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**SC Court of Appeals**

**Via Electronic Filing**

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
ctappfilings@sccourts.org

Re: *Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. v. Travelers Casualty and Surety Company, et al.*  
Appellate Case No. 2021-000648  
Notice of Supplemental Authority

Dear Ms. Kitchings:

We write on behalf of Appellants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Standard Fire Insurance Company (together “Travelers”) in the above-captioned appeal.

During oral argument on February 13, 2024, counsel for Respondent argued for the first time that the insurance policies Travelers allegedly issued to Starr Davis require all sums allocation, rather than pro rata allocation, because the policies define covered “bodily injury” as bodily injury that occurs during the policy period, “including death at any time resulting therefrom,” and that this “death at any time” language extends the protection of each policy to cover losses beyond the policy period.

Initially, Travelers notes that the Respondent abandoned this new argument by failing to raise it in his brief. *See I’On, LLC v Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (“Of course, a respondent may abandon an additional sustaining ground under the present rules—just as a respondent could under the former rules—by failing to raise it in the appellate brief.”).

Additionally, Travelers submits this letter pursuant to Rule 208(b)(7), SCACR, to advise this Court that multiple courts have expressly rejected this precise argument, including:

- *Liberty Mut. Fire Ins. Co. v. J&S Supply Corp.*, No. 13-CV-4784 (VSB), 2015 WL 13649824, at \*7 (S.D.N.Y. June 29, 2015) (“the fact that the [ ] Policy covers death at any time resulting from injury during the policy period does not change the fact that it

unambiguously provides for pro rata allocation of liability under New York law.”), reconsideration denied, 2017 WL 4351523 (S.D.N.Y. Sept. 29, 2017).

- *New England Insulation Co., Inc. v. Liberty Mut. Ins. Co.*, 988 N.E.2d 450, 454 (Mass. Ct. App. 2013) (rejecting argument that “the words ‘including death at any time resulting therefrom’ signify that each triggered [] policy will provide coverage, on a joint and several basis, for bodily injuries that occur, but do not necessarily end, during the policy period”).

Likewise, many other courts have rejected arguments for all sums allocation in interpreting policies with the same “death at any time” language for here, including, for example:

- *In re Wallace & Gale Co.*, 385 F.3d 820, 830–32 (4th Cir. 2004), as amended (Nov. 15, 2004) (adopting pro rata allocation in the context of a Travelers policy with “death at any time” language).
- *Danaher Corp. v. Travelers Indem. Co.*, 414 F. Supp. 3d 436, 451 (S.D.N.Y. 2019) (applying pro rata approach to Travelers policies with “death at any time” language).
- *Continental Cas. Co. v. Indian Head Indus., Inc.*, 666 Fed. Appx. 456, 459, 464-66 (6th Cir. 2016) (applying pro rata approach to policies with “death at any time” language).

We appreciate the Court’s consideration of this Notice of Supplemental Authority. If we can provide any additional materials or information, please do not hesitate to call on us.

Respectfully,

/s/ M. Todd Carroll

cc: Counsel of Record