

EXHIBIT A

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: COVID-19 BUSINESS) MDL No. 2942
INTERRUPTION PROTECTION)
INSURANCE LITIGATION)**

DECLARATION OF PROFESSOR TOM BAKER

1. I have been asked by the moving Plaintiffs seeking JPML transfer and centralization of the cases constituting MDL No. 2942 before Judge Matthew Kennelly in the United States for the Northern District of Illinois to explain: (a) my initial findings from the COVID coverage litigation database that I am building at Penn Law School; (b) the standard form nature of the insurance policies in the database; and (c) why the insurance industry uses standard forms for these and other insurance policies. In brief: all the policies in the database are assembled from standard forms; the provisions we have examined in detail are nearly identical across insurers; other provisions with greater variation can be categorized into small sets (such as the presence/absence of a disease exclusion and, if so, what version); and these findings are as expected, because standardization is essential to the insurance business.

2. I am the William Maul Measey Professor at the University of Pennsylvania Carey School of Law (“Penn Law”), with a secondary appointment in the Wharton School. I am the Reporter for the American Law Institute’s Restatement of the Law, Liability Insurance. Before joining Penn, I was the inaugural Connecticut Mutual Professor and Director of the Insurance Law Center at the University of Connecticut.

3. I have written extensively on insurance law, markets, and institutions, often employing empirical methods. Through my research and other activities, I have had substantial exposure to the process of drafting, assembling, and working with standard form insurance policies. My CV appears as Exhibit 1.

I. The COVID Coverage Litigation Tracker Database

4. The COVID Coverage Litigation Tracker (CCLT) project is my latest empirical legal research project. For this project, I am leading the construction of a database that contains a comprehensive set of federal COVID-19 insurance coverage cases and an extensive set of state cases.¹ My team collects many data points for each case, including the coverage sought and, when we can obtain the insurance policy, the relevant standard form components of the policy, identified by form number and author. We have nearly completed the initial data entry for federal cases filed as of June 10, 2020, and state cases filed as of May 27, 2020.

5. The CCLT database is made possible by, and is premised on, the standard form nature of insurance policies and the limited number of policy provisions that are relevant to any insurance dispute.

6. Without standard form policies, there would be no way to group the cases into a manageable set of categories based on the coverage provided. Because of the standard form nature of the policies, however, we can identify and track the precise policy language at issue in any case simply by recording the relevant form numbers listed on what is known as the “declarations” of each policy. By comparing the relevant forms, we can group the cases into a manageable number of standard-form-insurance-policy categories.

7. This same premise lies behind the judicial procedure that the Financial Conduct Authority of the United Kingdom recently instituted to facilitate mass resolution of COVID-19 business interruption claims in the U.K. The FCA commissioned insurance coverage lawyers to

¹ Apart from including Timothy Burns among the group of lawyers from both sides of the insurance coverage bar, ALI staff, and law professors who I consulted when designing the database, none of the lawyers who asked me to prepare this Declaration, or anyone else outside of my team, has had any control over or provided any direction regarding the CCLT database.

review exemplars of the standard form property insurance policies sold in the U.K. Based on that review, the FCA identified a small number of standard forms (a total of seventeen “policy wordings,” from eight insurers), the adjudication of which will facilitate the resolution of thousands of claims, including those made under the policies of insurers that are not engaged in the proceeding. See <https://www.fca.org.uk/firms/business-interruption-insurance>. The FCA also identified a small set of questions to be answered by the High Court to speed resolution of these claims. *Id.*, Questions for Determination (listing a total of twenty-five questions).

II. Standard Form Insurance Policies

8. The insurance policies at issue in the COVID-19 coverage cases are “standard form” policies. This means several things in this context:

First, the insurance policy issued to each individual business is assembled from standard components, called “forms.” Each form has a number. If the form is included in an insurance policy, that number is listed in the declarations section of the policy.

Second, many insurers use forms that are drafted by an industry service organization (typically ISO) and are thus identical to one other across different insurers.

Third, even when insurers use forms that are not identical, the forms are far more alike than different, and the variations are modeled on the form drafted by the industry service organization, and, in substantial part, use the identical language in key coverage provisions. Indeed, the variations are so nearly identical to the industry service organization form that insurers using the variations typically obtain a license from the organization to avoid violating copyright law.

Finally, consistent with the experience of the Financial Conduct Authority in the U.K. (see Paragraph 8, above), our preliminary analysis of the insurance policies filed in

the federal cases—which is the universe of cases implicated by this MDL proceeding—concludes that the relevant parts of the insurance policies that apply to a large portion of the federal cases come from a relatively small number of sets of identical, or very nearly identical, standard insurance forms.

9. The table on the next page illustrates this standardization. The four insurers listed are those most frequently named as defendants in the federal cases. Listed below each insurer is the form number of each of the insurer’s standard forms in the CCLT database² that most directly addresses the topics in the columns: the causal requirements for business income and extra expense; and the related “covered cause of loss” definition.

10. Expanding this table to address all the policies in the CCLT database would not, in my opinion, significantly expand the narrow range of variation in the standard form language evidenced in the table. Within a short time, the CCLT database will be ready to facilitate the preparation of similar tables for other important coverage provisions, such as those addressing the predicate for civil authority coverage and those related to viruses and other communicable diseases. Based on my substantial experience with standard forms and our preliminary review of those provisions in the policies in the CCLT database, I am confident that most of the provisions will be similarly substantially identical, apart from such easily identified differences as (a) the geographical scope of the civil authority coverage provisions and (b) whether the exclusions include viruses among the list of disease-causing agents.

² As of the date of this report, the only insurance policies included in the CCLT database are those that were attached to the federal and state complaints that have been filed. In the ensuing weeks we will be expanding that universe to include insurance policies that are attached to answers and other filings in the various case dockets.

	Business Income Causal Requirement	Covered Cause of Loss	Extra Expense Causal Requirement
Hartford			
SS 00 07 07 05	... caused by direct physical loss of or physical damage to property at the "scheduled premises" ... caused by or resulting from a Covered Cause of Loss	Risks of direct physical loss unless the loss is [excluded or limited]	... reasonable and necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or physical damage to property at the "scheduled premises" ... caused by or resulting from a Covered Cause of Loss
SP 30 13 10 18 (included with SP 00 00 10 18)	... caused by direct physical loss or direct physical damage to property at the "scheduled premises" ... caused by or resulting from a Covered Cause of Loss	... direct physical loss or direct physical damage unless the loss or damage is excluded or limited reasonable and necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or direct physical damage to property ... caused by or resulting from a Covered Cause of Loss
Cincinnati			
FM 101 04 04	... caused by direct physical "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss	... risks of direct physical loss unless the "loss" is [excluded or limited]	... necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical "loss" to property caused by or resulting from a Covered Cause of Loss
FM 101 05 16	... caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss	.. direct "loss" unless the "loss" is excluded or limited necessary expenses you sustain ... during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss
FA 213 05 16 & FA 213 05 16IL	... caused by direct "loss" to property at "premises".... The loss must be caused by or result from a Covered Cause of Loss	... direct "loss" unless the "loss" is excluded or limited necessary expenses you sustain ... during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss
Society			
TBP2 (05-15)	... caused by direct physical loss of or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.	Direct Physical Loss unless the loss is excluded or limited necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.
Travelers			
MP T1 02 02 05	... caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.	Risks of direct physical loss unless the loss is [excluded or limited]	... reasonable and necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss.
DX T1 01 11 12	... caused by direct physical loss of or damage to property at premises The loss or damage must be caused by or result from a Covered Cause of Loss.	... risks of direct physical loss unless the loss is excluded or limited reasonable and necessary expenses ... that you incur during the "period of restoration" and that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss

III. Why Insurers Use Standard Form Policies

11. Standard forms facilitate efficient pricing, underwriting, reserving, and claims administration processes in the insurance industry. Among other benefits, standard forms allow: (a) the prior experience of multiple insurers to be combined to provide guidance in setting prices for insurance and setting the reserves for any claims that occur; (b) insurance regulators to better protect consumers and businesses from surprising or unfair terms; (c) insurance brokers to better compare the offerings of multiple insurers and recommend the best price/quality mix to their customers; (d) underwriters and claims professionals to move from one insurer to another; and (e) insurers to incorporate and respond to the guidance they receive from the courts about the application of their insurance policies to newly emerging or changing claims.

12. Standard forms also support a competitive insurance market in at least two important ways. First, standard form policies give policyholders—and, importantly, in the commercial market, those policyholders’ insurance brokers—the ability to make “apples to apples” comparisons among the offers from competing insurance companies. Second, standard form policies reduce the barriers to entry. An insurance company entering a new market can buy a license to use ISO’s standard form policies and to access ISO’s common data pool from companies that use those same policies. That insurer can price and underwrite policies and set reserves for claims with a confidence that would be impossible in the absence of standard forms.



Tom Baker

Dated: June 15, 2020