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IN THE COURT OF APPEALS OF INDIANA

Ronald Morgan and Cheryl Morgan,

Appellants-Plaintiffs,

v.

Dickelman Insurance Agency, Inc., Dickelman Insurance, Inc., Jason Dickelman, and State Farm Fire and Casualty Co.,

Appellees-Defendants

December 30, 2022

Court of Appeals Case No. 22A-PL-892

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-1709-PL-116

Crone, Judge.

Case Summary

[1] Ronald Morgan and Cheryl Morgan appeal from the trial court's grant of summary judgment in favor of Dickelman Insurance Agency, Inc., Dickelman Insurance, Inc., Jason Dickelman, and State Farm Fire and Casualty Co. (collectively Defendants) on the Morgans' complaint for breach of contract, promissory estoppel, negligence, and fraud. As for their breach of contract claim, they assert that genuine issues of material fact exist as to whether an oral modification of their insurance policy to increase their dwelling coverage limit was formed. We find this argument irrelevant because the Morgans subsequently received and accepted easy-to-read renewal certificates clearly indicating the amount of their coverage. With respect to the remaining claims, they contend that genuine issues of material fact exist as to whether they reasonably relied on an insurance agent's alleged representations. Based on the easy-to-read, unambiguous renewal certificates, we conclude that as a matter of law, their reliance is unjustified. Accordingly, we affirm.

Facts and Procedural History

[2] The facts most favorable to the Morgans as the nonmovants show that in 2007, they purchased a log home in Lafayette. In 2008, they acquired homeowners insurance with State Farm through an agency owned by Chantal Breedlove. The Morgans determined the amount of dwelling coverage for their home through the recommendation of the insurance agent because Cheryl "always go[es] by the experts." Appellants' App. Vol. 2 at 126. The Morgans paid insurance premiums through escrow funds held by their mortgage company.

Each year, State Farm mailed the Morgans "renewal notices," but Cheryl did not recall looking at the notices because "when you talk to an agent, I expect our conversation to be followed through on." *Id*. 126-27.

[3] In 2011, Dickelman Insurance "took over" Breedlove's agency and the administration of the Morgans' insurance policy. *Id*. at 58. Dickelman contacted the Morgans several times between 2011 and 2014 "to sit down and meet" with him, but they did not respond, and they never met with Dickelman to discuss their insurance coverage. *Id*. In 2012, State Farm mailed a two-page renewal certificate to the Morgans for the policy period April 4, 2012, to April 4, 2013, as well as a homeowners available coverage notice. *Id*. at 79, 81. The first page of the renewal certificate indicated that their policy provided dwelling coverage of up to $291,500. *Id.* at 79. The Morgans did not read the renewal certificate, and Cheryl put the envelope in a file without opening it. *Id*. at 128.

[4] In May 2012, Cheryl read that log homes could have higher replacement costs than ordinary houses and became concerned that their home might be underinsured. Cheryl called Dickelman Insurance and spoke with a female insurance representative. *Id*. at 142. Cheryl initially requested a $250,000 increase in dwelling coverage, but the representative told her "that's way too much, way too much." *Id*. After a discussion, Cheryl "finally said" that she wanted to increase the coverage by "[$]150,000 on the structure." *Id*. Cheryl "agreed to pay a higher insurance premium in exchange for $150,000 of additional fire and casualty coverage" on the home. *Id*. at 159. There is no evidence in the record as to the amount of the higher premium. Cheryl

"provided [her] debit card information, including the full account number, to the female representative during the May 2012 phone call … to process the payment for the additional coverage." *Id*. Cheryl was "informed the transaction was completed and that the additional coverage was obtained and applied to [their] homeowner's policy." *Id*. Following this phone call, Cheryl believed that the Morgans had dwelling coverage of approximately $450,000. *Id*. at 130, 159. Cheryl never confirmed with Dickelman's office whether the requested additional coverage had been procured. *Id*. at 127.

[5] In 2013, 2014, and 2015, State Farm mailed two-page renewal certificates identical in form to the previous renewal certificates as well as homeowners available coverage notices to the Morgans. The first page of the 2013 renewal notice showed that for the policy period April 4, 2013, to April 4, 2014, the Morgans' dwelling coverage limit was $297,100. *Id*. at 86. In 2014, the renewal certificate showed a dwelling coverage limit of $300,700. *Id*. at 93. In 2015, the renewal certificate showed a dwelling coverage limit of $313,100. *Id*. at 110. The renewal notices also specified the annual premium and that it was to be paid by the mortgagee. Although the renewal notices are two pages, the second pages are largely blank, providing the name of the mortgagee and a one-paragraph advisement regarding the customer's responsibility to choose coverage and limits. *Id*. at 87, 94, 111. Cheryl filed all the envelopes from State Farm without opening them. *Id*. at 128, 134.

[6] On September 20, 2015, the Morgans submitted a claim to State Farm for extensive water damage to their home with a repair estimate of $712,000 to

$800,000. *Id*. at 53. Cheryl learned that the dwelling coverage limit had not been increased by $150,000, and in late September or early October, she went to Dickelman Insurance to ask "how this could have happened." *Id*. at 144. According to Cheryl, "the girl pulled it up and showed [Cheryl] on the screen," and all four employees said, "We don't know how that happened, how that could [have] happened. It shows you put it in, you paid for it and she pulled it out the same day." *Id.* Dickelman "came out" and told her that "you don't have to worry about anything. I got off with State Farm headquarters this morning … and they guaranteed me they will pay a hundred percent of everything with this claim. You will not be harmed. You'll have everything taken care of a hundred percent." *Id*. at 146. Ultimately, State Farm paid the Morgans $330,034.88 for the claim, which represented their dwelling coverage limit for the policy period April 4, 2015, to April 4, 2016, plus inflation guard protection and the cost of debris removal.

[7] On September 20, 2017, the Morgans filed a complaint against Defendants alleging breach of contract, promissory estoppel, negligence, and fraud. Defendants filed a motion for summary judgment on all claims, and the Morgans filed a response. After a hearing, the trial court issued an order granting summary judgment for Defendants on all of the Morgans' claims. The Morgans filed a motion to correct error, which the trial court denied. This appeal ensued.

Discussion and Decision

[8] We review summary judgment de novo, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Summary judgment is appropriate only when the pleadings and designated evidence reveal that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Brill v. Regent Commc'ns, Inc.*, 12 N.E.3d 299, 308-09 (Ind. Ct. App. 2014), *trans. denied*. "A fact is material if its resolution would affect the outcome of the case, and an issue is genuine if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (citations and quotation marks omitted). "The initial burden is on the summary-judgment movant to 'demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue,' at which point the burden shifts to the non-movant to 'come forward with contrary evidence' showing an issue for the trier of fact." *Hughley*, 15 N.E.3d at 1003 (quoting *Williams*, 914 N.E.2d at 761-62).[1]

[9] In reviewing summary judgment rulings, we consider only the evidentiary matter that the parties have specifically designated to the trial court. *Reed v.*

[1] The Morgans contend that the trial court improperly applied the summary judgment standard because it granted summary judgment based on a lack of evidence. We disagree that the trial court improperly applied the standard. Once the movant produces evidence to establish that there is no genuine issue of material fact, our summary judgment standard requires the nonmovant to produce evidence to establish that there is a genuine issue of material fact. The trial court concluded that the Morgans failed to produce that evidence.

Reid, 980 N.E.2d 277, 285 (Ind. 2012). In determining whether issues of material fact exist, we do not reweigh the evidence. *Daisy v. Roach*, 811 N.E.2d 862, 864 (Ind. Ct. App. 2004). Rather, "[w]e construe all factual inferences in the non-moving party's favor and resolve all doubts as to the existence of a material issue against the moving party." *Reed*, 980 N.E.2d at 285. "Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims." *Hughley*, 15 N.E.3d at 1004. "Although the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *Id*. at 1003. Finally, "we may affirm the entry of summary judgment on any grounds supported by the designated evidentiary materials." *Hulse v. Ind. State Fair Bd.*, 94 N.E.3d 726, 730 (Ind. Ct. App. 2018).

Section 1 – Defendants are entitled to summary judgment on the Morgans' breach of contract claim.

[10] In their complaint, the Morgans alleged that Defendants breached an oral agreement to increase their dwelling coverage by $150,000. In support of their summary judgment motion on the breach of contract claim, Defendants designated evidence that established that State Farm paid the policy coverage limit on the Morgans' claim, that the dwelling coverage limit never increased by $150,000, and that the Morgans never paid an increased premium for a nearly fifty-percent increase in coverage. Further, in an affidavit, Dickelman attested that the Morgans never authorized Dickelman Insurance to increase the

dwelling limits and that he never informed the Morgans that State Farm would cover their losses. Thus, Defendants' designated evidence established that they did not commit breach of contract.

[11] The burden then shifted to the Morgans to designate evidence establishing a genuine issue of material fact as to whether an oral agreement to modify the dwelling coverage was reached. We note that "the modification of a contract, because it is also a contract, requires all of the requisite elements of a contract." *AM Gen. LLC v. Armour*, 46 N.E.3d 436, 443 (Ind. 2015) (quoting *City of Indianapolis v. Twin Lakes Enters., Inc.*, 568 N.E.2d 1073, 1085 (Ind. Ct. App. 1991), *trans. denied*). "The basic requirements of a contract are offer, acceptance, consideration, and a meeting of the minds of the contracting parties." *Barrand v. Martin*, 120 N.E.3d 565, 572 (Ind. Ct. App. 2019), *trans. denied*; *see also* 2 Steven Plitt, et al., *Couch on Insurance* § 25:11 (3d ed. Nov. 2022) ("[O]ral modification of an insurance policy is only permissible where there is adequate meeting of the minds as to subject matter, risk insured against, amount, duration of risk, and premium."). The Morgans argue that they met their burden with evidence showing that Cheryl "contacted Dickelman Insurance, requested an additional $150,000 in coverage, agreed to pay for an increase in premiums, provided debit card information, and was told that the transaction was completed." Appellants' Br. at 14.

[12] Defendants assert that even if an oral contract was formed, it was superseded by the Morgans' acceptance of the offers to renew the policy in 2013, 2014, and 2015. In support, they cite *Millikan v. U.S. Fidelity & Guaranty Co.*, 619 N.E.2d

948, 950 (Ind. Ct. App. 1993), *trans. denied* (1994), in which another panel of this Court observed, "A renewal policy is a replacement policy issued at the end of a policy period and not the first issuance of a policy." Defendants also rely on *Cook v. Michigan Mutual Liability Co.*, wherein the court observed,

> The general rule is that the delivery of a policy by the insurer to the insured upon the expiration of a policy without request by the insured *is an offer which must be accepted by the insured before a contract of insurance is effective*. Such acceptance can be by acts, words or deeds of the insured which manifest an intent to accept. Under certain circumstances, mere retention of the policy by the insured could constitute a valid acceptance.

154 Ind. App. 346, 350, 289 N.E.2d 754, 757 (1972) (emphasis added) (citations omitted). *See also Egnatz v. Med. Protective Co.*, 581 N.E.2d 438, 440 (Ind. Ct. App. 1991) ("[I]n order for the renewal of an insurance policy to be effective, there must be an offer to renew and an acceptance thereof."). In *Cook*, the court concluded that an automobile insurer was not required to defend an automobile owner in an action pending against the owner because the evidence established that the owner did not accept the renewal policy, did not intend to be bound by it, and had no intention of paying the required premium. 154 Ind. App. at 351, 289 N.E.2d at 757.

[13] While no Indiana cases have squarely addressed the circumstances presented here, *Couch on Insurance* provides,

> From the fact that a renewal of a policy calls for an extension of the identical policy, it follows that the insured is not bound by a new provision added to the renewal policy where he and she had

> not agreed to its inclusion. In other words, the terms of the old policy are effective unless contrary intent is clearly demonstrated or the insurer makes the insured aware of the changes in the new policy ….
>
> As a corollary of the above principle, an insurer, in issuing a policy which differs from the original, *is obligated to inform the insured as to the changes* if there has been no special agreement for terms differing from those of the original contract.

2 *Couch on Insurance* § 29:42 (emphasis added).

[14] In this case, State Farm mailed renewal certificates to the Morgans that clearly and unambiguously informed them of the amount of their policy dwelling coverage. "[I]nsureds have a duty to read and to know the contents of their insurance policies." *Safe Auto Ins. Co. v. Enter. Leasing Co. of Indianapolis*, 889 N.E.2d 392, 397 (Ind. Ct. App. 2008). A casual scan by an unsophisticated customer of the first page of the two-page 2013 renewal certificate would inform that person that the dwelling coverage was limited to $297,100 and that the premium charged was for this amount of coverage. By retaining the policy and paying the premium through an escrow account held by their mortgage company, the Morgans accepted the offer to renew. Similarly, in 2014, the Morgans accepted the offer to renew the policy with a dwelling coverage of $300,700, and in 2015, they accepted the offer to renew with a dwelling coverage of $313,100.

[15] The Morgans contend that "[p]olicy renewals extend existing insurance coverage [and] do not allow an insurer to silently and unilaterally alter a policy

to an unsophisticated customer's detriment." Reply Br. at 12-13. They further assert that Defendants' "argument implies an absurd and undesirable result: that an insurer can promise specific coverage in one year, then silently reduce that coverage the very next year by simply mailing policy documents that customers are unlikely to read or understand." *Id.* at 13-14. These scenarios do not reflect the circumstances here. State Farm was not silent, and an ordinary customer would immediately recognize the dwelling coverage limit on the first page of an easy-to-read renewal certificate, which requires no expertise to understand. We conclude that the designated evidence establishes that State Farm paid the full amount of the policy dwelling coverage that the Morgans had accepted. Accordingly, Defendants are entitled to summary judgment as a matter of law on the Morgans' breach of contract claim.

Section 2 – Defendants are entitled to summary judgment on the Morgans' promissory estoppel claim.

[16] The Morgans also argued that they were entitled to relief on a theory of promissory estoppel because they reasonably relied to their detriment on Defendants' alleged promise to increase their dwelling coverage. The Morgans assert that summary judgment is improper because the designated evidence establishes a genuine issue of material fact as to whether their reliance was

reasonable.[2] The elements of promissory estoppel are "(1) a promise by the promissor; (2) made with the expectation that the promisee will rely thereon; (3) which induces reasonable reliance by the promisee; (4) of a definite and substantial nature; and (5) injustice can be avoided only by enforcement of the promise." *Turner v. Nationstar Mortg., LLC*, 45 N.E.3d 1257, 1265 (Ind. Ct. App. 2015). "The estoppel doctrine is based on the rationale that a person whose conduct has induced another to act in a certain manner should not be permitted to adopt a position inconsistent with such conduct so as to cause injury to the other." *Huber v. Hamilton*, 33 N.E.3d 1116, 1123 (Ind. Ct. App. 2015), *trans. denied*.

[17] Our supreme court has stated that while "the reasonableness of the plaintiffs' reliance is usually a question for the trier of fact[,] the reasonableness of reliance can in some circumstances be determined as a matter of law." *Allen v. Great Am. Rsrv. Ins. Co.*, 766 N.E.2d 1157, 1164 (Ind. 2002) (citation omitted). "Where the evidence is conflicting, the issue of whether a particular person has exercised reasonable prudence and whether the reliance was justified is for a jury's determination." *Wright v. Pennamped*, 657 N.E.2d 1223, 1231 (Ind. Ct. App.

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[2] We observe that the Morgans apply their reasonable reliance argument to their claims of promissory estoppel, negligence, and fraud without differentiating among the claims. They have failed to set forth the elements of any of these claims or explain how reasonable reliance is relevant to each. These omissions have hindered our review and nearly resulted in waiver of their argument. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (failure to present cogent argument waives issue for appellate review), *trans. denied*. However, because they discuss the relevant case law, we have decided not to find their argument waived.

1995), *clarified on reh'g*, 664 N.E.2d 394 (1996). "Where the evidence is susceptible to only one interpretation, however, 'it is for the court to determine as a matter of law whether plaintiff was justified in relying on the representation and whether he was negligent in doing so.'" *Id*. (quoting *Plymale v. Upright*, 419 N.E.2d 756, 763 n.6 (Ind. Ct. App. 1981)).[3]

[18] As previously noted, "insureds have a duty to read and to know the contents of their insurance policies." *Safe Auto*, 889 N.E.2d at 397. The traditional rule is that "reliance [upon the representation of another] is not justified where the injured party has a written instrument available and fails or neglects to read it." *Plohg v. NN Investors Life Ins. Co. Inc.*, 583 N.E.2d 1233, 1237 (Ind. Ct. App. 1992), *trans. denied*. However, "reasonable reliance upon an agent's representations can override an insured's duty to read the policy*." Filip v. Block*, 879 N.E.2d 1076, 1084 (Ind. 2008) (quoting *Vill. Furniture, Inc. v. Assoc. Ins. Managers, Inc.*, 541 N.E.2d 306, 308 (Ind. Ct. App. 1989)). The rationale for this exception to the general rule that one has a duty to read and know the contents of one's insurance policies is that an insurance contract is "a detailed and complex instrument, drafted by expert legal counsel[, and] has been called a 'contract of adhesion' for the reason that the insured is expected to 'adhere' to it

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[3] The Morgans cite *Earl v. State Farm Mutual Insurance Co.*, 91 N.E.3d 1066, 1076 (Ind. Ct. App. 2018), *trans. denied*, and *Plohg v. NN Investors Life Insurance Co*., 583 N.E.2d 1233, 1237 (Ind. Ct. App. 1992), *trans. denied*, for the proposition that "whether a party's reliance upon an [insurance] agent's representations is reasonable even though he failed to exercise the opportunity to read the policy is a question of fact for the factfinder." Appellants' Br. at 22. To the extent that this statement could be read to have blanket applicability to all cases, we respectfully disagree.

as it is, with little or no choice as to its terms." *Medtech Corp. v. Ind. Ins. Co.*, 555 N.E.2d 844, 850 n.3 (Ind. Ct. App. 1990) (quoting *Vernon Fire & Cas. Ins. Co. v. Thatcher*, 260 Ind. 55, 56, 292 N.E.2d 606, 606 (1973) (denial of petition to transfer) (Arterburn, J., concurring)), *trans. denied*. In addition, an insured rarely reads the insurance contract, and even if the insured did read the policy, it is doubtful that he or she would gain more knowledge "because of the technical language." *Id*. (quoting *Vernon*, 260 Ind. at 56, 292 N.E.2d at 606).

[19] Still, the exception to the traditional rule that an insured has a duty to read and understand the policy is not limitless. Our supreme court has stated that the "exception negates an insured's duty to read part of the policy if an agent insists that a particular hazard will be covered." *Filip*, 879 N.E.2d at 1084.

> If the agent insists to the prospective purchaser that the policy will insure against a hazard ... that the prospect is particularly concerned about, and the hazard materializes, the company may be estopped to plead the terms of the policy because the strength of the agent's oral assurances lulled the prospect into not reading, or reading inattentively, *dense and rebarbative policy language*.

Id. (emphasis added) (quoting *Vill. Furniture*, 541 N.E.2d at 308).

[20] The Morgans contend that the "designated evidence demonstrates that a State Farm agent made false representations to [them] regarding the extent of their insurance coverage, and [they] have averred that they relied on those representations." Appellants' Br. at 24. They maintain that reasonable reliance is a question for the trier of fact, citing *Earl v. State Farm Mutual Automobile Insurance Co.*, 91 N.E.3d 1066, 1073 (Ind. Ct. App. 2018), *trans. denied*. In that

case, Jerry and Kimberly Earl had an uninsured motorist (UM) policy with available coverage of $250,000 and a personal liability umbrella policy (PLUP), which included available coverage for damage done by an uninsured motorist of $2,000,000, both of which were with State Farm. Jerry was injured in a motorcycle crash with a hit-and-run driver. After the Earls filed a claim with State Farm and rejected State Farm's offer to settle, they sued State Farm. During discovery, State Farm's attorney answered interrogatories without ever mentioning the PLUP policy. A jury returned a verdict of $175,000 in favor of the Earls. The following day, State Farm directed its counsel to inform the Earls' counsel of the existence of the PLUP policy, and within a week State Farm provided a copy of the PLUP policy. Kimberly Earl (Jerry had died from unrelated causes) then filed a complaint against State Farm alleging fraud, constructive fraud, bad faith, and breach of contract. Relevant to this appeal, the trial court granted summary judgment to State Farm on the fraud and constructive fraud claims on the grounds that, as a matter of law, Kimberly could not reasonably rely on State Farm's representations in the earlier litigation.

[21] Earl appealed. State Farm contended that the case did not involve the interpretation of complex insurance provisions and Earl had sufficient notice of the terms of the PLUP policy because this information was reflected on many pages of the policy documents, including the declarations page, which was the first page of the policy, and therefore Earl's reliance on their representations was not reasonable. *Id.* at 1075. The *Earl* court rejected State Farm's contention

and concluded that "there is a question of fact regarding whether Earl's reliance on [State Farm's] representations of her insurance coverage was reasonable." *Id*. at 1076. In reaching this conclusion, the *Earl* court distinguished *Wiggam v. Associates Financial Services of Indiana, Inc.*, 677 N.E.2d 87 (Ind. Ct. App. 1997), explaining that "the language in the PLUP is more complex than the two-page loan document in *Wiggam*" and that "even within State Farm there existed confusion regarding the coverage available." *Id*.

[22] The Morgans also argue that *Wiggam* is distinguishable from the case at hand. In *Wiggam*, the insured chose to receive disability insurance for a 1986 loan that would make payments on the loan if Wiggam became disabled and unable to pay. On the loan application, Wiggam signed the portion of the application that indicated that he wanted disability insurance. In 1988, Wiggam took out another loan. The loan application was identical to the previous loan application, but this time Wiggam did not sign the portion that would indicate he wanted disability insurance. He claimed that the bank representative offered him disability coverage and assured him on at least three separate occasions that if he were to become disabled, his loan payments would be made. Wiggam became permanently disabled and applied for the disability insurance. He was denied his claim for the 1988 loan, and the Wiggams filed a complaint against the bank and insurance company for breach of oral contract, negligence, promissory estoppel, and fraud. The defendants sought and were granted summary judgment on all claims, and the Wiggams appealed.

[23] The *Wiggam* court agreed with the Wiggams that "when an insurance agent makes oral representations about the content or effect of a complex insurance policy which actually contradict the express terms of the policy, an insured's reasonable reliance upon those representations may override the insured's obligation to read and be familiar with the terms of the policy." *Id*. at 90-91. However, based upon the rationale for the exception to "the general rule that one is bound to know and understand the contents of written documents he or she signs," the court concluded that the exception did not apply. *Id*. at 91. The court reasoned that the case "did not involve the terms of a complex insurance policy," but involved "a few clear terms in a two-page application for insurance." *Id*. The court further noted that the case did not involve "a contract of adhesion under which one must accept the terms of a pre-printed insurance policy as written or decline coverage altogether" and that it was "clear from the face of the loan application" that the Wiggams were free to choose whether they wanted disability insurance. *Id*. Finally, the court found that the "1988 loan application demonstrate[d] that the Wiggams affirmatively decided to forgo the opportunity to be protected by Credit Disability insurance." *Id*. Thus, the court concluded that the bank and the insurance company were entitled to judgment as a matter of law. *Id*.

[24] Neither *Earl* nor *Wiggam* is on all fours with the facts of this case. Nevertheless, the rationale for the exception to the duty to read leads us to conclude that it does not apply. First, the exception has been applied to whether a particular hazard has been covered, and there is no dispute here that the Morgans' home

was covered. Further, this case involves an unambiguous dollar amount that appears on the first page of the renewal certificates. At least under the facts of this case, the dollar amount does not qualify as technical or complex language. If the Morgans had glanced at the first page of the renewal certificates, they certainly would have immediately recognized the coverage limit of their policy. We also note that the renewal certificates were not contracts of adhesion, as the Morgans had a choice regarding the coverage limits. We agree with Defendants that "if the exception to the duty to read were extended to dollar amounts on the first page of a renewal certificate, an insured would have no duty to read any document." Appellees' Br. at 17. Accordingly, we conclude as a matter of law that the traditional rule, i.e., "reliance is not justified where the injured party has a written instrument available and fails or neglects to read it[,]" applies. *Plohg*, 583 N.E.2d at 1237.

Section 3 – Defendants are entitled to summary judgment on the Morgans' negligence claim.

[25] As for the Morgans' negligence claim, they alleged that Defendants were negligent in fulfilling their duty to procure sufficient replacement cost coverage for their home. Defendants moved for summary judgment on this claim on the grounds that it was filed outside the two-year statute of limitations for tort claims. Ind. Code § 34-11-2-4. The Morgans argued to the trial court that the statute of limitations was tolled by their reasonable reliance on the alleged representations made by Defendants in May 2012. The trial court reasoned that the statute of limitations began to run as early as April 4, 2013, because the

Morgans could have discovered in the exercise of ordinary diligence that their policy limits had not changed by looking at the renewal certificate. The trial court concluded that their negligence claim was time-barred because they did not commence the action until September 2017.

[26] The trial court's conclusion is in accord with our supreme court's decisions in *Filip* and *Groce v. American Family Mutual Insurance Co.*, 5 N.E.3d 1154 (Ind. 2014). *Filip* involved the Filips' claim against an insurance agent and insurance agency, asserting that they had been negligent in advising them on selecting adequate insurance for their apartment building. The Filips purchased the insurance policy in January 1999, and their apartment building was substantially destroyed by fire in 2003. Our supreme court was called on to determine when the Filips' claim accrued. The court explained that in general "the cause of action of a tort claim accrues and the statute of limitations begins to run when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another." 879 N.E.2d at 1082 (quoting *Wehling v. Citizens Nat'l Bank*, 586 N.E.2d 840, 843 (Ind. 1992)). The court also observed that the limitation period may be tolled where the insured's "reasonable reliance upon an agent's representations … override[s] an insured's duty to read the policy." *Id*. at 1084 (quoting *Vill. Furniture*, 541 N.E.2d at 308). Our supreme court concluded that the statute of limitations accrued "on or shortly after the activation of the policy" because the insureds could have discovered the inadequacy of their coverage "simply by reading the policy." *Id*. at 1084.

[27] Similarly, in *Groce*, the court concluded that "in the exercise of ordinary diligence in reviewing their homeowners insurance policy, [the insureds] could have timely discovered the policy limits," and therefore "the statute of limitations … began to run no later than the first policy renewal after the [insurance agent's] alleged statements." 5 N.E.3d at 1159. As discussed in the previous section, the Morgans easily could have ascertained that their coverage had not been increased by simply looking at the renewal certificate in April 2013. Accordingly, as a matter of law their negligence claim, filed in September 2017, is time-barred.

Section 4 – Defendants are entitled to summary judgment on the Morgans' fraud claim.

[28] "Actual fraud exists when there is a material misrepresentation of a past or existing fact made with knowledge of or reckless disregard for the falsity of the statement to the detrimental reliance of a third party." *Munsell v. Hambright*, 776 N.E.2d 1272, 1281 (Ind. Ct. App. 2002), *trans. denied* (2003). "[R]eliance on the omission or misrepresentation must be justified before the fraud becomes actionable." *Medtech*, 555 N.E.2d at 849. To demonstrate reasonable reliance, the plaintiff must show not only that he in fact relied on the misrepresentation, but also that he had a right to rely on it. *Plymale*, 419 N.E.2d at 761. As we have already discussed, the renewal certificates were simple and the amount of dwelling coverage was unambiguous. Had the Morgans looked at them, they would have seen that their coverage had not been increased by $150,000. Therefore, we conclude as a matter of law that the Morgans' reliance on

Defendants' alleged statements was not justified. Based on the foregoing, we affirm summary judgment in favor of Defendants.

[29] Affirmed.

May, J., and Weissmann, J., concur.