

IN THE SUPREME COURT OF THE STATE OF DELAWARE

300 WEST 22 REALTY, LLC

Plaintiff-Appellant,

v.

STRATHMORE INSURANCE  
COMPANY,

Defendant-Appellee.

No. 109, 2023

Court Below: Superior Court  
of the State of Delaware

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

**ANSWERING BRIEF OF DEFENDANT-APPELLEE  
STRATHMORE INSURANCE COMPANY**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	ii
NATURE OF PROCEEDINGS.....	1
SUMMARY OF ARGUMENT .....	6
STATEMENT OF FACTS .....	9
ARGUMENT .....	12
I.    The Superior Court Correctly Concluded That the Delaware Long-Arm Statute Does Not Confer Personal Jurisdiction over Strathmore .....	12
A.    Question Presented.....	12
B.    Standard and Scope of Review.....	12
C.    Merits.....	13
1.    Section 3104(c)(1) Does Not Apply Because 300 West’s Claims Arise from Strathmore’s Business Transactions in New York, Not Delaware .....	13
2.    Section 3104(c)(6) Does Not Apply for Multiple Reasons .....	23
II.   Subjecting Strathmore to Jurisdiction in Delaware for the Claims Asserted in the Complaint Would Also Violate Due Process .....	30
A.    Question Presented.....	30
B.    Standard and Scope of Review.....	30
C.    Merits.....	30
III.  The Superior Court Appropriately Rejected 300 West’s Request for Jurisdictional Discovery .....	36
A.    Issue Presented .....	36
B.    Standard and Scope of Review.....	36
C.    Merits.....	37
CONCLUSION.....	39
CERTIFICATE OF COMPLIANCE.....	41

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>10012 Holdings, Inc. v. Sentinel Ins. Co., Ltd.</i> , 21 F.4th 216 (2d Cir. 2021) .....	1
<i>Abajian v. Kennedy</i> , 1992 WL 8794 (Del. Ch. Jan. 17, 1992).....	16
<i>AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.</i> , 871 A.2d 428 (Del. 2005) .....	12, 30
<i>AR Cap., LLC v. XL Specialty Ins. Co.</i> , 2019 WL 1932061 (Del. Super. Apr. 25, 2019).....	19, 22
<i>Boone v. Oy Partek Ab</i> , 724 A.2d 1150 (Del. Super. 1997), <i>aff'd</i> , 707 A.2d 765 (Del. 1998) .....	31
<i>Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.</i> , 582 U.S. 255 (2017) .....	32, 33
<i>Certain Underwriters at Lloyds, London v. Chemtura Corp.</i> , 160 A.3d 457 (Del. 2017) .....	2
<i>Coleman v. PriceWaterhouseCoopers, LLC</i> , 902 A.2d 1102 (Del. 2006) .....	36
<i>Consol. Rest. Operations, Inc. v. Westport Ins. Corp.</i> , 205 A.D.3d 76 (N.Y. App. Div. 2022) .....	1
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014).....	19, 31
<i>Donaldson v. Progressive Advanced Ins. Co.</i> , 2022 WL 951260 (Del. Super. Mar. 29, 2022).....	23
<i>Eaton v. Allstate Prop. &amp; Cas. Ins. Co.</i> , 2021 WL 3662451 (Del. Super. Apr. 28, 2021).....	21, 22, 23
<i>EBP Lifestyle Brands Holdings, Inc. v. Boulbain</i> , 2017 WL 3328363 (Del. Ch. 2017).....	14

<i>Energy Transfer Equity, L.P. v. Twin City Fire Ins. Co.</i> , 2020 WL 5757343 (Del. Super. Sept. 25, 2020) .....	24, 27
<i>Fico Realty 22 Realty, LLC v. Strathmore Ins. Co.</i> , 2022 WL 5246559 (N.Y. Sup. Ct. Oct. 3, 2022).....	1
<i>Fischer v. Hilton</i> , 549 F. Supp. 389 (D. Del. 1982).....	16
<i>Galilea, LLC v. Pantaenius Am. Ltd.</i> , 2020 WL 9188643 (D. Mont. Sept. 25, 2020), <i>report and recommendation adopted by</i> 2021 WL 1383082 (D. Mont. Apr. 13, 2021) .....	28
<i>Gateway Clippers Holdings LLC v. Main St. Am. Prot. Ins. Co.</i> , 2021 WL 4168202 (E.D. Mo. Sept. 14, 2021) .....	26
<i>Genuine Parts Co. v. Cepec</i> , 137 A.3d 123 (Del. 2016) .....	18, 22, 31
<i>Gonzalez v. Caraballo</i> , 2008 WL 4902686 (Del. Super. Nov. 12, 2008) .....	25
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915 (2011).....	31, 32
<i>Greenly v. Davis</i> , 486 A.2d 669 (Del. 1984) .....	12, 15
<i>Hartsel v. Vanguard Grp., Inc.</i> , 2011 WL 2421003 (Del. Ch. June 15, 2011), <i>aff'd</i> , 38 A.3d 1254 (Del. 2012) .....	12
<i>Hoechst Celanese Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA</i> , 1991 WL 190313 (Del. Super. Sept. 10, 1991) .....	24, 27
<i>Hoffman-La Roche, Inc. v. Invamed, Inc.</i> , 183 F.R.D. 157 (D.N.J. 1998).....	28
<i>Lenape Props. Mgmt., Inc. v. Prudential Ins. Co. of Am.</i> , 2022 WL 17826010 (Del. Super. Dec. 20, 2022).....	3, 16, 18

<i>Mack v. Rev Worldwide, Inc.</i> , 2020 WL 7774604 (Del. Ch. Dec. 30, 2020).....	24, 37
<i>Maloney-Refaie v. Bridge at School</i> , 958 A.2d 871 (Del. Ch. 2008) .....	13
<i>Martinez v. E.I. DuPont De Nemours &amp; Co.</i> , 2012 WL 6845678 (Del. Super. Dec. 5, 2012).....	25
<i>Mobile Diagnostic Grp. Holdings, LLC v. Suer</i> , 972 A.2d 799 (Del. Ch. 2009) .....	12, 14, 15
<i>Newspan, Inc. v. Hearthstone Funding Corp.</i> , 1994 WL 198721 (Del. Ch. May 10, 1994).....	16
<i>Otto Candies, LLC v. KPMG, LLP</i> , 2017 WL 3175619 (Del. Super. July 26, 2017).....	31
<i>Page v. Oath Inc.</i> , 270 A.3d 833 (Del. 2022) .....	12
<i>Partners &amp; Simons, Inc. v. Sandbox Acquisitions, LLC</i> , 2021 WL 3161651 (Del. Ch. July 26, 2021) .....	36
<i>Phunware, Inc. v. Excelmind Grp. Ltd.</i> , 117 F. Supp. 3d 613 (D. Del. 2015).....	16
<i>RBC Cap. Markets, LLC v. Jervis</i> , 129 A.3d 816 (Del. 2015) .....	30
<i>Rosado v. State Farm Mut. Ins. Co.</i> , 2020 WL 3887880 (Del. Super. July 9, 2020).....	21, 22, 23
<i>Ruggiero v. FuturaGene, plc.</i> , 948 A.2d 1124 (Del. Ch. 2008) .....	31
<i>Sprint Nextel Corp. v. iPCS, Inc.</i> , 2008 WL 2737409 (Del. Ch. July 14, 2008) .....	20
<i>Tell v. Roman Cath. Bishops of Diocese of Allentown</i> , 2010 WL 1691199 (Del. Super. Apr. 26, 2010).....	13

<i>Uribe v. Maryland Auto. Ins. Fund</i> , 2015 WL 3536574 (Del. 2015).....	19, 20, 23
<i>Walden v. Fiore</i> , 571 U.S. 277 (2014).....	17, 31, 32, 34
<i>Wiggins v. Physiologic Assessment Servs., LLC</i> , 138 A.3d 1160 (Del. Super. 2016).....	18
<i>Yankees Ent. &amp; Sports Network, LLC v. Hartford Fire Ins. Co.</i> , 2022 WL 6735556 (D. Del. Oct. 11, 2022).....	3, 4, 6, 7, 21, 22, 26
<b>Other Authorities</b>	
10 <i>Del. C.</i> § 3104 .....	passim
Black’s Law Dictionary (6th ed. 1990) .....	28
Super. Ct. Civ. R. 12(b)(2).....	2, 12, 30, 33, 39
Fed. R. Civ. P. 4(d) .....	28
Merriam-Webster Online Dictionary.....	28
Mo. Rev. Stat. § 506.500.1(5).....	26
Supr. Ct. R. 14(b).....	6, 25
U.S. Const. amend. XIV, § 2 .....	2, 5, 8, 9, 10, 16, 30, 33

## **NATURE OF PROCEEDINGS**

### **Introduction**

This is an appeal of an order dismissing the Complaint of Plaintiff-Appellant 300 West 22 Realty LLC (“300 West”) for lack of personal jurisdiction. 300 West filed the Complaint in the Superior Court seeking coverage for its New York City hotel under a New York commercial property insurance policy (the “Policy”) issued by Defendant-Appellee Strathmore Insurance Company (“Strathmore”). 300 West alleged financial losses caused by two factors: (1) the presence of the SARS-Cov-2 virus on property in and around the hotel; and (2) public health orders issued by New York officials to slow the spread of the virus.

The same counsel that represents 300 West in this case filed seven nearly identical actions against Strathmore and its parent company on behalf of other New York hotels in New York state court. The court dismissed those New York actions with prejudice.<sup>1</sup> Indeed, state and federal courts applying New York law have uniformly dismissed similar COVID-19 property insurance coverage actions, because they fail to allege “direct physical loss of or damage to property,” an essential element of coverage.<sup>2</sup>

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<sup>1</sup> See, e.g., *Fico Realty 22 Realty, LLC v. Strathmore Ins. Co.*, 2022 WL 5246559 (N.Y. Sup. Ct. Oct. 3, 2022).

<sup>2</sup> See, e.g., *10012 Holdings, Inc. v. Sentinel Ins. Co., Ltd.*, 21 F.4th 216 (2d Cir. 2021); *Consol. Rest. Operations, Inc. v. Westport Ins. Corp.*, 205 A.D.3d 76 (N.Y.

In a textbook case of forum shopping, 300 West commenced this action in Delaware to avoid an inevitable dismissal by a New York court.<sup>3</sup> All 300 West avoided was a ruling on the merits, as the Superior Court correctly held that it lacked personal jurisdiction over Strathmore, a non-resident, under the Delaware long-arm statute, 10 *Del. C.* § 3104. Accordingly, the Court dismissed the Complaint under Super. Ct. Civ. R. 12(b)(2).<sup>4</sup>

### **Procedural Background**

Strathmore moved to dismiss the Complaint on June 22, 2022. A-347. Strathmore’s motion argued that 300 West could not establish personal jurisdiction under the Delaware long-arm statute, 10 *Del. C.* § 3104, or the Due Process Clause of the Fourteenth Amendment to the United States Constitution. A-350, *et seq.* 300 West filed an opposition on September 16, 2022, arguing that the allegations of the Complaint satisfied Section 3104(c)(1) of the long-arm statute and due process. A-

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App. Div. 2022).

<sup>3</sup> New York’s substantive law applies to 300 West’s claims, regardless of forum. *See Certain Underwriters at Lloyds, London v. Chemtura Corp.*, 160 A.3d 457, 464 (Del. 2017) (applying “most significant relationship” test, including its presumption that “the law of the state ‘which the parties understood was to be the principal location of the insured risk’ should be applied because that state will typically have the most significant relationship”) (internal citations omitted).

<sup>4</sup> Following the Superior Court’s dismissal based on lack of personal jurisdiction, 300 West also filed a new action against Strathmore in New York state court. *300 West 22 Realty, LLC v. Strathmore Ins. Co.*, No. 651419/2023 (N.Y. Sup. Ct.). The Complaint was served on Strathmore or about July 13, 2023.



378, *et seq.* 300 West also requested jurisdictional discovery. *Id.* Strathmore filed a reply brief on September 30, 2022. A-404.

The Superior Court heard oral argument on the motion to dismiss on December 20, 2022. A-421. At oral argument, Strathmore alerted the Court to a decision issued after the close of briefing by the Delaware federal district court dismissing, on personal jurisdiction grounds, a similar COVID-19 property insurance case—*Yankees Ent. & Sports Network, LLC v. Hartford Fire Ins. Co.*, 2022 WL 6735556 (D. Del. Oct. 11, 2022) (hereinafter “*YES Network*”). The plaintiff in that case was represented by the same counsel as 300 West here and had raised nearly identical arguments in support of personal jurisdiction. Following oral argument, on December 23, 2022, Strathmore submitted a notice of supplemental authority alerting the Court to another recent decision bearing on the issues raised in the motion to dismiss. A-423 (citing *Lenape Props. Mgmt., Inc. v. Prudential Ins. Co. of Am.*, 2022 WL 17826010, at \*2 (Del. Super. Dec. 20, 2022)).

On January 18, 2023, 300 West filed a consolidated response to both supplemental authorities. A-429. Strathmore thereafter moved to strike 300 West’s response because, among other reasons, it attempted to assert an entirely new argument based on Section 3104(c)(6) of the long-arm statute that had not been raised in 300 West’s prior briefing or at oral argument. A-440.

**The Superior Court’s Opinion Dismissing the Complaint**

The Superior Court granted Strathmore’s motion to dismiss on March 1, 2023. A-459 *et seq.* Agreeing with the reasoning in *YES Network*, the court held that, even accepting 300 West’s allegations and arguments as true—including that 300 West is incorporated in Delaware, that Strathmore transacts business in Delaware in connection with policies issued to other customers, that Strathmore has participated in other litigation in Delaware, and that 300 West’s economic losses “flow” to Delaware by virtue of its incorporation there—300 West has failed to satisfy its burden to establish personal jurisdiction under Section 3104(c)(1) of the long-arm statute. In the Superior Court’s view, 300 West’s causes of action in the Complaint do not “aris[e] from” Strathmore’s Delaware business transactions. A-463-65.

The Superior Court also rejected 300 West’s argument that Section 3104(c)(6) of the long-arm statute conferred jurisdiction over Strathmore. A-466-68. The Court found that the Policy insured 300 West’s property in New York, not 300 West in Delaware. *Id.* As the Court explained, “the fact that the real property is owned by a Delaware LLC is tangential to the insurance coverage.” A-468.

Finally, the Superior Court rejected 300 West’s request for jurisdictional discovery, observing that none of the topics on which 300 West sought discovery “would establish this Court’s personal jurisdiction under Section 3104(c)(1) or 3104(c)(6) . . . [because] [t]he instant case still would not sufficiently ‘arise from’

[Strathmore's] interactions with Delaware.” A-468-69.<sup>5</sup>

Because the Court determined that the long-arm statute did not confer personal jurisdiction, it did not analyze Strathmore's additional arguments under the Due Process Clause.

300 West timely filed a Notice of Appeal on March 30, 2023. A-471. It filed its Opening Brief on June 26, 2023. This is Strathmore's Answering Brief.

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<sup>5</sup> The Superior Court denied as moot Strathmore's motion to strike 300 West's response to supplemental authorities, which is the first and only time 300 West raised an argument under Section 3104(c)(6) of the long-arm statute.

## SUMMARY OF ARGUMENT

No response is required to the first three numbered paragraphs of 300 West's Summary of Argument, which purport to characterize this appeal.<sup>6</sup> *See* Supr. Ct. R. 14(b)(iv). Strathmore responds to the legal propositions set forth beginning in paragraph 4, as follows:

4. Denied. 300 West argues that Strathmore's business transactions in Delaware subject Strathmore to specific jurisdiction under Section 3104(c)(1) of Delaware's long-arm statute. 10 *Del. C.* § 3104(c)(1). 300 West overlooks a crucial statutory requirement: in order to establish specific jurisdiction under the long-arm statute, Strathmore's Delaware business transactions must "aris[e] from" the circumstances underlying the causes of action in the Complaint. Here, they do not. The claims asserted in the Complaint are focused exclusively on conduct that allegedly occurred in New York, not Delaware.

5. Denied. The Superior Court's opinion cited the persuasive authority of *YES Network*. Like this case, *YES Network* involved a claim for property insurance coverage arising from the COVID-19 pandemic. *YES Network*, 2022 WL 6735556, at \*3. Addressing nearly identical issues, the Delaware federal district court held that the plaintiff could not establish personal jurisdiction under the long-arm statute over

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<sup>6</sup> To the extent a response is deemed to be required, Strathmore denies paragraphs one through three.

the non-resident defendant insurer. The Superior Court's reliance on *YES Network* was appropriate. It is 300 West, not *YES Network*, that conflates the concepts of general and specific jurisdiction, by ignoring the requirement that Strathmore's Delaware activities must "aris[e] from" the circumstances underlying the causes of action in the Complaint in order to support jurisdiction under 10 *Del. C.* § 3104(c)(1).

6. Denied. The Superior Court did not ignore any facts alleged in the Complaint. Rather, it carefully considered the relevant allegations and legal arguments and then held, consistent with well-established Delaware law, that the mere fact that Strathmore sold a property insurance policy on a New York hotel to an entity that happened to be incorporated in Delaware is insufficient to establish personal jurisdiction over Strathmore for all claims arising from that policy. The Court properly rejected 300 West's attempt to combine several incomplete and flawed arguments to conjure a basis for specific jurisdiction under 10 *Del. C.* § 3104(c)(1).

7. Denied. Strathmore sells insurance in Delaware. However, there is no connection between its Delaware business transactions and the causes of action in the Complaint. Nor is there any connection between 300 West's claims in the Complaint and Strathmore's participation in other, unrelated litigation in Delaware. Consequently, 300 West cannot establish jurisdiction under 10 *Del. C.* § 3104(c)(1).

8. Denied. The Policy is a contract to insure property in New York. It is not, as 300 West claims, a contract to insure a person in Delaware. Even if it were, 300 West is not physically located in Delaware. Thus, 300 West cannot establish jurisdiction under 10 *Del. C.* 3104(c)(6). In addition, 300 West has waived this argument, because it failed to raise 10 *Del. C.* 3104(c)(6) in the Superior Court briefing or at oral argument.

9. Denied. The Superior Court properly rejected 300 West's request for jurisdictional discovery. There is no discoverable information that is material or necessary to a determination of personal jurisdiction. 300 West argues that personal jurisdiction exists over Strathmore, but it is undisputed that neither the Policy nor any of the claims in the Complaint arise from any activity of Strathmore's Delaware activities, as is required to establish jurisdiction under the long-arm statute.

10. Even if 300 West could satisfy its burden to establish that 10 *Del. C.* § 3104 confers jurisdiction (which it cannot), the Complaint was still properly dismissed by the Superior Court, because the exercise of personal jurisdiction over Strathmore for the claims asserted in the Complaint would not comport with the Due Process Clause.

## STATEMENT OF FACTS

Strathmore is an insurance company incorporated in New York with a principal place of business in New York. A-16, ¶¶22. 300 West is a Delaware limited liability company with a principal place of business in New York. A-15, ¶¶21. It operates a hotel at 300 West 22nd Street in New York City. A-7, ¶2.

Strathmore issued the Policy to 300 West in New York. A-41, ¶¶99. The Policy identifies 300 West as the Named Insured, with a mailing address at 300 West 22 Realty, LLC, c/o Icon Realty Management, 419 Lafayette Street, FL 5th, New York, NY 10003-7033. A-58. 300 West purchased the Policy through a producer at Fabricant & Fabricant, Inc., 1251 Old Northern Boulevard, Roslyn, New York. *Id.* The Policy provides insurance for a single insured location: 300 West’s hotel at 300 West 22nd Street, New York, NY 10011-2602. A-59. The Policy contains New York-specific endorsements but has no endorsements specific to Delaware or any other jurisdiction. A-72-78.

The Complaint alleges that 300 West was “prevented from conducting normal business operations and deprived of the use of its business premises” at its New York hotel as a result of: (1) the presence of the SARS-Cov-2 virus on property; and (2) executive orders issued by Governor Cuomo and Mayor de Blasio in response to the COVID-19 pandemic. A-8, ¶¶5, 18. 300 West further alleges that, even when the hotel was permitted to open, it was unable to operate without substantial physical

alterations, reductions in physical capacity, and other protective measures. *Id.*

300 West submitted an insurance claim to Strathmore in New York for its alleged economic losses from the COVID-19 pandemic. Strathmore subsequently denied coverage. A-12, ¶14; A-49, ¶137, ¶140. 300 West filed this lawsuit in Delaware challenging Strathmore’s denial and asserting two causes of action against Strathmore: declaratory relief (Count I) and breach of contract (Count II). 300 West alleges that Strathmore “wrongfully breached its obligations under the All Risk Policy” and that Strathmore “denied coverage without conducting an investigation or considering supporting evidence.” A-12, ¶16.

With respect to personal jurisdiction, the Complaint alleges that “[t]his Court has jurisdiction over Strathmore because it is authorized to sell and write insurance in Delaware and, at all material times, has conducted business within the State of Delaware, including by selling the Policy to a Delaware limited liability company, thereby covering risks of a Delaware insured.” A-15, ¶25.

None of these allegations, however, is jurisdictionally relevant. While Strathmore is licensed to transact insurance business in Delaware, the amount of business it conducts in Delaware is limited. A-376, ¶9. Strathmore does not maintain an office in Delaware or own or use real property there. *Id.*, ¶7. Nor does Strathmore employ anyone in Delaware. *Id.*, ¶8. Moreover, the Policy was issued in New York through a New York insurance broker, to a hotel located in New York. A-58. 300



West being a Delaware limited liability company has no relevance to: (1) the issuance of the Policy; (2) the purely financial losses alleged in the Complaint; or (3) 300 West's claim for benefits under the Policy. *See* A-376, ¶¶5-6.

## ARGUMENT

### **I. The Superior Court Correctly Concluded That the Delaware Long-Arm Statute Does Not Confer Personal Jurisdiction over Strathmore**

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

Has 300 West satisfied its burden to establish that either 10 *Del. C.* §§ 3104(c)(1) or 3104(c)(6) confer personal jurisdiction over Strathmore when the causes of action in the Complaint arise from Strathmore’s transactions and conduct in New York (not Delaware) and relate to the insurance on a hotel in New York (and not a person in Delaware)?

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

This Court reviews the Superior Court’s grant of a motion to dismiss *de novo* and applies the same standard as the trial court. *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022). On a motion to dismiss for lack of personal jurisdiction, the “plaintiff bears the burden of showing a basis for a trial court’s exercise of jurisdiction over a nonresident defendant.” *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 (Del. 2005); *see also* Super. Ct. Civ. R. 12(b)(2). To meet this burden, the plaintiff “must plead specific facts and cannot rely on mere conclusory assertions.” *Id.* (quoting *Mobile Diagnostic Grp. Holdings, LLC v. Suer*, 972 A.2d 799, 802 (Del. Ch. 2009)). In assessing personal jurisdiction, the Court may consider affidavits and exhibits outside the pleadings. *See Greenly v. Davis*, 486 A.2d 669, 670 (Del. 1984); *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003,

at \*7 (Del. Ch. June 15, 2011), *aff'd*, 38 A.3d 1254 (Del. 2012); *Tell v. Roman Cath. Bishops of Diocese of Allentown*, 2010 WL 1691199, at \*3 (Del. Super. Apr. 26, 2010).

### C. Merits

Delaware’s long-arm statute, 10 *Del. C.* § 3104(c), authorizes Delaware courts to exercise personal jurisdiction over a non-resident “[a]s to a cause of action brought by any person arising from” certain enumerated activities by the non-resident in Delaware, including:

- (1) [t]ransact[ing] any business or perform[ing] any character of work or service in the State; [or]
- ...
- (6) [c]ontract[ing] 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.

10 *Del. C.* § 3104(c) (emphasis added). The Superior Court correctly held that neither Section 3104(c)(1) nor 3104(c)(6) confer personal jurisdiction over Strathmore for the claims asserted in the Complaint.

#### 1. Section 3104(c)(1) Does Not Apply Because 300 West’s Claims Arise from Strathmore’s Business Transactions in New York, Not Delaware

Section 3104(c)(1) of the Delaware long-arm statute requires both that “(1) the nonresident transacted some sort of business in the state, and (2) the claim being asserted arose out of that specific transaction.” *Maloney-Refaie v. Bridge at School*,

958 A.2d 871, 878 (Del. Ch. 2008). In other words, to establish jurisdiction, “some [jurisdictionally relevant] act must actually occur in the state,” and the cause of action “must have a nexus to the forum-related conduct.” *Mobile Diagnostic*, 972 A.2d at 804; *see also EBP Lifestyle Brands Holdings, Inc. v. Boulbain*, 2017 WL 3328363, at \*3 (Del. Ch. 2017) (concluding that the alleged breach of contract arose out of the defendant’s transactions in California, not Delaware, and therefore failed to satisfy Section 3104(c)(1)).

The allegations of the Complaint establish that 300 West’s claims against Strathmore arise from Strathmore’s business transactions in New York, not Delaware. The Policy was issued by a New York-based insurer (Strathmore) through a New York producer (Fabricant & Fabricant, Inc. of 1251 Old Northern Blvd, Roslyn, NY), and was mailed to 300 West in care of its New York property manager (Icon Realty Management at 419 Lafayette St., 5<sup>th</sup> Floor, New York, NY). A-58. The Policy covers a single New York City premises (the hotel at 300 West 22<sup>nd</sup> Street) and contains New York specific endorsements (but no endorsements specific to Delaware or any other state). A-72-78. 300 West submitted its claim under the Policy in New York for alleged damage to property from a virus that allegedly spread in New York and for an alleged business interruption that resulted from COVID-19 governmental orders issued by the Mayor of New York City and the Governor of

New York. A-8, ¶¶5, 18. Strathmore investigated and denied the claim in New York. A-12, ¶14; A-49, ¶137, ¶140.

Unable to draw a connection between the claims in the Complaint and Delaware, 300 West proposes an unmanageably broad interpretation of Section 3104(c)(1) that conflates general and specific jurisdiction. If adopted, 300 West’s interpretation would extend Delaware long-arm jurisdiction over all non-resident insurers (and other non-resident defendants) that transact *any* business in Delaware, whether or not the claims at issue are connected to those Delaware business transactions. This interpretation is at odds with the provisions of 10 *Del. C.* § 3104 and should be rejected.

**(a) The Mere Incorporation of 300 West in Delaware Is Irrelevant**

300 West contends that, because Strathmore issued the Policy to a limited liability company that happened to be incorporated in Delaware, 300 West’s causes of action seeking coverage under the Policy *ipso facto* “aris[e] from” Strathmore’s Delaware business transactions. It is wrong. The mere act of contracting with a Delaware entity does not confer jurisdiction under 10 *Del. C.* § 3104(c)(1). *See Greenly*, 486 A.2d at 671 (finding no personal jurisdiction over non-resident defendants for breach of contract, “even though a part of the negotiations included a proposed sale of stock of a Delaware corporation which does transact business in Delaware”); *Mobile*, 972 A.2d at 805 (“[I]t is well settled law that a contract between

a Delaware corporation and a nonresident to . . . transact business outside Delaware, which has been negotiated without any contacts with this State, cannot alone serve as a basis for personal jurisdiction over the nonresident for actions arising out of that contract.”) (quotations and citations omitted); *Abajian v. Kennedy*, 1992 WL 8794, at \*9–10 (Del. Ch. Jan. 17, 1992) (defendant did not “transact[] business in Delaware” where it “entered into a lease transaction and stock purchase agreement with . . . a Delaware corporation” that was “negotiated and executed outside of Delaware”).<sup>7</sup>

Courts have relied on the same reasoning to conclude that merely entering into a contract with a Delaware entity is insufficient to support specific jurisdiction under the Due Process Clause. *See Lenape*, 2022 WL 17826010, at \*2 (“Merely contracting with an entity incorporated in Delaware is not enough to support a finding of specific jurisdiction.”); *Newspan, Inc. v. Hearthstone Funding Corp.*, 1994 WL 198721, at \*6 (Del. Ch. May 10, 1994) (“Plainly, I would have thought, a contract between a Delaware corporation and a nonresident . . . to transact business outside Delaware, which has been negotiated without any contacts with this state, cannot alone

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<sup>7</sup> *See also Phunware, Inc. v. Excelmind Grp. Ltd.*, 117 F. Supp. 3d 613, 631 (D. Del. 2015) (“transact[ing] business with a Delaware corporation outside of Delaware” did not subject defendant to specific jurisdiction in Delaware); *Fischer v. Hilton*, 549 F. Supp. 389, 391 (D. Del. 1982) (defendant did not “transact business” in Delaware when he entered into a contract with a Delaware resident that was negotiated in Ohio).

serve as a basis for personal jurisdiction over the nonresident for actions arising out of that contract.”).

300 West attempts to connect the causes of action in the Complaint to Delaware by focusing on its alleged losses, which it contends “are not limited to New York, but extend to other jurisdictions where 300 West 22nd operates, conducts business, and is organized.” Appellant’s Br. at 17. There are two problems with this argument. First, 300 West does not explain how alleged economic losses at its New York City hotel affected the company in Delaware, and it is not entitled to an inference that they did. 300 West does not operate the insured hotel or conduct any other business in Delaware. Nor does it claim to employ anyone in Delaware. Second, 300 West must demonstrate that its claims “aris[e] from” *Strathmore’s* Delaware business transactions. Any indirect economic impact 300 West might claim to have experienced in Delaware from the alleged loss of revenue at its New York hotel has no connection to any claim-related conduct of Strathmore in Delaware and does not support personal jurisdiction over Strathmore here. *See Walden v. Fiore*, 571 U.S. 277, 289 (2014) (explaining in the context of the due process analysis that “[s]uch reasoning improperly attributes a plaintiff’s forum connections to the defendant and makes those connections ‘decisive’ in the jurisdictional analysis.”).

300 West’s overly broad interpretation of the long-arm statute also implicates concerns raised by Delaware courts about relying on the state of incorporation for the exercise of personal jurisdiction. *See Wiggins v. Physiologic Assessment Servs., LLC*, 138 A.3d 1160, 1165 (Del. Super. 2016) (warning that “courts should exercise caution in extending jurisdiction over nonresident defendants whose direct ties to Delaware are, at best, tenuous”); *see also Genuine Parts Co. v. Cepec*, 137 A.3d 123, 143 (Del. 2016) (“As the home of a majority of the United States’ largest corporations, Delaware has a strong interest in avoiding overreaching in th[e] sensitive area [of personal jurisdiction].”); *Lenape* 2022 WL 17826010, at \*3 (explaining that “Delaware should be circumspect in recognizing jurisdiction merely because one of [the] contracting parties is a resident here”). Indeed, 300 West’s position implies a radical expansion of Delaware’s long-arm statute over non-resident defendants who merely enter into a contract with a Delaware entity.

**(b) Strathmore’s Business Transactions with Other Delaware Customers Are Unrelated to the Claims in the Complaint**

Strathmore is licensed to sell insurance in Delaware, and it conducts a limited amount of business in the state. But 300 West’s insurance claim under the Policy for its alleged COVID-19 financial losses in New York, and Strathmore’s subsequent denial of the claim in New York, were not related to Strathmore’s Delaware business transactions, which is a requirement for specific jurisdiction under 10 *Del. C.* §



3104(c)(1). *See AR Cap., LLC v. XL Specialty Ins. Co.*, 2019 WL 1932061, at \*5 (Del. Super. Apr. 25, 2019) (dismissing for lack of personal jurisdiction coverage claims against a non-resident insurer because the insurer’s “purported . . . connections to Delaware are outside the context of this lawsuit”).

By ignoring the requirement that its causes of action “aris[e] from” Strathmore’s Delaware business transactions, 300 West improperly seeks to impose what is essentially a general jurisdiction standard, subjecting Strathmore to any suit in Delaware, whether or not the causes of action alleged arise from Strathmore’s Delaware conduct. *See Uribe v. Maryland Auto. Ins. Fund*, 2015 WL 3536574, at \*3 (Del. 2015) (“In effect, the Appellants argue that the reach of Section 3104(c)(1) should be expanded to include any and all conduct performed by a defendant company in Delaware, even if that conduct has no relation whatsoever to the subject of the action at issue. This position finds no support in Delaware case or statutory law, and we find no reason as to why it should be adopted here.”). However, as 300 West concedes, general jurisdiction does not apply here. Appellant’s Br. at 15. *Cf. Daimler AG v. Bauman*, 571 U.S. 117, 128-29 (2014) (general, or all-purpose, jurisdiction exists when a defendant’s “affiliations with” the forum state “are so continuous and systematic” as to “justify suit against it on causes of actions arising from dealings entirely distinct from those” affiliations).

**(c) Strathmore's Participation in Other Delaware  
Litigation Has Nothing to Do with 300 West's Claims**

300 West further argues that Strathmore's participation in other litigation in Delaware provides a basis for finding personal jurisdiction for the claims in the Complaint under 10 *Del. C.* § 3104(c)(1). Specifically, it cites, in a footnote, a handful of cases in which Strathmore or its parent company have been a participant in Delaware litigation. Appellant's Br. at 20, n. 6. Each of the cases was filed more than ten years ago. None is currently pending. This argument, too, misses the mark.

Even if participating in other litigation in Delaware constituted transacting business in the state, Strathmore would be subject to jurisdiction only if 300 West's causes of action "aris[e] from" Strathmore's participation in other litigation, which they do not. Indeed, 300 West presents no information about the other litigation in its footnote. Nor does it attempt to draw any connection between the other litigation and the causes of action in the Complaint. Mere participation in other litigation, by itself, is not enough to establish personal jurisdiction over Strathmore for the claims in 300 West's Complaint. *See Uribe*, 2015 WL 3536574, at \*3 (rejecting the plaintiff's argument that the insurer's filing of several unrelated lawsuits against other Delaware residents provided a basis for personal jurisdiction under 10 *Del. C.* § 3104(c)(1)); *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at \*9 (Del. Ch. July 14, 2008) (rejecting the same argument because the litigation did not arise from the prior one).

**(d) The Superior Court Properly Cited to the District Court’s Well-Reasoned Decision in *YES Network*, and Its Holding Is Supported by Additional Case Law**

300 West is critical of the Superior Court’s reliance on the persuasive authority of *YES Network*, in which the Delaware federal district court dismissed a similar complaint for lack of personal jurisdiction. 300 West incorrectly suggests that the holding in *YES Network* rests on that court’s finding that an insurance company that sells insurance policies in Delaware is not transacting business in the state. What the court actually held is that the plaintiff’s “cause of action does not ‘aris[e] from’ contacts with unrelated third parties.” 2022 WL 6735556, at \*4. The insurer defendant’s Delaware business transactions had nothing to do with the plaintiff’s COVID-19 business interruption claims for properties outside Delaware. 300 West’s Complaint here is lacking for the same reason.

300 West also argues that *YES Network* mistakenly relies on two Delaware Superior Court cases—*Eaton v. Allstate Prop. & Cas. Ins. Co.*, 2021 WL 3662451 (Del. Super. Apr. 28, 2021) and *Rosado v. State Farm Mut. Ins. Co.*, 2020 WL 3887880 (Del. Super. July 9, 2020). 300 West contends that *Eaton* and *Rosado* addressed general jurisdiction and jurisdiction under 10 *Del. C.* § 3104(c)(3), neither of which are at issue here. This is wrong. Both *Eaton* and *Rosado* recognize, as a general matter, that an insurer’s general Delaware business transactions do not confer specific jurisdiction unless the causes of action at issue actually arise from

those transactions. Moreover, *YES Network* contains an extensive analysis of personal jurisdiction under the long-arm statute, which goes well beyond its discussion of *Eaton* and *Rosado*.

Other Delaware cases support the dismissal of the Complaint based on lack of personal jurisdiction. In *AR Cap., LLC v. XL Specialty Ins. Co., supra*, the plaintiff, also a Delaware limited liability company, filed suit in Delaware against non-resident insurers seeking coverage under a “Difference in Conditions” policy. 2019 WL 1932061, at \*1. The insurers moved to dismiss the complaint for lack of personal jurisdiction, arguing that the plaintiff made only “generalized allegations” that each of them “is an insurance company that is licensed to do business in the state of Delaware, among other places” and therefore both were subject to jurisdiction in Delaware. *Id.*, at \*5. The plaintiffs also alleged that each of the insurers “has written insurance policies covering risks for Delaware citizens” and “is transacting business in the state of Delaware.” *Id.* Reviewing these allegations, the court dismissed the complaint because 10 *Del. C.* § 3104(c)(1) “requires that the relevant cause of action ‘arise from’ a nonresident’s Delaware business transactions,” and the allegations of the Complaint did “not arise from [the insurers’] conduct alleged to have occurred in Delaware.” *Id.*<sup>8</sup>

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<sup>8</sup> *See also Genuine Parts*, 137 A.3d at 143 (affirming dismissal of complaint based on lack of personal jurisdiction where the plaintiff argued that a non-resident defendant’s registration in Delaware as a foreign corporation conferred jurisdiction

The same is true of 300 West’s claims here. The Complaint does not allege that the Policy was negotiated, executed, or issued in Delaware. Nor does the Policy cover any property in Delaware. Moreover, 300 West does not allege that Strathmore, a New York insurer, had any contact with Delaware, let alone any contact in Delaware in connection with the issuance of the Policy. Indeed, the Complaint does not allege that Strathmore had any contact with Delaware in connection with its investigation of the insurance claim made by 300 West. Ultimately, the *only* connection to Delaware is that 300 West is a Delaware limited liability company.

## **2. Section 3104(c)(6) Does Not Apply for Multiple Reasons**

300 West further argues that 10 *Del. C.* § 3104(c)(6) confers personal jurisdiction over Strathmore for the claims in the Complaint. Section 3104(c)(6) permits jurisdiction where a defendant “contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to

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under Delaware’s long-arm statute); *Uribe*, 2015 WL 3536574, at \*3 (affirming dismissal based on lack of personal jurisdiction because the plaintiff “failed to offer any action [the insurer] ha[d] taken in Delaware that derive[d] from the issues that [were] the focus” of the lawsuit); *Donaldson v. Progressive Advanced Ins. Co.*, 2022 WL 951260 (Del. Super. Mar. 29, 2022) (dismissing complaint based on lack of personal jurisdiction where the plaintiff alleged that the insurer was “licensed to do business in Delaware, perform[ed] work or service within the State and transact[ed] business in Delaware,” because the court found these generalized allegations insufficient to meet Delaware’s long-arm statute’s requirements); *Eaton*, 2021 WL 3662451, at \*1 (dismissing complaint against non-resident insurer based on lack of personal jurisdiction); *Rosado*, 2020 WL 3887880, at \*1 (same).

be performed within [Delaware] at the time the contract is made . . . .” 10 *Del. C.* § 3104(c)(6). This argument was not raised by 300 West in its opposition to Strathmore’s motion to dismiss or at oral argument and is, therefore, waived. But even if the argument had not been waived, it fails on the merits for two separate and independent reasons.

**(a) 300 West Waived Its Argument under 10 *Del. C.* § 3104(c)(6) by Not Raising It in the Superior Court**

Strathmore’s opening brief in support of its motion to dismiss argued that 10 *Del. C.* § 3104(c)(6) did not provide a basis for specific jurisdiction in this case. 300 West’s responsive brief relied *solely* on 10 *Del. C.* § 3104(c)(1) and did not raise or address § 3104(c)(6) at all. 300 West also failed to raise § 3104(c)(6) as a basis for personal jurisdiction during oral argument on the motion to dismiss. Moreover, the two cases 300 West relies on to support its belated argument under 10 *Del. C.* § 3104(c)(6)—*Energy Transfer Equity, L.P. v. Twin City Fire Ins. Co.*, 2020 WL 5757343 (Del. Super. Sept. 25, 2020) and *Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 1991 WL 190313 (Del. Super. Sept. 10, 1991)—do not appear in 300 West’s responsive brief to Strathmore’s motion to dismiss and were not raised during oral argument.

By not raising this argument in its responsive brief, 300 West has waived it. *See Mack v. Rev Worldwide, Inc.*, 2020 WL 7774604, at \*16 (Del. Ch. Dec. 30, 2020) (“It is well settled that arguments that were not raised in an opening brief and

are beyond the scope of [the] matter asserted in a responsive brief are deemed waived.”); *see also* *Martinez v. E.I. DuPont De Nemours & Co.*, 2012 WL 6845678, at \*4 (Del. Super. Dec. 5, 2012) (“New arguments and authorities, presented for the first time at oral argument, will not be considered by the Court and are deemed waived.”); *Gonzalez v. Caraballo*, 2008 WL 4902686, at \*3 (Del. Super. Nov. 12, 2008) (“These principles [of waiver] apply with equal force to papers filed in this [Superior] Court.”).

300 West’s improper attempt to raise 10 *Del. C.* § 3104(c)(6) as part of its post-oral-argument response to Strathmore’s supplemental authorities does not avoid waiver. Notably, 300 West’s Opening Brief on appeal fails to comply with the requirement of this Court’s Rule 14(b)(vi)A.(1) requirement to provide “a clear and exact reference to the pages of the appendix where a party preserved each question in the trial court.” Indeed, 300 West failed to raise and preserve this argument in the Superior Court.

**(b) 300 West’s Claims Arise from a Contract to Insure a Property in New York, Not a Person in Delaware**

Even if not waived, 300 West’s argument under 10 *Del. C.* § 3104(c)(6) fails. 300 West contends that “Section (c)(6) applies where an insurance company contracts to, and does, sell an insurance policy to a company organized under Delaware law.” Appellant’s Br. at 21. It is wrong. The Policy is a contract to insure property located

within New York. It is not a contract to insure a person located within Delaware. The Policy was issued in New York to cover New York real estate (*i.e.*, 300 West’s New York City hotel). The Superior Court was, therefore, correct to reject 300 West’s 10 *Del. C.* § 3104(c)(6) argument. As the Court observed, “the fact that the real property is owned by a Delaware LLC is tangential to the insurance coverage.” A-468.

The district court implicitly rejected this same argument in *YES Network*, where the same counsel represented the policyholder. 2022 WL 6735556, at \*3 n.1 (“In its answering brief, Yankees states that § 3104(c)(6) provides an additional and independent means for the court to exercise specific jurisdiction. Yankees does not cite any authority for this proposition, nor does it offer any response to Hartford’s arguments with respect to that provision. Yankees centers its argument on § 3104(c)(1). Accordingly, so do I.”). Courts in other jurisdictions have likewise concluded that a commercial property insurance policy is a contract to insure property, not a person. *See, e.g., Gateway Clippers Holdings LLC v. Main St. Am. Prot. Ins. Co.*, 2021 WL 4168202, at \*1-2 (E.D. Mo. Sept. 14, 2021) (concluding the court lacked personal jurisdiction over a non-resident insurer in a COVID-19 property insurance action because, under Missouri’s similarly-worded long-arm statute covering “contract[s] to insure any person, property or risk located within [Missouri] at the time of contracting,” Mo. Rev. Stat. § 506.500.1(5), the plaintiff



“purchased the Policy, subject to Florida insurance regulatory authority, to insure property or risk located in Florida”).

The two unpublished Delaware trial court decisions on which 300 West relies involved different types of insurance policies. *Energy Transfer* addressed policies that “insured the actions of officers and directors of Delaware corporate entities” to “protect Energy Transfer and its subsidiaries against third-party claims alleging wrongful conduct on the part of Energy Transfer and its subsidiaries.” 2020 WL 5757343, at \*2, \*5. The nature of the insured risk led the court to conclude that these policies were “‘contracts to insure’ a person (the Insureds and their officers and directors).” *Id.* at \*5. For that reason, the Superior Court correctly found *Energy Transfer* distinguishable here. A-467.

*Hoechst Celanese*, also cited by 300 West, involved an inter-insurer dispute arising under liability policies issued to defend and indemnify the insured from covered third-party claims. 1991 WL 190313, at \*2. The court held that the arbitration clause in the policies did not apply to the coverage claims brought by third-party insurers. *Id.* The application of the arbitration clause was the only objection to personal jurisdiction addressed in the decision. *Id.* Thus, it is inapposite.

### **(c) 300 West Is Not Located in Delaware**

300 West’s Section 3104(c)(6) argument also fails because a company is not a “person . . . located . . . within” Delaware solely because it was formed under

Delaware law. The ordinary, plain meaning of “located” suggests physical presence within a geographic area. *See Located, Black’s Law Dictionary* (6th ed. 1990) (defining “located” as “[h]aving physical presence or existence in a place” in one of the few editions that defines the past participle “located” as opposed to the noun “location”); *Locate, Merriam-Webster Online Dictionary* (last visited Jul. 26, 2023) (defining “locate” as “to set or establish in a particular spot”), (<https://www.merriam-webster.com/dictionary/locate>); *see also Hoffman-La Roche, Inc. v. Invamed, Inc.*, 183 F.R.D. 157, 159-60 (D.N.J. 1998) (interpreting the plain meaning of “defendant located within the United States” set forth in Fed. R. Civ. P. 4(d) as requiring the defendant to be “physically present in the United States”); *Galilea, LLC v. Pantaenius Am. Ltd.*, 2020 WL 9188643, at \*10 n.5 (D. Mont. Sept. 25, 2020) (interpreting Montana’s similarly worded long-arm statute and concluding that a policy issued to Montana residents did not give rise to personal jurisdiction in Montana because “neither Plaintiffs nor the [insured property] were located in Montana at the time Plaintiffs obtained the policy”), *report and recommendation adopted*, 2021 WL 1383082 (D. Mont. Apr. 13, 2021). The requirement is not satisfied when an entity is merely formed under a state’s laws but has no actual physical presence in the state.

Moreover, nothing in the Policy suggests that it is a contract to insure a “person . . . located . . . within” Delaware. On the contrary, the Policy insures a

property located in New York, identifies a New York mailing address, and contains endorsements that modify the Policy's terms to comply with New York's (but not Delaware's) regulatory requirements for commercial property insurance.

300 West seizes on the fact that, in rejecting personal jurisdiction under Section 3104(c)(6) of the long-arm statute, the Superior Court stated in passing that "Plaintiff is a Delaware LLC, which makes Plaintiff a 'person' located in Delaware." A-466. This statement was immaterial due to the Superior Court's conclusion that 10 *Del. C. § 3104(c)(6)* does not apply. For that reason, it should be afforded little weight. The Superior Court also lacked the benefit of briefing on the issue because, as noted, 300 West failed to raise the Section 3104(c)(6) argument in a timely fashion.

## **II. Subjecting Strathmore to Jurisdiction in Delaware for the Claims Asserted in the Complaint Would Also Violate Due Process**

### **A. Question Presented**

Has 300 West satisfied its burden to establish that the exercise of personal jurisdiction over Strathmore satisfies the requirements of the Due Process Clause, when the causes of action in the Complaint have no connection to Delaware beyond it being 300 West's state of formation?

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

Because the Superior Court determined that 300 West failed to satisfy the requirements of 10 *Del. C.* § 3014, it did not need to, and it did not in fact address, Strathmore's arguments pursuant to the Due Process Clause. Nevertheless, this Court may address Strathmore's Due Process arguments as an alternative basis for affirming the Superior Court's Rule 12(b)(2) dismissal of the Complaint. *See RBC Cap. Markets, LLC v. Jervis*, 129 A.3d 816, 849 (Del. 2015) ("This Court may affirm on the basis of a different rationale than that which was articulated by the trial court, if the issue was fairly presented to the trial court."). The same standard and scope of review—*de novo*—applies. *See AeroGlobal*, 871 A.2d at 437.

### **C. Merits**

A court's exercise of personal jurisdiction over a non-resident defendant must comport with the Due Process Clause, in addition to satisfying 10 *Del. C.* § 3104. This means a plaintiff must establish either general or specific jurisdiction over the

defendant. *Daimler*, 571 U.S. at 128-29. Here, 300 West concedes that general jurisdiction does not apply. Appellant’s Br. at 15.

Specific, or case-linked, jurisdiction exists when “the suit arises out of or relates to the defendant’s contacts with the forum.” *Daimler*, 571 U.S. at 127; *see also Cepec*, 137 A.3d at 130; *see also Walden*, 571 U.S. at 284 (explaining that specific jurisdiction requires that “the defendant’s suit-related conduct . . . create[s] a substantial connection with the forum State.”); *Ruggiero v. FuturaGene, plc.*, 948 A.2d 1124, 1131 (Del. Ch. 2008) (“[T]he plaintiffs must show that the Individual Defendants engaged in some Delaware-directed conduct . . . in order to obtain personal jurisdiction over the Individual Defendants”); *Boone v. Oy Partek Ab*, 724 A.2d 1150, 1155 (Del. Super. 1997), *aff’d*, 707 A.2d 765 (Del. 1998) (“Specific jurisdiction is at issue when the plaintiff’s claims arise out of acts or omissions that take place in Delaware.”).

To determine whether an act “gives rise” to a cause of action for purposes of establishing specific jurisdiction, it is the “nature of the acts giving rise to a claim, rather than the nature of the claims, that determines whether a cause of action arises from contacts with the forum (citations omitted).” *Otto Candies, LLC v. KPMG, LLP*, 2017 WL 3175619 (Del. Super. July 26, 2017). Where a plaintiff fails to allege that the defendant’s “in-state activity . . . gave rise to the episode-in-suit,” there can be no specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564

U.S. 915, 923 (2011) (emphasis in original); *see also Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (“[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction”); *Walden*, 571 U.S. at 283 n.6 (specific jurisdiction “depends on an affiliation between the forum and the underlying controversy (*i.e.*, an activity or occurrence that takes place in the forum State and is therefore subject to the State’s regulation)”).

To satisfy due process, “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.’” *Bristol-Myers Squibb.*, 582 U.S. at 264 (quoting *Goodyear*, 564 U.S. at 919). While 300 West’s claims need not be “caused by” or “c[o]me about because of” Strathmore’s Delaware activities, *Ford*, 141 S. Ct. at 1027, Strathmore’s “*suit-related conduct* must create a substantial connection with the forum State.” *Walden*, 571 U.S. at 291 (emphasis added) (stating differently, the “challenged conduct” must be connected to the forum State). The due process “analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden*, 571 U.S. at 285.

Here, 300 West—a New York hotelier—seeks coverage under the Policy for the pandemic-related economic losses it allegedly sustained at its New York City

hotel. Strathmore's obligations under the Policy and its alleged breach of those obligations show no "connection between the forum [*i.e.*, Delaware] and the specific claims at issue." *Bristol-Myers Squibb*, 582 U.S. at 264. Rather, all the facts and circumstances surrounding the Policy and 300 West's claim for coverage are centered squarely in New York. Strathmore, through its contacts with Delaware, has not availed itself of the forum such that the exercise of personal jurisdiction over it with respect to the claims in 300 West's Complaint would comport with the Due Process Clause. Because the Superior Court lacks specific personal jurisdiction over Strathmore, this Court should affirm the dismissal of this action pursuant to Super. Ct. Civ. R. 12(b)(2).

In its trial court brief, 300 West inaccurately compared Strathmore to the defendant in *Ford*, 141 S.Ct. at 1022. In *Ford*, the United States Supreme Court held that a plaintiff could bring a products liability suit against Ford Motor Company in Montana, which was the state where the plaintiff lived, the motor vehicle accident at issue occurred, and Ford did substantial business. *Id.* Ford had argued that Montana lacked personal jurisdiction because the car involved in the crash was originally purchased and manufactured in a different state. *Id.* at 1026.

300 West argued in the Superior Court that, like the defendant in *Ford*, Strathmore does "substantial business" in Delaware, but 300 West ignores the obvious and critical factual and legal distinction between this case and *Ford*: the

underlying controversy in *Ford* was deeply connected to Montana, because the underlying motor vehicle accident giving rise to the claim occurred there. By contrast, the underlying controversy here concerns a property insurance claim that arose from events occurring in New York and involving a policy of insurance issued in New York. Thus, *Ford* actually reinforces why Delaware lacks personal jurisdiction over Strathmore in this case.

300 West also argued that Strathmore, by issuing the Policy to 300 West, “consented to jurisdiction here.” A-398. Yet, 300 West has offered no legal authority or other support for this sweeping proposition. Here, again, 300 West improperly focuses on its own connections to Delaware rather than Strathmore’s activities in Delaware. *See Walden*, 571 U.S. at 289 (“[I]t is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”).

The relatedness requirement serves as a well-established and crucial check on the jurisdictional power of courts. The implication of 300 West’s radical position here is that Delaware may exercise personal jurisdiction over any insurance company (or any other business or individual) that conducts any business in the State, whether or not the claims in the lawsuit are connected to those business activities. This intentionally blurs the distinction between general jurisdiction and specific jurisdiction. 300 West’s position is unreasonable and motivated by



inappropriate forum shopping and should be rejected by this Court as inconsistent with well-established legal precedent.

### **III. The Superior Court Appropriately Rejected 300 West’s Request for Jurisdictional Discovery**

#### **A. Issue Presented**

Did the Superior Court abuse its discretion when it rejected 300 West’s request for jurisdictional discovery, where no set of discoverable facts could establish personal jurisdiction over Strathmore for the causes of action in the Complaint?

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

This Court reviews a Superior Court’s pretrial rulings, including whether to grant jurisdictional discovery, under an abuse of discretion standard. *Coleman v. PriceWaterhouseCoopers, LLC*, 902 A.2d 1102, 1106 (Del. 2006). “[T]he decision to grant jurisdictional discovery is discretionary.” *Partners & Simons, Inc. v. Sandbox Acquisitions, LLC*, 2021 WL 3161651, at \*9 (Del. Ch. July 26, 2021) (quotations and citations omitted). To merit jurisdictional discovery, plaintiffs must show that their factual allegations establish with reasonable particularity the possible existence of requisite contacts.” *Id.* (quotations and citations omitted). “[T]here must be at least some indication that this particular defendant is amenable to suit in this forum.” *Id.* (quotations and citations omitted). A plaintiff cannot use jurisdictional discovery to simply “fish for a possible basis for this court’s jurisdiction.” *Id.* (quotations and citations omitted).

### C. Merits

The Superior Court properly exercised its discretion in denying 300 West's request for jurisdictional discovery. In its brief in response to Strathmore's motion to dismiss, 300 West requested discovery "relating to Strathmore's knowledge of 300 West's connections to Delaware." Rejecting this request in its decision granting Strathmore's motion to dismiss, the Superior Court held that such discovery "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."

300 West now argues on appeal that it also needs jurisdictional discovery to probe "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 Delaware's website or apps originating from Delaware as well as discovery of any other insurance policies sold to 300 West 22nd." Appellant's Br. at 27. This argument suffers from multiple flaws.

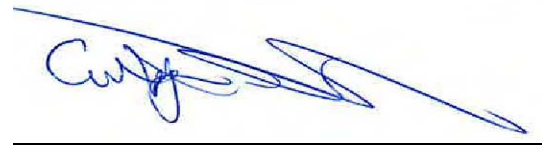
As an initial matter, the argument is waived because 300 West failed to raise it in the Superior Court. *See Mack*, 2020 WL 7774604, at \*16. It also ignores the affidavit submitted by Strathmore in support of its motion to dismiss, in which

Strathmore affirms that it “does not maintain an office in Delaware or own or use real property in Delaware,”; “Strathmore does not employ anyone in Delaware,”; and “Strathmore is licensed to transact business in Delaware, but the amount of business it conducts in Delaware is extremely limited relative to its business in other jurisdictions.” A-376, ¶¶5-9. Finally, the jurisdictional discovery 300 West seeks on appeal is futile, because it is not directed to the discovery of facts that could impact or alter the personal jurisdiction legal analysis. 300 West cannot establish personal jurisdiction over Strathmore here because there is no connection between the causes of action in the Complaint and Strathmore’s Delaware business transactions. None of the topics identified by 300 West for jurisdictional discovery can or will change that.

## CONCLUSION

The Superior Court correctly held that neither 10 *Del. C.* § 3104(c)(1) nor § 3104(c)(6) confer jurisdiction over Strathmore for the causes of action in the Complaint. Therefore, the Superior Court's dismissal of the Complaint under Super. Ct. Civ. R. 12(b)(2) should be affirmed. Affirmance is also justified for the independent reason that the exercise of personal jurisdiction over Strathmore for the claims asserted in the Complaint would offend Due Process. Finally, the Superior Court properly rejected 300 West's request for jurisdictional discovery, because there are no potentially discoverable facts that could reasonably support 300 West's argument for personal jurisdiction against Strathmore in this case.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing answering brief of Defendant-Appellee Strathmore Insurance Company complies with the typeface requirement of Rule 13(a)(i), because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 365 ProPlus Version 1808.

I hereby further certify that the foregoing answering brief of Defendant-Appellee Strathmore Insurance Company complies with the type-volume limitation of Rule 14(d)(i), because it contains 8,380 words, as determined using the word-count feature of Microsoft Word 365 ProPlus Version 1808.



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