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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

No. 2021AP000585

CIRCOLO, LLC DBA PASQUAL'S HILLDALE,
Plaintiff-Appellant,

v.

SOCIETY INSURANCE, A MUTUAL COMPANY,
Defendant-Respondent.

On Appeal from the Circuit Court of Dane County
The Honorable Mario D. White Presiding
Circuit Court Case No. 2020CV001062

**RESTAURANT LAW CENTER'S MOTION FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT**

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July 28, 2021

Attorneys for Movant

The Restaurant Law Center, by its attorneys, Jenner & Block LLP, respectfully moves for leave to file the accompanying non-party brief as *amicus curiae* in support of Appellants, pursuant to Wis. Stat. § 809.19(7). *Amicus* states the following in support of its motion:

1. Motions for leave to file *amicus curiae* briefs by non-parties—such as industry groups like the Restaurant Law Center—are often 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 Assocs., P.A. v. Comm’r of Internal Revenue*, 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.* (internal 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. 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. 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.

4. *Amicus* and its 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 state and local 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 these shutdown orders. Therefore, although whether a claim for coverage has been stated depends on the specific factual allegations in the complaint, *amicus* and its 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.

5. In its brief, *amicus* will offer the Court a useful industry-wide perspective on the issues in this appeal. In particular, the *amicus* 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 *amicus* represents the restaurant and hospitality industry as a whole, the perspective of *amicus* may differ from that of the parties. In addition, the information and experience that *amicus* can offer goes beyond what the parties can provide.

6. Other federal and state appellate courts have recently granted the Restaurant Law Center permission to file briefs in business interruption cases involving state-law issues similar to those in this case.¹

7. *Amicus* certifies that counsel for Appellant has represented they do not oppose this motion, and counsel for Appellees has represented they do not take a position on this motion.

WHEREFORE, given its substantial interest in this case, *amicus* respectfully requests that this Court grant leave to file a brief supporting Appellants and reversal.

¹ See Order, *Sweet Berry Café, Inc. v. Society Insurance, Inc.*, No. 2-21-0088 (Ill. App. 2d Dist. July 9, 2021) (Illinois law); Order, *Commodore, Inc. v. Certain Underwriters at Lloyd's of London*, No. 3D21-0671 (Fla. 3d DCA Apr. 29, 2021) (Florida law); Order, *SA Palm Beach, LLC v. Certain Underwriters at Lloyd's of London*, 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); Order, *Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, No. 354418 (Mich. Ct. App. Mar. 8, 2021) (Michigan law); *Rose's 1 LLC v. Erie Ins. Exch.*, No. 20-cv-0535 (D.C. Ct. App. Oct. 30, 2020) (District of Columbia law); see also, e.g., *TJBC, Inc. v. Cincinnati Ins. Co.*, No. 21-1203 (7th Cir. Apr. 5, 2021) (Illinois law, filed with consent); *Terry Black's Barbecue, L.L.C. v. State Auto. Mut. Ins. Co.*, No. 21-50078 (5th Cir. June 4, 2021) (Texas law, filed with consent).

July 28, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 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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