

IN THE CIRCUIT COURT OF MARYLAND  
FOR BALTIMORE COUNTY

**MCDANIEL COLLEGE, INC.**  
2 College Hill  
Westminster, Maryland 21157

*Plaintiff*

v.

**CONTINENTAL CASUALTY COMPANY**  
CNA Plaza  
Chicago, Illinois 60685

Serve On:

Kathleen A. Birrane  
Maryland Insurance Commissioner  
Maryland Insurance Administration  
525 St. Paul Place  
Baltimore, Maryland 21202

and

**CNA FINANCIAL CORPORATION**  
151 North Franklin Street  
Chicago, Illinois 60685

Serve On:

Kathleen A. Birrane  
Maryland Insurance Commissioner  
Maryland Insurance Administration  
525 St. Paul Place  
Baltimore, Maryland 21202

and

**RIGGS, COUNSELMAN, MICHAELS &  
DOWNES, INC.**  
555 Fairmount Avenue  
Baltimore, Maryland 21204

Serve On:

Jon Kevin Carnell  
555 Fairmount Avenue  
Baltimore, Maryland 21204

*Defendants*

CASE NO. C-03-CV-21-000012

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff MCDANIEL COLLEGE, INC. (“Plaintiff” or “McDaniel”), by its undersigned attorneys, sues Defendants CONTINENTAL CASUALTY COMPANY (“Continental”), CNA FINANCIAL CORPORATION (“CNA” and, together with Continental, the “Insurer” or “Defendant Insurer”) and RIGGS, COUNSELMAN, MICHAELS & DOWNES, INC. (“RCM&D” or the “Producer”) and states as follows:

### THE NATURE OF THIS ACTION

1. Insurance is the transfer of risk from one party to another. An insurer volunteers to assume the risks faced by the policyholder in exchange for payment of an insurance premium. The insurer knows that the future is uncertain. Yet, the insurer volunteers to assume its policyholders’ unknowable future risks. If none of those risks come to fruition, the insurer gets to keep the entire premium. Purchasers of insurance are comfortable with this deal, because they are buying “peace of mind” from the insurer. Or at least that is what they are led to believe.

2. Plaintiff thought it was purchasing “peace of mind” when it, along with several other colleges, paid Defendant Insurer almost Two Million Dollars (\$2,000,000) for a single year of insurance coverage under the insurance policy (the “Policy”) at issue in this case. This case is about Defendant Insurer refusing to provide Plaintiff the peace of mind that it paid for.

3. One of the risks that Defendant Insurer accepted when it sold McDaniel the Policy is the financial devastation that the COVID-19 pandemic has wreaked on McDaniel’s operations. After the SARS virus epidemic, which arose in and around 2006, numerous insurers began adding standard “virus exclusions” to their insurance policies. These common virus exclusions are intended to extinguish coverage for losses arising from virus outbreaks. The Policy that Defendant Insurer sold to McDaniel in 2019, however, does ***not*** contain one of the

virus exclusions that had become commonplace in the decade-and-a-half after the SARS outbreak.

4. Defendant Insurer began with a blank piece of paper when it drafted the Policy. The Insurer could have attempted to include any provisions the Insurer desired to include. In this case, Defendant Insurer made an informed and considered decision not to include a virus exclusion in McDaniel's Policy. Yet, Defendant Insurer has refused to provide McDaniel coverage anyway.

5. Apparently recognizing the inherent weakness in attempting to rely on the coverage exclusions that are included in the Policy, the Insurer has taken the remarkable position that all of McDaniel's substantial losses do not trigger any coverage under the Policy in the first place. According to the Insurer, we do not need to even consider the limitations the exclusions place on coverage, because there is no coverage under the Policy in the first place. Defendant Insurer sold McDaniel "business interruption" insurance, and McDaniel's business has been interrupted in a fundamental way, but Defendant Insurer argues that the Policy it accepted a multi-million dollar premium for does not respond to McDaniel's catastrophic losses at all.

6. McDaniel's losses have been disastrous, because McDaniel's core business, which is providing students from within the United States, and globally, a dynamic residential experience, has been completely destroyed. Previously, all full-time undergraduate students and graduate students, with limited exceptions, lived on McDaniel's campus and participated in one of the college meal plans.

7. Due to the physical damage caused by COVID-19, McDaniel was caused to suspend on-campus housing; cancel educational, athletic, social, and religious events and ceremonies; close its dormitories, classrooms, fields, and athletic facilities and fitness center, and dining facilities; and suffered a loss of use of its campus.

8. Although the physical damage and risks of the COVID-19 pandemic would have forced these suspensions, cancellations, and closures on their own, a series of governmental orders issued by the State of Maryland, and across the United States and globally, forced McDaniel's hand in any event. These orders include multiple Executive Proclamations by Maryland Governor Larry Hogan that contain his specific Executive Finding that: **“COVID-19 is a highly infectious respiratory disease that spreads easily from person to person, physically contaminates property by attaching to surfaces for prolonged periods of time, and may result in serious illness or death.”**

9. All of these orders, proclamations and other government guidance, many of which also expressly cite the physical damage to property resulting from the deadly nature of COVID-19 and its means of transmission, along with the virus itself, prohibited McDaniel and its student body from using McDaniel's campus; attending in-person classes; living in the School's dorms; utilizing the School's dining facilities; attending religious services and other secular and non-secular events in the School's chapel; participating in and attending athletic events in the Schools' gymnasiums, fitness center, aquatic center, stadium, and other intercollegiate and recreational athletic facilities; and otherwise.

10. Defendant Insurer's assertion that McDaniel's property damage and business interruption claims do not trigger any coverage under Defendant Insurer's property damage and business interruption Policy is a breach of the Policy contract. This absurd denial also demonstrates Defendant Insurer's lack of good faith in the claims adjustment process, in violation of Maryland insurance statutes that are specifically designed to prevent groundless claims denials of the type at issue here.

11. Alternatively, to the extent that this Court finds that the Policy does not cover McDaniel's millions of dollars in losses, then Defendant RCM&D, McDaniel's long-serving and

trusted insurance advisor and producer, who was paid a substantial commission for identifying and obtaining this Policy, is responsible for McDaniel's losses.

12. Prior to McDaniel's purchase of this Policy, RCM&D agreed to analyze McDaniel's risks and exposures, and to explain those risks to McDaniel. RCM&D further agreed to advise McDaniel on how to protect itself from those identified risks by purchasing insurance coverage, and to then procure insurance for McDaniel to cover those risks.

13. RCM&D performed all of these services for McDaniel, culminating in RCM&D procuring the Policy to protect McDaniel against risks such as the losses McDaniel has incurred due to the COVID-19 property damage and related governmental actions. McDaniel paid its substantial premium for One Billion Dollars (\$1,000,000,000) in coverage, on advice and counsel from RCM&D, precisely to avoid millions of dollars in losses McDaniel has now incurred, and which Defendant Insurer, who was identified and recommended by RCM&D, has refused to cover.

14. McDaniel relied on RCM&D to identify and obtain the Policy, and paid RCM&D the significant commission, because RCM&D held itself out as a skilled and seasoned insurance professional, who should have known that exposure to losses from viral diseases (such as outbreaks on campus of SARS and viral meningitis) was a significant risk McDaniel faced. RCM&D breached all of its duties to McDaniel by failing to ever bring this risk to McDaniel's attention, and by failing to advise McDaniel that it was uninsured for this risk. RCM&D never informed McDaniel that McDaniel was uninsured against viral outbreaks notwithstanding the absence of any virus exclusion in the subject Policy, as Defendant Insurer now claims.

15. To the extent that the Policy is found not to cover McDaniel's losses, which McDaniel denies and disputes, then RCM&D failed McDaniel in its essential tasks by

identifying and selling McDaniel a Policy that leaves McDaniel uninsured for the catastrophic losses it has incurred.

### **THE PARTIES**

16. McDaniel is a Maryland corporation with its principal place of business located in Westminster, Carroll County, Maryland.

17. Defendant CNA is an insurance holding company incorporated in Delaware with its principal place of business at 151 North Franklin Street, Chicago, Illinois 60606. CNA is an insurance holding company that provides commercial insurance to businesses through its affiliate, Defendant Continental. Among its offerings is Business Interruption coverage, often called Business Interruption or Business Income coverage that is designed to protect businesses from the risk of being forced to suspend their operations because of an unexpected disaster. As CNA states on its website promoting this coverage, “[n]othing should stand in the way of your ability to deliver your products, services and expertise to your customers.”

18. Defendant Continental is a property and casualty company engaged in the business of selling insurance contracts to commercial entities such as McDaniel throughout the United States in general, and in this instance, in Maryland. Continental is an Illinois corporation with its headquarters and principal place of business located in Chicago, Illinois, but is licensed to sell insurance in the State of Maryland, employs agents in Maryland, is registered and qualified to do business in Maryland, contracts to provide insurance coverage for property located in Maryland, and derives a substantial revenue from the sale of insurance and financial products in Maryland. Continental sold and delivered the Policy to McDaniel in Maryland.

19. RCM&D is an insurance producer that is engaged in the business of providing insurance services in the State of Maryland, including marketing and selling insurance products, analyzing the insurance risks and exposures for its clients, and providing advice and

recommendations to its clients concerning their insurance needs. RCM&D is a Maryland corporation with its headquarters and principal place of business located in Baltimore County, Maryland. RCM&D is licensed by the State of Maryland as an insurance producer, is registered and qualified to do business in Maryland, contracts to sell insurance products in Maryland, and derives a substantial revenue from the sale of insurance and financial products in Maryland. RCM&D has served as McDaniel's trusted insurance advisor and producer for years. RCM&D analyzed the risks faced by McDaniel, and based on this analysis, advised McDaniel to purchase the Policy. McDaniel purchased the Policy in reliance on RCM&D's advice, and RCM&D earned a substantial commission on the sale. Finally, RCM&D delivered the Policy to McDaniel in Maryland.

#### **JURISDICTION AND VENUE**

20. This Court has jurisdiction over the claims alleged herein pursuant to § 1-501 of the Courts and Judicial Proceedings Article of the Maryland Code.

21. This Court has personal jurisdiction over each Defendant pursuant to § 6-103(b) of the Courts and Judicial Proceedings Article of the Maryland Code. Each Defendant transacts business in the State of Maryland. Defendants Continental and RCM&D are licensed and qualified to do business in the State of Maryland, and are licensed to sell insurance products in the State of Maryland. Defendants Continental and CNA contracted to provide insurance to McDaniel in the State of Maryland, to insure property located in the State of Maryland and to cover risks McDaniel faces by the conduct of its business in Maryland.

22. Venue in this Court is proper, pursuant to § 6-201 of the Courts and Judicial Proceedings Article of the Maryland Code. The Producer has its principal places of business in Baltimore County, Maryland. Moreover, the obligations under the contract at issue were to be performed in Baltimore County, Maryland, as well as Carroll County, Maryland, and the events

that led to this dispute occurred in Baltimore County, Maryland, as well as Carroll County, Maryland. As such, this dispute can be brought in either county.

### FACTUAL ALLEGATIONS

**A. McDaniel's Revenue Depends on its Ability to Use its Campus and Provide an On-Campus Residential Experience for its Students.**

23. McDaniel is a private college that enrolls approximately 1,700 students per year. McDaniel was chartered in 1867, originally as Western Maryland College, and for more than a century, has prided itself on providing its students with a broad based, multi-cultural, liberal arts education.

24. McDaniel enrolls students from thirty-two (32) states and Washington, D.C., as well as numerous countries. Its students study in more than thirty-three (33) majors and forty (40) minors, including fourteen (14) interdisciplinary minors. Among other accolades, McDaniel is one of forty (40) institutions profiled in *Colleges That Change Lives* by Loren Pope. McDaniel has also been featured in The Princeton Review's *The Best 386 Colleges* and has repeatedly ranked in the top tier of U.S. News and World Report's list of Best Colleges, including recognition in the "Best Value Schools" list (ranking as No. 1 "Best Value Regional University in the North"), "Top Performers on Social Mobility" list, and "A+ Schools for B Students" list.

25. McDaniel's 160-acre campus is located thirty-five (35) miles from Baltimore and sixty-six (66) miles from the District of Columbia. McDaniel's campus is not fenced in and, leading up to the tragic events which are the subject of this action, it was common for visitors, including alumni, students from surrounding colleges and universities, visiting sports teams, community groups and individuals, and other guests, to be on McDaniel's campus and in its facilities.



26. McDaniel's main academic buildings include Hill Hall and Eaton Hall. The college has numerous other academic and residential buildings.

27. McDaniel's largest sources of revenue are derived from tuition and room and board payments it receives from its students. McDaniel also generates rental income from leasing and renting its physical space to third parties. In 2019, these sources generated significant revenue for McDaniel and were in line to continue generating significant revenue for McDaniel in 2020 and thereafter.

**i. McDaniel Derives Substantial Revenue From Year-Round Rentals of its Many Residential Properties.**

28. McDaniel provides on-campus housing for its students, and derives a significant portion of its revenue from the room and board (rental and dining/restaurant) payments it receives from its student body.

29. Campus housing for students at McDaniel includes singles, doubles, triples, and suites, as well as on-campus and off-campus apartments. McDaniel's residence halls and other student halls have the capacity to accommodate over 1,400 students and are located throughout the campus. These include the Daniel MacLea Hall, Albert Norman Ward Hall, McDaniel Hall, Blanche Ward Hall, Rouzer Hall, Whiteford Hall, and the North Village and Garden Apartments.

**ii. McDaniel Derives Substantial Revenue From Renting Multipurpose Venues to Third-Party Businesses and Organizations.**

30. Throughout the year, and particularly in the summer months, McDaniel derives significant and substantial revenue from renting out and otherwise leasing the use of its various facilities to third parties for athletic, cultural, educational, and other events.

**iii. McDaniel Derives Substantial Revenue From Year-Round Athletic Events, Camps, and Similar Extracurricular Offerings.**

31. Athletics, both interscholastic and intermural, are an important component of the student experience at McDaniel. The school is a member of the Centennial Conference and competes in the NCAA's Division III in men's and women's sports, including lacrosse, tennis, soccer, track, wrestling, football, volleyball, basketball, baseball, softball, field hockey, golf, and swimming. The college's sports and recreational facilities include turf fields, stadiums, an indoor pool, a gymnasium, a fitness center, a track, basketball, tennis, racquetball, and squash courts, as well as locker rooms.

32. McDaniel generates revenue from admissions and food and beverage sales from these interscholastic events. McDaniel's diverse offering of interscholastic and intermural sports offering is also a recruiting differentiator that attracts well-rounded applicants to the school.

33. During the summer months, McDaniel's campus, dormitories, buildings, fields, and dining facilities are used, and rented for use, by numerous summer camp sponsors, sports leagues, tournament organizers, and others who host events on campus.

34. During the Spring, Summer, and Fall of 2020, numerous events were scheduled to be held at McDaniel's campus but were forced to be cancelled.

35. McDaniel lost significant revenue as a result of the cancellation of these events due to the physical losses and damages caused by the COVID-19 pandemic, including but not limited to losses and damages arising from government actions that prevented or disrupted the academic year and McDaniel's use of its physical campus.

**B. McDaniel Purchased the Policy to Protect Itself Against the Catastrophic Property Damage and Business Interruption Losses, Damages, and Expenses Identified by RCM&D.**

36. In December 2019, McDaniel purchased an “all-risks” insurance Policy from Defendant Insurer for a premium payment of one million nine hundred thirty six thousand three hundred sixty dollars (\$1,936,360.00) to protect against property damage, business interruption losses and other risks identified by RCM&D, who acted as McDaniel’s producer for the Policy. A copy of the Policy is attached hereto as Exhibit A and incorporated herein as if set forth in full.

37. The Insurer chose to title the Policy as a “Signature Property Insurance Policy”, Policy No. 6023245110. The Policy states that the issuing company is Continental. However, the Insurer also chose to state, within the language of the Policy form, that the Policy is a “CNA POLICY.”

38. The Policy states that CNA holds the copyright on the Policy forms, which contain notice that the forms are “Copyright CNA All Rights Reserved.” The Policy is also signed by CNA’s Chairman of the Board and Secretary, and provides the following property claim reporting instructions: “**FOR EMERGENCY CONTACT:** Our 24-hour toll free number for direct contact with the CNA Loss Processing Center is: 877-261-6676”; **FOR NON-EMERGENCY:** Property claims may be reported by toll free fax to the CNA Loss Processing Center at: 877-566-2728. Property claims may also be reported via email to the CNA Loss Processing Center at: CNAproperty.LPC@cna.com.” *Id.*

39. Defendant Insurer issued the Policy to McDaniel, along with a consortium of other private liberal arts colleges of which McDaniel is a member, known as Consortium Services Program, LLC, by sending the Policy to RCM&D, McDaniel’s producer, at its Towson, Maryland offices. RCM&D then delivered the Policy to McDaniel at its Westminster campus.

40. The Policy incepted on December 1, 2019, and was effective for one year and one day—through December 1, 2020.

41. The Policy identifies McDaniel’s 160-acre campus, the buildings, facilities and structures thereon as, as well as other locations purchased, leased or rented by McDaniel after the Policy inception date of December 1, 2019, as scheduled locations and/or insured/covered property as defined in the Policy.

42. McDaniel is an insured under the Policy, and McDaniel owns scheduled locations and other insured property as defined in the Policy. McDaniel thus has multiple significant insurable interests covered by the Policy.

**i. Defendant Insurer’s Grant of Coverage is Broad, and Was Designed to be Broad.**

43. The Policy that Defendant Insurer and RCM&D sold to McDaniel broadly states, in relevant part, that “this [P]olicy insures against risks of **direct physical loss of or damage to property and/or interests described herein at covered Locations.” See Ex. A, Signature Policy Form G300709A (10-08) (“Signature Policy Form”), at Page 10 of 37, § II (emphasis added).**

44. The Policy’s coverage grant is an “all risks” grant that is deliberately designed to be broad. Defendant Insurer chose to issue a Policy form that grants McDaniel coverage against an unlimited scope of “risks” of property damage, business interruption, and other losses, “[e]xcept as hereinafter excluded and subject to the” policy’s one-billion-dollar liability limit, and sublimits, as applicable.

45. The fact that Defendant Insurer drafted a Policy by which it agrees to cover a literally unlimited scope of risks (subject to policy exclusions) cannot be reconciled with the fact that Defendant Insurer has refused to cover McDaniel’s insurance claim based on its incorrect

assertion that McDaniel's losses from the COVID-19 virus are not a risk that triggers the Policy coverage.

46. This is not a case about Policy exclusions or other limitations on coverage, because Defendant Insurer did not rely on any exclusions or limitations in denying McDaniel's claim. Rather, Defendant Insurer argued that its "all risks" insurance Policy does not cover the risks posed by COVID-19. That is the epitome of a lack of good faith.

**ii. Multiple Different Policy Coverages are Triggered by Losses, and Should Compensate McDaniel for its Losses.**

47. All of McDaniel's losses, damages and expenses are covered by the Policy's broad coverage grant, because all of McDaniel's losses arise from McDaniel's "direct physical loss of" its campus due to the COVID-19 pandemic, and related governmental action. Signature Policy Form, at Page 10 of 37, § II. McDaniel lost its property, and related interests, due to the COVID-19 pandemic.

48. Separately and independently, all of McDaniel's losses, damages and expenses are covered by the Policy coverage for "damage to property or interests." Signature Policy Form, at Page 10 of 37, § II. McDaniel sustained damage to its property and to its interests due to the COVID-19 pandemic, thus triggering this separate coverage.

49. McDaniel's loss of business income is also separately and independently covered by the Business Interruption (Gross Earnings) Policy coverage. Signature Policy Form, at Page 11 of 37, § II.B. This business income or "Time Element" insurance "covers against loss resulting from necessary interruption of business caused by **direct physical loss of or damage to covered property** by the perils insured against and occurring during the term of this policy." *Id.* (emphasis added). All of McDaniel's lost business income arises from the necessary interruption

of its business due to the loss of, and separately due to the physical damage to its property and interests, by the perils this Policy insures against (all risks).

50. Defendant Insurer has extended this Time Element coverage to cover loss of business income for “such additional length of time as would be required with the exercise of due diligence and dispatch to restore [McDaniel’s] business to the condition that would have existed if no loss occurred.” Signature Policy Form, at Page 15 of 37, § II.C.14. This is a critical coverage for McDaniel. Even when McDaniel returns to full capacity, as existed prior to the COVID-19 pandemic, if that is ever possible, McDaniel’s Time Element coverage will not be exhausted. *Id.* Under this extension, McDaniel’s loss of business income coverage extends until such time that McDaniel’s business is restored to pre-pandemic levels. *Id.*

51. McDaniel is also entitled to its “extra expenses” until that restoration occurs. Signature Policy Form, at Pages 15–16 of 37, § II.C.15. By the Policy’s “Extra Expense” coverage, Defendant Insurer agreed to “pay for the reasonable and necessary extra expense” incurred by McDaniel “in order to continue as nearly as practicable the normal operation” of its business “following **direct physical loss of or damage to** covered property.” *Id.* (first emphasis in original, second emphasis added). McDaniel has incurred “extra expenses” in attempting to continue its operations as near as it can to normal.

52. Defendant Insurer chose to extend this “Time Element” coverage to also cover loss resulting from interruptions to McDaniel’s business caused by “direct physical loss or damage” to real or personal property of direct suppliers or service providers to McDaniel. Signature Policy Form, at Page 13 of 37, § II.C.4. The suppliers of certain goods and services that McDaniel relies on for its operations also, upon information and belief, sustained loss or damage to their property, and all were impacted by the governmental actions described herein. McDaniel is entitled to additional coverage under this extension because even if the



governmental actions had not been taken, and even if McDaniel had chosen to maintain full operations during the pandemic, McDaniel still would have sustained loss of business income due to the property loss and damage sustained by its suppliers.

53. The Policy's "Time Element" coverage is also extended to cover loss resulting from interruptions to McDaniel's business caused by "direct physical loss or damage" to real or personal property of "direct customers." Signature Policy Form, at Page 13 of 37, § II.C.4. McDaniel is entitled to additional coverage under this extension because even if the governmental actions had not been taken, and even if McDaniel had chosen to maintain full operations during the pandemic, McDaniel still would have sustained loss of business income due to the property loss and damage sustained by its students, camp operators such as WL and others.

54. A separate Policy coverage obligates Defendant Insurer to pay "contractual penalties incurred by [McDaniel] for its failure to timely deliver its products or services to its customers" due to loss or damage to covered property. Signature Policy Form, at Page 13 of 37, § II.C.5. McDaniel incurred substantial contractual penalties arising from the property loss and damage caused by the COVID-19 pandemic.

55. Separately and independently, McDaniel is entitled to coverage for the substantial expenses it has incurred in decontaminating its property "as a direct result of physical damage" to its property caused by COVID-19. These amounts are covered by the Policy's "Decontamination Expense" coverage. Signature Policy Form, at Page 13 of 37, § II.C.7. In addition to compensating McDaniel for its hard decontamination costs, this decontamination coverage also extends the Policy's "Time Element" coverage for the substantial additional loss of business income McDaniel incurred while decontaminating its property. *Id.* at 14 of 37.



56. McDaniel is similarly entitled to “Ordinance or Law” coverage for the increased costs of repairing its property through decontamination efforts. Signature Policy Form, at Page 18 of 37, § II.C.23. By this coverage grant, Defendant Insurer states that “[i]n the event of physical loss or damage covered hereunder that causes the enforcement of any law or ordinance in effect at the time of loss regulating the . . . repair or use of the damaged building(s), this Company shall be liable for . . . [t]he increased costs for business interruption, extra expense or rental value arising out of the additional time required to comply with said law or ordinance.” *Id.* at § II.C.23.d.

57. A related Policy coverage for “Expediting Expenses” is also responsive to McDaniel’s claim. Signature Policy Form, at Page 15 of 37, § II.C.12. McDaniel has incurred “expediting expenses” by paying additional amounts to decontaminate its campus, from time to time, to repair its property for the uses that can be made of McDaniel’s facilities at this time. *Id.*

58. McDaniel has also incurred “Expenses Related to Reducing Loss” by incurring additional costs and expenses, in addition to those that are “Normal” to replace its “Finished Stock” of books, clothing, food and other items that McDaniel sells as part of its “Normal” business operations. Signature Policy Form, at Page 15 of 37, § II.C.13.

59. Separately and independently of all of the above coverages, the Policy provides coverage for losses, damages and expenses “during the period of time while access to the Insured’s Location is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property.” Signature Policy Form, at Page 14 of 37, § II.C.10. All of McDaniel’s losses, damages and expenses are covered by this “Denial of Access by Civil Authority and Ingress-Egress” coverage due to the governmental actions described herein.

60. The Policy provides McDaniel coverage for all of the lost rental value of its residential properties during the time that McDaniel has not been able to house students, campers and others in its residence halls. Signature Policy Form, at Page 20 of 37, § II.C.30. McDaniel's residence halls have been "untenantab[le]" due to the "direct physical loss or damage" that McDaniel has incurred due to the pandemic, and related governmental action.

61. Defendant Insurer also included a "Leasehold Interest Coverage" when McDaniel's interests as the lessee, rather than the lessor, are impacted. Signature Policy Form, at Page 17 of 37, § II.C.19. This "Leasehold Interest" coverage requires the Insurer to compensate McDaniel for the continuing rent payments that McDaniel has made on property that is wholly or partially untenable or unusable during this pandemic. *Id.*

62. The expenses that McDaniel incurred, and continues to incur, in investigating and preparing its insurance claim, are also covered. Signature Policy Form, at Page 17 of 37, § II.C.20. This Policy coverage obligated Defendant Insurer to pay the "reasonable expenses incurred by [McDaniel] in preparing claim data when required by the Company."

63. The professional fees that McDaniel has incurred from decontamination professionals who have provided McDaniel services in repairing the decontamination damage are similarly covered. Signature Policy Form, at Page 19 of 37, § II.C.26.

64. The Policy also contains "Preservation of Property" coverage, along with coverage for damage sustained to property being moved in order to preserve it from loss or damage under the Policy's "Property Off Premises" and "Unscheduled Locations" coverages. Signature Policy Form, at Page 19 of 37, § II.C.25; Page 19 of 37, § II.C.28; Pages 21–22 of 37, § II.C.37. To the extent McDaniel has moved property from its campus in order to preserve it from direct physical loss or damage and to the extent such property has been damaged in the move, McDaniel is entitled to coverage for those losses.

65. Each of the aforementioned coverages has been triggered by the events described herein and the losses McDaniel has suffered.

**iii. All Of McDaniel's Losses, Damages, and Expenses Arising From COVID-19 Property Damage and Business Interruption Constitute a Single "Occurrence" Under the Policy.**

66. The Policy's limits of liability, i.e., the amounts the Insurer is obligated to pay, apply on a "per occurrence" basis, except as expressly stated otherwise in the Policy. *See* Signature Policy Form, at Page of 37, § 1.4.

67. The Policy defines the term "Occurrence" in pertinent part as any "[o]ne or more losses which result from one common cause or disaster, even if arising out of more than one event." Signature Policy Form, at Page 37 of 37. All of McDaniel's losses claimed by this action are the result of a single "occurrence" which triggered coverage during the December 1, 2019, to December 1, 2020 Policy period.

68. Although the 2019–2020 Policy expired on December 1, 2020, McDaniel is entitled to all of its losses arising from the property damage and government action occurrence that triggered coverage under the 2019–2020 Policy. Signature Policy Form, at Page 7 of 37, § 6 ("All claims for loss, damage or expense covered under this policy and arising out of or resulting from any one Occurrence shall be adjusted as one claim") (emphasis in original).

**iv. The Insurer Chose Not To Include Any Virus Exclusion in the Policy.**

69. The Policy does not contain any virus, communicable disease or virus-related exclusions. *See* Ex. A. Rather, the Policy was written by the Insurer and purchased by McDaniel with the intent of both parties, as expressed in the Policy's plain language, that losses caused by viruses such as that which McDaniel now faces would be covered.

70. In 2006, the Insurance Services Organization (“ISO”)<sup>1</sup> created a “Virus” exclusion in response to the SARS, Ebola and other viral outbreaks. This exclusion—*which is not included in the Policy*—is titled “Exclusion for Loss Due To Virus or Bacteria” and, in relevant part, reads:

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

ISO Form CP 01 40 07 06. The 2006 ISO virus exclusion goes on to specifically state that it applies to, among other things, loss of “business income” (i.e., business interruption).

71. In July of 2006, ISO prepared a circular (LI-CF-2006-175) as part of its filing of the new virus exclusion with state regulators which makes specific reference to the fact that the new exclusion was created in response to viral contaminants such as rotavirus, SARS and influenza, and to clarify that losses arising from viruses are intended to be excluded. By creating a separate endorsement in an effort to exclude coverage for viruses, ISO acknowledged i) that viruses cause physical loss of and damage to property, and ii) that that standard policy exclusions (such as that found in the Policy) do not exclude coverage for losses caused by viruses such as SARS-CoV-2 and COVID-19.

72. Defendant Insurer could have, but chose not to, include this now-common virus exclusion language in the Policy. McDaniel materially relied on the absence of any virus exclusion in purchasing the Policy. As McDaniel told RCM&D, viruses are a critical issue for residential colleges, given the poor experience, and large losses, that certain schools incurred due

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<sup>1</sup> The ISO is an advisory organization that provides advisory services and information to insurance companies and develops and publishes policy language that many insurance companies use as the basis for their products.

to SARS, meningitis and other outbreaks in the decades leading up to McDaniel's purchase of this Policy.

**C. COVID-19: A Unique and Deadly Disease.**

73. COVID-19 is a deadly disease caused by the recently discovered coronavirus, known as SARS-CoV-2 ("SARS-CoV-2" or the "coronavirus").

74. Not all viruses are alike. There are viruses that do not infect humans, and there are viruses that infect humans but cannot be transmitted from human-to-human. Further, not all viruses that cause illnesses cause the type of loss or damage to property that the coronavirus causes, or prompt authorities to issue shutdown orders or other civil orders. COVID-19 is a rare exception that, because of its particular nature and characteristics, meets all of these criteria: it has caused deadly illnesses and physical loss and damage; and it has thereby led to hundreds of orders prohibiting anything other than very small gatherings, and ultimately, to enormous financial losses.

75. The coronavirus can be transmitted in several ways, including via human-to-human contact, airborne viral particles in ambient air, and touching surfaces or objects. For example, when an uninfected person touches a surface containing the coronavirus, the uninfected person may transmit the coronavirus to another person, either by touching and contaminating a second surface, which is subsequently touched by that other person, or more directly by transmitting the coronavirus to another person.

76. The coronavirus spreads easily from person-to-person and person-to-surface or object, primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings, coughs, or sneezes. According to research published in The Journal of the American Medical Association, a person who sneezes can release a cloud of

pathogen-bearing droplets that can span as far as 23 to 27 feet.<sup>2</sup> The Centers for Disease Control and Prevention (“CDC”) has stated that the coronavirus is most likely to spread when people are within six (6) feet of each other, but has acknowledged that the coronavirus may spread from an infected person who is more than six (6) feet away or who has left a given space.<sup>3</sup> Further, “longer exposure time likely increases exposure risk” to the coronavirus.<sup>4</sup>

77. According to the World Health Organization (“WHO”), the incubation period for COVID-19—i.e., the time between exposure to the coronavirus and symptom onset—can be up to fourteen (14) days. Other studies suggest that the period may be up to twenty-one (21) days.

78. Before infected individuals exhibit symptoms, i.e., the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers.

79. Studies from the CDC and others estimate that between 40% and 70% of infected individuals may never become symptomatic (“asymptomatic” carriers). Pre-symptomatic and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

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<sup>2</sup> See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

<sup>3</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

<sup>4</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>.

**D. Coronaviruses and COVID-19 Cause Physical Loss of and Damage to Property.**

80. Physical droplets containing the coronavirus can land on objects and surfaces. After landing on objects and surfaces, the coronavirus can remain present and dangerous for periods ranging from hours to many days.

81. According to the WHO, people can become infected with the coronavirus by touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission—indirect transmission via objects and surfaces—is known as “fomite transmission.”

82. As the WHO has noted, fomite transmission is “a likely mode of transmission for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.<sup>5</sup>

83. A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases Journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.<sup>6</sup>

84. An experiment commissioned in Japan underscores just how easy it is to spread the virus.<sup>7</sup> The experiment involved ten (10) people; one of which was designated to be the “infected” person. Fluorescent paint was applied to the “infected” person’s palms to replicate

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<sup>5</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>6</sup> See [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article).

<sup>7</sup> See <https://www.kxan.com/news/coronavirus/see-how-easily-covid-19-might-spread-through-a-restaurant-in-this-black-light-experiment/>.

the condition that exists when an infected person covers their mouth or nose when coughing or sneezing. The participants then ate a cafeteria-style meal for just thirty (30) minutes. After thirty (30) minutes, the researchers used a black light to track the spread of the “virus.” Concerningly, the researchers discovered that traces of the fluorescent paint had spread onto the hands of each participant, the faces of three participants, and onto numerous hard objects such as table tops and dishes.

85. Research has indicated that the coronavirus can be detected on certain surfaces even weeks after infected persons are present at a given location. One study, for example, found that the coronavirus remains active and dangerous on plastics for at least three (3) days, while another reported that the coronavirus remained stable and viable for seven (7) days on a range of common surfaces, including plastic, stainless steel, glass, and wood.<sup>8</sup> Another study detected viable coronavirus samples on glass, stainless steel, and money for approximately one (1) month if left at or around room temperature.

86. Research has also indicated that the coronavirus can spread through the air. For example, airborne viral particles are known to have spread into a facility’s heating and ventilation (“HVAC”) system, leading to transmission of the coronavirus from person-to-person. A study of an outbreak at a restaurant in China concluded that the spread of the coronavirus “was prompted by air-conditioned ventilation,” with persons who sat at tables downstream of the HVAC system’s air flow becoming infected.<sup>9</sup> Another study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients.

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<sup>8</sup> See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>); <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>; <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

<sup>9</sup> See [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article#r2](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article#r2).



This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than fifty (50) meters from the patients' rooms.<sup>10</sup>

87. The Environmental Protection Agency (“EPA”) has compiled several studies related to the issue of airborne transmission of COVID-19 through aerosols (also referred to as droplet nuclei), including studies reflecting epidemiological evidence suggestive of COVID-19 transmission through aerosols.<sup>11</sup> Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.<sup>12</sup>

88. Accordingly, COVID-19 and the coronavirus cause physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 and the coronavirus have caused such physical loss and damage to McDaniel’s insured property.

89. First, respiratory droplets (i.e., droplets larger than 5–10  $\mu\text{m}$ ) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they physically change the property and its surface by becoming a part of that surface. This physical alteration makes physical contact with those previously safe, inert surfaces (e.g., walls, handrails, desks) unsafe.

90. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (i.e., those smaller than 5  $\mu\text{m}$ ) that remain in the air and,

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<sup>10</sup> See <https://www.researchsquare.com/article/rs-34643/v1>.

<sup>11</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications>.

<sup>12</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the physical properties of air in buildings from safe and breathable to unsafe and dangerous.

91. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not theoretical, informational, or incorporeal, but rather, are dangerous physical substances that have a material, tangible existence.

92. In a study by the U.S. National Institutes of Health, researchers found that the coronavirus was detectable for up to three (3) hours in aerosols, four (4) hours on copper, up to twenty-four (24) hours on cardboard, and up to three (3) days on stainless steel and plastic surfaces.<sup>13</sup>

93. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, converting the surfaces and materials to fomites.<sup>14</sup> This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

94. The presence of the coronavirus and COVID-19 within a facility, structure or building and on the surfaces therein causes physical loss and damage by necessitating remedial measures that include, without limitation, extensive cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases of the coronavirus and COVID-19 on-site.

95. The presence of cases of the coronavirus and COVID-19 within a facility, structure or building causes physical loss and damage by transforming the facility from property

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<sup>13</sup> See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

<sup>14</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

that is usable and safe for humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

96. In addition, the presence of the coronavirus on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the facility by touching a doorknob or a handrail, will carry those droplets on their hands and deposit them elsewhere in the facility, causing additional damage and loss.

97. The physical losses and physical damages described above have occurred at McDaniel, leading to huge losses covered by the Policy. To the extent that the Policy requires structural alteration to establish “physical damage,” which McDaniel disputes, such alteration has occurred.

98. McDaniel has undertaken, and continues to undertake, efforts to mitigate the impacts of COVID-19 and the coronavirus at a significant, but covered expense to McDaniel.

**E. Civil Authorities Nationwide, in the State of Maryland, and in Carroll County Have Prohibited Access to Property Because of the Physical Damage Caused by SARS-CoV-2 and COVID-19.**

99. To date, hundreds if not thousands of orders, executive proclamations, border closings and edicts have been issued by countries throughout the world, and by states, counties, cities, townships and other government bodies across the United States that have prohibited access to properties, including insured locations on McDaniel’s campus, because of physical loss or damage from coronavirus and COVID-19.

100. In Maryland, on March 5, 2020, Governor Larry Hogan declared that a State of Emergency and that Catastrophic Health Emergency existed throughout the entire State.

101. Subsequently, Governor Hogan issued Proclamations renewing the Declared State of Emergency and Catastrophic Health Emergency on March 17, 2020, April 10, 2020, May 6,

2020, June 3, 2020, July 1, 2020, July 30, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, and November 25, 2020.

102. In each of these Proclamations beginning on May 6, 2020, Governor Hogan made an Executive Finding that: “COVID-19 is a highly infectious respiratory disease that spreads easily from person to person, physically contaminates property by attaching to surfaces for prolonged periods of time, and may result in serious illness or death.”

103. In Carroll County, Maryland, the Board of Commissioners has adopted each of Governor Hogan’s Executive Findings, Orders and Proclamations.

104. At the time when these Executive Orders and Proclamations were first issued, and for some period thereafter, there was limited testing capacity in Maryland in general and in Baltimore County in particular. Peer reviewed literature indicates that the number of actual COVID-19 cases was very likely five to ten times higher than the number of confirmed cases. The known cases, along with likely cases involving pre-symptomatic or asymptomatic carriers, resulted in significant physical loss and damage to property in and around McDaniel’s campus, by leading to the Orders and Proclamations discussed above and causing McDaniel to shut down operations and prohibit or substantially limit the use of McDaniel’s campus.

105. Each such order was the result of local COVID-19 conditions and resulting property damage, which conditions also made travel difficult and dangerous in and around McDaniel’s campus. These orders, and other similar orders, prohibited, limited, restricted, or impaired access to McDaniel’s campus, precluding McDaniel to operate as it did under pre-COVID-19 conditions.

106. Governor Hogan’s Executive Findings, Orders and Proclamations, are supported by the Science as discussed, and compelled McDaniel to suspend on-campus housing during the Spring 2020 Semester, and have caused McDaniel to close dormitories, classrooms, restaurants,

dining hall, and athletic facilities; and to cancel religious and secular events, lectures, seminars, and paid gatherings.

107. All of this has come at a corresponding tremendous financial loss to McDaniel, including the refunding and loss of room and board payments and deposits, and the inability to generate revenue from the use and rental of its campus and the insured locations thereon.

**F. Numerous Outbreaks of COVID-19 Caused Physical Loss and Damages and Forced McDaniel to Close its Campus, Cancel On-Campus In-Person Learning, Close its Dining Facilities, Dormitories, Chapel, and Other Scheduled and Insured Property.**

108. During the first half of 2020, Maryland, like every state in the Country and every Country in the world, suffered outbreaks of COVID-19. Each of these outbreaks caused an unprecedented loss of life, damage to property, business closures, financial losses, and other losses.

109. These outbreaks had a significant detrimental impact on McDaniel.

110. These outbreaks, the resulting loss of and damage to property (including insured properties and the property of others), the impaired ability to travel to and from McDaniel's Campus, and the governmental orders forced McDaniel to close its campus.

111. For the period of time continuing through the date of this Complaint, the damage to and loss of McDaniel's facilities, the various governmental orders, and related circumstances have impaired and interrupted the operations of McDaniel.

112. The cumulative impacts of these numerous outbreaks, of the loss and damage to McDaniel's insured property, and of the many governmental orders, declarations and proclamations have been massive, continue to grow and have resulted in the loss of millions of dollars to McDaniel.

**G. The Policy Covers McDaniel's Losses, Damages, and Expenses.**

113. McDaniel is insured under the Policy, and McDaniel's campus and the buildings and facilities thereon are scheduled or otherwise insured locations.

114. The Policy's property coverage grant is broad. The Policy "insures against risks of **direct physical loss of or damage** to property and/or interests described herein . . . [u]nless otherwise indicated." Signature Policy Form, at Page 10 of 37, § II (emphasis added).

115. During the Policy period, McDaniel suffered "direct physical loss of property," which triggers coverage. McDaniel suffered loss of "interests," as described herein, which separately triggers coverage. McDaniel additionally suffered "damage to property" that is also separately covered. Finally, McDaniel suffered "damage to . . . interests." All four of these categories of losses and damages that Defendant Insurer describes in its Policy form are separate and independent bases on which McDaniel is entitled to Policy coverage. Signature Policy Form, at Page 10 of 37, § II.

**i. McDaniel Has Sustained Damage To Its Property and Related Interests.**

116. The coronavirus and coronavirus-containing respiratory droplets and nuclei are physical substances that are active on physical surfaces and are also emitted into the air. Such substances are not theoretical, informational, or incorporeal, but rather have a material existence and are physically dangerous.

117. Coronavirus-containing fomites (i.e., inanimate objects), respiratory droplets, and nuclei from those individuals come into contact with, adhere to, and attach to the surfaces of the property upon which they land, including, without limitation, the real property, fixtures and personal property at McDaniel.

118. Coronavirus or coronavirus-containing fomites, respiratory droplets, and nuclei physically alter property to which they adhere, attach or come in contact including, without

limitation, by altering the surfaces of that property and/or by making physical contact with those previously safe, inert materials dangerous.

119. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, the coronavirus physically alters the air. Air inside buildings that was previously safe to breathe, but can no longer safely be breathed due to coronavirus and COVID-19, has undergone a physical alteration.

120. The presence of the coronavirus and COVID-19, including, but not limited to, coronavirus droplets or nuclei on solid surfaces and in the air at the insured property, has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. Coronavirus, a physical substance, has attached and adhered to Plaintiff's property, and by doing so, altered that property. Such presence has also directly resulted in loss of use of those facilities.

121. One or more faculty, staff and/or employees of McDaniel has tested positive for COVID-19, the disease caused by the coronavirus, on various dates and at various locations during 2020. Persons who tested positive for COVID-19 were present on McDaniel's campus and in its insured locations on various dates during 2020, and persons who came into contact with persons diagnosed with COVID-19 were present on McDaniel's campus and in its insured locations on various dates during 2020.

122. It is believed and therefore alleged that persons who were pre-symptomatic or asymptomatic and unknowingly carrying the coronavirus, including, but not limited to, faculty, staff and/or employees of McDaniel, and campus visitors, were on McDaniel's campus and in its insured locations on various dates during 2020.

123. Coronavirus droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including, but not limited to, furniture, doors, floors, walls, railings, elevator buttons, bathroom facilities, dining and restaurant facilities, athletic and fitness facilities, equipment, and supplies, and into the air and HVAC systems of McDaniel's insured property, causing aerosolized coronavirus to enter the air in McDaniel's facilities and damage and alter physical property and ambient air at McDaniel's campus.

124. As a result, McDaniel has sustained damage to its property and related interests, including, but not limited to, substantial sums spent to repair physical damage to its property, such as for cleaning and disinfecting premises, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of the coronavirus on its property. Such repair measures have been ongoing because of the continuous and repeated recurrence of the coronavirus while the pandemic persists.

**ii. McDaniel Has Suffered Loss of Its Property and Related Interests.**

125. In addition to damage, McDaniel has also suffered physical loss of its property. The on-site coronavirus, fomites, and respiratory droplets or nuclei containing the coronavirus have attached to and deprived McDaniel of the physical use of its insured property and locations by making them unsafe and unusable and thereby lost.

126. These physical losses of McDaniel's insured property and related interests include, without limitation, the rendering of its insured property from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of the coronavirus, fomites, and respiratory droplets or nuclei directly upon the property.

127. These physical losses to McDaniel's insured properties include, without limitation, the physical loss of the ability to use Plaintiff's properties for their primary functions



based on McDaniel's own independent judgment, and separately and independently, in certain circumstances, due to governmental action.

128. The losses and damages to McDaniel's properties also include, among many other things, the cancellations, postponements and suspensions described herein.

129. McDaniel gave timely notice of its claim to the Insurer and has satisfied, is excused from performing, or the Insurer has waived or is estopped from insistence upon performance of, all conditions of the Policy, including, but not limited to, the submission of a Proof of Loss.

**iii. McDaniel Has Suffered a Time Element / Business Interruption Loss.**

130. The Policy "covers against loss resulting from necessary interruption of business caused by direct physical loss of . . . covered property . . . occurring during the term of this policy at covered Locations occupied by the Insured." Signature Policy Form, at Page 11 of 37, § II.B.1.a. (emphasis in original).<sup>15</sup>

131. McDaniel's losses arising from COVID-19 related physical loss of and damage to covered property, and the inability to physically use its facilities, are losses covered by the Time Element coverages in the Policy.

132. McDaniel's Time Element loss includes its lost "Gross Earnings" (i.e., its gross earnings less certain variable expenses plus all other earnings) during the Policy Period and the Extended Period of Indemnity (365 Days), and are capped at One Billion Dollars (\$1,000,000,000).

133. As demonstrated, McDaniel has suffered direct physical loss of and damage to the insured property of the type insured under the Policy. As a direct result of the direct physical

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<sup>15</sup> The Policy defines "location" as "[t]he area within legal boundaries of the premises, or of the portion of the premises, in which the Insured has an interest." Signature Policy Form, at Page 36 of 37.

loss of and damage to its insured property, McDaniel sustained losses of gross earnings, additional operational expenses, loss of other operational earnings, losses of gross profits, extra expenses, and increases in the cost of doing business, claim preparation costs, leasehold and rental losses, and other covered losses.

134. McDaniel has made good faith efforts to mitigate its losses where possible, but has nonetheless sustained significant Time Element loss (business interruption), and McDaniel's Time Element losses are ongoing and continuing.

**iv. McDaniel Has Incurred Covered Extra Expenses And Other Loss, Damage and Expense In Attempting To Continue Its Operations And Mitigate Its Losses.**

135. The Policy provides that in the event of “a direct physical loss of or damage to covered property,” the Insurer “will pay for the reasonable and necessary extra expense . . . incurred by the Insured in order to continue as nearly as practicable the *normal* operation of the Insured's business.” Signature Policy Form, at Page 15 of 37, § II.C.15 (emphasis in original).

136. McDaniel has incurred reasonable and necessary extra expenses to temporarily continue as nearly normal as practicable the conduct of its business, including, but not limited to, extra expenses for transitioning to on-line learning and the technology required to do so, training of students, staff and professors, COVID-19 screening and testing, alternative housing, wastewater testing, cleaning supplies, physical and structural modifications, extra security, and other operational changes.<sup>16</sup>

137. McDaniel's losses, damages and expenses incurred in decontaminating the property, in expediting its return (or attempts to return) to normal operations and reducing loss,

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<sup>16</sup> The Policy defines “normal” as “[t]he condition that would have existed had no loss occurred.”

as well as its claim adjustment expenses and professional fees are also covered under this Policy, for the reasons described above.

**v. McDaniel Has Sustained an Insured Loss Covered by the Civil Authority and Ingress-Egress Policy Coverage.**

138. The Policy provides Civil Authority and Ingress-Egress Coverage for actual losses sustained, subject to a “Gross Earnings” cap when access to or use of McDaniel’s insured property is “prohibited by order of civil authority” if such order is given as a result of “physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of” McDaniel’s insured location, or when, as a result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from McDaniel’s insured location is thereby physically prevented.

139. McDaniel has sustained an actual loss because one or more governmental orders and/or proclamations have limited, restricted or prohibited partial or total access to its insured locations, or impaired access to, such locations and such orders and proclamations limiting, restricting, prohibiting, or impairing access to McDaniel’s Campus and the use of its facilities have been issued as a direct result of, among other things, physical loss or damage caused by the coronavirus and COVID-19 either at insured locations or within the vicinity thereof.

**vi. McDaniel Has Sustained an Insured Loss Covered by the Rental Value And Leasehold Interest Policy Coverages.**

140. The Policy provides rental value coverage for losses resulting from the untenability of McDaniel’s insured premises, caused by physical loss of or damage from perils insured against, and expenses incurred for the purpose of reducing the loss. The Policy further covers the impairment of McDaniel’s leasehold interests.

141. McDaniel has sustained actual loss of rental income due to COVID-19, including, but not limited to, the fair rental value of properties they occupy, reasonably expected rental

income from unoccupied or unrented portions of properties, and rental income from the rented portions of such property under leases, contracts or agreements in force at the time of the loss. McDaniel has also sustained losses in the form of rent paid for facilities it has been unable to use because of orders, physical damage, or physical loss, as well as damage to moved property, as described more fully above.

**vii. McDaniel Has Sustained an Insured Contingent Business Interruption Loss.**

142. The Policy provides Contingent Business Interruption Coverage for losses sustained by McDaniel.

143. McDaniel has sustained actual loss and has incurred extra expense directly resulting from physical loss or damage of the type insured against at locations of direct customers (such as its students; those who would have attended events on campus, including events, lectures, concerts, ceremonies, religious services, weddings, seminars, athletic events, camps and tournaments; those who would have patronized McDaniel's dining facilities and restaurant) - including physical loss or damage due to the presence of the coronavirus, time element losses and extra expense due to orders of civil authority, and time element losses and extra expense due to prevention of ingress/egress. The affected contingent time element locations include, but are not limited to, the locations of students; those who would have attended events on campus, including events, lectures, concerts, ceremonies, religious services, weddings, seminars, athletic events, camps and tournaments; those who would have patronized McDaniel's dining facilities and restaurant and others who were ordered to shelter in place or quarantine because of the presence of the coronavirus and COVID-19 and resulting physical loss and damage and/or were prevented from traveling to and from McDaniel's campus.

144. Finally, McDaniel has also sustained covered contract penalties due to its inability to perform and satisfy certain contracts, as set forth above.

**H. The Insurer Has Denied McDaniel's Insurance Claim Based On the Unfounded Assertion that the Claim Does Not Trigger Coverage Under The Insurer's "All Risks" Policy.**

145. Although the Insurer agreed to cover the very losses, damages and expenses that McDaniel seeks to recover by this lawsuit, the Insurer denied McDaniel's claim via a letter dated July 27, 2020 (the "Denial Letter"). A copy of the Denial Letter is attached hereto as **Exhibit E** and incorporated herein as if set forth in full.

146. The bases asserted by Defendant Insurer for its denial are incorrect and incomplete, and demonstrate the Insurer's lack of good faith in handling McDaniel's insurance claim.

**i. Defendant Insurer Incorrectly Claims To Have Denied McDaniel's Insurance Claim Based On a "Complete Factual Investigation."**

147. The Denial Letter is written on CNA letterhead, by Mr. Thomas Raftery, Claim Specialist, who lists a CNA-branded email address "[Thomas.Raftery@cna.com](mailto:Thomas.Raftery@cna.com)." Ex. B, at 1. The Insurer chose to list Continental's return address on the letter, however, and listed Continental as the underwriting company.

148. By the Denial Letter, the Insurer purported to have evaluated McDaniel's claim under the Policy "following the completion of [Defendant Insurer's] factual investigation." *Id.* at 3. Based on this purportedly complete factual investigation, Defendant Insurer emphasized that "[w]e value [McDaniel] as a policyholder, and we want [McDaniel] to know that we gave thoughtful consideration to the facts of the claim presented and the terms and conditions of the Policy." *Id.* at 7. The contents of the Denial Letter, however, belie this assertion.

**ii. The Insurer Denies the Claim Based On the Assertion that McDaniel's Insurance Claim Does Not Trigger Any Policy Coverage.**

149. In its Denial Letter, the Insurer first asserts that McDaniel's claim does not trigger the broad property coverage grant because McDaniel has allegedly not reported that McDaniel sustained direct physical loss or damage to the properties for which McDaniel has submitted claims. *Id.* at 3.

150. The Insurer similarly contends that the Time Element coverage has not been triggered by McDaniel's claim because, according to Defendant Insurer, "[McDaniel's] operations were not suspended because of any direct physical loss of or damage to property" and "[Defendant Insurer's] investigation has revealed no evidence of such physical loss or damage." *Id.* at 4.

151. Defendant Insurer similarly asserts that the Policy's "Decontamination" coverage, "Denial Of Access By Civil Authority And Ingress-Egress" coverage, and "Fungi, Wet Rot, Dry Rot and Microbes" coverage were also never triggered by McDaniel's claim because Defendant Insurer's investigation "has determined that there was no covered physical loss, damage or destruction of property at [McDaniel's] Location from a peril insured against that resulted in a loss or damage by COVID-19." *Id.* at 6.

152. None of these asserted bases for denial were raised in good faith because, among other things, Defendant Insurer did not conduct a legitimate investigation. Defendant Insurer never visited the campus, nor did Defendant Insurer inspect any single physical piece of evidence, so Defendant Insurer does not know whether any piece of McDaniel's property was physically damaged.

153. In its denial, Defendant Insurer claimed that it had reviewed Governor Hogan's Executive Findings, Orders and Proclamations and determined that "the governmental

authorities' various notices and orders were not issued as a direct result of physical loss of or damage to property at or in the immediate vicinity of [McDaniel's] Location and caused by a peril insured against." *Id.* at 5. It is alleged that Defendant Insurer did not review the relevant executive findings, orders and proclamations to determine whether "the governmental authorities' various notices and orders were not issued as a direct result of physical loss of or damage to property," but rather based its finding on a predetermined corporate policy to deny all COVID-19 property and business interruption claims.

154. Indeed, had the Insurer reviewed Governor Hogan's Executive Orders and Proclamations, it would have easily discovered that Governor Hogan issued Proclamations renewing the Declared State of Emergency and Catastrophic Health Emergency in Maryland on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, July 31, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, and November 25, 2020.

155. In each of the Governor's Proclamations on and after May 6, 2020, after the Governor's staff was more familiar with COVID-19 and its characteristics, Governor Hogan made an Executive Finding that: "COVID-19 is a highly infectious respiratory disease that spreads easily from person to person, physically contaminates property by attaching to surfaces for prolonged periods of time, and may result in serious illness or death."

156. Moreover, had Defendant Insurer made a proper and thorough investigation of McDaniel's property and business interruption claims, it would have easily discovered that the Board of Carroll County Commissioners adopted each of Governor Hogan's Executive Findings, Orders and Proclamations.

157. Based on its incomplete investigation, Defendant Insurer denied coverage based on an incomplete list of five potential coverages. As noted herein, far more than five coverages

are triggered by McDaniel's claims of direct physical loss of its property, by damage to McDaniel's property, and as otherwise set forth herein.

**iii. The Insurer Does Not Rely On Any Coverage Exclusions Because the Insurer Incorrectly Claims No Coverage Was Triggered In the First Instance.**

158. The Insurer takes the position that none of the five coverages listed in the Denial Letter were triggered, so the Insurer had no need to assert coverage exclusions. *Id.* at 6. The Insurer raises some exclusions that hypothetically could have applied if coverage had been triggered. *Id.* (noting that "it appears that one or more of these exclusions would bar coverage for property damage and/or loss of business income caused by COVID-19, even if the other requirements to trigger coverage under the Policy were met").

159. None of these exclusions were raised (but not asserted) in good faith in any event.

160. The Policy's "Contaminants or Pollutants" exclusion is inapplicable by its plain language. Signature Policy Form, at Page 23 of 37, § II.D.1.g. This exclusion extinguishes coverage only for "release, discharge or dispersal of toxic or hazardous substances, Contaminants or Pollutants . . . caused by, contributed to or aggravated by any physical loss or damage covered by this policy." The spread of a virus is not the "release, discharge or dispersal" of the items identified in this exclusion. Secondly, and separately, McDaniel's losses, damages and expenses were not "caused by, contributed to or aggravated by" the physical loss or damage at McDaniel's property. Finally, the COVID-19 virus does not meet the Policy definition of a "Contaminant" or "Pollutant." Signature Policy Form, at Page 34 of 37.

161. The Policy "microbes" exclusion raised by the Insurer does not extinguish coverage for McDaniel's claim because the spread of COVID-19 was not "caused by, contributed to or aggravated by any physical damage insured by this [P]olicy." Signature Policy



Form, at Page 23 of 37, § II.D.1.h. In addition, the COVID-19 virus is not a “Microbe” as defined in the Policy. *Id.* at 36.

162. The “contamination” exclusion does not extinguish coverage for multiple reasons. The “contamination” exclusion is inapplicable here because, by its plain terms, the exclusion does not apply to “loss or damage caused directly by physical damage not otherwise excluded.” Signature Policy Form, at Page 23 of 37, § II.D.2.i. This exclusion would be inapplicable here in any event, because the term “contamination,” when read in the context of the exclusion provision, as used in the exclusion, does not refer to the spread of COVID-19. In addition, the Insurer’s reading of the “contamination” exclusion is impermissible because it would swallow the Policy’s “decontamination” coverage.

163. The contingent Policy exclusion for “[d]elay, loss of market, loss of use or any other consequential or remote loss” is inapplicable on its face, because “coverage is [otherwise] provided” by the Policy. Signature Policy Form, at Page 24 of 37, § II.D.2.h.

164. Finally, the exclusion limiting recovery for Time Element loss “during a period during [*sic*] which business would not or could not have been conducted for any reason other than physical damage of the type insured against herein” is inapplicable on its face because McDaniel could not conduct its business due to physical damage of the type insured against under this Policy. Signature Policy Form, at Page 23 of 37, § II.D.3.a. The exclusion is also unenforceable because exclusions for unstated “other” reasons are unenforceable, as a matter of law, and Defendant Insurer has not identified any such “other” reason in any event.

165. All of the above exclusions would also be unenforceable if the Insurer had asserted them (it did not) for multiple additional reasons, including but not limited to the fact that the language of each exclusion is impermissibly vague and ambiguous, inconsistent with the Insurer’s proposed but not asserted application of the above exclusions, and because the

language of these exclusions, to the extent it can be understood, is inconsistent with other provisions of the Policy, rendering these exclusions impermissibly ambiguous.

**I. McDaniel Engaged RCM&D as its Trusted Insurance Advisor to Assess its Risks and Procure Insurance to Cover those Risks.**

166. At all times relevant hereto, McDaniel engaged RCM&D to serve as its advisor and producer in connection with its insurance needs.

167. RCM&D has continuously served as McDaniel's trusted insurance advisor and insurance producer.

168. For more than a decade, RCM&D has regularly analyzed McDaniel's risks and exposures, alerted McDaniel of those risks, advised McDaniel on how to protect itself from such risks through available insurance coverage, and procured insurance for McDaniel to cover the RCM&D-identified risks and exposures.

169. RCM&D represented to McDaniel that it would identify and address client specific risks and exposures, and contracted with McDaniel to provide this service.

170. RCM&D represented to McDaniel that it would review McDaniel's Business Interruption and Extra Expense exposure, and contracted with McDaniel to provide this service.

171. In doing so, RCM&D held itself out as a higher education insurance specialist.

172. RCM&D represented to McDaniel that it would use its professional knowledge of the insurance marketplace, as well as the relationships it had established with insurance carriers and intermediaries, to provide McDaniel with a comprehensive insurance program, and contracted with McDaniel to provide this service.

173. RCM&D represented to McDaniel that it would provide a variety of related consulting services to help McDaniel manage and improve McDaniel's insurance program, and contracted with McDaniel to provide these services.

174. RCM&D represented to McDaniel that it would advise McDaniel of trends in the marketplace that were pertinent to McDaniel's insurance program and make McDaniel aware of insurance coverage available to McDaniel that McDaniel had not purchased and obtain estimated pricing for such insurance coverage, and contracted with McDaniel to provide these services.

175. RCM&D represented to McDaniel that it would offer recommendations to improve McDaniel's insurance program, and contracted with McDaniel to provide this service.

176. RCM&D issued a coverage binder to McDaniel confirming coverage under the Policy.

177. RCM&D issued certificates of insurance to McDaniel evidencing McDaniel's status as an insured entitled to coverage under the Policy.

178. RCM&D obtained the Policy for McDaniel and earned a substantial commission on the premiums paid for the Policy.

179. At the time the Policy was procured, RCM&D knew or, as a skilled and seasoned insurance professional that held itself out as a specialist in higher education risk management and insurance, should have known that exposure to losses from viral diseases (such as outbreaks on campuses across the county of viral meningitis, SARS, and flus) was a significant risk McDaniel faced.

180. At no time did RCM&D bring this risk to McDaniel's attention, nor did RCM&D advise McDaniel that it was uninsured for this risk.

181. Thus, to the extent the Insurer is found to be correct in its position with respect to the Policy, which is denied and disputed, then RCM&D failed McDaniel in its essential task, by leaving McDaniel uninsured for the catastrophic loss it now faces.

**COUNT I**  
**(Breach of Contract – Continental and CNA)**

182. McDaniel repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, inclusive, as though set forth fully herein.

183. The Policy is a valid and enforceable contract between McDaniel and the Insurer.

184. McDaniel has satisfied all conditions of the Policy, including, but not limited to, provisions of timely notice of claim, and submission of a Proof of Loss, or McDaniel is excused from performing, or the Insurer has waived or is estopped from insistence upon performance of such conditions.

185. The Insurer agreed in its insurance contract to provide insurance coverage for all risks of direct physical loss of and damage to property and interests, not otherwise excluded.

186. The COVID-19 pandemic has caused and continues to cause direct physical loss of McDaniel's property and interests, and damage to McDaniel's property and interests, as well as to properties of others.

187. McDaniel has suffered an actual loss, damages, and expenses due to direct physical loss of property and related interests, and due to damage to property and related interests, as well as due to damage to property and related interests of others caused by the COVID-19 pandemic.

188. No Policy exclusion applies to preclude or limit coverage for these losses, damages or expenses, and Defendant Insurer has not relied on any exclusions in denying coverage.

189. As is set forth more fully above, the Insurer is contractually obligated under the Policy to indemnify McDaniel for the full amount of its losses, damages and expenses resulting from (i) direct physical loss of property and interests arising from and caused by the coronavirus

and COVID-19, (ii) damage to property and interests arising from and caused by the coronavirus and COVID-19, (iii) time element losses, (iv) extra expenses, (v) contractual penalties, (vi) decontamination expenses, (vii) expediting expenses, (viii) ordinances, laws and civil authority orders, (ix) obstruction of ingress and egress, (x) expenses incurred to reduce losses, (xi) loss of rental value, (xii) losses arising from leasehold interests, (xiii) claim adjustment and preparation expenses, (xiv) professional fees, (xv) property damage and expenses from moving property to protect from loss, and otherwise incurred, subject only to the applicable deductibles and limits of liability in the Policy.

190. Nonetheless, the Insurer has refused to pay for McDaniel's loss and expenses in breach of the Policy.

191. As a direct and proximate result of its breach of contract, the Insurer has deprived McDaniel of the benefits of the insurance coverage for which substantial premiums were paid, which entitles Plaintiff to money damages, including interest according to law.

192. McDaniel's losses as a result of the Insurer's breach of contract are continuing.

WHEREFORE, Plaintiff prays for judgment against Defendants Continental Casualty Company and CNA Financial Corporation, individually and jointly and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment and post-judgment interest thereon, as well as the costs incurred in presenting and prosecuting the claims asserted herein, including the reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court deems just and proper.

**COUNT II**  
**(Lack of Good Faith – Continental and CNA)**

193. McDaniel repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, inclusive, as though set forth fully herein.

194. This claim is filed pursuant to § 27-1001 of the Insurance Article of the Maryland Code and § 3-1701 of the Courts and Judicial Proceedings Article of the Maryland Code.

195. Continental is an “insurer” as defined in § 1-101 of the Insurance Article of the Maryland Code.

196. CNA is an “insurer” as defined in § 1-101 of the Insurance Article of the Maryland Code.

197. The Policy is a policy for “property insurance” as defined in § 1-101 of the Insurance Article of the Maryland Code.

198. The Policy is a commercial insurance policy with liability limits of One Billion Dollars (\$1,000,000,000.00) and thereby meets the requirements of § 3-1701(c)(2)(iii) of the Courts and Judicial Proceedings Article of the Maryland Code.

199. At all times relevant hereto, Defendant Insurer (Continental and CNA) owed McDaniel a duty to act in good faith in its investigation, analysis, and adjustment of McDaniel’s claim for insurance coverage under the terms of the Policy, meaning “an informed judgment based on honesty and diligence supported by evidence that the Insurer knew or should have known at the time the insurer made a decision on McDaniel’s claim.

200. This statutory duty on the part of Defendant Insurer is imposed by statute and is independent of duties arising out of the insurance contract to exercise such reasonable skill and ordinary diligence as may fairly be expected from an insurer.

201. Defendant Insurer breached this duty of good faith to McDaniel because Defendant Insurer failed to make use of an informed judgment based on honesty and diligence supported by evidence that Defendant Insurer knew or should have known at the time Defendant Insurer made the decision to deny McDaniel’s claim.

202. Defendant Insurer breached this duty of good faith to McDaniel because it misrepresented pertinent facts related to McDaniel's claim that Defendant Insurer knew or should have known by an exercise of honesty and diligence.

203. Defendant Insurer breached this duty of good faith to McDaniel because Defendant Insurer misrepresented pertinent facts related to the Policy that Defendant Insurer knew or should have known by an exercise of honesty and diligence.

204. Defendant Insurer breached this duty of good faith to McDaniel because Defendant Insurer misrepresented pertinent facts related to the extent of coverage provided by the Policy that Defendant Insurer knew or should have known by an exercise of honesty and diligence.

205. Defendant Insurer breached this duty of good faith to McDaniel because Defendant Insurer failed to make an informed judgment based on honesty and diligence supported by evidence that Defendant Insurer knew or should have known at the time Defendant Insurer denied McDaniel's claim.

206. Defendant Insurer's conduct has caused and continues to cause damage to McDaniel.

207. As a direct and proximate result of Defendant Insurer's breaches of its duties of good faith, the Insurer has deprived McDaniel of the benefits of the insurance coverage for which substantial premiums were paid, and the Insurer has damaged McDaniel.

208. The Policy is for "property insurance" and "commercial insurance," Continental and CNA are each an "insurer," and this action seeks to recover all allowed expenses, litigation costs, and interest as permitted by § 27-1001 of the Insurance Article of the Maryland Code and § 3-1701 of the Courts and Judicial Proceedings Article of the Maryland Code.

WHEREFORE, Plaintiff prays for judgment against Defendants Continental Casualty Company and CNA Financial Corporation, individually and jointly and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment and post-judgment interest thereon, as well as the costs incurred in presenting and prosecuting the claims asserted herein, including the reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court deems just and proper.

**COUNT III**  
**(Negligence – RCM&D)**

209. McDaniel repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, inclusive, as though set forth fully herein.

210. McDaniel engaged RCM&D to serve as its producer in connection with its insurance needs in direct reliance on RCM&D's self-promoted expertise and specialization in analyzing the risks faced by higher education institutions such as McDaniel and in procuring insurance to protect such institutions from those risks.

211. For more than a decade, RCM&D has served as McDaniel's insurance producer and trusted advisor, and RCM&D has developed a special relationship with McDaniel based upon the following factors: (a) RCM&D's sales of insurance products implicate public interest concerns that subject RCM&D to more stringent standards of conduct than those normally arising out of contract. Insurance policies do not just protect policyholders from financial catastrophe, policies protect numerous third parties and the societal network who are also materially impacted by the financial devastation that insurance policies are intended to protect against; (b) RCM&D cultivated a relationship of trust and confidence in McDaniel through their self-proclaimed expertise in matters of higher education insurance; (c) RCM&D held itself out as a highly-skilled higher education insurance expert, possessing the special knowledge and



expertise needed to understand and analyze the risks institutions such as McDaniel face, and to interpret and understand the complex and sophisticated insurance coverages available to protect against those risks; (d) RCM&D encouraged McDaniel to rely on its proffered special knowledge and expertise in procuring the Policy for over a decade, and McDaniel did so; (e) RCM&D counseled McDaniel concerning the complex and specialized insurance it was purchasing; and (f) RCM&D knew or should have known that McDaniel did not share RCM&D's expertise with the technical language of the Policy, and relied upon RCM&D for assistance.

212. RCM&D owed McDaniel a duty to (and specifically agreed to) analyze McDaniel's risks and exposures, alert McDaniel of those risks, advise McDaniel on how to protect itself from such risks through available insurance coverage, and procure insurance for McDaniel to cover its risks and exposures.

213. At the time the Policy was procured, RCM&D knew or, as a skilled and seasoned insurance professional that held itself out as a specialist in higher education risk management and insurance, should have known, that exposure to losses from viral diseases was a significant risk McDaniel faced.

214. However, at no time did RCM&D bring this significant risk to McDaniel's attention, nor did RCM&D advise McDaniel that it was uninsured for this risk.

215. To the extent the Insurer is found to be correct in its position with respect to the Policy, which is denied and disputed, then RCM&D was negligent and breached the duty it owed to McDaniel, and failed McDaniel in its essential task by leaving McDaniel uninsured for the catastrophic losses, damages and expenses it has incurred.

216. Under such circumstances, as a direct and proximate result of RCM&D's negligence, McDaniel has been damaged.

217. McDaniel neither caused nor contributed to its injuries, losses, and damages.

WHEREFORE, Plaintiff prays for judgment against Defendant Riggs, Counselman, Michaels & Downes, Inc. in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment and post-judgment interest thereon, as well as the costs incurred in presenting and prosecuting the claims asserted herein, including the reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court deems just and proper.

**COUNT IV**  
**(Breach of Contract – RCM&D)**

218. McDaniel repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, inclusive, as though set forth fully herein.

219. McDaniel engaged RCM&D to serve as its producer in connection with its insurance needs in direct reliance on RCM&D's self-promoted expertise and specialization in analyzing the risks higher education institutions such as McDaniel face and in procuring insurance to protect such institutions from those risks.

220. RCM&D contracted with McDaniel to analyze McDaniel's risks and exposures, alert McDaniel of those risks, advise McDaniel on how to protect itself from such risks through available insurance coverage, and procure insurance for McDaniel to cover its risks and exposures, among other services.

221. RCM&D contracted with McDaniel to identify and address McDaniel's client specific risks and exposures.

222. RCM&D contracted with to McDaniel to review McDaniel's Business Interruption and Extra Expense exposure and advise McDaniel concerning this insurance coverage.

223. RCM&D held itself out to McDaniel as a higher education insurance specialist and contracted with McDaniel to use its professional knowledge of the insurance marketplace, as well as the relationships it has established with insurance carriers and intermediaries, to provide McDaniel with a comprehensive program, covering McDaniel's risks.

224. RCM&D contracted with McDaniel to provide a variety of related consulting services to help McDaniel manage and improve McDaniel's insurance program.

225. RCM&D contracted with McDaniel to advise McDaniel of trends in the marketplace that were pertinent to McDaniel's program and make McDaniel aware of insurance coverage available to McDaniel that McDaniel had not purchased and obtain estimated pricing for such insurance products, and to offer recommendations to improve McDaniel's insurance program.

226. At the time that RCM&D procured the Policy for McDaniel, and collected a substantial commission for having identified and procured this Policy, RCM&D knew or, as a skilled and seasoned insurance professional that held itself out as a specialist in higher education risk management and insurance, should have known that exposure to losses from viral diseases (such as outbreaks on campuses across the county of viral meningitis, SARS, and flus) was a significant risk McDaniel faced.

227. At no time did RCM&D bring this risk to McDaniel's attention, nor did RCM&D advise McDaniel that it was uninsured for this risk.

228. To the extent the Insurer is found to be correct in its position with respect to the Policy, which is denied and disputed, then RCM&D breached its contractual obligations to McDaniel and failed McDaniel in its essential task, by leaving McDaniel uninsured for the catastrophic loss it now faces.

229. Under such circumstances, as a direct and proximate result of RCM&D's breaches of its contract with McDaniel, McDaniel has been damaged.

230. McDaniel neither caused nor contributed to its injuries, losses, and damages.

WHEREFORE, Plaintiff prays for judgment against Defendant Riggs, Counselman, Michaels & Downes, Inc. in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment and post-judgment interest thereon, as well as the costs incurred in presenting and prosecuting the claims asserted herein, including the reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court deems just and proper.

**COUNT V**  
**(Breach of Fiduciary Duty – RCM&D)**

231. McDaniel repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, inclusive, as though set forth fully herein.

232. McDaniel engaged RCM&D to serve as its producer in connection with its insurance needs in direct reliance on RCM&D's self-promoted expertise and specialization in analyzing the risks faced by higher education institutions such as McDaniel and in procuring insurance to protect such institutions from those risks.

233. For more than a decade, RCM&D has served as McDaniel's insurance producer and trusted advisor, and RCM&D has developed a special relationship with McDaniel based upon the following factors: (a) RCM&D's sales of insurance products implicate public interest concerns that subject RCM&D to more stringent standards of conduct than those normally arising out of contract. Insurance policies do not just protect policyholders from financial catastrophe, policies protect numerous third parties and the societal network who are also materially impacted by the financial devastation that insurance policies are intended to protect against; (b) RCM&D cultivated a relationship of trust and confidence in McDaniel through their

self-proclaimed expertise in matters of higher education insurance; (c) RCM&D held itself out as a highly-skilled higher education insurance expert, possessing the special knowledge and expertise needed to understand and analyze the risks institutions such as McDaniel face, and to interpret and understand the complex and sophisticated insurance coverages available to protect against those risks; (d) RCM&D encouraged McDaniel to rely on its proffered special knowledge and expertise in procuring the Policy for over a decade, and McDaniel did so; (e) RCM&D counseled McDaniel concerning the complex and specialized insurance it was purchasing; and (f) RCM&D knew or should have known that McDaniel did not share RCM&D's expertise with the technical language of the Policy, and relied upon RCM&D for assistance.

234. RCM&D owed McDaniel a fiduciary duty to (and specifically agreed to) analyze McDaniel's risks and exposures, alert McDaniel of those risks, advise McDaniel on how to protect itself from such risks through available insurance coverage, and procure insurance for McDaniel to cover its risks and exposures.

235. At the time that RCM&D procured the Policy for McDaniel and collected a substantial commission for having identified and procured this Policy, RCM&D knew or, as a skilled and seasoned insurance professional that held itself out as a specialist in higher education risk management and insurance, should have known, that exposure to losses from viral diseases was a significant risk McDaniel faced.

236. However, at no time did RCM&D bring this significant risk to McDaniel's attention, nor did RCM&D advise McDaniel that it was uninsured for this risk.

237. To the extent the Insurer is found to be correct in its position with respect to the Policy, which is denied and disputed, then RCM&D was negligent and breached the fiduciary

duty it owed to McDaniel, and failed McDaniel in its essential task by leaving McDaniel uninsured for the catastrophic loss it now faces.

238. Under such circumstances, as a direct and proximate result of RCM&D's breach of its fiduciary duty to McDaniel, McDaniel has been damaged.

239. McDaniel neither caused nor contributed to its injuries, losses, and damages.

WHEREFORE, Plaintiff prays for judgment against Defendant Riggs, Counselman, Michaels & Downes, Inc. in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment and post-judgment interest thereon, as well as the costs incurred in presenting and prosecuting the claims asserted herein, including the reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: December 30, 2020

Respectfully submitted,

/s/ Albert J. Mezzanotte, Jr.

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