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MANDATE

*Milton M. Harrison**

The Louisiana courts have long recognized the doctrine of apparent authority of an agent as binding on a principal in the absence of actual authority. In *Broadway v. All-Star Insurance Corp.*¹ Chief Justice Sanders, as the organ of the court, did much to clarify the concepts of express authority.

The defendant, an insurer, authorized an agent to receive proposals for insurance, but expressly withheld authority to bind the insurer without written approval. The insurer expressly reserved to itself the right to cancel policies and to send notice thereof to the policyholder. The agent sent notification of cancellation to the policyholder. After loss occurred, defendant insurer defended an action to enforce the payment of benefits under the policy on the basis that its agent had apparent authority to send notices of cancellation. The court of appeal upheld defendant's position.²

In reversing, the Louisiana supreme court held that apparent authority is not available to a principal to defeat claims of a third person. The concept is one based on estoppel "which operates in favor of third persons seeking to bind a principal to an unauthorized act of an agent."³

The opinion in *Broadway* also recognizes the doctrine of implied authority as a category of actual authority which is "inferred from the circumstances, purposes, and nature of the agency itself," thus providing the agent with the "implied authority to do all those things necessary or incidental to the agency assignment."⁴ The implied authority may be "inferred from the functions" of the agent⁵ operating under an indefinite power conferred by a principal.⁶

It is to be hoped that the opinion in *Broadway* will lead the courts to use consistent terminology in the area of authority. This is especially important in view of the fact that in a recent decision of the Second Circuit Court of Appeal,⁷ the court used the terms "apparent authority" and "implied authority" interchangeably.

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1. 285 So. 2d 536 (La. 1973).

2. 267 So. 2d 589 (La. App. 3d Cir. 1972).

3. 285 So. 2d at 538.

4. *Id.*

5. See LA. CIV. CODE art. 3000.

6. See *id.* art. 3006.

7. *Alphonse Brenner Co. v. Dickerson*, 283 So. 2d 849 (La. App. 2d Cir. 1973).