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Christian's practice areas consist of appellate advocacy, retail and hospitality liability defense, and state healthcare regulatory issues.

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Hospitality Liability Report: Major Retailer Rethinks Shoplifting Enforcement Policies

Shoplifting is a crime. Moreover, the effects of this crime are costly to retailers. American retailers lose more than \$30 billion a year to theft, according to the National Retail Federation, a trade group. To put matters into perspective, for a grocery store to cover just \$1,000 in thefts, the store would need to sell an additional 900 candy bars or 380 cans of soup. United States Small Business Admin., *Curtailing Crime — Inside and Out* (2002). This is a great deal of merchandise that must be sold to make up for this shrinkage. Revenue that could be used for hiring additional employees or expanding businesses and bettering local economies is

subrogated to the criminal pursuits of others.

However, enforcement of the shoplifting laws can be also costly to retailers - especially those with a "zero tolerance" stance. A great deal of associate time and resource can be dedicated to catching and prosecuting violators. Further, for larger retailers, tremendous sums are expended on funding and operating their loss prevention units. In a move arguably motivated by logistics and resource allocation, Wal-Mart has apparently revised its shoplifting protocols to a level of less than zero tolerance, as recently reported by *The New York Times*.

The company, the

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nation's largest retailer and leading destination for shoplifting, will no longer prosecute first-time thieves unless they are between 18 and 65 and steal merchandise worth at least \$25, putting the chain in line with the policies of many other retailers.

Under the new policy, a shoplifter caught trying to swipe a DVD of the movie "Basic Instinct 2" (\$16.87) would receive a warning, but one caught walking out of the store with "E.R. - The Complete Fifth Season" (\$32.87) would face arrest. Wal-Mart said the change would allow it to focus on theft by professional shoplifters and its own employees, who together steal the bulk of merchandise from the chain every year, rather than the teenager who occasionally takes a candy bar from the checkout counter.

The change in policy by Wal-Mart may also serve to placate small-town police departments across the country who have protested what the company has called its zero-tolerance policy on shoplifting. Employees summoned officers whether a customer stole a \$5 toy or a \$5,000 television set - anything over \$3, the company said.

At some of the chain's giant 24-hour stores, the police make up to six arrests a day prompting a handful of departments to hire an additional officer just to deal with the extra workload.

Notwithstanding its decision not to prosecute under \$25 offenders, Wal-Mart said it would closely track shoplifters it did not have arrested and would ask that they be prosecuted after a second incident. Further, Wal-Mart will also seek the prosecution of all suspected shoplifters who threaten violence or fail to produce identification, no matter how much they are trying to steal. Not carrying identification is a popular tactic among professional shoplifters to avoid arrest.

The new policy, which became effective in March, is a departure from Wal-Mart traditions. In the past, the company has proudly defended its aggressive prosecution of shoplifters. Wal-Mart's zero tolerance policy can be traced to its founder, Sam Walton, who tied employee bonuses to low theft rates at stores. Stolen merchandise, he wrote in his autobiography published in 1992, the year he died, "is one of the biggest enemies of profitability in the retail business."

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Nevertheless, Wal-Mart reports there is “overwhelming” employee support for the new policy because it would more effectively deter theft. Wal-Mart is not alone in giving shoplifters some leeway. Its new policy “is consistent with guidelines many retailers use,” said Joseph J. LaRocca, vice president for loss prevention at the National Retail Federation. Retailers, he said, have learned that prosecuting small shoplifting cases “does not warrant the store resources or the judicial resources required, given the dollar amount that was stolen.”

In some cases, loss prevention executives said, retailers will prosecute only shoplifters who steal at least \$50 or \$100 worth of merchandise. The legal costs required for prosecution, they said, are simply too high. Stores must hire a lawyer for employees who become witnesses in a trial and pay workers overtime to appear in court.

Christian Stegmaier is a member of the Retail and Hospitality Liability Practice Group of Collins & Lacy, P.C., a Columbia-based defense litigation firm with a statewide practice. Christian welcomes your questions or comments regarding issues of liability in the hospitality sector by either calling him at

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