



# Proceedings

A monthly newsletter from McGraw-Hill



February 2013 Volume 4, Issue 7



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## Dear Professor,

Happy “Groundhog Day,” everyone! Welcome to McGraw-Hill’s February 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, Issue 7 of Proceedings incorporates “hot topics” in business law, video suggestions, an ethical dilemma, teaching tips, and a “chapter key” cross-referencing the February 2013 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. Recording confessions as a way to improve criminal justice;
2. Exercise of the “shopkeeper’s privilege” at a Walmart in Lithonia, Georgia;
3. A recent French appellate court ruling regarding the criminal liability of Continental Airlines in the July 2000 crash of a Concorde airplane;
4. Videos related to a) a clothing factory fire in Bangladesh resulting in the deaths of 112 workers and the owner’s relationship to United States companies and brands and b) the federal government’s requirement that “black boxes” (data recorders) be included in all new automobiles sold in the United States;
5. An “Ethical Dilemma” regarding whether Walmart can be held liable for alleged labor violations committed by contractors and subcontractors in its supply chain; and
6. “Teaching tips” related to Article 1 (“A Sure Way to Improve Criminal Justice: Record Confessions”) and Article 3 “French Court Overturns Concorde Crash Conviction”.)

I wish all of you an enjoyable and academically enriching continuation of the spring semester!

Jeffrey D. Penley, J.D.  
Catawba Valley Community College  
Hickory, North Carolina



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## Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) Recording confessions as a way to improve criminal justice;
- 2) Exercise of the "shopkeeper's privilege" at a Walmart in Lithonia, Georgia; and
- 3) A recent French appellate court ruling regarding the criminal liability of Continental Airlines in the July 2000 crash of a Concorde airplane.

## Hot Topics in Business Law

### Article 1: "A Sure Way to Improve Criminal Justice: Record Confessions"

<http://www.huffingtonpost.com/geoffrey-r-stone/a-sure-way-to-improve-criminal-justice.html>

*Note: This article was co-authored by Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law at the University of Chicago, and Thomas Sullivan, a lawyer with Jenner & Block, Chicago (1954-77, 1981-present) and former United States Attorney for the Northern District of Illinois (1977-1981).*

In 2003, following an exposé of several questionable "confessions" obtained by Illinois police which resulted in murder convictions and in some cases death sentences for persons who were later exonerated, legislation was proposed in the Illinois legislature to require custodial interrogations in homicide investigations to be electronically recorded. Barack Obama, then a little-known member of the Illinois Senate, took the lead in negotiating with members of the law enforcement community who opposed electronic recording.

After lengthy give and take, Illinois enacted a law requiring that custodial interrogations of individuals suspected of murder must be recorded from beginning to end. This was the first law of its kind in this country. Now, ten years later, legislation and court rules provide for electronic recording of custodial interviews in Alaska, Arkansas, Connecticut, District of Columbia, Illinois, Indiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Oregon, and Wisconsin. Other state legislatures and supreme courts are considering adopting similar laws. And exercising sound judgment, many police and sheriff departments throughout the nation now electronically record custodial interviews even when they are not legally required to do so.

The particular requirements vary somewhat from state to state. There are differences, for example, as to which suspected felonies trigger the recording requirement, what exigent circumstances can excuse non-recording, whether the recording must be audio or video, and whether a violation of the requirement mandates the presumed inadmissibility of the confession or merely a cautionary jury instruction. Although there may be one, uniform,



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ideal approach to these questions, there are also reasonable arguments to support the different approaches taken in various states.

After some hesitation and resistance, law enforcement's reception of these statewide recording mandates has become extremely positive. They recognize the many benefits of recording confessions: detectives are better able to concentrate on the interview rather than on note taking; there are no longer disputes about what was said and done during the interrogation; officers who might otherwise be tempted to play fast-and-loose with the rules are deterred from doing so; it is more difficult for interviewed suspects to bring trumped-up charges against police officers for alleged misconduct; and public confidence in the fairness of the criminal justice system is enhanced. All in all, this common sense reform has worked extraordinarily well.

Nonetheless, there are still some national, state and local law enforcement organizations that vehemently oppose statewide laws or court rules on electronic recording. Although they no longer dispute that recording is, in theory, a good idea, they nonetheless insist that each police and sheriff department in the nation should be free to adopt its own "best practices," which means that every local department could decide for itself whether or not to record, and if so when and how. Their reasons for opposing statewide rules are sketchy, at best. For example, they argue that "every locale is different" and that defense lawyers will use recordings to "get guilty criminals off." These are simply unwarranted objections.

As a practical matter, wholly localized rules would produce a hodgepodge of different requirements and procedures within a single state and a complete lack of statewide uniformity. The result would be dramatically unequal treatment for individuals who are brought in for questioning, for their rights would vary from one station house to the next based entirely on the fortuity of which department is undertaking the investigation. That is incompatible with elemental notions of fairness and sound law enforcement policy. And beyond that, such a melange of localized rules would produce no coherent mechanism to insure compliance. If the "rules" have no legally binding effect, then individual suspects would be left to the very discretion of investigating officers that a uniform, mandatory recording policy is meant to constrain.

In New York State, the Chief Judge of the New York Court of Appeals established a Task Force on Criminal Justice Reform made up of judges, prosecutors, police officials, defense lawyers, and academics. In recommending statewide legislation rather than optional "best practices" as determined by each local department, the Task Force determined that "electronic recording of interrogations was simply too critical to identifying false confessions and preventing wrongful convictions to recommend as a voluntary rather than mandatory reform."

This is a simple problem, with a simple solution. The use of electronic recordings has resulted in increased police professionalism, preclusion of testimonial disputes about what took place during closed-door interrogations, fewer motions to suppress confessions, more pleas of guilty, fewer false confessions, fewer wrongful prosecutions and unjust convictions, and substantial savings of time and money. The time has come for all law enforcement organizations to support mandatory state laws



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that require the use of electronic recording systems during custodial interviews. This is a simple, sensible and effective way to improve our nation's system of criminal justice.

## Discussion Questions

1. Why require that confessions be recorded?

*Recorded confessions increase the likelihood that a) the suspect gave the confession voluntarily and willingly and b) investigating authorities followed proper procedure in terms of receiving the confession. In turn, these safeguards increase the likelihood that the trial court judge will admit the confession into evidence for the purpose of conviction.*

2. Assume that state law requires a recorded confession, and that a suspect's confession is not recorded. Should violation of the recording requirement result in the presumed inadmissibility of the confession, or merely a cautionary jury instruction? Explain your response.

*This is an opinion question, so student responses will likely vary. Presumed inadmissibility would likely force investigating authorities to record the confession, since they would like to assure that the confession will be admitted into evidence for the purpose of convicting the suspect. In your author's opinion, a cautionary jury instruction (i.e., advising the trial jury that the confession was not recorded, thereby increasing the likelihood that the confession was not given voluntarily and willingly, or that investigating authorities did not follow proper procedure in terms of receiving the confession) might be ineffectual, since it would be difficult for the jury to disregard the fact that the suspect purportedly confessed.*

3. The article calls for mandatory state laws that require the use of electronic recording systems during custodial interviews. Do you support or oppose such laws? Explain your response.

*This is an opinion question, so student responses will likely vary. As indicated in response to Discussion Question 1 above, recorded confessions increase the likelihood that a) the suspect gave the confession voluntarily and willingly and b) investigating authorities followed proper procedure in terms of receiving the confession. In turn, these safeguards increase the likelihood that the trial court judge will admit the confession into evidence for the purpose of conviction.*

## **Article 2: "Alleged Walmart Shoplifter Dies After Struggle with Store Employees"**

<http://usnews.nbcnews.com/news/2012/11/25/15433967-alleged-walmart-shoplifter-dies-after-struggle-with-store-employees>

According to the article, a suspected shoplifter died recently after a confrontation with Walmart employees and a security guard in the store parking lot in Lithonia, Georgia.



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According to the DeKalb County, Georgia police report, officers arrived around 1:30 a.m. to find the employees on top of the middle-aged man, who reportedly was caught shoplifting two DVD players. When an officer placed the man in handcuffs, he noticed the man did not resist him. That is when he realized the man was unconscious and bleeding from the nose and mouth. Paramedics transported the man to a nearby hospital, where he was pronounced dead.

Further investigation revealed that a “physical altercation” had taken place in the parking lot. One of the employees had reportedly placed the man in a choke hold. The cause of death, however, has not been determined.

Dianna Gee, a Walmart spokeswoman, released a statement saying that both employees had been placed on paid leave. She said the security guard would no longer provide services for the store. “No amount of merchandise is worth someone’s life,” Gee said in the statement. “Associates are trained to disengage from situations that would put themselves or others at risk.”

## Discussion Questions

1. Describe the “shopkeeper’s privilege” in terms of questioning and detaining individuals suspected of shoplifting.

*The “shopkeeper’s privilege” gives store owners and employees the right to reasonably detain and question someone who is reasonably suspected of shoplifting. The shopkeeper’s privilege is not an unlimited right; instead, it is restrained by: a) **reasonable** detention and questioning of a suspect; and b) **reasonable** suspicion of shoplifting. If a store representative’s actions exceed the scope of the privilege (i.e., if the store representative’s actions were, as determined by a jury, unreasonable), the employee, owner and/or store can be held liable for assault and battery, false imprisonment, and perhaps other related torts and crimes.*

2. In your reasoned opinion, did Walmart personnel correctly exercise the shopkeeper’s privilege? Why or why not?

*Based on your author’s opinion, there is not enough information present in the article to determine whether Walmart personnel correctly exercised the shopkeeper’s privilege. Although the employees perhaps had reasonable suspicion of theft, the detention might have been unreasonable if it was merely in retaliation for the middle-aged man’s suspected shoplifting, rather than for the self-defense of Walmart personnel. As the Walmart spokeswoman indicated in her statement, “(n)o amount of merchandise is worth someone’s life.” The fact that the employees acted unreasonably might be indicated by the fact that both Walmart employees were placed on leave after the incident, and that the security guard involved in the altercation will no longer be permitted to provide services for the store.*

3. If a jury should determine that Walmart personnel did not properly exercise the shopkeeper’s privilege, what monetary damages would be recoverable by the plaintiff’s estate?



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*Typically, the trial jury is given the discretion to decide what amount of money damages is appropriate in a tort case, based on the unique facts and circumstances surrounding the case. Although it may sound unusual to permit a suspected shoplifter (in this case, the suspected shoplifter's estate) to recover, keep in mind that a trial jury would be charged with the specific responsibility of determining whether Walmart and its personnel wrongfully exceeded the scope of the shopkeeper's privilege.*

## Article 3: "French Court Overturns Concorde Crash Conviction"

<http://usatoday.com/story/travel/flights/2012/11/29/continental-airlines-air-france-concorde-crash/1734417/>

According to the article, United States aviation safety advocates welcomed a recent French appellate court ruling that overturned a manslaughter conviction against Continental Airlines in the July 2000 crash of the Concorde as a sign that maintenance mistakes are not criminal.

Continental and mechanic John Taylor were convicted in 2010 by a French trial court of involuntary homicide after the fiery July 25, 2000, crash of an Air France Concorde in which 113 people were killed.

Continental, which has since merged with United Airlines, was ordered to pay about \$2.7 million in fines and damages.

The trial court had found that a metal strip on Continental DC-10 fell onto the runway in Paris and that it punctured a tire on the Concorde. Bits of tire got into fuel tanks, which started a fire that brought down the plane.

But the appellate court overturned the conviction, saying that mistakes by Continental's mechanics were not enough to make it legally responsible for the deaths.

"This was an accident, not a crime," says Kenneth Quinn, general counsel for the Flight Safety Foundation. "We've got to get away from focusing on attempting to blame people and putting them behind bars for professional mistakes."

Megan McCarthy, a United spokeswoman, says the combined airline supports the court's decision that Continental did not bear fault.

"We have long maintained that neither Continental nor its employees were responsible for this tragic event and are satisfied that this verdict was overturned," McCarthy said in a statement.



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The crash hastened the demise of the Concorde, which was the first supersonic jet to fly commercially. It offered up to 100 passengers a flight first-class, albeit cramped, service at twice the speed of sound starting in 1976. It could cross the Atlantic in less than four hours, about half what it took other jetliners at the time.

The Concorde, flown jointly by Air France and British Airways, was noticeable for its pointed nose, sweeping wings and sleek design. The Paris crash came as the Concorde already was in trouble. High operating costs for the plane meant very high fares, which limited its market. All Concordes were retired in 2003.

Parties including Air France and Continental compensated the families of most victims years ago, so financial claims were not the trial's focus — the main goal was to assign responsibility.

In France, unlike in many other countries, plane crashes routinely lead to trials to assign criminal responsibility — cases that often drag on for years.

Quinn, an aviation lawyer at Pillsbury Winthrop Shaw Pittman LLP, says the industry has a culture encouraging front-line workers to report mistakes without fear of retribution so that they can be corrected.

"Unfortunately we have zealous prosecutors and courts conducting these decades-long criminal investigation and prosecutions which serve no useful purpose," says Quinn, who heads a safety task force for the International Civil Aviation Organization.

Jeff Shane, an aviation lawyer at Hogan Lovells LLP, says pursuing criminal charges "has been the single largest impediment to the objective investigation of these incidents that we've had."

He says aviation lawyers are trying to establish an international rule that "it is a mistake for any government" to pursue charges "when the world needs to know why the accident happened."

"People who are trying to make air travel safer are often completely compromised in their efforts to get to the bottom of things," says Shane, who was undersecretary of transportation during the Bush administration.

A ValuJet crash in Florida in 1996, which killed 110 people, generated criminal charges against the airline and SabreTech, which packed cargo on the flight. But Quinn said the state dropped hundreds of manslaughter charges and the rest were thrown out on appeal.



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## Discussion Questions

1. Define “manslaughter.”

*Manslaughter is defined as the taking of the life of another human being without malice. It is different from murder, since murder involves malice. Voluntary manslaughter typically involves the mental state (“mens rea”) of criminal recklessness, while involuntary manslaughter involves criminal negligence.*

2. Do you agree or disagree with the proposition that in terms of providing transportation services to the public, maintenance mistakes are not criminal? Explain your response.

*This is an opinion question, so student responses will likely vary. In your author’s opinion, for those providing transportation services to the public, maintenance mistakes resulting from extreme recklessness or negligence are criminal, since such failures represent a wrong against society as a whole, the very definition of crime.*

3. Do you agree or disagree with the French appellate court’s decision to overturn the manslaughter conviction against Continental Airlines for the July 2000 crash of the Concorde? Explain your response.

*This is an opinion question, so student responses will likely vary. As the article indicates, the trial court found that a metal strip on a Continental DC-10 fell onto the runway in Paris and punctured a tire on the Concorde, resulting in bits of tire getting into the fuel tanks and starting a fire that brought down the plane. In your author’s opinion, the trial jury was within its discretion to conclude that such an event resulted from improper maintenance of the Continental aircraft; further, the trial jury was within its power to conclude that such negligence, resulting in the deaths of 113 people, amounted to involuntary manslaughter. As indicated in response to Discussion Question 1 above, involuntary manslaughter involves the unintentional taking the life of another person as the result of the defendant’s criminal negligence. The appellate court should overturn a trial jury’s conviction of the defendant only if it determines that there was an “abuse of discretion” or a “mistake of law” committed by the trial court. In your author’s opinion, there was neither an abuse of discretion nor a mistake of law committed by the trial court, and the appellate court should have affirmed the trial court’s involuntary manslaughter conviction of Continental Airlines and its mechanic.*





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## Video Suggestions

### **Video 1: “\$1,200 a Life: Clothing Company Pays Peanuts to Families of Factory Fire Dead”**

<http://abcnews.go.com/Blotter/1200-life-clothing-company-pays-peanuts-families-factory/story?id=17814618#.ULkVWORDL-Y>

*Note: In addition to the video, please also read the following article located at the above-referenced web site.*

### **“\$1,200 a Life: Clothing Company Pays Peanuts to Families of Factory Fire Dead”**

According to the article, a company that makes clothes for Sean Combs' clothing brand ENYCE and other United States labels reassured investors that a factory fire that recently killed 112 people would not harm its balance sheet, and also pledged to pay the families of the dead \$1,200 per victim.

In a recent announcement, Li & Fung Ltd., a middleman company that supplies clothes from Bangladesh factories to United States brands, said "it wishes to clarify" that the deadly blaze at the high-rise Tazreen Fashions factory outside Dhaka "will not have any material impact on the financial performance" of the firm.

The fire broke out on the ground floor of the nine-floor building as hundreds of workers were upstairs on a late-night shift producing fleece jackets and trousers for the holiday rush at American stores, including Walmart, according to labor rights groups. Fire officials said the only way out was down open staircases that fed right into the flames. Some workers died as they jumped from higher floors.

After reassuring investors about its financial health, Li & Fung's statement went on to express "deepest condolences" to the families of the dead, and pledge the equivalent of \$1,200 to each family. The company also said it would set up an educational fund for the victims' children.

Bangladesh has become a favorite of many American retailers, drawn by the cheapest labor in the world, as low as 21 cents an hour, producing clothes in crowded conditions that would be illegal in the United States. In the past five years, more than 700 Bangladeshi garment workers have died in factory fires.



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"[It's] the cheapest place, the worst conditions, the most dangerous conditions for workers and yet orders continue to pour in," said Scott Nova, executive director of Worker Rights Consortium, an American group working to improve conditions at factories abroad that make clothes for United States companies. Nova said the fire was the most deadly in the history of the Bangladesh apparel industry, and "one of the worst in any country."

United States companies have extended condolences to the families of the victims, and scrambled to answer questions about the dangerous factory that had been making their clothes.

Walmart inspectors had warned last year that "the factory had violations or conditions which were deemed to be high risk," according to a document posted on-line.

Yet Walmart clothing continued to be made at the factory, according to workers groups who found clothing with Walmart's private label, Faded Glory, in the burned out remains along with clothing for a number of other United States labels, including ENYCE, Dickies and a brand associated with Sears.

Walmart recently confirmed that its clothes were being made at the Tazreen factory. Even though Walmart is famed for maintaining tight control over its supply chain, the company said its clothes were being made at the plant without its knowledge.

A Walmart spokesman said that the Tazreen factory "was no longer authorized to produce merchandise for Walmart. A supplier subcontracted work to this factory without authorization and in direct violation of our policies... (W)e have terminated the relationship with that supplier. The fact that this occurred is extremely troubling to us, and we will continue to work across the apparel industry to improve fire safety education and training in Bangladesh." Though Li & Fung is known to supply clothes to Walmart, and to have subcontracted work to the Tazreen factory, Walmart did not name the supplier it had fired.

Sears initially claimed the company "does not source from this factory. In addition, Sears recognizes that fire safety is a critical international issue that we intend to address through specialized training for management in those factories that produce merchandise for Sears Holdings."

Told that lingerie labeled True Desire, a Sears brand, had been found in the burned factory, a Sears spokesman said "any merchandise found at that factory should NOT have been manufactured there and we are currently investigating further." Sears said it had not used the Tazreen factory since 2011.

The president of ENYCE clothes, which is owned by Sean Combs, extended the firm's "deepest condolences [to] the families of the victims" and confirmed that ENYCE Kids is licensed to Li & Fung, "which operates, produces and oversees all manufacturing for the brand."



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"Compliance and safety are important to us," said Jeffrey Tweedy, president of Enyce, "and we expect all our licensees to have in place compliant standards for fire and safety conditions at any factory that may produce our brand."

Labor activists also said they found garments with the Dickies label in the factory, and provided photos. Dickies said in a statement that the company's "thoughts and prayers" were those affected by the fire, but that the company had concluded its production schedule "with this vendor earlier this year."

The statement also said that "it is standard operating procedure at Williamson-Dickie to ensure the global vendors and suppliers we work with provide a safe work environment in accordance with all applicable laws and fair labor practices."

## Discussion Questions

1. Comment on the \$1,200 amount that Li & Fung Ltd. has proposed to pay to the families of each of the 112 workers killed in the Bangladesh factory fire. How does that amount compare to compensation a jury might award if such a case were tried in a United States court?

*The \$1,200 proposed payout obviously pales in comparison to the amount of money a United States jury might return in the form of a verdict. In wrongful death cases in the United States, it would not be unusual to see a per-victim payout in the millions of dollars. In the United States, although most work-related fatalities are settled by way of workers' compensation benefits, the families of workers killed as a result of the "extreme recklessness" or "gross negligence" of employers are allowed to pursue their claims in civil court, before a trial jury. Trial juries are often sympathetic to the plight of deceased workers' families, awarding them millions to account for the loss of their loved ones resulting from the wrongful actions of the employer-defendant.*

2. In your reasoned opinion, do the United States companies mentioned in this case (Walmart, Sears, Williamson-Dickie, etc.) have an ethical obligation to ensure that working conditions are safe in foreign-based facilities manufacturing product for them? Why or why not?

*Although this is an opinion question, most students will likely conclude that United States companies do have an ethical obligation to ensure that working conditions are safe in foreign-based facilities manufacturing product for them. Given their close business relationship, United States companies have negotiating leverage in terms of demanding that working conditions are safe in such facilities.*

3. Are the United States companies mentioned in this case (Walmart, Sears, Williamson-Dickie, etc.) legally responsible for the Bangladesh factory fire? Why or why not?

*Although most students will likely conclude that United States companies do have an ethical obligation to ensure that working conditions are safe in foreign-based facilities manufacturing product for them (see the response to Discussion Question 2 above), a corresponding legal*



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*obligation is less likely. If a United States company does not own its foreign-based production facility (for example, if the United States company merely licenses production of its goods to the foreign-based facility), the company is likely immune from the negligence of the foreign facility. If, however, a United States company exercises so much control over the foreign-based facility that it is tantamount to the control an owner would exercise over his/her/its business, there might be some legal authority to hold the United States company liable. Complicating matters would be the questions of a) jurisdiction over the United States company and b) choice of law (United States versus foreign law.)*

## Video 2: "'Black boxes' Required in New Cars by 2014"

<http://video.msnbc.msn.com/nightly-news/50131531/#50131531>

### Discussion Questions

1. What is the advantage of such a regulation?

*Obviously, the advantage of such a regulation is the preservation of evidence for the eventual purpose of determining liability for an accident.*

2. What is the disadvantage of such a regulation?

*The disadvantage of such a regulation is that it represents an intrusion on the privacy of the driver.*

3. In your reasoned opinion, does the federal government's requirement that all new vehicles sold in the United States beginning in September 2014 be equipped with a "black box" an example of reasonable and effective government regulation? Why or why not?

*This is an opinion question, so student responses will likely vary. Formulating a reasoned opinion in response to this question involves a critical assessment of the advantage of such a regulation (preservation of evidence) as opposed to the disadvantage of such a regulation (invasion of privacy.) In your author's opinion, the "black box" mandate does represent "reasonable and effective" government regulation, since the advantage of preservation of evidence for the purpose of determining liability for an accident is so pronounced that it outweighs countervailing concerns of privacy intrusion. What if an airplane pilot were to argue that a "black box" on his aircraft was an unreasonable invasion of his privacy?*



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## Of Special Interest

This section addresses the question of whether Walmart can be held liable for alleged labor violations committed by contractors and subcontractors in its supply chain.

## Ethical Dilemma

### “Warehouse Worker Lawsuit Targets Wal-Mart”

[http://www.msnbc.msn.com/id/50026215/ns/business-us\\_business/#.ULkcVeRDL-Y](http://www.msnbc.msn.com/id/50026215/ns/business-us_business/#.ULkcVeRDL-Y)

According to the article, lawyers alleging that a Southern California warehouse complex cheated mostly Latino contract workers out of pay took steps recently to add Walmart as a defendant in an ongoing lawsuit.

The move is expected to draw the nation’s largest retailer into a case in which it had, heretofore, been tangentially involved – and raises questions about the human cost of Walmart’s tightly controlled supply chain, which relies heavily on contractors and subcontractors.

“Walmart employs a network of contractors and subcontractors who have habitually broken the law to keep their labor costs low and profit margins high,” Michael Rubin, one of the lawyers for the workers, contended in a written statement to the Center for Public Integrity and the Center for Investigative Reporting. “We believe Walmart knows exactly what is happening and is ultimately responsible for stealing millions of dollars from the low-wage warehouse workers who move Walmart merchandise.”

Walmart spokesman Dan Fogleman declined to comment on the move by the workers' lawyers. Instead, he said that a recent e-mailed statement he made to news organizations still applied.

"We disagree with [Rubin's] characterization. While we have a set of quality standards that must be met, the third party service providers we utilize are responsible for running their day-to-day business. They manage their people completely independent of us," the e-mailed statement said.

Court documents filed recently in Los Angeles claim "(r)ecent discovery has established that Walmart bears ultimate responsibility for the violations of state and federal law committed against plaintiff warehouse workers," who "perform hard physical labor for long hours with little pay under hot, hazardous, and dust-filled conditions, unloading and loading trucks destined for Walmart stores and distribution centers throughout the United States."



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The class-action lawsuit, filed in October 2011, accuses the owner of the Mira Loma warehouse complex, Schneider Logistics Transloading and Distribution, and two staffing agencies of cheating contract workers out of pay.

In a recent statement, Fogleman said “some workers at third party logistics facilities that we use have raised some concerns about their work environment.

“Even though the workers aren’t employed by us, we take these types of allegations very seriously,” the statement said. “The fact is, we hold our service providers to high standards and want to ensure that workers throughout our supply chain are treated with dignity and respect.”

Walmart officials planned to begin audits of warehouses such as Schneider “within days,” according to the statement. “In the meantime, company representatives have made multiple visits – including some that were unannounced – to the facilities where the bulk of the concerns have been raised.”

Walmart said in its e-mail that it is Schneider's customer. "We have a set of business needs that we pay them to meet, just like any company might hire an accounting firm to do taxes or an advertising firm to help launch a new product."

The lawsuit alleges that Schneider and staffing agencies Premier Warehousing Ventures LLC and Impact Logistics Inc. conspired to “cover up the extent of their wrongdoing by failing to keep mandatory payroll records, falsifying records of hours worked and compensation owed, and concealing, denying and/or misrepresenting to the workers the amount of their earnings and on what basis these earnings were calculated.”

The staffing agencies have agreed to pay a collective \$450,000 in fines and back wages to settle citations issued by California labor officials, who raided the warehouse the same month the lawsuit was filed last year. Schneider, which was not cited by the state, said in a statement that it “played no role in determining the rate or method of pay” that led to the violations.

By seeking to add Walmart – the warehouse’s only customer – to the lawsuit, lawyers for the workers are trying to prove that the company pressured Schneider to hold down costs by underpaying subcontractors who loaded semi-trailers with goods destined for Walmart stores. As many as 1,800 workers in Southern California could receive back pay and damages as a result of the case, and the impacts could be felt in other warehouse centers as well.

One Walmart employee has an office in the Schneider warehouse and participates in daily operational meetings and audits, court documents allege. The employee was deposed recently by the workers’ lawyers; the decision on whether to try to add Walmart to the lawsuit hinged partly on that deposition, according to Elizabeth Brennan, a spokeswoman for Warehouse Workers United, an advocacy group funded largely by the labor consortium Change to Win.

The Mira Loma warehouse has been on regulators’ radar for more than a year.



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Responding to worker complaints about inaccurate pay stubs, investigators with the California Division of Labor Standards Enforcement raided the complex on October 12, 2011. The agency cited Schneider's two labor suppliers at the time, Premier and Impact, for failing to provide employees with statements detailing the hours they had logged, their hourly pay, deductions and other wage-related information. The state proposed a \$601,000 penalty against Premier, \$499,000 against Impact.

Premier and Impact were using an indecipherable "group piece-rate" system to compensate workers, investigators found. Workers say they virtually always lost money in the arrangement, compared to what they would have made had they been paid by the hour.

"We found that workers were being denied the very basic right to know what they had earned for the work that they were doing," California Labor Commissioner Julie Su, who ordered the raid, said in an interview. "We found that workers were being denied minimum wage, were not being paid overtime hours."

Premier – which no longer contracts with Schneider – and Impact agreed to pay \$175,000 and \$140,000 in fines, respectively, to settle the cases. In addition, Premier will pay \$75,000 in back wages to 151 workers; Impact will pay \$60,000 to 283 workers.

Neither Premier nor Impact responded to emails and phone calls seeking comment. In its statement, Schneider said it was unaware of the violations prior to the raid.

"Our contracts clearly indicate that the vendors are exclusively responsible for the material aspects of the employment, including hiring, discipline, onsite management, training, determining rates of pay, timekeeping and compliance," Schneider said.

California's Su said she brooks no tolerance for employers who exploit low-wage, immigrant workers. Her views were hardened in the mid-1990s, when, while working as a lawyer with the Asian-Pacific American Legal Center in Los Angeles, she represented 72 garment workers from Thailand who had been kept behind barbed wire and under armed guard at an apartment complex in suburban El Monte. She sued the shop owner and won more than \$4 million in back wages for the encaged Thai workers – as well as a group of Latino workers who sewed in a "front shop" and were being shorted on pay.

"We have seen in many industries that this type of subcontracting can give rise to really horrible labor abuses," Su said. "There becomes a question about who's ultimately responsible for the workers and who has the legal obligation to ensure that labor laws are complied with."

The construction of mega-warehouses near Interstate 10, east of Los Angeles, began in the late 1990s. Today, similar clusters of blocks-long buildings anchor sections of Chicago, northern New Jersey and other urban areas. Some serve only Walmart; others have multiple customers.



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Mistreatment of workers in these facilities is endemic, a product of fierce competition for contracts with Wal-Mart and other retailers, said Juan De Lara, an assistant professor of American studies and ethnicity at the University of Southern California who has researched the industry. “Walmart essentially distances itself from conditions inside these warehouses,” De Lara said.

In interviews and written declarations, current and former workers at Schneider said they were required to perform various tasks for which they were not paid. They might be called to work and told to wait for hours in case they were needed, they said, only to be sent home without pay. Those who complained were told, “If you don’t like it you can hit the door,” Impact worker Juan Chavez said in a declaration.

Jesus Saucedo, 33, worked construction until the weak economy forced him out of a job. He went to work for Impact in Mira Loma in late 2011 and said he was surprised at the conditions in the Schneider warehouse. “Everything you do, they want more,” Saucedo said. “I’d rather work outside in the heat.”

Saucedo injured his shoulder while lifting a box – a warehouse worker might move as many as 4,000 a day, he says – and has seen co-workers get hurt as well because “they don’t have the time to work properly.”

“When there’s a problem with pay or working conditions, a company like Schneider will hand it off to the staffing agency,” said Guadalupe Palma, a director of Warehouse Workers United. “The workers are bounced between the warehouse and the agencies and the problem never gets resolved. They get terminated if they’re injured or complain about hours missing from their paychecks.”

United States District Judge Christina Snyder, who is presiding over the lawsuit, has made several rulings favorable to the plaintiffs. In February 2012, for example, Snyder blocked the termination of about 100 Premier workers, who were absorbed by Schneider.

The judge issued an order in December 2011 that effectively ended the piece-rate system and forced the two temp agencies to pay hourly wages, maintain accurate payroll records and disclose on each paystub how pay was calculated.

Neither of these rulings touched Walmart directly. But, lawyer Rubin asserts, the retailer “is responsible for the ultimate plight of the workers.”

## Discussion Questions

1. What is a “class action” lawsuit?

*A “class action” lawsuit involves a large number (perhaps thousands) of plaintiffs joining together to pursue litigation against a defendant who has harmed them. Class action plaintiffs have “commonality of purpose,” meaning that the same wrongful action(s) of the defendant (such as*





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*negligence) resulted in harm to all of them. Class action lawsuits also tend to result from the same set of facts and circumstances (such as the production of a defective good.)*

2. If Walmart does not own the warehouse involved in the subject lawsuit, how could it even potentially bear responsibility for alleged violations of state and federal law committed at the warehouse?

*Since Walmart does not own the warehouse involved in the subject lawsuit, it would be difficult to hold it responsible for alleged violations of state and federal law committed at the warehouse. If, however, Walmart directed that such violations occur, or if it gave tacit permission for such violations with knowledge that they were occurring, the likelihood of Walmart's liability would increase. Finally, if Walmart exercised so much control over the warehouse that it rose to the level of control an owner exercises over his/her/its business, there is legal authority to hold Walmart liable.*

3. Based on the information presented in the article, do you believe Walmart will be held legally responsible for violations of state and federal law committed at the warehouse? Explain your response.

*This is an opinion question, so student responses will likely vary. If the court allows Walmart to be included as a defendant in the class-action lawsuit, the discovery process (depositions, interrogatories, etc.) will shed considerable insight as to how much knowledge and control Walmart had concerning such violations.*



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## Of Special Interest

This section of the newsletter will assist you in covering Article 1 ("A Sure Way to Improve Criminal Justice: Record Confessions") and Article 3 ("French Court Overtakes Concorde Crash Conviction") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Article 1: "A Sure Way to Improve Criminal Justice: Record Confessions"):

For insight regarding the admissibility of criminal confessions in federal court, please refer to 18 USC § 3501 at the following website (the exact language of 18 USC § 3501 is also included below):

<http://www.law.cornell.edu/uscode/text/18/3501>

#### "18 USC § 3501 - Admissibility of Confessions"

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including:

- (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment,
- (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession,
- (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him,
- (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and



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(5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term “confession” means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

## **Teaching Tip 2 (Related to Article 3: “French Court Overturns Concorde Crash Conviction”):**

For a brief but intriguing summary of the history of the Concorde, please refer to the following video:

**“History Rocks the ‘70s: The Concorde”**

<http://www.history.com/videos/the-concorde#the-concorde>



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## Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	<b>Hot Topics</b>	<b>Video Suggestions</b>	<b>Ethical Dilemma</b>	<b>Teaching Tips</b>
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 6, 7 and 8	Chapters 6, 9 and 45	Chapters 2 and 42	Chapters 6 and 7
<b>Kubasek et al., Dynamic Business Law: Summarized Cases</b>	Chapters 6, 7 and 8	Chapters 6, 9 and 45	Chapters 2 and 42	Chapters 6 and 7
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 1, 5 and 6	Chapters 1, 6 and 25	Chapters 1 and 24	Chapters 1 and 5
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 5 and 6	Chapters 7 and 48	Chapters 4 and 51	Chapter 5
<b>Barnes et al., Law for Business</b>	Chapters 5 and 6	Chapters 7 and 46	Chapters 3 and 25	Chapter 5
<b>Brown et al., Business Law with UCC Applications</b>	Chapters 5, 6 and 34	Chapters 6, 15 and 34	Chapters 1 and 23	Chapters 5 and 34
<b>Reed et al., The Legal and Regulatory Environment of Business</b>	Chapters 10, 12 and 13	Chapters 10, 12 and 18	Chapters 2 and 22	Chapters 12 and 13
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4, 7 and 16	Chapters 7, 15 and 16	Chapters 2 and 14	Chapters 4 and 16
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 9, 22 and 25	Chapters 9, 21 and 25	Chapters 5 and 11	Chapters 22 and 25
<b>Bennett-Alexander &amp; Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society</b>	Chapters 6, 8 and 17	Chapters 4, 6 and 17	Chapters 1 and 12	Chapters 8 and 17



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## This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
- Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
- Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
- Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
- Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
- McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
- Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
- Melvin, The Legal Environment of Business: A Managerial Approach 2011© (0073377694)

