SC100440

IN THE MISSOURI SUPREME COURT

State of Missouri ex rel. Brittany Trexler
Relator,

v.

The Honorable Scott A. Lipke, Circuit Court of Cape Girardeau County, Missouri
Respondent.

REPLY BRIEF OF RELATOR

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I. This Case Involves a Basic Discovery Issue and the Application of Settled Law.

Respondent sought transfer asserting this case involved (1) issues of general interest and importance and (2) a conflict between the Court of Appeals opinion (A1-13) and *State Farm Mutual Auto Ins. Co. v. Ballmer*, 899 S.W.2d 523 (Mo. banc 1995); *American Standard Ins. Co. v. Hargrave*, 34 S.W.3d 88 (Mo. banc 2000). The reality is this case involves a basic discovery dispute, the application of a clear statute and settled law, and the interpretation of policy language. It also involves an issue significantly different from *Ballmer*.

At its core, this mandamus proceeding involves a basic discovery dispute. Relator asserts claims for breach of contract, insurance bad faith, and negligence against Consumers Insurance USA, Inc. Consumers never sought dismissal or summary judgment on those claims before the circuit court. They are active and remain pending. Relator has the right to conduct discovery on her claims, and discovery of the insurer's claim notes is garden variety in a case where the insurance company's handling of the claim is the central issue. *McConnell v. Farmers Ins. Co., Inc.*, No. 07-4180-CV-C-NKL, 2008 WL 510392, at *3 (W.D. Mo. Feb. 25, 2008). Relevance cannot seriously be disputed, and the only thing an insurer-insured privilege could conceivably protect would be a direct communication from Hitt Automotive to Consumers concerning an event that could form the basis for a claim—not an entire claim file. *State ex rel. Cain v. Barker*, 540 S.W.2d 50, 54 (Mo. banc

1976).[1] Relator has already agreed, and the Court of Appeals ruled, that any such communications may be identified on a privilege log. The remainder of the claims file, being non-privileged material created in the ordinary course of the insurer's business, is discoverable under Rule 56.01. Because Respondent had "no discretion to deny discovery matters [that] are relevant to [the] lawsuit and are reasonably calculated to lead to the discovery of admissible evidence when the matters are neither work product nor privileged," mandamus is the appropriate remedy. *State ex rel. BNSF Ry. Co. v. Neill*, 356 S.W.3d 169, 172 (Mo. banc 2011). The analysis need not be more complicated than that.

II. The Interrelationship Between the MVFRL, the Insurance Contract, and *Ballmer*.

Next, Respondent's Brief twists Relator's argument by contending she claims Consumers owed her duties to defend and settle *under the MVFRL*. This is not what Relator has argued, and knowledge of the background of the discovery dispute is important.

Consumers resisted the discovery claiming Relator was not its insured, that it had no contract with Relator, and that it owed Relator no coverage under its insurance contract. This directly contradicts § 303.190.2(2) R.S.Mo., which requires that every owner's policy "shall insure the person named therein and any other person, **as insured**, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured." (emphasis added). It also directly contradicts 20 C.S.R. § 500-2.100(2)(B)(2), which requires the definition of "insured" in every auto policy to include permissive users.

[1] Even that is questionable as Trexler's was also Consumers' insured and Consumers never bifurcated the claims file.

It additionally contradicts *Rader v. Johnson*, 910 S.W.2d 280 (Mo. App. W.D. 1995) and *Rutledge v. Bough*, 399 S.W.3d 884 (Mo. App. S.D. 2013). It is indisputable that, under Missouri law, every insurer who issues an owner's policy agrees to insure any permissive user of the covered auto up to the minimum coverage limit under its policy.

Based upon this authority, Trexler argued, and a unanimous panel of the Court of Appeals held, that "Trexler became Consumers' insured as a matter of law by operation of section 303.190.2(2) **to the extent of the $25,000 in minimum liability coverage required by the MVFRL**." A7 (emphasis added). Because Consumers attempted to disclaim that insured status in its policy, the Court of Appeals concluded "a provision providing such coverage will be 'read into the policy' **up to the MVFRL's statutory minimum for liability coverage**." A8 (emphasis added). This was a straightforward application of *Dutton v. American Family Mut. Ins. Co.*, 454 S.W.3d 319, 325 (Mo. banc 2015) ("[I]f the MVFRL requires a policy issued in Missouri to provide coverage, and if the policy as a whole excludes such coverage, then a provision providing such coverage will in effect be read into the policy, up to the MVFRL's minimum statutory limit of liability coverage").

So far, so good. But what about *Ballmer*?

Ballmer shows that where a policy only affords coverage because of the MVFRL, the policy may lawfully exclude any additional coverage beyond what the statute requires. 899 S.W.2d at 526-27. This holding had its roots in § 303.190.7 R.S.Mo., which says a policy may grant coverage in excess of that required under the statute, but that such coverage is not subject to the statute's requirements. Thus, a policy that has a $500,000 per

person liability limit may lawfully exclude any additional monetary coverage above $25,000 per person for a permissive user. Or, as was the case in *Ballmer*, the policy may lawfully exclude additional coverage to defend claims against permissive users. *Id*.

But this case does not involve the question of whether Consumers owed Trexler any additional coverage (whether it be monetary or for a defense) under the MVFRL. Rather, it involves the question of rights Consumers reserved for itself in its insurance contract as to the undisputed coverage Consumers owed. These provisions gave Consumers the exclusive right to control settlement over that coverage, which coverage would ultimately benefit—not Trexler as would be the case with coverage for defense costs—but the injured Monighan. Moreover, the right to control settlement is not "additional coverage" designed to benefit the insured as is the case with defense cost coverage. Rather, it is designed to benefit *the insurer* by allowing it to have exclusive control over its insurance money, including how much it pays and when.

Because such a provision is not "additional coverage" subject to § 303.190.7, it may not be ignored. In fact, § 303.190.6(4) R.S.Mo.[2] states "[t]he policy, the written application thereof, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties." Thus, once Trexler's status as an insured—entitled to as much as $25,000 in liability coverage

[2] This subsection also confirms that the coverage required by the MVFRL is, in fact, coverage provided *under an insurance contract* and that provisions of the contract not directly conflicting with the MVFRL's requirements must be taken into account.

under the policy—is confirmed, the analysis shifts *to the insurance contract*, and what the policy says the insurer may do with the coverage it owes matters.

Again, *in its contract,* Consumers chose to reserve the *exclusive* right to control settlement decisions as to any coverage it owed, including coverage owed to a permissive user. This case proves that to be true as it was Consumers who refused to tender Trexler's coverage in response to settlement demands. Trexler could not have cut her own deal; she did not control the insurance money. Section 303.190.6(3) expressly authorizes insurers to settle claims on behalf of permissive user insureds, so Consumers' contract provision granting it the exclusive right to control settlement does not conflict with the MVFRL. Therefore, the provision cannot be ignored per § 303.190.6(4).

Respondent's Brief did not contest that the purpose of this provision was to prevent insureds from obligating Consumers to pay full coverage on smaller claims. This reflected a choice Consumers made at the time of contracting. That choice was between (1) not controlling settlement decisions and risking that a permissive user might commit it to paying its full coverage, or (2) exclusively controlling settlement decisions so as not to allow an insured to bind it to overpay on smaller claims. Consumers opted for the control, and the consequence of that choice is clear under Missouri law. Where the insurer reserves the exclusive right to control settlement of claims, the choice creates a duty to use good faith when exercising that right, the breach of which gives rise to an actionable claim for bad faith. *Scottsdale Ins. Co. v. Addison Ins. Co*., 448 S.W.3d 818, 827-830 (Mo. banc

2014). Thus, it was Consumers' contractual gamble that it would save more money if it controlled settlement that created the duty of good faith as to settlement, *not the MVFRL*.[3]

Nor does this conflict with the purpose underlying the MVFRL—to protect persons injured by negligent motor vehicle operators. *Ballmer*, 899 S.W.2d at 527. Unlike additional coverage for a defense, which exclusively benefits the insured often to the disadvantage of the injured person, it is the injured person who immediately suffers when an insurer contracts for the exclusive right to control settlement and then completely abrogates its coverage obligation by saying it owes no coverage at all. The insurer's violation of the settlement right, which it voluntarily contracted for to benefit itself, deprives the injured person of the coverage required for his or her benefit. This is what happened here. The best way to protect persons injured by negligent motorists is to hold insurers accountable to the rights they contract for in their policies, and it does not conflict with the MVFRL since enforcing such provisions is not "additional coverage" not mandated by the MVFRL.[4]

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[3] As shown in Relator's Brief pp. 56-57, this is consistent with third party beneficiary law. Respondent contends a permissive user could not be a third-party beneficiary under its contract because the definition of "insured" attempted to exclude her, but any auto insurer writing an owner's policy in Missouri automatically assumes a direct obligation under the policy to insure a permissive user up to $25,000 in coverage regardless of what else the policy says. This confers third party beneficiary status on the permissive user up to the required coverage as the cases Relator cites in her opening brief show.

[4] In fact, the § 537.065 agreement requires Trexler to pay the net recovery in her case to Monighan in order to satisfy the judgment that resulted when Consumers refused to settle and denied coverage. Respondent's Ex. A.

This case, thus, does not involve a scenario where Relator is trying to "read into" the statute additional coverage that would benefit only her. Rather, it is Consumers who is asking the Court to (1) strike out express terms of the MVFRL requiring that Trexler be its insured and (2) ignore the import of the contractual choice it made to control settlement *as to that coverage*. What this means is that Relator has a viable claim for bad faith refusal to settle based on the insurance contract and should have been afforded the right to conduct complete discovery as to her claim. This would include not just claim notes revealing Consumers' ultimate coverage determination, but also those showing its mindset and conduct throughout the entire claim, including when it ignored reasonable settlement opportunities.

Thus, when put into proper context, the Court of Appeals opinion does not conflict with *Ballmer*. The Court of Appeals' two-part holding was that Ms. Trexler was (1) an insured under the Consumers policy for the minimum coverage and (2) entitled to the discovery she sought under *either* Rule 56.01 *or Grewell v. State Farm Mut. Auto Ins. Co., Inc.*, 103 S.W.3d 33, 37 (Mo. banc 2003). A1-13. This was not a holding that the MVFRL required coverage for a defense.[5] Consumers points to the Court of Appeals' statement that "we see no reason that Trexler was not vested with the same rights and responsibilities as

[5] This is made even more clear when considering the context in which the Court of Appeals went on to discuss *Ballmer*. In distinguishing *Ballmer*, the Court of Appeals noted that unlike here, *Ballmer* involved a household exclusion that was invalidated, whereas here, under *Dutton*, the statutory language requiring Trexler to be an insured for as much as $25,000 per person was required to be read into the policy. Noting its obligation to follow *Dutton*, the Court of Appeals found that "Trexler is an "insured" under Consumers' policy," not that the MVFRL created a duty to defend. A10.

any other insured under that policy" as creating a conflict. This takes the *dicta* out of context, but if the Court believes the language in the Court of Appeals opinion is capable of misinterpretation, it can certainly modify it. Nonetheless, the ultimate result the Court of Appeals reached on the discovery question was correct. [6]

III. Respondent's Argument Proves Its Policy is Ambiguous as to Whether Relator Meets the Policy Definition of Insured.

Respondent's argument confirms its policy definition of "insured" is ambiguous when considered alongside the "other insurance" provisions in the Consumers and Progressive policies. If a policy's "terms are susceptible to two possible interpretations and there is room for construction, provisions limiting, cutting down, or avoiding liability on the coverage made in the policy are construed most strongly against the insurer." *Owners Ins. Co. v. Parkison*, 517 S.W.3d 608, 616 (Mo. App. E.D. 2017).

First, when reading both policies together, the Consumers' policy expressly stated it would be primary (Ex. 3, p. 071) whereas the Progressive coverage said its coverage would be contingent (Ex. 4, p. 140). However, Consumers argues Progressive's excess "other insurance" provision was not triggered because Trexler did not have other insurance under the Consumers' policy. Once again, this contradicts the MVFRL. The statute

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[6] There is also no conflict with *Hargrave*. *Hargrave* simply held that when two owner's policies apply to an accident, each must provide at least the statutory minimum in coverage. 34 S.W.3d at 91-92. *Hargrave* confirms Consumers conduct is even more problematic in this case. Directly contrary to *Hargrave*, Consumers attempted to pass off its coverage obligation to Progressive, Trexler's personal insurer, when it too was required to insure Relator for the accident as the primary insurer.

establishes the minimum coverage amount, but it is *the insurance policy that insures the accident vehicle* that must provide the MVFRL's mandated coverage. Relator, therefore, did have other insurance aside from her Progressive coverage—$25,000 in coverage under the Consumers' policy. In reading both policies together, it is clear that Consumers' policy would be primary, and Progressive's coverage would be "contingent" or "excess."

Consumers then contends its definition of "insured" is not ambiguous because it contemplates excess or contingent coverage as one type of coverage that would be "available." But that is exactly the point. By definition, coverage that is "contingent" or "excess" is not "available"—that is, "present or ready for **immediate** use"[7] until the contingency occurs. Therefore, the definition is confusing on its face, and the provision is ambiguous.

The fact that Progressive voluntarily tendered its limit in this case does not change how the provision could be interpreted. What if instead of recognizing that Monighan's claim would exceed the available coverage and tendering its $25,000 limit, Progressive had instead pointed to the "other insurance" provisions and said it would pay nothing until Consumers tendered its $25,000 as both policies contemplated? Ex. 3, p. 71; Ex. 4, p. 140. Based on the language of the "other insurance" clauses and consistent with the general rule that the policy covering the liability of the vehicle owner pays first,[8] Progressive could have taken this position. This makes the Progressive coverage, and any contingent

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7 https://www.merriam-webster.com/dictionary/available (emphasis added).

8 *Distler v. Reuther Jeep Eagle*, 14 S.W.3d 179, 186 (Mo. App. E.D. 2000).

coverage for that matter, not *actually available*, which reveals the ambiguity inherent in the definition. And, because there is uncertainty and confusion in the definition's meaning, the construction most favorable to Trexler controls. *Parkison*, 517 S.W.3d at 616.

Therefore, one possible interpretation of the Consumers policy is that Relator was someone without other "available" insurance, as contemplated in the "insured" definition in the Consumers' policy, because her other coverage through Progressive was not present and ready for immediate use.[9] This makes Relator an insured under the Consumers policy irrespective of MVFRL, and it follows that the duties owed to an insured are also owed to Relator. This is the construction that must control given that courts apply *contra proferentem* more rigorously in insurance contracts than other contracts. *Parkison*, 517 S.W.3d at 616.[10]

IV. The Main Focus of this Mandamus Proceeding is Regarding the Basic Discovery Dispute.

A. The Application of *Grewell v. State Farm Mut. Auto Ins. Co., Inc.*[11]

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[9] Consumers attempts to distinguish *Rader* on the basis that the "other insurance provision" in the garage liability policy became operative because the policy stated it covered any person required by law to be an insured, whereas here, the Consumers policy did not contain that language. This misses the point. Whether the policy said it or not, Trexler, and any other permissive user, was required by law to be an insured under the policy. Thus, in the event of two or more policies affording that coverage, reference to the other insurance clauses is appropriate.

[10] Should the Court find this to be the case, discussion of the MVFRL becomes unnecessary.

[11] 102 S.W.3d 33 (Mo. banc 2003).

The question of whether Relator is entitled to claim file discovery in this case is not one of general interest or importance. Respondent's Brief phrases the question as whether a permissive user is entitled to a claim file separately *under the MVFRL*, but, again, that is not the argument being made. Rule 56.01 governs the scope of discovery and, as shown above and found by the Court of Appeals, the claims file is discoverable in this case under Rule 56.01.

To be clear, *Grewell* also supports discovery of the claim file because Relator was required to be insured under the policy up to a coverage limit of $25,000 per person. Respondent's Brief contends *Grewell* holds a claims file may only be discovered by a person who the insurer is obligated to defend.[12] There are two problems with this argument. First, it assumes the entire claims file is subject to the insurer-insured privilege. Second, that is not what *Grewell* held.

Grewell concluded an insurer may not withhold a claim file based on work product from its own insured[13] because the file belongs to the insured, not that an insurer-insured privilege covers an entire claims file making all of its contents undiscoverable. 102 S.W.3d at 35-37. Under Missouri law as stated in *Cain*, the insurer-insured privilege is much narrower, applying only to *direct communications from the insured to the insurer concerning an event that could form the basis for a claim*. 540 S.W.2d at 54. Claim notes

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[12] That obligation, in fact, exists here based on the ambiguity in the policy which makes Relator meet the policy definition of insured.

[13] This claim was always principally about Trexler as she was the driver of the accident vehicle.

detailing the insurer's activities in handling the claim and how it considered settlement opportunities are not direct reports made from the insured to the insurer. No privilege applies to them, and they are not work product in a subsequent bad faith case because they are not created in anticipation of a bad faith case. Respondent's Brief makes the point when it says the claims file notes and internal communications "**include** communications" with Hitt Automotive. Respondent's Brief, p. 49 (emphasis added). The wording is careful, and it is *proof* that Consumers is withholding file materials that are not direct communications from Hitt Automotive concerning facts that may be the basis for a claim. This confirms the need for mandamus relief.[14]

Respondent's Brief also states the basis for the Court's holding in *Grewell* too narrowly. The source of the finding that the file belongs to the insured is the nature of the relationship between the insurer and insured. *Grewell*, 102 S.W.3d at 36. That relationship assumes a fiduciary character any time the insurer reserves the right to control an aspect of the claim that could harm the insured if the insurer elevates its own interests over the insured's. That circumstance arises not only where the insurer controls the defense, but

[14] Consumers cites *State ex rel. Shelter Mut. Ins. Co. v. Wagner* as authority for applying the attorney-client and insurer-insured privilege to the claim file. *Wagner* involved a claimant seeking to discover communications between the insurer and its separate coverage counsel hired in response to a threatened bad faith claim. 575 S.W.3d 476, 479-80 (MO. App. W.D. 2018). Such communications between Shelter and the attorney it hired to advise it were obviously privileged. This case involves no such issue and Relator has not sought any communication between Consumers and the counsel it retained to represent it in any bad faith case. *Wagner* further distinguished its applicability from a case "where a defendant is attempting to use a vague reference to privilege to avoid having to explain its failure to settle." *Id*. at 481. That is exactly what Consumers has done in this case.

also where the insurer reserves the exclusive right to control settlement. *Sprint Lumber, Inc. v. Union Ins. Co.*, 627 S.W.3d 96, 118 (Mo. App. W.D. 2021) ("[A]n insurer under a liability policy has a fiduciary duty to its insured to evaluate and negotiate third-party claims in good faith."). Thus, the same rationale justifying an insured's ownership of the claim file where the insurer has a duty to defend applies in the refusal to settle scenario. An insured whose insurer has refused to settle has the right to see the file demonstrating how the insurer handled the claim.

B. The Work Product Doctrine Was Not Triggered by Monighan's October 27, 2020 letter.

For the work product doctrine to apply, a document must have been prepared in anticipation of litigation. *Hill v. Wallach*, 661 S.W.3d 786, 790 (Mo. banc 2023). Here, the subject claims file was prepared with an eye toward an underlying car accident claim, not this subsequent bad faith action. Perhaps to shield a particular claim note generated on or after Monighan made another settlement demand on October 27, 2020 (Ex. 7), Consumers claims this is when "the anticipation of litigation" began because Monighan indicated that if the case did not settle he would be seeking an excess judgment. However, a statement *from Monighan* inquiring about whether Consumers advised Trexler and Hitt to obtain personal counsel[15] and stating that he would be seeking an excess judgment does not automatically transform subsequent portions of the claims file into material created in

[15] Respondent's Brief suggests Monighan wrote he hoped *Consumers* had retained the advice of a lawyer for itself. Respondent's Brief, p. 50. That is not accurate. Ex. 7.

anticipation of a bad faith case. "[T]he work product rule does not come into play merely because there is a remote prospect of future litigation." *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 604 (8th Cir. 1977).[16]

> Prudent parties anticipate litigation, and begin preparation prior to the time suit is formally commenced. Thus the test should be whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. But the converse of this is that even though litigation is already in prospect, there is no work product immunity for documents prepared in the regular course of business rather than for purposes of the litigation.

Id. (citation omitted). A threat *from Monighan* that he would seek a judgment in excess of the policy limits is not the same as a threat from Trexler that she would pursue a bad faith case if she were exposed to a judgment in excess of the policy limits. Consumers never even notified Trexler that it was denying coverage until November 10, 2020. Ex. 8. That is the earliest possible date when Trexler could have realized her interests and Consumers' were adverse. Moreover, bad faith litigation never became more than a remote prospect until Consumers learned a § 537.065 agreement had been executed.[17] Yet, Relator's discovery only seeks the claim file materials up through November 10, 2020.

More fundamentally, Consumers has done nothing to establish through competent evidence—not even a privilege log—that anything in the claim file meets the definition of

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[16] "When one of this Court's rules of civil procedure is modeled after a federal rule, this Court and the court of appeals will consider federal courts' construction of the federal rule as a persuasive guide in applying the Missouri corollary rule." *Hill*, 661 S.W.3d at 789.

[17] Execution of that agreement was complete on Apri1 1, 2021. Respondent's Ex. A.

work product in this bad faith case or is subject to any other recognized privilege. *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2004). The bare assertion it has made is insufficient to deny discovery. *Id*.

C. Respondent's Order Did Not Provide Relator with All the Evidence Relevant to Her Claims.

Respondent's Brief misconstrues the basis for Relator's claims by alleging her claims only involve Consumers' now-admitted-to-be erroneous coverage declination. This is not a fair characterization of Relator's claims, which focus on Consumers' *mindset* in not only denying coverage, but also in refusing to settle when presented with multiple opportunities. As shown in Relator's Brief, the claim notes around the dates of Monighan's settlement demands are redacted, as are nearly all the claim notes from the first three years of the claim. But, because these notes are relevant to Relator's claims and do not meet the definition of any recognized privilege, there is no basis under the law for withholding them. The Order prohibiting their discovery was clear error.

It is also important to recognize the impact of Respondent's too narrow discovery Order. That Order, which was *drafted entirely by Consumers* with full knowledge of what is contained within its claim file, prohibited the discovery of any document in the claim file unless it relates to (1) any coverage decision made by Consumers USA regarding Ms. Trexler *and* (2) the March 4, 2017 accident. A19. In subsequent briefing, Consumers was careful to highlight this language, specifically the use of the conjunction "and" as opposed to "or". Ex. 23, p. 6. It is not difficult to conceive of the prejudicial impact this language Consumers drafted has on Relator's ability to discover information in Consumers'

possession about her claims. For instance, under this language, Consumers could withhold a claim note discussing coverage or settlement as to a permissive user generally. That would be highly relevant to Relator's claims, but if that note did not also reference the March 4, 2017 accident, Consumers could withhold it. Likewise, Consumers could withhold a claim note involving the potential settlement of Trexler's coverage because that note would not relate to Consumers' ultimate coverage decision. This handcuffs Relator and allows Consumers to carefully control anything it does not want to Relator to see, and the net effect is to prohibit Relator from discovering relevant information about her claims that is not the subject of any recognized privilege. Mandamus is, therefore, appropriate. *Neill*, 356 S.W.3d at 172.

V. The Court Should Make the Preliminary Writ Permanent.

There are many ways the Court could decide this case. The Court could recognize Relator has active claims for bad faith never challenged through a dispositive motion and find that Relator is entitled to the discovery she seeks under Rule 56.01 because it is relevant and non-privileged to her pending claims. Alternatively, the Court could hold the Consumers policy to be ambiguous such that Trexler meets the policy definition of insured, which would further entitle her to the claims file not only under Rule 56.01 but also *Grewell*. Or, the Court could also determine that as Consumers' "insured" under the policy up to a minimum coverage limit of $25,000, Trexler is entitled to the discovery under either Rule 56.01 or *Grewell*, particularly given that Consumers contracted for the right to control settlement as to that coverage. Under any scenario, the result is the same—Respondent

prohibited discovery of matters relevant to the suit that are neither privileged nor work product such that mandamus relief is the appropriate remedy to cure the prejudice Respondent's order has caused. *Neill*, 356 S.W.3d at 172.

Should the Court choose to address the issues related to the MVFRL, it is critical to recognize this is not a case like *Ballmer* where the issue was whether the carrier owed additional coverage not mandated by the statute designed to benefit only the negligent motor vehicle operator. Rather, this is a case where the carrier insuring the accident auto, after contracting for the primary coverage responsibility and the exclusive right to control settlement, tried to avoid paying any of the statutorily-required coverage. This directly conflicted with the purpose underlying the MVFRL: to compensate persons injured by negligent motorists. To hold insurers who shirk their minimum coverage obligations responsible for the consequences of their actions but serves this purpose. Regardless, the issue before the Court is a discovery issue, and Missouri law is clear that Relator had a clear and unequivocal right to the claims file materials she sought in discovery. Respectfully, the Court should make the preliminary writ permanent.

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CERTIFICATE OF COMPLIANCE FOR WORD OR LINE LIMITS

Counsel for Relator hereby certifies the following:

1. The Reply Brief of Relator complies with the type-volume limitation set forth in Mo. R. Civ. P. 84.06, in that the Brief contains 5,272 words which is less than 7,750 words (including headings, footnotes and quotes, Table of Contents and Table of Authorities and excluding the Cover, Rule 84.069(c) Certificate, Signature Block and Appendix).

2. The Reply Brief of Relator complies with the typeface and type style requirements of MO SC Rule 84.06(a) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point font size and Times New Roman type style, and have been scanned for viruses and they are virus-free.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 25, 2024, a copy of this Relator's Reply Brief was filed electronically, in compliance with Mo. Sup. Ct. R. 84.015, with the Clerk of the Court and all attorneys of record were notified via electronic mail of submitting the Relator's Reply Brief to:

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