



The Dog Days of Summer

TCMA followed the lead of other regional newspaper sectionals in 2006 by moving our annual conference to the spring. Overall, our attendance was better and many new successful ideas were implemented. The enhancements to the conference were reported in the May 2006 *Lone Star Review*.

The excitement is beginning to build for our May Conference! The 2007 TCMA Conference will be at the Omni Southpark Hotel in Austin, Texas, hosted by the *Austin American-Statesman*. The dates of the 2007 Conference are May 7-9, 2007. President, **Dolan Stidom**, (*Fort Worth Star-Telegram*) promises a terrific lineup of speakers and is in the process of preparing the program now. If you have a part in planning of your company's 2007 budget, be sure to include your conference expenses for May, 2007.



Stidom

In the next few weeks, **Randy Schawe**, (*USA Today*) will be mailing the 2007 Carrier of the Year (COTY) nomination forms. Hopefully, this new schedule will allow newspapers to nominate carriers for state level recognition during their respective year end recognition of their own carriers.

The 2007 TCMA membership renewal notice will be included in the November 2007 issue of the *Lone Star Review*. Also, in November, a special early-bird package for our vendors will be included with the newsletter enabling your company to order their 2007 Buyer's Guide ad and advertising space in the newsletter and on the web site

As August ends and the fall season is upon us, there is still a lot to be accomplished as we look forward to 2007. On October 9, 2006, we have the opportunity to recognize our carriers with International Newspaper Carrier Day. The new ABC (Audit Bureau of Circulation) year begins in October and many newspapers will begin their annual audit in the fall. Although TCMA will not meet in October with a fall conference, as in past years, there is much to do before we meet again in Austin next May.

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THE ZINSER LAW FIRM

TCMA Legal Counsel

This month's column reports on a new U. S. Supreme Court case that makes it easier for employees to make out retaliation claims under the discrimination laws and a new Court of Appeals case upholding management's right to discharge an employee for disloyalty.

U. S. Supreme Court expands "retaliation" definition

White, a forklift operator for Burlington Northern & Santa Fe Railroad Co. ("Burlington") complained about sexual harassment by her supervisor. Although the supervisor was removed from his position, White was later transferred (at no change in pay) from her forklift position to standard laborer tasks. She filed a discrimination complaint regarding the transfer; she was then suspended for 37 days insubordination pending the Company's investigation into the insubordination issue. White was reinstated with back pay after a union grievance was sustained by an arbitrator, holding she had not been insubordinate. White filed retaliation charges against Burlington, and a jury awarded White compensatory damages. The U. S. Court of Appeals for the Sixth Circuit affirmed.

In a surprise unanimous decision, the U. S. Supreme Court affirmed the Sixth Circuit's ruling, holding that Title VII's anti-retaliation provision, unlike its discrimination provision, permits recovery for discriminatory acts that are unrelated to employment and/or that do not occur in the work-

place. The Supreme Court further held that Title VII's anti-retaliation provisions only cover alleged retaliatory acts that are "*materially* adverse to a reasonable employee or applicant," meaning acts that "could well dissuade a reasonable worker from making or supporting a charge of discrimination."

The Court stated: We speak of *material* adversity because it is important to separate significant from trivial harms. Title VII, we have said, does not set forth 'a general civility code for the American Workplace'... An employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience. The Court also stated that whether an action is materially adverse must be judged from an objective standard, rather than from the employee's subjective point of view.

Applying its holding to White's circumstances, the Supreme Court affirmed that a reasonable person might well have been dissuaded from pursuing her discrimination claims by her suspension, even though she was awarded back pay. The Court reasoned that 37 days would be a long time for any person to go without pay not knowing whether back pay would be dispensed and that such a hardship could cause a reasonable person to consider

forgoing a discrimination claim in exchange for returning to work and getting paid. As to the transfer, the Court reasoned that although not every transfer is materially adverse, the transfer from a more prestigious, highly skilled forklift operator job to a "more arduous and dirtier" position, which was objectively considered a demotion by Burlington employees, constituted a materially adverse reassignment.

Editor's note: This case is a surprise gift to plaintiff lawyers. In many jurisdictions before this case, courts had ruled that retaliation had to involve tangible or ultimate employment decisions such as "hiring, granting leave, discharging, demoting, or pay reduction." To quantify the impact, White's damages before this decision would have been zero since she suffered no reduction in pay and was reinstated with back pay. The plaintiff, by virtue of this decision, received \$43,000 plus attorneys' fees. Retaliation claims will mushroom.



TCMA Board Briefs

President-Elect, **Wendy Stane**, accepted a position in the Marketing Department of the Fort Worth Star-Telegram leaving the Star's Circulation Department.



Wendy said, "Well, I guess I won't be the first female TCMA Board President." Wendy began her new assignment on August 28, 2006.

Her departure from the TCMA Board will create a vacancy and a reassignment of responsibilities for the board. This will be a topic of discussion at the next Board meeting which will be held in October, 2006.

On behalf of the TCMA Board of Directors, thank you, Wendy, for your service to TCMA and best wishes in your new pursuit!

2007 Conference

The 2007 TCMA Conference will be held on May 7-9, 2007, at the Omni Southpark Hotel in Austin, Texas.



The Omni Southpark is a favorite TCMA hotel. We held our spring seminars at this hotel from 2002 through 2005.

The Austin American-Statesman will be our host for the 2007 conference.

The highway construction that has plagued this hotel is now complete! There is easy access to and from the hotel now that the I-35 and Highway 71 construction is complete.

Reservations are now being accepted for the conference. Hotel rates begin at \$109/night. Call the Omni toll free number (888) 444 OMNI or the hotel directly at 512 448 2222.

Our Newest Members!

Brenda Mrazek Sequin
Gazette Enterprise

Membership Renewal Notices

The TCMA By-Laws require the Secretary to send membership renewal notices each November for the succeeding year.

Members will receive their renewal notice in the next newsletter in November, 2006, and an opportunity to win a paid registration to the 2007 Conference! Watch for your next issue of the *Lone Star Review!*

COTY Roundup!

In the next several weeks, **Randy Schawe, First Vice President**, will be mailing Carrier of the Year Nominations for the 2007 Carrier of the Year (COTY) Competition.

The schedule for the selection process is:

- **September** Nominations/Instructions mailed
- **December 8** Nominations due
- **December 15-20** Preliminary judging
- **December 22** Finalists notified/Instructions mailed with video requirements
- **February 13, 2007** Finalist videos due
- **February 23, 2007** Board Selects Winners
- **May 8, 2007** Awards presented at the 2007 Conference in Austin, Texas

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