CASE NOTES

CORPORATIONS—A CORPORATE EMPLOYER IS LIABLE FOR EXEMPLARY DAMAGES FOR THE ACT OF AN EMPLOYEE IF THE CORPORATE EMPLOYER OR A MANAGERIAL AGENT AUTHORIZED OR RATIFIED THE DOING AND THE MANNER OF THE ACT, OR WAS RECKLESS IN EMPLOYING OR RETAINING AN UNFIT EMPLOYEE, OR IF THE EMPLOYEE WAS EMPLOYED IN A MANAGERIAL CAPACITY AND WAS ACTING IN THE SCOPE OF EMPLOYMENT. *Briner v. Hyslop*, (Iowa 1983).

David L. Briner was killed in an automobile-truck accident when the car which he was driving was struck by a truck driven by defendant, Dennis Lee Hyslop.[1] Hyslop, at the time, was employed by McLane Livestock Transport, Inc., owner of the truck.[2] On November 7, 1979, the evening prior to the accident, Hyslop departed from Colorado and drove the McLane-owned truck, loaded with cattle, to Sioux Center, Iowa.[3] After driving all night, Hyslop arrived in Sioux Center at two o'clock in the afternoon of November 8. At that time he and another of McLane's employees were instructed by McLane to begin driving to Waterloo, Iowa.[4] Later that evening, Hyslop and the other McLane employee, Scowden, stopped in Fort Dodge to allow the latter to call McLane.[5] While in Fort Dodge, Hyslop, who had not slept for some thirty hours,[6] with the exception of about an hour nap, con-

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1. Briner v. Hyslop, 337 N.W.2d 858 (Iowa 1983).

2. *Id.* at 860.

3. *Id.* Upon Hyslop's arrival in Sioux Center, another of McLane's employees, Leo Scowden, notified McLane that Hyslop had arrived. *Id.*

4. *Id.*

5. *Id.* At this time McLane instructed its two employees to drive to Rowley, Iowa, to pick up a load of cattle early in the morning of November 9. *Id.*

6. *Id.* at 867. The plaintiff, prior to commencement of the trial, was permitted to amend her petition to urge that the defendant, Hyslop, was negligent in driving for consecutive periods in excess of that authorized under section 321.225 of the Iowa Code. *Id.* at 868. Section 321.225 of the Iowa Code provides, "[n]o person shall operate a commercial vehicle for hire for more than a period of twelve hours out of any period of twenty-four hours . . . without being relieved for ten consecutive hours. . . ." IOWA CODE § 321.225 (1981). An employer is prohibited from allowing its driver to violate section 321.225 of the Iowa Code by operation of section 321.226 of the Iowa Code which provides, "[n]o . . . corporation shall require or permit any employee . . . to drive or operate any commercial vehicle . . . in violation of the provisions of section 321.225." IOWA CODE § 321.226 (1981). The *Briner* court indicated that the question *was* whether a violation of the aforementioned provision "may amount to conduct that gives the jury discretion to award punitive damages." Briner v. Hyslop, 337 N.W.2d at 868 (emphasis added).

sumed several double scotches.[7] Thereafter, he returned to his truck and began driving.[8] The truck drifted over the center line and collided with the oncoming Briner automobile.[9] The administratrix of Briner's estate, Norma J. Briner, commenced this wrongful death action[10] against both Hyslop and McLane, employee and employer respectively.[11]

The action was tried to a jury which returned verdicts for compensa-

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7. Briner v. Hyslop, 337 N.W.2d 858, 860 (Iowa 1983).

8. *Id.* The facts indicate that it was evening when Hyslop resumed driving; however, there is no indication as to the specific time at which he commenced driving. *Id.*

9. *Id.* The court noted that a witness to the accident indicated that Briner took evasive action and drove onto the shoulder of the road; nevertheless the truck, driven by Hyslop, swerved onto the shoulder and hit the car. *Id.* at 867.

10. *Id.* at 860. The Iowa Supreme Court considered the issue raised by Hyslop, in his cross-appeal, as to whether punitive damages are recoverable in wrongful death actions in Iowa. *Id.* at 870. The court declined to overrule the conclusion it had reached in Berenger v. Frink, 314 N.W.2d 388 (Iowa 1982). In *Berenger* the court decided that punitive damages are recoverable in wrongful death actions in Iowa. *Id.* at 391.

The *Berenger* court, in so holding, overruled its decision in *Boyle v. Bernholtz*, *quoted in* 314 N.W.2d at 390, where the Iowa Supreme Court did not permit punitive damages "if the action was commenced by the administrator after the death of the injured party." 224 Iowa at 93, 275 N.W. at 482. The *Berenger* court further stated in pertinent part:

> Thus, the discussion in *Boyle* as to the differing measure and purposes of damages when a suit is brought by the injured party or the estate is irrelevant to punitive damages, which are designed to punish and deter, not to compensate . . . [b]ecause punitive damages serve to punish and deter, we find they are properly included elements of recovery whether or not the injured party seeks them in an action before his death.

Berenger v. Frink, 314 N.W.2d at 391.

The foregoing conclusion has been reached in federal cases interpreting Iowa's survival statutes, sections 611.20-.22 of the Iowa Code. *Id. See, e.g.*, Koppinger v. Cullen-Schlitz & Associates, 513 F.2d 901 (8th Cir. 1975) (exemplary damages are recoverable under Iowa wrongful death statute). *See also* Ellis, *Punitive Damages in Iowa Law: A Critical Assessment*, 66 IOWA L. REV. 1005, 1051-54 (1981); Riley, *Punitive Damages: The Doctrine of Just Enrichment*, 27 DRAKE L. REV. 195, 204-06 (1977-78).

11. Briner v. Hyslop, 337 N.W.2d at 860. Prior to the commencement of this action, Hyslop entered a plea of guilt to a charge of involuntary manslaughter based upon his operation of a motor vehicle while under the influence of alcohol or drugs, reckless driving, failure to have control, failure to yield one-half of the highway, failure to keep a log book, and operating a commercial vehicle for more hours than allowed by law. *Id.* In response to arguments made by Hyslop in his cross-appeal, the Iowa court opined, "[w]e also decline to overrule well-established precedent that a party may be assessed punitive damages in a civil action even though he has pleaded guilty or has been convicted of a crime." *Id.* at 870.

The *Briner* court relied upon the rule set forth in Hauser v. Griffith, 102 Iowa 215, 71 N.W. 223 (1897). In *Hauser*, the court stated that although a defendent in a civil action for assault was fined in a former criminal prosecution, such prior action did not serve to bar an allowance of exemplary damages. *Id.* at 215, 71 N.W. at 223. It should be noted also that prior to commencement of this civil action, Hyslop admitted his negligence, thus removing this issue from jury deliberation. Briner v. Hyslop, 337 N.W.2d at 860. McLane also admitted Hyslop's negligence. *Id.*

tory[12] and punitive[13] damages against both defendants. The Iowa District Court for Black Hawk County entered a judgment in accordance with that portion of the verdict which awarded compensatory damages against both defendants and punitive damages against Hyslop; however, it entered a judgment notwithstanding the verdict for McLane on the punitive damage award.[14] On appeal,[15] the Iowa Supreme Court *held*, affirmed in part; reversed and remanded in part.[16] A corporate employer is liable for exemplary damages for the act of an employee if the corporate employer or a managerial agent authorized or ratified the doing and manner of the act, or was reckless in employing or retaining an unfit employee, or if the employee was employed in a managerial capacity and was acting in the scope of employment. *Briner v. Hyslop*, 337 N.W.2d 858 (Iowa 1983).

The *Briner* decision is significant in that the Iowa Supreme Court rejected[17] the rule under which a corporate employer may be held liable for

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12. Briner v. Hyslop, 337 N.W.2d at 860. As against both defendants, a joint verdict for compensatory damages for the amount of $116,846.08 was rendered. *Id.*

13. *Id.* Separate verdicts for punitive damages against Hyslop for $100,000 and against McLane for $150,000 were rendered. *Id.*

14. *Id.* In considering the propriety of the trial court's grant of a judgment notwithstanding the verdict, the *Briner* court noted that the trial court failed to give a reason for its ruling. *Id.* Such failure on the part of the trial court constituted noncompliance with the requirement contained in rule 118 of the Iowa Rules of Civil Procedure. *Id.* Rule 118 provides, "[a] motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally." Iowa R. Civ. P. 118 (1951). The *Briner* court commented, "[t]his failure to comply with [the rule] . . . creates uncertainty about the trial court's reasoning and the issues that should be considered on appeal." Briner v. Hyslop, 337 N.W.2d at 860.

The *Briner* court relied upon its decision in Greenwell v. Meredith Corp., 189 N.W.2d 901 (Iowa 1971) in stating, "[w]e have admonished trial courts to comply with rule 118. . . . [N]oncompliance may be grounds for reversal." Briner v. Hyslop, 337 N.W.2d at 860. The court, however, was not of the belief that reversal for noncompliance was warranted in the instant case. *Id.* Faced with an absence of any rationale as to why the trial court entered its judgment notwithstanding the verdict, the Iowa Supreme Court confined its review "to the grounds urged by McLane in its motion for a directed verdict, as the motion for judgment notwithstanding the verdict must stand or fall on grounds urged therein." *Id. See, e.g.*, Watson v. Lewis, 272 N.W.2d 459, 461 (Iowa 1978). A motion for judgment notwithstanding the verdict must stand on the grounds raised in the directed verdict motion. *Id.*

15. Briner v. Hyslop, 337 N.W.2d at 860. Plaintiff appealed from the trial court's grant of judgment notwithstanding the verdict for McLane on plaintiff's claim of punitive damages. *Id.* McLane cross-appealed from the award of compensatory damages. *Id.* Hyslop cross-appealed from the award of punitive damages against him. *Id.*

16. *Id.* The supreme court affirmed that portion of the judgment which awarded compensatory damages against both defendants, and also affirmed the portion which awarded punitive damages against defendant Hyslop. *Id.* at 871. With respect to the judgment notwithstanding the verdict in favor of McLane on the punitive damage award, the supreme court reversed, noting "[t]he special verdict [as to the award of punitive damages] . . . was arrived at by the jury after they were instructed under the course of employment rule, rather than the complicity rule . . . [t]he verdict is no longer effective." *Id.* at 868.

17. *Id.* at 867. The trial court instructed the jury under the "course of employment" rule on the issue of whether McLane, the corporate employer, should be held liable for punitive

punitive damages *whenever* the actions of its employees fall within the scope of their employment.[18] Although, as the court noted, there are about twenty states that follow the "course of employment rule,"[19] there does exist

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damages. *Id.* at 868. Thus the supreme court in *Briner* was faced with the issue of whether the trial court erred in adopting the course of employment rule as the law of the case. *Id.* at 861. In concluding that the Restatement rule, rather than the rule under which the jury had been instructed at trial, is the proper rule to apply in determining corporate liability for punitive damages, the *Briner* court "remanded [the case] for a new trial under the proper rule in accordance with this opinion." *Id.* at 871.

18. *Id.* at 861 (hereinafter referred to as the "course of employment" rule). The court noted that in Iowa under the doctrine of *respondeat superior*, a corporate employer may be liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment even though the employer is without fault. *Id.* With respect to the employer's liability for punitive damages, several authors have suggested that the standard applied under the course of employment rule is similar to the standard of vicarious liability applied under the doctrine of *respondeat superior* in determining employer liability for compensatory damages. *See* Ellis, *Punitive Damages in Iowa Law: A Critical Assessment*, 66 IOWA L. REV. 1005, 1036 (1981); Morris, *Punitive Damages in Personal Injury Cases*, 21 OHIO ST. L.J. 216, 221 (1961); Note, *The Assessment of Punitive Damages Against an Entrepreneur for Malicious Torts of His Employees*, 70 YALE L.J. 1296 (1961).

19. Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265, 1278 (3d Cir. 1979) (where the court in reviewing the state court precedents ascertained that Pennsylvania did not follow the more restrictive Restatement rule which circumscribes the scope of an employer's liability for punitive damages); Standard Oil Co. v. Gunn, 243 Ala. 598, _, 176 So. 332, 334 (1937) (an oil company was liable for its agent who, while acting within apparent scope of employment, sold adulterated motor oil at a filling station); Western Coach Corp. v. Vaughn, 9 Ariz. App. 336, _, 452 P.2d 117, 120 (1969) (evidence was sufficient to indicate that manager while acting within scope of employment acted with reckless indifference to the interests of others, permitting an award of punitive damages against the corporate employer); Miller v. Blanton, 213 Ark. 246, _, 210 S.W.2d 293, 297 (1948) (evidence that defendant motorist was operating automobile on mission for corporate employer at time of collision, and that motorist was guilty of driving automobile in a manner indicative of wilful or wanton disregard for rights of others, authorized submission to jury of question of corporate employer's liability for punitive damages arising out of the collision); Ford v. Charles Warner Co., 15 Del. (1 Marv.) 88, _, 37 A. 39, 42 (1893) (master is responsible for injuries of a third person, caused by negligence of his servant, acting within the scope of his employment); Atlantic Greyhound Corp. v. Austin, 72 Ga. App. 289, _, 33 S.E.2d 718, 720 (1945) (bus company liable for punitive damages incurred by passenger who, after being sold a ticket, was refused transportation by the bus company, evincing wilful and intentional bad faith); Hibschman Pontiac, Inc. v. Batchelor, 266 Ind. 310, _, 362 N.E.2d 845, 848 (1977) (agent's acts in scope of authority attributable to corporation); Wheeler & Wilson Mfg. Co. v. Boyce, 36 Kan. 350, _, 13 P. 609, 610 (1887) (exemplary damages may be recovered against corporation for wrongful acts of servants and agents done in course of employment); Memphis & Cincinnati Packet Co. v. Nagel, 97 Ky. 9, _, 29 S.W. 743, 743 (1895) (refusal of employee in charge of steamboat to put passenger off at destination for which she bought ticket was wrongful neglect, subjecting owner of boat to liability for punitive damages); Embrey v. Holly, 442 A.2d 966, 972 (Md. 1982) (court imposed liability for punitive damages upon radio station for defamatory utterances of broadcaster acting within scope of employment); Lucas v. Michigan Central R.R. Co., 98 Mich. 1, _, 56 N.W. 1039, 1040 (1893) (ejection of passenger by conductor, acting within scope of authority, is ground for recovery of exemplary damages against company); Sandifer Oil Co. v. Dew, 220 Miss. 609, _, 71 So. 2d 752, 758 (1954) (corporate employer liable for punitive damages arising from wanton and reckless conduct of em-

on the more conservative end of the spectrum a group of authorities, approximating twenty-two states,[20] which impose liability for punitive dam-

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ployee when gasoline being pumped into tank ignited and exploded causing burns resulting in death to minor child); Rinker v. Ford Motor Oil Co., 567 S.W.2d 655, 667 (Mo. App. 1978) (evidence of whether manufacturer consciously and knowingly disregarded potential for danger was held sufficient to justify submission of punitive damages to jury in action against manufacturer and automobile dealer for injuries sustained in collision resulting from a defective brake); Rickman v. Safeway Stores, 124 Mont. 451, _, 227 P.2d 607, 611 (1951) (corporation held liable for act of an agent within the scope of authority, resulting in injury to third party); Clemmons v. Life Ins. Co., 274 N.C. 416, _, 163 S.E.2d 761, 767 (1968) (punitive damages awarded against corporate employer where its agent was acting in course of employment); Kurn v. Radencic, 193 Okla. 126, _, 141 P.2d 580, 581 (1943) (exemplary damages awarded against the employer for the act of agent, beating a passenger, even though the employer did not participate in, authorize, or ratify the act); Stroud v. Denny's Restaurant, Inc., 271 Ore. 430, _, 532 P.2d 790, 793 (1975) (recognizes employer liability for punitive damages for acts of "menial" employees if employee was acting within scope of employment and act was such as would render employee liable for punitive damages). Although this case adopted § 909 of Restatement (Second), it disregarded the § 909(c) limitation that the agent must be employed in a "managerial capacity." *Id.* The failure to recognize this limitation has the effect of rendering the employer liable for employee acting within the scope of his employment which is equivalent to the course of employment rule. *See also* Beauchamp v. Winnsboro Granite Corp., 113 S.C. 552, _, 101 S.E. 856, 858 (1920) (corporation liable for punitive damages for acts of employees though action was contrary to instructions of the manager); Odum v. Gray, 508 S.W.2d 526, 533 (Tenn. 1974) (expressly rejected the complicity rule).

20. Roginsky v. Richardson-Merril, Inc., 378 F.2d 832, 842 (2d Cir. 1967) (New York law adheres to complicity rule holding corporate master liable for punitive damages only when superior officers either order, participate in, or ratify outrageous conduct); Great Atlantic & Pacific Tea Co. v. Lethcoe, 279 F.2d 948, 950 (4th Cir. 1960) (under West Virginia law, corporate employer not required to pay punitive damages for action of store manager unless showing of authorization or ratification); Jenkins v. Whittaker Corp., 551 F. Supp. 110, 113 (D. Haw. 1982) (punitive damages not recoverable against corporate defendant absent allegations or evidence that would indicate corporate authorization of the allegedly tortious act); Agarwal v. Johnson, 25 Cal. 3d 932, _, 603 P.2d 58, 67, 160 Cal. Rptr. 141, 150 (1979) (no liability for punitive damages against principal for act of agent, unless showing that principal authorized, approved, or participated in wrongful act, or failed to exercise proper care in selecting servant (applying RESTATEMENT (SECOND) OF AGENCY, § 217C)); Maisenbacker v. Society of Concordia, 71 Conn. 369, _, 42 A. 67, 70 (1899) (to render principal liable in exemplary damages for acts of agent in course of employment, misconduct of principal beyond that which law implies from mere relation of principal and agent must be shown); Remeikis v. Boss J. Phelps Inc., 419 A.2d 986, 992 (D.C. 1980) (punitive damages permissible against corporation in fraud action if showing that wrongful act was authorized and ratified by corporation, not merely perpetuated by an employee); Mercury Motors Express, Inc. v. Smith, 393 So.2d 545, 547 (Fla. 1981) (analogous factual situation to that which appears in *Briner*, in which court determined "under what circumstances" employer may be held liable for punitive damages and rejected course of employment rule); Openshaw v. Oregon Automobile Ins. Co., 94 Idaho 335, _, 487 P.2d 929, 932 (1971) (for award of punitive damages against a corporation, complainant must show that corporation's directors and managing officers participated in or authorized or ratified agents' acts); Pendowski v. Patent Scaffolding Co., 83 Ill. App. 3d 484, _, 411 N.E.2d 910, 913 (Ill. App. 1980) (adhering to complicity rule); Summa Corp. v. Greenspun, 96 Nev. 247, _, 607 P.2d 569, 575 (1980) (punitive damages not awarded against corporation for acts of Howard Hughes, where defendant corporation did not know of wrongful conduct, and did not authorize it or ratify it); Win-

ages upon the corporate employer only when the employer wrongfully contributed to, authorized or ratified the outrageous conduct of its employee.[21] The latter is termed the "complicity rule."[22] As was indicated by Justice Schultz in the *Briner* decision,[23] the "complicity rule" is nearly identical[24] to section 909 of the Restatement (Second) of Torts.[25] Justice Schultz noted that prior to the *Briner* decision the proper rule to be applied in determining a corporate employer's liability for punitive damages was unclear.[26] Thus, since the issue was fully before the Iowa Supreme Court for the first time,[27] the *Briner* court was presented with the opportunity to adopt a rule more compatible with the rule under the Restatement.[28]

The Restatement rule, set forth in the *Briner* decision,[29] provides for an

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kler v. Hartford Accident & Indemnity Co., 66 N.J. Super. 22, _, 168 A.2d 418, 422 (1961) (exemplary damages can be awarded in conversion action against employer only if act was specifically authorized, participated in, or ratified by employer); Samedan Oil Co. v. Neeld, 91 N.M. 599, _, 577 P.2d 1245, 1247 (1978) (damages could not be assessed against foreman's corporate employer, for the former's act of designing and ordering a totally defective safety vent system in a gas well, absent showing that corporate employer is also guilty of wrongful motives upon which punitive damages are based); Mahanna v. Westland Oil Co., 107 N.W.2d 353, 363 (N.D. 1960) (no liability of corporation for exemplary damages for act of agent unless corporation authorized or ratified act); Gray v. Allison Div., General Motors Corp., 52 Ohio App. 2d 348, _, 370 N.E.2d 747, 752 (1977) (employer not to be punished for personal guilt of servant by way of imposition of punitive damages unless employer authorized, ratified, or participated in the wrongdoing); Conti v. Walter Winters, Inc., 86 R.I. 456, _, 136 A.2d 622, 624 (1957) (punitive damages for fraud can be awarded against management when there is evidence from which it may be inferred that management participated in fraudulent conduct); Fischer v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627, 631 (Tex. 1967) (hotel's club manager was acting in managerial capacity subjecting hotel to liability for exemplary damages for battery committed upon patron); Shortle v. Central Vermont Pub. Serv. Corp., 137 Vt. 32, _, 399 A.2d 517, 519 (1979) (utility employee's negligent termination of electrical service did not subject public service corporation to liability for punitive damages); Jordon v. Melville Shoe Corp., 150 Va. 101, _, 142 S.E. 387, 388 (1928) (corporation not held liable for punitive damages for insulting language used by its agent); Garcia v. Sampsons, Inc., 10 Wis. 2d 515, _, 103 N.W.2d 565, 567 (1960) (question of whether defendant ratified acts of three employees who committed assault and battery upon plaintiff, thus subjecting defendant to liability for punitive damages, was for jury); Campen v. Stone, 635 P.2d 1121, 1125 (Wyo. 1981) (quoting and applying RESTATEMENT (SECOND) OF TORTS, § 909).

21. Briner v. Hyslop, 337 N.W.2d at 861.

22. *Id.*

23. *Id.*

24. *See generally* Note, *Liability of Employers for Punitive Damages Resulting from Acts of Employees*, 54 CHI.-KENT L. REV. 829, 840-46 (1978) (wherein author suggests that the position adopted under the Restatement of Torts, is one of intermediacy between that of the course of employment rule and that of the complicity rule).

25. Briner v. Hyslop, 337 N.W.2d at 861 (hereinafter referred to as the Restatement rule).

26. *Id.* at 863.

27. *Id.*

28. *Id.*

29. *Id.* at 861. The Restatement (Second) of Torts § 909 states:

Punitive damages can properly be awarded against a master or other principal because of an act of an agent if, but only if:

award of punitive damages "against a master or other principal because of an act by an agent, if the principal authorized the doing and the manner of the act, or the act was ratified or approved by the principal or a managerial agent of the principal."[30] Additionally, under the Restatement, the principal may be liable for punitive damages caused by an act of an agent if "the agent was unfit and the principal was reckless in employing him, or the agent was acting in a managerial capacity and was acting in the scope of employment."[31]

The *Briner* decision is notable not only for the Iowa Supreme Court's rejection[32] of the "course of employment" rule, but also for its adoption of the Restatement rule as the proper rule to be applied by the Iowa courts in determining under what circumstances a corporate employer may be held liable for punitive damages caused by the act of an employee.[33] The Iowa court, on previous occasions, has addressed the issue of a corporate employer's liability for punitive damages for the acts of an employee. In 1914, Iowa initially took a position consistent with the Restatement rule and required corporate complicity.[34] Such requirement was expressed in *Dunshee v. Standard Oil Co.*,[35] wherein the court was of the opinion that a principal could not be held liable for punitive damages for the wanton acts of its agent unless the principal "participated, either expressly or impliedly,[36] or by conduct authorizing or approving the act, either before or after it was committed."[37]

(a) the principal authorized the doing and manner of the act, or

(b) the agent was unfit and the principal was reckless in employing him, or

(c) the agent was employed in a managerial capacity and was acting in the scope of the employment, or

(d) the principal or the managerial agent of the principal ratified or approved the act.

RESTATEMENT (SECOND) OF TORTS § 909 (1979).

30. RESTATEMENT (SECOND) OF TORTS § 909 (1979). The *Briner* court also stated that the complicity rule is the same as that expressed by section 217C of the Restatement (Second) of Agency. Briner v. Hyslop, 337 N.W.2d at 861. *See also* Morris, *supra* note 18, at 221.

31. RESTATEMENT (SECOND)OF TORTS § 909 (1979).

32. Briner v. Hyslop, 337 N.W.2d at 863. The *Briner* court stated, "[T]he pressure of *stare decisis* does not prevent us from reconsidering our judicial pronouncements and correcting or abandoning them when we believe the better rule otherwise." *Id.*

33. *Id.* at 867. *Contra* Riley, *Punitive Damages: The Doctrine of Just Enrichment*, 27 DRAKE L. REV. 195, 206 (1977-78) (wherein the author states that under Iowa law prior to *Briner* punitive damages could be awarded against a corporation for conduct of an agent acting in the scope of his employment).

34. Briner v. Hyslop, 337 N.W.2d at 861.

35. 165 Iowa 625, 146 N.W. 830 (1914).

36. *See infra* text accompanying note 118.

37. 165 Iowa at 630, 146 N.W. at 833. *See, e.g.*, Ashland v. Lapiner Motor Co., 247 Iowa 596, 601, 75 N.W.2d 357, 361 (1956) (case in which acceptance by corporation of benefits of corporation attorney's scheme, amounted to an affirmance or ratification of attorney's tortious action). *See also* White v. International Textbook Co., 173 Iowa 192, 194, 155 N.W. 298, 299

In *Dunshee*, the assignee of Crystal Oil Company brought suit to recover damages for injury to the business of the company against Standard Oil Company and three of its agents, charging that they fraudulently and maliciously formed a conspiracy resulting in unlawful competition which drove Crystal Oil out of business.[38] Regarding the liability of the corporate employer, Standard Oil, for acts of its agents, a verdict was rendered in favor of the plaintiff, solely against Standard for punitive damages.[39] The *Dunshee* court expounded upon the requirement of corporate complicity stating, "[w]hen it appears . . . that the methods employed were *with the knowledge of and under the general direction of* the agents who were representatives of their principal . . . such state of facts warranted submitting to the jury the question of liability . . . for . . . exemplary damages."[40]

According to Justice Schultz in the *Briner* opinion, the next Iowa reference[41] to the issue of a corporate employer's liability for punitive damages appeared in *Claude v. Weaver Construction Co.*[42] In *Claude*, the court decided that a jury question was created as to whether the construction company could be held liable for punitive damages resulting from the operation of an asphalt plant which caused property damage to be incurred by plaintiffs-homeowners.[43] As was noted by the *Briner* court,[44] the president of the corporation in *Claude* was actively involved in business operations and had authorized the controverted activity.[45] Nevertheless, the *Claude* court was unable to consider the issue of the liability of the corporate employer for punitive damages because the defendant corporation failed to raise the issue

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(1915). In *White* an agent contacted the corporation inquiring as to whether he should have a subordinate employee of the corporation arrested. *Id.* at 195, 155 N.W. at 299. The corporation responded without investigation that the agent should consult a certain attorney and be guided by his advice. *Id.* Thus, the court found that the corporation consented to the prosecution of its employee, and thereby became responsible for the acts of the agent and attorney. *Id. See also* Ellis, *supra* note 10, at 1039; Riley, *supra* note 10, at 207; Note, *supra* note 24, at 831.

38. Dunshee v. Standard Oil Co., 165 Iowa at 627, 146 N.W. at 832.

39. *Id.* at 629, 146 N.W. at 832.

40. *Id.* at 630, 146 N.W. at 833 (emphasis added). *See infra* notes 116 and 120 for a review of the facts concerning McLane's knowledge of its employees' driving and sleeping habits.

41. Briner v. Hyslop, 337 N.W.2d at 862. The fact that there appears to be a lapse of 52 years before the issue reappeared before the Iowa court may be explained by the manner in which the *Briner* court has chosen to frame the issue. Specifically, Justice Schultz stated, "[i]n none of these cases have we been called upon *as we are here* to address directly the question of a corporation's liability for punitive damages." *Id.* at 863 (emphasis added). In other words, during the period of 52 years, from the time of the *Dunshee* decision to the time of the *Claude* decision and up until the *Briner* decision, the courts had never been faced with the precise question of "determining *under what* circumstances a corporation would be liable for punitive damages for the acts of an employee." *Id.* at 862 (emphasis added).

42. 261 Iowa 1225, 158 N.W.2d 139 (1968).

43. *Id.* at 1227, 158 N.W.2d at 142.

44. Briner v. Hyslop, 337 N.W.2d at 862.

45. Claude v. Weaver Constr. Co., 261 Iowa at 1227, 158 N.W.2d at 142.

of such liability.[46] Although the defendant corporation had failed to raise the issue, the *Claude* court's decision that a jury question was created[47] relative to the liability of the corporation for punitive damages permits the inference that the facts in *Claude* fell under the complicity rule adopted by the *Dunshee* court.[48]

Notwithstanding this inference, the reference in *Claude* to the issue of a corporate employer's liability for punitive damages does not provide insight as to which rule, course of employment or complicity, was given effect by the Iowa courts at that time. The *Claude* court's inability to consider the issue left the rule in Iowa uncertain.

The Iowa court returned to the issue in *Northrup v. Miles Homes, Inc.*[49] In *Northrup*, the defendant corporation argued that punitive damages could not be assessed against a corporation.[50] To the contrary, the *Northrup* court stated that the result reached by the *Claude* court indicated a movement by the Iowa court toward the *prevailing rule*.[51] Thus, the court held that exemplary damages could be assessed against the corporation.[52] The *Northrup* court further indicated that to impose such liability, the employees' actions must have been within the scope of their employment, or in connection with their duties.[53] The foregoing statements seem to imply that the *Northrup* court was looking for the opportunity to hold that the Iowa courts should apply the course of employment rule when assessing whether a corporate employer should be held liable for punitive damages;[54] however, the only justification the *Northrup* court asserted in favor of adopting the rule was that it was the "prevailing rule."[55]

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46. *Id.* at 1233, 158 N.W.2d at 145. The *Claude* court stated in pertinent part:

> Error asserted in the case at bar is broad, but liability of a corporate entity, for punitive damages, is neither urged nor discussed by defendant. As a result, we are not called upon to consider or resolve that issue and do not do so. Stated otherwise, the question as to liability of a corporation for exemplary damages is not involved in this appeal.

Id. at 1233, 158 N.W.2d at 145.

47. *Id.* at 1235, 158 N.W.2d at 146.

48. Ellis, *supra* note 10, at 1040 (the author suggests that since *Claude* involved a closely held family type corporation that was operating what constituted a private nuisance, and since the corporation's president was actively involved in the plant operation, the facts were clearly within the complicity rule). *See, e.g.*, Briner v. Hyslop, 337 N.W.2d at 863. The court stated, "the result we reached in *Claude* would also have been reached if the court had applied the complicity rule." *Id.*

49. 204 N.W.2d 850 (Iowa 1973).

50. *Id.* at 858.

51. *Id.* (emphasis added).

52. *Id.*

53. *Id.* at 859.

54. *Compare supra* text accompanying note 53, *with supra* text accompanying note 18 (the rule intimated in the *Northrup* decision is equivalent to the course of employment rule, rejected by the *Briner* court).

55. Northrup v. Miles Homes, Inc., 204 N.W.2d at 858.

Although the *Northrup* court may have intimated that the course of employment rule was the prevailing rule in Iowa, the *Briner* court, in an effort to clarify the abstruseness of the *Northrup* decision, indicated that *Northrup* did not necessarily indicate the course of employment rule was the prevailing rule.[56] According to the *Briner* opinion, the reference by the *Northrup* court to the "prevailing rule" was only with regard to whether a corporation may be liable for punitive damages.[57] While the *Northrup* court clearly indicated that a corporation could be held liable for punitive damages, the Iowa court had yet to be presented with the question of determining "under what circumstances" a corporation would be held liable for punitive damages.[58] Since the foregoing decisions merely made slight reference to the employer's liability for punitive damages, the *Briner* court was faced with the task of ascertaining under what circumstances such liability would be imposed.

By rejecting the course of employment rule,[59] and adopting the rule set forth under the Restatement[60] as the law to be applied in Iowa when determining the liability of a corporate employer for punitive damages, the *Briner* court looked first to the general justification in support of the allowance of punitive damages.[61] The drafters of the Restatement have suggested that the justification for an award of punitive damages is two-fold in that it serves as punishment to the wrongdoer and as a deterrent to all others who may offend in a like manner.[62] The *Briner* court reasoned that an award of punitive damages is permitted only by the "grace and gratuity" of the law;[63] and therefore, such award is not permitted as a matter of right, but rather of discretion.[64] The rule that an award of punitive damages is a discretionary matter appears to warrant the conclusion that such an award should not

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56. Briner v. Hyslop, 337 N.W.2d at 863.

57. *Id.*

58. *Id.* at 862.

59. *See supra* text accompanying note 17.

60. *See supra* note 29.

61. Briner v. Hyslop, 337 N.W.2d at 865. By ascertaining the purpose of awarding punitive damages, the *Briner* court was able to determine which rule effectuated that purpose. *Id.*

62. RESTATEMENT (SECOND) OF TORTS § 908 comment a (1979). *See, e.g.*, Claude v. Weaver Constr. Co., 261 Iowa 1225, 1229, 158 N.W.2d 139, 143 (1968). Punitive damages are awarded not as compensation for the wrong done . . . but as purely incidental and by the grace and gratuity of the law, as punishment of the wrongdoer, and as an example and deterrent to others. *Id.* (quoting Sebastian v. Wood, 246 Iowa 94, 100, 66 N.W.2d 841, 844 (1954)); Rowen v. LeMars Mut. Ins. Co. of Iowa, 282 N.W.2d 639, 662 (1979) (purposes of punitive damages not served in penalizing innocent policyholders by assessing such damages against Iowa Mutual). *See also* Ellis, *supra* note 10, at 1006-13; Morris, *supra* note 18, at 216; Note, *supra* note 24, at 829.

63. Briner v. Hyslop, 337 N.W.2d at 865 (quoting Claude v. Weaver Constr. Co., 261 Iowa 1225, 1230, 158 N.W.2d 139, 143 (1968)).

64. Rowen v. LeMars Mut. Ins. Co., 282 N.W.2d 639, 661 (1979). The court stated that "[i]t is fundamental that punitive damages are not allowed as a matter of right . . . [s]uch damages are always discretionary." *Id.*

be granted where the dual purpose for which punitive damages are awarded, punishment and deterrence, is not served.

In *Briner*, the court conceded that punishment is a valid justification for the imposition of liability upon a corporate employer for punitive damages where the corporation is at fault.[65] Under the Restatement, this fault aspect is taken into consideration since the rule limits the imposition of punitive damages upon a principal to those acts done and specifically authorized or ratified by a managerial agent, or acts done by an unfit employee whom the principal was reckless in retaining.[66] Thus, as the foregoing appears to indicate, since the fault of the corporate employer is taken into account by the Restatement rule, the purpose of punishment in imposing punitive damages is effectuated thereunder. By contrast, under the course of employment rule a corporate employer is subject to liability for punitive damages whenever the employee's actions are within the scope of employment, even when the corporate employer is without fault.[67] According to the *Briner* court, application of the course of employment rule would result in punishment of a corporate employer who may be without fault, thus imposing liability merely on the basis of its role as employer.[68]

The *Briner* court acknowledged the impropriety of imposing liability for punitive damages on a corporate employer without fault, as would be the case under the course of employment rule, by considering *Rowen v. LeMars Mutual Insurance Co.*[69] In *Rowen*, the Iowa Supreme Court, cognizant of the purpose served by an award of punitive damages, ascertained that such purpose was not served where the loss would fall on innocent policyholders.[70] A derivative action was brought in *Rowen* by policyholders of an insurance company against the company and another insurance company which had allegedly purchased control of the former.[71] Additional defendants to

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65. Briner v. Hyslop, 337 N.W.2d at 865. *See, e.g.*, Mercury Motors Express, Inc. v. Smith, 393 So. 2d 545 (Fla. 1981). In *Mercury Motors*, the court was faced with factual circumstances analogous to those in the *Briner* case. *See id.* The *Mercury Motors* court, in recognizing the necessity of finding fault on the part of the corporate employer before assessing punitive damages, applied the complicity rule and stated, "[b]efore an employer may be held vicariously liable for punitive damages . . . there must be some *fault* on his part." *Id.* at 549 (emphasis added).

66. *See generally* RESTATEMENT (SECOND) OF TORTS § 909 comment b (1979); Riley, *supra* note 10, at 207; Note, *supra* note 18, at 1305.

67. *See supra* note 18 (imposing liability for punitive damages under the course of employment rule and imposing liability for compensatory damages vicariously, both have a similar effect, (i.e., the imposition of liability without consideration of fault on the part of the employer) however, the purpose sought to be effectuated under both compensatory and punitive damages is dissimilar (i.e., to make "whole" as opposed to punishment and deterrence)). *See* Morris, *supra* note 18, at 220-21.

68. Briner v. Hyslop, 337 N.W.2d at 865.

69. 282 N.W.2d 639 (Iowa 1979).

70. *Id.* at 662.

71. *Id.* at 644.

the action were various officers and directors of the companies, some of whom were found guilty of violating their fiduciary duty by engaging in conduct which was deliberately designed to wrongfully obtain control of LeMars.[72] The *Rowen* court denied an award of punitive damages against the corporate employer, LeMars, but upheld the trial court's award of punitive damages against the individual directors.[73] In so holding, the *Rowen* court reasoned that the liability of the individual directors of LeMars was based on their personal misconduct, and in their situations punitive damages would indeed punish and deter.[74] On the other hand, in setting aside the award of punitive damages against the insurance company, the *Rowen* court was of the opinion that no legitimate purpose could be served by penalizing a group of innocent policyholders.[75] Thus, an assessment of punitive damages would not serve the purposes such damages were designed to serve.[76]

A similar conclusion is warranted with respect to the award of punitive damages under the course of employment rule against corporate employers irrespective of fault. As in the case of punishing innocent policyholders in *Rowen*, punishing a corporate employer by assessing punitive damages against the employer under the course of employment rule, irrespective of fault, fails to effectuate the purpose for which such damages are to be imposed.[77] The impropriety of imposing liability for punitive damages on a corporate employer without fault is acknowledged in the Restatement.[78]

Upon concluding that an assessment of punitive damages is more difficult to justify where an otherwise innocent corporate employer is held liable solely on the basis of its role as employer,[79] the *Briner* court directed its analysis to the other basis upon which an assessment of punitive damages against an employer might be justified, the deterrent effect.[80] The justification for holding a corporate employer liable for punitive damages *whenever* the employee's actions are within the scope of employment[81] is primarily based upon the deterrent effect[82] that such an imposition may have on the

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72. *Id.* at 662.
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *See generally* Ellis, *supra* note 10 at 1037 (the author asserts that punishing the innocent by the imposition of punitive damages is conceded to be morally reprehensible); Long, *Punitive Damages: An Unsettled Doctrine*, 25 DRAKE L. REV. 870, 886 (1976).
78. RESTATEMENT (SECOND) OF TORTS § 909 (1979); *see also* Ellis, *supra* note 10, at 1038.
79. Briner v. Hyslop, 337 N.W.2d at 865.
80. *Id. See also* PROSSER, LAW OF TORTS § 2 (4th ed. 1971).
81. *See supra* text accompanying notes 17-19.
82. Tolle v. Interstate Systems Truck Lines, Inc., 42 Ill. App. 3d 771, _, 356 N.E.2d 625, 627 (1976). The *Tolle* court opined, "[p]roponents of the rule cite the incentive towards greater selectivity and supervision of employees . . . or the necessity of institutional liability to discourage the types of torts committed." *Id.* at _, 356 N.E.2d at 627.

corporate defendant and others similarly situated.

The *Briner* court conceded that punitive damages are needed to deter undesirable conduct.[83] The court, however, maintained that in the absence of some conduct to be deterred, there can be no effective deterrence.[84] Often, employees perform their duties where direct supervision by the corporate employer is impossible, or where increased supervision by the corporate employer would be ineffective in preventing the occurrence of certain torts for which punitive damages are assessed.[85] In these instances, the imposition of vicarious liability on the corporate employer under the course of employment rule, where such employer could have done nothing to prevent misconduct of its employee,[86] renders the deterrent purpose for which an award of punitive damages may be assessed against the corporate employer to be of insignificant value.[87]

The *Briner* court examined the case of *Tolle v. Interstate Systems Truck Lines, Inc.*,[88] in which there was little the corporate employer could have done to prevent the employee from committing an outrageous tort. In *Tolle*, an action was brought against the corporate employer for injuries sustained by the passenger of an automobile traveling westward.[89] The corporation's truck driver, who was traveling eastward in the outer lane, attempted to switch to the inner lane without using a signal and without checking for passing traffic.[90] As a result, the truck collided with another automobile, also traveling eastward but occupying the inner lane, and forced the latter automobile into the path of the vehicle heading westward in which Tolle was riding.[91] The *Tolle* court held that the corporate employer truck line could not be held liable in punitive damages for the alleged wilful and wanton misconduct of its employee truck driver on the ground that the employer was not shown to be implicated in the acts of its employee,[92] i.e., no complicity between employer and truck driver. In *Tolle*, there was a complete failure of evidence to support the award of punitive damages under the Restatement.[93] The *Tolle* court was of the opinion that there should be delib-

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83. Briner v. Hyslop, 337 N.W.2d at 865. *See also* McCormick, Handbook of the Law of Damages § 80 (1935).

84. Briner v. Hyslop, 337 N.W.2d at 865. *See, e.g.*, Tolle v. Interstate Systems Truck Lines, Inc., 42 Ill. App. 3d 771, _, 356 N.E.2d 625, 627 (1976). The *Tolle* court indicated that "[t]he ability to better control the actions of the employee through greater supervision is often illusory." *See id.* at _, 356 N.E.2d at 627.

85. Tolle v. Interstate Systems Truck Lines, Inc., 42 Ill. App. 3d 771, _, 356 N.E.2d 625, 627 (1976).

86. *Id.* at _, 356 N.E.2d at 627.

87. Briner v. Hyslop, 337 N.W.2d at 865.

88. 42 Ill. App. 3d 771, 356 N.E.2d 625 (1976).

89. *Id.* at _, 356 N.E.2d at 626.

90. *Id.*

91. *Id.*

92. *Id.*at _, 356 N.E.2d at 628. *See infra* text accompanying notes 113-26.

93. *Id.* at _, 356 N.E.2d at 627. The *Tolle* court indicated from a discussion of the evi-

erate participation shown before the sanction of punitive damages is imposed.[94] Therefore, like the *Tolle* court, the *Briner* court concluded that the Restatement rule[95] is more consistent with the purpose for imposing the punitive damages sanction than is the course of employment rule which requires no "participation" whatsoever as a limitation on the imposition of liability.[96]

The Restatement rule is more consistent with the purpose of assessing punitive damages against an employer than is the course of employment rule. Under the former, punitive damages will not be assessed against the corporate employer unless the conduct of such employer is "outrageous, either because the acts are done with an evil motive or because they are done with a reckless indifference to the rights of others."[97] Consequently, an assessment of punitive damages against a corporate employer under the Restatement would result on the one hand in punishing the corporate employer, where there is a need for arousing the institutional conscience of the corporation.[98] Additionally, one would hope the imposition of liability under the Restatement would result in deterring that specific employer and other

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dence that the corporate employer "issued to each driver-employee copies of the Interstate Commerce Commission rules of driving plus its own stricter rules." *Id.* Additionally, "records were kept of all accidents involving any property damage or personal injury." *Id.* Finally, the evidence revealed that a safety program was in effect under which employees were financially rewarded for safe, accident-free driving through a point system. *Id.* The court concluded the corporate employer "cannot be said to have authorized its driver . . . to ignore the rules of the road." *Id.*

By contrast, the *Briner* evidence appears to indicate that McLane had knowledge of its employees' disregard for the "rules of the road" (i.e., section 321.225 of the Iowa Code). Briner v. Hyslop, 337 N.W.2d at 868. Moreover, not only did McLane fail to supervise its employees' driving and sleeping habits, but it also provided the employees with an incentive to work long hours without getting sufficient sleep. *Id.* The *Briner* court was of the opinion that the evidence was sufficient to generate a jury question as to whether McLane authorized the doing and the manner of the driving in question, to permit an assessment of punitive damages against McLane. *Id.*

94. Tolle v. Interstate Systems Truck Lines, Inc., 42 Ill. App. 3d at _, 356 N.E.2d at 627.

95. RESTATEMENT (SECOND) OF TORTS § 909(a)-(d) (1979).

96. Briner v. Hyslop, 337 N.W.2d at 867. The *Briner* court commented:

> To the extent that it appears that a corporation might have been able to prevent wrongful conduct by an employee, the corporation should be liable for punitive damages . . . . If, on the other hand, the corporation could have done nothing to prevent the employee's wrongful conduct, punitive damages can have little deterrent effect.

Id. at 865-66.

97. RESTATEMENT (SECOND) OF TORTS § 908 comment b (1979). *See, e.g.*, Claude v. Weaver Constr. Co., 261 Iowa 1225, 158 N.W.2d 139 (1968). The *Claude* court construed the element of "malice" which must be shown for an award of punitive damages. *Id.* at 1231, 158 N.W.2d at 144. The court noted that malice, which must be shown for an award of punitive damages, does not necessarily mean spite or hatred. *Id.* at 1231, 158 N.W.2d at 144. For legal malice the court deemed it sufficient "if it be the result of any improper . . . motive and in disregard of the rights of others." *Id.* at 1231, 158 N.W.2d at 144.

98. Briner v. Hyslop, 337 N.W.2d at 866.

employers similarly situated from engaging in such conduct in the future. On the other hand, where there is an absence of such conduct on the part of the corporate employer, indicating that there is no purpose to be served by punishing or deterring the corporation, the Restatement rule will serve to protect the corporation from liability for punitive damages where its properly supervised or disciplined employees act outrageously.[99]

The Restatement permits the award of punitive damages against the corporate employer only under certain specified circumstances.[100] These circumstances consist of either the authorization[101] or ratification[102] by the corporate employer of the acts. Another circumstance under which an employer may be held liable for punitive damages exists where the employee was employed in a managerial capacity and was acting in the scope of employment.[103] Finally, the Restatement rule provides that the employer may be held liable if the employee was unfit and the employer was reckless in hiring the employee.[104]

An application of the latter provision is illustrated in *Montgomery Ward & Co. v. Marvin Riggs Co.*[105] In *Montgomery Ward*, a motor vehicle collision occurred, involving a truck driver of Montgomery Ward.[106] The truck driver was found to be incompetent to drive the truck.[107] The court found that Montgomery Ward was grossly negligent in entrusting the truck to an incompetent driver because, in the exercise of ordinary care, Montgomery "should have known"[108] of the driver's incompetence.[109] The *Montgomery Ward* court was of the view that both punitive and deterrent purposes of punitive damages were served by assessing such damages against Montgomery Ward "when its own gross negligence in employing an incompetent driver resulted in the foreseeable collision."[110]

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99. *Id. See also* Morris, *supra* note 18, at 221.

100. RESTATEMENT (SECOND) OF TORTS § 909 (a)-(d) (1979).

101. *Id.* at 909(a).

102. *Id.* at 909(d).

103. *Id.* at 909(c). It is suggested in the comment to subsection 909(c) that this subsection is intended to act as a deterrent to the employment of unfit persons for important positions. *Id.*

104. *Id.* at 909(b).

105. 584 S.W.2d 863 (Tex. Civ. App. 1979), *cited with approval in* Briner v. Hyslop, 337 N.W.2d at 866.

106. Montgomery Ward & Co. v. Marvin Riggs Co., 584 S.W.2d at 865.

107. *Id.* at 866. The truck driver may have had a vision problem; he did have difficulty using the mirrors of the truck, and when "put in a stressful situation, he became 'flustered and nervous, almost to the point where he couldn't do anything' . . . . [He] was a nervous driver and a slow reactor." *Id.*

108. *See infra* text accompanying notes 124-26.

109. Montgomery Ward & Co. v. Marvin Riggs Co., 584 S.W.2d at 867. Montgomery Ward's act of entrusting the truck to the incompetent, unfit driver, who was at the time of the collision acting within the scope of his employment, was found to be the proximate cause of the collision. *Id.* at 865.

110. *Id.* at 867.

In *Briner*, the court was required to ascertain whether a jury question was engendered regarding McLane's liability for punitive damages under the Restatement rule.[111] The *Briner* court stated that although the evidence was sufficient to generate such a fact question, there was no evidence that McLane was reckless in hiring or retaining Hyslop, and thus the issue was not to be considered as it was in *Montgomery Ward* under subparagraph (b) of the Restatement.[112] Similarly, since there was no argument made that Hyslop was employed in a managerial capacity,[113] nor was there any evidence that McLane ratified or approved of Hyslop's acts,[114] the issue was not to be considered under subparagraphs (c) or (d) of the Restatement. Rather, the *Briner* court stated the issue to be considered on remand was whether, under subparagraph (a) of the Restatement, section 909, McLane authorized the doing and the manner of Hyslop's acts.[115] Although this issue was remanded to the trial court for consideration in accordance with the rule adopted in this decision, a look at the evidence upon which the *Briner* court determined that a fact question existed, viewed in the context of the law respecting the necessary "authorization" to constitute complicity, might provide insight as to the direction the trial court on remand will take.

Concededly, an employer may be adjudged to have authorized the employee's act if there is evidence of an express instruction to do the act.[116] The evidence, as the *Briner* court found, indicated that McLane instructed its employees to drive to specified destinations to deliver cattle.[117] Although McLane did not expressly instruct its employees to forego sleep in order to arrive on time as scheduled, McLane was well aware of its drivers' sleeping and driving habits,[118] but did not supervise them.[119] It is established that

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111. Briner v. Hyslop, 337 N.W.2d at 868.

112. *Id.* at 867.

113. *Id. See, e.g.*, Agarwal v. Johnson, 25 Cal. 3d 142, 603 P.2d 58, 160 Cal. Rptr. 141 (1979). In *Agarwal*, the court stated, "[e]ven assuming no ratification or authorization by [the employer], the rule in this state is that the employer is liable for the wilful misconduct of his employees acting in a managerial capacity." *Id.* at 946, 603 P.2d at 67, 160 Cal. Rptr. at 150. The rationale behind the imposition of punitive damages as explained by the court was "to encourage careful selection and control of persons placed in important management positions." *Id.* at 946, 603 P.2d at 67, 160 Cal. Rptr. at 150.

114. Briner v. Hyslop, 337 N.W.2d at 867.

115. *Id.*

116. *See, e.g.*, Denver & Rio Grande Ry. v. Harris, 122 U.S. 597, 608 (1887) (corporation liable for acts of its agents done by its authority express or implied, though there be neither a written appointment under seal nor a vote of the corporation authorizing the act). *See generally* Note *supra* note 24, at 832; 15 Am. Jur. *Damages* § 289 (1938) ("[T]he necessary authorization may be evidenced either by an express order to do the act or an express approval of its commission, or it may be implied from the acts or conduct of the principal.").

117. Briner v. Hyslop, 337 N.W.2d at 868.

118. *Id.* at 867. The evidence in *Briner* indicated that McLane did not have any established time for reviewing the logs kept by its drivers and knew that Hyslop had not kept a log for three weeks prior to the collision. *Id.* Moreover, the evidence revealed that 120 days could pass before the drivers' logs were reviewed. *Id.* Additionally, there was evidence that Hyslop

the Restatement rule is not limited solely to employee conduct that is expressly authorized by the corporation.[120] If there is no evidence of express instruction, authorization may be implied from the corporate employer's conduct.[121]

Thus, McLane's awareness of its drivers' sleeping and driving habits, coupled with its lack of supervision thereof,[122] may constitute conduct from which authorization may be implied for purposes of finding complicity and holding McLane liable for punitive damages under the Restatement. The evidence further revealed that McLane provided its employees with incentive to work long hours without getting sufficient sleep: the greater the number of truckloads the drivers made, the greater amount of money earned.[123]

In *Claude v. Weaver Construction Co.*,[124] the court indicated:

> [T]he intentional doing of a 'wrongful act' without justification will permit an inference of the wicked state of mind. Yet it is apparent that many wrongful or illegal acts may be intentionally committed wholly apart from any malice or evil intent . . . as where defendant is *motivated by a desire for gain.*[125]

Punitive damages could be assessed if such motive is pursued with a reckless

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had in his possession amphetamines and caffeine pills and that he admitted to taking them at various times during his trip. *Id.*

119. *Id.* at 868. The record indicated the driving and sleeping habits of Hyslop constituted a violation of section 321.225 of the Iowa Code, and since McLane knew of its drivers' sleeping and driving habits, a failure to supervise such habits constituted a violation of section 321.226 of the Iowa Code. *Id.* For discussion of the aforementioned statutory violations committed by Hyslop and McLane, see *supra* note 6. *See, e.g.*, Mahanna v. Westland Oil Co., 107 N.W.2d 353, 355 (N.D. 1960) (where "the evidence was such that a jury may find that the defendants . . . knowingly and recklessly violated express statutory provisions of law, the jury may also infer malice and award exemplary damages.") With respect to the possibility of inferring malice on the part of McLane, the *Briner* court indicated that J.P. McLane's testimony that "whether Dennis Hyslop drove for thirty hours with less than an hour of sleep was Hyslop's choice," showed a knowing and reckless violation of section 321.226 of the Iowa Code. *See supra* note 6.

120. *See supra* notes 103-04 and accompanying text.

121. *See, e.g.*, Wright v. Crown Co., 267 A.2d 347, 350 (D.C. 1970) (the mere fact that creditor had knowledge or encouraged its employees to contact its debtors did not make it liable for punitive damages because of employee's conduct). *See also* Note, *supra* note 24 at 832; 15 Am. Jur. *Damages* § 289 (1938).

122. *See supra* note 116.

123. Briner v. Hyslop, 337 N.W.2d at 868. The company's system "paid the drivers a percentage of the gross truck revenue." *Id.* "[I]f the McLane drivers were unable to make it to a loading site at a certain time of the day, the loading of cattle would be postponed for another day as the cattle had to be weighed in the morning." *Id.* Upon consideration of these facts, the *Briner* court stated, "[t]he evidence shows that the employer *knew or should have known* of its employees' [driving and] sleeping habits." *Id.* at 867 (emphasis added).

124. 261 Iowa 1225, 158 N.W.2d 139 (1968).

125. Id. at 1231, 158 N.W.2d at 144 (emphasis added).

indifference to the rights of others.[126] Application of the foregoing to the evidence in *Briner* might lead to the conclusion that in providing its employees with incentive to work long hours, McLane was pursuing its desire for gain in a manner which indicated a reckless indifference to the rights of others. For this conduct an assessment of punitive damages could be rendered against McLane.

Finally, with respect to the issue of implied authorization, the *Briner* court indicated that from the evidence, McLane "knew or should have known"[127] of its employee's sleeping habits. Just as the employer in *Montgomery Ward & Co. v. Marvin Riggs Co.*[128] was held liable for punitive damages arising from an accident caused by its incompetent employee, of whose incompetence Montgomery Ward "should have known,"[129] so too in the *Briner* case, on retrial McLane might be found liable for punitive damages arising from the accident caused by its employee as a result of the employee's intoxication and improper sleeping and driving habits, the latter of which McLane "knew or should have known."[130]

In conclusion, it is clear from the *Briner* decision that the proper rule to be applied by the Iowa courts when determining corporate liability for punitive damages for the acts of an employee is the Restatement rule.[131] The uncertainty of and indecision by the Iowa courts[132] prior to this decision, with respect to the circumstances under which an award of punitive damages may be assessed against a corporate employer for the acts of an employee, might have been alleviated altogether had there been a statute in Iowa[133] promulgating essentially the same limitations as those which are delineated under the Restatement.[134] Justice Uhlenhopp,[135] while concurring in the majority's adoption of the complicity rule, disagreed with the result reached by the majority in remanding the issue of punitive damages against McLane for a new trial.[136] His dissent stated that this case is not a punitive damage case as to McLane.[137] Furthermore, the dissent suggested that "punitive damage awards . . . are becoming commonplace rather than extraordinary."[138] In his criticism of the commonplace award of punitive dam-

126. RESTATEMENT (SECOND) OF TORTS § 908 comment b (1979).
127. Briner v. Hyslop, 337 N.W.2d at 867.
128. 584 S.W.2d 863 (Tex. Civ. App. 1979).
129. *Id.* at 865.
130. Briner v. Hyslop, 337 N.W.2d at 867.
131. *See supra* text accompanying notes 29-33.
132. *See supra* text accompanying notes 34-58.
133. *See* RESTATEMENT (SECOND) OF TORTS § 908 comment f (1979) ("[S]ome states decline to award these damages in the absence of a statutory provision.")
134. *See supra* text accompanying notes 29-31.
135. Briner v. Hyslop, 337 N.W.2d at 871 (Uhlenhopp, J., dissenting). Justices Carter and Wolle joined in the partial concurrence and dissent.
136. *Id.* at 871 (Uhlenhopp, J., dissenting).
137. *Id.* (Uhlenhopp, J., dissenting).
138. *Id.* (Uhlenhopp, J., dissenting).

ages by the courts, Justice Uhlenhopp asserted that such awards should be restricted to the truly extraordinary circumstances under which they are appropriate.[139]

The majority has indicated the circumstances under which the award of punitive damages against a corporate employer is appropriate.[140] Likewise, the decisions preceding *Briner* either referred to or intimated what the courts assumed to be at the time the rule in Iowa regarding corporate liability for punitive damages.[141] The *Briner* court, however, maintained that prior to this decision the rule was in question, even though the past decisions purported to promulgate a clear standard. Any potential confusion which future courts may find under the standard adopted by the *Briner* decision might be clarified if the standard were embodied in a statutory provision. A look to section 908, comment f, of the Restatement (Second) of Torts, which was mentioned by Justice Uhlenhopp[142] in his criticism of the commonplace award of punitive damages, reveals that in the absence of a statutory provision, "some jurisdictions have declined to award punitive damages."[143]

There are several considerations which support the need for the enactment of legislation adopting the Restatement rule by the Iowa legislature. One such consideration is the *indecision* which existed prior to the *Briner* decision as to the rule to be applied in Iowa, as well as the desire to avoid any potential confusion which might arise in future cases as to the circumstances under which an employer may be held liable for punitive damages. Another factor is the concern expressed by three of the members of the *Briner* court regarding the commonplace award of punitive damages. A final consideration is the recognition expressed by the drafters of the Restatement that criticisms and attacks are lodged against an award of punitive damages, in part, because of the absence of statutory provisions clarifying the circumstances under which such awards may be assessed against the corporate employer.

In light of the foregoing considerations, the *Briner* decision and its adoption of the complicity rule ought to be considered by Iowa lawmakers, as have similar decisions been so considered and acted upon by lawmakers of other jurisdictions.[144] The *Briner* opinion represents a voice which ex-

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139. *Id.* (Uhlenhopp, J., dissenting). Note also that Justice Uhlenhopp's dissent from the result reached by the majority was due in part to the commonplace awarding of punitive damages, and to the belief that there was not substantial evidence of McLane's complicity regarding Hyslop's negligence. *Id.*

140. *Id.* at 867.

141. *See supra* text accompanying notes 34-58.

142. Briner v. Hyslop, 337 N.W.2d at 871 (Uhlenhopp, J., dissenting).

143. RESTATEMENT (SECOND) OF TORTS § 908 comment (1979).

144. *Compare* CAL. CIV. CODE § 3294 (West Supp. 1983), *with* MINN. STAT. ANN. § 549.20 (West Supp. 1983). The latter statute provides in pertinent part:

> Subd. 2. Punitive damages can properly be awarded against a master or principal

presses the *need for the enactment* of legislation adopting the Restatement rule[145] as the substantive law of the state, to be applied by the courts when determining the liability of a corporate employer for punitive damages for the acts of an employee.

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because of an act done by an agent only if:
(a) the principal authorized the doing and the manner of the act, or
(b) the agent was unfit and the principal was reckless in employing him, or
(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
(d) the principal or a managerial agent of the principal ratified or approved the act.

MINN. STAT. ANN. § 549.20 (West Supp. 1983). *Compare* CAL. CIV. CODE § 3294 (West Supp. 1983) *and* MINN. STAT. ANN. § 549.20 (West Supp. 1983) *with* RESTATEMENT (SECOND) OF TORTS § 909 (1979) and RESTATEMENT (SECOND) OF AGENCY § 217C (1979) (all of which delineate essentially the same circumstances warranting the imposition of liability for punitive damages upon the corporate employer).

145. RESTATEMENT (SECOND) OF TORTS § 909 (1979).