**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-1152**

Smith Jadin Johnson, PLLC, et al.,
Respondents,

vs.

Minnesota Lawyers Mutual Insurance Company,
Appellant.

**Filed June 16, 2025**
**Reversed and remanded**
**Harris, Judge**

Hennepin County District Court
File No. 27-CV-23-8247

Margo Brownell, Bryan Freeman, Judah Druck, Maslon LLP, Minneapolis, Minnesota (for respondents)

Richard J. Thomas, Chris Angell, Burke & Thomas, P.L.L.P., Arden Hills, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Johnson, Judge; and Bentley, Judge.

**NONPRECEDENTIAL OPINION**

**HARRIS**, Judge

In this insurance-coverage dispute, appellant challenges the district court's grant of judgment on the pleadings in favor of respondents. For respondents to be entitled to coverage, the insurance policy required the claim to be deemed made and reported during

the applicable policy period. The district court concluded that those requirements were satisfied, and appellant had a duty to defend respondents.

Appellant argues that the district court's interpretation of the insurance policy was erroneous based on the plain language of the policy and that the district court should have granted appellant's motion for summary judgment because there is no genuine issue of material fact. Based on our recent decision in *Minnesota Laws. Mut. Ins. Co. v. Bradshaw & Bryant L. Off. PLLC*, 19 N.W.3d 206 (Minn. App. 2025) (*Bradshaw*), we agree with appellant that the district court's interpretation of the policy was erroneous and we therefore reverse.[1] However, because there remains a genuine issue of material fact, we remand for further proceedings.

## FACTS

### *The Insurance Policy*

Respondents Smith Jadin Johnson PLLC, Alexander Jadin, and Ross Hussey (SJJ) purchased professional-liability insurance from appellant Minnesota Lawyers Mutual Insurance Company (MLM) since 2013. In 2022, SJJ renewed its insurance with MLM for the applicable policy period, March 29, 2022, through March 29, 2023. In relevant part, the MLM policy provided coverage for "all DAMAGES the INSURED may be legally obligated to pay and CLAIM EXPENSES, due to any CLAIM," "provided that", "the CLAIM is deemed made during the POLICY PERIOD; and . . . the CLAIM is reported

[1] We recognize that the district court did not have the benefit of *Bradshaw*, which was decided after briefing, but prior to oral argument, in this matter.

to [MLM] during the POLICY PERIOD or within 60 days after the end of the POLICY PERIOD."

The policy defines a "claim" as:

> (1) a demand communicated to the INSURED for DAMAGES [f]or PROFESSIONAL SERVICES;
> (2) a lawsuit served upon the INSURED seeking such DAMAGES;
> (3) any notice or threat, whether written or oral, that any person, business entity or organization intends to hold an INSURED liable for such DAMAGES; or
> (4) any act, error or omission by any INSURED which could support or lead to a demand for such DAMAGES.

At issue here is the policy's deemed-made clause, which explains that a "CLAIM" is deemed made when:

> (1) a demand is communicated to an INSURED for DAMAGES resulting from the rendering of or failure to render PROFESSIONAL SERVICES; or
> (2) an INSURED first becomes aware of any actual or alleged act, error or omission by any INSURED which could support or lead to a CLAIM.

The deemed-made clause also states that, "All CLAIMS arising out of the same or related PROFESSIONAL SERVICES shall be considered one CLAIM and shall be deemed made when the first CLAIM was deemed made."

***The Underlying Malpractice Claim***

On August 28, 2020, Aspenwood Condominiums of Duluth approached SJJ seeking representation in a disputed property insurance claim against Aspenwood's insurer, PMA Companies, related to hail damage that occurred on August 31, 2018. Aspenwood's insurance policy included a requirement that any lawsuit be brought within two years of

the loss, which expired on August 31, 2020. The same day that this two-year limitation period expired, Aspenwood officially retained SJJ. SJJ drafted a summons and complaint and attempted personal service on PMA at its corporate headquarters in Pennsylvania.

The following day, September 1, 2020, SJJ learned that personal service was impossible, and served the summons and complaint by certified mail on the Minnesota Commissioner of Commerce under Minnesota Statutes section 45.028 (2024). SJJ contended that PMA was required to maintain a registered agent for personal service and failed to do so, and that the Aspenwood complaint did not qualify for substitute service under section 45.028.[2]

In April 2021, the district court dismissed the Aspenwood matter because Aspenwood did not commence the lawsuit within the two-year limitation contained in the insurance contract. SJJ appealed. *See Aspenwood Condominium of Duluth, Inc. v. PMA Cos.*, No. A21-0719, 2022 WL 433241 (Minn. App. Feb. 14, 2022), *rev. denied* (Minn. Apr. 27, 2022). We affirmed, concluding:

> [T]he Association failed to take "reasonably prudent steps" to avoid the consequences of ineffective and untimely service. The Association knew of the COVID-19 pandemic and its ramifications, yet it elected to personally serve an out-of-state corporation on the last day of the contractual period

[2] SJJ contends under section 45.028, substitute service is only available via the Commissioner of the Department of Commerce when the complaint alleges a violation of certain Minnesota statutes, which the Aspenwood complaint did not allege. *See Wandersee v. RAM Mut. Ins. Co.*, No. A21-1060, 2022 WL 589461, at *1-2 (Minn. App. Feb. 28, 2022) ("[S]ubstitute service pursuant to section 45.028 requires the complaint to allege the defendant 'engage[d] in conduct prohibited or made actionable' by section 65A. The plain language of the statute, therefore, requires an allegation that the defendant engaged in a prohibited act or behavior for substitute service to be available." (quoting Minn. Stat. § 45.028, subd. 1 (2020))).

> without even attempting to confirm that PMA's office was open. Had the Association called PMA to inquire as to whether the office would be open, it could have timely commenced this action by serving the Commissioner via certified mail. Moreover, had the Association taken advantage of the alternative method of service via the Commissioner, it would have eliminated the risk of ineffective service entirely. Accordingly, the Association assumed the calculated risk associated with attempting personal service under these circumstances.

*Id.* at *3.

SJJ contends that, following our decision, it petitioned the Minnesota Supreme Court for review because SJJ recognized a conflict between the *Aspenwood* decision and *Wandersee*, 2022 WL 589461, at *2-3. The supreme court denied review of the *Aspenwood* matter on April 27, 2022.

On September 28, 2022, Aspenwood provided SJJ with a written demand for damages related to the litigation against PMA. The same day, SJJ provided notice of the demand for damages to MLM. On October 14, 2022, MLM notified SJJ that SJJ's policy did not provide coverage for the Aspenwood claim. MLM explained that the claim was deemed made, at the latest, on February 14, 2022—the date that we issued our decision in the *Aspenwood* matter, which was prior to the applicable policy period. MLM concluded that SJJ did not timely report the Aspenwood claim to MLM as required under the policy. In December 2022, Aspenwood sued SJJ for negligence and malpractice for failure to commence its suit against PMA within two years.

***This Appeal***

In May 2023, SJJ sued MLM for breach of contract and declaratory judgment, alleging that MLM wrongfully denied coverage for the Aspenwood claim. SJJ filed a

motion for judgment on the pleadings and MLM filed a motion to dismiss because SJJ did not name Aspenwood as a party. MLM also argued that there were no genuine issues of material fact and that the district court should grant summary judgment in favor of MLM.

The district court denied MLM's motion to dismiss and granted SJJ's motion for judgment on the pleadings, concluding that MLM had a duty to defend SJJ in the Aspenwood claim. The district court stated that "[b]oth parties agree the claim involves interpretation of the insurance contract and that there are no material issues of fact." The district court determined that the policy language is "clear and unambiguous," and that a claim is deemed made when either of the conditions in the deemed-made clause occurs. The district court further stated, "[t]he fact that one could argue that facts could have been determined such that [the claim] could have been 'deemed made' under the second, separate clause [prior to the policy period] does not prevent it . . . from ***also*** being deemed made . . . upon the demand."

MLM appeals.

## DECISION

MLM argues that the district court erred by granting judgment on the pleadings because the district court's interpretation of the insurance policy was erroneous under the plain language of the policy. MLM also argues that the district court should have granted MLM's motion for summary judgment because, under the correct interpretation of the policy, there is no genuine dispute that the Aspenwood claim was deemed made prior to the applicable policy period and not timely reported.

We review a district court's decision on a motion for judgment on the pleadings de novo "to determine whether the complaint sets forth a legally sufficient claim for relief." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted). "[W]e consider only the facts alleged in the complaint, accepting those facts as true and drawing all reasonable inferences in favor of the nonmoving party." *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). The interpretation of the professional liability insurance policy is a question of law that we also review de novo. *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). This includes "whether a policy provides coverage in a particular situation" and "whether provisions in a policy are ambiguous." *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 687 (Minn. 2018); *King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 316 (Minn. 2021) (quotation omitted). An insurance policy is ambiguous only "if it is reasonably subject to more than one interpretation." *Am. Com. Ins. Brokers, Inc. v. Minn. Mut. Fire & Cas. Co.*, 551 N.W.2d 224, 227 (Minn. 1996).

We first consider whether the district court erred by granting judgment on the pleadings based on an erroneous interpretation of the insurance policy. Then, we consider whether a genuine dispute remains.

## I. The district court erred by granting judgment on the pleadings because the plain language of the insurance policy requires that the insured timely report the claim the first time that the claim is deemed made.

The parties disagree whether SJJ's claim was deemed made within the applicable policy period as required by the plain language of the deemed-made clause. The deemed-made clause states that a "CLAIM is deemed made" when one of the following conditions

occur: "(1) a demand is communicated to an INSURED for DAMAGES resulting from the rendering of or failure to render PROFESSIONAL SERVICES; or (2) an INSURED first becomes aware of any actual or alleged act, error or omission by any INSURED which could support or lead to a CLAIM." Additionally, "All CLAIMS arising out of the same or related PROFESSIONAL SERVICES shall be considered one CLAIM and shall be deemed made when the first CLAIM was deemed made."

MLM argues that a claim is deemed made the first time either of the two conditions are met. In contrast, SJJ argues, consistent with the district court's interpretation, that a claim is deemed made if either of the two conditions are met, regardless of whether the same claim may have already been deemed made in a previous policy period but was not reported. Alternatively, SJJ argues that the policy is ambiguous and should be interpreted in favor of the insured to require coverage.

We recently interpreted the identical policy language and deemed-made clause at issue here. In *Bradshaw*, 19 N.W.3d at 215-217, we concluded that the policy was not ambiguous and that "under the policy, once a claim was deemed made under either provision of the deemed-made clause, the claim had to be reported during the then-applicable policy period and could not later be deemed made again and reported during another policy period." We discern no reason to depart from the same conclusion here.

Therefore, the district court erred by interpreting the deemed-made clause to provide coverage. The district court concluded that even if SJJ's claim was deemed made prior to the applicable policy period, the same claim could be deemed made again during the applicable policy period. This conclusion directly conflicts with our holding in *Bradshaw*.

19 N.W.3d at 217. Because the district court's decision to grant judgment on the pleadings in favor of SJJ was based on an erroneous interpretation of the insurance policy, we reverse.[3]

## II. Whether SJJ's claim was deemed made prior to the applicable policy period is a factual dispute for the district court to resolve.

The parties disagree whether, under the correct interpretation of the policy, a genuine factual dispute remains regarding whether the claim was deemed made prior to the applicable policy period. MLM maintains that it does not have a duty to defend SJJ because "it is undisputed that [SJJ] became aware on September 1, 2020, that Aspenwood's complaint against PMA had not been served within the two-year limitations period." Therefore, SJJ is not entitled to coverage because SJJ's claim was deemed made on September 1, 2020, prior to the applicable policy period—March 29, 2022, through March 29, 2023. In contrast, SJJ argues that the fact development and discovery is needed to determine when SJJ first became aware of allegations that could lead to a claim for damages because "SJJ's awareness of an act or error that could later lead to a claim [is] necessarily fact-dependent." SJJ argues that SJJ's awareness is dependent on "the SJJ-Aspenwood engagement and relationship, communications between SJJ and Aspenwood,

[3] Alternatively, SJJ argues that we should affirm the district court's decision because notice is not a condition precedent to coverage and MLM has never alleged any actual prejudice from the timing of SJJ's notice. In *Bradshaw*, we decided that notice is a condition precedent because the policy language uses the phrase "provided that," which "unambiguously requires [the insured] to report a claim within a certain time frame as a condition precedent to coverage." 19 N.W.3d at 220. And because notice is a condition precedent, if the claim was not timely reported, actual prejudice is not required to deny coverage. Therefore, SJJ's alternative argument lacks merit.

SJJ's actions, the proceedings in the initial Aspenwood property-insurance litigation, and more."

Whether an insurer has a duty to defend or indemnify is a legal question that we review de novo. *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2022). "The duty to defend is broader than the duty to indemnify," because it extends to "claims that arguably fall within the scope of the policy." *Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 415 (Minn. 1997). An insurer challenging the duty to defend "has the burden of showing that all parts of the cause of action fall clearly outside the scope of coverage." *Westfield Ins. Co. v. Kroiss*, 694 N.W.2d 102, 106-07 (Minn. App. 2005) (quotation omitted).

To support its argument that SJJ is not entitled to coverage, MLM relies on *Pelagatti v. Minnesota Laws. Mut. Ins. Co.*, No. 11-7336, 2013 WL 3213796 (E.D. Pa. June 25, 2013). In *Pelagatti*, the court analyzed whether the insured violated the policy by failing to notify the insurance company of an "act, error or omission . . . which could *reasonably* support or lead to a demand for damages." 2013 WL 3213796, at *2, *7. To interpret "reasonably support," *Pelagatti* applied a two-pronged subjective/objective test to "consider[] the subjective knowledge of the insured and then the objective understanding of a reasonable attorney with that knowledge." *Id.* at *6 (quotation omitted). The court granted summary judgment in favor of the insurance company because, as relevant here, "[the insured] knew that [the] claims were dismissed . . . because of his failure to comply with the relevant statute of limitations, and he knew that his appeal was dismissed as

untimely. Also, [the insured] and [his client] discussed the possibility of [his client] suing him." *Id.* at *7.

MLM argues that we should apply the same two-pronged test as in *Pelagatti* and conclude that SJJ objectively became aware that it had not served the summons and complaint within the two-year contractual limitations period on September 1, 2020. However, *Pelagatti* is distinguishable from this case. First, as a nonprecedential, district court case, *Pelagatti* is not binding on this court. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that we are "bound by supreme court precedent and the published opinions of the court of appeals"), *rev. denied* (Minn. Sept. 21, 2010). *Pelagatti* also analyzed different policy language and was decided after discovery was completed. Because the court had the benefit of discovery, it relied on summary judgment evidence, including a letter and deposition, to make its decision. *Id.* at *6-7. Even if we applied this standard here and concluded that the objective prong was met, the record lacks sufficient facts to determine when SJJ subjectively became aware that the untimely service could lead to a claim for damages because the parties did not engage in discovery and evidence was not presented to the court.

Like *Pelagatti*, *Bradshaw* involved a grant of summary judgment after the district court determined that there was no genuine dispute that the claim was first deemed made prior to the applicable policy period when the insured received a letter threatening legal action. *Bradshaw*, 19 N.W.3d at 219. Because the insured did not report the claim to the insurer when it received the letter, the insurer did not have a duty to defend. *Id.* at 218-19. We concluded that the claim was deemed made prior to the applicable policy period

because, upon receiving this letter, the insured "was aware of allegations that could lead to a claim for damages." *Id.* at 219. To reach this conclusion, we relied on undisputed facts in the record, including that the litigation-hold letter referred to "potential legal action," and "that failure to comply with the litigation hold could negatively affect [the insured's] 'defenses in this matter.'" *Id.* The insured also received an email "instruct[ing] him to notify his malpractice carrier" because the "letter concerns a potential malpractice action." *Id.* The insured was also aware that the client they had just represented at trial was "understandably upset," and that two months after trial the client "requested substitution of counsel 'to handle the posttrial and appeal process.'"

Here, unlike *Bradshaw*, the district court did not decide whether SJJ's claim was deemed made prior to the applicable policy period. Instead, the district court relied on the September 28, 2022, demand from Aspenwood and determined that the policy language was "clear and unambiguous" and that the claim could be deemed made again, even if it had already been deemed made prior to the applicable policy period. The parties' briefing focused on the interpretation of the policy, not whether the claim was deemed made prior to the applicable policy period, and there is nothing definitive in the pleadings, such as the letter in *Bradshaw*, to establish when SJJ became aware of allegations that could lead to a claim. Therefore, we remand to the district court to reconsider whether MLM has a duty to defend SJJ in light of this opinion. *See Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) ("[A]n undecided question is not usually amenable to appellate review."); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.

1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court).

**Reversed and remanded.**