



**IN THE SUPREME COURT FOR THE STATE OF DELAWARE**

300 WEST 22 REALTY, LLC,

Plaintiff-Appellant,

v.

STRATHMORE INSURANCE  
COMPANY,

Defendant-Appellee.

No. 109, 2023

On Appeal from the Superior Court  
of the State of Delaware

C.A. No. N22C-03-147 MMJ CCLD

**OPENING BRIEF OF APPELLANT 300 WEST 22 REALTY, LLC**

Dated: June 26, 2023

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## **NATURE OF THE PROCEEDINGS**

300 West 22 Realty, LLC (“300 West 22nd”) brings this appeal of an Opinion issued by the Delaware Superior Court that granted Strathmore Fire Insurance Company’s (“Strathmore”) Motion To Dismiss Complaint for lack of personal jurisdiction (“Motion”).<sup>1</sup>

300 West 22nd’s Complaint asserts claims for declaratory judgment and breach of contract arising out of Strathmore’s refusal to cover pandemic-related business interruption losses under the terms and conditions of an “all-risk” property insurance policy sold by Strathmore to 300 West 22nd (the “Policy”). A-7. The Superior Court granted Strathmore’s Motion based on its finding that 300 West 22nd failed to establish that this Court has personal jurisdiction over Strathmore under Delaware’s Long-Arm Statute, 10 *Del C.* § 3104(c). A-421. 300 West 22nd filed its Notice of Appeal in this matter on March 30, 2023. A-471. In this appeal, 300 West 22nd challenges the Superior Court’s interpretation of Sections (c)(1) and (c)(6) as well as its reasoning that jurisdictional discovery is unwarranted.

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<sup>1</sup> The Superior Court’s Opinion is attached hereto as Exhibit A.

## SUMMARY OF THE ARGUMENT

1. This case centers on an “all risk” insurance policy 300 West purchased 22nd from Strathmore to protect against business interruption losses resulting from unforeseen and fortuitous events, such as the physical damage and inability to operate its business, due to a pandemic or other large-scale natural disaster. As a result of the COVID-19 pandemic, 300 West 22nd suffered extraordinary business losses and widespread direct physical loss of or damage to properties throughout the locales where 300 West 22nd operates. Following these losses, 300 West 22nd made a claim for coverage with Strathmore, which Strathmore subsequently denied. By way of this action, 300 West 22nd seeks declaratory judgment and breach of contract stemming from Strathmore’s improper coverage denial.

2. Strathmore now attempts to avoid its contractual obligations by seeking to dismiss this action on the basis that the Superior Court lacks personal jurisdiction over Strathmore. This attempt should be denied and, for the reasons set forth below, the Superior Court’s Opinion granting Strathmore’s Motion should be reversed.

3. Two principal errors warrant reversal of the Superior Court’s dismissal:

4. **First**, the Superior Court erred in concluding, as a matter of law, that it could not exercise personal jurisdiction over Strathmore pursuant to Delaware’s Long-Arm Statute. To begin, 300 West 22nd has sufficiently alleged that Strathmore purposefully and regularly “transacts business” in Delaware, including by (i)



maintaining a Delaware license to sell insurance policies in the State, (ii) entering into insurance policies with Delaware entities, such as 300 West 22nd, and initiating and (iii) participating in litigation regarding those insurance policies in this jurisdiction, along with Strathmore's parent company, Greater New York Mutual Insurance Company.

5. Nevertheless, the Superior Court failed to undertake a proper jurisdictional analysis. Instead, the Superior Court relied *solely* on the United States District Court for the District of Delaware's holding in *Yankees Entertainment and Sports Network, LLC v. Hartford Fire Insurance Company*, 2022 U.S. Dist. LEXIS 185319 (D. Del. Oct. 11, 2022) ("*YES Network*"), an unpublished federal court decision case that is presently on appeal, to conclude that 300 West 22nd failed to establish that Strathmore "transacted business" in Delaware within the meaning of Section 3104(c)(1) of Delaware's Long-Arm Statute.<sup>2</sup> Such a reliance was misplaced, as the *YES Network* court improperly conflated general and specific

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<sup>2</sup> In its Opinion, the Superior Court summarily concludes that, because the "*YES Network* analysis is applicable to the instant case," 300 West 22nd failed to show that Strathmore "transacted business" in Delaware pursuant to Section 3104(c)(1). Ex. A, at p. 7. Critically, the Superior Court failed to conduct any independent jurisdictional analysis, relying on *YES Network* alone to arrive at its conclusion. *See* A-425-427 (setting forth *YES Network* court's findings and refraining from conducting a jurisdictional analysis outside of concluding that *YES Network* analysis applies to this case). *Id.* Accordingly, 300 West 22nd analyzes the deficiencies in the court's analysis and subsequent conclusion in *YES Network*, as it directly pertains to the Superior Court's ruling here.

jurisdiction by relying on two unpublished Delaware superior court cases, both of which are legally and factually inapposite.

6. Even more, the Superior Court improperly disregarded critical facts 300 West 22nd alleged that establish personal jurisdiction. Contrary to well-established Delaware law, the Superior Court read each of 300 West 22nd's well-plead allegations in isolation and erred in concluding that those allegations were insufficient to amount to a "single act done" by Strathmore in Delaware to confer personal jurisdiction over Strathmore. Indeed, in its Complaint, 300 West 22nd more than sufficiently alleged that its claims relate directly to Strathmore's business transactions in this forum. Specifically, 300 West 22nd alleged that, as a Delaware limited liability company, 300 West 22nd is seeking insurance coverage for business losses it sustained due to the COVID-19 pandemic, including losses sustained in Delaware.

7. Further, as in *YES Network*, the Superior Court disregarded 300 West 22nd's detailed allegations that Strathmore secured a Delaware license to sell insurance policies in the State, entered into numerous contractual relationships with Delaware entities, such as 300 West 22nd, receives insurance proceeds each year stemming from these activities, and initiates and participates in litigation in this jurisdiction, along with its parent company.

8. Moreover, the Superior Court erred in holding that Strathmore did not contract to insure a “person . . . located within Delaware at the time the contract was made” under Section (c)(6). As the Superior Court conceded, 300 West 22nd is a “person” under Section (c)(6) and, as set forth below, 300 West 22nd has adequately shown that Section (c)(6), by its plain terms, is met. Despite this, the Superior Court narrowly interpreted Section (c)(6) to require that 300 West 22nd demonstrate that the Policy insures an entity in which Delaware has an interest. Section (c)(6) imposes no such requirement. Moreover, 300 West 22nd has demonstrated that Delaware has an interest here; namely, Delaware has an interest in the insurance recoveries and financial sustenance of its companies, like 300 West 22nd, and protecting how its companies are treated by their insurers.

9. **Second**, the Superior Court abused its discretion by denying 300 West 22nd’s request to conduct jurisdictional discovery. 300 West 22nd’s claims are minimally plausible and not frivolous and jurisdictional discovery would likely shed light on whether Strathmore’s connections in Delaware satisfy any of the subsections for establishing jurisdiction under Delaware’s Long-arm Statute. At minimum, jurisdictional discovery should be permitted and 300 West 22nd should be given an opportunity to amend its Complaint with newly-obtained discovery.

## STATEMENT OF FACTS

### **I. STRATHMORE SOLD 300 WEST 22ND AN “ALL-RISK” POLICY INSURING BUSINESS INTERRUPTION LOSSES ARISING FROM ALL NON-EXCLUDED RISKS.**

300 West 22nd is a Delaware limited liability company with its principal place of business in New York, New York. A-14 at ¶21. 300 West 22nd owns and operates a hotel, The Moore Hotel, with a location of 300 West 22nd Street, New York, New York 10011. A-7 at ¶2. Although 300 West 22nd owns and operates a hotel located in New York City, its business losses are not limited to New York, but extend to the other jurisdictions where 300 West 22nd operates, conducts business, and is organized. A-8 at ¶5, A-37 at ¶84 – A-40-41 at ¶98. The losses suffered at the hotel location affect the business decisions and losses for the company in this State due to the way its income losses flow from the hotel to the company as a whole, such as the loss of hotel bookings from Delaware residents. A-37 at ¶84 – A-40-41 at ¶98.

Strathmore is a multi-million dollar insurance company in the business of selling “all risk” property insurance policies to cover insured risks that may arise in numerous jurisdictions throughout the United States, including those for Delaware companies formed under the laws of the State of Delaware, like 300 West 22nd. A-14 at ¶21. 300 West 22nd purchased an “all risk” policy from Strathmore to protect against business interruption losses and expenses resulting from unforeseen and fortuitous events, such as the physical loss and inability to operate its business as a

result of a pandemic or other large-scale natural disaster, and it expected its policy would insure such losses. A-11 at ¶13, A-41 at ¶99.

The COVID-19 pandemic had an unprecedented effect on 300 West 22nd's business operations, causing millions of dollars in losses and widespread direct physical loss of or damage to properties throughout the locales where 300 West 22nd operated. A-8 at ¶3. The pandemic prevented 300 West 22nd from conducting normal business operations and deprived 300 West 22nd of the use of its business premises. A-8 at ¶5. Even when permitted to open, as a result of the spread of COVID-19, 300 West 22nd was unable to operate without substantial physical alterations, reductions in physical capacity, and other protective measures. *Id.* Further, the presence of COVID-19 and SARS-CoV-2 within 300 West 22nd's insured properties also caused direct physical loss of or damage to properties (or both) by transforming the properties from usable and safe into properties that are unsatisfactory and prohibited for use, uninhabitable, unfit for their intended function, and extremely dangerous and potentially deadly for humans. *Id.*

Following its significant losses, 300 West 22nd made a claim with Strathmore, which Strathmore denied. A-12 at ¶14, A-49 at ¶¶ 138-139.

**II. 300 WEST 22ND BROUGHT SUIT AND THE SUPERIOR COURT ULTIMATELY GRANTED STRATHMORE'S MOTION TO DISMISS.**

As a result of Strathmore's denial of coverage, on March 17, 2022, 300 West 22nd filed a lawsuit in Delaware Superior Court asserting two causes of action: (1) declaratory judgment; and (2) breach of contract. A-7 at ¶1. On June 22, 2022, Strathmore filed its Motion To Dismiss Complaint for lack of personal jurisdiction under Delaware Rule of Civil Procedure 12(b)(2). A-347. On September 16, 2022, 300 West 22nd filed its Answering Brief in Opposition to Strathmore's Motion. A-378. On March 1, 2023, the Superior Court, Hon. Mary M. Johnston, issued an Opinion granting Strathmore's Motion and dismissing the case without prejudice. Ex. A. On March 30, 2023, 300 West 22nd filed a timely Notice of Appeal to this Court, which was assigned docket number 109, 2023. A-471.

## ARGUMENT

### **I. THE SUPERIOR COURT ERRED IN FINDING THAT IT DOES NOT HAVE PERSONAL JURISDICTION OVER STRATHMORE PURSUANT TO DELAWARE’S LONG-ARM STATUTE.**

#### **A. Question Presented**

Whether the Superior Court erred in finding that it does not have personal jurisdiction over Strathmore pursuant to Delaware’s Long-Arm Statute.<sup>3</sup>

#### **B. Standard and Scope of Review**

This Court exercises plenary review when assessing a superior court’s dismissal of a complaint under Rule 12(b)(2). *O’Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 286 (Del. 2001). In reviewing the granting of a motion to dismiss, this Court applies the same legal standard as the trial court. *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022). It is well-established that “[t]he pleading standards governing the motion to dismiss stage of a proceeding in Delaware . . . are minimal.” *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).

In reviewing a motion to dismiss for lack of personal jurisdiction, the Court “must accept as true all of the plaintiff’s well-pleaded facts, and draw all reasonable inferences in plaintiff’s favor.” *Olenik v. Lodzinski*, 208 A.3d 704, 714 (Del. 2019) (internal quotations and citation omitted). A court must “accept even vague

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<sup>3</sup> This issue was raised and ruled on in the Delaware Superior Court. A-388-401, Ex. A, at pp. 5-10.

allegations in the Complaint as ‘well-pleaded’ if they provide the defendant notice of the claim . . . and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.” *Cent. Mortg. Co.*, 27 A.3d at 536 (citation omitted). Further, a motion to dismiss for lack of personal jurisdiction “should be denied if the facts pled support a reasonable inference that the plaintiff can succeed on his claims.” *Olenik*, 208 A.3d at 714. Indeed, plaintiffs are only required to make a “*prima facie* showing of personal jurisdiction.” *Ryan v. Gifford*, 935 A.2d 258, 272 (Del. Ch. 2007).

### **C. Merits of the Argument**

#### **1. The Court May Properly Exercise Personal Jurisdiction Over Strathmore.**

Delaware courts apply a two-prong analysis to determine whether a court has personal jurisdiction over a defendant. *AeroGlobal Capital Mgmt., Inc. v. Cirrus Indus., Inc.*, 871 A.2d 428, 438 (Del. 2005). A court must examine whether jurisdiction (i) is authorized by Delaware’s Long-Arm Statute and (ii) satisfies constitutional due process. *Id.* In a motion to dismiss for lack of personal jurisdiction, absent an evidentiary hearing or jurisdictional discovery, the plaintiff need only make a *prima facie* showing that the exercise of personal jurisdiction is appropriate. *Wiggins v. Physiologic Assessment Servs., LLC*, 138 A.3d 1160, 1164-65 (Del. Super. Ct. 2016).



Delaware’s Long-Arm Statute provides that “[a]s to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident . . . who[:]”

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;
- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
- (5) Has an interest in, uses or possesses real property in the State; or
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

10 *Del. C.* § 3104(c). “The term ‘person’ in this section includes any natural person, association, partnership or corporation.” 10 *Del. C.* § 3104(a).

Importantly, Delaware’s Long-Arm Statute must be “broadly construed to confer jurisdiction to the maximum extent possible under the Due Process Clause.” *Hercules Inc. v. Leu Tr. and Banking (Bah.) Ltd.*, 611 A.2d 476, 480-81 (Del. 1992) (emphasis added); *see also Sample v. Morgan*, 935 A.2d 1046, 1056 (Del. Ch. 2007) (same). Accordingly, Delaware courts liberally interpret the Long-Arm Statute in

favor of exercising jurisdiction. *Waters v. Deutz Corp.*, 460 A.2d 1332, 1335 (Del. Super. Ct. 1983); *Mobil Oil Corp. v. Advanced Env'tl. Recycling Techs., Inc.*, 833 F. Supp. 437, 443-44 (D. Del. 1993).

Of particular relevance, under Section (c)(1), “[t]ransact[ing] any business” is broadly interpreted to include “activities whose purpose is to attempt to make a profit, directly or indirectly or otherwise are affected with a commercial aspect.” *Chandler v. Ciccoricco*, 2003 Del. Ch. LEXIS 47, at \*36-37 (Del. Ch. May 5, 2003) (internal quotations and citation omitted). A defendant need not consistently nor continuously transact business in Delaware for jurisdiction to attach: “*A single act done or transaction engaged by the nonresident [in Delaware] is sufficient to establish jurisdiction.*” *Friedman v. Alcatel Alsthom*, 752 A.2d 544, 549 (Del. Ch. 1999) (internal quotations and citation omitted) (emphasis added); accord *Lake Treasure Holdings, Ltd. v. Foundry Hill Gp. LLC*, 2013 Del. Ch. LEXIS 285, at \*10 (Del. Ch. Nov. 21, 2013).

**a. 300 West 22nd Has Demonstrated That Strathmore Is Subject to Personal Jurisdiction by Virtue of Its “Transact[ing] Business” in Delaware.**

The Superior Court relied solely on the Delaware District Court’s ruling in *YES Network* (again, an unreported decision that is presently on appeal) to conclude that it does not have personal jurisdiction over Strathmore pursuant to Section (c)(1). Ex. A, pp. 5-7. Indeed, the Superior Court noted as follows:

The United States District Court for the District of Delaware addressed a similar situation in [*YES Network*]. In that case, the plaintiff was a Delaware LLC arguing for insurance coverage related to losses at seven properties all outside of Delaware. The plaintiff in *YES Network* made the same arguments [300 West 22nd] makes in the instant case.

*Id.* at p. 6. The Superior Court then summarily concluded that the “*YES Network* analysis is applicable to the instant case” and, on that basis alone, that 300 West 22nd failed to establish that Strathmore “transacted business” in Delaware under Section (c)(1). *Id.* at p. 7. The Superior Court’s blanket adoption of the *YES Network* analysis and its failure to conduct any independent personal jurisdiction analysis warrants reversal for the following reasons.

**(i) The Superior Court Erred in Adopting *YES Network*’s Erroneous Conclusion that an Insurer’s Act of Entering into an Insurance Policy with a Delaware Company Is Insufficient To Establish Personal Jurisdiction under Section (c)(1).**

The Superior Court adopted *YES Network*’s improper finding that an insurance company selling policies covering risks for Delaware entities formed under the laws of Delaware, and receiving insurance proceeds from those activities, is insufficient to establish that the insurer was “transact[ing] business” in Delaware. Ex. A, at pp. 5-7 (relying on its understanding of *YES Network*’s that “contracting with a Delaware LLC . . . does not qualify as ‘transacting business’ under Section 3104(c)(1)”)”; *YES Network*, 2022 U.S. Dist. LEXIS 185319, at \*10. Notably, *YES Network*’s analysis is limited to a single sentence that cites to two unpublished Delaware superior court cases, *Eaton v. Allstate Prop. & Cas. Ins. Co.*, 2021 Del.

Super. LEXIS 562 (Del. Super. Apr. 28, 2021) and *Rosado v. State Farm Mut. Auto. Ins. Co.*, 2020 Del. Super. LEXIS 342 (Del. Super. July 9, 2020):

Simply “doing business” in a forum state is not enough to satisfy this prong. *Cf. Eaton v. Allstate Prop. & Cas. Ins. Co.*, 2021 Del. Super. LEXIS 562, 2021 WL 3662451, at \*1 (Del. Super. Apr. 28, 2021) (granting insurance company’s motion to dismiss for lack of personal jurisdiction because selling other insurance policies in Delaware is insufficient to confer general jurisdiction in Delaware); *Rosado v. State Farm Mut. Auto. Ins. Co.*, 2020 Del. Super. LEXIS 342, 2020 WL 3887880, at \*2 (Del. Super. July 9, 2020) (same).

*YES Network*, 2022 U.S. Dist. LEXIS 185319, at \*10 (emphasis added). The District Court’s conclusion, including its reliance on *Eaton* and *Rosado*, is flawed and the Superior Court’s subsequent ruling based on that conclusion should be reversed.

Critically, the District Court in *YES Network* impermissibly conflated general and specific jurisdiction, which led it erroneously to conclude that “[s]imply ‘doing business’” does not constitute “transact[ing] business” under Section (c)(1) of Delaware’s Long-Arm Statute. *Id.* (quoting *Eaton*, 2021 Del. Super. LEXIS 562, at \*3). In *Eaton*, a North Carolina resident claimed that his insurer, an Illinois corporation, breached its duty under a personal automobile insurance policy to provide uninsured motorist insurance payments for damages the plaintiff incurred from an automobile accident in Delaware. *Eaton*, 2021 WL 3662451, at \*1. In analyzing the insurer’s motion to dismiss for lack of personal jurisdiction, the court focused on whether the insurer was subject to general jurisdiction in Delaware by virtue of “doing business” there. *Id.* at \*2-3. The court concluded it was not. *Id.*

Rather, the *Eaton* court determined that conducting business in the forum state, without more, does not meet the requirements of general jurisdiction under Delaware law such that the defendant is subject to suit for non-forum related activity. *Id.*

Importantly, here (as with the *YES Network* plaintiff) 300 West 22nd has not asserted and does not assert that general jurisdiction applies to Strathmore. Instead, 300 West 22nd's sole argument before the Superior Court (and *YES Network*'s sole argument before the District Court) was that Strathmore is subject to specific jurisdiction in Delaware. This is a distinction with a difference: general jurisdiction requires a higher showing of "continuous and systematic" contacts with the forum state whereas specific jurisdiction requires only that a plaintiff show "a single act." *See Friedman*, 752 A.2d at 549 ("A single act done or transaction engaged by the nonresident [in Delaware] is sufficient to establish [personal] jurisdiction.") (internal quotations and citation omitted). Given that these standards fundamentally differ, whether "doing business" satisfies general jurisdiction – the issue in *Eaton* – has no bearing on whether Strathmore "transact[ed] business" in Delaware.<sup>4</sup>

*Eaton*'s personal jurisdiction analysis, on which the *YES Network* court relied and which the Superior Court seemingly adopted, is equally inapposite. *YES Network*, 2022 U.S. Dist. LEXIS 185319, at \*10. In *Eaton*, the plaintiff exclusively

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<sup>4</sup> *Eaton* is also factually weaker than the present action given that neither party was a resident of the forum state. *Eaton*, 2021 WL 3662451, at \*1-2.

argued that Section (c)(3) conferred personal jurisdiction over the insurer because its failure to pay pursuant to the policy caused the plaintiff tortious injury. 2021 WL 3662451, at \*3-4; *see* 10 *Del. C.* § 3104(c)(3) (analyzing whether non-resident caused “tortious injury in the State by an act or omission in this State”). *But, Section (c)(3) is not at issue here nor was it at issue in YES Network.* Rather, this case deals with the application of Sections (c)(1) and (c)(6) (discussed below), and Section (c)(1) asks whether Strathmore “[t]ransact[ed] any business or perform[ed] any character of work or service in the State.” 10 *Del. C.* § 3104(c)(1). Accordingly, the Superior Court’s acceptance of the District Court’s reliance on *Eaton* to support its position that it cannot exercise personal jurisdiction over Strathmore is problematic.

Further, *Rosado* did not support the blanket conclusion in *YES Network* that “doing business” in Delaware is insufficient to confer personal jurisdiction in Delaware and likewise does not support a similar finding here. There, an Illinois incorporated insurance company insured a Maryland resident for, among other things, uninsured motorist coverage. 2020 WL 3887880, at \*1. The losses in *Rosado* stemmed from a car accident that occurred in Maryland with a tortfeasor who was described as a resident of either Delaware or Maryland. *Id.* at \*3. In granting the insurer’s motion to dismiss for lack of personal jurisdiction, the court found that the only relationship between Delaware and the insurer was that the tortfeasor *may have been* a Delaware resident. *Id.* On that basis, the court held that the plaintiff’s attempt

to impose personal jurisdiction based on conduct that was unrelated to the forum state was improper. *Id.*

As in *YES Network*, the same is not true here. First, *Rosado*'s conclusion that doing business in Delaware alone does not confer personal jurisdiction suffers from the same fatal flaw as *Eaton*. Namely, that conclusion arose in the context of the court's general jurisdictional analysis. *Rosado*, 2020 WL 3887880, at \*4-5. For the reasons set forth above with regard to *Eaton*, *Rosado* is neither persuasive nor controlling.

Second, unlike with the insurer in *Rosado*, Strathmore here willingly and knowingly entered into an insurance policy with 300 West 22nd, a Delaware company, and 300 West 22nd's claims relate directly to Strathmore's business transactions in this forum. A-14 at ¶21. Specifically, 300 West 22nd is a Delaware limited liability company seeking insurance coverage for business losses it sustained due to the COVID-19 pandemic. A-13 at ¶17 – A-14 at ¶20. Although 300 West 22nd owns and operates a hotel located in New York City, its business losses are not limited to New York, but extend to the other jurisdictions where 300 West 22nd operates, conducts business, and is organized. A-7 at ¶2, A-8 at ¶5, A-396. The losses suffered at the New York City hotel location affect the business decisions and losses for the company in this State due to the way its income losses flow from the hotel to the company as a whole, such as the loss of hotel bookings from Delaware residents.

A-37 at ¶84 – A-40-41 at ¶98. 300 West 22nd’s business losses that it seeks to recover through this action extend to Delaware, as it seeks coverage for business losses suffered due to its inability to use its property. *Id.* These damages due to business interruption are not isolated to the single hotel location, but rather, naturally flow to the company as a whole, including to its place of organization, Delaware. *Id.* Strathmore’s improper denial of coverage thus directly affects this forum and is more than sufficient to constitute a “single act done” by Strathmore within Delaware to establish jurisdiction.

Further, the Superior Court’s reference to *YES Network’s* reliance on decisions that do not involve insurance companies selling policies insurance to policyholders, such as *Zausner Foods Corp. v. ECB USA, Inc.*, 2022 WL 609110, at \*8 (D. Del. Jan. 31, 2022) and *Fischer v. Hilton*, 549 F. Supp. 389, 391 (D. Del. 1982), to support its argument that jurisdiction is unfounded is of no consequence where, as here, jurisdiction exists under Section (c)(6). Ex. A, at pp. 5, 7 (citing *Zausner* and *Fischer* for proposition that contracting with Delaware corporation is insufficient to confer jurisdiction).

**(ii) The Superior Court Erroneously Adopted the *YES Network* District Court’s Conclusion That an Insurer Must Take “Some Relevant Action” in Delaware to Subject it to Personal Jurisdiction.**

In *YES Network*, the court erred in determining that the insurer did not “transact business” in Delaware by entering into the Policy with YES. The Superior



Court here again improperly adopted this reasoning, an error that warrants reversal. Ex. A, at p. 7 (relying on District Court’s holding that “a plaintiff cannot rely on its own business losses to determine that a defendant transacted business in Delaware” and citing District Court’s analysis that a plaintiff must point to “some relevant action that the defendant— not the plaintiff—has taken within the state of Delaware”). In *YES Network*, the court reasoned that neither the policyholder’s status as a Delaware LLC, nor its business losses in Delaware, supported a finding that an insurer has taken sufficient action within Delaware to subject it to personal jurisdiction there. *YES Network*, 2022 U.S. Dist. LEXIS 185319, at \*11-14. The District Court instead concluded that the policyholder must identify “some relevant action” the insurer has taken within Delaware to prove that the insurer has transacted business in Delaware. *Id* at \*13.<sup>5</sup>

As with the insurer in *YES Network*, and as identified in the Complaint, Strathmore has undertaken numerous actions in Delaware that subject it to personal jurisdiction: Strathmore secured a Delaware license to sell insurance policies in the State, A-15 at ¶25; Strathmore entered into countless contractual relationships with Delaware entities, including 300 West 22nd, A-15 at ¶25; and Strathmore regularly

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<sup>5</sup> Tellingly, the event in *YES Network* shed no light on what it meant by “some relevant action” nor did it provide a legal basis to support this assertion. The Superior Court, too, offered no further insight. Nevertheless, it appears that this ambiguous standard is met for the reasons set forth above.

pursues and participates in litigation in this jurisdiction, as does its parent company, Greater New York Mutual Insurance Company.<sup>6</sup> *Contrary to the District Court’s approach, no one fact can be taken in isolation.* On balance, Strathmore’s activities within Delaware surpass the “some relevant action” standard set forth in *YES Network*, and on which the Superior Court relies, for purposes of conferring personal jurisdiction.

**b. 300 West 22nd Has Demonstrated That Strathmore Is Subject to Personal Jurisdiction by Virtue of Its Contracting to Insure 300 West 22nd, a Person Located in Delaware for Purposes of Section (c)(6).**

The Superior Court further erred in holding that Strathmore did not contract to insure a “person . . . located within Delaware at the time the contract was made” under Section (c)(6) of Delaware’s Long-Arm Statute. Ex. A, at pp. 8-10. Again,

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<sup>6</sup> *Strathmore Insurance Company v. Antonio Torres* (No. N10C-12-149); *JDT Strathmore Insurance Company v. Denene Chandler* (No. N09C-12-203); *Strathmore Insurance Company v. Pyro-Tech LLC* (No. 1:11cv188); *Strathmore Insurance Company v. Simplex Grinnell* (No. JP13-11-017423); *Greater New York Mutual Insurance Company v. Hutchinson* (No. 1:12-cv-00632); *Greater New York Mutual Insurance Company v. Travelers Insurance Company* (No. 1:10-cv-01107); *Greater New York Mutual Insurance Co. vs Judith Obieke & Yvette Johnson* (No. N10C-08-047); *Greater New York Mutual Insurance Co. v. Tracy Denise Howard* (No. N09C-12-214); *CONSOL USAA [Including Greater New York Mutual Insurance] v. Brooks Jeffrey* (No. 08C-04-092); *Greater New York Mutual Insurance Co. v. Adams* (No. 07C-11-137); *Greater New York Mutual Ins Co. v. Wayman Fire Protection Inc.* (No. 07C-11-138); *University Village Apartments LLC vs Greater New York Mutual Insurance Co.* (No. 06C-01-249); *Nathaniel Freeman v. Bakers Associates, LP and Greater New York Mutual Insurance Company* (No. N14C-07-020 JAP); *Greater New York Mutual Insurance Company v. Travelers Insurance Company* (No. N10C-11-123); *Greater New York Mutual Insurance Company v. Sensa-Air Inc.* (No. JP13-12-008285).

Section (c)(6) provides that a court may exercise personal jurisdiction over a non-resident who “[c]ontracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.” 10 *Del. C.* § 3104(c)(6).

Courts applying Delaware law have found that Section (c)(6) applies where an insurance company contracts to, and does, sell an insurance policy to a company organized under Delaware law. *See, e.g., Energy Transfer Equity, L.P. v. Twin City Fire Ins. Co.*, 2020 Del. Super. LEXIS 2803, at \*15-16 (Del. Super. Ct. Sept. 25, 2020) (“*Energy Transfer*”) (holding Section (c)(6) applied where insurers sold director and officer insurance policies to policyholder “found in Delaware,” *i.e.*, organized and existing under the laws of the State of Delaware). This is true even where the policyholders are not physically headquartered in Delaware. *Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 1991 Del. Super. LEXIS 338, at \*5-7 (Del. Super. Ct. Sept. 10, 1991) (holding Section(c)(6) applied to insurance company that sold policy to Delaware corporation with office address listed on policy in New York, New York).

Here, the Superior Court conceded that 300 West 22nd is a “‘person’ located in Delaware” for purposes of Section (c)(6). Ex. A, at p. 8. It reasons, however, that Section (c)(6) does not apply because Strathmore “contracted to insure property

owned by a Delaware LLC” and, thus, “did not contract to insure a ‘person . . . located within Delaware at the time the contract was made.’” *Id.* at 8-9. That is incorrect and self-contradictory on its face. The plain terms of Section (c)(6) state that personal jurisdiction exists over (a) a non-resident [Strathmore] (b) who “contracts to insure” [enters into an insurance policy with] (c) “any person” [300 West 22nd]; (d) “located . . . within the State at the time the contract is made” [Delaware]. Put simply: (a) Strathmore is a non-resident (b) who entered into insurance policy with 300 West 22nd, (c) a “person” for purposes of Section (c)(6), who (d) was (and is) located in Delaware, as expressly acknowledged Superior Court. Section (c)(6), by its plain terms, is thus met here.

The Superior Court attempts to distinguish this case from *Energy Transfer*. Ex. A, at p. 9. There, the court held that Section (c)(6) applied where insurers sold director and officer insurance policies to insureds “[who we]re found in Delaware, i.e., . . . [were] organized and existing under the laws of the State of Delaware[,]” because the policies insured “the actions of officers and directors of Delaware corporate entities” and thus were “‘contracts to insure’ a person (the [i]nsureds and their officers and directors) located and/or to be performed in Delaware at the time the policies were issued.” *Energy Transfer*, 2020 Del. Super. LEXIS 2803, at \*15-16; A-429-430. The Superior Court concluded that, unlike in *Energy Transfer*, where the policy insured a Delaware entity’s corporate fiduciaries, Section (c)(6) does not

apply because the Policy here does not insure “an entity or person in which Delaware has an interest[,]” such as an “interest in the activities of corporate fiduciaries and the management of Delaware corporate entities.” Ex. A, at p. 9.

In so doing, however, the Superior Court reads Section (c)(6) much too narrowly. Indeed, Section (c)(6) imposes no such “interest” requirement. 10 *Del. C.* § 3104(c)(6). By its plain terms, Section (c)(6) provides that personal jurisdiction is proper where a “nonresident . . . [c]ontracts to insure . . . any person . . . located . . . within the State at the time the contract is made[.]” *Id.* For the reasons set forth above, these requirements are met and the Court may thus exercise jurisdiction over Strathmore under the plain meaning of Section (c)(6). In any event, and contrary to the Superior Court’s contention otherwise, the Policy here does insure an entity in which Delaware has an interest. Once more, 300 West 22nd is a Delaware limited liability company. Its business decisions, such as decisions relating to revenue, directly impact this forum, as Delaware has an interest in both the profitability of Delaware companies and in knowing where and how those companies derive their income. The Superior Court thus erred in holding it could not exercise personal jurisdiction over Strathmore under Section (c)(6). Reversal is also warranted on this basis alone.<sup>7</sup>

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<sup>7</sup> Notably, Section 3104(c)(6) is one way, not the only way, for Delaware to exercise personal jurisdiction over an insurance company. *See* 10 *Del. C.* § 3104 (stating exercise of jurisdiction proper where party “[t]ransacts any business or performs any

**c. Asserting Personal Jurisdiction over Strathmore Comports with Due Process.**

The second step in the Court’s personal jurisdictional analysis is a “simple one.” *Sample*, 935 A.2d at 1062. It requires the defendant to “have certain minimum contacts with [the jurisdiction] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice” before subjecting a defendant to personal jurisdiction. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations and citation omitted). This test only requires the defendant to have fair warning that a particular activity may subject it to jurisdiction in a given forum. *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977). Fair warning is satisfied when a defendant purposefully directed his activity to the residents of the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). In sum, “it is constitutionally permissible to exercise personal jurisdiction over a nonresident defendant when that defendant should have reasonably anticipated . . . that [its] . . . actions might result in the forum state exercising personal jurisdiction over [it] in

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character of work or service in the State; ... *or* ... [c]ontracts to insure or act as surety for, or on any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made”) (emphasis added). Had the Legislature intended for Section (c)(6) to be the only means to exercise jurisdiction over insurance companies, it would have so stated. *Leatherbury v. Greenspun*, 939 A.2d 1284, 1291 (Del. 2007) (applying doctrine of “*expressio unius est exclusio alterius*” to find “*there is an inference that all omissions [are] intended by the legislature*” (citation omitted)). Thus, 300 West 22nd may also rely on Section (c)(1) to demonstrate that the Superior Court has personal jurisdiction over Strathmore.

order to adjudicate disputes arising from those actions.” *Sample*, 935 A.2d at 1062-63 (internal quotations and citation omitted).

Here, the Superior Court did not analyze the second prong of the jurisdictional analysis pertaining to due process because it incorrectly found that it could not exercise personal jurisdiction over Strathmore pursuant to Delaware’s Long-Arm Statute. Ex. A, at p. 10. Given that 300 West 22nd has sufficiently demonstrated that Strathmore is subject to Delaware’s Long-Arm Statute, under multiple Sections, this Court should reverse the Superior Court’s dismissal and require the Superior Court to evaluate 300 West 22nd’s arguments that: (1) Strathmore has purposefully availed itself of the privilege of conducting activities in Delaware and (2) 300 West 22nd’s claims relate to Strathmore’s contacts in Delaware.

## II. THE SUPERIOR COURT ERRED IN DENYING 300 WEST 22ND'S REQUEST FOR JURISDICTIONAL DISCOVERY

### A. Question Presented

Whether the Superior Court erred in denying 300 West 22nd's request for jurisdictional discovery.<sup>8</sup>

### B. Standard and Scope of Review

Jurisdictional discovery is appropriate if a plaintiff's assertion of jurisdiction is "minimally plausible." *Munoz v. Vazquez-Cifuentez*, 2019 Del. Super. LEXIS 89, at \*11 (Del. Super. Ct. Feb. 18, 2019). Indeed, the trial court may only preclude reasonable jurisdictional discovery if the plaintiff's personal jurisdiction claim is "frivolous." *Harris v. Harris*, 289 A.3d 277, 296 (Del. Ch. 2023) (citation omitted); see also *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) ("[C]ourts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff's claim is 'clearly frivolous.'" (citation omitted)). "As long as the plaintiff has provided some indication that the particular defendant is amenable to suit, then jurisdictional discovery is appropriate." *Harris*, 289 A.3d at 296 (internal quotations and citation omitted). The standard of review for a court's pretrial discovery rulings is abuse of discretion. *Coleman v. PriceWaterhouseCoopers, LLC*, 902 A.2d 1102, 1106 (Del. 2006).

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<sup>8</sup> This issue was raised and ruled on in the Delaware Superior Court. A-401-402; Ex. A, at pp. 10-11.



### **C. Merits of the Argument**

300 West 22nd adequately demonstrated that, at a minimum, jurisdictional discovery is warranted, as its jurisdictional claims are “minimally plausible” and not “frivolous.” The Superior Court thus abused its discretion in denying 300 West 22nd leave to conduct jurisdictional discovery. Ex. A, at pp. 10-11. In its Opinion, the Superior Court summarily concludes that 300 West 22nd’s arguments for jurisdictional discovery – discovery relating to Strathmore’s knowledge of 300 West 22nd’s connection to Delaware and discovery relating to determining Strathmore’s connection to Delaware – would not “help to establish this Court’s personal jurisdiction under Section 3104(c)(1) or 3104(c)(6)” because the “instant case still would not sufficiently ‘arise from’ [Strathmore’s] interactions in Delaware . . . [n]or would the insurance directly cover a person or entity in which Delaware has an interest.” *Id.* Not so.

300 West 22nd’s request for jurisdictional discovery is not limited to Strathmore’s knowledge of 300 West 22nd’s connections to Delaware. A-401-402. That was only one example offered by 300 West 22nd of the kind of targeted discovery that could aid the Superior Court’s evaluation of Strathmore’s arguments. Beyond this, jurisdictional discovery should be allowed to determine Strathmore’s own connections to Delaware, such as real estate owned or leased in the State, employees and agents in the State, premium income sources from Delaware, non-

premium income sources from Delaware, advertisements directed to Delaware, traffic on Strathmore’s website or apps originating from Delaware as well as discovery of any other insurance policies sold to 300 West 22nd. *See, e.g., Gurmessa v. Genocide Prevention in Eth., Inc.*, 2022 U.S. Dist. LEXIS 31611, at \*9 (D. Del. Feb. 23, 2022) (granting jurisdictional discovery where plaintiff posed a “real question” regarding defendant’s connection with the state). In other words, 300 West 22nd is entitled to conduct jurisdictional discovery to evaluate whether Strathmore’s connections to Delaware satisfy any of the subsections in Delaware’s Long-Arm Statute. The Superior Court erred in denying 300 West 22nd’s request for leave to conduct jurisdictional discovery because 300 West 22nd’s jurisdictional claims are both minimally plausible and non-frivolous. *See Arot v. Lardani*, 2019 Del. Ch. LEXIS 168, at \*9-11 (Del. Ch. Apr. 25, 2019) (allowing jurisdictional discovery because “threshold for showing entitlement to jurisdictional discovery is low” and totality of plaintiff’s allegations presented non-frivolous arguments). Accordingly, this court should reverse and remand.

**CONCLUSION**

For all the foregoing reasons, this Court should reverse the Superior Court's Opinion granting Strathmore's Motion To Dismiss Complaint without prejudice.

Dated: June 26, 2023

Respectfully submitted,

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Dated: June 26, 2023

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