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## **NEW PANDEMIC PROTOCOLS FOR LITIGATION WILL HELP STRUGGLING BUSINESSES AND THEIR INSURERS**

*IAALS announces new project to help courts more quickly resolve the anticipated wave of business interruption insurance cases stemming from COVID-19-related closures and losses.*

DENVER, CO (May 27, 2020)—IAALS, the Institute for the Advancement of the American Legal System, has launched a new project to create *Initial Discovery Protocols for COVID-19 Insurance Claims*. In response to the rapid increase in court cases involving business interruption insurance property damage claims arising from the COVID-19 pandemic, the project will develop pattern discovery protocols specific to these cases, in an effort to reduce conflict and cost and to help both businesses and insurers alike reach a quick resolution.

Businesses nationwide both large and small are struggling, and they are looking to their insurance policies to see how their coverage can help them through the pandemic. The extent to which these policies provide coverage—be it under business interruption or civil authority clauses—will be a question of policy interpretation, governing law, and the individual factual circumstances of the cases. Disputes between businesses and their insurance companies are already being filed for resolution in our courts and have gained national attention.

Unlike insurance cases following a natural disaster, which generally only affect a certain geographic area, these claims will be filed in all 50 states. The result will be an unprecedented number of time-consuming and costly cases flooding our courts.

“Courts and litigants throughout the country will be grappling with COVID-19 insurance issues long after the disease has run its course,” said Douglas J. Pepe, a partner at Joseph Hage Aaronson LLC who previously served on the IAALS Disaster Protocols Committee and is currently serving on the COVID-19 Protocols working group. “Building on the model developed for natural disasters, we hope to give courts a package of effective tools to streamline the critical early stage of COVID-19 insurance cases, and to position these significant disputes for a more efficient resolution.”

Through the *Initial Discovery Protocols for COVID-19 Insurance Claims* project, IAALS is creating pattern protocols that will require both businesses and their insurance companies to automatically disclose certain information and documents early in the case. This will make the discovery process—normally one of the most expensive, contentious, and lengthy parts of litigation—far more efficient and targeted. The IAALS protocols will provide judges and courts with a new pretrial procedure to follow, which will make it easier and faster for the parties and their counsel to:

- Exchange important information and documents early in the case;
- Frame the issues to be resolved;
- Value the claims for possible early resolution; and
- Plan for more efficient and targeted subsequent formal discovery, if needed.

“Like businesses, our justice system is being disrupted by the pandemic. Courts are having to rethink and alter the way they do business, while ensuring the delivery of justice. These challenges will continue as filings increase, both because of delayed filings and new cases resulting from the pandemic,” explains Brittany Kauffman, Senior Director at IAALS. “If we can work now to put in place protocols to ensure these cases move through the process efficiently, this will benefit the businesses, the insurance companies, and our court system at a time when the need is greatest.”

IAALS has helped improve the discovery process and hasten the resolution of other types of court cases in the past, including for employment cases, fair labor standards act cases, and—just last year—disaster cases, to help victims and their insurances companies better resolve disputes following natural disasters like hurricanes, tornados, earthquakes, and wildfires. The *Initial Discovery Protocols for COVID-19 Insurance Claims* will be the fourth set of protocols that IAALS has issued.

As with previous protocols IAALS has developed, they will be informed by a working group of expert plaintiff and defense attorneys from around the country, as well as leading judges who work on these types of difficult cases and who have used such protocols effectively in their courts.

“IAALS’ prior discovery protocols have proven incredibly valuable to efficient, fair, cost-effective progress in each of these categories of cases. Because lawyers on both sides of the ‘v.’ were involved in developing each protocol, the obligations are balanced and fair. The lawyers and parties get critical information they need in every case early, and fast. Often this is the only information needed for meaningful case evaluation and early resolution.” said Judge Lee Rosenthal, Chief Judge of the United States District Court of the Southern District of Texas, Houston Division. “The COVID-19 pandemic has already generated a wave of insurance claims for business interruption losses. A set of protocols for these cases is the docket equivalent of social distancing and masks—it may be the only chance we have to flatten the curve and avoid unnecessary cost and delay.”

The working group for the *Initial Discovery Protocols for COVID-19 Insurance Claims* has been formed and includes Steven J. Badger, Zelle LLP; David H. Brown, Copeland & Rice LLP; Hon. Andrew M. Edison, U.S. Magistrate Judge, Southern Dist. of Texas, Houston Division; Hon. John Koeltl, U.S. District Judge, Southern Dist. of New York; Jay Levin, Offit Kurman; Adam J. Levitt, DiCello Levitt Gutzler; Douglas J. Pepe, Joseph Hage Aaronson LLC; Hon. Lee H. Rosenthal, U.S. District Chief Judge, Southern Dist. of Texas, Houston Division; Ronald P. Schiller, Hanglely Aronchick Segal Pudlin & Schiller; Rene M. Sigman, Merlin Law Group; and Joyce Wang, Carlson, Calladine & Peterson LLP. The protocols are tentatively scheduled to be released by the end of the year.

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## **About IAALS**

*IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, is a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system. Our mission is to forge innovative and practical solutions to problems within the American legal system.*