23CV208724

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

OBERLIN COLLEGE
173 W Lorain St.
Oberlin, OH 44074
and
MEREDITH RAIMONDO
3157 Galangale Way
Doraville, GA 30340

Plaintiffs,

v.

LEXINGTON INSURANCE COMPANY
175 Water Street
New York, NY 10038

and

UNITED EDUCATORS INSURANCE
7700 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

and

MT. HAWLEY INSURANCE COMPANY
9025 N. Lindbergh Dr.
Peoria, IL 61615

and

STARSTONE SPECIALTY INSURANCE COMPANY f/k/a TORUS SPECIALITY INSURANCE COMPANY
201 E. Fifth Street, Suite 1200
Cincinnati, OH 45202

Defendants.

JUDGE D. CHRIS COOK

CASE NO. _____

JUDGE _____

COMPLAINT

TYPE: DECLARATORY JUDGMENT / BREACH OF CONTRACT / EQUITABLE SUBROGATION / BAD FAITH AND BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING / PROMISSORY ESTOPPEL

JURY DEMAND ENDORSED HEREON

Plaintiffs Oberlin College ("Oberlin") and Meredith Raimondo ("Dr. Raimondo") (collectively, "Plaintiffs" or the "Insureds"), by and through their undersigned counsel, hereby submit their Complaint against Defendants Lexington Insurance Company ("Lexington"), United Educators Insurance ("United Educators" or "UE"), Mt. Hawley Insurance Company ("Mt. Hawley"), and StarStone Specialty Insurance Company f/k/a Torus Specialty Insurance Company ("StarStone") (collectively, "Defendants" or the "Insurers"), and in support thereof, allege as follows:

PRELIMINARY STATEMENT

1. This insurance coverage action arises from the wrongful refusals by Oberlin's insurers to honor promises they made in their respective policies to protect the interests of Oberlin and Dr. Raimondo in underlying litigation in this Court captioned *Gibson Bros., Inc. et al. v. Oberlin College, et al.*, 17-cv-193761 (Lorain County, OH) ("*Gibson*"). After years of hard-fought litigation in this Court and multiple unsuccessful appeals, Oberlin ultimately paid $36,590,572.48 in damages and post-judgment interest to the underlying plaintiffs in the *Gibson* litigation last year, not including a separate $1 million contribution from Oberlin's primary commercial general liability ("CGL") insurer, the College Risk Retention Group ("CRRG"). Oberlin also incurred millions of dollars in defense costs pursuing its appeals.

2. At the time of the events that ultimately resulted in the *Gibson* litigation, Oberlin maintained insurance policies issued by the Defendant Insurers that collectively provided at least $75 million in total insurance coverage, which is more than enough to pay the underlying judgment and substantial unpaid defense costs that Oberlin incurred. Specifically, Oberlin purchased $25 million in Commercial Umbrella Liability coverage from Lexington pursuant to a policy immediately excess of the CRRG policy that paid its per-occurrence $1 million policy limit toward

the damages awarded against Oberlin. Above that policy, Oberlin also purchased $10 million in excess CGL insurance coverage from Defendant Mt. Hawley, $5 million in excess CGL insurance coverage from Defendant StarStone, and $10 million in excess CGL insurance coverage from Defendant United Educators. In addition, Oberlin purchased another $25 million in overlapping Educators Legal Liability coverage from United Educators. These policies were intended to provide seamless coverage for lawsuits like the *Gibson* litigation.

3. Unfortunately, the Defendant Insurers have failed to pay a penny toward the $36,590,572.48 sum that Oberlin paid the *Gibson* plaintiffs. They also have failed to pay for the full cost of Oberlin's appeals, which were pursued at the behest of the Insurers in order to reduce their collective exposure.

4. Plaintiffs' unreimbursed losses could have been avoided if Defendants Lexington and United Educators had properly defended their Insureds' interests in the *Gibson* litigation and resolved the *Gibson* litigation within the limits of their policies when they had the opportunity to do so before trial. Indeed, before the *Gibson* jury rendered its verdict, Defendants Lexington and United Educators both acknowledged that some, if not all, of the damages in a hypothetical jury verdict would be covered under their policies. In fact, both Lexington and United Educators sold policies that contain varying amounts of coverage for punitive damages, which form a substantial portion of the judgment that was entered against their Insureds.

5. Yet instead of paying this coverage as required under their policies, Lexington and United Educators each engaged in a systematic, multi-year effort to avoid their coverage obligations by attempting to shift responsibility for the *Gibson* lawsuit to each other, to CRRG, or to Oberlin, instead of protecting their Insureds' interests. In doing so, Lexington and United

Educators placed their own financial interests in resolving priority of payments disputes between themselves ahead of their Insureds' interests in securing the benefits of the insurance policies.

6. To make matters worse, Lexington and United Educators observed mock jury exercises before the *Gibson* trial and were therefore fully aware of the possibility for a substantial plaintiffs' verdict. The record also shows that Lexington and United Educators both had numerous pre-trial opportunities to resolve the underlying litigation for a small fraction of the eventual verdict. For instance, on the eve of trial, it became clear that the case likely could be settled for under $10 million. Accordingly, Oberlin demanded that Lexington and United Educators fund a settlement that would have been well within the combined $50 million limits of their policies to avoid the risk of a substantial jury verdict.

7. Oberlin's view that the underlying case was covered under its policies and should be settled before trial was shared by its excess insurers. On the eve of trial, Oberlin's first excess insurer Mt. Hawley sent Lexington and United Educators a letter demanding that they "negotiate in good faith and settle this matter on [Oberlin's] behalf[.]" As Mt. Hawley presciently warned Lexington and United Educators, "[a]llowing this matter to proceed to trial could needlessly expose the Mt. Hawley excess layer of coverage," which has now happened because Lexington and United Educators failed to settle the case. Oberlin's second excess insurer, StarStone, sent a similar demand letter to Lexington, United Educators, and Mt. Hawley, noting "the potential exposure of taking this case to trial" and "demand[ing] that this matter be settled with the plaintiffs within the underlying limits afforded by the underlying policies."

8. Unfortunately, none of the Insurers were willing to contribute sufficient sums to realize the available settlement opportunity that was well within the limits of the Lexington and United Educators policies. In fact, Lexington, whose umbrella policy provides the broadest

coverage, sought to condition its funding of any pre-trial settlement amount on an agreement by United Educators to litigate priority of payment and other coverage issues in a separate proceeding in federal court in Ohio, even though Lexington's and United Educators' sole obligations were to their Insureds, Oberlin and Dr. Raimondo.

9. Ultimately, the combined actions of Lexington and United Educators caused Oberlin to pay unreimbursed damages that are many times greater than the lost settlement opportunity that was on the table before trial.

10. After refusing to settle to protect their Insureds, Lexington and United Educators both failed to pay the full costs of Oberlin's unsuccessful appeals, despite Lexington's promise in its Policy to assume a duty to defend after the exhaustion of the underlying CRRG policy, and United Educators' promises after the verdict that it would protect its Insureds' interests and pay for the costs of appeal.

11. Without the benefit of the defense that Lexington was contractually obligated to provide, and in reliance on United Educators' empty promises to fund the appeal, Oberlin assented to appellate counsel recommended by United Educators. United Educators began to pay some of appellate counsel's initial invoices. But then, in a complete about-face, United Educators abandoned the Insureds' defense entirely and refused to pay for millions of dollars in appeal costs.

12. Notwithstanding its complete abandonment of its Insureds, United Educators claims in its Fall 2022 newsletter *UE Appeals* that the *Gibson* bakery case was one of several "[s]ignificant appeals undertaken by United Educators (UE) on behalf of our members[.]" But having undertaken that appeal, United Educators has left Oberlin with the bill for the lawyers United Educators wanted Oberlin to retain.

13. Moreover, even to this day, neither Lexington nor United Educators has reimbursed Oberlin for any portion of the covered damages Oberlin paid the underlying plaintiffs. Accordingly, Lexington and United Educators have both breached their policy obligations to their Insureds. In the process, Lexington and United Educators have repeatedly acted in gross disregard of the interests of Oberlin and Dr. Raimondo and wasted this state's judicial resources by allowing a case that they knew could have been resolved go to trial. The net result of their actions is that Oberlin has suffered tens of millions of dollars in damages.

14. Accordingly, Plaintiffs bring this action seeking a declaratory judgment and damages for breach of contract and violations of the duty of good faith and fair dealing, attorney's fees, and statutory interest against Lexington and United Educators. In addition, Plaintiffs seek a declaratory judgment that the policies of Defendants Mt. Hawley and StarStone are triggered and are contractually obligated to pay any portion of Oberlin's more than $38 million loss that penetrates into their respective layers of coverage. The relevant insurance contracts are not attached hereto because they are voluminous, but they are available to the parties.

THE PARTIES

15. Plaintiff Oberlin College was incorporated and chartered as a non-profit corporation by special act of the Ohio legislature in 1834. Oberlin is located at 173 W. Lorain St., Oberlin OH 44074.

16. Plaintiff Meredith Raimondo is the former Vice President and Dean of Students of Oberlin. Dr. Raimondo resides in Doraville, Georgia.

17. Defendant Lexington Insurance Company is a Delaware stock corporation with a principal place of business in Boston, Massachusetts, and is in the business of selling insurance. Lexington is an American International Group, Inc. ("AIG") member.

18. Defendant United Educators Insurance is an unincorporated reciprocal risk retention group organized that consists of members in multiple states, including Ohio. United Educators is organized under the laws of Vermont and with its principal place of business in the State of Maryland.

19. Defendant Mt. Hawley Insurance Company is an Illinois corporation with its principal place of business in Peoria, Illinois.

20. Defendant StarStone Specialty Insurance Company f/k/a Torus Specialty Insurance Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Cincinnati, Ohio.

JURISDICTION AND VENUE

21. All parties are subject to the jurisdiction of this Court, either by consent or by operation of the Long-Arm Statute of the State of Ohio. Ohio Rev. Code Ann. § 2307.382. Moreover, all losses for which Plaintiffs assert insurance coverage emanate from a judgment on verdict and defense costs arising out of proceedings in this Court.

22. Venue is proper in Lorain County, Ohio, because a substantial part of the events giving rise to the underlying *Gibson* action and this coverage lawsuit occurred in Lorain County.

FACTUAL ALLEGATIONS

I. Oberlin's Insurance Policies That Should Have Covered Oberlin's Losses in the *Gibson* Litigation

23. Plaintiffs incorporate each allegation set forth in the preceding paragraphs as if fully rewritten herein.

24. Before the events giving rise to the underlying *Gibson* action, Oberlin purchased overlapping commercial general liability and educators legal liability insurance policies to protect itself and its employees against, among other things, financial exposure resulting from lawsuits like the *Gibson* action, including defense costs, settlements, and judgments. Oberlin typically purchases these types of insurance policies on an annual basis. Some of the coverages provided by the Defendant Insurers that are relevant to this insurance coverage action are summarized below.

A. The Commercial General Liability Insurers.

25. Oberlin purchased over $50 million of CGL, umbrella liability, and excess CGL coverage for the September 1, 2016 to September 1, 2017 policy period. This coverage consisted of five policies: (1) a $1 million per-occurrence policy from CRRG (the "CRRG Policy"); (2) a $25 million umbrella policy from Lexington (the "Lexington Policy"); (3) a $10 million first excess insurance policy from Mt. Hawley (the "Mt. Hawley Excess Policy"); (4) a $5 million second excess policy from StarStone (the "StarStone Excess Policy"); and (5) a $10 million third excess policy from United Educators (the "UE Excess Policy").

i. The CRRG Policy.

26. CRRG issued a $1 million per-occurrence CGL policy (Policy No. GL090116) to Oberlin that provides coverage for "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage'" and "those sums that the insured becomes legally obligated to pay as damages because of 'personal and advertising injury'" that occurred during the September 1, 2016 to September 1, 2017 policy period (the "CRRG Policy"). CRRG Policy §§ I, Coverage A(1)(a), Coverage B(1)(a).

27. Oberlin and Dr. Raimondo are Insureds under the CRRG Policy. *See id.* at §§ II(A), (C), Declarations, Item 1, Endorsement 1.

28. "Bodily injury" under the CRRG Policy is defined as "bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time," and "also includes humiliation, mental anguish, mental injury, shock or fright resulting in or from otherwise covered bodily injury" as well as "damages for care, loss of services, or loss of support if liability for such damages is imposed by reason of the selling, serving, or furnishing of any alcoholic beverage." *Id.* at § IV(E).

29. "Personal and advertising injury" under the CRRG Policy "means injury, including consequential 'bodily injury,' arising out of one or more of the following offenses:"

> 1. False arrest, detention, or imprisonment; or
>
> 2. Any actual or alleged act, error, omission, or neglect, or breach of duty by the insured or security or other personnel arising out of the performance of acts, services, or duties in the furtherance of law enforcement or security services;
>
> 3. Malicious prosecution;
>
> 4. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
>
> 5. Oral, electronic, or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
>
> 6. Oral, electronic, or written publication of material that violates a person's right of privacy;
>
> 7. The use of another's advertising idea in your "advertisement"; or
>
> 8. Infringing upon another's copyright, trade dress, or slogan in your "advertisement."

Id. at § IV(AA).

30. The CRRG Policy also provides "duty to defend" coverage for "the insured against any 'suit' seeking" damages for "bodily injury," "property damage" or "personal and advertising injury." *Id.* at §§ I, Coverage A(1)(a), Coverage B(1)(a).

31. The Policy also states that CRRG's "right and duty to defend ends when [CRRG has] used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B, or E." *Id.*

ii. Lexington Policy.

32. Lexington issued an umbrella liability policy (Policy No. 013136482) that provides up to $25 million in coverage and extends broad insurance coverage for "sums in excess of the 'Retained Amount' that the 'Insured' becomes legally obligated to pay as damages because of 'bodily injury', 'property damage', or 'personal and advertising injury'" during the policy period—September 1, 2016 to September 1, 2017 (the "Lexington Policy"). Lexington Policy § I(A).

33. The "Retained Amount" under the Lexington Policy is defined as:

> The total applicable limits of "scheduled underlying insurance" (plus any "Self-Insured" retention applicable thereto) and any applicable "other insurance" providing coverage to the "Insured"[.]

Id. at § V(W)(1).

34. "Scheduled Underlying Insurance" under the Lexington Policy means:

> 1. The policy or policies of insurance and limits of insurance (plus any self[-]insured retention applicable thereto) shown in the Schedule of Underlying Insurance; and
>
> 2. Automatically any renewal or replacement of any policy in Paragraph 1 above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.
>
> "Scheduled underlying insurance" does not include a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

Id. at § V(X).

35. The CRRG Policy is listed as the underlying CGL policy in the Lexington Policy's Schedule of Underlying Insurance. *Id.* at Schedule of Underlying Insurance, 1 of 4.

36. An "Insured" under the Lexington Policy is "[t]he 'Named Insured,'" which includes Oberlin. *Id.* §§ V(J)(i), (O)(1), Endorsement 19.

37. An "Insured" under the Lexington Policy also includes Oberlin's "'employees' . . . within the scope of their employment by [Oberlin] or while performing duties related to the conduct of [Oberlin's] business." *Id.* at § V(J)(2)(b). Accordingly, Dr. Raimondo is an "Insured" under the Lexington Policy.

38. "Bodily Injury" under the Lexington Policy "means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time" and includes "mental anguish or other mental injury resulting from 'bodily injury.'" *Id.* at § V(C).

39. "Personal and advertising injury" under the Lexington Policy "means injury arising out of your business, including consequential 'bodily injury', arising out of one or more of the following offenses:"

> 1. False arrest, detention or imprisonment;
>
> 2. Malicious prosecution;
>
> 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
>
> 4. Oral or written publication, in any manner, of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services;
>
> 5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
>
> 6. The use of another's advertising idea in your "advertisement"; or

7. Infringement upon another's copyright, trade dress or slogan in your "advertisement".

Id. at § V(R).

40. The Lexington Policy also provides, in relevant part, that

> [Lexington] will have the right and duty to defend any "suit" against the "Insured" that seeks damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies, even if the "suit" is groundless, false or fraudulent when:
>
> 1. The total applicable limits of "scheduled underlying insurance" and any applicable "other Insurance" have been exhausted by payment of damages to which this policy applies[.]

Id. at § II(A)(1).

41. Pursuant to a separate Endorsement to the Lexington Policy purchased by Oberlin, Lexington agreed to provide broad coverage for punitive damages as follows:

> Punitive or exemplary damages that are awarded against an "Insured" in a judgment that also awards compensatory damages covered by this policy shall be covered where insurable under applicable law, subject to all other terms, conditions, definitions and exclusions of this policy (including, but not limited to Exclusion W.).
>
> The law of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall govern the interpretation of coverage for such damages under this policy, provided that such jurisdiction either:
>
> 1. Has a substantial relationship to:
>
> a. the "Insured",
> b. the suit in which the punitive or exemplary damages were awarded, or
> c. the conduct or loss for which punitive or exemplary damages were imposed or awarded, or
>
> 2. Is the State or Commonwealth in which [Lexington is] incorporated or [Lexington has its] principal place of business, or is where this insurance contract was made.

Id. at Endorsement 18.

42. Lexington is incorporated in Delaware, where punitive damages are insurable. Accordingly, Delaware law, as well as the law of other jurisdictions recognizing the insurability of punitive damages, could apply to the coverage of punitive damages under the Lexington Policy.

iii. Mt. Hawley Excess Policy.

43. Oberlin purchased a first excess CGL policy (Policy No. MXL0421471) for the September 1, 2016 to September 1, 2017 policy period from Mt. Hawley (the "Mt. Hawley Excess Policy"). The Mt. Hawley Policy provides $10 million in coverage excess of the $25 million Lexington Policy to which the Mt. Hawley Excess Policy follows form.

44. The Mt. Hawley Excess Policy provides coverage for "the insured's **ultimate net loss** if such loss results from an occurrence insured by **underlying insurance**." Mt. Hawley Excess Policy § I(A). The Mt. Hawley Excess Policy further provides that

> the insurance afforded by this policy shall apply: (a) only in excess of the **underlying insurance**; (b) only after the **underlying insurance** has been exhausted by payment of the limits of liability of such insurance; and (c) only if caused by an occurrence which takes place during the policy period and anywhere in the world; provided however, if suit is brought, such suit is brought in the United States, its territories or possessions, or Canada. If the **underlying insurance** does not pay a loss, for reasons other than exhaustion of an aggregate limit of liability, then we shall not pay such loss.
>
> This policy, except where provisions to the contrary appear herein, is subject to all of the conditions, agreements, exclusions, definitions and limitations of and shall follow the **underlying insurance** in all respects. This includes changes by endorsement.

Id.

45. "**Ultimate net loss**" under the Mt. Hawley Excess Policy "means all sums actually paid, or which the insured is legally obligated to pay, as damages in settlement or satisfaction of

claims or suits for which insurance is afforded under this policy, reduced by all recoveries or salvage," including "defense expense payments made by the insurer of the **underlying insurance**, provided that such expenses are included within the limit of insurance of the **underlying insurance** by the terms of that policy." *Id.* at § II(A).

46. "**Underlying insurance**" under the Mt. Hawley Excess Policy "means the policy or policies of insurance in the Schedule of Underlying Insurance," *id.* at § II(B), which lists the Lexington Policy, *id.* at Schedule of Underlying Insurance.

47. The Mt. Hawley Excess Policy covers certain expenses, namely:

> a. If the insured is legally liable for interest which accrues on a judgment after the entry of the judgment and before we have paid, offered to pay, or deposited in court the amount of the judgment to which this policy applies, then we will pay the interest on the amount of the judgment to which this policy applies.
>
> b. If an expense is incurred directly by us and solely at our discretion, then we will pay such expense.
>
> c. If a payment for damages is made under this policy, then we will pay related prejudgment interest for which the insured is legally liable, provided:
>
> (1) The **underlying insurance** pays prejudgment interest; and
>
> (2) Our share of prejudgment interest shall not exceed the proportion that payment for damages under this policy bears to the total damages determined by final judgment or settlement.
>
> 3. Subject to all of the foregoing:
>
> a. If the defense expense payments are included within the limit of liability of the **underlying insurance** by the terms of that policy, then any such expense payment we make shall reduce the limit of liability of this policy.
>
> b. If the **underlying insurance** does not include defense expense payments within its limit of liability by the terms of that policy, then any such expense payment we make shall not reduce the limit of liability of this policy.

Id. at § I(B)(2)-(3).

48. Because the Mt. Hawley Excess Policy follows form in all material respects to the Lexington Policy, *see id.* at § I(A), it also provides coverage for punitive damages pursuant to the "most favorable jurisdiction" language in the Lexington Policy's punitive damages endorsement, *see* Lexington Policy, Endorsement 18.

iv. Starstone Excess Policy.

49. Oberlin purchased from StarStone a CGL "Following Form Excess Liability Insurance Policy" (Policy No. 03024E161ALI) for the September 1, 2016 to September 1, 2017 policy period (the "StarStone Excess Policy"). The StarStone Excess Policy provides $5 million in coverage excess of the $10 million Mt. Hawley Excess Policy.

50. The StarStone Excess Policy follows form to the Lexington Policy and the Mt. Hawley Excess Policy. *See* StarStone Excess Policy, Declarations, Item 7, Endorsement 2.

51. Because the StarStone Excess Policy follows form in all material respects to the Lexington Policy and the Mt. Hawley Excess Policy, *see id.*, it also provides coverage for punitive damages pursuant to the "most favorable jurisdiction" language in the Lexington Policy's punitive damages endorsement, *see* Lexington Policy, Endorsement 18.

v. UE Excess CGL Policy.

52. Oberlin purchased an excess liability policy from United Educators for the September 1, 2016 to September 1, 2017 policy period (the "UE Excess CGL Policy"), which provides $10 million in coverage excess of the $5 million StarStone Excess Policy.

53. On information and belief the UE Excess CGL Policy follows form to the Lexington Policy, Mt. Hawley Excess Policy, and Starstone Excess Policy.

B. United Educators ELL Policy.

54. In addition to its substantial CGL coverage, Oberlin also purchased Educators Legal Liability ("ELL") coverage for errors and omissions committed by the college and its employees. Some of the coverages provided by Oberlin's ELL policies overlap with the coverages provided by its CGL policies.

55. When the complaint in the underlying *Gibson* litigation was filed, United Educators was Oberlin's ELL insurer, as it had been since at least 1987.

56. Oberlin paid $133,219 in premiums to United Educators to purchase a claims-made ELL Policy (Policy No. X65-67C) for the June 1, 2017 to June 1, 2018 policy period (the "United Educators Policy").

57. The United Educators Policy includes a $25 million limit of liability, subject to a $100,000 self-insured retention per claim. *See* United Educators Policy, Declarations at Items C, D.

58. The United Educators Policy's Insuring Agreement provides that:

> "**We** will pay on behalf of the **Insureds** that amount of **Loss** that exceeds the **Self-Insured Retention** up to the **Limit of Liability** as a result of a **Wrongful Act** anywhere for which a **Claim** is first made against an **Insured** during the **Policy Period** and is reported to **us** as required by this Policy."

Id. at 1 of 12, Insuring Agreement ¶ 1.

59. "**Insureds**" under the United Educators Policy "means the **Included Entities**," which includes Oberlin, "and the **Individual Insureds**," which includes "any . . . past, present and future employee, member of the faculty, student teacher, or teaching assistant of an **Included Entity**." *Id.* at 3 of 12, Schedule A. Accordingly, Dr. Raimondo is an "Insured" under the United Educators Policy.

60. "**Loss**" under the United Educators Policy "means **Damages** and **Defense Costs**." *Id.* at 3 of 12.

61. "**Damages**" under the United Educators Policy "means money compensation that an **Insured** becomes legally obligated to pay as a result of a **Wrongful Act** and includes settlements to which **we** have consented." *Id.* at 1-2 of 12.

62. "**Defense Costs**" under the United Educators Policy "means costs and expenses incurred by **us** or with **our** prior approval in defense of **Claims** and includes the cost of arbitration, mediation or other alternative dispute resolution process to which the **Insured** must submit or has submitted with **our** consent." *Id.* at 2 of 12.

63. "**Wrongful Act**" under the United Educators Policy "means any actual or alleged error, omission, act, misstatement, neglect or breach of duty in the discharge of duties to or on behalf of an **Included Entity.**" *Id.* at 4-5 of 12.

64. The United Educators Policy also covers "where lawfully insurable, punitive or multiplied damages limited to $1,000,000." *Id.* at 1 of 12.

65. The United Educators Policy is "governed by and construed in accordance with the internal laws of the State of New York, except insofar as such laws may prohibit payment of punitive damages." *Id.* at 10 of 12, ¶ 24.

66. The "Other Insurance" provision in the United Educators Policy provides that:

> This Policy shall at all times be excess over any other valid and collectible insurance (including any insurance naming the **Insured** as "additional insured") available to the **Insured** other than insurance that is expressly and specifically excess of the limits of this Policy, and nothing in this Policy shall be construed to require this Policy to contribute with, or subject this Policy to the conditions of any other insurance. We will not defend or pay any **Defense Costs** of any **Claim** that another insurer has a duty to defend.

Id. at 11 of 12, ¶ 28.

67. The United Educators Policy contains an allocation condition pursuant to which it "agree[s] to use [its] best efforts in good faith to reach a fair and equitable allocation of **Loss** between covered and non-covered elements of any **Claim**." *Id.* at 7 of 12, ¶ 14.

68. The Defense and Settlement Conditions of the United Educators Policy state that

> [United Educators] may appeal any judgment on behalf of the **Insureds**, but we are not obligated to do so. If **we** appeal any judgment, **we** will do so at our own costs and the Insureds agree to cooperate with us in that appeal. If **we** elect not to appeal, the **Insureds** may appeal at their own cost, but our liability for **Loss** shall not exceed the amount for which we were liable prior to the appeal.

Id. at 7 of 12, ¶ 13.

II. The Underlying *Gibson* Lawsuit.

69. On November 7, 2017, Gibson Bros., Inc., David R. Gibson, and Allyn W. Gibson (the "*Gibson* Plaintiffs") filed suit against Oberlin and Dr. Raimondo in Lorain County, captioned *Gibson Bros., Inc. et al. v. Oberlin College, et al.,* 17-cv-193761 (Lorain County, OH) ("*Gibson*"), concerning Oberlin and then-Dean Dr. Raimondo's alleged response to a November 2016 incident, including an alleged attempted robbery by three African American students and also involving the owners of Gibson's Bakery, a bakery/convenience store located across the street from Oberlin's campus, which resulted in a physical altercation, charges brought against the students, and a public outcry against the bakery among the student population during a time of heightened racial tension in the country.

70. The *Gibson* complaint included counts for libel, slander, tortious interference with business relationship, tortious interference with contracts, deceptive trade practices, intentional infliction of emotional distress, negligent hiring retention and supervision, and trespass, and sought

damages, including punitive damages. Accordingly, the complaint included claims and requested damages that are covered under the Insurers' policies.

71. Oberlin timely notified its Insurers of the underlying *Gibson* lawsuit and requested that they honor their coverage obligations, including a defense and/or payment of Oberlin's defense costs, as well as coverage for any settlements or damages, consistent with the terms and conditions of their policies.

72. Following extensive discovery and pre-trial motion practice, three of the *Gibson* plaintiffs' claims were submitted to the jury: libel, intentional infliction of emotion distress, and tortious interference. The *Gibson* plaintiffs sought compensatory damages, punitive damages, and their attorney's fees at trial.

III. Lexington and United Educators Avoid Their Coverage Obligations.

73. After receiving notice of the *Gibson* lawsuit Oberlin's primary CGL insurer CRRG initially and improperly denied coverage, including any duty to defend. Thus, Oberlin turned to Lexington, its umbrella insurer, and United Educators, its ELL insurer, expecting that they would provide a defense given the allegations in the *Gibson* complaint that triggered coverage under their policies. Lexington and United Educators both failed to do so.

74. United Educators acknowledged receipt of Oberlin's notice of the *Gibson* complaint and accepted that certain of the claims asserted potentially fell within the indemnity coverage of the United Educators Policy, subject to a reservation of rights. But United Educators disclaimed coverage for the Insureds' Defense Costs based on its view that CRRG had the primary duty to defend.

75. Subsequently, on April 11, 2018, CRRG belatedly accepted its duty to defend.

76. Accordingly, on April 17, 2018, Oberlin advised Lexington that CRRG had withdrawn its coverage denial and had agreed to defend the Insureds, subject to a reservation of rights. However, Oberlin also informed Lexington that if and when damages incurred by a settlement or judgment in the Gibson litigation exceeded $1 million, "Lexington's coverage obligation will be triggered." Oberlin further advised Lexington that United Educators had also been put on notice of the claim, and that "UE and Lexington would have a shared coverage responsibility[.]"

77. Oberlin sent a similar letter to United Educators on April 17, 2018, informing United Educators that CRRG had accepted the defense. Oberlin also informed United Educators of the overlapping coverage provided by Lexington, advised that Lexington had been placed on notice, and that "[c]onsequently, UE and Lexington would have a shared coverage responsibility."

78. In a May 1, 2018 response to Oberlin, United Educators characterized its prior failure to defend Insureds as "moot," but stated that United Educators' defense obligation would arise when "CRRG properly exhausted its limit of liability with respect to the Gibsons' claim." United Educators otherwise failed to address which policy—Lexington's or United Educators'—should respond first following the exhaustion of the CRRG Policy.

79. As for Lexington, it issued its first substantive coverage letter concerning the *Gibson* lawsuit on June 20, 2018. In its letter, Lexington recognized both Oberlin and Dr. Raimondo as "Insureds" under the Lexington Policy. While Lexington stated that it "currently ha[s] no information that the 'Retained Limit' underlying the [Lexington] Policy has been exhausted," it acknowledged that if such exhaustion was met, "[b]ased on the allegations of the [*Gibson*] Complaint" there was "potential for 'bodily injury' coverage," "potential for 'property

damage' coverage," and "potentially coverage for 'personal and advertising injury'" under the Lexington Policy.

80. Lexington also acknowledged that "Pursuant to Endorsement # 18 ('Law Governing Insurability Of Punitive Or Exemplary Damages Endorsement (Most Favorable Jurisdiction)'), punitive or exemplary damages that are awarded against an 'Insured' in a judgment that also awards compensatory damages covered by the Policy shall be covered where insurable under applicable law."

81. Later that same day, Lexington's counsel sent another letter "to supplement Lexington's coverage position as it related to satisfaction of the 'Retained Amount' within the meaning of the Lexington Policy." In that letter, Lexington's counsel claimed that its policy, "would not appear to be implicated, if at all, unless and until both the CRRG and UE policies are properly exhausted in relation to the lawsuit," even though the Lexington Policy is an umbrella policy that unquestionably provides broader coverage than the CRRG Policy and provides overlapping coverage with the United Educators Policy.

82. Oberlin has never accepted Lexington's position, which is contrary to applicable law, that United Educators' $25 million ELL policy must be exhausted before the Lexington Policy must reimburse Oberlin for losses incurred in the *Gibson* lawsuit.

83. It was always Oberlin's understanding and reasonable expectation that both Lexington and United Educators had independent and overlapping obligations and either independently or in collaboration would ensure their policies responded in the event of a covered loss to make their insureds whole. The policies Oberlin purchased from Lexington and United Educators did not permit these insurers to insist on resolving priority of payment questions between themselves before protecting the interests of their insureds.

IV. Lexington and United Educators Refuse in Bad Faith to Settle *Gibson* Within the Limits of Their Policies.

84. As the trial date in *Gibson* approached, with CRRG paying for the defense, Oberlin attempted to pursue resolution with the underlying plaintiffs. During this time, Lexington and United Educators, instead of protecting their Insureds against a potential judgment, continued pointing their fingers at each other and squabbled about which of their respective policies should be first in line to pay a potential settlement, rather than taking steps to protect their insureds, complicating Oberlin's efforts to explore resolution.

85. Despite the obstinance of Oberlin's Insurers, Oberlin made some progress in mediation with the underlying plaintiffs in early 2019, and the parties ultimately agreed to mediate within a bracket that could have resulted in a settlement below $10 million.

86. While settlement efforts were underway, and as Oberlin and Dr. Raimondo continued to prepare for trial, their defense team organized mock jury exercises in April 2019 that Lexington and United Educators both observed. These exercises demonstrated that despite Oberlin's and Dr. Raimondo's attempts to mount a strong defense, it was reasonably probable that a jury would award compensatory and punitive damages well in excess of the limits of each insurer's policy if the case went to trial, which created renewed urgency to settle the case if possible.

87. Therefore, on April 12, 2019, Oberlin wrote CRRG, Lexington, United Educators, and Mt. Hawley, stating that following the mock jury exercises, "Oberlin must assume that a severe jury verdict on the order of tens of millions of dollars is a distinct possibility." Oberlin further stressed that "the insurers, especially United Educators (UE) and Lexington, are greatly underestimating the risk of a huge jury verdict and their potential liability for that verdict." Thus, Oberlin urged CRRG to be prepared to fund its $1 million per occurrence limit of liability toward

any potential settlement, and for Lexington and United Educators to be prepared to fund the remainder. Oberlin also warned all the insurers that "should the jury return a verdict well in excess" of the settlement ranges being discussed before trial, that "Oberlin would, of course, seek full reimbursement from its insurers, and such other relief, as permitted by law."

88. CRRG was fully prepared to contribute the full $1 million per occurrence limits of its policy to fund a settlement. But Lexington and United Educators refused to make adequate contributions from their policies.

89. Lexington rejected Oberlin's invitation to make a settlement proposal on April 14, 2019, and attempted to downplay the risks of taking the case to trial, accusing Oberlin of attempting to manufacture "leverage against Lexington[.]"

90. Then, two days later, following unsuccessful settlement efforts at a pretrial conference and just two weeks before trial, Lexington supplemented its coverage position, principally to restate its position that its policy was "excess" of the United Educators Policy and would not respond to certain of the damages the *Gibson* Plaintiffs were seeking "until the UE policy properly exhausts." In other words, Lexington would not contribute to the potential settlement that was on the table.

91. Meanwhile, United Educators and Lexington began writing letters back and forth to each other, insisting that to achieve a settlement, the other insurer would have to pay its policy limits first, without any regard for the Insureds' interests.

92. For example, on April 16, 2019, United Educators sent Lexington a letter noting that CRRG had made its $1 million in coverage available for settlement, that Lexington's approach to settlement was unfair to United Educators, and that Lexington was not properly evaluating its responsibility for potential punitive damages.

93. As for Lexington, it claimed on April 17, 2019, that United Educators was holding up settlement negotiations and asserted that if the Oberlin Defendants were hit with a punitive damage award, this would be attributable to United Educators' decision not to settle for the amount ultimately demanded.

94. Recognizing the likelihood of a plaintiffs' verdict at trial, Oberlin's top excess insurers Mt. Hawley and StarStone grew increasingly concerned about Lexington's and United Educators' stubborn refusal to settle the case. Mt. Hawley and StarStone both demanded that Lexington and United Educators settle the litigation within their policy limits, but those demands fell on deaf ears, as both United Educators and Lexington continued to place priority of payment issues between themselves ahead of their Insureds' interests in avoiding a substantial jury verdict.

95. Having failed to resolve which policy would pay first, and despite the warnings it received from Oberlin and the top excess insurers about the dangers of trial, United Educators told Oberlin's General Counsel that "UE is willing to go forward with the trial of this matter and, for the reasons previously communicated to you Tuesday, does not believe that the mediator's proposal represents an appropriate resolution. UE also believes that UE's ELL policy limit of $25 million should be more than sufficient to address the portion [sic] any judgment covered under UE's policy."

96. On April 30, 2019, Lexington begrudgingly offered to make a limited contribution to a potential settlement offer to the *Gibson* Plaintiffs, but this was too little too late. And Lexington conditioned its offer on obtaining an agreement from United Educators to limit priority of payment issues between the Lexington and United Educators policies, assuming a settlement could be reached, in a separate court proceeding. United Educators rejected this "offer."

97. Ultimately settlement efforts with the underlying plaintiffs broke down due to insufficient funding from Oberlin's insurers, and the *Gibson* lawsuit went to jury trial in May 2019. Despite clear indications that the case would settle within the limits of their policies, and fully aware of the risks that their obstinance could create potential exposure for Mt. Hawley and StarStone, as well as for their Insureds, Lexington and United Educators decided to refrain from offering a settlement that would have avoided a trial.

98. Lexington then attempted to intervene in the underlying proceedings by filing a proposed complaint in intervention, and it submitted proposed jury instructions designed to diminish Lexington's coverage obligations "because neither plaintiffs nor [Oberlin and Dr. Raimondo] have an interest in establishing that there is no coverage for the libel claim."

99. In invoking this Court's jurisdiction, Lexington summarized certain coverages available under its policy and admitted that "it may be obligated to indemnify, in part, a verdict against Oberlin and Ms. Raimondo," but it otherwise continued to urge that its policy was excess to other insurance provided by United Educators. Lexington's motion to intervene and proposed jury instructions were ultimately denied as untimely.

V. The *Gibson* Verdict, Judgment, and Appeal.

100. After the *Gibson* mediation failed and trial began in May 2019, Oberlin continued to update its insurers on the trial, and some of the insurers sent representatives to observe the proceedings.

101. During the trial, Oberlin again urged its insurers to settle, noting "the plaintiffs may well be prepared to settle this dispute for a lump-sum payment of $5 million. The judge has hinted that such a proposal would resolve this lawsuit." But the Insurers declined to settle the case on behalf of their Insureds.

102. In May 2019, following a report from Oberlin on pre-trial motion developments that would put $20 million in economic damages on the libel claim before the jury, Lexington and United Educators continued to point fingers at each other, claiming that the other had not done enough to negotiate a settlement directly with the *Gibson* Plaintiffs or to offer enough money to resolve the lawsuit. In the meantime, the trial continued to unfold, and the Insurers failed to take any meaningful steps to negotiate a settlement.

103. Following closing arguments, on June 7, 2019, the jury awarded the *Gibson* plaintiffs $11,074,500 in compensatory damages and $33,233,500 in punitive damages.

104. After the jury verdict, United Educators wrote Oberlin on June 19, 2019, "to offer its assistance with the appeal of the recent trial," stating that UE believed that "reversible errors were committed involving several aspects of the case, and particularly with the instructions and interrogatories provided to the jury in both trial phases. Accordingly, our first focus is to assist Oberlin in putting in place the right appellate legal team to seek to have any judgments based on the current verdicts reversed." As memorialized in this letter, United Educators' former general counsel and its head of claims "have already discussed this issue with Donica Varner, Oberlin's General Counsel . . . to determine how best to provide this assistance to Oberlin in preparing for the appellate phase of this case."

105. On June 27, 2019, the trial court entered judgment in *Gibson*. The judgment reduced the jury's verdict pursuant to Ohio law, entering the following awards totaling $31,614,531.79:

a. $14,000,000 to David Gibson (compensatory damages for economic loss of $1,800,000; compensatory damages for noneconomic loss of $350,000 on the libel claim

and $250,000 on the intentional infliction of emotional distress claim; and punitive damages of $11,600,000);

b. $6,500,000 to Allyn Gibson (compensatory damages for non-economic loss of $250,000 on the libel claim and $250,000 on the intentional infliction of emotional distress claim; and punitive damages of $6,000,000);

c. $4,549,000 to Gibson Brothers (compensatory damages for economic loss of $1,137,250 on the libel claim and $1,137,250 on the tortious interference with business relationship claim; and punitive damages of $2,274,500); and

d. $6,565,531.79 in attorneys' fees and costs were also awarded.

106. Approximately three weeks later, United Educators wrote a letter to the Tucker Ellis LLP law firm, stating: "On behalf of United Educators, I am pleased to confirm the appointment of Tucker Ellis LLP to act as appellate counsel" for the *Gibson* litigation, subject to compliance with UE's "Defense Counsel Guidelines."

107. Following the trial court's judgment, CRRG tendered its $1 million policy limit to Insureds to fund a portion of the plaintiffs' damages, thereby exhausting the per occurrence limits of its policy and terminating its defense obligation.

108. Upon learning of this development, which was no surprise given CRRG's willingness to pay its $1 million policy to fund a pre-trial settlement, United Educators reneged on its agreement to fund the costs of the appeal and refused to pay any Tucker Ellis LLP invoices after October 31, 2019. In doing so, United Educators blamed Oberlin for the missed opportunity to settle the case before trial, claiming it was *Oberlin's* fault for not obtaining "sufficient contributions" from Lexington to fund a settlement.

109. As for Lexington, it also failed to accept its duty to defend Insureds upon the exhaustion of the CRRG policy.

110. Accordingly, despite having two insurance policies that should have paid for the appeal, and despite United Educators' prior representations that it would fund the appeal, Oberlin was left with no option but to fund the effort to overturn or reduce the trial court's judgment. Oberlin also posted appeal bonds for substantial fees that the Insurers have so far failed to reimburse.

111. Oral argument was heard by the Ohio Court of Appeals on November 10, 2020.

112. On March 31, 2022, the Court of Appeals of the Ninth Judicial District of Ohio issued its decision upholding the *Gibson* judgment.

113. On May 13, 2022, the Oberlin Defendants requested leave to appeal to the Supreme Court of Ohio.

114. On August 30, 2022, the Supreme Court of Ohio declined to hear the *Gibson* case.

115. In September 2022, Oberlin paid the full amount of the trial court judgment to the *Gibson* Plaintiffs, including millions of dollars in post-judgment interest.

VI. Lexington and United Educators Continue to Wrongfully Deny Coverage After the *Gibson* Verdict and the Unsuccessful Appeal.

116. To date, Oberlin has suffered at least $38,327,341.38 in outstanding loss by paying damages, post-judgment interest, and defense costs associated with the unsuccessful appeal of the *Gibson* lawsuit. Oberlin paid the full amount of the trial court judgment, including post-judgment interest, in September 2022.

117. Nevertheless, none of Oberlin's Insurers (other than CRRG) has paid *any* portion of the damages and post-judgment interest that the Insureds incurred due to the *Gibson* lawsuit. Even though the Insurers acknowledged the existence of coverage under their policies long ago

and recognized the risks in taking the underlying case to trial, the Insurers chose to place their own interests ahead of their Insureds' interests.

118. Furthermore, the Insurers failed to pay for millions of dollars in Oberlin's appeal costs, even though Lexington and United Educators made the decision not to settle before trial.

119. Oberlin and United Educators participated in a mediation on February 23, 2021, in an effort to resolve coverage disputes between Oberlin and United Educators relating to the *Gibson* lawsuit, but the mediation failed. The month after the mediation failed, United Educators, which prides itself on its trademarked "Cool Head, Warm Heart" claims philosophy, issued Oberlin a notice of non-renewal of coverage, thereby terminating its 34-year policyholder relationship with Oberlin.

120. As for Lexington, which sold Oberlin up to $25 million in coverage for punitive damages, it failed to pay a single cent towards the Insureds' losses.

FIRST CAUSE OF ACTION
(Declaratory Judgment against Lexington)

121. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

122. The Lexington Policy is a valid and legally enforceable contract.

123. Plaintiffs Oberlin and Dr. Raimondo are both insured under the Lexington Policy issued by Lexington.

124. Plaintiffs have fully performed their contractual obligations to Lexington under the Lexington Policy and fulfilled all conditions precedent to bringing this action.

125. Pursuant to the terms of the Lexington Policy, Lexington had a duty to defend Plaintiffs Oberlin and Dr. Raimondo in the *Gibson* action.

126. Pursuant to the terms of the Lexington Policy, Lexington has an obligation, up to its limits, to pay those damages that Oberlin paid in connection with the underlying *Gibson* lawsuit that fall within the scope of coverage provided under the Lexington Policy.

127. There is an actual justiciable controversy between Plaintiffs and Lexington regarding their respective rights and obligations under the Lexington Policy.

128. Therefore, Plaintiffs seek a judicial determination that Lexington is obligated to indemnify Plaintiffs with respect to those defense costs and damages paid by Oberlin in the underlying *Gibson* lawsuit that fall within the scope of coverage under the Lexington Policy.

SECOND CAUSE OF ACTION
(Breach of Contract by Lexington)

129. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

130. The Lexington Policy is a valid and legally enforceable contract.

131. Oberlin paid Lexington valuable premiums to obtain the insurance provided by the Lexington Policy.

132. Both Oberlin and Dr. Raimondo are Insureds under the Lexington Policy.

133. Plaintiffs have fully performed their contractual obligations to Lexington under the Lexington Policy and fulfilled all conditions precedent to bringing this action.

134. Lexington breached its duty to defend Plaintiffs Oberlin and Dr. Raimondo in the underlying *Gibson* lawsuit.

135. Lexington also breached its duty to indemnify Plaintiffs Oberlin and Dr. Raimondo for the damages they incurred in the underlying *Gibson* lawsuit in accordance with the terms and conditions of the Lexington Policy.

136. As a direct and proximate result of Lexington's breaches, Plaintiffs have incurred direct damages in an amount to be established at trial.

THIRD CAUSE OF ACTION
(Equitable Subrogation against Lexington)

137. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

138. Plaintiff Dr. Raimondo is an Insured under the Lexington Policy, which is a valid and legally enforceable contract.

139. Lexington breached its obligations to defend Dr. Raimondo and to indemnify Dr. Raimondo in connection with damages assessed against Dr. Raimondo in the *Gibson* lawsuit.

140. As a direct and proximate result of Lexington's breaches of its contractual obligations to Dr. Raimondo, Oberlin has incurred and paid costs and expenses in defending Dr. Raimondo against the underlying *Gibson* lawsuit and has paid damages on her behalf. Those costs, expenses, and liabilities should have been paid by Lexington under the terms of the Lexington Policy.

141. As between Lexington on the one hand, and Oberlin on the other, Lexington is primarily liable, and Oberlin is at most only secondarily liable, for the costs of defending and indemnifying Dr. Raimondo against the underlying *Gibson* lawsuit. In equity and good conscience, these costs and expenses should be borne by Lexington, and not by Oberlin.

142. Oberlin is subrogated to the rights of Dr. Raimondo under the Lexington Policy and is entitled to recover from Lexington all sums it paid on her behalf.

FOURTH CAUSE OF ACTION
(Bad Faith and Breach of the Duty of Good Faith and Fair Dealing by Lexington)

143. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

144. The Lexington Policy is an insurance contract which, like all contracts, contains an implied covenant of good faith and fair dealing. This covenant imposes a duty on the part of Lexington to, among other things, conduct a reasonably prompt investigation of claims asserted against its policyholder, handle claims against its policyholder in good faith, effectuate settlements where liability has become reasonably clear, and pay covered claims under the Lexington Policy.

145. The coverage correspondence and course of dealing reveal continuous and repeated efforts by Lexington to avoid its coverage responsibilities by improperly attempting to shift responsibility for the *Gibson* lawsuit to other insurers and Oberlin, instead of protecting its Insureds' interests.

146. Moreover, Lexington had numerous opportunities before the *Gibson* trial to resolve the underlying *Gibson* lawsuit for a small fraction of the eventual verdict, but Lexington declined to do so. Instead, Lexington improperly conditioned any settlement payment on the receipt of contributions from United Educators and United Educators' agreement to litigate priority of payment issues as between the insurers in a separate forum.

147. In elevating resolution of priority of payment issues above the interests of its policyholder in securing a settlement well within the limits of its insurance policies, Lexington grossly disregarded its Insureds' interests.

148. By refusing to fulfill its coverage responsibilities or contribute to a settlement that was substantially lower than the ultimate jury verdict and well within its policy limits, despite demands from Oberlin and Oberlin's excess insurers that it should do so, Lexington breached the

covenant of good faith and fair dealing, forcing Plaintiffs to incur substantial damages and legal expenses that would have been avoided if Lexington had timely settled or paid the claim.

149. Plaintiffs have incurred consequential damages as a result of Lexington' bad faith actions, including a trial court judgment exceeding the limits of the Lexington Policy, additional unnecessary costs in seeking to enforce its rights in this action, pre-judgment interest, and other damages to be established at trial.

150. Moreover, Lexington's conduct was performed with actual malice and/or reckless disregard of Plaintiffs' rights, such that the Plaintiffs should be awarded punitive damages against Lexington in excess of $25,000, plus attorney's fees.

FIFTH CAUSE OF ACTION
(Declaratory Judgment against United Educators)

151. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

152. The United Educators Policy is a valid and legally enforceable contract.

153. Plaintiffs Oberlin and Dr. Raimondo are both insured under the United Educators Policy.

154. Plaintiffs have fully performed their contractual obligations under the United Educators Policy and have satisfied all conditions precedent to bringing this action, including participating in a pre-suit mediation.

155. Pursuant to the terms of the United Educators Policy, United Educators has an obligation to pay on behalf of the Plaintiffs covered Loss that exceeds the Self-Insured Retention of the United Educators Policy, including those Defense Costs and Damages incurred in the *Gibson* lawsuit that fall within the scope of coverage under the United Educators Policy.

156. There is an actual justiciable controversy between Plaintiffs and United Educators regarding their rights, legal obligations, and enforcement of the terms of the United Educators Policy.

157. Therefore, Plaintiffs seek a judicial determination that United Educators is obligated to indemnify Plaintiffs with respect to those defense costs and damages paid by Oberlin in the underlying *Gibson* lawsuit that fall within the scope of coverage under the United Educators Policy.

SIXTH CAUSE OF ACTION
(Breach of Contract by United Educators)

158. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

159. The United Educators Policy is a valid and legally enforceable contract.

160. Oberlin paid United Educators valuable premiums to obtain the insurance provided by the United Educators Policy.

161. Both Oberlin and Dr. Raimondo are insured under the United Educators Policy.

162. Plaintiffs have fully performed their contractual obligations under the United Educators Policy and have satisfied all conditions precedent to bringing this action, including participating in a pre-suit mediation.

163. United Educators breached its obligations under the United Educators Policy to pay covered Loss the Plaintiffs incurred in connection with the *Gibson* lawsuit.

164. As a direct and proximate result of United Educators' breach of contract, Plaintiffs have incurred direct damages in an amount to be established at trial.

SEVENTH CAUSE OF ACTION
(Equitable Subrogation against United Educators)

165. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

166. Plaintiff Dr. Raimondo is an Insured under the United Educators Policy, which is a valid and legally enforceable contract.

167. United Educators breached its obligation to pay covered Loss on behalf of Dr. Raimondo in connection with the *Gibson* lawsuit.

168. As a direct and proximate result of United Educators' breaches of its obligations to Dr. Raimondo, Oberlin has incurred and paid costs and expenses in defending Dr. Raimondo against the underlying *Gibson* lawsuit and has paid damages on her behalf. These costs, expenses, and liabilities should have been paid by United Educators under the terms of the United Educators Policy.

169. As between United Educators on the one hand, and Oberlin on the other, United Educators is primarily liable, and Oberlin is at most only secondarily liable, for the costs of defending and indemnifying Dr. Raimondo against the underlying *Gibson* lawsuit. In equity and good conscience, these costs and expenses should be borne by United Educators, and not by Oberlin.

170. Oberlin is subrogated to the rights of Dr. Raimondo under the United Educators Policy and is entitled to recover from United Educators all sums it paid on her behalf.

EIGHTH CAUSE OF ACTION
(Promissory Estoppel against United Educators for Appeal Defense Costs)

171. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

172. After the jury issued its verdict in the *Gibson* lawsuit, United Educators represented that it would provide coverage for and fund an appeal by Plaintiffs under United Educators' Policy.

173. Oberlin reasonably and foreseeably relied on United Educators' promise to fund the appeal, including retaining appellate counsel recommended by United Educators.

174. United Educators initially paid $223,748 to appellate counsel to represent Oberlin in its appeal of the *Gibson* jury verdict, and it represents on its website that it undertook the appeal on behalf of Oberlin.

175. Oberlin detrimentally relied upon United Educators' assurance that it would fund the appeal, and its $223,748 in payments were consistent with that assurance that United Educators initially made towards funding the Insureds' appeal defense costs.

176. United Educators has broken its promises to fund the appeal, and Oberlin incurred $2,736,769 in defense costs and appeal bonds pursuing appeals in the Ohio Court of Appeals and the Ohio Supreme Court, despite United Educators' representations that it would cover those defense costs.

177. Accordingly, Oberlin incurred damages in an amount to be proved at trial.

NINTH CAUSE OF ACTION
(Bad Faith and Breach of the Duty of Good Faith and Fair Dealing by United Educators)

178. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

179. The United Educators Policy is an insurance contract which, like all contracts, contains an implied covenant of good faith and fair dealing. This covenant imposes a duty on the part of United Educators to, among other things, conduct a reasonably prompt investigation of claims asserted against its policyholder, handle claims against its policyholder in good faith,

effectuate settlements where liability has become reasonably clear, and pay covered claims under the United Educators Policy.

180. The coverage correspondence and course of dealing reveal continuous and repeated efforts by United Educators to avoid coverage by improperly attempting to shift responsibility for the *Gibson* litigation to CRRG, Lexington, and Oberlin, instead of protecting its Insureds' interests.

181. Moreover, United Educators had several opportunities before the *Gibson* trial to resolve the underlying *Gibson* lawsuit for a small fraction of the eventual verdict, but United Educators declined to contribute sufficient sums to achieve a reasonable settlement well within the limits of its United Educators Policy, despite demands from Oberlin and Oberlin's excess insurers that it do so.

182. In fact, United Educators said it was "willing to go forward with the trial" of the *Gibson* lawsuit, in part because the "ELL policy limit of $25 million should be more than sufficient to address the portion [sic] any judgment covered under UE's policy."

183. Although United Educators refused to meaningfully cooperate with settlement efforts and disregarded Oberlin's desire to avoid the *Gibson* trial, United Educators did not, after the *Gibson* trial, pay any portion of the judgment covered under its Policy.

184. Instead, United Educators prioritized resolution of priority of payment issues, at the expense of Oberlin, who was left to shoulder the costs of the jury verdict, appeal, and post-judgment interest alone.

185. Moreover, after the *Gibson* trial, United Educators elected to undertake Oberlin's defense by hiring appellate counsel and initiating an appeal of the *Gibson* judgment. After selecting and hiring appellate counsel, United Educators abandoned the defense. When the *Gibson*

appeal failed to overturn the judgment, Untied Educators still failed to contribute toward the judgment consistent with the insurance coverage that Oberlin purchased from United Educators.

186. By refusing to contribute to a potential pre-trial settlement that was substantially lower than the ultimate jury verdict and well within its policy limits, United Educators put its own interests ahead of its Insureds' interests and breached the covenant of good faith and fair dealing under the United Educators Policy, forcing Plaintiffs to incur unnecessary damages and legal expenses that could have been avoided if United Educators had timely settled or paid the claim.

187. Plaintiffs have incurred consequential damages as a result of United Educators' bad faith actions, including additional unnecessary costs in seeking to enforce its rights under the United Educators Policy in this action, a trial court judgment in excess of the limits of the United Educators Policy, pre-judgment interest, and other damages to be established at trial.

188. Moreover, United Educators' conduct was performed with actual malice and/or reckless disregard of Plaintiffs' rights, such that the Plaintiffs should be awarded punitive damages against Lexington in excess of $25,000, plus attorney's fees.

TENTH CAUSE OF ACTION
(Declaratory Judgment against Mt. Hawley)

189. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

190. The Mt. Hawley Excess Policy is a valid and legally enforceable contract and follows form to the Lexington Policy.

191. Plaintiffs Oberlin and Dr. Raimondo are both insured under the Mt. Hawley Excess Policy.

192. Plaintiffs have fully performed their contractual obligations under the Mt. Hawley Excess Policy.

193. Pursuant to the terms of the Mt. Hawley Excess Policy, Mt. Hawley has an obligation to indemnify Plaintiffs for those damages that Oberlin paid in connection with the underlying *Gibson* lawsuit that fall within the scope of coverage provided under the Mt. Hawley Excess Policy.

194. There is an actual justiciable controversy between Plaintiffs and Mt. Hawley regarding their rights, legal obligations, and enforcement of the terms of the Mt. Hawley Excess Policy.

195. Therefore, Plaintiffs seek a judicial determination that Mt. Hawley is obligated to pay those damages that Oberlin paid in connection with the underlying *Gibson* lawsuit that penetrate into and fall within the scope of coverage provided by the Mt. Hawley Policy.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment against StarStone)

196. Plaintiffs incorporate by reference each and every paragraph contained in this Complaint, as if fully restated herein.

197. The StarStone Excess Policy is a valid and legally enforceable contract and follows form to the Lexington Policy.

198. Plaintiffs Oberlin and Dr. Raimondo are both insured under the StarStone Excess Policy.

199. Plaintiffs have fully performed their contractual obligations under the StarStone Excess Policy.

200. Pursuant to the terms of the StarStone Excess Policy, StarStone has an obligation to indemnify Plaintiffs for those damages that Oberlin paid in connection with the underlying *Gibson* lawsuit that fall within the scope of coverage provided under the StarStone Excess Policy.

201. There is an actual justiciable controversy between Plaintiffs and Mt. Hawley regarding their rights, legal obligations, and enforcement of the terms of the StarStone Excess Policy.

202. Therefore, Plaintiffs seek a judicial determination that StarStone is obligated to pay those damages that Oberlin paid in connection with the underlying *Gibson* lawsuit that penetrate into and fall within the scope of coverage provided by the StarStone Excess Policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered against Defendants for the following relief:

1. Declaring that each of the Defendants' respective insurance policies are obligated to fund that portion of Oberlin's losses falling within their respective layers of coverage.

2. Declaring Defendants Lexington and United Educators are liable, jointly and severally, for all the defense costs, damages, appeal bond costs, and post-judgment interest paid by Oberlin in the underlying *Gibson* lawsuit;

3. Declaring that Oberlin is equitably subrogated to all rights of Dr. Raimondo under all insurance policies at issue.

4. Awarding Plaintiffs compensatory damages in excess of $38 million, in an amount to be proven at trial, plus prejudgment interest, against Defendants Lexington and United Educators;

5. Awarding Plaintiffs consequential and punitive damages against Defendants Lexington and United Educators, in an amount to be proven at trial;

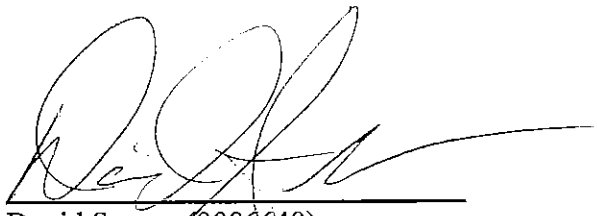
6. Awarding prejudgment interest against any and all insurers, as appropriate, at the maximum rate allowed by law;

7. Awarding Plaintiffs their costs and attorney's fees incurred in this action; and

8. Awarding Plaintiffs such other and further relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand, pursuant to Civ. R. 38, that a jury be impaneled to try all issues contained herein.



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