

# GLOBAL SUPPLY CHAIN REVIEW

Published by the Global Supply Chain Leaders Group

**LEADER PROFILE:**  
INTERVIEW WITH  
ANGEL L. MENDEZ

**BELIEVE IT:**  
COMPLAINTS ARE  
GIFTS

**ARE YOU AT RISK?**  
AGENT / EMPLOYEE  
LIABILITY

**PLUS:**  
COMMERCIAL LITIGATION  
UPDATE



Angel L. Mendez  
Cisco Systems, Inc.

## Message from the President of GSCLG

As President of the GSCLG, I am delighted to present this special edition of the Global Supply Chain Review. Starting this month, the GSC Review showcases the first of many icons in the world of Supply Chain Executives.

As promised in earlier editions, we seek those individuals that have made the most significant contributions to the advancement of the supply chain industry at the same time helping their companies' bottom lines. In other words, these are the individuals that will inspire veterans and new hires alike. In the coming months, our readers will be presented a lineup of the most influential, accomplished, and renowned executives from some of the most well known corporations worldwide.

These are the individuals most people strive to be in working towards their professional goals.

We are excited to give you the first of many important supply chain interviews. We will do our best to keep searching globally for those leaders that deserve to be singled out and I ask you to send me the names of those you would like to be profiled so we can learn from their views and accomplishments.

We are extremely pleased to be able to present this month, an interview with Angel L. Mendez, Senior Vice President, Customer Value Chain Management, of Cisco Systems, Inc. Angel is an individual that is well known in the USA, Asia, Europe, and in Latin America not only for his high ranking position at Cisco Systems, but for his contributions to the community as well.

Angel's drive and support of The Supply Chain Leadership Institute illustrates his approach to globalization, which he sees as an opportunity to promote supply chain talent and innovation available in all parts of the world.

I continue to preach that we should celebrate supply chain leaders with vision, passion, and care for their customers and employees. These leaders provide the value shareholders deserve. They ensure that their customers keep moving forward while dealing with global challenges affecting the day-to-day operations.

If we recognize great performance and leadership potential, we will promote our capacity to lead both operationally as well as at the C-level. As senior-level supply chain leaders, these top notch individuals in the Supply Chain industry should be celebrated by their peers. We hope to see them grow and become the future CEOs that we all deserve and admire.

We are honored to present Angel L. Mendez, Senior Vice President, Customer Value Chain Management, of Cisco Systems, Inc. and look forward to showcasing many more like him in the future.

Sergio Retamal

Publisher, GSC Review

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# Are Your Financial Supply Chain Goals on Target?

## Make your mark with *Global4PL Supply Chain Services*

Expert Resources  
Customizes Solutions  
Freight Post Audits  
Compliance Programs  
Financial Savings ROI  
Import / Export  
Training



**What We Do:** We help our clients save large amounts of money, improve efficiencies, and avoid costly errors in their global logistics operations.

**Who We Are:** We are a team of high-performance, hands-in industry veterans that come to the table with proven experience. We deploy experts in import / export compliance, multi-mode transportation, partner negotiations, third party logistics, and general operations management to implement innovative solutions with immediate, measurable results. Our resources, along with our supply base management techniques, collaborative communication infrastructure, and technologies frequently produce savings of 15% to 35% of a company's logistics spend.

## Customized Supply Chain Solutions to Help You Succeed

### See how our results speak for themselves

#### Transportation Cost Savings

We conduct a 1-2 day no-cost audit of your transportation spend and identify opportunities for cost savings in areas such as rate reduction, coding errors, commodity code reclassification, or service level requirements. At the conclusion of this audit, we present you with our findings and recommendations, including a quantifiable cost savings opportunity.

#### Client: Large West Coast contemporary clothing retailer

Concern: The client company was concerned that its global transportation expenditures were escalating and they could not pinpoint cost savings opportunities. The company also desired to establish a best-practices import compliance program to eliminate non-compliant entries and subsequent risk of fines and penalties.

#### Results:

Global4PL conducted a post-audit of recent freight invoices and shipments, and discovered transportation cost savings totaling over 27% net cost savings. Global4PL reviewed the company's import compliance program and documented required changes to achieve best-practices status, and identified classification changes to comply with US CBP regulations.

#### CBP, BIS, and SOX Compliance

We offer a comprehensive set of services to ensure compliance with import / export regulations and to improve the efficiency of your compliance processes. We develop and document a comprehensive import / export program proven to pass muster with CBP and / or BIS in the event of an audit or error. We will ferret out errors to avoid costly fines. We will identify any duty savings opportunities.

- Review existing operations
- Set up compliance programs
- File rulings
- Review products, classification, create databases
- Free trade agreements – qualifications / reviews
- Create policies and procedures
- Draft disclosures

#### Client: Mid-size computer company

Concern: The client company had a small logistics staff with limited import/export compliance expertise and a potential risk of non-compliance in import/export operations.

#### Results:

Global4PL compiled a best-practices import/export compliance program that detailed compliance procedures, documentation formats and record retention methods and requirements. Global4PL reviewed all products' HTS commodity codes and uncovered a classification error. Then, to rectify the past errors, Global4PL prepared thorough documentation of the errors, calculated duties owed to US CBP, and prepared the post-entry filing for submission to US CBP. The self-disclosure was accepted by US CBP with no assessment of penalties and no further action.

#### Logistics Strategy

We conduct a complete review of your supply chain management that spans all movement and storage of raw materials, work-in-process inventory, and finished goods from point of origin to point of consumption. We provide a complete assessment of your inbound & outbound distribution, warehousing, and reverse logistics functions, both domestically and internationally. We identify inefficiencies and opportunities for cost savings.

#### Client: Large telecommunications manufacturer

Concern: The client company modified its supply chain footprint as the market and strategies shifted over time.

#### Results:

Global4PL executed the project to rationalize the company's logistics strategy and to optimize the revised supply chain strategy. Global4PL's assessments (including geopolitical and process risks) and solutions improved the company's intra-Asia shipping efficiency. Global4PL set up customized import / export compliance programs, having met with officials at contract manufacturers and conducted packaging redesign which resulted in 53% overall cost savings without compromising engineering requirements. Global4PL revamped transportation provider relationships, resulting in 20% reduction in transportation costs. Global4PL developed and implemented an operational strategy to minimize EU VAT charges (including reverse logistics considerations). Last, but not least, Global4PL provided a supply chain visibility tool (PO Horizon™) that tracks product movement at the part number level.

*"In the first month we engaged Global4PL we were able to implement three cost reduction projects which will result in millions of dollars in savings over the next five years".*

**JB Delaney**

Director, Supply Chain  
Infinera Corporation



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## **You head up a relatively new organization at Cisco, Customer Value Chain Management. What is your role?**

We formed the new organization in 2008 by bringing together our manufacturing and supply chain teams with our order management and corporate quality management organizations. Our vision is to increase alignment and collaboration across these teams in order to provide our customers with an unrivaled, end-to-end experience. That requires our leadership team to manage an organization of 9,000 people at 90 locations in more than 30 countries, as well as a partner network of suppliers, contract manufacturers, and call center operators. It's a job that involves product design and planning, sourcing thousands of components, building hundreds of product families and solutions, then fulfilling and supporting them for a diverse worldwide customer base. Cisco's CEO, John Chambers, summed up the job when he said: "We need to support any innovation and any business model in any part of the world."



## **What's a value chain and how is it different from a supply chain?**

We define the value chain as the network of integrated Cisco and partner activities that drives innovation and value to our customers. The value chain, as we see it, is demand driven, distributed, global and collaborative in nature. We are as focused as ever on improving operational excellence and driving down costs, but we balance those traditional supply chain goals with a strategic focus on meeting specific customer needs, capturing new market adjacencies, and driving innovation to customers faster and more reliably than our competitors.

## **What are your primary areas of focus these days?**

One major focus is quality and improving the customer experience across every area of interaction with Cisco, or what we call "customer moments of truth". For example, we have formed dedicated Customer Value Teams that bring together subject matter experts from across different functions to meet the requirements of our strategic customers. We are also in the process of transforming our key metrics to measure success in terms of impact on customers and other key stakeholders.

## **What are the biggest internal challenges for manufacturers to achieve supply chain excellence?**

The principal internal challenge that we face is to manage the growing complexity that follows from changing customer needs, new business models, constant innovation, and the many added factors—such as country-of-origin requirements and product localization—that accompany globalization. The challenge is to manage this complexity while holding down costs and not sacrificing productivity through enormous new investments in IT systems or layers of bureaucracy. Increasingly, we are finding the best solutions in collaborative Web 2.0 technologies such as online web conferencing, TelePresence, Wikis and other flexible software tools that scale globally at low cost while replacing transactions with real-time interactions that speed decision making and streamline key processes.

## **What are the biggest external challenges in achieving supply chain excellence?**

A major external challenge is staying out in front of changes in the macro economy, which as we all know have been difficult to predict. We have worked hard to build out our Demand Management and planning capabilities over the past several years and make the transition to a lean supply chain driven by customer orders and demand. Our ability to improve our demand signal and extend Lean principles across our

suppliers, contract manufacturers, and distributor channel really paid off during the recent economic downturn. So did our ability to use Web 2.0 collaboration technologies to monitor the resiliency of our suppliers. During the downturn we were able to dramatically reduce inventory in our supply chain with minimum excess and obsolete inventory exposure, and we did this while maintaining high levels of customer service. Now, as we see signs of improvement in the economy, the challenge is to be equally successful in judging the upturn and responding to increases in demand.

## During this economic downturn, how do you keep your entire organization motivated?

You could say that we stayed motivated by preparing for the upturn. We viewed the downturn as an opportunity to shift resources toward strategic priorities and gain market share. I think most of us at Cisco felt fortunate and excited to work for the kind of global leader that provides such an opportunity. For true supply chain professionals, there is also satisfaction in applying all that you've learned to navigate through tough times. We have had to manage expenses more carefully, but the added discipline helped us find new and smarter ways to get things done that will deliver even greater benefits as the economy improves.

## In volatile times, risk management becomes more critical than ever. How does Cisco approach mitigating risk in its value chain?

We take a comprehensive approach to risk management that includes business continuity planning, crisis management, and close monitoring of product and supply chain resiliency. We use our collaboration and communications technologies to stay in close communication with our suppliers and we maintain detailed resiliency dashboards that let us know when we need to take remedial action. Our founding leadership in the Supply Chain Risk Leadership Council helps us collaborate with other leading supply chain companies to develop and share risk management standards and best practices.

## How is Cisco addressing the market's increasing focus on "green" supply chains and reducing a company's carbon footprint?

Our Customer Value Chain organization plays an integral role in delivering on Cisco's social responsibility and Green strategies. Our corporate strategy has several components, including the development of products and solutions architectures that help our customers reduce their carbon footprints. TelePresence, for example, which is Cisco's high-resolution videoconferencing system, has helped Cisco and our customers dramatically reduce both carbon emissions and travel costs. Within our value chain organization, our

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**What We Do:** We help our clients save large amounts of money, improve efficiencies, and avoid costly errors in their global logistics operations.

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**Customized Supply Chain Solutions to Help You Succeed**

**See how our results speak for themselves**

**Transportation Cost Savings**  
We estimate a 1.2% cost avoidance of your transportation spend and identify opportunities for cost savings in areas such as rate reduction, carrier selection, mode, route, consolidation, or service level requirements. At the conclusion of the audit we present our findings and recommendations, including a detailed savings opportunity report.

**Customs and Trade Compliance**  
We offer a comprehensive set of services to ensure compliance with import / export regulations and to improve the efficiency of your compliance processes. We develop and document a comprehensive import/export program, provide comprehensive training to your staff, and we can assist you with all aspects of your compliance program, including: 1) Risk assessment, 2) Policy development, 3) Process optimization, 4) Audit preparation, 5) Incident response, 6) Regulatory updates, 7) Training, 8) Reporting, 9) Compliance monitoring, 10) Risk mitigation, 11) Incident response, 12) Regulatory updates, 13) Training, 14) Reporting, 15) Compliance monitoring, 16) Risk mitigation, 17) Incident response, 18) Regulatory updates, 19) Training, 20) Reporting, 21) Compliance monitoring, 22) Risk mitigation, 23) Incident response, 24) Regulatory updates, 25) Training, 26) Reporting, 27) Compliance monitoring, 28) Risk mitigation, 29) Incident response, 30) Regulatory updates, 31) Training, 32) Reporting, 33) Compliance monitoring, 34) Risk mitigation, 35) Incident response, 36) Regulatory updates, 37) Training, 38) Reporting, 39) Compliance monitoring, 40) 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Green strategy encompasses product design and packaging, sourcing, manufacturing, transport, and the recycling and reuse of our products. We ensure that our products and our customers comply with environmental regulations around the world, but our vision is to go beyond mere compliance and work with our customers and suppliers to innovate and lead in Green solutions. Toward that goal, we work with various industry and scientific groups to develop and implement best practices for environmentally sustainable manufacturing and supply chain solutions.

**What's your priority for the coming 2-3 years? 5-10 years?**

Our stated goal is to provide our customers with the world's best value chain by 2012. It's not in our nature to aspire to stay in the top five, or to be second best. We want to be the best, and to achieve that goal we need to continue to deliver for our customers faster, more reliably, and at the highest levels of quality, and we need to do it through a segmented customer experience that meets the specific needs of customers in different market segments-from the world's leading telecommunications service providers to home consumers. Looking further ahead, we will need to support an even greater range of business models as Cisco moves into new market adjacencies and becomes a much larger company. This growth direction puts a premium on our ability to deliver flexible, scalable and re-configurable systems and processes.

**Cisco recently opened a Supply Chain Leadership Institute in China, together with Fudan University in Shanghai and Stanford University. What motivated you to make this unusual type of investment?**

The Supply Chain Leadership Institute illustrates our approach to globalization, which we see as an opportunity to benefit from the talent, innovation and growth markets available in all parts of the world. This educational program helps us partner with China's leading corporate, government and educational institutions to drive supply chain innovation and develop future talent and leadership. It's a great way for Cisco to effectively operate in China by forming strong connections and relationships that support business growth. It also provides opportunities for our own Cisco leadership to learn and lecture, as I did at Fudan this summer.

**What are the main skills and attributes that have helped you reach your current position?**

To begin with, I was very fortunate to start my career with GE, a company which is likely the best in the world when it comes to leadership development. That experience engrained in me a series of leadership values and change management skills that have served me well over the years. In addition,

At the crossroads of crisis and opportunity stands productive change.



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I think an informal style, a focus on people, and my interest and experience in global business and cultures, have allowed me to lead large and complex business transformations on a global scale. I also believe in the process of constant learning and preparation, something upon which I rely on every single day. Finally, a good sense of humor is essential.... I never take myself too seriously. In a profession where so many things can go wrong every day, humor can keep you calibrated.

## Who do you rely on for advice?

I'm fortunate to have a tremendous senior leadership team that is not afraid to speak openly about the obstacles we face and offer solutions that approach problems in innovative ways. We put a great deal of emphasis on leadership development in our value chain organization and cultivating a collaborative, high performance culture among our people at all levels. Over the years I have also counted on valuable coaching from close friends and former bosses. I have been fortunate to work with and for some excellent role models from which I have learned tremendously.

## What have you learned as SVP of Customer Value Chain Management that has surprised you or changed the way you do business?

I continue to be amazed by the opportunities that exist across the value chain we manage. Just when you think a process or plant is optimized, you come to find yet another long list of things that can be done better. As we formed CVCM last year, we knew there were plenty of areas that needed to be improved. Nine months into our journey, we're finding many more opportunities than initially met the eye....and we're just getting started. More broadly, I continue to be impressed by the excellent people in my team. If you lay out a vision and nurture a culture focused on excellence, talented people can do amazing things. We really have an infinite capacity to improve everything we touch.

## Turbulent times should be the best time to implement changes. However, companies tend to get paralyzed due to uncertainty in the market or human capital. What is your advice to maximize the opportunities to implement changes during tough times?

Three factors stand out. First, I think it's crucial that you have strong standards and values and a clear vision of why your company is in business in the first place. Second, you need to invest in talented, resilient people who have the flexibility and the energy to deal with change. Third, I think it's critical to develop leaders in your organization who can simultaneously manage both business transformation and execution on your immediate targets. That is the essence of the high performance culture that we work hard to develop in our value chain leaders-constantly improving, achieving new levels of excellence, and then starting over and aiming even higher. Business and the economy may go up or down, but the journey to excellence never ends.



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# VISION *Sync* 2009

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*"...we value our partnership with vendors, these meetings have been very successful when looking to reduce deductions and compliance issues..."*

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# Believe It: Complaints Are Gifts

An organization can view complaining customers as a nuisance or use their complaints to its advantage.

By Janelle Barlow, PhD

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<http://gbr.pepperdine.edu/091/complaints.html>

Complaining customers give businesses a key opportunity to uncover problems. Resolving these problems can result in the conversion of these complaining customers into loyal ones who feel bonded to the company and will continue buying its products or services. In other words, it is to the organization's benefit to think of complaints as gifts.

Suppose a customer calls in with the following complaint: "Your wireless service never works. I keep getting disconnected, but your advertising says you can be heard anywhere in the country. My first bill also had charges for calls I know I didn't make. But that doesn't surprise me. If you can't get the connections right, you probably can't get your billing right!"

The organization's typical response is: "Thanks for calling and telling us. We really appreciate it." But does the company really appreciate it? Probably not!

An organization's mind-set is a major factor in how complaints are handled. For example, a survey of European retail banks revealed a direct relationship between the way financial industry leaders view customer complaints, the way customers behave when making a complaint, and ultimately how the customers are treated. That is, customers can sense that an organization sees complaints as a gift or as something to be avoided.

An in-depth study of two Swedish banks also supported the idea that branch managers' attitudes about complaints impact how customer-facing staff treat their customers; it concluded that successful managers used complaint handling as their *primary* tool for creating long-term customer satisfaction with small-business customers.

## What is a Complaint?

In order to internalize this strategic idea of the complaint as a gift, we must first understand what a complaint is. In simplest terms, complaints are statements about expectations that have not been met. They are also, and perhaps more importantly, opportunities for organizations to reconnect with customers by fixing service or product breakdowns.

### Complaints define what customers want.

Customer complaints can tell organizations how to improve services and products, which, in turn, can help them maintain market share. Leslie Byrne, former director of the U.S. Office of Consumer Affairs (OCA), claimed she can tell which companies were doing a good job of pleasing customers and which ones were not by simply listening to the OCA complaint helpline. "Put a CEO on the company hotline. He will find out what customers think and he will find it out fast," she said in a newspaper article. In the article, she also cited a study on complaint handling that concluded: "...far from being a pain in the neck as too many managers regard customer complaints, they are a marvelous source of crucial management information."

John Davis, a former IBM representative, put it in terms of competition: "The selling edge trick is to establish a continuously flowing pipeline from the customer's mind to the salesperson's ear. When you keep track of what customers want and do not want, what pleases and gripes them, you can adjust your sights accordingly and stay a step ahead of competitors."

# Believe It: Complaints Are Gifts

An organization can view complaining customers as a nuisance or use their complaints to its advantage.

Continued

## Complaints are one of the least expensive market research tools around.

Complaints that are brought directly to businesses are the most efficient and least expensive way of understanding customer expectations about products and services. More costly and less direct methods include reviewing customer expectations in parallel industries; conducting transaction-based studies, such as using mystery shoppers or external auditors; and conducting comprehensive customer expectation research, such as focus groups. But none of these methods bring customers closer to you as they are being conducted. Furthermore, while large companies can afford to conduct or commission market research of this type, medium and small companies are forced to rely on their customers to tell them what they think about their products and services.

In most cases, customers are not going to generate groundbreaking ideas for companies—they will not come up with the next Toyota Prius hybrid, Apple iPhone, Bose noise-reduction headset, or Segway personal transporter. Innovation is the purview of a company's research and development department. However, customer feedback is extremely helpful in fine-tuning product concepts. For example, the idea to have onboard massages on Virgin Atlantic flights came from a passenger, the masseur of founder Richard Branson's wife. In fact, it is well known that the computer technology industry has been developed almost as much by user feedback as it has been by developers.

In addition to calling attention to product defects, service shortcomings, and poorly designed systems, complaining customers can also alert managers to personnel problems. Customers are usually the first to know when the company is being badly represented. In fact, managers may *never* learn about poorly treated customers because, generally, employees behave better when managers are around or when telephone calls are taped.

## Complaints can build stronger relationships.

Loyal customers are not easily created. The multitude of statistics generated in this area suggest that if customers believe their complaints are welcomed and responded to, they are more likely to become repeat customers. In addition, long-term customers are not only easier to sell to; they are also easier to serve because they know how to get their needs met.

Of course, some complaints beg for more attention than others, for example, complaints expressed by highly consequential customers or that indicate a customer is considering leaving. In general, customers who state their complaints with anger are easier to address (and, consequently, retain) compared to those who state their complaints with sadness—more often than not, they are sad because they are going to leave.

Every organization should establish a hierarchy of customer dissatisfaction that ranks importance to both the organization and the customer. This is not a simple task—it is not always easy to properly categorize either complaints or customers. For example, a 30-year-old, seemingly inconsequential complainer could grow up to become the CEO of a major corporate customer. In addition, sometimes identical complaints are not equal. Because of the knowledge gained every time an employee handles a customer complaint, teams should be encouraged to share what they have learned in the resolution process.

For most companies, about two-thirds of sales come from existing or repeat customers. A research group surveyed 1,179 department-store shoppers and found that customers who were satisfied with the stores were more likely to complain than others, and that customers were more likely to remain loyal after they complained. As such, it is necessary to consider the total potential volume of business a customer represents, rather than to focus on the individual, perhaps insignificant item a customer is currently complaining about. For example, in the early 2000s, the average Staples office supply store customer spent between \$600 and \$700 a year. If that customer also used a Staples catalog, he or she spent twice as much. Someone who used both the catalog and the store, and also shopped online, spent about four times as much as the store-only shopper. In other words, unbeknownst to the customer service representative, a single customer can represent high volume business to companies that offer several purchasing channels.

## Believe It: Complaints Are Gifts

An organization can view complaining customers as a nuisance or use their complaints to its advantage.

Continued

Customer complaints, whether of great or minor significance, provide an opportunity to form incredibly tight relationships with customers. As one reader commented in response to a post by well-known technology blogger Matt Woodward: "Don't you love companies that just get it? Companies that reach out and make an effort to be available and accountable to all of their customers inspire a real sense of trust and loyalty."

### Voiced complaints help control negative word of mouth (WOM).

Businesses are understandably interested in what the public says about them. WOM can make or break a business or product—every dissatisfied customer represents a potential threat to the reputation of the company in the marketplace. Complaints can work for or against your company in the following ways:

- **People are much more likely to believe a personal recommendation than an advertiser's promotional statements.** A General Electric study found that recommendations made by people who customers knew carried twice the weight of advertising statements. Consider the following example: When a customer came into John Robert's Spa in Cleveland, Ohio, for a hair coloring, she ended up with a stained suit. Manager John DiJulius sent her a large check to cover the cost of the suit after a trip to the dry cleaners did not remove the stain, and also gave her a free facial and pedicure. DiJulius estimates that his good-will gesture generated 30 new customers. In addition, the customer now comes in for facials and pedicures on a regular basis. "At first, I thought about never going back. Now I would never think of going anywhere else," she said.
- **When handled effectively, complaints can be a powerful source of positive WOM.** Spend some time online reading all the personal service experiences that bloggers and their commenters have had. Saska, who writes a blog called Fiendish Glee Club, posted a lengthy description of fantastic service she received from Nintendo when she bought a new Nintendo Wii game console on its 2007 launch day, and from the beginning, the optical drive was noisy. When the noise persisted, Saska called Nintendo and instead of having to send her unit for repair, she was invited to stop by their offices (close to her house) and have it looked at immediately. "So this is my Valentine to Nintendo. That was the most awesome customer service experience I have ever, ever had," she wrote. It is a fun read, and to date, almost 100 people have commented on her post, asking additional questions and making similarly positive statements about Nintendo.
- **The more dissatisfied customers become, the more likely they are to use negative WOM to express their displeasure.** If customers walk away angry, there may not be much a company can do to stop their negative comments. But if companies make it easy for customers to complain and can handle these complaints well, positive WOM may be generated. If you read complaints posted online, you will see that they almost all involve complaints that were handled poorly. If the companies do not listen to their customers' complaints, customers will find another audience and the company loses its chance to defend itself.

Some individuals lack social skills and their complaints may appear inappropriate or unreasonable; however, it is the service provider's job to focus on the content of the complaint combined with the emotions presented, and not whether the complaint is delivered in a socially acceptable way. While this can be difficult, if service providers adopt the mind-set that complaints are gifts, they will have the best foundation to handle one of the thorniest aspects of customer relations.

# Believe It: Complaints Are Gifts

An organization can view complaining customers as a nuisance or use their complaints to its advantage.

Continued

Beyond adopting an appropriate mind-set about complaints, what else can an organization do? I recommend a five-step process that uses questions to formulate a complete service recovery mapping process.

<p><b>1. Design</b></p>	<ul style="list-style-type: none"> <li>● What is our mind-set about complaints?</li> <li>● What do we want to accomplish with our service recovery approach?</li> <li>● What experiences do we want our customers to have when they give us feedback?</li> <li>● What guidelines should we follow when handling complaints?</li> </ul>
<p><b>2. Measure</b></p>	<ul style="list-style-type: none"> <li>● What are our goals and how will we know we are getting close to them?</li> <li>● What do we currently do well?</li> <li>● What does our staff think and feel about complaints?</li> <li>● How robust are our current metrics regarding product or service failures?</li> <li>● How widely is our complaint data shared internally?</li> <li>● Have we benchmarked ourselves against our competitors?</li> <li>● Would it be useful for us to use a robust customer relationship management (CRM) program to track our complaints?</li> </ul>
<p><b>3. Align</b></p>	<ul style="list-style-type: none"> <li>● Do our written responses to complaints reflect our service recovery approach?</li> <li>● Does our reward system compensate for effective complaint handling?</li> <li>● Are our return policies, refunds, and guarantees in alignment with our customer philosophy?</li> <li>● Are our internal policies, procedures, and systems in alignment with our feedback philosophy?</li> </ul>
<p><b>4. Respond and Recover</b></p>	<ul style="list-style-type: none"> <li>● Does our staff respond to complaining customers as if they have been given a gift?</li> <li>● How empowered is our staff to respond to complaints?</li> <li>● How do we handle conflicts between our staff and our customers?</li> <li>● Does everyone, in some way, take responsibility for responding and recovering for our customers?</li> </ul>
<p><b>5. Integrate</b></p>	<ul style="list-style-type: none"> <li>● How do we apply what we learn from our customers to help improve our quality?</li> <li>● What is our process enabling staff to learn from each other about effective complaint handling?</li> <li>● What is our system for sharing information across departments?</li> <li>● How do we ensure that the topic of "feedback" is on everyone's agenda?</li> <li>● How can we use our service recovery approach in our marketing?</li> </ul>

# Believe It: Complaints Are Gifts

An organization can view complaining customers as a nuisance or use their complaints to its advantage.

Continued

Quality processes significantly impact an organization's success. So, too, can a total service recovery process change the way an organization responds to and learns from customer complaints.

## About the Author:

Janelle Barlow has a PhD from the University of California-Berkeley, along with master's degrees in international relations and in psychology. She is co-author of A Complaint Is a Gift; Emotional Value; Branded Customer Service; the Stress Manager; Mind Flexors, I and II; and Smart Videoconferencing. She is also president and owner of TMI US, a partner of TMI International with offices in 35 countries worldwide; CEO of Branded Customer Service; and a licensed marriage and family therapist.

The screenshot shows the Prestige Protection website homepage. At the top right, it says "24 hour dispatch services". The main header features the Prestige Protection logo with the tagline "Our Business Is Protecting Yours!" and the phone number "1-877-743-8482". Below the header is a navigation menu with links for Home, About Us, Services, and Employment. The main content area is divided into several sections:

- Prestige Protection Security Patrol and Guard Services:** A large section with a photo of a security guard in a white and red patrol car. Text describes the company's commitment to being the "Provider of Choice" and lists services like construction site and event security.
- 24/7 Dispatch Services:** A section with a small photo of a guard and text explaining that employees take calls 24 hours a day.
- Licensed Professionals:** A section with a photo of two guards and text stating that the company provides licensed professionals for various environments.
- Employment Opportunities:** A section with a photo of a guard and text offering career opportunities for quality men and women.
- Client Logos:** On the left side, there are logos for "The Golden State Warriors" and "The Port of Redwood City".

At the bottom of the page, there is a footer with the copyright notice: "©2009 Copyright: Prestige Protection, All Rights Reserved. Created and maintained by: WSI".

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# Agent / Employee Liability for Customs Transgressions

By Ronald C. Chauvel, Esq.

Those who are employed in the complex world of customs may from time to time encounter situations where issues arise regarding the propriety of certain export or import authority and documentation. In these instances, employers should be made aware of concerns and should turn to experts in the field for the answers.

If the employer (exporter, importer, or otherwise) is not vigilant in seeking expert customs assistance, then the employee dealing with the day-to-day customs issues may ask the following question: Am I personally liable if I have knowledge that my company is or may not be compliant with pertinent customs requirements?

The answer is to be found in Title 19 of the United States Code which is entitled "Customs Duties." But, as with most complex areas of the law, there may not always be a simple answer to the issue of employee liability.

Section 1592 of Title 19 is entitled "Penalties for fraud, gross negligence and negligence". It states, in part, that "... no person, by fraud, gross negligence, or negligence – (A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of – (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or (ii) any omission which is material, or (B) may aid or abet any other person to violate subparagraph (A)."

On the positive side, section 1592 goes on to state that "Clerical errors or mistakes of fact are not violations ... unless they are part of a pattern of negligent conduct."

Section 1592 prescribes maximum penalties. For instance, for a fraud violation the maximum penalty shall not exceed the domestic value of the merchandise. In instances of gross negligence, the maximum penalty is the lesser of the domestic value of the merchandise or four times the lawful duties, taxes and fees of which the United States was deprived.

The Customs & Border Protection (CBP) is required to serve on the person concerned a "Pre-Penalty Notice" which sets forth the facts that CBP has accumulated that indicate a violation has occurred, and the person served is given an opportunity to respond and provide additional information and facts to the CBP.

So, what are the chances that an employee of an importer or exporter might be pursued by CBP under the above procedures? Generally, it is unlikely. Normally, CBP pursues the employer that is the official importer / exporter. However, there are never any guarantees in these types of matters. If the employee is an owner, officer or director of the importer / exporter and gained or stood to gain by way of improper customs activity, then there is the real prospect that CBP may pursue the employee.

Likewise, if the employee was aware of the violations and failed to forewarn the employer, the employer might pursue the employee for any penalties the employer is required to pay. This would be particularly true where the employee was somehow deriving gain by way of the illegal customs activity.

Good judgment in this area means immediately forewarning your employer of any customs issues that may arise. If the employer fails or refuses to seek expert advice, then you may wish to look elsewhere for employment.

## About the Author:

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# You're Fired: Dishonest Conduct Trumps Franchise Agreement's Right to Cure Provision

By A. Christopher Young and Thomas T. Watkinson

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In a case of first impression in Pennsylvania, the Supreme Court of Pennsylvania held that certain types of dishonest conduct are so egregious that the franchisor may terminate the franchise immediately despite the existence of an express notice and cure provision in the franchise agreement. See *LJL Transp., Inc. v. Pilot Air Freight Corp.*, PICS Case No. 09-0108. In doing so, the court rejected the franchisee's argument that an absolute right to cure any default exists under Pennsylvania law.

When Pilot, a freight forwarding company with numerous stations throughout the country, became aware that one of its franchisees, LJL Transportation, Inc. (LJL), was improperly shipping freight through companies other than Pilot despite its exclusive obligation, it terminated LJL's franchise without providing it an opportunity to cure its default. Pilot asserted that any attempt to cure the breach by LJL was impossible because LJL's dishonesty destroyed the trust that Pilot required to do business with LJL. In its suit against Pilot for breach of the franchise agreement, LJL claimed it was not given an opportunity to cure its admitted breach of the agreement within 90 days as expressly provided in the franchise agreement. LJL argued that the right to cure clause was absolute and, no matter what type of breach, it must be given an opportunity to cure by paying Pilot the royalties on the improperly diverted shipments.

Recognizing it as a matter of first impression in Pennsylvania, the Supreme Court agreed with the lower courts and found in favor of the franchisor. The court relied primarily on precedent from other jurisdictions, which held that certain types of dishonest conduct are so egregious and of such a nature that the aggrieved party may terminate the contract immediately even when a cure provision is specifically provided in the contract. Two fundamental principles of contract law underlay the court's decision: first, a material breach that goes to the root of the matter or the essence of the contract constitutes grounds for rescission without opportunity to cure, and 2) all franchise agreements imply a covenant of good faith requiring the parties not to engage in conduct that deprives the other of its rightful expectations. See 13 P.S. § 1203 ("[e]very contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.") and 13 P.S. § 1201(20) (defining good faith in the commercial context of the sale of goods as "honesty in fact and the observance of reasonable commercial standards of fair dealing."). Generating business for each other was a core element/purpose of the franchise. LJL's diversions of business away from Pilot constituted a material breach of the implied covenant of good faith such that Pilot was not obligated to afford LJL an opportunity to cure the breach.

The court further rejected the franchisee's claim to an absolute right to cure under these circumstances, noting that the inclusion of an additional contract clause, which specified the parties retained other remedies at law and equity, could be fairly read as an "express indication" by Pilot of the right to exercise all remedies available to it after a breach by LJL, including its inherent power to terminate the contract without notice in the event of an essential breach.

The court stopped short of definitively holding that all dishonest conduct, no matter how insubstantial, gives rise to an immediate termination remedy. LJL's alternative argument that its breach was *de minimus*<sup>1</sup> and, for that reason, it should have been given an opportunity to cure, was rejected because it was not encompassed by the court's order granting review. The Superior Court, although ruling the argument ultimately waived, had commented on the possibility that the trier of fact could have found the breach was not so egregious to warrant termination of the franchise agreement. See *LJL Transp., Inc. v. Pilot Air Freight Corp.*, 905 A.2d 991, 993 (Pa. Super. 2006). Determining when dishonest conduct warrants summary termination of the franchise agreement must be made on a case-by-case basis. Examples of conduct that may allow for immediate termination without opportunity to cure are: Warehouseman's conversion by short-weighting deliveries of fertilizer, *Olin v. Central Indus. Inc.*, 576 F.2d 642 (5th Cir. 1978); franchisee's scheme to hide revenue from franchisor, *Southland Corp. v. Mir*, 748 F. Supp. 969 (E.D.N.Y. 1990); manager engaging in self-dealings, *Larken, Inc. v. Larken Iowa City P'ship, Ltd.*, 589 N.W.2d 700 (Iowa 1999); and employee misappropriating corporate funds and usurping business opportunities for himself, *Leghorn v. Wieland*, 289 So. 2d 745, 748 (Fla. Dist. Ct. App. 1974).

Although a case of first impression in Pennsylvania, the *LJL* decision follows authority from other jurisdictions and relies on established principles of contract law. Fortunately, the Supreme Court resisted the temptation to strictly follow the letter of the franchise agreement. Doing so would have only created an intolerable outcome that excuses - indeed encourages - dishonest conduct.

## Endnotes

1 The diverted shipments amounted to only 0.5 percent of total billings and deprived Pilot of only \$5,500 in royalties.

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