STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 20-CVS-02569

NORTH STATE DELI, LLC d/b/a LUCKY'S DELICATESSEN, MOTHERS & SONS, LLC d/b/a MOTHERS & SONS TRATTORIA, MATEO TAPAS, L.L.C. d/b/a MATEO BAR DE TAPAS, SAINT JAMES SHELLFISH LLC d/b/a SAINT JAMES SEAFOOD, CALAMARI ENTERPRISES, INC. d/b/a PARIZADE, BIN 54, LLC d/b/a BIN 54, ARYA, INC. d/b/a CITY KITCHEN and VILLAGE BURGER, GRASSHOPPER LLC d/b/a NASHER CAFE, VERDE CAFE INCORPORATED d/b/a LOCAL 22, FLOGA, INC. d/b/a KIPOS GREEK TAVERNA, KUZINA, LLC d/b/a GOLDEN FLEECE, VIN ROUGE, INC. d/b/a VIN ROUGE, KIPOS ROSE GARDEN CLUB LLC d/b/a ROSEWATER, and GIRA SOLE, INC. d/b/a FARM TABLE and GATEHOUSE TAVERN,

Plaintiffs,

v.

THE CINCINNATI INSURANCE COMPANY; MORRIS INSURANCE AGENCY INC.; and DOES 1 THROUGH 20, INCLUSIVE,

Defendants.

MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE* AND FILE A BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The North Carolina Restaurant and Lodging Association ("NC-RLA") respectfully submits this Motion for Leave to Appear as *Amicus Curiae* and File a Brief in Support of Plaintiffs' Motion for Partial Summary Judgment. NC-RLA, on behalf of its thousands of members, has a strong interest in this case and offers its unique perspective to the Court

regarding the issues raised by Plaintiffs' pending Motion for Partial Summary Judgment. The proposed *Amicus* brief is attached hereto as **Exhibit A**.

ARGUMENT

While the North Carolina Superior Courts have not promulgated rules governing the submission of *Amicus* briefs, the North Carolina Business Court's Rules are instructive. N.C. BRC 7.14(a) provides, "An amicus curiae may file a brief only with leave of the Court."; and at 7.14(b) provides "A motion for leave to file an amicus brief must state the nature of the movant's interest, the issues that the amicus brief would address, the movant's position on those issues, and the reasons that an amicus brief would aid the Court. The motion must also attach the proposed amicus brief. The Court will generally rule on the motion without a response or argument." A copy of the applicable Business Court rule is attached hereto as **Exhibit B.**

I. NC-RLA'S INTEREST IN THIS CASE

Plaintiffs are small-business restaurants located in North Carolina. Plaintiffs allege that they are covered under a business interruption insurance policy purchased from Defendant, The Cincinnati Insurance Company ("Defendant"), for losses sustained due to Covid-19 and the related entry of certain governmental orders. Plaintiffs have moved for partial summary judgment, arguing that small businesses like Plaintiffs have coverage under their policies from Defendant because Covid-19 has caused "physical loss" within the meaning of those policies. This threshold insurance coverage issue is one that is being disputed by insurers across North Carolina (and nationwide) in a systematic attempt by the insurance industry to deprive policyholders of coverage for their Covid-19 related losses.

NC-RLA is the leading, statewide non-profit trade association for the hospitality industry. NC-RLA was founded in 1947 as the North Carolina Restaurant Association. In 2006, the

organization changed its name to the North Carolina Restaurant and Lodging Association and began admitting hotels into membership. The NC-RLA's mission is to protect, educate, and promote North Carolina's multi-billion-dollar restaurant and hospitality industry.

Dedicated to safeguarding the needs of its membership, the NC-RLA represents the interests of its members at all levels of government to ensure the voices of its members are heard and their interests protected. NC-RLA also operates a 501(c)(3) subsidiary, the Foundation, which offers food safety training and high school career programs across the State. The Foundation recently launched the NC Restaurant Workers Relief Fund, which received contributions of over $1 million and made grants to workers who had lost their jobs due to recent government orders closing restaurants in light of Covid-19.

Today, NC-RLA represents the interests of over 17,000 food service establishments and over 1,700 lodging properties in the State. Before the impact of the Covid-19 pandemic, hotels and restaurants employed 11% of the State's workforce and generated more than $23.5 billion in sales, which in turn produced sales tax and occupancy tax revenues for the communities they serve. A large majority of NC-RLA's membership are small, "mom-and-pop" operations.

The NC-RLA has a strong interest in the pending Motion for Partial Summary Judgment because hundreds of its members, like Plaintiffs, have been financially devastated by Covid-19 and the related government orders and have likewise pursued insurance claims for their losses. The NC-RLA seeks to file its *Amicus* brief especially on behalf of these many small business members.

II. THE *AMICUS* BRIEF WOULD AID THE COURT IN CONSIDERATION OF THE ISSUES ADDRESSED BY THE MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs' Motion argues that small businesses such as Plaintiffs' that purchased business interruption coverage should receive coverage for the Covid-19-related loss of use or access to their covered properties because they have sustained "accidental physical loss." Thousands of similarly situated policyholders in North Carolina, including many of NC-RLA's members, have a significant interest in this issue being correctly decided. The attached *Amicus* brief provides the argument and supporting authorities explaining why the Covid-19-related government orders resulted in a covered "accidental physical loss" at these types of properties.

NC-RLA's *Amicus* brief is submitted with the assistance of pro bono counsel with decades of experience representing policyholders in insurance coverage disputes. *Amicus* counsels' collective experience includes briefing similar issues following the September 11, 2011 attacks on the World Trade Center, Hurricane Katrina, and the many hurricanes that have impacted North Carolina.

WHEREFORE, NC-RLA respectfully requests that this Court enter an Order granting this Motion for Leave to Appear as *Amicus Curiae* and accepting the *Amicus* brief attached as **Exhibit A** in consideration of Plaintiffs' Motion for Partial Summary Judgment.

[Signatures appear on the following page.]

Respectfully submitted this 17th day of September 2020.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he did serve a copy of the *Motion for Leave to Appear as Amicus Curiae and File a Brief in Support of Plaintiffs' Motion for Partial Summary Judgment* (and the exhibits to the motion) and proposed order, by depositing a copy of the same in the U.S. Mail, postage paid, addressed as follows and via email at the addresses set out below:

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This the 17 day of September 2020.

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STATE OF NORTH CAROLINA

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NORTH STATE DELI, LLC d/b/a LUCKY'S DELICATESSEN, MOTHERS & SONS, LLC d/b/a MOTHERS & SONS TRATTORIA, MATEO TAPAS, L.L.C. d/b/a MATEO BAR DE TAPAS, SAINT JAMES SHELLFISH LLC d/b/a SAINT JAMES SEAFOOD, CALAMARI ENTERPRISES, INC. d/b/a PARIZADE, BIN 54, LLC d/b/a BIN 54, ARYA, INC. d/b/a CITY KITCHEN and VILLAGE BURGER, GRASSHOPPER LLC d/b/a NASHER CAFE, VERDE CAFE INCORPORATED d/b/a LOCAL 22, FLOGA, INC. d/b/a KIPOS GREEK TAVERNA, KUZINA, LLC d/b/a GOLDEN FLEECE, VIN ROUGE, INC. d/b/a VIN ROUGE, KIPOS ROSE GARDEN CLUB LLC d/b/a ROSEWATER, and GIRA SOLE, INC. d/b/a FARM TABLE and GATEHOUSE TAVERN,

Plaintiffs,

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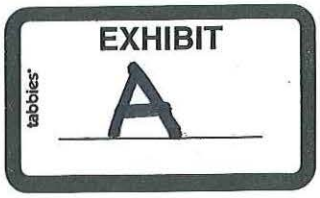
THE CINCINNATI INSURANCE COMPANY; MORRIS INSURANCE AGENCY INC.; and DOES 1 THROUGH 20, INCLUSIVE,

Defendants.

AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The North Carolina Restaurant and Lodging Association ("NC-RLA") respectfully submits this *Amicus* brief on behalf of its thousands of small business and other members throughout North



Carolina whose restaurant and hotel businesses have been devastated by the Covid-19 event and resulting Government Orders mandating physical closure.[1]

As addressed in its Motion for Leave to Appear as Amicus Curiae, NC-RLA, on behalf of its thousands of members, has a strong interest in the outcome of Plaintiffs' Motion for Partial Summary Judgment and offers its unique perspective to the Court regarding the issues raised in Plaintiffs' Motion. NC-RLA's brief authoritatively supports the axiom that certain covered causes of loss – namely, COVID-19 and the related civil authority orders – constitute "physical loss" to property under settled principles of insurance policy interpretation so as to provide coverage to Plaintiffs and others similarly situated.

INTRODUCTION

Like numerous insurance policies issued in North Carolina and elsewhere, Plaintiffs' policies are "all risk" property policies that broadly cover loss resulting from any kind of direct "physical loss" to "Covered Property" unless expressly excluded. Here, no exclusions apply. Because Plaintiffs' policies do not exclude viruses or virus-related perils, Plaintiffs are covered for their losses. This is precisely what Plaintiffs have alleged and is beyond dispute - the Government Orders, issued as a result of the Coronavirus, forced Plaintiffs' restaurants to close, and these closures had (and continue to have) a devastating effect on Plaintiffs' businesses.

In denying coverage, insurance companies such as Defendant, on the other hand, are ignoring the Governmental Orders entirely, and instead comparing Covid-19 to something ephemeral or fleeting that supposedly has no physical impact. Defendant here has informed

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[1] Specifically, NC-RLA has 3,000 members and works on behalf of 20,000 restaurants and hotels statewide. NC-RLA's members employ roughly 250,000 of the North Carolina restaurant and lodging industry's 500,000-strong workforce (which comprises 11% of North Carolina's workforce).

Plaintiffs that "the pandemic, without more, is not direct physical loss or damage to property at the premises" and therefore no coverage is provided.

However, Covid-19 is neither ghostly nor intangible – it is real, and it is ***physical*** – and tragically, ***ubiquitous, and constantly shifting***. Plaintiffs' business interruptions were caused by the loss of use and access to their business premises from the virus and the Government Orders. Those orders in particular are indisputably a "physical loss" event. Patrons cannot venture inside the restaurant premises because they are ***physically dangerous*** and they have been forbidden to do so. The risk of individuals falling victim to Covid-19 while congregating is so high that North Carolina authorities entered Government Orders effectively shutting down non-essential business premises. Defendant The Cincinnati Insurance Company ("Cincinnati") simply ignores the core reality: as a direct result of the virus and the Government Orders (a physical trigger), Plaintiffs have lost the physical use of their restaurants, resulting in a significant loss of business income as well as additional expense.

ARGUMENT

A. Settled Principles of Insurance Policy Interpretation

Before the Court – among other issues – is whether the policy language "direct physical loss" applies to the Plaintiffs' loss of their space because of the virus and the Government Orders. While Plaintiffs' and NC-RLA believe the coverage application is clear, because, as pointed out below, other courts have given varied interpretations of the "direct physical loss" language the Court here in its analysis may find that policy language ambiguous.

If that is the case, then in conducting its analysis, this Court must take guidance from a bedrock principle of insurance policy interpretation that North Carolina law requires that *any policy ambiguity must be construed in favor of coverage. See, e.g., Grant v. Emmco Ins. Co.*, 295

N.C. 39, 43, 243 S.E.2d 894, 897 (1978); *Southeast Airmotive Corp. v. U.S. Fire Ins. Co.*, 78 N.C. App. 418, 420, 337 S.E.2d 167, 169 (1985), *disc. review denied*, 316 N.C. 196, 341 S.E.2d 583 (1986). This principle means that if there are two reasonable interpretations of the same language, then the Court *must* favor the pro-coverage view. *See, e.g., W & J Rives, Inc. v. Kemper Ins. Grp.*, 92 N.C. App. 313, 316, 374 S.E.2d 430, 433 (1988), *disc. review denied*, 324 N.C. 342, 378 S.E.2d 809 (1989) ("If the language used in the policy is reasonably susceptible to different constructions, it must be given the construction most favorable to the insured.").[2]

Additionally, when interpreting insurance policies, North Carolina courts have held that provisions of insurance policies extending coverage must be liberally construed so as to provide coverage while provisions excluding coverage are not favored and should be strictly construed against the insurer and in favor of the insured. *State Capital Ins. Co. v Nationwide Mutual Ins. Co.*, 318 N.C. 534, 350 S.E. 2d (1986).

B. History of Courts Finding "Physical Loss" in Similar Circumstances

Here the Plaintiffs' policies cover loss from a suspension of operations "caused by direct 'loss' to property," with "loss" defined as "accidental physical loss or accidental physical damage."

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[2] The Seventh Circuit has articulated the rationale for this widely accepted doctrine, known as *contra proferentum*. *See Phillips v. Lincoln Nat'l Life Ins. Co.*, 978 F.2d 302, 312 (7th Cir. 1992) ("The *contra proferentem* rules [sic] is followed in all fifty states and the District of Columbia, and with good reason. Insurance policies are almost always drafted by specialists employed by the insurer. In light of the drafters' expertise and experience, the insurer should be expected to set forth any limitations on its liability clearly enough for a common layperson to understand; if it fails to do this, it should not be allowed to take advantage of the very ambiguities that it could have prevented with greater diligence. Moreover, once the policy language has been drafted, it is not usually subject to amendment by the insured, even if he sees an ambiguity; an insurer's practice of forcing the insured to guess and hope regarding the scope of coverage requires that any doubts be resolved in favor of the party who has been placed in such a predicament.").

It is significant that in its policy Defendant chose to connect the two defining phrases with "or," meaning of course, one or the other, but not necessarily both.

There is a long-running record of courts distinguishing between what constitutes "physical *loss*" as distinct from "physical *damage*," with policyholders logically demonstrating that the word "loss" cannot be collapsed into and mean the same thing as "damage." While "damage" indisputably includes tangible or structural physical damage such as inflicted by a tornado, "loss" must mean something different from "damage" or else it would not be separated from "damage." Here, Covid-19's actual or suspected physical presence at, or in the vicinity of, a property like Plaintiffs' restaurants—as well as the ensuing Government Orders—prevents the policyholders from making full use of their properties, especially in cases where the business (as here) has had to close in part or in full. This kind of loss constitutes a "*physical loss*" to the property because it cannot be used for its insured purpose.

As noted in Plaintiffs' brief, in *Studio 417, Inc. v. The Cincinnati Insurance Company*, No. 6:20-cv-03127-SRB (W.D. Mo. Aug. 8, 2020), the Western District of Missouri interpreted the same policy language against the same defendant here – Cincinnati Insurance Company. There, the court determined that because "physical loss" was not defined within the policy, under traditional policy interpretation principles, it should be afforded its ordinary meaning as supplied by standard dictionary definitions. In denying Cincinnati's motion to dismiss, the court referred to the standard dictionary definition of "physical," meaning to have "material existence." The court identified the meaning of "loss" as including either "the act of losing possession" or "deprivation" of use for an intended purpose. *Id.* Because Covid-19 is alleged to be a physical substance that lives on and is active on inert physical surfaces, and its presence resulted in direct loss of property (and the resulting governmental orders), the policyholder had alleged a covered

loss. The imminent threat of, or actual attachment of, the virus droplets to the surfaces of Plaintiffs' properties here likewise renders their properties unsafe and unusable for their intended purpose.[3]

The distinction between "physical loss" and "physical damage" has been made in other contexts analogous to Covid-19. For example, in *Motorist Mutual Insurance Co. v. Hardinger*, 131 F. App'x 823 (3d Cir. 2005) (applying Pennsylvania law), the court found that bacterial contamination of a home's water supply constituted a "direct physical loss to property" because, despite the lack of physical *damage*, it rendered the home too dangerous to inhabit. Similarly, in *Cooper v. Travelers Indemnity Company of Illinois*, No. C-01-2400-VRW, 2002 WL 32775680 (N.D. Cal. Nov. 4, 2002), where a tavern was forced to close due to E. coli contamination in its well water, the court held that the E. coli constituted "direct physical damage to the property" and ordered the insurer to pay time element/extra expense coverage.

Likewise, in *Total Intermodal Services v. Travelers Property Casualty Company of America*, No. CV 17-04908, 2018 WL 3829767 (C.D. Cal. July 11, 2018), the court interpreted a similar requirement of "direct physical loss of or damage to" as encompassing "loss of use." In that case, cargo was lost during shipment but was not physically damaged, and the court held this event constituted "physical loss of" insured property, stating that "'loss of' property contemplates that the property is misplaced and unrecoverable, without regard to whether it was damaged." And, in *U.S. Airways v. Commonwealth Insurance Co.*, No. 03–587, 2004 WL 1094684 (Va. Cir. Ct. May 14, 2004), *rev'd on other grounds sub nom.*, *PMA Capital Ins. Co. v. US Airways, Inc.*,

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[3] To the extent Cincinnati may rely on the one or two decisions which have dismissed complaints for claims as alleged by other policyholders under similar policy language, NC-RLA notes that *Studio 417* denied Cincinnati's motion to dismiss. This disagreement evidences that two different but reasonable interpretations of the same language are possible – and, under the principles of policy interpretation, any such ambiguity must be construed in favor of the policyholder: here, Plaintiffs.

626 S.E. 2d 369, 374 (Va. 2006), an airline sought coverage for business interruption losses sustained as a result of the government's closure of National Airport during the September 11, 2001 attacks on the World Trade Center. The insurer argued that actual damage to the airline's property was required to recover under the Civil Authority part of business interruption coverage. The court rejected this argument, ruling in favor of the policyholder and distinguishing the insurer's cases that involved policies with language requiring "physical damage."[4]

Further, there is also a long line of majority-rule cases holding that a property affected by an odor alone has experienced "physical loss" sufficient to trigger insurance even without physical alteration or damage to the property itself. For example, in *TRAVCO Insurance Co. v. Ward*, 715 F. Supp. 2d 699, 709 (E.D. Va.2010), *aff'd*, 504 F. App'x 251 (4th Cir. 2013), the court found "direct physical loss" where a "home was rendered uninhabitable by the toxic gases" released by defective drywall, regardless of lasting physical damage to the property itself. In another case, *Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, No. 2:12-cv-04418, 2014 WL 6675934 (D.N.J. Nov. 25, 2014), the court held that an ammonia discharge inflicted direct physical loss or damage to a manufacturing plant because the ammonia physically rendered the facility temporarily unfit for occupancy despite a lack of any structural alteration. Here, the presence of Covid-19 – now purportedly airborne – creates an analogous physical loss at Plaintiffs' restaurants.

Indeed, dozens of courts across the country, both state and federal, have found "physical loss" in fact patterns where there was no tangible physical damage to the covered property however the presence of a disease-causing agent that must be cleaned from the property still constituted a

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[4] The Virginia Supreme Court later reversed on other, unrelated grounds having to do with the policyholder not being able to claim insurance for amounts received through a governmental relief fund (which mooted the coverage otherwise found to be available under the policy). *PMA Capital Ins. Co. v. US Airways, Inc.*, 626 S.E. 2d 369, 374 (Va. 2006).

covered physical loss.[5] As one among many examples, in *Columbiaknit, Inc. v. Affiliated FM Insurance Co.*, No. Civ. 98-434-HU, 1999 WL 619100 (D. Or. Aug. 4, 1999), the court found that mildew exposure qualified as direct "physical loss" sufficient to trigger business interruption coverage. In *Columbiaknit*, as in the context of Covid-19 here, there is *more* at stake than "the mere adherence of molecules to porous surfaces" (*id.* at *7): specifically, the prospect of illness or death due to the presence of the virus on surfaces or in the restaurants' air.

Finally, and notably, Defendant could have chosen to specifically exclude viral contamination such as Covid-19 from coverage. Viral contamination is not an unknown risk in the restaurant or insurance industry. For this reason, the insurance industry developed a "virus exclusion" that explicitly excludes coverage for losses associated with viruses. Despite this exclusion being commonplace in "all-risk" property policies, Cincinnati chose not to include such an exclusion in the policies at issue in this litigation. It is logical to conclude that by failing to exclude virus-related losses from coverage, Cincinnati intended to convey to its potential customers that they would be protected from risks arising from viruses or pandemics such as Covid-19. Many of NC-RLA's members, like Plaintiffs, specifically purchased insurance *without* a virus exclusion.

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[5] *See, e.g.*, *Cooper v. Travelers Indem. Co.*, No. C-01-2400, 2002 WL 32775680, at *5 (N.D. Cal. Nov. 4, 2002) (addressing E. coli bacteria in well water); *Am. Alliance Ins. Co. v. Keleket X-Ray Corp.*, 248 F.2d 920, 925 (6th Cir. 1957) (radioactive dust); *Schlamm Stone & Dolan, LLP v. Seneca Ins. Co.*, 2005 WL 600021, at *4 (N.Y. Super. Mar. 4, 2005) (noxious particles from dust, soot, and smoke); *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 615 N.W.2d 819, 825-26 (Minn. 2000) (asbestos fibers); *Prudential Prop. & Cas. Ins. Co. v. Lillard-Roberts*, No. CV-01-1362-ST, 2002 WL 31495830, at *8-9 (D. Or. June 18, 2002) (toxic mold); *Pillsbury Co. v. Underwriters of Lloyd's*, 705 F. Supp. 1396, 1401 (D. Minn. 1989) (health-threatening organisms); *Henri's Food Prods. v. Home Ins. Co.*, 474 F. Supp. 889, 892 (E.D. Wis. 1979) (agricultural chemicals in vapor form); *Gen. Mills. Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. App. 2001) (pesticides).

Interpreting Plaintiffs' policies as Cincinnati suggests would deprive Plaintiffs and similarly situated small business owners of the full coverage they purchased and would allow Cincinnati to retroactively amend its policies to escape its coverage obligations for which it has already collected premiums.

CONCLUSION

The language in Plaintiffs' business interruption policies does not require a structural alteration to covered property to satisfy the requirement of "physical loss." The virus and resulting Governmental Orders plainly resulted in just this kind of physical loss. For these and the other reasons stated herein, the NC-RLA respectfully requests the Court grant Plaintiffs' Partial Motion for Summary Judgment.

Respectfully submitted this 17th day of September 2020.

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NORTH CAROLINA BUSINESS COURT RULES

★★★

CODIFIED BY THE OFFICE OF ADMINISTRATIVE COUNSEL, SUPREME COURT OF NORTH CAROLINA

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that requests a response, (ii) deny the motion, or (iii) issue an order with further instructions. The opposing party is not required to file a response unless ordered by the Court. If the Court elects to conduct a telephone conference on the motion, then the Court may decide the motion during the conference.

7.13. Emergency motions prior to designation.

(a) **Actions in which a Notice of Designation was filed when the action was initiated.** If a party seeks to have an emergency motion heard in the Court, the party should contact the Chief Justice of the Supreme Court of North Carolina promptly after filing the Notice of Designation and request expedited designation of the case as a mandatory complex business case. The party should also promptly contact the Court's Trial Court Coordinator and advise that the party seeks to have an emergency motion heard in the Court.

(b) **Actions subsequently designated as mandatory complex business cases.** If a party has filed an emergency motion in an action before a Notice of Designation has been filed, and the action is later designated as a mandatory complex business case or assigned to a Business Court judge under Rule 2.1 of the General Rules of Practice, then the emergency motion will be heard by the Business Court judge to whom the action has been assigned as provided by N.C.G.S. § 7A-45.4(e). If, however, the emergency motion is heard by a non-Business Court judge prior to designation or assignment, then, barring exceptional circumstances, the Business Court judge will defer to the judge who heard the motion.

(c) **Briefing.** When a party moves for emergency relief under BCR 7.13(a) or (b), the Court will, if practicable, establish a briefing schedule for the motion. A party that moves for emergency relief under BCR 7.13(a) must file a supporting brief that complies with these rules. The Court's briefing schedule for a BCR 7.13(a) motion will establish deadlines for a response and, in the Court's discretion, a reply.

Unless the Court orders otherwise, the length restrictions in BCR 7.8 apply to all briefs filed under this rule.

7.14. Amicus briefs.

(a) **When permitted.** An amicus curiae may file a brief only with leave of the Court.

(b) **Motion for leave.** A motion for leave to file an amicus brief must state the nature of the movant's interest, the issues that the amicus brief would address, the movant's position on those issues,

and the reasons that an amicus brief would aid the Court. The motion must also attach the proposed amicus brief. The Court will generally rule on the motion without a response or argument.

(c) **Deadline for filing.** A motion for leave to file an amicus brief must be filed no later than the deadline for the brief of the party supported.

(d) **Method of filing.** The motion and proposed amicus brief must be filed consistent with BCR 3.

(e) **Contents, length, and form.** An amicus brief may not exceed 3,750 words and must comply with all other aspects of BCR 7.8. The brief must also state whether (i) a party's counsel authored the brief, (ii) a party or party's counsel paid for the preparation of the brief, and (iii) anyone other than the amicus curiae paid for the brief and, if so, their identities.

(f) **Response.** A party must obtain leave to file a separate response to an amicus brief. If the Court provides leave, the response must be limited to points and authorities presented in the amicus brief. The response may not exceed 3,750 words. An amicus curiae may not file a reply brief.

(g) **Oral argument.** An amicus curiae may not participate in oral argument without leave of the Court.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 8. Presentation Technology

8.1. Electronic presentations favored. The Court encourages electronic presentations, but only if the presentation meaningfully aids the Court's understanding of key issues. Counsel should limit the use of paper handouts at court proceedings. Any paper handout that a party provides to the Court must also be provided to all parties, the court reporter, and the law clerk.

8.2. Courtroom technology. Parties may bring their own electronic technology, including hardware, for presentation to the Court or may use the systems available in each Business Court courtroom. Parties are responsible for consulting in advance with courthouse personnel about security, power, and other logistics associated with the use of any external hardware. Counsel who plan to use the available courtroom technology must be familiar with that technology and must follow any rules established by the Court associated with that technology's use.

History Note.

372 N.C. 911; 372 N.C. 844.