

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROBERT R. BAUER, II AND LILA BAUER,  
APPELLANTS,**

**v.**

**FARMERS INSURANCE COMPANY,  
RESPONDENT.**

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WD68501

December 2, 2008

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Appeal From:  
Jackson County Circuit Court  
The Honorable Charles Emmert Atwell, Judge

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Appellate Judges:  
Division Two: James M. Smart, Jr., P.J., Thomas H. Newton and Ronald R. Holliger, JJ.

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Attorneys:  
Bruce C. Jackson, Jr., Kansas City, MO, **for appellant.**

Randolph G. Willis, Kansas City, MO, **for respondent.**

# MISSOURI APPELLATE COURT OPINION SUMMARY

## MISSOURI COURT OF APPEALS, WESTERN DISTRICT

**ROBERT R. BAUER, II AND LILA BAUER, APPELLANTS**

v.

**FARMERS INSURANCE COMPANY, RESPONDENT**

WD68501

JACKSON COUNTY CIRCUIT COURT

Before Division Two Judges: James M. Smart, Jr., P.J., Thomas H. Newton and Ronald R. Holliger, JJ.

This appeal arises from a breach of contract action that Robert and Lila Bauer filed against their automobile insurer, Farmers' Insurance Company. Robert was injured in an automobile accident. The insurance company for the other driver settled with the Bauers by paying the \$100,000 policy liability limit. The Bauers then sought payment from Farmers under the uninsured motorist coverages in their two Farmers policies. The Bauers believed that they were entitled to "stack" the two coverages for a total of \$200,000, which would trigger the underinsured motorist provision, since the other driver's liability limit was \$100,000. Farmers denied the claim on the basis that the policy was governed by Kansas law and "stacking" of coverages is prohibited in Kansas. The Bauers filed a breach of contract action against Farmers on the basis that Missouri law governed the stacking issue (under the language of the policies) and that stacking is permitted in Missouri. Both sides filed motions for summary judgment. The trial court granted Farmers' motion after finding, based on a conflict of laws analysis, that Kansas law governed and that, therefore, stacking was not permitted. Consequently, the other driver was not an underinsured motorist, and the Bauers were not entitled to compensation under their Farmers' policies. The Bauers appeal the circuit court's judgment.

### **REVERSED AND REMANDED.**

**Division Two holds:** The very same policy language that the Bauers rely upon to argue that Missouri law governs the stacking issue in this case was examined by this court in *Williams v. Silvola*, 234 S.W.3d 396 (Mo. App. 2007), and was found to be ambiguous. Under both Missouri and Kansas law, ambiguities in insurance policies are construed in the insured's favor. Thus, the insured's understanding in *Silvola* that the policy language meant that Missouri law governed the stacking issue prevailed. The ruling in *Silvola* controls the resolution of this case, where the insureds raise the same argument based on the very same policy language. Farmers' argument that the parties could not (under the Restatement (Second) of Conflict of Laws) have chosen Missouri law to govern the

stacking issue must fail, because there is no indication that Kansas' policy against stacking is a "fundamental" policy. Farmer's contention that *Silvola* is not controlling because this case involves underinsured coverage, as opposed to the uninsured coverage in *Silvola*, also must fail. Missouri permits stacking of underinsured coverage where, as here, the policy treats underinsured and uninsured coverage the same. The case is reversed and remanded for further proceedings consistent with the opinion.

**Opinion by James M. Smart, Jr., Judge**

December 2, 2008

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