

March 8, 2013

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WP-03-08-13

**ANDY PALA, FORMER APMA EXECUTIVE, PASSES AWAY**

We are saddened to announce the passing of Andy Pala, former Arizona Petroleum Marketers Association Executive, in Phoenix, Arizona on Monday, March 4, 2013.

Andy joined the Intermountain Oil Marketers Association in 1980, when he was appointed as the Arizona State Field Executive, which was the first State Executive position outside of the IOMA head office. He served twenty-two years as State Executive of the Arizona Petroleum Marketers Association, from 1980 until his retirement in 2002. Andy was inducted into the WPMA Hall of Fame in 2002 for his many years of service to the petroleum marketing industry. The WPMA staff, members, and associates offer our deepest condolences to Andy's wife Lois Jean and their family. Those wishing to contact Lois Jean Pala may call her at 602-942-7173, or mail condolences to her at her home: 340 E. Carol Ann Way, Phoenix, AZ 85022.

A celebration of Andy's life is planned, but will not be held for several weeks. Andy's family asks that in lieu of flowers, donations may be made to Hospice of the Valley, 1510 East Flower St., Phoenix, AZ 85014.

**FED RELEASES INTERCHANGE FEE REPORT**

This week, the Federal Reserve (Fed) released its biannual report on interchange fees and found that the average cost to process a debit transaction was five cents. However, under the final rule to implement the Durbin amendment, the Fed capped debit interchange fees at 21 cents per transaction and 0.05 percent of the transaction plus an extra penny for card issuers for fraud prevention. Banks and credit unions with \$10 billion or less were exempted under the Durbin amendment. The largest bank holding companies responded to the Durbin amendment by eliminating free checking accounts and charging higher ATM fees which didn't sit well with customers and many banks reversed course. The Merchants Payments Coalition (MPC) noted that the report proved that the Fed's final rule was flawed and the cap on debit card fees should be reduced. Prior to the Durbin amendment, debit interchange fees averaged 44 cents.

**KEYSTONE PIPELINE CLEARS IMPORTANT HURDLE****New EPA-DOE Chiefs Nominated**

Late last Friday, the U.S. State Department released its draft "supplemental environmental impact statement" study (subject of 45 day comment period) which dispelled environmental critics' claims that the Keystone XL pipeline would increase the production of Canadian oil sands. The study argued that Canadian oil sands would be developed with or without the pipeline. Although the report stopped short of recommending whether to grant a construction permit, it is considered an important step forward. Keystone has received a wide range of support from businesses and labor unions as well as bipartisan support from Congress which could potentially bring 830,000 barrels of crude oil per day from Canada and the Bakken oil shale formation in Montana and North Dakota to Gulf Coast refineries. A decision by the Obama Administration is expected in the next six months.

Meanwhile, President Obama nominated EPA's assistant administration for air and radiation, Gina McCarthy, to head the EPA. Former EPA Chief, Lisa Jackson, left her post on February 14. The Senate Environment and Public Works Committee will hold a confirmation hearing very soon on McCarthy who oversaw implementation of EPA's controversial greenhouse gas regulations final rule for new coal-fired power plants. Furthermore, President Obama nominated MIT physicist Ernest Moniz to be Secretary of Energy to replace Steven Chu who left his post last month. Moniz served as undersecretary of energy under the Clinton Administration.

**FEDERATED INSURANCE EXPANDS RECENT AFFORDABLE CARE ACT WEBINAR FOR ASSOCIATION MEMBERS**

Federated Insurance, your association's recommended insurance carrier, recently hosted a webinar for over 600 business owners regarding the Patient Protection and Affordable Care Act (PPACA). Facilitated by Federated's in-house PPACA professional, webinar participants were treated to information on current healthcare legislation and what it could mean for the future of their health insurance program.

Due to overwhelming response, Federated Insurance has chosen to offer a recorded version of the webinar to association members at no charge until March 22, 2013, regardless of insurance affiliation.

To view the recorded session go to:

<https://federatedinsurance.webex.com/tc0505ld/trainingcenter/record/recordAction.do?actionType=Info&strformURL=1&tcRecordingLink=Yes&siteurl=federatedinsurance&renewticket=0&isurlact=true&entactname=/e.do&entappname=url0107ld&siteurl=federatedinsurance&api>. After clicking the link, you will be asked to register to view the presentation and to enter a password which is ppaca.

Whether you participated in the original webinar or not, you won't want to miss this opportunity to educate yourself on this important topic.

## 2014 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA



Start planning now to attend the 2014 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 18-20, 2014.

Access the WPMA National Convention page by scanning the QR code on the left with your smart device.

## MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2013

**May 9-10, 2013** – NPM&CSA Big Dogs' Shootout – Red Rock Hotel & Casino – Las Vegas, Nevada

**June 4-6, 2013** - Montana (MPMCSA) Convention - Holiday Inn Grand - Billings, Montana

**June 17-20, 2013** - Washington (WOMA) Convention - Suncadia Lodge - Cle Elum, Washington

**June 20, 2013** – UPMRA Summer Golf Classic – South Mountain Golf Course – Draper, Utah

**July 31-August 2, 2013** - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, Idaho

**August 27-29, 2013** – New Mexico (NMPMA) Convention – Embassy Suites Hotel , Albuquerque, NM

**September 12-13, 2013** - Utah (UPMRA) Convention - Zermatt Resort - Midway, UT

Petro Pete: *“I do charity work. I volunteer my opinion every day.”*

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If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: [janr@wpma.com](mailto:janr@wpma.com). Thanks.



## Classified Ads

### EMPLOYMENT OPPORTUNITY



#### Dealer Sales Representative

Thomas Petroleum is looking for a Dealer Sales Representative for the Northern Utah and Southern Idaho area. Must have experience with branding stations, dealer contracts and dealer relations. Great pay and benefits.

Interested candidates should send their resume to

[ahansen@clthomas.com](mailto:ahansen@clthomas.com)

## **INFORMATION ON THE SETTLEMENT OF THE VISA/MASTERCARD CLASS ACTION ANTITRUST LITIGATION**

The proposed settlement offers marketers money damages. The exact amount of money to be received is unclear at this time, however attorneys estimate that retailers could receive approximately three months' worth of interchange. In addition, the settlement provides for limited modifications to Visa's and MasterCard's surcharging rules, by which, under certain circumstances, marketers will be allowed to surcharge customers who pay with Visa or MasterCard. The settlement offers merchants no changes to the interchange or "swipe fee" rules that are the centerpiece of the case.

On November 27, 2012, the federal court preliminarily approved the proposed settlement. Now Judge John Gleeson must decide whether to grant final approval to the settlement. Between now and May 28, 2013, class members can let Judge Gleeson know what they think of the settlement, including by opting out and submitting written objections to it. Marketers who **do not opt out or object will automatically accept the settlement and will be viewed by the court as affirmatively supporting its terms**. Marketers who wish to accept the settlement do not need to take any action now. If and when the judge gives final approval to the settlement, all merchants in the class will receive claim forms. Details are available at [www.paymentcardsettlement.com](http://www.paymentcardsettlement.com).

Most retailer trade associations oppose the settlement because it does not bring any meaningful relief to retailers. While it will bring some monetary payments to marketers who accept credit cards, there is nothing to prevent Visa and MasterCard from hiking rates in the future to recoup the settlement costs. **In addition, the settlement will bar retailers-- whether they object, opt out or participate in the settlement-- from ever suing the Visa and MasterCard over future interchange fees and the other issues raised by the lawsuit.** Though this settlement is unfair, retailers who opt out of the settlement will not receive any of the settlement funds, and they may never realize any monetary relief through future actions. It is impossible to predict whether retailers opting out of the settlement will have the wherewithal to file a new lawsuit over past damages, on their own, or collectively with others. Even if they did so, it would likely be many, many years before it is resolved. Marketers will not risk losing their share of the settlement funds if they object to the settlement, but do not opt out.

***Each marketer who accepted Visa and/or MasterCard at any time between January 1, 2004 and November 27, 2012 or accepts those cards today needs to decide on its own how to respond to the settlement.***

If you independently conclude that the settlement is bad for you and/or for marketers generally, you can (i) opt out of the money damages (only) portion of the settlement **and** object to it, or (ii) object to the settlement, but not opt out of it. Either of these choices, which are explained more fully below, must be exercised by **May 28, 2013**. Regardless of whether you opt out or object, you will be subject to the injunctive relief and the release if the proposed settlement is finally approved in September (subject to any appeals).

## **Details on Objecting to the Settlement**

### **What does it mean to object to the settlement?**

Objecting to the settlement means telling Judge Gleeson and the proponents of the settlement why you oppose it. Even if you opt out to preserve your right to seek past damages, you will still be bound by the release and the various purported rules changes (offered in lieu of swipe fee changes). If you do not object, you will have relinquished your only opportunity to make your opposition known to Judge Gleeson and have it noted in the record for appeal. Therefore, if you think the deal is bad overall, you should consider opting out and objecting (explained below).

### **What is the benefit of objecting?**

The benefit of objecting is that you (along with other objectors) may persuade Judge Gleeson that the settlement is unfair, thus it should not be finally approved. You may also be able to file or join an appeal if Judge Gleeson decides to grant final approval. Further, if you do not object, you will have relinquished your only opportunity to make your opposition known to the court and noted in the record for appeal. Therefore, if you do not accept all of the settlement's terms, you should consider objecting (as well as opting out).

### **What are the costs or risks of objecting?**

We are not aware of significant costs or risks of objecting. It is your right to let Judge Gleeson know how you feel about the settlement.

### **What are the benefits of opting out and objecting together?**

Opting out and objecting is the most complete way to express your opposition to the settlement. You will put the most pressure on Judge Gleeson to reject the settlement. You will also get the best protection from any argument that you have accepted the settlement's release terms. And you will be entitled to sue for past damages.

### **Can I object and not opt out?**

Yes. However, as noted below, if you do not opt out you will lose your right to sue for more damages for conduct that occurred before November 27, 2012.

## **How do I object?**

You object to the settlement by submitting a Statement of Objections to Judge Gleeson and the lawyers for the proponents of the settlement at the addresses below by May 28, 2013. Two sample objections are available – one for retailers who opt out and one for retailers who do not opt out. You can complete the appropriate sample and submit it, or use it as an example to draft your own objection. If you draft your own objection, be sure to include all of the information in the sample

As mentioned earlier, each marketer must make a decision on what they determine to be their best course of action. There very well may be a follow-up class action lawsuit suing for damages for years prior to January 1, 2004 but it is not a certainty.

Below please find the "Statement of Objection" forms to "Opt Out" and to "Not Opt Out".

**STATEMENT OF OBJECTIONS  
(FOR MERCHANTS WHO OPT OUT)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
In re PAYMENT CARD INTERCHANGE :  
FEE AND MERCHANT DISCOUNT : No. 05-MD-01720 (JG) (JO)  
ANTITRUST LITIGATION :  
-----X

Statement of Objections

I am a member of the plaintiff class in the case called *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*. I am a class member because I operate *[business name*

*and address]* \_\_\_\_\_

and I have accepted Visa and/or MasterCard from *[approximate date]* \_\_\_\_\_

until *["present," or approximate date]* \_\_\_\_\_.

I object to the settlement in this lawsuit. My reasons for objecting are:

1. The proposed settlement does not address Visa's and MasterCard's price-fixing of interchange rates for the banks, the subject of the core claims in the case. The proposed settlement actually validates that practice, enabling Visa and MasterCard to continue to illegally fix fees for the banks that merchants and their customers have no choice but to pay. Our portion of the compensatory relief amounts to only a fraction of what we pay in interchange, and given that Visa and MasterCard can continue to fix interchange, they can recoup the settlement amount by raising interchange rates in the future.
2. Instead of addressing the core claims in the case, the settlement merely provides merchants with a limited ability to surcharge Visa and MasterCard credit card transactions that is of little value to us.
3. *[If merchant operates in one of the ten states that prohibit surcharging: CA, CO, CT, FL, KS, ME, MA, NY, OK and TX]*  
We operate stores in the state(s) of \_\_\_\_\_ which prohibit surcharging of credit card transactions. Because of this law, the principal relief is of no value to us.
4. *[If merchant accepts American Express]* We accept American Express transactions. The settlement limits our ability to surcharge Visa and MasterCard credit card transactions because under its terms we can only surcharge Visa and MasterCard transactions if we also surcharge American Express transactions. However, we cannot surcharge American Express transactions under our contract with American Express. Since we cannot realistically drop American Express to avoid this limitation, this is another reason why we cannot take advantage of the surcharging relief in the settlement.
5. The proposed settlement includes unacceptable obligations, such as requiring us to disclose to customers at the point of sale that we are imposing the surcharge, when in fact the only reason we would charge such fees is the onerous fees set by Visa and MasterCard. The settlement also requires us to disclose to Visa and MasterCard that we are imposing the surcharge, which is an effort to intimidate us.
6. The release will not allow me to protect against mistreatment by Visa and MasterCard. It purports to cover all Visa and MasterCard rules and conduct that were in place upon preliminary approval, and all future rules and future conduct that are substantially similar to rules and conduct in place at preliminary approval. These rules are unfair and cause problems for my business.
7. Based on the outcome of the settlement, we do not believe the lawyers who negotiated it represented our best interests.

My personal information is:

Name *[first, middle, last]*: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

*[If your own lawyer is representing you with respect to the settlement]* The contact information for my lawyer is:

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Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Merchant name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**STATEMENT OF OBJECTIONS  
(FOR MERCHANTS WHO DO NOT OPT OUT)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
In re PAYMENT CARD INTERCHANGE :  
FEE AND MERCHANT DISCOUNT : No. 05-MD-01720 (JG) (JO)  
ANTITRUST LITIGATION :  
-----X

Statement of Objections

I am a member of the plaintiff class in the case called *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*. I am a class member because I operate [business name

and address] \_\_\_\_\_

and I have accepted Visa and/or MasterCard from [approximate date] \_\_\_\_\_

until ["present," or approximate date] \_\_\_\_\_.

I object to the settlement in this lawsuit. My reasons for objecting are:

1. The proposed settlement does not address Visa's and MasterCard's price-fixing of interchange rates for the banks, the subject of the core claims in the case. The proposed settlement actually validates that practice, enabling Visa and MasterCard to continue to illegally fix fees for the banks that merchants and their customers have no choice but to pay. Our portion of the compensatory relief amounts to only a fraction of what we pay in interchange, and given that Visa and MasterCard can continue to fix interchange, they can recoup the settlement amount by raising interchange rates in the future.
2. Instead of addressing the core claims in the case, the settlement merely provides merchants with a limited ability to surcharge Visa and MasterCard credit card transactions that is of no value to us.
3. [If merchant operates in one of the ten states that prohibit surcharging: CA, CO, CT, FL, KS, ME, MA, NY, OK and TX]  
We operate stores in the state(s) of \_\_\_\_\_ which prohibit surcharging of credit card transactions. Because of this law, the principal relief is of no value to us.
4. [If merchant accepts American Express] We accept American Express transactions. The settlement limits our ability to surcharge Visa and MasterCard credit card transactions because under its terms we can only surcharge Visa and MasterCard transactions if we also surcharge American Express transactions. However, we cannot surcharge American Express transactions under our contract with American Express. Since we cannot realistically drop American Express to avoid this limitation, this is another reason why we cannot take advantage of the surcharging relief in the settlement.
5. The proposed settlement includes unacceptable obligations, such as requiring us to disclose to customers at the point of sale that we are imposing the surcharge, when in fact the only reason we would charge such fees is the onerous fees set by Visa and MasterCard.
6. The release is overly broad. It purports to cover all Visa and MasterCard rules and conduct that were in place upon preliminary approval, and all future rules and future conduct that are substantially similar to rules and conduct in place at preliminary approval.
7. Based on the outcome of the settlement, we do not believe the lawyers who negotiated it represented our best interests.
8. We did not opt out to assert past damages claims because prosecuting such claims against large companies like Visa and MasterCard is not a realistic option for a merchant of our size. That is especially true given that we are not permitted to opt out of other provisions of the settlement which are, overall, far more important than the small amount of dollars that individual merchants might receive in this case. In addition, the settlement does not allow us to opt out to pursue claims for ongoing or future damages. Our

decision not to opt out should not be construed as agreement that the compensatory damages amount accurately reflects our losses because it is a small fraction of what we paid in interchange for Visa and MasterCard transactions. Nor should it be construed as acceptance of the release set forth in the settlement. We consider the release overbroad and object to its scope.

My personal information is:

Name *[first, middle, last]*: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

*[If your own lawyer is representing you with respect to the settlement]* The contact information for my lawyer is:

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Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Merchant name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_