



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CAMBRIDGE RETIREMENT
SYSTEM, derivatively on behalf of
nominal defendant AMTRUST
FINANCIAL SERVICES, INC.,

Plaintiff,

v.

DONALD D. DECARLO, SUSAN C.
FISCH, ABRAHAM GULKOWITZ,
GEORGE KARFUNKEL, MICHAEL
KARFUNKEL, JAY J. MILLER,
BARRY ZYSKIND, LEAH
KARFUNKEL, and ACP RE, LTD.,

Defendants,

and

AMTRUST FINANCIAL SERVICES,
INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 10879-CB

**UNREDACTED PUBLIC
VERSION FILED 4/10/15**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Cambridge Retirement System (“Cambridge” or “Plaintiff”), for the benefit of nominal defendant AmTrust Financial Services, Inc. (“AmTrust” or the “Company”), brings the following Verified Stockholder Derivative Complaint (the “Complaint”) against the members of the board of directors of AmTrust (the

“Board” or “AmTrust Board”), ACP Re, Ltd. (“ACP”), and Leah Karfunkel. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the investigation of counsel and review of publicly available information and internal Company documents produced in response to Plaintiff’s demands for the inspection of books and records pursuant to Section 220 of the Delaware General Corporation Law (the “Section 220 Demand”), as to all other matters.

INTRODUCTION

1. This case arises from a usurpation of corporate opportunity by AmTrust’s controlling stockholder group, the Karfunkel Family,¹ in connection with a series of transactions involving property and casualty insurer Tower Group International, Ltd. (“Tower”).

2. AmTrust is a property and casualty insurer that was founded by members of the Karfunkel Family. As of March 25, 2015, the Karfunkel Family owned approximately 51.8% of AmTrust’s outstanding common stock. Furthermore, members of the Karfunkel Family – specifically, Michael Karfunkel and his son-in-law Zyskind – currently occupy the Company’s Board Chairman and Chief Executive Officer (“CEO”) positions, respectively. A majority of

¹ As used herein, the “Karfunkel Family” means George Karfunkel, Michael Karfunkel, Leah Karfunkel, and Barry Zyskind (“Zyskind”), collectively.

AmTrust's seven-member Board also consists of either Karfunkel Family members – including Zyskind, Michael Karfunkel, and Michael Karfunkel's younger brother George Karfunkel – or their loyalists.

3. In the fall of 2013, AmTrust submitted a letter of intent to acquire then-struggling property and casualty insurer, Tower. Shortly thereafter, however, members of the Karfunkel Family unilaterally decided that AmTrust would withdraw its bid and that ACP, a Bermuda insurer owned by The Michael Karfunkel 2005 Grantor Retained Annuity Trust (the "Michael Karfunkel Trust"),² would buy Tower instead.

4. *After* ACP submitted an offer for Tower, AmTrust's CEO and member of the Karfunkel Family, Zyskind, informed the Board that AmTrust would no longer be pursuing the Tower transaction and that AmTrust management now contemplated that Zyskind's father-in-law's company, ACP, would pursue the acquisition in AmTrust's stead.

5. Following only approximately one hour of deliberation, and based solely on representations by the plainly conflicted Zyskind that an AmTrust acquisition of Tower would purportedly be undesirable for the Company, the Board approved the Karfunkel Family's purchase of Tower through ACP. As

² Leah Karfunkel is the sole trustee of the Michael Karfunkel Trust.

explained below, that purchase included a series of other related transactions, including AmTrust's purchase from ACP of Tower's commercial lines insurance business upon closing of the ACP/Tower acquisition.

6. In light of, among other things, AmTrust's prior interest in acquiring Tower and its financial ability to consummate a purchase, ACP's purchase of Tower constituted a usurpation of AmTrust's corporate opportunity. Similarly, the AmTrust Board breached its fiduciary duties by (a) failing to meaningfully explore whether an acquisition of Tower by AmTrust remained in the Company's best interests, and (b) relying solely on the representations of a conflicted executive whose family was simultaneously competing with AmTrust for the opportunity to acquire Tower.

7. Following the execution of the transaction documents, members of the Karfunkel Family continued to work largely outside of the Board's view to modify the deal terms to their benefit. Among other things, members of the Karfunkel Family dictated that AmTrust and National General Holdings Corp. ("NGHC"), another public company affiliated with Karfunkel Family, would loan ACP \$250 million to facilitate ACP's acquisition of Tower. With little to no meaningful deliberation, the AmTrust Board rubber-stamped the revised transaction structure.

8. Although the Board ultimately retained a financial advisor, the

advisor's mandate was effectively limited to assisting the Board in setting the specific terms (*e.g.*, the interest rate) for the massive related-party loan to ACP.

9. The Karfunkel Family's abuse of AmTrust, and the Board's acquiescence thereto, continued. For instance, the Karfunkel Family was able to negotiate a purchase price reduction from Tower. Instead of passing along some or all of the cost savings to AmTrust (*i.e.*, the publicly-traded entity from which the Karfunkel Family had misappropriated the opportunity in the first instance), the Karfunkel Family sought a potential additional payment from AmTrust in the form of an "earn-out."

10. As with the other aspects of the Tower-related transactions, the AmTrust Board indulged the Karfunkel Family and ultimately agreed to provide ACP an "earn-out" payment of up to \$30 million.

11. Through this action, Plaintiff seeks to hold (a) the Karfunkel Family accountable for their breaches of fiduciary duty, including their usurpation of AmTrust's corporate opportunity, in their capacity as AmTrust's controlling stockholder; and (b) the AmTrust Board accountable for their breaches of fiduciary duty.

THE PARTIES

12. Plaintiff Cambridge is a stockholder of AmTrust and has owned

shares of AmTrust continuously at all times relevant to this action.

13. Nominal defendant AmTrust underwrites and provides property and casualty insurance products, including workers' compensation, commercial automobile, general liability and extended service and warranty coverage, in the United States and internationally, to niche customer groups. AmTrust is headquartered at 59 Maiden Lane, New York, NY, 10038. AmTrust's common stock is listed on the NASDAQ Global Select Market ("NASDAQ") under the symbol "AFSI."

14. Defendant Donald D. DeCarlo ("DeCarlo") has served as a member of the AmTrust Board since 2006. DeCarlo also serves on NGHC's board of directors.

15. Defendant Susan C. Fisch ("Fisch") has served as a member of the AmTrust Board since 2010.

16. Defendant Abraham Gulkowitz ("Gulkowitz") has served as a member of the AmTrust Board since 2006.

17. Defendant George Karfunkel has served as a member of the AmTrust Board since 1998. George Karfunkel is one of the co-founders of AmTrust. As of March 25, 2015, George Karfunkel beneficially owned 16,419,204 shares, or 20.0%, of the Company's outstanding common stock. George Karfunkel is

Michael Karfunkel's younger brother.

18. Defendant Michael Karfunkel has served as Chairman of the AmTrust Board since 1998. Michael Karfunkel is one of the co-founders of AmTrust. As of March 25, 2015, Michael Karfunkel beneficially owned 1,096,412 shares, or 1.3%, of the Company's outstanding common stock. Michael Karfunkel is also currently the Chairman, President and CEO of NGHC. Additionally, the Michael Karfunkel Trust owns 99% of the outstanding stock of ACP's parent company.³ Michael Karfunkel is George Karfunkel's brother, Leah Karfunkel's husband, and Zyskind's father-in-law.

19. Defendant Jay Miller ("Miller") has served as a member of the AmTrust Board since 1998 and was AmTrust's corporate secretary (without compensation) from 1998 to 2005. Miller also serves as a director of several of AmTrust's wholly-owned subsidiaries, including Security National Insurance Company, Technology Insurance Company, AmTrust North America of Florida Inc. and AmTrust North America of Texas Inc. Additionally, Miller is the Chairman of the board of directors of Gulf USA Corporation, a property and natural resource company controlled by the Karfunkels. Furthermore, Miller is the trustee of The George Karfunkel 2007 Grantor Retained Annuity Trust #1 and The

³ ACP is 100% owned by ACP Re Holdings, LLC, which is 99.9% owned by the Michael Karfunkel Trust.

George Karfunkel 2007 Grantor Retained Annuity Trust #2 (together, the “George Karfunkel Trusts”). Moreover, Miller serves as an advisor to GK Acquisition, a private investment company co-founded by George Karfunkel.

20. Defendant Zyskind has served as a director of the Company since 1998 and currently serves as AmTrust’s CEO and President. Zyskind has held senior management positions with the Company since 1998. Zyskind also serves as an officer and director of many of AmTrust’s wholly-owned subsidiaries. Zyskind is a member of NGHC’s board of directors. Zyskind is Michael Karfunkel and Leah Karfunkel’s son-in-law. As of March 25, 2015, Zyskind beneficially owned 15,058,164 shares, or 18.3%, of the Company’s outstanding common stock.

21. The defendants listed in paragraphs 14 through 20 above are collectively referred to herein as the “Director Defendants.”

22. Defendant Leah Karfunkel is a member of AmTrust’s controlling stockholder group, the Karfunkel Family. Leah Karfunkel is the wife of Michael Karfunkel. As of March 25, 2015, Leah Karfunkel beneficially owned 10,029,637 shares – or 12.2% – of the Company’s outstanding common stock.

23. Defendant ACP is a Bermuda insurer owned by the Michael Karfunkel Trust.

SUBSTANTIVE ALLEGATIONS

I. History of AmTrust

24. Brothers George Karfunkel and Michael Karfunkel, along with AmTrust's CEO and Michael Karfunkel's son-in-law, Zyskind, founded AmTrust in 1998 to provide property and casualty insurance to small businesses. Through a combination of acquisitions and organic growth, AmTrust grew into a multinational property and casualty insurer specializing in coverage for small to mid-sized businesses.

25. In November 2006, AmTrust conducted its initial public offering and began trading on the NASDAQ under the symbol "AFSI."

26. AmTrust continues to be controlled by the Karfunkel Family. According to the Company's Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") on March 2, 2015 (the "2015 10-K"):

Based on the number of shares outstanding as of December 31, 2014, Barry D. Zyskind, Michael Karfunkel, Leah Karfunkel (wife of Michael Karfunkel and sole trustee of the Trust) and George Karfunkel [*i.e.*, the Karfunkel Family], directly or indirectly, collectively own or control approximately 57% of our outstanding common stock.⁴ As a result, these stockholders, acting together, have the ability to control all matters requiring approval by our stockholders, including the election and removal of directors, amendments to our certificate of incorporation and bylaws, any

⁴ Between December 31, 2014 and March 25, 2015, the Karfunkel Family's collective ownership stake in AmTrust decreased from 57% to 51.8%.

proposed merger, consolidation or sale of all or substantially all of our assets and other corporate transactions. These stockholders may have interests that are different from other stockholders. In addition, we are a “controlled company” as defined in NASDAQ Listing Rule 5615(c).

27. Similarly, the Company’s annual meeting proxy statement filed with the SEC on March 31, 2015 (the “2015 Proxy”) states:

We are a “controlled company” as defined in Rule 5615(c)(1) of NASDAQ’s listing standards because George Karfunkel, Michael Karfunkel, Leah Karfunkel and Barry Zyskind, directly or indirectly, collectively beneficially own or control approximately 51.8% of our voting power . . . Therefore, we are exempt from the requirements of NASDAQ Marketplace Rule 5605[.]

(Emphasis added)

28. In addition to the Karfunkel Family’s majority equity stake, they also occupy a number of the Company’s most powerful and influential positions, including the following:

- a. Zyskind is the Company’s CEO and President;
- b. Michael Karfunkel is the Board’s Chairman;
- c. Michael Karfunkel and George Karfunkel, together with Zyskind, form the Board’s Executive Committee; and
- d. Michael Karfunkel and Miller, a longtime Karfunkel Family associate and advisor, comprise two-thirds of the Board’s Nominating and Corporate Governance Committee.

29. The Company also engages in a number of related-party transactions

with the Karfunkel Family and entities they control or in which they have a significant interest, all of which constitute further indicia of control over AmTrust and its operations. These related-party transactions include:

- a. Various reinsurance and service agreements between AmTrust and Maiden Holdings, Ltd. (“Maiden”). Maiden is a publicly-held Bermuda insurance holding company formed by Michael Karfunkel, George Karfunkel, and Zyskind. The Karfunkel Family owns roughly 30% of Maiden.
- b. AmTrust leases its New York headquarters from 59 Maiden Lane Associates, LLC, an entity that is wholly-owned by Michael Karfunkel and George Karfunkel.
- c. The Company provides NGHC and its affiliates with information technology development services.
- d. AmTrust provides investment management services to ACP, as well as accounting and administrative services.
- e. The Company’s wholly-owned subsidiary, AmTrust Underwriters, Inc. (“AUI”), is a party to an aircraft time share agreement with each of Maiden and NGHC. For personal travel, Zyskind and Michael Karfunkel each entered into an aircraft reimbursement agreement with AUI.

II. Tower’s Struggles Push The Company’s Stock Price To Bargain Levels

30. Prior to 2013 (and ACP’s acquisition of Tower), Tower was a publicly-traded, diversified casualty and property insurance company that was highly regarded within the industry and broader market.

31. On August 7, 2013, Tower announced that it was indefinitely suspending the release of its second quarter 2013 earnings. As a result, insurance rating agency A.M. Best placed Tower “under review” and indicated it would treat the announcement negatively. At or around the same time, Tower began exploring its strategic alternatives and retained J.P. Morgan to serve as its lead financial advisor.

32. On September 23, 2013, Tower entered into various reinsurance agreements to reduce its exposure to adverse loss development.

33. On October 5, 2013, Tower’s board of directors publicly expressed concern over the company’s liquidity, capital, and business prospects.

34. On October 7, 2013, Tower announced a goodwill impairment charge of \$215 million, and stated its intention to increase loss reserves by \$365 million. Also on October 7, 2013, Fitch Ratings downgraded Tower’s issuer default rating from “BBB” to “B,” and reduced Tower’s operating subsidiaries’ insurer financial strength ratings from “A-” to “BB”.

35. On October 8, 2013, A.M. Best downgraded the financial strength rating of Tower’s insurance subsidiaries from A- (Excellent) to B++ (Good), and issuer credit ratings from “a-” to “bbb.” A.M. Best also downgraded the issuer credit rating and debt rating for Tower’s Convertible Notes from “bbb-” to “bb”.

36. Under heavy pressure from the ratings downgrades, Tower's stock price tumbled. Between October 7, 2013 and October 8, 2013, Tower's stock price declined from \$7.41 per share to \$4.39 per share, a decrease of 40.8%.

III. Tower's Troubles Pique AmTrust's Interest

37. On or around October 31, 2013, AmTrust submitted a letter of intent to Tower contemplating (a) the sale of two of Tower's insurance subsidiaries (the "Tower Subsidiaries") to AmTrust in exchange for cash consideration of \$50 million, (b) a \$100 million preferred stock investment by AmTrust in Tower, and (c) a managing general agent ("MGA") agreement between Tower and the two Tower Subsidiaries, pursuant to which the Tower Subsidiaries would exclusively write business produced by Tower.

38. On November 5, 2013, the AmTrust Board convened a regularly-scheduled meeting, during which Zyskind reported on discussions with Tower. The meeting minutes, however, do not indicate that the Board engaged in any discussion or deliberation concerning the potential Tower transaction. Furthermore, as explained below, the Board would not meet again until *after* AmTrust management (*i.e.*, members of the Karfunkel Family) had already (a) submitted two revised proposals to acquire Tower and (b) ultimately determined to drop its bid entirely for Tower in favor of ACP.

39. On November 14, 2013, Tower announced its intention to restate its financial statements for 2011 and 2012 in order to fix accounting errors in the company's premium balances. Tower also expressed doubt that it would be able to continue as a "going concern."

40. The struggling company revealed that Tower's management had "concluded . . . that material weaknesses exist in internal control over financial reporting related to the company's loss reserving and premiums receivable reconciliation processes," and expressed doubt that it would be able to continue as a "going concern." Tower concluded that "its internal control over financial reporting was not effective as of Dec. 31, 2012 and disclosure controls procedures were not effective as of Dec. 31, 2012."

41. On November 22, 2013, Tower announced a net loss for the second quarter of 2013 of over \$507 million, driving the Company's stock price below \$4 per share. Tower therefore was in an extremely vulnerable position and "ripe" for a takeover at a heavily distressed price.

42. AmTrust management subsequently decided to revise the Company's proposal to Tower. On November 28, 2013, AmTrust's CEO, Zyskind, indicated to Tower (and in separate conversations, to Tower's advisors at J.P. Morgan) that AmTrust would be interested in an acquisition of Tower *in its entirety*.

43. On December 2, 2013, AmTrust submitted a letter of intent to acquire Tower. AmTrust's letter of intent reflected a proposal for AmTrust to acquire Tower for \$5.50 per share.

44. During the course of the following week, AmTrust conducted several due diligence sessions with representatives from Tower and J.P. Morgan.

45. On December 5, 2013, AmTrust provided a revised letter of intent that expressly permitted Tower to consummate the sale of its stake in Canopus Group Limited and thus exclude that asset from AmTrust's acquisition of Tower.

46. On December 10, 2013, AmTrust sent Tower a draft merger agreement.

47. In a sudden turn of events, on December 12, 2013, AmTrust management, led by Karfunkel Family member Zyskind, decided to withdraw AmTrust's indication of interest in acquiring Tower. Documents produced in response to Plaintiff's Section 220 Demand indicate that this decision was never considered – much less approved – by any independent directors. Nevertheless, management proceeded to advise Tower that the Company was withdrawing its bid.

IV. Tower's Stock Price Continues To Slide, Making A Potential Acquisition Of Tower By AmTrust Even More Attractive

48. On December 17, 2013, Tower indicated that it would increase its loss

reserves for the third quarter of 2013. On December 20, 2013, A.M. Best again downgraded Tower's credit rating.

49. By December 20, 2013, Tower was trading at \$2.65 per share—a 35% decrease from its trading price when AmTrust submitted its December 2, 2013 letter of intent to acquire Tower for \$5.50 per share. Thus, over the course of just a few weeks, an acquisition of Tower took on a whole new investment profile, as its market capitalization had dropped significantly. At this point, the AmTrust Board should have revisited the possibility of acquiring Tower outright, as the target company was now seemingly available at a fraction of the price it could have commanded just weeks earlier.

50. But the AmTrust Board never did. To the contrary, as indicated below, by the time the Board finally reconvened, AmTrust management, without Board knowledge or approval, had already agreed to forgo an acquisition of Tower and had begun to facilitate an alternative transaction between the Karfunkel Family-owned ACP and Tower.

V. The Karfunkel Family Usurps A Corporate Opportunity From AmTrust

51. Leveraging the information gathered while evaluating Tower as a potential acquisition target on behalf of the Company, members of the Karfunkel Family formulated their own bid for Tower in December 2013. According to

Tower's public SEC filings, sometime before December 29, 2013, Zyskind told J.P. Morgan that AmTrust intended to immediately withdraw its existing proposal, and that ACP proposed to acquire Tower for \$3.00 per share instead. The proposal included reinsurance side agreements with AmTrust and NGHC that, at that time, had been neither deliberated upon nor authorized by the AmTrust Board.

52. On December 30, 2013, Tower's counsel sent ACP a draft merger agreement that was merely a revised version of the draft agreement AmTrust had sent to Tower weeks earlier when AmTrust had proposed acquiring the company.

53. Also on December 30, 2013, Zyskind finally (and simultaneously) informed the Board about (a) AmTrust's withdrawal of its bid to acquire Tower and (b) ACP's pending bid to acquire Tower. Specifically, during a telephonic Board meeting that lasted only 25 minutes, Zyskind reported that, through due diligence, management had purportedly become concerned about an acquisition of Tower. As a result, management contemplated that ACP – not AmTrust – would acquire Tower, and that AmTrust would then purchase certain assets of Tower directly from ACP upon ACP's acquisition of the insurer.

54. By presenting this information to the Board *after* (a) AmTrust had withdrawn its bid and (b) ACP had tendered its proposal to Tower, Zyskind and members of the Karfunkel Family effectively deprived the Board of the ability to

(c) determine whether an acquisition of Tower, particularly in light of its plummeting stock price, still presented a value proposition for AmTrust and (d) explore alternative transaction structures that did not contemplate the Karfunkel Family's entity, ACP, acquiring Tower.

55. At the conclusion of the December 30, 2013 meeting, the Board approved AmTrust senior management's (*i.e.*, Zyskind's) continuation of negotiations with Tower.

56. The AmTrust Board met again on January 3, 2014. The meeting lasted for approximately fifteen minutes. Zyskind explained that ACP would acquire Tower for \$3.00 per share and that AmTrust and NGCH would then acquire Tower's underlying commercial lines and personal lines businesses, respectively, from Tower. Zyskind expected that AmTrust would pay between \$100 million and \$125 million for the asset purchase.

57. At the end of the meeting, Zyskind asked each Board member to offer any opinions before the full Board made a recommendation to the AmTrust Audit Committee.⁵ With three members of the Karfunkel Family (George Karfunkel, Michael Karfunkel, and Zyskind) and AmTrust's senior management team in attendance, this was an unacceptable substitute for independent deliberation.

⁵ The AmTrust Audit Committee consists of directors DeCarlo, Fisch, and Gulkowitz.

58. Immediately after the Board meeting concluded, a 15-minute Audit Committee meeting commenced. Karfunkel Family member Zyskind explained that AmTrust purportedly could not acquire Tower directly, but expected that the Company could ultimately purchase Tower's statutory companies from ACP for \$100 million to \$125 million.

59. Despite the fact that (a) the Audit Committee had only recently learned about the Company's withdrawal of its bid for Tower and ACP's substitute offer, and (b) the Audit Committee's only source of information was a member of the Karfunkel Family who was directly interested in the transaction, the Audit Committee failed to hit the "pause button" or seek to play an active role in the conflicted process. According to minutes produced by the Company, the Audit Committee did not even *inquire* about retaining independent legal or financial advisors to help determine whether it was actually unadvisable for AmTrust to acquire Tower, or whether an acquisition of Tower by AmTrust – as opposed to ACP – for \$3.00 per share would have been in the best interest of the Company.⁶ Instead, the Audit Committee simply approved the transaction structure as fed to it

⁶ Indeed, if an acquisition of Tower by AmTrust for \$5.50 per share was compelling in early December 2013, it is reasonable to assume that an acquisition of Tower by AmTrust for \$3.00 per share would have been compelling approximately one month later.

by Zyskind.⁷

60. Indeed, the Audit Committee was obligated to, but did not, take steps to confirm that abandoning a potential acquisition of Tower and ceding it to AmTrust's controlling stockholder was in the best interests of the Company. Instead, the Audit Committee relied entirely on the conflicted Karfunkel Family as their sole source of information and guidance.

61. On January 3, 2014, ACP and Tower executed a merger agreement (the "Original Merger Agreement") for ACP to acquire all of Tower for \$3.00 per share, which valued Tower at approximately \$172.1 million. Concurrently with execution of the Original Merger Agreement, AmTrust and ACP entered into a commercial lines stock and asset purchase agreement (the "CL SPA"), by which AmTrust agreed to purchase from ACP the renewal rights and certain other assets related to Tower's commercial lines insurance operations ("Commercial Lines Assets"), including certain of Tower's U.S.-domiciled insurance companies, for a

⁷ Any argument that an acquisition of Tower by AmTrust was too risky or that an acquisition was not financially attractive is undercut by the fact that the Karfunkel Family was eager to acquire Tower in its entirety in their personal capacity. Had the Karfunkel Family truly believed that acquiring Tower for \$3.00 per share represented a losing proposition, the Karfunkel Family would not have agreed to acquire Tower through a vehicle in which they hold 100% of the equity. The reality is that the Karfunkel Family realized that Tower represented a tremendous opportunity and they wanted to divert a larger percentage of the potential upside to themselves.

purchase price equal to the tangible book value of the companies, which was expected to be \$125 million.

62. In connection with the entry into the CL SPA with AmTrust, ACP also entered into a personal lines stock and asset purchase agreement (the “PL SPA”) with NGHC, by which NGHC agreed to purchase from ACP the renewal rights and certain other assets related to Tower’s personal lines insurance operations (“Personal Lines Assets”), including certain of Tower’s U.S.-domiciled insurance companies, for a purchase price equal to the tangible book value of the companies, which also was anticipated to be \$125 million.

VI. Members Of The Karfunkel Family Work To Restructure The Terms Of The Tower Transaction Outside Of The AmTrust Board’s View

63. Over the next several months, the Karfunkel Family considered potential changes to the structure and financing of ACP’s acquisition of Tower. Despite the impact of these potential changes on AmTrust, members of the Karfunkel Family neglected to raise them at the February 2014 and March 2014 AmTrust Board meetings.

64. On April 7, 2014, Zyskind finally informed the Audit Committee that the Karfunkel Family had decided to modify the deal structure for ACP’s acquisition of Tower. Zyskind proposed a new structure whereby ACP would

purchase Tower and all of its subsidiaries, but the Company would retain the renewal rights. The revised structure called for the Company to finance ACP's acquisition through a loan.

65. After meeting for less than half an hour – and without the benefit of independent financial or legal advisors, or even any prepared materials – the Audit Committee somehow determined that it was in the best interests of the Company and its unaffiliated stockholders to approve and proceed with the newly-structured transaction with ACP. The Audit Committee also agreed to the Company's termination of the stock and asset purchase agreement, its entry into the master agreement, and an AmTrust loan to ACP of up to \$125 million.

66. The very next day, AmTrust, ACP, and NGHC agreed to revise the transaction structure. Under the terms of the new arrangement, AmTrust, ACP and NGHC agreed that (a) Tower (*i.e.*, ACP upon consummation of the Tower acquisition) would retain ownership of all of Tower's U.S. insurance companies, and (b) AmTrust and NGHC would (i) acquire the Commercial Lines Assets and the Personal Lines Assets; (ii) administer the run-off of Tower's historical commercial lines claims and personal lines claims at cost; (iii) in their discretion, place commercial lines business and personal lines business with the Tower insurance companies, which they would exclusively manage and fully reinsure for

a net 2% ceding fee payable to the Tower insurance companies; (iv) retain the expirations on all business written by the Tower insurance companies through AmTrust and NGHC, as managers; and (v) receive the agreement of the Tower insurance companies and ACP not to compete with respect to the commercial lines business and personal lines business (the “Revised Plan”).

67. In connection with the Revised Plan, AmTrust and NGHC expected to provide ACP with financing in an aggregate principal amount of up to \$125 million each, subject to terms that were to be negotiated (but that would have a term of no shorter than seven years), and would pay a market interest rate. In addition, AmTrust and NGHC agreed to issue a \$250 million aggregate stop-loss reinsurance agreement to Tower by which each company, as reinsurers, would provide, severally, \$125 million of stop-loss coverage (the “Stop-Loss”).

68. AmTrust also terminated the CL SPA and entered into a commercial lines master agreement with ACP (the “Master Agreement”), which provided for the implementation of the Revised Plan and AmTrust’s acquisition of the Commercial Line Assets.

69. All of these transactions were structured and agreed upon without any independent financial or legal advice, and without any independent negotiation on behalf of AmTrust. The only item that the Audit Committee sought to negotiate –

or seek advice on – was the Company’s \$125 million related-party loan to ACP.

VII. Members Of The Karfunkel Family Negotiate A Purchase Price Reduction For Tower

70. In late April 2014, Zyskind and AmTrust’s mergers and acquisitions executive Adam Karkowsky began negotiations with Tower to reduce ACP’s previously agreed-upon \$3.00 per share proposal. Over the next week, ACP and Tower continued negotiations on a revised transaction even though nobody was representing AmTrust’s interests in those discussions or taking any steps to protect the Company’s interests as the third party in the new deal structure.

71. On May 2, 2014, Michael Karfunkel, on behalf of ACP, offered Tower a revised purchase price of \$2.50 per share of Tower common stock.

72. Between May 6, 2014 and May 8, 2014, Tower and ACP negotiated the specific terms of an amendment to the Original Merger Agreement (the “Merger Agreement Amendment”). In its final form, the Merger Agreement Amendment, among other things, (a) reduced the merger consideration from \$3.00 per share to \$2.50 per share, (b) reduced the termination fee in an amount proportionate to the reduction in the merger consideration, and (c) made a series of changes to the material adverse effect provision in the Original Merger Agreement to exempt from the provision deterioration in Tower’s financial performance.

73. On May 8, 2014, more than four months after learning about a

potential transaction involving Tower and AmTrust, and after a handful of material changes in the deal structure and terms, the Audit Committee finally retained a financial advisor.

74. The Audit Committee retained as its financial advisor Griffin Partners (“Griffin”), a corporate advisory firm that has a business history with the Karfunkel Family and AmTrust, and agreed to pay Griffin \$175,000.⁸ There is no indication that the Audit Committee met with or considered any alternative advisors.

VIII. The Karfunkels Continue To Seek Improved Terms For ACP At The Expense Of The Company

75. On May 29, 2014, the Audit Committee convened a conference call. DeCarlo sought to recuse himself from the call on the basis that in addition to serving on AmTrust’s Board, he also serves as a member of NGHC’s board of directors. The Audit Committee then decided to form a subcommittee consisting of directors Gulkowitz and Fisch (the “Subcommittee”).

76. On June 26, 2014, the Subcommittee convened for a conference call to discuss ACP’s comments to the credit facility term sheet, as well as feedback from Griffin and Michael Karfunkel relating to the Company’s loan to ACP.

⁸ Griffin advised Mutual Insurers Holding Company in its 2013 sale to AmTrust. Stevens & Lee, an affiliate of Griffin, advised First Nonprofit Companies, Inc. in a stock sale to AmTrust.

77. The Subcommittee met on July 1, 2014 and discussed that ACP had proposed an earn-out structure as one possible means of contingent consideration that would be based on renewal rights of Tower's commercial and personal lines businesses. The very next day, the Subcommittee authorized an earn-out payment to ACP.

78. By July 10, 2014, AmTrust and ACP were preparing to present their agreements to insurance regulators, even though the terms were purportedly still being negotiated.

IX. The Audit Committee Approves The Terms Of The Credit Agreement And Stop-Loss Retrocession

79. On July 22, 2014, the Subcommittee approved the terms of the credit agreement between AmTrust, ACP and NGHC (the "Credit Agreement"). The Credit Agreement contemplated a \$250 million secured loan with a seven-year term and a 7% annual interest rate.

80. That same day, the Subcommittee also approved the terms of the Stop-Loss and Retrocession. The Stop-Loss premium will be equal to \$56 million, payable five years following the closing of the Tower Merger (the "Stop-Loss Premium"). The Retrocession premium will be equal to the Stop-Loss Premium, less a fee of 5.5% of the Stop-Loss Premium to be retained by AmTrust and NGHC.

81. On August 7, 2014, the Audit Committee met and reviewed a summary of the terms of the earn-out payment to be made to ACP. The Audit Committee also agreed to cause the Company to either sub-lease or assume certain office leases from ACP.

82. On September 15, 2014, AmTrust entered into various agreements with Tower (then-owned by ACP) including, primarily, a renewal rights agreement and a quota share reinsurance agreement. Based on the terms of the renewal rights agreement, AmTrust is required to pay ACP an earn-out of up to \$30 million over a three-year period based on 3% of the gross written premiums of the Tower commercial lines business (the “Earn-Out”). The quota share agreement replaced the Cut-Through Reinsurance Agreement. Additionally, AmTrust entered into the Credit Agreement to finance ACP’s purchase of Tower.

83. Thus, not only did the Karfunkel Family usurp from AmTrust the corporate opportunity presented by an acquisition of Tower, but they also (i) saved money as a result of the reduced purchase price, and (ii) extracted improved terms from the Company. Instead of passing along some of the cost savings to AmTrust, the Karfunkel Family again enriched itself to the detriment of the Company.

DERIVATIVE ALLEGATIONS

84. Plaintiff brings this action derivatively to redress injuries suffered by

the Company as a direct result of breaches of fiduciary duties by Defendants and usurpation of corporate opportunity by ACP and the Karfunkel Family.

85. Plaintiff has owned AmTrust stock continuously during this relevant period.

86. Plaintiff will adequately and fairly represent the interests of AmTrust and its stockholders in enforcing and prosecuting its rights and has retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE AMTRUST BOARD IS EXCUSED AS FUTILE

87. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

88. Plaintiff has not made a demand on the AmTrust Board to investigate or initiate the claims asserted herein because demand is excused as futile.

89. Such demand would be futile and useless, and is thereby excused, because the allegations herein, at a minimum, permit the inference that a majority of the members of the AmTrust Board are either interested in the Tower Transactions,⁹ or lack the requisite independence from the Karfunkel Family to determine fairly whether to pursue claims relating to the Tower Transactions that

⁹ As used herein, the term “Tower Transactions” means, collectively, (a) ACP’s acquisition of Tower, (b) the CL SPA, (c) the PL SPA, (d) the Revised Plan, (e) the Stop-Loss, (f) the Master Agreement, (g) the Credit Agreement and (h) the Earn-Out.

would be adverse to the Karfunkel Family's economic interests. Additionally, the Board's decision to consummate the Tower Transactions was not the product of a valid exercise of business judgment.

90. The AmTrust Board is comprised of seven directors. Three of the members of the AmTrust Board are members of the Karfunkel Family – George Karfunkel, Michael Karfunkel and Zyskind. As detailed herein, the Karfunkel Family, through their ownership of ACP, was interested in the Tower Transactions.

91. Additionally, George Karfunkel, Michael Karfunkel and Zyskind are not independent for demand futility purposes. Indeed, the 2015 Proxy concedes that “Barry Zyskind, George Karfunkel, and Michael Karfunkel do not qualify as independent directors.”

92. A fourth member of the Board, Defendant Miller, is not independent of the Karfunkels, and in turn, is not independent for purposes of determining whether to pursue claims relating to the Tower Transactions. Miller has served on the AmTrust Board since the Karfunkel Family founded the Company in 1998. Miller also serves as director or advisor on a number of other entities controlled by, or partially-owned by, the Karfunkel Family, including as director of American Stock Transfer & Trust Co., Security National Insurance Company, Technology Insurance Company, AmTrust North America of Florida Inc. and AmTrust North

America of Texas Inc.

93. Furthermore, Miller is the trustee of the George Karfunkel Trusts. As trustee for the George Karfunkel Trusts, Miller is a fiduciary of George Karfunkel. Miller is therefore ethically obligated to protect and advance the interests of George Karfunkel, and could not independently consider a demand on the Board to investigate or prosecute the claims alleged herein.

94. Additionally, Miller serves as an “advisor” to George Karfunkel’s personal investment vehicle – GK Acquisition.

95. Miller’s role as trustee and advisor for George Karfunkel evidences George Karfunkel’s faith in Miller’s loyalty and ability to safeguard and advance George Karfunkel’s interests.

96. Miller’s loyalty to the Karfunkel Family is also evidenced by Miller’s unpaid service as AmTrust’s corporate secretary from 1998 to 2005.

97. Miller’s long-term and multifaceted personal and professional relationship with the Karfunkel Family makes him incapable of properly and disinterestedly considering a demand on the AmTrust Board to investigate or prosecute the claims alleged herein.

98. Miller’s loyalty to, and mutually beneficial relationship with, the Karfunkel Family is also evidenced by his outsized compensation for serving on

the AmTrust Board. For the fiscal year ended December 31, 2014, Miller received a total of \$291,958 in cash and equity awards for his Board service.

99. Indeed, all of the purportedly independent AmTrust directors enjoy outsized director compensation. For the fiscal year ended December 31, 2014, Gulkowitz received \$246,480 in cash and equity awards for his Board service; Fisch received \$234,480 in cash and equity awards for her Board service; and DeCarlo received \$348,480 in cash and equity awards for his Board service.

100. In light of the foregoing, demand on the AmTrust Board to investigate or prosecute the claims alleged herein is excused as futile.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE KARFUNKEL FAMILY IN THEIR CAPACITY AS AMTRUST'S CONTROLLING STOCKHOLDER

101. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

102. As detailed herein, the Karfunkel Family is AmTrust's controlling stockholder. As a controlling stockholder, the Karfunkel Family owes the Company and its stockholders the utmost fiduciary duties of due care, good faith, candor, and loyalty.

103. AmTrust had an interest in acquiring Tower, as evidenced by the Company's overtures to Tower and its advisors, including but not limited to the offer to purchase Tower submitted by the Company in December 2013.

104. An acquisition of Tower was a business opportunity that AmTrust was financially able to undertake.

105. Without first informing the AmTrust Board, the Karfunkel Family improperly and selfishly caused the Company to abandon its pursuit of Tower and instead initiated its own pursuit of Tower on behalf of ACP (*i.e.*, the Karfunkel Family's personal entity).

106. In connection with the Tower Transactions, the Karfunkel Family's improper conduct included, among other things, (a) usurping a corporate opportunity from the Company through ACP, (b) initially revising the transaction terms without Board input, (c) causing the Company to participate in a \$250 million loan to ACP to facilitate its acquisition of Tower, and (d) demanding the Earn-Out Payment. This conduct constitutes a breach of the Karfunkel Family's fiduciary duties owed to the Company and its stockholders.

107. AmTrust has been and continues to be harmed by the Karfunkel Family's improper usurpation of the Company's corporate opportunity to acquire Tower and breaches of fiduciary duty in causing the Company to enter into related

agreements unfair to the Company, including the term loan and Earn-Out Payment.

108. The Company is entitled to restitution including disgorgement of any profits received by ACP or the Karfunkel Family (in their personal capacity rather than their capacity as AmTrust stockholders) as a result of the Tower Transactions.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

109. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

110. The Director Defendants, as AmTrust directors and officers, owe the Company the utmost fiduciary duties of due care, good faith, candor and loyalty. By virtue of their positions as directors and/or officers of AmTrust and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Director Defendants was required to, among other things: (a) use their ability to control and manage AmTrust in a fair, just and equitable manner; and (b) act in furtherance of the best interests of AmTrust and its stockholders, and not in furtherance of their own.

111. The Director Defendants breached their fiduciary duties by failing to

inform themselves regarding AmTrust's strategic alternatives with respect to Tower and instead allowing conflicted fiduciaries to dominate and control the Company's deliberations about and negotiations with Tower.

112. The Director Defendants breached their fiduciary duties in agreeing to the Revised Plan, the Earn-Out and the Credit Agreement on terms unfair to the Company.

113. The Director Defendants also breached their fiduciary duties by failing to safeguard the Company's interests in the face of a clearly conflicted series of transactions.

COUNT III

DERIVATIVE CLAIM AGAINST THE KARFUNKEL FAMILY AND ACP FOR UNJUST ENRICHMENT

114. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

115. The Tower Transactions were the product of breaches of fiduciary duty by the Director Defendants and/or the usurpation of a corporate opportunity by ACP and the Karfunkel Family.

116. The terms of the Tower Transactions are unfair to the Company and provide improper benefits to the Karfunkel Family and ACP.

117. The process by which the Tower Transactions were orchestrated was

also improper, and unduly influenced by the Karfunkel Family.

118. The Karfunkel Family and ACP were – and continue to be – the direct recipients of the benefits flowing from the Tower Transactions. Those benefits were derived by improper and unlawful means.

119. It would be unconscionable for the Karfunkel Family and ACP to be permitted to retain these benefits that were derived by improper and unlawful means.

120. The Karfunkel Family and ACP have therefore been unjustly enriched as a result of the Tower Transactions and the Company is entitled to restitution.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- a. Finding that demand on the AmTrust Board is excused as futile;
- b. Finding the Karfunkel Family, in their capacity as controlling stockholder of AmTrust, liable for breaching their fiduciary duties owed to AmTrust and its stockholders, by among other things, usurping a corporate opportunity from AmTrust;
- c. Finding the Director Defendants liable for breaching their fiduciary duties;
- d. Finding the Karfunkel Family and ACP liable for unjust

enrichment;

- e. Requiring AmTrust to improve its corporate governance practices and/or change the composition of the Board to better protect the Company and its stockholders from the undue influence of the Karfunkel Family;
- f. Awarding the Company compensatory damages, together with pre-and post-judgment interest;
- g. Requiring ACP and the Karfunkel Family to account for and disgorge all profits resulting from the Tower Transactions;
- h. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and
- i. Awarding such other and further relief as is just and equitable.

Dated: April 7, 2015

Public version dated: April 10, 2015

OF COUNSEL:

Christopher J. Keller
Eric J. Belfi
Michael W. Stocker
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
(212) 907-0700

LABATON SUCHAROW LLP

By /s/ Ned Weinberger

Christine S. Azar (#4170)
Ned Weinberger (#5256)
300 Delaware Ave., Suite 1340
Wilmington, DE 19801
(302) 573-2540

Counsel for Plaintiff

Jeremy Friedman
Spencer Oster
FRIEDMAN OSTER PLLC
240 East 79th Street, Suite A
New York, NY 10075
Tel: (888) 529-1108

Counsel for Plaintiff