

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

TOWN KITCHEN LLC,
individually and on behalf of
those similarly situated,

Plaintiff,

CIVIL ACTION NO. 1:20-cv-22832

v.

CERTAIN UNDERWRITERS AT LLOYDS, LONDON,
KNOWN AS SYNDICATE ENH 5151, NEO 2468
XLC 2003, TAL 1183, TRV 5000, AGR 3268,
ACS 1856, NVA 2007, HDU 382, PPP 1980,
AMA 1200, ASC 1414 and VSM 5678,
and INDIAN HARBOR INSURANCE COMPANY,
and HDI GLOBAL SPECIALTY SE

Defendants.

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1446 and 1453, Defendants Certain Underwriters at Lloyd's, London known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268, ACS 1856, NVA 2007, HDU 382, PPP 1980, AMA 1200, ASC 1414 and VSM 5678 ("Underwriters")¹, Indian Harbor Insurance Company ("Indian Harbor"), and HDI Global Specialty SE ("HDI") (collectively, the "Insurers"), hereby give notice of the removal of this action from the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 2020-008801-CA-01, to the United States District Court for the Southern District of Florida.

I. Background

¹ The Insurers note that the proper name for Underwriters is Certain Underwriters at Lloyd's, London Subscribing to Certificate Number AVS011418900.

1. On April 21, 2020, Town Kitchen, LLC (“Plaintiff”) commenced a putative class action lawsuit styled *Town Kitchen, LLC, individually and behalf of those similarly situated vs. Certain Underwriters at Lloyd’s, London known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268, ACS 1856, NVA 2007, HDU 382, PPP 1980, AMA 1200, ASC 1414 and VSM 5678, Indian Harbor Insurance Company, and HDI Global Specialty SE.*, bearing Case No. Case No. 2020-008801-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Civil Division (the “Circuit Court Action”). A true and correct copy of the Complaint as served upon the Insurers in the Circuit Court Action is attached hereto as Exhibit A and incorporated herein by reference.

2. This matter is removable pursuant to the Class Action Fairness Act of 2005 (“CAFA”). Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in scattered sections of 28 U.S.C., including Sections 1332 and 1453). As set forth below, this is a putative class action in which: (1) there are 100 or more members in Plaintiff’s putative class; (2) at least some members of the putative class have a different citizenship than some defendants; and (3) the amount in controversy in the proposed claims of the putative class members exceeds the sum or value of \$5,000,000 in the aggregate. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A).

II. Removal Is Proper Because This Court Has Jurisdiction Pursuant To 28 U.S.C. § 1332(d)

3. Under CAFA, federal diversity jurisdiction over class actions exists where “any member of a class of plaintiffs is a citizen of a State different from any defendant” and in which the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(6).

4. The Insurers have a statutory right to have this action adjudicated in federal court based upon diversity jurisdiction under CAFA. Diversity of citizenship exists in this matter because Plaintiff and Defendant Indian Harbor are citizens of different states. (Compl. at ¶¶ 1, 3). In addition, Plaintiff and Defendant HDI are citizens of different states, as Defendant HDI is a foreign entity. (Compl. at ¶¶ 1, 4). Finally, based upon the allegations in the Complaint, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. Accordingly, federal jurisdiction exists in this case under CAFA.

A. CAFA's Requirement of Minimal Diversity is Satisfied

5. Plaintiff is a limited liability company with its principal place of business in Florida, and Plaintiff seeks to represent a class of entities that do business in Florida. (Compl. at ¶¶ 1, 19).

6. Indian Harbor has been at all times during the pendency of this action an insurance company organized and existing under the laws of the State of Delaware with its principal place of business in Stamford, Connecticut. (Compl. at ¶ 3). Thus, Indian Harbor is a citizen of Delaware and Connecticut for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

7. HDI has been at all times during the pendency of this action a foreign insurance company with its principal place of business in Hannover, Germany. (Compl. at ¶ 4). Thus, HDI is a foreign entity for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

8. Because the citizenship of at least one proposed class member and one of the Insurers is diverse, CAFA's minimal diversity requirement is satisfied.

B. CAFA’s Amount In Controversy Requirement is Satisfied

9. Plaintiff purports to bring this class action on behalf of “[a]ll entities that do business in Florida: (1) having commercial property insurance policies issued by [the Insurers] including business interruption and extra expense coverage that do not exclude coverage for pandemics; and (2) which have suffered losses due to measures put in place by civil authorities to stop the spread of COVID-19.” (Compl. at ¶ 19).

10. Plaintiff (on behalf of itself and the putative class) seeks business interruption and extra expense coverage due to losses incurred by “measures put in place by civil authorities to stop the spread of COVID-19,” and cites government orders issued in March and April 2020. (Compl. at ¶ 19).²

11. Specifically, Plaintiff seeks “a Declaratory Judgment on whether the Governor’s March 19, 2020 Civil Authority Order and the restrictions set forth therein is a covered loss under the policies issued by [the Insurers].” (Compl. at ¶ 29).

12. While Plaintiff’s declaratory action ultimately asks the Court to find coverage under the commercial insurance policy issued by the Insurers, which included business interruption and extra expense coverage, Plaintiff claims an unspecified amount of damages.

13. CAFA provides that district courts shall have original jurisdiction over any putative class action “in which the matter in controversy exceeds the sum or value of

² Plaintiff’s class definition seeks to include “all entities that do business in Florida,” thus, by virtue of Plaintiff’s proposed class definition, Plaintiff presumably is referring to Florida Governor DeSantis’s orders, which applied statewide. (Compl. at ¶ 13) (the Insurers note that Paragraphs 22(b) and 29 of the Complaint appear to use the incorrect date of the Governor’s “Safer at Home” order). Although Plaintiff cites an order that Miami-Dade County Mayor Gimenez issued in March 2020, this order had no impact on putative class members outside of Miami-Dade County, and thus, the Insurers understand Plaintiff to reference Governor DeSantis’s orders in its class definition.

\$5,000,000, exclusive of interest and costs” 28 U.S.C. § 1332(d)(2).

14. CAFA further provides that, in determining whether this \$5,000,000 amount is met in class actions, “the claims of the individual class members shall be aggregated” 28 U.S.C. § 1332(d)(6).

15. The Insurers deny that Plaintiff (and any of the putative class members) is entitled to any relief or that this matter is appropriate for class treatment. However, the Insurers have undertaken to quantify the potential damages at stake if Plaintiff certifies a class and prevails at trial on the claims it asserts.

16. The Insurers have determined that should Plaintiff’s putative class be certified, and the Court finds a covered loss under the policies, the amount in controversy will well exceed the \$5,000,000 jurisdictional threshold.³

17. If Governor DeSantis’s orders (along with local orders issued by municipalities) constitute a loss covered by the applicable insurance policy, as Plaintiff alleges, coverage would be provided under the “Civil Authority” provision, which provides for a maximum of three or four weeks of business interruption coverage, depending on the existence of a particular endorsement.

18. As such, the amount in controversy for the putative class would be three weeks of business interruption coverage under the relevant policies at issue.⁴ *See*

³ While the Insurers note that attorneys’ fees and costs can be included in calculating the amount in controversy requirement under CAFA, the Insurers advise the Court that they are not taking fees and costs into consideration when calculating the amount in controversy. *Morgan v. Ace Am. Ins. Co.*, 3:16-CV-705-J-39MCR, 2017 WL 8362727, at *6 (M.D. Fla. Sept. 15, 2017) (noting that attorneys’ fees and costs can be included in the amount in controversy calculation under CAFA, but such figures cannot be speculative).

⁴ Although some policies at issue provide for three weeks of coverage and other policies provide for four weeks, the Insurers have chosen to assume that all of the policies had the more conservative three-week limitation to avoid improperly inflating the amount in controversy. Notably, Plaintiff’s policy contains the endorsement and limits Plaintiff’s business interruption damages to a period of three weeks. (Compl. at Ex. A, Form CP 00 30 10 12, pp. 43-53).

Anderson v. Wilco Life Ins. Co., 943 F.3d 917, 925 (11th Cir. 2019) (“This Court has held that ‘[f]or amount in controversy purposes, the value of injunctive or declaratory relief is the “value of the object of the litigation” measured from the plaintiff’s perspective.’ Stated another way, ‘the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff if the injunction were granted.’” (quoting *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1268 (11th Cir. 2000) (internal citations omitted))).

19. Based on the Insurers’ calculations and understanding of Plaintiff’s class definition, Plaintiff’s putative class consists of approximately 2,927 separate insured locations within the state of Florida. Each of these 2,927 insured locations maintains business interruption coverage with policy limits of varying amounts. The aggregate of the business interruption policy limits for the putative class is approximately \$843,000,000. Here, the value of the relief ultimately requested by Plaintiff—the amount in controversy—is available business income coverage for each applicable policy at issue. *See id.*

20. Each policy issued by the Insurers to Plaintiff and to the the putative class members is in effect and provides coverage for one year, or 52 weeks. As such, the calculation of the amount in controversy equals the available coverage during the maximum three-week period provided under the “Civil Authority” provision, which is $3/52$ (or approximately $1/17^{\text{th}}$) of the total policy limits for business interruption coverage. Thus, $1/17^{\text{th}}$ of the \$843,000,000 representing the aggregate limit of all the policies equals \$49,000,000. Accordingly, the Insurers estimate that the aggregate business interruption coverage of \$49,000,000 is at issue for this three-week period,

which is almost ten times the \$5,000,000 CAFA threshold. *See S. Fla. Wellness v. Allstate Ins. Co.*, 745 F.3d 1312, 1317 (11th Cir. 2014) (“Estimating the amount in controversy is not nuclear science; it does not demand decimal-point precision. . . . The larger the calculated amount at stake, the easier it is to be confident that collection contingencies should not count for much”).⁵

21. Thus, the Insurers believe CAFA’s amount-in-controversy requirement is satisfied.

III. Removal is Timely Pursuant to 28 U.S.C. §§ 1446 and 1453

22. The Insured served the Insurers on different dates, as follows: Underwriters and HDI were served with the Complaint on June 11, 2020, and Indian Harbor was served with the Complaint on June 13, 2020.

23. Notwithstanding the “later-served defendant” rule, the Insurers’ Notice of Removal is timely in that it is filed within thirty (30) days of Underwriters and HDI being served with Plaintiff’s Complaint. 28 U.S.C. § 1446(b)(2)(B).

IV. The Insurers Have Satisfied All Other Requirements For Removal

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the United States District Court for the Southern District of Florida embraces the place where this action was pending.

25. Further, the Insurers have determined that approximately 2,927 insured locations (or policies) represent the putative class. The putative class, thus, consists of over 100 class members.

⁵ Indeed, each of the 2,927 putative class locations need only seek \$1,710 in business interruption damages under their respective policy to meet CAFA’s \$5,000,000 threshold.

26. Based on the above, CAFA's diversity and amount-in-controversy requirements have been satisfied and this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.

27. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as provided by law, and written notice is being sent to Plaintiff's counsel.

28. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon the Insurers are attached to this Notice as Composite Exhibit B.

29. The Insurers in no way concede to any of the allegations set forth in the Complaint, which includes the parameters of Plaintiff's putative class or that this matter is appropriate for class treatment. Thus, all paragraphs and provisions contained herein are adversarial in nature, operate under all necessary assumptions and presumptions, and are set forth for the limited purpose of removing said matter to federal court.

30. If any question arises as to the propriety of this removal, the Insurers respectfully request the opportunity to present a brief and argument in support of their Notice of Removal.

WHEREFORE, the Insurers respectfully request that this action, now pending in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, be removed to the United States District Court for the Southern District of Florida.

Respectfully submitted this 10th day of July 2020.

/s/ John D. Mullen

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Counsel for Defendants Certain

Underwriters at Lloyd's, London, Known as

Syndicate ENH 5151, NEO 2468, XLC 2003,

TAL 1183, TRV 5000, AGR 3268 ACS 1856,

NVA 2007, HDU 382, PPP 1980, AMA

1200, ASC 1414 and VSM 5678, and Indian

Harbor Insurance Company, and HDI

Global Specialty SE

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system and served a true and correct copy via regular U.S. Mail to the following:

Michael E. Criden
Kevin B. Love
Lindsey C. Grossman
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/s/ John D. Mullen _____
Counsel for Defendants

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Town Kitchen LLC, individually and on behalf of those similarly situated DEFENDANTS Certain Underwriters at Lloyds, London, Subscribing to Certificate Number AVS011418900, Indian Harbor Insurance Company and HDI Global Specialty SE

(b) County of Residence of First Listed Plaintiff Miami-Dade County (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael E. Criden, Esq., Kevin B. Love, Esq. and Lindsey C. Grossman, Esq.; Criden & Love, P.A., 7301 SW 57th Court, Ste. 515, Attorneys (If Known) John D. Mullen, Esq., Sarah B. Van Schoyck, Esq. Jason A. Pill, Esq.; Phelps Dunbar LLP, 100 S. Ashley Dr., Ste 2000, Tampa, FL 33602; ph. (813) 472-7550

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Grid for Basis of Jurisdiction and Citizenship of Principal Parties. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid for Nature of Suit. Columns include CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding [X] 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): CAFA 28 USC §§1332, 1453 - Brief Description: Declaratory action for business interruption insurance coverage LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [] Yes [X] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE July 10, 2020 SIGNATURE OF ATTORNEY OF RECORD /s/ John D. Mullen

Exhibit A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

TOWN KITCHEN, LLC, individually and
on behalf of others similarly situated,

Case No.

Plaintiff,

CLASS REPRESENTATION

v.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON KNOWN AS
SYNDICATE ENH 5151, NEO 2468,
XLC 2003, TAL 1183, TRV 5000, AGR
3268, ACS 1856, NVA 2007, HDU 382,
PPP 1980, AMA 1200 ASC 1414 and
VSM 5678, INDIAN HARBOR
INSURANCE COMPANY, and HDI
GLOBAL SPECIALTY SE,

Defendants.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, Town Kitchen, LLC (“Town” or “Plaintiff”) on behalf of itself and all others similarly situated, bring this action against Certain Underwriters at Lloyds, London known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268, ACS 1856, NVA 2007, HDU 382 , PPP 1980, AMA 1200 ASC 1414 and VSM 5678, Indian Harbor Insurance Company and HDI Global Specialty SE (altogether, “Defendants”) for a declaratory judgment of rights and obligations under the commercial property insurance policies issued by Defendants. Plaintiff alleges as follows, based on personal knowledge, and upon information and belief as to all other matters:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Town is a Florida limited liability company with its principal place of business at 7301 SW 57th Court, Suite 100, South Miami, Florida 33143. Defendants issued a commercial property insurance policy to Town, bearing Policy Number AVS011418900 and effective from April 10, 2019 to April 10, 2020 (the “Policy”), attached hereto as Exhibit “A.”

2. Defendant Certain Underwriters at Lloyd’s, London (hereinafter “Lloyds”) subscribing to Policy Number AVS011418900 are certain syndicates in the business of issuing policies of insurance, with their principal place of business in London, England. Upon information and belief, the liabilities under Policy Number AVS011418900 are shared among a syndicate of underwriters identified only by a pseudonym and respective allocation of liability: ENH 5151(26%), NEO 2468 (4%), XLC 2003 (3.69%), TAL 1183 (1.28%), TRV 5000 (.37%), AGR 3268 (.74%), ACS 1856 (1.28%), NVA 2007 (1%), HDU 382 (3.38%), PPP 1980 (3.38%), XLC 2003 (8.5%), TRV 5000 (1.68%), AMA 1200 (3.38%), ACS 1856 (1.74%), ASC 1414 (2.52%), VSM 5678 (3.38%).

3. Defendant Indian Harbor Insurance Company (“Indian Harbor”) is a Delaware insurance company with its principal place of business in Stamford, Connecticut. Indian Harbor shares 15% liability under Policy Number AVS011418900.

4. Defendant HDI Global Specialty SE (“HDI”) is a foreign insurance company with its principal place of business in Hannover, Germany. HDI shares 18.68% liability under Policy Number AVS011418900.

5. Personal jurisdiction exists over Defendants under Fla. Stat. § 48.193(1)(a)(4) as Defendants contracted to insure Plaintiff’s property located in South Miami, Florida.

6. This Court has subject matter jurisdiction over this action pursuant to Fla. Stat. § 86.011.

7. Venue is properly fixed in Miami-Dade County, Florida, as Plaintiff's cause of action accrued in Miami-Dade County and the insured property is located in Miami-Dade County.

II. GENERAL ALLEGATIONS

8. Defendants issue commercial property insurance policies providing coverage for losses including, but not limited to, business income losses (also referred to as "business interruption") and extra expenses incurred in connection with business income losses. In exchange, insureds pay insurance policy premiums. The insurance policies provide additional coverage for the loss of business income and extra expenses sustained due to civil authority actions that prohibit access to a business's premises. Upon information and belief, the Business Income (and Extra Expense) Coverage Form is a standard form used by Defendants and prepared by Insurance Services Office, Inc. ("ISO"), a company that drafts standard policy language for use in insurance contracts. ISO also drafted an endorsement excluding coverage for loss or damage caused by a virus and/or bacteria, and while other insurers have incorporated that language in their policies, Defendants chose not to include such an exclusion in their policies.

9. In or around December 2019, the first case of COVID-19 or the novel Coronavirus was reported. According to the World Health Organization, COVID-19 is "an infectious disease caused by a newly discovered coronavirus."¹ COVID-19 can be transmitted from person to person, but can also be acquired after touching contaminated objects. In fact, scientists found that COVID-19 was detectable on plastic and stainless steel up for up to two to three days.²

¹ https://www.who.int/health-topics/coronavirus#tab=tab_1.

² <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

10. Over the last few months, COVID-19 has spread into a global pandemic.³ In response to the pandemic, on March 9, 2020, the Governor of Florida Ronald DeSantis declared a State of Emergency in Florida related to COVID-19. A few days later, Miami-Dade County Mayor Carlos Gimenez declared a State of Emergency for Miami-Dade County.

11. On March 16, 2020, President Donald J. Trump and the Center for Disease Control (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt social distancing measures, such as avoiding gatherings of more than 10 people. On March 31, the President updated the guidance to “30 Days to Slow the Spread.”

12. In light of the CDC’s guidelines to slow the spread of COVID-19, on March 19, 2020 at 9:00 p.m., Mayor Gimenez ordered the closure of non-essential commercial establishments, including restaurants with dine-in operations. *See* Miami-Dade County Emergency Order 07-20 attached hereto as Exhibit “B.” In response, businesses all across Miami-Dade County shuttered their operations due to COVID-19. As of the date of this filing, Emergency Order 07-20 is still in effect.

13. Ultimately, on April 1, 2020, Governor DeSantis issued a “Safer at Home” Order, Executive Order Number 20-91 mandating that all persons in Florida “limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.”

14. As a result of these restrictions, most non-essential businesses, including restaurants, retail establishments, and entertainment venues, have been forced to close.

15. Plaintiff’s losses due to COVID-19 are covered under the terms of its policy. More specifically, COVID-19 and/or the government shutdown constitute “direct physical loss of or

³ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

damage to the property at the premises.” Accordingly, on March 25, 2020, Plaintiff, a Miami restaurant with dine-in operations, submitted a Sworn Statement in Proof of Loss, attached hereto as Exhibit “C.” In response, Defendants’ Claims Adjuster contacted Plaintiff expressly reserving all rights and requesting significant information and documentation. Plaintiff subsequently provided written responses.

16. On March 30, 2020, Plaintiff contacted Defendants to inquire as to whether Defendants are providing coverage under their policy based on the civil action requiring Plaintiff to shut down. Defendants’ Claims Adjuster notified Plaintiff that Defendants are “still reviewing coverage.” Plaintiff has repeatedly requested that Defendants provide clarity as to whether its claim is covered under the policy. On April 10, 2020, Defendants’ Claims Adjuster advised Plaintiff that it is “still reviewing” the claim.

17. At this point, Defendants have neither denied Plaintiff’s claim, nor committed to providing coverage to Plaintiff, further imperiling Plaintiff.

18. Upon information and belief, Defendants have refused to provide coverage or at least provide appropriate and timely response to its policyholders due to civil actions taken in light of the novel Coronavirus pandemic.

III. CLASS REPRESENTATION ALLEGATIONS

19. Plaintiff brings this action pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure on its own behalf and on behalf of all entities that do business in Florida: (1) having commercial property insurance policies issued by Defendants including business interruption and extra expense coverage that does not exclude coverage for pandemics; and (2) which have suffered losses due to measures put in place by civil authorities to stop the spread of COVID-19.

20. Excluded from the Class are Defendants, their affiliates, their subsidiaries, and any officers, employees, attorneys, agents, legal representatives, heirs, successors and assigns.

21. Upon information and belief, Defendants sell this type of insurance to thousands of businesses across Florida making joinder of all Class members impracticable.

22. There are questions of law and fact that are common to the Plaintiff and the Class, including, but not limited to:

- a. Whether there is a bona fide dispute between the Parties as to the Parties' rights and obligations under Defendant's insurance policies;
- b. Whether the Governor's March 19, 2020 Order is an act of Civil Authority;
- c. Whether Plaintiff and the Class suffered business income losses; and
- d. Whether the losses experienced by Plaintiff and the Class are covered losses under their insurance policies.

23. Plaintiff's claims are typical of the claims of the Class Members. The practice alleged herein was a standardized, uniform practice employed by Defendant wherein it refused to provide coverage to the insureds.

24. Plaintiff and counsel will fairly and adequately protect and represent the interest of each member of the Class. Plaintiff is committed to the vigorous prosecution of this Action and has retained competent counsel experienced in prosecuting class actions. The interests of Plaintiff are consistent with and not antagonistic to those of the other Class Members.

25. Pursuant to Rule 1.220(b)(2), Defendants have acted or refused to act on grounds generally applicable to all members of the class, thereby making declaratory relief concerning the class as a whole appropriate.

IV. CAUSES OF ACTION

COUNT I **DECLARATORY RELIEF**

26. Plaintiff incorporates the allegations in paragraphs 1 through 25 as though fully set forth herein.

27. Under Fla. Stat. § 86.011, et seq., the court may render declaratory judgments on the existence or nonexistence of any “immunity, power, privilege, or right,” or “[o]f any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future.”

28. There is a bona fide, actual, present practical need for the declaration. Plaintiff and the Class’s businesses are currently non-operational, and their ability to survive this pandemic depends on their ability to obtain insurance coverage for their losses.

29. Accordingly, Plaintiff and the Class seek a Declaratory Judgment on whether the Governor’s March 19, 2020 Civil Authority Order and the restrictions set forth therein is a covered loss under the policies issued by Defendants.

30. Further, all antagonistic and adverse interests are before the court, and the relief sought is not merely the giving of legal advice by the courts or the answers to questions propounded from sheer curiosity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests that the Court:

1. Certify the proposed Class, designate Plaintiff as the named representative of the Class, and designate undersigned counsel as Class Counsel;

2. Issue a Declaratory Judgment declaring the Parties' rights and obligations under the insurance policies; and
3. Award such other and further relief the Court deems just, proper, and equitable.

Dated: April 20, 2020

Respectfully submitted,

/s/Michael E. Criden
Michael E. Criden (Fla. Bar No. 714356)
Kevin B. Love (Fla. Bar No. 993948)
Lindsey C. Grossman (Fla. Bar No. 105185)
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