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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

REPLY BRIEF OF APPELLANT 300 WEST 22 REALTY, LLC

Dated: August 10, 2023

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INTRODUCTION

300 West brought this action against Strathmore for business-income losses from the COVID-19 pandemic under an "all-risk" policy Strathmore sold. Strathmore's attempt to avoid its obligations based on alleged lack of personal jurisdiction is mistaken, and the Superior Court's Opinion granting Strathmore's Motion To Dismiss should be reversed.

First, by relying ***solely*** on *Yankees Entertainment and Sports Network, LLC v. Hartford Fire Insurance Company*, 2022 U.S. Dist. LEXIS 185319 (D. Del. Oct. 11, 2022) ("*YES*"), the Superior Court erred in concluding it could not exercise personal jurisdiction over Strathmore under Delaware's Long-Arm Statute, 10 *Del C.* § 3104(c). Under Section (c)(1), Strathmore purposefully and regularly "transacts business" in Delaware, including by maintaining a Delaware license to sell policies here, selling policies to Delaware entities, like 300 West, collecting premiums each year from these activities, and participating in litigation regarding those policies here. 300 West's claims directly "arise from" Strathmore's business transactions in Delaware, as 300 West seeks coverage for business losses sustained from the pandemic, including Delaware losses.

Additionally, jurisdiction lies under Section (c)(6) because Strathmore sold an insurance policy to 300 West, a Delaware LLC, which satisfies the statute's plan terms. Last, asserting jurisdiction over Strathmore comports with Due Process

because Strathmore "purposefully availed itself of the privilege of conducting activities in" Delaware, 300 West's claims "arise out of or relate to" to Strathmore's activities here, and exercising jurisdiction does not "offend traditional notions of fair play and substantial justice."

Second, the Superior Court abused its discretion in denying 300 West jurisdictional discovery. 300 West's claims are minimally plausible and not frivolous and jurisdictional discovery would likely shed light on whether Strathmore's Delaware connections satisfy any of the subsections under Delaware's Long-Arm Statute. Accordingly, reversal is warranted.

ARGUMENT

I. STRATHMORE IS SUBJECT TO JURISDICTION IN DELAWARE.

A. Jurisdiction is Proper under Section (c)(1).

The Superior Court relied solely on *YES*, an unreported decision presently on appeal, to conclude there is not personal jurisdiction over Strathmore under Section (c)(1). A-463-65. The Superior Court found the "*YES* analysis [was] applicable" here, and, on that basis alone, 300 West failed to establish Strathmore "transacted business" in Delaware. A-456. The Superior Court's blanket adoption of *YES* is flawed, as *YES* misapplied the legal standard for conferring ***general*** jurisdiction in its ***specific*** jurisdiction analysis. Moreover, the Superior Court ignored 300 West's well-plead allegations that Strathmore engaged in numerous actions subjecting it to specific jurisdiction beyond selling a policy to a Delaware entity. Opening Brief ("OB") at 12-20.

1. The Superior Court Erred in Adopting *YES*'s Misapplication of the Requisite Legal Standard.

a. Determining Whether General versus Specific Jurisdiction Exists Requires Distinct Analyses.

Courts may exercise personal jurisdiction over a nonresident if general or specific jurisdiction exists. *AstraZeneca AB v. Mylan Pharms., Inc.*, 72 F. Supp. 3d 549, 553 (D. Del. 2014). Courts apply different standards when evaluating general versus specific jurisdiction. *Id.* For general jurisdiction, "doing business" in a state was once enough to subject a nonresident defendant to jurisdiction. *Genuine Parts*

Co. v. Cepec, 137 A.3d 123, 133-36 (Del. 2016). That test is now more rigorous. General jurisdiction exists where the defendant (1) is incorporated, (2) has its principal place of business, or (3) has operations "render[ing the corporation] essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Specific jurisdiction, by contrast, exists if the plaintiff's claim "arises out of or relates to the defendant's contacts with the forum." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (internal citations and quotations omitted). Namely, it exists if it (1) is authorized by Delaware's Long-Arm Statute and (2) satisfies constitutional due process. *AeroGlobal Capital Mgmt., Inc. v. Cirrus Indus., Inc.*, 871 A.2d 428, 438 (Del. 2005).

b. The Superior Court Erroneously Adopted the *YES*'s Analysis that Conflated General and Specific Jurisdiction.

Delaware's Long-Arm Statute states, "a court may exercise personal jurisdiction over any nonresident … who [t]ransacts any business or performs any character of work or service in the State." 10 *Del. C.* § 3104(c)(1). The Superior Court improperly determined Strathmore's sale of insurance to Delaware entities and receiving proceeds from those activities was insufficient to establish Strathmore was "transact[ing] business" in Delaware. A-463-65. Notably, *YES*'s analysis, on which the Superior Court exclusively relies, is limited to a single sentence, concluding "simply '***doing business***' in a forum state is not enough" to demonstrate

the non-resident defendant was "transacting business" in that state. A-463-65. The Superior Court's reliance on *YES* is flawed for multiple reasons.

First, in finding Strathmore is not subject to ***specific*** jurisdiction, the Superior Court erroneously adopted *YES*'s application of a ***general*** jurisdiction analysis. A-463-65. Although the act of "doing business" may no longer be sufficient to establish general jurisdiction, it bears no relation to determining specific jurisdiction. Rather, specific jurisdiction involves the two-step process of analyzing the applicability of Delaware's Long-Arm Statute and confirming the exercise of jurisdiction would not violate Due Process. *AeroGlobal*, 871 A.2d at 438. That error alone warrants reversal.

Second, the Superior Court uncritically adopted *YES*'s reliance on two inapposite, unpublished Delaware Superior Court decisions, *Eaton v. Allstate Prop. & Cas. Ins. Co.*, 2021 Del. Super. LEXIS 562 (Apr. 28, 2021) and *Rosado v. State Farm Mut. Auto. Ins. Co.*, 2020 Del. Super. LEXIS 342 (July 9, 2020). A-464-65. Strathmore attempts to correct that misstep by stating "[b]oth *Eaton* and *Rosado* recognize, as a general matter, that an insurer's general Delaware business transaction do not confer specific jurisdiction unless the causes of action at issue actually arise from those transactions." Answering Brief ("AB") at 21-22. Not only does Strathmore fail to cite any portion of *Eaton* and *Rosado* to support its assertion;

but, even if this Court were to consider them, it would find their reasoning inapplicable.

In *Eaton*, a North Carolina resident claimed his insurer, an Illinois corporation, breached its duty under an automobile insurance policy following an accident sustained in Delaware. 2021 Del. Super. LEXIS 562, at *1. In *Rosado*, a Maryland policyholder sought coverage from his Illinois insurer under his automobile policy following an accident with a tortfeasor who "may" have been a Delaware resident. 2020 WL 3887880, at *3. Notably, neither the policyholders nor the insurers in *Eaton* or *Rosado* resided in Delaware, which those courts found dispositive. *Eaton*, 2021 Del. Super. LEXIS 562, at *4; *Rosado*, 2020 Del. Super. LEXIS 342, at *3. They held specific jurisdiction did not exist because the ***only*** connection between the policyholders' claims and Delaware arose from the random occurrence of the accident in Delaware (*Eaton*), and potential residence of the tortfeasor in Delaware (*Rosado*). *Id.* The courts thus concluded the relationships between the policyholders' claims and Delaware were too attenuated to confer jurisdiction. *Id.* That is untrue here, as Strathmore knowingly sold an insurance policy to 300 West, a Delaware entity, and 300 West's claims "arise from" Strathmore's business transactions in Delaware.

2. Strathmore Purposefully and Regularly "Transacts Business" in Delaware and 300 West's Claims "Arise From" Strathmore's Transactions.

"[A] court may exercise personal jurisdiction over any nonresident ... who ... [t]ransacts any business or performs any character of work or service in the State." 10 *Del. C.* § 3104(c)(1). "Transacts 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 (May 5, 2003) (internal quotations and citation omitted). A defendant need not consistently or 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 citations omitted) (emphasis added). The relevant inquiry under Section(c)(1) is whether: (a) Strathmore "[t]ransacts any business or performs any character of work or service" in Delaware; and (b) 300 West's claim "arises from" Strathmore's Delaware transactions.

a. Strathmore Purposefully and Regularly "Transacts Business" in Delaware.

Strathmore argues "merely entering into a contract with a Delaware entity is insufficient to support specific jurisdiction" under Delaware's Long-Arm Statute,[1]

[1] Strathmore cites *Greenly v. Davis,* 486 A.2d 669, 670 (Del. 1984); *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, (Del. Ch. June 15, 2011), *aff'd*, 38 A.3d 1254 (Del. 2012), *Mobile Diagnostic Grp. Holdings, LLC v. Suer*, 972 A.2d 799,

AB at 16, and that 300 West's interpretation "would extend Delaware long-arm jurisdiction over all non-resident insurers ... that transact *any* business in Delaware whether or not the claims at issue are connected to those Delaware transactions" and "implies a radical expansion of Delaware's long-arm statute over nonresident defendants who merely enter into a contract with a Delaware entity." AB at 15, 18. Strathmore misses the point.

Critically, 300 West does ***not*** contend Strathmore's act of selling an insurance policy to a Delaware entity ***alone*** confers specific jurisdiction. Rather, Strathmore has taken numerous actions in and directed toward Delaware, subjecting Strathmore to specific jurisdiction, including:

- securing a Delaware license to sell insurance policies here, A-15;
- entering into contractual relationships with Delaware entities, *id.*; *see also* AB at 18 (conceding Strathmore conducts business in Delaware);

805 (Del. Ch. 2009), *Abajian v. Kennedy*, 1992 WL 8794 (Del. Ch. Jan. 17, 1992), *Lenape Props. Mgmt., Inc. v. Prudential Ins. Co. of Am.*, 2022 WL 17826010, at *2 (Del. Super. Ct. Dec. 20, 2022), *Phunware, Inc. v. Excelmind Grp. Ltd.*, 117 F. Supp. 3d 613, 631 (D. Del. 2015), and *Fischer v. Hilton*, 549 F. Supp. 389 (D. Del. 1982) to further support its assertion. Strathmore's reliance on these is misplaced. Strathmore has engaged in numerous activities in Delaware that amount to more than simply selling stock of a Delaware corporation (*Greenly*), serving as an officer of a Delaware company (*Hartsel*), entering into a contract with a Delaware choice-of-law provision (*Mobile* and *Phunware*), "enter[ing] into a lease transaction and stock purchase agreement with ... a Delaware corporation" (*Abajian*), mailing rent payments to Delaware (*Lenape*), and engaging in two phone calls to and from Delaware (*Fischer*).

- insuring risks sustained in Delaware, including business income losses suffered by 300 West in this State, A-15;
- collecting proceeds each year from relationships with Delaware policyholders, *id.* & OB at 4; and
- participating in litigation regarding those policies here, as does its parent company, OB at 19-20, n.6.

No one fact can be taken alone—collectively, Strathmore's activities in Delaware amount to "transacting business" under Section (c)(1), as they surpass a "single act done or transaction engaged by" Strathmore in Delaware sufficient to confer jurisdiction. *Friedman*, 752 A.2d at 549.

b. 300 West's Claims "Arise From" Strathmore's Transactions in Delaware.

Strathmore incorrectly concludes 300 West's claims do not "arise from" any activities Strathmore directed at Delaware. AB at 13-18. Strathmore mischaracterizes 300 West's position and ignores 300 West's allegations that Strathmore's acts in Delaware gave rise to 300 West's claims. First, Strathmore contends jurisdiction does not exist because 300 West failed to show Strathmore took "some jurisdictionally relevant act" within Delaware to establish jurisdiction. AB at 13-14. It further claims 300 West cannot connect its business losses to Strathmore's Delaware activities: "300 West does not explain how alleged economic losses at its ... hotel affected the company in Delaware ... [and, in any event,] [a]ny indirect economic impact 300 West might claim to have experienced in Delaware ...

has no connection to any claim-related conduct of Strathmore in Delaware[.]" AB at 17. Strathmore is incorrect on both scores.

300 West's Complaint sufficiently alleges its claims directly "arise from" Strathmore' Delaware transactions. Specifically, 300 West is a Delaware LLC seeking coverage for business losses from the COVID-19 pandemic. A-7 at ¶1, A-13 at ¶17 – A-14 at ¶¶20-21. Although 300 West owns and operates a hotel in New York, its losses are not limited to New York, but extend to the other jurisdictions where 300 West operates, conducts business, and is organized, including Delaware. A-7 at ¶2, A-8 at ¶5, A-40-41 at ¶¶95-98, A-396-397. The losses suffered at the New York 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 bookings from Delaware residents. *Id.* Strathmore's improper denial of coverage directly affects Delaware and is more than sufficient to constitute a "single act done" by Strathmore to establish jurisdiction. Accordingly, 300 West's claims directly "arise from" Strathmore's act of selling the Policy to a Delaware entity.

Second, Strathmore maintains selling policies to other policyholders and its involvement in other litigation do not give rise to specific jurisdiction in Delaware regarding 300 West's claims because, according to Strathmore, they do not demonstrate that the claims "arose from" Strathmore's activities here. A-13-14.

Strathmore misunderstands 300 West's position. 300 West cites those facts to show Strathmore's activities in Delaware satisfy the first prong of the jurisdictional analysis—Strathmore "transacts business" here for purposes of Section (c)(1). 300 West does not rely only on those facts to demonstrate its claim "arises from" Strathmore's sale of the Policy, as Strathmore suggests. Strathmore's misguided interpretation of 300 West's should be rejected.

B. Jurisdiction Is Proper under Section (c)(6).

1. 300 West Properly Raised Section (c)(6) in The Superior Court.

This Court should consider Section (c)(6), as the Superior Court did (A-462, A-466-468), and as Strathmore invited it to do when it raised Section (c)(6) in its opening brief below (AB at 24). Strathmore concedes 300 West briefed Section (c)(6) below in "response to Strathmore's supplemental authorities" (AB at 25; *see* A-430-433), and the Superior Court ruled on it after receiving both sides' briefing. There thus is no question Section (c)(6) was "fairly presented to the trial court," Del. Sup. Ct. R. 8, and Strathmore offers no authorities supporting waiver in these circumstances, which would contravene the very purpose of waiver. *See Shawe v. Elting*, 157 A.3d 152, 169 (Del. 2017) (quoting 5 Am. Jur. 2D Appellate Review § 618 (2016)) (stating waiver "is based on the principle that it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider") (internal quotations omitted).

Citing additional cases on appeal is not waiver because an appellant "is free to cite new authority in support of [an] issue" raised below. *Schmidt v. Bank of Am., N.A.*, 223 Cal. App. 4th 1489, 1505 n.11 (Cal. Ct. App. 2014); *L.H. Controls, Inc. v. Custom Conveyor, Inc.*, 974 N.E.2d 1031, 1042-1043 (Ind. Ct. App. 2012). 300 West complied with Rule 14(b)(vi)A.(1) by identifying the question presented—whether the Superior Court erred in finding no personal jurisdiction exists under Delaware's Long-Arm Statute—and including citations showing this issue was preserved. OB at 9 and n.3. And, even if both Parties' briefing and the Superior Court's undisputed consideration was still inadequate, Section (c)(6) merely provides "an additional reason in support of a proposition urged below"—that jurisdiction was proper under Delaware's Long Arm Statute—and, as such, "there is no acceptable reason why in the interest of a speedy end to litigation the argument should not be considered." *Mundy v. Holden*, 204 A.2d 83, 85 (Del. 1964) (citation omitted); *see also Wit Capital Group, Inc. v. Benning*, 897 A.2d 172, 184 n.48 (Del. 2006) (stating new argument is not waived if it "is sufficiently related to [existing] arguments" and need not be "closely related"). Strathmore's waiver argument should be rejected.

2. Section (c)(6) Supports Jurisdiction.

Strathmore's substantive argument is no stronger. Section (c)(6), properly read, states "a court may exercise personal jurisdiction over [a] ***any nonresident*** …

who … [b] ***Contracts to insure*** or act as surety for, or on, [c] ***any person***, property, risk, contract, obligation or agreement [d] ***located***, executed or to be performed ***within the State at the time the contract is made***, unless the parties otherwise provide in writing." (emphasis added). Here, (a) Strathmore, a nonresident, (b) contracted to insure (c) a person, 300 West, (d) located in Delaware, as 300 West is a Delaware LLC. Section (c)(6) supports finding jurisdiction over Strathmore. *CML V, LLC v. Bax*, 28 A. 3d 1037, 1040-41 (Del. 2011).

Strathmore's assertion that Section (c)(6) does not apply can be reduced to two positions: (1) 300 West is not a "person" under Section (c)(6); and (2) 300 West was not "located ... within the State" at the time the contract was made. AB at 25-28. Both are flawed. First, Strathmore argues *YES* provides succor in its position that 300 West is not a "person" under Delaware's Long-Arm Statute; however, unlike here, *YES* did not ***expressly*** concede the policyholder was a "person" for purposes of Section (c)(6). This is critical. Here, the Superior Court correctly concludes ***"[300 West] is a 'person'"*** for purpose of Section (c)(6). A-466. Section (c)(6), as it pertains to 300 West, is satisfied on its face.

Strathmore tries to muddy the waters by contending Section (c)(6) is not met because the Policy "is a contract to insure property located within New York" and thus not a contract to insure a "person." AB at 25-26. Yet, the plain language of Section (c)(6) states it applies where there is a "contract to insure ... ***any person [or]***

property ... located ... within the State at the time the contract is made." That the contract insures property in New York is inconsequential because another prong of Section (c)(6) is met—Strathmore, a nonresident, entered into a contract to insure a "person," 300 West, located in Delaware at the time the contract was made.

The only case Strathmore cites to support its position is *Gateway Clippers Holdings LLC v. Main St. Am. Prot. Ins. Co.*, 2021 WL 4168202, at *1-2 (E.D. Mo. Sept. 14, 2021), an unpublished Missouri case. AB at 26. *Gateway Clippers* considered Missouri's Long-Arm Statute, which does not define the term "person" to include corporations or other entities and uses the separate terms "person" and "firm," drawing a distinction Delaware's Long-Arm Statute does not. *Gateway Clippers* is not persuasive.

Next, Strathmore contends Section (c)(6)'s requirement that the organization be "located" in Delaware is "not satisfied when an entity is merely formed under a state's laws but has no actual physical presence in the state." AB at 28. Strathmore, however, does not cite any persuasive (much less, binding) authority to support its position. Instead, it cites to dictionary definitions for "located" and a single unreported Montana decision to argue a company is not "located" in Delaware solely because it was formed under Delaware law. AB at 27-28. This is contrary to the record and the law as it pertains to jurisdiction.

First, the Superior Court expressly held "[300 West] is a Delaware LLC, which makes [it] a 'person' located in Delaware." A-466. Strathmore makes no meaningful attempt to rebut this finding other than to say the Superior Court's comment was "stated in passing" and "immaterial due to the Superior Court's conclusion that [Section (c)(6)] does not apply" and it should thus "be afforded little weight." AB at 29. Stathmore's position is unsupported. The Superior Court correctly recognized that "[300 West] is a Delaware LLC, which makes [it] a 'person' located in Delaware." A-466.

Strathmore also cites *Galilea, LLC v. Pantaenius Am. Ltd.*, 2020 U.S. Dist. LEXIS 252982 (D. Mont. Sept. 25, 2020). AB at 28. *Galilea* involved plaintiffs that were a Nevada LLC with a "home" in California and a human member of the LLC who lived in Montana, and non-Montana insurer-defendants. The *Galilea* court observed "neither Plaintiffs nor the [insured property] were located in Montana at the time Plaintiffs obtained the policy." *Galilea*, 2020 U.S. Dist. LEXIS 252982, at *26 n.5. That is different from here, as 300 West was a Delaware LLC when Strathmore sold the Policy.

Equally important, the meaning of "located" in the context of questions concerning jurisdiction can be derived from well-settled law relating to incorporation:

> A corporation is "at home" only in the states where it is incorporated or has its principal place of business, or—in an "exceptional case"—where its operations are "so substantial and of such a nature as to render the corporation at home in that State."

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 923–24 (2011); *Daimler AG v. Bauman*, 571 U.S. 117, 137–38, 139 n.19 (2014) (same). This applies to LLCs like 300 West. *Finn v. Great Plains Lending LLC*, 2016 WL 705242, at *7, n.3 (E.D. Pa. Feb. 23, 2016) (observing *Daimler* "applies with equal force" to LLCs). Although in the context of general jurisdiction, the notion that an entity is "at home" in the state where it is organized sounds very much like where it is "located." Accordingly, under the plain language of Section (c)(6), the Court should conclude Strathmore is subject to personal jurisdiction in Delaware and reverse the Superior Court's Opinion.

C. Asserting Personal Jurisdiction over Strathmore Comports with Due Process.

The Superior Court did not analyze Due Process because it incorrectly found it could not exercise personal jurisdiction over Strathmore under Delaware's Long-Arm Statute. A-468. Given 300 West has sufficiently shown Strathmore is subject to Delaware's Long-Arm Statute, this Court should reverse the Superior Court's dismissal and require the Superior Court to evaluate 300 West's arguments. Nevertheless, if this Court addresses Due Process as part of this appeal, it should find exercising jurisdiction over Strathmore comports with Due Process.

Due Process permits a non-resident defendant to be subject to jurisdiction in a state if (1) the defendant has "purposefully availed itself of the privilege of conducting activities in the forum;" (2) the plaintiff's claims "arise out of or relate to" to defendant's activities; and (3) exercising jurisdiction does not "offend traditional notions of fair play and substantial justice." *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007) (internal quotations and citation omitted). Each prong is met here.

The first prong of the Due Process analysis, concerning "purposeful availment," and the third, concerning "traditional notions of fair play and substantial justice," are related. Initially, Strathmore must have purposefully availed itself of the privilege of conducting activities in Delaware for personal jurisdiction to attach. *O'Connor*, 496 F.3d at 316-318. That happens where Strathmore "purposefully directed [its] activities" at Delaware. *Id.* Then, Strathmore needs "certain minimum contacts with [Delaware]" for the maintenance of the suit to not infringe on these notions. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations and citation omitted). This test is a "simple one" and requires only the defendant have fair warning a particular activity may subject it to jurisdiction in the forum. *Sample v. Morgan*, 935 A.2d 1046, 1062 (Del. Ch. 2007); *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977). Fair warning is satisfied when a defendant purposefully

directed activity to residents of the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

Here, Strathmore purposefully availed itself of the benefits of conducting activities in Delaware and exercising jurisdiction would not "offend traditional notions of fair play and substantial justice." Strathmore secured a license to sell insurance policies in Delaware, regularly receives financial proceeds from its activities, and protects its business interests here by regularly participating in litigation regarding those policies in this jurisdiction. A-15; OB at 4; OB at 19-20, n.6. Those contacts were Strathmore's "own choice and not random, isolated, or fortuitous." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021) (internal citations and quotations omitted). They are far beyond what the Supreme Court has required in finding minimum contacts sufficient to exercise jurisdiction. *International Shoe Co.*, 326 U.S. at 310.

Strathmore has "deliberately reached out beyond its home [state]" into Delaware, by "exploi[ting] [third claimant] market" and entering countless "contractual relationship[s] centered" here, including its relationship as 300 West's insurer. *Walden v. Fiore*, 571 U. S. 277, 285 (2014). Given its extensive engagement with Delaware, there should be no surprise that Strathmore would be subject to suit here; indeed, "it is presumptively not unreasonable to require [Strathmore] submit to the burdens of litigation" given such purposeful availment. *Burger King*, 471 U.S.

at 476 (quotations and citations omitted). "When a corporation purposefully avails itself of the privilege of doing business in the forum state, it has clear notice that it is subject to suit there[.]" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (quotations and citations omitted). As the United States Supreme Court stated in *Burger King*:

> [W]here individuals "purposefully derive benefit" from their interstate activities, ... it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.

471 U.S. at 473-74 (citation omitted). Based on its contacts, Strathmore should have reasonably foreseen it could be subject to this lawsuit in Delaware and exercising jurisdiction does not "offend traditional notions of fair play and substantial justice."

Next, 300 West's claims "must arise out of or relate to the defendant's contacts with the forum." *Ford*, 141 S. Ct. at 1025 (internal citations and quotations omitted). "Or put ... differently, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* (internal citations and quotations omitted).

In *Ford*, the Supreme Court made clear the "arise out of *or* relate to" phrase has two distinct prongs and two ways by which the requirement may be satisfied. *Id.* at 1026. A claim will "arise out of" a defendant's contacts with the forum when the

defendant's forum contacts *caused* the legal claim. *Id.* Under the "relatedness" prong, jurisdiction exists when a claim merely "relates to" in-forum contacts; the phrase's "back half, after the 'or,' contemplates some relationships will support jurisdiction without a causal showing." *Id.* The "relatedness" prong is satisfied when some activity or event involved in the controversy took place in the forum. *Id.* at 1025.

Strathmore contends the Superior Court's exercise of jurisdiction would be inappropriate because 300 West's claims do not "arise out" of any activities Strathmore directed at Delaware. AB at 30-34. However, Strathmore cannot question activities and occurrences relevant to this coverage dispute took place in Delaware. There are multiple links between the operative facts and this forum, which easily satisfy the "arise of out" standard or, at minimum, satisfy relatedness under *Ford*.

Strathmore attempts to distinguish *Ford* by stating that "the underlying controversy [there] was deeply connected to Montana, because the ... motor vehicle accident giving rise to the claim occurred there" and that those facts are in contrast to the circumstances here concerning "a property insurance claim that arose from events occurring in New York and involving a policy issued in New York." AB at 34. This is misguided.

First, 300 West is a Delaware LLC seeking insurance coverage for business losses sustained from the COVID-19 pandemic. A-7 at ¶1, A-13 at ¶17 – A-14 at ¶¶20-21. Although 300 West owns and operates a hotel in New York, its losses are not limited to New York, but extend to the other jurisdictions where 300 West operates, conducts business, and is organized. A-7 at ¶2, A-8 at ¶5, A-40-41 at ¶¶95-98, A-396-397. Again, the losses suffered at the New York location affect the business decisions and losses for 300 West in Delaware due to the way its income losses flow from the hotel to the company as a whole, such as the loss of bookings from Delaware residents. *Id.* 300 West's claim for business losses, which includes those suffered in Delaware, thus directly "arises from" Strathmore's act of entering into a contractual agreement with a Delaware LLC whose business services span the United States, including Delaware.

Second, as in *Ford*, the product at issue, Strathmore's "all risk" insurance, is and continues to be "available for sale" in Delaware as part of Strathmore's "continuous[] and deliberate[]" exploitation of the Delaware insurance market. *Ford*, 141 S. Ct. at 1028. "And apart from sales, [Strathmore, like *Ford*,] works hard to foster ongoing connections" with customers whose Delaware properties it insures, including 300 West's. *Id.* At a minimum, under *Ford*, all of these in-forum contacts "relate to" 300 West's coverage lawsuit, as Strathmore has "systematically served a market in [Delaware] for the very [insurance policies] that the plaintiffs allege"

Strathmore breached. *Id.* There is thus "a strong 'relationship among the defendant, the forum, and the litigation'—the 'essential foundation' of specific jurisdiction." *Id.* (quoting *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 414 (1984)).

Finally, Strathmore contends 300 West takes the "position ... that Delaware may exercise personal jurisdiction over any insurance company ... that conducts any business in the State, whether or not the claims in the lawsuit are connected to those business activities." AB at 34. Not so. 300 West, instead, argues Delaware may exercise personal jurisdiction over an insurance company that conducts business in the State where the claims in the lawsuit, i.e. where the injury(ies) are felt, relate to or arise from those business activities. That is exactly the case here—Strathmore conducts business in Delaware and 300 West suffered business losses in Delaware that relate to Strathmore's activities here.

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING JURISDICTIONAL DISCOVERY.

Jurisdictional discovery should be liberally granted. It is appropriate where a plaintiff's assertion of jurisdiction is "minimally plausible" or not "frivolous." *Munoz v. Vazquez-Cifuentez*, 2019 Del. Super. LEXIS 89, at *11 (Feb. 18, 2019); *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 ... claim is 'clearly frivolous.'" (citation omitted)). Pretrial discovery rulings are reviewed for abuse of discretion. *Coleman v. PriceWaterhouseCoopers, LLC*, 902 A.2d 1102, 1106 (Del. 2006).

The Superior Court summarily concluded 300 West's arguments for jurisdictional discovery relating to Strathmore's knowledge of 300 West's connection to Delaware and determining Strathmore's Delaware connection—would not "help 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." A-469. Incorrect.

First, jurisdictional discovery should be permitted to determine Strathmore's knowledge of 300 West's business operations, particularly regarding 300 West's operations in Delaware. Such evidence would directly speak to whether 300 West's

claim "arises from" or "relates to" Strathmore's business in Delaware. If 300 West can show Strathmore knowingly and willingly entered into a contract with 300 West with the understanding that it may suffer business losses in Delaware, then 300 West will have sufficiently demonstrated its claim for those anticipated losses "arose out of" Strathmore's sale of the Policy. This request is "minimally plausible" and far from "frivolous." *Munoz*, 2019 Del. Super. LEXIS at *11; *Toys "R" Us*, 318 F.3d at 456.

Second, evidence of Strathmore's Delaware connections, such as non-premium income sources from Delaware, advertisements directed to Delaware, traffic on Strathmore's website or apps originating from Delaware, and/or discovery of any other insurance policies sold to 300 West, could support a finding of general jurisdiction. *Goodyear*, 564 U.S. at 923–24 (holding general jurisdiction exists where defendant is "at home" in forum state). Although 300 West does not presently contend general jurisdiction exists, if the Court concludes Strathmore is not subject to specific jurisdiction in Delaware, jurisdictional discovery should be permitted to determine whether Strathmore is subject to general or specific jurisdiction here given its extensive contact with Delaware. The Superior Court thus erred in denying 300 West's request for jurisdictional discovery and reversal is warranted.

CONCLUSION

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

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Respectfully submitted,

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