

SUMMONS

Attorney(s) Trevor J. Cooney - Archer & Greiner, P.C.

Office Address One Centennial Square

Town, State, Zip Code Haddonfield, NJ 08033

Telephone Number 856-616-2681

Attorney(s) for Plaintiff Inspira Health Network

INSPIRA HEALTH NETWORK,

Plaintiff(s)

vs.

AMERICAN GUARANTEE AND

LIABILITY INSURANCE COMPANY,

Defendant(s)

**Superior Court of  
New Jersey**

Gloucester County

Law Division

Docket No: GLO-000348-21

**CIVIL ACTION  
SUMMONS**

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf).

  
Clerk of the Superior Court

DATED: 04/01/2021

Name of Defendant to Be Served: AMERICAN GUARANTEE AND LIABILITY INSURANCE CO.

Address of Defendant to Be Served: 1299 Zurich Way, Schaumburg, IL 60196

**ARCHER & GREINER**  
A Professional Corporation  
One Centennial Square  
P.O. Box 3000  
Haddonfield, New Jersey 08033-0968  
(856) 795-2121  
Attorneys for Plaintiff  
BY: **ELLIS I. MEDOWAY, ESQUIRE (#024611982)**  
**TREVOR J. COONEY, ESQUIRE (#035142000)**

INSPIRA HEALTH NETWORK,

Plaintiff,

v.

AMERICAN GUARANTEE AND  
LIABILITY INSURANCE COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY

DOCKET NO.:

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**COMPLAINT FOR DECLARATORY JUDGMENT**

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Plaintiff Inspira Health Network (“Inspira” or “Plaintiff”), by way of Complaint against Defendant American Guarantee and Liability Insurance Company (“AGLIC” or “Defendant”), avers as follows:

**THE PARTIES**

1. Inspira is a nonprofit health care organization organized under the laws of the State of New Jersey with its principal place of business located at 165 Bridgeton Pike, Mullica Hill, NJ 08062.

2. Upon information and belief, AGLIC is a New York stock company with its principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action because, at all times relevant to the allegations in this Complaint, AGLIC was duly authorized to conduct business within the State of New Jersey, including engaging in the business of selling insurance, investigating claims, and/or issuing policies that cover policyholders, property, and/or activities located in New Jersey.

4. Venue is proper in this County because Inspira resides in this County and AGLIC conducts business in this County.

### **FACTUAL BACKGROUND**

#### **A. Inspira's Business Operations**

5. Inspira is one of the region's leading network of health care providers, delivering the full continuum of primary, acute and advanced care services. The system comprises three hospitals, two comprehensive cancer centers, several multi-specialty health centers and a total of more than 150 access points. These include urgent care; outpatient imaging and rehabilitation; sleep medicine labs; cardiac testing facilities; digestive health and wound care centers; home care and hospice; and more than 35 primary and specialty physician practices in Gloucester, Cumberland, Salem, Camden and Atlantic counties.

6. The medical services provided by Inspira include elective surgical procedures and elective invasive procedures.

7. Inspira has approximately 7,500 employees working in its health care facilities.

#### **B. The AGLIC Policy**

8. AGLIC issued to Inspira "The Zurich EDGE Healthcare Policy," bearing policy number ZMD 0165887-03, effective January 1, 2020 to January 1, 2021 (the "Policy"). The Policy is attached hereto as **EXHIBIT A**.

9. The Policy's language was drafted solely by the AGLIC. There were no negotiations over the Policy language.
10. The Policy Limit is \$500,000,000 for the total of all coverages combined.
11. The Policy sub-limit for the special coverage under the INTERRUPTION BY COMMUNICABLE DISEASE provision is \$1,000,000.00.
12. The annual premium Inspira paid for the coverage provided under the Policy was \$546,402.00.
13. Section 1.01 of the Policy sets forth the following Insuring Agreement:

This Policy Insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms, conditions and exclusions stated in this Policy.
14. **"Covered Cause of Loss"** is defined in the Policy as: "All risks of direct physical loss of or damage from any cause unless excluded."

C. **"Direct Physical Loss of or Damage"**

15. The phrase "direct physical loss of or damage" is not defined in the Policy.
16. The courts of New Jersey have interpreted the phrase "physical loss of or damage" in the standard form coverage grant that appears in the Policy.
17. The Superior Court of New Jersey, Appellate Division, observed that, since the policy term "'physical' can mean more than material alteration or damage, it was incumbent on the insurer to clearly and specifically rule out coverage in the circumstances where it was not to be provided." *Customized Distribution Services v. Zurich Ins. Co.*, 373 N.J. Super. 480, 487–88 (App. Div. 2004), *certif. denied*, 183 N.J. 214 (2005).
18. The Appellate Division has specifically found the undefined term "physical damage" as it appears in a commercial property policy is ambiguous: "The fact that the term

‘physical damage’ is capable of at least two different reasonable interpretations convinces us that it is ambiguous. And well-established precedent teaches that such an ambiguous provision must be construed favorably to the insured.” *Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co.*, 406 N.J. Super. 524, 541 (App. Div. 2009).

19. The Appellate Division in *Wakefern* cited with approval decisions from other jurisdictions that have held that “‘physical damage’ is not restricted to the physical destruction or harm” but that the phrase also “includes loss of access, loss of use, and loss of functionality.” *Id.* at 543.

20. The United States District Court for the District of New Jersey concluded that a release of ammonia that caused the evacuation of a building for several days because it was unsafe inflicted direct physical loss of or damage to the facility, “as that phrase would be construed under New Jersey law by the New Jersey Supreme Court, because the ammonia physically rendered the facility unusable for a period of time.” *Gregory Packaging v. Travelers Property Casualty Co. of America*, Civ. No. 2:12-CV-04418 (WHW) (CLW) (D.N.J. November 24, 2014).

21. The *Gregory Packaging* Court noted that the *Wakefern* opinion “indicates that property’s temporary and non-structured loss of function is recognized as direct physical loss or damage under New Jersey law.”

22. Thus, the phrase “direct physical loss of or damage” includes, under New Jersey law, “loss of access, loss of use, and loss of functionality.”

23. Accordingly, the Policy provides coverage for claims that involve the physical loss of, the loss of access to, the loss of use of, or the loss of functionality of its facilities, as long

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