SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.

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October 30, 2026

In the Court of Appeals of Georgia

A26A0897. 3399 PEACHTREE, LLC v. CLEAR BLUE INSURANCE COMPANY et al.
A26A0943. CLEAR BLUE INSURANCE COMPANY v. 3399 PEACHTREE, LLC.
A26A0993. SECURAMERICA, LLC v. 3399 PEACHTREE, LLC

DAVIS, Judge.

These companion appeals stem from a civil dispute after a woman was sexually assaulted in a parking garage at Lenox Square Mall in Atlanta, Georgia. In Case No. A26A0897, 3399 Peachtree, LLC ("Peachtree") appeals from the trial court's order granting summary judgment to Clear Blue Insurance Company ("Clear Blue") and SecurAmerica, LLC ("SecurAmerica"), arguing that the trial court erred by determining that (1) Clear Blue had no duty to indemnify Peachtree because it was not an "additional insured" under Clear Blue's insurance policy; (2) Clear Blue had no

duty to indemnify Peachtree because the victim's settled claims were not for bodily injury; and (3) SecurAmerica had no duty to indemnify because the victim's claims did not arise out of SecurAmerica's services. In Case No. A26A0943, Clear Blue appeals from the trial court's order granting summary judgment to Peachtree, arguing that the trial court erred by determining that it had a duty to defend Peachtree in the victim's lawsuit against Peachtree. And in Case No. A26A0993, SecurAmerica similarly appeals from the trial court's order granting summary judgment to Peachtree, arguing that the trial court erred by determining that it had a duty to defend Peachtree in the victim's lawsuit. For the reasons that follow, in Case No. A26A0987, we affirm the trial court's order granting summary judgment to Clear Blue and SecurAmerica, and in Case Nos. A26A0943 and A26A0993, we affirm the trial court's orders granting summary judgment to Peachtree.

> To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact, so that the party is entitled to a judgment as a matter of law. When a plaintiff moves for summary judgment, he has the burden of establishing the absence or non-existence of any defense raised by the defendant. When a defendant moves for summary judgment, he has the burden of either presenting evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such

> claims. We review a grant or denial of summary judgment de novo and construe the evidence in the light most favorable to the nonmovant. Because this opinion addresses cross-motions for summary judgment, we will construe the facts in favor of the nonmoving party as appropriate.

Plantation at Bay Creek Homeowners Ass'n, Inc. v. Glasier, 349 Ga. App. 203, 204 (825 SE2d 542) (2019).

So viewed, the record shows the following. Peachtree owns Buckhead Tower in Atlanta, Georgia, which is situated near Lenox Square Mall and JW Marriott and shares common areas with those properties, including the "art walk" which is owned by Simon Group, the owner and operator of Lenox Mall. Buckhead Tower's parking garage has five levels, and the top level connects to the art walk and provides access to the Buckhead Tower. Although security cameras were located in the parking garage, there were no security cameras in the stairwells.

SecurAmerica did not provide security services for the art walk, but it did provide security services for Buckhead Tower pursuant to a service agreement. The agreement contained an indemnification clause which stated:

Contractor[1] agrees:

> (a) To indemnify, defend and hold harmless Manager and Owner (and their respective subsidiaries and affiliates, directors, officers, agents, servants and employees) from and against any and all claims, demands, causes of action, proceedings, losses, damages, fines, penalties, liabilities, judgments, orders, costs and expenses (including without limitation reasonable attorney's fees and legal costs) sustained or incurred by or asserted against Manager or Owner by reason of, arising from or in any way attributable to: (i) the duties, responsibilities, obligations or covenants of Contractor under this Agreement; (ii) the performance of the Contracted Services; and/or (ii) the acts or omissions of Contractor, any employee of Contractor or any other person acting by or for Contractor while in, on or about the Property.

The service agreement also required SecurAmerica to add Peachtree as an "additional insured" by endorsement to its Commercial General Liability ("CGL") and Auto Liability insurance policies,[2] which SecurAmerica had through its insurance carrier, Clear Blue. Pertinently, the CGL policy states:

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[1] The agreement designates SecurAmerica as the "Contractor" and Peachtree as the "Owner."

[2] Although the service agreement also uses the term "Vendor," that term was apparently a "scriveners's error" and was referring to SecurAmerica, and none of the parties dispute that "Vendor" applied to SecurAmerica. .

Section I — Coverages

Coverage A Bodily Injury and Property Damage Liability

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

The policy provides that "the words 'you' and 'your' refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words 'we', 'us' and 'our' refer to the company providing this insurance." The CGL policy also contained a provision relating to "additional insured" persons or organizations which states:

A. Section II — Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the

> Schedule,[3] but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
>
> 1. In the performance of your ongoing operations; or
>
> 2. In connection with your premises owned by or rented to you.

SecurAmerica established "post orders" for Buckhead Tower, which were the protocols and procedures security officers were to use while on duty at Buckhead Tower. The post orders required the shift supervisor to patrol all areas of Buckhead Tower, "with specific emphasis on the [perimeter] of the property, parking garage and other common areas[,]" and to "look for suspicious persons and activity[.]" As to the parking areas, the shift supervisor had to check all stairwells and elevator lobbies, take note of people seated inside their vehicles, and be aware of "people ducking down as [they] pass[ed]."

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[3] The Schedule lists as an additional insured "[a]ny person or organization [SecurAmerica] agreed in a written contract to add as an additional insured on [its] policy provided the written contract is executed prior to the 'bodily injury', 'property damage' or personal and advertising injury."

On November 6, 2020, at 3:00 p.m., Shift Supervisor Eskerridge and Security Officer Barnes were on duty, and in accordance with the post orders, they monitored the surveillance cameras. At 6:27 p.m., Officer Barnes began his patrol of the parking garage, which he completed at 7:07 p.m. After completing his patrol, he made a notation in the daily log that the parking decks were "clear and normal" and that he did not observe anything unusual. Shortly thereafter, at approximately 7:20 p.m., an unknown assailant abducted V. W. at knifepoint from the art walk, dragged her into a stairwell inside the parking garage, and sexually assaulted her.

V. W. filed a negligence action against Peachtree and several other defendants, arguing, among other things, that Peachtree "negligently failed to inspect, patrol, and protect Lenox Square" and negligently failed to supervise its employees and provide adequate security. Peachtree requested that Clear Blue defend and indemnify it in V. W.'s lawsuit, but Clear Blue declined. Peachtree then filed a complaint against Clear Blue and SecurAmerica, asserting a breach of contract claim against Clear Blue based on Clear Blue's failure to defend and indemnify it and a claim for indemnity against SecurAmerica.

Peachtree subsequently filed a motion for summary judgment, arguing that Clear Blue owed a duty to defend and indemnify because it was an "additional insured" under the CGL provision of the insurance policy and that SecurAmerica owed it a duty to defend and indemnify based on the indemnification clause in the service agreement. Clear Blue and SecurAmerica filed cross motions for summary judgment. Clear Blue argued that Peachtree was not an additional insured under the insurance policy because V. W.'s injuries were not caused by any act or omission by SecurAmerica. SecurAmerica argued that it owed no duty to indemnify because Peachtree could not be indemnified for its own negligence, V. W. did not allege any claims against SecurAmerica, and there was no evidence that SecurAmerica did not comply with the post orders.[4] In a single order dated August 8, 2024, the trial court granted summary judgment to Peachtree on its duty to defend claim pertaining to Clear Blue and on its indemnity claim as to SecurAmerica, and it denied summary judgment to Clear Blue and SecurAmerica.

Following the August 2024 order, the parties conducted additional discovery, V. W. settled her claims against Peachtree, and the parties again moved for summary

[4] Although SecurAmerica cursorily mentioned "defend" once in its motion, it did not put forth any argument about a duty to defend.

judgment.[5] Following a hearing, the trial court entered an order on September 17, 2025, granting summary judgment to Clear Blue and SecurAmerica and denying Peachtree's motion for summary judgment.[6] The trial court first determined that to the extent the August 2024 order ruled on the issue of indemnity, that ruling was premature since V. W.'s lawsuit was still pending at that time. The court then stated that because V. W. had settled her claims against Peachtree, the "true facts" were now known and that there was no evidence that SecurAmerica failed to comply with the post orders or in any way caused V. W.'s injuries, and thus Clear Blue and SecurAmerica were entitled to judgment as a matter of law on Peachtree's indemnity claim.[7] These appeals followed.

Case No. A26A0897

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[5] Peachtree moved for summary judgment only against Clear Blue on the issue of indemnification.

[6] "[T]he previous denial of summary judgment does not preclude a subsequent granting thereof on the basis of an expanded record." *Nelson v. Bd. of Regents of Univ. Sys. of Ga.*, 307 Ga. App. 220, 228(2) (704 SE2d 868) (2010).

[7] Although the trial court granted summary judgement to Clear Blue, it did not specifically address Clear Blue's argument about Peachtree's status as an "additional insured" under the policy.

1. First, Peachtree argues that the trial court erred by determining that Clear Blue had no duty to indemnify. We disagree.

The construction of insurance policies, like contracts, are questions of law for the court that are reviewed de novo. *Old Republic Nat. Title Ins. Co. v. RM Kids, LLC*, 352 Ga. App. 314, 314, 317(1) (835 SE2d 21) (2019). And "[b]ecause the indemnity clause is a contractual provision, its interpretation is a question of law, and we therefore review the trial court's ruling on this issue de novo." *Firmani v. Dar-Court Builders, LLC*, 339 Ga. App. 413, 425(4) (793 SE2d 596) (2016).

We begin our analysis by stating the principles applicable to insurance policy interpretation:

> As with any contract, in construing the terms of an insurance policy, we look first to the text of the policy itself. Words used in the policy are given their usual and common meaning, see OCGA § 13-2-2 (2), and the policy should be read as a layman would read it and not as it might be analyzed by an insurance expert or attorney. Where the contractual language is explicit and unambiguous, the court's job is simply to apply the terms of the contract as written, regardless of whether doing so benefits the carrier or the insured. This is so because Georgia law permits an insurance company to fix the terms of its policies as it sees fit, so long as they are not contrary to the law, thus companies are free to insure against certain risks while excluding others.

Nationwide Agribusiness Ins. Co. v. Onionman Co., LLC, 369 Ga. App. 597, 600(2) (894 SE2d 152) (2023). Moreover,

> [a]n insurer is entitled, of course, to define terms used in its insurance policies as it sees fit, and it may choose to define a term in an unusual and uncommon way. But unless the policy itself indicates that a term is used in an unusual sense, we attribute to that term its usual and common meaning.

Wilkinson v. Ga. Farm Bureau Mutual Ins. Co., 351 Ga. App. 891, 893 (833 SE2d 579) (2019).

> Nevertheless, we construe insurance policies liberally in favor of coverage and narrowly interpret any exclusion in favor of the insured. Yet if the policy exclusions are unambiguous they must be given effect even if beneficial to the insurer and detrimental to the insured. We will not strain to extend coverage where none was contracted or intended.

Philadelphia Indemnity Ins. Co. v. Eubanks, 378 Ga. App. 837, 841(2) (927 SE2d 518) (2026) (citation modified).

"Insurance policies generally contain two duties relevant to the disputes here: A duty to defend and a duty to indemnify. *These are separate and distinct obligations*[,]" *Eubanks*, 378 Ga. App. at 841(2) (emphasis supplied), which "must" be analyzed separately. *Nationwide Mutual Fire Ins. Co. v. Somers*, 264 Ga. App. 421, 424(2) (591

SE2d 430) (2003). "[I]ndemnity is defined as the obligation or duty resting on one person to make good any loss or damage another has incurred by acting at his request or for his benefit." *Dist. Owners Ass'n, Inc. v. AMEC Env't & Infrastructure, Inc.*, 322 Ga. App. 713, 715(1) (747 SE2d 10) (2013).

> Generally, the fact that an indemnitee has settled or compromised the underlying tort action brought by the injured party does not bar the indemnitee from pursuing a claim for indemnification or contribution from a third-party indemnitor. However, the payment of the settlement by the indemnitee does not of itself conclude the issue of liability for purposes of obtaining indemnification from the indemnitor.

Cajun Contractors, Inc. v. Peachtree Prop. Sub, LLC, 360 Ga. App. 390, 416(3)(b) (861 SE2d 222) (2021). Indeed, an insurer's refusal to indemnify "bars the insurer from contesting the insured's liability after a judgment, but it does not prevent the insurer from arguing that there was no coverage under the policy." *Eubanks*, 378 Ga. App. at 842(2). In determining whether an insurer is entitled to summary judgment on the issue of indemnification, we examine the policy language, *Eubanks*, 378 Ga. App. at 842(2), and other evidence within the record. *City of Atlanta v. St. Paul Fire & Marine Ins. Co.*, 231 Ga. App. 206, 208(3) (498 SE2d 782) (1998) (examining affidavits that were submitted in support of a motion for summary judgment on an indemnity

claim).[8] "Obviously, if there is no coverage for the claims, there would be no duty to indemnify." *Eubanks*, 378 Ga. App. at 842(2).

Here, Peachtree's indemnification claim is based on its status as an "additional insured" under the CGL provision of the insurance policy. The CGL policy provides in part: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies." The "Additional Insured — Designated Person or Organization" endorsement provides that a person or organization is included as an "additional insured" under the policy as a result of a written contract "but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' *caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf*: 1. In the performance of your ongoing operations; or 2. In connection

[8] Peachtree appears to initially argue that courts should look only to the policy terms and the allegations of the complaint in determining the issue of indemnity, and it relies upon our prior decision in *ALEA London Ltd. v. Woodcock*, 286 Ga. App. 572 (649 SE2d 740) (2007), in support of this claim. But there is no language in *Woodcock* that states that courts are to only look to the policy language and allegations of the complaint in determining the issue of *indemnification*. But "[a]n insurer's duty to *defend* is determined by comparing the allegations of the complaint with the provisions of the policy." *Landmark Am. Ins. Co. v. Khan*, 307 Ga. App. 609, 611(1) (705 SE2d 707) (2011) (emphasis supplied).

with your premises owned by or rented to you. (Emphasis supplied). The policy does not define "caused," but the plain ordinary meaning of the word is "a reason for an action or condition," or "something that brings about an effect or result." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/cause (last visited October 13, 2026).[9] The policy further provides that "the words 'you' and 'your' refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy." And the policy clearly lists SecurAmerica as a Named Insured. Thus, although Peachtree is an "additional insured" under the policy because of the service agreement, *coverage* for a claim against Peachtree as an additional insured is contingent upon whether a bodily injury was the result, in whole or in part, of SecurAmerica's acts or omissions in the performance of its operations. See *Milliken & Co. v. Ga. Power Co.*, 306 Ga. 6, 12(1)(b) (829 SE2d 111) (2019) (interpreting similar indemnity provision to mean that indemnity in that case was limited to damages resulting from Georgia Power's acts or

[9] See OCGA § 13-2-2(2) (stating that in interpreting contracts, "[w]ords generally bear their usual and common signification[.]"); *Eubanks*, 378 Ga. App. at 844(3)(a) ("[A] dictionary is a useful tool for narrowing the range of meanings ordinarily attributed to a word.").

omissions "and necessarily exclud[ing] instances in which Georgia Power ha[d] not in any way caused the damages.").[10]

Here, we have not uncovered *any* evidence in the record to show that SecurAmerica's acts or omissions at the time of the crimes caused or brought about V. W.'s injuries. Indeed, the evidence in the record shows that SecurAmerica was not responsible for providing security services for the art walk where V. W. was first abducted by the assailant. Moreover, while SecurAmerica was responsible for security of the stairwell where the assault eventually occurred, Officer Barnes patrolled the parking deck in accordance with the post orders approximately 13 minutes before V. W. was attacked, and he noted that the parking deck was "clear" and that there was "nothing unusual." Peachtree has not directed us to any evidence to show that this

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[10] For these reasons, we reject Peachtree's argument that the inquiry should be on the nature of V. W.'s settled claims and the settlement amount. While it is true that "to recover on [an] indemnification claim, the indemnitee must show that the settlement with the injured party was reasonable, prudent and reached in good faith[,]" *Cajun*, 360 Ga. App. at 416(3)(b) (quotation marks omitted), that inquiry applies when an indemnitor challenges *the reasonableness of a settlement*. Id. In this case, Clear Blue is not challenging the reasonableness of the settlement. Rather, it challenges whether V. W.'s claims were covered under the policy in the first place. Thus, the proper inquiry is whether the terms of the insurance policy and the evidence in the record support an indemnification claim. See *Eubanks*, 378 Ga. App. at 842(2); *St. Paul Fire & Marine Ins. Co.*, 231 Ga. App. at 208(3).

frequency of patrolling was unreasonable. Instead, Peachtree's corporate representative notably testified that SecurAmerica carried out its responsibilities under the service agreement at the time of the attack and that the attack against V. W. was not caused by any act or omission on the part of SecurAmerica. Although Peachtree points to the corporate representative's testimony that V. W. believed that SecurAmerica should bear some liability for the crimes, V. W.'s subjective belief is insufficient to create an issue of fact as to whether SecurAmerica's acts or omissions caused her injuries. It is well settled that "summary judgment cannot be avoided based on speculation or conjecture; once the pleadings are pierced with actual evidence, the plaintiff must point to admissible evidence showing a genuine issue of fact." *McManus v. Taylor*, 326 Ga. App. 477, 485(4) (756 SE2d 709) (2014) (punctuation omitted). Because there is no evidence in the record to show that V. W.'s injuries were the result of an act or omission on the part of SecurAmerica's officers, we exercise our discretion under the "right for any reason" rule and conclude that Clear Blue was entitled to summary judgment on Peachtree's indemnity claim.[11] See *Webster v.*

[11] Again, the trial court did not specifically address Clear Blue's indemnity claim in the order granting summary judgment. But as stated above, Clear Blue argued below in its motion for summary judgment that although Peachtree was an "additional insured" under the policy, the claim was not covered because V. W.'s injuries were

Campbell, 375 Ga. App. 712, 716–17(2) (917 SE2d 381) (2025) (affirming the trial court's order granting summary judgment under the "right for any reason" rule where the trial court reached the correct result "albeit for reasons different from those stated in its order[.]").[12]

2. Peachtree further argues that the trial court erred by granting summary judgment to SecurAmerica on the grounds that SecurAmerica had no duty to indemnify because its actions were not the basis of V. W's claims. After careful review of the indemnity clause in the service agreement and the relevant law, we disagree.

In arguing that SecurAmerica owed it a duty to indemnify, Peachtree relies heavily on our prior decision in *JNJ Found. Specialists, Inc. v. D. R. Horton, Inc.*, 311 Ga. App. 269 (717 SE2d 219) (2011) (physical precedent only). There, Gary Hall was

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not caused by any act or omission by SecurAmerica. And importantly, Peachtree responded to Clear Blue's claim and argued that it was covered as an "additional insured" under the insurance policy. See *Mommies Props., LLC v. Semanson*, 366 Ga. App. 153, 167(6) (880 SE2d 376) (2022) (explaining that the "right for any reason" rule is a discretionary tool by which appellate courts may affirm the grant of summary judgment "if it is right for any reason, whether stated or unstated in the trial court's order, so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond.").

[12] In light of our resolution of this issue, it is unnecessary to address Peachtree's second enumeration of error concerning whether V. W.'s bodily injury claim was covered under the insurance policy.

injured after his vehicle was rear-ended while he was stopped due to construction barrels in the roadway near a D. R. Horton subdivision. Id. at 269. After the vehicle was struck, Hall noticed a cement truck near the subdivision which was being used to construct a sidewalk. Id. Hall filed suit against the driver of the second vehicle, D. R. Horton, and John Doe, alleging among other things, that D. R. Horton was responsible for failing to properly train and supervise Doe and that D. R. Horton knew that failure to adequately mark the lane would create a hazard. Id. D. R. Horton answered the complaint and filed a third-party complaint against several contractors and their insurance carriers, including JNJ Foundation Specialists, Inc. (JNJ"), Brent Scarbrough ("Brent") and their insurance carriers. Id. JNJ and Brent moved for summary judgment on D. R. Horton's contractual indemnity claim, which the trial court denied. Id. at 269, 278(3)(c).

On appeal, JNJ argued in part that it was entitled to summary judgment on D. R. Horton's contractual indemnity claim because Hall's claims did not fall within the scope of JNJ's work. *JNJ Found. Specialists, Inc.*, 311 Ga. App. at 272(1)(c). In rejecting this claim, we began our analysis by noting that the indemnity clause required JNJ to indemnify D. R. Horton "for any claims in any way occurring, incident to,

arising out of, or in connection with the work performed or to be performed by contractor or contractor's personnel, agents, suppliers, or permitted subcontractors." Id. at 270(1) (citation modified). We then noted that "[u]nder Georgia law pertaining to indemnity provisions, 'arising out of' means 'had its origins in,' 'grew out of,' or 'flowed from.'" Id. (quotation marks omitted). We emphasized that "'arising out of' does not mean proximate cause in the strict legal sense, nor does it require a finding that the injury was directly and proximately caused by the insured's actions. Almost any causal connection or relationship will do." Id. Examining the indemnity provision, we noted that the provision "required only that a claim arose from or was connected with the work of JNJ or, among others, its suppliers." Id. at 272(1)(c). We therefore concluded that "[t]he collision arose from or was connected to the construction activities that the facts show JNJ was performing were sufficient to invoke the provision." Id.

Here, similar to the indemnification provision in *JNJ Found. Specialists, Inc.*, the indemnification provision of the service agreement requires SecurAmerica

> [t]o indemnify, defend and hold harmless Manager and Owner (and their respective subsidiaries and affiliates, directors, officers, agents, servants and employees) *from and against any and all claims, demands, causes of*

> *action*, *proceedings, losses, damages*, fines, penalties, liabilities, judgments, orders, costs and expenses (including without limitation reasonable attorney's fees and legal costs) sustained or incurred by or asserted against Manager or Owner *by reason of*, *arising from or in any way attributable to*: *(i) the duties, responsibilities, obligations or covenants of Contractor under this Agreement;* (ii) the performance of the Contracted Services; *and/or* (ii) the acts or omissions of Contractor, any employee of Contractor or any other person acting by or for Contractor while in, on or about the Property. (Emphasis supplied).

The agreement does not define the term "by reason of," but the Merriam-Webster Dictionary defines the phrase as "because of: due to." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/by%20reason%20of (last visited October 16, 2026). And again, we have construed the similar term "arising out of" in indemnity disputes to mean "'had its origins in,' 'grew out of,' or 'flowed from[,]'" and the term "does not mean proximate cause in the strict legal sense, nor require a finding that the injury was directly and proximately caused by the insured's actions. Almost any causal connection or relationship will do." *JNJ Found. Specialists, Inc.*, 311 Ga. App. at 270(1). Thus, unlike the contractual provision in Clear Blue's insurance policy, the indemnity clause in the service agreement does not require a claim or a loss to be *caused* by some act or omission on the part of SecurAmerica.

Instead, SecurAmerica is required to indemnify Peachtree from claims or losses that simply have some causal connection with SecurAmerica's duties or obligations under the service agreement. In V. W.'s complaint, she specifically alleged that Peachtree's and Lenox Mall's owners and operators "negligently failed to *inspect, patrol*, *and protect* Lenox Square, including the indoor walkway between Lenox Square and the J. W. Marriott, the 3399 Peachtree parking lot, and approaches to the mall and business operations." And critically, the parties agree, and the record reflects, that SecurAmerica was responsible for inspecting and patrolling the parking deck where the assault ultimately occurred. Thus, *at first glance*, the plain terms of the indemnification provisions place a duty on SecurAmerica to indemnify Peachtree.

But as SecurAmerica correctly argues, in Georgia, "contractual indemnities do not extend to losses caused by an indemnitee's own negligence unless the contract expressly states that the negligence of the indemnitee is covered." *Allstate Ins. Co. v. City of Atlanta*, 202 Ga. App. 692, 693 (415 SE2d 308) (1992). Indeed, we have been clear that

> [i]n the absence of explicit language to the contrary, courts will not interpret an indemnity agreement as a promise by the indemnitor to save the indemnitee harmless on account of the latter's own negligence. And

Georgia courts never imply an agreement to indemnify another for one's own negligence in the absence of express language.

Red Dress Boutique, Inc. v. Harbour, 375 Ga. App. 883, 886 (917 SE2d 867) (2025). This is because "public policy is reluctant to cast the burden of negligent actions upon those who are not actually at fault." *United Parcel Svc., Inc. v. Colt Sec. Agency, Inc.*, 296 Ga. App. 815, 816(1) (676 SE2d 22) (2009) (punctuation omitted). Thus, blanket references in an indemnification provision to "all claims" or similar language are insufficient to constitute the "explicit language" required to conclude that an indemnification provision covers a party's own negligence. See *Ryder Integrated Logistics, Inc. v. BellSouth Telecommunications, Inc.*, 281 Ga. 736, 737–38 (642 SE2d 695) (2007) (indemnification provision where a party agreed "to indemnify and hold BellSouth harmless from any and all liabilities, causes of action, lawsuits, penalties, claims or demands that may be made by [a]nyone for injuries of any kind" was insufficiently explicit to require indemnification for a party's own negligence); see also *Viad. Corp. v. United States Steel Corp.*, 343 Ga. App. 609, 616(1) (808 SE2d 58) (2017)

(references in an indemnification provision to the parties' "acts or omissions" were not explicit enough to cover claims for a party's own negligence).

Here, Peachtree seeks indemnification for the settlement it paid to resolve V. W.'s claims, which all sounded in negligence. In examining the indemnification clause of the service agreement, we note that it does not contain any explicit language that Peachtree would be indemnified for its own negligence. Still, this does not end our inquiry. We have held that "an indemnification provision that does not indemnify a defendant for its own acts of negligence could grant indemnity to the defendant for damages due to the *combined negligence* of a defendant and a third-party defendant[,]" specifically, when the injury to the plaintiff was caused by the joint negligence of both the indemnitor and the indemnitee. *Red Dress Boutique, Inc.*, 375 Ga. App. at 886–87 (emphasis supplied).

As stated above, however, we have not uncovered *any* evidence in the record to show that SecurAmerica was negligent or otherwise did not fulfill its obligations under the service agreement at the time of the attack. We again note that Peachtree's corporate representative testified that SecurAmerica carried out its responsibilities under the service agreement at the time of the attack and that the attack against V. W.

was not caused by any act or omission on the part of SecurAmerica. Moreover, Peachtree does not point to any negligent actions of any third party in this case. Consequently, Peachtree is not entitled to be indemnified for its own negligence, and thus the trial court did not err by granting SecurAmerica's motion for summary judgment.

Case No. A26A0943

3. In this appeal, Clear Blue appeals from the trial court's August 2024 order denying its motion for summary judgment on Peachtree's duty to defend claim. As a preliminary matter, however, we address our jurisdiction over Clear Blue's appeal from this order. See *Clay v. Douglasville-Douglas County Water & Sewer Auth.*, 357 Ga. App. 434, 436(1) (848 SE2d 733) (2020) ("[I]t is our duty to inquire into our jurisdiction in any case in which there may be a doubt about the existence of such jurisdiction.").

We begin our analysis by first noting that "[t]he Appellate Practice Act begins with the command that this article shall be liberally construed so as to bring about a decision on the merits of every case appealed. In so prescribing, we have held, the Act disfavors multiple appeals and piecemeal litigation." *Sewell v. Cancel*, 295 Ga. 235, 237

(759 SE2d 485) (2014) (citation modified). OCGA § 9-11-56(h) provides: "An order granting summary judgment on any issue or as to any party shall be subject to review by appeal. An order denying summary judgment shall be subject to review by direct appeal in accordance with subsection (b) of Code Section 5-6-34."[13] In construing OCGA § 9-11-56(h), it is well settled that a party may directly appeal from an order granting partial summary judgment. See *Born v. Born*, 364 Ga. App. 511, 516(1) (874 SE2d 846) (2022) ("[A] grant of partial summary judgment is subject to direct appeal under OCGA § 9-11-56(h)."). In this case, the trial court entered an order on August 8, 2024, granting Peachtree's motion for summary judgment *and* denying Clear Blue's motion for summary judgment on the issue of Clear Blue's duty to defend Peachtree in V. W.'s action. Because the order both granted summary judgment to Peachtree and denied summary judgment to Clear Blue on Peachtree's duty to defend claim, Clear Blue could have directly appealed from the partial grant of summary judgment, notwithstanding the portion of the order denying its motion for summary judgment. See *State v. Int'l Keystone Knights of the Ku Klux Klan, Inc.*, 299 Ga. 392, 397–98(3) (788 SE2d 455) (2016) (concluding that the state could have directly appealed from

[13] OCGA § 5-6-34(b) concerns the procedures for seeking an interlocutory appeal through an interlocutory application.

an order granting summary judgment to the plaintiff even though the trial court also denied its motion for summary judgment in the same order).

But it is a well settled principle that "pleadings, motions, and orders are to be construed according to their substance and function and not merely as to their nomenclature, being always mindful to construe such documents in a manner compatible with the best interest of justice." *Corken v. Maynard*, 374 Ga. App. 777, 780(1)(a) n.3 (913 SE2d 876) (2025). To that end, OCGA § 5-6-38 provides in part that "[i]n civil cases, the appellee may institute [a] cross appeal by filing notice thereof within 15 days from service of the notice of appeal by the appellant; *and the appellee may present for adjudication on the cross appeal all errors or rulings adversely affecting him*." OCGA § 5-6-38(a) (emphasis supplied). Here, on September 17, 2025, the trial court granted summary judgment to Clear Blue and denied summary judgment to Peachtree on Peachtree's indemnity claim. Peachtree timely filed its notice of appeal on October 14, 2025, and on the following day, Clear Blue filed its notice of appeal of the August 2024 order. Because Clear Blue filed its notice of appeal within 15 days of service of Peachtree's notice of appeal, Clear Blue's appeal is properly before us as a cross-appeal under OCGA § 5-6-38(a), and therefore we have jurisdiction. See *Think*

Dev. Sys., Inc. v. Cloudious, LLC, 369 Ga. App. 58, 59 n.1 (891 SE2d 426) (2023) (concluding that jurisdiction was proper to review a summary judgment order because the order was reviewable as a cross appeal since the main appeal was properly before the Court).

4. Turning to the merits of this appeal, Clear Blue argues that the trial court erred by denying its motion for summary judgment because it had no duty to defend Peachtree in the action against V. W.'s lawsuit. After careful review, we disagree.

At the outset, we note that "an insurer's duty to defend is *broader* than its duty to indemnify." *Shafe v. Am. States Ins. Co.*, 288 Ga. App. 315, 317 (653 SE2d 870) (2007) (emphasis supplied). Critically therefore, *an insurer may owe a duty to defend even if it does not owe a duty to indemnify*. *St. Paul Fire & Marine Ins. Co.*, 231 Ga. App. at 208(2).

> [T]he duty to defend is determined by the contract; and since the contract obligates the insurer to defend claims asserting liability under the policy, *even if groundless*, *the allegations of the complaint are looked to in order to determine whether a liability covered by the policy is asserted*. Thus, an insurer's duty to defend is determined by comparing the allegations of the complaint with the provisions of the policy. . . . [T]o excuse the duty to defend the petition must unambiguously exclude coverage under the policy, and thus, the duty to defend exists if the claim *potentially*

> comes within the policy. Where the claim is one of potential coverage, doubt as to liability and insurer's duty to defend should be resolved in favor of the insured.

Eubanks, 378 Ga. App. at 841(2) (citation modified).

The CGL policy provides: "We will have the right and duty to defend the insured against any 'suit' seeking those damages. However, we will have no duty to defend the insured against any 'suit' seeking damages for 'bodily injury' or 'property damage' to which this insurance does not apply." As stated above, the "Additional Insured — Designated Person or Organization" endorsement provides coverage for an "additional insured" "but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf: 1. In the performance of your ongoing operations; or 2. In connection with your premises owned by or rented to you. As stated above, V. W. alleged in her complaint that Peachtree negligently failed to train and supervise its employees and "negligently failed to *inspect, patrol*, *and protect* Lenox Square." And again, SecurAmerica was the entity responsible for inspecting and patrolling the parking deck. Because the allegations of the complaint alleged acts or omissions on the part of SecurAmerica

which caused V. W.'s injuries, even though the allegations were ultimately unsubstantiated, Clear Blue had a duty to defend Peachtree, and the trial court therefore properly denied summary judgment. See *Nationwide Mutual Fire Ins. Co. v. Somers*, 264 Ga. App. 421, 424–25(2) (591 SE2d 430) (2003) (insurer breached duty to defend because the allegations of the complaint potentially fell within the insurance policy).

Case No. A26A0993

5. Lastly, in this appeal, SecurAmerica appeals from the trial court's August 2024 order denying its motion for summary judgment, arguing that it had no duty to defend Peachtree in V. W.'s lawsuit.[14] But as stated above, in its complaint, Peachtree only asserted a duty to defend claim against Clear Blue, and while it stated in a heading in its motion for summary judgment that SecurAmerica owed a duty to defend, it did not present any argument to support this statement, instead solely arguing that

[14] As with Case No. A26A0943, here, the trial court denied SecurAmerica's motion for summary judgment on its duty to defend claim on August 8, 2024, and it granted SecurAmerica's motion for summary judgment on its indemnity claim on September 17, 2025. Peachtree filed its notice of appeal from the grant of summary judgment on October 14, 2025, and SecurAmerica filed its notice of appeal of the August 2024 order on October 15, 2025. For the reasons stated above in Division 3, SecurAmerica's appeal is properly before us as a cross appeal under OCGA § 5-6-38(a).

SecurAmerica had a duty to indemnify. Similarly, although SecurAmerica passively referenced a duty to defend once in its motion for summary judgment, it did not provide any actual argument that it did not owe a duty to defend. Crucially, as to SecurAmerica, the trial court only addressed its duty to indemnify in the August 2024 order, and it did not conclude that SecurAmerica had a duty to defend Peachtree. Therefore, because we do not read the trial court's order as concluding that SecurAmerica had a duty to defend Peachtree, its claim that the trial court erred by determining that it had a duty to defend Peachtree presents nothing for our review.

Accordingly, for the foregoing reasons, in Case No. A26A0897, we affirm the trial court's order granting summary judgment to Clear Blue and SecurAmerica, and in Case Nos. A26A0943 and A26A0993, we affirm the trial court's orders granting summary judgment to Peachtree.

Judgments affirmed. Doyle, P. J., and Whitaker, J., concur.