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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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No. A-1-CA-41564

DENNIS MURPHY, in his capacity as Personal Representative of the Wrongful Death Estate of Ruben Bonilla, Jr. and ANNIE-LAURIE COOGAN, in her capacity as Personal Representative of the Wrongful Death Estate of Serina T. Clark, as assignees for claims brought by Plaintiffs CLARKE C. COLL, Chapter 7 Trustee of the Bankruptcy Estate of Pawan Kumar Jain, M.D.,

Plaintiffs-Appellees,

v.

PROFESSIONAL UNDERWRITERS LIABILITY INSURANCE COMPANY, a foreign insurance company,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Elaine P. Lujan, District Court Judge

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OPINION

ATTREP, Judge.

{1} This case stems from protracted litigation relating to Defendant Professional Underwriters Liability Insurance Company's (PULIC) refusal to provide coverage to Pawan Jain, M.D. Jain committed malpractice that tragically resulted in numerous patient deaths, and Plaintiffs, the personal representatives of two of the deceased patients, sued Jain for wrongful death. Jain filed for bankruptcy, and his bankruptcy estate sued PULIC for its failure to provide Jain coverage against these wrongful death actions, asserting, inter alia, claims for breach of contract and bad faith, and violations of the Unfair Insurance Practices Act and the Unfair Practices Act. Plaintiffs asserted claims against Jain's bankruptcy estate; eventually, Plaintiffs settled these claims and were assigned Jain's lawsuit against PULIC. Plaintiffs' lawsuit against PULIC, as assignees of Jain, is the subject of this appeal.

{2} The principal issue we resolve in this appeal is whether documents from the New Mexico Medical Board, suspending Jain's license to practice medicine for his misconduct that resulted in patient deaths, constitute a "claim" under the "claims-made" professional liability insurance policy PULIC issued to Jain. As relevant to our review, a "claim" under the policy requires an allegation of "damages." We conclude that the plain and unambiguous meaning of the term "damages," as used in the policy, means monetary compensation. Because the New Mexico Medical

Board documents contain no allegation of money or compensation more generally, these documents do not constitute a "claim" under the policy. The district court's summary judgment ruling to the contrary was in error. This erroneous ruling had a cascading effect on the trajectory of the litigation—resulting in summary judgment being granted in Plaintiffs' favor on breach of contract and bad faith, and a jury ultimately awarding Plaintiffs $52 million in punitive damages. These rulings and the award must be reversed in light of the district court's erroneous coverage determination. The judgment in favor of Plaintiffs on their statutory claims, however, stands.

{3} As set forth in detail below, we reverse in part, affirm in part, and remand for further proceedings consistent with this opinion.

BACKGROUND

{4} This case involves a complex factual background and procedural history, with litigation spanning years. We set forth only essential facts and procedural history here and provide additional detail in the analysis of the issues.

{5} Dr. Pawan Jain was practicing as a neurologist in Las Cruces, New Mexico in 2012. At the time, Jain (or the Insured) had professional liability insurance with PULIC through a "claims-made" policy (the Policy). A "'[c]laims-made policy' covers [the] insured for claims made during the policy period, regardless of when the covered act or omission occurred, whereas [an] 'occurrence policy' provides

coverage for acts or omissions that occur within [the] policy period whether or not [the] insured or insurer learns of [the] claim during [the] policy period." 7 Jordan R. Plitt et al., *Couch on Insurance* § 102:22 n.9 (3d ed. 2026); *see also City of Santa Rosa v. Twin City Fire Ins. Co.*, 2006-NMCA-118, ¶ 3, 140 N.M. 434, 143 P.3d 196 (similar). *See generally* 3 Jeffrey E. Thomas, *New Appleman on Insurance Law Library Edition* § 20.01[5][a] (2026) (explaining that coverage under a "claims-made" policy is typically "triggered" when two events occur: "(a) the third-party claimant . . . assert[s] the claim against the insured; and (b) the insured . . . report[s] the claim to the insurer"). "In other words, [for a claims-made policy,] the insured event is the claim, not the injury." *Id.*, § 16.07[5][a]; *see also id.*, § 20.01[7][a] ("A 'claims-made' policy is triggered not by the real-world occurrence—the accident or property loss—that gives rise to a liability claim, but instead by the assertion of the resulting liability claim against the insured during the policy period."). Under the Policy at issue in this case, PULIC was responsible for covering those claims that were made against Jain and received by PULIC during the policy period.

{6} The New Mexico Medical Board (the Board) learned of allegations that Jain had been engaging in misconduct, including the overprescribing of narcotics to his patients that resulted in approximately 17 drug-toxicity deaths. In June 2012, the Board suspended Jain's medical license, sending him a notice of contemplated action and a summary suspension order (collectively, the Board Documents). In July 2012,

Jain's insurance broker became aware of Jain's license suspension and forwarded the Board Documents by email to a PULIC underwriter. Jain's broker stated that she was aware Jain's suspension would result in the cancellation of the Policy, and inquired if the Policy could be kept in place until she could confirm whether Jain would be purchasing "tail" coverage, which extends the coverage period for claims made for acts or omissions committed prior to cancellation. PULIC's underwriter responded that the Policy would need to be canceled immediately. Jain's broker further inquired about the availability of three-year tail coverage. Despite PULIC's ability to offer three-year tail coverage, PULIC's underwriter told Jain's broker that PULIC "cannot offer a 3 year tail option."

{7} Jain's Policy was canceled in August 2012. In the cancellation letter, PULIC's underwriter provided Jain options for one, five, and ten-year tail coverage. Jain did not purchase tail coverage because he did not have the funds at the time to purchase such coverage and was confident that he would not be sued. Nearly a year later, in August 2013, Plaintiffs, the personal representatives of Ruben Bonilla, Jr. and Serina Clark, two of the 17 patients whose deaths resulted in the suspension of Jain's license, filed wrongful death actions against Jain.[1] Jain reported the Bonilla lawsuit to PULIC. PULIC denied coverage, stating there was no claim made or reported

[1]Although not referred to by name in the Board Documents, the parties do not dispute that Bonilla and Clark are two of the individuals whose deaths led to the Board's investigation and the suspension of Jain's medical license.

prior to the suspension of Jain's Policy. In its communications denying coverage, PULIC quoted several provisions it claimed were drawn from the Policy, but were not in fact accurate. Because coverage was denied for the Bonilla lawsuit, Jain never reported the Clark lawsuit to PULIC.

{8} In October 2013, Jain filed for bankruptcy. In the course of the bankruptcy proceedings, Plaintiffs asserted two creditor claims—$5 million each for a total of $10 million—against Jain's bankruptcy estate. In July 2016, the bankruptcy trustee commenced this present action against PULIC on Jain's behalf. Later, as part of a settlement agreement between Plaintiffs and Jain's bankruptcy estate, Plaintiffs released their creditor claims and Jain's ex-wife paid $810,000.00 into the bankruptcy estate for distribution to Plaintiffs and assigned Plaintiffs this lawsuit. Plaintiffs subsequently dismissed their wrongful death lawsuits against Jain. In their amended complaint in this case, Plaintiffs raised claims against PULIC for (1) declaratory judgment; (2) breach of contract; (3) breach of the covenant of good faith and fair dealing; (4) violations of the Unfair Insurance Practices Act (UIPA), NMSA 1978, §§ 59A-16-1 to -30 (1984, as amended through 2026); (5) breach of fiduciary duties and insurance bad faith; and (6) violations of the Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -27 (1967, as amended through 2025).

{9} Plaintiffs and PULIC both filed motions for summary judgment directed at all of Plaintiffs' claims. The district court ruled, as a matter of law, that the language of

the Policy was ambiguous as to what constituted a valid "claim." Construing the Policy in Plaintiffs' favor, the district court ultimately determined that the Board Documents qualified as a "claim" under the Policy. As a result, the district court granted Plaintiffs summary judgment on their declaratory judgment claim, ruling that "the Insured was entitled to coverage (defense and indemnity) under the Policy for the [wrongful death] lawsuits."[2]

{10} Based on this conclusion, the district court ruled that PULIC breached its contract by failing to defend and indemnify Jain against the wrongful death lawsuits, failed to conduct a proper investigation into whether they were obligated to provide coverage, and committed insurance bad faith. Based on its coverage and failure to defend rulings, the district court denied PULIC summary judgment on its affirmative defense that misrepresentations Jain made in his policy renewal application voided the Policy. The court also ruled that PULIC violated the UIPA in numerous ways. The district court further ruled that Plaintiffs' damages for breach of contract were limited to the $810,000.00 paid into the bankruptcy estate, plus the fees and costs Jain incurred in defending the wrongful death lawsuits for which PULIC denied coverage. The district court rejected Plaintiffs' argument that the measure of

[2]Regrettably, it does not appear that PULIC sought interlocutory appellate review of the district court's coverage decision.

damages includes the $10 million in creditor claims from the bankruptcy proceedings.

{11} At trial, three issues remained: (1) whether PULIC violated the UPA, (2) whether Plaintiffs were entitled to compensatory damages on their bad faith and UIPA claims, and (3) whether Plaintiffs were entitled to punitive damages. Ultimately, the district court granted a directed verdict in favor of PULIC on the issue of compensatory damages, finding that Plaintiffs had failed to prove damages beyond the $810,000.00 already awarded on their breach of contract claim. At the conclusion of trial, the district court instructed the jury that it was required to accept as true that PULIC received a timely claim under the Policy; breached its insurance contract by not providing coverage, a defense, and indemnity to Jain; committed insurance bad faith; and violated the UIPA. The jury found that PULIC's actions in misrepresenting the availability of three-year tail coverage violated the UPA. The jury also found that PULIC's conduct was "in reckless disregard for the interests of the [I]nsured, based on a dishonest judgment, or otherwise malicious, willful, or wanton," and assessed $52 million in punitive damages against PULIC. The district court entered judgment against PULIC, awarding Plaintiffs $810,000.00 in compensatory damages on Plaintiffs' breach of contract, bad faith, and UIPA claims; $100 in statutory damages on Plaintiffs' UPA claim; and $52 million in punitive

damages. PULIC filed an appeal from this judgment. Plaintiffs did not file a cross-appeal.

DISCUSSION

{12} In this appeal, PULIC challenges many of the district court's summary judgment rulings, and the resulting judgment, on all of Plaintiffs' claims, with the exception of their UPA claim. We take these asserted errors up in turn. First, we review the district court's coverage ruling based on its conclusion that the Board Documents constituted a "claim" under the Policy. Concluding the district court erred in this regard, we next take up the district court's summary judgment rulings that were dependent upon its erroneous coverage ruling. As we explain, the grant of summary judgment for Plaintiffs on their breach of contract and insurance bad faith claims falls with the district court's erroneous coverage ruling. Similarly, the district court's ruling on PULIC's affirmative defense of material misrepresentation also must be reversed. Then, we turn to PULIC's challenges to Plaintiffs' UIPA claim, and, for the reasons explained, affirm judgment in Plaintiffs' favor on this claim. Having resolved PULIC's claims of error, we address Plaintiffs' claims of error pertaining to the district court's rejection of the $10 million in creditor claims from the bankruptcy proceeding as a measure of damages in this lawsuit, and affirm the district court's rulings in this regard. Finally, we delineate the portions of the

judgment that remain, in light of all of our rulings. Before turning to the parties' challenges, we set out the standard of review.

I. Standard of Review

{13} The parties' claimed errors on appeal relate in large part to the district court's rulings at summary judgment. The parties' challenges to the summary judgment rulings come after trial on the merits and entry of final judgment. Such rulings are not universally reviewable on appeal.

{14} On the one hand, the grant of partial summary judgment, resolving purely legal issues, generally is reviewable after entry of final judgment following a trial on the merits. *See Bd. of Trs. of Vill. of Los Ranchos de Albuquerque v. Sanchez*, 2004-NMCA-128, ¶ 13, 136 N.M. 528, 101 P.3d 339 (indicating a series of New Mexico cases in which a grant of partial summary judgment "was reviewed on appeal after a trial on the merits had been held for a final order entered"); 5 C.J.S. *Appeal and Error* § 869 (2026) ("Under the rule that the appeal from a final judgment draws in question on review all prior nonfinal orders and decrees, whether interlocutory or intermediate, provided the order or ruling bears the requisite relationship to the judgment appealed, the court's ruling on a summary judgment motion granting . . . summary judgment is reviewable on appeal from a final judgment." (footnotes omitted)). On the other hand, as a general rule, the "denial of a motion for summary judgment is not reviewable after final judgment on the merits.

If a summary judgment motion is improperly denied, the error is not reversible for the result becomes merged in the subsequent trial." *Green v. Gen. Accident Ins. Co. of Am.*, 1987-NMSC-111, ¶ 19, 106 N.M. 523, 746 P.2d 152. This general rule holds true where the trial court denies a motion for summary judgment on the ground that genuine issues of material fact exist. *See Dart v. Westall*, 2018-NMCA-061, ¶ 4, 428 P.3d 292. This general rule yields, and post-trial review of the denial of summary judgment is permitted, under narrow circumstances—where "(1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law which does not depend to any degree on facts to be addressed at trial, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom." *Gallegos v. State Bd. of Educ.*, 1997-NMCA-040, ¶ 12, 123 N.M. 362, 940 P.2d 468. Under these circumstances, "the appellant may include in the appeal the purely legal issues that were argued unsuccessfully in the motion for summary judgment, and the appellant need not have renewed that legal issue during trial to preserve it." *Id.*

{15} To the extent the district court's orders granting or denying summary judgment are properly before this Court, our review is de novo. *United Nuclear Corp. v. Allstate Ins. Co.*, 2012-NMSC-032, ¶ 9, 285 P.3d 644. "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Romero v. Philip Morris Inc.*, 2010-NMSC-

035, ¶ 7, 148 N.M. 713, 242 P.3d 280 (internal quotation marks and citation omitted); *see* Rule 1-056(C) NMRA.

II. The Existence of a Claim Under the Policy

{16} The principal question we address in this appeal is whether the Board Documents constitute a "claim" under the specific terms of the Policy issued by PULIC to Jain.[3] This inquiry is highly dependent upon the terms of the policy

[3]As discussed in the next section, we remand this case for further proceedings on Plaintiffs' claim that PULIC breached its duty to defend, among other claims. *See infra* Part III, ¶¶ 42-48. This Court instructed that the duty to defend should be resolved independent of coverage and prior to the resolution of contract-based defenses. *See Dove v. State Farm Fire & Cas. Co.*, 2017-NMCA-051, ¶ 15, 399 P.3d 400 ("In a breach of the duty to defend case, the district court should not attempt to determine the merits of the underlying claim in the primary action, i.e., whether the claim was *actually* covered. That is because an insurer who unilaterally refuses to defend effectively waives its ability to later challenge the underlying merits as to coverage because the ultimate question of coverage is to be properly resolved in the primary action in order to protect the interests of the insured and for judicial efficiency. In other words, the question in a breach of duty to defend action is less exacting—and thus easier for the claimant to prevail on—than the underlying question presented when the parties are disputing whether there is coverage." (citations omitted)); *D.R. Horton, Inc. v. Trinity Universal Ins. Co.*, 2024-NMCA-054, ¶ 1, 553 P.3d 463 ("As a policy matter, New Mexico law prioritizes the duty to defend over potential contract defenses—like the failure to give notice. Thus, if a jury determines that the insurer breached the duty to defend, the insurer 'suffers serious consequences,' including the loss of certain contract-based defenses—like the insured's failure to give notice. As a result, under New Mexico law, when the duty to defend remains in dispute, summary judgment may not be granted on defenses that implicate the insured's breach of the insurance contract provisions." (citations omitted)); *id.* ¶ 19 ("[I]f the insurance company fails to defend after a demand, it loses the right to claim that the insured breached policy provisions. Thus, if the duty to defend was triggered, that issue must be resolved before the defense that the insured breached the policy comes into play." (internal quotation marks and citations omitted)). This is because an insurer that has breached its duty to defend

language before us, in light of applicable contract construction principles. We thus start with a brief overview of the law governing the interpretation of contracts, and specifically insurance policies. Next, we set out the relevant terms of the Policy. And lastly, applying the pertinent law to the Policy terms, we answer the question posed—i.e., whether the Board Documents constitute a "claim" under the terms of the Policy—in the negative. *See generally City of Santa Rosa*, 2006-NMCA-118, ¶¶ 6-18 (utilizing a similar framework to decide whether a charge of discrimination constituted a claim within the meaning of the claims-made policy at issue in that case).

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may be found to have waived certain defenses or arguments. *See Dove*, 2017-NMCA-051, ¶ 15; *D.R. Horton, Inc.*, 2024-NMCA-054, ¶¶ 1, 19. In this case, the parties do not discuss whether the absence of a "claim" under the Policy should be treated as a contract-related defense—resolved after the duty to defend—or instead should be treated as a threshold matter—resolved independently at the outset. Instead, the parties appear to assume the latter, and we follow suit. Further, whether the absence of a "claim" under the Policy, as we find below, might serve entirely to foreclose Plaintiffs' breach of contract and bad faith claims, or might instead be factored into the duty to defend analysis as part of ascertaining whether the insured's actions were "not arguably covered by the policy," is a matter left for resolution on remand, *see infra* Part III, ¶ 48. *See D.R. Horton, Inc.*, 2024-NMCA-054, ¶ 17 (explaining that "an insurer is not defenseless when facing allegations that it has breached the duty to defend" because "[t]he insurer may assert that the claim is not arguably covered by the policy, the insurer did not receive actual notice of the claim, the insurer conducted a reasonable investigation, or that the insured declined a defense").

A. Applicable Law

{17} "Under New Mexico law the obligation of a liability insuror is contractual and is to be determined by the terms of the policy. The clauses in the policy must be construed as intended to be a complete and harmonious instrument designed to accomplish a reasonable end." *Safeco Ins. Co. of Am. v. McKenna*, 1977-NMSC-053, ¶ 18, 90 N.M. 516, 565 P.2d 1033 (citations omitted). "Words and terms used in a contract are to be construed to effect the intent of the parties. In accomplishing this construction, the words and terms must be read in their usual and ordinary sense, unless some different meaning is required. If in fact ambiguity exists in the language of an insurance contract, then it should be construed liberally in favor of the [i]nsured. However, resort will not be made to a strained construction for the purpose of creating an ambiguity when no ambiguity in fact exists." *Cain v. Nat'l Old Line Ins. Co.*, 1973-NMSC-121, ¶ 7, 85 N.M. 697, 516 P.2d 668 (citations omitted).

{18} "We construe the insurance policy as a whole and determine whether ambiguities exist in the language of the contract." *Davis v. Farmers Ins. Co. of Ariz.*, 2006-NMCA-099, ¶ 7, 140 N.M. 249, 142 P.3d 17; *accord Crawford Chevrolet, Inc. v. Nat'l Hole-in-One Ass'n*, 1992-NMSC-024, ¶ 10, 113 N.M. 519, 828 P.2d 952 ("In determining whether an ambiguity exists in an insurance contract, we consider the policy as a whole."). "The mere fact that the parties are in disagreement on [the] construction to be given to the contract does not necessarily establish an ambiguity."

Levenson v. Mobley, 1987-NMSC-102, ¶ 7, 106 N.M. 399, 744 P.2d 174. Instead, for ambiguity to be found, (1) "the contract must be fairly susceptible to different constructions," and (2) "the [insured's] interpretation must be reasonable." *See Gardner-Zemke Co. v. State*, 1990-NMSC-034, ¶ 18, 109 N.M. 729, 790 P.2d 1010; *see also United Nuclear Corp*, 2012-NMSC-032, ¶¶ 10-11 (explaining that a policy term will be found ambiguous only if the "term is reasonably and fairly susceptible of different constructions," and "so long as both constructions are reasonable" (internal quotation marks and citation omitted)). The party seeking to have a contract construed in their favor as ambiguous—here, Plaintiffs—bears the burden of demonstrating that the material terms of the contract are ambiguous. *See Health Plus of N.M., Inc. v. Harrell*, 1998-NMCA-064, ¶ 10, 125 N.M. 189, 958 P.2d 1239 ("When construing the language of an insurance contract, the [insured] has the burden of showing that the language of the contract is ambiguous."); *Farmington Police Officers Ass'n Commc'n Workers of Am. Local 7911 v. City of Farmington*, 2006-NMCA-077, ¶ 16, 139 N.M. 750, 137 P.3d 1204 ("[W]here the meaning of a material contract term is in dispute a party seeking affirmative relief based upon its interpretation necessarily bears the burden of establishing that its interpretation controls.").

{19} "Typically, the determination that a term in an insurance policy is ambiguous is a matter of law rather than a factual determination." *United Nuclear Corp.*, 2012-

NMSC-032, ¶ 39 (internal quotation marks and citation omitted). "Where there are no disputed material facts, . . . courts routinely view construction of a term in an insurance policy as purely a question of law." *Id.* (internal quotation marks and citation omitted). Because there are no relevant facts in dispute, our review is de novo. *See id.* ¶ 9 ("[T]he interpretation of terms within an insurance policy is a matter of law about which the court has the final word, and is subject to de novo review." (internal quotation marks and citations omitted)).

B. Relevant Policy Provisions

{20} The Policy is conspicuously and repeatedly marked as a "claims-made" policy, making clear that "this insurance is limited to liability for only those CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD." The Policy Period ran from January 1, 2012, to January 1, 2013, with a Retroactive Date of January 1, 2005.[4] PULIC canceled the Policy effective August 28, 2012, making the Claims Reporting Period January 1, 2005, to August 28, 2012.[5] The Policy contains the following provisions relevant to our analysis.

[4]The professional liability insurance policy at issue in this case uses words beginning with capital letters to denote defined terms and other terms of art within the Policy. For readability, we do the same—whenever a defined term or other term of art within the Policy is referenced, we simply capitalize the word without placing quotation marks around it.

[5]"'Claims Reporting Period' means the period from the Retroactive Date of the Policy at 12:01 a.m. to the date of cancellation or nonrenewal of this Policy at 12:01 a.m. . . . ."

MEDICAL PROFESSIONAL LIABILITY - The Company will pay on behalf of the Insured, but not more than the Limits of Liability, *all sums which the Insured shall become legally obligated to pay as Damages because of any Claim against the Insured for Injury* because of an Incident involving Professional Services if the Claim is first made during the Claims Reporting Period.

. . . .

DEDUCTIBLE PROVISIONS:

The following provisions apply to the deductible amount shown in the Declarations:

The deductible amount shown in the Declarations applies to each Claim and includes all Defense Fees and Supplementary Payments and *any indemnity payments made under the Policy as Damages*.

. . . .

DEFINITIONS:

When used in this Policy:

. . .

"Claim" means both the receipt by the Insured of written notice received from the injured party or a representative of the injured party and *a written notice* filed by the Insured and received by the Company *that alleges Damages to an injured party* from an Incident, provided the Incident occurred during and is received by the Company during the Claims Reporting Period; the Company requires that the written notice contain a description of specific events, *the nature of the possible Injury*, and the alleged error or omission;

. . .

"Damages" means *including Damages for death and for care and loss of services resulting from Injury*; "Damages" as used *does not include any sums demanded or awarded* as fines, statutory penalties, punitive

> or exemplary damages, the restitution of consideration and expenses paid to the Insured for services or goods or judgments or awards arising from acts or omissions deemed uninsurable by law;
>
> . . .
>
> "Injury" means Bodily Injury, sickness or disease sustained by any person.[6]

C. The Board Documents Do Not Constitute a Claim

{21} Plaintiffs do not dispute that the Bonilla and Clark lawsuits—having been filed and reported to PULIC well outside the Claims Reporting Period, if at all[7]—do not qualify as *timely* Claims under the Policy. Nor do the parties dispute that the Board Documents were sent to PULIC during the Claims Reporting Period.[8] The disputed question is whether the Board Documents qualify as a Claim within the meaning of the Policy. As relevant to our resolution of this question is the requirement in the Policy that a "'Claim' means . . . a written notice filed by the Insured and received by the Company that *alleges Damages to an injured party* from

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[6]We italicize portions of the Policy language here and elsewhere in the opinion for emphasis.

[7]The parties do not contest that because PULIC denied coverage for the Bonilla lawsuit, Jain never submitted the Clark lawsuit to PULIC.

[8]The parties disputed below and continue to dispute on appeal whether the Board was "a representative of the injured party" for purposes of the additional requirement that a Claim means "the receipt by the Insured of written notice received from the injured party or a representative of the injured party." Even if we assume for purposes of this opinion that the Board was such a representative of Bonilla and Clark, the Board Documents fail to meet the requirements of a Claim under the Policy because, as we discuss, they do not allege Damages. We therefore do not separately analyze whether "representative" as used in the Policy is ambiguous.

an Incident . . . .” Damages in turn “means including Damages for death and for care and loss of services resulting from Injury . . . .” The parties below and now on appeal dispute the meaning of Damages, as used in the Policy. In brief, PULIC contends that Damages unambiguously and exclusively means monetary compensation for an injury or loss, while Plaintiffs contend that the meaning of Damages is ambiguous and can fairly mean the injury or loss itself. It is undisputed that the Board Documents did not allege or even mention money, or compensation more generally, for the patient deaths. Instead, the Board Documents only mention the fact of the patient deaths (the injury itself). Thus, whether the meaning of Damages encompasses the reference to patient deaths in the Board Documents is dispositive of whether a Claim was made.

{22} Faced with this issue, the district court ruled on cross-motions for summary judgment that the term Damages was ambiguous; Plaintiffs’ proposed interpretation was reasonable; and, construing the Policy in the Insured’s favor, Plaintiffs’ interpretation would prevail and coverage would be found. The district court reasoned:

> “Damages” is a term of art but is incompletely defined tautologically as a concept that includes (but is not necessarily limited to) itself (“Damages”). While the Policy describes what is not included within its definition of “Damages” (fines, punitive damages), it does not describe with any clarity its own parameters for what is actually and exclusively/exhaustively intended to be included within its ambit. The Policy states only that “Damages” “include[] Damages for death and for care and loss of services resulting from injury.”

> The [c]ourt agrees with Plaintiff[s] that "Damages" is ambiguous. Given the plain language of the Policy and its self-referential "definition" of damages, the question for the [c]ourt is simply whether Plaintiff[s'] interpretation of the term is reasonable. It is. The Policy does not equate the term "Damages" solely with monetary compensation for injury caused by Jain's professional services, but also reasonably includes the fact of the underlying injury, the fact of death. . . . [C]overage triggered by notice of the fact of injury is a reasonable interpretation of the ambiguous term "Damages" as it is used in the Policy.

(First alteration in original.) The district court entered summary judgment in favor of Plaintiffs on Count I (declaratory judgment), ruling that "PULIC received the Ruben Bonilla, Jr. and Serina Clark 'Claims' within the 'Claims Reporting Period' as both terms are defined in the Policy and the Insured was entitled to coverage (defense and indemnity) under the Policy for the lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013." For the reasons that follow, we cannot agree with the district court's analysis.

{23} To summarize, first, the district court erroneously determined ambiguity in a vacuum—without looking to the entire Policy to determine whether the term Damages was in fact ambiguous. *See United Nuclear Corp.*, 2012-NMSC-032, ¶ 16 (explaining that "[i]nsurance policy terms cannot be analyzed in a vacuum, and a policy must be construed in its entirety, with each clause interpreted in relation to others contained therein" (internal quotation marks and citation omitted)); *Allsup's Convenience Stores, Inc. v. N. River Ins. Co.*, 1999-NMSC-006, ¶ 27, 127 N.M. 1,

976 P.2d 1 ("[T]he language of the entire agreement should be construed together. Thus a single sentence or paragraph may not be selected as the entire dependence for the determination that a contract is clear and plain as to its meaning, or that it is uncertain, indefinite, and ambiguous." (internal quotation marks and citations omitted)). Because the district court viewed the term Damages as ambiguous, the court should have then "look[ed] to whether [its] meaning and intent is explained by other parts of the policy." *See Rummel v. Lexington Ins. Co.*, 1997-NMSC-041, ¶ 20, 123 N.M. 752, 945 P.2d 970.

{24} Second, the district court erroneously concluded that Plaintiffs' proposed interpretation of Damages, to mean the injury itself, was reasonable—without considering whether this interpretation was an ordinary and usual meaning of the word "damages," and without taking into account the long-standing legal distinction between "damages" and "injury," as also recognized by the Policy's separate definitions of Damages and Injury. *See Cain*, 1973-NMSC-121, ¶ 7 ("Words and terms used in a contract are to be construed to effect the intent of the parties. In accomplishing this construction, the words and terms must be read in their usual and ordinary sense, unless some different meaning is required." (citation omitted)); *cf. Battishill v. Farmers All. Ins. Co.*, 2006-NMSC-004, ¶ 8, 139 N.M. 24, 127 P.3d 1111 ("[A]n insurance policy is not rendered ambiguous merely because a term is not defined; rather, the term must be interpreted in its usual, ordinary, and popular

sense." (internal quotation marks and citation omitted)). We explain our conclusions as to each error in turn.

1. Viewing the Policy as a Whole, the Meaning of the Term Damages Is Unambiguous

{25} Although we do not disagree with the district court that the Policy definition of Damages is tautological (i.e., circular) or that the definition explicitly provides what is excluded but not what is included, we disagree with the district court that the circularity or non-exhaustive nature of the Damages definition in the Policy renders it ambiguous. We conclude that the Policy, read as a whole, defines Damages clearly and unambiguously.

{26} As an initial matter, circularity in a contract definition is not necessarily objectionable. As one commentator has explained, because defined terms in a contract differ from words defined in a dictionary, it is "unobjectionable to repeat a contract defined term in the definition, as in *'Trademark' means a registered trademark or service mark or any trademark or service mark that is the subject of any application, registration, or renewal*." Kenneth A. Adams, *A Manual of Style for Contract Drafting* 189 (5th ed. 2023). That is to say, "Dictionaries shouldn't use in a definition the term being defined—it would be unhelpful for a dictionary definition of, say, *chair* to include the word *chair*. By contrast, a defined term simply serves as a convenient substitute for the definition, and only for that contract." *Id.*; *see also id.* (explaining that "[a] defined term makes a contract easier to read by

allowing the drafter to use throughout the contract the shorter defined term instead of the longer definition"). Given the structure of the Policy definition of Damages—which first sets out a non-exhaustive shorthand for the term Damages (i.e., "'Damages' means *including* Damages for death and for care and loss of services resulting from Injury") and then sets out a list of items specifically excluded from the term Damages (i.e., "'Damages' as used does not include any sums demanded or awarded as fines, statutory penalties, punitive or exemplary damages, . . . ")—the Policy does not attempt to "define" Damages in the dictionary sense but instead simply provides a convenient shorthand whenever the term is used in the Policy. *See id.*; *cf. AIU Ins. Co. v. Super. Ct.*, 799 P.2d 1253, 1259 n.3 (Cal. 1990) (in bank) (treating the term "damages" in an insurance policy as undefined where the "definition" of the term, which is substantially the same as the one at issue in this case, "states merely that 'damages' includes certain specified items" and "there is no indication that this brief list is intended as a limit on definition of the term" (emphasis omitted)). Viewed in this light, what the district court identified as deficiencies in the Policy definition of Damages are insufficient in themselves to render the term ambiguous.[9]

[9]The parties have not cited any cases in New Mexico or elsewhere directly addressing whether contract ambiguity may be based principally on the circularity of a defined term, as the district court ruled. We are unaware of any such case law in New Mexico but have looked outside our state and discovered that other jurisdictions have frequently dealt with this scenario. Some conclude circularity in

{27} More significantly, though, the district court's singular focus on the definitional clause of Damages to determine ambiguity runs counter to well-established principles of contract interpretation in New Mexico. "In determining whether there is an ambiguity, [courts] consider the *entire* contract and not selected portions thereof." *Lindbeck v. Bendziunas*, 1972-NMCA-074, ¶ 6, 84 N.M. 21, 498 P.2d 1364 (emphasis added). "Thus a single sentence or paragraph may not be selected as the entire dependence for the determination that a contract is clear and plain as to its meaning, or that it is uncertain, indefinite, and ambiguous." *Allsup's*

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the definition of a term renders the term ambiguous. *See, e.g.*, *Crabtree v. State Farm Ins. Co.*, 632 So.2d 736, 744 (La. 1994) (concluding the term "bodily injury" is ambiguous because, among other things, "the definition is circular in that the term being defined is used within its own definition"). Others, though, conclude that such circularity is insufficient in and of itself to render a term ambiguous and turn to the greater context of the contract to determine ambiguity. *See, e.g.*, *Hawthorne v. Migoni*, 5th Dist. Tuscarawas No. 2003AP070054, 2004-Ohio-378, ¶ 13 ("An insurance policy provision is ambiguous when it is reasonably susceptible of more than on[e] interpretation. We do not find the inclusion of the words 'bodily injury' in the definition of the term 'bodily injury' results in the term being susceptible to more than one interpretation." (citation omitted)); *Safe Auto Ins. Co. v. Berlin*, 2010 PA Super 31, ¶ 9, 991 A.2d 327 (2010) (rejecting third-party beneficiary's argument that circular definitions of policy terms rendered them ambiguous when the third-party beneficiary "fail[ed] to offer any interpretation of the policy[] . . . that demonstrates how the policy's syntactical faux pas amounts to a tangible variance between two logical interpretations of the same language"); *see also, e.g.*, *Me. Mut. Fire Ins. Co. v. Grant*, 674 A.2d 503, 506 (Me. 1996) ("Nor does the circular use of the term 'insured' to define who is an 'insured' render the clause ambiguous."). We find this latter line of case law more persuasive because it is aligned with New Mexico's approach to contract ambiguity in general—which, as we discuss, examines whether a contractual provision is reasonably susceptible of different interpretations in light of the contract as a whole. *See infra* Part II.C.1, ¶ 27.

Convenience Stores, Inc., 1999-NMSC-006, ¶ 27 (internal quotation marks and citations omitted); *see also, e.g.*, *Safeco Ins. Co. of Am.*, 1977-NMSC-053, ¶ 18 ("The clauses in the policy must be construed as intended to be a complete and harmonious instrument designed to accomplish a reasonable end."). This means, "[i]f any provisions appear questionable or ambiguous, [courts] will first look to whether their meaning and intent is explained by other parts of the policy." *Rummel*, 1997-NMSC-041, ¶ 20.

{28} We thus turn to other relevant portions of the Policy to discern the meaning of the term Damages. *See United Nuclear Corp.*, 2012-NMSC-032, ¶ 16 ("Our inquiry [into whether a contract term is ambiguous] begins with the other relevant terms of the [p]olicies."). Throughout the Policy, the term Damages is used exclusively to refer to sums of money demanded, awarded, obligated to be paid, or made. In the insuring clause, for instance, Damages refers to the sums of money the Insured becomes legally obligated to pay on a Claim:

> MEDICAL PROFESSIONAL LIABILITY - The Company will pay on behalf of the Insured, but not more than the Limits of Liability, *all sums which the Insured shall become legally obligated to pay as Damages because of any Claim* against the Insured for Injury because of an Incident involving Professional Services if the Claim is first made during the Claims Reporting Period.

See Sum, *Black's Law Dictionary* (12th ed. 2024) (defining "sum" as "[a] quantity of money"). Next, in the deductible clause, Damages refers to indemnity payments made under the Policy:

> DEDUCTIBLE PROVISIONS:
>
> The following provisions apply to the deductible amount shown in the Declarations:
>
> The deductible amount shown in the Declarations applies to each Claim and includes all Defense Fees and Supplementary Payments and *any indemnity payments made under the Policy as Damages*.

In this context, an "indemnity payment" means the delivery of money (by the insurer) in satisfaction of any loss, damage, or liability incurred by another (the insured). *See Indemnity*, *Black's Law Dictionary* (12th ed. 2024) (defining "indemnity" as "[a] duty to make good any loss, damage, or liability incurred by another"); *Payment*, *id.* (defining "payment" as "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation"). Lastly, in the definition of Damages itself, the definition refers to sums of money demanded or awarded that are excluded from coverage—i.e., that PULIC is not responsible for paying under the Policy:

> "Damages" as used does not include *any sums demanded or awarded* as fines, statutory penalties, punitive or exemplary damages, the restitution of consideration and expenses paid to the Insured for services or goods or judgments or awards arising from acts or omissions deemed uninsurable by law.

{29} Simply put, the term Damages is consistently used throughout the Policy to reference sums of money demanded, awarded, obligated to be paid, or made. It is reasonable and logical to read the term Damages in the first clause of the Damages definition in this same way—to mean *sums of money demanded, awarded, obligated*

to be paid, or made "for death and for care and loss of services resulting from Injury." *See Safeco Ins. Co. of Am.*, 1977-NMSC-053, ¶ 21 (concluding there was "nothing unreasonable or illogical" about reading a term within the disputed clause of the insurance policy in the same manner in which the term was used in "numerous" other places in the policy); *see also Rummel*, 1997-NMSC-041, ¶¶ 29-30 (examining various sections of an insurance policy to discern the meaning of the phrase "held liable" in another section of the policy); *Lindbeck*, 1972-NMCA-074, ¶ 11 (examining contractual terms in the context of the contract as a whole to discern their meaning and conclude they are unambiguous).

{30} What is more, the Policy distinguishes between the terms Damages and Injury. The Policy separately defines Injury as "Bodily Injury, sickness or disease sustained by any person." The district court's construction of Damages to mean injury itself overlooks the fact that Injury is a defined term in the Policy. In addition, Injury is used to define Damages—i.e., Damages means "Damages . . . for care and loss of services *resulting from Injury*." The Policy plainly distinguishes between Injury sustained by a person and resulting Damages from the Injury—a legal distinction that, as we discuss, is well-recognized and long-standing. *See infra* Part II.C.2.b, ¶¶ 37-38. The district court's construction of the term Damages to mean injury itself ignores this distinction.

{31} In sum, when viewed within the context of the Policy as a whole, the term Damages does not appear fairly susceptible to different constructions—it instead clearly and unambiguously refers to monetary amounts, as PULIC argues. We therefore cannot agree with the district court's contrary conclusion, based narrowly on the definitional clause of the term Damages.

2. The Interpretation of the Term Damages Advanced by Plaintiffs and Accepted by the District Court Is Not Reasonable

{32} Our conclusion above—that the term Damages is not "fairly susceptible to different constructions"—is sufficient to resolve the question of ambiguity; we nevertheless review the district court's separate ruling that Plaintiffs' interpretation of the term Damages is "reasonable." *See Gardner-Zemke Co.*, 1990-NMSC-034, ¶ 18 (explaining that for an ambiguity to exist, "the [proposed] interpretation must be reasonable *and* the contract must be fairly susceptible to different constructions" (emphasis added)). To reiterate, the district court ruled—as Plaintiffs argue on appeal—that the term Damages reasonably means the injury, or death, itself. Looking to the ordinary and usual meaning of the word "damages" and the long-standing legal distinction between "damages" and "injury"—one also drawn in the Policy—we cannot agree.

a. The ordinary and usual meaning of "damages"

{33} Plaintiffs, in advancing their argument that the term Damages can reasonably mean the injury itself, rely on dictionary definitions.[10] Specifically, Plaintiffs cite the

[10]Although Plaintiffs rely on dictionary definitions to support their ambiguity argument, they suggest reference to such definitions is impermissible when a term is defined in the contract. We do not find this point to be well-taken—particularly where, as here, the definition of the term in question is not akin to a dictionary definition but rather is a convenient shorthand for the term Damages whenever it is used in the Policy. *See supra* Part II.C.1, ¶ 26; *cf., e.g.*, *Menge v. GEICO Gen. Ins. Co.*, 358 A.3d 912, 919 (R.I. 2026) (turning to the *Black's Law Dictionary* definition of a term where the policy definition of the term was circular); *Rose's 1, LLC v. Erie Ins. Exch.*, 290 A.3d 52, 60 n.18 (D.C. 2023) ("Given this circular definition of [an insurance term], we keep in mind the common understanding of the term, [as found in an American English dictionary]."). Moreover, New Mexico courts have, as a general matter, utilized dictionary definitions to construe the meaning of defined terms in contracts, including insurance policies. *See, e.g.*, *Davis*, 2006-NMCA-099, ¶¶ 9-11 (turning to dictionary definitions to construe the meaning of a term defined in an insurance policy); *Miller v. Triad Adoption & Counseling Servs., Inc.*, 2003-NMCA-055, ¶ 13, 133 N.M. 544, 65 P.3d 1099 (utilizing the ordinary meaning of a term defined in an insurance policy to evaluate whether an ambiguity existed based on the insured's proposed interpretation of the term). And courts outside New Mexico examining "definitions" of the term "damages" nearly identical to the one before us have utilized dictionary definitions to resolve whether the term "damages" is ambiguous and determine its meaning. *See, e.g.*, *AIU Ins. Co.*, 799 P.2d at 1259 n.3, 1267 (turning to dictionary definitions to construe the meaning of the term "damages" where the policy "defined" the term "damages" as "'damages' includes damages for death and for care and loss of services resulting from personal injury and damages for loss of use of property resulting from property damage"); *New Castle Cnty. v. Hartford Accident & Indem. Co.*, 673 F. Supp. 1359, 1365, 1365 n.9 (D. Del. 1987) (turning to the "ordinary, usual meaning" of the term "damages" found in *Webster's Third New International Dictionary* (1971) where, similarly to this case, the term was defined tautologically as "'damages' includes damages for death and for care and loss of services resulting from bodily injury" and thus was "of little help"); *Nat'l Indem. Co. v. U.S. Pollution Control, Inc.*, 717 F. Supp. 765, 767 (W.D. Okla. 1989) (similar).

definition of the singular word "damage." The district court accepted Plaintiffs' interpretation, ruling that Damages "also reasonably includes the fact of the underlying injury, the fact of death." For the reasons that follow, we disagree.

{34} First, while the ordinary and usual meaning of a policy term, as found in dictionary definitions, may be useful in determining whether a policy term is ambiguous and discerning its meaning, Plaintiffs' reliance on the dictionary definition of the singular word "damage" is misplaced. *See generally United Nuclear Corp.*, 2012-NMSC-032, ¶¶ 18-19 (looking to dictionary definitions, after examining the policy language, to determine whether the policy term in question is ambiguous); *Cain*, 1973-NMSC-121, ¶ 7 ("In accomplishing [a] construction [that effectuates the parties' intent], the words and terms must be read in their usual and ordinary sense, unless some different meaning is required."). This is because the singular word "damage" and the plural word "damages" have distinct meanings. *See Am. Stevedores, Inc. v. Porello*, 330 U.S. 446, 450 n.6 (1947) ("[T]here is a distinction between damage and damages. *Black's Law Dictionary* cautions that the word 'damage,' meaning 'loss, injury, or deterioration,' is 'to be distinguished from its plural,—'damages,'—which means a compensation in money for a loss or damage.'").

{35} Looking to American English, legal, and insurance dictionaries, the singular "damage" uniformly is defined as loss, injury, or harm to a person or property, while

the plural "damages" uniformly is defined as sums of money awarded, claimed, or paid as reparation for loss or injury. *Compare Damage*, *Black's Law Dictionary* (12th ed. 2024) (defining "damage" as "[l]oss or injury to person or property; esp., physical harm that is done to something or to part of someone's body"), *with Damages*, *id.* (defining "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury" or "money legally owed or paid under an insurance provision in a liability policy for a legal or equitable claim asserted against the insured")); *compare also, e.g.*, *Damage*, *New Oxford American Dictionary* (3d ed. 2010) (defining "damage" as "physical harm caused to something in such a way as to impair its value, usefulness, or normal function"); *and Damage*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/damage (last visited Nov. 17, 2026) (defining "damage" as "loss or harm resulting from injury to person, property, or reputation"), *with, e.g.*, *Damages*, *New Oxford American Dictionary* (3d ed. 2010) (defining "damages" as a "sum of money claimed or awarded in compensation for a loss or an injury"); *and Damages*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/damages (last visited Nov. 17, 2026) (defining "damages" as "money awarded to a party in a legal action as reparation for loss or injury"). *See also, e.g.*, Restatement (Second) of Torts § 902 (1979) ("'Damages' means a sum of money awarded to a person injured by the tort of another."); *Damages*, *Dictionary of Insurance Terms* (6th ed. 2013) (defining

"damages" as the "sum the insurance company is legally obligated to pay an insured for losses incurred"); *AIU Ins. Co.*, 799 P.2d at 1267 ("Whatever their semantic differences, the statutory and dictionary definitions of 'damages' share several basic concepts. Each requires there to be 'compensation,' in 'money,' 'recovered' by a party for 'loss' or 'detriment' it has suffered through the acts of another." (footnote omitted)).

{36} Stated simply, "damages," plural, is not simply more than one "damage," singular. Instead, "damages" has a meaning distinct and different from "damage." It is only the plural word "damages" that is used throughout the Policy and as part of the Policy definition of Claim—i.e., "a written notice . . . that alleges Damages." And only the ordinary and usual meaning of the word "damages," as found in dictionary definitions, is in line with how the term Damages is used throughout the Policy—the ordinary and usual meaning of the singular word "damage" is not.[11]

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[11]We additionally observe that the district court's construction of the term Damages to mean "the fact of the underlying injury, the fact of death" would require us to excise words in the Damages definition: "'Damages' means including ~~Damages for~~ death and ~~for care and loss of services resulting from~~ Injury." This we will not do. *See Lindbeck*, 1972-NMCA-074, ¶ 14 (rejecting claims of ambiguity where they "disregard express contract provisions and are unreasonable when the contract is considered as a whole"). As PULIC argues, "[t]he word 'for' is a preposition which, in the phrase 'Damages for death,' indicates a 'because of' or 'on account of' relationship between its subject and object, not an equivalence." *See For*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/for (last visited Nov. 17, 2026); *see also Rummel*, 1997-NMSC-041, ¶¶ 20, 26 (providing that "[t]he traditional rules of punctuation, syntax, and grammar may also help clarify a contractual ambiguity" and "[t]he rules of semantics and grammar will

b. The legal distinction between "damages" and "injury"

{37} Second, interpreting Damages to mean injury, as Plaintiffs proposed and the district court accepted, ignores the legal distinction these terms have long held. *Cf. United Nuclear Corp.*, 2012-NMSC-032, ¶¶ 30-32 (examining how other courts have interpreted a contractual term to assess its ambiguity). As numerous courts and authorities have recognized, "damages" and "injury" are distinct words and concepts—with "damages" being the measure of money needed to compensate for an "injury" suffered. *See, e.g.*, *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 22, 111 N.M. 336, 805 P.2d 603 (referring to "damages" and "injury" as two distinct concepts by examining "the measure of damages [needed] to compensate [the injured party] for the injury [they have] suffered"); *Goodyear v. Discala*, 849 A.2d 791, 799 (Conn. 2004) ("The concept of 'damages,' however, is distinct from the legal injury from which damages arise." (footnote omitted)); Restatement (Second) of Torts § 902 (1979) ("Damages flow from an injury."); *see also, e.g.*, *Oklahoma City v. Hopcus*, 1935 OK 988, ¶ 10, 50 P.2d 216 ("There is a clear distinction between injury and damages. . . . The word 'injury' denotes the illegal act; the term 'damages' means the sum recoverable as amends for the wrong. The one is the legal

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assist in clarifying this contractual provision"). Thus, excising these words from the Damages definition impermissibly changes the meaning of the term. *See Miller*, 2003-NMCA-055, ¶ 13 (rejecting a proposed interpretation of a policy term that would require the Court to ignore words in the policy and would result in a construction that "defies the plain meaning of the word").

wrong to be redressed, the other the scale or measure of recovery." (internal quotation marks and citation omitted)), *overruled on other grounds by Oklahoma City v. Eylar*, 1936 OK 614, 61 P.2d 649; *City of N. Vernon v. Voegler*, 2 N.E. 821, 824 (Ind. 1885) ("The words are sometimes used as synonymous terms, but they are, in strictness, words of widely different meaning. There is more than a mere verbal difference in their meaning, for they describe essentially different things. . . . The one [(injury)] is the legal wrong which is to be redressed; the other [(damages)], the scale or measure of the recovery." (citations omitted)). Importantly, the legal distinction between "damages" and "injury" is one not only understood by the courts or lawyers drafting insurance policies but is one within the understanding of ordinary laymen. *See, e.g.*, *West v. St. Louis Pub. Serv. Co.*, 236 S.W.2d 308, 310 (Mo. 1951) (rejecting the contention that "a jury of laymen . . . could not be expected to know the legal distinction between 'injuries' and 'damages'"); *see also Rummel*, 1997-NMSC-041, ¶ 19 ("In determining the existence of an ambiguity, the language at issue should be considered not from the viewpoint of a lawyer, or a person with training in the insurance field, but from the standpoint of a reasonably intelligent layman, viewing the matter fairly and reasonably, in accordance with the usual and natural meaning of the words." (internal quotation marks and citation omitted)).

{38} Interpreting the term Damages to mean the injury itself, as the district court did, not only ignores the legal distinction between "damages" and "injury," but also

ignores the fact that the Policy recognizes this legal distinction through its separate definitions of Damages and Injury. *See supra* Part II.C.1, ¶ 30. Were we to accept the district court's construction, this effectively would collapse the terms Damages and Injury, rendering these terms' separate definitions a nullity. *But see Rummel*, 1997-NMSC-041, ¶ 27 (rejecting a construction of an insurance phrase that would be "senselessly redundant" because "[t]he rules of contract construction prohibit such an absurd interpretation"). Moreover, the district court's construction of Damages to mean the injury itself erases a key component of a Claim within the meaning of the Policy. Claim, as defined in the Policy, requires *both* an "alleg[ation of] *Damages* to an injured party" and "a description of . . . the nature of the possible *Injury*." Contrary to the Policy language at issue here, the district court's construction of the term Damages to mean the injury itself rewrites the Policy to require notice of only an injury, without a corresponding allegation of damages. *But see Gardner-Zemke Co.*, 1990-NMSC-034, ¶ 18 ("To be reasonable, an interpretation must be consistent with the contract language: the language of the entire contract must be considered, and selected portions cannot support a claim of ambiguity."). The district court's construction was in error. *See Garza v. Glen Falls Ins. Co.*, 1986-NMSC-094, ¶ 16, 105 N.M. 220, 731 P.2d 363 ("We cannot rewrite the insurance contract for the parties. Where the [provision] is clear and unambiguous we are required to enforce its provisions."); *Casias v. Dairyland Ins.*

Co., 1999-NMCA-046, ¶ 11, 126 N.M. 772, 975 P.2d 385 ("It is a well-established principle that the courts will not rewrite a contract for the parties.").

D. The District Court's Rulings That a Claim Was Made Under the Policy Are Reversed

{39} In sum, the district court's construction of the term Damages overlooks the different meanings of the words "damage" and "damages," ignores the legal distinction between "damages" and "injury," as also recognized by the Policy's separate definitions of Damages and Injury, and effectively rewrites the parties' contract. As such, it is strained and unreasonable, and does not support the conclusion that the term Damages is ambiguous. *See Miller v. Triad Adoption & Counseling Servs., Inc.*, 2003-NMCA-055, ¶ 15, 133 N.M. 544, 549, 65 P.3d 1099 (rejecting an argument of contract ambiguity where the proposed construction was "a strained interpretation, particularly in view of the policy as a whole"); *Safeco Ins. Co. of Am.*, 1977-NMSC-053, ¶ 20 ("Resort will not be made to a strained construction for the purpose of creating an ambiguity when no ambiguity in fact exists."). Thus, there is no basis for interpreting the term in Plaintiffs' favor. *See City of Santa Rosa*, 2006-NMCA-118, ¶ 15 ("We find no ambiguity in the language used in these circumstances, and thus we do not apply the rule that when faced with an ambiguity in coverage a policy should be construed in favor of the insured."); *Safeco Ins. Co. of Am.*, 1977-NMSC-053, ¶ 20 ("[T]he rule requiring construction of insurance contracts favorably to an insured applies only where the language in the

policy is ambiguous."). Instead, construing Damages in its usual and ordinary sense, and in light of the context of the Policy as a whole, we conclude that the term Damages as used in the Policy is susceptible to only one reasonable construction—meaning sums of money demanded, awarded, obligated to be paid, or made. In light of this, the Board Documents did not "allege Damages" as required by the Policy to constitute a Claim.

{40} As a result:

(1) We reverse the district court's grant of Plaintiffs' *First Motion for Summary Judgment on Count I: Declaratory Judgment*.

(2) We reverse the district court's denial of PULIC's *Motion for Summary Judgment #2 Regarding Lack of Notice Within the Policy Period* (PULIC's *Motion for Summary Judgment #2*).

(3) We remand for the district court to grant PULIC's *Motion for Summary Judgment #2* as to Count I (declaratory judgment) and to enter judgment in PULIC's favor on the same.[12]

See Grisham v. Allstate Ins. Co., 1999-NMCA-153, ¶ 2, 128 N.M. 340, 992 P.2d 891 ("The parties also agree that the central facts are not in dispute, and they have

[12]PULIC's *Motion for Summary Judgment #2* sought entry of judgment in its favor on all counts. Our direction here to enter judgment in favor of PULIC only goes so far as Count I of the amended complaint. Plaintiffs' other claims against PULIC are addressed separately below.

filed cross-motions for summary judgment requesting this Court to rule on the issue as a matter of law. Where cross-motions for summary judgment are presented on the basis of a common legal issue, this Court may reverse both the grant of one party's motion and the denial of the opposing party's cross-motion and award judgment on the cross-motion.").

III. Breach of Contract and Bad Faith

{41} We turn now to PULIC's challenge to the district court's summary judgment rulings on Plaintiffs' claims for breach of contract and bad faith. Before the district court, Plaintiffs filed two motions for summary judgment—one on Count II (breach of contract) and another jointly addressing Count III (breach of the covenant of good faith and fair dealing)[13] and Count V (breach of fiduciary duties and insurance bad

[13]It is not entirely clear what came of Count III (breach of the covenant of good faith and fair dealing) and how or whether this Count is distinct from Plaintiffs' breach of contract and insurance bad faith claims in Counts II and V, respectively. We observe that after the district court ruled in Plaintiffs' favor on Counts II, III, and V, Plaintiffs filed their *Tenth Motion for Partial Summary Judgment on Count III, for Breach of the Covenant of Good Faith and Fair Dealing* (Plaintiffs' *Tenth Motion for Partial Summary Judgment on Count III*), arguing that "cumulative conduct" by PULIC provided an additional basis for concluding PULIC breached the covenant of good faith and fair dealing. The district court denied this motion, ruling there were genuine issues of material fact in dispute. At trial, however, the jury was never asked to determine liability for Count III and instead was instructed, as a matter of law, that "[P]laintiffs are entitled to compensation from . . . PULIC for . . . [b]reach of the [i]mplied [d]uty of [g]ood [f]aith and [f]air [d]ealing" and that "[l]iability has been established against PULIC under th[is] theor[y]." Nonetheless, in the judgment resulting from the jury verdict, good faith and fair dealing was not separately listed as a claim on which judgment was entered for Plaintiffs. On appeal, neither party mentions Plaintiffs' *Tenth Motion for Partial Summary Judgment on*

faith)—while PULIC filed a motion for summary judgment on insurance bad faith and punitive damages.[14] The parties disputed, inter alia, whether PULIC breached its duties to investigate, defend, and indemnify.[15] In taking up these motions, the district court ruled that its decision on coverage "essentially makes mandatory the granting of summary judgment to . . . Plaintiffs" on these claims and granted summary judgment in Plaintiffs' favor. Having reversed the district court's coverage determination, we must also reverse the court's grant of summary judgment for Plaintiffs on breach of contract and bad faith. *See* 5 C.J.S. *Appeal and Error* § 1127 (2026) ("An order, judgment, or proceeding dependent on, or ancillary and accessory

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Count III, what came of the district court's determination that genuine issues of material fact existed as to Count III, or the omission of good faith and fair dealing in the judgment. Accordingly, we give Plaintiffs' *Tenth Motion for Partial Summary Judgment on Count III* no consideration; and, to the extent the distinction among Counts II, III, and V is unclear, we follow the parties' example and collectively address any and all of the claims for "breach of contract" and "bad faith" without further parsing. *Cf. State v. Vasquez*, 2025-NMSC-008, ¶ 44, 563 P.3d 901 (Zamora, J., dissenting) ("In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. . . . Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." (quoting *Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008)).

[14]We deal separately with punitive damages below. *See infra* Part VII, ¶ 71.

[15]The parties on appeal predominantly address breach of contract and bad faith together, treating these claims as collectively involving breach of the duties to investigate, defend, and indemnify. We follow suit, although we largely limit our discussion to the duties to defend and investigate—as the parties have done on appeal. *Cf. Vasquez*, 2025-NMSC-008, ¶ 44.

to, a judgment, order, or decree which is reversed . . . falls with it."); *cf. Freeman v. Fairchild*, 2018-NMSC-023, ¶ 41, 416 P.3d 264 (vacating a damages award "because the award was dependent on the [erroneous] grant of summary judgment"); 5 C.J.S. *Appeal and Error* § 1126 (2026) (explaining that "[t]he effect of a general and unqualified reversal . . . of a judgment, order, or decree is to nullify it completely and to leave the case standing as if such judgment, order, or decree had never been rendered").

{42} PULIC would have us take the next step and direct entry of summary judgment in its favor on these claims. As PULIC recognizes, however, "[t]he [district] court did not engage in any analysis of these claims beyond relying on its coverage determination." In fact, the district court's coverage ruling prevented it entirely from considering the parties' motions for summary judgment on breach of contract and bad faith in the absence of a Claim. *See Valdez v. Bd. of Trs. of Juan Bautista Valdez Land Grant*, 2026-NMCA-063, ¶ 11, 591 P.3d 1122 (explaining that the district court's jurisdictional ruling "prevented it from comprehensively determining the issue of whether genuine issues of material fact existed," and that this Court "cannot affirm [the district court's] order reaching the merits and view[s] its findings as in need of a second look"), *cert. granted*, 2026-NMCERT-006 (S-1-

SC-41364, June 24, 2026). Given this and for the reasons that follow, we decline to resolve these motions in the first instance on appeal.[16]

{43} As for Plaintiffs' claim that PULIC breached its duty to defend, New Mexico case law makes clear that the absence of coverage does not necessarily resolve whether an insurer has breached the duty to defend. *See, e.g.*, *Dove v. State Farm Fire & Cas. Co.*, 2017-NMCA-051, ¶ 15, 399 P.3d 400 (explaining that "[i]n a breach of the duty to defend case, the district court should not attempt to determine the merits of the underlying claim in the primary action, i.e., whether the claim was *actually* covered"). This is because "the question in a breach of duty to defend action is less exacting—and thus easier for the claimant to prevail on—than the underlying question presented when the parties are disputing whether there is coverage." *Id.* "[T]he analysis a district court is to apply to resolve an action seeking to declare that

[16]As a procedural matter, we question the propriety of PULIC's request for entry of summary judgment in its favor on breach of contract at this juncture. While PULIC requested entry of summary judgment on all counts in its *Motion for Summary Judgment #2*, PULIC only summarily addressed breach of contract. And PULIC never separately moved for summary judgment on breach of contract, as it did with bad faith. Given this, PULIC's request for entry of summary judgment on breach of contract does not appear to be properly before us. *Cf. Valdez*, 2026-NMCA-063, ¶ 18 (explaining that the district court erred by granting relief beyond what was requested in the motion for summary judgment by quieting title in favor of the non-moving party); *D.R. Horton, Inc.*, 2024-NMCA-054, ¶ 23 (explaining that the issue of whether the insurer breached its duty to defend was "out of our reach on appeal" where the district court denied the insured's summary judgment motion on the duty to defend based on factual disputes and the insurer filed no cross-motion for summary judgment on the duty to defend).

an insurer has breached its duty to defend . . . is . . . [(1)] whether there was any potential that the claim in the primary action was covered, or [(2)] whether the claim clearly fell outside of the policy's coverage." *Id.* (citation omitted).

{44} PULIC argues on appeal that this case falls within the second category—that the Board Documents "manifestly were not a claim" and "therefore did not require PULIC to defend." Plaintiffs, in contrast, argue that this case falls within the first category—that because the Board Documents provided notice of *potential* claims, they sufficed to trigger PULIC's duty to defend. Plaintiffs further argue that PULIC's failure to seek judicial determination on coverage resulted in a breach of its duties and bad faith. Neither party, however, fulsomely develops their position on appeal—spending only about a page each on this issue. *See generally Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what a party's arguments might be." (text only) (citation omitted)). And while both parties cite duty-to-defend case law in New Mexico, none of the cited cases are particularly instructive here. All appear to deal with occurrence-based insurance policies. *See, e.g.*, *Dove*, 2017-NMCA-051, ¶ 16 ("In order for [the district court's] ruling to be affirmable, then, the district court must have been indisputably correct . . . that the complained-of *occurrence* in the primary action clearly fell outside the policy's coverage." (emphasis added)); *D.R. Horton, Inc. v. Trinity Universal Ins. Co.*, 2024-NMCA-054, ¶ 2, 553 P.3d 463

(explaining that the policies included "an obligation for the insured to notify the insurer of *occurrences*, offenses, claims, or suits" as a prerequisite for coverage (emphasis added)); *Guar. Nat'l Ins. Co. v. C de Baca*, 1995-NMCA-130, ¶ 14, 120 N.M. 806, 907 P.2d 210 (looking to the timing of the occurrence to resolve whether the insurer had a duty to defend its insured); *G & G Servs., Inc. v. Agora Syndicate, Inc.*, 2000-NMCA-003, ¶ 30, 128 N.M. 434, 993 P.2d 751 (same). And most deal with situations where the potential claim falls within the policy period, but the issue is whether the claim is excluded for another reason.[17] *See, e.g.*, *Dove*, 2017-NMCA-051, ¶¶ 19-24 (looking to whether the insured was a "real estate manager" as defined by the policy); *D.R. Horton, Inc.*, 2024-NMCA-054, ¶¶ 15-25 (reviewing whether the insurer received adequate notice of "an occurrence, claim, or suit" thereby triggering the duty to defend); *State Farm Fire & Cas. Co. v. Price*, 1984-NMCA-036, ¶¶ 17, 27-28, 101 N.M. 438, 684 P.2d 524 (reviewing whether the insured provided the insurer with a proper demand to defend), *overruled on other grounds*

[17]The most analogous case cited by the parties is *C de Baca*, involving an automobile insurance policy. *See* 1995-NMCA-130, ¶ 1. In *C de Baca*, the policy was effective from February 3 to March 3, and the accident occurred on March 7. *Id.* ¶ 12. Under these circumstances, this Court held that the insurer had no duty to defend because "the liability alleged in the complaint clearly fell outside of the policy coverage." *Id.* ¶ 14. Additionally, this Court rejected the insured's estoppel argument that because the insurer did not seek a judicial determination of coverage, the insurer was estopped from denying coverage, concluding such arguments do "not apply when no policy of insurance exists." *Id.* ¶ 15.

by Ellingwood v. N.N. Invs. Life Ins. Co., 1991-NMSC-006, ¶ 17, 111 N.M. 301, 805 P.2d 70.

{45} In this case, in contrast, we have a claims-made policy where no claim was made within the policy period. The parties have not cited and we are unaware of any New Mexico case law addressing the duty to defend in this context. Based on our research, however, it appears other jurisdictions faced with this situation conclude there is no duty to defend. *See, e.g.*, *Edwards v. Lexington Ins. Co.*, 507 F.3d 35, 40 (1st Cir. 2007) (holding that, in order to establish a breach of the duty to defend under Maine law, a plaintiff must show "that a claim was timely made; otherwise, there was neither a duty to defend nor to indemnify the insured"); *Hill v. Physicians & Surgeons Exch. of Cal.*, 274 Cal. Rptr. 702, 705 (Ct. App. 1990) (explaining that under a claims-made policy, where no claim as defined by the policy has been filed, "there [is] no potential liability under the insurance policy and no obligation to defend"); *Home Ins. Co. v. Law Offs. of Jonathan DeYoung, P.C.*, 32 F. Supp. 2d 219, 225-29 (E.D. Pa. 1998) (holding, under Pennsylvania law, that because "there was no claim first made within the relevant claims-made policy period . . . there is no genuine issue of material fact and [the insurer] does not have a duty to defend or indemnify"). *See generally* 14 Jordan R. Plitt et al., *Couch on Insurance* § 201:4 (3d ed. 2026) ("There is no duty to defend claims or suits based on activity that falls outside the period of coverage of the policy."). Whether this approach is followed in

New Mexico is a question that should be considered in light of our existing jurisprudence on the duty to defend—a matter we leave for further development by the parties on remand as needed. *Compare, e.g.*, *C de Baca*, 1995-NMCA-130, ¶¶ 14-15 (holding that an insurer had no duty to defend where "the liability alleged in the complaint clearly fell outside of the policy coverage" and rejecting the argument that the insurer was estopped from denying coverage for its failure to obtain a judicial determination of coverage because such estoppel arguments do "not apply when no policy of insurance exists"), *with, e.g.*, *D.R. Horton, Inc.*, 2024-NMCA-054, ¶¶ 21-22 (concluding that the insured's failure to meet certain conditions precedent to coverage in an insurance policy—i.e., notice to the insurer of an occurrence or claim—did not alleviate the insurer's duty to defend, explaining that "New Mexico has rejected the view that the failure of a party to an insurance contract to perform a condition excuses the other party from performance as a matter of law"). *See generally Elane Photography, LLC*, 2013-NMSC-040, ¶ 70 ("To rule on an inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties' work for them. This creates a strain on judicial resources and a substantial risk of error. It is of no benefit either to the parties or to future litigants for this Court to promulgate case law based on our own speculation rather than the parties' carefully considered arguments." (citation omitted)).

{46} In short, having reversed the district court's erroneous coverage ruling, we remand to that court to redetermine the motions for summary judgment relating to the duty to defend in light of our ruling that no Claim was made under the Policy, and for any other necessary proceedings. *See Archuleta v. Lacuesta*, 1999-NMCA-113, ¶ 17, 128 N.M. 13, 988 P.2d 883 (remanding for reconsideration of summary judgment where the district court had not given "full consideration" to potential independent grounds presented by the parties and those grounds were not briefed on appeal); *Rummel*, 1997-NMSC-041, ¶ 16 ("[W]hen the trial court's grant of summary judgment is grounded upon an error of law, the case may be remanded so that the issues may be determined under the correct principles of law.").

{47} As for Plaintiffs' claim that PULIC acted in bad faith by failing to conduct a reasonable investigation, again, the absence of coverage does not necessarily resolve this claim.[18] This Court has explained that, even in the absence of coverage, a claim of bad faith not predicated on a refusal to pay a covered claim may be viable. *See Haygood v. United Servs. Auto. Ass'n*, 2019-NMCA-074, ¶¶ 18-24, 453 P.3d 1235.

[18]While it is true, as Plaintiffs point out in their answer brief, that the district court ruled with respect to bad faith that "PULIC cannot meet its burden in demonstrating that it conducted a reasonable investigation into insurance coverage for its Insured for the lawsuits filed on behalf of Ruben Bonilla, Jr. and Serina Clark," this ruling was predicated on the district court's erroneous coverage ruling. Thus, to the extent Plaintiffs request that we affirm their bad faith claim based on a failure to investigate, we decline to do so and instead remand for further proceedings, as provided below.

In such circumstances, the insured "might establish bad faith in a variety of ways—whether by proving [the insurer] failed to deal fairly in handling the claim, failed to conduct a fair investigation, or failed to fairly evaluate coverage, among other possibilities." *Id.* ¶ 23. In this case, Plaintiffs argued, in response to PULIC's motion for summary judgment on bad faith, that even if "there was no coverage, . . . PULIC can still face a claim of bad faith for not investigating and actively trying to avoid having the [Bonilla and Clark] claims documented in July 2012 during the Claims Reporting Period." The district court never ruled on, or even considered, these alternative arguments on bad faith. Having reversed the district court's erroneous coverage decision, we leave it to that court to consider these arguments in the first instance on redetermination of the motions for summary judgment relating to bad faith in light of our ruling that no Claim was made under the Policy, and for any other necessary proceedings. *See id.* ¶ 24 (remanding to the district court to redetermine its summary judgment ruling on the insured's bad faith claim); *see also Archuleta*, 1999-NMCA-113, ¶ 17; *Rummel*, 1997-NMSC-041, ¶ 16.

{48} In light of the foregoing:

(1) We reverse the district court's grant of Plaintiffs' *Second Motion and Memorandum in Support of Partial Summary Judgment on Count II: Breach of Contract*.

(2) We reverse the district court's grant of Plaintiffs' *Third Motion and Memorandum for Partial Summary Judgment on Counts III and V: Breach of the Duty to Defend*.

(3) We reverse the district court's denial of PULIC's *Motion for Partial Summary Judgment #6 Regarding Plaintiffs' Claims for Insurer Bad Faith and Punitive Damages*.

(4) We remand for the district court to redetermine its rulings on the foregoing motions in light of this Court's ruling that no Claim was made under the Policy, and for any other necessary proceedings on Plaintiffs' claims for breach of contract and bad faith.

IV. Affirmative Defense of Material Misrepresentation

{49} Next, we address PULIC's challenge to the district court's denial of its motion for summary judgment on its affirmative defense of material misrepresentation.[19] There is no dispute that Jain made material misrepresentations in his November 2011

[19]Plaintiffs argue that PULIC did not properly preserve this issue because there were factual disputes underlying PULIC's motion. It is true that a district court's denial of a motion for summary judgment on the ground that genuine issues of material fact exist generally is not reviewable after entry of final judgment. *See Dart*, 2018-NMCA-061, ¶ 4. As we discuss, however, the denial of PULIC's motion was not based on disputed facts, but instead was premised on the district court's erroneous rulings on coverage and duty to defend, which we have reversed. Under these circumstances, review of the denial of PULIC's motion for summary judgment, even after entry of judgment after trial, is not prohibited. *See Gallegos*, 1997-NMCA-040, ¶ 12.

policy renewal application, when he answered "No" to questions about whether he was being investigated by a licensing agency and whether he was aware of facts or circumstances that may give rise to a claim or suit. The parties, however, disputed below and continue to dispute on appeal the possible effect of such misrepresentations. PULIC contends Jain's misrepresentations "void[ed] the [P]olicy at inception." Plaintiffs, in contrast, contend that such misrepresentations merely render the Policy "voidable" and subject to recission, but that PULIC failed to meet conditions precedent to recission. The parties further disputed below and continue to dispute on appeal the reach of this Court's statement in *Dove* that "an insurer who unilaterally refuses to defend effectively waives its ability to later challenge the underlying merits as to coverage." 2017-NMCA-051, ¶ 15. PULIC asserts that *Dove* does not extend to its material misrepresentation defense, while Plaintiffs assert the contrary.

{50} The district court rejected PULIC's view of *Dove*: "Given the [c]ourt's ruling on [coverage], the [c]ourt disagrees with [PULIC] on any applicable limit to the holding in *Dove*. Because [PULIC's] coverage analysis failed to accurately consider the terms of its own Policy, [PULIC] is bound by the admittedly broad scope of the holding in *Dove*." The district court ultimately denied PULIC's motion for summary judgment on its material misrepresentation defense, ruling as a matter of law that PULIC "waived its ability to later assert a rescission defense" under *Dove* given its

failure to defend Jain. Because we have reversed the district court's summary judgment rulings on coverage and duty to defend—on which the material misrepresentation ruling was based—we also reverse the district court's summary judgment ruling on PULIC's affirmative defense of material misrepresentation. *See* 5 C.J.S. *Appeal and Error* § 1127; *cf. Freeman*, 2018-NMSC-023, ¶ 41; 5 C.J.S. *Appeal and Error* § 1126. PULIC again would have us take the next step and direct entry of judgment in its favor on its material misrepresentation defense. We again decline to do so and instead remand to the district court for redetermination of PULIC's motion for summary judgment on its material misrepresentation defense. *See Archuleta*, 1999-NMCA-113, ¶ 17; *Rummel*, 1997-NMSC-041, ¶ 16; *Haygood*, 2019-NMCA-074, ¶ 24. We explain why.

{51} First, the district court's erroneous coverage ruling "prevented it from comprehensively determining the issue of whether" *Dove*'s statement on waiver extends to PULIC's material misrepresentation defense and is "in need of a second look" by the district court on remand, *if necessary*. *See Valdez*, 2026-NMCA-063, ¶ 11. But because *Dove*'s statement on waiver comes into play only if PULIC has breached its duty to defend, *see Dove*, 2017-NMCA-051, ¶ 15 (providing that an insurer waives its right to dispute the existence of coverage if it *unjustifiably* refuses to defend its insured); *D.R. Horton, Inc.*, 2024-NMCA-054, ¶ 18 (providing that when an insurer breaches its duty to defend it "waive[s] some defenses," including

the ability to argue that the insured breached the insurance contract's requirements), and the district court must redetermine on remand whether such breach has occurred, it is premature to address whether PULIC's material misrepresentation defense might be waived under *Dove* for any hypothetical failure to defend by PULIC. *Cf. D.R. Horton, Inc.*, 2024-NMCA-054, ¶¶ 1, 18 (explaining that, "under New Mexico law, when the duty to defend remains in dispute, summary judgment may not be granted on defenses that implicate the insured's breach of . . . insurance contract provisions," such as the insured's contractual duty to give notice or cooperate). If on remand the district court determines, for instance, that PULIC did not breach its duty to defend, it will be unnecessary to resolve whether PULIC's material misrepresentation defense is waived under *Dove*. We therefore express no opinion on the matter. *Cf. Crutchfield v. N.M. Dep't of Tax'n & Revenue*, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 ("A reviewing court generally does not decide academic or moot questions.").

{52} Second, setting aside the possible applicability of *Dove*, PULIC's material misrepresentation defense has never been addressed on the merits. That is, whether Jain's material misrepresentations void the Policy, as PULIC contends, or merely make the Policy voidable, as Plaintiffs contend, has never been resolved by the district court. Nor has the district court ruled on whether genuine issues of material fact exist, under either of these theories. This is a fact-bound inquiry that this Court

is ill-equipped to perform in the first instance. *See Haygood*, 2019-NMCA-074, ¶ 24 (remanding to the district court to redetermine a summary judgment motion on bad faith because the "inquiry is necessarily fact-dependent, which this Court is not well-situated to evaluate in the first instance"); *Freeman*, 2018-NMSC-023, ¶ 35 (counseling against undertaking "fact-dependent inquiry" on appeal).

{53} For these reasons, we decline PULIC's invitation to rule in its favor on its affirmative defense of material misrepresentation. Instead, we reverse the district court's denial of PULIC's *Motion for Summary Judgment #3 Regarding Material Misrepresentations in Policy Application* and remand for the district court to redetermine the same, in light of the foregoing.

V. UIPA

{54} We now turn our attention to Plaintiffs' UIPA claim. PULIC purports to challenge the district court's determination on summary judgment that it violated the UIPA. The parties filed cross-motions for summary judgment on Count IV (UIPA). Plaintiffs alleged at summary judgment that PULIC had violated the UIPA in four ways, by:

> (1) misrepresenting terms of the [P]olicy in [the] August 2013 denial letter to Jain; (2) failing to adopt and implement reasonable standards for prompt investigation of covered claims; (3) failing to timely affirm or deny coverage after the claims were made through [the broker's] email; and (4) misrepresenting its ability to offer 3-year tail coverage.

See § 59A-16-20(A), (C), and (D). PULIC argued, inter alia, that it was entitled to summary judgment on the first and fourth violations because Jain suffered no damages. *See* § 59A-16-30 ("Any person covered by [the UIPA] who has suffered damages as a result of a violation of that article by an insurer or agent is granted a right to bring an action in district court to recover actual damages."). The district court rejected PULIC's request for summary judgment, concluding that PULIC violated the UIPA in the above four ways, but reserving for trial "[t]he amount of damages caused by these statutory violations."[20] At trial, PULIC moved for a directed verdict on damages for Plaintiffs' UIPA claim, as well as the other outstanding claims, requesting the district court rule that Plaintiffs failed to prove any compensatory damages on these claims *beyond* the $810,000.00 already recognized for breach of contract. The district court granted this motion. As a result, the court instructed the jury that "PULIC is liable to Plaintiffs for compensatory damage[s] in the amount of $810,000.00," and the jury did not decide liability or

[20]The first violation—pertaining to the August 2013 denial letter—was taken up by the district court in an earlier order. In that order, the court ruled that "PULIC violated Section 59A-l6-20(A) . . . by misrepresenting pertinent policy provisions of its Policy in its August 27, 2013 letter denying its Insured a defense in the [Bonilla] wrongful death lawsuit, which caused its Insured to not tender the [Clark] wrongful death lawsuit and to file for bankruptcy protection." The amount of damages, if any, caused by this UIPA violation was not included in this order and does not otherwise appear to have been resolved prior to trial. *See Gallegos*, 1997-NMCA-040, ¶ 13 (explaining that on appeal, we "expect that all doubts about whether a motion was dependent on or affected by facts addressed at trial would be resolved against the appealing party").

damages for Plaintiffs' UIPA claim. Instead, the judgment resulting from the jury trial included an award of $810,000.00 for Plaintiffs' UIPA claim.

{55} On appeal, PULIC again advances its argument that the first and fourth UIPA violations fail "because a UIPA claimant must have 'suffered damages as a result of a violation,'" *see* § 59A-16-30, and Jain suffered no damages as a result of these violations. Because of this, PULIC continues, the grant of summary judgment for Plaintiffs on these violations and the denial of summary judgment for PULIC on the same should be reversed. As support that this issue was preserved for our review, PULIC cites the summary judgment briefing and rulings. In response, Plaintiffs argue that UIPA "violations" and "damages" resulting from the same are distinct, and that the district court only "granted partial summary judgment that PULIC violated the UIPA, leaving damages for subsequent litigation." PULIC does not respond to this argument in reply, which we may treat as a concession. *See Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174 (providing that when a reply brief does not address an argument made in an answer brief, and the argument is not otherwise addressed in the brief in chief, "a failure to respond constitutes a concession on the matter"). We agree with Plaintiffs that the amount of damages, if any, that resulted from the UIPA violations was not decided at summary judgment, but instead was reserved for trial. In light of this, had PULIC wished to preserve for appellate review its argument that no damages

resulted from the first and fourth UIPA violations, it needed to raise the matter at trial. *See Gallegos*, 1997-NMCA-040, ¶ 9 (explaining that where disputed facts precluded entry of summary judgment and are later resolved at trial, the summary judgment ruling merges with the final judgment such that the summary judgment ruling is not separately reviewable). PULIC could have done so by, for example, moving for directed verdict on the first and fourth UIPA violations, based on the lack of *any* damages, or having the issue of damages resolved by the jury. *See id.* ¶ 13 ("We would expect that all doubts about whether a motion was dependent on or affected by facts addressed at trial would be resolved against the appealing party. Thus, prudent counsel would be well advised to protect the record by motion for directed verdict or appropriate post-trial motion.").

{56} PULIC, however, did neither—opting instead for a directed verdict that Plaintiffs had failed to prove damages on their UIPA violations *beyond* the $810,000.00 already recognized for breach of contract. *See Platero v. Jones*, 1971-NMCA-154, ¶ 3, 83 N.M. 261, 490 P.2d 1234 (explaining that the appellant would "not be permitted to complain on appeal because the trial court made the findings that he requested," which disposed of the appellant's claims); *Cox v. Cox*, 1989-NMCA-035, ¶ 19, 108 N.M. 598, 775 P.2d 1315 (explaining that where a party requested findings of fact and conclusions of law stipulating to the provision of alimony, "we do not review the award to determine whether alimony should not have

been awarded at all"); *see also State v. Jim*, 2014-NMCA-089, ¶ 22, 332 P.3d 870 ("It is well established that a party may not invite error and then proceed to complain about it on appeal."). Now, after entry of final judgment that included an award of $810,000.00 for Plaintiffs' UIPA claim, PULIC's argument that Plaintiffs suffered no damages as a result of the first and fourth UIPA violations such that summary judgment should have been entered in PULIC's favor is not reviewable on appeal. *See Dart*, 2018-NMCA-061, ¶ 4 (declining to review a summary judgment ruling where disputed facts were resolved at trial against the appellant).

{57} As for PULIC's second argument related to Plaintiffs' UIPA claim, we decline to address this argument as well, but for a different reason. PULIC contends, "The second and third grounds fail because Plaintiffs cannot identify a claim within the policy terms that could give rise to a violation." Other than referring back to its argument section on the absence of a Claim, this is the entirety of PULIC's argument on this point in its brief in chief. That is, PULIC develops no argument on this point and cites no supportive legal authority. *See Lee v. Lee* (*In re Adoption of Doe*), 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 ("We have long held that to present an issue on appeal for review, an appellant must submit argument and authority as required by rule. We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority. We therefore will not do this research for counsel. Issues raised in appellate briefs

which are unsupported by cited authority will not be reviewed by us on appeal." (emphasis and citations omitted)). It is not our job to undertake these tasks ourselves, and we decline to review this argument further. *See Elane Photography, LLC*, 2013-NMSC-040, ¶ 70; *see also Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to entertain a cursory argument that included no explanation of the party's argument and no facts that would allow the Court to evaluate the claim); *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (explaining that the burden is on the appellant to clearly demonstrate that the district court erred).

{58} For the foregoing reasons, we conclude PULIC's arguments pertaining to Plaintiffs' UIPA claim are either not preserved or inadequately developed for our review and, as a result, we affirm the judgment as to this claim.[21]

[21]Our affirmance here does not foreclose the district court from revisiting liability on the UIPA claim in the event the district court grants PULIC's *Motion for Summary Judgment #3 Regarding Material Misrepresentations in Policy Application* (PULIC's *Motion for Summary Judgment #3*) on remand. *See supra* Part IV, ¶ 53. In that case, the district court would be free to determine whether PULIC's successful material misrepresentation defense eliminates its liability under the UIPA, as PULIC contended in its *Motion for Summary Judgment #3*. If the district court so ruled, the district court would additionally be free to amend the judgment to reflect this. *Cf. State v. Garcia*, 2013-NMCA-064, ¶ 32, 302 P.3d 111 (conditionally affirming a defendant's conviction and leaving for the district court on remand to conduct a new trial if warranted after further proceedings).

VI. Plaintiffs' Claims of Error

{59} Last, we address Plaintiffs' claims of error, raised in their answer brief, pertaining to the district court's rejection of the $10 million in creditor claims from the bankruptcy proceeding as a measure of damages in this lawsuit. As a threshold matter, the parties dispute whether Plaintiffs can raise these issues in the absence of a cross-appeal. Because we have reversed and remanded a portion of the judgment in this case, we conclude Plaintiffs' claims of error are properly before us, pursuant to Rule 12-201(C) NMRA.[22] *See id.* ("An appellee may, without taking a cross-appeal . . . , raise issues for determination only if the appellate court should reverse, in whole or in part, the judgment or order appealed from."); *Herbertson v. Iliff*, 1989-NMCA-027, ¶ 2, 108 N.M. 552, 775 P.2d 754 (reviewing, under Rule 12-201(C), two claims of error advanced by the appellee after reversing the district court on grounds argued by the appellant). We accordingly turn to the merits of Plaintiffs' arguments.

{60} As previously discussed, Plaintiffs sued Jain for the wrongful deaths of Bonilla and Clark, Jain subsequently filed for bankruptcy, and Plaintiffs asserted two

[22] Plaintiffs alternatively argued that review is permissible under Rule 12-201(C) because their claims of error "present other grounds under Rule 12-201(C) to affirm the district court's denial of remittitur" of the punitive damages award. *See* Rule 12-201(C) ("An appellee may, without taking a cross-appeal . . . , raise issues on appeal for the purpose of enabling the appellate court to affirm."). This contention is not well taken because, as we discuss, *see infra* Part VII, ¶ 71, the punitive damages award is reversed in its entirety.

proofs of claim for the wrongful deaths of Bonilla and Clark in the amount of $5 million each against Jain's bankruptcy estate. Eventually, a settlement agreement between Plaintiffs and the bankruptcy estate was reached, which the bankruptcy court approved. As part of the settlement, Plaintiffs agreed to release their claims against the bankruptcy estate and Jain's ex-wife agreed to (1) make an $810,000.00 payment into the bankruptcy estate for distribution to Plaintiffs after the costs of administration were deducted, (2) withdraw her objections to Plaintiffs' proofs of claim, and (3) assign her interest in the lawsuit that is the subject of this appeal. Subsequently, the bankruptcy court deemed allowed Plaintiffs' $10 million in proofs of claim, Plaintiffs dismissed their wrongful death lawsuits against Jain, a final accounting in the bankruptcy proceeding was made, and Jain waived his bankruptcy discharge.

{61} The parties below disputed at length the potential relevance and effect of Plaintiffs' proofs of claim against Jain's bankruptcy estate. PULIC filed a motion for partial summary judgment regarding the damages of Jain's bankruptcy estate. In brief, PULIC argued that Plaintiffs' damages for breach of contract were limited to the $810,000.00 distribution from the bankruptcy estate, plus any fees and costs Jain incurred from defending against Plaintiffs' wrongful death lawsuits. PULIC also argued that the $10 million in allowed proofs of claim against Jain's bankruptcy estate was not relevant to compensatory or punitive damages for any of Plaintiffs'

claims against PULIC. Plaintiffs opposed PULIC's motion for partial summary judgment, arguing, inter alia, that the bankruptcy court's order allowing their proofs of claim is a final judgment and that under this Court's reasoning in *Dydek v. Dydek*, 2012-NMCA-088, ¶¶ 63-74, 288 P.3d 872, PULIC was liable for the $10 million in allowed proofs of claim as an excess judgment for bad faith. For their part, Plaintiffs filed a motion for partial summary judgment, arguing that the allowed proofs of claim were res judicata, such that "the measure of damages includes, without limitation, the amounts of the proof of claims filed in the bankruptcy court of $5,000,000 for each decedent." Variants of the foregoing arguments were renewed before trial in briefing on a motion in limine filed by PULIC.

{62} Ultimately, the district court resolved these motions against Plaintiffs. The court ruled that the bankruptcy court's allowance of Plaintiffs' proofs of claim was not a final judgment, rendering *Dydek* inapplicable, and that "PULIC was not a party to the bankruptcy proceeding, rendering claim preclusion inapplicable to PULIC in this case." In light of these rulings, the district court determined that damages for Plaintiffs' breach of contract were limited as PULIC requested—to the $810,000.00 distribution from the bankruptcy estate, plus any fees and costs Jain incurred from defending against Plaintiffs' wrongful death lawsuits—and that evidence of the $10

million in allowed proofs of claim was irrelevant and therefore inadmissible at trial.[23] *See* Rule 11-401 NMRA.

{63} On appeal, Plaintiffs challenge the district court's rulings as to the applicability of *Dydek* and res judicata (i.e., claim preclusion). First, Plaintiffs assert that "*Dydek* controls." Plaintiffs do not succeed in convincing us that the district court erred on this point.[24] *Dydek* addressed the question of whether an insurer was liable for an excess judgment for its bad faith failure to settle when the injured party executed a covenant not to execute the judgment against the insured. 2012-NMCA-088, ¶¶ 63-65. *Dydek* resolved this question in the affirmative, adopting the "judgment rule," which "does not require the insured to make payment as a precondition to the insurer's liability." *Id.* ¶ 67. The Court explained the rationale of the judgment rule: "Underlying this rule is the notion that it is the judgment against the insured, not the amount of [their] personal exposure to it, that damages the insured. Thus, a bad faith insurer is liable regardless of whether its insured has paid, can pay, or must pay an excess judgment." *Id.*

[23]The district court alternatively held that, even if evidence of the allowed proofs of claim was relevant, such evidence would not be admissible because its probative value was substantially outweighed by a danger of unfair prejudice, confusing the issues, and misleading the jury. *See* Rule 11-403 NMRA. Plaintiffs do not challenge this ruling.

[24]This opinion should not be read to resolve the applicability of *Dydek* to an allowed proof of claim in a bankruptcy proceeding, and we leave open this possibility for a future case. Our resolution of this matter here is based solely on the arguments presented in this appeal.

{64} In its ruling on PULIC's motion for partial summary judgment, the district court—relying on the Policy's limitation that PULIC was only responsible for covering "all sums which the Insured shall become *legally obligated to pay* as Damages" and employing federal bankruptcy law—rejected the notion that the bankruptcy court's order allowing the $10 million in proofs of claim was a final judgment that Jain was legally obligated to pay. *See, e.g.*, *Ziino v. Baker*, 613 F.3d 1326, 1328 (11th Cir. 2010) (providing that an allowed claim in a bankruptcy proceeding is not akin to an executable "money judgment" because such a claim "serves a different objective from that of a money judgment—it permits the claimant to participate in the distribution of the bankruptcy estate . . . [and] obtain a distributive share in the immediate assets of the proceeding," but nothing more (internal quotation marks and citation omitted)); *see also Kipp Flores Architects, L.L.C. v. Mid-Continent Cas. Co.*, 852 F.3d 405, 410 (5th Cir. 2017) (explaining that "[a] creditor whose claim is allowed may participate in the ultimate distribution of the debtor's assets"). And in its pretrial ruling in limine, the district court explained the significance of this determination as it relates to *Dydek*:

> Plaintiffs are trying to fit the facts of this case into *Dydek*. . . . [But t]he facts [of this case] are distinguishable from *Dydek* because . . . there's no judgment in this case. I think Plaintiffs are trying to equate creditor claims to a subsequent judgment. And I don't find that persuasive. I think creditor claims are clearly distinguishable from a subsequent judgment and excess judgment, as was the case in *Dydek*.

{65} Plaintiffs do not discuss the federal bankruptcy law cited by the district court, nor do they advance a persuasive argument that the district court erred in concluding that the circumstances here are distinct from *Dydek*, rendering *Dydek* inapplicable to the present case. Instead, citing federal bankruptcy law that was presented and rejected below, Plaintiffs simply assert that the bankruptcy court's allowance of the proofs of claim is a final judgment. *See, e.g.*, *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 529 (9th Cir. 1998) (explaining that the Ninth Circuit has held that "a bankruptcy court's allowance or disallowance of a claim is a final judgment" for res judicata purposes). Such an approach provides this Court with little reason to reach a result contrary to the district court's. *See, e.g.*, *Hall v. City of Carlsbad*, 2023-NMCA-042, ¶ 5, 531 P.3d 642 (providing that, "[o]n appeal, there is a presumption of correctness in the rulings and decisions of the district court," and thus "it is the appellant's burden to persuade us that the district court erred" (internal quotation marks and citation omitted)). Having been presented with no argument how the district court may have erred in applying federal bankruptcy precedent or in ruling *Dydek* inapplicable to the allowed proofs of claim in this case, we decline to engage in this analysis on our own and affirm the district court's ruling. *See Elane Photography, LLC*, 2013-NMSC-040, ¶ 70 ("We will not review unclear arguments, or guess at what a party's arguments might be." (text only) (citation omitted));

Farmers, Inc., 1990-NMSC-100, ¶ 8 (explaining that the burden is on the appellant to clearly demonstrate that the district court erred).

{66} Second, Plaintiffs briefly challenge the district court's res judicata ruling. The district court correctly set out the applicable test:

> The party asserting res judicata must satisfy the following four requirements: (1) the parties must be the same, (2) the cause of action must be the same, (3) there must have been a final decision in the first suit, and (4) the first decision must have been on the merits.

Kirby v. Guardian Life Ins. Co. of Am., 2010-NMSC-014, ¶ 61, 148 N.M. 106, 231 P.3d 87 (text only) (citation omitted); *see also Deflon v. Sawyers*, 2006-NMSC-025, ¶ 2, 139 N.M. 637, 137 P.3d 577 ("Res judicata bars relitigation of the same claim between the same parties or their privies when the first litigation resulted in a final judgment on the merits." (internal quotation marks and citation omitted)). On appeal, Plaintiffs only address whether the allowed proofs of claim may be final judgments for purposes of res judicata and the congruence of the parties—a matter specifically rejected by the district court "[b]ecause [PULIC] was not a party to the bankruptcy case." Even if we were persuaded by Plaintiffs on these points, Plaintiffs provide no argument on the congruence of the causes of action between this lawsuit and the bankruptcy proceeding. We thus are not persuaded that the district court erred in its

res judicata ruling.[25] *See Elane Photography, LLC*, 2013-NMSC-040, ¶ 70; *Farmers, Inc.*, 1990-NMSC-100, ¶ 8.

{67} In light of the foregoing, we reject Plaintiffs' claims of error as to their $10 million in allowed proofs of claim against Jain's bankruptcy estate. We accordingly affirm the district court's grant of PULIC's *Motion for Partial Summary Judgment #7 Regarding Alleged Damages of Dr. Jain's Bankruptcy Estate*, affirm the district court's denial of Plaintiffs' *Seventh Motion for Partial Summary Judgement for Issue and Claim Preclusion on Proof of Claims Against PULIC*, and affirm the district court's grant of PULIC's *Motion in Limine #4 Regarding the Amount of Plaintiffs' Bankruptcy Claims*, as well as the district court's related rulings at trial.

VII. The Judgment on Remand

{68} Following the jury trial in this case, the district court entered judgment in Plaintiffs' favor and awarded Plaintiffs attorney fees. We address which portions of the judgment and fee award remain in light of our foregoing rulings.

[25]To the extent Plaintiffs separately argue—even in the absence of error on the *Dydek* and res judicata rulings—that the district court should have permitted evidence of the allowed proofs of claim at trial, we find this argument to be undeveloped and we give it no further consideration. *See Headley*, 2005-NMCA-045, ¶ 15 (declining to entertain a cursory argument that included no explanation of the party's argument and no facts that would allow the Court to evaluate the claim).

{69} First, we address the $810,000.00 compensatory damages award in the judgment on Plaintiffs' breach of contract, bad faith, and UIPA claims. We have reversed the district court's entry of summary judgment in Plaintiffs' favor on Plaintiffs' claims for breach of contract and bad faith. In light of this, the judgment in favor of Plaintiffs on these claims must also be reversed. We, however, have affirmed the judgment in favor of Plaintiffs on their UIPA claim. On the matter of damages for all three of Plaintiffs' claims, the judgment provided, "Plaintiffs' compensatory damages for each of these claims was the *same* and Plaintiffs are therefore only entitled to a single recovery of $810,000.00 for their breach of contract, bad faith claims, and [UIPA] claims." In light of this determination, which PULIC has not separately challenged on appeal, we affirm the $810,000.00 compensatory damages award in the judgment for Plaintiffs' UIPA claim. *Cf. Cent. Sec. & Alarm Co. v. Mehler*, 1996-NMCA-060, ¶ 17, 121 N.M. 840, 918 P.2d 1340 (explaining that where the measure of damages is the same for multiple theories of liability, "once the plaintiff establishes a right to compensatory damages for a particular harm, the amount of the plaintiff's award is determined in the same way regardless of the legal theory under which the plaintiff recovers").

{70} Second, we address the portion of the judgment pertaining to Plaintiffs' UPA claim, which PULIC does not contest. As explained in the brief in chief, "PULIC does not dispute that the jury's verdict in Plaintiffs' favor on their UPA claim and

its determination that the violation was willful are supported by substantial evidence." Given this, the judgment's award of $100 in statutory damages, and Plaintiffs' entitlement to trebling of the same, under the UPA stands.[26] *See* § 57-12-10(B) ("Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars ($300), whichever is greater, to the party complaining of the practice."). Furthermore, "PULIC has elected not to challenge Plaintiffs' recovery of attorney's fees under the UPA." Given this, the district court's award of $750,478.62 in attorney fees pursuant to Section 57-12-10(C) of the UPA also stands.[27]

{71} Next, we address the award of $52 million in punitive damages. Because the only claims that remain intact in light of our rulings are Plaintiffs' UIPA and UPA claims, for which punitive damages are not permitted, we must reverse the jury's

[26]Upon resolution on remand of Plaintiffs' now-outstanding bad faith claim and their corresponding claim for punitive damages, Plaintiffs must elect between the award of UPA treble damages and any punitive damages award. *See Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 20, 110 N.M. 314, 795 P.2d 1006 (requiring the election of remedies between "statutory treble damages and punitive damages based upon the same conduct").

[27]Although the award of attorney fees was also made under Section 59A-16-30(B) of the UIPA, PULIC does not contest any portion of this fee award as erroneously granted. Regardless, we have affirmed the judgment as to Plaintiffs' UIPA claim. *See supra* Part V, ¶ 58.

punitive damages award of $52 million and the resulting judgment of the same.[28] *See* § 59A-16-30 (limiting recovery on successful UIPA actions to "actual damages"); *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 28 n.5, 135 N.M. 397, 89 P.3d 69 ("Under the Insurance Code, persons injured by unfair claims practices are entitled to recover 'actual damages,' supplemented when appropriate by costs and attorneys' fees. We note that [the uniform jury instruction on punitive damages], authorizing the jury to award punitive damages, applies to common-law bad-faith actions, and not to violations of Article 16 of the Insurance Code." (quoting § 59A-16-30)); § 57-12-10(B) (limiting recovery under the UPA to "actual damages or the sum of one hundred dollars ($100), whichever is greater," and permitting the court to "award up to three times actual damages or three hundred dollars ($300), whichever is greater" "[w]here the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice"); *McLelland v. United Wis. Life Ins. Co.*, 1999-NMCA-055, ¶ 1, 127 N.M. 303, 980 P.2d 86 ("The UPA does not permit a jury to

[28]PULIC alternatively argues that, should this Court deny its requested relief, we "should remit the $52 million punitive damages award" as violative of constitutional due process, or order a new trial because errors at the first trial "influenced the jury to award excessive punitive damages." Because we have reversed the punitive damages award in its entirety, we need not and therefore do not address these alternative claims of error. *See, e.g.*, *OR&L Constr., L.P. v. Mountain States Mut. Cas. Co.*, 2022-NMCA-035, ¶ 46, 514 P.3d 40 ("It is not our practice to address issues unnecessary for the disposition of an appeal.").

award punitive damages; it only permits a judge to award up to treble damages for a willful violation of the Act.").

{72} Finally, we address the award of pre- and post-judgment interest in the judgment. Because the district court's grant of prejudgment interest was based on Plaintiffs' breach of contract claim, which has been reversed, we likewise reverse the prejudgment interest award. *See* NMSA 1978, § 56-8-3(A) (1983) (permitting the award of prejudgment interest on money due by contract); *Sunwest Bank of Albuquerque, N.A. v. Colucci*, 1994-NMSC-027, ¶ 17, 117 N.M. 373, 872 P.2d 346 ("Section 56-8-3 allows prejudgment interest in cases on money due by contract."). The district court granted post-judgment interest at a rate of fifteen percent, pursuant to NMSA 1978, Section 56-8-4(A)(2) (2004). Section 56-8-4(A) provides that post-judgment interest shall be computed at the rate of fifteen percent, rather than eight and three-fourths percent, when "the judgment is based on tortious conduct, bad faith or intentional or willful acts." It is unclear from the record what the district court relied on in setting post-judgment interest at fifteen percent. On remand, the district court shall clarify which claim or claims the fifteen percent post-judgment interest award was based on. If the award was not based on the UIPA, the district court shall reduce the post-judgment interest rate to eight and three-fourths percent on the

$810,000.00 compensatory damages award in the judgment.[29] *See* § 56-8-4(A) (setting the default rate of post-judgment interest at eight and three-fourths percent).

CONCLUSION

{73} For the foregoing reasons, judgment in favor of Plaintiffs is reversed on all but Plaintiffs' UIPA and UPA claims. *See supra* Part II.D, ¶ 40; Part III, ¶ 48; Part IV, ¶ 53; Part V, ¶ 58; Part VI, ¶ 67; Part VII, ¶¶ 68-72. This matter is remanded to the district court for entry of judgment in favor of PULIC on Plaintiffs' claim for declaratory judgment and for further proceedings consistent with this opinion. *See id.*

{74} **IT IS SO ORDERED.**

JENNIFER L. ATTREP, Judge

WE CONCUR:

J. MILES HANISEE, Judge

ZACHARY A. IVES, Judge

[29]In light of the jury's finding that "PULIC act[ed] willfully in its violation of the [UPA]," the fifteen percent post-judgment interest award on Plaintiffs' UPA claim stands.