

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 2020-02558

DIVISION “ M ”

CAJUN CONTI LLC, CAJUN CUISINE 1 LLC, AND CAJUN CUISINE LLC D/B/A
OCEANA GRILL

VERSUS

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON, ET AL.

FILED: _____

DEPUTY CLERK

**PLAINTIFFS’ OPPOSITION TO CERTAIN UNDERWRITERS AT LLOYD’S,
LONDON’S AMENDED PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION,
DILATORY EXCEPTION OF PREMATURITY, AND PRECAUTIONARY
DECLINATORY EXCEPTION OF LIS PENDENS AND SUR-REPLY IN SUPPORT OF
PLAINTIFFS’ OPPOSITION TO LLOYD’S ORIGINAL EXCEPTIONS**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC D/B/A Oceana Grill, who file this opposition to Certain Underwriters at Lloyd’s, London (“Lloyd’s”) Amended Exception of No Cause of Action, Exception of Prematurity, and Precautionary Exception of Lis Pendens, and/or sur-reply in support of Plaintiffs’ opposition to Lloyd’s original exceptions. Lloyd’s exceptions were previously set for July 23, 2020. The briefing by both parties has been submitted on those exceptions. Plaintiffs filed a First Supplemental and Amended Petition for Declaratory Judgment on July 22, 2020. Lloyd’s thereafter filed amended exceptions, re-urging their original arguments on August 13, 2020. Plaintiffs file this brief opposition and/or sur-reply thereto considering a recent development on August 14, 2020 by Lloyd’s that negates their arguments and moots their exceptions in their entirety.

A. Lloyd’s formal denial of Plaintiffs’ policy coverage for COVID-19 losses confirms Plaintiffs’ allegations and further negates Lloyd’s arguments, moots the exceptions.

On August 14, 2020, undersigned counsel received a letter from Lloyd’s third party administrator assigned to investigate and adjust Plaintiffs’ loss regarding their COVID-19 business interruption claim.¹ Therein, the insurer admits that they are aware of the business interruption and a claim of damages arising there out of, assigning the loss claim number AMAOG20030002.² The insurer sites to Plaintiffs’ July 22, 2020 amended petition as information gathered during their

¹ See Lloyd’s Denial attached hereto as Exhibit 1.

² *Id.* at p. 1.

investigation.³ Based on the information contained in this litigation, Lloyd's issued a formal denial of coverage for Plaintiffs' COVID-19 losses.⁴ Several things are clear from Lloyd's denial:

1. Lloyd's exception of prematurity must be denied because, contrary to opposing counsel's assertion, Lloyd's has clearly acknowledged that there is a recognizable claim of which they have actual knowledge of, as demonstrated by their assignment of a claim number and loss team to investigate and adjust the loss;
2. Lloyd's exception of no cause of action must be denied as, while the Plaintiffs maintain a valid cause of action is presented in the Petition, Lloyd's sole argument that there is no dispute between the parties must be moot by their formal denial which rejects coverage under the policy and confirms the Plaintiffs' allegations; and
3. Lloyd's intended to deny Plaintiffs' claims from the beginning, as Lloyd's and all other insurers have done across the United States, without any consideration of the actual policy language providing coverage for the losses being sustained by restaurants and other businesses throughout the country.

As previously briefed to the Court, Lloyd's is aware of a justiciable controversy regarding the Plaintiffs' allegations, and with the August 14, 2020 formal denial issued, that controversy certainly can't be in dispute. Lloyd's is arguably in bad faith by continuing to assert their exceptions when they have actually fully denied Plaintiffs' claim. Lloyd's arguments then, that Plaintiffs' must comply with the policy vis-à-vis notice, are moot as Lloyd's accepted notice of the claim via notice of litigation. Lloyd's is apprised of the facts of Plaintiffs' losses, so much so that Lloyd's feel comfortable with the information at hand to issue a formal denial. Therefore, Plaintiffs' claim cannot be premature, nor "hypothetical" or "theoretical" as to not only the ongoing losses obviously occurring from the continued civil order restrictions and property loss resulting from COVID-19, but also from Lloyd's denial of any coverage.

B. Lloyd's wrongful denial that the exposure and contamination of the Plaintiffs' property from COVID-19 constitutes a physical loss under the policy affirms that there is an actual dispute as to the policy terms and coverage.

Lloyd's has formally advanced that they deny the Plaintiffs' contentions that exposure to COVID-19 would constitute a physical loss.⁵ Lloyd's efforts to have this matter dismissed on technicalities that bear no relation to (1) facts that Lloyd's clearly is aware of; (2) facts that

³ *Id.* at p. 3.

⁴ *Id.*

⁵ *Id.* at p. 4

Plaintiffs have pled; and (3) that Lloyd's clearly relies on to actually deny Plaintiffs' claim in bad faith, are a transparent effort to avoid having this Court rule on the actions core issue: whether COVID-19 causes a physical loss to property under Lloyd's policy, thereby triggering coverage under the civil authority extension. This is, in short, the single largest legal issue being decided by this Courts and its resolution is critical to millions of Louisiana businesses who paid premiums for business interruption policies issued without any virus or pandemic exclusion such as the policy at issue.

Notably, the United States District Court for the Western District of Missouri in *Studio 417, Inc. et al v. The Cincinnati Insurance Company*,⁶ recently ruled in favor of the plaintiff on virtually the same physical loss issue, which Lloyd's is attempting to delay this Court ruling on by dismissing this matter and delaying Oceana Grill's potential for recovery. Similarly, Studio 417, Inc., purchased an all-risk insurance policy for the physical loss or damage to property that did not define these terms nor included a virus or pandemic exclusion. The Court ultimately held, in a well-reasoned opinion, that COVID-19 can render a business unsafe and unusable, therefore resulting in physical loss triggering coverage under the policy:

Plaintiffs have adequately alleged a direct physical loss. Plaintiffs allege a causal relationship between COVID-19 and their alleged losses. Plaintiffs further allege that COVID-19 "is a physical substance," that it "live[s] on" and is "active on inert physical surfaces," and is also "emitted into the air." (Doc. #16, ¶¶ 47, 49-60.) COVID-19 allegedly attached to and deprived Plaintiffs of their property, making it "unsafe and unusable, resulting in direct physical loss to the premises and property." (Doc. #16, ¶ 58.) Based on these allegations, the Amended Complaint plausibly alleges a "direct physical loss" based on "the plain and ordinary meaning of the phrase." Vogt, 963 F.3d at 963.

Plaintiffs have similarly alleged that COVID-19 attaches to surfaces on a molecular level, interacting with the property's surface and causing a dangerous property condition and loss, an act that has occurred in the immediate area of the Plaintiffs' property, and a fact supported by the civil authority order issued by Mayor Cantrell.⁷ Plaintiffs' have further plead that COVID-19 rendered property unsafe and unusable for ordinary use, which is a "direct physical loss" under Lloyd's policy that triggers business income and civil authority coverage.⁸ Similar to the law considered by the Missouri Court, Louisiana Courts, as previously pled, have also found that a physical loss has occurred where property has been rendered unusable or uninhabitable; and that whether a

⁶ See Decision attached hereto as Exhibit 2.

⁷ See Amended Petition for Declaratory Judgment paragraph 28, 36, 40, 41, 42, and 45

⁸ *Id.* at paragraph 46.

property is intact and functional is irrelevant because physical damage is not necessary for physical loss.⁹ This is a vital issue Lloyd's attempts to improperly delay the Court from hearing.

Considering Plaintiffs' original opposition to Lloyd's exceptions, Lloyd's acknowledgement of the loss, and the explicit denial of the Plaintiffs' claim affirming the clear controversy between Oceana Grill and Lloyd's, Lloyd's has no plausible argument to support their exceptions in good faith.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Court DENY Lloyd's exception of no cause of action, exception of prematurity, and exception of lis pendens.

Respectfully Submitted,

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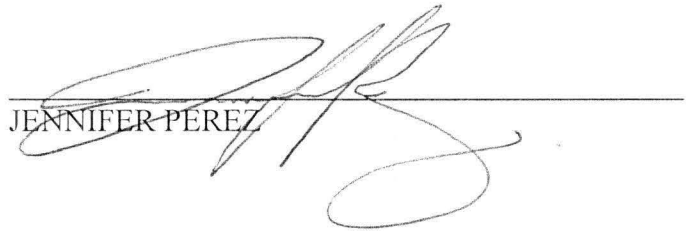
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⁹ *Id* at paragraphs 47 and 48 citing to *Widder v. Louisiana Citizens Prop. Ins. Corp.*, 2011- 0196 (La. App. 4 Cir. 8/10/11); 82 So. 3d 294, 296; and *Ross v. C. Adams Const. & Design, L.L.C.*, 10-852 (La. App. 5 Cir. 6/14/11); 70 So. 3d 949, 952.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all known counsel of record by either hand-delivery, electronic delivery, facsimile transmission, or U.S.

Mail, postage prepaid, this 18th day of August 2020.


JENNIFER PEREZ