

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
THIRD DISTRICT

CASE NO. 3D21-0671
L.T. Case NO. 20-10334

COMMODORE, INC. D/B/A GREENSTREET CAFÉ, INC.,

Appellant,

v.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON, KNOWN AS SYNDICATE AXS 1686, NEO 2468, ENH 5151, XLC 2003, TAL 1183, AGR 3268, and ACS 1856, and XL CATLIN INSURANCE COMPANY UK LTD., HDI GLOBAL SPECIALTY SE, and ENDURANCE WORLDWIDE INSURANCE,

Appellees.

**RESTAURANT LAW CENTER AND FLORIDA RESTAURANT
AND LODGING ASSOCIATION'S MOTION FOR LEAVE
TO FILE AN *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

Pursuant to Florida Rule of Appellate Procedure 9.370(a), the Restaurant Law Center and the Florida Restaurant and Lodging Association respectfully move for leave to file a brief as *amici curiae* in support of Plaintiff-Appellant. *Amici* state the following in support of their motion:

1. Appellate courts, including this one, have often permitted non-parties, including *amici*, to file briefs in cases that may have

industry-wide implications. *See, e.g., Singh v. Walt Disney Parks & Resorts US, Inc.*, No. 5D18-2927 (Fla. 5th DCA 2020); *Escobar v. Tower Hill Signature Insurance Co.*, Case No. 3D16-1844 (Fla. 3d DCA 2017); *Vazquez v. Southern Fidelity Property & Casualty, Inc.*, No. 3D16-915 (Fla. 3d DCA 2016); *State v. Fla. Workers' Advocs.*, No. 3D14-2062 (Fla. 3d DCA 2015).

2. Motions for leave to file *amicus curiae* briefs are routinely granted because courts recognize they may be of assistance in understanding the significance of the material issues and provide useful context as the Court considers a particular case. “Even when a party is very well represented, an amicus may provide important assistance to the court.” *Neonatology Associates, P.A. v. Commissioner*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.). “Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.” *Id.* (quotation marks and citation omitted); *see also Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761 (7th Cir. 2020) (Scudder, J., in

chambers) (describing how *amicus* briefs may aid the court). In this case, the brief of proposed *amici* fulfills all three of these functions.

3. The Restaurant Law Center is a public policy organization affiliated with the National Restaurant Association, the world's largest foodservice trade association. The industry is comprised of over one million restaurants and other foodservice outlets that represent a broad and diverse group of owners and operators—from large national outfits with hundreds of locations and billions in revenue, to small single-location, family-run neighborhood restaurants and bars, and everything in between. The industry employs over 15 million people, and is the nation's second-largest private-sector employer.

4. Through regular participation in *amicus* briefs on behalf of the industry, including in cases like this one, the Restaurant Law Center provides courts with the industry's perspective on legal issues in pending cases that may have industry-wide implications.

5. The Florida Restaurant and Lodging Association is the leading business association for the restaurant and hospitality industry in Florida. A statewide, non-profit trade association originally founded in 1946, it advocates for businesses and

employees in the industry, including public lodging establishments, restaurants, and thousands of suppliers to the industry, which serve as the cornerstone of the state economy. Its mission is to protect, educate, and promote the hospitality industry.

6. *Amici* and their members have a significant interest in the important issues raised by this case. Many businesses in the restaurant and hospitality industry have sought business interruption coverage under “all risk” commercial insurance policies for the physical loss or damage they suffered as a direct result of unprecedented executive shutdown orders. Many of those restaurants have been unreasonably and categorically denied coverage on the basis that they supposedly have not incurred physical loss or damage even though their properties have been rendered non-functional, detrimentally altered, and physically impaired as a result of the orders. Therefore, although whether Appellant has stated a claim for coverage depends on the specific factual allegations in its pleadings, *amici* and their members have a strong interest in highlighting for the Court why certain issues raised in this appeal are important to the restaurant industry as a whole.

7. *Amici* will offer the Court a useful industry-wide perspective on the issues in this appeal. In particular, *amici* will provide the Court with important information about the state of the restaurant industry, about the broader landscape of business interruption cases being pursued by restaurants and hospitality companies across the country, and about the industry's perspective on those cases. Because *amici* represent the restaurant and hospitality industry as a whole, and the entire industry in Florida, the perspective of *amici* may differ from that of the parties in this case. Moreover, the information and experience that *amici* can offer goes beyond what the parties can provide.

8. Reflecting its strong interest in this case and related issues, the U.S. Court of Appeals for the Eleventh Circuit recently granted the Restaurant Law Center's motion to file a brief as *amicus curiae* in a business interruption case involving a restaurant and the application of Florida law. See *SA Palm Beach LLC v. Certain Underwriters at Lloyd's*, No. 20-14812 (11th Cir. Feb. 9, 2021).¹

¹ The Eleventh Circuit and other courts have also granted the Restaurant Law Center's motions to file a brief as *amicus* in business interruption cases involving the application of state law. See Order, *Henry's Louisiana Grill, Inc. v. Allied Ins. Co. of Am.*, No. 20-14156

9. *Amici* certify that counsel for Appellant has represented it does not oppose this motion, and counsel for Appellees has represented that Appellees do not consent to this motion.

WHEREFORE, Given their substantial interest in this case, *amici* respectfully request that this Court grant leave to file a brief supporting Appellant and reversal.

April 27, 2021

Respectfully submitted,

/s/ Marc L. Warren

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(11th Cir. Jan. 25, 2021) (Georgia); *Gavrilides Mgmt. Co. LLC v. Mich. Ins. Co.*, No. 355318 (Mich. Ct. App. Feb. 9, 2021) (Michigan); *Rose's 1 LLC v. Erie Ins. Exch.*, No. 20-cv-535 (D.C. Ct. App. Oct. 30, 2020) (District of Columbia); *see also, e.g., TJBC Inc. v. The Cincinnati Ins. Co.*, No. 21-1203 (7th Cir. Apr. 5, 2021) (Illinois, filed with the consent of the parties, under Fed. R. App. P. 29(a)(2)).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2021, a true and correct copy of the foregoing has been served via the Court's electronic filing system upon the following:

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