.73% on Chinese tires, making it impossible for Chinese tire exports to the U.S. to be competitive. Such a policy could have an impact on the nearly one million Chinese workers.

SSDA-AT believes that a reduction of this magnitude in the quantity of Chinese tires imported would itself create a market disruption, and cause very real harm to our member companies and the U.S. consumer. Our members, by directly im-

porting or contracting with suppliers, are meeting the demands of a segment of the tire consumer market for lower-cost tires. No manufacturing uptick would satisfy this product segment, but instead could create a need for product allocation, resulting in shortages and outages. In the best of times such occurrences are troubling, but in today’s climate could inflict severe financial harm on many retailers and on the motoring public.



Have You Made Plans Yet?



**September
25 - 27, 2014**

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Annual
Convention
and Mega
Trade
Show**



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attached
flyer for
more
information**

House Passes Short-term Highway Trust Fund Fix, Transportation Leaders Await Senate Action

Continued from page 5

likely to offer an amendment to limit the duration of the extension to the end of December as opposed to the end of next May.

Additionally, the Office of Management and Budget released a Statement of Administration Policy (SAP) in support of the House measure and President Obama expressed support for a short-term HTF fix.

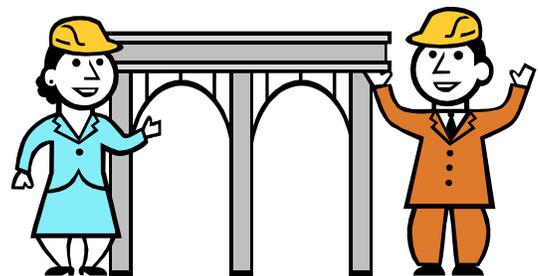
"The President supports the steps that Congress is taking in the short-term to avoid a lapse in the Highway Trust Fund, and he will continue to push for long-term solutions for our nation's infrastructure and the American economy," according to a statement from the White House. That statement also addresses a new initiative by the President to encourage additional public-private partnerships in transportation projects.

Still, leaders in transportation and many other industries are continuing to sound the alarm on the HTF. In reaction, a group of 62 organizations, including the American Association of State Highway and Transportation Officials, sent a letter to Congress to advocate for action on the HTF.

"Shortchanging the Highway Trust Fund is not the path to future economic growth, jobs and increased competitiveness. The possibility of a deficient Highway Trust Fund that shuts 100,000 construction projects that support 700,000 jobs and puts all new highway, bridge and public transportation investments on hold will further harm an already

fragile economy," according to the letter. "The U.S. economy requires a surface transportation infrastructure network that can keep pace with growing demands. A long-term federal commitment to prioritize and invest in our aging infrastructure and safety needs is essential to achieve this goal. Keeping the Highway Trust Fund solvent is the first step."

All this news comes as USDOT released its latest numbers for the Highway Trust Fund. As of June 27, the Highway Account of the fund stood at \$6.5 billion, down from \$8.1 billion last month. USDOT prefers to keep a minimum of \$4 billion in the highway account in order to properly manage day-to-day financial transactions. At the end of the month, when the HTF is projected to drop below that \$4 billion level, USDOT will exercise cash management strategies, such as limiting payment reimbursements to state DOTs.



GENERAL COUNSEL CORNER

Continued from page 2

ment entered in favor of a supplier who had offered its dealer a right of first refusal that required removal of tanks and pumps. The appeals court held that “the statute clearly dictates that an offer excluding the pumps and tanks cannot be considered bona fide.”

The *Roberts* opinion made the important point that Congress’ intent was not simply to provide a dealer the opportunity to match an offer submitted by a developer or any other third party who had other plans for the property, but to ensure that the dealer had an opportunity to continue to operate the service station. This intent could only be satisfied by providing the dealer an opportunity to acquire the tanks and pumps as well as the real estate.

Indeed, Congress’ reiterated its intent that a dealer be permitted an opportunity to stay in business when it amended the PMPA in 1994 to provide the dealer a right to demand that its supplier make a bona fide offer to sell the dealer any “improvements and equipment” located on the real estate, once the dealer obtained title to the property *See* 15 U.S.C. § 2802(c)(4)(C).

Nevertheless, the court in the *Scarsdale Central Service* case denied the dealer’s motion for reconsideration in an unpublished opinion entered on June 24, 2014. In so doing, the court relied on the standard applicable in that federal district that “reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked.”

The court concluded that the dealer’s argument constituted “an entirely new theory” of liability, which it could have advanced, but failed to do so, in its opposition to Cumberland’s original preliminary injunction motion. Further, the court held that precedent such as the *Roberts* case, although “persuasive”, did not constitute “controlling decisions” because they were decided outside of the Second Circuit, which included the New York district court.

It is easy to understand why courts are hostile to motions for reconsideration. There is a basic reluctance to grant the litigant “a second bite at the apple.” Further, motions for reconsideration attack the finality of previous decisions, and prolong the litigation process. On the other hand, the court’s task is to get it right. Hopefully, the dealer can obtain a full hearing on its theory of liability either in the damages phase of the case or on appeal. The underlying lesson, however, appears to be to get it right the first time or else.

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