

August 25th, 2020 was a sad day for our industry. Ralph Bombardiere, our long time Executive Director of our association passed away peacefully at home.

I personally have known Ralph for over 35 years after meeting him at a Mobil convention in Las Vegas in 1984. In those 35 years he taught me what it takes to “play the game”. Whenever there was a problem in our industry, whether it be a government official bearing down on one of our members or just helping a member with a minor issue Ralph would be there. If he could not rectify the problem over the phone he would drive (sometimes 5-6 hours) to the member’s and/or the government’s location to satisfactorily resolve the situation.

If he was not tackling members problems, he was constantly in Albany lobbying for and against causes that affected our industry. And there were many. I can remember an instance of a fund raiser for one of the State’s most powerful and respected assemblyman. We had gone to this specific fund raiser at the Fort Orange Club to meet and greet this assemblyman...and, of course, present him with a campaign contribution. It was very well attended, and Ralph and I were sitting in the back of the room out of sight minding our own business. In walks the assemblyman. From all the commotion of people trying to greet the assemblyman I told Ralph that he was there, and shouldn’t we get up and approach him? He turned to me and said, “don’t need to, he will find us”. It was not five minutes later that the assemblyman found Ralph and proceeded to have a nice conversation. That was pure Ralph Bombardiere.

I will miss Ralph. I will miss our multi weekly phone conversations. He was a great man, a leader in a complex and diversified industry. I wish I could have learned more.

Bill Adams
President

For those wishing to send condolence cards, they can be sent to his wife Catherine and son Wayne:

Mrs. Catherine Bombardiere
65 Roberts Drive
Staten Island, NY 10306

Wayne Bombardiere
17 Yucca Drive
Staten Island, NY 10312

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September 2020

ATTORNEY'S CORNER

By Larry Culley

Administrative hearings in New York City and in other parts of New York State have been held remotely for the past few months, either by a phone conference call or by emails. However, this hasn't prevented inspectors from such agencies from continuing to make their rounds and issue summonses for perceived violations. By the end of next week I will have had four remote hearings before the N.Y.C. Department of Consumer Affairs in the past two weeks. Three of them are for the sale of tobacco to undercover minors and the fourth is for allegedly engaging in price gouging during a declared emergency (covid-19, of course) by over-charging for face masks. In the City they take very seriously the sale of tobacco to minors. One DCA inspector told me privately that the Department would rather that our members sell heroin to minors than tobacco. A bit of hyperbole to be sure, but it shows which way the wind is blowing. If you lose your tobacco license over this not only will you never get it back at that location, but you could lose your lottery license for a minimum of a year and maybe longer. Some members have told me that the loss of their lottery license would likely put them out of business. **DON' TAKE THAT RISK!** Get tobacco training for your counter staff. Have your staff sign an acknowledgment that they will be terminated if they sell tobacco or alcohol to minors. Have friends with teenage children stop by at your store occasionally to secretly test your counter staff to see if they will sell to a minor. The British used to hang an admiral now and then "to encourage the others". Fire any counter staff who sell to minors to encourage the others not to break this rule. These are valuable licenses at risk. Don't lose them!

Regarding alleged price gouging in N.Y.C., the key is that during a declared emergency, whether covid, a deadly storm or blizzard, a power outage during a heatwave, whatever, **DO NOT** increase your prices for critical supplies by 10% or more over the price before the declared emergency took effect. Generally, that should keep you safe from such charges. They are out there looking for violators, so be advised.

The contents of this column are not intended as legal advice. I give no legal advice without an appointment and interview with a client

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Safety restraints

Are child safety seats and child restraint systems required in New York State? Yes. New York State law requires that

- all children under the age of 4 ride in child safety seats
- all children ride in child restraint systems until their 8th birthday

Safety seats and child restraint systems must be certified according to Federal Motor Vehicles Safety Standard 213. Follow the instructions of the manufacturer of the seat or system, and make sure you install and use the seat or system correctly. The Governor's Traffic Safety Committee website has a list of permanent child safety seat fitting stations in NY State.

How do I select the correct child safety seat or child restraint system?

To select the correct protection for your child, carefully read the recommendations of child safety seat or child restraint system manufacturers. The recommendations tell you what age weight and height a child can be to use the seat or system. The recommendations are normally printed on the outside of the package.

- An appropriate child safety restraint system
 - is required for all children until their 8th birthday
 - must meet the size and weight requirements for the child based on the Federal requirements and the recommendations of the manufacturer
 - can be a child safety seat, a harness, a vest or a booster seat attached with the vehicle seat belt system, but not the vehicle seat belt alone
 - should not be used in the front seat of the vehicle
- These examples can help you to select the correct child safety seat

Infant seats are normally for infants that weigh approximately 22 pounds or less, are 25 inches or less in length. Always place the seat in the back seat of the vehicle and make sure the child safety seat faces rear of the vehicle. Never put an infant in the front seat of a vehicle that has a passenger-side air bag.

Convertible child safety seats are normally for infants or toddlers that weigh approximately 40 pounds or less. For infants, face these seats toward the rear of the vehicle. Follow manufacturer instructions to adjust the seat as the child grows. For the best possible protection, the National Highway Transportation Safety Administration (NHTSA) recommends that a child continue to face the rear for as long as possible up to the weight and height limits specified by the seat manufacturer. For toddlers, you can change a convertible seat to face the front of the vehicle.

Booster seats are for children who have outgrown convertible or toddler seats. Booster seats are for children who are 4 to eight 8 old, weigh 40 to 80 pounds, and are less than 4 feet, 9 inches in height. You can use a booster seat until an adult seat belt correctly fits the child without use of the booster seat. Always use both the shoulder and lap belts with a booster seat. Never use only the lap belt with a booster seat.

Built-in child seats are available with some vehicle models. Built-in child seats fold away from the standard car seats. Do not use these seats for infants.

Always read the instructions and the information provided in the vehicle owner manual about the use of child safety seats or child restraint systems. Make sure you install and use the seat or system correctly at all times. Never use an infant seat in the front seat of a vehicle that has a passenger-side air bag. Make sure that other passengers use their seat belts.

Can I use a child safety seat in a car with air bags?

It is not illegal under NY State law for a child passenger to ride in the front seat of a vehicle that has a passenger air bag, but it is dangerous. Recent studies show that air bags can cause serious or fatal injuries to infants, children or small adults that sit in the passenger-side front seat. It is also normally safer for a child of any age to ride in the back seat of any vehicle.

For the best child passenger protection in your vehicle

- Never put a child safety seat that faces the rear of the vehicle in the front seat of a vehicle if the vehicle has a passenger-side air bag.
- Do not put small children in the front seat of vehicle that has an air bag. Put a child that does not use a safety seat and who is less than 5 feet in height in the back seat.
- If a child must ride in the front seat, make sure the car seat is installed as far back as possible. Fasten the child securely in the child safety seat or lap and shoulder belts. An air bag that opens suddenly can cause a serious injury to your infant or young child.
- Air bags, used with seat belts, provide the best protection for older children and adults during an accident.
- Remember that the back seat is the safest location for children to ride. Read more tips on the correct use of safety seats and child restraint systems.

Visit the Governor's Traffic Safety Committee website for more information on occupant protection.

What is the seat belt law in New York State?

New York State law requires all front seat passengers to wear seat belts. Children under the age of 16 must wear seat belts when they are in the front seat or the back seat. Children under the age of four must ride in safety seats. See the information above about safety restraint systems required for children until their 8th birthday.

The penalty for a seat belt or car seat violation is a fine of up to \$50. If the violation is for a person under the age of 16, the driver receives a maximum fine of \$100 and three driver violation points upon conviction.

Extension of Expired Documents

All driver licenses, permits, non-driver identification cards and vehicle registrations that expired March 1, 2020 or after and vehicle inspections that expired March 31 or after were previously extended and continue to be extended by Executive Order. In addition, the federal REAL ID enforcement deadline has been extended until October 1, 2021.

Credit Card Swipe Fees Continue to Thwart Merchants

Cash is becoming a rarity as shoppers increasingly rely on credit cards, apps and online purchases during the current pandemic. That's a growing problem for some retailers, such as Bump 'n Grind, an independent coffee and vinyl record shop, in Silver Spring, Maryland, according to the Wall Street Journal.

The shop, which roasts its own coffee beans, spent less on green beans last year (\$12,827) than on the card-processing fees (\$18,645) it pays to the financial institutions that enable cashless payments.

"All you know is at the end of the month they're pulling out X thousands of dollars," owner David Fogel told the Journal.

Bump 'n Grind closed for almost two months during the coronavirus pandemic, but Fogel continued to roast and sell

beans. The coffee shop is now open for takeout only, but unless Fogel can renegotiate his rent, he may shut his store to focus on wholesale coffee beans.

Bump 'n Grind's plight is an example of what is going on in the largely hidden interchange economy. The fees are set by the major card networks, and merchants pay the fees to banks, driving the payments system and pushing up retail prices.

Last year, cards represented 73.2% of sales transactions at convenience stores. During the pandemic, cash sales have been down—which means more people are paying with debit or credit cards. A Consumer Survey found that the percentage of customers paying for gas by cash dropped from 21% to 14%, which may be the lowest it could go given how many consumers are shying away from handling cash in the current climate.

When a customer makes a credit card purchase, the merchant often remits 2-3% of the price to the bank that issued the card. These are swipe fees, and the bank may return some of the fee to the cardholder in the form of rewards.

Because retailers' profit margins are slim, they pass some of the fees to customers through higher prices, according to the National Retail Federation. Customers typically pay the same price whether they use cash or a card. Economists say this equates to a transfer from users of cash to users of cards. On average a cash-using household pays \$149 a year, and a card-using household receives \$1,133, according to a 2010 study from the Federal Reserve Bank of Boston.

Most U.S. households that have credit cards have a rewards card, even those earning less than \$20,000 a year, according to Greg Weed, director of card-performance research at Phoenix Marketing International, which tracks the credit-card market.

Merchants paid issuers \$53.6 billion in Visa and Mastercard credit-card interchange fees in 2019, more than double what they paid in 2012, according to the Nilson Report, a trade publication. The growth reflects two things. First, credit-card use rose in recent years: Americans made 67% more credit-card payments in 2018 than in 2012, according to the Federal Reserve. Second, banks rolled out more cards with higher swipe fees to pay more rewards.

To help support the rewards programs, banks also charge higher rates. Average annual percentage rates for credit cards have risen more for those with the lowest credit scores by about 4.2 percentage points since 2010, reports WalletHub.com, a consumer-finance website. That's compared with about 1.3 points for those with the highest credit scores. Merchants have battled card companies over swipe fees for decades and point to the impact on low-income consumers to help make their case.

Card networks bar merchants from accepting some but not all of their credit cards. A merchant who accepts Visa credit cards can't turn down premium cards that are often carried by wealthier consumers and have higher swipe fees. NACS is a plaintiff in the long-running merchant litigation against the card networks challenging their "honor all cards"

rule and other practices on the grounds of antitrust violations. Roughly 63 merchants, including Amazon, Lowes, The Gap and Starbucks are suing Visa, Mastercard and card-issuing banks, claiming they collude to avoid competing over interchange fees. The merchants allege card fees are a hidden tax, especially for lower-income consumers who are more likely to pay with cash.

Merchants want the freedom to select which cards they will accept and to negotiate swipe fees directly with card-issuing banks rather than Visa and Mastercard. But card companies argue this would confuse consumers. They say the fees help cover costs such as fraud, innovation, reissuing cards with updated features and losses on unpaid cardholder bills. They add that cards help avoid cash-related costs including theft.

Large merchants fare better in the interchange economy than small. Costco switched its co-branded cards in the U.S. from American Express to Visa in part because Visa lowered Costco's interchange fees on all Visa-branded credit cards close to zero, according to people familiar with the matter. Small businesses lack that negotiating power. Swipe fees are especially harmful to small businesses, which account for more than 60% of the convenience retailing industry.

As reported in NACS Daily, Visa and Mastercard planned to increase interchange fees for many merchants starting next month, with the changes in some cases hitting small businesses the hardest. Visa and Mastercard have since said they've delayed those changes until next year. While some merchants bypass cards entirely, that has become more challenging during the pandemic when both consumers and retailers try to avoid touching cash.

Governments in many developed countries, including Australia and much of Europe, have capped credit-card interchange fees. A week ago, NACS Daily reported that in a landmark ruling the U.K. Supreme Court has supported a lower court's ruling that credit card firms charge excessive fees. The decision will allow Sainsbury's Supermarkets, along with other retailers, to proceed with a 2016 suit that seeks damages based on claims in which the fees violated U.K. anti-competitive regulations. The U.S. only has caps on debit-card fees.

"Banks have no incentive to curtail [credit-card spending], because they make money on it ... so they don't have an incentive to prevent people from using credit cards," said Joanna Stavins, an economist at the Boston Fed.

Will Electric Vehicles Kill Liquid Fuels?

The death of liquid fuels is greatly exaggerated—that's the conclusion of Stephen Jones, global head of oil products for Argus Media on this week's Convenience Matters podcast, "Are Liquid Fuels Dead?"

"Overall, the health in the refining sector has been pretty strong," said Jones. "The U.S. Gulf coast [has been strong] in particular because of cheap operating costs. ... That export market can't be understated, ... which has been on the rise."

There has been a long-term global change in the transportation sector. "The U.S. refinery industry has been

extraordinarily adaptable to changing market conditions, as well as to the regulatory environment,” Jones said. He sees the U.S. refiners as being willing to make adjustments to meet these changes head on.

“Renewable fuel requirements are growing both in terms of regulation and cost-competitiveness in the outlook. There’s probably not a single U.S. refiner who’s not already advancing plans to invest in co-processing renewable feed stocks directly in the refining system itself,” Jones pointed out.

“The use of cars continues to increase despite the efficiency improvements,” Jones said. “When you look at the actual miles driven, ... the need for mobility continues to rise. You have some threat of market share with [electric vehicles] but it’s small and [in] its early years. It’s decades away from being a large swath of taking away liquid fuels market share.”

Questions and Answers – EMV Alternatives

Q: By April 2021, retailers must upgrade their dispenser and POS equipment or be held liable for any fraudulent activity that occurs because the dispenser has not been upgraded. But for many retailers upgrading to EMV is a nonstarter since the switch can be expensive, tedious and painful. What options are out there for these retailers?

A: Although they have dominated the market for decades, Outdoor Payment Terminals (OPTs) manufactured and distributed by big name dispenser companies are not the most convenient or cost-effective solutions available today. These proprietary offerings, which are built and sold as a bundled unit including hydraulics and the OPT, are expensive, difficult to install, and become outdated quickly as payment technology progresses.

Instead, retailers should look to third-party OPT providers. These providers have decades of experience in the payments industry and with EMV globally. They utilize retrofit kits, which install OPTs into a site’s working pumps of any model. The installation process is significantly faster, requires no permits, digging up concrete or rewiring. The cost is substantially less, with rental models to alleviate the burden of a huge upfront investment on EMV also available. Rental models may even be all-inclusive, meaning maintenance and warranty are covered—with no more “surprise” invoices for broken parts or servicing.

Q: And haven’t Europe and Asia solved for de-bundling and outdoor EMV already?

A: Yes. Believe it or not the U.S. is late to catch up when it comes to outdoor EMV. Asia and Malaysia introduced EMV in 2004, and the U.K. in 2013. Invenco has worked on EMV installs in these countries as far back as 2005, yielding significantly lower fraud since implementation. When it comes to OPT purchasing, almost 100% of the U.K. market favors a de-bundled approach. The Malaysian and Asian markets prefer the same, with more retailers moving away from purchasing OPTs from pump manufacturers and instead buying from third-party providers. In Malaysia and Singapore, Invenco worked on an EMV installation with Shell, which illustrated the ease of retrofit kit installation:

1,000 sites were upgraded to EMV over the course of nine months.

Q: Many retailers believe that once they make the investment in EMV, they’ll need to do it again in a few years when the environment changes again. How can retailers guard against future disruption?

A: This is a valid concern as EMV and PCI regulations update on a regular basis. The first step to future-proofing a site is to purchase your OPTs from a payments company. Payments companies are continuously tracking and developing solutions for the industry’s ever-changing regulations and consumer trends. When compliance regulations change, payments companies can distribute software updates via the cloud with no service reps needed on site. Within the rental model previously mentioned, OPT compliance is managed by the provider, relieving the retailer of the responsibility to track compliance regulations. This also relates back to the retrofit kit model. The Shell sites that were upgraded to EMV have since utilized three versions of Invenco’s all-in-one OPT (the G5, G6-100 and G6-300) since their initial installation, all without ever getting new pumps.

Q: Adjacent industries, such as Quick-Service Restaurants (QSRs), have benefitted from a more open system. Can we learn anything from them?

A: Absolutely. Choosing a provider with an open system (or open API) creates more opportunity for what retailers can do with their OPTs and makes establishing functionalities significantly easier. Innovative third parties can implement features like media, food ordering and loyalty, which plug into the open architecture. An open API protects against future changes as functionality can be added or updated as the retail landscape progresses. An example of this was seen with the COVID-19 epidemic when many sites wanted to implement curbside pickup of store items. In the past, functionality to order store items may only have available via the site’s Point of Sale (POS) system, but with an open API OPT, an application could be developed and implemented so that a customer could order those food items directly from the OPT.

Q: What else can retailers do to ensure they stay engaged and current with EMV, standards and other critical retail issues?

A: Industry organizations that make payments a priority are important for retailers to involve themselves with. Conexus is a non-profit, member-driven organization for the convenience store and retail fuel marketing industry which provides insightful resources on the forefront of the EMV and payments space. Engaging with organizations like Conexus (www.conexus.org) will keep retailers in the know for coming trends like contactless payment and other consumer tendencies. Invenco also has a series of resources on our blog at www.invenco.com/news, as well as a Convenience Matters podcast recently co-hosted with NACS (www.conveniencematters.com titled “#230 EMV Upgrades Made Easier”) which provide helpful insights into EMV and OPT topics.

Work Hours For Minors

The number of hours a minor may work per day and per week depends upon the youth's age, the type of work being performed, and whether school is in session. New York State has one of the most stringent child labor laws in the country, which limits the number of hours that minors under 18 years of age may work when school is in session. It requires that 16 and 17 year olds may not work past 10 PM on the night before a school day without permission from a parent and a certificate of satisfactory academic standing from their school. Minors may not work during the hours when they are required to attend school. When school is in session, generally from September-June, minors 14 and 15 years old may not work for:

- More than three hours on any school day
- More than eight hours on a non-school day (Saturday, Sunday and holidays)
- More than 18 hours in any week
- More than six days in any week.

However, 14 or 15 year old minors who are employed as part of a supervised work study or work experience program that is approved by the Commissioner of Education may work three hours on a school day and 23 hours a week, instead of three hours a day and 18 hours a week. When school is in session, minors 16 and 17 years old enrolled in a day school, other than a part-time or continuation school, may not work for:

- More than four hours on any day preceding a school day (Monday - Thursday)
- More than eight hours on Friday, Saturday, Sunday or holiday
- More than 28 hours in any week
- More than six days in any week.

However, students enrolled in a cooperative work experience program approved by the Department of Education may be employed up to a maximum of six hours on a day preceding a school day other than a Sunday or a holiday if these hours are in conjunction with the program. Any hours worked in such program shall be included when calculating the number of hours worked for the four-hour maximum.

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