Asbestos Ruling Cements All Sums Coverage Precedent In SC

By **Raymond Mascia and Thomas Dupont** (August 7, 2025)

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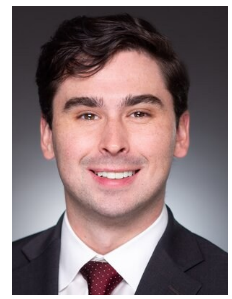

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On May 14, the South Carolina Court of Appeals in Peter Protopapas v. Travelers Casualty and Surety Co. joined the trend followed by many courts around the country and upheld a lower court's decision to apply the policyholder-friendly all sums allocation approach to long-tail injuries such as asbestos losses.[1]

The decision also adopted other key legal principles that ensure policyholders receive the benefits of the insurance they buy. Thus far, this is the highest court in South Carolina to adopt the all sums allocation approach, and the decision provides key appellate precedent to support policyholders' efforts to maximize their coverage.

Insurance companies have historically argued for pro rata allocation of long-tail claims — namely, for the loss to be divided into even amounts over all the years that may be at issue. When the loss is so divided, it's possible that the policyholder's losses in each year never exceed the applicable self-insured retention or primary layer, potentially negating coverage entirely.

By contrast, policyholders have advocated for an all sums method, arguing that any occurrence-based insurance policy on the risk at the time that injury or damage occurred is obligated to pay for the entire loss up to policy limits.

Prior to the Protopapas ruling, on March 1, 2024, the South Carolina Court of Common Pleas held in Covil Corp. v. Pennsylvania National Mutual Casualty Insurance Co. that the phrase "including death at any time resulting therefrom" in the policy's definition of bodily injury required an all sums allocation for asbestos liabilities.[2]

The Covil court explained that this definition precludes confining bodily injury coverage to a limited time period. Rather, the policy language creates an open-ended commitment to cover the legal liability stemming from the covered bodily injury, whenever that liability emerges as long as some portion of the bodily injury occurs during the policy period.[3]

Protopapas provides additional precedent to protect South Carolina policyholders.

In Protopapas, Starr Davis, a contractor that installed insulation, faced various asbestos-related claims. The South Carolina Circuit Court, Richmond County, appointed a receiver to manage Starr Davis' assets, including recovering any available insurance assets. Starr Davis' receiver brought an action against Travelers, alleging insurance companies that Travelers owns sold liability insurance coverage to Starr Davis beginning in the 1940s, and demanding that Travelers defend Starr Davis in the underlying asbestos-related lawsuits.

The receiver moved for partial summary judgment, and the circuit court held that the several liability policies and related secondary evidence produced by Travelers require Travelers to provide millions in defense and indemnity coverage to Starr Davis for the asbestos-related claims.

In affirming the circuit court's decision, the South Carolina Court of Appeals adopted three positions on insurance coverage issues that often decide whether a policyholder will receive the full benefit of the insurance coverage they bought — or nothing.

First, Travelers argued that the receiver did not establish the terms and conditions of all the alleged Travelers policies because, in its summary judgment briefing, the receiver only relied on two of the purported policies, in addition to coverage charts that displayed all the alleged coverage between 1946 and 1986.

The South Carolina Court of Appeals found that Travelers failed to submit evidence to support an inference that any of the policies' terms and conditions were different for any policy period, and that any issues regarding alleged missing policy forms or endorsements were the result of Travelers' failure to locate or produce them. Therefore, the court rejected Travelers' arguments that the lower court erred in granting summary judgment for the receiver.

Second, the court affirmed the circuit court's findings that (1) "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"; (2) Travelers had issued liability insurance coverage to Starr Davis for at least 40 uninterrupted years; and (3) Starr Davis was in receivership with no assets other than insurance coverage available to absorb its losses.

Therefore, the court affirmed that the most equitable allocation methodology is an all sums approach, obligating Travelers to pay for Starr Davis' losses up to policy limits for each year Travelers was on the risk.

Last, the court found that while the initial burden to prove that a loss is covered under the Travelers policies is on the receiver, Travelers bore the burden of proving any exclusion, restriction or limitation of coverage. In this case, that meant that Travelers had the burden of demonstrating which of the receiver's claims, if any, fall within a policy's aggregate limits that would cap coverage.

The South Carolina Court of Appeals correctly affirmed the circuit court's decision regarding these insurance coverage issues.

These types of decisions are not only important for long-tail environmental and asbestos liabilities, but also have become increasingly relevant in recent years for policyholders facing lawsuits alleging sex abuse after reforms of the relevant statutes of limitations in many states. Because sex abuse lawsuits often allege continuing abuse and injuries over the course of many years, policyholders can expect insurance companies to argue for pro rata allocation in those cases.

It is crucial for policyholders to reject an insurance company's attempt to impose a coverage interpretation that drastically limits their recovery, and to vehemently oppose these arguments that are often asserted by insurance companies to escape liability for the insurance they promised to provide, even if that promise was made decades ago and policy records are incomplete.

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[1] Protopapas v. Travelers Cas. & Sur. Co., 446 S.C. 39, 916 S.E.2d 844 (Ct. App. 2025).

[2] C.A. No. 2020-CP-40-02098, slip op. (S.C. Ct. C.P. Mar. 1, 2024).

[3] See the authors' analysis of this case in Law360, "SC Ruling Reinforces All Sums Coverage Trend," 3/27/24.