



12-1-11

2012

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2011 REFLECTION

When historians reflect on the year A.D. 2011, it will be with mixed emotions. Depending on your perspective, it was year replete with innovation, creativity and opportunity, but also a year of recession, high unemployment and low confidence. As Franchisees, the dichotomy of the year and the emotions it triggers are telling signs that we are at a turning point—a near breaking point, really. Not only in our economy, but also in the way we approach our future.

The year 2011 will most likely be remembered as the year social media found its voice and discovered its power. The new relationship between brands and customers will forever be changed. Imagine this: For the first time in history customers are influencing company strategy –arm-in-arm with CEOs.

The learning lesson for all us in the franchisee family from 2011, was the power of collective voice. So powerful that 2011 saw entire governments collapse in revolutions conceived through grass-roots social media

collaboration.

Companies large and small are learning— some more slowly than others—that listening to the collective voice is as strategic as formal research and complicated Mindjet maps.

But perhaps the greatest gift from 2011 is that if laid the foundation for a stunning 2012, a year that promises an acceleration of the lessons, opportunities and explosive land mines from 2011. A turning-point year for all of us.

The mantra rolling into the new year? Rules must be broken, and so must smelly old business models and thick, syrupy bureaucracy. Let's move forward with what we've got and create and execute in unexpected ways.

In 2012, we must unite and have a collective voice... That, my friends, is the future. Now if we just get the damn banks to lend a little, we could change the world.

Legal Update: Class Action Update

The Class Action is continuing to be litigated before Judge Charles Breyer in the Northern District of California. We recently filed our amended complaint which outlines the breaches of contract as they relate to the Retalix system, vendor issues and fuel issues. As the Court requested, we identified specific provisions of the various agreements that we believe apply to this dispute. BP will have 30 days to respond. It is anticipated that after BP responds, the Court will hold a discovery conference to permit the parties to commence discovery, including deposing BP executives. Unfortunately, the Court did not agree with us that Retalix should be a defendant in this lawsuit. We disagree with the Court's reasoning and are working on filing an appeal.

We located very good and valid case law that supports our position that the franchisees are third party beneficiaries and also submitted Declaration from fellow franchisees showing the court Retalix LTD's involvement during installation and post installation at franchisee site level. Nevertheless, we believe that our claims regarding the failures of the Retalix system still continue against the BP defendants. As you all know, the Court on October 11, 2011 pursuant to our request ordered that [BP is barred from making further settlement discussions with all franchisees in the United States.](#) unless it goes through the Plaintiffs' law firms in the class action: LTL and Seeger

Our Communication Newsletter will cover an array of topics as:

- ONLINESFA.ORG web site
- Franchisee Business Tools
- Class Action Updates
- Mass Action Updates
- Industry News
- Industry Regulations
- BP News
- Vendors
- New Products
- Industry Trends
- Franchisee Rights
- Franchisee Recognition
- Legal Rights

Weiss. [This order covers settlement communications with ALL BP Branded gas stations, ARCO, and/or AMPM franchisees in United States.](#) regardless if the franchisee has filed a lawsuit with any other lawyer or law firms. In addition, this order also encompasses ALL other franchisees that have not filed any lawsuits. Accordingly, if BP or any of their representatives attempt to discuss any settlement regarding the Retalix system, third party vendor, Pay-point and fuel claims with you or otherwise try to discuss settlements, please contact the attorneys immediately. They will aggressively and instantly notify the Court that BP is violating a federal court order and seek appropriate sanctions including contempt.

Class Action Update Continued

The Class Action attorneys are continuing to work very closely with the representative plaintiffs and other franchisees to collect evidence. The Class Action attorneys are also cooperating with the Mass Action attorneys to aggressively litigate this case.

If you have any questions or concern, please do not hesitate to call the Class Action Attorney offices or one of the representative plaintiffs.

“This Court Order covers settlement communications with ALL BP Branded gas stations, ARCO, and/or AMPM franchisees in United States.”

“The Court also ordered that BP is barred from making further settlement discussions with the franchisees”

Mass Action “rebuffs attempts by BP to engage in coercive tactics—including its ploy of threatening termination of franchisees who fail to make Retailix Payments”

Franchisee Helpful Tips: {LOGMEIN.COM} By Ali Mazarei

Ever wish you could do all your bookkeeping from home.? What about doing them from your off-site office? Are you paying for these services?

Want to see and use your QuickBooks, S2K Remotely for FREE?

Well my fellow franchisees, I have the answer, well an option. This is the remote software program I have been using for the last four years.
WWW.LOGMEIN.COM

I started just like all of you, working and auditing my books in my cramped office using the Back office Manager PC provided by BP at my store. Always looking for a more efficient way to do my work and communicate with my office manager and my Accountant, I realized I can use the same Technology I use at my other businesses for my station. The added bonus, it is a FREE service.

You can always upgrade to a paid service if you need the

more enhanced options, but the FREE Option is good enough to do everything you need remotely.

There are a lot of Companies and software programs out on the net, but in my opinion, I love **WWW.LOGMEIN.COM**.

First and foremost, it is a FREE service, it is Fast and it is very dependable. My accountant can login into my system and gather the data she needs to complete her tasks. I can login my BOS from my Smartphone or IPAD or Office PC and see sale reports, run S2K functions, QuickBooks Register entries.

I recommend you trying out **WWW.LOGMEIN.COM** for your self and see what you can accomplish.

Another helpful tip to increase your manager PC internet communication.

You can always disconnect your Back Office PC from the Hughes Satellite and use your own DSL line at your store. I found this a

very effective way to increase both the BOS Manager PC Internet connection speed and S2K.

You are no longer tied to the Slow satellite transfer rate.

Users worldwide rely on **WWW.LOGMEIN.COM** solutions for remote control, file sharing, systems management, data backup, business collaboration and on-demand customer support of PCs, servers, Macintosh computers, smartphones and other connected devices. The award-winning solutions are easy to try, buy and deploy from any web browser with an Internet connection. Over 125 million devices worldwide have connected to a **WWW.LOGMEIN.COM** service.

If you have any questions please feel free in contacting me directly via email or phone.

Legal Update: Mass Action

The Mass Action is being litigated before judge Elihu Berle in a court that is designated for the litigation of complex matter in the Los Angeles Superior Court. To this point, The Mass Action attorneys have successfully rebuffed attempts by BP to engage in coercive tactics—including its ploy of threatening termination of franchisees who fail to make Retalix Payments. Judge Berle has been extremely receptive to the Mass Action complaints about BP. In Fact, in every instance in which they have filed ex parte applications to thwart BP's tactics, BP has relented rather than having the matters litigated before Judge Berle.

Last week, Retalix withdrew its objection to the jurisdiction of the Court after: (a) the Court ruled that it would have to respond to discovery regarding

the extent of its contact with California; and (b) our scheduling of depositions in Texas, California and Israel of BP and Retalix corporate officers.

The Mass Action presently are preparing oppositions to BP and Retalix's Demurrer, in which they are claiming the individual plaintiffs do not have any causes of action they can pursue against them.

With respect to the main defendant, BP, the Mass Action attorneys are extremely confident that they will defeat the demurrer. This is based upon the comments made by Judge Berle at numerous court appearances and the assessment of the strengths of the Mass Action legal arguments. Again, the attorneys view Judge Berle as being a very good judge of the Mass Action Case.

Once Judge Berle rules on the demurrers, the attorneys anticipate submitting a "Trial plan," in which they can expeditiously get these cases set for trial. The attorneys want the discovery to be placed on a "fast track," with trial set in 2012. The attorneys are presently in the process of assembling the best evidence for the cases—especially with respect to the core issue of BP's wholesale gasoline pricing which we maintain violates the written agreements and the underlying purpose for the franchise relations.

The Mass Action attorneys are working very closely with the Class Action attorneys in developing this evidence, for the mutual benefit of all of the BP Franchisees.

"Mass Action attorneys are working very closely with the Class Action attorneys in development of evidence."

ARCO Accepts Credit Cards Again NACS Daily

Arco is taking credit cards again. The move comes almost 30 years after the refiner "blew up" its credit card in TV commercials and slashed prices, ushering in a new era of competition at the pump.

Arco has launched its new marketing ploy in Seattle, where it has started offering consumers two-tier pricing, cash or credit. The switch is being promoted in signage at stations and in local Internet ads depicting happy consumers dancing at the islands. A pump banner proclaims, "No more 45 cents fee [on debit cards], hello credit cards." A voiceover notes that Arco now accepts credit cards, concluding with the promise, "Arco, straight up gas."

BP purchased Arco in 2000 for approximately \$28.6 billion but continued its "low-price, no

credit cards" policy. A spokesman for the British oil major says the credit card offer in Seattle is a market test at Arco am/pm stores. "It is a pilot credit card program being offered to dealers on a voluntary basis in the greater Seattle area. The majority of dealers in the pilot geography have signed on for the pilot program," the spokesman said.

There are reports that Arco may shortly expand the new card strategy further south to Los Angeles, and San Diego, but BP officials declined further comment. Los Angeles is Arco's biggest market.

A return to credit cards by Arco could have a major impact on pump prices in western states where the company and Costco often vie for the title of lowest-priced fuel retailer in the mar-

ket, experts say.

"There's no telling what the landscape would be like as to price and volume rankings if Arco is going to accept credit cards market-wide, but such a decision will be the second massive game-changing move in three decades, by the same brand," says petroleum marketing analyst Trilby Lundberg.

"Everyone, from Chevron to Costco, and of course consumers, would be affected if Arco dumps its ultra low-price strategy. Brand loyalty would be transformed in one way or another. Arco's price personality may or may not be revolutionized, but it would be affected not only by its taking credit cards but by the reactions of its competitors," Lundberg added. Lundberg's newsletter, The Lundberg Letter, a fixture in



Credit Card Pilot Continued

industry since 1953, was the first to report on BP/Arco's shift to credit cards.

Arco stopped taking credit cards in April 1982 and cut its dealer price by 3 cts/gal. The move was part of a new marketing strategy to build station volume through lower prices, while saving \$73 million a year in credit card costs, then-Arco senior marketing VP George H. Babikian declared at the time.

Since then, Arco has accepted only cash, debit cards and its pre-paid "Arco PumpPass" plastic at its stations, charging a 45 cents fee for every debit transaction.

In a recent communication to retailers, however, Arco laid out a new pricing strategy for acceptance of credit and debit cards, along with third-party bank cards and fleet cards. The document, titled "West of the Rockies Tiered Pricing Pilot Payment Card Fees," lists the different credit cards retailers

in the pilot program will accept, and the fees they will pay as a result.

Among the new cards and charges is BP's co-branded Visa. Retailers will have to pay a 13 cts per transaction fee for every sale they make on the card, which is the same rate that BP charges branded marketers east of the Rockies. There is no processing fee listed for the BP Visa, but that is not the case for the other cards that Arco stations will accept.

For example, retailers will have to pay a 1.75% processing fee on American Express sales, plus a 12 cts per transaction fee. Third-party MasterCard and Visa sales will carry a 1.75% processing fee and a 12 cts transaction fee. The fee on debit cards will be reduced from 45 cts to .10%, plus a 17 cts transaction fee. Retailers who accept BP's fleet card will pay 74 cts per transaction but no processing fee. Third-party fleet sales will cost up to 1.75% in a processing fee and 12 cts

per transaction.

"The 13 cts transaction fee for the BP Visa alone will add about 1.8% to 2% to Arco's payment processing costs," says a credit card executive with one major oil company. "The average credit card fill-up is 12 gallons, so if dealers decide to pass the fee through at the pump, that fee alone will add about 1 ct/gal to the price. One of the key differentiations with Arco was that they didn't take credit cards. Now they're starting to look more like the rest of us."

When Arco stopped taking credit cards, the industry consensus was that it could lose up to a third of its volume by forcing customers to pay with cash. Arco's Babikian acknowledged the risk in interviews at the time, but the ploy paid off — by 1999, the company's average station throughput in Los Angeles was 49.9% above that of the rest of the station population, according to data published by The Lundberg Letter.

"Retailers will have to pay a 1.75% processing fee on American Express sales, plus a 12 cts per transaction fee."

"The 13 cts transaction fee for the BP Visa alone will add about 1.8% to 2% to Arco's payment processing costs."

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ROI Broken Down in Simple Terms by Amin Salkhi

The service stations industry has had high hurdles to overcome historically, when it comes to financing. Environmental concerns and limited use of property reduces its appeal when it comes to financing. Then of course, the current credit market - like to most small-to-medium size businesses - continues to be extremely difficult, which only makes matters worse for an industry that already faces major challenges.

Regardless if one is seeking to expand or refinance an existing business, the fundamental assessment is how much of a return on investment (ROI) is attainable. Most lenders in the industry use the following parameters:

Income to debt ratio; Loan to value; and Maximum leverage based on earnings before interest, taxes, depreciation, amortization, and rent (EBITDAR).

- Income to debt ratio is simply dividing the net earnings of the site by the monthly debt payment or debt service. It is possible that the lender may deduct personal expenses (mortgages, car payment, living expenses etc.) from earnings before computing this ratio. Historically, this ratio has been 1.25 (\$1.25 of earning for every \$1 of debt service).

This ratio has increased in the current market.

- Loan to value; Refers to the loan amount versus the value of the enterprise. The value is derived from an appraisal. One of the most prominent appraisers for the industry is Hopkins Appraisal. Hopkins. They will assess a total value to the business and property based on a gross profit multiplier. Gross profit is computed by subtracting the cost of good from revenue, which then Hopkins will multiply [the figure] by two to four depending on the region, brand and conditions of the site. From this figure, Hopkins will allocate an appropriate amount towards the business value, furniture fixture and equipment (FF&E) and real estate. However, not all lenders will consider business and FF&E value toward a loan. In order to maximize the value of the investment, gross profit must be maximized (low gasoline margin equates to less profit).

- EBITDAR; Refers to when a lender wants to cap ones total debt levels. The ratio could be as high as five, meaning the lender wants to limit the debt to a maximum of \$5 or even as low as \$3.5 for every \$1 of net earnings.

Ultimately these parameters are different measurements of ROI. NACS data indicates current valuation of five to six times earnings before interest, taxes and amortization (EBITA). Consequently, this means a return on investment that ranges from 16.6% to 20%. In order for the investment to be considered a worthwhile investment for a potential buyer or lender, the site must be able to earn at minimum, a double digit return.

About the author: Amin Salkhi is an SSFA board member and he and his family, operate fourteen service stations in northern California.

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Secretary

Ryan Farsai

Treasurer

The mission of the Service Station Franchisee Association is to give BP ARCO AM/PM Franchisees an Independent credible voice in the BP Global System to protect and preserve franchisee rights, enhancing members investments, profitability and strengthening the brand.



www.onlinessfa.org

Frequently asked Questions

Why join an Independent Franchisee association?

The Answer is simple.

- An association provides a voice for franchisees
- Strength in numbers
- Credibility and legitimacy

What else do I get out of Membership in an association?

- The ability to communicate and exchange information privately with other franchisees
- Formation and operation of buying co-operatives
- Advice from legal counsel on matters of group interest.

How much does this cost?

- Currently only \$125.00 per store per year.

What about the little guys? I only have one store?

- The board members are sensitive to this issue and have adopted resolutions to ensure that small and large franchisees have representation on the board and executive committee.

What are my voting rights as a member?

- The bylaws call for one vote per store. You will have the right to vote for a seat of board member, who will in turn elect officers and committee chairs.

If you are interested in becoming a board member. What can you do?

- If you are interested in becoming board member and can donate your time and expertise, please contact one of the existing board members via email. There are other opportunities to assist, by being on a committee or working on specific task or project . Please let one of the board members know.

How do I contact the Attorneys regarding BP law suit?

Class Action -

Lee Tran & Liang, A Professional Law Corporation

601 S. Figueroa St. | Suite 4025
Los Angeles, California 90017
tel: 213-612-3737 | fax: 213-612-3773 dir: 213-612-8910

Mass Action -

Kabateck Brown Kellner LLP
Engine Company No. 28 Building

644 S. Figueroa Street
Los Angeles, Ca 90017
tel: 213-217-5013
fax: 213-217-5010

Visit our **Web Site** for links:

www.onlinessfa.org



**SERVICE STATION FRANCHISE ASSOCIATION, INC.
MEMBERSHIP FORM**

() **Yes** I want to add my voice and join the Service Station Franchise Association, Inc.

Section I (All franchisees complete Section I, if you are a multi unit owner, attach site numbers on a separate sheet)

Site Contract Number(s) _____ Number of Sites _____

Business Name on Franchise Agreement _____

Name of Franchisee on Franchise Agreement _____

Address: _____

Telephone Number: _____ Cell : _____

Email _____

Signature: _____ Date _____

Section II (only complete if Representative is different than franchisee of record)

Designated Representative:

By signing below, I certify that the Franchisee identified above (or in the case of multiple units, on the attached sheets) have authorized me to speak and vote for it/them with respect to the Service Station Franchise Association..

Name: _____

Address: _____

Telephone Number: _____ Cell : _____

Email _____

Signature: _____ Date _____

Dues: Dues are \$125/per store/per year, make check payable to SSFA, Inc. (Due 30 days after signing)

_____ enclosed is our check for \$_____.

**Mailing Address
SSFA Membership
23261 Cajalco Expressway, Perris California 92571**