THE SUPREME COURT OF MISSOURI

APPEAL NO: SC97511

LESLIE SEATON,

Plaintiff/Respondent,

vs.

SHELTER MUTUAL INSURANCE COMPANY,

Defendant/Appellant.

ORIGINAL PROCEEDING FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
CAUSE NO.: 15SL-CC03927

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

SUBSTITUTE BRIEF OF APPELLANT SHELTER MUTUAL INSURANCE COMPANY

Seth G. Gausnell #35767
James D. Ribaudo #67232
GAUSNELL, O'KEEFE & THOMAS, LLC
Attorneys for Appellant Shelter Mutual Insurance Company
701 Market Street, Suite 200
St. Louis, Missouri 63101
(314) 257-9800
Email: sgausnell@gotlawstl.com
Email: jribaudo@gotlawstl.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

JURISDICTIONAL STATEMENT

On December 18, 2018, this Court entered an Order sustaining an Application for Transfer filed by Appellant Shelter Mutual Insurance Company ("Shelter") pursuant to Rule 83.04. The Order transferred this cause to this Court following the decision of the Missouri Court of Appeals, Eastern District (Cause No: ED105895) entered on September 11, 2018. Pursuant to Article V, Section 10 of the Missouri Constitution, this Court has jurisdiction over this matter as a case transferred by "order of the supreme court before or after opinion because of the general interest or importance of a question involved in the case, or for the purpose of reexamining the existing law, or pursuant to supreme court rule."

STATEMENT OF FACTS

Plaintiff Leslie Seaton sought Underinsured Motorist Coverage ("UIM") from three Shelter Automobile Policies on behalf of her daughter–Chelsea Seaton–who sustained fatal injuries in a motor vehicle accident on June 28, 2010. (L.F. 008–026.) Shelter agreed that one of the Shelter Policies (Cavalier Policy) provided UIM Coverage to Chelsea Seaton and tendered those limits of $100,000. (L.F. 008–026, 414.) Shelter denied UIM Coverage under the other two Shelter Policies (Durango/Camaro Policies) because Chelsea Seaton was not a defined "**insured**" for UIM Coverage. (L.F. 008–026, 038–039.)

Plaintiff sued Shelter in the Circuit Court of Saint Louis County seeking, in part, a declaration that UIM Coverage existed for Chelsea Seaton and damages for breach of contract. (L.F. 008–012.) The trial court granted Plaintiff's Motion for Summary Judgment as to the existence of UIM Coverage for Chelsea Seaton under the Durango/Camaro Policies and awarded $200,000. (L.F. 554–555, 569–571; App'x. A1–A5.) The trial court also denied Shelter's Motion for Summary Judgment addressing the same issue of UIM Coverage for Chelsea Seaton. (L.F. 554–555, 569–571; App'x. A1–A5.)

The trial court held the UIM Coverage of the Shelter Policies was ambiguous because the Declarations of the Policies set forth UIM Coverage, but did not explain that the Policies may include limitations or qualification that deny and/or reduce UIM Coverage. (L.F. 554–555; 569–571; App'x. A1–A5.) The Missouri Court of Appeals, Eastern District affirmed the ruling and held the Shelter Policies were ambiguous because the given definition of **relative** was not repeated in the UIM Endorsements. (Opinion, p. 1–7; App'x. A6–A12.) The definition of **relative** is set forth in the Definitions Sections of

the main policy form–the first section of the Policies. (L.F. 118–127; App'x. A19–A28.)

The opening sentence of the Definitions Sections provides "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." (L.F. 121; App'x. A22.) The definition of **relative** in the Policies is as follows:

> **Relative** means an **individual** related to **you** by blood, marriage, or adoption, who is primarily a **resident** of, and actually living in **your** household. . . . **Relative** does not mean any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**.

(L.F. 125; App'x. A26.) The primary question of the case is whether Chelsea Seaton is an **insured** for UIM Coverage as defined by the Shelter Policies. The Court of Appeals determined Chelsea Seaton was an **insured** by virtue of being a **relative**. (Opinion, p. 5–7; App'x. A10–A12.) Shelter contends Chelsea Seaton cannot be a **relative** and therefore cannot be an **insured** due to her ownership of the 1997 Cavalier–as reflected by the Certificate of Title to the same (L.F. 355; App'x. A34) and the admissions of Plaintiff during summary judgment (L.F. 476–477; App'x. A35–A37).

In accordance with the applicable standard of review, Shelter provides the following statement of facts based on the summary judgment record before the trial court.

I. Wrongful Death Claim Against Megan Deaton

On July 28, 2010, Megan Deaton operated her vehicle–a 2003 Ford Ranger–with Chelsea Seaton riding as a passenger. (L.F. 008–026, 049.) Ms. Deaton lost control of her vehicle and caused Chelsea Seaton to sustain fatal injuries. (L.F. 008–026, 049.) Plaintiff settled a wrongful death claim for Chelsea Seaton against Megan Deaton for $102,000–the

limits of Megan Deaton's insurance policy. (L.F. 008–026, 401–402, 413.)

II. Claim for UIM Coverage and Shelter Auto Insurance Policies

Plaintiff sought UIM Coverage for Chelsea Seaton under three Shelter Policies. (L.F. 008–026.)

This table summarizes the relevant Shelter Policies:

Policy #	Vehicle	Named Insureds	Additional Listed Insureds	Legal File	Appendix
24-1-5544691-1	1999 Dodge Durango	Leslie Seaton	Nathan Seaton Leslie Seaton Chelsea Seaton	115–155	A13–A14, A19–A33
24-1-5544691-2	1990 Chevrolet Camaro	Leslie Seaton Nathan Seaton	Chelsea Seaton Leslie Seaton Nathan Seaton	156–196	A15–A16, A19–A33
24-1-5544691-3	1997 Chevrolet Cavalier	Chelsea Seaton Leslie Seaton	Chelsea Seaton Leslie Seaton Nathan Seaton	198–238	A17–A33

The Durango Policy, Camaro Policy, and Cavalier Policy (collectively "Shelter Policies") were in effect on the date of the accident. (L.F. 115–117, 156–158, 198–200; App'x. A13–A18.) The Shelter Policies included identical policy terms since each had the same Policy Form–A.20.8.A–for the primary agreement and the same UIM Endorsement–A-577.7-A. (L.F. 116, 157, 357; App'x. 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'x. A13, A15, A17.)[1]

The primary policy form of the Shelter Policies, following a cover page and table of contents, set forth the applicable Definitions. (L.F. 118–121; App'x. A19–A22.) The

[1] Because the Shelter Policies are identical, any reference to the terms of a Policy refers to the terms of all the Shelter Policies.

Shelter Policies provide the following Definitions for policy terms pertinent to UIM Coverage and appear in bold print where indicated:

> 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.
>
> * * *
>
> (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.
>
> * *
> * * *
>
> (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. 121–127; App'x. A22–A28.)

After the Definitions Sections, the Shelter Policies provide the following Policy Terms pertinent to the interpretation of the Shelter Policies:

POLICY TERMS APPLICABLE TO
MORE THAN ONE 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**. Those 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 a 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. 128; App'x. A29.)

The UIM Endorsements of the Shelter Policies provide the following insuring 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.
>
> * * *

(L.F. 151; App'x. A31.)

The UIM Endorsements provide the following 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. 151; App'x. A31.)

III. Underlying Litigation and Ownership of the 1997 Cavalier

Shelter provided UIM Coverage to Plaintiff under the Cavalier Policy, but denied UIM Coverage under the Durango/Camaro Policies because Chelsea Seaton was not an **insured** as defined by the UIM Endorsements. (L.F. 008–026, 038–039.)

On November 13, 2015, Plaintiff sued Shelter and David Crawford, as agent for Shelter, seeking a declaratory judgment and damages. (L.F. 007.) Count I of Plaintiff's First Amended Petition sought a declaration of the existence of UIM Coverage on behalf of Chelsea Seaton under the Durango/Camaro Policies. (L.F. 008–026.) Count II asserted a claim of breach of contract against Shelter for failing to provide UIM Coverage under the Durango/Camaro Policies. (L.F. 008–026.)

A. Shelter's Motion for Summary Judgment

On March 15, 2016, Shelter filed a Motion for Summary Judgment as to Counts I and II of Plaintiff's First Amended Petition because Chelsea Seaton was not an **insured** for UIM Coverage under the Durango/Camaro Policies. (L.F. 044–105.) In part, Shelter asserted Chelsea Seaton did not constitute an **insured** as defined in the UIM Endorsements because she did not constitute "any **relative**" as she was an "**individual** who **owns** a **motor**

vehicle". (L.F. 044–105.)

In its Statement of Uncontroverted Material Facts, Shelter asserted Chelsea Seaton was included as a legally recognized title owner to the Cavalier at the time of the accident (L.F. 051.) Plaintiff responded with the following denial:

> Denied. Chelsea Seaton was listed as an owner of a Chevy Tudor[2] along with Plaintiff as a legally recognized title owner to the 1997 Chevy Tudor, as alleged in Exhibit A, par. 24, but denies the contents of Exhibit J as no Exhibit J was provided by Defendant Shelter.[3]

(L.F. 111.)(emphasis in original)

Plaintiff also provided statements of Undisputed Material Facts and attached a true and accurate Certificate of Title for the Cavalier as an Exhibit. (L.F. 112, 197.) The Certificate of Title to the Cavalier lists, "Seaton Leslie & Chelsea TOD Seaton Robert" under the heading of "Owner". (L.F. 197; App'x. A34.)

In Reply to Shelter's Additional Statement of Uncontroverted Material Facts, Plaintiff admitted "Chelsea Seaton was listed as a title owner on the certificate of title to the 1997 Chevy Tudor, which is the vehicle identified in the policies at issue as a Chevy Cavalier 2DR . . . ." (L.F. 476–477; App'x. A35–A36.)

---

[2] The 1997 Chevy Tudor is the same vehicle as the 1997 Chevy Cavalier insured by the Cavalier Policy. (L.F. 270.) The Certificate of Title describes the vehicle as a 1997 Chevrolet Tudor while the Cavalier Policy describes the vehicle as a 1997 Chevrolet Cavalier 2DR. (L.F. 112, 197, 199.) Both the Certificate of Title and Cavalier Policy identify a vehicle with the same Vehicle Identification Number: 1G1JC124XVM123001. (L.F. 112, 197.) For ease of reference, Shelter refers to this vehicle as a Cavalier.

[3] Shelter inadvertently omitted Exhibit J–the Certificate of Title to the Cavalier–in its Statement of Uncontroverted Material Facts. Shelter subsequently supplemented the record and filed Exhibit J. (L.F. 438–439.)

B. Plaintiff's Motion for Summary Judgment

On March 15, 2016–the same day that Shelter filed its Motion for Summary Judgment, Plaintiff filed a Motion for Summary Judgment arguing Chelsea Seaton qualified as an **insured** under the Durango/Camaro Policies. (L.F. 259–427.) Plaintiff's Motion alleged that Chelsea Seaton was included as a legally recognized title owner of a 1997 Chevy Tudor on July 28, 2010. (L.F. 260.) Plaintiff made this same allegation in Response to Shelter's Motion for Summary Judgment. (L.F. 240.)

In her Statement of Uncontroverted Material Facts, Plaintiff asserted that Plaintiff was "the person to hold the legally recognized title to the 1997 Chevy Cavalier 2DR and Chelsea Seaton was listed on the title as TOD after Leslie Seaton" and that "Chelsea Seaton was not the person to hold the legally recognized title to the 1997 Chevy Cavalier 2DR." (L.F. 270.) Shelter denied these Statements of Fact because the Certificate of Title listed the owners of the Cavalier as "SEATON LESLIE & CHELSEA TOD SEATON ROBERT" and thus only designated Robert Seaton–not Chelsea Seaton–as a transfer on death beneficiary. (L.F. 457–458.) Based on the Certificate of Title, Shelter asserted Chelsea Seaton and Leslie Seaton were the owners of the Cavalier. (L.F. 457–458.)

Shelter further responded with a Statement of Undisputed Material Fact and asserted Chelsea Seaton was included as the title owner on the Certificate of Title to the Cavalier and supported the assertion with a citation to the Certificate of Title set forth in Plaintiff's Exhibit 3. (L.F. 459.) In response, Plaintiff denied and asserted:

> Chelsea Seaton was listed as a title owner on the certificates of title to the 1997 Chevy Tudor, which is the vehicle identified in the policies at issue as a Cavalier 2DR, along with Plaintiff

> as a legally recognized title owner to the 1997 Chevy Tudor, as shown in Plaintiff's Exhibit 3. Chelsea Seaton was not listed as the title owner on the certificate of title to the 1997 Chevy Cavalier 2DR as alleged by Shelter.

(L.F. 476–477; App'x. A35–A36.)(emphasis in original).

On August 10, 2016, Plaintiff 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 issued by Shelter with an effective date of June 23, 2016. (L.F. 544–549.) On August 12, 2016, Plaintiff 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 Plaintiff included Declarations for Shelter Policies in effect at the time of the underlying accident. (L.F. 544–553.)

IV. November 22, 2016 and June 26, 2017 Orders

On November 22, 2016, the trial court entered an Order and Summary Judgment on the Issue of Insurance Coverage. (L.F. 554–555; App'x. A1–A2.) This Order granted Plaintiff's Motion for Summary Judgment as to Counts I and II and denied Shelter's Motion for Summary Judgment. (L.F. 554–555; App'x. A1–A2.) The 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'x. A2.)

The November 22, 2016 Order held the uncontroverted material facts demonstrated the Durango/Camaro Policies were ambiguous. (L.F. 554; App'x. A1.) 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'x. A1.) 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'x. A1.) The trial court cited *Nationwide Ins. Co. of Am. v. Thomas*, 487 S.W.3d 9 (Mo. App. 2016) in holding the Shelter Policies were ambiguous. (L.F. 554–555; App'x. A1–A2.) Based on its finding of an ambiguity, the trial court held UIM Coverage existed under the Durango/Camaro Policies. (L.F. 554–555; App'x. A1–A2.)

On June 23, 2017, Shelter and Plaintiff entered into a stipulation as to damages for Counts I and II of Plaintiff's First Amended Petition. (L.F. 566–568.) The Parties agreed the damages exceeded the UIM Coverage limits of the Durango/Camaro Policies. (L.F. 567.) In the stipulation, Shelter continued to contest the existence of UIM Coverage and reserved the right to appeal any final judgment. (L.F. 566–567.)

On June 26, 2017, the trial court entered an "Order and Summary Judgment on the Issue of Insurance Coverage and Judgment on Damages". (L.F. 569–571; App'x. A3–A5.) The reasoning and findings 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'x. A1–A5.) However, due the stipulation, 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 Plaintiff and against Shelter for $200,000. (L.F. 570; App'x. A4.)

On September 1, 2017, following the voluntary dismissal of Counts III and IV–the only remaining claims of Plaintiff's First Amended Petition–Shelter timely filed its Notice of Appeal to the Missouri Court of Appeals, Eastern District (L.F. 574–581.)

V. 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 judgment. (App'x. A6–A12.)

The Opinion interpreted the language of the Durango/Camaro Policies to determine if it was ambiguous or unambiguous as to whether Chelsea Seaton met the definition of **insured**. (Opinion, p. 3–4; App'x. A8–A9.) In its discussion of the rules of construction for the Durango/Camaro Policies, the Opinion asserted 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." (Opinion, p. 4; App'x. A9)(citing *Maxam v. Am. Family Mut. Ins. Co.*, 504 SW.3d 124, 127 (Mo. App. 2016)). 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.)

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'x. A10.) 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'x. A10.)

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'x. A11)(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'x. A11)(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'x. A11.) "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'x. A11)(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'x. A10–A11)(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'x. A11–

A12)(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'x. 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'x. A12.) 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'x. A12.)

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

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT FAILED TO INTERPRET THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR UNAMBIGUOUS TERMS IN THAT CHELSEA SEATON DOES NOT MEET ANY OF THE DEFINITIONS OF "INSURED" FOR UIM COVERAGE.

Carter v. Shelter Mut. Ins. Co., 516 S.W.3d 370 (Mo. App. 2017)

McKee v. Am. Family Mut. Ins. Co., 932 S.W.2d 801 (Mo. App. 1996)

Owners Ins. Co. v. Craig, 514 S.W.3d 614 (Mo. banc 2017)

Taylor v. Owners Ins. Co., 499 S.W.3d 351 (Mo. App. 2016)

II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT FAILED TO INTERPRET THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS IN THAT THE TRIAL COURT IMPROPERLY HELD THE DECLARATIONS CONFERRED COVERAGE BASED ON AN AMBIGUITY ONLY CONCERNING THE AMOUNT OF UIM COVERAGE.

Floyd-Tunnell v. Shelter Mut. Ins. Co., 439 S.W.3d 215 (Mo. banc 2014)

Owners Ins. Co. v. Craig, 514 S.W.3d 614 (Mo. banc 2017)

Swadley v. Shelter Mut. Ins. Co., 513 S.W.3d 355 (Mo. banc 2017)

III. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE MEANING OF 'RELATIVE' IS GOVERNED BY THE DEFINITION PROVIDED IN THE DURANGO/CAMARO POLICIES AND SHELTER DID NOT NEED TO REPEAT THIS DEFINITION IN THE UIM ENDORSEMENTS FOR THE SAME TO BE EFFECTIVE.

Lair v. Am. Family Mut. Ins. Co., 789 S.W.2d 30 (Mo. banc 1990)

Peters v. Employers Mut. Cas. Co., 853 S.W.2d 300 (Mo. banc 1993)

Rodriguez v. Gen. Accident Ins. Co., 808 S.W.2d 379 (Mo. banc 1991)

Taylor v. Owners Ins. Co., 499 S.W.3d 351 (Mo. App. 2016)

STANDARD OF REVIEW[4]

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. 1999)(citing *Lang v. Nationwide Mut. Fire Ins. Co.*, 970 S.W.2d 828, 830 (Mo. App. 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. 2002)(citing *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)).

No deference is provided to the trial court in the review of the summary judgment ruling in favor of Plaintiff. *Barekman v. City of Republic*, 232 S.W.3d 675, 677 (Mo. App. 2007)(citation omitted). The criteria for testing the propriety of summary judgment are "no different from that which should be employed by the trial court to determine the propriety of sustaining the motion initially." *Stormer v. Richfield Hospitality Services, Inc.*, 60 S.W.3d 10, 12 (Mo. App. 2001)(citing *ITT Commercial Fin. Corp.*, 854 S.W.2d at 376).

[4] Shelter submits the following Standard of Review separately from its Points Relied On as the standard of review is the same and applies equally to each Point Relied On.

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." *Lopez*, 96 S.W.3d 891, 892 (Mo. App. 2002)(citing *First Nat'l Bank of Annapolis, N.A., v. Jefferson Ins. Co. of New York*, 891 S.W.2d 140, 141 (Mo. App. 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*. (citing *First Nat'l Bank of Annapolis*, 891 S.W.2d at 141).

Shelter, respectfully, seeks two forms of relief as to the judgments of the trial court. First, the undisputed material facts demonstrate Chelsea Seaton does not constitute an **insured** and thus the trial court erred in granting Plaintiff's Motion for Summary Judgment. This ruling should be reversed. Second, because the undisputed facts demonstrate Chelsea Seaton does not constitute an **insured**, the trial court also erred in denying Shelter's Motion for Summary Judgment. This ruling should also be reversed.

Because Plaintiff's and Shelter's Motions concern identical and inextricably intertwined issues, this Court should reverse the denial of Shelter's Motion for Summary Judgment.

Interpretation of Insurance Policy Language

In construing the terms of an insurance policy, Missouri courts apply "the meaning which would be attached by an ordinary person of average understanding in purchasing insurance." *Wilson v. Am. Family Mut. Ins. Co.*, 472 S.W.3d 579, 586 (Mo. App. 2015). "The general rule in interpreting insurance contracts is to give the language of the policy its plain meaning." *Id*. at 586–87. In the absence of an ambiguity, courts must enforce the

policy as written. *Trans World Airlines, Inc. v. Associated Aviation Underwriters*, 58 S.W.3d 609, 622 (Mo. App. 2001). "A court may not use its inventive powers to create an ambiguity where none exists or rewrite a policy to provide coverage for which the parties never contracted . . ." *Foremost Signature Ins. Co. v. Montgomery*, 266 S.W.3d 868, 872 (Mo. App. 2008)(internal quotes omitted).

This Court has explained "[a] court is not permitted to create an ambiguity in order to distort the language of an unambiguous policy, or, in order to enforce a particular construction which it might feel appropriate." *Rodriguez v. Gen. Accident Ins. Co. of Am.*, 808 S.W.2d 379, 382 (Mo. banc 2007). Missouri courts recognize "the law will not require an insurer to provide coverage where none existed under the policy's own terms." *Young v. Ray Am., Inc.*, 673 S.W.2d 74, 80 (Mo. App. 1984). "An insured cannot create an ambiguity by reading only a part of the policy and claiming that, read in isolation, that portion of the policy suggests a level of coverage greater than the policy actually provides when read as a whole." *Owners Ins. Co. v. Craig*, 514 S.W.3d 614, 617 (Mo. banc 2017).

I. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT FAILED TO INTERPRET THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR UNAMBIGUOUS TERMS IN THAT CHELSEA SEATON DOES NOT MEET ANY OF THE DEFINITIONS OF "INSURED" FOR UIM COVERAGE.

The status of Chelsea Seaton as an **insured** for UIM Coverage under the Durango/Camaro Policies is determinative to Plaintiff's claims against Shelter. Plaintiff Leslie Seaton brings claims for UIM Coverage against Shelter as the legally authorized representative of Chelsea Seaton. The UIM Endorsements permit such a claim, but Plaintiff can only prevail to the extent the Durango/Camaro Policies provide UIM Coverage to Chelsea Seaton in the first place. The undisputed material facts dictate Chelsea Seaton does not meet any of the possible definitions of **insured** and thus is not entitled to UIM Coverage. The inability of Chelsea Seaton to be an **insured** for UIM Coverage requires reversal of the trial court's order granting summary judgment to Plaintiff as well as the reversal of the denial of summary judgment to Shelter.

Following a cover page and table of contents, the first substantive page of the Durango/Camaro Policies provide the Definitions Sections. (L.F. 121; App'x. A22.) The Definitions Sections make clear that words shown in **bold type** have the meaning set forth in the Definitions unless a different meaning is stated in a particular coverage or endorsement. (L.F. 121; App'x. A22.) The Definitions Sections give a definition of **insured** that instructs the policyholder to consult the given definition "by the specific coverage or endorsement under which coverage is sought." (L.F. 123; App'x. A24.) Accordingly, the UIM Endorsements of the Durango/Camaro Policies provide three

definitions of who is an **insured** for UIM Coverage: (1) **You**; (2) any **relative**; and (3) any **individual occupying** the **described auto** who is listed in the **Declarations** as an "additional listed insured". (L.F. 151; App'x. A31.) Again, the inability of Chelsea Seaton to meet any one of the preceding definitions is dispositive of Plaintiff's claims.

As with virtually all insurance policies, the definition of **insured** in the UIM Endorsements incorporates other bolded policy terms defined elsewhere in the Durango/Camaro Policies. See *Miller v. Ho Kun Yun*, 400 S.W.3d 779, 785 (Mo. App. 2013)("[W]e recognize from our experience with such policies that such bolded terms are definitional terms, and that such a defined term may serve as a fulcrum in limiting or expanding coverage.") The Definitions Sections of the Policies make clear the bolded policy terms have the defined meaning throughout the policy, including all endorsements. (L.F. 121; App'x. A22.) The Durango/Camaro Policies further clarify that "Endorsements to this policy are a part of it and have the same contractual effect as the provisions of the base policy itself." (L.F. 128; App'x. A29.)

As the inability of Chelsea Seaton to constitute an **insured** for UIM Coverage is dispositive to the case, Shelter addresses each of the three definitions of **insured** individually as well as the corresponding policy definitions included therein. First, Chelsea Seaton does not qualify as **You** because she is not a **named insured** to the Durango/Camaro Policies. Second, Chelsea Seaton does not qualify as a **relative** because she owned the Cavalier and the definition of **relative** does not include the owner of a motor vehicle. Finally, Chelsea Seaton did not occupy the Durango or the Camaro at the time of the accident and thus did not occupy the **described auto**.

A. Chelsea Seaton does not meet the definition of "You".

The first definition of **insured** for UIM Coverage under the Durango/Camaro Policies is **You**. (L.F. 151; App'x. A31.)

The Durango/Camaro Policies define **You** as "any **person** listed as a **named insured** in the **Declarations** and if that **person** is an individual, his or her **spouse**." (L.F. 127; App'x. A28.) The Durango/Camaro Policies define **named insured** as follows:

> **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**".

(L.F. 123; App'x. A24.) Based on the foregoing, Chelsea Seaton must appear under the heading "**Named Insured**" on the Declarations of the Durango/Camaro Policies to be considered **You** for the purposes of being an **insured** for UIM Coverage.

Chelsea Seaton does not appear under the heading "**Named Insured**" on the Declarations of the Durango/Camaro Policies. (L.F. 116, 157; App'x. A13, A15.) The absence of Chelsea Seaton's name under the heading "**Named Insured**" is evident from a review of the Declarations. (L.F. 116, 157; App'x. A13, A15.) Additionally, Plaintiff admitted the "sole named insured" of the Durango Policy was Leslie Seaton and admitted the "named insured" of the Camaro Policy was Leslie Seaton and Nathan Seaton. (L.F. 110.) Based on the Declarations of the Durango/Camaro Policies and the admissions of Plaintiff, Chelsea Seaton is unquestionably not listed under the heading "**Named Insured**" and thus is not a **named insured**. Because of this undisputed fact, Chelsea Seaton does not meet the definition of **You** and thus is not an **insured** for UIM Coverage.

Although Chelsea Seaton appears under the heading 'Additional Listed Insured' on the Declarations, this does not make her a **named insured**. (L.F. 116, 157; App'x. A13, A15.) The definition of **named insured** makes clear that a person listed under other headings does not constitute a **named insured** unless "they are also listed under the heading '**Named Insured**'." (L.F. 123; App'x. A24.) Per its unambiguous definition, **named insured** does not include Chelsea Seaton by virtue of only being listed under the heading 'Additional Listed Insured' on the Declarations.

The designation of Chelsea Seaton as an 'Additional Listed Insured' does not create an ambiguity as to the meaning of **named insured** or cause Chelsea Seaton to be considered an **insured** for UIM Coverage. In *Carter v. Shelter Mut. Ins. Co.*, the court addressed the exact same policy language and circumstances wherein the plaintiff seeking coverage was listed as an 'Additional Listed Insured', but not as a "**Named Insured**". 516 S.W.3d 370, 373–74 (Mo. App. 2017). The court held the plaintiff did not meet the definition of **You** because the plaintiff's listing under the heading 'Additional Listed Insured' did not meet the clear and plain definition of **named insured**:

> Despite his listing under Additional Listed Insured, Carter does not fit the clear and plain definition of "You" as defined by the terms of the policy. Moreover, the definitions directly address that the inclusion under another headings [sic] of the Declarations Page does not qualify an individual as a Named Insured without actual listing under the heading of Named Insured.

Id. at 374.

Here, it is undisputed Chelsea Seaton does not appear under the heading of '**Named Insured**'. As found by *Carter*, the definition of **named insured** makes clear that persons

appearing under other headings on the Declarations–like 'Additional Listed Insured'–is not a **named insured** or an **insured**. Chelsea Seaton does not meet the plain and unambiguous definition of **named insured** and thus does not meet the definition of **You** and cannot qualify for UIM Coverage under the first definition of **insured**.

B. Chelsea Seaton does not meet the definition of "any relative".

The second definition of **insured** for UIM Coverage under the Durango/Camaro Policies is "any **relative**". (L.F. 151; App'x. A31.)

The Durango/Camaro Policies define the term **relative** as an **individual** related to **you** by blood, marriage, or adoption who is primarily a resident of, and actually living in, **your** household. (L.F. 125; App'x. A26.) The definition of **relative** concludes with:

> **Relative** does not mean any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**.

(L.F. 125; App'x. A26.) The foregoing appears directly in the definition of **relative**.

"Policy language that extends coverage only to relatives that do not own an automobile has been upheld as clear and unambiguous, and not contrary to public policy." *Taylor v. Owners Ins. Co.*, 499 S.W.3d 351, 356 (Mo. App. 2016). The limitation of the meaning of "relative" to not include a resident relative who owns a motor vehicle of their own has been upheld as a clear and logical limitation of coverage. *Id*. "The obvious instruction of the policy conditions is that vehicle owners, including relatives of the named insured, should look to their own insurance as to events associated with ownership and use of their machine." *Id*. (citing *Famuliner v. Farmers Ins. Co.*, 619 S.W.2d 894, 897 (Mo. App. 1981)). "If the relative acquires a vehicle, the relative should insure his or her own

vehicle and obtain 'drive-other-cars' coverage through his or her own policy." *McKee v. Am. Family Mut. Ins. Co.*, 932 S.W.2d 801, 803 (Mo. App. 1996)(citation omitted).

In this case, Chelsea Seaton owned the Cavalier and was the Named Insured of the Cavalier Policy. In accordance with its terms, Shelter provided UIM Coverage for Chelsea Seaton under the Cavalier Policy. As reasoned in *Famuliner* and *McKee*, the source of UIM Coverage to Chelsea Seaton arises from the policy issued for the vehicle she owns–the Cavalier Policy–not from the Policies issued to Plaintiff as the Named Insured.

A limitation on the meaning of **relative** to not include owners of motor vehicle does not function as a policy exclusion. *McKee*, 932 S.W.2d at 802–03. The insurance policy in *McKee* provided a definition of "relative" that concluded with:

> It excludes any person who, or whose spouse, owns a motor vehicle other than an off-road motor vehicle.

Id. at 802. The plaintiff in *McKee* argued the foregoing clause was an exclusion warranting a strict construction in favor of coverage and against the insurer. *Id*. at 803. The court disagreed and held the definition of "relative" defined the initial scope of coverage as opposed to excluding already existing coverage. *Id*. "Here, the issue is not the applicability of an exclusionary clause to bar plaintiff's coverage under the policy." *Id*. "Rather, the issue revolves around the initial extension of coverage to plaintiff as a 'relative' of the insured." *Id*. (citation omitted).

Similar to the definition of "relative" in the policy considered by *McKee*, the definition of **relative** in the Durango/Camaro Policies simply dictates who is and is not a **relative**. The part of the definition clarifying that an owner of a motor vehicle is not a

relative does not function as an exclusion. Instead, the clause identifies who meets the definition of **relative** for the initial extension of coverage. Because the definition identifies the scope of who is a **relative**–as opposed to removing previously conferred coverage–a strict construction is not appropriate.

The limitation regarding the scope of **relative** and its lack of inclusion of individuals who **own** a motor vehicle appears directly in the definition of **relative** and the meaning of **relative** could only be reasonably and fairly open to one construction: a **relative** does not include the owner of a motor vehicle. Indeed, substantially similar definitions have been construed as unambiguous and enforceable. See *Lair v. Am. Family Mut. Ins. Co.*, 789 S.W.2d 30 (Mo. banc 1990); *Taylor v. Owners Ins. Co.*, 499 S.W.3d 351 (Mo. App. 2016); *Denny v. Duran*, 254 S.W.3d 85 (Mo. App. 2008); *Famuliner v. Farmers Ins. Co., Inc.*, 619 S.W.2d 894 (Mo. App. 1981); and *McKee v. Am. Family Mut. Ins. Co.*, 932 S.W.2d 801 (Mo. App. 1996).

It is undisputed that Chelsea Seaton **owned** the Cavalier and thus Chelsea Seaton cannot meet the definition of **relative**. The Durango/Camaro Policies define **owns** as meaning "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**." (L.F. 124; App'x. A25.) In the context of the definition of **relative**, "the **person** referred to" is the "**individual** who **owns** a **motor vehicle**." (L.F. 125; App'x. A26.) Based on the definition of **own**, the following persons do not qualify as a **relative**:

> **Relative** does not mean any **individual** who [holds the legally recognized title to] a **motor vehicle**.

Chelsea Seaton held the legally recognized title to the Cavalier. In Missouri, the legally recognized title owner of a motor vehicle is the person or persons listed as the owner on the certificate of title. Mo. Rev. Stat. §§ 301.190, 301.210. The Certificate of Title to the Cavalier lists the "Owners" of the Cavalier as "Seaton Leslie & Chelsea" with a Transfer on Death ("TOD") designation to Robert Seaton. (L.F. 355; App'x. A34.) Missouri law allows for multiple owners of a motor vehicle and thus both Chelsea Seaton and Plaintiff held the legally recognized title to the Cavalier. Mo. Rev. Stat. § 301.681. The definition of **own** tracks with Missouri law and makes clear that a person can **own** a motor vehicle, "even if there are other owners." (L.F. 124; App'x. A25.)

The presence of Chelsea Seaton on the Certificate of Title confirms her status as a holder of the legally recognized title to the Cavalier. Indeed, Plaintiff, in her summary judgment pleadings, admitted "Chelsea Seaton was listed as a title owner on the certificate of title to the 1997 Chevy Tudor, which is the vehicle identified in the policies at issue as a Chevy Cavalier 2DR . . . ." (L.F. 476–477; App'x. A35–A36)(emphasis in original).

Plaintiff emphasized the listing of Chelsea Seaton as a title owner on the Certificate of Title as part of an argument that the definition of **own** only permitted for a single owner due to its use of the phrase "the person" as opposed to "a person". (L.F. 252–256.) This argument–not adopted or addressed by the trial court or Court of Appeals–fails to hold water as the definitions of **own** and **owner** make clear that a person may **own** property "even if there are other **owners**" or "other titleholders or **leaseholders**." (L.F. 124; App'x. A25.) Even if the definitions of **own** and **owner** did not immediately dispel Plaintiff's argument, the use of the modifier "the" as opposed to the modifier "a" does not limit the

meaning of **own** to a single person. As a definite article, "the" refers to a specific and known noun, but does not dictate the modified noun's ability to be singular or plural. *Hopkins v. State*, 802 S.W.2d 956, 957–58 (Mo. App. 1991)("The use of the definite article 'the', as opposed to the indefinite article 'a', denotes a *particular* judgment or the *particular* sentence which resulted from a felony conviction on a guilty please and delivery to custody.")(emphasis added).

The definition of **own** explains that "the person referred to holds the legally recognized title." (L.F. 124; App'x. A25.) In the context of the definition of **relative**, "the person referred to" is the **individual** who **owns** a **motor vehicle**. (L.F. 125; App'x. A26.) The use of a definite article in this context makes grammatical sense because the policy previously identified the **person** and thus modifies a particular noun. Similar arguments relying on nuanced grammatical syntax have been rejected as ignoring the substance of the definitions in the policy. *Vega v. Shelter Mut. Ins. Co.*, 162 S.W.3d 144, 149–50 (Mo. App. 2005)("Thus, Chastity's contention that the use of the indefinite article 'an' before the term 'insured auto', as opposed to the definite article, 'the', is without merit. In fact, because of the definitions in the policy, that choice of words is irrelevant.") Even if Plaintiff's grammatical construction of the definition were correct, it simply cannot be ignored that the Policies define both **own** and **owner** as permitting for multiple owners. As noted in *Vega*, Plaintiff cannot ignore these express terms in favor of a tortured construction in order to create coverage.

Based on the Certificate of Title and Plaintiff's admissions, Chelsea Seaton, as a matter of law, held the legally recognized title to the Cavalier and therefore **owned** the

Cavalier. Because Chelsea Seaton **owned** the Cavalier, she is not a **relative** and thus is not an **insured** for UIM Coverage under the second definition of **insured**.

C. Chelsea Seaton did not occupy the "described auto".

The final definition of **insured** for UIM Coverage under the Durango/Camaro Policies is "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. 151; App'x. A31.)

The Durango/Camaro Policies define **described auto** as "the vehicle described in the **Declarations** . . . ." (L.F. 122; App'x. A23.) The **described auto** of the Durango Policy is the 1999 Dodge Durango (L.F. 116; App'x. A13) and the **described auto** of the Camaro Policy is the 1990 Chevrolet Camaro (L.F. 157; App'x. A15).

It is undisputed Chelsea Seaton occupied a 2003 Ford Ranger being operated by Megan Deaton at the time of the accident. (L.F. 111, 457.) As such, Chelsea Seaton cannot qualify for UIM Coverage under the third and final definition of **insured** because she did not occupy the **described auto** of either the Durango Policy or the Camaro Policy.

D. The Durango/Camaro Policies do not provide UIM Coverage to Chelsea Seaton because she does not meet the definition of an "insured" for UIM Coverage.

The undisputed material facts demonstrate Chelsea Seaton does not meet any of the three possible definitions of **insured** and thus UIM Coverage does not exist. It is undisputed the Declarations do not list Chelsea Seaton under the heading "**Named Insured**". It is undisputed Chelsea Seaton held the legally recognized title to the Cavalier. And it is undisputed Chelsea Seaton did not occupy the **described auto** at the time of the

accident. These undisputed facts negate the possibility of Chelsea Seaton qualifying as an **insured** for UIM Coverage and thus disposes of Plaintiff's claims under the Durango/Camaro Policies.

Because Chelsea Seaton does not qualify for UIM Coverage, the trial court erred in granting Plaintiff's Motion for Summary Judgment and erred in denying Shelter's Motion for Summary Judgment on the same question of UIM Coverage.

II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE TRIAL COURT FAILED TO INTERPRET THE DURANGO/CAMARO POLICIES ACCORDING TO THEIR TERMS IN THAT THE TRIAL COURT IMPROPERLY HELD THE DECLARATIONS CONFERRED COVERAGE BASED ON AN AMBIGUITY ONLY CONCERNING THE AMOUNT OF UIM COVERAGE.

The trial court erred in finding an ambiguity in the Declarations of the Durango/Camaro Policies in order to create UIM Coverage for Chelsea Seaton. As discussed in Point I, the dispositive issue is Chelsea Seaton's status as an **insured**. It remains axiomatic that if Chelsea Seaton does not meet the definition of an **insured** for UIM Coverage, Shelter has no obligation to provide UIM Coverage on behalf of Chelsea Seaton to Plaintiff. The trial court did not consider the relevant definitions of **insured**, but instead created UIM Coverage based on a purported ambiguity in the Declarations of the Durango/Camaro Policies. (L.F. 569–571; App'x. A3–A5.) The trial court erred in its reasoning because the Declarations are not ambiguous as to whether Chelsea Seaton is an **insured** for UIM Coverage, and Declarations cannot confer coverage without consulting the pertinent policy terms. And in this case, the unambiguous terms of the Durango/Camaro Policies make clear Chelsea Seaton is not an **insured** for UIM Coverage.

In its Order, the trial court reasoned the Durango/Camaro Polices promised UIM Coverage "in the Declarations page" but then took it "away in later provisions of the policies." (L.F. 569; App'x. A3.) Such an analysis is flawed as the Declarations function as an abbreviation of the essential terms of the Durango/Camaro Policies and "when the policy is read as a whole, it is clear that a reader must look elsewhere to determine the

scope of coverage." *Floyd-Tunnell v. Shelter Mut. Ins. Co.*, 439 S.W.3d 215, 221 (Mo. banc 2014). As made clear by its Order, the trial court failed to follow the guidance of *Floyd-Tunnell* and exclusively relied upon the Declarations in creating UIM Coverage.

Additionally, any ambiguity found by the trial court exclusively concerned the *amount* of UIM Coverage, but not as to *when* UIM Coverage existed. An ambiguity concerning the *amount* of UIM Coverage bears no relevance on the unambiguous terms of a policy dictating *when* UIM Coverage exists. See *Swadley v. Shelter Mut. Ins. Co.* 513 S.W.3d 355, 358 (Mo. banc 2017)("[A]ny ambiguity as to the *amount* of UIM coverage provided by this policy is irrelevant because such an ambiguity, if one exists, would not render this policy ambiguous *as to when* UIM coverage applies.")(emphasis in original).

A. The Declarations do not promise UIM Coverage to Chelsea Seaton.

The trial court improperly found the existence of UIM Coverage based solely on the Declarations of the Durango/Camaro Policies. In its Orders, the trial court determined the Declarations set 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. 569; App'x. A3.) Based on the lack of a limitation or qualification in the Declarations, the trial court held the Durango/Camaro Policies "promise coverage in the Declarations page and then take it away in later provisions of the policies, rendering them ambiguous and rendering them to be construed in favor of the insured." (L.F. 569; App'x. A3.) Such a rationale directly conflicts with the legal principles of interpretation for insurance policies which unequivocally state Declarations cannot grant coverage and the whole policy must

be reviewed to determine the existence of coverage. See *Floyd-Tunnell*, 439 S.W.3d at 221 and *Geico Cas. Co. v. Clampitt*, 521 S.W.3d 290, 293 (Mo. App. 2017). In this case, the relevant policy terms make clear Chelsea Seaton is not an **insured** for UIM Coverage.

The Declarations "do not grant any coverage but are introductory only and subject to refinement and definition in the body of the policy." *Clampitt*, 521 S.W.3d at 293 (citing *Owners Ins. Co. v. Craig*, 514 S.W.3d 614, 617 (Mo. banc 2017)). "[O]ur courts have held that since the declarations page **cannot grant coverage**, it cannot be used to argue that the insurer has promised something to the insured in the declarations page that is then later taken away by the more complete policy terms." *Id*. (citations omitted)(emphasis added).

Despite the holdings of *Floyd-Tunnell* and its progeny, the trial court held the Declarations promise UIM Coverage to Chelsea Seaton. (L.F. 569; App'x. A3.) Such a holding cannot be reconciled with the limited function of Declarations that categorically "cannot grant coverage". The Declarations to the Durango/Camaro Policies simply identify the **Named Insureds**, the Additional Listed Insureds, the types of coverages provided, and the limits of said coverage. This abbreviated information cannot unconditionally "promise" UIM Coverage to Chelsea Seaton.

The trial court also erred in requiring an "alert" or "warning" to Plaintiff that "exceptions or definitions later in the policies" may "attempt to deny and/or reduce UIM coverage." (L.F. 569; App'x. A3.) Because Declarations do not promise coverage, no requirement exists to clarify coverage in the Declarations. The requirement of an "alert" or "warning" is particularly troublesome in this case as it would ostensibly require Shelter to provide the entire definition of **relative** in the Declarations–or any other policy definition

or term that may limit coverage. But Declarations simply do not function in this manner.

The trial court erred in failing to consider the policy terms of the Durango/Camaro Policies to determine whether UIM Coverage existed for Chelsea Seaton. As discussed in Point I, the substantive terms of the Durango/Camaro Policies unambiguously do not consider Chelsea Seaton an **insured** for UIM Coverage.

B. Any ambiguity as to the amount UIM Coverage is irrelevant as to when UIM Coverage exists.

In addition to improperly relying on the Declarations to define coverage, the trial court improperly focused on a purported ambiguity concerning the *amount* of UIM Coverage, but not the *existence* of UIM Coverage. Again, the trial court did not consider the definition of **insured** for UIM Coverage and only focused on the statement of the limits for UIM Coverage in the Declarations. As made clear by its Orders, the trial court based its finding of an ambiguity from the limits of UIM Coverage in the Declarations.

In *Swadley*, this Court held a potential ambiguity as to the *amount* of UIM Coverage could not be used to create an ambiguity *as to when* UIM Coverage existed. 513 S.W.3d at 356. The insurer in *Swadley* denied UIM Coverage on the basis the tortfeasor's vehicle did not meet the definition of "underinsured motor vehicle" because its limits of liability exceeded the limits of UIM Coverage shown in the declarations. *Id*. The plaintiff argued the definition of "underinsured motor vehicle" was ambiguous because it restricted UIM Coverage to ensure the full limits of UIM Coverage set forth in the declarations would never be paid due set off provisions. *Id*. This Court rejected the argument and correctly held "any ambiguity as to the *amount* of UIM coverage provided by this policy is irrelevant

because such an ambiguity, if one exists, would not render this policy ambiguous *as to when* UIM coverage applies." *Id*. (emphasis in original).

The Court in *Swadley* further noted any ambiguity found with respect to the amount of UIM Coverage would be dicta because UIM coverage did not exist in the first place. *Id*. n.4. ("[B]ecause UIM coverage does not apply in this case, any ambiguity analysis as to the amount of UIM coverage would be nothing more than dicta.") See also *Lawson v. Progressive Cas. Ins. Co.*, 527 S.W.3d 198, 203 (Mo. App. 2017)("However, we need not decide whether the limits of liability, insuring agreement, or other insurance clause provisions render the Policy ambiguous because these alleged ambiguities would relate to *the amount of* UIM coverage provided under the Progressive policy, and they would not render the Policy ambiguous *as to when* UIM Coverage applies.")(emphasis in original)

As made clear by *Swadley*, if the Durango/Camaro Policies unambiguously do not provide UIM Coverage to Chelsea Seaton—as is the case—any ambiguity as to the amount of potential UIM Coverage remains an irrelevant question.

III. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING SHELTER'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THE MEANING OF "RELATIVE" IS GOVERNED BY THE DEFINITION IN THE DURANGO/CAMARO POLICIES AND SHELTER DID NOT NEED TO REPEAT THIS DEFINITION IN THE UIM ENDORSEMENTS FOR THE SAME TO BE EFFECTIVE.

The Durango/Camaro Policies–including the UIM Endorsements–exist as a single contract to be construed in harmony. "The insurance contract includes the form policy, the declarations, and any endorsements and definitions." *Grable v. Atlantic Cas. Ins. Co.*, 280 S.W.3d 104, 107–108 (Mo. App. 2009)(citing *Todd v. Missouri United Schools Ins. Council*, 223 S.W.3d 156, 163 (Mo. banc 2007)(remaining citation omitted)). The Durango/Camaro Policies make this point clear in its policy terms:

> ENTIRE AGREEMENT
>
> This policy includes the policy form, the application related to it, any applications for changes to it, all endorsements, and the **Declarations**. Those 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 a 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. 128; App'x. A29.) Without question, the UIM Endorsements were a part of the Durango/Camaro Policies and did not exist as a separate contract of insurance to be interpreted in isolation. See *Swadley v. Shelter Mut. Ins. Co.*, 513 S.W.3d 355, 357 (Mo. banc 2017)("When determining whether an ambiguity exists, courts should not interpret

policy provisions in isolation but rather evaluate policies as a whole.")(citation omitted).

In this matter, the Court of Appeals affirmed the decision of the trial court and adopted a rationale in direct conflict with bedrock legal principles of contract interpretation and the express terms of the Durango/Camaro Policies. Although this Court reviews the ruling of the trial court–not the Court of Appeals–Shelter addresses the reasoning of the Court of Appeal's Opinion due to its pointed divergence from the rules of interpretation governing insurance policies. Shelter also addresses the Opinion as it did not adopt any argument set forth by the trial court or Plaintiff and thus its rationale was largely unbriefed by the Parties. See *Gerlach v. Missouri Com'n on Human Rights*, 980 S.W.2d 589, 594 (Mo. App. 1988).

Per the requirement that the UIM Endorsements be construed as part of a single contract–not an independent agreement–the meaning of **relative** is derived from the Definitions Sections of the Durango/Camaro Policies. The Opinion fails to apply the meaning given in the Definitions Sections for the term **relative** as used in the UIM Endorsements. This interpretation cannot be justified as the meaning of **relative**–as used in the UIM Endorsements–has the same meaning set forth in the Definitions Sections and thus presents no conflict requiring resolution.

The Opinion reasons Shelter needed to repeat the definition of **relative** in the UIM Endorsements for the same to be effective. No basis exists for such a requirement as the Policies give the meaning of **relative** in the Definitions Sections and make clear the given definition applies to the bolded-policy term **relative** "unless a different meaning is stated in a particular coverage or endorsement." (L.F. 121; App'x. A21.) Because the UIM

Endorsements use the bolded-term **relative** and do not give a replacement definition for relative, the meaning set forth in the Definitions Sections controls.

The Opinion's finding of an ambiguity because Shelter did not repeat the definition of **relative** in the UIM Endorsements is particularly misguided as the Opinion never finds an ambiguity in the actual language used to define **relative**. The Opinion fails to consider the policy language and determine whether the same was clear and unambiguous–the key inquiry for interpreting an insurance policy. In this case, the definition of **relative** could not be clearer and could only be interpreted in one manner: the term **relative** does not include any **individual** who **owns** a **motor vehicle**. (L.F. 125; App'x. A26.) As the definition is unambiguous, it controls the meaning of **relative** as used in the UIM Endorsements. *Floyd-Tunnell v. Shelter Mut. Ins. Co.*, 439 S.W.3d 215, 219 (Mo. banc 2014)("This Court starts with the language of the policies to determine who qualifies as an insured and whether the person is entitled to coverage.")(citation omitted).

Shelter did not need to repeat the definition of **relative** in the UIM Endorsements for the same to be effective and such a rule would not benefit policyholders and lead to highly unpredictable results. The Opinion relies on inapposite case law for the proposition that Shelter needed to repeat the definition of **relative**. Indeed, the Opinion overlooks a decision from this Court enforcing a substantially similar definition of **relative** that appears in the Definitions Section as opposed to the coverage subsection. *Lair v. Am. Family Mut. Ins. Co.*, 789 S.W.2d 30, 32 (Mo. banc 1990). The Opinion imposes a new requirement that would require insurers to repeat all definitions of policy terms in each and every endorsement to ensure the same will be enforceable. This would not provide any clarity to

the policyholder as the definition already appears in the policy. The requirement for insurers to repeat definitions of policy terms would greatly lengthen the size of insurance policies while providing no new information.

Whether an insurer repeats the definition of a policy term in an endorsement should not be the test as to whether that definition is enforceable. As repeatedly held by this Court, the test is whether the language used to define a policy term is clear and unambiguous.

A. The UIM Endorsements exist as a part of one contract of insurance and cannot be construed in a vacuum.

"The policy of insurance and an endorsement must be read together where there is a dispute as to its meaning, and they should be construed together unless they are in such conflict they cannot be reconciled." *Abco Tank & Mfg. Co. v. Fed. Ins. Co.*, 550 S.W.2d 193, 198 (Mo. banc 1977). The Durango/Camaro Policies expressly incorporate the foregoing principles of law by making clear that "[e]ndorsements to this policy are a part of it and have the same contractual effect as the provisions of the base policy itself." (L.F. 128; App'x. A29.) Again, the Durango/Camaro Policies make clear that bolded-terms have the meaning set forth in the Definitions Sections unless a particular coverage or endorsement provides a different meaning. (L.F. 121; App'x. A22.)

The UIM Endorsements do not provide an additional or replacement definition of **relative** and thus the meaning provided in the Definitions Sections controls the meaning of **relative** as used in the UIM Endorsement of the Policies. The Durango/Camaro Policies cannot be interpreted in a piecemeal fashion and must be construed as a single document. "When determining whether an ambiguity exists, courts should not interpret policy

provisions in isolation but rather evaluate policies as a whole." *Swadley*, 513 S.W.3d at 357 (citing *Ritchie v. Allied Prop. & Cas. Ins. Co.*, 307 S.W.3d 132, 135 (Mo. banc 2009)).

The Opinion misapplied the law in its interpretation of the Durango/Camaro Policies as it considers the UIM Endorsements to be separate from the rest of the Policies. The meaning of **relative** in the UIM Endorsements can only be derived from its meaning set forth in the Definitions Sections.

B. The definition of relative is unambiguous and thus controls its meaning in the UIM Endorsements.

"This Court has long held that the general rules for interpretation of other contracts apply to insurance contracts." *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2d 300, 301–02 (Mo. banc 1993)(citation omitted). "The key is whether the contract language is ambiguous or unambiguous." *Id*. (emphasis added). "Where insurance policies are unambiguous, they will be enforced as written absent a statute or public policy requiring coverage." *Id*. (emphasis added)(citations omitted). "An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract." *Id*. (citations omitted)(emphasis added).

As previously discussed, the definition of **relative** includes blood relatives who reside in **your** household, but concludes with the following:

> **Relative** does not mean any **individual** who **owns** a **motor vehicle** or whose husband or wife **owns** a **motor vehicle**.

(L.F. 125; App'x. A26.) Again, the foregoing informs the meaning of **relative** in defining the scope of coverage and does not function as an exclusionary clause subject to a strict construction against Shelter. *McKee v. Am. Family Mut. Ins. Co.*, 932 S.W.2d 801, 802–03

(Mo. App. 1996). Instead, the only inquiry concerns whether the words used to define **relative** in the Durango/Camaro Policies are unambiguous.

The Opinion deviated from the principles of contract interpretation by finding an ambiguity not based on the policy language. In its discussion of the meaning of **relative** and the definition provided by the Durango/Camaro Policies, the Opinion found an ambiguity because an ordinary person would not construe the term 'relative' to not include the owners of motor vehicles. (Opinion, p. 5; App'x. A10)("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.")

How an ordinary person would construe the term "relative" in a conventional setting–without consulting the terms of the Durango/Camaro Policies–simply has no bearing on the meaning of **relative** as used in the Policies. Indeed, insurance policies specifically provide definitions for certain terms <u>because</u> the meaning deviates from conventional use. In this case, the Durango/Camaro Policies clarify that terms <u>not</u> appearing in bold-type "have their common dictionary meaning". (L.F. 121; App'x. A22.) As the UIM Endorsements use the bolded policy term **relative**, the Policies make clear the term **relative** is governed by its given definition–not its common dictionary meaning. 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.

The precedent set by the Opinion on this issue creates enormous uncertainty for

insurers and insureds. Again, the Opinion does not find an ambiguity in the policy language used to define **relative**, but still refuses to apply its given meaning under the Durango/Camaro Policies. This standard cannot be squared with the rules of contract interpretation and provides no guidance as to when the terms of a policy will be enforceable. In this case, Shelter uses clear and unambiguous language in the Durango/Camaro Policies to define **relative**. This language should control the interpretation of the Durango/Camaro Policies–not the conventional understanding of the term 'relative'. The rationale of the Opinion places no weight on the policy language in its interpretation of the Policies. As such, an insurer or insured could never know when a policy term applies–even when the policy language is clear and unambiguous. This simply cannot be the standard for interpreting insurance policies. Absent public policy concerns or statutory requirements, the unambiguous policy language controls. "If a term within an insurance policy is clearly defined, the contract definition controls." *State Farm Mut. Auto Ins. Co v. Ballmer*, 899 S.W.2d 523, 525–26 (Mo. banc 1995).

The Opinion's finding of a difference between the conventional meaning of relative and the policy definition of **relative** does not justify its holding. Again, insurance policies provide definitions for policy terms precisely because the insured should not construe the term according to its plain meaning. Instead, the insured should consult the given definition. Unambiguous policy language must be enforced even if the reviewing court "may feel that another construction would more accurately reflect what most consumers reasonably anticipate they will receive." *Kastendieck v. Millers Mut. Ins. Co.*, 946 S.W.2d 35, 40 (Mo. App. 1997). "A court is not permitted to create an ambiguity in order to distort

the language of an unambiguous policy, or, in order to enforce a particular construction which it might feel more appropriate." *Rodriguez v. Gen. Accident Ins. Co.*, 808 S.W.2d 379, 382 (Mo. banc 1991). The Opinion fails to follow *Rodriguez* as it interprets the Policies without consulting the plain and unambiguous language used to define **relative.**

C. The definition of relative is not an exclusion and should not be strictly construed against Shelter.

In addition to not considering the language that defined the meaning of **relative**, the Opinion also misapplied the law by construing the definition of **relative** as a policy exclusion. The Opinion repeatedly refers to the definition of **relative** as an "exclusion" or "exclusionary definition". (Opinion, p. 5–7; App'x. A10–A12.) The Opinion improperly deems the definition of **relative** as a policy exclusion and applies an unwarranted strict construction in favor of coverage. As previously discussed, a strict construction does not apply to the definition of **relative** as it does not function as an exclusion. *McKee*, 932 S.W.2d at 802–03. Instead, the definition of **relative** defines the initial extension of coverage and does not remove previously conferred coverage. *Id*.

Notably, the Opinion relies on inapposite case law addressing the standard of construction for policy exclusions in its interpretation of the definition of **relative**. (Opinion, p. 4.)(citing *Maxam v. Am. Family Mut. Ins. Co.*, 504 S.W.3d 124, 127 (Mo. App. 2016)). Unlike the present case, where the pertinent policy language concerns the extension of coverage from the meaning of a defined policy term, the court in *Maxam* interpreted an "owned-vehicle exclusion"–a true policy exclusion. 504 S.W.3d at 128. The owned-vehicle exclusion in *Maxam* appeared under the heading "Exclusions" and after the

scope of coverage had already been provided. *Id*. The Opinion's reliance on *Maxam* for a strict construction in favor of coverage is improper as *Maxam* addressed a policy exclusion–not the initial definition of coverage.

D. There is no justification for requiring an insurer to repeat the definition of a policy term in an endorsement.

The definition of **relative** did not need to be repeated in the UIM Endorsements. Again, a reviewing court must review an insurance policy as a single contract and construe its terms as a whole and according to its contract language. *Abco Tank*, 550 S.W.2d at 198. The Opinion disregards the foregoing core principles of contract interpretation and bases its holding on the fact Shelter did not repeat the definition of **relative** previously given in the Definitions Sections. The Opinion notes "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'x. A12.) The Opinion also reasons that it would be "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." (Opinion, p. 7; App'x. A12.)

As an initial matter, the Opinion disregards the fundamental requirement and expectation that an insured read the insurance policy. *Jenkad Enterprises, Inc. v. Transp. Ins. Co.*, 18 S.W.3d 34, 38 (Mo. App. 2000)(citations omitted). The unambiguous language of a policy or contract cannot be avoided simply because an insured would have to read the policy or contract to understand its effect. As recognized by this Court, "[d]efinitions, exclusions, conditions and endorsements are necessary provisions in insurance policies."

Floyd-Tunnell, 439 S.W.3d at 221 (citing *Todd v. Missouri United Sch. Ins. Council*, 223 S.W.3d 156, 162–63 (Mo. banc 2007)). It cannot be argued that some definitions may not be enforceable because the insured would believe a different meaning applied without actually reading the policy. Similar to the requirement that an insured look beyond the Declarations to determine the scope of coverage, an insured must also look to the definition of a bolded-term when interpreting an insurance policy. "[A] reader must look elsewhere to determine the scope of coverage." *Id*. (citations omitted).

The Opinion also misconstrues *Taylor v. Owners Ins. Co.* in holding Shelter needed to repeat the definition of **relative** in the UIM Endorsements. 499 S.W.3d 351 (Mo. App. 2016). The Opinion characterizes *Taylor* as suggesting a similar definition of "relative" may not have been enforceable had it not appeared within the applicable coverage subsection. (Opinion, p. 6–7; App'x. A11–A12.) Based on its depiction of the holding in *Taylor*, the Opinion asserts the Durango/Camaro Policies are not enforceable because it would be "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." (Opinion, p. 7; App'x. A12.)

The court in *Taylor* did not suggest that a general definition could create an ambiguity if the insurer does not repeat the definition in the applicable coverage subsection. In *Taylor*, the policy defined "relative" in the general definitions section as "a person related to you by blood, marriage, or adoption." *Id*. at 356. In the coverage subsection for UM Coverage, the policy defined an "insured" as including "a relative who does not own an automobile." *Id*. The plaintiff–who owned three automobiles–sought to distinguish case

law enforcing a similar limitation on the meaning of "relative" when defining who is an "insured". *Id*. (discussing *Lair v. Am. Family Mut. Ins. Co.*, 789 S.W.2d 30, 32 (Mo. banc 1990) and *Famuliner v. Farmers Ins. Co., Inc.*, 619 S.W.2d 894, 896 (Mo. App. 1981)). The plaintiff argued *Lair* and *Famuliner* did not control because those cases interpreted policies where the general definition of "relative" did not include the owner of an automobile, whereas the policy in *Taylor* added that limitation to the coverage subsection. *Id*. Based on this difference, the plaintiff argued the policy was ambiguous. *Id*. The court rejected the plaintiff's argument as unsupported by any existing authority and posited "[a]rguably, 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." *Id*.

The court in *Taylor* did not "suggest" its holding might have been different if the policy gave the definition of "relative" in the definitions section as opposed to the coverage subsection. The court in *Taylor* merely pointed out that an insurer could either set forth the ownership limitation in the general definition of "relative" or set forth the ownership limitation in the coverage subsection. Indeed, the court in *Taylor* ultimately held *Lair* and *Famuliner* were controlling even though the definition of "relative" in those cases appeared in the general definitions–not directly in the coverage subsection. The Opinion thus adopts a legal interpretation not considered or even suggested by the court in *Taylor*. Critically, the Opinion overlooks *Lair* and *Famuliner*–cases cited favorably by *Taylor* where the definition of "relative" was set forth in the definitions section and held to be unambiguous and enforceable–the same circumstances as the present case.

E. Requiring insurers to repeat already provided definitions in endorsements provides no benefit to policyholders.

The rationale of the Opinion creates a drastically different interpretation of insurance policies and calls into question the ability of an insurer to use *any* policy terms in an endorsement without repeating an already given definition. Repeating the definition of **relative** provides no benefit to the insured in understanding the scope of coverage. As made clear by the terms of the Durango/Camaro Policies, bolded-terms like **relative** have the meaning set forth in the Definitions Sections. "[T]he average person reading the policy would know that this is, as it says, a definition of a term, and one must look to insuring clauses to see if there are limitations on the extent of the insurer's liability." *Stewart v. Royal*, 343 S.W.3d 736, 743 (Mo. App. 2011). "[T]he phrase 'bodily injury' may be used in the policy without having to spell out the definition each time." *Id*. (emphasis added).

The Opinion's requirement to repeat already given definitions would make insurance policies considerably longer and more difficult to comprehend. In addition to conflicting with well-established case law, the newly declared requirement to repeat policy terms would harm an insured in understanding coverage. As a singular contract, an insurance policy incorporates numerous bolded-terms that bear a specific meaning throughout the policy. Again, this Court has found such definitions to be necessary provisions in insurance policies. See *Floyd-Tunnell*, 439 S.W.3d at 221 (citations omitted).

As made clear by the terms of the Durango/Camaro Policies, the meaning of the bolded-terms comes from the Definitions Sections of the Policies. Because the meaning of these terms continues to be the meaning set forth in the Definitions Sections, the UIM

Endorsements do not repeat the definitions.

The UIM Endorsements of the Durango/Camaro Policies incorporate twenty-six[5] (26) bolded policy terms, including **relative**, in order to explain UIM Coverage. (L.F. 151–153; App'x. A31–A33.) In order to comply with the Opinion, the UIM Endorsements would now need to repeat definitions for an additional twenty-six (26) bolded-terms. Such an exercise provides no new information to the insured as the meaning of these terms can be determined from the Definitions Sections.

A requirement that policy definitions are repeated in each Endorsement would considerably lengthen the Endorsement while providing no new information. Moreover, the inclusion of already given definitions would obfuscate the most important provisions of the Endorsement that should be consulted by a policyholder. Notably, the UIM Endorsements include additional and replacement definitions for **insured**, **damages**, **uncompensated damages**, and **underinsured motor vehicle**. The meaning of the foregoing terms, as used in the UIM Endorsements, are critical to understanding UIM Coverage. Said definitions appear on the first page of the UIM Endorsements. (L.F. 151; App'x. A31.) The inclusion of twenty-six (26) already given definitions only makes it more difficult for a policyholder to understand the most essential terms necessary to understanding coverage.

[5] In addition to **relative**, the UIM Endorsements incorporate the following bolded policy terms previously defined in the Durango/Camaro Policies: **accident**, **bodily injury**, **claim**, **compensation law**, **consequential loss**, **Declarations**, **described auto**, **financial responsibility law**, **general consent**, **individual**, **motor vehicle**, **permission**, **person**, **property damage**, **punitive damages**, **relative**, **resident**, **spouse**, **occupy**, **operator**, **our**, **own**, **owner**, **us**, **use**, **you**. (L.F. 151–153; App'x. A31–A33.)

CONCLUSION

The trial court's entry of summary judgment in favor of Plaintiff should be reversed. The undisputed facts demonstrate Chelsea Seaton is not an **insured** for UIM Coverage and the language of the Durango/Camaro Policies is unambiguous. The denial of summary judgment to Shelter on the same issues should be reversed and judgment should be entered in favor of Shelter.

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, a copy of this brief was served upon counsel for Plaintiff via the electronic filing system as set forth in the Certificate of Service, and this brief complies with the limitations contained in Rule 84.06(b).

This brief was prepared using Microsoft Word, is proportionally spaced and contains 13,630 words, not including material contained in the cover, certificate of compliance, certificate of service, signature block, and appendix.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

/s/ James D. Ribaudo

SETH G. GAUSNELL #35767
JAMES D. RIBAUDO #67232

CERTIFICATE OF SERVICE

I, the undersigned, certify that the original pleading was signed by the attorney of 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 28th day of January, 2019.