

NY Hospital System Says Chubb Denied It COVID-19 Coverage

By **Mike Curley**

Law360 (July 24, 2020, 8:52 PM EDT) -- A New York hospital system on the front lines in the fight against the COVID-19 pandemic sued a unit of Chubb Insurance on Friday, saying the insurer strung the health care provider along for two months before wrongfully denying its claim for the cost of dealing with the virus.

In a complaint in New York County Court, Northwell Health Inc., which manages 23 hospitals in New York City and the surrounding area, says Illinois Union Insurance Co. is misrepresenting the terms of its policy by denying coverage.

Northwell says in the complaint that as the state's largest health provider, it was at the forefront of the fight against COVID-19 as New York quickly became the nation's epicenter for the pandemic, and has incurred heavy costs both as a result of adapting to the disease and from the shutdown of non-COVID-19-related services such as elective surgeries.

"Chubb's position has forced Northwell to fight a two-front war, both against the worst public health crisis the world has seen in generations, but also to obtain coverage to which it is clearly entitled," Northwell said in the complaint.

As the pandemic grew in the city, Northwell says its hospitals were "overflowing," and it had to create more than 1,600 additional beds, secure personal protective equipment and have staff ready around the clock, according to the complaint.

At the same time, the hospitals had to put a hold on elective surgeries, close physicians' practices and allow fewer non-COVID-19 admissions to protect patients, Northwell says.

According to the complaint, Northwell's policy with Chubb entitles it to coverage for costs of remediation, emergency response and decontamination for a "facility-borne illness event" and "pollution conditions."

But despite promptly sending its claim to Chubb as the pandemic took hold in March, Northwell didn't hear back until May, when Chubb denied the claim, saying COVID-19 was neither a pollution condition nor a facility-borne illness because it could pass through human-to-human contact.

Northwell quickly responded to the May letter disputing Chubb's decision, but again the insurance

company delayed, only responding in July, according to the complaint.

In Friday's complaint, Northwell argues COVID-19 is considered a facility-borne illness because of its ability to survive on surfaces and be retransmitted that way, so it is not only transferable by human-to-human contact. The health provider adds that the policy's definition of pollution conditions includes viruses.

In the suit, Northwell is pursuing claims for breach of contract and a covenant of good faith as well as a declaration that Chubb has to cover its costs in responding to the pandemic. In addition to those costs, Northwell says it's seeking damages of more than \$500,000 for the alleged breach of contract.

An attorney for Northwell and a spokesperson for Chubb declined to comment Friday.

Northwell is represented by Robin L. Cohen, Alexander M. Sugzda and Cynthia Jordano of McKool Smith PC.

Counsel information for Chubb was not available.

The case is Northwell Health Inc. v. Illinois Union Insurance Co., case number unavailable, in the Supreme Court of the State of New York, County of New York.

--Editing by Janice Carter Brown.