

No. 20-14156-BB

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HENRY'S LOUISIANA GRILL, INC., AND,
HENRY'S UPTOWN LLC,

Plaintiffs-Appellants,

v.

ALLIED INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

On Appeal from the United States District Court for the
Northern District of Georgia,
Hon. Thomas W. Thrash, Jr., District Judge
Case No. 1:20-cv-02939-TWT

**RESTAURANT LAW CENTER'S REPLY IN SUPPORT OF MOTION FOR
LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

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Henry's Louisiana Grill, Inc. v. Allied Ins. Co. of America, No. 20-14156-BB

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *amicus curiae* hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

Pursuant to Eleventh Circuit Rule 26.1-2(b), *amicus curiae* here certify that, to the best of its knowledge, the CIP contained in its Motion for Leave to File Brief as *Amicus Curiae* in Support of Plaintiffs-Appellants, as supplemented by the CIP contained in Defendant-Appellee Allied Insurance Co.'s Brief in Opposition filed January 4, 2021, is complete and correct.

Amicus curiae further certifies that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

/s/ Gabriel K. Gillett
Gabriel K. Gillett

**RESTAURANT LAW CENTER’S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Pursuant to Federal Rules of Appellate Procedure 27 and 29, the Restaurant Law Center (“Law Center”) respectfully submits this reply brief in support of its motion for leave to file a brief as *amicus curiae* in support of Plaintiffs-Appellants.

As the Law Center explained in its opening brief, the *amicus curie* brief it proposes to file may assist the court in understanding the significance of material issues and provide useful context as the Court considers this case. *See, e.g., Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761 (7th Cir. 2020) (Scudder, J., in chambers); Fed. R. App. P. 29(a)(3); *accord* Sup. Ct. R. 37.1 (“An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.”). Indeed, in this Court and others the Law Center has previously filed *amicus curiae* briefs in cases that may have industry-wide implications, including cases raising issues similar to those raised in this appeal, *see, e.g., Oral Surgeons, P.C. v. The Cincinnati Ins. Co.*, No. 20-3211 (8th Cir. Dec. 8, 2020); *Rose’s 1 LLC v. Erie Ins. Exchange*, No. 20-cv-535 (D.C. Ct. App. Oct. 30, 2020).¹

¹ *See, e.g., Keim v. ADF Midatlantic, LLC*, No. 18-90034 (11th Cir. Dec. 24, 2018), *leave granted* (Jan. 31, 2019); *Chipotle Mexican Grill, Inc. v. Scott*, No. 20-257 (U.S. Oct. 1, 2020); *The ERISA Indus. Cmte v. City of Seattle*, No. 20-35472 (9th Cir. Sept. 3, 2020); *Calcano v. Swarovski N. Am. Ltd.*, No. 20-1522(L) (2d Cir. Aug. 28, 2020).

Defendant-Appellee Allied Insurance Co. raises three arguments in opposition to the Law Center's motion. None has merit.

First, Allied argues that the Law Center impermissibly “seeks to expand the facts beyond those presented by Appellants.” Opp. 5-6. The Law Center's core arguments are based on many of the same facts that Henry's relies on—including that many businesses in the restaurant industry have sought business interruption coverage under “all risk” commercial insurance policies as a result of recent executive orders, yet were unreasonably denied coverage because the businesses supposedly have not incurred physical loss or damage even though their properties have been rendered non-functional, detrimentally altered, and physically impaired. Insofar as the Law Center's brief contains information that differs from Henry's, it merely reinforces that allowing the Law Center to appear as *amicus curiae* may aid the Court by providing additional context, offering unique industry-wide perspective, and highlighting potential impacts of the Court's decision. *See Prairie Rivers Network*, 976 F.3d at 761; Fed. R. App. P. 29(a)(3).²

Second, Allied argues that “Appellants' interests” are “represented adequately” by their own counsel. That is beside the point, as an *amicus* brief may

² Even if Allied were correct, the Court should nevertheless grant the Law Center's motion. *See, e.g., Richardson v. Ala. State Bd. of Educ.*, 935 F.2d 1240, 1247 (11th Cir. 1991) (granting *amici's* motion for leave but limiting its consideration of certain arguments); *W. Ala. Women's Ctr. v. Williamson*, 900 F.3d 1310, 1320 & n.8 (11th Cir. 2018) (citing *amicus* briefs without reaching certain issues they raised).

be allowed “when the amicus has an interest in some other case that may be affected by the decision in the present case ..., or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” Opp. 5 (citation omitted). Notably, Allied does not contend that Appellants’ counsel is representing the interests of the Law Center or the restaurant industry as a whole. Nor does Allied dispute that the Law Center and its members have a perspective to offer that is different from Appellants’, or that the Law Center and its members have a significant interest in the important issues raised by this case. Accordingly, Appellants’ counsel is not grounds to deny the Law Center’s motion.

Third, Allied asserts without explanation that the Law Center is offering arguments that “are at best duplicative” of arguments “advanced by Appellants.” Opp. 8. Even a cursory comparison of the points raised in the two briefs, as well as the respective authorities they cite, makes clear that Allied is wrong.

Given the Law Center’s substantial interest in this case and the unique industry-wide perspective it offers, the Law Center respectfully requests that this Court grant its motion for leave to file a brief as *amicus curiae* in support of Plaintiffs-Appellants.

January 11, 2021

Respectfully submitted,

/s/ Gabriel K. Gillett

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CERTIFICATE OF COMPLIANCE

Under Rule 32(g) of the Federal Rules of Appellate Procedure, I certify this brief complies with the type-volume limitation set forth in Fed. R. App. P. 27(d)(2)(C) because it contains 759 words, as counted by Microsoft Word, excluding the items that may be exempted under Fed. R. App. P. 27(a)(2)(B). This document complies with the typeface requirements and type-style requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface, Times New Roman, in 14-point font, using Microsoft Word 2016.

I further certify this Motion was filed in electronic format through this Court's CM/ECF system on the 11th day of January, 2021.

/s/ Gabriel K. Gillett
Gabriel K. Gillett

CERTIFICATE OF SERVICE

I certify that on January 11, 2021, I served the foregoing Reply In Support Of Motion upon all counsel of record by and through this Court's CM/ECF system.

/s/ Gabriel K. Gillett
Gabriel K. Gillett