NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12441
Non-Argument Calendar

JEFFREY B. SCOTT,

Plaintiff-Appellant,

versus

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON,
SUCSCRIBING TO POLICY NO. B0901LI1837279,
RLI INSURANCE COMPANY,
CERTAIN UNDERWRITERS AT LLOYDS, LONDON AND
THE INSURANCE COMPANY,
SUBSCRIBING TO POLICY NO. B0180FN2102430,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-82054-KAM

Before ROSENBAUM, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

This appeal arises from a coverage dispute under a Directors & Officers (D&O) insurance policy. The district court dismissed Appellant Jeffrey B. Scott's lawsuit pursuant to Rule 12(b)(6), holding that no "Claim" as defined in the policy was made against him during the policy period and that Scott did not provide a "notice of circumstances" to trigger coverage. We affirm.

I.

Appellee Underwriters at Lloyd's, London issued a Professional Liability, Directors & Officer's Liability and Fiduciary Liability Insurance policy to Gemini Financial Holdings, LLC, of which Appellant Jeffrey B. Scott was a named insured. The policy is a "claims made and reported policy," providing coverage for the directors, officers, and managers of Gemini. As part of the policy, Underwriters would "pay on behalf of the Insured Persons all Loss which is not indemnified by the Insured Organization resulting from any Claim first made against the Insured Persons and reported in writing to the Underwriters during the Policy Period . . . , if applicable, for a Wrongful Act." The policy defines a "Claim" to mean, in relevant part, "a written demand for monetary damages, non-monetary, or injunctive relief against any of the Insureds." It also provides insurance coverage if the "the Chief Executive Officer, Chief Financial Officer or Chief Actuary (or equivalent position)" of the company gives "notice of circumstances . . . that may reasonably be expected to give rise" to a claim.

Scott was terminated from his role as CEO, President, and Secretary of Gemini in October 2019, following a failed attempt to purchase the majority interest held by Gemini's controlling investor, Pegasus Capital Advisors. Upon his termination, Scott threatened legal action against Gemini, and Gemini sent him letters accusing him of misconduct and demanding the return of company property, the preservation of documents, and the like. But Scott did not receive a summons, subpoena, or formal arbitration demand from Gemini during the policy period.

Scott submitted a letter to Lloyd's on November 23, 2019, shortly after his termination. It was entitled "Notice of Claim," enclosing Gemini's letters. Lloyd's denied coverage, determining that no "Claim" against Scott had been made under the policy.

Scott sued Gemini for wrongful termination and entered into a settlement agreement with Gemini on February 20, 2022.

Scott also sued Lloyd's for insurance coverage. But the district court dismissed the case. This appeal followed.

II.

We review a dismissal under Rule 12(b)(6) *de novo*, accepting the complaint's well-pleaded factual allegations as true and construing them in the light most favorable to the plaintiff. *Hegel v. First Liberty Ins. Corp.*, 778 F.3d 1214, 1219 (11th Cir. 2015).

Interpretation of an insurance policy is a legal question of state law subject to *de novo* review. *Id.* In diversity cases arising under Florida law, a federal court is bound by the law articulated by

the Florida Supreme Court. *See Shapiro v. Associated Int'l Ins. Co.*, 899 F.2d 1116, 1118 (11th Cir. 1990). If the Florida Supreme Court has not spoken on an issue, Florida District Court of Appeals decisions control absent persuasive indication that the Florida Supreme Court would rule otherwise. *See Blanchard v. State Farm Mut. Auto. Ins. Co.*, 903 F.2d 1398, 1399 (11th Cir. 1990).

As a matter of Florida law, unambiguous policy terms are interpreted according to their plain meaning as written. *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005).

III.

Scott argues that the district court made two errors. First, Scott says that Gemini's letters to him constitute a "claim" under the policy. Second, and in the alternative, Scott argues that, as "the Chief Executive Officer, Chief Financial Officer or Chief Actuary (or equivalent position)" of the company, his November letter gave "notice of circumstances . . . that may reasonably be expected to give rise" to a claim. We address each issue in turn.

First, Scott contends that the district court erred in holding that the letters between Scott and Gemini did not qualify as a "Claim . . . for a Wrongful Act" under the D&O policy. The Lloyd's policy defines a "Claim" as a "written demand for monetary damages, non-monetary, or injunctive relief against any of the Insureds." Scott contends that letters from Gemini—particularly the October 24 and November 13, 2019, communications—constituted such a "Claim."

We disagree. The letters cited by Scott do not contain a demand for relief against him. They explain why, in Gemini's view, Scott was terminated and request that he preserve documents and return company equipment. In *National Fire Insurance v. Bartolazo*, 27 F.3d 518 (11th Cir. 1994), we held that a written letter was not a claim under a liability policy when it "made no demand for money or services, nor did it allege . . . [an] incident" but instead "requested [Insured's] records and alluded to a claim." *Id.* at 519. Like the letters in *Bartolazo*, the letters Gemini sent do not request monetary payment or legal remedies. Instead, they assert a cause for Scott's termination and outline expectations for his post-employment conduct. Viewed in the light most favorable to Scott, these letters are anticipatory posturing for a future dispute—an intention to "[review] certain workplace conduct by [Scott]." But they are not present demands for relief.

Second, and in the alternative, Scott maintains that his November letter to Lloyd's qualifies as a valid "notice of circumstances" that he would be subject to a "claim," and thereby preserved coverage for claims arising from those circumstances, including the eventual lawsuit he filed and the settlement he reached with Gemini in 2022. Again, we disagree. Scott's November 2019 letter does not identify circumstances that would lead to a claim against him. Instead, it mostly reflects his demands against Gemini over a putative wrongful termination. He said: "I … intend to seek monetary compensation for damages caused by the improper actions of [Gemini]'s controlling persons, among others, to the Company and to me." We also note that, because of his termination,

Scott was not one of the specified officers who could provide a notice of circumstances under the policy when he sent his November letter.

The district court correctly rejected Scott's arguments that his documents reflected a "claim," or, in the alternative, a "notice of circumstances" for a future claim.

IV.

AFFIRMED.