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 PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION, DILATORY EXCEPTION OF PREMATURITY, AND PRECAUTIONARY DECLINATORY EXCEPTION OF LIS PENDENS

NOW INTO COURT, through undersigned counsel, comes 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") Exception of No Cause of Action, Exception of Prematurity, and Precautionary Exception of Lis Pendens. Lloyd's opposes the declaration of Plaintiffs' coverage under their legally binding contract with what amounts to one singular premise – that the issue the Plaintiffs present for declaratory relief is merely theoretical, has not yet and may never actually occur, and is therefore not ripe for determination. This notion willfully ignores the reality faced by our community and Oceana Grill, located a mere few steps outside the Courthouse. Indeed, to the extreme contrary, the COVID-19 pandemic is in fact a real issue that is affecting millions of people and businesses, and a covered cause of loss for which Lloyd's knew there would be coverage for. For the following reasons, all of Lloyd's exceptions must be denied: (1) Plaintiffs present a valid cause of action with respect to contractual coverage that is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment; (2) the issue before the Court is not premature; (3) the instant matter is the only suit relating to Oceana's COVID-19 business interruption claim; and (4) rendering a declaratory judgment absolutely terminates the uncertainty giving rise to this proceeding. Whether Lloyd's owes coverage for Plaintiffs' business interruption losses as a result of civil authority shutdown orders is ripe for determination and Plaintiffs are entitled to a declaratory judgment from this Court vis-à-vis coverage.

INTRODUCTION

Lloyd's policy extended all-risk coverage to Oceana, which covers all risks of loss unless clearly and specifically excluded.[1] This coverage includes the risk of loss resulting from a pandemic or virus. For example, Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore, and Thailand all previously lost business due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak in 2002. Mandarin Oriental International Ltd. secured a $16 million settlement for its SARS business interruption losses from their insurers.[2] After SARS, also a covered cause of loss under the Lloyd's policy, the insurance industry quickly moved to exclude losses stemming from a pandemic or virus through exclusions published by the Insurance Services Organization and American Association of Insurance Services. However, these exclusions are not automatic and must be specifically included in each policy.[3] While some insurers, including other Lloyd's syndicates, did in fact include exclusions containing the word "virus" or "pandemic," Lloyd's did not include any such exclusion in Oceana Grill's policy.

Fast forward to today, the COVID-19 pandemic is one of the worst public health crises in over a century. Within six months, the novel SARS-CoV-2 virus has infected almost 3.5 million Americans and nearly one hundred thousand Louisianans, with almost ten thousand of those cases coming in Orleans Parish. The virus is so dangerous that, for the first time in modern history, elected officials and government agencies have declared states of emergency and prohibited the use of certain properties and businesses due to the dangerous property conditions. Such is the case in New Orleans, where Mayor Cantrell specifically noted in her mayoral declaration that "COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances." The losses suffered by businesses due to the closure or limitations to their business, like Oceana, have been catastrophic. It is a natural disaster.[4]

This public health crises and the rampant spread of the virus has caused a direct physical loss to property, as the virus adheres to surfaces for extended periods of time, creating a dangerous property condition and preventing the use of property. COVID-19 has rendered property unsafe

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[1] *Dawson Farms, L.L.C. v. Millers Mut Fire Ins. Co.*, 34, 801 (La. App. 2 Cir. 8/1/01); 794 So. 2d 949; *see also* p. 59 of Exhibit 1 of Plaintiff's Petition for Declaratory Judgment.
[2] *See* https://www.sec.gov/Archives/edgar/vprr/0303/03037259.pdf.
[3] Under information and belief, these exclusions were introduced and presented to the Louisiana Insurance Commissioner with material misrepresentations regarding the reduction of coverage to policyholders.
[4] *See Friends of DeVito v. Wolf*, No. 68 MM 2020 (Pa. Apr. 13, 2020).

and unusable. This is a "direct physical loss" to property which triggers business income and civil authority coverage under policies such as Lloyd's policy. Where a property has been rendered unusable or uninhabitable, a physical loss has occurred.[5] Whether the property is intact and functional is irrelevant because physical damage is not necessary to define physical loss.[6] It is clear that Oceana's business was affected by the New Orleans civil authority orders closing and limiting businesses due to property loss in the area and dangerous property conditions. This is a covered cause of loss under the civil authority provision in the absence of any exclusions.

LAW AND ARGUMENT

A. Plaintiffs have a valid cause of action against Lloyd's because there is an actual question and controversy being presented with respect to coverage that poses issues of sufficiency immediacy to warrant issuance of a declaratory judgment.

Declaratory judgments are authorized by La. C.C.P. article 1871, which provides: "Courts of record within their respective jurisdictions may declare rights, status, and other legal relations, whether or not further relief is or could be claimed." A "declaratory judgment" is one which simply establishes the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. [7] Its distinctive characteristic is that the declaration stands by itself with no executory process following as a matter of course, so that it is distinguished from a direct action in that it does not seek execution or performance from the defendant or the opposing litigants.[8] "[A] person is entitled to relief by declaratory judgment when his rights are uncertain or disputed in an immediate and genuine situation and the declaratory judgment will remove the uncertainty or terminate the dispute."[9] The code articles establishing and governing declaratory judgments are remedial in nature and must be liberally construed and applied so as to give the procedure full effect within the contours of a justiciable controversy.[10] However, for a court to entertain an action for declaratory relief, there must be a justiciable controversy and the question presented must be real and not theoretical.[11]

The Louisiana Supreme Court in *Abbot v. Parker* noted as follows regarding a justiciable controversy:

> "A 'justiciable controversy' connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or

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[5] *See Widder v. Louisiana Citizens Prop. Ins. Corp*., 2011-0196 (La. App. 4 Cir. 8/10/11); 82 So. 3d 294, 296.
[6] *Id; see also Ross v. C. Adams Const. & Design, L.L.C.*, 10-852 (La. App. 5 Cir. 6/14/11); 70 So. 3d 949, 952.
[7] *Lemoine v. Baton Rouge Physical Therapy, L.L.P.*, 13-0404 (La. App. 1 Cir. 12/27/13); 135 So.3d 771, 773.
[8] *Id.*
[9] *Louisiana Associated General Contractors, Inc. v. State, Division of Administration, Office of State Purchasing*, 95–2105 (La.3/8/96); 669 So.2d 1185, 1191.
[10] *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 817. *See also* La. C.C.P. article 1881.
[11] *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So.2d 158, 162 (La. 1993).

> abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of conclusive character. Further, the plaintiff should have a legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[12]

There is no hypothetical or abstract dispute here – Oceana Grill's business was interrupted as a result of the orders of Mayor Cantrell and Governor Edwards stemming from property loss and damage from COVID-19, and operates today only in a limited capacity. Oceana Grill has a tangible stake at interest – the survivability of its business. The insured-insurer relationship in first-party matters is inevitably adverse and insurers, including Lloyd's, throughout the globe are denying coverage on the identical issues Oceana Grill seeks a declaratory judgment on. The longer Lloyd's gets to delay resolution of the coverage issue the greater the likelihood that Oceana Grill may no longer be able to serve its signature seafood dishes to locals and tourists alike. A declaratory judgment is necessary for the very existence of this world-famous French Quarter restaurant. Oceana Grill has been shutdown and continues to operate in a limited capacity, there is no "hypothetical" controversy.

The Fourth Circuit's analysis of a controversy in *Morial v. Gusto* is an apt comparison.[13] In *Morial*, the court addressed a "suit for declaratory relief . . . filed by Ernest M. Morial, Mayor of the City of New Orleans, and Joseph I. Giarrusso, Councilman at Large and President of the New Orleans City Council, seeking determination of the status, as against the Louisiana Public Meetings Law, of [a] proposed meeting between the Mayor and other members of his staff and any City Council members who chose to attend."[14] Morial and Giarrusso named as defendants the Louisiana Attorney General and the District Attorney for the Parish of Orleans on the theory that they were the entities responsible for enforcing the Public Meetings Law.[15] The Attorney General filed an exception of no cause of action, as Lloyd's does here, arguing "that the petition sought advisory relief only and did not set forth a justiciable controversy sufficient to serve as a foundation for a declaratory judgment."[16] What Morial sought was a declaratory judgment determining the legal status of his proposed meeting.[17] "Public officers [were] concerned about the proper performance of the duties of their office."[18] The Court held that "[t]he meeting has been called,

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[12] *Abbot v. Parker*, 249 So.2d 908, 918 (La. 1971).
[13] *Morial v. Guste*, 365 So.2d 289 (La. App. 4 Cir. 1978).
[14] *Id*. at 290.
[15] *Id*.
[16] *Id*.
[17] *Id*. at 291.
[18] *Id*. at 293.

and a serious question exists as to whether the holding of the meeting will be in violation of the Public Meetings Law . . . In our view, there is an existing actual and substantial dispute . . . There is a justiciable controversy here."[19] Just as in *Morial*, there is a serious question as to whether the Lloyd's policy provides coverage for Oceana Grill's business interruption losses that have already occurred, there is no request for "advisory relief." Morial sought, as La. C.C.P. Article 1871 allows, a declaration as to the "rights, status, and other legal relations" between the parties. This is precisely what Plaintiffs seek, albeit in an insurance coverage context and not a Public Meetings Law context– a declaration as to the rights of the parties.

Contrast *Morial* with *Abbott v. Parker*, which Lloyd's cites to for the proposition that this court may not render a declaratory judgment on a hypothetical or abstract dispute.[20] In *Abbott*, the Louisiana Stadium and Exposition District authorized the issuance of $113 million of bonds to construct a domed stadium in New Orleans in 1971.[21] A group of citizens, taxpayers, property owners, legislators, and bond holders brought suit against the Stadium District and certain state agencies and officials opposing the stadium bonds.[22] This group of Plaintiffs requested declaratory judgment "on perhaps thirty issues of budget procedure, of bond-payment priorities, and of payments of the State's lease rentals [the District had an agreement to lease to the State to finance the bond issue]."[23][24] The Court ultimately held that the plaintiffs' claims for declaratory relief were in part "based upon alleged prejudice such bondholders might sustain through diversion of state revenues to the stadium lease rentals . . . ."[25] However, evidence showed that state revenues available to pay bonds exceeded $500 million dollars, and the gross annual stadium bond payments would never exceed $10 million dollars, therefore plaintiffs' requests for declaratory relief presented "merely abstract questions of law which might hypothetically arise . . . ."[26] Contrast that to the situation of Oceana Grill, who has contractual insurance coverage for business interruption which was caused by a civil authority shutdown. This interruption (and corollary coverage) was initiated on March 16, 2020 and has continued for over four months. Plaintiffs seek a determination

[19] *Id*. at 293.
[20] *Abbott v. Parker*, 249 So.2d 908 (La. 1971).
[21] *Id*. at 284.
[22] *Id*. at 285.
[23] *Id*. at 307.
[24] "To construct and operate the facilities, the Stadium District was authorized to incur debt and issue bonds, to levy and collect a hotel occupancy tax in Jefferson and Orleans Parishes and to pledge the proceeds to the payments of its bonds, to mortgage or lease the District's property, and to pledge any lease or leases and the revenues and benefits therefrom. Under the amendment, the powers granted by it to the Stadium District to accomplish its functions were self-sufficient and plenary." *Id*. at 287.
[25] *Id*. at 310.
[26] *Id*. at 308-09.

from this Court as to coverage under their Lloyd's policy. There is simply nothing hypothetical or abstract about such a request for events that have already occurred. In fact, as evidence of the existence of an actual dispute, Plaintiffs provided a Consent Judgment to Lloyd's requesting that they stipulate to certain facts and coverage issues giving rise to this suit.[27] If there is no dispute, Lloyd's should simply agree to the consent judgment prior to this hearing.

Moreover, Plaintiffs seek a declaration of its rights under a policy of property insurance, which is a written contract. La. C.C.P. article 1872 provides that "[a] person interested under a…written contract or other writing constituting a contract...may have determined any question of construction or validity arising under the…contract…and obtain a declaration of rights, status, or other legal relations thereunder."[28] The next article, La. C.C.P. article 1873, makes clear that "[a] contract may be construed ***either before or after*** there has been a breach thereof." (emphasis added).[29] Accordingly, the relevant code articles state that an insured may seek a declaration of his rights under its insurance policy before the policy is actually breached—that is, before the insured has made a claim under the policy and before the insurer has denied it.

Alternatively, if this Court finds that Lloyd's exception of no cause of action is warranted, Plaintiffs respectfully aver that they should be granted leave to amend their Petition pursuant to Louisiana Code of Civil Procedure Article 934.

B. Plaintiffs' declaratory judgment action is not premature.

Lloyd's contention that Plaintiffs' request for relief is premature is incorrect because the request is based on non-speculative losses that have indisputably already occurred and continue to occur on a daily basis. Additionally, Plaintiffs may assert their claim for declaratory relief prior to making their claim under the Lloyd's policy. Lloyd's suffers no prejudice by the Court allowing Plaintiffs to proceed in this fashion.

i. Lloyds has not cited to a single analogous case to support its proposition that Plaintiffs' claim for declaratory relief is premature.

Oceana Grill's request for declaratory judgment is based on non-speculative losses that took place as a result of the civil authority shutdowns which are ongoing to this day. Lloyd's' statement that the action is premature because Plaintiffs seek a declaration "with respect to a hypothetical insurance claim for losses that have not yet (and may never) be sustained" borders on the absurd. Oceana Grill is often packed with customers from near and far, yet has stood empty

[27] *See* Exhibit "1" attached hereto.
[28] La. C.C.P. article 1872.
[29] La. C.C.P. article 1873.

for months. Only recently with the phasing in of indoor seating capacity has the bleeding been slightly stemmed. There is simply nothing about Plaintiffs' claims that are not based on actual events that have occurred. Lloyd's citations to Louisiana jurisprudence in support of their exception are unavailing.

For example, Lloyd's cites to *Houghton v. Our Lady of the Lake Hosp., Inc*. for the proposition that a suit "is premature when it is brought before the right to enforce the claim sued upon has accrued."[30] However, *Houghton* is a medical malpractice case that stands for the well-established law that a Court must sustain an exception of prematurity if a plaintiff sues a qualified healthcare provider before presenting her claim to a medical review panel.[31] *Houghton* therefore has nothing at all to do with whether an insured can seek a declaratory judgment on coverage prior to complying with any policy's loss reporting obligations. *Williamson v. Hospital Service Dist. No. 1 of Jefferson*, is also a medical malpractice action case involving the same issue as *Houghton* regarding a premature medical malpractice claim, and is therefore similarly irrelevant.[32]

Lloyd's citation to *Norfolk S. Corp. v. Cal. Union Ins. Co*., for support of its position that Plaintiff's claims are premature is also unavailing and actually help demonstrate that Oceana Grill's claims are in fact ripe for determination, and therefore, not brought prematurely.[33] In *Norfolk*, Norfolk sought a declaratory judgment on coverage under a commercial general liability policy for costs, in part, it **may** have to pay in response to orders (or **potential** orders) from a governmental entity to several clean-up polluted sites.[34] The court noted that "**the purpose of the [declaratory] judgment is to settle and afford relief from uncertainty and insecurity, [at times,] before damages arise and the need for traditional remedies occur[ ].**"[35] [emphasis added]. With respect to one of the two Norfolk sites left at the time of trial, Southern Shipbuilding, the Court noted that "[n]o claim ha[d] been filed against Norfolk in connection with this site by the EPA or any other entity."[36] Therefore, the claims regarding Southern Shipbuilding were too hypothetical and abstract to allow the granting of declaratory relief, as the "only facts alleged in support of Norfolk's potential liability at the site [were] speculative at best. Furthermore, no entity ha[d] sought to hold Norfolk liable in connection with the site, and no entity may ever seek to

[30] *Houghton v. Our Lady of the Lake Hosp., Inc*. 2003-0135 (La. App. 1 Cir. 7/15/03); 859 So. 2d 103, 105.
[31] *Id*. at 105-06.
[32] *Williamson v. Hospital Service Dist. No. 1 of Jefferson*, 2004-0451 (La. 12/1/04); 888 So. 2d 782, 785.
[33] *See Norfolk S. Corp. v. Cal. Union Ins. Co*., 2002-0369 (La. App. 1 Cir. 9/12/03); 859 So.2d 167.
[34] *See Norfolk, supra*, generally, and at p. 182.
[35] *Id*. at 185; *citing American Waste & Pollution Control Co. v. St. Martin Parish Policy Jury*, 627 So. 2d 158 (La. 1993).
[36] *Id*. at 186.

impose liability. Therefore, the question of insurance coverage [was] based on a contingency that may never occur and is not of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id. Norfolk* holds (and is supported by La. C.C.P. Article 1973, *supra*) that declaratory judgments are meant to settle and afford relief from uncertainty and insecurity, even ***before*** damages arise. Unlike *Norfolk*, where the insured requested a declaratory judgment with respect to insurance coverage for clean-up of a site for which Norfolk had no liability yet, Oceana Grill seeks a declaratory judgment with respect to insurance coverage for non-speculative, real losses that have already taken place.[37] A declaratory judgment in this action would absolutely "settle and afford relief from uncertainty and insecurity, and is therefore not premature.

ii. Plaintiffs do not have to satisfy policy obligations to obtain a declaratory judgment with respect to coverage.

Lloyd's has not only pointed to no Louisiana case law on point, but has also not pointed to any contractual provision that prohibits Plaintiffs from obtaining a declaratory judgment as to coverage prior to complying with the policy. Certainly, Plaintiffs cannot file a breach of contract action against Lloyd's until the policy provisions are complied with and Lloyd's has an opportunity to investigate the claim. However, Lloyd's cites to no contractual provision that prevents Plaintiffs, or this Court, from making a coverage determination in the form of a declaratory judgment prior to complying with the policy's loss reporting obligations.

Lloyd's further loses nothing by allowing this Court to make such a coverage determination, which actually can only help Lloyd's save time, energy, and expense. The loss reporting obligations additionally have no effect on whether this Court believes coverage exists under the set of facts and present situation applicable to Oceana Grill. Therefore, the contract's purpose of such reporting obligations is not germane to a declaratory judgment action. If nothing else, Lloyd's certainly now has notice of Oceana Grill's claims at this juncture given the facts contained in the declaratory judgment action and the reality of the effect on restaurants in New Orleans by virtue of civil authority orders. Just as this Court may take judicial notice of facts regarding the civil authority shutdown orders and the progression of various 'phases' of re-opening for restaurants, Lloyd's undoubtedly can do the same. For Lloyd's to argue that the claim is premature because they don't know the facts of Oceana Grill's claim is not only dubious, but

[37] Lloyd's reliance on La. C.C.P. Articles 423 similarly has no merit because Plaintiffs do not seek to enforce an 'obligation,' they are merely seeking a determination of coverage. Notably, not a single one of the 114 noted decisions discussing La. C.C.P. Article 423 appears to mention anything to do with the precise scenario before this Court.

clearly designed as a vehicle to avoid this Court ruling on the merits of the declaratory judgment action and delay resolution of Plaintiffs' claims.

C. Lloyd's exception of lis pendens must be denied as the instant matter is the only COVID-19 business interruption suit that exists between the parties.

The doctrine of lis pendens prevents a plaintiff from litigating a second suit when the suits involve the same transaction or occurrence between the same parties in the same capacities.[38] The instant Petition for Declaratory Judgment was filed well before the Second Supplemental and Amending Petition for Damages and Declaratory Judgment was filed in Oceana Grill's fire-related lawsuit, which is also pending before this Court. Moreover, the Second Supplemental and Amending Petition for Damages in the fire lawsuit does not relate back to the original filing date of the fire suit because the facts therein do not arise out of the same transaction or occurrence. Nevertheless, out of an abundance of caution, Plaintiffs have filed a motion to dismiss with prejudice their Second Supplemental and Amending Petition for Damages and Declaratory Judgment in the fire suit.[39] Therefore, the instant declaratory judgment action is the only suit before this court, or any other court, concerning business interruption claims from civil authority shutdown as a result of the COVID-19 pandemic. Lloyd's exception of lis pendens is therefore moot and should be denied.

D. Rendering a declaratory judgment would absolutely terminate the uncertainty giving rise to this proceeding, and any argument to the contrary is unfounded.

What Lloyd's fails to acknowledge, and which is obvious on its face, is that a judgment on Oceana Grill's declaratory judgment action would, without a doubt, logically terminate any uncertainty giving rise to the proceeding. The uncertainty is whether Lloyd's policy at issue provides coverage for a civil authority shutdown as a result of a pandemic and/or virus that leads to business interruption losses. Would allowing this declaratory judgment action to go forward and allow this Court to make a determination of coverage terminate this uncertainty? The answer is a resounding yes.

Lloyd's own citation to *Western World Ins. Co., Inc. v. Paradise Pools & Spas, Inc.*, supports this contention.[40] In *Western World*, Paradise Pools sought a declaratory judgment that its insurer, Western World, owed a duty to defend after Paradise Pools was sued for negligent installation of a new pool.[41] The court held that declaratory judgment "would remove at least part

[38] *See e.g. Aisola v. Louisiana Citizens Property Ins. Corp*., 2014-1708 (La. 10/14/15); 180 So.3d 266, 269.
[39] *See* Motion to Dismiss, attached hereto as Exhibit "2" filed Wednesday, July 15, 2020.
[40] *Western World Ins. Co., Inc. v. Paradise Pools & Spas, Inc*., 633 So.2d 790 (La. App. 5 Cir. 1994).
[41] *Id*. at 790-91.

of the uncertainty that gave rise to th[e] proceeding" as "a determination that there is no coverage would terminate the litigation as to Western World."[42] As in *Western World*, if the Court determines that coverage does not exist for Plaintiffs under the Lloyd's policy (which Plaintiffs stringently deny), any further litigation would logically and necessarily be halted. Conversely, if the Court determined coverage existed, there would be no reason for litigation and the parties would merely need to confer on the amount of loss. Under either scenario, the uncertainty giving rise to this proceeding (i.e. whether the Lloyd's policy provides coverage for business interruption due to a civil authority shutdown from the COVID-19 pandemic) would be eliminated.

Lloyd's citation to the macabre *In re Internment of LoCicero*, similarly supports Plaintiffs' contention.[43] In *LoCicero*, Ramona LoCicero Hedrick, one of four heirs to decedent Ms. Cleo Satter LoCicero, who passed due to a heart attack, sued her three sisters for defamation after they publicly accused her of poisoning their mother. Allstate Insurance Company, who issued a policy of insurance, to one of the three sisters, filed a declaratory judgment action based on an exclusion of coverage for intentional acts.[44] The court noted that the simple issue on Allstate's declaratory judgment action was "Allstate's coverage of Marks for liability resulting from any defamatory statements she allegedly made. This need not involve more than a comparison between the acts alleged in the petition and the text of the policy."[45] The court held that rendering a declaratory judgment would not terminate any controversy giving rise to the proceeding because its insured, Marks, was still a party to the suit by Hedrick, and Hedrick "could present evidence to prove that Marks negligently [as opposed to intentionally] made the alleged defamatory statement" thereby making Allstate liable.[46] Therefore, a coverage determination was premature because Allstate could still be responsible for damages resulting from negligently made statements.[47] Whereas in *LoCicero*, potential facts could come out that could alter the insurer Allstate's liability, there is nothing that is going to change with respect to Oceana Grill that would alter whether Lloyd's owes coverage for business losses from civil authority shutdown as a result of COVID-19. Oceana Grill has clearly suffered extensive losses from civil authority shutdown orders. A declaratory judgment on whether coverage exists as a result of these losses is ripe because the reality of the damage to the Oceana Grill restaurant from these shutdowns is not going to change. All the facts are out and

[42] *Id*. at 793.
[43] *In re Internment of LoCicero*, 2005-1051 (La. App. 4 Cir. 05/26/06); 933 So. 2d 883, 884-85.
[44] *Id*. at 885.
[45] *Id*. at 886.
[46] *Id*. at 887.
[47] *Id*. at 887.

Oceana Grill has been living with the reality of those facts on a daily basis, struggling to survive. All the court has to do is, as in *LoCicero*, compare the acts alleged in the petition with the text of the policy, nothing more.

The Fourth Circuit in *Morial* further held that pursuant to Louisiana Code of Civil Procedure Article 1876 Courts "**must** render a declaratory judgment when such a judgment would terminate the uncertainty or controversy giving rise to the proceeding . . . ." [emphasis added].[48] Considering that rendering a declaratory judgment in this matter will logically and undoubtedly terminate any uncertainty regarding whether the Lloyd's policy at issue provides civil authority coverage from the current COVID-19 pandemic related civil authority shutdowns, this Court should find that a cause of action exists and deny Lloyd's exceptions.

CONCLUSION

Plaintiffs have pled sufficient facts to state a cause of action against Lloyd's and their seeking of declaratory judgment is not premature. A determination on the coverage issues Oceana Grill seeks this Court to address will absolutely remove uncertainty that exists regarding the coverage dispute. What Lloyd's seeks to do with these exceptions is delay resolution of an issue of paramount importance to Oceana Grill and to the local, national, and global landscape on the COVID-19 business interruption litigation.

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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[48] *Morial*, 365 So.2d at 292.

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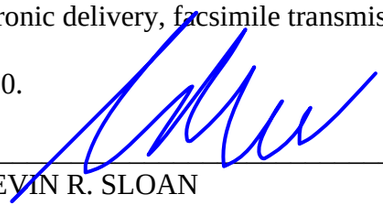
CERTIFICATE OF SERVICE

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 15th day of July, 2020.



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