



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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 :
 ARCA INVESTMENTS, A.S., ARCA :
 CAPITAL BOHEMIA, A.S., AND :
 ARCA VENTURE CAPITAL A.S., :
 : C.A. No. _____
 Plaintiffs, :
 :
 v. :
 :
 AMTRUST FINANCIAL SERVICES, :
 INC., :
 :
 Defendant. :
 _____ X

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiffs Arca Investments, a.s., Arca Capital Bohemia, a.s., and Arca Venture Capital a.s. (together, “Plaintiffs” or “Arca”), allege the following on information and belief, except as to the allegations specifically pertaining to Plaintiffs, which are based on personal knowledge:

NATURE OF THE ACTION

1. Pursuant to 8 *Del. C.* § 220 (“Section 220”), Plaintiffs hereby seek to enforce their right to inspect certain corporate books and records of Defendant AmTrust Financial Services, Inc. (“AmTrust” or the “Company”).

2. On March 1, 2018, AmTrust announced that it had entered into a definitive merger agreement, whereby the Karfunkel-Zyskind Family, the

Company's majority controlling stockholder, and private equity firm Stone Point Capital LLC ("Stone Point") will acquire the Company's minority shares for \$13.50 per share (the "Proposed Merger") (the "Merger Price").

3. Plaintiffs own over 4.8 million common shares of AmTrust and seek to inspect the books and records described herein: (1) to value their AmTrust shares in order to make an informed decision concerning whether to perfect appraisal rights; (2) to investigate director disinterestedness related to the Proposed Merger; and (3) to investigate potential breaches of fiduciary duty in connection with the Proposed Merger.

4. Based on their analysis of publicly available information, Arca is of the belief that the Merger Price is inadequate, and that Stone Point and the Karfunkel-Zyskind Family are attempting to purchase AmTrust at a discount, at a time when the Company's fair value is not necessarily reflected in its public trading prices, which have experienced several large-scale fluctuations since February of 2017. Arca therefore seeks certain books and records to test those beliefs before it undergoes the considerable expense and risk of an appraisal proceeding.

5. Moreover, there is a credible basis to infer that the members of AmTrust's special committee tasked with negotiating against the Family on behalf of AmTrust's minority stockholders (the "Special Committee") did not act independently or disinterestedly, and relatedly, that the factors established under

Kahn v. M&F Worldwide, 88 A.3d 635 (Del. 2014) were not met, which, if proven, would give rise to breach of fiduciary duty claims reviewed under the entire fairness standard.

6. Plaintiffs served their operative demand letter on AmTrust (the “Demand,” is attached hereto as Exhibit 1) on May, 2, 2018. As described below, AmTrust has failed to comply with its Section 220 obligations, prompting this instant proceeding.

PARTIES

7. Plaintiff Arca Investments, a.s. (“Arca Investments”) is a joint stock company registered with the District Court of Bratislava, and is the investment vehicle of Arca Capital Group (“ACG”), a private equity firm with offices in the Czech Republic and the Slovak Republic. Arca Investments is the sole stockholder of Plaintiff Arca Venture Capital a.s. (“AVC”) and Plaintiff Arca Capital Bohemia, a.s. (“AC Bohemia”), which are both joint stock companies registered with the Prague Municipal Court. Arca Investments, AVC, and AC Bohemia separately and beneficially held and continue to hold AmTrust common stock at all relevant times. Collectively, these three stockholders currently hold over 4.8 million shares of AmTrust common stock.

8. Defendant AmTrust is an insurance holding company headquartered in New York and incorporated in Delaware. AmTrust’s Chief Executive Officer

(“CEO”) and Chairman of AmTrust’s board of directors (the “Board”) is Barry D. Zyskind, the son-in-law of the late Michael Karfunkel, who, in 1998, co-founded AmTrust with his brother George Karfunkel (a current member of the Board). The Karfunkel-Zyskind family and its affiliates and related parties (collectively, the “Karfunkel-Zyskind Family” or the “Family”) currently own or control approximately 55% of the outstanding shares of AmTrust common stock.

FACTUAL BACKGROUND

I. Background Regarding AmTrust’s Stock Performance and the Proposed Merger

9. On February 27, 2017, AmTrust announced that it had “identified material weaknesses in its internal control over financial reporting that existed as of December 31, 2016” and that it expected to make “immaterial corrections” to its financial statements. Those corrections proved to be more than immaterial: two weeks later, on March 16, 2017, AmTrust announced that its Audit Committee had concluded that its consolidated financial statements for the years ended December 31, 2014 and 2015 and the first three quarters of 2016 “should be restated and should no longer be relied upon.” AmTrust also stated that audit reports concerning the effectiveness of its internal control over financial reporting for the years ended December 31, 2014 and 2015 “likewise should also no longer be relied upon.” And, on April 11, 2017, the *Wall Street Journal* reported that the SEC, the FBI and the New York Department of Financial Services were each investigating AmTrust, and

that a former auditor of AmTrust had been assisting the FBI through secretly recording conversations about AmTrust. The former auditor stated that he witnessed “seemingly unsupported adjustments to financial schedules by a senior AmTrust executive.”

10. These revelations caused the trading price of shares of AmTrust common stock to plummet. Specifically, (i) on February 27, 2017, shares of AmTrust common stock fell from \$27.66 per share the previous trading day, to close at \$22.34 per share, down \$5.32 per share, or 19.2%; (ii) on March 17, 2017, shares fell from \$21.61 per share the previous day, to close at \$17.58 per share, down \$4.03 per share, or 18.6%; and (iii) on April 11, 2017, shares fell from \$18.87 per share the previous day, to close at \$15.30 per share, down approximately \$3.57 per share, or 18.9%.

11. On April 4, 2017, following AmTrust’s filing of its 2016 10-K, which contained the Company’s restated financials, AmTrust stock rebounded, closing at \$21.95 per share.

12. Also on April 4, 2017, Arca began purchasing AmTrust common stock, believing that the fundamentals of the Company were sound, despite the recent revelations of impropriety and mismanagement. Arca believed that AmTrust’s fair value was not reflected in its trading price.

13. The revelations in February and March 2017 precipitated a number of lawsuits against AmTrust and its leadership. For example,

- In March and April of 2017, investors filed three putative securities class actions in the U.S. District Court for the Southern District of New York against AmTrust and certain of its officers and directors. The actions were ultimately consolidated under the case name *In re AmTrust Financial Services, Inc. Securities Litigation*. The stockholders seek damages under Sections 10(b) and 20(a) of the Securities Exchange Act (“Exchange Act”), and Rule 10b-5 promulgated thereunder and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933.

- On April 27, 2017, an AmTrust stockholder filed a derivative action in the Supreme Court of the State of New York for the County of New York seeking damages on behalf of the Company (*Shaev v. DeCarlo et al.*).

- On May 11, 2017, and on June 28, 2017, two derivative actions were filed by AmTrust stockholders in the U.S. District Court for the District of Delaware. The District Court consolidated these two action under the case name *In re AmTrust Financial Services, Inc. Derivative Litigation*. The plaintiffs in the derivative action, who allege violations of Sections 10(b), 14(a), 20A, and 29(b) of the Exchange Act, breaches of fiduciary duties, unjust enrichment, and waste of corporate assets, seek damages on behalf of AmTrust and also to reform AmTrust’s governance practices and policies, among other relief.

14. Despite this tumult, analysts have shared Arca’s belief that the Company is still poised for growth. For example, JMP Securities LLC (“JMP”), in a report dated October 4, 2017 (when AmTrust stock was trading at \$14.12) acknowledged that “there are still steps that need to take place for the stock to work from here – mainly improved financial disclosures (including better fee income and

reserving disclosures) and remediation of the material weaknesses cited by its auditor at year-end.” JMP Securities LLC, *Update Following Meetings with Management* (Oct. 4, 2017). JMP also acknowledged that AmTrust had entered “into several related-party transactions, mostly with members of or entities controlled by the Karfunkel-Zyskind Family,” which it identified as investment risks. Nevertheless, JMP gave AmTrust a “Market Outperform” rating and a price target of \$18.00 per share of common stock, stating that the “\$300 [million] in capital raised earlier this year and the recently purchased \$400 [million] adverse development cover” led it to believe that “management is committed to making progress on the remaining outstanding items in coming quarters.”

15. The \$300 million referenced by JMP was from a May 25, 2017 private placement in which AmTrust issued 24,096,384 shares of common stock, solely to members of the Karfunkel-Zyskind Family, at \$12.45 per share (reflecting AmTrust’s May 25, 2017 closing price of \$12.45 per share) (the “Private Placement”). As the trading price of AmTrust common stock experienced a significant drop earlier that month, the timing of the Private Placement benefitted the Family. Moreover, the Private Placement had the effect of further consolidating the Family’s control over AmTrust, which, in the event of a going-private proposal, would provide it additional leverage when compared to the minority stockholders,

as well as a larger rollover stake in any future private company, all at a cost lower than the proposed \$13.50 per share Merger Price.

16. On January 10, 2018, AmTrust announced that it received a proposal the previous day from Stone Point, together with Barry Zyskind and AmTrust directors George Karfunkel and Leah Karfunkel (Zyskind's mother-in-law) to acquire all of the outstanding shares of AmTrust common stock that the Family did not already own or control for \$12.25 per share in cash (the "Proposal"). Stone Point and the Family announced that their going private Proposal would allow "Amtrust to focus on the long term without the emphasis on short-term results," which was a recognition from management that the fair value of AmTrust common stock has not necessarily been reflected in its trading price.

17. In the wake of this news, an analyst from SunTrust Robinson Humphrey Inc. ("SunTrust") identified a price target of \$16.00 for AmTrust. The analyst also included the following Industry Valuation Comparison, which demonstrates that AmTrust's price/earning ratio ("P/E Ratio") and price-to-book ratio ("P/B Ratio") were far below the P/E Ratio and P/B Ratio for comparable companies, and which suggests that the market was significantly undervaluing AmTrust's stock:

Figure 1: P&C Industry Valuation Comparison

Ticker	Company Name	2016 P/E	2017E P/E	2018E P/E	P/B
Specialty P&C:					
AFSI	AmTrust Financial Services Inc.*	5.2x	13.0x	9.4x	0.8x
HIG	Hartford Financial Services Group, Inc.	16.3x	17.7x	12.9x	1.1x
TRV	Travelers Companies, Inc.	13.1x	19.5x	13.0x	1.5x
AIZ	Assurant, Inc.	22.2x	28.4x	14.1x	1.3x
AFG	American Financial Group, Inc.	17.9x	17.8x	14.6x	1.8x
JRVR	James River Group Holdings Ltd	14.9x	16.1x	12.5x	1.5x
EIG	Employers Holdings, Inc.	16.8x	17.7x	17.6x	1.5x
AMSF	AMERISAFE, Inc.	14.7x	19.0x	19.9x	2.3x
WRB	W. R. Berkley Corporation	20.2x	28.6x	19.3x	1.5x
NAVG	Navigators Group, Inc.	20.6x	54.0x	18.6x	1.2x
KNSL	Kinsale Capital Group, Inc.	35.5x	38.4x	26.0x	4.2x
PRA	ProAssurance Corporation	22.5x	26.9x	24.8x	1.6x
RLI	RLI Corp.	28.4x	39.2x	28.2x	3.0x
MKL	Markel Corporation	35.8x	201.9x	35.4x	1.7x
Average:		20.3x	38.4x	19.0x	1.8x
Median:		19.0x	23.2x	18.1x	1.5x

*Valued at \$12.25 proposed takeout price

Source: FactSet, SunTrust Robinson Humphrey Estimates

SunTrust Robinson Humphrey Inc., *Management-Led Takeout Proposed* (Jan. 9, 2018).

18. Similarly, on January 12, 2018, when AmTrust stock was trading at \$12.55, Compass Point Research & Trading, LLC (“Compass Point”) identified a price target of \$15.00, noting that “the decision to take AFSI private leads us to the assumption that short-term headlines may create more headaches for management, but long-term, the upside is obviously higher. Otherwise it is unlikely private equity firm Stone Point Capital (with many investments in the insurance space) would have teamed up with AFSI family insiders to take the company private.” Compass Point Research & Trading, LLC, *Market Assumes Offer Could Rise... But By How Much?* (Jan. 12, 2018).

19. In fact, the *modus operandi* of most private equity firms—and Stone Point is no exception—is to identify companies they perceive to be undervalued, and acquire them through taking advantage of market timing.

20. Compass Point noted that a higher offer of \$13.50 (the consideration ultimately reflected in the Merger Price) “still represents more than 40% upside to Stone Point and the investor group,” observing that several large transactions by AmTrust in 2017 had “strengthened [the Company’s] capital position” and that AmTrust “maintains a competitive advantage on the expense side of their operations within the small commercial Workers Comp business through their IT platform, as well as being a leader in the Warranty business,” which Compass Point identified as “long term upsides,” given its belief that the market for both Workers Comp and warranty products would be expanding.

21. On March 1, 2018, AmTrust announced that it had entered into a definitive agreement, whereby Stone Point and the Karfunkel-Zyskind Family would acquire the approximately 45% of the Company’s issued and outstanding common shares that the Family did not already own or control. Under the Proposed Merger, unaffiliated stockholders will receive \$13.50 in cash for each share of AmTrust common stock they hold.

22. A preliminary valuation performed internally at Arca (based on publicly available information) suggests that the \$13.50 Merger Price is grossly

inadequate, and does not reflect the fair value of AmTrust shares. Specifically, Arca's analysis resulted in implied values for AmTrust within a range of \$15.00 to \$22.00 per share, considerably higher than the Merger Price.

23. Accordingly, and consistent with analyst observations, it appears that the Karfunkel-Zyskind Family and Stone Point have taken advantage of the 2017 market-overreaction, and, unless rejected in the stockholder vote, will acquire AmTrust at a considerable discount, at the expense of AmTrust's minority stockholders.¹

II. *The Karfunkel-Zyskind Family's Attempt to Invoke the Protections of M&F Worldwide in Connection with the Proposed Merger*

24. The Karfunkel-Zyskind Family attempted to structure the Proposed Merger to qualify for business judgment review under *Kahn v. M&F Worldwide*, by conditioning its proposed going-private transaction on special committee approval and a majority-of-the-minority vote. Under *M&F Worldwide*

¹ On May 17, 2018, activist investor Carl Icahn disclosed that he had acquired approximately 9.4% of AmTrust's common stock, and issued an open letter to the Board expressing his displeasure with the Merger, which he believes is "blatantly taking advantage of AmTrust's minority shareholders," further validating Plaintiffs' fears. Aside from urging stockholders to vote against the Merger, Icahn has also filed an action against the Karfunkel-Zyskind Family for breaches of fiduciary duty. Moreover, last week, Institutional Shareholder Services, Inc. ("ISS") issued its greatly anticipated report on the Merger, which criticized the Special Committee's "less-than-robust sale process," and which concluded that "a standalone scenario seems to be a preferable alternative to the currently proposed transaction" and, accordingly, "a vote AGAINST the merger is warranted."

in controller buyouts, the business judgment standard of review will be applied *if and only if*: (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority.

88 A.3d at 645 (emphasis in original).

25. As previously noted, Arca's analysis concerning the Merger Price as well as analyst opinion that the Karfunkel-Zyskind Family was attempting to purchase AmTrust at a discount credibly demonstrate that the Merger Price is inadequate, which calls into question whether the Special Committee met its duty of care in negotiating for a fair merger price.

26. Moreover, there is credible basis to believe that the Special Committee, formed to negotiate against the Family on behalf of minority stockholders, did not act independently. *First*, all four Special Committee members (Donald T. DeCarlo, Susan C. Fisch, Abraham Gulkowitz, and Raul Rivera) have been named as defendants in pending derivative actions. As a going-private merger might have the effect of extinguishing derivative exposure, the Special Committee members may have been strongly incentivized to approve it. Indeed, the definitive proxy filed on May 4, 2018, in support of the Merger (the "Definitive Proxy") notes that Donald DeCarlo recused himself from at least two Special Committee meetings "[i]n light of the allegations against him as a defendant" in a pending derivative action filed by

Cambridge Retirement System in April of 2015 (the “Cambridge Action”). The Cambridge Action, which alleges breaches of the duty of loyalty not only against DeCarlo but also against Fisch, Gulkowitz, Zyskind, George Karfunkel, and Leah Karfunkel in connection with AmTrust’s transactions with insurance company Tower Group International, Ltd., was repeatedly discussed by the Special Committee during the merger process, according to the Definitive Proxy.

27. *Second*, Donald DeCarlo, the chairman of the Special Committee, has maintained a longstanding relationship with the Karfunkel-Zyskind Family. He has been a director of AmTrust since 2006—the year the Family took the Company public—and has served as a director, along with members of the Family, for many AmTrust subsidiaries, including Sequoia Indemnity Company, Wesco Insurance Company, and Rochdale Insurance Company. Moreover, since 2010, DeCarlo has been a director of National General Holdings Corp. (“NGHC”) an insurance company controlled by the Karfunkel-Zyskind Family, and has also been a director since 2010 of NGHC subsidiaries National Health Insurance Company, Imperial Fire and Casualty Insurance Company and National Automotive Insurance Company.²

² AmTrust and NGHC often work closely with one another. For example, on September 14, 2017, NGHC announced that it had entered into an agreement to purchase its policy administration system (NPS) and related intellectual property from AmTrust for \$200 million.

28. *Third*, Abraham Gulkowitz, like DeCarlo, has served as an AmTrust board-member since 2006, and has served as a director, along with members of the Family, for many AmTrust subsidiaries. Gulkowitz also has served as chairman of AmTrust’s Audit Committee while simultaneously serving as the co-founder and partner of Brookville Advisory (“Brookville”). As disclosed in an SEC filing, the Hod Foundation, a private foundation owned and controlled by the Karfunkel-Zyskind Family, was the beneficial owner of at least 10 percent of FrontPoint Brookville Credit Opportunities L.P., which is managed by Brookville and Gulkowitz. Additionally, Gulkowitz’s residence is within one mile of the residences of several members of the Family, including the residences of Barry Zyskind, AmTrust director George Karfunkel and AmTrust director Leah Karfunkel. There is certainly a credible basis to believe that Gulkowitz may have material connections to the Karfunkel-Zyskind Family, aside from those within his capacity as an AmTrust director.

29. *Fourth*, the other two members of the Special Committee also have substantial ties to the Karfunkel-Zyskind Family. Like Gulkowitz and DeCarlo, Fisch has also been an AmTrust director for a substantial period of time, having commenced her service in 2010, following nomination from the Karfunkel-Zyskind-dominated board. And like Gulkowitz and DeCarlo, Fisch sits on many AmTrust subsidiary boards, along with members of the Family. Even the most recent director

on the Special Committee—Rivera, who was elected by the Board in 2016 to fill a vacancy created by another director’s retirement—has sat and continues to sit on numerous AmTrust subsidiary boards with the Family. All Special Committee members are compensated for sitting on AmTrust’s subsidiary boards. In fact, AmTrust’s annual proxy statement filed on May 18, 2017 noted:

For service on subsidiary boards, our non-employee directors are eligible to receive an annual retainer of \$5,000 for each domestic board, and \$20,000 for each international subsidiary board, with a \$100,000 annual cap on subsidiary board retainers. Should any non-employee director serve as chairperson of a subsidiary board, such director will receive an additional \$15,000 annual retainer for such service, regardless of the annual cap.

That same proxy noted that, all told, DeCarlo, Fisch, and Gulkowitz respectively received \$318,086.00, \$256,845.00, and \$217,586.00 in director compensation from AmTrust in 2016. (Rivera, who had only joined the Board earlier that year, received \$61,667.00). Given these professional and profitable relationships, it is certainly credible to suspect that the Special Committee, which included members who worked with the Karfunkel-Zyskind Family for well over a decade (and in connection with several different companies), were incapable of completely reversing this friendly and exceedingly lucrative dynamic to be able to aggressively negotiate against the Family during the merger process.

30. *Fifth*, the Special Committee’s retention of a plainly conflicted financial advisor further underscores its lack of independence and its inability (or

unwillingness) to meet its duty of care. Specifically, the Proxy notes that the Special Committee retained Deutsche Bank Securities, Inc. (“Deutsche Bank”), and did so “based on, among other factors,...the absence of potential conflicts of interest that would prevent Deutsche Bank from acting as independent financial advisor to the Special Committee.” Proxy at 24. However, a supplemental proxy statement filed more recently, on May 24, 2018, disclosed that the CEO of Stone Point **is a member of the Deutsche Bank Americas Advisory Board**, and that for such service, he receives an annual six figure salary. In other words, there exists a significant financial and professional connection between the Special Committee’s advisor and the Special Committee’s purported counterparty. Nevertheless, AmTrust’s more recent proxy filing still clings to the disproven fiction that Deutsche Bank is an “independent financial advisor,” and is still touting its biased valuation analysis in support of the Merger.

III. *Plaintiffs’ Demand*

31. On May 2, 2018, Counsel for Plaintiffs served upon Zyskind their operative letter demanding to inspect certain books and records of AmTrust (the “Demand”). Attached as Exhibit A to the Demand was a Special Power of Attorney signed by Pavol Krúpa, ACG Chairman, appointing Wolf Popper LLP to act as Plaintiffs’ attorney-in-fact to act on their behalf in demanding books and records from AmTrust. Attached as Exhibit B were true and correct brokerage statements

evidencing Plaintiffs' ownership of stock and a declaration from Krúpa attesting to his authority to act on their behalf.

32. The Demand stated the following proper purposes for the inspection of AmTrust's books and records: (1) to value Plaintiffs' AmTrust shares; (2) to investigate director disinterestedness related to the Proposed Merger; and (3) to investigate potential breaches of fiduciary duty in connection with the Proposed Merger. Plaintiffs' stated purposes are reasonably related to their interests as a AmTrust stockholders.

33. In accordance with these proper purposes, the Demand sought inspection of (a) Board materials concerning the Proposed Merger; (b) documents evidencing the compensation received by Special Committee members from any entity affiliated with the Karfunkel-Zyskind Family, as well as any benefits to be received by such members in the connection with the Proposed Merger; (c) Board materials concerning any financial analysis or valuation of AmTrust or its stock; (d) Board materials concerning discussions during the Merger Process about any pending derivative actions; and (e) documents sufficient to identify any professional, business, communal, familial, or social relation between any Special Committee members, on the one hand, and any members of the Karfunkel-Zyskind Family on the other hand, among other books and records. Ex. A at 6-8.

34. The foregoing material sought is necessary and essential to accomplish the stated purposes of the Demand. The requests set forth in the Demand are narrowly tailored to serve Plaintiffs' stated purposes.

35. On May 9, 2018, AmTrust responded to Plaintiffs' Demand (attached hereto as Exhibit 2), agreeing to produce only a small subset of the books and records demanded. And even with respect to the small subset of books and records AmTrust agreed to produce, AmTrust stated it would produce such material only subject to a confidentiality agreement. Ex. 2 at 10.

36. Plaintiffs and AmTrust met and conferred concerning the demanded books and records, yet the parties did not reach an agreement. Moreover, with respect to the small subset of books and records that AmTrust agreed to produce, AmTrust proposed a confidentiality agreement containing several unreasonable terms, which Plaintiffs cannot agree to, and which indicates that AmTrust does not intend to adhere to its books and records obligations. Given this impasse, Plaintiffs have filed this instant suit.

CAUSE OF ACTION

(Demand for Inspection Pursuant to 8 *Del. C.* § 220)

37. Plaintiffs hereby incorporate by reference the allegations contained in each of the preceding paragraphs.

38. On May 2, 2018, Plaintiffs made their written Demand upon AmTrust for the inspection of corporate books and records.

39. Plaintiffs have complied with all requirements under Section 220 concerning the form and manner of making a demand for inspection of books and records.

40. Plaintiffs made their Demand for proper purposes, and the documents identified in the Demand are necessary and essential to those proper purposes.

41. AmTrust has refused to permit inspection of certain demanded books and records. Accordingly, it has not complied with its obligations to Plaintiffs pursuant to 8 Del. C. § 220.

42. By reason of the foregoing, and pursuant to 8 Del. C. § 220, Plaintiffs are entitled to an Order permitting it to inspect and copy the books and records set forth in the Demand.

43. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for the following relief:

- A. An Order requiring AmTrust to permit the immediate inspection and copying of all books and records requested in Plaintiffs' Demand, including, but not limited to, all books and records requested on pages 6 through 8 of Exhibit 1, attached herein;

- B. An Order directing AmTrust to pay reasonable attorneys' fees and expenses in connection with Plaintiffs' Demand and related litigation; and
- C. Such other relief as this Court deems just and appropriate.

PRICKETT, JONES & ELLIOTT, P.A.

By: /s/ Marcus E. Montejo
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Dated: May 30, 2018



EXHIBIT 1

DIRECT DIAL: 212 451-9631
EMAIL: cstine@wolfpopper.com

May 2, 2018

BY HAND DELIVERY

Mr. Barry D. Zyskind
Chairman and Chief Executive Officer
AmTrust Financial Services, Inc.
59 Maiden Lane, 43rd Floor
New York, NY 10038

Re: *Demand for Inspection of Books and Records of AmTrust Financial Services, Inc.
Pursuant to 8 Del. C. § 220*

Dear Mr. Zyskind:

My firm has been retained by Arca Capital Group (“Arca Capital”), and its affiliates Arca Investments, a.s., Arca Capital Bohemia, a.s., and Arca Venture Capital a.s. (collectively, “Arca”) in its efforts to inspect certain books and records of AmTrust Financial Services, Inc. (“AmTrust” or the “Company”).¹ As you are aware, Arca requested material in a letter dated March 6, 2018, pursuant to its rights as an AmTrust stockholder under 8 *Del. C. § 220* (the “March 6 Demand”). By letter dated March 13, 2018, your counsel objected to the March 6 Demand and refused to provide any of the documents requested in that demand. By letter dated April 18, 2018, Arca withdrew its March 6, 2018 demand, and replaced it with that letter (the “April 18 Demand”). By letter dated April 26, 2018, your counsel objected to the April 18 Demand. By this letter, Arca hereby withdraws both of the earlier demands and replaces them with this instant letter (the “Demand”), which addresses the questions raised by your counsel in its March 13, 2018 letter concerning Arca’s ownership of AmTrust stock. Please ask your counsel to contact me as soon as possible to arrange for the review of the demanded books and records described below. If AmTrust does not respond to this letter or fails to permit inspection and copying of the demanded documents within five business days from the date of receipt of this Demand, we intend to seek appropriate relief to the fullest extent permitted under the law.

Attached to this letter as Exhibit “A” is a true and correct copy of the Special Power of Attorney authorizing me and my firm, Wolf Popper LLP, to act on behalf of Arca in connection with these efforts. Attached as Exhibit “B” is a true and correct copy of redacted brokerage

¹ Arca Capital is a private equity group that operates primarily in the Czech and Slovak markets and has over € 1.4 billion in assets. As indicated in the attached brokerage statements, Arca currently holds over 4.8 million common shares of AmTrust, which, at the \$13.50 per share proposed purchase price, equates to an investment worth over \$65 million.

Mr. Barry D. Zyskind
May 2, 2018
Page 2 of 12

statements of the Arca affiliates demonstrating their beneficial ownership of AmTrust stock. Attached as Exhibit "C" is a true and correct copy of a declaration from Arca Capital's Chairperson describing Arca's ownership structure and averring that he has the authority to act on behalf of Arca's affiliates identified above.

BACKGROUND ON THE PROPOSED AMTRUST MERGER

On February 27, 2017, AmTrust announced that it had "identified material weaknesses in its internal control over financial reporting that existed as of December 31, 2016" and that it expected to make "immaterial corrections" to its financial statements. Those corrections proved to be more than immaterial: two weeks later, on March 16, 2017, AmTrust announced that its Audit Committee had concluded that its consolidated financial statements for the years ended December 31, 2014 and 2015 and the first three quarters of 2016 "should be restated and should no longer be relied upon." AmTrust also stated that audit reports concerning the effectiveness of its internal control over financial reporting for the years ended December 31, 2014 and 2015 "likewise should also no longer be relied upon." And, on April 11, 2017, the *Wall Street Journal* reported that the SEC, the FBI and the New York Department of Financial Services were each investigating AmTrust, and that a former auditor of AmTrust had been assisting the FBI through secretly recording conversations about AmTrust. The former auditor stated that he witnessed "seemingly unsupported adjustments to financial schedules by a senior AmTrust executive."

These revelations caused the trading price of shares of AmTrust common stock to plummet. Specifically, (i) on February 27, 2017, shares of AmTrust common stock fell from \$27.66 per share the previous trading day, to close at \$22.34 per share, down \$5.32 per share, or 19.2%; (ii) on March 17, 2017, shares fell from \$21.61 per share the previous day, to close at \$17.58 per share, down \$4.03 per share, or 18.6%; and (iii) on April 11, 2017, shares fell from \$18.87 per share the previous day, to close at \$15.30 per share, down approximately \$3.57 per share, or 18.9%.

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The revelations in February and March 2017 precipitated a number of lawsuits against AmTrust and its leadership. For example,

- In March and April of 2017, investors filed three putative securities class actions in the U.S. District Court for the Southern District of New York against AmTrust and certain of its officers and directors. The actions were ultimately consolidated under the case name *In re AmTrust Financial Services, Inc. Securities Litigation*. The stockholders seek damages under Sections 10(b) and 20(a) of the Securities Exchange Act ("Exchange Act"), and Rule 10b-5 promulgated thereunder and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933.

Mr. Barry D. Zyskind
May 2, 2018
Page 3 of 12

- On April 27, 2017, an AmTrust stockholder filed a derivative action in the Supreme Court of the State of New York for the County of New York seeking damages on behalf of the Company (*Shaev v. DeCarlo et al.*).

- On May 11, 2017, and on June 28, 2017, two derivative actions were filed by AmTrust stockholders in the U.S. District Court for the District of Delaware. The District Court consolidated these two action under the case name *In re AmTrust Financial Services, Inc. Derivative Litigation*. The plaintiffs in the derivative action, who allege violations of Sections 10(b), 14(a), 20A, and 29(b) of the Exchange Act, breaches of fiduciary duties, unjust enrichment, and waste of corporate assets, seek damages on behalf of AmTrust and also to reform AmTrust's governance practices and policies, among other relief.²

Despite this tumult, analysts have shared Arca's belief that the Company is still poised for growth. For example, JMP Securities LLC ("JMP"), in a report dated October 4, 2017 (when AmTrust stock was trading at \$14.12) acknowledged that "there are still steps that need to take place for the stock to work from here – mainly improved financial disclosures (including better fee income and reserving disclosures) and remediation of the material weaknesses cited by its auditor at year-end."³ JMP Securities LLC, *Update Following Meetings with Management* (Oct. 4, 2017). Nevertheless, JMP gave AmTrust a "Market Outperform" rating and a price target of \$18.00 per share of common stock, stating that the "\$300 [million] in capital raised earlier this year and the recently purchased \$400 [million] adverse development cover" led it to believe that "management is committed to making progress on the remaining outstanding items in coming quarters."⁴

² To be sure, scrutiny into misconduct at AmTrust did not come to the fore only last year. AmTrust has been litigating another pending derivative action (this one in the Delaware Court of Chancery) since April of 2015, in which the stockholder, Cambridge Retirement System, has alleged breaches of the duty of loyalty against (among other defendants) Barry Zyskind, George Karfunkel, Michael Karfunkel, and Leah Karfunkel, as well as AmTrust Audit Committee members Donald DeCarlo, Susan C. Fisch, and Abraham Gulkowitz, in connection with AmTrust's transactions with Tower Group International, Ltd. The preliminary proxy filed on April 9, 2018, in support of the Merger ("Preliminary Proxy") demonstrates that the Cambridge action appears to have been of particular interest to the AmTrust Board and its Special Committee during the merger process, and was discussed repeatedly.

³ JMP also acknowledged AmTrust's control by the Karfunkels and that the Company had entered "into several related-party transactions, mostly with members of or entities controlled by the Karfunkel-Zyskind Family," which it identified as investment risks. The Karfunkel-Zyskind family and its affiliates and related parties (collectively, the "Karfunkel-Zyskind Family" or the "Family") currently own or control approximately 55% of the outstanding shares of AmTrust common stock.

⁴ The \$300 million raised in capital was from a May 25, 2017 private placement in which AmTrust issued 24,096,384 shares of common stock, solely to members of the Karfunkel-Zyskind Family, at \$12.45 per share (reflecting AmTrust's May 25, 2017 closing price of \$12.45 per share) (the "Private Placement"). As the trading price of AmTrust common stock experienced a significant drop earlier that month, the timing

Mr. Barry D. Zyskind
 May 2, 2018
 Page 4 of 12

On January 10, 2018, AmTrust announced that it received a proposal the previous day from Stone Point Capital LLC (“Stone Point”), together with Barry D. Zyskind, CEO of AmTrust and Chairman of its Board, and AmTrust directors George Karfunkel and Leah Karfunkel to acquire all of the outstanding shares of AmTrust common stock that the family did not already own or control for \$12.25 per share in cash (the “Proposal”). Stone Point and the Family announced that their proposed going-private offer would allow “Amtrust to focus on the long term without the emphasis on short-term results,” which, one can only assume, is a recognition from management that the fair value of AmTrust common stock has not necessarily been reflected in its trading price. See Compass Point Report, discussed *infra*.

In the wake of this news, an analyst from SunTrust Robinson Humphrey Inc. (“SunTrust”) identified a price target of \$16.00 for AmTrust. The analyst also included the following Industry Valuation Comparison, which demonstrates that AmTrust’s price/earning ratio (“P/E Ratio”) and price-to-book ratio (“P/B Ratio”) were far below the P/E Ratio and P/B Ratio for comparable companies, and which suggests that the market was significantly undervaluing AmTrust’s stock:

Figure 1: P&C Industry Valuation Comparison

Ticker	Company Name	2016 P/E	2017E P/E	2018E P/E	P/B
<i>Specialty P&C:</i>					
AFSI	AmTrust Financial Services Inc *	5.2x	13.0x	9.4x	0.8x
HIG	Hartford Financial Services Group Inc	16.3x	17.7x	12.9x	1.1x
TRV	Travelers Companies, Inc	13.1x	19.5x	13.0x	1.5x
AIZ	Assurant Inc	22.2x	28.4x	14.1x	1.3x
AFG	American Financial Group, Inc	17.9x	17.8x	14.6x	1.8x
JRVR	James River Group Holdings Ltd	14.9x	16.1x	12.5x	1.5x
EIG	Employers Holdings, Inc	16.8x	17.7x	17.6x	1.5x
AMSF	AMERISAFE Inc	14.7x	19.0x	19.9x	2.3x
WRB	W R Berkley Corporation	20.2x	28.6x	19.3x	1.5x
NAVG	Navigators Group, Inc	20.6x	54.0x	18.6x	1.2x
KHSL	Kinsale Capital Group, Inc	35.5x	38.4x	26.0x	4.2x
PRA	ProAssurance Corporation	22.5x	26.9x	24.8x	1.6x
RLI	RLI Corp	28.4x	39.2x	28.2x	3.0x
MKL	Markel Corporation	35.8x	201.9x	35.4x	1.7x
Average:		20.3x	38.4x	19.0x	1.8x
Median:		19.0x	23.2x	18.1x	1.5x

*valued at \$12.25 proposed takeout price

Source: FactSet, SunTrust Robinson Humphrey Estimates

SunTrust Robinson Humphrey Inc., *Management-Led Takeout Proposed* (Jan. 9, 2018).

of the Private Placement benefitted the Family. Moreover—and despite the fact that the Preliminary Proxy states that the Karfunkel-Zyskind Family only began their going-private discussions with Stone Point in September 2017—one cannot ignore the fact that the Private Placement had the effect of further consolidating the Family’s control over AmTrust, which, in the event of a going-private proposal, would provide it additional leverage when compared to the minority stockholders, as well as a larger rollover stake in any private-equity backed future company, all at a cost even lower than the proposed \$13.50 per share Merger Price.

Mr. Barry D. Zyskind
May 2, 2018
Page 5 of 12

Similarly, on January 12, 2018, when AmTrust stock was trading at \$12.55, Compass Point Research & Trading, LLC identified a price target of \$15.00, noting that “the decision to take AFSI private leads us to the assumption that short-term headlines may create more headaches for management, *but long-term, the upside is obviously higher. Otherwise it is unlikely private equity firm Stone Point Capital (with many investments in the insurance space) would have teamed up with AFSI family insiders to take the company private.*” Compass Point Research & Trading, LLC, *Market Assumes Offer Could Rise...But By How Much?* (Jan. 12, 2018) (emphasis added).⁵ Compass Point noted that a higher offer of \$13.50 (the consideration ultimately reflected in the Merger) “still represents more than 40% upside to Stone Point and the investor group.” Compass Point noted that several large transactions by AmTrust in 2017 had “strengthened [the Company’s] capital position.” Compass Point also observed that AmTrust “maintains a competitive advantage on the expense side of their operations within the small commercial Workers Comp business through their IT platform, as well as being a leader in the Warranty business,” which it identified as “long term upsides,” given Compass Point’s belief that the market for both workers’ compensation and warranty products would be expanding.

On March 1, 2018, AmTrust announced that it had entered into a definitive agreement, whereby Stone Point and the Karfunkel-Zyskind Family would acquire the approximately 45% of the Company’s issued and outstanding common shares that the Family did not already own or control (the “Proposed Merger”). Under the Proposed Merger, unaffiliated stockholders will receive \$13.50 in cash for each share of AmTrust common stock they hold (the “Merger Price”).

A preliminary valuation performed by Arca (based on publicly available information) suggests that the Merger Price is grossly inadequate, and does not reflect the fair value of AmTrust shares:

- Arca’s valuation of AmTrust was based on using Wall Street analyst estimates of AmTrust’s fiscal 2018 and 2019 earnings per share and dividends per share. Arca applied AmTrust’s historical five-year average price/earnings per share multiple and dividend yield and AmTrust’s peer group historical five-year average price/earnings per share multiple and dividend yield to derive implied values for AmTrust.
- In addition, Arca used its estimate of AmTrust’s 2017 book value per share, and from that, applied AmTrust’s and AmTrust’s peer group historical five-year average Price/Book Value multiple to derive implied values for AmTrust.

Arca’s analysis resulted in implied values for AmTrust within a range of \$15.00 to \$22.00 per

⁵ It is well recognized that private equity companies identify companies they perceive to be undervalued, and acquire them through taking advantage of market timing. *In re Appraisal of Dell Inc.*, No. 9322-VCL, 2016 Del. Ch. LEXIS 81, at *99 n.28 (Ch. May 31, 2016), *aff’d in part and rev’d in part*, 177 A.3d 1 (citing academic scholarship making this empirical observation).

Mr. Barry D. Zyskind
May 2, 2018
Page 6 of 12

*share, considerably higher than the \$13.50 Merger Price.*⁶

Accordingly, it appears that the Karfunkel-Zyskind Family and Stone Point have taken advantage of the 2017 market-overreaction, and, unless rejected in the stockholder vote, will acquire AmTrust at a considerable discount, and at the expense of AmTrust's minority stockholders.⁷

MATERIAL DEMANDED

In light of the above, I hereby demand pursuant to Section 220 of the Delaware General Corporation Law that AmTrust immediately make the following books, records, documents, and material available for inspection and copying during the usual hours for business:⁸

1. All minutes, packages, presentations, surveys, reports, exhibits, recordings, agendas, summaries, memoranda, transcripts, notes, summaries of meetings, appraisals, evaluations or resolutions, including materials prepared by non-Company sources such as consultants, financial advisors, or contractors, provided to any member of the Board ("Board Materials") for any of the meetings⁹ of the Board of Directors of AmTrust (the "Board") and any of its committees, including meetings of the Special Committee,¹⁰ from January 1, 2017, to and

⁶ In some manners, Arca's valuation appears to be conservative as it utilized Thomas Reuters Eikon in forecasting earnings per share estimates of \$0.97 for 2018E and \$1.44 for 2019E. Had Arca used Bloomberg's figures, those estimates would be \$1.35 per share and \$1.80 per share, respectively, and would have resulted in a higher valuation.

⁷ "Stock market prices can depart substantially from their fundamental value for extended periods of time." *In re Appraisal of Dell Inc.*, 2016 Del. Ch. LEXIS 81, at *74 n.16. "It is therefore erroneous to conflate the stock market (which is generally highly efficient) with the deal market (which often is not)." *Id.* at *74; *see also id.* at *74 n.13 (in a management buyout, which is not an arms-length transaction, one cannot assume that merger price is the best indicator of value).

⁸ As shown here, most of the materials demanded are "board level documents evidencing the directors' decisions and deliberations, as well as the materials that the directors received and considered," which "[a] corporation usually can collect and provide ... easily and quickly with minimal burden." *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 790 (Del. Ch. 2016); *id.* ("[i]n many organizations, the corporate secretary maintains a central file for each board meeting [which] contains the minutes for the meeting and the materials that directors received and reviewed"). Accordingly, the burden to AmTrust in complying with this demand is minimal.

⁹ "Meetings" includes, for purposes of this Demand, all regular, special, and ad hoc meetings of the Board and all meetings of regular, specially created, or ad hoc committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise.

¹⁰ "Special Committee" refers to the committee established on or about December 28, 2017, to review expected acquisition proposals from Stone Point and the Family, and includes AmTrust directors Donald T. DeCarlo, Susan C. Fisch, Abraham Gulkowitz, and Raul Rivera.

Mr. Barry D. Zyskind
May 2, 2018
Page 7 of 12

including the date of your response to this letter (the “Relevant Time Period”), at which the Proposed Merger or any potential acquisition, going-private transaction, or strategic alternatives of or related to AmTrust were discussed.

2. All Board Materials concerning the establishment and mandate of the Special Committee and the process it undertook to retain legal and financial advisors.

3. Documents sufficient to identify the compensation members of the Special Committee receive and have received in connection with their roles as directors of AmTrust or other companies or entities controlled by the Karfunkel-Zyskind Family, including, but not limited to, any compensation received in connection with committee participation on those boards or in connection with sitting on boards of directors of any of the subsidiaries or affiliates of those companies or entities.

4. Documents sufficient to identify the ownership of securities or debt of AmTrust or any other company or entity controlled by the Karfunkel-Zyskind Family.

5. Documents sufficient to identify the actual or approximate net worth of members of the Special Committee.

6. All Board Materials from the Relevant Time Period concerning any financial analysis or valuation prepared for or used in connection with the Proposed Merger, or consideration of other strategic alternatives. Documents responsive to this request include, but are not limited to, projections or forecasts of the Company's financial performance (for any use), and any financial or valuation analyses of the Company prepared by the Company or any advisors or consultants to the Company or the Board, including, but not limited to, any documents or presentations prepared by Deutsche Bank Securities Inc. (“DB”) and BofA Merrill Lynch (“BAC”) for use by the Special Committee or the Board.¹¹

7. All Board Materials from the Relevant Time Period concerning or commenting upon the fairness or adequacy or the consideration offered to the Company's stockholders in the Proposed Merger, whether from a financial point of view or otherwise.

8. All Board Materials from the Relevant Time Period concerning the financial results, value, market value, fair value, or inherent value of AmTrust or its stock. Documents responsive to this request include, but are not limited to, any appraisals, analyses, opinions, reviews, presentations or statements concerning any of the above-referenced subjects.

9. All Board Materials from the Relevant Time Period concerning any derivative action on behalf of AmTrust against any of AmTrust's officers or directors, including but not limited to any documents concerning the effect, if any, of a merger on any such derivative actions,

¹¹ Excluded from this and the next two requests is any material AmTrust filed on Schedule 13E-3 on April 9, 2018 (the “13e-3 Filings”).

Mr. Barry D. Zyskind
May 2, 2018
Page 8 of 12

and the value, if any, of the claims asserted in those derivative actions.

10. All Board Materials from the Relevant Time Period concerning the potential post-closing employment of any director or officer of Amtrust, and all potential remuneration, benefits, and payments made, to be made, or discussed in connection therewith.

11. All Board Materials, regardless of time period, concerning remuneration, benefits or payments received or to be received by any director or officer of AmTrust in connection with the Proposed Merger.

12. All Board Materials, regardless of time period, concerning Arca, including all communications with or about Arca.

13. Any pro forma financial statements prepared in connection with the Proposed Merger.

14. All Board Materials concerning the compensation and fee structure of DB and BAC in connection with the Proposed Merger, including but not limited to, all documents concerning any negotiation with DB and BAC regarding their compensation in connection with the Proposed Merger.

15. All Board Materials concerning AmTrust's net operating losses ("NOLs"), including but not limited to, whether they were reflected or incorporated into DB's final analyses concerning the fairness of the Merger Price.

16. Documents reflecting communication during the Relevant Time Period between anyone at AmTrust and A.M. Best Company, Inc., including but not limited to any documents concerning AmTrust's Financial Strength Rating, and all Board Materials concerning those communications.

17. Documents, regardless of time period, sufficient to identify any professional, business, communal, familial, or social relation between any member of the Special Committee, on the one hand, and any member of the Karfunkel-Zyskind Family or any employee of Stone Point, on the other hand.

18. Documents reflecting the "confidential presentation" with the "ratings agency" described on page 24 of the Preliminary Proxy, including but not limited to any communications with the agency concerning that presentation, any final or draft of that presentations, and all Board Materials concerning that presentation.

The books and records demanded above are "essential and sufficient to [Arca's] stated purpose[s]." *See Yahoo!*, 132 A.3d at 787.

DEMAND PURPOSES

A stockholder is entitled to inspect a corporation's books and records "for any proper

Mr. Barry D. Zyskind
May 2, 2018
Page 9 of 12

purpose.” 8 Del. C. § 220(b). A “proper purpose” is one “reasonably related to such person’s interest as a stockholder.” *Id.* The following purposes in making this demand are reasonably related to Arca’s interest as an AmTrust stockholder and, as such, are proper:

A. To Value Arca’s AmTrust Shares

Arca seeks the demanded material in order to value its shares of AmTrust and determine whether to seek appraisal. “It is settled law in Delaware that valuation of one’s shares is a proper purpose for the inspection of corporate books and records.” *Polygon Global Opportunities Master Fund v. W Corp.*, 2006 Del. Ch. LEXIS 179, *12 (Del. Ch. Oct. 12, 2006) (citation omitted). As noted earlier, Arca owns nearly five million shares of AmTrust common stock. Given its large stake in AmTrust, and given Arca’s belief (based on publicly available information) that at \$13.50, the offer price does not represent fair value, Arca is considering undergoing the expense, delay, and risk in prosecuting an appraisal proceeding. However, Arca cannot make an informed decision as to whether to pursue this option without the demanded material.¹²

Nor can Arca rely exclusively on AmTrust’s Preliminary Proxy and 13e-3 Filings, as they are missing material information concerning, among other things, (i) the valuation of AmTrust and (ii) DB’s financial analysis, which formed the basis of its opinion that the Merger Price was fair to AmTrust’s minority stockholders. Without the demanded books and records, Arca is prevented from performing a comprehensive valuation of its shares, which will inform Arca’s appraisal decision.

B. To Investigate Director Disinterestedness Related to the Proposed Merger

It is well settled that Section 220 may be used “to investigate questions of director disinterestedness and independence.” *Yahoo!*, 132 A.3d at 784 (citing cases). Thus, for example, it is proper to inspect board minutes to see how “directors handled management proposals or conduct in various contexts, which could reveal patterns of behavior.” *Id.* at 785.

Here, there is a credible basis to believe that the Special Committee tasked with negotiating a merger on behalf of the minority stockholders did not act independently or disinterestedly:

First, all four Special Committee members (Donald T. DeCarlo, Susan C. Fisch, Abraham Gulkowitz, and Raul Rivera) have been named as defendants in pending derivative actions. As a going-private merger might have the effect of extinguishing derivative exposure, the Special Committee members may have been strongly incentivized to approve any merger. Indeed, the

¹² After 60 days after the consummation of a merger, a stockholder may only withdraw its appraisal demand upon “written approval of the corporation.” *Ala. By-Products Corp. v. Cede & Co. ex rel. Shearson Lehman Bros.*, 657 A.2d 254, 259 (Del. 1995) (quoting 8 Del. C. § 262(k)). Thus, and unlike most other civil litigation, a stockholder in an appraisal proceeding cannot simply “drop” its lawsuit upon discovering that the evidence may not support its position. Accordingly, prompt inspection of the demanded books and records is crucial.

Mr. Barry D. Zyskind
May 2, 2018
Page 10 of 12

Preliminary Proxy notes that Donald DeCarlo recused himself from at least two Special Committee meetings “[i]n light of the allegations against him as a defendant in the Cambridge Derivative Action.”¹³

Second, Donald DeCarlo, the chairman of the Special Committee, has had a longstanding relationship with the Karfunkel-Zyskind Family. He has been a director of AmTrust since 2006—the year the Family took the Company public—and has served as a director, along with members of the Family, for many AmTrust subsidiaries, including Sequoia Indemnity Company, Wesco Insurance Company, and Rochdale Insurance Company. Moreover, since 2010, DeCarlo has been a director of National General Holdings Corp. (“NGHC”) an insurance company controlled by members of the Karfunkel-Zyskind Family, and has also been a director since 2010 of NGHC subsidiaries National Health Insurance Company, Imperial Fire and Casualty Insurance Company and National Automotive Insurance Company.¹⁴

Third, Abraham Gulkowitz, like DeCarlo, has served as an AmTrust board-member since 2006, and has served as a director, along with members of the Family, for many AmTrust subsidiaries. Gulkowitz also has served as chairman of AmTrust’s Audit Committee while simultaneously serving as the co-founder and partner of Brookville Advisory (“Brookville”). As disclosed in an SEC filing, the Hod Foundation, a private foundation owned and controlled by the Karfunkel-Zyskind Family, was the beneficial owner of at least 10 percent of FrontPoint Brookville Credit Opportunities L.P., which is managed by Brookville and Gulkowitz. Additionally, Gulkowitz’s residence is within one mile of the residences of several members of the Family, including the residences of Barry Zyskind, AmTrust director George Karfunkel and AmTrust director Leah Karfunkel. There is certainly a credible basis to believe that Gulkowitz may have connections to the Karfunkel-Zyskind Family, aside from those within his capacity as an AmTrust director.

Fourth, the other two members of the Special Committee also have substantial ties to the Karfunkel-Zyskind Family. Like Gulkowitz and DeCarlo, Fisch has also been an AmTrust director for a substantial period of time, having commenced her service in 2010, following nomination from the Karfunkel-Zyskind-dominated board. And like Gulkowitz and DeCarlo, Fisch sits on many AmTrust subsidiary boards, along with members of the Family. Even the most recent director on the Special Committee—Rivera, who was elected by the Board in 2016 to fill a vacancy created by another director’s retirement—has sat and continues to sit on numerous AmTrust subsidiary boards with the Family. All Special Committee members are compensated for sitting on AmTrust’s subsidiary boards. In fact, AmTrust’s annual proxy statement filed on May 18, 2017

¹³ This disclosure raises more questions than it answers, given that i) Fisch and Gulkowitz were also named as defendants in the Cambridge Action; and ii) there is other pending litigation (including other derivative litigation) against the Special Committee members, aside from the Cambridge Action.

¹⁴ AmTrust and NGHC often work closely with one another. For example, on September 14, 2017, NGHC announced that it had entered into an agreement to purchase its policy administration system (NPS) and related intellectual property from AmTrust for \$200 million.

Mr. Barry D. Zyskind
May 2, 2018
Page 11 of 12

noted:

For service on subsidiary boards, our non-employee directors are eligible to receive an annual retainer of \$5,000 for each domestic board, and \$20,000 for each international subsidiary board, with a \$100,000 annual cap on subsidiary board retainers. Should any non-employee director serve as chairperson of a subsidiary board, such director will receive an additional \$15,000 annual retainer for such service, regardless of the annual cap.

That same proxy noted that, all told, Decarlo, Fisch, and Gulkowitz respectively received \$318,086.00, \$256,845.00, and \$217,586.00 in director compensation from AmTrust in 2016. (Rivera, who had only joined the Board earlier that year, received \$61,667.00). Given these professional and profitable relationships, it would be unreasonable to expect that the Special Committee, which included members who worked with the Karfunkel-Zyskind Family for well over a decade (and in connection with several different companies) to have been capable of completely reversing this friendly and exceedingly lucrative dynamic and be able to aggressively negotiate against the Family during the merger process. *See, e.g., In re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 943 (Del. Ch. 2003) (in determining director disinterestedness, a court “necessarily draw[s] on a general sense of human nature”); *id.* at 938 (court recognized that, aside from greed or negative economic motivations, positive motivations like friendship and collegiality may also compromise a director’s independence and cited empirical research for this point).

C. To Investigate Potential Breaches of Fiduciary Duty in Connection with the Proposed Merger

As an alternative to an appraisal proceeding, Arca is considering filing an action alleging breaches of fiduciary duty. In that context, both the Delaware Supreme Court and the Delaware Court of Chancery have repeatedly urged prospective plaintiffs to use the “tools at hand,” such as books and records requests, to obtain information before filing such claims. *See, e.g., White v. Panic*, 783 A.2d 543, 549 n.15 (Del. 2001); *In re China Agritech, Inc. S’holder Deriv. Litig.*, 2013 Del. Ch. LEXIS 132, at *23 n. 1 (Del. Ch. May 21, 2013) (collecting cases).

The Karfunkel-Zyskind Family has attempted to structure the Proposed Merger to qualify for business judgment review under *Kahn v. M&F Worldwide*, 88 A.3d 635 (Del. 2014), by conditioning its proposed going-private transaction with AmTrust on special committee approval and a majority-of-the-minority vote. Under *M&F Worldwide*

in controller buyouts, the business judgment standard of review will be applied *if and only if*: (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority.

Id. at 645.

Mr. Barry D. Zyskind

May 2, 2018

Page 12 of 12

As described above, there is a credible basis to believe that members of the Special Committee were *not* independent. Moreover, the Preliminary Proxy fails to disclose material information which, if not corrected, will prevent a fully informed minority vote. Additionally, while the preliminary valuation materials herein are based solely on publicly available information, they credibly demonstrate that the Merger Price is inadequate and, in that way, “call into question the adequacy of the Special Committee’s negotiations.” *Id.* at 645 n.14 (Del. 2014) (allegations that target company’s share price was depressed at time of offer and that commentators viewed the final offer as “being surprisingly low” was deemed sufficient to withstand motion to dismiss under the *M&F Worldwide* standard).

Accordingly, the demanded books and records will assist Arca in investigating any breaches of fiduciary duty in connection with the Proposed Merger, and whether any of the *M&F Worldwide* factors were not present.

I hereby affirm that the purposes for the demanded inspection as set forth above constitute a true and accurate statement of my understanding of the reasons Arca desires to review the demanded books, records, and documents and that such demand is made in good faith. As described above, Arca’s purposes are “reasonably related to [its] interest as a stockholder. 8 Del. C. § 220(b).

Please contact me as soon as possible for the review of the demanded books and records: Wolf Popper LLP, 845 Third Avenue, New York, New York, 10022, telephone (212) 759-4600, facsimile (212) 486-2093; email cstine@wolfpopper.com, Attention: Carl L. Stine, Esq.

Very truly yours,



Carl L. Stine

CC: Kevin G. Abrams, Esq. (by email)
Lawrence J. Zweifach, Esq. (by email)
Mark A. Kirsch, Esq. (by email)

SWORN TO AND SUBSCRIBED
before me this 2 day of May, 2018.



Notary Public

MELISSA JULIA
Notary Public, State of New York
No. 01JU6177924
Qualified in Kings County
Commission Expires Nov. 19, 2019

My Commission Expires: 11/19/2019

EXHIBIT A

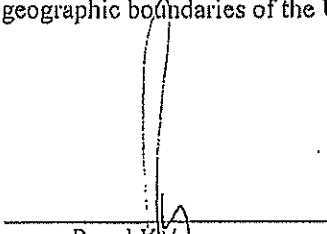
SPECIAL POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that Pavol Krúpa ("Krúpa"), on behalf of Arca Capital Group and its affiliates Arca Investments, a.s., Arca Capital Bohemia, a.s., and Arca Venture Capital a.s. (collectively, "Arca") does hereby make, constitute, and appoint Carl L. Stine, Esq. and Wolf Popper LLP, 845 Third Avenue, New York, New York, 10022 and any person designated by them, to act as true and lawful attorney-in-fact for Arca, in its name, place, and stead, jointly and severally, in all matters regarding the examination of the books and records of AmTrust Financial Services, Inc. ("AmTrust" or the "Company") including, but not limited to: (i) demanding inspection of books and records of AmTrust on Arca's behalf as a stockholder of the Company as said attorneys deem appropriate, (ii) reviewing and/or copying any documents received in connection with any such books and records demand made on Arca's behalf as a stockholder of AmTrust, and (iii) giving and granting unto said attorneys full power and authority to perform all and every act and thing whatsoever requisite, necessary, and proper to be done in and without the premises, as fully, to all intents and purposes as they might or could do, with full power of substitution and revocation, hereby ratifying and confirming all that Arca's attorneys or the substitute shall lawfully do or cause to be done.

The rights, powers, and authority of said attorneys shall remain in full force and effect until Arca tenders a written notice of termination to Carl L. Stine and Wolf Popper LLP.

I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States.

Signed this 18th day of April, 2018



Pavol Krúpa
Chairman, Arca Capital Group

EXHIBIT B



STAV DEPOTU
STATE OF DEPOSITORY

(v měně cp/ in security currency)

Klient / Client

Jméno / Name: Arca Capital Bohemia, a.s.
Adresa / Address: Doudlebská 1699/5, 14000 Praha
RČ/ICO: 27110265

Stav ke dni / Balance as of:

Datum tisku / Date printed: Mar 21, 2018
Čas tisku / Time printed: 10:58:19

Název CP Name of security	ISIN ISIN	Měna Currency	Počet ks Purchase value	Cena pořízení na / kus v měně Purchase price	Celková cena pořízení v měně Total purchase price
AMTRUST FINANCIAL SERVICES	US0323593097	USD	1 516 721.00	15.13	22 944 994.36
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

J&T BANKA, a.s.

STAV DEPOTU / STATE OF DEPOSITORY - Arca Capital Bohemia, a.s.

J&T BANKA, a.s.
POBŘEŽNÍ 14, 186 00 PRAHA 8, ČESKÁ REPUBLIKA
TEL.: +420 2 2171 0111, FAX: +420 2 2171 0133, E-MAIL: SECURITIES@JTBANK.CZ
IČ: 47115378, DIČ: CZ47115378
ZAPSÁNA V OR VEDENÉM MS V PRAZE, ODDÍL B., VL. 1731

Název CP Name of security	ISIN ISIN	Měna Currency	Počet ks Purchase value	Cena pořízení na / kus v měně Purchase price	Celková cena pořízení v měně Total purchase price
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Název CP Name of security	ISIN ISIN	Měna Currency	Počet ks Purchase value	Cena pořízení na / kus v měně Purchase price	Celková cena pořízení v měně Total purchase price
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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J&T BANKA, a.s.

STAV DEPOTU / STATE OF DEPOSITERY- Arca Capital Bohemia, a.s.

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 ZAPSÁNA V OR VEDENĚM SIS V PRAZE, ODDÍL B., VL. 1731



STAV DEPOTU
STATE OF DEPOSITARY

Klient / Client

Jméno / Name : Arca Venture Capital a.s.
Adresa / Address : Doudlebská 1699/5 14000 Praha 4
RČ/IČO: 05709466

Stav ke dni / Balance as of: 18 04 2018

Datum tisku / Data printe: 19 04 2018

Čas tisku / Time printe: 15:51:05

Název CP Name of security	ISIN ISIN	Počet ks Quantity	Měna Currency	Aktuální cena/ks Current price	Aktuální AÚV/ks Current price AÚV	Aktuální cena celkem (včetně AÚV) Current price total	Cena celkem v Ref měně Current price total
████████████████████	████████████████	██████	████	████	████	██████████████	██████████████
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████████████████████	████████████████	██████	████	████	████	██████████████	██████████████
AMTRUST FINANCIAL SERVICES	US0323593097	2180217	USD	12.49	0.000000	27 230 910.33	556 164 112.58
Celkem							██████████████

J&T BANKA, a.s.

STAV DEPOTU / STATE OF DEPOSITARY - Arca Venture Capital a.s.

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ZAPSÁNA V OR. VEDENÉM I MS V PRAZE ODĚL. B., VL. 1731



STAV DEPOTU
STATE OF DEPOSITORY

(v měně cp/ in security currency)

Klient / Client

Jméno / Name: Area Investments, a.s.
Adresa / Address: Plynárenská 7/A, 82109 Bratislava
RČ/ICO: 8880362349

Stav ke dni / Balance as of:

Datum tisku / Date printed: Mar 21, 2018
Čas tisku / Time printed: 10:59:28

Název CP Name of security	ISIN ISIN	Měna Currency	Počet ks Purchase value	Cena pořízení na / kus v měně Purchase price	Celková cena pořízení v měně Total purchase price
AMTRUST FINANCIAL SER	US0323593097	USD	1 134 539.00	14.26	16 177 351.37

Název CP Name of security	ISIN ISIN	Měna Currency	Počet ks Purchase value	Cena pořízení na / kus v měně Purchase price	Celková cena pořízení v měně Total purchase price
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J&T BANKA, a.s.

STAV DEPOTU / STATE OF DEPOSITORY- Area Investments, a.s.

J&T BANKA, a.s.
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EXHIBIT C

DECLARATION OF PAVOL KRÚPA

1. I am the Chairman of the Board of Directors of Arca Capital Group ("ACG"), a private equity group with offices in the Czech Republic and the Slovak Republic.


2. ACG operates and manages its business through Arca Investments, a.s. ("Arca Investments"), a joint stock company registered with the District Court of Bratislava.

3. Arca Investments is the sole stockholder of Arca Venture Capital a.s. ("AVC") and Arca Capital Bohemia, a.s. ("AC Bohemia"), which are both joint stock companies registered with the Prague Municipal Court. (Together, ACG, Arca Investments, AVC, and AC Bohemia are referred to herein as "Arca").

4. As Chairman of ACG, I have authority to act on behalf of all of the above-mentioned Arca entities, including the authority to demand on their behalf the right to inspect corporate books and records.

5. I have reviewed the letter prepared by Arca's attorney, Carl L. Stine of Wolf Popper LLP, in which he demands certain books and records of AmTrust Financial Services, Inc. (the "Demand Letter") on Arca's behalf, and I aver that Arca's purposes for making its demand are those articulated in the Demand Letter.

6. I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct, this 18th day of April, 2018, and that I am physically located outside the geographic boundaries of the United States.



Pavol Krúpa

EXHIBIT 2

ABRAMS & BAYLISS LLP
20 MONTCHANIN ROAD, SUITE 200
WILMINGTON, DE 19807
MAIN: 302-778-1000
FAX: 302-778-1001

KEVIN G. ABRAMS

DIRECT DIAL NUMBER
302-778-1002
ABRAMS@ABRAMSBAYLISS.COM

May 9, 2018

BY EMAIL AND REGULAR MAIL

Carl L. Stine, Esq.
Wolf Popper LLP
845 Third Avenue
New York, NY 10022

Re: Section 220 Demand to AmTrust Financial Services, Inc.

Dear Mr. Stine:

I write on behalf of AmTrust Financial Services, Inc. (“AmTrust” or the “Company”) in response to your letter dated May 2, 2018 on behalf of Arca Capital Group (“Arca”) requesting books and records from AmTrust pursuant to 8 *Del. C.* § 220 (the “Demand”).¹ As set forth herein, the Demand is fatally overbroad and there is substantial reason to doubt that the purposes set forth in the Demand are in fact Arca’s true purpose.

However, if the parties can reach agreement on the issues set forth in this letter, including Arca’s stock ownership, the terms and scope of the production, and the form of an acceptable confidentiality agreement, and without waiver of AmTrust’s defenses to the Demand, AmTrust is willing to produce to Arca certain of the documents it has requested.

1. The Demand Does Not Address AmTrust’s Concerns Regarding Arca’s Alleged Ownership of AmTrust Stock

“Delaware courts require strict adherence to the section 220 inspection demand procedural requirements.” *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 145 n.25 (Del. 2012) (collecting decisions). One of those requirements is that the requestor be a “stockholder,” which means it must be “a holder of record or stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person.” 8 *Del. C.* § 220(a)(1).

The Demand claims that Arca is making demand on behalf of three of Arca’s affiliated funds, which allegedly are beneficial holders of AmTrust common stock, and attaches documents

¹ The Demand is the third demand for AmTrust’s books and records sent on behalf of Arca. The Demand “withdraws both of the earlier demands and replaces them[.]” Demand at 1.

that purport to be “broker statements of the Arca affiliates demonstrating their beneficial ownership of AmTrust stock[.]” Demand at 1.

As you discussed with Mr. Barlow on Monday, AmTrust has significant concerns about Arca’s alleged ownership of 4.8 million shares of AmTrust. If that is accurate, Arca would be one of AmTrust’s largest institutional stockholders. Demand at 1 n.1. To the Company’s knowledge, no list of AmTrust’s top institutional holders published by any market source has ever included verifiable data showing such ownership by Arca (or J&T Banka, a.s.), even though Arca’s alleged holdings would include it among the top five institutional stockholders of the Company. Arca’s ownership is not reflected on records from FactSet Research Systems Inc. or NASDAQ Market Intelligence. You have provided unverified print-outs from Bloomberg that purport to show Arca’s position in AmTrust, but we believe the source for that information is Arca itself. According to the Company’s sources, Arca submitted to Bloomberg a statement of its holdings, which is why the source for that information is identified as “Research” – the only position reflected on those documents that cannot be otherwise verified.

On Monday’s call, you suggested that if AmTrust requested more specific confirmation, you would be willing to discuss that request with your client. To address AmTrust’s concerns about this issue, we ask that Arca identify the participant of the Depository Trust Company that acts as the ultimate custodian holding Arca’s shares (through J&T Banka, a.s.), and provide a record from that DTC participant evidencing that Arca is a holder of AmTrust stock on or after April 30, 2018.

2. The Demand Fails to State a Proper Purpose

A stockholder seeking to inspect a corporation’s books and records must establish a “proper purpose” for the inspection. 8 *Del. C.* § 220(c); *Pyott v. La. Mun. Police Emps.’ Ret. Sys.*, 74 A.3d 612, 618 n.23 (Del. 2013). A “proper purpose” means “a purpose reasonably related to such person’s interest as a stockholder.” 8 *Del. C.* § 220(b).

Arca alleges three purposes for the Demand: (i) to value Arca’s AmTrust shares and determine whether to seek appraisal in connection with the Proposed Merger; (ii) to investigate director disinterestedness related to the Proposed Merger;² and (iii) to investigate proposed breaches of fiduciary duty in connection with the Proposed Merger. *See* Demand at 9–11.

² The Demand uses the term “Proposed Merger” to refer to the proposed merger by which an entity affiliated with (i) Stone Point Capital LLC, and (ii) Barry Zyskind, George Karfunkel, Leah Karfunkel, and their affiliates (collectively, the “Karfunkel-Zyskind Family”) would acquire the approximately 45% of AmTrust’s outstanding common shares that they did not already own or control. *See* Demand at 5.

A. Arca’s History of Requesting That AmTrust Invest in Its Funds, Taking Out Advertisements, and Funding Demonstrations Suggests that Arca’s Stated Purposes Are Not Arca’s Primary Purposes

As recounted in AmTrust’s March 13, 2018 and April 26, 2018 letters rejecting Arca’s previous books and records demands (the “Response Letters”), Arca recently has taken numerous actions that create serious questions about whether the purposes stated in the Demand have anything to do with Arca’s actual purpose. For example, Arca has requested that the Company invest in its Nova Green Energy Fund and Nova Real Estate Fund, and only began making demands for books and records of the Company after AmTrust rejected those requests. Arca also took out advertisements relating to AmTrust, threatened to “arrange demonstration [sic] in front of your headquarters” in emails sent to the Company, and sent AmTrust a news clipping depicting a demonstration Arca instigated in Europe. When AmTrust declined to meet with Arca, Arca carried out its threat and hired paid protestors who have been gathering outside AmTrust’s offices on a daily basis and shouting derogatory statements about the Company. Arca even has stationed protestors outside of Mr. Zyskind’s home.

These actions strongly suggest that Arca’s true purpose in making the Demand is not any of the purposes stated in the Demand. *See KT4 Partners, LLC, v. Palantir Techs., Inc.*, 2018 WL 1023155, at *16 (Del. Ch. Feb. 22, 2018) (rejecting inspection motivated by stockholder’s individual interests and not by his status as a corporate stockholder); *see also Wilkinson v. A. Schulman, Inc.*, 2017 WL 5289553, at *3 (Del. Ch. Nov. 13, 2017) (denying inspection where stockholder’s stated purposes were not his true purposes); *Cook v. Hewlett–Packard Co.*, 2014 WL 311111, at *3 (Del. Ch. Jan. 30, 2014) (explaining that “[i]n order for a purpose to be ‘proper,’ it must be . . . the plaintiff’s actual purpose”); *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 819 (Del. Ch. May 11, 2007) (finding the shareholder’s actual purpose was to find a legal vehicle by which it could publicly broadcast improperly obtained confidential information). Once again, however, Arca has not addressed the concerns raised in the Response Letters, and AmTrust continues to have serious concerns regarding Arca’s actual purpose for seeking AmTrust’s books and records.

B. Arca Is Not Entitled to AmTrust Books and Records in Connection with Its Stated Purpose of Valuing Its Shares or Evaluating an Appraisal Action

The Demand asserts that “Arca seeks the demanded material in order to value its shares of AmTrust and determine whether to seek appraisal.” Demand at 9. In reality, Arca and all other AmTrust stockholders already have access to more than enough information to fulfill these stated purposes.

On April 9, 2018, AmTrust filed a 136-page preliminary proxy statement for the special meeting of AmTrust stockholders to vote on the Proposed Merger (the “Preliminary Proxy Statement”). Also on April 9, 2018, AmTrust and others filed a transaction statement on Schedule 13E-3 regarding the Proposed Merger (the “Transaction Statement”). The Preliminary

Proxy Statement contains the Company's financial projections as well as a summary of the financial analyses performed for the Special Committee by Deutsche Bank Securities Inc. ("Deutsche Bank"). The Transaction Statement attached eleven presentations created by Deutsche Bank, including the slide deck from the meeting at which the Special Committee approved the merger agreement. The Delaware Court of Chancery addressed substantially identical facts in *Polygon Global Opportunities Master Fund v. West Corp.*, 2006 WL 2947486, at *4 (Del. Ch. Oct. 12, 2006). In *Polygon*, the Court held that valuing shares and evaluating an appraisal demand were proper purposes for a Section 220 inspection but further held that plaintiff already had received all documents necessary and essential for these purposes from the company's public filings. In so holding, the Court noted the detailed disclosures required for going private transactions governed by SEC Rule 13e-3. *See id.* The same reasoning applies here.

The Demand asserts that additional information is needed to permit Arca to "perform[] a comprehensive valuation of its shares," including unspecified "material information concerning, among other things, (i) the valuation of AmTrust and (ii) DB's financial analysis, which formed the basis of its opinion that the Merger Price was fair to AmTrust's minority stockholders." Demand at 9. Arca's assertion that AmTrust's disclosures are somehow deficient because Arca does not feel it has all the information necessary to perform an independent, comprehensive valuation is incorrect. It is well-established that the materiality standard "does not require disclosure of sufficient data to allow stockholders to perform their own valuation." *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 904 (Del. Ch. 2016). Moreover, the presentations attached as exhibits to the Transaction Statement already provide AmTrust stockholders the written presentations received by the Special Committee in connection with approving the Proposed Merger, including detailed summaries of the projections considered by the Special Committee and the valuation analyses prepared by Deutsche Bank.

In essence, Arca is seeking the discovery it would be entitled to in an appraisal action itself, which is not properly discoverable through a Section 220 books and records demand. *See Polygon*, 2006 WL 2947486, at *4 ("Apparently anticipating the inherent problems with requesting additional information in the face of a transaction with comprehensive public disclosures, Polygon argues that it should be given access to the same information it would receive through discovery in an appraisal action. This argument misapprehends the significant difference in scope between a section 220 action and discovery under Rule 34."); *see also KT4 Partners LLC v. Palantir Techs. Inc.*, 2018 WL 2045831, at *2 (Del. Ch. May 1, 2018) ("Inspection of corporate books and records pursuant to Section 220 should not be confused with comprehensive discovery under Court of Chancery Rule 34.").

AmTrust's public filings already provide Arca with all necessary information for its stated valuation and appraisal purposes,³ and, AmTrust will not produce any additional documents in response to these stated purposes.

C. Arca's Purported Purpose to Investigate Director Disinterestedness Related to the Proposed Merger

The Demand asserts that "there is a credible basis to believe that the Special Committee tasked with negotiating a merger on behalf of the minority stockholders did not act independently or disinterestedly" because: (i) "all four Special Committee members . . . have been named as defendants in pending derivative actions"; (ii) "Donald DeCarlo, the chairman of the Special Committee, has had a longstanding relationship with the Karfunkel-Zyskind Family"; (iii) "Abraham Gulkowitz, like DeCarlo, has served as an AmTrust board-member since 2006, and has served as a director, along with members of the Family, for many AmTrust subsidiaries"; and (iv) "the other two members of the Special Committee also have substantial ties to the Karfunkel-Zyskind Family." Demand at 9–10.

In claiming a proper purpose to investigate director disinterestedness, the Demand simply reveals the sweeping information already available to AmTrust stockholders through AmTrust's public filings. *See id.* (pulling numerous facts from the Preliminary Proxy Statement and AmTrust's annual proxy statements). Nevertheless, as addressed further below, AmTrust is willing to produce to Arca certain of the documents it has requested related to this purpose if the parties can reach agreement on the terms and scope of the production and the form of an acceptable confidentiality agreement.

D. Arca's Purported Purpose to Investigate Potential Breaches of Fiduciary Duty Related to the Proposed Merger

The Demand identifies three areas that supposedly merit further investigation in connection with the Proposed Merger. *First*, the Demand asserts that "there is a credible basis to believe that members of the Special Committee were *not* independent." Demand at 12. Although AmTrust disagrees that there is a credible basis to believe that the members of the Special Committee were not independent, for the reasons stated above, AmTrust is willing to produce certain documents related to this purpose if the parties can reach agreement on the terms and scope of the production and on the form of an acceptable confidentiality agreement.

Second, the Demand asserts that "the Preliminary Proxy [Statement] fails to disclose material information which, if not corrected, will prevent a fully informed minority vote." *Id.* at

³ Indeed, the Demand cites numerous analyst reports and Arca's own preliminary valuation as evidence supporting Arca's view "that the Merger Price is grossly inadequate, and does not reflect the fair value of AmTrust shares[.]" Demand at 3–5.

12. Nevertheless, the Demand fails to identify with any specificity what material information is missing from the Preliminary Proxy Statement. The Demand's conclusory assertion that the Preliminary Proxy Statement and Schedule 13e-3 "are missing material information concerning, among other things, (i) the valuation of AmTrust and (ii) DB's financial analysis" (*id.* at 9) do not give rise to a credible basis for Arca to investigate AmTrust's disclosures. If such conclusory allegations were sufficient, every corporate stockholder would be entitled to corporate books and records for disclosure purposes in connection with every proposed transaction—regardless of the amount of disclosure actually contained in corporate filings. AmTrust does not intend to produce books and records with respect to the disclosure portion of Arca's stated purpose.

Third, the Demand asserts that "the preliminary valuation materials herein . . . credibly demonstrate that the Merger Price is inadequate and, in that way, call into question the adequacy of the Special Committee's negotiations." *Id.* (internal quotation marks omitted). To the extent Arca is seeking materials to value its AmTrust shares, Arca already has received sufficient information to do so through AmTrust's public filings. *See supra* § 2.B. To the extent Arca is seeking materials regarding the Special Committee's consideration and negotiation of the Proposed Merger, AmTrust is willing to produce to Arca certain of the documents it has requested related to this purpose if Arca serves a demand in compliance with Section 220 and if the parties can reach agreement on the terms and scope of the production and the form of an acceptable confidentiality agreement.

3. The Demand Is Overbroad

Even if the Demand stated a proper purpose, the Demand is fatally overbroad. "Section 220 is . . . not a way to circumvent discovery proceedings, and is certainly not meant to be a forum for the kinds of wide-ranging document requests permissible under Rule 34." *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 165 (Del. Ch. 2006), *aff'd sub nom. Highland Equity Fund, L.P. v. Motient Corp.*, 922 A.2d 415 (Del. 2007). In fact, there is a "significant difference in scope between a [Section 220 demand] and discovery under Rule 34." *Polygon*, 2006 WL 2947486, at *5. Accordingly, a stockholder seeking books and records must frame his request with "rifled precision" and seek only those documents necessary and essential to his articulated purpose. *See Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 371–72 (Del. 2011); *Brehm v. Eisner*, 746 A.2d 244, 266–67 (Del. 2000). Information is not "essential" to a books and records demand unless it "addresses the crux of the shareholder's purpose" and is "unavailable from another source." *Espinoza*, 32 A.3d at 371–72. The stockholder bears the burden of demonstrating that the documents he requests are essential. *Id.* at 372.

The categories of documents sought in the Demand go well beyond those essential to address the Demand's stated purposes and the carefully prescribed limits of Section 220. Faced with this overbreadth, it is not the responsibility of either AmTrust or a court "to pick through the debris of a Section 220 demand . . . to find the few documents that might be justified as necessary and essential to the plaintiff's demand." *Highland Select Equity Fund, L.P.*, 906 A.2d

at 168. Nonetheless, AmTrust has considered the specific requests in the Demand as set forth below.

A. Arca’s Request For “Board Materials”

Eleven of the eighteen document categories requested in the Demand are limited to “Board Materials” regarding various topics.⁴ Under Section 220, “[t]he starting point—and often the ending point—for a sufficient inspection will be board level documents evidencing the directors’ decisions and deliberations, as well as the materials that the directors received and considered.” *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 790 (Del. Ch. 2016); *see Norfolk Cty. Ret. Sys. v. Jos. A Bank Clothiers, Inc.*, 2009 WL 353746, at *7 (Del. Ch. Feb. 12, 2009) (limiting the scope of production pursuant to a Section 220 demand to “the special committee report, minutes of the meetings of the special committee, and minutes of any meeting of the board of directors relating to the creation or the recommendations of the special committee”). Arca appears to agree that “Board Materials” are limited to formal board materials. *See Demand at 6 n.8.*

However, Arca seeks “Board Materials” that are unnecessary to fulfill Arca’s stated purposes in the Demand.

- Categories 8, 13, and 15 seek wide-ranging valuation information, despite the fact that AmTrust’s public disclosures already contain all information necessary for Arca to fulfill its stated valuation purposes. *See supra* § 2.B.
- Categories 10 and 11 seek information regarding “any director or officer of AmTrust,” even though the Demand’s investigative purposes all relate to the Special Committee.
- Category 12 seeks Board Materials “concerning Arca,” including “communications with or about Arca,” but such documents are neither related to nor justified by any of the purposes set forth in the Demand.
- Category 14 seeks information concerning the compensation of Deutsche Bank and Bank of America Merrill Lynch, but the Demand provides no basis for investigation into this topic and the Preliminary Proxy Statement already contains substantial disclosure regarding the fees to these entities in connection with the Proposed Merger.

⁴ *See* Categories 1, 2, 6, 7, 8, 9, 10, 11, 12, 14, and 15.

B. Arca’s Request for Documents Beyond “Board Materials”

Seven of the eighteen document categories requested in the Demand seek documents beyond “Board Materials.” *See* Categories 3, 4, 5, 13, 16, 17, and 18. To obtain books and records other than formal board materials, a plaintiff must establish that such documents are necessary for plaintiff’s proper purpose. *See In re UnitedHealth Grp., Inc. Section 220 Litig.*, 2018 WL 1110849, at *9 (Del. Ch. Feb. 28, 2018) (denying inspection of email communications from five senior corporate officers because “email communications are generally the exception rather than the rule” in Section 220 productions) (internal quotation marks and citation omitted); *Khanna v. Covad Commc’ns Grp., Inc.*, 2004 WL 187274, at *9 (Del. Ch. Jan. 23, 2004) (declining to require production of emails and other communications). The Demand does not explain why an exceptionally broad production that extends beyond formal board materials is necessary here.⁵

Five of these seven categories seek documents that are not likely to be within AmTrust’s possession or control. *See* Categories 3 (compensation received by Special Committee members from other entities), 4 (debt and equity ownership of AmTrust and other entities owned by the Karfunkel-Zyskind family), 5 (net worth of the Special Committee members), 17 (relationships between the Special Committee members and Stone Point or the Karfunkel-Zyskind family, and 18 (a rating agency presentation not made by the Company).

Other document categories seek information that is not necessary to fulfill the Demand’s proper purposes.

- Category 3 seeks information regarding the remuneration of the Special Committee members for service for other entities affiliated with the Karfunkel-Zyskind Family. To the extent this information is even in AmTrust’s possession, AmTrust’s proxy statements sufficiently disclose it. Indeed, the Demand cites a May 18, 2017 AmTrust proxy statement that discloses the remuneration the Special Committee members receive from service on the boards of AmTrust subsidiaries. *See* Demand at 10–11.
- Category 4 seeks information regarding the holders of debt and equity in AmTrust or “any other company or entity controlled by the Karfunkel-Zyskind Family” without identifying such other companies or entities or explaining this information’s relevance to the purposes stated in the Demand.

⁵ Notably, Categories 16 and 18 explicitly seeks communications without explaining why the production of communications is necessary here. *See* Demand at 8; *see also, e.g., KT4 Partners*, 2018 WL 2045831, at *2 (rejecting plaintiff’s request for email communications and holding that “inspection of electronic mail is not essential to fulfilling [plaintiff’s] stated investigative purpose”).

C. The Proposed Time Period Is Overbroad

The Demand defines the “Relevant Time Period” as “January 1, 2017, to and including the date of your response to this letter[.]” Demand at 6. Categories 11, 12, and 17 seek documents “regardless of time period.” The Demand does not explain, however, why any documents unrelated to the Proposed Merger are necessary for the Demand’s proper purposes. In interpreting the document categories requested in the Demand, AmTrust will use the time period of April 27, 2017 through March 1, 2018 (*i.e.*, from the date of the *Shaev* derivative action was filed through the approval of the Proposed Merger by the Board and Special Committee).

D. Arca Is Not Entitled to Privileged or Work Product Documents

The Demand seeks documents that may contain attorney-client privilege or attorney work product, including advice from AmTrust’s and the Special Committee’s counsel. The Company assumes Arca is not seeking privileged or protected information because the Demand does not explain why Arca is entitled to such communications. AmTrust will not produce privileged or otherwise protected information in response to the Demand.

E. AmTrust Is Willing To Produce Certain Documents

As set forth above, Arca’s demand is deficient and there are substantial reasons to doubt that its stated purposes are its true purposes. Nonetheless, if Arca serves a demand in compliance with Section 220 and if the parties can come to agreement on the scope of production and certain standard terms and restrictions to be set forth in a jointly approved confidentiality agreement, AmTrust is willing to produce to Arca non-privileged copies of the following documents from the Board and the Special Committee’s official files:

1. Final, executed minutes and resolutions of the Board that include discussion of the Proposed Merger, strategic alternatives to the Proposed Merger, or the Derivative Actions⁶, and any materials provided to the Board with respect to the same;
2. Final, executed minutes and resolutions of the Special Committee that include discussion of the Proposed Merger, strategic alternatives to the Proposed Merger, or the Derivative Actions, and any materials provided to the Special Committee with respect to the same; and
3. Copies of the director independence questionnaires, if any, for the last three years for each current member of the Board.⁷

⁶ “Derivative Actions” means *Cambridge Retirement System v. DeCarlo*, C.A. No. 10879-CB (Del. Ch.) and *In re Amtrust Financial Services, Inc. Derivative Litigation*, C.A. No 1:17-cv-553-GMS (D. Del.).

These books and records are more than sufficient to satisfy the Company's obligations, if any, under Section 220, and reasonably balance the competing demands of Arca with the Company's right to be free from costly and unnecessary demands unrelated to Arca's asserted purpose. The Company disclaims any responsibility to update its production to address documents post-dating the Demand.

4. The Demand Seeks Confidential Information

The documents set forth above contain highly confidential information and will be produced only subject to a confidentiality agreement containing customary provisions governing the use of corporate books and records produced pursuant to a proper demand under Section 220. Such confidentiality agreements are routine in books and records actions. *See, e.g., Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 796–99 (Del. Ch. Feb. 2, 2016) (upholding incorporation by reference provision in Section 220 confidentiality agreement); *United Techs. Corp. v. Treppel*, 109 A.3d 553, 558–59 (Del. 2014) (discussing Court of Chancery's authority to condition production on agreement to bring future derivative actions in Delaware). AmTrust will provide a proposed confidentiality agreement for your review.

* * *

AmTrust reserves all rights and objections with respect to the Demand. All further communications regarding this matter should be directed to the undersigned with copies to Lawrence J. Zweifach, Esq., and Mark A. Kirsch, Esq., of Gibson, Dunn & Crutcher LLP.

Sincerely yours,

/s/ Kevin G. Abrams

Kevin G. Abrams

KGA/

⁷ On March 21, 2018, the Board approved an increase in the size of the Board from seven to eight directors and elected Mark Serock to fill the newly created vacancy. Mr. Serock is not a defendant in any of the lawsuits identified in the Demand, was not a member of the Special Committee, and was not appointed to the Board until several weeks after the Proposed Merger was approved. The Demand does not claim to seek documents for the purpose of pleading demand futility and therefore any director questionnaires for Mr. Serock are not essential to the Demand's stated purposes and will not be produced in response to the Demand.

Carl L. Stine, Esq.
May 9, 2018
Page 11

cc: Lawrence J. Zweifach, Esq. (by email)
Mark A. Kirsch, Esq. (by email)