by Lawrence Savell

The Shared Chevrolet

Not As Simple As A, B, C

Many published court decisions involving old cars involve disputes with insurance companies over whether an accident was covered by a particular policy. Automobile liability policies often contain a so-called "omnibus" clause, which typically defines the "insured" for a covered vehicle as the specific named insured as well as anyone else driving the vehicle with the permission of the named insured. A claimant seeking to establish coverage under such a provision must therefore prove that, at the time of the incident in question, the vehicle was being used by the named insured or with his or her expressed or implied permission.

But what if named insured Mr. A gives permission for a Mr. B to drive the car, and Mr. B then independently gives permission for a Mr. C to drive the car, and Mr. C has an accident? Can Mr. C (or anyone else whom Mr. C injures with the car)obtain compensation from Mr. A or Mr. A's insurance company?

This was the question before the court in *Wade vs. Autoland, Inc.*, decided on May 26, 2000, by the Court of Appeal of Louisiana, Second Circuit.

According to the Court (which considered much contrary testimony), Autoland, an auto dealership, owned a 1978 Chevrolet station wagon. Dwight May, who was working for Autoland in some capacity and was allowed to use the Chevrolet, allowed Ricky Sewell to drive the wagon in an effort to convince Sewell to buy it. Sewell subsequently gave Don Coleman permission to use it. While driving the Chevrolet, Coleman struck a pickup truck owned and driven by Jay Wade. The pickup was totaled, and Wade's passengers were injured.

Wade and his passengers sued Autoland and Autoland's insurer, American Equity Insurance Company. The trial court ruled for the plaintiffs, awarding money damages for the physical injuries and property loss. It also found that the Chevrolet was covered under the omnibus clause of Autoland's liability insurance policy with American Equity. The defendants appealed, arguing that there was no coverage because Autoland had not given Coleman permission to use the Chevrolet.

The Court of Appeal reversed the lower court's decision, and rendered judgment in favor of Autoland and American Equity and dismissed the plaintiffs' claims.

The Court noted that the case "involved a 'second permittee' scenario, where the first permittee allows another to drive the automobile. In this situation, the general rule applies that the party alleging coverage must prove that a non-owner user operated the vehicle with the named insured's permission....Courts may infer the named insured's permission for the third party to drive the vehicle, depending on the facts and circumstances of the particular case."

"The question of implied permission is determined by whether it was reasonably foreseeable that the first permittee would allow someone else to drive the automobile....Where the first permittee is allowed to use the vehicle as his own, the possibility that the permittee might allow another to drive is reasonably foreseeable."

"Here, the testimony established that May allowed Ricky Sewell to use the vehicle for test driving purposes with the intent to sell him the automobile. In light of the fact that May was allowed to use the vehicle as his own and was working at Autoland, the possibility that May, as first permittee, might allow another to drive the automobile prior to a sale was reasonably foreseeable. Consequently, the circumstances support a finding that Sewell drove the vehicle with Autoland's implied permission and thus would have been covered under the omnibus clause.

"However, this determination does not end our inquiry, because the evidence indicates that Sewell was not driving when the accident occurred."

"[R]egarding second permittees, permission to drive given to one person does not necessarily give that person authority to allow another to use the vehicle....May allowed Sewell to use the vehicle in anticipation of a sale, but the evidence presented fails to establish that May envisioned the possibility that Sewell would permit someone else to drive the automobile. Thus, the plaintiffs have failed to satisfy their burden of proving that Coleman was using the vehicle with the first permittee's express or implied consent. Nor do the cases cited by plaintiffs provide authority for finding that Coleman's use was reasonably foreseeable to Autoland given the factual situation involved in the present case."

"Consequently, the named insured's permission cannot be inferred under these circumstances. Therefore, the trial court erred in concluding that Coleman's use of the automobile was covered under the omnibus clause of the insurance policy issued to Autoland."

Having dealt with the insurer, the Court further ruled that there was no basis to hold Autoland itself responsible. "In Louisiana, owners of motor vehicles are ordinarily not personally liable for damages which occur while another is operating the vehicle. Courts have recognized exceptions to this rule, including situations when the driver is an agent or employee of the owner, or when the owner negligently entrusts the vehicle to an incompetent driver.... Based upon the evidence presented, neither of these exceptions are applicable in the present case."

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