IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

TOWN KITCHEN LLC,
individually and on behalf of
those similarly situated,

Plaintiff,

CIVIL ACTION NO. 1:20-cv-22832

v.

CERTAIN UNDERWRITERS AT LLOYDS, LONDON,
KNOWN AS SYNDICATE ENH 5151, NEO 2468
XLC 2003, TAL 1183, TRV 5000, AGR 3268,
ACS 1856, NVA 2007, HDU 382, PPP 1980,
AMA 1200, ASC 1414 and VSM 5678,
and INDIAN HARBOR INSURANCE COMPANY,
and HDI GLOBAL SPECIALTY SE

Defendants.

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1446 and 1453, Defendants Certain Underwriters at Lloyd's, London known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268, ACS 1856, NVA 2007, HDU 382, PPP 1980, AMA 1200, ASC 1414 and VSM 5678 ("Underwriters")[1], Indian Harbor Insurance Company ("Indian Harbor"), and HDI Global Specialty SE ("HDI") (collectively, the "Insurers"), hereby give notice of the removal of this action from the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 2020-008801-CA-01, to the United States District Court for the Southern District of Florida.

I. Background

[1] The Insurers note that the proper name for Underwriters is Certain Underwriters at Lloyd's, London Subscribing to Certificate Number AVS011418900.

1. On April 21, 2020, Town Kitchen, LLC ("Plaintiff") commenced a putative class action lawsuit styled *Town Kitchen, LLC, individually and behalf of those similarly situated vs. Certain Underwriters at Lloyd's, London known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268, ACS 1856, NVA 2007, HDU 382, PPP 1980, AMA 1200, ASC 1414 and VSM 5678, Indian Harbor Insurance Company, and HDI Global Specialty SE.*, bearing Case No. Case No. 2020-008801-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Civil Division (the "Circuit Court Action"). A true and correct copy of the Complaint as served upon the Insurers in the Circuit Court Action is attached hereto as Exhibit A and incorporated herein by reference.

2. This matter is removable pursuant to the Class Action Fairness Act of 2005 ("CAFA"). Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in scattered sections of 28 U.S.C., including Sections 1332 and 1453). As set forth below, this is a putative class action in which: (1) there are 100 or more members in Plaintiff's putative class; (2) at least some members of the putative class have a different citizenship than some defendants; and (3) the amount in controversy in the proposed claims of the putative class members exceeds the sum or value of $5,000,000 in the aggregate. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A).

II. Removal Is Proper Because This Court Has Jurisdiction Pursuant To 28 U.S.C. § 1332(d)

3. Under CAFA, federal diversity jurisdiction over class actions exists where "any member of a class of plaintiffs is a citizen of a State different from any defendant" and in which the amount in controversy exceeds $5,000,000, exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(6).

4. The Insurers have a statutory right to have this action adjudicated in federal court based upon diversity jurisdiction under CAFA. Diversity of citizenship exists in this matter because Plaintiff and Defendant Indian Harbor are citizens of different states. (Compl. at ¶¶ 1, 3). In addition, Plaintiff and Defendant HDI are citizens of different states, as Defendant HDI is a foreign entity. (Compl. at ¶¶ 1, 4). Finally, based upon the allegations in the Complaint, the amount in controversy exceeds $5,000,000, exclusive of interest and costs. Accordingly, federal jurisdiction exists in this case under CAFA.

A. CAFA's Requirement of Minimal Diversity is Satisfied

5. Plaintiff is a limited liability company with its principal place of business in Florida, and Plaintiff seeks to represent a class of entities that do business in Florida. (Compl. at ¶¶ 1, 19).

6. Indian Harbor has been at all times during the pendency of this action an insurance company organized and existing under the laws of the State of Delaware with its principal place of business in Stamford, Connecticut. (Compl. at ¶ 3). Thus, Indian Harbor is a citizen of Delaware and Connecticut for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

7. HDI has been at all times during the pendency of this action a foreign insurance company with its principal place of business in Hannover, Germany. (Compl. at ¶ 4). Thus, HDI is a foreign entity for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

8. Because the citizenship of at least one proposed class member and one of the Insurers is diverse, CAFA's minimal diversity requirement is satisfied.

B. CAFA's Amount In Controversy Requirement is Satisfied

9. Plaintiff purports to bring this class action on behalf of "[a]ll entities that do business in Florida: (1) having commercial property insurance policies issued by [the Insurers] including business interruption and extra expense coverage that do not exclude coverage for pandemics; and (2) which have suffered losses due to measures put in place by civil authorities to stop the spread of COVID-19." (Compl. at ¶ 19).

10. Plaintiff (on behalf of itself and the putative class) seeks business interruption and extra expense coverage due to losses incurred by "measures put in place by civil authorities to stop the spread of COVID-19," and cites government orders issued in March and April 2020. (Compl. at ¶ 19).[2]

11. Specifically, Plaintiff seeks "a Declaratory Judgment on whether the Governor's March 19, 2020 Civil Authority Order and the restrictions set forth therein is a covered loss under the policies issued by [the Insurers]." (Compl. at ¶ 29).

12. While Plaintiff's declaratory action ultimately asks the Court to find coverage under the commercial insurance policy issued by the Insurers, which included business interruption and extra expense coverage, Plaintiff claims an unspecified amount of damages.

13. CAFA provides that district courts shall have original jurisdiction over any putative class action "in which the matter in controversy exceeds the sum or value of

[2] Plaintiff's class definition seeks to include "all entities that do business in Florida," thus, by virtue of Plaintiff's proposed class definition, Plaintiff presumably is referring to Florida Governor DeSantis's orders, which applied statewide. (Compl. at ¶ 13) (the Insurers note that Paragraphs 22(b) and 29 of the Complaint appear to use the incorrect date of the Governor's "Safer at Home" order). Although Plaintiff cites an order that Miami-Dade County Mayor Gimenez issued in March 2020, this order had no impact on putative class members outside of Miami-Dade County, and thus, the Insurers understand Plaintiff to reference Governor DeSantis's orders in its class definition.

$5,000,000, exclusive of interest and costs . . . ." 28 U.S.C. § 1332(d)(2).

14. CAFA further provides that, in determining whether this $5,000,000 amount is met in class actions, "the claims of the individual class members shall be aggregated . . . ." 28 U.S.C. § 1332(d)(6).

15. The Insurers deny that Plaintiff (and any of the putative class members) is entitled to any relief or that this matter is appropriate for class treatment. However, the Insurers have undertaken to quantify the potential damages at stake if Plaintiff certifies a class and prevails at trial on the claims it asserts.

16. The Insurers have determined that should Plaintiff's putative class be certified, and the Court finds a covered loss under the policies, the amount in controversy will well exceed the $5,000,000 jurisdictional threshold.[3]

17. If Governor DeSantis's orders (along with local orders issued by municipalities) constitute a loss covered by the applicable insurance policy, as Plaintiff alleges, coverage would be provided under the "Civil Authority" provision, which provides for a maximum of three or four weeks of business interruption coverage, depending on the existence of a particular endorsement.

18. As such, the amount in controversy for the putative class would be three weeks of business interruption coverage under the relevant policies at issue.[4] *See*

[3] While the Insurers note that attorneys' fees and costs can be included in calculating the amount in controversy requirement under CAFA, the Insurers advise the Court that they are not taking fees and costs into consideration when calculating the amount in controversy. *Morgan v. Ace Am. Ins. Co.*, 3:16-CV-705-J-39MCR, 2017 WL 8362727, at *6 (M.D. Fla. Sept. 15, 2017) (noting that attorneys' fees and costs can be included in the amount in controversy calculation under CAFA, but such figures cannot be speculative).

[4] Although some policies at issue provide for three weeks of coverage and other policies provide for four weeks, the Insurers have chosen to assume that all of the policies had the more conservative three-week limitation to avoid improperly inflating the amount in controversy. Notably, Plaintiff's policy contains the endorsement and limits Plaintiff's business interruption damages to a period of three weeks. (Compl. at Ex. A, Form CP 00 30 10 12, pp. 43-53).

Anderson v. Wilco Life Ins. Co., 943 F.3d 917, 925 (11th Cir. 2019) ("This Court has held that '[f]or amount in controversy purposes, the value of injunctive or declaratory relief is the "value of the object of the litigation" measured from the plaintiff's perspective.' Stated another way, 'the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff if the injunction were granted.'" (quoting *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1268 (11th Cir. 2000) (internal citations omitted))).

19. Based on the Insurers' calculations and understanding of Plaintiff's class definition, Plaintiff's putative class consists of approximately 2,927 separate insured locations within the state of Florida. Each of these 2,927 insured locations maintains business interruption coverage with policy limits of varying amounts. The aggregate of the business interruption policy limits for the putative class is approximately $843,000,000. Here, the value of the relief ultimately requested by Plaintiff—the amount in controversy—is available business income coverage for each applicable policy at issue. *See id.*

20. Each policy issued by the Insurers to Plaintiff and to the the putative class members is in effect and provides coverage for one year, or 52 weeks. As such, the calculation of the amount in controversy equals the available coverage during the maximum three–week period provided under the "Civil Authority" provision, which is 3/52 (or approximately 1/17th) of the total policy limits for business interruption coverage. Thus, 1/17th of the $843,000,000 representing the aggregate limit of all the policies equals $49,000,000. Accordingly, the Insurers estimate that the aggregate business interruption coverage of $49,000,000 is at issue for this three–week period,

which is almost ten times the $5,000,000 CAFA threshold. *See S. Fla. Wellness v. Allstate Ins. Co.*, 745 F.3d 1312, 1317 (11th Cir. 2014) ("Estimating the amount in controversy is not nuclear science; it does not demand decimal-point precision. . . . The larger the calculated amount at stake, the easier it is to be confident that collection contingencies should not count for much").[5]

21. Thus, the Insurers believe CAFA's amount–in–controversy requirement is satisfied.

III. Removal is Timely Pursuant to 28 U.S.C. §§ 1446 and 1453

22. The Insured served the Insurers on different dates, as follows: Underwriters and HDI were served with the Complaint on June 11, 2020, and Indian Harbor was served with the Complaint on June 13, 2020.

23. Notwithstanding the "later-served defendant" rule, the Insurers' Notice of Removal is timely in that it is filed within thirty (30) days of Underwriters and HDI being served with Plaintiff's Complaint. 28 U.S.C. § 1446(b)(2)(B).

IV. The Insurers Have Satisfied All Other Requirements For Removal

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the United States District Court for the Southern District of Florida embraces the place where this action was pending.

25. Further, the Insurers have determined that approximately 2,927 insured locations (or policies) represent the putative class. The putative class, thus, consists of over 100 class members.

[5] Indeed, each of the 2,927 putative class locations need only seek $1,710 in business interruption damages under their respective policy to meet CAFA's $5,000,000 threshold.

26. Based on the above, CAFA's diversity and amount–in–controversy requirements have been satisfied and this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.

27. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as provided by law, and written notice is being sent to Plaintiff's counsel.

28. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon the Insurers are attached to this Notice as Composite Exhibit B.

29. The Insurers in no way concede to any of the allegations set forth in the Complaint, which includes the parameters of Plaintiff's putative class or that this matter is appropriate for class treatment. Thus, all paragraphs and provisions contained herein are adversarial in nature, operate under all necessary assumptions and presumptions, and are set forth for the limited purpose of removing said matter to federal court.

30. If any question arises as to the propriety of this removal, the Insurers respectfully request the opportunity to present a brief and argument in support of their Notice of Removal.

WHEREFORE, the Insurers respectfully request that this action, now pending in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, be removed to the United States District Court for the Southern District of Florida.

Respectfully submitted this 10th day of July 2020.

/s/ John D. Mullen
John D. Mullen (FBN 32883)
Sarah B. Van Schoyck (FBN 70979)
Jason A. Pill (FBN 70284)
100 South Ashley Drive, Suite 2000
Tampa, Florida 33602-5311
813-472-7550 (telephone)
813-472-7570 (facsimile)
john.mullen@phelps.com
sarah.vanschoyck@phelps.com
jason.pill@phelps.com

Counsel for Defendants Certain Underwriters at Lloyd's, London, Known as Syndicate ENH 5151, NEO 2468, XLC 2003, TAL 1183, TRV 5000, AGR 3268 ACS 1856, NVA 2007, HDU 382, PPP 1980, AMA 1200, ASC 1414 and VSM 5678, and Indian Harbor Insurance Company, and HDI Global Specialty SE

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system and served a true and correct copy via regular U.S. Mail to the following:

Michael E. Criden
Kevin B. Love
Lindsey C. Grossman
CRIDEN & LOVE, P.A.
7301 SW 57TH Court
Suite 515
South Miami, Florida 33143
mcriden@cridenlove.com
klove@cridenlove.com
lgrossman@cridenlove.com

/s/ John D. Mullen
Counsel for Defendants