

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**AMERISOURCEBERGEN DRUG
CORPORATION,**

Plaintiff,

v.

**CIVIL ACTION NO. 17-C-36
JUDGE 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 TO COMPLAINT FOR (1) DECLARATORY JUDGMENT
AND (2) BREACH OF CONTRACT**

Defendant St. Paul Fire and Marine Insurance Company ("St. Paul") hereby submits this answer to the complaint (the "Complaint") filed by plaintiff AmerisourceBergen Drug Corporation ("ABDC"), as follows:

THE NATURE OF THE ACTION

1. Paragraph 1 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.
2. Paragraph 2 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.
3. Paragraph 3 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

4. Paragraph 4 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

PARTIES

Plaintiff

5. St. Paul does not dispute that ABDC distributes prescription medication, over-the-counter pharmaceutical products and other products to various places in the United States, including West Virginia. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 5 of the Complaint.

The Defendants

6. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 6 of the Complaint.

7. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 7 of the Complaint.

8. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 8 of the Complaint.

9. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 9 of the Complaint.

10. St. Paul admits the allegations set forth in Paragraph 10 of the Complaint.

JURISDICTION & VENUE

11. Paragraph 11 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. Further answering, St. Paul admits that it is licensed and/or registered to conduct business in West Virginia, and denies that the Court has personal jurisdiction over St. Paul. St. Paul is without knowledge or information sufficient to

form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. Further answering, St. Paul denies that the Court has personal jurisdiction over St. Paul.

13. Paragraph 13 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. Further answering, St. Paul denies that venue is appropriate in this Court, and denies that a substantial portion of the events giving rising to the Complaint occurred in Boone County.

14. Paragraph 14 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. To the extent Paragraph 14 is deemed to contain factual allegations relating to St. Paul, St. Paul denies those allegations. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 14 of the Complaint.

FACTS

The WVAG Lawsuit

15. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 15 of the Complaint.

16. St. Paul admits that the State of West Virginia filed a complaint in the WVAG Lawsuit¹ on or around June 26, 2012, which complaint speaks for itself.

17. St. Paul admits that the State of West Virginia filed an amended complaint in the WVAG Lawsuit on or around January 2, 2014, which amended complaint speaks for itself.

¹ Capitalized terms not otherwise defined herein are given the meaning set forth in the Complaint.

18. St. Paul admits that the State of West Virginia filed under seal a second amended complaint in the WVAG Lawsuit on or around January 13, 2015. St. Paul has never been provided with an unredacted copy of the Second Amended Complaint, and therefore is without knowledge or information as to the complete content of that document, including the substance of any redacted information and the basis for any such redactions.

19. St. Paul admits that Marsh, purportedly on behalf of ABD and ABDC, provided written notice to St. Paul of the WVAG Lawsuit for the first time on or about July 27, 2016, which written notice speaks for itself. St. Paul denies that any policy issued by St. Paul provides coverage to ABDC for the WVAG Lawsuit. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 19 of the Complaint.

20. St. Paul admits that Exhibit B to the Complaint is a redacted copy of the Second Amended Complaint, which document speaks for itself.

21. St. Paul admits that Exhibit B to the Complaint is a redacted copy of the Second Amended Complaint, which document speaks for itself.

22. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. To the extent Paragraph 23 of the Complaint contains any factual allegations, St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of any such allegations.

24. St. Paul admits that ABDC provided St. Paul with certain updates concerning the settlement and mediation of the WVAG Lawsuit, which updates speak for themselves. St. Paul

denies that it owes a coverage obligation to ABDC in connection with the WVAG Lawsuit, and therefore denies that it did not acknowledge any such obligation. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 24 of the Complaint.

25. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 25 of the Complaint.

26. St. Paul admits the allegations of Paragraph 26 of the Complaint to the extent they apply to St. Paul. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 26 of the Complaint.

27. St. Paul has been provided with a copy of what purports to be a settlement agreement between ABDC and the Plaintiffs in the WVAG Lawsuit effective January 9, 2017, which document speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 27 of the Complaint.

28. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 28 of the Complaint.

29. St. Paul has been provided with a copy of what purports to be a settlement agreement between ABDC and the Plaintiffs in the WVAG Lawsuit effective January 9, 2017, which document speaks for itself.

30. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 30 of the Complaint beyond the stated terms of the purported settlement agreement between ABDC and the Plaintiffs in the WVAG Lawsuit effective January 9, 2017, which document speaks for itself.

31. Paragraph 31 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. Further answering, St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 31 of the Complaint.

The County and City Lawsuits

32. St. Paul admits that McDowell County, West Virginia filed a complaint against ABDC and others on or around December 23, 2016, which complaint speaks for itself.

33. St. Paul admits that the City of Huntington, West Virginia filed a complaint against ABDC and others on or around January 19, 2017, which complaint speaks for itself.

34. St. Paul admits that the Town of Kermit, West Virginia filed a complaint against ABDC and others on or around January 31, 2017, which complaint speaks for itself.

35. St. Paul admits that the City of Welch, West Virginia filed a complaint against ABDC and others on or around February 13, 2017, which complaint speaks for itself.

36. ABDC's reservation of the purported right to include additional lawsuits in this action states a legal conclusion or other non-factual allegation as to which no response is required. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 36 of the Complaint.

37. Paragraph 37 states a legal conclusion or other non-factual allegation as to which no response is required.

38. St. Paul admits that ABDC has notified St. Paul of the County and City Lawsuits, which notices speak for themselves. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 38 of the Complaint.

39. St. Paul states that the complaints in the County and City Lawsuits speak for themselves.

40. St. Paul states that the complaints in the McDowell County and Town of Kermit lawsuits speak for themselves.

41. St. Paul states that the complaint in the City of Huntington lawsuit speaks for itself.

42. St. Paul states that the complaint in the City of Welch lawsuit speaks for itself.

43. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 43 of the Complaint.

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

44. St. Paul admits that ABC paid premium to St. Paul for Policy No. TE06100918 (the "St. Paul Policy"), which policy speaks for itself.² St. Paul denies that ABC complied with all applicable conditions precedent under the St. Paul Policy. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 44 of the Complaint.

45. St. Paul admits that, at various times, it received notice of the Prescription Opioid Lawsuits from or on behalf of ABDC under the St. Paul Policy. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 45 of the Complaint.

46. St. Paul denies the allegations set forth in Paragraph 46 of the Complaint.

47. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul denies that the St. Paul Policy contains a duty to defend. St. Paul is without

² Plaintiff identifies only a single St. Paul policy, No. TE06100918, in its Complaint. Accordingly, in this Answer, St. Paul will address only that policy.

knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 47 of the Complaint.

48. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 48 of the Complaint.

49. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 49 of the Complaint.

50. The complaints in the Prescription Opioid Lawsuits and the St. Paul Policy speak for themselves. Paragraph 50 otherwise states a legal conclusion or other non-factual allegation as to which no response is required.

51. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

53. The complaints in the Prescription Opioid Lawsuits speak for themselves. Paragraph 53 otherwise states a legal conclusion or other non-factual allegation as to which no response is required.

54. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 54 of the Complaint.

55. The complaints in the Prescription Opioid Lawsuits speak for themselves. Paragraph 55 otherwise states a legal conclusion or other non-factual allegation as to which no response is required.

56. St. Paul admits that it issued the St. Paul Policy to ABC, which policy speaks for itself. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 56 of the Complaint.

57. The complaints in the McDowell County, Town of Kermit and City of Welch lawsuits speak for themselves. Paragraph 57 otherwise states a legal conclusion or other non-factual allegation as to which no response is required.

58. St. Paul denies the allegations of Paragraph 58 of the Complaint as they relate to St. Paul, except that St. Paul admits that it disputes its coverage obligations to ABDC in connection with the Prescription Opioid Lawsuits under the St. Paul Policy and has not, therefore, reimbursed ABDC for amounts allegedly expended by ABDC in connection with the Prescription Opioid Lawsuits. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 58 of the Complaint.

59. St. Paul admits that St. Paul disputes its coverage obligations to ABDC in connection with the Prescription Opioid Lawsuits. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 59 of the Complaint.

60. St. Paul denies the allegations of Paragraph 60 of the Complaint to the extent they relate to St. Paul. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 60 of the Complaint.

COUNTI
Declaratory Judgment

61. St. Paul repeats and incorporates by reference its responses to the allegations set forth in Paragraph 1-60 of the Complaint.

62. St. Paul admits that St. Paul disputes its coverage obligations to ABDC in connection with the Prescription Opioid Lawsuits under the St. Paul Policy. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 62 of the Complaint.

63. St. Paul admits that St. Paul disputes its coverage obligations to ABDC in connection with the Prescription Opioid Lawsuits under the St. Paul Policy. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 63 of the Complaint.

64. St. Paul admits that ABC paid premium to St. Paul for the St. Paul Policy. St. Paul denies that ABC complied with all applicable conditions precedent under the St. Paul Policy, which policy speaks for itself. The remaining allegations of Paragraph 64 of the Complaint, to the extent they relate to St. Paul, state a legal conclusion or other non-factual allegation as to which no response is required. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

66. Paragraph 66 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required. The prayer for relief immediately following

Paragraph 66 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

COUNTII
Breach of Contract

67. St. Paul repeats and incorporates by reference its responses to the allegations set forth in Paragraphs 1-66 of the Complaint.

68. St. Paul denies the allegations of Paragraph 68 of the Complaint to the extent they relate to St. Paul. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 68 of the Complaint.

69. St. Paul denies the allegations of Paragraph 69 of the Complaint to the extent they relate to St. Paul. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 69 of the Complaint.

70. St. Paul denies the allegations of Paragraph 70 of the Complaint to the extent they relate to St. Paul. St. Paul is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 70 of the Complaint. The prayer for relief immediately following Paragraph 70 of the Complaint states a legal conclusion or other non-factual allegation as to which no response is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Express Terms, Exclusions, Conditions, Definitions,
Declarations, Endorsements and/or Limitations)

ABDC's causes of action against St. Paul may be barred, in whole or in part, by the express terms, exclusions, conditions, definitions, declarations, endorsements, and/or limitations contained in the St. Paul Policy.

SECOND AFFIRMATIVE DEFENSE

(No Duty to Defend)

ABDC's causes of action against St. Paul are barred, in whole or in part, to the extent they seek a defense from St. Paul, because the St. Paul Policy does not include a duty to defend.

THIRD AFFIRMATIVE DEFENSE

(No Event)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent the Prescription Opioid Lawsuits do not allege or constitute an "event" under the St. Paul Policy.

FOURTH AFFIRMATIVE DEFENSE

(No Coverage Outside Covered Period)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent any "bodily injury" or "property damage," if any, took place wholly or partially outside the covered period of the St. Paul Policy.

FIFTH AFFIRMATIVE DEFENSE

(No Coverage for Intentional, Willful or Deliberate Acts or Conduct)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent the Prescription Opioid Lawsuits, or the alleged costs, injuries or damages in the Prescription Opioid Lawsuits, were caused by the intentional, willful or deliberate acts or conduct of ABDC.

SIXTH AFFIRMATIVE DEFENSE

(Expected or Intended Injury or Damages)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that the injuries caused and/or damages sought in the Prescription Opioid Lawsuits were expected or intended by the insured(s).

SEVENTH AFFIRMATIVE DEFENSE

(Loss-in-Progress/Known Loss/Known Risk Doctrines)

ABDC's causes of action against St. Paul may be barred, in whole or in part, by the loss-in-progress, known loss, and/or known risk doctrines.

EIGHTH AFFIRMATIVE DEFENSE
(No Coverage for Fines or Penalties)

To the extent that the alleged acts or failures to act that gave rise to the Prescription Opioid Lawsuits violate any law, governmental regulation or public policy, or to the extent that ABDC seeks indemnity for fines, penalties or punitive damages that have been or may be assessed against it, ABDC is not entitled to coverage under the St. Paul Policy.

NINTH AFFIRMATIVE DEFENSE
(Late Notice)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that ABDC failed to timely notify St. Paul of "events," or the Prescription Opioid Lawsuits.

TENTH AFFIRMATIVE DEFENSE
(Voluntary Payments)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that ABDC has voluntarily assumed any liability or obligation, made any payment or incurred any expense without the consent of St. Paul.

ELEVENTH AFFIRMATIVE DEFENSE
(No Stacking)

Any liability for which St. Paul may have to indemnify ABDC must be allocated among all insurance policies triggered by the Prescription Opioid Lawsuits on the basis that only one policy period's limit per occurrence is available.

TWELFTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

ABDC's causes of action against St. Paul may be barred, in whole or in part, by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE
(Waiver)

ABDC's cause of action against St. Paul may be barred, in whole or in part, by the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE
(Estoppel)

ABDC's causes of action against St. Paul may be barred, in whole or in part, by the doctrine of estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE
(Contribution)

To the extent that the sums allegedly incurred by ABDC are covered by the St. Paul Policy, other insurers may be obligated to pay the sums, reimburse St. Paul for its payments or contribute to St. Paul's payments.

SIXTEENTH AFFIRMATIVE DEFENSE
(Allocation)

To the extent that sums allegedly incurred by ABDC are covered by the St. Paul Policy, such sums must be allocated to any and all periods of other insurance and self-insurance, including policy periods with deductibles or self-insured retentions, as well as to periods where no insurance was issued or where the relevant insurers are insolvent.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Deductibles/Self-Insured Retention Limits)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that ABDC has not satisfied all applicable deductibles and/or self-insured retention limits.

EIGHTEENTH AFFIRMATIVE DEFENSE
(No Impairment of Rights)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that ABDC has impaired or prejudiced St. Paul's rights to subrogation, indemnity, contribution and/or settlement.

NINETEENTH AFFIRMATIVE DEFENSE
(Other Insurance)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent that insurance coverage other than the coverage allegedly provided under the St. Paul Policy is available to ABDC for the Prescription Opioid Lawsuits.

TWENTIETH AFFIRMATIVE DEFENSE
(Unclean Hands)

ABDC's causes of action against St. Paul may be barred, in whole or in part, by the equitable doctrine of unclean hands.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Failure to Perform Policy Obligations)

ABDC's cause of action against St. Paul may be barred, in whole or in part, to the extent that ABDC has failed to perform all of its obligations under the St. Paul Policy.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(No "Bodily Injury" or "Property Damage")

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent the Prescription Opioid Lawsuits do not allege "bodily injury" or "property damage" within the meaning of the St. Paul Policy.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(No “Personal Injury” or “Advertising Injury”)

ABDC’s causes of action against St. Paul may be barred, in whole or in part, to the extent the Prescription Opioid Lawsuits do not allege “personal injury” or “advertising injury” within the meaning of the St. Paul Policy.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(No “Damages”)

ABDC’s causes of action against St. Paul may be barred, in whole or in part, to the extent the Prescription Opioid Lawsuits do not seek amounts that ABDC is “legally required to pay as damages” “for” “bodily injury” or “property damage” within the meaning of the St. Paul Policy.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Professional Health Care Services Exclusions)

ABDC’s causes of action against St. Paul may be barred, in whole or in part, by the Professional Health Care Services Exclusion in the St. Paul Policy.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(No Coverage for Non-Covered Entities)

ABDC’s causes of action against St. Paul may be barred, in whole or in part, to the extent that they are being asserted by entities that are not insureds under the St. Paul Policy, or were not insureds under the St. Paul Policy for some or all of the relevant period.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

ABDC’s Complaint fails to state a claim against St. Paul upon which relief can be granted.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Pre-Tender Fees)

ABDC’s causes of action against St. Paul may be barred, in whole or in part, to the extent ABDC seeks to recover pre-tender fees, costs, expenditures or obligations.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(Non-Cooperation)

ABDC's causes of action against St. Paul may be barred, in whole or in part, to the extent ABDC has not cooperated with St. Paul in its investigation, settlement or defense of any purported "claim," "suit," or "event."

THIRTIETH AFFIRMATIVE DEFENSE
(Jurisdiction)

ABDC's causes of action against St. Paul may be barred, in whole or in part, if the Court does not have personal jurisdiction over St. Paul. St. Paul reserves the right to challenge personal jurisdiction at an appropriate time.

THIRTY-FIRST AFFIRMATIVE DEFENSE
(Right to Amend)

To the extent that the Complaint does not describe the events or claims alleged in it with sufficient particularity to enable St. Paul to determine what defenses may exist to such events or claims, St. Paul reserves the right to amend this answer, to assert additional affirmative and other defenses, and to supplement, alter or change this answer and these defenses upon discovery and investigation in this matter.

WHEREFORE, St. Paul respectfully requests:

- a. dismissal of or judgment on the Complaint against St. Paul;
- b. a declaration that St. Paul has no obligation to defend or indemnify ABDC in connection with the Prescription Opioid Lawsuits;
- c. denial of any relief sought by ABDC; and
- d. that the Court grant such other and further relief as it deems just and proper.

Respectfully Submitted,

**ST. PAUL FIRE & MARINE INSURANCE
COMPANY,**

By Counsel,



Lee Murray Hall, Esquire (WVSB #6447)
JENKINS FENSTERMAKER, PLLC
P.O. Box 2688
Huntington, WV 25726-2688
Telephone: (304) 523-2100
Fax: (304) 523-2347
E-mail: lmh@JenkinsFenstermaker.com

Robert A. Kole (BBO#: 633269)
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000
Fax: (617) 248-4000
E-mail: rkole@choate.com

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

AMERISOURCEBERGEN DRUG
CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 17-C-36
JUDGE 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

I, Lee Murray Hall, Counsel for St. Paul Fire & Marine Insurance Company, do hereby certify that on this 26th day of May, 2017, I served the foregoing "*Answer to Complaint for (1) Declaratory Judgment and (2) Breach of Contract*" via U.S. Mail, postage prepaid to the following counsel of record:

Paul R. Koepff, Esq.
Clyde & Co US LLP
405 Lexington Avenue
New York, NY 10174
*Counsel for Defendant, ACE American Insurance Co.
and ACE Property and Casualty Insurance Co.*

Richard Mason, Esq.
Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103
*Counsel for Defendant, ACE American Insurance Co.
and ACE Property and Casualty Insurance Co.*

Matthew J. Perry, Esq.
Lamp, Bartram, Levy, Trautwein & Perry, PLLC
720 4th Avenue
Huntington, WV 25701
Telephone: (304) 523-5400
Fax: (304) 523-5409
*Counsel for Defendant, ACE American Insurance
Co. and ACE Property and Casualty Insurance Co.*

Tiffany R. Durst, Esq.
Pullin, Fowler, Flanagan, Brown & Poe, PLLC
2414 Cranberry Square
Morgantown, WV 26508
Telephone: (304) 225-2200
Fax: (304) 225-2214
*Counsel for American Guarantee & Liability
Insurance Co.*


Hema Mehta, Esq.
Fineman Krekstein & Harris PC
1801 Market Street, Suite 1100
Philadelphia, PA 19103
Counsel for Endurance American Insurance Co.

Charles s. Piccirillo, Esq.
SHAFFER & SHAFFER PLLC
330 State Street
P.O. Box 38
Madison, WV 25130
Telephone: (304) 369-0511

Caitlin R. Garber, Esq.
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Telephone: (215) 851-8217

Edward P. Tiffey, Esq.
Tiffey Law Practice, PLLC
205 Capitol Street, 4th Floor
Charleston, West Virginia 25337
Telephone: (304) 344-3200
Fax: (304) 344-9919
Counsel for Endurance American Insurance Co.

Courtney C.T. Horrigan, Esq.
Kateri T. Persinger, Esq.
REED SMITH LLP
225 Fifth Ave.
Pittsburgh, PA 15222
Telephone: (412) 288-4226



Lee Murray Hall, Esq. (WVSB #6447)

JENKINS FENSTERMAKER, PLLC
P.O. Box 2688
Huntington, WV 25726-2688

EXHIBIT B

OPIOID LAWSUITS INVOLVED IN COVERAGE ACTION	
1.	State of West Virginia v. AmerisourceBergen Drug Corp., et al., Civil Action No. 12-C-141 (Circuit Court of Boone County, West Virginia)
2.	McDowell County v. McKesson Corp., et al., Civil Action No. 16-C-137-M (Circuit Court of McDowell County, West Virginia)
3.	The City of Huntington v. AmerisourceBergen Drug Corp., et al., Civil Action No. 17-C-38 (Circuit Court of Cabell County, West Virginia)
4.	Mayor Reba Honaker, on behalf of The City of Welch v. McKesson Corp., et al., Civil Action No. 17-C-18-M (Circuit Court of McDowell County, West Virginia)
5.	Mayor Charles Sparks, on behalf of The Town of Kermit v. McKesson Corp., et al., Civil Action No. 17-C-13 (Circuit Court of Mingo County, West Virginia)

EXHIBIT C

ADDITIONAL UNDERLYING OPIOID LAWSUITS	
1.	<u>Kanawha County Commission v. Rite Aid of Maryland, Inc.</u> , Civil Action No. 2:17-cv-01666 (S.D.W. Va.)
2.	<u>Cabell County Commission v. AmerisourceBergen Drug Corp., et al.</u> , Civil Action No. 3:17-cv-01665 (S.D.W. Va.)
3.	<u>Fayette County Commission v. Cardinal Health, Inc., et al.</u> , Civil Action No. 2:17-cv-01957 (S.D.W. Va.)
4.	<u>Wayne County Commission v. Rite Aid of Maryland, Inc.</u> , Civil Action No. 3:17-cv-01962 (S.D.W. Va.)
5.	<u>Boone County Commission v. AmerisourceBergen Drug Corp., et al.</u> , Civil Action No. 2:17-cv-02028 (S.D.W. Va.)
6.	<u>The Cherokee Nation v. McKesson, et al.</u> , Civil Action No. CV-2017-203 (Cherokee D. Ct.)
7.	<u>Logan County Commission v. Cardinal Health, Inc., et al.</u> , Civil Action No. 2:17-cv-02296 (S.D.W. Va.)
8.	<u>Wyoming County Commission v. AmerisourceBergen Drug Corp., et al.</u> , Civil Action No. 5:17-cv-02311 (S.D.W. Va.)

EXHIBIT D

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

NOTED CIVIL DOCKET

APR 24 2013

JULIE BALL
CLERK CIRCUIT COURT
MERCER COUNTY, WV

**ERIE INSURANCE PROPERTY
AND CASUALTY COMPANY**
Plaintiff,

v.

CIVIL ACTION NO 12-C-687

**ALEX LAMBERT, LAMBERTS
CONSTRUCTION COMPANY,
And CROWN POINT PROPERTIES, LLC,**
Defendants.

FINDINGS OF FACT AND RECOMMENDATION

Plaintiff in the above-styled matter has filed a motion with the Circuit Court of Mercer County to refer the case to the Business Court Division. Defendant Crown Point Properties ("Crown Point") objects to referral on the grounds that an individual is a named defendant in the dispute. By Administrative Order of April 3, 2013, Chief Justice Brent D. Benjamin of the West Virginia Supreme Court of Appeals directed that a hearing be held on the matter of whether the case should be referred to the Business Court Division. The Business Court Division or a designated member thereof was directed to conduct a hearing, in order to receive evidence and entertain arguments by the parties or any judge, and to submit findings of fact and a recommendation to the Chief Justice.

By Order entered April 10, 2013, the undersigned was designated by the Business Court Division to conduct a hearing on Plaintiff's motion and to submit findings of fact and a recommendation to the Chief Justice.

On the 17th day of April, 2013, the following parties appeared before the Court for hearing on this matter: Erie Insurance Property and Casualty Company ("Plaintiff") by counsel, Lauren M. Palmer of Steptoe & Johnson PLLC; and Crown Point Properties ("Crown Point") by

counsel, Harold B. Wolfe, III. Lamberts Construction Company and Alex Lambert have not filed any response to Plaintiff's Complaint and failed to appear at the hearing.

Plaintiff's complaint seeks a declaratory judgment to determine whether it is required to defend or indemnify policyholder Lamberts Construction Company of Bluefield (sometimes, "Lamberts Construction") in a civil action for damages brought by Crown Point, *Crown Point Inc. v. Alex Lambert and Lambert Construction*, Mercer County Docket No. 11-C-491. The initial complaint filed by Crown Point alleges negligence, breach of contract, and promissory fraud in conjunction with a contract for excavation and paving of an apartment complex parking lot. Plaintiff is defending its insured in this separate action under a reservation of rights. Plaintiff asserts that the commercial general liability insurance policy held by Lamberts Construction does not provide coverage for the property damage alleged by Crown Point, and that it thus has no duty to defend Lamberts Construction in the *Crown Point* litigation.

In support of its motion to refer the case to the Business Court Division, Plaintiff states that the claim falls within the subject-matter jurisdiction of the Business Court Division, to-wit: the claim involves a matter of significance to and between business entities, and presents commercial issues in which specialized treatment by the Business Court Division is likely to improve the expectation of a fair and reasonable resolution of the controversy.

Crown Point filed its response to Plaintiff's Motion outside the 20 days provided for under W.Va. T.C.R. 29.06. Therein it asserts that because Alex Lambert is an individually-named defendant in the *Crown Point* Complaint, W.Va. T.C.R. 29.04 bars referral to the Business Court Division. In relevant part, the Rule reads as follows.

Rule 29.04 Definitions

For purposes of this Rule, the following definitions apply:

- (a) "Business Litigation" — one or more pending actions in circuit court in which...
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions,

actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance coverage disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W.Va. T.C.R. 29.04 (emphasis added).

Crown Point urges the Court to find that this dispute is one in which an individual, Alex Lambert, may be covered under the commercial policy issued to Lamberts Construction, but is involved in the dispute in an individual capacity. It argues that Alex Lambert is named in the initial complaint as an individual tortfeasor, just as a complaint alleging a battery by a business owner might name both the business entity and the business owner in his individual capacity.

Plaintiff argues that the exclusion delineated in Rule 29.04 is intended to preclude transfer of cases where one party is an individual but may be covered under a commercial policy. For example, an employee operating his personal vehicle for business purposes might be entitled to coverage under his employer's commercial insurance policy in the event of an accident. The employer's commercial insurance carrier could not file a complaint for declaratory relief and seek transfer to the Business Court Division, because the individual might be prejudiced by transfer to a specialty court intended to manage complex business litigation.

The situation here is not one where an individual may be covered under a commercial policy but is involved in the dispute in an individual capacity. In the initial complaint filed by Crown Point, Lamberts Construction Company is a named defendant. Crown Point concedes that it entered into a contract whereby Lamberts Construction Company would excavate and pave an apartment complex parking lot. A portion of the agreement between the parties is memorialized in a document signed "Lesley Lambert, VP."

Crown Point argues that Lamberts Construction is a sole proprietorship operated by Alex Lambert and family members. However, the evidence clearly shows that Lamberts Construction is a duly formed West Virginia Corporation. Records maintained by the West Virginia Secretary of State identify Alex Lambert as the president of the company and Lesley Lambert as its vice president. Together, these brothers own and operate the business.

Crown Point contends that Alex Lambert did not hold himself out as acting on behalf of an incorporated entity and seeks to hold him individually liable for the alleged malfeasance of Lamberts Construction. However, this does not render the matter at hand unsuitable for resolution in before the Business Court Division. Even if Alex Lambert is individually liable to Crown Point, he is not involved in the dispute in his individual capacity. Alex Lambert is named in Plaintiff's Complaint for Declaratory Relief, and in Crown Point's initial complaint, in his capacity as business owner and contractor.

This scenario can be distinguished from the example stated above, where an individual is involved in an auto accident while operating his personal vehicle for business purposes. The employee might seek indemnification for claims brought by others involved in the accident, or be named in an action such as this where the commercial insurance carrier seeks a declaratory judgment as to whether or not coverage should be afforded under the employer's policy. Neither case would be appropriate for transfer to the Business Court Division.

The recommendation of the undersigned is that Plaintiff's Complaint for Declaratory Relief is appropriate for referral to the Business Court Division under Trial Court Rule 29.

Submitted this 19th day of April, 2013.

THE FOREGOING IS A TRUE COPY OF A DOCUMENT
ENTERED IN THIS OFFICE ON THE 20th DAY
OF April
DATED THIS 20th DAY OF April
20 13

JULIE BALL, CLERK OF THE
CIRCUIT COURT OF MERCER COUNTY WV
BY Angrids Fox
HER DEPUTY

James J. Rowe
James J. Rowe, Judge
Business Court Division