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THE OFFICIAL  
PUBLICATION OF THE  
ALABAMA RETAIL  
ASSOCIATION

*THE VOICE  
of Retailing in Alabama*



ALABAMA RETAIL  
ASSOCIATION

## ALABAMA RETAIL ASSOCIATION NAMES 2005 "RETAILERS OF THE YEAR"

The Alabama Retail Association recognized ten outstanding retailers from across the state on Tuesday, August 9, with the seventh annual "Retailer of the Year" Awards. The presentation was made at the Summit Club in Birmingham.

The Gold Award in the category "Annual Sales \$1 Million and Under," went to **Clayton Sherrod of Chef Clayton's Food Systems, Inc.**, in Birmingham. Connie Blalock of Alagasco and Sara Hamlin of The Greater Birmingham Convention & Visitors Bureau nominated Chef Clayton. There was a tie for the Silver Award in this category. One Silver Award was presented to **Karen Fountain of Kaleidoscope, Inc., DBA Think Toys**, in Anniston. Ms. Fountain was nominated by Linda Hearn of the Calhoun County Chamber of Commerce. Another Silver Award was presented to **Wilson W. McManus, II, DVM of Valley Animal Hospital & Pet Resort, SE, PC** in Huntsville. He was nominated by John Harris of InsureSouth. **Pat Adamson of Pat's Petals Garden Center** in Ozark received the Bronze Award. Jeanette Reeves of the Ozark Area Chamber of Commerce nominated Ms. Adamson.

In the category "Annual Sales \$1-5 Million," the Gold Award went to **David Carrington of RacingUSA.com** in Pelham. Mr. Carrington was nominated by Rosemary Chesser of RacingUSA.com. The Silver Award was presented to **Gus Pappas of Norton's Florist, Inc.**, in Birmingham. Mr. Pappas was nominated by Tricia Ford of the Mountain Brook Chamber of Commerce. **Tommy Wagner of Wagner's Tuscaloosa, Inc., dba The Athlete's Foot**, received the Bronze Award. Delbert Reed of McFarland Mall nominated Mr. Wagner.

In the category "Annual Sales Over \$5 Million," the Gold Award was presented to

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*Alabama Supreme Court Justice Drayton Nabers addressed the gathered group of winners, guests and ARA Board members.*

# THE VOICE

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## FROM THE PRESIDENT

CHARLES MCDONALD



With every passing year, Internet and catalog sales grow by BILLIONS of dollars. For Alabama, this translates to hundreds of millions of dollars in uncollected sales taxes. For retailers, it means lower sales and a lower bottom line.

Other states are moving closer to being able to collect sales taxes from remote sellers. Those that have joined the Streamlined Sales and Use Tax Agreement's governing board in July have simplified their sales tax laws and brought them into compliance with provisions of the Streamlined Agreement. (The Agreement is the result of a nationwide effort by 43 states, including Alabama, to draft a law to radically simplify sales and use tax collection.)

Twelve states have adopted the Agreement (law), and six soon will with amendments to their tax code, which triggers a Web-based centralized point of sales tax registration for the member states, certification of software to assist in sales tax collection, and an amnesty period for sellers that have not been contacted by member states for audit. The simplified system reduces the number of sales tax rates, brings uniformity to definitions of items in the sales tax base, significantly reduces the paperwork burden on retailers, and incorporates new technology to modernize many administrative procedures.

But there will be no legal obligation to collect online sales taxes until Congress passes a law allowing the qualifying states to do so. Still, as of October 1, retailers may voluntarily agree to collect taxes for remote sales originating in any of the 12 states that are full members, and the states expect some of these companies may come forward and volunteer to collect taxes under the simplified system because of the indemnity provision.

In the last edition of *THE VOICE*, you were told of a task force created by a resolution sponsored by Rep. Betty Carol Graham (D-Alexander City) to study all aspects of the Streamlined Sales Tax Project and the loss of tax revenue due to Internet and catalog sales. That task force met with all interested parties last month to determine if and how Alabama could move towards becoming a participating state under the Streamlined Agreement.

Local government groups (among them the League of Municipalities and the County

Commissioners Association) feel strongly that Alabama should wait until Congress acts before changing Alabama's sales tax laws to bring them into compliance with the Agreement. These groups are now allowed to administer and collect their own sales taxes, something not allowed under the Agreement. They have dug their heels in and refuse to give up this power, even with the golden carrot of increased sales tax revenue held before them. Although I do not agree with their philosophy, they have proven that they have the power to hold any legislation on this subject hostage.

Rep. Graham has asked the Legislative Fiscal Office and others to work to prepare legislation to bring Alabama into compliance with the Agreement. When Congress does act, Rep. Graham will immediately introduce her bill.

Rep. Graham and Speaker Seth Hammett are to be commended for their continued commitment to this idea. But they need your help! We must put pressure on Congress to pass enabling legislation. Bickering on unrelated subjects has thus far kept a Simplified Sales Tax bill from even being introduced this year! Please take a moment to FAX a letter to your Congressman and both Senators telling them how Internet sales have affected your business. This is a tax **FAIRNESS** issue.

Without your continued commitment to this issue, the status quo will remain and Alabama's tax base will further erode. It is a lose-lose situation. PLEASE DO YOUR PART TO MAKE A DIFFERENCE.

**FAX**

Sen. Richard Shelby	202-224-3416
Sen. Jeff Sessions	202-224-3149
Cong. Jo Bonner	202-225-0562
Cong. Terry Everett	202-225-8913
Cong. Mike Rogers	202-226-8485
Cong. Robert Aderholt	202-225-5587
Cong. Bud Cramer	202-225-4392
Cong. Spencer Bachus	202-225-2082
Cong. Artur Davis	202-226-9567

# THE RETIREE DRUG SUBSIDY: WHY EMPLOYERS AND UNION PLAN SPONSORS SHOULD CONSIDER IT

Tara Shaver, State Director of the State Health Insurance assistance Program

The Medicare Modernization Act (MMA) is changing the way seniors get prescription drug coverage, even for those who are already covered by an employer or retiree drug plan. Everyone with Medicare will be eligible for this benefit. Seniors without prescription drug coverage should enroll in a Medicare prescription drug plan. But for those who are already covered by high quality plans, Medicare can support those plans – not replace them.

Medicare offers a number of options to encourage employers and unions to continue providing high quality prescription drug coverage. The retiree drug subsidy is one of these options. For plans that are, on average, at least as good as a Medicare prescription drug plan (actuarially equivalent), sponsors have full flexibility in plan design. This means most plan sponsors can lower the cost of covering Medicare-eligible retirees while maintaining their current high quality, comprehensive coverage.

Plan sponsors that choose to participate in the retiree drug subsidy program will receive \$668 on average in annual per retiree subsidy payments. For plan sponsors who pay taxes, we estimate that the \$668 tax-free retiree drug subsidy would equal about \$891 of taxable income for employers with a marginal tax rate of 25 percent, and about \$1,028 of taxable income for employers with a 35 percent rate.

Five easy steps to receive the retiree drug subsidy process:

**Step One:** Submit (electronically or otherwise) an application by September 30, 2005, to qualify for the subsidy, which begins January 1, 2006. If you decide to apply later, your application is due by September 30 of each year, or, for non-calendar year plans, 90 days before the beginning of the plan year.

**Step Two:** Attach to the application an actuary's attestation that your plan meets the MMA's actuarial equivalence standard. Actuaries have considerable flexibility in the use of simplified calculations, treatment of multiple benefit options, and allocation of premiums between drug and non-drug coverage.

**Step Three:** Certify that the creditable coverage status of the plan has or will be disclosed to plan participants and CMS. CMS has posted guidance, including sample language, on how to provide these disclosures.

**Step Four:** Electronically submit and periodically update enrollment information about retirees and dependents. Entering into a voluntary data sharing agreement with CMS makes this even easier. More information about these agreements is online at [www.cms.hhs.gov/medicare/cob](http://www.cms.hhs.gov/medicare/cob).

**Step Five:** Electronically submit aggregate data about drug costs incurred and reconcile costs at year-end. Plan sponsors can choose whether to submit data and receive payments monthly, quarterly, or annually.

The retiree drug subsidy is only one of several options available to plan sponsors. For example, there are several ways to supplement the standard Medicare drug benefit:

1. They can set up their own supplemental plans and coordinate benefits with Part D coverage, which their retirees would enroll in. This would provide cost sharing similar to how employers currently supplement the standard Medicare Part A and B benefits.

2. They can pay a Part D plan for enhanced coverage. CMS offers waivers for these special arrangements, which would allow employers to provide more flexible benefits and to limit enrollment to their retirees.

3. Regardless of whether they choose to provide additional coverage that supple-

ments the standard Medicare prescription drug coverage, plan sponsors can also provide extra help by assisting their retirees in paying for some or all of their Part D beneficiary premiums.

Plan sponsors that choose to offer comprehensive drug coverage by wrapping around or enhancing Part D will save at least \$900 on average per retiree due to the federal subsidy of a significant portion of Part D costs.

All of the options available to employers and unions under Part D help reduce sponsors' prescription drug coverage costs. For more information, visit [rds.cms.hhs.gov](http://rds.cms.hhs.gov) or [www.cms.hhs.gov/medicarereform/pdbmalemployer.asp](http://www.cms.hhs.gov/medicarereform/pdbmalemployer.asp). To be notified by email about CMS news and activities of interest to employer and union plan sponsors, subscribe to the MMA employer/union issues listserv at [www.cms.hhs.gov/maillinglists](http://www.cms.hhs.gov/maillinglists).

Alabama's State Health Insurance assistance Program (SHIP) provides free, unbiased counseling through 13 Area Agencies on Aging. The SHIP program is paid for by Medicare through the Alabama Department of Senior Services. To learn more about the new Medicare prescription drug coverage, contact the Alabama Department of Senior Services at (334) 242-5743. Local speakers and trainers are available and volunteers are greatly needed. Information is also available by calling 1-800-MEDICARE or visiting [www.medicare.gov](http://www.medicare.gov).



Alison Wingate, ARA Director of Governmental and Public Affairs (second from right), is pictured with U.S. Secretary of Health and Human Services Mike Leavitt (third from left) at a Medicare meeting in Birmingham.



# 2005 RETAILERS OF THE YEAR

*(Continued from page 1)*

**Earnest Dean** of **Greenville Cash & Carry, Inc., Andalusia Cash & Carry, Inc., and Luverne Cash & Carry.** Carol Lee of the Greenville Area Chamber of Commerce nominated Mr. Dean. The Silver Award was presented to **Shane R. Wilks** and **Craig G. Wilks** of **Wilks Tire and Battery Services Inc.,** in Albertville. Jennifer Palmer of the Albertville Chamber of Commerce made their nomination. **Deke Damson** and **Bruce Park** of **Jerry Damson Automotive Group** in Huntsville received the Bronze Award. They were nominated by Ray Johnson of the Huntsville Times.

“This was an exciting day for us,” said Charles McDonald, President of the Alabama Retail Association. “We have been working on this for some time and it is an honor to be able to recognize such an outstanding group of retailers. They are a credit to this profession and an asset to their communities.”

*Annual Sales \$5 Million and Over – Shown below (left to right): Shane and Craig Wilks, Wilks Tire and Battery Service, Inc.; Deke Damson and Bruce Park, Jerry Damson Automotive Group; Earnest Dean, Greenville Cash & Carry, Inc., Andalusia Cash & Carry, Inc., and Luverne Cash & Carry.*



*Annual Sales \$1 Million and Under – Shown (left to right): Pat Adamson, Pat’s Petals Garden Center; Karen Fountain, Kaleidoscope, Inc., DBA Think Toys; Clayton Sherrod, Chef Clayton’s Food Systems, Inc.; Wilson W. McManus, II, DVM, Valley Animal Hospital & Pet Resort, SE, PC.*



*Annual Sales \$1-5 Million – Shown (left to right): David Carrington, RacingUSA.com; Gus Pappas, Norton’s Florist, Inc.; Tommy Wagner, Wagner’s Tuscaloosa, Inc., dba The Athlete’s Foot.*



# 2005 ALABAMA CENTENNIAL RETAILERS ANNOUNCED

On Tuesday, August 9, the Alabama Retail Association recognized four Alabama Centennial Retailers—retailers with 100 or more years in business in Alabama. Alabama Centennial Retailers were honored at the Alabama Retailer of the Year Awards Luncheon held at the Summit Club in Birmingham. Each received a bronze plaque for the outside of the business and a certificate suitable for display inside.

## HONORED WERE:

### **Badcock Home Furniture & more**

Badcock Home Furniture & more was founded in 1904 by Henry S. Badcock in Mulberry, Florida. Today it is a home furnishings store with more than 320 locations throughout the Southeast. The founder is the great-grandfather of one of the current owners, Wogan S. Badcock, III, an ARA Board Member. Today, the Badcock Family still owns and operates Badcock Home Furniture and more.

In 1920, Henry's 22-year-old son, Wogan Stanhope Badcock, Sr., bought the Mulberry store for \$9,000. He expanded sales by consigning merchandise to area collectors who began selling from trucks along their routes. Soon, some collectors acquired buildings to display their merchandise. This was the start of Badcock's unique system of dealer-owned-and-operated stores that continue to flourish today.

It was originally known as Badcock Home Furniture, but in 2000 they developed the "Badcock Home Furniture and more" concept which included a new product line of more than 4,000 items; a brighter, more spacious store display; and a new logo. While the philosophy "Badcock will treat you right" stays the same, the new concept was introduced to better serve Badcock's existing customers and to appeal to a broader, younger customer base.

### **Clayton Drug Company**

Clayton Drug Company was founded in 1903 by Lige Lingo and Lamar Jennings in Clayton. Today it continues to operate as a retail drug store and gift shop owned by Representative William M. "Billy" Beasley.

Merchandise in the earlier years was primarily over-the-counter medicines, and ten prescriptions a day was considered a large number. Pharmacists compounded most of the prescriptions in the store. Today prescriptive medicines make up more than 90% of the inventory, and the medicine comes from manufacturers. The professional services provided by Clayton Drug Company have remained their trademark to their loyal patrons.

### **G. May & Sons Furniture**

G. May & Sons Furniture was founded by Gerson May in 1905 in Dora. Today it is a retail furniture store that operates two stores in Jasper.

Over a period of three generations of ownership, this company has gone from a horse and buggy operation selling housewares, clothing, and groceries, to a retailer of furniture, appliances, electronics and floorcovering. Their policy has always been "Quality, Service, and Courtesy" to all of their customers. G. May & Sons Furniture is owned by Gerson May, grandson of founder.

### **Robertson's Garage**

Robertson's Garage was founded by John Robertson in 1890 in Cragford. Today it is a transportation repair store that continues to operate in Cragford.

As transportation has changed, so has the business. It began as a blacksmith shop that shod horses and worked on wagons. The business took on its current name after WWI when John's son, R. B. Robertson, began working on automobiles. In 1950, Buster Robertson took over the business and today it is owned by his son, Larry Robertson.

"For businesses to survive and thrive despite the dramatic changes of the past century, is a remarkable achievement," said ARA President Charles McDonald. "It is fitting to celebrate their enduring contributions to their communities in Alabama."

The Alabama Retail Association plans to present awards annually to additional Centennial Retailers. To notify ARA of a retail business that has been in operation for 100 years or more, please contact Alison Wingate at (800) 239-5423 or [awingate@alabamaretail.org](mailto:awingate@alabamaretail.org).



*Shown (left to right): Rep. Billy Beasley, Clayton Drug Company; Jeff Baxter (for Wogan S. Badcock, III), Badcock Home Furniture and more; Larry D. Robertson, Robertson's Garage; Gerson May, G. May & Sons Furniture.*



# AN EMPLOYER'S GUIDE TO ALABAMA'S WORKERS' COMPENSATION RETALIATORY DISCHARGE STATUTE

Richard I. Lehr, Esq., Lehr Middlebrooks Price & Vreeland, P.C.

The rule is well settled in Alabama that an employee contract at will may be terminated by either party – with or without cause or justification – for a good reason, a wrong reason, or no reason at all. However, one exception to this general rule of at-will employment is contained in a 1985 amendment to the Alabama Workers' Compensation Act, Ala. Code 1975, § 25-5-11.1, which provides: "No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter..."

Although the text of the statute does not appear to leave much room for debate, we all know that the law rarely means exactly what it says. On top of that, when it was enacted in 1985, section 25-5-11.1 was an entirely new cause of action in Alabama and, thus, employers and their attorneys did not have the benefit of case law to aid them in their compliance efforts. Still worse, the legislature did not define any of the terms in the statute. Now with twenty years of litigation behind us and a good bit of creative judicial interpretation arising out of that litigation, employers have at least some guidance on what this statute *really* means.

## What elements must a plaintiff prove to succeed on a claim?

To succeed on a retaliatory discharge claim under Alabama's workers' compensation statute, the plaintiff must prove each of the following elements: (1) an employment relationship, (2) an on-the-job injury, (3) knowledge on the part of the employer of an on-the-job injury, and (4) subsequent termination of employment based "solely"

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*No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter.*

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upon the employee's on-the-job injury and the filing of a workers' compensation claim.

## What does "solely" mean?

A retaliatory discharge claim brought under section 25-5-11.1 is limited to cases where the employee is discharged "solely" for filing an action to exercise rights under the Workers' Compensation Act. The Alabama Supreme Court holds that "solely" really means

"solely." That is, an employee cannot succeed on a retaliatory discharge claim if the decision to terminate the plaintiff's employment was motivated by *any* factor other than the fact that the employee filed a workers' compensation claim prior to the discharge of his employment. Examples of "any factor" include performance, attitude, attendance and behavior, such as violation of company policy or insubordination.

## What does "action" mean?

Although the statute plainly states that an employee must be terminated subsequent to filing an "action," which legal dictionaries define to mean a "lawsuit," the Alabama Supreme Court has twice held (and the Legislature has accepted) that it really means "filing a workers' compensation claim." The court has also clarified that "filing a workers' compensation claim" means little more than requesting workers' compensation benefits from the employer. Thus, to show that s/he filed an "action" for workers' compensation benefits, the plaintiff

need only show that s/he sought workers' compensation benefits.

## Can you fire an employee who has filed a workers' compensation claim?

Yes. Nothing in the statute immunizes an employee who has filed a claim for workers' compensation benefits from being disciplined, suspended, reprimanded, or terminated for a legitimate, non-retaliatory reason; the Act only requires that termination cannot occur in retaliation for filing a claim for workers' compensation benefits. However, a stated reason, even if otherwise legitimate, is no defense if the underlying facts surrounding the termination indicate that: (a) the stated reason has been applied in a discriminatory manner to employees who have filed workers' compensation claims, (b) the stated reason conflicts with express company policy on grounds for discharge, or (c) the employer has disavowed the stated reason or has otherwise acknowledged its pretextual status.

## Timing alone is not enough, is it?

No, proximity between the injury and discharge is not sufficient, by itself, to succeed on a retaliation claim under Alabama's workers' compensation statute. However, the closer in time the discharge is to the employee's exercise of rights under the Workers' Compensation Act, the less proof the employee will need to establish causation.

## What if the decision maker was unaware of the claim?

It is not enough that someone in the company knew about the plaintiff's workers' compensation claim. The plaintiff must prove that the person(s) making the decision to terminate his employment had knowledge of his workers' compensation claim (or that the decision maker(s) were acting upon the direction of a person with knowledge in making the decision). Also, it is not enough for the employee to show that the decision maker(s) knew that the employee was injured on the job; the plaintiff must prove that the decision maker(s) knew that the plaintiff filed a workers' compensation claim.

## What if the employee is not terminated, can s/he still file a claim?

Yes. While the Act specifically prohibits termination of employment, it may apply to other employment actions if a constructive discharge is found or if the employment action is substantial enough to constitute a partial termination, such as a significant reduction in pay.

## Does the statute require reasonable accommodation?

No, Alabama's workers' compensation retaliatory discharge statute does not require an employer to create a job specifically designed for an injured employee, nor does it require an employer to provide the employee with special accommodations to allow the employee to perform a job. However, if an employer creates a light duty position for other injured employees, and no such position is offered to an employee whose employment ends because s/he is unable to perform the employee's original job functions after s/he filed a workers' compensation claim, the employer must be prepared to show that retaliation for filing a workers' compensation claim was not the reason for the denial of light duty work.

## What if the employee is not ready, willing and able to return to work, can s/he still sue for retaliatory discharge?

Yes, even an employee who is physically unable to return to work

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## EMPLOYER'S GUIDE *(Continued from page 6)*

after filing a workers' compensation claim can succeed on a claim under Alabama's workers' compensation retaliatory discharge statute. Although an employee who is not willing and able to return to work after an on the job injury may proceed with a retaliatory discharge claim, the fact the s/he is unable to work will limit the amount of damages s/he can recover for lost wages and it will make it harder for the plaintiff to prove causation. Practically speaking the limitation on damages is of little consequence since punitive damages are typically the largest component of damages in workers' compensation retaliatory discharge lawsuits. Thus, employers should approach termination

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*Alabama's workers' compensation retaliatory discharge statute does not require an employer to create a job specifically designed for an injured employee, nor does it require an employer to provide the employee with special accommodations to allow the employee to perform a job.*

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decisions involving employees physically unable to work subsequent to the filing of a workers' compensation claim with the same degree of caution as they would handle the termination of an employee ready, willing and able to work.

### What damages may a plaintiff recover?

Although section 25-5-11.1 omits specific reference to damages for violation of its provisions, damages are to be awarded in accordance with general tort law principles. Damages

which may be awarded include compensatory and punitive damages. While it is true that it is generally hard to succeed on a claim under section 25-5-11.1, successful plaintiffs may recover significant, *i.e.*, seven figure, awards of punitive damages.

### How can I terminate an employee and reduce the risk of a retaliatory discharge lawsuit?

Before you terminate an employee who has filed a workers' compensation claim, you should consider the following:

1. Is the reason for discharge consistent with employee counseling/discipline prior to the workers' compensation claim?
2. Have you been consistent in enforcing company policies and expectations?
3. If the termination isn't due to a compelling event (e.g., theft, fighting), did the employee know the job was "on the line?"
4. If the termination is due to the need to fill the vacancy before the employee returns, consider a "soft" termination. Tell the employee that if and when the employee is able to return to work, let you know and you (the company) will consider the individual for re-employment, depending on the employee's qualifications and the positions available at that time.
5. Remember to evaluate whether the injury is a "serious health condition" under the Family and Medical Leave Act and whether the employee is eligible for leave under the FMLA. A proper discharge that avoids a retaliatory discharge claim could provoke a FMLA action.

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*Lehr Middlebrooks Price & Vreeland, P.C. represents employers only regarding labor and employment matters. The firm can be reached at: 2021 Third Avenue North, Birmingham, AL 35203; Phone 205-326-3002; Fax. 205-326-3008; www.lmpv.com*

## IMPORTANT 5-4 SUPREME COURT DECISION FAVORS EMPLOYER

*By Matt McDonald, Alabama Criminal Justice Reform Committee and ARA General Counsel*

The Alabama Supreme Court recently reversed its earlier decision upholding a jury verdict for the employee in a wrongful termination suit. The newly released decision is an important victory for employers who are forced to lay off workers, some of whom have workers' compensation claims history, during a general workforce reduction.

Perhaps even more importantly, the decision highlights the impact of electing justices to the Supreme Court who will fairly and strictly interpret the law in a manner consistent with legislative intent.

The decision came in the midst of changes in Supreme Court Justices, as Justices Gorman Houston and Douglas Johnstone, who participated in the majority opinion initially affirming the verdict last December, were no longer on the Court. They were replaced by Justices Mike Bolin and Patti Smith who voted with a new majority to reverse the jury verdict. Justice Tom Parker, who replaced Justice Jean Brown, chose to dissent from the majority opinion, joining Justices Champ Lyons, Tom Woodall and Bernard Harwood. In addition to Justices Bolin and Smith, Chief Justice Drayton Nabers and Justices Lyn Stuart and Harold See formed the majority.

This is truly a landmark decision as it forecloses a potentially disastrous result for businesses which are frequently forced to make general reductions in force (RIF) but fear retaliatory discharge suits from employees who have previously filed workers' compensation claims. It also highlights what Court observers believe to be the current philosophical fault lines on the Court at present.

The suit stemmed from a RIF at a Cullman business. The plaintiff had been out on a work-related injury when the RIF was initiated. After he returned to work, he was assigned a less demanding job because he was physically unable to perform his regular job. Even this task was too much for him and he reported he needed to rest and take pain relievers. He testified he was then terminated because of his back injury, but his employer produced a document which he signed stating he was merely laid off and subject to recall due to "reduction in work force". He was later recalled to work, but chose not to do so, as he had already filed a suit for workers' compensation benefits and retaliatory discharge instead.

The court's majority opinion focused on the retaliatory discharge statute which states that no employee shall be "terminated" solely because he has instituted an action to recover workers' compensation benefits. The majority opinion held there had been no termination because there had been no "complete severance" of the employer-employee relationship. This was because the company had attempted to recall the plaintiff and many other employees, including employees who, like the plaintiff, had filed workers' compensation claims. Thus, the majority opinion emphasized it was remaining true to the legislative enactment which permits suit only for "termination" and not for any other reason.



# DEFUSING UPSET CUSTOMERS

*by Jim Mathis*

**A**ngry, distraught calls or visits are every Customer Service Representative's (CSR's) nightmare. I recently called the company that made our air cleaning machine to swap-out a box of new filters. They had sent me the wrong ones the previous week. Without even listening to what I needed, the guy on the other end had told me that they only made one type of filter and he would send me a box. Well, they don't make just one model. Now I was calling the 800-number to get these switched for the correct ones.

The moment the CSR heard my problem, she sent for her supervisor. When he came to the phone, he greeted me warmly and said, "I'm very sorry that we put you through this, Mr. Mathis. Lola tells me that you got the wrong filters!" I was relieved and he offered me an extra box at no charge for being reasonable. I asked why she asked him to step in (since usually the Supervisor deals with angry, upset callers) and he said that she was shocked that I had gotten the wrong product and wanted him to handle it; but she emphatically told him, "Mr. Mathis is not angry."

Upset customers call toll free service centers and storm complaint counters every day. Did you know that the more upset someone is who calls or comes in to complain, the more likely you are to retain their business? It's true. Dissatisfied customers who never complain are more likely to take their business elsewhere. You should welcome complaints as an opportunity to serve. You will discover mistakes that have been made by your organization. Look on complaints as warning lights on your dashboard. We hate to see them, but they are giving us important messages we need to understand for the car to function properly. The same is true for complaints. Welcome them to help you serve better in the future.

Don't you wish you had a way to defuse the anger and turn these concerns into a happy customer/sales experience? Don't you wish you knew how to take the disgruntled complainers and turn them into our most loyal supporters? Have no fear! Help is on the way. Here are 7.5 ways to take the ticking time bomb (maybe it's already going off) and defuse it before serious damage is done. These steps will turn difficult situations into positive experiences for both you and your customers almost every time.

## 1. REMAIN CALM

Remember, anger like any attitude is a choice. People choose to be angry. They are in control of themselves more than you think, because they chose this negative attitude. Think about the last time you were angry. Didn't you feel out of control? But you were in control. You and only you control your feelings and reactions to others. Some upset people want to draw you in to their pool of anger to keep the conversation on their playing field. "A soft answer turns away wrath." It is difficult to keep arguing when the person you are talking to is smiling and calm.

Certain personality types sound angry when they really are just being firm. We get sucked in to their attitude and we try to out shout them. Nobody wins. Learn to calmly state phrases like: "Uh huh," "I understand," "I see." Everyone wants to be understood and sometimes they simply need an opportunity to vent. The worst thing you can do as a CSR is take their comments personally. Even if the upset party gets too personal, you still can say in a calm reassuring voice, "Sir, or Ma'am, I'm trying to help you. I can't do it if you are fighting me." Now there is no reason to take obscenities or abuse, but those cases are rare and will be rarer if you apply this step to begin with. If the language gets out of hand, firmly and calmly state what you will and will not tolerate to help solve their problem.

## 2. ASK QUESTIONS

The biggest mistake I see in the way Customer Service Representatives deal with people is they try to solve the problem too soon without enough information. Get out of problem solving mode. Become an investigator. Remember the old television program, *Columbo*? Peter Falk would wear the murderer down by asking question after question. People want to be heard. Stop talking and listen to their needs and concerns. Find out what the real problem is and address it. Learn to ask leading questions--the kind that great sales people employ. What do I mean by leading questions? Questions that don't elicit a "Yes" or "No" answer, but require a discussion. Questions that make the person tell their side of the story, or describe their problem. This puts you in the position of hearing them out with a sympathetic ear. It helps cool the flames because you are the one



person who is listening to them. It also puts YOU in control of the conversation.

*Remember, the person asking the questions controls the dialogue.* Make that person you!

### 3. ACKNOWLEDGEMENT

While you are practicing active listening by saying, “Uh huh,” “I understand,” and “I see,” begin agreeing that they have a right to be upset with their poor service or product. “I know how frustrated you are,” or “I can see why this has upset you.” Don’t sell out your company. Don’t say how bad working conditions are, or your bad impressions of fellow employees, or your organization’s product. Above all, don’t blame it on the sales team—they work with you, as partners. If one member of the organization speaks negatively about other members, it benefits no one. Agree with the angry customer’s point of view regarding their understanding of the problem. Allow the upset party to feel like their concerns are registering without losing your own temper.

Most of the time, people get angry because they feel like they aren’t being heard. They take it up a notch to get your attention. They become angry because they feel out of control. Agreement gives them the idea that you are with them in spirit. After a while you will notice (and so will they) *that it is hard to argue with someone who is agreeing with you.* It lets them see how ridiculous their show of temper is coming across and will more quickly calm them down. Remember, too that sometimes people act angry when they really aren’t just to get your attention. Acknowledgement tells them they’ve got your attention, but not your panic button.

### 4. JUST THE FACTS

Speaking of television detective shows, remember *Dragnet*? Remember Jack Webb’s character saying, “Just the facts, ma’am?” Upset people tend to stray off the subject and can’t tell the difference between the facts and their feelings. When this happens you will lose the argument because it is not based on anything you have responsibility for or control over. *Angry people don’t think or act rationally.* They say things they would never say in a calm mood. They don’t listen well to logical responses. Bear this in mind and you will be less likely to take what they say personally. Keep them

focused on why they called and what specifically is wrong. If they get into a feeling conversation, re-state the last fact they gave and ask for the next fact that follows that. Which leads us to...

### 5. RESTATE

Repeat what they say. As each concern is expressed, repeat it back either verbatim or in an accurate manner that conveys the information they have relayed to you. When I have been my angriest about poor service it has been compounded by the CSR not understanding what the problem is. *By restating what you hear, you are letting them know you understand. You are thinking about what their problem is.* And you are buying time to allow them to cool down. Listening to a problem is an important use of time even if you can’t do anything to resolve their problem. You may use this opportunity to rationally think of a solution to their problem. This is another way of agreeing with the upset individual that gets them to feel like you are on their side. Think back on the best customer service you have received. Wasn’t it when the problem was restated back to you that you felt like they understood your concerns?

### 6. ANYTHING ELSE?

Don’t offer assistance until you know everything that your customer knows. Ask if they have any other concerns they haven’t expressed. Most of the time they won’t, but if they do, this is when you will earn their respect. Dig deeper into their entire experience of your product or service. Find out how other areas of your organization are meeting their needs. Ask them to stop and think if there are any other concerns they have that weren’t expressed. Again, this serves to not only calm them down, it reassures them that you are attempting to help them. You are showing concern for their continued business. This step will keep them as customers for the future. *Statistics show that complainers whose full needs are met are twice as likely to stay with a brand or company as those who never complained.* This is yet another reason you want to welcome complaints.

### 7. MEET REAL NEEDS.

Find the best solution to solve their problem based on your extensive investiga-

tion with them in the conversation. If it involves referring them to someone else, take them there personally, or make a three-way call to the individual who will work out their problem. Introduce them to the supervisor, tech support specialist, or problem-solver. If it is you, offer discounts, free service or whatever you are allowed to do based on their loyal patronage. Reward their calm behavior, not their anger. This can be like working with Pavlov’s dog. Let them know that you are pleased to help them out and keep their business once they are calm and rational.

### 7.5. FOLLOW UP

Call them back at a pre-arranged time to see how their problem is. Greet them as an old friend. Were their concerns met? Is there anything that wasn’t taken care of that you can do for them? Find out how well they feel their concerns were met. Ask more questions. How may we serve you better in the future? Once again, you are taking the initiative. You are in control of the process. You are finding ways to serve your customer better for many years to come—a long satisfying future. Encourage them to call you back personally the next time they have a problem or complaint. You will be surprised at how they respond to your initiative.

A satisfying experience in customer service is the key to increasing your profits. Great service welcomes complaints as opportunities to serve and almost guarantees repeat business. It gets word of mouth advertising (the least expensive and the most rewarding) going in your favor. It ensures continued business and referrals. So welcome the complaints. Practice these techniques and watch your business grow.

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# “CAPTURING MULTIPLE GENERATIONS: WHAT ARE YOU DOING TO EXPAND YOUR CUSTOMER BASE?”

by Nan Napier, Owner, Tres Mariposas, Inc., El Paso, Texas – Texas Retailers Association Chairperson

New customers are the lifeblood of any retailer: We always work to keep the ones we've got – however, it's the new shoppers who help us grow.

Many independent retailers are in a situation similar to mine. In our shop, Tres Mariposas, a 35-year-old women's apparel store in El Paso, we take good care of our customers. I would go so far as to say we coddle and even spoil them. Building one-on-one relationships is just how we do business. We get to know these folks very well – we know when their daughters and sons are getting married, because they need ballgowns or cocktail dresses. We know where their mothers and adult children live, because they buy gifts and we mail them out. However, our relationship focus was on that particular customer – not her family.

Then one day Texas Retailers Association President Chuck Courtney asked me what strategies we use at Tres Mariposas to target multiple generations within the same families. He got me thinking of course! Were we maximizing these good customer relationships by reaching out to their families?

Unless you are a teen trend shop, if you've been around for a while, you are bound to have thoughts that go like this: “My best customers aren't getting any younger -- what am I going to do when they slow down and stop shopping like they do now? How can we survive without our favorite patrons, our regulars?” Bringing in the next generation is imperative for us.

When I took it over in 1978, Tres Mariposas targeted upscale women with mature tastes. If you've been in this business forever, you can appreciate it when I say we carried the sportswear lines Bleyle and Dalton. You won't just appreciate it -- you will probably have a good laugh. These lines were for the true lady, but they didn't have an ounce of youthfulness.

Why did we evolve from that “mature specialty store” to the much larger, more varied store that we are now, with both fashion-forward teens and conservative older women shopping here at the same time? Necessity, of course. We couldn't grow by serving only one segment of the population. I thought about what Chuck had said and realized that we were doing some things right. We were

trying to recruit and retain customers across the generations, and now that we're more aware of this need, we'll be trying to expand our efforts in this area to ensure the store's future – for the next 35 years!

## REACHING OUT ACROSS GENERATIONS

What can you do to target multiple generations? Here are some thoughts:

- Everything hinges on the right merchandise of course. We buy and merchandise most of our inventory in three lifestyle categories, which we call True Contemporary, Contemporary Too, and Classic. Come to think of it, we could call these groups granddaughter, mother, and grandma!
- We try to stay sensitive to what the generations are looking for. For instance, we've seen that the youngest customer is all about labels: Juicy, Seven jeans, and Lacoste, for instance. If we don't have the labels she connects with, we just aren't going to get her in.
- Service is critical. Grandmother wants coffee; Mom will take wine; Granddaughter wants a buzz from a Red Bull. Every facet of customer service needs to be customized to the particular lifestyle.
- Staffing also needs to reflect the various generations being targeted. For the most part, a customer will connect with someone closest to her own age. A staff that reflects the range of ages and ethnicities of the customer base can be most effective, in my opinion.

## GETTING 'EM IN THE DOOR

It's easy to say we want the next generation to shop with us. Making that happen isn't always that easy. Many teenaged girls do not want to shop where their mothers shop. That's just not hip. How do you become the next generation's favorite place to shop when the young women perceive that your store is only for grownups?

Once the youngest generation has a good experience with your product and service, you'd be surprised how loyal they can be to your store. Here are a few strategies and observations about reaching the younger set:

- If the staff gets to know the customer well, they will know about her family. Last Christmas when a mom was buying some

holiday clothes for herself, our salesperson said, “Okay, now it's time to shop for your daughter Susie.” The feedback we got later was that the daughter loved the gift. Most moms are shocked and elated when they give their kids something they are truly thrilled about. Now the mom regularly buys clothes for the daughter. The daughter has started coming in, too.

- The labels bring them in. We have several teens who brought in their moms because the teen wants a certain hip pair of jeans that she can only get at our store. The mom becomes a customer, too.
- Okay, this is kind of strange, but we have seen how a few mothers and daughters can actually be competitive with each other about their appearances. For instance, at a contemporary trunk show we hosted, one mother and daughter were vying to see which one was going to get to buy certain styles. While that may sound a bit unusual, it sure was good for business!
- Have you noticed how teenagers rarely want to shop with their moms? They may come in and select a prom dress, and later the parent comes in to pay for it. They try to avoid shopping together. By college age though, it's funny – suddenly, they begin shopping again with their mothers. What happened? Did Mom suddenly get smarter, cooler, more fun to be with during her daughter's freshman year?
- Once the youngest generation comes in the store, become their friend and start finding out about what they wear to school, what special events they have coming up. Is college on the horizon? Get these girls thinking about their needs and desires for those aspects of their lives.
- Overwhelm young people with good service, friendship, and product so they never want to shop anywhere else. Our store is pricier than a lot of moms want to pay for their teens. However if we make shopping incredibly simple and enjoyable for them, they just relax and spend anyway. Who wants to go to the trouble to seek out other stores when it's so easy right here?

# WELCOME NEW MEMBERS

Airport Salvage, L.L.C. ....	Mobile	La Orquidea, Inc. ....	Albertville
AMC Enterprises, Inc. ....	Auburn	Lne Hotel Management Company, L.L.C. ....	Montgomery
Antiques At The Loop, Inc. ....	Mobile	LNW Enterprises, LLC. ....	Huntsville
Arrival Systems, Inc. ....	Mobile	M & I Industrial Supplies, Inc. ....	Florence
B & B Enterprises, LLC ....	Enterprise	Macbean, Inc. ....	Cussetta
Berry Enterprises USA, LLC ....	Eufaula	Montrose Store All, L.L.C. ....	Montgomery
Blythe, Davis, & Stroud, LLC ....	Athens	Natori, Inc. ....	Birmingham
Buckner Center, LLC ....	Anniston	NTA Graphics South, Inc. ....	Birmingham
C & D Sales, Inc. ....	Boaz	Organic Harvest, L.L.C. ....	Birmingham
C & M Enterprises, LLC. ....	Vestavia Hill	Osanippa Creek Lodge, Inc. ....	Valley
Casa Ole' Restaurant, Inc. ....	Hazel Green	Parker Architecture Associates ....	Tuscumbia
Castle Pines Country Club, L.L.C. ....	Gardendale	Pegah, Inc. ....	Tanner
Chang Madison Land, LLC. ....	Madison	Pelham 31 Treats, L.L.C. ....	Clay
Conner Business Solutions Inc. ....	Dothan	Randy's Bar & Grill ....	Fairhope
Evans Enterprises LLC ....	Mobile	Sanctuary, L.L.C. ....	Birmingham
Fairhope Farmers Market, Inc. ....	Fairhope	Sir Speedy. ....	Birmingham
Frazier's, Inc. ....	Bay Minett	Skeen Enterprises, LLC. ....	Troy
G & C Management, LLC ....	West Point	Stanlieo's Sub Villa ....	Huntsville
Gulf States Restaurant Management, LLC ....	Miramar	Strike, Inc. ....	Huntsville
Hima-Kunal, LLC ....	Suwane	Tennessee Valley Golf Management ....	Huntsville
Huntsville Hotels I, LLC. ....	Auburn	Tera Lane, LLC ....	Tuscaloosa
IVS, Inc. ....	Newton	The Chicken Stop, Inc. ....	Lanett
J & E, LLC ....	Birmingham	Valley Bowl, LLC ....	Valley
Jumpin' Gym, Inc. ....	Hoover	Vega, Inc. ....	Auburn
Kishan, LLC ....	Troy	Wall Street Markets LLC. ....	Dothan
L.K. & Sons, Inc. ....	Homewood	Wing Master. ....	Montgomery



# ARA MEMBERS MAKE A DIFFERENCE WITH VISIT TO CAPITOL HILL

**O**n Wednesday, June 8, a delegation of ARA members and staff visited with several members of our Congressional delegation in Washington, DC, while attending a meeting of the Food Marketing Institute (FMI) and the National Grocers Association (NGA).

Scheduled for a vote on the House floor that evening was a bill that contained a one-year extension for the requiring of country of origin labeling (COOL) for meat. It was important to grocers to retain this delay, but an amendment to strip-out the delay was to be offered by Congressman Dennis Rehberg, R-MT, and Congresswoman Darlene Hooley, D-OR.

While meeting with Alabama's Congressmen, we laid out the burdens COOL causes for grocers, and urged them to vote against the Rehberg-Hooley amendment and keep the one-year delay for meat labeling. Two Alabama Congressmen, Robert Aderholt and Spencer Bachus, voted with us, changing a previous stance.

This vote has been a reminder of just how much it means to have your voice heard on issues. Your contacts on tough issues are vital! As Napoleon Bonaparte said, **"Ten people who speak make more noise than ten thousand who are silent."**



*Rick Brown, ARA Vice President, and Charles McDonald, President, greet Senator Richard Shelby.*



*ARA staffers Charles McDonald, Alison Wingate and Rick Brown are shown meeting with Senator Richard Shelby.*



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