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Nov 09 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

C.A. No: 2019-CP-40-06243
Appellate Case No. 2021-000648

Peter D. Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis
Company of S.C., Inc..... Respondents,

v.

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company;
The Standard Fire Insurance Company; St. Paul Fire and Marine Insurance Company;
The Employers' Fire Insurance Company; Southeastern Agency Group and M.I.A.
Company, Inc. individually and as successors to or f/k/a Merrimon Insurance Agency,
Inc.; Robert E. Aspray; Nell Ashworth, individually and as personal representative of the
Estate of Robert J. Ashworth; Betty C. D'Amico, individually and as Executor of the
Estate of Julian D'Amico, Jr.; Kayla Keith, individually and as the personal
representative of the Estate of Jerry W. Archer, Sr.; Richard L. Knight II, as personal
representative of the Estate of Teddy L. Knight, Sr., and Linda Knight, individually;
David D. Rollins; James W. Smith and Frances R. Smith; and Linda J. White,
individually and as personal representative of the Estate of Lubert R. White, Jr.,..... Defendants,

of which

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company
and The Standard Fire Insurance Company are the Appellants.

APPENDIX IN SUPPORT OF MOTION TO STRIKE PORTION OF RESPONDENTS' BRIEF
AND ENTRY ON RESPONDENTS' DESIGNATION OF MATTER

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Switch View

Starr Davis Company Inc , plaintiff, et al vs Hartford Accident And Indemnity Company , defendant, et al

Case Number:	2019CP4006243	Court Agency:	Richland County Common Pleas	Filed Date:	11/06/2019
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Jury
Status:	Appeal	Assigned Judge:	Toal, Jean Hoefer		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Aetna Casualty And Surety Company	NEF(09-15-2021 03:15:06 PM) Order/Signed Order/Protectio...	Filing		09/15/2021-16:09		
Aetna Casualty And Surety Company	Order/Signed Order/Protection from Court Appearance	Filing		09/15/2021 15:15		
Peter D Protopapas Receiver	NEF(07-28-2021 06:03:27 PM) Stipulation Of Dismissal	Filing		07/29/2021-08:53		
Peter D Protopapas Receiver	Stipulation Of Dismissal as to Southeastern Agency Group and	Filing		07/28/2021-18:03		
Standard Fire Insurance Company	NEF(06 23 2021 12:27:17 PM) Motion/Other	Filing		06/23/2021 12:33		
Travelers Casualty And Surety Company	Motion For Status Conference	Motion		06/23/2021-12:27		
Standard Fire Insurance Company	NEF(06 18 2021 03:31:18 PM) Appeal/Notice of Appeal to C...	Filing		06/21/2021 09:38		
Standard Fire Insurance Company	Appeal/Notice of Appeal to Court of Appeals	Action		06/19/2021-15:31		
Standard Fire Insurance Company	NEF(06-09-2021 05:24:56 PM) Notice/Notice of Appearance	Filing		06/09/2021-17:25		
Standard Fire Insurance Company	Notice/Notice of Appearance	Filing		06/09/2021 17:24		
Employers Fire Insurance Company	NEF(06-08-2021 04:06:58 PM) Letter/Letter	Filing		06/08/2021-16:17		
Employers Fire	Letter/Removing	Filing	App. 001	06/08/2021		

Insurance Company	Attorney from Record			16:06		
Starr Davis Company Inc	NEF(05-19-2021 11:51:59 AM) Order/Form 4	Filing		05/19/2021-11:52		
Starr Davis Company Inc	Form 4 Order This matter comes before the court upon Traveler	Order		05/19/2021-11:51		
Southeastern Agency Group	NEF(03-31-2021 11:51:43 AM) Notice/Notice of Appearance	Filing		03/31/2021-16:33		
Starr Davis Company Inc	NEF(03-31-2021 11:05:41 AM) Response	Filing		03/31/2021-16:33		
M I A Company Inc	NEF(03-31-2021 01:27:53 PM) Answer/Answer to Crossclaim	Filing		03/31/2021-13:35		
M I A Company Inc	Answer to Travelers Casualty And Surety Company's Crossclaim	Filing		03/31/2021-13:27		
Southeastern Agency Group	Answer to Travelers Casualty And Surety Company's First Amen	Filing		03/31/2021-11:51		
Southeastern Agency Group	Notice/Notice of Appearance	Filing		03/31/2021-11:51		
Starr Davis Company Inc	Response in Opposition to Motion to Reconsider	Filing		03/31/2021-11:05		
Starr Davis Company Inc	Decline to Sign:Order/Approval Of Settlement	Filing		03/26/2021-14:17		
Starr Davis Company Inc	Decline to Sign:Order/Approval Of Settlement	Filing		03/26/2021-14:17		
Peter D Protopapas Receiver	NEF(03-18-2021 04:30:08 PM) Motion/Dismiss	Filing		03/19/2021-08:16		
Peter D Protopapas Receiver	Motion/Dismiss The Travelers Defendants' Amended Counterclai	Motion		03/18/2021-16:30		
Travelers Casualty And Surety Company	NEF(03-16-2021 04:16:17 PM) Answer/Answer To Amended Com...	Filing		03/17/2021-08:03		
Travelers Casualty And Surety Company	Answer/Answer To First Amended Complaint, Counterclaims And	Filing		03/16/2021-16:16		
Standard Fire Insurance Company	NEF(03-16-2021 10:36:32 AM) Order/Substitution Of Counse...	Filing		03/16/2021-10:37		
Standard Fire Insurance Company	Order/Substitution Of Counsel	Order		03/16/2021-10:36		
Standard Fire Insurance Company	NEF(03-15-2021 03:50:27 PM) Motion/Substitute Counsel by...	Filing		03/15/2021-16:58		
Standard Fire Insurance Company	Motion/Substitute Counsel by Consent	Motion		03/15/2021-15:50		
Standard Fire Insurance Company	NEF(03-12-2021 06:30:09 PM) Notice/Notice of Appearance	Filing		03/15/2021-08:11		
Standard Fire Insurance	Notice/Notice of Appearance	Filing		03/12/2021-19:30		

Company						
Travelers Casualty And Surety Company	Motion/Reconsider	Motion		03/12/2021-19:30	05/19/2021-19:30	
Starr Davis Company Inc	NEF(03-04-2021 05:02:47 PM) Notice/Other	Filing		03/04/2021-17:07		
Starr Davis Company Inc	Motion/Seal	Motion		03/04/2021-17:02		
Starr Davis Company Inc	Notice/Of Filing	Filing		03/04/2021-17:02		
Starr Davis Company Inc	NEF(03-04-2021 03:00:02 PM) Notice/Notice of Appearance	Filing		03/04/2021-16:03		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		03/04/2021-15:00		
Starr Davis Company Inc	Notice/Of Appearance Letter	Filing		03/04/2021-15:00		
Peter D Protopapas Receiver	NEF(03 04 2021 07:49:37 AM) Order/Form 4	Filing		03/04/2021 07:50		
Peter D Protopapas Receiver	Form 4 Order This matter was heard on January 25, 2021. The	Order		03/04/2021-07:49		
Starr Davis Company Inc	NEF(03 04 2021 07:40:28 AM) Order/Summary Judgment	Filing		03/04/2021 07:41		
Starr Davis Company Inc	Order Court Grants Receiver's Motion for Partial Summary Jud	Order		03/04/2021-07:40		
Starr Davis Company Inc	Decline to Sign:Order/Summary Judgment	Filing		03/03/2021-18:05		
Employers Fire Insurance Company	Decline to Sign:Order/Entry of Default	Filing		03/02/2021-12:34		
Peter D Protopapas Receiver	NEF(03-02-2021 11:38:48 AM) Order/Entry of Default	Filing		03/02/2021-11:39		
Peter D Protopapas Receiver	Order/Entry of Default	Order		03/02/2021-11:38		
Standard Fire Insurance Company	NEF(02-22-2021 02:31:54 PM) Filing/Other	Filing		02/22/2021-15:30		
Peter D Protopapas Receiver	NEF(02-22-2021 12:54:27 PM) Letter/Letter	Filing		02/22/2021-14:39		
Standard Fire Insurance Company	Filing/Objections of Travelers Casualty And Surety Company A	Filing		02/22/2021-14:31		
Peter D Protopapas Receiver	Letter Addressed to Judge Toal	Filing		02/22/2021-12:54		
Employers Fire Insurance Company	NEF(02-21-2021 10:02:20 PM) Proposed Order/Entry of Defa...	Filing		02/22/2021-09:09		
Employers Fire Insurance Company	Letter/Letter	Filing		02/21/2021 22:02		
Employers Fire Insurance Company	Record of Hearing	Filing		02/21/2021-22:02		
Starr Davis Company Inc	NEF(02 19 2021 10:31:03 AM) Proposed	Filing		02/19/2021 10:57		

	Order/Summary Judgm...					
Starr Davis Company Inc	NEF(02-19-2021 10:45:43 AM) Notice/Notice of Appearance	Filing		02/19/2021- 10:46		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		02/19/2021- 10:45		
Starr Davis Company Inc	Order/Order Cover Sheet \$25.00	Filing		02/19/2021- 10:31		
Starr Davis Company Inc	NEF(02-18-2021 07:48:18 AM) Letter/Letter	Filing		02/18/2021- 07:48		
Starr Davis Company Inc	Supreme Court Letter Admitting Pro Hac Vice	Filing		02/18/2021- 07:48		
Standard Fire Insurance Company	NEF(02-08-2021 05:33:47 PM) Memo/Memo in Opposition	Filing		02/09/2021- 09:08		
Standard Fire Insurance Company	Notice/Notice of Appearance	Filing		02/08/2021- 17:33		
Standard Fire Insurance Company	Objections of Travelers to the form of Proposed Order Granti	Filing		02/08/2021- 17:33		
Employers Fire Insurance Company	NEF(02-04-2021 07:53:45 PM) Letter/Letter	Filing		02/05/2021- 08:57		
Employers Fire Insurance Company	Letter to Judge Toal	Filing		02/04/2021- 19:53		
Employers Fire Insurance Company	Letter to Court Reporter	Filing		02/04/2021- 19:53		
Starr Davis Company Inc	NEF(02-02-2021 11:26:38 AM) Proposed Order/Summary Judgm...	Filing		02/02/2021- 13:02		
Peter D Protopapas Receiver	NEF(02-02-2021 10:28:07 AM) Order/Order Cover Sheet \$25....	Filing		02/02/2021- 12:37		
Employers Fire Insurance Company	NEF(02-02-2021 11:39:46 AM) Answer/Amended Answer	Filing		02/02/2021- 11:50		
Employers Fire Insurance Company	Answer/Amended Answer To Travelers Casualty And Surety Compa	Filing		02/02/2021- 11:39		
Employers Fire Insurance Company	Answer/Amended Answer To St Paul Fire And Marine Insurance C	Filing		02/02/2021- 11:39		
Starr Davis Company Inc	Order/Order Cover Sheet \$25.00	Filing		02/02/2021- 11:26		
Peter D Protopapas Receiver	Order/Order Cover Sheet \$25.00	Filing		02/02/2021- 10:28		
Peter D Protopapas Receiver	NEF(02-02-2021 10:18:24 AM) Order/Order Cover Sheet \$25....	Filing		02/02/2021- 10:21		
Peter D Protopapas Receiver	Order/Order Cover Sheet \$25.00	Filing		02/02/2021- 10:18		
Standard Fire Insurance	NEF(01-25-2021 12:24:26 PM)	Filing		01/25/2021- 12:24		

Company	Order/Pro Hac Vice					
Peter D Protopapas Receiver	NEF(01-25-2021 12:24:15 PM) Order/Pro Hac Vice	Filing		01/25/2021-12:24		
Standard Fire Insurance Company	Order/Pro Hac Vice	Order		01/25/2021-12:24		
Peter D Protopapas Receiver	Order/Pro Hac Vice	Order		01/25/2021-12:24		
Employers Fire Insurance Company	NEF(01-23-2021 04:04:07 PM) Motion/Vacate	Filing		01/25/2021-10:14		
Peter D Protopapas Receiver	NEF(01-23-2021 12:26:50 PM) Motion/Rule to Show Cause	Filing		01/25/2021-09:01		
Employers Fire Insurance Company	Motion/Vacate	Motion		01/23/2021-16:04		
Peter D Protopapas Receiver	Motion/Rule to Show Cause	Motion		01/23/2021-12:26		
Standard Fire Insurance Company	NEF(01-22-2021 05:15:53 PM) Proposed Order/Pro Hac Vice	Filing		01/23/2021-11:00		
Standard Fire Insurance Company	Order/Order Cover Sheet \$25.00	Filing		01/22/2021-17:15		
Peter D Protopapas Receiver	NEF(01-22-2021 03:53:29 PM) Motion/Admission Pro Hac Vic...	Filing		01/22/2021-16:10		
Peter D Protopapas Receiver	Motion/Admission Pro Hac Vice	Motion		01/22/2021-15:53		
Peter D Protopapas Receiver	Order/Order Cover Sheet \$25.00	Filing		01/22/2021-15:53		
Standard Fire Insurance Company	NEF(01-22-2021 02:15:00 PM) Reply/Other	Filing		01/22/2021-14:40		
Standard Fire Insurance Company	Reply In Support of Partial Motion To Dismiss	Filing		01/22/2021-14:15		
Employers Fire Insurance Company	NEF(01-22-2021 10:19:07 AM) Answer/Answer to Crossclaim	Filing		01/22/2021-11:11		
Employers Fire Insurance Company	Answer/Answer to Crossclaim	Filing		01/22/2021-10:19		
Employers Fire Insurance Company	Answer/Answer to Crossclaim	Filing		01/22/2021-10:19		
Starr Davis Company Inc	NEF(01-22-2021 10:13:47 AM) Notice/Notice of Appearance	Filing		01/22/2021-10:14		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		01/22/2021-10:13		
Travelers Casualty And Surety Company	NEF(01-21-2021 10:51:06 PM) Notice/Notice of Appearance	Filing		01/22/2021-08:57		
Travelers Casualty And Surety Company	NEF(01-21-2021 10:43:26 PM) Memo/Memo in Opposition	Filing		01/22/2021-08:56		

App. 005

App. 006

Receiver	Service/Acceptance Of Servic...					
Peter D Protopapas Receiver	NEF(12-09-2020 03:15:37 PM) Service/Acceptance Of Servic...	Filing		12/09/2020- 15:24		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Frances R Smith	Filing		12/09/2020- 15:23		
Peter D Protopapas Receiver	NEF(12-09-2020 03:14:52 PM) Service/Acceptance Of Servic...	Filing		12/09/2020- 15:22		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Linda Knight	Filing		12/09/2020- 15:21		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Richard L Knight, II	Filing		12/09/2020- 15:19		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Richard L Knight II Prs	Filing		12/09/2020- 15:19		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Teddy L Knight Sr Estate	Filing		12/09/2020- 15:19		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Julian D Amico Jr Estate	Filing		12/09/2020- 15:17		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Betty C D Amico	Filing		12/09/2020- 15:17		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Betty C D Amico Executer	Filing		12/09/2020- 15:17		
Peter D Protopapas Receiver	Service/Acceptance Of Service on James W Smith	Filing		12/09/2020- 15:15		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Linda J White	Filing		12/09/2020- 15:14		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Lubert F White Jr Estate	Filing		12/09/2020- 15:14		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Linda J White Prs	Filing		12/09/2020- 15:14		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Robert E Aspray	Filing		12/09/2020- 15:13		
Peter D Protopapas Receiver	Service/Acceptance Of Service on David D Rollins	Filing		12/09/2020- 15:12		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Kayla Keith	Filing		12/09/2020- 15:11		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Jerry W Archer Sr Estate	Filing		12/09/2020- 15:11		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Kayla Keith Prs	Filing		12/09/2020- 15:11		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Nell Ashworth	Filing		12/09/2020- 15:09		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Nell Ashworth Prs	Filing		12/09/2020- 15:09		
Peter D Protopapas Receiver	Service/Acceptance Of Service on Robert J Ashworth Estate	Filing		12/09/2020- 15:09		

White, Linda J	NEF(12-02-2020 02:50:21 PM) Notice/Notice of Appearance	Filing		12/02/2020-14:50		
White, Linda J	Notice/Notice of Appearance	Filing		12/02/2020-14:50		
Peter D Protopapas Receiver	NEF(11-25-2020 11:22:49 AM) Motion/Default Judgment	Filing		11/25/2020-11:28		
Peter D Protopapas Receiver	Motion/Default Judgment Against The Employers' Fire Insuranc	Motion		11/25/2020-11:22		
M I A Company Inc	NEF(11-13-2020 03:00:04 PM) Answer/Answer to Crossclaim	Filing		11/13/2020-15:09		
M I A Company Inc	Answer/Answer to Crossclaim	Filing		11/13/2020-15:00		
Southeastern Agency Group	NEF(11-13-2020 02:25:20 PM) Answer/Answer	Filing		11/13/2020-14:35		
Southeastern Agency Group	Answer To First Amended Complaint And Cross-claims	Filing		11/13/2020-14:25		
Peter D Protopapas Receiver	NEF(11-09-2020 12:18:43 PM) Order/Entry of Default	Filing		11/09/2020-12:18		
Peter D Protopapas Receiver	Order/Entry of Default against Employer's Fire Insurance Co.	Order		11/09/2020-12:18		
Peter D Protopapas Receiver	NEF(11-06-2020 11:56:51 AM) Proposed Order/Entry of Defa...	Filing		11/06/2020-12:55		
Peter D Protopapas Receiver	Order/Order Cover Sheet \$25.00	Filing		11/06/2020-11:56		
Peter D Protopapas Receiver	NEF(11-06-2020 11:14:29 AM) Affidavit/Default	Filing		11/06/2020-11:28		
Peter D Protopapas Receiver	Affidavit/Default As To The Employers' Fire Insurance Compan	Filing		11/06/2020-11:14		
Peter D Protopapas Receiver	NEF(11-06-2020 10:41:48 AM) Service/Affidavit Of Service	Filing		11/06/2020-11:01		
Peter D Protopapas Receiver	Service/Acceptance From SCDOI on Employers Fire Insurance Co	Filing		11/06/2020-10:41		
Peter D Protopapas Receiver	NEF(11-06-2020 10:23:15 AM) Service/Affidavit Of Service	Filing		11/06/2020-10:31		
Peter D Protopapas Receiver	Service/Proof Of Service on St Paul Fire And Marine Insuranc	Filing		11/06/2020-10:23		
Peter D Protopapas Receiver	NEF(11-06-2020 09:26:55 AM) Response	Filing		11/06/2020-09:46		
Peter D Protopapas Receiver	Response In Oppositon To St Paul Fire And Marine Insurance C	Filing		11/06/2020-09:26		
Standard Fire Insurance Company	NEF(10-30-2020 02:54:13 PM) Motion/Dismiss	Filing		10/30/2020-15:02		

Standard Fire Insurance Company	Answer/Answer To Amended Complaint & Cross Claims of Standar	Filing		10/30/2020-14:54		
Standard Fire Insurance Company	Joinder Partial Motion/Dismiss & Memo in Support	Motion		10/30/2020-14:54		
Peter D Protopapas Receiver	NEF(10-09-2020 08:51:09 AM) Response	Filing		10/09/2020-08:55		
Peter D Protopapas Receiver	NEF(10-09-2020 08:50:25 AM) Reply/Reply to Counterclaim	Filing		10/09/2020-08:53		
Peter D Protopapas Receiver	Response In Opposition To The Travelers Defendants' Partial	Filing		10/09/2020-08:51		
Peter D Protopapas Receiver	Reply to Answer, Counterclaim And Cross-claims	Filing		10/09/2020-08:50		
Southeastern Agency Group	NEF(10-01-2020 01:49:52 PM) Answer/Answer to Crossclaim	Filing		10/01/2020-13:53		
Southeastern Agency Group	Answer/Answer to Crossclaim	Filing		10/01/2020-13:49		
M I A Company Inc	NEF(10-01-2020 01:06:04 PM) Answer/Answer & Crossclaim	Filing		10/01/2020-13:12		
M I A Company Inc	Answer/Answer To Crossclaim	Filing		10/01/2020-13:06		
Starr Davis Company Inc	NEF(09-23-2020 08:16:56 AM) Order/Other	Filing		09/23/2020-08:17		
Starr Davis Company Inc	Order/OtherOrder Granting Receiver's Motion to Clarify Order	Order		09/23/2020-08:16		
Standard Fire Insurance Company	NEF(09-21-2020 04:09:19 PM) Answer/Answer To Amended Com...	Filing		09/21/2020-20:27		
Starr Davis Company Inc	Decline to Sign:Order/Other	Filing		09/21/2020-18:38		
Standard Fire Insurance Company	Answer to First Amended Complaint, Counterclaims and Cross-C	Filing		09/21/2020-16:09		
Standard Fire Insurance Company	NEF(09-21-2020 03:24:42 PM) Motion/Dismiss	Filing		09/21/2020-15:29		
Standard Fire Insurance Company	Motion/Dismiss And Memorandum In Support	Motion		09/21/2020-15:24		
Standard Fire Insurance Company	Notice/Notice of Appearance	Filing		09/21/2020-15:24		
Standard Fire Insurance Company	Decline to Sign:Order/Other	Filing		09/21/2020-08:13		
Starr Davis Company Inc	NEF(09-10-2020 03:36:51 PM) Notice/Other	Filing		09/11/2020-08:07		
Starr Davis Company Inc	Notice/Of Withdrawal of Joint Motion to Approve Settlement	Filing		09/10/2020-15:36		
Peter D Protopapas Receiver	NEF(09-09-2020 09:32:26 AM)	Filing		09/09/2020-09:53		

	Service/Affidavit Of Service					
Peter D Protopapas Receiver	Service/Affidavit Of Service on Employers Fire Insurance Com	Filing		09/09/2020-09:32		
Peter D Protopapas Receiver	Service/Affidavit Of Service on St Paul Fire And Marine Insu	Filing		09/09/2020-09:32		
M I A Company Inc	NEF(09-04-2020 09:46:31 AM) Answer/Answer To Amended Com...	Filing		09/04/2020-10:19		
M I A Company Inc	Answer To First Amended Complaint	Filing		09/04/2020-09:46		
Southeastern Agency Group	NEF(09-04-2020 09:13:07 AM) Answer/Answer and Jury Deman...	Filing		09/04/2020-09:29		
Southeastern Agency Group	Answer To First Amended Complaint For Declar and Jury Demand	Filing		09/04/2020-09:13		
Travelers Casualty And Surety Company	NEF(08-27-2020 02:02:44 PM) Notice/Notice of Appearance	Filing		08/27/2020-14:03		
Travelers Casualty And Surety Company	Notice/Notice of Appearance	Filing		08/27/2020-14:02		
Standard Fire Insurance Company	NEF(08-25-2020 02:56:20 PM) Proposed Order/Other	Filing		08/25/2020-15:02		
Standard Fire Insurance Company	Order/Order Cover Sheet \$25.00	Filing		08/25/2020-14:56		
Peter D Protopapas Receiver	NEF(08-21-2020 09:36:30 AM) Motion/Summary Judgment	Filing		08/21/2020-09:52		
Starr Davis Company Inc	NEF(08-20-2020 02:52:56 PM) Proposed Order/Other	Filing		08/21/2020-09:50		
Peter D Protopapas Receiver	Motion/Summary Judgment	Motion		08/21/2020-09:36		                                                                       
Starr Davis Company Inc	Order/Order Cover Sheet \$25.00	Filing		08/20/2020-14:52		
Starr Davis Company Inc	NEF(08-17-2020 01:21:28 PM) Reply/Other	Filing		08/17/2020-14:27		
Starr Davis Company Inc	Reply/Response to Motion to Clarify Order	Filing		08/17/2020-13:21		
Peter D Protopapas Receiver	NEF(08-06-2020 11:12:13 AM) Amended/Amended Summons And ...	Filing		08/06/2020-11:32		
Peter D Protopapas Receiver	Amended Summons And Complaint	Filing		08/06/2020-11:12		 
Peter D Protopapas Receiver	NEF(08-06-2020 11:08:30 AM) Notice/Notice of Appearance	Filing		08/06/2020-11:08		
Peter D Protopapas Receiver	Notice/Notice of Appearance	Filing		08/06/2020-11:08		
Standard Fire	NEF(07-07-2020	Filing	App 010	07/07/2020-		

Insurance Company	11:46:07 AM) Response			12:43		
Standard Fire Insurance Company	Response to Motion to Clarify Order Appointing Receiver	Filing		07/07/2020-11:46		
Starr Davis Company Inc	Letter/Sealed Exhibits for Motion to Seal	Filing		06/26/2020 13:19		
Starr Davis Company Inc	NEF(06-23-2020 02:01:23 PM) Motion/Summary Judgment	Filing		06/23/2020-14:09		
Starr Davis Company Inc	Motion/Partial Summary Judgment	Motion		06/23/2020 14:01		                   
Starr Davis Company Inc	NEF(06-23-2020 01:49:50 PM) Motion/Seal	Filing		06/23/2020-13:53		
Starr Davis Company Inc	Motion/Seal Exhibit 4, 5, 8, 10, 11, 12, 13, 14 and 15	Motion		06/23/2020-13:49		
Starr Davis Company Inc	NEF(06-17-2020 01:45:41 PM) Motion/Other	Filing		06/17/2020-13:53		
Starr Davis Company Inc	Motion/To Clarify Order Appointing Receiver for Starr Davis	Motion		06/17/2020-13:45		
Starr Davis Company Inc	NEF(06 15 2020 03:32:31 PM) Notice/Notice of Appearance	Filing		06/15/2020 15:32		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		06/15/2020-15:32		
Starr Davis Company Inc	NEF(06 15 2020 03:31:05 PM) Notice/Notice of Appearance	Filing		06/15/2020 15:31		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		06/15/2020-15:31		
Starr Davis Company Inc	NEF(06 15 2020 03:29:47 PM) Notice/Notice of Appearance	Filing		06/15/2020 15:30		
Starr Davis Company Inc	Notice/Notice of Appearance	Filing		06/15/2020-15:29		
Starr Davis Company Inc	ADR/Alternative Dispute Resolution (Workflow)	Action		06/03/2020 11:39	12/18/2019 11:39	
Standard Fire Insurance Company	NEF(04-21-2020 01:34:01 PM) Memo/Memo in Opposition	Filing		04/21/2020-14:18		
Standard Fire Insurance Company	Memo/Memo in Opposition & Objections to Motion for Order	Filing		04/21/2020-13:34		   
Standard Fire Insurance Company	FILED IN ERROR/Memo/Memo in Opposition	Filing		04/20/2020 17:48		
Standard Fire Insurance Company	NEF(03-30-2020 04:04:42 PM) Motion/Other	Filing		03/30/2020-16:33		
Standard Fire Insurance Company	Motion/For Admission to Pro Hac Vice Harry Lee	Motion		03/30/2020 16:04		  
Starr Davis Company Inc	NEF(03-30-2020 02:25:01 PM)	Filing		03/30/2020-14:25		

	Letter/Letter					
Starr Davis Company Inc	Supreme Court Letter Admitting Pro Hac Vice for Harry Lee	Filing		03/30/2020-14:25		
Starr Davis Company Inc	NEF(03-27-2020 03:27:21 PM) Stipulation/Stipulation of	Filing		03/30/2020-08:10		
Starr Davis Company Inc	Stipulation/Stipulation of Policy	Filing		03/27/2020-15:27		 
Starr Davis Company Inc	NEF(03-19-2020 05:00:39 PM) Motion/Other	Filing		03/19/2020-17:16		
Starr Davis Company Inc	NEF(03-19-2020 04:57:18 PM) Motion/Other	Filing		03/19/2020-17:01		
Starr Davis Company Inc	Motion to Establish a Qualified Settlement Fund	Motion		03/19/2020-17:00		  
Starr Davis Company Inc	Motion to Approve Settlement	Motion		03/19/2020-16:57		
Southeastern Agency Group	NEF(03-18-2020 10:42:08 AM) Order/Protection from Court ...	Filing		03/18/2020-10:42		
Southeastern Agency Group	Order/Protection from Court Appearance	Order		03/18/2020-10:42		
Southeastern Agency Group	NEF(03-17-2020 02:16:43 PM) Order/Order Cover Sheet \$25....	Filing		03/17/2020-14:20		
Southeastern Agency Group	Order/Order Cover Sheet \$25.00	Filing		03/17/2020-14:16		
Southeastern Agency Group	NEF(03-17-2020 08:47:50 AM) Order/Protection from Court ...	Filing		03/17/2020-08:48		
Southeastern Agency Group	Order/Protection from Court Appearance	Order		03/17/2020-08:47		
Southeastern Agency Group	NEF(03-13-2020 12:18:57 PM) Order/Order Cover Sheet \$25....	Filing		03/16/2020-08:47		
Southeastern Agency Group	Order/Order Cover Sheet \$25.00	Filing		03/13/2020-12:18		
Starr Davis Company Inc	NEF(03-02-2020 03:26:01 PM) Motion/Other	Filing		03/02/2020-15:51		
Starr Davis Company Inc	Motion To Require Travelers Casualty And Surety Company To G	Motion		03/02/2020-15:26		  
Starr Davis Company Inc	NEF(02-28-2020 03:02:21 PM) Motion/Summary Judgment	Filing		02/28/2020-15:26		
Starr Davis Company Inc	Motion For Partial Summary Judgment As To Its Declaratory Ju	Motion		02/28/2020-15:02		     
M I A Company Inc	NEF(02-17-2020 04:30:19 PM) Answer/Amended Answer	Filing		02/18/2020-09:27		
M I A Company Inc	Answer/Amended Answer Of M I A Company Inc	Filing		02/17/2020-16:30		
Starr Davis Company Inc	NEF(02-07-2020 03:07:12 PM) Notice/Notice of Appearance	Filing		02/07/2020-15:27		

Starr Davis Company Inc	Notice/Notice of Appearance	Filing		02/07/2020-15:07		
Starr Davis Company Inc	Motion For Status Conference	Motion		02/07/2020-15:07		
Southeastern Agency Group	NEF(02-05-2020 02:36:26 PM) Notice/Notice of Appearance	Filing		02/05/2020-14:36		
Southeastern Agency Group	Notice/Notice of Appearance	Filing		02/05/2020-14:36		
M I A Company Inc	NEF(02-05-2020 02:22:18 PM) Notice/Notice of Appearance	Filing		02/05/2020-14:22		
M I A Company Inc	Notice/Notice of Appearance	Filing		02/05/2020-14:22		
Starr Davis Company Inc	NEF(01-31-2020 04:08:46 PM) Filing/Other	Filing		02/03/2020-08:10		
Starr Davis Company Inc	NEF(01-31-2020 04:12:15 PM) Filing/Other	Filing		02/03/2020-08:05		
Starr Davis Company Inc	NEF(01-31-2020 04:09:47 PM) Filing/Other	Filing		01/31/2020-16:32		
Starr Davis Company Inc	NEF(01-31-2020 04:13:20 PM) Filing/Other	Filing		01/31/2020-16:31		
Starr Davis Company Inc	NEF(01-31-2020 04:07:20 PM) Filing/Other	Filing		01/31/2020-16:30		
Starr Davis Company Inc	NEF(01-31-2020 04:06:34 PM) Filing/Other	Filing		01/31/2020-16:29		
Starr Davis Company Inc	NEF(01-31-2020 04:04:17 PM) Filing/Other	Filing		01/31/2020-16:25		
Starr Davis Company Inc	NEF(01-31-2020 04:02:24 PM) Filing/Other	Filing		01/31/2020-16:19		
Starr Davis Company Inc	NEF(01-31-2020 03:59:40 PM) Filing/Other	Filing		01/31/2020-16:16		
Starr Davis Company Inc	Federal Ct/ Notice of Filing ECF 17 Pursuant To Court Order	Filing		01/31/2020-16:13		  
Starr Davis Company Inc	Federal Ct/Notice of Filing ECF 16 Pursuant To Court Order	Filing		01/31/2020-16:12		  
Starr Davis Company Inc	Filing/Notice of Filing ECF 19 Pursuant To Court Order	Filing		01/31/2020-16:09		  
Starr Davis Company Inc	Filing/Notice of Filing ECF 41 Pursuant To Court Order	Filing		01/31/2020-16:08		  
Starr Davis Company Inc	Filing/Notice of Filing ECF 31 Pursuant To Court Order	Filing		01/31/2020-16:07		  
Starr Davis Company Inc	NEF(01-31-2020 04:01:30 PM) Filing/Other	Filing		01/31/2020-16:07		
Starr Davis Company Inc	Filing/Notice of Filing ECF 30 Pursuant to Court Order	Filing		01/31/2020-16:06		  
Starr Davis Company Inc	NEF(01-31-2020 04:00:38 PM) Filing/Other	Filing		01/31/2020-16:05		
Starr Davis Company Inc	Federal Ct/ Notice Of Filing ECF 20 Pursuant To Court Order	Filing		01/31/2020-16:04		  

Starr Davis Company Inc	Filing/Notice Of Filing ECF 15 Pursuant to Court Order	Filing		01/31/2020-16:02		
Starr Davis Company Inc	Federal Ct/Notice of Filing ECF 12 Pursuant To Court Order	Filing		01/31/2020-16:01		
Starr Davis Company Inc	Federal Ct/ Notice of Filing ECF 09 Pursuant To Court Order	Filing		01/31/2020-16:00		
Starr Davis Company Inc	Filing/Notice of Filing ECF 08 Pursuant to Court Order	Filing		01/31/2020-15:59		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:17:38 PM) Notice/Other	Filing		01/31/2020-15:40		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:16:17 PM) Notice/Other	Filing		01/31/2020-15:39		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:10:50 PM) Notice/Other	Filing		01/31/2020-15:39		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:14:19 PM) Notice/Other	Filing		01/31/2020-15:38		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:08:41 PM) Notice/Other	Filing		01/31/2020-15:37		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:13:15 PM) Notice/Other	Filing		01/31/2020-15:37		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:07:08 PM) Notice/Other	Filing		01/31/2020-15:36		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:06:00 PM) Notice/Other	Filing		01/31/2020-15:34		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:01:52 PM) Notice/Other	Filing		01/31/2020-15:34		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:04:53 PM) Notice/Other	Filing		01/31/2020-15:33		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:59:28 PM) Notice/Other	Filing		01/31/2020-15:33		
Travelers Casualty And Surety Company	NEF(01-31-2020 03:03:40 PM) Notice/Other	Filing		01/31/2020-15:31		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:58:18 PM) Notice/Other	Filing		01/31/2020-15:31		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:56:56 PM) Notice/Other	Filing		01/31/2020-15:31		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:55:36 PM) Notice/Other	Filing		01/31/2020-15:30		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:54:09 PM) Notice/Other	Filing		01/31/2020-15:29		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:50:20 PM) Notice/Other	Filing		01/31/2020-15:28		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:46:49 PM) Notice/Other	Filing		01/31/2020-15:28		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:45:28 PM) Notice/Other	Filing		01/31/2020-15:27		

Travelers Casualty And Surety Company	NEF(01-31-2020 02:44:09 PM) Notice/Other	Filing		01/31/2020-15:26		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:43:05 PM) Notice/Other	Filing		01/31/2020-15:26		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:41:53 PM) Notice/Other	Filing		01/31/2020-15:25		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:39:55 PM) Notice/Other	Filing		01/31/2020-15:24		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:15:14 PM) Notice/Other	Filing		01/31/2020-15:22		
Travelers Casualty And Surety Company	Federal Ct Misc Filings	Filing		01/31/2020-15:17		
Travelers Casualty And Surety Company	Federal Ct Misc Filing	Filing		01/31/2020-15:16		
Travelers Casualty And Surety Company	Notice/Federal Ct Filing/Order	Filing		01/31/2020-15:14		
Travelers Casualty And Surety Company	Notice/Fed Ct/Supplemental Opposition to Motion/Remand & Me	Filing		01/31/2020-15:13		
Travelers Casualty And Surety Company	Federal Ct/Starr Davis's Reply In Further Support Of Its Mot	Filing		01/31/2020-15:10		
Travelers Casualty And Surety Company	Federal Ct/ Reply In Support of Motion To Dismiss	Filing		01/31/2020-15:08		
Travelers Casualty And Surety Company	Federal Ct/ Reply To Claimants' Opposition To Motion To Real	Filing		01/31/2020-15:07		
Travelers Casualty And Surety Company	Notice/Reply To Starr Davis Company Inc And Starr Davis Comp	Filing		01/31/2020-15:06		
Travelers Casualty And Surety Company	Federal Ct/ Response In Opposition To Motion To Remand And M	Filing		01/31/2020-15:04		
Travelers Casualty And Surety Company	Federal Ct/ Amended Answer Of Southeastern Agency Group	Filing		01/31/2020-15:03		
Travelers Casualty And Surety Company	Notice/Fed Ct/Answer on Behalf of Southeastern Agency Group	Filing		01/31/2020-15:01		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:36:53 PM) Notice/Other	Filing		01/31/2020-14:59		
Travelers Casualty And Surety Company	Notice/Fed Ct/Answer of MIA Co to Declaratory Judg & Breach	Filing		01/31/2020-14:59		
Travelers Casualty And Surety Company	Notice/Of Federal Ct Misc Filing	Filing		01/31/2020-14:58		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:34:15 PM) Notice/Other	Filing		01/31/2020-14:58		
Travelers Casualty And Surety Company	Notice/Fed Ct/Unopposed Motion for Enlargement of Time/Repl	Filing		01/31/2020-14:56		

Travelers Casualty And Surety Company	Notice/Of Federal Ct Misc Filing	Filing		01/31/2020-14:55		
Travelers Casualty And Surety Company	Notice/Fed Ct Filing/Response to Motion to Dismiss & Memo	Filing		01/31/2020-14:54		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:31:49 PM) Notice/Other	Filing		01/31/2020-14:52		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:29:23 PM) Notice/Other	Filing		01/31/2020-14:50		
Travelers Casualty And Surety Company	Notice/Of Federal Ct Misc Filing	Filing		01/31/2020-14:50		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:23:50 PM) Notice/Other	Filing		01/31/2020-14:48		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:17:45 PM) Notice/Other	Filing		01/31/2020-14:47		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:16:29 PM) Notice/Other	Filing		01/31/2020-14:46		
Travelers Casualty And Surety Company	Notice/Federal Ct Filing/Appearence of Counsel	Filing		01/31/2020-14:46		
Travelers Casualty And Surety Company	Notice/Fed Ct Filing/Unopposed Motion for Enlargement of Tim	Filing		01/31/2020-14:45		
Travelers Casualty And Surety Company	NEF(01-31-2020 02:13:19 PM) Notice/Other	Filing		01/31/2020-14:44		
Travelers Casualty And Surety Company	Notice/Of Federal Ct Misc Filing	Filing		01/31/2020-14:44		
Travelers Casualty And Surety Company	Notice/Federal Ct/Notice of App by Cooke, Jr & Novak/Southea	Filing		01/31/2020-14:43		
Travelers Casualty And Surety Company	Notice/Federal Ct/Unopposed Motion for Ext of Time to Respon	Filing		01/31/2020-14:41		
Travelers Casualty And Surety Company	Notice/Fed Ct/Response to Motion to Realign & Memo in Suppor	Filing		01/31/2020-14:39		
Travelers Casualty And Surety Company	Federal Ct/Notice of Apperance Of Vincent Sheehen On Behalf	Filing		01/31/2020-14:36		
Standard Fire Insurance Company	NEF(01-31-2020 02:11:26 PM) Notice/Other	Filing		01/31/2020-14:34		
Travelers Casualty And Surety Company	Federal Ct/ Notice Of Apperance Of G. Murrell Smith Jr On Be	Filing		01/31/2020-14:34		
Travelers Casualty And Surety Company	Federal Ct/ Notice of Apperance of Jonathan M Robinson On Be	Filing		01/31/2020-14:31		
Standard Fire Insurance Company	NEF(01-31-2020 12:03:53 PM) Filing/Other	Filing		01/31/2020-14:31		
Travelers Casualty And Surety Company	Federal Ct/ Motion To Remand	Filing		01/31/2020-14:29		
Travelers Casualty And Surety	Federal Ct/Response In Opposition To	Filing		01/31/2020-14:23		

Company	Motion To Realgin					
Travelers Casualty And Surety Company	Federal Ct/ Appearance Of Counsel	Filing		01/31/2020-14:17		
Travelers Casualty And Surety Company	Federal Ct/ Answers to Local Rule 26.01 Interrogatories	Filing		01/31/2020-14:16		
Travelers Casualty And Surety Company	Notice/Of Federal Ct Filing Remanded Back	Filing		01/31/2020-14:15		
Travelers Casualty And Surety Company	Federal Ct/ Consent Motion For Extension of Time for Respon	Filing		01/31/2020-14:13		
Standard Fire Insurance Company	Federal CT/ Response Consenting Defendant's Motion To Enlarg	Filing		01/31/2020-14:11		
Standard Fire Insurance Company	Federal Ct/Travelers Cas & Standard Fire Motion/Enlarge	Filing		01/31/2020-12:03		
Standard Fire Insurance Company	NEF(01-31-2020 11:35:26 AM) Filing/Other	Filing		01/31/2020-11:59		
Standard Fire Insurance Company	NEF(01-31-2020 11:30:57 AM) Filing/Other	Filing		01/31/2020-11:58		
Standard Fire Insurance Company	NEF(01-31-2020 11:24:47 AM) Filing/Other	Filing		01/31/2020-11:57		
Standard Fire Insurance Company	Motion to Dismiss and Memorandum in Support	Filing		01/31/2020-11:35		
Standard Fire Insurance Company	Motion to Realign and Memorandum in Support	Filing		01/31/2020-11:30		
Standard Fire Insurance Company	Defendant Travelers Casualty and Surety Company F/K/A the Ae	Filing		01/31/2020-11:24		
Travelers Casualty And Surety Company	NEF(01-31-2020 11:04:02 AM) Filing/Other	Filing		01/31/2020-11:19		
Travelers Casualty And Surety Company	Notice of Removal from US District Court	Filing		01/31/2020-11:04		
Starr Davis Company Inc	NEF(01-30-2020 03:22:50 PM) Order/Other	Filing		01/30/2020-15:23		
Starr Davis Company Inc	US District Court Order Remanding Case to Circuit Court	Order		01/30/2020-15:22		
Standard Fire Insurance Company	NEF(12-13-2019 04:21:14 PM) Notice/Removal to District C...	Filing		12/18/2019-08:40		
Standard Fire Insurance Company	Acknowledgement of Filing of Removal	Filing		12/13/2019-16:21		
Standard Fire Insurance Company	Notice/Removal to District Court	Filing		12/13/2019-16:21		
Standard Fire Insurance Company	Notice/Notice of Appearance	Filing		12/13/2019-16:21		
Starr Davis Company Inc	NEF(12-06-2019 11:48:26 AM) Service/Affidavit Of Service	Filing		12/06/2019-12:03	12/18/2019-12:03	
Starr Davis Company Inc	NEF(12-06-2019 11:44:42 AM)	Filing		12/06/2019-12:01	12/18/2019-12:01	

	Service/Affidavit Of Service					
Starr Davis Company Inc	Service/Affidavit Of Service on Southeastern Agency Group	Filing		12/06/2019-11:48	12/18/2019-11:48	  
Starr Davis Company Inc	Service/Affidavit Of Service on Merrimon Insurance Agency	Filing		12/06/2019-11:44	12/18/2019-11:44	  
Starr Davis Company Inc	NEF(11-21-2019 11:48:50 AM) Notice/Other	Filing		11/21/2019-12:08	12/18/2019-12:08	
Starr Davis Company Inc	NEF(11-21-2019 11:47:57 AM) Notice/Other	Filing		11/21/2019-12:08	12/18/2019-12:08	
Starr Davis Company Inc	NEF(11-21-2019 11:47:19 AM) Notice/Other	Filing		11/21/2019-12:07	12/18/2019-12:07	
Starr Davis Company Inc	NEF(11-21-2019 11:46:42 AM) Notice/Other	Filing		11/21/2019-12:06	12/18/2019-12:06	
Starr Davis Company Inc	Notice Of Filing Acceptance Of Service Of Summons And Compla	Filing		11/21/2019-11:48	12/18/2019-11:48	 
Starr Davis Company Inc	Notice Of Filing Acceptance Of Service Of Summons And Compla	Filing		11/21/2019-11:47	12/18/2019-11:47	 
Starr Davis Company Inc	Notice Of Filing Acceptance Of Service Of Summons And Compla	Filing		11/21/2019-11:47	12/18/2019-11:47	 
Starr Davis Company Inc	Notice Of Filing Acceptance Of Service Of Summons And Compla	Filing		11/21/2019 11:46	12/18/2019 11:46	 
White, Linda J	NEF(11-07-2019 05:00:32 PM) Notice/Notice of Appearance	Filing		11/08/2019-08:48	12/18/2019-08:48	
White, Linda J	Answer/Answer & Crossclaim	Filing		11/07/2019-17:00	12/18/2019-17:00	
White, Linda J	Notice/Notice of Appearance	Filing		11/07/2019-17:00	12/18/2019-17:00	
Starr Davis Company Inc	Summons & Complaint	Filing		11/06/2019 11:39	12/18/2019 11:39	 

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Plaintiff,

v.

Case No.: 2019-CP-40-06243

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE COMPANY;
ST. PAUL FIRE AND MARINE INSURANCE
COMPANY; THE EMPLOYERS' FIRE
INSURANCE COMPANY; SOUTHEASTERN
AGENCY GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of the
Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO, JR.;
KAYLA KEITH, individually and as the personal
representative of the Estate of JERRY W.
ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L KNIGHT, SR., and LINDA KNIGHT,
individually; DAVID D. ROLLINS; JAMES
W. SMITH and FRANCES R. SMITH; and
LINDA J. WHITE, individually and as Personal
Representative of the Estate of LUBERT F.
WHITE, JR.,

Defendants.

**TRAVELERS CASUALTY
AND SURETY COMPANY
AND THE STANDARD FIRE
INSURANCE COMPANY'S
RESPONSE IN OPPOSITION
TO STARR DAVIS'S RENEWED
SUPPLEMENTAL MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Standard Fire Insurance Company (together, “Travelers”) submit this memorandum of law in opposition to the Renewed Supplemental Motion for Partial Summary Judgment (“Motion” or “Mot.”) filed by Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (together, “Starr Davis”) through Starr Davis’s receiver, Peter D. Protopapas (“Receiver”).

I. INTRODUCTION AND SUMMARY OF ARGUMENT

By its Amended Complaint, Starr Davis asks this Court to make judicial declarations concerning, among other things, the precise manner in which multiple liability insurance policies issued by Travelers to Starr Davis apply to highly-individualized pending and future asbestos personal injury claims. The requested declarations require significant discovery that will allow the parties to compare the controlling policy language to the material facts of each separate asbestos claim. That discovery has not occurred, and thus Starr Davis’s Motion is premature and precluded by the existence of genuine issues of material fact. In addition, the legal rulings Starr Davis seeks are premised on an inapplicable, non-final discovery-related sanctions order issued in a different case involving a different insurer, a different policyholder, different policies and potentially different law. Moreover, the requested rulings are entirely inconsistent with applicable law. Each of these grounds is summarized below.

First, the Motion is premature. Starr Davis seeks summary judgment with respect to complex insurance coverage issues, yet:

- Travelers has filed still-pending partial motions to dismiss, including as to certain aspects of the declaratory judgment claims on which Starr Davis now seeks summary judgment;
- written discovery and document productions are ongoing, and Travelers anticipates being forced to file a motion to compel because Starr Davis has failed to respond adequately to Travelers’ discovery requests;

- Defendants M.I.A. Company, Inc. f/k/a Merrimon Insurance Agency, Inc. (“Merrimon”), Southeastern Agency Group, Inc. (“Southeastern”), and the various individual asbestos claimants named as Defendants (the “Individual Defendants”) have not fully and adequately responded to Travelers’ discovery requests, likely requiring a separate motion to compel;
- Starr Davis continues to seek additional fact discovery from Travelers;
- Fact depositions have not yet begun; and
- Expert reports have not been exchanged, nor have expert depositions been taken.

As reflected below and in Travelers’ accompanying Rule 56(f) declaration, there are numerous factual issues Travelers must be able to investigate through discovery in order to fully and properly respond to Starr Davis’s Motion, including evidence concerning:

- the material terms and conditions of the insurance policies Travelers and other insurers issued or allegedly issued to Starr Davis, including regarding certain alleged or “missing” policies;
- the parties’ understanding of the policies’ terms and conditions, to the extent it is found that there is any ambiguity in the language used;
- whether Starr Davis or its brokers/agents¹ possess copies of the policies and, if not, the facts and circumstances surrounding how and when the policies were lost or destroyed;
- how and where each asbestos claimant, including but not limited to each of the Individual Defendants, suffered injury as a result of exposure to asbestos-containing products or asbestos-related contracting work;
- whether each claimant’s injury in any given policy year occurred before or after an asbestos-containing product manufactured and/or sold by Starr Davis had been placed into the stream of commerce, or occurred before or after a Starr Davis asbestos contracting operation had been completed;
- whether the underlying asbestos claims arose from a single occurrence, such as Starr Davis’ decision to engage in asbestos-related manufacturing and sales;
- whether Starr Davis and Travelers have in fact already agreed which alleged or missing policies provide coverage for asbestos claims, and which do not;

¹ Starr Davis sued its own insurance brokers—Merrimon and Southeastern—as Defendants in this case.

- whether the parties also agree how defense and indemnity expenses would be allocated between them;
- whether Starr Davis purchased primary or excess insurance from companies other than Travelers that would cover any asbestos claims at issue, and thus would have to contribute to any defense or indemnity costs; and
- whether Starr Davis's claims are barred or limited by its acts or omissions, including its failure to do anything about the alleged missing policies for nearly 40 years.

Travelers is entitled to discover and marshal this factual evidence against entry of summary judgment, as well as to support its own summary judgment motion once fact discovery is complete. In the meantime, Starr Davis is not entitled to have this Court issue advisory rulings based on a materially incomplete factual record.

Second, numerous genuine issues of material fact preclude summary judgment. These disputed factual issues, which are the subject of pending discovery, include:

- the material terms and conditions of certain "missing" policies;
- the facts surrounding the issuance of the policies, when they were lost or destroyed by Starr Davis or its brokers/agents, and when Starr Davis learned that Travelers could not locate copies of certain policies;
- the parties' intent when choosing to employ certain policy language;
- details regarding Starr Davis's sales and operations;
- the facts giving rise to any asbestos claims as to which a declaration is sought, such as the individualized facts concerning the scope and timing of each claimant's alleged injury, including whether the injury during any specific policy period took place before or after an injurious product was sold by Starr Davis, or before or after Starr Davis' injurious operations were completed;
- the facts relating to which state's law applies to the interpretation of any insurance policies at issue; and
- the effect of a written agreement entered into between Aetna (Travelers' predecessor) and Starr Davis in 1985 detailing how coverage and claims handling would be treated.

Third, the sanctions order Starr Davis asks this Court to essentially adopt wholesale has nothing to do with the parties, policies, or facts at issue here. It is a *discovery-related* sanction issued in a *non-insurance coverage tort* case against a *different insurer* concerning *different insurance policies* issued to a *different policyholder* based on *potentially different law*. That order, which will be appealed when this Court decides a long-pending motion for reconsideration (challenging the propriety of the ruling based upon, among other grounds, inconsistency with controlling South Carolina law), is not a ruling on the merits of a dispute between parties to an insurance coverage action. There is no factual or legal basis to “cut and paste” the unrelated sanctions order into this case, as Starr Davis suggests.

Fourth, the declarations Starr Davis seeks are legally unsupported.² For example, Starr Davis is not entitled to simply ‘select’ any Travelers policy it wants to pay the full amount of liability owed to each long-tail asbestos claimant. Under clear and controlling South Carolina Supreme Court law, the liability must be pro-rated between all ‘triggered’ years *without exception*. Starr Davis also has no right to a declaration that by simply asserting “ambiguity,” it is entitled to have this Court construe any and all policy language (the vast majority of which is not before the Court) against Travelers. Starr Davis’s request for numerous other declarations, *e.g.*, that asbestos claims are not subject to per occurrence limits, that Starr Davis’s liability for a claimant’s injury that progresses after a Starr Davis’ operation is complete is not subject to aggregate limits, and that Travelers has the burden to prove that any claim is within the products or completed operations hazard, are all equally unsupported.

² Because Starr Davis’s Motion relies solely on South Carolina law, Travelers primarily discusses South Carolina law in this memorandum. By doing so, however, Travelers does not assume or suggest that South Carolina law applies. Instead, this memorandum demonstrates Starr Davis is not entitled to summary judgment even if South Carolina law applies, a determination that cannot be made until all choice-of-law facts are discovered and it becomes clear whether North Carolina law actually applies.

In short, Starr Davis's Motion is premature, factually unsupported and/or disputed, improperly premised on an unrelated discovery sanctions order, and legally incorrect. The Motion should be denied.

II. BACKGROUND

This case involves a dispute over various liability insurance policies that affiliates or predecessors of Travelers—Aetna and Standard Fire—issued or allegedly issued to Starr Davis several decades ago. While Starr Davis's Motion characterizes Starr Davis as a former South Carolina corporation, *see* Mot. at 3 (“Starr Davis began business operations as an insulation contractor in or about 1946 in South Carolina”); *id.* at 6 (“Starr Davis was formed in South Carolina in or about 1946”), in reality, there are two Starr Davis entities named as plaintiffs in this case—Starr Davis Company, Inc., which was formed in *North Carolina*, and Starr Davis Company of S.C., Inc., which was formed in South Carolina. In its Amended Complaint, Starr Davis acknowledges that “STARR DAVIS COMPANY, INC. is a *former North Carolina corporation* whose principal place of business was at pertinent times *in North Carolina*,” and that “STARR DAVIS COMPANY OF S.C., INC. is a former South Carolina corporation.” Am. Compl. ¶¶ 2-3 (emphasis added); *see also* Am. Compl. ¶ 17 (“this Court appointed the plaintiff as Receiver of Starr Davis, a former South Carolina *and former North Carolina corporation*”) (emphasis added). Indeed, Starr Davis's liability insurance policies were issued and delivered to Starr Davis in Greensboro, North Carolina. *See, e.g.*, Ex. A (TRAV_SD_004636), 1975-1976 Policy at 1; Ex. B (TRAV SD 004793), 1976-1977 Policy at 1 (listing named insured as “STARR DAVIS CO., INC. AND STARR DAVIS CO. OF S.C., INC.” at “502-504 GUILFORD AVE. GREENSBORO, N.C.”). Several of the Individual Defendants (asbestos

claimants) are also North Carolina citizens who were potentially injured in North Carolina. *See generally* Am. Compl.

Attempting to downplay North Carolina’s significant interests in this dispute, Starr Davis suggests, without any explanation or analysis, that South Carolina law applies—no doubt because Starr Davis wants this Court to adopt a sanctions order imposed against a separate Travelers subsidiary—United States Fidelity and Guaranty Company (“USF&G”)—which is premised on application of South Carolina law. Starr Davis ignores the fact that the issue of whether South Carolina law or North Carolina law applies is very much an open issue on which discovery is needed.

Starr Davis’s Amended Complaint seeks various declarations that detail the manner in which asbestos personal injury claims are supposedly covered by the various liability insurance policies issued or allegedly issued to Starr Davis. In Count II, Starr Davis seeks a declaration in part that Travelers has “a duty to defend the Asbestos Claimants lawsuits,” and asks the Court to “declare the essential terms and conditions” for “those insurance policies that are missing or incomplete[.]” Am. Compl. ¶¶ 45-46. Count III requests a raft of complex judicial declarations concerning “the interpretation and meaning of the insurance policies.”³ Starr Davis refers to the

³ Specifically, Starr Davis asks this Court to declare that: (i) the policies “cover all damages of alleged bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;” (ii) “[a]ll of the liability insurance policies in effect from a person’s first exposure to asbestos through manifestation of an asbestos-related disease or condition, and, ultimately, to death, cover the asbestos cases unless coverage is otherwise excluded under the policy;” (iii) Starr Davis “may select the policy or policy years to which to assign or allocate asbestos related loss;” (iv) “where multiple primary policies were issued to Starr Davis for the same policy year, and these multiple policies provide coverage for the same claim, Starr Davis may select one or both of the policies to respond to the claim and may also ‘stack’ the limits of such policies for each and every such claim;” (v) “[a]s to any individual asbestos lawsuit, it is the Insurer Defendants’ burden to prove that the suit seeks the recovery of damages that are subject to any aggregate limits of liability applicable to the ‘products’ or ‘completed operations’ provisions as those terms are defined in the Starr Davis Insurance Policies, in order to subject the claim to the aggregate limits in the Starr Davis Insurance Policies, if any;” (vi) where there is “a claimed ambiguity in any Starr Davis Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Insurance Policies;”

policies throughout its Amended Complaint as “Starr Davis Insurance Policies” and states that the policies are “outlined in the coverage charts and schedules in Tab A[.]” Am. Compl. ¶ 47. But there is no “Tab A” attached to Starr Davis’s Amended Complaint.

As noted above, Travelers has moved to dismiss Count I and a portion of Count II on several grounds.⁴ Travelers has also moved to dismiss numerous new causes of action relating to a so-called “Participating Endorsement” included in one of the many insurance policies Travelers issued to Starr Davis. Briefing on this latter motion to dismiss is just completing.

(vii) “[e]ach of the Starr Davis primary insurance policies has an unlimited supplemental duty to pay or reimburse defense costs; (viii) “[t]he duty to pay or reimburse defense costs is ‘triggered’ whenever there is any obligation that could potentially involve the policy coverage; (ix) “[t]he duty to pay or reimburse defense costs is triggered by the allegations of a complaint asserted against Starr Davis;” (x) “[d]efense costs for the Insured are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Starr Davis Insurance Policies; (xi) “[t]he asbestos insulation contracting, or ‘operations,’ claims against Starr Davis have resulted from multiple ‘occurrences’ under the Starr Davis Insurance Policies, thus entitling Starr Davis to multiple ‘per occurrence’ limits of liability to satisfy its asbestos liabilities;” (xii) “[a]s to the asbestos ‘operations’ claims against Starr Davis, the Defendant Insurers are obligated to pay those claims ‘in full’ up to each applicable policy’s ‘per occurrence’ limits of liability;” (xiii) “[w]hile product liability or completed operations losses are subject allocation on a ‘time on the risk’ pro rata allocation method, ‘operations’ claims are allocated on an ‘all sums’ basis, and, in either case, in light of its non-operating defunct status, no loss may be allocated to Starr Davis as part of any ‘time-on-the-risk’ allocation scheme;” (xiv) “Asbestos Claimants’ exposure to asbestos for which Starr Davis is liable, during Starr Davis’ operations, including Starr Davis’ construction, installation, repair maintenance or removal activities, are, including but not limited to, subject only to the ‘per occurrence’ limits of the Insurance Policies, and not subject to ‘aggregate’ limits, if any, of the Starr Davis Insurance Policies;” and (xv) “[t]he ‘completed operations hazard’ described in the Starr Davis Insurance Policies, and the corresponding aggregate limits of liability, apply only when a plaintiff is exposed to asbestos products after Starr Davis completed its installation or removal operations or work at a particular jobsite.” Am. Compl. ¶ 47.

⁴ Regarding Count I, Travelers’ motion to dismiss demonstrates that Starr Davis has not alleged sufficient facts regarding what the Receiver, a non-party to the case, has done to warrant “compensation” from Travelers. As for Count II, Travelers points out that, to the extent Starr Davis is able to bring a standalone claim for declaratory relief regarding the non-party Receiver’s alleged personal right to obtain copies of the insurance policies, the claim must fail because there is no justiciable controversy for the Court to settle given that Travelers does not assert otherwise. Indeed, Starr Davis’s Amended Complaint does not allege that it had requested copies of the policies or that Travelers refused to provide them; and, regardless, Travelers has already provided Starr Davis and the Receiver with copies of all of the policies Travelers has located to date.

With respect to discovery, Travelers has served Starr Davis with interrogatories, document requests, and requests for admissions. *See* Exs. C – G.⁵ This discovery is designed to obtain necessary evidence relating to the issues raised by Starr Davis’s Motion, including:

- the material terms and conditions of the insurance policies Travelers issued or allegedly issued to Starr Davis;
- Starr Davis’s admitted destruction of all of its insurance policies, along with nearly all other Starr Davis-related documents in 1999;
- the intent and understanding of the parties regarding the policies’ terms and conditions;
- whether Starr Davis and/or its brokers or agents possess copies of the policies or other evidence of their terms and conditions, and if not, why not;
- how, where, and when each asbestos claimant suffered injury;
- the facts, circumstances, and applicability of the written claims handling agreement the parties signed in 1985 detailing how coverage and claims handling would be treated;
- the facts relating to Starr Davis’s incorporation, operations, sales, and/or dissolution in North Carolina and/or South Carolina and facts bearing upon which state’s law should apply to the interpretation of the insurance policies; and
- whether Starr Davis purchased primary or excess insurance from companies other than Travelers that would potentially cover any asbestos claims at issue, and thus would potentially have to contribute to any defense or indemnity costs.

Attached hereto as Exhibits H, I, and J are examples of discovery deficiency correspondence

Travelers has sent Starr Davis regarding various issues with Starr Davis’s discovery responses.

See Exs. H, I, J.

⁵ *See* Ex. C, Traveler Cas. & Surety Co.’s First Set of Requests for Production to Starr Davis; Ex. D, Traveler Cas. & Surety Co.’s Second Set of Requests for Production of Documents to Receiver for Starr Davis; Ex. E, Traveler Cas. & Surety Co.’s First Set of Interrogatories to Starr Davis; Ex. F, Traveler Cas. & Surety Co.’s Second Set of Interrogatories for Starr Davis; Ex. G, Traveler Cas. & Surety Co.’s First Set of Requests for Admission to Receiver for Starr Davis.

Starr Davis's discovery responses have also raised new issues about which further discovery is needed. For example, in its interrogatory responses, Starr Davis asserted for the first time that George Gibson, its former Chief Financial Officer, destroyed substantially all of Starr Davis's records in 1999 without any notice to Aetna or Standard Fire. *See, e.g.*, Ex. K, Starr Davis's Supplemental Responses and Objections to Travelers' Interrogatories, at Response to Interrogatory No. 13. Most recently, on December 21, 2020, in verified responses to requests for admission, Starr Davis confirmed that it unilaterally destroyed substantially all of its records. *See* Ex. L, Starr Davis's Responses and Objections to Travelers' First Requests to Admit, at Response to Request for Admission No. 8. Travelers must be given a full and fair opportunity to investigate and take discovery on this and other issues that may significantly impact the availability of insurance coverage.

Travelers has also served discovery requests on co-defendants Merrimon, Southeastern, and the Individual Defendants. *See* Exs. M – P. These requests seek documents concerning, among other things, the terms and conditions of Starr Davis's policies, Starr Davis's and/or its brokers' efforts to locate the policies, Starr Davis's and/or its brokers' destruction of or failure to retain the policies, Starr Davis's and/or its brokers' knowledge of the fact that Travelers could not locate certain policies in the 1980s, and the details of how, when, and where the Individual Defendants were supposedly injured by Starr Davis's conduct. This discovery is all the more necessary in light of Starr Davis's recent admission that it has destroyed its own records. Worse yet, Starr Davis's broker, Merrimon, recently advised Travelers that it too unilaterally destroyed or failed to preserve substantially all of its Starr Davis-related records. *See* Ex. Q, Affidavit of Greg Myers dated November 25, 2020.

For its part, Starr Davis has served various discovery requests on Travelers, including by way of a third-party subpoena *duces tecum* (even though Travelers is a party), document requests, interrogatories, and requests for admission. Travelers has timely responded to all of Starr Davis's discovery requests (despite the cumulative, duplicative, and overbroad nature of the requests), and it has produced over 15,400 pages documents to date. Starr Davis has also served dozens of document subpoenas on third parties, including various insurance companies.

No depositions have been taken in this case thus far. Depositions will clearly be necessary. Once Starr Davis, Merrimon, Southeastern, and the Individual Defendants have fully and properly responded to Travelers' discovery requests, Travelers anticipates noticing the depositions of certain of their current and former representatives and agents. Travelers may also need to depose certain third parties, including third parties Starr Davis has subpoenaed.

Even though fact discovery is ongoing, Starr Davis asks this Court to simply adopt the unsupported allegations in its Amended Complaint and effectively declare that Starr Davis is entitled to unlimited insurance coverage, regardless of the relevant policy language and/or claim-related allegations or facts. Among other things, Starr Davis insists on issuance of declarations that (i) all of Starr Davis's policies in effect from a person's first exposure to asbestos through death cover the asbestos claims against Starr Davis unless coverage is otherwise excluded; (ii) the policies' "completed operations hazard" provision, and the corresponding aggregate limits of liability, apply only when an individual is exposed to asbestos after Starr Davis completed its installation or removal operations or work at a particular jobsite, and no aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the individual was exposed to asbestos while Starr was performing work at a particular jobsite; (iii) Travelers bears the burden of proof with respect to the applicability of limits; (iv) Starr Davis is entitled to

multiple occurrence liability limits; and (v) the appropriate method of “allocating” liability among insurers and Starr Davis is for all liability to fall on whatever insurer Starr Davis chooses. Starr Davis is not entitled to any of these declarations.

III. RELEVANT FACTS

The “facts” offered by Starr Davis in support of its Motion are remarkably thin, and lack admissible evidentiary support.

A. Corporate History and Business Activities

Starr Davis states, without proof, that it “was formed in South Carolina in or about 1946, and engaged in the installation, removal, replacement and repair of insulation in various facilities across South Carolina and in the neighboring states of North Carolina, Tennessee and Georgia, as well as Alabama and Virginia, for over four decades.” Mot. at 6. Starr Davis goes on to say, again without evidentiary support, that its “operations involved the installation, removal, replacement, repair and disturbance of insulation materials, typically supplied, required, or acquired by other parties,” and that at unspecified “pertinent times, insulation materials contained asbestos, and Starr Davis’s operations allegedly resulted in bodily injury to South Carolina citizens.” *Id.* Starr Davis then claims, again without any evidence, that Travelers somehow “understands that many of the asbestos contracting claims against Starr Davis invoke the ‘operations’ coverage portion of their policies because the claims did not result from Starr Davis’ ‘completed operations[.]’” *Id.* These assertions not only lack any supporting evidence of any kind, they are also contradicted by contemporaneous documentary evidence.

As an initial matter, as noted above, Starr Davis’s suggestion that it is simply a former South Carolina corporation is false. Starr Davis’s Amended Complaint acknowledges that it is two corporations: a former South Carolina corporation and a former North Carolina corporation.

See Am. Compl. ¶¶ 2-3, 17. This fact is borne out by the South Carolina Secretary of State filings attached to Starr Davis's Motion. See Mot., Exs. 3-A and 3-B.

As for Starr Davis's assertion that it primarily did "contracting" work (which supposedly resulted in so-called "operations" claims), contemporaneous documentary evidence demonstrates that, in reality, the *vast majority* of Starr Davis's work involved manufacturing and sales of products, *not contracting*. In fact, the historical records suggest that [REDACTED]

[REDACTED] Ex. R (TRAV_SD_007948 - TRAV_SD_007950, at TRAV_SD_007949). Historical documents further indicate that the Starr Davis companies described themselves as in the [REDACTED]

[REDACTED] Ex. S (TRAV_SD_007968 - TRAV_SD_007970, at TRAV_SD_007970). One contemporaneous document reports that Starr Davis [REDACTED]

[REDACTED] Ex. T (TRAV_SD_009036 - TRAV_SD_009038, at TRAV_SD_009037). As other documents described it, Starr Davis [REDACTED]

[REDACTED] Ex. R at TRAV_SD_007949; Ex. U (TRAV_SD_007982 - TRAV_SD_007985, at TRAV_SD_007983).

Moreover, contemporaneous evidence reflects that Starr Davis [REDACTED]

[REDACTED] Thus, Starr Davis's suggested "fact" that most of the asbestos liability claims against Starr Davis involve

“contracting” (and supposedly fall outside the policies’ “completed operations” hazard provisions) is not only unsupported, it appears to be openly contradicted by the contemporaneous documentation. The same conclusion pertains to any suggested “fact” that claimants were exposed to Starr Davis’ installation, removal or repair “operations”—there is no evidentiary support for this contention in Starr Davis’s Motion, [REDACTED]

[REDACTED]. At the very least, these are open fact issues on which discovery is needed.

Starr Davis also suggests that at “pertinent times,” insulation materials it handled “contained asbestos” fibers, and “Starr Davis’s operations” resulted in asbestos-related “bodily injury to South Carolina citizens.” Mot. at 6. Yet again, this vague but loaded assertion is completely unsupported by admissible evidence attached to Starr Davis’s Motion. Indeed, Travelers and the Court are left to guess as to what Starr Davis means by “pertinent times,” “operations,” and “South Carolina citizens,” as well as when, where, and how these “citizens” supposedly suffered “bodily injury.” These are critical facts to any insurance coverage analysis, because insurance policies respond to the *facts* alleged and eventually proven by individual claimants. The allegations made by each individual claimant (coupled with any known facts) determine whether there is a duty to defend that claim, and the actual facts eventually established determine whether there is a duty to indemnify any actual liability, as well as the scope of those duties. Generalized, unsupported statements about supposedly pertinent times, operations, and citizens are plainly insufficient to demonstrate the absence of a genuine issues of material fact.

Starr Davis also says that “[t]he State of South Carolina rescinded Starr Davis Company, Inc.’s corporate charter in 1996, and rescinded Starr Davis Company of South Carolina, Inc.’s corporate charter in 1997, for failure to file the appropriate documentation with the Secretary of

State.” Mot. at 6 (citing Secretary of State filings). These facts are not material, other than regarding the likelihood that Starr Davis had insurance until 1997, and thus any insurance obligations must be allocated between injury periods allegedly insured by Travelers prior to 1985, injury periods insured by other insurers through 1997, and also to injury periods after 1997 until manifestation of the injury. *See Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 717 S.E.2d 589, 591, 595 (S.C. 2011) (finding “the scope of [the insurer’s] liability is limited to damages accrued during its ‘time on the risk,’” and “each triggered insurer must indemnify only for the portion of the loss attributable to property damage that occurred during its policy period.”).

B. Production of the Travelers Policies

Starr Davis disingenuously suggests that Travelers refused to promptly produce copies of Starr Davis’s insurance policies to Starr Davis. *See* Mot. at 6-7. This also is flatly untrue. As Travelers noted in its letter responding to Starr Davis’s procedurally improper document subpoena, Travelers sent the Receiver copies of all available policies in May and June of 2019—*over a year and a half ago*. *See* Ex. X, Production Cover Letter No. 1, May 14, 2019 and Ex. Y, Production Cover Letter No. 2, June 14, 2019 Travelers has re-produced the policies again in this case and agreed to produce any additional policies it discovers. Travelers has also produced thousands of pages of other insurance-related documents. Starr Davis omits this critical information from its Motion, suggesting falsely that Travelers simply objected to producing the policies, and that, before filing its Motion, Starr Davis and its Receiver did not have copies of any of the policies.

Starr Davis's Motion also completely ignores the fact that Starr Davis failed to retain copies of *any* of its own policies.⁶ Starr Davis's broker, Merrimon, apparently failed to retain any of the policies as well. In other words, Travelers is the only entity that retained and produced copies of available Starr Davis's policies. Starr Davis's unfortunate attempt to rotely portray Travelers as a "document destroyer" is not only a play out of an inapplicable playbook, it is very telling. Rather than focus on the supposed merits of its Motion, Starr Davis resorts to distracting, baseless attacks.

C. The 1985 Agreement

According to Starr Davis, Travelers issued liability insurance coverage to Starr Davis from 1946 to 1986. *See* Mot. at 8. But Starr Davis also reluctantly concedes, as it must, that it entered into a written agreement with Aetna (Travelers' predecessor) in 1985, pursuant to which the parties agreed that Travelers' coverage would be deemed to exist for certain years (1959-85), but *did not exist* for any prior years (1946-58). *See* Mot. at 7; Mot. Ex. 9 at 5-8. Starr Davis and Travelers also agreed to allocate and share in both defense and indemnity costs during the agreed-upon policy years, and further agreed on how to handle coverage and claims on a going-forward basis. The agreement states in relevant part:

WHEREAS, Aetna has afforded products liability/completed operations insurance coverage to Starr Davis from January 1, 1959 to June 30, 1985 and Starr Davis has been insured by other insurers or has been self-insured for the remainder of its existence,

WHEREAS, a dispute has arisen with regard to the responsibility of providing for the defense and disposition of Starr Davis' asbestos claims, and

⁶ As to Starr Davis's failure to maintain its own records, it bears noting that some court have held that "it is the responsibility of the insured not the insurance company, to keep track of which carriers have provided it with liability insurance." *See, e.g., Olin Corp. v. Ins. Co. of N. Am.*, 966 F.2d 718, 725 (2d Cir. 1992).

WHEREAS, Starr Davis and Aetna believe that it will be in their best interests to provide for the effective management of Starr Davis' asbestos claims and that by entering into and performing under the terms of this Interim Agreement they will assure the continuity of such effective management.

Mot. Ex. 9 at 5. Critically, the agreement also provides that "Starr Davis agrees to reimburse Aetna for the expense for any portion of such exposure occurring in a period of Aetna's policies that have been exhausted by the payment of indemnity," that "Aetna's liability for the cost of defense will be limited" in certain respects, that "Aetna's liability for the cost of disposition of the asbestos claims will be limited" in certain respects, and that "Aetna will not be responsible for any payment of expense or indemnity on any policy after the aggregate limits of such policy have been exhausted by payment of indemnity." *Id.* at 6-7. Starr Davis has not offered any evidence whatsoever that the agreement has ever been terminated, and Travelers is not aware of any such evidence.⁷

Starr Davis's Motion goes on to assert that, "[t]hrough painstaking policy reconstruction and analysis based on documents finally produced by Travelers, a 40-year uninterrupted relationship has been revealed, from January 1, 1946 to April 30, 1986, during which Travelers

⁷ In a footnote, Starr Davis points out that paragraph 1 of the agreement states: "Neither this Interim Agreement nor any part thereof shall be offered in evidence or used for any purpose in any court of law as support for the position being asserted by either party hereto in connection with the meaning, intent or construction of any insurance policy or policies issued by Aetna or purchased by Starr Davis." Mot. at 7 n.7 (quoting Mot. Ex. 9 at 5). Starr Davis says that, "[o]nce again, Travelers has filed something that it should not have filed." *Id.* Starr Davis does not elaborate on this vague, unsupported accusation, but to the extent Starr Davis is suggesting that paragraph 1 of the agreement somehow prohibited Travelers from filing the agreement, Starr Davis is wrong. Paragraph 1 states that the agreement cannot be used as evidence of "the meaning, intent or construction" of the insurance policies; it *does not* state that the agreement cannot be used, or filed, for any and all other purposes. Travelers filed the document as evidence of the existence of an enforceable contract, i.e., the parties' agreement that certain policies do and do not exist, as well as how claims will be handled and paid—not as evidence of "the meaning, intent or construction" of any of policies. Filing the agreement was and is entirely proper. In fact, Starr Davis filed the agreement with this Court as an exhibit to its Motion "as evidence of the existence of the insurance policies." *Id.*

insured Starr Davis for asbestos-related bodily injury suits and claims.” Mot. at 8. Once again, this assertion is not supported by admissible evidence, *i.e.*, copies of the insurance policies or other evidence of coverage. Instead, Starr Davis relies on summary “charts” that Starr Davis’s counsel appears to have prepared specifically for this litigation. The charts are not evidence, admissible or otherwise, and thus they cannot be relied on for summary judgment purposes.

In any event, as noted above, Starr Davis and Travelers expressly agreed that “Aetna has afforded products liability/completed operations insurance coverage to Starr Davis *from January 1, 1959 to June 30, 1985 and Starr Davis has been insured by other insurers or has been self-insured for the remainder of its existence.*” Mot. Ex. 9 at 5 (emphasis added). In other words, the parties agreed that Aetna insured Starr Davis from 1959 to 1985, and that Aetna *did not* insure Starr Davis prior to 1959 (or after 1985). Thus, Starr Davis’s suggested “fact” that “Travelers insured Starr Davis for asbestos-related bodily injury suits and claims” from 1946 to 1986 (Mot. at 8) is both unsupported and contradicted by indisputable evidence.⁸

D. What the Policies Cover

Regarding the liability policies the parties agree Aetna issued, Starr Davis states, again without evidentiary support, that “[t]his primary coverage covers bodily injury as the result of both products and completed operations claims subject to an aggregate limit for settlement or judgment costs only (‘products/completed operations’) and operations claims that are subject to a per occurrence limit (‘premises/operations claims’).” Mot. at 9. Starr Davis contends that the “primary coverage issued by Aetna alone provides at least \$11,900,000 in products/completed

⁸ Starr Davis suggests that the “relationship” between Travelers and Starr Davis was so “extensive” and “intertwined” that “Starr Davis was issued an endorsement such that Starr Davis was, and is, entitled to participate in the earnings of Travelers.” Mot. at 8. This is a red herring. The endorsement contains a mundane policy provision completely irrelevant to the relief Starr Davis seeks in its Motion. Travelers has also moved to dismiss all of Starr Davis’s causes of action based on this single-policy “Participating Endorsement.”

operations limits and \$11,900,000 per occurrence in premises/operations limits, with no limit to the number of occurrences.” *Id.* Based on these unsupported assertions, Starr Davis asks the Court to “declare that Aetna issued” various specific coverages to Starr Davis from 1946 to 1986. *See id.* at 9-10. Starr Davis says that “[w]ith the exception of the primary policies from January 1, 1974 to May 1, 1980, which do not cover North Carolina claims, the Aetna policies . . . cover all asbestos-related suits asserted against Starr Davis Co. or Starr Davis of South Carolina.” *Id.* at 10-11. Starr Davis makes additional unsupported statements regarding the policies issued by Standard Fire (rather than Aetna). *Id.* at 12.

Starr Davis’s characterizations of the policies are not evidence. Starr Davis has provided the Court with copies of only *two* of its liability insurance policies with its Motion (Mot. Exs. 4-5), even though Travelers located and produced to Starr Davis numerous additional policies well over a year ago. Rather than cite the actual policy language, Starr Davis relies on self-serving, inadmissible summary “charts” its lawyers prepared. *See* Mot. Exs. 10-15. The inadmissible charts, and Starr Davis’s counsel’s characterizations of what the policies supposedly say, cannot be used to support the summary judgment rulings Starr Davis seeks.

IV. SUMMARY JUDGMENT STANDARDS

Summary judgment is proper only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129 (S.C. 2008); Rule 56(c), SCRCP. Every benefit of the doubt is given to the party opposing summary judgment. *See Watters v. Terminix Service, Inc.*, 376 S.C. 632 (S.C. App. 2008). “At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a [factfinder] for summary judgment to be denied.” *Hill v. York County Sheriff’s Dept.*, 313 S.C. 303, 308 (S.C.

App. 1993). Moreover, “[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins v. Fields*, 354 S.C. 58, 69 (S.C. 2003). Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. *Evening Post Publ’g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C. 2011).

Pursuant to Rule 56(f), “[s]hould it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.” Thus, where discovery is ongoing and evidence is likely to exist that is necessary to the non-moving party’s opposition, any consideration of summary judgment should be postponed until that evidence can be marshalled for the Court’s review. *See Schmidt v. Courtney*, 592 S.E.2d 326, 331, 335 (S.C. 2003) (noting that “[b]ecause summary judgment is a drastic remedy, it must not be granted until the opposing party has had a ‘full and fair opportunity to complete discovery,’” and finding trial court erred in granting summary judgment because additional discovery was needed) (citations omitted). Moreover, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 331 (collecting cases). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.* (collecting cases).

V. ARGUMENT

A. The Motion is Premature

This case is in its early stages. Travelers' two motions to dismiss remain pending. This Court has no way of knowing, at this preliminary stage, the entirety of what is at issue in this case, let alone how the issues should be decided. Moreover, as detailed above, significant discovery is ongoing. Travelers continues to seek information from Starr Davis, Merrimon, and the Individual Defendants. Starr Davis also continues to seek discovery from Travelers and others. No depositions have been taken. Experts have not been identified, and no expert reports have been exchanged. A multitude of facts are yet to be discovered and marshaled. There is nothing about this case that suggests it is anywhere close to ripe for summary judgment practice.

Travelers' accompanying Rule 56(f) declaration details the facts Travelers must discover to respond fully and adequately to Starr Davis's Motion. *See* Ex Z, Affidavit of William P. Davis ("Davis Decl."). As that declaration explains, Travelers has served Starr Davis with document requests, requests for admission, and interrogatories designed to obtain a host of information relevant to this case and the issues raised by Starr Davis' out-of-the-gate summary judgment motion. Travelers has also served document requests on Merrimon, Southeastern, and the Individual Defendants. Specific examples of some of the most important categories of documents and information sought are set forth above and in Section B below.

In an apparent effort to justify the timing of its Motion, Starr Davis suggests that "[i]nitially" Travelers "categorically refused" to produce documents to the Receiver for Starr Davis, including copies of the existing insurance policies. Mot. at 7. Starr Davis' lack of candor is both distressing and revealing. It fails to apprise the Court that Travelers objected to the improperly-served subpoenas on many grounds, *yet Travelers had already produced to Starr Davis copies of all of the policies it was able to locate well over a year ago, in mid-2019. See* Exs. X - Y.

Starr Davis seeks to avoid any discussion of the actual policy language or the actual claim facts, and instead expects this Court to grant reflexively Starr Davis's Motion based on false comparisons with a discovery sanctions order issued in a tort case involving a different insurer. While Starr Davis points out that Travelers has agreed that it issued certain liability policies to Starr Davis for the period 1959 to 1985, the contract reflecting that agreement, signed more than 35 years ago, certainly does not obviate the need to consider the actual policy language and surrounding facts in order to make coverage determinations. Moreover, Starr Davis completely ignores the fact that the 1985 claims agreement provides that Starr Davis consented long-ago to pro rata allocation of defense and indemnity costs, and gave Travelers the right to reimbursement from Starr Davis for the portion of defense or indemnity allocable to years not covered by Travelers. Mot. Ex. 9 at 5-8. Yet Starr Davis now suggests that the Court should somehow look past this binding agreement, find that further discovery is unnecessary, and announce that pro rata allocation is somehow not required, *i.e.*, declare that Starr Davis can simply move liability associated with bodily injury that occurs during certain policy years into any single year it chooses. Starr Davis's failure to provide the Court with copies of all of the insurance policies about which it seeks declarations, coupled with its selective reliance on the 1985 agreement, shows just how ill-timed it would be to consider summary judgment at this juncture, let alone to issue the wide-ranging declarations Starr Davis seeks.

In short, Starr Davis's Motion is plainly premature and should be denied on that basis alone. *See Schmidt*, 592 S.E.2d at 331, 335 (noting that "[b]ecause summary judgment is a drastic remedy, it must not be granted until the opposing party has had a 'full and fair opportunity to complete discovery,'" and finding trial court erred in granting summary judgment because additional discovery was needed) (citations omitted)). "Summary judgment is not

appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 331 (collecting cases). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.* (collecting cases).

B. Numerous Material Factual Issues Abound

A cursory review of the “facts” on which Starr Davis’ Motion is based reveals not only the lack of admissible evidence necessary to decide the Motion, and thus the need for further discovery, but also that the supposed “facts” on which Starr Davis relies are far from undisputed.

The genuine issues of material fact include, first and foremost, the material terms and conditions of every policy. To be sure, there are a number of policies that exist today—Travelers located and produced to Starr Davis in 2019 complete or partial copies of nearly two dozen primary liability insurance policies issued to Starr Davis by Aetna or Standard Fire. It has also produced excess indemnity (umbrella) policies, special multi-peril policies, and workers compensation policies. Despite this, Starr Davis has provided this Court with copies of only *two* of the policies for summary judgment review.

There are a number of insured years as to which the parties agree that policies existed that would cover products/completed operations claims (subject to their terms, conditions and exclusions), but the parties cannot locate the policies, including in particular policies issued prior to 1975. The parties looked extensively for those policies in the early 1980s—more than 35 years ago—and could not find them at that time. Not surprisingly, the parties still cannot find them today.

Importantly, contemporaneous documents reveal that Starr Davis has known for nearly 40 years—since no later than 1980—that Travelers did not have copies of certain policies

allegedly issued prior to 1975. In a 1980 letter to Starr Davis, for example, Aetna (Travelers' predecessor) stated in pertinent part as follows: [REDACTED]

[REDACTED]

[REDACTED] Ex. S at TRAV_SD_007968.

Starr Davis responded: [REDACTED]

[REDACTED] *Id.* at TRAV_SD_007970. But Merrimon never found any pre-1975 policies. *Id.*; *see also* Ex. Q, Affidavit of Greg Myers dated November 25, 2020.⁹ And we now know that Starr Davis has since destroyed substantially all of its records—*i.e.*, *after* being put on notice that Aetna could not locate copies of some of the policies. Thus, the language applicable to those policies may or may not remain unknown, subject to further discovery from Starr Davis, Merrimon and/or other fact and expert discovery.

There are a number of years as to which the parties agreed that no coverage existed, even if there is evidence that some type of policy may have been issued. This is memorialized in the parties' 1985 agreement. *See* Mot. Ex. 9 at 5-8. Again, if Starr Davis now seeks to contest the non-existence of that coverage, the relevant facts will have to be determined through discovery. While Starr Davis's Motion seeks to sidestep these factual disputes, there must be discovery concerning the controlling policy language in order to decide what type of coverage exists, whether any particular conditions or exclusions apply, and what limits of liability pertain.

In addition, Starr Davis' Motion demonstrates that the parties vigorously dispute their knowledge and intent when choosing to employ certain policy language. These knowledge and intent facts are relevant to the correctness of the coverage positions espoused by Starr Davis's

⁹ That Starr Davis did nothing about this known fact for nearly 40 years, and instead chose to enter into an agreement with Aetna in 1985 detailing how coverage and claims handling would be treated going forward, is powerful evidence that Starr Davis's claims in this case are barred by waiver, estoppel, limitations and/or laches, among other fact-intensive defenses.

current Receiver, which appear to be at odds with the parties' contemporaneous understandings. The contemporaneous statements made by Starr Davis and its brokers, as well as Travelers' underwriters and claims personnel, in applications, binders, quotes, and claims correspondence, are necessary to resolve these factual disputes.

Numerous material factual disputes also exist with respect to the facts and circumstances by which the asbestos claimants suffered their alleged injuries. These individualized facts include the cause, location and timing of each claimant's alleged injury, particularly whether the injury took place during one or more policy periods, and if so, which periods, as well as whether any injury related to a product or a completed operation. Travelers is in the process of seeking discovery on these and other issues from the Individual Defendants and also from Starr Davis, Merrimon, and Southeastern.

As discussed above, Travelers has evidence that [REDACTED] [REDACTED] Exs. R-U. Thus, 90% of Starr Davis' revenues involved the in-plant fabrication of products that were simply sold to others, with the claimants' exposure occurring thereafter. These are classic "products hazard" injuries that are subject to applicable aggregate limits of liability in the Aetna and Standard Fire policies. Moreover, Travelers has evidence that [REDACTED]

[REDACTED] a representation on which Travelers clearly relied. Exs. R, V. At the very least, this fact means that any injury suffered by any claimant post-1972 must be either a products or completed operations hazard injury subject to aggregate limits. Travelers is currently seeking discovery on these fact issues.

Genuinely disputed facts also exist concerning the facts needed to decide whether South Carolina or North Carolina law applies to the interpretation of any Starr Davis insurance policies. The policies located to date show that they were issued to *both* Starr Davis entities in Greensboro, North Carolina. Yet as noted above, Starr Davis cites only South Carolina law in its Motion, and suggests incorrectly that Starr Davis is only a former South Carolina corporation. The correct law to be applied here remains an open issue subject to discovery. To date, Starr Davis has refused to provide any information to support its assertion that South Carolina law applies.

Finally, factual issues exist concerning the 1985 agreement. In its Motion, Starr Davis suggests that the agreement has no bearing on this case, other than as evidence of the existence of certain policies. But it is also evidence that Starr Davis and Travelers agreed that Travelers' coverage would be deemed to exist for certain years (1959-85), but not for others (1946-58), *see* Mot. Ex. 9 at 5-9, despite Starr Davis's assertion of 1946-58 coverage. The agreement also clearly reflects Starr Davis' bargained-for concession that Travelers would be reimbursed by Starr Davis for any defense or indemnity expenses allocable to injury years not covered by Travelers policies, *i.e.*, at the very least all years prior to 1959 and after 1985. To the extent Starr Davis takes the position in this litigation that it need not follow this agreement, or that it can otherwise now avoid its enforcement, these issues will be a significant and necessary topic of discovery.¹⁰

¹⁰ Starr Davis has so far refused to answer Travelers' discovery concerning the agreement. In Interrogatory No. 9, for example, Travelers asked Starr Davis to "[s]tate whether the Interim Agreement dated November 19, 1985, between Starr Davis and Travelers, remains in force, and if not, identify all facts that support Starr Davis's contention that it is not in force." *See* Ex. E, Traveler Cas. & Surety Co.'s First Set of Interrogatories, at Interrogatory No. 9. In response, Starr Davis lodged various objections and refused to answer. *See* Ex. B, Starr Davis's Supp. Responses and Objections to Travelers' First Set of Interrogatories. Travelers sent Starr Davis a discovery deficiency letter regarding this and other evasive and otherwise improper responses to Travelers' discovery requests. *See* Exs. H, I. Starr Davis has

C. A Discovery Sanctions Order Issued in Tort Cases Cannot Control The Outcome of This Insurance Coverage Action

Starr Davis' Motion is premised almost entirely on the discovery sanctions order entered in certain tort cases involving Covil Corporation, rather than the actual policy terms and claims at issue in this case, even though those tort cases involve a different policyholder, different insurers (USF&G and Zurich), different policies, different claimants, and alleged facts that do not exist here concerning a so-called "purge" of USF&G documents. Simply put, the order is irrelevant here, and certainly cannot dictate how this Court rules with respect to the policies at issue. Disputed declaratory judgment rulings must be decided based on the actual policy contract language, in conjunction with the actual facts of this case and any underlying claims, all in accordance with the correct applicable law. Moreover, the sanctions order was entered as a discovery-related penalty against a non-party insurer, USF&G; it was not a ruling on the merits of an insurance coverage dispute between two parties, and was not based on any discovery, including depositions, cross-examination or any other indicia of due process.

Further, Judge Bruce Howe Hendricks of the United States District Court for the District of South Carolina has ruled that the Receiver's pursuit of coverage-related rulings in the tort case was an improper "mechanism to indirectly force the Insurers to stake out litigation positions integral to coverage issues" pending in already-existing coverage actions, in violation of the Anti-Suit Injunction Act. Opinion and Order at 23, *Covil Corp. v. Zurich Am. Ins. Co.*, No 7:18-3291 (D.S.C.), [ECF 105] (Feb. 27, 2020). Given Judge Hendrick's admonition that the same Receiver at issue here was and is not authorized to obtain coverage rulings in tort cases before this Court, the sanctions order issued in that tort case cannot possibly be viewed as authoritative here. The order also remains subject to review by the appellate courts.¹¹ Any

continued to refuse to provide a substantive response. See Ex. J.

¹¹ USF&G's motion for reconsideration of the *Covil* sanctions order has remained pending for over a year. USF&G's appeal to the South Carolina Court of Appeals has been dismissed without prejudice to refiling the appeal if and when reconsideration is denied.

appeal will involve each of the insurance coverage issues raised by Starr Davis' Motion, as well as whether the insurers' alleged conduct warranted such "sanctions" in the form of coverage rulings—rulings that the Receiver is improperly seeking to leverage here. Simply put, the sanctions order cannot inform, let alone control, any Starr Davis coverage issues.

D. The Requested Judicial Declarations Lack Legal and Factual Merit

South Carolina's Uniform Declaratory Judgments Act provides that courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed," including with respect to the construction or validity of contracts. S.C. Code Ann. §§ 15-53-20, 30. In actions based on contract, "the burden [is] upon the [insured] to prove the contract, its breach, and the damages caused by such breach." *Fuller*, 240 S.C. at 89, 124 S.E.2d at 610. South Carolina follows the "basic principle that insurance policies are contracts to be interpreted in accord with contract law." *Crossmann*, 717 S.E. 2d at 595. The court's "role in interpreting a contract is to enforce the parties' intent. [The court] look[s] *first to the language of the contract*. If that language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect. . . [and] [i]n such instances, [the court] must enforce the language as written" *McCord v. Laurens Cty. Health Care Sys.*, No. 2017-001064, 2020 WL 86744, at *2 (S.C. Ct. App. Jan. 8, 2020) (emphasis added) (internal quotations omitted).

When these principles are applied to Starr Davis's requests for declaratory relief, it is clear that those requests are unsupported both factually and legally.

1. Continuous Trigger of Coverage

The first declaration Starr Davis seeks pertains to the so-called 'trigger' of coverage. Starr Davis argues that, "[i]n the *Covil* [sanctions order], this Court ruled that Covil's liability insurance policies [issued by USF&G] in effect from a person's *first* exposure to asbestos

through manifestation of an asbestos disease and, ultimately, to death cover the asbestos cases unless coverage is otherwise excluded under a policy.” Mot. at 16 (emphasis in original) (citing *Covil* order at 14-15). Relying solely on the sanctions order, and without any supporting evidence of any kind relating to the specific asbestos claims at issue, Starr Davis contends that “this Court should hold that all of Starr Davis’s policies in effect from a person’s first exposure to asbestos through death cover the asbestos claims against Starr Davis unless coverage is otherwise excluded.” *Id.*

While Travelers is well aware of the trigger of coverage rule generally adopted by South Carolina courts in the context of asbestos claims, that rule is based on actual policy language, which is referenced almost nowhere in Starr Davis’ Motion. *See Crossmann*, 395 S.C. at 52–53, 717 S.E.2d at 595. (“We begin with the basic principle that insurance policies are contracts to be interpreted in accord with contract law. Accordingly, our discussion begins with the language of the policies themselves.”). The trigger declaration Starr Davis seeks is not only untethered to any specific policy language or claim facts, *it is also quite incomplete*. Under South Carolina law, long-tail asbestos injuries not only trigger policies on the risk between first exposure to asbestos and manifestation of disease, those injuries also trigger years insured by other insurance companies, as well as any uninsured or “under-insured” years. *See Crossmann*, 395 S.C. at 55, 62-63 (explaining South Carolina allows for coverage under multiple policies, and there “is no logic to support the notion that one single insurance policy among 20 or 30 years[’] worth of policies could be expected to be held liable for the entire time period”). Starr Davis’ requested declaration completely ignores this binding principle.

Moreover, Starr Davis’s requested declaration fails to account for the effect of the 1985 cost sharing agreement, whereby Starr Davis expressly agreed to allocate asbestos-related

liability, share in both defense and indemnity costs, and give Travelers the right to reimbursement from Starr Davis for the portion of defense or indemnity allocable to years not covered by Travelers. Mot. Ex. 9 at 5-8.

Finally, Starr Davis's requested trigger declaration asks this Court to simply announce by fiat that nothing in any of the policies excludes coverage. Again, Starr Davis makes this extraordinary request for a judicial proclamation without any analysis of the applicable policy language, and without providing the Court with copies of the vast majority of Starr Davis's known liability policies. This Court cannot rule on trigger with respect to policy contracts that Starr Davis has failed or refused to submit to the Court as part of its Motion.

2. Completed Operations Hazard Aggregate

The liability policies issued to Starr Davis define "bodily injury" as "bodily injury, sickness or disease sustained by any person *which occurs during the policy period . . .*" Ex. A at 6 (emphasis added). The policies further provide that where the "bodily injury" within the policy period occurs after Starr Davis's operations were completed or abandoned, the injury falls within the policy's "completed operations hazard." Specifically, the policies define the "completed operations hazard" as applying to any bodily injury during the policy period that "occurs after such operations have been completed or abandoned and occurs a way from premises owned by or rented to the named insured." *Id.* (emphasis added).

In other words, the completed operations hazard is based on a comparison of the bodily injury that took place during the policy period with the timing of the insured's operations. If the injury-causing operation was complete before a policy inceptioned, then any progressive bodily injury that occurs during that policy's period *necessarily* falls within the completed operations hazard of that policy, and is subject to that policy's completed operations aggregate limit.

Likewise, if a policy incepts after Starr Davis' injury-causing asbestos products were relinquished to others, any progressive injury during the policy period is subject to the products hazard aggregate limit applicable to that policy.

Starr Davis argues that “the ‘completed operations hazard’ described in the Travelers (and other insurers’) policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is *first* exposed to asbestos *after* [the insured] completed its installation or removal operations or work at a particular jobsite.” Mot. at 17 (emphasis in original). Starr Davis ignores the controlling policy language and, instead, improperly relies on the inapplicable sanctions order.

The “completed operations hazard” definition focuses on “bodily injury,” which, as noted above, is specifically defined as the bodily injury that occurs *during the policy period*. To illustrate, consider a plaintiff who inhaled asbestos fibers during a Starr Davis operation in 1977, but which was completed before 1978. Coverage may be triggered under Starr Davis policies issued in 1978 and thereafter because of the claimant’s continuing injury in those years, but the injury in those years occurred after the operation was completed in 1977. The injury thus falls within the post-1977 policies’ completed operations hazard and is subject to any associated aggregate limit.

The U.S. Court of Appeals for the Fourth Circuit reached this very result in *Wallace & Gale*. When reviewing the same policy language, that court, applying Maryland law (which is on all fours with the law of South Carolina), found that the completed operations aggregate limit applies where the “bodily injury” during the policy period occurs after the insured’s relevant operations have been completed. *See In re Wallace & Gale Co.*, 385 F.3d 820, 833 (4th Cir. 2004). The Fourth Circuit has confirmed this result each time it has been asked to revisit the

question. *See Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Roberts*, 668 F.3d 106, 113-115 (4th Cir. 2012), *cert. denied*, 568 U.S. 822 (2012); *Gen. Ins. Co. of Am. v. U.S. Fire Ins. Co.*, 886 F.3d 346, 355 (4th Cir. 2018).

The *Wallace & Gale* decision is entirely consistent with South Carolina Supreme Court precedent. Indeed, the Supreme Court in *Crossmann* emphasized that because coverage applies “only if ... [t]he ‘bodily injury’ or ‘property damage’ occur[red] during the policy period,” it follows that “the insurance does not apply to property damage that did not occur during the policy period.” 395 S.C. at 62, 717 S.E.2d at 600. That basic principle was fundamental to *Wallace & Gale*’s holding.

Even the state of California, often a bastion of pro-policyholder law, agrees. In *Plant Insulation Co. v Fireman’s Fund Ins. Co.*, No. CGC06448618, 2013 WL 3286410, at *5 (Cal. Super. Ct. Apr. 08, 2013), where counsel for the Receiver here also represented the policyholder, the court explained that “[b]y fully incorporating the definition of bodily injury into the definition of the completed operations hazard, the plain and unambiguous policy language provides that a claim for bodily injury falls within the completed operations hazard where: (1) it arises from [the insured’s] operations; (2) the bodily injury during the policy period occurs after such operations have been completed or abandoned; and (3) the bodily injury during the policy period occurs away from premises owned or rented by” the insured]. The court reach the same conclusion as to the products hazard. *Id.* at *11-12. This approach follows South Carolina law, which recognizes that contracts should be interpreted in accordance with the contracts’ plain and unambiguous terms. *See Cont’l Cas. Co. v. Penn Nat’l Ins. Co.*, 128 F. App’x 957, 962 (4th Cir. 2005) (under South Carolina law, a “court must give policy language its plain, ordinary, and

popular meaning”) (citations omitted); *McCord v. Laurens Cty. Health Care Sys.*, No. 2017-001064, 2020 WL 86744, at *2 (S.C. Ct. App. Jan. 8, 2020).

Starr Davis suggests that South Carolina law differs from Maryland law with respect to policy provisions of the type analyzed by *Wallace & Gale* and the myriad decisions that have reached the same result. This is pure fiction. Starr Davis cites no South Carolina case in support of this argument other than the *Covil* sanctions order, which, as explained above, is neither precedential nor persuasive as to the coverage issues here. Contrary to Starr Davis’s assertion, *Wallace & Gale* and the numerous judicial decisions that agree with it do *not* hold that operations claims “transform into completed operations claims where there is continuing injury post-dating completion of the installation.” Mot at 15. Rather, *Wallace & Gale* and other courts have repeatedly and consistently held that where injury during a policy period occurs after the completion of the operation that caused it, payment for that injury under that policy is, by definition, within the completed operations products hazard. 385 F.3d at 826.

3. Starr Davis Bears the Burden of Proof as to Aggregate Limits

Starr Davis asserts, without any analysis or explanation, that “[t]his Court has held [in the *Covil* sanctions order] that ‘[i]nsurers bear the burden of demonstrating that aggregate limits in their policies, if any, apply to any particular asbestos suit,’ and that “[t]his ruling applies equally in this case, and should be included in a judgment.” Mot. at 18. As explained above, the *Covil* sanctions order is not controlling here.

Assuming South Carolina law applies to this case (which is an open question subject to discovery), the Court should follow controlling precedent that requires an insured to bear the burden of proving the applicability of limits of liability, a fundamental term of every insurance policy. Starr Davis does not cite *any* controlling South Carolina law or precedent in its favor,

because there is none. South Carolina law is clear that an insured bears the burden of proving the existence and terms of a policy, while the insurer bears the burden of proof only with respect to policy exclusions. *See Fuller v. Eastern Fire & Cas. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) (addressing burden of proof generally); *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 346, 803 S.E.2d 288, 302 (2017) (addressing burden of proof with respect to policy exclusions).

The amount of insurance, *i.e.*, the limit of liability, is not an exclusion; it is a term present in all commercial general liability policies. *See Gaskins v. Firemen's Ins. Co. of Newark, N.J.*, 206 S.C. 213, 217, 33 S.E.2d 498, 499 (1945) (“All parties must agree upon the necessary terms, including those in relation to the subject matter insured, the risk insured against, the commencement and duration of the risk, *the amount of insurance*, and the premium to be paid.”) (emphasis added). Indeed, courts have commonly found that the application of a policy aggregate limit of liability to asbestos injury relates to the scope of coverage, not the exclusion of claims, and that the burden of proving the inapplicability of aggregate limits therefore falls on the insured. *See, e.g., Plant Insulation Co.*, 2013 WL 3286410, at *15 (products and completed operations hazards are “term[s] of coverage and should be given broad application as such even if [they] operate[] to limit or preclude coverage in a particular case”) (citation omitted).

Courts have reasoned that where, as here, the policyholder has access to all existing insurance policies and is closest to the facts relating to the claims it faces, it is in the best position to prove whether or not those claims fall outside the products and/or completed operations hazard, and thus are not subject to an aggregate limit. *See Nat'l Union Fire Ins. Co. of Pittsburgh, PA, v. Porter Hayden Co.*, No. CCB-03-3408, 2012 WL 734176, at *2 (D. Md. Mar. 6, 2012). In *Porter Hayden*, the court noted that in Maryland, like in South Carolina, it is well-

established that “[i]n an action on an insurance policy, the [policyholder] has the burden of proving every fact essential to his or her right to recover.” *Id.* (quotation omitted). The court went on to explain that “[o]nce the plaintiff makes that prima facie showing, ‘the burden rests on the insurer to establish the applicability of a particular exclusion from coverage.’” *Id.* (quotation omitted). The court then explicitly found that the policyholder “bears the burden of showing when the operations hazard applied to a claim,” because “[c]lassification of a claim . . . is a matter of showing *entitlement* to coverage—not a defense or limitation thereto.” *Id.* (emphasis in original). The court reasoned that because the policyholder had argued that it was “conducting operations that resulted in the release of asbestos fibers (such as ‘tie-in’ operations or asbestos removal operations) during the relevant policy periods, the burden was on [the policyholder] to prove that,” because it was “of course” in the best position to do so. *Id.* The court specifically declined to require the insurers to demonstrate the absence of ongoing operations during the policy periods. *See id.*

The Maryland law underlying the *Porter Hayden* decision is the same in South Carolina, and thus Starr Davis should also bear the burden of proving that operations coverage applies to any given asbestos injury. Starr Davis has made no effort to satisfy this burden for purposes of this Motion. At the very least, a material factual issue exists. It would be manifestly unjust and improper for the Court to issue a contrary burden of proof declaration at this time.

4. Starr Davis Has Not Made a Showing That It is Entitled to Multiple “Occurrences” Under the Policies

Relying again solely on the *Covil* sanctions order, Starr Davis says it is entitled to a declaration that the asbestos claims pending against it arise from multiple “occurrences,” as that term is defined by the policies. *See Mot.* at 18-19. Starr Davis notes that the *Covil* court found that “Covil faces allegations in numerous lawsuits . . . that multiple asbestos injury and wrongful

death ‘occurrences’ have resulted from its ‘operations,’ entitling Covil to multiple ‘per occurrence’ limits of liability to resolve the asbestos suits.” *Id.* at 18-19 (citing *Covil* sanctions Order at 18). Starr Davis goes on to assert, again without any explanation or analysis, that “this Court [should] apply this ruling to the insurance policies Travelers issued to Starr Davis.” *Id.* at 19. Not so.

Starr Davis’s policies provide coverage for “occurrences” that cause damage during the policy period. *See* Ex. A at 6. An “occurrence” is defined as “an accident, including continuous or repeated exposure to conditions, which result in bodily injury or property damage neither expected nor intended from the standpoint of the insured.” *Id.* While Starr Davis references the “typical” definition of an occurrence (Mot. at 18), it neglects to mention that the primary policies issued to Starr Davis specifically provide that “for the purpose of determining the limit of the Company’s liability, *all bodily injury* and property damage arising out of continuous or repeated exposure to *substantially the same general conditions* shall be considered as arising out of *one* occurrence.” *See* Ex. A at 10 (emphasis added). Moreover, Starr Davis has offered no admissible evidence concerning any number-of-occurrence facts, such as whether Starr Davis’ liability arises mainly from ongoing and relatively undifferentiated manufacturing and sales, which would lead to a single occurrence finding, or from highly unique circumstances that somehow may justify a multiple occurrences finding. As noted above, Starr Davis’ broker informed Travelers that *90% of Starr Davis’s activities were simple sales*. *See* Exs. R-U

In addition, a threshold factual question when determining whether one or multiple occurrences exists is whether any occurrence has taken place *at all* with respect to a policy, which is a question of fact that has not yet been resolved. A claimant could, for example, have been first exposed to asbestos long after all of the policies had expired. Given that Starr Davis

has not provided this Court with any facts concerning its involvement with asbestos, nor offered any facts concerning how, when and where any particular claimant came to be exposed to asbestos associated with Starr Davis, it is simply too early to decide the number of occurrences issue. *See, e.g., Indep. Petrochemical Corp. v. Aetna Cas. & Sur. Co.*, No. 83–3347, 1987 WL 10107, at *4 (D.D.C. Mar. 30, 1987) (“any finding as to the number of occurrences would, on the present record, be premature.”). Thus, Starr Davis’s requested number of occurrences declaration is factually unsupported and premature.

As a legal matter, although the South Carolina Supreme Court has not spoken on this issue, it is likely to follow the “cause test” in determining the number of occurrences, meaning that all personal injury claims arising from the same cause (such as a defendant’s decision to use a hazardous product like asbestos-containing insulation) arise from a single occurrence. Indeed, a majority of jurisdictions apply the “cause test,” which “asks if there was but one proximate, uninterrupted and continuing cause which resulted in all of the injuries and damage.” *Liberty Mut. Ins. Co v. Treesdale, Inc.*, 418 F.3d 330, 334 (3d Cir. 2005); *see also Stonewall Ins. Co. v. E.I. du Pont de Nemours & Co.*, 996 A.2d 1254, 1258 (Del. 2010). Courts that employ the “cause test” often hold that multiple injuries arising from an insured’s decision to manufacture and sell asbestos-containing products is a single occurrence. *See Treesdale*, 418 F.3d at 335; *Owens-Illinois v. Aetna Cas & Sur. Co.*, 597 F. Supp. 1515, 1527 (D.D.C. 1984) (“It is undisputed that all suits brought by all claimants share a common feature: each claimant alleges at least one exposure to [the insured’s] asbestos-containing product.”). Although the South Carolina Supreme Court has not considered whether to apply the “cause test” in the asbestos context, it has characterized that test as the majority view and, in a case involving “the distribution of inherently defective goods,” held that “placing a defective product into the stream

of commerce is one occurrence.” *Owners Ins. Co. v. Salmonsens*, 366 S.C. 336, 338–39, 622 S.E. 2d 525, 526 (2005). The policy language at issue in *Salmonsens* is virtually identical to the “occurrence” language at issue here. Thus, when fact issues are resolved and this Court rules on this issue, it should likely find that all asbestos claims arising from exposure to asbestos used by Starr Davis in its business are a single occurrence.

5. Under Controlling South Carolina Law, Allocation of Loss Must be Based on “Time on the Risk”

Firmly established South Carolina law holds that a judgment or settlement for an injury progressing over multiple policy periods should be allocated proportionately to each triggered policy based on the relative amount of time each policy was on the risk. *See Crossmann*, 395 S.C. at 62–63, 717 S.E. 2d at 601. The Court should deny Starr Davis’s request for a summary judgment ruling granting it the ability to “pick and choose” which policies cover which claims—an approach that has been squarely rejected by the South Carolina Supreme Court.

In connection with the allocation of underlying judgments or settlements to triggered insurance policies, Starr Davis argues that because the “all sums” policy language triggers multiple policies, the policyholder can pick or choose any one policy to pay the entire settlement or judgment, including the portion for bodily injury that occurred before the policy issuance or after expiration, up to that policy’s per-occurrence limit. In essence, Starr Davis seeks a declaration that it can ignore the time-on-the-risk allocation required by the South Carolina Supreme Court and force Travelers to pay the entirety of every asbestos-related bodily injury claim. Such a declaration would be contrary to controlling law.

In *Crossmann*, the South Carolina Supreme Court reversed a lower court’s finding that an insurer like Travelers must cover multi-year, progressive injury on an “all sums” or “joint and several” basis. Instead, the Supreme Court ruled that “the scope of [the insurer’s] liability is

limited to damages accrued during its ‘time on the risk.’” *Id.* at 591. Specifically, the Supreme Court held that:

After a detailed review of the policy language and the relevant case law, we find that each triggered insurer must indemnify only for the portion of the loss attributable to property damage that occurred during its policy period. Accordingly, we adopt a “time on risk” approach to the allocation of damages caused by progressive injuries.

Id. at 595.¹² In reaching this conclusion, the Court analyzed at great length the relative merits of the all sums/joint and several approach to allocation, as compared to the pro rata/time-on-the risk approach. Observing that “[a]dvocates of a ‘joint and several’ approach typically contend that the plain language of the insuring agreement requires an insurer to pay ‘all sums’ or ‘those sums’ the insured becomes legally obligated to pay,” as long as some “damage occurs during the policy period,” the Court countered that, “we believe this interpretation ignores critical language limiting the insurer’s obligation to pay to sums that are attributable to property damage that occurred during the policy period.” *Id.* at 599. It found that pro rata/time on the risk allocation was most consistent with the policy language, reasoning that, “[n]ot only does [the time on the risk approach] give effect to each part of the insuring agreement (rather than focusing solely on the terms ‘all sums’ or ‘those sums’), it is consistent with objectively reasonable expectations of contracting parties”:

[W]e doubt that an objectively reasonable insured reading the relevant policy language would expect coverage for liability from property damage occurring outside the policy period.... No reasonable policyholder could have expected that a single one-year policy would cover all losses caused by [a progressive injury] over the course of several decades. Any reasonable insured purchasing a series of occurrence-based policies would have understood that each policy covered it only for property damage occurring during the policy year.

¹² Although *Crossmann* dealt with progressive property damage, the Court clearly intended its ruling to extend to progressive bodily injury claims; indeed, it expressly referenced asbestos-related bodily injury claims. *Id.* at 595 & n. 8 (“A progressive injury ... results from an event or set of conditions that occurs repeatedly or continuously over time, such as long-term exposure to asbestos fibers or the continual intrusion of water into a building.”).

“[T]here is no logic to support the notion that one single insurance policy among 20 or 30 years worth of policies could be expected to be held liable for the entire time period. Nor is it reasonable to expect that a single-year policy would be liable, for example, if the insured carried no insurance at all for the other years covered by the occurrence.”

Id. at 600-01 (citing *Boston Gas Co. v. Century Indem. Co.*, 910 N.E.2d 290, 309-10 (Mass. 2009), quoting *Public Serv. Co. of Colo. v. Wallis & Cos.*, 986 P.2d 924, 940 (Colo. 1999) (en banc)). Noting in *dicta* that “trial courts employing the ‘time on risk’ approach may alter the default formula set forth above where a strict application would be unduly burdensome or otherwise inappropriate under the circumstances of a particular case,” the South Carolina Supreme Court stressed nevertheless that courts must “remain faithful to the premise that each insurer is responsible only for a pro rata portion of the total loss, and each pro rata portion must be defined by the insurer’s time on the risk.” *Id.* at 602-03.

The Court also considered whether progressive damages should be allocated to years when insurance coverage was uninsured or insufficiently insured. The Court rejected the argument that such years should be excluded from time-on-the-risk allocation:

In our view, the “time on risk” approach best conforms to the terms of a standard CGL policy and to the parties’ objectively reasonable expectations. In particular, the “time on risk” approach requires a policyholder to bear a pro rata portion of the loss corresponding to any portion of the progressive damage period during which the policyholder was not insured or purchased insufficient insurance.

Id. at 594. The Court added that its “interpretation forwards important policy goals,” including “engender[ing] stability and predictability in the insurance market, provid[ing] incentive for responsible commercial behavior, and produc[ing] an equitable result.” *Id.* at 601 (quoting *Boston Gas*, 910 N.E.2d at 311). The Court contrasted its pro rata outcome with the all sums/joint and several theory, which “creates a false equivalence between an insured who has purchased insurance coverage continuously for many years and an insured who has purchased only one year of insurance coverage.” *Id.* at 601 (citations omitted).

The *Crossmann* Court also rejected the suggestion that insurers are responsible for years in which insurance coverage was not made “available” by the insurance industry:

Some courts have created an “unavailability” exception to the “time on risk” rule and therefore altered the default formula to exclude years during which coverage was either not offered by the insurance industry or not offered to the particular policyholder. *See Boston Gas Co.*, 910 N.E.2d at 315 & n. 41 (citing cases). Alterations of this kind would exceed the trial court’s authority, as the effect is to shift losses from one policy period to another in order to create coverage where none was purchased. As observed in *Boston Gas*, an unavailability exception “effectively provides insurance where insurers made the calculated decision not to assume risk and not to accept premiums.” *Id.* at 315 (emphasis added).

Id. at n. 16. Finally, the Court shot down the suggestion that the all sums/joint and several approach is somehow “fair” because each individual insurer is protected by contribution rights against other insurers. The Court observed that because the all sums/joint and several approach requires “a selected insurer to bring a separate lawsuit seeking such reimbursement, many have criticized the theory as inefficient and wasteful of judicial resources.” *Id.* at 599, *citing Boston Gas*, 910 N.E.2d at 311. The Court echoed the Supreme Court of New Hampshire:

[T]he joint and several allocation method is improvident. It ‘does not solve the allocation problem; it merely postpones it.’ ... This method ‘divides the case into two separate suits: in the first suit, the insured selects and sues one of the triggered insurers; in the second suit, the selected insurer then sues other triggered insurers for contribution.’ ... In this way, despite its advocates’ claims to the contrary, the joint and several method does not decrease litigation costs, does not give courts guidance as to how to allocate liability, and requires insurers to ‘factor the costs of uncertain liability into their premiums.’

EnergyNorth Natural Gas, Inc. v. Certain Underwriters at Lloyd’s, 934 A.2d 517, 527 (N.H. 2007) (citations omitted). *See also Olin Corp. v. Ins. Co. of N. Am.*, 221 F.3d 307, 323 (2d Cir. 2000) (noting that “‘any contribution proceeding will involve many of the same issues that are raised in the initial liability proceeding, and ... it is more efficient to deal with these issues in a single proceeding.’”) (quoting *In re Prudential Lines Inc.*, 158 F.3d 65, 85 (2d Cir.1998)).

South Carolina is not alone in its rejection of all sums/pro rata allocation. The majority of courts nationwide have also refused to adopt that approach and instead have embraced pro rata/time-on-the-risk allocation. *See* Restatement of the Law of Liability Insurance § 41 cmt. c (Am. Law Inst. 2019) (“a clear majority of the jurisdictions that have addressed the question have adopted the pro rata approach.”). Indeed, the trend towards pro rata allocation has accelerated dramatically in recent years. Since 2003, ten state supreme courts have adopted time-on-the-risk/pro rata allocation and rejected the joint and several/all sums approach.¹³ The Fourth Circuit has also repeatedly embraced time-on-the-risk/pro rata allocation in the asbestos bodily injury context.¹⁴ Its rulings are based on interpretation of the same policy language at issue in *Crossmann*, and apply uniform state law insurance-related legal principles, such as:

when deciding the issue of coverage under an insurance policy, the primary principle of construction is to apply the terms of the insurance contract itself. Unless there is an indication that the parties intended to use words in the policy in a technical sense, we accord the words their usual, ordinary, and accepted meaning. A word’s ordinary signification is tested by what meaning a reasonably prudent layperson would attach to the term. . . . [A]s with contracts generally, the parties’ intention is to be ascertained from the policy as a whole.

Wallace & Gale, 385 F.3d at 834 (quoting *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 625 A.2d 1021, 1031 (Md. 1993) (citations omitted)). South Carolina has adopted these same legal

¹³ *See Rossello v. Zurich American Ins. Co.*, 226 A.3d 444, at 457 (Md. 2020); *Crossmann*, 717 S.E.2d at 603; *Dutton-Lainson Co. v. Cont’l Ins. Co.*, 778 N.W.2d 433, 444-45 (Neb. 2010); *Boston Gas Co.*, 910 N.E.2d at 306; *S. Silica of La., Inc. v. La. Ins. Guar. Ass’n*, 979 So. 2d 460, 466 (La. 2008); *Towns v. N. Sec. Ins. Co.*, 964 A.2d 1150, 1166-67 (Vt. 2008); *EnergyNorth Nat. Gas Inc.* 934 A.2d at 521-27; *Aetna Cas. & Sur. Co. v. Commonwealth*, 179 S.W.3d 830, 842 (Ky. 2005); *Atchison, Topeka & Santa Fe Ry. Co. v. Stonewall Ins. Co.*, 71 P.3d 1097, 1133-34 (Kan. 2003); *Sec. Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co.*, 826 A.2d 107, 116-122 (Conn. 2003). In that same time period, only one state supreme court has adopted the minority all sums approach. *Plastics Eng’g Co. v. Liberty Mut. Ins. Co.*, 759 N.W.2d 613, 625-27 (Wis. 2009).

¹⁴ *See, e.g., Gen. Ins. Co. of Am. v. U.S. Fire Ins. Co.*, 886 F.3d 346 (4th Cir. 2018) (asbestos bodily injury); *Penn. Nat’l Mut. Cas. Ins. Co. v. Roberts*, 668 F.3d 106 (4th Cir. 2012) (lead paint); *Wallace & Gale*, 385 F.3d at 830-32 (asbestos bodily injury).

principles. *See, e.g., Schulmeyer v. State Farm Fire & Cas. Co.*, 579 S.E.2d 132, 134 (S.C. 2003); *Crossmann*, 717 S.E.2d at 600-01.

Notably, a North Carolina district court, relying on *Crossmann*, has also expressly rejected Starr Davis's Receiver's argument for all sums/joint and several allocation when the Receiver presented that argument in his capacity as Receiver for Covil. *Zurich Am. Ins. Co. v. Covil Corp.*, No. 1:18-CV-932, 2020 WL 4483236, at *11 (M.D.N.C. Aug. 4, 2020). The court, applying South Carolina law, explained that the Supreme Court of South Carolina had already "spoke[n] directly to this situation" and it refused the request "to relitigate *Crossmann*." *Id.* at **9-10. Regarding the argument that pro rata allocation would be "unfair" in that case because Covil had no funds to absorb any of its asbestos liability, the court stated that "[t]he *Crossmann* court understood that an insured company might lack insurance for certain periods of time; [but] rather than impose that financial risk on its insurers and then allow them to seek contribution from each other, the South Carolina Supreme Court explicitly gave the insured the "responsibility for whatever portion of the total loss is attributed to those uninsured years." *Id.* at *11 (citation omitted).

Like in *Crossmann*, under the policies at issue here, the language of which Starr Davis ignores in its Motion, Travelers agreed to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage *to which this insurance applies*, caused by an occurrence[.]" Ex. A at 10 (emphasis added). The policies further provide that liability coverage applies only to occurrences that cause damage during the policy period. *See id.* at 6. In addition, "bodily injury" is defined as "bodily injury, sickness or disease sustained by any person which occurs *during the policy period*." *Id.* (emphasis added).

Starr Davis argues that, as a “defunct company,” “[i]t lacks the funds necessary for it to absorb a portion of the company’s asbestos liability in conjunction with the insurers as part of a ‘pro rata’ allegation [sic] regime.” Mot. at 20. But Starr Davis’s defunct status does not alter the applicable allocation approach. *See Harleysville Grp. Ins.*, 420 S.C. at 348-50, 803 S.E.2d (affirming time-on-risk allocation that limited recovery despite policyholder’s insolvency). As the South Carolina Supreme Court explained in *Crossmann*, if “the portion of the loss attributed to a particular policy exceeds that policy’s limit of coverage,” then “[t]he portion of the loss that exceeds the policy limit would either fall back onto the policyholder or be covered by an excess insurance policy.” 395 S.C. at 65 n.15, 717 S.E.2d at 602 n.15. The availability or unavailability of insurance to the particular policyholder does not alter these allocation requirements. *See id.* at 66 n.16, 602 n.16.

VI. CONCLUSION

For the foregoing reasons and others appearing in the record, Travelers respectfully requests that the Court deny Starr Davis’s renewed supplemental motion for partial summary judgment in its entirety.

Respectfully,

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Pro Hac Vice Application Pending

January 21, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE COMPANY;
ST. PAUL FIRE AND MARINE INSURANCE
COMPANY; THE EMPLOYERS' FIRE
INSURANCE COMPANY; SOUTHEASTERN
AGENCY GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of the
Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO, JR.;
KAYLA KEITH, individually and as the personal
representative of the Estate of JERRY W.
ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L KNIGHT, SR., and LINDA KNIGHT,
individually; DAVID D. ROLLINS; JAMES
W. SMITH and FRANCES R. SMITH; and
LINDA J. WHITE, individually and as Personal
Representative of the Estate of LUBERT F.
WHITE, JR.,

Defendants.

Case No.: 2019-CP-40-06243

**OBJECTIONS OF TRAVELERS
CASUALTY AND SURETY
COMPANY AND THE STANDARD
FIRE INSURANCE COMPANY'S TO
THE FORM OF THE PROPOSED
ORDER GRANTING RECEIVER'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I. INTRODUCTION

Defendants Travelers Casualty and Surety Company and The Standard Fire Insurance Company (together, “Travelers”) submit the following objections to the form of the proposed Order (the “Proposed Order”) submitted by the Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (collectively, “Starr Davis”) granting Starr Davis’s Renewed Supplemental Motion for Partial Summary Judgment (“Motion”). While Travelers objects to the Proposed Order in its entirety for the reasons explained in Travelers’ Response in Opposition to Starr Davis’s Renewed Supplemental Motion for Partial Summary Judgment (“Opposition”), and thus incorporates the Opposition herein by reference, along with the materials accompanying that Opposition, the objections set forth below are directed solely to the form of the Proposed Order and accompanying materials.

II. OBJECTIONS TO THE FORM OF THE PROPOSED ORDER

A. “Nature of the Case and the Motion”

The Proposed Order identifies Starr Davis as a former South Carolina company. *See* Proposed Order at 2. As demonstrated in Travelers’ Opposition, and as admitted by Starr Davis in its Motion, there are in fact two distinct Starr Davis entities: Starr Davis Company, Inc., which was formed in North Carolina, and Starr Davis Company of S.C., Inc., which was formed in South Carolina. *See* Opposition at 5; Motion at 2.

The Proposed Order equates “Starr Davis” with “Covil Corporation” in order to rely on a January 8, 2020 discovery-related sanctions order issued in a case involving Covil and an insurer different from the insurers at issue in this case. As explained in Travelers’ Opposition, the sanctions order has nothing to do with Starr Davis and/or the parties, policies, or facts at issue here. *See* Opposition at 4, 26-27.

B. “Undisputed Facts”

For the reasons explained in detail in Travelers’ Opposition and supporting papers, the so-called “Undisputed Facts” set forth in Starr Davis’s Proposed Order are not undisputed. Travelers not only demonstrated that the allegedly undisputed facts lack evidentiary support, it expressly disputed many of those facts in its Opposition and included contemporaneous documentary evidence in support of the dispute. *See* Opposition at 11-18. The Proposed Order thus misrepresents Travelers’ Opposition.

For example, Travelers located and produced to Starr Davis at least *twenty-two* (22) primary liability insurance policies issued to Starr Davis by Aetna or Standard Fire. The policies span from 1964 to 1986. Despite Travelers’ production of this evidence, Starr Davis’s Motion included copies of only *two* policies. *See* Motion, Exs. 4-5. In an effort to obtain summary judgment with respect to all policies, the Proposed Order relies not on the actual policies, but rather on self-serving, inadmissible summary “charts” Starr Davis’s lawyers prepared specifically for this litigation. *Id.*, Exs. 10-15. Travelers not only disputed the contents of those charts, it pointed out that the charts themselves are inadmissible, and that Starr Davis’s counsel’s characterizations of what the policies supposedly say cannot be used to support the summary judgment rulings Starr Davis seeks. *See* Opposition at 18. Yet Starr Davis’s Proposed Order suggests that the contents of the policies are before the court (they are not) and that they are undisputed (they are not). *See* Proposed Order at 7-11.

The Proposed Order also incorrectly suggests that Travelers failed or refused to promptly produce copies of the policies to Starr Davis in response to a document subpoena. *See* Proposed Order at 6. This is demonstrably false. As reflected in its Opposition, Travelers sent the Receiver copies of all available policies more than one and one-half years ago, in May and June

of 2019, *before* the Receiver served any document subpoenas on Travelers in connection with this case. See Opposition at 14.

Remarkably, the Proposed Order also purports to characterize Travelers as a document destroyer. See Proposed Order at 7, 7 fn.3, 8 fn.4, 11. But it is Starr Davis, not Travelers, that has admitted it intentionally destroyed substantially all of its records in 1999, including all copies of its insurance policies. See Opposition at 9. In fact, Travelers is the **only** party that retained and produced copies of Starr Davis's insurance policies in existence when Starr Davis requested their production in 1980, more than 40 years ago, and then again in 2019. See Opposition at 15. There is no evidence whatsoever presented in Starr Davis's Motion or otherwise to suggest that Travelers improperly destroyed any documents.

Starr Davis's Proposed Order also misstates Travelers' position with respect to the import of the Claims Handling Agreement executed by Aetna (Travelers' predecessor) and Starr Davis in 1985. See Proposed Order at 6. As explained by Travelers in its Opposition, the Claims Handling Agreement details Starr Davis' contractual agreement as to how asbestos-related indemnity and defense payments must be allocated, **regardless** of the parties' current arguments concerning how the policies should be interpreted. See Opposition at 16. While Paragraph 1 of the Claims Handling Agreement says that it cannot be used as evidence of "the meaning, intent or construction" of the insurance policies, that provision does not prevent the contractual agreement from being enforced, which is what Travelers argued in its Opposition and at the January 25, 2021 hearing in this matter. Travelers has quite properly relied on the Claims Handling Agreement as evidence of the existence of an enforceable contract, including the parties' agreement that certain policies do and **do not** exist, as well as how indemnity and defense payments **must** be allocated and, in certain circumstances, reimbursed back to Travelers.

Contrary to the statements made in the Proposed Order, Travelers is not relying on the agreement as evidence of “the meaning, intent or construction” of the policies.

C. “Rulings Concerning Policy Provisions”

The Proposed Order sets forth suggested “Rulings Concerning Policy Provisions” that are not before the Court. *See* Proposed Order at 9-16. The Proposed Order says that, “as a matter of undisputed fact ... Travelers issued liability insurance coverage to Starr Davis as depicted in” a so-called “Policy Schedule,” from 1946 to 1986. *Id.*, at 13. As explained above, an attorney-created policy schedule does not constitute admissible evidence of the actual policies. Starr Davis has not submitted anything to support its “Policy Schedule.” Moreover, the most glaring defect in Starr Davis’s proposed “Policy Schedule,” and thus the Proposed Order, is reflected in the 1985 Claims Handling Agreement, wherein Starr Davis and Travelers **expressly agreed** that “Aetna has afforded products liability/completed operations insurance coverage to Starr Davis *from January 1, 1959 to June 30, 1985 and Starr Davis has been insured by other insurers or has been self-insured for the remainder of its existence.*” *See* Opp. at 17 (emphasis added). In other words, the parties agreed by subsequent contract that Aetna insured Starr Davis from 1959 to 1985, and that Aetna **did not** insure Starr Davis prior to 1959 (or after 1985). Starr Davis’s suggestion that the Proposed Order state as a “fact” that Travelers insured Starr Davis from 1946 to 1986 is both unsupported and contradicted by its own contract with Aetna. *See* Opposition at 17.

D. “Policy Interpretation Issues”

The Proposed Order states that Travelers has not identified any material conflict between South Carolina and North Carolina law on the issues presented in the Motion. *See* Proposed Order at 17. This statement ignores the fact that Starr Davis’ Motion and Proposed Order are

based almost entirely on the coverage rulings set forth in the Covil sanctions order, which purports to apply South Carolina law in a manner inconsistent with controlling South Carolina precedent. See Opposition at 27-43. For example, the Proposed Order incorrectly states that the ruling in *Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), does not apply in the context of an insured in receivership. However, the South Carolina Supreme Court, in *Crossmann*, expressly rejected the “all sums” approach and made clear that, even in circumstances where some alteration to the default method might be warranted, courts “must remain faithful to the premise that each insurer is responsible only for a pro rata portion of the total loss” A later ruling from that court has affirmed that *Crossmann* applies in the context of an insolvent insured. *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 330, 348-50, 803 S.E.2d 288, 293, 303 & n.4 (2017) (affirming time-on-risk allocation that limited recovery despite policyholder’s insolvency). The Fourth Circuit is also in agreement. See *Penn. Nat’l Mut. Cas. Ins. Co. v. Roberts*, 668 F.3d 106, 115 (4th Cir. 2012) (stating that the “regrettable reality” of an injured party not being able to recover its entire judgment from an insolvent insured “does not allow us to ignore” pro rata allocation law “to hold an insurance company to a contractual provision to which it never agreed”); *Wallace & Gale*, 385 F.3d 820, 832 (4th Cir. 2004) (holding that the insolvency of a policyholder does not change the insurer’s obligations under its insurance contract).

Moreover, a federal court in North Carolina has applied *Crossmann* in the specific context of a defunct insured in receivership and held that the South Carolina Supreme Court explicitly gave the insured the “responsibility for whatever portion of the total loss is attributed to those uninsured years.” *Zurich Am. Ins. Co. v. Covil Corp.*, No. 1:18-CV-932, 2020 WL 4483236, at *11 (M.D.N.C. Aug. 4, 2020). If the Covil sanctions order is adopted here, the law

applied would be in direct conflict with the law of South and North Carolina (and most jurisdictions) on the issues presented in the Motion. Indeed, South Carolina is not alone in its rejection of the all sums/pro rata allocation Starr Davis seeks. The majority of courts nationwide have also refused to adopt that approach and instead have embraced pro rata/time-on-the-risk allocation. *See* Opposition at 41 (citation omitted). Additionally, as explained in Travelers' Opposition, genuinely disputed facts exist concerning the facts needed to decide whether South Carolina or North Carolina law applies to the interpretation of any Starr Davis insurance policies. *See* Opposition at 22-25.

In this section of the Proposed Order, Starr Davis also incorrectly claims (again) that Travelers has attempted to rely on the 1985 Claims Handling Agreement to interpret the policies. Proposed Order at 20. As explained above, this is a blatant mischaracterization of Travelers' position. The Claims Handling Agreement, which has been in place for 35 years, states that it cannot be used as evidence of "the meaning, intent or construction" of the insurance policies, but it **does not** state that Travelers is prevented from using or filing the agreement as evidence of the existence of an enforceable contract, i.e., the parties' agreement that certain Travelers policies do not exist, as well as how claim-related indemnity and defense payments **must** be allocated and reimbursed. *See* Opposition at 16.

III. RESERVATION

The above objections have been formulated without the benefit of the January 25, 2021 hearing transcript, which was ordered promptly on the day of the hearing but has not yet been completed. Travelers reserves the right to supplement its objections when the transcript has been prepared and can be reviewed.

Respectfully submitted,

/s/Mariel D. Norton

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February 8, 2021
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Case Number: 2019-CP-40-06243

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE
COMPANY; ST. PAUL FIRE AND MARINE
INSURANCE COMPANY; THE
EMPLOYERS' FIRE INSURANCE
COMPANY; SOUTHEASTERN AGENCY
GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of
the Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO,
JR.; KAYLA KEITH, individually and as the
personal representative of the Estate of
JERRY W. ARCHER, SR.; RICHARD L.
KNIGHT II, as personal representative of the
Estate of TEDDY L. KNIGHT, SR., and
LINDA KNIGHT, individually; DAVID D.
ROLIINS; JAMES W. SMITH and FRANCES
R. SMITH; and LINDA J. WHITE,
individually and as Personal Representative of
the Estate of LUBERT F. WHITE, JR.,

ORDER

Defendants.

INTRODUCTION

This matter is before the Court on the motion of Starr Davis Company, Inc. and Starr Davis Company of South Carolina, Inc. (Starr Davis Company, Inc. is referred to as “Starr Davis Co.”, Starr Davis of South Carolina, Inc. is referred to as “Starr Davis of South Carolina,” and the two companies are collectively referred to as “Starr Davis”), by and through their duly-appointed Receiver, Peter D. Protopapas (the “Receiver”), for partial summary judgment (the “Motion”) as to their claims for declaratory judgment against defendants Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company and referred to herein individually as “Aetna,” and The Standard Fire Insurance Company, referred to individually as “Standard Fire” (collectively “Travelers”).

Having considered all of the papers filed by the parties, as well as the arguments of counsel presented at the extensive January 25, 2021, hearing by video conference to which all parties consented, the Court **Grants** the Receiver’s Motion for Partial Summary Judgment and issues a declaratory judgment as follows:

BACKGROUND

The South Carolina Supreme Court appointed the undersigned to serve as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system. The asbestos litigation in South Carolina constitutes a significant number of complex multi-party cases. A typical case will include an injured plaintiff alleging that an asbestos-related cancer was caused by dozens of different defendants. The Asbestos cases on my docket are predominantly brought by claimants who allege they have contracted mesothelioma by reason of exposure to asbestos containing products sold or installed or used by defendants. Mesothelioma has a long latency period before the disease manifests. These cases usually involve exposures 20 plus years ago, which have been discovered recently within the statute of limitations period. The

insurance policies which cover liability claims against the defendants are typically “per occurrence coverage” rather than the more modern “claims made policies.” It sometimes happens that a defendant will be a company not currently in operation. Nevertheless, the older “legacy” policies which cover “occurrences” during the policy period, rather than “claims made” during the policy period, will still be liable for coverage of these mesothelioma claims. Where a defendant is no longer operating, I have been appointing a Receiver to pursue coverage to provide for the defense and payment of claims on behalf of these companies.

This Court has worked diligently to manage this docket and to organize this complicated statewide litigation into an orderly process whereby cases are assigned for trial in a predictable fashion. This process is designed to allow the litigants to participate in discovery in an orderly fashion to facilitate the evaluation of litigation positions well before trial and to try the cases as necessary.

This Court appointed Peter Protopapas as the Receiver of Starr Davis on February 22, 2019. The Court vested the Receiver with the “power and authority to fully administer all assets of Starr Davis,” which is “inclusive of, but not limited to, the right and obligation to administer any insurance assets of Starr Davis as well as any claims related to the actions or failure to act of Starr Davis’ insurance carriers.” Order Granting Motion to Appoint a Receiver and Appointing Receiver at 1, *Hopper v. Air & Liquid Sys.*, No. 2019-CP-40-00076 (S.C. Com. Pl. Feb. 22, 2019).

NATURE OF THE CASE AND THE MOTION

Starr Davis began business operations as an insulation contractor in the 1940s. Over the course of the next forty years, the company grew to become a major regional insulation contractor—installing, removing, replacing and repairing insulation, including at pertinent times asbestos-containing insulation—in a variety of industrial facilities throughout the southeastern United States, principally in South Carolina, North Carolina, Georgia, Alabama, Virginia and

Tennessee. Over the course of the company's existence, Starr Davis paid premiums to purchase significant amounts of liability insurance from Travelers.

Following substantial and unexcused delay in complying with its basic discovery obligations under South Carolina law, Travelers ultimately produced liability insurance policies and evidence of liability insurance policies issued to Starr Davis. The Motion seeks resolution of a number of issues concerning the existence and terms of the Travelers policies, and Starr Davis' request that the Court issue the following declarations concerning the interpretation and application of the Travelers' policies to the asbestos suits that have been filed, continue to be filed, and likely will be filed against Starr Davis into the future:

1. Multiple-year policies and policies that were subject to annual renewal provide for a full separate limit of liability for product liability and completed operations claims and a full per occurrence limit for premises and operations claims separately for each annual period or portion thereof;
2. Primary insurance policies issued by Travelers have an unlimited supplemental duty to pay or reimburse defense costs;
3. The duty to pay or reimburse defense costs is "triggered" whenever there is any obligation that could potentially involve the policy coverage;
4. The duty to pay or reimburse defense costs is triggered by the allegations of a complaint asserted against Starr Davis;
5. In the unique case of Starr Davis, where multiple primary policies were issued for the same policy year, and these multiple policies provide coverage for the same claim, Starr Davis may select one or both of the policies to respond to the claim and may also "stack" the limits of such policies for each and every such claim;

6. The burden of proving any limitation or exclusion to coverage is on the insurer, here Travelers;
7. All of the Travelers liability insurance policies in effect from a person's first exposure to asbestos through manifestation of an asbestos-related disease or condition, and, ultimately, to death, cover the asbestos cases unless coverage is otherwise excluded under a policy;
8. The "completed operations hazard" described in the Travelers policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos products *after* Starr Davis completed its installation or removal operations or work at a particular jobsite;
9. As to any individual asbestos lawsuit, it is Travelers' burden to prove that the suit seeks the recovery of damages that are subject to any aggregate limits of liability applicable to the "products" or "completed operations" provisions in its policies;
10. The asbestos insulation contracting, or "operations," claims against Starr Davis have resulted from multiple "occurrences" under the Travelers policies, thus entitling Starr Davis to multiple "per occurrence" limits of liability to satisfy its asbestos liabilities;
11. As to the asbestos "operations" claims against Starr Davis, Travelers is obligated to pay those claims "in full" up to its "per occurrence" limit of liability; and
12. While product liability or completed operations losses are subject to allocation on a "time-on-the-risk" pro rata allocation method, "operations" claims are allocated on an "all sums" basis, and, in either case, in light of its non-operating defunct status, no loss may be allocated to Starr Davis as part of any "time-on-the-risk"

allocation scheme.

Based on this Court's review of the evidence and arguments of the parties, this Court will grant the Motion in its entirety and enter partial summary judgment in favor of Starr Davis.

UNDISPUTED FACTS

Starr Davis began operations in the 1940s, and engaged in the installation, removal, replacement and repair of insulation in various facilities across South Carolina and in the neighboring states of North Carolina, Tennessee and Georgia, as well as Alabama and Virginia, for over four decades. Starr Davis' operations involved the installation, removal, replacement, repair and disturbance of insulation materials, typically supplied, required, or acquired by other parties. At pertinent times, insulation materials contained asbestos, and Starr Davis' operations allegedly resulted in bodily injury to South Carolina citizens.

The State of North Carolina rescinded Starr Davis Company, Inc.'s corporate charter in 1996, and the State of South Carolina rescinded Starr Davis Company of South Carolina, Inc.'s corporate charter in 1997, for failure to file the appropriate documentation with their respective Secretaries of State. *See* Exhibit 3 to the Motion.

Travelers has always been, and continues to be, aware of the nature of Starr Davis' prior operations.¹ Travelers also understands that many of the asbestos contracting claims against Starr

¹ For example, as late as the policy issued for the period January 1, 1978, through January 1, 1979, Standard Fire listed Starr Davis's business as including:

“Steam Pipe or Boiler Insulation –
Applying Cork, Asbestos or Other
Non Conducting Materials”

See policy materials attached as Exhibit 5 to the Motion, comprising an “Incomplete Policy” for Policy No. 25 AL 802 646 CNS 8, issued for the policy period January 1, 1978 to January 1, 1979 by The Standard Fire Insurance Company, and Exhibit 4 to the Motion, comprising an “Incomplete Policy” for Policy No. 25 AL 801 362 CMA 8 for the same policy period issued by The Aetna Casualty and Surety Company.

Davis invoke the “operations” coverage portion of their policies because the claims did not result from Starr Davis’ “completed operations” or from Starr Davis’ “products” after the company relinquished possession of those products into the stream of commerce, as discussed further below.

In its authority as the Receivership Court for Starr Davis, this Court issued a subpoena to Travelers pursuant to a request by the Receiver, seeking copies of insurance policies issued by Aetna and Standard Fire (both Travelers companies) to Starr Davis, as well as multiple other categories of documents, including underwriting and claims documents. *See* Exhibits 6 and 7 to the Motion. Initially, Travelers categorically refused to produce the requested documents on the ground that it did not believe the subpoena was served properly: “A subpoena *duces tecum* to Travelers is only proper if issued by the Connecticut Superior Court in the judicial district in which Travelers is located.” *See* Exhibit 8 to the Motion.

Travelers’ failure to comply with this Court’s subpoena came despite the fact that Travelers had previously admitted that it issued liability insurance coverage to Starr Davis for the period 1959 to 1985. A document entitled “Interim Agreement” between Starr Davis and Aetna, dated November 19, 1985, shows that Travelers issued coverage to Starr Davis continuously from 1959 to 1985. *See* Exhibit 9 to the Motion at 5-8.

Paragraph 1 of the Interim Agreement specifies, however: “Neither this Interim Agreement nor any part thereof shall be offered in evidence or used for any purpose in any court of law as support for the position being asserted by either party hereto in connection with the meaning, intent or construction of any insurance policy or policies issued by Aetna or purchased by Starr Davis.” Travelers nevertheless relies *substantially* on the Interim Agreement in support of its opposition to the Motion—something Travelers’ counsel repeated *several times* at the hearing on the Motion—concerning the “meaning, intent or construction” of the insurance policies memorialized

by the Interim Agreement. These arguments violate the specific terms of the Interim Agreement prohibiting the parties from using the document for this very purpose, and the Court admonishes Travelers and its counsel for reliance on admittedly inadmissible material in opposing the Motion. By contrast, Starr Davis uses the document only as evidence of the existence of the insurance policies, an appropriate use of the Interim Agreement.

While most of the policy documentation concerning the Travelers coverage has apparently been destroyed—at this point something this Court has grown accustomed to seeing when Travelers and its many affiliated and subsidiary insurance companies are involved—there is sufficient secondary evidence, including partial or incomplete policies, to prove the existence of a multi-decade relationship between Travelers and Starr Davis. The undisputed evidence presented by Starr Davis in connection with the Motion shows a 40-year uninterrupted relationship between the parties from January 1, 1946 to April 30, 1986, during which Travelers issued liability insurance coverage under which it agreed to defend and indemnify Starr Davis against, among other things, asbestos-related bodily injury suits.

Because essentially all of the Travelers policies were destroyed by Travelers,² this Court has been called upon by Starr Davis to render partial summary judgment on several issues relating to policy issuance by Travelers. Partial summary judgment is appropriate based on discovery to date, Travelers' admissions, and legal principles implied or imposed by law. The documents and admissions by Travelers demonstrate the following as a matter of undisputed fact:

² As has become customary over the course of several cases pending in this Court, Travelers seeks to be absolved from its destruction of insurance policies and related insurance documentation because Starr Davis, itself, is also unable to locate copies of its historic insurance policies. Travelers, however, is in the business of insurance; Starr Davis was not. Travelers is, and was, responsible to maintain documentation integral to its business operations. Its behavior is not excused because its insured, a defunct regional insulation contractor, did not maintain its own copies of Travelers' insurance documentation.

A. The Aetna Casualty and Surety Asbestos Coverage

The Aetna Casualty and Surety Company (“Aetna”) issued primary coverage that was renewed annually on an uninterrupted basis for 40 years which provides defense and indemnity coverage for asbestos-related bodily injury suits. These policies were issued from January 1, 1946 through April 30, 1986.

The Aetna primary coverage indemnifies Starr Davis against damages for bodily injury for operations claims that are subject only to a per occurrence limit (“premises/operations claims”), and for products and completed operations claims which are also subject to an aggregate limit of liability. There is no aggregate limit of liability as respects premises/operations claims. The primary coverage issued by Aetna provides \$11,900,000 in products/completed operations limits and \$11,900,000 per occurrence in premises/operations limits. There is no limit to the number of occurrences to which the Aetna policies respond.

Aetna also issued umbrella liability coverage to Starr Davis for 11 policy years, from January 1, 1974 to May 1, 1983.

With the exception of the primary policies from January 1, 1974 to May 1, 1980, which do not cover North Carolina claims, the Aetna policies, which are also summarized in the policy schedule that appears below, cover all asbestos-related suits asserted against Starr Davis Co. or Starr Davis of South Carolina.³

B. The Standard Fire Insurance Company Asbestos Coverage

Standard Fire issued primary policies to Starr Davis Co. and Starr Davis of South Carolina with an unlimited supplemental defense obligation and separate annual products/completed

³ An incomplete Aetna policy produced by Travelers appears as Exhibit 4 to the Motion. Travelers and Aetna routinely destroyed policies such as those issued to Starr Davis and Starr Davis of South Carolina.

operations limits for each of the two annual periods January 7, 1974 to January 7, 1976 with separate annual limits of \$300,000 per occurrence and in the aggregate. Standard Fire also issued primary policies to Starr Davis Co. and Starr Davis of South Carolina for five annual periods between January 7, 1976 and May 1, 1980, each affording \$500,000 in coverage per occurrence and in the aggregate. The aggregate limit of liability does not apply to “operations” claims. There is no limit to the number of occurrences the Standard policies pay. These Standard Fire policies were issued to Starr Davis Co. and Starr Davis of South Carolina but cover operations only in North Carolina. They are also summarized in the policy schedule that appears below.

C. Rulings Concerning Policy Provisions

There is no evidence, or any other indication, that the Travelers policies were issued on anything other than standard policy forms used during the pertinent time periods. Based on this fact, and based on the policy evidence produced by Travelers, the Court issues the following rulings concerning the policy provisions in the Travelers policies:

1. All of the Travelers policies summarized in the policy schedule below are either multiple-year policies or policies that were subject to annual renewal and all such policies issued by Travelers provide for a full separate limit of liability for product liability and completed operations claims and for premises/operations claims on a per occurrence basis for each annual period or portion thereof;
2. All of the primary insurance policies issued by Travelers have an unlimited supplemental duty to pay or reimburse defense costs;
3. The duty to pay or reimburse defense costs in these policies is “triggered” whenever there is any obligation that could potentially involve the policy coverage;
4. The duty to pay or reimburse defense costs is triggered by the allegations of a complaint asserted against Starr Davis;

5. In the unique case of Starr Davis, where multiple primary policies were issued for the same policy year, and multiple policies provide coverage for the same claim, Starr Davis may select one or both of the policies to respond to the claim and may “stack” the limits of such policies for each and every such claim;
6. The policy limits of successive Travelers primary or umbrella policies that respond to an asbestos suit may also be stacked to the extent necessary for the claimant to be paid in full for a Starr Davis liability;
7. The burden of proving any limitation or exclusion to coverage is on the insurer, here Travelers;
8. All of the Travelers liability insurance policies in effect from a person’s first exposure to asbestos through manifestation of an asbestos-related disease or condition, and, ultimately, to death, cover the asbestos cases unless coverage is otherwise excluded under a policy;
9. The “completed operations hazard” described in Travelers’ policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos attributed to Starr Davis *after* Starr Davis completed its installation or removal operations or work at a particular jobsite;
10. The “products hazard” described in Travelers’ policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos attributed to Starr Davis *after* Starr Davis relinquished possession of the products and placed them into the stream of commerce;
11. As to any individual asbestos lawsuit, it is Travelers’ burden to prove that the suit seeks the recovery of damages that are subject to the aggregate limits of liability

applicable to the “completed operations hazard” or “products hazard” provisions in its policies;

12. The asbestos insulation contracting, or “operations,” claims against Starr Davis have resulted from multiple “occurrences” under the Travelers policies, thus entitling Starr Davis to multiple “per occurrence” limits of liability to satisfy its asbestos liabilities;
13. As to the asbestos “operations” claims against Starr Davis, Travelers is obligated to pay those claims “in full” up to its “per occurrence” limit of liability; and
14. While product liability or completed operations losses are subject to allocation on a “time-on-the-risk” pro rata allocation method, in light of its non-operating defunct status, no loss may be allocated to Starr Davis as part of any “time-on-the-risk” allocation scheme.

* * *

Travelers represents that the documents it produced comprise all that Travelers has in terms of the Starr Davis policies. Travelers has admitted its insuring relationship with Starr Davis Co. and Starr Davis of South Carolina. Starr Davis Co. and Starr Davis of South Carolina submit that, as to the foregoing, it has met its burden and, accordingly, Travelers’ response “must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial.” *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 454 (Ct. App. 1988). Travelers cannot do so. The foregoing rulings are based on Travelers’ own documents. It destroyed all of the remaining evidence.

Travelers also makes a number of arguments why the Court's rulings on missing policy issues are "premature" based on its asserted need to conduct discovery. The Court rejects these arguments for several reasons.

First, Travelers asserts that an open issue exists as to whether the parties have "already agreed which alleged or missing policies provide coverage for the asbestos claims, and which do not." This appears to be an argument concerning the construction or application of the Travelers policies based on the Interim Agreement. As noted above, the Court finds that this type of argument is precluded by the Interim Agreement.

Second, Travelers claims that it needs discovery from Starr Davis' former insurance brokers or agents which it asserts may have copies of the missing Travelers policies. This is not necessary since the documents that Travelers produced are sufficient for the Court to make rulings as to the existence of the Travelers policies and the substance of the material terms and conditions of the policies that are relevant to the asbestos suits against Starr Davis.

Third, Travelers asserts that it needs to know from the insurance brokers or agent for Starr Davis about the circumstances under which the Travelers policies were lost or destroyed. Beneath this argument is an assumption by Travelers that a symmetry of interest and responsibility exists between an insurer and its insured concerning the maintenance of insurance-related documentation. Insurance documentation is integral to the functioning of an insurance organization. It is not integral to the functioning of an insulation contractor. The Court has been presented with sufficient policy evidence, produced by Travelers, to reach conclusions concerning the existence and scope of the Travelers policies issued to Starr Davis. There is no contrary evidence.

Fourth, Travelers asserts it needs to discover whether Starr Davis purchased primary or excess liability insurance coverage from other insurers such that it may have potential contribution claims against those insurers. This is not a good faith argument in opposition to an assertion by an insured that it has unearthed sufficient evidence of policy terms and conditions to obtain declarations that the insurer, in fact, issued coverage under policies that the insured cannot presently locate. Whether Travelers has contribution claims against other insurers has nothing to do with whether sufficient evidence of the Travelers coverage presently exists for the Court to grant the Motion. Travelers is free to continue searching for insurance coverage issued to Starr Davis by other insurers in support of potential contribution claims. This is immaterial, however, as to whether the Court can, and should, grant the Motion.

Consequently, it is not premature for the Court to rule on the missing Travelers policy issues framed by the Motion. The Court therefore finds, based on a compilation of policy dates, insurer, policy number, and occurrence and aggregate limits provided by defendants, that Travelers issued liability insurance coverage to Starr Davis as is depicted in the following Policy Schedule:

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/01/1946	01/01/1947	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1947	01/01/1948	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1948	01/01/1949	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1949	01/01/1950	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1950	01/01/1951	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1951	01/01/1952	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1952	01/01/1953	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1953	01/01/1954	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000

01/01/1954	01/01/1955	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
10/14/1954	01/02/1955	Aetna Casualty & Surety Co.	25 LC 120	300,000	300,000
01/01/1955	01/01/1956	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1956	01/01/1957	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1957	01/01/1958	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1958	01/01/1959	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	100,000	100,000
01/01/1960	01/01/1961	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1961	01/01/1962	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	100,000	100,000
01/01/1962	01/01/1963	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000
01/01/1963	01/01/1964	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	50,000	100,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/01/1964	01/01/1965	Aetna Casualty & Surety Co.	25 AL 6996 CM	300,000	300,000
01/01/1964	01/01/1965	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000
01/01/1965	01/01/1966	Aetna Casualty & Surety Co.	25 AL 8026 CM	300,000	300,000
01/01/1966	01/01/1967	Aetna Casualty & Surety Co.	25 AL 009308 CM	300,000	300,000
01/01/1967	01/01/1968	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000
01/01/1968	01/01/1969	Aetna Casualty & Surety Co.	25 AL 106258 CMA	300,000	300,000
01/01/1969	01/01/1970	Aetna Casualty & Surety Co.	25 AL 108793 CMA	300,000	300,000
01/01/1970	01/01/1971	Aetna Casualty & Surety Co.	25 AL 111525 CMA	300,000	300,000
01/01/1970	01/01/1971	Aetna Casualty & Surety Co.	25 AL 106258 CMA	300,000	300,000
01/01/1971	01/01/1972	Aetna Casualty & Surety Co.	25 AL 114022 CMA	300,000	300,000
01/01/1972	01/01/1973	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000
01/01/1973	01/01/1974	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000
01/01/1974	01/01/1975	Aetna Casualty & Surety Co.	25 AL 214134 CMA	300,000	300,000

01/01/1974	01/01/1975	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000
01/01/1975	01/01/1976	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	300,000	300,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/01/1976	01/01/1977	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	500,000	500,000
01/01/1977	01/01/1978	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	500,000	500,000
01/01/1978	01/01/1979	Aetna Casualty & Surety Co.	25 AL 801 362 CMA 8	500,000	500,000
01/07/1979	05/01/1979	Aetna Casualty & Surety Co.	25 GL 802 646 CMA 9	500,000	500,000
05/01/1979	05/01/1980	Aetna Casualty & Surety Co.	25 GL 802 646 CMA 9	500,000	500,000
05/01/1980	4/31/81	Aetna Casualty & Surety Co.	25 GL 56819 CCA	500,000	500,000
05/01/1981	05/01/1982	Aetna Casualty & Surety Co.	25 GL 269082 CCA	500,000	500,000
05/01/1982	05/01/1983	Aetna Casualty & Surety Co.	25 GL 355800 CCA	500,000	500,000
05/01/1982	05/01/1983	Aetna Casualty & Surety Co.	25 GL 56819 CCA	500,000	500,000
05/01/1983	05/01/1984	Aetna Casualty & Surety Co.	25 GL 456932 CCA	500,000	500,000
04/30/1984	04/30/1985	Aetna Casualty & Surety Co.	25 GL 541203 CCA	500,000	500,000
04/30/1985	04/30/1986	Aetna Casualty & Surety Co.	25 GL 601412 CCA	500,000	500,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/07/1974	01/07/1975	Aetna Casualty & Surety Co.	25 XS 1344 WCA	1,000,000	1,000,000
01/07/1975	08/04/1975	Aetna Casualty & Surety Co.	25 XS 802646 WCA	1,000,000	1,000,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
08/04/1975	01/07/1976	Aetna Casualty & Surety Co.	25 XS 802646 WCA	2,000,000	2,000,000

01/07/1976	01/07/1977	Aetna Casualty & Surety Co.	25 XS 802646 WCA	2,000,000	2,000,000
01/07/1977	01/07/1978	Aetna Casualty & Surety Co.	25 XS 802646 WCA	2,000,000	2,000,000
01/07/1978	01/07/1979	Aetna Casualty & Surety Co.	25 XS 802646 WCA	2,000,000	2,000,000
01/07/1979	05/01/1979	Aetna Casualty & Surety Co.	25 XS 802 646 WCA	2,000,000	2,000,000
05/01/1979	05/01/1980	Aetna Casualty & Surety Co.	25 XS 802646 WCA	2,000,000	2,000,000
05/01/1980	05/01/1981	Aetna Casualty & Surety Co.	25 XS 7245 WCA	2,000,000	2,000,000
05/01/1981	05/01/1982	Aetna Casualty & Surety Co.	25 XS 54578 WCA	2,000,000	2,000,000
05/01/1982	05/01/1983	Aetna Casualty & Surety Co.	25 XS 102709 WCA	2,000,000	2,000,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/07/1974	01/07/1975	Standard Fire Ins. Co.	25 SM 802 646 FPS	300,000	300,000
01/07/1975	01/07/1976	Standard Fire Ins. Co.	25 AL 802 646 CNS 8	300,000	300,000

Policy Begin Date	Policy End Date	Insurer	Policy No.	Bodily Injury Occurrence Limits	Bodily Injury Aggregate Limits
01/07/1976	01/07/1977	Standard Fire Ins. Co.	25 AL 802 646 CNS 8 (North Carolina)	500,000	500,000
01/07/1977	01/07/1978	Standard Fire Ins. Co.	25 AL 802 646 CNS 8 (North Carolina)	500,000	500,000
01/07/1978	01/07/1979	Standard Fire Ins. Co.	25 AL 802 646 CNS 8 (North Carolina)	500,000	500,000
01/07/1979	05/01/1979	Standard Fire Ins. Co.	25 AL 802 646 CNS 8 (North Carolina)	500,000	500,000
05/01/1979	05/01/1980	Standard Fire Ins. Co.	25 AL 802 646 CMA (North Carolina)	500,000	500,000

SUMMARY JUDGMENT STANDARD

“[S]ummary judgment is proper when there is no genuine issue as to [any] material fact and the moving party is entitled to judgment as a matter of law.” *S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.*, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) (citing Rule 56(c), SCRCF). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine

issue of material fact.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2009). However, once that party carries its initial burden, the “opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.’” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (emphasis in original)); *See also Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (non-moving party may not rely on speculation to survive summary judgment) (citations omitted); *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (Ct. App. 2009) (“[E]vidence must amount to more than speculation and conjecture to submit a case to the jury.”) (citations omitted).

AUTHORITY OF THIS COURT TO INTERPRET POLICIES

On November 27, 2018, the Receiver filed an action styled *Covil Corporation by its duly appointed Receiver, Peter D. Protopapas v. Zurich, Sentry, USF&G, and others*, in the South Carolina Circuit Court. This action sought a determination of the insurance coverage provided by the various defendant insurance companies to Covil Corporation. Shortly thereafter, this matter was removed to the United States District Court for the District of South Carolina, Spartanburg Division. U.S. District Court Judge Bruce Howe Hendricks describes the course of this litigation as follows:

This is an insurance coverage action in which the parties dispute the relative rights and obligations of Covil, its Receiver, and certain of Covil’s insurers under policies issued or allegedly issued to Covil. Among other issues, the parties dispute the manner in which it should be determined whether injuries in underlying asbestos actions are within the products and completed operations hazard of the policies

(rendering them subject to an aggregate limit), or outside the products and completed operations hazard (in which case no aggregate limit would apply), as well as the proper method for allocating injury across multiple policy years. Opinion and Order at 2, *Covil Corporation by its duly appointed Receiver, Peter D. Protopapas v. Zurich, Sentry, USF&G, and others*, CA No.: 7:18-3291-BHH (U.S.D.C.S.C. Mar. 1, 2021) (internal citation omitted).

South Carolina District Court Judge Bruce Howe Hendricks denied motions to remand to state court and issued an injunction against determination of these issues in State Court pending further rulings by the federal court. Judge Hendricks has now reconsidered her original order, withdrawn her injunction as improvidently granted and made it clear that this Court is fully empowered to determine asbestos coverage matters in cases in which the Receiver is involved on behalf of non-operational companies such as Starr Davis. Thus, there is no impediment to this Court's determination of this motion in this case. *See infra Covil Corp. by Protopapas v. Zurich, et al.*

POLICY INTERPRETATION ISSUES

As to the matters of insurance policy construction, this Court notes that South Carolina law applies to matters before South Carolina courts unless a material difference exists between the law of South Carolina and the law of another state. Travelers asserts that North Carolina law *might* have something to say on these issues, but it has not identified any material conflict between the law of South Carolina and the law North Carolina on these issues. Opp. at 4 n.2, 6, 25. Travelers might have a better argument regarding North Carolina law as to the five primary policies issues by Standard Fire Insurance Company from January 7, 1976 to May 1, 1980, which cover North Carolina occurrences (the "Standard Fire Policies"), *see* Motion at 11, but Travelers did not even mention these policies in its opposition, or attempt to make a demonstration regarding North

Carolina law. Opp. at 6, 25. In the absence of any arguable conflict, even as to these policies, reliance on South Carolina law is appropriate, including under the “false conflict” doctrine. The Court therefore does not need to engage in a conflicts of law analysis to rule on the Motion.

Travelers asserts that contract interpretation rulings are also premature because it needs to conduct discovery. Opp. at 19–22. It asserts that fact issues exist on a number of topics, including that it believes that “very little of Starr Davis’ revenues—approximately 10%—involved contracting work.” The other 90%, according to Travelers, involved product fabrication work or product distribution. Travelers asserts that this means that resulting fabrication-related claims would involve “classic ‘products hazard’ injuries.” If that is a true statement—and the Court makes no ruling one way or the other since the issue is not before it—then perhaps certain asbestos suits against Starr Davis will involve “classic ‘product hazard’ injuries.” Or, perhaps, only those plaintiffs injured during Starr Davis’ contracting work will pursue asbestos claims against Starr Davis, regardless of whether contracting was, or was not, a significant source of the company’s revenue. As discussed below, Travelers’ policies respond to the allegations in the underlying complaints, and to the facts proven in the underlying cases, not to “revenues” or a percentage of sales. There is nothing germane about the facts asserted by Travelers as a ground to defer ruling, especially since cases continue to be asserted against Starr Davis and this Court has been asked to make rulings regarding the responsiveness of the policies to actual lawsuits.

The Court does not need the facts behind Starr Davis’ historical revenue to rule on the Motion. Starr Davis has not asked the Court to declare that some percentage of asbestos suits against Starr Davis do not involve “classic ‘products hazard’ injuries,” or that some percentage of the asbestos cases against Starr Davis involve “operations injuries.” Instead, the Motion asks this Court to declare the applicable *rules* to determine whether any particular asbestos case against

Starr Davis involves “operations injuries,” “products hazard injuries” or “completed operations hazard injuries.” Motion at 11–13. These rules are based on insurance contract language. Contract interpretation is a question of law.

Indeed, this Court has not been asked in the Motion to determine whether any particular asbestos suit is, or is not, an “operations” claim under the Travelers policies. Nor is the Court being called upon to rule that a claim pursued by a theoretical asbestos plaintiff exposed to asbestos after 1972—allegedly the final year in which Starr Davis may have “touched” asbestos according to Travelers, *see* Opp. at 24—is or is not an “operations” claim under the Travelers policies. The Court can only make coverage rulings on *particular asbestos claims* based on the record evidence from the underlying tort cases. Although Travelers says it is “currently seeking discovery” on “fact issues” as to when Starr Davis last “touched” asbestos, *see* Opp. at 24, those issues are not germane to the contract interpretation issues framed by the Motion.

Furthermore, the Court notes that the issues for coverage will depend upon when the underlying asbestos claimants allege exposure or injury to Starr Davis operations or products. This Court is not going to pre-judge what those allegations or facts will be when brought before this and other courts in which underlying asbestos suits are adjudicated against Starr Davis. As noted earlier in this order, as late as the policy period January 1, 1978 through January 1, 1979, Travelers described Starr Davis’ business as including “Steam Pipe or Boiler Insulation – Applying Cork, Asbestos or Other Non-Conducting Materials.” *See* materials comprising Standard Fire Policy No. 25 AL 802 646 CNS 8. The Court finds it difficult to square this policy language with Travelers’ assertion that Starr Davis last “touched” asbestos in 1972. The Court also notes that the word “applying” connotes the installation of materials, not “fabrication.” The Court does not need to

make factual findings on Travelers' assertions, but it does note that the statements regarding a need for fact discovery appear to lack foundation, and they perhaps lack candor.

Travelers also asserts that the Interim Agreement resolves certain "allocation" and "reimbursement" issues between the parties. *See Opp.* at 21. That is incorrect. As noted above, the Interim Agreement states in no uncertain terms that it may not be used to resolve disputes between the parties concerning the meaning, intent or construction of the Travelers policies. As respects contract interpretation issues, the Motion seeks to resolve disputes between the parties concerning the meaning, intent and the construction of the Travelers policies. The Interim Agreement is irrelevant to the contract interpretation issues raised in the Motion. Neither Travelers nor its counsel should have attempted to rely on the agreement in a manner that is indisputably contrary to its express terms.

LEGAL RULINGS AS TO POLICY INTERPRETATION

Sarr Davis was engaged for more than four decades in the insulation contracting business. Whether contracting work comprised 10%, 50% or 100% of its revenues is immaterial to the Motion. The Sarr Davis business *included* installing, removing, replacing, repairing and distributing insulation materials in premises that were not owned or controlled by Sarr Davis. The Travelers policies make clear that Sarr Davis performed contracting work, and, given the four-decade relationship with Sarr Davis, Travelers certainly was aware of Sarr Davis' operations. Travelers also knew that Sarr Davis was a major business with operations conducted in at least the states of South Carolina, North Carolina, Georgia, Alabama, Tennessee and the Commonwealth of Virginia.

This Court is aware from its extensive experience and briefing on these issues in other matters before this Court that Travelers (and other insurers) seek to rely on the decision of the United States Court of Appeals for the Fourth Circuit in *In re Wallace & Gale Co.*, 385 F.3d 820

(4th Cir. 2004), which purported to apply Maryland law. More specifically, *Wallace & Gale* adopted the view that operations claims transform into completed operations claims where there is continuing injury post-dating completion of the installation. *Id.*, 385 F.3d at 833-34.

This is a South Carolina case. Because *Wallace & Gale* purported to interpret only Maryland law, under basic principles of federalism, it established no state law precedent relevant to the outcome of this South Carolina case. The insurance issues present here turn on the interpretation of South Carolina law, which requires an independent analysis.

A. Continuous Trigger of Coverage

There is no real dispute between the parties as to the “trigger of coverage” for the asbestos suits against Starr Davis.

The term “trigger of coverage” describes the necessary events for a liability policy to respond to a suit seeking damage because of bodily injury. The South Carolina Supreme Court adopted an “injury-in-fact” trigger of coverage for progressively deteriorating property damage in the defective construction arena:

Under this theory, coverage is triggered whenever the damage can be shown in fact to have first occurred, even if it is before the damage became apparent, and the policy in effect at the time of the injury-in-fact covers all the ensuing damages.

Joe Harden Builders, Inc. v. Aetna Cas. and Sur. Co., 326 S.C. 231, 236 (1997).

The Court therefore rules that the policies at issue respond to the asbestos suits against Starr Davis when exposure resulting in bodily injury takes place during the policy period, regardless of when the injury becomes known or knowable. All of an insured’s policies in effect from a person’s first exposure to asbestos through manifestation of an asbestos disease and, ultimately, to death cover the asbestos cases against Starr Davis unless coverage is otherwise excluded. This approach is also called a “continuous trigger of coverage” inasmuch as medical science established long ago that asbestos injuries begin upon first inhalation of asbestos fibers

and continue progressively thereafter. As respects asbestos injury and death suits, the “continuous trigger of coverage” and the “injury in fact trigger of coverage” yield the same result such that the court need not choose between these conceptually similar approaches. *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 45 Cal. App. 4th 1, 45 (1996) (“We find no error in the trial court’s use of an injury-in-fact analysis to apply a continuous trigger.”).

Consequently, all of Starr Davis’ policies in effect from a person’s first exposure to asbestos through death cover the asbestos claims against Starr Davis unless coverage is otherwise excluded.

B. The Distinction between “Operations” and “Products” and “Completed Operations.”

It has been long-established that the risk insured by the “products hazard” and the “completed operations hazard” is “the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than the product or completed work itself.” Roger C. Henderson, *Insurance Protection For Products Liability And Completed Operations – What Every Lawyer Should Know*, 50 Neb. L. Rev. 415, 441 (1971). By contrast, “[w]here an insured begins an operation and the evidence shows it is still in progress” when an injury or damage occurs, the applicable hazard is “premises-operations” and not “completed operations.” *Id.* at 434–35.

Case law issued while Travelers insured Starr Davis, and shortly after it no longer insured the company, agrees with this basic formulation. For example, in *Boyer Metal Fab, Inc. v. Maryland Casualty Co.*, 750 P.2d 1195, 1197 n.2 (Or. Ct. App. 1988), the court noted that:

the purpose of the product hazard and completed operations hazard coverage is to insure against the risk that the product or work, if defective, will cause bodily injury or damage to property of others after it leaves the insured’s hands

Earlier, in *Friestad v. Travelers Indemnity Co.*, 393 A.2d 1212 (Pa. Super. Ct. 1978), the court

held:

Regardless of the involvement of the insured's products, so long as an accident occurs on the insured's business premises or away from his premises, but while he has the jobsite under his control, the premises operations clause obtains and coverage is afforded thereunder. It is only after he has relinquished control of a jobsite that the products hazard or completed operations hazard exclusions will operate to deny coverage.

See also *CPS Chemical Co. v. Cont'l Ins. Co.*, 489 A.2d 1265, 1270 (N.J. Super. Ct. Law Div. 1984), reversed on other grounds by 495 A.2d 886 (N.J. Super. Ct. App. Div. 1985) ("Commentators are in complete agreement that [the completed operations hazard] refers to accidents caused by defective workmanship which arise after completion of work by the insured on construction or service contracts.").

Despite this historical understanding, the *Wallace & Gale* court adopted the view that operations claims somehow are transmuted into completed operations claims where there is continuing injury post-dating completion of the installation. Under *Wallace & Gale*, a single continuing injury claim could be within the "operations" hazard of one of the insured's policies, but within the "completed operations hazard" of all of the insured's other policies.⁴ This is antithetical to the nature of a "hazard" against which insurance policies cover insureds.

At its most fundamental level, a "hazard" in an insurance policy "is the source from which an accident may arise, or 'a danger or risk lurking in a situation which by chance or fortuity develops into an active agency of harm.'" *Ketona Chem. Corp. v. Globe Indem. Co.*, 404 F.2d 181, 185 (5th Cir. 1968) (quoting *Hough v. Contributory Ret. Appeal Bd.*, 36 N.E.2d 415, 418 (Mass. 1941)); see also *Serv. Welding & Mach. Co. v. Mich. Mut. Liab. Co. of Detroit*, 311 F.2d 612, 617

⁴ Travelers asserts that "[e]ven the State of California, often a bastion of pro-policyholder law, agrees" with *Wallace & Gale*. Opp. at 31. Travelers' lone citation for this bold assertion is an unpublished decision of a California trial court in a long-dismissed case. *Id.* Travelers has cited no published appellate authority from any state agreeing with *Wallace & Gale*.

(6th Cir. 1962) (“The word ‘hazard’ as used in the policy must mean ‘the source of a risk.’” Thus, a ‘hazard’ is a danger or risk lurking in a situation or place.”). “Along with other meanings, the standard dictionary defines the noun ‘hazard’ as exposure to the chance of loss or injury.” *Caminetti v. Guaranty Union Life Ins. Co.*, 52 Cal. App. 2d 330, 334 (1942). The Merriam-Webster Online Dictionary defines “hazard” to include “a source of danger.” *Hazard*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/hazard> (last visited Jan. 17, 2020); see also *Travelers Cas. & Sur. Co. v. Emp’rs Ins. of Wausau*, 130 Cal. App. 4th 99, 114 n.6 (2005) (“Examples of injuries covered under the premises-operations coverage include injuries suffered by a shipyard worker while installing insulation at the insured’s facility and injuries caused by a subcontractor’s negligent construction of a wall that fell on a worker while the job was in progress.”). Or, in other words, the “completed operations hazard” protects Starr Davis from the risk of loss caused by its *completed* operations. The source of the “danger” against which this particular coverage protects Starr Davis is its *completed* insulation work, not its ongoing insulation work. That risk of injury caused by Starr Davis’ ongoing work is covered under the “operations” hazard in the policies. The source of a claimant’s harm—the insured’s work-in-progress or its completed work—does not change over time, even if the claimant’s bodily injury persists and progresses throughout several policy periods after injurious contact with the insured’s work.

Consequently, the “completed operations hazard,” and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos *after* Starr Davis completed its installation or removal operations or work at a particular jobsite. The Court rejects Travelers’ assertion that that aggregate limits of liability in its policy apply to *any* third party’s claim against Starr Davis involving exposure to asbestos that took place before the *inception date* of a particular

policy. The policies are not written in that manner, however. There is nothing in the definition of “completed operations” that focuses on the *inception* date of a policy.

In short, no aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Starr Davis was performing work at a particular jobsite. As discussed above, the distinctions between “operations” on the one hand, and “products” and “completed operations” have been well-established for many decades. No contract interpretative rule justifies applying one approach to claims of instantaneous injury resulting from an accident, and a different approach to claims of long-term injury resulting from injurious exposures to toxic conditions. Rules of contract interpretation are uniformly applied. The “completed operations hazard” is so named because it protects the insured against liability “caused by” or “arising out” of its “completed operations”—not its un-completed operations. Bodily injury caused by Starr Davis’ ongoing operations or ongoing work is an “operations” claim. Bodily injury caused by Starr Davis’ completed operations or completed work is a “completed operations” claim. Bodily injury caused by Starr Davis’ products after Starr Davis relinquished possession of the products and place them into the stream of commerce is a “products” claim.

C. Travelers Must Show the Applicability of a Contract Limitation or Exclusion

Travelers bears the burden of proving any exclusion or limitation of coverage, including the application of aggregate limits to particular suits and the “exhaustion” of the aggregate limits of liability in their policies.

The South Carolina Supreme Court has recognized that insurers bear the burden of proving the applicability of a coverage provision that limits their liability to their insured: “Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion’s applicability.” *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2004) (citing *Boggs v. Aetna Cas. and Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565

(1979)); *see also Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144–48, 781 S.E.2d 137, 141–44 (2015) (upholding circuit court decision to construe ambiguous terms in favor of coverage, and noting that “ambiguous terms are to be construed strictly against the insurer”). Courts have held that this basic principle also applies to “limitations” on coverage. *Ins. Co. of N. Am. v. Kayser-Roth Corp.*, 770 A.2d 403 (R.I. 2001) (“[o]nce the insured makes a prima facie showing of coverage, ‘the insurer then bears the burden of proving the applicability of policy exclusions and limitations in order to avoid an adverse judgment.’” (quoting *Gen. Accident Ins. Co. v. Am. Nat’l Fireproofing, Inc.*, 770 A.2d 403, 416 (R.I. 1998))); *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1446 (3d Cir. 1996) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage, since disclaiming coverage on the basis of an exclusion is an affirmative defense”).

Travelers seems to be arguing that Starr Davis has the burden of showing that a particular asbestos claimant’s injury is not subject to the aggregate limits of liability in its policies. This is an odd proposition because it would require Starr Davis to prove two negative propositions for an asbestos claim not to be subject to an aggregate limit of liability, e.g., that an asbestos claim is not a “completed operations” claim, and that it also is not a “products” claim. However, the Travelers policies do not define a “premises-operations hazard” or an “operations hazard.” They define the “products hazard” and the “completed operations hazard.” Consequently, claims seeking the recovery of damages for bodily injury are “operations” claims unless they are shown to satisfy the definition of the “products hazard” or the “completed operations hazard” in the policies.

A party seeking to show that an asbestos claim is within the “products hazard” or the “completed operations hazard”—here, Travelers seeking to impose an aggregate limit of liability onto Starr Davis—naturally should have the burden of proving that the definition of the “products

hazard” or the “completed operations hazard” has been satisfied. Otherwise, Starr Davis would be in the unenviable position of “proving” negatives. The law generally does not impose this type of burden.

Consequently, as to any individual asbestos lawsuit, it is Travelers’ burden to prove that the suit seeks the recovery of damages that are subject to the aggregate limits of liability, if any, applicable to the “completed operations hazard” or “products hazard” in its policies, where such aggregate limits have been proven by Travelers as to each specific policy or policy period. By definition, aggregate limits restrict coverage. Accordingly, Travelers bears the burden of demonstrating that aggregate limits in its policies, if any, apply to any particular asbestos suits.⁵

D. Number of Occurrences

The Travelers policies at issue provide coverage for legal liabilities resulting from an “occurrence.” An “occurrence” is typically defined as an accident, including continuous or repeated exposure to substantially similar conditions, that results in bodily injury during the policy period. *See, e.g., Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 47–48, 717 S.E.2d 589, 592–93 (2011). The Court understands Starr Davis’ motion to be seeking a multiple occurrence ruling only as respects “operations” claims, and not “completed operations” claims or “products” claims.

Nevertheless, Travelers asserts that all “operations” asbestos cases against Starr Davis must result from a single “occurrence” under its policies by citing to several asbestos *products* cases where the evidence against the product-manufacturer insureds were the same in every case—they manufactured and/or sold a defective product that resulted in injury or death. *Opp.* at 34–37. The single “cause” in each of those cases was the manufacture of a harmful product. *Id.* (citing *Liberty*

⁵ Travelers again cites to the unpublished decision of a California trial court in support of its contrary view. *Opp.* at 31. The Court does not find this decision persuasive. *See also* n. 8, above.

Mut. Ins. Co. v. Treesdale, Inc., 418 F.3d 330 (3d Cir. 2005); *Stonewall Ins. Co. v. E.I. du Pont de Nemours & Co.*, 996 A.2d 1254 (Del. 2010); *Owens-Illinois, Inc. v. Aetna Cas. & Sur. Co.*, 597 F. Supp. 1515 (D.D.C. 1984); *Owners Ins. Co. v. Salmonsens*, 622 S.E.2d 525 (S.C. 2005) (all addressing products coverage rather than ongoing operations coverage)).

This is not the same thing as cases arising from Starr Davis’ installation, disturbance and/or removal of asbestos-containing materials. Those cases do not involve liability simply for placing defective products into the “stream of commerce.” They are cases arising from Starr Davis’ alleged negligence and its failure to warn and protect bystanders of harm arising from its insulation contracting work. The evidence against Starr Davis is different in each one of these types of cases because the asbestos plaintiff’s contact with Starr Davis is unique to his or her particular circumstances. The cause of injury in all of the Starr Davis insulation contracting cases is not uniform like it is in manufacturer asbestos products cases, and it is not uninterrupted. Travelers’ reliance on insurance coverage decisions concerning manufacturers of asbestos products—not at issue here—is therefore misplaced.

Indeed, the asbestos insulation operations suits against Starr Davis are not repetitive products liability suits alleging exposure to asbestos from the same defective product. Instead, these suits allege that Starr Davis’ operations exposed workers and other bystanders to asbestos. Courts have held that the type of asbestos operations claims against Starr Davis resulted from multiple ‘occurrences’ under the standard definition of ‘occurrence’ used during the time of the insurers’ policies. See, e.g. *Travelers Cas. & Sur. Co. v. Gerling Global Reinsurance Corp. of Am.*, 419 F.3d 181, 184 (2d Cir. 2005) 184 (“[I]f claims arising from multiple occurrences triggered [operations] coverage, then Travelers was exposed to unlimited liability; each occurrence was subject to a \$1 million limit on liability, but there was no cap on total liability. Regardless of how

much Travelers had paid for previous non-products occurrences under a single policy, each additional non-products occurrence under that policy subjected Travelers to liability anew.”).

Travelers has not provided a persuasive argument as to why the Court should come to a different conclusion in connection with asbestos operations claims against Starr Davis. The Court will not do so.

E. Allocation of Losses to the Travelers’ Policies

Exposure to asbestos results in progressive injury spanning many years, thereby triggering coverage under multiple policies. Exposure to asbestos during the conduct of operations that results in bodily injury during the policy period or periods during which the operations were conducted also presents an allocation issue.

The issue is somewhat theoretical in this case, as opposed to other cases, since Travelers alone issued forty years of uninterrupted liability insurance coverage to Starr Davis. Equally important is that Starr Davis is in a Receivership, with no assets other than its insurance policies and proceeds, which also affects any allocation of loss to the insured since Starr Davis cannot absorb any allocation of loss. Finally, the Court notes that the language of the policies typically requires the insurers to pay “all sums” —meaning everything—for which the insured is legally obligated to pay if a claimant sustains bodily injury during the period of the policy.

The Court remains quite mindful of the South Carolina Supreme Court’s decision in *Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and notes that it speaks generally to allocation of loss in a continuing construction property loss case, but does not address the particular circumstances presented by this Receivership, i.e., the applicability of operations coverage and the impracticability of allocation of loss to Starr Davis itself.

Therefore, the Court will apply the rule of *Crossmann Communities of N.C., Inc.*, except

in the case of operations claims where the policies in effect during the conduct of the operations will apply on an “all sums” basis. The Court also interprets *Crossmann* such that allocation of loss will not be made to policy years after 1986, when Starr Davis does not have any available or responsive coverage. Starr Davis lacks the ability to absorb loss allocations from Travelers, its liability insurer over a forty-year period. Allocation of loss from a judgment or settlement to an insured which cannot pay any portion of the judgment or settlement —especially when there is abundant insurance to pay for the loss but for a judicially-created allocation formula—is unproductive, as well as inequitable. The reason for a “time on the risk” allocation is to accomplish an “equitable” allocation. However, there is no “equity” in either driving an insured further into insolvency through a formulistic allocation method or by leaving a portion of a settlement or judgment unpaid. Nor is it “equitable” to apportion any loss to an insured in receivership when there is any responsive insurance.⁶

Finally, the Court notes one additional allocation aspect, which is unique to this case. As set forth, the Standard Fire policies apply to North Carolina occurrences for the policy years 1976 to May 1980 and there are Aetna policies for the same policy periods that apply to other occurrences. If a claimant alleges exposure or injury that invoke or implicate both the Standard

⁶ Travelers notes that a federal court in North Carolina allegedly applied the *Crossman* rule in the context of a defunct insured receivership and therefore allocated proportionate responsibility to the defunct insured during the time in which asbestos liability was not insurable. Opp.. at 42 (citing *Zurich-Am. Ins. Co. v. Covil Corp.*, No. 1:18-CV-932, 2020 WL 4483236, at *11 (M.D.N.C. Aug. 4, 2020). However, at issue in the *Covil* decision upon which Travelers relies was coverage for the judgment entered in the *Finch* lawsuit, which was indisputably a “products” case under the policies before the court. Here, Starr Davis seeks contract interpretation rulings applicable to asbestos “operations” suits that continue to be asserted against the company. The *Covil* decision thus is based on distinguishing factual circumstances that neither determine nor suggest an outcome here.

Fire policies and Aetna policies for the same policy period, Starr Davis can “stack” the limits of such policies. This declaration is a reasonable construction of these policies.

Conclusion

This Court Grants Receiver’s Motion for Partial Summary Judgement and issues a declaratory judgment as above set forth.

AND IT IS SO ORDERED!

Jean H. Toal, Chief Justice of the Supreme Court,
Retired, acting as Circuit Court Judge

_____, 2021
Columbia, South Carolina



Richland Common Pleas

Case Caption: Starr Davis Company Inc , plaintiff, et al vs Hartford Accident And Indemnity Company , defendant, et al

Case Number: 2019CP4006243

Type: Order/Summary Judgment

So Ordered

Jean H. Toal

Electronically signed on 2021-03-03 16:40:25 page 34 of 34

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Plaintiff,

Case Number: 2019-CP-40-06243

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

NOTICE OF FILING

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE
COMPANY; ST. PAUL FIRE AND MARINE
INSURANCE COMPANY; THE
EMPLOYERS' FIRE INSURANCE
COMPANY; SOUTHEASTERN AGENCY
GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of
the Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO,
JR.; KAYLA KEITH, individually and as the
personal representative of the Estate of JERRY
W. ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L. KNIGHT, SR., and LINDA
KNIGHT, individually; DAVID D. ROLIINS;
JAMES W. SMITH and FRANCES R.
SMITH; and LINDA J. WHITE, individually
and as Personal Representative of the Estate of
LUBERT F. WHITE, JR.,

Defendants.

The Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (“Starr Davis”) hereby submits the documents attached hereto as Exhibit A. These documents consist of documents produced by the Travelers Defendants in this action and address the arguments raised at pages 14-18 of their Response in Opposition to Starr Davis’ Renewed Motion for Partial Summary Judgment, which was filed at 10:43 PM on the second business day before the hearing on Starr Davis’ motion, and their supplemental briefing on these arguments (*see* Objection of Travelers filed Feb. 8, 2021, at pp. 2-4; *see also* Objections of Travelers filed on Feb. 22, 2021, at p. 1).

Respectfully submitted,

s/ Jonathan M. Robinson

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March 4, 2021

EXHIBIT A-

Filed under seal with the Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Case Number: 2019-CP-40-06243

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

MOTION TO SEAL

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE
COMPANY; ST. PAUL FIRE AND MARINE
INSURANCE COMPANY; THE
EMPLOYERS' FIRE INSURANCE
COMPANY; SOUTHEASTERN AGENCY
GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of
the Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO,
JR.; KAYLA KEITH, individually and as the
personal representative of the Estate of JERRY
W. ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L. KNIGHT, SR., and LINDA
KNIGHT, individually; DAVID D. ROLIINS;
JAMES W. SMITH and FRANCES R.
SMITH; and LINDA J. WHITE, individually
and as Personal Representative of the Estate of
LUBERT F. WHITE, JR.,

Defendants.

The Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (“Starr Davis”) hereby moves this Court pursuant to Rule 41.1, SCRCP, for an order sealing Exhibit A, which is attached to Starr Davis’ Notice of Filing. This exhibit consists of documents produced by the Travelers Defendants in this action and addresses the arguments raised at pages 14-18 of their Response in Opposition to Starr Davis’ Renewed Motion for Partial Summary Judgment, and their supplemental briefing on these arguments (see Objection of Travelers filed Feb. 8, 2021, at pp. 2-4; see also Objections of Travelers filed on Feb. 22, 2021, at p. 1).

LAW AND ARGUMENT

Starr Davis brings this motion pursuant to SCRCP 41.1, which sets out the procedures for parties to file a motion to file documents under seal. Rule 41.1(b) provides:

The motion shall state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) the need to ensure a fair trial;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality;
- (4) the public or professional significance of the lawsuit;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternative other than sealing the documents are not available to Protect legitimate private interests as identified by this Rule; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

The documents which are the subject of this motion were produced to the Receiver with the expectation of confidentiality, and it is the position of the Starr Davis that if the documents were produced, Starr Davis may be prejudiced in the underlying asbestos personal injury cases given that this case has public significance, particularly among the plaintiffs’ bar in the asbestos litigation. This court has recognized the significance of the role of Starr Davis insurance proceeds in the asbestos litigation, and Starr Davis respectfully requests that this Court consider that the

content of these documents should be protected to protect the interest of the Receiver and Starr Davis. Starr Davis respectfully submits that the confidential nature of these documents renders them of the type that should be sealed, and therefore respectfully request that this Court seal the exhibits.

CONCLUSION

Therefore, Starr Davis prays that this Court grant its Motion to Seal.

Respectfully submitted,

s/ Jonathan M. Robinson

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Jonathan M. Robinson (68285)

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Morgan, LLC

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March 4, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Plaintiff,

v.

Case No.: 2019-CP-40-06243

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE COMPANY;
ST. PAUL FIRE AND MARINE INSURANCE
COMPANY; THE EMPLOYERS' FIRE
INSURANCE COMPANY; SOUTHEASTERN
AGENCY GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of the
Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO, JR.;
KAYLA KEITH, individually and as the personal
representative of the Estate of JERRY W.
ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L KNIGHT, SR., and LINDA KNIGHT,
individually; DAVID D. ROLLINS; JAMES
W. SMITH and FRANCES R. SMITH; and
LINDA J. WHITE, individually and as Personal
Representative of the Estate of LUBERT F.
WHITE, JR.,

Defendants.

**TRAVELERS CASUALTY
AND SURETY COMPANY
AND THE STANDARD FIRE
INSURANCE COMPANY'S
MOTION TO RECONSIDER**

I. INTRODUCTION

Pursuant to SCRCP Rules 6(a), 52(b), 59(e) and 62(b), Defendants Travelers Casualty and Surety Company and The Standard Fire Insurance Company (together, “Travelers”) request reconsideration of the Court’s March 3, 2021 Order (“Order”) issued in favor of the Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (collectively, “Starr Davis”) and granting Starr Davis’s Renewed Supplemental Motion for Partial Summary Judgment (“Motion”). The Court should reconsider and withdraw its Order and substitute one that fully addresses all material issues presented to the Court by Travelers in its Response in Opposition to Starr Davis’s Renewed Supplemental Motion for Partial Summary Judgment (“Opposition”). Travelers hereby incorporates by reference its Opposition along with the materials accompanying that Opposition. As grounds for this motion, Travelers states as follows.

II. ARGUMENT

A. The Court’s Order Does not Address Certain of Travelers’ Arguments Concerning Prematurity.

In its Opposition, Travelers argued that a ruling on the Motion was premature. *See* Opposition at 19-22. Among the points made by Travelers were the fact that written discovery and document production was ongoing and would require motions to compel, because as Travelers demonstrated, Starr Davis and the individual defendants had served incomplete and inadequate responses. Moreover, Travelers explained that fact depositions had not yet begun, expert reports had not been exchanged, expert depositions had not yet commenced, and no discovery had occurred concerning the parties’ drafting intent and understanding of the terms and conditions of the policies at issue. The Court’s Order does not address these arguments. Travelers respectfully submits that if the Court were to address these issues, the Motion would need to be denied.

B. The Court's Order Does not Address Certain Travelers' Arguments Concerning Genuine Issues of Fact.

Travelers also argued in its Opposition that a number of genuine issues of material fact precluded entry of partial summary judgment in Starr Davis' favor. Among those facts were the contents of at least *twenty-two* (22) primary liability insurance policies issued to Starr Davis by Aetna or Standard Fire. Starr Davis's Motion included copies of only *two* of these myriad policies. *See* Opposition at 18. The Court's Order does not address the absence of these policies, other than to rely on charts prepared by Starr Davis's lawyers. *See* Order at 13-16. Travelers not only disputed the contents of those charts, it pointed out that the charts themselves are inadmissible, and that Starr Davis's counsel's characterizations of what the policies supposedly say cannot be used to support a summary judgment ruling. *See* Opposition at 18. Yet the Court's Order ignores the disputed, missing policies. *See Order* at 7-11.

The Court's Order also does not address certain arguments made by Travelers concerning the Claims Handling Agreement executed by the parties in 1985. As explained in Travelers' Opposition, the Claims Handling Agreement details Starr Davis' contractual agreement as to how asbestos-related indemnity and defense payments must be allocated, regardless of the parties' arguments concerning how the disputed policies should be interpreted. *See* Opposition at 16. The Court ignored this argument, however, finding only that the Claims Handling Agreement cannot be used as evidence of the meaning, intent or construction of the insurance policies. *See Order* at 6-7, 21. This finding does not prevent the parties' post-policy, contractual agreement from being *enforced*, however. This argument should have been addressed in the Court's Order.

Travelers respectfully submits that if the Court were to address these issues, the Motion would need to be denied.

C. The Court's Order Does not Address Travelers' Argument that the Relief Sought by Starr Davis is Premised on an Unrelated Sanctions Order.

In its Opposition, Travelers argued that the partial summary judgment ruling sought by Starr Davis was based on a January 8, 2020 discovery-related sanctions order issued in a different case, and that the sanctions order has nothing to do with Starr Davis and/or the parties, policies, or facts at issue here. *See* Opposition at 26. In its Order here, however, the Court adopted the coverage-related rulings in that sanctions order nearly verbatim. *See* Order at 21-33. The Court should reconsider this aspect of its Order and should refuse to adopt the January 8, 2020 sanctions order as its ruling here. Travelers respectfully submits that if the Court were to address this issue, the Motion would need to be denied.

III. CONCLUSION

For the reasons stated above, Travelers respectfully requests that the Court reconsider its Order.

[This section intentionally left blank]

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/s/M. Elizabeth O'Neill

M. Elizabeth O'Neill, S.C. Bar No.: 104013

M. Todd Carroll, S.C. Bar No.: 74000

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AND

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(202) 429-8112, HLee@steptoe.com

*Attorneys for Travelers Casualty and Surety
Company and The Standard Fire Insurance
Company*

March 12, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

PETER D. PROTOPAPAS, as Receiver for
STARR DAVIS COMPANY, INC. and
STARR DAVIS COMPANY OF S.C., INC.,

Plaintiff,

Case Number: 2019-CP-40-06243

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY; THE
STANDARD FIRE INSURANCE
COMPANY; ST. PAUL FIRE AND MARINE
INSURANCE COMPANY; THE
EMPLOYERS' FIRE INSURANCE
COMPANY; SOUTHEASTERN AGENCY
GROUP and M.I.A. COMPANY, INC.
individually and as successors to or f/k/a
MERRIMON INSURANCE AGENCY, INC.;
ROBERT E. ASPRAY; NELL ASHWORTH,
individually and as personal representative of
the Estate of ROBERT J. ASHWORTH;
BETTY C. D'AMICO, individually and as
Executor of the Estate of JULIAN D'AMICO,
JR.; KAYLA KEITH, individually and as the
personal representative of the Estate of JERRY
W. ARCHER, SR.; RICHARD L. KNIGHT II,
as personal representative of the Estate of
TEDDY L. KNIGHT, SR., and LINDA
KNIGHT, individually; DAVID D. ROLIINS;
JAMES W. SMITH and FRANCES R.
SMITH; and LINDA J. WHITE, individually
and as Personal Representative of the Estate of
LUBERT F. WHITE, JR.,

Defendants.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO THE TRAVELERS
DEFENDANTS' MOTION TO
RECONSIDER**

Plaintiff Peter D. Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. ("Starr Davis"), hereby submits this response in opposition to the motion to reconsider filed by Defendants Travelers Casualty and Surety Company f/k/a the Aetna Casualty

and Surety Company and The Standard Fire Insurance Company (collectively “Travelers”) on March 12, 2021. The Court properly granted partial summary judgment in favor of Starr Davis on March 4, 2021 (the “Order”), and Travelers’ motion to reconsider should be denied.

I. INTRODUCTION

The Court should reject Travelers’ request to relitigate the same issues that Starr Davis prevailed on with its successful motion for summary judgment for at least the following reasons:

- Starr Davis submitted a substantial amount of evidence establishing that the Travelers companies issued general liability insurance coverage to Starr Davis for more than four decades. Travelers did not dispute the accuracy of the information Starr Davis provided, and it submitted no contrary evidence.
- No evidence exists that the Travelers companies used anything other than the prevailing standard forms to supply the material terms and conditions that bring the asbestos suits within the general liability coverage afforded by the Travelers companies. The written and document discovery Travelers supposedly needs from Starr Davis and others cannot change that basic fact. Indeed, if Travelers has evidence that its companies did not use standard forms on Starr Davis’ general liability coverage, it could have presented this evidence with its opposition. However, no such evidence exists.
- Similarly, nothing prevented Travelers from presenting expert testimony in response to Starr Davis’ motion if any serious dispute existed that the Travelers companies issued general liability coverage to Starr Davis for decades, or if there was a dispute that the Travelers companies used anything other than standard forms on the policies. Travelers’ “prematurity” argument therefore makes even less sense in its second iteration than it did in its first.

- Travelers did not assert in its opposition that its policy terms were “ambiguous” such that evidence of the “parties’ drafting intent and understanding of the terms and conditions of the policies at issue” was necessary for the Court to resolve Starr Davis’ motion. Travelers therefore waived ambiguity arguments by not making them earlier. Extrinsic evidence of the “parties’ drafting intent and understanding of the terms and conditions of the policies at issue” therefore is immaterial.

Travelers’ motion simply re-plows barren ground. It merits swift denial.

II. ARGUMENT

A. The Motion was not Premature

Travelers asserts that the Starr Davis’ motion was “premature” for several related reasons. It contends that it “demonstrated” that “Starr Davis and the individual defendants had served incomplete and inadequate responses” to written discovery.¹ It asserts that fact depositions have not been taken, yet. It asserts that expert reports have not been exchanged, and that expert deposition have also not been taken, yet. Finally, it notes that no discovery has been conducted into the parties’ mutual understanding and intent concerning the application of form policy provisions.

Travelers’ assertions boil down to a single contention: summary judgment is never appropriate, even if it is otherwise permitted under the civil procedure rules, until all pre-trial activity is completed. This is, of course, not true. *See* Rule 56(a), SCRCP (“A party seeking to recover upon a claim . . . or to obtain declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action . . . move with or without supporting affidavits

¹ Starr Davis disagrees with this point as a factual matter. It is, however, immaterial as explained below.

for a summary judgment in his favor upon all or any part thereof.”). Instead, to obtain a continuance of the motion, Travelers needed to explain, and establish, the following:

- How “adequate” discovery responses could have changed the disposition of the motion.
- How expert testimony on the existence and/or material terms and conditions of the Travelers’ policies could have shown, for example, that the parties did not use standard general liability forms on the policies, or that those forms were materially altered by endorsement.
- That its policies contain material terms that are “ambiguous” such that evidence of the parties’ supposed mutual understanding of the application of those terms to the asbestos suits could have altered the Court’s contract interpretation rulings.

Travelers neither explained nor established any of this. Its failure to do so – or, in some instances even try – justified the Court’s denial of its request for a continuance. Travelers fares no better in round two of its attempt to forestall resolution of the issues raised in Starr Davis’ motion.

B. The Court Correctly Disposed of Travelers’ Assertions of Disputed Facts

Travelers raises three factual disputes that supposedly warranted denial of Starr Davis’ motion. These arguments lack merit and are easily disposed.

First, Travelers asserts that disputed issues of fact exist concerning the “contents” of the policies issued by the Travelers companies. Not so. No evidence exists that these policies were issued on anything other than the prevailing standard forms used on general liability insurance policies during the pertinent time period. The terms and conditions of these policy forms are not secret. They are discussed in hundreds of decisions readily available on Westlaw and Lexis. Travelers was required to provide evidence of endorsements with its opposition if it believes that these standard form provisions were altered in a material manner. It provided none. Its bald-faced

assertion that parties to insurance contracts “often” amend policy terms via endorsement, without presenting any evidence that this was done to the policies issued to Starr Davis, does not raise disputed issues of material fact. *See* Rule 56(e), SCRCP (“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”).

Second, contrary to Travelers’ assertion, the Order is amply supported by evidence of more than four-decades of uninterrupted coverage that Travelers issued to Starr Davis. *See Bank of Am. v. Draper*, 405 S.C. 214, 224, 746 S.E.2d 478, 482-83 (Ct. App. 2013) (affirming summary judgement based on evidence other than the parties’ original agreement and because the opposing party failed to submit evidence raising an issue of material fact). The Court’s order does not “ignore” disputed policies, as Travelers asserts. It holds that a lack of dispute exists. *See id.*

Third, the Court correctly admonished Travelers and its counsel for attempting to rely on contract interpretation compromises that the claims handling agreement states in no uncertain terms is inadmissible in court to interpret the policies at issue. The Court was not obligated “to address certain arguments Travelers made concerning the Claims Handling Agreement,” since it concluded that these arguments were based entirely on inadmissible evidence. The fact that the Court rejected Travelers’ arguments does not mean it ignored them or failed to consider the entire record before it. (*See* Order p. 2 (stating that the Court considered “all of the papers filed by the parties” and all arguments made by counsel at the January 25, 2021 hearing).).

The motion was rightfully granted.

C. Travelers' Curious Argument that the Order was Based on an Earlier Order is not Grounds for Reconsideration

Finally, Travelers castigates the Court for not considering its argument that the Order was improperly “based on” an Order issued in another case. The Court correctly rejected this argument when it entered the Order. The Order stands on its own. That it might resemble the other order to Travelers is merely a function that it addresses, and resolves, the same issues. The Court is not required to reach a different result in this case just so its orders read differently.

III. CONCLUSION

Travelers' motion is perfunctory placeholder on its way to the court of appeals. The motion should be denied on the papers and without oral argument. *See Pollard v. County of Florence*, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994) (citing Rule 59(f), SCRCP) (holding that a motion made under rule 59(e) may be decided on the briefing without oral argument).

Respectfully submitted,

/s/ Brian M. Barnwell
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 Jescelyn T. Spitz (SC Bar 101880)
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March 31, 2021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-40-06243

Peter Protopapas, as Receiver for Starr Davis
Company, Inc., et al
PLAINTIFF(S)

Travelers Casualty and Surety Company, et al
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____.
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter comes before the court upon Travelers Casualty and Surety Company and The Standard Fire Insurance Company's Motion to Reconsider filed March 12, 2021. After fully considering the Defendant's Motion to Reconsider the Court's March 3, 2021, Order granting Starr Davis's Renewed Supplemental Motion for Partial Summary Judgment, the Court DENIES the Defendant's Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**



Richland Common Pleas

Case Caption: Starr Davis Company Inc , plaintiff, et al vs Hartford Accident And Indemnity Company , defendant, et al

Case Number: 2019CP4006243

Type: Order/Form 4

So Ordered

Jean H. Toal

Electronically signed on 2021-05-19 11:23:59 page 3 of 3

Carroll, Todd

From: Shanon Peake <shanonp@smithrobinsonlaw.com>
Sent: Monday, October 25, 2021 1:52 PM
To: Carroll, Todd
Cc: Jon Robinson; Dot Faulkenberry; Lindsay Valek
Subject: RE: Appellate Case No. 2021-000648

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Hey Todd,

The Notice of Filing was electronically served on the parties via e-filing. In the Notice of Filing, we indicated that we were filing the exhibits with the Court under seal and that the documents addressed arguments raised in pages 14-18 of Travelers' Response in Opposition to Starr Davis' Renewed Motion for Partial Summary Judgment as well as your supplemental briefing on the same arguments. On these pages in Traveler's Response in Opposition, Travelers argued that it had produced insurance policies to Starr Davis and Starr Davis did not submit these policies to the Court and instead relied on summary charts prepared for this litigation. Accordingly, we submitted the insurance policies on March 4, 2021 in the Notice of Filing, which were Travelers' documents that were produced to us by Travelers. We are not able to find evidence that we sent these documents back to you. However, we were unaware of any objection that Travelers' had to the Court considering these documents due to improper service because Travelers did not make any objections to the circuit court after these documents were filed. These are not new documents that were never presented to the circuit court that we are now attempting to insert into the record on appeal. Instead, these are documents that were presented to the circuit court without any objection below. Accordingly, we believe these documents were properly before the circuit court and are properly included in the record on appeal as they were presented to the circuit court without objection by Travelers.

Thanks,
Shanon

SMITHROBINSON
Forward thinking. Results driven.
Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

Shanon Peake
Attorney at Law

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From: Carroll, Todd <Todd.Carroll@wbd-us.com>
Sent: Thursday, October 21, 2021 4:36 PM
To: Shanon Peake <shanonp@smithrobinsonlaw.com>
Cc: Jon Robinson <jon@smithrobinsonlaw.com>; Dot Faulkenberry <Dot@smithrobinsonlaw.com>; Lindsay Valek <Lindsay@rplegalgroup.com>
Subject: RE: Appellate Case No. 2021-000648

Thanks, Shanon. Were these materials also served on the parties?

Todd

From: Shanon Peake <shanonp@smithrobinsonlaw.com>

Sent: Thursday, October 21, 2021 4:34 PM

To: Carroll, Todd <Todd.Carroll@wbd-us.com>

Cc: Jon Robinson <jon@smithrobinsonlaw.com>; Dot Faulkenberry <Dot@smithrobinsonlaw.com>; Lindsay Valek <Lindsay@rplegalgroup.com>

Subject: RE: Appellate Case No. 2021-000648

Hey Todd,

Here's a link with copies of everything that was filed with the Court for the March 4, 2021 Notice of Filing.

<https://app.box.com/s/331q8fk2wjignw0k4o2fb7cx0pbtjkff>

Thanks,
Shanon

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Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

Shanon Peake
Attorney at Law

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From: Carroll, Todd <Todd.Carroll@wbd-us.com>

Sent: Thursday, October 21, 2021 8:32 AM

To: Shanon Peake <shanonp@smithrobinsonlaw.com>

Subject: FW: Appellate Case No. 2021-000648

Good morning, Shanon. I've got a quick question regarding the Respondents' designation of matter. Your designation #3 says "Notice of Filing with Exhibits, March 4, 2021." I cannot find any record of that filing beyond what's on the Public Index. Do you have correspondence showing that additional materials were sent to the court and served on our side, or was what's in the Public Index it? Thanks for your help,

Todd

Todd Carroll

Partner

Womble Bond Dickinson (US) LLP

d: 803-454-7730

m: 803-446-2883

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Columbia, SC 29201

womblebonddickinson.com

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From: Shanon Peake <shanonp@smithrobinsonlaw.com>**Sent:** Monday, October 18, 2021 5:31 PM**To:** Carroll, Todd <Todd.Carroll@wbd-us.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; hlee@step toe.com**Cc:** Jon Robinson <jon@smithrobinsonlaw.com>; Brian Barnwell <BB@rplegalgroup.com>; Jescelyn Spitz<jspitz@rplegalgroup.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Dot Faulkenberry<Dot@smithrobinsonlaw.com>**Subject:** Appellate Case No. 2021-000648

Good Afternoon,

Please find attached Respondents' Initial Brief (redacted and unredacted), Respondents' Designation of Matter, and Proof of Service that we are filing with the Court of Appeals this afternoon.

Thank you,

Shanon

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Forward thinking. Results driven.

Smith Robinson Holler DuBose and Morgan, LLC

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March 4, 2021

Via Hand Delivery

Chief Justice (Ret.) Jean Hoefer Toal

Redacted Home Address

Columbia, SC 29205

**RE: Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc., through
its Receiver, Peter D. Protopapas vs. Hartford Accident and Indemnity
Company, et al.
Civil Action No. 2019-CP-40-06243**

Dear Chief Justice Toal,

Please find enclosed a copy of Starr Davis's Notice of Filing, filed electronically on March 4, 2021, in the above-referenced case. Please also find enclosed a copy of Starr Davis's Motion to Seal, which was contemporaneously filed, and the corresponding Exhibits Starr Davis seeks to file under seal.

Sincerely,

Jonathan M. Robinson

JMR/dlf

Enclosure

RECEIVED

Nov 09 2021

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below by emailing them as the addresses below:

Pleading(s): Appendix in Support of Motion to Strike Portion of Respondents' Brief and Entry on Respondents' Designation of Matter

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Counsel for the Respondents

By: /s/ M. Todd Carroll

November 9, 2021