STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0767

King's Cove Marina, LLC,
Appellant,

vs.

Lambert Commercial Construction LLC.,
doing business as Lambert Construction, et al.,
Defendants,

United Fire & Casualty Company,
Respondent.

Filed May 12, 2025
Affirmed
Wheelock, Judge

Washington County District Court
File No. 82-CV-14-527

Mark R. Bradford, Nicole S. Frank, Elizabeth Euller, Bradford Andresen Norrie & Camarotto, Bloomington, Minnesota; and

Stephen P. Watters, Watters Law Office, Waconia, Minnesota (for appellant/cross-respondent King's Cove Marina, LLC)

Kay Nord Hunt, Michelle K. Kuhl, Keith J. Broady, Lommen Abdo, P.A., Minneapolis, Minnesota (for respondent/cross-appellant United Fire & Casualty Company)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Wheelock, Judge.

SYLLABUS

A district court's findings of the reasonableness and allocation of an unallocated *Miller-Shugart* settlement agreement under *King's Cove Marina, LLC v. Lambert*

Commercial Construction LLC, 958 N.W.2d 310 (Minn. 2021) (*King's Cove II*), are reviewed for clear error.

OPINION

WHEELOCK, Judge

King's Cove Marina LLC, appellant and cross-respondent, brought an action against defendant Lambert Commercial Construction LLC, alleging construction defects. After entering into a *Miller-Shugart* settlement agreement with Lambert, King's Cove filed a supplemental complaint for garnishment against Lambert's liability insurer, United Fire & Casualty Company, respondent and cross-appellant. The district court approved the *Miller-Shugart* settlement agreement. On appeal, this court reversed the district court's approval of the *Miller-Shugart* settlement agreement because King's Cove and Lambert had not allocated damages between those that were covered by Lambert's insurance policies with United Fire and those that were not. After King's Cove petitioned for further review, the supreme court reversed this court and announced a two-step inquiry for assessing reasonableness and making allocation findings for an unallocated *Miller-Shugart* settlement agreement. The supreme court, and this court in turn, remanded the matter to the district court for application of the new analytical framework. King's Cove and United Fire now seek review of the district court's findings, pursuant to this framework, of the reasonableness and allocation of the *Miller-Shugart* settlement agreement. Specifically, King's Cove challenges the district court's allocation findings, including by arguing about the remedy to which it is entitled, and it challenges one of the district court's evidentiary

rulings on remand. In its cross-appeal, United Fire challenges the district court's reasonableness finding.

We affirm.

FACTS

In 2011, King's Cove, a full-service marina on the Mississippi River in Hastings, began a remodeling and facilities-expansion project. *King's Cove Marina, LLC vs. Lambert Com. Constr. LLC*, 937 N.W.2d 458, 462 (Minn. App. 2019) (*King's Cove I*), *aff'd in part and rev'd in part*, 958 N.W.2d 310. It contracted with Lambert for some of the work on the project. *Id.* King's Cove later alleged construction defects and sued Lambert and other contractors. *Id.* at 462-63. Lambert tendered its defense to its liability insurer, United Fire, which denied coverage and filed a declaratory-judgment action, seeking to establish that Lambert's policies with it do not cover King's Cove's claims. *Id.* at 463. This case arises out of the *Miller-Shugart* settlement agreement[1] between King's Cove and Lambert and subsequent garnishment action by King's Cove against Lambert's insurer, United Fire, to collect the judgment pursuant to the agreement.

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[1] In a *Miller-Shugart* settlement, the insured, having been denied any [insurance] coverage for a claim, agrees claimant may enter judgment against him for a sum collectible only from the insurance policy. To be binding on the insurer if policy coverage is found to exist, the settlement amount must be reasonable.

Alton M. Johnson Co. v. M.A.I. Co., 463 N.W.2d 277, 278 n.1 (Minn. 1990).

Marina Remodeling and Expansion Project

The 2011 project remodeled the marina's main building to create a new second-level mezzanine space for offices, which entailed installing a new steel roof, new steel exterior walls, and new windows. *King's Cove I*, 937 N.W.2d at 462; *King's Cove II*, 958 N.W.2d at 313. King's Cove hired Lambert, in part, to perform work on the roof and siding, frame the window openings, install window trim, and install wood flooring on the second level. *King's Cove II*, 958 N.W.2d at 313. Lambert subcontracted with another company to perform concrete work. *Id.* During the building-permit application process, the City of Hastings added the requirement that a weather-resistant barrier (WRB) be installed before the building's new exterior siding could be installed. Lambert used a steel siding product[2] for the new siding. *King's Cove I*, 937 N.W.2d at 462. Based on its experience, Lambert believed that the product would meet the city code requirements for installing a weather-resistant barrier; Lambert did not install a separate weather-resistant barrier when it installed the siding product.

In 2012, King's Cove notified Lambert and other contractors that large cracks had appeared in the concrete on the first and second floors of the building and that the walls and roof were leaking, which was causing damage to the building's interior. *King's Cove II*, 958 N.W.2d at 313. King's Cove refused to pay Lambert's outstanding invoices due to

[2] Throughout the record, the parties refer to the prefabricated steel siding materials used in this remodeling project as "Butler-building materials." "Butler" appears to refer to a brand of siding products called Butler MFG Parts, which are made by MAR Building Solutions.

these problems, and Lambert stopped performing work on the project, which was not yet complete. *Id.* at 313-14.

Marina Project Litigation

In 2013, King's Cove sued Lambert and other contractors that had worked on the project for breach of contract and negligence. *Id.* at 314. Lambert tendered its defense to United Fire pursuant to two commercial liability insurance policies.[3] *Id.* at 314. A central issue throughout the litigation was King's Cove's assertion that Lambert's failure to use a separate weather-resistant barrier when it installed new siding on the building caused water damage and violated the city code's requirement to install a weather-resistant barrier. In August 2015, amid the litigation, a city official sent Lambert's attorney a letter (2015 Bakken letter) stating that it was his "determination that, if the [steel siding product] was installed per the manufacturer's specifications, it would meet the intent of the code for an exception to the need for a separate weather resistive barrier." King's Cove and United Fire dispute the effect of this letter on the litigation.

Another issue central to the dispute is the potential application of flood plain regulations in the city code. *See* Hastings, Minn., Code of Ordinances (HCO) §§ 151.01-.13 (2021). The marina is located in a "flood fringe district." HCO §§ 151.02(H), .03(A)(2). Buildings located in a flood fringe district are subject to a provision stating that, if the cost of structural alterations and additions exceeds 50% of the

[3] The supreme court noted that Lambert's umbrella policy with United Fire is, in relevant part, the same as its commercial general liability policy with United Fire. *Id.* at 316 (noting that the two policies "contain[] the same relevant provisions").

building's market value, then the structure must be brought into compliance with the provision's requirements for new structures constructed in the flood fringe district. HCO § 151.11(A)(3) (flood plain compliance provision).[4] The undisputed market value of the marina's main building is between $1,600,000 and $1,700,000. King's Cove estimated that the total cost to repair the damages to this building was $1,085,000. *King's Cove II*, 958 N.W.2d at 314. Therefore, throughout the litigation, King's Cove has argued that, because the estimated total repair cost was $1,085,000, which is more than 50% of the building's market value, the flood plain compliance provision is triggered. And, King's Cove argues, since that provision is triggered, it must bring its facility into compliance with HCO § 151.05, which entails tearing down the building and reconstructing it, raising its foundation by several feet, and making changes to other areas of the marina property. King's Cove asserts that it would cost between $4,500,000 and $5,200,000 to comply with the city code's flood plain regulations—a significantly higher cost than the estimated cost to simply repair the damages. *Id.* at 315.

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[4] The flood plain compliance provision reads as follows:

> The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of § 151.04 or § 151.05 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

Id.

The Miller-Shugart *Settlement Agreement*

In July 2015, while King's Cove was in litigation with Lambert and the other contractors, United Fire brought a declaratory-judgment action, seeking a ruling that it did not have a duty to defend or indemnify Lambert for the claims King's Cove asserted. *Id.* at 314. Soon thereafter, King's Cove and Lambert entered into settlement negotiations. *Id.* King's Cove sent a demand letter in February 2016 seeking $2,000,000 to settle its claims against Lambert. In June 2016, Lambert accepted this settlement offer, and they entered into a *Miller-Shugart* settlement agreement. *Id.*

When an insurer disclaims coverage, litigants may enter into a *Miller-Shugart* settlement agreement whereby "a plaintiff and insured defendant stipulate to a judgment against the defendant on the condition that the plaintiff releases the defendant from any personal liability and agrees to seek recovery solely from the insurer," after which the plaintiff proceeds against the insurer in a garnishment proceeding. *Id.* at 320-21 (explaining the settlement process the supreme court approved in *Miller v. Shugart*, 316 N.W.2d 729 (Minn. 1982)). The insurer may challenge the scope of coverage and the reasonableness of the settlement in the subsequent garnishment proceeding. *See Alton M. Johnson Co.*, 463 N.W.2d at 278 (describing the two issues presented in the garnishment proceeding following a *Miller-Shugart* settlement as coverage and reasonableness).

In their *Miller-Shugart* settlement agreement, King's Cove and Lambert stipulated that the cost to repair the building was $1,085,000,[5] and that, if the flood plain compliance

[5] The *Miller-Shugart* settlement agreement estimated that $317,000 of the total cost to repair the building was attributable to "general damages" that applied to all areas of the

provision applied and King's Cove was required to demolish and reconstruct its facility, the estimated cost was up to $5,200,000. *King's Cove II*, 958 N.W.2d at 314-15. King's Cove and Lambert agreed that Lambert could be responsible for between $2,426,000 and $2,870,000 of this amount. *Id.* at 315. They therefore agreed to settle for $2,000,000. *Id.* at 314. The settlement agreement settled only the claims King's Cove alleged against Lambert, stating that it "relates to the claims and damages for the work provided by Lambert, including the roof and siding."[6] *Id.* King's Cove agreed to obtain satisfaction of a judgment entered pursuant to the agreement against only United Fire "from any insurance coverage provided to Lambert for [King's Cove's] claims under" the insurance policies Lambert carried with United Fire. King's Cove and Lambert submitted the *Miller-Shugart* settlement agreement to the district court.

After the district court approved King's Cove and Lambert's *Miller-Shugart* settlement agreement and entered judgment against Lambert, King's Cove served a garnishment complaint on United Fire. *King's Cove I*, 937 N.W.2d at 463. United Fire then "denied that insurance coverage exists for the claims of King's Cove" and asserted "that the *Miller-Shugart* settlement agreement is unreasonable to the extent that the settlement fails to allocate damages between covered and uncovered claims." *King's Cove II*, 958 N.W.2d at 315.

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main building. Further, King's Cove and Lambert agreed that Lambert was responsible for 55.2% of the total cost.

[6] The *Miller-Shugart* settlement agreement expressly excluded recovery from Lambert for its subcontractor's concrete work on the project.

The district court determined on summary judgment "that there is insurance coverage under the terms of the United Fire and Casualty Company policies issued to Defendant Lambert . . . for the claims and damages at issue in this action."

During discovery in the garnishment action, United Fire deposed a city building official, Lambert's owner, and the owner of King's Cove. Lambert's owner was asked if he was "ever concerned that the consent judgment amount proposed in the [demand] letter was unreasonable." He responded, "I have thought this entire case has been unreasonable since day one." When asked if he would "pay $2 million of his own money to settle the claims," he responded, "No."

After United Fire and King's Cove completed discovery, the district court held a two-day evidentiary hearing to evaluate the reasonableness of the *Miller-Shugart* settlement agreement, ultimately finding that it was reasonable.

King's Cove I *and* II*: The Supreme Court Announces a New Analytical Framework for Unallocated* Miller-Shugart *Settlement Agreements*

United Fire and King's Cove filed cross-appeals in this court regarding the extent of coverage available for King's Cove's claims under Lambert's insurance policies with United Fire given the exclusions contained in the policies. In particular, they disagreed about whether an exclusion in the policies (exclusion *l*) operated to exclude from coverage all property damages that "arose out of Lambert's own work" as the insured but did not exclude "a claim for damages caused by Lambert's work to preexisting structures located adjacent to the work performed by Lambert." *King's Cove I*, 937 N.W.2d at 468. This court reversed the district court, in part because we concluded that the agreement's failure

to "allocate between covered and non-covered damages" was "unreasonable as a matter of law." *Id.* at 470 (considering persuasive federal caselaw).

King's Cove petitioned for further review in the supreme court, which granted review on two issues: (1) the scope of coverage under Lambert's policies with United Fire and (2) the reasonableness of King's Cove and Lambert's *Miller-Shugart* settlement agreement. *King's Cove II*, 958 N.W.2d at 313. With respect to the scope of coverage, the supreme court affirmed this court's determination "that the claimed property damage to Lambert's own work on the roof and siding of the main building of the marina is not covered under United Fire policies based on the plain language of exclusion *l*" and observed that "United Fire has not challenged the court of appeals' conclusion that damage to 'existing sheetrock, tiles, carpet, and the floor' of the main building, which was 'adjacent to the work performed by Lambert would, if proven, be covered under the insurance policy.'" *Id.* at 319-20 (quoting *King's Cove I*, 937 N.W.2d at 468). However, it disagreed that the lack of allocation between covered and uncovered claims rendered the *Miller-Shugart* settlement agreement unreasonable as a matter of law in a case involving a single defendant.[7] *Id.* at 321-22 (explaining that, although it had held in *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 331 (Minn. 1993), that a *Miller-Shugart*

[7] We observe that, in its first appeal, King's Cove urged the supreme court "to adopt a new rule in cases involving a single defendant" to allow district courts "to determine the reasonableness of a *Miller-Shugart* settlement agreement based on the value of the covered claims," stating that "there is no factual or legal basis to assume that district courts are incapable, in every case of determining the reasonableness of unallocated settlements." *Id.* at 322. The supreme court agreed that it should "reject the rigidity of a per se allocation rule," *id.*, and fashioned the test we apply now.

settlement agreement that failed to allocate damages among multiple defendants was unreasonable and unenforceable against the insurer, it had not yet considered a failure to allocate when a single defendant was involved). In its decision, the supreme court announced a new two-part inquiry—the *King's Cove II* framework—for reviewing unallocated *Miller-Shugart* settlement agreements with one defendant. *Id.* at 320-25. This framework requires district courts first to make findings as to the reasonableness of the settlement and second to review the applicable insurance policy or policies and then make allocation findings between covered and uncovered claims.[8] *Id.* at 323-25. It also explicitly provided that King's Cove would bear the burden of proof on the allocation issue. *Id.* at 325. The supreme court then remanded the case to this court, *id.*, and this court remanded to the district court to apply the new analytical framework, *King's Cove Marina, LLC v. Lambert Commercial Construction LLC*, No. A19-0078, 2021 WL 4259025, at *4 (Minn. App. Sept. 20, 2021) (*King's Cove III*).

On remand, the district court reopened the record to receive evidence that would facilitate further analysis of the reasonableness issue and enable it to make its allocation finding in light of *King's Cove II*. King's Cove sought admission of two exhibits that related to the flood plain compliance provision: a February 17, 2023 Building Permit Application and a related March 10, 2023 City of Hastings letter, but the district court

[8] The supreme court indicated that, in the second step, "the district court then makes an allocation ruling in light of the ultimate coverage determination." *Id.* at 324. In *King's Cove II*, the supreme court made this coverage determination by analyzing what property damage was not covered under the policies in light of exclusion *l*. *Id.* at 317-20. Similarly, before making an allocation ruling, a district court will first need to determine what is covered and not covered under the applicable policies.

excluded them. The district court also held a two-day evidentiary hearing at which the parties called expert witnesses. King's Cove called an engineer and a forensic building analyst; United Fire called a restorative contractor. The engineer testified about the applicability of the flood plain compliance provision. The forensic analyst testified about data that supported King's Cove's theory for allocating the covered and uncovered damages under the settlement agreement and provided costs of repair using "2016 valuation." United Fire's expert testified that King's Cove's repair estimates were excessive and that, in his opinion, repairs would cost approximately $75,000.

The district court found that the unallocated *Miller-Shugart* settlement agreement was reasonable, but it rejected King's Cove's allocation theory, ultimately finding that the relative value of the covered claims was only $174,350 and that, therefore, United Fire owed that amount to King's Cove pursuant to the *Miller-Shugart* settlement agreement. In conducting its analysis under the *King's Cove II* framework, the district court found that the settlement agreement estimated the costs of repair for Lambert's "own work," for the work of other contractors on the project, and for the total general damages to the building for which all of the contractors on the project shared responsibility. It concluded that the only covered damages identified in the settlement agreement were Lambert's share of the general damages because those damages were not Lambert's "own work" and thus fell into the category of damage to preexisting structures caused by Lambert. The district court determined that Lambert's proportional share of the cost of repair for general damages to the building was 55% of $317,000, which equals $174,350. The district court reasoned that, under the language of the *Miller-Shugart* settlement agreement, King's Cove and

Lambert agreed that Lambert's insurer—United Fire—would pay only covered damages and, after allocating between covered and uncovered damages as directed by the supreme court, that amount was $174,350.

King's Cove and United Fire appeal.

ISSUES

I. What standard of review applies to a district court's findings of the reasonableness and allocation of an unallocated *Miller-Shugart* settlement agreement under the *King's Cove II* framework?

II. Did the district court clearly err in finding the reasonableness and allocation of King's Cove and Lambert's unallocated *Miller-Shugart* settlement agreement?

III. Did the district court abuse its discretion when it excluded King's Cove's exhibits related to the application of the flood plain compliance provision?

ANALYSIS

This appeal requires us to review the district court's decision, pursuant to the *King's Cove II* framework, in which it found that the *Miller-Shugart* settlement agreement here is reasonable and allocated $174,350 as the relative value of the settled claims covered by the United Fire insurance policies. This appeal presents a question of first impression for our court regarding the appropriate standard of review to apply when reviewing the district court's decisions under the framework.

In *King's Cove II*, the supreme court announced a new, two-part analytical framework that district courts must use to assess the reasonableness and allocation of unallocated *Miller-Shugart* settlement agreements. 958 N.W.2d at 323. In the first step of the *King's Cove II* framework, district courts evaluate "the overall reasonableness of the

settlement."[9] *Id.* at 323. In considering the issue of reasonableness, "[t]he test is 'what a reasonably prudent person in the position of the defendant would have settled for on the merits' of plaintiff's claims at the time of the settlement." *Id.* (quoting *Miller*, 316 N.W.2d at 735). "This is a multi-factor objective test, which requires the district court to consider 'the facts bearing on the liability and damage aspects' of the plaintiff's claims." *Id.* (quoting *Miller*, 316 N.W.2d at 735). As such, the supreme court set forth five factors relevant to the reasonableness finding: (1) "the customary evidence on liability and damages"; (2) "the risks of going to trial"; (3) "the likelihood of favorable or unfavorable rulings on legal defenses and evidentiary issues if the tort action had been tried"; (4) "expert legal opinions"; and (5) "other factors of forensic significance." *Id.* (quoting *Alton M. Johnson Co.*, 463 N.W.2d at 279). If the settlement is reasonable, district courts continue to the second step to determine what insurance coverage exists and to make findings of fact regarding the allocation of the covered and uncovered claims.

In considering the issue of allocation, "[t]he test is how a reasonable person in the position of the insured would have valued and allocated the covered and uncovered claims at the time of the settlement." *Id.* at 323-24 (citing *UnitedHealth Grp. Inc. v. Exec. Risk Specialty Ins. Co.*, 870 F.3d 856, 863 (8th Cir. 2017)). The supreme court explained, "Like the reasonableness inquiry, the allocation inquiry is a multi-factor objective test, which requires the consideration of 'any facts that bear on the issues of liability, damages, and

[9] If the settlement agreement is unreasonable but coverage exists, "the default rule is that the parties to the settlement agreement are returned to the even footing of a trial on the merits of the main action." *Id.* at 321 (quotation omitted).

the risks of trial.'" *Id.* at 324 (quoting *Jorgensen v. Knutson*, 662 N.W.2d 893, 904 (Minn. 2003)). It then set forth four nonexclusive categories of evidence relevant to the allocation determination:

> (1) information that was available to the parties at the time of the settlement regarding the underlying facts; (2) materials produced in discovery and any court rulings in the underlying litigation; (3) evidence of how the parties and their attorneys evaluated the claims at the time of the settlement; and (4) expert testimony about the value of the settled claims.

Id.

We note an important observation the supreme court made when it explained this new framework:

> Because the relevant evidence on reasonableness and allocation overlaps, we contemplate that the district court typically will consider the reasonableness and allocation issues at the same time. If the district court finds that the unallocated settlement is reasonable, the district court then makes an allocation ruling in light of the ultimate coverage determination.

Id. While the supreme court acknowledged "that a post-hoc allocation of covered and uncovered claims may in some circumstances be a difficult task for district courts," it nonetheless expressed its confidence that district courts are well-equipped to engage in this task. *Id.* ("As long as the parties present sufficient evidence, the district court has the expertise and authority to determine post-hoc allocations in the *Miller-Shugart* settlement agreement context . . . .").

On remand, the district court applied the *King's Cove II* framework and found, first, that the unallocated *Miller-Shugart* settlement agreement here is reasonable and, second,

that a reasonable person in Lambert's position would have valued and allocated the covered and uncovered claims at the time of the 2016 settlement such that only $174,350 of the settlement amount was covered rather than the full amount of the settlement agreement. These findings are the subject of King's Cove's and United Fire's challenges in this appeal.

We begin our analysis with a discussion of the standard of review that applies to a district court's findings under the *King's Cove II* framework. Once we have established the appropriate standard of review, we consider the merits of the parties' arguments as to each step of the framework to discern whether the district court erred when it found that the *Miller-Shugart* settlement agreement was reasonable and then whether the district court erred in its allocation when it found that only $174,350 of the settled claims were covered by Lambert's insurance policies with United Fire. We then consider King's Cove's remedy argument, and finally, we consider whether the district court abused its discretion by excluding two of King's Cove's exhibits on remand.

I. Appellate courts review a district court's reasonableness and allocation findings for clear error.

The supreme court in *King's Cove II* did not specifically articulate the standards of review that apply to a district court's findings of the reasonableness and allocation of an unallocated *Miller-Shugart* settlement agreement. Because it set forth two inquiries, we consider the standard of review that should apply to each step.

A. Reasonableness Inquiry

As explained above, the first step of the *King's Cove II* framework requires a district court to find whether the settlement is reasonable by applying "a multi-factor objective

test" to examine "'the facts bearing on the liability and damage aspects' of the plaintiff's claims" and the value of both the covered and uncovered claims. 958 N.W.2d at 323 (quoting *Miller*, 316 N.W.2d at 735) (explaining that the reasonableness requirement is intended to discourage possible overreaching in *Miller-Shugart* settlement negotiations). "The plaintiff judgment creditor bears the burden of showing that 'the settlement is reasonable and prudent'" based on "'what a reasonably prudent person in the position of the defendant would have settled for on the merits' of the plaintiff's claims at the time of the settlement." *Id.* (quoting *Miller*, 316 N.W.2d at 735). The supreme court then articulated five nonexhaustive factors, or categories of evidence, that a district court must consider when making this finding. *Id.* The supreme court explained that "[r]easonableness is 'a question of fact' for the district court to resolve as the fact-finder." *Id.* at 321 (quoting *Alton M. Johnson Co.*, 463 N.W.2d at 279). The supreme court in *Alton M. Johnson Co.* noted that, in this context, "[t]he decisionmaker is being asked to apply its sense of fairness to evaluate a compromise of conflicting interests, a characteristic role for equity." 463 N.W.2d at 279 (explaining that the district court is the fact-finder when an issue is "equitable").

Because the first step of the two-step *King's Cove II* framework mirrors the reasonableness inquiry that district courts have typically undertaken when reviewing *Miller-Shugart* settlement agreements, we discern no reason to conclude that the applicable standard of review should be different as to the first step. We therefore conclude that the supreme court's explanation that reasonableness is a question of fact continues to apply to

this first step. Accordingly, we hold that the reasonableness of an unallocated *Miller-Shugart* settlement agreement should be reviewed for clear error.

B. Allocation Inquiry

Next, we turn to the standard of review for the second step. "If the district court finds that the unallocated *Miller-Shugart* settlement agreement is reasonable, the district court then considers the issue of allocation." *King's Cove II*, 958 N.W.2d at 323.

In the second step of the *King's Cove II* framework, a district court makes findings of fact as to the allocation of a *Miller-Shugart* settlement agreement that is unallocated between covered and uncovered claims by applying a "multi-factor objective test" examining "any facts that bear on the issues of liability, damages, and the risks of trial." *Id.* at 324 (quoting *Jorgensen*, 662 N.W.2d at 904). The plaintiff judgment creditor "bear[s] the burden of proof on allocation," given the general rule that "the burden of proof rests upon the party claiming coverage under an insurance policy" and the specific rule that the plaintiff judgment creditor bears the burden of proof on the reasonableness inquiry for a *Miller-Shugart* settlement agreement. *Id.* at 325.

In setting forth the new framework, the supreme court emphasized the similarity between the reasonableness inquiry and the allocation inquiry, including the overlap in the evidence a district court should consider when conducting both inquiries. *Id.* (stating that, "[l]ike the reasonableness inquiry, the allocation inquiry is a multi-factor objective test" and that, because the relevant evidence overlaps, both inquiries will likely occur at the same time). The plaintiff judgment creditor also bears the burden of proof for both issues. *Id.* The striking similarity between both inquiries and the supreme court's directives to the

district courts about how to resolve them persuades us that, although appellate courts still interpret insurance policies de novo, *id.* at 316, allocation is a "question of fact for the district court to resolve as the fact-finder," *Alton M. Johnson Co.*, 463 N.W.2d at 279, and the standard of review for the reasonableness and allocation inquiries should be consistent. Because we conclude that a district court's allocation of an unallocated *Miller-Shugart* settlement agreement is a finding of fact, we hold that appellate courts review a district court's allocation of an unallocated *Miller-Shugart* settlement agreement for clear error.

It is already well settled that appellate courts review a district court's findings of fact for clear error. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021); *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). In conducting clear-error review, "we examine the record to see if there is reasonable evidence in the record to support the [district] court's findings." *Rasmussen*, 832 N.W.2d at 797. "[T]he role of an appellate court is not to weigh, reweigh, or inherently reweigh the evidence when applying a clear-error review; that task is best suited to, and therefore is reserved for, the factfinder." *Kenney*, 963 N.W.2d at 223. "Instead, it is the duty of an appellate court to fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that it reasonably tends to support the findings of the factfinder." *Id.* (quotation omitted). To conclude that "[f]indings of fact . . . are clearly erroneous," appellate courts must be "left with the definite and firm conviction that a mistake has been made." *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 507 (Minn. 2012).

Having established the appropriate standards of review, we now turn to the merits of the parties' arguments.

II. The district court did not clearly err in its findings of the reasonableness and allocation of King's Cove and Lambert's unallocated *Miller-Shugart* settlement agreement.

The parties raise the following challenges regarding the district court's findings: United Fire argues that the district court erred by finding that the *Miller-Shugart* settlement agreement was reasonable; King's Cove argues that the district court erred in its allocation; and King's Cove further argues that the district court erred by awarding it $174,350 in covered damages because it is entitled to either enforcement of the full amount—$2,000,000—from United Fire pursuant to the *Miller-Shugart* settlement agreement or to reinstatement of a trial on the merits as if no claims had been settled with Lambert (the remedy argument). We consider each of these arguments in turn.

A. The district court did not clearly err when it found that the *Miller-Shugart* settlement agreement was reasonable.

We first consider whether the district court erred in finding that the unallocated *Miller-Shugart* settlement agreement was reasonable. United Fire argues that the district court erred for three reasons: first, no reasonable person would have thought that a separate weather-resistant barrier was required; second, the flood plain compliance provision would not have applied; and third, the *Miller-Shugart* settlement agreement was the product of collusion. King's Cove argues that the district court correctly determined that the *Miller-Shugart* settlement agreement was reasonable.

We review the district court's reasonableness finding for clear error, then we consider the three specific arguments that United Fire raises on appeal, concluding that the district court did not clearly err in its factual findings.

1. The district court considered the relevant evidence as to reasonableness.

King's Cove II requires that the district court consider what a reasonably prudent person in the position of the defendant—Lambert—would have settled for on the merits of the plaintiff's—King's Cove's—claims at the time of settlement, and in doing so, that the district court consider evidence relevant to that finding. 958 N.W.2d at 323. Here, the district court considered the five factors relevant to the reasonableness determination listed in the *King's Cove II* opinion.

The district court considered the customary evidence on liability and damages. In its order, the district court found that "Lambert was facing a minimum of $599,000 in damages and, if the floodplain ordinance was triggered, over $2 million in damages." It noted that Lambert's failure to complete the work "allowed water intrusion into the property" and that Lambert faced potential liability "for failing to install a separate WRB." The district court concluded that, "[d]epending on the evidence admitted at trial, Lambert could have been facing significant damages totaling millions of dollars."

The district court considered Lambert's risk of going to trial. In its order, the district court concluded that "[t]here was a real risk of going to trial. There were conflicting expert reports and material issues to be resolved."

The district court considered the likelihood of favorable or unfavorable rulings on legal defenses and evidentiary issues had the action been tried. In its order, the district court concluded, "There was significant discovery and litigation regarding the necessity of a WRB and whether the floodplain ordinance would be triggered." The district court

determined that neither party knew "whether a jury would hear evidence about the floodplain ordinance," but if that issue "was given to the jury, then Lambert would have faced significantly higher damages." The district court also observed that it was not settled whether the parties' respective experts' opinions regarding the need for a separate weather-resistant barrier were admissible.

The district court considered the experts' legal opinions. In its order, the district court concluded that the opinions conflicted regarding the need for a separate weather-resistant barrier. King's Cove sought to present expert testimony about the need for a separate weather-resistant barrier. "Lambert had expert opinions that no separate [weather-resistant barrier] was necessary, and that the floodplain ordinance would not be triggered."

The district court considered other factors of forensic significance. In its order, the district court concluded that, when Lambert and King's Cove entered into the unallocated *Miller-Shugart* settlement agreement, "United Fire had begun a declaratory judgment action, and it was unresolved whether Lambert had insurance coverage for the potential damages [it] was facing."

Based on the above, the district court found that "the overall agreement is reasonable, when viewed from the perspective of Lambert." The district court observed the following:

> There were unresolved competing legal theories regarding the floodplain ordinance and whether an appropriate WRB was installed. Lambert was facing damages that could possibly exceed $2 million dollars and did not have a determination of insurance coverage. It was reasonable for Lambert to accept

> the $2 million settlement considering the substantial liability and the uncertainty regarding which legal theory a jury would accept.

Thus, the district court concluded that it was reasonable for Lambert to agree to a $2,000,000 settlement.

Aside from its collusion argument, United Fire contends that the district court erred in concluding that the agreement is reasonable for two reasons. First, United Fire argues that it was not reasonable for Lambert to be concerned about facing liability for failing to install a separate weather-resistant barrier. Second, United Fire argues that it was not reasonable for Lambert to be concerned that the flood plain compliance provision may require the demolition and reconstruction of King's Cove's building. Based on its position that neither of these liability risks were reasonable, United Fire argues that the settlement amount is unjustifiable and, therefore, that the district court erred when it found that the settlement was reasonable. Third, returning to its collusion argument, United Fire argues that the *Miller-Shugart* settlement agreement was the product of collusion and that this is an independent basis on which the district court erred in finding the settlement agreement reasonable.

2. United Fire's first challenge: whether the district court clearly erred when it determined that a reasonable person in Lambert's position faced potential liability by not installing a separate weather-resistant barrier.

United Fire argues that Lambert faced no risk of a court determining that Lambert caused damages to King's Cove's building by failing to install a separate weather-resistant barrier. Specifically, it argues that the 2015 Bakken letter, which a city building official

provided to Lambert's attorney prior to the execution of the *Miller-Shugart* settlement agreement, was a final determination of the issue: "[I]t is my determination that if the [steel siding product] was installed per the manufacturer's specifications it would meet the intent of the code for an exception to the need for a separate weather resistive barrier." United Fire highlights that the district court found that "[i]t is undisputed that the wall siding and panels were installed per the manufacturer's specifications." Based on these facts, United Fire argues that, under *State v. Arkell*, 672 N.W.2d 564, 568 (Minn. 2003), and *Centra Homes LLC v. City of Norwood Young America*, 834 N.W.2d 581, 584-85 (Minn. App. 2013), the 2015 Bakken letter was a binding and final determination, appealable only to the city's board of appeals.

We are not persuaded. In 2011, the city expressly required King's Cove to install a weather-resistant barrier. The 2015 Bakken letter said, "[I]f the [siding] system was installed per the manufacturer's specifications it would meet the intent of the code for an exception to the need for a separate weather resistive barrier." In 2016, King's Cove and Lambert entered into the *Miller-Shugart* settlement agreement. Then, in a 2018 deposition, Lambert testified that his employees installed the siding in accordance with the manufacturer's specifications. Much later, in the 2023 order from which King's Cove and United Fire bring this appeal, the district court cited Lambert's 2018 deposition testimony to support its finding of fact that it was "undisputed the siding and wall panels were installed per the manufacturer's specifications and Lambert would so testify."

We review a district court's finding of fact for clear error. *Kenney*, 963 N.W.2d at 221-23; *Rasmussen*, 832 N.W.2d at 797. We conclude that the district court clearly erred

when it found that it was "undisputed the siding and wall panels were installed per the manufacturer's specifications" because the evidence in the record demonstrates that, when King's Cove and Lambert signed their *Miller-Shugart* settlement agreement in 2016, Lambert's allegedly defective installation of the siding was one of the disputed issues between the settling parties. The record supports that Lambert believed it had installed the siding correctly. However, the record shows that King's Cove did not agree because it was in active litigation against Lambert for what it alleged were related claims. We conclude that, insofar as the district court's finding that it was "undisputed the siding and wall panels were installed per the manufacturer's specifications" pertains to King's Cove's and Lambert's positions in 2016, this finding is clearly erroneous. Because we conclude that this finding of fact as it pertains to King's Cove's and Lambert's positions in 2016 was clear error and that whether installation was correct was an issue in dispute, we are not persuaded by United Fire's argument that the 2015 Bakken letter renders unreasonable any perceived liability risk that Lambert faced due to failing to install a separate weather-resistant barrier. In drawing this conclusion, we observe that, when "a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained." *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979).

Finally, United Fire argues that, regardless of the 2015 Bakken letter, there was ample evidence contradicting the need for a separate weather-resistant barrier, which supports a finding that Lambert was not acting reasonably when it entered into the settlement agreement. United Fire supports this argument by showing that Lambert had

extensive professional experience using this siding material, had not encountered a project requiring a separate weather-resistant barrier before, and had prepared expert witnesses to testify that King's Cove did not require Lambert to install a separate weather-resistant barrier before they entered into the *Miller-Shugart* settlement agreement.

We are not persuaded. The district court correctly applied the relevant law, and reweighing evidence is outside the scope of our review. *Kenney*, 963 N.W.2d at 223. Evidence in the record, including the city's requirement to add a weather-resistant barrier during the building-permit application process coupled with the claims King's Cove alleged against Lambert, supports the district court's determination that Lambert faced potential liability for damages to the building due to its failure to install a separate weather-resistant barrier. We therefore conclude that the district court did not clearly err with respect to the potential liability Lambert faced due to not installing a separate weather-resistant barrier.

3. United Fire's second challenge: whether the district court clearly erred when it found that a reasonable person in Lambert's position faced potential liability through the application of the flood plain compliance provision.

United Fire also argues that a reasonable person in Lambert's position at the time of settlement should not have been concerned about the flood plain compliance provision potentially increasing the scope of Lambert's liability. The relevant provision of the ordinance reads as follows:

> The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all

> structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of § 151.04 or § 151.05 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

HCO § 151.11(A)(3).

When King's Cove and Lambert entered into the *Miller-Shugart* settlement agreement, it was not clear whether the flood plain compliance provision required King's Cove to demolish and reconstruct the building and make other changes to comply with the ordinance. The undisputed market value of the building is between $1,600,000 and $1,700,000. King's Cove and Lambert stipulated in the settlement agreement that it would cost King's Cove $1,085,000 to repair the building, inclusive of costs to repair damages attributable to all of the contractors that worked on the project that were included in King's Cove's underlying lawsuit. Because $1,085,000 is more than half of the building's undisputed market value, King's Cove argued that the flood plain compliance provision required it to tear down and reconstruct the building at a higher elevation to bring it into compliance with city code. King's Cove and Lambert therefore agreed that King's Cove faced up to $5,200,000 in damages if the flood plain compliance provision required demolition and reconstruction of the building.

On appeal, United Fire argues that the flood plain compliance provision could not have applied because it does not contemplate applying to repairs "at all." United Fire further argues that Lambert's work cannot fall within the scope of "structural alterations"

because Lambert worked on only the building's siding and roofing and these are not structural components of the building.

But when King's Cove and Lambert entered into their *Miller-Shugart* settlement agreement, it was not clear whether the flood plain compliance provision would apply to the building.

First, United Fire's argument that it was not possible for the flood plain compliance provision to apply because it does not contemplate applying to repairs is not persuasive because it applies to "[t]he cost of all structural alterations or additions to any non-conforming structure." HCO § 151.11(A)(3). Based on the plain language of the flood plain compliance provision, we conclude that it was not apparent, at the time of settlement, that the provision would not apply to King's Cove's building because King's Cove was repairing it.

Second, we are not persuaded by United Fire's argument that the flood plain compliance provision could not apply to Lambert's work because Lambert worked on only the building's siding and roofing and these parts of a building are not "structural." The flood plain compliance provision applies to "structural alterations." The city code does not define "structural alterations," HCO § 151.02(H), however, and it was therefore undetermined at the time of settlement whether the roof and siding work falls within the scope of structural alterations and, thus, whether the flood plain compliance provision would apply.

The district court was tasked with finding whether the *Miller-Shugart* settlement agreement was reasonable from the perspective of a reasonably prudent person in

Lambert's position. *King's Cove II*, 958 N.W.2d at 323. We review that finding for clear error. *See id.* at 321. Based on our review of the record and the flood plain compliance provision, we conclude that the district court did not clearly err because, at the time of settlement, a reasonable person in Lambert's position may have had genuine concerns about the flood plain compliance provision increasing their potential liability.

4. United Fire's third challenge: whether the district court clearly erred when it found that the *Miller-Shugart* settlement agreement was not a product of collusion.

We address United Fire's argument that the *Miller-Shugart* settlement agreement was a product of collusion and that, therefore, it is unenforceable. On remand, the district court rejected this argument, concluding that the record includes no evidence of collusion.[10]

We review a district court's finding that a settlement agreement is enforceable, and thus not a product of collusion, for clear error. *See Indep. Sch. Dist. No. 197*, 525 N.W.2d at 607 (applying clear-error review to a district court's summary-judgment determination that a *Miller-Shugart* settlement agreement was not collusive). "[T]he role of an appellate court is not to weigh, reweigh, or inherently reweigh the evidence when applying a clear-error review; that task is best suited to, and therefore is reserved for, the factfinder."

[10] King's Cove contends that United Fire failed to preserve this issue for appeal because United Fire did not raise collusion in its initial appeal. We first observe that the issue of collusion was presented to and considered by the district court on remand in the parties' posttrial motions. Notwithstanding that this court concluded that United Fire did "not claim the settlement was obtained through fraud or collusion" and "the sole issue presented [was] whether the settlement was reasonable," *King's Cove III*, 2021 WL 4259025, at *3 n.2, because "[c]ollusion would make a facially reasonable settlement unreasonable in fact," *Indep. Sch. Dist. No. 197 v. Accident & Cas. Ins. of Winterthur*, 525 N.W.2d 600, 607 (Minn. App. 1995), *rev. denied* (Minn. Apr. 27, 1995), and the parties disputed this issue on remand to the district court, we address this argument on its merits.

Kenney, 963 N.W.2d at 223. "Collusion, for purposes of a *Miller-Shugart* settlement, is a lack of opposition between a plaintiff and an insured that otherwise would assure that the settlement is the result of hard bargaining." *Indep. Sch. Dist. No. 197*, 525 N.W.2d at 607.

United Fire claims that the settlement here was not the result of a hard bargain, pointing to the following deposition testimony taken in the garnishment action: Lambert's owner said that he "thought this entire case has been unreasonable since day one" and agreed that he would not "pay $2 million of his own money to settle."

In finding that the *Miller-Shugart* settlement agreement here was reasonable, the district court found that no collusion occurred: "[T]here has been no evidence put forth that Lambert committed fraud or colluded with [King's Cove] when entering into the 2016 *Miller-Shugart* Agreement." In addition, the district court already considered and rejected United Fire's collusion argument in its 2018 order that led to the initial appeal, saying, "United Fire has no evidence of collusion. The facts show that this is a typical *Miller/Shugart* agreement. . . . [T]here is no fraud and collusion simply because defendant believes the amount is too high." Because we will not reweigh the evidence and we discern no clear error in the district court's factual findings, we conclude that the district court did not clearly err by determining that the *Miller-Shugart* settlement agreement was reasonable.

B. The district court did not clearly err in its allocation of the unallocated *Miller-Shugart* settlement agreement.

We next consider whether the district court erred in allocating the unallocated *Miller-Shugart* settlement agreement. Because King's Cove and Lambert did not allocate

between claims that were covered and not covered by Lambert's insurance policies with United Fire, the district court was tasked on remand with applying the *King's Cove II* framework to allocate the settlement between covered and uncovered claims.

King's Cove argues that the district court erred in making its allocation finding by excluding from its allocation assessment covered damages to other property and property adjacent to Lambert's work and by failing to consider the flood plain compliance provision's impact on allocation. United Fire argues that the allocation is reasonable.

We first review the district court's allocation finding for clear error, and then we consider the specific arguments that King's Cove raises on appeal, concluding that the district court did not err in its factual findings.

1. The district court did not clearly err when it made its allocation finding.

King's Cove II requires that the district court consider how a reasonably prudent person in the position of the defendant—Lambert—would have valued and allocated the covered and uncovered claims at the time of settlement and, in doing so, that the district court consider evidence relevant to that determination. 958 N.W.2d at 323. Here, the district court considered the four categories of evidence relevant to the allocation determination listed in the *King's Cove II* opinion.

The district court considered information that was available to King's Cove and Lambert at the time of the settlement regarding the underlying facts. The district court explained that, although there were many expert reports from both Lambert and King's Cove, the settlement agreement "relied on Plaintiff's Supplemental Response to

Defendant's Interrogatories and Requests for Production of Documents to Plaintiff, March 6, 2015, and Report of [a city building official] dated September 24, 2015."

The district court considered materials produced in discovery and court rulings in the underlying litigation, observing the "hundreds of exhibits totaling thousands of pages produced in this litigation." The district court noted that, before settling, "the parties had exchanged interrogatories, requests for documents, and expert reports." Importantly, the district court explained that the appellate courts "determined that there was no insurance coverage for Lambert's 'own work' under exclusion *l*."[11]

The district court considered evidence of how King's Cove, Lambert, and their attorneys evaluated the claims at the time of the settlement, noting that, when King's Cove and Lambert evaluated them, the damages "were categorized by different areas of the building instead of by which entity performed the work that led to damage." The district court proceeded to explain how King's Cove and Lambert calculated the general and location-based damages in the settlement agreement. The district court then noted that, despite Lambert's expert reports "opining that a separate [weather-resistant barrier] was not required, and that the floodplain ordinance would not be triggered," the settlement agreement showed that both King's Cove and Lambert "acknowledge[d] that there was potential for Lambert to be held liable for significant damages" if the flood plain ordinance was triggered.

[11] We acknowledge that, in other cases, the legal issue of coverage should be determined by the district court in conjunction with its allocation finding.

The district court considered expert testimony about the value of the settled claims. In considering this, the district court noted that it admitted evidence "based on information available to the parties at the time of the settlement but was not necessarily available in the form of an expert report" into the record.

We conclude that the district court did not clearly err in its allocation finding. The district court stated that King's Cove and Lambert "entered into the agreement with the understanding, but not the assurance, that there was insurance coverage for the claims." It then explained that King's Cove "assumed the risk by agreeing to a settlement with Lambert that was completely reasonable for Lambert to accept" and stated that, "in 2016, Lambert *would have had no knowledge that on appeal in 2021* the higher courts would overturn this Court's determination that there was in fact insurance coverage for these claims." Therefore, we turn to the specific arguments raised by King's Cove.

2. King's Cove's first challenge: whether the district court clearly erred by relying on the *Miller-Shugart* settlement agreement to exclude from its allocation covered damages to other property and property adjacent to Lambert's work.

King's Cove asserts that the district court clearly erred in its allocation finding by relying on the unallocated *Miller-Shugart* settlement agreement's identification of damages because, in doing so, the district court erroneously excluded covered damages to other property and property adjacent to Lambert's work. This argument is premised on King's Cove's assertion that the district court should have accepted its allocation theory on remand, in which it sought to maximize its recoverable claims by establishing that the

damages it sought were both within the scope of the settlement agreement and covered by the insurance policies.

On remand, King's Cove claimed that the total damages to its building amounted to $1,041,387 and that the damages that were attributable to Lambert's own work, and thus excluded under exclusion *l*, were limited to $379,928.91. The district court observed that this was a substantial reduction from the amount that the original *Miller-Shugart* settlement agreement allocated to Lambert's own work. King's Cove argued that, under its new allocation theory, the United Fire insurance policies covered $661,457 because that was the amount of damages that were not related to Lambert's "own work." But the district court rejected this allocation theory.

In its order, the district court pointed out that King's Cove conceded that the full amount of damages attributed to Lambert in the *Miller-Shugart* settlement agreement would not be covered because of exclusion *l*, that King's Cove did not put forward any argument that the amount of damages attributable to others that worked on the project would be covered under Lambert's policies with United Fire, and that any amount of damages attributable to Lambert's subcontractor that provided concrete work were specifically excluded from the *Miller-Shugart* settlement agreement. Thus, the only remaining damages that could possibly be covered were the "general damages."

After rejecting King's Cove's allocation theory and reviewing the supreme court's coverage determination, the district court allocated the *Miller-Shugart* settlement agreement by looking at all claims with which it had been presented that were attributable to Lambert: claims for damages to the roof, claims for damages to the siding, and claims

for Lambert's portion of general damages to the building. The district court was bound by the conclusions of this court and the supreme court that exclusion *l* in the policies operated to exclude from coverage all property damage to Lambert's own work that "arose out of Lambert's own work" as the insured but did not exclude "a claim for damages caused by Lambert's work to preexisting structures located adjacent to the work performed by Lambert." *King's Cove II*, 958 N.W.2d at 317-18 (quotation omitted). The district court applied that prior coverage ruling and found that claims for the roofing and siding were not covered; accordingly, it excluded claims for the roofing and siding from its allocation of covered damages.

Then, relying on the supreme court's conclusion that Lambert's insurance policies with United Fire covered other damages attributable to Lambert, such as "damage to existing sheetrock, tiles, carpet, and the floor," *id.* at 317 (quotation omitted), the district court used the settlement agreement's general damages estimation of $317,000 in its allocation finding. And because King's Cove and Lambert stipulated in their *Miller-Shugart* settlement agreement that Lambert was responsible for 55% of the general damages to the building, the district court calculated 55% of the general damages amount in the settlement agreement. The result was $174,350. Thus, the district court allocated $174,350 to King's Cove as the sum of covered damages recoverable from United Fire.

The district court's finding is supported by the record, which includes the *Miller-Shugart* settlement agreement, and we discern no clear error in its allocation finding that the amount of general damages proportional to Lambert's share of the total damages identified by King's Cove are the only covered damages.

3. King's Cove's second challenge: whether the district court clearly erred by failing to consider the flood plain compliance provision's impact on allocation.

It is clear that the district court considered the flood plain compliance provision throughout its order, including by making findings that "Lambert faced potential liability for substantial costs to repair the building in compliance with City Ordinances through the operation of the floodplain ordinance" and recounting expert testimony on this topic. The district court weighed the flood plain compliance provision in favor of a finding that the *Miller-Shugart* settlement agreement was reasonable.

The district court also concluded, however, that King's Cove did not carry its burden of proof on allocation. King's Cove argues that it was not required "to prove that each contribution to the whole of damages is covered because the cost to comply with laws (*e.g.*, ordinances or building codes) may be covered even if both covered and uncovered causes contributed" to the damage. King's Cove supports this argument by citing federal caselaw: *Cincinnati Insurance Co. v. Rymer Cos.*, 41 F.4th 1026, 1029-30 (8th Cir. 2022), and *Regents of Mercersburg College v. Republic Franklin Insurance Co.*, 458 F.3d 159 (3d Cir. 2006). Federal caselaw can be persuasive, but not binding, authority. *State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010), *rev. denied* (Minn. June 29, 2010). We are not persuaded that the district court erred in its allocation findings as King's Cove argues. The supreme court gave plaintiff judgment creditors the burden to prove allocation because "the burden of proof rests upon the party claiming coverage under an insurance policy." *King's Cove II*, 958 N.W.2d at 325 (quoting *Boedigheimer v. Taylor*, 178 N.W.2d 610, 614 (Minn. 1970)).

King's Cove did not identify legal errors made by the district court that this court can review de novo, nor did it establish that there was coverage for this claim such that the district court's allocation finding is erroneous. We therefore conclude that the district court did not clearly err when it applied the supreme court's multi-factor allocation inquiry as stated in *King's Cove II* and awarded King's Cove $174,350.

C. King's Cove is not entitled to either enforcement of the full *Miller-Shugart* settlement agreement or reinstatement of a trial on the merits.

King's Cove next argues that the district court erred by revising the amount of the *Miller-Shugart* settlement agreement and substituting its allocation of the covered claims for the parties' stipulated judgment. King's Cove contends that it is entitled to full recovery of the *Miller-Shugart* settlement amount. Alternatively, King's Cove argues that, if the settlement is not fully enforced without allocating any amounts to uncovered claims, King's Cove and Lambert should be returned to their presettlement positions and its claims reinstated for a trial on the merits. United Fire argues that the district court did not err because it followed the supreme court's instructions in *King's Cove II* to allocate between covered and uncovered amounts and to allow recovery only to the extent that amounts set forth in the settlement agreement are covered by Lambert's insurance policies with United Fire.

Whether King's Cove is entitled to reinstatement of a trial on the merits when the full settlement amount will not be enforced is a question of law that requires us to interpret caselaw. Appellate courts review the interpretation of caselaw de novo. *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011).

In *King's Cove II*, the supreme court expressly directed the district court to engage in post hoc allocation of covered and uncovered claims—empowering the district court to determine that not all of the amounts agreed to in a *Miller-Shugart* settlement agreement are covered by the insurance policy or policies at issue. 958 N.W.2d at 324-25. This is neither a revision of the amount of the settlement nor a substitution of the parties' stipulated judgment, as King's Cove contends; rather, it is an enforcement of the parties' agreement to have United Fire pay only for those damages that are covered by Lambert's policies with it.

Although prior to *King's Cove II*, district courts may not have allocated *Miller-Shugart* settlement agreements for parties, the supreme court adopted a rule directing district courts to allocate an unallocated *Miller-Shugart* settlement agreement through the course of this litigation. *Id.* at 325. We are thus not persuaded by the argument that King's Cove is entitled to either enforcement of the full value of its unallocated *Miller-Shugart* settlement agreement or reinstatement of its claims against Lambert because it disregards the supreme court's holding in *King's Cove II*.

III. The district court did not abuse its discretion when it excluded two exhibits related to the application of the flood plain compliance provision.

The final issue on appeal is whether the district court abused its discretion when it declined to admit two exhibits—a 2023 City of Hastings building permit application and a related letter from a city official—into evidence at the hearing it held on remand. The district court declined to admit these exhibits into the record because neither document

would "have been contemplated at the time of the 2016 *Miller-Shugart* Agreement" and, therefore, they were not relevant.

"We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Relevant evidence is any evidence that has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. In reviewing both the reasonableness and allocation of a *Miller-Shugart* settlement agreement, district courts must consider the insured defendant's position, when faced with the plaintiff's claims, at the time of the settlement. *King's Cove II*, 958 N.W.2d at 323-24.

On remand, United Fire submitted evidence to support its argument that the damages arising out of the 2011 project did not trigger the flood plain compliance provision and King's Cove sought to admit two related exhibits to rebut that evidence. These were a 2023 building permit application and a letter dated March 10, 2023, that states that the building permit is incomplete "pending conformance to the Flood Plain Regulations outlined in this letter." King's Cove asserts that these documents reflect the city official's position on whether the flood plain compliance provision was triggered and that this position had changed between when the 2015 Bakken letter was issued and 2023. United Fire opposed the admission of these exhibits, arguing that the evidence was irrelevant because it was created in 2023—seven years after King's Cove and Lambert entered into the *Miller-Shugart* settlement agreement—and thus was not available to the parties at the

time they entered into the agreement. Because the evidence did not exist at the time the agreement was executed, it could not be used to determine how the "insured would have valued and allocated the covered and uncovered claims *at the time of the settlement*." *Id.* (emphasis added). The district court agreed that the exhibits would not have been contemplated at the time of settlement in 2016 and thus that they were not relevant, and it excluded both of the exhibits. And, as to King's Cove's assertion that the evidence was admissible as impeachment evidence, the district court determined that the 2023 letter could not be used to impeach statements from 2015.

Here, the district court was charged with evaluating both the reasonableness and allocation of the *Miller-Shugart* settlement agreement, and in doing so, it was to consider how a reasonable person in the position of the insured would have valued and allocated the covered and uncovered claims at the time of the settlement. Given the definition of relevant evidence, we must consider whether the district court abused its discretion in determining that the 2023 building permit application and 2023 letter were not relevant to the issues before it. The district court's reasoning that two documents created seven years after the execution of the settlement agreement were not relevant is sound because they did not have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. As the Eighth Circuit explained, "Events and circumstances happening after settlement are relevant only insofar as they inform how a reasonable party would have valued and allocated the claims at the time of settlement." *UnitedHealth Grp. Inc.*, 870 F.3d at 864. Although we do not foreclose the possibility that a document that was

created after a *Miller-Shugart* settlement agreement was executed could have some bearing on how reasonable persons in the position of the insured would have valued and allocated the covered and uncovered claims at the time of the settlement, we discern no abuse of discretion in the district court's determination here regarding documents created long after the settlement agreement and the events surrounding the negotiation of the settlement agreement concluded. Moreover, we discern no abuse of discretion in the district court's additional reasons for deciding that the two exhibits were not relevant and thus not admissible.

"We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136*, 872 N.W.2d at 879. The district court did not abuse its discretion when it excluded the 2023 building permit application and 2023 letter because the evidence would not have been contemplated when King's Cove and Lambert entered the 2016 *Miller-Shugart* settlement agreement and was therefore not relevant.

DECISION

When reviewing a district court's findings of fact pursuant to the two-step framework for determining the reasonableness of an unallocated *Miller-Shugart* settlement agreement set forth in *King's Cove II*, appellate courts review the district court's reasonableness findings for clear error and its allocation findings for clear error.

The district court did not clearly err when it found that the *Miller-Shugart* settlement agreement was reasonable pursuant to the *King's Cove II* framework, in which "[t]he test is what a reasonably prudent person in the position of the defendant would have settled for

on the merits of the plaintiff's claims at the time of the settlement." *King's Cove II*, 958 N.W.2d at 323. The district court properly considered the relevant nonexclusive factors in making its finding. *Id.* Therefore, the district court did not clearly err when it found that the agreement was reasonable.

The district court did not clearly err in finding the allocation of covered and uncovered claims pursuant to the *King's Cove II* framework, in which "[t]he test is how a reasonable person in the position of the insured would have valued and allocated the covered and uncovered claims at the time of the settlement." *Id.* at 323-24. Here, the district court properly considered relevant evidence regarding allocation, including the four nonexclusive factors provided by the supreme court. *Id.* at 324. Therefore, the district court did not clearly err when it ordered United Fire to pay $174,350 to King's Cove for its covered claims under the settlement agreement.

Because, under *King's Cove II*, district courts are explicitly tasked with allocating covered and uncovered claims in unallocated *Miller-Shugart* settlement agreements, we reject the argument that, if King's Cove does not receive the full value of the settlement, it is entitled to reinstatement of a trial on the merits. Finally, the district court did not abuse its discretion when it excluded two of King's Cove's exhibits after remand.

Affirmed.