

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

TWISTED TSUNAMI, LLC, d/b/a TWO  
TWISTED ITALIANS BISTRO,

Plaintiff,

v.

AMGUARD INSURANCE COMPANY,

Defendant.

Case No: \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant, AmGUARD Insurance Company (“AmGUARD”) hereby removes this action from the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Civil Division, Docket No. 502020CC005094, to the United States District Court for the Southern District of Florida, West Palm Beach Division pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

1. Plaintiff, Twisted Tsunami, LLC (d/b/a Two Twisted Italians Bistro) (“Plaintiff”), instituted litigation against AmGUARD on or about June 4, 2020, through the filing of a Complaint in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Civil Division (the “Complaint”).

2. True and correct copies of the Summons, Complaint with its attached exhibits, and discovery requests are attached as Exhibit A to the accompanying declaration of Gregory Coleman.<sup>1</sup>

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<sup>1</sup> All citations to “Ex. \_\_\_” refer to exhibits to the Declaration of Gregory Coleman, dated July 2, 2020.

**Removal is Timely**

3. On or about June 5, 2020, the Chief Financial Officer (“CFO”) of the State of Florida was served with the Summons and Complaint pursuant to Fla. Stat. Ann. § 624.422 & 624.423, which authorizes the CFO to accept service of process on behalf of insurers licensed to do business within the state of Florida. A copy was forwarded by the CFO to AmGUARD on June 12, 2020. *See* Ex. A at A1. AmGUARD received the Complaint thereafter.

4. Removal of this case is timely because it is “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint and summons.]” 28 U.S.C. § 1446; *see also Fin. Accounting Sols., Inc. v. Houston Cas. Co.*, No. 09-61084-CIV, 2009 WL 10668187, at \*2 (S.D. Fla. Aug. 26, 2009).

5. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve a copy of this Notice of Removal on counsel for Plaintiffs and will file a copy of this Notice of Removal with the clerk of the state court.

**The Court Has Diversity Jurisdiction Pursuant to 28 U.S.C. §§ 1332, 1441(A)**

6. Section 1441(a) provides that “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) in that there is complete diversity between the parties and the amount in controversy in this matter exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. Venue in this Court is proper under 28 U.S.C. § 1441(a) and Local Rule 3.1 because this action is being removed from the state court in which it was originally filed, the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

***The Parties Are Citizens of Different States***

9. Plaintiff is a citizen of Florida and Defendant is a citizen of Pennsylvania.

10. Plaintiff is a Florida limited liability company with its principal address located at 4521 PGA Boulevard, 152, Palm Beach Gardens, FL 33416. According to the Florida Department of State, Twisted Tsunami LLC is a single-member LLC and its sole member, Thomas L. Caraccia, is a citizen of Florida. *See* Ex. B.

11. Defendant AmGUARD is a Pennsylvania corporation with its principal place of business at 39 Public Square, Wilkes Barre, Pennsylvania 18703.

***The Amount in Controversy Exceeds \$75,000***

12. Plaintiff is asking this Court to order Defendant to provide more than \$75,000 of insurance coverage to Plaintiff. That shows the amount in controversy is in excess of \$75,000.

13. Plaintiff owns and operates Two Twisted Italians Bistro in West Palm Beach, Florida. Compl. ¶¶ 2, 4. Plaintiff seeks to recover under its property insurance policy money it contends it lost due to the COVID-19 virus and associated government orders. *Id.* ¶ 24-26. The Complaint alleges that Plaintiff “was closed entirely for approximately 10 days, and subsequently reopened in a limited capacity” as a result of social-distancing directives issued by various governmental authorities in response to the COVID-19 virus and the presence of COVID-19 damaged Plaintiff’s property. *Id.* ¶¶ 20-22. The Complaint alleges that Plaintiff’s direct physical damage and business income loss have “continued through the date of filing of this action.” *Id.* ¶ 25.

14. The Complaint seeks damages and a declaratory judgment, among other things, that Defendant AmGUARD is obligated to provide business income and extra expense coverage to Plaintiff. *Id.* ¶ 30.<sup>2</sup> Assuming all other terms and conditions are satisfied, the insurance policy at issue provides coverage of actual loss up to \$300,000 for business interruption and extra expense coverage.

15. The amount in controversy requirement is satisfied because the value of the declaratory relief Plaintiff seeks exceeds \$75,000. *AAA Abachman Enters., Inc. v. Stanley Steamer Int'l, Inc.*, 268 F. App'x 864, 866–67 (11th Cir. 2008) (amount in controversy satisfied in action for declaratory judgment providing that plaintiff had exclusive use of a trademark because the record contained plaintiff's own valuation of this right, which exceeded \$75,000); *JZ Auto Serv., Inc. v. W. Heritage Ins. Co.*, No. 14-80395, 2014 WL 12461366, at \*2 (S.D. Fla. July 24, 2014) (amount in controversy settled in action for breach of contract and declaratory judgment where plaintiff's estimate of the damaged property along, along with the policy limits, demonstrated that Plaintiff was seeking in excess of \$75,000); *see also Ralph v. Target Corp.*, No. 6:09CV-1328-ORL-19KRS, 2009 WL 3200680, at \*3 (M.D. Fla. Sept. 30, 2009) (amount in controversy satisfied where Plaintiff provided a demand letter requesting a \$100,000 and refused to stipulate to Defendant's request to stipulate that damages do not exceed \$75,000 and the Complaint alleged a damages which were continuing in nature); *Lias v. Galbut*, No. 10-22699-CIV, 2011 WL 335346, at \*2 (S.D. Fla. Jan. 31, 2011) (amount in controversy satisfied where

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<sup>2</sup> The Complaint includes in its allegations regarding jurisdiction that “[t]his is an action for damages of no less than Five Thousand and 00/100 (\$5,000.00) but less than Thirty Thousand and 00/100 Dollars (\$30,000.00) exclusive of interest, attorneys’ fees and costs.” Compl. ¶ 1. However, the Plaintiff does not make any specific demand in the *ad damnum* clause of the Complaint or otherwise. Therefore, damages are unspecified for purposes of this notice of removal. *See Barnes v. JetBlue Airways Corp.*, 2007 WL 1362504 at \*1 n.1 (S.D. Fla. May 7, 2007) (finding that a complaint sought an unspecified amount of damages where the complaint alleged that damages did not exceed \$75,000, but did not make a specific demand in the *ad damnum* clause of the complaint).

Defendant, among other things, provided the Court with “a very straightforward damage calculation”). The allegations of the Complaint demonstrate beyond a preponderance of the evidence that the value of the action from the perspective of Plaintiff exceeds \$75,000.

16. Plaintiff reported to Defendant in a recorded telephone call that Plaintiff’s loss began on March 15, 2020, and that its estimated monthly loss it seeks from Defendant is \$25,000, and that the loss it seeks to recover has been ongoing. *See* Ex. C at 4:13-18, 6:4-8. It has been more than 3 months since Plaintiff’s \$25,000 per month ongoing loss commenced. Therefore, it is a legal certainty that the amount in controversy in this case exceeds \$75,000 because if Plaintiff recovers the entirety of her claim for monthly loss it will recover in excess of \$75,000.

17. Furthermore, Plaintiff reported when applying for insurance that yearly revenue for the insured premises is \$750,000. *See* Ex. D at D5. Plaintiff’s monthly revenue is approximately \$62,500 per month. The Complaint alleges its business was closed for approximately 10 days beginning in March 2020, and resumed on a limited basis. Compl. ¶ 21. The ten days closure would represent a reduction in revenue of approximately \$20,000. Assuming a reduction of income of 50% for the months of April, May, and June, Plaintiffs would have additional revenue losses of over \$90,000.<sup>3</sup> *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (holding that a removing defendant may demonstrate the amount in controversy with “specific factual allegations” supported by “evidence combined with reasonable deductions, reasonable inferences, or other reasonable extrapolations,” and making clear that this “kind of reasoning is not akin to conjecture, speculation, or star gazing”). This

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<sup>3</sup> The Complaint alleges that on March 17, 2020, restaurants were ordered to limit occupancy to 50% of current building occupancy and on March 20, 2020 restaurants were ordered to close on-premises service to customers. Compl. ¶¶ 12, 13.

also shows that the amount in controversy in this case exceeds \$75,000 because if Plaintiff recovers the entirety of its stated loss it will recover in excess of \$75,000.

18. There is no binding, enforcing stipulation from Plaintiff that it will not seek to recover more than \$75,000 from Defendant in this case. While the Complaint states that “[t]his is an action for damages of no less than Five Thousand and 00/100 (\$5,000.00) but less than Thirty Thousand and 00/100 Dollars (\$30,000.00) exclusive of interest, attorneys’ fees and costs” (Compl. ¶ 1)<sup>4</sup>, this case involves a prayer for unspecified damages and a separate request for a declaratory judgment. *Id.* ¶ 30 (seeking declaratory judgment), ¶ 39(a) (seeking “[a]ll damages to which Plaintiff is entitled, including all benefits available under the Policy”). The allegations and facts show beyond a preponderance of the evidence that the declaratory judgment Plaintiff seeks is worth more than \$75,000. At bottom, Plaintiff is asking this Court to order Defendant to provide more than \$75,000 of insurance coverage to Plaintiff. That shows the amount in controversy is in excess of \$75,000.

**Reservation of Defenses**

19. As of the filing of this Notice of Removal, no further proceedings have been had in the state court action.

20. Nothing in this Notice of Removal shall be interpreted as a relinquishment of Defendants’ right to assert any defense or affirmative matter.

21. Defendants reserve the right to amend or supplement this Notice of Removal.

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<sup>4</sup> The Complaint seeks attorneys’ fees pursuant to Fla. § 627.428. “Where, as here, a statute authorizes the recovery of attorney’s fees, and the plaintiff has requested attorney’s fees, a reasonable amount of those fees is included in the amount in controversy.” *Moshiach Cmty. Ctr. 770, Inc. v. Scottsdale Ins. Co.*, No. 17-62352-CIV, 2018 WL 6308671, at \*2 (S.D. Fla. Jan. 23, 2018) (finding that in applying the Court’s judicial experience in awarding attorney’s fees, and projecting such fees through trial, attorney’s fees would “far exceed \$20,000.”).

WHEREFORE, Defendant hereby removes the above-captioned action from the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, to this Court, and requests that all further proceedings be conducted in this Court, as required by law.

Respectfully submitted,

**CRITTON, LUTTIER & COLEMAN, LLP**

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By: /s/ Gregory W. Coleman

**Gregory W. Coleman**

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 2nd 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

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