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## **Manufacturing Beyond the Border: An Ethical Dilemma**

Every art and every inquiry, and similarly every action and pursuit, is thought to aim at some good; and for this reason, the good has rightly been declared to be that at which all things aim.

-- Aristotle

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## Identification of Topic

The task of this Semester Project is to address and reconcile the following dilemmatic statement: Whether, with respect to worker safety, Fat Cat International (a fictitious U.S. pet food company) (“FCI”) is ethically or morally bound to go beyond mere compliance with an ineffective Indonesian safety regulation and to impliment its domestic safety policy at its Indonesian facility.

The author will advance a general discussion of the concept of ethics and human rights. Second, the author will explain the integration of these principles into various labor laws and regulatory agencies of the United States. Third, the author will focus on the Occupational Safety and Health Administration (OSHA) and how it affords, secures, and protects the right to a safe workplace. Fourth, the author will explore a specific OSHA standard and reveal FCI’s internal policy that coordinates compliance with the OSHA regulation. Fifth, the author will look at the Indonesian agency, law, or regulation, if any, that affords the right to a safe workplace.

The author will then show that the standard of care afforded to FCI’s domestic workers is greater than the standard of care afforded to its Indonesian workers, assuming mere compliance in both instances. The author will show that for FCI to impose its domestic safety policy at its Indonesian facility, FCI would afford its Indonesian workers the same standard of care as its domestic employees, but would hinder FCI’s duty to its shareholders, which is to increase its profit margin.

The author will then propose a model by which to reconcile the dilemma.

## Part One

### I. Fat Cat International

#### A. Brief History

Malcolm Hollabird[1] is an animal nutritionist, and in 1945, he had an idea: to invest his personal savings into a small feed mill in Toledo, Ohio. Under the name Midwest Feed,[2] Mr. Hollabird manufactured specialty feed and grain, an operation that soon expanded to dry dog and cat food.

During the latter half of the 1900s, many American companies sought to expand aggressively their operations on an international level, in one form or another. This expansion was, in part, an attempt to counter the saturation of the U.S. Market with foreign-made products.[3] U.S. companies sought to keep or increase their share of the domestic market by seeking new markets abroad. To that end, many companies built manufacturing facilities in foreign countries. This allowed U.S. companies to operate more efficiently and to capitalize on less expensive labor and better resources.[4] Midwest Feed was no exception.

During the 1960s and 1970s, Midwest Feed acquired a host of businesses, all of which manufactured various brands of pet foods. In 1980, Midwest Feed acquired Punky Pet Foods (PPF),[5] a Kansas-based international pet food company. PPF owned three manufacturing operations, one in Kansas, one in Arkansas, and one in Brazil. After the acquisition of PPF, Midwest Feed began doing business under the name Fat Cat International (FCI).[6] Mr. Hollabird retired after the acquisition.

In 1985, FCI added to its enterprise when it built a manufacturing facility in Southeast Sulawesi, Indonesia. This project created more than 500 permanent jobs for native workers and helped to increase FCI's overall sales, which in 1999 were approximately \$1.3 billion. FCI realized forty-percent of its profit from domestic operations and sixty-percent of its profits from overseas operations, approximately eight-percent of which was directly attributable to production at the Indonesian facility. FCI currently employs approximately 14,000 people across the world, has operations in more than seven countries, and is publicly traded on the New York Stock Exchange.

## B. FCI's Expansionist Vision and Duty to Its Shareholders

Adam Smith, the Father of Economics, once suggested that true wealth lies not in the stockpiling of gold and silver, but rather, by increasing income.[7] Although Adam Smith's theory originally applied to the "true wealth of a nation," it can be easily extrapolated to the world of ordinary, everyday business – and more specifically, global business. A company can increase its true wealth by increasing its production, sales, and income.

To increase income, many companies opt to expand their operations on a global level. This allows companies, which are engaged in production, to utilize human labor and resources of a host country. Some host countries, owing to the skill of their workers or the quality of their natural resources, permit international companies to produce goods in a less-expensive manner than those companies could

otherwise manage. Adam Smith termed this efficiency “absolute advantage,” which means that, in certain countries, a company may be able to produce a good more cheaply than it can be produced elsewhere.[8] Exploiting an absolute advantage (e.g., inexpensive labor) is a basis for engaging in global business.

FCI has well honed the skill of acquiring and integrating businesses that contribute to profits quickly and have superior growth potential, and FCI now has strong operations in the world’s fastest growing economies. It possesses nearly a century of operating experience around the globe, an impressive track record of continuing geographic expansion and acquisition, and a powerful portfolio of leading global and regional brand names. As a global company with many businesses in its portfolio, FCI’s primary goal is to reward its investors.

To its investors, FCI pledges to to make substantial progress in efficiency and cost savings. To this end in 1999, FCI formally adopted a business management approach known as “Economic Progress Initiative” (EPI). FCI adopted this program to improve its utilization of assets, management of resources, and to increase its rate of growth, all of which are duties owed to FCI’s shareholders. FCI applies the theories and practices of EPI to all of its operations, both domestically and around the world. FCI’s sharpened focus helped to account for a decline in trade working capital in 1999, to increase its free cash flow, and to increase its diluted earnings per share by ten percent and to increase its operating income by eight percent in 1999. The EPI initiative has proved extremely successful at FCI’s Indonesian facility.

### C. FCI’s “Right Values, Policies, Practices”

Modern transnational companies like FCI are expected to respect human rights and fundamental freedoms. Consequently, FCI claims to operate with high ethical standards and smart business practices, regardless of geographic location. FCI has developed internal policies and programs in order to meet the following business objectives: to provide high-quality, safe products to its consumers and customers; to ensure safe workplaces; to engage in fair labor practices; to protect human rights and the environment; to encourage and reward ambitious, profit-maximizing qualities in its employees; to honor its obligation to its shareholders; and to help achieve its company’s goal, which is to be “The Most Profitable Pet Food Company in the World.”

To comply efficiently and effectively with the host of governmental regulatory standards, FCI developed a comprehensive regulatory compliance program known as “Right Values, Policies, and Practices”

(RVPP). FCI's RVPP pertains to many areas of regulated business. FCI devotes a significant amount of resources to the proper and effective implementation of the program.

As to issues of worker safety, RVPP states that it provides working conditions for its employees that ensure their health, safety, and security by "complying with all applicable laws and disciplining violators accordingly." All of FCI's business units are decentralized to enforce compliance in a manner practicable to each facility, "unless otherwise advised."

### C. A Microcosm of FCI's Manufacturing: the Need for Forklifts

All of FCI's manufacturing facilities are well-developed, large, industrial operations. Each of its manufacturing facilities, whether domestic or abroad, boast similar configurations: loading and unloading docks, rail-spurs, bulk storage and warehouse areas, large industrial production areas, hazardous waste areas, and maintenance shops. For FCI, forklifts are unquestionably an integral part of the manufacturing process. In fact, FCI currently owns and utilizes over 150 forklifts, all of which were manufactured prior to 1992. At its Indonesian facility, FCI operates approximately twenty forklifts.

Among other things, FCI's forklifts are needed to handle pallets of ingredients, blends, and finished product. In the ordinary scope of business, FCI's forklift operators are required to negotiate forklifts in the narrow aisles of FCI's warehouses, as well as on and around sometimes precarious loading and unloading areas; however, FCI forklift operators are often exposed to the hazard of a tipover.

According to an internal memorandum issued by FCI, a tipover can occur "during the loading and unloading process; when the forklift is operated on uneven ground; when the balance of a forklift is compromised; or when the forklift is operated at a speed greater than ten miles-per-hour."

At FCI's Indonesian plant in January 1998, a senior forklift operator was killed in a forklift accident. As Michael Turner,[9] the Indonesian plant manager, recorded,

At approximately 9:00 AM, Jalan Inspecki[10] was in his ordinary course of business when he was unloading pallets of grain from a trailer truck. In doing so, he was maneuvering his forklift back and forth across a small wooden ramp, which connected the loading dock to the rear of a tractor trailer. The bridge was approximately four feet off the ground.

At some point while driving across the ramp toward the truck, a plank of the wooden ramp cracked and gave way. The forklift tipped to one side and began to fall. In an effort to mitigate his own personal injury, Mr. Inspecki jumped from the falling forklift. Mr. Inspecki fell to the ground. The forklift fell on top of him, and his neck was crushed between the steel overhead shield of the forklift and the ground. Mr. Inspecki died shortly thereafter.

## Part Two

### I. Ethics and Oughtness

Ethics is timeless and transcendent.[11] It is a concept that addresses what ought to be done and what ought not to be done by man.[12] It is concerned with “good actions,” which are those actions carried out at “the right times, with reference to the right objects, toward the right people, with the right motive, and in the right way.”[13] Its essence survives the metaphysical boundaries of law, religion, culture, politics, and business, as well as the physical borders between countries.[14]

Human beings have written, recorded, and codified certain fundamental tenets of ethics. Such efforts can be traced from writings represented in the Bible to recent legislation.[15] A recurring theme in many of these writings is that such rights belong to individuals because they are human beings, and not because they are subjects of a state’s law.[16]

The following postulates help to define “human rights”:

- (i) regardless of their ultimate origin or justification, human rights represent individual and group demands for the shaping and sharing of power, wealth, enlightenment, and other important values in community process. They limit state power;
- (ii) human rights refer to a wide continuum of value claims ranging from the most justiciable to the most aspirational. They represent both the ‘is’ and ‘ought’;
- (iii) a human right is general or universal in character, equally possessed by all human beings everywhere;

(iv) most, but not all, are qualified by the limitation that the rights of any particular group or individual are restricted as much as is necessary to secure the comparable rights of others and the aggregate common interest; and

(v) human rights are commonly assumed to refer, in some vague sense, to ‘fundamental’ as distinct from “non-essential” claims.[17]

In the United States, federal, state, and local legislatures pass laws, in part, to protect fundamental human rights. Federal, state, and local legislatures also create specific agencies to encourage or enforce compliance with such laws.[18] Thus, it can be syllogistically inferred that compliance with certain regulations results in ethical conduct and the protection of human rights.

## II. Human Rights and the Evolution of Regulatory Agencies

Between the end of the eighteenth century and the middle of the nineteenth century, science and technology merged to produce the Industrial Revolution.[19] Its pulse beat to produce more goods at less cost, and generally to make life easier and safer.[20] Although the industrial revolution positively changed the United States in a number of ways, it also had many negative effects.

Lacking significant government controls, many businesses engaged in less-than-appropriate relations with their workers. Whistles, clocks, and machines ran factory life.[21] Government and society as a whole were preoccupied with building business and developing the national economy. State and federal governments did little to regulate business and employment relationships.[22] The primary focus was simply a healthy bottom line, and laborers had few rights.

However, as this new age progressed, society’s preoccupation with the economy gave way to quality-of-life concerns. Progressives, reformist groups, and individuals sought to convince the states and the federal government to enact laws to protect workers. Thus reform movements began to emerge, and the era of long-standing *laissez faire* government drew to a close.[23]

## III. A Juxtaposition of Workers’ Rights: The Occupational Safety and Health Act and the Indonesian Safety Act of 1970

### A. The Occupational Safety and Health Act

During the Industrial Revolution, workers would rise in the morning, leave the safety of their homes, and enter often-unsafe factories.[24] As the Industrial Revolution waned, however, social values began to change. A renewed concern with human rights in the workplace arose.

The worth of individuals, their lives, and their health were now more important than the product or the processes by which the products were manufactured.[25] State and federal legislatures, regulatory agencies, and the courts responded to this outcry by expanding the breadth of occupational safety and health law.[26] From the outrage of society regarding the appalling number of worker accidents, illnesses, and injuries, and environmental damage, Congress engaged in aggressive legislative action in the areas of, among others, worker safety and environmental protection.[27]

One of Congress's specific concerns was to combat the existence of unsafe workplaces, which were left unchecked during the Industrial Revolution. At the insistence of activists, lobbyists, and labor unions (all of which called for worker-safety programs that were prophylactic, remedial, and punitive in nature), Congress passed a plethora of laws, culminating with the Occupational Safety and Health Act of 1970 (hereafter OSH Act).[28]

The purpose of the OSH Act is to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources . . . ."[29] The OSH Act ensures safer workplaces by authorizing and promulgating health and safety standards, by providing the machinery for enforcing those standards, and by protecting workers who protest against allegedly unsafe conditions in the workplace.[30] The Act boasts wide coverage, enveloping all employers who have one or more employees and who are engaged in a business "affecting" commerce, unless the employer is in a category expressly excluded from the scope of the Act.[31] In the United States, enforcement is often accomplished by means of workplace inspections, citations, or monetary penalties.

The OSH Act sets forth both specific and broad standards. An example of an extremely detailed, highly important requirement is OSHA's requirement that employers maintain records of work-related injuries and illnesses.[32] An example of more general standard in the OSH Act, which expels broad coverage, is the OSH Act's general duty clause.

## 1. The General Duty Clause: A Big Bear with Sharp Teeth

In many instances, OSHA sets forth specific, comprehensive regulations and guidelines, which subject employers to high standards of care and compliance.[33] In fact, OSHA has passed over 4,000 detailed safety regulations, dictating everything from the height of railings to the length at which a plank can protrude from a temporary scaffold.[34]

However, a broader clause is the OSH Act's general duty clause, which sits at the core of the Act:

Each employer (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees ... .[35]

The general duty clause attempts to secure a worker's fundamental right to be free from a hazardous or dangerous workplace. It not only represents the spirit of the OSH Act, but it also provides a standard under which OSHA may issue citations in cases when no specific OSHA standard exists.[36] In fact, OSHA has made increasing use of the general duty clause, in a number of areas of worker safety. For instance, under the General Duty clause, OSHA requires that seat belts be used on forklifts and issues citation for an employer's failure to comply.

## 2. The Requirement of Seat Belts on Forklifts

Every year, approximately 100 deaths and 94,000 injuries occur as a result of the use of forklifts.[37] OSHA has thus recognized the hazard associated with the use of forklifts, particularly forklift tipovers.[38] OSHA recognizes this hazard by virtue of their own records and by certain standards set forth by the American National Standards Institute (ANSI).[39]

ANSI B56.1-1993 requires that powered industrial trucks manufactured after 1992 have a restraint device, system, or enclosure to "assist the operator in reducing the risk of entrapment of the operator's head or torso between the truck and the ground in the event of a tipover." [40] ANSI B56.1-1993 requires use of an operator restraint device when equipped on a powered industrial truck. Simply put, when read together, both ANSI standards require the installation and use of seat belts on forklifts manufactured after 1992.

Although OSHA has recognized the importance of reducing the risk associated with this specific hazard, no specific OSHA standard exists that requires the use or installation of seat belts on forklifts.[41] Rather, OSHA has adopted these standards and currently enforces the installation and use of such devices under its general duty clause.[42] Under the ANSI standards, OSHA also requires that forklift trucks already in use (manufactured prior to 1992) be retrofitted for seatbelts, if that employer has been “notified by a powered industrial truck manufacturer or association of the hazard of lift truck overturn and made aware of an operator restraint system retrofit program . . . .” [43] OSHA has not made any exclusions regarding the use of operator restraint systems.[44] If a forklift has seat belts, they must be worn, “no matter how many times the operator is on and off the forklift.”[45]

Due to OSHA’s adopted requirements, FCI developed an internal domestic policy with regard to the installation and use of seat belts on forklifts. In 1997, one year after OSHA announced its adoption of the ANSI standards, FCI corporate safety manager, Paul Frank, directed all domestic plant managers to “[R]etrofit all forklifts with seatbelts and to require operators of powered industrial trucks to use the devices at all times, no matter how frequently the operator is on and off the forklift.” The internal memorandum then went on to discuss the proper way in which to protect oneself during a forklift tipover: “In the event of a tipover, the FCI forklift operator shall hold tightly the steering wheel and push back firmly against the seat. With the operator’s seat belt tightly fastened, this precautionary measure will substantially decrease the likelihood that the operator will fall out of a tipping forklift. At NO time shall the operator attempt to jump out of a tipping forklift.”

#### B. The Indonesian Safety Act of 1970: An Empty Promise?

Just as there is some degree of inconsistency between laws in the same country, there is exponential inconsistency between laws of different countries.[46] For instance, the United States has made it illegal to give bribes to high level foreign officials in order to obtain or maintain business in foreign countries. However, many countries do not accept the underlying premise of this law, nor do they acknowledge its legal restraint.[47] This disparity among laws often carries into other areas of the law.

In the United States, worker safety is regulated by the laws and regulations administered by the Occupational Safety and Health Administration. Many of these laws are detailed, specific, and greatly affect the doing of business. In Southeast Sulawesi, Indonesia, manufacturing practices are subject to the environmental, health, and safety regulations promulgated under the authority of the President of the Republic of Indonesia.[48] In Indonesia, this law is known as the Indonesian Safety Act of 1970.[49]

The Safety Act of 1970 came about when the former Dutch Act of Safety of 1910 was declared out-of-date in many respects. The Dutch Act of Safety was repealed in order to keep with changes made to other regulations on manpower protection in relation to the technical process, higher technology, and industrialization, which is taking place in Indonesia:

New and quite complicated machines, tools, apparatus, et cetera, are now in general use; new technical materials are being manufactured and used in great quantities, which mechanization and electrification are being increased everywhere. . . . It is clear that it is necessary to have up to date and accurate knowledge of employment safety and occupational health.[50]

At its essence, the Safety Act of 1970 provides, “[E]very worker is entitled to the protection of his safety in performing work . . . .”[51] This is the primary clause against which all facets of workplace safety are measured.

The Act regulates safety in all workplaces[52] The Act applies to workplaces that involve, among other things, machines, tools, equipment that are dangerous or may cause an accident.[53] The Act authorizes legislative regulation to prevent and reduce the possibility of accidents; to prevent ensure that workers are provided with protective gear; to safeguard and facilitate the transportation of men; to safeguard and facilitate the loading, unloading, handling, and storage of goods.

However, despite the authority granted under the Act, neither specific legislation nor interpretive guidelines has been issued with respect to the use of seat belts on forklifts. Furthermore, although the Safety Act of 1970 is preventative in nature, it recognizes the difficulty associated with “re-building” or “altering” what has already been constructed and installed, in order to comply with relative safety requirements.[54] It may be inferred that this statement may apply to the difficulty associated with retrofitting forklifts manufactured before 1992.

### Part Three

#### I. The Elements of a Dilemma Emerge and Converge

##### A. FCI’s Compliance in the United States

With regard to the safety of its workers who operate forklifts in the United States and Indonesia, FCI faces different safety standards. In the United States, FCI is required (1) to ensure that all forklifts are equipped with operator restraint devices; (2) to retrofit any forklift manufactured before 1992 with operator restraint devices; and (3) to require its operators to wear such devices. To this end, in January 1997, Paul Frank, FCI's corporate safety manager, circulated an internal memorandum to its domestic plant managers, instructing in part,

OSHA has adopted ANSI standards ANSI B56.1-1003 and B56.1-1969. The former requires that powered industrial trucks manufactured after 1992 have a operator restraint devices; the latter that operators use such devices. OSHA has been using its "general duty" clause to cite infractions of both ANSI B56.1-1993 and B56.1-1969.

As such, since all FCI domestic forklifts were purchased prior to 1992, all FCI plant managers are responsible for retrofitting all forklifts with seatbelts and to require operators of powered industrial trucks to use the devices at all times, no matter how frequently the operator is on and off the forklift.

In the event of a tipover, the FCI forklift operator shall hold tightly the steering wheel and push back firmly against the seat. With the operator's seat belt tightly fastened, this precautionary measure will substantially decrease the likelihood that the operator will fall out of a tipping forklift. At NO time shall the operator attempt to jump out of a tipping forklift."

All domestic facilities must be in full compliance by January 1998 . . . .

By December 1997, all domestic FCI forklifts had been retrofitted, an expense of approximately \$40,000. Since December 1999, FCI has adhered to its zero-tolerance policy with regard to violations of FCI's seat-belt policy.

## B. FCI's Compliance in Indonesia

In Indonesia, however, under the Safety Act of 1970, FCI is not necessarily required to install seat belts on forklifts; nor is FCI required to mandate the use of seat belts on forklifts or to retrofit its forklifts with seat belts. The Safety Act of 1970 merely provides, "[E]very worker is entitled to the protection of his safety in performing work . . . ."[55] Under FCI's "Right Values, Policies, Programs, and Practices" FCI

pledges to ensure safety and healthy workplaces at each business unit by “complying with all applicable laws.”

In Indonesia, if FCI chose to retrofit its forklifts, it would do so pursuant to its own compulsion. To retrofit its fifteen Indonesian forklifts would ensure that FCI’s Indonesian workers are afforded the same standard of care as its domestic employees (ethics), but would cost FCI approximately \$30,000 due to unavailability of necessary parts (economics); not to retrofit its forklifts in Indonesia would put its Indonesian workers at a greater risk of injury or death than its U.S. workers (ethics), but would help FCI meet its commitment to its shareholders (economics).

The FCI fatality in Indonesia prompted Michael Turner, FCI’s Indonesian plant manager, to raise the issue of seat belts on forklifts at FCI’s annual safety conference in December 1998. Specifically, Mr. Turner urged FCI management to impliment FCI’s domestic forklift/seat belt policy in Indonesia. In doing so, Mr. Turner turned to FCI’s domestic policy, which specifically states, “FCI plant managers are obligated to retrofit forklifts with seatbelts and to require operators of powered industrial trucks to use the devices.” Mr. Turner simply argued for consistency, at the potential risk of excessive cost.

## II. Reconciliation of an Ethical Dilemma

### A. The Business of Business Is Not Only Business.

The relationship between economics and ethics brushes a practical problem, which was evident during the Industrial Revolution. During that time, economic values rose highly and seemed to trump all other values. In many instances, ethical values were left at the doorstep of sweatshops.

Like many companies, issues of business ethics plague a multitude of areas of manufacturing. For FCI, one such area is the issue of seat belts on forklifts. To addresss this dilemma, FCI held a worldwide safety conference. The purpose of this seminar was not only to resolve the specific issue of a global approach to seat belts on forklifts, but also to develop a consistent business-ethics approach with respect to all facets of FCI’s operations. All FCI Plant managers and corporate safety personnel attended the conference, which was presented, in part, by a business-ethics consultanting firm, Super Cool Ethics Solutions, Inc. (SCES)

During the conference, Michael Turner, FCI's Indonesian plant manager, again raised the issue of seat belts on forklifts at FCI's Indonesian facility. Mr. Turner urged SCES to identify a method by which FCI could afford its Indonesian workers a standard of care (with respect to seat belts on forklifts) similar to FCI's standard of care in the United States. In response, SCES proposed three theoretical business-ethics solutions for the seat-belt dilemma.[56]

First, SCES referred to a model of business ethics known as the "only one value" model. In general terms, this model places extreme emphasis and stress on one value over another.[57] SCES then discussed the model of "means to an end," which boasts two variants. Pursuant to this model, one variant posits ethical value as the end-value; the other takes economic value as the end value.[58] The third model proposed by SCES is known as the "model of identity." This model essentially asserts that prudent and "efficient" economic behavior itself has ethical value. Under this model, the two values are intertwined. FCI chose to adopt the model of identity as a template for resolving the issue raised by Mr. Turner.

#### B. The Model of Identity: A Fish with A Bear's Paw

Contrary to the Chinese proverb, which suggests that one cannot have both a fish and a bear's paw at the same time, the model of identity associates efficient economic behavior with ethical value. This model suggests that conflicting needs of a company, which ultimately point to a central need, should not be viewed separately. "When a key economic need is met, that need invariably turns out to be intertwined with ethical needs." [59] If FCI's central need (i.e., to increase profits and meet its obligation to its shareholders) can be met in such a way as to satisfy connected ethical needs (i.e., to afford the same standard of care to its Indonesian workers as its domestic workers), then the connections between these two needs will support and confirm the central need.[60] Conversely, if FCI's central need (i.e. to increase profits and meet its obligation to its shareholders) is met at the expense of, or in opposition to related moral needs (i.e., not to afford the same standard of care to its Indonesian workers as its domestic workers), then the practice of discussing whether a central need has been met is a questionable practice.[61]

Under the model of identity, FCI revised its "Right Values, Policies, and Practices" to include the following provision: "With respect to its operations, both in the United States and abroad, FCI will not seek economic value without simultaneously examining, acknowledging, and embracing the relation of economic value to other values, particularly ethical values." In line with this theory, FCI sought a method

by which to reconcile the need to protect its workers with its obligation to its shareholders. In doing so, turned once again to the dictates of OSHA.

In *Secretary of Labor v. Virginia International Terminals, Inc.*,<sup>[62]</sup> the OSHA review commission suggested that there is no evidence that the failure to wear a seat belt is itself a hazard. “There is no risk of injury that stems solely from such a failure. The hazard is the risk of a tipover accident.”<sup>[63]</sup> “A better statement,” the court stated, “is that seat belts in forklift trucks are a component part of an operator restraint system that is designed to reduce the incidence and severity of injuries to the operator in the event of a tipover accident, a hazard to which forklift trucks are particularly susceptible, and that the failure to wear the seat belt that is provided in the forklift truck increases the risk of injury to the operator in the event of such an accident.”<sup>[64]</sup>

Pursuant to the logic set forth in *Virginia Terminals Int’l*, FCI elected to adopt a new global company policy with respect to seat belts on forklifts. In an internal safety memorandum dated February 15, 2000, Paul Frank, corporate safety manager, stated,

The issue of whether seat belts must be worn by forklift operators turns implicitly on whether the activity to which the forklift and the operator are exposed may reasonably give rise to the hazard of a forklift tipover.

If the hazard of forklift tipover reasonably exists, only forklifts retrofitted with seat belts may be utilized for that activity, and the forklift operators are required to wear supplied seat belts for the duration of the activity in question.

All FCI facilities must have at least one-half of all forklifts retrofitted with seat belts. Only retrofitted forklifts are permitted to engage in activities in which the likelihood of a tipover reasonably exists. All FCI facilities must be in compliance with this memorandum by December 2000. (See attached list of activities in which the likelihood of a tipover reasonably exists.)

Mr. Frank stated that this new policy “complies effectively with the underlying purpose of the adopted OSHA standards, and ensures to a significant degree that all of FCI’s forklift operators, regardless of geographic location, will be free from unreasonable risks of harm.”

C. The Model of Identity Marries FCI’s RVPP and EPI

As a company, FCI decided to retrofit eight of its fifteen forklifts at its Indonesian facility. In Indonesia, the eight retrofitted forklifts are designated to those activities in which the likelihood of a forklift tipover “reasonably exists.” In these instances, the operators are required to wear the seat belts, no matter how frequently the operator mounts or dismounts the forklift.

This course of action comports with the dictates of FCI’s RVPP, under which two of FCI’s business objectives are to ensure safe workplaces and to engage in fair labor practices, regardless of geographic location. To stretch the same standard of care around the world, FCI effectively softened its domestic policy, to a reasonably comfortable level, but raised its standard of care in its foreign facilities, including Indonesia. FCI’s global policy with regard to the installation and use of seat belts on forklifts is a reasonable safety standard that is now universal: All FCI facilities must have at least one-half of all forklifts retrofitted with seat belts; only retrofitted forklifts are permitted to engage in activities in which the likelihood of a tipover reasonably exists; and the forklift operators are required to wear supplied seat belts for the duration of the activity in question. This policy also conforms with FCI’s business management approach, EPI.

The decision to retrofit at least half of FCI’s forklifts is an efficient business decision that leads to savings and ultimately an increased profit margin. FCI adopted the EPI to improve its utilization of assets, its management of resources, and its rate of growth, all of which are duties owed to FCI’s shareholders. To retrofit half of FCI’s forklifts, rather than all of them, allows FCI to strive to meet its obligations to its shareholders, but still afford its workers a reasonable standard of care.

In sum, FCI reconciled this dilemma by adopting the model of identity. FCI focused on a central need (i.e., to afford the same standard of safety at all of its facilities), but chose not to view separately the need to afford its workers a universal standard of safety in this respect. By opting to retrofit at least half of its forklifts (in order to afford an overall, higher standard of safety to its employees), FCI satisfied a “key economic need,” a decision which was invariably intertwined with ethical value – decision that in all probability consummated the FCI marriage between RVPP and EPI.

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- [1] Maclolm Hollabird is a fictitious name.
- [2] Midwest Feed is a fictitious company.
- [3] Michael R. Czinkota, *Global Business* (New York: The Dryden Press, 1998) 7.
- [4] Michael R. Czinkota, *Global Business* (New York: The Dryden Press, 1998) 7.
- [5] “Punky Pet Foods” is a fictitious company.
- [6] “Fat Cat International” is a fictitious company.
- [7] Michael R. Czinkota, *Global Business* (New York: The Dryden Press, 1998) 35 (relying on Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by Edwin Cannan, Modern Library Edition, Random House, New York, 1994).
- [8] Michael R. Czinkota, *Global Business* (New York: The Dryden Press, 1998) 35.
- [9] Michael Turner is a fictitious name.
- [10] Jalan Inspecki is a fictitious name.
- [11] Albert B. Hakim, *Historical Introduction to Philosophy* (New York: Macmillan, 1987) 113.
- [12] Hakim, *Historical Introduction to Philosophy* 29.
- [13] Hakim, *Historical Introduction to Philosophy* 85.
- [14] Dinah Payne, Cecily Raiborn, and Jorn Askvik, “A Global Code of Business Ethics,” *Journal of Business Ethics* Vol. 16, No. 16 (1997).
- [15] It is widely accepted that Ethics – a branch of philosophical study concerned with human behavior, morality, and responsibility – is religious in nature. A large part of the Bible is composed of “wisdom literature” that compels contemplation of behavior by individuals and society.
- [16] Prudence E. Taylor, “From Environment to Ecological Human Rights: A New Dynamic in International Law,” *10 Geo. Int’l. Env’tl. L. Rev.* 309, 312 (1998).
- [17] Prudence E. Taylor, “From Environment to Ecological Human Rights: A New Dynamic in International Law,” *10 Geo. Int’l. Env’tl. L. Rev.* 309, 317 (1998) (quoting Burns H. Weston, “Human Rights,” *6 Hum.Rts.Q.* 257, 259 (1986).
- [18] The Occupational Safety and Health Administration (OSHA) is an example of an agency that seeks to protect workers’ relatively new “right” to a safe workplace. OSHA was created under the authority promulgated by the OSH Act of 1970.
- [19] Leonard Pitt, *We Americans: A Topical History of the United States* (Iowa: Kendall/Hunt Publishing Co., 1976), 206.
- [20] Leonard Pitt, *We Americans: A Topical History of the United States* (Iowa: Kendall/Hunt Publishing Co., 1976), 207.

- [21] Leonard Pitt, *We Americans: A Topical History of the United States* (Iowa: Kendall/Hunt Publishing Co., 1976), 216.
- [22] Stephen F. Befort and Virginia E. Cornett, “Beyond the Rhetoric of the NAFTA Treaty Debate: A Comparative Analysis of Labor and Employment Law in Mexico and the United States,” 17 *Comp.Lab.L.J.* 269, 276 (Winter 1996).
- [23] Stephen F. Befort and Virginia E. Cornett, “Beyond the Rhetoric of the NAFTA Treaty Debate: A Comparative Analysis of Labor and Employment Law in Mexico and the United States,” 17 *Comp.Lab.L.J.* 269, 276 (Winter 1996); Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969 (1987).
- [24] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969 (1987).
- [25] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 970 (1987).
- [26] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969, 970 (1987).
- [27] Philip K. Howard, *The Death of Common Sense: How Law Is Suffocating America* (New York: Warner Books, 1994), 25.
- [28] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969, 970 (1987).
- [29] 29 U.S.C. §§ 651-678 (1982).
- [30] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969 (1987).
- [31] 29 U.S.C. § 652(5). OSHA controls employers that merely “affect” commerce, rather than “engage” in interstate commerce. Thus, the coverage of the Act is extensive.
- [32] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969, 975-976 (1987).
- [33] Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969, 975-976 (1987).
- [34] Philip K. Howard, *The Death of Common Sense: How Law Is Suffocating America* (New York: Warner Books, 1994), 12.
- [35] 29 U.S.C. § 654.
- [36] Occasionally, OSHA’s use of the General Duty clause is impracticable – if not questionable. (Nina G. Stillman and John R. Wheeler, “The Expansion of Occupational Safety and Health Law,” 62 *Notre Dame L. Rev.* 969, 976 (1987)). Further to the point, OSHA has stated that it does not intend to use the

general duty clause “extensively” in certain cases (e.g., air contaminants cases), in part because of the difficulty in proving violations under the clause. (See BNA Occupational Safety & Health Daily, Aug. 12, 1993.

[37] “Seat Belts on Forklifts,” EMC Insurance Companies, News Release [on-line] (Mar. 2000, accessed March 26, 2000); available from [http://www.emcins.com/news\\_releases/seatbelts.html](http://www.emcins.com/news_releases/seatbelts.html).

[38] OSHA Standards Interpretation and Compliance Letters, March 7, 1996 (Use of Seat Belts on Powered Industrial Trucks).

[39] The American National Standards Institute (ANSI) administrates and coordinates a voluntary system of standardization in the private sector of the United States. ANSI holds as a primary goal the enhancement of American quality of life by promoting and facilitating voluntary consensus standards. ANSI represents the interests of its nearly 1,000 company, organization, government agency, and insitutional members. ANSI does not itself develop national standards; rather it facilitates development by establishing consensus among qualified groups. (See “An Introduction to ANSI, American National Standards Insitute,” American National Standards Institute [on-line] (23 March 2000), accessed on 4 April 2000); available from <http://web.ansi.org/public/about.html>.

[40] OSHA Standards Interpretation and Compliance Letters, March 7, 1996 (Use of Seat Belts on Powered Industrial Trucks).

[41] OSHA Standards Interpretation and Compliance Letters, March 7, 1996 (Use of Seat Belts on Powered Industrial Trucks).

[42] OSHA Standards Interpretation and Compliance Letters, March 7, 1996 (Use of Seat Belts on Powered Industrial Trucks).

[43] OSHA Standards Interpretation and Compliance Letters, March 7, 1996 (Use of Seat Belts on Powered Industrial Trucks).

[44] OSHA Standards Interpretation and Compliance Letters, May 22, 1998 (Seat Belts for Forklifts; Fall Protection for Scissor Lifts).

[45] “Seat Belts on Forklifts,” EMC Insurance Companies, News Release, [on-line] (Mar. 2000, accessed March 26, 2000); available from [http://www.emcins.com/news\\_releases/seatbelts.html](http://www.emcins.com/news_releases/seatbelts.html).

[46] Dinah Payne, Cecily Raiborn, and Jorn Askvik, “A Global Code of Business Ethics,” *Journal of Business Ethics* Vol. 16, No. 16 (1997).

[47] Dinah Payne, Cecily Raiborn, and Jorn Askvik, “A Global Code of Business Ethics,” *Journal of Business Ethics* Vol. 16, No. 16 (1997).

[48] The Safety Act of 1970 (State Gazette No. 55 of 1969, Supplementary State Gazette No. 2912) (repealing the Safety Act of 1910, State Gazette No. 406). It should be noted that the author does not contend that his research with respect to safety regulations in Indonesia is exhaustive, although accurate.

The author contends that he explored the safety regulations in Indonesia only as much as necessary to develop the ethical dilemma in question.

[49] Id.

[50] Id., Chapter 1, Article 18.

[51] Id.

[52] Article 1 defines “workplace” as “any room or space, closed or open, moving or stationary, where an employee is employed or which is often entered by an employee on behalf of an undertaking, where a source of danger is present . . . .” Id., Chapter 1, Article 1, Section 1.

[53] Id., Chapter 1, Article 1, Section 1(a).

[54] Id., Chapter 1, Article 18.

[55] The Safety Act of 1970 (State Gazette No. 55 of 1969, Supplementary State Gazette No. 2912) (repealing the Safety Act of 1910, State Gazette No. 406).

[56] Super Cool Ethics Solutions, Inc. is a fictitious name.

[57] Lu Xiaohe, “On Economic and Ethical Values,” The Online Journal of Ethics [on-line] (accessed 11 Feb. 2000); available from <http://www.depaul.edu/ethics/evaluate.html>.

[58] In China today, many people view the economy to be the basis of society, while ethics is seen as the superstructure. This school of thought claims that the criterion for assessing whether something has ethical value is whether it furthers the realization of economic value. Lu Xiaohe, “On Economic and Ethical Values,” The Online Journal of Ethics [on-line] (accessed 11 Feb. 2000); available from <http://www.depaul.edu/ethics/evaluate.html>.

[59] Lu Xiaohe, “On Economic and Ethical Values,” The Online Journal of Ethics [on-line] (accessed 11 Feb. 2000); available from <http://www.depaul.edu/ethics/evaluate.html>.

[60] Lu Xiaohe, “On Economic and Ethical Values,” The Online Journal of Ethics [on-line] (accessed 11 Feb. 2000); available from <http://www.depaul.edu/ethics/evaluate.html>.

[61] Lu Xiaohe, “On Economic and Ethical Values,” The Online Journal of Ethics [on-line] (accessed 11 Feb. 2000); available from <http://www.depaul.edu/ethics/evaluate.html>.

[62] 1998 WL 30377 (O.S.H.R.C.)

[63] 1998 WL 30377 (O.S.H.R.C.).

[64] Id. at 5-6.