

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1293**

Andrew Cusick, et al.,
Respondents,

vs.

Mozey's Concrete & Masonry Inc., and
SullivanDay Construction, Inc., defendants/third-party plaintiffs,
Respondents,

vs.

Demo Unlimited, Incorporated, third-party defendant,
Appellant.

**Filed May 11, 2020
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-17-16170

Alicia N. Sieben, Matthew J. Barber, Schwebel, Goetz, & Sieben, P.A., Minneapolis,
Minnesota (for respondents Andrew Cusick, et al.)

Deborah C. Eckland, Elizabeth L. Taylor, Matthew G. Nelson, Goetz & Eckland P.A.,
Minneapolis, Minnesota (for respondent Mozey's Concrete)

Michael J. Tomsche, James C. Kovacs, Tomsche, Sonnesyn & Tomsche, P.A., Golden
Valley, Minnesota (for respondent SullivanDay Construction)

Mark G. Pryor, Elizabeth J. Roff, Brown & Carlson, P.A., Minneapolis, Minnesota, and

Timothy Poeschl, Laura Johnson, Grotefeld, Hoffman, Gordan, Ochoa & Evinger LLP,
Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this appeal from a final judgment, appellant challenges the district court's order granting respondents' motions to enforce a settlement agreement signed by all parties at a mediation. Appellant argues the district court erred when it concluded that (1) the settlement agreement "was a global release of all claims," which included appellant's increased-premium claim, and (2) appellant's attorney had "authority to settle its increased-premium claim." Because we conclude that the district court did not err when it enforced the settlement agreement and when it determined that appellant's attorney had authority to enter a mediated settlement under Minn. Stat. § 481.08 (2018), we affirm.

FACTS

This dispute arises from respondent Andrew Cusick's workplace injury. Respondent SullivanDay Construction Inc. (SullivanDay) was the general contractor for a project that involved converting a bank into a Montessori school in Golden Valley. SullivanDay hired appellant Demo Unlimited Incorporated (Demo), Cusick's employer, to perform demolition work at the project site. SullivanDay also hired respondent Mozey's Concrete & Masonry Inc. (Mozey's) as a subcontractor to remove a bank-vault door, among other tasks. Mozey's removed the door, and "left [it] leaning against the wall outside the vault." Cusick was near the door when "[s]omehow the vault door fell on Cusick's left leg and he sustained severe injuries."

Cusick received workers' compensation benefits and sued SullivanDay and Mozey's for damages. In his amended complaint, Cusick alleged negligence, breach of contract, joint enterprise, vicarious liability, and res ipsa loquitur. SullivanDay and Mozey's filed separate answers denying liability, filed cross-claims against each other, and filed third-party complaints against Demo. Mozey's alleged contribution and indemnity against Demo. SullivanDay alleged contractual and common-law contribution and indemnity, breach of contract, negligent misrepresentation, and negligent supervision against Demo. Demo answered both third-party complaints and denied liability.

On February 20, 2019, all parties participated in mediation and executed a settlement agreement. The settlement agreement is two typed pages, with a few handwritten notes in the margin, and states, in part:

Now, therefore, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, *the parties, intending to be bound pursuant to Minn. Stat. § 572.35, and with the intent of resolving any and all claims that have been brought or could have been brought in the Legal Action, hereby agree as follows:*

1. Defendant shall pay Plaintiff and Plaintiff's Attorney the sum of seven hundred fifty thousand Dollars (750,000.00) *in full and final settlement of all claims, except for no-fault benefits, which were made, or could have been made in the Legal Action as to the settling parties.*

. . . .

5. Plaintiff shall execute a Release of All Claims and the settling parties shall execute a Stipulation of Dismissal with Prejudice of the legal Action.

(Emphasis added.) The right margin includes handwritten notes that read “Naig: 730,000,” “Reverse Naig 20,000, Demo agrees to no comp future credit.”

After the mediation, Mozey’s circulated proposed release language by email. Demo responded that the proposed release language was “overbroad” and sent a revised draft that removed Demo from the proposed release. Mozey’s rejected Demo’s revised draft. Each party moved to enforce the settlement. Cusick asked the district court to enforce the settlement agreement signed at the mediation and to permit the parties to distribute funds as directed by the handwritten notes. Demo asked the district court to enforce a settlement that excluded Demo’s claim for increased workers’ compensation premiums against Mozey’s and SullivanDay, both of whom separately moved to enforce the settlement agreement as signed by the parties at mediation.

After a hearing, the district court issued a written order, finding that the settlement agreement was unambiguous and by its plain terms “settles, resolves and provides for the release and stipulated dismissal, of any and all claims that were brought or could have been brought as part of this action.” The district court granted Mozey’s and SullivanDay’s motions and dismissed with prejudice “[a]ll claims, cross-claims, counterclaims, and third party claims and counterclaims brought by the parties or which could have been brought, including any claim by Demo for increased worker’s compensation premiums.” Finally, the district court denied Demo’s motion, but did not direct entry of judgment.

Demo then filed a counterclaim against Mozey’s and SullivanDay for increased workers’ compensation premiums. The district court dismissed the attempted counterclaim and directed entry of judgment. Demo filed a letter with the district court seeking

permission to move to reconsider the order enforcing the settlement agreement. The district court denied Demo's request in a written order, stating it found "no equitable reason to put the settlement aside."

Demo appeals.

DECISION

I. The district court did not err when it enforced the mediated settlement agreement as including a global settlement of all claims.

A settlement agreement is "contractual in nature." *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). When determining whether a contract is ambiguous, the court gives contractual language "its plain and ordinary meaning." *Current Tech. Concepts, Inc. v. Irie Enter., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). A contract is ambiguous if its language is "reasonably susceptible to more than one interpretation." *Id.* A contract must be interpreted to give effect to all of its provisions. *Id.* Whether a contract is ambiguous is a question of law that this court reviews de novo. *Storms, Inc. v. Mathy Const. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). Appellate courts review a district court's decision to enforce a settlement agreement for an abuse of discretion and will "not [] reverse[] unless it be shown that the court acted in such an arbitrary manner as to frustrate justice." *Johnson v. St. Paul Ins. Co.*, 305 N.W.2d 571, 573 (Minn. 1981) (quotation omitted).

Demo argues that the mediated settlement agreement is unambiguous and that the "only reasonable interpretation is that the parties did not intend to settle [Demo's] increased

premium claim.” Demo makes three arguments why the settlement agreement does not include its increased-premium claim, which we will discuss in turn.

First, Demo argues that this case is not a “run of the mill” personal-injury case because it requires an understanding of workers’ compensation. Demo points out that an increased-premium claim is a cause of action for an insured employer to recover increased workers’ compensation premiums against a third-party tortfeasor under Minn. Stat. § 176.061, subd. 5(c) (2018). Here, the settlement agreement refers to a *Naig* settlement, which is “an agreement between the injured employee and the third-party tortfeasor that settles only those damages that are not recoverable under workers’ compensation law.” *Drake v. Reile’s Transfer & Delivery, Inc.*, 613 N.W.2d 428, 432 n.2 (Minn. App. 2000) (citing *Naig v. Bloomington Sanitation*, 258 N.W.2d 891, 893 (Minn. 1977)). And the settlement agreement refers to a reverse-*Naig* settlement, which is “when the tortfeasor settles potential subrogation claims for workers’ compensation benefits with the employer and the employer’s workers’ compensation insurer.” *Fish v. Ramler Trucking, Inc.*, 923 N.W.2d 337, 339 n.1 (Minn. App. 2019) (quotation and citations omitted), *aff’d*, 935 N.W.2d 738 (Minn. 2019).

With this background, Demo argues that the settlement agreement resolved only *Naig* and reverse-*Naig* claims, and did not include its increased-premium claim against Mozey’s and SullivanDay. Demo relies on the handwritten comments in the margin referring to “*Naig*” and “reverse-*Naig*” and contends that this language “narrowed the broad release language.” Mozey’s argues that if we adopt Demo’s reading of the settlement agreement, it would “require the Court to ignore the unambiguous global settlement

language wholesale.” Because a contract should be interpreted to give meaning to all contract provisions, *see Current Tech. Concepts.*, 530 N.W.2d at 543, SullivanDay contends that the handwritten comments should be interpreted “to allocate how the settlement funds would be distributed.”

The settlement agreement provides that it is a “full and final settlement of *all* claims, except for no-fault benefits, which were made, or *could have been made* in the Legal Action as to the settling parties.” (Emphasis added.) We conclude that this language is unambiguous and governs the scope of the claims settled. When contract language is unambiguous, we must apply its “plain and ordinary meaning.” *Current Tech. Concepts.*, 530 N.W.2d at 543. And, here, the settlement agreement stated that the parties intended to resolve “any and all claims that have been brought or could have been brought.” We reject Demo’s interpretation of the handwritten comments because it ignores and negates the “any and all claims” language in the settlement agreement. *See id.*¹

Second, Demo argues that the district court’s interpretation of the settlement agreement as a “global release” makes the handwritten comments meaningless. Demo also contends that the parties would have “omitted or crossed out the *Naig* and reverse *Naig* limiting language” if they had intended a global release. The district court determined that the handwritten comments “specify certain terms of the settlement,” but do “not negate the other, broad language settling all claims.” We agree with the district court’s interpretation

¹ Demo argues, alternatively, that the settlement agreement is ambiguous, but does not articulate two reasonable interpretations of the “any and all claims” language. Because we conclude the settlement agreement is unambiguous, we do not further address Demo’s ambiguity arguments.

of the settlement agreement. The handwritten comments allocate the settlement funds as between the *Naig* and reverse-*Naig* amounts, but do not limit the scope of the claims settled, *i.e.*, the parties agreed to “full and final settlement of all claims . . . which were made, or could have been made.”

Third, Demo argues that the parties’ dispute about the scope of the claims settled “evidences no meeting of the minds necessary to form an enforceable agreement.” A “full and enforceable settlement” requires “a definite offer and acceptance [so] that it can be said that there has been a meeting of the minds on the essential terms of the agreement.” *Jallen v. Agre*, 119 N.W.2d 739, 743 (Minn. 1963). “Minnesota follows the objective theory of contract formation, under which an outward manifestation of assent is determinative, rather than a party’s subjective intention.” *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985); *see also SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2001) (“Whether mutual assent exists is tested under an objective standard.”).

Demo relies on *Smoliak v. Myhr*, 361 N.W.2d 153 (Minn. App. 1985). In *Smoliak*, two parties executed a purchase agreement for the sale of shoreline property, but did not include a legal description of the land. *Id.* at 156. Both understood the property to have 600 feet of shoreline, except the purchaser assumed a “straight line” measurement while the seller measured in a “meandering fashion,” leading to a discrepancy of 75 feet. *Id.* at 155. This court affirmed the district court’s determination that the “contract was insufficient and could not be specifically enforced by either party” because there was no meeting of the minds about the measurement of the property to be sold. *Id.* at 155-56.

Demo argues that *Smoliak* is instructive because, here, the parties did not have a meeting of the minds about what the term “claims” encompassed. Mozey’s argues *Smoliak* is inapposite because, there, the purchase agreement did not describe the land sold and the district court received evidence about the parties’ conflicting understandings of what land was conveyed. We agree with Mozey’s. The purchase agreement in *Smoliak* was ambiguous and the district court considered extrinsic evidence. Here, the settlement agreement is unambiguous and no essential term is missing, so the district court did not consider extrinsic evidence. In short, *Smoliak* does not apply because the settlement agreement is unambiguous.

Because Demo objectively manifested its assent to the settlement agreement by signing unambiguous language that resolved “any and all claims,” we conclude that Demo agreed to settle “all claims . . . which were made, or could have been made” and that “all claims” includes Demo’s increased-premium claim. The district court did not abuse its discretion when it enforced the mediated settlement agreement as including a global settlement of all claims.

II. The district court did not err when it determined that Demo’s attorney had authority to enter into a settlement agreement.

Demo argues the district court erred because its attorney lacked authority to settle its increased-premium claim at the mediation. The district court rejected this argument, relying on Demo’s concession that the settlement is governed by Minn. Stat. § 481.08 (2018), which provides that “[a]n attorney may bind a client, at any stage of any action or proceeding, by agreement . . . made in writing and signed by such attorney.”

At the district court and on appeal, Mozey’s and SullivanDay argue that Demo is bound by the settlement agreement. Along with citing section 481.08, respondents also rely on Minn. Stat. § 572.35, subd. 1 (2018), which provides that a mediated settlement agreement is *not* binding, unless:

- (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement if they are uncertain of their rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights.

We conclude that the district court did not err in rejecting Demo’s argument that its attorney lacked authority to sign the mediated settlement agreement. First, the settlement agreement states, “the parties are desirous of creating a binding Mediated Settlement Agreement that is enforceable pursuant to Minn. Stat. § 572.35.” Second, the settlement agreement explicitly satisfied section 572.35’s statutory requirements by these provisions:

6. Pursuant to Minn. Stat. § 572.35, the parties are hereby advised of the following:
 - a. The mediator, [], has no duty to protect their interest or provide them with information about their legal rights;
 - b. The signing of the Mediated Settlement Agreement may adversely affect their legal rights; and
 - c. They should consult with an attorney before signing a Mediated Settlement Agreement if they are uncertain of their rights.

Third, Demo’s attorney bound Demo under Minn. Stat. § 481.08 by signing a written settlement agreement. Demo never asked the district court to vacate the settlement agreement; when the district court asked Demo’s attorney at the hearing whether Demo

would seek to “get[] . . . out of the deal,” Demo responded, “No.” Rather, Demo’s motion in the district court sought to enforce the settlement agreement by adding an exception for its increased-premium claim. Thus, Demo implicitly concedes that its attorney had authority to bind it at the mediation. *See, e.g., Ghostley v. Hetland*, 204 N.W.2d 821, 823 (Minn. 1973) (enforcing settlement agreement under section 481.08 after determining that “[i]t is clear—indeed, undisputed—that both parties authorized their attorneys to settle the litigation and that a good-faith settlement was made by the two attorneys”); *Triple B & G, Inc. v. City of Fairmont*, 494 N.W.2d 49, 52-53 (Minn. App. 1992) (affirming district court’s decision to enforcement settlement agreement under section 481.08 because attorney had authority to settle dispute). To the extent that Demo has attempted to shift its theory on appeal, we decline to grant relief on that basis. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“[A] party [may not] obtain review by raising the same general issue litigated below but under a different theory.”).

Affirmed.