This opinion is nonprecedential except as provided by Minn.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
A25-1017

Jacquelyn Karre, et al.,
Plaintiffs,

vs.

City of Duluth, et al.,
Defendants,

Spirit Mountain Recreation Area Authority,
Appellant,

Wiegand Sports GmbH,
Respondent.

Filed May 4, 2026
Affirmed; motion denied
Wheelock, Judge

St. Louis County District Court
File No. 69DU-CV-20-551

Ryan M. Zipf, League of Minnesota Cities, St. Paul, Minnesota (for appellant/cross-respondent Spirit Mountain Recreation Area Authority)

Mark A. Fredrickson, William L. Davidson, Sean G. Kelly, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent/cross-appellant Wiegand Sports GmbH)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the district court's judgment on respondent's contractual indemnification claim for a personal-injury suit wherein plaintiffs brought negligence claims against appellant and respondent and additional product-liability claims against respondent. Appellant argues that (1) the contract between appellant and respondent did not contain express and specific language entitling respondent to indemnification for settlement and defense costs; (2) the *Pierringer* agreement[1] between appellant and plaintiffs precludes respondent from being indemnified; and (3) based on common-law principles of indemnification, appellant is not contractually obligated to indemnify respondent. Respondent filed a cross-appeal, arguing that the district court erred by not awarding it attorney fees and costs incurred in enforcing its right to indemnification. We affirm. Appellant also filed a motion to strike portions of respondent's brief. Because we do not rely on any of the material in respondent's brief that appellant moves to strike, we deny appellant's motion as moot.

[1] A *Pierringer* agreement or settlement allows a plaintiff to enter into a settlement with one or more defendants (the settling defendants) while maintaining a cause of action against one or more codefendants (the nonsettling defendants), and "the nonsettling defendants' right to contribution can be cut off by [the] plaintiff[,] who agrees to indemnify the settling defendants against any claims of contribution." *Frey by Frey v. Snelgrove*, 269 N.W.2d 918, 921 (Minn. 1978) (adopting the procedures set forth in *Pierringer v. Hoger*, 124 N.W.2d 106, 111-12 (Wis. 1963)).

FACTS

In June 2018, Jacquelyn Karre and Kelly Ray (plaintiffs) were injured in an accident while riding the Timber Twister Alpine Coaster (Alpine Coaster) at Spirit Mountain Recreation Area in Duluth, which was built by respondent Wiegand Sports GmbH (Wiegand) and is owned and operated by appellant Spirit Mountain Recreation Area Authority (Spirit Mountain).[2] About a decade earlier, Spirit Mountain entered into a contract with Wiegand to design, manufacture, and construct the Alpine Coaster for its adventure park (the contract). The following facts are drawn from the trial record and the district court's July 20, 2022 order, which sets out the underlying facts referenced in its subsequent summary-judgment orders.

The Alpine Coaster was completed and inspected for approval to operate in 2010 and operates at a rate of approximately 100,000 rides a year. It is a two-person ride controlled by the rider in the rear seat of the cart using the handle attached to the cart to change the speed and operate the brakes. Riders are not allowed to have cell phones on the ride because both passengers are required, pursuant to the ride's safety instructions, to use both hands to hold onto the cart while on the ride—the rear passenger must hold onto speed and brake controls, and the front passenger must hold onto "loops" on the cart.

Spirit Mountain provides training for its employees to ensure compliance with the ride's safety rules, and both state and in-house inspectors conduct regular inspections of

[2] Spirit Mountain Recreation Area is owned by the City of Duluth, and the Spirit Mountain Recreation Area Authority is a unit of the city that maintains, controls, and operates the recreation area and adventure park.

the Alpine Coaster. Four employees operate the Alpine Coaster when it is in use: a loading attendant meets riders and provides the safety rules; a launch attendant assists riders with getting seated in the cart, checks their seatbelts, and verifies that they understand the rules; a bottom attendant observes riders at the end of the ride and watches as they return to the load/unload platform; and an unload attendant assists riders with exiting the ride. Prior to the 2018 accident, there were three reports of similar incidents on the coaster: in 2011, 2016, and 2017.

Before plaintiffs rode the Alpine Coaster at Spirit Mountain, they walked past multiple signs Spirit Mountain had posted "between the ticket office and the coaster" that warned riders to keep their hands and feet inside the cart at all times and prohibited cell-phone use while riding the coaster. The Spirit Mountain employee responsible for assisting plaintiffs into the cart that day testified that, although she did not recall the specific instructions she gave to plaintiffs, she provided the same instructions and warnings to all riders. The employees knew that riders were not supposed to have their cell phones out while riding and that the taller rider was supposed to ride in the back seat and the shorter rider in the front seat. Notwithstanding this knowledge, the employee responsible for the launch of the ride stated that he allowed patrons to ride the coaster while using cell phones and had never received any punishment or feedback from Spirit Mountain about not enforcing this rule. On this day, Ray, the taller of the two plaintiffs, rode in the front seat of the cart and had her cell phone out and in her hands during the launch and throughout the ride. Karre rode in the back seat of the cart.

Plaintiffs rode the Alpine Coaster without incident until the third curve, when Karre "head a loud noise and felt a jolt" that threw both plaintiffs to the right. When this happened, Karre saw Ray begin to come out of the cart and contact the guardrail, so she attempted to pull Ray back into the cart. Karre's leg and arm hit the fence on the side of the ride, though both plaintiffs remained restrained by their seat belts and in the cart. When the Alpine Coaster came to a stop at the end of the ride, Karre removed herself from the cart and unbuckled Ray, who was unconscious. Ray's son, who was with them that day, approached and saw that a stick had impaled Ray's heel and that her face was injured. Ray's son, a trained paramedic, removed the stick, and an ambulance transported her to the hospital. Karre followed in a separate vehicle, and both plaintiffs were treated for their injuries at the hospital.

Plaintiffs filed a complaint against the City of Duluth, Spirit Mountain, and Wiegand, asserting multiple claims that included the following: count I—negligence against the city as owner of Spirit Mountain Recreation Area;[3] count II—negligence against Spirit Mountain; count III—negligent hiring/supervision/retention against all defendants; count IV—negligence against Wiegand; count V—defective design against Wiegand; and count VI—strict liability against Wiegand. Spirit Mountain and Wiegand subsequently brought crossclaims against each other for contribution and indemnity; Spirit Mountain moved for summary judgment against plaintiffs and Wiegand; and Wiegand moved for summary judgment against Spirit Mountain on its indemnity claim.

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[3] The district court granted the city's motion for summary judgment based on its assertion of parks and recreational-use immunity, and it is therefore not a party on appeal.

Wiegand tendered its defense to Spirit Mountain in July 2020, which Spirit Mountain denied, asserting that it had no duty to defend or indemnify Wiegand. Spirit Mountain then tendered its defense to Wiegand.

Paragraph 12 of the contract sets forth the mutual indemnity rights of the parties in two separate clauses. The indemnification clause in paragraph 12(a) identifies Spirit Mountain's rights and reads:

> (a) SELLER [Wiegand] agrees to protect, indemnify, defend and hold BUYER [Spirit Mountain] harmless from and against any and all losses, claims, obligations, fines, costs, proceedings, deficiencies, damages, suits, actions, penalties, judgments, assessments or liabilities of any kind or description, including, loss of life or personal injury (including but not limited to employees of SELLER or of the BUYER), or property damage (including but not limited to property of BUYER or of the SELLER), reasonable fees and costs of attorneys and requisite experts ("LOSSES"), arising out of or sustained, in each case, directly or indirectly, from any material breach of representation, warranty or covenant of SELLER made herein or any default by SELLER, hereunder, including, without limitation, from defective design, engineering, manufacture or installation of the Alpine Coaster, from defective materials or workmanship incorporated in the Alpine Coaster or defective marking of the Alpine Coaster. SELLER shall not be liable for any consequential, special, incidental, exemplary or punitive damages or any claim for lost business opportunities.

The indemnification clause in paragraph 12(b) identifies Wiegand's rights and reads:

> (b) BUYER [Spirit Mountain] agrees to protect, indemnify, defend and save SELLER [Wiegand] harmless from and against any and all LOSSES of SELLER arising out of or sustained, in each case, directly or indirectly, from any material breach of representation or covenant of BUYER made herein or default by BUYER hereunder, including, without limitation, from defective/ bad maintenance and/ or operation of the Alpine Coaster, except to the extent such maintenance

> and/or operation was in conformity with the design and maintenance specification, non-compliance with maintenance and/ or operation manuals supplied by SELLER or breach of any applicable laws. Notwithstanding the foregoing, BUYER shall not be liable for any consequential, special, incidental, exemplary or punitive damages or any claim for lost business opportunities.

The district court held a hearing on the summary-judgment motions, and it subsequently issued an October 2022 order in which it granted Spirit Mountain's motion as to counts II and III and dismissed the claims based on parks and recreational-use immunity and granted Wiegand's motion as to its indemnity claim against Spirit Mountain. The district court denied Spirit Mountain's summary-judgment motion as to Wiegand, finding that the indemnification clause in paragraph 12(b) applied. The district court determined that the "failure of Spirit Mountain's employees to adhere to the basic safety guidelines" by allowing the taller rider to ride in the front and launching the cart while one of the riders was actively holding her cell phone "likely contributed to the accident." However, the district court further determined that the indemnification clause in paragraph 12(b) applied only to Spirit Mountain's negligence and that, if Wiegand was found liable for defective design/construction and/or strict product liability, Spirit Mountain would not be obligated to indemnify Wiegand under that clause. After counts I through III were dismissed, counts IV through VI against Wiegand remained. And at this point, it was still undecided whether Spirit Mountain was obligated to indemnify Wiegand.

In October 2022, Spirit Mountain and plaintiffs entered into a *Pierringer* settlement agreement in which Spirit Mountain agreed to waive taxation of its costs and disbursements related to the district court's grant of summary judgment in its favor on plaintiffs' claims in counts II and III and plaintiffs agreed to dismiss their claims against Spirit Mountain with prejudice and waive any other claims they might have against Spirit Mountain related to the accident.

The parties then filed new motions for summary judgment. Wiegand sought dismissal of plaintiffs' remaining counts IV through VI, arguing that summary judgment was appropriate because fault for the accident lay solely with plaintiffs and Spirit Mountain. Spirit Mountain sought dismissal of Wiegand's crossclaims against it, arguing that Wiegand's claim for indemnification should be dismissed based on Spirit Mountain's *Pierringer* agreement with plaintiffs.

In June 2023, the district court denied Wiegand's motion and reserved Spirit Mountain's motion pending a determination of the allocation of liability for the accident. In its order, the district court determined that the language in the paragraph 12(b) indemnification clause providing that Wiegand "is to be held harmless for 'any losses . . . from defective/bad maintenance and/or operation of the Alpine Coaster'" was meant to include costs to defend claims resulting from losses attributable to Spirit Mountain. It determined that a question of fact remained on the apportionment of fault and that "Spirit [Mountain] may have a duty to pay for defense costs commensurate to its portion of the liability."

In March 2024, Wiegand entered into a settlement with both plaintiffs for $287,500. The settlement expressly stated that Wiegand entered into the agreement "to avoid attorneys fees, costs and expenses of proceeding to trial" and that it was not admitting any liability by entering into the settlement agreement.

Spirit Mountain moved for summary judgment a third time, arguing that, based on Wiegand's settlement with plaintiffs, Wiegand had paid "no more than its fair share of liability"; that the terms of the *Pierringer* agreement between Spirit Mountain and plaintiffs noted that Wiegand would not pay more than its fair share of liability; and that the contract between Wiegand and Spirit Mountain did not use "specific" and "express" language that established that the parties would share defense costs based on fault. The district court, unpersuaded by Spirit Mountain's argument, denied the motion because it determined that the settlement between Wiegand and plaintiffs was to "avoid further litigation costs up to and including a lengthy trial" and was not based on any admission of liability by Wiegand.

In January 2025, the district court held a hearing on the parties' motions in limine and a motion for a protective order filed by Spirit Mountain. The district court ordered that a trial proceed on the issues of fault of the parties and damages to encompass "'any and all losses of Wiegand arising out of or sustained . . . from defective/bad maintenance and/or operation of the alpine coaster' including attorney fees Wiegand incurred to defend against Spirit Mountain's negligence." The district court also ruled that damages would be limited to those attributable to Spirit Mountain's negligence and that Wiegand could not recover any attorney fees and costs it incurred either prior to the tender of its defense to Spirit Mountain or in enforcing its right to indemnification because the language in the contract "does not explicitly provide for recovery of these costs." The district court determined that Spirit Mountain provided "no authority to support its position that the settlement and defense costs incurred by Wiegand are not recoverable, and the court [found] these as plainly recoverable under the broad language of the contract." The district court determined that Wiegand conceded common-law indemnification through its settlement with plaintiffs, but not contractual indemnification, and that Wiegand was still entitled to recover losses "arising out of or sustained, directly or indirectly, including from defective/bad maintenance and/or operation of the Alpine Coaster" under the language of the indemnification clause in paragraph 12(b) of the contract.

A jury trial took place in April 2025 on the only remaining issues: the apportionment of fault between the parties and damages. In its opening statement, Wiegand asserted that it had lived up to its end of the contract by designing and installing the Alpine Coaster, which operated successfully for 15 years, and that Spirit Mountain had the responsibility to operate the coaster properly and safely for all patrons. Wiegand pointed out that it had provided Spirit Mountain with an operator manual with specific operating instructions and signs and posters with warnings and instructions to place near the coaster for patrons. Wiegand also asserted that the employees at Spirit Mountain failed to operate the Alpine Coaster according to the manual on the day of the accident and that the employees knew that the shorter of two riders must ride in the front seat and that riders are not allowed to use their cell phones on the ride based on their training, the manual, and the instructions on signs throughout the ride. Wiegand stated that its settlement with plaintiffs was purely a business decision made to avoid trial costs and not an admission of liability for the accident. In its opening statement, Spirit Mountain asserted that, while it was accountable for its employees' mistakes, Wiegand was also liable for the accident because of inconsistencies in the manual and signs Wiegand provided.

A Spirit Mountain employee testified about the frequency and type of inspections performed on the ride, including that Spirit Mountain inspects the track on a daily and monthly basis and an outside party inspects it annually. She testified that there was nothing wrong with the track on the day of the accident, there were no defects with the cart used on the coaster, and Spirit Mountain "does not have any evidence that the coaster malfunctioned on the date of the accident." She also noted that the employees working that day were required to make sure that the plaintiffs did not have their cell phones out during the ride and that the shorter rider was placed in the front of the coaster with the taller rider in the back, but they failed to do so.

After Spirit Mountain rested its case, Wiegand moved the district court for judgment as a matter of law—arguing there was no issue of fact that Spirit Mountain's negligence caused the accident and that Wiegand was entitled to judgment pursuant to Minn. R. Civ. P. 50. The district court noted that it was "a close one for the Court" and requested a conference with the parties. The district court then granted Wiegand's motion on the issue of liability pursuant to Minn. R. Civ. P. 50(a) based on its determination that there was no evidence that Wiegand had any fault for the accident. The district court noted that the next step in the proceedings would be for the jury to determine damages.

Wiegand then called its CEO to testify. Wiegand's CEO testified about the contract, including the paragraph 12(b) indemnification clause. The CEO testified that Spirit Mountain was required to indemnify and defend Wiegand for any losses that were the result of (1) a material breach of a representation or covenant, or any default, of Spirit Mountain; (2) defective/bad maintenance and/or operation; (3) non-compliance with maintenance or the operation manual supplied by Wiegand; or (4) a breach of any applicable laws. He further testified that the term "losses" as used in the contract included "attorney's fees, expert costs, airline travel," and any other costs arising out of the occurrence of any of these four events. The CEO stated that Wiegand would have had to do the same for Spirit Mountain if Wiegand had any fault.

The CEO also testified that, when Wiegand first saw the video of the "bad operation of the ride"—Spirit Mountain's employee allowing Ray to ride the Alpine Coaster with a phone in her hand—it contacted Spirit Mountain to enforce the indemnification clause in paragraph 12(b) of the contract. He stated that the video showed that Spirit Mountain failed to operate the ride properly, that employees were not using the provided instruction manual, and that those two errors triggered Spirit Mountain's obligation to indemnify Wiegand under the contract.

The district court admitted Wiegand's evidence of the costs it had incurred in connection with the case. Wiegand's CEO testified that Wiegand incurred nearly $580,000 in attorney fees and expenses defending itself in the lawsuit, which did not include expenses related to its settlement with plaintiffs. He testified about the anticipated expenses of a trial on plaintiffs' claims, especially given that plaintiffs demanded an award of over one million dollars, and he explained that Wiegand made a prudent business decision to settle with plaintiffs for a total of $287,500, even though Wiegand was not at fault for the accident. He highlighted that the settlement agreement between Wiegand and plaintiffs specified that Wiegand settled only to avoid further litigation expenses and that "any payment is not to [be] construed as admission of liability on the part of the parties released." The total amount of expenses Wiegand incurred was $908,651.04.

Spirit Mountain questioned plaintiffs' engineering expert about the industry building standards that apply to building roller-coaster rides. The expert testified that different standards apply to different rides; that, in his opinion, a standard known as the "ASTM F2291" standard[4] should have applied to the Alpine Coaster; and that the coaster was not in compliance with this standard. But during his cross-examination, Wiegand's CEO had explained that the Alpine Coaster did not follow the ASTM 2291 standard because that standard applied to the type of roller coasters one might see in Disney World but not the Alpine Coaster and that, because the Alpine Coaster is a patron-controlled ride, it follows the "ASTM F1159" standard. The CEO had also responded to another question by pointing out that one of Wiegand's experts concluded during his deposition that the cause of the accident was that Ray held her cell phone while the ride was operating.

Wiegand's CEO testified about Spirit Mountain's indemnity letter, which stated, "Spirit Mountain was unaware and is still unaware of any issues regarding defective design, engineering, manufacture or installation of the Alpine Coaster." When asked if that was the same answer Spirit Mountain gave in its discovery responses and all throughout litigation, Wiegand's CEO responded that it was.

[4] This is one of the industry standards for design of amusement-park rides, known as the "Standard Practice for Design of Amusement Rides and Devices" established by the American Society for Testing and Materials (ASTM).

The jury found in favor of Wiegand, and the district court ordered Spirit Mountain to indemnify Wiegand as agreed in the contract by compensating Wiegand for attorney fees and costs in the amount of $621,151.04 and for Wiegand's settlement with plaintiffs in the amount of $287,500, for a total award of $908,651.04. The district court also determined that Wiegand was not entitled to attorney fees related to enforcing its indemnification rights against Spirit Mountain.

Spirit Mountain appeals the district court's decision on indemnification, and Wiegand cross-appeals the denial of the attorney fees and costs it incurred in enforcing its right to indemnification.

DECISION

Spirit Mountain challenges the district court's denial of its motion for summary judgment on Wiegand's contractual indemnification claim. First, Spirit Mountain argues that, based on the language of the indemnification clause in paragraph 12(b) of the contract, it was not required to indemnify Wiegand. Second, it argues that, based on the use of a *Pierringer* agreement between Spirit Mountain and plaintiffs and because Wiegand also entered into its own settlement agreement with plaintiffs, Wiegand did not pay more than its share of liability and that this is an independent basis that precludes Wiegand's entitlement to indemnification. And third, applying common-law principles of indemnification, Spirit Mountain argues that it does not have a contractual obligation to indemnify Wiegand. In its cross-appeal, Wiegand argues that it is entitled to recover costs incurred in enforcing its indemnification right. We address each issue raised in turn, beginning with Spirit Mountain's arguments.

I. The district court did not err in denying Spirit Mountain's motion for summary judgment on Wiegand's contractual indemnification claim.

The district court must grant summary judgment if the moving party shows that "there is no genuine issue as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). In doing so, we "view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.* Summary judgment is inappropriate if reasonable people can draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

A. Spirit Mountain is obligated to indemnify Wiegand for settlement and defense costs.

Spirit Mountain argues that, under the language of the contract, Wiegand is not entitled to indemnification because the contract—which, Spirit Mountain points out, was drafted by Wiegand—did not contain express and specific language entitling Wiegand to indemnification for settlement and defense costs. Spirit Mountain also argues that the term "LOSSES" in the paragraph 12(b) indemnification clause did not include Spirit Mountain indemnifying Wiegand against product-liability claims.

1. A liberal interpretation of the indemnification clause in paragraph 12(b) requires Spirit Mountain to indemnify Wiegand for Spirit Mountain's negligent operation of the Alpine Coaster.

Spirit Mountain contends that Wiegand is not entitled to indemnification because the contract provided that Wiegand would defend, indemnify, and hold Spirit Mountain harmless for defective design, engineering, manufacture and installation of the coaster and did not contain specific and express language establishing the parties' clear and unequivocal intent that the allocation of defense and settlement costs in a joint-tortfeasor case would be determined in proportion to the allocation of fault by a jury.

We review interpretation of a contract's indemnification clause de novo. *DeWitt v. London Rd. Rental Ctr., Inc.*, 910 N.W.2d 412, 416 (Minn. 2018). Spirit Mountain cites *DeWitt* in support of its assertion that indemnification clauses are strictly construed and that a clause "must use specific, express language that clearly and unequivocally states the contracting parties' intent." It is true that the supreme court held in *DeWitt* that express language that clearly and unequivocally shows the parties' intent to transfer liability to an indemnitor is required *when a clause is being used to obligate an indemnitor to indemnify an indemnitee for the indemnitee's own negligence*. *Id.* at 416-20 (concluding that a business that rented tables from a rental company did not have to indemnify the rental company for the rental company's own negligence because the rental agreement's indemnification clause did not expressly transfer such liability to the business). In so holding, the supreme court observed that appellate courts "disfavor agreements seeking to indemnify the indemnitee for losses occasioned by its *own* negligence," and thus, they strictly construe such clauses. *Id.* at 416 (quotation omitted). But Spirit Mountain's argument misses an important limitation on the interpretive rule in *DeWitt*. Notably, the supreme court clarified in *DeWitt* that indemnity agreements are to be "*liberally* construed when they are concerned with the negligence of the indemnitor . . . and *strictly* construed when the indemnitee . . . seeks to be indemnified for its own negligence." *Id.* at 417 (quoting *Webster v. Klug & Smith*, 260 N.W.2d 686, 690 (Wis. 1978)). Applying *DeWitt*, the facts here require a liberal construction.

Spirit Mountain, the indemnitor, is obligated to indemnify Wiegand, the indemnitee, for the indemnitor's—Spirit Mountain's—negligence, not the indemnitee's—Wiegand's—negligence. Thus, not only does the reasoning in *DeWitt* not support Spirit Mountain's argument for strict construction, but it requires a liberal construction because the indemnitor is being asked to indemnify for the indemnitor's own negligence when the indemnitee was found to not have any fault for the Alpine Coaster accident. A liberal construction of the paragraph 12(b) indemnification clause requires Spirit Mountain to pay Wiegand for Spirit Mountain's negligence, which alone led to the accident and the lawsuit in which Wiegand then had to defend itself. We therefore reject Spirit Mountain's argument that the language of the paragraph 12(b) indemnification clause must be strictly construed.

2. The term "losses" as used in the contract includes costs of the settlement between Wiegand and plaintiffs.

Spirit Mountain argues that, because the contract defines "LOSSES" as "reasonable fees and costs of attorneys and requisite experts," Wiegand is not entitled to indemnification for the cost of Wiegand's decision to settle plaintiffs' remaining product-liability claims against it.

In making this argument, Spirit Mountain focuses on only the last clause of the definition of "losses" in the contract, to the exclusion of the other clauses included in the definition. But the full definition of "LOSSES," as set forth in paragraph 12(a) of the contract, is as follows:

> [A]ny and all losses, claims, obligations, fines, costs, proceedings, deficiencies, damages, suits, actions, penalties, judgments, assessments or liabilities of any kind or description, including, loss of life or personal injury (including but not limited to employees of [WIEGAND] or of [SPIRIT MOUNTAIN]), or property damage (including but not limited to property of [SPIRIT MOUNTAIN] or of [WIEGAND]), reasonable fees and costs of attorneys and requisite experts ("LOSSES")[.]

"An indemnity agreement is a contract, which is to be construed according to the principles generally applied in the construction or interpretation of other contracts." *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 726 (Minn. App. 1998), *rev. denied* (Minn. Apr. 14, 1998). "The objective of judicial construction of contracts is to allow the intent of the parties to prevail." *Id.* Unambiguous language "must be construed according to its plain and ordinary meaning." *Id.*

The expansive definition of "losses" in the parties' contract goes far beyond only "reasonable fees and costs of attorneys and requisite experts." Spirit Mountain does not argue that "losses" is an ambiguous term. Applying the plain and ordinary meaning of the contractual language, Wiegand's loss as incurred in its settlement with plaintiffs would fall within the broad scope of "losses" included in the indemnification clauses in paragraph 12 of the contract.

Thus, we conclude that the contract's language provides that Wiegand is entitled to indemnification from Spirit Mountain for the settlement and defense costs Wiegand incurred.

B. The *Pierringer* agreement between Spirit Mountain and plaintiffs does not diminish or eliminate Spirit Mountain's obligation to indemnify Wiegand under the paragraph 12(b) indemnification clause.

Spirit Mountain next argues that the terms of the *Pierringer* agreement between itself and plaintiffs operated to ensure that Wiegand did not pay more than its fair share of liability for the Alpine Coaster accident and that, therefore, Spirit Mountain is not required to indemnify Wiegand for any losses Wiegand incurred.

When a plaintiff brings claims against more than one defendant in its lawsuit, it may enter into a settlement, known as a *Pierringer* agreement, with one or more defendants (the settling defendants) and continue to maintain a cause of action against one or more codefendants (the nonsettling defendants), and "the nonsettling defendants' right to contribution can be cut off by a plaintiff who agrees to indemnify the settling defendants against any claims of contribution." *Frey*, 269 N.W.2d at 921 (adopting the procedures set forth in *Pierringer*, 124 N.W.2d at 111-12). The basic elements of a *Pierringer* settlement include the following:

> (1) The release of the settling defendants from the action and the discharge of a part of the cause of action equal to that part attributable to the settling defendants' causal negligence;
> (2) the reservation of the remainder of plaintiff's causes of action against the nonsettling defendants; and
> (3) the plaintiff's agreement to indemnify the settling defendants from any claims of contribution made by the nonsettling parties and to satisfy any judgment obtained from the nonsettling defendants to the extent the settling defendants have been released.

Id. at 920 n.1.

However, *Pierringer* agreements also generally are not meant to prejudice a nonsettling defendant if a settling defendant's negligence was the cause of the injury. This understanding of how a *Pierringer* agreement operates is explained in a 1977 law-review article:

> If the non-settling tortfeasor has a cross-claim for full indemnity, instead of or in addition to a claim for contribution, against his codefendants, the traditional *Pierringer* release will not protect the settling tortfeasor from the cross-claim for indemnity. This is because the *Pierringer* release, like all releases, is only valid if the non-settling party is not thereby prejudiced. . . . *If all the tortfeasors are commonly liable to the plaintiff, and the non-settling tortfeasor is only secondarily liable to the plaintiff and thus is entitled to indemnification by the settling tortfeasor, then the agreement between the plaintiff and the settling defendant should not be allowed to cut off the non-settling tortfeasor's right to indemnity against the settling defendant.* This would greatly prejudice the non-settling tortfeasor. So, unless the claim for indemnity is vulnerable to a motion for summary judgment, the settling defendant will have to remain in the lawsuit and defend himself against the indemnity claim.

John E. Simonett, *Release of Joint Tortfeasors: Use of the Pierringer Release in Minnesota*, 3 Wm. Mitchell L. Rev. 1, 23 (1977) (emphasis added). We find this commentary persuasive.

Minnesota courts have also recognized an important exception when independent indemnification obligations already exist. In cases involving vicarious-liability relationships with independent indemnification agreements, courts have held that "the law does not favor an agreement of the injured claimant and the active tortfeasor which prejudices the settled rights of another nonsettling party." *Hoffmann v. Wiltscheck*, 411 N.W.2d 923, 926-27 (Minn. App. 1987), *rev. denied* (Minn. Nov. 13, 1987). The supreme court applied this exception in *Hoffman* because the settling defendant and the nonsettling defendant had a preexisting indemnification relationship independent of the tort claims[5]—just as Wiegand and Spirit Mountain have under the contract here.

Spirit Mountain's argument that Wiegand was not required to pay more than Wiegand's share of liability in Wiegand's settlement with the plaintiffs relies on a common-law remedy that does not apply here given the prior indemnification relationship established in the contract. In addition, Spirit Mountain's argument runs afoul of the notion that a *Pierringer* agreement should not be used to prejudice a nonsettling defendant when the settling defendant's negligence was the cause of the injury. Thus, because the jury found that Spirit Mountain was solely responsible for plaintiffs' accident—the jury allocated no liability to Wiegand—and Wiegand paid a settlement to plaintiffs and paid for its defense costs, Wiegand is still entitled to indemnity. And because Wiegand's indemnification claim is based on a preexisting contractual obligation between it and Spirit Mountain, the district court did not err in rejecting the argument that the *Pierringer* agreement here operates to diminish or eliminate Spirit Mountain's obligation to indemnify Wiegand and determining that Spirit Mountain was required to indemnify Wiegand under the paragraph 12(b) indemnification clause.

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[5] In *Hoffman*, the settling defendant was the driver of the vehicle that caused the plaintiff's injuries and the nonsettling defendant was the owner of the vehicle. *Id.* at 924. The supreme court observed that it is established law in Minnesota that a principal who pays damages for the acts of an agent is entitled to indemnification from the agent. *Id.* at 925. In addition, pursuant to Minn. Stat. § 170.54 (1982), which applied at the time *Hoffman* was decided, an owner who paid damages was entitled to be indemnified by the operator of the vehicle. *Id.* at 925-26.

C. Common-law principles of indemnification do not apply, and therefore, Spirit Mountain cannot rely on them to avoid its contractual obligation to indemnify Wiegand.

Spirit Mountain next argues that it was entitled to summary judgment on Wiegand's contractual indemnification claim because a party seeking indemnification must have paid more than its fair share of common liability to recover from an indemnitor, Wiegand did not pay more than Wiegand's fair share of common liability, and therefore, Wiegand was not entitled to indemnification from Spirit Mountain.

Spirit Mountain cites two cases to support its argument; however, these cases are inapposite because they address statutes of limitations and common-law indemnification, which is distinct from the contractual indemnification at issue here.

In *City of Willmar v. Short-Elliott-Hendrickson, Inc.*, the supreme court considered whether a cross-claim for contribution and common-law indemnification was governed by the four-year Uniform Commercial Code statute of limitations or the two-year statute of limitations for defective improvements to real estate. 512 N.W.2d 872, 874 (Minn. 1994); *see also Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 645 (Minn. 2006) (stating that the issue in *City of Willmar* "was whether the crossclaim for contribution and indemnity could go forward when the underlying action had been barred by the statute of limitations"). The parties involved with the cross-claim did not have a contract with one another. *City of Willmar*, 512 N.W.2d at 876.

Contrary to Spirit Mountain's assertions, the *City of Willmar* opinion supports that Spirit Mountain had an obligation to indemnify Wiegand, stating that "[i]ndemnity applies when, among other situations, a party fails to discover or prevent another's fault and, consequently, pays damages for which the other party is primarily liable," which Wiegand did here. *Id.* at 874 (citing *Tolbert v. Gerber Indus., Inc.*, 255 N.W.2d 362, 366 (Minn. 1977) (overruling one of the five indemnity rules explained in *Hendrickson v. Minn. Power & Light Co.*, 104 N.W.2d 843, 848 (Minn. 1960), and highlighting that the supreme court distinguishes between common-law and contractual indemnification)); *see also In re Indiv. 35W Bridge Litig.*, 787 N.W.2d 643, 646 (Minn. App. 2010), *aff'd*, 806 N.W.2d 820 (Minn. 2011) (litigating two distinct claims: one for common-law contribution and one for indemnity and contractual contribution and indemnity).[6]

Under Minnesota law, the supreme court has concluded that a contractual indemnity clause applies, even after a party that was not at fault settles with a plaintiff, when the party that was not at fault and the negligent party are in contract with one another. *Lemmer v. IDS Props., Inc.*, 304 N.W.2d 864, 868 (Minn. 1980). In *Lemmer*, the party that was not at fault, the owner, sought indemnification from the negligent party, the subcontractor, after the owner had already settled with the plaintiff, who was injured while working on construction at the owner's property. *Id.* The supreme court determined that the owner was entitled to indemnity from the subcontractor because the subcontractor breached its duty under the contract by failing to take safety precautions and was found 80% liable for the plaintiff's damages. *Id.* The supreme court noted that the case was unlike other indemnity cases because the parties were not joint tortfeasors—the owner was not liable

[6] Spirit Mountain also cites *Calder v. City of Crystal*, 318 N.W.2d 838, 841 (Minn. 1982); however, *Calder* also dealt with the application of statutes of limitations regarding common-law indemnity and contribution claims, not a contract dispute, and it does not apply here.

for the accident, even though the owner had already reached a settlement agreement with the plaintiff. *Id.* at 869. And it determined that the owner could enter into a "reasonable and prudent settlement" and still be entitled to indemnification from the subcontractor: "Our holding is in accord with the principle that parties who settle litigation are favored in the law and that each tortfeasor accept responsibility for damages commensurate with its own relative culpability." *Id.* (citation and quotation omitted). The supreme court further determined that a third codefendant was not entitled to recovery under the same theory as the owner because, unlike the owner, that codefendant was not "a party to the contract" with the subcontractor. *Id.* The facts of *Lemmer* are similar to those here. *Lemmer* counsels that Wiegand could enter into a reasonable and prudent settlement with plaintiffs and still be entitled to indemnification from Spirit Mountain.

Wiegand settled with plaintiffs to avoid trial costs but did not admit any liability for the accident. Though Spirit Mountain argues that Wiegand's design was the cause of the harm, it did not offer any evidence during trial to prove Wiegand's fault, arguing only that Wiegand's signs were inconsistent. And the jury found that Wiegand did not contribute to plaintiffs' injuries. The primary issue at trial was the apportionment of liability as between Wiegand and Spirit Mountain for the accident to ascertain if any indemnification damages were owed to Wiegand.

And, as "parties who settle litigation are favored in the law," which encourages that "each tortfeasor accept responsibility for damages commensurate with its own relative culpability," Wiegand's claim for indemnification is proper. *Lemmer*, 304 N.W.2d at 869 (quotation omitted).

II. Wiegand is not entitled to attorney fees and costs incurred in enforcing its indemnification right against Spirit Mountain.

Wiegand argues on cross-appeal that it is entitled to attorney fees and costs associated with enforcing its contractual right to indemnification against Spirit Mountain because the issue of enforcement is related to Spirit Mountain's failure to properly operate the Alpine Coaster.

Attorney fees are generally not recoverable unless a contract or statute specifically authorizes recovery. *Midway Nat'l Bank v. Gustafson*, 165 N.W.2d 218, 224 (Minn. 1968). We interpret contract language de novo. *Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 504 (Minn. 2018). We attempt to determine and enforce the intent of the parties, and to do so, we look to the plain language of the written agreement. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

The contract between the parties defines "losses" in the indemnification clause in paragraph 12(a). *See supra* section I.A.2. The contractual language could have included fees incurred to enforce the indemnification right; however, it did not do so. In addition, the indemnification clause in paragraph 12(b) states that it includes "any and all LOSSES of [Wiegand] arising out of or sustained . . . directly or indirectly from any material breach" caused by Spirit Mountain, including "from defective/bad maintenance and/or operation of the Alpine Coaster." The clause does not contain any language, however, that specifies that the losses include attorney fees or other costs related to enforcing the indemnification clause itself.

Wiegand argues that, because the issue of enforcement is “indirectly related” to Spirit Mountain’s negligence, the costs of enforcing the indemnification clause fall within the scope of the paragraph 12(b) indemnification clause. But we have rejected this precise argument in persuasive nonprecedential opinions, reasoning that to collect attorney fees and costs for enforcement of a contractual right, the contract language needs to explicitly evidence that intention. *See Onofre v. Hernandez*, No. A18-1452, 2019 WL 1983496, at *2-3 (Minn. App. May 6, 2019) (concluding that an indemnification clause did not provide for recovery of attorney fees incurred in enforcing contractual indemnification rights because the language of the contract did not “clearly evidence the parties’ intention to allow for fee recovery,” as it referred only to losses “arising out of or based upon . . . the breach” and not losses incurred to enforce rights under the contract); *see also Athena 2004, LLC v. LC Rochester, Inc.*, No. A22-0609, 2023 WL 1771018, at *8-9 (Minn. App. Feb. 6, 2023) (concluding that the indemnification clause at issue “is naturally read as only covering attorney fees incurred by LC in a lawsuit between LC and a third party arising from Athena’s breach of the contract” and not from enforcing the indemnification clause itself).[7]

We conclude that the district court did not err in denying Wiegand’s motion seeking attorney fees and costs incurred in enforcing its indemnification right pursuant to the contract with Spirit Mountain.

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[7] Nonprecedential opinions are not binding authority but may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

III. Spirit Mountain's motion to strike is moot.

Spirit Mountain submitted a motion to strike portions of Wiegand's reply brief. Because our decision does not rely on any challenged portion of the brief, we deny the motion as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying a motion to strike as moot when the reviewing court did not rely on the material). To the extent Wiegand objects to any portion of Spirit Mountain's briefs, our analysis similarly does not rely on any portion of Spirit Mountain's briefs to which Wiegand objected.

Affirmed; motion denied.