

IN THE SUPREME COURT OF MISSOURI

SC 90080

MARK KARSCIG,

Appellant,

vs.

JENNIFER MCCONVILLE,

Appellant

And

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Respondent.

**APPEAL FROM THE
CIRCUIT COURT OF PETTIS COUNTY, MISSOURI
DIVISION NO. 18
HONORABLE ROBERT M. LISTON, JUDGE**

**BRIEF OF *AMICUS CURIAE* MISSOURI ASSOCIATION OF TRIAL
ATTORNEYS IN SUPPORT OF APPELLANTS**

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INTERESTS OF AMICUS CURIAE

The Missouri Association of Trial Attorneys (MATA) is a professional organization of approximately 1,400 trial lawyers in Missouri, most of whom are engaged in personal injury litigation involving Missouri citizens. Whether an insurance agency can refuse to provide statutory minimum coverage on a liability insurance policy is an important question. Accordingly, this issue is of considerable interest to MATA and its members.

On behalf of the citizens of the State of Missouri, MATA urges this court to reverse the ruling of the trial court – that is to find the policy in question provides the statutory minimum amount of coverage.

CONSENT OF THE PARTIES

MATA has received consent from counsel for Appellants, Mark Karscig and Jennifer McConville, to file this brief. MATA sent a request for consent for the filing of this brief to counsel for the Respondent, American Family Insurance Company, on June 30, 2009; however, counsel for the Respondent has not consented to the filing of this brief. Therefore, MATA sought an order from this Court pursuant to Rule 84.05(f)(3) granting leave to file this *Amicus Curiae* brief. (See Motion of Missouri Association of Trial Attorneys for Leave to File Brief as *Amicus Curiae* in Support of Respondent). This Court granted MATA leave to file brief as *Amicus Curiae* on July 2, 2009.

JURISDICTIONAL STATEMENT

MATA hereby adopts the Jurisdictional Statement of Appellants.

STATEMENT OF FACTS

MATA hereby adopts the Statement of Facts of Appellants.

ARGUMENT AND AUTHORITY

I. THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAWS REQUIRE THAT THE POLICY ISSUED BY AMERICAN FAMILY TO JENNIFER McCONVILLE PROVIDE MINIMUM LIABILITY LIMITS OF \$25,000

MATA adopts the position of Appellants' Mark Karscig and Jennifer McConville.

It is undisputed that Jennifer McConville did not own the 1990 Pontiac she was driving on the day of the accident. Further, the policy issued to Jennifer McConville did not clearly state whether it was an operator's policy or an owner's policy. The Motor Vehicle Financial Responsibility Laws require that every insurance policy be either a owner's policy or an operator's policy. However, the statute and previous court opinions are vague in distinguishing between these two types of policies. It is MATA's position that the policy issued to Jennifer McConville appears to be an operator's policy. As such, any ambiguity should be construed against the insurer and coverage should extend to the accident at issue in this case.

The policy issued to Jennifer McConville was an operator's policy as opposed to an owner's policy. An operator's policy is required to "insure the person named as insured therein against loss . . . for damages arising out of the use . . . of **any motor vehicle not owned by him or her** . . ." § 303.190.3 RSMo (emphasis added). "[T]he MVFRL requires [] that each valid owner's or operator's policy provide the minimum liability limits specified . . ." *American Standard Ins. Co. v. Hargrave*, 34 S.W.3d 88, 92 (Mo. 2000). As such, the policy covering Jennifer McConville is required to pay the statutory minimum for injuries caused by Jennifer McConville.

The statute, by its express language, requires that every operator's policy provide coverage to "**any** vehicle not owned by him or her." § 303.190.3 RSMo (emphasis added). As previously mentioned, it is undisputed that Jennifer McConville does not own the vehicle involved in the accident. Therefore, the exclusion relied on by American Family is contrary to the language of the policy and should not be enforced.

Even if this policy is determined to be both an operator's and owner's policy, as many courts have found insurance policies to be, coverage should nonetheless be provided. The longstanding public policy of this State is to construe insurance contracts in order to find coverage. Additionally, the Motor Vehicle Financial Responsibility Laws mandate that **both** types of insurance policies provide statutory minimums. *See Hargrave*, 34 S.W.3d at 92. Cases which have found that policies which meet both the requirements of an operator's and owner's policy are valid so long as they meet the requirements of an owner's policy have applied the general public policy of Missouri incorrectly. It is MATA's position that this view needs to be reexamined to comport with Missouri public policy and the general view of insurance policies.

The exclusion in this policy strikes directly at the heart of the public policy of Missouri. It does so by restricting the insurance contract, as a whole, so as not to provide the insured with coverage. "[T]he MVFRL requires [] that each valid owner's or operator's policy provide the minimum liability limits specified." *Hargrave*, 34 S.W. 3d at 92. Because public policy generally requires coverage and in particular requires each policy to provide "minimum liability limits," the policy in the case at bar should be interpreted broadly as allowing this type of inclusion of coverage.

CONCLUSION

For the reasons stated above, the Court should reverse the opinion of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that a copy of the computer diskette containing the full text of Brief of *Amicus Curiae* Missouri Association of Trial Attorneys In Support of Respondent is attached to the Brief and has been scanned for viruses and is virus-free.

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(b); and (3) this Brief contains 896 words, as calculated by the Microsoft Word software used to prepare this brief.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing
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