# COURT OF APPEALS DECISION DATED AND FILED

## January 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

**NOTICE**

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**A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.**

**Appeal No. 2014AP1547** | **Cir. Ct. No. 2013CV41**

**STATE OF WISCONSIN** | **IN COURT OF APPEALS DISTRICT III**

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**RICKY W. RAYGO AND JANET RAYGO,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY, PAUL WADZINSKI, L & S ELECTRIC, INC., STATE OF WISCONSIN DEPARTMENT OF HEALTH & FAMILY SERVICES AND MANAGED HEALTH SERVICES INSURANCE CORPORATION,**

**DEFENDANTS,**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Ricky and Janet Raygo appeal a summary judgment dismissing their underinsured motorist (UIM) claim against their automobile insurer, State Farm Mutual Automobile Insurance Company. The Raygos sought UIM coverage for injuries Ricky sustained in a February 27, 2012 accident. The circuit court concluded the Raygos were not entitled to UIM coverage under three policies issued by State Farm, pursuant to altered policy terms that took effect shortly before the accident. The Raygos argue the altered policy provisions never went into effect because State Farm failed to provide notice as required by the policies. We reject the Raygos' argument and affirm.

## BACKGROUND

¶2 The Raygos purchased three automobile insurance policies from State Farm that covered, respectively, a Dodge Charger (Dodge), a Chrysler Pacifica (Chrysler), and a Nissan King Cab pick-up truck (Nissan).[1] The three policies were issued using the same State Farm policy form, 9849B. Each policy provided UIM coverage with a per-person limit of $100,000.

¶3 Policy form 9849B defines an underinsured motor vehicle, in relevant part, as a "land motor vehicle … for which the total limits of insurance and self-insurance for bodily injury liability from all sources … are less than the Underinsured Motor Vehicle Coverage limits of this policy[.]" Policy form 9849B

[1] The Raygos also purchased a fourth policy from State Farm covering a Harley-Davidson motorcycle. In the circuit court, State Farm conceded the Raygos were entitled to UIM coverage under the Harley-Davidson policy, and the parties subsequently settled the Raygos' claim under that policy. Consequently, the Harley-Davidson policy is not at issue in this appeal, and we will not discuss it further.

also prohibits the stacking, or adding together, of UIM coverage limits from multiple State Farm policies issued to the insured.

¶4 On November 1, 2009, 2009 Wisconsin Act 28 went into effect, mandating a broader definition of the term "underinsured motor vehicle" than that contained in policy form 9849B. *See* 2009 Wis. Act 28, §§ 3153, 9426(2). Act 28 defined an underinsured motor vehicle, in relevant part, as a vehicle whose bodily injury liability insurance limits "are less than the amount needed to fully compensate the insured for his or her damages." 2009 Wis. Act 28, § 3153. Act 28 also prohibited antistacking clauses like the one in policy form 9849B, but it allowed insurers to "limit the number of motor vehicles for which the limits for coverage may be added to 3 vehicles." 2009 Wis. Act 28, § 3168.

¶5 Because policy form 9849B did not comply with 2009 Wisconsin Act 28, the Raygos' policies included endorsement 6949B.1. As relevant here, endorsement 6949B.1 changed the policy's definition of an underinsured motor vehicle to a "land motor vehicle … for which the total limits of insurance and self-insurance for bodily injury liability from all sources are less than the compensatory damages for ***bodily injury*** which the ***insured*** is legally entitled to recover." Endorsement 6949B.1 also allowed the Raygos to stack the limits of "three underinsured motor vehicle coverages[.]"

¶6 On November 1, 2011, 2011 Wisconsin Act 14 went into effect. *See* 2011 Wis. Act 14, § 29. Act 14 repealed the definition of "underinsured motor vehicle" mandated by 2009 Wisconsin Act 28. *See* 2011 Wis. Act 14, § 15c. It also permitted, once again, the inclusion of antistacking clauses in automobile insurance policies. *See* 2011 Wis. Act 14, § 23.

¶7 The Raygos' policies covering the Chrysler and Nissan were set to expire on December 7, 2011, and the policy covering the Dodge had an expiration date of December 29, 2011. State Farm mailed "Auto Renewal" sheets to the Raygos for the Chrysler and Nissan policies on November 4, 2011, and for the Dodge policy on November 29, 2011. Each Auto Renewal sheet contained the heading, "**Additional Information…**[,]" directly underneath which were the words "1 Endorsement 6949B.2[.]" The Auto Renewal sheets informed the Raygos endorsement 6949B.2 would take effect on January 8, 2012, for the Chrysler and Nissan policies and on February 2, 2012, for the Dodge policy.

¶8 Along with each Auto Renewal sheet, State Farm mailed the Raygos a document entitled, "Important Notice Regarding Changes to Your Policy" and a copy of endorsement 6949B.2. The "Important Notice[s]" informed the Raygos, "Endorsement 6949B.2 … replaces Endorsement 6949B.1 and makes the following changes to your policy. Changes that broaden coverage are effective November 1, 2011. All other changes are effective 60 days after your renewal notice was sent." The "Important Notice[s]" then described the following changes with respect to UIM coverage:

> 1. Previously, Coverage W paid for damages when an insured was injured in a car accident caused by another person who had liability insurance, but whose available liability limits were less than the compensatory damages that an insured was legally entitled to recover.
>
>    Now, Coverage W will pay if the person who caused the accident has available liability limits that:
>
>    a. are less than the Coverage W limits of this policy; or
>
>    b. have been reduced by payments to persons other than you and resident relatives to less than the Coverage W limits of this policy.

> The definition of an Underinsured Motor Vehicle has been revised to reflect this change.
>
> ….
>
> 4. The limits for Underinsured Motor Vehicle Coverage under this policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limits of coverage available for bodily injury to an insured. The maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies.[2]

The "Important Notice[s]" further stated:

> Due to Wisconsin law, we are required to tell you that any new, less favorable terms described herein do not become effective until 60 days after your renewal notice was sent, and that you have a corresponding 60 days within which to elect to renew or cancel your policy. You also have the right to cancel your policy at any time.

¶9 The Raygos paid renewal premiums for all three State Farm policies and did not elect to cancel them. Thereafter, on February 27, 2012, Ricky Raygo was driving the Dodge when he was involved in a collision with a vehicle operated by Paul Wadzinski. Following the accident, the Raygos sued Wadzinski and his insurer, American Family Mutual Insurance Company. They also asserted a claim against State Farm for UIM coverage.

¶10 The Raygos settled their claim against American Family and Wadzinski in exchange for American Family's $150,000 policy limits. State Farm subsequently moved for summary judgment, arguing its policies did not provide

[2] Endorsement 6949B.2 does not actually contain any provisions related to UIM coverage. However, because endorsement 6949B.2 replaced endorsement 6949B.1, it is undisputed that the result of endorsement 6949B.2, if it actually took effect, was to reinstate the narrower definition of "underinsured motor vehicle" and the antistacking clause contained in policy form 9849B.

UIM coverage for Ricky's injuries because Wadzinski's vehicle did not qualify as an underinsured motor vehicle. State Farm argued endorsement 6949B.2 went into effect before the accident, and, accordingly, the applicable definition of the term "underinsured motor vehicle" was the definition in policy form 9849B. State Farm argued Wadzinski's vehicle did not qualify as an underinsured motor vehicle under that definition because Wadzinski's liability limit—$150,000—was greater than the $100,000 UIM limit of each of the Raygos' State Farm's policies. State Farm also argued that, pursuant to the antistacking clause in policy form 9849B, the Raygos could not add together the UIM limits of their three State Farm policies "for purposes of evaluating whether UIM benefits [were] available."

¶11 In response, the Raygos did not dispute State Farm's claim that they were not entitled to UIM coverage if endorsement 6949B.2 applied. However, they argued endorsement 6949B.2 never went into effect because State Farm failed to provide proper notice of the changes. The circuit court rejected the Raygos' argument, concluding the notices State Farm sent complied with both WIS. STAT. § 631.36(5)[3] and the terms of the Raygos' policies. The court therefore granted State Farm summary judgment, and the Raygos now appeal.

## DISCUSSION

¶12 We independently review a grant of summary judgment, applying the same standards as the circuit court. ***Smith v. Dodgeville Mut. Ins. Co.***, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is appropriate where "there is no genuine issue as to any material fact and … the

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[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2). The facts of this case are undisputed, leaving only issues of law for our review.

¶13 The parties agree the notices State Farm sent the Raygos complied with WIS. STAT. § 631.36(5), entitled "Renewal with altered terms." Section 631.36(5)(a) provides, in relevant part:

> [I]f the insurer offers or purports to renew the policy but on less favorable terms or at higher premiums, the new terms or premiums take effect on the renewal date if the insurer sent by 1st class mail or delivered to the policyholder notice of the new terms or premiums at least 60 days prior to the renewal date. If the insurer notifies the policyholder within 60 days prior to the renewal date, the new terms or premiums do not take effect until 60 days after the notice is mailed or delivered, in which case the policyholder may elect to cancel the renewal policy at any time during the 60-day period. The notice shall include a statement of the policyholder's right to cancel.

State Farm mailed the Raygos notices of the new, less favorable policy terms less than sixty days before the policies' renewal dates. As required by § 631.36(5), the notices therefore stated the new terms would not take effect until sixty days after the notices were mailed. The notices also complied with the statute by informing the Raygos of their right to cancel the policies.

¶14 Although State Farm indisputably complied with WIS. STAT. § 631.36(5), the Raygos argue the State Farm policies imposed stricter notice requirements than the statute. Therefore, we must determine whether the notices State Farm mailed the Raygos regarding changes to their UIM coverage complied with the notice requirements set forth in the Raygos' policies. Insurance policy interpretation presents a question of law for our independent review. ***Stubbe v. Guidant Mut. Ins. Co.***, 2002 WI App 203, ¶7, 257 Wis. 2d 401, 651 N.W.2d 318.

When interpreting an insurance policy, we construe policy language from the perspective of a reasonable insured, giving the words used in the policy their common and ordinary meanings. ***Id.***, ¶8. If policy language is unambiguous, we simply apply it as written. ***Id.*** However, if policy language is ambiguous—that is, susceptible to more than one reasonable interpretation—we resolve the ambiguity in the insured's favor. ***Id.***

¶15 The relevant policy provisions state:

> **4. Changes to This Policy**
>
> **a. Changes in Policy Provisions**
>
> ***We*** may only change the provisions of this policy by:
>
> (1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or
>
> (2) revising this policy to give broader coverage without an additional premium charge. If any coverage provided by this policy is changed to give broader coverage, then ***we*** will give ***you*** the broader coverage as of the date ***we*** make the change effective in the state of Wisconsin without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.
>
> ….
>
> **6. Renewal**
>
> ***We*** agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless ***we*** mail or deliver a nonrenewal notice or a cancellation notice as set forth in 7. and 8. below.
>
> **7. Nonrenewal**
>
> If ***we*** decide not to renew this policy, then, at least 60 days before the end of the current policy period, ***we*** will mail or deliver a nonrenewal notice to the most recent policy address that ***we*** have on record for the named insured.

**8. Cancellation**

….

**b. How and When We May Cancel**

> ***We*** may cancel this policy by mailing or delivering a written notice to the most recent policy address that ***we*** have on record for the named insured ….
>
> After this policy has been in force for more than 59 days, ***we*** will not cancel this policy before the end of the current policy period ….[4]

¶16 State Farm acknowledges its policies contain provisions addressing renewal and nonrenewal, but they do not contain any provision expressly addressing renewal with altered terms. The Raygos therefore argue the policies are ambiguous and should be construed against State Farm. They assert a reasonable insured "would expect that an attempt to alter the terms of the policy would be considered 'nonrenewal'" under the policies, rather than renewal. In other words, a reasonable insured would have concluded that the "Auto Renewal" sheets and "Important Notice[s]" State Farm sent to the Raygos were notices that State Farm was not going to renew the existing policies and would then issue new policies with different terms. The policy provision addressing nonrenewal requires State Farm to mail a notice of nonrenewal at least sixty days before the end of the current policy period. State Farm mailed the "Auto Renewal" sheets and "Important Notice[s]" to the Raygos less than sixty days before their policy periods ended. Accordingly, the Raygos argue the altered policy terms never went

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[4] These provisions are quoted from policy form 9849B. Endorsement 6949B.1 amended section 7, "Nonrenewal," and section 8, "Cancellation," by slightly changing the language regarding the address to which notice must be sent. The amendatory language is not pertinent to the issues raised in this appeal.

into effect, and the UIM coverage provisions in endorsement 6949B.1 remained applicable at the time of the accident.

¶17 We reject the Raygos' argument that the State Farm policies are ambiguous. An insurance policy is ambiguous when it is susceptible to more than one *reasonable* interpretation. *See* ***Stubbe***, 257 Wis. 2d 401, ¶8. Here, the Raygos' proposed construction of the State Farm policies is simply not reasonable. No reasonable insured in the Raygos' position could have concluded State Farm's actions constituted a nonrenewal of the policies, rather than a renewal with altered terms.

¶18 First, the documents State Farm sent to the Raygos clearly informed them State Farm was renewing the policies. The "Auto Renewal" sheets each stated "AUTO RENEWAL" at the top of the first page. They also referred to the same policy numbers, insureds, addresses, vehicles, coverage types, and limits listed on each policy's declarations page for the previous policy period. In addition, the "Auto Renewal" sheets charged the Raygos premiums for continued coverage. This is consistent with the "Renewal" provisions in the Raygos' policies, which state, "***We*** agree to renew this policy for the next policy period upon payment of the renewal premium when due[.]"

¶19 The "Important Notice[s]" mailed with each of the "Auto Renewal" sheets also made it clear the event taking place was a renewal with altered terms, rather than a nonrenewal. The "Important Notice[s]" informed the Raygos that Endorsement 6949B.2 replaced endorsement 6949B.1 and made certain changes to their policies. They also stated, "Changes that broaden Coverage are effective November 1, 2011. *All other changes are effective 60 days after your renewal notice was sent.*" (Emphasis added.) The "Important Notice[s]" later reiterated

that, "[d]ue to Wisconsin law," State Farm was required to inform the Raygos that any new, less favorable terms would not become effective until "60 days after [their] renewal notice was sent[.]" Thus, the "Important Notice[s]" repeatedly referred to renewal notices, and they also contained terms directly mirroring the requirements of WIS. STAT. § 631.36(5), the statute addressing renewal of a policy with altered terms. The only reasonable conclusion the Raygos could have drawn after receiving both the "Important Notice[s]" and "Auto Renewal" sheets was that State Farm was renewing their policies.

¶20 Moreover, the Raygos' policies clearly state that, in the event of a nonrenewal, State Farm will "mail or deliver a nonrenewal notice" at least sixty days before the end of the current policy period. No reasonable insured could have concluded the documents State Farm sent were nonrenewal notices.

¶21 The Raygos' interpretation of the policies is also unreasonable because it effectively adds language to the policies' "Renewal" provisions. The "Renewal" provisions state, "***We*** agree to renew this policy for the next policy period upon payment of the renewal premium when due[.]" Under the Raygos' interpretation, the term "this policy" in the "Renewal" provisions actually means "this policy with all of its terms and conditions unchanged." However, that is not what the policies state, and the Raygos do not explain why a reasonable insured would have interpreted the term "this policy" to include the additional language.

¶22 In addition, the Raygos' interpretation is inconsistent with another provision in policy form 9849B, which specifies that "this policy" consists of:

> a. the most recently issued Declarations Page;
>
> b. the policy booklet version shown on that Declarations Page; and

> c. *any endorsements that apply*, including those listed on the Declarations Page *as well as those issued in connection with any subsequent renewal of this policy.*

(Emphasis added.) This language clearly contemplates the issuance of endorsements at the time of policy renewal. This is contrary to the Raygos' interpretation, which does not allow a policy to be renewed with alterations.

¶23 The Raygos' interpretation is also unreasonable because it would render certain language in the policies' "Changes in Policy Provisions" section superfluous. State Farm asserts that, under the Raygos' interpretation, a notice of nonrenewal would be required every time State Farm wanted to change a policy term. The Raygos implicitly concede this proposition in their reply brief. However, if State Farm could change the policies only by issuing notices of nonrenewal, there would be no need for that portion of the "Changes in Policy Provisions" section allowing State Farm to change the policies by "issuing a revised policy booklet, a revised Declarations Page, or an endorsement[.]" "Interpretations that render policy language superfluous are to be avoided where a construction can be given which lends meaning to the phrase." ***Progressive N. Ins. Co. v. Olson***, 2011 WI App 16, ¶8, 331 Wis. 2d 83, 793 N.W.2d 924.

¶24 The Raygos argue ***Botdorf v. Krebsbach***, 2013 WI App 99, 349 Wis. 2d 736, 837 N.W.2d 641, supports their interpretation. On October 9, 2009, the Botdorfs renewed an automobile insurance policy issued by Allstate Vehicle and Property Insurance Company. ***Id.***, ¶2. The policy contained a reducing clause. ***Id.*** Earlier that year, the legislature had enacted 2009 Wisconsin Act 28, which prohibited reducing clauses in motor vehicle insurance policies issued or renewed on or after November 1, 2009. ***Id.***, ¶3. On November 10, 2009, the Botdorfs contacted Allstate to request coverage for a newly acquired vehicle. ***Id.***,

¶4. Allstate then processed an endorsement for the existing policy providing coverage for the new vehicle. ***Id.*** On appeal, the Botdorfs argued the endorsement qualified as a motor vehicle insurance policy issued or renewed on or after November 1, 2009, for purposes of Act 28, and the reducing clause in the policy was therefore invalid. ***Id.***, ¶10. We agreed, based on WIS. STAT. § 600.03(35), which defines the term "policy" as "any document other than a group certificate used to prescribe in writing the terms of an insurance contract, including endorsements[.]" ***Botdorf***, 349 Wis. 2d 736, ¶12.

¶25 The Raygos argue ***Botdorf*** stands for the proposition that every issuance of an endorsement constitutes a new insurance policy. They therefore argue State Farm could not renew their existing policies and issue endorsements at the same time. However, the Raygos read ***Botdorf*** too broadly. ***Botdorf*** simply held that an endorsement qualified as a "policy," for purposes of the initial applicability provision in 2009 Wisconsin Act 28. ***Botdorf*** did not consider, much less decide, whether renewal of a policy and issuance of an endorsement are mutually exclusive acts, nor whether a policy renewal with an endorsement containing different terms constitutes the issuance of a new policy. This is not surprising, given that ***Botdorf*** involved issuance of an endorsement during the policy period to provide coverage for a new vehicle. Unlike ***Botdorf***, this case involves issuance of an endorsement at the time of policy renewal. Moreover, the Raygos' reading of ***Botdorf*** ignores the existence of WIS. STAT. § 631.36(5), which clearly contemplates the occurrence of policy renewals with altered terms.

¶26 For the foregoing reasons, we reject the Raygos' argument that State Farm's actions in this case constituted nonrenewal of their policies. Based on the policy language, the only reasonable conclusion is that State Farm was renewing the policies, albeit with altered terms. Because the policies do not contain any

notice requirements for renewals with altered terms, the notice requirements of WIS. STAT. § 631.36(5) apply. *See* ***Bertler v. Employers Ins. of Wausau***, 86 Wis. 2d 13, 23, 271 N.W.2d 603 (1978) ("Missing terms required by a statute will be read into the policy."); *see also* ***Brunson v. Ward***, 2001 WI 89, ¶23, 245 Wis. 2d 163, 629 N.W.2d 140. It is undisputed that State Farm complied with § 631.36(5). Accordingly, the circuit court correctly concluded endorsement 6949B.2 was in effect at the time of the accident. The Raygos concede they were not entitled to UIM coverage if endorsement 6949B.2 was in effect. As a result, the circuit court properly granted summary judgment in State Farm's favor.[5]

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

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[5] In the alternative, State Farm argues that, even if endorsement 6949B.2 was not in effect at the time of the accident, the drive-other-car exclusion in endorsement 6949B.1 precluded UIM coverage. Because we conclude endorsement 6949B.2 was in effect, we need not address State Farm's alternative argument. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 ("Issues that are not dispositive need not be addressed.").