

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**DECEMBER 10, 1996**

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

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1142**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**WENDY MARIE HENDERSON,**

**Plaintiff-Appellant,**

**v.**

**JOHN GLAUS and AMERICAN STANDARD  
INSURANCE COMPANY OF WISCONSIN,**

**Defendants-Respondents.**

APPEAL from a judgment of the circuit court for Pierce County:  
DANE F. MOREY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Wendy Henderson appeals a summary judgment dismissing her action against American Standard Insurance Company of Wisconsin (ASIC). The trial court would not allow Henderson to stack her underinsured motorist (UIM) coverage provided by her policy with ASIC on the liability coverage provided by the same policy. Henderson argues that she understood the policy to allow stacking and that § 631.43(1), STATS., compels the

stacking of liability and UIM coverage despite the policy language precluding stacking. We reject these arguments and affirm the judgment.

Henderson was a passenger in her own car at the time she was injured in a one-car accident. Henderson recovered the liability limit, \$50,000, from ASIC because her policy insured the driver as a permissive user of her car. Henderson then brought this action to recover an additional \$50,000 based on the UIM provisions of the same policy.

Construction of an unambiguous insurance contract presents a question of law that we review de novo. *Martin v. Milwaukee Mut. Ins. Co.*, 146 Wis.2d 759, 766, 433 N.W.2d 1, 3 (1988). When an insurance policy's terms are plain on their face, the policy will not be rewritten by construction. *Limpert v. Smith*, 56 Wis.2d 632, 640, 203 N.W.2d 33-34 (1973).

Henderson's policy with ASIC unambiguously precludes stacking the UIM coverage and the liability coverage. The definition of "underinsured motor vehicle" in the policy specifically excludes a vehicle "insured under the liability coverage of this policy." Despite this language, Henderson contends that she believed she could stack the two coverages. The question is not the subjective expectations of the insured, but whether a reasonable insured would have interpreted the policy in this manner. See *Meyer v. Classified Ins. Co.*, 192 Wis.2d 463, 648, 531 N.W.2d 416, 418 (Ct. App. 1995). No reasonable person reading the entire policy would have believed that the policy allowed both liability and UIM coverage for this accident.

Section 631.43(1), STATS., does not compel stacking of these coverages. That statute applies "when two or more policies promise to indemnify an insured ...." Henderson does not have two or more insurance policies. Rather, she is attempting to stack the coverages under a single policy. Section 631.43(1) does not preclude anti-stacking language for two coverages arising out of the same policy.

Citing *Rodey v. Stoner*, 180 Wis.2d 309, 317, 509 N.W.2d 316, 319 (Ct. App. 1993), and *Krech v. Hanson*, 164 Wis.2d 170, 177, 473 N.W.2d 600, 603 (Ct. App. 1991), Henderson argues that a single insurance policy can be

construed as more than one policy for purposes of § 631.43, STATS., if additional premiums have been paid and the policy creates two or more coverages. Those cases involved a single policy that insured more than one vehicle. They did not involve attempts to stack coverage from a single policy insuring a single vehicle.

*By the Court.* – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.