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APPELLATE COURT 2ND DISTRICT

**IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT**

SWEET BERRY CAFE, INC.,

Plaintiff-Appellant,

v.

SOCIETY INSURANCE, INC.,

Defendant-Appellee.

Appeal from the Circuit Court for the
Sixteenth Judicial Circuit, Kane County, Illinois,
No. 20 CH 266
The Honorable Kevin Busch, Judge Presiding.

**RESTAURANT LAW CENTER AND ILLINOIS RESTAURANT
ASSOCIATION'S MOTION FOR LEAVE
TO FILE BRIEF AS AMICI CURIAE
IN SUPPORT OF PLAINTIFF-APPELLANT *INSTANTER***

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF-APPELLANT *INSTANTER***

Pursuant to Illinois Supreme Court Rule 345, the Restaurant Law Center and Illinois Restaurant 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. Motions for leave to file *amicus* briefs by non-parties—such as industry groups like the Restaurant Law Center and Illinois Restaurant 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 *amicus* brief fulfills all three of these functions.

3. *Amicus* 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.¹

5. *Amicus* the Illinois Restaurant Association is a non-profit trade organization founded over one hundred years ago to promote, educate, and improve the restaurant industry in Illinois. Headquartered in Chicago, the Association has nearly 8,000 members statewide—including restaurant operators, food service professionals, suppliers, and related industry professionals—and represents the Illinois restaurant industry that includes more than 25,000 restaurant owners and operators, and employs hundreds of thousands across the state. The Association supports the restaurant industry by promoting local tourism, providing food service education and training programs, providing analysis on topics of the day, providing

¹ See, e.g., *McDonald v. Symphony Bronzeville Park, LLC*, No. 126511 (Ill. May 11, 2021); *Fox Fire Tavern, LLC v. Gov. Jay Robert Pritzker*, Nos. 2-20-0623, 02-2020-0627 (2d Dist. Nov. 4, 2020); *Rosenbach v. Six Flags Ent. Corp.*, No. 123186 (Ill. Sept. 18, 2018).

networking opportunities, hosting culinary events, and advocating for its members' interests.

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 Plaintiff-Appellant has stated a claim for coverage depends on its 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 Illinois and other states, the information and experience that *amici* can offer goes beyond what the parties can provide.

8. In other briefs filed, the Restaurant Law Center has explained why, under Illinois 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.² Building on those briefs, *amici* write to provide this Court with additional context about how Illinois law applies 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 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.³

10. *Amici* certify that, pursuant to Local Rule 102, counsel for the other parties to the appeal have been informed of the filing of this motion. Counsel for Plaintiff-Appellant and counsel for Defendant-Appellee have represented that they do not oppose this motion.

² See *Zajas, Inc. v. Budget Mut. Ins. Co.*, No. 21-1660 (7th Cir. June 11, 2021); *TJBC Inc. v. The Cincinnati Ins. Co.*, No. 21-1203 (7th Cir. Apr. 5, 2021).

³ See Order, *Skilletts, LLC v. Colony Ins. Co.*, No. 21-1268 (4th Cir. June 29, 2021); 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, e.g., *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).

WHEREFORE, given their substantial interest in this case, proposed *amici* Restaurant Law Center and Illinois Restaurant Association respectfully request that this Court grant leave to file a brief supporting Plaintiff-Appellant and reversal.

July 7, 2021

Respectfully submitted,

/s/ Gabriel K. Gillett

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: July 7, 2021

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CERTIFICATE OF SERVICE

I, Gabriel K. Gillett, hereby certify that on July 7, 2021, I caused a copy of **Restaurant Law Center and Illinois Restaurant Association's Motion for Leave to File Brief as Amici Curiae in Support of Plaintiff-Appellant *Instanter*** to be served via electronic mail and via email using the Court's e-file system to the email addresses listed below:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

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