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COLORADO COURT OF APPEALS

Court Address: 2 East 14th Avenue
Denver, CO 80203

District Court, Jefferson County, Colorado
The Honorable Todd Vriesman
Case No. 2014CV32056

Appellant–Defendant: MABEL GARCIA

v.

Plaintiff–Appellee: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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Court of Appeals
Case Number: 2015CA1771

APPELLANT'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 5,996 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Timothy Garvey
Timothy M. Garvey, Esq.

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I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred when it concluded that the tortfeasor, Susan Lynette Leavitt ("Ms. Leavitt"), was not an "insured"—and therefore not entitled to policy benefits—under an insurance policy she purchased, that listed her as a "named insured," and that insured a vehicle she owned.

II. STATEMENT OF THE CASE

A. Nature of the Case.

This case involves the district court's imposition of a limitation on insurance coverage not clearly expressed in Ms. Leavitt's insurance policy.

B. Course of Proceedings.

On November 25, 2012, Susan Lynette Leavitt ("Ms. Leavitt") and Appellant, Mabel Garcia ("Ms. Garcia"), were travelling in the same direction on a rural two-lane highway. Ms. Garcia drove the lead vehicle, and as she made a legal left turn onto another roadway, Ms. Leavitt illegally attempted to pass Ms. Garcia on the left. In the resulting t-bone collision, Ms. Garcia suffered severe injuries, including a ruptured spleen, that required emergency surgeries and repeated hospitalizations.

Following the collision, Ms. Garcia sued Ms. Leavitt, who tendered the lawsuit to her insurer, State Farm Mutual Automobile Insurance Company ("State Farm"), asking it to defend and indemnify her under two separate automobile

insurance policies. The first, Policy No. 058520006G ("State Farm Policy #1"), identified on the declarations page the 2007 Volvo XC70 Ms. Leavitt was driving when she collided with Ms. Garcia. R. CF, p. 116. The second, Policy No. 043113806H ("State Farm Policy #2"), identified on the declarations page a 2004 Ford Explorer that was not involved in the collision with Ms. Garcia.

Under both policies, State Farm promised to pay damages Ms. Leavitt became legally liable to pay for bodily injury and property damage caused by an accident involving "a vehicle" that she—as the person insured—owned, maintained, or used. R. CF, p. 77. Further, State Farm agreed that if liability coverage were triggered under both policies, it would pay benefits equal to the highest limit provided by any one of the two policies. R. CF, pp. 79–80.

While State Farm defended Ms. Leavitt under State Farm Policy #1 and eventually tendered the policy's $100,000 bodily injury limits, it refused to provide any coverage under State Farm Policy #2, which carried a $500,000 limit. According to State Farm, although Ms. Leavitt had paid premiums for State Farm Policy #2, was a named insured under State Farm Policy #2, and owned the 2004 Ford Explorer identified on the declarations page for State Farm Policy #2, she did not meet the definition of an "insured" under the policy for purposes of the collision with Ms. Garcia.

State Farm then filed a declaratory judgment action, seeking a judicial determination that State Farm Policy #2 provided no coverage to Ms. Leavitt for the collision with Ms. Garcia. Both State Farm and Ms. Garcia moved for summary judgment on stipulated facts. R. CF, pp. 115–17 (Stipulation of Facts); R. CF, pp. 170–192 (State Farm's Motion for Summary Judgment); R. CF, pp. 193–204 (Ms. Garcia's Response to Plaintiff State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment and Defendant Garcia's Motion for Summary Judgment Pursuant to C.R.C.P. 56(b)); R. CF, pp. 219–36 (State Farm's Response to Defendant Garcia's Motion for Summary Judgment and Reply in Support of Plaintiff's Motion for Summary Judgment); R. CF, pp. 242–251 (Defendant Mabel Garcia's Reply to Plaintiff State Farm Mutual Automobile Insurance Company's Response to Defendant Garcia's Motion for Summary Judgment).

The court granted State Farm's motion, and denied Ms. Garcia's, concluding as a matter of law that Ms. Leavitt was not an "insured" under State Farm Policy #2, and therefore State Farm was not required to provide any coverage under that policy. R. CF, pp. 252–55 (Order re: Motions for Summary Judgment).

This appeal followed.

III. STATEMENT OF FACTS

The facts are not in dispute, and the district court resolved this matter on summary judgment based on the parties' stipulated facts. R. CF, 115–17. Many of those facts are detailed in section II, above, and in the interest of brevity, Appellant incorporates herein the entirety of section II. Below, Appellant sets forth only those facts not presented above that are relevant to this Court's resolution.

Both policies (State Farm Policy #1 and State Farm Policy #2) were delivered in Colorado and identified Terry J. Leavitt and S. Lynette Leavitt as the named insureds. R. CF, p. 116. Both policies were in force and effect on November 25, 2012, when Ms. Leavitt collided with Ms. Garcia. R. CF, pp. 58, 62, 116. Both policies were written on State Farm's Colorado Policy Form 9806B and contain identical insuring provisions. R. CF, pp. 58, 62, 116.

Under both policies, State Farm agreed to provide liability coverage to Ms. Leavitt as follows:

> **Insuring Agreement**
>
> 1. ***We*** will pay damages an ***insured*** becomes legally liable to pay because of:
>
>   a. ***bodily injury*** to others; and
>
>   b. damage to property

> caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy.

R. CF, p. 77. Both policies define the word "**we**" to mean "the Company issuing this policy as shown on the Declarations Page." R. CF, p. 76. For both policies, that company was State Farm Mutual Automobile Insurance Company. R. CF, pp. 58, 62.

Both policies include four separate definitions for the term "**insured.**" R. CF, p. 76. The one at issue here is the first, under which State Farm defined "insured" to mean:

> 1. ***you*** and ***resident relatives*** for:
>
> a. the ownership, maintenance, or use of:
>
> (1) ***your car***;
>
> (2) a ***newly acquired car***; or
>
> (3) a ***trailer***; and
>
> b. the maintenance or use of:
>
> (1) a ***non-owned car***; or
>
> (2) a ***temporary substitute car***;

R. CF, p. 76.

Both policies define "**you**" to mean "the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page

is a ***person***, then '***you***' … includes the spouse of the first ***person*** shown as a named insured if the spouse resides primarily with that named insured." R. CF, p. 76.

Under both policies, State Farm defined "**your car**" to mean "the vehicle shown under 'YOUR CAR' on the Declarations Page." R. CF, p. 76. While State Farm used the defined term "your car" throughout both policies, in its grant of coverage, State Farm chose to not use that term, and instead afforded coverage to an insured for damage caused by an accident involving "a vehicle." R. CF, p. 77.

Ms. Leavitt was a named insured under State Farm Policy #2, and owned the 2004 Ford Explorer identified on the declarations page for State Farm Policy #2. R. CF, p. 116.

IV. SUMMARY OF THE ARGUMENT

The district court found that Ms. Leavitt was not an insured under State Farm Policy #2 even though she paid premiums for that policy, was a named insured under that policy, and owned the vehicle identified on the declarations page for that policy. This cannot stand. Under the plain language of State Farm Policy #2, Ms. Leavitt—as the named insured and owner of the 2004 Ford Explorer identified on the declarations page—meets the policy's definition of "an insured." Thus, the district court's finding that Ms. Leavitt was not "an insured" under State Farm Policy #2 must be reversed.

Further, because the liability coverage afforded to Ms. Leavitt under State Farm Policy #2 is tied to her as the insured—rather than to the vehicle listed on the declarations page and defined as "your vehicle"—the district court erred by imposing a limitation on coverage not clearly expressed in the policy and concluding that State Farm Policy #2 provides no coverage to Ms. Leavitt.

Additionally, to the extent the coverage granted by State Farm Policy #2 was ambiguous, the district court erred by failing to construe the policy in favor of coverage, and by failing to acknowledge Ms. Leavitt's reasonable expectations of coverage.

Accordingly, the district court's Order granting summary judgment in State Farm's favor must be reversed.

V. ARGUMENT

A. The District Court Erred When It Concluded State Farm Policy #2 Provided No Coverage To Ms. Leavitt For Her Collision With Ms. Garcia.

1. Standard Of Review And Issue Preservation.

A court's interpretation of an insurance contract is a matter of law subject to *de novo* review. *Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 666 (Colo. 2011); *Cyprus Amax Minerals Co. v. Lexington Ins. Co.*, 74 P.3d 294, 298 (Colo. 2003). This issue was preserved at R. CF, pp. 196–202, 243–49. The district

ruled against Appellant when it granted summary judgment for Appellee on this issue. R. CF, p. 255.

2. The Plain Language Of State Farm Policy #2 Invokes Coverage.

Under the plain language of State Farm Policy #2, Ms. Leavitt was "an insured" entitled to liability coverage for causing Ms. Garcia's injuries, damages, and losses.

An insurance policy is interpreted according to well-settled principles of contract interpretation. *See Compass Ins. Co. v. City of Littleton*, 984 P.2d 606, 613 (Colo. 1999); *Chacon v. Am. Family Mut. Ins. Co.*, 788 P.2d 748, 750 (Colo. 1990). In undertaking the interpretation of an insurance contract, courts must give effect to the plain and ordinary meaning of the contract's terMs. *Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1050–51 (Colo. 2011). Additionally, courts must "construe coverage provisions in an insurance contract liberally in favor of the insured to provide the broadest possible coverage." *TCD, Inc. v. Am. Family Mut. Ins. Co.*, 296 P.3d 255, 257–58 (Colo. App. 2012) (citing *Fire Ins. Exch. v. Bentley*, 953 P.2d 1297, 1300 (Colo. App. 1998)).

Here, under State Farm Policy #2, State Farm agreed to provide liability coverage to Ms. Leavitt as follows:

Insuring Agreement

1. ***We*** will pay damages an ***insured*** becomes legally liable to pay because of:

   a. ***bodily injury*** to others; and

   b. damage to property

   caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy.

R. CF, p. 77.

Thus, to determine whether Ms. Leavitt is entitled to coverage under State Farm Policy #2, the initial inquiry is to ascertain whether she qualifies as an "insured" under the policy. R. CF, p. 76.

As related here, State Farm defined "**insured**" to mean:

1. ***you*** and ***resident relatives*** for:

   a. the ownership, maintenance, or use of:
      (1) ***your car***;
      (2) a ***newly acquired car***; or
      (3) a ***trailer***; and

   b. the maintenance or use of:
      (1) a ***non-owned car***; or
      (2) a ***temporary substitute car***;

R. CF, p. 76. The term "**you**" means "the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a

person, then '***you***' … includes the spouse of the first ***person*** shown as a named insured if the spouse resides primarily with that named insured." R. CF, p. 76.

Here, it is undisputed that Ms. Leavitt is both a named insured on the declarations page of State Farm Policy #2 and the resident spouse of the first person named on the declarations page. R. CF, p. 58. Thus, Ms. Leavitt meets the policy definition of "you."

However, that alone does not determine whether Ms. Leavitt qualifies as an "insured" under State Farm Policy #2. Indeed, to qualify as an "insured" under that policy, Ms. Leavitt must also *own*, *maintain*, or *use* the 2004 Ford Explorer listed on the declarations page.[1] This, too, is satisfied, as there is no dispute Ms. Leavitt owns the 2004 Ford Explorer identified as "your car" on the declarations page of State Farm Policy #2. R. CF, p. 116 (¶9). Thus, because Ms. Leavitt is a named insured who owns the 2004 Ford Explorer, she qualifies as an "insured" under State Farm Policy #2.

Of course, simply being an "insured" under State Farm Policy #2 does not end the inquiry either, as State Farm agreed to "pay damages an ***insured*** becomes legally

[1] Because State Farm chose not to define the term "**ownership**," it should be construed according to its plain and ordinary meaning. *Hoang v. Assurance Co. of Am.*, 149 P.3d 798, 801 (Colo. 2007). The term "ownership" means: "[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others." Black's Law Dictionary (9th ed. 2009).

liable to pay" only when those damages were "caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy." R. CF, p. 77. Here, it is undisputed that Ms. Leavitt is liable to Ms. Garcia for causing her bodily injury and property damage. It is further undisputed that those damages were caused by an accident involving "a vehicle" (*i.e.*, the 2007 Volvo XC70).[2] And, as explained above, Ms. Leavitt was an "insured" who was provided liability coverage under State Farm Policy #2. Thus, because State Farm promised to pay for damages caused by an accident involving "a vehicle" owned, maintained, or used by the *person* insured by the policy, and because Ms. Leavitt caused an accident involving "a vehicle," and because Ms. Leavitt was a person insured under State Farm Policy #2, that policy affords Ms. Leavitt with liability coverage for the accident with Ms. Garcia.

Accordingly, because State Farm Policy #2 provides liability coverage to Ms. Leavitt for the collision with Ms. Garcia, the district court's Order concluding otherwise must be reversed.

[2] State Farm did not define the word "vehicle." Generally, it means "[a]n instrument of transportation or conveyance" or "[a]ny conveyance used in transporting passengers or things by land, water, or air." Black's Law Dictionary (9th ed. 2009) (defining *vehicle*).

3. The District Court Erred When It Concluded Ms. Leavitt Was Not An "Insured" Under State Farm Policy #2.

The district court's conclusion that Ms. Leavitt did not qualify as an "insured" under State Farm Policy #2 was erroneous for several reasons. First, it ignored the policy's plain language. Second, the district court imposed a limitation on coverage that State Farm failed to clearly express. Third, to the extent the policy is ambiguous, the court improperly construed it in favor of State Farm, rather than in favor of providing coverage. Finally, the district court failed to acknowledge Ms. Leavitt's reasonable expectations of coverage.

i. The District Court Ignored The Policy's Plain Language.

In entering summary judgment for State Farm, the district court failed in its obligation to give effect to the plain and ordinary meaning of the terms used in State Farm Policy #2. *Bailey*, 255 P.3d at 1050–51.

The district court found "the policy unambiguous as to the fact that Leavitt is not an insured under State Farm Policy #2 as it pertains to the vehicle involved in the Collision, the Volvo XC70." R. CF, p. 255. According to the district court, Ms. Leavitt is not an insured under State Farm Policy #2 because the Volvo "is not listed as 'YOUR CAR' on the Declarations Page of State Farm Policy #2, and the parties stipulate through their pleadings that it does not qualify as one of the other

exceptions listed in the definitions of an 'insured' in State Farm Policy #2." R. CF, p. 255.

In reaching its conclusion, the district court ignored the plain language of State Farm Policy #2, relying instead on State Farm's argument that Ms. Leavitt was an insured under State Farm Policy #2 only if the 2007 Volvo involved in the collision fell within the policy's definition of "your car," a "non-owned car," a "newly acquired car," or a "temporary substitute car." *See* R. CF, p. 178. However, this argument was a red herring. It presumed that Ms. Leavitt could be insured only for the *use* of one of those vehicles. But that is not true. Under the plain language of State Farm Policy #2, an "insured" is a person who uses, maintains, or *owns* any of the referenced vehicles. R. CF, p. 76. Thus, because it was undisputed that Ms. Leavitt owned the 2004 Ford Explorer identified on the declarations page for State Farm Policy #2, Ms. Leavitt was necessarily an insured under that policy for purposes of coverage for the subject collision.

Furthermore, the language in State Farm Policy #2 does not support State Farm's argument—or the district court's conclusion—that the policy limits coverage to only those accidents involving "your car," a "newly acquired car," a "non-owned car," or a "temporary substitute car." Those terms are found only in the definition of an "insured." R. CF, p. 76. They do not appear in the insuring agreement. R. CF,

p. 77. Rather, the insuring agreement simply uses the term "a vehicle" and states that Sate Farm will provide coverage to "an insured" for damages caused by an accident involving "a vehicle." R. CF, p. 77. Thus, because Ms. Leavitt was a person insured under State Farm Policy #2, she was entitled to coverage for the claims arising from the subject collision, State Farm's complaints notwithstanding.

ii. The District Court's Interpretation Impermissibly Imposes An Unexpressed Limitation On Ms. Leavitt's Coverage.

Indeed, the district court's interpretation of State Farm Policy #2 impermissibly imposes a coverage limitation that State Farm failed to clearly express in the policy.

Because coverage provisions in an insurance contract are to be liberally construed in favor of the insured to provide the broadest possible coverage, when insurers seek to restrict coverage, they must clearly express any such limitations. *Tepe v. Rocky Mountain Hosp. and Medical Srvcs*, 893 P.2d 1323, 1327 (Colo. App. 1994); *Urtado v. Allstate Ins. Co.*, 528 P.2d 222, 223 (Colo. 1974). The insurer must establish the applicability of a coverage limitation. *Hecla Mining Co. v. N. H. Ins. Co.*, 811 P.2d 1083 (Colo. 1991); *Colo. Intergov't Risk Sharing Agency v. Northfield Ins. Co.*, 207 P.3d 839 (Colo. App. 2008). In meeting this burden, the insurer must demonstrate that the limiting language is subject to no other reasonable

interpretation. *Am. Family Mut. Ins. Co. v. Johnson*, 816 P.2d 952 (Colo. 1991); *Mid-Century Ins. Co. v. Robles*, 271 P.3d 592 (Colo. App. 2011).

Here, contrary to the district court's conclusion, State Farm Policy #2 contains no language limiting Ms. Leavitt's liability coverage to accidents involving "your car," a "newly acquired car," a "non-owned car" or a "temporary substitute car." R. CF, p. 255. Had State Farm intended such a limitation on coverage, it could have so stated. State Farm used to do just that. For example, *O'Herron v. State Farm Mut. Auto. Ins. Co.*, 397 P.2d 227, 228 (Colo. 1964), involved a State Farm insuring agreement under which the insurer promised to "pay all damages which the insured shall become legally obligated to pay because of (A) bodily injury sustained by other persons … caused by accident arising out of the ownership, maintenance or use, … *of the owned automobile.*" (Emphasis added). Likewise, other insurers have done the same. *See, e.g., Farmers Alliance Mut. Ins. Co. v. Bakke*, 619 F.2d 885, 887 (10th Cir. 1980) (quoting Farmers' insuring agreement, in which it promises to pay damages the insured becomes legally obligated to pay because of bodily injury or property damage "caused by accident and arising out of the ownership, maintenance or use *of the owned motorcycle* … .") (emphasis added). In both instances, the insurer tied coverage to the vehicle insured, rather than the person insured. However, in writing State Farm Policy #2, State Farm reversed course and tied coverage to the

person insured—not the vehicle involved in the injury-producing accident. R. CF, p. 77.

Alternatively, like other insurers with broad insuring agreements similar to State Farm Policy #2, State Farm could have expressly excluding liability coverage for all but certain vehicles. *See, e.g.*, *Jefferson v. Scariano*, 949 P.2d 120, 121 (Colo. App. 1997) (concluding that the following exclusion removed coverage for a person otherwise covered by the insuring agreement: "We do not provide Liability Coverage for ownership, maintenance or use of: … 3. Any vehicle, other than **your covered auto** … ."). Indeed, State Farm Policy #2 did just that, but only for vehicles used for business purposes. Under Exclusion No. 10, State Farm excluded coverage for an insured person "[w]hile maintaining or using any vehicle other than ***your car***, a ***newly acquired car***, a ***temporary substitute car***, or a ***trailer*** in any business or occupation other than a ***car business*** or valet parking." R. CF, p. 70 (¶ 10) (capitalization omitted).

This exclusion demonstrates three things. First, State Farm knows how to limit coverage in such a manner when it wants to. Second, State Farm never intended the insuring agreement to limit coverage to accidents involving only "your car," a "newly acquired car," or a "temporary substitute car"—as the district court concluded it did—since Exclusion No. 10 would be superfluous if the insuring

agreement already imposed such a limitation on coverage. Third, and as a corollary to the second, this exclusion demonstrates that State Farm intended the insuring agreement of State Farm Policy #2 to provide a broad grant of coverage that extended coverage to vehicles other than "your car," a "newly acquired car," or a "temporary substitute car" except when that other vehicle was used for business. Thus, because Ms. Leavitt was not using the Volvo for any business purpose when she collided with Ms. Garcia, State Farm Policy #2 should provide her with liability coverage for the subject collision.

Another way State Farm could have limited coverage in the manner suggested by the district court would have been to do as Allstate Insurance Company has done and included an anti-stacking provision that states: "If **you** have two or more **autos** insured in **your** name and one of these **autos** is involved in an accident, only the coverage limits shown on the declarations page for that **auto** will apply … ." *Allstate Ins. Co. v. Indep. Appliance and Refrig. Serv., Inc.*, 278 F.3d 1102, 1103–04 (10th Cir. 2002). However, once again, State Farm chose otherwise. Instead of limiting coverage to the amount shown on the declarations page for the vehicle involved in the collision, State Farm promised to pay under the policy with the highest liability coverage limits:

> If Liability Coverage provided by this Policy and one or more other Car Policies issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** apply to the same accident, then:
>
> a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
>
> b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

R. CF, pp. 79–80. Thus, instead of limiting coverage to the amount provided by State Farm Policy #1, which listed the Volvo involved in the collision on its declarations page, State Farm extended coverage to "the single highest applicable limit provided by any *one of the policies*"—substantiating that, contrary to the district court's conclusion, more than one policy issued to the insured could potentially afford liability coverage to Ms. Leavitt. R. CF, pp. 79–80 (emphasis added). Here, "the single highest applicable limit" is the $500,000 limit of State Farm Policy #2.

In sum, the district court erred when it concluded State Farm limited coverage under State Farm Policy #2 to only those accidents involving the use of the vehicle identified on the declarations page (*i.e.*, "your car"). To be sure, there were numerous ways State Farm could have unambiguously limited coverage under State Farm Policy #2 in such a manner. It could have tied coverage to the vehicle, rather than the insured (as it once did); it could have expressly limited coverage to accidents

involving “your car” (as other insurers have done and as State Farm did for business pursuits); and/or it could have clarified that when multiple policies are involved, it would pay only the limits provided for the vehicle involved in the accident. It chose otherwise. And, because State Farm did not limit coverage to only those accidents involving “your car,” the district court erred in determining the policy “unambiguously” included such a limitation and, on that basis, concluding that that Ms. Leavitt was not insured under State Farm Policy #2.

iii. To The Extent State Farm Policy #2 Is Ambiguous, It Must Be Construed In Favor Of Coverage.

Appellant believes the plain language of State Farm Policy #2 is clear and unambiguously requires State Farm to provide coverage to Ms. Leavitt for her collision with Ms. Garcia. However, to the extent the Court disagrees with Ms. Garcia’s reading of the policy, it should still reverse the district court’s Order, as the policy must be considered ambiguous and its language construed in favor of coverage.

Ambiguous language in an insurance contract must be construed in favor of the insured and against the insurer that drafted the policy. *Hecla Min. Co.*, 811 P.2d at 1090–91; *Tepe*, 893 P.2d at 1328 (holding that an insurance contract must be construed in favor of coverage when the policy uses inconsistent or ambiguous language). Terms used in an insurance contract are ambiguous when they are

susceptible of more than one reasonable interpretation. *Hoang*, 149 P.3d at 801; *Hecla Min. Co.*, 811 P.2d at 1091.

Here, to the extent State Farm Policy #2 does not clearly invoke coverage, the district court erred by construing the ambiguous language in favor of State Farm instead of Ms. Leavitt. In interpreting the policy, the district court decided that Ms. Leavitt was not an insured under State Farm Policy #2 because the policy purportedly limited coverage to accidents involving the vehicle identified on the declarations page as "your car." R. CF, pp. 252–55. In reaching its determination, the district court stated that Ms. Leavitt was not an insured under State Farm Policy #2 because the Volvo XC70 involved in the collision with Ms. Garcia was not listed as "YOUR CAR" on the declarations page of State Farm Policy #2. R. CF, p. 255.

However, there exist other reasonable interpretations of State Farm Policy #2 that tie coverage to the person insured, rather than the vehicle, and which result in coverage. One of those, explained in detail above, is that Ms. Leavitt is an insured under State Farm Policy #2 because she is one of two "named insureds" on the declarations page and is the undisputed owner of the 2004 Ford Explorer identified on the declarations page as "your car." R. CF, p. 58. Further, under this interpretation of an "insured," because Ms. Leavitt is an insured who is provided liability coverage

under State Farm Policy #2, and because she became legally liable to pay damages caused by an accident involving "a vehicle"—not "your car"—coverage was triggered.

Not only is Ms. Leavitt's interpretation of the policy objectively reasonable, it is more reasonable than the district court's conclusion, because it does not render superfluous any of the contract's other terms or provisions. *See Copper Mountain, Inc. v. Indus. Sys., Inc.*, 208 P.3d 692, 700 (Colo. 2009) (courts must interpret writings in their entirety, harmonizing and giving effect to all provisions so that none will be rendered meaningless). Indeed, the district court's conclusion that Ms. Leavitt does not meet the definition of an insured because the 2004 Ford Explorer listed on the declarations page of State Farm Policy #2 was not involved in the collision with Ms. Garcia renders meaningless the "ownership" provision of the definition of an "insured." In essence, the court's holding limits coverage under State Farm Policy #2 to those instances where the vehicle listed on the declarations page is being *used* and is involved in a collision. But, the policy extends coverage beyond mere "use" and includes "maintenance" and "ownership." R. CF, p. 76.

The district court's holding also ignores State Farm's choice to extend coverage to the insured for damage caused by an accident involving "a vehicle"—not just the vehicle identified as "your car" on the declarations page. R. CF, p. 77. In

ruling as it did, the district court stated, "importantly, the inclusion of the phrase 'this policy' in the Insurance Agreement unambiguously restricts the *vehicles* covered." R. CF, p. 255 (emphasis added). However, that is not the only reasonable reading of the insuring agreement. Rather, the insuring agreement can be read—and construing any ambiguity in favor of the insured, should be read—so that the limiting language "provided Liability Coverage by this policy" applies to the *insured* rather than the vehicle. And, in doing so, State Farm Policy #2 means State Farm will pay for damages caused by an accident involving "a vehicle" owned, maintained, or used by the *person* insured under the policy. In which case, coverage would be triggered here.

Thus, because the key phrases cited by the district court to support its conclusion are susceptible to other reasonable interpretations, State Farm Policy #2 is ambiguous. As such, the district court had to enforce the interpretation that supported coverage. Having failed to do so, the district court's Order must be reversed.

iv. Ms. Leavitt's Reasonable Expectations Of Coverage Under State Farm Policy #2 Are Supported By Sound Public Policy.

Ms. Leavitt's interpretation of the coverage provided by State Farm Policy #2 comports with both her reasonable expectations of coverage and sound public policy.

Language in an insurance policy that conflicts with the insured's objectively reasonable expectations is unenforceable, even if a "painstaking study of the policy provisions would have negated those expectations." *State Farm Mut. Auto Ins. Co. v. Nissen*, 851 P.2d 165, 168 (Colo. 1993). The doctrine of reasonable expectations is a principle of fairness designed to protect insureds from the dangers inherent in standardized insurance policies. *See Bailey*, 255 P.3d at 1049. "A commonsense analysis of automobile insurance contracts is particularly appropriate because such insurance policies are sold to consumers who are not expected to be highly sophisticated in the art of reading them." *Radil v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 207 P.3d 849, 852 (Colo. App. 2008).

Here, the coverage at issue is Ms. Leavitt's liability coverage. Liability insurance is "[a]n agreement to cover a loss resulting from the *insured's* liability to a third party." Black's Law Dictionary (9th ed. 2009) (defining *liability insurance*) (emphasis added). Under State Farm Policy #2, State Farm agreed to cover losses resulting from Ms. Leavitt's liability to third parties. R. CF, p. 77. Specifically, State Farm promised to "pay damages an ***insured*** becomes legally liable to pay … ." R. CF, p. 77. As such, a reasonable insured, such as Ms. Leavitt, would expect that the liability coverage afforded to *her* under the policy would attach to *her*, rather than the vehicle listed on the declarations page.

Further supporting Ms. Leavitt's reasonable expectation of liability coverage is the fact that State Farm drafted State Farm Policy #2 to acknowledge that multiple State Farm policies could be implicated, and limited the risk it would accept in such situations: "The maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies." R. CF, p. 80. Reading this provision in concert with the purpose of liability insurance—to protect the *person* insured—a reasonable insured would expect that if she is responsible for an accident, so long as she qualifies as an insured under more than one automobile policy, she will be protected under the policy with the higher liability coverage limits.

Moreover, Ms. Leavitt's reasonable expectation of coverage comports with sound public policy and does not adversely affect State Farm, which issued two separate liability policies to Ms. Leavitt and agreed to insure her against losses up to $500,000 caused by an accident. R. CF, p. 76. From the perspective of insuring the risk, it makes little difference which car Ms. Leavitt chose to drive the day she collided with Ms. Garcia—except in this case State Farm can save $400,000 by arguing that Ms. Leavitt's $500,000 in liability coverage attached to the Ford rather than to her. However, in issuing State Farm Policy #2, the insurer, State Farm, accepted Ms. Leavitt's monthly premiums in exchange for accepting a $500,000

liability risk. There is no dispute that had Ms. Leavitt chosen to drive the Explorer the day she collided with Ms. Garcia, the higher limits of State Farm Policy #2 would have been triggered. Considering that Ms. Leavitt was a covered insured under both State Farm policies, the fact that Ms. Leavitt was driving the Volvo rather than the Ford when the collision occurred should not permit State Farm to pay a lower damage amount—absent clear policy language allowing it to do so—and thus garner a $400,000 windfall.

Finally, even if there were an argument that Ms. Leavitt was excluded from liability coverage under State Farm Policy #2 because the Volvo and not the Ford was involved in the collision, as demonstrated in the sections above, it would take a painstaking study of the policy to uncover that exclusion. Indeed, the district court's Order proves this point.

In concluding that Ms. Leavitt was not an "insured" under State Farm Policy #2, the district court stated, "Because the definition of 'insured' specifies the types of vehicles included in that term, and those vehicles are previously defined in the 'Definitions' section of the policy booklet, the Court finds that State Farm was not required to reiterate which vehicles were covered by the Insurance Agreement." R. CF, p. 255. The law, however, does not require an ordinary policyholder to make such an incisive investigation of the automobile policy to uncover a provision

limiting the policy's broad grant of liability coverage for insureds involved in an accident. *See, e.g.*, *Bailey*, 255 P.3d at 1049 (doctrine of reasonable expectations designed to protect insureds from dangers inherent in insurance policies); *Radil*, 207 P.3d at 852 (exclusionary language that conflicts with insured's objectively reasonable expectations is unenforceable); *Tepe*, 893 P.2d at 1327 (insurer must clearly express any coverage limitation).

Moreover, the district court's focus on determining whether Ms. Leavitt was an "insured" proves the policy's ambiguity. Indeed, "the definition of an 'insured'" is not the primary issue in this dispute. Rather, the cogent question is whether Ms. Leavitt—unquestionably an "insured" under both State Farm policies—is entitled to coverage pursuant to the insuring agreement of State Farm Policy #2. That the district court failed to recognize this fact only undermines its assertion that State Farm Policy #2 "unambiguously restricts the vehicles covered." R. CF, p. 255.

Hence, it was reasonable for Ms. Leavitt, as an insured person under State Farm Policy #2, to expect State Farm to provide coverage under that policy, regardless of which vehicle she was driving when an accident occurred. Indeed, insureds in Ms. Leavitt's position would likely fail to understand that they would not be entitled to liability coverage under State Farm Policy #2 when: (1) the insuring agreement provides liability coverage to persons insured under the policy; (2) they

are a named insured under the policy; (3) they meet the policy's definition of an "insured"; and (4) they paid premiums for such coverage.

Accordingly, to the extent it exists, any language in State Farm Policy #2 that purports to limit coverage to only those accidents involving "your car" cannot be enforced under Colorado law, as that language would conflict with Ms. Leavitt's reasonable expectations of liability coverage for the collision with Ms. Garcia. The district court's Order entering summary judgment in State Farm's favor must therefore be reversed.

V. CONCLUSION

For the reasons stated above, Appellant respectfully requests that this Court reverse the district court's Order entering summary judgment for State Farm and remand the case with instructions for the district court to enter summary judgment in favor of Appellant, Mabel Garcia.

Respectfully submitted this 22nd day of April 2016,

s/ Timothy Garvey
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of April 2016, a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF** was filed and served electronically through ICCES, with service to:

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