

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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Index No. _____

CIRRUS INDUSTRIES, INC. and CIRRUS DESIGN
CORPORATION,

Plaintiffs,

-against-

NORTH AMERICAN ELITE INSURANCE COMPANY,

Defendant.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK

Plaintiffs Cirrus Industries, Inc. and Cirrus Design Corporation d/b/a Cirrus Aircraft (collectively, “Cirrus”) for its Complaint for declaratory judgment, breach of contract, bad faith (pursuant to Minn. Stat. § 604.18), and damages against Defendant North American Elite Insurance Company (“Swiss Re”), allege as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This insurance coverage action arises out of Swiss Re’s baseless denial of Cirrus’ claim for coverage under its commercial property insurance policy’s Communicable Disease Response and Interruption by Communicable Disease coverages (collectively referred to herein as the “Communicable Disease Coverages”) for losses resulting from the presence of COVID-19 at its insured locations, including at its Duluth (MN) Production and HQ buildings, Knoxville (TN) Flight Training Center, McKinney (TX) Factory Service Center, and Grand Forks (ND) (the “Properties”).¹

¹ The policy defines Communicable Disease in pertinent part as disease that is “transmissible from human to human by direct or indirect contact with an affected individual or the individual’s discharges[.]” Capitalized terms not otherwise defined herein have the meaning ascribed to them in the insurance policy.

2. The Communicable Disease Response coverage is a Property Damage Coverage Extension purchased by Cirrus that provides coverage if an insured location “has the actual not suspected presence of COMMUNICABLE DISEASE and access” to an insured location is “limited, restricted or prohibited by: (a) an order of an authorized governmental agency regulating the actual not suspected presence of COMMUNICABLE DISEASE; or (b) a decision of an Officer of the Insured as a result of the actual not suspected presence of COMMUNICABLE DISEASE[.]” The Communicable Disease Response coverage provides coverage for “cleanup, removal and disposal of the actual not suspected presence of COMMUNICABLE DISEASE” as well as the “actual costs of fees payable to public relations services or actual costs of using the Insured’s employees for reputation management.”

3. The Interruption by Communicable Disease coverage is a Time Element Coverage Extension that provides coverage if an insured location “has the actual not suspected presence of COMMUNICABLE DISEASE and access” to an insured location is “limited, restricted or prohibited by: (a) an order of an authorized governmental agency regulating the actual not suspected presence of COMMUNICABLE DISEASE; or (b) a decision of an Officer of the Insured as a result of the actual not suspected presence of COMMUNICABLE DISEASE[.]” The Interruption by Communicable Disease coverage provides coverage for “Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense.”

4. The Policy also provides coverage for “Protection and Preservation of Property – Property Damage” and “Protection and Preservation of Property – Time Element (collectively the “Protection and Preservation of Property Coverages”), which cover costs Cirrus incurred when it took reasonable action to temporarily protect and preserve its property.

5. At various times beginning in March 2020, the actual not suspected presence of COVID-19, a severe communicable disease caused by the Coronavirus, classified by the Center for Disease Control (CDC) as an epidemic, globally described as a pandemic, was present on numerous, clearly evidenced occasions at each of the aforementioned Properties and in the surrounding 1,000 feet area of these Properties, all which constitute insured locations under the covered policy. At all times, Cirrus acted as a reasonable insured and underwent mitigation efforts to reduce the impact that COVID-19 had on its operations consistent with its obligations under the Policy. Cirrus also undertook steps to protect and preserve its property.

6. At various times beginning in March 2020, Cirrus Officers made decisions to limit, restrict or prohibit access to the Properties because of the actual presence of COVID-19 as documented in various company-wide memos, including when Cirrus' Executive Team instituted a furlough that restricted access to its Properties. Ex. A, Affidavit of Curtis Landherr.

7. Also, in or around this time beginning in March 2020, the state or local authorities where Cirrus' Properties are located issued orders limiting, restricting or prohibiting access to the Properties because of the actual presence of COVID-19.

8. Accordingly, Cirrus has suffered in excess of \$250,000 in covered losses and sought coverage pursuant to the Communicable Disease Coverages after promptly notifying Swiss Re of its claim and losses.

9. Cirrus complied with all Policy requirements and provided support for its assertions that: (a) COVID-19 was present at each Property; (b) Cirrus Officers decided to limit, restrict or prohibit access to the insured locations as a result of the actual presence of COVID-19; and/or (c) authorized government agency orders limited, restricted or prohibited access to the insured

locations as a result of the actual presence of COVID-19.

10. Cirrus has met the requirements to trigger both the policy's Communicable Disease Coverages, which are subject to a \$250,000 annual aggregate limit of liability, and the Protection and Preservation of Property Coverages, which are not so limited. It further seeks coverage for the Professional Fees incurred for preparing its claim.

11. Nevertheless, Swiss Re has acted in bad faith and breached the covenant of good faith and fair dealing. It failed to conduct any meaningful or reasonable investigation into the claim, improperly denied coverage, continually delayed its responses, and continually demanded an ever-changing list of document and/or requirements for Cirrus to produce in order to allegedly "trigger coverage." But in reality, Swiss Re's collective response to Cirrus' claim was nothing more than a dedicated effort to deny coverage instead of working with Cirrus to adjust and pay a clearly valid claim under coverage that Cirrus paid premiums for and that was expressly triggered by the presence of COVID-19 in Cirrus' facilities.

12. Cirrus seeks declaratory judgments declaring the scope of Swiss Re's obligation to pay Cirrus' losses under the Communicable Disease Coverages and the Protection and Preservation of Property coverage, and related professional fees.

13. Cirrus also seeks damages for breach of contract and bad faith (under Minn. Stat.) against Swiss Re for its failure to investigate the claim and uphold its coverage obligations, namely its express promise to provide communicable disease coverage.

THE PARTIES

14. Cirrus Industries, Inc. is a Delaware corporation and has its principal place of business in Minnesota.

15. Cirrus Design Corporation d/b/a Cirrus Aircraft is a wholly-owned subsidiary of

Cirrus Industries, Inc. and is a Wisconsin corporation that has its principal place of business in Minnesota.

16. Upon information and belief, North American Elite Insurance Company was formed under the laws of Missouri and has its principal place of business in Missouri.

JURISDICTION AND VENUE

17. This Court has general personal jurisdiction over Swiss Re pursuant to CPLR §301, because Swiss Re carries on a continuous and systematic part of its general business within the State of New York, including but not limited to marketing, selling, and issuing insurance policies.

18. This Court has specific personal jurisdiction over Swiss Re and venue is proper in this Court pursuant to CPLR §302 and §503, because Swiss Re, through its policy, contracted to insure Cirrus and included a New York selection clause, which provides that the parties “irrevocably submit to the exclusive jurisdiction of the Courts of the State of New.”

FACTUAL BACKGROUND

A. The Policy

19. Cirrus purchased an insurance policy from Swiss Re, policy number NAP 2002150 01, effective October 1, 2019 to October 1, 2020 (the “Policy”). Ex. B.

20. Cirrus is a Named Insured under the Policy, and Swiss Re drafted the Policy.

21. The Policy has express Communicable Disease Coverages.

22. The Communicable Disease Response Coverage states:

Communicable Disease Response

If an INSURED LOCATION owned, leased or rented by the Insured has the actual not suspected presence of COMMUNICABLE DISEASE and access to such INSURED LOCATION is limited, restricted or prohibited by:

- a. an order of an authorized governmental agency regulating the actual not suspected presence of COMMUNICABLE DISEASE; or
- b. a decision of an Officer of the Insured as a result of the actual not suspected presence of COMMUNICABLE DISEASE,

this POLICY covers the reasonable and necessary costs incurred by the Insured at such INSURED LOCATION with the actual not suspected presence of COMMUNICABLE DISEASE for the:

- a. cleanup, removal and disposal of the actual not suspected presence of COMMUNICABLE DISEASES from INSURED PROPERTY; and
- b. actual costs of fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from the actual not suspected presence of COMMUNICABLE DISEASES ON INSURED PROPERTY.

This extension of coverage will apply when access to such INSURED LOCATION is limited, restricted or prohibited in excess of the WAITING PERIOD specified for this extension.

This extension of coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to the actual not suspected presence of COMMUNICABLE DISEASE.

23. The Interruption by Communicable Disease Coverage states:

Interruption by Communicable Disease

If an INSURED LOCATION owned, leased or rented by the Insured has the actual not suspected presence of COMMUNICABLE DISEASE and access to such INSURED LOCATION is limited, restricted or prohibited by:

- a. an order of an authorized governmental agency regulating the actual not suspected presence of COMMUNICABLE DISEASE; or
- b. a decision of an Officer of the Insured as a result of the actual not suspected presence of COMMUNICABLE DISEASE,

this POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense** incurred by the Insured during the **Period Of Liability** at such INSURED LOCATION with the actual not suspected presence of COMMUNICABLE DISEASE.

This extension of coverage will apply when access to such INSURED LOCATION

is limited, restricted, or prohibited in excess of the WAITING PERIOD specified for this extension.

Interruption By Communicable Disease Exclusions: As respects **Interruption By Communicable Disease**, the following additional exclusions apply:

This POLICY does not insure loss resulting from the enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of COMMUNICABLE DISEASE.

24. Insured Location(s) is defined as those locations listed on a schedule of locations, *e.g.*, the Properties, and includes “the area within one thousand (1,000) feet of such LOCATION(S) if within the” United States of America and its Territories.

25. The Policy does not contain any exclusions for losses caused by virus, communicable disease, pandemics, COVID-19, or the Coronavirus. Rather, the Policy has express communicable disease coverage, and COVID-19 is without question a glaring example of a “communicable disease.” Cirrus has maintained communicable disease coverage beginning in 2017 and has timely paid all insurance premiums for this coverage.

26. By its plain language, the Communicable Disease Coverages do not require proof of physical loss, damage, or destruction.

27. The “Protection and Preservation of Property – Property Damage” provision provides:

This Policy is extended to insure reasonable and necessary costs incurred for actions to temporarily protect or preserve INSURED PROPERTY; provided such actions are necessary due to actual, or to prevent immediately impending, direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

28. The “Protection and Preservation of Property – Time Element” provision provides:

This POLICY is extended to insure loss of Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense incurred by the Insured for a period of time after the Insured has first taken reasonable action for the temporary protection and preservation of property insured by this POLICY provided such action is necessary

to prevent immediately impending direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

29. Under the Protection and Preservation Coverages there need not be “direct physical loss or damage,” only that such loss or damage be impending.

30. The Policy also provides coverage for Professional Fees.

B. Cirrus’ Insured Locations Had the Actual Presence of COVID-19 and Access Was Limited, Restricted or Prohibited by Decisions of Cirrus Officers

31. Cirrus designs, manufactures, and markets the best-selling general aviation aircraft in the world. The company produces single-engine piston and jet powered airplanes made from resin-permeated fiberglass and designed for personal transportation, and its products are marketed and recognized worldwide.

32. The presence of COVID-19 at the Properties is well documented. Between March 2020 through December 2020, Cirrus was aware of at least 124 employees that tested positive. Hundreds of additional positive tests of Cirrus employees occurred after December 2020 and are still occurring today.

33. Given the high percentage of asymptomatic cases of COVID-19 as recognized by the CDC, and the timing and limits of Cirrus’ testing programs, especially early on (where testing sites were highly restricted and limited), it is certain that the actual number of Cirrus employees who had contracted COVID-19 was substantially greater than the number of employees currently known to have contracted COVID-19.

34. Moreover, due to the high prevalence of infectious cases, and the CDC recognized weeklong incubation period of the Coronavirus, there was certain or virtually certain to be viral presence of the Coronavirus that caused COVID-19 at Cirrus’ Properties. This can be confirmed with certainty or near-certainty by statistical modeling based on the known incidences of infection

despite the lack of validated, commercially available tests for air or surface presence of the Coronavirus, and despite the shortage of either rapid or laboratory COVID-19 tests and testing sites that could have otherwise been administered to every individual who was on-site at the relevant times. Testing for the Coronavirus was highly controlled and occurred off-site at a facility located nearby. These tests were, in many instances, conducted well within the incubation period of the virus involving employees who were present working inside a Cirrus facility. This is direct proof of the actual, not suspected presence of the Coronavirus at the Cirrus Properties.

35. The existence and/or presence of the Coronavirus and COVID-19 is not simply reflected in reported cases or individuals' positive test results, as only a portion of the population has been tested, or could even actually be tested. For example, the CDC estimates that the number of people in the United States who have been infected with COVID-19 was ten times higher than the number of reported cases.² Additionally, at least 40% of people infected with COVID-19 are asymptomatic.³

36. COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can unintentionally transmit COVID-19 to people, and release infectious droplets and aerosols into the air and onto surfaces without having experienced symptoms and without realizing that they are contagious or infected.⁴ The threat posed by this

² Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported*, WASH. POST (June 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last visited June 28, 2022).

³ Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC estimate says*, BUS. INSIDER (July 12, 2020), <https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7> (last visited June 28, 2022).

⁴ *See Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last visited June 28, 2021); Minghui Yang et al., *SARS-CoV-2 Detected on*

highly contagious and pervasive virus, and its potentially deadly consequences, are well documented.

37. Due to the actual presence of COVID-19 and the significant employee safety concern that existed as a result, in addition to the stay-at-home orders issued by relevant governing bodies in Cirrus' locations, Cirrus Officers chose to restrict, limit and/or prohibit access to its Properties by instituting a plant shut-down and resulting furlough. The furlough of 1,156 employees began on March 31, 2020, during which non-essential employees were denied access to the Properties. Approximately 400 employees were not put on furlough, with most able to continue working remotely.

38. On April 16, 2020, Cirrus informed its employees that it was planning a gradual return to work beginning on April 27, 2020, in which a plan was being developed to schedule the staggered return of certain furloughed employees and departments. Accordingly, even during this return-to-work period, access to the Properties continued to be limited, restricted or prohibited by Cirrus Executives and steps were taken (and resulting expenses incurred) to mitigate against and respond to the existence of the Coronavirus and COVID-19 inside Cirrus facilities. For example, Cirrus placed temperature readers at each access point and every employee was screened before entrance into the buildings.

39. Cirrus has incurred significant covered losses as a result COVID-19's presence at its Properties and access to its Properties was limited, restricted or prohibited by Cirrus Officers because of the presence of COVID-19 and related government orders.

Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3 (Feb. 1, 2021), <https://www.atsjournals.org/doi/10.1164/rccm.202006-2136LE> (last visited June 28, 2022).

C. The Coronavirus and COVID-19

40. COVID-19 is a severe infectious disease caused by the Coronavirus. Due to pervasive spread and presence of the Coronavirus and COVID-19, both are presumed to be present or imminently present everywhere. Indeed, several cases of COVID-19 were reported at Cirrus' insured locations beginning in March 2020, and COVID was present not only at the Properties, but also within the 1,000 feet surrounding area of those Properties, all areas which constitute insured locations under the Policy.⁵

41. Studies have demonstrated that pre-symptomatic individuals have an even greater ability to transmit COVID-19 than other infected people because they carry high levels of “viral load” during a period when they have no symptoms and therefore are unaware they are infectious.⁶ The National Academy of Sciences has concluded that “the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the pre-symptomatic stage or the infection is asymptomatic.”⁷

⁵ See, e.g., Christopher Ingraham, *At the population level, the coronavirus is almost literally everywhere*, WASH. POST (Apr. 1, 2020), <https://www.washingtonpost.com/business/2020/04/01/population-level-coronavirus-is-almost-literally-everywhere/> (last visited June 28, 2022).

⁶ See, e.g., Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020), <https://www.nature.com/articles/s41591-020-0869-5> (last visited June 28, 2022); Lirong Zou, et al., *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, 382 NEW ENG. J. MED. 1177-79 (Mar. 19, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2001737> (last visited June 28, 2022).

⁷ Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020), <https://www.pnas.org/content/117/30/17513> (last visited June 28, 2022).

D. Cirrus' Insured Locations Had the Actual Presence of COVID-19 and Access Was Limited, Restricted or Prohibited by Government Orders

42. Cirrus has suffered covered communicable disease related losses under the Policy, in connection with orders by authorized governmental agencies due to the actual presence of communicable disease, which impaired access to the Properties.

43. State and local governments across the nation recognized the unprecedented and mushrooming outbreaks of COVID-19 across the nation and the Coronavirus's catastrophic impact. Consequently, many states issued "State of Emergency" Declarations and related orders given the existence or threat of hazardous conditions from the Coronavirus and COVID-19. Within a short time, public authorities issued orders suspending or severely limiting the premises (e.g., facilities or operations) where people could potentially contract COVID-19 from others or from the property itself. This included Cirrus' own insured locations.

44. By way of example only and by no way exhaustive, Governor Tim Walz issued Minnesota Emergency Executive Orders declaring a state of emergency, including Executive Order 20-20, stating: "Community spread of COVID-19 in Minnesota and nationwide is increasing. As of March 24, 2020, Minnesota had 287 confirmed COVID-19 cases, with 35 hospitalizations. It is further expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Minnesota that currently have not identified a confirmed case."

45. Minnesota issued a stay-at-home order on March 26, 2020, set to begin on March 27, 2020 at 11:59 p.m., and therefore these orders limited, restricted and/or prohibited access to Cirrus' locations, again triggering coverage under the Policy.

46. Despite Cirrus ultimately being deemed an “essential business” under the Minnesota stay-at-home order, Executive Order 20-20 still required that all Cirrus employees who could work from home do so, and therefore the order restricted, limited and/or prohibited access to the Properties. Only a few executives and essential personnel were present at Cirrus facilities after the March 26, 2020 stay-at-home order until the Cirrus shut-down and furlough was later lifted on April 27, 2020.

47. Once the furlough was lifted, for the health, safety and wellbeing of its employee’s Cirrus took numerous measures on an ongoing basis – and incurred significant covered expenses as a result – to respond to the actual presence of COVID-19 and prevent the further spread of COVID-19 inside its facilities, including restricting access to the facility, continually screening employees, and implementing COVID-19 policies as advised by the Minnesota Department of Health and Cirrus did so also in part due to its obligations to mitigate losses under the Policy.

48. Cirrus continuously adapted to the changing CDC, State, OSHA and local guidelines. In response to the actual presence of COVID-19 at its Properties, and in addition to purchasing large quantities of masks, cleaning supplies, sanitizers, testing kits and gloves, Cirrus also implemented numerous protective protocols and procedures, and incurred additional labor costs in conjunction with such protocols and procedures, including, without limitation, the following:

- Daily temperature and health question screening;
- Onsite COVID vaccination and booster clinics at all Enterprise locations;
- Area deep cleaning with ionizer sprayers with a 70/30 iso/distilled water solution after reports of employees testing posting;

- Intensive widespread cleaning of campus buildings and common areas with 70/30 iso/distilled water solution (break rooms, bathrooms);
- Social distance measures including removal of large lunch tables, installation of one-person tables, distances of manufacturing floors; and,
- Installation of plastic dividers to separate people and workstations.

49. As a direct result of the actual presence of COVID-19 and these state and local orders, access to Cirrus' insured locations was limited, restricted or prohibited.

50. Cirrus has suffered and continues to suffer damages, in an amount to be proven at trial, and seeks coverage for its losses pursuant to the Communicable Disease Coverages.

E. Swiss Re's Wrongful Denial of Cirrus' Claim

51. On or about March 30, 2020, Cirrus timely provided notice of a claim for losses ("Claim") under the Policy.

52. In its notice of Claim, Cirrus indicated that it suffered losses at various locations.
Id.

53. On May 6, 2020, Sedgwick, the claims adjuster retained by Swiss Re, made various requests for information.

54. Cirrus provided responsive information on a rolling basis, yet despite providing such information, Swiss Re continued to ask for information that was already timely provided, including information and details that Cirrus readily provided not just by email but also on conference calls.

55. On September 21, 2021, Cirrus shared a call with Swiss Re claims leadership to discuss a path forward in getting a claim determination, including discussions regarding the information already provided and any potential information that Cirrus could yet provide to further

a claim determination. The call proved futile and ended abruptly as Swiss Re could not advise on what information it yet required to make a coverage determination.

56. On February 28, 2022, nearly two years after Cirrus initially filed its Claim, Swiss Re issued another communication alleging it was still “investigating” the Claim, but Swiss Re was doing nothing more than dragging its feet and burdening Cirrus with additional document requests as a delay and denial tactic. Swiss Re had effectively denied coverage for Cirrus’ Claim, alleging in part that:

The information provided regarding one positive COVID-19 test is insufficient to trigger coverage under the Insurance Contract. The information supplied does not provide details about whether and how any access to a location with the actual not suspected presence of communicable disease was limited, restricted or prohibited by “an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease or a decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease.

57. Despite acknowledging that Cirrus instituted a shut-down and furlough that restricted access to the Properties as a direct result of the COVID-19 (communicable disease), and despite referencing Cirrus’ employee memorandums documenting and explaining the furlough process and protocol, Swiss Re has refused to uphold its coverage obligations and acknowledge that the Communicable Disease Coverages have been triggered, let alone the Protection and Preservation of Property and Professional Fees coverages.

58. Cirrus provided detailed information to Swiss Re regarding over 124 employees that tested positive for COVID, including: 92 positive cases in Minnesota, 16 positive cases in North Dakota, 14 positive cases in Tennessee, and 2 positive cases in Texas. This number is now significantly higher as after December 2020, hundreds of Cirrus employees have tested positive.

59. Still further, Cirrus provided memorandums it issued to employees regarding positive test notifications and the necessary cleaning that would be conducted to ensure a safe

workspace, closures, furlough programs and the gradual reopening at its various locations. Cirrus outlined the significant mitigation efforts that were put in place to further reduce the spread and protect its operations.

60. Swiss Re has more than sufficient information to make a coverage determination of a covered loss as mandated by the communicable disease policy for which Cirrus paid premiums.

61. Swiss Re has wrongly denied coverage for Cirrus' Claim based on an erroneous interpretation of the Policy, including the Communicable Disease Coverages, and also in complete contradiction to the information Cirrus provided about its Claim.

62. Then, in April 2022, Swiss Re indicated that it was still investigating the Claim, and provided a litany of requests for information. However, Cirrus had already provided responses to these requests, as well as significant financial information, which clearly demonstrated that Cirrus' losses far exceed the "Communicable Disease Response and Interruption by Communicable Disease" sublimit of \$250,000. What's more, Swiss Re's focus on a single positive March 27, 2020 test result ignored that over 124 Cirrus employees tested positive for COVID-19 through December 2020 (which number is significantly higher now), including, as of December 2020: 92 positive cases in Minnesota, 16 positive cases in North Dakota, 14 positive cases in Tennessee, and 2 positive cases in Texas. Swiss Re also stated that "[t]he information provided regarding one positive COVID-19 test is insufficient to trigger coverage under the" Policy. Yet, Cirrus has provided significant documentation demonstrating the actual presence of COVID-19 at its properties, and the resulting company orders (by decision of Cirrus CEO Zean Nielsen) that limited, restricted and/or prohibited access to Cirrus' insured locations as a direct result of

communicable disease.

63. Unequivocally, coverage is triggered under the Policy's Communicable Disease coverages in at least two ways.

64. First, Cirrus Officers (including its CEO) made decisions to limit, restrict and/or prohibit access to the Properties in March 2020 because of the actual presence of COVID-19 as documented in various company-wide memos, including when Cirrus' Executive Team instituted a furlough that restricted access to its Properties. The Policy provides coverage if there is the actual presence of COVID-19 and access to the Properties is "limited, restricted or prohibited by . . . a decision of an Officer of the Insured as a result of the actual not suspected presence" of COVID-19.

65. Second, in or about that same time, the state or local authorities where Cirrus' Properties are located issued orders limiting, restricting and/or prohibiting access to the Properties because of the presence of COVID-19. The Policy provides coverage if there is the actual presence of COVID-19 and access to the Properties is "limited, restricted or prohibited by . . . an order of an authorized governmental agency regulated the actual not suspected presence of" of COVID-19. That the State and Local Orders did not explicitly identify and single out the Cirrus Properties in each Order is irrelevant: there is no such requirement to trigger coverage.

66. Coverage is also triggered under the Policy's Protection and Preservation of Property Coverages, in that it incurred reasonable and necessary costs to temporarily protect and/or preserve covered property, such action that was necessary due to prevent immediately impending physical loss or damage.

67. Thus, for the reasons set forth above and as otherwise provided by the terms of the

Policy, Swiss Re's denial of coverage is not supportable and constitutes a breach of the duty of good faith and fair dealing an insurer owes to its policyholder. Swiss Re has acted in bad faith in its handling of the Cirrus claim.

FIRST CAUSE OF ACTION
(Declaratory Judgment as to Coverage)

68. Cirrus incorporates the above Paragraphs by reference.

69. This is a claim for relief for declaratory judgment pursuant to CPLR §3001. An actual and justiciable controversy exists between Cirrus and Swiss Re concerning their respective rights and obligations under the Policy.

70. The issuance of declaratory relief will terminate the controversy between Cirrus and Swiss Re that gave rise to this action.

71. The Policy includes coverage extensions for losses resulting from COVID-19, and each insured location has satisfied the requisite elements to trigger coverage under the Communicable Disease Coverages.

72. Moreover, the Policy includes coverage for reasonable and necessary costs incurred to temporarily protect or preserve property, and professional fees, and Cirrus has satisfied the requisite elements to trigger coverage under the Protection and Preservation of Property and Professional Fees Coverages.

73. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of Cirrus and Swiss Re under the Policy.

74. Cirrus seeks a declaratory judgment declaring that the Policy covers the losses it has suffered and that Swiss Re is responsible for fully and timely paying Cirrus' Claim.

75. The burden of proof is on Swiss Re to demonstrate that coverage is limited in any way under the Policy.

SECOND CAUSE OF ACTION
(Breach of Contract)

76. Cirrus incorporates the above Paragraphs by reference.

77. The Policy is a valid and enforceable contract.

78. Cirrus paid substantial premiums for the Policy and the promises of coverage contained therein, and otherwise performed all of its obligations owed under the Policy or was excused from performance.

79. Swiss Re has wrongfully denied Cirrus' Claim and has refused to pay or otherwise honor its promises. In denying coverage for Cirrus' Claim, Swiss Re breached the contract (that is, the Policy). As a result, Cirrus has suffered and continues to suffer significant damages, in an amount to be proven at trial.

80. Swiss Re has breached the covenant of good faith and fair dealing based on its conduct with respect to Cirrus, including by failing to investigate Cirrus' Claim. As a result, Cirrus is entitled to consequential damages for Swiss Re's breach of the Policy, and attorneys' fees.

81. Consequential damages for breach of the Policy was reasonably contemplated by the parties when Swiss Re issued the Policy.

THIRD CAUSE OF ACTION
(Bad Faith Claim Handling (Minn. Stat. § 604.18))

82. Cirrus incorporates the above Paragraphs by reference.

83. Swiss Re sold the Policy to Cirrus, and Cirrus' principal place of business is in Minnesota.

84. Cirrus seeks additional relief under Minn. Stat. § 604.18.

85. Swiss Re failed to provide a reasonable basis for denying coverage for Cirrus' loss in connection with COVID-19, particularly given that the Policy has express Communicable Disease Coverages.

86. Swiss Re knew of the lack of a reasonable basis for denying coverage or acted in reckless disregard of the lack of a reasonable basis for denying coverage to Cirrus pursuant to the Policy's express Communicable Disease Coverages.

87. Swiss Re failed to conduct any meaningful or reasonable investigation into the claim.

88. It delayed responding to information Cirrus provided about the claim, would ask for information that Cirrus already provided, and had an ever-changing list of requests for information and/or requirements before coverage would be triggered.

89. Swiss Re had all the information needed to adjust Cirrus' claim and pay under the Communicable Disease Coverages.

90. Swiss Re's conduct demonstrates that rather than working to adjust Cirrus' claim, it underwent a dedicated effort to deny coverage.

91. Cirrus is entitled to damages and costs as a result of Swiss Re's denial and/or unreasonable delay in processing Cirrus' claim, including reasonable attorneys' fees actually incurred to establish Swiss Re's violation of Minn. State § 604.18.

PRAYER FOR RELIEF

WHEREFORE, Cirrus respectfully demands judgment against Swiss Re as follows:

- 1) On the First Cause of Action, a declaratory judgment that the Policy covers the losses it has suffered and that Swiss Re is responsible for fully and timely paying Cirrus' claim up to the policy limits.
- 2) On the Second Cause of Action, for an award of damages in favor of Cirrus in an amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal rate, consequential damages, attorneys' fees, costs and disbursements for this action.
- 3) On the Third Cause of Action, an award of pre-judgment and post-judgment interest, costs and disbursements, and reasonable attorneys' fees under Minn. Stat. § 604.18, subd. 2; and
- 4) For such other equitable and further relief as this Court deems just and proper.

JURY DEMAND

Cirrus hereby demands a trial by jury on all issues so triable in this action.

Dated: New York, New York
June 29, 2022

/s/ Joseph D. Jean
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