**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**November 11, 2026**

**Samuel A. Christensen**
**Clerk of Court of Appeals**

**NOTICE**

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

**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. 2025AP1423** **Cir. Ct. No. 2024CV1227**

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

---

**LANNON STONE PRODUCTS, INC.,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WEST BEND MUTUAL INSURANCE COMPANY,**

**DEFENDANT-APPELLANT.**

---

APPEAL from an order of the circuit court for Waukesha County: MICHAEL P. MAXWELL, Judge. *Reversed and cause remanded with directions*.

Before Lazar, P.J., Gundrum, and Grogan, JJ.

**Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

¶1 PER CURIAM. West Bend Mutual Insurance Company ("West Bend") appeals from a non-final decision and order in which the circuit

court denied West Bend's motion for summary judgment and granted Lannon Stone Products, Inc.'s ("Lannon") partial summary judgment motion in this insurance coverage dispute.[1] West Bend says the court erred in concluding that its policy provides coverage for well damage purportedly caused by Lannon's quarrying operations. Having reviewed the briefs and record, we conclude that West Bend's insurance policy does not provide coverage for the well damage at issue here due to Lannon's breach of contract. Accordingly, we reverse and remand with instructions for entry of summary judgment in West Bend's favor as to coverage and denial of Lannon's motion for partial summary judgment.

¶2 West Bend issued a Commercial General Liability (CGL) insurance policy to Lannon for the policy period of March 1, 2022, through March 1, 2023. Lannon conducted blasts at its Sussex Quarry in November 2022 (the November Blasts), which purportedly resulted in damage to multiple wells in an adjacent neighborhood. In August 2023, Lannon submitted a claim to West Bend pursuant to the CGL policy and informed West Bend that the claim related to the November Blasts. West Bend denied coverage on the basis that damage to the neighboring wells was not an "occurrence" because it was an "expected or intended" result of the quarrying operations within the meaning of the CGL policy, as well as on the basis that the "Contractual Liability" exclusion precluded coverage.

¶3 Lannon thereafter filed a summons and complaint in July 2024 seeking declaratory judgment as to coverage under the CGL policy, *see* WIS. STAT. § 806.04 (2023-24),[2] and damages for breach of contract in an amount not

[1] We previously granted West Bend's petition for leave to appeal the non-final order.

[2] All references to the Wisconsin Statutes are to the 2023-24 version.

less than $2,355,278.40, which Lannon says it has incurred in costs to remediate damage to wells on account of the November Blasts. The parties filed cross-motions for summary judgment. West Bend asserted there was no initial grant of coverage under the CGL policy because there was no "occurrence," or, alternatively, because even if there was an "occurrence," multiple exclusions and conditions eliminated coverage. Lannon sought partial summary judgment as to coverage and argued there was an initial grant of coverage because the well damage was an "occurrence" within the policy's definition and no exclusion or other policy provision applied to preclude coverage.

¶4 The circuit court held a hearing on the cross-motions in February 2025, and in a June 2025 written decision and order, it granted Lannon's motion for partial summary judgment and denied West Bend's motion for summary judgment. The court concluded there was coverage under the CGL policy because the well damage constituted an "occurrence" under the policy's terms and because no exclusion or other provision applied to preclude coverage. In reaching its conclusion, particularly as to Lannon's lack of intention to cause damage to nearby wells through its blasting operations, the court relied largely on cases such as ***American Family Mutual Insurance Co. v. American Girl, Inc.***, 2004 WI 2, 268 Wis. 2d 16, 673 N.W.2d 65, and ***Glendenning's Limestone & Ready Mix Co., Inc. v. Reimer***, 2006 WI App 161, 295 Wis. 2d 556, 721 N.W.2d 704. We granted West Bend's subsequent petition for leave to appeal a non-final order. Additional facts will be developed below as necessary.

¶5 Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WIS. STAT. § 802.08(2); *see also*

***Talley v. Mustafa***, 2018 WI 47, ¶12, 381 Wis. 2d 393, 911 N.W.2d 55. "Appellate courts review a grant of summary judgment de novo using the same methodology as the circuit court." ***Martinez v. Rullman***, 2023 WI App 30, ¶18, 408 Wis. 2d 503, 992 N.W.2d 853.

¶6 The interpretation of an insurance contract is likewise a question of law appellate courts review de novo, and the "primary purpose in interpreting a contract for insurance is to give effect to the intentions of the parties." ***Cincinnati Ins. Co. v. Ropicky***, 2026 WI 25, ¶¶45-46, 421 Wis. 2d 165, 36 N.W.3d 917 (citation omitted). The parties' intent "is found primarily in the policy language itself[,]" and we will "construe policy language as it would be understood by a reasonable insured, 'giving the words used their common and ordinary meaning.'" ***Id.***, ¶46 (citation omitted). "We also 'look to the purpose of the particular insurance and the kind of coverage that a reasonable person in the insured's position would expect under the policy.'" ***Id.*** (citation omitted).

¶7 In this appeal, we must determine whether the circuit court correctly concluded that West Bend's CGL insurance policy provides coverage for well damage purportedly resulting from the November Blasts. West Bend asserts that the policy does not provide coverage for multiple reasons. First, it says the policy prohibits voluntarily assumed obligations or voluntary payments and that Lannon breached this provision when it "assumed obligations [regarding well replacement and the process for establishing liability] in its Amended Plan of Operation in order to secure its mining permit and government permission to blast rock with explosives near residential neighborhoods." Next, it asserts the well damage was not an "occurrence" within the policy's terms. Third, it argues that even if there was an "occurrence," the expected or intended injury exclusion applies because Lannon expected damage to wells as a result of its quarrying operations. Finally,

West Bend argues that Lannon assumed liability for the well damage contrary to the contractual liability exclusion.

¶8 Lannon, in turn, argues that the circuit court did not err and that the CGL policy does provide coverage because: (1) the well damage at issue constitutes an "occurrence" under the policy's terms; (2) the exclusions West Bend relies upon do not apply; and (3) it did not breach the policy's prohibition against voluntary payment or voluntary assumption of liability conditions.

¶9 We utilize a three-part framework when determining whether an insurance policy provides coverage. ***Id.***, ¶47. First, we determine whether there is an initial grant of grant of coverage. ***Id.*** "If so, we examine whether an exclusion applies that would remove coverage." ***Id.*** "If an exclusion applies, the final step asks whether an exception to the exclusion applies, thereby reinstating coverage." ***Id.*** The insured bears the burden of proof as to the first and third steps while the insurer bears the burden of establishing an exclusion applies. ***Id.***, ¶48.

¶10 Each of West Bend's arguments initially depends upon whether the well damage was an "occurrence" within the CGL policy's terms. As relevant, the policy provides that West Bend "will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." The policy "applies to 'bodily injury' and 'property damage' only if" "[t]he 'bodily injury' or 'property damage' is caused by an 'occurrence' that takes place in the 'coverage territory[.]'" Under the policy's terms, "'[o]ccurrence' means an accident, including continuous or repeated exposure to substantially the same general harmful conditions." While the policy itself does not define "accident," our courts "have interpreted identical

policy language many times" and have generally interpreted "accident" as meaning "'an event or condition occurring by chance or arising from unknown or remote causes,' or 'an event which takes place without one's foresight or expectation.'" ***5 Walworth, LLC v. Engerman Contracting, Inc.***, 2023 WI 51, ¶34, 408 Wis. 2d 39, 992 N.W.2d 31; *see also* ***Riverback Farms, LLC v. Saukville Feed Supplies, Inc.***, 2023 WI App 40, ¶11, 409 Wis. 2d 14, 995 N.W.2d 257.

¶11 Having reviewed the policy language, record, and arguments raised on appeal, we are satisfied that the well damage at issue constitutes an "occurrence" within the policy's terms. Although Lannon's blasting activities were intentional, "an initial intentional act by the insured—the provision of goods, products or work—can set in motion a chain of events that includes an accident, a covered occurrence, causing property damage." *See* ***Riverback Farms, LLC***, 409 Wis. 2d 14, ¶17. "The focus is on whether the injury or damages was foreseeable or expected, not on whether the action that caused the damages was intended." ***Id.*** Here, while Lannon did intentionally engage in blasting activities at the Sussex Quarry as part of its business operations, that intentional act "set in motion a chain of events" that appears to have resulted in unforeseen property damage to neighboring wells. *See* ***id.*** We are unpersuaded by West Bend's argument that Lannon's intentional act created a direct risk of foreseeable harm under ***Schinner v. Gundrum***, 2013 WI 71, 349 Wis. 2d 529, 833 N.W.2d 685, or that Lannon "expected and anticipated" that its quarrying activities would cause well damage, as West Bend contends, such that the damage was not an accident/"occurrence" within the policy's terms.

¶12 Having concluded there was an "occurrence" and therefore an initial grant of coverage, we would typically next consider whether an exclusion applies

to preclude coverage. We need not do so here, however, because West Bend points to a different policy provision we conclude is determinative in this case—the "Duties In The Event Of Occurrence, Offense, Claim Or Suit" provision (the "Duties provision").[3] (Formatting altered.) This provision is not found in the exclusions section of the CGL policy but rather within the "Commercial General Liability Conditions" section. (Formatting altered.) As relevant, the Duties provision provides that "in the event of an occurrence … [n]o insured will, except at that insured's own cost, voluntarily make a payment, *assume any obligation*, or *incur any expense*, other than for first aid, *without our consent*." (Formatting altered; emphases added.)

¶13 Here, Lannon entered into an "Amended and Restated Plan of Operation" agreement with the Town of Lisbon[4] in 2021 (the "Agreement"). (Formatting altered.) As relevant, the Agreement provides that Lannon "shall be liable to pay all costs to correct any problems caused by [Lannon]'s quarry operations to water and/or sewer mains" in specified areas and that:

> Should problems develop, or in the event a complaint is received from the owner of a well or water and/or sewer main in the Town of Lisbon, then the same shall be investigated by a licensed well driller or inspector acceptable (collectively, the "Inspector") to the Town and [Lannon] who shall determine if a problem exists, and if so, to what extent was it caused by [Lannon]'s quarry operations or site activities and what is required to correct the problem. If a problem does exist that is the result of [Lannon]'s quarry operations or site activities, [Lannon] shall be solely responsible for the cost of correcting the

[3] At least as to the applicability of this provision, West Bend effectively concedes there was an "occurrence" because by its plain language, this provision would not otherwise apply.

[4] As of February 13, 2023, the Town of Lisbon was incorporated and is now a village. *See* https://www.townoflisbonwi.com/275/New-Resident-Information.

> problem as reasonably determined by the Inspector. The Town in no way waives whatever rights it may have to require testing of area wells in order to determine whether [Lannon]'s quarry operations have caused damage to area wells.

Lannon contends this is simply an "agreement to an alternative dispute resolution procedure before a dispute even arises" rather than a "settlement of a pending dispute before providing notice to the insurer." We disagree.

¶14 Contrary to Lannon's attempt to fashion the Agreement as simply an agreement to a process for resolving claims if and when they arise, by agreeing that an Inspector would both determine whether Lannon was liable for the damage or issue complained of *and* the "cost of correcting the problem," which Lannon agreed to be "solely responsible for" paying, Lannon "voluntarily … assume[d] an obligation" or "voluntarily … incur[red] an expense," and it did so without West Bend's consent. This is necessarily so because pursuant to the Agreement, Lannon agreed to be liable for whatever damage the Inspector determined it was liable for, and it also agreed that it would be liable to pay whatever amount the Inspector determined was reasonable to address the damage or issue Lannon was liable for. This is not simply an agreement to a process—it is an agreement that Lannon will submit to another party's determination as to Lannon's liability and will pay whatever that other party tells it to pay as a result. While a specific future dollar amount may have been unknown at the time Lannon entered the Agreement, the practical effect of the Agreement is that Lannon prospectively settled any such claims that might arise.

¶15 We are likewise unpersuaded by Lannon's argument that there can be no breach of contract as to the Duties provision under the circumstances present here on account of it having entered the Agreement *before* the "occurrence" at

issue arose. While Lannon is correct that the Duties provision identifies certain obligations Lannon must and must not do "in the event of [an] occurrence" and that this suggests that the Duties provision applies after an "occurrence" arises, Lannon's obligations under the Agreement here were triggered at the time the "occurrence"—the well damage at issue here—arose. (Formatting altered.) Stated otherwise, the practical effect of the Agreement is that once the "occurrence" arose, Lannon agreed that it would pay what the Inspector told it to pay—it agreed to "incur an expense" as a result of the "occurrence," and it did so without West Bend's consent. In doing so, Lannon breached its insurance contract with West Bend, and the breach was material. *See, e.g.*, ***Prunty v. Maple Valley Mut. Ins. Co.***, 2025 WI App 38, ¶¶36-37, 417 Wis. 2d 69, 24 N.W.3d 207 (insured's failure to comply with insurance policy provisions prevented insurer from making its own coverage determination and was therefore a material breach that precluded coverage).

¶16 Because Lannon breached its insurance contract with West Bend as set forth above, there is no coverage under the policy's terms for the well damage arising from the November Blasts. The circuit court therefore erred as a matter of law when it granted Lannon's motion for partial summary judgment and denied West Bend's motion for summary judgment as to coverage. Accordingly, we reverse the circuit court's order and remand with instructions that the circuit court

enter an order granting West Bend's motion for summary judgment and denying Lannon's motion for partial summary judgment.[5]

*By the Court.*—Order reversed and cause remanded with directions.

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

[5] Based on our conclusion that there is no coverage under the CGL policy as a result of Lannon's breach of contract, we do not address West Bend's alternate arguments. *See* ***State v. Lickes***, 2021 WI 60, ¶33 n.10, 397 Wis. 2d 586, 960 N.W.2d 855 ("Issues that are not dispositive need not be addressed." (citation omitted)); ***Martinez v. Rullman***, 2023 WI App 30, ¶5, 408 Wis. 2d 503, 992 N.W.2d 853 (appellate courts will decide cases on the narrowest possible grounds).