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## PERMISSION IMPOSSIBLE

Sometimes, no matter what you do, you lose. Ask John Sandoval. Mr. Sandoval owned a landscape maintenance business. He also owned a vintage 1959 Ford truck. On September 14, 1984, one of Sandoval's employees, Del Camp, while working at a job site, picked up the keys and drove himself and another employee to lunch. Unfortunately, on the way, the truck collided with a motorcycle driven by Duhamel Rodriguez.

### Act I

#### Rodriguez v. Camp and Sandoval

Rodriguez sued Camp and Sandoval. In his deposition in that case, Sandoval testified unequivocally that before the accident he had told Camp never to drive any of his vehicles. Sandoval further testified that he was outraged when he learned that Camp had been driving at the time of the collision. Sandoval presumably believed that these facts would insulate him from liability to Rodriguez.

However, although Sandoval had denied that Camp had permission to drive the Ford, an arbitrator ruled in favor of Rodriguez against Sandoval and awarded Rodriguez \$28,000 in damages. Rodriguez eventually settled with Sandoval for \$18,000.

### Act II

#### Sandoval v. Mercury

Shortly after the accident, Sandoval had notified his insurer, Mercury Insurance Group, about it. Mercury denied coverage.

Sandoval then sued Mercury. Mercury responded that Camp had

not had permission to drive the Ford and that, under the terms of the policy and California law, Sandoval therefore had no coverage for Camp's collision with Rodriguez.

At trial, the court ruled for Mercury. Sandoval appealed that ruling.

On February 27, 1991, the Court of Appeal of California, Fourth Appellate District, affirmed the trial court's ruling in favor of Mercury.

The Court of Appeal noted that the principal issue was whether Camp was a "permissive user" under California law. Indeed, Sandoval had conceded that if Camp was not a permissive user, Mercury would win the lawsuit.

The appellate court looked at two provisions of California law. First, a section of the Vehicle Code provided that "Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner." A provision of the Insurance Code provided a critical corollary, requiring all automobile liability policies issued in California to provide coverage "to the same extent that insurance is afforded to the named insured, to any other person using, or legally responsible for the use of, such motor vehicle, provided such use is by the named insured or with his or her permission, express or implied, and within the scope of such permission."

The facts of the case made it clear that Sandoval had never given

LAWRENCE SAVELL

Camp express (i.e., specifically stated) permission to drive the truck. Thus, Sandoval's only hope was for the court to find that Camp had implied permission to drive it. Unfortunately for Sandoval, the evidence did not support such a finding.

The court noted that such implied permission can only be found where the use by the individual in question was or should have been within the contemplation or expectation of the owner. While the court recognized the need in many cases to provide a source of compensation for innocent victims of automobile accidents, that need cannot be satisfied by finding coverage without regard to the conduct and expectations of the owner. The court expressed the concern that basing insurance coverage on ownership alone would increase the risks currently covered by automobile insurance and presumably thereby diminish its availability.

Reviewing Sandoval's deposition testimony and other statements, the court concluded that Sandoval did not contemplate Camp driving the truck. Sandoval had repeatedly told Camp not to drive any of Sandoval's vehicles, in part because he knew Camp did not have a driver's license. Moreover, Sandoval's testimony, including his statement that he had never seen Camp driving any vehicles at or near the time of the accident, indicated that he had no reason to believe that Camp would disobey his explicit instructions not to drive. Thus, Sandoval was unable to establish that Camp was driving with Sandoval's implied permission.

#### Epilogue

Mr. Sandoval certainly got the double-whammy in this case. His testimony that Camp did not have permission to drive the Ford, offered to defend himself against Rodriguez, failed to stop the arbitrator from holding him liable to Rodriguez. But it did have the effect of providing a basis for Sandoval's insurer to deny coverage to Sandoval for the accident.

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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