Circuit Court for Prince George's County
Case No. CAL 15-38300

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1186

September Term, 2016

ERIE INSURANCE EXCHANGE

v.

JASMINE MORALES, AS PARENT AND NEXT FRIEND, et al.

Berger,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 3, 2017

This appeal arises from Erie Insurance Exchange's ("Erie") denial of coverage to the wrongful death beneficiaries of Olegario Alejandro Morales-Reyes ("Morales-Reyes"), who was killed by a motorist while working for Erie's insured, Olney Masonry Corporation ("Olney Masonry"). The accident occurred on March 21, 2014 while Morales-Reyes was directing traffic in a construction zone. Morales-Reyes's wrongful death beneficiaries, Jasmine Morales (as parent and next friend of the minor, Ayden Morales), Alejandro Morales Silva, and Luz Maria Reyes Bravo (collectively "Morales"), sought to collect underinsured motor vehicle benefits from Erie.

After Erie denied the claim, Morales filed a complaint against Erie and Olney Masonry in the Circuit Court of Prince George's County seeking declaratory relief that Morales was covered by Olney Masonry's Commercial Automobile Policy. In response, Erie filed a motion for summary judgment in which it sought a written declaration that Morales-Reyes was not covered under its uninsured/underinsured motor vehicle policy with Olney Masonry. Morales then filed a cross-motion for summary judgment in which she requested a written declaration that Morales-Reyes was covered. The circuit court granted Morales's motion for summary judgment, denied Erie's motion, and, in an amended order, issued a declaration that Olney Masonry's policy with Erie provides uninsured/underinsured motor vehicle coverage for Morales.

Erie presents two issues for appeal, which we have reworded as follows:

1. Whether the circuit court erred in granting Morales's motion for summary judgment and in declaring that Morales was covered under the uninsured/underinsured motor vehicle policy.

2. Whether the circuit court erred in denying Erie's motion for summary judgment, which sought a declaration that Morales-Reyes was not covered under the uninsured/underinsured motor vehicle policy.

BACKGROUND AND PROCEDURAL HISTORY

Factual Circumstances

On March 21, 2014, Morales-Reyes was struck and killed by an automobile while directing traffic in a construction zone in Baltimore County. At the time of his death, Morales-Reyes was standing in the westbound lane of Stevenson Lane, holding a stop sign to control the flow of traffic. The driver of the vehicle was Patricia Kay Dinger, who was insured by State Farm Insurance Company. Her policy (Policy No. 6044941F2420G) limited liability to $100,000 per person, and State Farm Insurance Company tendered the full amount to Morales after Morales-Reyes's death.

Both parties agree that Morales-Reyes was killed while acting within the scope of his employment with Olney Masonry. At the time of the accident, Olney Masonry was covered by a "Commercial Automobile Policy" (#Q07 014692) ("the Policy"), an insurance policy issued by Erie. The Policy included an "Uninsured/Underinsured Motorist Coverage Endorsement" ("UM/UIM Endorsement") with applicable limits of one million dollars per person. Under the heading "Our Promise," the UM/UIM Endorsement provided that Erie

> will pay damages for bodily injury and property damage that "you" or "your" legal representative are legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle."

The term "legal representative" is not defined in the UM/UIM Endorsement, nor anywhere else in the Policy. The Policy defines "you," "your," and "named insured" to mean

> the Subscriber named in Item 1 on the Declarations and others named in Item 1 on the Declarations. Except under the GENERAL POLICY CONDITIONS Section, these words include the spouse of an individual(s) named in Item 1 on the Declarations, provided the spouse is a resident of the same house-hold.

The Policy defines "Subscriber" as "the person who signed, or the organization that authorized the signing of, the Subscriber's Agreement." The "named insured" listed on the "Declarations" is Olney Masonry.

The UM/UIM Endorsement also provides, under "Others We Protect:"

> "We" also protect:
>
> 1. Any "relative," if "you" are an individual.
>
> 2. Anyone else, while "occupying" any "owned auto we insure" other than one being used without the permission of the owner.
>
> 3. Anyone else who is entitled to recover damages because of bodily injury to any person protected by this coverage.
>
> 4. If "You" are an individual, anyone else while "occupying" a "non-owned auto we insure" other than:
>
>   a. one "you" are using that is owned by another person residing in "your" household.
>
>   b. one furnished or available for the regular use of "you" or anyone residing in "your" household.
>
>   c. one being operated by anyone other than "you" or a relative.

The Policy defines "occupying" as "in or upon, getting into or out of, or getting off."

As Morales-Reyes's wrongful death beneficiaries, Morales sought to collect UIM benefits from Erie based on the UM/UIM Endorsement in the Policy. Erie denied the claim on the grounds that Morales-Reyes was not covered by the Policy.

Procedural History

Morales filed a complaint against Erie and Olney Masonry in the Circuit Court of Prince George's County seeking declaratory relief. Morales argued before the circuit court that Morales-Reyes was covered either as a "legal representative" of Olney Masonry or, in the alternative, as someone "occupying" a vehicle covered by the Policy.

In its counterclaim for declaratory relief, Erie argued that Morales-Reyes was neither acting as Olney Masonry's "legal representative" nor "occupying" a covered vehicle at the time of his death. Thereafter, Erie filed a motion for summary judgment, in which it requested a written declaration that Morales-Reyes was not covered by the Policy. In turn, Morales filed her own motion for summary judgment on the question of whether Morales-Reyes was a "legal representative" and, therefore, covered by the Policy. Morales also sought a written declaration that Morales-Reyes was covered.

On July 7, 2016, the Circuit Court for Prince George's County granted Morales's motion for summary judgment and denied the cross-motion brought by Erie. On August 31, 2016, the Circuit Court amended its order to include a declaration that the Policy provided uninsured/underinsured motorist coverage for Morales. Erie filed a timely appeal. We discuss additional facts below as they become relevant.

DISCUSSION

I. Standard of Review

We review a circuit court's decision to grant summary judgment to determine whether the court was correct as a matter of law, "because the trial court decides issues of law, and not disputes of fact" when considering a motion for summary judgment. *Piscatelli v. Van Smith*, 424 Md. 294, 305 (2012) (citing *Rosenberg v. Helinski*, 328 Md. 664, 674 (1992)). Our review of a circuit court's grant of summary judgment is *de novo*. *See Torbit v. Baltimore Cty Police Dep't*, 231 Md. App. 573, 586 (2017) (citing *Roy v. Dackman*, 445 Md. 23, 39 (2015)); *see also Carter v. Aramark Sports & Entm't Servs., Inc.*, 153 Md. App. 210, 224 (2003) ("Our review over a circuit court's decision on summary judgment is plenary.") (citing *Hemmings v. Pelham Wood Ltd. Liab. P'ship*, 375 Md. 522, 533 (2003)).

Maryland Rule 2-501 governs the circuit court's decision whether to grant summary judgment, providing the following: "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule 2-501. The nonmoving party has the burden of showing that material facts remain in dispute. *See Rite Aid Corp. v. Hagley*, 374 Md. 665, 684 (2003). Where there is no dispute of material fact, "our role is to determine whether the trial court was correct in granting summary judgment as a matter of law." *Hines v. French*, 157 Md. App. 536, 549 (2004).

When the parties agree on the material facts implicated in a pretrial motion for summary judgment, we review the denial of the motion *de novo*. *Amalgamated Transit*

Union v. Lovelace, 441 Md. 560, 565 n. 4 (2015) (holding that *de novo* review of a denial of a motion for summary judgment was appropriate because the relevant facts were undisputed and therefore "the factual record was complete with respect to the issue under consideration"). In such a case, the decision to deny the motion for summary judgment does not involve an exercise of discretion. *Id.*

II. The Circuit Court Erred in Granting Morales's Motion for Summary Judgment and in Denying the Cross-Motion for Summary Judgment Brought by Erie.

The critical question in this case is whether the phrase "'you' or 'your' legal representative" in Erie's UM/UIM Endorsement covers any employee of Olney Masonry acting within the scope of employment.[1] We agree with Erie and hold that it does not. The term "legal representative" as used in the UM/UIM Endorsement refers to the wrongful death or survival beneficiaries of the named insured. Since Morales-Reyes was not a named insured, his wrongful death beneficiaries are not covered. Likewise, the Policy clearly defines the term "you" to mean the Subscriber and other persons listed in the Declarations. Because Morales-Reyes was neither the Subscriber nor listed in the Declarations, he was not covered by the UM/UIM Endorsement.

In interpreting the provisions of an insurance policy, we rely on the same principles that we apply to traditional contracts. *Bailer v. Erie Ins. Exch.*, 344 Md. 515, 521 (2000) (citing *Bond v. Pa. Nat'l Mut. Cas. Ins. Co.*, 289 Md. 379, 384 (1981)). The trial court's

[1] Although the circuit court did not address whether Morales-Reyes was "occupying" ("in or upon, getting into or out of, or getting off") a covered vehicle when the accident occurred, there is no indication in the record that he was doing so, and Morales presents no such argument on appeal.

goal in its interpretation of a contract "is to ascertain and effectuate the intention of the contracting parties, unless that intention is at odds with an established principle of law." *Philadelphia Indem. Ins. Co. v. Md. Yacht Club, Inc.*, 129 Md. App. 455, 467 (1999) (citing *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 290-91 (1996), *aff'd*, 346 Md. 122 (1997)). In determining the intention of the parties, we look primarily at "the language of the contract itself." *Id.* at 467-478.

Applying these principles to insurance contracts, Maryland courts "give the words of the contract their ordinary and accepted meaning, looking to the intention of the parties from the instrument as a whole." *Finci v. American Cas. Co.*, 323 Md. 358, 369-70 (1991). The meaning of a word or phrase in an insurance policy is judged from the perspective of a reasonably prudent layperson. *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985). Notably, Maryland does not follow the rule of many other states that insurance policies are generally construed against the insurance company. *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 779 (1991).

It is only when the language is ambiguous that courts will look beyond the plain meaning of the words in context. *Pac. Indem. Co.*, *supra*, 302 Md. at 389. The language of an insurance policy is ambiguous if a reasonably prudent person would find that "the term is susceptible to more than one meaning." *Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 305-06 (2000). If a word or phrase in an insurance policy is ambiguous, it will be "construed liberally in favor of the insured and against the insurer as drafter of the instrument." *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 695 (2015) (quoting

Dutta v. State Farm Ins. Co., 363 Md. 540, 556-57 (2001)); *accord Empire Fire & Marine Ins. Co. v. Liberty Mut. Ins. Co.*, 117 Md. App. 72, 97-98 (1997).

A. Morales-Reyes Was Not Olney Masonry's "Legal Representative" Under the Policy.

Morales argues that the term "legal representative" as used in the UM/UIM Endorsement is ambiguous and, therefore, should be construed against Erie as the drafter. We disagree. When read in light of its ordinary meaning, its context, and the character and purpose of the UM/UIM Endorsement, the term "legal representative" clearly refers to the wrongful death or survival beneficiaries of the named insured.

In determining whether a contract is ambiguous, we consider "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014) (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)). A term in an insurance policy is not ambiguous simply because it is undefined and has multiple shades of meaning. *See Rigby v. Allstate Indem. Co.*, 225 Md. App. 98, 107-13 (2015), *cert. denied sub nom. Rigby v. Allstate Indem.*, 446 Md. 220 (2016) (holding that the terms "dependent person" and "in the care of" in a motor vehicle insurance policy were not ambiguous). A term in an insurance policy may be unambiguous even if it "cannot be precisely defined so as to make clear its application in all varying factual situations." *Id.* at 106 (citing *Allstate Ins. Co. v. Humphrey*, 246 Md. 492, 496 (1967)).

The term "legal representative" is undefined in the Policy, but it is not ambiguous. The term is "almost always held to be synonymous with the term personal representative,"

which primarily means an executor or administrator of a deceased person, but may encompass "any person who with respect to his property and rights stands in the deceased's place and represents his interests, whether transferred to him by the act of the deceased or by operation of law." *Unsatisfied Claim & Judgment Fund v. Hamilton*, 256 Md. 56, 61 (1969). In *Forbes v. Am. Int'l Ins. Co.*, the Court of Appeals analyzed the term "legal representative" as used in an insurance policy and came to the following conclusion:

> In sum, in the cases we have read and in the examples cited by the authorities there is present either the thread of derivation of interest or authority running from the deceased to the person to whom the term "legal representative" is applied, or the person is actually standing in the deceased's stead.

260 Md. 181, 188 (1970) (rejecting appellant's argument that the term "legal representative" was broad enough to cover a succeeding life tenant). Maryland courts, therefore, have consistently understood "legal representative" as primarily referring to someone who represents the legal interests of a deceased person or an estate, rather than a mere agent or employee. Indeed, Morales has not provided us with any authority in which a Maryland court has interpreted "legal representative" to cover a mere agent or employee.

In the case at hand, any uncertainty about the meaning of "legal representative" is resolved by examining the overall purpose of the UM/UIM Endorsement. The relevant legal context of the UM/UIM Endorsement is Maryland's Uninsured Motorist statute ("the UM Statute"), which requires insurance coverage for damages that:

> (1) the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident arising out of the ownership, maintenance, or use of the uninsured motor vehicle; and

> (2) a surviving relative of the insured, who is described in § 3-904 of the Courts Article, is entitled to recover from the owner or operator of an uninsured motor vehicle because the insured died as the result of a motor vehicle accident arising out of the ownership, maintenance, or use of the uninsured vehicle.

Md. Code (1995, 2011 Repl. Vol.), § 19-509(c) of the Insurance Article.[2] The UM/UIM Endorsement is clearly intended to satisfy the requirements of the UM Statute, as can be seen when the shared language in the UM/UIM Endorsement is placed in **bold**:

> "We" will pay **damages** for **bodily injury** and property damage that "you" [i.e. **the insured**] or "your" legal representative are legally **entitled to recover from the owner or operator of an "uninsured motor vehicle"** or "underinsured motor vehicle."
>
> Damages must result from **a motor vehicle accident arising out of the ownership or use of the "uninsured motor vehicle"** or "underinsured motor vehicle" as a motor vehicle and involve . . . .

Although the term "legal representative" does not explicitly appear in the UM Statute, its inclusion in the UM/UIM Endorsement -- like the shared language surrounding it -- is clearly intended to bring the Policy into compliance with the UM Statute. More specifically, the inclusion of "'your' legal representative" satisfies the requirement that coverage be extended to surviving relatives of the named insured.

Indeed, we turned to the UM Statute to interpret a similar insurance policy in *Globe Am. Cas. Co. v. Chung*, 76 Md. App. 524 (1988), *vacated on procedural grounds*, 322 Md. 713 (1991). In that case, the insurance policy required the insurer

[2] The General Assembly of Maryland has since enacted revisions to this section at H.B. 5, 437th Gen. Assem., Reg. Sess. (Md. 2017). These changes will not take effect until October 1, 2017 and are not relevant to the resolution of the case *sub judice*.

> [t]o pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured highway vehicle because of bodily injury or property damage, caused by accident and arising out of the ownership, maintenance or use of such uninsured highway vehicle . . . .

Id. at 532. The question before the Court was whether the language above required compensation for both wrongful death and survival actions brought by the same family members on behalf of the same insured. In concluding that it did, we observed that "[t]he inclusion of the term 'or legal representative' in the Uninsured Motorist endorsement itself is nothing more than a recognition that a survival action would be available on behalf of the injured 'insured' provided for by [the UM statute]." *Id.* at 541.

In the instant case, the context of the term "legal representative" in the UM/UIM Endorsement is entirely consistent with a purpose to cover wrongful death and survival beneficiaries. The term first appears in the section called "Our Promise," which provides coverage for the named insured and a legal representative when he or she is legally entitled to recover damages arising from a motor vehicle accident. The only other occurrence of the term in the UM/UIM Endorsement is under "Limitations to Our Duty to Pay," which provides an exclusion for "damages sustained by 'anyone we protect' if he, she or a legal representative settled with anyone who may be liable for the damages, without 'our' consent." The UM/UIM Endorsement has numerous exclusions and limitations that refer to "anyone we protect," but this is the only one that extends to the "legal representative" of the protected person. That the UM/UIM Endorsement always uses the term "legal representative" in the context of litigation -- and only in the context of litigation --

demonstrates that the relevant characteristic of a legal representative for the purposes of coverage is the ability to bring a case on behalf of an insured person.

Morales argues that the term "legal representative" must mean something more than a wrongful death or survival beneficiary because otherwise the term would be meaningless in the context of the Policy. To be sure, "[a] contract must be construed as a whole, and effect given to every clause and phrase, so as not to omit an important part of the agreement." *Philadelphia Indem. Ins. Co.*, *supra*, 129 Md. App. at 468. "When the language of the contract is plain and unambiguous," however, "there is no room for construction, and a court must presume that the parties meant what they expressed." *Spacesaver Sys., Inc. v. Adam*, 440 Md. 1, 8 (2014) (quoting *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). Here, there is no room for interpretation. The term "legal representative" is clear and unambiguous in light of its context within the Policy and the overall purpose of the UM/UIM Endorsement.

That "legal representative" refers to a wrongful death or survival beneficiary is also consistent with the dual-purpose character of the UM/UM Endorsement. The UM/UIM Endorsement plainly contemplates that the insured may be either an individual or a corporation. The "Others We Protect" section, for example, specifies that relatives are only covered when the named insured is an individual. Even though Erie neglected to provide similar specificity in the "Our Promise" section, a reasonably prudent layperson would read that section in light of the dual-purpose character of the UM/UIM Endorsement as a whole. Understood in this light, the term "legal representative" is unambiguous because its purpose

in context -- to extend coverage to the named insured's wrongful death or survival beneficiaries *if* the named insured is an individual -- is clear.

Morales argues that any reading of an insurance policy that leads to ineffectual language is ambiguous on its face. In support of this principle, Morales cites a line of cases from Ohio that starts with *King v. Nationwide Ins. Co.*, 519 N.E.2d 1380 (1988). In that case, the Ohio Supreme Court held that the phrase "a relative living in your household" was ambiguous because the named insured was not an individual. Inasmuch as the language of the UM/UIM Endorsement is unambiguous under Maryland contract law, we need not look to cases from other jurisdictions to construe it. We merely note in passing that Ohio is an outlier in this regard. *See Sears by Sears v. Wilson*, 704 P.2d 389, 392 (Kan. Ct. App. 1985); *see also American States Ins. Co. v. C & G Contracting, Inc.*, 924 P.2d 111, 113 (Ariz. Ct. App. 1996); *see also Economy Preferred Ins. V. Jersey County Constr.*, 615 N.E.2d 1290 (Ill. App. Ct. 1993); *see also Cutter v. Maine Bonding & Cas. Co.*, 579 A.2d 804, 807 (N.H. 1990); *see also Buckner v. Motor Vehicle Accident Indem. Corp.*, 486 N.E.2d 819, 812 (N.Y. 1985).

B. Morales-Reyes Does Not Fall Within the Definition of "You" Under the Policy.

In the alternative, Morales argues that Morales-Reyes was covered under the term "you" in the UM/UIM Endorsement. The term "you," however, is clearly defined in the Policy as meaning

> the Subscriber named in Item 1. on the Declarations and others named in Item 1. on the Declarations. Except under the GENERAL POLICY CONDITIONS Section, these words include the spouse of an individual(s) named in Item 1. on the

> Declarations, provided the spouse is a resident of the same house-hold.

The term "Subscriber" is defined as "the person who signed, or the organization that authorized the signing of, the Subscriber's Agreement." The term "you," therefore, could only have applied to Morales-Reyes if he was the signer of the Subscriber's Agreement or a listed person in the Declarations. It is undisputed that Morales-Reyes was neither.

Morales argues that a broader reading of the language is necessary because otherwise "the policy's guarantee of personal injury benefits . . . would be meaningless and illusory." As we discussed in our analysis of the term "legal representative," we will not construe the language of a contract when that language is plain and unambiguous. *Spacesaver*, *supra*, 440 Md. at 8. The term "you" is clearly defined, and we will not rewrite the contract to expand its definition. Given the dual-purpose character of the UM/UIM Endorsement, a reasonably prudent layperson would understand that the guarantee of personal injury benefits only applies when the named insured is an individual. When the named insured is a corporation, as is the case here, the UM/UIM Endorsement is not illusory because it covers, among other things, property damages resulting from motor vehicle accidents involving uninsured or underinsured vehicles.

In *Schuler v. Erie Ins. Exchange*, 81 Md. App. 499, 508 (1990), this Court rejected an expansive reading of a similar uninsured/underinsured motorist policy issued by the same insurer. In that case, we considered whether an injured pedestrian was entitled to compensation on the grounds that his wife was the owner of a covered vehicle. The

appellant argued that the policy should be interpreted as implicitly extending coverage to the owners of covered vehicles. In rejecting this view, we reasoned as follows:

> If Rainbow Hair Designers had intended to include the owners of the five cars as named insureds it could have done so simply by including the named individuals under the named insured portion of the declaration sheet in the policy. Having failed to do so, we conclude that Rainbow did not intend to extend this additional protection to the owners of the insured cars. As we see it, to hold otherwise would require us to rewrite the Erie policy.

Id. at 508. Likewise, if Olney Masonry had intended to include Morales-Reyes as a named insured it could have done so simply by listing him in the Declarations. Because it did not list Morales-Reyes in the Declarations, we conclude that Olney Masonry did not intend to extend any protection to him as a named insured.

Morales argues that *dicta* in *Schuler* support rather than undermine her expansive interpretation of the UM/UIM Endorsement. In our view, Morales misreads *Schuler*. In discussing whether the appellant's wife was covered, we described two hypothetical scenarios:

> Assuming that appellant's wife had been struck as a pedestrian *in the course of her travels in the BMW*, coverage would apply. This is so because she obviously uses her car with the knowledge and consent of her employer. *This does not mean, however, that had she, rather than appellant, been struck while standing beside appellant's Camaro that the Erie policy would provide UM coverage to her.*

Id. at 507 (emphasis added). In the first scenario, the appellant's wife would be covered as the authorized user of a covered vehicle (the BMW). In the second, in which the covered

vehicle is not involved, the appellant's wife would not be covered, *even though* she was an employee of the named insured.[3]

Morales further argues that any uncertainty should be resolved in her favor because the remedial nature of the UM Statute "dictates a liberal construction in order to effectuate its purpose of assuring recovery for innocent victims of motor vehicle accidents." *Clay v. Gov't Employees Ins. Co.*, 356 Md. 257, 265 (1999). Morales provides no support for the assertion, however, that the UM Statute requires insurers to extend uninsured motor vehicle coverage to every employee of an insured corporation. Instead, Morales appears to argue that the remedial nature of the UM Statute requires a liberal construction of the Policy. This is incorrect. Where the Policy complies with the minimum requirements of the UM Statute, our role is "to ascertain and effectuate the intention of the contracting parties." *Philadelphia Indem. Ins. Co.*, *supra*, 129 Md. App. at 467. The policy goals of the UM Statute do not commit us to side with every person who claims coverage under an uninsured motor vehicle policy. *See generally Schuler*, *supra*, 81 Md. App. 499 (rejecting an expansive reading of a similar uninsured motor vehicle insurance policy).

For the foregoing reasons, we hold that the phrase "'you' or 'your' legal representative" in the UM/UIM Endorsement is not ambiguous and did not extend coverage to Morales-Reyes. Because Morales-Reyes was not covered by the UM/UIM

[3] Later in the opinion, we acknowledged that "PIP coverage may extend to appellant's wife as an officer of [the named insured]" due to a provision in the policy that explicitly extended coverage to "[e]ach active executive officer, if the Named Insured is a corporation." *Schuler*, *supra*, 81 Md. App. at 508. Here, the UM/UIM Endorsement contains no such provision.

Endorsement when he was killed, the circuit court erred in denying Erie's motion for summary judgment and in declaring that Morales-Reyes's wrongful death beneficiaries were covered by the UM/UIM Endorsement. For the same reason, the circuit court also erred in denying Erie's motion for summary judgment.[4] Accordingly, we reverse the circuit court's judgment for Morales and remand the case to the circuit court for entry of judgment in favor of Erie.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR ENTRY OF A DECLARATORY JUDGMENT IN FAVOR OF ERIE INSURANCE EXCHANGE AND AGAINST MORALES CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

[4] At oral argument, Morales argued that even if we reject their argument on appeal, we should nonetheless remand to the trial court so that discovery may be pursued on the question of whether Morales-Reyes was "occupying" an insured vehicle. Although Morales did not present this argument in their brief, they did present such an argument in their opposition to Erie's motion for summary judgment. To survive a motion for summary judgment, however, "[a] plaintiff's claim must be supported by more than a scintilla of evidence, as there must be evidence upon which a jury could reasonably find for the plaintiff. *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 108 (2014) (internal citations omitted). "Speculation concerning the existence of unproduced evidence will not defeat the motion [for summary judgment]." *Vogel v. Touhey*, 151 Md. App. 682, 705 (2003) (quoting *A.J. Decoster Co. v. Westinghouse Elec. Corp.,* 333 Md. 245, 262 (1994)). In the instant case, the Policy defines "occupying" as "in or upon, getting into or out of, or getting off." There is no dispute that Morales-Reyes was standing in the road and directing traffic when he was struck by an underinsured vehicle not covered by the Policy.