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Answer ✓

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

AMERISOURCEBERGEN DRUG  
CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 17-C-36  
Honorable William S. Thompson

ACE AMERICAN INSURANCE  
COMPANY, ACE PROPERTY AND  
CASUALTY INSURANCE COMPANY,  
AMERICAN GUARANTEE & LIABILITY  
INSURANCE COMPANY, ENDURANCE  
AMERICAN INSURANCE COMPANY,  
and ST. PAUL FIRE & MARINE  
INSURANCE COMPANY,

Defendants.

**ANSWER OF DEFENDANT, AMERICAN GUARANTEE & LIABILITY  
INSURANCE COMPANY, TO COMPLAINT FOR (1) DECLARATORY  
JUDGMENT AND (2) BREACH OF CONTRACT OF PLAINTIFF,  
AMERISOURCEBERGEN DRUG CORPORATION**

COMES NOW the Defendant, American Guarantee & Liability Insurance Company ("hereinafter sometimes referred to as "AGLIC" or "Defendant"), by and through its undersigned counsel, Tiffany R. Durst, Esq., and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, without waiving any defenses, and hereby answers the Complaint for (1) Declaratory Judgment and (2) Breach of Contract (hereinafter referred to as "Complaint") filed by the Plaintiff, Amerisourcebergen Drug Corporation (hereinafter sometimes referred to as "ABDC" or "Plaintiff").

**Preliminary Statement**

Because of the nature of the allegations in the Complaint, in order to preserve important legal rights and protections, AGLIC sets forth below certain affirmative defenses

which, based upon the information set forth in the Complaint, it believes do apply or may apply to some or all of the claims raised therein. As permitted by Rule 8(e)(2) of the West Virginia Rules of Civil Procedure, defenses to the claims made in the Complaint are being asserted alternatively and, in some instances, hypothetically. As a result, AGLIC reserves the right to withdraw or modify some or all of the affirmative defenses set forth below, in whole or in part, depending upon the nature of the discovery in this matter.

### **First Defense**

#### **NATURE OF THE ACTION**

1. Paragraph 1 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that Paragraph 1 of the Complaint sets forth a summary of the action, no response by AGLIC is required. To the extent that allegations contained in Paragraph 1 of the Complaint are directed to AGLIC and infer or imply that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint, AGLIC denies the allegations. Further, insofar as the allegations contained in Paragraph 1 of the Complaint are directed to AGLIC and infer or imply any conduct of AGLIC constituting a breach of any contract of insurance, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 1 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

2. Paragraph 2 of the Complaint makes no specific factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 2 of the Complaint are directed to

AGLIC and infer or imply that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 2 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

3. Paragraph 3 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that Paragraph 3 of the Complaint sets forth a summary of the action, no response by AGLIC is required. To the extent that allegations contained in Paragraph 3 of the Complaint are directed to AGLIC and infer or imply that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 3 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

4. Paragraph 4 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 4 of the Complaint are directed to AGLIC and infer or imply that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint, AGLIC denies the allegations. Further, insofar as the allegations contained in Paragraph 4 of the Complaint are directed to AGLIC and assert any conduct of AGLIC constituting a breach of any contract of insurance, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 4 of the Complaint are directed at

parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

**PARTIES**  
**Plaintiff**

5. Paragraph 5 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and, on that basis, denies those allegations.

**The Defendants**

6. Paragraph 6 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and, on that basis, denies those allegations.

7. Paragraph 7 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and, on that basis, denies those allegations.

8. AGLIC admits the allegations contained in Paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as

to the truth of the allegations contained in Paragraph 9 of the Complaint and, on that basis, denies those allegations.

10. Paragraph 10 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and, on that basis, denies those allegations.

### **JURISDICTION & VENUE**

11. Paragraph 11 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 11 of the Complaint are directed to AGLIC and assert that AGLIC is licensed to and/or registered to conduct business in West Virginia, AGLIC admits the same. Insofar as the allegations contained in Paragraph 11 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

12. Paragraph 12 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 12 of the Complaint are directed to AGLIC and assert that this Court has jurisdiction pursuant to the West Virginia Uniform Declaratory Judgment Acts, *W. Va. Code § 55-13-1, et seq.*, AGLIC admits the same. However, by admitting that this Court has jurisdiction for purposes of Plaintiff's request for declaratory judgment, AGLIC specifically denies any allegation that infers or implies that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint.

Insofar as the allegations contained in Paragraph 12 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

13. Paragraph 13 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 13 of the Complaint are directed to AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations. Insofar as the allegations contained in Paragraph 13 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

14. Paragraph 14 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that Paragraph 14 of the Complaint sets forth a summary of the action, no response by AGLIC is required. To the extent that allegations contained in Paragraph 14 of the Complaint are directed to AGLIC and infer or imply that any policy of insurance issued by AGLIC affords insurance coverage for any claims referenced in the Complaint, AGLIC denies the allegations. Further, insofar as the allegations contained in Paragraph 14 of the Complaint are directed to AGLIC and assert any conduct of AGLIC constituting a breach of any contract of insurance, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 14 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

**FACTS**  
**The WVAG Lawsuit**

15. Paragraph 15 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and, on that basis, denies those allegations.

16. Paragraph 16 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the State of West Virginia and referenced in Paragraph 16 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 16 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the complaint filed by the State of West Virginia, AGLIC denies the allegations.

17. Paragraph 17 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the amended complaint filed by the State of West Virginia and referenced in Paragraph 17 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 17 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the amended complaint filed by the State of West Virginia, AGLIC denies the allegations.

18. Paragraph 18 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the Second Amended Complaint filed by the State of West Virginia and referenced in Paragraph 18 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 18 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the Second Amended Complaint filed by the State of West Virginia, AGLIC denies the allegations.

19. With regard to the allegations contained in Paragraph 19 of the Complaint, AGLIC would state that any written notice of the legal action filed by the State of West Virginia speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 19 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the Second Amended Complaint filed by the State of West Virginia, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 19 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

20. Paragraph 20 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the Second Amended Complaint filed by the State of West Virginia and referenced in Paragraph 20 speaks for itself and is not subject to any



self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 20 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the Second Amended Complaint filed by the State of West Virginia, AGLIC denies the allegations.

21. Paragraph 21 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the Second Amended Complaint filed by the State of West Virginia and referenced in Paragraph 21 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 21 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the Second Amended Complaint filed by the State of West Virginia, AGLIC denies the allegations.

22. Paragraph 22 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and, on that basis, denies those allegations.

23. Paragraph 23 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as

to the truth of the allegations contained in Paragraph 23 of the Complaint and, on that basis, denies those allegations.

24. With regard to the allegations contained in Paragraph 24 of the Complaint, AGLIC would state that any written "status reports" referenced therein speaks for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 24 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the Second Amended Complaint filed by the State of West Virginia, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 24 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

25. Paragraph 25 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and, on that basis, denies those allegations.

26. To the extent that allegations contained in Paragraph 26 of the Complaint are directed to AGLIC, AGLIC generally admits that Plaintiff was advised to take the actions it deemed necessary to protect its interests. Moreover, to the extent that allegations contained in Paragraph 26 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC affords insurance coverage for any claims for which a settlement was negotiated by Plaintiff, AGLIC denies the allegations. Insofar as the allegations contained

in Paragraph 14 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

27. Paragraph 27 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, with regard to the allegations contained in Paragraph 27 of the Complaint, AGLIC would state that any written Settlement Agreement and Release referenced therein speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 27 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for any claims for which a settlement was negotiated by Plaintiff, AGLIC denies the allegations.

28. Paragraph 28 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, with regard to the allegations contained in Paragraph 28 of the Complaint, AGLIC would state that any "joint press release" referenced in said Paragraph speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 28 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for any claims for which a settlement was negotiated by Plaintiff, AGLIC denies the allegations.

29. Paragraph 29 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is

deemed to be required, with regard to the allegations contained in Paragraph 29 of the Complaint, AGLIC would state that any written Settlement Agreement and Release referenced therein speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 29 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for any claims for which a settlement was negotiated by Plaintiff, AGLIC denies the allegations.

30. Paragraph 30 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, with regard to the allegations contained in Paragraph 30 of the Complaint, AGLIC would state that any written Settlement Agreement and Release referenced therein speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 30 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for any claims for which a settlement was negotiated by Plaintiff, AGLIC denies the allegations.

31. Paragraph 31 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint and, on that basis, denies those allegations.

### **The County and City Lawsuits**

32. Paragraph 32 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by McDowell County, West Virginia and referenced in Paragraph 32 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 32 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the complaint filed by McDowell County, AGLIC denies the allegations.

33. Paragraph 33 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the City of Huntington, West Virginia and referenced in Paragraph 33 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 33 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the complaint filed by the City of Huntington, AGLIC denies the allegations.

34. Paragraph 34 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the Town of Kermit, West Virginia and referenced in Paragraph 34 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 34 of the Complaint can be construed as inferring or implying that any policy of

insurance issued by AGLIC afforded insurance coverage for the claims referenced in the complaint filed by the Town of Kermit, AGLIC denies the allegations.

35. Paragraph 35 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the City of Welch, West Virginia and referenced in Paragraph 35 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 35 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the complaint filed by the City of Welch, AGLIC denies the allegations.

36. Paragraph 36 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint and, on that basis, denies those allegations.

37. The allegations contained in Paragraph 37 of the Complaint contain no factual assertions and, instead, contain only a summary statement of documents referenced in the Plaintiff's Complaint and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the "WVAG Lawsuit and the County and City Lawsuits" referenced in Paragraph 37 speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 37 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the

claims referenced in the "WVAG Lawsuit and the County and City Lawsuits" referenced in Paragraph 37, AGLIC denies the allegations.

38. With regard to the allegations contained in Paragraph 38 of the Complaint, AGLIC would state that any written notice(s) speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 38 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the "County and City Lawsuits", AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 38 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

39. Paragraph 39 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaints filed in the "County and City Lawsuits" and referenced in Paragraph 39 speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 39 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims referenced in the "County and City Lawsuits", AGLIC denies the allegations.

40. Paragraph 40 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaints filed by McDowell County and the Town of Kermit and referenced in Paragraph 40 speak for themselves and are not subject to

any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 40 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims of McDowell County and the Town of Kermit, AGLIC denies the allegations.

41. Paragraph 41 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the City of Huntington and referenced in Paragraph 41 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 41 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims of the City of Huntington, AGLIC denies the allegations.

42. Paragraph 42 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC would state that the complaint filed by the City of Welch and referenced in Paragraph 42 speaks for itself and is not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, insofar as the allegations contained in Paragraph 42 of the Complaint can be construed as inferring or implying that any policy of insurance issued by AGLIC afforded insurance coverage for the claims of the City of Welch, AGLIC denies the allegations.

43. Paragraph 43 of the Complaint makes no factual assertions against AGLIC and, therefore, no response by AGLIC is required. To the extent that a response by AGLIC is deemed to be required, AGLIC is without knowledge or information sufficient to form a belief as



to the truth of the allegations contained in Paragraph 43 of the Complaint and, on that basis, denies those allegations.

**ABDC's Insurance Coverage and the Defendants' Failure to Provide Coverage**

44. With regard to the allegations contained in Paragraph 44 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. AGLIC admits that Plaintiff paid a premium for the policy of insurance issued by AGLIC. However, insofar as the allegations contained in Paragraph 44 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 44 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

45. With regard to the allegations contained in Paragraph 45 of the Complaint, AGLIC admits that a tender was received from the Plaintiff in regard to the WVAG Lawsuit and/or the County and City Lawsuits. AGLIC would further state, however, that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 45 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 45 of the Complaint are

directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

46. AGLIC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint and, on that basis, denies those allegations. Insofar as the allegations contained in Paragraph 46 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations.

47. With regard to the allegations contained in Paragraph 47 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 47 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 47 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

48. With regard to the allegations contained in Paragraph 48 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 48 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance

issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 48 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

49. With regard to the allegations contained in Paragraph 49 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 49 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 49 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

50. With regard to the allegations contained in Paragraph 50 of the Complaint, AGLIC would state that the "Prescription Opioid Lawsuits" speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 50 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and

City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 50 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

51. With regard to the allegations contained in Paragraph 51 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 51 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 51 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

52. With regard to the allegations contained in Paragraph 52 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Further, the allegations contained in Paragraph 52 contain a summary statement or conclusion to which no response by AGLIC is required. To the extent that a response is deemed to be required, insofar as the allegations contained in Paragraph 52 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the

allegations contained in Paragraph 52 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

53. With regard to the allegations contained in Paragraph 53 of the Complaint, AGLIC would state that the "Prescription Opioid Lawsuits" speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 53 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 53 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

54. With regard to the allegations contained in Paragraph 54 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 54 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 54 of the Complaint are directed at parties other than AGLIC,

AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

55. With regard to the allegations contained in Paragraph 55 of the Complaint, AGLIC would state that the Prescription Opioid Lawsuits speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 55 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 55 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

56. With regard to the allegations contained in Paragraph 56 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 56 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 56 of the Complaint are directed at parties other than AGLIC,

AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

57. With regard to the allegations contained in Paragraph 56 of the Complaint, AGLIC would state that the complaints filed by McDowell County, the Town of Kermit and the City of Welch all speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 57 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 57 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

58. With regard to the allegations contained in Paragraph 58 of the Complaint, AGLIC would state that the "Prescription Opioid Lawsuits" speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 58 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph

58 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

59. With regard to the allegations contained in Paragraph 59 of the Complaint, AGLIC would state that the "Prescription Opioid Lawsuits" speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Moreover, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 59 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 59 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

60. With regard to the allegations contained in Paragraph 60 of the Complaint, AGLIC would state the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 60 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 60 of the Complaint are directed at parties other than AGLIC,



AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

**COUNT I**  
**Declaratory Judgment**

61. With regard to the realleged paragraphs contained in Paragraph 61 of the Complaint, AGLIC incorporates herein by reference all paragraphs of this Answer, including all denials, as if the same were set forth herein verbatim.

62. With regard to the allegations contained in Paragraph 62 of the Complaint, AGLIC would state the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 62 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 62 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations. AGLIC denies all remaining allegations contained within Paragraph 62 of the Complaint.

63. With regard to the allegations contained in Paragraph 63 of the Complaint, AGLIC would state the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 63 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG

Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 63 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations. AGLIC denies all remaining allegations contained within Paragraph 63 of the Complaint.

64. With regard to the allegations contained in Paragraph 64 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. AGLIC admits that Plaintiff paid a premium for the policy of insurance issued by AGLIC. However, insofar as the allegations contained in Paragraph 64 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 64 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

65. With regard to the allegations contained in Paragraph 65 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 65 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the

allegations contained in Paragraph 65 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

66. Paragraph 66 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that Paragraph 66 of the Complaint sets forth a summary of the action, no response by AGLIC is required. To the extent that allegations contained in Paragraph 66 of the Complaint are directed to AGLIC and require a response, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 66 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 66 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

67. AGLIC denies that the Plaintiff is entitled to any of the relief sought from it in the WHEREFORE clause of Count I of the Complaint. Insofar as the WHEREFORE clause of Count I of the Complaint seeks a declaration against parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

**COUNT II**  
**Breach of Contract**

68. With regard to the realleged paragraphs contained in Paragraph 67 of the Complaint, AGLIC incorporates herein by reference all paragraphs of this Answer, including all denials, as if the same were set forth herein verbatim.

69. With regard to the allegations contained in Paragraph 68 of the Complaint, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 68 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the allegations contained in Paragraph 68 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

70. Paragraph 69 of the Complaint makes no factual assertions against AGLIC and, instead, contains only conclusions of law to which no response by AGLIC is required. To the extent that allegations contained in Paragraph 69 of the Complaint are directed to AGLIC and require a response, AGLIC would state that the terms and conditions of any applicable policy of insurance issued by AGLIC speak for themselves and are not subject to any self-serving legal or factual interpretations by the Plaintiff. Insofar as the allegations contained in Paragraph 69 of the Complaint can be construed as inferring, implying or asserting that any policy of insurance issued by AGLIC afforded insurance coverage for any claims referenced in either the WVAG Lawsuit or the County and City Lawsuits, AGLIC denies the allegations. Insofar as the

allegations contained in Paragraph 69 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

71. AGLIC affirmatively denies the allegations contained in Paragraph 70 of the Complaint and, therefore, demands strict proof thereof. Insofar as the allegations contained in Paragraph 70 of the Complaint are directed at parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

72. AGLIC denies that the Plaintiff is entitled to any of the relief sought from it in the WHEREFORE clause of Count II of the Complaint, including subparts (a) through (f). Insofar as the WHEREFORE clause of Count II of the Complaint seeks recovery against parties other than AGLIC, AGLIC is without knowledge or information sufficient to form a belief as to the truth of the said allegations and, on that basis, denies those allegations.

73. AGLIC denies all allegations in the Complaint not herein expressly admitted to be true.

74. AGLIC denies that the Plaintiff is entitled to the relief requested within the WHEREFORE clauses contained within the Complaint.

### **Second Defense**

The Complaint, or some of the allegations therein, fails to state a cause of action against AGLIC upon which relief can be granted.

### **Third Defense**

The damages of which the Plaintiff complains were not the proximate result of any act of omission or commission on the part of AGLIC.

#### **Fourth Defense**

AGLIC has, at all times, acted within its legal rights in the conduct of all of its activities and with just cause.

#### **Fifth Defense**

Insofar as Count II of the Complaint asserts a claim against AGLIC for breach of contract, it is affirmatively asserted that AGLIC did not breach and has not breached any contract of insurance between it and the Plaintiff.

#### **Sixth Defense**

AGLIC affirmatively states the defense of statute of limitations to the extent the same may be deemed to be applicable.

#### **Seventh Defense**

Coverage under any AGLIC policy of insurance is not available to the extent the claims described in the Prescription Opioid Lawsuits do not meet the terms of any insuring agreement set forth in any applicable policy of insurance.

#### **Eighth Defense**

Coverage is not available under any AGLIC policy of insurance for the claims described in the Prescription Opioid Lawsuits to the extent all conditions precedent and subsequent to the triggering of coverage under any AGLIC policy of insurance have not been fulfilled.

#### **Ninth Defense**

Coverage is not available under any AGLIC policy of insurance for the claims described in the Prescription Opioid Lawsuits as the same does not meet the policy definition of an occurrence.

#### **Tenth Defense**

Coverage is not available under any AGLIC policy of insurance for the claims described in the Prescription Opioid Lawsuits as the same does not meet the policy definition of a bodily injury.

#### **Eleventh Defense**

Coverage is not available under any AGLIC policy of insurance for the claims described in the Prescription Opioid Lawsuits as the same does not meet the policy definition of property damage.

#### **Twelfth Defense**

Coverage is not available under any AGLIC policy of insurance for the claims described in the Prescription Opioid Lawsuits if the Plaintiff has failed to exhaust the underlying insurance as described in any AGLIC policy of insurance.

#### **Thirteenth Defense**

Coverage under any AGLIC policy of insurance may be barred, in whole or in part, to the extent that the Plaintiff is entitled to coverage for the claims described in the Prescription Opioid Lawsuits under any other valid policy(ies) of insurance.

#### **Fourteenth Defense**

Not being fully advised as to the facts and circumstances surrounding the Plaintiff's Complaint, AGLIC reserves the right to assert that the Plaintiff has failed to join parties necessary to the adjudication of this action, including but not limited to other insurers that may be required to respond.

**Fifteenth Defense**

AGLIC breached no duty at law owed to the Plaintiff.

**Sixteenth Defense**

Not being fully advised as to all the facts and circumstances surrounding the allegations in the Complaint, AGLIC hereby invokes and asserts all affirmative defenses which may prove applicable herein, so as not to waive them, including, but not necessarily limited to, those lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, accord and satisfaction, arbitration and award, duress, estoppel, failure of consideration, fraud, laches, release, res judicata, statute of frauds, and collateral estoppel and further reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case.

**Seventeenth Defense**

AGLIC specifically asserts all common law, statutory and Constitutional immunities afforded under State and Federal law.

**Eighteenth Defense**

AGLIC reserves the right to file additional cross-claims, counterclaims, or third-party Complaints if the evidence warrants the filing of these claims.

**Nineteenth Defense**

Some or all of the Plaintiff's claims and/or assertions against AGLIC may be barred in whole or in part by the doctrines of waiver or estoppel.



### **Twentieth Defense**

At no time did AGLIC, or any of its representatives, breach any duty or obligation owed to the Plaintiff or otherwise violate any applicable statute, guideline, regulation, rule or law in its dealings with the Plaintiff.

### **Twenty-First Defense**

The Complaint does not set forth sufficient facts to allow AGLIC to determine all potential affirmative defenses, including defenses based upon the terms, conditions or exclusions of any AGLIC policy of insurance. Accordingly, AGLIC reserves its right to assert additional defenses when such information is ascertained through discovery and further investigation.

### **JURY DEMAND**

AGLIC respectfully demands a trial by Jury on all issues so triable.

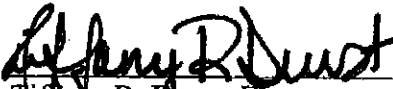
WHEREFORE, Defendant, American Guarantee & Liability Insurance Company, respectfully requests judgment as follows:

- (1) for a dismissal of the Complaint against AGLIC;
- (2) for a declaration that AGLIC owes no obligations to the Plaintiff under any AGLIC policy of insurance;
- (3) for a denial of any relief sought by the Plaintiff;
- (4) for an award of any applicable costs and/or attorneys' fees as may be appropriate, and;
- (5) for such other relief as the Court may deem just and proper.

Dated this 21<sup>st</sup> day of April, 2017.

**DEFENDANT, AMERICAN GUARANTEE &  
LIABILITY INSURANCE COMPANY,**

**By Counsel:**

A handwritten signature in black ink, appearing to read "Tiffany R. Hurst", is written over a horizontal line.

Tiffany R. Hurst, Esq. State Bar No. 7441

Pullen, Fowler, Flanagan, Brown & Poe, PLLC

2414 Cranberry Square

Morgantown, West Virginia 26508

Telephone: (304) 225-2200

Facsimile: (304) 225-2214

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

AMERISOURCEBERGEN DRUG  
CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 17-C-36

Honorable William S. Thompson

ACE AMERICAN INSURANCE  
COMPANY, ACE PROPERTY AND  
CASUALTY INSURANCE COMPANY,  
AMERICAN GUARANTEE & LIABILITY  
INSURANCE COMPANY, ENDURANCE  
AMERICAN INSURANCE COMPANY,  
and ST. PAUL FIRE & MARINE  
INSURANCE COMPANY,

Defendants.

**CERTIFICATE OF SERVICE**

The undersigned, counsel of record for Defendants, does hereby certify on this 21st day of April, 2017, that a true copy of the foregoing "ANSWER OF DEFENDANT, AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, TO COMPLAINT FOR (1) DECLARATORY JUDGMENT AND (2) BREACH OF CONTRACT OF PLAINTIFF, AMERISOURCEBERGEN DRUG CORPORATION" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles S. Piccirillo, Esquire  
Shaffer & Shaffer PLLC  
330 State Street  
P.O. Box 38  
Madison, WV 25130

Matthew Perry, Esquire  
Lamp, Bartram, Levy, Trautwein & Perry, PLLC  
P.O. Box 2488  
Huntington, WV 25725



Tiffany R. Kurst, WV State Bar No. 7441

**PULLIN, FOWLER, FLANAGAN, BROWN & POE PLLC**  
2414 Cranberry Square  
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Facsimile: (304) 225-2214

**IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA**

<b>PLAINTIFFS:</b> Amerisourcebergen Drug Corporation	<b>CASE NUMBER:</b> 17-C-36
<b>DEFENDANTS:</b> Ace American Insurance Company Ace Property & Casualty Insurance Company; American Guarantee & Liability Insurance Company; Endurance American Insurance Company; and St. Paul Fire & Marine Insurance Company	

<b>TORTS</b>	<b>OTHER CIVIL</b>	<b>OTHER CIVIL</b>
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

**JURY DEMAND:** Yes

**CASE WILL BE READY FOR TRIAL BY (Month / Year):** April 2018

**DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? IF YES, PLEASE SPECIFY:**

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other

**Attorney:** Tiffany R. Durst  
**Firm:** Pullin, Fowler, Flanagan, Brown & Poe, PLLC  
**Address:** 2414 Cranberry Square  
Morgantown, WV 26508

**Telephone:** 304-225-2200

**Representing:** American Guarantee & Liability Insurance Company

**Date:** April 21, 2017

**Signature:**

