

**Summary of SC90080, *Mark Karscig v. Jennifer M. McConville and American Family Mutual Insurance Company***

Appeal from the Pettis County circuit court, Judge Robert M. Liston  
Argued and submitted Sept. 30, 2009; Opinion issued Jan. 12, 2010

**Attorneys:** Karscig was represented by William Dirk Vandever of The Popham Law Firm in Kansas City, (816) 221-2288; Andrew J. Gelbach, an attorney in Warrensburg, (660) 747-5138; and John E. Turner and Christopher P. Sweeney of Turner & Sweeney in Kansas City, (816) 942-5100. McConville was represented by William Cownie of The Law Office of William G. Cownie LLC in Lee's Summit, (816) 525-9200. American Family was represented by David R. Frye and Rebecca J. King of Lathrop & Gage LLC in Overland Park, Kan., (913) 451-5100.

There were two entities filing briefs as friends of the Court: the Missouri Association of Trial Attorneys was represented by Leland F. Dempsey and Ashley L. Baird of Dempsey & Kingland PC in Kansas City, (816) 421-6868; and the Missouri Insurance Coalition was represented by Michael A. Dallmeyer and Keith A. Wenzel of Hendren Andrae LLC in Jefferson City, (573) 636-8135.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man injured in an automobile accident appeals the grant of summary judgment to an insurance company based on language in its policy. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case for further proceedings. One policy provision in question simply does not apply, and two other provisions in question conflict with state law mandating certain liability coverage.

**Facts:** In October 2005, Mark Karscig was injured when his motorcycle was struck by a 1998 Pontiac Grand Am owned by Jennifer McConville's parents and operated by her with their consent. McConville admitted she ran a stop sign and caused the accident, which resulted in more than \$200,000 in medical bills for Karscig. The parents insured the automobile under an American Family Mutual Insurance Company policy that provided bodily injury liability coverage of \$25,000 per person and \$50,000 per accident. McConville was insured under a separate American Family policy that also provided liability coverage of \$25,000 per person and \$50,000 per accident. The vehicle listed on McConville's policy was a 1990 Pontiac Grand Am, which her parents also owned. American Family denied coverage under McConville's policy based on a provision excluding coverage for the use of family vehicles other than the one insured by the policy as well as "anti-stacking" provisions that limited liability to the maximum allowed for a single vehicle under a single policy. Karscig filed suit; American Family filed a

counterclaim and cross-claim. Ultimately the trial court granted summary judgment to American Family. Karscig appeals.

## **REVERSED AND REMANDED.**

**Court en banc holds:** (1) Although the exclusion in McConville’s policy excludes coverage for Karscig’s injuries, it conflicts with state law and, therefore, does not apply here. The plain language of McConville’s policy, which describes only the 1990 vehicle, unambiguously excludes coverage for Karscig’s injuries because the 1998 vehicle she was driving at the time of the accident was owned by her parents, was available for her regular use but was not described in the declarations in her policy. McConville’s policy is silent as to whether it is an “owner’s policy” or an “operator’s policy.” But because the only vehicle described in the declarations is one she did not own, nor did she own any of the other household cars insured by American Family, she was only an “operator” of these vehicles; therefore, her policy only could be an “operator’s policy.” As such, it must comply with the mandates of section 303.190.3, RSMo 2000, which requires that the policy must insure McConville against liability arising out of her use of any motor vehicle she does not own.

(2) Of the two anti-stacking provisions in McConville’s policy, one does not apply here and the second is invalid under state law. The first provision limits liability on multiple policies issued to one policyholder. Because McConville is the only policyholder named in the declarations in her policy, she is unmarried and she was issued only a single policy, this provision does not apply. The second provision limits liability to the maximum amount of damages in the declarations, no matter how many policies are involved. Here, two policies are involved: McConville’s and her parents’. Under each policy, the maximum liability for bodily injury is \$25,000 per person. Because McConville was a member of her parents’ household and was operating the accident vehicle with their permission, the parents’ policy already had provided \$25,000 to Karscig. This second anti-stacking provision attempts to limit Karscig’s total compensation to \$25,000, even though the two policies issued by American Family each provide \$25,000 in coverage. The state’s vehicle financial responsibility law requires each owner’s and operator’s policy issued in Missouri to provide \$25,000 in minimum liability coverage and does not restrict minimum liability payments to a single insurance policy if coverage is provided under multiple policies. *See American Standard Insurance Company v. Hargrave*, 34 S.W.2d 88, 91-92 (Mo. banc 2001). Accordingly, McConville’s policy also must provide the statutory minimum of \$25,000 in liability coverage for Karscig’s injuries.