

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**AMERISOURCEBERGEN DRUG
CORPORATION,**

Plaintiff,

v.

**Civil Action No. 17-C-36
Honorable Williams 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.

**ENDURANCE AMERICAN INSURANCE COMPANY'S ANSWER TO PLAINTIFF'S
COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendant Endurance American Insurance Company (hereinafter "Endurance"), by and through its undersigned counsel, without waiving any defenses, hereby answers Plaintiff AmerisourceBergen Drug Corporation's (hereinafter "Plaintiff") Complaint.

PRELIMINARY STATEMENT

Because of the nature of the allegations in the Complaint, in order to preserve important legal rights and protections, Endurance 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, Endurance 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
THE NATURE OF THE ACTION**

1. Denied. The allegations contained in paragraph 1 are conclusions of law to which no response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

2. Denied. The Insurance Policies referenced in Plaintiff's Complaint are writings which speak for themselves, therefore, no further response is required. Further, the allegations contained in paragraph 2 are conclusions of law to which no response is required.

3. Denied. The Insurance Policies referenced in Plaintiff's Complaint are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 3 are conclusions of law to which no response is required. Further, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

4. Denied. The allegations contained in paragraph 4 are conclusions of law to which no response is required. Further, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

PARTIES

Plaintiff

5. Admitted in part; denied in part. It is admitted that the insurance policies issued by Endurance to AmerisourceBergen Corporation were addressed and delivered to its Chesterbrook, Pennsylvania office. By regard to the remaining factual allegations, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 5. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

The Defendants

6. Denied. The averments of paragraph 6 of Plaintiff's Complaint are directed to a Defendant other than Endurance and accordingly no answer is required of Endurance.

7. Denied. The averments of paragraph 7 of Plaintiff's Complaint are directed to a Defendant other than Endurance and accordingly no answer is required of Endurance.

8. Denied. The averments of paragraph 8 of Plaintiff's Complaint are directed to a Defendant other than Endurance and accordingly no answer is required of Endurance.

9. Admitted in part; denied in part. It is admitted that Endurance is incorporated under the laws of the State of Delaware and its principal place of business is located in New York, New York. The remaining allegations contained in paragraph 9 are conclusions of law to which no response is required.

10. Denied. The averments of paragraph 10 of Plaintiff's Complaint are directed to a Defendant other than Endurance and accordingly no answer is required of Endurance.

JURISDICTION & VENUE

11. Denied. The allegations contained in paragraph 11 are conclusions of law to which no response is required. Further, with regard to the factual allegations contained in paragraph 11, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

12. Denied. The allegations contained in paragraph 12 are conclusions of law to which no response is required.

13. Denied. The allegations contained in paragraph 13 are conclusions of law to which no response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, with regard to the remaining factual allegations contained in paragraph 13, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

14. The allegations contained in paragraph 14 are conclusions of law to which no response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, with regard to the remaining factual allegations contained in paragraph 14, Endurance is without sufficient information, knowledge and belief to

form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

FACTS

The WVAG Lawsuit

15. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 15. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. By way of further answer, the Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required.

16. Denied. The Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 16. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

17. Denied. The Amended Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 17. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

18. Denied. The Second Amended Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge

and belief to form an opinion as to the truth of the allegations contained in paragraph 18.

Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

19. Denied. The correspondences from Marsh Risk and Insurance Services are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, with regard to the remaining factual allegations contained in paragraph 19, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Moreover, to the extent that the averments of paragraph 19 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

20. Denied. The Second Amended Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 20. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

21. Denied. The Second Amended Complaint filed by the State of West Virginia is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 21. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

22. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 22. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

23. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 23. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. To the extent the averments in this paragraph are conclusions of law, no response is required.

24. Denied. The alleged status reports from Plaintiff are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, with regard to the remaining factual allegations contained in paragraph 24, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Moreover, to the extent that the averments of paragraph 24 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

25. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 25. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

26. Denied. The averments of paragraph 26 of Plaintiff's Complaint are directed to a Defendant other than Endurance, therefore, no answer is required of Endurance. By way of further answer, with regard to the factual allegations contained in paragraph 26, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Further, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

27. Denied. The Settlement Agreement and Release is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 27. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

28. Denied. The January 7, 2017 joint press release is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 28. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

29. Denied. The Settlement Agreement and Release is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an

opinion as to the truth of the allegations contained in paragraph 29. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

30. Denied. The Settlement Agreement and Release is a writing which speaks for itself, therefore, no further response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 30. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

31. Denied. The allegations contained in paragraph 31 are conclusions of law to which no response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 31. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

The County and City Lawsuits

32. Denied. The McDowell County Lawsuit referenced in paragraph 32 is a writing which speaks for itself, therefore, no further response is required.

33. Denied. The City of Huntington Lawsuit referenced in paragraph 33 is a writing which speaks for itself, therefore, no further response is required.

34. Denied. The Town of Kermit Lawsuit referenced in paragraph 34 is a writing which speaks for itself, therefore, no further response is required.

35. Denied. The City of Welch Lawsuit referenced in paragraph 35 is a writing which speaks for itself, therefore, no further response is required.

36. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained

in paragraph 36. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. By way of further answer, the allegations contained in paragraph 36 are conclusions of law to which no response is required.

37. Denied. The WVAG Lawsuit and the County and City Lawsuits referenced in paragraph 37 are writings which speak for themselves, therefore, no further response is required.

38. Denied. The written notice is a writing which speaks for itself, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, with regard to the remaining factual allegations contained in paragraph 38, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Moreover, to the extent that the averments of paragraph 38 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

39. Denied. The County and City Lawsuits referenced in paragraph 39 are writings which speak for themselves, therefore, no further response is required.

40. Denied. The McDowell County Lawsuit and the Town of Kermit Lawsuit referenced in paragraph 40 are writings which speak for themselves, therefore, no further response is required.

41. The City of Huntington Lawsuit referenced in paragraph 41 is a writing which speaks for itself, therefore, no further response is required.

42. Denied. The City of Welch Lawsuit referenced in paragraph 42 is a writing which speaks for itself, therefore, no further response is required.

43. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 43. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. By way of further answer, the allegations contained in paragraph 43 are conclusions of law to which no response is required.

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

44. Denied. After reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the allegations contained in paragraph 44. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Further, to the extent that the averments of paragraph 44 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

45. Admitted in part; denied in part. It is admitted, without reference to timeliness, that Plaintiff tendered the WVAG Lawsuit and the County and City Lawsuits referenced in Plaintiff's Complaint. By way of further answer, with regard to any remaining factual allegations, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Further, to the extent that the averments of paragraph 45 of Plaintiff's Complaint are directed to a Defendant

other than Endurance, no answer is required of Endurance. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

46. Denied. The allegations contained in paragraph 46 are conclusions of law to which no response is required. By way of further answer, the Insurance Policies are writings which speak for themselves, therefore, no further response is required.

47. Denied. The Insurance Policies referenced in paragraph 47 are writings which speak for themselves, therefore, no further response is required.

48. Denied. The Insurance Policies referenced in paragraph 48 are writings which speak for themselves, therefore, no further response is required.

49. Denied. The Insurance Policies referenced in paragraph 49 are writings which speak for themselves, therefore, no further response is required.

50. Denied. The WVAG Lawsuit and the County and City Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 50 are conclusions of law to which no response is required. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

51. Denied. The Insurance Policies referenced in paragraph 51 are writings which speak for themselves, therefore, no further response is required.

52. Denied. The allegations contained in paragraph 52 are conclusions of law to which no response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

53. Denied. The WVAG Lawsuit and the County and City Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 53 are conclusions of law to which no response is required. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

54. Denied. The Insurance Policies referenced in paragraph 54 are writings which speak for themselves, therefore, no further response is required.

55. The State of West Virginia, McDowell County, City of Huntington, Town of Kermit and City of Welch Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations

contained in paragraph 55 are conclusions of law to which no response is required. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

56. Denied. The Insurance Policies referenced in paragraph 56 are writings which speak for themselves, therefore, no further response is required.

57. Denied. The McDowell County, Town of Kermit and City of Welch Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 57 are conclusions of law to which no response is required. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation.

58. Denied. The WVAG Lawsuit and the County and City Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 58 are conclusions of law to which no response is required. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Additionally, to the extent that the averments of paragraph 58

of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

59. Denied. The WVAG Lawsuit and the County and City Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 59 are conclusions of law to which no response is required. By way of further answer, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 59. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Moreover, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Additionally, to the extent that the averments of paragraph 59 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

60. Denied. The WVAG Lawsuit and the County and City Lawsuits are writings which speak for themselves, therefore, no further response is required. Further, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, the allegations contained in paragraph 60 are conclusions of law to which no response is required. Further, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 60. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Moreover, it is denied that the insurance policies issued by

Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Additionally, to the extent that the averments of paragraph 60 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

COUNT I
Declaratory Judgment

61. Endurance hereby incorporates by reference its answers to paragraphs 1 through 60 as if fully set forth at length.

62. Denied. The Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, the allegations contained in paragraph 62 are conclusions of law to which no response is required. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 62. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 62 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

63. Denied. The Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims

referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, the allegations contained in paragraph 63 are conclusions of law to which no response is required. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 63. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 63 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

64. Denied. The Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, the allegations contained in paragraph 64 are conclusions of law to which no response is required. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 64. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 64 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

65. Denied. The Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the

insurance policies issued to AmerisourceBergen Corporation. Further, the allegations contained in paragraph 65 are conclusions of law to which no response is required. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 65. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 65 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

66. Denied. The allegations contained in paragraph 66 are conclusions of law to which no response is required. By way of further answer, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. Further, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Moreover, with regard to the remaining factual allegations contained in paragraph 66, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of those allegations. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Lastly, Endurance denies the Prayer for Relief contained in paragraph 66.

WHEREFORE, Endurance hereby requests that Count I of Plaintiff's Complaint be dismissed.

COUNT II
Breach of contract

67. Endurance hereby incorporates by reference its answers to paragraphs 1 through 66 as if fully set forth at length.

68. Denied. The Insurance Policies are writings which speak for themselves, therefore, no further response is required. By way of further answer, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Further, the allegations contained in paragraph 68 are conclusions of law to which no response is required. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 68. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant.

69. Denied. The allegations contained in paragraph 69 are conclusions of law to which no response is required. By way of further answer, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. Further, it is denied that the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 69. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 69 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance.

70. Denied. The allegations contained in paragraph 70 are conclusions of law to which no response is required. By way of further answer, the Insurance Policies are writings which speak for themselves, therefore, no further response is required. Further, it is denied that

the insurance policies issued by Endurance afford insurance coverage for any of the claims referenced in Plaintiff's Complaint, and that Endurance breached the terms and conditions of the insurance policies issued to AmerisourceBergen Corporation. Moreover, after reasonable investigation, Endurance is without sufficient information, knowledge and belief to form an opinion as to the truth of the remaining allegations contained in paragraph 70. Therefore, they are denied. Strict proof is demanded at the time of trial, if at all times relevant. Additionally, to the extent that the averments of paragraph 70 of Plaintiff's Complaint are directed to a Defendant other than Endurance, no answer is required of Endurance. Lastly, Endurance denies the Prayer for Relief contained in paragraph 70, inclusive of sub-parts (a) through (f).

WHEREFORE, Endurance hereby requests that Count II of Plaintiff's Complaint be dismissed.

SECOND DEFENSE

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

THIRD DEFENSE

Pennsylvania law governs the interpretation of the insurance policies.

FOURTH DEFENSE

Plaintiff is estopped and/or has waived any argument that Pennsylvania law does not apply to the insurance policies.

FIFTH DEFENSE

The contracts of insurance between Endurance and AmerisourceBergen Corporation were formed in the Commonwealth of Pennsylvania.

SIXTH DEFENSE

The insurance policies issued to AmerisourceBergen Corporation insured risks in numerous other locations besides West Virginia.

SEVENTH DEFENSE

If Plaintiff is entitled to any compensation, the only compensation to which Plaintiff would be entitled to is determined under the terms and conditions of the insurance policies.

EIGHTH DEFENSE

Endurance asserts any and all defenses available to them under the terms and conditions of the insurance contracts between AmerisourceBergen Corporation and Endurance.

NINTH DEFENSE

Endurance did not breach the terms and conditions of the insurance policies.

TENTH DEFENSE

Endurance breached no legal duty to AmerisourceBergen Corporation.

ELEVENTH DEFENSE

Endurance fulfilled all of its legal obligations under the insurance policies issued to AmerisourceBergen Corporation.

TWELFTH DEFENSE

Any damages allegedly suffered by AmerisourceBergen Corporation were the result of AmerisourceBergen Corporation's breach of the terms and conditions of one or more of the insurance policies.

THIRTEENTH DEFENSE

Plaintiff's claims may be barred and/or limited by the terms, conditions, and exclusions within the insurance policies.

FOURTEENTH DEFENSE

The Endurance Policy(ies) does not apply unless and until the insured or the insured's "underlying insurance" pays the full amount of the "underlying limits of insurance."

FIFTEENTH DEFENSE

The Endurance Policy(ies) provided that it applied only in excess of the "underlying limits of insurance" and only after the "underlying limits of insurance" have been exhausted.

SIXTEENTH DEFENSE

The Endurance Policy(ies) provided that it has "the right, but not the duty to be associated with you or your underlying insurer or both in the investigation of any claim or defense of any suit which in [its] opinion may create liability to [the] policy for 'loss.'"

SEVENTEENTH DEFENSE

Coverage provided by Endurance was excess over the other insurance, whether primary, excess, contingent, or any other basis.

EIGHTEENTH DEFENSE

The Endurance Policy(ies), by virtue of the language contained in the ACE policy(ies), provides coverage to the Named Insured shown in the Declarations, as well as any person or organization qualifying as an "insured" under Section II - Who is an Insured.

NINETEENTH DEFENSE

The Endurance insurance policies only applied to damages "because of 'bodily injury' or 'property damage'".

TWENTIETH DEFENSE

The Endurance Policy(ies) applied to "bodily injury" or "property damage" only if it occurs during the policy period.

TWENTY FIRST DEFENSE

The Endurance Policy(ies) applied to "bodily injury" or "property damage" only if it "occurs during the policy period," and no insured knew "[p]rior to the policy period," that the "bodily injury" or "property damage" had occurred, in whole or in part."

TWENTY SECOND DEFENSE

The Endurance Policy(ies) provided that "bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim: (1) reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer; or (2) receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or (3) becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

TWENTY THIRD DEFENSE

The Expected or Intended Injury exclusion precluded coverage for "bodily injury" or "property damage" expected or intended from the standpoint of the insured.

TWENTY FOURTH DEFENSE

Exclusion k, "Damage to Your Product," provided that there is no coverage for "property damage" to "your product" arising out of it or any part of it." "Your Product" included "any goods or products other than real property, manufactured, sold, handled, distributed or disposed of by: (a) You; (b) Others trading under your name; or (c) a person or organization

whose business or assets you have acquired.”

TWENTY FIFTH DEFENSE

The Physicians, Surgeons & Dentist Professional Liability exclusion provided that coverage did not “apply to any liability for any actual or alleged errors, designs or specifications errors, acts or omissions by the insured, or by any other person whose acts the insured is legally liable, arising out of professional services performed by the insured in the conduct of the insured’s operations.”

TWENTY SIXTH DEFENSE

Plaintiff’s claims are barred because Plaintiff provided Endurance with late notice which prejudiced its ability to investigate.

TWENTY SEVENTH DEFENSE

The “Duties in the Event of Occurrence, Claim or Suit” provision required notice as soon as practicable “whenever you have information from which you may reasonably conclude that an “occurrence” or offense may result in a claim or claims involving damages.”

TWENTY EIGHTH DEFENSE

AmerisourceBergen Corporation has not exhausted all of the underlying limits of insurance, or any other valid and collectible insurance.

TWENTY NINTH DEFENSE

Plaintiff’s claims may be barred and/or limited by waiver.

THIRTIETH DEFENSE

Plaintiff’s claims may be barred and/or limited by estoppel.

THIRTY FIRST DEFENSE

Plaintiff's claims may be barred and/or limited by payment and/or release.

THIRTY SECOND DEFENSE

Plaintiff has failed to supply reasonable proof of a compensable claim.

THIRTY THIRD DEFENSE

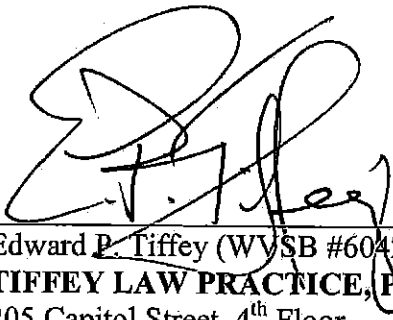
Plaintiff's claims are barred by the doctrine of unclean hands.

THIRTY FOURTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

**ENDURANCE AMERICAN INSURANCE
COMPANY**

By Counsel



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PLAINTIFF: AMERISOURCEBERGEN DRUG CORPORATION

CIVIL CASE NO.: 17-C-36

DEFENDANT: 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

JUDGE THOMPSON

II. TYPE OF CASE:

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

III. JURY DEMAND: ☐ Yes ☒ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): June 2018

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
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 hearing impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other:

Attorney Name: Lee Murray Hall, Esq. (WVSV #6447)

Firm: Jenkins Fenstermaker, PLLC

Address: P.O. Box 2688
Huntington, WV 25726

Telephone: (304) 523-2100

Dated: 5/26/17

Signature: 

Representing
Plaintiffs ☒ Defendant
St. Paul Fire & Marine Ins. Co.
☐ Cross-Complainant
☐ Cross-Defendant