

September 25, 2009

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WP-09-25-09

JOE WONDRAK – PAST PRESIDENT OF WPMA PASSES AWAY

We are saddened to announce the passing of Joe Wondrack of Kennewick, Washington on Wednesday, September 23rd. Joe was the owner of Wondrack Distributing in Kennewick, and an active member of the Washington Oil Marketers Association. He served many years in the Washington Association, and also served on the WPMA Board of Directors for several years. He served as President of the Western Petroleum Marketers Association from 1987 – 88, and was inducted into the WPMA Hall of Fame in 1995 for his many years of service to the petroleum marketing industry. The Washington Oil Marketers Association and WPMA offer our deepest condolences to Joe's wife Carol and their family. A funeral has been scheduled for 1:00 p.m. on Tuesday, September 29th, at the Kennewick First United Methodist Church in Kennewick. The address for the church is 421 West Kennewick Avenue, Kennewick, Washington. Joe was a long time supporter of the United Way, and Carol has asked that in lieu of flowers, donations may be made to the United Way of Kennewick, 401 N Young Street, Kennewick, WA 99337.

JOBBER LIABILITY CASE REVERSED BY SOUTH CAROLINA SUPREME COURT

The South Carolina Supreme Court filed its decision in the Jamison v. Morris case on Monday, September 21, 2009 reversing the liability verdicts against defendants Texaco and jobber Anderson Oil for injuries suffered by Louis Jamison a passenger in a single car accident. The driver, who was killed in the accident, was allegedly intoxicated at the time of the accident and purportedly purchased the alcohol from a convenience store operated by Mini Mart. Anderson Oil supplied Texaco branded motor fuel for resale at the convenience store. Jamison maintained that Mini Mart, the seller of the alcohol, was an agent of Texaco and/or Anderson Oil who was, therefore, liable for the plaintiffs' injuries. The jury verdict found for the plaintiffs and the defendants appealed.

Because the lower court decision set very harmful precedents for all jobbers, PMAA along with the National Association of Shell Marketers (NASM) and the South Carolina Petroleum Marketers Association (SCPMA), filed a joint amicus brief urging reversal. As we urged in the amicus brief, the South Carolina Supreme Court found that Mini Mart was not an agent either of Texaco or Anderson Oil and that neither was liable for the plaintiffs' injuries. Under South Carolina law, an agency relationship is established only if, among other things, the principal exercises control over the agent's activities. The defendants (and PMAA) argued that Texaco and Anderson Oil lacked the requisite element of control over Mini Mart's activities with respect to the sale of alcoholic beverages and the Court agreed.

In reviewing the franchise documents, the Court noted that the documents contained provisions that provided only for the protection of the Texaco trademark and goodwill. The Court found that the franchise documents gave neither Texaco nor Anderson Oil the right to direct the manner or means of Mini Mart's activities regarding the sale of food or beverages at the convenience store. That is, neither Texaco nor Anderson Oil had the power to control the sale of alcoholic beverages at the Mini Mart store and no agency relationship was established. Accordingly, neither Texaco nor Anderson Oil was found to be liable to Jamison under the South Carolina's law of agency.

EPA FINALIZES GHG REPORTING PROGRAM

The Environmental Protection Agency (EPA) is moving forward on its efforts to curb greenhouse gas emissions (GHGs). The agency announced Tuesday that it would require facilities emitting 25,000 tons or more of CO₂ to collect its emissions data beginning January 1, 2010 and report that data in 2011. The EPA estimates the program will cover 85 percent of the country's GHGs and apply to approximately 10,000 facilities including refineries and manufacturing plants.

E15 AMENDMENT NOT CONSIDERED IN SENATE

Earlier this week, Senator Ben Nelson (D-NE) intended to attach an E15 waiver amendment to the FY 2010 Interior Appropriations bill; however, it was not considered by the Senate. While PMAA continues to be supportive of new ethanol blends, PMAA will not support an E15 waiver until certain legal protections are given to retailers to sell higher ethanol blends. PMAA along with Nebraska Petroleum Marketers and Convenience Store Association Executive Tim Keigher reached out to Sen. Nelson's staff to voice our concerns with the amendment. PMAA plans to follow up with Senator Nelson's staff next week regarding retailer liability concerns.

IRS TO AUDIT EMPLOYER TAX RECORDS

The Internal Revenue Service (IRS) announced last week that it will begin conducting detailed employment tax examination on approximately 5,000 employers, selected at random in November, as part of its National Research Program. These audits are not new. The IRS conducted its last NRP in 2007 when it reviewed approximately 13,000 individual returns.

The NRP of employment tax returns follows a July 2009 study by the Treasury Department on the “tax gap.” Based on data last collected in 2001, the Treasury Department estimates the tax gap is \$290 billion after enforcement.

The audit will focus on: 1) worker classification; 2) fringe benefits; 3) reimbursed expenses and; 4) compensation of owner employees.

PMAA URGES SENATE SUPPORT FOR NORA REAUTHORIZATION

PMAA and the National Oilheat Research Alliance (NORA) have asked oilheat marketers in the 23 states that belong to NORA to urge their Senators to support legislation reauthorizing NORA. NORA is an industry-funded organization authorized by federal legislation.

Through NORA’s efforts, ultra low sulfur heating fuel is being adopted in many states. Reauthorizing NORA would provide the best means for enabling the heating oil industry to continue its efforts to fund research and development, employee training and educating customers on how to use the fuel efficiently.

CHAIRMAN PUSHES FOR INTERCHANGE FEE REFORM

On Wednesday, Senate Banking Committee Chairman Chris Dodd (D-CT) indicated that he will pursue credit card interchange fee legislation in the near future. The legislation is currently being drafted by Senate Banking Committee staff and details are still being worked out. Additionally, the Government Accountability Office’s (GAO) study on interchange fees is still pending which was a result of the Credit Cardholders’ Bill of Rights Act (H.R. 627) that passed earlier this year.

In June, Senate Majority Whip Richard Durbin (D-IL) introduced the “Credit Card Fair Fee Act of 2009,” legislation that is similar to House Judiciary Committee Chairman John Conyers (D-MI) and Rep. Bill Shuster’s (R-PA) “Credit Card Fair Fee Act of 2009,” (H.R. 2695). Durbin’s bill would provide a framework for negotiations that would give retailers a voice in setting interchange fee rates and terms and then spur card providers and retailers to work out voluntary agreements on rates or have a federally-appointed panel choose between the two proposals. The ultimate goal of the legislation is for the process never to reach the point where judges would need to issue a ruling. Rather, the prospect of an arbitration ruling should compel card providers and retailers to reach agreements that both sides can live with. Furthermore, earlier this year Representatives Peter Welch (D-VT) and Bill Shuster (R-PA) also introduced the Credit Card Interchange Fees Act of 2009 (H.R. 2382) which would eliminate anticompetitive contract rules, such as the Honor All Cards rule, that Visa and MasterCard impose on the merchants who accept their cards.

Independent Connecticut Petroleum Association (ICPA) marketers, PMAA and the Merchants Payment Coalition (MPC) staff continue to urge Senator Dodd to make credit card interchange fee reform a priority. Senator Dodd advised ICPA that he would not address interchange fees in the consumer protections bill (H.R. 627) on the floor at that time, but was committed to working on interchange later in the year.

FDA BANS FLAVORED CIGARETTES

On Tuesday, federal health officials banned the sale of flavored cigarettes such as chocolate, vanilla, strawberry, clove and other flavorings. The ban results from legislation which passed in June known as the “Family Smoking Prevention and Tobacco Control Act.” The legislation also created a new “Center for Tobacco Products” inside the FDA to regulate the production, marketing and sale of tobacco products. A twelve person panel of physicians and others, including three people from the tobacco industry, advise the regulators. Unlike the other panelists, the tobacco industry representatives do not have a vote on the panel. The new oversight is paid for by user fees on tobacco companies and importers. Over the next 10 years, the user-fees are expected to grow to \$712 million annually.

PMAA’s Tobacco Task Force, chaired by North Dakota Petroleum Marketers Association Executive Mike Rud and PMAA Legal Counsel Mark Morgan, continue to work with FDA officials on a number of issues including advertising and marketing of tobacco products, label statements and warnings and the sale and distribution of tobacco products.

FINDINGS OF INTERNATIONAL INTERCHANGE FEE STUDY

The Merchants Payments Coalition (MPC) released a study last week outlining interchange fees in other countries. The MPC reported that if U.S. merchants had paid the same interchange rate as Australian merchants, the U.S. merchants would have achieved a savings of \$125 billion since 2005. Further, the U.S. rate is twice that charged in the U.K. and New Zealand, and more than six times the cross-border rate charged in the European Union, the study says.

PMAA and MPC continue to urge legislators to pass language that will give retailer groups the opportunity to negotiate interchange fees in a transparent environment. Representatives Peter Welch (D-VT) and Bill Shuster (R-PA) introduced the Credit Card Interchange Fees Act of 2009 (H.R. 2382) and Judiciary Chairman John Conyers (D-MI) and Congressman Bill Shuster (R-PA) reintroduced the “Credit Card Fair Fee Act” (H.R. 2695) – with companion language in the Senate introduced by Sen. Dick Durbin (D-IL), which MPC and PMAA fully support. Chairman Conyers’ bill would grant retailers limited antitrust immunity to band together to negotiate interchange rates across the table from Visa, MasterCard and the

banks. PMAA believes these negotiations will put downward pressure on interchange fees and force credit card companies to provide justification for the rates charged.

REGISTER FOR NACS BY GOING TO THE LINK ON THE WPMA WEB SITE

If you are planning on attending the NACS show in October and will be registering online, please go to the WPMA web site. We have set up a link on the home page that will take you to the online registration for NACS. Your state association will be given \$5 for each person who registers through this special link. Register today by going to www.wpma.com and click on the link for the NACS Show and help benefit your state association.

NACS SHOW 2009 SET FOR OCTOBER 20-23

The NACS Show 2009 is scheduled for October 20-23 at the Las Vegas Convention Center in Las Vegas, Nevada. PMAA will hold its fall meeting in conjunction with the NACS Show on October 19-20 at the Las Vegas Hilton.

The NACS Show is a buying show and THE place to find the most innovative, profit-building products and services in top categories. This year, you'll be able to explore some 1,300 exhibitors on the expo floor including 20 percent that are brand new to NACS. Additional information can be found by going to <http://www.nacsonline.com/NACSShow/Pages/default.aspx>. Please note that the NACS Show registration is separate from the PMAA Meeting Registration.

PMAA will continue to hold its Fall Meeting in conjunction with the NACS Show on October 19-20 at the Las Vegas Hilton. The PMAA meeting will begin with a Board Orientation mid-afternoon on October 19th followed by a Board Briefing. A welcome reception with NACS to State Association Leaders will follow. On the morning of October 20th, there will be a Buffet Breakfast followed by Regional Meetings and Task Forces / Divisions Meetings. The PMAA Board of Directors meeting is scheduled after lunch. Please view <http://www.pmaa.org/userfiles/file/Fall Meeting/2009/Conference Schedule with Room Assignments.pdf> for the Conference Schedule with Room Assignments.

If you have not registered to attend the meeting, we would encourage you to do so now to expedite your time during the conference! Please complete a PMAA Fall Registration form by going to <http://www.pmaa.org/pmaameetings/upcomingmeetings.asp> at your earliest convenience.

2010 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2010 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 16-18, 2010.

REGISTER NOW FOR THESE UPCOMING EVENTS IN 2009

October 9, 2009 – Hawaii Petroleum Marketers Association Golf Tournament – Ko Olina Golf Club, Kapolei, HI
October 22, 2009 - Nevada Petro Cup Kart Race - Fast Lap Indoor Kart Track - Las Vegas, Nevada

Petro Pete: “A word to the wise ain't necessary, it's the stupid ones who need the advice.”

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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. Thanks.

CLASSIFIED ADS

FOR SALE



2000 Freightliner with Cat engine and six speed trans. The BEALL Trailer is 4200 Gallons and 4-Compartment. The pumping equipment is all hydraulic and the Meters have ticket printers. The truck has approximately 68,000 miles and the pumping equipment has less than 100 hours.

Call 406-543-7621 and ask for Frank