COURT OF APPEALS
DECISION
DATED AND FILED

February 18, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2014AP1086 **Cir. Ct. No. 2012CV490**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NORBERT TRZEBIATOWSKI AND REBECCA TRZEBIATOWSKI,

PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS,

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Portage County: THOMAS B. EAGON, Judge. *Affirmed in part; reversed in part.*

Before Lundsten, Higginbotham and Blanchard, JJ.

¶1 HIGGINBOTHAM, J. Norbert and Rebecca Trzebiatowski had in effect two automobile insurance policies purchased from State Farm Mutual Automobile Insurance Company on the day that their son was killed in an

automobile accident. State Farm insured a Ford Windstar and a Chrysler Town & Country van owned by the Trzebiatowskis. Both policies provided underinsured motor vehicle (UIM) coverage. The Trzebiatowskis submitted a UIM claim to State Farm seeking recovery for their loss under the UIM provisions of both policies. State Farm granted UIM coverage under the Chrysler policy, but denied coverage under the Windstar policy, on the ground that Endorsement Two, which was part of the Windstar policy, was in effect and the UIM provisions in the policy booklet controlled.

¶2 The primary dispute in this case centers on which UIM provisions govern—those in the policy booklet, or those in Endorsement One. The answer to this question will determine whether an anti-stacking clause was in effect.[1]

¶3 The Trzebiatowskis sued State Farm in the circuit court asserting breach of contract and bad faith claims. The parties filed opposing motions for summary judgment, which the court resolved by granting the Trzebiatowskis' motion on their breach of contract claim, and at the same time denied State Farm's motion for summary judgment. The court dismissed the Trzebiatowskis' bad faith claim. The Trzebiatowskis then sought statutory interest on their breach of

[1] Stacked UIM coverage entitles an insured to recover the UIM policy limits from more than one auto insurance policy issued for multiple vehicles. The natural effect of the Trzebiatowskis stacking the initial Windstar policy onto their Chrysler policy is that they would be entitled to recover $100,000 under their respective policy limits, for a total recovery from State Farm in the amount of $200,000. This is precisely what the Trzebiatowskis are attempting to do in this case, and if Endorsement One was in effect on the day the accident occurred, the Trzebiatowskis would be entitled to recover $100,000 in damages from State Farm under the UIM provisions in Endorsement One.

contract claim, pursuant to WIS. STAT. § 628.46 (2011-12),[2] which the court granted.

¶4 State Farm appeals the breach of contract and statutory interest decisions. The Trzebiatowskis cross-appeal the dismissal of their bad faith claim. For the reasons that follow, we conclude that the UIM provisions in the policy booklet were in effect at the time the loss applied. As a result, under the terms of that policy, the Trzebiatowskis are unable to "stack" the UIM coverage in the Windstar policy with the UIM coverage in the Chrysler policy, meaning that the Trzebiatowskis' UIM claim under the Windstar policy is not covered.

¶5 As for the Trzebiatowskis' bad faith claim, we affirm the circuit court's dismissal of this claim because State Farm had a reasonable basis to deny coverage under the Windstar policy. Accordingly, we reverse the summary judgment on the Trzebiatowskis' breach of contract claim, and affirm the circuit court's dismissal of the Trzebiatowskis' bad faith claim. Because the Trzebiatowskis did not prevail on their breach of contract claim, dismissal of their statutory interest claim is required.

BACKGROUND

¶6 On April 20, 2012, the Trzebiatowskis' son died in a motor vehicle accident. The tortfeasor's insurance company paid the Trzebiatowskis its policy limit as part of a wrongful death settlement.

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

¶7 The Trzebiatowskis sought additional compensation for their damages from State Farm, under the UIM provisions set forth in two separate automobile insurance policies issued by State Farm: one for the Ford Windstar, which is the subject of this case, and the other covering the Trzebiatowskis' Chrysler Town & Country van. Each of these policies carried UIM coverage, with policy limits set in the amount of $100,000 each. The Windstar policy in effect on the day of the accident had been renewed in December 2011 (for ease of reference we refer to this policy as "the renewed Windstar policy"). The Trzebiatowskis sought to "stack" coverage under the policy limits of the renewed Windstar policy with coverage under the policy limits of their Chrysler policy; that is, to collect coverage to the limits under both polices. State Farm paid the Trzebiatowskis the UIM policy limit of $100,000 under the Chrysler policy's UIM provision. However, State Farm denied the Trzebiatowskis' claim under the renewed Windstar policy's UIM provision on the basis that when the Trzebiatowskis renewed the Windstar policy, they agreed to a change in the policy that included an anti-stacking clause and limited total UIM coverage to $100,000.[3]

¶8 After State Farm denied the Trzebiatowskis' claim under the renewed Windstar policy, the Trzebiatowskis filed this lawsuit against State Farm alleging breach of contract and bad faith.

[3] Following 2011 Wisconsin Act 14, insurance companies are free to reduce certain types of coverage for insureds through the use of limit-to-limits UIM coverage, reducing clauses, and anti-stacking clauses. WIS. STAT. § 632.32(5). State Farm's position is that the renewed Windstar policy included a limit-to-limits clause and an anti-stacking clause, and therefore the Trzebiatowskis could not recover under the Windstar policy in light of the fact that they had already recovered the Windstar UIM policy limit of $100,000 from the tortfeasor's insurance company.

¶9 State Farm filed summary judgment on the Trzebiatowskis' breach of contract claim, and the Trzebiatowskis filed a motion for summary judgment on their breach of contract and bad faith claims. The court granted the Trzebiatowskis' motion on their breach of contract claim and denied State Farm's motion on the same, determining that an identified endorsement discussed below, Endorsement 6949B.1, which the court concluded was part of the renewed Windstar policy, provided UIM coverage. The court denied the Trzebiatowskis' motion for summary judgment on their bad faith claim. State Farm sought leave to appeal the court's non-final summary judgment order, which we denied.

¶10 State Farm then filed a motion, which the parties and the circuit court treated as a motion for summary judgment, to prohibit the Trzebiatowskis from pursuing discovery on their bad faith claim, which the court granted. In granting State Farm's motion, the court concluded that the Trzebiatowskis "failed to make a showing that [State Farm] lacked a reasonable basis to deny (debate) [the Trzebiatowskis'] claim for underinsured motor vehicle coverage on the Windstar Policy ...."

¶11 The Trzebiatowskis next filed a notice of motion and motion for judgment awarding them damages, costs, and statutory interest. The court granted the motion and entered judgment in the amount of $100,000 in UIM benefits to the Trzebiatowskis under the renewed Windstar policy, plus costs and statutory interest on the terms described above. The court also issued an order dismissing the Trzebiatowskis' bad faith claim on the merits and with prejudice.

¶12 State Farm appeals the breach of contract and statutory interest[4] summary judgment order. The Trzebiatowskis cross-appeal the court's dismissal of their bad faith claim.

¶13 Before we proceed to the merits of this case, we provide a glossary of terms that will be used for ease of reference in this opinion to identify particular pertinent documents. They are described as follows:

- The Windstar policy in effect from September 16, 2011 to December 10, 2011. This is the first of two Windstar policies we construe in this appeal. As such, we refer to this policy as the "initial Windstar policy."

- The initial Windstar policy included:

    - a declarations page;

    - a policy booklet identified as Form 9849B. We refer to this document as "the policy booklet"; and

    - a document identified on the declarations page as "6949B.1 AMENDATORY ENDORSEMENT." For ease of reference, we refer to this document as "Endorsement One."

- The Windstar policy in effect from December 10, 2011 to June 10, 2012. This policy was a renewal of the initial Windstar policy. We

[4] As we indicated, because the Trzebiatowskis do not prevail on their breach of contract claim, dismissal of their statutory interest claim is required. We do not consider this issue further.

will refer to this policy as "the renewed Windstar policy," which included:

- An auto renewal page; and
- a separate endorsement identified as Endorsement 6949B.2, which we will refer to as "Endorsement Two."

- A document titled "Important Notice Regarding Changes to Your Policy" (hereinafter referred to as "the notice of changes" or "the notice").

DISCUSSION

¶14 We address two issues on appeal. First, whether, at the time of the accident, the Trzebiatowskis' renewed Windstar policy provided UIM coverage that could be stacked to the other payments for their son's death. To answer this question, we must determine the terms of the UIM coverage that were in effect on the date of the loss. If the UIM provisions in the renewed Windstar policy were in effect when the accident occurred, the Trzebiatowskis' UIM claim was not covered under the renewed Windstar policy because the policy's UIM provisions prohibited stacking of insurance policies. Second, whether the circuit court erred in dismissing the Trzebiatowskis' bad faith claim. We address each issue in turn.

I. Breach of Contract: UIM Coverage

A. Applicable Standards of Review and Principles of Law

¶15 We review a grant of summary judgment de novo, applying the same methodology as the circuit court. ***State v. Bobby G.***, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81. Summary judgment is appropriate when the

affidavits and other submissions show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶16 This dispute concerns the proper interpretation of the Trzebiatowskis' Ford Windstar insurance policy. The interpretation of an insurance contract presents a question of law, which we review de novo. ***Glendenning's Limestone & Ready-Mix Co. v. Reimer***, 2006 WI App 161, ¶19, 295 Wis. 2d 556, 721 N.W.2d 704.

¶17 The pertinent rules governing a court's interpretation of an insurance policy are well established. The goal of contract interpretation is "to ascertain and carry out the true intent of the parties." ***Frost v. Whitbeck***, 2002 WI 129, ¶16, 257 Wis. 2d 80, 654 N.W.2d 225. "The language in an insurance contract should be given its ordinary meaning—the meaning a reasonable person in the position of the insured would give the terms." ***Kalchthaler v. Keller Constr. Co.***, 224 Wis. 2d 387, 393, 591 N.W.2d 169 (Ct. App. 1999). When the terms of a policy are unambiguous, we enforce the policy as written "without resort to rules of construction or principles in case law." ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150.

B. Analysis

¶18 We begin with a description of what is not in dispute: (1) in general, the policy booklet sets forth the provisions of the auto insurance policy, unless amended by applicable endorsements or changed when State Farm issues a new policy booklet; (2) State Farm may change the terms of the policy by issuing a new endorsement; (3) the renewed Windstar policy at the time of the accident included at least the most recently issued declarations page, the policy booklet,

and Endorsement Two; and (4) the notice of changes was not part of the renewed Windstar policy.

¶19 We highlight two additional facts that are not in dispute, because of their importance to the resolution of this case. First, the policy booklet provides UIM coverage that *prohibits* stacking. Second, Endorsement One provided UIM coverage that *permits* stacking of insurance policies. We now turn our attention to the issue presented.

¶20 State Farm cites three reasons why, under the terms of the renewed Windstar policy, the Trzebiatowskis' UIM claim is not covered, one of which is that the insurer-favored anti-stacking clause in the policy booklet was in effect when the accident occurred.

¶21 State Farm rests its contention on the following bases. First, the notice of changes stated in unambiguous terms that Endorsement Two replaced Endorsement One. Then, looking to Endorsement Two, we see that it does not amend the UIM provisions in the policy booklet. As a result, the terms of UIM coverage in the policy booklet governed when the accident occurred.

¶22 In their response, the Trzebiatowskis argue that a reasonable insured reading the renewed Windstar policy, together with the notice of changes, would understand that Endorsement One was a part of the policy when the accident occurred, and therefore the UIM provisions in Endorsement One were in effect. The Trzebiatowskis cite two reasons in support of their argument. First, contrary to statements made in the notice of changes that Endorsement Two replaced Endorsement One and that changes to UIM coverage included an anti-stacking clause, Endorsement Two does not include any language incorporating these changes into the policy. Second, a prefatory paragraph to Endorsement Two leads

the reasonable insured to interpret the renewed Windstar policy as including the UIM coverage found in Endorsement One. The Trzebiatowskis also point to the most recently issued declarations page, which recites that Endorsement One is part of the policy, as additional support for their argument that Endorsement One was in effect.

¶23 As we now explain, we reject the Trzebiatowskis' construction of the renewed Windstar policy because they advance a construction that is unreasonable and ignore key provisions in the policy. It follows that we conclude that State Farm's construction of the renewed Windstar policy is reasonable and consistent with the plain language of the policy, as informed by the notice of changes.

¶24 As we have indicated, the notice of changes was included with the renewed Windstar policy packet State Farm purportedly mailed to the Trzebiatowskis. Although the notice of changes is not a part of the renewed Windstar policy, both parties appear to agree that the starting point for determining the terms of UIM coverage in effect when the accident occurred is the notice of changes.

¶25 In pertinent part, the notice of changes states that Endorsement Two, which as we have indicated is part of the renewed Windstar policy, replaces Endorsement One. The notice of changes also summarizes changes Endorsement Two purportedly made to the UIM coverage, including changing the definition of underinsured motor vehicle to one that favors the insurer and adding an anti-stacking clause.

¶26 The notice of changes also includes a disclaimer, which states that the notice is only a general summary of changes to the insurance policy and does

not grant any insurance coverage. The disclaimer reiterates that the terms and conditions of coverage are provided in the State Farm auto insurance policy booklet, "the most recently issued Declarations Page, and any applicable endorsements."

¶27 In sum, the notice of changes, although not part of the renewed Windstar policy, establishes context for how the reasonable insured should read the policy to determine the terms of UIM coverage in effect when the accident occurred. The reasonable insured would understand after reading the notice of changes that Endorsement One is not part of the renewed Windstar policy because it was replaced with Endorsement Two. The reasonable insured would also understand that the renewed Windstar policy includes changes to UIM coverage that are less favorable to the insured, including an anti-stacking clause.

¶28 Staying on the topic of the notice of changes, it is worth noting that auto insurers such as State Farm are statutorily required to provide written notice to an insured at the time a policy is being renewed of changes made to the terms of the policy that are less favorable to the insured. *See* WIS. STAT. § 631.36(5). It reasonably follows that the insured is expected to read the notice to understand the changes made in the terms of the renewal policy. One can reasonably expect the insurer to provide accurate notice of the policy changes; that is, an insured can reasonably assume that changes in the policy as indicated by the notice of the renewal policy will be included in the policy.

¶29 With the notice of changes in mind, the reasonable insured would turn to the renewed Windstar policy and, more in particular, Endorsement Two, in an attempt to determine the terms of UIM coverage in effect when the accident occurred. This is a logical approach to reading the policy because the renewal

page lists Endorsement Two as being part of the renewed Windstar policy and the notice of changes indicated that Endorsement Two made changes to UIM coverage.

¶30 Endorsement Two begins with a prefatory paragraph, which states in full: "This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement." This paragraph directs the reasonable insured to read Endorsement Two to determine any changes the endorsement made to the policy booklet. According to the prefatory paragraph, if Endorsement Two does not include any language that makes any changes to other provisions in the policy booklet, such as UIM coverage in this case, the prefatory paragraph directs the reasonable insured to the policy booklet to identify the applicable terms of coverage.

¶31 Looking at Endorsement Two, it is obvious that the endorsement says nothing about UIM coverage, or for that matter anything regarding Endorsement Two replacing Endorsement One. Applying the plain language of the prefatory paragraph to Endorsement Two, it is clear that Endorsement Two itself did not include any amendments to the UIM provisions in the policy booklet. Thus, the reasonable insured turns to the policy booklet to determine the terms of UIM coverage in effect when the accident occurred and, pertinent to this case, the reasonable insured learns that the policy booklet contains UIM provisions that favor State Farm, and includes an anti-stacking clause.

¶32 Turning to the Trzebiatowskis' arguments, the absence of any mention of UIM coverage and a statement that Endorsement Two replaced

Endorsement One leads to the conclusion that the terms of UIM coverage in Endorsement One continued to be in effect. This argument is seriously flawed.

¶33 The Trzebiatowskis' argument rests on a misreading of the prefatory paragraph to Endorsement Two. Rather than follow the directive of the prefatory paragraph to look to the terms of the policy that are not amended by the endorsement to determine the terms that remain unchanged, the Trzebiatowskis inexplicably jump to the illogical conclusion that Endorsement One applies. Particularly problematic is that the Trzebiatowskis do not present a developed argument in support of their reading of the policy, let alone an argument that includes an analysis of the policy applying a plain language interpretation.

¶34 The Trzebiatowskis argue that State Farm's construction of the renewed Windstar policy fails because State Farm relies on the notice of changes to "implement changes that can only be accomplished" by issuing a new policy booklet, a new declarations page, or an endorsement. According to the Trzebiatowskis, because State Farm improperly relied on the notice of changes to reduce UIM coverage, Endorsement One was in full force and effect when the accident occurred.

¶35 The Trzebiatowskis mischaracterize State Farm's argument on this topic. We see nothing in State Farm's arguments that the notice of changes itself reduced UIM coverage. State Farm does state in its main brief on appeal that the notice of changes "issuing replacement Endorsement [Two] *changed the documents* that would constitute the Renewal Windstar Policy.… It is those documents that set forth the terms and conditions of the Renewal Windstar Policy." (Emphasis added.) We understand State Farm to mean that the notice of changes *identifies* the policy's documents, which is very different from the notice

itself making the changes to UIM coverage. The Trzebiatowskis are attempting to create an issue that simply does not exist.

¶36 The Trzebiatowskis appear to argue that the rules of contract interpretation require Endorsement Two to expressly state that it replaced Endorsement One, but the Trzebiatowskis fail to point to any rule that imposes such a requirement. The Trzebiatowskis fail to explain why it is not sufficient that the notice of changes informed them of the replaced endorsement. After all, as we have indicated, it is unreasonable to think that State Farm would misrepresent in a statutorily required notice that an endorsement replaced another endorsement.

¶37 In sum, we conclude that the reasonable insured would understand that the UIM coverage in effect on the day of the accident was governed by the UIM provisions set forth in the policy booklet, and therefore, under those provisions, the renewed Windstar policy did not provide UIM coverage for the Trzebiatowskis' loss.

II. The Cross-Appeal: The Trzebiatowskis' Bad Faith Claim

¶38 The Trzebiatowskis appeal the circuit court's dismissal of their bad faith claim against State Farm on summary judgment. This part of the dispute arises from the Trzebiatowskis' efforts to conduct discovery from State Farm on their bad faith claim. State Farm moved the court for a protective order to prohibit discovery by the Trzebiatowskis, which the parties and the court treated as a motion for summary judgment, and the court granted the motion. State Farm then filed a motion for judgment dismissing the Trzebiatowskis' bad faith claim and the court granted that motion.

¶39 The Trzebiatowskis allege that State Farm acted in bad faith when it rejected the Trzebiatowskis' UIM claim, on the grounds that the facts support a prima facie case that their claim for UIM coverage was not fairly debatable, and that their allegations withstand State Farm's rebuttal allegations. Specifically, the Trzebiatowskis contend that State Farm's denial of the Trzebiatowskis' claim for UIM coverage was based on an unreasonable reading of the renewed Windstar policy.[5] The Trzebiatowskis support this contention with the circuit court's ruling that Endorsement One was in effect at the time of the loss and, therefore, there was UIM coverage under the renewed Windstar policy. State Farm takes the position that the Trzebiatowskis' claim was fairly debatable based on State Farm's reasonable construction of the renewed Windstar policy. State Farm maintains that there was a legitimate disagreement over the proper interpretation of the renewed Windstar policy.

¶40 An insured may bring a first-party bad faith claim against his or her insurer by alleging that the insurer has unreasonably withheld payment in bad faith. ***Roehl Transp. Inc. v. Liberty Mut. Ins. Co.***, 2010 WI 49, ¶27, 325 Wis. 2d 56, 784 N.W.2d 542. To establish a bad faith claim, the insured must demonstrate: (1) "the absence of a reasonable basis for denying benefits of the policy," and (2) "the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim." ***Anderson v. Continental Ins. Co.***, 85 Wis.2d 675, 691, 271 N.W.2d 368, 376 (1978). The first prong applies an

[5] The Trzebiatowskis relied on two additional grounds in support of their bad faith claim against State Farm. As we discuss above, we reject the Trzebiatowskis' argument that the circuit court erred in dismissing the Trzebiatowskis' bad faith claim, on the basis that whether UIM coverage was provided under the renewed Windstar policy was fairly debatable. Thus, we need not address the Trzebiatowskis' other arguments.

objective standard; the second prong applies a subjective standard. ***Weiss v. United Fire & Cas. Cos.***, 197 Wis. 2d 365, 377, 541 N.W.2d 753 (1995). We need not address the second prong when an objective reasonable basis to deny coverage exists. *See* ***Samuels Recycling Co. v. CNA Ins. Co.***, 223 Wis. 2d 233, 250, 588 N.W.2d 385 (Ct. App. 1998).

¶41 An insured must establish the first element—the insurer had no reasonable basis to deny the claim—before he or she may proceed with bad faith discovery. *See* ***Brethorst v. Allstate Prop. & Cas. Ins. Co.***, 2011 WI 41, ¶¶76-77, 334 Wis. 2d 23, 798 N.W.2d 467. We have explained the bad faith discovery pleading requirements as requiring an insured to show "some evidence that the insurer's denial of coverage was unreasonable, or stated differently, that coverage was not fairly debatable." ***Ullerich v. Sentry Ins.***, 2012 WI App 127, ¶22, 344 Wis. 2d 708, 824 N.W.2d 876.

¶42 The Trzebiatowskis' argument that State Farm acted in bad faith when it denied the Trzebiatowskis' UIM claim is easily rejected. As we conclude above, State Farm's interpretation of the renewed Windstar policy as not providing coverage for the Trzebiatowskis' UIM claim is reasonable. State Farm offered the interpretation of the policy that we accepted above soon after the Trzebiatowskis filed a claim with State Farm seeking UIM coverage under the renewed Windstar policy. Aside from a few inconsequential missteps, State Farm consistently denied the Trzebiatowskis claim prior to the filing of this lawsuit, based on a reasonable interpretation of the renewed Windstar policy. It follows that whether there was UIM coverage under the renewed Windstar policy for the Trzebiatowskis' UIM claim was fairly debatable. Accordingly, we conclude that the circuit court properly dismissed the Trzebiatowskis' bad faith claim.

CONCLUSION

¶43 For the above reasons, we affirm in part the circuit court's judgment, and reverse in part.

By the Court.—Judgment affirmed in part, reversed in part.

Not recommended for publication in the official reports.

¶44 LUNDSTEN, J. (*concurring*). I conclude, as does the lead opinion, that State Farm properly denied stacked UIM coverage to the Trzebiatowskis and that the Trzebiatowskis' bad faith claim was properly dismissed. But I do not join the lead opinion.

¶45 Our analysis need not delve into the meaning of policy language. So far as I can tell, there is no significant dispute over the meaning of any policy language. Rather, the dispositive question is whether Endorsement 6949B.1 (what the lead opinion calls Endorsement One) was eliminated when the car policy at issue here was renewed prior to the death of the Trzebiatowskis' son. If Endorsement One remained a part of the renewed policy, all agree that State Farm was obligated to stack UIM coverage. If, instead, Endorsement One was eliminated when it was replaced by Endorsement Two, all agree that no stacking was required.

¶46 This dispute is easily resolved. The notice, titled "Important Notice Regarding Changes to Your Policy," provided to the Trzebiatowskis at the time they renewed their policy, plainly informed the Trzebiatowskis that a new endorsement, Endorsement 6949B.2 (i.e., Endorsement Two), replaces Endorsement One. Under the heading "Changes to State Farm Car Policy — Endorsement 6949B.2," the notice plainly states:

> Endorsement 6949B.2, which is included at the end of this notice, replaces Endorsement 6949B.1 ....

¶47 The Trzebiatowskis attempt to avoid the obvious effect of this language by arguing that we may not consider it. The Trzebiatowskis contend that courts may not look to a notice like this to determine the content of a renewed policy because such a notice is not a part of the policy. According to the Trzebiatowskis, only policy language can change what comprises a policy. Applied here, so the argument goes, some part of the State Farm policy itself must inform us that Endorsement One is no longer a part of the car policy. However, the Trzebiatowskis' own discussion shows that this makes no sense.

¶48 The Trzebiatowskis discuss at length Endorsement Two, the endorsement added during the renewal process. Their purpose is to show that Endorsement Two fails to state that it replaces Endorsement One. In doing so, the Trzebiatowskis concede that Endorsement Two has been added to the policy. But how do the Trzebiatowskis know this? They know it because the *notice* tells them so. And, it is nonsense to say that a notice can inform the policyholder that an endorsement has been added, but a notice cannot tell the policyholder that an existing endorsement is being replaced with a new endorsement.

¶49 As State Farm explains, the policy booklet, both before and after renewal, states that one way a policy may be changed is by "issuing ... an endorsement." Here, Endorsement Two was issued to replace Endorsement One. The first 2 pages of each are nearly identical. That is to say, Endorsement Two looks like a replacement for Endorsement One. And, as State Farm points out, Endorsement Two could not and did not issue itself.

¶50 The same applies to other new or replacement policy documents. For example, it is true that a new declaration page might specify the revised contents of a renewed policy, but how would a policyholder know that the new

declaration page itself is part of the new policy? The obvious answer is that something outside the policy is necessary to inform the policyholder that new or replacement documents will be part of the renewed policy.

¶51 In sum, I agree with State Farm that adopting the Trzebiatowskis' argument would create a Catch-22. If only policy language can change a policy's content, then no policy changes are possible because such a rule leaves no way to add policy language that could, in turn, make a change.

¶52 What remains is the Trzebiatowskis' challenge to the circuit court's decision to dismiss the Trzebiatowskis' bad faith claim against State Farm. The Trzebiatowskis contended that State Farm acted in bad faith when it denied the Trzebiatowskis' request for stacked coverage. As we have seen, State Farm properly denied stacked coverage. It follows that the circuit court properly dismissed the Trzebiatowskis' bad faith claim.

¶53 I am authorized to state that Judge Blanchard joins this concurrence.