

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

GARTNER, INC.,  
Plaintiff,

v.

HCC SPECIALTY UNDERWRITERS, INC.  
and U.S. SPECIALTY INSURANCE  
COMPANY,  
Defendants.

Civil Action No.

**COMPLAINT AND JURY DEMAND**

1. This is an action by plaintiff, Gartner, Inc. (“Gartner”), for declaratory relief, breach of contract, breach of the covenant of good faith and fair dealing, misrepresentation, and unfair claims settlement practices and unfair trade practices arising out of “event cancellation” policies negotiated and underwritten by HCC Specialty Underwriters, Inc. (“Specialty Underwriters”), and identifying defendant U.S. Specialty Insurance Company (“USSIC”) as the insurer.

2. Gartner stages events and conferences throughout the world for IT and other professionals. These events are planned and scheduled well in advance of their actual date. Because these conferences and events are a profitable component of its overall business, Gartner sought to insure them against the risk that they could be cancelled and the revenue generated by them lost. Since 2007, Specialty Underwriters has negotiated on behalf of its affiliate companies to underwrite Gartner’s event cancellation coverage.

3. For many years prior to and including 2020, the policies specifically included “Communicable Disease” coverage, which provides insurance against “loss ... of whatsoever nature directly or indirectly caused by, resulting from or in connection with any outbreak of

communicable disease (whether actual or perceived). . . .” Since 2008, Specialty Underwriters has also included in the policies a provision permitting Gartner to “reinstate” or increase the total aggregate limit of liability (but only so much of it as Gartner might need) by paying a pre-determined additional premium, thus potentially doubling the initial limits available. Finally, the policies and the parties’ course of dealing permitted Gartner to submit an updated events schedule early in the year to obtain coverage for new events either not held in prior years or not large enough to have been insured in prior years and also permitted Gartner to increase the amount of coverage available for individual events beyond the prior year’s estimates initially provided to Specialty Underwriters in a placeholder schedule.

4. When the COVID-19 viral outbreak began to spread worldwide in early 2020, Gartner was forced to begin cancelling its planned events, and turned to Defendants for coverage. Defendants have responded by saying that Gartner may not: (a) reinstate the aggregate limits of liability, despite express provisions of the policies permitting Gartner to do so; (b) increase the amounts of revenue projected for individual events (and thus the coverage available for a given event) beyond the estimated revenues from the prior year, despite routinely permitting Gartner to do so in the past; or (c) add new shows to the schedules for 2020 — even though organized, planned, and committed to long before the pandemic.

### **PARTIES**

5. Plaintiff, Gartner, Inc. (formerly known as Gartner Group, Inc.), is a publicly traded global research and advisory firm incorporated in Delaware and has its principal place of business in Stamford, Connecticut. Gartner hosts conferences and events worldwide connecting leaders in IT, finance, HR, customer service and support, legal and compliance, marketing, sales, and supply chain functions. These events also serve as a venue to demonstrate the value of Gartner’s research and advisory subscription services to clients and potential clients.

6. Defendant, HCC Specialty Underwriters, Inc., is a Massachusetts corporation with its principal place of business in Wakefield, Massachusetts. Specialty Underwriters is authorized to and does business in New York as a foreign corporation and is licensed as an insurance broker and agent in New York. Specialty Underwriters operates under the marketing umbrella of the Tokio Marine HCC group of companies, under the trade name Tokio Marine HCC– Specialty Group, and negotiates and serves as the underwriting arm of various insurance companies in the group, including USSIC.

7. Defendant, U.S. Specialty Insurance Company, is an insurance company incorporated in Texas, with its principal place of business in Houston, Texas. USSIC has been admitted by the New York State Department of Insurance to write insurance in New York.

#### **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332(a) and 2201 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. This Court has personal jurisdiction over the Defendants under N.Y. C.P.L.R. § 302.

10. Venue is proper under 28 U.S.C. § 1391(b)(2).

#### **FACTUAL ALLEGATIONS**

11. Gartner hosts upwards of 70 destination conferences and events for business professionals annually in cities across the globe, as well as nearly 250 smaller meetings for executives under its “Evanta” brand. These events draw international attendees, exhibitors, and speakers, and also serve as a venue to demonstrate the value of Gartner’s research and advisory subscription services. Because the conferences segment of Gartner’s business generates a

significant percentage of its total revenue, Gartner insures against losses that may result from the cancellation of its events.

12. Gartner purchased two policies relating to the events it was forced to cancel in 2020: one for its larger, worldwide events (the “Gartner Policy”), and one for the smaller “Evanta” events (the “Evanta Policy,” and together, the “Policies”). Both these policies included essentially the same key terms and reinstatement of limits provision. For both policies, Gartner specifically purchased coverage for loss, damage, or expense in connection with “any outbreak of communicable disease (whether actual or perceived).”

13. Aon/Albert G. Ruben Insurance Services, Inc. (“Aon”) has been Gartner’s insurance broker since 2007, and since that time has negotiated all of the terms and conditions of Gartner’s event cancellation coverage with Specialty Underwriters. Neither Aon nor Gartner ever negotiated directly with USSIC regarding the terms of the Policies; rather, all of the terms were negotiated with Specialty Underwriters in Massachusetts. Specialty Underwriters sent the invoices for the policy premiums to Aon’s New York City office, which then invoiced Gartner, who submitted the payments to Aon in New York. Aon then remitted payment to Specialty Underwriters in Massachusetts, not to USSIC in Texas.

#### **EVOLUTION OF THE GARTNER POLICY**

14. Prior to 2008, Gartner had event cancellation coverage issued by Lloyd’s of London, brokered by Marsh. Subsequent to the issuance of that policy, Aon replaced Marsh as Gartner’s broker and solicited a competing bid for a renewal from Specialty Underwriters.

15. At the time, Gartner had no claims under the event cancellation coverage for several years running. To compete for the business, Specialty Underwriters offered Gartner several coverage options. The option chosen by Gartner came with a lower initial aggregate limit of liability, but gave Gartner an absolute, unilateral right — at its sole option, at a pre-

negotiated premium rate — to reinstate so much of the aggregate limits as Gartner might need if the initially stated limits were exhausted. This reinstatement right guaranteed that if Gartner needed additional coverage, it would be available and could be triggered for a set premium, thus ensuring that Gartner had access to double the limit stated on the declarations, as specifically provided for in the policy’s “reinstatement” provisions. As reflected in the policies, Specialty Underwriters represented that the limits of liability could be reinstated at any time, if Gartner needed to do so. This was a big selling point for Gartner, which did not want to pay a premium for coverage it historically did not need but wanted available. Aside from paying the agreed premium, there were no other restrictions placed on Gartner’s right to use the full limits of coverage, which for 2020 were \$300,000,000.

16. Specialty Underwriters placed the current coverage with its related company, USSIC. For the policy in effect from December 30, 2019 through December 31, 2021, Policy No. U-19/7004347 (the “Gartner Policy”) (Exhibit A, as represented by USSIC in a lawsuit filed against Gartner by USSIC in Texas), the Gartner Policy sets out an estimated yearly premium of \$1,413,670, which was, initially and preliminarily, based upon the schedule of budgeted revenues of Gartner shows for 2019, with the understanding that Gartner would provide in the early part of 2020 an updated Schedule of Events to be covered in 2020. Consistent with the language of the Policies and the parties’ course of dealing since 2007, Gartner could add new events to the 2020 Gartner schedule that did not appear on the 2019 schedule, and could budget increased revenues for recurring events, as these events were increasingly profitable.

17. Gartner’s addition of new events and increases in projected revenues for 2020 events (above the revenues generated by Gartner in 2019) resulted in a higher base on which the premium was calculated, according to an agreed-upon formula. Thus, USSIC collected more

premium based upon the rate to be applied per dollar than it had in the past. As long as USSIC was not paying claims, this arrangement suited Specialty Underwriters and USSIC just fine.

**TERMS OF THE GARTNER POLICY**

18. The Gartner Policy identifies the Insured as Gartner Group, Inc., with an address at 291 Broadway, Suite 901, New York, New York, and contains a notice that although the policy forms and rates are exempt from the New York insurance regulator's filing requirements, they nevertheless "must meet the minimum standards of the New York Insurance law and Regulations."

19. Section I of the Gartner Policy (Show Cancellation) provides, in relevant part, that "[t]his insurance indemnifies the Insured against any non-excluded loss occurring subsequent to the Effective Date resulting in the ... Cancellation, Curtailment, Postponement, Interruption, Relocation/Removal to Alternative Premises, or Abandonment of a Show" or "Enforced Reduced Attendance".

20. The Gartner Policy defines "Cancellation, Curtailment, Postponement, Interruption, Relocation/Removal to Alternative Premises, or Abandonment of a Show" all to mean "the inability of the Insured to open, keep open, or otherwise maintain the Show in whole or in part for its original intent, scope and duration."

21. The Gartner Policy insures Gartner for the Shows set forth in the 2020 Gartner schedule provided by Gartner on February 11, 2020. The shows and events on this schedule were planned, scheduled, and organized, with commitments made to venues and vendors, before Gartner understood it would have to cancel events and shows because of the COVID-19 pandemic.

22. Two key features of the coverage Gartner purchased give Gartner the right to (a) increase the limits of indemnity for particular shows and (b) reinstate the aggregate limit.

23. First, the policy permits Gartner to increase the amount of insurance reflected in the schedule for a particular show before it takes place:

9. *Increase in Limits of Indemnity*

It is understood and agreed that the Aggregate Limit of Indemnity is a loss limit and may not be sufficient to cover the aggregate value of all Shows. At any time prior to commencement of a Show or Shows the Insured can apply in writing for increased indemnity limits based upon revised financial estimates of Gross Revenues, Expenses or Commitments, provided that there is no circumstance(s) known by the insured which may give rise to a claim with respect to such Show or Shows declared to this insurance. ... It is understood and agreed that if Gross Revenue, Expenses or Commitments for any one, several or all Shows ... increases in value by a factor of 10% or less, there will be no change in premium and the Limit of Indemnity for any one, several or all Shows ... automatically increase accordingly.

24. Thus Gartner has the right to increase the limit for particular events before they occur, if Gartner's revenue expectations for those events increase over the amounts reflected on the schedule initially provided to Specialty Underwriters.

25. In addition, pursuant to the consistent course of dealing between the parties, the Defendants understood and agreed that Gartner could increase the limits available for a particular show by increasing the projected revenue for that show beyond what Gartner had provided in its initial schedule of events, when it provided an updated schedule of events to Specialty Underwriters.

26. The second way for Gartner to increase the amount of insurance is a provision that permits Gartner to access more than the initial \$150,000,000 in annual aggregate limits if Gartner needs to do so because Gartner's losses from cancellations would exceed \$150,000,000. Therefore Specialty Underwriters agreed that for 2020 Gartner would be entitled to increase the

total aggregate limit available by up to an additional \$150,000,000, for a potential total of \$300,000,000:

12. *Reinstatement of Original Limit of Liability*

This insurance is extended to cover a Show if it is Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated. The Company agrees to reinstate that part of the Limit of Indemnity shown in the Schedule utilized by way of any potential or actual loss payment under this insurance at the sole option of the Insured. If the Insured opts to reinstate the Limit of Indemnity then the additional premium payable is calculated at 100% of the original premium multiplied by that portion of the Limit of Indemnity reinstated. Furthermore, if the Limit of Indemnity reinstated exceeds the ultimate settled loss then the Company agrees to a return premium for the difference calculated in accordance with the foregoing. **The maximum amount that can be reinstated shall not exceed \$150,000,000.** (Emphasis added.)

27. The Gartner Policy accordingly provides both the ability for Gartner to increase a Limit of Indemnity for any event and the right to “reinstate” — i.e., potentially double — the aggregate limit of \$150,000,000 in the event Gartner’s losses in 2020 exceed that amount. Gartner’s right to “increase” the amount of insurance for a particular show or event is independent of Gartner’s right to also “reinstate” so much of the aggregate limit of \$150,000,000 as it might need, subject only to the restriction that the “maximum amount that can be reinstated shall not exceed \$150,000,000,” or a total of \$300,000,000 for 2020. Gartner bargained for both of these rights, and they had been part of Gartner’s event cancellation policies and the parties’ course of dealing for over a decade.

28. Another key feature of the Gartner Policy, which had been a part of Gartner’s event cancellation policies underwritten by Specialty Underwriters since 2014, is its explicit, broad extension of coverage for “Communicable Disease”:



COMMUNICABLE DISEASE – This insurance is to indemnify the insured for any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any outbreak of communicable disease (whether actual or perceived) regardless of any other cause contributing concurrently or in any sequence to the loss.

29. The claims procedure under the Gartner Policy requires the insured to give notice of the “happening or circumstance which gives rise to a claim” to Specialty Underwriters, Inc. in Wakefield, Massachusetts, not to USSIC.

30. Loss under the Show Cancellation coverage is determined as “the greater of”:

(i) the loss of Gross Revenue that would have been received in the absence of the covered loss, whether or not the insured is obligated by contract or otherwise to return such Gross Revenue, plus the insured’s loss from Commitments, less recoveries made and any necessary Expenses not incurred. Pro-rata return of any part of Gross Revenue in connection with a Show shall be considered as loss of Gross Revenue; or

(ii) the total of Expenses incurred plus loss of Commitments, less any recoveries obtained, and less Gross Revenue retained after refunds, whether or not the insured is obligated by contract or otherwise to return such Gross Revenue; and

(iii) with respect to (i) and (ii) above the reasonable cost incurred, agreed, or committed by the Insured to avoid, diminish, or mitigate the extent, scope or possibility of a loss including costs to reschedule and or remarket a Show. Such costs include but are not limited to: extra expense, transportation, accommodation, Commitments, incentives, advertising, promotion, marketing and public relations Expenses. The cost of such action is in addition to the limit of liability.

31. On February 11, 2020, under the terms of the Gartner Policy and in keeping with the parties’ course of dealing, Gartner timely provided Specialty Underwriters with the 2020 Gartner schedule for the Shows that Gartner intended to host through December 31, 2020, with an estimate of the expected revenue to be derived from each show.

**THE EVANTA POLICY**

32. In April 2017 Gartner acquired a company that put on conferences and events under the brand name “Evanta.” These events are smaller than the ones put on by Gartner.

33. Sometime after acquiring the Evanta events business, Gartner decided it would be prudent to obtain from Specialty Underwriters a policy covering the smaller events put on by Evanta, which typically had revenues under \$1,000,000. In 2019, Specialty Underwriters negotiated a policy with total limits of \$40,000,000, modelled closely after the Gartner Policy. Thus, the Evanta Policy provided for \$20,000,000 in initial limits, with \$20,000,000 more that could be reinstated by Gartner for any reason, and only if Gartner needed to reinstate them.

34. The Evanta Policy is only an eighteen-month policy, because Gartner needed coverage for the Evanta events during 2019. USSIC, through Specialty Underwriters, sold Gartner this additional policy, effective June 15, 2019 through December 31, 2020, Policy No. U-19/7000957 (the “Evanta 2019 Policy”) (Exhibit B, as represented by USSIC in a lawsuit filed against Gartner by USSIC in Texas).

35. The Evanta Policy, like the Gartner Policy, identifies the Insured as Gartner Group, Inc., with an address at 291 Broadway, Suite 901, New York, New York, and contains a notice that although the policy forms and rates are exempt from the New York insurance regulator’s filing requirements, they nevertheless “must meet the minimum standards of the New York Insurance law and Regulations.”

36. Gartner first requested a quotation for the Evanta Policy in April 2019, providing Specialty Underwriters with a preliminary schedule of Evanta events for 2019. Through its affiliate USSIC, Specialty Underwriters issued the Evanta Policy effective June 15, 2019 through

December 31, 2020. Specialty Underwriters understood that Gartner would provide an updated schedule for 2020, consistent with the parties' course of dealing.

37. The terms of the Evanta Policy were intended to mirror the Gartner Policy, except with respect to the limit, premium, and Schedule of Events. The Evanta Policy contains the same important features as the Gartner Policy that give Gartner the right to increase the limits of indemnity for particular shows and to reinstate the aggregate limit.

38. Gartner provided its updated schedule of Evanta events to Specialty Underwriters on March 2. Gartner had planned, organized, and scheduled these events to take place in 2020 long before Gartner knew it would have to cancel events because of the COVID-19 pandemic. The 2020 Evanta schedule includes some recurring Evanta events, the previous iterations of which were shown on the Evanta schedule for 2019. Consistent with its estimates of expected revenue and attendance growth, the 2020 Evanta schedule reflects higher revenues for the 2020 events than their 2019 iterations. It also includes some new events, which were not recurrences of 2019 insured events, consistent with the parties' understanding and course of dealing that new shows were expected to be added by the time the 2020 Evanta schedule was finalized and given to Specialty Underwriters.

39. These events, both recurring and new, were expected to be profitable and beneficial to Gartner's business.

#### **GARTNER IS FORCED TO CANCEL EVENTS**

40. In February 2020, as the COVID-19 pandemic began to spread beyond China, Gartner was forced to begin postponing and cancelling events in order to protect the health and safety of its employees, contractors, and attendees — and in response to public advisories and governmental requests to limit travel and gatherings.

41. These cancellations and postponements were necessary in the midst of a global public health crisis, and represented a substantial loss to Gartner's profitable and growing events business. The resulting loss was squarely within the coverage provided by the Gartner and Evanta Policies, and Gartner, through Aon, promptly notified Specialty Underwriters.

42. Specialty Underwriters responded to Gartner's notices by unreasonably refusing to acknowledge coverage, and instead demanding, through its contracted adjustor, Hyperion Adjusters ("Hyperion"), that Gartner provide unnecessary and burdensome documentation regarding each individual event while Gartner was struggling to formulate a strategy to keep its events business afloat.

43. Gartner gave its first notice of a potential cancellation in late February 2020, reporting two events, scheduled to be held in Tokyo and Dubai, that were in danger of cancellation because of travel concerns raised by various governments as a result of the pandemic.

44. Specialty Underwriters' Director of Contingency and SHEL Claims, Lorna Gillespie, responded to Gartner's notice on February 25, 2020, and assigned Hyperion to handle the matters, but did not acknowledge that either event would be covered by USSIC despite the rapidly worsening global health situation. Indeed, she suggested that despite Gartner's "Communicable Disease" coverage, the cancellation of these events would not be covered. She wrote, "We will continue to follow the situation in Dubai and Asia and any affect Coronavirus will have on future events. For now, it seems travel to Dubai is only restricted if flying to/from Iran or through Bahrain. Otherwise, there shouldn't be any disruption to the event, other than any reduced attendance due to attendees in China, Bahrain, Italy, etc. that cannot get there due to travel restrictions." She further stated (wrongfully) that "[t]he policy would not respond to any

**cancellations/refunds arising out of fear of traveling, alone.”** This position was contrary to the language of the Gartner and Evanta Policies providing coverage for loss indirectly or directly in connection with “any outbreak of communicable disease (**whether actual or perceived**)”. (Emphasis added.)

45. Soon thereafter, Specialty Underwriters demanded to know the reasons for the cancellations. This came as a surprise to Gartner given the nonstop news of the pandemic and Gartner’s repeated explanations that the only reason for cancelling its otherwise profitable events was the effects of COVID-19, which fell squarely within the policy’s “Communicable Disease” coverage.

46. Soon after the February 25, 2020 Gillespie communication, Gartner was forced to cancel the Tokyo event (scheduled for February 27) in response to a Japanese government statement raising health concerns and requesting caution in response to the pandemic.

47. On March 3, Gartner informed Hyperion that the event in Dubai also had to be cancelled, because among other reasons, it required 74 Gartner employees and 31 contractors to travel to set up and run the event, risking their health and safety (along with that of the attendees) and presenting the possibility that some or all might need to be quarantined abroad. In addition, many non-local attendees were from countries imposing travel restrictions. In light of Specialty Underwriters’ stated position that the policy would not respond to attendees’ “fear of traveling,” Gartner requested an immediate confirmation that the cancellation was covered under the Policy. Neither Specialty Underwriters nor Hyperion would acknowledge coverage at the time. Hyperion, however, requested and received detailed information with respect to vendors and attendees for the Dubai event.

**SPECIALTY UNDERWRITERS UNREASONABLY WITHHOLDS ACKNOWLEDGEMENT OF COVERAGE FOR CANCELLATIONS**

48. Hyperion, in response to Gartner's request for an acknowledgment of coverage, demanded on behalf of Specialty Underwriters and USSIC voluminous and irrelevant documentation on the cancelled events, including lists of staff, exhibitors, contractors, and attendees, and detailed event budgets. It also asked for the reasons why the event, cancelled at the last minute in response to the COVID-19 emergency, could not be rescheduled. Finally, Hyperion asked Gartner to **"identify and provide written confirmation from the lists of delegates and exhibitors who had declined to attend either Event and the reason stated for their withdrawal."** Gartner was shocked and dismayed by these voluminous, burdensome and wholly irrelevant requests. The volume of information sought by Hyperion and Specialty Underwriters was staggering, especially given the Policies' straightforward formula for calculating losses by taking the revenue that would have been received if not for the covered cancellation, plus losses from commitments the insured could not avoid less recoveries and expenses not incurred.

49. One of Gartner's brokers at Aon, George Walden, responded to Hyperion on March 11, 2020, stating that the information requested — in particular, the reasons given by individual attendees who declined to attend — was unreasonably burdensome and irrelevant to the claim, as the reason for the cancellation of the otherwise profitable event was the only relevant factor, and the pandemic was the obvious reason for the cancellation.

50. Specialty Underwriters, in response, affirmed that it was driving Hyperion's requests. On March 11, 2020, as locations around the world were entering lockdown, governments were imposing travel bans and advisories, businesses were being ordered closed, and sporting and other events were being cancelled around the globe, Specialty Underwriters'

Michael Thompson responded to Aon that Hyperion “is just trying to get details to support the claim and provide a detailed report to insurers. ... **The insured will need to provide the reasons/details [why] they were unable to open the show.**”

51. During the month of March as COVID-19 continued to spread, Gartner had to cancel two events in London, two in the United States, and three in Sweden, which had issued a ban on non-essential travel. Each time, Aon requested that Specialty Underwriters confirm that the cancellation was covered under the Gartner Policy, given the express “Communicable Disease” coverage extension.

52. On March 26, 2020, Specialty Underwriters finally confirmed coverage for the Tokyo and Dubai cancellations, subject to adjustment of the amounts owed. Gillespie wrote that while “[w]e don’t anticipate any coverage issues on events cancelled through the end of April/beginning of May for now, however, we have to review each one individually to formally confirm coverage.” Remarkably, Specialty Underwriters did not withdraw its demand that Gartner “provide the reasons” each of the attendees were unable to attend Gartner’s events.

53. Aon responded to this communication, demanding a response regarding coverage with respect to “all events that have been cancelled and noticed to [Specialty Underwriters] to date.” Gillespie responded on March 27, only confirming coverage for seven more events in March and April that were scheduled to be held in the United Kingdom, the United States, Brazil, Japan, and Australia.

54. On April 7, 2020, following additional requests from Aon, Specialty Underwriters confirmed coverage for all events cancelled due to COVID-19, but only through the end of May 2020, even though Gartner had notified Specialty Underwriters of cancellations beyond May.

55. On April 14, 2020, Gartner sent detailed spreadsheets identifying the city and specific location of the events cancelled through August for the Gartner Policy, and through June for the Evanta Policy, and the expected revenue associated with those events. Included with those materials was a detailed and comprehensive spreadsheet of financial data for Event 0088 – Data and Analysis Symposium to have been held in London on March 9, 2020, showing a loss to Gartner in excess of \$5,000,000 for this event alone.

56. Hyperion ultimately notified Gartner in mid-April that it would provide a “template” for Gartner to use to provide information regarding each cancelled event. This template, provided on April 30, 2020, required Gartner to provide disaggregated information for each cancelled/postponed event, including, but not limited to: all of the “commitments” undertaken by Gartner by vendor and date; all invoices for the event by number and date; and amounts of revenues from all customers, with invoice numbers and dates. Because thousands of people regularly attended large Gartner events, including Gartner personnel — who each had travel and lodging expenses — the disaggregated requests were wildly burdensome, unnecessary and designed to impede the payment of valid claims.

57. On April 15, 2020, Aon asked Specialty Underwriters to “advise next steps for a full re-instatement of limits” on both Policies.

58. Thereafter, Aon requested that Specialty Underwriters provide written confirmation that the limits would be reinstated in accordance with the terms of the Policies. Specialty Underwriters delayed in providing a response for weeks. In a May 11 email, Aon’s Walden called Specialty Underwriters’ continued delay “frustrating and unreasonable. We must insist that [Specialty Underwriters] advise its coverage opinion as to this issue and we must demand a firm date for a response.”



59. Aon similarly demanded that Specialty Underwriters affirm coverage for events cancelled through June 2020 under the Gartner and Evanta Policies “so that the insured can move forward with quantification.” Given the pandemic worldwide, “[i]t is unreasonable to not accept the obvious in light of present world events.”

60. On May 12, 2020, Aon informed Specialty Underwriters that Gartner had officially cancelled events through August 2020 and some later, and was developing a plan to produce its “most profitable and strategically important conferences in Q4.”

61. On May 13, 2020, Specialty Underwriters’ Gillespie sent a letter to Aon in New York acknowledging the submission of claims under the Gartner Policy and reiterating that Specialty Underwriters had accepted coverage of many of the individual event claims, but only subject to a reservation of rights. Gillespie’s letter requested additional documentation regarding cancellations and postponements, asserting that “Gartner has provided USSIC no information that would permit USSIC to assess indemnity, even preliminarily. Specifically, Gartner has not provided the basis on which it determined that it was ‘unable’ to stage each of the events. Nor has Gartner provided even rough financial information from which USSIC might calculate loss.” That statement ignored the significant loss information Gartner had been providing to Hyperion.

62. Regarding reinstatement, Gillespie stated in her May 13 letter that Gartner’s demand for reinstatement was “premature”:

As referenced above, the Policy provides for reinstatement of policy limits based on “potential or actual loss payment.” No payment has occurred, nor has Gartner provided preliminary claim information necessary to evaluate the potential amount of each claim. In any event, whether USSIC is required to provide a reinstatement of limits that may potentially respond to a loss in progress which has already occurred or is occurring implicates complex coverage questions that implicate policy language and applicable law. **We believe that it is premature at this**

**point to address the question, but USSIC will provide its position on this issue within fourteen (14) days of the date of this letter.**

(Emphasis added.)

63. Fourteen days later, on May 27, Gillespie provided USSIC's promised position:

Gartner has requested that USSIC state its position in writing as to whether USSIC will reinstate limits for the Policy, pursuant to Paragraph 12 of the General Conditions and Warranties, without requiring a COVID-19 exclusion. USSIC will agree to reinstate the original limit of liability for the cancelled Shows, however, as detailed below, the reinstated liability limits for a particular Show will respond solely to costs incurred with respect to the Show or Shows for which reinstatement is requested. In no event can such reinstatement of limits be used for purposes of paying claims related to a separate and unrelated Show, nor will reinstatement of limits result in an increase in the Aggregate Limit of Indemnity.

64. On the same day, and with no prior notice to Gartner, USSIC filed two suits against Gartner in the U.S. District Court for the Southern District of Texas. The suits seek declaratory judgments that USSIC is not obligated to reinstate the limits under the Gartner Policy or the Evanta Policy, and that Gartner cannot add "new" events or claim increased projected revenues (and therefore increased coverage for individual events) beyond what Gartner expected from those events in 2019, despite Defendants' knowledge that Gartner's event revenues increased from year to year.

65. To date, neither USSIC nor Specialty Underwriters has paid anything for Gartner's loss on the London event.

**COUNT I**  
**DECLARATORY JUDGMENT – REINSTATEMENT OF AGGREGATE LIMITS OF GARTNER POLICY -**  
**- USSIC**

66. Gartner realleges the allegations of the foregoing paragraphs.

67. The terms of the Gartner Policy provide Gartner with the option to reinstate the aggregate limits of liability for any reason up to an additional \$150,000,000 in the event that Gartner's losses exhaust the original limits.

68. Gartner's right to reinstate the aggregate limits for 2020 of the Gartner Policy to access a full \$300,000,000 in coverage for 2020 if required to cover Gartner's losses was a key feature of the coverage Gartner paid for.

69. Gartner is entitled to a declaration that it is entitled to reinstate the initial aggregate limits of the Gartner Policy, in part or in full, at its option.

**COUNT II**  
**DECLARATORY JUDGMENT – REINSTATEMENT OF AGGREGATE LIMITS OF EVANTA POLICY –**  
**USSIC**

70. Gartner realleges the allegations of the foregoing paragraphs.

71. The terms of the Evanta Policy provide Gartner with the option to reinstate the aggregate limits of liability for any reason up to an additional \$20,000,000 in the event that Gartner's losses exhaust the original limits.

72. Gartner's right to reinstate the limits of the Evanta Policy to access a full \$40,000,000 in coverage if required to cover Gartner's Evanta losses was a key feature of the coverage Gartner paid for.

73. Gartner is entitled to a declaration that it is entitled to reinstate the initial aggregate limits of the Evanta Policy, in part or in full, at its option.

**COUNT III**  
**DECLARATORY JUDGMENT – COVERAGE FOR 2020 EVENT SCHEDULES – USSIC**

74. Gartner realleges the allegations of the foregoing paragraphs.

75. The Gartner Policy was initially underwritten based on the 2019 events schedule, with the mutual understanding that Gartner could add new events and update the budgeted

revenue for recurring events, consistent with past practice. The parties intended and understood that Gartner, as it had in the past, would provide an updated schedule of 2020 events in the early part of the year, at which point the premium for the Gartner Policy would be recalculated.

76. Similarly, Specialty Underwriters, as the agent of USSIC, understood that in early Spring 2020, Gartner would provide an Evanta schedule for 2020 events, at which point the premium for the Evanta Policy would be recalculated.

77. The actual 2020 schedules provided to Specialty Underwriters included some recurring shows that reflected higher revenues, consistent with Gartner's estimates of expected revenue and attendance growth.

78. The schedules also included some new events, which were not recurrences of 2019 events, consistent with the parties' understanding and course of dealing that new shows were expected to be added by the time the schedules were given to Specialty Underwriters.

79. These events, both recurring and new, were expected to be profitable and beneficial to Gartner's business. The 2020 events were planned, organized and scheduled and many commitments to vendors had been made before Gartner knew it would have to cancel its previously-planned events because of the pandemic.

80. The 2020 schedules were submitted to Specialty Underwriters in the first quarter of 2020, rather than earlier or in a piecemeal fashion as events were scheduled and budgets were finalized, consistent with and in reliance on the previous course of dealing between Gartner and Specialty Underwriters, as USSIC's agent. Specialty Underwriters had consistently accepted in full new schedules provided by Gartner in the first quarter of the second year of previous two-year policies.

81. Months after receiving the 2020 Evanta schedule, Specialty Underwriters refused, on behalf of USSIC, to insure the “recurring” events at 2020 budgeted revenue levels, asserting that coverage for those shows did not “incept” until after Gartner became aware of the risks of the COVID-19 pandemic and thus any increase in expected revenues reflected in the 2020 Evanta schedule over 2019 levels would be subject to a COVID-19 exclusion.

82. Specialty Underwriters imposed these new restrictions notwithstanding the prior course of dealing and understandings with Gartner on which Gartner had relied for years.

83. Gartner is entitled to a declaration that USSIC is obligated to provide coverage under the Policies at the levels stated in the 2020 schedules provided to Specialty Underwriters, without an exclusion for losses related to COVID-19; or, in the alternative, that USSIC is estopped from refusing to accept and cover the events on the 2020 schedules at the levels stated therein by the parties’ prior course of dealing and Gartner’s reasonable reliance on Specialty Underwriter’s prior conduct on behalf of USSIC.

**COUNT IV**  
**DECLARATORY JUDGMENT – ADDITIONAL COSTS AND EXPENSES – USSIC**

84. Gartner realleges the allegations of the foregoing paragraphs.

85. The Gartner and Evanta Policies contain a broad extension of coverage for “Communicable Disease,” indemnifying Gartner for **“any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any outbreak of communicable disease ... regardless of any other cause contributing concurrently or in any sequence to the loss.”**

86. As a result of or in connection with the COVID-19 pandemic, Gartner has been forced to litigate coverage under the Gartner and Evanta Policies with USSIC and Specialty Underwriters in two jurisdictions.

87. Gartner is entitled to a declaration that USSIC must indemnify Gartner for its attorneys' fees and other costs and expenses because, under the "Communicable Disease" coverage, those amounts were "directly or indirectly caused by, resulting from or in connection with" the COVID-19 pandemic.

**COUNT V**  
**BREACH OF CONTRACT – GARTNER POLICY -- USSIC**

88. Gartner realleges the allegations of the foregoing paragraphs.

89. The terms of the Gartner Policy provide Gartner with the option to reinstate the aggregate limits of liability for any reason up to an additional \$150,000,000 in the event that Gartner's losses exhaust the original limits.

90. Gartner's right to reinstate the aggregate limits for 2020 of the Gartner Policy to access a full \$300,000,000 in coverage for 2020 if required to cover Gartner's losses was a key feature of the coverage Gartner paid for.

91. USSIC breached the Gartner Policy by refusing to reinstate its limits, thereby depriving Gartner of as much as \$150,000,000 in coverage for 2020.

92. Gartner has been damaged by USSIC's breach in an amount to be determined at trial.

**COUNT VI**  
**BREACH OF CONTRACT – EVANTA POLICY – USSIC**

93. Gartner realleges the allegations of the foregoing paragraphs.

94. The terms of the Evanta Policy provide Gartner with the option to reinstate the aggregate limits of liability for any reason up to an additional \$20,000,000 in the event that Gartner's losses exhaust the original limits.

95. Gartner's right to reinstate the limits of the Evanta Policy to access a full \$40,000,000 in coverage if required to cover Gartner's Evanta losses was a key feature of the coverage Gartner paid for.

96. USSIC breached the Evanta Policy by refusing to reinstate its limits, thereby depriving Gartner of as much as \$20,000,000 in coverage.

97. USSIC further breached the contract by refusing to accept the schedule of events and revenues that Gartner planned long before it was aware of the impact of the COVID-19 pandemic.

98. Gartner has been damaged by USSIC's breach in an amount to be determined at trial.

**COUNT VII**  
**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – USSIC**

99. Gartner realleges the allegations of the foregoing paragraphs.

100. Beginning April 15, 2020, Aon repeatedly requested that Specialty Underwriters provide written confirmation on behalf of USSIC that Gartner would be able to reinstate the policy limits as provided by the Policies. Specialty Underwriters repeatedly delayed in providing a response.

101. In an email dated May 11, 2020 to Specialty Underwriters, Aon's Walden stated: "We must insist that [Specialty Underwriters] advise its coverage opinion as to this issue and we must demand a firm date for a response."

102. On May 13, 2020, Specialty Underwriters' Gillespie sent a letter to Aon stating that Gartner's demand for reinstatement was "premature."

103. Fourteen days later, on May 27, Gillespie finally replied that "[i]n no event can such reinstatement of limits be used for purposes of paying claims related to a separate and

unrelated Show, nor will reinstatement of limits result in an increase in the Aggregate Limit of Indemnity.”

104. On the same day, USSIC filed two suits against Gartner in the U.S. District Court for the Southern District of Texas, seeking declaratory judgments that it was not obligated to reinstate the limits under the Gartner Policy or the Evanta Policy, and that Gartner could not add “new” events or claim increased revenues beyond what Gartner had budgeted for 2019.

105. On information and belief, Specialty Underwriters’ weeks of delays and statement on May 13, 2020 that in 14 days it would respond to the requests for a coverage position submitted more than a month earlier were intended to give USSIC sufficient time to prepare and file declaratory judgment actions in Texas asserting an actual controversy, while lulling Gartner to take no action by telling Gartner its request was “premature,” therefore ensuring that USSIC was able to choose a forum inconvenient to Gartner, and where none of the witnesses or evidence is located.

106. Gartner reasonably relied on Specialty Underwriters’ representations on behalf of USSIC that Gartner’s request for reinstatement was “premature” but that they were working in good faith to state a coverage position. As a result of its reasonable reliance, Gartner was forced to respond to two separate lawsuits filed by Specialty Underwriters’ affiliate, USSIC, in Houston, Texas.

107. The actions of USSIC through its agent, Specialty Underwriters, were intended to deprive Gartner of its rights to receive the benefits of the Gartner and Evanta Policies.

108. USSIC’s breaches of the implied covenant of good faith and fair dealing, including through its agent, have caused Gartner losses of money for which USSIC is liable, in an amount to be determined at trial.



**COUNT VIII**

**UNFAIR AND DECEPTIVE ACTS (MASS. G.L. C. 93A) – SPECIALTY UNDERWRITERS**

109. Gartner realleges the allegations of the foregoing paragraphs.

110. Gartner is engaged in trade or commerce.

111. Specialty Underwriters committed unfair and deceptive acts and practices in violation of Massachusetts General Laws c. 93A, §§ 2, 11, in the handling of Gartner’s COVID-19 cancellation claims and Gartner’s demand to exercise its contractual rights to reinstate the Policies’ limits.

112. Among the unfair and deceptive acts and practices Specialty Underwriters committed with regard to the Gartner and Evanta Policies in Massachusetts are the following:

- i. Failing to provide prompt confirmations of coverage for the clearly necessary cancellation and postponements of events through August 2020, but instead demanding irrelevant documentation and otherwise neglecting to provide prompt and clear coverage positions;
- ii. Demanding burdensome documentation supporting the cancellation of events despite the evident need to cancel events in the face of the global COVID-19 pandemic and the broad language of the Policies’ “Communicable Disease” coverage;
- iii. Representing that Gartner could not cancel events based on attendees’ fear of traveling during the COVID-19 pandemic, which was directly contrary to the Policies’ “Communicable Disease” coverage;
- iv. Refusing to cover new events and the increased revenue expectations from recurring events reflected in the 2020 schedules provided by Gartner notwithstanding the parties’ prior course of dealing on which Gartner reasonably relied to determine the timing of its submission of the schedules; and
- v. Asserting in response to Gartner’s request for a coverage position regarding reinstatement of the limits of the Gartner and Evanta Policies that Gartner’s request was premature, in order to lull Gartner into awaiting Specialty Underwriters’ coverage position while, undisclosed to Gartner, USSIC was using that time to prepare and file declaratory judgment actions in Texas, therefore ensuring that Gartner did not file an action first and thereby deprive Specialty Underwriters and USSIC of their choice of a forum inconvenient to Gartner.

113. Specialty Underwriters, in handling Gartner's event cancellation claims under the Gartner Policy and the Evanta Policy as an agent of USSIC, also committed the following further acts that constitute unfair claim settlement practices that are prohibited by Massachusetts G.L. c. 176D § 3(9), and therefore constitute violations of G.L. c. 93A, §§ 2, 11:

- i. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue, by representing that widespread fear of flying and travel by attendees in the face of a global pandemic and widespread travel advisories was an inadequate reason for cancellation of an event under the policies, and therefore there would not be coverage for such cancellations;
- ii. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies, by failing to provide prompt confirmations of coverage for the clearly necessary cancellation and postponements of events through August 2020, but instead demanding irrelevant documentation and otherwise neglecting to provide prompt and clear coverage positions; and
- iii. Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

114. Specialty Underwriters' violations of G.L. c. 93A were willful and knowing.

115. Specialty Underwriters is located in Wakefield, Massachusetts and its unfair and deceptive acts after receiving notice of the cancellations occurred primarily and substantially in Massachusetts.

116. Gartner has suffered losses of money as a result of Specialty Underwriters' unfair and deceptive acts.

**COUNT IX**  
**UNFAIR AND DECEPTIVE ACTS (MASS. G.L. C. 93A) – USSIC**

117. Gartner realleges the allegations of the foregoing paragraphs, and particularly the allegations of Count VIII, paragraphs 109-116.

118. USSIC is independently responsible for the conduct of Specialty Underwriters in violation of G.L. c. 93A because Specialty Underwriters acted on behalf of and as an agent of USSIC.

**COUNT X**  
**MISREPRESENTATION – PREMATURETY OF DEMAND FOR POSITION ON REINSTATEMENT –  
SPECIALTY UNDERWRITERS AND USSIC**

119. Gartner realleges the allegations of the foregoing paragraphs.

120. Beginning April 15, Aon repeatedly requested that Specialty Underwriters provide written confirmation on behalf of USSIC that Gartner would be able to reinstate its limits in accordance with the terms of the Policies. Specialty Underwriters repeatedly delayed in providing a response.

121. On May 13, 2020, Specialty Underwriters' Gillespie sent a letter to Aon stating that Gartner's demand for a position on reinstatement was "premature."

122. Fourteen days later, on May 27, Gillespie finally provided the promised position:

In no event can such reinstatement of limits be used for purposes of paying claims related to a separate and unrelated Show, nor will reinstatement of limits result in an increase in the Aggregate Limit of Indemnity.

123. On the same day, without any prior notice to Gartner, USSIC filed two suits against Gartner in the U.S. District Court for the Southern District of Texas, seeking declaratory judgments that it was not obligated to reinstate the limits under the Gartner Policy or the Evanta Policy, and that Gartner could not add "new" events or claim increased revenues beyond what Gartner had budgeted for 2019.

124. On information and belief, Specialty Underwriters' weeks of delays and statement on May 13, 2020 that in 14 days it would respond to the requests for a coverage position submitted more than a month prior were intended to give its attorneys sufficient time to prepare

and file declaratory judgment actions in Texas while lulling Gartner to take no action, therefore ensuring that USSIC was able to choose a forum inconvenient to Gartner.

125. Gartner reasonably relied on Specialty Underwriters' representations that Gartner's request for reinstatement was "premature" but that they were working in good faith to state a coverage position. As a result of its reasonable reliance, Gartner was forced to respond to the lawsuits filed by Specialty Underwriters' affiliate, USSIC, in Houston, Texas.

### **PRAYER FOR RELIEF**

WHEREFORE, Gartner respectfully requests that the Court:

- a. Enter judgment declaring that Gartner is entitled to reinstate the initial limits of the Gartner Policy and the Evanta Policy, in part or in full, at its option;
- b. Enter judgment declaring that USSIC is obligated to provide coverage under the Policies at the levels stated in the 2020 schedules provided to Specialty Underwriters, without an exclusion for losses related to COVID-19; or, in the alternative, that USSIC is estopped from refusing to accept and cover the events on the 2020 schedules at the levels stated therein by the parties' prior course of dealing and Gartner's reasonable reliance on Specialty Underwriter's prior conduct on behalf of USSIC;
- c. Enter judgment declaring that, under the broad "Communicable Disease" coverage in the Gartner and Evanta Policies, USSIC must indemnify Gartner for its attorneys' fees and other costs and expenses "directly or indirectly caused by, resulting from or in connection with" the COVID-19 pandemic, including but not limited to attorneys' fees for responding to USSIC's declaratory judgment suits and for bringing this affirmative action;
- d. Award damages for USSIC's breach of the implied covenant of good faith and fair dealing;
- e. Award damages for Specialty Underwriters' violations of Mass. G.L. c. 93A, including multiple damages for Specialty Underwriters' willful and knowing violations and award Gartner its reasonable attorneys' fees;
- f. Award damages for USSIC's violations of Mass. G.L. c. 93A, including multiple damages for USSIC's willful and knowing violations and award Gartner its reasonable attorneys' fees;
- g. Award damages for USSIC's and Specialty Underwriters' misrepresentation;
- h. Award all other relief that the Court deems just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Gartner, Inc. hereby demands a trial by jury as to all claims and all issues properly triable.

Dated: June 25, 2020  
New York, New York

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