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United States District Court, D. Maryland.

NICHOLAS GROSSO, M.D., Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA, Defendant.

Civil Action No. RDB-24-1432

|

October 16, 2026

TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Richard D. Bennett United States Senior District Judge

I. Introduction

***1** This action involves a dispute over the proper interpretation of critical terms contained in a long term disability insurance policy. On July 1, 2018, Plaintiff Nicholas P. Grosso, M.D. ("Plaintiff" or "Dr. Grosso") entered into an insurance contract on behalf of the Centers for Advanced Orthopedics ("CAO")[1] for coverage under a group long term disability insurance policy ("Policy") issued by Defendant Unum Life Insurance Company of America ("Defendant" or "Unum"). Prior to selecting Unum's Policy, the CAO received informational presentations about the Policy from Unum's insurance broker, Peter Hibbard ("Mr. Hibbard"). Mr. Hibbard conveyed to the CAO that Unum's Policy was an "own occupation" policy, under which the definition of "disability" is tied to a physician's medical specialty. The CAO therefore purchased Unum's Policy with the understanding that a physician would be eligible to receive monthly disability benefits upon becoming disabled from their specialty, and that a physician's monthly disability benefit would only be reduced by the income they continued to derive from their medical specialty in spite of their disability (otherwise known as "disability earnings").

On September 9, 2021, Dr. Grosso underwent surgery on his dominant left wrist to correct severe osteoarthritis, with surgery on his right wrist taking place in January 2022. However, following his first wrist surgery, Dr. Grosso learned that he would no longer be able to perform orthopedic surgery. In October 2021, Dr. Grosso filed a claim for disability benefits under the Policy issued by Unum to the CAO. In February 2022, Unum approved Dr. Grosso's claim for benefits.

Following its approval of Dr. Grosso's claim, Unum made three payments to Dr. Grosso before recalculating his claim and determining that he was no longer eligible to receive a monthly disability benefit. Unum also requested that Dr. Grosso repay the benefits it had paid to him and later terminated Dr. Grosso's claim altogether. During this time, Dr. Grosso repeatedly attempted to contact Unum and understand why he was not receiving a monthly disability benefit to little avail. Believing he would not find recourse with Unum, Dr. Grosso filed a complaint with the Maryland Insurance Administration ("MIA"). During the MIA's investigation, Dr. Grosso learned for the first time that Unum had miscalculated his date of disability, his pre-disability monthly earnings—which determine his monthly benefit amount, and his post-disability earnings—which reduce his monthly benefit amount. The confluence of Unum's miscalculations caused a total elimination of Dr. Grosso's monthly disability benefit. After the MIA found in favor of Unum, Dr. Grosso filed the instant lawsuit.

On March 1, 2024, Plaintiff initiated this action by filing in the Circuit Court for Howard County, Maryland, a two-Count Complaint against Defendant asserting claims for breach of contract (Count I) and failure to act in good faith in violation of Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and Md. Code Ann., Ins. § 27-1001 (Count II). *See* (ECF No. 2). Defendant removed

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this action to this Court on May 16, 2024. *See* (ECF No. 1). Plaintiff then filed a two-Count Amended Complaint (ECF No. 13) on June 11, 2024, and Defendant filed a Motion to Dismiss (ECF No. 14), which this Court denied by Memorandum Opinion dated March 25, 2025 (ECF No. 19).

***2** On June 11, 2025, Plaintiff filed the operative, three-Count Second Amended Complaint (ECF No. 37) alleging against Defendant claims for common law breach of contract (Count I), failure to act in good faith in violation of Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and Md. Code Ann., Ins. § 27-1001 (Count II), and declaratory relief pursuant to Fed. R. Civ. P. 57 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* (Count III). *See generally* (ECF No. 37). Defendant then filed its Answer to Plaintiff's Second Amended Complaint (ECF No. 38), and following the conclusion of discovery, (ECF No. 54), the parties filed cross-motions for summary judgment (ECF Nos. 55, 56). Following two hearings and a request for supplemental briefing on the issue of ERISA preemption, this Court denied the parties' cross-motions for summary judgment. (ECF Nos. 71, 72, 75). Accordingly, this matter then proceeded to a three-day bench trial beginning on Tuesday, September 29, 2026, and concluding on Thursday, October 1, 2026.

After consideration of the evidence and argument presented at that bench trial, and for the reasons set forth below, this Court concludes as follows:

1. By erroneously concluding that Dr. Grosso's disability date occurred in 2021, and that 2020 was the appropriate tax year for purposes of determining Dr. Grosso's monthly pre-disability income; by failing to include Dr. Grosso's "corporate" income in Dr. Grosso's pre-disability "monthly earnings"; and by including sources of income other than Dr. Grosso's "clinical" income in Dr. Grosso's "disability earnings," all of which improperly reduced Dr. Grosso's monthly disability benefit, Unum breached the insurance contract and caused Dr. Grosso to incur **1,045,045.35** in actual damages. Dr. Grosso is further awarded prejudgment interest at the rate of six percent (6%) per annum.

2. The long-term disability insurance policy issued by Unum to the CAO is a group insurance policy. Count II of Plaintiff's Second Amended Complaint therefore fails as a matter of law.

3. Dr. Grosso is entitled to declaratory relief under Count III, as described herein and in this Court's separate Order and Judgment.

4. Judgment shall be ENTERED in favor of Dr. Grosso on Counts I and III.

5. Judgment shall be ENTERED in favor of Unum on Count II.

6. Unum SHALL PAY to Dr. Grosso a total of **1,045,045.35**, plus prejudgment interest at the rate of six percent (6%) per annum.

II. Parties & Procedural History

A. Parties

Plaintiff Nicholas P. Grosso, M.D. ("Plaintiff" or "Dr. Grosso") is an individual residing in Ellicott City, Maryland. (ECF No. 95 at 26:25–27:1 (Dr. Grosso)).[2] Dr. Grosso is a licensed medical doctor who became board certified in 1997 and practiced as an orthopedic surgeon in Maryland for over twenty-five years. (*Id.* at 27:2–29:3 (Dr. Grosso)). Following his discharge from the United States Army, Dr. Grosso joined the Orthopedic Associates of Central Maryland ("OACM") and in 2013, he helped found the Centers for Advanced Orthopedics ("CAO"), of which OACM is a division. (*Id.* at 27:14–29:6 (Dr. Grosso)) Dr. Grosso serves as President of the CAO, and he is presently employed as a non-operative orthopedic surgeon with OACM. (*Id.* at 27:2–3; 74:20–23 (Dr. Grosso)).

Defendant Unum Life Insurance Company of America ("Defendant" or "Unum") is an insurance provider based in Maine. (ECF No. 80 at 1). Unum is headquartered in Chattanooga, Tennessee, and maintains offices in the United States and globally. *See About Us*, Unum Group, https://www.unumgroup.com/about (last visited October 1, 2026). Unum is a leading provider of group and individual disability benefits in the United States. *Id.*

B. Procedural History

Plaintiff initiated this civil action on March 1, 2024, by filing in the Circuit Court for Howard County, Maryland, a two-Count Complaint (ECF No. 2) alleging common law breach of contract (Count I) and failure to act in good faith in violation of Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and Md. Code Ann., Ins. § 27-1001 (Count II) against Defendant Unum Life Insurance Company of America ("Defendant" or "Unum"). (ECF No. 2). Defendant removed this action to this Court on May 16, 2024, asserting federal jurisdiction under 28 U.S.C. § 1332 based on the complete diversity of the parties.[3] (ECF No. 1 ¶¶ 5–8). Plaintiff then filed a two-Count Amended Complaint (ECF No. 13) on June 11, 2024, asserting the same two claims as those set forth in the initial Complaint (ECF No. 2) against Defendant Unum. Thereafter, Defendant filed a Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 14), which this Court denied by Memorandum Opinion dated March 25, 2025 (ECF No. 19).[4] Defendant then filed its Answer to Plaintiff's Amended Complaint (ECF No. 31).

***3** Ultimately, Plaintiff filed the operative, three-Count Second Amended Complaint (ECF No. 37) on June 11, 2025, alleging against Defendant claims for common law breach of contract (Count I), failure to act in good faith in violation of Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and Md. Code Ann., Ins. § 27-1001 (Count II), and declaratory relief pursuant to Fed. R. Civ. P. 57 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* (Count III). *See generally* (ECF No. 37). Defendant then filed its Answer to Plaintiff's Second Amended Complaint (ECF No. 38), and following the conclusion of discovery, (ECF No. 54), the parties filed cross-motions for summary judgment (ECF Nos. 55, 56).

This Court held a hearing on the parties' cross-motions for summary judgment on July 2, 2026, and after hearing oral argument from both parties, the Court ordered supplemental briefing on the issue of ERISA preemption. *See* (ECF 70). After reviewing the parties' supplemental briefing and hearing additional oral argument on the issue of ERISA preemption, this Court denied summary judgment to both parties. (ECF Nos. 71, 72, 75). This matter then proceeded to a three-day bench trial that concluded on October 1, 2026. The Court heard testimony from five witnesses and received approximately 50 exhibits. Based on the evidence admitted at trial, the Court now makes the following findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

III. Trial Findings of Fact

A. Finding of Fact: Dr. Grosso is a physician with the Orthopedic Associates of Central Maryland, a division of the Centers for Advanced Orthopedics.

Dr. Grosso joined the Orthopedic Associates of Central Maryland ("OACM") as an orthopedic surgeon following his honorable discharge from the United States Army in 2001. (ECF No. 95 at 27:14–29:3 (Dr. Grosso)). In 2013, Dr. Grosso and a number of other physicians from orthopedic practices around the Washington D.C. Metropolitan area elected to create a larger coalition of orthopedic surgeons known as the Centers for Advanced Orthopedics ("CAO"). (*Id.* at 28:18–29:6 (Dr. Grosso)). Today, the CAO comprises twenty-four divisions that employ approximately 170 physicians. (*Id.* at 28:18–29:12 (Dr. Grosso)). OACM operates as division seventeen of the CAO[5] and employs approximately seventeen physicians, including Dr. Grosso. (*Id.* at 29:4–23 (Dr. Grosso)). In addition to his current role as a non-operative orthopedic surgeon with OACM, Dr. Grosso was a partner-member of the CAO until January 1, 2024, and he continues to serve as the CAO's President. (*Id.* at 27:2–3; 61:9–25; 74:20–23 (Dr. Grosso)).

B. Finding of Fact: The Centers for Advanced Orthopedics purchased Unum's group long-term disability insurance policy through Unum's broker, Peter Hibbard.

A few years into his tenure with OACM, Dr. Grosso and several other physicians created a Physician's Benefits Committee that began soliciting options for disability insurance to cover the CAO's doctors. (ECF No. 95 at 30:2–19 (Dr. Grosso)). The Committee then presented their proposed plan options to the CAO's governing body, the Board of Managers, for a final vote. (*Id.* at 30:23–31:4 (Dr. Grosso)). The Board of Managers is comprised of one physician representative from each division of the CAO. (*Id.* at 30:23–31:4; 70:14–24 (Dr. Grosso)). The Board of Managers meets once per month to discuss items broadly affecting the CAO, including compliance, risk management, and client care. (*Id.* at 30:23–31:4; 70:14–71:2 (Dr. Grosso)); *see also* PE29.[6]

***4** During the solicitation period, the CAO's Board of Managers were introduced to an insurance broker for Unum named Peter Hibbard ("Mr. Hibbard"). (ECF No. 95 at 71:3–21 (Dr. Grosso)).[7] Although Dr. Grosso facilitated Mr. Hibbard's introduction to the CAO's Benefits Committee, he then recused himself from the selection process and did not participate in the Board of Managers' final vote on an insurance policy. (*Id.* at 30:2–22; 70:14–71:7; 110:24–111:19 (Dr. Grosso); 147:18–148:17 (Mr. Hibbard)). The Board of Managers eventually elected to offer Unum's group long-term disability insurance plan to the CAO's physicians. (*Id.* at 30:23–31:7 (Dr. Grosso)).

1. Peter Hibbard acted as a broker for Unum.

As noted above, Dr. Grosso introduced Mr. Hibbard to the CAO's Physician's Benefits Committee during the Committee's search for a long-term disability insurance plan. (ECF No. 95 at 30:2–31:4 (Dr. Grosso)). Mr. Hibbard is an owner of Columbia Benefits Consultants Retirement Partners ("CBC Retirement Partners"), a company engaged in the design and sale of employee benefit plans. (*Id.* at 124:8–13; 133:4–8 (Mr. Hibbard)); PE49. Mr. Hibbard also serves as the President and a Director of EBH, Inc. ("EBH"), an insurance brokerage firm owned by his wife. (ECF No. 95 at 133:4–14 (Mr. Hibbard)); PE49.

On August 4, 2008, Mr. Hibbard executed a broker agreement with Unum in his capacity as President of EBH. (ECF No. 95 at 131:5–25; 132:10–24 (Mr. Hibbard)); PE25; DE17. The broker agreement provided that EBH would operate as an independent broker of Unum's insurance plans. (ECF No. 95 at 131:5–13 (Mr. Hibbard)); PE25; DE17. The broker agreement further provided that EBH's brokers were not employees of Unum and that they would receive compensation in the form of commissions representing a percentage of premiums paid on Unum policies sold. (ECF No. 95 at 131:5–13; 133:18–134:1 (Mr. Hibbard)); PE25; DE17. The broker agreement also outlined limitations on the authority of EBH's brokers. Specifically, Section 5(a) of the broker agreement clarified that EBH's brokers "shall have no authority to alter, modify, change, or waive any terms, rates, conditions, applications, or policies" of Unum unless instructed to do so in writing, nor could EBH's brokers "make any representations not strictly in accordance with the provisions of Policies" issued by Unum. (ECF No. 95 at 149:5–150:4 (Mr. Hibbard)); PE25 at 2; DE17 at 2.

Notwithstanding the broker agreement, at all times, Mr. Hibbard and EBH remained free to sell insurance policies issued by other insurance companies. (ECF No. 95 at 131:5–13 (Mr. Hibbard)). The terms of the 2008 broker agreement between EBH and Unum were in effect at the time Mr. Hibbard consulted with the CAO about Unum's long-term disability insurance policy. (*Id.* at 132:11–133:2 (Mr. Hibbard)).

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2. The CAO chose to offer Unum's group long-term disability insurance policy to CAO physicians on the recommendation of Peter Hibbard.

Mr. Hibbard elected to recommend Unum's long-term disability insurance policy to the CAO based on information Mr. Hibbard received from Unum about the policy over the course of his business relationship with Unum. (ECF No. 95 at 131:5–134:24; 147:18–148:17 (Mr. Hibbard)). Mr. Hibbard initially presented Unum's policy to a small group of CAO physicians; however, the physicians were still looking at other policies from different insurance providers at this time. (*Id.* at 132:4–9 (Mr. Hibbard)). During his discussions with CAO physicians, Mr. Hibbard conveyed information about the policy that had been provided to him by Unum's representatives in the Washington D.C. Metropolitan area. (*Id.* at 135:22–136:22 (Mr. Hibbard)). Mr. Hibbard presented promotional materials created by Unum to the CAO, and he also created promotional materials using information he gathered from Unum or its representatives about Unum's group long-term disability insurance policy. (*Id.* at 135:22–137:10 (Mr. Hibbard)); *see* PE26; PE27; PE28; PE51. At the end of the solicitation period, the CAO elected to offer Unum's long-term disability insurance policy to CAO physicians. (ECF No. 95 at 30:2–19; 88:20–89:4 (Dr. Grosso); 134:2–9 (Mr. Hibbard)). As a result, Mr. Hibbard and Dr. Grosso, in his capacity as the President of CAO, executed an application for a group long term disability insurance policy from Unum. (*Id.* at 89:5–10 (Dr. Grosso); 134:2–15 (Mr. Hibbard)); DE19. Thereafter, Unum issued to the CAO Unum Group Long Term Disability Policy No. 659439 001 ("Policy"). (ECF No. 95 at 89:8–13 (Dr. Grosso)); PE1; DE1. The policyholder was listed as the CAO, and the effective date of the initial Policy was July 1, 2018. (ECF No. 95 at 89:8–13 (Dr. Grosso); 134:10–15 (Mr. Hibbard)); PE1; DE1; DE19.

3. Unum's long-term disability insurance policy is a group insurance policy, not an individual policy.

***5** The evidence presented at trial demonstrates that the Unum Policy issued to the CAO is a group insurance policy, not an individual insurance policy personal to each CAO physician who enrolls. The Policy application executed by Mr. Hibbard and Dr. Grosso on behalf of the CAO is titled, "Application for Group Insurance," and Dr. Grosso selected the box for "Group Long Term Disability Benefits" out of the available plan options. (ECF No. 95 at 88:11–17 (Dr. Grosso); 166:17–167:22 (Mr. Hibbard)); DE19. The first page of the initial Policy issued in 2018 identifies the Policy as a "Group Insurance Policy Non-Participating" and lists the CAO as the Policyholder. (ECF No. 95 at 90:1–15 (Dr. Grosso)); PE1. The Policy was amended twice on October 29, 2020, and October 10, 2022,[8] and in both instances, the first page of the amended Policy indicates that "[t]his amendment forms a part of Group Policy No. 659439 001 issued to the Policyholder: Center for Advanced Orthopedics, LLC." (ECF No. 95 at 90:24–91:10 (Dr. Grosso)); PE2; DE2; PE3. Additionally, in the Policy overview titled "BENEFITS AT A GLANCE," the CAO divisions eligible for coverage under the Policy are listed under the heading, "ELIGIBLE GROUP(S)." PE2 at GROSSO002255. Although CAO physicians signed up for the Policy individually via Unum's website or through Mr. Hibbard and remitted premium payments directly to Unum, copies of the Policy issued to physicians who filed claims for benefits bore the same policy number as that issued to the CAO as a whole—No. 659439 001. (ECF No. 95 at 31:9–32:2; 90:13–15 (Dr. Grosso)); PE2 at GROSSO002252–53.

In addition to being marketed as a group plan, the Policy operates as a group policy in practice. The Policy provides that Unum may cancel or modify the Policy if "there is less than 75% participation of those eligible employees who pay all or part of their premium for a plan." PE2 at GROSSO002260. With respect to premium payments, Mr. Hibbard testified that he receives past due notices from Unum for clients whose premiums are more than sixty days overdue. (ECF No. 95 at 142:16–144:1 (Mr. Hibbard)); *see* PE48. Mr. Hibbard testified that past due notices concerning the CAO's Policy are generated based on divisions of the CAO that have failed to pay their premium, rather than any individual physician. (ECF No. 95 at 142:16–144:1 (Mr. Hibbard)); *see* PE48. This is so because Unum and the CAO developed a payment structure whereby the CAO would pay Policy premiums division-by-division, with each division including at least more than one enrolled physician. (ECF No. 95 at 142:16–144:1; 172:16–17 (Mr. Hibbard)). Mr. Hibbard further testified that if the premium remained unpaid, the Policy could be cancelled as to the physicians in that CAO division, though the Policy would not be cancelled for the CAO as a whole. (*Id.* at 170:8–172:24 (Mr. Hibbard)).

C. Finding of Fact: Unum's group long-term disability insurance policy is an "own occupation" policy under which "disability income" is limited to a physician's clinical income.

The evidence presented at trial plainly demonstrates that the Unum Policy issued to the CAO is an "own occupation" disability insurance policy under which "disability earnings" are limited to physician's income. Specifically, the evidence shows that: (i) CAO physicians specifically solicited an "own occupation" policy which would replace their clinical income in the event of disability; (ii) Mr. Hibbard recommended Unum's Policy to the CAO based on the physicians' desired plan features; (iii) Mr. Hibbard represented to the CAO's doctors that the Policy was an "own occupation" policy based on information he learned from Unum about the Policy; and (vi) the CAO's physicians reasonably relied on Mr. Hibbard's representations about the "own occupation" feature of the Policy—and Mr. Hibbard's authority to make those representations—when electing to enroll. *See infra* Sections III.C.1–3. The Court therefore finds that the Policy is in fact an "own occupation" policy under which disability income is limited to a physician's clinical earnings.

1. Mr. Hibbard recommended Unum's Policy to the CAO based on the physicians' desired plan features.

According to Mr. Hibbard's trial testimony, upon meeting with a small group of CAO physicians, he was informed that the CAO was interested in procuring a long-term disability insurance policy that would provide coverage to all CAO doctors at every CAO location. (ECF No. 95 at 132:4–9; 134:16–24 (Mr. Hibbard)). The CAO physicians also informed Mr. Hibbard that their primary concern was finding an insurance policy which would provide coverage for the loss of their surgical income specifically. (*Id.* at 134:25–135:21 (Mr. Hibbard)). The physicians did not want a plan under which an operating physician would not receive disability benefits if they transitioned to the role of a general medical practitioner; rather, the physicians sought a plan designed to provide compensation based solely on their inability to perform their surgical specialty, even if they continued working part-time in a different role. (*Id.* at 134:25–135:21 (Mr. Hibbard)). Mr. Hibbard understood this to mean that the physicians were looking for an "own occupation" policy. (*Id.* at 134:16–135:7 (Mr. Hibbard)).

***6** According to Mr. Hibbard's trial testimony, a primary feature of "own occupation" coverage is that it will pay an insured physician full benefits for the loss of their primary specialty even if they remain a general medical practitioner. (*Id.* at 134:16–135:21 (Mr. Hibbard)). Put differently, an "own occupation" policy would consider a physician "disabled" if they were rendered unable to perform their primary specialty, and the physician's monthly disability benefit would only be reduced or offset to the extent that they continued to derive income from their clinical practice despite their disability (also known as "disability earnings"). (*Id.* at 134:16–135:21; 136:23–138:25 (Mr. Hibbard)). Thus, "disability earnings" are limited to clinical earnings under an own occupation policy, and a physician's monthly disability benefit would not be reduced by the physician's receipt of other, non-clinical sources of income. (*Id.* at 137:24–138:25 (Mr. Hibbard)). In light of the physicians' specific requests, Mr. Hibbard determined that the group long-term disability insurance policy offered by Unum Life Insurance Company of America was a suitable plan to fit the physicians' needs. (*Id.* at 131:5–134:24; 147:18–148:17 (Mr. Hibbard)).

2. Mr. Hibbard represented to CAO physicians that Unum's Policy was an "own occupation" policy based on information he learned from Unum.

Mr. Hibbard gave presentations and marketing materials about Unum's policy to CAO physicians both before and after the CAO elected to offer its physicians coverage under the Policy. (ECF No. 95 at 135:22–136:16; 139:7–140:9 (Mr. Hibbard)); PE51. Mr. Hibbard created the slide decks and other promotional materials using information about the Policy that was provided to him directly by Unum and its local representatives, including Elizabeth Goshorn, Unum's Maryland-based Senior Client Manager with whom Mr. Hibbard worked "closely" to understand Unum's product. (*Id.* at 136:2–137:10; 140:3–141:18 (Mr. Hibbard)); *see also* PE 26; PE27; PE 28; PE51. According to Mr. Hibbard's trial testimony, in discussions with the CAO, Mr.

Hibbard viewed his responsibility as one to present the product "exactly as designed by Unum" and as such, he did provide any information to the CAO's physicians beyond that which was given to him by Unum. (ECF No. 95 at 136:2–137:10; 140:3–141:18 (Mr. Hibbard)).

Mr. Hibbard's verbal representations to CAO physicians, as well as the presentations and tangible marketing materials he gave to the CAO concerning Unum's Policy, conveyed that the Policy was an "own occupation" policy. (*Id.* at 135:25–137:10; 140:3–141:18 (Mr. Hibbard)). In presentations to the CAO on March 18, 2020, and July 15, 2020, Mr. Hibbard utilized a slide deck bearing Unum's logo which describes the Policy as one that is "own occupation" with a "specialty definition of disability for the duration." (*Id.* at 135:25–137:10 (Mr. Hibbard)); PE26 at CBC000115; PE51 at CBC000106. Mr. Hibbard testified that he did not write this description of the Policy in the presentation; rather, this language came directly from Unum. (ECF No. 95 at 136:23–137:10 (Mr. Hibbard)). Mr. Hibbard also testified that these presentations were essentially the same as those given to CAO physicians before the CAO chose to offer coverage under Unum's Policy in 2018. (*Id.* at 139:7–16 (Mr. Hibbard)).

Similarly, in presentations to the CAO on September 15, 2021, and September 22, 2021, Mr. Hibbard also utilized slide decks bearing Unum's logo which contained details about the Policy. (*Id.* at 139:23–141:18 (Mr. Hibbard)); PE27; PE28. On a slide titled "Plan Details," the "[d]efinition of disability" under the Policy is again described as "own occupation" with a "specialty definition of disability for the duration." PE27 at GROSSO00709; PE28 at GROSSO001470. On the following slide, under the heading "[w]e've got you covered," the Policy is again described as one which contains a "[s]pecialty definition of disability for physicians [ ] to provide additional own occupation protection." PE27 at GROSSO00710; PE28 at GROSSO001471. According to the presentation, "Regular Occupation" under the Policy "means a person's specialty in the practice of medicine which he/she is routinely performing when his/her disability begins." PE27 at GROSSO00710; PE28 at GROSSO001471. Mr. Hibbard testified that, during presentations to the CAO, he would "specifically ... always point out ... these bullet points" and clarify that the definition of disability in the Policy is tied directly to the physicians' specialty. (ECF No. 95 at 140:25–141:18 (Mr. Hibbard)). Mr. Hibbard continued to give these presentations to the CAO on occasion between 2018 and 2021 as CAO physicians decided whether to enroll in the Policy. (*Id.* at 134:2–141:18 (Mr. Hibbard)).

***7** Mr. Hibbard also answered physician's specific questions about the Policy in his role as a broker for Unum. Mr. Hibbard testified that CAO physicians would contact him directly with questions about the Policy or the meaning of Policy terms that he would answer on Unum's behalf. (*Id.* at 132:1–9; 138:8–139:6; 142:3–15; 152:8–19 (Mr. Hibbard)). Mr. Hibbard would answer physicians' questions based on the information provided in Unum's marketing materials, and if questions arose that he could not answer, he would reach out to Unum's local representatives for assistance. (*Id.* at 142:3–11; 152:8–19 (Mr. Hibbard)). Additionally, in each presentation Mr. Hibbard gave to the CAO concerning the Policy, Mr. Hibbard's contact information was provided directly alongside that for Unum's Senior Client Manager, Elizabeth Goshorn, for those with questions about the Policy. (*Id.* at 140:3–24 (Mr. Hibbard)); *see also* PE26; PE27; PE28; PE51.

3. CAO physicians reasonably relied on Mr. Hibbard's representations that the Policy was an "own occupation" policy.

The testimony presented at trial demonstrates that CAO physicians reasonably relied on Mr. Hibbard's representations concerning the "own occupation" feature of the Policy in electing to enroll in coverage. Dr. Grosso testified that, in conversations with Mr. Hibbard and representatives of Unum[9] who gave presentations to the CAO about the Policy before he enrolled, both represented that the Policy was an "own occupation" policy under which disability earnings would not be unrelated to Dr. Grosso's clinical orthopedic practice. (ECF No. 95 at 68:4–17 (Dr. Grosso)). Dr. Grosso understood that the purpose of an "own occupation" policy was to provide relief for his lost clinical earnings only and that, if he were to leave his role as an orthopedic surgeon to begin taking consultations at an urgent care center, for example, any income he received would not be considered "disability earnings" because it was not derived from his orthopedic specialty. (*Id.* at 67:11–68:17 (Dr. Grosso)). Dr. Grosso further understood that Mr. Hibbard had authority to speak on Unum's behalf with respect to details about the Policy. (*Id.* at 33:9–17 (Dr. Grosso)). Dr. Grosso testified that he and the other CAO physicians paid higher premiums specifically for the "own occupation" protection they believed would be provided by the Policy. (*Id.* at 32:3–21; 34:4–12 (Dr. Grosso)). Dr. Grosso

also testified that he would not have been interested in enrolling in the Policy if he had known that non-clinical earnings would be considered disability earnings and reduce or offset his monthly disability benefit. (*Id.* at 34:4–16 (Dr. Grosso)).

Dr. Oren Blam, an orthopedic spine surgeon with CAO's OACM division, further testified that he understood the Policy to be an "own occupation" policy based on Unum's marketing materials along with conversations with Mr. Hibbard following Mr. Hibbard's presentations to OACM. (ECF No. 96 at 4:16–17; 6:6–14; 7:15–8:8 (Dr. Blam)). Dr. Blam testified that he specifically sought coverage under an "own occupation" plan as opposed to a more general long term disability policy because he wanted coverage in the event that he became unable to perform his surgical specialty, even if he remained employed as a general medical practitioner. (*Id.* at 6:15–7:6 (Dr. Blam)). Dr. Blam testified that he only enrolled in Unum's Policy because he believed it was an "own occupation" policy. (*Id.* at 6:25–7:6 (Dr. Blam)).

***8** According to Dr. Blam, he also understood that if he became disabled from practicing his specialty yet continued working as a general practitioner, he would still be eligible to receive a monthly disability benefit representing his lost earnings from his clinical surgical practice. (*Id.* at 7:15–8:2 (Dr. Blam)). Dr. Blam testified that he understood the term "disability earnings" to only encompass income he received from completing spinal surgery or related tasks, in essence, income from his clinical surgical practice. (*Id.* at 7:22–8:2 (Dr. Blam)). Dr. Blam did not recall being informed that his monthly disability benefit could be reduced by his receipt of income from sources outside of his clinical surgical practice. (*Id.* at 9:13–17 (Dr. Blam)). Dr. Blam further testified that he would not have enrolled in the Policy if he knew that non-clinical income would be used to offset his monthly disability benefit because that would render the coverage a nullity. (*Id.* at 9:18–10:4 (Dr. Blam)). Dr. Blam also testified that the information he received directly from Mr. Hibbard about the plan aligned with information he learned from slideshow presentations to OACM about the Policy. (*Id.* at 8:9–9:12 (Dr. Blam)).

D. Finding of Fact: Dr. Grosso filed a claim for disability benefits under the Policy.

Dr. Grosso suffers from a degenerative joint disease known as osteoarthritis. (ECF No. 95 at 36:9–11 (Dr. Grosso)). Dr. Grosso gradually developed osteoarthritis over time; however, the condition progressed faster than he expected which led him to seek out care from a hand specialist in Maryland. (*Id.* at 36:12–19; 37:11–17 (Dr. Grosso)). Dr. Grosso's pain and limited range of motion eventually rendered him unable to complete core duties associated with his clinical orthopedic practice, such as swinging mallets to break or reposition bones, using bone saws, or twisting bone anchors, and he increasingly began to rely on the assistance of other staff as a result. (*Id.* at 36:20–37:10 (Dr. Grosso)); PE36.

On September 9, 2021, Dr. Grosso underwent the first of two surgeries to correct severe osteoarthritis in his dominant left wrist, with surgery on his right wrist taking place on January 7, 2022. (ECF No. 95 at 37:11–38:7 (Dr. Grosso)); (ECF No. 88 at 14 (Stipulation 3)). However, following his first wrist surgery, Dr. Grosso was deemed permanently unable to perform orthopedic surgery again. (ECF No. 95 at 37:25–38:10 (Dr. Grosso)). On October 17, 2021, Dr. Grosso filed a claim for disability benefits under the Policy issued by Unum Life Insurance Company of America. (*Id.* at 39:1–12 (Dr. Grosso)); PE36.

In his claim application, Dr. Grosso indicated that the date he was first unable to work due to his medical condition was September 9, 2021, based on his inability to perform surgery following the first procedure on his left wrist. (ECF No. 95 at 39:13–17 (Dr. Grosso)); PE36. Dr. Grosso further indicated that he had returned to work part-time beginning on September 17, 2021, for approximately 12 hours per week. (ECF No. 95 at 64:12–19; 65:18–66:8 (Dr. Grosso)); PE36. The claim form also inquired whether Dr. Grosso was receiving "[o]ther [d]isability [i]ncome" that "could reduce [his] benefit from Unum," such as, *inter alia,* social security, worker's compensation, unemployment benefits, or pension proceeds. PE36. Dr. Grosso indicated no for each enumerated source of income. PE36. Unum approved Dr. Grosso's claim for disability benefits on February 17, 2022. (ECF No. 95 at 40:17–23 (Dr. Grosso)). The following month, Unum commenced paying Dr. Grosso disability benefits pursuant to the Policy as amended through Amendment No. 1,[10] which was issued to the CAO on October 29, 2020.[11] (*Id.* at 41:19–21 (Dr. Grosso)); (ECF No. 88 at 14 (Stipulation 1; Stipulation 5)).

E. Finding of Fact: Policy Terms Applicable to Dr. Grosso's Claim.

***9** Dr. Grosso's claim for disability benefits was determined according to the terms of Amendment No. 1 to Unum Policy No. 659439 001. (ECF No. 88 at 14 (Stipulation 1)). Under the Policy, an insured is eligible to receive a monthly disability benefit once Unum determines that the insured is "disabled" within the meaning of that term as it is defined in the Policy. PE2 at GROSSO002255–2257. Unum then provides a definition for "disabled" in the section of the Policy titled "LONG TERM DISABILITY BENEFIT INFORMATION," under the heading, "HOW DOES UNUM DEFINE DISABILITY?" PE2 at GROSSO002266. Specifically, the Policy provides,

You are disabled when Unum reasonably determines that:

-you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and

-you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

Id.; (ECF No. 95 at 94:4–95:1; 101:1–23 (Dr. Grosso)). In addition to suffering from a qualifying disability, the Policy also requires that an insured satisfy a ninety-day elimination period before the insured is eligible to receive a monthly disability benefit. PE2 at GROSSO002266. In this respect, the Policy elaborates:

> You must be continuously disabled through your elimination period. The days that you are not disabled will not count toward your elimination period.... You are not required to have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury to be considered disabled during the elimination period.

Id.; (ECF No. 95 at 91:24–92:11; 95:2–14 (Dr. Grosso)).

Once an insured is disabled and satisfies the ninety-day elimination period, Unum will calculate the insured's monthly disability benefit. *See* PE2 at GROSSO002267 ("You will begin to receive payments when we approve your claim, providing [sic] the elimination period has been met and you are disabled."). Under the heading "HOW MUCH WILL UNUM PAY YOU IF YOU ARE DISABLED," the Policy provides:

> We will follow this process to figure your payment:
>
> (1) Multiply your **monthly earnings** by 50%.
>
> (2) The maximum monthly benefit is $20,000.
>
> (3) Compare the answer from Item 1 with the maximum monthly benefit. The lesser of these two amounts is your gross disability payment.
>
> (4) Subtract from your gross disability payment any deductible sources of income.
>
> The amount figured in Item 4 is your monthly payment.
>
> Your monthly payment may be reduced based on your **disability earnings**.

Id. "Monthly earnings" and "disability earnings"[12] are both defined terms under the Policy. *Id.* at GROSSO002267, 2281. Pre-disability "monthly earnings" are defined as "your average monthly income as an insured partner" and are calculated

> from the line which shows 'net earnings (loss) from self-employment' from your Schedule K-1 of the federal partnership income tax return from your Employer for the tax year just prior to your date of disability....
>
> It does not include income received from sources other than your Employer.

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Id. at GROSSO002267. On the other hand, post-disability earnings are defined as "the earnings which you receive while you are disabled and working, plus the earnings you could receive if you were working to your maximum capacity." *Id.* at GROSSO002281. In other words, an insured's gross monthly disability benefit is initially calculated using their pre-disability monthly earnings; however, the insured's net monthly disability benefit may be less than the gross benefit calculation, which would reflect a reduction based on the insured's receipt of post-disability earnings.

***10** The Policy goes on to provide a complex formula for determining how much Unum will pay an insured who receives "disability earnings" and is subject to a monthly benefit offset. *See* PE2 at GROSSO002268. Under the heading "HOW MUCH WILL UNUM PAY YOU IF YOU ARE DISABLED AND WORKING?," the Policy provides as follows:

> We will send you the monthly payment if you are disabled and your monthly disability earnings, if any, are less than 20% of your indexed monthly earnings, due to the same sickness or injury.
>
> If you are disabled and your monthly disability earnings are from 20% through 80% of your indexed monthly earnings, due to the same sickness or injury, Unum will figure your payment as follows:
>
> During the first 12 months of payments, while working, your monthly payment will not be reduced as long as disability earnings plus the gross disability payment does not exceed 100% of indexed [pre-disability] monthly earnings...
>
> If the [combined value] is more than 100% of your indexed [pre-disability] monthly earnings, Unum will subtract the amount over 100% from your monthly payment.
>
> After 12 months of payments, while working, you will receive payments based on the percentage of income you are losing due to your disability.
>
> (1) Subtract your disability earnings from your indexed [pre-disability] monthly earnings.
>
> (2) Divide the answer in Item 1 by your indexed monthly earnings. This is your percentage of lost earnings.
>
> (3) Multiply your monthly payment by the answer in Item 2.
>
> This is the amount Unum will pay you each month.

Id. Thus, the impact that disability earnings have on an insured's monthly disability benefit depends on the amount of disability earnings the insured receives and the amount of time the insured has received disability earnings while collecting a disability benefit under the Policy.

F. Finding of Fact: Unum misapplied the terms of the Policy to Dr. Grosso's claim for benefits.

The evidence presented at trial shows that Unum misapplied the terms of the Policy to Dr. Grosso's claim for benefits, which resulted in a miscalculation of Dr. Grosso's monthly disability benefit and a significant underpayment of benefits to which Dr. Grosso was entitled under the Policy.

1. Unum calculated Dr. Grosso's Dr. Grosso's disability benefits based on his pre-disability monthly earnings in 2020, despite the fact that the Policy required his benefits to be calculated using his earnings in 2021.

As noted above, Unum approved Dr. Grosso's claim for disability benefits under the Policy in February 2022, (ECF No. 95 at 40:17–20 (Dr. Grosso)), and his claim was administered according to the terms of Policy as amended by Amendment No. 1. (ECF No. 88 at 14 (Stipulation 1)). Under the Policy, the tax year for calculating an insured's pre-disability monthly earnings—which in turn influences the insured's gross disability benefit—is the "tax year just prior to" the insured's date of disability. (ECF

No. 95 at 35:6–36:5; 50:9–17 (Dr. Grosso)); PE2 at GROSSO002267. The Policy goes on to provide the following formula for determining the insured's date of disability:

> You are disabled when Unum reasonably determines that:
>
> -you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and
>
> -you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

***11** (ECF No. 95 at 94:4–95:1; 101:1–23 (Dr. Grosso)); PE2 at GROSSO002266. In addition to suffering from a qualifying disability, the insured must also satisfy a ninety-day elimination period before they are eligible to receive a monthly disability benefit. (ECF No. 95 at 91:11–21 (Dr. Grosso)); PE2 at GROSSO002266. Another Policy provision clarifies the interplay between the insured's date of disability and the commencement of the elimination period:

> You must be continuously disabled through your elimination period. The days that you are not disabled will not count toward your elimination period.... You are not required to have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury to be considered disabled during the elimination period.

(ECF No. 95 at 91:24–92:11; 95:2–14 (Dr. Grosso)); PE2 at GROSSO002266.

Thus, under the Policy, an insured's elimination period will commence once the insured is "limited from performing the material and substantial duties of [their] regular occupation," however, the insured's "date of disability" for purposes of benefit eligibility will not occur until the time they meet the second prong of the definition, namely, the time the insured suffers the requisite earnings loss. *See* PE2 at GROSSO002266–67. Unum's Benefits Center Claims Manual ("Claims Manual") supports this interplay between the Policy's provisions. *See* PE13. Under the section titled "Disability Date Determination," the Claims Manual provides as follows:

> **FACTORS TO CONSIDER**
>
> When determining the DOD [date of disability], consider the following:
>
> (i) LDW [last day worked]
>
> (ii) First date of medical treatment
>
> (iii) Earnings loss if required by Policy

(ECF No. 95 at 51:20–52:21 (Dr. Grosso)); PE13 at UA-CL-LTD-002677–2678. Here, earnings loss is required before an insured is eligible to receive benefits under the Policy. PE2 at GROSSO002266. In addition to the context provided by Unum's Claim Manual, insurance broker Peter Hibbard, testifying in the capacity as an expert on insurance sales,[13] confirmed that the purpose of an elimination period is for the insurance company to verify that it is paying only legitimate long term disability claims. (ECF No. 95 at 129:13–131:1 (Mr. Hibbard)). Thus, it is consistent with industry practice to require only proof of physical disability during the elimination period, with overall benefit eligibility ultimately contingent upon the insured also suffering the requisite earnings loss.

In this case, it is undisputed that Dr. Grosso became "limited from performing the material and substantial duties of [his] occupation due to [his] sickness or injury" after his first wrist surgery on September 9, 2021. *See* (ECF No. 88 at 14 (Stipulation 3)). It is also undisputed that Dr. Grosso did not suffer "a 20% or more loss in [his] indexed monthly earnings due to the same sickness or injury" until the month beginning on January 8, 2022, and ending on February 7, 2022. *See* (ECF No. 88 at 14 (Stipulation 4)). Thus, under the Policy, Dr. Grosso's "date of disability" did not occur until January 8, 2022, at the earliest. Accordingly, the "tax year just prior to" Dr. Grosso's date of disability for purposes of calculating his pre-disability monthly earnings was 2021, not 2020. Unum misapplied the Policy terms when it used Dr. Grosso's 2020 earnings to calculate his pre-disability monthly earnings. (ECF No. 95 at 50:9–51:14 (Dr. Grosso)).

2. Unum improperly removed consideration of Dr. Grosso's corporate income from his pre-disability "monthly earnings" calculus.

***12** Unum commenced paying Dr. Grosso benefits under the Policy following its approval of Dr. Grosso's claim in February 2022. (ECF No. 95 at 40:17–23 (Dr. Grosso)); (ECF No. 88 at 15 (Stipulation 5)). Thereafter, Unum made three payments of $6,348.92 to Dr. Grosso in late March and early April 2022. (ECF No. 95 at 41:19–24 (Dr. Grosso)). After receiving those payments, Dr. Grosso suspected that Unum had miscalculated his monthly disability benefit because the amounts he received fell below the 50% of his pre-disability monthly earnings he was entitled to under the Policy. (*Id.* at 41:2 2–42:6 (Dr. Grosso)). Specifically, Dr. Grosso testified that his total pre-disability income from 2021 was around $60,000 a month. (*Id.* at 42:1–6; 100:9–16 (Dr. Grosso)). Dr. Grosso further understood that the Policy would replace up to 50% of his lost monthly earnings with a benefit cap of $20,000 per month. (*Id.* at 42:1–6; 100:6–16 (Dr. Grosso)). Thus, Dr. Grosso believed that he would receive the maximum monthly benefit of $20,000 per month, given that 50% of his pre-disability monthly earnings exceeded the benefit cap. (*Id.* at 42:1–6; 100:6–16 (Dr. Grosso)); *see also* PE6; PE12.

Dr. Grosso contacted Unum in June 2022 about this perceived discrepancy. (ECF No. 95 at 42:7–17 (Dr. Grosso)). In response to Dr. Grosso's inquiry, Unum recalculated Dr. Grosso's monthly disability benefit and remitted payment of $60,953.24 to Dr. Grosso on June 8, 2022, to make up the difference for the first three underpayments, as well as an additional payment of $20,000 on June 30, 2022. (*Id.* at 42:7–20 (Dr. Grosso)). However, this recalculation was not due to Unum identifying an error in using 2020 for Dr. Grosso's initial benefits calculation; rather, Unum informed Dr. Grosso that it had received an additional Schedule K-1 tax form for 2020 which bore the same employer identification number as the CAO and reflected Dr. Grosso's income for his role as President of the CAO.[14] (*Id.* at 29:19–20; 42:7–20 (Dr. Grosso)); *see* PE11; PE34 at UA-CL-LTD-000759. Although Dr. Grosso was still unaware at this point that Unum was using the wrong tax year to calculate his pre-disability earnings, he expressed no issue with Unum factoring in his salary as CAO President into its calculation of his pre-disability monthly earnings as a general matter. (ECF No. 95 at 45:5–47:9 (Dr. Grosso)); *see also* PE34 at UA-CL-LTD-000759 (chronicling the adjustment of Dr. Grosso's disability benefits in light of Unum's receipt of the corporate Schedule K-1 and noting that at the end of the call with Dr. Grosso, Dr. Grosso "had no questions and [was] glad that the calculations have been updated and completed").

At some point after the June 2022 phone call between Unum and Dr. Grosso, Unum removed Dr. Grosso's corporate income from its calculation of Dr. Grosso's pre-disability earnings. (ECF No. 95 at 45:5–46:2 (Dr. Grosso)); (ECF No. 96 at 136:3–25 (Gisela Eubanks)); *compare* PE34 at 1, *with* PE37 at 1. Dr. Grosso did not receive a monthly disability benefit in August. (ECF No. 95 at 42:7–43:5 (Dr. Grosso)). The reason for this change is not clear to the Court, particularly in light of Unum's decision to *include* Dr. Grosso's corporate income in its calculation of his pre-disability earnings only two months earlier. Nor did Unum present any evidence at trial to explain its reasoning for removing Dr. Grosso's corporate income from the pre-disability earnings calculus.

For his part, Dr. Grosso insinuated at trial that this change may have been due either to Unum's misinterpretation of his complaint to the Maryland Insurance Administration concerning *post*-disability earnings, (ECF No. 95 at 45:5–47:9 (Dr. Grosso)), or to an October 2022 Policy Amendment ("Amendment No. 6") removing the CAO's corporate division from eligibility for coverage under the Policy.[15] (*Id.*). However, considering the lingering uncertainty surrounding the motivation for this change, the Court is not content to find that Unum acted with an ill motive in removing Dr. Grosso's corporate income from its calculation of his pre-disability earnings. Instead, the Court credits the evidence demonstrating that corporate income was included in the calculation of Dr. Grosso's pre-disability earnings as of June 2022, it was improperly removed by Unum sometime thereafter, and following its removal, Dr. Grosso's monthly disability benefit was reduced. (ECF No. 95 at 41:19–43:5; 45:5–47:9 (Dr. Grosso)).

3. Unum improperly reduced Dr. Grosso's monthly disability benefit by factoring streams of non-clinical income into its calculation of Dr. Grosso's "disability earnings."

***13** As noted above, the Unum Policy under which Dr. Grosso filed his claim for disability benefits was an "own occupation" insurance policy. A critical feature of an "own occupation" policy is that it provides coverage once a physician is disabled from practicing their medical specialty, even if they remain able to work in a different capacity. (ECF No. 95 at 134:16–135:21 (Mr. Hibbard)). Accordingly, under an "own occupation" policy, a physician's "disability earnings"—the income they receive while disabled and working—are limited to any earnings the physician continues to derive from their medical specialty ("clinical earnings"). (*Id.* at 137:24–138:25 (Mr. Hibbard)). Other sources of non-clinical income do not qualify as disability earnings under an "own occupation" policy. (*Id.*).

Despite the clear "own occupation" nature of Unum's Policy, Unum considered multiple sources of non-clinical income Dr. Grosso received while disabled as "disability earnings" which reduced or eliminated Dr. Grosso's monthly disability benefit. Specifically, Unum considered: (i) Dr. Grosso's corporate income from his role as President of the CAO; (ii) income for services rendered as an "on-call physician," as listed on the Schedule C attached to Dr. Grosso's Form 1040; (iii) income from Dr. Grosso's partnership with MedVanta Interco, LLC; and (iv) profits from Dr. Grosso's former status as a partner of OACM. (ECF No. 96 at (90:2–92:22; 95:2–9; 97:10–25 (Ms. Eubanks)); DE15. Unum's calculations, which consider the aforesaid sources of non-clinical income as disability earnings, produce a rather unique result: Dr. Grosso would only be eligible to receive a single $10,000 disability benefit for *one month* between January 8, 2022, and December 7, 2026, the end of Dr. Grosso's benefit payment period. (ECF No. 96 at 108:8–110:6 (Ms. Eubanks)). What is more, Dr. Grosso would *owe* Unum $121,209.60 in overpaid benefits. (*Id.* at 109:2–110:6 (Ms. Eubanks)); DE15 at 2. Dr. Grosso filed a complaint with the Maryland Insurance Administration ("MIA") challenging Unum's use of non-clinical income as disability earnings, *inter alia*; however, the complaint was resolved by a final decision issued on January 31, 2024, in Unum's favor. (ECF No. 95 at 4:19–22 (Plaintiff's counsel indicating the parties stipulate to the date of the MIA's final decision); 46:3–48:25 (Dr. Grosso)).

The relevant figure for measuring Dr. Grosso's clinical income appears in Box 4A of Dr. Grosso's Clinical Schedule K-1s from OACM. (*Id.* at 72:17–73:2 (Dr. Grosso)). Unum, on the other hand, measured Dr. Grosso's disability earnings from the OACM using Box 14A of Dr. Grosso's Clinical Schedule K-1s. (ECF No. 96 at 117:2–22 (Ms. Eubanks)). Box 14A reflects a combination of both Box 4A—Dr. Grosso's clinical income—and Box 1—Dr. Grosso's share of OACM's profits for his status as a partner of OACM. (ECF No. 95 at 72:17–73:17 (Dr. Grosso)); (ECF No. 96 at 78:1–17(Ms. Eubanks)). However, under the section of the Policy which discusses "disability earnings," under the heading, "WHAT ARE NOT DEDUCTIBLE SOURCES OF INCOME?," the Policy states the following:

> Unum will not subtract from your gross disability payment income you receive from, but not limited to, the following:
>
> -401(k) plans
>
> -Profit sharing plans

(ECF No. 95 at 107:3–7 (Dr. Grosso)); PE2 at GROSSO002270.

In keeping with the "own occupation" nature of the Policy, Dr. Grosso's disability earnings are properly calculated using only Box 4A of Dr. Grosso's OACM Schedule K-1 for the years Dr. Grosso is eligible to receive benefits under the Policy—2022 through 2026.

G. Finding of Fact: Unum improperly terminated Dr. Grosso's claim for benefits in July 2024.

On July 30, 2024, Unum mailed a letter to Dr. Grosso's former counsel, Meghan Finnerty, advising Ms. Finnerty and Dr. Grosso that it was closing Dr. Grosso's claim for benefits under the Policy. (ECF No. 95 at 57:5–60:5 (Dr. Grosso)); PE38. Unum based

its decision to close Dr. Grosso's claim on the fact that it had not received documents demonstrating Dr. Grosso's income from various sources, including his 2023 Corporate Schedule K-1, and an estimate of his profit share from Box 1 of his 2024 OACM Schedule K-1. (ECF No. 95 at 57:18–58:18 (Dr. Grosso)); PE38. Dr. Grosso appealed Unum's decision, and Unum denied that appeal by letter to Ms. Finnerty dated April 3, 2025. (ECF No. 95 at 60:9–61:8 (Dr. Grosso)); PE39. Craig Pereira ("Mr. Pereira"), OACM's Director of Finance, testified at trial that he was chiefly responsible for sending Unum claim specialists Marie Hunt and Alexa Keenan proof of Dr. Grosso's earnings, including monthly profit and loss statements and pay stubs. (ECF No. 96 at 14:3–20:13 (Mr. Pereira)); PE14. Mr. Pereira sent Ms. Hunt proof of Dr. Grosso's May 2024 earnings via email on July 3, 2024. (ECF No. 96 at 18:25–19:21 (Mr. Pereira)); PE14 at GROSSO001552. Mr. Pereira testified that, following his July 3, 2024, email to Ms. Hunt, he was not contacted by Unum again to request additional documents relating to Dr. Grosso's earnings, and he was "locked out of the system"[16] in August 2024. (ECF No. 96 at 19:17–20:13 (Mr. Pereira)). Given that it was historically Mr. Pereira's responsibility to provide Unum with proof of Dr. Grosso's earnings and any other requested financial information, Unum should have contacted Mr. Pereira for the requested documents that formed the basis for its termination of Dr. Grosso's benefits claim, and its failure to do so was improper.

H. Finding of Fact: Unum did not apply its COVID-19 Relief Policy to Dr. Grosso's claim for benefits.

***14** In 2020, Unum published guidance under the Frequently Asked Questions ("FAQs") section of its website concerning its response to the **COVID-19** pandemic ("**COVID-19** Relief Policy"). (ECF No. 95 at 52:22–53:5; 56:25–57:4; 113:8–114:17 (Dr. Grosso)); PE42. The website sought to provide information to Unum's clients about accommodations it was offering for certain insurance plans in light of the financial difficulties imposed by the pandemic. (ECF No. 95 at 113:8–114:17 (Dr. Grosso)); PE42. At the outset, the FAQs section of Unum's website clarified that some parts of the **COVID-19** Relief Policy "confirm existing policies or procedures," while "[o]thers indicate where [Unum is] temporarily making an exception to better support [its] customers during the pandemic." PE42 at GROSSO00676. One section of Unum's **COVID-19** Relief Policy specifically provided guidance on how Unum would handle the calculation of benefits for employees whose work hours or earnings are reduced due to **COVID-19**. *See* PE42 at GROSSO00692–693. That section stated as follows:

> **How will you calculate benefits for employees who are furloughed or whose work hours or earnings are reduced due to COVID-19?**
>
> Basic benefits can be calculated based on the earnings, when applicable, that the employee was receiving before any **COVID-19** related change in work hours or earnings, using the policy's definition of earnings. Premiums must have been paid on the pre-reduction earnings.
>
> For earnings definitions with components averaged over a specified period of time (e.g., bonuses or commissions averaged over 12 months), we can prorate those components to exclude up to 90 days of any **COVID**-related furlough, temporary layoff or leave of absence.
>
> This accommodation will end after 8/31/20 and we will follow our policy provisions thereafter.

(ECF No. 95 at 113:8–114:17 (Dr. Grosso)); PE42 at GROSSO00692–693. Unum's **COVID-19** Relief Policy remained available on its website until at least September 7, 2022. (ECF No. 95 at 56:7–57:4 (Dr. Grosso)); PE23 at UA-CL-LTD-000939.

Dr. Grosso filed his claim for benefits under the CAO's long-term disability insurance Policy on October 17, 2021. (ECF No. 95 at 39:1–12 (Dr. Grosso)); PE36 at UA-CL-LTD-000071–75. As this accommodation under Unum's **COVID-19** Relief Policy terminated on August 31, 2020, the accommodation did not apply to Dr. Grosso's claim for benefits under the disability insurance Policy. PE42 at GROSSO00693. Dr. Grosso contacted Unum to inquire whether Unum would consider applying the accommodation to his claim for benefits under the Policy. (ECF No. 95 at 52:22–54:11 (Dr. Grosso)). Initially, Unum informed Dr. Grosso that it would consider whether to apply the **COVID-19** Relief Policy to claims for benefits on a case-by-case basis. (*Id.* at 52:22–53:10 (Dr. Grosso)). However, on October 31, 2022, Unum informed Dr. Grosso that it had decided that the **COVID-19** Relief Policy would not apply to claims for benefits filed in 2021 with a prior year earnings definition. (*Id.* at 53:11–

54:17 (Dr. Grosso)); PE24. Thus, Unum informed Dr. Grosso that it would continue calculating claims for benefits filed in 2021 based on the insured's actual earnings identified in their 2020 W-2 or other tax forms. (*Id.* at 53:11–54:17 (Dr. Grosso)); PE24.

IV. Conclusions of Law

Maryland law applies to the state law claims in this action.[17] Accordingly, this Court refers to Maryland law to resolve the breach of contract and failure to act in good faith claims under Counts I and II of Plaintiff's Second Amended Complaint (ECF No. 37).

A. Unum is liable for Breach of Contract under Count I.

***15** Under Count I, Dr. Grosso alleges that Unum breached the terms of the Policy by: (i) determining his "disability date" occurred in 2021, despite the fact that he did not suffer the requisite earnings loss until 2022; (ii) relatedly determining that 2020 was the "tax year just prior to" his date of disability for purposes of calculating his pre-disability monthly earnings; (iii) failing to include his income from his role as President of the CAO in its calculation of his pre-disability monthly earnings; and (iv) including non-clinical sources of income in its calculation of his post-disability earnings, thereby reducing his monthly disability benefit.[18]

***16** To prevail on a claim for breach of contract under Maryland law, a party must prove the existence of a contractual obligation, a material breach of that contractual obligation, and resulting damages. *Kumar v. Dhanda*, 198 Md. App. 337, 345, 17 A.3d 744, 749 (2011). Unum is liable for breach of contract because it had a contractual obligation to apply the terms of the Policy to Dr. Grosso's claim for benefits as the terms are written, and it materially breached that obligation by misapplying the Policy terms to Dr. Grosso's claim for benefits, thereby causing Dr. Grosso to incur damages representing his lost disability benefits due to Unum's miscalculations.

1. The definition of disability in the Policy must be read in the conjunctive.

In this case, Unum contends that it correctly determined Dr. Grosso's date of disability by using the date on which Dr. Grosso was first "limited from performing the material and substantial duties of [his] occupation due to [his] sickness or injury"—the date of his first wrist surgery, or September 9, 2021. Unum supports this position by directing the Court's attention to another provision concerning the Policy's ninety-day elimination period, namely, the directive that the insured is "not required to have a 20% or more loss in [their] indexed monthly earnings ... to be considered disabled during the elimination period." *See* PE2 at GROSSO002266. According to Unum, these two provisions, read in tandem, make clear that the insured is not required to satisfy the second prong of the Policy's definition of disability—the requirement that the insured suffer a 20% or more loss in earnings—before the insured is considered "disabled" and eligible to collect benefits under the Policy.

Unum did not attempt to explain for the Court what, if any, significance the second prong of the definition has, if it is not required for the insured to be considered disabled under the Policy. Nor did Unum explain when an insured would be eligible for benefits if they satisfied the first prong of the definition and the elimination period but never suffer the requisite earnings loss. These lingering questions make plain the unreasonableness of Unum's reading, which would ignore or "cast out" the second prong of the definition concerning earnings loss. Contrary to Unum's position, the definition for when an insured is considered "disabled" under the Policy must be read in the conjunctive, requiring that both prongs be met before an insured is considered "disabled" and eligible to receive benefits.

Under Maryland law, the interpretation of a contract is "ordinarily a question of law for the court." *Kantsevory v. LumenR LLC*, 301 F. Supp. 3d 577, 594-95 (D. Md. 2018) (Hollander, J.) (quoting *Grimes v. Gouldmann*, 232 Md. App. 230, 235, 157 A.3d 331, 334-35 (2017) (citation and internal quotation marks omitted). Insurance contracts are "read and construed in the same manner as any other contract." *Harsanyi v. Hartford Acc. Indem. Co.*, 41 Md. App. 685, 688, 398 A.2d 524, 527 (1979). " 'The

cardinal rule of contract interpretation is to give effect to the parties' intentions.' " *Dumbarton Imp. Ass'n Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51, 73 A.3d 224, 232 (2013) (alteration omitted) (quoting *Tomran, Inc. v. Passano*, 391 Md. 1, 14, 891 A.2d 336, 344 (2006)). To determine the parties' intentions, courts look first to the written language of the contract. *Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643, 660, 894 A.2d 584, 594 (2006) ("Generally, when seeking to interpret the meaning of a contract our search is limited to the four corners of the agreement.").

***17** At this first stage of the analysis, Maryland courts "analyze the plain language of [the] contract according to the words and phrases in their ordinary and accepted meanings[,] as defined by what a reasonably prudent lay person would understand them to mean." *Cordish Cos., Inc. v. Affiliated FM Ins. Co.*, 573 F. Supp. 3d 977, 994 (D. Md. 2021) (quoting *Universal Underwriters Ins. Co. v. Lowe*, 135 Md. App. 122, 137, 761 A.2d 997, 1005 (2000)). In other words, the court interprets the policy "as a whole, according words their usual, everyday sense, giving force to the intent of the parties, preventing absurd results, and effectuating clear language." *Id.* at 995 (quoting *United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 495 (4th Cir. 1998)). Critical to this inquiry in an examination of "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *CX Reinsurance Co., Ltd. v. Heggie*, ELH-15-1674, 2016 WL 6025488, at *6 (D. Md. Oct. 14, 2016) (quoting *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 79, 899 A.2d 819, 833 (2006)).

Where the terms of a contract are plain and unambiguous, the Court will determine the meaning of the terms as a matter of law. *Affiliated FM Ins. Co.*, 573 F. Supp. 3d at 995 (citing *Clendenin Bros. Inc. v. U.S. Fire Ins. Co.*, 390 Md. 449, 459, 889 A.2d 387, 393 (2006)). "[T]he Court will assume the parties meant what they said," *Capital City Real Estate, LLC v. Certain Underwriters at Lloyd's*, 788 F.3d 375, 379 (4th Cir. 2015), and "[the] [C]ourt has no alternative but to enforce those terms." *Megonnell v. United Servs. Auto. Ass'n*, 368 Md. 633, 655, 796 A.2d 758, 772 (2002) (quoting *Dutta v. State Farm Ins. Co.*, 363 Md. 540, 557, 769 A.2d 948, 957 (2001)). A term "is not ambiguous merely because the parties do not agree on its meaning," *Affiliated FM Ins. Co.*, 573 F. Supp. 3d at 995 (citing *Fultz v. Shaffer*, 111 Md. App. 278, 299, 681 A.2d 568, 578 (1996)); rather, "[a] policy term is considered ambiguous if, to a reasonably prudent person, the term is susceptible to more than one meaning." *Id.* (quoting *Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 306, 753 A.2d 533, 537 (2000)) (internal quotation marks omitted).

Finally, "Maryland law disfavors contract interpretation that leads to absurd results or nullifies contract terms." *Horsey Denison Landscaping, LLC v. Denison*, No. JRR-24-1484, 2026 WL 2299663, at *13 (D. Md. Aug. 11, 2026) (quoting *Micro Focus (US), Inc. v. Bell Canada*, 686 F. Supp. 2d 564, 567 (D. Md. 2010)). When interpreting a contract, the court must consider the contract "in its entirety and, if reasonably possible, effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed." *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52, 73 A.3d 224, 233 (2013) (quoting *Sagner v. Glenangus Farms, Inc.*, 234 Md. 156, 167, 198 A.2d 277, 283 (1964)).

Here, the Policy's definition for determining an insured's disability date is not ambiguous, and Unum's reading would render the earnings loss provision meaningless. As explained above, the Policy sets forth a two-part definition for determining when an insured is disabled under the heading, "HOW DOES UNUM DEFINE DISABILITY?" PE2 at GROSSO002266. The Policy then provides,

> You are disabled when Unum reasonably determines that:
>
> -you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; ***and***
>
> -you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

***18** *Id.* (emphasis added); (ECF No. 95 at 94:4–95:1; 101:1–23). The existence of a two-part definition appearing under the heading, "HOW DOES UNUM DEFINE DISABILITY?" and joined by the word "and" compels the conclusion that a reasonable lay person reading Unum's Policy would interpret the definition in the conjunctive, to require that both prongs be met before an insured is considered disabled under the Policy.

At the outset, Maryland courts may look to the dictionary when construing terms contained in an insurance policy. *See* *Callaway v. Mamsi*, 145 Md. App. 567, 592, 806 A.2d 274, 288 (2002) (considering definitions provided by Black's Law Dictionary and Webster's dictionary to interpret the terms "accident" and "injury" in the underlying insurance policy); *Harleysville Mut. Cas. Co. v. Harris & Brooks, Inc.*, 248 Md. 148, 151, 235 A.2d 556, 557 (1967) (considering definitions provided by Webster's Dictionary and the Shorter Oxford English Dictionary to construe the term "accident" in the underlying insurance policy). Both Black's Law Dictionary and Merriam Webster's Dictionary define "and" as a "conjunction" used to "indicate connection or addition." *See And*, Merriam-Webster, https://www.merriam-webster.com/dictionary/and (last visited Oct. 12, 2026) (defining "and" as a "conjunction" that is "used as a function word to indicate connection or addition" or, in noun form, as a "logical operator that requires both of two inputs to be present or two conditions to be met before an output to be made"); *And*, Black's Law Dictionary (4th rev. ed. 1968) (defining "and" as "[a] conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first").

These definitions accord with how a reasonable person would interpret the term and when used to join a list of two criteria. *Hatzinicolas v. Protopapas*, 73 Md. App. 271, 276, 533 A.2d 1311, 1313 (1987) (noting "the conjunctive nature of 'and' " when used in a statute and interpreting the phrase "partners are liable jointly *and* severally" to mean "jointly *as well as* severally liable"). Dr. Grosso, for example, testified that he read the definition to require both the physical limitation element and the earnings loss element to determine an insured's date of disability. (ECF No. 95 at 39:13–40:16; 94:4–96:15; 103:12–104:5 (Dr. Grosso)). Though Dr. Grosso is a party to this case, his opinion is significant for three reasons: (i) Dr. Grosso is a well-educated layperson who underwent extensive academic training to become a physician and whose reading is informed by his educational background; (ii) the Court found Dr. Grosso's testimony to be credible on this point; and (iii) the record demonstrates that Dr. Grosso has maintained his position as to the two-prong interpretation of the definition since discovering Unum's one-prong interpretation in late 2022. *See* (ECF No. 95 at 50:9–23 (Dr. Grosso)); PE44. Thus, his position was not contrived in preparation for this litigation. What is more, Dr. Grosso's testimony is not the only circumstance driving the Court's conclusion that "and" must be read in the conjunctive.

This conjunctive reading of the term "and" comports with other provisions of the Policy in which the term "and" appears to join a list of items. Specifically, in the section of the Policy titled "CLAIM INFORMATION: LONG TERM DISABILITY," under the heading, "WHAT INFORMATION IS NEEDED AS PROOF OF YOUR CLAIM?," the Policy provides as follows:

> ***19** Proof of your claim, provided at your expense, must show:
>
> (i) the date your disability began;
>
> (ii) the existence and cause of your sickness or injury;
>
> (iii) that your sickness or injury causes you to have limitations on your functioning and restrictions on your activities preventing you from performing the material and substantial duties of your regular occupation;
>
> (iv) That you are under the regular care of a physician;
>
> (v) The name and address of any hospital or institution where you received treatment, including all attending physicians; ***and***
>
> (vi) The appropriate documentation of your monthly earnings, any disability earnings, and any deductible sources of income.

PE2 at GROSSO002257 (emphasis added). Unum could not seriously contend that it would approve an insured for disability benefits if it received documentation demonstrating that the insured was suffering from a sickness or injury, but no proof of (1) when the sickness or injury began, (2) that the insured was under the regular care of a physician, or (3) that the sickness or injury has rendered the insured unable to perform the material and substantial duties of their occupation. Similarly, in the section of the Policy titled "LONG TERM DISABILITY: BENEFIT INFORMATION," the Policy notes in standard form that it does not cover disabilities caused by or resulting from a "pre-existing condition." PE2 at GROSSO002273. Then, under the heading "WHAT IS A PRE-EXISTING CONDITION?," the Policy provides the following definition:

A pre-existing condition is a condition:

(i) for which you received medical treatment, consultation, care or services including diagnostic measures, or took prescribed drugs or medicines in the three months just prior to your effective date of coverage; ***and***

(ii) which causes, contributes to or results in a disability that begins in the first 12 months after your effective date of coverage.

Id. (emphasis added). Here, too, it is evident that "and" is employed in a conjunctive manner. Given that the Policy does not cover *disabilities* resulting from *pre-existing conditions*, a reasonable reading of the above definition conveys that the Policy will provide coverage unless the insured both (i) suffers from a pre-existing condition, *and* (ii) the pre-existing condition manifests into a disability within the first 12 months of coverage. This reading makes sense: a disability insurer is usually concerned with the legitimacy of the claims for benefits that it receives and pays. *See* (ECF No. 95 at 129:23–131:1 (Mr. Hibbard)). The existence of a pre-existing, non-disabling condition alone is of no great significance unless and until the condition progresses into a disability for which an insured seeks benefits. Thus, the only tenable reading of this definition is in the conjunctive.

On the other hand, Maryland courts have recognized that the term "and" in a contract may have a *disjunctive* reading in light of the character of the contract in which it appears. In *Bankers & Shippers Ins. Co. v. Urie*, 38 Md. App. 232, 380 A.2d 243 (Md. Ct. Spec. App. 1977), the Maryland Court of Special Appeals confronted a contract which insured an aircraft to be piloted by "Paul Erickson and Wilford Goldman." *Bankers*, 38 Md. App. at 234, 380 A.2d at 244. The Defendant contended that the insurance policy should be read in the conjunctive to require both Erickson and Goldman to be at the controls of the plane for the policy to apply. *Id.* at 240, 380 A.2d at 248. The Court rejected this argument, finding no ambiguity in the contract. *Id.* at 241, 380 A.2d at 248. The conjunction "and" had "only one clear an unambiguous meaning to any reasonable person, and that is that 'and' was used in the disjunctive sense to mean 'or.' " *Id.* While a conjunctive reading of the provision was certainly possible—there were dual controls, after all—requiring both pilots to fly the plane would court disaster as they wrestled for control of the vehicle. *Id.* at 242, 380 A.2d at 248. The Court, mindful of the nature of the contract before it, refused to read it in a manner which would encourage aviation catastrophes.

***20** In this case, however, it is clear that the Court need not entertain the possibility that Unum sought to indicate a disjunctive when it used "and" in the Policy's disability date definition. Critically, it would be antithetical to the very nature of disability insurance—and to the position Unum has taken in this litigation—to read the Policy's disability date definition as requiring *either* one or the other prong be met, such that an insured could be disabled if they suffered the requisite earnings loss even if they were *not* "limited from performing the material and substantial duties of [their] regulation occupation." *See* PE2 at GROSSO002266. Second, Unum's Policy plainly makes use of the term "or" to indicate a disjunctive, removing any doubt that "and" could be employed in the same manner. In the section of the Policy titled "CLAIM INFORMATION: LONG TERM DISABILITY," under the heading "WHAT HAPPENS IF UNUM OVERPAYS YOUR CLAIM?," the Policy provides as follows:

Unum has the right to recover any overpayments due to:

(i) fraud;

(ii) any error Unum makes in processing a claim;

(iii) disability earnings; ***or***

(iv) deductible sources of income

PE2 at GROSSO002258 (emphasis added). Unum's use of "or" in this fashion suggests that Unum has the right to recover from the insured when *any* of the above triggers an overpayment, not only once *all* of the above occur. Given that the Policy demonstrably uses "and" and "or" in their usual conjunctive and disjunctive forms, there is no basis for this Court to conclude that "and" as used in the Policy's disability date definition is meant to convey anything but a conjunctive, requiring that both prongs be met before an insured is considered "disabled."

Unum attempts to thwart this imperative by directing the Court's attention to provisions of the Policy concerning the required ninety-day elimination period. In Unum's view, an insured is considered disabled once they satisfy the first prong of the Policy's definition, as evidenced by another provision of the Policy which states:

> You must be continuously disabled through your elimination period. The days that you are not disabled will not count toward your elimination period.... *You are not required to have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury to be considered disabled during the elimination period.*

PE2 at GROSSO002266 (emphasis added). To Unum, the language above confirms that the earnings loss threshold set forth under the second prong is not actually required for an insured to be considered "disabled" under the Policy.

Unum's reading is untenable. First, Unum produced no evidence or testimony to explain what, if any, significance the earnings loss threshold has, if it has no significance to the determination of when an insured is considered "disabled" under the Policy. Though the Court opines that the earnings loss threshold is intended to indicate when an insured is actually *eligible to receive benefits*, as opposed to when the insured is considered "disabled" for purposes of determining the "tax year just prior to [their] date of disability," the Policy's plain terms do not convey as much. Indeed, the two-prong definition at the heart of this issue appears under the heading, "HOW DOES UNUM DEFINE DISABILITY?," suggesting that Unum will determine an insured's *date of disability* as the date on which both prongs are met. *See* PE2 at GROSSO002266. If Unum meant to convey that an insured is considered "disabled" upon meeting the first prong for purposes of selecting the tax year for measuring the insured's pre-disability earnings and starting the clock on the ninety-day elimination period, but that the insured is not eligible to receive benefits until the earnings loss threshold was also met, it could have drafted the Policy to convey as much. But the Court's optimistic reading, informed by decades of experience interpreting insurance policies, cannot supplant the meaning of the Policy's plain terms.

***21** Second, Unum's reading would effectively ignore the second prong of the definition for determining when an insured is considered disabled under the Policy. As noted above, "Maryland law disfavors contract interpretation that leads to absurd results or nullifies contract terms." *Denison*, 2026 WL 2299663, at *13 (quoting *Bell Canada*, 686 F. Supp. 2d at 567). Therefore, a court must not interpret a contract so as to "cast[ ] out or disregard[ ] a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed." *Dumbarton*, 434 Md. at 52, 73 A.3d at 233 (quoting *Sagner*, 234 Md. at 167, 198 A.2d at 283). Here, Unum's position would require the Court to ignore the earnings loss prong and conclude that an insured qualifies as "disabled" once they are "limited from performing the material and substantial duties of [their] regular occupation" alone, despite the fact that the *two*-prong definition appears directly below the heading, "*HOW DOES UNUM DEFINE DISABILITY?*". *See* PE2 at GROSSO002266 (emphasis added). The Court simply cannot interpret the Policy in a manner which disregards the earnings loss prerequisite, especially absent any evidence or testimony to support the reasonableness of this reading.

The proper interpretation of the Policy's definition for determining an insured's disability date is a conjunctive reading which requires that both the physical limitation and the earnings loss criteria be met before an insured is considered "disabled." Read this way, Dr. Grosso met the first prong on September 9, 2021, by virtue of the physical limitations he experienced following his first wrist surgery, (ECF No. 88 at 14 (Stipulation 3)), but he did not meet the second prong of the definition until he suffered the requisite earnings loss in the month beginning on January 8, 2022, a fact which is undisputed. *See* (ECF No. 88 at 14 (Stipulation 4)). Thus, Dr. Grosso was not "disabled"[19] under the Policy until January 8, 2022, and Unum breached the Policy by concluding otherwise.

***22** Given that the Court has just concluded Dr. Grosso's disability date occurred in 2022, not 2021, it follows that 2021 is the "tax year just prior to" Dr. Grosso's date of disability for purposes of determining his pre-disability monthly earnings, not 2020. *See* PE2 at GROSSO002267. Unum's corporate designee, Gisela Eubanks, testified at trial that 2021 would be the proper year for measuring Dr. Grosso's pre-disability earnings if, hypothetically, his disability date was determined to have occurred in January 2022. (ECF No. 96 at 113:15–20 (Ms. Eubanks)). Thus, Unum also breached the contract by calculating Dr. Grosso's

disability benefits based on his 2020 earnings, in contravention of the Policy's clear and unambiguous terms requiring it to use the "tax year just prior to" his 2022 disability date—2021.

2. Dr. Grosso's pre-disability "monthly earnings" under the Policy included his gross monthly income from his role as a President of CAO.

Unum also breached the insurance contract by removing Dr. Grosso's corporate salary for his role as CAO President from its calculation of Dr. Grosso's pre-disability monthly earnings. As discussed at length above, the Policy requires that the insured suffer both a qualifying physical limitation and "a 20% or more loss in [their] indexed monthly earnings" in order to be considered disabled under the Policy. *See* PE2 at GROSSO002266. The Policy then defines "monthly earnings" as the insured's "average monthly income as an insured partner," which is calculated:

> from the line which shows 'net earnings (loss) from self-employment' from your Schedule K-1 of the federal partnership income tax return from your Employer for the tax year just prior to your date of disability....
>
> It does not include income received from sources other than your Employer.

Id. at GROSSO002267. Unum's calculation of the insured's pre-disability earnings in turn affects the insured's monthly disability benefit, as the insured's monthly benefit is determined by multiplying their pre-disability monthly earnings by 50% and taking the lesser of that value or the Policy's $20,000 per month benefit cap. *Id.* The insured's monthly disability benefit may then be reduced by their receipt of "disability earnings." *Id.* at GROSSO002267, 2281.

Dr. Grosso contends that Unum breached the insurance contract by removing his corporate income for his position as CAO President from its calculation of Dr. Grosso's pre-disability earnings, which had the effect of erroneously reducing his monthly disability benefit. *See* Taking into consideration the plain terms of the Policy and the absence of an explanation for Unum's decision to remove Dr. Grosso's corporate income from its calculation of his pre-disability earnings, the Court agrees with Dr. Grosso.

At the outset, the Court looks to the written language of the contract. *Walton*, 391 Md. at 660, 894 A.2d at 594; *Cordish Cos.*, 573 F. Supp. 3d at 994. The Policy directs that an insured's pre-disability monthly earnings be calculated based on the line that shows " 'net earnings (loss) from self-employment' from [their] Schedule K-1 ... from [their] Employer for the tax year just prior to" their date of disability. (ECF No. 96 at 131:6–18 (Ms. Eubanks)); PE2 at GROSSO002267. The Policy also confirms that pre-disability monthly earnings do "not include income received from sources other than [the insured's] Employer." PE2 at GROSSO002267. By the plain terms of the Policy then, Dr. Grosso's pre-disability monthly earnings should be calculated based on the line which shows "net earnings (loss) from self-employment"—line 14A—on his 2021 Schedule K-1 from the CAO. However, Dr. Grosso receives two Schedule K-1s from the CAO annually: one reflecting his clinical income for his role as an orthopedic surgeon, and one reflecting his corporate income for his role as President of the CAO. The question for the Court is whether Unum was required to consider *both* of Dr. Grosso's 2021 Schedule K-1s from the CAO, based on the plain language of the Policy quoted above.

***23** The Court concludes that the Policy's definition for calculating an insured's pre-disability "monthly earnings" unambiguously required Unum to consider both of Dr. Grosso's 2021 Schedule K-1s from the CAO—and to aggregate the amounts contained on line 14A of each—for purposes of determining Dr. Grosso's pre-disability monthly earnings. First, the CAO is Dr. Grosso's "employer" for purposes of his position as an orthopedic surgeon and for purposes of his position as President. (ECF No. 95 at 27:2–3; 28:18–29:16; 74:20–23); *see* PE4–PE12. The CAO is a single entity, and both 2021 K-1s bear the same employer's name and identification number. (ECF No. 95 at 29:7–20); *compare* PE6, *with* PE12. Second, nothing in the Policy expressly limits calculation of an insured's pre-disability monthly earnings to a single Schedule K-1 or precludes consideration of more than one Schedule K-1 from the same employer. *See generally* PE2. Indeed, the only limiting instruction in the Policy with respect to calculating an insured's pre-disability monthly earnings is that the calculation "does not include income received from sources *other than* your Employer." PE2 at GROSSO002267 (emphasis added). The logical corollary

of this instruction is that the pre-disability earnings calculation *does* include *all* income received from your Employer, even if such income is reflected under two separate tax documents.[20]

Third, and importantly, Unum produced no evidence to rebut or contradict this interpretation, nor did it produce evidence to explain *why* it removed consideration of Dr. Grosso's corporate income from the calculus only several months after affirmatively deciding to consider it. *See* (ECF No. 95 at 45:5–46:2 (Dr. Grosso)); (ECF No. 96 at 136:3–25 (Ms. Eubanks)); PE34 at UA-CL-LTD-000759; *compare* PE34 at UA-CL-LTD-000753, *with* PE37 at UA-CL-LTD-002025. Again, as noted in this Court's Findings of Fact, the reason for this change is not clear to the Court. However, it is clear that: (1) Unum factored Dr. Grosso's corporate income into its calculation of Dr. Grosso's pre-disability monthly earnings as late as June 2022, four months after it approved Dr. Grosso's claim for benefits under the Policy, and (2) Unum stopped factoring in Dr. Grosso's corporate income for an unspecified reason sometime after June 2022, causing a reduction in Dr. Grosso's monthly disability benefit. *See* (ECF No. 95 at 41:19–43:5; 45:5–47:9 (Dr. Grosso)). In light of the Court's conclusion that the plain terms of the Policy do not restrict the pre-disability earnings calculation to a single Schedule K-1, Unum's latter conduct constituted a breach of the insurance contract.

In sum, as this Court has already determined Dr. Grosso's "disability date" occurred in 2022, it follows that Unum was required to consider any Schedule K-1s issued to Dr. Grosso in the "tax year just prior to" his date of disability—2021—to calculate Dr. Grosso's pre-disability monthly earnings. The Policy dictated consideration of *all* income received from Dr. Grosso's employer in that tax year, and accordingly, Unum breached the contract when it failed to consider Dr. Grosso's 2021 corporate income from the CAO.

3. "Disability earnings" under the Policy are limited to Dr. Grosso's clinical earnings.

i. The term "disability earnings" under the Policy is ambiguous and requires extrinsic evidence to construe.

In contrast to the unambiguous Policy terms discussed above, the Policy's definition of "disability earnings" is an ambiguous provision that requires an exercise of this Court's judgment to construe. As explained above, in Maryland, a contractual term is ambiguous if a "reasonably prudent person" would understand the term to be susceptible to more than one meaning. *Clendenin Bros., Inc. v. U.S. Fire. Ins. Co.*, 390 Md. 449, 459, 889 A.2d 387, 393 (2006) (quoting *Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 306, 753 A.2d 533, 537 (2000)). To determine whether contractual language is susceptible to more than one meaning, a court will consider "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Id.* (quoting *Pacific Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388, 488 A.2d 486, 488 (1985)). If the court determines that the terms of the contract are ambiguous, the court will look to extrinsic sources to ascertain the meaning of the terms and the intent of the parties. *MAMSI Life & Health Ins. Co. v. Callaway*, 375 Md. 261, 279, 825 A.2d 995 (2003) (citing *Cole*, 359 Md. at 305, 753 A.2d at 537); *Clendenin Bros.*, 390 Md. at 459, 889 A.2d at 393.

***24** Although Maryland does not construe insurance contracts against the insurer as a matter of course, *Litz v. State Farm*, 346 Md. 217, 224, 695 A.2d 566, 569 (1997), when a term in an insurance policy is found to be ambiguous, the court will construe that term "liberally in favor of the insured and against the insurer *as drafter of the instrument.*" *Connors v. Gov't Employees Ins. Co.*, 442 Md. 466, 482–83, 113 A.3d 595, 604–05 (2015) (quoting *Megonnell v. United States Services Auto Ass'n*, 368 Md. 633, 655–56, 796 A.2d 758, 772 (2002)); *Dutta v. State Farm*, 363 Md. 540, 556, 769 A.2d 948, 957 (2001). However, a court will only apply this principle if, after considering extrinsic evidence to resolve the ambiguity, the ambiguity still remains. *See Empire Fire & Marine Ins. Co. v. Liberty Mut. Ins. Co.*, 117 Md. App. 72, 98 n.10, 699 A.2d 482, 494 n.10 (1997) ("Maryland courts first ascertain the intent of the parties from the policy as a whole, considering extrinsic and parol evidence to construe any ambiguity. Only if either no extrinsic or parol evidence is introduced or if an ambiguity still remains after the examination of extrinsic evidence will Maryland courts construe a policy against the insurer.").

In this case, the Policy at issue defines the term "disability earnings" as "the earnings which you receive while you are disabled and working, plus the earnings you could receive if you were working to your maximum capacity." PE2 at GROSSO002281. In the Court's view, the broad definition of the term "disability earnings" as "earnings which you receive while you are disabled and working" is a circular definition which does not clarify for a reasonable person *what* qualifies as disability earnings. *See Scipio v. United Nat. Bankshares, Inc.*, 284 F. Supp. 2d 411, 417 (N.D. W. Va. 2003) (determining that the term "earnings," as defined by the underlying retirement plan to mean "the total earnings received from the Employers during a calendar year," was ambiguous because the definition was "circular ... using the word 'earnings' to define the team 'earnings' " and thus "provide[d] no guidance at all" to employees covered by the plan). This is especially so in light of the fact that the Policy, in its definition of pre-disability "monthly earnings," provides that "monthly earnings" do "not include income received from sources other than your Employer." *See* PE2 at GROSSO002267. No similar limiting constraint appears in the Policy's definition of "disability earnings."[21] *See* PE2 at GROSSO002281. Thus, an insured is left with no recourse for determining *what* sources of "earnings" qualify as "disability earnings," whether that is only earnings from the insured's plan-defined Employer, as one reasonable person may interpret the definition, or all earnings including those from an unrelated third party, as another reasonable person may so interpret.

Given this ambiguity, the Court looks to three primary sources of extrinsic evidence to construe the parties' intended meaning of the term "disability earnings": (i) the verbal representations and impressions of Unum's insurance broker, Peter Hibbard; (ii) Unum's marketing materials; and (iii) the testimony of CAO physicians Dr. Grosso and Dr. Blam about their understanding of the Policy. *See Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 305–15, 753 A.2d 533, 537–43 (2000) (determining that the term "accident" in an automobile liability insurance policy was ambiguous, considering extrinsic evidence to construe the term, and ultimately construing the term against State Farm in light of the ambiguity); *Callaway v. Mamsi*, 145 Md. App. 567, 592, 806 A.2d 274, 288 (2002) (considering extrinsic evidence to interpret the terms "accident" and "injury" in the underlying insurance policy), *rev'd on other grounds*, 375 Md. 261, 825 A.2d 995 (2003); *Harleysville Mut. Cas. Co. v. Harris & Brooks, Inc.*, 248 Md. 148, 151, 235 A.2d 556, 557 (1967) (considering extrinsic evidence to construe the term "accident" in the underlying insurance policy).

ii. Peter Hibbard represented that "disability earnings" were limited to a physician's clinical income, and he acted with apparent authority to bind Unum when he did so.

***25** One source of extrinsic evidence the Court reviews are the words and conduct of insurance broker Peter Hibbard in discussions with the CAO prior to the CAO choosing Unum's Policy. As described at length in this Court's Findings of Fact, Mr. Hibbard gave presentations and marketing materials about Unum's Policy to the CAO both before and after the CAO elected to offer its physicians coverage under the Policy. (ECF No. 95 at 135:22–136:16; 139:7–140:9 (Mr. Hibbard)); PE51. Mr. Hibbard's verbal representations, as well as the visual aids and tangible sales materials he relied upon, all uniformly conveyed to CAO physicians that Unum's Policy was an "own occupation" insurance policy which included a "specialty definition of disability" that had the effect of limiting "disability earnings" to a physician's clinical income. *See* (ECF No. 95 at 134:16–135:21; 135:25–138:25; 139:7–16; 140:3–141:18 (Mr. Hibbard)); *see also* PE26 at CBC000115; PE27 at GROSSO00709; PE28 at GROSSO001470; PE51 at CBC000106. What is more, at least some of the marketing materials set forth verbatim the Policy's definition of "Regular Occupation," which is "a person's specialty in the practice of medicine which he/she is routinely performing when his/her disability begins." PE27 at GROSSO00710; PE28 at GROSSO001471. Mr. Hibbard also testified that he would "specifically ... always point out ... these bullet points" and clarify that the definition of disability in the Policy is tied directly to the physicians' specialty. (ECF No. 95 at 140:25–141:18 (Mr. Hibbard)).

The extrinsic evidence of Mr. Hibbard's words and conduct during repeated marketing meetings with the CAO about Unum's Policy, combined with the physicians' testimony as to their impressions from his representations in those meetings, would be sufficient by itself to impute an intended meaning of the term to the policyholder—the CAO. *See* (ECF No. 95 at 68:4–17 (Dr. Grosso)); ECF No. 96 at 4:16–17; 6:6–14; 7:15–8:8 (Dr. Blam)). However, the Court goes a step further in light of the substantial amount of evidence adduced at trial shedding light on (i) Mr. Hibbard's status vis-à-vis Unum, and (ii) the confidence

CAO physicians placed in Mr. Hibbard's representations about the "own occupation" nature of the Policy. Specifically, the Court looks to whether Mr. Hibbard acted as Unum's agent when he made the representations at issue. If he did, Mr. Hibbard's statements will bind Unum to the "own occupation" nature of the Policy—and the import this feature has to the meaning of "disability earnings"—that Mr. Hibbard repeatedly advertised to the CAO.

Agency is "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Integrated Consulting Servs., Inc. v. LDDS Communications, Inc.*, 996 F. Supp. 470, 474 (D. Md. 1998) (quoting Restatement (Second) of Agency § 1(1) (1958)). "The authority of an agent must come from the principal," and actual authority exists only where "the principal knowingly permits the agent to exercise the authority or holds out the agent as possessing it." *Id.* (quoting *Homa v. Friendly Mobile Manor*, 93 Md. App. 337, 359–60, 612 A.2d 322 (1992)).

The existence of an actual agency relationship may be established by written agreement or inference. *Id.* (citing *Patten v. Board of Liquor*, 107 Md. App. 224, 238, 667 A.2d 940 (1995)); *see also Dickerson v. Longoria*, 414 Md. 419, 442, 995 A.2d 721, 735 (2010) ("Actual authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account." (quoting *Citizens v. Md. Indus.*, 338 Md. 448, 459, 659 A.2d 313, 318 (1995)). In the absence of a written agreement, a principal-agent relationship may be established by inference upon a showing that "(1) the agent was subject to the principal's right of control; (2) the agent had a duty to primarily act for the benefit of the principal; and (3) the agent held the power to alter the legal relations of the principal." *Integrated Consulting Servs.*, 996 F. Supp. at 474 (citing *Schear v. Motel Management Corp.*, 61 Md. App. 670, 687, 487 A.2d 1240 (1985)). Critically, "[a]n agent's power to bind the principal is confined by the authority that the principal has actually granted to the agent." *Dickerson*, 414 Md. at 442, 995 A.2d at 735. For this reason, "[a]n agent cannot ... enlarge the actual authority by his [or her] own acts without some measure of assent or acquiescence on the part of his [or her] principal." *P. Flanigan & Sons v. Childs*, 251 Md. 646, 654, 248 A.2d 473, 477 (1968) (quoting *Brager v. Levy*, 122 Md. 554, 561, 90 A. 102, 104 (1914)).

***26** In the absence of actual authority, a principal may still be bound by the acts of a purported agent when the purported agent acts on the principal's behalf with apparent authority. *Dickerson*, 414 Md. at 442, 995 A.2d at 735. Under the doctrine of apparent authority, a principal will be bound by the acts of a person purporting to act for him where "the words or conduct of *the principal* cause the third party to believe that the principal consents to or has authorized the conduct of the agent." *Integrated Consulting Servs.*, 996 F. Supp. at 475 (quoting *Johns Hopkins Univ. v. Ritter*, 114 Md. App. 77, 96, 689 A.2d 91 (1996)). Put differently, "[a]pparent authority results from certain acts or manifestations by the alleged principal to a third party leading the third party to believe that an agent had authority to act." *Dickerson*, 414 Md. 442, 995 A.2d at 735 (quoting *Klein v. Weiss*, 284 Md. 36, 61, 395 A.2d 126, 140 (1978)). As applied by Maryland Courts, the doctrine of apparent agency can be expressed in three elements:

(1) Did the principal create, or acquiesce in, the appearance that an agency relationship existed?

(2) Did the plaintiff believe that an agency relationship existed and rely on that belief in seeking the services of the apparent agent?

(3) Were the plaintiff's belief and reliance reasonable?

Bradford v. Jai Medical Systems Managed Care Organizations, Inc., 439 Md. 2, 18, 93 A.3d 697, 707 (2014) (citing *Chevron U.S.A., Inc. v. Lesch*, 319 Md. 25, 34–35, 570 A.2d 840, 845 (1990)).

In the insurance context, Maryland courts have recognized that "[b]rokers generally are agents of the insured, not the insurer." *Essex Ins. Co. v. Hoffman*, 168 F. Supp. 2d 547, 558 (D. Md. 2001) (citing *Am. Cas. Co. of Reading, Pa. v. Ricas*, 179 Md. 627, 630, 22 A.2d 484, 487 (1941)). The core purpose of an insurance broker is to "act[ ] as a middleman between the insurer and insured." *Medical Mut. Liab. Ins. Soc. of Md. v. Mut. Fire, Marine & Island Ins. Co.*, 37 Md. App. 706, 714, 379 A.2d 739, 743 (1977). "In some cases, however, the broker is an agent of the insurer[,] and in other cases [the broker] may be an agent of both parties at different points in the transaction." *Hoffman*, 168 F. Supp. 2d at 558 (citing 3 Couch on Insurance §

45:3 (3d ed. 1997)). At bottom, "[w]hether a person is [only] a broker or an agent is determined not by what he is called[,] but by what he does." *Medical Mut. Liab. Ins. Soc.*, 37 Md. App. at 714, 379 A.2d at 743 (citing *Moone v. Com. Cas. Ins. Co.*, 350 Ill. App. 328, 112 N.E.2d 626 (1953)).

In this case, the Court cannot conclude that Mr. Hibbard acted with actual authority to bind Unum when he made the representations at issue. As noted above, actual authority rests on either a written agreement or the spoken words or conduct of the principal which reasonably cause the agent to believe that the principal wishes the agent to act on the principal's behalf. *See Dickerson*, 414 Md. at 442, 995 A.2d at 735. However, the agent's power is confined by the authority that the principal *actually granted* to the agent. *See id.* Here, the written broker agreement executed between Unum and Mr. Hibbard's brokerage firm, EBH, outlines limitations on the authority of EBH's brokers when acting on Unum's behalf. *See* PE25; DE17. Specifically, Section 5(a) of the broker agreement clarified that EBH's brokers "shall have no authority to alter, modify, change, or waive any terms, rates, conditions, applications, or policies" of Unum unless instructed to do so in writing, nor could EBH's brokers "make any representations not strictly in accordance with the provisions of Policies" issued by Unum. (ECF No. 95 at 149:5–150:4 (Mr. Hibbard)); PE25 at 2; DE17 at 2.

Here, the Policy does not exhaustively or even explicitly list the sources of income that Unum may consider when calculating an insured's disability earnings. *See* PE2 at GROSSO002281. Nor does anywhere in the Policy directly state that it is an "own occupation" insurance Policy. *See generally* PE2. Given the dearth of explicit language in the Policy on the two key points that Mr. Hibbard conveyed to the CAO, Mr. Hibbard's representations may be construed as "representations not strictly in accordance with the provisions of" Unum's Policy. *See* PE25; DE17. Although the Policy provides a definition of the term "regular occupation" which closely aligns with the "own occupation" principles conveyed by Mr. Hibbard to the CAO, the salient point is that the Policy is not internally identified as one that provides only "own occupation" coverage, nor does the Policy explicitly state that disability earnings are limited to a physician's clinical income. *See generally* PE2.

***27** The Court is also not inclined to find Mr. Hibbard acted with actual authority by drawing inferences from Unum's conduct. Mr. Hibbard testified that he sought to market the Policy as Unum described it and only conveyed to the CAO information that Unum conveyed to him. (ECF No. 95 at 136:2–137:10; 140:3–141:18 (Mr. Hibbard)). Although the Court finds Mr. Hibbard's testimony credible, the absence of language in the Policy indicating it is an "own occupation" policy or placing a limitation on sources of income properly considered disability earnings is also evidence that Unum did *not* acquiesce in or concur with Mr. Hibbard's representations about the Policy's terms. *See generally* PE2. The Court also notes that Mr. Hibbard has been in the insurance business for over five decades, during which time he has sold many different types of insurance policies for many different carriers. (ECF No. 95 at 125:19–126:10 (Mr. Hibbard)). The Court cannot ignore the risk that information gleaned from Mr. Hibbard's vast sales experience with other carriers or policies may have seeped its way into his synopsis of Unum's Policy, at least in the absence of additional evidence demonstrating Unum initially or retroactively assented to Mr. Hibbard's representations.

Although Mr. Hibbard did not act with *actual authority*, the Court does conclude that Mr. Hibbard acted with *apparent authority* to bind Unum when he made the representations at issue. As noted above, the doctrine of apparent agency can be expressed in three elements:

(1) Did the principal create, or acquiesce in, the appearance that an agency relationship existed?

(2) Did the plaintiff believe that an agency relationship existed and rely on that belief in seeking the services of the apparent agent?

(3) Were the plaintiff's belief and reliance reasonable?

Bradford, 439 Md. at 18, 93 A.3d at 707 (quoting *Lesch*, 319 Md. at 34–35, 570 A.2d at 845).

With respect to the first element, the principal—here, Unum—created or at least acquiesced in the appearance that Mr. Hibbard was its agent by: (i) permitting Mr. Hibbard to hold informational sessions about its Policy in which Mr. Hibbard was the *only*

representative present on behalf of Unum; (ii) permitting Mr. Hibbard to direct *all* questions about the Policy to himself, thus indicating he was authorized by Unum to answer inquiries on its behalf about the Policy; and (iii) by permitting Mr. Hibbard to market the Policy using slide decks, brochures, and other marketing materials bearing Unum's logo, all of which list Mr. Hibbard's contact information directly above contact information for Unum's Senior Client Manager, Elizabeth Goshorn. (ECF No. 95 at 132:1–9; 135:22–137:10; 138:8–139:6; 139:7–141:18; 142:3–15; 152:8–19 (Mr. Hibbard)); PE26, PE27; PE28; PE51. This conclusion is bolstered by the fact that at least some of the Unum-branded marketing materials that Mr. Hibbard used list the aforesaid contact information directly below the heading, "*We've* got u." *See* PE27 at GROSSO00710 (emphasis added); PE28 at GROSSO001471 (emphasis added). Additionally, and critically, all of the above was communicated directly to the CAO physicians who sought information about the Policy, sat in the marketing meetings, viewed the Unum-branded materials, and directed their questions to Mr. Hibbard as requested. (ECF No. 95 at 32:3–18; 68:4–17 (Dr. Grosso)); (ECF No. 96 at 4:16–17; 6:6–14; 7:15–8:8 (Dr. Blam)).

The evidence presented at trial also demonstrates that the CAO's physicians believed Mr. Hibbard was authorized to speak about the Policy on Unum's behalf and that they reasonably relied on that belief in electing coverage under the Policy. Dr. Grosso explicitly testified that he believed Mr. Hibbard had authority to speak on Unum's behalf with respect to details about the Policy, and that from his interactions with Mr. Hibbard, he understood that the Policy was an "own occupation" policy under which disability earnings would not be unrelated to his clinical orthopedic practice. (ECF No. 95 at 33:9–17; 67:11–68:17 (Dr. Grosso)). Dr. Grosso's reliance on Mr. Hibbard's representations is evident from his testimony that he and the other CAO physicians paid higher premiums specifically for the Policy's "own occupation" protection, and that he would not have been interested in enrolling in the Policy if he had known that non-clinical earnings would be considered disability earnings and reduce or offset his monthly disability benefit. (ECF No. 95 at 32:3–21; 34:4–16 (Dr. Grosso)).

***28** Similarly, Dr. Blam, an orthopedic spine surgeon with the CAO, testified that he understood the Policy to be an "own occupation" policy based on Unum's marketing materials along with conversations with Mr. Hibbard following Mr. Hibbard's presentations to OACM. (ECF No. 96 at 4:16–17; 6:6–14; 7:15–8:8 (Dr. Blam)). Dr. Blam further testified that he specifically sought coverage under an "own occupation" plan, that the information he received about the Policy from Mr. Hibbard and the marketing materials aligned with his desired plan features, and that he would not have enrolled in the Policy if he knew that it did not provide "own occupation" protection or that it would consider non-clinical income as "disability earnings." (ECF No. 96 at 6:15–7:6; 7:15–8:2; 9:13–17; 9:18–10:4 (Dr. Blam)). The credible testimony of Dr. Grosso and Dr. Blam about their subjective perceptions of Mr. Hibbard's authority and their reliance on his representations in enrolling in the Policy are more than sufficient to meet the second element required to establish apparent authority.

Furthermore, the Court finds that Dr. Grosso's and Dr. Blam's reliance on Mr. Hibbard's representations (and their belief in his authority to make the representations at issue) was objectively reasonable. As noted above, Mr. Hibbard was the only representative of Unum in the majority of discussions with the CAO about the Policy; he specifically directed CAO physicians to contact him with questions about the Policy, including the meaning of technical Policy terms; and in each presentation he gave to the CAO about the Policy, he utilized Unum-branded marketing materials which would convey to a reasonable person that Unum endorsed his authority and the information he represented about the Policy's terms. (ECF No. 95 at 132:1–9; 135:22–137:10; 138:8–139:6; 139:7–141:18; 142:3–15; 152:8–19 (Mr. Hibbard)); *see also* PE26, PE27; PE28; PE51. These circumstances compel the conclusion that Mr. Hibbard acted with apparent authority as an agent of Unum when he represented that the Policy was an "own occupation" policy under which "disability earnings" were limited to a physician's clinical income. It follows that Unum is bound by Mr. Hibbard's representations.

Finally, although in past cases Maryland has recognized that an insurance broker may be an agent of the insured, the Court reiterates that each case is to be decided by its own facts, with the defining factor being "not [ ] what [the broker] is called[,] but [ ] what he does." *See Hoffman*, 168 F. Supp. 2d at 558; *Medical Mut. Liab. Ins. Soc.*, 37 Md. App. at 714, 379 A.2d at 743. In this case, where Unum cloaked Mr. Hibbard with near-exclusive authority to communicate information about the Policy to the CAO on its behalf, including detailed information about the meaning of the Policy's terms, there is simply no basis for the Court to conclude that Mr. Hibbard was an agent of the CAO or of anyone else but Unum. Indeed, the entire purpose of the

equitable doctrine of apparent authority is to "prevent[ ] a principal from 'choos[ing] to act through agents whom it has clothed with the trappings of authority and then determin[ing] at a later time whether the consequences of their acts offer an advantage.' " *Williams v. Dimension Health Corp.*, 480 Md. 24, 32, 279 A.3d 954 (2022) (quoting Restatement (Third) of Agency § 2.03, cmt. c). If Unum disagreed with Mr. Hibbard's representations about the Policy's terms, Unum could have so informed Mr. Hibbard, terminated his broker agreement, or otherwise reigned in his authority. *See Dickerson*, 414 Md. at 442, 995 A.2d at 735 ("[I]t is nearly axiomatic that one dealing with an agent must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his powers."). The Court may not do so retroactively.

iii. Extrinsic evidence demonstrates that disability earnings are limited to clinical earnings.

In light of the above, the Court concludes that the term "disability earnings" in Unum's Policy means only a physician's clinical income that the physician continues to receive despite their disability. The Court comes to this decision based on its conclusion that Unum is bound by Mr. Hibbard's representations conveying the same, but also on the basis of independent extrinsic evidence, namely, Unum's marketing materials which also conveyed this meaning, and the testimony of CAO physicians that this was the narrow meaning they reasonably imputed to the term. And even if this extrinsic evidence was insufficient for the Court to interpret the term, the Court would be required to construe this provision of the Policy against the drafter, Unum. *See Connors v. Gov't Employees Ins. Co.*, 442 Md. 466, 482–83, 113 A.3d 595, 604–05 (2015) (quoting *Megonnell v. United States Services Auto Ass'n*, 368 Md. 633, 655–56, 796 A.2d 758, 772 (2002)); *Dutta v. State Farm*, 363 Md. 540, 556, 769 A.2d 948, 957 (2001).

***29** Given that the proper interpretation of "disability earnings" is one that is limited to a physician's clinical income, it follows that Unum breached the insurance contract when it considered multiple sources of non-clinical income as "disability earnings" which reduced or eliminated Dr. Grosso's monthly disability benefit. Specifically, Unum considered: (i) Dr. Grosso's corporate income from his role as President of the CAO; (ii) income for services rendered as an "on-call physician," as listed on the Schedule C attached to Dr. Grosso's Form 1040; (iii) income from Dr. Grosso's partnership with MedVanta Interco, LLC; and (iv) profits from Dr. Grosso's former status as a partner of OACM. (ECF No. 96 at (90:2–92:22; 95:2–9; 97:10–25); DE15. This was error. The proper figure for measuring Dr. Grosso's clinical income appears in Box 4A of Dr. Grosso's Clinical Schedule K-1s from OACM, (ECF No. 95 at 72:17–73:2 (Dr. Grosso)), and Unum should have limited its calculation of Dr. Grosso's "disability earnings" to that figure as it appears on Dr. Grosso's Schedule K-1s for each year that he was in pay status under the Policy.

4. Dr. Grosso is entitled to damages arising from Unum's breach.

i. Actual Damages

When a party breaches a contract, the injured party is entitled to the damages that arise naturally from that breach. *Ambling Mgmt. Co. v. Univ. View Partners, LLC*, No. WDQ-07-2071, 2011 WL 4103098, at *10 (D. Md. Sep. 9, 2011) (citing *Strasbaugh v. Steward Sanitary Can Co.*, 127 Md. 632, 648, 96 A. 863, 868 (1916)). Contractual damages must be both reasonably foreseeable and proven with reasonable certainty. *Cory v. Whisman, Grygiel & Giordano*, No. WNM-06-02694, 2012 WL 13001305, at *8 (D. Md. Nov. 29, 2012) (first citing *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 162 n.25, 916 A.2d 257, 288 n.25 (2007), then citing *Hoang v. Hewitt Ave. Assoc.*, 177 Md. App. 562, 594, 936 A.2d 915, 934 (2007)). "Reasonable certainty of contract damages means the likelihood of damages being incurred as a consequence of the breach, and their probable amount." *Id.* (quoting *Hoang*, 177 Md. App. at 595, 936 A.2d at 935). "Losses that are speculative, hypothetical, remote, or contingent either in eventuality or amount will not qualify as 'reasonably certain' and therefore recoverable as contract damages." *Id.*

In this case, Dr. Grosso seeks to recover $1,045,045.35 in actual damages resulting from Unum's breach of contract. *See* PE16. This sum represents the total benefits payable to Dr. Grosso over the life of the Policy, less all benefits Unum has already paid to

him, if: (i) his corporate income from his role as CAO president is included in the pre-disability "monthly earnings" calculation; and (ii) the calculation of his "disability earnings" is limited to consideration of his clinical income only, as set forth on line 4A of his 2021 Schedule K-1 from the CAO. *Id.* Thus, Dr. Grosso's calculation of "disability earnings" excludes consideration of his corporate income from the CAO and his share of profits from his status as a "member" of the CAO, in addition to any income received from third parties. *Id.*

Based on the evidence presented at trial, and the Court's findings above, the Court agrees with Dr. Grosso's calculation of his actual damages. The Court finds that Dr. Grosso's requested damages were proven with reasonable certainty based on the evidence demonstrating his repeated attempts to contact Unum about his date of disability, his corporate earnings, and the calculation of his disability earnings, and his reassertion of these concerns in his complaint to the MIA. (ECF No. 95 at 41:19–43:5; 52:22–54:11 (Dr. Grosso)); PE24 at UA-CL-LTD-001156; PE34 at UA-CL-LTD-000759; PE37 at UA-CL-LTD-002027; PE43; PE44. Unum was clearly on notice from these contacts that Dr. Grosso took issue with the administration of his claim and was incurring damages from its breach of the insurance contract. And having made no attempt over the course of over four years to work with Dr. Grosso and resolve his concerns, it certainly should have been reasonably foreseeable to Unum that Dr. Grosso would file suit to recover those damages. Finally, Unum approved Dr. Grosso's claim for benefits in the first instance, so it cannot be said that his losses are speculative or hypothetical, particularly in light of Unum's clear notice as to all three of Dr. Grosso's claims for breach and associated damages.

***30** Accordingly, this Court will award Dr. Grosso actual damages in the amount of $1,045,045.35.

ii. Prejudgment Interest

In addition to actual damages, Dr. Grosso also requests that the Court award prejudgment interest. *See* (ECF No. 37 at 14); (ECF No. 88 at 15). Prejudgment interest "compensates the non-breaching party for its 'inability to use the funds that should have been in [its] hands at some earlier time.' " *Crystal v. West & Callahan, Inc.*, 328 Md. 318, 343, 614 A.2d 560, 572 (1992) (quoting *Buxton v. Buxton*, 363 Md. 634, 652, 770 A.2d 152, 162–63 (2001)). As Judge Hollander of this Court has noted, Maryland applies "three basic rules governing the allowance of prejudgment interest." *Baker's Exp., LLC v. Arrowpoint Capital Corp.*, No. ELH-10-2508, 2012 WL 4370265, at *27 (D. Md. Sep. 20, 2012) (quoting *Buxton*, 363 Md. at 656, 770 A.2d at 165). Specifically, under Maryland law: (1) prejudgment interest is available as a matter of right where "the obligation to pay and the amount due [have] become certain, definite, and liquidated by a specific date prior to judgment"; (2) prejudgment interest is not available "in tort cases where the recovery is for bodily harm, emotional distress, or similar intangible elements of damage not easily susceptible of precise measurement"; and (3) "[b]etween these poles of allowance as of right and non-allowance is a broad category of contract cases in which the allowance of prejudgment interest is within the discretion of the trier of fact." *Id.* at *27 (quoting *Buxton*, 363 Md. at 656, 770 A.2d at 165). In light of these guiding principles, "prejudgment interest as a matter of right is the exception rather than the rule." *Ver Brycke v. Ver Brycke*, 379 Md. 669, 702–03, 843 A.2d 758, 777 (2004) (quoting *Buxton*, 363 Md. at 656, 770 A.2d at 165).

With respect to prejudgment interest as a matter of right, it may only be awarded where "the effect of [one party's] withholding payment was to deprive the [other party] of a fixed amount as of a known date." *Buxton v. Buxton*, 363 Md. 634, 656, 770 A.2d 152, 165 (2001) (quoting *First Virginia Bank v. Settles*, 322 Md. 555, 564, 588 A.2d 803, 807 (1991)). Maryland courts have held that the right to pre-judgment interest arises, *inter alia*, "under written contracts to pay money on a day certain," "in sums payable under leases as rent," and "in conversion cases where the value of the chattel converted is readily ascertainable." *Buxton*, 363 Md. At 656, 770 A.2d at 165 (first citing *I. W. Berman Props. v. Porter Bros, Inc.*, 276 Md. 1, 16–17, 344 A.2d 65, 75–76 (1975), then citing *Robert C. Herd & Co. v. Krawill Machinery Corp.*, 256 F.2d 946 (4th Cir. 1958), *aff'd*, 359 U.S. 297 (1959)). Indeed, "[i]f the contractual obligation ... is to pay a liquidated sum of money at a certain time, interest is almost universally allowed from the time when its payment was due." *I. W. Berman Props.*, 276 Md. at 18, 344 A.2d at 75–76 (citing *Weant v. Southern Trust & Deposit Co.*, 112 Md. 463, 473, 77 A. 289, 294 (1910)).

On the other hand, the Fourth Circuit has suggested that where the sum of money at issue "was genuinely disputed," it is not "readily ascertainable and therefore liquidated" under Maryland law. *In re J.T.R. Corp.*, 958 F.2d 602, 606 (4th Cir. 1992). Additionally, Judge Hollander has also explained that a party is not entitled to prejudgment interest as a matter of right where "the contractual language did not provide for payment on a date certain." *Hart v. Pac. Rehab of Md., P.A.*, No. ELH-12-2608, 2013 WL 5212309, at *22 (D. Md. Sep. 13, 2013). "The rationale is that, where such certainty exists, 'the effect of the debtor's withholding payment [is] to deprive the creditor of the use of a fixed amount as of a known date,' and mandatory prejudgment interest is meant to rectify the situation." *Metromont Corp. v. Allan Myers, L.P.*, No. DKC-18-3928, 2021 WL 3367772, at *13 (D. Md. Aug. 3, 2021). Thus, "[c]ourts must determine whether a contract case" warrants prejudgment interest as a matter of right "based on their level of certainty as to the existence, amount, and due date of an obligation to pay." *Parkway 1046, LLC v. U.S. Home Corp.*, 961 F.3d 301, 312 (4th Cir. 2020). In any case, absent a statute setting forth a different rate, "the legal rate of prejudgment interest is equal to the general legal rate of six percent." *Crystal*, 328 Md. at 342, 614 A.2d at 572 (citing *Maryland Nat'l Bank v. Cummins*, 322 Md. 570, 599–600, 588 A.2d 1205, 1219 (1991)).

***31** Here, the Policy's language did not provide for payment of a fixed sum on a day certain. *See* PE2. The disability benefit to which an insured is entitled under the Policy, if any, is dependent on a number of dynamic factors, one of which—the insured's receipt of disability earnings—may cause a fluctuation in the insured's benefit amount month-over-month. *See* PE2 at GROSSO002269 (explaining how Unum will protect an insured whose disability earnings fluctuate from month to month). Although benefits are paid under the Policy on a fixed schedule once monthly, the amount of benefits to which Dr. Grosso was entitled under the Policy—and Unum's obligation to pay—was uncertain prior to the date of this Court's judgment. *See Ver Brycke*, 379 Md. at 702–03, 843 A.2d at 777 (affirming denial of prejudgment interest as of right where the obligation to pay was uncertain prior to the date of judgment). As such, this case does not present the degree of certainty required for the Court to conclude Dr. Grosso is entitled to prejudgment interest as a matter of right.

This case instead falls into the "broad category of contract cases in which the allowance of prejudgment interest is within the discretion of the trier of fact." *Buxton*, 363 Md. at 656, 770 A.2d at 165. When awarding prejudgment interest as a matter of discretion, courts must balance "the scales of equity and justice" considering the facts of a particular case. *Imgarten v. Bellboy Corp.*, 383 F. Supp. 2d 825, 848–49 (D. Md. 2005); *see also Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 771, 923 A.2d 971, 1022 (2007) ("The exercise of discretion to award prejudgment interest must be based on the equity and justice appearing between the parties and a consideration of all the circumstances.") (internal quotation marks and citations omitted), *aff'd* 403 Md. 367, 962 A.2d 722 (2008). Thus, discretionary prejudgment interest may be appropriate "when the defendant has made no attempt to meet the plaintiff half way when it became clear that some amount of money was owed." *Imgarten*, 383 F. Supp. 2d at 848 (first citing *Crystal*, 328 Md. at 342, 614 A.2d at 572, then citing *I.W. Berman Props.*, 276 Md. at 20–21, 344 A.2d at 77).

In this case, the Court determines, in the exercise of its discretion, that Dr. Grosso is entitled to prejudgment interest at the rate of 6% per annum on this Court's award of actual damages in the amount of $1,045,045.35 for Unum's breach of contract. In so concluding, the Court highlights Dr. Grosso's fervent attempts to contact Unum and discuss the calculation of his disability benefits to little avail. *See* (ECF No. 95 at 41:19–43:5 (Dr. Grosso); PE24 at UA-CL-LTD-001156; PE34 at UA-CL-LTD-000759; PE37 at UA-CL-LTD-002027. The Court also reiterates several concerns it has with Unum's conduct in administering Dr. Grosso's claim, including Unum's unexplained decision to remove Dr. Grosso's corporate earnings from its calculation of Dr. Grosso's pre-disability monthly earnings, Unum's dubious switch from a three-year to a one-year earnings lookback during the height of **COVID-19** (meaning all new claims filed after January 1, 2021 would be determined based solely on the applicant's 2020 earnings), and Unum's termination of Dr. Grosso's claim without soliciting the financial documentation it needed from its usual point of contact at the CAO, Craig Pereira. *See* PE1; PE2; PE38; PE39; *compare* PE34 at UA-CL-LTD-000753, *with* PE37 at UA-CL-LTD-002025. Though the Court does not go as far to say it ever became "clear" that Unum owed money to Dr. Grosso prior to this Court's judgment in this case, the Court does conclude that the balance of "equity and justice" militates in favor of Dr. Grosso with respect to prejudgment interest. Accordingly, Dr. Grosso is awarded prejudgment interest at the rate of 6% per annum on this Court's award of $1,045,045.35 in actual damages.

B. Plaintiff's bad faith claim under Count II fails as a matter of Maryland law because the Policy is a group disability insurance policy, not an individual policy.

***32** Dr. Grosso's claim under Count II fails as a matter of law because the Policy under which his claim arises is a group disability insurance policy, not an individual policy. *See supra* Section III.B.3. Section 3-1701 of the Maryland Code, Courts & Judicial Proceedings Article permits an insured to recover damages for an insurer's failure to act in good faith. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1701. As a prerequisite to filing a claim under this section, the insured must first obtain a final decision on an administrative complaint filed with the Maryland Insurance Administration ("MIA") under Md. Code Ann., Ins. § 27-1001. *See* § 3-1701(c).[22] In additional to this procedural prerequisite, § 3-1701 also provides that it "only applies to first-party claims under property and casualty insurance policies or *individual* disability policies issued, sold, or delivered in the State." § 3-1701(b) (emphasis added).

As discussed in this Court's Findings of Fact, the Policy is identified as a group long term disability insurance policy on the Policy application, on the initial Policy, and on all amended versions of the Policy that have been issued to the CAO to date. *See* (ECF No. 95 at 88:11–17; 90:1–91:10; 166:17–167:22); PE1; PE2; PE3; DE19. The named policyholder is the CAO, not Dr. Grosso or any other individual physician, and copies of the Policy issued to CAO physicians who filed claims under the Policy all specify the same policy number as that issued to the CAO as a whole—No. 659439 001. *See* (ECF No. 95 at 90:1–91:10;); PE2 at GROSSO002252–53. Furthermore, Unum reserves the right to cancel the Policy if participation by eligible employees falls below a certain percentage, *see* PE2 at GROSSO002260, and where a Policy premium is past due, although the Policy may not be cancelled as to the CAO as a whole, it may be cancelled as to that division of the CAO that failed to pay its premium, with each division including at least more than one enrolled physician. (ECF No. 95 at 142:16–144:1). Given that the Policy is a group disability insurance policy, § 3-1702 is inapplicable to Dr. Grosso's bad faith claim. Accordingly, Count II of Plaintiff's Second Amended Complaint (ECF No. 37) fails as a matter of law, and judgment shall be entered for Unum. For the same reason, Plaintiff is not entitled to attorneys' fees under § 3-1702(e).

C. Plaintiff is entitled to a Declaratory Judgment under Count III.

Under Count III, Dr. Grosso is entitled to a declaratory judgment that clarifies the rights and obligations of the parties in relation to the Policy. Under the Declaratory Judgment Act ("DJA"), "a district court, in a case or controversy otherwise within its jurisdiction, 'may declare the rights and other legal relations of any interested party seeking such declaration, whether or not other relief is or could be sought.' " *Penn-Am Ins. Co. v. Coffey*, 368 F.3d 409, 412 (4th Cir. 2004) (quoting 28 U.S.C. § 2201(a)).[23] The Fourth Circuit has set forth three factors district courts must consider when deciding whether declaratory judgment is appropriate: "(1) the complaint alleges an 'actual controversy' between the parties 'of sufficient immediacy and reality to warrant issuance of a declaratory judgment'; (2) the court possesses an independent basis for jurisdiction over the parties (e.g., federal question or diversity jurisdiction); and (3) the court does not abuse its discretion in its exercise of jurisdiction." *Volvo Const. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 592 (4th Cir. 2004) (citing 28 U.S.C. § 2201, and *Cont'l Cas. Co. v. Fuscardo*, 35 F.3d 963, 965 (4th Cir. 1994)). "A case meets the actual controversy requirement only if it presents a controversy that qualifies as an actual controversy under Article III of the Constitution." *Id.* "For a controversy to exist for declaratory judgment purposes, however, the situation need not present a federal cause of action; if the parties are diverse, a federal court may possess subject matter jurisdiction over a state-law contract dispute." *Id.*

***33** All three elements are met in this case, and the Court may properly order declaratory relief. First, this case plainly presents an "actual controversy" in the form of a state law contractual dispute between Dr. Grosso and Unum over the terms of a disability insurance policy. *See Volvo Const. Equip.*, 386 F.3d at 592 ("A case meets the actual controversy requirement only if it presents a controversy that qualifies as an actual controversy under Article III of the Constitution."); *see also id.* at 593 ("For a controversy to exist for declaratory judgment purposes, however, the situation need not present a federal cause of action; if the parties are

diverse, a federal court may possess subject matter jurisdiction over a state-law contract dispute."). Second, this Court has an independent basis for jurisdiction, as the amount in controversy exceeds $75,000 and there is complete diversity of citizenship between the parties. (ECF No. 1 ¶¶ 5–7; ECF No. 37 at 13–15); *see also* 28 U.S.C. § 1332. Third, this Court would not abuse its discretion in exercising its declaratory judgment jurisdiction here. Although the Court has resolved the gravamen of Dr. Grosso's complaint through its ruling on Count I, a ruling on an alternative substantive claim does not automatically render the declaratory judgment claim moot. *See Aleti v. Metropolitan Baltimore, LLC*, 251 Md. App. 482, 521, 254 A.3d 533, 555 (2021) ("[O]ur courts 'have not ... generally blessed the dismissal of a proper action for a declaratory judgment because of a ruling on an alternative claim in the same action.' " (quoting *Post v. Bregman*, 349 Md. 142, 160, 707 A.2d 806, 814 (1998))); *see also id.* ("[E]ven if the court were correct that its rulings on Counts II through IV effectively resolved the dispute ... in Count I, the court was still required to enter a judgment declaring the rights and obligations of the parties.").[24] Thus, the Court does not abuse its discretion by declaring the rights and obligations of Dr. Grosso and Unum in relation to the Policy.

For the reasons explained in this Court's Findings of Fact and Conclusions of Law, this Court DECLARES as follows:

1. The terms of the Policy unambiguously required both elements of the two-prong disability definition to be met before Unum determined that Dr. Grosso was disabled under the Policy.

2. The terms of the Policy unambiguously required Unum to include Dr. Grosso's corporate income in its calculation of his pre-disability monthly earnings.

3. The Policy term "disability earnings" is ambiguous, and extrinsic evidence demonstrates that the term means a physician's clinical earnings only.

4. Peter Hibbard is an agent of Unum, and he acted with apparent authority when represented to Dr. Grosso and the CAO that the Policy was an "own occupation" policy under which "disability earnings" were limited to clinical earnings.

5. Unum breached the insurance contract by: (i) determining Dr. Grosso's disability date occurred in 2021, despite the fact that he did not suffer the requisite earnings loss until 2022; (ii) relatedly determining that 2020 was the "tax year just prior to" Dr. Grosso's date of disability; (iii) failing to include Dr. Grosso's corporate income in its calculation of his pre-disability earnings; and (iv) including in its calculation of Dr. Grosso's "disability earnings" sources of non-clinical income.

6. Dr. Grosso was entitled to coverage under the Policy until the end of his benefit period on December 7, 2026, and he would have continued receiving monthly disability benefits but for Unum's breach.

***34** 7. As a result of Unum's breach, Dr. Grosso is entitled to his actual damages in the amount of $1,045,045.35, plus prejudgment interest at the rate of six percent (6%) per annum.

8. Unum shall pay to Dr. Grosso $1,045,045.35 in actual damages, plus prejudgment interest at the rate of six percent (6%) per annum.

9. Count II fails as a matter of law because the Policy is a group disability insurance policy, not an individual policy.

V. Conclusion

Having conducted a three-day bench trial in this matter from September 29, 2026, through October 1, 2026, heard fact and expert witness testimony, considered documentary evidence submitted by the parties, heard the parties' legal arguments, and reviewed the parties' Proposed Findings of Fact and Conclusions of Law, this Court concludes as follows:

1. By erroneously concluding that Dr. Grosso's disability date occurred in 2021, and that 2020 was the appropriate tax year for purposes of determining Dr. Grosso's monthly pre-disability income; by failing to include Dr. Grosso's "corporate" income in Dr. Grosso's pre-disability "monthly earnings"; and by including sources of income other than Dr. Grosso's "clinical" income in Dr. Grosso's "disability earnings," all of which improperly reduced Dr. Grosso's monthly disability

benefit, Unum breached the insurance contract and caused Dr. Grosso to incur **1,045,045.35** in actual damages. Dr. Grosso is further awarded prejudgment interest at the rate of six percent (6%) per annum.

2. The long-term disability insurance policy issued by Unum to the CAO is a group insurance policy. Count II of Plaintiff's Second Amended Complaint therefore fails as a matter of law.

3. Dr. Grosso is entitled to declaratory relief under Count III, as described herein and in this Court's separate Order and Judgment.

4. Judgment shall be ENTERED in favor of Dr. Grosso on Counts I and III.

5. Judgment shall be ENTERED in favor of Unum on Count II.

6. Unum SHALL PAY to Dr. Grosso a total of **1,045,045.35**, plus prejudgment interest at the rate of six percent (6%) per annum.

A separate Order and Judgment follows.

ORDER AND JUDGMENT

Following a bench trial in the above-captioned matter, the Court on October 16, 2026, filed its Trial Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure and further ordered that Judgment on Plaintiff's three-Count Second Amended Complaint (ECF No. 37) shall be entered in favor of Plaintiff and against Defendant on Counts I and III, and that Judgment shall be entered in favor of Defendant and against Plaintiff on Count II. Accordingly, pursuant to Rule 58, IT IS HEREBY ORDERED AND ADJUDGED this 16th day of October 2026 that:

1. The Clerk of this Court shall enter Judgment on Count I of Plaintiff's Second Amended Complaint (ECF No. 37) in favor of Plaintiff and against Defendant;

2. The Clerk of this Court shall enter Judgment on Count II of Plaintiff's Second Amended Complaint (ECF No. 37) in favor of Defendant and against Plaintiff;

3. The Clerk of this Court shall enter Judgment on Count III of Plaintiff's Second Amended Complaint (ECF No. 37) in favor of Plaintiff and against Defendant, and enter declaratory judgment declaring that:

***35** a. Plaintiff Nicholas P. Grosso, M.D., was entitled to coverage under Group Long-Term Disability Insurance Policy No. 659439 001 ("Policy"), issued by Defendant Unum Life Insurance Company of America to the Centers for Advanced Orthopedics, from the date that Unum approved Plaintiff's claim for benefits, February 17, 2022, until the end of Plaintiff's benefit payment period, December 7, 2026.

b. Defendant had a legal duty to properly administer Plaintiff's claim for disability benefits under the Policy, and it breached that duty by: (i) determining Dr. Grosso's disability date occurred in 2021, despite the fact that he did not suffer the requisite earnings loss until 2022; (ii) relatedly determining that 2020 was the "tax year just prior to" Dr. Grosso's date of disability; (iii) failing to include Dr. Grosso's corporate income in its calculation of his pre-disability earnings; and (iv) including in its calculation of Dr. Grosso's "disability earnings" sources of non-clinical income.

c. As a result of Defendant's breach, Plaintiff incurred **$1,045,045.35** in actual damages representing lost benefits under the Policy.

d. Plaintiff is entitled to recover the actual damages from Unum's breach, plus prejudgment interest at the rate of six percent (6%) per annum.

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4. Defendant SHALL PAY to Plaintiff a total of **$1,045,045.35**, plus prejudgment interest at the rate of six percent (6%) per annum. Judgment in that amount is entered in favor of Plaintiff and against Defendant.

5. Any and all prior rulings of this Court disposing of any claims against any parties are incorporated by reference therein, and this Order shall be deemed to be a Final Judgment within the meaning of Rule 58 of the Federal Rules of Civil Procedure.

6. The Clerk of this Court SHALL CLOSE this case; and,

7. The Clerk of this Court shall transmit copies of this Order and Judgment and the accompanying Trial Findings of Fact and Conclusions of Law to counsel of record in this case.

/s/

Richard D. Bennett United States Senior District Judge

All Citations

--- F.Supp.3d ----, 2026 WL 3120976

Footnotes

1 Dr. Grosso entered into the group insurance contract in his capacity as President of the CAO. DE19.

2 The trial transcript appears at ECF Nos. 95, 96, and 97.

3 In its Notice of Removal (ECF No. 1),, Defendant invoked federal question jurisdiction pursuant to 28 U.S.C. § 1331 as the ground for removal in addition to diversity jurisdiction, reasoning that the subject matter of Plaintiff's claims is an employee benefits plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* (ECF No. 1 ¶ 3). Defendant then raised in its Answer (ECF No. 31) an affirmative defense that Plaintiff's state law claims were preempted by ERISA (ECF No. 31 at 8), which it litigated through this Court's denial of the parties' cross-motions for summary judgment. *See* (ECF Nos. 55; 56; 71; 72; 73; 75). In the parties proposed Joint Pretrial Order (ECF No. 80), however, Defendant elected to waive or abandon its affirmative defense based on ERISA preemption. (ECF No. 80 at 14). Additionally, although Count III asserts a claim for relief pursuant to the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201 *et seq.*, the DJA is procedural in nature and is insufficient to generate federal question jurisdiction on its own. *See Skelly Oil Co. v. Phillips Petroleum*, 339 U.S. 667 (1950). Thus, the basis for this Court's jurisdiction is now complete diversity of citizenship pursuant to 28 U.S.C. § 1332, as Dr. Grosso is a citizen of Maryland, while Unum is incorporated and has its principal place of business in Maine. (ECF No. 1 ¶¶ 5–7).

4 Defendant also filed a Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim (ECF No. 8) on May 21, 2024, prior to the filing of Plaintiff's Amended Complaint (ECF No. 13) on June 11, 2024. Given the filing of Plaintiff's Amended Complaint (ECF No. 13) before this Court's ruling on Defendant's initial Motion to Dismiss (ECF No. 8), this Court also denied Defendant's first Motion to Dismiss (ECF No. 8) as moot in its Memorandum Opinion denying Defendant's Motion to Dismiss the Amended Complaint (ECF No. 14).

5 OACM is a wholly owned subsidiary of the CAO. (ECF No. 95 at 29:17–23 (Dr. Grosso)).

6 The Court refers to Plaintiff's Exhibits by the abbreviation "PE," and to Defendant's Exhibits by the abbreviation "DE."

7 The testimony at trial was unclear as to how exactly Peter Hibbard was introduced to the CAO's Board of Managers. *See generally* (ECF No. 95). Although Dr. Grosso testified that he had a preexisting relationship with Mr. Hibbard and may have suggested Mr. Hibbard as someone the Benefits Committee should contact about a disability insurance policy, Dr. Grosso clarified that he recused himself from the insurance policy selection process and was not involved in bringing Mr. Hibbard before the Board of Managers. (*Id.* at 110:24–111:19 (Dr. Grosso)).

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8 The Parties stipulate that Amendment No. 6 to the Policy, dated October 10, 2022, does not apply to Dr. Grosso's claim for benefits under the Policy. *See* (ECF No. 88 at 15 (Stipulation 11)). The Court does not reference Amendment No. 6 for its operative policy terms but rather only cites to the cover pages of Amendment No. 6 for illustrative purposes.

9 During trial, Dr. Grosso testified that Unum representatives also occasionally gave presentations to the CAO about the Policy. (ECF No. 95 at 33:9–14 (Dr. Grosso)). Although the Court finds the whole of Dr. Grosso's testimony to be credible, the Court bases its Findings of Fact and Conclusions of Law on the words and conduct of Mr. Hibbard only, given the frequency of Mr. Hibbard's contacts with the CAO and the evidence of those contacts, compared to the lack of evidence shedding light on the words and conduct of Unum's representatives during interactions with the CAO.

10 The primary change between the initial Policy and the amended Policy was to change the basis for the calculation of an insured's pre-disability monthly earnings. *Compare* PE1, *with* PE2. The initial Policy provided that an insured's pre-disability monthly earnings should be calculated using the average of the insured's income over the last three tax years. *See* PE1. The amended Policy provides that the pre-disability monthly earnings calculation should be based solely on the "tax year just prior to" the insured's date of disability. *See* PE2 at GROSSO002267. The Court interchangeably refers to this calculation metric as the Policy's "lookback" provision.

11 The Court continues to refer to the amended Policy as "the Policy" given that the thrust of Dr. Grosso's claim for breach is not based on the provision of the Policy that was modified by Amendment No. 1 (or the general fact that the Policy was amended). Put differently, there is no reason for the Court to textually differentiate between the initial and the amended Policy.

12 For clarity, the Court refers to "monthly earnings" interchangeably as "pre-disability earnings," and to "disability earnings" interchangeably as "post-disability earnings."

13 At trial, Peter Hibbard testified as a hybrid fact and expert witness for the Plaintiff. (ECF No. 95 at 126:11–129:11 (Mr. Hibbard)). With respect to Mr. Hibbard's expert capacity, this Court, hearing no objection from Unum, qualified Mr. Hibbard as an expert in insurance sales and insurer's bad faith. (*Id.*). Mr. Hibbard holds an undergraduate degree in Health Sciences from Rutgers University. (*Id.* at 124:14–20 (Mr. Hibbard)). After graduating from college, Mr. Hibbard served in the United States Marine Corps for several years before opening an insurance business on February 1, 1971. (*Id.* at 124:21–125:24 (Mr. Hibbard)). Mr. Hibbard has now been engaged in the business of selling insurance for over 55 years and holds experience selling various types of insurance, including long-term disability insurance policies. (*Id.* at 125:25–126:10 (Mr. Hibbard)); *see also* PE49 (Peter Hibbard's curriculum vitae).

14 For clarity and consistency, the Court refers to Dr. Grosso's salary for his role as President of the CAO interchangeably as Dr. Grosso's "corporate income" to differentiate between the income he receives from his clinical orthopedic practice with the CAO, or his "clinical income." Similarly, the Court refers to Dr. Grosso's Schedule K-1s that reflect his CAO President salary as his "corporate K-1s," and to his Schedule K-1s that reflect his clinical income as his "clinical K-1s."

15 Given that Dr. Grosso did not receive a disability benefit in August 2022, the Court is not prepared to conclude that Amendment No. 6, which was incorporated into the Policy in October 2022, had any influence on Unum's decision to remove Dr. Grosso's corporate income from the pre-disability earnings calculus. In any event, the parties have agreed that Amendment No. 6 does not apply to Dr. Grosso's claim for benefits under the Policy, so the import of the Amendment or Unum's motivation for the Amendment is of no great significance to the Court. *See* (ECF No. 88 at 15 (Stipulation 11)).

16 The Court assumes that Plaintiff's counsel and Mr. Pereira were referring to an internal system relevant to the exchange of financial documents between Unum and Mr. Pereira during this exchange at trial.

17 The Policy provides that Maryland law governs, *see* PE2 at GROSSO002253, and neither party disputes the application of Maryland law to resolve Plaintiff's claims given Defendant's waiver of its ERISA preemption defense. *See* ECF No. 88 at 14. However, for avoidance of any doubt, the Court also notes that Maryland law would govern under ordinary choice-of-law principles even in the absence of the Policy's choice-of-law clause. Federal courts follow the doctrine set forth in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) where, as here, a plaintiff alleges a state law claim in federal court based on diversity jurisdiction. Under the *Erie* doctrine, a federal court sitting in diversity applies federal procedural law and the substantive law of the forum in which the court sits. *See Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 261 n.3 (4th Cir. 2013). For purposes of the *Erie* analysis, choice of law constitutes substantive law such that this Court applies the choice-of-law principles of Maryland. *See Koppers Performance Chems., Inc. v. Argonaut-Midwest Ins. Co.*, 105 F.4th 635, 641 n.4 (4th Cir. 2024). In contract actions, Maryland adheres to the rule of *lex loci contractus*, meaning it applies the substantive law of the state where the contract was formed. *E.g., Brownlee v. Liberty*

Mut. Fire Ins. Co., 456 Md. 579, 584–85, 175 A.3d 697 (2017). Here, there is also no dispute that the Policy—an insurance contract—was formed in Maryland. The application for group insurance was executed in Maryland, *see* DE19, the named policyholder—the CAO—is based in Maryland, *see* DE19, and the Policy was delivered to the CAO in Maryland. (ECF No. 95 at 98:14–25; 153:3–7; 157:25–159:25). Thus, Maryland law applies to Plaintiff's claims under Counts I and II. *See Com. Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 673, 698 A.2d 1167, 1200 (1997) ("Typically, the *locus contractus* of an insurance policy is the *state in which the policy is delivered and the premiums are paid*." (quoting *Aetna Cas. & Sur. Co. v. Souras*, 78 Md. App. 71, 77, 552 A.2d 908, 911 (1989))) (internal quotation marks and alteration omitted).

18 Relatedly, Dr. Grosso raised concern with Unum's incorporation of Amendment No. 1 to the Policy on October 29, 2020. *See* PE1. Dr. Grosso testified that he was unaware of the Amendment, (ECF No. 95 at 35:6–36:8; 50:9–17 (Dr. Grosso)), which, as noted above, modified the lookback provision for calculating an insured's pre-disability earnings from an average of three years to just one year—the year prior to the insured's date of disability. *See* PE2 at GROSSO002267; *compare* PE1, *with* PE2. Although the Court does not conclude that Amendment No. 1 constituted a breach of contract because Dr. Grosso did not file his claim for benefits until October 2021, *see* PE36, the Court does note that Unum's conduct in this regard is suspect at best. The Amendment was incorporated at the end of October 2020, approximately seven months into the **COVID-19** pandemic, which Unum itself recognized had a severe financial impact on its clients. *See* PE42 at GROSSO000676–699. And the Amendment changed arguably the most crucial provision in the Policy as it relates to determining an insured's monthly disability benefit—the definition of pre-disability "monthly earnings." *See* PE2 at GROSSO002267. To be sure, the effect of the Amendment was to reduce the earnings lookback period from three years to one year for all new claims filed after October 29, 2020, meaning ALL new claims filed after January 1, 2021, but before the next calendar year would be based *solely* on the insured's 2020 earnings—earnings during the height of a global pandemic when non-essential employees were subject to closures and significantly reduced or eliminated working hours. Indeed, Dr. Grosso testified that his clinical income during 2020 was reduced by approximately 50% due to the restrictions imposed on elective surgeries, which comprised the majority of his caseload as a then-operating orthopedic surgeon. (ECF No. 95 at 51:2–19 (Dr. Grosso)). Unum's decision to amend the Policy and subject 2021 claimants to a drastically deflated pre-disability earnings calculation, which would work in Unum's favor by significantly lessening the insured's monthly disability benefit, is highly suspect, even if it does not qualify as a breach of the contract. *See* PE1. Additionally, the only recourse available to a policyholder who disagreed with the amendment was to affirmatively reject the amendment in writing to Unum within 90 days. (ECF No. 95 at 97:25–98:13 (Dr. Grosso)); PE2 at GROSSO002252. However, Amendment No. 1 modified only one provision in the forty-four-page insurance Policy, and the Court has no indication from the copies of the Policy in evidence that Unum even directed the insured's attention to the crucial provision it amended. *See* PE1; PE2. In the Court's view, this amendment procedure in the context of an insurance policy tends to suggest that the Policy is a contract of adhesion. *See Walther v. Sovereign Bank*, 386 Md. 412, 430, 872 A.2d 735, 746 (2005) ("A contract of adhesion has been defined as one 'that is drafted unilaterally by the dominant party and then presented on a "take-it-or-leave-it" basis to the weaker party who has no real opportunity to bargain about its terms.' " (quoting Restatement (Second) of Conflict of Laws § 187 cmt. b (1971))). However, because Dr. Grosso did not raise this issue in his Second Amended Complaint (ECF No 37) or case-in-chief at trial, the Court will not make that finding on its own accord.

19 In the Court's view, Dr. Grosso's "elimination period" began to run when he became "limited from performing the material and substantial duties of [his] regular occupation due to [his] sickness or injury" on September 9, 2021. *See* PE2 at GROSSO002266; (ECF No. 88 at 14 (Stipulation 3)). After all, the Policy states that "[y]ou are not required to have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury *to be considered disabled during the elimination period*." PE2 at GROSSO002266 (emphasis added). The Court therefore agrees with Unum that Dr. Grosso's elimination period ended on December 9, 2021. *See* (ECF No. 96 at 44:3–19 (Mr. Pereira); 118:13–17 (Ms. Eubanks)). However, the Court does not find the date on which the insured completes the ninety-day elimination period compelling in light of the two-part definition the same page of the Policy provides to determine the insured's date of disability. If anything, the Policy provision that the insured is "not required to have a 20% or more loss in [their] indexed monthly earnings due to the same sickness or injury to be considered disabled during the elimination period" reads as an exception to the disability date definition: although the insured has not suffered the requisite earnings loss, Unum will consider the insured "disabled" for purposes of starting the clock on the insured's ninety-day elimination period so the insured is not delayed in receiving benefits once the earnings loss does kick in. *See* PE2 at GROSSO002266. However, for all other purposes, including for purposes of determining the "tax year just prior to" the insured's date of disability and for actually being eligible to receive benefits under the Policy, the insured is not considered disabled until they also meet the earnings loss threshold. *See* PE2 at GROSSO002266. This reading, which requires only physical disability in connection with the elimination period, is also supported by the expert testimony of Peter Hibbard, who opined that the purpose of the ninety-day elimination period was to ensure that the

company was only paying legitimate claims, i.e., that the disability was truly long term and not temporary. (ECF No. 95 at 129:23–131:1).

20 It is not this Court's prerogative to question why the CAO issues two separate Schedule K-1 forms to physicians who work in both a clinical and corporate capacity, rather than issuing a single Schedule K-1 which reflects the physician's aggregate compensation. This distribution method is insignificant to the Court given that, at bottom, both Schedule K-1's bear the same employer's name and tax identification number. *See* PE4–12; (ECF No. 95 at 29:4–20 (Dr. Grosso)).

21 For avoidance of doubt, the Court notes that it would not find the Policy's definition of "disability earnings" to be unambiguous *even if* the same limiting language were inserted, nor does the Court conclude that, given the absence of the limiting phrase, the "disability earnings" definition unambiguously *permits* consideration of income received from sources other than the insured's employer. Rather, the Court did not find the Policy's definition of "monthly earnings" to be ambiguous both because it contained a limiting directive, cabining consideration only to income received from the insured's employer, and because it defined the amount of an insured's "monthly earnings" by reference to a specific box on a standard tax form. *See* PE2 at GROSSO002267. The Policy's definition of "disability earnings" contains no similarly specific instructions.

22 Although Count II fails on substantive grounds, the Court notes that, if the Policy were an individual insurance policy, the Court would have subject matter jurisdiction to resolve the merits of Dr. Grosso's bad faith claim because Dr. Grosso properly exhausted his administrative remedies by obtaining a final decision on a complaint filed with the MIA. *See* PE43; DE16. Dr. Grosso's MIA complaint substantively alleged Unum's failure to act in good faith, and the Commissioner to the Office of Administrative Hearings ("OAH") issued a final decision on Dr. Grosso's MIA complaint on January 31, 2024. *See* PE44 at 1; PE45. Although Dr. Grosso elected to appeal the MIA's initial decision and proceed to a hearing before the OAH, a "final decision" under Md. Code Ann., Ins. § 27-1001 includes both the MIA's initial decision, if no hearing is requested, as well as the final decision of the Commissioner to the OAH after a hearing is held. *See* Md. Code Ann., Ins. §§ 27-1001 (f)(1), (f)(2)(iii), (f)(3). Thus, the final decision of the OAH on Dr. Grosso's MIA complaint is sufficient to satisfy § 3-1701(c)'s exhaustion requirement.

23 For the purposes of the Declaratory Judgment Act, a case is "otherwise within [a federal court's] jurisdiction" if the court has independent subject matter jurisdiction (for example, federal question jurisdiction, 28 U.S.C. § 1331, or diversity jurisdiction, 28 U.S.C. § 1332) over the case. *See Elec. Motor.*, 235 F. Supp. 3d at 793; *Volvo Const. Equip.*, 386 F.3d at 592.

24 Although Dr. Grosso's asserts his claim for declaratory relief pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, Maryland's Uniform Declaratory Judgments Act, Md. Code. Ann., Cts. & Jud. Proc. §§ 3-401 *et seq.*, is essentially identical in application. *See Goodwin v. Johns Hopkins Univ.*, No. MJM-25-3228, 2026 WL 3012359, at *5 & n.3 (D. Md. Oct. 7, 2026). For good measure, however, the Court notes that it would not abuse its discretion in any case because declaratory relief in this instance would serve the "useful purpose" of clarifying the rights and obligations of the parties in light of the Court's ruling on Count I. *See Torres v. Bacon*, No. MJM-25-3961, 2026 WL 979569, at *2 (D. Md. Apr. 1, 2026) ("In deciding whether to exercise its discretion to grant declaratory relief, the court should consider '(1) whether the judgment will serve a useful purpose in clarifying the legal relations in issue; or (2) whether the judgment will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.' " (quoting *White v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 913 F.2d 165, 168 (4th Cir. 1990))).

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