

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER 2020-02558

SECTION "M-13"

CAJUN CONTI LLC, CAJUN CUISINE 1 LLC, and
CAJUN CUISINE LLC d/b/a OCEANA GRILL

VERSUS

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

FILED: _____

DEPUTY CLERK

MOTION IN LIMINE

NOW INTO COURT, through undersigned counsel, come Defendants, Certain Underwriters at Lloyd's, London Subscribing to Policy No. AVS011221002 ("Underwriters"), who respectfully requests that this Court grant Underwriters' Motion *in Limine* for the reasons stated more fully in the attached memorandum, and prohibit Plaintiffs Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC dba Oceana Grill (collectively, "Cajun") from offering or soliciting any evidence or testimony, or making any statements or arguments, either directly or indirectly, during any phase of the trial of this matter, concerning:

1. Policies and ISO documents not at issue in this litigation;
2. Other policies Underwriters subscribe to;
3. Third-parties' communications with regulatory bodies;
4. Parol evidence irrelevant to Cajun's claims;
5. Any testimony or evidence regarding Underwriters' investigation into and adjustment of Cajun's alleged loss;
6. Demonstrative evidence or real physical evidence not previously ruled upon;
7. With respect to the presentation of expert witnesses, neither the witness nor counsel shall not introduce, reference, or allude to the existence of or contents of any documents, reports, scientific papers, or journal submissions that (i) were not referenced in the expert's report in this litigation or (ii) were not introduced in the course of an expert deposition in this case;
8. Any evidence suggesting or inferring that any subsequent changes have been made to the content of Underwriters' policies (*e.g.*, the modification of forms, the addition of exclusions, etc.) in response to the COVID-19 pandemic;

9. Any testimony or argument suggesting that Underwriters asserted claim(s) of privilege during discovery;
10. The relative wealth or poverty of any party to the lawsuit; and
11. Any testimony, evidence or argument concerning the yearly profits of the litigants.

With respect to the presentation of expert witnesses, neither the witness nor counsel shall not introduce, reference, or allude to the existence of or contents of any documents, reports, scientific papers, or journal submissions that (i) were not referenced in the expert's report in this litigation or (ii) were not introduced in the course of an expert deposition in this case.

WHEREFORE, for the reasons stated above and more fully in the attached memorandum in support, Underwriters pray that this Motion be granted.

Respectfully submitted,

PHELPS DUNBAR LLP

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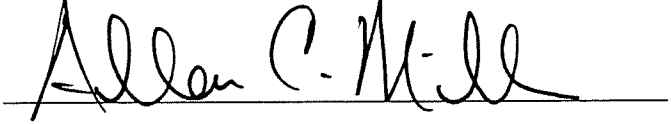
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**ATTORNEYS FOR CERTAIN
UNDERWRITERS AT LLOYD'S, LONDON
SUBSCRIBING TO POLICY NO.
AVS011221002**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 12th day of November, 2020, delivered a copy of the foregoing to all known counsel of record by United States Mail, proper postage prepaid, Electronic Mail and/or Facsimile.

A handwritten signature in black ink, appearing to read "Allen C. Mill", is written over a horizontal line.

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FILED: _____

DEPUTY CLERK

MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE*

MAY IT PLEASE THE COURT:

Defendants, Certain Underwriters at Lloyd's, London Subscribing to Policy No. AVS011221002 ("Underwriters") submit this Memorandum in Support of their Motion *in Limine*. The Underwriters request that Plaintiffs, Cajun Conti LLC, Cajun Cuisine 1 LLC and Cajun Cuisine LLC d/b/a Oceana Grill (collectively, "Cajun") be prohibited from offering or soliciting any evidence or testimony, or making any statements or arguments, either directly or indirectly, during any phase of the trial regarding the areas discussed below.

I. LEGAL ANALYSIS

"Generally, a district court is afforded great discretion concerning the admission of evidence at trial, and its decision to admit or exclude evidence may not be reversed on appeal in the absence of an abuse of that discretion." *Medine v. Roniger*, 2003-3436 (La. 07/02/04), 879 So. 2d 706, 711. Louisiana Code of Evidence article 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Generally, "relevant evidence is admissible, and evidence that is not relevant is not admissible." *State v. Thomassie*, 2016-0370 (La. App. 4 Cir. 12/21/16), 206 So. 3d 311, 315, *writ denied*, 2017-0186 (La. 02/24/17), 216 So. 3d 60. Furthermore, even if relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or

waste of time.” La. Code of Evid. art. 403. Evidence may cause “undue prejudice” when the evidence has “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Jackson*, 584 So. 2d 266, 268 (La. App. 1 Cir. 1991).

For each of the categories of evidence discussed below, the evidence is either not relevant, or even if relevant, is unduly prejudicial to the Underwriters. As such, the evidence should be excluded.

A. References To Other Insurance Policies, ISO Documents Not at Issue In This Litigation, Testimony Concerning Other Insurance Policies Underwriters Subscribe To, And Evidence Of Communications By Third-Parties Regulatory Bodies.

The Court should exclude any evidence submitted by Cajun pertaining to any and all policies or policy documents other than the specific policy (the “Policy”) issued by Underwriters to Cajun.

“An insurance policy is a contract between the insured and insurer and has the effect of law between them.” *Gorman v. City of Opelousas*, 2013-1734 (La. 7/1/14), 148 So. 3d 888, 892. “When the words of an insurance contract are clear and explicit and lead to no absurd consequences, courts must enforce the contract as written and may make no further interpretation in search of the parties’ intent.” *Gorman*, 148 So. 3d at 892. Thus, the meaning of the words in insurance policies—like any other contract—are “ordinarily determined from the four corners of the instrument, and extrinsic (parol) evidence is inadmissible either to explain or to contradict the terms thereof.” *French Quarter Realty v. Gambel*, 2005-0933 (La. App. 4 Cir. 12/28/05), 921 So. 2d 1025, 1029-30. “[T]he use of extrinsic evidence is proper only where a contract is ambiguous after examination of the four corners of the agreement.” *Id.* at 1030.

Time and again, Cajun has asked the Court to ignore these hornbook rules of Louisiana contractual interpretation. Cajun’s suggestions come despite the fact that Cajun has never alleged, nor has this Court found, that the Policy is ambiguous. Consider:

- Cajun’s operative Second Amended Petition does not assert any ambiguity in the Policy.
- Cajun’s Opposition to Underwriters’ Motion for Summary Judgment does not assert any ambiguity in the Policy.
- In the Court’s Order denying Underwriters’ Motion for Summary Judgment, the Court did not find any provision of the Policy ambiguous.

- In Cajun’s Opposition to Underwriters’ Motion to Exclude Charles Miller, it does not identify a single ambiguous provision in the Policy.
- During the hearing on Underwriters’ *Daubert* motion concerning Mr. Miller, Cajun did not argue—and this Court did not find—that any provision of the Policy is ambiguous.
- Likewise, during the hearing on Underwriters’ Motion to Quash Cajun’s 1442 Subpoena, Cajun did not argue—and this Court did not find—that any provision of the Policy is ambiguous.

Cajun has had ample time to assert that the extrinsic evidence is required because the Policy is ambiguous, however Cajun has repeatedly declined to do so. And, yet, Cajun has repeatedly sought discovery on parol evidence and has offered expert testimony that is, itself, parol evidence.

Underwriters respectfully submit that Cajun has had more than enough time to take the position that the Policy is ambiguous, but it has repeatedly declined to do so. Consequently, under the rules for contractual interpretation in the Civil Code and the rules for interpreting insurance policies stated in *Gorman, supra*, the content of the Policy is the only evidence that may be considered for interpretive purposes, to the exclusion of: (i) other policies; (ii) ISO documents and forms, (iii) testimony regarding other policies that Underwriters subscribe to; (iv) third party statements to regulatory bodies; and (v) any other parol evidence irrelevant to Cajun’s claims. All of this evidence should be excluded as a matter of law.

B. Discussions of Underwriters’ Handling of Cajun’s Claim

In Cajun’s operative Second Amended Petition, Cajun describes the narrow scope of this declaratory judgment action:

77. Plaintiffs seek a Declaratory Judgment to determine whether the COVID-19 Civil Authority Orders restricting the operations of their business trigger the civil authority provision of the policy issued to the plaintiffs.

78. Plaintiffs ask the Court to affirm that because the all-risk policy provided by Lloyd’s does not contain an exclusion for virus or pandemic, the policy provides coverage to plaintiffs for any civil authority orders shutting down or limiting the operations of restaurants in the New Orleans area due to physical loss from COVID-19 within one mile from the plaintiffs’ business, and that the policy provides business income coverage for the contamination of the insured premises by COVID-19.

79. Plaintiffs do **not** seek **any** determination on the amount of damages or any other remedy besides the declaratory relief.

Second Amended Petition, p. 8 (emphasis supplied).

Nevertheless, during the November 11, 2020 deposition of Cajun’s expert, Charles Miller, counsel for Cajun suggested that at least some issues relevant to Underwriters’ handling of Cajun’s claim—including, apparently, the predicate facts for Title 22 statutory penalties should the Court conclude that coverage exists—are at issue in this litigation. Underwriters’ counsel disagreed with Cajun’s counsel’s assertion on the record during the deposition and, in filing this motion, Underwriters formally object to Cajun’s efforts to expand the scope of its pleadings.

Further, Underwriters ask the Court to exclude any testimony or evidence regarding Underwriters’ investigation into and adjustment of Cajun’s alleged loss as irrelevant to the question of the existence of coverage under the four corners of the subject policy. Generally, “[w]hether an insurance policy provides coverage . . . it is a question of law[.]” *Melder v. State Farm Mut. Auto. Ins. Co.*, 2016-692 (La. App. 3 Cir. 12/14/16), 208 So. 3d 416, 419, *writ granted*, 2017-0095 (La. 4/7/17), 218 So. 3d 107. Although Underwriters and Cajun will litigate whether the underlying insuring agreement provides coverage as applied to a narrow set of contested facts (for example, whether a virus causes “direct physical loss of or damage to property”), Underwriters’ investigation into and adjustment of Cajun’s loss has no bearing on what the subject policy does or does not cover. Because evidence of Underwriters’ investigation into and adjustment of Cajun’s alleged loss is not probative of any issue in this litigation, Underwriters ask the Court to exclude all testimony and evidence on these issues.

C. Miscellaneous Requests for Relief

In addition, Underwriters seek the following limitations on the presentation of evidence at trial:

- Underwriters ask the Court to exclude demonstrative evidence or real physical evidence not previously ruled upon.
- With respect to the presentation of expert witnesses, neither the witness nor counsel shall not introduce, reference, or allude to the existence of or contents of any documents, reports, scientific papers, or journal submissions that (i) were not referenced in the expert’s report in this litigation or (ii) were not introduced in the course of an expert deposition in this case.

- Underwriters request the Court to exclude any reference by Cajun, Cajun's counsel, or Cajun's witnesses that suggests or infers that any subsequent changes have been made to the content of Underwriters' policies (e.g., the modification of forms, the addition of exclusions, etc.) in response to the COVID-19 pandemic.
- Underwriters request the Court to exclude any testimony or argument suggesting Underwriters asserted claim(s) of privilege during discovery. Claims of privilege are not admissible as evidence.
- Underwriters ask the Court to exclude any evidence of the relative wealth or poverty of a party to a lawsuit.
- Underwriters ask the Court to exclude any mention of yearly profits of the litigants.

II. CONCLUSION

For the reasons stated more fully above, Underwriters respectfully request that this Court grant the instant Motion.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: 
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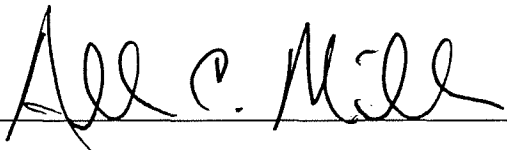
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**ATTORNEYS FOR CERTAIN
UNDERWRITERS AT LLOYD'S, LONDON
SUBSCRIBING TO POLICY NO.
AVS011221002**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 12th day of November, 2020, delivered a copy of the foregoing to all known counsel of record by United States Mail, proper postage prepaid, Electronic Mail and/or Facsimile.



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FILED: _____

DEPUTY CLERK

MOTION AND ORDER TO SET FOR HEARING

NOW INTO COURT, through undersigned counsel, comes Defendants, Certain Underwriters at Lloyd's, London Subscribing to Policy No. AVS011221002 ("Underwriters"), who respectfully request that Plaintiffs, Cajun Conti LLC, Cajun Cuisine 1 LLC and Cajun Cuisine LLC d/b/a Oceana Grill (collectively, "Cajun") show cause why Underwriters' Motion *in Limine* should not be granted. Underwriters will not offer live testimony at the hearing of its Motion *in Limine*. The above-captioned case is set for trial beginning November 16, 2020. Accordingly,

IT IS HEREBY ORDERED that Cajun show cause on the 16th day of November, 2020, at 9:00 o'clock a.m. why the foregoing Motion should not be granted.

New Orleans, Louisiana _____ day of November, 2020.

Honorable Paulette Irons, Presiding Judge, *Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC d/b/a Oceana Grill v. Certain Underwriters at Lloyd's, London*, Case No. 2020-2558, Division M, Civil District Court for the Parish of Orleans, State of Louisiana

Please do not serve.

Plaintiffs will be served in accordance with Louisiana Code of Civil Procedure article 1313(c).

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

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VERSUS

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

FILED: _____

DEPUTY CLERK

ORDER

In consideration of the Motion *in Limine* (the "Motion") filed by Defendants, Certain Underwriters at Lloyd's, London Subscribing to Policy No. AVS011221002 ("Underwriters"):

IT IS HEREBY ORDERED that the Motion is granted;

IT IS FURTHER ORDERED that Plaintiffs Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC d/b/a Oceana Grill (collectively, "Cajun") are prohibited from offering or soliciting any evidence or testimony, or making any statements or arguments, either directly or indirectly, during any phase of the trial of this matter regarding: (1) policies and ISO documents not at issue in this litigation, (2) other policies Underwriters subscribe to, (3) Third-party communications with regulatory bodies, (4) any other parol evidence irrelevant to Cajun's claims;

IT IS FURTHER ORDERED that Cajun may not offer or elicit any testimony or evidence regarding Underwriters' investigation into and adjustment of Cajun's alleged loss;

IT IS FURTHER ORDERED that Cajun may not introduce demonstrative evidence or real physical evidence not previously ruled upon;

IT IS FURTHER ORDERED that with respect to the presentation of expert witnesses, neither the witness nor counsel shall not introduce, reference, or allude to the existence of or contents of any documents, reports, scientific papers, or journal submissions that (i) were not referenced in the expert's report in this litigation or (ii) were not introduced in the course of an expert deposition in this case;

IT IS FURTHER ORDERED that Cajun, Cajun's counsel, and Cajun's' witnesses may not make any statements or offer any evidence suggesting or inferring that any subsequent changes

have been made to the content of Underwriters' policies (e.g., the modification of forms, the addition of exclusions, etc.) in response to the COVID-19 pandemic;

IT IS FURTHER ORDERED that Cajun may not offer any testimony or argument suggesting that Underwriters asserted claim(s) of privilege during discovery;

IT IS FURTHER ORDERED that Cajun may not offer any evidence of the relative wealth or poverty of any party to the lawsuit;

IT IS FURTHER ORDERED that Cajun may not offer any testimony or argument concerning the yearly profits of the litigants; and

New Orleans, Louisiana _____ day of November, 2020.

Honorable Paulette Irons, Presiding Judge, *Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC d/b/a Oceana Grill v. Certain Underwriters at Lloyd's, London*, Case No. 2020-2558, Division M, Civil District Court for the Parish of Orleans, State of Louisiana

[Service Information on Following Page]

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