

that they intended to sue HP for invasion of privacy. Counsel for the journalists indicated that the suit would seek punitive damages against HP for its actions in connection with the spy investigation. Several other reporters who were investigated also commenced settlement negotiations with HP. HP settled cases with the New York Times Company and three *BusinessWeek* journalists in 2008 for undisclosed amounts.<sup>29</sup>

29. Nancy Gohring, *HP Settles Pretexting Cases*, PCWORLD, Feb. 14, 2008, available at [http://www.pcworld.com/article/142524/hp\\_settles\\_pretexting\\_cases.html](http://www.pcworld.com/article/142524/hp_settles_pretexting_cases.html).

The HP incident also hastened passage of a federal law, the Telephone Records and Privacy Protection Act of 2006,<sup>30</sup> which made it illegal for a person to use fraud to obtain individual customer billing records and other customer information from telephone companies. The act also prohibited the selling of such illegally obtained records. Violators face fines and up to ten years in prison. Although some argued that passage of the act meant that pretexting had not previously been a violation of federal law, that was cold comfort to HP, Dunn, and the others implicated in the spying scandal.

30. 18 U.S.C. § 1039.

## KEY WORDS AND PHRASES

actual authority	126	duty of loyalty	123	implied ratification	128
agency	121	duty of obedience	123	independent contractor	122
agency by estoppel	121	electronic agents	126	principal	121
agency by ratification	121	equal dignities rule	121	ratification	128
agent	121	express authority	126	<i>respondeat superior</i>	122
aided-in-the-agency-relation theory	130	express ratification	128	undisclosed principal	128
apparent authority	121	fiduciary	123	vicarious liability	130
duty of care	124	implied authority	126		

## QUESTIONS AND CASE PROBLEMS

**5.1** Singer was employed by General Automotive Manufacturing Company (GAMC) as its general manager from 1953 until 1959. He had worked in the machine-shop field for more than thirty years and enjoyed a fine reputation in machine-shop circles.

GAMC was a small company with only five employees and a low credit rating. Singer attracted a large volume of business to GAMC and was invaluable in bolstering the company's credit rating. At times, when collections were slow, Singer paid the customer's bill to GAMC and waited for his own reimbursement until the customer remitted. Also, when work was slack, Singer would finance the manufacture of unordered parts and wait for recoupment until the stockpiled parts were sold. Some parts were never sold, and Singer personally absorbed the loss on them.

While working for GAMC, Singer set up his own sideline operation, in which he acted as a machinist–consultant. As orders came in to GAMC through him, Singer would decide that some of them required equipment GAMC lacked or that GAMC could not do the job at a competitive price. For such orders, Singer would give the customer a price, arrange for another machine shop to

do the work at a lower price, and pocket the difference. Singer conducted his operation without notifying GAMC of the orders that it (through Singer) did not accept.

Contending that Singer's sideline business was in direct competition with its business, GAMC sued Singer for breach of fiduciary duty. What was the result? What were Singer's duties to GAMC as its agent? Was Singer's operation of a sideline business ethical? Would it have been ethical if he had disclosed it to his GAMC superiors? [*General Automotive Manufacturing Co. v. Singer*, 120 N.W.2d 659 (Wis. 1963).]

**5.2** Bailey, an owner-operator truck driver working as an independent contractor, was transporting goods for Norco when his truck was stolen. It was found in a lake with its diesel fuel contaminating the water. Bailey called the Norco dispatcher to alert her, and Protect Environmental Services later arrived on the scene with a contract to perform clean-up services. Bailey was told that the contract needed to be signed before clean-up could begin, and he testified that the Protect representative told him the contract was between Protect and Norco. The Protect representative asked Bailey if he