In the
Missouri Court of Appeals
Western District

YOLANDA BELL,	)	
	)	
Appellant,	)	**WD88275**
	)	
v.	)	**OPINION FILED:**
	)	**AUGUST 18, 2026**
SHELTER GENERAL INSURANCE COMPANY,	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Charles H. McKenzie, Judge

Before Division Four: Edward R. Ardini, Jr., Chief Judge, Presiding, Alok Ahuja, Judge and Cynthia L. Martin, Judge

Yolanda Bell ("Bell") appeals the trial court's grant of a motion for judgment on the pleadings, which dismissed with prejudice Bell's amended class action petition against Shelter Insurance Company ("Shelter"). The amended class action petition alleged that Shelter breached the insurance policy issued to Bell and other similarly situated insureds when, after the total loss of an insured vehicle, Shelter failed to pay the

insured sales tax and fees to acquire a replacement vehicle, whether a replacement vehicle was acquired or not. On appeal, Bell argues that her breach of contract claim was based on well-pleaded allegations and a reasonable interpretation of the insurance policy. Bell further asserts that even if the trial court's alternative interpretation of the insurance policy is reasonable, the policy is ambiguous and the ambiguity must be resolved in her favor. Because the trial court correctly concluded that the policy is not ambiguous since an ordinary purchaser of insurance would not read the policy to expect Shelter to pay for sales tax or fees to acquire a replacement vehicle when those charges have not been incurred by an insured, we affirm.

Factual and Procedural Background[1]

Bell insured a vehicle through Shelter. In February 2018, the vehicle sustained damage, and Bell filed a claim for collision coverage with Shelter.

Bell's insurance policy provided that in the event of direct loss, Shelter could elect to pay the comparable value or the cost to repair the insured vehicle. Shelter determined that Bell's vehicle was a total loss and elected to pay Bell the vehicle's comparable value.

The policy defined "comparable value" as "[t]he depreciated worth of a covered **auto** or part immediately before the **accident**; plus the **reasonable charges** required to pay for any of the following that apply to the **claim**":

[1]"Because we are reviewing the grant of a motion for judgment on the pleadings, '[w]e treat the nonmovant's well-pleaded facts as admitted,' giving h[er] 'the benefit of all reasonable inferences drawn therefrom.'" *State ex rel. Solenov v. Mo. Comm'n on Hum. Rts.*, 718 S.W.3d 72, 74 n.1 (Mo. App. W.D. 2025) (first alteration in original) (quoting *Eisenmenger v. Nat'l Indem. Co.*, 699 S.W.3d 583, 585 (Mo. App. W.D. 2024)).

(a) Incurred cost for the necessary towing of a covered **auto** from the place where the **accident** occurred;

(b) Incurred cost for necessary storage of a covered **auto** from the day **you** make a **claim** under this policy until **we** offer to settle that **claim**;

(c) Sales tax or luxury vehicle tax **you** must incur to acquire **ownership** of another **auto** or part to replace a covered **auto** or part with one of equal value; and

(d) Other taxes or fees **you** must incur to acquire **ownership** of another **auto** or part to replace a covered **auto** or part with one of equal value.[2]

It is uncontested that "you" as defined by the policy refers to Bell, the insured named on the policy's declaration page, and "we" refers to Shelter. The policy defined "reasonable charges" as the lesser of:

(a) The amount for which **we** can discharge the **insured's** entire obligation to the **person** providing the goods and services; or

(b) The charges incurred for goods and services that, in **our** judgment, are within the range of charges for the same or similar goods and services, in the geographic area where the services are rendered or the goods are purchased.

Shelter paid Bell a comparable value of $11,787 on her claim, which included $12,026 for her insured vehicle's depreciated worth, plus $11 for a title transfer fee, less the policy's deductible of $250. The comparable value calculation did not include any sales tax, or other taxes or fees, to acquire ownership of a replacement vehicle.

In February 2022, Bell filed a class action petition against Shelter and later filed an amended class action petition in June 2022.[3] The amended petition alleged that Shelter breached its contractual duties by failing to include tax and fees to acquire ownership of a replacement vehicle in the "comparable value" paid to Bell and all

[2]The words are bolded as they appear in the policy.

[3]Both the initial and amended class action petitions were improperly entitled "complaint." *See* Rule 55.01 (the initial pleading of a civil action is called a "petition").

similarly situated insureds sales.[4] Bell sought monetary damages for the amounts owed under the policy, plus pre- and post-judgment interest, costs, and attorney's fees, on behalf of herself and all class members.

In June 2022, Shelter filed a motion to dismiss Bell's amended petition. Shelter argued that the amended petition failed to state a claim for breach of contract because Bell did not plead that she had acquired a replacement vehicle, and therefore could not establish that she "must incur" sales tax or fees to acquire a replacement vehicle. Bell opposed the motion and argued that the policy did not require her to acquire a replacement vehicle in order to recover as a part of "comparable value" the sales tax and fees that would be incurred by an insured to do so. The trial court granted Shelter's motion to dismiss Bell's amended petition without prejudice.

Bell appealed the trial court's dismissal. Following transfer from this Court, our Supreme Court reversed the trial court's grant of the motion to dismiss and remanded to the trial court for further proceedings. *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 619

[4]On appeal, our Court requested Bell to file a supplemental legal file because Bell had not included all relevant pleadings in the initial legal file. Bell filed a supplemental legal file, but did not include the amended petition. Bell later moved to supplement the record with the amended petition and three other trial court filings. Shelter opposed the motion since Bell had failed to include her operative pleading in the initial record on appeal. The motion was taken with the case. We grant the motion to supplement the record.

Additionally, Shelter moved to strike Bell's reply brief because Bell's local counsel failed to sign the brief in violation of Rule 9.03 and because the brief alleges false statements of material fact. Our Court denied the motion as to the signature issue, and took the motion as to the false statement issue with the case. The allegedly false statements relate to whether we should grant Bell's motion to supplement the record. The motion to strike Bell's reply brief is denied.

(Mo. banc 2024). The Supreme Court held that the amended petition was "legally adequate to survive a motion to dismiss" because Bell had alleged well-pleaded facts that, when assumed to be true as required, stated a cognizable claim for breach of contract. *Id.*

Importantly, in doing so, the Court recognized that the parties disagreed about whether the policy's definition of "comparable value" required Bell to acquire a replacement vehicle to establish that she "must incur" sales tax and fees to do so. *Id*. at 618. The Court noted that resolution of the parties' dispute about whether the amended petition was required to allege that Bell had acquired a replacement vehicle depended on interpreting the policy, a question of law. *Id*. at 618-19. The Court noted that "the only inquiry [on a motion to dismiss] is whether the plaintiff has stated a ***cognizable*** claim," while an inquiry into whether the construction of the policy on which Bell's "cognizable claim" necessarily depends "is actually correct is a matter for summary judgment, judgment on the pleadings, or trial -- when the court decides the ***merits*** of adequately pleaded cases." *Id.* at 619 (emphasis in original) (citing *Keveney v. Mo. Mil. Acad.*, 304 S.W.3d 98, 101 (Mo. banc 2010)). The Court thus declined to express a "view about the proper interpretation of the policy, as that [was] a matter premature for resolution on a motion to dismiss . . . ." *Id.* at 619 n.6.

After the case was remanded to the trial court, Shelter moved for judgment on the pleadings. The trial court denied the motion. Shelter applied for a change of judge, and, following transfer to a new judge, Shelter filed a renewed motion for judgment on the pleadings. In the motion, Shelter argued that Bell's claim for breach of contract failed as a matter of law because a plain reading of the policy required Shelter to include sales tax

and fees in the calculation of "comparable value" only where an insured "must incur" those costs, which an insured cannot establish unless they acquire a replacement vehicle. Shelter also asserted that Bell's claim was barred by the affirmative defense of accord and satisfaction because Bell accepted as a "final settlement amount" the amount Shelter paid for her vehicle's comparable value, as demonstrated by an exhibit attached to the amended petition.

Bell opposed the motion for judgment on the pleadings. She argued that the amended petition stated a valid claim for breach of contract that was sufficient to survive a motion for judgment on the pleadings because "must incur" meant the sales tax and fees an insured would incur if they acquired a replacement vehicle. Bell argued that this was a reasonable interpretation of the policy, rendering it unnecessary for her to allege that she had acquired a replacement vehicle. Bell also argued that Shelter's accord and satisfaction defense did not bar her claim because the payment that she received was not intended to resolve a claim for the payment of sales tax and fees.

Following a hearing, the trial court granted Shelter's renewed motion for judgment on the pleadings, and dismissed the amended petition with prejudice ("Judgment"). The trial court found that the insurance "policy is not ambiguous when examining its ordinary meaning in the eyes of a purchaser of insurance." Based on the policy's definitions of "comparable value" and "reasonable charges," the trial court determined that the policy required Shelter to pay sales tax and fees as a part of "comparable value" only when an insured "must incur" those costs by actually acquiring a replacement vehicle. Consequently, based on this legal construction of the policy, the trial court found Bell's

breach of contract claim was without merit as a matter of law because the facts alleged in the amended petition did not establish that Bell "must incur" sales tax and fees, as Bell had not alleged that she acquired a replacement vehicle. The Judgment did not address Shelter's alternative argument that judgment on the pleadings should be granted based on the affirmative defense of accord and satisfaction.

Bell timely appealed.

Standard of Review

We review the grant of a motion for judgment on the pleadings *de novo*. *Olofson v. Olofson*, 625 S.W.3d 419, 429 (Mo. banc 2021). The "question presented by a motion for judgment on the pleadings is whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Grant v. Sears*, 379 S.W.3d 905, 914 (Mo. App. W.D. 2012) (emphasis omitted) (quoting *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. banc 2007)). We will affirm the trial court's grant of judgment on the pleadings "only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that [the] petitioner could not prevail under any legal theory." *Olofson,* 625 S.W.3d at 429 (quoting *Emerson Elec. Co. v. March & McLennan Cos.*, 362 S.W.3d 7, 12 (Mo. banc 2012)). "When reviewing the grant of a motion for judgment on the pleadings, '[we] consider[] solely whether the grounds raised in the motion supported dismissal[.]'" *Id*. at 428 (quoting *City of Lake St. Louis v. City of O'Fallon*, 324 S.W.3d 756, 759 (Mo. banc 2010)).

Analysis

Bell raises two points on appeal.[5] Both assert that the trial court erred in granting Shelter's motion for judgment on the pleadings based on an interpretation of the policy that would not require Shelter to pay an insured the reasonable charges for sales tax and fees to acquire a replacement vehicle unless an insured acquires a replacement vehicle.[6]

---

[5]Shelter contends that Bell's appellant's brief violated Rule 81.12 by failing to include the amended petition in the record. Shelter's contention is moot in light of our grant of Bell's motion to supplement the record. *See supra* note 4.

[6]Rule 84.04(a)(4) requires the appellant's brief to state the points relied on, in summary fashion, preceding the argument portion of the brief, which, pursuant to Rule 84.04(a)(5), is then required to "substantially follow the order of the points relied on." Bell complied with this Rule by summarizing two points on appeal in her brief, prior to the argument portion of her brief. For each of these two points, Bell also complied with Rule 84.04(d), which describes the required form of points relied on, including the obligation following each point relied on to include a list of relevant legal authorities upon which the point on appeal principally relies.

After the argument addressing her two points relied on, Bell included a separate section in the argument portion of her brief where she argues that the trial court could not have granted Shelter's motion for judgment on the pleadings based on Shelter's accord and satisfaction defense. This argument does not qualify as a point relied on as it does not comply with Rule 84.04(a)(4) or Rule 84.04(d). And this argument preserves nothing for our review, as it is not fairly encompassed in Bell's compliant points relied on. *See* Rule 84.04(e); *New LLC v. Bauer*, 586 S.W.3d 889, 899 n.11 (Mo. App. W.D. 2019) (appellate courts do not review issues raised in the argument portion of a brief that are not encompassed in a point relied on). Bell's unpreserved argument about the accord and satisfaction defense will not be further addressed in this opinion.

Ordinarily, if a party fails to preserve a claim of error on appeal addressing an alternative basis for affirming a trial court's judgment, that failure is fatal to the appeal. *STRCUE, Inc. v. Potts*, 386 S.W.3d 214, 219 (Mo. App. W.D. 2012). However, we elect not to reach that conclusion. The trial court did not address the accord and satisfaction defense in its Judgment. Though we can affirm the grant of a motion for judgment on the pleadings on any ground raised in the motion, we primarily defer to that standard of appellate review when the trial court's judgment does not specify the basis for dismissal. *See, e.g., Stein v. Novus Equities Co.*, 284 S.W.3d 597, 602 (Mo. App. E.D. 2009) ("When the trial court's judgment does not specify its grounds for dismissal, we presume the dismissal was based on one of the reasons stated in the defendant's motion to dismiss.") (citation omitted); *Boulds v. Chase Auto Fin. Corp.*, 266 S.W.3d 847, 849-50

Bell's first point contends that her allegations in the amended petition were well-pleaded and raised a reasonable interpretation of the insurance policy that would require Shelter to always pay sales tax and fees as part of the "comparable value" of a covered vehicle, even if a replacement vehicle is not acquired. The second point contends that even if the trial court's contrary interpretation of the policy is also reasonable, then the policy is ambiguous and must be construed in Bell's favor.

Point One: The trial court did not err in granting the motion for judgment on the pleadings because the trial court properly construed the Shelter policy to require an insured to acquire a replacement vehicle before the sales tax and fees incurred in doing so are subject to inclusion in "comparable value," and because Bell's urged construction of the policy is not reasonable

Bell's first point contends that the trial court erred in granting the motion for judgment on the pleadings because the amended petition included well-pleaded allegations that were based on a reasonable interpretation of the policy that requires "comparable value" to include sales tax and fees to acquire a replacement vehicle, whether a replacement vehicle is acquired or not. In the argument portion of her brief, Bell makes more specific arguments. First, Bell emphasizes that the Supreme Court already concluded that Bell's amended petition stated a "valid" claim for breach of contract, precluding the grant of a motion for judgment on the pleadings because Bell's interpretation of the policy was reasonable. Second, Bell argues that she proffered a reasonable interpretation of the policy. And third, Bell argues that the trial court's

---

(Mo. App. E.D. 2008) ("Because the trial court did not specify its grounds for dismissal, we presume the court acted on one of the reasons stated in the motion to dismiss.") (citation omitted).

construction of the policy conflicts with the policy's plain language, principles of contract interpretation, and prevailing law. We address Bell's first argument, before turning to her second and third arguments, which we address collectively.[7]

Bell's amended petition survived Shelter's motion to dismiss because its well-pleaded facts, assumed to be true for purposes of the motion to dismiss, were found to be sufficient to state a cognizable claim for breach of contract. *Bell*, 701 S.W.3d at 619. However, it is undisputed that the merit of Bell's claim for breach of contract depends for its success on the resolution of a controlling question of law--the meaning of "must incur to acquire ownership of another auto . . . to replace a covered auto . . . with one of equal value," the language in the policy which addresses Shelter's obligation to include sales tax and fees in the calculation of "comparable value." (Emphasis omitted).

The Supreme Court acknowledged this controlling question of law, and acknowledged that its resolution would also control the parties dispute over whether Bell was required to allege in the amended petition that she acquired a replacement vehicle and incurred sales tax and fees to do so. *Bell*, 701 S.W.3d at 619 n.6. Though the Court determined it was premature to resolve the controlling question of law in ruling on

---

[7]Shelter asserts that Bell's brief violated Rule 84.04 for a number of reasons, including that she makes arguments that are not encompassed within her first point relied on. We agree that all of the distinct subparts in the argument developing Bell's first point on appeal are not expressed or encompassed in the point relied on. But, we nonetheless conclude that all of the distinct subparts are intertwined, as they share, at their core, the essential argument that Bell's urged interpretation of the policy is reasonable, so that she should prevail at a motion for judgment on the pleadings stage. Bell's Rule 84.04 deficiency does not "affect our ability to understand [or] adequately address the claims of error . . . ." *Murphree v. Lakeshore Ests., LLC*, 636 S.W.3d 622, 624 (Mo. App. E.D. 2021) (citing *Hamilton v. Archer*, 545 S.W.3d 377, 381 (Mo. App. E.D. 2018)).

Shelter's motion to dismiss, *id*., it also plainly held that this controlling question of law could be appropriately determined by way of a motion for judgment on the pleadings. *Id.* at 619.

It is true that, as with Shelter's motion to dismiss, the well-pleaded facts in Bell's amended petition are assumed to be true for purposes of Shelter's motion for judgment on the pleadings. *Woods v. Mo. Dep't of Corr.*, 595 S.W.3d 504, 505 (Mo. banc 2020). However, unlike Shelter's motion to dismiss, where the Supreme Court afforded Bell the temporary benefit of her proffered legal interpretation of the policy in assessing whether well-pleaded facts in the amended petition stated a cognizable claim for breach of contract, on Shelter's motion for judgment on the pleadings, the sufficiency of those well-pleaded facts must be evaluated with a fresh eye once the propriety of Bell's proffered interpretation of the policy is determined. *See Bell*, 701 S.W.3d at 619. Stated another way, the Supreme Court's determination that Bell's amended petition stated a cognizable claim sufficient to survive a motion to dismiss because the claim as pled *could* be meritorious *if* Bell's urged construction of the policy was correct, is not binding or controlling once the merit of the controlling question of law is resolved. The trial court did not commit legal error by applying its legal interpretation of the policy to determine that Bell's claim for breach of contract was without merit because she did not plead that she acquired a replacement vehicle and incurred sales tax and fees to do so. Bell effectively concedes this point because although she argues that the Supreme Court already found that the well-pleaded facts in her amended petition stated a legally

cognizable claim for breach of contract, she also acknowledges that the claim's sufficiency depends on whether her urged interpretation of the policy is reasonable.

That naturally brings us to the second and third arguments raised in Bell's first point on appeal, which collectively contest the trial court's construction of the policy and urge instead that Bell's construction of the policy is reasonable. It is Bell's assertion that reasonable charges for sales tax and fees to acquire a replacement vehicle are to be included in calculating "comparable value" whether a replacement vehicle is acquired or not. It is Shelter's contrary assertion that reasonable charges for sales tax and fees to acquire a replacement vehicle are not to be included in calculating "comparable value" unless those costs must be incurred because a replacement vehicle is acquired.

The trial court acknowledged these contrary assertions about the meaning of the policy in its Judgment, and concluded that the policy "is not ambiguous when examining its ordinary meaning in the eyes of a purchaser of insurance." The trial court rejected Bell's assertion that the term "must incur" refers to a future event (acquiring a replacement vehicle) that may, but need not, occur. Instead, the trial court concluded that the term "must incur" refers to an event (acquiring a replacement vehicle) that must occur before reasonable charges for sales tax and fees are subject to inclusion in the calculation of "comparable value."

The trial court reinforced its interpretation of "must incur" by noting that the definition of "comparable value" only requires Shelter to pay the reasonable charges for costs in the four categories described in the definition if those costs "apply to an insure[d]'s claim." In the case of sales tax or fees to acquire a replacement vehicle, those

costs do not apply to an insured's claim unless they "must be incurred" because the insured "acquire[s] another auto to replace the auto lost." The trial court also noted that the definition of "reasonable charges" refers only to charges that are incurred, and not to those that may be incurred.

Reading the policy as a whole, the trial court thus concluded that the policy only requires "reimbursement for sales tax and fees only when an insured has incurred reasonable charges for sales tax and fees to acquire a replacement auto." The trial court found that "the plain meaning of the policy as any ordinary person would read the policy" required the conclusion that Shelter is not obligated to pay sales tax and fees that were never incurred, requiring the grant of Shelter's motion for judgment on the pleadings because Bell did not plead that she incurred sales tax or fees to acquire a replacement auto. In substance, the trial court thus found that Bell's urged interpretation of the policy was not reasonable. The trial court did not commit legal error in doing so.

"The interpretation of an insurance policy, and the determination [of] whether coverage and exclusion provisions are ambiguous, are questions of law that" are reviewed *de novo*. *Shelter Mut. Ins. Co. v. MacVittie*, 423 S.W.3d 252, 254 (Mo. App. W.D. 2013) (quoting *Am. Nat'l Prop. & Cas. Co. v. Wyatt,* 400 S.W.3d 417, 419 (Mo. App. W.D. 2013)). "In an insurance contract, 'the risk insured against is made up of both the general insuring agreement as well as the exclusions and definitions.'" *Id.* at 255 (quoting *Todd v. Mo. United Sch. Ins. Council,* 223 S.W.3d 156, 163 (Mo. banc 2007)).

The general rules of contract interpretation apply when interpreting an insurance policy. *Shelter*, 423 S.W.3d at 255. As with all questions of contract interpretation, we

first endeavor to determine the parties' intent by assessing the words of the policy and giving those words their plain, ordinary, and usual meaning. *Belton Chopper 58, LLC v. N. Cass Dev., LLC*, 496 S.W.3d 529, 532 (Mo. App. W.D. 2016). We determine the intent based solely upon the policy's language unless the terms are ambiguous. *Id.* "Courts should not interpret policy provisions in isolation but rather evaluate policies as a whole." *Ritchie v. Allied Prop. & Cas. Ins. Co.*, 307 S.W.3d 132, 135 (Mo. banc 2009) (citing *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 133 (Mo. banc 2007)). We will reject an interpretation of the policy that would produce unreasonable results so long as we can adopt a probable and reasonable construction. *Belton Chopper 58*, 496 S.W.3d at 532. "[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." *Id.* (alteration in original) (quoting *Foley Co. v. Walnut Assocs.,* 597 S.W.2d 685, 689 (Mo. App. W.D. 1980)).

The policy provides that in the event of a vehicle's direct loss, Shelter can elect to pay the insured the "comparable value" of the insured vehicle. The policy defines "comparable value" as "the depreciated worth of a covered auto or part immediately before the accident; plus the reasonable charges required to pay for any of the following that apply to the claim":

> (a) Incurred cost for the necessary towing of a covered auto from the place where the accident occurred;
>
> (b) Incurred cost for necessary storage of a covered auto from the day [the insured] make[s] a claim under this policy until [Shelter] offer[s] to settle that claim;
>
> (c) Sales tax or luxury vehicle tax [the insured] must incur to acquire ownership of another auto or part to replace a covered auto or part with one of equal value; and

> (d) Other taxes or fees [the insured] must incur to acquire ownership of another auto or part to replace a covered auto or part with one of equal value.

(Emphasis omitted). The principle debate in this case is the meaning of the phrase "[the insured] must incur to acquire ownership of another auto . . . to replace a covered auto . . . with one of equal value" that appears in subsection (c) and (d). However, in interpreting this phrase, we are required to consider and interpret the policy as a whole, including, specifically, the entire definition of "comparable value." *See Ritchie*, 307 S.W.3d at 135.

The four cost categories included in the policy's definition of "comparable value" are preceded by modifying language. Though "comparable value" as defined will always include the "depreciated worth of [the] covered auto," the modifying language which follows plainly limits what can be added to "comparable value" to the "***reasonable charges required to pay***" for "***any of the following***" costs described in subsections (a) through (d) "***that apply to the claim***." (Emphasis added). These emphasized phrases unambiguously communicate that a cost described in any of subsections (a) through (d) will ***not*** be included in "comparable value" ***unless*** the described cost "applies to the claim," and ***unless*** the insured must be "required to pay" the "reasonable charge" for the described cost.

Bell admits her urged construction of the phrase "must incur to acquire ownership of another auto . . . to replace a covered auto . . .with one of equal value" would require reasonable charges for sales tax and fees to be included in the calculation of "comparable value" in ***every*** case, even when those costs are not required to be paid. Bell's construction of the policy renders the phrases "required to pay," "any of the following,"

and "that apply to the claim" meaningless. *See Belton Chopper 58*, 496 S.W.3d at 532 (courts should reject an interpretation of an insurance policy that would produce unreasonable results or that would leave a part of the policy without effect). On that basis alone, Bell's urged construction of the policy is not reasonable because it creates conflict between language within the definition of "comparable value" that need not exist. "Proper interpretation [of an insurance policy] requires that we seek to harmonize all provisions of the policy to avoid leaving some provisions without function or sense." *Golden Rule Ins. Co. v. R.S.*, 368 S.W.3d 327, 334 (Mo. App. W.D. 2012) (quotation omitted).

The trial court also concluded that Bell's argued construction of the phrase "must incur to acquire ownership of another auto . . . to replace a covered auto . . .with one of equal value" is also in conflict with the policy's definition of "reasonable charges," a term that is used in the definition of "comparable value." We agree. The policy defines "reasonable charges" as the lesser of:

> (a) The amount for which [Shelter] ***can discharge the insured's entire obligation*** to the person providing the goods and services; or
>
> (b) The ***charges incurred*** for goods and services that, in [Shelter's] judgment, are within the range of charges for the same or similar goods and services, in the geographic area where the services are rendered or the goods are purchased.

(Emphasis added and omitted.) The commonly understood meaning of "obligation" in the context of "amounts" for goods and services refers to a liability to pay. That is confirmed by the dictionary definition of the term. *Obligation*, Webster's Third New Int'l Dictionary (3rd ed. 2002) ("a formal and binding agreement or acknowledgement of a liability to pay a specified sum or do a specified thing"). The commonly understood

meaning of "incurred" in the context of "charges" refers to becoming liable to pay. Once again, this is confirmed by the dictionary definition of the term. *Incur*, Webster's Third New Int'l Dictionary (3rd ed. 2002) ("to become liable or subject to"); *see Mo. Dep't of Health & Senior Servs. v. Reprod. Health Servs. of Planned Parenthood of St. Louis Region*, 722 S.W.3d 629, 644 (Mo. App. W.D. 2025) (holding that the term "incur" as used in a statute means "to become liable or subject to"). Both subsections of the definition of "reasonable charges" thus require the undertaking of a liability to pay.[8] When coupled with the phrase "required to pay" in the definition of "comparable value," the only permissible conclusion is that before "reasonable charges required to pay" for sales tax or fees to acquire a replacement vehicle can "apply to a claim," the insured must have become liable to pay those costs. Bell's urged construction to the contrary is not reasonable.

Bell disagrees. To do so, she isolates her focus on the policy's use of the word "incurred" in referring to towing and storage costs in cost categories (a) and (b) in the definition of "comparable value," and the phrase "must incur" in referring to sales tax and fees in cost categories (c) and (d). Bell argues the use of different language is significant because "incurred" refers to the past tense, and "must incur" refers to the "future tense."

[8]The dissent discounts reliance on the definition of "reasonable charges" to construe the policy as a whole because it "does not comfortably apply to sales tax collected by a government agency" since, under subsection (a) of the definition, "the person providing the goods and services" is not the agency collecting the tax. That same concern does not apply, of course, to subsection (b) of the definition, as the "charges incurred for goods" would most certainly include sales tax and fees to acquire a replacement vehicle.

Bell extrapolates from this claimed "distinction" that because "must incur" refers to a future act, sales tax and fees are required to be included in the calculation of "comparable value" even if they are never required to be paid by the insured.

The first and most obvious flaw in Bell's contention is her focus on the words "incurred" and "must incur" in isolation without regard to our obligation to read the policy as a whole. *See Ritchie*, 307 S.W.3d at 135 ("Courts should not interpret policy provisions in isolation but rather evaluate policies as a whole.") (citation omitted). Bell offers no plausible or persuasive response to the trial court's conclusion in its Judgment that her construction of the policy would be in conflict with other provisions in the policy. We have reached the same conclusion, because the policy, read as a whole, forecloses interpretation of "must incur" in a manner that would require "comparable value" to include reasonable charges for sales tax and fees simply because they would be incurred ***if*** an insured acquires a replacement vehicle.

Even if we could permissibly focus on the phrase "must incur" in isolation without reading the policy as a whole, Bell's contention that "must incur" is in the "future tense," and thus requires sales tax and fees to be included in "comparable value" whether a replacement vehicle is acquired or not, is strained and without merit. The word "must" is a commonly used term, with accepted meanings like "to have to," "is commanded or requested to," "is obliged to," and "is required by law, custom, or moral conscience to." *Must*, Webster's Third New Int'l Dictionary (3rd ed. 2002). The word "must" thus means something that is a matter of necessity. We have already explained that the word "incur" means "to become liable or subject to." *Incur*, Webster's Third New Int'l Dictionary (3rd

ed. 2002); *Mo. Dep't of Health & Senior Servs.*, 722 S.W.3d at 644. Together, the plain meaning of "must incur" is to necessarily become liable or subject to. An insured does not necessarily become liable or subject to pay sales tax or fees to acquire a replacement vehicle unless they acquire a replacement vehicle.

Undeterred, Bell places great emphasis in her brief on the trial court's conclusion that because Bell did not allege in the amended petition that she has acquired a replacement vehicle, she is not entitled to sales tax and fees under the policy as a matter of law. Bell argues that the trial court imposed an unwritten "extracontractual precondition" of acquisition of a replacement vehicle before the policy's obligation to include reasonable charges for sales tax and fees in the calculation of comparable value is triggered. We disagree.

Once the trial court construed the legal meaning of the policy, and in particular, the definition of "comparable value" as it relates to the obligation to include (or not) sales tax and fees in the calculation of "comparable value," the trial court had to determine whether the pleadings supported an inference that Bell "must incur" sales tax and fees because she has necessarily become liable for or subject to pay sales tax or fees. There is no allegation in the amended petition that permits this inference. That includes the absence of an allegation that Bell has acquired a replacement vehicle.

Certainly, an insured's actual acquisition of a replacement vehicle would be the most common means by which an insured could allege that they have necessarily become liable for or subject to pay sales tax or fees for the replacement vehicle. However, we need not determine, and the trial court did not find, that this is the only means by which

an insured could allege facts that would permit a reasonable inference that the insured has necessarily become liable for or subject to pay sales tax or fees to acquire a replacement vehicle. All that matters here is that Bell points to no allegation in her amended petition that would support an inference that she has necessarily become liable for or subject to pay sales tax or fees to acquire a replacement vehicle. We agree with the trial court that an ordinary purchaser of insurance would not expect Shelter to pay the insured for sales tax or fees to acquire a replacement vehicle when those charges have not been and will not be incurred.[9]

The trial court's construction of the policy was not in error, and Bell's urged construction of the policy is not reasonable.[10] The trial court did not commit error in

---

[9]As Shelter noted in its answer to the amended petition, in the pleadings in support of the motion for judgment on the pleadings, and in its brief on appeal, in Missouri, section 144.027.1 permits insurance proceeds paid after the total loss of a vehicle to be "a credit against the purchase price of another motor vehicle" bought within 180 days of the insurance payment for purposes of calculating sales tax owed on the replacement vehicle. The effect is that an insured subject to section 144.027.1 cannot establish that they "must incur" sales tax to replace a totaled vehicle up to equal value of the totaled vehicle if a replacement vehicle is acquired within 180 days, because no sales tax is owed. If an insured under the Shelter policy acquires a replacement vehicle more than 180 days after receiving an insurance payment for their total loss, the insured would no longer be eligible for the credit contemplated by section 144.027.1. Whether this scenario qualifies as "must incur" sales tax for purposes of the calculation of "comparable value" under the Shelter policy is not before us to be determined. This illustrates, however, why a Missouri insured under the Shelter policy must allege facts that demonstrate they have necessarily become liable or subject to pay sales tax to acquire a replacement vehicle. In the absence of any such allegation, an insured does not state a claim for breach of the Shelter policy based on the failure to include sales tax in the calculation of comparable value.

[10]We acknowledge, but reject, the dissent's reliance on out-of-state cases interpreting the phrases "actual cash value" or "replacement cost" in non-Shelter insurance policies to conclude to the contrary. Even the dissent acknowledges that "the policy language in those cases" is different. "Other decisions 'are not dispositive in the

granting Shelter's motion for judgment on the pleadings because Bell's breach of contract claim as alleged in the amended petition is without merit, as a matter of law.

Point One is denied.

Point Two: The trial court did not err in granting the motion for judgment on the pleadings because the insurance policy is not ambiguous

Bell's second point on appeal asserts that the trial court erroneously granted the motion for judgment on the pleadings because even if the trial court's interpretation of the policy is reasonable, the policy is also susceptible to Bell's reasonable interpretation and is therefore ambiguous, requiring the policy to be interpreted in her favor. We do not agree.

"An ambiguity in the language of an insurance policy . . . exists when there is 'duplicity, indistinctness, or uncertainty in the meaning of words used in the contract[; or] . . . language . . . [that] is reasonably and fairly open to different constructions.'" *Shelter*, 423 S.W.3d at 255 (alterations in original) (quoting *Vega v. Shelter Mut. Ins. Co.,* 162 S.W.3d 144, 147 (Mo. App. W.D. 2005)). When determining whether policy language is ambiguous, we consider the policy "in the light in which it would normally be understood by the lay person who bought and paid for the policy." *Id.* (quoting *Vega,* 162 S.W.3d at 147). If we determine the policy is ambiguous, we will construe the policy's language against the insurer. *Id.*

---

absence of identical policy language.'" *Kennedy v. Safeco Ins. Co. of Ill.*, 413 S.W.3d 14, 17 (Mo. App. S.D. 2013) (quoting *Long v. Shelter Ins. Cos.*, 351 S.W.3d 692, 702 (Mo. App. W.D. 2011)).

We have already explained that the plain and ordinary meaning of the language in the policy when read as a whole supports the trial court's conclusion that the policy unambiguously requires an insured to establish that they have necessarily become liable or subject to pay sales tax and fees in acquiring a replacement vehicle before the "reasonable charges" for those costs are subject to inclusion in the calculation of "comparable value." We have also explained that the policy interpretation urged by Bell, which isolates focus on her urged interpretation of the phrase "must incur," and which would require Shelter to include sales tax and fees in the calculation of "comparable value" even though an insured has not obtained a replacement vehicle, or established they have undertaken an obligation to do so, is not reasonable. "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. Such a request for a 'truncated consideration of portions of the . . . policy is unavailing.'" *Owners Ins. Co. v. Craig*, 514 S.W.3d 614, 617 (Mo. banc 2017) (quoting *Dutton v. Am. Fam. Mut. Ins. Co.*, 454 S.W.3d 319, 324 (Mo. banc 2015)). "This Court will not 'create an ambiguity under the policy language 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 618 n.4 (quoting *Harrison v. MFA Mut. Ins. Co*., 607 S.W.2d 137, 142 (Mo. banc 1980)). Because Bell has not established an alternative reasonable interpretation of the policy, the essential premise of her second point on appeal is without merit. "Absent an ambiguity, an insurance policy must be enforced according to its terms." *Seeck*, 212

S.W.3d at 132 (citing *Rodriguez v. Gen. Accident Ins. Co. of Am.*, 808 S.W.2d 379, 382 (Mo. banc 1991)).

The trial court did not err when it concluded that the policy is unambiguous.

The dissent disagrees and argues that the policy is ambiguous because the trial court's construction of the policy leads to the absurd result that an insured would only be entitled to recover sales tax or fees ***if*** the acquired replacement vehicle is the same cost as the depreciated value of the totaled vehicle. This contention erroneously relies on the dissent's presumptive construction of the phrase "with one of equal value" in subsections (c) and (d) of the policy's definition of comparable value even though that phrase was not construed by the trial court because it did not need to be.

The hypothetical alarm sounded by the dissent is not relevant ***unless and until*** an insured must incur reasonable charges for sales tax and fees to acquire a replacement vehicle. Then and only then is the amount of the insured's recovery for sales tax and fees calculated--an amount that will be subject to the policy's requirements that the incurred charges were "reasonable" and "necessary," and to the determined meaning of the phrase "with one of equal value." Bell acknowledges this very point, as she makes the fleeting argument in her appellant's brief that "***if the insured purchases a replacement vehicle*** that costs more--or less--than the [depreciated] value of the totaled vehicle . . . the insured is left guessing what happens" with respect to the amount the insured will recover for sales tax and fees. (Emphasis added.)

Here, of course, the amount Bell would be entitled by the policy to recover for incurred sales tax and fees is irrelevant because Bell did not allege that she has acquired a

replacement vehicle, and thus did not allege that she incurred sales tax or fees to do so. In a future case, where calculation of the amount Shelter is obligated by the policy to pay an insured for incurred sales tax and fees is properly at issue, a trial court can address the meaning of the phrase "with one of equal value." At that point, a trial court can determine whether an ordinary insured would interpret the phrase to describe a cap on the recovery of sales tax and fees incurred in acquiring a replacement vehicle, or to prohibit the recovery of sales tax and fees unless the cost of a replacement vehicle is exactly the same as the depreciated value of the totaled vehicle.

Until that time, it is improper to engage in *dicta* to construe the meaning of the phrase "with one of equal value," and it is improper to presume a construction of the phrase, (as the dissent does), to argue that "must incur" is ambiguous. The trial court certainly understood this as it was not asked to, and it did not endeavor to, construe the phrase "with one of equal value" before concluding in its Judgment that "must incur" means that "the policy requires the reimbursement for sales tax and fees only when an insured has incurred reasonable charges for sales tax and fees to acquire a replacement [vehicle]."

Point Two is denied.

Conclusion

The Judgment is affirmed.

Cynthia L. Martin, Judge

Edward R. Ardini, Jr., Presiding Judge, concurs
Alok Ahuja, Judge, dissents in separate opinion

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

YOLANDA BELL,	)	
	)	
Appellant,	)	
	)	
v.	)	**WD88275**
	)	
SHELTER GENERAL INSURANCE COMPANY,	)	**Filed: AUGUST 18, 2026**
	)	
	)	
Respondent.	)	

DISSENTING OPINION

I respectfully dissent. Shelter's Automobile Insurance Policy is ambiguous concerning whether an insured must *actually purchase* a replacement for a totaled vehicle before Shelter will pay the sales tax and fees which would be required to purchase such a replacement. The ambiguity in Shelter's policy must be interpreted in favor of Yolanda Bell, Shelter's insured. Moreover, Shelter's interpretation of the policy leads to an absurd result: an insured would be entitled to recover the sales tax paid on a replacement vehicle *only* if the replacement had precisely the same value as the totaled vehicle. I would reverse the circuit court's grant of judgment on the pleadings to Shelter.

I.

The Automobile Insurance Policy which Shelter issued to Bell includes collision coverage, which provides that Shelter "will pay the **direct loss** resulting

from **accidental property damage** to a **described auto**" in specified circumstances. (Boldface used in Shelter's policy indicates terms which are defined elsewhere in the policy.) With an exception not relevant here, the policy provides that, in the event of a covered collision, "[i]t is **our** right to elect whether **we** pay the **comparable value** or the **cost to repair** a **described auto** or any of its parts."

In this case, Shelter chose to declare Bell's vehicle a total loss, and to pay her the vehicle's "comparable value." The policy defines "comparable value" as follows:

> **Comparable value** means the depreciated worth of a covered **auto** or part immediately before the **accident**; plus the **reasonable charges** required to pay for any of the following that apply to the **claim**:
>
> (a) Incurred cost for the necessary towing of a covered **auto** from the place where the **accident** occurred;
>
> (b) Incurred cost for necessary storage of a covered **auto** from the day **you** make a **claim** under this policy until **we** offer to settle that **claim**;
>
> (c) Sales tax or luxury vehicle tax **you** must incur to acquire **ownership** of another **auto** or part to replace a covered **auto** or part with one of equal value; and
>
> (d) Other taxes or fees **you** must incur to acquire **ownership** of another **auto** or part to replace a covered **auto** or part with one of equal value.
>
> **Comparable value** is determined by **us**. We base that determination on our knowledge of the prices charged by vehicle or part merchants in the geographic area where the **insured resides**. To aid us in determining **comparable value**, **we** may use any one or more of the databases, appraisal tools, and other methods the insurance industry commonly uses to evaluate similar vehicles or parts.

(Although "ownership" appears in boldface in this definition, the terms is not separately defined in the policy.)

While insurance policies are generally subject to the same rules of construction as other contracts, "'[t]he key [to interpreting insurance policies] is whether the contract language is ambiguous or unambiguous.'" *Todd v. Mo. United Sch. Ins. Council*, 223 S.W.3d 156, 160 (Mo. 2007) (quoting *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2d 300, 302 (Mo. 1993)). "'An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy. Language is ambiguous if it is reasonably open to different constructions.'" *Burns v. Smith*, 303 S.W.3d 505, 509 (Mo. 2010) (quoting *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 132 (Mo. 2007)). "When there is ambiguity in an insurance policy, the Court must interpret the policy in favor of the insured." *Todd*, 223 S.W.3d at 160 (citing *Bellamy v. Pacific Mut. Life Ins. Co.*, 651 S.W.2d 490, 496 (Mo. 1983)).

For several reasons, I conclude that the definition of "comparable value," and subsection (c) of that definition in particular, are ambiguous as to whether an insured must actually purchase a replacement for a totaled vehicle, before they are entitled to payment for the sales taxes which would be required to buy a replacement vehicle.

As an initial matter, adoption of Shelter's reading of the policy would lead to an absurd outcome. Shelter insists that an insured is only entitled to payment for sales tax if the insured *actually purchases* a replacement automobile. But subsection (c) only promises to pay an insured for sales tax necessary to purchase a vehicle "to replace a covered auto . . . *with one of equal value*." (Emphasis

added.) Notably, the emphasized language does not allow for the possibility that an insured might replace a totaled vehicle with one of *greater* or *lesser* value.

At oral argument, Shelter's counsel acknowledged that, on Shelter's reading of subsection (c), an insured would be entitled to payment for sales tax on a replacement vehicle ***only*** if the replacement was purchased for precisely the same "comparable value" Shelter had assigned to the totaled vehicle. Shelter's counsel agreed that, on Shelter's reading, an insured would forfeit the right to recover ***any*** sales tax if they purchased a vehicle of greater or lesser value; counsel asserted that, "unless you rewrite the policy, that's what the policy says." This is not simply a question of determining *the amount* of sales tax to which an insured would be entitled. Instead, according to Shelter, subsection (c)'s promise to pay sales tax is not triggered – in ***any*** fashion, or to ***any*** degree – unless and until an insured actually "acquire[s] ownership of another auto . . . to replace a covered auto . . . with one of equal value." This is not a collateral matter, but an essential attribute of the policy interpretation Shelter advocates.

"'[W]hen interpreting contracts'" – including insurance policies – "'this court attempts to avoid absurd results.'" *Walsh v. State Farm Mut. Auto. Ins. Co.*, 662 S.W.3d 105, 111-12 (Mo. App. W.D. 2023) (citation omitted). Shelter's reading of subsection (c) leads to just such an absurd outcome: Shelter's construction would mean that Bell would be entitled to payment of sales tax if – *but **only** if* – she purchased a replacement automobile costing exactly $12,026. Notably, the majority opinion fails to explain how subsection (c)'s reference to a replacement vehicle of "equal value" can operate in a sensible fashion, ***if*** an

insured is actually required to purchase a replacement vehicle before being eligible for payment of sales tax.

Fortunately, Shelter's reading of subsection (c), and the nonsensical results that reading produces, are not compelled by the language of the policy. Subsections (a) and (b) of the definition of "comparable value" refer to the "incurred cost[s]" for towing or storage of the damaged vehicle. Subsection (c) is worded differently: it refers to the tax an insured "must incur" to acquire a replacement vehicle. Plainly, the phrase "incurred cost" in subsections (a) and (b) requires that the insured have actually become liable for particular expenses. But subsection (c) does not refer to "incurred" taxes, even though it could easily have been drafted to say that Shelter would pay "[s]ales tax . . . ***incurred by you*** to acquire ownership of another auto," or "[s]ales tax . . . ***you incur*** to acquire ownership of another auto." But, although language comparable to subsections (a) and (b) was readily available, subsection (c) does not use such language. The material difference in wording between subsections (a), (b) and (c) must be given meaning. *Bozarth v. Bozarth*, 653 S.W.3d 899, 903 (Mo. App. W.D. 2022) ("we presume that the use of the different words [in different parts of a contract] was intentional or else they would have no effect"); *cf. Woody v. Clark*, 725 S.W.3d 638, 643 (Mo. App. W.D. 2025) ("the legislature's use of different terms in different statutory provisions is presumed to be intentional and for a particular purpose" (cleaned up)). Shelter could have easily specified that it would only pay sales tax which an insured actually "incurred." Its failure to do so – despite its use of unambiguous language to that effect in the two preceding

subsections – suggests that sales tax need not be *actually incurred* by the insured.

Subsection (c) refers to sales tax which an insured "must incur" to acquire a replacement vehicle of comparable value, while the opening phrase of the definition of "comparable value" refers to costs an insured is "required to pay." Unlike the majority, I do not believe that the use of those terms requires that sales tax actually have been incurred by the insured; instead, those terms can reasonably be read in a hypothetical or subjunctive sense, directed to potential future actions. Thus, "must" can mean "is commanded or requested to," "is urged to," "is compelled by physical necessity to," or "is required by law, custom, or moral conscience to." WEBSTER'S THIRD NEW INT'L DICTIONARY 1492 (unabridged ed. 2002). The usage examples following these definitions include such phrases as "you must stop that noise," "you must come to visit us soon," "we must hurry if we want to catch the bus," or "we must obey the rules." *Id.* None of the relevant definitions, or usage examples, necessarily require that the person to whom the "must" statement is directed has actually done anything.

The relevant definitions of "require" are similar: "to demand as necessary or essential," or "to impose a compulsion or command on." *Require*, MERRIAM-WEBSTER.COM DICTIONARY, https://www.merriam-webster.com/dictionary/require (last visited Aug. 6, 2026). The usage examples are once against directed to hypothetical, future actions: "[t]he occasion *requires* formal dress"; "[t]he job *requires* a driver's license"; "[t]he law *requires* that school buses stop at railroad crossings." *Id.*

While I may agree with the majority that "must" refers to "a matter of necessity," I do not agree that the use of the word "must" or "required" necessarily indicates that specific actions have *actually been taken*.

The more sensible reading of subsection (c) is that it obligates Shelter to pay the sales tax that an insured would be required to pay *if* they purchased a replacement vehicle of equal value to their totaled vehicle. Under this reading, the amount of the sales tax to which the insured is entitled could be determined at the time Shelter made payment for the totaled vehicle; it would be unnecessary to wait and see whether the insured was able to locate and purchase a replacement vehicle with a price tag identical to the value of the vehicle they had lost. The fact that Bell's reading of the policy permits a single, comprehensive payment for a totaled vehicle, rather than requiring a supplemental payment when (and if) an insured purchases an identically valued replacement, counsels in favor of her reading.

Shelter contends that reading the policy as Bell contends "is not 'reasonable,' but contrary to fundamental insurance law and a 'common-sense reading' of the Policy." Resp. Br. at 32 (quoting *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 623 (Mo. 2024) (Fischer, J., dissenting)). I see nothing unreasonable, or contrary to common sense, in holding that a Shelter insured is entitled to payment of the sales taxes which would be required to replace a totaled vehicle, whether or not they actually replace that vehicle. In many (although admittedly not all) cases, an insured purchased their totaled car at some point in the past, and paid sales tax and titling fees when they did so. When their car is totaled, the insured loses the value not only of the car itself, but of the

other associated, one-time expenses they paid when they acquired that car. There is nothing nonsensical in holding that, under Shelter's policy, such an insured is entitled to the (depreciated) value not only of the car itself, but of the sales tax and registration fees they paid when acquiring it – whether they purchase a replacement vehicle or not. Other courts have reached this result under first-party property insurance policies entitling an insured to the "actual cash value" or "replacement cost" of damaged property. *See*, *e.g.*, *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1305-06 (11th Cir. 2008) (Florida law); *Ghoman v. New Hampshire Ins. Co.*, 159 F. Supp.2d 928, 934-35 (N.D. Tex. 2001). While the policy language in those cases may be different, they demonstrate that there is nothing inherently unreasonable in an insured receiving payment for sales taxes and other charges which would be incurred on the hypothetical replacement of property which is a total loss.

B.

The majority opinion relies on two other aspects of the policy to support its conclusion that actual purchase of a replacement vehicle is necessary to trigger subsection (c). With all respect to my colleagues, I disagree that these other policy provisions resolve the ambiguities in subsection (c) itself.

First, the majority opinion highlights the fact that, in the introduction to subsections (a) through (d), the definition of "comparable value" refers to "any of the following that apply to the claim." As the majority notes, use of the phrase "any of the following that apply to the claim" indicates that the items listed in subsections (a) through (d) will not necessarily apply in *every* case. But Bell's argument does not make everything in subsections (a) through (d) applicable to

every case in which Shelter pays "comparable value." In particular, even on Bell's reading, every insured entitled to a payment of "comparable value" will not have incurred the towing or storage charges referenced in subsections (a) and (b). Even considering subsection (c) in isolation, *all* of the taxes referenced in subsection (c) would not apply in every case. Subsection (c) refers to "[s]ales tax *or luxury vehicle tax*" – but Bell does not argue that a luxury vehicle tax applies to her loss. Subsection (c) also refers to the acquisition of a replacement "auto *or part*." It does not appear that replacement of an "auto" and a "part" would occur in the same case. Thus, Bell's reading of subsection (c) does not render meaningless the phrase "any of the following that apply to the claim."

The majority opinion also relies on the fact that, in the "comparable value" definition, Shelter only promised to pay "the **reasonable charges** required to pay" the applicable items listed in subsections (a) through (d). The policy defines "reasonable charges" as follows:

> **Reasonable charges** means the lesser of:
>
> (a) The amount for which **we** can discharge the **insured**'s entire obligation to the **person** providing the goods and services; or
>
> (b) The charges incurred for goods and services that, in **our** judgment, are within the range of charges for the same or similar goods and services, in the geographic area where the services are rendered or the goods are purchased.
>
> **We** may employ outside reviewers, consultants, or data providers to determine if the charges are **reasonable charges**. That determination may be made after the **insured** has received the goods or services for which the charges are made . . . .

Based on this definition, the majority opinion concludes that "the insured must have become liable to pay th[e] costs" listed in subsections (a) through (d), before the listed items can be considered "reasonable charges."

As an initial matter, the policy's definition of "reasonable charges" does not comfortably apply to sales taxes collected by a government agency. The agency collecting the taxes is not "the person providing the goods and services" to the insured when they purchase a replacement automobile. Further, it is unclear how Shelter would decide whether the sales tax rate prevailing in a particular locale is "within the range of charges for the same or similar goods and services, in the geographic area."

Even if applicable here, the definition of "reasonable charges" does not defeat Bell's claim. The majority notes that subsection (b) of the definition of "reasonable charges" refers to "[t]he charges incurred for goods and services." But subsection (b) provides only one of the two alternative forms of a "reasonable charge." It is not clear to me that the statement that "reasonable charges means the lesser of (a) or (b)" requires that both (a) and (b) actually exist or occur in a particular case.

Subsection (a) of the definition of "reasonable charges" refers to "[t]he amount for which [Shelter] can discharge the insured's entire obligation" to a provider of goods or services. *That* subsection does not require that the insured actually have incurred a liability. Like "must" or "required," "can" is "used to indicate *possibility*" or *ability* – it does not necessarily require that a particular circumstance actually exist. *See Can*, MERRIAM-WEBSTER.COM Dictionary, https://www.merriam-webster.com/dictionary/can (last visited Aug. 6, 2026)

(emphasis added). As with "must" and "required," the usage examples provided by the dictionary plainly include hypothetical or possible situations: "everything that money *can* buy," "Congress *can* declare war," "2 + 2 *can* also be written 3 + 1." *Id.* Nothing in subsection (a) of the "reasonable charges" definition requires that an insured have actually purchased a replacement vehicle and incurred a liability for sales taxes.

The fact that "reasonable charges" need not be *actually incurred* is proven by the policy's treatment of repair costs. Under the collision coverage of Shelter's Automobile Insurance Policy, Shelter can choose to pay the insured *either* the vehicle's "comparable value," or the "cost to repair" it. Like the definition of "comparable value," "cost to repair" is defined to mean "the **reasonable charges** for the **repair** of a covered **auto** or part, plus the **reasonable charges** required to pay for" any necessary towing or storage of the vehicle. Notably – although "repair cost" includes only "reasonable charges" – nothing in Shelter's policy requires that an insured *actually pay to repair* a damaged vehicle. On the contrary, the policy expressly provides that Shelter will pay "repair cost" based on "**our** estimate of the **cost to repair**"; this would apparently leave an insured free to perform repairs themselves, or decide not to have the repairs performed at all. The treatment of repair costs confirms that the policy's definition of "reasonable charges" does not require an insured to actually incur particular financial liabilities.

II.

Shelter's motion for judgment on the pleadings also contended that Bell's claim failed because her acceptance of Shelter's payment for her totaled vehicle

constituted an "accord and satisfaction," releasing Shelter from any further liability to her. Although the circuit court did not rely on this separate argument in its judgment, Shelter argues that it constitutes an alternate ground for affirmance.

> An 'accord and satisfaction' contemplates an agreement between parties to give and accept something different from that claimed by virtue of the original obligation and both the giving and acceptance are essential elements. An 'accord' is an agreement for settlement of some previously existing claim by substituted performance. 'Satisfaction' is the performance of such agreement. Accord and satisfaction may only result where a meeting of the minds occurs. In addition, no accord and satisfaction exists unless payment is tendered on the express condition that it be accepted in full satisfaction of the claim, a condition which must be made clearly apparent to the creditor. The proponent of the affirmative defense has the burden of proof.

Clark v. Kinsey, 488 S.W.3d 750, 761-62 (Mo. App. E.D. 2016) (cleaned up).

Since the case was decided on a motion for judgment on the pleadings, Shelter relies on the allegations of Bell's amended petition to establish the elements of accord and satisfaction. Bell's amended petition does not specifically describe the circumstances under which Shelter tendered, and she accepted, Shelter's $11,787 payment. In particular, the allegations of the amended petition fail to establish that Shelter's payment was tendered "on the express condition that it be accepted in full satisfaction of the claim," and that this condition was "made clearly apparent to the creditor." *Id.* In these circumstances, and without further factual development concerning Shelter's handling of Bell's collision-damage claim, I do not believe accord and satisfaction can provide an independent basis to affirm the circuit court's judgment.

III.

Even though I believe that Shelter's policy should be construed in the way Bell advocates, I realize that her claim may fail to clear a separate legal obstacle. As the majority opinion points out, § 144.027.1, RSMo, provides in relevant part that,

> [w]hen a motor vehicle . . . for which all sales or use tax has been paid is replaced due to . . . a casualty loss in excess of the value of the unit, the director shall permit the amount of the insurance proceeds plus any owner's deductible obligation, as certified by the insurance company, to be a credit against the purchase price of another motor vehicle . . . which is purchased or is contracted to purchase within one hundred eighty days of the date of payment by the insurance company as a replacement motor vehicle . . . .

Depending on how § 144.027.1 is interpreted, it could arguably foreclose Bell's claim, even if her interpretation of the Shelter policy is correct. It may be that, under § 144.027.1, a Missouri insured would *never* be legally required to incur sales tax "to acquire ownership of another auto . . . to replace a covered auto with one of equal value" – *even if* Bell is correct that it is unnecessary to actually purchase a replacement vehicle to trigger subsection (c).

For at least two reasons, however, it would be inappropriate for this Court to rely on § 144.027.1 as an alternate basis to affirm the circuit court's grant of judgment on the pleadings. In the first place, Shelter did not move for judgment on the pleadings on the basis that Bell's claim was foreclosed by § 144.027.1 – even if she was otherwise correct concerning the interpretation of subsection (c). The Supreme Court has held that, "[w]hen reviewing the grant of a motion for judgment on the pleadings, 'this Court considers solely whether the grounds raised in the motion supported dismissal.'" *Olofson v. Olofson*, 625 S.W.3d 419, 428 (Mo. 2021) (citation omitted). *Olofson* refused to consider a potential

alternate ground for affirmance of a judgment on the pleadings, because the respondent had not raised the alternate ground in its motion for judgment on the pleadings in the circuit court. *Id.* Therefore, whether or not § 144.027.1 could provide an independent basis to affirm, we cannot rely on it in this appeal.

In addition, in Bell's prior appeal, the Supreme Court rejected Shelter's reliance on § 144.027.1, concluding that the argument improperly relied on matters beyond the allegations of Bell's petition. The Court's opinion noted:

> Shelter argues Bell's theory is unworkable in practice and negated by section 144.027.1, RSMo 2016. At the motion to dismiss stage, however, this Court is limited to a review of the allegations in Bell's petition to determine simply if those allegations state a cognizable cause of action. Shelter's arguments go beyond the allegations contained in Bell's petition and are premature for a motion to dismiss. *See State ex rel. Clinton No. 1 v. Baker*, [708 S.W.3d 474, 479 (Mo. 2024)] ("If the circuit court considers matters outside the pleadings on a motion to dismiss for failure to state a claim upon which relief can be granted, the motion must be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 74.04." (quotations and alterations omitted)).

Bell v. Shelter Gen. Ins. Co., 701 S.W.3d 614, 619 n.7 (Mo. 2024) ("*Bell I*") (other citation omitted).

I recognize that the Supreme Court's decision in *Bell I* involved a *motion to dismiss*, not a motion for judgment on the pleadings like the one at issue here. But – at least for present purposes – that is a distinction without a difference. "'The position of a party moving for judgment on the pleadings is similar to that of a movant on a motion to dismiss, *i.e.*, assuming the facts pleaded by the opposite party to be true, these facts are nevertheless insufficient as a matter of law.'" *Madison Block Pharmacy, Inc. v. U. S. Fid. & Guar. Co.*, 620 S.W.2d 343,

345 (Mo. 1981). As on a motion to dismiss for failure to state a claim, when reviewing a motion for judgment on the pleadings, "'[t]he well-pleaded facts of the non-moving party's pleading are treated as admitted,'" and the movant is entitled to judgment "'only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory.'" *Olofson*, 625 S.W.3d at 429 (quoting *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 12 (Mo. 2012)). Importantly, just like with a motion to dismiss for failure to state a claim (*see* Rule 55.27(a)(6)), if matters beyond the pleadings are presented in connection with a motion for judgment on the pleadings, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 74.04." Rule 55.27(b).

Therefore, if Shelter's reliance on § 144.027.1 could not be considered in connection with a motion to dismiss, because "Shelter's arguments go beyond the allegations contained in Bell's petition," *Bell I*, 701 S.W.3d at 619 n.7, the issue cannot be considered on a motion for judgment on the pleadings either.

Conclusion

Because the relevant terms of Shelter's policy are ambiguous, and must be interpreted in Bell's favor, I would reverse the circuit court's grant of judgment on the pleadings to Shelter.



Alok Ahuja, Judge