IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF PIERCE

PACIFIC LUTHERAN UNIVERSITY, a Washington non-profit corporation, THE UNIVERSITY OF PUGET SOUND, a Washington non-profit corporation, WHITWORTH UNIVERSITY, a Washington non-profit corporation, ALBION COLLEGE, a Michigan non-profit corporation, ALBRIGHT COLLEGE, a Pennsylvania non-profit corporation, ALMA COLLEGE, a Michigan non-profit corporation, ARCADIA UNIVERSITY, a Pennsylvania non-profit corporation, AUGSBURG UNIVERSITY, a Minnesota non-profit corporation, AUGUSTANA COLLEGE, an Illinois non-profit corporation, BENNETT COLLEGE, a North Carolina non-profit corporation, CALIFORNIA LUTHERAN UNIVERSITY, a California non-profit corporation, CAPITAL UNIVERSITY, an Ohio non-profit corporation, CLAFLIN UNIVERSITY, a South Carolina non-profit corporation, CONCORDIA COLLEGE CORPORATION, a Minnesota non-profit corporation, CORNELL COLLEGE, an Iowa non-profit corporation, DENISON UNIVERSITY, an Ohio non-profit corporation, DEPAUW UNIVERSITY, an Indiana non-profit corporation, DOMINICAN UNIVERSITY OF CALIFORNIA, a California non-profit corporation, DREW UNIVERSITY, a New Jersey non-profit corporation, UNIVERSITY OF EVANSVILLE, an Indiana non-profit corporation, FURMAN UNIVERSITY, a South Carolina non-profit

No.

EIIA MEMBERS' COMPLAINT

1. DECLARATORY JUDGMENT
2. BREACH OF CONTRACT

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corporation, GREENSBORO COLLEGE, a North Carolina non-profit corporation, HUSTON-TILLOTSON UNIVERSITY, a Texas non-profit corporation, ILLINOIS WESLEYAN UNIVERSITY, an Illinois non-profit corporation, KENYON COLLEGE, an Ohio non-profit corporation, LAGRANGE COLLEGE, a Georgia non-profit corporation, LAKE FOREST COLLEGE, an Illinois non-profit corporation, UNIVERSITY OF LYNCHBURG, a Virginia non-profit corporation, LYON COLLEGE, an Arkansas non-profit corporation, MCKENDREE UNIVERSITY, an Illinois non-profit corporation, MCMURRY UNIVERSITY, a Texas non-profit corporation, MILLS COLLEGE, a California non-profit corporation, MILLSAPS COLLEGE, a Mississippi non-profit corporation, MONTREAT COLLEGE, a North Carolina non-profit corporation, OHIO NORTHERN UNIVERSITY, an Ohio non-profit corporation, OHIO WESLEYAN UNIVERSITY, an Ohio non-profit corporation, PRINCETON THEOLOGICAL SEMINARY, a New Jersey non-profit corporation, THE TRUSTEES OF ROANOKE COLLEGE, a Virginia non-profit corporation, ROLLINS COLLEGE, a Florida non-profit corporation, ROSE-HULMAN INSTITUTE OF TECHNOLOGY, an Indiana non-profit corporation, SCHREINER UNIVERSITY, a Texas non-profit corporation, SHAW UNIVERSITY, a North Carolina non-profit corporation, SHENANDOAH UNIVERSITY, a Virginia non-profit corporation, SIMPSON COLLEGE, an Iowa non-profit corporation, SPARTANBURG METHODIST COLLEGE, a South Carolina non-profit corporation, ST. OLAF COLLEGE, a Minnesota non-profit corporation, THIEL COLLEGE, a Pennsylvania non-profit corporation, TRINITY UNIVERSITY, a Texas non-profit corporation, UNION COLLEGE, a Kentucky non-profit corporation, THE LUTHERAN UNIVERSITY ASSOCIATION, INC. dba VALPARAISO UNIVERSITY, an Indiana non-profit

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corporation, WAGNER COLLEGE, a New York non-profit corporation, WESLEY THEOLOGICAL SEMINARY, a Maryland non-profit corporation, TRUSTEES OF WHEATON COLLEGE, an Illinois special charter corporation, WILEY COLLEGE, a Texas non-profit corporation, WILLIAM PEACE UNIVERSITY, a North Carolina non-profit corporation, WILSON COLLEGE, a Pennsylvania non-profit corporation, WOFFORD COLLEGE, a South Carolina non-profit corporation, THE COLLEGE OF WOOSTER, an Ohio non-profit corporation,

Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W2205F200301 EFFECTIVE MARCH 1, 2020 TO MARCH 1, 2021; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER B080110908U20 EFFECTIVE MARCH 1, 2020 TO MARCH 1, 2021, GUIDEONE NATIONAL INSURANCE COMPANY, an Iowa corporation, COLONY INSURANCE COMPANY, a Virginia corporation. ACE AMERICAN INSURANCE COMPANY, a Pennsylvania corporation, STARR SURPLUS LINES INSURANCE COMPANY, a Texas corporation, ARCH SPECIALTY INSURANCE COMPANY, a Missouri corporation, EVANSTON INSURANCE COMPANY, a Illinois corporation, ATEGRITY SPECIALTY INSURANCE COMPANY, a Delaware corporation, HDI GLOBAL INSURANCE COMPANY, an Illinois corporation, WESTPORT INSURANCE CORPORATION, a Missouri corporation, TOKIO MARINE AMERICA INSURANCE COMPANY, a New York corporation, ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, a Delaware corporation, THE PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY, a Delaware corporation, MITSUI SUMITOMO

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INSURANCE COMPANY OF AMERICA, a New York corporation, HOMELAND INSURANCE COMPANY OF NEW YORK, a New York corporation, and DOES 1 through 50, inclusive,

Defendants.

Plaintiffs Pacific Lutheran University ("Pacific Lutheran"), The University of Puget Sound ("Puget Sound"), Whitworth University ("Whitworth"), Albion College ("Albion"), Albright College ("Albright"), Alma College ("Alma"), Arcadia University ("Arcadia"), Augsburg University ("Augsburg"), Augustana College ("Augustana"), Bennett College ("Bennett"), California Lutheran University ("California Lutheran"), Capital University ("Capital"), Claflin University ("Claflin"), Concordia College Corporation ("Concordia"), Cornell College ("Cornell"), Denison University ("Denison"), DePauw University ("DePauw"), Dominican University of California ("Dominican"), Drew University ("Drew"), University of Evansville ("Evansville"), Furman University ("Furman"), Greensboro College ("Greensboro"), Huston-Tillotson University ("Huston-Tillotson"), Illinois Wesleyan University ("IWU"), Kenyon College ("Kenyon"), LaGrange College ("LaGrange"), Lake Forest College ("Lake Forest"), University of Lynchburg ("Lynchburg"), Lyon College ("Lyon"), McKendree University ("McKendree"), McMurry University ("McMurry"), Mills College ("Mills"), Millsaps College ("Millsaps"), Montreat College ("Montreat"), Ohio Northern University ("ONU"), Ohio Wesleyan University ("OWU"), Princeton Theological Seminary ("Princeton Theological"), The Trustees of Roanoke College ("Roanoke"), Rollins College ("Rollins"), Rose-Hulman Institute of Technology ("Rose-Hulman"), Schreiner University ("Schreiner"), Shaw University ("Shaw"), Shenandoah University ("Shenandoah"), Simpson College ("Simpson"), Spartanburg Methodist College, St. Olaf College ("St. Olaf"), Thiel College ("Thiel"), Trinity University ("Trinity"), Union College ("Union"), The Lutheran University Association, Inc. dba Valparaiso University ("Valparaiso"), Wagner College ("Wagner"), Wesley Theological Seminary ("Wesley"), Trustees of Wheaton

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College ("Wheaton"), Wiley College ("Wiley"), William Peace University ("William Peace"), Wilson College ("Wilson"), Wofford College ("Wofford"), and The College of Wooster ("Wooster") (collectively, the "EIIA Members" or "Plaintiffs") by and through the undersigned attorneys, for their complaint against Defendants Certain Underwriters at Lloyd's London Subscribing to Policy Number W2205F200301 ("Beazley"),[1] GuideOne National Insurance Company ("GuideOne"), Colony Insurance Company ("Colony"), ACE American Insurance Company ("ACE"), Starr Surplus Lines Insurance Company ("Starr"), Arch Specialty Insurance Company ("Arch), Evanston Insurance Company ("Evanston"), Certain Underwriters at Lloyd's London Subscribing to Policy Number B080110908U20,[2] Ategrity Specialty Insurance Company ("Ategrity"), HDI Global Insurance Company ("HDI"), Westport Insurance Corporation ("Westport"), Tokio Marine America Insurance Company ("Tokio Marine"), Endurance American Specialty Insurance Company ("Endurance"), The Princeton Excess And Surplus Lines Insurance Company ("Princeton"), Mitsui Sumitomo Insurance Company Of America ("Mitsui"), and Homeland Insurance Company Of New York ("Homeland") (collectively, the "Defendant Insurers" or "Insurers"), allege as follows based on personal knowledge and information and belief:

I. INTRODUCTION

1. This action arises out of the Defendant Insurers' refusal to acknowledge coverage for the EIIA Members' losses arising from the SARS-CoV-2 virus (the "Coronavirus") and the disease that it causes, Coronavirus Disease 2019 ("COVID-19").

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[1] Made up of Lloyd's Underwriter Syndicate No. 2623 (82%) and Lloyd's Underwriter Syndicate No. 623 (18%).

[2] With respect to the excess layer $40M x $10M: Lloyd's Underwriter Syndicate No. 1414 ASC (5%), Lloyd's Underwriter Syndicate No. 2988 BRIT (0.75%), Lloyd's Underwriter Syndicate No. 2987 BRIT (5.75%), Lloyd's Underwriter Syndicate No. 1967 WRB (8%), Lloyd's Underwriter Syndicate No. 2015 CHN (4%), Lloyd's Underwriter Syndicate No. 1183 TAL (2%). With respect to the excess layer $100M x $50M: Lancashire Insurance Co. (UK) Ltd, LIRMA L0205 (10%), Lloyd's Syndicate Underwriter No. 3902 NOA (3%), Convex Insurance UK Limited, LIRMA C9800 (5%), Aggregate Offline Market (1.5%). With respect to the excess layer $150M x $250M: Lloyd's Underwriter Syndicate No. 1414 ASC (5%).

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2. The EIIA Members' interest in their respective covered property has been impacted adversely by the Coronavirus and COVID-19. The EIIA Members have suffered covered losses under a program of "all-risk" commercial property insurance policies that the Defendant Insurers sold to the EIIA Members (the "Policies"), as detailed further herein. The Policies adopt a master policy form (the "Policy"), with $1.2 billion per occurrence limits in primary and excess coverage, effective from March 1, 2020 to March 1, 2021.

3. The EIIA Members seek a declaration as to the scope and breadth of the parties' rights and obligations under the Policies in connection with the EIIA Members' losses and the Defendant Insurers' refusal to honor their promises to protect the EIIA Members in the face of devastating losses.

4. Rather than stand by their insureds and honor their obligations under the Policies, the Defendant Insurers turned their back on the EIIA Members, and upon information and belief, many other insureds in Washington and around the nation – forcing the EIIA Members to turn to this Court for relief.

5. The EIIA Members suffered covered losses at their respective campuses.

6. The EIIA Members seek declaratory relief in the form of an order declaring that the losses the EIIA Members have suffered are covered by the Policies and that the Defendant Insurers are responsible for fully and timely paying the EIIA Members' losses. The EIIA Members also seek damages for breach of contract for the Defendant Insurers' failure to pay their covered losses.

7. The "all risk" Policy was drafted by the Defendant Insurers and "insures against all risk of direct physical loss of or damage to property . . . except as hereinafter excluded[.]" It provides coverage for property damage losses, time element and/or business interruption losses, and other losses.

8. The Policy also insures "[l]oss resulting from necessary interruption of business . . . caused by loss, damage, or destruction . . . ."

9. Neither virus, communicable disease, pandemics, COVID-19, nor the Coronavirus

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are excluded causes of loss under the Policy.

10. Indeed, the Policy expressly includes "Communicable Disease" coverage (in the Policy's "Coverage Extensions" section), for property damage for "direct physical loss or damage to insured property caused by or resulting from a . . . communicable disease event at an insured location[,]" and "costs to test, monitor, contain . . . disinfect . . . insured property."

11. Further, and without any requirement to demonstrate physical loss or damage, the Policy expressly includes "Interruption by Communicable Disease" coverage (in the Policy's "Coverage Extensions" section), for business interruption "if the interruption is caused by order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases or by recommendation of the Center[s] for Disease Control (CDC) or that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the Location."

12. The "Interruption by Communicable Disease" coverage also provides coverage for "the reasonable and necessary cost incurred for the cleanup, removal and disposal of the actual not suspected presence of substances(s) [sic] causing the spread of such communicable disease and to restore the locations in a manner so as to satisfy such authorized governmental agency."

13. The phrases "all risk of direct physical loss of or damage to property," "direct physical loss or damage," and "loss, damage, or destruction" are not defined and do not apply on a blanket basis to all coverages in the Policies. In plain English, they denote at least the following meanings: (1) physical damage to that property; (2) the structural alteration of that property; (3) the interaction of an external physical substance or force with that property, including its attachment to the surface or presence in the air of that property, rendering the property unfit, unsafe or uninhabitable for normal use or otherwise negatively affecting the property's usability; or (4) the loss of use or the loss of functional use, whether in whole or in part, of that property.

14. Due to the prevalence (ratio of infected persons in a population) and incidence (ratio of new cases) of COVID-19 infections in the U.S. and globally, the EIIA Members would have

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had consistently high risks for the presence of the airborne Coronavirus from infected students, employees and visitors, some of whom would have been asymptomatic and unknowing spreaders (in some cases superspreaders) of the Coronavirus. The Coronavirus can be released into the air when infected persons breathe, talk, cough, sneeze or sing, and such releases can infiltrate ventilation systems, as well as myriad surfaces (i.e., fomites) such as any and all dermal contact surfaces (e.g., door handles, carpeting, bedding, computers, books, desks, podiums, chairs, restroom faucets and other surfaces subject to intense use by students and employees throughout the day). The Coronavirus has and continues to deposit, and therefore elevate contagion risks on myriad dermal contact surfaces, which can pose transmission risks for persons contacting surfaces that have been transformed into disease-spreading fomites.

15. Due to the pervasiveness of the Coronavirus, classrooms, residences halls, bathrooms, locker rooms and many other facilities subject to intense and ongoing use throughout the day by countless students and employees have sustained devastating covered losses. The fundamental nature of campus operations including the repeated movement of students from residence halls to various classes to various activities throughout the day demonstrates that the EIIA Members' facilities were constantly bombarded with deposits of the Coronavirus.

16. It is undisputed that air within a property laden with asbestos fibers is unsafe for people. It is no different for a property that has the Coronavirus physically invading its air – the building has been damaged because the virus invades and physically transforms the air and makes it unsafe for breathing.

17. It is similarly undisputed, and indeed is the law across this country, that drinking water and the water table containing virus or any other impurity that is an agent of illness or death are damaged because the virus/impurities make the water unsafe for drinking. The same rule must apply to property that has the Coronavirus in the air – the building has been damaged because the virus invades and physically transforms the air and makes it unsafe for breathing.

18. The presence of the Coronavirus on the EIIA Members' campuses is not the same

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as – and could not be more different from – the presence of dust. The presence of dust is an everyday occurrence. By contrast, the presence of the Coronavirus in the air and on surfaces was neither expected nor ordinary. And unlike dust, the Coronavirus cannot be removed by routine cleaning from surfaces. Attempting to remove the Coronavirus from surfaces requires specific protocols. These specific protocols require harsh and abrasive chemicals that are not routinely used and that themselves cause additional covered losses to property at the EIIA Members' campuses. And none of that surface cleaning removes the Coronavirus from the air – the number one transmission vector for its spread.

19. Three EIIA Members are located in Washington (Pacific Lutheran, Puget Sound and Whitworth) (the "Washington EIIA Members"). Two of them, Pacific Lutheran and Puget Sound are located in Pierce County and one, Whitworth, is located in Spokane County, while the other EIIA Members are located throughout the nation. The EIIA Members are prominent colleges and universities and draw students from all fifty states and dozens of foreign countries.

20. The toll of the Coronavirus and COVID-19 on lives, property, and businesses in Washington, the United States and around the world has been unprecedented and is among the worst public health and economic catastrophes of the last 100 years.

21. The loss or damage to property and the economic devastation wrought by the Coronavirus and COVID-19 is unprecedented. The Coronavirus and COVID-19 could result in net losses starting at $3.2 trillion and reaching as much as $4.8 trillion in U.S. real gross domestic product over two years.[3] None of the states and counties where the EIIA Members operate have been spared this devastating toll.

[3] Emily Gersema, *Business closures and partial reopenings due to COVID-19 could cost the U.S. trillions*, USC News (Nov. 30, 2020), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus (last visited May 9, 2021).

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22. As of May 7, 2021, Washington has reported over 413,980 COVID-19 cases.[4]

23. Washington lost a half-million jobs in April 2020 alone.[5] The unemployment rate more than tripled from 5.1% before the emergence of the Coronavirus and COVID-19 to 15.4% in April 2020. *Id.* Over the eight weeks between March 8, 2020 and May 9, 2020, "the Seattle-Tacoma-Bellevue Metropolitan Statistical Area (Seattle MSA) lost 608,688 jobs."[6] States across the nation have faced significant unemployment, and this is certainly true of the states where the EIIA Members operate.[7]

24. Washington is also expected to suffer substantial revenue declines as a result of COVID-19's impact on Washington's economy. Washington's budget shortfall is projected at $1 billion per year for 2020, 2021 and 2022.[8] None of the states where the EIIA Members operate have been spared massive revenue declines.[9]

25. While most sectors of the economy are struggling, the nation's colleges and universities have been particularly hard hit.[10] Even small reductions in student enrollment can lead to significant losses at colleges and universities.

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[4] *Data Dashboard*, Washington Department of Health (updated May 7, 2021), https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard (last visited May 9, 2021).

[5] Jim Camden, *Washington lost a half-million jobs in April; unemployment reaches 15%*, The Spokesman-Review (May 20, 2020) (last visited May 9, 2021).

[6] *COVID-Recession & Recovery*, Seattle Jobs Initiative (May 2020), https://www.seattle.gov/documents/Departments/economicDevelopment/workforce/COVID-19-Recession-and-Recovery-Brief%20(1).pdf (last visited May 9, 2021).

[7] Michael Ettlinger & Jordan Hensley, *COVID-19 Economic Crisis: By State*, Carsey Sch. of Pub. Health (Apr. 16, 2021) https://carsey.unh.edu/COVID-19-Economic-Impact-By-State (last visited May 9, 2021).

[8] *State Budget Watch*, Center on Budget and Policy Priorities (Nov. 6, 2020), https://www.cbpp.org/research/state-budget-and-tax/states-grappling-with-hit-to-tax-collections (last visited May 9, 2021).

[9] *Id.*

[10] *As Campuses Become COVID-19 Hot Spots, Colleges Strain Under Financial Pressures*, NPR (Sep. 16, 2020), https://www.npr.org/2020/09/16/913500758/as-campuses-become-covid-hotspots-colleges-strain-under-financial-pressures (last visited May 9, 2021).

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26. A June 2020 survey of 271 college and university chief business officers conducted by Inside Higher ED found that most institutions had already incurred more than $2 million in unanticipated budget costs relating to the Coronavirus and COVID-19, with one in five reporting costs of more than $5 million, and 1 in 10 reporting costs of at least $10 million.[11] The U.S. Labor Department estimates that at least 650,000 workers at American academic institutions are no longer employed – or one in eight workers in academia.[12]

27. The EIIA Members are part of Educational & Institutional Insurance Administrators, Inc. ("EIIA"), a consortium of private colleges, universities, and seminaries committed to protecting the promise of higher education. EIIA was created in the 1960's to help historically black colleges and universities connected with the Methodist Church purchase insurance during a period of extreme prejudice and racial injustice. Other schools that shared a vision of racial equality joined the consortium. Many of the member schools are still faith based, and a number were faith based at their founding but no longer are.

28. The EIIA Members are devoted to educating the next generation and the Defendant Insurers' actions, if left unremedied, threaten the EIIA Members' ability to continue their vital mission.

29. In mid-March 2020, the Coronavirus and COVID-19 struck Washington and the nation hard, including the states and counties where the EIIA Members operate.

30. In Washington, there were nearly 6,000 confirmed cases of, and 247 deaths attributable to, the Coronavirus and COVID-19 by the end of March 2020.[13] The rate of daily new

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[11] *COVID-19's Forceful Financial Hit: A Survey of Business Officers*, Insider Higher ED (Jul. 10, 2020), https://www.insidehighered.com/news/survey/covid-19s-forceful-financial-hit-survey-business-officers (last visited May 9, 2021).

[12] A Brutal Tally: Higher Ed Lost 650,000 Jobs Last Year, The Chronicle of Higher Education (Feb. 5, 2021), https://www.chronicle.com/article/a-brutal-tally-higher-ed-lost-650-000-jobs-last-year (last visited May 9, 2021).

[13] Casey McNerthney, *Coronavirus in Washington state: A timeline of the outbreak through March 2020*, KIRO 7 (Apr. 3, 2020), https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/ (last visited May 9, 2021).

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cases continued to grow thereafter, with the 21-day average exceeding 3,400 new cases a day in December 2020.[14] As of March 31, 2020, Washington had a 7-day moving positivity average rate of 9.3%.[15] No state was spared the rapid spread of the Coronavirus and COVID-19 including each of the states where the EIIA Members are located.[16]

31. The Coronavirus and COVID-19 have decimated lives and businesses, causing widespread loss or damage throughout the United States, including the counties where the EIIA Members are located. The Coronavirus and COVID-19 have devastated the EIIA Members' property and business by causing loss or damage to their property and other loss of the type insured under the Policy.

32. The EIIA Members have experienced loss or damage to their property in at least four ways:

(1) over 1,000 employees and 6,000 students tested positive for COVID-19, demonstrating both the certain or virtually certain presence of COVID-19 and/or the Coronavirus throughout the EIIA Members' property, in the air or on surfaces (whether in droplet nuclei, aerosols, droplets or otherwise);

(2) through state, local and agency governmental orders, including Centers for Disease Control ("CDC") recommendations, that dramatically limited the EIIA Members' use of their property (including, but not limited to, ordering the closure of non-essential functions and prohibiting in-person learning), causing the EIIA Members to lose the normal use and function of their campuses and other property;

(3) through the need to modify physical behaviors by implementing social

[14] *Tracking Coronavirus in Washington: Latest Map and Case Count*, New York Times (last updated May 9, 2021), https://www.nytimes.com/interactive/2021/us/washington-covid-cases.html (last visited May 9, 2021).

[15] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (last updated May 9, 2021), https://coronavirus.jhu.edu/testing/individual-states/washington (last visited May 9, 2021).

[16] *Map: Watch Coronavirus Cases Spread Across the US*, NBC Chicago (updated Aug. 12, 2020) https://www.nbcchicago.com/news/national-international/map-watch-coronavirus-cases-spread-across-the-us/2249881/ (last visited May 9, 2021).

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distancing, avoiding confined indoor spaces, and avoiding congregating in the same physical area as others, in order to reduce or minimize the potential for viral transmission; and

(4) through the need to mitigate the threat or actual physical presence of the Coronavirus on door handles, desks, chairs, computers, library shelving, in heating and air conditioning systems, and any of the multitude of other places that the Coronavirus has or could be found.

33. The incidence and prevalence (ratio of new vs. existing COVID-19 disease cases) in Washington and everywhere in the United States where the EIIA Members are located is unprecedented. In less than 4 months, COVID-19 spread worldwide and by June 2020, 10 million infections were reported, causing or contributing to the mortality of a million people.[17]

34. Indeed, occupancy of indoor spaces is reported to be a major risk factor for transmission of the Coronavirus. Investigation of over 7,000 COVID-19 cases found that all outbreaks involving three or more people occurred indoors.[18] The airborne Coronavirus viral RNA has been detected inside indoor spaces at distances over 50 meters from its source and in outdoor air in crowded areas outside of buildings.[19]

35. The prevalence and incidence of COVID-19 throughout the United States (and considering the thousands of cases of COVID-19 infections reported by the EIIA Members' students and employees) demonstrates that it is certain or virtually certain that the Coronavirus was in the air and on myriad surfaces at the EIIA Members' campuses.

36. While the EIIA Members' employees could conduct perfunctory "cleaning" or even disinfection of workplace surfaces, there is no definitive consensus or metric for "how clean is

[17] Hua Qian et al., *Indoor transmission of SARS-CoV-2*, INDOOR AIR (Oct. 31, 2020), https://pubmed.ncbi.nlm.nih.gov/33131151/ (last visited May 9, 2021).

[18] *Id.*

[19] Yuan Liu et al., *Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals*, 582 NATURE 7813, 557-60 (June 2020), https://pubmed.ncbi.nlm.nih.gov/32340022/ (last visited May 9, 2021).

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clean." Unlike dust, the Coronavirus is invisible to the naked eye. Accordingly, confirmation of disinfection of the Coronavirus even from surfaces could not be verified by EIIA staff.

37. More importantly, unlike surface cleaning of visible substances like dust or debris, where the degree of "clean" can be visually confirmed to a reasonable degree of certainty, that is not the case for the cleaning and disinfection of the Coronavirus because:

- the Coronavirus is not visible to the naked eye;
- the degree and magnitude of the Coronavirus would be unknown so the rigorousness required and effectiveness of disinfection cannot be determined; and
- viral inactivation through disinfection is different for different substrates and surfaces (i.e., carboard, plastic, stainless steel or copper) and varies for porous vs. non-porous surfaces.

38. As compared to the cleaning of visible soiling, dirt and debris, which typically does not require "disinfection" of surfaces as required for viral contamination, the uncertainty involved in the effectiveness of disinfection of surfaces for something invisible (i.e., the Coronavirus) makes cleaning a much more complicated and less effective process. There is no degree of certainty as to the "cleanliness" or more importantly the degree of disinfection that would be possible in order to effectively remove the Coronavirus. Nor is there any method or technique to confirm the disinfection of the invisible Coronavirus from surfaces at the EIIA Members' campuses.

39. The presence of the Coronavirus in the air and on surfaces made the EIIA Members' campuses uninhabitable, unsafe, and unfit for their normal and intended uses – just as if radon gas, cat urine, asbestos, ammonia, fumes, a mold infestation or a salmonella outbreak were in the air or on surfaces of the premises. Nor could the Coronavirus or the risk of Coronavirus transmission be completely removed by routine surface cleaning. As a result, the EIIA Members had to operate at a limited capacity or close entirely.

40. Throughout March 2020, states where the EIIA Members operate issued orders imposing numerous and sweeping restrictions on business operations, gatherings, travel, dining

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and various health and safety measures (such as the use of face coverings and social distancing measures), as well as restrictions specifically directed at colleges and universities.

41. The CDC issued extensive guidance to colleges and universities regarding the implementation of extensive health and safety measures to minimize the spread of the Coronavirus throughout the campus environment and reduce the risk to students, employees and visitors – all which impacted the EIIA Members' operations.

42. For example, on March 13, 2020, Governor Jay Inslee issued a proclamation providing that "[a]ll public and private universities, colleges, technical schools, apprenticeship and similar programs are prohibited from conducting in-person classroom instruction and lectures related to all educational and apprenticeship programs." [20] This proclamation explicitly noted that the spread of COVID-19 generally and in Washington "remain a public disaster affecting life, health, property or the public peace[.]" *Id.*

43. On June 24, 2020, Governor Inslee issued a proclamation titled "Higher Education – Fall 2020," which specified a "science-based approach" to reopening campuses that "incorporates safety, sanitation, and physical distancing guidelines[.]"[21] This proclamation specified over thirty campus safety measures including: the development of a "Safe Back to School Plan," implementation of social distancing and/or administrative or engineering controls to minimize exposure; "sanitization of high-touch surfaces and shared resources (e.g., doorknobs, elevators, vending machines, points of sales)," testing, reporting and quarantine measures, and limiting occupancy and gatherings in residential facilities. *Id.*

44. Similar orders were issued by states, counties, health departments and other governmental authorities throughout the United States, and the EIIA Members canceled in-person

[20] *Proclamation by the Governor 20-12.2*, Off. Governor (March 13, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-12%20Coronavirus%20College%20Closure%20%28tmp%29.pdf (last visited May 10, 2021).

[21] *Proclamation by the Governor 20-12.2 Higher Education – Fall 2020*, Off. Governor (Jun. 24, 2020), https://www.governor.wa.gov/sites/default/files/proc_20-12.1.pdf (last visited May 10, 2020).

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classes for the remainder of the Spring 2020 semester, cancelled events and activities, and altered their normal operations in countless ways.

45. While most EIIA Members resumed in-person classes in the Fall 2020 semester to varying degrees and subject to substantial continuing restrictions, the interruption led to significant losses, including, but not limited to: food service revenue, lost/returned housing income or reductions/freezes in housing fees, lost/returned tuition or reductions/freezes in tuition, lost parking fees, quarantine-related costs, reduced enrollment, increased expenses for campus safety and health services, costs associated with the modification of indoor and outdoor space for social distancing, dorm clean-up and maintenance costs, enhanced sanitizing and cleaning, COVID-19 related student grants/financial aid, cancelled athletic events, cancelled summer programs and camps, lost sales at campus bookstores, lost child care revenues, reduction in fundraising activities leading to reduced donations, cancelled/renegotiated vendor contracts, lost revenue from study abroad programs including travel costs to return students home, technology costs including equipment, software and licenses for remote learning, unemployment and other costs associated with staffing changes and enhanced sanitizing and cleaning.

46. The EIIA Members customized their plans based on their individual circumstances, including the applicable governmental orders and their ability to safely operate given the prevalence of COVID-19 in their communities.

47. Even after reopening, the EIIA Members continue to operate with extensive and costly health and safety protocols and numerous modifications to their property, and additional categories of increased costs such as enhanced air filtration and the purchase of specialized cleaning equipment (including electrostatic cleaning, bipolar ionization and ozone sprayers), consultant costs, increased costs to house students given the need for social distancing in dorms (including rental of hotel rooms in some instances), quarantine, contact tracing and testing related costs, campus signage, plexiglass barriers, tents, furniture and other equipment for outdoor/modified classroom spaces.

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48. For example, all three Washington schools cancelled in-person classes in March, and also cancelled athletics, events and travel, and closed their residences and/or encouraged students to leave. When the Washington schools resumed in person instruction and reopened their campuses in certain respects, they did so subject to numerous restrictions and health and safety protocols.

49. Pacific Lutheran cancelled all in person classes (except for certain nursing classes requiring "hands on" learning that remained subject to numerous restrictions), and did not resume in person instruction until the fall semester commenced. Pacific Lutheran's enrollment declined by over 200 students from Spring 2020 to Spring 2021.

50. Similarly, Whitworth cancelled in person instruction and sent students home, reopening the campus for the fall semester pursuant to their WhitworthFlex plan which was designed to accommodate a subset of students pursuing their education remotely, and included numerous changes to normal operations.[22]

51. Puget Sound cancelled in-person classes, closed campus residences for students without special circumstances, cancelled travel, athletics and events, and reopened subject to restrictions on classes, residences, dining, athletics and other aspects of campus operations, and reduced tuition when the fall semester commenced.[23]

52. Despite concerted safety processes, the EIIA Members have not escaped the spread of COVID-19. The EIIA Members have had numerous employees contract COVID-19. Indeed, at least 1,000 employees reported contracting COVID-19: Albright – 148 (combined students and employees), Alma – 5, Arcadia – 23, Augsburg – 29, Augustana – 41, Bennett – 5, California

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[22] President Taylor's Statement About Plans for Whitworth University to Open For In-Person Classes in Fall Semester: New Students (May 20, 2020), https://www.whitworth.edu/cms/whitworthflex/updates/plans-to-open-for-in-person-clasess-may-20-2020/ (last visited May 10, 2020).

[23] COVID-19 Message Archive, UNIVERSITY OF PUGET SOUND (January-July 2020), https://www.pugetsound.edu/emergency/coronavirus/communications-to-the-puget-sound-community/ (last visited May 10, 2020).

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Lutheran – 35, Claflin – 11, Cornell – 22, Denison – 27, DePauw – 46, Dominican – 4, Drew – 10, Evansville – 49, Furman – 90, Greensboro – 10, IWU – 25, Kenyon – 26, Lake Forest – 15, Lynchburg – 39, Lyon – 12; McKendree – 25, Millsaps – 17, Mills – 4; OWU – 6, ONU – 65, Pacific Lutheran –5, Princeton Theological – 16, Puget Sound – 47 (combined students and employees), Roanoke – 12, Rollins – 22, Rose-Hulman – 44, Schreiner – 15, Shenandoah – 34, Spartanburg Methodist College – 29, St. Olaf – 41, Thiel – 17, Trinity – 44, Valparaiso – 20, Wheaton – 47, Whitworth – 32, Wiley – 16, William Peace – 10, Wilson – 6, Wofford – 59, and Wooster – 58.

53. Many EIIA Member students also tested positive for COVID-19, including at least 6,000 students: Albright – 148 (combined students and employees), Alma – 100, Arcadia – 84, Ausburg – 224, Augustana – 248, Bennett – 10, California Lutheran – 79, Claflin – 41, Cornell – 74, Denison – 52, DePauw – 153, Dominican – 30, Drew – 57, Evansville – 245, Furman – 382 students, Greensboro – 77, IWU – 233, Kenyon – 32, Lake Forest – 54, Lynchburg – 210, Lyon – 95, McKendree – 240, Mills – 1, Millsaps – 91, OWU – 162, ONU – 135, Pacific Lutheran – 45, Princeton Theological – 10, Puget Sound – 47 (combined students and employees), Roanoke – 134, Rollins – 332, Rose-Hulman – 252, Schreiner – 42, Shenandoah – 121, Spartanburg Methodist College – 243, St. Olaf – 117, Thiel – 92, Trinity – 236, Valparaiso – 289, Wagner – 165, Wesley – 2, Wheaton – 104; Whitworth – 315, William Peace – 96, Wilson 76, Wofford – 423, and Wooster – 193.

54. Students and employees also tested positive for COVID-19 at Albion, Capital, Concordia, Huston-Tillotson (employees only), LaGrange, Montreat, Shaw, Simpson and Union.

55. Given the high percentage of asymptomatic cases of COVID-19, and the timing and limits on testing, it is certain that the actual number of the EIIA Members' employees and students who have contracted COVID-19 were substantially greater than the number of employees and students currently known to have contracted COVID-19.

56. To help alleviate the devastating impact of the Coronavirus and COVID-19, the

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EIIA Members turned to the Defendant Insurers, to whom the EIIA Members paid substantial premiums. The Defendant Insurers, however, declined to fulfill their obligations to the EIIA Members, putting the EIIA Members and their vital educational mission at risk.

57. The Defendant Insurers abandoned the EIIA Members and have refused to pay COVID-19-related losses. The insurance industry has repeatedly and falsely warned courts and the media that COVID-19-related claims will bankrupt insurers and force them to raise premiums and restrict coverages – but they have reaped enormous profits by denying covered claims and have continued to raise premiums despite refusing to uphold their coverage obligations.

58. For example, of the five primary-layer insurers in this case, three have publicly available financial statements for 2020, and ***all*** appear to be thriving. Chubb Limited reported a massive increase in net income from $252 million in the first quarter of 2020 to $2.3 billion in the same period in 2021.[24] Argo Group, the parent of Colony, reported a dramatic increase in net income from a loss of $24.7 million in the first quarter of 2020 to a profit of $27.2 million in the same period in 2021.[25] Beazley PLC reported a 17% increase in net premiums written and a 15% premium rate increase for renewals for 2020 over 2019.[26]

59. The EIIA Members seek damages for breach of contract against the Defendant Insurers for their failure to honor their policy obligations.

60. The EIIA Members also seek a judgment declaring the scope of the Defendant Insurers' obligation to pay the EIIA Members' losses under the Policies.

II. PARTIES

Plaintiffs

[24] Chubb 1st Quarter 2021 Press Release, https://s1.q4cdn.com/677769242/files/doc_financials/2021/q1/1st-Quarter-2021-Earnings-Press-Release.pdf (last visited May 9, 2021).

[25] Argo Group Reports 2021 First Quarter Results, https://www.argolimited.com/news-release/argo-group-reports-2021-first-quarter-results/ (last visited May 9, 2021).

[26] Beazley plc results for year end 31 December 2020, https://investor.relations.beazley.com/~/media/Files/B/Beazley-IR/documents/preliminary-results-pr-05022021.pdf (last visited May 9, 2021).

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61. Albion is a non-profit corporation formed under the laws of Michigan with its principal place of business in Albion, Michigan.

62. Albright is a non-profit corporation formed under the laws of Pennsylvania with its principal place of business in Reading, Pennsylvania.

63. Alma is a non-profit corporation formed under the laws of Michigan with its principal place of business in Alma, Michigan.

64. Arcadia is a non-profit corporation formed under the laws of Pennsylvania with its principal place of business in Glenside, Pennsylvania.

65. Augsburg is a non-profit corporation formed under the laws of Minnesota with its principal place of business in Minneapolis, Minnesota.

66. Augustana is a non-profit corporation formed under the laws of Illinois with its principal place of business in Rock Island, Illinois.

67. Bennett is a non-profit corporation formed under the laws of North Carolina with its principal place of business in Greensboro, North Carolina.

68. California Lutheran is a non-profit corporation formed under the laws of California with its principal place of business in Thousand Oaks, California.

69. Capital is a non-profit corporation formed under the laws of Ohio with its principal place of business in Columbus, Ohio.

70. Claflin is a non-profit corporation formed under the laws of South Carolina with its principal place of business in Orangeburg, South Carolina.

71. Concordia is a non-profit corporation formed under the laws of Minnesota with its principal place of business in Moorehead, Minnesota.

72. Cornell is a non-profit corporation formed under the laws of Iowa with its principal place of business in Mount Vernon, Iowa.

73. Denison is a non-profit corporation formed under the laws of Ohio with its principal place of business in Granville, Ohio.

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74. DePauw is a non-profit corporation formed under the laws of Indiana with its principal place of business in Greencastle, Indiana.

75. Dominican is a non-profit corporation formed under the laws of California with its principal place of business in San Rafael, California.

76. Drew is a non-profit corporation formed under the laws of New Jersey with its principal place of business in Madison, New Jersey.

77. Evansville is a non-profit corporation formed under the laws of Indiana with its principal place of business in Evansville, Indiana.

78. Furman is a non-profit corporation formed under the laws of South Carolina with its principal place of business in Greenville, South Carolina.

79. Greensboro is non-profit corporation formed under the laws of North Carolina with its principal place of business in Greensboro, North Carolina.

80. Huston-Tillotson is a non-profit corporation formed under the laws of Texas with its principal place of business in Austin, Texas.

81. IWU is a non-profit corporation formed under the laws of Illinois with its principal place of business in Bloomington, Illinois.

82. Kenyon is a non-profit corporation formed under the laws of Ohio with its principal place of business in Gambier, Ohio.

83. LaGrange is a non-profit corporation former under the laws of Georgia with its principal place of business in LaGrange, Georgia.

84. Lake Forest is a non-profit corporation formed under the laws of Illinois with its principal place of business in Lake Forest, Illinois.

85. Lynchburg is a non-profit corporation formed under the laws of Virginia with its principal place of business in Lynchburg, Virginia.

86. Lyon is a non-profit corporation formed under the laws of Arkansas with its principal place of business in Batesville, Arkansas.

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87. McKendree is a non-profit corporation formed under the laws of Illinois with its principal place of business in Lebanon, Illinois.

88. McMurry is a non-profit corporation formed under the laws of Texas with its principal place of business in Abilene, Texas.

89. Mills is a non-profit corporation formed under the laws of California with its principal place of business in Oakland, California.

90. Millsaps College is a non-profit corporation formed under the laws of Mississippi with its principal place of business in Jackson, Mississippi.

91. Montreat College is a non-profit corporation formed under the laws of North Carolina with its principal place of business in Montreat, North Carolina.

92. ONU is a non-profit corporation formed under the laws of Ohio with its principal place of business in Ada, Ohio.

93. OWU is a non-profit corporation formed under the laws of Ohio with its principal place of business in Delaware, Ohio.

94. Pacific Lutheran is a non-profit corporation formed under the laws of Washington with its principal place of business in Parkland, Washington.

95. Princeton Theological is a non-profit corporation formed under the laws of New Jersey with its principal place of business in Princeton, New Jersey.

96. Puget Sound is a non-profit corporation formed under the laws of Washington with its principal place of business in Tacoma, Washington.

97. Roanoke is a non-profit corporation formed under the laws of Virginia with its principal place of business in Salem, Virginia.

98. Rollins is a non-profit corporation formed under the laws of Florida with its principal place of business in Winter Park, Florida.

99. Rose-Hulman is a non-profit corporation formed under the laws of Indiana of with its principal place of business in Terre Haute, Indiana.

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100. Schreiner is a non-profit corporation formed under the law of Texas with its principal place of business in Kerrville, Texas.

101. Shaw is a non-profit corporation formed under the laws of North Carolina with its principal place of business in Raleigh, North Carolina.

102. Shenandoah is a non-profit corporation formed under the laws of Virginia with its principal place of business in Winchester, Virginia.

103. Simpson is a non-profit corporation formed under the laws of Iowa with its principal place of business in Indianola, Iowa.

104. Spartanburg Methodist College is a non-profit corporation formed under the laws of South Carolina with its principal place of business in Spartanburg, South Carolina.

105. St. Olaf is a non-profit corporation formed under the laws of Minnesota with its principal place of business in Northfield, Minnesota.

106. Thiel is a non-profit corporation formed under the laws of Pennsylvania with its principal place of business in Greenville, Pennsylvania.

107. Trinity is a non-profit corporation formed under the laws of Texas with its principal place of business in San Antonio, Texas.

108. Union is a non-profit corporation formed under the laws of Kentucky with its principal place of business in Barbourville, Kentucky.

109. Valparaiso is a non-profit corporation formed under the laws of Indiana with its principal place of business in Valparaiso, Indiana.

110. Wagner is a non-profit corporation formed under the laws of New York with its principal place of business in Staten Island, New York.

111. Wesley Theological is a non-profit corporation formed under the laws of Maryland with its principal place of business in Washington, D.C.

112. Wheaton is an Illinois special charter corporation with its principal place of business in Wheaton, Illinois.

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113. Whitworth is a non-profit corporation formed under the laws of Washington with its principal place of business in Spokane, Washington.

114. Wiley is a non-profit corporation formed under the laws of Texas with its principal place of business in Marshall, Texas.

115. William Peace is a non-profit corporation formed under the laws of North Carolina with its principal place of business in Raleigh, North Carolina.

116. Wilson is a non-profit corporation formed under the laws of Pennsylvania with its principal place of business in Chambersburg, Pennsylvania.

117. Wofford is a non-profit corporation formed under the laws of South Carolina with its principal place of business in Spartanburg, South Carolina.

118. Wooster is a non-profit corporation formed under the laws of Ohio with its principal place of business in Wooster, Ohio.

Defendants

119. Upon information and belief, Beazley subscribing to Policy Number W2205F200301, are comprised of two syndicates of unknown citizenship who subscribed to the above-mentioned policy.

120. Upon information and belief, GuideOne is a corporation formed under the laws of Iowa with its principal place of business in Iowa.

121. Upon information and belief, Colony is a corporation formed under the laws of Virginia with its principal place of business in Texas.

122. Upon information and belief, ACE is a corporation formed under the laws of Pennsylvania with its principal place of business in Pennsylvania.

123. Upon information and belief, Starr is a corporation formed under the laws of Texas with its principal place of business in New York.

124. Upon information and belief, Arch is a corporation formed under the laws of Missouri with its principal place of business in New Jersey.

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125. Upon information and belief, Evanston is a corporation formed under the laws of Illinois with its principal place of business in Illinois.

126. Upon information and belief, Lloyd's subscribing to Policy Number B080110908U20, are comprised of various syndicates of unknown citizenship who subscribed to the above-mentioned policy.

127. Upon information and belief, Ategrity is a corporation formed under the laws of Delaware with its principal place of business in Arizona.

128. Upon information and belief, HDI is a corporation formed under the laws of Illinois with its principal place of business in Illinois.

129. Upon information and belief, Westport is a corporation formed under the laws of Missouri with its principal place of business in Missouri.

130. Upon information and belief, Tokio Marine is a corporation formed under the laws of New York with its principal place of business in New York.

131. Upon information and belief, Endurance is a corporation formed under the laws of Delaware with its principal place of business in New York.

132. Upon information and belief, Princeton is a corporation formed under the laws of Delaware with its principal place of business in New Jersey.

133. Upon information and belief, Mitsui is a corporation formed under the laws of New York with its principal place of business in New Jersey.

134. Upon information and belief, Homeland is a corporation formed under the laws of New York with its principal place of business in Minnesota.

III. JURISDICTION AND VENUE

135. This Court has original jurisdiction pursuant to RCW 2.08.010 because the case originates in Washington and the amount in controversy exceeds the jurisdictional threshold.

136. This Court has general jurisdiction over the Defendant Insurers under RCW 4.28.080(10) because each of them transacts substantial and continuous business within the state

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of such character as to give rise to a legal obligation. *See Crose v. Volkswagenwerk Aktiengesellschaft,* 88 Wn. 2d 50, 54 (1977). This Court also has jurisdiction over unauthorized non-resident insurers that solicit insurance business in this state or transact insurance business in this state under RCW 48.05.215.

137. This Court has specific personal jurisdiction over the Defendant Insurers because each of them insured the Washington EIIA Members' property located in Washington through the policies at issue in this action and conducts business in Washington and therefore has sufficient minimum contacts with Washington, and otherwise intentionally avails itself of the markets within Washington through its business activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW 4.28.185. Moreover, the Policies at issue all provide coverage for property located in Pierce County and property and time element losses to all three Washington EIIA Members in Washington, including two in Pierce County, Washington. Accordingly, Venue is proper in Pierce County, Washington pursuant to RCW 4.12.025.

IV. FACTUAL BACKGROUND

A. *The EIIA Members*

138. Pacific Lutheran is a private Lutheran university located in Pierce County – in Parkland. Pacific Lutheran has approximately 3,100 enrolled students. Pacific Lutheran offers 51 majors and 63 minors in its five schools: the College of Arts and Sciences; the School of Arts and Communication; the School of Business; the School of Education and Kinesiology; and the School of Nursing.

139. Puget Sound is a private university founded in 1888, located in Pierce County – in Tacoma. Approximately 2,600 predominately undergraduate enrolled students hail from 44 states and 16 countries. Puget Sound offers more than 50 traditional and nontraditional areas of study in the liberal arts and sciences, as well as graduate programs in occupational therapy, physical therapy, and education. In total, Puget Sound offers 1,200 courses annually. More than 90% of Puget Sound students receive need-based financial aid or merit scholarships.

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140. Whitworth is a private Christian university affiliated with the Presbyterian Church located in Spokane, Washington. Founded in 1890, the university enrolls more than 3,000 students and offers over 100 graduate and undergraduate programs, 5 graduate programs and 8 adult bachelor's degree completion programs. Whitworth offers 30-plus study abroad programs, and over 50% of its students participate in one or more off-campus programs.

141. Albion is a private liberal arts college founded in 1835 and located in Albion, Michigan. Albion has approximately 1,500 enrolled students and 90% live on campus. Albion offers 59 majors and 51 minors over 23 academic departments. Albion students participate in over 100 student organizations and 22 intercollegiate athletic teams. Albright is a private liberal arts college founded in 1856 in Reading, Pennsylvania and it is affiliated with the United Methodist Church. Albright offers more than 50 programs of study to its over 1,600 undergraduate students. Albright encourages the study of multiple disciplines, with about half of Albright students pursuing concentrations that combine two or three fields of learning. Albright is a fully residential college, and also offers dozens of study abroad programs, as well as research programs during the summer and winter sessions. Albright has been recognized as one of the most ethnically and economically diverse schools in the country. Albright also owns commercial properties in Reading, Pennsylvania, both on and off of its campus, which it rents to commercial tenants. Albright has a contractual relationship with a childcare center. Along with the university, these facilities were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and Albright incurred substantial costs and losses as a result.

142. Alma is a private liberal arts college in Alma, Michigan. Its total student enrollment is over 1,400, representing 24 states and 17 countries. Alma offers over 50 majors and graduate programs. Alma is a fully residential campus, and students are heavily dependent on campus facilities. Alma has a nationally competitive Scholarship Committee designed to help juniors and seniors apply for funding opportunities for graduate and professional school. Alma houses the Heritage Center for the Performing Arts, the region's premiere performing arts facility. Over a

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third of Alma students, regardless of major, take part in at least one theatrical performance per year.

143. Arcadia is a private university currently located in Glenside, Pennsylvania and founded in 1853. Arcadia offers more than 80 majors to its 2,300 undergraduates in its College of Arts & Sciences, College of Health Sciences, School of Education, and School of Global Business, and also allows students to propose self-designed majors. Arcadia also offers a variety of Masters and Doctoral level degree programs to its 1,600 MA and PhD students. Arcadia's College of Global Studies offers over 130 study abroad programs and, prior to the impact of COVID-19, approximately 900 students were scheduled to study abroad. Arcadia University has more than 60 active governing, academic, sport, cultural, media, religious, and service clubs and organizations. Arcadia has a satellite campus located in Christiana, Delaware.

144. Augsburg is a private university founded in 1869 and located in Minneapolis, Minnesota. The university has an undergraduate enrollment of over 2,500, and a graduate enrollment of over 800, representing over 40 states, 40 foreign countries, and over 20 tribal nations. The university is known for its emphasis on service learning, and requires volunteering in the community in order to graduate. Augsburg offers undergraduate degrees in over 50 majors and 11 graduate degrees. Students can participate in more than 50 clubs and organizations.

145. Augustana is a Lutheran liberal arts college in Rock Island, Illinois with an enrollment of 2,500 students. Augustana offers nearly 90 academic programs and fields of study including 9 pre-professional and 8 interdisciplinary programs. Over 60% of Augustana students study abroad. Augustana also offers the CORE program, standing for Careers, Opportunities, Research, Exploration, which provides student with learning experiences, a network of mentors and advisors, and professional career coaches, and boasts a group of alumni with a proven track record of success.

146. Bennett is a historically black liberal arts college for women in Greensboro, North Carolina. Bennett offers 15 majors and 19 minors under 2 divisions: the Division of Arts &

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Sciences and the Division of Professional Studies. Students can participate in over 60 campus social, service, religious, and student government organizations. Bennett has an enrollment of over 200 students.

147. California Lutheran is private liberal arts university in Thousand Oaks, California. California Lutheran offers 41 majors and 41 minors, with degrees at the bachelor's, master's and doctoral levels, as well as post-masters and post-bachelor's degrees. California Lutheran is home to more than 2,800 undergraduate and 1,200 graduate students who come from more than 40 states and 49 countries and a wide variety of faiths. California Lutheran also owns or operates: (a) an entrepreneurial center in Los Angeles County, California; and (b) counseling centers in Oxnard and Westlake Village in California. Along with the university, these facilities were required to close and/or substantially limit its operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

148. Capital is a private liberal arts university and graduate school located in Columbus, Ohio. It was founded in 1830 and chartered as a university in 1850. Capital is the oldest university in central Ohio, and one of the oldest and largest Lutheran-affiliated universities in North America. Capital enrolls nearly 3,300 students and offers 60 majors and more than 50 minors in the areas of Music, Arts and Communication, Business and Management, Education, Humanities, Natural Sciences, Mathematics and Computer Sciences, Nursing and Health, and Social Sciences. Capital offers graduate and/or post-degree certification in Education, Law, Theology, Nursing, Business and Music Education.

149. Claflin is a comprehensive university affiliated with the United Methodist Church. A historically black university founded in 1869, it awards the BA, BS, BSN, MBA, MS and the M. Ed degrees. Specifically, the institution offers 37 undergraduate majors, 26 minors and 5 graduate programs through its 4 Schools –The School of Business, The School of Education, The School of Humanities and Social Sciences, The School of Natural Sciences and Mathematics, and its Center for Professional and Continuing Studies. Approximately 2,000 students from 24 states

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and 18 countries are enrolled at this university.

150. Concordia is a private liberal arts college located in Moorhead, Minnesota, affiliated with the Evangelical Lutheran Church of America. Concordia has a total student enrollment of nearly 2,000 students, and offers 61 majors and 12 pre-professional programs. Concordia offers Bachelor of Arts, Bachelor of Music, Master of Education and Master of Service in Nutrition degrees. All students complete two signature integrative learning experiences where the focus is on active learning that occurs outside the traditional classroom. Its Concordia Language Villages offers unique language immersion and educational programs.

151. Cornell was founded in 1858 and is a private liberal arts college in Mount Vernon, Iowa. From its inception, Cornell has accepted women into all degree programs, and was the first school in the nation to make a woman a full professor at a salary equal to male colleagues. With respect to enrollment, 92% of students live on campus and participate in over 50 student clubs and organizations. Cornell also owns the Brackett House Bed and Breakfast, a historic four room inn. Along with the college, the Brackett House was required to close and/or substantially limit its operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

152. Denison is a private liberal arts college located in Granville, Ohio. Founded in 1831, Denison has approximately 2,300 undergraduate students and offers over 53 majors. Denison students hail from 40 U.S. states and 23 countries. Denison boasts a 9-to-1 average student to faculty ratio and over 160 student organizations. Denison has a fully residential campus, and students are heavily dependent on campus facilities. Denison also owns the Granville Inn, a nearly 100-year-old hotel and inn, and the Denison Golf Club, recognized as one of the top golf facilities in Central Ohio. Along with the university, the inn and golf course were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

153. DePauw is a private university in Greencastle, Indiana founded in 1837. DePauw

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enrolls almost 2,000 students. DePauw prides itself on being the first university to guarantee employment within six months of graduation, and offers students unable to find such employment an entry-level professional opportunity or an additional primary term tuition-free. DePauw offers 49 majors and 55 minors, and more than 100 clubs and student organizations.

154. Dominican is a private university in San Rafael, California founded in 1890, and is one of the oldest universities in California. In 2020, Dominican had 1,837 students including 1,374 undergraduates. Dominican offers students more than 60 academic majors, minor and concentrations, as well as 11 graduate programs. Students can participate in more than 40 student organizations.

155. Drew is a private university in Madison, New Jersey founded in 1867. Drew includes the College of Liberal Arts, the Drew Theological School and the Caspersen School of Graduate Studies. The Drew Theological School and the Caspersen School of Graduate Studies both offer Master and Doctoral programs, and the College confers BA and BS degrees in 40 disciplines. Drew's total enrollment is more than 2,000 students. Drew is known for its "Launch" program for undergraduates, which requires two "immersive" experiences, such as internships or research positions, in order to foster transferable skills, create a network of mentors, and develop an experience-based resume upon graduation. Prior to the impacts of COVID-19, 88% of Drew students lived on campus in its 17 residence halls.

156. Evansville is a private university located in Evansville, Indiana founded in 1854. Evansville offers more than 80 different majors and graduate programs. Evansville operates a satellite center, Harlaxton College, in Grantham, England. In 2020, combined graduate and undergraduate enrollment was more than 2,300 students, from 50 countries and 42 states. The university also hosts more than 120 student organizations, and 17 varsity sports at the NCAA Division I level. Students are required to reside on campus for a minimum of two academic years.

157. Furman is a private liberal arts university in Greenville, South Carolina. It enrolls approximately 2,700 undergraduate students and 200 graduate students, representing 46 states and

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53 foreign countries. All full-time students, except those who are married or living at home with their parents or guardians, are required to live on campus in university housing and required to have a meal plan. Furman offers over 60 programs of study. Furman competes in NCAA Division I athletics, fields18 men's and women's teams, and has 16 club sports and many intramural teams.

158. Greensboro is a private liberal arts college affiliated with the United Methodist Church located in Greensboro, North Carolina. Greensboro was founded in 1838, and currently enrolls approximately 1,000 students from 32 states and 29 countries. Greensboro offers 35 undergraduate majors and 26 minors across 5 different schools, the School of Arts, the School of Business, the School of Humanities, the School of Science and Mathematics, and the School of Social Sciences and Education.

159. Huston-Tillotson is a private historically black university in Austin, Texas established in 1875. Huston-Tillotson offers undergraduate and graduate degrees through its College of Arts and Sciences and School of Business and Technology. Huston-Tillotson is affiliated with The United Methodist Church, the United Church of Christ and the United Negro College Fund.

160. IWU is a private liberal arts college in Bloomington, Illinois. IWU consists of the College of Liberal Arts, the College of Fine Arts that includes three professional schools – the Ames School of Art, School of Music and the School of Theatre Arts – and the School of Nursing. IWU offers over 80 majors, minors and programs. IWU enrolls over 1,600 students and is fully residential – students are required to live on campus for 6 semesters, and has an enrollment of over 1,600. IWU supports over 300 global study abroad options in 70 countries, and offers more than 150 student organizations. IWU also owns the Wilder Guest House, a historic two-story house with multiple bedrooms available to rent, and also owns a building it leases to commercial tenants. Along with the college, the Wilder Guest House was required to close and/or substantially limit its operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result. Similarly, IWU's commercial tenants were required to

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close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and IWU was forced to negotiate a lease reduction as a result to mitigate its losses.

161. Kenyon is a private liberal arts college located in Gambier, Ohio founded in 1824. Approximately 1,830 students come from 48 U.S. states and 49 countries. Kenyon offers more than 50 majors, 150 clubs and organizations, and more than 190 study abroad programs in 50 countries. Prior to implementing remote learning, 100% of Kenyon students lived in its 30 residence halls or other campus housing. Kenyon has a fully residential campus, and students are heavily dependent on campus facilities. Kenyon also owns the Kenyon Inn & Restaurant, which offers lodging and dining in Knox County, on Kenyon's campus. Along with the college, the inn was required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

162. LaGrange is a private liberal arts and sciences college in LaGrange, Georgia founded in 1831. LaGrange enrolls roughly 1,000 students, representing 21 states and 5 foreign countries. LaGrange offers more than 70 academic and pre-professional programs, over 50 student clubs and organizations, and 18 athletic programs. Of its student population, 98% receive financial assistance, with more than $23 million awarded annually.

163. Lake Forest is a liberal arts college founded in 1857 located in Lake Forest, Illinois. Lake Forest enrolls approximately 1,600 students, representing 47 states and 81 countries. Lake Forest offers 30 undergraduate major and minor programs in the humanities, social sciences, and natural sciences, and features programs of study in pre-law, pre-medicine, communication, business, finance, and computer science.

164. Lynchburg is a private university founded in 1903 located in Lynchburg, Virginia. Lynchburg has 1,822 undergraduate and 870 graduate students, representing 44 states. Lynchburg offers 52 undergraduate majors, 67 minors, 16 pre-professional programs, 3 doctoral programs, and 14 master's programs. Lynchburg owns the Daura

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Museum of Art, established in 1974 as the University Art gallery. Lynchburg also owns: (a) the 491-acre Claytor Nature Center in Bedford, Virginia, which serves as an education and research center for environmental study; and (b) Historic Sandusky, a civil war-era historic site converted to a museum which preserves and interprets the history of slavery, the Civil War, and 19th century American Life. Along with the university, these properties were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

165. Lyon is a private liberal arts college located in Batesville, Arkansas. Lyon College has an enrollment of over 600 undergraduate students. Lyon's housing follows the British collegiate house system. Designed around small-group living, students divide into subunits or "houses." Within each house is a suite for a live-in faculty member who designs programs to integrate the academic and co-curricular aspects of campus life. Lyon offers majors in 19 areas of study, and has more than 40 student clubs and organizations. Lyon has a fully endowed two-week study abroad program called the Nichols Program, one of the most robust yet inexpensive study abroad options offered by any college.

166. McKendree is a private university located in Lebanon, Illinois. Originally founded as Lebanon Seminary in 1828, McKendree is the oldest college or university in Illinois. McKendree enrolls approximately 2,300 undergraduates and nearly 700 graduate students representing 25 countries and 29 states. McKendree offers over 50 undergraduate majors, 45 minors and master's degrees in business administration, criminal justice, education, nursing and clinical mental health counseling, as well as a doctoral program in education. McKendree also has a campus in Radcliff, Kentucky, and offers certain classes at Scott Air Force Base and at several locations in Southern Illinois.

167. McMurry is a private Methodist university founded in 1923 located in Abilene, Texas. The University enrolls more than 1,100 students, who can choose from 45 majors in the arts, business, education and the sciences, as well as pre-professional programs in medicine,

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dentistry, engineering, law, pharmacy, physical therapy and others. A three-week May term gives students an opportunity to explore a subject outside their major, and the Servant Leadership Program teaches students about ethics and helps develop leadership qualities.

168. Mills is a private liberal arts and science college located in Oakland, California that traces its history to 1852, and was the first women's college west of the Rockies. Mills is currently an undergraduate women's college with graduate programs for students of all genders. Over 900 enrolled students come from 41 states and 13 different countries. Mills offers more than 45 undergraduate majors and minors, and over 30 graduate degrees, certificates, and credentials. Unfortunately, because of the losses it sustained due to the Coronavirus, COVID-19, the government orders and the Defendant Insurers' failure to provide the coverage Mills paid for and to which it is entitled, Mills is in the process of transitioning away from being a degree-granting institute, and will no longer accept first-year students after fall 2021.

169. Millsaps is a liberal arts college in Jackson, Mississippi. Its enrollment is 750 students hailing from 26 states and 23 countries. Millsaps offers 33 majors and 47 minors, including the option for a self-designed major. Millsaps also offers several master's programs, including the Master of Business Administration and Master of Accountancy through the Else School of Management, and has a continuing education program offering more than 60 courses for adults.

170. Montreat is a private liberal arts college located in Montreat, North Carolina. Montreat has 3 additional campuses for adults, professionals, and graduate students in Asheville, Charlotte, and Morganton, North Carolina. Montreat has an enrollment of over 900 undergraduate and graduate students, and offers 19 majors and 48 minors and concentrations. Its students hail from more than 30 states and 20 countries. Its School of Adult and Graduate Studies seeks to serve adults in the work force or who are retired who want to earn a college degree, as well as those who want to expand their horizons. Montreat is also home to Graham Chapel, Chapel of the Prodigal and the Manor House, which host wedding ceremonies and celebrations.

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171. ONU was founded in 1871 and is a private university in Ada, Ohio affiliated with the United Methodist Church. ONU offers over 60 programs across 5 colleges, arts and sciences, business, engineering, pharmacy and law. ONU enrolls over 2,800 students, representing 50 states and 26 countries. ONU offers a 4-year graduation guarantee, hands-on high-impact learning, and a sustained focus on job placement and graduate and professional school admissions for graduates. It also owns the Inn at ONU, a full-service hotel located on the university's campus. Along with the university, its hotel was required to close and/or substantially limit its operations as a result of the Coronavirus, COVID-19 and governmental orders resulting in substantial costs and losses.

172. OWU is a private liberal arts college located in Delaware, Ohio and was founded in 1842 as a nonsectarian institution. Undergraduate admission is currently 1,426 students, with about 60% of the student population being Ohio residents, and 27% being international students. OWU has one of the highest percentages of international students among liberal arts colleges. OWU combines the advantages of a small college, such as a 10-to-1 average student to faculty ratio, while offering over 70 majors.

173. Princeton Theological is a private school of theology in Princeton, New Jersey. Founded in 1812, Princeton Theological is the second-oldest seminary in the United States and enrolls approximately 364 students. While founded under the auspices of the Presbyterian Church, and while 40% of students are candidates for ministry specifically in the Presbyterian Church, the majority of students are candidates for ministry in other denominations, pursuing careers in academia across a number of different disciplines, or receiving training for other non-theological fields. Students come from nearly every state and 17 countries. The Princeton Seminary Library is one of the largest theological libraries in the world, and includes over 1,252,503 bound volumes, pamphlets, and microfilms.

174. Roanoke was founded in 1842 and is a private liberal arts college located in in Salem, Virginia. Roanoke is the second-oldest Lutheran-affiliated college in America. It has approximately 2,000 full-time students, and offers 35 majors, with 57 minors and concentrations.

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Roanoke students come from 43 states and 31 countries. Roanoke has 21 varsity teams, 14 club teams, and over 100 clubs and organizations. Roanoke also owns several houses that it rents to professors. With the cessation of in person instruction as a result of the Coronavirus, COVID-19 and governmental orders, Roanoke incurred substantial losses from lost rental income as a result.

175. Rollins is a private liberal arts college in Winter Park, Florida. Rollins has an undergraduate enrollment of over 2,500 students, and offers over 30 undergraduate majors and several graduate programs, as well as adult education programs through the Hamilton Holt School. Over 60% of students study abroad before graduation. Rollins, through wholly owned subsidiaries, also owns certain rental properties, as well as the Alfond Inn, an award-winning 112 room boutique hotel in Winter Park, Florida, which donates its net income to a scholarship fund for Rollins students. The Alfond Inn features an award-winning restaurant, pool, fitness center, and 10,000 square feet of flexible meeting space. Along with the university, the Alfond Inn and Rollins' commercial tenants were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders. Rollins accordingly incurred substantial costs and losses relating to the Alfond Inn, and lost rental income at Rollins' commercial properties, as a result.

176. Rose-Hulman is a private college founded in 1874, located in Terre Haute, Indiana. It offers over 20 Science, Technology, Engineering and Math ("STEM") majors to its over 2,000 undergraduates. The Institute offers a unique combination of academic excellence, invaluable hands-on experience, one-to-one mentoring, and access to advanced labs and equipment. Approximately 97% of Rose-Hulman's full-time faculty hold the highest degree available in their field. The Institute's Rose-Hulman Ventures program gives students the opportunity to work on real-world projects from a variety of technology-based companies.

177. Schreiner is a private Presbyterian university located in Kerrville, Texas with approximately 1,400 enrolled students. In addition to its undergraduate programs, Schreiner offers masters of education and masters of business administration programs. Schreiner is home to the

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Schreiner Institute, a college-level service academy preparatory program for those working to receive a military academy appointment.

178. Shaw is a private, historically black university in Raleigh, North Carolina. Founded in 1865, Shaw is the first historically black college or university in the Southern United States and one of the first in the United States, and the first to open its doors to women. Shaw offers undergraduate Bachelor of Arts and Science degrees through its School of Arts Sciences and Humanities and its School of Business and Professional Studies. Additionally, Shaw offers graduate degrees through its School of Divinity and Department of Education and Child Development, as well as adult degree programs at campuses located across North Carolina.

179. Shenandoah is a private university founded in 1875. It has 6 different schools across multiple Virginia locations including Winchester, Loudoun County, and Fairfax. Shenandoah has approximately 4,000 students and offers more than 200 areas of study. Shenandoah has 22 men's and women's athletic teams, and more than 90 clubs and campus life organizations. Shenandoah is home to the world-renowned Shenandoah Conservatory which offers degrees at the baccalaureate, master's, artist diploma and doctoral levels, and typically produces more than 300 performances each year.

180. Simpson was founded in 1860 and is a private liberal arts college in Indianola, Iowa. Simpson has approximately 1,250 full-time and 300 part-time students. In addition to the Indianola residential campus, Simpson has a facility in West Des Moines. Simpson offers more than 70 majors, minors, and pre-professional programs. Coursework is structured in a 4-4-1 format, with classes running September to December, January to April, and includes a three-week May Term. The May Term provides Simpson students with the opportunity to study abroad, participate in internships and take part in other unique programs.

181. Spartanburg Methodist College is a private liberal arts college located in Spartanburg, South Carolina with an enrollment of approximately 1,000 undergraduate students. The college requires all bachelor's degree students to take six core courses (called the "Camak

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Core") stressing skills and experiences for personal and career success, giving students a head start on the habits, skills and behaviors that are vital for workplace success. Spartanburg Methodist College offers six Associate Degrees in arts, religion studies, science, business administration, fine arts and criminal justice, a Bachelor of Arts in Business Administration, and a customizable Bachelor of Arts degree with concentrations in business, criminal justice, English, history, psychology or religion. Spartanburg Methodist College also offers 3 online Associate Degrees and 2 online Bachelor of Arts degrees.

182. St. Olaf is a private liberal arts college in Northfield, Minnesota, with an undergraduate enrollment of over 3,000 students. Over 96% of St. Olaf students reside in one of the 11 residence halls, and 18 academic and special interest group houses. St. Olaf offers 123 domestic and international off-campus programs. Students participate in more than 250 student organizations. St. Olaf is also known for its extensive music programs and its century-old annual Christmas Festival tradition attended by over 12,000 guests on-campus and watched via streaming by countless others around the world. St. Olaf is also home to the Hong Kierkegaard Library, which serves as the world's official repository for books by Søren Kierkegaard as well as those influencing and influenced by his authorship. Thiel was founded in 1866 and is a private liberal arts, sciences and professional studies college in Greenville, Pennsylvania. Thiel offers Bachelor of Arts and Bachelor of Science degrees in more than 60 majors, minors and areas of study. Thiel enrolls approximately 700 undergraduate students.

183. Trinity was founded in 1869 and is a private university located in San Antonio, Texas. Trinity has more than 2,500 enrolled students from 48 states and 57 countries. Trinity offers more than 110 majors and minors, has over 115 clubs and organizations and 18 varsity athletics teams. Trinity also offers 5 graduate degrees.

184. Union was founded in 1879 and is a private Methodist-affiliated liberal arts college located in Barbourville, Kentucky. Union's approximately 946 undergraduate and 192 graduate students hail from 31 states and 19 countries, and it offers 39 majors. All Union students receive

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grants or scholarships to alleviate financial concerns.

185. Valparaiso was founded in 1859 and is a private university in Valparaiso, Indiana. Valparaiso is a Lutheran university with approximately 3,600 students from over 50 countries. It offers more than 70 majors in five undergraduate colleges: Arts and Sciences, Business, Engineering, Nursing and Health Professions, and Christ College. Additionally, its graduate school offers more than 20 programs. Valparaiso prioritizes study abroad, and has dedicated "Study Centers" in England, Germany, Costa Rico, and China, and offers an additional 50-plus programs around the world. Valparaiso students perform more than 247,000 hours of community outreach and service-learning annually.

186. Wagner was founded in 1883 and is a private liberal arts college in Staten Island, New York. Wagner enrolls approximately 2,200 students, who chose from more than 40 undergraduate programs, and graduate programs in Business Administration, Education, Microbiology, Nursing, Physician Assistant and Media Management. Wagner undergraduate students participate in the "Wagner Plan," which combines a liberal arts core program with "hands on" learning.

187. Wesley was founded in 1882 and is a United Methodist Church seminary located in Washington, D.C. Wesley offers Master of Divinity, Master of Arts, Master of Theological Studies, and Doctor of Ministry degrees, as well as a dual degree program in partnership with American University. Wesley enrolls approximately 700 students.

188. Wheaton is a Christian, fully residential liberal arts college, graduate school and Conservatory of Music located in Wheaton, Illinois. Founded in 1860 by abolitionist leaders, Wheaton granted a degree to one of the first African American college graduates in Illinois, and at that time, was the only school in Illinois with a college-level women's program. Approximately 2,400 undergraduate and 500 graduate students at Wheaton hail from 50 states and 43 countries. Wheaton offers more than 40 undergraduate degrees in the liberal arts and sciences and 18 graduate degrees. Wheaton also owns: HoneyRock, overnight summer camp; Harbor House, a three-

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bedroom Bed and Breakfast, which also hosts events such as small conferences and work retreats; and Black Hills Science Station, which serves as the residential base camp for Wheaton's geology program's yearly field camp. Along with the college, these properties were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders, and incurred substantial costs and losses as a result.

189. Wiley was founded in 1873 and is a private, historically black, residential, primarily liberal arts college located in Marshall, Texas and is affiliated with The United Methodist Church. Wiley is an open admissions college and about 96% of students receive financial aid. Wiley offers bachelor's degrees through 2 academic schools: School of Education and Sciences and School of Business and Social Sciences.

190. Wilson was founded in 1869 and is a private liberal arts college located in Chambersburg, Pennsylvania. Wilson operated as a women's college for 144 years, becoming co-educational beginning in the fall of 2014. Wilson offers 34 undergraduate majors, 40 minors, and master's degrees. Wilson encourages students to think differently, reason wisely and act passionately to become bold, successful leaders of tomorrow.

191. William Peace is a private university located in Raleigh, North Carolina. Originally founded in 1857 as one of the first institutions of higher education for women in the United States, William Peace began admitting men in the fall of 2012. William Peace encourages study abroad and funds a portion of the cost. William Peace stresses the value of internships and career preparation, and offers almost 40 majors and minors to approximately 900 enrolled undergraduate students.

192. Wofford was founded in 1854 and is a private liberal arts college located in Spartanburg, South Carolina. Wofford enrolls nearly 1,800 students, 92% of whom reside on campus. It offers bachelor's degrees in 27 major fields of study, and graduate and professional studies in medicine and other health professions, law, commerce, as well as advanced graduate study across academic disciplines.

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193. Wooster was founded in 1866 and is a private liberal arts college located in Wooster, Ohio. Wooster is widely known for its emphasis on mentored undergraduate research. Each of its approximately 2,000 enrolled students work one-on-one with a faculty mentor to conceive, organize and complete a significant research project on a topic of the student's choosing. Approximately 15% of the student body is international in origin, representing 59 countries.

194. Certain EIIA Members have additional miscellaneous properties which are insured locations under the Policies and at which insured losses occurred, examples of which are listed above. For example, some EIIA Members own a hotel, while others own commercial properties in their communities.

195. As a part of their prudent business practices and in recognition of their responsibilities to their employees, students and communities, the EIIA Members maintain insurance coverage.

196. The EIIA Members specifically maintain "all-risk" commercial property coverage with the Defendant Insurers, covering not only more commonly occurring risks but also entirely unanticipated and novel risks that may arise.

B. The Coronavirus and COVID-19

197. COVID-19 is a severe infectious disease caused by the Coronavirus. The Coronavirus can cause serious systemic illness and death.[27] To date, there have been over 157 million confirmed cases of COVID-19 (over 32 million of them in the United States alone) and over 3.2 million deaths worldwide.[28] Due to pervasive spread and presence of the Coronavirus and COVID-19 across the planet, both are presumed to be present or imminently present

[27] Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT'L INST. HEALTH (Aug. 18, 2020), https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2 (last visited May 9, 2021).

[28] *Coronavirus Disease 2019 (COVID-19)*, CDC (updated May 9, 2021), https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited May 9, 2021); *Europe, Southeast Asia, and Eastern Mediterranean COVID Cases: WHO Coronavirus Disease (COVID-19) Dashboard*, WHO (updated May 9, 2021), https://covid19.who.int/ (last visited May 9, 2021).

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everywhere.[29]

198. The existence and/or presence of the Coronavirus and COVID-19 is not simply reflected in reported cases or individuals' positive test results, which necessarily underestimate the number of cases because only a portion of the population gets tested. The CDC estimates that the number of people in the U.S. who have been infected with COVID-19 was 10 times higher than the number of reported cases in June 2020.[30] Additionally, at least 40% of people infected with COVID-19 are asymptomatic.[31] COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to people, and release infectious droplets and aerosols into the air and onto surfaces without having experienced symptoms and without realizing that they are contagious or infected.[32]

199. Studies have demonstrated that pre-symptomatic individuals have an even greater ability to transmit COVID-19 than other infected people because they carry high levels of "viral load" during a period when they have no symptoms and therefore are unaware that they are infectious.[33] The National Academy of Sciences has concluded that "the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the pre-

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[29] *See, e.g.*, Christopher Ingraham, *At the population level, the coronavirus is almost literally everywhere*, WASH. POST (Apr. 1, 2020), https://www.washingtonpost.com/business/2020/04/01/population-level-coronavirus-is-almost-literally-everywhere/ (last visited May 9, 2021).

[30] Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported*, WASH. POST (June 25, 2020), https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/ (last visited May 9, 2021).

[31] Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC estimate says*, BUS. INSIDER (July 12, 2020), https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7 (last visited May 9, 2021).

[32] *See Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020), https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y (last visited May 9, 2021); Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3 (Dec. 16, 2020), https://www.atsjournals.org/doi/10.1164/rccm.202006-2136LE (last visited May 9, 2021).

[33] *See, e.g.*, Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020), https://www.nature.com/articles/s41591-020-0869-5 (last visited May 9, 2021); Lirong Zou, M.Sc., *et al., SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, NEW ENG. J. MED. 382, 1177-79 (Mar. 19, 2020), https://www.nejm.org/doi/full/10.1056/NEJMc2001737 (last visited May 9, 2021).

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symptomatic stage or the infection is asymptomatic."[34]

200. As early as February 26, 2020, the CDC advised that COVID-19 was spreading freely without the ability to document the source of new infections, also known as community transmission or community spread.

201. COVID-19 is highly contagious, uniquely resilient, and potentially deadly. The degree to which an infectious disease is contagious is measured by R_0, a term that defines the average number of other people who are likely to become infected by one person with that disease. The R_0 is a measure of the transmissibility of a pathogen and is determined by estimating the susceptibility of individuals in the population to disease, the transmissibility of the pathogen and importantly, the likelihood and duration of contact between individuals in a population, a parameter that is directly determined by the physical properties of the environment in which contact occurs.[35] Studies have concluded that one person with COVID-19 could infect as many as 5.7 others ($R_0 \approx 5.7$), which is much higher than seasonal influenza for example, where on average, one person will infect only 1.3 others ($R_0 \approx 1.3$).[36]

202. The Coronavirus can remain infectious for "much longer time periods than generally considered possible."[37] In the Journal of Virology, research demonstrated that the Coronavirus can survive up to 28 days at room temperature (68°F) on a variety of surfaces including glass, steel, vinyl, plastic, and paper.[37] A CDC report from March 27, 2020, stated that

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[34] Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020), https://www.pnas.org/content/117/30/17513 (last visited May 9, 2021).

[35] Anthony R. Ives & Claudio Bozzuto, *Estimating and explaining the spread of COVID-19 at the county level in the USA*, 4 COMMC'NS BIOLOGY 60 (Jan. 20, 2021), https://www.nature.com/articles/s42003-020-01609-6 (last visited May 9, 2021).

[36] M. Cevik, C.C.G. Bamford & A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 CLINICAL MICROBIOLOGY & INFECTION 7, 842-47 (July 1, 2020), https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext (last visited May 9, 2021).

[37] Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 VIROLOGY J. 145 (2020), https://doi.org/10.1186/s12985-020-01418-7 (last visited May 9, 2021).

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the Coronavirus was identified on surfaces of the cabins on board the Diamond Princess cruise ship 17 days after the cabins were vacated but before they were disinfected.[38]

203. Numerous other scientific studies and articles have identified the persistence of the Coronavirus on doorknobs, toilets, faucets and other high-touch points, as well as on commonly overlooked surfaces such as floors.[39]

204. While the detection of viral RNA on surfaces or in the air does not necessarily mean that the Coronavirus is currently present and infectious, it demonstrates that the Coronavirus was in fact present. Studies have demonstrated the transmission of laboratory-confirmed Coronavirus infection via surfaces.[40]

205. The World Health Organization ("WHO") states that "[t]he disease spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks . . . . People can catch COVID-19 if they breathe in these droplets from a person infected with the virus . . . . These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth."[41]

206. People infected with the Coronavirus spread the virus not only from small droplets but also from aerosols expelled from their nose and mouth when they cough, sneeze or speak. People become infected with the Coronavirus and resultant COVID-19 disease if they breathe in

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[38] Leah F. Moriarty, Mateusz M. Plucinski, Barbara J. Marston, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, 69 MMWR 12, 347-352, (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm (last visited May 9, 2021).

[39] Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020,* 26 EMERGING INFECTIOUS DISEASE 7, 1583-91 (July 2020), https://pubmed.ncbi.nlm.nih.gov/32275497/ (last visited May 9, 2021).

[40] Nancy HL Leung, *Transmissibility and transmission of respiratory viruses*, Nature Revs. Microbiology 1-18 (Mar. 22, 2021), https://pubmed.ncbi.nlm.nih.gov/33753932/ (last visited May 9, 2021); G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J. HOSP. INFECTIONS (Mar. 2020), https://pubmed.ncbi.nlm.nih.gov/32035997/ (last visited May 9, 2021).

[41] *Q&A on coronaviruses (COVID-19)*, World Health Organization, https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses (last visited May 9, 2021).

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these droplets or aerosols from an infected person. Droplets and aerosols can be expelled in close proximity (1-2 meters) or can be carried on air currents tens of meters.[42]

207. Washington, and the United States as a whole, experienced a reported COVID-19 outbreak in mid-March 2020, and experienced dramatic increases in the number of cases thereafter.[43]

208. Indeed, Washington experienced the earliest known COVID-19 outbreak in the United States. The first known case in the United States was in the Seattle area and was reported in January 2020, and by March 2020 the area had become an epicenter of the Coronavirus and COVID-19[44] — but researchers have concluded that "hidden outbreaks" were spreading through cities even before COVID-19 cases were confirmed through testing.[45]

C. The Coronavirus and COVID-19 Cause Loss or Damage to Property

209. The omnipresence of the Coronavirus and COVID-19 is enabled by multiple modes of viral transmission, including respiratory droplet, airborne/aerosolized, and fomite transmission (i.e., transmission from surfaces and objects).[46] These transmission methods demonstrate that the Coronavirus and/or COVID-19 cause loss or damage to property.

210. Respiratory transmission of the Coronavirus occurs through exposure to an infected

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[42] Lidia Morawska & Donald K. Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)*, 71 CLINICAL INFECTIOUS DISEASES 9, 2311-13 (Dec. 3, 2020), https://pubmed.ncbi.nlm.nih.gov/32628269/ (last visited May 9, 2021).

[43] *A Timeline of the Coronavirus Pandemic*, New York Times (Mar. 17, 2021), https://www.nytimes.com/article/coronavirus-timeline.html (last visited May 9, 2021).

[44] *See, e.g.*, Casey McNerthney, *Coronavirus in Washington state: A timeline of the outbreak through March 2020*, KIRO 7 (Apr. 3, 2020), https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/ (last visited May 9, 2021).

[45] Benedict Carey & James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020) (updated Jul. 6, 2020), https://www.nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html (last visited May 9, 2021).

[46] *See, e.g.*, WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited May 9, 2021).

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person's respiratory particles, such as from saliva or mucus.[47] Respiratory transmission of the Coronavirus is commonly divided into droplets (larger particles that have a transmission range of about six feet) and airborne (smaller particles that can remain suspended in the air for prolonged periods of time) modes of transmission. Though convenient, this binary division is an oversimplification that underscores transmission risk.[48] Humans produce a wide range of particle sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with virions predominating in the smallest particles.[49] Respiratory particles produced by the average person can travel almost 20 feet by sneezing.[50] An M.I.T. researcher has found that virus-laden "clouds" containing clusters of droplets can travel 23 to 27 feet.[51] A recent review article on viral, host and environmental factors reported on the "abundant evidence" that proximity is a determinant to the Coronavirus transmission risks.[52]

211. Airborne transmission involves the spread of the infectious agent caused by the dissemination of droplet nuclei (aerosols) from, *e.g.*, exhaled breath, that remain infectious when suspended in the air over long distances and time.[53] These tiny particles can remain suspended

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[47] *Id.*

[48] Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext (last visited May 9, 2021).

[49] *Id.*

[50] *Id.*

[51] Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020), https://jamanetwork.com/journals/jama/fullarticle/2763852 (last visited May 9, 2021).

[52] Eric A. Meyerowitz et al., *Transmission of SARS-CoV-2: A Review of Viral, Host, and Environmental Factors*, Annals Internal Med. (Jan. 2021), https://www.acpjournals.org/doi/10.7326/M20-5008 (last visited May 9, 2021).

[53] *Id.; see also* Jose-Luis Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act*, TIME, Aug. 25, 2020, https://time.com/5883081/covid-19-transmitted-aerosols/ (last visited May 9, 2021); Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in the air. CDC says wear a mask in public*, (last updated Sept. 21, 2020), www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/ (last visited May 10, 2021); Nan Zhang, Jianjian Wei, Hui-Ling Yen, and Yuguo Li, *Short-range airborne route dominates exposure of respiratory infection during close contact*, 176 BLDG. AND ENV'T (June 2020).

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"for indefinite periods unless removed by air currents or dilution ventilation."[54] As a result, the risk of disease transmission increases substantially in enclosed environments, compared to outdoor settings.[55]

212. The WHO and the scientific community have studied the spread of the Coronavirus through aerosols in indoor settings via air circulation systems. For example, the CDC published a research letter concluding that a restaurant's air conditioning system triggered transmission of the Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant's airflow.[56] Moreover, a study detected the Coronavirus inside HVAC systems transmitted over 180 feet from its source.[57]

213. Additionally, on May 7, 2021, the CDC issued a scientific brief warning of the risks of airborne indoor transmission of the Coronavirus from aerosols at distances greater than six feet from the source, which stated that "transmission of SARS-CoV-2 from inhalation of virus in the air farther than six feet from an infectious source can occur" and that:

> With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances. These transmission events have involved the presence of an infectious person exhaling

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[54] Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext (last visited May 10, 2021).

[55] Muge Cevik, Julia L Marcus, Caroline Buckee, & Tara C Smith, *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (2020), https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315 (last visited May 10, 2021).

[56] Jianyun Lu, Jieni Gu, Kuibiao Li, Conghui Xu, Wenzhe Su, Zhisheng Lai, Deqian Zhou, Chao Yu, Bin Xu, and Zhicong Yang, *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited May 10, 2021); *see also* Keun-Sang Kwon, Jung-Im Park, Young Joon Park, Don-Myung Jung, Ki-Wahn Ryu, and Ju-Hyung Lee, *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46 (Nov. 2020), https://doi. org/10.3346/jkms.2020.35.e415 (last visited May 10, 2021).

[57] Karolina Nissen, Janina Krambrich, Dario Akaberi, Tobe Hoffman, Jiaxin Ling, Ake Lundkvist, Lennart Svensson & Erik Salaneck, *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCI REP 10, 19589 (Nov. 11, 2020) https://doi.org/10.1038/s41598-020-76442-2 (last visited May 10, 2021)/

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> virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:
>
> **Enclosed spaces with inadequate ventilation or air handling** within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.
>
> **Increased exhalation** of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g., exercising, shouting, singing).
>
> **Prolonged exposure** to these conditions, typically more than 15 minutes. [58]

214. A recently published (February 2021) systematic review of airborne transmission of the Coronavirus corroborated the CDC's concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and reduce the Coronavirus' spread.[59]

215. The CDC has recommended "ventilation interventions" to help reduce exposures to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air (HEPA) fan/filtration systems).[60] These and other remedial measures need to be implemented, at high cost and extra expense, to reduce the amount of the Coronavirus present in the space and make property safe for its intended use. These measures

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[58] *Scientific Brief: SARS-CoV-2 Transmission*, CDC (last updated May 7, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fscience%2Fscience-briefs%2Fscientific-brief-sars-cov-2.html (last visited May 10, 2021) (emphasis in original).

[59] Zahra Noorimotlagh, Neemat Jaafarzadeh, Susana Silva Martínez, & Seyyed Abbas Mirzaee, *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV'T RSCH. 110612, 1-6 (Feb. 2021), https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited May 10, 2021).

[60] CDC, *Ventilation in Buildings* (last updated Mar. 23, 2021), https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2 (last visited May 10, 2021).

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demonstrate that the Coronavirus and COVID-19 cause loss or damage to interior spaces. And even then, at most, those interventions reduce, but do not eliminate, the aerosolized Coronavirus in an indoor space and they do not eliminate it immediately.

216. COVID-19 may also be transmitted to people from physical objects, materials or surfaces. "Fomites" are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease.[61] Fomite transmission has been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-mouth.[62]

217. In addition, while fomite transmission may not be the primary mode of transmission for COVID-19, fomite transmission has been estimated to be responsible for up to 25% of all deaths due to COVID-19 since lockdowns were imposed.[63]

218. The WHO has described fomite transmission as follows:

> Respiratory secretions or droplets expelled by infected individuals can contaminate surfaces and objects, creating fomites (contaminated surfaces). **Viable SARS-CoV-2 virus and/or RNA detected by RT-PCR can be found on those surfaces for periods ranging from hours to days**, depending on the ambient environment (including temperature and humidity) and the type of surface, in particular at high concentration in health care facilities where COVID-19 patients were being treated. Therefore, transmission may also occur indirectly through touching surfaces in the immediate environment or objects contaminated with virus from an infected person . . . .[64] (Emphasis added).

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[61] Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/fomite (last visited May 10, 2021).

[62] P. Rusin, S. Maxwell, & C. Gerba, *Comparative surface-to-hand and fingertip-to-mouth transfer efficiency of gram-positive bacteria, gram-negative bacteria, and phage*, 93 J. OF APPLIED MICROBIOLOGY, 4, 585-92 (Sept. 18, 2002), https://pubmed.ncbi.nlm.nih.gov/12234341/ (last visited May 10, 2021).

[63] A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020), https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3 (last visited May 10, 2021).

[64] *See, e.g.*, WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited May 10, 2021).

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219. In addition to studies cited by the WHO,[65] numerous other studies and scientific articles have discussed fomite transmission as a mode of virus transmission, including, but not limited to:

a. A study of a COVID-19 outbreak published by the CDC identifying elevator buttons and restroom taps as possible causes of the "rapid spread of SARS-CoV-2" in a shopping mall in China.[66]

b. A National Institutes of Health study published in the New England Journal of Medicine finding that the Coronavirus survives up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel, and suggesting that people may acquire the virus through the air and after touching contaminated objects.[67]

c. An American Society for Microbiology article discussed fomite infection as involving both porous and non-porous surfaces, and occurring through a fomite's contact with bodily secretions, hands, aerosolized virus from talking, sneezing, coughing, etc., or other airborne viral particles that settle after a disturbance of a fomite (*e.g.*, shaking a contaminated blanket).[68] According to the researchers, "[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites (if brought

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[65] *Id*.

[66] CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited May 10, 2021).

[67] National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17, 2020), https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces (last visited May 10, 2021).

[68] Stephanie A. Bone and Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral* Disease, 73 APPLIED AND ENVIRONMENTAL MICROBIOLOGY 6, 1687-96 (Mar. 2007), https://aem.asm.org/content/73/6/1687 (last visited May 10, 2021).

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together)."[69] Of course, materials like desks, chairs, computer terminals and a huge variety of education-related equipment that come into contact with droplets and hands are handled thousands of times a day. Generally, frequently touched surfaces can become highly transmissive fomites.[70]

d. A CDC research letter reported that the Coronavirus can remain viable on polystyrene plastic, aluminum, and glass for 96 hours in indoor living spaces.[71]

e. A *Journal of Hospital Infection* article cited studies revealing that human coronaviruses can persist on inanimate surfaces like metal, glass, or plastic for up to 9 days.[72]

220. Importantly, the Coronavirus has been detected on environmental objects and surfaces from both symptomatic and asymptomatic individuals.[73] Fomites transform the surface of property into a potentially deadly Coronavirus transmission device.

221. Accordingly, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, causes loss or damage to property by causing physical harm to and altering property, and otherwise making it incapable of being used for its intended purpose.

222. Among other things, the presence of the Coronavirus transforms everyday surfaces and objects into fomites, causing a tangible change of the property into a transmission vehicle for

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[69] *Id*.

[70] *Id*.

[71] CDC, Boris Pastorino, Franck Touret, Magali Gilles, Xavier de Lamballerie, and Rémi N. Charrel, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept. 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited May 10, 2021).

[72] G. Kampf, D. Todt, S. Pfaender, E. Steinmann, *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J. OF HOSPITAL INFECTION 104, 246-51 (2020), https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3 (last visited May 10, 2021).

[73] Minghui Yang, Liang Li, Ting Huang, Shaxi Li, Mingxia Zhang, Yang, Yujin Jiang, Xiaohe Li, Jing Yuan, and Yingxia Liu, *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. OF RESPIRATORY AND CRITICAL CARE MED. 3, 374-78 (Dec. 16, 2020), https://doi.org/10.1164/rccm.202006-2136LE (last visited May 10, 2021).

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disease from one host to another. The WHO's description of fomite transmission of COVID-19 expressly recognizes this physical alteration of property, describing viral droplets as "**creating** fomites (contaminated surfaces)"[74] (emphasis added). "Creating" involves making or bringing into existence something new[75] – such as something that is in an altered state from what it was before the Coronavirus was present on, in and around the property.

223. The Coronavirus adheres to surfaces and objects, harming and physically changing and physically altering those objects by becoming a part of their surface and making physical contact with them unsafe for their ordinary and customary use. Once the Coronavirus is in, on, or near property, it is easily spread by the air, people and objects from one area to another, causing additional loss or damage.

224. Additionally, the presence of the dangerous and potentially fatal Coronavirus in and on property, including in indoor air, on surfaces, and on objects, renders the property lost, unsafe and unfit for its normal usage. Respiratory particles (including droplets and airborne aerosols) and fomites are physical substances that alter the physical properties of the interiors of buildings to make them unsafe, untenantable and uninhabitable.

225. In addition to being found in air samples,[76] the Coronavirus remains stable in body secretions (respiratory, urine, feces), on surfaces, and in sewage, particularly at lower temperatures.[77]

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[74] *See, e.g.*, WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited May 10, 2021).

[75] *See, e.g.*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/create (last visited May 10, 2021).

[76] Zhen-Dong Guo, Zhong-Yi Wang, Shou-Feng Zhang, Xiao Li, Lin Li, Chao Li, Yan Cui, Rui-Bin Fu, Yun-Zhu Dong, Xiang-Yang Chi, Meng-Yao Zhang, Kun Liu, Cheng Cao, Bin Liu, Ke Zhang, Yu-Wei Gao, Bing Lu, Wei Chen, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 EMERG. INFECT. DIS. 7, 1583-91 (July 2020), https://pubmed.ncbi.nlm.nih.gov/32275497/ (last visited May 10, 2021).

[77] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), https://doi.org/10.1002/jmv.26170 (last visited May 10, 2021).

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D. The Coronavirus Cannot be Removed or Eliminated by Routine Cleaning

226. The proposition advanced by the insurance industry that an indoor space containing the infectious Coronavirus can be made safe and fit for its functional and intended use because the Coronavirus can be removed by routine surface cleaning is false.

227. In fact, the CDC has recently released guidance stating that there is little evidence to suggest that the routine use of disinfectants can prevent the transmission of the Coronavirus from fomites in community settings.[78] Indeed, the CDC concluded that according to a more quantitative microbial risk assessment study, "surface disinfection once- or twice-per-day had little impact on reducing estimated risks" of Coronavirus transmission.[79]

228. A number of studies have demonstrated that the Coronavirus is "much more resilient to cleaning than other respiratory viruses tested."[80] The measures that must be taken to attempt to remove and disinfect the Coronavirus from property are significant and depend on the concentration of the Coronavirus, myriad surface characteristics (e.g., type of surface, temperature, porosity) and extend far beyond ordinary or routine cleaning.

229. Efficacy of decontaminating agents for viruses are based on a number of factors, including the initial amount of virus present, surface porosity, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. No reported studies have investigated the efficacy of surface cleaning (with soap or detergent not containing a registered disinfectant) for reducing concentrations of the Coronavirus on non-porous surfaces.[81]

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[78] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited May 10, 2021).

[79] *Id.* (citing A. K. Pitol & T. R. Julian, *Community transmission of SARS-CoV-2 by fomites: Risks and risk reduction strategies*, ENV'T SCI. & TECH. LETTERS (2020)).

[80] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), https://doi.org/10.1002/jmv.26170 (last visited May 10, 2021).

[81] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited May 10, 2021).

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However, in one study, detergent surfactants were not recommended as single agents, but rather in conjunction with complex disinfectant solutions.[82]

230. Additionally, unlike cleaning a visible substance such as dust, with respect to the invisible (to the naked eye) Coronavirus, it can be challenging to accurately determine the efficacy of decontaminating agents and "how clean is clean" or if surface disinfection was even effective. Moreover, the toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.[83]

231. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under "real life" conditions in the midst of a widespread wave of pervasive Coronavirus spread, where treated surfaces or objects may not undergo even exposure or adequate contact time.[84] Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.[85]

232. When considering disinfection and decontamination, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.[86]

233. With respect to textiles, such as bedding and towels, staples of dorm life, studies have demonstrated that the virus can survive on fabrics and be transferred to skin and other surfaces, "suggesting it is biologically plausible that . . . infectious diseases can be transmitted directly through contact with contaminated textiles."[87] Given the inadequacy of conventional

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[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] Joon Young Song, Hee Jin Cheong, Min Joo Choi, Ji Ho Jeon, Seong Hee Kang, Eun Ju Jeong, Jin Gu Yoon, Saem Na Lee, Sung Ran Kim, Ji Yun Noh, & Woo Joo Kim, *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 INFECTION & CHEMOTHERAPY 4, 252-5 (2015), https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252 (last visited May 10, 2021).

[86] *Id.*

[87] Lucy Owen and Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the*

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cleaning procedures, disinfection and decontamination measures include, but are not limited to, the use of harsh chemicals to perform deep disinfection, the removal and disposal of porous materials like clothing, cloth and other fabrics, making changes to air filtration systems, and redesigning interior spaces, all performed at great cost and expense to the EIIA Members. These measures, among others, demonstrate that the Coronavirus and COVID-19 cause loss or damage to property.

234. Many of the surfaces and materials discussed in the studies and articles cited above are used at the EIIA Members' properties, and as part of their operations, including plastics, glass, metals and cloth and fabrics such as blankets and towels.

235. The aerosolized Coronavirus presents an inhalation exposure risk for people becoming exposed and infected with the Coronavirus and developing COVID-19. Indeed, the CDC, on April 5, 2021, concluded that:

- "[t]he principal mode by which people are infected with [the Coronavirus] … is through exposure to respiratory droplets carrying infectious virus"; and
- "when a person with suspected or confirmed COVID-19 has been indoors, virus can remain suspended in the air for minutes to hours."[88]

236. Aerosolized Coronavirus particles and virions cannot be eliminated by routine surface cleaning and in some cases cleaning contaminated surfaces (i.e., floors) could reasonably result in re-aerosolization of the Coronavirus. Cleaning Coronavirus contaminated surfaces in an indoor space will not remove aerosolized Coronavirus particles from the air that people can inhale and become infected with the Coronavirus and develop COVID-19 – no more than cleaning friable asbestos particles that have landed on a surface will remove the friable asbestos particles suspended

infection control risk, 8 PEER J. LIFE AND ENV'T e9790, 1-35 (2020), https://peerj.com/articles/9790/ (last visited May 10, 2021).

[88] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited May 10, 2021).

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in the air that people can inhale and develop asbestos-related diseases.

237. Moreover, given the ubiquity, pervasiveness and increasing transmission of the Coronavirus strain variants, no amount of cleaning or ventilation intervention will prevent a person infected and contagious with the Coronavirus from entering an indoor space and exhaling millions of additional Coronavirus droplets and infectious aerosols into the air, further: (a) filling the air with the aerosolized Coronavirus that can be inhaled; and (b) depositing infectious Coronavirus droplets on surfaces, and physically altering and transforming those surfaces into disease-transmitting fomites.

E. The Certain or Virtually Certain Presence of the Coronavirus at the EIIA Members' Properties

238. As detailed above, at least 1,000 employees and 6,000 students have confirmed to the EIIA Members that they have contracted COVID-19. Given the high percentage of asymptomatic cases of COVID-19, and the timing and limits of the EIIA Members' testing programs, it is certain that the actual number of the EIIA Members' employees and students who had contracted COVID-19 was substantially greater than the number of employees and students currently known to have contracted COVID-19. This is direct proof of the actual, certain presence of the Coronavirus at the EIIA Members' properties.

239. Still further, Alma conducted wastewater testing for the presence of COVID-19 by sampling sewer outflows at 8 residence halls during the fall 2020 semester. The samples were tested for two different genes from COVID-19, and when both genes were present at relatively consistent levels above a certain threshold, it was determined that students in that residence hall were infected with COVID-19, which occurred an estimated twelve times.

240. While wastewater testing was not economically feasible or available for all EIIA Members, Alma's wastewater testing results provide additional direct proof of the actual presence of the Coronavirus on the EIIA Members' property, as well as the pervasiveness of the virus throughout such property.

241. Additionally, given how highly contagious the Coronavirus is, the global pervasive

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status of COVID-19, the nature of campus life and the resulting heavily-trafficked common areas in and around the EIIA Members' properties, it is statistically certain or near-certain that many other individuals at or in the vicinity of the EIIA Members contracted and/or transmitted the Coronavirus.

242. Moreover, the high number of COVID-19 deaths indicates a significantly higher number of cases than those confirmed by COVID-19 tests.[89]

243. The high prevalence of infectious COVID-19 cases makes it statistically certain or near-certain that Coronavirus droplets and aerosols were dispersed repeatedly into the air and on property in, on and around the EIIA Members' properties, rendering routine cleaning even less effective at removing the Coronavirus from surfaces at the EIIA Members' properties and completely ineffective at removing aerosolized Coronavirus particles and virions from the air inside those properties.

244. Due to the high prevalence of infectious cases, the Coronavirus was certain or virtually certain to be present at the EIIA Members' campuses and in their communities. This can be confirmed with certainty or near-certainty by statistical modeling based on the known incidences of infection despite the lack of validated, commercially available tests for air or surface presence of the Coronavirus, and despite the shortage of either rapid or laboratory COVID-19 tests and testing sites that could have otherwise been administered to every individual who was on-site at the relevant times.[90]

245. The presence of the Coronavirus and COVID-19 in, on, and near property therefore caused and continues to cause loss or damage to the EIIA Members' property, resulting in business income loss covered under the Policies.

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[89] Andrew T. Levin et al. *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications*, 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 2020), https://pubmed.ncbi.nlm.nih.gov/33289900/ (last visited May 10, 2021).

[90] *See, e.g.*, Aroon Chande et al., *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, NATURE HUM. BEHAV. 4, 1313-19 (Nov. 9, 2020), https://www.nature.com/articles/s41562-020-01000-9 (last visited May 10, 2021).

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246. This loss or damage to the EIIA Members' property required the EIIA Members to close their campuses in whole or in part, cease in-person learning, incur extra expenses, and undertake costly efforts to protect and preserve property from further damage or loss. Even after resuming in-person learning, the many remaining restrictions continued to limit the EIIA Members' operations and require extensive ongoing remediation and decontamination procedures, all resulting in losses exceeding multi-millions in damages.

247. Early in the course of the Coronavirus and COVID-19, testing was limited, and thus potentially thousands more people were infected than was reported.[91] Concerning the testing that was available at the time of the first wave of COVID-19, national and local incidence and prevalence rates clearly demonstrated the high magnitude of COVID-19 infections (and deaths) throughout Washington and the United States. Moreover, deaths recorded in the communities of the EIIA Members point to a much higher prevalence of infectious cases, and allow statistical estimates to quantify the certainty or high probability that the Coronavirus was present at the campuses of the EIIA Members.

248. Epidemiologists have explained that "the percent positive is a critical measure because it gives us an indication of how widespread infection is in the area where the testing is occurring[.]"[92] The percent positive is a crucial indicator to determine whether a business can safely remain open. As a threshold for the percent positive being "too high," the WHO stated that the percent positive should remain below 5% for at least two weeks before reopening.[93]

249. Washington presents a powerful example of how statistical modeling confirms the presence of the Coronavirus at the EIIA Members' properties (in addition to its certain presence

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[91] *See, e.g.*, Benedict Carey and James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020), (updated July 6, 2020), https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html (last visited May 10, 2021).

[92] David Dowdy and Gypsyamber D'Souza, *COVID-19 Testing: Understanding the "Percent Positive"*, Johns Hopkins Bloomberg School of Public Health Expert Insights (Aug. 10, 2020), https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html (last visited May 10, 2021).

[93] *Id*.

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as demonstrated by the large numbers of the EIIA Members' students and employees who tested positive for COVID-19).

250. As of March 31, 2020, Washington had a 7-day moving positivity average rate of 9.3%, significantly above the 5% threshold.[94] Washington's positivity rate remained consistently over 5% until dropping below this figure in February 2021, demonstrating the need for continuing health and safety measures.[95] The positivity rate has also been dramatically above 5% in the additional states where the EIIA Members operate.

251. Early in the course of the Coronavirus and COVID-19, testing was limited, and thus potentially thousands more people were infected than reported.[96] Concerning the testing that was available at that time, local positivity rates demonstrated the pervasiveness of the Coronavirus in Washington and the certitude based on statistical modeling that the Coronavirus was present at the Washington EIIA Members' campuses. By March 31, 2020, the COVID-19 positivity rate in Washington was 9.4%, indicating uncontrolled community spread of the Coronavirus and its certain or virtually certain presence at the Washington EIIA Members' campuses.[97]

252. Thousands of students and employees at the EIIA Members' campuses repeatedly came into close contact at residence halls, classrooms, libraries, fitness centers, dining halls and numerous other campus facilities. As such, there can be no doubt that the virus was present in the air of indoor spaces, physically altering and transforming that air into something akin to poison gas, radon gas, ammonia fume or asbestos in the air, and thereby rendering the campus' indoor spaces unfit for their intended use due to the danger to life and health posed by the virus-laden air.

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[94] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (last updated May 10, 2021), https://coronavirus.jhu.edu/testing/individual-states/washington (last visited May 10, 2021).

[95] *COVID-19 Data Dashboard*, Washington Department of Health (updated May 8, 2021), https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard (last visited May 10, 2021).

[96] Benedict Carey & James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020), (updated July 6, 2020), https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html (last visited May 10, 2021).

[97] *COVID-19 Data Dashboard*, Washington Department of Health (updated May 8, 2021), https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard#tables (last visited May 10, 2021).

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Similarly, there can be no doubt that fomite transmission occurred on a wide variety of campus surfaces such as desks, chairs, computers, door handles and bathroom fixtures, thereby causing loss or damage at the EIIA Members' campuses.

F. Government Orders, CDC Guidance and the Resulting Impact on the EIIA Members' Operations

253. As detailed below, in addition to CDC guidance, Governor Inslee issued multiple proclamations restricting and subsequently closing most Washington businesses, including the Washington EIIA Members' operations. Additional orders enacted and maintained substantial restrictions that persist through the present. The EIIA Members located in other states were subject to similar restrictions, as well as CDC guidance.

254. These closures and restrictions were due to loss or damage to property caused by the Coronavirus and COVID-19, and as a result of the loss of the ability to operate the EIIA Members' properties safely or without draconian restrictions and modifications to property and procedures.

255. These governmental orders were issued for a number of reasons, including: loss or damage to property caused by the Coronavirus and COVID-19; the ability of the Coronavirus and COVID-19 to be transmitted through fomites; and, the ability of the Coronavirus and COVID-19 to survive on surfaces for days, linger in indoor air, and transform surfaces and air into vehicles of virus transmission, thereby rendering property unsafe for normal use.

256. State and local governments recognized the unprecedented and mushrooming outbreaks of COVID-19 across the nation and the Coronavirus' catastrophic impact through the loss or damage to property and lives. As a consequence, many states issued "State of Emergency" Declarations in early March 2020.

257. As detailed below, states, counties, health departments and other governmental authorities across the nation issued orders suspending or severely limiting business operations where people could potentially contract COVID-19. Colleges and universities like the EIIA Members were barred from conducting in-person classes, and when permitted to resume in-person

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classes, were subject to numerous restrictions and extensive disinfection and safety protocols. The EIIA Members also limited their operations in accordance with the CDC guidance detailed below, as well as to protect the health and safety of their students, employees and communities, and mitigate ongoing loss or damage to property.

258. Washington's orders illustrate the types of restrictions placed on the EIIA Members. On March 13, 2020, Governor Inslee issued a proclamation providing that "All public and private universities, colleges, technical schools, apprenticeship and similar programs are prohibited from conducting in-person classroom instruction and lectures related to all educational and apprenticeship programs."[98] Governor Inslee noted this proclamation was issued in part because of the spread of COVID-19 throughout Washington and he singled out the Puget Sound region specifically, noting that the confirmed number of cases was expected to double "every five to seven days."

259. To comply with the Governor's proclamation, to keep students, faculty, staff and the community safe and healthy, and also to mitigate loss or damage to their property, the Washington EIIA Members promptly announced plans to discontinue in-person classes. The Washington EIIA Members continued support services for students remaining in campus residences, but closed most campus facilities and cancelled or restricted events, athletics and gatherings.

260. Governor Inslee's March 13, 2020 Proclamation, as well as each of the proclamations discussed below, each explicitly noted that the spread of COVID-19 generally and in Washington "remain a public disaster affecting life, health, property or the public peace[.]"

261. On March 23, 2020, Washington's "Stay Home – Stay Healthy" Proclamation prohibited Washingtonians from leaving their homes except to engage in essential activities or work for essential businesses, ordered non-essential businesses to close and prohibited all public

[98] *Proclamation by the Governor 20-12.2*, Off. Governor (March 13, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-12%20Coronavirus%20College%20Closure%20%28tmp%29.pdf (last visited May 10, 2021).

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gatherings.[99] A detailed list published the same day designated colleges and universities essential only for "purposes of distance-learning" without exceptions.[100]

262. As a result of the continuing spread of the Coronavirus and COVID-19, the Stay Home – Stay Healthy Proclamation, as well as the CDC guidance described below, the Washington EIIA Members extended the cancellation of in-person classes as well as the closing of other campus facilities through the Spring 2020 semester and into the summer. As a result, the Washington EIIA Members incurred a number of costs and losses including, but not limited to, losses associated with: cancelling numerous events and programs, cancelling or renegotiating vendor contracts, cancelling summer programs, refunding a portion of student room and board and certain other fees, purchasing equipment, software and training costs associated with remote learning, and incurring storage costs associated with student belongings that remained in the dormitories.

263. Pursuant to the Stay Home -Stay Healthy Proclamation, not all on-campus work was "essential," or necessary to "facilitate distancing learning" and the Washington EIIA Members adjusted employee work accordingly. In light of the need to retain employees and/or employee contracts, the Washington EIIA Members continued to pay many employees unable to work remotely in whole or in part. To the extent employees were let go, the Washington EIIA Members incurred additional hiring, training and other costs as their campuses later partially reopened.

264. On June 17, 2020, a working group of Washington colleges and universities, including the Presidents of Pacific Lutheran and Whitworth, published the "Campus Reopening Guide" a 15-page set of recommendations and proposed requirements for safely reopening college

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[99] *Proclamation by the Governor Amending Proclamation 20-25*, Off. Governor (March 23, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronovirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf (last visited May 10, 2021).

[100] *Washington Essential Critical Infrastructure* (March 23, 2020), https://www.governor.wa.gov/sites/default/files/WA%20Essential%20Critical%20Infrastructure%20Workers%20%28Final%29.pdf (last visited May 10, 2021).

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and university campuses.[101] The Campus Reopening Guide included over 20 recommendations for campus safety, student/personnel support and visitors, and additional detailed recommendations for food services, campus transport and residences.

265. On June 24, 2020, Governor Inslee issued a Proclamation titled "Higher Education – Fall 2020" which specified a "science-based approach" to reopening campuses that "incorporates safety, sanitation, and physical distancing guidelines[.]"[102] Incorporating the guidance of the Campus Reopening Guide, the June 24, 2020 Order specified over 30 campus safety measures including: developing a "Safe Back to School Plan" based on the Campus Reopening Guide, implementing social distancing of six feet, and where not possible, implementing of administrative or engineering controls to minimize exposure; "sanitization of high-touch surfaces and shared resources (e.g., doorknobs, elevators, vending machines, points of sales)," testing, reporting and quarantine measures and limiting occupancy and gatherings in residential facilities.

266. In July 2020 and continuing thereafter, Governor Inslee issued several proclamations reopening Washington in phases subject to specified social distancing, disinfection, face covering and other requirements ("County-by-County Plan").[103] These proclamations and the County-by-County Plan imposed certain additional restrictions beyond Governor Inslee's higher education-specific proclamations on matters including allowed gathering size, occupancy limits for food service, indoor fitness and training, large sporting events and other matters.

267. Governor Inslee updated his June 24, 2020 Higher Education – Fall 2020 proclamation on October 20, 2020, continuing to allow in person learning, but reiterating the

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[101] Campus Reopening Guide, Higher Education Working Group (June 17, 2020) https://www.governor.wa.gov/sites/default/files/2020.06.23%20Campus%20Reopening%20Guide%20FINAL.pdf (last visited May 10, 2021).

[102] *Proclamation by the Governor 20-12.2 Higher Education – Fall 2020*, Off. Governor (Jun. 24, 2020), https://www.governor.wa.gov/sites/default/files/proc_20-12.1.pdf (last visited May 10, 2020).

[103] *See, e.g., Proclamation Nos. 20-25.5*, (July 1, 2020), *20-25.6* (July 7, 2020), and *20-25.7* Off. Governor (July 8, 2020), https://www.governor.wa.gov/office-governor/official-actions/proclamations (last visited May 10, 2020); *Safe Start Washington: Phased Reopening County-by-County*, Off. Governor (October 7, 2020), https://www.governor.wa.gov/sites/default/files/SafeStartPhasedReopening.pdf (last visited May 10, 2020).

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requirements of his June 24, 2020 Proclamation.[104] In addition, the October 20, 2020 Proclamation specified over a dozen additional social distancing, sanitization, occupancy and other requirements applicable to congregate housing.

268. While the orders issued in the states where the EIIA Members are located vary in certain respects, Washington's orders, described above, were the norm and similarly implemented nationwide. Specifically, the EIIA Members were subject to governmental orders from states, counties, cities, health departments and over governmental authorities prohibiting in-person classes and restricting or prohibiting athletics, events, dining and numerous other aspects of campus operations. Similarly, when the EIIA Members were eventually permitted to resume in-person classes and certain activities, they were subject to numerous restrictions relating to, among other things, gathering size, social distancing, disinfection and cleaning, use of face coverings, testing, contact tracing and quarantine. The EIIA Members also complied with CDC and other applicable guidance to protect the health and safety of their students, employees and communities, and mitigate ongoing loss or damage to their property caused by the Coronavirus and COVID-19. The orders impacting the EIIA Members located in states other than Washington include:

- **Arkansas (Lyon)**: On April 4, 2020, Arkansas ordered that businesses limit person-to-person contact, maintain social distancing, limit the number of people entering facilities, and follow sanitization protocols.[105]
- **California (California Lutheran, Dominican, Mills)**: On March 19, 2020, California issued a stay at home order that ordered residents to stay at home unless engaged in essential activities, and mandated the closure of all non-critical businesses.[106] Many California counties, including those in which California Lutheran, Dominican and

[104] *Proclamation by the Governor 20-12.2 Higher Education*, Off. Governor (Oct. 20, 2020) https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-12.2.pdf (last visited May 10, 2021).

[105] Executive Order EO 20-13, State of Arkansas Executive Department (Apr. 4, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-13._.pdf (last visited May 10, 2021).

[106] Executive order N-33-20, Executive Department of California (Mar. 19, 2020), https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf (last visited May 10, 2021).

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Mills are based, issued similar but more restrictive orders limiting colleges and universities to distance learning. Marin County, where Dominican is located, prohibited in-person classes from March 17, 2020 until October 27, 2020, at which point colleges and universities were allowed to operate subject to compliance with California's Blueprint for Reopening Guidance.[107] Alameda County, where Mills College is located, issued a largely identical stay at home order, also restricting colleges and universities to distance learning.[108] By October 13, 2020, Alameda County was designated as "Orange Tier" and students could return for in-person classes, subject to a capacity limit of 50% for indoor lectures.[109] Similarly, Ventura County, where California Lutheran is located, issued an order on March 20, 2020 confining educational institutions to distance learning.[110]

- **District of Columbia (Wesley Theological Seminary)**: On March 24, 2020, the District of Columbia closed all non-essential businesses, including colleges and universities, except for the purposes of facilitating distance learning, or providing support for efforts to address the public health emergency caused by COVID-19.[111] As

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[107] Order of the Health Officer of the County of Marin (Mar. 16, 2020), https://coronavirus.marinhhs.org/sites/default/files/Files/Shelter%20in%20Place/Shelter%20in%20Place%20Order%2016%20March%202020.pdf (last visited May 10, 2021); Risk Reduction Order, Marin Public Health (Oct. 27, 2020) https://web.archive.org/web/20210426144922/https://coronavirus.marinhhs.org/risk-reduction-order (last visited May 10, 2021); COVID-19 Industry Guidance: Institutions of Higher Education, California Department of Public Health (Sept. 30, 2020) https://files.covid19.ca.gov/pdf/guidance-higher-education--en.pdf (last visited May 10, 2021).

[108] Order of the Health Officer of the County of Alameda (Mar. 16, 2020), https://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf (last visited May 10, 2021);

[109] *Alameda County Permits New Indoor Activities as Case Rates, Testing Positivity and Hospitalizations Remain Stable* (Oct. 21, 2020), https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.10.21.pdf (last visited May 10, 2021); Industry Guidance to Reduce Risk (updated May 6, 2021), https://covid19.ca.gov/industry-guidance/#higher-education (last visited May 10, 2021).

[110] Stay Well at Home, Order of the Ventura County Health Officer (Mar. 20, 2020), https://www.vcemergency.com/wp-content/uploads/2020/03/StayWellAtHomeOrder.pdf (last visited May 10, 2021).

[111] Mayor's Order 2020-053, Government of the District of Columbia (Mar. 24, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/Mayor%27s%20Order%202020-053%20Closure%20of%20Non-Essential%20Businesses%20and%20Prohibiti....pdf (last visited May 10,

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part of the District's phase one reopening, the Office of Planning and Deputy Mayor for education implemented a campus plan approval process.[112] The District's Phase II Order reiterated this requirement, noting that such plans include "prevention, containment, and mitigation measures" as set forth in "the Guidance for Colleges and Universities."[113] On August 5, 2020, the District issued updated guidance on school reopening, including social distancing and other health and safety protocols.[114]

- **Florida (Rollins)**: On April 1, 2020, Florida issued a "Safer at Home" Order, directing residents to "limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities."[115] Pursuant to the "Essential Services List" published to support this order, college and university educators were deemed essential personnel only "for the purposes of facilitating distance learning."[116]
- **Georgia (LaGrange)**: On April 2, 2020, Georgia Governor Brian Kemp issued his "Executive Order to Ensure a Safe & Healthy Georgia[.]"[117] Additional guidance regarding this order, and a detailed breakdown of the social distancing, disinfection and

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[112] Mayor's Order 2020-067, Government of the District of Columbia (May 27, 2020), https://coronavirus.dc.gov/phaseone (last visited May 10, 2021).

[113] Mayor's Order 2020-075, Government of the District of Columbia (June 19, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2020-075-06-19-20.pdf (last visited May 10, 2021).

[114] DC Health, Coronavirus 2019 (COVID-19): Guidance for Schools (Preschool-K-12 and Adult Education) (Aug. 5, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/COVID-19_DC_Health_Guidance_For-Schools-Reopening_2020-08-05.pdf (last visited May 10, 2021).

[115] Executive Order No. 20-91, Office of the Governor (Apr. 1, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91.pdf (last visited May 10, 2021).

[116] Governor DeSantis Executive Order 20-91 ESSENTIAL SERVICES LIST, https://www.floridadisaster.org/globalassets/governor-essential-services.pdf (last visited May 10, 2021).

[117] Executive Order to Ensure a Safe & Healthy Georgia, State of Georgia (Apr. 2, 2020), https://gov.georgia.gov/document/2020-executive-order/04022001/download (last visited May 10, 2021).

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other health and safety requirements is provided by a supplementary order published the next day.[118]

- **Illinois (Augustana, IWU, Lake Forest, McKendree and Wheaton)**: On March 20, 2020, Illinois issued a Stay-at-Home Order requiring non-essential businesses to cease operations.[119] Colleges and universities were permitted to remain open only for "purposes of facilitating distance learning, perfom1ing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible."[120] Dining halls were only allowed to operate on a pick-up and takeaway basis, and could "not permit the food to be eaten at the site where it is provided, or any other gathering site due to the virus's propensity to physically impact surfaces and personal property."[121] Educational entities were allowed to reopen as of May 29, 2020, subject to social distancing and other health and safety protocols.[122]
- **Indiana (DePauw, Evansville, Rose-Hulman, Valparaiso)**: On March 23, 2020, Indiana issued a Stay-at-Home Order, directing non-essential businesses to cease operations.[123] Colleges and universities were permitted to remain open only for "purposes of facilitating distance learning, performing critical research, or performing essential functions[.]"[124] Dining halls restricted to pick-up and takeaway.[125]

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[118] Executive Order 4.03.20.02, Office of the Governor (Apr. 3, 2020), https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders (last visited May 10, 2021).

[119] Executive Order 2020-10, Office of the Governor (Mar. 20, 2020), https://www.isbe.net/Documents/EO-2020-10.pdf (last visited May 10, 2021).

[120] *Id*.

[121] *Id*.

[122] Executive Order 2020-38, Office of the Government (May 29, 2020), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-38.aspx (last visited May 10, 2021).

[123] Executive Order No. 20-08, Office of the Governor (Mar. 23, 2020), https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf (last visited May 10, 2021).

[124] *Id*.

[125] *Id*.

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Educational institutions were allowed to "fully open and operate" as of September 24, 2020, subject to social distancing, sanitization and other requirements.[126]

- **Iowa (Cornell, Simpson)**: On March 17, 2020, Iowa declared a disaster emergency and issued an order that closed certain businesses and prohibited gatherings of more than 10 people.[127] On May 1, 2020, certain businesses were permitted to reopen in a limited fashion with social distancing public health measures in place in designated counties,[128] and limited reopening was extended to all Iowa counties on May 15, 2020.[129] Social distancing restrictions remained in place throughout 2020 and into 2021.[130]
- **Kentucky (Union)**: On March 25, 2020, Governor Andy Beshear announced a "Healthy at Home" initiative closing all businesses not deemed "life-sustaining" and specifying social distancing and hygiene measures for businesses permitted to operate, and directing such businesses to follow CDC guidance to the "fullest extent practicable[.]"[131]

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[126] Executive Order No. 20-43, Office of the Governor (Sept. 24, 2020), https://www.in.gov/gov/files/Executive-Order-20-43-Stage-5-The-New-Normal-w-Mask-Mandate.pdf (last visited May 10, 2021).

[127] *Proclamation of Disaster Emergency*, State of Iowa Executive Department (Mar. 17, 2020) https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.17.pdf (last visited May 10, 2021).

[128] *Proclamation of Disaster Emergency*, State of Iowa Executive Department (Apr. 27, 2020) https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.04.27%20-%20Pt%201.pdf (last visited May 10, 2021).

[129] *Proclamation of Disaster Emergency*, State of Iowa Executive Department (May 13, 2020) https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.05.13.pdf?utm_medium=email&utm_source=govdelivery (last visited May 10, 2021).

[130] *Proclamation of Disaster Emergency*, State of Iowa Executive Department Nov. 10, 2020) https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.11.10.pdf (last visited May 10, 2021).

[131] Executive Order 2020-257, Andy Beshear, Governor (March 25, 2020), https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf (last visited May 10, 2021).

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- **Michigan (Albion, Alma)**: On March 23, 2020, Governor Gretchen Whitmer issued an executive order ordering individuals to stay at home and prohibiting all non-essential in-person work and gatherings.[132] Certain in-person activities were permitted to resume on June 1, 2020, subject to social distancing and health and safety protocols including preparation of a COVID-19 preparedness and response plan consistent with guidance from the Occupational Health and Safety Administration.[133] Michigan again prohibited and restricted non-essential services on November 18, including prohibiting in-person classes at colleges and universities, through December 20, 2020.[134]
- **Minnesota (Augsburg, Concordia, St. Olaf)**: On March 25, 2020, Minnesota ordered all non-essential businesses to close, including colleges and universities.[135] On May 11, 2020, Minnesota allowed colleges and universities to conduct in-person classes only for students enrolled in programs which supported critical infrastructure, such as health programs, law enforcement, public safety, and first responders.[136] On May 27, 2020, Minnesota allowed colleges and universities to offer in-person instruction to no more than 10 individuals for classes that could not otherwise be provided via distance

[132] Executive Order 2020-21, *Temporary requirement to suspend activities that are not necessary to sustain or protect life*, Office of Governor Gretchen Whitmer (Mar. 23, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html (last visited May 10, 2021).

[133] Executive Order 2020-110, *Temporary restrictions on certain events, gatherings, and businesses*, Office of Governor Gretchen Whitmer (June 1, 2020), https://content.govdelivery.com/attachments/MIEOG/2020/06/01/file_attachments/1463964/EO%202020-110%20Emerg%20order%20-%20MI%20Safe%20Start.pdf (last visited May 10, 2021); Executive Order 2020-97, *Safeguards to protect Michigan's workers from COVID-19*, Office of Governor Gretchen Whitmer (May 21, 2020), https://content.govdelivery.com/attachments/MIEOG/2020/05/21/file_attachments/1456637/EO%202020-97%20Emerg%20order%20-%20Workplace%20safeguards%20-%20re-issue.pdf (last visited May 10, 2021).

[134] Gatherings and Face Mask Order (Dec. 7, 2020), https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-546790--,00.html (last visited May 10, 2021).

[135] Emergency Executive Order 20-20, *Directing Minnesotans to Stay Home*, Governor Tim Walz (Mar. 25, 2020), https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf (last visited May 10, 2021).

[136] Emergency Executive Order 20-52, *Authorizing Students in Critical Sectors to Return to Safe Higher Education Institutions for Completion of a Postsecondary Credential*, Governor Tim Walz (May 11, 2020), https://mn.gov/governor/assets/Executive%20Order%2020-52_tcm1055-431643.pdf (last visited May 10, 2021).

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learning, subject to social distancing and other cleaning and disinfection protocols.[137] On August 26, 2020, Minnesota colleges and universities were allowed to resume in-person classes, subject to social distancing and other cleaning and disinfection protocols.[138]

- **Mississippi (Millsaps)**: On March 24, 2020, Mississippi ordered residents to avoid non-essential gatherings of more than 10 people.[139] Colleges and universities were deemed essential only for the purposes of facilitating distance learning and performing critical research or other essential functions.[140] On April 1, 2020, Mississippi issued a shelter in place order, ordering all non-essential businesses and operations to cease.[141] The order was extended,[142] and replaced with a Safe Return order, effective through May 11, which permitted businesses to reopen subject to Mississippi and the CDC's regulations, orders, and guidelines.[143] The City of Jackson and County of Hinds, where

[137] Emergency Executive Order 20-63, *Continuing to Safely Reopen Minnesota's Economy and Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency*, Governor Tim Walz (May 27, 2020), https://mn.gov/governor/assets/EO%2020-63%20Final_tcm1055-433759.pdf (last visited May 10, 2021); Emergency Executive Order 20-74, *Continuing to Safely Reopen Minnesota's Economy and Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency*, Governor Tim Walz (June 5, 2020), https://mn.gov/governor/assets/EO%2020-74%20Final_tcm1055-437539.pdf (last visited May 10, 2021).

[138] Emergency Executive Order 20-85, *Authorizing and Directing Higher Education Institutions to Provide Safe and Effective Learning Environments to their Students*, Governor Tim Walz (Aug. 26, 2020), https://mn.gov/governor/assets/3a.%20EO%2020-85%20OHE%20Return%20to%20Safe%20Higher%20Ed%20Institutions_tcm1055-444956.pdf (last visited May 10, 2021).

[139] Executive Order 1463: Social Distancing and Essential Businesses, Office of the Governor (Mar. 24, 2020), https://www.jacksonfreepress.com/documents/2020/mar/24/mississippis-covid-19-response/ (last visited May 10, 2021).

[140] *Id*.

[141] Executive Order 1466, Office of the Governor (Apr. 1, 2020), https://www.sos.ms.gov/Education-Publications/ExecutiveOrders/1466.pdf (last visited May 10, 2021).

[142] Executive Order 1473, Office of the Governor (Apr. 17, 2020), https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1473.pdf (last visited May 10, 2021).

[143] Executive Order 1477, Office of the Governor (Apr. 24, 2020), https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1477.pdf (last visited May 10, 2021).

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Millsaps is located, also issued numerous COVID-19 related orders, which in some respects were stricter than the applicable state orders.

- **New Jersey (Drew, Princeton Theological)**: By March 16, 2020 Order, New Jersey required institutions of higher education to cease in-person instruction, close all libraries and computer labs, discontinue communal dining and transition to "grab-and-go" meal options, restrict access to athletic facilities, student centers, campus commons, theaters, and art galleries, cancel all athletic programs, and transition staff and employees to remote work environments.[144] Limited in person instruction was authorized beginning July 1, 2020, subject to the requirement to submit a "restart plan" implementing policies and procedures for increased sanitization, social distancing, and other health and safety protocols.[145] On August 13, 2020, all in-person classes at universities and colleges were permitted to resume, as well as dining at school cafeterias and dining halls, subject to health and safety protocols.[146] New Jersey supplemented these orders with detailed guidance on reopening standards and continuing requirements.[147]
- **New York (Wagner)**: On May 1, 2020, Governor Cuomo limited colleges to distance learning for the 2020 academic year.[148] New York published extensive requirements

[144] Executive Order No. 104, Office of the Governor (Mar. 16, 2020) https://nj.gov/infobank/eo/056murphy/pdf/EO-104.pdf (last visited May 10, 2021); State of New Jersey, Office of the Secretary of Higher Education, *COVID-19: A Guide for New Jersey Institutions of Higher Education*, (Mar. 26, 2020), https://nj.gov/highereducation/documents/pdf/index/HigherEducationCOVID-19Guidance-OSHE.pdf (last visited May 10, 2021).

[145] Executive Order No. 155, Office of the Governor (June 18, 2020), https://nj.gov/infobank/eo/056murphy/pdf/EO-155.pdf (last visited May 10, 2021).

[146] Executive Order No. 175, Office of the Governor (Aug. 13, 2020), https://nj.gov/infobank/eo/056murphy/pdf/EO-175.pdf (last visited May 10, 2021).

[147] Office of the Secretary of Higher Education of New Jersey, *Restart Standards for all New Jersey Institutions of Higher Education* (Aug. 31, 2020), https://www.state.nj.us/highereducation/documents/pdf/index/OSHErestart.pdf (last visited May 10, 2021).

[148] Cuomo: Schools and Colleges Closed for Remainder of Academic Year, NY1 (May 1, 2020), https://www.ny1.com/nyc/all-boroughs/news/2020/05/01/new-york-schools-and-colleges-closed-for-remainder-of-academic-year- (last visited May 10, 2021)

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and guidance governing reopening campuses and addressing capacity limitations, PPE, testing, social distancing, hygiene, cleaning and disinfection, monitoring and testing, quarantine and other recommendations and requirements.[149]

- **North Carolina (Bennett, Greensboro, Montreat, Shaw, William Peace)**: On March 27, 2020, North Carolina issued a statewide "Stay at Home" order which prohibited the continuation of in-person classes at colleges and universities.[150] North Carolina moved into Phase One on May 8, modifying the Stay at Home Order to allow 10 person gatherings subject to health and safety protocols, mask wearing, and social distancing.[151] Phase Two began on May 22, which permitted gatherings of up to 25 persons indoors and allowed in-person instruction, subject to health and safety protocols including social distancing and cleaning and disinfection requirements.[152] North Carolina published detailed requirements and guidance specifically for institutions of higher education.[153]
- **Ohio (Capital, Denison, Kenyon, ONU, OWU, Wooster)**: On March 22, 2020, the Ohio Department of Health issued its "Stay at Home Order" directing "non-essential business and operations" to "cease" operations as of March 23, 2020.[154] The Ohio Stay

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[149] Interim Guidance for Higher Education During the COVID-19 Public Health Emergency, New York State Department of Health (June 28, 2020), https://www.governor.ny.gov/sites/default/files/atoms/files/Higher_Education_Detailed_Guidelines.pdf (last visited May 10, 2021).

[150] Executive Order No. 121, Governor of North Carolina (Mar. 27, 2020) https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-text.pdf (last visited May 10, 2021).

[151] Executive Order No. 135, Governor of North Carolina (Apr. 23, 2020) https://files.nc.gov/governor/documents/files/EO135-Extensions.pdf (last visited May 10, 2021); Executive Order No. 138, Governor of North Carolina (May 5, 2020) https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf (last visited May 10, 2021); Governor of North Carolina, *What's new in Phase One?*, https://files.nc.gov/governor/documents/files/Phase-1-Side-by-Side.pdf (last visited May 10, 2021).

[152] Executive Order No. 141, Governor of North Carolina (May 20, 2020) https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf (last visited May 10, 2021).

[153] Higher Education COVID-19 Resources, NC.GOV, https://covid19.ncdhhs.gov/guidance#colleges-and-universities (last visited May 10, 2021).

[154] *Director's Stay At Home Order*, Ohio Department of Health (Mar. 22, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Or

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at Home Order permitted colleges to remain open only "for the purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible."[155] On April 30, 2020, the Ohio Department of Health issued its "Stay Safe Ohio Order," which allowed certain business, including colleges and universities, to begin reopening as of May 4, 2020 (or on specified dates for certain business types), subject to compliance with the social distancing and other requirements specified in the Ohio Stay at Home Order and repeated in the Stay Safe Ohio Order. The Stay Safe Ohio Order also required businesses to "[c]omply with all applicable guidance from the U.S. Centers for Disease Control and Prevention" and the Ohio Department of Health regarding social distancing, and added specific requirements for "general office environments." Additional orders supplemented and expanded on the requirements for reopening.

- **Pennsylvania (Albright, Arcadia, Thiel, Wilson)**: On March 19, 2020, Pennsylvania ordered all non-essential businesses to close, including colleges and universities.[156] On June 4, 2020, Pennsylvania moved into the "yellow phase" for reopening the state.[157] In-person classes at postsecondary educational institutions were allowed to resume on June 5, 2020, pursuant to adherence to guidance issued by the Pennsylvania

der.pdf (last visited May 10, 2021).

[155] *Director's Stay At Home Order*, Ohio Department of Health (Mar. 22, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf (last visited May 10, 2021).

[156] Office of the Governor, *Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, (Mar. 18, 2020), https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf (last visited May 10, 2021); List of Life Sustaining Businesses, Office of the Governor, https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf (last visited May 10, 2021).

[157] Commonwealth of Pennsylvania Governor's Office, *Amendment to Proclamation of Disaster Emergency* (June 3, 2020), https://www.governor.pa.gov/wp-content/uploads/2020/06/20200603-TWW-amendment-to-COVID-disaster-emergency-proclamation.pdf (last visited May 10, 2021).

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Department of Education, which called for, among other requirements, adherence to social distancing guidelines, limiting class sizes to no more than 25 persons, implementation of hygiene, sanitization, face covering, and PPE protocols, and additional requirements for the reopening of residence halls.[158]

- **South Carolina (Claflin, Furman, Spartanburg Methodist College, Wofford)**: On March 15, 2020, all public schools, including public colleges and universities, were ordered to close except to the extent necessary to provide remote learning. While the South Carolina-based EIIA Members are private institutions, they suspended in person classes consistent with CDC guidance to protect the health and safety of their students and employees and mitigate ongoing loss or damage to their property. On April 6, 2020, South Carolina issued a stay-at-home order that ordered "residents and visitors of the State of South Carolina . . . to limit social interaction, practice 'social distancing' in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their home, place of residence, or current place of abode."[159] Pursuant to the Stay at Home Order and other South Carolina Orders, private colleges and universities were required to comply with social distancing and other health and safety protocols.[160]

[158] Pennsylvania Department of Education, *Preliminary Guidance for Resuming In-Person Instruction at Postsecondary Education Institutions and Adult Education Programs* (June 3, 2020), https://www.education.pa.gov/Documents/K-12/Safe%20Schools/COVID/GuidanceDocuments/PDE%20Preliminary%20Reopening%20Guidance%20Postsecondary%20and%20Adult%20Education.pdf (last visited May 10, 2021).

[159] Executive Order No. 2020-21, Office of the Governor (Apr. 6, 2020), https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-04-06%20eFILED%20Executive%20Order%20No.%202020-21%20-%20Stay%20at%20Home%20or%20Work%20Order.pdf (last visited May 10, 2021).

[160] *Id*.

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- **Texas (Huston-Tillotson, McMurry, Schreiner, Trinity, Wiley)**: By March 19 and March 31, 2020 Orders, Texas closed "schools" to in person attendance.[161] By April 17, 2020 Order, Texas required institutions of higher education to establish procedures "to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home."[162] Institutions of higher education were permitted "to reopen campuses" on May 28, 2020, but "encouraged" to enact similar standards to the health protocols found in guidance issued by the Texas Education Agency.[163] Like the EIIA Members generally, the Texas-based EIIA Members were also subject to a variety of orders from local governmental authorities.
- **Virginia (Roanoke, Shenandoah, Lynchburg)**: On March 30, 2020, Virginia's "Stay at Home Order" required colleges and universities to "cease all in-person classes and instruction, and cancel all gatherings of more than ten individuals" as of April 1, 2020, and permitted continuing operations only "for purposes of facilitating remote learning, performing critical research, or performing essential functions . . . provided that social distancing requirements are maintained."[164] As of June 5, 2020, colleges and universities, while "encouraged to continue remote learning" were permitted to resume in person instruction provided they complied "with all applicable requirements" under Virginia's "Guidelines for All Business Sectors."[165]

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[161] Office of the Texas Governor, *Executive Order Nos. 8* (March 19, 2020) and 14 (March 31, 2020), https://gov.texas.gov/coronavirus-executive-orders (last visited May 10, 2021).

[162] Office of the Texas Governor, *Executive Order Nos. 16* (April 17, 2020), https://gov.texas.gov/coronavirus-executive-orders (last visited May 10, 2021).

[163] Office of the Texas Governor, *Executive Order Nos. 23* (May 28, 2020), https://gov.texas.gov/coronavirus-executive-orders (last visited May 10, 2021).

[164] *Executive Order Number 55 (2020), Temporary Stay at Home Order Due to Novel Coronavirus (Covid-19),* Commonwealth of Virginia, Office of the Governor (Mar. 30, 2020), https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf (last visited May 10, 2021).

[165] *Executive Order Number 65 (2020), Phase Two Easing of Certain Temporary Restrictions Due to Novel*

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269. The CDC also issued a comprehensive set of recommendations tailored to institutions of higher education that evolved over time through frequent updates. On March 2, 2020, the CDC released its first "Interim Guidance for Administrators of US Institutions of Higher Education (IHE) to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)."[166] In this Guidance, the CDC directed colleges and universities to, among other things: (1) review, update, and implement emergency operations plans; (2) establish procedures for students, staff, and faculty with symptoms; (3) prepare health clinics for COVID-19; (4) perform environmental cleaning of frequently touched surfaces on a routine basis; (5) share COVID-19 informational resources with students and employees; and (6) consult with CDC guidance for businesses and employers. The guidance also directed colleges and universities in communities with identified cases of COVID-19 to "[d]etermine if, when, and for how long [they] may need to suspend classes and postpone or cancel events and activities" and to consider cancelling classes, events and activities "for at least 14 days, or possibly longer" depending on the evolving situation. The guidance advised colleges and universities to consider cancelling extracurricular group activities and large events, discourage "students, staff, and faculty from gathering or socializing anywhere[,]" "transition of classes from in-person to distance-based formats" and take steps to provide safe housing and continue meal programs such as temporary housing, "grab and go" meal options and other measures. The CDC guidance explicitly noted that it was also necessary to consider "if and when to stop, scale back or modify other support services on campus."

270. On March 16, 2020, the CDC and the national Coronavirus Task Force issued the

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Coronavirus (COVID-19), Commonwealth of Virginia, Office of the Governor (June. 2, 2020), https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-65-Phase-Two.pdf (last visited May 10, 2021). *See also* Safer at Home: Phase Two Guidelines for all Business Sectors, https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Virginia-Forward-Phase-Two-Guidelines.pdf (last visited May 10, 2021).

[166] *Interim Guidance for Administrators of US Institutions of Higher Education (IHE) to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, CDC (Updated Mar. 2, 2020), http://web.archive.org/web/20200304001625/https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-ihe-response.html (last visited May 10, 2021).

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American public guidance titled "30 Days to Slow the Spread" of COVID-19. The guidance called for restrictive social distancing measures, such as working from home, avoiding gatherings of more than 10 people and staying away from bars and restaurants.[167]

271. On March 18, 2020, updated CDC guidance expanded on appropriate mitigation strategies depending on whether confirmed cases of COVID-19 were found on campus, and on the threshold level of community transmission in the communities where the educational institutions are located.[168] With no community transmission, colleges and universities were nonetheless directed to intensify cleaning and disinfection efforts and to consider postponing non-critical gatherings and events. With minimal to moderate community transmission, the CDC advised: implementing multiple social distancing strategies such as, cancelling large gatherings; cancelling or modifying courses where students are likely to be in very close contact; increasing space between desks; reducing congestion in the health clinic; and considering if and how existing dining services should be scaled back or adapted. With substantial community transmission, the CDC guidance advised considering extended in-person class suspension and event/activity cancellations.

272. On May 19, 2020, the CDC released "Considerations for Institutes of Higher Education" which indicates that colleges and universities are at the lowest risk where "[f]aculty and students engage in virtual-only learning options, activities, and events" and "[r]esidence halls are closed, where feasible." [169] Conversely, the highest risk was presented with "[f]ull-sized in-person classes, activities, and events. Students are not spaced apart, share classroom materials or

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[167] The President's Coronavirus Guidelines for America, *30 Days to Slow the Spread*, The White House and CDC (Mar. 16, 2020), https://*trumpwhitehouse*.archives.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited May 10, 2021).

[168] *Interim Guidance for Administrators of US Institutions of Higher Education: Plan, Prepare, and Respond to Coronavirus Disease (COVID-19)*, CDC (Updated Mar. 18, 2020), http://web.archive.org/web/20200320114654/https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/index.html (last visited May 10, 2021).

[169] *Considerations for Institutes of Higher Education*, CDC (Updated May 19, 2020), http://web.archive.org/web/20200520185240/https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/considerations.html (last visited May 10, 2021).

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supplies, and mix between classes and activities" and "[r]esidence halls are open at full capacity including shared spaces." The guidance clarified cleaning and disinfection procedures that IHEs should undertake, including cleaning and disinfecting frequently touched surfaces at least daily, and limiting the use of shared objects. The guidance also directs IHE administrators to: "[e]nsure ventilation systems operate properly and increase circulation of outdoor air[;]" implement modified classroom layouts including spacing seating and desks at least 6 feet apart, and offer distance learning in addition to in-person classes; "[i]nstall physical barriers, such as sneeze guards and partitions, particularly in areas where it is difficult for individuals to remain at least 6 feet apart" and "[p]rovide physical guides . . . to ensure that individuals remain at least 6 feet apart[;]" close shared communal spaces or otherwise stagger use and restrict the number of people allowed at one time; post signage promoting protective measures and responsible behaviors such as face coverings; and make changes to the provision of food services.

273. On October 5, 2020, the CDC's guidance was substantially updated in numerous respects.[170] The guidance continued to recognize that the highest risk was presented when students and faculty regularly engage in in-person learning, activities, and events, and contained recommendations for lowering risks with "hybrid" learning approaches as well as strict adherence to risk mitigation strategies such as "cohorting, alternating schedules, and staggered schedules in residence halls, dining areas, and recreational areas on campus to create small groups of students and minimize their contact with others." Regarding ventilation, the guidance recommended "ventilation system upgrades or improvements" including improving central air filtration, using portable high-efficiency particulate air fan or filtration systems. The guidance suggested that colleges and universities "test [for COVID-19 in] students, faculty, or staff for purposes of surveillance, diagnosis, screening, or in the context of an outbreak."

274. On December 31, 2020, the CDC's guidance was updated in additional respects,

[170] *Considerations for Institutions of Higher Education*, CDC (Updated Oct. 5, 2020), http://web.archive.org/web/20201007092258/https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/considerations.html (last visited May 10, 2021).

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including expanded guidance on cleaning and disinfection. The CDC recommended encouraging students, faculty, and staff to use disinfectant wipes to wipe down shared objects and surfaces before use, and providing hand sanitizer or hand washing stations near high-touch areas and at entrances/exits to buildings.[171]

275. Similarly, certain EIIA Members own other businesses, *e.g.*, museums, commercial rental properties, golf courses, summer camps, childcare centers, Bed and Breakfasts and hotels, that are insured under the Policies and incurred insured losses at such properties as a result of the Coronavirus, COVID-19 and governmental orders closing or restricting such businesses. By way of example only, Rollins owns the Alfond Inn, a 112-room boutique hotel in Winter Park, Florida and certain commercial rental properties. Along with the university, the Alfond Inn and Rollins' commercial tenants were required to close and/or substantially limit their operations as a result of the Coronavirus, COVID-19 and governmental orders. Rollins accordingly incurred substantial costs and losses relating to the Alfond Inn, and lost rental income at Rollins' commercial properties, as a result.

276. As the EIIA Members began the process of reopening subject, they made numerous changes to their normal operations including, but not limited to: managing campus density by having some staff and faculty work remotely; requiring daily personal symptom monitoring for students and staff; implementing social distancing measures, including using larger and/or outdoor spaces for classes, limiting the number of students in residences, making alternative housing arrangements, utilizing signage to inform students of requirements, purchasing equipment for outdoor spaces such as tents and outdoor furniture, modifying indoor spaces and installing barriers; altering class and other schedules to permit enhanced social distancing; increasing staff to respond to social distancing needs (for example, activities were conducted in multiple sessions, with fewer students); distributing face masks; providing rapid and ample testing for COVID-19; conducting

[171] *Consideration for Institutions of Higher Education*, CDC (Updated Dec. 31, 2020), http://web.archive.org/web/20210101162158/https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/considerations.html (last visited May 10, 2021).

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extensive contact tracing; incorporating quarantine support for those with symptoms or identified by contact tracing (for example, several EIIA Members modified residence halls exclusively for quarantining students); and, implementing strict disinfection and cleaning protocols on campus with costly sanitation products, such as equipment for electrostatic cleaning, air filtration with expensive and specialized equipment (such as equipment for bipolar ionization, and ozone sprayers).

277. By way of further example, several EIIA Members froze tuition for the 2020-2021 academic year, in some cases after increases had already been announced. By way of example only, Augsburg reversed a planned tuition increase for 2021 and offered extra discounts leading to losses of almost $2,000,000.

278. Additionally, most EIIA Members offered remote options for the Fall 2020 semester, which further created a loss of room and board revenue, losses that continued into the Spring 2021 semester.

279. In November and December of 2020, COVID-19 surged in Washington and throughout much of the nation.[172] As a result, the EIIA Members were forced to adopt a new round of health and safety precautions and limitations on their operations including a renewed halt on, or further modification to, in-person classes.

280. Before and after resuming in-person classes, the EIIA Members were required to operate with severe restrictions and have undertaken expensive safety measures and related extra expenses to prevent further loss or damage to their property from the Coronavirus. Among other things, the EIIA Members have purchased PPE, modified ventilation systems and purchased expensive and specialized equipment for advanced filtration such as bipolar ionization, reconfigured classrooms to allow social distancing, purchased equipment to utilize outdoor spaces,

[172] *COVID-19 cases surge in Washington State*¸ State of Reform (Nov. 10, 2020), https://stateofreform.com/news/washington/2020/11/covid-19-cases-surge-in-washington-state/ (last visited May 7, 2021). COVID-19: US faces "surge upon a surge", BMJ 2020, https://www.bmj.com/content/371/bmj.m4693 (last visited May 10, 2021).

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incurred equipment and software costs for remote learning, installed physical barriers, restricted class sizes and modified classrooms and other gathering spaces, issued refunds for cancelled events, pro-rated room and board, hired consultants, adopted rigorous procedures for disinfecting surfaces, added hand hygiene stations, incurred staffing and vendor expenses for extra disinfection, increased staffing to facilitate smaller and socially distanced classes and other services, extensively tested students faculty and staff, and devoted extensive resources to quarantine students.[173]

281. As a result of the fundamental alterations made to the learning and campus experience, the EIIA Members experienced reduced enrollment and significant losses.

282. The EIIA Members' losses exceed multi-millions of dollars in damages, staggering sums for not-for-profit educational organizations devoted to educating the next generation.

283. The EIIA Members timely notified the Defendant Insurers of their losses and have met all conditions and requirements for coverage under the Policies. As set forth herein, the Defendant Insurers have wrongly refused to provide coverage.

G. The "All Risk" Commercial Property Policy and Potentially Applicable Coverages

284. The EIIA Members purchased a quota share program, to which the Defendant Insurers subscribed – a type of sharing agreement where various insurers share a portion of the risk according to a fixed percentage.

285. Each of the Defendant Insurers issued separate policies with unique market reference and/or policy numbers, setting forth their respective quota shares and adopting the terms of the main Policy.

286. In exchange for a very substantial premium, the Defendant Insurers sold the EIIA Members the Policy, effective from March 1, 2020 to March 1, 2021

287. The EIIA Members fully paid the premium for the Policy.

[173] *See, e.g., COVID-19 Safe Campus Guide, Spring 2021*, Ohio Wesleyan University, https://www.owu.edu/about/safe-campus-guide-covid-19/ (last visited May 10, 2021); *Guide To Spring 2021*, Denison University, https://reopen.denison.edu/hc/en-us (last visited May 10, 2021).

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288. The Defendant Insurers drafted the Policy.

289. The EIIA Members did not draft the Policy.

290. The Policy has a $1.2 billion per occurrence limit.

291. The Policy has a deductible of "$750,000 in excess of the deductibles shown in Appendix A, subject to a maximum of $6,500,000 annually."

292. Each institution has a distinct deductible. Appendix A lists the applicable deductibles for each EIIA Member including, for example, $25,000 for Pacific Lutheran, $50,000 for Puget Sound, and $50,000 for Whitworth.

293. The Policy does not exclude virus or communicable disease as causes of loss. Thus, the entire $1.2 billion per occurrence limit is available for the EIIA Members' losses.

294. No policy exclusions apply to the EIIA Members' claim, and the Policies provide coverage as follows:

Business Interruption Coverages

295. The Policy covers Business Interruption losses "resulting from necessary interruption of business conducted by the Insured, whether total or partial, and caused by loss, damage, or destruction covered herein . . . (the "Business Interruption Coverage")."

296. As set forth herein, the Coronavirus and COVID-19 caused loss, damage or destruction to property to the EIIA Members' insured locations.

297. The Coronavirus and COVID-19 also rendered such property unfit and unsafe for its normal usages, depriving the EIIA Members of their property.

298. Neither the Coronavirus nor COVID-19, or losses therefrom, are excluded under the Policy.

299. As a result of the presence of the Coronavirus and COVID-19 on premises, the EIIA Members have been subject to both total and partial closures beginning in mid-March 2020, and to the extent they have re-opened, they have done so subject to numerous restrictions on normal business operations. As such, the EIIA Members have sustained and are sustaining

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substantial and covered business interruption losses.

300. The Policy also includes an Extended Period of Liability, extending the Business Interruption Coverage "for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred[.]"

301. The Policy provides Extra Expense Coverage, covering "the excess of the total cost chargeable to the operation of the Insured's business over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred."

302. As set forth herein, the EIIA Members incurred covered extra expenses to resume and continue as nearly as practicable their normal business activities that were otherwise suspended due to loss, damage or destruction caused by the Coronavirus and COVID-19, costs associated with altering their property to protect it from further loss, damage or destruction, as well as to protect the safety of its students and employees, erecting barriers, altering air circulation, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE.

303. The Policy also provides coverage for Rental Value and Royalties.

Coverage Extensions

304. The Policy provides Interruption by Communicable Disease Coverage which states: "The Company will pay for the actual Gross Earnings loss sustained by the Insured, as provided by this Policy, resulting from the necessary interruption of the Insured's business activities at an Insured Location if the interruption is caused by order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases or by recommendation of the Center for Disease Control (CDC) or that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the Location."

305. The EIIA Members' business activities and access to their properties were interrupted and reduced by orders and recommendations by governmental agencies and the CDC

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due to the threat of the spread of communicable disease and the presence thereon, as further described herein.

306. The Policy provides Communicable Disease Coverage which states: "This policy will pay for: . . . (b) direct physical loss or damage to insured property caused by or resulting from a . . . communicable disease event at an insured location[.]"

307. The ACE Policy removes the Interruption by Communicable Disease and Communicable Disease coverages and replaces them with a Communicable Disease Additional Coverage Endorsement ("ACE Disease Endorsement"). The ACE Disease Endorsement covers "[t]he reasonable and necessary cost of the cleanup, removal, disposal, and/or decontamination of property at the insured location contaminated by contact with actual, not threatened, communicable disease, all in a manner required to satisfy any order of the applicable public authority;" and "[t]he actual loss sustained by the Insured of business income or gross profits, as defined and covered elsewhere in this Policy, and the extra expense incurred by the Insured, as defined and covered elsewhere in this Policy, resulting from the suspension of the Insured's operations during the Communicable Disease Period of Recovery." These coverages apply if "directly resulting from the actual or suspected presence of a communicable disease, the Insured's premises are totally or partially closed at the direction of The National Center for Disease Control and/or the applicable state, city or municipal department of public health."

308. COVID-19 is a communicable disease that was physically present on the EIIA Members' premises.

309. The EIIA Members have experienced interruption and interference with their business as a result of the presence of the Coronavirus and COVID-19 at their campuses and properties, including at least 818 employees and 4,078 students tested positive for COVID-19.

310. The EIIA Members' campuses and properties were also subject to complete and partial closure due to the threat of actual and suspected presence of hazardous conditions, namely the presence of the Coronavirus and COVID-19.

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311. The Policy provides Decontamination Costs coverage, which provides in relevant part: "If insured property is contaminated as a direct result of physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating Contamination due to the actual not suspected presence of Contaminant(s), then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance."

312. The Policy provides Protection and Preservation of Property coverage for the "reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property."

313. The Policy provides Crisis Management coverage for "additional cost for communication response and actual loss of Gross Earnings and Extra Expense due to a covered crisis event. Covered crisis event includes, . . . covered premises contaminated by communicable disease . . . ."

314. The Policy provides Loss Adjustment Expenses coverage for "expenses incurred by the Insured, or by the Insured's representatives of reasonable fees payable to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees, for producing and certifying any particulars . . . resulting from an insured loss payable under this policy."

315. The EIIA Members undertook costly measures necessary to protect from imminent and further loss or damage and to protect as much as possible, the health, safety and welfare of employees and customers. These measures included, among other things, altering property to protect it from loss or damage, and taking measures to protect the safety of its employees and students, such as erecting barriers, altering air circulation, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE to employees. Among other things, the EIIA Members incurred costs associated with securing, storing and arranging student retrieval of

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personal property left behind by students required to unexpectedly depart the EIIA Members' campuses as a result of the Coronavirus (or mailing and shipping such property), COVID-19 and governmental orders.

Time Element Extensions

316. The Policy includes numerous Time Element Extensions (i.e. extensions to the business interruption coverage) that apply to the EIIA Members' losses from the Coronavirus and COVID-19.

317. The Policy provides Interruption by Civil or Military Authority coverage for "the loss sustained during the period of time, not to exceed 30 days, when access to real or personal property is impaired by order or action of civil or military authority issued in connection with or following a peril insured against."

318. The Coronavirus and COVID-19 caused loss or damage to property throughout Washington, including in Pierce and Spokane Counties, where the Washington EIIA Members are located, as well as throughout the various other communities and states where the EIIA Members are located, and caused the deprivation of use of such property, giving rise to the actions of civil authority, as set forth herein. These orders impaired access to the EIIA Members' campuses and properties.

319. The Policy provides Contingent Time Element coverage for "loss resulting from damage to or destruction by, causes of loss insured against, to property that wholly or partially prevents any direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that wholly or partially prevents any direct receiver of goods and/or services from the Insured from accepting the Insured's goods and/or services, such supplier or receiver to be located anywhere in the world."

320. The Policy provides Leader Property coverage for "loss sustained during the period of time, not to exceed 30 days, resulting from damage to or destruction by, causes of loss insured against, to property not owned or operated by the Insured, located in the same vicinity as the

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Insured, which attracts business to the Insured."

321. In plain English, the Policy provides coverage for the EIIA Members' losses if the properties of the EIIA Members' direct suppliers, or nearby properties that attract business to the EIIA Members, suffer damage or destruction unless the causes of that damage or destruction are expressly excluded under the Policy. The Policy covers all risks and does not contain any relevant exclusions for the EIIA Members' losses.

322. Among other things, as set forth herein, the Coronavirus and COVID-19 caused damage or destruction at properties of direct suppliers and service providers to the EIIA Members, and properties that attract customers to the EIIA Members' campuses.

323. Additionally, as set forth herein, the Coronavirus and COVID-19 rendered such properties unfit and unsafe for their normal usages, resulting in the deprivation of use of such properties.

324. The Policy provides Ingress/Egress coverage for "the loss sustained during the period of time, not to exceed 30 days, when in connection with or following a peril insured against, access to or egress from real or personal property is impaired."

325. The Coronavirus and COVID-19 caused loss or damage to property throughout Washington (including both Pierce and Spokane Counties) and the United States, and impaired use and access to such property. The presence of the Coronavirus and COVID-19 impaired access to the areas at and surrounding the EIIA Members' campuses.

The Other Program Insurance Policies

326. The policy issued by Beazley, Policy No. W2205F200301 (the "Beazley Primary Policy"), provides a 10% share of the $50,000,000 primary layer of coverage (attached hereto as Ex. 1).

327. The policy issued by GuideOne, Policy No. 099000107 (the "GuideOne Primary Policy"), provides a 1% share of the $50,000,000 primary layer of coverage (attached hereto as Ex. 2).

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328. The policy issued by Colony, Policy No. BPR200033-0 (the "Colony Primary Policy"), provides a 29% share of the $10,000,000 primary layer of coverage (attached hereto as Ex. 3).

329. The policy issued by ACE, Policy No. GPA D42260526 002 (the "ACE Policy"), provides a 30% share of the $10,000,000 primary layer of coverage (attached hereto as Ex. 4).

330. The policy issued by Starr, Policy No. SLSTPTY11266120 (the "Starr Policy"), provides a 30% share of the $10,000,000 primary layer of coverage, a 10% share of the $40,000,000 excess of $10,000,000 layer of coverage, and a 45% share of the $100,000,000 excess of $250,000,000 layer of coverage (attached hereto as Ex. 5).

331. The policy issued by Arch, Policy No. ESP0053735-07 (the "Arch Policy"), provides a 12.5% share of the $40,000,000 excess of $10,000,000 layer of coverage (attached hereto as Ex. 6).

332. The policy issued by Evanston, Policy No. MKLV12XP003343 (the "Evanston Policy"), provides a 5% share of the $40,000,000 excess of $10,000,000 layer of coverage, and a 5% share of the $100,000,000 excess of $150,000,000 layer of coverage (attached hereto as Ex. 7).

333. The policy issued by Lloyd's, Policy No. B080110908U20 (the "Lloyd's Excess Policy"), provides a 25.5% share of the $40,000,000 excess of $10,000,000 layer of coverage, a 19.5% share of the $100,000,000 excess of $50,000,000 layer of coverage, and a 5% share of the $100,000,000 excess of $250,000,000 layer of coverage (attached hereto as Ex. 8).

334. The policy issued by Ategrity, Policy No. 01-B-XP-P00000106-1 (the "Ategrity Policy"), provides an 15% share of the $40,000,000 excess of $10,000,000 layer of coverage (attached hereto as Ex. 9).

335. The policy issued by Colony, Policy No. XP200034-0 (the "Colony Excess Policy"), provides an 8.5% share of the $40,000,000 excess of $10,000,000 layer of coverage (attached hereto as Ex. 10).

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336. The policy issued by HDI, Policy No. CPXD5460202 (the "HDI Policy"), provides a 12.5% share of the $340,000,000 excess of $10,000,000 layer of coverage (attached hereto as Ex. 11).

337. The policy issued by Princeton, Policy No. 78-A3-XP-0000488-02 (the "Princeton Policy"), provides a 7.5% share of the $100,000,000 excess of $50,000,000 layer of coverage, and a 22.5% share of the $100,000,000 excess of $150,000,000 layer of coverage (attached hereto as Ex. 12).

338. The policy issued by Liberty Specialty Markets Bermuda Limited, Policy No. LSMAPR105580A01 (the "Liberty Policy"), provides a 4.5% share of the $100,000,000 excess of $50,000,000 layer of coverage. The Liberty Policy contains an arbitration clause and, as such, Liberty Specialty Markets Bermuda Limited is not named in this action.

339. The policy issued by GuideOne, Policy No. 099000119 (the "GuideOne Excess Policy(1)"), provides an 11% share of the $100,000,000 excess of $50,000,000 layer of coverage (attached hereto as Ex. 13).

340. The policy issued by Markel Bermuda Limited, Policy No. 1417657-11178-PRMAN-2020 (the "Markel Policy"), provides a 10% share of the $100,000,000 excess of $50,000,000 layer of coverage. The Markel Policy contains an arbitration clause and, as such, Markel Bermuda Limited is not named in this action.

341. The policy issued by Endurance, Policy No. ARP10010732903 (the "Endurance Policy"), provides a 10% share of the $200,000,000 excess of $50,000,000 layer of coverage (attached hereto as Ex. 14)

342. The policy issued by Tokio Marine, Policy No. LCP6480578-03 (the "Tokio Marine Policy"), provides a 10% share of the $200,000,000 excess of $50,000,000 layer of coverage (attached hereto as Ex. 15).

343. The policy issued by Westport, Policy No. NAP 0451682 06 (the "Westport Policy"), provides a 10% share of the $200,000,000 excess of $50,000,000 layer of coverage

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(attached hereto as Ex. 16).

344. The policy issued by Argo Re Ltd., Policy No. P141584 (the "Argo Policy"), provides a 5% share of the $200,000,000 excess of $50,000,000 layer of coverage. The Argo Policy contains an arbitration clause and, as such, Argo Re Ltd.is not named in this action.

345. The policy issued by GuideOne, Policy No. 099000120 (the "GuideOne Excess Policy(2)"), provides a 20% share of the $100,000,000 excess of $150,000,000 layer of coverage (attached hereto as Ex. 17).

346. The policy issued by Hamilton Re, Ltd., Policy No. PX20-3891-01 (the "Hamilton Policy"), provides a 5% share of the $100,000,000 excess of $150,000,000 layer of coverage. The Hamilton Policy contains an arbitration clause and, as such, Hamilton Re, Ltd.is not named in this action.

347. The policy issued by Mitsui, Policy No. EXP7000138 (the "Mitsui Policy"), provides a 37.5% share of the $100,000,000 excess of $250,000,000 layer of coverage (attached hereto as Ex. 18).

348. The policy issued by Homeland, Policy No. 795011830 (the "Homeland Policy"), provides a 28% share of the 350,000,000 excess of $350,000,000 layer of coverage (attached hereto as Ex. 19).

349. The policy issued by XL Bermuda Ltd., Policy No. XL PRP 1373773 20 (the "XL Policy"), provides a 30% share of the $350,000,000 excess of $350,000,000 layer of coverage. The XL Policy contains an arbitration clause and, as such, XL Bermuda Ltd. is not named in this action.

350. The policy issued by Chubb Bermuda Limited, Policy No. EIIA01659P01 (the "Chubb Policy"), provides a 42% share of the $350,000,000 excess of $350,000,000 layer of coverage, and a 100% share of the $500,000,000 excess of $700,000,000 layer of coverage. The Chubb Policy contains an arbitration clause and, as such, Chubb Bermuda Limited is not named in this action.

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H. The Defendant Insurers Denied The EIIA Members' Claims

351. The EIIA Members timely have provided notice to the Defendant Insurers of their losses from the Coronavirus and COVID-19 (collectively the "EIIA Members' Claims").

352. The Defendant Insurers never sent an adjuster – or anyone on their behalf – to visit, inspect or set foot in any of the EIIA Members' locations or properties to investigate the EIIA Members' Claims.

353. The Defendant Insurers have not conducted any investigation of the EIIA Members' Claims.

354. The Defendant Insurers have either reserved their rights to deny coverage, denied coverage or failed to timely acknowledge or deny coverage for the EIIA Members' Claims, forcing the EIIA Members to face substantial unreimbursed losses.

355. Upon information and belief, the Defendant Insurers contend that their promise to pay for loss is strictly limited to property that undergoes a tangible, permanent structural alteration or transformation as a result of an external force, as might be the case when a fire burns a piece of wood. But the coverage provided under the Policy is not so narrowly circumscribed; its coverage expressly extends to "all risk of direct physical loss of or damage to property" unless excluded, "direct physical loss or damage," and "loss, damage, or destruction," including the inability to access or use all or a portion of the insured locations.

356. To the extent applicable to the coverages afforded by the Policy, the requirement of "physical loss of or damage," "physical loss or damage," or "loss, damage, or destruction" to property has been met in one or more ways as alleged herein, including by virtue of the loss or damage to the EIIA Members' insured property caused by (i) the actual or potential presence of the Coronavirus in the air (whether in droplet nuclei, aerosols, droplets, or otherwise) and on surfaces such as door handles, desks, chairs, computers and educational equipment at such properties; (ii) the necessity of modifying physical behaviors through the use of social distancing in order to reduce or minimize the potential for viral transmission, as well as the necessity of

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physically modifying interior spaces; (iii) government orders requiring that physical spaces, be shut down, or restricting the use of such physical spaces, as was the case with the prohibition on in-person classes; and/or (iv) the need to mitigate the threat or actual physical presence of the Coronavirus on door handles, desks, chairs, computers, educational equipment, and assorted surfaces, as well as in heating and air conditioning systems and any other of the multitude of places virus has or could be found.

357. The Defendant Insurers have denied, or constructively denied, coverage despite never visiting or sending an adjuster to any of the EIIA Members' properties to verify the accuracy of the basis for their denial.

358. The Defendant Insurers' denial or constructive denial of the EIIA Members' Claims without conducting a substantive investigation of such claim constitutes a breach of the duty of good faith and fair dealing an insurer owes to its insured. In so doing, the Defendant Insurers placed their own interests above those of their policyholders.

359. The Defendant Insurers' position is particularly egregious in light of the fact that they have repeatedly acknowledged the possibility of massive losses from pandemics. For example, Chubb Limited ("Chubb"), ACE's parent corporation, acknowledged the possibility of massive losses from pandemics in its own public filings for years. In its 2019 Form 10-K, Chubb Limited acknowledged "We have substantial exposure to losses resulting from . . . catastrophic events, including pandemics."[174] Chubb also routinely stated in its annual filings that the risk factors to the Chubb Group of Companies included "infection rates and severity of pandemics and their effects on our business operations and claims activity."[175]

360. Similarly, the corporate parent of Evanston, Markel Insurance Company, acknowledged in the "Risk Factors" section of its 10-K that "[a]s a company with significant

[174] *See, e.g.*, 2019 Form 10-K of Chubb Limited, at 19, https://s1.q4cdn.com/677769242/files/doc_financials/2020/ar/Chubb-Limited-2019-Form-10-K.pdf (last visited May 9, 2021).

[175] *Id.* at 36.

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property and casualty insurance operations, we may experience losses from man-made or natural catastrophes. Catastrophes . . . may include pandemics."[176]

361. ***After*** the Policies were issued to the EIIA Members and ***after*** the scope and severity of the Coronavirus and COVID-19 became clear, the Defendant Insurers sought ***future*** changes to the Policies to eliminate coverages expressly covering the losses at issue in this action. Among other changes, the Defendant Insurers indicated that they would remove all Nonphysical Damage coverage terms, remove coverage for Contaminated Food or Water / Communicable Disease (COVID-19), and remove coverage for Interruption caused by Communicable Disease.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

362. The EIIA Members incorporate the above Paragraphs by reference.

363. This is a cause of action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24.010 *et seq.*

364. An actual and justiciable controversy exists between the EIIA Members and the Defendant Insurers concerning their respective rights and obligations under the Policies.

365. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of the EIIA Members and the Defendant Insurers under the Policies.

366. The EIIA Members seek a declaratory judgment declaring that the Policies cover the losses they have suffered.

367. The EIIA Members seek a declaratory judgment declaring that the Defendant Insurers are responsible for fully and timely paying the EIIA Members' losses.

[176]2019 Form 10-K of Markel Insurance Company, at 25, https://www.sec.gov/Archives/edgar/data/1096343/000109634320000039/mkl1231201910k.htm (last visited May 9, 2021).

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SECOND CAUSE OF ACTION

(Breach of Contract)

368. The EIIA Members incorporate the above Paragraphs by reference.

369. The Policies are valid and enforceable contracts.

370. The EIIA Members paid substantial premiums for the Policies and the promises of coverage contained therein, and otherwise performed all of their obligations owed under the Policies or were excused from performance.

371. The Defendant Insurers have denied the EIIA Members' Claims and have refused to pay or otherwise honor their promises. In denying or constructively denying coverage for the EIIA Members' Claims as alleged above, the Defendant Insurers breached their contracts (that is, the Policies). As a result, the EIIA Members have suffered and continue to suffer damage in an amount to be proven at trial, but currently estimated to exceed multi-millions in damages.

372. By failing to investigate the EIIA Members' Claims, the Defendant Insurers breached their duty of good faith and fair dealing to their insureds. As a result, the EIIA Members are entitled to consequential damages for the Defendant Insurers' breach of the Policies.

373. Consequential damages for breach of the Policies were reasonably contemplated by the parties when the Defendant Insurers issued the Policies.

V. PRAYER FOR RELIEF

Wherefore, the EIIA Members pray for judgment as follows:

A. On the First Cause of Action, a declaratory judgment that the losses the EIIA Members have suffered are covered by the Policies; and that the Defendant Insurers are responsible for fully and timely paying the EIIA Members' losses;

B. On the Second Cause of Action, for an award of damages in favor of the EIIA Members in an amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal rate, attorneys' fees, costs and disbursements for this action; and

C. For such other equitable and further relief as this Court may deem just and proper.

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DATED this 17th day of May, 2021.

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