

Legal Brief



Monkey Business: The Risk of Apparent Authority

It doesn't happen often, but the potential for liability is reason to be careful. It is the liability you may incur when your "agent" intentionally harms a third party.

Let's start with some definitions. An agent, in the legal sense, is someone who you authorize to act on your behalf. Your employees are considered your agents. But so are other individuals such as a broker or a sales representative. Although most people rarely think of it, by engaging these agents (be they employees or independent contractors) you are empowering or "authorizing" them to deal with third persons on your behalf.

It is impossible to do business without engaging agents of one sort or another. The key is to protect yourself from being liable to a third party because of an act of your agent. Typical scenarios, such as your truck driver causing property damage to another in a motor vehicle accident, are going to be covered by your company's insurance policy. Our focus here is the scenario where your agent takes action that you would never have authorized or intended. When does such conduct cause you to be responsible?

Take the oddly named and extreme case of *Grease Monkey International, Inc. v. Montoya*, 904 P.2d 468 (Colo. 1995). A man by the name of Mr. Sensenig was a former banker who was hired as president of Grease Monkey International, Inc. ("Grease Monkey"). Obviously, as president, Sensenig appeared to the public to be authorized to act on behalf of the company. Unfortunately, the owners of Grease Monkey didn't realize that

Sensenig was dishonest to the core. Sensenig's scheme was to contact his former banking clients and solicit money from them, telling them that they were either loaning money to or investing in Grease Monkey. He was quite successful at this, raising some \$500,000. As you might guess, Sensenig put the money in his own pocket or squandered it. When the victims of this fraud realized what had occurred, they and their lawyers went looking to retrieve the money. Not surprisingly, they turned their attention to Sensenig's employer, Grease Monkey.

Initially, the victims argued that this situation was not unlike a scenario where the company's truck driver is in a motor vehicle accident. Sensenig was an employee of Grease Monkey at the time he solicited these funds, so the employer should be liable for his actions under the principle of master/servant liability. However, the Court denied recovery under this argument because an employer's liability for conduct of an employee is limited to acts being carried out for the benefit of the employer. Certainly that was not the case here. Sensenig was using his position as an officer of Grease Monkey, but his purpose was to benefit himself.

Unfortunately, that was not the end of the story. The victims discovered in their investigation that the owners of Grease Monkey had given Sensenig significant authority to borrow without the need for approval by the Board of Directors and had exercised little control. A reading of the Court's opinion leaves one with the impression that this lack of oversight was an important factor in the outcome of the case. The Court found that Grease Monkey had cloaked Sensenig with "apparent authority" to

solicit money from others on behalf of the company and that the victims had reasonably relied on this "apparent authority." So, even though Grease Monkey had not given Sensenig actual permission to take money from these victims, it was enough that the company had placed Sensenig in a position to perpetrate the fraud. Grease Monkey had to repay the money.

What lessons are to be learned? Clearly, the broad scope of authority given to Sensenig and the lack of subsequent oversight was a terrible mistake. It is possible that a carefully crafted job description, a requirement for Board approval of borrowing, and written evidence of Board inquiry and oversight may have changed the outcome. ☒

For more information on how to protect your organization from potential liability claims, contact Patrick Delaney at MacDonald, Illig, Jones and Britton LLP at 814/870-7658 or pdelaney@mijb.com.

W. Patrick Delaney is a partner in the law firm of MacDonald, Illig, Jones and Britton LLP, where he is chairman of the firm's Commercial Litigation Group. He is a 1976 graduate of Capital University Law School. His practice focuses on issues of business litigation in the state and federal courts throughout western Pennsylvania.

