

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

----- X

NORTH AMERICAN ELITE INSURANCE COMPANY

Plaintiff,
-against-

SYNCHRONY FINANCIAL,

Defendant.

----- X

:
:
: Index Number:
:
: **SUMMONS**
:
: The basis of venue is CPLR
: §503. North American is a
: resident of New York County.
:
: X

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 twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (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.

Dated: New York, New York
March 5, 2022

DLA PIPER LLP (US)

By 

Aidan M. McCormack
Robert C. Santoro
1251 Avenue of the Americas, 27th Floor
New York, New York 10020
(212) 335-4500

*Attorneys for Plaintiff North American Elite Insurance
Company*

To: Synchrony Financial
777 Long Ridge Road
Stamford, CT 06902

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COMPLAINT FOR DECLARATORY JUDGMENT

North American Elite Insurance Company (“North American”), by and through its undersigned counsel, as and for their complaint for declaratory judgment against defendant Synchrony Financial (“Synchrony”), alleges as follows:

THE NATURE OF THIS ACTION

1. This lawsuit arises out of an insurance dispute over a claim for coverage for alleged business losses arising out of the SARS-CoV-2 virus that causes COVID-19 in humans under an insurance contract issued by North American to Synchrony, which is subject to New York law and exclusive New York jurisdiction.

2. Upon information and belief, Synchrony is a consumer financial services company.

3. On April 23, 2020, Synchrony’s insurance broker, Lockton, provided notice of a claim to North American of alleged “losses in connection with interruption of its business operations in response to the novel coronavirus disease COVID-19.”

4. On behalf of Synchrony, Lockton stated that “numerous state and local authorities in various jurisdictions have ordered all ‘nonessential’ businesses to cease operations, causing Synchrony additional loss.”

5. By letter dated May 4, 2020, Sedgwick Claims Management Services (“Sedgwick”), the independent adjuster assigned by North American to investigate the claim, also acknowledged receipt of the claim and fully reserved all North American’s rights under the Insurance Contract (defined below).

6. North American issued to Synchrony at 777 Long Ridge Road, Stamford, CT 06902, a first-party commercial property insurance contract number NAP 2003025 00, with a policy period of November 17, 2018 to November 17, 2020 (“Insurance Contract”).

7. The Insurance Contract has a limit of liability of \$150,000,000 excess of the applicable deductibles.

8. Among other things, the Section VIII, Loss Adjustment and Settlement M. “Suit” provision of the Insurance Contract states that “[n]o suit or action on this POLICY for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this POLICY shall have been complied with, and unless commenced within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.”

9. The Section IX, General Conditions G. “Governing Law and Jurisdiction” provision of the Insurance Contract states that the “laws of the State of New York in United [States], without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.

10. It also states that both Synchrony and North American “hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York in United [States], and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.”

11. The “Governing Law and Jurisdiction” clause is binding and enforceable.

12. North American performed all its obligations under the Insurance Contract and has not breached any provisions of the Insurance Contract.

13. An actual controversy exists between the parties as to the rights and obligations, if any, of the parties under the Insurance Contract.

14. North American has no adequate remedy at law.

15. North American requires a declaration of its rights and obligations under the Insurance Contract from this Court, including that there is no coverage for Synchrony for the claim under the Insurance Contract.

PARTIES

16. North American is incorporated under the laws of the State of New Hampshire with its principal place of business in New York, New York.

17. Upon information and belief, Synchrony is a Delaware corporation with a principal place of business in Stamford, Connecticut.

JURISDICTION

18. A declaratory judgment action may be properly sought in this Court under CPLR § 3001.

19. Personal jurisdiction over Synchrony is proper under CPLR § 301. The “Governing Law and Jurisdiction” provision of the Insurance Contract provides that:

1. The laws of the State of New York in United [States], without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.
2. The parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York in United [States] and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

VENUE

20. The parties to the Insurance Contract expressly agreed to the “Governing Law and Jurisdiction” clause.

21. The “Governing Law and Jurisdiction” clause states that “the parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York in United States, and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.”

22. Venue for this action is proper in this Court under CPLR §§ 501 and 509 under the exclusive forum provision of the Insurance Contract.

THE INSURANCE CONTRACT

23. A copy of the Insurance Contract is attached as Exhibit A.

24. The Insurance Contract includes, among others, the following provisions:

LEADING EDGE ALL-RISK FORM

A. Insuring Agreement

1. Subject to the terms, conditions, exclusions and limitations contained herein or endorsed hereon and in consideration of the premium paid, this POLICY, of which this page forms a part, insures all risks of direct physical loss or damage to INSURED PROPERTY while on INSURED LOCATION(S) provided such physical loss or damage occurs during the term of this POLICY.

* * *

SECTION II

POLICY LIMITS AND SUBLIMITS PURCHASED OR NOT PURCHASED

A. Program Limit of Liability

The Insured has chosen to purchase a Property Insurance Program with a limit of \$150,000,000, and this POLICY will serve to participate in that

Program subject to the terms outlined in the **Company's Policy Limit of Liability and Application** section.

B. Company's Policy Limit of Liability and Application

The Company is not liable for more than its proportionate share, as specified below, of the Program Limit or of the Program Layer Limits that make up the Program Limit for all loss or damage insured by this POLICY arising out of one OCCURRENCE regardless of the number of LOCATIONS or coverages involved in the OCCURRENCE.

Company's Policy Limit of Liability		Program Limit or Program Layer Limits		
\$150,000,000	(Being 100.00 % part of	\$150,000,000	Excess of	\$0 which is excess of policy deductible

* * *

C. Application of Program Sublimit(s)

1. Program Sublimit(s) are part of and not in addition to the Program Limit. Program Sublimit(s) do not increase the Program Limit or any other Program Sublimit(s).
2. Program Sublimit(s) apply in the aggregate per OCCURRENCE to all INSURED LOCATION(S) and for all coverages involved, including TIME ELEMENT.
3. When a Program Sublimit(s) is noted as an Annual Aggregate, such Program Sublimit(s) applies in the aggregate annually to all losses insured by this POLICY occurring during the **Policy Period**.
4. If a Program Sublimit(s) is specified for the cause of loss that causes the claimed loss or damage such sublimit is the maximum amount payable for such OCCURRENCE.
5. If a Program Sublimit(s) is specified for a coverage that is provided, such Sublimit(s) are the maximum amount payable under this POLICY for all loss or damage, resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S).

D. Coverage Purchased and Coverage Not Purchased

The following Types of Loss, Causes of Loss and Coverages are all excluded unless a monetary amount is set forth next to the Type of Loss, Cause of Loss or Coverage. If no monetary amount is provided; the amount is \$0; the line is left blank; or **NCP** (No Coverage Purchased) is shown, then those Types of Loss, Causes of Loss and those Coverages, so designated, remain excluded from recovery under this POLICY.

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
...	
\$5,000,000	Attraction Property ...
\$250,000	Communicable Disease Response and Interruption by Communicable Disease combined (Annual Aggregate)
NCP	Contingent Time Element – Direct Named Suppliers and Customers
\$10,000,000	Contingent Time Element – Direct Unnamed Suppliers and Customers
\$5,000,000	Contingent Time Element – Indirect Suppliers and Customers ...
\$1,000,000	Crisis Management ...
\$2,500,000	Ingress/Egress ...
\$2,500,000	Order of Civil or Military Authority
\$500,000	Professional Fees: \$25,000 plus 50% of the amount recoverable under this Professional Fees coverage in excess of \$25,000 ...

E. Time Limit(s)

No coverage is provided by this POLICY for any loss sustained or incurred beyond the corresponding Time Limit specified. Such Time Limit starts on the date of the physical loss or damage insured by this POLICY; however, not to exceed the stated dollar sublimit provided in Section D above: ...

30 consecutive calendar days from the date of OCCURRENCE for **Attraction Properties**

30 consecutive calendar days from the date of the order of civil or military prohibition for **Crisis Management ...**

30 consecutive calendar days from the date of OCCURRENCE for **Ingress/Egress ...**

30 consecutive calendar days from the date of OCCURRENCE for **Order Of Civil Or Military Authority ...**

12 consecutive calendar months from the date of OCCURRENCE for **Interruption by Communicable Disease**

F. Distance Limit(s)

No coverage for TIME ELEMENT loss, as described below, is provided if the LOCATION of the physical loss or damage is beyond the state Distance Limits indicated below for:

1 statute mile(s) from the INSURED LOCATION for **Attraction Properties**

1 statute mile(s) from the INSURED LOCATION for **Ingress/Egress**

1 statute mile(s) from the INSURED LOCATION for **Order Of Civil Or Military Authority**

**SECTION III
POLICY DEDUCTIBLES AND WAITING PERIODS**

A. Policy Deductibles

In each case of loss or damage insured by this POLICY, the Company is liable only if the Insured sustains such loss or damage in a single OCCURRENCE, the value of which is in excess of the applicable deductible specified, and then the amount insured by this POLICY shall be the amount in excess of the deductible, subject to all terms, conditions, provisions, limitations and exclusions of this POLICY.

Basic Deductible: \$50,000 per OCCURRENCE ...

C. Waiting Periods

Coverage is provided by this POLICY only if the corresponding WAITING PERIOD specified is exceeded. Coverage shall then apply only to the LOCATION(s) where the WAITING PERIOD has been exceeded. The corresponding coverage will then apply from the beginning of the interruption of services but only for the amounts in excess of the applicable Deductible(s). If multiple LOCATIONS exceed the WAITING PERIOD

then the applicable Deductible(s) will apply to the combined loss of all such LOCATIONS. ...

2. 4 consecutive hours from the inception of order of prohibition for **Crisis Management**. ...
4. 48 consecutive hours from the date access to such INSURED LOCATION is limited, restricted or prohibited as a result of the actual not suspected presence of COMMUNICABLE DISEASE.

SECTION IV PROPERTY DAMAGE

3. Communicable Disease Response

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

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

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

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

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

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

* * *

SECTION V TIME ELEMENT

A. Loss Insured

1. This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S) or as otherwise provided in this section or endorsed hereon, and subject to all terms and conditions within this POLICY. ...

D. Period of Liability

1. The **Period of Liability** applying to all TIME ELEMENT coverages, except Gross Profits and Leasehold Interest and as shown below, or if otherwise provided under the TIME ELEMENT coverage extensions, is as follows:

- a. For building and equipment, the period of time:

- I. starting on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and

- II. ending when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.

Such period of time is not limited by the POLICY expiration date. ...

H. Time Element Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Attraction Property

This POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance**, and **Extra Expense** incurred by the Insured directly resulting from direct physical loss or damage as insured by this POLICY to property of the type insured, but not owned or operated by the Insured, that directly attracts business to an INSURED LOCATION(S).

* * *

3. Contingent Time Element

a. This POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance**, and **Extra Expense** incurred by the Insured during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to any property, except of the type as excluded under **Property Not Insured**, at any LOCATION(S) of suppliers or customers, provided that such physical loss or damage prevents:

- I. such suppliers from supplying goods or services directly or indirectly to the Insured;
- II. such customers from receiving goods or services directly or indirectly from the Insured;

provided that such LOCATION(S) of suppliers or customers are situated within the **Policy Territory**.

b. Specified limits for this extension are shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY for:

- I. those direct suppliers and customers who have been specifically named by the Insured have been submitted to, accepted by and on file with the Company;
- II. those direct suppliers and customers who have not been specifically named by the Insured; and

III. all indirect suppliers and customers.

c. As used herein, suppliers or customers do not include any company supplying to or receiving from INSURED LOCATION(S) electricity,

fuel, gas, refrigerant, sewage, steam, water, telecommunications, audio, data or video.

4. Crisis Management

a. This POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense** incurred by the Insured during the **Period of Liability** if an order of civil or military authority prohibits access to an INSURED LOCATION(S), provided such order is a direct result of:

- I. a violent crime, suicide, attempted suicide, or armed robbery; or
- II. a death or bodily injury caused by a workplace accident;

at such INSURED LOCATION(S).

b. For the purposes of this Extension only, a workplace accident shall be considered a sudden, fortuitous event that happens during working hours and arises out of work performed in the course and the scope of employment.

This Extension of coverage will apply when the **Period Of Liability** is in excess of the WAITING PERIOD specified for this extension.

The **Period Of Liability** for this **Time Element Coverage Extension** will be:

The period of time:

- a. starting with the time the civil or military authority prohibits partial or total access; but
- b. not to exceed the Time Limit specified for **Crisis Management**.

* * *

7. Ingress / Egress

This POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

- a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and
- b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

8. **Interruption by Communicable Disease**

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

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

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

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

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

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

The **Period Of Liability** for this **Time Element Coverage Extension** will be:

The period of time:

- a. starting at the time of the order of the authorized governmental agency or the Officer of the Insured; but
- b. not to exceed the Time Limit specified for **Interruption by Communicable Disease**,

this period of time is part of and not in addition to any **Period Of Liability** applying to any coverage provided in the **Time Element** section.

* * *

11. Order of Civil or Military Authority

This POLICY is extended to insure loss of **Gross Earnings, Gross Profits, Rental Insurance, and Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

- a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and
- b. the order referenced above is caused by direct physical loss or damage as insured by this POLICY to property, including property excluded under **Property Not Insured**.

* * *

SECTION VI EXCLUSIONS

B. Types of Loss or Damage Not Insured

This POLICY does not insure against the following types of loss or damage:

1. a. indirect or remote loss or damage;
- b. delay or loss of market; or
- c. interruption of business unless otherwise provided hereon; ...
6. mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence

poses an actual or potential threat to human health, wet rot or dry rot, unless such loss or damage results directly from physical loss or damage insured by this POLICY and then only to the limit of liability shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY. ...

C. Causes of Loss Not Insured

This POLICY does not insure against loss or damage caused by any of the following: ...

5. Loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS (except as provided under the **Radioactive Contamination** provision of this POLICY), unless the discharge, dispersal, seepage, migration, release or escape is directly caused by physical loss or damage insured by this POLICY.

D. Time Element Exclusions

1. This POLICY does not insure against TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by this POLICY to INSURED PROPERTY.

* * *

SECTION X DEFINITIONS

Unless otherwise defined elsewhere, the following Definitions apply when the term is used in this POLICY. ...

D. CONTAMINANT(S)

- a. Materials that may be harmful to human health, wildlife or the environment. CONTAMINANTS include any impurity, solid, liquid, gaseous or thermal irritant or pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, chemicals, bacteria, virus, vaccines, waste, and hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control

Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency.

- b. However, CONTAMINANTS do not include fungi.

* * *

CLAIM CORRESPONDENCE

25. On April 23, 2020, Lockton, on behalf of Synchrony, provided notice of loss to North American, concerning certain alleged losses related to COVID-19.

26. Synchrony's loss notice stated:

Please be advised that your insured, Synchrony Financial ("Synchrony") hereby submits its first notice of claim for insurance pursuant to the above-referenced Policy. Specifically, Synchrony seeks insurance for Property Damage and Time Element losses in connection with interruption of its business operations in response to the novel coronavirus disease COVID-19.

As you know, the World Health Organization declared the COVID-19 outbreak as a global pandemic and the U.S. and other locations where Synchrony has operations have declared states of national emergency. Your insured has suffered and will likely continue to suffer business income loss, extra expense and/or other damages in the wake of the ongoing pandemic. In addition, numerous state and local authorities in various jurisdictions have ordered all "nonessential" businesses to cease operations, causing Synchrony additional loss.

The scope and extent of covered loss, expense and/or damage that will result from these circumstances is not yet known, but could be significant. Synchrony is currently in the process of determining its losses and whether to seek an advance payment from you that could assist Synchrony in meeting its ongoing expenses.

27. By letter dated May 4, 2020, Sedgwick issued a full and complete reservation of rights to Synchrony that included a preliminary set of Requests for Information.

28. By email, on September 11, 2020, Synchrony provided written responses to the Requests for Information.

29. On February 23, 2021, Sedgwick issued additional Requests for Information to Synchrony.

30. On April 26, 2021, Synchrony provided written responses to the February 23, 2021 Requests for Information.

31. On March 1, 2021, Lockton requested on behalf of Synchrony, a “6-month extension of the policy’s suit limitation clause. This will allow Synchrony the time and opportunity to continue sharing information in the spirit of resolving this claim amicably.”

32. In response, North American agreed to a 90-day extension of any applicable suit limitation deadline to July 23, 2021.

33. On July 1, 2021, Synchrony requested a 120-day extension of any applicable suit limitation provision.

34. North American declined the request for any further extension of any applicable suit limitation provision.

35. On August 18, 2021, Sedgwick issued a letter to Synchrony denying coverage for the claim.

36. Sedgwick wrote:

North American previously agreed to extend the toll the suit provision, to the extent it was running, until July 14, 2021. Synchrony has now sought an extension of the suit limitation provision until November 1, 2021. North American respectfully declines to agree to any additional extension of the suit limitation provision.

This letter is based on the information supplied to Sedgwick as of this date. It is not, and should not be construed as, a waiver of North American’s rights or any of the terms, conditions, and exclusions of the captioned insurance contract. Likewise, North American is not estopped from asserting any defenses or any applicable exclusion under the Insurance Contract or at law. Should you have any further information you would like us to evaluate, please forward it to my office within 30 days of the date of this letter. If no response is received within 30 days of the date of this letter, we will proceed with closing our file and advise North American to do the same.

CAUSE OF ACTION - DECLARATORY JUDGMENT

37. North American repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

38. North American seeks a judicial declaration regarding the rights and obligations, if any, of the parties to the Insurance Contract.

39. North American respectfully submits that is entitled to a judicial declaration that Synchrony is not entitled to coverage for the claim under the terms, provisions, conditions and exclusions of the Insurance Contract, based on, but not limited to, these reasons:

a. The SARS-CoV-2 virus responsible for COVID-19 does not cause “direct physical loss or damage” to property.

b. The Stay-at-Home and Executive Orders issued by various federal, state, and local governmental agency, mayor, and/or municipalities impacting business operations due to the threat of COVID-19 do not cause “direct physical loss or damage” to property.

c. There is no coverage for Communicable Disease Response or Interruption By Communicable Disease on the grounds and to the extent that Synchrony’s insured locations did not have the “actual not suspected presence of communicable disease” and access to Synchrony’s insured locations were not limited, restricted or prohibited as a result of either (a) “an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease,” or (b) “a decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease.”

d. To the extent the Court determines that there is coverage for Communicable Disease Response or Interruption By Communicable Disease, it is limited to the sublimit of

\$250,000 per Occurrence combined in the annual aggregate and 12 consecutive calendar months from the date of OCCURRENCE for Interruption by Communicable Disease.

e. There is no coverage under the Extra Expense provision on the grounds and to the extent that there was no “direct physical loss or damage” to Synchrony’s insured property and, therefore, no “period of restoration” or “period of recovery.”

f. To the extent the Court determines that there is coverage for Extra Expenses, it is limited to a \$25,000,000 sublimit.

g. There is no coverage under the “Attraction Property” provision on the grounds and to the extent that Synchrony’s alleged loss did not result from “direct physical loss or damage as insured by the” Insurance Contract to property of the type insured that “directly attracts business” to an insured location.

h. To the extent the Court determines that there is coverage for Attraction Property, it is limited to a \$5,000,000 sublimit and 30 consecutive calendar days from the date of OCCURRENCE.

i. There is no coverage under the Contingent Time Element provisions on the grounds and to the extent that there was no “direct physical loss or damage” to the property of suppliers or customers that prevented suppliers from supplying goods or services to Synchrony or customers from receiving goods and/or services from Synchrony.

j. To the extent the Court determines that there is coverage for Contingent Time Element, there is no coverage for Contingent Time Element due to Direct Named Suppliers and Customers, and it is further limited to a \$10,000,000 sublimit due to Direct Unnamed Suppliers and Customers, and a \$5,000,000 sublimit due to Indirect Suppliers and Customers.

k. There is no coverage under the Crisis Management provision on the grounds and to the extent that there was no order of civil or military authority that prohibited access to an insured location as a direct result of a violent crime, suicide, attempted suicide, armed robbery, or a death or bodily injury caused by a workplace accident.

l. To the extent the Court determines that there is coverage for Crisis Management, it is limited to a \$1,000,000 sublimit and 30 consecutive calendar days from the date of the order of civil or military prohibition.

m. There is no coverage under the Ingress / Egress provision on the grounds and to the extent that, during the period of time specified in the Insurance Contract, there was no necessary interruption of Synchrony's business resulting from the prevention of direct ingress to or direct egress from any insured location caused by direct physical loss or damage insured by the Insurance Contract to any property.

n. To the extent the Court determines that there is coverage for Ingress/Egress, it is limited to a \$2,500,000 sublimit and 30 consecutive calendar days from the date of OCCURRENCE.

o. There is no coverage under the Order of Civil or Military Authority provision on the grounds and to the extent that, during the period of time specified in the Insurance Contract, there was no necessary interruption of Synchrony's business directly resulting from an order of a civil or military authority that prohibits partial or total access to insured locations caused by direct physical loss or damage as insured by the Insured Contract to property.

p. To the extent the Court determines that there is coverage for Order of Civil or Military Authority, it is limited to a \$2,500,000 sublimit and 30 consecutive calendar days from the date of OCCURRENCE.

q. There is no coverage under the Professional Fees provision on the grounds and to the extent that, among other things, Synchrony did not incur “reasonable expenses” for “preparing and certifying the details of a claim insured” by the Insurance Contract.

r. To the extent the Court determines that there is coverage for Professional Fees, it is limited to a \$500,000 sublimit and further limited to \$25,000 plus 50% of the amount recoverable under the Professional Fees coverage in excess of \$25,000.

s. There is no coverage on the grounds and to the extent that Exclusion B.1. for “delay or loss of market” applies.

t. There is no coverage on the grounds and to the extent that Exclusion B.6 for “mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health ...” applies.

u. There is no coverage on the grounds and to the extent that Exclusion C.5 for “loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS,” applies and where “CONTAMINANTS” is defined to include “materials that may be harmful to human health, wildlife or the environment,” including any “pathogen or pathogenic organism, disease-causing or illness-causing agent, ... [or] virus.”

v. There is no coverage on the grounds and to the extent that Exclusion D.1 for “TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by the” Insurance Contract applies.

w. To the extent the Court determines there is any loss caused by “direct physical loss or damage,” there is no coverage under the Insurance Contract because Synchrony

did not commence suit against North American “within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.”

x. The coronavirus pandemic is a single OCCURRENCE under the terms of the Insurance Contract.

40. North American’s grounds for asserting that there is no coverage for the claim under the Insurance Contract reflect the facts available to North American at this time. North American reserves the right to raise any additional grounds should North American determine such grounds to exist.

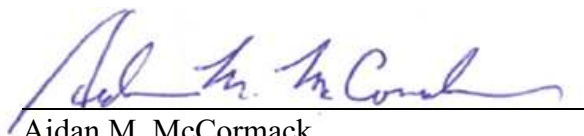
PRAYER FOR RELIEF

North American respectfully requests that the Court enter judgment in its favor and against Synchrony and declare that (a) Synchrony is not entitled to coverage under the Insurance Contract and (b) awarding North American such other and further relief as the Court deems just and proper.

JURY DEMAND

North American demands trial by jury of all issues so triable.

Dated: New York, New York
March 5, 2022



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