

was pointing could be adjusted manually or automatically in the control room. The control room also had a large screen that the guards could use to view the images from the cameras or to monitor what was being taped on the VCR. The purpose of having the VCR was to enable the guards to videotape suspicious activities, and the guards were told to practice taping on the VCR.

The Working Women's Survival Show, an exhibition held at the convention center, featured a "fitness fashion show." Promoters for the Working Women's Survival Show had a makeshift curtained dressing area set up near the stage for the models in the fashion show. Unbeknownst to the models, the dressing area was in a location that could be monitored by one of the surveillance cameras. That fortuity was discovered by two guards, Rook and Smith. Rook had the rank of captain, denoting supervisory capacity, though there was testimony that when he worked in the control room, he had no supervisory authority. Another supervisor with disputed supervisory authority, Ramey, walked by the control room and saw the guards using the large screen to view women in a state of undress. Either Smith or Rook (each accused the other) had focused the camera on the models and taped them as they were changing clothes for the fashion show. The models later sued for invasion of privacy.

Is Wells Fargo Guard Services liable for the unauthorized actions of its agents, even if those actions were done for personal pleasure rather than for work? [*Doe v. B.P.S. Guard Service, Inc., d/b/a Wells Fargo Guard Services*, 945 F.2d 1422 (8th Cir. 1991).]

- 5.7 The Southern Pacific Transportation Company was transporting eighteen boxcars loaded with bombs belonging to the U.S. government from Hawthorne, Nevada, to Port Chicago, California, pursuant to a contract with the U.S. Navy. While in Southern Pacific's yard in Roseville, California, the boxcars exploded, causing personal injuries and property damage and resulting in a lawsuit.

Assume that Southern Pacific used due care in transporting the bombs. Is it nonetheless liable for the damage caused by the explosion? Should the government be liable? How could Southern Pacific have protected itself from this lawsuit? Who would be liable if, instead of bombs exploding, deadly chemicals were spilled while being transported? [*Chavez v. Southern Pacific Transportation Co.*, 413 F. Supp. 1203 (E.D. Cal. 1976); *Indiana Harbor Belt Railroad Co. v. American Cyanamid Co.*, 916 F.2d 1174 (7th Cir. 1990).]

- 5.8 Firefly Corporation needed capital for product development. On May 26, 2009, Firefly held a board meeting at which it was anticipated that a quorum of the board would vote to accept an equity investment offer from Trident Capital. (The deadline for accepting the Trident offer was May 26, 2009.) Siamik Mirhakimi, a "senior executive" and board member of Caterpillar, Inc. and another individual from Caterpillar, who was not a board member, attended the meeting. According to a complaint filed later by the CEO of Firefly, "Caterpillar executives authorized Mr. Mirhakimi and [the other Caterpillar representative] to attend the Board meeting to make a presentation and offer on its behalf regarding an equity investment by Caterpillar in Firefly." At the meeting, Mirhakimi "expressly stated that he had 100% authorization from Caterpillar" to make an investment in Firefly. Because the terms of Caterpillar's offer were better than the terms offered by Trident, Firefly's board voted to accept the Caterpillar offer.

Shortly thereafter, Caterpillar informed Firefly that it had decided not to make the investment. Because Firefly could not raise capital elsewhere, it ultimately filed for bankruptcy. The CEO of Firefly (to whom the rights, claims, and causes of action of Firefly against Caterpillar had been sold) subsequently sued Caterpillar, alleging claims for intentional misrepresentation and anticipatory breach of contract. The intentional misrepresentation claim hinged on whether the CEO could sufficiently plead that Mirhakimi had actual implied authority or apparent authority.

The CEO alleged that Mirhakimi "was a senior executive" at Caterpillar. Does that allegation show implied authority to commit to an investment? What other actions could Mirhakimi have performed to show implied authority?

The CEO also attempted to show that because the second representative from Caterpillar attended the board meeting with Caterpillar's approval, he had implied authority to commit to the investment. Does that allegation show implied authority? If yes, how? If no, what other facts would be required to show such authority?

In support of his apparent authority theory, the CEO alleged that Caterpillar "engaged in words that created the appearance of apparent authority through its express agents" and that apparent authority was also created because Caterpillar "sen[t] Mr. Mirhakimi and [the other Caterpillar representative] to the Firefly Board meeting to make the investment presentation." Do these actions create apparent authority? How could Caterpillar have avoided this litigation? Did it act ethically? [*Williams v. Caterpillar Inc.*, 940 F. Supp. 2d 840 (C.D. Ill. 2013).]