

Come Back, Little Chevy

A Corvette's Return To Coverage

The English word "permission" comes from the French word *permittere*, itself a combination of *per* (through) and *mittere* (to let go), together meaning "to let go through."

The case of *Alfa Mutual Insurance Company v. Small*, decided on March 15, 2002 by the Supreme Court of Alabama, addressed the concept of permission in the context of an old car in a manner quite consistent with the word's pedigree.

According to the Court, Sandra Young owned a 1979 Chevrolet Corvette. The car was covered under a liability insurance policy Young obtained from Alfa. That policy extended coverage to any person while such person was using the Corvette with Young's "express" (directly and distinctly declared) permission. The pertinent provision stated: "Covered Person - means: 1. You and your. 2. Family members. 3. Any other person while using the covered car with the express permission of you or a family member."

One day when Young was not home, her live-in boyfriend David Barclift (Young testified she never considered them to be married) took the Corvette without permission and drove to Opelika. From there, Barclift called Young and told her that he had her automobile. Young rather pointedly told Barclift, "You better get your ass in that car and drive my car home. You knew not to drive it to begin with." Barclift replied that he was bringing the Corvette home.

On the way home to return the vehicle to Young, Barclift was involved in an accident, with the Corvette colliding with a vehicle occupied by Gladys Small. Barclift had no liability insurance of his own. Young's Alfa policy provided possible liability benefits of \$25,000.00 per person. If Barclift qualified as a permissive user under the policy at the time of the accident, the insurance applied to the accident. If Barclift did not qualify as a permissive user at the time of the accident, Barclift was completely uninsured and Small's only claim for insurance benefits would be against the Hartford Insurance Company, which provided Small uninsured/underinsured benefits at the time of the accident.

Small brought a declaratory judgment action against Alfa, among others, asking the court to declare that the accident was covered under the Alfa policy. The lower court ruled in favor of Small. Alfa appealed.

The Supreme Court affirmed the judgment for Small.


"Alfa correctly asserts that the clause at issue, also referred to as an 'omnibus clause,' requires a finding that Young gave Barclift her express permission to use her vehicle and that a finding of

[merely] implied permission would not support Alfa's liability on any claim asserted by Small. . . . Alfa also offers caselaw from other jurisdictions holding that for coverage to be found under an omnibus clause, permission must be a voluntary act of the insured, and that permission is not shown when another driver has taken the insured's vehicle without the insured's knowledge."

The Court discussed prior court decisions which attempted to define what constituted express permission. "To be express, it must be of an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference.

"In Webster's Third New International Dictionary, Copyright 1961, page 803, the adjective 'express,' is defined as follows: '1: directly and distinctly stated or expressed rather than implied or left to inference: not dubious, or ambiguous: DEFINITE, CLEAR, EXPLICIT, UNMISTAKABLE:'

"Although Barclift initially did not have Young's express permission when he drove her vehicle from their home to Opelika, that trip was a separate occurrence; had the accident occurred while Barclift was en route to Opelika, Alfa would have a strong argument that it was not required to provide coverage under the terms of the policy, and any *ex post facto* [after the fact] attempt by [Young] to grant permission retroactively would have been unavailing as to the insurer. However, once Barclift telephoned Young and told her that he had her vehicle, she clearly and unmistakably ordered that he get in the vehicle and return it to their home. This represents a change in circumstances because, as the trial court found, Young easily could have ordered Barclift to leave her vehicle parked. Therefore, we conclude that, in the final analysis, Barclift had Young's 'before-the-fact' express, if begrudging, permission to drive the vehicle, by virtue of her expressly ordering him to get in it and drive it back to their home. Accordingly, the judgment of the trial court is due to be affirmed."

Thus, the insurer Alfa lost and the injured Ms. Small won, because the Court derived the express permission required under the policy from the insured Ms. Young's explicit (in more ways than one) demand that Barclift return her Corvette pronto. 

Lawrence Sevell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars In Law" articles can be found on-line at www.lawrencesavell.com.