

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

RAYMOND H NAHMAD DDS PA
RH NAHMAD EQUITIES LLC,

Plaintiff,

FEDERAL COURT CASE NO.:
STATE CASE NO.:
2020-011071-CA-01

v.

HARTFORD CASUALTY INSURANCE
COMPANY,

Defendant.

**DEFENDANT, HARTFORD CASUALTY INSURANCE
COMPANY'S, NOTICE OF REMOVAL**

COMES NOW Defendant, HARTFORD CASUALTY INSURANCE COMPANY (“Hartford”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and hereby files this statement of the grounds for removing this cause of action to the United States District Court for the Southern District of Florida, Miami Division, together with a copy of all process, pleadings and orders served upon Hartford in the state court case. In support thereof, Hartford states the following:¹

1. On June 5, 2020, Plaintiffs, Raymond H. Nahmad DDS PA, a dental practice, and RH Nahmad Equities LLC, sued Hartford for various claims arising out of the policy of insurance between Hartford and Plaintiffs (“Policy”). Plaintiffs’ lawsuit arises out of Hartford’s denial of Plaintiffs’ claims for coverage for “business income losses and other covered expenses” “from measures put in place by the civil authorities to stop the spread of COVID-19 among the

¹ Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant’s rights to assert any defense, including, but not limited to those defenses available under Rule 12 of the Federal Rules of Civil Procedure or otherwise.

population.” Compl. ¶ 11.

2. The lawsuit is pending in the 11th Judicial Circuit, in and for Miami-Dade County, Florida under Case No. 2020-011071-CA-01 (“State Action”).

3. On June 12, 2020, Hartford was served with a Summons and copy of the Complaint in connection with the State Action.

4. Hartford timely files this Notice of Removal within 30 days of service in accordance with 8 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), requiring a copy of all process, pleadings, and orders served upon Defendants to be included with a notice of removal, the Complaint and Summons are attached as **Exhibit “A”**. No other documents have been served on Hartford.

6. Venue is proper in this Division in accordance with 28 U.S.C. §§ 121(1) and 1441(a).

7. The Plaintiffs, RAYMOND H NAHMAD DDS PA RH NAHMAD EQUITIES LLC (collectively “Plaintiffs”), are in fact two entities. Plaintiff, RAYMOND H NAHMAD DDS PA, is a Florida corporation, and its principal place of business is in Miami, Florida. Compl. ¶ 2.

8. Plaintiff, R. H. NAHMAD EQUITIES LLC, is a Florida limited liability company. R. H. NAHMAD EQUITIES LLC has two members: Raymond H. Nahmad and Patricia Nahmad.²

9. Members Raymond H. Nahmad and Patricia Nahmad own residential real property carrying a homestead exemption located at 11495 SW 93 CT Miami, FL 33176.³

² See R. H. Nahmad Equities LLC, LexisNexis SmartLinx Comprehensive Business Report (2020), attached as **Exhibit “D.”**

³ See <https://www.miamidade.gov/Apps/PA/propertysearch/#/> (last accessed July 5, 2020).

Members Raymond H. Nahmad and Patricia Nahmad are both registered to vote in Florida at that same address.⁴ Members Raymond H. Nahmad and Patricia Nahmad are both citizens of Florida.

10. All of the members of Plaintiff R. H. NAHMAD EQUITIES LLC are citizens of Florida. Plaintiff RAYMOND H NAHMAD DDS PA is a citizen of Florida.

11. Hartford is incorporated in and has a domicile Indiana and has its principal place of business in Connecticut.⁵ Hartford is a citizen of Indiana and Connecticut.

12. Therefore, the parties are citizens of different states.

13. The Complaint does not state the specific amount of damages sought by the two Plaintiffs. The Complaint states that it is an action for damages in excess of thirty thousand (\$30,000.00) dollars, exclusive of interest, costs and attorney's fees. Compl. ¶ 1. Thirty thousand dollars is the minimum amount in controversy for the Circuit Court in the State of Florida to have jurisdiction over the lawsuit. Fla. Stat. §§ 34.01(1)(c)(1), 26.012(2)(a). Plaintiffs' Complaint does not seek to limit its damages below the jurisdictional threshold of this Court.

14. Plaintiffs are seeking a declaratory judgment, damages for breach of contract, interest, costs, and attorneys' fees pursuant to Fla. Stat. § 627.428. Compl. ¶¶ 11, 37, 39.

15. The damages sought are valued based on the value of Plaintiffs' claim under the Policy, *i.e.*, the amount of money Hartford would pay to Plaintiffs if the claim is covered under the Policy. *Kirschbaum v. Safeco Ins. Co. of Am.*, No. 10-80406-CIV, 2010 WL 11597602, at *1 (S.D. Fla. Apr. 22, 2010) (quoting *Hartford Insurance Group v Lou-Con, Inc.*, 293 F.3d 908 (5th

⁴ See <https://voterrecords.com/voter/9409885/patricia-nahmad>;
<https://voterrecords.com/voter/9592319/raymond-nahmad> (last accessed July 5, 2020).

⁵ See <https://www.thehartford.com/legal-notice> (last accessed July 6, 2020).

Cir. 2002)) (“in declaratory judgment cases that involve the applicability of an insurance policy to a particular occurrence, the jurisdictional amount in controversy is measured by the value of the underlying claim – not the face amount of the policy.”). The two Plaintiffs are seeking coverage under the Policy provisions for Business Income, Extra Expense, and Civil Authority. Compl. ¶ 31.

16. Plaintiffs do not state the value of their claims in the Complaint, but Plaintiff Raymond H Nahmad DDS PA is an established dental practice with eight employees that has been in business for 40 years.⁶ Plaintiff Raymond H Nahmad DDS PA’s annual revenues alone are estimated at \$431,000-\$689,634.⁷ Plaintiffs do not state specific dates as to the beginning and end of the interruption of their business and loss of income, but Plaintiffs allege that on March 20, 2020, Governor DeSantis issued Executive Order No. 20-72 “Non-essential Elective Medical Procedures” limiting all “medically unnecessary” and elective medical and surgical procedures. Compl. ¶ 19. Plaintiffs allege that “[s]ince that time, Plaintiff has been forced to suspend operations with a deleterious effect on business income.” Compl. ¶ 21. Plaintiffs filed a claim with Hartford providing the date of their loss as March 13, 2020.⁸ Accordingly, Plaintiffs’ alleged losses began to accrue before the date of their claim and are alleged to have continued thereafter at least until the filing of the Complaint on June 5, 2020. Closure or reduced operation from March 13, 2020 (*see* Exhibit F), through the date the complaint was filed (*see* Compl. ¶ 21) indicates an alleged closure period of approximately 23% of the year. Given the dental practice’s estimated annual income of \$431,000-\$689,634, a 23% reduction in income likely would be in the range of \$99,130 to \$158,616.

⁶ *See* records for Raymond H. Nahmad, DDS PA, collectively attached hereto as **Exhibit “E.”**

⁷ *See id.*

⁸ *See* letter from Hartford denying coverage for Plaintiffs’ claim, attached hereto as **Exhibit “F.”**

17. Plaintiffs have also alleged unspecified “extra expenses” and “related losses” as damages “resulting from actions taken by civil authorities”. Compl. ¶ 12.

18. Second, Plaintiffs seek attorneys’ fees under Fla. Stat. § 627.428. Attorneys’ fees are also considered when determining the amount in controversy when the relevant state statute allows for an award of attorney’s fees. *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000). At a minimum, attorneys’ fees incurred by Plaintiffs up to the time of removal count towards the amount in controversy. *See Miller Chiropractic & Med. Ctrs., Inc. v. Progressive Select Ins. Co.*, No. 8:16-cv-3034-T-33MAP, 2016 WL 6518782, at *2 (M.D. Fla. Nov. 3, 2016).

19. Combining the value of the claims for Business Income, Extra Expense, Civil Authority, and attorneys’ fees, Plaintiffs’ demand satisfies the \$75,000 amount in controversy required by 28 U.S.C. § 1332, such that the Court has jurisdiction over the pending State Action.

20. This action is appropriate for removal because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states, in accordance with 28 U.S.C. § 1332.

21. Attached as **Exhibit “B”** is a copy of the Certification of Notice of Removal, which will be filed by Hartford in the pending State Action.

22. Attached as **Exhibit “C”** is a copy of the Notice of Removal to Opposing Counsel, which will be filed by Defendant in the pending State Action.

WHEREFORE, Defendant, HARTFORD CASUALTY INSURANCE COMPANY, respectfully requests that this Honorable Court exercise jurisdiction over this matter.

Dated this 10th day of July.

Respectfully submitted,

/s/ Tracy A. Jurgus

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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by ECF and e-Service on July 10, 2020.

/s/ Tracy A. Jurgus

Tracy A. Jurgus