

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NORTHWELL HEALTH, INC.,		:	
	Plaintiff,	:	Date Purchased:
	v.	:	<u>SUMMONS</u>
		:	
ILLINOIS UNION INSURANCE COMPANY,		:	
	Defendant.	:	
-----		:	

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue is proper pursuant to N.Y. C.P.L.R. §§ 501 and 503. The bases of venue are Plaintiff's residency in New York State and the venue provision in the Healthcare Premises Pollution Liability Insurance Policy (the "Policy") issued by you to Plaintiff. The Policy's "Jurisdiction and Venue" provision provides: "It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the 'insured' shall submit to the exclusive jurisdiction of the State of New York and shall comply with all requirements necessary to give such court jurisdiction." Policy at p. 22 of 61.

Dated: New York, New York
July 24, 2020

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NORTHWELL HEALTH, INC.,		:	
	Plaintiff,	:	<u>COMPLAINT</u>
	v.	:	<u>JURY TRIAL DEMANDED</u>
ILLINOIS UNION INSURANCE COMPANY,		:	
	Defendant.	:	
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Plaintiff Northwell Health, Inc. (“Northwell” or “Plaintiff”), by and through its undersigned attorneys, as and for its Complaint against Illinois Union Insurance Company (“Illinois Union” or “Defendant”),¹ alleges as follows:

INTRODUCTION

1. This action for breach of contract and declaratory judgment arises out of Chubb’s refusal to provide insurance coverage under a “Healthcare Premises Pollution Liability Policy” for Northwell’s significant costs and losses arising out of the novel coronavirus outbreak and ongoing COVID-19 pandemic.

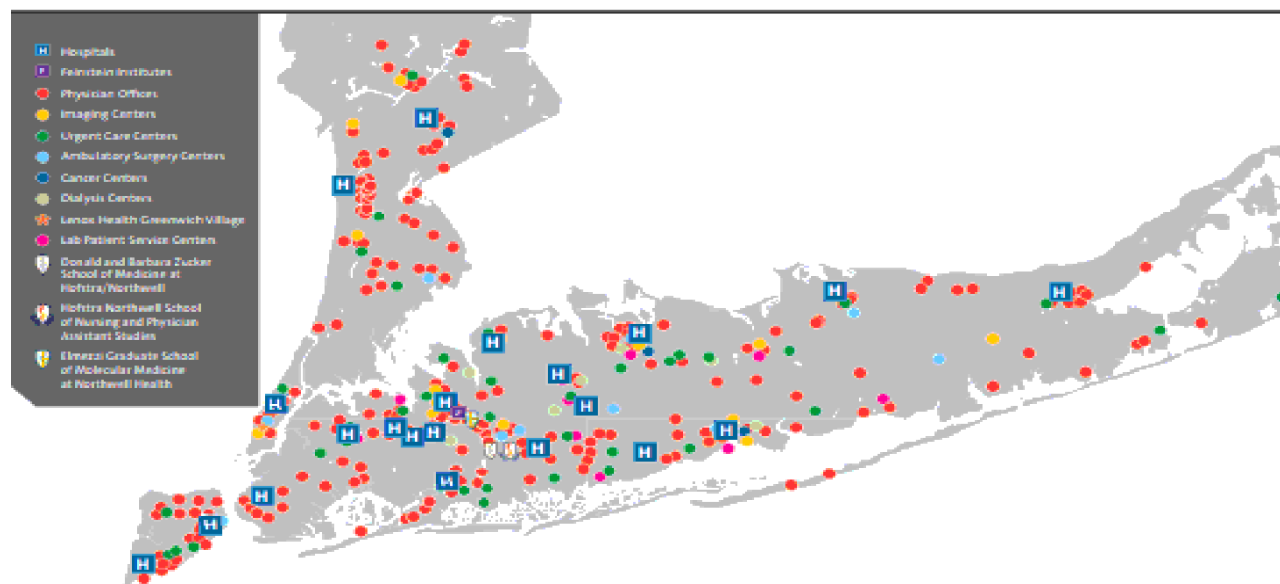
2. The State of New York, and more specifically the New York City metropolitan area, was the hardest hit area in the early stages of the COVID-19 pandemic in the United States. By the end of March, the state was reporting more than 15,000 confirmed cases, with that number doubling every three to four days. By mid-May, the state had more than 375,000 confirmed cases and more than 27,500 deaths, representing nearly one out of every three COVID-19 deaths in the country.

¹ Illinois Union is referred to as “Chubb” in large part throughout this Complaint because it is part of the Chubb Group of Insurance Companies and refers to itself as “Chubb” in its correspondence related to this claim.

3. Northwell is New York State's largest health care provider and private employer, with 23 hospitals and nearly 800 outpatient facilities, and cares for more than two million people annually in the metro New York area and beyond. As of mid-July, Northwell's health system had cared for more COVID-19 patients than any other organization in the U.S.

4. Northwell has more than 72,000 employees, including more than 17,000 nurses and approximately 4,500 employed physicians as part of more than 14,200 physicians providing care at its facilities.

5. This map from Northwell's fact sheet shows the location of Northwell facilities around the New York metro area:



6. Given the wide spread of coronavirus and Northwell's status as a healthcare provider, virtually all of those dots (and especially the 23 Hs) represent a building in which coronavirus comes walking in the door every single day and it must be assumed is present in the air and on surfaces at all times.

7. All of Northwell's employees have been on the front lines in the war to contain COVID-19's spread and save the lives of New Yorkers, administering tests, monitoring those

infected but not requiring hospitalization, and doing everything in their power to heal those requiring inpatient treatment in hospital rooms or intensive care units, whether by providing the direct medical care or the administrative or facilities support.

8. Northwell has been providing this care while dealing with numerous, and evolving, mandates from local, state, and federal health authorities as to how to clean or otherwise remediate its facilities and equipment to prevent the spread of the coronavirus and avoid infection among other patients at the facilities or among its employees.

9. While devoting these resources to combat a healthcare crisis not seen in more than a century, many of the various other aspects of Northwell's business have ground to a halt or slowed considerably.

10. This includes private physician practices that operate out of Northwell facilities or the cessation of medical procedures described as elective, which although to a layperson may imply that the procedures are less serious, in the medical community it simply means any procedure that can be scheduled in advance, sweeping in a wide variety of procedures some of which are anything but a matter of choice.

11. These elements of Northwell's business have been affected not only out of necessity as it confronts the COVID-19 pandemic, but have also been dictated or influenced by local, state, and federal orders, directives, or guidelines.

12. Fortunately, Northwell purchased insurance to provide it with coverage when confronting these types of medical emergencies. One of the insurance policies it purchased was Chubb Healthcare Premises Pollution Liability Insurance Policy No. HPI G627376939 002 (the "Policy"), which was in effect in early 2020 when the pandemic began its spread throughout the U.S.

13. The Policy straightforwardly provides coverage for “remediation costs,” “emergency response costs,” and “decontamination costs” associated with “facility-borne illness events” and “pollution conditions,” as well as business interruption caused by “covered pollution conditions.”

14. Northwell promptly notified Chubb of its claim (the “Claim”), only to be strung along for weeks and then receive the shock of a denial of coverage from Chubb stating that the pandemic did not meet the Policy definition of either “facility-borne illness event” or “pollution condition.”

15. These positions are meritless, as the definition of “facility-borne illness” includes “virus” as long as the virus is not solely the result of communicability through human-to-human contact, which, because it has been established that coronavirus can exist on surfaces, COVID-19 is not. The definition of “pollution condition” encompasses the presence of hazardous substances or materials and waste materials including infectious wastes, which are present in Northwell’s facilities.

16. 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 comes to this Court to force Chubb to provide the coverage it is owed under the Policy to enable it to go back to fighting the battle where its attention and resources should be focused.

THE PARTIES

17. Plaintiff Northwell is a not-for-profit corporation organized under the laws of New York with its principal place of business in New Hyde Park, New York.

18. Upon information and belief, Defendant Illinois Union is a corporation duly authorized to conduct insurance business in the State of New York with its principal place of

business in Chicago, Illinois. Upon information and belief, Illinois Union, at all material times, has conducted business within the State of New York, including engaging in the business of selling insurance, investigating claims, and/or issuing policies that cover policyholders, property, or activities located in New York.

JURISDICTION AND VENUE

19. This Court has jurisdiction pursuant to N.Y. C.P.L.R. §§ 301 and 302.

20. The Policy provides that “If the insured requests, [Chubb] will submit to the jurisdiction of any court of competent jurisdiction.” Ex. 1, at p. 54 of 61.²

21. The Policy further provides:

I. Jurisdiction and Venue

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the “insured” shall submit to the exclusive jurisdiction of the State of New York and shall comply with all requirements necessary to give such court jurisdiction.

Id. at p. 22 of 61.

22. Venue in this Court is proper pursuant to N.Y. C.P.L.R. §§ 501 and 503.

FACTUAL ALLEGATIONS

I. The Coronavirus Outbreak

23. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus and resulting COVID-19 disease has been staggering on life and property.

24. As of February 26, 2020, the Centers for Disease Control and Prevention (the “CDC”) warned that community transmission of the disease existed in the United States. The

² The Policy does not have consecutive page numbering, so citations in this Complaint are to the page number of the complete 61-page Policy.

coronavirus was spreading with no ability to trace the origins of new infections.³ Moreover, the nature of the novel coronavirus that causes COVID-19 has made its containment particularly challenging. Numerous scientific studies and articles have identified that the virus spreads when droplets from an infected person land on objects and surfaces and then, after contact with the infected objects and surfaces, other individuals touch their eyes, nose, or mouth.

25. An experiment commissioned in Japan underscores just how easy it is to spread the virus.⁴ The experiment involved 10 individuals, one whom played the infected person. Fluorescent paint was applied to that person's palms to replicate what might happen after a sneeze was covered with the hands. All 10 individuals then ate a buffet-style meal for just 30 minutes before a black light was used to track the spread of the "virus." Traces of the fluorescent paint had spread to numerous dishes, the faces of three people, and the hands of *all* 10 participants.

26. Another unique aspect of the novel coronavirus that makes its containment very challenging is the fact that infected individuals can be completely asymptomatic—and thus unaware that they may be spreading the virus through the mere touching of objects and surfaces. Indeed, studies have estimated that more than 40% of infected individuals may never develop any symptoms.⁵ But even individuals who appear healthy and present no identifiable symptoms

³ CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S, CDC Newsroom, available at <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>.

⁴ See How Easily COVID-19 Might Spread Through A Restaurant In This Black Light Experiment (May 16, 2020), available at <https://www.kxan.com/news/coronavirus/see-how-easily-covid-19-might-spread-through-a-restaurant-in-this-black-light-experiment/>.

⁵ Asymptomatic COVID-19 Cases May Be More Common Than Suspected (May 27, 2020), available at <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

of the disease will still spread the virus by merely breathing, speaking, or touching objects and surfaces.

27. Infected droplets carrying the novel coronavirus are not visible, but still are physical objects that attach to and cause harm to other objects. Studies have shown that the virus can survive on a whole range of surfaces including stainless steel, wood, paper, plastic, glass, ceramic, cardboard, and cloth.⁶

28. And unlike many other viruses that are unable to survive for long periods of time outside the body, the novel coronavirus is remarkably resilient and can survive on surfaces for days, and even weeks. For instance, the CDC reported that the coronavirus was identified on surfaces on the *Diamond Princess* cruise ship 17 days after cabins were vacated.⁷

29. COVID-19 is not only highly contagious, but also deadly. Even though testing has been severely limited, more than 3.9 million Americans have had confirmed cases of COVID-19, and more than 142,000 have died according to the CDC.

30. In the United States, federal and state governments have been generally slow to act to stem the spread of infection. Despite evidence that the novel coronavirus was rapidly spreading in the United States and other parts of the world, many federal and state officials downplayed the risk to the United States. By mid-March 2020, however, it became clear that drastic action had to be taken to slow down the rate of infections.

⁶ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>, “How does COVID-19 spread?”; <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

⁷ Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020, CDC Morbidity and Mortality Weekly Report (March 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

31. Beginning in mid-March, many state and local governments began to act to stem the tide of the virus. Of relevance here, on March 22, 2020, New York Governor Andrew Cuomo issued the “New York State on PAUSE” executive order, ordering the closure of all non-essential businesses and prohibiting non-essential gatherings. This order has been extended since its initial issuance, and the Governor, the City of New York, and counties in New York in which Northwell operates have issued similar orders and orders bearing directly on healthcare providers. Similar executive orders have been issued by state and municipal governments across the country.

32. Given the ongoing effects and increases in confirmed cases, the orders have been renewed and amended by such authorities since that time and still include severe restrictions on all non-essential businesses.

II. Northwell’s Costs and Losses Due to the Pandemic

33. When the pandemic arrived in the New York area, Northwell responded to meet it and treat its patients.

34. It faced an enormous amount of cases in the weeks after the pandemic arrived in earnest. By March 20, the ICU of Northwell’s Long Island Jewish Medical Center in Queens—just one of Northwell’s many facilities affected by the pandemic—was overflowing.

35. In addition to the tireless efforts of its employees, Northwell transformed its facilities and operations to meet this threat, creating more than 1,600 additional beds, secured personal protective equipment, and ensured it had necessary staff ready around the clock.

36. During the course of the pandemic, Northwell has successfully treated more than 50,000 patients who have tested positive for COVID-19.

37. Northwell has incurred significant costs and losses caused by the coronavirus pandemic, costs and losses that are mounting every day.

38. As an example of its rising costs, Northwell has stated that its system was using approximately 50 times more oxygen than ever before in treating the respiratory effects of COVID-19.

39. While the losses have taken many forms, the most significant drivers of the losses have been the forced cessation of elective surgeries, the closing of physician's practices, and fewer hospital admissions and visits to or uses of Northwell's other medical facilities due to the pandemic.

III. The Chubb Policy

40. In exchange for a substantial premium, Chubb sold the Policy to Northwell as the **First Named Insured** for the **Policy Period** April 25, 2017 to April 25, 2020. Ex. 1, at p. 1 of 61.⁸

41. The Policy is made up of Chubb forms, and the terms and conditions relevant to this dispute were drafted by Chubb and, upon information and belief, are in use in policies issued by Chubb to its other policyholders.

42. The Policy is designed to cover exactly the type of losses Northwell has suffered due to the COVID-19 pandemic: costs expended in response to emergencies and to decontaminate its facilities in response to "facility-borne illness events" and broadly defined "pollution conditions," and business interruption caused by "covered pollution conditions."

43. The Policy provides \$20 million in coverage per occurrence and in the aggregate, subject to a \$500,000 per-occurrence retention for the first occurrence and a \$50,000 maintenance retention for each occurrence thereafter, with a maximum of \$2 million. *Id.* at pp. 1, 24 of 61.

⁸ Terms in bold or in all caps appear in that manner in the Policy.

44. The **INSURING AGREEMENTS** of the Policy provide that Chubb agrees to pay for:

A. FIRST-PARTY REMEDIATION COSTS (Coverage A.)

“Remediation costs” and associated “legal defense expenses”, in excess of the “self-insured retention”, arising out of a “pollution condition” on, at, under, or migrating from a “covered location”, provided that the “insured” first discovers such “pollution condition” during the “policy period”.

The coverage afforded pursuant to this Coverage **A.** only applies to discoveries of “pollution conditions” that are reported to the Insurer, in writing, during the “policy period”.

B. FIRST-PARTY EMERGENCY RESPONSE COVERAGE (Coverage B.)

“Emergency response costs”, in excess of the “self-insured retention”, arising out of a “pollution condition” or “facility-borne illness event”, provided that the “insured” first discovers such “pollution condition” during the “policy period”.

The coverage afforded pursuant to this Coverage **B.** only applies to discoveries of “pollution conditions” or “facility-borne illness events” that are reported to the Insurer, in writing, during the “policy period”. . . .

D. DECONTAMINATION COSTS COVERAGE (Coverage D.)

“Decontamination costs” incurred by an “insured”, in excess of the “self-insured retention”, arising out of a “facility borne illness event”, at a “covered location”, provided that the “insured” first discovers such “facility borne illness event” during the “policy period”.

The coverage afforded pursuant to this Coverage **D.** only applies to “facility borne illness events” that:

1. Require reporting to any local, state or federal governmental agency or other agency that maintains oversight authority over the “covered location”; and
2. Are reported to the Insurer, in writing, during the “policy period”, but in no event later than:
 - a. Seventy-two (72) hours following the “insured’s” reporting to any of the entities identified in Item 1. Above; or
 - b. The expiration of the “policy period”,

whichever occurs first.

Id. at pp. 5–6 of 61.

45. “Facility-borne illness event” is defined as:

[T]he presence of a facility-borne infectious virus, bacteria or disease at a “covered location”; provided that such facility-borne infectious virus, bacteria or disease is not:

1. Naturally occurring in the environment in amounts and concentrations discovered at the “covered location”; and
2. Solely or exclusively the result of communicability through human-to-human contact.

Id. at p. 11 of 61.

46. The Policy broadly defines “pollution condition” in relevant part as:

1. The presence of “fungi” or *legionella pneumophila*; [or]
3. The discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials on, in, into, or upon land and structures thereupon, the atmosphere, surface water, or groundwater.

For the purpose of this definition, waste materials include, but are not limited to, “low-level radioactive waste”, “mixed waste” and medical, red bag, infectious or pathological wastes.

Id. at p. 13 of 61.

47. To ensure coverage is available at all of its facilities, “covered location” is defined to include not only “any location owned, operated, managed, leased or maintained” by Northwell when the Policy was issued, but also locations that fit that description during the Policy Period subject to the terms and conditions of an Automatic Acquisition and Due Diligence Endorsement. *Id.* at pp. 9, 48 of 61.

48. Endorsement No. 014 provides that “Remediation costs” means:

[R]easonable expenses incurred to investigate, quantify, monitor, mitigate, abate, remove, dispose, treat, neutralize, or immobilize “pollution conditions” to the

extent required by “environmental law” in the jurisdiction of such “pollution conditions”

“**Remediation costs**” shall also include [in pertinent part]:

1. Reasonable legal cost, where such cost has been incurred by an “insured” with the written consent of the Insurer; and
2. Reasonable expenses required to restore, repair or replace real or personal property, to substantially the same condition it was in prior to being damaged during the course of responding to a “pollution condition.”

Id. at p. 40 of 61.

49. “Emergency response costs” are defined as “‘remediation costs’ or ‘decontamination costs, as applicable, incurred within seventy-two (72) hours following the discovery of a ‘pollution condition’ or ‘facility-borne illness event’ by an ‘insured’ in order to abate or respond to an imminent and substantial threat to human health or the environment’ arising out of a “pollution condition” or “facility-borne illness event.” *Id.* at p. 10 of 61.

50. The Policy defines “decontamination costs” as “reasonable and necessary expenses incurred within thirty (30) calendar days of the discovery of a ‘facility-borne illness event’ to clean and disinfect a ‘covered location’ due to a ‘facility-borne illness event’ to the extent required by ‘environmental laws’.” *Id.*

51. “Environmental law” is defined to include “any federal, state, commonwealth, municipal or other local law, statute, directive, ordinance, rule, guidance document, regulation, and all amendments thereto, including voluntary cleanup or risk-based corrective action guidance, governing the liability or responsibilities of the ‘insured’ with respect to a ‘pollution condition’ or ‘facility-borne illness event.’” The definition of “environmental law” also specifically addresses a situation in which no applicable laws exist governing decontamination efforts following a “facility-borne illness event” and directs the reader to CDC guidance for what is reasonable and necessary. *Id.* at p. 11 of 61.

52. Endorsement No. 005 provides a specific \$20 million Decontamination Costs Aggregate Sublimit of Liability for all Facility-Borne Illness Events. *Id.* at p. 29 of 61.

53. The Policy also provides business interruption coverage:

**E. BUSINESS INTERRUPTION AND DELAY EXPENSE COVERAGE
(Coverage E.)**

“Business interruption loss” incurred by an “insured” during a “period of interruption” in excess of the Deductible Period identified in Item **4.b** of the Declarations to this Policy.

The coverage afforded to this Coverage **E.** only applies to “business interruption loss” that:

1. Is directly attributable to a “covered pollution condition”; and
2. Is reported to the Insurer, in writing, as soon as practicable, and during the “policy period”.

Id. at p. 6 of 61.

54. The Policy defines “period of interruption” as “the length of time commencing with the date that operations are necessarily suspended at a ‘covered location’ as a result of ‘covered pollution conditions’.” *Id.* at p. 13 of 61.

55. “Business interruption” is defined as necessary partial or complete suspension of the “insured’s” operations at a “covered location” arising from a “covered pollution condition.”

Id. at p. 8 of 61.

56. “Business interruption loss,” as relevant here, is defined as “**1.** ‘Business income’ [and] **2.** ‘Extra expense’.” *Id.* at p. 8 of 61.

57. The Policy defines “Business income” to mean:

1. Net profit or loss, before income taxes, including “rental income” from tenants, that would have been realized had there been no “business interruption”;
2. The “insured’s” continuing operating and payroll expense (excluding payroll expense of officers, executives, department managers and contract employees);

3. Costs incurred by the “insured” as rent for temporary premises when a portion of a “covered location” becomes untenable due to a “covered pollution condition” and temporary premises are required to continue the “insured’s” operations. Such rental costs cannot exceed the fair rental value of untenable portion of the “covered location.”

Id.

58. The Policy defines “extra expense” as “costs incurred by the ‘insured’ due to a ‘covered pollution condition’, that are necessary to avoid or mitigate any ‘business interruption’.

Such costs must be incurred to actually minimize the amount of foregone ‘business income’ that would otherwise be covered pursuant to this Policy.” *Id.* at p. 11 of 61.

III. Northwell’s Claim to Chubb

59. Northwell gave prompt notice of its Claim to Chubb, and then waited for nearly two months for Chubb to provide its initial coverage position on the Claim.

60. On May 20, 2020, Chubb provided that initial coverage position by letter (the “May 20 Letter”). Much to Northwell’s surprise, the May 20 Letter stated that “coverage is not available for the referenced Claim.”

61. The May 20 Letter stated that the Claim “does not involve a ‘pollution condition’ or a ‘facility-borne illness event’.” The May 20 Letter stated that there was not a “pollution condition” because “COVID-19 is an infectious communicable disease caused by a virus, not pollution.”

62. Turning from that conclusory analysis that did not include any discussion of the terms in the definition of “pollution condition” to the term that specifically includes “virus,” Chubb stated there was not a “facility-borne illness event” because that kind of event is “generated in the facility itself,” and COVID-19 “is communicable through human-to-human contact.”

63. Northwell responded to the May 20 Letter promptly on May 29, 2020 (the “May 29 Letter”), noting it disagreed with all of the positions in the May 20 Letter but, in an effort to determine the breadth of its dispute with Chubb, focused only on the decision that it had not suffered a “facility-borne illness event.”

64. Northwell provided Chubb with the same conclusive scientific evidence described above demonstrating that coronavirus can survive on surfaces, and therefore it satisfies the Policy definition of “facility-borne illness” as a virus that is not solely communicable through human-to-human contact.

65. The May 29 Letter requested a response from Chubb by June 10, 2020. Despite the evidence clearly demonstrating its position was incorrect and that COVID-19 constitutes a “facility-borne illness event,” Chubb made no response by that date or in the days thereafter, and on June 16, Northwell followed up to see why Chubb had gone “radio silent.”

66. On July 9, 2020, Northwell received a letter from Chubb’s outside coverage counsel explaining it adhered to its initial position that COVID-19 did not constitute a “facility-borne illness event” because that event requires “that the facility must be the source of the virus.”

67. Because Chubb will not honor its Policy obligations to Northwell on its own, Northwell has commenced this action to obtain the coverage it is owed.

FIRST CAUSE OF ACTION
(Breach of Contract)

68. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

69. The Policy constitutes a valid and enforceable contract between Northwell, as the “First Named Insured,” and Chubb, as the “Company” providing the insurance under the Policy.

70. As described above, Northwell has sustained, and is continuing to sustain, losses covered under the Policy and during the **Policy Period**.

71. Northwell provided prompt notice of its losses, performed all obligations required of it under the Policy, or was ready willing and able to perform its obligations under the Policy at the time Chubb stated that coverage is not available for the Claim in the May 20 Letter and reaffirmed its disclaimer of coverage in the July 9 Letter.

72. Under the terms of the Policy, Chubb must pay up to \$20,000,000 Per Pollution Condition or Facility-Borne Illness Event, subject to the additional terms and conditions of the Policy.

73. Chubb has not paid any amounts to Northwell in connection with its Claim. Instead, Chubb has asserted various inapplicable bases to wrongfully deny coverage for Northwell's Claim.

74. As a direct and proximate result of Chubb's breach of contract, Northwell has suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

75. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

76. Pursuant to the terms of the Policy, Chubb must pay up to \$20,000,000 Per Pollution Condition or Facility-Borne Illness Event, subject to the additional terms and conditions of the Policy.

77. As detailed above, Northwell's losses are covered under the Policy and are not excluded from coverage.

78. Chubb disputes its legal obligation to pay Northwell's claim.

79. An actual and justiciable controversy presently exists between Northwell and Chubb concerning the proper construction of the Policy, and the rights and obligations of the parties thereto, with respect to Northwell's Claim for expenses or losses arising out of the coronavirus outbreak.

80. The issuance of prompt declaratory relief by this Court is desirable and necessary to resolve the existing controversy between the parties.

THIRD CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

81. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

82. The Policy provides that it is to be governed by and construed in accordance with the laws of the State of New York.

83. Under New York law, the Policy contains an implied covenant of good faith and fair dealing.

84. Chubb has put forward baseless and nonsensical reasons why the Claim may not be covered even after Northwell has demonstrated why those reasons are meritless.

85. Through these actions, Chubb has breached the implied covenant of good faith and fair dealing in the Policy.

86. Chubb's conduct has violated the standards for good faith and fair dealing set forth in New York Insurance Law § 2601(a).

87. Northwell has been damaged by Chubb's breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial.

88. Northwell is entitled to consequential damages flowing from Chubb's violation of the implied covenant of good faith and fair dealing, including, without limitation, pre-judgment interest on the amount owed under the Policy, and the attorneys' fees, costs, and disbursements incurred by Northwell in enforcing its rights and as a consequence of Chubb's bad faith delays in providing coverage for Northwell's claim.

89. Consequential damages were reasonably contemplated by Northwell and Chubb at the time that they entered into the Policy.

FOURTH CAUSE OF ACTION
(Deceptive Business Practices – General Business Law § 349)

90. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

91. Chubb at all times has acted in bad faith and through a pattern of deceptive conduct that has injured Northwell.

92. New York Insurance Law § 2601 provides that "No insurer doing business in this state shall engage in unfair claim settlement practices," and defines unfair claim settlement practices to include:

(1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;

...

(4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear

....

(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

93. The deceptive acts and practices by Chubb include, without limitation, (i) relying on false pretenses to justify their refusal to pay Northwell's Claim, and (ii) persisting in refusing to pay Northwell's Claim even after Northwell rebutted the reasons Chubb put forward to deny the Claim.

94. Chubb has also taken improper positions, which it improperly and without a good-faith basis purported to justify as interpretations of the same standard-form insurance policy language that, on information and belief, it uses in insurance policies sold to many other policyholders in New York and elsewhere, in a manner that would affect, apply to, and injure all of its policyholders with similar policy language that suffer losses due to "pollution conditions" and "facility-borne illness events" and bring coverage claims to Chubb expecting fair and good-faith treatment.

95. Chubb's conduct constitutes deceptive acts and practices in violation of New York General Business Law § 349.

96. Chubb's conduct was knowing, reckless, and willful.

97. By reason of the foregoing, Northwell has suffered damages.

98. By reason of the foregoing, Northwell is entitled to compensatory, consequential, and punitive damages, as well as prejudgment interest and attorneys' fees and costs, against Chubb, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Northwell prays for relief as follows:

(a) On the First Cause of Action, Northwell requests that the Court enter judgment against Chubb, awarding Northwell damages in an amount to be determined at trial, but more

than \$500,000, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;

(b) On the Second Cause of Action, Northwell requests that the Court enter a declaratory judgment in favor of Northwell against Chubb that Northwell's losses are covered under the Policy, declaring that Chubb is required to pay Northwell, up to the applicable limits of the Policy, for claimed amounts under the Policy.

(c) On the Third Cause of Action, Northwell requests that the Court enter a judgment against Chubb, awarding Northwell damages in an amount to be determined at trial, plus punitive damages, consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;

(d) On the Fourth Cause of Action, Northwell requests that the Court enter a judgment against Chubb, awarding Northwell (1) its actual damages in an amount to be determined at trial plus prejudgment interest, (2) its reasonable attorneys' fees, and (3) punitive damages in an amount deemed sufficient to prevent Chubb from engaging in similar deceptive conduct with other policyholders;

(e) For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all of Northwell's costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and

(f) Northwell requests such other and further relief as the Court deems just and proper.

JURY DEMAND

Northwell hereby demands a trial by jury on all issues so triable.

Dated: New York, New York
July 24, 2020

MCKOOL SMITH, P.C.

/s/ Robin L. Cohen

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