SUPREME COURT OF MISSOURI
en banc

JEFFERY D. SWADLEY, et. al.	)	
	)	
Respondents,	)	
	)	
vs.	)	SC95844
	)	
SHELTER MUTUAL INSURANCE COMPANY	)	ORAL ARGUMENT
	)	REQUESTED
Appellant.	)	

APPEAL
FROM THE CIRCUIT COURT OF JASPER COUNTY, AT JOPLIN, MISSOURI
TWENTY-NINTH JUDICIAL CIRCUIT
HON. DAVID B. MOUTON, JUDGE

SUBSTITUTE REPLY BRIEF OF APPELLANT SHELTER MUTUAL INSURANCE COMPANY

Submitted by:
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INTRODUCTION

The Missouri Association of Trial Attorneys ("MATA") sought and was granted leave to file an *amicus* brief in this matter. Although not required to respond, Shelter desires to address all issues presented before this Court simultaneously whether submitted by Respondents or MATA. Although the arguments of Respondents and MATA are largely congruent, any notable distinctions will be addressed *in fra*.

ARGUMENT

A. Shelter's UIM Coverage Is Not Illusory.

Respondents' argument in favor of UIM coverage relies heavily on the flawed conclusion that Shelter's UIM coverage is illusory because Respondents allege it would never be paid out. (*Resp. Brief p. 9, 10, 12, 13, 15, 19, 21, 25, 26, 27, 29-31, 34, 36, and 38*). The argument that UIM coverage is illusory is not novel. In fact, this Court previously considered and rejected Respondents' illusory argument in *Rodriquez*[1], stating that the purpose of UIM coverage is to ensure an insured recovers the contracted amount of protection. 808 S.W.2d 379, 382 n. 1 (Mo.banc 1992). This Court further stated, "It is difficult to understand why the mathematical inability to collect a full $50,000 in underinsured motorist coverage renders the coverage meaningless." *Id*. Respondents received in excess of the guaranteed minimum coverage under their policy. *(LF, Pg. 113)*. A guarantee of a minimum amount of recovery is not illusory protection. *Melton v. Country Mut. Ins. Co.*,75 S.W.3d 321, 327 (Mo.E.D. 2002) (emphasis added). Shelter's UIM coverage guarantees its insured will recover, from some source, the amount of the insured's damages up to the limit of the UIM coverage. *Id*. This guarantee is clearly spelled out in the introductory note of the UIM endorsement. In what may seem to this Court like an endless cycle of insurance opinions followed by insurer policy revisions

[1] Despite Respondents' criticism of the age of the *Rodriquez* opinion by this Court, it has not been overruled by this Court and is still good law. The Court of Appeals subsequent application and interpretation of *Rodriquez* is not binding on this Court.

attempting to make policy language understandable (and in conformity with those opinions), Shelter has not only drafted unambiguous language but actually gives an explanation to an insured on how to buy UIM coverage. To Shelter's knowledge this user-friendly, customer centered explanatory language may be the only one of its kind in the insurance industry. The introductory note states as follows:

> INTRODUCTORY NOTE:
>
> This coverage provides a monetary benefit that supplements the amount paid to an **insured** when he or she sustains a covered **bodily injury**. It does not cover **claims** based on **property damage**. It is important to note that the sections headed: "LIMITS OF **OUR** LIABILITY" and "INSURANCE WITH OTHER COMPANIES" reduce the total limits provided under this endorsement by the amount paid to an **insured** by the **person(s)** who caused the injury, or paid under another insurance policy. **You** should, therefore, purchase this coverage with a monetary limit in the amount **you** want to ensure is the minimum amount available from all sources to compensate an **insured** for his, or her, injuries sustained in an **auto accident**. *(LF Pg. 111)*
>
> [Emphasis in original Policy]

Respondents received the protection contemplated under their UIM coverage when they received payment from the underlying tortfeasor in an amount greater than that which was guaranteed under their policy.

Moreover, Respondents assertion that there is no set of facts in which Shelter would be required to pay the full limits of its UIM coverage is simply incorrect. Typically,

insurance companies strive to settle all claims arising out of an accident within the available bodily injury liability limit in order to protect their insureds from personal liability. In some cases, however, whether it be a claimant's refusal to participate in a global settlement, or insufficient policy limits, a liability insurer is not able to settle all claims within the available bodily injury liability policy limits. In such cases, the claimant who did not recover from the underlying tortfeasor could make a claim under his UIM coverage for limits if his damages so warrant. An insured tortfeasor does not become uninsured simply because his limits have been exhausted. *Hill v. Gov't Employee Ins. Co*., 390 S.W.3d 187, 196 (Mo. Ct. App. 2012)("We determine that exhaustion of a liability policy's limits does not change the insured's status to that of 'uninsured.'")

A recent bodily injury liability settlement by another carrier illustrates circumstances under which Shelter's declared UIM limit of liability would be available to a claimant. Five claimants made liability claims on a policy with limits of 25/50. Three of the claimants were passengers in the insured's vehicle and there was one claimant in each of the other two vehicles involved in the accident. All claimants were invited to attend mediation. One of the claimants did not attend the mediation. The liability insurance carrier made the difficult decision to exhaust the $50,000 per accident policy limits in settling four of the five claims. The "no-show" claimant recovered nothing. If, however, the "no-show" claimant was a Shelter insured with UIM coverage under the subject endorsement, she would be able to recover the full limit of her UIM policy, even if the policy provided for an offset because the entire $50,000 limit of liability of the underlying tortfeasor was exhausted in settlement.

Shelter's position that its coverage is not illusory is also consistent with Missouri's UIM statute. The statute was enacted following concern expressed by regarding illusory coverage that could arise due to the interplay between the requirements of the Motor Vehicle Financial Responsibility Law ("MVFRL") and the UIM coverage. The MVFRL requires each motor vehicle to be insured with a minimum of $25,000.00/$50,000.00 in coverage. If insurance companies were permitted to sell supplemental UIM coverage of $25,000.00/$50,000.00, said coverage, based upon the accepted definition of "underinsured motor vehicle", would be illusory since every vehicle on the road is required to carry $25,000.00/$50,000.00 in coverage. If the vehicle does not have the mandatory coverage required by law, it would no longer be an underinsured motor vehicle, but instead would be uninsured motor vehicle, so UIM coverage would not apply. Therefore, RSMo. §379.204 states if the UIM coverage is not twice the requirement under the MVFRL, it will be treated as excess.[2] By reading the statute, it is clear the legislature contemplated situations in which the UIM coverage would be supplemental instead of excess. This is clearly not the fact pattern in this case and the mere fact that the stated limits are reduced per the policy provisions does not make the policy illusory.

[2] MATA argues that the interplay between UIM coverage and the MVFRL creates illusory coverage, but appears to have failed to read the statute that was enacted to protect against the exact scenario upon which this argument is based. (*Amicus, P. 12).*

B. Underinsured Motorist Coverage Is Voluntary Coverage, Not an Exclusion.

Respondents' argument that Shelter's UIM endorsement is actually an exclusion because it serves to exclude coverage altogether, appears to be an attempt by Respondents to shift the burden in this case to Shelter. *Heringer v. American Family Mut. Ins. Co.*, 140 S.W.3d 100, 103 (Mo.App.W.D. 2004). UIM coverage, however, is not an exclusion but instead purely optional coverage for the insured since there is no Missouri statutory or public policy requirement for such coverage. *Ritchie v. Allied Property & Cas. In. Co.*, 307 S.W.3d 132, 135 (Mo. banc 2009). Therefore, absent a statute or public policy requiring coverage, an insured and insurer are free to contract for coverage and a court must enforce the unambiguous contract terms. *Hempen v. State Farm Mut. Auto. Ins. Co.*, 687 S.W.2d 894, 894 (Mo. banc 1985).

There are many definitions under a policy of insurance that must be met under different scenarios for certain coverages to apply. Therefore, Respondents' argument that the definition of "underinsured motor vehicle" nullifies coverage under the policy is nonsensical. (*Resp. Brief, p. 12).* Failure to meet a definition, and sometimes meeting a definition, under any policy of insurance may have the effect of reducing the available coverage under the policy, sometimes to zero. The freedom to contract for optional coverages permits an insurance company to limit the cases in which the underinsured coverage applies. Premiums for this coverage are set based upon these limitations. The undisputed fact that the underlying tortfeasor in this case was not an underinsured motor vehicle per the definition in Respondents' policy of insurance does not create an exclusion in the policy but simply triggers the contemplated limitations for the application of the

optional coverage. Neither of the recent cases heavily relied upon by Respondents held that the definition of "underinsured motor vehicle" was ambiguous or that the limited definition of "underinsured motor vehicle" nullifies coverage, creating an ambiguity.[3] *Nationwide Insurance Company of America v. Thomas*, 487 S.W.3d 9 (Mo.App.E.D. 2016); *Simmons v. Farmers Insurance Company*, 479 S.W.3d 671 (Mo.App.E.D. 2015). These cases merely held that the coverage analysis did not stop at the policy definition.[4] *Id.*

[3] Although MATA argues the definition of "underinsured motor vehicle" is invalid and is in direct conflict with the Declarations page, it fails to cites any legal authority to support this position.

[4] Although Shelter concedes that this Court's analysis does not stop with the Policy definition of "underinsured motor vehicle", it is important for the Court to review the whole policy, including the policy definition that Respondents' concede they cannot meet. *(LF, Pg. 141).*

C. Shelter's Set-off Language Is Unique, Plain and Unambiguous.

Although this Court and other Missouri courts have held other UIM setoff provisions to be ambiguous, the interpretation of a set-off provision in a policy is policy specific, turning on the policy's language. As observed by one Missouri appellate court, "[A]lthough other decisions construing set-off provisions and their effect on UIM coverage can be instructive, they are not dispositive in the absence of *identical* policy language." *Long v. Shelter Ins. Co.*, 351 S.W.3d 692, 702 (Mo.App.W.D. 2011). (emphasis added). Contrary to Respondents' assertion, neither *Nationwide* nor *Simmons*[5] is directly on-point because the policy language considered by the courts is not identical to the policy language in this case. 400 S.W.3d 779 (Mo.App. E.D. 2016); 479 S.W.3d 671 (Mo.App. E.D. 2015).

First, the insuring agreements in the three policies are significantly different. Shelter's insuring agreement under the UIM coverage is the only agreement that notifies the insured that the coverage afforded under the UIM endorsement is subject to limitations under specific provisions within the policy. Neither *Nationwide's* nor *Simmons'* insuring agreement notified its insureds to such limitations. *Id.* The insuring agreements state as follow:

[5] Significantly, the recent decision of the *Warden* court is directly on point as it examined the exact same Shelter UIM endorsement and found no ambiguity with the set-off language yet Respondents fail to address or even mention the *Warden* court in their brief. 480 S.W.3d 403 (Mo.App.W.D. 2015).

Shelter	Nationwide	Farmers (Simmons v.)
INSURING AGREEMENT If the **owner** or **operator** of an **underinsured motor vehicle** is legally obligated to pay **damages, we** will pay the **uncompensated damages** subject to all provisions of this policy including those stated below in the sections headed: "LIMITS OF **OUR** LIABILITY" and "INSURANCE WITH OTHER COMPANIES".	INSURING AGREEMENT A. We will pay compensatory damages which an "insured" is legally entitled to recover from the operated of an "underinsured motor vehicle" because of "bodily injury: 1. Sustained by an "insured" and 2. Caused by an accident. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle"	Endorsement Adding UNDERinsured Motorist Coverage We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of **UNDERinsured motor vehicle** because of **bodily injury** sustained by an insured person. The **bodily injury** must be caused by an **accident**, and arise out of the ownership, maintenance or use of the **UNDERinsured motor vehicle.** We will pay under this coverage only after the

		limits of liability under any applicable **bodily injury** liability bonds or policies have been exhausted by payment of judgments or settlements. Further, we will provide insurance for an **insured person**, other than you or a **family member**, up to the limits of the Financial Responsibility Law only.

Second, the Limits of Liability sections between the three policies are substantially different. Shelter's Limits of Liability immediately alerts the insured that the maximum limits stated in the Declaration are subject to limitations and that the limits stated in the Declarations will be reduced.[6] *Nationwide* and *Simmons* failed to provide the same

[6] Limits in the Declaration page are stated, not promised as repeatedly argued by Respondents, since policy declarations do not grant coverage and do not bar provisions in the policy which limit the coverage stated in the declarations. *Floyd-Tunnell v. Shelter*

notification. *Id.* Additionally, Shelter clearly and effectively reduces the limits when Shelter is certain that the insured is guaranteed to be paid an amount equivalent to the protection contemplated under the policy. Conversely, *Nationwide's* policy takes an indirect path in an attempt to create a reduction without promptly notifying the insured that a reduction exists, and *Simmons* offers the insured a more complex "lesser of two formulas" description that is not easily understood by the insured. The limits of liability sections under these three policies state as follows:

Shelter	Nationwide	Farmers (Simmons v.)
LIMITS OF **OUR** LIABILITY The maximum limits of liability for this coverage are stated in the **Declarations** and are subject to the following limitations: * * * (3) The limits stated in the **Declarations** are reduced by the amount paid, or payable,	LIMIT OF LIABILITY A. The limit of liability shown in the Declarations for each person for Underinsured Motorist Coverage is our maximum limit of liability for all damages, including damages for care, loss or services or death, arising out of "bodily injury"	**Limits of Liability** a. Our liability under the UNDERinsured Motorist coverage cannot exceed the limits of the UNDERinsured Motorist Coverage stated in this policy, and the most we will pay will be the lessor of: 1. The difference between the amount of an **insured person's damages** for

Mutual Insurance. 439 S.W.3d 215, 221 (Mo. 2014), *see also Peters v. Farmers Ins. Co., Inc.*, 726 S.W.2d 749, 751 (Mo. banc 1987).

to the **insured** for **damages** by: (a) All persons who are, or may be, legally liable for the **bodily injury** to that **insured**; and (b) All liability insurers of those **persons.**	sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability show in the Declarations for each accident for Underinsured Motorist Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident. This is the most we will pay . . . E. Any amount otherwise payable for damages under this coverage shall be reduced by all sums paid because of the bodily injury by or on behalf of persons or organization who may be legally responsible. . .	**bodily injury**, and the amount paid to that **insured person** by or for any person or organization who is or may be held legally liable for the **bodily injury;** or 2. The limits of liability of this coverage.

Finally, the most significant difference between Shelter's UIM endorsement and those struck down in *Nationwide* and *Simmons* is Shelter's Introductory Note. Neither of the polices reviewed by the Eastern District contained an Introductory Note in the endorsement. Both policies began simply with the insuring agreement. As discussed in *Nationwide*, if the Declaration page does not set forth all limitations under the policy, an additional level of scrutiny will be applied when reading the remainder of the policy for language that confirms whether the coverage is gap or excess[7]. *Nationwide*, 487 S.W.3d at 12-13.

Even if an additional level scrutiny is applied, the plain reading of Shelter's endorsement reveals that Shelter's policy clearly and unambiguously advises its insured that the UIM coverage serves as supplemental, not excess coverage. The endorsement appears as follows:

[7] Interestingly, MATA highlighted for this Court that Shelter's UIM coverage "supplements" amounts paid. (*Amicus, P. 9)* Webster defines "supplements" as, "something added to complete a thing." *Webster's American Dictionary, College Edition* 791 (1st ed. 1997). Conversely, excess is defined by Webster as "more than or above what is . . . specified." *Id*. at 278. "A court must give the contract's terms their plain and ordinary meaning, unless a term is defined in the policy or is ambiguous." *Jaudes*, 11 F.Supp.3d at 949, *citing Farmland Indus. Inc. v. Republic Ins. Co.*, 941 S.W.2d 505, 508 (Mo. 1997).

UNDERINSURED MOTORIST ENDORSEMENT

* * *

The following coverage is provided under this policy only if it is shown in the **Declarations**. It is subject to all conditions, exclusions, and limitations, of **our** liability as stated in this policy.

INTRODUCTORY NOTE:

This coverage provides a monetary benefit that supplements the amount paid to an **insured** when he or she sustains a covered **bodily injury**. It does not cover **claims** based on **property damage**. It is important to note that the sections headed: "LIMITS OF **OUR** L IABILITY" and "I NSURANCE WITH OTHER COMPANIES" reduce the total limits provided under this endorsement by the amount paid to an **insured** by the **person(s)** who caused the injury, or paid under another insurance policy. **You** should, therefore, purchase this coverage with a monetary limit in the amount **you** want to ensure is the minimum amount available from all sources to compensate an **insured** for his, or her, injuries sustained in an **auto accident**.

(*LF Pg. 111*)[Emphasis in original Policy]

As Judge Ahuja observed, writing for the Western District of the Court of Appeals in *Warden,* **"Shelter has now highlighted the limitations of coverage in its policy provisions for clarity. In the Introductory Note at the beginning of the UIM Endorsement, Shelter states:… Thus, from the outset, the insured is informed that**

the 'LIMITS OF OUR LIABILITY' and 'INSURANCE WITH OTHER COMPANIES' sections of the policy will reduce the endorsement's total limits by the amount paid under another insurance policy." *Warden* at 407. (emphasis added).

Thus, while Missouri case law addressing set-off provisions found in other policies may assist a court by providing general guidelines for interpretation, the specific language of Shelter's policy, including Shelter's Introductory Note, ultimately defines the contractual relationship between Shelter and Respondents and controls the application of the UIM coverage.[8] *Long*, 351, S.W.3d at 702. As held by the *Warden* court when analyzing the exact same UIM endorsement before this Court, there is no ambiguity in Shelter's set-off language and the policy should be enforced as written. 480 S.W.3d at 410.

[8] Although the set-off does not apply in this case because the underlying tortfeasor was not an "underinsured motorist", if the set-off provision was applied irrespective of the definition, the maximum limit of UIM coverage would be reduced by the $823,874.80 previously received by Respondents, thereby reducing the amount available from Shelter since Respondents have already received the full amount of protection contemplated under the UIM policy.

D. The Policy's Declarations Do Not Constitute a Grant of Coverage and Do Not Render The Policy's Set-off Provision Unenforceable.

Although Respondents' repeatedly impress upon the Court to review the policy as a whole, in reality, Respondents are asking the Court to end its analysis at the declarations page. Shelter's policy, by its set-off provision, does not take away coverage promised elsewhere in the policy, namely the policy's declarations, because the declarations cannot grant coverage. This Court has already held that to be true. *Floyd-Tunnell v. Shelter Mut. Ins. Co.*, 439 S.W.3d 215, 221 (Mo. banc 2014). "The declarations state the policy's essential terms in an abbreviated form, and when the policy is read as a whole, it is clear that a reader must look elsewhere to determine the scope of coverage." *Id*. More specifically, "[t]he 'declarations' are introductory only and subject to refinement and definition in the body of the policy."[9] *Id*. (internal quotation and citation omitted). Interestingly, Respondents previously appeared to agree with this proposition that definitions, exclusions, conditions and endorsements are necessary provisions in a policy but now appear to have abandon this position.[10]

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[9] Respondents attempt to mislead this Court regarding Shelter's position concerning the terms set forth on the declaration page by citing only a portion of Shelter's position. (*Resp. Brief, P. 11).*

[10] Respondents previously argued that "Missouri law clearly does not prohibit an insurance contract from setting forth the maximum amount the insurer will pay in one part, and then stipulating the circumstances under which the insurer may lower the maximum amount it

The fact that the set-off provision in the Shelter UIM endorsement limits the coverage set forth on the declarations does not render the policy ambiguous. To hold otherwise would create an ambiguity in every insurance policy that contains any limitation in the body of the policy because that limitation would reduce the stated coverage limits on the policy's declaration. And the only way to cure this ambiguity would be for every policy's declaration to contain the entire policy. This clearly is not the state of the law.

Moreover, no court has held that a policy's declarations page is required to contain all limitations on coverage stated elsewhere in the policy. The body of the policy contains the applicable limitations on all coverage including but not limited to liability, uninsured, and underinsured. This Court has never adopted the view that the policy declarations override the body of the policy or that the insured can rely on the declaration page in isolation without any further obligation to read the entire policy.

This Court's holding in *Floyd-Tunnel* is not new or novel. Courts have long recognized the limited role that declaration pages play in insurance policy. *Todd v. Missouri United Scools Ins. Council,* 223 S.W.3d 156, 160 (Mo. banc 2007) (holding "essential terms are usually stated in an abbreviated form on a declarations page); *Peters v. Farmers Ins. Co.,* 726 S.W.2d 749, 751 (Mo. banc 1987) ("The 'declarations' are

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will pay, **so long as all considered sections contain plain and unambiguous terms, and reading them together does not create ambiguity**. . . Missouri law recognizes that definitions, exclusions, conditions, and endorsements are necessary provision in insurance policies, and [the Swadleys] do not argue to the contrary." (*Opinion 7-19-19, P.8).*

introductory only and subject to refinement and definition in the body of the policy."); *Naeger v. Farmers Ins. Co.*, 436 S.W.3d 654, 660 (Mo.App.E.D 2014) (holding the declarations are not required to "notify an insured of the limitations or exclusions to UIM coverage absent a requirement by the policy itself"); *Warden v. Shelter Mut. Ins. Co.*, 480 S.W.3d 403, 407-08 (Mo.App. W.D. 2015) (holding it was permissible for language in the body of the policy to reduce the limits stated in the declarations); *Yagar v. Shelter General Ins. Co.*, 460 S.W.3d 68, 75 (Mo.App. W.D. 2015) (reiterating this Courts holding that policy declaration pages do not grant coverage and only state the essential terms in an abbreviated form requiring the policy to be read as a whole to determine the scope of coverage); *Midwestern Indem. Co. v. Brooks*, 779 F.3d 540, 546 (8th Cir. 2015) ("In Missouri, a policy [providing UIM coverage] is not ambiguous just because its broad statement of coverage [in the declarations] is later cabined by policy definitions or exclusions."); *Jaudes v. Progressive Preferred Ins. Co.*, 11 F.Supp.3d 943, 957 (E.D. Mo. 2014) ("There is nothing about the words used . . . that would lead an ordinary person of average understanding to believe that the declaration page . . . contains anything more than an 'abbreviated form' of the policy's 'essential terms.'" (internal citation omitted)).

The Southern District's dissenting opinion cannot be reconciled with these decisions. The Southern District's dissenting judge impermissibly designated the declarations page as the single most important part of the policy in conflict with this Court's decisions in *Floyd-Tunnel* and *Todd*. Respondents similarly argue that the declarations page should be given a fluid level of importance, thereby minimizing the role of the

declarations when convenient to Respondents and maximizing its importance when it is not. (*Resp. brief, P. 33).* This cannot and is not the state of the law.

This Court's holdings in *Todd, Floyd-Tunnell* and *Peters* exhibits that the trial court's judgment should be reversed. The interplay between the policy declarations and the set-off language in the UIM endorsement does not create an ambiguity in the policy. Consistent with this Court's holdings, Shelter's policy, when read as a whole, is clear and unambiguous.

E. Shelter's Alleged Advertising Should Not Be Considered by This Court.

Respondents attempt to divert this Court attention from the insurance policy at issue. First, there is absolutely no evidence in the record that Respondents reviewed or even saw the alleged advertising on Shelter's website, let alone relied upon it when entering into the contract for insurance. Respondents did not assert a claim for misrepresentation and a claim for misrepresentation is not presently before this Court, therefore any information related to such a claim is wholly irrelevant.

Second, the Court is to examine the insurance contract in determining whether the language within the contract is clear and unambiguous. "When determining whether an insurance policy or other contract contains ambiguous language, the court examines the four corners of the document." *Spellman v. Sentry Ins.*, 66 S.W.3d 74 (Mo.App. E.D. 2001) *citing McDonough v. Liberty Mut. Ins. Co., Inc.*, 921 S.W.2d 90, 93 (Mo.App. E.D. 1996). "The ambiguity must appear from the four corners of the contract – extrinsic evidence cannot be used to create an ambiguity." *Kelly v. State Farm Mut. Auto. Ins. Co.*, 218 S.W.3d 517 (Mo.App. W.D. 2007). Respondents are attempting to interject extrinsic evidence unrelated to the contract as issue. Therefore, Respondents attempt create a side-show unrelated to the current issues before this Court must fail.

CONCLUSION

The circuit court erred in finding that Respondents were entitled to underinsured motorist coverage and that the policy as a whole was ambiguous and misleading. Respondents are unable to satisfy the policy definition for "underinsured motor vehicle" and the policy's declarations page and set-off provisions are clear and unambiguous warranting no coverage under the underinsured motor vehicle endorsement. The Declarations page does not promise coverage because the Declarations are subject to definitions, modifications, and limitations which are repeated ad nauseam and emphasized within the policy.

Wherefore, Shelter requests this Court overrule the circuit court's partial summary judgment in favor of Respondents and hold that, as a matter of law, Respondents are not entitled to underinsured motorist benefits under the policy.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies pursuant to Missouri Supreme Court Rule 84.06(c) that:

1. This Brief of Appellant includes the information required by Missouri Supreme Court Rule 55.03;

2. This Brief of Appellant complies with the limitations contained in Missouri Supreme Court Rule 84.06(b).

3. This Brief of the Appellant, excluding the cover page, signature blocks, Affidavit of Service, this Certificate of Compliance, and the Appendix, contains 5,390 words, as determined by the word-count tool contained in the Microsoft Word software with which this Brief of Appellant was prepared.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was filed electronically this 2nd day of December, 2016 via CM/ECF in the Missouri Supreme Court, with notice of same being electronically served by the Court to the following:

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