



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 1, 2022

Yafit Cohn
The Travelers Companies, Inc.

Re: The Travelers Companies, Inc. (the "Company")
Incoming letter dated January 18, 2022

Dear Ms. Cohn:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Silva and Shana Weiss for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company report on current Company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties, and to assess related reputational, competitive, operational, and financial risks.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(5) because we are unable to conclude that the Proposal is not otherwise significantly related to the Company's business.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Sanford Lewis



The Travelers Companies, Inc.
Yafit Cohn
Chief Sustainability Officer & Group GC
485 Lexington Avenue, 8th Floor
New York, NY 10017
917.778.6764 TEL
888.277.0906 FAX
ycohn@travelers.com

VIA E-MAIL

January 18, 2022

Re: The Travelers Companies, Inc. – Omission of Shareholder Proposal from Proxy Materials Pursuant to Rule 14a-8

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Ladies and Gentlemen:

The Travelers Companies, Inc. (“Travelers” or the “Company”) is filing this letter with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Arjuna Capital on behalf of John Silva and Shana Weiss (the “Proponents”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2022 Annual Meeting of Shareholders (collectively, the “Proxy Materials”).

A copy of the Proposal and accompanying correspondence from the Proponents is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against the Company if it omits the Proposal in its entirety from the Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief to the Staff via e-mail at shareholderproposals@sec.gov, and the undersigned has included her name and telephone number both in this letter and in the cover e-mail accompanying this letter. Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), we are:

1. filing this letter with the Commission no later than 80 calendar days before the date on which the Company plans to file its definitive Proxy Materials with the Commission; and
2. simultaneously providing the Proponents with a copy of this submission.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

Rule 14a-8(k) of the Exchange Act and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponents that if they elect to submit additional correspondence to the Commission or the Staff relating to the Proposal, they must concurrently furnish a copy of that correspondence to the Company. Similarly, the Company will promptly forward to the Proponents any response received from the Staff to this request that the Staff transmits by e-mail or fax only to the Company.

I. The Proposal

The Proposal sets forth the following resolution for adoption by the Company's shareholders:

Resolved: Shareholders request Travelers report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and financial risks, and be prepared at reasonable cost, omitting proprietary, privileged or prejudicial information.

II. Bases for Exclusion

The Company respectfully requests the Staff's concurrence that the Company may exclude the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations;
- Rule 14a-8(i)(5) because the Proposal relates to operations accounting for significantly less than 5% of the Company's total assets at the end of the Company's most recent fiscal year for which audited financial statements are available (the "most recent fiscal year"), and for significantly less than 5% of its net earnings and gross sales for the most recent fiscal year. Additionally, racist police brutality is not significantly related, or related at all, to the Company's business; and
- Rule 14a-8(i)(3) and Rule 14a-9 because the Proposal contains numerous false and misleading statements, rendering the Proposal in violation of the proxy rules.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

III. Analysis

A. **The Proposal Is Excludable under Rule 14a-8(i)(7) Because It Deals with a Matter Relating to the Company's Ordinary Business Operations**

Under Rule 14a-8(i)(7), a company may omit from its proxy materials a shareholder proposal that relates to the registrant's "ordinary business" operations. In the 1998 amendments to Rule 14a-8, the Commission noted that the term "ordinary" in "ordinary business" "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In that release, the Commission noted that the principal policy for this exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and the second "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

A shareholder proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") ("[T]he staff will consider whether the subject matter of the special report . . . involves a matter of ordinary business; where it does, the proposal will be excludable under [the predecessor to Rule 14a-8(i)(7)]."); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting the exclusion of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risk related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

1. *The Subject Matter of the Proposal Is Fundamental to Management's Ability to Run the Company's Day-to-Day Business Because It Requests that the Company Report on Options for Changes to Its Policies Related to Its Insurance Offerings, Which Are Core to the Company's Business Model*

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

When evaluating whether the actions sought by a proposal implicate tasks that are so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight, the Staff has consistently acknowledged that shareholder proposals that could undermine a company's core business model and/or relate to the products and services offered by the company are appropriately excludable under Rule 14a-8(i)(7). In *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013), for example, the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the company's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the [company]" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." Similarly, in *JPMorgan Chase & Co.* (Mar. 16, 2010), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) where such proposal sought to have the company's board of directors implement a policy mandating that the company cease issuing refund anticipation loans, which the proponent claimed were predatory loans. There, while the company acknowledged that the proposal addressed an issue that the Staff itself recognized as a "significant policy issue," the company noted that its "decisions as to whether to offer a particular product to its clients and the manner in which the [c]ompany offers those products and services, including pricing, are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7)." *See also Pfizer Inc.* (Mar. 1, 2016) (excluding, under Rule 14a-8(i)(7), a shareholder proposal requesting a report describing steps taken by Pfizer to prevent the sale of its medicines for use in executions, commenting that the proposal "relates to the sale or distribution" of the company's products); *The Walt Disney Co.* (Nov. 23, 2015) (excluding, under Rule 14a-8(i)(7), a proposal requesting that the company's board approve the release of a certain film on Blu-ray, noting that the proposal "relates to the products and services offered for sale by the company"); *The TJX Companies, Inc.* (Apr. 16, 2018) (excluding, under Rule 14a-8(i)(7), a proposal requesting that the company's board develop and disclose a new universal and comprehensive animal welfare policy applying to the company's sale of products, with the supporting statement focusing on the company's sale of products containing fur).

Here, the Proposal attempts to direct the Company's underwriting strategy, which is at the core of the Company's day-to-day business operations as a property casualty insurer. The business of insurance involves a contractual arrangement in which the insurer agrees to bear a policyholder's expected financial risk of future loss, subject to agreed limits, terms and conditions, in exchange for a premium. Underwriting is the process by which the Company evaluates the expected financial risk of future loss and, based on that evaluation, determines whether, at what cost and under what terms and conditions to offer insurance coverage to particular customers. By specifically requesting that Travelers report on options for changes to its policies related to the Company's insurance offerings, the Proposal directly relates to the Company's products – i.e., the insurance policies that it sells, through its subsidiaries, to new and existing customers. Underwriting decisions with respect to the Company's product offerings fall

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

squarely within the ambit of management's core business operations and are at the heart of an insurer's business model. For these reasons, the Proposal is excludable as relating to the Company's ordinary business operations pursuant to Rule 14a-8(i)(7).

2. *The Proposal Does Not Focus on a Significant Policy Issue for Purposes of Rule 14a-8*

Although the Proposal is drafted in such a way as to appear to implicate a matter of significant social policy within the meaning of Rule 14a-8(i)(7), a close reading of the Proposal makes clear that the Proposal is intended to result in changes to the Company's underwriting practices. By seeking changes to the Company's policies and practices with respect to its insurance offerings, the Proposal interferes with the core business model of the Company.

The Company acknowledges the Staff's recent guidance in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), in which the Staff announced that it is rescinding several recent staff legal bulletins and "no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)." The Staff explained that "[b]ased on a review of the rescinded SLBs and staff experience applying the guidance in them," in the Staff's view, "an undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal *focuses on* a significant social policy." (emphasis added). While the Staff will no longer consider whether a sufficient nexus exists between a proposal and the company at issue, there remains a separate and distinct argument for exclusion under (i)(7) that a proposal does not *focus on* a significant social policy issue.

The requirement that a proposal must focus on a significant social policy issue was explained by the Commission in the 1998 Release: "[P]roposals . . . *focusing on* sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." (emphasis added). Consistent with new SLB 14L, the Staff has historically recognized that, regardless of whether certain proposals may extend beyond the topic of the subject companies' practices to implicate broader societal issues, if the essence of the proposal nevertheless impermissibly targets the ordinary business operations of a company, such proposals are excludable under Rule 14a-8(i)(7). *See Amazon.com, Inc.* (Mar. 17, 2016) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal asking the company's board to prepare a report on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes, noting that "the proposal relate[d] to the company's products and services and [did] not focus on a significant policy issue"); *Chipotle Mexican Grill, Inc.* (Dec. 30, 2015) (permitting, under Rule 14a-8(i)(7), the exclusion of a proposal asking the board to adopt principles for minimum wage reform because the proposal "relate[d] to general compensation matters"); *General Electric Co.* (Dec. 7,

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

2007) (concurring, under Rule 14a-8(i)(7), in the exclusion of a shareholder proposal requesting that the board establish an independent committee to prepare a report on the potential damage to the registrant's brand as a result of sourcing products and services from the People's Republic of China, with the Staff noting in its response that the proposal "relat[ed] to [the company's] ordinary business operations (*i.e.*, *evaluation of risk*)" (emphasis added)); *PPG Industries, Inc.* (Feb. 26, 2015) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal requesting a report on options for policies and practices the company could adopt to reduce health hazards by eliminating the use of lead in paint and coatings, because the proposal related to the company's product development); *Wal-Mart Stores, Inc.* (Mar. 15, 1999) (permitting, under Rule 14a-8(i)(7), the exclusion of a proposal requesting that the board report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor or child labor or who fail to comply with laws protecting employees' rights, because "... although the proposal appear[ed] to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relate[d] to ordinary business operations").

More specifically, the Staff has permitted the exclusion of proposals submitted to financial institutions requesting the adoption of policies regarding lending and credit decisions that arguably involved a social issue. For example, the proposal in *Bank of America Corp.* (Feb. 24, 2010) requested a report describing, among other things, the company's policy regarding the funding of companies engaged predominantly in mountain top removal coal mining. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), stating that "the proposal addresses matters beyond the environmental impact of Bank of America's project finance decisions, such as Bank of America's decisions to extend credit or provide other financial services to particular types of customers. Proposals concerning customer relations or the sale of particular services are generally excludable under rule 14a-8(i)(7)." *See also JPMorgan Chase & Co.* (Mar. 12, 2010) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal requesting a report assessing the adoption of a policy barring future financing of companies engaged in mountain top removal coal mining).

The Proposal is not only analogous to the proposal in *Bank of America Corp.* but is also directly comparable to the proposal found to be excludable in *The Allstate Corp.* (Jan. 16, 2015), where the proposal requested that the registrant's board of directors prepare a report describing, among other things, how the board and management identify, oversee and analyze civil rights risks related to the registrant's use of data. There, the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), specifically noting "that the proposal relates to the manner in which the company uses customer information to make pricing determinations."

Here, while the Proposal is positioned as a broad call to arms to combat racist police brutality, the essence of the Proposal is to identify ways in which the Company can change its underwriting approach. Notwithstanding that the Proposal mentions terms such as "racist police brutality," the specific action requested is for the Company to report on current internal policies

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

and practices, as well as options to change such policies, related to the products that the Company offers to its customers. Though couched as a proposal relating to a significant social policy issue, the underlying thrust of the Proposal is to request that the Company cease, limit or modify certain of its product offerings – i.e., insurance policies involving law enforcement liability. Therefore, the Proposal seeks to address matters that are at the core of the Company’s ordinary business and is not focused on a significant social policy issue within the meaning of Rule 14a-8(i)(7).

3. *The Proposal Would Implicate the Company in Litigation It Defends on Behalf of Its Insureds*

Even if the Staff does not agree that the Proposal does not focus on a significant social policy issue for purposes of Rule 14a-8(i)(7), the Proposal is nonetheless excludable under Rule 14a-8(i)(7) because it implicates the Company’s legal strategy in ongoing litigation. The Staff has long recognized that regardless of whether they touch on a significant social policy issue, shareholder proposals that implicate a company’s litigation conduct or legal strategy are excludable under Rule 14a-8(i)(7) on the basis that management, and not a registrant’s shareholders, are responsible for the litigation strategies of a company. For example, though smoking is widely considered to be a significant social policy issue, the Staff concurred in the exclusion of a proposal that touched upon this issue where the substance of the proposal (*e.g.*, the health effects of smoking in teens) was the same as or similar to that which was at the heart of litigation in which the company was then involved. *See Philip Morris Companies Inc.* (Feb. 4, 1997) (noting that although the Staff “has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business,” and that the Staff has viewed “the issue of teen smoking as transcending ordinary business,” the company could exclude a proposal that implicates its litigation strategy, “which is viewed as inherently the ordinary business of management to direct”). Most recently, the Staff concurred in the exclusion of a shareholder proposal seeking a racial justice audit of Chevron Corp. based on Rule 14a-8(i)(7), where the proposal potentially implicated Chevron’s litigation strategy in climate change litigation involving allegations that its policies perpetuate racial injustice on communities of color. *See Chevron Corp. (Sisters of St. Francis of Philadelphia et al.)* (Jan. 18, 2021). The Staff has also concurred in the exclusion of other proposals that similarly implicated ongoing litigation and legal strategy. *See, e.g., Walmart Inc.* (Apr. 13, 2018) (concurring in the exclusion of a proposal requesting a report on risks associated with emerging public policies on the gender pay gap where the registrant was involved in numerous pending lawsuits regarding gender-based pay discrimination and related claims before a U.S. regulator, as “affect[ing] the conduct of ongoing litigation relating to the subject matter of the [p]roposal to which the [c]ompany is a party”); *General Electric Co.* (Dec. 15, 2015) (proposal sought a report assessing the registrant’s potential liability in connection with a chemical spill, with the registrant noting that such a report interferes with the registrant’s “defense of both pending *and potential* litigation”; the Staff noted that the proposal was excludable because of its impact on pending litigation) (emphasis added);

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

AT&T Inc. (Feb. 9, 2007) (concurring in the exclusion of a proposal requesting a report containing certain information regarding the alleged disclosure of customer records to governmental agencies where the registrant was a defendant in multiple pending lawsuits alleging related unlawful acts by the company).

Here, in the Company's capacity as a property casualty insurer, the Company currently faces, has faced and could again in the future face legal proceedings that would be adversely affected by publication of a report regarding the Company's business practices and the impact they may be claimed to have on racist police brutality, as contemplated by the Proposal. The Company sells a variety of insurance products to small cities, counties, municipalities and other public entities, who have been, are and will in the future be subject to suits asserting claims for discrimination and/or civil rights violations. Where such claims trigger a defense obligation under the relevant insurance contract and applicable law, the Company is legally obligated to defend that insured for those claims.¹ Recommendations of the nature anticipated to be included in the report requested by the Proposal, however, would compromise the Company's ability to defend its insureds, including in ongoing litigation.

Specifically, as part of a multi-line offering to public entities with law enforcement exposure, the Company writes Law Enforcement Liability ("LEL") coverage² under which the Company is required to defend – and is currently defending – insureds in claims alleging civil rights violations. The LEL coverage provides in relevant part:

SECTION I - LAW ENFORCEMENT LIABILITY COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies. **We will have the right and duty to defend the insured against any claim or "suit" seeking those damages.** (emphasis added).

The Company's LEL coverage defines "personal injury" to include:

- a. False arrest, detention or imprisonment;

¹ Note that the Company's obligations to defend and/or indemnify claims for discrimination and civil rights violations are subject to the terms, conditions and exclusions in the insurance contract which may otherwise eliminate coverage. For example, loss arising out of criminal or intentional acts are generally excluded from insurance coverage. Such contract terms are consistent with the laws of many jurisdictions that prohibit insurance coverage for intentional or criminal wrongdoing. *See, e.g.*, Cal. Ins. Code § 533 ("An insurer is not liable for a loss caused by the willful act of the insured.").

² *See* Form PR T1 04 02 09.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

- b. Malicious prosecution;

- f. False or improper service of process; or
- g. Violation of civil rights protected under any federal, state or local law.

Pursuant to its contractual and legal obligations, the Company has defended, is currently defending and expects to continue to defend insureds in lawsuits that rely on disputed allegations and legal theories that could be implicated by the Proposal, such as civil cases alleging racial profiling and/or racially motivated behavior, as evidenced by the following sample complaints³:

- *Patty Jackson, individually, and as Administratrix of the Estate of Daryl Mount v. City of Saratoga Springs, et al*, Index No. 20143461 (Supreme Court of the State of NY) (alleging, *inter alia*, civil rights violations in the death of a black male at the hands of officers, with allegations of racial profiling, including that “individual police officer defendants engaged in a pursuit, detention and/or arrest and battery of plaintiff’s decedent herein based upon a pre-textual allegation of misconduct and as a result of ‘racial profiling’ and/or discriminatory practices due to, and motivated by, decedent’s race . . .”).
- *Lakeisha Afiah Nix, as Personal Representative of the Estate of Lymond Maurice Moses v. New Castle County, et al.*, 1:21-cv-00590-LFR, (U.S.D.C., DE) (alleging, *inter alia*, civil rights violations resulting in the death of a black male resulting from implementation of deadly force at a higher rate against black men, including allegations that “New Castle County, with deliberate indifference to rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, fostered or ratified a number of customs, patterns, or practices that condoned and required officers to treat the members of the black Community of New Castle County differently, including but not limited to, implementing deadly force at a higher rate against black men who did not pose a threat to officers”).
- *Estate of Ricky J. Ball v. City of Columbus, Mississippi, et al*, 1:16-cv-176 (N.D., MS) (alleging, *inter alia*, racial profiling resulting in an unjustified stop and ultimate shooting of an unarmed black male by a white police officer, including allegations that “Plaintiff is the victim of racial profiling, since Defendant [officer] Boykin singled him out for arrest because he was black . . .;” “Defendant Boykin and other officers of the City of Columbus had engaged in racial

³ Unless otherwise noted, cases cited are open, and litigation is ongoing.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

profiling . . .;” and that the “City of Columbus had knowledge that Defendant Boykin had made racists [sic] postings . . . on social media . . .”).⁴

The Proposal, which requests that the Company report on “options for changes to [its] policies,” would impact the Company’s litigation strategy and could compromise Travelers’ ability to effectively defend its insureds, regardless of the specific content of the report, since the report would necessarily address the very subject of the Company’s ongoing litigation. As noted above, the Company provides insurance coverage designed, among other things, to protect public entity insureds against claims of violations of civil rights. Publicly proposing any “options for changes” to the Company’s policies regarding those insurance offerings would necessarily impact the Company’s legal strategy in defending its insureds and could prejudice the Company and its insureds in litigation.

For example, the Proposal appears to request, at least in part, changes the Company could make to its policies as they relate to measures that police departments should implement to reduce or eliminate police violence against people of color. As an insurance company, the Company has no ability to require its insureds to implement any particular policy or practice. By recommending such policies or practices in the manner contemplated by the Proposal, the Company and its underwriting and risk control personnel risk becoming subject to discovery and depositions in cases brought against the Company’s own insureds. The Company’s ability to adequately defend its insureds would be impaired if claimants sought to use testimony by Company personnel against its own insureds.

Additionally, a report outlining practices for reducing police brutality against people of color could make it significantly more difficult for the Company to defend the municipalities it insures in current litigation alleging race-based violence, if the police department at issue did not have such practices in place, even if it had other (and even more robust and effective) practices in place designed to reduce the risk of police brutality. Similarly, if the report requested by the Proposal were to conclude that Travelers should perform risk control consultations or assessments beyond those the Company already performs and to make recommendations to implement additional training, tools and tactics aimed at reducing police violence, such recommendations could be used against the insured to establish liability under the *Monell* doctrine, significantly prejudicing the insured and the Company in litigation.⁵

The Company cannot risk compromising the defense of its insureds in lawsuits centered on allegations and legal theories that could be directly implicated by the Proposal. Contracts of insurance (like other contracts) include an implied promise of good faith and fair dealing. A

⁴ Travelers defended this case, and the matter is resolved. The complaint in this matter is typical of the types of complaints tendered to Travelers in the ordinary course of its business.

⁵ Under the *Monell* doctrine, a plaintiff can sue a municipality for promulgating unconstitutional policies or practices or inadequate training that precipitate civil rights violations by law enforcement officers. See *Monell v. Dep’t of Social Services*, 436 U.S. 658 (1978).

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

number of jurisdictions have even concluded that insurers are subject to a heightened duty of good faith and fair dealing to their insureds that is akin to a fiduciary relationship. *See, e.g., Love v. Fire Ins. Exch.*, 271 Cal. Rptr. 246, 251–52 (Cal. App. 4th Dist. 1990) (“Moreover, because of the ‘special relationship’ inherent in the unique nature of an insurance contract, the insurer’s obligations attendant to its duty of good faith are heightened. Such obligations have been characterized as *akin* to fiduciary-type responsibilities.”); *O.K. Lumber Co., Inc. v. Providence Washington Ins. Co.*, 759 P.2d 523, 525 (Alaska 1988) (“The fiduciary relationship inherent in every insurance contract gives rise to an implied covenant of good faith and fair dealing.”).

Consequently, the Proposal could cause the Company to take positions that could impair its insureds’ defense and/or subject the Company to claims for extracontractual liability based on an alleged breach of duties the Company owes to its insureds if its ability to defend its insureds is impaired in the ways described above or in innumerable other ways that may not be readily foreseeable.

4. *The Proposal Seeks to Micromanage the Company by Probing Too Deeply into Matters of a Complex Nature upon Which Shareholders, as a Group, Would Not Be in a Position to Make an Informed Judgment*

While we believe that the Proposal is excludable under Rule 14a-8(i)(7) as interfering with the Company’s current and future litigation strategy and, consequently, with its legal duty to defend its insureds in litigation, we note that the Proposal is also excludable because it attempts to micromanage the Company. As is the case with respect to a proposal’s interference with a company’s litigation strategy, even if a proposal involves a significant social policy issue within the meaning of Rule 14a-8(i)(7), it may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. As the 1998 Release explains: “This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” The Staff has a long history of determining that proposals relating to significant social policy issues are excludable when they seek to micromanage a company. *See, e.g., Marriott International, Inc.* (Mar. 17, 2010) (concurring in the exclusion of a proposal seeking to save energy by requesting that the company install certain showerheads in test properties, explaining that, “although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate”); *Exxon Mobil Corp. (Adam Seitchik)* (Mar. 6, 2020) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal requesting that the board charter a new board committee on climate risk because the proposal sought to micromanage the company); *JPMorgan Chase & Co. (Harrington Investments, Inc.)* (Mar. 30, 2018) (permitting, under Rule 14a-8(i)(7), the exclusion of a proposal requesting the company establish a “Human and Indigenous Peoples’ Rights Committee” because the proposal micromanaged the company); *Amazon.com, Inc.* (Jan. 18, 2018, *recon. denied* Apr. 5, 2018) (concurring, on micromanagement grounds under Rule 14a-8(i)(7), in the exclusion of a proposal

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

requesting the company list certain efficient showerheads before others on its website and describe the benefits of these showerheads).

The Staff recently explained in SLB 14L that “in order to assess whether a proposal probes matters ‘too complex’ for shareholders, as a group, to make an informed judgment, [the Staff] may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” Here, the topic of the Proposal probes matters far too complex for even more sophisticated investors to be able to make an informed judgment.

While the concept of insurance can certainly be explained in such a way that investors are able to understand how an insurance company operates and evaluate that company’s profitability, the business of insurance is highly complex. To calculate the risk of expected future loss, insurers employ actuaries, who apply mathematics, statistics and economic methods in order to estimate the probability and financial implications of various risk factors. Actuaries evaluate various factors that have been proven to correlate with losses. The procedures through which actuaries set rates are complex, involve the application of informed business judgment and are required by law to be based on risk factors that correlate with losses. *See generally*, Michael J. Miller, *Disparate Impact and Unfairly Discriminatory Insurance Rates*, Casualty Actuarial Society E-Forum, Winter 2009 at 284.⁶ This assessment of risk is designed to accurately identify “the expected value of all future costs associated with an individual risk transfer.” Casualty Actuarial Society, *Statement of Principles Regarding Property and Casualty Insurance Ratemaking* at 57–58.

In light of the complexities and nuances associated with the underwriting and pricing of the Company’s products, as of December 31, 2020, the Company has more than 1,500 employees working in analytics, including nearly 400 actuaries, 200 data scientists and statisticians, and 350 data engineers. Moreover, it has an underwriting function of more than 4,200 people, supported by over 4,000 operations specialists across more than 70 locations. The Company’s actuaries, the individuals who mathematically calculate and assess the risk associated with providing certain insurance coverage to potential insureds, complete between five and seven years of training and successful examination to become accredited by nationally recognized organizations, and are required to maintain those accreditations through annual continuing actuarial education, including with respect to professionalism standards. The Company’s actuaries are experts at pricing, reserving, predictive modeling, strategic and financial planning, risk and capital management, and predicting loss, among other things. Notably, the average underwriting tenure at Travelers for those in the Company’s underwriting function is approximately 13 years, inclusive of the Company’s underwriting training and development program. The Company also has staff dedicated to ensuring that the Company’s underwriting policies and product offerings are compliant with regulations to which it is subject in all 50

⁶ Available at https://www.casact.org/sites/default/files/database/forum_09wforum_miller.pdf.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

states. The Proposal does not appreciate the experience, complexity and resources that are involved in establishing and implementing the Company's policies and practices regarding its underwriting approach. For this reason, the Proposal probes matters too complex for shareholders, as a group, to make an informed judgment.

The Proposal is excludable based on the same reasoning applied by the Staff in permitting the exclusion of other proposals that covered similarly complex matters and were thus found to micromanage the company at issue. For example, in *SeaWorld Entertainment, Inc.* (Mar. 30, 2017), the proposal sought to "retire the current resident orcas to seaside sanctuaries and replace the captive-area exhibits with innovative virtual and augmented reality or other types of non-animal experiences." The company argued, among other things, that the proponent sought to micromanage the company's decisions with respect to the entertainment products it offered to customers because those decisions involved "deep knowledge of the [c]ompany's business and operations – information to which the [c]ompany's shareholders do not have access" as well as myriad complex factors involved in relevant board and management decision-making. The Staff concurred in the omission of the proposal under Rule 14a-8(i)(7), stating that the proposal sought to "micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See also The Wendy's Company* (Mar. 2, 2017) (concurring in the exclusion of a proposal urging the board to join a farmworker initiative and prepare a report on the implementation of the proposal as micromanaging the company); *JPMorgan Chase & Co.* (Mar. 30, 2018) (concurring in the exclusion of a proposal requesting the establishment of a human and indigenous peoples' rights committee as micromanaging the company). Most recently, the Staff concurred, in the exclusion of a proposal that sought the annual publication of the written and oral content of any employee-training materials offered to any subset of the company's employees by the company or with its consent, as well as any such materials which the company sponsored in the creation in whole or part. In allowing exclusion, the Staff's no-action letter specifically expressed its view that "the [p]roposal micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company's employment and training practices." *Deere & Company* (Jan. 3, 2022).

Allowing shareholders to interfere with the process by which insurance actuaries and underwriters assess risk – the process at the very core of the Company's business and subject to extensive regulation in all 50 states – would undermine the ability of insurers such as Travelers to function properly. Attempting to evaluate and critique the company's highly complex and heavily regulated underwriting and pricing strategies and its provision of insurance policies micromanages the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

Because the Proposal deals with the Company's ordinary business operations, does not focus on a significant policy issue as contemplated by Rule 14a-8, implicates the Company's

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

legal strategy in litigation and seeks to micromanage the Company, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

B. The Proposal May Be Excluded under Rule 14a-8(i)(5) Because It Relates to Operations Which Account for Less Than 5% of the Company's Total Assets at the End of Its Most Recent Fiscal Year, and for Less Than 5% of Its Net Earnings and Gross Sales for Its Most Recent Fiscal Year, and Is Not Otherwise Significantly Related to the Company's Business

Rule 14a-8(i)(5) permits a company to exclude a proposal that “relates to operations which account for less than five percent of the company’s total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” The Commission has stated that, “For example, the proponent could provide information that indicates that while a particular corporate policy which involves an arguably economically insignificant portion of an issuer’s business, the policy may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.” SEC Release No. 34-19135 (Oct. 14, 1982).

The Company acknowledges the Staff’s recent change in approach with respect to requests to exclude proposals pursuant to Rule 14a-8(i)(5). In SLB 14L, the Staff stated that “proposals that raise issues of broad social or ethical concern related to the company’s business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5).” The Staff, however, also confirmed that it is “returning to [its] longstanding approach, prior to SLB No. 14I” and that it would apply analysis consistent with the court’s ruling in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), which stated that a proposal that is “ethically significant in the abstract but ha[s] no meaningful relationship to a [company’s] business” may be excluded under Rule 14a-8(i)(5). The Company believes that excluding the Proposal would be consistent with the Staff’s current approach.

The Staff has historically permitted the exclusion of proposals under Rule 14a-8(i)(5) where the company’s business operations at issue fell below the five percent tests, regardless of the fact that the proposal raised issues of broad social or ethical concern. *See The Procter & Gamble Co.* (Aug. 11, 2003) (concurring, under Rule 14a-8(i)(5), in the exclusion of a proposal involving embryonic stem cell research); *Arch Coal, Inc.* (Jan. 19, 2007) (concurring, under Rule 14a-8(i)(5), in the exclusion of a proposal requesting a report on emissions from current and proposed power plant operations).

Specifically, the Staff has concurred in the exclusion of proposals under Rule 14a-8(i)(5) where, although the product at issue raised broad social or ethical concerns, the sale of the product accounted for less than five percent of a company’s total assets, net earnings, and gross sales and the company offered a diverse array of products. In *Kmart Corp.* (Mar. 11, 1994), for

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

example, the Staff concurred in the exclusion of a proposal asking the board to review its sale of firearms. Although Kmart sold firearms, those sales accounted for less than five percent of its total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year. With respect to whether the proposal was otherwise significantly related to its business, Kmart explained that it “is the world’s second largest retailer in sales volume. It operates discount general merchandise stores that sell a broad variety of products. . . . With a product mix that is extremely diversified, the limited scope of [Kmart’s] sale of firearms are [sic] simply not significantly related to the Company’s business.” The Staff agreed with this argument and permitted exclusion of the proposal under the predecessor to Rule 14a-8(i)(5). *See also American Stores Company* (Mar. 25, 1994) (concurring in the exclusion of a proposal requesting that the company terminate the sale of tobacco products when the company sold thousands of different products).

Here, too, the Proposal relates to operations that are *de minimis* to the Company and account for significantly below Rule 14a-8(i)(5)’s five percent threshold. At December 31, 2020, the most recent date for which audited financial information is available, the Company’s Law Enforcement Liability policies accounted for 0.03% of total assets, significantly less than 0.5% of total net earnings and 0.11% of total gross sales.

To provide additional context, as the Proposal itself notes, the Company “is the second-largest writer of US commercial property-casualty insurance.” Travelers, through its subsidiaries, offers hundreds of insurance products and types of coverages in the United States and in the countries and territories in which it operates worldwide. Through its operating subsidiaries, the Company has over 10 million policies in force for millions of personal and commercial customers under hundreds of lines of coverage. These coverages range from homeowners and auto to workers compensation, general liability, directors & officers liability, professional liability and many other lines of coverage issued at the primary, umbrella and excess level. The limited scope of law enforcement liability insurance when put into the context of the Company’s larger operations leads to the conclusion that, regardless of the metrics cited above, the sale of law enforcement liability insurance is not otherwise significantly related to the Company’s business. As an additional point of reference, when looking at insurance claims, LEL Excessive Force claims accounted for less than 0.2% of the Company’s general liability claims since 2016 (and, accordingly, a meaningfully lower percentage as compared to all of the Company’s claims). This, too, confirms the fact that law enforcement liability insurance is not otherwise significantly related to the Company’s business.

The Proposal is directly comparable to the proposal the Staff permitted to be excluded in *Unocal Corp.* (Feb. 16, 1995) (“*Unocal*”). There, the proposal requested that Unocal terminate its operations in Myanmar until political prisoners were released and political power was transferred to a democratically-elected government. The Staff permitted the exclusion of the proposal under the predecessor to Rule 14a-8(i)(5), noting the lack of economic significance to Unocal and that “the policy issues raised by the proposal, the form of government in Burma, and

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

the imprisonment of political prisoners is not otherwise significantly related to Unocal's business." *See also Amoco Corp.* (Feb. 14, 1994); *Pepsico, Inc.* (Feb. 14, 1994). Unocal, citing as support several substantially similar proposals that the Staff had permitted to be excluded under the predecessor to Rule 14a-8(i)(5), explained in its no-action request that the proposal attempted to link Unocal's drilling operations to alleged governmental misconduct without providing "any statement that would suggest that Unocal's business and employment practices are less than exemplary." Unocal concluded its analysis with the following statement: "Because the Proposal fails to substantiate a relationship between Unocal's business conduct and either political prisoners or the form of government in Myanmar, it therefore does not present any significant policy implications for Unocal or its shareholders and accordingly is not 'otherwise significantly related to the Company's business.'"

As in *Unocal*, in addition to the fact that the Company easily satisfies the economic relevance test, the Proposal does not provide any evidence that the Company's business practices are anything less than exemplary or that there is any relationship between the lawful provision of insurance and racist police brutality. Rather, the entire purpose of the Proposal appears to be an attempt to persuade the Company to alter its business operations entirely to start providing trainings to police forces (which is well outside the scope of the company's operations and is thus not meaningfully related to the company's business) or to offer a completely new line of professional liability insurance to individual police officers, as advocated for in the paper titled "Policing the Police" cited by the Proponents. While the Company recognizes that racist police brutality is a serious societal issue, as explained in the "ordinary business" discussion in Section A.2 above, the Proposal does not, in fact, focus on a significant social policy issue within the meaning of Rule 14a-8(i)(7). Even if the Staff determines that the Proposal raises a significant social policy issue, it is simply not meaningfully related to the Company's business; as noted above, the Proposal relates to operations that are not economically or otherwise significant to the Company. Allowing exclusion of the Proposal would be consistent with the court's holding in *Lovenheim v. Iroquois Brands, Ltd.* and, accordingly, with the Staff's approach explained by SLB 14L, as well as the no-action letter precedent issued prior to the SLBs rescinded by SLB 14L.

C. The Proposal Is Excludable under Rule 14a-8(i)(3) Because It Contains False and Misleading Statements, Rendering It in Violation of the Proxy Rules

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a company's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As described below, exclusion of the Proposal is warranted because inclusion of the Proposal's supporting statement and proposed resolution in the Company's forthcoming Proxy Materials would result in the Company filing a proxy statement with materially false and misleading statements.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

On the whole, the Proposal is false and misleading and must be excluded in its entirety from the Company's Proxy Materials under Rules 14a-8(i)(3) and 14a-9. References throughout the Proposal to "murders," "racist police brutality," and "racially motivated police abuses" suggest, without any basis in fact, that the Company insures and/or supports illegal behavior. This suggestion is materially false and misleading, and the Proposal's language serves only to inflame.

In fact, as noted above, the Company's obligations to defend and/or indemnify claims for discrimination and civil rights violations are subject to the terms, conditions and exclusions in the insurance contract which may otherwise eliminate coverage. For example, loss arising out of criminal or intentional acts are generally excluded from insurance coverage. Such contract terms are consistent with the laws of many jurisdictions that prohibit insurance coverage for intentional or criminal wrongdoing. *See, e.g.*, Cal. Ins. Code § 533 ("An insurer is not liable for a loss caused by the willful act of the insured."). Consistent with applicable laws and regulations, the Company in no way enables illegal behavior, and to suggest otherwise is materially false.

In addition, the Proposal is materially false and misleading because it posits that there is a vast amount of data available to support the conclusion that an insurance company can use its policies to address structural racism and curb misconduct. However, the sources provided by the Proponents do not support that conclusion. For instance, the Boston University study referenced, does not discuss insurance policies at all. Michael Siegel, *Racial Disparities in Fatal Police Shootings: An Empirical Analysis Informed by Critical Race Theory*, 100 B.U. L. Rev. 1069 (2020).⁷ Even more inexplicable is the paper by John Rappaport that the Proposal repeatedly references for support, in which the author merely opines that insurers have a role to play with respect to the conduct of police officers. Importantly, Rappaport's response to his question – "[d]oes [p]olice [i]nsurance [r]educe [p]olice [m]isconduct?" – is: "Ultimately, it's an empirical question to which I lack an answer." John Rappaport, *How Private Insurers Regulate Public Police*, 130 Harv. L. Rev. 1539, 1595-96 (2017).⁸ The Proponents also fail to mention Rappaport's conclusion that insurers are particularly *unlikely* to be able to influence race-related police misconduct. *Id.* at 1613 ("Certain kinds of misconduct, like racial profiling, are largely resistant to regulation-by-insurance."). The Northeastern Law paper referenced proposes mandatory professional liability insurance for police officers. Deborah Ramirez and Tamar Pinto, *Policing the Police: A Roadmap to Police Accountability Using Professional Liability Insurance*, Northeastern University School of Law Research Paper No. 397-2020 (2020).⁹ This is

⁷ Available at

https://heinonline.org/HOL/Page?handle=hein.journals/bulr100&div=31&g_sent=1&casa_token=&collection=journals.

⁸ Available at <https://harvardlawreview.org/wp-content/uploads/2017/04/1539-1614-Rappaport-Online.pdf>.

⁹ Available at

<https://deliverypdf.ssrn.com/delivery.php?ID=27708811407309711706411509106911110202907501006502108210807101308108708611800107609312306103700205810411500309010912111910311304704202105102911311501>

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

not a product that the Company even offers. These articles and the cherry-picked statements selected from them are deployed throughout the supporting statement to mislead shareholders into thinking there is empirical evidence and data to support voting for the Proposal, when that is far from true.

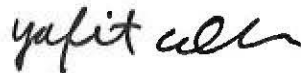
Including these statements in the Company's Proxy Materials would violate Rule 14a-9 and would otherwise require that Company management expend time and resources refuting such claims in its forthcoming proxy statement. The preponderance of false and misleading statements included in the Proposal justifies the Proposal's exclusion – a position that the SEC has historically supported. *See, e.g., Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal in its entirety under Rule 14a-8(i)(3) where "certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading").

IV. Conclusion

We hereby respectfully request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials in reliance on Rules 14a-8(i)(7), (5) and (3).

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response. If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at 917-778-6764 or ycohn@travelers.com.

Sincerely,



Yafit Cohn

Enclosures

cc: Natasha Lamb, Arjuna Capital
A.J. Kess, The Travelers Companies, Inc.

Exhibit A

Copy of the Proposal and Accompanying Correspondence

From: Natasha Lamb [REDACTED]
Sent: Thursday, December 02, 2021 4:23 PM
To: Skjerven, Wendy C
Cc: Julia Cedarholm
Subject: [External] Shareholder Proposal - RE: Police Brutality
Attachments: TRV_Complete Mailing_Law Enforcement Liability_2022.pdf

Importance: High

***** External Sender - Please Exercise Caution *****

Dear Ms. Skjerven,

Please find enclosed a shareholder proposal submitted for inclusion in Travelers Companies, Inc.'s 2022 proxy statement, for which Arjuna Capital is the lead filer on behalf of our clients John Silva and Shana Weiss. Please confirm receipt of this email. We have also sent this proposal via Fedex mail to your corporate offices.

We would welcome discussion with your team about the contents of the proposal.

Best,

Natasha

ARJUNA CAPITAL
ENLIGHTENED INVESTING

Natasha Lamb
MANAGING PARTNER/ PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM

[REDACTED]

Disclaimer: This message and any attachments are intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, as taking of any action on the information is prohibited. Unless specifically indicated, this message is not financial advice or a solicitation of any investment products or other financial product or service. Arjuna Capital is registered under the Investment Advisers Act of 1940, as amended. More information about Arjuna Capital is available on our Form ADV Part 2, available upon request.

ARJUNA  CAPITAL
ENLIGHTENED INVESTING

December 1, 2021

VIA FEDEX OVERNIGHT

Ms. Wendy Skjerven, Corporate Secretary
The Travelers Companies, Inc.
485 Lexington Avenue
New York, New York 10017

Dear Ms. Skjerven:

Arjuna Capital is an investment firm focused on sustainable and impact investing.

I am hereby authorized to notify you of our intention to file the enclosed shareholder proposal with The Travelers Companies, Inc. (TRV) on behalf of our clients John Silva and Shana Weiss. Arjuna Capital submits this shareholder proposal for inclusion in the 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, John Silva and Shana Weiss have continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of the Company's common stock. Verification of this ownership is attached. Our clients will remain invested in these positions continuously through the date of the 2022 annual meeting.

Enclosed please find verification of the positions and a letter from John Silva and Shana Weiss authorizing Arjuna Capital to undertake this filing on their behalf. A representative will attend the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

John Silva, Shana Weiss, and Arjuna Capital are available to meet with the Company via teleconference on December 13th from 10-10:30am or 10:30-11am EST.

Please direct any written communications to me at the address below or to [REDACTED].
Please also confirm receipt of this letter via email.

Sincerely,



Natasha Lamb
Managing Partner
Arjuna Capital
[REDACTED]
[REDACTED]

Enclosures

Racist Police Brutality

Whereas: Thousands of police misconduct lawsuits are filed annually—costing taxpayers over 300 million dollars in 2019. The murders of George Floyd, Ahmaud Arbery, and Black Americans at the hands of police have strengthened the Black Lives Matter movement and calls for police reform.

A Boston University research study found a strong relationship between fatal police shootings and structural racism, that is, discrimination arising from institutional systems. How law enforcement liability insurance policies may contribute to structural racism and perpetuate misconduct is under question. Insurance policyholder attorney Alexander Brown notes:

“What I see now with the Black Lives Matter is that there’s going to be a whole lot of investigation into whether various municipalities or police entities have policies or practices that discriminate against African-Americans.”

John Rappaport, University of Chicago Law School, points out how insurance policies could decrease police accountability:

“If insurance companies are not doing a good job at trying to manage the risk, they could actually be making things worse. This is the idea of moral hazard, right? When you get insurance coverage, you drive a little bit less carefully.”

Rappaport notes insurance companies can exert pressure on police departments to reduce use of force that may result in large settlements or court-ordered damages the insurance company must then pay out. Through lower premiums and deductibles, private insurance can encourage departments to engage in “better training, better use of force policies, better screening in the hiring process, and even the firing of bad cops.” Northeastern Law paper “Policing the Police” affirms that tying premium reductions to specific trainings and programs can incentivize individual officers to engage in trainings that lower risk. The United States Commission on Civil Rights’ report “Police Use of Force: An Examination of Modern Policing Policies” magnified these opportunities:

While private insurance is “no panacea,” especially since many large cities are self-insured and therefore lack the external pressure for reform, insurance companies may nonetheless play an important role in increasing police accountability. (Washington Post)

Travelers, the second-largest writer of US commercial property-casualty insurance, provides law enforcement liability insurance, including coverage for “violation[s] of civil rights under any federal, state, or local law” and defense for “claims or suits alleging criminal, malicious, dishonest, or fraudulent wrongful act until determination or admission of such wrongful act in a legal proceeding.” Yet, Travelers does not disclose specific policies or programs to reduce the risk of racist police brutality, such as a risk management specialization or training, education, or audits focused on prevention of racially motivated police abuses and brutality.

Resolved: Shareholders request Travelers report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and financial risks, and be prepared at reasonable cost, omitting proprietary, privileged or prejudicial information.

Date: 11/15/2021

Natasha Lamb
Managing Partner
Arjuna Capital

[REDACTED]
[REDACTED]

Dear Ms. Lamb,

We hereby authorize Arjuna Capital to file a shareholder proposal on our behalf for The Travelers Companies, Inc. (TRV) 2022 annual shareholder meeting. The specific topic of the proposal is requesting that the company publish a report on current company policies to help ensure its insurance offerings reduce and/or do not increase the potential for police brutality.

We support this proposal as law enforcement liability insurance policies may present risks to the company and society at large. We specifically give Arjuna Capital full authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal, and to negotiate a withdrawal of the proposal to the extent the representative views the company's actions as responsive. We understand that our names may appear on the corporation's proxy statement as the filer of the aforementioned proposal.

Sincerely,

John Silva

John Silva

Shana Weiss

Shana Weiss

c/o Arjuna Capital

[REDACTED]
[REDACTED]

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 9, 2022
Via electronic mail
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Response to No Action Letter of The Travelers Companies, Inc. on Shareholder Proposal on Racist Police Brutality

Ladies and Gentlemen,

John Silva and Shana Weiss (the “Proponent”) are beneficial owners of common stock of The Travelers Companies, Inc. (the “Company”) and Arjuna Capital has submitted a shareholder Proposal (the “Proposal”) to the Company on behalf of the Proponent. I am responding, on behalf of Proponent, to the letter dated January 18, 2022 (“Company Letter”), from Yafit Cohn, Chief Sustainability Officer, contending that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being sent concurrently to Yafit Cohn.

SUMMARY

The Proposal in its resolved clause requests that the Company report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and financial risks, and be prepared at reasonable cost, omitting proprietary, privileged or prejudicial information.

The Company Letter asserts that the Proposal is excludable under Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations. However, the Company misrepresents the objective of the Proposal, as the Proposal does not attempt to direct the underwriting process. Moreover, this Proposal focuses on the significant policy issue of racial justice, so that it transcends ordinary business. The Company also cannot reasonably claim that the Proposal would implicate the Company’s litigation, as the Proposal neither requires admissions nor disclosure of the Company’s litigation strategy. The Company Letter also claims under Rule 14a-8(i)(7) that the Proposal seeks to micromanage the Company. Yet, the Proposal is pitched at an appropriate level for investor engagement on this issue with the Company and does not micromanage the decision-making of the board or management.

The Company Letter also asserts Rule 14a-8(i)(5) for a basis of exclusion, stating that its coverage of law enforcement activities accounts for less than 5% of the Company’s total assets, net earnings, and gross sales, and is not otherwise significantly related to the Company’s business. As noted in SLB 14L “proposals that raise issues of broad social or ethical concern related to the company’s business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5).” In this instance, the subject matter of the Proposal is meaningfully related to the Company’s business, as the

Company actively sells and promotes law enforcement liability insurance and is recognized as one of the leading commercial insurers, demonstrated in Exhibits A and B to this letter. Due to these insurance offerings, the Company faces significant reputational and business risks if not appropriately addressing racist police brutality.

Finally, the Company Letter asserts that the Proposal is excludable under Rule 14a-8(i)(3) and Rule 14a-9 as the Company alleges the Proposal contains false and misleading statements. The Company Letter makes a series of advocacy arguments regarding the tone of the Proposal and capacity of an insurer to influence police behavior. The statements that the Company cites are matters of advocacy and are not objectively false within the meaning of Staff interpretive guidance on issues appropriate to exclusion. Instead, they are objections more appropriate to a company opposition statement that would appear in the proxy. While the Company may disagree with the Proposal, the Proposal itself does not contain any false or misleading statements and therefore is not excludable under Rule 14-a8(i)(3) or Rule 14a-9.

Therefore, the Proposal is not excludable under any of the asserted rules.

PROPOSAL

Whereas: Thousands of police misconduct lawsuits are filed annually—costing taxpayers over 300 million dollars in 2019. The murders of George Floyd, Ahmaud Arbery, and Black Americans at the hands of police have strengthened the Black Lives Matter movement and calls for police reform.

A Boston University research study found a strong relationship between fatal police shootings and structural racism, that is, discrimination arising from systems established within an institution. There is increased scrutiny of how law enforcement liability insurance policies may contribute to structural racism and perpetuate misconduct. Insurance policyholder attorney Alexander Brown notes:

“What I see now with the Black Lives Matter is that there’s going to be a whole lot of investigation into whether various municipalities or police entities have policies or practices that discriminate against African-Americans, and that’s going to be established with respect to numerous cities.”

John Rappaport, University of Chicago Law School, points out how insurance policies could decrease police accountability:

“If insurance companies are not doing a good job at trying to manage the risk, they could actually be making things worse. This is the idea of moral hazard, right? When you get insurance coverage, you drive a little bit less carefully.”

Rappaport notes that insurance companies can exert pressure on police departments to reduce uses of force that may result in large settlements or court-ordered damages that the insurance company must then pay out. Through lower premiums and deductibles, private insurance can encourage departments to engage in “better training, better use of force policies, better screening in the hiring process, and even the firing of bad cops.” The United States Commission on Human Rights’ report “Police Use of Force: An Examination of Modern Policing Policies” amplified these opportunities.

While private insurance is “no panacea,” especially since many large cities are self-insured and therefore lack the external pressure for reform, insurance companies may nonetheless play an important role in increasing police accountability. (Washington Post)

Travelers, the second-largest writer of US commercial property-casualty insurance, provides law enforcement liability insurance, including coverage for “violation of civil rights under any federal, state, or local law” and defense for “claims or suits alleging criminal, malicious, dishonest, or

fraudulent wrongful act until determination or admission of such wrongful act in a legal proceeding.” Yet, Travelers does not disclose specific policies or programs to reduce the risk of racist police brutality, such as a risk management specialization or training, education, or audits focused on prevention of racially motivated police abuses and brutality.

Resolved: Shareholders request Travelers report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and financial risks, and be prepared at reasonable cost, omitting proprietary, privileged or prejudicial information.

ANALYSIS

Rule 14a-8(i)(7)

The Company Letter asserts that the Proposal addresses the ordinary business of the Company. However, when examining the Proposal against the Commission and Staff’s guidance on shareholder proposals, including ordinary business and micromanagement, it is evident that the Proposal addresses a significant policy issue that transcends ordinary business and does not micromanage or otherwise inappropriately address the Company’s ordinary business. Nor does the Proposal interfere with the Company’s litigation defense.

a) Ordinary Business Operations

The Proposal does not undermine the Company’s core business model. In its first argument for exclusion under the ordinary business rule, the Company Letter states that:

“The subject matter of the proposal is fundamental to management's ability to run the Company's day-to-day business because it requests that the Company report on options for changes to its policies related to its insurance offerings, which are core to the Company's business model.”

The Company argues that “the Proposal attempts to direct the Company's underwriting strategy, which is at the core of the Company's day-to-day business operations as a property casualty insurer.” The Company misrepresents the objective of the Proposal. The Proponent does not attempt to direct the underwriting process. Instead, the Proposal’s resolved clause clearly requests the Company to “report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality.” As will be discussed further below, the range of possible company activities that could be discussed in such a report could include educational and training related activities, as well as any conditions or considerations the company deploys prior to insuring law enforcement.

The Company Letter references ordinary business exclusion precedents, including *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) and *JPMorgan Chase & Co.* (Mar. 16, 2010), where the proposals attempted to dictate these financial service companies’ fundamental business decisions around product offerings. In contrast, the current Proposal does not attempt to dictate the underwriting process or insurance offerings to customers, but simply requests a report- at the discretion of the board and management- on strategies the Company is utilizing to reduce and prevent racist police brutality.

b) Significant Policy Issues

The Company Letter argues under Rule 14a-8(i)(7) that “though couched as a proposal relating to a significant social policy issue, the underlying thrust of the Proposal is to request that the Company cease, limit or modify certain of its product offerings.” As discussed above, the Proposal’s request for a report does not necessitate any such changes to its product offerings. Even if it did, the Proposal would not be excludable in this instance because it focuses exclusively on a significant policy issue. Where the focus of the Proposal is entirely on a significant policy issue, the fact that it may touch on issues related to products and services offered does not cause it to be excludable. Staff Legal Bulletin 14H, October 22, 2015, made this clear:

[T]he Commission has stated that proposals focusing on a significant policy issue are not excludable under the ordinary business exception “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” [Release No. 34-40018] Thus, a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” [emphasis added].

The Proposal is asking for an appropriate level of analysis and disclosure by the board and management so that shareholders can understand “current company policies, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties.” This request is in no way inappropriate for a shareholder proposal.

Systemic racism and police brutality have a broad societal impact

It is already well established that discrimination matters relate to a significant policy issue. Especially over the last few years, systemic racism and police brutality have been widely recognized as a significant issue in need of resolution. Several research studies support the significance of this issue:

- 1000 civilians are killed each year by law enforcement officers in the United States;¹
- Black men are 2.5 times more likely than white men to be killed by police during their lifetime;²
- California data shows police stopped and used force against Black people disproportionately compared with other racial groups in 2018;³
- A 2017 Dallas Police Department study showed that Dallas officers were more likely to draw their firearms on minority suspects;⁴
- 76% of Americans agree that incidents such as the George Floyd killing are signs of structural racism with law enforcement.⁵

The Black Lives Matter movement has led to increased calls for police reform in the US. Policies and practices of police departments are under increased scrutiny—as are the insurance companies providing coverage for municipal police departments. **The insurance industry is uniquely and powerfully situated to help abate the epidemic of racist police brutality.**

¹ Edwards, F., Hedwig, L. & Esposito, M. *Proc. Natl Acad. Sci. USA* **116**, 16793-16798 (2019).

² Ibid.

³ <http://go.nature.com/2bgfrah>

⁴ Wheeler, A. P., Phillips, S. W., Worrall, J. L. & Bishopp, S. A. *Justice Res. Policy* **18**, 48–76 (2017).

⁵ [Why Most Americans Support the Protests - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/06/06/us/politics/why-most-americans-support-the-protests.html)

In a Harvard Law Review article of 2017, Prof. John Rappaport detailed “How Private Insurers Regulate Public Police.”⁶ The abstract states:

A string of deadly police-citizen encounters, made public on an unprecedented scale, has thrust American policing into the crucible of political conflict. New social movements have taken to the streets, while legislators have introduced a wide array of reform proposals. Optimism is elusive, though, as the police are notoriously difficult to change. One powerful policy lever, however, has been overlooked: police liability insurance. Based on primary sources new to legal literature and interviews with nearly thirty insurance industry representatives, civil rights litigators, municipal attorneys, and consultants, this Article shows how liability insurers are capable of effecting meaningful change within the agencies they insure — a majority of police agencies nationwide.

The Article is the first to describe and assess the contemporary market for liability insurance in the policing context; in particular, the effects of insurance on police behavior. While not ignoring the familiar (and potentially serious) problem of moral hazard, **the Article focuses on the ways in which insurers perform a traditionally governmental “regulatory” role as they work to manage risk. Insurers get police agencies to adopt or amend written departmental policies on subjects like the use of force and strip searches, to change the way they train their officers, and even to fire problem officers, from the beat up to the chief.** ... At bottom, the Article establishes that liability insurance has profound significance to any comprehensive program of police reform....

[A]mong other things, in the hands of insurers, liability for constitutional violations and other police misconduct becomes “loss” to the police agency, which must be “controlled.” Perhaps surprisingly, by denaturing the law in this way and stripping it of its moral valence, insurers may actually advance the law’s aims.

...**[A]n understanding of how insurers manage police risk is essential to any persuasive theory of civil deterrence of police misconduct.** [Emphasis added]

The Proponent believes that the current Proposal is an essential opportunity for insurance investors to encourage insurance companies in their portfolios to *lead* on this issue, protecting their reputations and curtailing the related social impacts by encouraging effective action within the *sphere of influence of an insurance company that offers law enforcement insurance*.

Thus, it is evident that the issues raised by the Proposal address a transcendent policy issue that does not relate to ordinary business.

The recent Staff determination in *Johnson & Johnson* (February 12, 2021, unwritten decision) confirmed that under Rule 14a-8(i)(7) it is not ordinary business for shareholders to request that a Company assess the racial impact of the company's policies, practices, products and services; and to provide recommendations for improving the company’s racial impact. As such, the present Proposal is in line with this understanding that issues of such disparate impact are squarely within the ambit of “transcendent policy issue.”

⁶ Rappaport, John, How Private Insurers Regulate Public Police (February 15, 2016). Harvard Law Review, Vol. 130, pp. 1539-1614, U of Chicago, Public Law Working Paper No. 562, University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 746, Available at SSRN: <https://ssrn.com/abstract=2733783> or <http://dx.doi.org/10.2139/ssrn.2733783>

We note, in addition, that President Biden’s Executive Order on racial equity of January 20, 2021⁷ urges federal agencies to look for opportunities to advance racial equity, including whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. This further confirms that the subject matter of the Proposal addresses a significant social policy issue—the racist police brutality and discrimination at municipal police departments that set off a wave of “Black Lives Matter” protests in 2020 up to the present.

c) Litigation

The Company Letter argues that the Proposal “implicates the Company’s legal strategy in ongoing litigation.” The Letter cites various excluded proposals where the requested disclosures overlapped with evidence sought in pending litigation. Unlike the current Proposal at hand, these referenced proposals did not provide sufficient flexibility for the Company to fulfill the proposal’s request without implicating its litigation. For example, in *Chevron Corp.* (March 30, 2021), the proposal requested a report analyzing how Chevron’s policies, practices, and business operations perpetuated racial injustice in the United States. Chevron successfully asserted that the proposal implicated its pending climate change litigation which argued the company’s policies perpetuated racial injustice. In each of the instances cited by the Company, there was not sufficient flexibility accorded in the proposal for the company to fulfill the proposal’s request without implicating litigation.

In contrast, where a proposal offers flexibility such that disclosures going to the core of pending litigation can be averted, the proposal is not excludable on the basis of the litigation exclusion. As such, the present matter is more like the recent decision in *The Walt Disney Company* (Jan.19, 2022), in which Staff found that a proposal requesting reporting of median and adjusted pay gaps across race and gender did not relate to the company’s pending litigation on California employees’ gender wage gaps. The company argued that a portion of the requested data could theoretically be deployed by plaintiffs in California gender discrimination litigation. While the proposal and litigation both involved wage gaps, the Staff ultimately decided the proposal was not excludable as it did not “deal with the Company’s litigation strategy or the conduct of the litigation to which the Company is a party.”

The present Proposal expressly requests omission from the report of “proprietary, privileged or prejudicial information.” This Proposal can thus be implemented without disclosure of any information that would prejudice or provide an admission of the Company in litigation. As a request for a report regarding current company practices and options for change, the Proposal provides flexibility to the Company to describe its current strategy and any options for changes at an appropriate level that would not affect ongoing litigation.

Notably, the Company already publishes educational materials on its website on many other issues that are undoubtedly the subject of litigation. The Company website has demonstrated that Travelers’ employees have the expertise, skill, and capacity to discuss public issues without undercutting its own position in litigation. For example, Exhibit E to this letter includes a Travelers’ blog post on guidance for local police departments in use of body cams, addressing the videotaping of police activities and similar matters. It is perfectly clear that the Company would not have done so if these disclosures would undercut its litigation positions.

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

Based on the recent history of these issues, there are a number of particular police practices associated with racially biased police brutality – the use of chokeholds, de-escalation, tasers, implicit bias, etc. that could be appropriate for similar educational efforts without affecting its litigation position.

The Proposal is intended to encourage the Company to provide a thoughtful and appropriately framed report to investors on how the Company addresses these concerns. The Proposal offers the Company sufficient flexibility to issue a report that would not “cause the Company to take positions that could impair its insureds' defense.”

We would add that as a practical matter, the argument advanced by the Company, if taken to its logical conclusion, would imply that insurance companies have a **shield against all shareholder proposals that address any issue on which the Company engages in underwriting**, because the logic of the Company's argument is that if the Company speaks to a significant policy issue, plaintiffs will be able to find a way to use the Company's statements against it to create a duty of care or to infer a Company ordained benchmark of appropriate practices. If not narrowly circumscribed, the exclusion of any disclosures that could potentially be used as an “admission” in litigation could easily encompass **all** shareholder proposals that address significant societal issues.

In most instances in which companies are faced with significant social policy issues, the controversies also are raised in the courts. If the Staff were to allow exclusion of resolutions because they *might* lead to some kind of statement that might be useful in ongoing litigation, this would have the effect of giving companies a pass on proposals on the most critical issues facing their businesses. As importantly, it would deprive investors of access to the shareholder proposal process for attention to the most significant issues facing their companies.

Accordingly, the Staff rulings on shareholder resolutions that might involve some form of “admission” have been narrowly circumscribed to apply only where the resolutions cross the line into requiring the company to do something that is pointedly inconsistent with defense of litigation, including reporting undisclosed information that is at the heart or crux of the litigation, such as admitting to liability or fault. In contrast, where acting on a proposal on significant policy issues of legitimate concern to investors, even if the proposal may potentially make some non-core admission or information available for plaintiffs, the Staff routinely rejects exclusion. The instances in which exclusions have been allowed involved proposals requiring a company to make an admission or concession at the crux of litigation - a *core contested fact* - for example, taking responsibility for a harm that the company has not already agreed exists.

As an example, in *Johnson & Johnson* (Feb. 14, 2012), the proposal would have required the company to address the “health and social welfare concerns of people *harmed by adverse effects from Levaquin*,” one of the company's pharmaceutical products. The company was in litigation about precisely *whether its products caused adverse effects*. As the company noted, the report requested in the proposal would have required a report on the very matter being litigated--“adverse effects from” the company's product.

In *General Electric Co.* (Feb. 3, 2016), the proposal requested a report quantifying the company's *liabilities associated with discharge of chemicals into the Hudson River*, while the company was a defendant in multiple pending lawsuits where those liabilities were at issue. *Quantifying liabilities* spoke directly to the outcome of the litigation.

In contrast, solutions-oriented, forward-looking proposals that seek to solve social problems without going to the merits of pending litigation are generally not excludable. For instance, in *The Dow Chemical Company* (February 11, 2004), the ongoing litigation was a civil suit for remediation relating to the

Bhopal disaster pending in the Southern District of New York. Additionally, there was also a criminal action against Dow/Union Carbide pending in India. The proposal requested that the management of Dow Chemical prepare *a report to shareholders describing new initiatives instituted by the management to address the specific health, environmental and social concerns of the survivors of the Bhopal tragedy*. Even though the company argued that “the Proposal asks the Company to effect an action that is precisely what the Company’s subsidiary is arguing in the pending litigation that it has no obligation to do...,” as in the present case, the Staff found that the issues that the proposal would have touched upon did not go to the issues of fault that were the crux of the litigation.

Similarly, and relevant to the current Proposal, is *American International Group, Inc. (AIG)* (March 14, 2005). This proposal urged that a committee of independent directors oversee a recently appointed transaction review committee that would be examining AIG’s sales practices and reporting its findings and recommendations to shareholders. The company had asserted that it may omit the proposal under the ordinary business exclusion because “it relates to the subject matter of litigation in which the Company has been named as a defendant.” AIG argued that a comprehensive, company-wide report is excludable when the “subject matter of the proposal is the same or similar to that which is at the heart of litigation in which a registrant is then involved.” This “litigation strategy” argument was rejected in this case, and in many others, because the proposal clearly addressed legitimate concerns and interests of investors rather than being directed at the litigation.

In the present instance, the Proposal does not seek specific information regarding the insureds, nor retrospective disclosures about particular cases or policies. The Company is free to, and indeed expected to, decline to disclose aspects of this issue that are pivotal to particular lawsuits. The Company’s defense of clients in litigation is not a basis for excluding the Proposal under Rule 14a-8(i)(7).

d) Micromanagement

Although a proposal may transcend ordinary business given its focus on a significant policy issue, it can still be excludable to the extent it is worded in a manner that is too granular — if the proposal seeks to “micromanage” a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. The Company letter makes such an assertion, stating that:

“the Proposal does not appreciate the experience, complexity and resources that are involved in establishing and implementing the Company’s policies and practices regarding its underwriting approach. For this reason, the Proposal probes matters too complex for shareholders, as a group, to make an informed judgment.”

The Company Letter further asserts that shareholders are ill-equipped to “evaluate and critique the company’s highly complex and heavily regulated underwriting and pricing strategies and its provision of insurance policies.”

The Proposal does not request detailed information about the Company’s underwriting strategy, nor requires the Company to reveal privileged information. The Proposal’s resolved clause is, once again, very clear in that it is simply asking for a report, at a broad level and appropriate for investors, addressing the significant policy issue of systemic police brutality:

“Shareholders request Travelers report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and

financial risks, and be prepared at reasonable cost, omitting proprietary, privileged or prejudicial information.”

The Proposal does not inquire into the intricacies of underwriting and does not even demand that the Company create policies that address police brutality – it only requests a report on “options” for changes, which the Company could also reject. The Proposal seeks to understand the Company’s current and prospective “policies and policies” to limit police brutality. For example, encouraging training programs or audits may or may not be a risk mitigation exercise the Company chooses to employ, but shareholders should understand the options for changes to current policies “to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties.” Shareholders are not attempting to interject themselves into pricing or contracting decisions, as those decisions lie with the Company alone. Whether the Company may “encourage better police training, use of force policies and screening and hiring of police personnel” is for the Company to decide, and for shareholders to understand.

In recent Staff Legal Bulletin 14L, analysis of issues of micromanagement comes down to two basic tests to determine whether a proposal “probes to deeply” for shareholders’ consideration:

- i) First, does the proposal frame the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace?
- ii) Second, does it leave sufficient flexibility for board and management discretion?

We will take each of these questions in turn.

i) A deliberation appropriate to investors

Staff Legal Bulletin 14L notes that in considering ordinary business challenges and micromanagement, the Staff will consider whether the deliberation posed by the Proposal in question is consistent with current investor discourse and credible national or international guidelines:

We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

...in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.

Media coverage amplifies significant social policy issue

There is, of course, massive media coverage of the problem of racially motivated police brutality. Media coverage has also focused on the potential role of insurance companies in either exacerbating or reducing the potential for police brutality. The Proposal addresses a significant issue for the insurance sector. Numerous articles have demonstrated that the insurance sector, in particular, has unique leverage to address the issue of police brutality, as well as the potential for vulnerability on this issue if its activities are seen to increase the prospects of police brutality by shielding individuals or entities from liability consequences of police brutality incidents.

For instance, NBC News reported that “across the nation, city insurers have demonstrated surprising success in “policing the police,” eliminating risky protocols, ousting police chiefs and even closing problematic departments altogether.”⁸

On “Marketplace Morning Report,” Professor John Rappaport noted that “you see the insurance companies participating in the training and education of officers. You see them auditing police departments by actually sending adjusters out to go visit the department. So there are various ways that the insurance companies have for working with the departments they insure to try to reduce the risk.”⁹

The Atlantic reports an example of insurer engagement success in Irwindale, California, where the city’s insurer “threatened to revoke Irwindale’s liability insurance unless City Hall and the police department took substantive steps to tackle internal corruption.” As a result of the insurer’s threat, “there were biweekly meetings with an outside risk manager; hundreds of hours of training sessions for police officers on topics like sexual harassment and use of force; and outside reviews of all internal-affairs investigations.”¹⁰

These successes are not exclusive to Irwindale. “In 2018, *The Atlantic* reported that in Wisconsin, an insurer recommended new training and supervision of SWAT teams after two botched drug raids. In 2010, a police chief in Rutledge, Tennessee, was fired to appease the town’s liability insurer after allegations of assault.”¹¹

Investor interests in the subject matter of the Proposal

The Proposal poses important questions for shareholders:

1) Issuer-specific risks: reducing the extent to which the Company’s underwriting places company assets at risk, including reputational damage. As a commercial insurer of law enforcement, the Company is at the forefront of defense of police brutality cases, as evidenced by the list of cases the Company describes in its no action request. This is a matter of liability, company reputation, and shareholder value.

2) Portfolio-wide and systemic risks: reducing the extent to which the Company’s law enforcement liability insurance offerings may be inconsistent with an investor’s commitment to racial justice. Since the George Floyd murder, investors have taken significant interest in ensuring that portfolio companies do not reinforce systemic racism. Shareholder proposals widely supported by investors on racial justice and diversity and inclusion at various companies demonstrate the interest of investors in ensuring portfolio companies are part of the solution, rather than part of the problem. Investors can reasonably be expected to find this an important issue for this Company.

3) ESG due diligence risks: ensuring that fiduciaries, including investment firms, asset managers, analysts and trustees, have necessary information to conduct due diligence on the fiduciaries’ ESG

⁸ Kit Ramgopal and Brenda Breslauer, “The hidden hand that uses money to reform troubled police departments,” NBC News (July 19, 2020), <https://www.nbcnews.com/news/us-news/hidden-hand-uses-money-reform-troubled-police-departments-n1233495>

⁹ David Brancaccio, Daniel Shin and Alex Schroeder, “Private insurance companies can play a powerful role in reforming police practices,” Marketplace (June 1, 2020), <https://www.marketplace.org/2020/06/01/police-reform-insurance/>

¹⁰ Rachel B. Doyle, “How Insurance Companies Can Force Bad Cops Off the Job,” *The Atlantic* (June 10, 2017), <https://www.theatlantic.com/politics/archive/2017/06/insurance-companies-police/529833/>

¹¹ Rakim Brooks, “The role insurance companies play in the brutality against Black bodies,” *The Griot* (June 30, 2020), <https://thegriot.com/2020/06/30/police-brutality-insurance-companies/>

related claims. The Company makes significant claims regarding its ESG performance. Yet, as a leading commercial insurer of law enforcement, the Company appears to be vulnerable due to a lack of disclosure or strategy on this critical social issue. Fiduciaries and investors who look to Travelers as an *ESG* investment, as promoted by the Company itself on its sustainability webpage,¹² would certainly find the offering of commercial law enforcement insurance without disclosures or attention to the prominent issue of racist police brutality to be a point of vulnerability and a potential issue of due diligence.¹³

ii) Retaining company discretion

Micromanagement analysis also involves evaluation of whether the proposal provides sufficient flexibility to board and management. But how flexible or specific should a shareholder proposal be?

To begin, the shareholder proposal rule in Rule 14a-8(a) states that a proposal should “state as clearly as possible the course of action” that the proponent believes “the company should follow”¹⁴ as an advisory “request” for company action. Thus, any claim that the proposal is overly inflexible must be evaluated against this fundamental guidance in the rule itself. Moreover, as the Company letter itself demonstrates, failure to be specific invites a company challenge based on vagueness, asserting that either the company or its shareholders will not understand the scope of the proposal or how it will be implemented.

At the other end of the spectrum is the potential for the proposal to encroach too far onto the board and management discretion. But with advisory proposals, the board and management’s discretion is seldom encroached upon. Even after a majority of support on an advisory proposal, the board and management

¹² <https://sustainability.travelers.com>

¹³ This investor due diligence that is enabled by the proposal is responsive to the demands and scrutiny placed on ESG investors according to the report of the SEC “Division of Examinations’ Review of ESG Investing, April 9, 2021. That review noted that numerous investment products and financial services have incorporated environmental, social, and governance (“ESG”) to meet demand. The division noted that it will be monitoring the accuracy of disclosures on ESG investing, and that examinations of firms claiming to engage in ESG investing will focus on, among other matters, a review of a firm’s policies, procedures, and practices related to ESG and its use of ESG-related terminology; due diligence and other processes for selecting, investing in, and monitoring investments in view of the firm’s disclosed ESG investing approaches; and whether proxy voting decision-making processes are consistent with ESG disclosures and marketing materials. The division also noted that 5 Advisers Act Section 206 imposes a fiduciary duty on investment advisers to provide full and fair disclosure of all material facts relating to the advisory relationship and to provide advice that is in the best interest of the client. Investment advisers also have antifraud liability with respect to communications to clients and prospective clients under Advisers Act Section 206. See Commission Interpretation Regarding Standard of Conduct for Investment. The Review also noted, despite claims to have formal processes in place for ESG investing, a lack of policies and procedures related to ESG investing; policies and procedures that did not appear to be reasonably designed to prevent violations of law, or that were not implemented; documentation of ESG-related investment decisions that was weak or unclear; and compliance programs that did not appear to be reasonably designed to guard against inaccurate ESG-related disclosures and marketing materials. They noted further:

- *Portfolio management practices were inconsistent with disclosures about ESG approaches.*
 - *Controls were inadequate to maintain, monitor, and update clients’ ESG-related investing guidelines, mandates, and restrictions.*
 - *Inadequate controls to ensure that ESG-related disclosures and marketing are consistent with the firm’s practices.*
 - *Policies and procedures that addressed ESG investing and covered key aspects of the firms’ relevant practices.*
- Controls were inadequate to maintain, monitor, and update clients’ ESG-related investing guidelines, mandates, and restrictions.*

¹⁴ See Rule 14a-8(a).

are *expected* to exercise discretion to act as fiduciaries in the interests of the corporation. The request of the current Proposal is advisory and is not directive.

The proposal is not prescriptive, as the Company has flexibility in its response.

In this instance, the Company Letter erroneously implies that the Proposal is a masked attempt to require the Company to “cease, limit or modify certain of its product offerings.” A plain reading of the Proposal demonstrates that it neither demands nor requires these actions. The Proponent is not attempting to delve into the nitty-gritty of the underwriting process, but simply inquiring about *any strategy* the Company has to address this significant social policy issue related to its insurance activities.

The Company Letter is inaccurate in concluding that the Proposal takes any particular position regarding whether or not the Company should modify any conditions or exclusions of its insurance policies to respond to or prevent racist police brutality incidents. There are a wide array of possible responses by an insurer to address police brutality that do not involve the details of the underwriting process, as demonstrated through insurance companies’ various practices and policies around other insurance offerings.

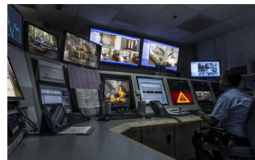
For instance, one approach that the Company has taken before with law enforcement liability coverage and beyond is to provide educational materials, videos, blog posts or brochures related to particular issues of concern. An NPR article (Exhibit C) on police brutality mentions that Travelers publishes a brochure for police on strip searches. The Company’s website also has various educational blog content for public entities on a variety of topics, but none of which appear to be intended or directed toward the issues of racially motivated police violence:

Public Entities



5 Ways Public Entities Apply Smart Tech to Enhance Transportation

The technologies being deployed to improve transportation systems present public entities with new risks.



6 Ways Public Entities Use Smart Tech for Public Safety

Smart street lights & predictive policing are two ways smart technology is used for public safety. Explore smart tech for public safety.



How Cities, Counties and Municipalities Can Reduce Cost of Risk

Every day, cities, counties and other public entities face exposures that can place their operations and budgets at risk. Making sure you have the right coverage and risk management plan in place is critical.



How to Help Municipalities Prepare for E-Vehicles

Electric bikes and scooters, as well as other on-demand e-vehicles, are appearing in cities and towns, prompting municipal leaders to regulate their use.



How Smart Cities Prepare for Technology Infrastructure Risks

Considering implementing smart city technology? Know the risks and how to help protect your public entity.



Managing the Risks to Law Enforcement, Security Personnel and Other Employees

Videos and social media presents law enforcement with new risks. Here are five tips to help manage those risks.

Description of graphic: Educational materials from Travelers Inc. website on a range of issues of concern to public entities

The Company's reporting could merely describe educational materials that the Company has considered publishing on reducing police brutality, or even disclose the reasons why it has decided not to publish such materials.

Additionally, the Company reportedly already investigates the types of training and policies in place at police departments prior to issuing law enforcement liability insurance. It would be relevant for the Company to make transparent to investors its current processes of screening law enforcement clients for trainings on issues such as implicit bias training, de-escalation, community policing strategies and other activities relevant to racist police brutality.

On the other hand, recent news reports in the *Washington Post* demonstrate that some training programs appear geared to exacerbating rather than reducing use of force. The *Post* investigated paid regional and national police conferences, oftentimes paid for by police departments and classified as "in-service training," which promote a "warrior" mentality and glorify violence.¹⁵ It would be relevant to investors and worthy of a company disclosure as to whether the insurer is monitoring the types of training programs utilized by police departments to avoid racially charged policing and excessive use of force.

The Proposal invites, but does not require, further explanation by Travelers on its risk management strategies that may screen out or elevate premiums for police departments that are much more prone to the use of force than others and that engage in practices such as pretextual searches, chokeholds, and tasers.¹⁶

This array of potential approaches to reporting is optional, flexible, and does not require the Company or its investors to go deeply into the weeds of the Company's underwriting practices. As a request for a broad report on responsive policies in addressing this issue, the Proposal does not micromanage.

The Proposal is asking for an appropriate level of analysis and disclosure by the board and management so that shareholders can understand "current company policies, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties." This analysis and disclosure

¹⁵ An article in the *Washington Post* investigating recent police training conferences noted the contrast in training approaches: "While police reformers and legislators nationwide have stressed a service-oriented approach to police training that emphasizes de-escalation and the avoidance of physical conflict, many sessions at these conferences presented violent confrontation as a rite of policing and, frequently, the only path. "The curriculum is that you are a good person and reveling in violence and being an expert in violence is not morally wrong," said Michael Sierra-Arévalo, an assistant professor in the Department of Sociology at the University of Texas at Austin who attended the Street Cop Conference. "In fact, it's your moral duty because you're a paladin. You are this kind of warrior."

"Much of America wants policing to change. But these self-proclaimed experts tell officers they're doing just fine."

<https://www.washingtonpost.com/national-security/2022/01/26/police-training-reform/>

¹⁶ A Nationwide Police Scorecard noted:

Examining data obtained from big city police agencies on both fatal and nonfatal police shootings incidents from 2013-2020, police in New York and Virginia Beach had among the lowest rates of police shootings per every 10,000 arrests they made. Detroit and Oklahoma City consistently had the highest rates of police shootings - Oklahoma City has had one of the top 3 highest rates of police shootings among big cities for 3 of the past 8 years while Detroit has had the highest rate of all agencies for 7 of the past 8 years. This

suggests the need for urgent interventions from the US Department of Justice and/or state Attorney's General to restrict police use of

force standards and strengthen independent accountability structures in these cities. <https://policescorecard.org>

could involve a variety of approaches, which the Proposal intentionally does not dictate. Such a request is appropriate for shareholder deliberation and therefore does not micromanage.

Rule 14a-8(i)(5)

The Company Letter next asserts that the Proposal may be excluded under Rule 14a-8(i)(5) because it claims that the relevant operations account for less than 5% of the Company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year and is not otherwise significantly related to the Company's business.

The Company argues that its coverage of law enforcement activities is "*de minimis*" to the Company's business because of its size relative to the Company's other insurance policies.

As demonstrated by Exhibits A and B to this letter, the Company is **recognized as one of the leading commercial providers of law enforcement insurance. The Company cannot escape this role and this relevance merely by pointing out that its law enforcement insurance is a small part of its giant business. In this instance, the Proposal is very clearly "otherwise significantly related to the company's business" and not excludable under Rule 14a-8(i)(5).**

While the subject matter may represent less than 5% of its assets or sales, it is otherwise significantly related to the Company because the Proposal raises issues of social and ethical significance to the Company's municipal insurance business and reputation. When, as in this case, a Company engages in activities that could jeopardize its reputation by potentially associating the Company with either the prevention or exacerbation of human rights abuses (i.e. racist police brutality), the Staff has long held that such a proposal is "otherwise significantly related" to the company's business. For instance, in *Marriott International Inc.* (March 18, 2002) the proposal urged the board of directors to create a committee of independent directors to prepare a report describing the risks to shareholders of operating and/or franchising hotels in Burma, including possible risks to Marriott's brand name resulting from association with human rights abuses in Burma. The Staff noted that they were unable to concur in the view that Marriott could exclude the proposal under Rule 14a-8(i)(5) since they were of the view that the proposal was otherwise significantly related to Marriott's business. Similarly, a request for a report on the economic and public relations cost relating to the company's operations in Burma, despite those operations accounting for less than 5% of the registrant's total assets, was deemed otherwise significantly related to the company in *Unocal Corporation* (April 3, 1998).

The relevance standard does not make an *abstract* ethical or social issue relevant to *every* company, because the issue must have a meaningful relationship to the company. In *Lovenheim v. Iroquois Brands, Ltd.*, the court noted that the ethical or social issue must not be "significant in the abstract," but must have a "meaningful relationship to the business of the company in question." *Id.* at 561 n.16. In the *Lovenheim* decision, the critical analysis was whether the focus of the proposal had a "meaningful relationship to the business."¹⁷ Applying the "meaningful relationship" standard, the Staff has historically found that an array of proposals were otherwise significantly related to a company's business even though they may not have met the economic relevance test of the rule. To cite some examples, in *The Gap* (March 14, 2012), the Division denied no-action relief to a proposal that sought an end to the company's trade partnership in Sri Lanka until the government ceased its human rights violations. The Gap was one of the largest apparel

¹⁷ *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985). In finding that the issue of foie gras was relevant to Iroquois/Delaware, the court noted in a footnote: "The result would, of course, be different if plaintiff's proposal was ethically significant in the abstract but had no meaningful relationship to the business of Iroquois/Delaware as Iroquois/Delaware was not engaged in the business of importing paté de foie gras. Fn 16.

manufacturers in Sri Lanka, and its presence there raised issues about whether the company was endorsing the government and its practices. Similarly, in *Exxon Corp.* (Jan. 30, 1995), the Division allowed a proposal seeking a report on the human, social, and environmental consequences of the company's mining operations.

Even in situations where a company's activities can impact only a small number of individuals or area, the Division has allowed proposals to go forward: *Unocal Corp.* (Jan. 20, 1995) seeking a report on an oil company's activities in the Lubicon territory in Alberta, Canada with a focus on the implications of these activities on indigenous societies. (Estimates were that fewer than 300 members of the Lubicon tribe live on their traditional lands.)

Other decisions are to the same effect. Issues related to pollution and environmental impacts are recognized as the kind of ethical issue that precludes exclusion under Rule 14a-8(i)(5). In *Synagro Technologies, Inc.* (March 28, 2006) requesting that the board of directors report on the environmental, health and safety impacts of New York Organic Fertilizer Company on the South Bronx, New York community, pollution issues were found to make the issue "otherwise related" despite less than 5% financial connection.

Numerous other instances have involved proposals which might not have met the numerical thresholds of Rule 14a-8(i)(5), but which were nevertheless deemed to be non-excludable under the rule because the issues involved had a potential impact on the company's reputation. To cite a few examples: *Devon Energy Corp.* (March 27, 2012) requesting an annual report on lobbying; *Gap, Inc.* (March 14, 2012) requesting termination of trade partnerships with the government of Sri Lanka until the government ceased human rights violations; *BJ Services Company* (December 10, 2003) requesting a land procurement policy that incorporated social and environmental factors; *Halliburton Co.* (March 14, 2003) requesting a review of company operations in Iran, with reference to financial and reputational risks associated with those activities. Additionally, the Division denied no-action relief for *Corning Incorporated* (Feb. 11, 2015), a proposal seeking adoption of equal employment opportunity principles to govern its Israel workforce. While Israeli operations accounted for less than 1% of the company's total assets, net earnings, and gross sales, the avoidance of discrimination across its operations was otherwise significantly related to the company's business. In each of these instances where the proposal addressed less than 5% of the company's business, no-actions were denied because issues-at-hand met the relevancy test and had the potential to negatively impact company's reputation and value.

While the Company Letter cites numerous precedents of exclusion under Rule 14a-8(i)(5), the subject matter of these examples did not bear a meaningful relationship to the company's business. In the current Proposal, there is no basis for the claim that the issue of racist police brutality has no meaningful relationship to the Company's business. The relevance is clear.

Rule 14a-8(i)(3)

The Proposal is neither false nor misleading, despite the Company's misdirected approach to Rule 14a-8(i)(3). The Company Letter makes a series of advocacy arguments that it might appropriately include in a statement in opposition to the Proposal that appears on the Company's proxy. However, the arguments raised by the Company do not rise to the level of "objectively false and misleading" statements that merit Staff action to exclude them.

The Staff has long made it clear that it will not intervene in arguments that merely represent advocacy positions of the issuer or proponent rather than objectively false and misleading statements. In Staff Legal Bulletin 14B of September 15, 2004, where the Staff noted that the process of reviewing company no

action letters had devolved to forcing the Staff to evaluate line-by-line company objections to the wording of proposals, the Staff stated:

“Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and or an entire proposal in reliance on Rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

There continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3). . . . Specifically, reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where:

- statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation;
- the company demonstrates objectively that a factual statement is materially false or misleading;

. . . . **As such, the staff will concur in the company’s reliance on rule 14a-8(i)(3) to exclude or modify a proposal or statement only where that company has demonstrated objectively that the proposal or statement is *materially* false or misleading.** [emphasis added]

Applying this standard, it becomes clear that the Company Letter’s assertions fall into the “not excludable” categories of statements in which the Company is either objecting to factual assertions that, while not materially false or misleading, may be disputed or countered, or which may be interpreted by shareholders in a manner that is unfavorable to the Company.

On March 8th, 2021, police officer Derek Chauvin was found guilty of the **murder** of George Floyd. On January 7th, 2022, former law enforcement officer Travis McMichael along with his son and neighbor were found guilty of the **murder** of Ahmad Arbury. The use of the word murder is not inflammatory, it is a fact, and to label it as anything less than a fact is not only a form of racist gaslighting, but also a stark reminder of why this Proposal is necessary.

The Proposal never suggested that "Travelers insures and/or supports illegal behavior." Rather it simply states the fact that racially motivated police brutality is a problem. Instead, the Company Letter chooses to misinterpret the Proposal and lash out in a reactive manner.

The words used were not inflammatory, false, or misleading, they just offended the sensibilities of the Company. Rules 14a-8(i)(3) and 14a-9 do not protect against language that companies might find offensive or uncomfortable.

The Company Letter also claims that Proposal is materially false and misleading because it “posits that there is a vast amount of data available to support the conclusion that an insurance company can use its policies to address structural racism and curb misconduct.” This is false. Once again, the Company Letter intentionally misinterprets the language of the Proposal. The Proposal states that “there is increased scrutiny of how law enforcement liability insurance policies **may** contribute to structural racism and perpetuate misconduct.” It would take far too many logical leaps to find that the statement “posits that there is a vast amount of data available to support the conclusion that an insurance company can use its policies to address structural racism and curb misconduct.”

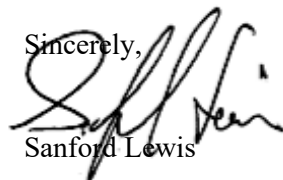
As noted above, in Staff Legal Bulletin 14B, Staff clarified that it would not be appropriate for companies to exclude supporting statement language or an entire proposal in reliance on Rule 14a-8(i)(3) because “the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered.” The Company’s characterization of the referenced ideas as being merely speculative or as unlikely to have an impact on police behavior belie the very clearly articulated ideas in the relevant articles and their uptake in related public discourse. For example, see the articles in Exhibit B and C appended to this letter.

Shareholders can reasonably understand and debate these issues, and the Company is free to issue an opposition statement or report in which it can deny that it has any influence at all over issues of racially biased policing. Such arguments by the Company do not rise to the level of “objectively false and misleading” statements that merit Staff action to exclude the Proposal or even any of the statements in the Proposal. Applying this standard, it becomes clear that the Company Letter’s assertions fall into the “not excludable” categories of statements in which the Company is either objecting to factual assertions that, while not materially false or misleading, may be disputed or countered by the parties, or which may be interpreted by shareholders in a manner that is unfavorable to the Company, or represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such. The Proposal is not excludable pursuant to Rule 14a-8(i)(3) and Rule 14a-9.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request.

Sincerely,



Sanford Lewis

Law Enforcement Liability Insurance



Law enforcement liability insurance provides coverage for bodily injury, personal injury or property damage caused by a wrongful act committed by or on behalf of a public entity while conducting law enforcement activities or operations.

Law enforcement activities or operations consist of any of the official activities or operations of the named insured's police department, sheriff agency or other public safety organization, other than a fire district or department, that enforces the law and protects persons or property, including:

- Ownership, maintenance or use of a premises in order to conduct law enforcement activities or operations, including ownership or operation of the named insured's jails, penal institutions or similar facilities
- Providing first aid at the time of an accident, crime or medical emergency
- Moonlighting (if approved by the named insured's police department, sheriff agency or other public safety organization)

Key Coverage Features:

- "Pay on behalf of" basis (deductible options only)
- Coverage for official activities or operations (includes moonlighting if approved by law enforcement agency)
- Coverage for violation of civil rights under any federal, state or local law
- Up to \$25,000 additional payment per policy period for physical damage to personal property of others that is in a person's possession at the time of arrest and that is in an insured's care, custody and control at time of such damage
- Coverage for liability arising out of providing or failing to provide first-aid
- Coverage for jail operations and premises
- Automatic coverage for owned and non-owned watercraft
- Defense for claims or suits alleging criminal, malicious, dishonest, or fraudulent wrongful act until determination or admission of such wrongful act in a legal proceeding
- Defense expenses are paid outside of, and are in addition to, the limits of insurance
- No intentional acts exclusion
- Coverage for pure mental anguish

Optional Features/Coverages:

- Occurrence and claims-made coverage forms are available
- Umbrella excess protection

Limits, Deductibles and Self-insured Retentions:

- Each wrongful act limit
- Aggregate limit for all damages because of all bodily injury, property damage and personal injury
- Aggregate limit can only be reduced by the payment of damages, not defense expenses
- Deductible applies to damages, defense expenses and personal property of others
- Self-insured retention options are available

This Coverage is Specifically Designed to Help Protect:

- [American Indian nations](#)
- [Municipalities and counties](#)
- [Transit authorities](#)
- [Utilities](#)

ZIP Code

Find an Agent

Find Solutions

Discover products by industry:

Public Entities 

Select your Business 

Find Solutions

Need an Agent?

ZIP Code

Find an Agent

Resources

[Public Entity Brochures](#)

[Public Entity Contacts](#)

[Public Entity Applications](#)

For Agents

[Agent Website](#)

[Become an Agent](#)

Related Services

Risk Control

We have one of the largest Risk Control departments in the industry, and our scale allows us to apply the right resource at the right time to meet customer needs.

Claim

Our knowledgeable Claim professionals will respond to your needs with speed, compassion, integrity and professionalism. It's our business to help keep you in business.



The future of police liability

BY JOHN RAPPAPORT, OPINION CONTRIBUTOR — 03/28/21 10:30 AM EDT
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

11 SHARES



Just In...

Logging makes forests and homes more vulnerable to wildfires

OPINION — 26S AGO

Sotomayor, Gorsuch issue statement denying tensions over masks

COURT BATTLES — 10M 16S AGO

CDC study shows prior COVID-19 infection and vaccines protected against delta variant

HEALTHCARE — 23M 28S AGO

People should not try to intentionally catch omicron, experts say

CHANGING AMERICA

— 24M 29S AGO

Your health (and you thought climate change was not about you)

OPINION — 30M 26S AGO

Kemp campaign alleges Perdue team illegally coordinating with new fundraising committee

CAMPAIGN — 30M 32S AGO

Sarah Huckabee Sanders raises \$12.8M since launch of Arkansas governor campaign

CAMPAIGN — 31M 44S AGO

Upstate New York father's photo of son's 'lacking' school lunch goes viral

CHANGING AMERICA

— 34M 42S AGO



© Getty Images

No sum of money will breathe back into George Floyd's body the life Derek Chauvin squeezed out of it. Nor will the budgetary impact of the \$27 million Minneapolis will pay to settle his family's lawsuit rank as the most significant consequence of Floyd's death. Yet \$27 million is enough to make even the biggest and wealthiest municipalities take notice. Is the Floyd settlement — one of the largest on record — an aberration or a sign of things to come? And if police liability costs are rising generally, what will this mean for pandemic-pinched local governments?

The Floyd settlement, in all likelihood, is both an outlier and a clue about where we're headed. Even among the most notorious and tragic cases, Floyd's death was exceptionally callous and indefensible. It's hard to imagine Minneapolis defending the explosive case at trial. The pressure to settle, at almost any cost, was enormous.

But there is also reason to think the \$27-million figure reflects not only the circumstances of Floyd's killing but also broader shifts in public sentiment. In a recent study, Aurélie Ouss and I looked at 23 years of police liability data — up through 2015 — from 350 law enforcement agencies in a midsized state. The patterns we saw were puzzling at first. The *number* of claims for compensation people filed each year trended slightly downwards over time, as did the number of claims alleging excessive force; fatalities held steady. But *payouts* — average and total — moved in the opposite direction, spiking by tenfold in 2014-2015, largely due to rising payouts on claims involving fatalities and excessive force. Claimants won more often over time, as well.

We identified multiple stories that could explain *some* of these trends but only one that could make sense of them all: evolving public attitudes toward the police.

VIEW ALL

View Latest Opinions >>

Particularly after the killing of Michael Brown in 2014, Americans have grown increasingly alarmed about the harms police inflict (as our study also showed). It would be natural to think that juries, then, have become less inclined to afford the police the benefit of the doubt and more willing to hand down significant verdicts when the police do wrong. Cities negotiate settlement payouts, in turn, in expectation of what juries would do.

To understand what these trends might mean for local governments — and what impact financial and market incentives might have on police reform — we have to know a little more about how police liability costs are financed. There are three principal approaches. The vast majority of U.S. municipalities purchase liability insurance that covers police misconduct.

When they settle, the insurer pays. Some buy it on the commercial market from companies like [Travelers](#). We should expect these premiums to climb and, before long, for firms to leave the market. It's not just the rising payouts — which insurers can price into the premiums they charge — but the increasing *uncertainty* about just how big those payouts will be.

Many municipalities — probably most — get liability insurance through a municipal risk pool. A risk pool is essentially a small mutual insurance company — basically, a bunch of cities get together and pool their risk. They contribute to the pool each year and draw on it when they settle claims or lose at trial. Just as on the commercial market, we should expect municipal contributions to pools to climb as payouts rise. But the pools, which are literally made up of their members, can't leave the market — indeed, they first arose the last time private carriers fled, in the 1980s.

Unable to exit the market, pools may double down on "[loss control](#)" as a way to get a handle on costs. This could be a good thing. The best pools have deep expertise about policing and municipal governance. They work closely with police departments on policies and training, they do site visits and audits, and some even put struggling agencies on detailed "performance improvement plans." As a last resort, pools have the power to expel municipalities that can't, or won't, right the ship. Cities that have lost coverage have been forced to raise property taxes to finance payouts or shut down their departments altogether.

ADVERTISING



Related News by

The Award-Winning Israeli Mask Everyone is

Sponsored | Sonovia Store

Juan Williams: American democracy will die

Stacey Abrams's shocking snub of Biden,

There's no such thing as 'absolute immunity' for

The third approach to financing police liability costs is "self-insurance." This can mean anything from simply "going bare" to running a sophisticated, in-house "risk management" program. Only larger cities, with budgets big enough to absorb seven-digit payouts, can afford this option. How these cities will respond to rising payouts isn't clear. It depends on a number of [considerations](#), including how easily they can free up funds from elsewhere in the budget, issue bonds, or nudge property taxes upwards.

I expect that the largest settlements will tend to be with these self-insured municipalities. Insurance policies have limits that tend to act as natural caps on settlement amounts. Insured cities — which, again, tend to be on the smaller side — have strong incentives to resist settlements that exceed their policy limits, which can make a real dent in their modest budgets. There is no analogous limit for self-insured municipalities.

It's not clear that all this is as it should be.

Media focus on big cities can make it seem like that's where all the action is, but roughly two-thirds of all police killings occur outside the 100 largest cities. Fatalities appear to be trending upwards in suburban and rural areas, moreover, and downwards in urban regions.

At the end of the day, all of this analysis, while necessary to understand the incentives of the politicians and bureaucrats who govern police departments most directly, risks obscuring one crucial fact: Municipalities aren't real, and they don't have their own money. They are of us, and the money they spend is ours.

How many \$27 million settlements will Minneapolis — or Chicago, my city — pay out? As many as we let them.

[John Rappaport](#) is Professor of Law and Ludwig and Hilde Wolf Research Scholar at the University of Chicago Law School. Much of his current research focuses on policing and police misconduct, including the effects on police behavior of collective bargaining rights, unionization, and regulation by insurance. He is the author of "[An Insurance-Based Typology of Police Misconduct](#)," a look at whether the insurance market could be an effective tool for reining in police misconduct risk.

TAGS MINNEAPOLIS GEORGE FLOYD LIABILITY INSURANCE POLICE MISCONDUCT
DISPUTE SETTLEMENT TYPES OF INSURANCE FINANCE TAX INCREASE



Exhibit C



DONATE

LAW

When It Comes To Police Reform, Insurance Companies May Play A Role

April 1, 2016 · 4:52 AM ET

Heard on Morning Edition



MARTIN KASTE

[4-Minute Listen](#)[PLAYLIST](#)[Download](#)[Transcript](#)

For all the talk in the last couple of years about reforming police, there are limits to what the government can do. But there may be another way, and it involves insurance companies.

John Rappaport, an assistant law professor at the University of Chicago, says he spent years studying police reform before it dawned on him to ask a basic question: What were the insurance companies doing?

"I just went on to Google and started searching and was just instantly amazed with the stuff I was finding," Rappaport says.

It turned out insurers were trying to limit the liability of the police departments they cover.

"One of the first things I found was this pamphlet from Travelers Insurance about how to do a strip search, and I just thought people in my world have no idea that this stuff

is out there and it's really fascinating," Rappaport says.

It was fascinating to him, because it seemed to offer a solution to a fundamental problem when it comes to reform: police departments usually don't feel the financial pain of a lawsuit. It's not the officers' personal money, obviously, and even the department budget is not usually at stake when somebody sues. If the city has liability insurance, on the other hand, the insurer does feel the pain — and it may try to do something to lessen it.

"They look for ways to push police departments in a direction of reduced risk," Rappaport says.

That's been the experience of William T. Riley III. When he was chief of police in Selma, Ala., he says the city's insurer made a point of getting together with him after a use-of-force incident to see what could be learned.



THE TWO-WAY
The Delicate
Politics Of
Rising Crime

"And one of the things that we did when we had somebody sue us or whatever is we went over it with a fine-tooth comb to see if there's some place that we

U.S.

Police Rethink
Tactics Amid

New
Technologies
And Social
Pressure



AROUND THE
NATION

For Police, A
Debate Over
Force, Cop
Culture And
Confrontation



fell short on," Riley says.

Most of the time, the insurers' role is informational.

They send out bulletins to police departments about the latest court precedents on, say, use of force. But some go further, paying for special training for the police departments.

Steve Albrecht does that kind of training in California.

"We're seeing forward-thinking chiefs and forward-thinking insurance companies that are working in partnership and I think that's a benefit. And I think

if that's driven by the business part of that then so much the better to get the changes we need," Albrecht says.

This kind of hands-on approach is most common with insurance pools, non-profit entities that cover groups of police agencies, especially in Western states. As membership organizations, they see it as part of their function to give advice to police departments. Commercial insurance companies, on the other hand, take a more market-oriented approach.

"Ultimately, the way we can influence behavior does come down to price," says Tim McAuliffe, who's with a commercial insurer called Ironshore. He's actually a little dubious about this idea that insurance companies can promote reform. He says companies like his don't really get into the minutiae of recommending best practices or training to police departments.

"They may do, like, a conference call if it was specific to a police incident. They may ask for a conference call with a police chief but that's generally as far as I've seen companies go " he says

companies go, he says.

Still, insurers tend to understate their own influence, in part because they don't want to be seen as dictating policies to local law enforcement. Joanna Schwartz is a law professor at UCLA who studies how police manage liability, and she agrees with

Rappaport that insurers can play the role of an honest broker to force a city to learn from its police department's mistakes.

"They are highly motivated to reform because it affects their bottom line, and they're not constrained by any of the political counterforces that could prevent the city council or mayor from pushing hard on a law enforcement agency to reform," Schwartz says.

These political counter-forces, she believes, which have been at work in some of the nation's biggest cities — such as Chicago — typically don't rely on insurance to pay out legal settlements. In those cities, the payouts have simply been absorbed by the larger budget over the years, and now the police find themselves in the middle of major crises over the use of excessive force.

[police reforms](#) [insurance companies](#) [police departments](#) [law enforcement](#)

Sign Up For The NPR Daily Newsletter

Catch up on the latest headlines and unique NPR stories, sent every weekday.

SUBSCRIBE

By subscribing, you agree to NPR's terms of use and privacy policy. NPR may share your name and email address with your NPR station. See Details. This site is protected by reCAPTCHA and the Google Privacy Policy and Terms of Service apply.

NEWS JUL 10 2020 11:45 AM EST 10:00 PM EST 10:00 PM EST

Exhibit D

The hidden hand that uses money to reform troubled police departments

Across the nation, insurers have had surprising success "polishing the police," ending risky behavior, raising chiefs, even closing troubled departments.



REUTERS

U.S. insurers explore officer coverage as police reform debate rages

By Rosemary Winters, Chicago Tribune

CHICAGO — U.S. insurers and brokers are starting to craft professional liability coverage for police officers, spurred on by signs that policymakers in some cities and states are looking to shift or shift to self-insure police departments.

Insurance

NEWS RISK MANAGEMENT RESOURCES BEST INSURANCE SPECIALTY SERVICES

Want to stop the violence? Get cities to buy insurance



Race and Economy MARKETPLACE

Private insurance companies can play a powerful role in reforming police practices

David Blawie, David Shin, and Alex Schroeder | Jan 1, 2020

QUARTZ

To stop police brutality, make it financially unsustainable

Insurance Journal Research

Police Liability Insurance in 2020, a Time of Civil Unrest

VOLUME 130 APRIL 2017 NUMBER 6

HARVARD LAW REVIEW

© 2017 by The Harvard Law Review Association

ARTICLE

HOW PRIVATE INSURERS REGULATE PUBLIC POLICE

John Rappaport

CONTENTS

INTRODUCTION

The role insurance companies play in the brutality against Black bodies

2017-18 Attorney-Client Privilege: A Powerful Role of Insurance in the Regulation of Public Safety

John Rappaport

June 30, 2018

Twitter Facebook LinkedIn

TRAVELERS For Individuals For Business Claims

Home / Prepare & Prevent / Industries / Managing Video and Social Media Policies for Law Enforcement Organizations

Managing Video and Social Media Policies for Law Enforcement Organizations

Facebook Twitter LinkedIn Email Print

Exhibit E



For

Individuals

For

Business

Claim

Center

Prepare &
Prevent



Home / Prepare & Prevent / Industries /

Managing Video and Social Media Policies for Law Enforcement Organizations

Managing Video and Social Media Policies for Law Enforcement Organizations



Videos have become a fixture of modern life, from a bank's security camera to a bystander's smartphone at a fire scene. Increasingly, this video footage is being shared on social media sites and used as evidence in court cases involving law enforcement agencies, their officers and security personnel. Developing social media and video policies and conducting regular training can help public safety departments understand the benefits and risks.

For law officers, video footage and social media can be an asset. The use of body-worn and dashboard cameras can support their work in the community by objectively capturing an event as it occurs, adding transparency to their interactions. Rather than relying on third-party camera footage, a public safety department's video footage can offer a near real-time account of an incident. It can help provide a legal defense by showing that officers performed their duties properly.

Top Stories



6 Ways Public Entities Use Smart Tech for Public Safety

Smart street lights & predictive policing are two ways smart technology is used for public safety. Explore smart tech for public safety.

[Learn more](#)

Related Content

[Business Continuity Planning in 4 Steps](#)

[Tips for Creating a Safety Management Program](#)

[Creating a Safety Culture in the Workplace](#)

Developing a Comprehensive Approach to Video and Social Media

Developing a Comprehensive Approach to Video and Social Media

Social media also presents new considerations as part of an overall communication strategy for law enforcement. Sharing videos, photos and other content on social media can show the public the positive work that the department is performing in the community. Developing a comprehensive approach to video and social media can help create a consistent policy for camera use and posting information.

Here are five tips to help manage the benefits and risks of social media and video for your law enforcement organization.

1. **Develop a body-worn camera policy.** Having a detailed policy that outlines how, when and why body-worn and dashboard cameras and other recording devices will be used can help establish a consistent standard across the department. The policy should uphold any local policy requirements as well as city or state law related to body-worn camera footage. To be effective, this training should cover common concerns, including citizen privacy, officer privacy, logistics, challenges in communicating with citizens and the potential consequences for failing to adhere to the camera policy.
2. **Train officers on response to citizen filming.** In addition to body-worn and dashboard cameras, departments should also address situations in which civilians record an incident. The training should include how the officer can appropriately respond to being recorded. Past camera footage can also offer valuable training opportunities for officers, highlighting effective responses to various situations. Officers should be trained to act in the same appropriate manner regardless of whether cameras are rolling.
3. **Establish a social media policy.** In addition to a department social media presence and policy for sharing information with the community, create a policy around social media accounts for public safety employees. If a law enforcement officer chooses to maintain or participate in social media activity or on social networking platforms while off-duty, consider developing guidelines or rules to make sure that he or she reflects positively upon the agency and its mission. Provide instruction to officers on the potential consequences of social media participation, such as the potential for the officer's social media posts to be presented in a court



[Explore Public Entities Insurance Offerings](#)

[For Agents](#)

[Agent Website](#)

[Become an Agent](#)

[See All Business Industries Content](#)

...of social media posts to be presented in a court case where he or she is a witness or a defendant.

4. **Remind officers that they are representatives of the department at all times.** Officers should be prepared to

be recorded at any time, whether or not they are in uniform or on-duty. Discuss strategies for responding to being recorded by members of the public.

5. **Learn from other cases.** With assistance from legal counsel, review other court cases that involve security and law officers and video and social media evidence. Determine if existing policies and training procedures need to be updated based on recent legal decisions or pertinent related community relations matters. Update training policies as new social media platforms and techniques emerge.

Establishing clear policies and training staff both initially and periodically about video and social media best practices can help public safety officers promote both their own and their department's reputations and professionalism, which can help grow trust with the community. Training can also help officers better understand the potential benefits and risks posed by video recording and social media activity.

[Learn More About Public Entity Insurance](#)

More Prepare & Prevent



**5 Ways Public
Entities Annlv**



**Crisis
Communications**



**Cyber Risk
Pressure Test**



The Travelers Companies, Inc.
Yafit Cohn
Chief Sustainability Officer & Group GC
485 Lexington Avenue, 8th Floor
New York, NY 10017
917.778.6764 TEL
888.277.0906 FAX
ycohn@travelers.com

VIA E-MAIL

March 4, 2022

Re: The Travelers Companies, Inc. – Omission of Shareholder Proposal from Proxy Materials Pursuant to Rule 14a-8

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Ladies and Gentlemen:

The Travelers Companies, Inc. (“Travelers” or the “Company”) is filing this letter to provide a brief reply to the letter dated February 9, 2022, sent by Sanford Lewis (the “Lewis Ltr.”), regarding the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Arjuna Capital on behalf of John Silva and Shana Weiss (the “Proponents”). The Proposal requests that Travelers “report on current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate [Travelers’] brand with police violations of civil rights and liberties.” As more fully explained below and in the Company’s letter to the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) dated January 18, 2022 (the “Travelers Ltr.”), Travelers believes that, pursuant to Rule 14a-8, the Proposal may be properly excluded from the proxy statement and form of proxy to be distributed by the Company in connection with its 2022 Annual Meeting of Shareholders (collectively, the “Proxy Materials”).

Pursuant to Rule 14a-8(j), we are simultaneously providing the Proponents with a copy of this submission. The Company will promptly forward to the Proponents any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

Travelers shares and respects the Proponents’ concerns about racism, bigotry and violence. The Company is committed to racial justice efforts in the communities in which it operates. In addition to the many initiatives described in detail in the Company’s annual sustainability reporting, Travelers has made significant financial contributions to support racial justice efforts in its communities.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

The Proposal, however, seeks to prescribe how Travelers should address racist police violence, requiring the Company to change its underwriting policies and practices with respect to law enforcement liability coverage. In this way, the Proposal would directly implicate Travelers' core business operations and interfere with management's day-to-day ability to run the business. In addition, the Proposal would harm the Company's position in ongoing litigation. Separately, insurance for law enforcement liability is not a significant part of Travelers' business, and the Proponents have presented no evidence that there is any link between the Company's insurance offerings and the threat of racially-motivated police brutality. Significantly, Travelers does not provide liability insurance to indemnify individual police officers who have committed criminal wrongful acts. For these reasons and others set forth below and in the Company's prior letter, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action to the Commission if Travelers excludes the Proposal from its Proxy Materials.

The Proposal Is Excludable Under Rule 14a-8

The Company's prior letter discussed in detail the reasons why the Proposal is excludable under Rule 14a-8. Rather than repeat that analysis here, the Company addresses the key points raised in the Proponents' letter. To preserve valuable Commission resources, Travelers is only responding to those statements that appear to relate to the legal arguments in the Company's no-action request.

The Proposal relates to Travelers' ordinary business operations. Rule 14a-8(i)(7) permits the exclusion of shareholder proposals that relate to a company's ordinary business operations and that therefore could interfere with management's ability to run the company on a day-to-day basis. As Travelers has explained in detail in its prior letter, the Proposal relates to the Company's ordinary business operations because it requires Travelers to report on its underwriting practices and, notably, ways to change them. This is made clear both by the language of the Proposal's resolution, which explicitly references "company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce . . . racist police brutality," and the Proposal's supporting statement, which discusses, for example, "lower premiums and deductibles" to encourage specific police behavior and "tying premium reductions to specific trainings and programs." A plain reading of the Proposal necessitates the conclusion that the Proposal relates to the underwriting at the heart of the Company's day-to-day business operations as a property casualty insurer, rather than a tangential issue that is somehow related to its underwriting. *See* Travelers Ltr. 4. And the Proposal would significantly interfere with management's ability to run the Company day to day, because it dictates that the Company should identify ways to change its underwriting policies.

The Proponents assert that the Proposal "does not attempt to direct the underwriting process," because the Proposal purportedly seeks only a report. Lewis Ltr. 3. This argument does not hold water, however; it is well settled that a shareholder proposal requesting the dissemination of a report is excludable if the report concerns the company's ordinary business

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

operations. *See* Travelers Ltr. 3 (citing authorities). The Commission has previously explained that the relevant question is not what type of action the proposal seeks; rather, it is whether the “subject matter” of the proposal “involves a matter of ordinary business.” Exchange Act Release No. 34-20091 (Aug. 16, 1983).

Here, a plain reading of the Proposal makes clear that it *is* attempting to direct the underwriting process – its goal is to have Travelers change its underwriting process as it relates to law enforcement liability coverage. The Proponents allege that the report would simply state what “strategies the Company is utilizing to reduce and prevent racist police brutality.” Lewis Ltr. 3. But the Proposal is not seeking merely to have the Company report on “current company policies”; it would also require the Company to report on “options for changes to such policies” to reduce racist police brutality. *Id.* Accordingly, the Proposal is, by its terms, seeking a change to Company policies – and not just any policies, but underwriting policies that go to the core of the Company’s business.

The Proponents’ letter further highlights that the report requested by the Proposal would address the Company’s ordinary business matters. The Proponents explain that the report could discuss “any conditions or considerations [Travelers] deploys prior to insuring law enforcement.” Lewis Ltr. 3. That is, in essence, the definition of “underwriting.” The Proponents also state that the report could discuss “educational and training related activities” that Travelers could provide to law enforcement agencies. Lewis Ltr. 3. In that respect as well, the Proposal seeks to persuade the Company to alter its business operations and begin offering new products. As the Staff has repeatedly recognized, shareholder proposals that implicate a company’s core business model or that relate to the products and services offered by the company are excludable. *See* Travelers Ltr. 4 (citing authorities).

The Proposal does not focus on a significant policy issue within the meaning of Rule 14a-8(i)(7). The Proponents argue that the Proposal is not excludable because it focuses exclusively on a significant policy issue – namely, racially-motivated police brutality. *See* Lewis Ltr. 4. As Travelers explained in detail in its previous submission, however, under Rule 14a-8(i)(7), a proposal does not “focus on” a significant policy issue if the essence of the proposal targets the ordinary business of the company. *See* Travelers Ltr. 5-7. Importantly, the Proponents acknowledge that for a proposal to focus on a significant policy issue, the proposal must “transcend [the] company’s ordinary business.” Lewis Ltr. 4 (quoting Staff Legal Bulletin 14H (Oct. 22, 2015)).

Travelers provided many examples of cases in which the Staff permitted companies to exclude proposals that raised significant social policy issues but targeted the companies’ products or services, none of which were addressed in the Proponents’ response. For example, in *Bank of America Corp.* (Feb. 24, 2010), the Staff permitted the exclusion of a proposal requesting a report on the financing of mountain top coal mining, explaining that that “[p]roposals concerning . . . the sale of particular services are generally excludable under rule

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

14a-8(i)(7).” Similarly, in *The Allstate Corp.* (Mar. 20, 2015), the Staff concurred in the exclusion of a proposal that would have required the company to provide a report describing how the board and company management identify, oversee and analyze civil rights risks related to the use of big data, how the company mitigates those risks, and how it incorporates the results of its assessment into company policies and decision-making. The Staff explained that the proposal was excludable under Rule 14a-8(i)(7) because it “relate[d] to the manner in which the company uses customer information to make pricing determinations.” *Id.* The same is true here: The Proposal requests that Travelers “report on current company policies and practices, and options for changes to such policies” related to its insurance offerings, which would require Travelers to propose changes to the manner in which the Company makes underwriting and pricing determinations.

In particular, a close reading of the Proposal makes clear that the Proponents’ ultimate goal is for the Company to change its underwriting policies with respect to law enforcement liability coverage, and potentially to also start offering new products to law enforcement agencies. *See* Travelers Ltr. 6-7. Thus, the Proposal’s “focus” is to manage Travelers’ underwriting process and product offerings. The Proponents disagree, arguing that the Proposal merely “touch[es] on” the Company’s products and services. Lewis Ltr. 4. To the contrary, the Proposal seeks to have the Company cease, limit or modify some of its product offerings “to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality.” It is this key point that distinguishes the Proposal from the one at issue in *Johnson & Johnson* (Feb. 12, 2021), which the Proponents cite in their letter. There, the proposal sought for the company to report on the potential racial impact of its policies, practices, products and services. The proposal in *Johnson & Johnson* requested “recommendations for improving the company’s racial impact,” but those recommendations were not necessarily related to the company’s ordinary business matters. Here, the Proposal presumes that Travelers could reduce racially-motivated police violence by changing its underwriting practices and, notably, directs the Company to propose changes to its underwriting process – a process at the heart of its business operations – to achieve that result.

The Proposal implicates the Company’s litigation strategy. As discussed in the Company’s original submission, a critical problem with the Proposal is that it requires Travelers to take action in a way that will affect the Company’s strategy in current and future litigation. *See* Travelers Ltr. 7-11. This is a separate basis for exclusion under Rule 14a-8(i)(7), regardless of whether the proposal relates to a significant social policy issue. The Staff has repeatedly recognized that a shareholder proposal is excludable when the proposal “affect[s] the conduct of ongoing litigation relating to the subject of the [p]roposal to which the [c]ompany is party.” *Walmart Inc.* (Apr. 13, 2018). For example, the Staff recently concurred in the exclusion of a proposal that would have required an oil company to report on whether, by allegedly contributing to climate change, its operations “perpetuate racial injustice and inflict harm on communities of color,” because the company was defending itself in litigation from claims that

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

its operations contributed to climate change that harmed communities of color. *Chevron Corp. (Sisters of St. Francis of Philadelphia et al.)* (Mar. 30, 2021).

As Travelers detailed in its prior submission, the same standard is met here. The Company is currently defending insureds who have law enforcement liability coverage and who are alleged to have engaged in racial profiling or other racially-motivated behavior. Travelers Ltr. 9. Anything that Travelers might say about how its underwriting process or product offerings relate to racist police brutality will become relevant in those litigations and could prejudice the Company and its insureds in litigation. *Id.* at 10. Specifically, any public acknowledgement by Travelers that there is a link between certain law enforcement practices and the risk of racist police conduct risks subjecting the Company and its personnel to discovery, and their statements would likely be used against the Company's own insureds. *Id.* In addition, if the Company were to publicly conclude that it should underwrite law enforcement liability policies only if insureds adopted certain practices – as the Proponents suggest, *see* Lewis Ltr. 5 – that would adversely impact the Company's defense of insureds who adopted different, but otherwise effective, practices, thereby interfering with the Company's legal duty to defend its insureds in litigation and potentially exposing the Company to claims alleging a breach of this duty. *See* Travelers Ltr. 10.

The Proponents incorrectly contend that the Proposal is flexible enough that the Company could fulfill its request without affecting pending litigation. Lewis Ltr. 6. The Proposal requests that the Company provide a report specifically addressing the purported link between the Company's underwriting process and product offerings, law enforcement practices, and the risk of racist police brutality. Anything that the Company might say about that link could affect ongoing litigation. The Proponents point to language in the Proposal that would permit Travelers to exclude "prejudicial information" from the report. *Id.* They thus appear to suggest that the Company could conduct the required investigation and then withhold any results that might affect litigation. *See id.* at 6, 8. However, once the Company conducts the requested assessment, all the work associated with that assessment would potentially be discoverable in litigation, even if the Company ultimately did not include a description of some of that work in the report. The Company cannot possibly know which components of its assessment would lead to the development of prejudicial material before performing the assessment. Additionally, as explained above, it is notable that a public report that includes *any* "options for changes" to "company policies and practices" with respect to the law enforcement liability coverage it offers will likely prejudice the Company and its insureds in ongoing and future litigation that the Company defends on behalf of its insureds as a matter of course.

The Proponents attempt to distinguish the many cases in which the Staff agreed with the exclusion of proposals that could affect the conduct of ongoing litigation. They claim that those cases are inapposite because they involved proposals "requiring a company to make an admission or concession at the crux of litigation," and the Proposal here does not contain that requirement. Lewis Ltr. 7. With this assertion, however, the Proponents misstate the legal

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

standard for exclusion. As the Staff has explained, including in the precedent cited by the Proponents, Rule 14a-8(i)(7) provides for the exclusion of a proposal if the proposal “would affect the conduct of ongoing litigation to which the company is a party.” *See, e.g., Johnson & Johnson* (Feb. 14, 2012); *General Electric Company* (Feb. 3, 2016). The Proposal does not need to require the company to make an admission about a contested litigation issue to be excludable under Rule 14a-8. *See* Travelers Ltr. 7-8.

In any event, the Proponents’ assertion that the Proposal does not require an adverse admission by the Company is false. The Proposal requires the Company to produce a report proposing changes to its policies “to reduce . . . the potential for racist police brutality.” As discussed above, in this way, the Proposal requires the Company to publicly accept the premise that there is a link between its company policies, law enforcement practices and police violence. The Proposal does not permit the Company to conclude that the report is not necessary because there is no such link, nor does it permit the Company to conclude that its current policies and practices are appropriate and to therefore decline reporting on “options for changes” to its policies. The Proposal is thus comparable to the proposals that the Staff permitted to be excluded in *Johnson & Johnson* (Feb. 14, 2012) and *General Electric Company* (Feb. 3, 2016), both of which required the company to presume facts that were contested in litigation (in *Johnson & Johnson*, that one of its pharmaceutical products could cause adverse health effects; in *General Electric Company*, that it could be liable for a chemical spill). Accordingly, the Proponents’ attempt to distinguish those cases is misguided.

The Proponents also attempt to compare the Proposal to the proposal at issue in *The Walt Disney Company* (Jan. 19, 2022), for which the Staff denied exclusion pursuant to Rule 14a-8(i)(7). That proposal, however, is materially different from the one at issue here. The proposal in *The Walt Disney Company* sought purely factual information – a report of the median and adjusted pay gaps across race and gender within the company and related risks. The proposal did not require the company to opine on how it could change its business policies or practices; it did not, for example, require the company to propose solutions for closing any wage gaps. In contrast, by requiring Travelers to propose options for changing the Company’s policies and offerings in an attempt to reduce racist police brutality, the Proposal directly addresses the subject of ongoing litigation.

The Proponents next argue that the report requested by the Proposal is no different from a blog post Travelers published about how law enforcement agencies can approach body cameras and social media. *See* Lewis Ltr. 6-7. This argument is a red herring; the blog post is in no way analogous to the report requested by the Proposal. First, the blog post has no relation to police violence and makes no mention of it at all. Rather, it lists five suggestions regarding how police departments can approach body cameras and social media, one of which is that police departments could “develop a body-worn camera policy.” *Id.* at Ex. E. The blog post does not link a law enforcement agency’s body-camera or social-media policy to racist police brutality or any other subject of ongoing litigation. Importantly – the blog post lists recommendations for insureds to

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

consider *in order to reduce their risk of litigation from unfounded claims*; the introductory paragraphs in the blog post make clear that the information is being provided, as “[i]t can help provide a legal defense by showing that officers performed their duties properly.” *Id.* The blog post is not designed to attempt to reduce racially-motivated police misconduct. Moreover, unlike the changes the Proposal requests the Company to report upon, the blog post does not amount to any kind of mandate or Company-wide policy to be applied to all insureds who purchase law enforcement liability coverage. The blog post was an informal suggestion; a report on changes to underwriting policies would be a formal statement by the Company that acknowledges a purported link between Company practices and police violence and the ability of the Company to reduce police violence. Additionally, as noted earlier, if Travelers prepared the requested report, any changes it suggests to its underwriting policies and practices could be used against insureds that did not adhere to those suggested actions to hold them liable in litigation.

Finally, the Proponents claim that Travelers’ argument would “shield against all shareholder proposals that address any issue on which the Company engages in underwriting” because any statement about a significant policy issue could be used against the Company in litigation. Lewis Ltr. 7 (emphasis omitted). The Proponents argue that “solutions-oriented, forward-looking proposals that seek to solve social problems without going to the merits of pending litigation are generally not excludable.” *Id.* In support of this contention, the Proponents cite to *The Dow Chemical Company* (Feb. 11, 2004). The proposal in *The Dow Chemical Company* requested that the company prepare a report describing the company’s initiatives to address health, environmental and social concerns of survivors of a gas leak from the company’s facility in Bhopal, India. Although Dow Chemical was engaged in litigation with respect to that incident, the company had already admitted that the gas leak had occurred and accepted responsibility for the incident; accordingly, the Staff concluded that the report did not implicate the company’s litigation strategy. As explained above, this is not the case with the Proposal; the report requested by the Proposal would be directly relevant to contested issues in ongoing and likely future litigation.

The Proponents also cite to *American International Group, Inc.* (Mar. 14, 2005) (“AIG”), where the proposal requested that a special committee of independent directors oversee a recently appointed transaction review committee and make available to shareholders a report of the transaction review committee’s findings. The Proponents claim that in that instance, the Staff denied exclusion under Rule 14a-8(i)(7) “because the proposal clearly addressed legitimate concerns and interests of investors rather than being directed at the litigation.” Lewis Ltr. 8. To clarify, the Staff did not make any statement in its response that mentioned the legitimacy of investor concerns or interests. Furthermore, AIG was required to appoint the transaction review committee to do the very thing the proposal requested pursuant to a settlement with federal regulators concerning AIG’s sale of finite risk policies. Here, the Company has not entered into any settlement resulting from previous litigation that would require it to report on its current company policies and practices and/or options for changes to those policies with respect to law enforcement liability coverage.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

Rule 14a-8(i)(7) allows for exclusion of proposals that implicate litigation strategy, and the Staff's no-action letters over the years have clearly set the parameters of that exclusion. Exclusion of the Proposal is consistent with the precedent cited by the Company in its no-action request.

The Proposal seeks to micromanage the Company. Not only does the Proposal focus on the Company's underwriting process and a specific product offering (law enforcement liability coverage), and not only does it implicate the Company's litigation strategy in ongoing litigation, but it also seeks to micromanage the Company's approach to underwriting and its product offering. Micromanagement is a separate basis for exclusion under Rule 14a-8(i)(7); even if a proposal involves a significant policy issue, it is inappropriate for shareholders to specify in detail the manner in which the company should address that issue. *See* Travelers Ltr. 11-14. The Proponents seem to have three responses, each of which is misguided.

First, the Proponents say that the Proposal does not micromanage the Company because it simply requests that Travelers publish a report that provides shareholders with information about the Company's options and choices. *See* Lewis Ltr. 8. Framing a proposal as a request for a report does not necessitate the conclusion that the proposal does not micromanage the company. *See The Wendy's Company* (Mar. 2, 2017) (concurring, on micromanagement grounds, in the exclusion of a proposal urging the board to join a farmworker initiative and prepare a report on the implementation of the proposal). In fact, as Travelers explained in its initial submission, the Staff recently concurred, on micromanagement grounds, in the exclusion of a proposal that sought the annual publication of the content of any employee training materials offered by the company or with its consent to any subset of the company's employees, as well as any such materials whose creation the company sponsored in whole or part. In allowing exclusion, the Staff's no-action letter specifically expressed the Staff's view that "the [p]roposal micromanages the [c]ompany by probing too deeply into matters of a complex nature *by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices.*" *Deere & Company* (Jan. 3, 2022) (emphasis added). Here, preparation of the requested report would require the Company to delve into and disclose intricate details regarding its underwriting process – which, as the Company explained in its original letter, is a highly complex business that requires deep technical, business and legal expertise. *See* Travelers Ltr. 12-13. It would not be possible to prepare the requested report without examining the Company's pricing and contracting decisions, which the Proponents concede should "lie with the Company alone." Lewis Ltr. 9. Further, the Proposal does not simply seek a report on existing underwriting policies – it seeks a report detailing proposed changes to such policies. In this way, the Proponents attempt to direct how the Company's actuaries and underwriters assess risk. *See id.* The Proponents' letter confirms this point; it describes the Proposal as an "essential opportunity for insurance investors to encourage insurance companies . . . to *lead* on [the issue of racist police brutality] . . . by encouraging effective action within the *sphere of influence of an insurance company that offers law enforcement insurance.*" Lewis Ltr. 5 (emphasis in original). The Proponents' assertion that the Proposal "only requests a report on 'options' for changes,

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

which the Company could also reject” misses the point. *Id.* at 9. The Proposal requires the Company to publicly provide options for changes to its policies with respect to its law enforcement liability insurance offerings; nothing in the text of the Proposal permits the Company to report that its current policies and practices are sufficient.

Second, the Proponents argue that the Proposal does not micromanage the Company because the topic is appropriate for investor deliberation. *See* Lewis Ltr. 9-11. They contend that given recent media coverage, shareholders are familiar with the purported relationship between insurers’ underwriting policies and practices and racial injustice. *Id.* at 9-10. But the referenced articles do not establish that investors have familiarity or expertise with respect to the Proposal’s request. As Travelers’ prior letter explained, insurers’ underwriting policies and practices are not appropriate for a shareholder vote. *See* Travelers Ltr. 12-13. The report would require the Company to discuss the details of its underwriting policies – i.e., how it assesses and prices risk – with respect to a particular line of insurance coverage. None of the articles go into that level of specificity. For these reasons, the Proposal does not frame the investor deliberation in a manner consistent with market discussions.

Third, the Proponents attempt to downplay the inflexibility of the Proposal, asserting that the Proposal is “not prescriptive” and does not require the Company to change its underwriting policies or product offerings. In furtherance of this argument the Proponent provides examples of what the report could entail. Lewis Ltr. 12-13. As mentioned above, however, what their argument ignores is the fact that the Proposal does not provide the Company with the ability to conclude that its present policies and practices are sufficient and that no options for change are advisable; in other words, the Proposal has already determined the outcome for the Company.

As an aside, the Proponents’ claim that they do not necessarily expect the Company to implement changes to its underwriting policies or product offerings is not credible. They suggest that the Company could instead decide to simply publish a blog post on racist police brutality. *See id.* But the Proposal’s (unproven) central thesis is that insurance companies are uniquely positioned to use their underwriting policies and product offerings to influence police behavior. *See id.* at 5, 10. It is clear from the Proposal as a whole that the Proponents seek to change Travelers’ policies and products, not merely to publish a blog post. This is paradigmatic micromanagement and a basis for exclusion.

The Proposal is not significantly related to Travelers’ business. The Proposal is excludable under Rule 14a-8(i)(5) because it relates to operations accounting for less than 5% of the Company’s total assets, net earnings and gross sales, and is not otherwise significantly related to the Company’s business. In other words, the 5% thresholds provided in the rule apply unless the proposal is “otherwise significantly related to the company’s business.” Rule 14a-8(i)(5). To meet this requirement, the Staff requires the proposal to have a “meaningful relationship” to the Company’s business under the standard set out in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985). *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021).

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

The rationale behind this approach is that a shareholder meeting is not an open forum for discussing social issues in the abstract, but only issues that significantly affect the Company's business and that, thus, could have a meaningful impact on the company's reputation or value.

The Company's law enforcement liability offerings account for less than 5% of the Company's total assets, net earnings and gross sales – in fact, much less. As the Company has previously explained, in 2020, coverage relating to law enforcement activities was less than 0.03% of the Company's total assets, less than 0.5% of net earnings, and 0.11% of gross sales. *See Travelers Ltr. 15.*

The Proponents do not dispute that law enforcement liability coverage is a miniscule part of Travelers' business. They instead argue that because the Company "is recognized as one of the leading commercial providers" of that coverage, the Proposal is significantly related to the Company's business. *Lewis Ltr. 14* (emphasis omitted). Critically, however, this is not what Rule 14a-8(i)(5) provides; the rule considers only how important the issue is to the Company, not how important the Company is to the issue. Under the Proponents' view, Rule 14a-8 would permit a leading insurance company (like Travelers), which insures countless different types of businesses and entities, to face proposals on virtually any topic relevant to any of its insureds, regardless of whether the Proposal is significantly related to the Company's business. As the Company explained in its initial submission, however, the Staff rejected this very argument in *Kmart Corp.* (Mar. 11, 1994), when they agreed with Kmart Corp. that its sale of firearms was not otherwise significantly related to its business given the "limited scope" of those sales compared to its "extremely diversified" product mix. *Travelers Ltr. 14-15.*

Putting aside the economics, there is no other reason that the Proposal is significantly related to the Company's business. The Proponents have offered no evidence that Travelers' insurance offerings have had any effect on the risk of racially-motivated police brutality. *See Travelers Ltr. 16.* Thus, regardless of the rule's numerical thresholds, the Proposal is excludable because it does not have a meaningful relationship to the Company's business. *Id.* at 14. Further, the Company engages regularly with many of its investors to understand their areas of focus and solicit their feedback and, in fact, has engaged with a significant portion of its shareholder base (typically 40-50%) in each of the past few years. Based on these engagements, it is apparent that the issue raised by the Proposal is overwhelmingly not a concern for the Company's shareholders. This, too, strongly suggests that the issue is not significantly related to the Company's business. The Proponents argue that, for purposes of Rule 14a-8(i)(5), it is enough for a proposal to involve issues that "ha[ve] the *potential* to negatively impact the company's reputation and value." *Lewis Ltr. 15.* (emphasis added). Rule 14a-8(i)(5), however, requires that the proposal be "*significantly* related to the company's business" (emphasis added). Otherwise, *no* shareholder proposal could ever be excluded pursuant to Rule 14a-8(i)(5) because any issue could be argued to potentially affect a company.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

The Proposal is materially misleading. Rule 14a-8(i)(3) allows exclusion of proposals containing materially false or misleading statements. As discussed in the Company's previous letter, the very premise of the Proposal is materially misleading. The Proposal is based on the view that Travelers' law enforcement liability offerings can increase or reduce racist police brutality, but there is no evidence to support that view. *See* Travelers Ltr. 16-18. The Proponents point to news articles suggesting the possibility of a link between insurance and general police misconduct, but none of those articles provides evidence that insurance coverage has ever contributed to any act of racist police brutality. Furthermore, all of the articles rely on the same source – a law review article in which the author asserts that insurers *might* be able to influence the behavior of law enforcement. *See id.* at 17. And as Travelers explained (and the Proponents do not dispute), the author admits that he does not have any empirical evidence to support his theories and specifically states that insurers are particularly *unlikely* to be able to influence race-related police misconduct. *See id.* The Proponents have not provided any evidence of a link between Travelers' law enforcement liability offerings and racist police brutality, or any evidence that the availability of insurance (underwritten by Travelers or any other insurer) has contributed to any act of racist police brutality. *See id.* at 16. Rather, the Proponents acknowledge that there only "may" be a link between the Company's insurance offerings and racist police violence, not that there is any evidence of such a link. Lewis Ltr. 17 (emphasis omitted). That is unsurprising, because the Company does not provide coverage for police officers' criminal wrongful acts – which is consistent with many states' laws that prohibit insurance coverage for intentional or criminal wrongdoing. *See* Travelers Ltr.8 n.1. Accordingly, the central claim in the Proposal simply is unfounded.

The Proposal is also materially misleading in other ways. For example, the Proposal repeatedly refers to illegal police behavior, which wrongly suggests that Travelers provides coverage for that behavior or otherwise supports it. *See* Travelers Ltr. 17. To the contrary, as mentioned above, Travelers does not cover criminal wrongful acts. *Id.* at 16. The Proponents argue that they referred to illegal police behavior only to highlight the problem of racially-motivated police brutality, *see* Lewis Ltr. 16, but again, they have not shown that there is any link between Travelers' law enforcement liability coverage and racially-motivated police brutality. Suggesting that such a link exists renders the Proposal materially false and misleading.

Finally, the Proponents argue that the Proposal is not so misleading as to be excludable, and that the Company could issue a statement in opposition to the Proposal. *See id.* at 17. The Staff has recognized, however, that a company should not have to go through that process when the proposal as a whole is materially false or misleading. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004). Given that the very premise of the Proposal is unsupported and therefore misleading, the Proposal meets that standard.

THE TRAVELERS COMPANIES, INC.

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel

Conclusion

For the reasons stated above and in Travelers' no-action request, the Company respectfully reiterates its request that the Staff express its intention not to recommend enforcement action to the Commission if Travelers omits the Proposal from its 2022 Proxy Materials.

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at 917-778-6764 or ycohn@travelers.com.

Sincerely,

A handwritten signature in black ink, appearing to read "yafit cohn", written in a cursive style.

Yafit Cohn

cc: Natasha Lamb, Arjuna Capital
A.J. Kess, The Travelers Companies, Inc.

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

March 11, 2022
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to The Travelers Companies Inc. Regarding Racist Police Brutality on
Behalf of John Silva and Shana Weiss

Ladies and Gentlemen:

John Silva and Shana Weiss (the "Proponents") are beneficial owners of common stock of The Travelers Companies Inc. (the "Company") and have submitted a shareholder proposal (the "Proposal") to the Company. We responded previously to the Company's no action request on February 9, 2022, and I have been asked by the Proponents to respond to the supplemental letter dated March 4, 2022 ("Supplemental Letter") sent to the Securities and Exchange Commission by Yafit Cohn, Chief Sustainability Officer of The Travelers Companies. A copy of this response letter is being emailed concurrently to Ms. Cohn.

As you know, the Proposal requests a report on current Company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate the company's brand with police violations of civil rights and liberties.

In its Supplemental Letter, the Company has re-doubled its effort to exclude the Proposal, rehashing a grab bag full of ostensibly applicable exclusions enumerated in the Company's initial letter. In plain language, these arguments boil down to: our company is *too large*, our business is *too complex and litigious*, and our ability to affect the occurrence of racist police brutality is *too speculative* to merit debate or consideration by shareholders.

None of the Company's arguments are a basis for exclusion under the shareholder proposal rule. Given the Company's status as a leading commercial insurer of law enforcement, and the issues of moral hazard associated with insuring police departments on matters that may lead to civil rights violations, the Proponents believe that this issue needs to be addressed by the Company. The Proponents are concerned about an apparent disconnect between the Company's efforts to brand itself as a leader on diversity and inclusion, while seeking to avoid discussion of this fundamental social justice issue that can reasonably be understood as intrinsically connected to its business practices.

Given the minimal demands and details of the Proposal for a report on current policies and "options" for addressing this issue, the Proposal is a reasonable topic for shareholder deliberation. The Company has provided no demonstration of excludability: the Proposal addresses a transcendent policy issue, does not undermine the Company's litigation strategy, does not seek to micromanage, is meaningfully related to the Company's business, and is not misleading

Rule 14a-8(i)(7)

The Supplemental Letter strains to interpret the Proposal and Staff precedents in a manner that would allow the Company to exclude the Proposal under Rule 14a-8(i)(7). However, the Rule and Staff precedents do not accommodate the Company's request. As an initial matter, we note that the Supplemental Letter amplifies the Company's effort to wall off its underwriting practices from scrutiny on issues of racism, bigotry and violence. These are concerns that it suggests it *is* addressing through community efforts and philanthropy on page 1 of the Supplemental Letter:

Travelers shares and respects the Proponents' concerns about racism, bigotry and violence. The Company is committed to racial justice efforts in the communities in which it operates. In addition to the many initiatives described in detail in the Company's annual sustainability reporting, Travelers has made significant financial contributions to support racial justice efforts in its communities.

The Company claims however that addressing these issues of police brutality as related to its underwriting is something that it cannot or should not be addressed through a shareholder proposal. The Supplemental Letter contains a repetitive refrain: that the Proposal should be excludable because it seeks to change the company's underwriting policies and practices. For instance, on page 3 of the Supplemental Letter:

[T]he Proposal is not seeking merely to have the Company report on "current company policies"; it would also require the Company to report on **"options for changes to such policies" to reduce racist police brutality. *Id.*** Accordingly, the Proposal is, by its terms, seeking a change to Company policies — and not just any policies, but underwriting policies that go to the core of the Company's business.

The Supplemental Letter (page 3) also reiterates the Company's attempt to semantically characterize the "focus" of the proposal as relating to its *underwriting practices* as opposed to a significant policy issue.

Here, a plain reading of the Proposal makes clear that it *is* attempting to direct the underwriting process — its goal is to have Travelers change its underwriting process as it relates to law enforcement liability coverage. The Proponents allege that the report would simply state what "strategies the Company is utilizing to reduce and prevent racist police brutality."

The subject matter of the proposal transcends ordinary business

We made it clear in our initial response that the focus of the Proposal addresses an issue of broad societal impact that transcends ordinary business and that the Proposal it does not seek to micromanage the Company's business. As the above quotations demonstrate, the Company's letters take the erroneous position that any proposal that addresses the Company's underwriting policies would necessarily be excludable, or alternatively that the Proposal does not address a significant policy issue. Neither argument

holds water.

Taking the Company's arguments to its logical conclusion, proposals on diversity, environmental impact and other social issues would only be permissible if they did not focus on the major impact that the company's insurance business has on the related issues, but only focus on, the composition of the board or the diversity of the workforce. That is an inaccurate interpretation of Staff decisions. As we laid out in our prior letter, a proposal can certainly address core business practices to the extent that they raise a significant policy issue.

A similar effort to bifurcate and wall off core business practices such as lending or investing has long been made by others, and the Staff has rejected such assertions. The Company's argument would make it out of bounds under Rule 14a-8(i)(7), for instance, for a proposal to address a financial institution's lending or investing policies that affect a significant policy issue such as climate change. No such principle exists, and in fact many proposals that address investment or lending policies transcend ordinary business and are found not to micromanage. If anything, the current proposal is far less directive of company practices or policy than proposals found non-excludable at banks on climate change. For example, proposals directed towards financial institutions, asking those companies to issue a report explaining how their lending policies align with global climate benchmarks are not excludable. Most recently, the Staff rejected exclusion on ordinary business or micromanagement at *Citigroup Inc.* (March 7, 2022) where the proposal asked the board adopt a policy by the end of 2022 committing to proactive measures to ensure that the Company's lending and underwriting do not contribute to new fossil fuel supplies inconsistent with fulfilling the IEA's Net Zero Emissions by 2050 Roadmap and the United Nations Environmental Program Finance Initiative recommendations to the G20 Sustainable Finance Working Group for credible net zero commitments. The proposal was relevant to the company because of its broad societal impact *posed by its lending and investing practices*. Through its financial services, Citigroup supports the development of fossil fuels that lead to climate change. Here the issue is 100% analogous. The Travelers Companies Inc. underwriting practices create the potential for moral hazard that may encourage racist police brutality. In contrast to the specific external benchmarks against which Citigroup's practices would be measured, the current proposal is much less directive. It merely asks for a report on policies and any options for changes related to the issue of racist police brutality. There is really no question as to whether there is in this instance a policy issue that transcends ordinary business. The Proponent believes it is quite clear.

The Proposal is not excludable as relating to litigation

The Supplemental Letter also distorts the interpretation of Staff decisions related to the litigation exclusion, claiming a new general litigation exclusion applicable to a proposal that does not either address *litigation strategy* or *require admissions*. The Supplemental Letter on page six references the General Electric (PCBs) and Johnson & Johnson (Levaquin) precedents as ostensibly demonstrating this general litigation exclusion. But in both instances, the companies argued that the disclosures requested by the proposals would constitute admissions that would be utilized against the company. In *General Electric* (February 3, 2016) the Proposal requested that the company undertake an independent evaluation and prepare an independent report demonstrating that the company has assessed all potential sources of liability related to PCB discharges in the Hudson River, including all possible liability from NRD claims for PCB discharges, and offering conclusions on the most responsible and cost-effective way to address them. Although the staff decisions allowing exclusion may have stated a broad principle for exclusion of proposals related to litigation, examination of the arguments demonstrates that the proposal was entirely

within the “admissions” strain of staff rulings. The Staff did note in the decision that “Proposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under rule 14a-8(i)(7).” However, the crux of the company’s argument was based on whether the proposal would necessitate adverse admissions in specific litigation.¹

Similarly, in *Johnson & Johnson* (February 14, 2012) the proposal asked the company to describe new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin. Johnson & Johnson stated that the proposal could be excluded because issuing such a report would concede that people are harmed by the adverse effects of Levaquin, which the company continued to contest in litigation.²

In contrast, in the current matter, the existence of racist police brutality is not in doubt, there is no current lawsuit alleging that the insurance company is exacerbating racist police brutality, and yet the moral hazard that makes this an issue relevant to *any* insurer of law enforcement is clear. The Company is not being asked to make disclosures adverse to its position in any ongoing litigation regarding causation, negligence, or any other elements of current litigation.

We included the reference to the blog post because it demonstrates quite clearly that the Company is able to write about significant public issues that might be raised in litigation without creating a litigation risk. The Supplemental Letter also asserts that the blog post is *informal* but that any reports prepared *in response to the proposal* would place the company in a fundamentally different position from a blog post.³ The Company is making a simple matter far more complicated than it needs to be. If shareholders

¹ General Electric wrote in seeking the exclusion:

In effect, by requesting that the Company both demonstrate that it has assessed all sources of liability and “offer[] conclusions on the most responsible and cost-effective way to address them,” the Proposal requests that the Company provide current and future claimants with both an admission from the Company regarding the extent of its alleged liability and a roadmap for establishing claims pursuant to that admission. Here, the information that would be subject to the requested report is particularly problematic because, under the terms of the Company’s consent decree (referenced in the Proposal’s supporting statements)⁴ with the Environment Protection Agency (the “EPA”), the Company did not admit any liability, nor did it acknowledge that the release or threatened release of substances at the Hudson River sites constituted an imminent or substantial endangerment to the public health or the environment. Thus, the Proposal requests that the Company take a position that is contrary to the position taken by the Company in its consent decree with the EPA, a move that could have significant implications for the Company’s current and future litigation strategy and negotiations.

² Johnson & Johnson had asserted in support of the exclusion:

...the existence and nature of adverse effects from LEVAQUIN®, and any causal relation of alleged adverse effects to LEVAQUIN®, is the very legal issue that the Company is currently litigating in thousands of cases. Thus, by requesting the Company to furnish information in a public report with respect to initiatives concerning those “harmed by adverse effects from Levaquin,” the Proposal interferes with the Company’s defense of pending litigation.

³ The Supplemental Letter notes on page 7:

The blog post was an informal suggestion; a report on changes to underwriting policies would be a formal statement by the Company that acknowledges a purported link between Company practices and police violence and the ability of the Company to reduce police violence. Additionally, as noted earlier, if Travelers prepared the requested report, any changes it suggests to its underwriting policies and

vote in favor of this Proposal and request such a report, the Proponent might hope for a more detailed report but also concedes that the Company could fulfill the Proposal with a blog post on the various issues associated with, and approaches to reducing, racially biased police brutality. Just as the Supplemental Letter notes on pages 6 and 7 that the purpose of the blog post on body cameras was to list “recommendations for insureds to reduce their risk of litigation from unfounded claims,” the very same approach could be taken on issues at the core of racially biased policing.⁴

Avoiding a principle of blanket immunity

The Supplemental Letter implies that anything requested by a proposal that relates to underwriting policies of a company should be excludable because the items published might be used by plaintiffs in current or future litigation related to the subject matter. This would constitute a new principle of blanket immunity for insurers against proposals, regardless of whether the proposals address a significant policy issue.

A similar argument for broad exclusion, based on the idea that plaintiffs *might* find something requested in a report to be useful in pending litigation was asserted and rejected by the Staff, in *The Walt Disney Company* (Jan.19, 2022).

There is no requirement or request in the current Proposal for disclosures that go to the crux of the Company’s pending litigation and therefore, there is no basis for an ordinary business exclusion based on the impact on litigation. If the Company’s assertion regarding its positions in litigation were to be applicable, it would proffer a shield for policies related to all underwriting activities from shareholder proposals. This would be a development with very broad implications for the shareholder proposal process as it applies to insurers and all other sectors for whom a significant policy issue may be the subject of future litigation.

Briefly addressing Company cited precedents/distinctions

The Company’s attempt to distinguish *Dow Chemical Company* on page 7 as being an acceptable proposal because the risk of litigation was in the past is inaccurate. At the time of the Staff decision, Dow Chemical was still litigating many issues, including criminal liability, related to the Bhopal disaster. The Staff conclusion that the report “did not implicate the company’s litigation strategy” simply meant that it did not require admissions or disclosure of litigation strategy in a manner that would undercut the company’s position in litigation. The same is true in the current instance.

The Supplemental Letter reiterated examples of staff precedents and citations where a proposal on products or services was *not* found by the Staff to address a subject matter that transcended ordinary business. It is unnecessary to go through them case-by-case to recognize that the Staff did not find that the proposal focused on a significant policy issue causing it to transcend ordinary business as cited by the Company on pages 3 and 4 of the Supplemental Letter, *Bank of America Corp* (Feb. 24, 2010) and *The Allstate Corp*

practices could be used against insureds that did not adhere to those suggested actions to hold them liable in litigation.

⁴ Indeed, if the blog post that we cited had directly addressed or discussed racially biased policing or police brutality, we can expect that the Company would have argued that it was substantially implementing the proposal.

(Mar. 20, 2015).

In contrast there are innumerable precedents, demonstrating that the focus on products or services does not lead to exclusion of a proposal under the ordinary business rule if the proposal addresses a transcendent policy issue. This line of decisions goes back at least as far as the judicial precedent of *Medical Committee For Human Rights v SEC*, 432 F.2d 659 (DC. Cir. 1970) in which the DC Circuit Court of Appeals concluded that a proposal addressing Dow Chemical's production and sale of napalm transcended ordinary business. Notably, the product was a very tiny portion of the Company's business, probably less than 1%.

The same conclusion is threaded through dozens of Staff rulings where companies have attempted the "products and services" exclusion, most recently in *Citigroup Inc.* (March 7, 2022) cited above, in which it was made clear that a proposal focused on a significant policy issue that addresses or touches on products and services provided by the company does not render the proposal excludable. *Citigroup* follows a long line of staff determinations that proposals addressing *climate risk* are appropriate for financial services companies, including the impact of their lending services. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the proposal micromanaged the business or related to products and services. The Staff rejected the claim.

Significantly, the focus of a proposal on a *policy level* as done in the current Proposal, rather than directing the Company's relations with particular suppliers or customers is sufficient to avoid the products and services exclusion. For example, in *TJX Companies* (April 9, 2020) the proposal requested that the board commission an independent analysis of any material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty. The company objected that the proposal was excludable as relating to sales of particular products, but the proponent effectively argued that the focus of the proposal on a clear, significant policy issue for the company caused the proposal to transcend ordinary business.

Even a proposal that goes further than the current proposal, to expressly seek to *ban* a particular product or service of a company, a more restrictive request than the current Proposal, may transcend ordinary business if it clearly focuses on a significant policy issue relevant to the company. For example, in *Amazon.com Inc.* (March 28, 2019) a proposal that was clearly directed toward a company product was found non-excludable. The proposal requested that the board prohibit sales of facial recognition technology to government agencies unless the board concludes, after an evaluation using independent evidence, that the technology does not cause or contribute to actual or potential violations of civil and human rights. An ordinary business claim similar to the Company Letter on the current Proposal was rejected, and rejected again on request for reconsideration. The proponent in opposition to the request for reconsideration wrote: "The Company's Amazon Web Services (AWS) segment is the leading cloud computing company, and is integrating facial recognition software to its services, which the Proposals assert is being done at risk to civil liberties, privacy and public trust in the Company's products and services."

Similarly, in *Bank of America* (February 26, 2009) the proposal directly focused on requesting a report to shareholders evaluating with respect to practices commonly deemed to be predatory, the company's credit card marketing, lending and collection practices and the impact these practices have on borrowers. Despite the focus on products and services, the prominence of predatory and subprime lending as an issue of concern transcended the ordinary business concern.

See also long-standing Staff precedents finding that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. *See e.g., Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28, 1984); *American Telephone and Telegraph Company* (December 12, 1985); *Harsco Corporation* (January 4, 1993); *Firststar Corporation* (February 25, 1993). In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to involve significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” SEC, Division of Corporation Finance, Staff Legal Bulletin No. 14C. Surely the same logic applicable to environment and public health is also applicable to reducing the occurrence of police brutality.

Micromanagement

We stand by our argument that the proposal does not seek to micromanage the company. We note that the Supplemental Letter asserts that the current situation is analogous in micromanagement to *Deere & Company* (January 3, 2022) where the proposal sought “annual publication of the written and oral content of any employee-training materials offered to any subset of the Company’s employees by the Company or with its consent, as well as any such materials which the Company sponsored in the creation in whole or part. The Proposal seeks this information so that shareholders can gauge executives’ responses to, and management of, reputational and legal risks and financial harm to the Company associated with employment discrimination.” In excluding the proposal, the Staff noted that the proposal “micromanages the Company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company’s employment and training practices.” The current Proposal does not resemble and is in no way analogous to the intricate details requested by that proposal. The Proposal does not request employee training materials nor anything of that level of detail, but rather leaves it within the Company’s discretion to address the *policies* and *options* at a level that the management or board determines is appropriate.

Rule 14a-8(i)(5)

The Supplemental Letter repeats the Company’s weak argument that the Proposal is not relevant to the Company. Although the Company can argue that it does not meet the financial tests of the rule, this is a crystal-clear instance of a proposal that is “otherwise significantly related to the company’s business.” Notably, in the Supplemental Letter the Company did not deny that it is a leading commercial provider of law enforcement liability insurance. Instead, the position taken in the Supplemental Response is that somehow this does not make the Proposal “otherwise significantly related to the Company’s business.” The Supplemental Letter acknowledges that the test is whether the proposal has a “meaningful relationship” to the company’s business.

The Company then proposes a new principle that the Company would like to apply to shield it from Rule 14a-8(i)(5) relevance, specifically the idea that “the rule considers only how important the issue is to the Company, not how important the Company is to the issue.” The Proponent believes that this is an inaccurate distortion of the rule, in which there are numerous historical examples of recognition of how important the company is to the issue. In any event, the moral hazard associated with insuring law enforcement entities presents an indisputable ethical challenge for the insurer, and therefore it is beyond question that there is a

meaningful connection to the company's business. We need not debate whether impact of the company on the issue needs to be found because these issues of moral hazard associated with insuring law enforcement raise obvious and significant ethical and reputational risks for Travelers. In addition, investors holding Travelers stock in their portfolios can reasonably assert stewardship over the externalities that the Company imposes on the economy if it exacerbates or fails to do its part to address these socially divisive issues. *These are all valid reasons for finding a meaningful relationship to the company's business.* As a leading commercial insurer of law enforcement, the issue of racist police brutality is an obvious issue of social impact, and the moral hazard associated with insurance brings a meaningful relationship to the Company's business.

From the Proponents' perspective, this Company argument demonstrates a critical disconnect. For a Company doing so much to build an image and reputation based on diversity and inclusion, the Company's opposition to the current Proposal is a seeming blind spot and vulnerability in sustaining that positive reputation. Ensuring the company does not contribute to racially motivated police brutality is clearly aligned with its diversity and inclusion and ESG narrative. The Proponent believes the Company has the opportunity to lead on these issues, and to shield itself from the reputational risks otherwise associated with ensuring law enforcement activities that raise significant issues of social justice.

TRAVELERS

CEO Message Company Governance Other Key Drivers of Sustained Value Financial Performance Resources

Diversity & Inclusion

WE'RE TRAVELERS

<p>WE'RE DARK WE'RE LIGHT WE'RE REVERENT WE'RE IRREVERENT WE'RE THINKERS WE'RE DOERS</p> <p>WE'RE TRAVELERS</p>	<p>WE'RE GAY WE'RE STRAIGHT WE'RE SISTERS WE'RE BROTHERS WE'RE MOVERS WE'RE SHAKERS</p> <p>WE'RE TRAVELERS</p>
<p>WE'RE SEASONED WE'RE TRENDING WE'RE HIPSTERS WE'RE BOOMERS WE'RE MENTORS WE'RE LEARNERS</p> <p>WE'RE TRAVELERS</p>	<p>WE'RE VETERANS WE'RE CIVILIANS WE'RE MOTHERS WE'RE FATHERS WE'RE IDEALISTS WE'RE REALISTS</p> <p>WE'RE TRAVELERS</p>

Additionally, the Supplemental Letter on page 10 again cites *Kmart Corp.* (Mar. 11, 1994) where the Staff agreed with Kmart that its sale of firearms was not otherwise significantly related to its business given the "limited scope" of those sales compared to its "extremely diversified" product mix. This is a poor analogy. The Company as a leading commercial insurer of law enforcement is not analogous to a retail market. It is more analogous to a bank whose lending may at times implicate a significant issue that creates a meaningful connection to the business. For instance see *Bank of America Corporation* (February 22, 2008) where the company sought to excluded proposal which recommended that prepare an Equator Principles Report to describe and discuss how Bank of America's implementation of the Equator Principles has led to improved environmental and social outcomes in its project finance transactions. Bank of America claimed that the proposal only addressed minimal business activities of the bank, but it was noted that in 2006, the bank participated in one transaction that that was included within the definition of Equator Principle activity. The Staff rejected the Rule 14a-8(i)(5) claim that the proposal was not "otherwise significantly related to the company's business." In contrast to that example, in this instance the Company has acknowledged that it insures police departments and that police brutality may indeed be an issue. Many insurance transactions are involved, not just one that sufficed in the Bank of America example.

Rule 14a-8(i)(3)

Finally, the Supplemental Letter on page 11 repeats the Rule 14a-8(i)(3) arguments that the advocacy in the Proposal is misleading to investors. The Proposal is framed around the clear and common understanding that the insurance of police departments brings with it issues of moral hazard, including related to the potential shielding of police engaged in racist police brutality.

While the impact of the Company's underwriting of law enforcement on police brutality is unknown, the underlying issues of moral hazard are well understood and form the basis of the current Proposal. Law Review articles and other public discussions have made it clear that insurance may create a sense of impunity for law enforcement personnel. The article by Prof. Rappaport⁵ summarizes this clearly:

Municipalities nationwide purchase insurance to indemnify themselves against liability for the acts of their law enforcement officers. These insurance policies shield the government from financial responsibility, often including punitive damages, for common law and constitutional torts such as assault and battery, excessive force, discrimination, false arrest, and false imprisonment.

Insurance theory warns us first of moral hazard — the propensity of insurance to reduce the insured's incentive to prevent harm. So, for example, upon learning that the Republican Party had purchased a \$10 million police liability policy for St. Paul before holding the Re-publican National Convention there in 2008, one activist fretted, "[n]ow the police have nothing to hold them back from egregious behavior." Implicit in this thinking is an assumption that the threat of tort liability would, absent indemnification through insurance, deter police misconduct by making the police internalize the cost of any harms they cause. Liability insurance dilutes, or even neutralizes,

⁵ <https://harvardlawreview.org/wp-content/uploads/2017/04/1539-1614-Rappaport-Online.pdf> at 1542

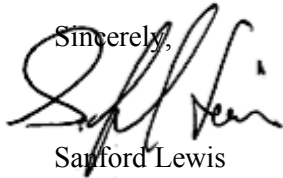
deterrence by transferring the risk of liability from the municipality to the insurer. Given the kinds of grave damage police misconduct can inflict, the possibility of underdeterrence is troubling.

But moral hazard is just the beginning. When the insurer assumes the risk of liability, it also develops a financial incentive to reduce that risk through loss prevention. By reducing risk, the insurer lowers its payouts under the liability policy and thus increases profits. An effective loss-prevention program can also help the insurer compete for business by offering lower premiums. In other words, an insurer writing police liability insurance may profit by reducing police misconduct. Its contractual relationship with the municipality gives it the means and influence necessary to do so — to “regulate” the municipality it in-sures. In fact, the insurer may be better positioned than the government to reform police behavior. Relative to government regulators, the insurer may possess superior information, such as data that cut across myriad police agencies; deeper and more nimble resources, including “boots on the ground” and the capacity to develop harm-prevention technologies; market incentives that favor good, but not overzealous, risk-management policies; and the flexibility to develop and prescribe individualized risk-reduction plans. If it uses the loss-prevention tools at its disposal, the insurer can reintroduce, or possibly even enhance, constitutional tort law’s deterrent effects.

The principled basis for the Proposal is clear and is not misleading. There is ample basis for asking the company to explore whether it can adopt policies suited to reducing the incidence of racist police brutality. The Proposal does not impugn the Company but rather raises this issue of moral hazard and potential for positive or negative influence on these issues consistent with the literature on policing and insurance.

We stand by our initial correspondence. There is no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413-549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the typed name below.

Sanford Lewis