

No. 21-1268

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SKILLETS, LLC, Individually and on behalf of all others similarly
situated, doing business as Skilletts Restaurant; GOOD BREAKFAST,
LLC, d/b/a Skilletts Restaurant; SKILLETS HOLDINGS, LLC,

Plaintiffs-Appellants,

v.

COLONY INSURANCE COMPANY,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia,
Case No. 3:20-cv-00678-HEH

**RESTAURANT LAW CENTER AND VIRGINIA RESTAURANT,
LODGING & TRAVEL ASSOCIATION'S MOTION FOR LEAVE
TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLANTS**

Pursuant to Rules 27 and 29 of the Federal Rules of Appellate Procedure, the Restaurant Law Center and Virginia Restaurant, Lodging & Travel Association respectfully move for leave to file a brief as *amici curiae* in support of Plaintiffs-Appellants. *Amici* state the following in support of their motion:

1. Motions for leave to file *amicus* briefs by non-parties—such as industry groups like the Restaurant Law Center and Virginia Restaurant, Lodging & Travel Association—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.

2. “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 proposed *amici* brief 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. *Amicus* Virginia Restaurant, Lodging & Travel Association is the unified voice for the restaurant, lodging, travel and hospitality suppliers associations in Virginia, advocates for the hospitality and tourism industry in the Commonwealth, and promotes its interests through educational offerings, networking opportunities, and other support.

6. *Amici* and their members have a significant interest in the important issues raised by this case. Many businesses in the restaurant 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 state and local 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 Plaintiffs-Appellants have stated a claim for coverage depends on their specific factual allegations, *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. In their brief, *amici* will offer the Court a useful industry-wide perspective on the issues in this appeal. In particular, the brief 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, including in Virginia and other states within the Fourth Circuit's jurisdiction, the information and experience that *amici* can offer goes beyond what the parties can provide.

8. In briefs filed in Florida state court and in the Eleventh Circuit, the Restaurant Law Center has explained why under Florida law restaurants have adequately alleged that they suffered physical loss or damage as a result of state and local shutdown orders that physically impaired and detrimentally altered their property.¹ Building on those

¹ See Brief of the Restaurant Law Center and Florida Restaurant & Lodging Association, as *Amici Curiae*, *Commodore, Inc. v. Certain Underwriters at Lloyd's London*, No. 3D21-0671 (Fla. 3d DCA June 14,

briefs, *amici* write to provide this Court with additional context about how Virginia law would apply in cases like this one, practical perspectives on potential outcomes, and to emphasize how restaurant and foodservice companies have suffered physical loss or damage as a result of state and local shutdown orders.

9. Other federal and state appellate courts—including the Florida Third District Court of Appeals and the Eleventh Circuit in cases applying Florida law—have recently granted the Restaurant Law Center and state restaurant associations permission to file briefs in business interruption cases involving state-law issues similar to those in this case.²

2021), *available at* <https://restaurantlawcenter.org/wp-content/uploads/2021/04/RLC-Amicus-Greenstreet-Cafe-v-Underwriters-at-Lloyds-London-6-14-2021.pdf>; Brief of the Restaurant Law Center, as *Amicus Curiae*, *SA Palm Beach LLC v. Certain Underwriters At Lloyd's London*, 2021 WL 777431 (11th Cir. Feb. 9, 2021), *available at* <https://restaurantlawcenter.org/wp-content/uploads/2021/02/RLC-SA-Palm-Beach-Amicus-Accepted.pdf>.

² See Order, *Commodore*, No. 3D21-0671 (Fla. 3d DCA Apr. 29, 2021) (Florida law); Order, *SA Palm Beach*, No. 20-14812 (11th Cir. Feb. 25, 2021) (Florida law); Order, *Henry's Louisiana Grill, Inc. v. Allied Ins. Co. of Am.*, No. 20-14156 (11th Cir. Jan. 25, 2021) (Georgia law); *Gavrilides Mgmt. Co. LLC v. Mich. Ins. Co.*, No. 355318 (Mich. Ct. App. Feb. 9, 2021) (Michigan law); *Rose's 1 LLC v. Erie Ins. Exch.*, No. 20-cv-535 (D.C. Ct. App. Oct. 30, 2020) (District of Columbia law); *see also*,

10. Per Local Rule 27(a), *amici* certify that counsel for the other parties to the appeal have been informed of the filing of this motion. Counsel for Plaintiffs-Appellants has represented they do not oppose this motion. Counsel for Defendant-Appellee has represented that they do not consent to this motion and intend to file a response in opposition.

WHEREFORE, Given their substantial interest in this case, proposed *amici* Restaurant Law Center and Virginia Restaurant, Lodging & Travel Association respectfully request that this Court grant leave to file a brief supporting Plaintiffs-Appellants and reversal.

June 17, 2021

Respectfully submitted,

/s/ Gabriel K. Gillett

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e.g., *TJBC Inc. v. The Cincinnati Ins. Co.*, No. 21-1203 (7th Cir. Apr. 5, 2021) (Illinois law, filed with the consent of the parties); *Terry Black's Barbecue, L.L.C. v. State Auto. Mut. Ins. Co.*, No. 21-50078 (5th Cir. June 4, 2021) (Texas law, filed on consent).

CERTIFICATE OF COMPLIANCE

Under Rule 32 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)(A) because it contains 1,099 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, Century Schoolbook, in 14-point font, using Microsoft Word 2016.

/s/ Gabriel K. Gillett
Gabriel K. Gillett

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Gabriel K. Gillett
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