



Montana Automobile Dealers Association

JANUARY 2019 NEWS BULLETIN

PRESIDENT'S MESSAGE:

New Year & a New MTADA President

There are some exciting things planned for the New Year, and we are jumping right into them with the Legislative Session already underway! The 66th Legislative Session started Monday January 7th, and it will continue for 90 days ending May 1st. The MTADA will be in attendance for the entire session making sure our Bills go through. We have four different parts to our proposed legislation; 1 – Warranty Retail Reimbursement for Labor and Parts. 2 – Title 30 Trade and Commerce – Canceled Dealership Contracts Repurchase Requirements and Definitions. 3 – Right of Designated Family Member to Succeed in Dealership Ownership and 4 – Accesses to Dealer Data.

At this time, we do not have a Bill number, but we will be sending email and texting blasts your way with important news and information. We ask that you stay as involved with the session as possible. Talk to your local representatives and let them know your views. Also, we would love for you to join us in Helena for any of the hearings.

New Year's Resolutions – everyone has them, everyone makes them, let's stick to them this year by marking our calendars now for the 105th Annual Family Convention! A Save the date was just sent out a week ago, so mark your calendars and plan on attending this wonderful event August 9-11th. Registration will begin February 1st. There will be a boat cruise on Flathead Lake, a golf tournament, great food and fabulous conversation! If I can travel all the way from Wolf Point, there is no distance too far to attend our Family Convention! I hope to see you all there.

In closing, I want to introduce myself as your new MTADA President. My name is James Johnson and I am the Dealer Principle at High Plans Motors, Inc. in Wolf Point. I have been with the dealership since July of 2007. Before that, I worked for State Farm Insurance for 12 years on the Claims side and 4 years on the Agency side. I am a graduate of MSU-Northern with a BS in Automotive Technology and a minor in Auto body. I have been married for 14 years to my lovely wife Michelle, and we have two children our daughter Kaylee who is 13 and our son Aaron who is 9. In my free time I enjoy fishing, hunting and working in my garage on all the family toys. And one fun fact about me: my favorite place on Earth is Fort Peck Lake! I look forward to seeing and working with you in the next year. **Here's to a fabulous 2019. ■**

James Johnson is the Dealer Principle at High Plans Motors, Inc. in Wolf Point, Montana



James Johnson
MTADA President

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DIRECTOR'S MESSAGE:

The Value of Membership: Advocacy, Education, Engagement

YOUR VOICE IN WASHINGTON

For more than 100 years, the National Automobile Dealers Association (NADA) has been the national voice of local dealerships, their employees and their customers. Founded in 1917 when 30 dealers came to Washington to successfully oppose a luxury tax on vehicles, NADA continues to work on behalf of its members with all branches of government, car and truck manufacturers, the media and the public.

ADVOCATING IN WASHINGTON

NADA's success lies with its powerful grassroots lobbying efforts, which are most effective when local dealers, meet with their members of Congress to advocate on behalf of all dealers and their customers. This team effort involving NADA, state and metro dealer associations and NADA's dealer members strengthens NADA's ability to advocate on behalf of local dealerships everywhere and target engagement to dealer-specific issues. In recent years, to push back against a variety of government policies that threatened local dealerships and their customers, NADA:

- Blocked the Bureau of Consumer Financial Protection

(BCFP) efforts to end dealer discounts on auto loans for customers.

- Helped educate members of Congress and the administration on the unintended consequences of an overly broad safety recall policy—which, if enacted, would have lowered consumer trade-in values.
- Supported an amendment to the Tax Cuts and Jobs Act that preserved 100 percent deductibility of floor plan interest.
- Worked with state dealer associations to ensure that autonomous vehicle legislation moving through Congress did not preempt state automotive franchise laws.



Don Kaltschmidt
NADA Director

Some successes are quieter than others. NADA's advocacy with federal regulatory agencies, for example, is often behind the scenes but has a profound impact on areas such as tax, employment and finance policy.

NADA's Political Action Committee, NADA PAC (formerly

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CHAIRMAN'S MESSAGE: Lone Star Leader

Charlie Gilchrist is taking over as NADA chairman armed with more than 30 years of experience operating automotive dealerships. But he started out on an entirely different career path: accounting.

Gilchrist's career as a number cruncher was brief because he realized he didn't actually like accounting. "I like to talk to people and interact," he says. But all was not lost. "Getting an accounting degree made me a natural at reading financial statements and understanding how businesses operate. My background allows me to look at numbers and understand what makes up those numbers."

In fact, Gilchrist credits much of his success as a dealer to lessons learned from his experience as an accountant and subsequent switch to the automotive industry: Cultivate and cherish good relationships in your business and in life, treat your customers and employees the way you would want to be treated, and give back to your community and industry whenever you can.

Building a Business

Ask Gilchrist what he does for a living and he'll tell you he's a "Ford dealer," even though Gilchrist Automotive includes Ford, Buick, GMC, Chevy, Nissan, VW, Chrysler, Dodge, Ram and Jeep across eight dealerships in the Dallas-Fort Worth area. That's because Gilchrist grew up around Fords. His dad went to work for Ford Motor Co. in

Detroit before transferring back to Texas when Gilchrist was in grade school. "He went into selling heavy-duty trucks, so I'd been around dealerships a little bit growing up," Gilchrist says. Still, he didn't consider going into the automotive industry, because "I never thought I could be as good a salesman as my dad was."

Instead, Gilchrist went to the University of Texas at Austin to become a lawyer but was advised if he didn't score a high percentage on his LSAT he would be a history major. "So they said to take accounting, it's a great secondary major to pre-law," he says. Gilchrist did well, passing the CPA exam before he graduated with highest honors and started work in public accounting at Coopers & Lybrand. Unfortunately, "you don't get to talk to anybody. You sit in an office and crunch numbers. I've got ADD [attention deficit disorder], so to sit there and grind numbers was tough."

From there he went to work at a dealership owned by his father's former sales manager, Ken Nichols, and eventually became his business partner. Gilchrist worked at the Kenworth and Ford heavy-truck dealership before getting into the retail car business with the purchase of SouthWest Ford in Weatherford. "Ken Nichols gave me an incredible opportunity to be his business partner," Gilchrist says. At first, "Ford wouldn't approve me as a dealer. They said I was too young and didn't have enough retail experience, but Ken stood by me and forever changed my life."

Working with NADA

In 2014, Gilchrist began his first term on NADA's board of directors, and has served on the Legislative Affairs and Empower Quality Control committees. He's also chaired the Regulatory Affairs and Industry Relations committees. Those positions have given him a deep appreciation for what the association does for its members, including heading off legislative and regulatory challenges. "When



Charlie Gilchrist
2019 NADA Chairman



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LEGAL UPDATE

Why Do They Do That?

We have a saying in the law biz “bad facts make bad law.” It seems like some of the brethren in the used car biz just can’t do it the right way. Here’s a recent example reported by Catherine C. Worthington of Hudson Cook in the December issue of Spot Delivery.

Mario Alexis went to PMM Enterprises, LLC, d/b/a Empire Auto Group a used car operation in South Windsor, CT, to buy a used car. The salesman told Alexis that the price of the car was \$16,900 and that it was “clean and had never been in an accident.” Alexis made a down payment of \$2,000 and financed the balance. The retail installment contract listed the car’s purchase price as \$18,000. Alexis was told by PMM that the \$1,100 discrepancy was a “bank fee.” Alexis alleged that he was not given a copy of the purchase order or the RIC. About nine months later, Alexis learned that the car had sustained significant structural damage before he bought it and was unsafe to drive. Alexis returned the car to PMM and revoked acceptance.

Most plaintiffs suing dealerships (or suing anyone, for that

matter) list as many law violations as possible in the hope that at least one will stick. Alexis alleged five violations in his complaint against the dealership where he bought and financed his car, and all five of them stuck. Keep reading to see all the things this dealership did wrong. He alleged violation of the Truth in Lending Act, Electronic Fund Transfer Act, and Connecticut Unfair Trade Practices Act as well as breach of implied and express warranties. Alexis moved for a default judgment after PMM failed to answer the complaint.

First, the U.S. District Court for the District of Connecticut found that PMM violated TILA by (1) not giving a copy of the contract containing the required disclosures to Alexis before consummation of the agreement, and (2) including the \$1,100 “bank fee” in the purchase price listed on the RIC. The court noted that inclusion of the “bank fee,” which was an additional charge beyond the price at which PMM would have sold the car for cash, allowed PMM to

understate the finance charge. The court awarded Alexis \$2,000 in statutory damages but found that he did not suffer any actual damages from the TILA violations.


Second, the court found that PMM violated the EFTA by requiring Alexis to set up preauthorized electronic transfers of the contract payments as a condition of financing the car. The court awarded Alexis statutory damages of \$100 for the EFTA violation.

Third, the court found that PMM breached the implied warranty of merchantability by selling a car that was unsafe to drive while it knew or should have known about the condition of the car at the time of sale. PMM also breached an express warranty because its employee told Alexis that the car was “clean and had never been in an accident,” and Alexis relied on that statement when he decided to buy the car. The court awarded Alexis \$2,000 in compensatory damages for these violations.


Finally, the court found that PMM’s negligent misrepresentation of the car’s condition elevated its breach of the implied warranty of merchantability and breach of express warranty to the level of a CUTPA violation. Alexis also established that PMM violated the CUTPA by violating TILA and potentially violating Connecticut’s Retail Installment Sales Financing Act when it misrepresented the car’s purchase price. The court awarded \$2,000 in punitive damages for the CUTPA violations. ■



R. J. “Jim” Sewell, Jr.
MTADA General Counsel



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COX AUTOMOTIVE

Chairman's Message CONTINUED FROM PAGE 3

I got involved with NADA, I saw the passion and drive that the NADA employees have to defend dealers and our franchises," says Gilchrist.

As vice chairman in 2018, Gilchrist was front and center for some of NADA's most important recent initiatives, such as the ongoing fight to protect dealer-assisted financing from overregulation and opposing auto tariffs that would hurt American consumers and dealers. "We have an affordability issue, and we need to make sure our vehicles stay affordable," he says. "We can't price these vehicles at a rate that makes them less affordable."

Leading NADA

Gilchrist says he will continue to focus on these priorities in 2019 while adding some new initiatives. He's particularly interested in finding ways to attract young people to careers in the auto industry, particularly service technicians. "One of the biggest issues is employees—how to recruit, train and retain the best people—and one of the issues we all have is we can't find enough great young people to work in dealerships," he says. "We have to get the word out. A dealership is one of the most misunderstood industries, but it's also one of the most diverse in terms of opportunities."

And as a father of two (Stephen, who runs the day-to-day operations of Gilchrist Automotive, and Reese, a junior at Texas Christian University), Gilchrist wants to get more young men and women involved not only in the industry as a whole but also in NADA. "I've been blessed and given a lot, and I've got to give back," he says. "This is my family's business, so I need to serve to help protect our franchises and advocate for each dealer. I want every dealer, every general manager, every employee to think that they are NADA. That 'I am NADA.'"

To this end, Gilchrist has outlined his vision for what he calls "One NADA" in four simple words: Nurture, Advocate, Deliver and Accountability. His goal as NADA chairman will be to promote each aspect of this N-A-D-A maxim as much as possible. ■



2019 NADA Chairman Charlie Gilchrist and his wife, Trina, spend as much time as possible with their horses.



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DEALERS CORNER

In Memoriam: Terry Fast age 70, of Wolf Point

November 22, 1948 – January 13, 2019

Our Dad, Terry Linn Fast of Wolf Point, MT, died at the Trinity Hospital on January 13, 2019 after suffering a heart attack. He was 70 years old. Our lives will never be the same.

He was born on November 22, 1948 in Glasgow, MT to our Grandparents Marvin and Esther (Fast) Fast. He was the second of 7 children and our Gramma always reminded us he was such a good baby. Our Dad loved horses. He spent much of his time even as a very young boy riding around the farm. When he was 6 our Grampa told him he would buy him a new saddle if he stopped sucking his thumb. He never sucked his thumb again!

Our Dad went to school through 8th grade in Lustre, MT, including the first 2 years where he spent his days in a one room country school house called Center Bell School. He graduated from Wolf Point High School in 1967. Gramma told us he always came up with the best excuses when he was late coming home from school. It was either a flat tire or he had to give someone a ride, either way he always got away with it. Our Dad's charming personality was evident at an early age.

Dad was athletic; he loved track and football best. His high school football coach told our Grandparents no matter what the score, even if they were far behind, Dad played like he was on the winning team. The coach's wife loved our Dad and told Gramma she wanted to keep him as one of her own. He also earned a scholarship to play for the Northern Lights football team at Northern MT College in Havre, MT. While he was there, he earned his associates degree in Diesel Technology.

In 1970 our Dad married our Mom, June Hanel, and shortly after joined the National Guard. He received the Outstanding Award for cleanest rifle in the Guards. This is about the time I came along and my Dad named me, Tiffany. My Brother Shawn followed 2 years behind me and then 6 years after him came Jonah. Our parents were divorced in 1997.

Our Dad was in the car business for most of his adult life, starting as a mechanic, then a salesman, and finally the owner of Terrible Terry's Camrud Motors. Gramma told us one time he sold more cars than many larger markets on the west coast and was recognized with several of Chrysler's prestigious Five Star Awards for overall customer satisfaction. He was a successful businessman and at one point was the

longest continuously operating Dodge dealer in the state of Montana. After he sold his business he still showed up to work 6 days a week to sell cars and trucks because that's what he loved to do and because of his many loyal customers who had become his friends.

Even though Dad was very busy with his business, he still found time to do the things he loved most. When he bought his first team of Percheron Draft Horses they were a big part of his life. His day was made if he could give someone a ride on one of his wagons that he refurbished himself. Dad attended many wagon trains with his team and was a part of the Montana Centennial Cattle Drive of '89. He told stories about his experience there right up until the end. He also loved to rope and help out with Brookman Rodeo events. He traveled to many rodeos to help out behind the scenes and proudly watched the Brookman livestock buck. They became family to him, too. Without a doubt, the rodeo life is where he shined the most.

Dad was diagnosed with a rare form of Macular Degeneration when he was only 49 years old. This impaired his vision greatly and significantly changed his life. He said when he received the diagnosis he allowed himself to feel



Continued on **PAGE 9**

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Director's Message CONTINUED FROM PAGE 2

DEAC), represents the interests of all franchised new-car and -truck dealers by supporting pro-dealer candidates of both political parties. NADA PAC is one of the largest and most active political action committees of any trade association, due in large part to the grassroots approach of the PAC. State teams of dealers and association executives are engaged directly in raising the funds and deciding which contributions are made to federal candidates.

ATAE PARTNERSHIPS: STRENGTH IN NUMBERS

While NADA works hard in Washington on behalf of local dealerships, it coordinates efforts with state and metro dealer associations through the Automotive Trade Association Executives (ATAE).

This group comprises 100-plus members, with representation from NADA, state associations, metro associations, minority associations and international dealer associations. ATAEE helps advance dealer interests at the local, state and federal levels.

NADA and ATAEE meet throughout the year to develop effective strategies for local, state and federal policy, and foster compelling education and consulting programs. Many ATAEEs also attend NADA's annual legislative conference to join dealers when they meet with their legislators and help bolster the dealer message on Capitol Hill.

YOUR VOICE WITH OEMs - ADVOCATING WITH MANUFACTURERS

NADA is the dealer's best advocate in dealer-manufacturer relations, addressing concerns with manufacturers and distributors. Twice each year, NADA delivers the results of its semiannual Dealer Attitude Survey to each manufacturer to discuss the positives and negatives of manufacturer performance and initiatives, including incentive programs. NADA also hosts two annual industry forums—in New York City and Los Angeles—that focus on the latest issues affecting dealers, manufacturers, suppliers and others in the industry. NADA also partners with international dealership associations to stay up to date on international trends in auto retailing—from Europe to Asia to Brazil.

Key economic reports, including NADA Data and ATD Data (annual financial profiles of new-car

and -truck dealerships), an annual NADA economic forecast, quarterly economic briefings and the Dealership Workforce Study, place NADA at the forefront of industry information.

PROMOTING DEALERSHIPS - BENEFITS OF THE FRANCHISE SYSTEM

Local dealerships benefit consumers, manufacturers and local communities alike. Consumers benefit when dealerships compete on pricing and service. Manufacturers benefit through low-cost and efficient distribution for their products. And local communities benefit from the massive tax revenue and good-paying jobs provided by local dealerships. NADA promotes these benefits to media, opinion leaders and the general public through media relations, videos, and digital media channels like Facebook, Twitter and Instagram. NADA's chairman gives an annual address to auto writers each year in Detroit to champion the franchise system. And recently, NADA's efforts helped make preserving dealer-assisted financing a major cause of The Wall Street Journal.

Continued on **PAGE 8**



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IT Security Tip: Will you be Adding Your Name to the Wall of Shame?

The bad guys have come up with another way to trick you! Now they are using sites like Dropbox, Google Drive and other file hosting sites for their evil attacks. They put a malicious file on the legitimate sites, and they use that site to send you an invite to log in and click on the infected file. The invites look legit because they are.

So, what to look out for?

- Be suspicious of any email invites to open a shared file somewhere in the cloud that you did not ask for.
- Emails that require you to log into a site to see something important. Don't enter anything.

If you are unfortunate enough to be ensnared by this scheme, you may even have the misfortune to be added to the Wall of Shame. Some people who have attempted but were unsuccessful in downloading the malware, posted comments on the page and left their names and email

addresses, there for all the other victims who are lured in to see, and also there for the use of the bad guys to send more malicious files.

Remember to never click on links in emails that you did not expect or did not ask for. If you decide to log into a file sharing site like Dropbox, type the address in your browser or use a bookmark you set previously. Remember, Think Before You Click!

If you would like to know more about protecting your business from cybercriminals or even if you just have questions about your current IT situation, call our DIS helpdesk at 866-293-9359. ■



Would you like to know more about IT security strategies? Download our free report, "The 7 Most Critical IT Security Protections Every Business Must Have in Place Now to Protect Themselves from Cybercrime, Data Breaches and Hacker Attacks". To get instant access, go to: <http://www.dismt.com/cybersecuritytips>

Director's Message CONTINUED FROM PAGE 7

Nowhere is this more evident than in digital media. In 2017, NADA launched the MyDealership initiative to promote dealerships with videos of real consumers and dealership employees who benefited from the price competition and jobs provided by local dealerships. Dozens of state and local dealer associations and dealership groups have begun using the initiative. Make it part of your community relations efforts with the materials available at mydealership.org/toolkit.

NADA FOUNDATION

The NADA Foundation—begun in 1975—has created programs to benefit the public and promote initiatives sponsored by franchised dealers. The Ambassador Program distributes hundreds of thousands of dollars each year in grants to local charities. The Emergency Relief Program has distributed millions of dollars to dealership employees and their families affected by disasters, including hurricanes, major storms and floods. A program to promote the benefits of dealership jobs in local communities—including jobs in sales, service and management—will be launched soon. Tax-deductible donations to the foundation are available at nadafoundation.org. ■

Dealers Corner CONTINUED FROM PAGE 6

sorry for himself for one day. That was it, one day. Our Dad didn't let anything slow him down, not even his debilitating eyesight. Our Grampa was a praying man and he made sure to include my dad's eyesight in his daily prayers.

Gramma is known to say, "Look for the blessings even in the hard times because they are always there". In 2007 Mona (Simensen) Soliday, a nurse originally from Wolf Point, living in Kalispell MT, heard about our Dad's eye condition and wrote to offer him some remedies she thought could help. Shortly after this Mona moved to Glasgow and they went on their first date. Dad took her to Chinese dinner where he ate his whole plate and what was left on hers, too! In 2010 they were married. Gramma was right again, there is always a blessing.

Dad was preceded in death by his father Marvin Fast. He is survived by his wife Mona of Wolf Point, his three children; Tiffany (Kevin) Rauch of Billings, MT, Shawn (Gabi) of Ulaanbaatar, Mongolia, and Jonah (Misty) Fast of Bend, OR. Mona's children Rob (Kayla) Soliday of Edwall, WA, Rhett (Kim) Soliday of Santa Ana, CA and Rocky (Holly) Soliday of Costa Mesa, CA, his many grandchildren and great children whom he loved, his mother Esther Fast of Glasgow, MT, his in-laws Kastor and Lona Simensen of Fort Peck, MT, his brother Gary (Marcia) Fast of Lustre, MT, his sister Wanda (Tom) Ault of Fort Peck, MT, his brother Dale

Fast from Salem OR, his sister Glenda (Bill) Fladager from Scobey, MT, his brother Rick (Alicia) Fast from Turner, OR and his brother Kevin Fast from Belgrade, MT, his Uncle Harvey (Gladys) Fast of Glasgow, MT, Aunt Erma (Irwin) Penner of Dallas, OR, and many more members of our large extended family.

Gramma's words are comforting to us, "Your Dad is in heaven because he knew and accepted the Lord". She reminds us he was greeted by our Grampa and he can now see perfectly.

We would like to invite you to a Remembrance with family and friends on Friday, January 18th at 7pm at Clayton Stevenson Memorial Chapel in Wolf Point, MT. There will also be a memorial service on Saturday, January 19 at 11am at First Lutheran Church in Wolf Point, MT.

A special thanks goes out to the Trinity Hospital staff, the ambulance crew, and all the many friends and family who are offering their support through many acts of kindness. We are eternally grateful.

Should friends desire, memorials may be sent to First Lutheran Church in Wolf Point, MT at 415 Johnson Street.

Clayton Stevenson Memorial Chapel of Wolf Point has been entrusted with the arrangements. Condolences can be sent to the family by using the form below. ■

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