IN 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 REPLY BRIEF OF APPELLANT SHELTER MUTUAL INSURANCE COMPANY

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INTRODUCTION

This Court should reject the arguments advanced by Plaintiff and decline to adopt the standard of interpretation used by the Court of Appeals and trial court. Ultimately, this Court should reverse the trial court's judgment and grant summary judgment in favor of Shelter because the Durango Policy and the Camaro Policy ("Shelter Policies") do not consider Chelsea Seaton an **insured** for UIM Coverage.

In a noteworthy effort to affirm the judgment of the trial court, Plaintiff throws numerous darts against the wall. Plaintiff's arguments range from creating ambiguities that simply do not exist, to ignoring clear and unambiguous policy language, to enforcing an inapplicable standard of interpretation, to voiding the Cavalier Title. Plaintiff's offered interpretations and standard of construction should be rejected as improper applications of Missouri law. Instead, this Court should reverse the trial court and continue to clarify the uniform standards of interpretation for insurance policies.

It is well-settled that a declarations page to an insurance policy does not grant or promise coverage:

> Declarations are introductory only and subject to refinement and definition in the body of the policy. The declarations do not grant any coverage. The declarations state the policy's essential terms in an abbreviated form, and when the policy is read as a whole, it is clear that a reader must look elsewhere to determine the scope of coverage.

Owners Ins. Co. v. Craig, 514 S.W.3d 614, 618 (Mo. banc 2017)(citations omitted).

It is equally well-settled that an insurance policy should be read as a whole and enforced according to its clear and unambiguous language:

> When determining whether an ambiguity exists, courts should not interpret policy provisions in isolation but rather evaluate policies as a whole.
>
> [D]efinitions, exclusions, conditions and endorsements are necessary provisions in insurance policies. If they are clear and unambiguous within the context of the policy as a whole, they are enforceable.

Swadley v. Shelter Mut. Ins. Co., 513 S.W.3d 355, 357–58 (Mo. banc 2017).

Based on the foregoing, it must be concluded that **relative** unambiguously does not include any person who **owns** a motor vehicle and **own** means holding the legally recognized title and expressly permits for multiple owners. The definitions of the pertinent **bolded** policy-terms control the meaning of said terms throughout the Shelter Policies–including the UIM Endorsements. The Declarations also do not make an unconditional promise of UIM Coverage to Chelsea Seaton. The mere listing of UIM Coverage on the Declarations cannot be used to negate subsequent definitions, exclusions, conditions, and endorsements–necessary provisions in insurance policies.

Plaintiff's numerous arguments to avoid this conclusion are either wholly unpreserved or premised on unreasonable interpretations of isolated provisions of the Shelter Policies–an improper and frequently rejected standard of interpretation. *Swadley*, 513 S.W.3d at 357 ("When determining whether an ambiguity exists, courts should not interpret policy provisions in isolation but rather evaluate policies as a whole.") The argument for consideration of the reasonable expectations of Plaintiff must also be rejected because the language of the Shelter Policies is unambiguous. *Rodriguez v. Gen. Accident Ins. Co.*, 808 S.W.2d 379, 382 (Mo. banc 1991).

ARGUMENT

I. DECLARATIONS CANNOT GRANT COVERAGE AND DO NOT CALL FOR AN "ADDITIONAL LEVEL OF SCRUTINY".

Plaintiff seeks to negate the unambiguous language of the Shelter Policies with an inappropriate "additional level of scrutiny" for the pertinent terms concerning whether Chelsea Seaton is an **insured** for UIM Coverage. The "additional level of scrutiny" or "heightened scrutiny" standard advanced by Plaintiff does not control the interpretation of the Shelter Policies. Missouri law is clear that "[w]here insurance policies are unambiguous, they will be enforced as written absent a statute or public policy requiring coverage." *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2d 300, 301–02 (Mo. banc 1993)(citation omitted).

The Declarations of the Shelter Policies do not create an ambiguity with respect to whether Chelsea Seaton is an **insured** because the Declarations do not make an unlimited promise of UIM Coverage for all persons under any circumstances. A declarations page functions as an abbreviation of the essential terms of coverage and Plaintiff 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). Plaintiff fails to justify the use of a purported "additional level of scrutiny" standard and this Court should enforce the Shelter Policies as written.

The cases cited by Plaintiff in support of an "additional level of scrutiny" are limited to when a declarations page does not clarify that UIM Coverage is gap coverage as opposed to excess coverage. Plaintiff's cases exclusively concern the issue of when declarations create an ambiguity as to the *amount* of UIM Coverage, but not as to *when* UIM Coverage

applies. This case concerns the latter issue and the potential amount of UIM Coverage is irrelevant as to whether Chelsea Seaton is an **insured**. *Swadley*, 513 S.W.3d at 358.

The Declarations also do not suggest that any and all "relatives" of Plaintiff would be entitled to UIM Coverage under all circumstances. The listing of UIM Coverage in the Declarations and identifying the Named Insureds and Additional Listed Insureds cannot serve as an unconditional promise of UIM Coverage. Holding otherwise would necessarily require Shelter–and all insurers–to set forth all definitions, conditions, exclusions, and terms in the Declarations–an absurd and impossible proposition. The definitions for **insured**, **you**, **own**, and **relative** are "necessary provisions in insurance policies" and if the same are "clear and unambiguous within the context of the policy as a whole, they are enforceable." *Id*. (citations omitted).

A. Missouri Law does not support an "additional level of scrutiny" standard of interpretation for the Shelter Policies.

Plaintiff relies on two cases in support of an "additional level of scrutiny" or "heightened scrutiny" standard of interpretation. (Plaintiff's Substitute Brief, p. 29, 31–32, 51–52, 59)(citing *Nationwide Ins. Co. of America v. Thomas*, 487 S.W.3d 9 (Mo. App. 2016) and *Simmons v. Farmers Ins. Co., Inc.*, 479 S.W.3d 671 (Mo. App. 2015)). As far as counsel for Shelter can determine, *Thomas* and *Simmons* are the only cases adopting an "additional level of scrutiny" standard. Both cases concern an issue wholly irrelevant as to who is an **insured** and thus do not control this matter.

The court in *Simmons* cites to *Miller v. Ho Kun Yun* in support of an "additional level of scrutiny". *Id*. at 677 (citing 400 S.W.3d 779, 787 (Mo. App. 2013)). Notably, the

court in *Miller* never expressly adopted an "additional level of scrutiny" or "heightened scrutiny" standard. *Id*. The court in *Miller* found the stated limits of UIM Coverage on the declarations did not make clear that UIM Coverage was "gap coverage rather than excess coverage" and thus made it "necessary to strictly and carefully consider any language in the endorsement which might also suggest that the coverage could be considered excess." *Id*. (citing *Jones v. Mid-Century Ins. Co.*, 287 S.W.3d 687, 690–92 (Mo. banc 2009) and *Ritchie v. Allied Prop. & Cas. Ins. Co.*, 307 S.W.3d 132, 138–40 (Mo. banc 2009)).

The court in *Miller* did not adopt a new "additional level of scrutiny" standard of interpretation to the extent argued by Plaintiff. Instead, the court found an ambiguity in the actual terms of the policy with respect to set-off provisions and other insurance provisions. *Id*. In reliance on *Jones* and *Ritchie*, the court determined the ambiguity between these provisions required heightened scrutiny because the declarations page did not provide an "alert" for the ordinary insured that UIM Coverage was gap coverage. *Id*. at 787 (distinguishing *Rodriguez v. Gen. Accident Ins. Co. of Am.*, 808 S.W.2d 379, 382 (Mo. banc 1991)). While the court in *Miller* focused on the absence of an "alert" in the declarations, the analysis was premised on an ambiguity in the terms of the policy.

The court in *Simmons* considered the same issue addressed by *Miller*. In *Simmons*, the insurer denied UIM Coverage on the basis the tortfeasor's vehicle was not an "underinsured motor vehicle" due to the limits of its applicable insurance policy. 479 S.W.3d at 673. The court in *Simmons* expressly relied on *Miller* in finding an ambiguity in the declarations page because it did not adequately alert the policyholder that UIM Coverage only functioned as gap coverage:

> Nothing in the declaration sheet indicates the coverage is merely gap coverage between the tortfeasor's liability limited and the underinsured motorist limit, rather than comprehensive coverage necessarily excess to the tortfeasor's liability coverage toward the Insured's total injuries.

Id. at 676 (citing *Miller*, 400 S.W.3d at 787). The court in *Thomas* considered the same issue and similarly held:

> 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).

487 S.W.3d at 12–13 (citing *Simmons*, 479 S.W.3d at 675–76).

As made clear by *Thomas*, and *Simmons*, any "heightened level of scrutiny" standard only applies when the declarations do not adequately alert the policyholder that UIM Coverage is gap coverage and not excess coverage. Subsequent decisions have clarified the limited scope of these holdings. In *Geico Cas. Co. v. Clampitt*, the insured argued anti-stacking provisions were ambiguous because the declarations page showed a separate premium being paid for UIM Coverage and thus "promised" UIM Coverage could be stacked and did not expressly prohibit stacking. 521 S.W.3d 290, 292–93 (Mo. App. 2017). The court in *Clampitt* rejected the argument and held the declarations did not make a promise that UIM Coverage could be stacked. *Id*. at 294–95. The court noted the absence of anti-stacking language was "unremarkable" and that a declarations page, by design, does not contain "the vast majority of the policy's limitations". *Id*. at 294 (citations

omitted)(emphasis added). The court also distinguished *Miller*, *Thomas*, and *Simmons* on the basis those cases dealt with whether UIM Coverage was "gap coverage" or "excess coverage". *Id*. at 295 ("These cases involve totally different policy provisions and are not applicable in the stacking context.")(citation omitted).

The court in *Clampitt* also noted *Miller*, *Thomas*, and *Simmons* did not consider recent decisions from this Court clarifying the nature and function of a declarations page:

> More important than the factual differences in these cases is that none of these cases acknowledge or take into account the Supreme Court's directive that a declarations page is merely an introduction to and summary of the essential terms of coverage, but does not grant coverage.
>
> Thus, not only are these cases not dispositive of the facts of this case, we also find them to be unhelpful even on general principles for interpreting insurance contracts.

Id. (referencing *Craig*, 514 S.W.3d at 617)(remaining citations omitted).

B. <u>The Declarations of the Shelter Policies do not unconditionally promise UIM Coverage to Chelsea Seaton.</u>

Plaintiff asserts an "additional level of scrutiny" standard must apply because the Shelter 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." (Plaintiff's Substitute Brief, p. 29)(citing *Thomas*, 487 S.W.3d at 12). Plaintiff similarly claims an ambiguity exists because "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." (Plaintiff's Substitute Brief, p. 50.)

In an attempt to create an ambiguity where none otherwise exists, Plaintiff pursues the same argument rejected by the court in *Clampitt*. The absence of a full definition of **insured**, **relative**, or **own** in the Declarations does not create an ambiguity or warrant "heightened scrutiny" of the language of the Shelter Policies. As found by *Clampitt*, the fact the Declarations do not give the definition of **relative** or **own** is "unremarkable" as the majority of policy limitations do not appear in the Declarations by design.

The determinative issue is whether Chelsea Seaton is an **insured**. The absence of the definition of **insured** or **relative** on the Declarations of the Shelter Policies cannot create an ambiguity because there is nothing on the Declarations that would remotely suggest UIM Coverage would always exist for Chelsea Seaton without qualification. As noted by this Court, the Declarations provide the essential terms of the Shelter Policies in an abbreviated form, "and when the policy is read as a whole, it is clear that a reader must look elsewhere to determine the scope of coverage." *Floyd-Tunnell*, 439 S.W.3d at 221.

The *Thomas*, *Simmons*, and *Miller* line of cases are limited to the issue of the *amount* of UIM Coverage. The ambiguity in those cases arose from a conflict between policy terms regarding how much of the limits an insurer would pay. The absence of a clarification on the declarations page as to whether UIM Coverage served as gap coverage or excess coverage compounded this ambiguity. The same type of ambiguity simply does not exist in this case. The fact that the Declarations list the existence of UIM Coverage and identify the Named Insured and Additional Listed Insured serves as an abbreviation of the basic contents of the Policies. If providing an abbreviation of coverage on the declarations page could be construed to promise coverage or create an ambiguity, it would necessarily be

impossible for *any* exclusion to *any* type of listed coverage to *ever* apply because a declarations page, by design, does not set forth the full agreement.

Indeed, this Court recently explained the ambiguity found sometimes in UIM Coverage arises from express language in the policy stating the insurer will pay up to the amount listed in the declarations page that conflicts with express language for a set-off provision that ensures the insurer will never be obligated to pay the full amount. *Craig*, 514 S.W.3d at 617 (citations omitted). The ambiguity in those cases arises from the impossibility of an insurer to fulfill a promise expressly made in the language of the policy. *Id*. Here, an express and unconditional promise of UIM Coverage to Chelsea Seaton simply does not exist and thus no ambiguity is created by subsequent definitions clarifying as to who is an **insured** for UIM Coverage.

The issue of whether UIM Coverage functions as "gap coverage" or "excess coverage" is unrelated to this dispute and simply cannot create an ambiguity as to the definition of **insured**. *Swadley*, 513 S.W.3d at 358 ("[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). Plaintiff fails to identify a relevant ambiguity in the Declarations that conflicts with any subsequent terms of the Shelter Policies.

Plaintiff also relies on subsequent policies issued by Shelter to demonstrate an ambiguity exists in the Shelter Policies at issue. (Plaintiff's Substitute Brief, p. 32.) Plaintiff asserts Shelter "could have alerted its policyholder . . . of the possibility of limitations to the stated coverages for underinsured motorist coverage, as it did in later policies purchased

by Plaintiff . . . but it did not do so." (Plaintiff's Substitute Brief, p. 32.) The Declarations for the Cavalier Policy, effective from 4/4/16 to 9/25/16, contains the following language below the listing of UIM Coverage:

> NOTE: the underinsured motorist limits stated above will be reduced by deducting the amounts an insured receives, or is entitled to receive, from other sources.

(L.F. 546.) The same language is included on the Declarations for a Pontiac GTO Policy effective from 6/23/16 to 12/23/16 (L.F. 548) and the Declarations for the Durango Policy effective from 3/16/16 to 9/16/16 (L.F. 552).

As an evidentiary matter, the terms of another Shelter policy not in effect on 6/28/10–the date of the accident–simply has no legal or logical relevance as to how to construe the Shelter Policies at issue. When the language of an insurance policy is unambiguous–as the Shelter Policies are here–extrinsic evidence cannot be used to interpret the provisions of the policy or otherwise be used to create an ambiguity. *Topps v. City of Country Club Hills*, 272 S.W.3d 409, 418 (Mo. App. 2008)(citation omitted).

It is also evident the language added to renewals of the Shelter Policies sought to rectify the gap coverage ambiguity identified by *Miller*, *Thomas*, and *Simmons*. But a gap coverage ambiguity simply has no relevance to who is an **insured** for UIM Coverage. The suggestion that Shelter could have "alerted" Plaintiff of "the possibility of limitations to the stated coverages" misconstrues the purpose of a declarations page. It is simply unfeasible to expect Shelter–or any other insurer for that matter–to set forth *all* possible limitations of *all* coverages in the declarations page. This would turn a declarations page into the entirety of the insurance policy–a ridiculous result.

In addition to *Thomas* and *Simmons* being non-controlling, Shelter questions the validity of an "additional level of scrutiny" standard for the interpretation of any insurance policy. As previously discussed, the court in *Thomas* adopted an "additional level of scrutiny" from *Miller*–despite the court in *Miller* never expressly adopting such a standard. More importantly, neither *Thomas* nor *Simmons* provide a clear framework for an "additional level of scrutiny" standard. Plaintiff repeatedly relies on the buzz phrase "additional level of scrutiny," but fails to explain how it applies. As made clear by numerous attacks on the plain language of the Shelter Policies, Plaintiff relies on the vague "additional level of scrutiny" to create ambiguities where none otherwise exist.

Because the "additional level of scrutiny" standard is undefined, unpredictable, and unworkable, this Court should reject its application in favor of the traditional principles of contract interpretation. At the very least, the application of such a standard should be limited only to ambiguities concerning gap coverage–an issue not present here. As repeatedly noted by this Court, the actual language of an insurance policy should control its meaning–not tortured and convoluted interpretations based on an amorphous "additional level of scrutiny." Policy interpretation should begin and end with whether policy language is ambiguous or unambiguous.

The recent holding by this Court in *Owners Ins. Co. v. Craig* calls into doubt the validity of the "additional level of scrutiny" standard and the holdings of *Thomas* and *Simmons*. 514 S.W.3d at 617–18. In *Craig*, the policyholder argued a set-off provision that reduced the stated limits of UIM Coverage on the declarations page created an ambiguity because the insurer would never actually have to pay that amount–nearly the same

argument asserted in *Thomas* and *Simmons*. *Id*. In *Craig*, this Court diverged from *Thomas* and *Simmons* and declined to find an ambiguity and noted "bare, general references" in the declarations containing the limit of liability does not grant coverage and could not create an ambiguity. *Id*. (citations omitted). "Evaluating the policy as a whole, it unambiguously provides that the declarations' listed limit amount serves only as a reference point for use with the set-off provisions, which are likewise unambiguous." *Id*.

Plaintiff asks this Court to adopt the same argument rejected by *Craig* wherein an ambiguity would be created "where none exists so as to construe the imaginary ambiguity in such a way to reach a result which some might consider desirable but which is not otherwise permissible under the policy or the law." *Id*. at 614, n. 4. Without question, everyone involved wishes the accident never occurred in the first place. But sympathy to the deceased and the family of the deceased should not dictate the result when the result can only be reached by disregarding fundamental principles of contract interpretation.

II. THE DEFINITION OF "OWN" IS UNAMBIGUOUS AND IT IS UNDISPUTED CHELSEA SEATON OWNED THE CAVALIER BECAUSE SHE HELD THE CERTIFICATE OF TITLE.

Plaintiff advances numerous arguments to negate the undisputed fact that Chelsea Seaton was an "individual who **owns** a **motor vehicle**" and thus not a **relative**. Plaintiff's arguments include challenges to the validity of the Certificate of Title to the Cavalier ("Cavalier Title"), the status of Chelsea Seaton as a TOD Beneficiary, and the definitions of **own**, **owner**, and **relative** in the Shelter Policies. These challenges must fail, however, as the Cavalier Title is not void, the Cavalier Title unequivocally shows Chelsea Seaton as an Owner, the Shelter Policies expressly permit for more than one owner, and the definition of **own** refers to the holder of the legally recognized title.

A. *Lightner* is inapplicable because the Shelter Policies specifically define **own** as holding the legally recognized title.

Plaintiff asserts *Lightner v. Farmers Ins. Co.*, 789 S.W.2d 487 (Mo. banc 1990) controls this case and Chelsea Seaton did not **own** the Cavalier because she was not "free to voluntarily destroy, encumber, sell, or otherwise dispose of the Cavalier." (Plaintiff's Substitute Brief, p. 40–44.) Plaintiff's reliance on *Lightner* is misplaced as the policy in that case did not define the meaning of "own". *Id*. at 489. Because the policy in *Lightner* did not define "own", this Court construed its meaning in accordance with its dictionary definition and defined "own" as exercising dominion and being "free to voluntarily destroy, encumber, sell, or otherwise dispose of the truck." *Id*. at 489–90. From this definition, this Court held the insured's son did not "own" the motor vehicle despite appearing on the certificate of title as an owner. *Id*. This holding was based upon uncontroverted testimony

from the insured regarding the nature of the arrangement with his son as to the ownership and use of the vehicle. *Id*. at 489. Notably, the testimony of the insured "was the only witness whose testimony has been provided in the record before us." *Id.*

In a subsequent decision, this Court adopted a similar definition of "own" when the policy did not define the term. *Manner v. Schiermeier*, 393 S.W.3d 58, 62–63 (Mo. banc 2013)(citation omitted). In *Manner*, the insurer asserted the term "own" should be construed as having an insurable interest in the motor vehicle. *Id*. at 62. This Court rejected the argument and defined the "own" according to the meaning that would ordinarily be understood by the layman who bought and paid for the policy. *Id*. In rejecting the insurer's argument, this Court noted "[w]hile the insurance policies at issue could have defined 'owned,' for purposes of the underinsured motorist endorsement, to include all those who have an insurable interest in the vehicle, they did not do so." *Id*. at 62 (emphasis added).

The definition of "own" applied by *Lightner* and *Manner* has no bearing on this case because the Shelter Policies specifically define **own** as holding the legally recognized title. (L.F. 124; App'x. A25.) The definition set forth in the Shelter Policies controls the meaning of **own**. "If a term is defined in a policy, the court will look to that definition rather than looking elsewhere." *Shelter Mut. Ins. Co. v. Sage*, 273 S.W.3d 33, 38 (Mo. App. 2008). Indeed, the Court in *Manner* recognized the insurer *could* have defined "owned" as persons with an insurable interest for the purposes of UIM Coverage but chose to leave the term undefined. 393 S.W.3d at 62. This case presents the opposite circumstances wherein Shelter *did* define **own** as holding the legally recognized title.

As made clear by *Manner*, the ordinary understanding of "own" controlled because the insurer chose to leave the term undefined. It is equally true, however, that when an insurer does define the term **own**–as the Shelter Policies do here–that definition controls its meaning. The inapplicability of *Lightner* and *Manner* to policies that define the meaning of "own" has been noted in subsequent cases:

> *Manner* has no relevance to this case. In *Manner*, the insurers chose not to define the term 'owned' in the policies,' and the Court was therefore left to rely on the common understanding of 'ownership.'
>
> In contrast to *Manner*, the terms 'own' and 'owner' are defined in the other Shelter policies, and no one disputes that, under those definitions, the Civic was 'owned' by Skylar Trail's parents.

Yager v. Shelter Gen. Ins. Co., 460 S.W.3d 68, 74 (Mo. App. 2015)(citation omitted).

Even if the meaning of "own" set forth by *Lightner* applied to this case, Plaintiff failed to offer any evidence to overcome the presumption of ownership created by Chelsea Seaton's holding of the legally recognized title. In *Lair v. Am. Family Mut. Ins. Co.*–a companion case to *Lightner* decided on the same day–this Court similarly confronted a policy that did not define the term "own" and circumstances where a vehicle was titled to a resident relative. 789 S.W.2d 30, 32–33 (Mo. banc 1990). This Court in *Lair* held the resident relative "owned" the vehicle and contrasted the facts from *Lightner* because the insured provided no evidence regarding "the circumstances regarding the purchase." *Id*. at 32. Here, Plaintiff similarly failed to provide any evidence at the trial court regarding such circumstances and only makes a challenge to the presumption of ownership for the first time on appeal. "Where a party raises an issue for the first time on appeal, that party has

failed to preserve the issue for appellate review." *Bowan v. General Sec. Indem. Co.*, 174 S.W.3d 1, 7 (Mo. App. 2005)(citations omitted). As such, even if the holdings of *Lightner* and *Lair* applied here, this case would fall squarely within *Lair* due to the failure of Plaintiff to provide evidence rebutting the presumption of ownership at the trial court.

Plaintiff similarly attempts to avoid the meaning of **own** by asserting its definition only permits for a single owner. Shelter previously addressed Plaintiff's convoluted grammatical argument, but it suffices to say the definition of **own** makes its meaning perfectly clear and susceptible to a single interpretation:

> **Own** means that the **person** referred to holds the legally recognized title to . . . 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.

(L.F. 124; App'x. A25.)(emphasis added). Notably, the final sentence of the foregoing definition also makes clear that the construction provided by *Lightner* and *Manner* does not apply and the meaning of **own** does not consider how Chelsea Seaton used the Cavalier or the circumstances of ownership between Plaintiff and Chelsea Seaton.

B. The Cavalier Title is valid and confirms Chelsea Seaton **owned** the Cavalier and thus was not a **relative**.

Chelsea Seaton held the legally recognized title to the Cavalier and therefore was an "individual who **owns** a **motor vehicle**" and not a **relative**. Again, the term **own** means the person referred to "holds the legally recognized title to . . . an item of real or personal property". (L.F. 124; App'x. A25.) The "legally recognized title" to the Cavalier is its Certificate of Title. Mo. Rev. Stat. § 301.210.

It is plainly apparent from the Cavalier Title that Chelsea Seaton is listed as an "Owner" and thus held the legally recognized title to the Cavalier. (L.F. 355; App'x. A34.) As discussed in Shelter's Substitute Brief, Plaintiff conceded this point during summary judgment. (Shelter's Substitute Brief, p. 33)(L.F. 476–477; App'x. A35–A36.)

1. The Cavalier Title does not list Chelsea Seaton as a TOD Beneficiary

It cannot be seriously argued that Chelsea Seaton was a Transfer on Death ("TOD") beneficiary of the Cavalier. (Plaintiff's Substitute Brief, p. 33, 39–40.) The Cavalier Title speaks for itself and lists Chelsea Seaton as an owner–not a TOD beneficiary. The Cavalier Title clearly reads as follows:

OWNER: SEATON LESLIE & CHELSEA TOD SEATON ROBERT.

(L.F 355; App'x. A26.)

"A certificate of ownership issued in beneficiary form shall include after the name of the owner, or after the names of multiple owners, the words 'transfer on death to' or the abbreviation 'TOD' followed by the name of the beneficiary or beneficiaries." Mo. Rev. Stat. § 301.681.2 (emphasis added). The Non-Probate Transfer Law adopts the same scheme and provides the "transfer on death direction" or abbreviation "TOD" comes "after the name of the owners and before the designation of the beneficiary." Mo. Rev. Stat. § 461.005(15)(emphasis added).

It is readily apparent the Cavalier Title designates Robert Seaton as the TOD beneficiary by virtue of his name appearing *after* the abbreviation "TOD". It is equally apparent the Cavalier Title designates Leslie Seaton and Chelsea Seaton as the owners by virtue of their names appearing *after* "Owner" and *before* the abbreviation "TOD".

2. The Cavalier Title is not defective and cannot be voided

Plaintiff alternatively seeks to retroactively void the transfer of the Cavalier to Chelsea Seaton altogether. Plaintiff claims the application for the Cavalier Title ("Application") failed to comply with 12 CSR 10-23.130 due to its purported failure to set forth the full legal name of Chelsea Seaton. (Plaintiff's Substitute Brief, p. 32, 44–46.)

This argument fails because Plaintiff never made this challenge at the trial court and thus failed to preserve it for appeal, because no evidences suggests the Application violated 12 CSR 10-23.130, indeed the Application remains unproduced, and because a hypothetical violation of 12 CSR 10-23.130 would not void the Cavalier Title.

i. *Plaintiff failed to preserve this challenge*

Plaintiff never challenged the legitimacy of the Cavalier Title or the transfer of ownership to Chelsea Seaton at the trial court. Just as Plaintiff failed to preserve a challenge to the presumption of ownership at the trial court, Plaintiff also failed to preserve a challenge to the legitimacy of the Cavalier Title. "A point not raised in the trial court may not be raised on appeal, and a party cannot request relief on appeal not sought in the trial court." *Bunting v. McDonnell Aircraft Corp.*, 522 S.W.2d 161, 168 (Mo. banc 1975)(citations omitted). Plaintiff did not preserve this argument and it should be rejected.

Plaintiff also took a position in the trial court wholly inconsistent with an attack on the legitimacy of the Cavalier Title. It is well-settled law that a party is "bound on appeal by the positions they took in the trial court". *Roche v. Roche*, 289 S.W.3d 747, 753 (Mo. App. 2009)(citations omitted). Plaintiff attached the Cavalier Title to her Statement of Uncontroverted Material Facts in support of her *own* Motion for Summary Judgment. (L.F.

112, 197, 270, 355, 476, 479.) By relying on the Cavalier Title to support her requested relief, Plaintiff represented the Cavalier Title as being legitimate. It was incumbent upon Plaintiff to raise any type of challenge to the legitimacy of the Cavalier Title at the trial court and cannot do so for the first time on appeal.

ii. *No evidence suggests the Application violated 12 CSR 10-23.130*

Even if preserved for review, Plaintiff fails to submit any evidence the Application violated 12 CSR 10-23.130. Plaintiff attacks the transfer of ownership of the Cavalier to Chelsea Seaton based on the purported absence of Chelsea Seaton's full legal name on the Application for the Cavalier Title. Again, the Application has never been produced by Plaintiff and is not a part of the Record. Despite the inability of this Court to actually review the Application to determine if it states the full legal name of Chelsea Seaton, Plaintiff asserts the contents of the Cavalier Title can prove the contents of the Application. Plaintiff claims that because the Cavalier Title does not have the full legal name of Chelsea Seaton, "presumably the application from which the title was issued" did not contain her full legal name in violation of 12 CSR 10-23.130. (Plaintiff's Substitute Brief, p. 46.) Plaintiff uses the qualifier "presumably" because Plaintiff does not know what information is in the Application. Indeed, neither Plaintiff, Shelter, nor this Court know if the Application complied with 12 CSR 10-23.130 because it has never been produced.

The Cavalier Title has no legal or logical relevance to the issue of whether the Application set forth Chelsea Seaton's full legal name. Unlike an application for a certificate of title, there is no requirement that the certificate of title itself set forth the full legal name of the owner(s). Section 301.190 provides the information that must be

contained in a certificate of title. The full legal name of all owner(s) is notably absent from these requirements. Mo. Rev. Stat. § 301.190. The Cavalier Title–a document not bound by the requirements of 12 CSR 10-23.130–cannot demonstrate another unproduced document violated 12 CSR 10-23.130.

iii. *A speculative violation of 12 CSR 10-23.130 would not void the transfer of ownership to Chelsea Seaton*

Even if Plaintiff's challenge was preserved and it could be shown the Application did not comply with 12 CSR 10-23.130, the Cavalier Title would not be rendered void. Plaintiff relies on Section 301.210 in order to void the transfer of the Cavalier to Chelsea Seaton and the Cavalier Title. (Plaintiff's Substitute Brief, p. 44–45)(also citing *Bolt v. Giordano*, 310 S.W.3d 237 (Mo. App. 2010)). But Section 301.210 does not render the sale or transfer of a motor vehicle void because a certificate of title or an application for a certificate of title does not list the full legal name of the owner or applicant.

Section 301.210 solely concerns the requirement that a certificate of title be assigned from the seller of a motor vehicle to the buyer at the time of sale. "In order to transfer ownership a vehicle properly, Missouri law requires the seller to assign the certificate of ownership to the purchaser." *Bolt*, 310 S.W.3d at 244 (citation omitted). At the time of delivery, the seller of a motor vehicle must endorse the certificate of title and endorse the same to the purchaser. Mo. Rev. Stat. § 301.210.1. The failure to assign the certificate of title to the seller is unlawful and "the sale of any motor vehicle or registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void." Mo. Rev. Stat. § 301.210.4 (emphasis added).

As made clear by the language of Section 301.210, the remedy of rendering a sale void only applies when the seller fails to assign the certificate of title to the buyer. In a series of logical leaps, Plaintiff attempts to graft the remedy afforded by Section 301.210 to a speculative violation of 12 CSR 10-23.130 concerning an issue wholly unrelated to the delivery of the Cavalier Title at the time of purchase.

Plaintiff claims Section 301.210 is a "sister statute" to Section 301.190 and therefore any violation of Section 301.190 would result in the remedy afforded by Section 301.210. No justification exists for applying a remedy exclusively provided for a violation of Section 301.210 to a violation of Section 301.190. Plaintiff's argument is particularly strained as Section 301.190 does not require the full legal name of the owner(s) to appear on the certificate of title. Plaintiff tries to sidestep this pitfall in reliance on the administrative authority conferred by Section 301.190.14 and the subsequent enactment of 12 CSR 10-23.130. This chain of reasoning is broken as 12 CSR 10-23.130 exclusively concerns the contents of the application for a certificate of title–not the certificate of title itself–and does not contain the same remedy provided by Section 301.210.

The holding of *Bolt v. Giordano*–the sole case cited by Plaintiff–similarly does not support rendering a transfer of ownership void due to the failure of the Application to comply with 12 CSR 10-23.130. The defendant in *Bolt*–a used car dealership–sold a vehicle to the plaintiff without conveying the certificate of title at the time of purchase or any time thereafter. 310 S.W.3d at 241. The plaintiff sued the defendant seeking to render the sales contract void, in part, because of the defendant's failure to comply with the requirements of Section 301.210. *Id.* The court in *Bolt* noted a violation of Section 301.210 enabled a

buyer to void a sale so long as the buyer expressed an intention to repudiate the purchase within a reasonable time while the contract remained executory and by returning, or offering to return, the vehicle in substantially as good of condition at the time of sale. *Id.* at 245–46 (citations omitted). The plaintiff in *Bolt* repudiated the contract less than two months after the initial negotiation, attempted to return the vehicle, and offered to return the vehicle in as good of a condition as it was at the time of sale. *Id.* at 246. Based on the conduct of the plaintiff, the plaintiff repudiated the contract and thus the purported sale was rendered void pursuant to Section 301.210.4. *Id.*

Plaintiff never sought to repudiate the transfer of ownership for the Cavalier and cannot do so now for the first time on appeal. Plaintiff also has unclean hands with respect to any defect in the Application as Plaintiff would have been responsible for the contents of the application. "A party who participates in inequitable activity regarding the very issue for which it seeks relief will be barred by its own misconduct from receiving relief." *City of St. Joseph v. Lake Contrary Sewer Dist.*, 251 S.W.3d 362, 369 (Mo. App. 2008)(citations omitted). Because Plaintiff would be the source of the claimed defect, Plaintiff has unclean hands and cannot now seek to forgo the ownership benefit conferred by the Cavalier Title.

III. THE DOCTRINE OF REASONABLE EXPECTATIONS CANNOT BE INVOKED TO NEGATE THE UNAMBIGUOUS LANGUAGE OF THE SHELTER POLICIES

The doctrine of reasonable expectations has no applicability to this case because the definition of "**relative**" in the Shelter Policies is unambiguous. It is long-established in Missouri that courts must interpret insurance policies–like all contracts–in a manner to give the effect to the language used:

> The key is whether the contract language is ambiguous or unambiguous. Where insurance policies are unambiguous, they will be enforced as written absent a statue or public policy requiring coverage.

Peters v. Employers Mut. Casualty Co., 853 S.W.2d 300, 301–02 (Mo. banc 1993)(citing *Rodriguez v. Gen. Accident Ins. Co.*, 808 S.W.2d 379, 382 (Mo. banc 1991)). As held by this Court in *Rodriguez*, a party to a contract may only invoke the doctrine of reasonable expectations upon the showing of an ambiguity within the policy language. *Id*. ("[T]he Rodriguezes' argument for the application of the objective reasonable expectation doctrine depends on the presence of an ambiguity in the contract language.")

Because the unambiguous terms of the Shelter Policies should control, Shelter strongly disagrees with the position taken by the Missouri Association of Trial Attorneys ("MATA"). In pertinent part, MATA asserts this Court's interpretation of the Shelter Policies can always go beyond the actual terms of the insurance policy. (MATA Brief, p. 7.) From this premise, MATA asks this Court to apply an interpretation that considers the reasonable expectations of the insured regardless of whether the language of the Shelter Policies is clear and unambiguous. (MATA Brief, p. 7.)

The holding of *Rodriguez* requires the rejection of MATA's proposed interpretation because considerations of reasonable expectations are dependent on the presence of an ambiguity in the policy language. 808 S.W.2d at 382. See also *Harris v. Shelter Mut. Ins. Co.*, 141 S.W.3d 56, 60–61 (Mo. App. 2004)("Because the Shelter policy is unambiguous, no basis exists for application of the objective reasonable expectation doctrine to the policy.") No ambiguity exists in the language used to define **relative** and the drastic remedy of rewriting a contract based on reasonable expectations is unwarranted. The doctrine of reasonable expectations is "not in accordance with traditional principles of contract interpretation" and therefore "should only be invoked by courts with caution, in instances where its application may seem particularly appropriate." *Niswonger v. Farm Bureau Town & Country*, 992 S.W.2d 308, 320 (Mo. App. 1999)(citations omitted).

Even if the Shelter Policies are "standardized agreements" or adhesion contracts, "the application of the 'reasonable expectations' doctrine depends on the presence of an ambiguity in the policy language." *Kastendieck v. Millers Mut. Ins. Co.*, 946 S.W.2d 35, 39 (Mo. App. 1997)(citing *Rodriguez*, 808 S.W.2d at 382). The nature of UIM Coverage further requires the rejection of the reasonable expectations doctrine and requires the Shelter Policies to be interpreted according to their language. MATA also frequently cites "public policy" as requiring an interpretation in conflict with the unambiguous language of the Shelter Policies. But UIM Coverage–unlike UM Coverage–is not mandated by statute. As such, "there is no predicate for a court overruling the clear language of the policy." *Rodriguez*, 808 S.W.2d at 383–84.

The authorities cited by MATA are distinguishable from this case. (MATA Amicus Brief, p. 6–7)(citing *Krombach v. Mayflower Ins. Co.*, 785 S.W.2d 728, 733 (Mo. App. 1990) and *Tegtmeyer v. Snellen*, 791 S.W.2d 737, 738 (Mo. App. 1990)). In both cases, the courts considered policies that treated UM Coverage and UIM Coverage synonymously and considered an "uninsured vehicle" to include an "underinsured vehicle" and expressly found an ambiguity in the policy language before turning to the doctrine of reasonable expectations. In *Krombach*, the court found an ambiguity because the policy did not define "underinsured motor vehicle" in a section of the policy discussing the meaning of an "uninsured motor vehicle." 785 S.W.2d at 734. In *Tegtmeyer*, the court found the same ambiguity and relied on *Krombach*. 791 S.W.2d at 738.

Unlike *Krombach* and *Tegtmeyer*, this case does not concern the conflation of UM Coverage with UIM Coverage, the meaning of "underinsured motor vehicle", or how setoffs apply to reduce the limits of UIM Coverage. The only question for this Court to answer is whether Chelsea Seaton meets any of the three definitions of **insured** for UIM Coverage. Because the Shelter Policies unambiguously define **relative**, the doctrine of reasonable expectations cannot be invoked.

Even if the reasonable expectations doctrine applied, it would not be reasonable for a policyholder to believe that all resident relatives who own a motor vehicle would automatically be considered an **insured** for all types of coverage. MATA broadly argues the Shelter Policies fail to adequately inform a reasonable insured that UIM Coverage would be precluded to a resident relative that owns a motor vehicle. (MATA Brief, p. 7–8.) This argument fails to note the definition of **relative** makes clear that it does not include

anyone who **owns** a **motor vehicle**. More importantly, nowhere in the Shelter Policies is it ever suggested that all "relatives" would be entitled to UIM Coverage under all circumstances. As such, the reasonable expectations cited by MATA are decidedly unreasonable because it requires a total disregard of the language of the Shelter Policies.

CONCLUSION

This Court should reverse the trial court's entry of summary judgment in favor of Plaintiff as well as the trial court's denial of summary judgment to 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 7,740 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

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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 27th day of February, 2019.