

## Insights

### Update: Indiana Court of Appeals Allows COVID-19 Class Action Lawsuits Against IU and Purdue to Proceed

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Last week, the Indiana Court of Appeals affirmed lower court decisions to allow separate class action lawsuits filed against Indiana University and Purdue University to move forward. The lawsuits, one against Indiana University and two against Purdue University, alleged breach of contract and unjust enrichment relating to the move by both universities to online learning during the heat of the COVID-19 Pandemic. Motions by each of the Universities to terminate the litigation were denied by the trial courts, and with the appellate decision, those denials remain in effect. To read more about the cases, please refer to our prior alert [here](#).

In its **opinion**, the Court of Appeals found that the complaints sufficiently stated claims for breach of implied contract and unjust enrichment regarding tuition and student fees. Additionally, the Court of Appeals found that the Purdue case sufficiently stated a claim for breach of express contract regarding room and board fees.

The Court of Appeals declined to address the enforceability of Indiana's new law prohibiting class actions against covered entities (including universities) for losses or damages arising from COVID-19 in a contract, implied contract, quasi-contract, or unjust enrichment claim. In April 2021, the Indiana General Assembly passed a law (codified at Indiana Code §34-12-5-7, with a retroactive effective date of March 1, 2020) providing this protection for universities and other institutions. The Court of Appeals refused to entertain the defendants' argument on this point because, consistent with long standing jurisprudence, the issue was raised for the first time on appeal. Of note, however, the new law was used to defend a similar suit against Ball State University at the trial court level and that trial court ruled in Ball State's favor. Thus, it seems likely that this defense will be raised at an appropriate point in the litigation of the merits of the cases against IU and Purdue, and, if the Ball State case is a good barometer, may well prevail.

The import of the Court of Appeals ruling can be interpreted as procedural hurdles being cleared by the plaintiffs: the class action lawsuits survived IU's motion for judgment on the pleadings and Purdue's motion to dismiss and will proceed to a trial on the merits. These rulings are based on the complaints and pleadings, respectively, in those matters, and thus different facts and circumstances could result in a different decision in other cases.

Krieg DeVault will continue to follow the progress of this litigation. Should you have any questions about how the decision may affect your institution, please reach out to **Elizabeth M. Roberson, Deborah J. Daniels, Robert A. Greising**, or a member of our **Higher Education Service Group**.

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