

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0078**

King's Cove Marina, LLC,
Respondent,

vs.

Lambert Commercial Construction LLC, et al.,
Defendants,

United Fire & Casualty Company,
Appellant.

**Filed September 20, 2021
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

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

Mark R. Bradford, Bassford Remele, Minneapolis, Minnesota; and

Stephen P. Watters, Watters Law Office, Minnetonka, Minnesota (for respondent)

Kay Nord Hunt, Keith J. Broady, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Respondent King's Cove Marina (King's Cove) brought an action against defendant Lambert Commercial Construction (Lambert) alleging construction defects. After entering into a *Miller-Shugart* settlement agreement¹ with Lambert, King's Cove filed a supplemental complaint for garnishment against Lambert's commercial general liability insurer. The district court granted Lambert partial summary judgment on coverage and approved the *Miller-Shugart* settlement. This court reversed the district court's summary-judgment decision on coverage and on the reasonableness of the *Miller-Shugart* settlement agreement and did not, therefore, reach the remaining issues. The Minnesota Supreme Court affirmed our coverage decision, reversed our *Miller-Shugart* decision and, instead, adopted a two-step inquiry for determining the reasonableness of unallocated *Miller-Shugart* settlement agreements. The supreme court remanded to this court for consideration of the remaining issues on appeal. We affirm in part, reverse in part, and remand.

FACTS

This case arises out of a *Miller-Shugart* settlement agreement between respondent-plaintiff King's Cove Marina and defendant Lambert Commercial Construction LLC, and

¹ See *Alton M. Johnson Co. v. M.A.I. Co.*, 463 N.W.2d 277, 278 n.1 (Minn. 1990) ("In a *Miller-Shugart* settlement, the insured, having been denied any 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."); *Miller v. Shugart*, 316 N.W.2d 729 (Minn. 1982).

a subsequent garnishment action by King's Cove against Lambert's insurance company, appellant-insurer United Fire & Casualty Company (United). This appeal is before us for a second time following remand by the Minnesota Supreme Court. *See King's Cove Marina, LLC v. Lambert Commercial Constr. LLC*, 958 N.W.2d 310 (Minn. 2021) (*King's Cove Marina II*); *King's Cove Marina, LLC v. Lambert Commercial Constr. LLC*, 937 N.W.2d 458 (Minn. App. 2019) (*King's Cove Marina I*).

King's Cove is a marina in Hastings, Minnesota. King's Cove remodeled the main building of the marina. Lambert performed work at the marina as part of the remodeling project. King's Cove began experiencing problems with the construction work and refused to pay the outstanding balance on Lambert's invoices, at which point Lambert stopped work on the project. In 2013, King's Cove sued Lambert and other subcontractors for breach of contract and negligence. Lambert tendered its defense to United, which insured Lambert pursuant to a commercial general liability policy and a commercial liability umbrella policy. In 2015, United brought a declaratory-judgment action against Lambert and King's Cove seeking a ruling that it did not have a duty to defend or indemnify Lambert.

While the declaratory-judgment action was pending, Lambert and King's Cove entered into settlement negotiations to resolve the underlying lawsuit. United received notice of a proposed *Miller-Shugart* settlement. Lambert and King's Cove ultimately executed the *Miller-Shugart* agreement. King's Cove agreed to solely enforce the judgment against United. In 2016, the district court determined the *Miller-Shugart*

agreement was reasonable and held that United was responsible for the judgment entered against Lambert.

King's Cove commenced a garnishment proceeding and moved to file a supplemental complaint against United. The district court granted the motion and King's Cove served United with a supplemental complaint. When United denied coverage, King's Cove moved for partial summary judgment against United. The district court granted King's Cove's partial-summary-judgment motion and determined there was insurance coverage under the terms of United's policies issued to Lambert for the claims and damages asserted by King's Cove.

The district court held a two-day evidentiary hearing to evaluate the reasonableness of the *Miller-Shugart* agreement. In 2018, the district court ruled the agreement was reasonable and issued an amended order for judgment, ordering that United would be the judgment debtor for the judgment entered in favor of King's Cove and against Lambert. The amended order also removed Lambert as the judgment debtor. United moved for a new trial or for amended findings. King's Cove filed a motion for pre- and post-judgment interest. The district court denied both motions.

The parties filed cross-appeals. We reversed and remanded the district court's decision. *King's Cove Marina I*, 937 N.W.2d at 470. We determined the district court erred in granting partial summary judgment on coverage in King's Cove's favor because an exclusion to the insurance policy applied and because the *Miller-Shugart* settlement agreement was unreasonable as a matter of law. *Id.* at 467-68. Based on this ruling, we did not consider whether: (1) the district court erred by allowing King's Cove to file a

supplemental complaint against United as garnishee; (2) the district court abused its discretion by denying United's motion for a new trial or amended findings; or (3) the district court erred by denying King's Cove's request for an award of interest. *Id.* at 469 n.5.

The supreme court granted review of two issues: (1) the scope of coverage under United's policies; and (2) the reasonableness of the *Miller-Shugart* settlement. *King's Cove Marina II*, 958 N.W.2d at 316. The supreme court affirmed this court's coverage determination, which held that an exclusion applied to coverage for property damage. *Id.* at 318-20. With respect to the second issue, the supreme court held "that the failure to allocate between covered and uncovered claims does not make the *Miller-Shugart* settlement agreement per se unreasonable." *Id.* at 322. The supreme court adopted a two-step inquiry for evaluating the reasonableness of an unallocated *Miller-Shugart* settlement and reversed and remanded for further consideration of the case in light of the newly-developed standard. *Id.* at 323-24.

We reinstated the appeal for the purpose of addressing: (1) the district court's order granting King's Cove leave to serve and file a supplemental garnishment complaint; (2) the overall reasonableness of the *Miller-Shugart* settlement agreement pursuant to the newly-established two-step inquiry; (3) the district court's denial of United's motion for a new trial or amended findings; and (4) King's Cove's request for an award of pre- and post-judgment interest.

DECISION

I. Leave to File a Supplemental Complaint

United claims the district court erred by granting King's Cove leave to file a supplemental complaint against United as a garnishee pursuant to Minn. Stat. § 571.75 (2018).

The statute provides, in relevant part, that:

In this and all other cases where the garnishee denies liability, the creditor may move the court at any time before the garnishee is discharged, on notice to both the debtor and the garnishee for an order making the garnishee a party to the civil action and granting the creditor leave to file a supplemental complaint against the garnishee and the debtor. The supplemental complaint shall set forth the facts upon which the creditor claims to charge the garnishee. If probable cause is shown, the motion shall be granted.

Id., subd. 4.

When the material facts are not in dispute, “appellate courts should review de novo the determination of whether probable cause exists in a garnishment action.” *McGlothlin v. Steinmetz*, 751 N.W.2d 75, 81 (Minn. 2008). To satisfy the probable-cause threshold, “the creditor needs to allege facts that show that it is possible that the garnishee is liable for the debt and must support those facts with evidence that fairly and reasonably tends to show the existence of the facts alleged.” *Id.* Whether probable cause exists “depends not on whether the creditor will ultimately be successful, but rather on whether the evidence shows probable grounds for believing that the garnishee might be held liable under the policy involved.” *Id.* (quotation and emphasis omitted).

The district court determined that King's Cove's property-damage allegations met "the low threshold of probable cause" necessary to file a supplemental complaint. King's Cove and Lambert entered into a *Miller-Shugart* settlement and filed a stipulation for order for judgment and entry of judgment. The parties agreed in the stipulation that "Lambert was insured at all times" with United. Thus, the district court did not err by permitting King's Cove to file a supplemental complaint against United.

II. *Miller-Shugart* Settlement Agreement

"A *Miller-Shugart* settlement agreement is a settlement between a plaintiff and an insured defendant in which the defendant, having been denied coverage for the claim, agrees that the plaintiff may enter judgment against it for a sum collectible only from the insurance policy." *King's Cove Marina II*, 958 N.W.2d at 313 n.1. After the district court approves a *Miller-Shugart* settlement, the insurer may challenge the validity and reasonableness of the settlement, and whether it was obtained through fraud or collusion. *See Miller*, 316 N.W.2d 733-35 (establishing insurer's right to challenge *Miller-Shugart* settlement in garnishment or declaratory-judgment proceeding); *see also Alton M. Johnson Co.*, 463 N.W.2d at 279 (addressing reasonableness of *Miller-Shugart* settlement). A district court has broad discretion to conduct an objective inquiry into the overall reasonableness of a *Miller-Shugart* settlement. *Id.* We give the district court's factual findings "great deference," and will not set them aside unless "clearly erroneous." *Jorgenson v. Knutson*, 643 N.W.2d 615, 618 (Minn. App. 2002), *rev'd on other grounds*, 662 N.W.2d 893 (Minn. 2003).

United challenges the reasonableness of the *Miller-Shugart* settlement agreement.² The supreme court adopted a two-step inquiry for evaluating the reasonableness of an unallocated *Miller-Shugart* settlement agreement. *King's Cove Marina II*, 958 N.W.2d at 323. The district court must (1) consider “the overall reasonableness of the settlement;” and (2) “[i]f the settlement is reasonable, the district court then considers 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.* Each step involves a “multi-factor objective test.” *Id.*

For the first step in the analysis, “the district court must find that the settlement is reasonable, examining the value of both the covered and uncovered claims.” *Id.* “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.* (quotation omitted). Further,

[t]he relevant evidence regarding reasonableness includes the customary evidence on liability and damages, as well as the risks of going to trial, the likelihood of favorable or unfavorable rulings on legal defenses and evidentiary issues if the tort action had been tried, expert legal opinions, and other factors of forensic significance.

Id. (quotations omitted).

The second step in the analysis considers “how a reasonable person in the position of the insured would have valued and allocated the covered and uncovered claims at the

² United does not claim the settlement was obtained through fraud or collusion. Thus, the sole issue presented is whether the settlement was reasonable.

time of the settlement.” *Id.* at 323-24. “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 the risks of trial.” *Id.* at 324 (quotation omitted). Relevant evidence may include:

- (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.

King’s Cove, as the plaintiff-judgment creditor, bears the burden of proof as to the agreement’s reasonableness. *Id.* at 325. The supreme court explained:

Placing the burden of proof on the plaintiff judgment creditor is consistent with the general rule that the burden of proof rests upon the party claiming coverage under an insurance policy, as well as the more specific rule that the plaintiff judgment creditor bears the burden of establishing the reasonableness of a *Miller-Shugart* settlement agreement.

Id. (citation and quotation omitted).

We conclude that remand to the district court is appropriate based on the supreme court’s development of the two-part inquiry. We recognize that the district court has already conducted an objective inquiry into the reasonableness of the *Miller-Shugart* settlement and made a number of factual findings. However, the district court did not have the benefit of the supreme court’s articulation of the new test or of its identification of multiple factors to consider as part of this test. The district court is in the best position to weigh the evidence, make factual findings, and apply those findings to the test. *See Sefkow*

v. Sefkow, 427 N.W.2d 203, 210 (Minn. 1988) (cautioning that reviewing court exceeds scope of review if it “usurp[s] the role of the [district] court by reweighing the evidence and finding its own facts”).

Accordingly, we reverse and remand to the district court for further analysis of the reasonableness of the *Miller-Shugart* agreement in light of the supreme court’s two-part inquiry. The district court may exercise its discretion how best to consider the new two-part test, whether to reopen the record for additional briefing, or to schedule a hearing to allow the parties to present additional evidence. *See Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005) (“[D]istrict courts are given broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided.”).

III. Remaining Issues

There are two remaining issues before us on remand.

First, United argues it is entitled to a new trial or amended findings on the issue of reasonableness because the district court committed reversible error by excluding testimony from certain witnesses. Because we reverse and remand the district court’s decision regarding the *Miller-Shugart* settlement and we defer to the district court as explained above how best to proceed, we need not reach these arguments.

Second, King’s Cove argues it is entitled to an award of pre- and post-judgment interest. King’s Cove contends that the district court erred by denying its request for an award of accrued interest pursuant to Minn. Stat. § 549.09, subd. 1 (2020). King’s Cove recognizes that we “cannot determine the *amount* of interest to which [King’s Cove] is

entitled,” but asks this court to “remand with instructions for *how* interest should be calculated.” We decline to do so. The district court will analyze the two-part *Miller-Shugart* reasonableness test on remand. It is not appropriate for us to resolve the question of interest at this time.

Affirmed in part, reversed in part, and remanded.