

*Insert at page 683 at the end of Note 8 to  
Zukaitis v. Aetna Casualty & Surety Co.:*

9. The Restatement Third would simplify the rule regarding the termination of apparent authority:

Apparent authority ends when it is no longer reasonable for the third party with whom the agent deals to believe that the agent continues to act with actual authority.

Restatement Third § 3.11(2) (Tentative Draft No. 2). Unlike the Restatement Second, the Restatement Third does not expressly distinguish between general agents and special agents. Because the determination of whether a terminated agent may nevertheless bind the former principal is a factspecific inquiry, whether the agent was a general or special agent may well be relevant.

Often termed "lingering authority," the doctrine stated in this section recognizes that it is reasonable for third parties to assume that an agent's actual authority is a continuing or ongoing condition, unless and until the third party has notice of circumstances that make it unreasonable so to assume. These circumstances include notice that the principal has revoked the agent's actual authority, that the agent has renounced it, that the *agent's authority was limited in duration or to a specific undertaking*, or that circumstances otherwise have changed such that it is no longer reasonable to believe that the principal consents to the agent's act on the principal's behalf.

Restatement Third § 3.11 cmt. c.

10. Restatement Third also differs from Restatement Second as to the manner in which apparent authority may be terminated. As discussed in Note 4, notice by publication is sufficient to terminate apparent authority as to the general public. Under Restatement Third, the inquiry would instead focus on whether, under the circumstances, a third party could no longer reasonably believe that the agent had authority to act for the principal:

*e. Notice of termination of authority.* Apparent authority is not present when a reasonable person in the position of a third party would not believe that the principal consents to the agent's or other actor's conduct. If a third party has notice of facts that call the agent's authority into question, and these facts would prompt a reasonable person to make inquiry of the principal before dealing with the agent, the agent does not act with apparent authority. See § 2.03, Comment *d*. This general principle is applicable to determining whether and when an agent acts with the lingering appearance

of authority after the agent's actual authority has terminated. Lingering authority does not survive a statement that the agent's authority has terminated, made by the principal to the third party with whom the now-former agent deals. The principal's statement is effective even though the agent succeeds in persuading the third party to disregard it.

Restatement Third § 3.11 cmt. c. Illustration 2 to Comment c indicates that an agent's apparent authority is terminated where "the local newspaper publishes a story about A's termination *on its front page.*". *Id.* (emphasis added).