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2022 SEP 23 04:29 PM
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CASE #: 22-2-15472-1 SEA

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WASHINGTON,

Plaintiff,

v.

EMPLOYERS INSURANCE COMPANY
OF WAUSAU, A LIBERTY MUTUAL
COMPANY,

Defendant.

No.

COMPLAINT

Plaintiff, The Board of Regents of the University of Washington (“University of Washington” or “UW”), for its Complaint for breach of contract, declaratory judgment pursuant to RCW 7.24.010, *et seq.*, and damages for the breach of the duty of good faith and fair dealing and under Washington’s Consumer Protection Act (“WCPA”) against Defendant, Employers Insurance Company of Wausau (“Insurer”), alleges as follows:

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INTRODUCTION

1. This is a civil action seeking multiple declaratory judgements, as well as damages for breaches of contract, insurer bad faith, and violations of WCPA arising out of Insurer’s wrongful failure and refusal to provide coverage under a series of “all risk” insurance policies issued to the University of Washington for its hundreds of millions of dollars in unreimbursed losses, costs, and expenses due to direct physical loss of or damage to its various medical and athletic properties located throughout Seattle, Washington, all of which arose out of the physical presence of the novel coronavirus (“COVID-19”) at its properties.

2. As alleged in further detail below, and as supported by scientific studies and reports, COVID-19 caused *direct physical damage* to UW’s properties by physically altering and impairing them. COVID-19 additionally caused *direct physical loss* to UW’s properties because the presence of COVID-19 was a physical condition that impacted the properties, rendering them unfit, in whole or in part, for their intended purposes and/or uninhabitable resulting in a loss of use. This is exactly the type of situation that the Washington Supreme Court recently confirmed qualifies as “direct physical loss of or damage to” property. *See Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC*, No. 100168-1, --- P.3d ---, 2022 WL 4241893, at *11-*12 (Wash. Sept. 15, 2022) (“conclude[ing] that ‘direct physical loss [or] ... damage’ refers to the deprivation or dispossession of or injury to the insured property,” noting that “for coverage ... the loss of use of the insured property must be caused by some physical condition impacting the insured property,” and favorably citing cases holding that “a loss of use claim is appropriate where the insured property is rendered unfit for its intended purpose or uninhabitable based on some change in the physical condition of the property”); *Hill & Stout, PLLC v. Mut. of Enumclaw Ins. Co.*, 515 P.3d 525, 533 (Wash. 2022) (distinguishing a loss caused solely by government orders from a case that, as here,

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JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Insurer because the policies that it issued to UW insure UW's properties, which are located within King County, in the State of Washington, and were delivered to UW in King County, Washington. This constitutes evidence that Insurer has purposefully availed itself of the benefits and protections of the State of Washington by transacting business with UW and assuming continuing obligations to UW in the State of Washington, as well as purposefully directing its activities at UW in King County, Washington. Moreover, Insurer has purposefully availed itself of the Court's jurisdiction and targeted Washington customers by registering with the Washington State Office of the Insurance Commissioner for the purpose of issuing property insurance policies in Washington. The policies at issue herein were delivered in Washington. Finally, the policies contain a provision whereby "[a]ny disputes arising [under the policies] will be exclusively subject to a State or Federal jurisdiction within the United State of America."

7. The Court has subject-matter jurisdiction over the controversy pursuant to RCW 2.08.0210.

8. Venue is proper in this District pursuant to RCW 4.12.025(1) because Insurer transacted business in King County, Washington by issuing insurance policies to UW—a King County, Washington resident—that insured property located in King County, Washington.

FACTUAL BACKGROUND

A. The Medical Centers and Athletic Programs of the University of Washington

9. This lawsuit involves the medical centers and athletic programs and facilities of the University of Washington. The medical centers involved include the University of Washington Medical Center, a medical center with both a Montlake campus ("UWMC") and a Northwest campus ("NWH"); and Harborview Medical Center ("HMC"), a hospital owned

1 by King County, but operated and managed by the UW pursuant to a Hospital Services
2 Agreement between King County and the University of Washington. Both HMC and UWMC
3 are part of UW Medicine, an integrated clinical, research, and learning health system with a
4 single mission to improve the health of the public. The athletic programs involved include
5 the University of Washington's Husky Stadium ("Husky Stadium") and the University of
6 Washington's other athletic department-related properties ("Athletics").
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13 10. Between the two campuses, UWMC and NWH, are an 810-bed hospital that
14 provide comprehensive healthcare services to the Puget Sound community and patients from
15 throughout the Pacific Northwest and beyond. UWMC is located on the UW campus at 1959
16 N.E. Pacific Street, Seattle, WA 98195, and NWH is located in north Seattle at 1550 N. 115th
17 Street, Seattle, WA 98133. Prior to becoming UWMC's second campus on January 1, 2020,
18 NWH was a community hospital originally formed as a nonprofit Washington corporation.
19 During normal operations, more than 27,000 patients receive inpatient care at this two campus
20 hospital each year.
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29 11. Harborview Medical Center ("HMC") is a hospital and level I adult and
30 pediatric trauma center located in Seattle, Washington. It is owned by King County but has
31 been managed by the UW under a management contract between King County and the Board
32 of Regents since 1967. In February 2016, the UW and King County entered into a Hospital
33 Services Agreement that, among other things, renewed UW's authority and responsibility to
34 manage the business and clinical affairs of HMC. The agreement has a ten-year term that may
35 be renewed for two successive ten-year terms if consented to by both parties. In 2019, HMC
36 admitted over 16,000 patients.
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45 12. Husky Stadium is located less than 1 mile from UWMC's Montlake campus.
46 It is home to the 17-time Pac-12 Conference champion University of Washington Huskies
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1 football team. In addition to hosting football games, it also serves as an events center
2 throughout the year. During normal operations, Husky Stadium typically hosts up to seven
3 events and 475,000 people a year.
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6 13. Athletics is comprised of the various recreational and athletic department
7 buildings and sports fields, all of which are located near UWMC's Montlake campus and
8 Husky Stadium. During normal operations, these facilities host approximately 120 events and
9 300,000 people each year.
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15 **B. The Insurance Policies**

16 14. Insurer issued five "all risk" Premier Property Protector insurance policies
17 ("Policies") to the UW-controlled entities above as follows:
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21 a. Policy No. YAC-L9L-469720-039 to UWMC ("UWMC Policy"), attached
22 hereto as **Exhibit 1**;
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24 b. Policy No. YAC-L9L469720-029 to NWH ("NWH Policy"), attached
25 hereto as **Exhibit 2**;
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27 c. Policy No. YAC-L9L-46970-049 identifying the Board of Regents of the
28 University of Washington, Harborview Board of Trustees, and King
29 County ("HMC Policy"), attached hereto as **Exhibit 3**;
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31 d. Policy No. YAC-L9L-450425-020 identifying the Board of Regents of the
32 University of Washington Husky Stadium ("Stadium Policy"), attached
33 hereto as **Exhibit 4**; and
34
35 e. Policy No. YAC-L9L-450425-030 identifying the Board of Regents of the
36 University of Washington Athletics ("Athletics Policy"), attached hereto
37 as **Exhibit 5**.

38 15. The Policies each cover "property, as described in this Policy, against *all risks*
39 of direct physical loss or damage, except as hereinafter excluded or limited, while located as
40 described in this Policy." *See, e.g., UWMC Policy, Policy Cover Page (emphasis added).*
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43 16. As discussed below, the Policies are substantially similar but contain certain
44 limited differences.
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i The UWMC Policy

17. The term of the UWMC Policy is July 1, 2019 through July 1, 2020 and has an extended period of liability of 365 consecutive days. This means that this policy covers all risks of direct physical loss or damage, including time element loss, unless specifically excluded, that occur during the period of liability and up to 365 days and not limited by the end of the policy term.

18. The UWMC Policy's limit of liability is \$600,000,000. The UWMC Policy contains various sublimits, including without limitation, for civil or military authority (\$10,000,000), communicable disease decontamination costs (\$2,500,000), time element loss due to contamination by communicable disease (\$1,000,000), and research and development (\$5,000,000).

19. The UWMC Policy provides coverage for UWMC's "Covered Locations" as specified in a Schedule of Locations on file with the Insurer. The "Covered Locations" include multiple locations, including, but limited to, the inpatient campus location in Montlake and various other locations in Seattle, Bellevue, and Edmonds ("UWMC Properties").

20. The UWMC Policy contains several different coverage provisions implicated by this lawsuit, including but not limited to:

- a. **COVERED PROPERTY.** "We cover your insurable interest in the following types of property that are located at or within one-thousand (1,000) feet of a covered location, unless otherwise excluded: a. Real Property ... b. Personal Property...." Real Property includes property such as "Building(s) and any other structures." Personal Property includes property such as "Furniture, fixtures, ... Materials, supplies."
- b. **PROPERTY DAMAGES COVERAGES AND LIMITATIONS - EXPEDITING EXPENSE.** "We cover your reasonable and necessary costs: (1) For the temporary repair of covered property from a covered loss; and (2) To expedite the permanent repair or replacement of such damaged property."

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- c. **TIME ELEMENT LOSS.** “We cover your actual loss sustained, as provided in the **TIME ELEMENT COVERAGES** and **TIME ELEMENT COVERAGES AND LIMITATIONS**, directly resulting from a loss of the type insured by this Policy: a. To property described elsewhere in this Policy and not otherwise excluded by this Policy, b. Used by you, or by others with whom you have a contract, c. At a covered location or while in transit as provided by this Policy, d. During the applicable **PERIOD OF LIABILITY** described in this section.”
 - d. **TIME ELEMENT COVERAGES - EXTRA EXPENSE.** “We cover your reasonable and necessary extra costs of the following incurred during the **PERIOD OF LIABILITY** applicable: (1) To temporarily continue as nearly normal as practicable the conduct of your business; and (2) The temporary use of property or facilities of yours or others.”
 - e. **TIME ELEMENT COVERAGES AND LIMITATIONS - CIVIL OR MILITARY AUTHORITY.** “We cover your actual loss sustained and **EXTRA EXPENSE** during the period of interruption if an order of civil or military authority prohibits access to a covered location provided such order is caused by physical loss or damage of the type insured by this Policy at a covered location or within the number of statute miles specified in the **LIMITS OF LIABILITY** Table in the Declarations.”
 - f. **TIME ELEMENT COVERAGES AND LIMITATIONS - CONTINGENT TIME ELEMENT.** “We cover your actual loss sustained and **EXTRA EXPENSE** during the **PERIOD OF LIABILITY** directly resulting from physical loss or damage of the type insured by this Policy at Direct Dependent Time Element Location(s) and Indirect Dependent Time Element Location(s) located within the territory of this Policy.”
 - g. **TIME ELEMENT COVERAGES AND LIMITATIONS - INGRESS / EGRESS.** “We cover your actual loss sustained and **EXTRA EXPENSE** due to the necessary interruption of your business if ingress to or egress from a covered location is prevented, whether or not your premises or property is damaged, provided that such prevention is the result of physical loss or damage of the type insured to property of the type insured.”
 - h. **TIME ELEMENT COVERAGES AND LIMITATIONS - RESEARCH AND DEVELOPMENT.** “We cover your actual loss sustained of fixed charges and ordinary payroll directly attributable to the interruption of research and development project(s) that would not have produced income during the **PERIOD OF LIABILITY** resulting from a covered loss.”
 - i. **COMMUNICABLE DISEASE DECONTAMINATION COST ENDORSEMENT.** “If your covered property at a covered location shown

1 on the Schedule of this endorsement is contaminated by a communicable
2 disease as the direct result of a covered loss, and there is in force at the time
3 of that covered loss a law or ordinance that requires you to decontaminate
4 that covered property as a result of this contamination by a communicable
5 disease, we will pay up to the limit as specific in the LIMITS OF
6 LIABILITY Table in the Declarations in any one (1) occurrence for those
7 decontamination costs incurred by you, but only to satisfy the minimum
8 requirements of that applicable law or ordinance.”
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10 *ii. The NWH Policy*

11 21. The term of the NWH Policy is July 1, 2019 through July 1, 2020 and has an
12 extended period of liability of 365 consecutive days. This means that this policy covers all
13 risks of direct physical loss or damage, including time element loss, unless specifically
14 excluded, that occur during the period of liability and up to 365 days and not limited by the
15 end of the policy term.
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21 22. The NWH Policy’s limit of liability is \$500,000,000. The NWH Policy
22 contains various sublimits, including without limitation, for civil or military authority
23 (\$10,000,000), communicable disease decontamination costs (\$2,500,000), time element loss
24 due to contamination by communicable disease (\$1,000,000), and research and development
25 (\$5,000,000).
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31 23. The NWH Policy provides coverage for NWS’s “Covered Locations” as
32 specified in a Schedule of Locations on file with the Insurer. The “Covered Locations”
33 include, but are not limited to, the inpatient campus location in north Seattle as well as several
34 leased properties throughout Seattle, Lake Forest Park, Mill Creek, and Montlake Terrace
35 (“NWH Properties”).
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41 24. The NWH Policy contains several different coverage provisions implicated by
42 this lawsuit, including but not limited to:
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- 45 a. **COVERED PROPERTY.** “We cover your insurable interest in the
46 following types of property that are located at or within one-thousand
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1 (1,000) feet of a covered location, unless otherwise excluded: a. Real
2 Property ... b. Personal Property....” Real Property includes property such
3 as “Building(s) and any other structures.” Personal Property includes
4 property such as “Furniture, fixtures, ... Materials, supplies.”
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6 **b. PROPERTY DAMAGES COVERAGES AND LIMITATIONS -**
7 **EXPEDITING EXPENSE.** “We cover your reasonable and necessary
8 costs: (1) For the temporary repair of covered property from a covered loss;
9 and (2) To expedite the permanent repair or replacement of such damaged
10 property.”
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12 **c. TIME ELEMENT LOSS.** “We cover your actual loss sustained, as
13 provided in the TIME ELEMENT COVERAGES and TIME ELEMENT
14 COVERAGES AND LIMITATIONS, directly resulting from a loss of the
15 type insured by this Policy: a. To property described elsewhere in this
16 Policy and not otherwise excluded by this Policy, b. Used by you, or by
17 others with whom you have a contract, c. At a covered location or while in
18 transit as provided by this Policy, d. During the applicable PERIOD OF
19 LIABILITY described in this section.”
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21 **d. TIME ELEMENT COVERAGES - EXTRA EXPENSE.** “We cover
22 your reasonable and necessary extra costs of the following incurred during
23 the PERIOD OF LIABILITY applicable: (1) To temporarily continue as
24 nearly normal as practicable the conduct of your business; and (2) The
25 temporary use of property or facilities of yours or others.”
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27 **e. TIME ELEMENT COVERAGES - LEASEHOLD INTEREST.** “We
28 cover the following: (1) If the lease agreement requires continuation of rent
29 as a result of a covered loss, and if the covered property is wholly or
30 partially untenantable or unusable, the actual rent payable while the
31 covered property is untenantable or until the lease is terminated, but not
32 exceeding the unexpired term of the lease.”
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34 **f. TIME ELEMENT COVERAGES AND LIMITATIONS - CIVIL OR**
35 **MILITARY AUTHORITY.** “We cover your actual loss sustained and
36 EXTRA EXPENSE during the period of interruption if an order of civil or
37 military authority prohibits access to a covered location provided such
38 order is caused by physical loss or damage of the type insured by this Policy
39 at a covered location or within the number of statute miles specified in the
40 LIMITS OF LIABILITY Table in the Declarations.”
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42 **g. TIME ELEMENT COVERAGES AND LIMITATIONS -**
43 **CONTINGENT TIME ELEMENT.** “We cover your actual loss
44 sustained and EXTRA EXPENSE during the PERIOD OF LIABILITY
45 directly resulting from physical loss or damage of the type insured by this
46 Policy at Direct Dependent Time Element Location(s) and Indirect
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1 Dependent Time Element Location(s) located within the territory of this
2 Policy.”

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4 h. **TIME ELEMENT COVERAGES AND LIMITATIONS - INGRESS /**
5 **EGRESS.** “We cover your actual loss sustained and EXTRA EXPENSE
6 due to the necessary interruption of your business if ingress to or egress
7 from a covered location is prevented, whether or not your premises or
8 property is damaged, provided that such prevention is the result of physical
9 loss or damage of the type insured to property of the type insured.”

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11 i. **TIME ELEMENT COVERAGES AND LIMITATIONS -**
12 **RESEARCH AND DEVELOPMENT.** “We cover your actual loss
13 sustained of fixed charges and ordinary payroll directly attributable to the
14 interruption of research and development project(s) that would not have
15 produced income during the PERIOD OF LIABILITY resulting from a
16 covered loss.”

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18 j. **COMMUNICABLE DISEASE DECONTAMINATION COST**
19 **ENDORSEMENT.** “If your covered property at a covered location shown
20 on the Schedule of this endorsement is contaminated by a communicable
21 disease as the direct result of a covered loss, and there is in force at the time
22 of that covered loss a law or ordinance that requires you to decontaminate
23 that covered property as a result of this contamination by a communicable
24 disease, we will pay up to the limit as specific in the LIMITS OF
25 LIABILITY Table in the Declarations in any one (1) occurrence for those
26 decontamination costs incurred by you, but only to satisfy the minimum
27 requirements of that applicable law or ordinance.”

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29 k. **TIME ELEMENT LOSSES DUE TO CONTAMINATION BY**
30 **COMMUNICABLE.** “If your covered property at a covered location is
31 contaminated by a communicable disease, and there is in force at the time
32 of that covered loss a law or ordinance that requires you to suspend your
33 operations on account of that contamination, we will pay the actual loss of
34 GROSS PROFIT or GROSS EARNINGS you sustain due to the necessary
35 suspension of your normal operations at that covered location because it is
36 either partially or totally closed by order of authority described in b.
37 below.”

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39 **iii. The HMC Policy**

40 25. The term of the HMC Policy is July 1, 2019 through July 1, 2020 and has an
41 extended period of liability of 365 consecutive days. This means that this policy covers all
42 risks of direct physical loss or damage, including time element loss, unless specifically
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1 excluded, that occur during the period of liability and up to 365 days and not limited by the
2 end of the policy term.
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5 26. The HMC Policy's limit of liability is \$600,000,000. The HMC Policy
6 contains various sublimits, including without limitation, for civil or military authority
7 (\$10,000,000), communicable disease decontamination costs (\$2,500,000), time element loss
8 due to contamination by communicable disease (\$1,000,000), and research and development
9 (\$5,000,000).
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14 27. The HMC Policy provides coverage for HMC's "Covered Locations" as
15 specified in a Schedule of Locations on file with the Insurer. The "Covered Locations"
16 include multiple locations, including, but limited to, the main center, parking garages, and
17 various other locations throughout Seattle ("HMC Properties").
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22 28. The HMC Policy contains several different coverage provisions implicated by
23 this lawsuit, including but not limited to:
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27 a. **COVERED PROPERTY.** "We cover your insurable interest in the
28 following types of property that are located at or within one-thousand
29 (1,000) feet of a covered location, unless otherwise excluded: a. Real
30 Property ... b. Personal Property...." Real Property includes property such
31 as "Building(s) and any other structures." Personal Property includes
32 property such as "Furniture, fixtures, ... Materials, supplies."
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34 b. **PROPERTY DAMAGES COVERAGES AND LIMITATIONS -**
35 **EXPEDITING EXPENSE.** "We cover your reasonable and necessary
36 costs: (1) For the temporary repair of covered property from a covered loss;
37 and (2) To expedite the permanent repair or replacement of such damaged
38 property."
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40 c. **TIME ELEMENT LOSS.** "We cover your actual loss sustained, as
41 provided in the TIME ELEMENT COVERAGES and TIME ELEMENT
42 COVERAGES AND LIMITATIONS, directly resulting from a loss of the
43 type insured by this Policy: a. To property described elsewhere in this
44 Policy and not otherwise excluded by this Policy, b. Used by you, or by
45 others with whom you have a contract, c. At a covered location or while in
46 transit as provided by this Policy, d. During the applicable PERIOD OF
47 LIABILITY described in this section."

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- d. **TIME ELEMENT COVERAGES - EXTRA EXPENSE.** “We cover your reasonable and necessary extra costs of the following incurred during the PERIOD OF LIABILITY applicable: (1) To temporarily continue as nearly normal as practicable the conduct of your business; and (2) The temporary use of property or facilities of yours or others.”

- e. **TIME ELEMENT COVERAGES AND LIMITATIONS - CIVIL OR MILITARY AUTHORITY.** “We cover your actual loss sustained and EXTRA EXPENSE during the period of interruption if an order of civil or military authority prohibits access to a covered location provided such order is caused by physical loss or damage of the type insured by this Policy at a covered location or within the number of statute miles specified in the LIMITS OF LIABILITY Table in the Declarations.”

- f. **TIME ELEMENT COVERAGES AND LIMITATIONS - CONTINGENT TIME ELEMENT.** “We cover your actual loss sustained and EXTRA EXPENSE during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured by this Policy at Direct Dependent Time Element Location(s) and Indirect Dependent Time Element Location(s) located within the territory of this Policy.”

- g. **TIME ELEMENT COVERAGES AND LIMITATIONS - INGRESS / EGRESS.** “We cover your actual loss sustained and EXTRA EXPENSE due to the necessary interruption of your business if ingress to or egress from a covered location is prevented, whether or not your premises or property is damaged, provided that such prevention is the result of physical loss or damage of the type insured to property of the type insured.”

- h. **TIME ELEMENT COVERAGES AND LIMITATIONS - RESEARCH AND DEVELOPMENT.** “We cover your actual loss sustained of fixed charges and ordinary payroll directly attributable to the interruption of research and development project(s) that would not have produced income during the PERIOD OF LIABILITY resulting from a covered loss.”

- i. **COMMUNICABLE DISEASE DECONTAMINATION COST ENDORSEMENT.** “If your covered property at a covered location shown on the Schedule of this endorsement is contaminated by a communicable disease as the direct result of a covered loss, and there is in force at the time of that covered loss a law or ordinance that requires you to decontaminate that covered property as a result of this contamination by a communicable disease, we will pay up to the limit as specific in the LIMITS OF LIABILITY Table in the Declarations in any one (1) occurrence for those decontamination costs incurred by you, but only to satisfy the minimum requirements of that applicable law or ordinance.”

1 j. **TIME ELEMENT LOSSES DUE TO CONTAMINATION BY**
2 **COMMUNICABLE.** “If your covered property at a covered location is
3 contaminated by a communicable disease, and there is in force at the time
4 of that covered loss a law or ordinance that requires you to suspend your
5 operations on account of that contamination, we will pay the actual loss of
6 GROSS PROFIT or GROSS EARNINGS you sustain due to the necessary
7 suspension of your normal operations at that covered location because it is
8 either partially or totally closed by order of authority described in b.
9 below.”

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11 *iv. The Stadium Policy*

12 29. The term of the Stadium Policy is March 1, 2020 through March 1, 2021 and
13 has an extended period of liability of 365 consecutive days. This means that this policy covers
14 all risks of direct physical loss or damage, including time element loss, unless specifically
15 excluded, that occur during the period of liability and up to 365 days and not limited by the
16 end of the policy term.
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22 30. The Stadium Policy’s limit of liability is \$331,055,581. The Stadium Policy
23 contains various sublimits, including without limitation, for time element (\$23,567,631), civil
24 or military authority (\$1,000,000), decontamination costs (\$1,000,000), and extra expense
25 (\$10,000,000).
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30 31. The Stadium Policy provides coverage for the Stadium’s “Covered Locations”
31 as specified in a Schedule of Locations on file with the Insurer. The “Covered Locations”
32 include Husky Stadium (“Stadium Properties”).
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36 32. The Stadium Policy contains several different coverage provisions implicated
37 by this lawsuit, including but not limited to:
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41 a. **COVERED PROPERTY.** “We cover your insurable interest in the
42 following types of property that are located at or within one-thousand
43 (1,000) feet of a covered location, unless otherwise excluded: a. Real
44 Property ... b. Personal Property....” Real Property includes property such
45 as “Building(s) and any other structures.” Personal Property includes
46 property such as “Furniture, fixtures, ... Materials, supplies.”
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- b. **PROPERTY DAMAGES COVERAGES AND LIMITATIONS - EXPEDITING EXPENSE.** “We cover your reasonable and necessary costs: (1) For the temporary repair of covered property from a covered loss; and (2) To expedite the permanent repair or replacement of such damaged property.”
 - c. **TIME ELEMENT LOSS.** “We cover your actual loss sustained, as provided in the TIME ELEMENT COVERAGES and TIME ELEMENT COVERAGES AND LIMITATIONS, directly resulting from a loss of the type insured by this Policy: a. To property described elsewhere in this Policy and not otherwise excluded by this Policy, b. Used by you, or by others with whom you have a contract, c. At a covered location or while in transit as provided by this Policy, d. During the applicable PERIOD OF LIABILITY described in this section.”
 - d. **TIME ELEMENT COVERAGES - EXTRA EXPENSE.** “We cover your reasonable and necessary extra costs of the following incurred during the PERIOD OF LIABILITY applicable: (1) To temporarily continue as nearly normal as practicable the conduct of your business; and (2) The temporary use of property or facilities of yours or others.”
 - e. **TIME ELEMENT COVERAGES AND LIMITATIONS - ATTRACTION PROPERTY.** “We cover your actual loss sustained and EXTRA EXPENSE resulting from loss or damage of the type insured by this Policy to property of the type insured at an attraction property within the number of statute miles specified in the LIMITS OF LIABILITY Table in the Declarations and during the period of that (1) Starts at the time of such physical loss or damage happens; (2) Ends when the attraction property is (a) Repaired or replaced; and (b) Made ready for operations ... the term attraction property is a property that (1) Is operated by others; and (2) You depend on to attract customers to your covered location.”
 - f. **TIME ELEMENT COVERAGES AND LIMITATIONS - CIVIL OR MILITARY AUTHORITY.** “We cover your actual loss sustained and EXTRA EXPENSE during the period of interruption if an order of civil or military authority prohibits access to a covered location provided such order is caused by physical loss or damage of the type insured by this Policy at a covered location or within the number of statute miles specified in the LIMITS OF LIABILITY Table in the Declarations.”
 - g. **TIME ELEMENT COVERAGES AND LIMITATIONS - CONTINGENT TIME ELEMENT.** “We cover your actual loss sustained and EXTRA EXPENSE during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured by this Policy at Direct Dependent Time Element Location(s) and Indirect Dependent Time Element Location(s) located within the territory of this Policy.”

1
2 h. **TIME ELEMENT COVERAGES AND LIMITATIONS - INGRESS /**
3 **EGRESS.** “We cover your actual loss sustained and **EXTRA EXPENSE**
4 due to the necessary interruption of your business if ingress to or egress
5 from a covered location is prevented, whether or not your premises or
6 property is damaged, provided that such prevention is the result of physical
7 loss or damage of the type insured to property of the type insured.”

8 i. **TIME ELEMENT COVERAGES AND LIMITATIONS -**
9 **RESEARCH AND DEVELOPMENT.** “We cover your actual loss
10 sustained of fixed charges and ordinary payroll directly attributable to the
11 interruption of research and development project(s) that would not have
12 produced income during the **PERIOD OF LIABILITY** resulting from a
13 covered loss.”

14 j. **TIME ELEMENT LOSSES DUE TO CONTAMINATION BY**
15 **COMMUNICABLE.** “If your covered property at a covered location is
16 contaminated by a communicable disease, and there is in force at the time
17 of that covered loss a law or ordinance that requires you to suspend your
18 operations on account of that contamination, we will pay the actual loss of
19 **GROSS PROFIT** or **GROSS EARNINGS** you sustain due to the necessary
20 suspension of your normal operations at that covered location because it is
21 either partially or totally closed by order of authority described in b.
22 below.”
23

24
25 v. *The Athletics Policy*

26 33. The term of the Athletics Policy is March 1, 2020 through March 1, 2021 and
27 has an extended period of liability of 365 consecutive days. This means that this policy covers
28 all risks of direct physical loss or damage, including time element loss, unless specifically
29 excluded, that occur during the period of liability and up to 365 days and not limited by the
30 end of the policy term.
31

32 34. The Athletics Policy’s limit of liability is \$250,000,000. The Athletics Policy
33 also contains various sublimits, including without limitation, for time element (\$4,345,657),
34 civil or military authority (\$10,000,000), decontamination costs (\$1,000,000), and extra
35 expense (\$25,000,000).
36

37 35. The Athletics Policy provides coverage for the Athletics’ “Covered Locations”
38 as reflected on the scheduled locations which include, but are not limited to, Nordstrom Tennis
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1 Facility, Conibear Shell House, Graves Annex, Tubby Graves Building, Hec Edmonson
2 Pavilion, Women's Softball Facility, Dempsey Indoor Practice Facility, Baseball Team
3 Building, Stadium/Hec Edmonson Scoreboard Equipment Daktronics ICA Digital Scoreboard
4 System, and ICA Husky Ballpark ("Athletic Properties").
5
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7

8
9 36. The Athletic Policy contains several different coverage provisions implicated
10 by this lawsuit, including but not limited to:
11

- 12
13 a. **COVERED PROPERTY.** "We cover your insurable interest in the
14 following types of property that are located at or within one-thousand
15 (1,000) feet of a covered location, unless otherwise excluded: a. Real
16 Property ... b. Personal Property...." Real Property includes property such
17 as "Building(s) and any other structures." Personal Property includes
18 property such as "Furniture, fixtures, ... Materials, supplies."
19
20 b. **PROPERTY DAMAGES COVERAGES AND LIMITATIONS -**
21 **EXPEDITING EXPENSE.** "We cover your reasonable and necessary
22 costs: (1) For the temporary repair of covered property from a covered loss;
23 and (2) To expedite the permanent repair or replacement of such damaged
24 property."
25
26 c. **TIME ELEMENT LOSS.** "We cover your actual loss sustained, as
27 provided in the TIME ELEMENT COVERAGES and TIME ELEMENT
28 COVERAGES AND LIMITATIONS, directly resulting from a loss of the
29 type insured by this Policy: a. To property described elsewhere in this
30 Policy and not otherwise excluded by this Policy. b. Used by you, or by
31 others with whom you have a contract, c. At a covered location or while in
32 transit as provided by this Policy, d. During the applicable PERIOD OF
33 LIABILITY described in this section."
34
35 d. **TIME ELEMENT COVERAGES - EXTRA EXPENSE.** "We cover
36 your reasonable and necessary extra costs of the following incurred during
37 the PERIOD OF LIABILITY applicable: (1) To temporarily continue as
38 nearly normal as practicable the conduct of your business; and (2) The
39 temporary use of property or facilities of yours or others."
40
41 e. **TIME ELEMENT COVERAGES AND LIMITATIONS -**
42 **ATTRACTION PROPERTY.** "We cover your actual loss sustained and
43 EXTRA EXPENSE resulting from loss or damage of the type insured by
44 this Policy to property of the type insured at an attraction property within
45 the number of statute miles specified in the LIMITS OF LIABILITY Table
46 in the Declarations and during the period of that (1) Starts at the time of
47 such physical loss or damage happens; (2) Ends when the attraction

1 property is (a) Repaired or replaced; and (b) Made ready for operations ...
2 the term attraction property is a property that (1) Is operated by others; and
3 (2) You depend on to attract customers to your covered location.”
4

5 f. **TIME ELEMENT COVERAGES AND LIMITATIONS - CIVIL OR**
6 **MILITARY AUTHORITY.** “We cover your actual loss sustained and
7 **EXTRA EXPENSE** during the period of interruption if an order of civil or
8 military authority prohibits access to a covered location provided such
9 order is caused by physical loss or damage of the type insured by this Policy
10 at a covered location nor within the number of statute miles specified in the
11 **LIMITS OF LIABILITY** Table in the Declarations.”
12

13 g. **TIME ELEMENT COVERAGES AND LIMITATIONS -**
14 **CONTINGENT TIME ELEMENT.** “We cover your actual loss
15 sustained and **EXTRA EXPENSE** during the **PERIOD OF LIABILITY**
16 directly resulting from physical loss or damage of the type insured by this
17 Policy at Direct Dependent Time Element Location(s) and Indirect
18 Dependent Time Element Location(s) located within the territory of this
19 Policy.”
20

21 h. **TIME ELEMENT COVERAGES AND LIMITATIONS - INGRESS /**
22 **EGRESS.** “We cover your actual loss sustained and **EXTRA EXPENSE**
23 due to the necessary interruption of your business if ingress to or egress
24 from a covered location is prevented, whether or not your premises or
25 property is damaged, provided that such prevention is the result of physical
26 loss or damage of the type insured to property of the type insured.”
27

28 i. **TIME ELEMENT COVERAGES AND LIMITATIONS -**
29 **RESEARCH AND DEVELOPMENT.** “We cover your actual loss
30 sustained or fixed charges and ordinary payroll directly attributable to the
31 interruption of research and development project(s) that would not have
32 produced income during the **PERIOD OF LIABILITY** resulting from a
33 covered loss.”
34

35 **C. The COVID-19 Pandemic**

36 *i. The Nature and Spread of COVID-19*

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38 37. COVID-19 is a communicable disease caused by a novel coronavirus known
39
40 as SARS-CoV-2. The SARS-CoV-2 virus can cause systemic illness and death.¹
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45 ¹ Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT’L INST.
46 HEALTH (Aug. 18, 2020), [https://www.nih.gov/news-events/nih-research-matters/immune-cells-](https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2)
47 [common-cold-may-recognize-sars-cov-2](https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2) (last visited Aug. 5, 2021).

1 38. On January 30, 2020, the World Health Organization (“WHO”) declared
2 COVID-19 a Public Health Emergency of International Concern. On March 11, 2020, the
3 WHO upgraded its declaration to recognize COVID-19 as a global pandemic.
4

5
6 39. The WHO reporting reflects that COVID-19 is highly transmissible and can be
7 passed, among other ways, through:
8

- 9
- 10 a. “direct, indirect, or close contact with infected people;”
 - 11 b. exposure to respiratory droplets from a person “in close contact (within 1
12 metre) with an infected person who has respiratory symptoms (e.g.
13 coughing or sneezing) or who is talking or singing;”
 - 14 c. airborne or aerosol transmission where droplets remain in the air for
15 extended periods of time and over long distances; and
 - 16 d. coming into contact with an infected surface as “viable SARS-CoV-2 virus
17 and/or RNA . . . can be found on . . . surfaces for periods ranging from
18 hours to days, depending on the ambient environment (including
19 temperature and humidity) and the type of surface.”²

20 40. The U.S. Centers for Disease Control and Prevention (“CDC”) has similarly
21 concluded that COVID-19 “is spreading very easily and sustainably between people.”³
22

23 41. At least one aerosols expert, University of Colorado chemistry professor Jose-
24 Luis Jimenez, stated in a March 2020 interview that individuals should maintain at least 25
25 feet of distance between themselves and others to prevent the aerosol spread of SARS-CoV-
26 2.⁴
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40 ² *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World
41 Health Org. (Jul. 9, 2020), [https://www.who.int/news-room/commentaries/detail/transmission-of-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
42 [sars-cov-2-implications-for-infection-prevention-precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions).

43 ³ *How it Spreads*, Ctr. for Disease Control and Prevention (Updated Jun. 16, 2020),
44 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

45 ⁴ Chris Bianchi, *Coronavirus: Tips to stay safe while exercising outdoors*, PIONEER PRESS
46 (March 27, 2020), [https://www.twincities.com/2020/03/27/coronavirus-exercising-outdoors-jogging-](https://www.twincities.com/2020/03/27/coronavirus-exercising-outdoors-jogging-staying-safe-tips/)
47 [staying-safe-tips/](https://www.twincities.com/2020/03/27/coronavirus-exercising-outdoors-jogging-staying-safe-tips/)

1 42. Due to the pervasive spread and presence of SARS-CoV-2 and COVID-19
2 worldwide, both are presumed to be present or imminently present everywhere.⁵
3

4 43. With respect to surfaces, a March 2020 National Institutes of Health study
5 published in the *New England Journal of Medicine* reported that SARS-CoV-2 “remained
6 active on plastic and stainless-steel surfaces for two to three days” and “remained infectious
7 for up to 24 hours on cardboard and four hours on copper.”⁶ The same study found that SARS-
8 CoV-2 “was detectable in aerosols for up to three hours.” All of these materials are present
9 at UW’s Properties.
10

11 44. Other studies have found that SARS-CoV-2 may be found on various surfaces
12 for even longer periods of time. For example, the CDC determined that SARS-CoV-2 RNA
13 was identifiable on surfaces within the Diamond Princess cruise ship up to 17 days after the
14 cabins had been vacated.⁷
15

16 45. Another study published on October 7, 2020 in the *Virology Journal*
17 determined that “SARS-CoV-2 can be recovered from non-porous surfaces for at least 28 days
18 at ambient temperature and humidity (20 °C and 50% RH).”⁸
19

20 46. The presence of COVID-19 is not simply reflected in reported cases or
21 individuals’ positive test results, which drastically underestimate the number of cases because
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⁵ 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 Aug. 5, 2021).

⁶ *Study Suggests New Coronavirus May Remain on Surfaces for Days*, Nat’l Inst. of Health (Mar. 24, 2020), <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

⁷ Leah F. Moriarty, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February-March 2020*, Ctr. for Disease Control and Prevention (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

⁸ Riddell, S., Goldie, S., Hill, A. et al. *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, *Virol J* 17, 145 (2020), <https://doi.org/10.1186/s12985-020-01418-7>.

1 only a portion of the population gets tested. The CDC estimated that the number of people in
2 the United States who had been infected with COVID-19 was ten times higher than the number
3 of reported cases in June 2020.⁹ And at least 40% of people infected with COVID-19 are
4 asymptomatic.¹⁰ Scientific studies suggest that even asymptomatic individuals can shed
5 and/or transmit SARS-CoV-2 particles at a level sufficient to infect others.
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11 47. COVID-19 is particularly dangerous because it has an incubation period (the
12 time between exposure and manifesting symptoms) of up to 14 days, during which time
13 infected people can unknowingly transmit COVID-19 and release infectious droplets and
14 aerosols into the air and onto surfaces.¹¹
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19 48. Pre-symptomatic individuals carry high levels of “viral load” during a period
20 when they are not aware that they are infectious, and therefore pose an even greater risk to
21 transmit COVID-19.¹² According to the National Academy of Sciences, “the majority of
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26 ⁹ Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher*
27 *than reported*, WASH. POST (June 25, 2020),
28 <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last visited
29 Aug. 5, 2021).

30 ¹⁰ Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC*
31 *estimate says*, BUS. INSIDER (July 12, 2020), [https://www.businessinsider.com/cdc-estimate-40-](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7)
32 [percent-infected-with-covid-19-asymptomatic-2020-7](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7) (last visited Aug 5, 2021), *see also* Apoorva
33 Mandavilli, *Even Asymptomatic People Carry the Coronavirus in High Amounts*, N.Y. TIMES (Aug.
34 6, 2020), <https://www.nytimes.com/2020/08/06/health/coronavirus-asymptomatic-transmission.html>
35 (last visited Aug. 11, 2021); *see also* Erika Edwards, *Asymptomatic COVID-19 Cases May Be More*
36 *Common Than Suspected* (May 27, 2020), [https://www.nbcnews.com/health/health-](https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481)
37 [news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481](https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481) (last visited Aug.
38 11, 2021).

39 ¹¹ *Coronavirus Disease (COVID-19) Situation Report - 73*, World Health Org. (Apr. 2,
40 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19)
41 [covid-19](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19); Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both*
42 *Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL
43 CARE MED. 3 (Dec. 16, 2020), <https://www.atsjournals.org/doi/10.1164/rccm.202006-2136LE> (last
44 visited Aug. 5, 2021).

45 ¹² *See, e.g.,* Xi He et al., *Temporal dynamics in viral shedding and transmissibility of*
46 *COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020), [https://www.nature.com/articles/s41591-](https://www.nature.com/articles/s41591-020-0869-5)
47 [020-0869-5](https://www.nature.com/articles/s41591-020-0869-5) (last visited Aug. 5, 2021); Lirong Zou, M.Sc., et al., *SARS-CoV-2 Viral Load in Upper*

1 transmission is attributable to people who are not exhibiting symptoms, either because they
2 are still in the pre-symptomatic stage, or the infection is asymptomatic.”¹³
3

4
5 49. Due to the prevalence of COVID-19 infections in the United States and
6 globally, UW’s locations would have had consistently high risks for presence of the SARS-
7 CoV-2 virus in the air or on surfaces from infected patients and employees, some of whom
8 would have been asymptomatic or presymptomatic unknowing spreaders or superspreaders of
9 SARS-CoV-2.
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14 50. The SARS-CoV-2 virus is released into the air when infected persons breathe,
15 talk, cough, or sneeze, and such releases can infiltrate ventilation systems and land on
16 numerous other surfaces, including high-touch areas such as counters and door handles.
17 SARS-CoV-2 has and continues to deposit, and therefore elevates contagion risks on,
18 numerous surfaces that people touch, which have been transformed into disease-spreading
19 fomites.
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26 51. The presence of SARS-CoV-2 in the air and on surfaces has caused physical
27 damage to UW’s property and, in turn, caused a direct physical loss of that property by making
28 unfit for its intended uses and/or and uninhabitable. *See Seattle Tunnel Partners* 2022 WL
29 4241893, at *11-*12.
30

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34 52. According to the CDC, the COVID-19 communicable disease has spread freely
35 throughout the United States without the ability to document the source of new infections.
36 This is known as community transmission or community spread.
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Respiratory Specimens of Infected Patients, NEW ENG. J. MED. 382, 1177-79 (Mar. 19, 2020),
44 <https://www.nejm.org/doi/full/10.1056/NEJMc2001737> (last visited Aug. 5, 2021).

45 ¹³ Seyed M. Moghadas et al., *The implications of silent transmission for the control of*
46 *COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020),
47 <https://www.pnas.org/content/117/30/17513> (last visited Aug. 5, 2021).

1 53. COVID-19 is extremely contagious. Contagiousness of an infectious disease
2 is measured by R_0 , a term that defines the average number of other people who are likely to
3 become infected by one person with that disease. The R_0 is a measure of the transmissibility
4 of a pathogen and is determined by estimating the susceptibility of individuals in the
5 population to disease, the transmissibility of the pathogen, and the likelihood and duration of
6 contact between individuals in a population.¹⁴ Studies have concluded that one person with
7 COVID-19 could infect as many as 5.7 other people ($R_0 \approx 5.7$), which is more than triple the
8 rate of seasonal influenza for example, where one person will infect only 1.3 others on average
9 ($R_0 \approx 1.3$).¹⁵

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18 54. SARS-CoV-2 can survive for up to 28 days at room temperature on numerous
19 surfaces, such as glass, steel, vinyl, plastic, and paper.¹⁶ For example, as mentioned above,
20 the virus was identified on surfaces in cruise ship cabins 17 days after they had been vacated
21 but prior to disinfection.¹⁷

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26 55. UW has such surfaces in its Properties.

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28 56. According to the WHO, COVID-19 primarily spreads through small droplets
29 from the nose or mouth. People can catch COVID-19 by breathing in these droplets in the
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34 ¹⁴ Anthony R. Ives & Claudio Bozzuto, *Estimating and explaining the spread of COVID-19*
35 *at the county level in the USA*, 4 *COMMUNIS BIOLOGY* 60 (Jan. 20, 2021),
36 <https://www.nature.com/articles/s42003-020-01609-6> (last visited Aug. 5, 2021).

37 ¹⁵ M. Cevik, C.C.G. Bamford & A. Ho, *COVID-19 pandemic—a focused review for*
38 *clinicians*, 26 *CLINICAL MICROBIOLOGY & INFECTION* 7, 842-47 (July 1, 2020),
39 [https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(20\)30231-7/fulltext](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext) (last
40 visited Aug. 5, 2021).

41 ¹⁶ Shane Riddell et al., *The effect of temperature on persistence of SARS-CoV-2 on common*
42 *surfaces*, 17 *VIROLOGY J.* 145 (Oct. 7, 2020),
43 <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7> (last visited Aug. 5,
44 2021).

45 ¹⁷ Leah F. Moriarty et al., *Public Health Responses to COVID-19 Outbreaks on Cruise*
46 *Ships — Worldwide, February–March 2020*, 69 *MMWR* 12, 347-52 (Mar. 27, 2020),
47 <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm> (last visited Aug. 5, 2021).

1 air—especially if they are within one meter (~3 feet) of an infected person—or by touching
2 surfaces—such as tables, doorknobs, elevator buttons, and handrails—on which droplets have
3 landed and then touching their eyes, nose, or mouth.¹⁸
4

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6
7 *ii. COVID-19 Causes Direct Physical Damage to Property*
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9 57. The COVID-19 communicable disease causes direct physical damage to
10 property in a couple of ways.
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12 58. First, the presence of the virus carrying COVID-19 physically transforms the
13 content of the air in any location where it is present, rendering the air unsafe for individuals
14 to breathe.
15
16

17 59. Larger SARS-CoV-2 particles in respiratory droplets can be transmitted about
18 six feet when expelled by a human.
19
20

21 60. Smaller SARS-CoV-2 viral particles can remain airborne “indefinitely under
22 most indoor conditions.”¹⁹
23
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25 61. Humans produce infectious aerosols in a wide range of particle sizes, although
26 pathogens predominate in smaller particles.²⁰ An M.I.T. researcher determined clouds of
27 “pathogen-bearing droplets of all sizes can travel 23 to 27 feet.”²¹ According to the Annals
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37 ¹⁸ *Q&A on coronaviruses (COVID-19)*, WHO (updated Apr. 17, 2020),
38 [https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-](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)
39 [coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses](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 Aug. 5, 2021).

40 ¹⁹ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*,
41 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020),
42 [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited
43 Aug. 5, 2021).

44 ²⁰ *Id.*

45 ²¹ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential*
46 *Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020),
47 <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Aug. 5, 2021).

1 of Internal Medicine, “there is abundant evidence that proximity is a key determinant of
2 transmission risk.”²²

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5 62. Consequently, the risk of disease transmission increases substantially in indoor
6 settings. In fact, a contact-tracing study suggests “an 18.7-fold higher risk of transmissions
7 indoors compared with outdoor environments.”²³ UW’s Properties are prime examples of
8 such environments.

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13 63. Even worse, air circulation systems such as those in UW’s Properties may
14 compound the risk of SARS-CoV-2 viral transmission in indoor settings, causing a further
15 direct physical transformation of the air within each Property.

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19 64. A research letter from the CDC concluded that a restaurant’s air conditioning
20 system spread the virus to people who sat at tables downstream from the restaurant’s airflow,
21 infecting a total of ten people from three families who had eaten at the same restaurant.²⁴ In
22 another study, SARS-CoV-2 was detected in the HVAC system connected to hospital rooms
23 for patients infected with COVID-19, including in vent openings, vent exhaust filters and
24 ducts located over 183 from the rooms with COVID-19 patients.²⁵ The CDC has also
25 identified numerous tools to improve ventilation to reduce exposures to SARS-CoV-2 in
26 indoor spaces, including increasing air flow and air filtration and using high-efficiency
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36 ²² Eric A. Meyerowitz et al., *Transmission of SARS-CoV-2: A Review of Viral, Host, and*
37 *Environmental Factors*, *Annals Internal Med.* (Jan. 2021),
38 <https://www.acpjournals.org/doi/10.7326/M20-5008> (last visited Aug. 5, 2021).

39 ²³ Muge Cevik et al., *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2)*
40 *Transmission Dynamics Should Inform Policy*, *CLINICAL INFECTIOUS DISEASES* (Sept. 23, 2020),
41 <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315> (last visited Aug. 5,
42 2021).

43 ²⁴ Jianyun Lu et al., *COVID-19 outbreak associated with air conditioning in restaurant,*
44 *Guangzhou, China, 2020*, 26 *EMERGING INFECTIOUS DISEASES* 7 (July 2020),
45 https://wwwnc.cdc.gov/cid/article/26/7/20-0764_article (last visited Aug. 5, 2021).

46 ²⁵ Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19*
47 *wards*, *SCI. REPS.* 10, 19589 (Nov. 11, 2020),
<https://www.nature.com/articles/s41598-020-76442-2> (last visited Aug. 5, 2021).

1 particulate air (HEPA) fan/filtration systems to enhance air cleaning.²⁶ Even then, these
2 remedial measures merely reduce the presence of SAR-CoV-2 in indoor spaces; they do not
3 eliminate the virus entirely.
4

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7 65. Second, the SARS-CoV-2 virus causes direct physical damage to property by
8 transforming physical objects, materials, or surfaces into “fomites.” “Fomites” are objects
9 “that may be contaminated with infectious agents (such as bacteria or viruses) and serve in
10 their transmission.”²⁷ In other words, when an individual knowingly or unknowingly carrying
11 the SARS-CoV-2 virus touches and/or breathes on physical objects, materials, or surfaces, he
12 or she expels viral particles that land on such objects, materials, or surfaces, causing direct
13 physical loss or damage.
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21 66. Fomite transmission is estimated to have contributed to as much as 25% of
22 COVID-19 deaths by enhancing the overall transmission rate of the virus.²⁸
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25 67. Citing numerous studies on the transmission of COVID-19, the WHO
26 described fomite transmission as follows:
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29 Respiratory secretions or droplets expelled by infected
30 individuals can contaminate surfaces and objects, creating
31 fomites (contaminated surfaces). **Viable SARS-CoV-2 virus**
32 **and/or RNA detected by RT-PCR can be found on those**
33 **surfaces for periods ranging from hours to days**, depending
34 on the ambient environment (including temperature and
35 humidity) and the type of surface, in particular at high
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38 ²⁶ *Ventilation in Buildings*, CDC (updated Mar. 23, 2021),
39 <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2> (last visited Aug. 5, 2021).

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41 ²⁷ *Fomite*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/fomite> (last
42 visited Aug. 5, 2021).

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44 ²⁸ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission*
45 *mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020),
46 <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Aug. 5, 2021).
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1 concentration in health care facilities where COVID-19 patients
2 were being treated. Therefore, transmission may also occur
3 indirectly through touching surfaces in the immediate
4 environment or objects contaminated with virus from an
5 infected person²⁹ (emphasis added).

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7 68. Because COVID-19 can be spread by touching contaminated surfaces,³⁰
8 fomites transform objects, materials, and/or surfaces and can render such objects, materials,
9 and/or surfaces at UW's Properties unsafe for their intended purposes.
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12 69. Based on this evidence, SARS-CoV-2 causes direct physical loss of or damage
13 to property. Specifically, the presence of SARS-CoV-2 in and on property, specifically in the
14 air and on surfaces and objects, causes direct physical loss of or damage to property by causing
15 physical harm to the property and otherwise making it unsafe and incapable of being used for
16 its intended purpose.
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20 70. The presence of COVID-19 makes a tangible alteration to everyday surfaces
21 and objects by turning this property into a transmission vehicle for spreading COVID-19 from
22 one person to the next. The WHO's description of fomite transmission expressly recognizes
23 that COVID-19 physically alters property, describing respiratory secretions and droplets from
24 infected individuals as "**creating** fomites (contaminated surfaces)"³¹ (emphasis added). Thus,
25 viral droplets and respiratory secretions alter surfaces and objects by changing them to fomites
26 capable of transmitting COVID-19.
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39 ²⁹ See, e.g., *Transmission of SARS-CoV-2: implications for infection prevention precautions*,
40 WHO (Jul. 9, 2020), [https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
41 [2-implications-for-infection-prevention-precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions) (last visited Aug. 5, 2021).

42 ³⁰ See *Coronavirus disease 2019 (COVID-19) Situation Report - 73*, WHO (Apr. 2, 2020),
43 [https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-](https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y)
44 [eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y) (last visited Aug. 5, 2021)

45 ³¹ See, e.g., *Transmission of SARS-CoV-2: implications for infection prevention precautions*,
46 WHO (Jul. 9, 2020), [https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
47 [2-implications-for-infection-prevention-precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions) (last visited Aug. 5, 2021).

1 71. COVID-19 adheres to objects and surfaces, causing physical harm and
2 alteration by becoming a part of the object's surface and making that object unsafe for its
3 ordinary and intended use. Once COVID-19 is in, on, or near property, it is easily spread by
4 the air, people, and objects, causing additional direct physical loss of or damage to property.
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9 72. Even if routine cleaning and disinfection may reduce the odds of fomite
10 transfer, the risk of such transfer cannot be entirely removed or eliminated.
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13 73. No amount of routine cleaning or disinfection can entirely remove aerosolized
14 SARS-CoV-2 suspended in the air at UW's Properties, making those locations more
15 dangerous, and therefore less safe and unfit for their intended uses.
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19 74. Finally, the presence of SARS-CoV-2 in and on property, including in indoor
20 air and on surfaces, materials, and/or objects, causes direct physical loss or damage to property
21 because it renders the property no longer safe or fit for its normal and intended use.
22 Respiratory droplets, aerosols, and fomites are physical substances that alter the physical
23 properties of building interiors and—based on the health risks associated with COVID-19—
24 make such property unsafe, uninhabitable, and incapable of being used for its intended
25 purpose.
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33 ***iii. COVID-19 Causes Direct Physical Loss to Property***
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35 75. The Washington Supreme Court has specified that a “direct physical loss”
36 includes to “the loss of use of the insured property” that is “caused by some physical condition
37 impacting the insured property.” *Seattle Tunnel Partners*, 2022 WL 4241893, at *11. The
38 Court has elaborated that “a loss of use claim is appropriate where the insured property is
39 rendered unfit for its intended purpose or uninhabitable based on some change in the physical
40 condition of the property.” *Id.* at *12.
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1 76. While government orders alone may not cause a “direct physical loss,” a
2 “direct physical loss” exists where government orders are coupled with allegations of
3 “imminent danger to the property, [] contamination with a problematic substance, and
4 [anything] that physically prevented use of the property or rendered it useless; ... [or] rendered
5 [property] unsafe or uninhabitable because of a dangerous physical condition.” *Hill & Stout*,
6 515 P.3d at 533 (Wash. 2022).

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12 77. COVID-19 is a communicable disease and, certainly, a “problematic
13 substance” under any reasonable definition. Its mere presence causes the loss of use of
14 property in whole or in part.

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17 78. Indeed, the presence of COVID-19 is so severe as to render some or all of any
18 property it touches to be unfit for its intended purposes, useless, and/or uninhabitable.

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22 iv. ***The Physical Presence of COVID-19 Caused Direct Physical Loss of or***
23 ***Damage to the UWMC, NWH, HMC, Stadium, and Athletic Properties***

24 79. COVID-19 was first reported in Wuhan City, China in or around December
25 2019.³² Available evidence “suggests that the start of the outbreak resulted from a single point
26 introduction in the human population around the time that the virus was first reported in
27 humans in Wuhan, China in December 2019.”³³

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30 80. On or about January 21, 2020, the United States confirmed what was then
31 believed to be the first known case of COVID-19 in the country, involving an individual who
32 entered the United States in Seattle, Washington and resided in Washington State.

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45 ³² *Coronavirus Disease (COVID-19) Situation Report - 94*, World Health Org. (Apr. 23,
46 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19)
47 covid-19 (last visited Aug. 5, 2021).

³³ *Id.*

1 81. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II
2 declared a public health emergency to combat COVID-19.³⁴
3

4 82. Thereafter, COVID-19 began to rapidly spread across the United States,
5 including in, at, and near UW's Properties and nearby locations
6

7 83. After the late January/early February time period, COVID-19 spread rapidly
8 across the country, going from 24 confirmed cases at the end of February to over 186,000
9 confirmed cases by the end of March.
10

11 84. Upon information and belief, many thousands (if not millions) more cases of
12 COVID-19 went unconfirmed due to, among other things, (a) lack of adequate testing
13 infrastructure and capacity; and (b) lack of public and scientific understanding about COVID-
14 19, including the ability for individuals to carry and/or shed the virus while pre-symptomatic
15 and/or asymptomatic.
16

17 85. In response to the rapid spread of COVID-19, states began enacting stay at
18 home orders.
19

20 86. On March 11, 2020, the WHO declared COVID-19 to be a "pandemic."
21

22 87. On March 13, 2020, the White House issued a Proclamation on Declaring a
23 National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.
24

25 88. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation
26 20-05, attached hereto as **Exhibit 6**, declaring a State of Emergency in all counties in the State
27 of Washington arising out of the presence and risks of COVID-19. The same day, King
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44 ³⁴ *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel*
45 *Coronavirus*, U.S. Dep't of Health and Human Serv. (Jan. 31, 2020),
46 [https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-](https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html)
47 [2019-novel-coronavirus.html](https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html) (last visited Aug. 5, 2021).

1 County confirmed the first COVID-19 fatality in Washington State—a patient located north
2 of the Properties in Kirkland, Washington.
3

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5 89. On March 11, 2020, Governor Inslee issued Proclamation 20-07, attached
6 hereto as **Exhibit 7**, banning “[g]atherings of 250 people or more for social, spiritual and
7 recreational activities including, but not limited to, community, civic, public, leisure, faith-
8 based, *or sporting events*; parades; concerts; festivals; conventions; fundraisers; and similar
9 activities.” in King County (among others) until March 31, 2020 unless extended beyond that
10 date. Ex. 7 at 2 (emphasis added). Proclamation 20-07 recognized that COVID-19 is “a
11 respiratory disease that spreads easily from person to person and may result in serious illness
12 or death, has been confirmed in 9 counties of Washington State resulting in 24 deaths, with
13 **significant community spread** in King, Pierce, and Snohomish counties.” *Id.* at 1 (emphasis
14 added).
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25 90. On March 16, 2020, Governor Inslee issued Proclamation 20-13, attached
26 hereto as **Exhibit 8**, which “prohibit[ed] any number of people from gathering in any public
27 venue in which people congregate for purposes of public entertainment . . . to include all
28 public venues in which the serving, provision, or consumption of prepared food or beverages
29 occurs at a table, bar, or for consumption within.” See Ex. 8. This Proclamation also
30 “prohibit[ed] the operation of public venues in which people congregate for entertainment,
31 social or recreational purposes.” *Id.*
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39 91. That same day, Governor Inslee also issued Proclamation 20-14, attached
40 hereto as **Exhibit 9**, which barred gatherings of greater than 50 people and limited gatherings
41 of less than 50 people only to those activities that “comply with social distancing and
42 sanitation measures established by the United States Centers for Disease Control and
43 Prevention or the Washington State Department of Health guidelines.”
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1 92. On March 19, 2020, Governor Inslee issued Proclamation 20-24, attached
2 hereto as **Exhibit 10**, entitled “Restrictions on Non Urgent Medical Procedures.”
3 Proclamation 20-24 recognized that COVID-19 “has broadly spread throughout Washington
4 State” and declared that: “[t]o curtail the spread of the COVID-19 pandemic in Washington
5 State and to protect our health care workers as they provide health care services, it is necessary
6 to immediately prohibit all hospitals . . . in Washington State from providing health care
7 services, procedures and surgeries that require personal protective equipment, which if
8 delayed, are not anticipated to cause harm to the patient within the next three months, except
9 as provided herein.” Ex. 10 at 1. Proclamation 20-24 also notes that the ban on certain
10 procedures—which included “most joint replacements, most cataract and lens surgeries, non-
11 urgent cardiac procedures, cosmetic procedures, some endoscopy, and some interventional
12 radiology services”—was being done “to help preserve and maintain life, health, *property* or
13 the public peace.” *Id.* at 2 (emphasis added). Proclamation 20-24 was initially in effect from
14 March 19, 2020 to May 18, 2020.

15 93. On March 23, 2020, Governor Inslee issued Proclamation 20-25, attached
16 hereto as **Exhibit 11**, entitled “Stay Home–Stay Healthy,” which recognized “at least 2,221
17 cases of COVID-19 in Washington State” at the time and ordered that “[a]ll people in
18 Washington State shall immediately cease leaving their home or place of residence except:
19 (1) to conduct or participate in essential activities, and/or (2) for employment in essential
20 business services” until April 6, 2020 or beyond. Proclamation 20-25 further banned all public
21 gatherings and ordered that “[e]ffective midnight on March 25, 2020, all non-essential
22 businesses in Washington State shall cease operations except for performing basic minimum
23 operations.” Ex. 11, at ¶ 3.

1 94. On May 18, 2020, Governor Inslee issued Proclamation 20-24.1, attached
2 hereto as **Exhibit 12**, which extended Washington’s prohibition on hospitals (among other
3 facilities) “from providing non-urgent health care and dental services, procedures, and
4 surgeries” until “until the state of emergency, issued on February 29, 2020, pursuant to
5 Proclamation 20-05, is rescinded, or until this order is amended or rescinded, whichever
6 occurs first.” Proclamation 20-24.1 provided exceptions to the ban on non-urgent services,
7 procedures, and surgeries where facilities “act in good faith and with reasonable clinical
8 judgment to meet and follow the procedures and criteria” outlined in the Proclamation. Ex.
9 12 at 3. Notably, Proclamation 20-24.1 recognized that COVID-19 “remains a public disaster
10 affecting ... property.” *Id.* at 2.

11 95. Beyond Proclamation 20-24, Washington extended the above-referenced
12 orders several times, including extending the “Stay Home–Stay Healthy” Proclamation 20-25
13 through May 31, 2020, after which time Washington began a phased re-opening plan. *See,*
14 *e.g.,* Proclamation 20-25.4, attached hereto as **Exhibit 13**.

15 96. In March 2020, as COVID-19 spread uncontrollably throughout King County,
16 Washington, including at the UW Properties, UWMC, NWH, and HMC began to significantly
17 limit the number of patients they took in and procedures they performed as a direct result of
18 COVID-19 and the Executive Orders. This was done for various reasons, including, but not
19 limited to: (1) limiting the spread of COVID-19 by decreasing the number of people on the
20 Properties; (2) allowing additional cleaning in between procedures in attempts to reduce
21 transmission; (3) protecting, but also coping with the lack of, workforce and available personal
22 protective equipment; (4) ceasing elective procedures in response to the Executive Orders;
23 and (5) shifting certain resources to set-up COVID-19 testing sites and free-up laboratory
24 availability to process those tests. These safety and mandatory protocols rendered the
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1 UWMC, NWH, and HMC Properties physically incapable of performing their intended
2 purpose, which is to treat patients.
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5 97. UWMC, NWH, and HMC have operated at a reduced capacity ever since the
6 national emergency was declared.
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9 98. By at least mid-March 2020, COVID-19 was present at the UWMC, NWH,
10 and HMC Properties.
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13 99. Since then, thousands of more confirmed COVID-19 cases have been reported
14 at the UWMC, NWH, and HMC Properties.
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17 100. As a result of the presence of COVID-19, UW incurred direct physical loss and
18 damage to the UWMC, NWH, and HMC Properties and it had to, among other things, turn
19 away numerous patients it would have otherwise treated and stop numerous procedures that it
20 would have otherwise performed due to COVID-19, rendering certain portions of the
21 Properties physically altered, unusable for their intended purposes, and/or inhabitable. In
22 addition, patients were understandably unable and unwilling to come to any hospital, out of a
23 fear of exposure to COVID-19. As of the date of this filing, the UWMC, NWH, and HMC
24 Properties have not returned to pre-pandemic capacity.
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28 101. In addition, prior to February 2020, UW Medicine had completed a
29 comprehensive strategic plan that included growth plans for prioritized service lines that
30 would have resulted in increased revenues. The UW was not able to implement this plan
31 because of COVID-19. The plan is in the early implementation phases now because of the
32 delay caused by the pandemic. The UW experienced lost revenue due to the delayed
33 implementation of this plan.
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37 102. Further, UW has incurred costs in preparing to safely operate in compliance
38 with applicable orders concerning COVID-19. Among other things, UW was forced to
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1 repeatedly remove COVID-19 from the UWMC, NWH, and HMC Properties, undertaking
2 expensive and extensive cleaning and disinfecting procedures (among other things).
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5 103. With respect to the Stadium and Athletic Properties, on March 11, 2020, UW
6 began to restrict the type and number of spectators at home events. Notably, only competing
7 student-athletes and their families, coaches, essential workers, and recruits were permitted to
8 attend home events. As a result, UW offered either credit or refunds to those who had
9 purchased single-game tickets. At that time, UW offered credit to season ticket holders for
10 cancelled games.
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17 104. A few days later, on March 14, 2020, the PAC-12 Conference—of which the
18 UW is a member—cancelled the remainder of the PAC-12 sports competitions and
19 championships through the end of the academic year (early June). This impacted UW
20 revenues from such competitions.
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25 105. On July 9, 2020, UW announced that the much anticipated Washington versus
26 Michigan football game, scheduled for September 5, 2020, had been cancelled. The following
27 day, on July 10, 2020, UW announced its decision to hold conference-only games for football,
28 soccer, and volleyball. Football did not end up resuming until November 2020. Some of
29 these conference-only games, however, were cancelled due to COVID-19 outbreaks among
30 the teams. Spectators continued to not be allowed at these games.
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37 106. In addition to loss of ticket sales, UW also experienced loss of concessions,
38 TV revenue, and lower sponsorship revenue due to no spectators at the events.
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41 107. UW took the above actions as a direct result of COVID-19 and the Executive
42 Orders. UW's Athletic Department began testing for COVID-19 at the Stadium and Athletics
43 Properties in June 2020; and between June 10, 2020 and January 29, 2021 it had recorded 55
44 positive cases at the Stadium Properties and 37 positive cases at the Athletics Properties. The
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1 Athletic Department also administered antibody tests to all returning students and a number
2 tested positive, meaning they had been infected with COVID-19 in the three months leading
3 up to June.
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7 108. Since then, numerous more confirmed COVID-19 cases have been reported at
8 the Stadium and Athletics Properties.
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11 109. Further, on information and belief, given the unmitigated spread of COVID-
12 19, the statistics of the number of people infected with covid in proportion to deaths due to
13 the disease, and the number of people at the Stadium and Athletics Properties in March 2020,
14 it is statistically certain there were cases of COVID-19 at these Properties in March 2020.
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18 110. As a result of the presence of COVID-19, UW incurred direct physical loss of
19 and damage to the Husky Stadium and Athletics Properties because it had to, among other
20 things, cancel games that it would have otherwise hosted if it were not for COVID-19.
21 COVID-19 therefore rendered the Properties in whole or in part physically altered, unusable
22 for their intended purposes, and/or inhabitable.
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26 111. Further, UW has incurred costs in preparing to safely operate in compliance
27 with applicable Executive Orders. Among other things, UW has been forced to remove
28 COVID-19 from the Husky Stadium and Athletics Properties, undertaking expensive and
29 extensive cleaning and disinfecting procedures.
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37 **D. Insurer's Denial of Coverage, Failure to Investigate, and Bad Faith Refusal to**
38 **Accept Coverage**

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40 112. Starting in July 2020, UW provided Insurer with notices of claims under each
41 of the Policies ("Claims").
42

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44 113. Starting in August 2020 and continuing through June 7, 2021, Insurer sent UW
45 a series of letters that collectively denied coverage for all of UW's Claims. Insurer took the
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1 legal position that no coverages under the Policies could be triggered by COVID-19, because
2 COVID-19 was not a risk of “direct physical loss or damage.” As such, there was no further
3 information the Insurer would have accepted from the UW to substantiate this claim. Insurer
4 confirmed its denials for all such claims in subsequent correspondence, including stating as
5 follows in a letter to UW dated August 2, 2022:
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11 By letters dated August 25, 2020, March 23, 2021, March 25,
12 2021, and May 28, 2021, Employers notified the University that
13 there was no coverage for the Claims submitted, respectively,
14 under Policy Numbers YAC-L9L-450425-040, YAC-L9L-
15 450425-030, YAC-L9L-450425-020, and YAC-L9L-469720-
16 019. Additionally, by letters dated May 28, 2021 and June 7,
17 2021, Employers notified the University that there was no
18 coverage for the Claims submitted, respectively under Policy
19 Numbers YAC-L9L-469720-029, YAC-L9L-469720-039, and
20 YAC-L9L-469720-049.
21

22 114. During the adjustment of the Claims, Insurer asserted that UW could be barred
23 from bringing this action by a purported two-year suit limitations period contained in the
24 Policies. Based on Insurer’s representations, UW and Insurer entered into multiple agreed-
25 upon written extensions of the purported limitations period.
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28 115. UW has brought this action within the time period contemplated by the written
29 extensions to which UW and Insurer agreed. UW, however, was forced to bring, and only
30 brought, this action after Insurer refused to grant further extensions of the purported
31 limitations period.
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38 **E. UW’s Claims for COVID-19 Related Damage and Losses Trigger the All Risks**
39 **Policies and Various Coverages Therein**
40

41 ***1. COVID-19 Triggers the Policies’ Property Damage Coverages***
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43 116. The presence of COVID-19 at UW’s Properties caused direct physical loss and
44 damage to covered properties at covered locations and caused by a covered loss.
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1 117. COVID-19 is a covered cause of loss that caused direct physical loss or damage
2 to UW's Properties by, among other things, requiring material alterations to the Properties
3 and operations and systems used therein; forcing complete or partial closure of some of the
4 Properties; and rendering the Properties physically nonfunctional and inaccessible, either
5 partially or totally, for the conduct of UW's ordinary business operations.
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11 *ii. COVID-19 Triggers the Policies' Time Element Coverages*

12 118. The spread of COVID-19 to UW's Properties caused UW to suffer a necessary
13 interruption of business, both partial and total, of its business activities at its Properties. This
14 necessary interruption of business was caused by direct physical loss or damage to the
15 Properties. The cause was a covered loss under all of the Policies and occurred during all of
16 the Policies' policy periods.
17
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19 119. This necessary interruption of business triggers all of the Policies' Time
20 Element coverages, including, but not limited to, Gross Earnings, Extended Period of
21 Liability, Extra Expense, and Civil or Military Authority coverages as defined by all of the
22 Policies.
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25 120. UW's necessary interruption of business is on-going due to the continuing
26 physical loss of or damage to its Properties caused COVID-19's presence at the same.
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35 *iii. COVID-19 Triggers the Policies' Gross Earnings and Extended Period of*
36 *Liability Coverages*

37 121. The presence of COVID-19 has caused a necessary interruption of business,
38 from the start of the pandemic and remaining to this day, resulting in an actual loss of gross
39 earnings sustained by UW during all of the Policies' periods of liability, thus triggering the
40 Policies' Gross Earnings coverages. Furthermore, at the conclusion of the Policies' periods
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1 of liability, the Policies' extended periods of liability coverages are triggered for actual gross
2 earnings loss resulting from the necessary business interruption up to an additional 365 days.
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4 122. The duration and amount of the Policies' Gross Earnings coverages and
5 extended period of liability coverages will be proven at trial.
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8 *iv. COVID-19 Triggers the Policies' Extra Expense Coverages*

9 123. The presence of COVID-19 has caused direct physical loss or damage to UW's
10 Properties. This has forced UW to incur reasonable and necessary costs in excess of the costs
11 it would have normally incurred to conduct its businesses had no physical loss or damage to
12 the Properties occurred.
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18 124. Such extra expenses were based on operational modifications made necessary
19 by the constant presence of COVID-19.
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22 125. UW's extra expenses trigger all of the Policies' Extra Expense coverages, for
23 a duration and in an amount to be proven at trial.
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26 *v. COVID-19 Triggers the NWH Policy's Leasehold Interest Coverage*

27 126. Various NWH Properties leased by UW became wholly or partially
28 untenable or unusable as a result of direct physical loss or damage caused by SARS-CoV-
29 2 and the Executive Orders. UW has incurred Leasehold Interest loss as a result of rent it paid
30 as a lessee of such building premises, for which it remained obligated to pay.
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36 127. The foregoing and any similar expenses incurred by UW trigger the NWH
37 Policy's Leasehold Interest coverage, for a duration and in an amount to be proven at trial.
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1 **vi. *COVID-19 Triggers the Stadium and Athletics Policies' Attraction Property***
2 ***Coverages***

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4 128. On information and belief, COVID-19 was present at and caused direct
5 physical loss or damage to properties not owned by UW, but within 1 mile of UW's Properties,
6 that attract business to UW's Properties.
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9 129. Such attraction properties include, but are not limited to, the University Village
10 shopping center and the Arboretum.
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13 130. The presence of COVID-19, the direct physical loss or damage caused by
14 COVID-19, and the Executive Orders issued in response to the pandemic, impacted the
15 "attraction properties" nearby and caused UW to incur substantial losses at its Stadium and
16 Athletics Properties in an amount and for a duration to be proven at trial, thus triggering the
17 Stadium and Athletics Policies' Attraction Property coverages.
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22 **vii. *COVID-19-related Executive Orders Trigger the Policies' Civil or Military***
23 ***Authority Coverages***

24 131. Starting in March 2020, state and local governments in jurisdictions where UW
25 does business issued orders that, among other things, closed all but "essential" businesses;
26 imposed occupancy restrictions; barred sporting events; urged and/or required the public to
27 avoid all non-essential travel; barred large group gatherings and events; and, even if spaces
28 remained open, required UW to incur costs to provide for safety measures such social
29 distancing of patients and employees and extra cleaning.
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38 132. COVID-19 and/or the state and local municipal orders partially or completely
39 prohibited access to UW's Properties making them either partially or completely unfit for their
40 intended purposes or partially or completely uninhabitable.
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43 133. Such orders were issued as a result of the COVID-19 pandemic and public
44 health crisis, which are covered losses under all of the Policies, and led UW to incur
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1 substantial losses at its Properties, thus triggering all of the Policies' Civil or Military
2 Authority coverages, for a duration and in an amount to be proven at trial.
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5 **viii. COVID-19 Triggers the Policies' Contingent Time Element Coverages**
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7 134. UW's claims under the Policies include loss resulting from a necessary
8 business interruption of UW's business at the Properties caused by direct physical loss of or
9 damage to the properties of UW's suppliers, contract manufacturers, and/or contract service
10 providers in connection with the COVID-19 pandemic. As a result of that loss or damage,
11 UW's suppliers, contract manufacturers, and/or contract service providers were prevented
12 from being able to accept or deliver the goods or services required or provided by UW.
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15 135. In other words, and without limitation, because individuals or businesses that
16 would have otherwise supplied UW with goods or services could not do so due to the loss or
17 damage to their own properties caused by the COVID-19 pandemic and Executive Orders,
18 UW itself incurred a necessary business interruption that triggers all of the Policies'
19 Contingent Time Element coverages, for duration and in an amount to be proven at trial.
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22 **ix. COVID-19-related Executive Orders Trigger the Policies' Ingress/Egress**
23 **Coverages**
24

25 136. UW has sustained an actual time element loss due to the necessary interruption
26 of its business at its Properties because either partial or complete ingress or egress to the
27 Properties was prevented due to direct physical loss or damage to the Properties or within 1
28 mile of the Properties caused by the COVID-19 pandemic and Executive Orders.
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31 137. The foregoing necessary interruption of business incurred by UW triggers all
32 of the Policies' Ingress/Egress coverages, for a duration and in an amount to be proven at trial.
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1 **x. *COVID-19 Triggers the Policies' Protection and Preservation of Property***
2 ***Coverages***

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4 138. UW has incurred reasonable and necessary costs, and gross earnings or gross
5 profit losses, for actions to temporarily protect and preserve its Properties due to impending
6 physical loss or damage to such Properties due to the COVID-19 pandemic.
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9 139. The foregoing costs and losses trigger all of the Policies' Protection and
10 Preservation of Property coverages, for a duration and amount to be proven at trial.
11

12 **xi. *COVID-19 Triggers the Policies' Research and Development Coverages***

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14 140. UW has sustained actual loss of fixed charges and ordinary payroll directly
15 attributable to the interruption of research and development projects directly resulting from
16 physical loss or damage to its Properties due to the COVID-19 pandemic.
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18 141. The foregoing losses trigger all of the Policies' Research and Development
19 coverages, for a duration and amount to be proven at trial
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21 **xii. *COVID-19-Related Executive Orders Trigger the UWMC, NWH, and HMC***
22 ***Policies' Communicable Disease Endorsements***

23 142. UW's Properties were contaminated by COVID-19, a communicable disease,
24 as the direct result of a covered cause of loss. Notably, the UWMC, NWH, and HMC Policies
25 treat communicable disease "contamination" differently from "contamination" defined
26 elsewhere in the Policies. Specifically, the Policies' Communicable Disease Decontamination
27 Cost Endorsements and Time Element Losses Due to Contamination by Communicable
28 Disease Endorsements (collectively these endorsements are referred to herein as the
29 "Communicable Disease Endorsements") define "communicable disease" as "a viral or
30 bacterial organism that is capable of inducing disease, illness, physical distress or death." The
31 Policies' property damage coverage and definitions sections, however, define "contaminant"
32 as "[a]ny foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen
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1 or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold
2 or mildew.” Further, the UWMC, NWH, and HMC Policies’ Communicable Disease
3 Decontamination Cost Endorsements preclude “costs associated with any other contamination
4 loss,” meaning loss from contaminants as that term is defined in the Policies’ property damage
5 coverage and definitions sections (*i.e.*, not communicable disease). Finally, the Policies’
6 property damage sections do not categorically exclude contamination as there are two
7 exceptions (a) if it directly results from a covered loss and/or (b) coverage is provided
8 elsewhere in the Policies. Any contamination was due to a covered cause of loss. As Such,
9 the UWMC, NWH, and HMC Policies’ Communicable Disease Decontamination
10 Endorsements provide coverage for communicable disease contamination.
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21 143. At the time of the COVID-19 contamination to UW Properties, there were (and
22 still are) Executive Orders in force that required (and still require) UW to decontaminate its
23 Properties as a result of the contamination by the communicable disease COVID-19.
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27 144. The costs incurred by UW to decontaminate the UWMC, NWH, and HMC
28 Properties of COVID-19, and the time element losses caused thereby, trigger the UWMC,
29 NWH, and HMC Policies’ Communicable Disease Endorsements, for a duration and amount
30 to be proven at trial.
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35 **F. None of the Policies’ Exclusions Bar Coverage**

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37 145. No exclusions in the Policies bar coverage for the actual presence of COVID-
38 19 at the Properties; direct physical loss or direct physical damage caused by COVID-19, or
39 within applicable distance limitations set forth in the Policies; or for any other losses, costs,
40 or expenses covered by the various coverage forms set forth above.
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**FIRST CAUSE OF ACTION:
INSURERS' BREACH OF CONTRACT - UWMC POLICY**

146. UW realleges and incorporates by reference, as if set forth herein, each of the allegations in the above paragraphs of this Complaint.

147. UW and Insurers entered into a legally binding written contract when Insurers issued the UWMC Policy.

148. UW made a claim to Insurers under the UWMC Policy for substantial, multi-million-dollar losses arising out of the physical presence of COVID-19 at or near its Properties and the Executive Orders, both of which are covered losses.

149. UW's property damage costs, time element losses, extra expenses, and other losses are covered under various coverages in the UWMC Policy as outlined herein and are not excluded.

150. UW has complied in all material respects with the conditions and requirements of the UWMC Policy, or such conditions and requirements have been waived, or their satisfaction otherwise excused by operation of law or by Insurers' conduct. Such conditions or requirements include without limitation paying the premium and providing timely notice of its claim.

151. By failing and refusing to provide coverage to UW, Insurer has breached the UWMC Policy.

152. As a direct and proximate result of such breach, UW has been deprived of the benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.

**SECOND CAUSE OF ACTION:
DECLARATORY JUDGMENT PURSUANT TO RCW 7.24 - UWMC POLICY**

153. UW realleges and incorporates by reference, as if set forth herein, each of the allegations in the above paragraphs of this Complaint.

1 154. UW is an Insured under the UWMC Policy, which is a valid and enforceable
2 contract sold to UW by Insurer that provides up to \$600,000,000 in coverage for property loss
3 or damage, time element loss, and other coverages.
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6 155. UW gave Insurer timely notice of its claim for property loss or damage, time
7 element loss, and other coverages, each of which involve a covered loss that is sufficient to
8 trigger the UWMC Policy's Property Damage coverages, Time Element coverages (including
9 Gross Earnings, Extended Period of Liability, Extra Expense, Civil or Military Authority,
10 Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and
11 Research and Development), Communicable Disease Decontamination endorsements, as well
12 as any other coverages or benefits potentially available under the UWMC Policy.
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20 156. Insurer has wrongfully denied coverage for the claim, erroneously contending
21 that certain UWMC Policy exclusions purportedly preclude coverage for the claim.
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24 157. As such, an actual and justiciable controversy exists between Insurer and UW
25 concerning the application of the UWMC Policy to the claim, including whether the presence
26 of COVID-19 at an insured location constitutes a covered loss; whether Executive Orders that
27 limit or prohibit access to the UWMC Properties constitute a covered loss; and whether
28 exclusions raised by Insurer apply.
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34 158. UW seeks a declaration from the Court that: (a) the presence of COVID-19 at
35 the UWMC Properties is a covered loss under the UWMC Policy; (b) the Executive Orders
36 prohibiting or limiting access to the UWMC Properties constitute a covered loss; (c) UW is
37 entitled to coverage under the UWMC Policy's Time Element coverages (including Gross
38 Earnings, Extended Period of Liability, Extra Expense, Civil or Military Authority,
39 Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and
40 Research and Development); (d) UW is entitled to coverage under the UWMC Policy's
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1 Communicable Disease endorsements; and (e) there is no applicable UWMC Policy exclusion
2 or condition that precludes coverage for the claim.
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5 **THIRD CAUSE OF ACTION:**
6 **INSURERS' BREACH OF CONTRACT - NWH POLICY**
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8 159. UW realleges and incorporates by reference, as if set forth herein, each of the
9 allegations in the above paragraphs of this Complaint.
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11 160. UW and Insurers entered into a legally binding written contract when Insurers
12 issued the NWH Policy.
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14 161. UW made a claim to Insurers under the NWH Policy for substantial, multi-
15 million-dollar losses arising out of the physical presence of COVID-19 at or near its Properties
16 and the Executive Orders, both of which are covered losses.
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18 162. UW's property damage costs, time element losses, extra expenses, and other
19 losses are covered under various coverages in the NWH Policy as outlined herein and are not
20 excluded.
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22 163. UW has complied in all material respects with the conditions and requirements
23 of the NWH Policy, or such conditions and requirements have been waived, or their
24 satisfaction otherwise excused by operation of law or by Insurers' conduct. Such conditions
25 or requirements include without limitation paying the premium and providing timely notice
26 of its claim.
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28 164. By failing and refusing to provide coverage to UW, Insurer has breached the
29 NWH Policy.
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31 165. As a direct and proximate result of such breach, UW has been deprived of the
32 benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.
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**FOURTH CAUSE OF ACTION:
DECLARATORY JUDGMENT PURSUANT TO RCW 7.24 - NWH POLICY**

166. UW realleges and incorporates by reference, as if set forth herein, each of the allegations in the above paragraphs of this Complaint.

167. UW is an Insured under the NWH Policy, which is a valid and enforceable contract sold to UW by Insurer that provides up to \$500,000,000 in coverage for property loss or damage, up to \$161,914,009 in coverage for time element loss, and various sublimits for other coverages.

168. UW gave Insurer timely notice of its claim for property loss or damage, time element loss, and other coverages, each of which involve a covered loss that is sufficient to trigger the NWH Policy's Property Damage coverages, Time Element coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, Leasehold Interest, Civil or Military Authority, Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and Research and Development), Communicable Disease endorsements, as well as any other coverages or benefits potentially available under the NWH Policy.

169. Insurer has wrongfully denied coverage for the claim, erroneously contending that certain NWH Policy exclusions purportedly preclude coverage for the claim.

170. As such, an actual and justiciable controversy exists between Insurer and UW concerning the application of the NWH Policy to the claim, including whether the presence of COVID-19 at an insured location constitutes a covered loss; whether Executive Orders that limit or prohibit access to the NWH Properties constitute a covered loss; and whether exclusions raised by Insurer apply.

171. UW seeks a declaration from the Court that: (a) the presence of COVID-19 at the NWH Properties is a covered loss under the NWH Policy; (b) the Executive Orders

1 prohibiting or limiting access to the NWH Properties constitute a covered loss; (c) UW is
2 entitled to coverage under the NWH Policy's Time Element coverages (including Gross
3 Earnings, Extended Period of Liability, Extra Expense, Leasehold Interest, Civil or Military
4 Authority, Contingent Time Element, Ingress/Egress, Protection and Preservation of Property,
5 and Research and Development); (d) UW is entitled to coverage under the NWH Policy's
6 Communicable Disease endorsements; and (e) there is no applicable NWH Policy exclusion
7 or condition that precludes coverage for the claim.
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15 **FIFTH CAUSE OF ACTION:**
16 **INSURERS' BREACH OF CONTRACT - HMC POLICY**

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18 172. UW realleges and incorporates by reference, as if set forth herein, each of the
19 allegations in the above paragraphs of this Complaint.
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22 173. UW and Insurers entered into a legally binding written contract when Insurers
23 issued the HMC Policy.
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26 174. UW made a claim to Insurers under the HMC Policy for substantial, multi-
27 million-dollar losses arising out of the physical presence of COVID-19 at or near its Properties
28 and the Executive Orders, both of which were are covered losses.
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32 175. UW's property damage costs, time element losses, extra expenses, and other
33 losses are covered under various coverages in the HMC Policy as outlined herein and are not
34 excluded.
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38 176. UW has complied in all material respects with the conditions and requirements
39 of the HMC Policy, or such conditions and requirements have been waived, or their
40 satisfaction otherwise excused by operation of law or by Insurers' conduct. Such conditions
41 or requirements include without limitation paying the premium and providing timely notice
42 of its claim.
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1 177. By failing and refusing to provide coverage to UW, Insurer has breached the
2 HMC Policy.
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4 178. As a direct and proximate result of such breach, UW has been deprived of the
5 benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.
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9 **SIXTH CAUSE OF ACTION:**
10 **DECLARATORY JUDGMENT PURSUANT TO RCW 7.24 - HMC POLICY**

11 179. UW realleges and incorporates by reference, as if set forth herein, each of the
12 allegations in the above paragraphs of this Complaint.
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14 180. UW is an Insured under the HMC Policy, which is a valid and enforceable
15 contract sold to UW by Insurer that provides up to \$600,000,000 in coverage for property loss
16 or damage, time element loss, and various other coverages.
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18 181. UW gave Insurer timely notice of its claim for property loss or damage, time
19 element loss, and other coverages, each of which involve a covered loss that is sufficient to
20 trigger the HMC Policy's Property Damage coverages, Time Element coverages (including
21 Gross Earnings, Extended Period of Liability, Extra Expense, Civil or Military Authority,
22 Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and
23 Research and Development), Communicable Disease Decontamination endorsement, as well
24 as any other coverages or benefits potentially available under the HMC Policy.
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27 182. Insurer has wrongfully denied coverage for the claim, erroneously contending
28 that certain HMC Policy exclusions purportedly preclude coverage for the claim.
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30 183. As such, an actual and justiciable controversy exists between Insurer and UW
31 concerning the application of the HMC Policy to the claim, including whether the presence of
32 COVID-19 at an insured location constitutes a covered loss; whether Executive Orders that
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1 limit or prohibit access to the HMC Properties constitute a covered loss; and whether
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3 exclusions raised by Insurer apply.
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5 184. UW seeks a declaration from the Court that: (a) the presence of COVID-19 at
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7 the HMC Properties is a covered loss under the HMC Policy; (b) the Executive Orders
8
9 prohibiting or limiting access to the HMC Properties constitute a covered loss; (c) UW is
10
11 entitled to coverage under the HMC Policy's Time Element Coverages (including Gross
12
13 Earnings, Extended Period of Liability, Extra Expense, Civil or Military Authority,
14
15 Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and
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17 Research and Development); and (d) UW is entitled to coverage under the NWH Policy's
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19 Communicable Disease endorsements; and (e) there is no applicable HMC Policy exclusion
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21 or condition that precludes coverage for the claim.
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23 **SEVENTH CAUSE OF ACTION:**
24 **INSURERS' BREACH OF CONTRACT - STADIUM POLICY**

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26 185. UW realleges and incorporates by reference, as if set forth herein, each of the
27
28 allegations in the above paragraphs of this Complaint.
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30 186. UW and Insurers entered into a legally binding written contract when Insurers
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32 issued the Stadium Policy.
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34 187. UW made a claim to Insurers under the Stadium Policy for substantial, multi-
35
36 million-dollar losses arising out of the physical presence of COVID-19 at or near its Properties
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38 and the Executive Orders, both of which are covered losses.
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40 188. UW's property damage costs, time element losses, extra expenses, and other
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42 losses are covered under various coverages in the Stadium Policy as outlined herein and are
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44 not excluded.
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1 189. UW has complied in all material respects with the conditions and requirements
2 of the Stadium Policy, or such conditions and requirements have been waived, or their
3 satisfaction otherwise excused by operation of law or by Insurers' conduct. Such conditions
4 or requirements include without limitation paying the premium and providing timely notice
5 of its claim.
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11 190. By failing and refusing to provide coverage to UW, Insurer has breached the
12 Stadium Policy.
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15 191. As a direct and proximate result of such breach, UW has been deprived of the
16 benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.
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19 **EIGHTH CAUSE OF ACTION:**
20 **DECLARATORY JUDGMENT PURSUANT TO RCW 7.24 - STADIUM POLICY**
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22 192. UW realleges and incorporates by reference, as if set forth herein, each of the
23 allegations in the above paragraphs of this Complaint.
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26 193. UW is an Insured under the Stadium Policy, which is a valid and enforceable
27 contract sold to UW by Insurer that provides up to \$331,055,581 in coverage for property loss
28 or damage, up to \$23,567,631 in coverage for time element loss, and various sublimits for
29 other coverages.
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34 194. UW gave Insurer timely notice of its claim for property loss or damage, time
35 element loss, and other coverages, each of which involve a covered loss that is sufficient to
36 trigger the Stadium Policy's Property Damage coverages, Time Element coverages (including
37 Gross Earnings, Extended Period of Liability, Extra Expense, Attraction Property, Civil or
38 Military Authority, Contingent Time Element, Ingress/Egress, Protection and Preservation of
39 Property, and Research and Development), as well as any other coverages or benefits
40 potentially available under the Stadium Policy.
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1 195. Insurer has wrongfully denied coverage for the claim, erroneously contending
2 that certain Stadium Policy exclusions purportedly preclude coverage for the claim.
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4 196. As such, an actual and justiciable controversy exists between Insurer and UW
5 concerning the application of the Stadium Policy to the claim, including whether the presence
6 of COVID-19 at an insured location constitutes a covered loss; whether Executive Orders that
7 limit or prohibit access to the Stadium Properties constitute a covered loss; and whether
8 exclusions raised by Insurer apply.
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10 197. UW seeks a declaration from the Court that: (a) the presence of COVID-19 at
11 the Stadium Properties is a covered loss under the Stadium Policy; (b) the Executive Orders
12 prohibiting or limiting access to the Stadium Properties constitute a covered loss; (c) UW is
13 entitled to coverage under the Stadium Policy's Time Element coverages (including Gross
14 Earnings, Extended Period of Liability, Extra Expense, Attraction Property, Civil or Military
15 Authority, Contingent Time Element, Ingress/Egress, Protection and Preservation of Property,
16 and Research and Development); and (d) there is no applicable Stadium Policy exclusion or
17 condition that precludes coverage for the claim.
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31 **NINTH CAUSE OF ACTION:**
32 **INSURERS' BREACH OF CONTRACT - ATHLETICS POLICY**

33 198. UW realleges and incorporates by reference, as if set forth herein, each of the
34 allegations in the above paragraphs of this Complaint.
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36 199. UW and Insurers entered into a legally binding written contract when Insurers
37 issued the Athletics Policy.
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39 200. UW made a claim to Insurers under the Athletics Policy for substantial, multi-
40 million-dollar losses arising out of the physical presence of COVID-19 at or near its Properties
41 and the Executive Orders, both of which are covered losses.
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1 201. UW's property damage costs, time element losses, extra expenses, and other
2 losses are covered under various coverages in the Athletics Policy as outlined herein and are
3 not excluded.
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7 202. UW has complied in all material respects with the conditions and requirements
8 of the Athletics Policy, or such conditions and requirements have been waived, or their
9 satisfaction otherwise excused by operation of law or by Insurers' conduct. Such conditions
10 or requirements include without limitation paying the premium and providing timely notice
11 of its claim.
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15 203. By failing and refusing to provide coverage to UW, Insurer has breached the
16 Athletics Policy.
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20 204. As a direct and proximate result of such breach, UW has been deprived of the
21 benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.
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25 **TENTH CAUSE OF ACTION:**
26 **DECLARATORY JUDGMENT PURSUANT TO RCW 7.24 - ATHLETICS POLICY**

27 205. UW realleges and incorporates by reference, as if set forth herein, each of the
28 allegations in the above paragraphs of this Complaint.
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31 206. UW is an Insured under the Athletics Policy, which is a valid and enforceable
32 contract sold to UW by Insurer that provides up to \$250,000,000 in coverage for property loss
33 or damage, up to \$4,345,657 in coverage for time element loss, and various sublimits other
34 coverages.
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39 207. UW gave Insurer timely notice of its claim for property loss or damage, time
40 element loss, and other coverages, each of which involve a covered loss that is sufficient to
41 trigger the Athletics Policy's Property Damage coverages, Time Element coverages
42 (including Gross Earnings, Extended Period of Liability, Extra Expense, Attraction Property,
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1 Civil or Military Authority, Contingent Time Element, Ingress/Egress, Protection and
2 Preservation of Property, and Research and Development), as well as any other coverages or
3 benefits potentially available under the Athletics Policy.
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7 208. Insurer has wrongfully denied coverage for the claim, erroneously contending
8 that certain Athletics Policy exclusions purportedly preclude coverage for the claim.
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11 209. As such, an actual and justiciable controversy exists between Insurer and UW
12 concerning the application of the Athletics Policy to the claim, including whether the presence
13 of COVID-19 at an insured location constitutes a covered loss; whether Executive Orders that
14 limit or prohibit access to the Athletics Properties constitute a covered loss; and whether
15 exclusions raised by Insurer apply.
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21 210. UW seeks a declaration from the Court that: (a) the presence of COVID-19 at
22 the Athletics Properties is a covered loss under the Athletics Policy; (b) the Executive Orders
23 prohibiting or limiting access to the Athletic Properties constitute a covered loss; (c) UW is
24 entitled to coverage under the Athletics Policy's Time Element coverages (including Gross
25 Earnings, Extended Period of Liability, Extra Expense, Attraction Property, Civil or Military
26 Authority, Contingent Time Element, Ingress/Egress, Protection and Preservation of Property,
27 and Research and Development); and (d) there is no applicable Athletics Policy exclusion or
28 condition that precludes coverage for the claim.
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37 **ELEVENTH CAUSE OF ACTION:**
38 **BAD FAITH**

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40 211. UW realleges and incorporates by reference, as if set forth herein, each of the
41 allegations in the above paragraphs of this Complaint.
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44 212. The Insurer is obligated under Washington law to fulfill all duties under the
45 policies in good faith and fair dealing with their insureds.
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1 213. The Insurer has failed to act in good faith to achieve a prompt, fair, and
2 equitable settlement of UW's claims for damage and losses arising out of the COVID-19
3 pandemic.
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6 214. The Insurer issued policies to UW that specifically cover, among other things,
7 property damage and time element losses arising from a "communicable disease" like
8 COVID-19.
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11 215. Despite this, over a two-year period, Insurer: (1) conducted a bad faith paper
12 investigation that sought irrelevant information from UW in its questionnaires that did not
13 arise from the terms of the Policies; and (2) has never acknowledged that any portion of the
14 Claims are covered under the Policies. This conduct continued even after the Washington
15 Supreme Court issued rulings explicitly supporting coverage under the Policies here.
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18 216. Each of these actions violates numerous applicable regulations with respect to
19 proper claims handling, including, without limitation: WAC 284-30-330(1), (2), (3), (4), (6),
20 (7), and (13); WAC 284-30-360; and WAC 284-30-370.
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23 217. Through its course of conduct, the Insurer has violated its duty of good faith
24 and placed its interests ahead of those of its insured, in what could only be an intentional effort
25 to delay complying with their obligations under Policies issued to cover the exact type of
26 losses incurred here.
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29 218. The Insurer's bad faith conduct has directly and proximately caused damage
30 to UW, including, without limitation, by losing the time value of its Claims proceeds and by
31 forcing UW to hire counsel to pursue the Insurer and now file this action due to the Insurer's
32 dilatory, unreasonable conduct.
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35 219. The Insurer is thus legally obligated to pay all damages caused by their conduct
36 performed in bad faith or in violation of applicable statutes and resolutions.
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**TWELFTH CAUSE OF ACTION:
VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT**

220. UW realleges and incorporates by reference, as if set forth herein, each of the allegations in the above paragraphs of this Complaint.

221. By virtue of being issued in the Washington to a Washington-based insured and insuring property based in Washington, the Policies are each subject to the WCPA, RCW 19.86, *et seq.*, and insurance claims handling regulations.

222. For the reasons described above, the Insurer has engaged in unfair and deceptive acts and practices in their investigation and resolution UW's Claim, in violation of numerous insurance regulations for proper claims handling, including but not limited to WAC 284-30-330(1), (2), (3), (4), (6), (7), and (13); WAC 284-30-360; and WAC 284-30-370.

223. The Insurer's breach of the covenant of good faith and fair dealing and violations of the above-referenced claims handling regulations are unfair and deceptive business practices that violate the WCPA.

224. UW has been damaged by the Insurer's violations of the WCPA, including, without limitation, by losing the time value of its Claims proceeds and by having to hire counsel to pursue the Insurer and now file this action due to the Insurer's dilatory and unreasonable conduct.

225. UW is thus entitled to recovery of all of its damages, exemplary or multiplier damages, and attorneys' fees from each of the Insurers as a result of their respective violations of the WCPA.

PRAYER FOR RELIEF

A. Enter a judgment in favor of UW and against Insurer, as requested herein, on each of the Causes of Action in this Complaint;

1 B. Award UW its actual and consequential damages sustained not otherwise
2 reimbursed as a result of Insurer's breaches of the Policies in an amount to be established
3 through proof;
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7 C. Enter a declaration of the rights of the parties under the Policies with respect
8 to UW's Claims that includes, but may not be limited to, declaring that: (1) each of the
9 coverage provisions identified herein is triggered by UW's Claims; (2) UW's Claims are not
10 subject to any exclusion or limitation in the Policies; and (3) Insurer is thus liable to cover
11 UW's Claims.
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17 D. Enter a judgment awarding UW all damages suffered or incurred arising from
18 Insurer's bad faith conduct.
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21 E. Enter a judgment awarding UW all damages suffered or incurred as a result of
22 or arising from Insurer's violations of the WCPA, including actual damages, plus statutory
23 exemplary or multiple and/or treble damages, together with all attorneys' fees and other
24 expenses.
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29 F. Enter a judgement awarding UW its attorneys' fees and other expenses
30 pursuant to applicable law. As a direct and proximate result of Insurer's breach of its duties
31 under the Policies, UW has been forced to incur the costs of attorney fees and other expenses
32 in order to obtain the benefit of its insurance contracts. UW is thus entitled to all of its attorney
33 fees and other expenses from defendants. *See, e.g., Olympic Steamship Co., Inc. v. Centennial*
34 *Insurance Co.*, 811 P.2d 673, 680-81 (Wash. 1991); *McGreevy v. Oregon Mutual Insurance*
35 *Co.*, 904 P.2d 731, 736-37 (Wash. 1995); *King County v. Vinci Constr. Grands Projets*, 398
36 P.3d 1093, 1099-1100 (Wash. 2017).
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45 G. Enter a judgment awarding UW pre-judgment interest and post-judgment
46 interest under applicable law; and
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1 H. Enter a judgment awarding UW its costs of court and any other and further
2 relief to which it may justly be entitled.
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5 **JURY DEMAND**
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7 The University of Washington demands a trial by jury of all issues so triable that are
8 raised herein or which may be raised in this action.
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13 Dated: September 23, 2022

s/ James M. Davis

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