UNIVERSITY CASEBOOK SERIES®

Business Associations

CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, LLCs, AND CORPORATIONS

TWELFTH EDITION

STEPHEN M. BAINBRIDGE

FOUNDATION PRESS

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TWELFTH EDITION

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PREFACE

It happened in Book III.

Her sister had never, Dudley's Aunt Marjorie declared, been anything other than an incurable "bad egg." She had run off with a "wastrel." Her husband James was a "no-account, good-for-nothing, lazy scrounger."

Within seconds, "her tiny eyes bulged, and her mouth stretched too tightly for speech." The buttons popped off her jacket. She inflated "like a monstrous balloon." Her belly burst "free of her tweed waistband," and "each of her fingers [blew] up like a salami."

Bloated, Dudley's aunt resembled nothing so much as the typical corporate law casebook.

We try to be different. And toward that end, in editing this book we follow six basic but apparently widely ignored principles. Each principle is one that we think helps produce a book that teaches students the gist of the law they need to know; that trains them to apply it; and that (perish the thought) almost makes them enjoy the process.

First, we give judges one chance—but only one chance—to explain the law. Most judicial opinions are as bloated as any Dursley who ever insulted Lily and James Potter, but law schools teach students that point marvelously well in the first year. We see no reason to make the point again in the second. More specifically, we see no reason to force students to plow through fifteen pages of bad prose when a disciplined judge could explain the law in three. We edit the law, and edit it ruthlessly.

Second, working within the "give us the facts, ma'am, just the facts" tradition, we include the facts in much of their maddening ambiguity. In corporate law as in most of legal practice, the gist is in the application, and for application the facts matter critically. Although we heavily edit discussions of the law, we take a lighter touch to the statements of facts. When helpful, we add extra fact-based problems to explore those applications further.

Third, because lawyers plan at least as often as they litigate, we bring a planner's perspective. In the first half of the book, for example, we explore how the parties to a case could have avoided the disputes at stake. At the end of the book, we use corporate debt to ask both how business executives can structure the relationships among their many investors, and what economic consequences follow from those structural possibilities.

Fourth, we believe in agency and partnership law. We believe they matter not just for their own sake, but for understanding corporate legal practice. Consequently, we include materials on agency and partnership that are complete, that cohere within themselves, and that help explain how the corporate enterprise functions.

Fifth, we offer a *case*book, not a treatise. Prior editions were especially rigorous in excluding explanatory or supplemental text. In this edition, we have introduced small amounts of such text in places where it seemed especially desirable. The goal remains, however, to allow the instructors to put their own spin on the cases. Instructors who prefer even more extensive explanatory text are encouraged to assign Bainbridge's *Corporate Law* (4th edition, Foundation Press) in conjunction with the casebook.

The result, we think, is a book that provides simple settings for sophisticated analysis. We offer interesting and challenging cases; we edit them carefully but ruthlessly; we include the necessary statutes; and we add questions and problems where helpful. Through this, we think we offer a book that isolates the basic ideas, eliminates distracting detail, and motivates students to apply those ideas to a world they will soon help shape.

Great literature, no. But we do hope it is closer to Potter than to *Ulysses*. Enjoy the book.

STEPHEN M. BAINBRIDGE

September, 2024

EDITORIAL NOTE AND ACKNOWLEDGMENTS

Footnote numbers in cases are as in the original, with no renumbering to take account of omitted footnotes. The numbering of editorial footnotes, which are indicated by asterisk, restarts on each page. Citations in cases are generally omitted, except where the authority cited might be familiar to the student, provides the source of quoted language, or otherwise seemed noteworthy.

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BUSINESS ASSOCIATIONS

CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, LLCs, AND CORPORATIONS

TWELFTH EDITION

CHAPTER 1

1-25

AGENCY

1. WHO IS AN AGENT?

Gorton v. Doty

57 Idaho 792, 69 P.2d 136 (1937).

In September, 1935, an action was commenced by R. S. Gorton, father of Richard Gorton, to recover expenses incurred by the father for hospitalization, physicians', surgeons', and nurses' fees, and another by the son, by his father as guardian ad litem, to recover damages for injuries sustained as a result of an accident. By stipulation the actions were consolidated for trial. Upon the trial of the cases so consolidated, the jury returned a verdict in favor of the father for $870 and another in favor of the son for $5,000. Separate judgments were then entered upon such verdicts. Thereafter a motion for a new trial was made and denied in each case. The cases come here upon an appeal from each judgment and order denying a new trial.

. . .

It appears that in September, 1934, Richard Gorton, a minor, was a junior in the Soda Springs High School and a member of the football team; that his high school team and the Paris High School team were scheduled to play a game of football at Paris on the 21st. Appellant was teaching at the Soda Springs High School and Russell Garst was coaching the Soda Springs team. On the day the game was played, the Soda Springs High School team was transported to and from Paris in privately owned automobiles. One of the automobiles used for that purpose was owned by appellant. Her car was driven by Mr. Garst, the coach of the Soda Springs High School team.

One of the most difficult questions, if not the most difficult, presented by the record, is, Was the coach, Russell Garst, the agent of appellant while and in driving her car from Soda Springs to Paris, and in returning to the point where the accident occurred?

Briefly stated, the facts bearing upon that question are as follows: That appellant knew the Soda Springs High School football team and the Paris High School football team were to play a game of football at Paris September 21, 1934; that she volunteered her car for use in transporting some of the members of the Soda Springs team to and from the game; that she asked the coach, Russell Garst, the day before the game, if he had all the cars necessary for the trip to Paris the next day; that he said he needed one more; that she told him he might use her car if he drove it; that she was not promised compensation for the use of her car and did not receive any; that the school district paid for the gasoline used on the trip to and from the game; that she testified she loaned the car to Mr. Garst; that she had not employed Mr. Garst at any time and that she had not at any time "directed his work or his services, or what he was doing."

. . .

Broadly speaking, "agency" indicates the relation which exists where one person acts for another. It has these three principal forms: 1. The relation of principal and agent; 2. The relation of master and servant; and, 3. The relation of employer or proprietor and independent contractor. While all have points of similarity, there are, nevertheless, numerous differences. We are concerned here with the first form only.

Specifically, "agency" is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. [Restatement of Agency § 1.]

[In a subsequent passage, the court indicated that the principal is responsible for the acts of his or her agent: "After having given the jury a correct definition of the term 'agency,' the [trial] court . . . instructed the jury that if they found from the evidence that Russell Garst was, at the time of the accident, the agent of appellant, then that she was chargeable with the acts of her agent as fully and to the same extent as though she had been driving the automobile herself . . ., which is unquestionably the law."]

. . . [This court has not held] that the relationship of principal and agent must necessarily involve some matter of business, but only that where one undertakes to transact some business or manage some affair for another by authority and on account of the latter, the relationship of principal and agent arises.

To enable the Soda Springs football team to play football at Paris, it had to be transported to Paris. Automobiles were to be used and another car was needed. At that juncture, appellant volunteered the use of her car. For what purpose? Necessarily for the purpose of furnishing additional transportation. Appellant, of course, could have driven the car herself, but instead of doing that, she designated the driver (Russell Garst) and, in doing so, made it a condition precedent that the person she designated should drive her car. That appellant thereby at least consented that Russell Garst should act for her and in her behalf, in driving her car to and from the football game, is clear from her act in volunteering the use of her car upon the express condition that he should drive it, and, further, that Mr. Garst consented to so act for appellant is equally clear by his act in driving the car. It is not essential to the existence of authority that there be a contract between principal and agent or that the agent promise to act as such (Restatement Agency, §§ 15, 16, pp. 50–54), nor is it essential to the relationship of principal and agent that they, or either, receive compensation (Restatement Agency, § 16, p. 53).

Furthermore, this court held in Willi v. Schaefer Hitchcock Co., 53 Idaho 367, 25 P.2d 167, in harmony with the clear weight of authority, that the fact of ownership alone (conceded here), regardless of the presence or absence of the owner in the car at the time of the accident, establishes a prima facie case against the owner for the reason that the presumption arises that the driver is the agent of the owner. . . .

It is vigorously contended, however, that the facts and circumstances bearing upon the question under discussion show appellant loaned her car to Mr. Garst. A determination of that question makes it necessary to quote appellant's testimony. She testified as follows:

"Q. On or about the 21st day of September, 1934, state whether or not you permitted Russell Garst to use that car?

"A. I did.

"Q. Under what circumstances?

"A. I loaned it to him.

"Q. When did you loan it to him? Was it that day, or the day before?

"A. On the day before I told him he might have it the next day.

"Q. Did you receive any compensation, or were you promised any compensation, for its use?

"A. No, sir.

"Q. What were the circumstances under which you permitted him to take it?

"A. Well,—"

After having so testified, appellant was then asked:

"Q. You may relate the conversation with him, if there was such conversation.

"A. I asked him if he had all the cars necessary for his trip to Paris the next day. He said he needed one more. I said that he might use mine if he drove it. That was the extent of it."

While it appears that appellant first testified that she permitted Russell Garst to use her car and also that she loaned it to him, it further appears that when she was immediately afterward asked to state the conversation she had with the coach about the matter, she stated that she asked him if he had all the cars necessary for the trip to Paris the next day, that he said he needed one more, that she said he might use her car if he drove it, and, finally, she said that that was the extent of it. It is clear, then, that appellant intended, in relating the conversation she had with the coach, to state the circumstances fully, because, after having testified to the conversation, she concluded by saying, "That was the extent of it." Thus she gave the jury to understand that those were the circumstances, and all of the circumstances, under which Russell Garst drove her car to the football game. If the appellant fully and correctly related the conversation she had with the coach and the circumstances under which he drove her car, as she unquestionably undertook to, and did, do, it follows that, as a matter of fact, she did not say anything whatever to him about loaning her car and he said nothing whatever to her about borrowing it.

We therefore conclude the evidence sufficiently supports the finding of the jury that the relationship of principal and agent existed between appellant and Russell Garst.

. . .

During the course of the closing argument of counsel for respondent, an objection was made by counsel for appellant to certain remarks addressed to the jury. Thereupon the trial court ordered a brief recess and took up such objection in chambers with counsel for the respective parties, whereupon the following proceedings took place outside of the presence of the jury:

> "Mr. GLENNON: What I said, your Honor, was in response to counsel's repeated charges that the plaintiff was attempting to mulch [mulct] the defendant in damages, and I stated to the jury in substance, 'That you have a right to draw on your experience as business men in determining the facts in this case, and that you know from your experience as business men that prudent automobile owners usually protect themselves against just such contingencies as are involved in this case.' "

Following that statement by Senator Glennon, counsel for appellant agreed it was substantially correct. Upon returning to the courtroom, the trial judge denied appellant's motion for a mistrial and then instructed the reporter to read the above quoted remarks to the jury, after which the court instructed the jury to disregard the remarks.

Appellant contends that the trial court erred in denying her motion for a mistrial.

Funk & Wagnalls New Standard Dictionary defines the word mulct: "1. To sentence to a pecuniary penalty or forfeiture as a punishment; fine; hence, to fine unjustly, as, to mulct the prisoner in $100. 2. To punish." Appellant had testified during the trial that she volunteered the use of her car. To charge, then, that respondent was attempting to "mulct" her in damages carried the inference that respondent was attempting to punish her in damages for having volunteered the use of her car for the commendable purpose of supplying additional transportation for the home town football team.

And it will be noted that Mr. Glennon stated, and the record shows no denial, that the above-quoted remarks were made by him only in response to repeated charges by appellant's counsel that respondent was attempting to mulct appellant in damages. There is no evidence whatever in the record justifying such charges. They were made during the course of the argument of counsel for appellant, and were as fully and clearly outside the record as the remarks of counsel for respondent. It was a case of meeting improper argument with improper argument. The remarks complained of were provoked by the conduct of counsel for appellant. Hence, we conclude that appellant has no just cause for complaint. Having reached that conclusion, we find it unnecessary to review the cases cited by counsel for the respective parties.

. . .

The judgments and orders are affirmed with costs to respondents.

■ BUDGE, J., dissenting. I am unable to concur in the majority opinion.

As I read the entire record there is a total lack of evidence to support the allegation in the complaint that Garst was the agent of appellant Doty at or prior to the time of the accident in which respondent Richard Gorton was injured and as such agent was acting within the scope of his authority. An agent is one who acts for another by authority from him, one who undertakes to transact business or manage some affair for another by authority and on account of the latter. (Moreland v. Mason, 45 Idaho 143, 260 P. 1035.) Agency means more than mere passive permission. It involves request, instruction or command. (Klee v. United States, 53 F.2d 58.) . . . As I read the record [Ms. Doty] simply loaned her car to Garst to enable him to furnish means of transportation for the team from Soda Springs to Paris. It was nothing more or less than a kindly gesture on her part to be helpful to Garst, the athletic coach, in arranging transportation for the team. The mere fact that she stated to Garst that he should drive the car was a mere precaution upon her part that the car should not be driven by any one of the young boys, a perfectly natural thing for her to do. It is principally and particularly upon this statement of fact that the majority opinion holds that the relationship of principal and agent was created and that Garst became the agent of Miss Doty, authorized by her to undertake the transportation of the boys from Soda Springs to Paris for her and on her behalf. In other words, Miss Doty is held legally liable for each and every act done or performed by Garst as though she had been personally present and personally performed each and every act that was done or performed by Garst, this in the absence of any contractual relationship between her and Garst or between her and the school district. The rule would seem to be that one who borrows a car for his own use is a gratuitous bailee and not an agent of the owner. (Gochee v. Wagner, 257 N.Y. 344, 178 N.E. 553.). . . .

I am also of the opinion the judgment should be reversed because of the prejudicial remarks of one of counsel for respondent while making his closing argument to the jury as follows:

> "That you have a right to draw on your experience as business men in determining the facts in this case and what you know from your experience as business men that prudent automobile

owners usually protect themselves against just such contingencies as are involved in this case."

Upon the making of the above-quoted remarks by respondent's counsel appellant moved for a mistrial basing his motion upon the theory that they suggested that the appellant was carrying insurance and would not have to pay any judgment the jury might render, and, that there was no evidence to support such a theory. The court refused to declare a mistrial but directed counsel for respondent not to argue the point further and directed the jury to disregard that part of counsel's argument. However, the prejudicial effect of the remarks was not cured by the court instructing the jury to disregard that part of counsel's argument. Nothing can be gleaned from the remarks made by learned counsel other than that he, intentionally or otherwise, clearly and unmistakably impressed upon the minds of the jurors that appellant carried insurance on her car and that she personally would not be called upon to pay any verdict that might be rendered against her. Error for injecting the question of insurance in a case of this character is quite clearly stated in [citing numerous authorities]. . . .

The judgment should be reversed and the cause remanded for further proceedings as herein indicated.

QUESTIONS

1. The dissent obviously disagreed with the majority as to the existence of an agency relationship between Doty and the Coach. Did the dissent disagree as to the test to be applied or merely as to the way in which the test should be applied?

2. The majority stated: "It is not essential . . . that there be a contract between principal and agent." What did the court mean by that?

3. Suppose that you were Ms. Doty's attorney and that a few months after the decision was handed down she stopped by your office. She tells you that the new football coach wants to use her car to take some players to another game. She asks for your advice as to how she could avoid liability in the event of an accident. What do you tell her?

4. Was the court using agency concepts to impose liability on the alleged principal in order to achieve some desired outcome? If so, what policy outcome was the court trying to implement?

INTRODUCTORY NOTE

In the next case, A. Gay Jenson Farms Co. v. Cargill, Inc., the context is that of a creditor exercising control over its debtors after the debtor has experienced financial difficulties. The plaintiffs were farmers who sold their grain crops to Warren Grain & Seed Co. (Warren). Warren was a local firm that operated a grain elevator (a storage facility). Cargill is a large, worldwide dealer in grain. On Cargill's view of the facts, Warren bought grain from the farmers and sold it to Cargill. On the farmers' view of the facts, Warren bought grain as an agent for Cargill. Warren became insolvent without having paid the farmers for their grain and they sued Cargill. The case offers a nice illustration of a legal issue of considerable importance to business firms like Cargill that provide trade credit to other firms, as well as to banks and other financial intermediaries.

A. Gay Jenson Farms Co. v. Cargill, Inc.

309 N.W.2d 285 (Minn.1981).

Plaintiffs, 86 individual, partnership or corporate farmers, brought this action against defendant Cargill, Inc. (Cargill) and defendant Warren Grain & Seed Co. (Warren) to recover losses sustained when Warren defaulted on the contracts made with plaintiffs for the sale of grain. After a trial by jury, judgment was entered in favor of plaintiffs, and Cargill brought this appeal. We affirm.

This case arose out of the financial collapse of defendant Warren Seed & Grain Co., and its failure to satisfy its indebtedness to plaintiffs. Warren, which was located in Warren, Minnesota, was operated by Lloyd Hill and his son, Gary Hill. Warren operated a grain elevator and as a result was involved in the purchase of . . . grain from local farmers. The cash grain would be resold through the Minneapolis Grain Exchange or to the terminal grain companies directly. Warren also stored grain for farmers and sold chemicals, fertilizer and steel storage bins. In addition, it operated a seed business which involved buying seed grain from farmers, processing it and reselling it for seed to farmers and local elevators.

Lloyd Hill decided in 1964 to apply for financing from Cargill. Cargill's officials from the Moorhead regional office investigated Warren's operations and recommended that Cargill finance Warren.

Warren and Cargill thereafter entered into a security agreement which provided that Cargill would loan money for working capital to Warren on "open account" financing up to a stated limit, which was originally set as $175,000.[2] Under this contract, Warren would receive funds and pay its expenses by issuing drafts drawn on Cargill through Minneapolis banks. The drafts were imprinted with both Warren's and Cargill's names. Proceeds from Warren's sales would be deposited with Cargill and credited to its account. In return for this financing, Warren appointed Cargill as its grain agent for transaction with the Commodity Credit Corporation. Cargill was also given a right of first refusal to purchase market grain sold by Warren to the terminal market.

A new contract was negotiated in 1967, extending Warren's credit line to $300,000 and incorporating the provisions of the original contract. It was also stated in the contract that Warren would provide Cargill with

[2] Loans were secured by a second mortgage on Warren's real estate and a first chattel mortgage on its inventories of grain and merchandise in the sum of $175,000 with 7% interest. . . .

annual financial statements and that either Cargill would keep the books for Warren or an audit would be conducted by an independent firm. Cargill was given the right of access to Warren's books for inspection.

In addition, the agreement provided that Warren was not to make capital improvements or repairs in excess of $5,000 without Cargill's prior consent. Further, it was not to become liable as guarantor on another's indebtedness, or encumber its assets except with Cargill's permission. Consent by Cargill was required before Warren would be allowed to declare a dividend or sell and purchase stock.

Officials from Cargill's regional office made a brief visit to Warren shortly after the agreement was executed. They examined the annual statement and the accounts receivable, expenses, inventory, seed, machinery and other financial matters. Warren was informed that it would be reminded periodically to make the improvements recommended by Cargill.[3] At approximately this time, a memo was given to the Cargill official in charge of the Warren account, Erhart Becker, which stated in part: "This organization [Warren] needs *very strong* paternal guidance."

In 1970, Cargill contracted with Warren and other elevators to act as its agent to seek growers for a new type of wheat called Bounty 208. Warren, as Cargill's agent for this project, entered into contracts for the growing of the wheat seed, with Cargill named as the contracting party. Farmers were paid directly by Cargill for the seed and all contracts were performed in full. In 1971, pursuant to an agency contract, Warren contracted on Cargill's behalf with various farmers for the growing of sunflower seeds for Cargill. The arrangements were similar to those made in the Bounty 208 contracts, and all those contracts were also completed. Both these agreements were unrelated to the open account financing contract. In addition, Warren, as Cargill's agent in the sunflower seed business, cleaned and packaged the seed in Cargill bags.

During this period, Cargill continued to review Warren's operations and expenses and recommend that certain actions should be taken.[4] Warren purchased from Cargill various business forms printed by Cargill and received sample forms from Cargill which Warren used to develop its own business forms.

Cargill wrote to its regional office in 1970 expressing its concern that the pattern of increased use of funds allowed to develop at Warren was

---

[3] Cargill headquarters suggested that the regional office check Warren monthly. Also, it was requested that Warren be given an explanation for the relatively large withdrawals from undistributed earnings made by the Hills, since Cargill hoped that Warren's profits would be used to decrease its debt balance. Cargill asked for written requests for withdrawals from undistributed earnings in the future.

[4] Between 1967 and 1973, Cargill suggested that Warren take a number of steps, including: (1) a reduction of seed grain and cash grain inventories; (2) improved collection of accounts receivable; (3) reduction or elimination of its wholesale seed business and its speciality grain operation; (4) marketing fertilizer and steel bins on consignment; (5) a reduction in withdrawals made by officers; (6) a suggestion that Warren's bookkeeper not issue her own salary checks; and (7) cooperation with Cargill in implementing the recommendations. These ideas were apparently never implemented, however.

similar to that involved in two other cases in which Cargill experienced severe losses. Cargill did not refuse to honor drafts or call the loan, however. A new security agreement which increased the credit line to $750,000 was executed in 1972, and a subsequent agreement which raised the limit to $1,250,000 was entered into in 1976.

Warren was at that time shipping Cargill 90% of its . . . grain. When Cargill's facilities were full, Warren shipped its grain to other companies. Approximately 25% of Warren's total sales was seed grain which was sold directly by Warren to its customers.

As Warren's indebtedness continued to be in excess of its credit line, Cargill began to contact Warren daily regarding its financial affairs. Cargill headquarters informed its regional office in 1973 that, since Cargill money was being used, Warren should realize that Cargill had the right to make some critical decisions regarding the use of the funds. Cargill headquarters also told Warren that a regional manager would be working with Warren on a day-to-day basis as well as in monthly planning meetings. In 1975, Cargill's regional office began to keep a daily debit position on Warren. A bank account was opened in Warren's name on which Warren could draw checks in 1976. The account was to be funded by drafts drawn on Cargill by the local bank.

In early 1977, it became evident that Warren had serious financial problems. Several farmers, who had heard that Warren's checks were not being paid, inquired or had their agents inquire at Cargill regarding Warren's status and were initially told that there would be no problem with payment. In April 1977, an audit of Warren revealed that Warren was $4 million in debt. After Cargill was informed that Warren's financial statements had been deliberately falsified, Warren's request for additional financing was refused. In the final days of Warren's operation, Cargill sent an official to supervise the elevator, including disbursement of funds and income generated by the elevator.

After Warren ceased operations, it was found to be indebted to Cargill in the amount of $3.6 million. Warren was also determined to be indebted to plaintiffs in the amount of $2 million, and plaintiffs brought this action in 1977 to seek recovery of that sum. Plaintiffs alleged that Cargill was jointly liable for Warren's indebtedness as it had acted as principal for the grain elevator.

. . .

The major issue in this case is whether Cargill, by its course of dealing with Warren, became liable as a principal on contracts made by Warren with plaintiffs. Cargill contends that no agency relationship was established with Warren, notwithstanding its financing of Warren's operation and its purchase of the majority of Warren's grain. However, we conclude that Cargill, by its control and influence over Warren, became a principal with liability for the transactions entered into by its agent Warren.

Agency is the fiduciary relationship that results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. . . .

In order to create an agency there must be an agreement, but not necessarily a contract between the parties. . . . An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the legal consequences of the relation to follow. The existence of the agency may be proved by circumstantial evidence which shows a course of dealing between the two parties. . . . When an agency relationship is to be proven by circumstantial evidence, the principal must be shown to have consented to the agency since one cannot be the agent of another except by consent of the latter. . . .

Cargill contends that the prerequisites of an agency relationship did not exist because Cargill never consented to the agency, Warren did not act on behalf of Cargill, and Cargill did not exercise control over Warren. We hold that all three elements of agency could be found in the particular circumstances of this case. By directing Warren to implement its recommendations, Cargill manifested its consent that Warren would be its agent. Warren acted on Cargill's behalf in procuring grain for Cargill as the part of its normal operations which were totally financed by Cargill.[7] Further, an agency relationship was established by Cargill's interference with the internal affairs of Warren, which constituted de facto control of the elevator.

A creditor who assumes control of his debtor's business may become liable as principal for the acts of the debtor in connection with the business. Restatement (Second) of Agency § 14O (1958). It is noted in comment a to section 14O that:

> A security holder who merely exercises a veto power over the business acts of his debtor by preventing purchases or sales above specified amounts does not thereby become a principal. However, if he takes over the management of the debtor's business either in person or through an agent, and directs what contracts may or may not be made, he becomes a principal, liable as a principal for the obligations incurred thereafter in the normal course of business by the debtor who has now become his general agent. The point at which the creditor becomes a principal is that at which he assumes de facto control over the conduct of his debtor, whatever the terms of the formal contract with his debtor may be.

A number of factors indicate Cargill's control over Warren, including the following:

[7] Although the contracts with the farmers were executed by Warren, Warren paid for the grain with drafts drawn on Cargill. While this is not in itself significant . . . it is one factor to be taken into account in analyzing the relationship between Warren and Cargill.

(1) Cargill's constant recommendations to Warren by telephone;

(2) Cargill's right of first refusal on grain;

(3) Warren's inability to enter into mortgages, to purchase stock or to pay dividends without Cargill's approval;

(4) Cargill's right of entry onto Warren's premises to carry on periodic checks and audits;

(5) Cargill's correspondence and criticism regarding Warren's finances, officers salaries and inventory;

(6) Cargill's determination that Warren needed "strong paternal guidance";

(7) Provision of drafts and forms to Warren upon which Cargill's name was imprinted;

(8) Financing of all Warren's purchases of grain and operating expenses; and

(9) Cargill's power to discontinue the financing of Warren's operations.

We recognize that some of these elements, as Cargill contends, are found in an ordinary debtor-creditor relationship. However, these factors cannot be considered in isolation, but, rather, they must be viewed in light of all the circumstances surrounding Cargill's aggressive financing of Warren.

It is also Cargill's position that the relationship between Cargill and Warren was that of buyer-supplier rather than principal-agent. Restatement (Second) of Agency § 14K (1958) compares an agent with a supplier as follows:

> One who contracts to acquire property from a third person and convey it to another is the agent of the other only if it is agreed that he is to act primarily for the benefit of the other and not for himself.
>
> Factors indicating that one is a supplier, rather than an agent, are:
>
> (1) That he is to receive a fixed price for the property irrespective of price paid by him. This is the most important. (2) That he acts in his own name and receives the title to the property which he thereafter is to transfer. (3) That he has an independent business in buying and selling similar property.

Restatement (Second) of Agency § 14K, comment a (1958).

Under the Restatement approach, it must be shown that the supplier has an independent business before it can be concluded that he is not an agent. The record establishes that all portions of Warren's operation were financed by Cargill and that Warren sold almost all of its market grain to Cargill. Thus, the relationship which existed between the parties was not merely that of buyer and supplier.

. . .

The amici curiae assert that, if the jury verdict is upheld, firms and banks which have provided business loans to county elevators will decline to make further loans. The decision in this case should give no cause for such concern. We deal here with a business enterprise markedly different from an ordinary bank financing, since Cargill was an active participant in Warren's operations rather than simply a financier. Cargill's course of dealing with Warren was, by its own admission, a paternalistic relationship in which Cargill made the key economic decisions and kept Warren in existence.

Although considerable interest was paid by Warren on the loan, the reason for Cargill's financing of Warren was not to make money as a lender but, rather, to establish a source of market grain for its business. As one Cargill manager noted, "We were staying in there because we wanted the grain." For this reason, Cargill was willing to extend the credit line far beyond the amount originally allocated to Warren. It is noteworthy that Cargill was receiving significant amounts of grain and that, notwithstanding the risk that was recognized by Cargill, the operation was considered profitable.

On the whole, there was a unique fabric in the relationship between Cargill and Warren which varies from that found in normal debtor-creditor situations. We conclude that, on the facts of this case, there was sufficient evidence from which the jury could find that Cargill was the principal of Warren within the definitions of agency set forth in Restatement (Second) of Agency §§ 1 and 14O.

NOTE

Warren, Minnesota was a town with a population of about 2,000 at the time this case was tried. Warren is located in Marshall County, which is in the northwest corner of Minnesota, on the North Dakota border, with a population in 1980 of about 13,000 and declining. The plaintiffs were local farmers and the defendant was a corporate giant. The case was tried to a jury.

QUESTIONS

1. Why do you suppose Cargill kept extending more and more credit to Warren?

2. What could the farmers have done to protect themselves from the risk of nonpayment?

3. What could Cargill have done to ensure that the grain it bought from Warren was paid for?

4. In light of your answers to questions 2 and 3, does the result in the case place responsibility for avoiding loss on the person with the lower cost of doing so?

5. If Peter says to Amy, "Go out and buy a thousand bushels of corn for me and I'll pay you the usual commission," Amy is Peter's non-servant agent (that is, she acts on behalf of Peter but is not subject to his control over how the objective is achieved). Peter is bound to contracts made by Amy to buy the corn. Control of the manner in which Amy accomplishes the assignment is not an issue. In the *Cargill* case, however, there seems to have been no evidence to support that kind of ordinary non-servant principal/agent relationship. Presumably that is why the court focuses on control and on the Restatement (Second) of Agency § 14 O. Examine the nine factors listed by the court as supporting a conclusion that Cargill exercised control over Warren. How, if at all, does each of these factors tend to establish a principal/agent relationship rather than a relationship of creditor to debtor or buyer to supplier?

6. What is the likely effect of decisions like *Cargill* on the behavior of major creditors? In addressing this question consider the effect on other, minor creditors, like the farmers who sold grain to Warren, as well as major creditors such as Cargill, Inc.

PLANNING

Suppose you are Cargill's lawyer. The chief executive officer (CEO) of the company, after hearing about the decision in the case involving Warren Grain & Seed Co., asks for your recommendations about how Cargill should change the way it does business to avoid liability in the future. She also wants your views on whether, with a supplier like Warren, at the time that its financial condition became desperate, it would have been advisable for Cargill to (a) call in its loans and force the supplier into bankruptcy or (b) notify all other potential creditors that Cargill would not be liable for any purchases by the supplier. What would you say? Bear in mind that you are expected to exercise sound business, as well as legal, judgment, but that your role is to offer alternatives, not to make decisions.

2. LIABILITY OF PRINCIPAL TO THIRD PARTIES IN CONTRACT

A. THE AGENT'S AUTHORITY

Mill Street Church of Christ v. Hogan

785 S.W.2d 263 (Ky.1990).

Mill Street Church of Christ and State Automobile Mutual Insurance Company petition for review of a decision of the New Workers' Compensation Board [hereinafter "New Board"] which had reversed an earlier decision by the Old Workers' Compensation Board [hereinafter "Old Board"]. The Old Board had ruled that Samuel J. Hogan was not an employee of the Mill Street Church of Christ and was not entitled to any workers' compensation benefits. The New Board reversed and ruled that Samuel Hogan was an employee of the church.

. . . In 1986, the Elders of the Mill Street Church of Christ decided to hire church member, Bill Hogan, to paint the church building. The Elders decided that another church member, Gary Petty, would be hired to assist if any assistance was needed. In the past, the church had hired Bill Hogan for similar jobs, and he had been allowed to hire his brother, Sam Hogan, the respondent, as a helper. Sam Hogan had earlier been a member of the church but was no longer a member. . . .

Dr. David Waggoner, an Elder of the church, soon contacted Bill Hogan, and he accepted the job and began work. Apparently Waggoner made no mention to Bill Hogan of hiring a helper at that time. Bill Hogan painted the church by himself until he reached the baptistry portion of the church. This was a very high, difficult portion of the church to paint, and he decided that he needed help. After Bill Hogan had reached this point in his work, he discussed the matter of a helper with Dr. Waggoner at his office. According to both Dr. Waggoner and Hogan, they discussed the possibility of hiring Gary Petty to help Hogan. None of the evidence indicates that Hogan was told that he had to hire Petty. In fact, Dr. Waggoner apparently told Hogan that Petty was difficult to reach. That was basically all the discussion that these two individuals had concerning hiring a helper. None of the other Elders discussed the matter with Bill Hogan.

On December 14, 1986, Bill Hogan approached his brother, Sam, about helping him complete the job. Bill Hogan told Sam the details of the job, including the pay, and Sam accepted the job. On December 15, 1986, Sam began working. A half hour after he began, he climbed the ladder to paint a ceiling corner, and a leg of the ladder broke. Sam fell to the floor and broke his left arm. Sam was taken to the Grayson County Hospital Emergency Room where he was treated. He later was under the care of Dr. James Klinert, a surgeon in Louisville. The church Elders did not know that Bill Hogan had approached Sam Hogan to work as a helper until after the accident occurred.

After the accident, Bill Hogan reported the accident and resulting injury to Charles Payne, a church Elder and treasurer. Payne stated in a deposition that he told Bill Hogan that the church had insurance. At this time, Bill Hogan told Payne the total number of hours worked which included a half hour that Sam Hogan had worked prior to the accident. Payne issued Bill Hogan a check for all of these hours. Further, Bill Hogan did not have to use his own tools and materials in the project. The church supplied the tools, materials, and supplies necessary to complete the project. Bill purchased needed items from Dunn's Hardware Store and charged them to the church's account.

It is undisputed in this case that Mill Street Church of Christ is an insured employer under the Workers' Compensation Act. Sam Hogan filed a claim under the Workers' Compensation Act.* . . .

As part of their argument, petitioners argue the New Board also erred in finding that Bill Hogan possessed implied authority as an agent to hire Sam Hogan. Petitioners contend there was neither implied nor apparent authority in the case at bar.

It is important to distinguish implied and apparent authority before proceeding further. Implied authority is actual authority circumstantially proven which the principal actually intended the agent to possess and includes such powers as are practically necessary to carry out the duties actually delegated. Apparent authority on the other hand is not actual authority but is the authority the agent is held out by the principal as possessing. It is a matter of appearances on which third parties come to rely.

Petitioners attack the New Board's findings concerning implied authority. In examining whether implied authority exists, it is important to focus upon the agent's understanding of his authority. It must be determined whether the agent reasonably believes because of present or past conduct of the principal that the principal wishes him to act in a certain way or to have certain authority. The nature of the task or job may be another factor to consider. Implied authority may be necessary in order to implement the express authority. The existence of prior similar practices is one of the most important factors. Specific conduct by the principal in the past permitting the agent to exercise similar powers is crucial.

The person alleging agency and resulting authority has the burden of proving that it exists. Agency cannot be proven by a mere statement, but it can be established by circumstantial evidence including the acts and conduct of the parties such as the continuous course of conduct of the parties covering a number of successive transactions. . . .

In considering the above factors in the case at bar, Bill Hogan had implied authority to hire Sam Hogan as his helper. First, in the past the church had allowed Bill Hogan to hire his brother or other persons whenever he needed assistance on a project. Even though the Board of Elders discussed a different arrangement this time, no mention of this discussion was ever made to Bill or Sam Hogan. In fact, the discussion between Bill Hogan and Church Elder Dr. Waggoner, indicated that Gary Petty would be difficult to reach and Bill Hogan could hire whomever he pleased. Further, Bill Hogan needed to hire an assistant to complete the job for which he had been hired. The interior of the church simply could not be painted by one person. Maintaining a safe and attractive place of

* [Ed.: If Bill Hogan had authority to hire Sam, then Sam would be deemed the Church's agent (technically, a sub-agent) and its employee for purposes of the Worker's Compensation Act.]

worship clearly is part of the church's function, and one for which it would designate an agent to ensure that the building is properly painted and maintained.

Finally, in this case, Sam Hogan believed that Bill Hogan had the authority to hire him as had been the practice in the past. To now claim that Bill Hogan could not hire Sam Hogan as an assistant, especially when Bill Hogan had never been told this fact, would be very unfair to Sam Hogan. Sam Hogan relied on Bill Hogan's representation. The church treasurer in this case even paid Bill Hogan for the half hour of work that Sam Hogan had completed prior to the accident. Considering the above facts, we find that Sam Hogan was within the employment of the Mill Street Church of Christ at the time he was injured.

The decision of the New Workers' Compensation Board is affirmed.

QUESTIONS

1. Is Sam Hogan's belief that his brother Bill had authority to hire Sam relevant to the issue of whether Bill had actual authority to do so?

2. The following hypotheticals are based on a simple fact pattern in which Paul owns an apartment building and has hired Ann to manage it.

   a. Paul tells Ann to hire a company to cut the grass. Ann does it. Is Paul bound by the contract?

   b. Without express instructions, Ann hires a janitor to clean the building. Is Paul bound by the employment contract with the janitor? See Restatement (Second) of Agency § 35.

   c. Suppose Paul specifically instructed Ann not to hire a janitor, but that local custom gives apartment managers the power to hire janitors. Would Paul be bound by the contract?

Ackerman v. Sobol Family Partnership, LLP

298 Conn. 495 (2010).

The principal issue in this consolidated appeal, which arises out of a series of disputes concerning the management and oversight of a family partnership and various family trusts, is whether the plaintiffs' attorney had apparent authority to make settlement proposals, engage in settlement discussions and bind the plaintiffs to a global settlement agreement with the defendants. . . .

In the underlying cases, the plaintiffs alleged, inter alia, breach of contract, breach of fiduciary duty, unjust enrichment, civil conspiracy and violation of the Connecticut Unfair Trade Practices Act. On July 3, 2008, however, the Sobol defendants and the defendant Bank of America each filed a motion to enforce a settlement agreement purportedly reached with the plaintiffs on July 1, 2008. . . . On July 9, 2008, the court issued an oral decision from the bench containing the following findings of fact and conclusions of law.

> "[T]he parties met for a mediation, which was held on May 29, 2008, before the Honorable Michael Sheldon. The plaintiffs' attorney, Glenn Coe, represented the plaintiffs at this mediation.
>
> "At the time the mediation was concluded, a settlement had not been reached . . . although Judge Sheldon did remain active in further negotiations between the parties. These negotiations continued to the point where [Coe] made a detailed offer of settlement . . . by way of letter dated June 16, 2008, which was addressed to Attorneys [Robert] Wyld, [Dina] Fisher, and [Steven] Ecker representing the defendants in this action other than Bank of America.
>
> "That particular letter was responded to by [Wyld] . . . in which he rejected the proposal. . . . After that rejection, negotiations continued in the matter to the point where [Coe] made an offer to settle the litigation in a series of conversations with [Wyld] and [Attorney David] Schneider [who represented the Bank of America] on Thursday, June 26, and Friday, June 27, 2008.
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> "[Coe] had been speaking on behalf of all [the] plaintiffs regarding settlement with the knowledge and authority of his own client[s], as well as [Attorney William Horan], who [had] represented the other two plaintiffs . . . [Rakoszynski] . . . and Mann, and that situation had continued since the time of the mediation on May 29, 2008. . . .
>
> "[Wyld], who was negotiating the settlement on behalf of . . . the Sobol defendants . . . notified [Coe] on Monday, June 30, 2008, that the offer of settlement made by [Coe] on behalf of all [of the] plaintiffs was accepted by the Sobol defendants.
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> ". . . The Bank of America, through [Schneider], accepted the $1.1 million settlement proposal in the early afternoon of July 1, 2008, prior to the 5 p.m. deadline. The global settlement offer thus [had] been accepted by all [of the] defendants.
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> . . .
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> "Based upon the court's prior findings in this matter, the court finds that [Coe] certainly did have apparent authority from his client[s]. Further . . . the court so finds, [it was] acknowledged in testimony, that the defendants' counsel reasonably believed that [Coe] was, in fact, authorized by the plaintiffs to make the settlement offer at issue, and further, that [the] defendants' counsel at all . . . relevant times were acting in good faith in their respective efforts to settle the case on the terms proposed by [Coe].

. . .

"The court understands [Coe] to indicate that there was a misunderstanding and that he did not appreciate the clients' wishes with regard to the proposal. That testimony, while unfortunate, does not change the fact that he had apparent authority to enter into these discussions and bind his client[s]. . . .

"With regard to . . . the testimony of Rena . . . Ackerman regarding the settlement discussions and her authority to [Coe] indicating that he had no authority to enter into this settlement, the court finds that her testimony is not credible.[6]"

Thereafter, the plaintiffs appealed from the July 9 decision enforcing the settlement agreement to the Appellate Court.

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I

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With respect to the governing legal principles, "it is a general rule of agency law that the principal in an agency relationship is bound by, and liable for, the acts in which his agent engages with authority from the principal, and within the scope of the agent's employment. . . . An agent's authority may be actual or apparent. . . . Actual authority exists when [an agent's] action [is] expressly authorized . . . or . . . although not authorized, [is] subsequently ratified by the [principal]." (Citations omitted; internal quotation marks omitted.) *Maharishi School of Vedic Sciences, Inc. (Connecticut) v. Connecticut Constitution Associates Ltd. Partnership*, 260 Conn. 598, 606–607, 799 A.2d 1027 (2002). In contrast, "[a]pparent authority is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses. . . . Consequently, apparent authority is to be determined, not by the agent's own acts, but by the acts of the agent's principal. . . . The issue of apparent authority is one of fact to be determined based on two criteria. . . . First, it must appear from the principal's conduct that the principal held the agent out as possessing sufficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority. . . . Second, the party dealing with the agent must have, acting in good faith, reasonably believed, under all the circumstances, that the agent had the necessary authority to bind the principal to the agent's action. . . .

"Apparent authority terminates when the third person has notice that: (1) the agent's authority has terminated; (2) the principal no longer consents that the agent shall deal with the

[6] Rena Ackerman testified that she was "in shock" after Coe explained on July 1, 2008, the terms of the settlement that he had negotiated with the defendants because she purportedly had never agreed to such terms.

third person; or (3) the agent is acting under a basic error as to the facts. Unless otherwise agreed, there is a notification by the principal to the third person of revocation of an agent's [apparent] authority or other fact indicating its termination: (a) when the principal states such fact to the third person; or (b) when a reasonable time has elapsed after a writing stating such fact has been delivered by the principal (i) to the other personally. . . . In addition, the principal can properly give notification of the termination of the agent's authority by . . . (b) giving publicity by some . . . method reasonably adapted to give the information to such third person. *Tomlinson v. Board of Education*, [226 Conn. 704, 734–35, 629 A.2d 333 (1993)].

The same principles apply to the relationship between attorneys and their clients. . . . Although reviewing courts in Connecticut have acknowledged that "[a]n attorney who is authorized to represent a client in litigation does not *automatically* have either implied[7] or apparent authority to settle or otherwise to compromise the client's cause of action"; (emphasis added) *Acheson v. White*, 195 Conn. 211, 213 n. 4, 487 A.2d 197 (1985); they also have repeatedly held that an agent with implied or apparent authority may bind the principal to an enforceable settlement agreement.

. . . Both the Restatement of Agency and the Restatement of the Law Governing Lawyers provide that the mere act of retaining an attorney, without more, is insufficient to create apparent authority to bind the client to a settlement. Rather, manifestations of apparent authority must take the form of "conduct by a person, observable by others, that expresses meaning." 1 Restatement (Third), Agency, supra, at § 1.03, comment (b), p. 56. Such conduct, however, "is not limited to spoken or written words. . . . Silence may constitute a manifestation when, in light of all the circumstances, a reasonable person would express dissent to the inference that other persons will draw from silence. Failure then to express dissent will be taken as a manifestation of affirmance." Id., at p. 57. Apparent authority also may be conveyed to the third person "from authorized statements of the agent, from documents or other indicia of authority given by the principal to the agent, or from third persons who have heard of the agent's authority through authorized or permitted channels of communication. Likewise . . . apparent authority can be created by appointing a person to a position . . . which carries with it

7 "Implied authority is actual authority circumstantially proved. It is the authority which the principal intended his agent to possess. . . . Implied authority is a fact to be proven by deductions or inferences from the manifestations of consent of the principal and from the acts of the principal and [the] agent." (Citation omitted; internal quotation marks omitted.) Maharishi School of Vedic Sciences, Inc. (Connecticut) v. Connecticut Constitution Associates Ltd. Partnership, supra, 260 Conn. at 607, 799 A.2d 1027. Thus, implied authority is determined by examining the conduct of the principal and the agent, whereas apparent authority is determined by examining the conduct of the principal as manifested to the third party and which leads the third party reasonably to believe that the agent has authority to represent the principal.

generally recognized duties . . . to do the things ordinarily entrusted to one occupying such a position. . . ." 1 Restatement (Second), Agency, supra, at § 27, comment (a), p. 104. The Restatement (Third) of Agency similarly explains that "[a] principal may . . . make a manifestation by placing an agent in a defined position in an organization or by placing an agent in charge of a transaction or situation. Third parties who interact with the principal through the agent will naturally and reasonably assume that the agent has authority to do acts consistent with the agent's position or role unless they have notice of facts suggesting that this may not be so. A principal may make an additional manifestation by permitting or requiring the agent to serve as the third party's exclusive channel of communication to the principal. . . .

> "If a principal has given an agent general authority to engage in a class of transactions, subject to limits known only to the agent and the principal, third parties may reasonably believe the agent to be authorized to conduct such transactions and need not inquire into the existence of undisclosed limits on the agent's authority." 1 Restatement (Third), Agency, supra, at § 3.03, comment (b), pp. 174–75.

. . .

A

We begin by considering whether the plaintiffs held Coe out as possessing sufficient authority to settle the litigation as required under the first prong of *Tomlinson v. Board of Education*, supra, 226 Conn. at 734, 629 A.2d 333. The plaintiffs claim that the trial court's findings that Rena Ackerman was present at the deposition on July 1, 2008, and that she " 'never manifested' " that the " 'settlement authority of her attorney was limited or had been terminated,' " were insufficient to support the conclusion that Coe had full and final settlement authority. The plaintiffs further contend that other findings by the trial court that Rena Ackerman was involved in every aspect of the litigation, including settlement, and that she is "a very bright person who is vigilant in pursuing and protecting her interests in these lawsuits," are inconsistent with the conclusion that Coe had apparent authority to settle the litigation because they show that Rena Ackerman fully participated in her legal action and would not have given settlement authority to Coe. They also contend that there is no evidentiary support for the trial court's finding that Rena Ackerman spoke for all of the other plaintiffs, including Rakoszynski and Mann. The defendants respond that the trial court's finding that Coe had apparent authority was based on a course of dealing that began, at the latest, during the court-ordered mediation on May 29, 2008, continued under court supervision through the month of June and concluded on July 1, during which time the plaintiffs consistently held Coe out as their sole spokesman on settlement matters with the power to receive, reject and make settlement offers. We agree with the defendants that the plaintiffs clothed Coe with apparent authority to settle the litigation.

It is well established that "[a] manifestation [of a principal's assent or intention] does not occur in a vacuum, and the meaning that may reasonably be inferred from it will reflect the context in which the manifestation is made. . . .

"Between particular persons, prior dealings or an ongoing relationship frame the context in which manifestations are made and understood." 1 Restatement (Third), Agency, supra, at § 1.03, comment (e), p. 62. Moreover, manifestations of apparent authority may take many forms. For example, "[t]he principal may make a manifestation [of apparent authority] by . . . directing or designating an agent to . . . conduct negotiations . . . or [by] placing the agent in charge of a transaction or situation." Id. Connecticut courts likewise have recognized that the basis of apparent authority may be a course of dealing between the agent and the principal. See *Graham v. Southington Bank & Trust Co.*, 99 Conn. 494, 505, 121 A. 812 (1923) (course of dealing between plaintiff receiver of corporation and defendant bank was not such that it would legally and logically support conclusion that third party was plaintiff's agent clothed with apparent authority to secure money from bank without check legally payable to him) . . . .

We conclude that the trial court's finding that the plaintiffs clothed Coe with apparent authority to settle the litigation is supported by evidence of a course of dealing involving the plaintiffs, Coe, the defendants and the parties' attorneys that was well established before the Sobol defendants and the Bank of America accepted the global settlement offer. The plaintiffs do not dispute the trial court's finding that Coe represented all of the plaintiffs at the court-ordered mediation on May 29, 2008, during which settlement terms were discussed and Rena Ackerman and the other plaintiffs were present. Moreover, it was Coe, acting on behalf of all of the plaintiffs, who subsequently rejected the defendants' written offer in a conference telephone call scheduled by Judge Sheldon and who stated that a counteroffer might be forthcoming. Thereafter, Coe made the anticipated counteroffer on behalf of all of the plaintiffs in his June 16 letter to the Sobol defendants. It is clear that Coe was authorized to make this offer, which would have settled the litigation if accepted, because the letter contained language indicating that it pertained to all of the pending litigation and was "for settlement purposes only." Indeed, all those who later gave testimony concerning the letter, including Coe, Horan,[13] and the defense attorneys, understood that Coe had authority to make the offer, and the plaintiffs repeatedly concede in their appellate briefs that Coe had express, or actual, authority to do so.

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[13] Horan specifically testified that the counteroffer in the letter of June 16 had been authorized by his clients.

Furthermore, after the Sobol defendants rejected the counteroffer, Wyld observed Rena Ackerman conferring with Coe at a hearing on June 25, 2008, to determine which issues would be tried to a jury. Thereafter, Coe made the global settlement offer to the defendants in a series of conversations with Schneider and Wyld, repeatedly assuring them that he had authority to settle the litigation for the terms under discussion. On July 1, one day after the Sobol defendants accepted the offer, the plaintiffs Rena Ackerman, Rakoszynski and Mann were present with Coe at the Hartford offices of Shipman and Goodwin for the depositions of Rakoszynski and Mann. On that day, Coe and Wyld, who also was present, were waiting to hear from Schneider whether the Bank of America would accept the terms that Coe had offered and that the Sobol defendants had accepted one day earlier. Wyld and Schneider both observed Rena Ackerman and her husband at the offices, where they met with Coe from time to time and were seen conferring with Coe before Schneider called to inform them that the Bank of America had accepted the offer, thus settling the litigation. There was no apparent discord or distance in the relationship between Coe and Rena Ackerman and no one objected to Coe's extension of the deadline for the Bank of America to respond from noon until 5 p.m. In other words, Ackerman manifested by her conduct during the times she was observed with Coe prior to the offer's acceptance that she was aware of, and fully supported, the global settlement offer.

In addition, none of the plaintiffs, including Rena Ackerman, who was described by the trial court as "a very bright person who is vigilant in pursuing and protecting her interests," indicated by their conduct prior to the Bank of America's acceptance of the offer that Coe did not have continued authority to settle the litigation. Specifically, there is no evidence that the plaintiffs notified any third person that they had revoked Coe's authority following the defendants' rejection of their counteroffer, or that Coe no longer was representing Rakoszynski and Mann during the negotiations in June. This conclusion is supported by Rena Ackerman's testimony that she had authorized Coe to engage in settlement discussions with other counsel, and that she never notified any other person involved in the negotiations that she had limited or revoked Coe's authority after June 16 to reach a settlement on her behalf. . . . Accordingly, the evidence unequivocally supports the trial court's finding that the plaintiffs held Coe out as possessing the necessary authority to settle the litigation by (1) authorizing him to represent them at the court-ordered mediation, reject the defendant's written proposal that followed the mediation and convey the June 16 counteroffer, (2) communicating with Coe in the presence of the defendants at various times during the ongoing negotiations after June 16, and (3) failing to revoke Coe's authority or to inform any third person that Coe no longer had authority to settle the litigation after June 16.

. . .