IN THE

New Hampshire Supreme Court

Case No. 2022-0155

SCHLEICHER AND STEBBINS HOTEL, LLC, ET AL.,
Plaintiffs-Appellees,
v.
STARR SURPLUS LINES INSURANCE COMPANY, ET AL.,
Defendants-Appellants.

Appeal from the Merrimack County Superior Court
Case No. 217-2020-CV-00309

AMICUS BRIEF OF AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF APPELLANTS AND REVERSAL

David A. Vicinanzo (NH Bar No. 9403)
James Hatem (NH Bar No. 8795)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101
Telephone: 603-628-4000
dvicinanzo@nixonpeabody.com
jhatem@nixonpeabody.com

Attorneys for Amicus Curiae
American Property Casualty Insurance Association

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INTEREST OF AMICUS CURIAE

American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition to benefit consumers and insurers, and its member companies represent nearly 60 percent of the U.S. property-casualty insurance market, including 67 percent of the commercial property insurance market. On important issues to the property and casualty insurance industry and marketplace, APCIA files amicus briefs in significant cases before federal and state courts, including in New Hampshire. *See Appeal of Panaggio*, No. 2019-0685, 2020 WL 12800528 (N.H. Aug. 4, 2020). This advocacy allows APCIA to share its broad national perspective with the judiciary on matters that shape and develop New Hampshire law.

The issues in this and similar cases pending in courts nationwide arising from coronavirus-related business income insurance claims will affect APCIA's members, their policyholders, and the property insurance marketplace. APCIA's unique national viewpoint will prove useful to the Court in analyzing the significant issues before it.

SUMMARY OF ARGUMENT

First, the history and purpose of commercial property insurance policies do not support the trial court's decision and

established New Hampshire law on the meaning of "direct physical loss of or damage to property" in policies like the one issued by Appellants. Commercial property insurance policies with business interruption coverage, such as the policy here, do not—and were never intended to—provide coverage for economic losses untethered to physical loss of or physical damage to property.

Second, public policy considerations support enforcing the insurance contracts' straightforward terms. Funding for distressed businesses, like Appellees, should come from government-backed pandemic recovery solutions, not efforts to force property insurers to pay for extracontractual economic losses despite the limitations of their contractual obligations. Imposing a new and retroactive extracontractual risk on insurers would threaten insurer solvency and harm New Hampshire's insurance marketplace. Ignoring the plain language of these policies to adopt the policy interpretation urged by Appellees would be a sweeping expansion of insurance coverage without any manageable bounds.

Third, *every* appellate court to decide this issue disagrees with the trial court: the coronavirus does not cause the type of distinct and demonstrable changes to property that are required to trigger the direct physical loss of or damage to property provision. This Court should not be the first and only appellate

court in the nation to hold otherwise. Appellees presented no evidence in their summary judgment motion of "direct physical loss of or damage to property." Appellees urge this Court to ignore the unambiguous policy language and find coverage for purely economic losses. Under Appellees' approach, any business closure or reduction relating to the alleged presence of any substance posing a potential human health risk could trigger coverage under property insurance policies that require "direct physical loss of or damage to property."

Thus, this Court should reverse the trial court's decision.

ARGUMENT

Over 600 courts nationwide, including every appellate court, disagree with the trial court's decision that COVID-19 related claims for business income losses meet the requirement for physical loss or physical damage under business owners' property insurance policies such as Appellants' policies. As every appellate court to address this issue recognizes, no amount of artful pleading can convert these claims for purely economic losses into claims for physical loss or physical damage to covered property insured by a *property* insurance policy. There must be some physicality to the loss or damage of property, but an "[e]vanescent presence of a harmful airborne substance that will quickly dissipate on its own, or surface-level contamination that can be removed by simple cleaning, does not physically alter or

affect property" and therefore does not constitute "direct physical loss of or damage to property." *Verveine Corp. v. Strathmore Ins. Co.*, 184 N.E.3d 1266, 1276 (Mass. 2022) (citations omitted). Appellees do not demonstrate that the virus caused a physical alteration or destruction to the properties or required any repair or replacement of any property. In the end, enforcing plain insurance policy terms is important to the public and to policyholders, as well as to insurers and reinsurers, because it is essential to the viability of the insurance marketplace.

I. THE HISTORY AND PURPOSE OF COMMERCIAL PROPERTY POLICIES SUPPORT HOLDING THAT PURELY ECONOMIC LOSSES DO NOT CONSTITUTE DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY.

Historically, property insurance insured against the risk of fire for ships, buildings, and commercial property when most structures were wooden. 10A *Couch on Insurance*, § 148.1 (3d ed. 2021); *see also* 4 Philip L. Bruner & Patrick J. O'Connor, Jr., *Bruner & O'Connor Construction Law* § 11:418 (Aug. 2021) (explaining how property insurance developed in London after the Great Fire of 1666). Over time, commercial property coverage expanded to include loss arising from other perils resulting in damage to or loss of property, such as theft, storms, and riots.

So-called "all risk"[1] or open peril property insurance used today developed out of marine insurance that covered losses caused by the sea. In property policies, this coverage has long been "limited to fortuitous physical loss from external causes." John Henry Magee & Oscar N. Serbein, *Property & Liability Insurance* 61-62 (4th ed. 1967). This type of insurance covers property, such as an insured's building or its personal property (*e.g.*, equipment, furniture), against risks of direct physical loss or damage. In other words, the insured's "*operations* are not what is insured—the building and the personal property in or on the building are." *Real Hosp., LLC v. Travelers Cas. Ins. Co. of Am.*, 499 F.Supp.3d 288, 296 (S.D. Miss. 2020). "Even when called 'all-risk' policies, as these policies sometimes are, they still cover only risks that lead to tangible 'physical' loss or damages, say by fire, water, wind, freezing and overheating, or vandalism." *Santo's Italian Café LLC v. Acuity Ins. Co.*, 15 F.4th 398, 403 (6th Cir. 2021) (citations omitted).

The requirement of a direct physical loss or physical damage to property is the linchpin for coverage under property policies such as Appellants' policies. As the Sixth Circuit explained, "direct physical loss" or "direct physical damage" "is the North Star of [a] property insurance policy from start to finish." *Id.* at 402.

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[1] "All risk" is a description or category; it is not the policy's name. Indeed, the term "all risk" does not appear in these policies.

When purchasing property insurance, a business can add Business Income and Extra Expense coverage. Business Income and Extra Expense coverage provides another layer, secondary to and dependent on direct physical loss or damage to property at the insured premises that requires repair or replacement. *Id.* at 400. This coverage is for "risks that arise secondarily to damage or loss of property" and provides another coverage when, for example, a fire damages an insured property, requiring the business to suspend operations. 10A *Couch on Ins.* § 148:1. In that case, certain losses of business income and extra expenses would be covered, such as renting a temporary office during the "period of restoration," while the property damage is being repaired, subject to the policy's terms and only if direct physical loss of or damage to the insured property caused the losses.

As other courts have held, risks of nonphysical harm and its consequences, such as business income losses caused by voluntary closures and governmental regulatory actions unrelated to physical harm to property, are outside the boundaries of property coverage. *See, e.g.*, *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 892 (9th Cir. 2021). Underscoring that "there must be some physicality to the loss or damage of property," the Eighth Circuit held that "[p]roperty that has suffered physical loss or physical damage requires restoration." *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th

1141, 1144 (8th Cir. 2021). Thus, "[t]he policy cannot reasonably be interpreted to cover mere loss of use when the insured's property has suffered no physical loss or damage." *Id.* (citations omitted). Coverage does not exist for the risks of economic losses in a pandemic like COVID-19 under the plain language of property policies such as Appellants'.

Appellees allege that their reduced operations, undertaken in response to New Hampshire's and Massachusetts' reduced capacity orders to slow the spread of the coronavirus, prevented them from using their properties. To be clear, Appellees suffered no physical loss or damage; neither the hotels nor their furniture have become unrecoverable. Appellees do "not identify a 'distinct, demonstrable, physical alteration of the property,'" nor do they allege they were "permanently dispossessed" of their properties. *Mudpie*, 15 F.4th at 892 (citation omitted); *see also Inns by the Sea v. Cal. Mut. Ins. Co.*, 71 Cal.App.5th 688, 705 (2021) ("despite [the policyholder's] allegation that the COVID-19 virus was present on its premises, it has not identified any direct physical damage to property that caused it to suspend its operations").

Appellees do "not even attempt to describe how either the presence of the virus or the resulting closure orders physically altered [their] property." *Sandy Point Dental, P.C. v. Cincinnati Ins. Co.*, 20 F.4th 327, 335 (7th Cir. 2021). Even though Appellees may not have been able to use the hotels for their preferred and

most lucrative use, they were still “at all times” able to use the hotels for other purposes “consistent with the closure orders.” *Id.* The fact is that Appellees insured their individual property, not the “ideal use of that property.” *Id.*

Long before the COVID-19 pandemic, courts made clear that a property policy like Appellants’ “clearly and unambiguously provides coverage only where the insured’s property suffers direct physical damage.” *Roundabout Theatre Co. v. Cont’l Cas. Co.*, 751 N.Y.S.2d 4, 8 (N.Y. App. Div. 2002). In *Roundabout Theatre*, a construction accident prompted New York City to close the street outside a theatre, which was forced to cancel its performances—although the theatre itself suffered no direct physical loss or damage. The New York Appellate Division held that “the only conclusion that can be drawn is that the business interruption coverage is limited to losses involving physical damage to the insured’s property[.]” *Id.*

The court rejected the argument that “loss of use of” the insured premises could trigger coverage, finding that because the theatre did not suffer physical damage (or physical loss, like theft), it was not entitled to coverage. *Id.* The court also noted that the policy language requires ‘direct physical loss or damage to the [insured’s] property.” *Id.* “The plain meaning of the words ‘direct’ and ‘physical’ narrow the scope of coverage and mandate

the conclusion that losses resulting from off-site property damage do not constitute covered perils under the policy[.]" *Id.*

The court said that under the policy, the measure of recovery would be limited to the time reasonably necessary to "rebuild, repair or replace" the lost or damaged property, emphasizing "that coverage is limited to instances where the insured's property suffered direct physical damage." *Id.* at 8–9 (emphasis removed). To find otherwise would render the provision "meaningless since the insured obviously has no duty to repair a third party's property." *Id. Roundabout Theatre* makes clear that state appellate courts follow the history and purpose of property coverage explained above. Applying *Roundabout Theatre*, the New York Appellate Division reached the same result in an essentially identical COVID-19 case. *Consol. Rest. Operations, Inc. v. Westport Ins. Corp.*, 205 A.D.3d 76, 82 (N.Y. App. Div. 2022) ("Were we to accept that an economic loss, for purposes of the all-risk policy plaintiff purchased from defendant, without any attendant physical, tangible damage to the property is sufficient, it would render the term 'physical' in the policy meaningless.") (citation omitted).

Business interruption coverage helps businesses recover when they cannot operate because property has been physically lost or damaged by a covered cause of loss. Just as there was no coverage for the business income losses from canceled theatre

performances in *Roundabout Theatre*, property policies such as Appellants' do not cover Appellees' economic losses from its decreased bookings absent physical harm to property.

II. FAILING TO ENFORCE THE BOUNDARIES OF PROPERTY COVERAGE WOULD HARM NEW HAMPSHIRE'S INSURANCE MARKETPLACE, TO THE DETRIMENT OF INSURERS, POLICYHOLDERS, THE PUBLIC, AND THE COURTS.

Appellees and the trial court contend property coverage is triggered whenever a business loses the functional use of its property due to the alleged presence of an evanescent substance potentially harmful to human health, without any physical alteration or permanent dispossession of property – or indeed without any physical effect on the property at all. Under this approach, potentially any regulation that limits a business' operations would trigger coverage. For instance, a change in a city noise ordinance setting earlier closing hours for bars and taverns would cause those businesses to lose the functional use of their property for the hours their alcohol sales are now prohibited. A regulation on disability access that requires businesses to maintain wider aisles and clearance for exits would deprive these businesses of the functional use of areas of their property. Similarly, a fire code regulation that sets a new maximum occupancy for a designated space would reduce the functional use of, for instance, a hotel's breakfast area, just as

COVID-related occupancy ratios impacted the number of people allowed to congregate in hospitality establishments for health and safety reasons.

It is unsurprising that every appellate court to date addressing COVID-related business interruption claims has declined to find coverage by substituting a functional use test for the policy requirement of direct physical loss or damage. Appellees' argument that this Court should find direct physical loss or damage to property virtually any time that the functional use of a property is impaired contradicts longstanding property insurance precedent. For example, before COVID-19, courts repeatedly rejected coverage claims for economic business losses when governments issued orders as preventive measures rather than because of physical damage to property. *See, e.g.*, *United Air Lines, Inc. v. Ins. Co. of State of Pa.*, 439 F.3d 128, 129 (2d Cir. 2006) (airline's lost earnings because of governmental closure of Washington National Airport after September 11 attacks meant to prevent future terrorist acts was not result of direct physical loss or damage to Pentagon); *Paradies Shops, Inc. v. Hartford Fire Ins. Co.*, No. 1:03-CV-3154-JEC, 2004 WL 5704715, at *7 (N.D. Ga. Dec. 15, 2004) (concluding airline ground stop order "designed to prevent, protect against, or avoid future damage is not a 'direct result' of already existing property loss or damage"); *Bros., Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611, 614 (D.C.

1970) (finding no coverage when curfew imposed after riots was not because of damage or destruction to property and merely restricted business hours and alcohol sales).

The interpretation Appellees offer would also lead to absurd results outside the context of governmental regulatory action that restricts access to or use of business premises. A passing rainstorm impairs the functional use of an outdoor patio area for dining; high winds may temporarily close an outdoor rooftop observation area—both would lead to lost income. Appellees' desire to substitute a new, functional use test for coverage eliminates the core boundaries that have long defined property insurance: there must be direct physical loss or damage to property. If the Court does not give effect to the requirement of direct physical loss or damage, the result is an unworkable scenario that would ultimately not serve the interests of policyholders, insurers, or the public. It would leave policyholders and insurers without certainty regarding the scope of coverage afforded, and it would burden courts with the litigation over the boundaries of coverage that inevitably would follow.

To impose this type of risk on Appellants would violate the plain language of their policies. It would also distort the insurance mechanism.[2] Nationwide, small business losses from

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[2] *See generally* NAIC, *Cycles and Crises in Property/Casualty Insurance: Causes and Implications for Public Policy* (1991), *available*

the COVID-19 pandemic have been estimated at between $255 billion and $431 billion *per month*.[3] By contrast, the total property casualty industry surplus, for companies of all sizes, is about $800 billion to protect auto, home, and business policyholders from all types of future insured losses.[4] Insurers reserve these funds to pay insured losses caused by tornadoes, wildfires, and other daily events throughout the country.[5] The National Association of Insurance Commissioners ("NAIC") has explained that requiring insurers to cover businesses' uninsured economic losses from the pandemic "would create substantial solvency risks for the [insurance] sector[.]"[6] Rating agencies agree with the NAIC on the threat to the insurance marketplace if courts and governments imposed coverage for these COVID-19 economic losses on property policies contrary to their terms.[7]

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at https://www.naic.org/documents/prod_serv_special_cyc_pb.pdf (last visited May 24, 2022).

[3] APCIA, *APCIA Releases Update to Business Interruption Analysis* (Apr. 28, 2020), *available at* https://www.apci.org/media/news-releases/release/60522/ (last visited May 24, 2022).

[4] *Id.*

[5] *Id.*

[6] NAIC, *NAIC Statement on Congressional Action Relating to COVID-19* (Mar. 25, 2020), *available at* NAIC-Statement-on-Congressional-Action-Relating-to-COVID-19.pdf (campbell-bissell.com) (last visited May 24, 2022).

[7] *See, e.g.*, *Best's Commentary: Two Months of Retroactive Business Interruption Coverage Could Wipe Out Half of Insurers' Capital*, Business Wire (May 5, 2020, 11:07 AM), *available at* https://www.businesswire.com/news/home/20200505005723/en/Best%E2%80%99s-Commentary-Two-Months-of-Retroactive-Business-

Many businesses across the nation experienced economic strain because of the coronavirus and government ordered closures. Funding for businesses in duress should, and did, come from government-backed pandemic recovery solutions, not efforts to force property insurers to pay for economic losses despite the contractual limitations of their obligations. Governmental relief efforts have provided trillions of dollars to businesses suffering setbacks from the pandemic through laws providing forgivable loans and other relief to American businesses. *See* Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146 (2020); Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021). Solutions for the economic toll the coronavirus had on businesses should come from government programs such as these, not trying to shoehorn claims into insurance policies that do not cover them.

Interruption-Coverage-Could-Wipe-Out-Half-of-Insurers%E2%80%99-Capital (last visited May 24, 2022); *Credit FAQ: How COVID-19 Risks Factor Into U.S. Property/Casualty Ratings*, S&P Glob. Ratings (Apr. 27, 2020), *available at* https://www.spglobal.com/ratings/en/research/articles/200427-credit-faq-how-covid-19-risks-factor-into-u-s-property-casualty-ratings-11454312 (last visited May 24, 2022).

III. NEITHER LOSS OF USE NOR THE PRESENCE OF THE CORONAVIRUS AT THE PROPERTY IS DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY.

A. The Appellees Did Not Suffer Direct Physical Loss of or Damage to Property.

Every appellate court that has decided this issue has held that neither the loss of use of property nor the alleged presence of the coronavirus can constitute "direct physical loss of or damage to property," because there is no physical loss of or alteration of property. *See, e.g.*, *SA Palm Beach, LLC v. Certain Underwriters at Lloyd's London*, 32 F.4th 1347 (11th Cir. 2022) ("COVID-19 did not cause any material alteration of the insureds' properties. It did require that the properties be cleaned to eliminate the particles of the virus, but . . . that does not constitute a 'physical loss of or damage to' the properties.") (citing cases, including *Ind. Repertory Theatre v. Cincinnati Cas. Co.*, 180 N.E.3d 403, 408–11 (Ind. Ct. App. 2022)); *United Talent Agency v. Vigilant Ins. Co.*, 77 Cal.App.5th 821, at *8 (2022) ("Many courts have rejected the theory that the presence of the virus constitutes physical loss or damage to property."); *Uncork & Create LLC v. Cincinnati Ins. Co.*, 27 F.4th 926, 933 (4th Cir. 2022) ("[N]either the closure order nor the Covid-19 virus caused present or impending material destruction or material harm that physically altered the covered property requiring repairs or replacement so that they could be used as intended.").

This result also follows the plain meaning of the words used in the policy as understood by a layperson. As one court explained:

> [A] person of ordinary understanding would define "physical damage" to be a perceptible, material harm to property. The same person would define "physical loss" to be a material, perceptible destruction or ruin of property. In other words, a person of ordinary understanding would read the policy to cover a spectrum of property damage that ranges from lesser harm (*i.e.* physical damage) to total ruin (*i.e.* physical loss). And that person would understand that the property damage must be "physical"—*i.e.*, material and perceptible, not theoretical or invisible.

Woolworth LLC v. Cincinnati Ins. Co., 535 F.Supp.3d 1149, 1153 (N.D. Ala. 2021), *appeal voluntarily dismissed*, No. 21-11847-CC, 2021 WL 3870691, at *1 (11th Cir. June 16, 2021).

The court below erroneously relied on *Mellin v. Northern Security Insurance Co.,* 167 N.H. 544 (2015), to reach a different result. However, neither *Mellin,* nor any of the handful of other cases relied on by Appellees, supports coverage here. As *Mellin* itself recognized, "the term 'physical loss' should not be interpreted overly broadly," and the term "requires a distinct and demonstrable alteration of the insured property." *Id.* at 549–50 (citation omitted). In *Mellin*, the pervasive odor of cat urine, perceived by the sense of smell, resulted in a letter from the building/health inspector advising that the owners "have a health problem existing" and the odor "is such that [they] need to move

out of[ ] the apartment temporarily and have a company terminate the odor." *Id.* at 546. The remediation efforts were unsuccessful. *Id.* In other cases that Appellees cited below, buildings were affected by pervasive odors, gases, and particulate matter, requiring extensive remediation. *See Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, No. 2:12-cv-04418 (WHW)(CLW), 2014 WL 6675934, at *6 (D.N.J. Nov. 25, 2014) (ammonia leak requiring evacuation and extensive remediation); *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 615 N.W.2d 819, 823 (Minn. 2000) (release of asbestos fibers required removal of building components costing over $4 million); *Farmers Ins. Co. of Or. v. Trutanich*, 123 Or. App. 6, 11-12, 858 P.2d 1332, 1336 (1993) (methamphetamine cooking physically damaged building components). Unlike the scenario those cases and in *Mellin,* here any potential presence of viral particles could be eliminated by cleaning, as Appellees admitted, and there was no demonstrable change to the property.

Here, the alleged presence of the coronavirus requires no repair or remediation; it can be removed by routine cleaning. A condition that can be eliminated by routine cleaning, which is the case with viruses like the coronavirus, is insufficient to establish that the property is "unusable." *See, e.g., Gregory Packaging*, 2014 WL 6675934, at *4 (due to ammonia leak, evacuation of premises and surrounding one-mile radius, along with outside

environmental clean-up service required to remediate the facility and to return it to a safe condition). Coverage cannot be found here because "[t]he novel coronavirus has no effect on the physical premises of a business." *Uncork & Create LLC v. Cincinnati Ins. Co.*, 498 F. Supp. 3d 878, 882 (S.D. W.Va. 2020), *aff'd,* 27 F.4th 926 (4th Cir. 2022). Property insurance policies "do not cover losses indirectly caused by a virus that injures people, not property." *Santo's*, 15 F.4th at 403.

B. The Trial Court's Decision Strays from a Reading of the Policy as a Whole.

Appellees also fail to show how when the policy is read as a whole, their position can plausibly be squared with the policy's "period of restoration," which is the period for Business Income coverage when coverage exists. *Cf. Wakonda Club v. Selective Ins. Co. of Am.*, No. 21-0374, 2022 WL 1194012, at *6 (Iowa Apr. 22, 2022) ("Our conclusion that there must be a physical element to trigger the Business Interruption coverage is further supported by reviewing the Coverage Part as a whole."). This phrase sheds "additional light on the term's meaning." *Georgetown Dental, LLC v. Cincinnati Ins. Co.*, No. 1:21-cv-00383-TWP-MJD, 2021 WL 1967180, at *8 (S.D. Ind. May 17, 2021).

The period of restoration provision "clearly implies that the property has not experienced physical loss or damage in the first place unless there needs to be active repair or remediation

measures to correct the claimed damage or the business must move to a new location." *Verveine*, 184 N.E.3d at 1275 (citing *Sandy Point Dental*, 20 F.4th at 333); *see also United Talent Agency*, 77 Cal.App.5th 821, at *7 (citing *Indiana Repertory Theatre*, 180 N.E.3d at 410).

Appellees' property does not need to be "repaired, rebuilt or replaced." There is a unanimous view by appellate courts that "direct physical loss of or damage to property" is not satisfied by coronavirus contamination because "[l]ike the dust and debris in *Mama Jo's*, COVID-19 did not cause any material alteration of the insureds' properties," even if the property required cleaning to eliminate the virus particles. *SA Palm Beach*, 32 F.4th at 1347 (citing *Mama Jo's Inc. v. Sparta Ins. Co.*, 823 F. App'x 868, 879 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1737 (2021)).

CONCLUSION

This Court should reverse the trial court's decision.

May 25, 2022

By:/s/ David A. Vicinanzo

David A. Vicinanzo (N.H. Bar 9403)
James Haten (N.H. Bar 8795)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101
Telephone: 603-628-4000
dvicinanzo@nixonpeabody.com
jhatem@nixonpeabody.com
Attorney for Amicus Curiae American Property Casualty Insurance Association

CERTIFICATE OF WORD COUNT

Pursuant to Rule 26 of the New Hampshire Supreme Court, I certify that this brief complies with the 9,500-word limit imposed by Rule 16(11). The amicus brief contains 4,131 words, exclusive of pages containing the table of contents and table of citations.

Dated: May 25, 2022 *Is/ David A. Vicinanzo*

CERTIFICATE OF SERVICE

I am filing this amicus brief electronically. I certify that a copy of this amicus brief is being or has been served on all other parties or their counsel, in accordance with the rules of the Supreme Court, as follows: I am serving registered e-filers through the court's electronic filing system.

Dated: May 25, 2022 *_/s/ David A. Vicinanzo_________*