

## “Catch the Wave!” A Super Success

By **Andy Nelson**

By all accounts, this year’s conference in South Padre was a big success thanks to the efforts of many people.

program, the dolphin watch, to dinner at Casa Grande, nothing could have been better. A special thanks also goes to everyone from the host newspapers who helped with the gift bags and registration for our

note and let them know how much you appreciate their participation in TCMA.

I said it at the awards dinner and I’ll say it again, “Thank You **Ben Morgan!**” Despite the changes and issues the board had to deal with this past year, Ben always found a way to get the job done. He recruited **Paul Jauma** to coordinate the COTY Awards and **James Smith** to fill in as secretary. Both did an excellent job on such short notice. I would also like to extend a personal thank you to **Brenice Honerkamp** for her help.

In an important vote taken during the conference, the issue to merge with MCMA was turned down by the member-

*(Continued on page 4)*



First, our host newspapers, The Valley Morning Star, The Brownsville Herald and The McAllen Monitor all did an outstanding job! From the hotel selection, the golf tournament, the spouse’s

conference attendees.

The generosity and support of our vendors and suppliers again helped to insure a first class conference! Please take a moment to give them a call or send them a

### Inside this issue:

Catch the Wave a Success!	1
Legally Speaking	2
Bellatrix Accepts New Coin	3
Send in your e-mail address	4
Telemark and Blenkarn Merge	4
Catch the Wave Photos	5

### Special points of interest:

- *TCMA Convention a Success*
- *Carrier of the Year Awards*
- *Zinser Speaks Legally*
- *Bellatrix Announces Changes*

# Legally Speaking

By L. Michael Zinser TCMA General Counsel

## Contractors as a matter of law

Plaintiff Jim Thompson worked as an assistant to independent contractor distributor Wayne Miller, who distributed newspapers under contract with the Houston Chronicle. Mr. Thompson brought suit under the Fair Labor Standards Act (FLSA) and the Texas Labor Code, claiming unpaid wages and claiming that he was wrongfully terminated by the Chronicle. The Chronicle filed a Motion for Summary Judgment claiming that he was an independent contractor and, thus, could not bring suit under either statute.

The Houston Chronicle presented evidence that the distributor who Mr. Thompson assisted was an independent contractor and, therefore, Mr. Thompson could not be an employee of the Chronicle.

The U. S. District Court for the Southern District of Texas agreed with the Houston Chronicle and granted its Motion for Summary Judgment relying on many factors of independent contractor status, including the following:

- The distributor signed a written "independent contractor agreement."
- He had the free right to engage others to assist him.
- He purchased newspapers at the wholesale rate.

- He leased a warehouse for his business.
- No taxes were withheld from his contract compensation.

The court also dismissed the suit against Miller, agreeing with his position that Thompson was an independent newspaper carrier who contracted with Miller.

## Arbitrator upholds discharge in Hawaii

A truck driver employed in the circulation department at the Hawaii Tribune-Herald, while delivering newspaper bundles to a carrier's home, caused \$2,500 in damage to the home and vehicle. The truck driver backed into the driveway which sloped downhill toward the residence. Claiming he needed the backup lights to illuminate the area behind the truck, on this incline he put the gear in reverse, left the engine running, and engaged the emergency brake. The brake did not hold the vehicle.

After an investigation, the driver was terminated for gross negligence. The union filed a grievance on behalf of the driver, claiming that the Company did not have just cause to terminate the driver.

Arbitrator Edward Parnell held for the Company and found that the driver's act constituted negligence sufficient to warrant his termination. Arbitrator Parnell stated:

What I do find persuasive is

the argument that the accident and resultant costly damages could have been prevented by simple common sense, i.e. driving in forward. If that had been done, the van could have been placed in park and the motor shut off. The forward facing headlights would have served to illuminate the carport. I have to agree that failure to follow such a simple procedure does constitute gross negligence.

In response to the Hawaii Guild Local 117 argument that a lesser penalty should have been applied, the Arbitrator held that he would not substitute his judgment for that of the Company's. In doing so, he stated, "The exercise of leniency or clemency is beyond the authority of arbitrators. That is the sole prerogative of management."

## NLRB reversed on "union security"

*The distributor signed a written "independent contractor agreement."*

The U. S. Court of Appeals for the Eighth Circuit

found the following language unlawful:

All Employees of the Employers subject to the terms of this Agreement shall, as a condition of continued employment, become and remain members in the Union, and all such Employees subsequently hired shall become members of the Union within thirty-one days, within the requirements of the National La-

(Continued on page 3)

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Zinser Continued

bor Relations Act. Union membership is required only to the extent that employees must pay either (I) the Union's initiation fees and periodic dues or (ii) service fees which in the case of a regular service fee payer shall be equal to the Union's initiation fees and periodic dues and in the case of an objecting service fee payer shall be the proportion of the initiation fees and dues corresponding to the proportion of the Union's total expenditures that support representational activities.

The court found the language requiring the employees to "become and remain members in the Union" misleading and "repugnant to the United States Supreme Court's pronouncement" in earlier cases which state that union membership may not be a condition of employment. The court stated that "this has been settled law for some time, and the only realistic explanation for the retention of the statutory language in collective bargaining agreements . . . is to

mislead employees about their right not to join the union." The court further stated that "although no employee can be required to join the union, this provision turns truth upon its head and informs those it governs that all employees are required to become and remain union members."

As a response to the NLRB's attempt to evade the court's original mandate, the court ordered that the clause be expunged from the contract and replaced with the following language:

- No employee shall be required to become or remain a member of the union as a condition of employment.
- Each employee shall have the right to freely join or decline to join the union.
- Each union member shall have the right to freely retain or discontinue his or her membership.
- Employees who decline

to join the union may be required, at a minimum, to pay a reduced service fee equivalent to his or her proportionate share of union expenditures that are necessary to support solely representational activities in dealing with the employer on labor management issues.

- No employee shall be discriminated against on account of his or her membership or non-membership in the union.

The court sternly served notice on the NLRB that "it will no longer uphold or enforce a union security clause that does not contain this language or reflect its undiluted equivalent."

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## Bellatrix Wizards Accept New \$1.00 Coin

Bellatrix Systems **COIN WIZARD & DATA WIZARD** electronic coin mechanisms are designed to read the new \$1.00 coin that is going to begin circulating in the next year or so.

All Bellatrix electronic coin mechanisms manufactured since 1994 have this capability already in their design. Bellatrix electronic coin mechanisms utilize proven low-power circuitry and a large D-cell Lithium battery that guarantee six-years of continuous performance in all weather conditions.

Recently Bellatrix has introduced the Route Wizard "keyless-entry" wand, that uses a ComLink infrared communications link and eliminates the changeover key switch. The Com-Link can be retro-fitted on all key-switch equipped Coin Wizards and ensures that freezing & wet key switches are a thing of the past while streamlining the route delivery process. Of course, they are easily upgraded in the field to full SINGLE-TRAK data collection.

# Telemark and Blenkarn Merge

TeleMark, Inc. has acquired J. Blenkarn Systems, Inc. and J. Blenkarn Holdings Canada, Ltd. (Blenkarn), Michigan-based firms that specialize in circulation telemarketing for the newspaper industry. TeleMark, an Inc. 500 company, specializes in inbound and outbound live-operator telemarketing services serving multiple clients and industry segments on a nationwide basis. Blenkarn specializes in new and renewal subscription sales services for major U.S. and Canadian newspapers.

TeleMark will now contribute customer service support plus operational and technological expertise to Blenkarn, which will continue to operate autonomously as a strategic business unit. The agreement between TeleMark and Blenkarn signifies TeleMark's first presence outside of the United States, as Blenkarn provides subscription sales services to many Canadian newspapers. Blenkarn employs a total of 325 people at facilities in Chicago, two offices in Grand Rapids, Michigan, and Canadian offices in Vancouver, Ottawa, Edmonton, and Winnipeg.

"This is another milestone for TeleMark, as we grow and realize our strategic objectives. Our ability to succeed is the result of the dedication and hard work of each of our employees, just as Blenkarn's employees have contributed to its remarkable success," said R. Patrick Hanlin, TeleMark president and CEO. "The parallels between Blenk-

arn's and TeleMark's business philosophies of providing outstanding client service makes an alliance between our two firms an ideal cooperative arrangement," said Jeff Blenkarn, founder, who will continue to lead the sales development of the newspaper business unit.



It's the 90's and what better and faster way to communicate than the Internet. We are building an e-mail address file at TCMA. Won't you join us? Send your e-mail address to [tcma@chron.com](mailto:tcma@chron.com) and you will be included. When important information arises that needs to be communicated, you will be sent an e-mail. Do it today!

## (TCMA Convention)

ship of TCMA. The overriding concerns regarding the merger were the impact on smaller markets and the loss of the historical traditions unique to TCMA.

As president this year, I will continue to honor our traditions, but I will also seek to find ways to improve our association through training, networking and membership development. But I can't do it myself. Just like this conference, it will take the efforts of many people. Here's to a fun and exciting year leading up to San Antonio!

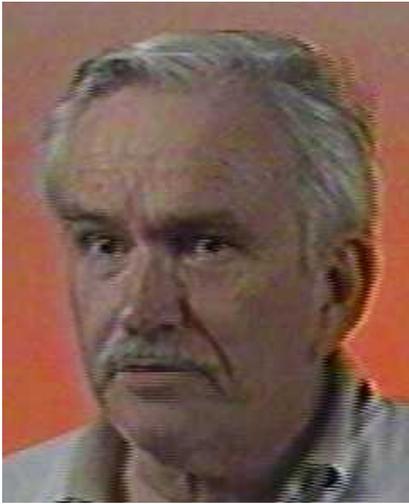
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# Catch the Wave Photos!

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**Daniel Zellmer**  
Under 200 Category



## Carrier of the Year Winners

**John Brower**  
Single Copy

**Arthur Hillman**  
Over 200 Category

**Mark Conley**  
District Manager



From left to right, **Thad Fisher**, Continental Products, **Ben Morgan**, South Padre Island Mayor, **Ben Morgan** accepting an Eagle, **Rich Randles**, Crystal from Blenkarn.



From left to right: **Lisa Cody-Smith, Andy Nelson, Steve Wiley, James Morrow, Cindy Maldonado**

## **TCMA Officers**

TEXAS CIRCULATION  
MANAGEMENT ASSOCIATION

<b>Ben Morgan</b>	<b>Chairman</b>	<b>Houston Chronicle</b>
<b>Andy Nelson</b>	<b>President</b>	<b>Fort Worth Star-Telegram</b>
<b>Lorenzo Vigliante</b>	<b>President Elect</b>	<b>Bryan-College Station Eagle</b>
<b>Chris Bradford</b>	<b>First Vice President</b>	<b>Brownwood Bulletin</b>
<b>Barry Berg</b>	<b>Second Vice President</b>	<b>San Antonio Express-News</b>
<b>John Whaley</b>	<b>Director</b>	<b>Lubbock Avalanche-Journal</b>
<b>Jo Linda Bishop</b>	<b>Director</b>	<b>Palestine Herald-Press</b>
<b>Paul Jauma</b>	<b>Director</b>	<b>Houston Chronicle</b>
<b>Eddie Goll</b>	<b>Associate Director</b>	<b>Eddie's Supply</b>
<b>James Smith</b>	<b>Secretary</b>	<b>Houston Chronicle</b>
<b>Ed Dorsey</b>	<b>NAA Federation</b>	<b>Dallas Morning News</b>