
**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**
Case No. 2022-0155

SCHLEICHER AND STEBBINS HOTELS, 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 NEW HAMPSHIRE MEDICAL SOCIETY

Michael Perez (NH Bar #17476)
PEREZ LAW
42 Arlington Street
Medford, MA 02155
Telephone: (781) 819-3494
mike@perez-law.com

Attorneys for Amicus Curiae New Hampshire Medical Society

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INTEREST OF AMICUS CURIAE

Founded in 1791, the New Hampshire Medical Society (the “Society”) is a non-profit organization dedicated and committed to advocating for patients, physicians, the medical profession and health-related rights, responsibilities and issues for the betterment of public health in the Granite State. Uniting together as physicians and healthcare advocates with one voice, the Society plays an important role in helping to shape the future of medicine.

The Society is the largest physician membership organization in the State of New Hampshire, representing the concerns of all medical specialties and regions across the state as well as patient interests through advocacy and education. The Society’s mission is and always has been to bring together physicians to advocate for the well-being of their patients, for their profession and, most importantly, for the betterment of the public health.

On behalf of its members, the Society is also substantially concerned with matters affecting the practice of physicians and matters affecting the relationship between physicians and their patients. One of the Society’s core missions is the fostering of trust and confidence between its thousands of physician members and their patients because such trust fosters the public health of all the people of this state.

The Society takes no position on the merits of the specific insurance dispute between the parties that has given rise to this appeal. However, the Society believes it can provide this Court with a perspective distinct from

either of the parties and grounded in science, which may assist this Court in determining the issues before it in this case.

This case concerns the COVID-19 pandemic, one of the greatest threats to the public health of the people of this state in the past one hundred years. Specifically, the issue before this Court centers on whether the presence of the SARS-CoV-2 virus that causes the deadly communicable disease COVID-19 inside a property and its consequent effects can cause “direct physical loss of or damage” to that property.

The insurance coverage issue is beyond the Society’s mission but the statements by the insurer-appellants (the “Insurers”) and their supporting amicus curiae, the insurance industry-funded American Property Casualty Insurance Association (“APCIA”) – repeatedly minimizing the seriousness of COVID-19 and inaccurately claiming SARS-CoV-2 can be removed from a property with simple surface cleaning – strike at the heart of the Society’s mission.

Simply put, these statements are not grounded in science and utterly ignore the actual scientific understanding of COVID-19, its transmission and the inability to completely remove SARS-CoV-2 from a property with routine surface cleaning.

The Society has an interest in this case because one of the greatest threats to physician-patient trust and to the public health of the people of New Hampshire is the propagation of false information, or junk science, minimizing the grave seriousness of COVID-19 and its causative virus, SARS-CoV-2 (hereinafter “COVID Denial”). The briefs of Insurers and the APCIA, unfortunately, spread exactly the kind of scientifically inaccurate information that cause our physician members’ patients to deny

the seriousness of COVID-19, ignore the medical advice of our members, and fail to protect themselves against this deadly virus.

A finding by this Court embracing the theories of the Insurers and the APCIA, which would become binding authority in all New Hampshire state and federal cases on the science of COVID-19 (whether or not related to business interruption insurance coverage), would threaten the public health in New Hampshire. Accordingly, the Society has a strong interest in this case.

COVID Denial has cost, and continues to cost, many lives. Given the inaccuracy of the statements in the Insurers' and the APCIA's briefs concerning the science of COVID-19 and SARS-CoV-2, the Society submits this brief to provide a scientific perspective on this important issue to assist this Court in deciding this case.

SUMMARY OF ARGUMENT

The briefs submitted to this Court by the Insurers and the APCIA are rife with scientifically unsupported statements minimizing the severity of COVID-19 and falsely proclaiming SARS-CoV-2 can be easily removed by surface cleaning or dissipation. Their statements are, at best, scientifically inaccurate, and frankly, are more accurately described as "junk science."

As the Society demonstrates in this brief, SARS-CoV-2 cannot be effectively removed from surfaces by routine or even extraordinary disinfection and such methods do not remove it whatsoever from the air – its number one transmission vector. Moreover, cleaning, disinfection and dissipation are ineffective at removing SARS-CoV-2 from any business

premises remaining open during this pandemic because the virus is continuously and repeatedly reintroduced into the premises.

The Insurers argue that the presence of the SARS-CoV-2 “does not render a structure uninhabitable.” That was not true in 2020 during the initial period of the emergence of COVID-19 before the advent of widely available vaccines and treatments when COVID-19 was often a death sentence for high-risk victims. During that time, the only way to avoid it was to shut down public property.

Nor, contrary to assertions by the Insurers and the APCIA, were essential businesses habitable or their property fully useful as they remained open as the virus raged. In fact, essential workers staffing those businesses were infected with, and died from, COVID-19 at rates much greater than the general public. In short, just because the government allowed a business to remain open did not mean it was habitable. Rather, the government decided that the political or economic reasons for the business staying open outweighed the often-grave risk to life and health.

Finally, the Insurers trivialize COVID-19 by comparing it to the common cold. Again, not so. The two are not comparable at all. The common cold does not render property uninhabitable or less usable and the common cold has never killed one million Americans or over 2,570 Granite Staters in the space of two years as COVID-19 has done. The Insurers’ attempts to equate the two is not only inaccurate but dishonors the memory of the fallen, including members of the Society who gave their lives attempting to save the lives of others from COVID-19.

In sum, the Society seeks to provide this Court with the accurate science on COVID-19 and SARS-CoV-2 to assist the Court in making its decision.

ARGUMENT

I. SARS-CoV-2 CANNOT BE REMOVED OR ELIMINATED WITH ROUTINE SURFACE CLEANING AND THE INSURERS' AND THE APCIA'S ARGUMENTS TO THE CONTRARY BREAK WITH SCIENCE.

The Insurers and the APCIA argue that the presence of SARS-CoV-2 inside a property can never cause “direct physical loss of or damage” to that property. That is an insurance coverage question on which the Society takes no position. But in advancing their argument, the Insurers and the APCIA break with scientific reality. They claim “Coronavirus can be removed by basic household cleaners.” (Insurer Br. at 20); (*accord* APCIA Br. at 23) (“any potential presence of viral particles could be eliminated by cleaning [SARS-CoV-2] can be eliminated by routine cleaning”). Not so.

As an initial matter, surface cleaning of SARS-CoV-2 is no panacea against COVID-19 transmission. In fact, the CDC released guidance stating that there is little evidence to suggest that routine use of disinfectants can prevent the transmission of Coronavirus from fomites (surfaces containing SARS-CoV-2) in community settings.¹ The CDC concluded that according to a more quantitative microbial risk assessment

¹ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited June 20, 2022).

study, “surface disinfection once- or twice-per-day had little impact on reducing estimated risks” of Coronavirus transmission.²

Moreover, SARS-CoV-2 cannot be removed by *routine* surface cleaning. A number of studies have similarly demonstrated that Coronavirus is “much more resilient to cleaning than other respiratory viruses so tested.”³

Studies have demonstrated that even *extraordinary* cleaning measures do not remove Coronavirus from surfaces. For example, a 2021 study by the largest hospital network in New York State demonstrated that even *after* trained hospital personnel used disinfection procedures in Coronavirus patient treatment areas, much of the virus *survived* in those areas – proving even intense, non-routine surface cleaning does not remove it from surfaces – let alone from the air.⁴ Stated simply, if even trained hospital workers using hospital-grade disinfectants could not remove all SARS-CoV-2, Lysol and a rag will not. As such, the Insurers’ and the APCIA’s assertion that routine cleaning removes SARS-CoV-2 from property has no basis in science and should not guide this Court’s decision.

² *Id.* (citing A. K. Pitol & T. R. Julian, *Community transmission of SARS-CoV-2 by fomites: Risks and risk reduction strategies*, ENV’T SCI. & TECH. LETTERS 8, 263-69 (2021)).

³ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170> (last visited June 20, 2022).

⁴ Zarina Brune et al., *Effectiveness of SARS-CoV-2 Decontamination and Containment in a COVID-19 ICU*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 5, 2479 (Mar. 3, 2021), <https://www.mdpi.com/1660-4601/18/5/2479> (last visited June 20, 2022).

II. THE INSURERS’ OVEREMPHASIS ON SURFACE CLEANING IGNORES COVID-19’S PRIMARY TRANSMISSION VECTOR – THE PRESENCE OF SARS-CoV-2 IN INDOOR AIR.

The Insurers’ surface cleaning arguments overemphasize the transmission of COVID-19 from virus on surfaces, also known as fomite transmission. This is an inaccurate and dangerous mischaracterization of how SARS-CoV-2 spreads. If surface cleaning were sufficient, over one million of our fellow Americans⁵ and over 2,570 of our fellow Granite Staters⁶ would not have perished from COVID-19.

In fact, it is undisputed that airborne – not surface – transmission is the primary transmission vector for SARS-CoV-2. This is not conjecture. This is the learned opinion of the World Health Organization (“WHO”), the Centers for Disease Control (“CDC”) and the scientific community. For example, on April 5, 2021, the CDC concluded that:

- “[t]he principal mode by which people are infected with SARS-CoV-2 ... is through exposure to respiratory droplets carrying infectious virus”;
- “[i]t is possible for people to be infected through contact with contaminated surfaces or objects (fomites), but the risk is generally considered to

⁵ *United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction*, CDC (updated June 17, 2022), https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited June 20, 2022).

⁶ *Tracking Coronavirus in New York: Latest Map and Case Count*, N.Y. TIMES (updated June 20, 2022), <https://www.nytimes.com/interactive/2021/us/new-hampshire-covid-cases.html> (last visited June 20, 2022).

be low”; and

- “when a person with suspected or confirmed COVID-19 has been indoors, virus can remain suspended in the air for minutes to hours.”⁷

Scientific study after study eviscerates the Insurers’ (and certain courts’ at behest of insurers) overemphasis on surface cleaning and makes clear that the danger from COVID-19 transmission is and always has been from the presence of SARS-CoV-2 in the indoor air of buildings. Indeed, an investigation of over 7,000 COVID-19 cases found that *all* outbreaks involving three or more people occurred indoors.⁸ Every single one.

Airborne Coronavirus viral RNA has also been detected inside hospitals at distances over 50 meters from COVID-19 patients’ rooms.⁹ Moreover, the CDC published a research letter concluding that a restaurant’s air conditioning system triggered the transmission of SARS-CoV-2, spreading it to people who sat at separate tables downstream of the restaurant’s airflow.¹⁰ Moreover, one study detected SARS-CoV-2

⁷ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited June 20, 2022).

⁸ Hua Qian et al., *Indoor transmission of SARS-CoV-2*, 31 *INDOOR AIR* 3, 639-45 (May 2021), <https://pubmed.ncbi.nlm.nih.gov/33131151/> (last visited June 20, 2022).

⁹ Yuan Liu et al., *Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals*, 582 *NATURE* 7813, 557-60 (June 2020), <https://pubmed.ncbi.nlm.nih.gov/32340022/> (last visited June 20, 2022).

¹⁰ Jianyun Lu et al., *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020*, 26 *EMERGING INFECTIOUS DISEASES* 7 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited June 20, 2022); *see also* Keun-Sang Kwon et al., *Evidence of*

inside HVAC systems transmitted over 180 feet from its source.¹¹

Additionally, on May 7, 2021, the CDC issued a scientific warning of the risks of indoor airborne transmission of Coronavirus from aerosols at distances greater than six feet from the source, stating that “transmission of SARS-CoV-2 [i.e., Coronavirus] from inhalation of virus in the air farther than six feet from an infectious source can occur” and that:

With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances. These transmission events have involved the presence of an infectious person exhaling virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:

- **Enclosed spaces with inadequate ventilation or air handling** within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.

Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea, 35 J. KOREAN MED. SCI. 46, e415 (Nov. 30, 2020), <https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415> (last visited June 20, 2022).

¹¹ Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCI. REPS. 10, 19589 (Nov. 11, 2020), <https://www.nature.com/articles/s41598-020-76442-2> (last visited June 20, 2022).

- **Increased exhalation** of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g., exercising, shouting, singing).
- **Prolonged exposure** to these conditions, typically more than 15 minutes.¹²

Insurers will not dispute, nor can they, that no amount of surface cleaning, regardless of the vigor or chemicals used, removes SARS-CoV-2 from the air – its number one transmission vector. Indeed, neither the Insurers nor the APCA made such an argument or cited a single scientific study to that effect. As such, their arguments about surface cleaning are a red herring.

III. FAR FROM BEING “EVANESCENT,” THE PRESENCE OF SARS-CoV-2 IS PERSISTENT BECAUSE ITS CONTINUOUS REINTRODUCTION INTO BUSINESS PREMISES REMAINING OPEN TO THE PUBLIC RENDERS CLEANING, DISINFECTION OR DISSIPATION INEFFECTIVE AT REMOVING IT.

The Insurers argue that the presence of SARS-CoV-2 is “evanescent.” (Insurer Br. at 19). They argue, citing caselaw but *not one* scientific study, that the presence of SARS-CoV-2 in the indoor air of a property is, at most, temporary, and will simply disappear with the passage of time. (Insurer Br. at 20, 32, 35). Indeed, the Insurers’ primary cited authority, the U.S. Court of Appeals for the Seventh Circuit’s decision in *Sandy Point Dental, P.C. v. Cincinnati Ins. Co.*, 20 F.4th 327, 335 (7th Cir.

¹² *Scientific Brief: SARS-CoV-2 Transmission*, CDC (updated May 7, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fscience%2Fscience-briefs%2Fscientific-brief-sars-cov-2.html (last visited June 20, 2022).

2021), reached that conclusion on a motion to dismiss with no scientific testimony, no scientific studies and no scientific record whatsoever. *See id.* (holding that SARS-CoV-2 “may be wiped off surfaces using ordinary cleaning materials, and it disintegrates on its own in a matter of days.”). Had that court been informed by the science, it would have reached a different result.

SARS-CoV-2 is persistent. Given the ubiquity and pervasiveness of SARS-CoV-2, no amount of cleaning, disinfection or even the dissipation of SARS-CoV-2 with the passage of time, will protect an indoor space from reintroduction of the virus if the space is open to persons infected with COVID-19. Any one infected person who enters an indoor space and exhales millions of additional SARS-CoV-2 droplets and infectious aerosols into the air, fills the room air with aerosolized and hazardous SARS-CoV-2 that can be inhaled by others.

The continuous reintroduction of SARS-CoV-2 by infectious persons into a publicly open indoor space renders cleaning, disinfection and even dissipation over time ineffective and futile. None of these things, while they may mitigate the situation temporarily, eliminates the presence of SARS-CoV-2. As such, none of these things makes indoor property safe, habitable or fit for its intended use, especially with respect to the time period before the emergence of widely available vaccinations for COVID-19 and effective and available treatments for COVID-19.

The scientific facts and reality of SARS-CoV-2 in the Granite State could not be clearer: the physical invasion by deadly SARS-CoV-2 particles that spread COVID-19 is not a single discharge event, such as a pipe bursting and spilling a toxic substance into a room where, once the

valve is shut off, the substance can be cleaned and dissipated from the room.

On the contrary, due to its continuous reintroduction into businesses that remain open to the public, the physical invasion by deadly SARS-CoV-2 virions that spread COVID-19 into such a business is a continuous discharge event that does not stop. As such, even if cleaning and dissipation of a one-time SARS-CoV-2 invasion into the business were effective in removing the virus, SARS-CoV-2's continuous reintroduction into a business open to the public prevents a business owner from permanently removing the virus from the premises so that the building could be made safe for its intended use. It is akin to placing a pipe pumping fumes into a business premises with the valve stuck in the open position indefinitely – depriving the business owner of the opportunity to clean or dissipate the fumes.

Thus, business owners are not able to remove or eliminate SARS-CoV-2 from their property with routine or even extraordinary cleaning, disinfection, or dissipation. Rather, the only way to eliminate the presence of Coronavirus from property and prevent its continuous reintroduction is to close the property and bar the public from entering.

The COVID-19 pandemic presents the worst health crisis to strike this nation and our state in 100 years. The Insurers' attempt to trivialize it by calling SARS-CoV-2 "evanescent" – classic COVID Denial – does not comport with either scientific facts or reality of this pandemic.

IV. THE PRESENCE OF SARS-CoV-2 RENDERED PROPERTY UNINHABITABLE OR LESS FUNCTIONALLY USEFUL IN 2020 AS DEMONSTRATED BY THE ELEVATED COVID-19 INFECTION AND DEATH RATES OF ESSENTIAL WORKERS

The Insurers, citing yet another COVID-19 case decided on a demurrer (motion to dismiss), bereft of any scientific evidence or record, argue that the presence of the SARS-CoV-2 “does not render a structure uninhabitable.” (Insurer Brief at 19, 30) (citing *United Talent Agency v. Vigilant Ins. Co.*, 77 Cal.App.5th 821, 293 Cal.Rptr.3d 65 (Ct. App. Apr. 22, 2022)).

While that may very well be true in today’s world of June 2022 with the medical advancements of COVID-19 vaccines, monoclonal antibodies, anti-viral medications and other FDA-approved treatments for COVID-19, that was not true in 2020 during the initial and early period of the COVID-19 pandemic. The Court cannot apply today’s medical breakthroughs to the desperate, dark early days of the pandemic when none of those medical advancements existed and people were spraying bleach on their groceries in an attempt to combat SARS-CoV-2. Back then, COVID-19 was often a death sentence for high-risk groups and the only way to avoid COVID-19 was to shut down public property.

In an effort to show that SARS-CoV-2 does not render property uninhabitable, the Insurers argue that the appellee’s hotels housed “essential” workers. (Insurer Br. at 30). While the government did allow certain “essential” businesses to remain open during the early days of the pandemic in 2020, that did not mean those businesses were habitable. It meant only that the government determined there were economic or

political reasons that outweighed the risk of contracting COVID-19 that enabled those businesses to be open.

Indeed, one need look no farther than the dramatically elevated COVID-19 infection and death rates of essential workers in 2020, as compared to the general public, to see the costs of keeping essential businesses open and the proof that staying open for business does not mean habitable or fully usable.¹³ After the first wave of mass business closures in March and April of 2020, employees of so-called “essential businesses” that were eventually allowed to re-open or operate at reduced capacities (i.e., essential workers) were faced with elevated rates of infection when compared to the general public, demonstrating the presence of SARS-CoV-2 in their workplaces, and that such workplaces were unfit and unsafe for normal use (e.g., for people to be present).¹⁴ For example:

- One study found that 20% of essential grocery store workers tested positive for COVID-19, a much higher rate of infections than others in their surrounding communities¹⁵ and that those grocery store workers with interactions with the public tested positive for COVID-19 at a rate five times

¹³ The CDC defines essential workers to be those who conduct “operations and services in industries that are essential to ensure the continuity of critical functions in the United States.” See *Interim List of Categories of Essential Workers Mapped to Standardized Industry Codes and Titles*, CDC (updated Mar. 29, 2021), <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html> (last visited June 20, 2022).

¹⁴ Joanna Gaitens et al., *COVID-19 and Essential Workers: A Narrative Review of Health Outcomes and Moral Injury*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 4, 1446 (Feb. 4, 2021), <https://www.mdpi.com/1660-4601/18/4/1446> (last visited June 20, 2022).

¹⁵ *Id.*

greater than the general population.¹⁶

- Essential workers (e.g., liquor store employees) accounted for 87% of excess deaths in California¹⁷ and over 60% in New York City.¹⁸
- Nursing home residents accounted for at least 35% of all COVID-19 deaths in the United States as of March 2021 despite comprising less than 1% of the nation's population.¹⁹

Similar findings have been reported across various sectors of essential workers, including elevated rates of infection for emergency services personnel (e.g., firefighters, police), prison correctional officers, and transportation and factory workers, among others.²⁰ These findings disprove the Insurers' arguments that SARS-CoV-2 does not affect the habitability, safety, usability, or the functional use of property merely

¹⁶ Fan-Yun Lan et al., *Association between SARS-CoV-2 infection, exposure risk and mental health among a cohort of essential retail workers in the USA*, 78 OCCUPATIONAL ENV'T MED. 237-43 (Oct. 30, 2020), <https://oem.bmj.com/content/oemed/78/4/237.full.pdf> (last visited June 20, 2022).

¹⁷ Yea-Hung Chen et al., *Excess mortality associated with the COVID-19 pandemic among Californians 18-65 years of age, by occupational sector and occupation: March through November 2020*, 16 PLoS ONE 6, e0252454 (June 4, 2021), <https://pubmed.ncbi.nlm.nih.gov/34086762/> (last visited June 20, 2022).

¹⁸ *The plight of essential workers during the COVID-19 pandemic*, 395 LANCET 1587 (May 23, 2020), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2931200-9> (last visited June 20, 2022).

¹⁹ Artis Curiskis et al., *Federal COVID Data 101: Working with CMS Nursing Home Data*, ATLANTIC (Mar. 4, 2021), <https://covidtracking.com/analysis-updates/federal-covid-data-101-working-with-cms-nursing-home-data> (last visited June 20, 2022).

²⁰ *Id.*

because the government allowed businesses it determined were “essential” to remain open.

Would the Insurers (or anyone) tell the survivors of those deceased essential workers that those businesses where their deceased loved ones contracted COVID-19 were “habitable” or “safe” or fit for their intended use? In sum, that a business was allowed to remain open did not mean it was habitable.

V. CONTRARY TO THE INSURERS’ CALLOUS CLAIMS, COVID-19 IS NOT COMPARABLE TO THE COMMON COLD

Finally, the Insurers callously trivialize COVID-19, comparing it to the common cold. Particularly, they contend that while SARS-CoV-2 “is much more dangerous than the common cold for people, like other viruses, it does nothing to property.” (Insurer Br. at 32). Again, not so.

COVID-19 and the common cold are not remotely the same. The common cold is so named because it is common and has existed for some 200 years²¹ whereas COVID-19 emerged near the end of 2019. The common cold does not render property uninhabitable or less usable; has never killed over one million Americans and over 2,570 Granite Staters in the span of two years; has not overflowed hospital morgues, forcing hospitals to park refrigerated tractor trailer trucks in the parking lots to store the corpses of the many Americans who perished from COVID-19; and never poisoned the air of businesses to the point where those businesses

²¹ Miranda de Graaf et al., *Evolutionary dynamics of human and avian metapneumoviruses*, 89 JOURNAL OF GENERAL VIROLOGY 12 (Dec. 1, 2008), <https://www.microbiologyresearch.org/content/journal/jgv/10.1099/vir.0.2008/006957-0> (last visited June 21, 2022).

either shut down or operated at reduced capacities. The Insurers' attempts to equate COVID-19 with the common cold are not only inaccurate but dishonor the memory of the fallen, including members of the Society who gave their lives attempting to save the lives of their patients from COVID-19.

CONCLUSION

It is often said that someone is entitled to their own opinion but they are not entitled to their own facts. This is just such a case. The Insurers and the APCIA devote large portions of their briefs to COVID Denial –denying the severity of COVID-19, claiming surface cleaning removes it once and for all from a business premises, claiming SARS-CoV-2 is “evanescent” and that the virus does not render property uninhabitable. While those positions may be the Insurers' opinion, they are simply unmoored from any scientific facts. The science refutes each and every one of those positions. Their adoption by this Court would shatter public trust and confidence in medicine and in the physicians who compose the Society's members, imperiling the public health in this state.

The Society implores this Court to rely on the real science advanced by the Society in this brief – not the opinions found in the Insurers' and the APCIA's briefs – in rendering a decision in this case.

CERTIFICATE PURSUANT TO SUPREME COURT RULE 26 (7)

I certify that pursuant to Supreme Court Rule 26(7) that, based on the Microsoft Word count function, the total word count of this Brief, as defined by Supreme Court Rule 16(11), is 4,757.

Respectfully submitted,

NEW HAMPSHIRE MEDICAL SOCIETY

By their attorneys,

PEREZ LAW

Date: June 23, 2022

/s/ Michael Perez

Michael Perez, Esq. NH Bar #17476
42 Arlington St.
Medford, Massachusetts 02155
Phone: (781) 819-3494
mike@perez-law.com

CERTIFICATE OF SERVICE

I certify that on this 23rd day of June 2022, a copy of the foregoing was served via electronic service through the Court's electronic filing system.

/s/ Michael Perez

Michael Perez