

---

**DISTRICT OF COLUMBIA  
COURT OF APPEALS**

ROSE'S 1, LLC d/b/a ROSE'S LUXURY  
ELAINE'S ONE, LLC d/b/a PINEAPPLE AND PEARLS  
DANNY BOY LLC d/b/a LITTLE PEARL  
BUTTERCREAM BAKESHOP LLC  
GRAVITAS NW LLC d/b/a GRAVITAS  
KARMA HEALTHY FOODS L.L.C. d/b/a KARMA MODERN INDIAN  
PURPLE PATCH LLC  
3313 11TH HOSPITALITY LLC d/b/a EL CHUCHO  
1825 18TH HOSPITALITY LLC d/b/a BAR CHARLEY  
SRG WATERFRONT LLC d/b/a LA VIE  
JADI GOOSE LLC d/b/a QUEEN'S ENGLISH  
ANB 623 LLC d/b/a BEUCHERT'S SALOON  
SERVICE BAR LLC  
and  
MAKETTO, LLC

Plaintiffs-Appellants,

v.

ERIE INSURANCE EXCHANGE

Defendant-Appellee.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION  
2020 CA 002424 B  
(The Honorable Kelly A. Higashi)

---

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF**

---

Victoria S. Nugent (DC Bar 470800)  
Andrew N. Friedman (DC Bar 375595)  
Julie Selesnick (DC Bar 485558)  
Geoffrey Graber (DC Bar 1025657)  
Karina G. Puttieva (DC Bar 1645185)  
**COHEN MILSTEIN SELLERS &  
TOLL PLLC**

1100 New York Ave. NW, Fifth Floor  
Washington, DC 20005  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699  
afriedman@cohenmilstein.com  
vnugent@cohenmilstein.com  
jselesnick@cohenmilstein.com  
ggraber@cohenmilstein.com  
kputtieva@cohenmilstein.com

*Counsel for Amici Curiae Restaurant Association of Metropolitan Washington  
and Restaurant Law Center*

Angelo I. Amador (DC Bar 480031)  
**RESTAURANT LAW CENTER**  
2055 L Street, NW, Suite 700  
Washington, DC 20036  
Telephone: (202) 492-5037  
Facsimile: (202) 331-2429  
aamador@restaurant.org

*Counsel for Amicus Curiae Restaurant Law Center*

Andre M. Mura (DC Bar 492837)  
**GIBBS LAW GROUP LLP**  
505 14th Street, Suite 1110  
Oakland, CA 94612  
Telephone: (510) 350-9700  
Facsimile: (510) 350-9701  
amm@classlawgroup.com

## ARGUMENT

The Restaurant Association of Metropolitan Washington (“RAMW”) and the Restaurant Law Center (“RLC”) hereby move, pursuant to Rule 29(a)(3), for leave to file the accompanying *amici curiae* brief in support of Appellants.

RAMW is a trade organization representing restaurants and the food service industry in the Washington, DC metropolitan area. Its members comprise 1,300 restaurants and food service businesses in the District of Columbia, Maryland, and Northern Virginia. RAMW works to promote and sustain the growth and development of the industry while providing its members legislative and regulatory representation, marketing and small business support, programming, and events.

RLC is a 501(c)(6) legal entity launched in 2015, and incorporated in 2016, by industry leaders with the express purpose of promoting laws and regulations that allow restaurants to continue growing, creating jobs and contributing to a robust American economy. RLC’s goal is to protect and advance the restaurant industry and to ensure that the views of America’s restaurants are taken into consideration by giving them a stronger voice in the regulatory process and in the courtroom. The Law Center regularly pursues cases and submits *amici curiae* briefs on issues of importance to the restaurant industry, as is the case now.<sup>1</sup>

---

<sup>1</sup> See, e.g., *Lewis v. Governor of Ala.*, 944 F.3d 1287 (11th Cir. 2019); *First Student, Inc. v. NLRB*, 935 F.3d 604 (D.C. Cir. 2019); *Texas v. Dep’t of Labor*, 929 F.3d 205 (5th Cir. 2019); *Robles v. Domino’s Pizza, LLC*, 913 F.3d 898 (9th Cir.

*Amici* are working on behalf of their members to protect the viability of the regional restaurant industry during the COVID-19 pandemic, while important public health orders issued by the District of Columbia and other state and local governments have significantly restricted the operation of restaurants.

Many restaurants and food service establishments in the District of Columbia, the broader metropolitan region, and across the country purchased business interruption insurance (“BII”) policies similar to those at issue in this litigation. If this Court were to find that BII coverage does not apply in circumstances similar to those faced by Appellants, it would seriously imperil many restaurants in the region and across the country. On the other hand, if the Court were to determine (correctly, in *amici*’s view) that BII coverage extends to these circumstances, that ruling would provide a significant lifeline to many struggling restaurants as well as their employees and the broader economy.

The Appellants have presented compelling arguments to justify why their BII claims should have been covered by Erie Insurance Exchange and why the Superior Court’s ruling should be reversed. *Amici* will not duplicate any analysis of the insurance contracts at issue.

---

2019); *Rodriguez v. Kaiaffa, LLC*, —A.3d—, SC 20274, 2020 WL 5919680 (Conn. Oct. 6, 2020); *Kim v. Reins Int’l Cal., Inc.*, 459 P.3d 1123 (Cal. 2020); *Pa. Restaurant & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810 (Pa. 2019); *Rosenbach v. Six Flags Ent. Corp.*, 129 N.E.3d 1197 (Ill. 2019).

Instead, RAMW and RLC submit the attached *amici* brief to provide a broader context for the issues presented and key policy considerations for the Court to consider. First, the *amici* brief discusses the history of BII to demonstrate that it was created specifically to provide coverage for business losses beyond, and not necessarily predicated upon, damage to physical property. Second, the *amici* brief explains the importance of BII to restaurants and the central role of the restaurant industry in the local economy. Third, the *amici* brief explains the impact the District's orders have had on restaurants in the District, and why the loss of access and use effectuated by these orders should trigger BII coverage. And finally, the *amici* brief explains why it would be unjust – in light of the insurance industry's superior knowledge and bargaining power – to allow any ambiguity in these insurance policies to fall on policyholders rather than on insurers.

### **CONCLUSION**

For the foregoing reasons, RAMW and RLC respectfully request leave to file the attached *amici curiae* brief.

DATED: October 30, 2020

Respectfully submitted,

*/s/Victoria S. Nugent*

---

Victoria S. Nugent (DC Bar 470800)

Andrew N. Friedman (DC Bar 375595)

Julie Selesnick (DC Bar 485558)

Geoffrey Graber (DC Bar 1025657)

Karina G. Puttieva (DC Bar 1645185)

**COHEN MILSTEIN SELLERS & TOLL PLLC**

1100 New York Ave. NW, Fifth Floor

Washington, DC 20005

Telephone: (202) 408-4600

Facsimile: (202) 408-4699

afriedman@cohenmilstein.com

vnugent@cohenmilstein.com

jselesnick@cohenmilstein.com

ggraber@cohenmilstein.com

kputtieva@cohenmilstein.com

Andre M. Mura (DC Bar 492837)

**GIBBS LAW GROUP LLP**

505 14th Street, Suite 1110

Oakland, CA 94612

Telephone: (510) 350-9700

Facsimile: (510) 350-9701

amm@classlawgroup.com

*Counsel for Amici Curiae Restaurant Association  
of Metropolitan Washington and Restaurant Law  
Center*

Angelo I. Amador (DC Bar 480031)

**RESTAURANT LAW CENTER**

2055 L Street, NW, Suite 700

Washington, DC 20036

Telephone: (202) 492-5037

Facsimile: (202) 331-2429

aamador@restaurant.org

*Counsel for Amicus Curiae Restaurant Law Center*

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2020, a copy of the foregoing was filed and served via the Court's electronic filing system, which will serve as notice of such filing upon all counsel of record.

/s/ Victoria S. Nugent  
Victoria S. Nugent (DC Bar 470800)