

NO. A06-1235

---

State of Minnesota  
**In Court of Appeals**

---

Auto Owners Insurance Company,

*Respondent,*

vs.

Chong Suk Perry,

*Appellant.*

---

**RESPONDENT AUTO OWNERS INSURANCE COMPANY'S  
BRIEF AND APPENDIX**

---

Michael A. Bryant (#218583)  
BRADSHAW & BRYANT, PLLC  
1505 Division Street  
Waite Park, MN 56387  
(320) 259-5414

*Attorney for Appellant*

Judith Mlinar Seeberger (#269670)  
REDING & PILNEY, PLLP  
8661 Eagle Point Boulevard  
Lake Elmo, MN 55042  
(651) 702-1414

*Attorney for Respondent*

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**..... ii

**STATEMENT OF THE LEGAL ISSUE** ..... 1

**STATEMENT OF CASE**..... 2

**STATEMENT OF FACTS**..... 4

**SCOPE OF REVIEW** ..... 7

**ARGUMENT** ..... 8

There is No Coverage for Appellant Chong Suk Perry Under the Policy for Survivors Economic Loss Benefits Because She is Not a “Dependent” as that Term is Defined By Either the Policy or the No-Fault Act ..... 8

A. Ms. Perry is Not an Insured Under the Auto Owners Policy ..... 8

B. Ms. Perry is Not A “Dependent” Under the Minnesota No Fault Act ..... 9

**CONCLUSION**..... 16

**INDEX TO RESPONDENT’S APPENDIX**..... 18

## TABLE OF AUTHORITIES

### CASES

<u>American Tower, L.P. v. City of Grant,</u> 621 N.W.2d 37, 42 (Minn. Ct. App. 2000) .....	12
<u>Core v. City of Traverse City,</u> 280 N.W.2d 569 (Mich. Ct. App. 1979) .....	16
<u>Dahle v. Aetna Cas. &amp; Sur. Ins., Co.,</u> 352 N.W.2d 397 (Minn. 1984) .....	12, 14, 15
<u>Denelsbeck v. Wells Fargo &amp; Co.,</u> 666 N.W.2d 339 (Minn. 2003) .....	7
<u>Frost-Benco Elec. Ass'n v. Minnesota Pub. Util. Comm'n,</u> 358 N.W.2d 639, 642 (Minn. 1984) .....	7
<u>Gomon v. Northland Family Physicians, Ltd.,</u> 645 N.W.2d 413 (Minn. 2002) .....	10
<u>Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.,</u> 383 N.W.2d 645 (Minn. 1986) .....	8
<u>Hibbing Educ. Ass'n v. Public Employment Relations Bd.,</u> 369 N.W.2d 527, 529 (Minn. 1985) .....	7
<u>Hoper v. Mutual Service Casualty Ins. Co.,</u> 359 N.W.2d 318 (Minn. Ct. App. 1984) .....	11
<u>Iverson v. State Farm Mut. Ins. Auto Ins. Co.,</u> 295 N.W.2d 573 (Minn. 1980) .....	9
<u>Medica, Inc. v. Atl. Mut. Ins. Co.,</u> 566 N.W.2d 74 (Minn. 1997) .....	8
<u>Nathe Bros. v. Am. Nat'l Fire Ins. Co.,</u> 615 N.W.2d 341 (Minn. 2000) .....	8
<u>Peevy v. Mutual Service Cas. Ins. Co.,</u> 346 N.W.2d 120 (Minn. 1984) .....	12, 13, 14

School Sisters of Notre Dame v. State Farm Mut., Auto. Ins. Co.,  
476 N.W.2d 523 (Minn. Ct. App. 1991) ..... 12, 15, 16

State by Beaulieu v. RSJ, Inc.,  
552 N.W.2d 695 (Minn. 1996)..... 10

State by Cooper v. French,  
460 N.W.2d 2 (Minn. 1990)..... 7

**STATUTES**

Minn. Stat. § 65B.44 subd. 6 (2006) ..... 9, 10, 11

Minn. Stat. § 65B.44 subd. 6 (1974)..... 11

Minn. Stat. § 645.16 ..... 10

Minn. Stat. § 645.17 ..... 12

## STATEMENT OF THE LEGAL ISSUE

Did the Trial Court correctly grant summary judgment in favor of Auto-owners when it held that Appellant is not a “dependent” entitled to no-fault survivors economic loss benefits?

The Scott County district court granted summary judgment in favor of Auto Owners Insurance Company because Appellant Chong Suk Perry does not meet the description of a “dependent” as set forth in the Auto Owners policy for insurance. Further, the trial court determined that the Auto Owners policy does not impermissibly restrict coverage narrower than that set out by Minnesota’s No-Fault Act.

Apposite Cases:

Peevy v. Mut. Servs. Cas. Ins. Co., 346 N.W.2d 120 (Minn. 1984)

Iverson v. State Farm Mut. Auto Ins. Co., 295 N.W.2d 573, 575-576 (Minn. 1980).

Apposite Statute:

Minn.Stat. § 65B.44, subd. 6 (2006).

## STATEMENT OF CASE

Auto Owners issued a policy of insurance to Kincaids Cars, Inc. which provided no-fault coverage to its owners and officers, including Daniel Savage ("Mr. Savage"). Mr. Savage was killed as a result of a motor vehicle accident that occurred while the policy was in force. Auto Owners determined that Mr. Savage was eligible for benefits and paid \$20,000 in medical benefits and \$2,000 in non-medical (funeral) benefits to Mr. Savage's estate.

Thereafter, Mr. Savage's live-in girlfriend, Appellant Chong Suk Perry, claimed survivors economic loss benefits arguing she was a dependent of Mr. Savage and was therefore entitled to benefits. Auto Owners denied her claim because under the policy, a dependent is defined only as either (1) the surviving spouse of the decedent; or (2) a child of the decedent. It is undisputed that Ms. Perry was neither.

Following the denial of benefits, on July 26, 2005, Ms. Perry petitioned for no-fault arbitration with the American Arbitration Association. On October 2, 2005, Auto Owners filed a Summons and Complaint for Declaratory Judgment and Motion to Stay Arbitration with the Scott County District Court. On November 29, 2005, Judge William E. Macklin of the Scott County District Court stayed the arbitration proceeding. On February 13, 2006, Auto Owners moved for summary judgment seeking a determination that there was no coverage for Ms. Perry's claim.

On April 30, 2006, Judge Michael R. Savre of the Scott County District Court granted summary judgment in favor of Auto Owners Insurance Company. Judge Savre held that Ms. Perry does not meet the description of a "dependent" as set forth in the

Auto Owners policy for insurance. Further, the court determined that the Auto Owners' policy does not impermissibly restrict coverage narrower than that set forth by the Minnesota No-Fault Act. Instead, Judge Savre found that Auto Owners' policy essentially mirrors the definition of "dependent" as spelled out in the No-Fault Act and as the Act has been interpreted by Minnesota case law, and held that there was no coverage for Ms. Perry's claim.

Ms. Perry has now appealed Judge Savre's April 30, 2006 Order granting summary judgment in favor of Auto Owners.

## STATEMENT OF FACTS

Auto Owners issued a Garage Liability policy of insurance to Kincaids Cars, Inc., policy number 44-958-467-00 (“Policy”), which was in effect at the time of this loss. (RA 1 and A 19) The Policy provides Personal Injury Protection (“no-fault”) benefits to Kincaids Cars, Inc. and other specified individuals identified in the Policy. (RA 2) The Policy was in effect from March 12, 2004 to March 12, 2005. (Id.)

On December 23, 2004 Daniel Savage (“Mr. Savage”) was involved in a motor vehicle accident. (A 19) Mr. Savage died as a result of injuries sustained in that accident. (Id.) Auto Owners determined that Mr. Savage was entitled to no-fault benefits under the Policy and paid \$20,000 in medical benefits and \$2,000 in non-medical funeral benefits. (Id.)

Both at the time of the accident and at the time of his death, Mr. Savage and Defendant Chong Suk Perry (“Ms. Perry”) lived together but were not married. (A 19, 30) Ms. Perry and Mr. Savage had never been married and were not blood relatives. (A 30, 31)

The Policy issued by Auto Owners provides for payment of no-fault benefits pursuant to the Minnesota No-Fault Automobile Insurance Act and includes coverage for “survivors economic loss benefits.” (RA 12) “Survivors economic loss benefits” are defined by the Policy as follows:

- b. Subject to the limitations below, personal injury protection benefits shall consist of:

...

(5) Survivors economic loss benefits meaning, if the eligible injured person dies as a result of the injuries sustained in an accident within one year of the date of the accident, loss accruing after death of contributions of money or tangible things of economic value, not including services, that surviving dependents would have received from the eligible injured person for their support during their dependency.

(RA 12, 13) The Policy defines a “dependent” as follows:

1. Dependent means:

- a. the deceased person’s surviving spouse who resided with the deceased person at the time of his or her death;
- b. a child of the deceased person while under the age of 18 years or while over that age but physically or mentally incapacitated from earning provided:
  - (1) the child resided with the deceased person; or
  - (2) received support regularly from the deceased person;

at the time of his or her death.

Dependency of the surviving spouse ends at remarriage or death. The dependency of a child who is physically and mentally able to earn ends when the child attains majority, marries or otherwise becomes emancipated or dies.

(RA 10)

Following Mr. Savage’s death, Ms. Perry made a claim for survivors economic loss benefits. (A 1) Auto Owners denied Ms. Perry’s claim on the basis that there is no coverage under the policy for her claim because she does not fall under the Policy definition of “dependent.” (A 2-3)

Following the denial of her claim for no-fault benefits, Ms. Perry petitioned for no-fault arbitration with the American Arbitration Association (“AAA”). (A 4-5) Auto Owners made timely objection to Ms. Perry’s petition for no-fault arbitration alleging the issue was one of coverage which must be determined by the district court, and that AAA

therefore had no jurisdiction to arbitrate her claim. (A 6) Pursuant to the Scott County Court's November 29, 2005 Order, the arbitration was stayed pending determination of the coverage issue. (A 13-15).

On February 13, 2006, Auto Owners moved for summary judgment based on the fact that Ms. Perry was not a "dependent" as the term is defined by the Auto Owners Policy. (A 16)

On April 30, 2006, Judge Michael R. Savre of the Scott County District Court granted summary judgment in favor of Auto Owners Insurance Company finding that Ms. Perry does not meet the description of a "dependent" as set forth in the Auto Owners policy for insurance. (A 18-22) Further, the District Court determined that the Auto Owners policy did not impermissibly restrict coverage narrower than that set forth by the Minnesota No-Fault Act. (A 22) Judge Savre found that the Policy essentially mirrors the definition of "dependent" as spelled out in No-Fault Act and as the Act has been interpreted by Minnesota case law, and denied coverage for Ms. Perry's claim. (Id.)

### SCOPE OF REVIEW

In reviewing a District Court Order granting Summary Judgment, the Court of Appeals must make two determinations: (1) whether there are any genuine issues of material facts; and, (2) whether the District Court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2 n.4 (Minn. 1990). Here, there is no dispute with regard to the facts. Therefore, this Court must determine whether the District Court erred in its application of the law.

The interpretation of an insurance contract is a question of law. Denelsbeck v. Wells Fargo & Co., 666 N.W.2d 339, 346 (Minn. 2003). Statutory interpretation is also a question of law. Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn.1985). An appellate court reviews questions of law de novo. Frost-Benco Elec. Ass'n v. Minnesota Pub. Util. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

## ARGUMENT

**THERE IS NO COVERAGE FOR APPELLANT CHONG SUK PERRY UNDER THE POLICY FOR SURVIVORS ECONOMIC LOSS BENEFITS BECAUSE SHE IS NOT A “DEPENDENT” AS THAT TERM IS DEFINED BY EITHER THE POLICY OR THE NO-FAULT ACT.**

**A. Ms. Perry is Not an Insured Under the Auto Owners Policy.**

It is well-established in Minnesota that general contract principles govern the construction of insurance policies, and that insurance policies are to be interpreted to give effect to the intent of the parties. Nathe Bros. v. Am. Nat'l Fire Ins. Co., 615 N.W.2d 341, 344 (Minn. 2000). When the language of an insurance contract is unambiguous, it must be given its plain and ordinary meaning. Medica, Inc. v. Atl. Mut. Ins. Co., 566 N.W.2d 74, 77 (Minn. 1997); Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co., 383 N.W.2d 645, 652 (Minn. 1986).

In this case, the Auto Owners Policy clearly and unambiguously defines what a “dependent” is for purposes of being eligible to receive survivors economic loss benefits.

A “dependent” is defined specifically as either:

(1) “the deceased person’s surviving spouse who resided with the deceased person at the time of his or her death;” or

(2) “a child of the deceased person while under the age of 18 years or while over that age but physically or mentally incapacitated from earning...”

(RA 10)

It is undisputed that Ms. Perry meets neither of these criteria. She was not married to Mr. Savage either at the time of the accident or at the time of his death, nor was she a child of Mr. Savage. Pursuant to the clear language of the Policy, Ms. Perry can not be a

“dependent” of Mr. Savage for the purposes of survivor’s economic loss benefits and she is not entitled to coverage. Therefore, Judge Savre’s holding that appellant “contractually is ineligible for survivor’s economic loss benefits” must be upheld. (A 9)

**B. Ms. Perry is Not a “Dependent” Under the Minnesota No Fault Act.**

In Minnesota, insurance companies may not create exclusions in an insurance policy that reduce coverage below what is minimally required by the Minnesota No-fault Act, as doing so would conflict with the purpose of the Act. Iverson v. State Farm Mut. Auto Ins. Co., 295 N.W.2d 573, 575-576 (Minn. 1980). This is not the case with regard to the Policy at issue in this matter. Here, the Auto Owners Policy language directly mirrors the Minnesota No-Fault Act, Minn. Stat. §65B.44, with regard to its definition “dependents” and therefore does not provide coverage narrower than that set forth in the Act.

For purposes of survivors economic loss benefits, the No-Fault Act provides as follows:

For the purposes of definition under sections 65B.41 to 65B.71, the following described persons shall be presumed to be dependents of a deceased person:

- (a) a wife is dependent on a husband with whom she lives at the time of his death;
- (b) a husband is dependent on a wife with whom he lives at the time of her death;
- (c) any child while under the age of 18 years, or while over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom the child is living or from whom the child is receiving support regularly at the time of the death of such parent...

Minn. Stat. § 65B.44, Subd 6 (2006).

The definition of “dependent” spelled out in Minn. Stat. § 65B.44, Subd. 6, essentially mirrors the language in the Auto Owners policy in force at the time of Mr. Savage’s death. Both define a dependent as either a surviving spouse or a child of decedent. Neither includes a live-in boyfriend or significant other within the definition of a dependent. Thus, the policy language is not impermissibly restrictive or otherwise in violation of the No-Fault Act.

Appellant claims that she is entitled to benefits based on the final sentence of the second paragraph of Minn. Stat. § 65B.44 Subd. 6 which states: “Questions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased.” She argues that the above language allows for an additional class of dependents beyond those enumerated in the statute and the Auto Owners policy. However, Appellant’s argument is not supported by the No-Fault Act or the case law interpreting the Act.

The Court must give a plain reading to any statute it construes, and when the language of the statute is clear, the Court must not engage in any further construction. See Minn. Stat. § 645.16 and Gomon v. Northland Family Physicians, Ltd, 645 N.W.2d 413 at 416 (Minn. 2002) citing State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 701 (Minn. 1996). In contrast to Appellant’s argument, the clear language of the final sentence of the second paragraph of Minn. Stat. § 65B.44 Subd. 6 relates only to the categories already enumerated in the statute. In this regard, the “questions of fact” relate to the amount and extent of the “support regularly received” by the enumerated

dependents. Or, more specifically, the questions of fact relate to the amount and extent of the “tangible things of economic value” for which the first paragraph of Minn. Stat. § 65B.44 Subd. 6 describes. The “tangible things” that the No-Fault Act aims to replace must be supported by fact, and therefore, are “questions of fact.” This interpretation is supported by volumes of case law, and makes far more sense than Appellants’ proposed reading. See Hoper v. Mutual Service Casualty Ins. Co., 359 N.W.2d 318 at 321 (Minn.Ct.App. 1984) (The Court denies economic loss benefits for a spouse who was unable to prove, with actual factual evidence, the existence and extent of support). Appellant’s position is at odds with the clear language present in the statute.

In addition, a brief look into the statutory history supports the position that no additional category of dependent is created by the No-Fault Act. The statutory history reveals that prior to 1975 the final sentence of the second paragraph of Minn. Stat. § 65B.44 Subd. 6 read “In all other cases, questions of the existence and extent of dependency shall be determined in accordance with the facts at the time of the death.” See Minn. Stat. § 65B.44 Subd. 6 (1974). In 1975, however, the statute was amended to remove the “In all other cases” language. This amendment shows clear legislative intent to strictly limit the factual inquiry regarding the existence and extent of dependency to the enumerated dependents described in the preceding sentence. Thus, no additional category of “dependents” is created as alleged by Appellant.

Further, to allow for an additional group of dependents outside of those enumerated in the statute would create an expanded class of dependents that would go far beyond the purpose and intent of the No-Fault Act. If the Court were to accept

Appellant's argument, and dependency outside of the enumerated dependents became a question of fact, virtually any person could simply claim to be a dependent. Thus, the enumerated classes set forth in the No-Fault Act would become meaningless and there would be no limitations with regard to whom may be found to be a dependent. Courts should not construe a statute to lead to an absurd result if the language will reasonably permit another construction. American Tower, L.P. v. City of Grant, 621 N.W.2d 37, 42 (Minn. Ct. App. 2000) review granted, aff'd as modified 636 N.W.2d 309; Minn. Stat. § 645.17(1) (2006). Appellant's reading of the statute would render the preceding provisions of the statute meaningless and would open the door by allowing virtually anyone to claim status as a "dependent." This interpretation is at odds with the language of the statute itself, and goes far beyond the legislative intent of the statute.

Moreover, from a public policy perspective, Appellant's proposed reading of the Act is also troubling. By allowing anyone to claim to be a "dependent," it would necessitate a determination by a fact finder as to the actual existence and extent of said claimed dependency. The Court system would be overwhelmed with parties of varying degree of relation to the deceased party seeking dependency determinations. Clearly, Appellant's proposed expansion would not work to serve the No-Fault system favorably.

Finally, the cases cited by Appellant provide no support for her position. Appellant relies on the Dahle, Peevy and School Sisters cases to support her argument. Dahle v. Aetna Cas. & Sur. Ins. Co., 352 N.W.2d 397, 400 (Minn. 1984); Peevy v. Mutual Service Cas. Ins. Co., 346 N.W.2d 120 (Minn. 1984); School Sisters of Notre Dame at Mankato, Minn., Inc. v. State Farm Mut. Automobile Ins. Co., 476 N.W.2d 523

(Minn. Ct. App. 1991). However, as discussed below, all of these cases are distinguishable, and/or do not stand for the proposition for which Appellant cites them.

i. Peevy does not expand the definition of “dependent.”

Appellant relies upon Peevy as authority for her assertion that she is entitled to no-fault benefits under the terms of the No-Fault Act. However, Peevy lends no support to Appellant’s argument because the court declined to expand the language of the No-Fault Act and instead relied upon the express terms of the policy in deciding whether benefits were payable. 346 N.W.2d at 123. Relying on the language of the policy, the court held that an ex-spouse who was actually dependent on the deceased spouse was entitled to survivors economic loss benefits.

It is important to note, however, that the policy in effect in the Peevy case is distinguishable from the policy at issue in this matter and provided coverage broader than the No-Fault Act. The policy in effect in Peevy provided that, in addition to a spouse and minor children, “any other person dependent upon the insured at the time of the insured’s death” was a “dependent” entitled to survivors economic loss benefits. Id., at 123. It was based upon this language of the policy that the court awarded the benefits in the Peevy case.

In this case, there is no such language in the Auto Owners policy. However, that does not render the policy any less clear or determinative as the policy in the Peevy case. As in Peevy, the Court must look to the terms of the Policy to determine whether the defendant is entitled to survivors economic loss benefits. As discussed, the Auto Owners policy does not afford Appellant coverage. Because she does not meet the definition of a

“dependent” under any scenario, one can draw only one conclusion and that is that there is no coverage for her claim. Thus, the Peevy case lends no support to Appellant’s claim.

ii. Dahle is inapplicable.

Appellant also relies on the Dahle case for the proposition that her dependency must be a question of fact. 352 N.W.2d 397. However, this case is inapplicable to the present analysis. In Dahle, the issue was whether no-fault benefits were available from the Minnesota Assigned Claims Plan to an unborn child of a decedent. In Dahle, in contrast to the matter presented here, there was no underlying policy of insurance. Instead, the unborn child of the decedent claimed survivor’s economic loss benefits under the Assigned Claims Plan when the child’s uninsured father was killed in a motor vehicle accident. Because there was no underlying policy of insurance, the court necessarily had to look to the provisions of the Assigned Claims Plan and the No-Fault Act to determine whether benefits were properly payable. In finding coverage for the unborn child, the court determined that the child fell within the definition of surviving dependent set forth in the No-Fault Act, and that the child was a part of the class of innocent parties the Assigned Claims Plan was designed to protect. Id., at 401.

The logic and holding of the Dahle case is inapplicable to the present matter because its rationale is limited to claims made under the Assigned Claims Plan. The Assigned Claims Plan is a “gap closing device” designed to ensure that individuals who are not covered under a plan of reparation security will be entitled to coverage for their economic loss if they satisfy the conditions for coverage. Id., at 399 (citations omitted). The Assigned Claims Plan provides basic economic loss benefits for individuals who

cannot procure their own protection because neither they nor any relative residing in the same household owns an automobile or because of their youth. Id., (citations omitted). The Assigned Claims Plan sets forth particular criteria a claimant must meet in order to be eligible for benefits, which criteria are analyzed by the court in making its determination.

The Appellant has not made her claim to the Assigned Claims Plan. Rather, she has made her claim pursuant to the policy of insurance held by her live-in boyfriend. Thus, an analysis set forth in Dahle is inapplicable and provides no authority for the defendant's claim that she is somehow entitled to survivors economic loss benefits.

iii. School Sisters does not support Appellant's position.

Finally, the Appellant also cites to School Sisters of Notre Dame at Mankato, Minn. Inc. v. State Farm Mut. Auto Ins. Co., 476 N.W.2d 523 (Minn. Ct. App. 1991) in support of her argument that she is a member of an additional category of dependents created by the No-Fault Act. School Sisters does not stand for this proposition. In School Sisters, one of the members of the appellant non-profit organization was fatally injured when she was struck by a motor vehicle insured by the respondent insurance company. School Sisters, 476 N.W.2d 523 at 524. The appellate non-profit corporation sought survivors economic loss benefits from the respondent insurance company. The District Court determined, and the Minnesota Appeals Court agreed, that a corporation can not be a dependent under the Act. Id., at 525.

In declining to find coverage for the claimant in the School Sisters case, the Minnesota Appeals Court specifically failed to recognize an additional category of

dependents over and above those enumerated in the statute. Id., at 525. In fact, the Appeals Court states that “where general language in a statute follows an enumeration of specific subjects, the general language is presumed to include only subjects of a class similar to those enumerated.” Id. citing Core v. City of Traverse City, 280 N.W.2d 569, 573 (Mich. Ct. App. 1979). This language supports Auto-Owners’ argument that the final sentence of the second paragraph of Minn. Stat. § 65B.44 Subd. 6 relates specifically to the enumerated classes in the preceding sentence. The classes enumerated should not be expanded because the expansion would create a class outside of those that are “similar to those enumerated.” Id.

Pursuant to the School Sisters case, and clear statutory interpretation, the statutory “questions of fact” described in the last sentence of the second paragraph of § 65B.44 Subd. 6 are only applicable to an evaluation of the “existence and extent” of the dependency of a spouse and/or a child. School Sisters at 573 and Minn. Stat. § 65B.44 Subd. 6. Therefore, Appellant does not meet the statutory definition of a dependent. Summary judgment in favor of Auto-Owners should be upheld.

### CONCLUSION

The District Court held that “Neither the policy insuring Mr. Savage nor Minnesota’s No Fault Act as currently drafted extended survivor’s economic loss benefits to a non-spouse, no matter that person’s living arrangement with the deceased person.” (A 22) This is an accurate reading of the law as it stands. The Policy language and the statute are clear as applied to the undisputed facts. The District Court made no error in its application of the law. Therefore, based upon the foregoing, Respondents respectfully

request this Court affirm the District Court's Order granting summary judgment in favor of Respondents.

**REDING & PILNEY, PLLP**

Date: 8-24-06

  
\_\_\_\_\_  
Judith Mlinar Seeberger #269670  
Attorneys for Respondent Auto Owners  
8661 Eagle Point Boulevard  
Lake Elmo, MN 55042  
(651)702-1414

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).