

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHELLY WILEY and MARK WILEY,  
Plaintiffs-Appellants,

UNPUBLISHED  
July 19, 2012

v

MEGAN SUE OSMUN and ERIC J. LABO,  
Defendants,

No. 304992  
Washtenaw Circuit Court  
LC No. 10-000209-NI

and

UNITED SERVICES AUTOMOBILE  
ASSOCIATION,  
Defendant-Appellee.

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Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Plaintiff Shelly Wiley sustained severe injuries in an automobile accident with an underinsured vehicle. She later learned that her no-fault insurance policy lacked underinsured motorist coverage. Shelly Wiley and her husband, plaintiff Mark Wiley, believed they had purchased a policy containing “full coverage,” despite that the policy plainly states that underinsured motorist coverage was not provided. The Wileys brought this action seeking a declaration that their no-fault insurance policy issued by defendant United Services Automobile Association (USAA) must be construed to provide underinsured motorist coverage. The circuit court granted summary disposition in favor of USAA. We affirm the circuit court’s decision.

**I. UNDERLYING FACTS AND PROCEEDINGS**

On July 6, 2009, a vehicle driven by defendant Megan Sue Osmun struck Shelly Wiley’s Mercury Mariner, propelling the Mariner into roll that ended when the Mariner hit a tree. Shelly Wiley sustained a neck fracture and other severe injuries. She and her husband, Mark Wiley sued Osmun and defendant Eric Labo, the owner of the car driven by Osmun, seeking damages

for noneconomic loss pursuant to MCL 500.3135.<sup>1</sup> The Wileys' complaint also named USAA as a defendant. The Wileys' complaint sought a declaration that the USAA no-fault insurance policy on the Mariner included coverage for underinsured motorist benefits.

The Mercury Mariner was insured under a USAA policy issued on February 13, 2009. The policy covered five other vehicles owned by the Wileys; the declarations span two pages. The declarations refer to the Mariner as vehicle 19. We reproduce both pages here:

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<sup>1</sup> Apparently the Wileys have settled their dispute with Osmun and Labo. The record does not include information regarding Labo's insurance policy limits.



**UNITED SERVICES AUTOMOBILE ASSOCIATION**

(A RECIPROCAL INTERINSURANCE EXCHANGE)  
8800 Fredericksburg Road - San Antonio, Texas 78288

**MICHIGAN AUTO POLICY  
RENEWAL DECLARATIONS**

(ATTACH TO PREVIOUS POLICY)

ADDL INFO ON NEXT PAGE MAIL MCH-M-T

**RENEWAL OF**

State	07 14 18 19	Veh	POLICY NUMBER
MI	136136136136	Yer	00178 07 61U 7105 1
POLICY PERIOD:		(12:01 A.M. standard time)	
EFFECTIVE FEB 13 2009 TO AUG 13 2009			

**Named Insured and Address**

MARK E WILEY  
9471 HICKS ROAD  
QUINCY MI 49082-9607

**OPERATORS**

01 MARK E WILEY  
02 RACHELLE JO WILEY

Description of Vehicle(s)							VEH USE#	WORK/SCHOOL	
VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM	Miles Per Week	Days Per Week
07	86	FORD	OTHER		2000	1FTDF15Y0GLA03347	9	F	
14	01	CHEV	SILVER1500	PKP4X22D	5000	1GCEC14W81Z130042	8	F	
18	05	H&S MANU	H&S MANUFACT		0	40LTV212245001015	9		
19	06	MERCURY	MARINER	UTL4X24D	6000	4M2YU56106KJ15368	8	P	

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. W=Work/School; B=Business; F=Farm; P=Pleasure

VEH 07 QUINCY MI 49082-9607      VEH 18 QUINCY MI 49082-9607  
VEH 14 QUINCY MI 49082-9607      VEH 19 QUINCY MI 49082-9607

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES (*ACV* MEANS ACTUAL CASH VALUE)	LIMITS OF LIABILITY		VEH 07		VEH 14		VEH 18		VEH 19	
	EA PER \$	EA ACC \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
<b>PART A - LIABILITY</b>										
BODILY INJURY	EA PER \$ 100,000									
	EA ACC \$ 200,000			18.59		22.26				22.48
PROPERTY DAMAGE	EA ACC \$ 50,000			5.44		6.68				6.54
<b>PART B - PERSONAL INJURY PROTECTION</b>										
NO DEDUCTIBLE				85.66		72.60				92.91
<b>PART B - PROPERTY PROTECTION INS</b>				3.52		4.25				4.33
<b>PART C - UNINSURED MOTORISTS</b>										
BODILY INJURY	EA PER \$ 100,000									
	EA ACC \$ 200,000			3.09		3.26				3.88
<b>PART D - PHYSICAL DAMAGE COVERAGE</b>										
COMPREHENSIVE LOSS	ACV LESS		D 500	14.52	D 500	32.35	D 500	1.24	D 500	31.96
STANDARD COLL COV	ACV LESS				D 500	90.46	D 500	4.94	D 500	134.09
BROAD COLL COV	ACV LESS									
TOWING AND LABOR				6.00		6.00				6.00
<b>VEHICLE TOTAL PREMIUM</b>				136.82		237.86		6.18		302.19
TOTAL PREMIUM - SEE FOLLOWING PAGE(S)										

**LOSS PAYEE**  
VEH 19 FORD MOTOR CREDIT COMPANY, MINNEAPOLIS MN

**ENDORSEMENTS: ADDED 02-13-09 - A401CW(01)**  
**REMAIN IN EFFECT (REFER TO PREVIOUS POLICY) - 5100MI (02) A400MI (03) A100MI (03)**

F4 166 166 166  
07 xxx40p00p0 14 RMM52p1100 19 RMP49p1100

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date JANUARY 7, 2009

*Laura Bishop*  
Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

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USAA Confidential



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)  
 9800 Fredericksburg Road - San Antonio, Texas 78288

MICHIGAN AUTO POLICY  
 RENEWAL DECLARATIONS  
 (ATTACH TO PREVIOUS POLICY)

State	20 21	Year	POLICY NUMBER
MI	136136	Year	00178 07 61U 7105 1
POLICY PERIOD:		(12:01 A.M. standard time)	
EFFECTIVE FEB 13 2009 TO AUG 13 2009			

Named Insured and Address

MARK E WILEY  
 9471 HICKS ROAD  
 QUINCY MI 49082-9607

Description of Vehicle(s)						VEH USE*	WORK/SCHOOL	
VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	Miles Per Week	Days Per Week
20	99	CHEV	CAVALER/RS	COUPE 2D	4160	1G1JC1244X7282364	14	P
21	07	CORN PRO	16FT		0	4MJSB16228E047710	9	

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. \*W=Work/School; B=Business; F=Farm; P=Plasure

VEH 20 QUINCY MI 49082-9607  
 VEH 21 QUINCY MI 49082-9607

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES	LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH 20		VEH 21		VEH		VEH	
		D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
PART A - LIABILITY									
BODILY INJURY	EA PER \$ 100,000								
	EA ACC \$ 200,000		26.53						
PROPERTY DAMAGE	EA ACC \$ 50,000		7.50						
PART B - PERSONAL INJURY PROTECTION									
	NO DEDUCTIBLE		113.29						
PART B - PROPERTY PROTECTION INS									
			5.02						
PART C - UNINSURED MOTORISTS									
BODILY INJURY	EA PER \$ 100,000								
	EA ACC \$ 200,000		3.80						
PART D - PHYSICAL DAMAGE COVERAGE									
COMPREHENSIVE LOSS	ACV LESS			D 500	2.41				
STANDARD COLL COV	ACV LESS			D 500	8.34				
TOWING AND LABOR			6.00						
VEHICLE TOTAL PREMIUM			162.14		10.75				
6 MONTH PREMIUM \$			855.94						

MCCA ASSESSMENT PREMIUM \$ 212.80

THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:

VEH 07 - UNDERINSURED MOTORIST, COLLISION, RENTAL REIMBURSEMENT  
 VEH 14 - UNDERINSURED MOTORIST, RENTAL REIMBURSEMENT  
 VEH 19 - UNDERINSURED MOTORIST, RENTAL REIMBURSEMENT  
 VEH 20 - UNDERINSURED MOTORIST, COMPREHENSIVE, COLLISION, RENTAL REIMBURSEMENT

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In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date JANUARY 7, 2009

*Laura Bishop*  
 Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

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USAA Confidential

Part C of the declarations sets forth uninsured motor vehicle coverage for all vehicles except number 18, but does not list any underinsured motorist insurance in the list of coverages.<sup>2</sup> The policy states at the bottom of the declarations page: “THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:”, and lists as to vehicle 19, “UNDERINSURED MOTORIST, RENTAL REIMBURSEMENT.”

The Wileys’ insurance policy set forth the following definitions of the terms “uninsured motor vehicle” and “underinsured motor vehicle:”

**B. Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage.

However, **underinsured motor vehicle** does not include an **uninsured motor vehicle**.

**C. Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which no liability bond or policy applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for liability specified by the Michigan financial responsibility law. [Emphasis in original].

Mark Wiley testified at his deposition that he typically bought all optional no-fault coverages recommended by USAA agents, and believed that his vehicles had “full coverage:”

Q. . . . I guess we’ll now go back to what you’ve mentioned to me a couple of times here, that and what’s mentioned in the lawsuit, and that’s this concept that you were assured or told something to the effect that you had full coverage; all right?

A. Correct.

Q. Okay. Did someone at USAA use the words, Mr. Wiley “You have full coverage”?

A. You’re asking me to recall conversations that happened months or years ago. I don’t recall if it was that exact language.

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<sup>2</sup> Mark Wiley is a farmer, and vehicle 18 is used only on the farm.

Q. Well, can you remember any language that might have conveyed a similar concept?

A. I can remember language that would have conveyed a similar - - yes.

Q. Tell me what was said.

A. I knew you were going there.

Q. That's my job.

A. The only thing that pops into my mind that can even remotely be recalled is something to the effect that, "You have all the options," or, "You have all the, you know, the extras." That's - - you know, that's the only that that pops into my mind.

Shelly Wiley testified that whenever she communicated with USAA agents, "basically the only term I would use is full coverage versus just non-collision on some of the cars that we've had in the past." Later in her deposition Shelly Wiley clarified that in her mind, "fully insured" equated with having collision coverage and adequate liability coverage. She could not recall that a USAA agent ever used the term "full coverage." Notably, neither of the Wileys testified to having specifically requested "full coverage." Shelly Wiley recalled "discussing" full coverage with USAA, but her testimony fell short of establishing that she had requested it.

The Wileys admitted that they never explicitly requested underinsured motor vehicle coverage and were never specifically advised that their policies included it. Nevertheless, the Wileys believed that their policy included underinsured motorist coverage in light of a letter sent by USAA titled "Automobile Policy Packet." The letter stated in relevant part:

### **IMPORTANT MESSAGES**

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

\*\*\*

*Your Uninsured Motorists Coverage (UM) and Underinsured Motorists Coverage (UIM) selection/rejection remains in effect. You may quote different coverage limits and make changes at any time to your policy on usas.com. Or you may call us at 1-800-531-USAA (8722). [Emphasis added].*

Mark Wiley testified that when he read: "Your Uninsured Motorists Coverage (UM) and Underinsured Motorists Coverage (UIM) selection/rejection remains in effect," he recalled having discussed those coverages with USAA. Wiley's testimony continued:

As I said earlier, we had talked at least once about them. When that says “selection/rejection,” I knew we hadn’t rejected it. We had bought the full coverage. And that in my mind right there, I says, “Well, it’s in effect.” So something is not right here, but yet they’ve billed us somehow for it.

Wiley believed that this sentence indicated that he had selected underinsured motorist coverage, despite that the declaration page stated only uninsured motorist coverage.

Documents supplied by USAA reveal that in 2008, USAA mailed to the Wileys a notification explaining the differences between uninsured motorist and underinsured motorist coverage, and a form permitting a coverage selection. We have reproduced those two pages here:

### Uninsured Motorists and Underinsured Motorists Coverages in Michigan

Below, you will find a brief explanation of Uninsured Motorists and Underinsured Motorists coverages. Please remember that this explanation is only an overview, and it does not replace or supplement any of the provisions of your policy. Please see your policy for details because the policy controls all issues of coverage.

The decisions you make regarding the amount of coverage will affect your insurance premium. If you have questions, please call Policy Service at 1-800-531-USAA (8722).

#### Coverage Description

##### Uninsured Motorists (UM) Coverage:

- Protects you and your family if injured in a motor vehicle accident caused by an uninsured or hit-and-run motorist who is at-fault.
- Is an optional coverage.
- Is issued with UM Coverage limits you request by completing, signing, and returning the Rejection/Selection Form by mail. You may also select UM Coverage limits by calling us or online at [usaa.com](http://usaa.com).
- Your selection of UM Coverage limits will remain in effect on this policy and on future renewals until you request otherwise.

##### Underinsured Motorists (UIM) Coverage:

- Protects you and your family if injured in a motor vehicle accident caused by an underinsured motorist who is at-fault.
- Pays if you are injured by an at-fault motorist whose Bodily Injury (BI) Liability limits are less than your UIM Coverage limits and less than the amount of damages you are legally entitled to recover from the at-fault motorist. The at-fault motorist's policy pays its BI Liability limits first, then your UIM Coverage pays the lesser of:
  - any remaining loss, or
  - the difference between the driver's BI Liability limits and your UIM Coverage limits.
- Is optional and is in addition to UM coverage.
- If selected, UIM Coverage limits must equal UM Coverage limits except when UM Coverage limits are \$20,000 per person and \$40,000 per accident. When UM Coverage limits are \$20,000 per person and \$40,000 per accident, UIM Coverage is not available.



**Rejection/Selection Form**

If you do not wish to make any changes to your current policy, no action is required. TO MAKE CHANGES TO YOUR POLICY, PLEASE COMPLETE THIS FORM, SIGN, AND RETURN IT TO US. The premiums below reflect the total premium for this coverage for all the vehicles insured on this Policy.

**Uninsured Motorists (UM) Coverage**

Semi-annual premium per policy

To make a change to your current policy, you must check one of the following boxes:

<u>Limits</u>	<u>Premium</u>	<u>Limits</u>	<u>Premium</u>
Per person/per accident		Per person/per accident	
<input type="checkbox"/> \$ 20,000/\$ 40,000	\$	<input type="checkbox"/> \$ 100,000/\$ 300,000	\$
<input type="checkbox"/> \$ 25,000/\$ 50,000	\$	<input type="checkbox"/> \$ 300,000/\$ 500,000	\$
<input type="checkbox"/> \$ 50,000/\$ 100,000	\$	<input type="checkbox"/> \$ 500,000/\$ 500,000	\$
<input type="checkbox"/> \$100,000/\$ 200,000	\$	<input type="checkbox"/> \$ 500,000/\$ 1,000,000	\$
		<input type="checkbox"/> \$1,000,000/\$ 1,000,000	\$

UM Coverage limits cannot exceed your Bodily Injury Liability limits.

I reject UM Coverage for this policy and all subsequent renewals until I request otherwise in writing.

**Underinsured Motorists (UIM) Coverage**

Semi-annual premium per policy

To make a change to your current policy, you must check one of the following boxes:

<u>Limits</u>	<u>Premium</u>	<u>Limits</u>	<u>Premium</u>
Per person/per accident		Per person/per accident	
<input type="checkbox"/> \$ 25,000/\$ 50,000	\$	<input type="checkbox"/> \$ 300,000/\$ 500,000	\$
<input type="checkbox"/> \$ 50,000/\$ 100,000	\$	<input type="checkbox"/> \$ 500,000/\$ 500,000	\$
<input type="checkbox"/> \$100,000/\$ 200,000	\$	<input type="checkbox"/> \$ 500,000/\$ 1,000,000	\$
<input type="checkbox"/> \$100,000/\$ 300,000	\$	<input type="checkbox"/> \$1,000,000/\$ 1,000,000	\$

If ordered, UIM Coverage must be the same limit as your UM coverage.

I reject UIM Coverage for this policy and all subsequent renewals until I request otherwise in writing.

**DO NOT SIGN UNTIL YOU READ**

USAA Number	Signature of Named Insured	
( )	( )	
Home Phone	Alternative Phone	Date

Please complete this form and fax it to 1-800-531-8877 or mail it to USAA, 9800 Fredericksburg Road, San Antonio 78298.

If this form is sent by facsimile machine (fax), the sender adopts the document USAA receives as a duplicate original and adopts the signature the receiving fax machine produces as the sender's original signature.

The Wileys presented no evidence that they selected underinsured motorist coverage or made any of the selections available on the form.

USAA filed a motion for summary disposition pursuant to MCR 2.116(C)(10), asserting that the Wileys had not purchased underinsured motorist coverage and that the plain language of the policy excluded that coverage. In response, the Wileys submitted their deposition testimony and an affidavit from an independent insurance agent who averred: “Despite my experience in the insurance industry, it is not apparent even to me, from my reading that material, that the Wileys did not have underinsured motorist coverage.” (Emphasis in original).

In a bench ruling, the circuit court granted summary disposition to USAA, reasoning:

[A] case involving the language of an insurance contract is something near and dear to all our hearts, ‘cause we all have to deal with it every day of the week. And there’s no question, though, that in this case the issues are somewhat narrowed by the Wilke case. That is, there is no question of what we as insurers - - as insured reasonably expect from a policy when we buy insurance. But what does the policy itself say and what is the language? And the insured has an obligation to read the policy and to raise questions or concerns if he or she reads it and is either confused or reads something that doesn’t make sense. Whatever the concern is, they’re to contact the company within a reasonable period of time and find out what the answers are so they can either correct the coverage or take other action in their own best interest.

Whether one thinks that is a harsh rule, when you think of the sophistication of the insurance industry versus the private citizen, is not for this Court to decide, but rather to find - - to determine whether there’s a question of fact here as to whether there’s ambiguity in the language of the contract that would require an issue of fact to be determined by a jury, or whether there’s a question of fact as to whether the insured contacted the company when they had concerns about certain provisions.

This Court finds that there is no genuine issue of material fact that the contract itself is not ambiguous, that it does clearly show the insured that they have not purchased underinsured coverage, and it does this in a number of different ways, all of which were recited by counsel today. And I don’t intend to repeat it.

I don’t find that there is a special relationship here that would obviate a finding that the language in the contract controls, because the factors or the elements that are necessary have not been met here.

So for those reasons, the Court - - I find no misrepresentation by and representative of the company, any statement made that was inaccurate that would require the special relationship to take effect.

## II. ANALYSIS

The Wileys challenge the circuit court’s summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). “In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial.” *Id.* We review underlying issues of contract interpretation de novo as well. *Citizens Ins Co v Pro-Seal Service Group, Inc.*, 477 Mich 75, 80; 730 NW2d 682 (2007).

### A. The Policy Unambiguously Excludes Underinsured Motorist Coverage

The Wileys initially insist that “either the insurance policy actually did provide them [underinsured motorist] coverage (just as they thought it did) or the policy is ambiguous in that regard[.]” (Emphasis in original). When reviewing an insurance policy dispute, we look “to the language of the insurance policy and interpret the terms therein in accordance with Michigan’s well-established principles of contract construction.” *Citizens Ins Co*, 477 Mich at 82, quoting *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353-354; 596 NW2d 190 (1999).

“First, an insurance contract must be enforced in accordance with its terms. A court must not hold an insurance company liable for a risk that it did not assume. Second, a court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise. Thus, the terms of a contract must be enforced as written where there is no ambiguity.” [*Citizens Ins Co*, 477 Mich at 82, quoting *Henderson*, 460 Mich at 354.]

This Court applies to insurance contracts the same contract construction principles that govern any other type of contract, and thus begins by considering the language of the parties’ agreement to determine their intent. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc.*, 267 Mich App 708, 714; 706 NW2d 426 (2005).

Accordingly, an insurance contract should be read as a whole and meaning should be given to all terms. The policy application, declarations page of policy, and the policy itself construed together constitute the contract. The contractual language is to be given its ordinary and plain meaning. An insurance contract must be construed so as to give effect to every word, clause, and phrase, and a construction should be avoided that would render any part of the contract surplusage or nugatory. Unless a contract provision violates law or one of the traditional contract defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. The judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of “reasonableness” as a basis upon which courts may refuse to enforce unambiguous contractual provisions. [*Id.* at 715 (quotation marks and citations omitted).]

“A contract is said to be ambiguous when its words may reasonably be understood in different ways.” *Raska v Farm Bureau Mut Ins Co of Mich*, 412 Mich 355, 362; 314 NW2d 440 (1982). If the language of an insurance policy is clear and unambiguous on its face, extrinsic evidence that contradicts or varies the written contract terms may not be admitted. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). The construction of an unambiguous contract presents a legal question for which no factual development is necessary. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). “Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement.” *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001).

By its clear and unambiguous terms, the Wileys’ USAA insurance policy omits underinsured motorist coverage. Our reading of the declarations page together with the policy definitions “fairly leads to only one reasonable interpretation.” *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161; 534 NW2d 502 (1995). Under the “Coverages” heading, the listed coverages include “uninsured motorists” but make no mention of “underinsured motorists.” The policy itself clearly distinguishes between these two coverages by explaining that an “underinsured motor vehicle” carries a policy with a limit for bodily injury less than the limit “for this coverage” while an uninsured motor vehicle either carries no insurance or the limit of its coverage “is less than the minimum for liability specified by the Michigan financial responsibility law.” The definitions of these two provisions leave no doubt that underinsured motorist coverage and uninsured motorist coverage constitute two separate entities. On the declaration sheet, the Mariner is identified as having no underinsured motorist coverage. The sole reasonable interpretation arising from these provisions is that the policy included uninsured motorist coverage but did not include underinsured motorist coverage.

Because the policy is free from ambiguity, we are foreclosed from considering the Wileys’ testimony concerning their belief that they had purchased “full coverage,” the letter referencing their uninsured and underinsured motorist coverage “selection/rejection,” or the affidavit signed by an independent insurance agent. “This court does not have the right to make a different contract for the parties or to look to extrinsic testimony to determine their intent when the words used by them are clear and unambiguous and have a definite meaning.” *Michigan Chandelier Co v Morse*, 297 Mich 41, 49; 297 NW 64 (1941). The Wileys’ “full coverage” expectation would have been readily dispelled had they read their policy. And the letter is simply not part of the policy. According to the policy itself, the entirety of the policy consists of “this policy plus the Declarations page and any applicable endorsements.” Any uncertainty about the extent of coverage provoked by the letter could have been resolved by reading the policy. As the Supreme Court summarized in *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 567-568; 596 NW2d 915 (1999), “This court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms.” (Quotation marks and citation omitted). In *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 394-395; 729 NW2d 277 (2006), this Court similarly observed as follows:

It is well established that an insured is obligated to read his or her insurance policy and raise any questions about the coverage within a reasonable time after the policy is issued. Consistent with this obligation, if the insured has

not read the policy, he or she is nevertheless charged with knowledge of the terms and conditions of the insurance policy.<sup>3]</sup>

Thus, the Wileys may not create ambiguity where none exists.

#### B. The Wileys Did Not Enjoy a Special Relationship with USAA

The Wileys next contend that they had a “special relationship” with USAA. According to the Wileys, this special relationship created a duty that USAA affirmatively advise them that their no-fault coverage was incomplete. The Wileys’ argument rests on the Supreme Court’s decision in *Harts v Farmers Ins Exch*, 461 Mich 1; 597 NW2d 47 (1999). In *Harts*, our Supreme Court considered whether an insurance agent owes an insured a duty to advise concerning the adequacy of coverage. *Id.* at 2. “[U]nder the common law, an insurance agent whose principal is the insurance company owes no duty to advise a potential insured about any coverage” because the agent’s job consists merely of “present[ing] the product of his principal and tak[ing] such orders as can be secured from those who want to purchase the coverage offered.” *Id.* at 8. In a footnote, the Supreme Court observed, “This limited role for the agent may seem unusually narrow, but it is well to recall that this is consistent with an insured’s obligation to read the insurance policy and raise questions concerning coverage within a reasonable time after the policy has been issued.” *Id.* at 8 n 4, citing *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 144; 314 NW2d 453 (1981).

Notwithstanding the general no-duty-to-advise rule, the Supreme Court concluded in *Harts* that “when an event occurs that alters the nature of the relationship between the agent and the insured,” a special relationship may result, creating a duty on the part of the agent to advise an insured in some respect regarding insurance issues. *Id.* at 9-10. The change in the agent-insured relationship becomes manifest when:

- (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. [*Id.* at 10-11.]

When a special relationship exists, an agent assumes a duty to advise an insured “regarding the adequacy of insurance coverage.” *Id.* at 11.

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<sup>3</sup> This Court recognized in *Casey* a limited exception to the insured’s duty to read, which it described as a situation “when the insurer renews the policy but fails to notify the insured of a reduction in coverage.” *Id.* at 395. In that circumstance, the insurer remains bound to the earlier policy and estopped from denying coverage “on the basis of the discrepancy between the current policy and the prior one that was not brought to the insured’s attention.” *Id.* That exception does not apply here.

The Wileys contend that they enjoyed a special relationship with USAA arising under three of the four *Harts* factors. According to the Wileys, their requests for “full coverage” triggered a special relationship under the second *Harts* factor, because the request was ambiguous and required clarification, and under the third factor because USAA agents never explained that uninsured and underinsured motorist coverages were separate and distinct. Additionally, the Wileys assert that when USAA initiated conversations about coverage by calling to perform a yearly review, the agents assumed a duty under the fourth *Harts* factor by telling the Wileys that their policy included “all the options” or “all the extras.”

The second *Harts* factor concerns ambiguous coverage requests that require clarification. The Supreme Court observed that a request for “full coverage” “might in certain circumstances require clarification[.]” *Id.* at 10 n 11. In *Harts*, no evidence supported that a request for “full coverage” had been made for the car involved in the accident. *Id.* at 11. Similarly, no evidence supports that either Mark or Shelly Wiley requested “full coverage” on the Mariner or any other vehicle. Although Mark and Shelly Wiley both insisted that they expected that their USAA coverage qualified as “full,” neither offered any recollection of having directed USAA’s agents to procure “full coverage.”

Moreover, “[a]n insured is obligated to read the insurance policy and raise questions concerning coverage within a reasonable time after the issuance of the policy.” *Parmet Homes, Inc.*, 111 Mich App at 145. An insured who decides not to read the policy proceeds at his or her own risk. See *Farm Bureau Mut Ins Co of Mich*, 460 Mich at 567-568; *Casey*, 273 Mich App at 394-395.

Despite the Wileys’ belief that they had purchased “full coverage,” they bore an obligation to determine that they actually received the coverage they sought. Had they done so, they would have readily recognized that the policy did not, in fact, afford “full coverage,” as it clearly excluded underinsured motorist coverage. Accordingly, we reject that the second *Harts* factor created a special relationship requiring specific coverage advice.

Nor did a special relationship arise under the third *Harts* factor, which pertains to a situation in which an agent gives inaccurate advice in response to an inquiry, even though he need not respond at all. *Harts*, 461 Mich at 10. The Wileys admitted during their respective depositions that they had not made any specific inquiry about underinsured motorist coverage. Nor could either Wiley identify any inaccurate advice given by an agent for USAA. Similarly, the Wileys failed to establish a special relationship under factor four, which addresses an agent’s express agreement with or promise to an insured. Although Mark Wiley testified that “there was a comment to some effect that we had all the coverages available” and that he had “bought stuff that was recommended to us via the individual on the other end of the phone,” his testimony failed to establish the existence of an “express agreement or promise.” *Id.* at 11. Based on our evaluation of the Wileys’ testimony, we find no factual support that they enjoyed a special relationship arising from their discussions with USAA agents.

### C. The Circuit Court Adequately Explained Its Summary Disposition Reasoning

Lastly, the Wileys seek remand to the circuit court “for an explanation of its reasoning on the four *Harts* factors[.]” Because this Court has reviewed de novo the circuit court record, we

reject the need for a remand. Moreover, the circuit court explained that “because the [*Harts*] factors or the elements that are necessary have not been met here,” the Wileys failed to establish the existence of a special relationship. We discern no inadequacy in the scope of this ruling.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Henry William Saad  
/s/ Jane M. Beckering