IN THE SUPREME COURT OF MISSOURI

APPEAL NO. SC97511

LESLIE SEATON,

Plaintiff/Respondent,

v.

SHELTER MUTUAL INSURANCE COMPANY,

Defendant/Appellant.

ORIGINAL PROCEEDING FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
CAUSE NUMBER 15SL-CC03927

TRANSFER FROM THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT
CAUSE NO. ED105895

SUBSTITUTE BRIEF OF RESPONDENT LESLIE SEATON

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JURISDICTIONAL STATEMENT

Respondent adopts Appellant's Jurisdictional Statement.

STATEMENT OF FACTS

This appeal follows the entry of summary judgment in favor of Plaintiff, Leslie Seaton ("Seaton") as to the existence of Underinsured Motorist Coverage ("UIM Coverage") provided by Automobile Policies issued by Shelter Mutual Insurance Company ("Shelter"). (L.F. 554–555, 569–571; App A8–A12.) In accordance with this Court's applicable standard of review, Seaton provides the following statement of facts based on the summary judgment record before the trial court.

On July 28, 2010, Chelsea Seaton rode as a passenger in a 2003 Ford Ranger operated by Megan Deaton. (L.F. 566–568; App A66-68.) Plaintiff lost her daughter when Ms. Deaton lost control of the vehicle and caused Chelsea Seaton to sustain fatal injuries. (L.F. 566–568; App A66-68.) Plaintiff, the mother of Chelsea Seaton, asserted a wrongful death claim against Megan Deaton for the death of Chelsea Seaton. (L.F. 008–026.) Plaintiff settled the wrongful death claim against Megan Deaton for her policy limits of $102,000 ($100,000 limits and $2,000 medical pay). (L.F. 401–402, 413.) Following the settlement, Plaintiff sought UIM Coverage from Shelter Insurance under three automobile policies.

INSURANCE POLICIES

Shelter issued three automobile policies relevant to Seaton's claims for UIM Coverage.

Shelter issued an Auto Policy bearing Policy Number 24-1-5544691-1 to provide coverage for a 1999 Dodge Durango ("Durango Policy"). (L.F. 115–117; App A13–A14.) Under the heading 'Named Insured', the Declarations Page of the Durango Policy lists Respondent. (L.F. 116; App A13.) Under the heading 'Additional Listed Insured', the Durango Policy lists Nathan Seaton, Respondent, and Chelsea Seaton. (L.F. 116; App A13.)

Shelter issued an Auto Policy bearing Policy Number 24-1-5544691-2 to provide coverage for a 1990 Chevrolet Camaro ("Camaro Policy"). (L.F. 156–158; App A15–A16.) Under the heading 'Named Insured', the Declarations Page of the Camaro Policy lists Respondent and Nathan Seaton. (L.F. 157; App A15.) Under the heading "Additional Listed Insured", the Camaro Policy lists, Respondent, Nathan Seaton and Chelsea Seaton. (L.F. 157; App A15.)

Shelter issued an Auto Policy bearing Policy Number 24-1-5544691-3 to provide coverage for a 1997 Chevrolet Cavalier ("Cavalier Policy"). (L.F. 356–358; App A17–A18.) Under the heading 'Named Insured', the Declarations Page of the Cavalier Policy lists Chelsea Seaton and Respondent. (L.F. 357; App A17.) Under the heading 'Additional Listed Insured', the Cavalier Policy lists Chelsea Seaton, Plaintiff, and Nathan Seaton. (L.F. 357; App A17.) The Certificate of Title showed the owner of the 1997 Chevrolet Cavalier as "SEATON LESLIE & CHELSEA TOD SEATON ROBERT". (L.F. 355; App A55.)

The Durango Policy, Camaro Policy, and Cavalier Policy (collectively, the "Shelter Policies") all have the same effective date of June 8, 2010 and expiration date of September 15, 2010, and were all in full force and effect on the date of the motor vehicle accident involving Chelsea Seaton. (L.F. 115–117, 156–158, 356–358; App A13–A18.)

The Shelter Policies incorporated the same Policy Form Number—A-20.8-A—for the primary coverage agreement and the same UIM Endorsement—A-577.7-A—for its UIM Coverage agreement. (L.F. 116, 157, 357; App A13, A15, A17.) The Shelter Policies have the same UIM Coverage limit of $100,000 per person and $300,000 per accident. (L.F. 116, 157, 357; App A13, A15, A17.)

UIM ENDORSEMENT

The UIM Endorsement for each of the Shelter Policies provided the following agreement:

> INSURING AGREEMENT
>
> If:
>
> (a) an **insured** sustains **bodily injury** as a result of an **accident** involving the **use** of an **underinsured motor vehicle**; and
> (b) the **owner** or **operator** of that **underinsured motor vehicle** is legally obligated to pay some or all of the **insured's damages**,
>
> **we** will pay the **uncompensated damages**, subject to the limit of **our** liability stated in this coverage.
>
> No insurance is provided under this coverage until settlements or payments of judgments have exhausted the limits of all liability bonds and policies that apply to the **insured's damages**.

(L.F. 392; App A52.)

The UIM Endorsement provides the following relevant definitions:

> ADDITIONAL AND REPLACEMENT
> DEFINITIONS USED IN THIS ENDORSEMENT
>
> As used in this coverage,
>
> **(2)** **Insured** means:
>
> (a) **You**;
> (b) any **relative**; and
> (c) any **individual occupying** the **described auto** who is listed in the **Declarations** as an "additional listed insured", if:
> (i) that **individual** does not **own** a **motor vehicle**; and
> (ii) that **individual's spouse** does not **own** a **motor vehicle**.

(L.F. 392; App A52.)

The UIM Endorsement provides the following relevant provision regarding the payment of UIM Coverage by Shelter:

> PAYMENTS UNDER THIS COVERAGE
>
> **We** will pay any amount due under this coverage to:
>
> (1) the **insured**, or
>
> * * *
>
> (3) the **person** legally authorized to maintain and settle a **claim** for the **insured's** death, if **our**

payment is for **damages** resulting from the **insured's** death, or…

(L.F. 394; App A54.)

PRIMARY AUTO POLICY TERMS

The primary auto policy agreement of the Shelter Policies provides the following relevant definitions:

> DEFINITIONS
>
> In this policy, the words shown in bold type have the meanings stated below unless a different meaning is stated in a particular coverage or endorsement. Words in bold type that are derived from a defined word have the same root meaning. The plural version of a defined word has the same meaning as the singular if it is also bolded. If any of these same words are used but not printed in bold type, they have their common dictionary meaning.
>
> (1) **Accident** means an action or occurrence, or a series of actions or occurrences that:
>
> (a) started abruptly;
> (b) during the policy period; and
> (c) directly resulted in **bodily injury** or **property damage**.
>
> * * *
>
> (4) **Bodily injury** means:
>
> (a) a physical injury;
> (b) a sickness or disease of the body.
> (c) the physical pain and physical suffering that directly results from (a) or (b) above; and
> (d) a death that directly results from (a) or (b), above.
>
> **Bodily injury** does not mean:

(a) a mental injury;
(b) a sickness or disease of the mind;
(c) mental anguish
(d) emotional distress,

unless such mental or emotional condition is diagnosed by a medical doctor and directly results from **bodily injury** to the **individual** on whose behalf the **claim** is made.

* * *

(11) **Declarations** means the part of this policy titled "Auto Policy **Declarations** and Policy Schedule". It sets out many of the individual facts related to **your** policy including the dates, types, and amounts of the various coverages.

(12) **Described auto** means the vehicle described in the **Declarations**, but only if a **named insured owns** that vehicle. It includes:

(a) all parts and equipment **permanently attached** to that vehicle before its **original sale**;

(b) all wireless component parts of its **permanently attached** equipment if:

(i) both the **permanently attached** component and the wireless component were purchased, with the vehicle at its **original sale**; and

(ii) the **permanently attached** component is essential to the functioning of the wireless component;

(c) replacements for the parts and equipment listed in (a) and (b), above, installed to **repairs**, or refurbish, the vehicle, if the replacement items are equivalent in value; and

(d) a **temporary substitute auto**.

* * *

(20) **Insured** means the person defined as an **Insured** by the specific coverage or endorsement under which coverage is sought.

* * *

(25) **Named insured** means any **person** listed in the **Declarations** under the heading "**Named Insured**". It does not include **persons** listed under other headings unless they are also listed under the heading "**Named Insured**".

* * *

(31) **Own** means that the **person** referred to holds the legally recognized title to, or is a **leaseholder** of, an item of real or personal property, even if there are other **owners**. This definition is not changed by the patterns of usage of the property.

(32) **Owner** means any **person** who is a legally recognized titleholder or **leaseholder** of an item of real or personal property, even if there are other titleholders or **leaseholders**. An **owner's** status as such is not changed by the patterns of usage of the property.

* * *

(40) **Relative** means an **individual** related to **you** by blood, marriage, or adoption, who is primarily a **resident** of, and actually living in, **your** household. It includes **your** child who is away at school, if that child is both unmarried and unemancipated. **Relative** also includes any foster child in **your** legal custody for more than ninety consecutive days immediately before the **accident**. **Relative** does not mean

> any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**.
>
> * * *
>
> (54) **We**, **us**, and **our** means the Shelter company providing this insurance.
>
> (55) **You** means any **person** listed as a **named insured** in the **Declarations** and if that **person** is an individual, his or her **spouse**.

(L.F. 362–368; App A22–A28.)

UNDERLYING LITIGATION

Plaintiff Seaton sought UIM Coverage from all three of the Shelter Policies on behalf of Chelsea Seaton. (L.F. 008–026.) At the time of Chelsea's death, the Certificate of Title to the 1997 Chevrolet Cavalier listed "Seaton Leslie & Chelsea TOD Seaton Robert" under the heading of "Owner". (L.F. 355; App A55.)

In response to Seaton's request for UIM Coverage, Shelter provided UIM Coverage pursuant to the Cavalier Policy for the policy limits of $110,000 (including $100,000 for UIM limit and $10,000 for medical payment). (L.F. 414.) However, Shelter denied UIM Coverage pursuant to the Durango Policy and the Camaro Policy ("Durango/Camaro Policies") on the basis Chelsea Seaton was not an insured for the purposes of UIM Coverage. (L.F. 008–026;34-40.)

Seaton initiated litigation against Shelter and David Crawford, as agent for Shelter, seeking a declaratory judgment and damages. (L.F. 008–026.) Count I of Plaintiff's First Amended Petition sought a declaration of the existence of UIM Coverage on behalf of Chelsea Seaton pursuant to the Durango/Camaro Policies. (L.F. 008–012.)

Count II of Plaintiff's First Amended Petition asserted a claim of breach of contract against Shelter Insurance for failing to provide UIM Coverage under the Durango/Camaro Policies. (L.F. 012.) Count III of Plaintiff's First Amended Petition asserted a claim of negligent misrepresentation against Shelter and David Crawford, as agent for Shelter, for allegedly providing false information to Plaintiff during the procurement of insurance. (L.F. 013–015.) Count IV of Plaintiff's First Amended Petition asserted a claim for punitive damages against Shelter and David Crawford, as Shelter's agent. (L.F. 015.)

On March 15, 2016, Shelter filed a Motion for Summary Judgment (L.F. 044–048), Statement of Uncontroverted Material Facts (L.F. 049–052), and Memorandum in Support (L.F. 053–105) and requested judgment as a matter of law to the claims of Seaton due to the non-existence of UIM Coverage for Chelsea Seaton's injuries under the Durango/Camaro Policies. On April 13, 2016, Seaton filed a response to Shelter's Motion for Summary Judgment (L.F. 239–258) and Statement of Uncontroverted Material Facts (L.F. 106–238).

On April 13, 2016, Seaton filed a Motion for Summary Judgment as to Counts I and II of Plaintiff's First Amended Petition (L.F. 259–265), Statement of Uncontroverted Material Facts (L.F. 266–414), and Memorandum in Support (L.F. 415–427).

NOVEMBER 22, 2016 ORDER

On August 4, 2016, following argument from the Parties on their respective Motions, the trial court granted Seaton time to supplement the record. (L.F. 543-545.) On

August 10, 2016, Seaton supplemented the record with the Declarations for the Camaro Policy with an effective date of April 4, 2016 as well as the Declarations for a 2004 Pontiac GTO Policy with an effective date of June 23, 2016. (L.F. 546–549.) On August 12, 2016, Seaton again supplemented the record with the Declarations for the Durango Policy with an effective date of March 16, 2016. (L.F. 550–553.) None of the supplemental records provided by Seaton included Declarations with effective dates at the time of the underlying accident, but were submitted primarily to show that Shelter had added language to its Declarations page notifying the purchaser of reduction of the amount of UIM coverage by money the purchaser received or is entitled to receive from other sources. (L.F. 546–553.)

On November 22, 2016, the trial court entered an "Order and Summary Judgment on the Issue of Insurance Coverage". (L.F. 554–555; App A8–A9.) The November 22, 2016 Order granted Seaton's Motion for Summary Judgment as to Counts I and II and denied Shelter's Motion for Summary Judgment. (L.F. 554–555; App A8– A9.) The November 22, 2016 Order held Shelter was "required to provide UIM coverage up to the total amount of $200,000 for UIM coverage contained in Policy Nos. 24-1-5544691-1 [Durango Policy] and 24-1-5544691-2 [Camaro Policy]." (L.F. 555; App A9.)

The November 22, 2016 Order held the uncontroverted material facts demonstrated the Durango/Camaro Policies were ambiguous with respect to UIM Coverage. (L.F. 554; App A8.) The trial court determined the Declarations of the Durango/Camaro Policies set forth UIM Coverage "without stating any limitations or

qualifications and do not alert Plaintiff, as the purchaser of the policies, that there may be exceptions or definitions later in the policies which attempt to deny and/or reduce UIM Coverage." (L.F. 554; App A8.) The trial court reasoned the "policies promise coverage in the Declarations page and then take it away in later provisions of the policies, rendering them ambiguous and requiring them to be construed in favor of the insured." (L.F. 554; App A8.) The trial court cited *Nationwide Insurance Company of America v. Thomas*, 487 S.W.3d 9 (Mo. App. E.D. 2016) in holding the Shelter Policies were ambiguous. (L.F. 554–555; App A8–A9.) Based on its finding of an ambiguity, the trial court held UIM Coverage existed under the Durango/Camaro Policies. (L.F. 554– 555; App A8–A9.) The trial court also noted that Seaton supplemented the record with recent insurance policies issued by Shelter and found it "noteworthy" that the current Declarations Page contained an "express limitation" with respect to UIM Coverage. (L.F. 555; App A9.) The November 22, 2016 Order did not make a determination as to the issue of damages. (L.F. 555; App A9.)

JUNE 26, 2017 ORDER

On June 23, 2017, Shelter and Seaton entered into a stipulation as to damages for Counts I and II of Plaintiff's First Amended Petition. (L.F. 566–568; App A66-A68.) The Parties stipulated that the damages were in excess of the UIM Coverage limits contained in the Durango/Camaro Policies and the amounts paid from another policy. (L.F. 567; App A67.) As set forth in the stipulation, Shelter continued to contest the existence of UIM Coverage and reserved the right to appeal any final judgment regarding the

existence of UIM Coverage. (L.F. 566–567: App A66-A67.) Shelter submitted a proposed judgment declaring that there was no UIM Coverage as to the injuries sustained by Chelsea Seaton and that judgment should be entered in favor of Shelter. (L.F. 560–565.) Seaton also submitted a proposed judgment declaring there was UIM Coverage and that judgment should be entered in favor of Seaton for the sum of $200,000. (L.F. 557–559.)

On June 26, 2017, following the submission of the stipulation and competing proposed judgments, the trial court entered an "Order and Summary Judgment on the Issue of Insurance Coverage and Judgment on Damages". (L.F. 569–571; App A10–A12.) The reasoning and findings regarding UIM Coverage and an ambiguity in the Durango/Camaro Policies as set forth in the June 26, 2017 Order were identical to the findings of the November 22, 2016 Order. (L.F. 554–555, 569–571; App A8–A12.) However, due to the presence of the stipulation concerning damages, the June 26, 2017 Order held there was "no need for a trial to determine the amount of damages" and entered summary judgment in favor of Seaton and against Shelter Insurance in the sum of $200,000. (L.F. 570; App A11.)

NOTICE OF APPEAL

On August 23, 2017, Seaton filed a dismissal without prejudice as to Counts III and IV of her First Amended Petition. (L.F. 572–573.) On September 1, 2017, Shelter filed its Notice of Appeal to the Missouri Court of Appeals, Eastern District, of the November 22, 2016 and June 26, 2017 Orders. (L.F. 574–581.)

MISSOURI COURT OF APPEALS, EASTERN DISTRICT

On September 11, 2018 the Missouri Court of Appeals, Eastern District, filed its Opinion affirming the trial court's summary judgment. (App A1-A7)

The Opinion noted that the appellate court "will affirm the trial court's grant of summary judgment if it is correct as a matter of law on any ground" citing *Lonero v. Dillick*, 208 S.W.3d 323, 327 (Mo. App. E.D. 2006)(citing *JTL Consulting, LLC v. Shanahan*, 190 S.W.3d 389,395 (Mo. App. E.D. 2006). (Opinion, p. 2, App A2.) The Opinion also discussed the rules of construction of contracts, particularly insurance contracts. (Opinion, p. 3-4; App A3-A4) The Opinion also noted that if the policy language is unambiguous it will be enforced as written, but if ambiguous the policy will be construed against the insurance company because insurance is designed to provide protection to the insured, and therefore, where provisions designed to restrict or limit coverage already granted or which introduce ambiguous exceptions or exemptions, the provisions must be strictly construed against the insurance company, and the insurance company is in the better position to remove an ambiguity from the contract as the drafter of the policy language, citing *Golden Rule Ins. Co. v. R.S.*, 368 S.W.3d 327, 334 (Mo. App. W.D. 2012)(quoting *Pruitt v. Farmers Ins. Co.*, 950 S.W.2d 659, 664 (Mo. App. S.D. 1997). (Opinion, p. 3-4, App A3-A4.) The Opinion also noted that the rule is more rigorously applied to insurance contracts than in other contracts, citing *Fanning v. Progressive Northwestern Ins. Co.*, 412 S.W.3d 360, 364 (Mo. App. W.D. 2013)(quoting *Long v. Shelter Ins. Co.*, 351 S.W.3d 692, 696 (Mo. App. W.D. 2011)). (Opinion, p. 4,

App A4.) The Opinion further noted that "while exclusions or limitations may be used to narrow an initially broad grant of coverage, such exclusions will only be enforced if they are clear and unambiguous", citing *Maxam v. Amer. Fam. Mut. Ins. Co.*, 504 S.W.3d 124, 127 (Mo. App. W.D. 2016). (Opinion, p. 4; App A4) The Opinion went on to state that policy language will be considered ambiguous if there is "duplicity, indistinctness, or uncertainty" in the language, citing *Fanning*, *supra*, at 364. (Opinion, p. 4; App A4) Finally, the Opinion noted that when determining whether the policy provisions are ambiguous the Court considers "words or phrases in the manner in which they would normally be understood by the lay person purchasing the policy", again citing *Fanning*, and reiterated that the terms of an insurance policy are construed by applying the meaning of such terms as they would be defined by an ordinary person of average understanding, citing *Seek v. Geico General Ins. Co.*, 212 S.W.3d 129,132 (Mo. banc 2007). (Opinion, p.4; App A4)

The Opinion also noted that in this case Plaintiff contracted and paid for additional coverage for underinsured motorist coverage. (Opinion, p. 4; App A4) The Court of Appeals analyzed the language of the Durango/Camaro policies to determine if Chelsea Seaton met the definition of **insured**. (Opinion, p. 3–4; App A3–A4.) The Opinion referred to the part of the definition of **relative** that does not include the owner of a motor vehicle as an "exclusion" or an "exclusionary definition". (Opinion, p. 5–7; App A5-A7.)

In its analysis of the definition of **relative**, the Opinion reasoned:

> This exclusion is so clearly a departure from the conventional definition of the term relative no ordinary person would

> construe the word in this manner. A reasonable lay person purchasing the additional underinsured motorist coverage and reviewing the endorsement to the policy containing such coverage could not reasonably interpret the definition of relative to exclude an individual who owns a motor vehicle.

(Opinion, p. 5; App A5.) The Opinion held the definition of **relative** "so severely constrains a reasonable interpretation of the term to create an ambiguity as to the definition of relative between the policy and the separate underinsured motorist endorsement." (Opinion, p. 5; App A5.)

The Opinion distinguished from prior decisions enforcing similar definitions of "**relative**" on the basis those cases addressed Uninsured Motorist Coverage ("UM Coverage"), not UIM Coverage. (Opinion, p. 6; App A6)(discussing *Carter v. Shelter Mut. Ins. Co.*, 516 S.W.3d 370 (Mo. App. 2017) and *Taylor v. Owners Ins. Co.*, 499 S.W.3d 351 (Mo. App. 2016)). The Opinion deemed *Carter* and *Taylor* as not controlling precedent because UIM Coverage, unlike UM Coverage, is not required by statute. (Opinion, p. 6; App A6)(citing Mo. Rev. Stat. § 379.203). Due to the absence of a statutory requirement, the Opinion reasoned "uninsured motorist coverage is unquestionably distinct from underinsured motorist coverage at issue in the present case." (Opinion, p. 6; App A6.) "The additional coverage for underinsured motorist liability is determined by the contract entered into between the insured and the insurer in an endorsement separate from the policy." (Opinion, p. 6; App A6)(citing *Niswonger v. Farm Bureau Town & Country Ins. Co. of Missouri*, 992 S.W.2d 308, 314 (Mo. App. 1999)).

The Opinion further distinguished from *Taylor* on the basis that the policy in *Taylor* defined "relative" "within the actual uninsured motorist coverage provisions in the policy itself" whereas the Durango/Camaro Policies did not provide the definition of "**relative**" directly in the UIM Endorsements. (Opinion, p. 5–6; App A5–A6)(citing *Taylor*, 499 S.W.3d at 356). The Opinion described *Taylor* as acknowledging its holding would be different "if the limitation was not stated directly in the coverage subsection but was contained in the definitions section of the policy." (Opinion, p. 6–7; App A6–A7)(citing *Taylor*, 499 S.W.3d at 356). Based on its interpretation of *Taylor*, the Opinion determined Shelter needed to set forth the "exclusionary definition" of **relative** in the UIM Endorsements:

> It is patently unfair to expect an insured to search for an exclusionary definition far beyond a reasonable lay person's interpretation of the term relative in any policy. In this matter, if Shelter intended to so limit its underinsured motorist coverage, the exclusionary definition should have been clearly set forth in the separate endorsement itself.

(Opinion, p. 7; App A12.)

Based on its finding of an "illogical exclusionary definition" of the term "**relative**", the Opinion held there was an "ambiguity between the policy and the endorsement which is construed in Plaintiff's favor." (Opinion, p. 7; App A7.) The Opinion held Plaintiff was entitled to UIM Coverage under the Durango/Camaro policies and ruled the trial court did not err in granting summary judgment in favor of Plaintiff. (Opinion, p. 7; App A7.)

On December 18, 2018, this Court sustained Shelter's Application for Transfer.

POINTS RELIED ON

I. **THE TRIAL COURT DID NOT ERR IN GRANTING SEATON'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT PROPERLY INTERPRETED THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS IN THAT CLELSEA SEATON DOES MEET THE DEFINITIONS OF INSURED FOR UIM COVERAGE BECAUSE THE POLICIES ARE AMBIGUOUS WHEN DETERMINING WHETHER CHELSEA SEATON WAS AN INSURED FOR UIM COVERAGE.**

Burns v. Smith, 303 S.W.3d 505, 509-11 (Mo. banc 2010)

Lightner v. Farmers Insurance Co., 789 S.W.2d 487 (Mo. 1990)

Nationwide Ins. Co. of America v. Thomas, 487 S.W.3d 9 (Mo. App. E.D. 2016)

II. **THE TRIAL COURT DID NOT ERR IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT PROPERLY INTERPRETED THE LANGUAGE OF THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS AND CONCLUDED THAT THE POLICIES CONFERRED COVERAGE TO CHELSEA SEATON, AND THEREFORE GRANTED COVERAGE TO CHELSEA SEATON.**

Lawson v. Progressive Cas. Ins. Co., 527 S.W.3d 198, 203 (Mo. App. E.D. 2017)

Nationwide Ins. Co. of America v. Thomas, 487 S.W.3d 9 (Mo. App. E.D. 2016)

III. THE TRIAL COURT DID NOT ERR IN GRANTING SEATON'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE DEFINITION OF "RELATIVE" AND THE PLACEMENT OF THE DEFINITION OF "RELATIVE" MAKE THE POLICIES AMBIGUOUS WHEN ALL THE TERMS OF THE DURANGO/CAMARO POLICIES ARE READ TOGETHER THEREBY CONFERRING COVERAGE TO CHELSEA SEATON AS AN INSURED.

Lightner v. Farmers Insurance Co., 789 S.W.2d 487 (Mo. 1990)

Nationwide Ins. Co. of America v. Thomas, 487 S.W.3d 9 (Mo. App. E.D. 2016)

STANDARD OF REVIEW

Seaton provides the following Standard of Review separately from her Points Relied On as the applicable standard of review for the grant of summary judgment and denial of summary judgment and for the interpretation of insurance policy language is the same for each Point set forth herein and equally applicable to each Point.

Standard of Review for Summary Judgment

"Whether to grant summary judgment is an issue of law that this Court determines *de novo*." *Swadley v. Shelter Mut. Ins. Co.*, 513 S.W.3d 355, 357 (Mo. banc 2017)(citing *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007)). "The interpretation of an insurance policy is a question of law that this Court also reviews *de novo*." *Id.* "Summary judgment is frequently used in the context of insurance coverage questions, and the interpretation of an insurance policy is a question of law." *Niswonger v. Farm Bureau Town & Country Ins. Co.*, 992 S.W.2d 308, 312 (Mo. App. E.D. 1999) (citing *Lang v. Nationwide Mut. Fire Ins. Co.*, 970 S.W.2d 828, 830 (Mo. App. E.D. 1998)).

"[I]f there remains a genuine dispute of material fact or if the facts do not entitle the movant to judgment as a matter of law, then we must reverse the judgment below." *Lopez v. Am. Family Mut. Ins. Co.*, 96 S.W.3d 891, 892 (Mo. App. W.D. 2002)(citing *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

Review of the trial Court's grant of summary judgment is *de novo*, and this Court will affirm the trial Court's grant of summary judgment if it is correct as a matter of law

on any ground. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 387-388 (Mo. banc 1993).

Reviewability of the Denial of a Motion for Summary Judgment

"Generally, the denial of a motion for summary judgment is not a final judgment that may be reviewed on appeal." *Id.* (citing *First Nat'l Bank of Annapolis, N.A., v. Jefferson Ins. Co. of New York*, 891 S.W.2d 140, 141 (Mo. App. S.D. 1995)). "When the merits of that motion, however, are inextricably intertwined with the issues in an appealable summary judgment in favor of another party, then that denial may be reviewable. *Id.* See also *Am. Std. Ins. Co. of Wis. v. Stinson*, 404 S.W.3d 303, 307 n.2 (Mo. App. E.D. 2012)("[W]here the merits of the denial are inextricably intertwined with the issues of an appealable order granting summary judgment to opposing party, the denial of a motion for summary judgment may be reviewed on appeal.")(citing *Dhyne v. State Farm Fire & Cas. Co.*, 188 S.W.3d 454, 456 n.1 (Mo. banc 2006)).

Seaton disagrees with Shelter and respectfully submits that the undisputed material facts in the record before the trial court entitle Plaintiff to judgment as a matter of law and the trial court did not err in granting summary judgment in favor of Seaton as to the existence of UIM Coverage. Secondly, the undisputed material facts do not entitle Shelter to judgment as a matter of law and the trial court did not err in denying summary judgment in favor of Shelter as to the existence of UIM Coverage. Because Plaintiff's and Shelter's motions for summary judgment concern identical and inextricably

intertwined issues and merits, the denial of Shelter Insurance's motion for summary judgment is reviewable by this Court.

As both motions for summary judgment addressed identical issues and no issue of fact remained in dispute, the grant of summary judgment to Seaton necessarily leads to the denial of summary judgment to Shelter.

Interpretation of Insurance Policy Language

Under Missouri law, the words of an insurance policy are afforded "[t]he ordinary meaning of a term ... the meaning that the average layperson would reasonably understand." *Burns v. Smith,* 303 S.W.3d 505 (Mo. banc 2010); *Wilson v. American Family Mutual Ins. Co.*, 472 S.W.3d 579, 586 (Mo. App.W.D. 2015).*Seeck v. Geico Gen. Ins. Co.,* 212 S.W.3d 129, 132 (Mo. banc 2007). Accord, *Martin v. U.S. Fidelity & Guaranty Co.,* 996 S.W.2d 506, 508 (Mo. banc 1999). "The plain or ordinary meaning is the meaning that the average layperson would understand." *Shahan v. Shahan*, 988 S.W.2d 529, 535 (Mo. banc 1999).

In interpreting insurance contracts, "[a] court must give meaning to all terms and if possible, harmonize those terms in order to accomplish the intention of the parties." *Henges Mfg., LLC v. Amerisure Ins. Co.,* 5 S.W.3d 544, 545 (Mo. App. 1999). Unless an ambiguity exists, the court must enforce the policy as written, giving the language its ordinary meaning. *American States Ins. Co. v. Memphis,* 974 S.W.2d 647, 649 (Mo. App. 1998). An ambiguity exists when the language of an insurance policy is reasonably and fairly open to differing constructions. *Standard Artificial Limbs, Inc. v. Allianz Ins. Co.,*

895 S.W.2d 205, 209 (Mo. App. 1995). An insurance policy, being a contract designated to furnish protection, will if reasonably possible, be construed so as to accomplish that objective and not to defeat it. Hence, if the terms are susceptible of 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. *Burns v. Smith*, 303 S.W.3d 505, 511 (Mo. banc 2010); *Farm Bureau Town and Country Ins. Co. of Mo. v. Schmidt*, 751 S.W.2d 375, 376 (Mo. banc 1998), quoting *Varble v. Stanley*, 306 S.W.2d 662, 664-665 (Mo. App. 1957); *Martin v. U.S. Fidelity & Guaranty Co.*, 996 S.W.2d 506, 508 (Mo. banc 1999). See also *Seeck v. Geico Gen. Ins. Co.,* 212 S.W.3d 129, 132 (Mo. banc 2007). If an ambiguity exists, courts will interpret the policy in favor of coverage rather than against it. *Henges Mfg., LLC*, 5 S.W.3d at 545. Ambiguities are resolved in favor of the insured. *Burns v. Smith*, 303 S.W.3d 505, 509-10 (Mo. banc 2010). "Missouri . . . strictly construes exclusionary clauses against the drafter, who also bears the burden of showing the exclusion applies." *Id.* "Where an insurance policy promises the insured something at one point but then takes it away at another, there is an ambiguity." *Long v. Shelter Insurance Companies*, 351 S.W.3d 692 (Mo. App. 2011); *Chamness v. American Family Mutual Insurance Co.*, 226 S.W.3d 199 (Mo.App.2007). Finally, in underinsured motorist coverages cases, an unambiguous definitions section does not end the inquiry as to the existence of an ambiguity. *Nationwide Insurance Company of America v. Thomas,* 487 S.W.3d 9 (Mo. App. E.D. 2016); *Simmons v. Farmers Insurance Company, Inc.*, 479 S.W.3d 671 (Mo. App. E.D.

2015). Rather, a court must "review the whole policy to determine whether there is contradictory language that would cause confusion and ambiguity in the mind of the average policy holder." *Id.* Specifically, the reviewing court must carefully examine the declarations page, which is generally less clear about the coverage's characteristics. *Id.* If the declarations page does not adequately alert the ordinary insured of its limitations, this triggers an additional level of scrutiny when reading the rest of the policy for any language that may suggest the coverage is excess (payment of the full underinsured motorist coverage amount up to the insured's total injury costs), as opposed to gap (paying only the difference between the tortfeasor's liability limit and the underinsured motorist limit). *Nationwide,* 487 S.W.3d at 12.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN GRANTING SEATON'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT PROPERLY INTERPRETED THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS IN THAT CHELSEA SEATON DOES MEET THE DEFINITIONS OF INSURED FOR UIM COVERAGE BECAUSE THE POLICIES ARE AMBIGUOUS WHEN DETERMINING WHETHER CHELSEA SEATON WAS AN INSURED FOR UIM COVERAGE.

Chelsea Seaton was an insured under the Durango/Camaro policies because she is an insured as that term is used in the policies and therefore, Plaintiff is entitled to the benefits of the underinsured motorist coverage she purchased in these policies. The Durango/Camaro policies define insured in the body of the policies as:

> (20) **Insured** means the person defined as an **Insured** by the specific coverage or endorsement under which coverage is sought.
>
> * * *

The Durango/Camaro policies define insured in the UIM Endorsement in relevant part as:

> (1) **Insured** means:
>
> (a) **You**;
> (b) any **relative**; and …

(L.F. 364, 392; App A24, A52.)

The UIM Endorsement does not provide a definition of relative. The primary body of the policies provides the following definition of relative:

> **Relative** means an **individual** related to **you** by blood, marriage, or adoption, who is primarily a **resident** of, and actually living in, **your** household. It includes **your** child who is away at school, if that child is both unmarried and

> unemancipated. **Relative** also includes any foster child in **your** legal custody for more than ninety consecutive days immediately before the **accident**. **Relative** does not mean any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**.

(L.F. 366; App A26)

It is undisputed that Chelsea Seaton was Plaintiff's "blood" daughter who was primarily a resident of and actually living in Plaintiff's household. (L.F. 401-402, App A62; L.F. 399) Shelter's contention is that Chelsea is not considered a "relative" because she "owns" a motor vehicle at the time of her death. There is no definition of "own" in the UIM endorsement. Shelter's contention is unfounded and incorrect for several reasons.

First, Chelsea does not fall within the definition of "own" as that term is defined in the body of the policies at issue because she is not "the" **person** to hold "the" "legally recognized" title to the Chevy Cavalier as claimed by Shelter. (L.F. 365; App A25) Because the Durango/Camaro policies do not contain any language in their Declarations to warn the policyholder that there may be limitations on the underinsured motorist coverage of $100,000 per person and $300,000 per accident (L.F. 116, 157, 357; App A13, A15, A17), the language of the policies should be viewed with heightened scrutiny. As the Court in *Nationwide Insurance Company of America v. Thomas,* 487 S.W.3d 9 (Mo. App. E.D. 2016) noted, "[i]f the declarations page does not adequately alert the ordinary insured of its limitations, this triggers an additional level of scrutiny when reading the rest of the policy…". *Nationwide*, at 12, citing *Simmons v. Farmers Insurance Company, Inc.*, 479 S.W.3d 671 (Mo. App.E.D. 2015). There is no such alert

in the Declarations page of the Durango/Camaro policies, so the language of the policies should be examined with an additional level of scrutiny. Shelter could have alerted its policyholder, Respondent, of the possibility of limitations to the stated coverages for underinsured motorist coverage, as it did in later policies purchased by Plaintiff (L.F. 546-549, 552-553), but it did not do so. Shelter likely alerted its policy holders of the possibility of limitations to stated coverages in its Declarations in response to appellate decisions in Missouri courts and in recognition of the ambiguity created by its failure to do so.

Secondly, Chelsea Seaton did not "own" the Cavalier because any transfer of ownership to her was void under Missouri law because her full name was not on the title as required by Missouri law.

Viewing the language of the Durango/Camaro policies with an additional layer of scrutiny leads to the conclusion that Chelsea did not "own" the Cavalier as claimed by Shelter. In order to own the Cavalier, Chelsea Seaton must be the legally recognized owner of the Cavalier. The policies define "own" as:

> (31) **Own** means that the **person** referred to holds the legally recognized title to, or is a **leaseholder** of, an item of real or personal property, even if there are other **owners**. This definition is not changed by the patterns of usage of the property.

A heightened examination of this language reveals that in order to "own" the Cavalier Chelsea Seaton must be "the" person to hold "the" legally recognized title to, or is "a" leaseholder of an item of real or personal property, even if there are other owners. The

plain language of this definition provides that "even if there are other owners" applies to a leaseholder of an item because this phrase immediately follows the phrase "or is a leaseholder of…" The phrase "even if there are other owners" does not apply to "the person referred to holds the legally recognized title" because the phrase "even if there are other owners" is removed from the phrase "the person referred to holds the legally recognized title to…" and therefore does not modify the earlier phrase, but only modifies the later phrase, closer in the sentence to the final phrase "even if there are other owners."

The definition of "own" is also ambiguous if the meaning is found to be that the phrase "even if there are other owners" applies to the legally recognized title holder. If so, then in one part of the definition "the" is singular, limiting the title holder to a single person which is then taken away by the phrase "even if there are other owners".

The definition of "own" expressly provides ownership to the person who holds the legally recognized title to…an item of personal property. (L.F. 365; App A25). Plaintiff agrees that a motor vehicle such as the 1997 Chevy Cavalier is personal property. However, Chelsea Seaton was not the person who holds the legally recognized title to the Cavalier at the time of her death. The title to the Cavalier clearly shows that Leslie Seaton was the first listed owner of the Cavalier and that Chelsea Seaton, as TOD, was only a, or a future, owner of the Cavalier upon the death of Leslie Seaton. That is the meaning of "TOD" on the title. (L.F. 355; App A55). Missouri recognizes "TOD" as meaning "transfer on death". *Estate of Dawes v. Dawes*, 891 S.W.2d 510, 513 & 526, fn. 2 (Mo. App. 1994); *Antrim v. Wolken*, 228 S.W.3d 50, 51 (Mo. App. 2007); *Ivie v. Smith*, 439 S.W.3d 189 (Mo. banc 2014).

It should also be noted that Shelter provides a definition of "owner" in the primary policy as:

> (32) **Owner** means any **person** who is a legally recognized titleholder or **leaseholder** of an item of real or personal property, even if there are other titleholders or **leaseholders**. An **owner's** status as such is not changed by the patterns of usage of the property.

(L.F. 365; App A25)

This definition of "owner" includes any person who is a legally recognized titleholder or leaseholder on an item of real or personal property. This definition is different than that of "own" which means the person who holds the recognized title to, or is a leaseholder of, an item of real or personal property…. Thus, an ordinary person purchasing these Shelter policies would see that as Chelsea was not "the" person holding the title to the cavalier, she did not own that motor vehicle. Shelter could have included "any" person who is a titleholder of personal property in the definition of "own" but chose not to do so even though Shelter did include "any" person who is "a" titleholder of personal property in its definition of "owner". These definitions create indistinctness or uncertainty in these policies as there are two different definitions of own and owner when a lay purchaser of these policies would believe the definitions should be the same. These definitions may also show that Shelter carved out an exception to the term "own" from that used in the definition of "owner" and therefore intentionally required a single person "own" a motor vehicle in order to qualify as a person to "own" a motor vehicle.

In addition, subpart (40) of the definitions section of the primary policies defining "relative" is ambiguous, as an average layperson would believe that Chelsea is an insured under this definition since she is an individual related to the named insured, Leslie Seaton, as her blood daughter. (L.F. 366; App A26) The average layperson would then be confused by the latter portion of this definition which takes away the insured's daughter as a relative because she owns a motor vehicle, especially where, as here, the daughter's interest in the motor vehicle is only as an owner, not the owner. Leslie Seaton is listed as the named insured while Chelsea is an additional listed insured on the policies. Missouri law is clear that an ambiguity exists in an insurance policy where the insurer on one hand provides coverage, only to take it away in another part of the policy. *Long v. Shelter Insurance Companies*, 351 S.W.3d 692 (Mo. App. 2011); *Chamness v. American Family Mutual Insurance Co.*, 226 S.W.3d 199 (Mo.App. E.D. 2007). Here, a lay purchaser of these policies would believe that Chelsea is an insured under the policies because she is listed as an additional listed insured, is not the person who holds the legally recognized title to the Cavalier and is the daughter of Plaintiff living with her.

Shelter relies upon several cases in support of its position. These cases are distinguishable from the circumstances here. In *Carter v. Shelter Mut. Ins. Co.*, 516 S.W.3d 370 (Mo. App. E.D. 2017) and *Taylor v. Owners Ins. Co.*, 499 S.W.3d 351 (Mo. App W.D. 2016) the Court of Appeals was deciding coverage pursuant to the uninsured motorist provisions of insurance policies. *Carter*, at 373-375. Although still interpreting the language in insurance policies, uninsured motorist coverage is mandated in Missouri and appears in the body of the Durango/Camaro policies as opposed to a separate

Endorsement. (L.F. 381-384; App A41-A44.) The definitions relied upon by the insurers in the *Carter* and *Taylor* cases are also located in the body of the policies where the UM coverage is provided, unlike here where the UIM Endorsement is located in a separate addition to the policies.

There are other distinguishing factual circumstances between the *Carter* and *Taylor* cases and this case. In *Taylor*, the Court addressed the coverage issue for the son of the purchaser of the policy who was married and owned three vehicles with his wife and happened to be living with his mother at the time of the accident which caused him injury. The policy in *Taylor* provided an "UNINSURED MOTORIST COVERAGE" endorsement in Mother's Policy which includes a "COVERAGE" subsection that extends UM coverage "to a relative who does not own an automobile." The facts in this case are readily distinguished as Chelsea did not own a motor vehicle as "own" is defined in the policy and it appears there was no dispute that Taylor owned three automobiles, in addition to the fact that the *Taylor* case involved UM coverage rather than UIM coverage.

In *Carter* the Court of Appeals held that the son of the purchaser of the policies was entitled to UM coverage even though he owned another motor vehicle because he was listed as an additional listed insured. Judge Richter wrote the opinion in *Carter* which found coverage for both policies being analyzed but reduced the amount of coverage in one of the policies based on the policy language, which is a different issue than here. In *Carter* the parties also stipulated that the son of the purchaser of the policy did not qualify as an additional listed insured or relative when determining the amount of coverage to which he was entitled. *Carter*, at 373. Here the issue of whether Plaintiff's

daughter was an additional listed insured or a relative is contested, and the issue here is not the amount of coverage (in Category A or Category B of the policies), but rather whether Chelsea is an insured under the Durango/Camaro policies.

Appellant also relies upon *McKee v. Am. Family Mut. Ins. Co.*, 932 S.W.2d 801 (Mo. App. 1996) and *Owners Ins. Co. v. Craig*, 514 S.W.3d 614 (Mo. banc 2017) in support of its position. These cases are also distinguishable from this case. In *McKee*, the son of the purchaser of the policy undisputedly bought a van which was eventually titled in his name. *Id.* at 802. The decision in *McKee* was based upon whether the vehicle was actually a vehicle which McKee intended to use rather than a junker which just sat in his mother's yard. *Id.* at 802-804. In addition, there was apparently no definition of "own" in the *McKee* policy, such as we have in this case, as none is referenced. *Id.*, generally.

In *Owners Ins. Co. v. Craig*, this Court dealt with the issue of the enforceability of set-off provisions in UIM coverage, which is different than the issue in this case. In *Craig*, the limitation of policy limits appears in the UIM endorsement itself, in contrast to the location of the definition of relative in this case. In *Craig*, the issue involved the amount an insurer will pay for UIM benefits after deduction of amounts recovered, not the existence of UIM coverage as in this case.

In the UIM Endorsement Shelter provides ADDITIONAL AND REPLACEMENT DEFINITIONS USED IN THIS ENDORSEMENT, including a definition of insured, which is different than that in the body of the policies. (L.F. 392; App A52)

The definition of Insured in the body of the policies is:

> **Insured** means the person defined as an **Insured** by the specific coverage or endorsement under which coverage is sought.

(L.F. 392; App A52).

This definition informs Respondent, as purchaser of these policies, that she should look to the UIM endorsement for the definition of Insured. A reasonable person may also conclude that she should also look to the UIM endorsement for other definitions, such as "relative" or "own". This understanding of the policy is reinforced by the heading of the definitions in the UIM endorsement, which is "additional and replacement definitions".

In addition, the definition of "relative" in the body of the policies is, as stated in the Court of Appeals Opinion, "far beyond a reasonable lay person's interpretation of the term relative". As stated by the Court of Appeals in *Niswonger v. Farm Bureau Town and Country Ins. Co. of Missouri,* 992 S.W.2d 308, 317 (Mo. App. E.D. 1999), "Insurers who seek to impose upon words of common speech an esoteric significance intelligible only to their craft, must bear the burden of any resulting confusion." We need also bear in mind that "the test is not what the insurer intended the words to mean, but rather what a reasonable layperson in the position of the insured would have thought they meant." *Id.* at 316. The definition of insured in the UIM endorsement provides a broad definition of insured in the body of the policy by providing coverage for "any relative" as opposed to simply "relative" which would also lead Plaintiff, a lay person purchasing UIM coverage, to believe that her teenage daughter living with her is covered by the UIM coverage provided in the Durango/Camaro policies.

Under the circumstances present here, Chelsea Seaton was an insured by virtue of being the natural daughter of the named insured, Leslie Seaton and as an additional listed insured. Therefore, Chelsea Seaton is entitled to underinsured motor vehicle liability coverage provided by the Durango/Camaro policies as an insured under subcategory (b) of the definition of "insured".

Alternatively, Plaintiff submits that subcategory (b) of the definition of Insured in the UIM Endorsement (L.F. 392; App A52) also includes Chelsea Seaton as an insured because Chelsea is a relative of the named insured, Leslie Seaton, as the term "relative" is defined by the policies. Under the definition of "relative" provided in the policies, Chelsea is a relative because she is the natural daughter of her mother, Leslie, and did not own a motor vehicle at the time of her death. Defendant relies upon the last sentence of the definition of "relative" in the policies, which reads "**Relative** does not mean any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**." (L.F. 366; App A26) However, the definition of "own" provided in the policies is "**Own** means that the **person** referred to holds the legally recognized title to, or is a **leaseholder** of, an item of real or personal property, even if there are other **owners**. This definition is not changed by the patterns of usage of the property." (emphasis added). (L.F. 365; App A25) Chelsea does not fit the definition of "own" in the policies because she is not the person to hold the legally recognized title to the Chevy Tudor, but rather her mother, Leslie, and Chelsea were both listed as owners of the Chevy, or Chelsea was listed as a future owner pursuant to the TOD designation. The definition of "own" in the policies requires Chelsea to be the (singular) person who holds the legally recognized

title to …an item of personal property. This sentence of the definition of "own" only applies to *the* person who holds the legally recognized title to …an item of personal property by himself or herself. Had Shelter wanted to include a person who holds the legally recognized title to a motor vehicle with others, then Shelter would have defined "own" to mean that the person referred to is a legally recognized titleholder…, as it did in the next phrase where Shelter states "…or is a leaseholder of, an item of …personal property". In its definition of "relative" Shelter intentionally excludes only the person who holds legal title to a motor vehicle by herself, and does not exclude a person, such as Chelsea Seaton, who holds part of the title to a motor vehicle with another person, the named insured in this case, Leslie Seaton, or is TOD after Leslie. Shelter chose to exclude "a" leaseholder of a motor vehicle, and likewise chose not to exclude "a" titleholder of a motor vehicle from the definition of "relative", but rather "the" titleholder of a motor vehicle.

An ordinary purchaser of these insurance policies would either make such a conclusion or be uncertain and confused by such language in the policies at issue. In either event, coverage should be provided to Plaintiff because of the ambiguities in these policies.

Appellant has cited many cases interpreting insurance policies in support of its position concerning the rules of construction of insurance policies, in addition to the *Carter*, *Taylor*, *McKee* and *Craig* cases discussed above. However, there is one case which is squarely on point with the facts in this case. In *Lightner v. Farmers Insurance*

Co., 789 S.W.2d 487 (Mo. 1990) the insurer sold three policies to Tim Lightner's father who had purchased a pickup truck for his son and included his son's name on the title. The other policies were for coverage on two other vehicles of Tim's parents. As here, Farmers paid on one of the policies and refused to provide coverage on the other two policies. This Court found that Tim was not the owner of the pickup truck because his father had bought the insurance policies with underinsured motorist coverage and because under the circumstances Tim could not have sold the truck. The Court stated "[A]n additional consideration supporting the trial court's judgment is that in adhesion contracts such as this insurance policy, its terms should be construed to give effect to the objective and reasonable expectations of the insured or the beneficiary. The evidence justifies the conclusion that when Jim Lightner paid the premiums on the policies for the three vehicles he could reasonably expect his children living at home to be protected by those policies, and that the language "owns an automobile" which narrows the scope of the term "relatives" would not mean that an automobile owned by him, even though jointly titled with his child, would bar such coverage." *Id.* at 490, citations omitted. Here, as in *Lightner*, Plaintiff purchased the Durango/Camaro policies and paid an additional premium for underinsured motorist coverage (L.F. 474-475; App A64-A65) and would also reasonably expect her sixteen-year-old daughter living at home to be protected by these policies. The *Lightner* Court also found significant the circumstances involved in a parent providing an automobile for a child, as follows:

> Defendant makes much of the fact the father added his son's name to the certificate of title, but, as stated in *Case v. Universal Underwriters*

> *Insurance Company,* 534 S.W.2d 635 (Mo.App.1976), "the Missouri courts have held that a certificate of title is only prima facie evidence of ownership which may be rebutted." *Id.* at 639. In *United States Fidelity and Guarantee Company v. Safeco Insurance Company of America,* 522 S.W.2d 809 (Mo. banc 1975), this Court observed that " 'owner' ... is a word of rather broad meaning," and in construing the term courts must take the meaning most favorable to the insured. *Id.* at 817–818. The presence of Tim's name on the title is not the single controlling factor as Farmers insists. Our Court has long held that policyholders are entitled to a favorable interpretation of the term "relative" in such contracts, and that coverage be provided where reasonably possible. *See Cobb v. State Security Insurance Co.,* 576 S.W.2d 726, 737 (Mo. banc 1979). In *U.S.F.G. v. Safeco, supra,* the issue was whether the daughter's friend was a permissive user under provisions of an automobile policy and the court, considering the term "owner," noted that the term was general in nature, and capable of various meanings depending on the situation involved. *Id.* at 817–818. The cases differ depending on the context in which the term is employed; e.g., Chapter 301, Registration and Licensing of Motor Vehicles, or in construing a variety of insurance provisions running the gamut from liability protection to uninsured motorist coverage. In the latter setting, the term is used to restrict coverage, and accordingly it must take the meaning most favorable to the insured. Though Tim was permitted to drive the car and have its general use with little or no controls, nothing in the evidence indicates this was done other than with the permission of his father, and it cannot seriously be suggested he was free to voluntarily destroy, encumber, sell, or otherwise dispose of the truck. Indeed, the truck was not to be his until he bought it or until "something happened" (i.e. death) to the father. From this, it may reasonably be inferred the father could, at his pleasure, withdraw the permission to drive the truck, which does little to bespeak ownership in Tim.

Id. at 490.

Here, Chelsea was not free to voluntarily destroy, encumber, sell, or otherwise dispose of the Cavalier. This is especially true because her mother's name is also on the title of the car and she would have to agree for Chelsea to do any of these acts of ownership. As also noted by the *Lightner* Court, in the circumstances where a father provided an automobile and insurance for his son, with both names on the title, his son

had no automobile of "his own". *Id.* at 490.

The *Lightner* Court also stated:

> An additional consideration supporting the trial court's judgment is that in adhesion contracts such as this insurance policy, its terms should be construed to give effect to the objective and reasonable expectations of the insured or the beneficiary, *Spychalski v. MFA Life Insurance Company,* 620 S.W.2d 388, 396 (Mo.App.1981), and its language is to be viewed in the light that would ordinarily be understood by laymen who purchased the policy. *McRaven v. F–Stop Photo Labs, Inc.,* 660 S.W.2d 459, 462 (Mo.App.1983). The evidence justifies the conclusion that when Jim Lightner paid the premiums on the policies for the three vehicles he could reasonably expect his children living at home to be protected by those policies, and that the language "owns an automobile" which narrows the scope of the term "relatives" would not mean that an automobile owned by him, even though jointly titled with his child, would bar such coverage.

Id. at 490.

As in *Lightner*, when Plaintiff paid the premiums on the Durango/Camaro policies for UIM coverage she could reasonably expect her daughter living at home to be protected by those policies and that the language "owns a motor vehicle" which narrows the scope of the term "any relative" would not mean that an automobile owned by her, even though jointly titled with her child, would bar such coverage.

It may seem that the interpretation of these policies should not turn upon the difference between "the" and "a" titleholder. However, Missouri law has recognized that the specific words used by an insurer in its insurance policies are very important when interpreting the meaning of the language of those policies. See *Burns v. Smith*, 303 S.W.3d 505, 509-11 (Mo. banc 2010), recently cited in *Stiers v. Director of Revenue*, 477 S.W.3d 611, 615 (Mo. banc 2016). In *Stiers*, the Supreme Court quoted from *Burns* at 615 that "The first meaning of 'and' ... is not 'or' but 'along with or together with' or

words of comparable meaning." The *Stiers* Court then held that nothing in the language itself in that case required that the word "and" should mean anything other than its ordinary plain meaning as a conjunctive. *Id.* At 615. Here, Shelter has chosen to provide language in the definition of "own" that limits "own" a motor vehicle to a single person, which is not applicable in this circumstance where two people, Chelsea Seaton and Plaintiff, are shown to own the Cavalier.

Certificate of Title

In the alternative, this Court may consider the effect of Shelter's reliance on the Certificate of Title to the Chevy Cavalier to prove that Chelsea Seaton was the owner of a motor vehicle. Plaintiff submits that this argument also fails because transfer of ownership to Chelsea is void under Missouri law. The title shows the owner as "SEATON LESLIE & CHELSEA TOD SEATON ROBERT". (L.F. 355; App A55) Section 301.190.14 R.S.Mo. 2015, provides that the Director of Revenue and the superintendent of the Missouri State Highway Patrol shall make and enforce rules for the administration of the inspections required by this section. Pursuant to this authority 12 CSR 10-23.130 was promulgated to require a Legal Name on Title Application. 12 CSR 10-23.130 provides: in pertinent part:

> (1) Any person(s) making application for a certificate of title for a motor vehicle or trailer must make the application using his/her or their full legal name. For the purpose of section 301.190, RSMo, the legal name is deemed to be the name that appears on that person's Missouri operator's or chauffeur's license.

In *Bolt v. Giordano*, 310 S.W.3d 237 (Mo. App. E.D. 2010) the Court found that a violation of Section 301.210 RSMo resulted in a void and fraudulent sale. *Id.*, at 245-246.

In *Bolt*, the Court was interpreting Section 301.210, which is one of several statutes dealing with Registration and Licensing of Motor Vehicles. Section 301.190 is another of the statutes dealing with Registration and Licensing of Motor Vehicles. 12 CSR 10-23.130 is one of the regulations promulgated pursuant to Section 301.190.14 and deals with registration of motor vehicles, requiring that the full legal name of a person applying for a certificate of title be used. The *Bolt* court found that noncompliance with Section 301.210 RSMo, a sister statute to Section 301.190, rendered assignment of the certificate of title void. The *Bolt* court noted:

> "Missouri is a strict title state, which means assignment of the certificate of title in the manner provided by statute is the exclusive and only method of transferring title to a motor vehicle." *Jackson,* 147 S.W.3d at 172. The statutory requirements of Section 301.210 are absolute, mandatory, and must be enforced rigidly. *Shivers,* 219 S.W.3d at 303–04; *Okello v. Beebe,* 930 S.W.2d 40, 43 (Mo.App. W.D.1996). Our Supreme Court has explained the importance of strict compliance with Section 301.210 because this section is:
>
> > a special statute, a police regulation "of the highest type" with which "absolute technical compliance" is required, the provisions of which are "rigidly enforced" and as to which there are "no exceptions to conform to intentions." The statute is "drastic, mandatory, and intended as a police regulation in the interest of the public welfare to prevent traffic in stolen automobiles," "to aid in the apprehension of criminals, and to protect the innocent and guileless from the machinations and wiles of the wicked."
>
> *Id.* at 304 (*quoting State v. Glenn,* 423 S.W.2d 770, 774 (Mo.1968)) (internal citations omitted). Bolt bears the burden of proving Dealer failed to deliver the title in order to invalidate the transaction. *Rice v. Farmers & Merchs. Ins. Co.,* 800 S.W.2d 96, 97–98 (Mo.App. S.D.1990).

Bolt, 310 S.W.3d at 244. The *Bolt* court also held:

> A party's failure to comply with Section 301.210.4 results in a void and fraudulent sale, where ownership does not pass. *Shivers,* 219 S.W.3d at 304. Moreover, a putative purchaser does not even acquire a right to

> possess the motor vehicle unless he or she receives a properly-endorsed certificate of title, even if accompanied by full payment or physical delivery of possession. *Citizens Nat'l. Bank v. Maries County Bank,* 244 S.W.3d 266, 273 (Mo.App. S.D.2008). Bolt did not acquire title to the vehicle and had no right of ownership or right to possess the vehicle.

Here, as in *Bolt*, title did not pass to Chelsea Seaton because she did not comply with 12 CSR 10-23.130 which was authorized by Section 301.190. Section 301.190 is a sister statute to Section 301.210 and part of the Missouri statutes dealing with Registering and Licensing of Motor Vehicles. Thus, this Missouri regulation is entitled to the same strict compliance as Section 301.210. It is apparent looking at the Certificate of Title to the 1997 Chevy Cavalier that Chelsea Seaton's full name was not on the title, and presumably the application from which the title was issued, as required by 12 CSR 10-23.130. Thus, Chelsea Seaton did not own the Cavalier as claimed by Shelter, and was therefore within the definition of a relative of Leslie Seaton as that term is defined in the Durango/Camaro policies.

Because Chelsea Seaton was a relative of Leslie Seaton, she was an insured and entitled to coverage in both the Durango/Camaro policies.

II. THE TRIAL COURT DID NOT ERR IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT PROPERLY INTERPRETED THE LANGUAGE OF THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS AND CONCLUDED THAT THE POLICIES CONFERRED COVERAGE TO CHELSEA SEATON, AND THEREFORE GRANTED COVERAGE TO CHELSEA SEATON.

In this Point Shelter argues that the trial court found an ambiguity in the Durango/Camaro policies based upon the Declarations alone in these policies. This argument fails as the trial court did not find an ambiguity in the Declarations, but rather found an ambiguity in the policy because the Declarations promise UIM coverage of $100,000 per person without limitation and the language later in the policies took away that coverage. (L.F. 569-571). Thus, Shelter's argument that the trial court looked only at the Declarations is based upon an incorrect reading of the trial court's Order granting Seaton summary judgment and denying Shelter summary judgment.

Shelter also argues that the trial court based its decision on an ambiguity between the amount of coverage and when UIM coverage exists. This argument is Shelter's effort to bring this case within recent holdings of the Missouri Court of Appeals and this Court. Indeed, Shelter cites several recent cases in support of its position. However, the trial court did not confuse the amount of coverage with the existence of coverage. Rather, the trial court found that there is an ambiguity in the policies when viewing the Declarations promising coverage and the later language in the policy which appears to take away that coverage. The fact that the amount of the UIM coverage purchased by Seaton is $100,000

has no bearing on the court's finding other than being the amount of UIM coverage provided by the each of the policies.

Shelter cites *Swadley v. Shelter Mut. Ins. Co.*, 513 S.W.3d 355 (Mo. banc 2017); *Floyd-Tunnel v. Shelter Mut. Ins. Co.*, 439 S.W.3d 215 (Mo. banc 2014), *Geico Cas. Co. v. Clampitt*, 521 S.W.3d 290 (Mo. App. E.D. 2017) and *Owners Ins. Co. v. Craig*, 514 S.W.3d 614 (Mo. banc 2017) in support of its contention. These cases are distinguishable from this case in several respects.

The issue in *Swadley* concerned the definition of an underinsured motor vehicle involving a tractor-trailer having struck a vehicle driven by Angela *Swadley*. The truck company had liability insurance of $1,000,000. The court held that the policy required that the limits of the underinsured's policy be less than the amount of the limits in the policy at issue in the *Swadley* case, and that therefore there was no coverage to the insured because the limits of the truck company were not less than the UIM limits in the *Swadley* policy. *Swadley*, at 356. The *Swadley* court also noted that any question of an ambiguity of the amount of coverage was irrelevant because the case was decided upon the issue of whether coverage was provided by the policy, not the amount. This is not the issue in this case, which is whether the Durango/Camaro policies provide UIM coverage to Chelsea.

The *Clampitt* case involves the issue of stacking UIM policies. The court specifically noted that cases involving issues other than stacking are distinguishable for that reason. *Clampitt*, at 295. Conversely, stacking cases, such as *Clampitt* cited by Shelter, are likewise distinguishable from this case, which does not involve stacking. As

the court noted in *Clampitt*, "[o]ur courts have warned of the risk of focusing too much on case law over policy language and have cautioned that other decisions "are not dispositive in the absence of identical language", citing *Kennedy v. Safeco Ins. Co. of Illinois*, 413 S.W.3d 14, 17 (Mo. App. S.D. 2013). Thus, it is more important to examine the language of the Durango/Camaro policies than other cases with different language.

The *Craig* case is a set-off case involving the amount of UIM coverage available given the amount of liability coverage available from the tortfeasor, and is thus distinguishable from this case.

Shelter relies on *Floyd-Tunnel v. Shelter Mut. Ins. Co.*, 439 S.W.3d 215 (Mo. banc 2014) in support of its contention that there is no ambiguity in the policies Seaton purchased at issue here. In *Floyd-Tunnel*, the court found that the policy at issue was not ambiguous, noting that the insuring agreement, which provides the UM coverage is "subject to all conditions, exclusions, and limitations of our liability, stated in this policy." *Floyd-Tunnel*, at 221. However, in this case the insuring agreement is provided in the Missouri Underinsured Motorist Endorsement and has no such language. The insuring agreement provides in its entirety:

> INSURING AGREEMENT
>
> If:
>
> (a) an **insured** sustains **bodily injury** as a result of an **accident** involving the **use** of an **underinsured motor vehicle**; and
> (b) the **owner** or **operator** of that **underinsured motor vehicle** is legally obligated to pay some or all of the **insured's damages**,

> **we** will pay the **uncompensated damages**, subject to the limit of **our** liability stated in this coverage.
>
> No insurance is provided under this coverage until settlements or payments of judgments have exhausted the limits of all liability bonds and policies that apply to the **insured's damages**.

(L.F. 392; App A52.) Thus, there is no notice or warning to an insured reviewing the Durango/Camaro policies that the coverage promised in this insuring agreement could be taken away somewhere else in the policies, by a definition or otherwise. Likewise, there is no notice or warning in the Declarations that the coverage provided could be taken away later in the policy, by definition or otherwise. This results in an ambiguity in the policy.

In addition, *Floyd-Tunnel* is also distinguishable from this case as it involves uninsured motorist coverage, not underinsured motorist coverage, and therefore involves interpretation of Section 379.203 (at p. 220), the purpose for UM coverage (p. 220), public policy behind UM coverage (p. 220) and a severability clause in the policy (p. 221), none of which are involved in this case. The underlying facts in *Floyd-Tunnel* were recited by this Court as follows:

> Doris Floyd's husband, Jerry, was killed in an automobile accident with an uninsured motorist. At the time of the accident, Jerry and Doris were the named insureds on three automobile liability insurance policies issued by Shelter Mutual Insurance Company for three vehicles they owned. One policy covered the car Jerry was driving when the accident occurred, and the other two policies covered other cars owned by the Floyds. Each policy's declarations page provided that UM coverage was limited to $100,000 per person, but the policies also included an "owned-vehicle" partial exclusion that further limited coverage if the insured was injured while occupying a vehicle owned by the insured but not covered by the

> policy. The partial exclusion limited coverage to $25,000, the minimum amount required by Missouri's UM statute, section 379.203.
>
> Doris sued Shelter seeking $100,000 of UM coverage under each policy for a total of $300,000. Shelter paid $150,000: $100,000 under the policy on the vehicle Jerry was driving when the accident occurred, and $25,000 under each of the other two policies. The parties agreed that Shelter had paid the full amount of UM coverage available under the first policy, but Doris argued that Shelter owed $75,000 under each of the other two policies.

Floyd-Tunnel, at 216-217.

The issue in *Floyd-Tunnel* involved the limitation placed on the insurer's promise to pay which the insured was told about in the UM insuring agreement. No such information was provided to Plaintiff in the Shelter policies at issue. In addition, there is no issue in this case concerning Plaintiff's ability to receive money for the death of Chelsea, as opposed to her own loss, as there was in *Floyd-Tunnel*.

Shelter also attempts to distinguish *Nationwide Ins. Co. of America v. Thomas*, 487 S.W.3d 9 (Mo. App. E.D. 2016) from the facts and issues in this case. The *Nationwide* court found that an insurance policy showing UIM coverage in the Declarations without any further notice or warning about elimination or reduction of coverage in other parts of the policy triggers an additional layer of scrutiny when analyzing the policy. Shelter's argument that *Nationwide* is distinguishable from this case, or that the Supreme Court implicitly overruled it fails on this holding of *Nationwide*. Nowhere has the Court of Appeals or this court held that an insurance policy showing UIM coverage in the Declarations without any further notice or warning about elimination or reduction of coverage in other parts of the policy does not trigger an

additional layer of scrutiny when analyzing the policy. Thus, when analyzing the Durango/Camaro policies, the court should review the language with an additional layer of scrutiny. Of note, the court in *Lawson v. Progressive Cas. Ins. Co.*, 527 S.W.3d 198, 203 (Mo. App. E.D. 2017), cited *Nationwide* with approval several months after *Swadley* was decided.

Moreover, the Durango/Camaro policies provide in their first words:

AUTOMOBILE INSURANCE POLICY

DEFINITIONS

> In this policy, the words shown in bold have the meanings stated below unless a different meaning is stated in a particular coverage or endorsement. Words in bold type that are derived from a defined word have the same root meaning. The pleural version of a defined word has the same meaning as the singular if it is also bolded. If any of these words are used but not printed in bold type, they have their common dictionary meaning.

(L.F. 362; App A22) This portion of the Definitions part of the policy is ambiguous when scrutinized using an additional layer of scrutiny. The first sentence would lead an ordinary person reading this policy to believe that an endorsement is not part of the policy. Compare the headings of the Automobile Insurance Policy and the Missouri Underinsured Motorist Endorsement, which are both in all capital letters and centered. (L.F. 362 & 392; App A22 & A52) An ordinary person reviewing the entire document would not know if the UIM endorsement is part of the policy or a stand-alone promise of UIM coverage. Likewise, there is no definition in either the Automobile Insurance Policy or in the Missouri Underinsured Motorist Endorsement of "policy", "automobile insurance policy", "endorsement" or language informing an ordinary person that the

Missouri Underinsured Motorist Endorsement is in fact part of the policy and not an auxiliary or independent document. (L.F. 362-368; App A22-A28). There is also no definition of "relative" in the UIM endorsement. (L.F. 392; App A52). In addition, the Durango/Camaro policies provide as part of the policy:

ENTIRE AGREEMENT

This policy includes the policy form; the application related to it; any applications for changes to it; all endorsements and the **Declarations.** These documents include all the agreements between **you** and **us** or any of **our** agents relating to this insurance.

EFFECT OF ENDORSEMENTS

> Endorsements to this policy are part of it and have the same contractual effect as the provisions of the base policy itself. If the terms of an endorsement conflict with the terms of the base policy with respect to a specific claim, the terms of the endorsement will apply to that claim.

(L.F. 369; App A29). The policy also includes the definition of "Declarations" as follows:

> (11) **Declarations** means the part of this policy titled "Auto Policy **Declarations** and Policy Schedule". It sets out many of the individual facts related to **your** policy including the dates, types, and amounts of the various coverages.

(L.F. 363; App A23). An ordinary person reading the policy may believe that the declarations part of the policy in fact includes the amounts of the various coverages and constitutes a promise to provide the coverages it includes because Shelter has included the Declarations as part of the policy and has not placed any limitation on the effect of the Declarations. Likewise, Shelter has not given notice or warning that the Declarations is not part of the body of the policy, as Shelter specifically identifies the Declarations as "part of the policy". Thus, an ordinary person may believe that when the Declarations

states that UIM coverage is $100,000 per person and $300,000 per accident, that is a promise of coverage up to those amounts. When Shelter later in the policy attempts to take away the UIM coverage in its definitions, an ambiguity is created. The Declarations in the Durango/Camaro policies are much more a part of these policies than many of the declarations Missouri courts have dealt with in the past.

An ordinary purchaser of insurance when reviewing the "Effect of Endorsements" portion of the policy may reasonably believe that endorsement is separate from the "base policy itself". As such the definitions in the "base policy itself" would not apply to the UIM endorsement. In turn, the term "relative" in the UIM endorsement is given its ordinary meaning because it is not defined in the UIM endorsement. Surely, Chelsea Seaton, as Leslie Seaton's daughter, would be a relative of Leslie Seaton and therefore an insured as that term is defined in the UIM endorsement of the Durango/Camaro policies. The Durango/Camaro policies are therefore "reasonably and fairly open to differing constructions". *Standard Artificial Limbs, Inc. v. Allianz Ins. Co.*, 895 S.W.2d 205, 209 (Mo. App. 1995). These policies are also duplicitous, indistinct or uncertain in the meaning of the policies' language. *Lawson, supra*, 527 S.W.3d at 201. Thus, the policies are ambiguous and these insurance policies must be interpreted to provide coverage to Seaton, as purchaser of the policies.

III. THE TRIAL COURT DID NOT ERR IN GRANTING SEATON'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE DEFINITION OF "RELATIVE" AND THE PLACEMENT OF THE DEFINITION OF "RELATIVE" MAKE THE POLICIES AMBIGUOUS WHEN ALL THE TERMS OF THE DURANGO/CAMARO POLICIES ARE READ TOGETHER THEREBY CONFERRING COVERAGE TO CHELSEA SEATON AS AN INSURED.

Shelter here addresses the Opinion of the Court of Appeals. As Shelter acknowledges, this Court reviews the trial court's ruling rather than that of the Court of Appeals. Shelter also recognizes without stating that Missouri appellate courts can affirm the grant of summary judgment by a Circuit Court on any ground. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, *supra* at 387-388.

Shelter criticizes the Court of Appeals' Opinion for several reasons, (1) for not reading the Durango/Camaro insurance policies as a whole, instead of construing the UIM Endorsement as an independent agreement (Shelter Substitute Brief at 42-46), (2) for not enforcing the definition of "relative" as unambiguous (Shelter Substitute Brief at 46-49), (3) for strictly construing the terms of the policies as Shelter claims the definition of "relative" is not an exclusion (Shelter Substitute Brief at 49-50), (4) for finding that the definition of "relative" in the circumstances of this case should be in the UIM Endorsement (Shelter Substitute Brief at 42-45), and (5) its claim that requiring Shelter to provide definitions in endorsements provides no benefit to policyholders (Shelter Substitute Brief at 53-54).

1 and 2. The Opinion does look at the policy as a whole when deciding that summary judgment for Plaintiff was appropriate and affirming the trial court's ruling.

The Court reviewed the terms and definitions provided by Shelter in the UIM Endorsements and the definitions within the separate policies. (App, A4-5). The Opinion notes that the definition of "relative" is "so clearly a departure from the conventional definition of the term relative no ordinary person would construe the word in this manner". (App, A5). Without specifically citing them, the Opinion is following caselaw of this Court established in *Lightner, supra*, [O]ur Court has long held that policyholders are entitled to a favorable interpretation of the term "relative" in such contracts, and that coverage be provided where reasonably possible. *See Cobb v. State Security Insurance Co.,* 576 S.W.2d 726, 737 (Mo. banc 1979)] and *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 544 (Mo. 1976) ("[C]ases should not and will not turn on how well the insurer drafts a limiting clause because the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear or unambiguous it may be."), quoting *Great Central Ins. Co. v. Edge*, 298 So. 2d 607 (Ala. 1974). "It is useless and meaningless and uneconomic to pay for additional bodily injury insurance and simultaneously have this coverage cancelled by an insurer's exclusion." *Cameron Mut. Ins. Co.*, 533 S.W.2d at 543, quoting *Tucker v. Government Employees Insurance Co.,* 288 So.2d 238 (Fla.1973).

Part of Shelter's argument is "The rules of interpretation cannot disregard the unmistakable and unambiguous intent of Shelter because the dictionary definition of "relative" differs from the meaning of relative given by the Durango/Camaro Policies"." Appellant's Substitute Brief, p. 47. This argument fails as noted by the Court in *Niswonger*, *supra*, at 316-317:

> But this argument overlooks the fact that the existence or non-existence of ambiguity in an insurance contract is not to be measured from the standpoint of one who has great expertise in the special terminology and intricacies of insurance law. Rather, the language is to be viewed in the light that would ordinarily be understood by the layman who bought and paid for the policy. *Krombach,* at 210. Words in an insurance contract are to be construed in accordance with the principle that the test is not what the insurer intended the words to mean, but rather what a reasonable layperson in the position of the insured would have thought they meant. *Wood v. American Family Mutual Insurance Co.,* 148 Wis.2d 639, 436 N.W.2d 594, 599 (Wis.1989).

Leslie Seaton would reasonably believe that her teenage daughter living with her would be covered by the UIM coverage she purchased because she was her relative, did not own a motor vehicle as "own" is defined in the policies and is shown as an additional listed insured in the policies.

Chelsea Seaton is listed as an additional listed insured in the Declarations part of the Durango/Camaro policies. (L.F. 274 & 315). There is no definition of "additional listed insured' in either policy. (L.F. 279-285 & 320-326) Thus, we look at the normal usage for this term. The dictionary defines "additional" as "existing by way of addition". "Listed" is the past tense of "list" which the dictionary defines as "to place (oneself) in a specified category". "Insured" is defined as "a person whose life or property is insured". See Webster's Ninth New Collegiate Dictionary. An average layperson would conclude that an additional listed insured is someone who is also insured under these policies. Shelter cites *Carter v. Shelter Mut. Ins. Co.,* 516 S.W.3d 370 (Mo. App. E.D. 2017) in support of its argument that Chelsea Seaton was not an insured, even though listed as an additional listed insured in the Durango/Camaro policies. In *Carter*, the parties agreed that Carter owned another vehicle. *Carter*, at 373. Here, as argued above, Chelsea Seaton

did not own another vehicle and would therefore qualify as an insured because she was a relative of Leslie Seaton. Thus, the *Carter* case is not controlling in this case as the facts are significantly different.

Shelter also relies on *Lair v. American Family Mutual Ins. Co.*, 789 S.W.2d 30 (Mo banc 1990) in support of its point. *Lair* was decided by this Court the same day as the *Lightner* case. In *Lair*, the parties stipulated that the Lairs' son owned a vehicle at the time of the collision which caused him to sustain injuries for which he sought uninsured motorist coverage under his parents' policy. The definition of relative in the American Family policy in *Lair* provided that the term relative …"excludes any person who, or whose spouse, owns a car." There is no definition of "own" mentioned by the *Lair* court. *Lair*, at 31-32. This is a significant difference than the facts here where Plaintiff contests Shelter's claim that Chelsea owned a motor vehicle. In *Lair* this court distinguishes the *Lightner* case, which is nearly identical to this case. *Lair*, at 32.

Shelter also relies on *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2 300 (Mo. Banc 1993) in support of its position. The *Peters* case involved property damage claims brought by faculty members at a college whose property was destroyed in a fire at one of the college's buildings. In *Peters* this court found that the insurance contract was not one of adhesion …[b]ecause the College drafted the insurance proposal, took bids, and switched insurance companies," and therefore found that the insurance contract was negotiated and not an adhesion contract. *Peters*, at 301. Thus, the *Peters* court was not interpreting a contract of adhesion such as the insurance contract here, but rather a negotiated contract for which the rules of construction are different. In a negotiated

contract there is no strict construction in favor of providing coverage purchased by an insured, as there is in the usual automobile insurance policy, such as those involved here.

Shelter also relies on *Rodriguez v. Gen. Accident Ins. Co.*, 808 S.W.2d 379 (Mo. Banc 1991) in support of its position. In *Rodriguez* this court was face with two issues of stacking UIM coverage and UM coverage and interpreting the policy concerning a set-off for amounts paid to compensate for injuries from other policies. Thus, the *Rodriguez* issues are separate and distinct from those here, where there is no dispute about any set-off for money already paid to Plaintiff and no dispute that the UIM coverage provided in the Durango/Camaro policies are both available to Chelsea as an insured. The issue here is whether Chelsea is an insured under the terms of the Durango/Camaro policies.

3. Plaintiff has already addressed the nature of the construction of these insurance policies as being a strict construction above. *See* pp. 25-27; 29-30. In fact, under the *Nationwide v. Thomas* case, *supra*, the policies should be viewed with heightened scrutiny. *Nationwide*, at 12. Thus, the Opinion was correct to strictly construe any ambiguity against the insurance company.

4. The Opinion references the *Taylor* case, *supra*, at 356 in support of its holding that the definition of "relative" should have been in the UIM Endorsement, rather than in the general definitions portion of the policy. In *Taylor*, the Court of Appeals stated "Arguably, a policy with the limitation on coverage stated directly in the COVERAGE subsection would be easier for a layperson to read, as opposed to requiring the reader to flip back and forth between definitions and the coverage provision." *Taylor*, at 356. Even though the holding in *Taylor* is distinguishable from the facts here, as

Taylor involved UM coverage questions, not UIM coverage as we have here, this statement is applicable to the construction of the Durango/Camaro policies as there is no definition of "relative" in the UIM Endorsement. The policyholder would have to flip back and forth between definitions and the coverage provision to try to figure out who is a relative. Average lay policyholders would likely not do so when looking for coverage of their teenage daughter who lives with them because the definition of relative is so far removed from ordinary use of the term "relative" they would think it is not necessary to refer to that definition. The Opinion correctly found the Durango/Camaro policies ambiguous in part because the definition of "relative" was not reasonably placed in the UIM Endorsement under the circumstances in this case.

5. Shelter's argument that providing relevant definitions in endorsements provides no benefits to policyholders is not well taken and counterintuitive to the understanding of an insurance policy by a lay purchaser. Insurance policies are already lengthy and placing relevant definitions in the UIM Endorsement in the Durango/Camaro policies would greatly help an insured understand the definition of "relative" as used in the endorsement. Again, average lay policyholders would likely not flip back and forth between definitions and the coverage provision to try to figure out who is a relative in an endorsement separate from the body of an insurance policy when looking for coverage of their teenage daughter who lives with them because the definition of relative is so far removed from ordinary use of the term "relative" they would think it is not necessary to refer back to that definition.

CONCLUSION

For the reasons stated above, the trial court's entry of summary judgment in favor of Plaintiff should be affirmed and the denial of summary judgment to Shelter on the same issues should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Missouri Supreme Court Rule 84.06, I hereby certify that this brief includes the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b) and states the number of words in the brief, as follows:

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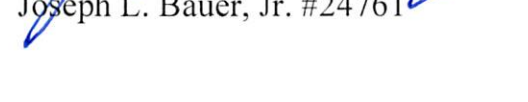

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CERTIFICATE OF SERVICE

I, the undersigned, certify that the original pleading was signed by the attorney or record and a copy of the foregoing has been electronically served on all counsel of record via the Court's electronic filing system, on this 17th day of February, 2019.

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