

protocol on an emergency basis. This crisis—which the University could have avoided by maintaining the dorms as it knew it should—meant students did not receive the value of their dorm rooms, and instead received degraded living quarters, a disrupted college experience, and were exposed to dangerous mold, which caused many health problems.

At Foster, McNutt, and Teter dorms, residents were exposed to dangerous mold (the “Moldy Dorms Class”) and the University subjected them to disruptive, but ineffective, mold remediation protocols. These students were deprived of access to their rooms entirely for periods of time, with many residents forced to permanently give up their rooms and to live and sleep in common areas in other dorms. At McNutt, Foster, and Teter, the University determined that the mold problems were and continue to be so extensive that no students will be housed there next year.¹ The heating ventilation and air conditioning (“HVAC”) systems at all three dorms—a cause of the mold²— all must be replaced.

Other dorms, such as Ashton, Wright, Collins, and Hillcrest, were not remediated on a widespread basis. Instead, because of mold issues, the University placed noisy high-efficiency particulate air filters (“HEPA machines”) in residents’ dorm rooms and required residents to run the HEPA machines on their highest setting 24-hours a day. The HEPA machines took up residents’ limited floor space while generating constant heat and noise, interfering with the residents’ use and enjoyment of the rooms (the “Noise-Polluted Dorms Class”).

At Forest and Eigenmann dorms, the University converted residents’ common areas into emergency living quarters for displaced students, denying the Forest and Eigenmann residents of

¹ Lilly St. Angelo, *Foster and McNutt Quads To Close For Renovations Next Year*, Indiana Daily Student, Dec. 7, 2018, <https://www.idsnews.com/article/2018/12/foster-and-mcnutt-quads-to-close-for-renovations-next-year>; *Residence Hall Renovation Plans Accelerated On Bloomington Campus*, Indiana University Press Release, Dec. 7, 2018, <https://news.iu.edu/stories/2018/12/iu/releases/07-residence-hall-renovation-plans-accelerated.html>.

² *IU Buildings: Remediation Updates*, Indiana University, <https://buildings.iu.edu/teter.html> (last visited May 30, 2019) (“the building structure and HVAC systems in all three of these buildings are the same”).

their shared social common spaces and creating overcrowded conditions as the shared facilities were used by a disproportionate number of residents (the “Overcrowded Dorms Class”).

As the University itself has repeatedly acknowledged, the damages caused to students by the 2018–2019 Mold Crisis extend beyond mold-related ailments and substandard living conditions; these health and housing problems have undermined the residents’ entire college experience, in breach of the University’s fundamental obligations to them. In fact, the “mission” of the University’s Division of Residential Programs and Services (RPS) is to provide “a residential experience which best meets the educational and developmental goals of our residents outside the classroom, enabling them to succeed inside the classroom,” and RPS promises that “we will provide and maintain facilities that are . . . environmentally healthy and clean.”³

The residents in the proposed Classes share common claims for damages against the University as set forth in Counts 1, 2, 9, 10, and 11 of the pending complaint that should be certified for trial as to liability and damages under Indiana Trial Rules 23(A) and 23(B)(3) (collectively, the “Damages Classes”), and share issues relating to the tort claims set forth in Counts 3–8 that should be certified for liability purposes under Indiana Trial Rule 23(A) and 23(C) (the “Tort Issues Class”).

PROPOSED CLASSES

I. The Damages Classes

The Court should certify the following plaintiff classes under Trial Rules 23(A) and 23(B)(3) for trial as to liability and damages as to the claims raised in Counts 1, 2, 9, 10, and 11:

Moldy Dorms Class: All residents of Foster, McNutt, and Teter dorms during the 2018–2019 school year.

Class Representative: Madeleine O’Connell

³ *Mission Statement*, Indiana University, <https://www.rps.indiana.edu/about/index.html> (last visited May 30, 2019).

Noise-Polluted Dorms Class: All residents of Ashton, Wright, Collins, and Hillcrest dorms during the 2018–2019 school year.

Class Representative: Etienne Najman

Overcrowded Dorms Class: All residents of Forest and Eigenmann dorms during the 2018–2019 school year.

Class Representative: Marley Muhlada

II. The Tort Issues Class

In addition, the Court should certify the Moldy Dorms Class under Trial Rules 23(A) and 23(C)(4) for the determination as to the following basic issues relating to liability:

- (1) Whether the University owed a duty not to expose members of the Moldy Dorms Class to the mold conditions that existed in their dorms during the 2018–2019 school year, including whether the University knew of the hazardous conditions and mold related problems in the dorms;
- (2) Whether the University breached that duty by housing them in those dorms, including the duty to truthfully inform the students of the hazardous conditions and mold related problems; and
- (3) Whether exposure to the hazardous conditions in the dorms generally causes the types of adverse health conditions experienced by the members of the Moldy Dorms Class.

Class Representative: Madeleine O’Connell

FACTS

I. The University for years ignored the worsening mold conditions in its dorms.

The University has been aware of the serious mold conditions in its dorms for over twenty years. In 2005, the University’s School of Public and Environmental Affairs issued a comprehensive report entitled *Mold on the Indiana University Bloomington Campus: A Review of Conditions, Procedures and Impacts* (the “2005 IU Mold Report”). The 2005 IU Mold Report explains that the University “has an acknowledged mold problem” and that “the University does

not seem to have an encompassing strategy to address the current problems and how to prevent future problems.” Am. Compl., Ex. 1 at 1.

The 2005 IU Mold Report reveals that the University did not take the mold problems seriously. *See, e.g., id.* at 47. It warned that “mold issues are not a major concern within RPS. It was estimated that less than 1% of the department’s budget [was] associated with [remediating] mold-related problems.” *Id.* at 25. In addition, the section of the report on training states that “the Physical Plant staff have the attitude that mold growth is not a serious problem.” *Id.* at 52.

The 2005 IU Mold Report not only identified the serious threat of mold problems at the Bloomington campus but also expressed concern about deferred maintenance leading to escalated mold problems and even predicted that the ongoing problem would result in the very liability that is the subject of this class action lawsuit. *Id.* at 40 (“[D]elayed investment in major repair and renovation has the potential to increase health problems and property damage, and therefore liability.”). Although the “goal” of the 2005 IU Mold Report was to identify mold problems on campus and provide recommendations to address these issues, *id.* at 1, the University chose to do nothing and allowed the problem to continue developing for nearly two more decades, until it inevitably developed into an unmanageable crisis. *See* Ex. 1, at IU0055207.

Perhaps most distressing, the 2005 IU Mold Report recognized the financial incentives for the University to defer mold remediation in the dormitories and to allow the students living in those dorms to suffer the harms and to incur the damages that are the subject of this action:

Student health care costs are borne entirely by students, either through their use of the IUB Health Center or other health care services. Additionally, the IUB Health Center is a self-supporting auxiliary unit, which relies on student fees and charges for service for their revenue generation. Therefore, **an additional incentive exists for delayed renovation and repair investments, since expenses related to**

decreased student health due [sic] not accrue to any academic or non-academic unit.

Am. Compl., Ex. 1 at 41 (emphasis added). In other words, the 2005 IU Mold Report recognized that it was economically advantageous for the University to allow students to bear the costs of mold-related illnesses rather than for the University to bear the expense of repairing the moldy dorms. *See id.*

In recent years, the University finally began to address the mold problem, but it did not do enough to effectively remedy that problem. The University initiated limited remediation efforts when mold was identified in Foster and Teter in 2015 and 2016. Ex. 2, at IU0140245. During the 2016–2017 school year, the University again faced widespread mold problems, at which time a Mechanical Electrical and Plumbing consultant for the University determined that the HVAC system used in Foster, Teter, and McNutt was the common cause of mold problems in the buildings and needed to be replaced. Ex. 3.

These HVAC systems, installed in each room in Teter, McNutt, and Foster “weren’t designed to remove humidity” and thus caused the mold growth that plagued the dormitories.⁴ The University has known for years that these HVAC systems caused moisture and mold problem in the dorms.⁵

For example, Dan Derheimer, the Environmental Manager of the Indiana University Bloomington campus, was involved in mold testing in 2016. Ex. 4, at IU0024865. Between

⁴ See Michael Reschke, *To Address Mold, IU Will Renovate Foster, McNutt This Summer*, Herald-Times Online (Dec. 7, 2018), https://www.hoosiertimes.com/herald_times_online/news/iu/to-address-mold-iu-will-renovate-foster-mcnutt-this-summer/article_372337ca-0d90-51f7-986d-2a3a5c3f14df.html.

⁵ Michael Reschke, *Judge Rules IU Must Preserve Evidence of Mold for Lawsuit*, Herald-Times Online (Nov. 21, 2018), https://www.hoosiertimes.com/herald_times_online/news/iu/judge-rules-iu-must-preserve-evidence-of-mold-for-lawsuit/article_30fe1381-a25a-5fa9-a4f1-3dfb161dd621.html (“Old heating and cooling units, installed in the 1980s, were blamed for the mold [in 2016].”).

October 2016 and March 2017, the University implemented some type of “remediation solution,” which obviously was insufficient. Ex. 5, at IU0046748.

After the 2018–2019 Mold Crisis erupted, Mr. Derheimer noted: “We saw this happen two years ago at McNutt and Teter and Foster, so [we] have a bit of experience with the dorms and dealing with students and parents.” Ex. 4, at IU0024866. Media reports in those earlier years also reported on widespread mold conditions at Teter, along with a statement by Mr. Derheimer that the University’s “goal is to have no mold next summer.” Am. Compl., Ex. 2.

II. The 2018–2019 Mold Crisis.

As a result of the University’s failure to address the moisture and mold problems during earlier eruptions, the problems exploded during the 2018–2019 academic year. Ex. 6, at IU0027429 (internal email from the University’s Asbestos Program Manager “anticipat[ing] additional mold related projects as we move forward due to the lack of preventative maintenance actions”); Ex. 7, at IU0288312 (internal email stating “[t]hese mold situations didn’t happen overnight”). By September 2018, the mold problem had become so widespread that the University was regularly receiving complaints of mold in residence halls and student dorm rooms. *See id.* (“We have 3 new mold jobs today alone. They’re happening everywhere.”). By October 19, 2018, Andi Cailles, the University’s Director of Residential Life, who served as the initial point of contact during the 2018–2019 Mold Crisis, had approximately 1,800 unanswered emails concerning the crisis. Ex. 8, at IU0285713.

A. The number of dorm residents seeking treatment for mold-related illnesses spiked.

The sudden and alarming surge in dorm residents seeking treatment for mold-related illnesses in the fall 2018 semester demonstrates the severity and impact of the 2018–2019 Mold

