

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

MALAUBE, LLC, d/b/a SPRIS ARTISAN
PIZZA, a Florida Limited Liability Company,

Plaintiff,

vs.

GREENWICH INSURANCE COMPANY, a
Foreign Corporation

Defendant.

Case No.: _____

DEFENDANT, GREENWICH INSURANCE COMPANY’S NOTICE OF REMOVAL

Defendant, Greenwich Insurance Company (“Greenwich”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes the action styled as *Malaube, LLC, d/b/a Spris Artisan Pizza, a Florida Limited Liability Company v. Greenwich Insurance Company, a Foreign Corporation*, Case No.: 2020-008378-CA-01, currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida, and as grounds states:

I. THE STATE COURT ACTION

1. On April 23, 2020, Plaintiff, Malaube, LLC, d/b/a Spris Artisan Pizza, a Florida Limited Liability Company (“Plaintiff”) filed a complaint against Greenwich in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2020-008378-CA-01 (the “State Court Action”) seeking to recover insurance benefits for loss of business income allegedly sustained as a result of the government shutdowns in response to the COVID-19 pandemic.

2. On June 4, 2020, Greenwich was served with Plaintiff's Complaint.

3. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders filed in the State Court Action are attached hereto as **Composite Exhibit "A"**.

4. At all times material, including at the time the case was filed and at the time of removal, Plaintiff is and has been a Florida corporation with its principal place of business at 5748 Sunset Drive, Miami, Florida 33143. Plaintiff is therefore a citizen of the State of Florida for jurisdictional purposes. *See* Complaint at ¶ 8.

5. Furthermore, the State Court Action concerns real property located at 5748 Sunset Drive, Miami, Florida 33143. *See* Complaint at ¶ 15.

6. At all times material, including at the time the case was filed and at the time of removal, Greenwich is and has been a Delaware corporation with its principal place of business in Connecticut. Greenwich is an authorized property and casualty insurer which issues policies in Florida, FEIN (95-1479095), NAIC (22322). Greenwich is therefore a citizen of Delaware and Connecticut for jurisdictional purposes.

7. The Complaint filed in the State Court Action seeks monetary damages in excess of \$30,000.00. *See* Complaint at ¶ 2.

8. At the time of service of Plaintiff's Complaint, the specific amount in controversy was unknown based on the pleadings as alleged.

II. NOTICE OF REMOVAL IS TIMELY FILED

9. Removal is appropriate upon a showing that there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney's fees. 28 U.S.C. § 1332.

10. Where removal is sought on the basis of jurisdiction conferred by 28 U.S.C § 1332, the amount in controversy is the sum identified in the initial pleading, except where the state practice permits recovery of damages in excess of the amount demanded. 28 U.S.C. § 1446 (c)(2)(A).

11. Where the state practice either does not permit or demand a specific sum or permits recovery of damages in excess of the amount demand in the initial pleading, removal is proper where the Court finds, by a preponderance of the Evidence, that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1446 (c)(2)(B).

12. The notice of removal shall be filed within 30 days after the defendant received an initial pleading. 28 U.S.C. § 1446 (b).

III. REMOVAL IS TIMELY AND PROPER

13. Greenwich is a citizen of Delaware and Connecticut. Plaintiff is a citizen of Florida. There is complete diversity of citizenship, and there has been at all times from the date the Complaint was filed through the present date. By filing this Notice of Removal, Greenwich consents to removal of this action from state to federal court.

14. A Defendant seeking removal based on diversity jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds the \$75,000.00 jurisdictional requirement. *See Baypoint Office Tower, Inc. v. Chubb Custom Ins. Co.*, No.12-20893-CIV, 2012 WL 2192853, at *1 (S.D. Fla. June 14, 2012) (citing *Leonard v. Enterprise Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002)).

15. Plaintiff seeks business interruption and extra expense coverage in connection with “The Government Shutdowns that interfered with Spris’ access to its business . . . as a result of the

COVID-19 pandemic,” and cites two government orders issued in March 2020. *See* Complaint at ¶ 18.

16. Specifically, Plaintiff seeks “A declaratory judgment determining that the coverage provided under the Policy will prevent Spris from being left without vital coverage acquired to ensure the survival of its business in circumstances as set forth hereinabove. As a result of the Government Shutdowns, Spris has incurred, and will continue to incur, substantial loss of business income and additional expenses covered under the Policy.” *See* Complaint at ¶ 22.

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

18. Greenwich has undertaken to quantify the potential damages at stake if Plaintiff prevails at trial on the claims it asserts.

19. Greenwich has determined that if the Court were to find a covered loss under the policy (a finding Greenwich will vehemently resist), the amount in controversy will exceed the \$75,000.00 jurisdictional threshold.

20. If Governor Ron DeSantis’s March 20, 2020 order (along with local orders issued by Miami-Dade Mayor, Carlos Gimenez) 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 weeks of business interruption coverage.

21. As such, the amount in controversy for the Plaintiff would be three weeks of business interruption coverage under the relevant policies at issue. *See 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)).

22. Based on Greenwich's calculations and understanding of Plaintiff's allegations, Plaintiff's policy of insurance contains a business interruption policy limit of \$500,000.00 and the civil authority coverage period is limited to three weeks. Here, the value of the relief ultimately requested by Plaintiff—the amount in controversy—is available business income coverage for the applicable policy.

23. The Policy issued to Plaintiff by Greenwich provides coverage for business interruption subject to the \$500,000.00 limit of liability, and for any one month period the limit of liability is capped at 1/6th of that amount. Further, the civil authority coverage period is limited to three weeks, or less than one full month. Therefore, the maximum Plaintiff could recover is its losses incurred during a single month, and that sum is further capped at 1/6th of the total business interruption limit of liability, or \$83,333.33, which exceeds the amount in controversy.

24. Further, Plaintiff seeks attorney's fees and costs from Greenwich. *See Stern v. First Liberty Ins. Corp.*, 424 F.Supp.3d 1264, 1274 (S.D. Fla. Jan. 24, 2020) ("Attorney's fees only count towards the amount in controversy, for purposes of determining whether federal court has subject matter jurisdiction over action."), further increasing the amount in controversy.

25. Therefore, Greenwich believes the jurisdictional amount-in-controversy requirement is satisfied.

26. This Notice of Removal is filed within 30 days of June 4, 2020, and is therefore timely. 28 U.S.C. § 1446 (c).

27. As the Notice of Removal was filed within 30 days, involved a controversy in excess of \$75,000.00, and there is complete diversity of citizenship of the parties, removal is proper.

28. Pursuant to 28 U.S.C. 28 U.S.C. § 1446 (d), written notice of the removal of this action will be promptly served on the Plaintiff's counsel, and a Notice of Filing Notice of Removal is simultaneously being filed with the Clerk of the Circuit Court in and for Miami-Dade County, Florida.

WHEREFORE, Greenwich Insurance Company, respectfully requests that this Court accept removal of the Complaint now pending against it in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

Dated: June 24, 2020

Respectfully submitted,

By: /s/ Christine M. Renella

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2020, a true and correct copy of the foregoing, filed through the Electronic Case Filing System, will be sent via first class mail to all parties on the attached Service List.

By: /s/ Christine M. Renella
CHRISTINE M. RENELLA

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

CASE NO.:

MALAUBE, LLC, d/b/a SPRIS
ARTISAN PIZZA, a Florida Limited
Liability Company,

Plaintiff,

vs.

GREENWICH INSURANCE
COMPANY, a Foreign Corporation,

Defendant.

_____ /

COMPLAINT

COMES NOW, Plaintiff, Malaube, LLC d/b/a Spris Artisan Pizza (“Spris”) and brings this Complaint against Defendant, Greenwich Insurance Company (“Greenwich”), and alleges as follows:

1. This is a cause of action for Declaratory Judgment pursuant to F.S. § 86, *et seq.* to construe and declare the rights, obligations, statues, and privileges of the parties as the named insured and insurer under a commercial lines insurance policy.
2. Spris is a Florida limited liability company organized under the laws of the State of Florida with its principal place of business in Miami, Florida. The amount in controversy without interest, costs and attorney’s fees exceeds \$30,000.
3. Greenwich is foreign for-profit corporation authorized to and doing business in Miami-Dade County, Florida, by issuing insurance policies to its insured, including the issuance

of policy number PHK-0950951-02 to Spris for the period of September 25, 2019 through September 25, 2020.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to F.S. §86.011.

5. Venue is appropriate in this Judicial District pursuant to F.S. §86.011; and is proper in this Judicial Circuit as Spris and Greenwich conducted business in Miami-Dade County, Florida.

6. All conditions precedent to the institution of this action have been met through performance, waiver or otherwise.

FACTUAL BACKGROUND

7. On or about September 25, 2019, Greenwich entered into a contract of insurance with Spris, whereby Spris agreed to make payments to Greenwich in exchange for Greenwich's promise to indemnify Spris for losses including, but not limited, business income losses at Spris' restaurant, Spris Artisan Restaurant ("Restaurant").

8. The Restaurant serves italian cuisine to the citizens of Miami-Dade County, Florida and its hours of operation are Monday through Thursday 11:00 a.m. to 10:00 pm and Friday and Saturday 11:00 a.m. to 11:00 p.m. The Restaurant is located at 5748 Sunset Drive, Miami, FL 33143. This address is listed as an insured property under the Policy (defined below).

9. The Restaurant is covered under a policy issued by Greenwich with policy number PHK-0950951-02 (hereinafter "Policy"), a copy of which is attached hereto as **Exhibit "A"**.

10. The Policy is currently in full effect, providing business income (and extra expense), and business personal property, and additional coverages between the period of September 25, 2019 through September 25, 2020.

11. Spris faithfully paid policy premiums to Greenwich, specifically to provide additional coverages to ensure some protections in such a case as its business was interrupted.

12. Under the Policy, insurance is extended to apply to the actual loss of business income sustained due to the necessary suspension of operations.

13. On March 17, 2020, Miami-Dade Mayor, Carlos Gimenez, signed an order to close all restaurants for dining in and only permitting takeout and delivery.

14. On March 20, 2020, the Florida Governor, Ron DeSantis, issued an executive order closing all onsite dining at restaurants (the March 17 and March 20 orders are collectively referred to as the "Government Shutdowns")

15. The Government Shutdowns by the local and state government resulted in significant business losses for Spris.

16. The Policy provides coverage to Spris for this situation under the Additional Coverages section of the Policy titled "Civil Authority".

17. The Policy further states that Greenwich will pay for the actual loss of business income Spris sustains and the Extra Expense caused by action of civil authority that prohibits access to the described premises.

18. The Government Shutdowns that interfered with Spris' access to its business came as a result of the COVID-19 pandemic.

19. The reason for the Government Shutdowns was the public reaction, by individuals, institutions and governments, to address the public health crisis caused by the COVID-19 pandemic.

20. The Government Shutdowns caused Spris to sustain significant losses and came as a direct result of the Government Shutdowns.

21. Greenwich's decision to deny Spris coverage may force Spris out of business. This coverage is essential to Spris' business survival.

22. A declaratory judgment determining that the coverage provided under the Policy will prevent Spris from being left without vital coverage acquired to ensure the survival of its business in circumstances as set forth hereinabove. As a result of the Government Shutdowns, Spris has incurred, and will continue to incur, substantial loss of business income and additional expenses covered under the Policy.

COUNT I – DECLARATORY RELIEF

23. Spris re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each paragraph of this Complaint.

24. Spris has a bona fide, actual and present need for a declaration and construction of the Policy of insurance, its status, rights, and privileges, and Greenwich's obligation to provide coverage to Spris under the Policy, including the applicable coverage triggered under the Policy.

25. A bona fide, actual, and present dispute exists as to Spris' rights and Greenwich's obligations under the policy and this suit is not just a request for legal advice.

26. Spris has become obligated to retain counsel to represent it in this dispute and Greenwich is required to pay Spris reasonable attorney's fees pursuant to F.S. § 627.428.

WHEREFORE, Spris requests that the Court declare and construe the Policy of insurance and enter its declaratory judgment as follows:

- a. declare that the Policy issued by Greenwich to Spris provides coverage for the losses stemming from the Governmental Shutdowns of business operations for business income, extra expense, and all other coverage extension up to the limited of the Policy;

- b. grant further relief based on the declaratory judgment and after adjudication of the rights of the parties, when necessary and proper, and, after notice to Greenwich, require Greenwich to show cause why further relief should not be granted;
- c. enter final declaratory judgment in Spris' favor and against Greenwich for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and reasonable attorney's fees and costs as part of the declaratory judgment.
- d. enter an award of attorney's fees and costs in Spris' favor and against Greenwich.

Respectfully submitted,

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