

## **Untapped Revenue Sources for New Jersey Towns and Villages**

**By Attorney Carl E. Person**  
**Author of *Saving Main Street and Its Retailers***

The ever-present problem of revenue shortfalls faced by the mayors of New Jersey towns and villages is going to end for some of the mayors – the mayors who appoint a “little Eliot Spitzer” as their “Town Attorney General”.

Starting with the Administration of President Richard M. Nixon, the United States has increasingly abandoned various areas of law enforcement in favor of a policy of “anything goes” for the largest corporations, resulting in decreased income and profits for many or most of the businesses and residents of each town and village. It seems that globalization and outsourcing can be blamed to a great extent on this failure by the United States to enforce the nation’s antitrust laws.

The areas of federal abandonment or withdrawal are centered around the governmental agencies and officials supposedly regulating business and large corporations, including the Federal Trade Commission, the Justice Department, the Securities and Exchange Commission, and various other agencies.

New York Attorney General Eliot Spitzer has stepped into the void and has amassed a remarkable record for state enforcement of law against major corporations, with the noticeable twist that the Spitzer lawsuits are generally directed to recovery of large amounts of money for New York as distinguished from costly, unprofitable criminal prosecutions.

It should be noted that Spitzer does not sue corporations whose operations are limited to New York State. He sues multinational corporations without significant regard to the percentage of their sales made to New York residents.

Many large corporations have caused injury to every town and village in New Jersey, but the mayor or political advisors often are not qualified as such to understand the nature and extent of these injuries. Eliot Spitzer or someone like him would be far more able to understand and articulate the injuries and the violations of law involved.

A substantial part of the injuries being caused to a given town or village is derived from the failure by major retailers such as Wal-Mart, Home Depot, CVS, Barnes & Noble and AutoZone and the hundreds of thousands of manufacturers selling to them, to comply with the requirements of the federal Robinson-Patman Act, which prohibits price discrimination by manufacturers, and prohibits customers of the manufacturer from inducing or knowingly receiving discriminatory prices from the manufacturer.

All towns and villages in New Jersey have lost a number of small businesses, including retailers, jobbers and wholesalers, even regional manufacturers, because of the evils of price discrimination, including below-cost sales by manufacturers who succumb to the growing purchasing monopolies (or “monopsonies”) of the major retailers.

The federal government gave up enforcing the Robinson-Patman Act starting with the Nixon Administration, and the major retailers have grown steadily from such point, putting hundreds of thousands of law-abiding independent distributors and small manufacturers out of business as a result.

When major retailers seek local permission to open up a new branch, they often make actionable misrepresentations to town or village officials to obtain the required approvals.

In my book, *Saving Main Street and Its Retailers*, I list a variety of legal areas which any Town Attorney General should explore when deciding what lawsuits to

commence on behalf of the town or village. This list may be seen and downloaded at [www.lawmall.com/salesmen/mx\\_list.pdf](http://www.lawmall.com/salesmen/mx_list.pdf). Also, I set forth in Appendix C of my book the Representations and Warranties which I recommend should be required of a major retailer before obtaining local approval to open a new store in the community.

The moneys which can be recovered from these lawsuits to be brought by the Town Attorney General should be more than sufficient to pay for healthcare and dental care for all residents of the town or village, as well as to support a substantial lowering of local taxes, and to permit increases of funding for other functions of the town or village.

It would not be surprising if communities conducted votes between elections to provide a guide for the type and priority of benefits to be provided to residents from the litigation proceeds.

The costs of a lawsuit are far less than most persons believe. The out-of-pocket expenses are minimal for the first year of litigation, and will probably be covered by one or more settlements by co-defendants. Legal fees can be kept low by having a salaried Town Attorney General, perhaps assisted by one or more attorneys working on a contingent-fee basis.

Also, I have obtained a favorable decision in federal court permitting the sale of shares in lawsuits to obtaining financing for the lawsuit. Go to [www.lawmall.com/files/suit\\_oc2.html](http://www.lawmall.com/files/suit_oc2.html) for a copy of my Offering Circular filed with the SEC offering shares in a lawsuit and see [www.lawmall.com/lm\\_finan.html](http://www.lawmall.com/lm_finan.html) for a discussion of lawsuit financing.

For mayors who believe it would be inappropriate to sue major retailers after giving them approval to operate, there are still the 21,000 suppliers to Wal-Mart, for

example, who are more liable to the town or village and its failed businesses (under Section 2(a) of the Robinson-Patman Act) than Wal-Mart or other major retailer (under Section 2(f) of the Act) . Thus, contrary to what some may believe, there is no need to sue the major retailers providing the immediate sales tax revenue upon which the town or village may have become dependent. There are various major retailers outside of the taxing reach of the town which have liability to the town or its businesses and could be sued without fear of revenue loss from the tax-producing major retailers.

The town or village probably can acquire for \$1 the stock of any one or more of the corporations which were put out of business by any of the area's major retailers during the past several years and sue to recover treble damages for the injuries to such failed businesses. [There is a 4-year statute of limitations.] Of course, the town or village should promise the owner of the failed business a percentage of any recovery (such as 25-35% of the net recovery) to obtain the needed continuing cooperation of the former owner during discovery and trial. As to the purchase of a failed business, see the text of my 29-minute infomercial at [www.lawmall.com/rpa/infomer6.html](http://www.lawmall.com/rpa/infomer6.html).

I envision that candidates for mayor and Town Attorney General will be competing among themselves to attract votes or support by promising the most profitable litigation possibilities for the community, and ways in which to spend or distribute the moneys on behalf of the community residents. The "little Eliot Spitzers" and mayors will be competing with other communities in New Jersey and other states to take the same path of the real Eliot Spitzer, to the Governor's mansion, and then to national politics.

In doing so, we will have a grass roots reform in the United States that will create effective antitrust law enforcement by the lowest governmental units, and help to put the genie of globalization and outsourcing back into the bottle.

Additional information about the Robinson-Patman Act is available in my book, as well as in my websites, [www.lawmall.com/rpa](http://www.lawmall.com/rpa) and [www.lawmall.com/wal-mart](http://www.lawmall.com/wal-mart).

To obtain a free pdf copy of the book (by email), please email your request to me at [carlpers@ix.netcom.com](mailto:carlpers@ix.netcom.com).

Also, I would be pleased to meet with any officials or residents to discuss my “Town Attorney General” proposal, including the costs and prospects for the recommended types of litigation.

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