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Case No. 2018-0358-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND LP, HIGH RIVER LIMITED PARTNERSHIP,	)	
	)	C.A. No __________________
Plaintiffs,	)	
v.	)	
BARRY D. ZYSKIND, GEORGE KARFUNKEL, LEAH KARFUNKEL and AMTRUST FINANCIAL SERVICES, INC.	)	
Defendants.	)	

VERIFIED COMPLAINT

Plaintiffs Icahn Partners LP, Icahn Partners Master Fund LP and High River Limited Partnership (collectively, the "Icahn Stockholders" or "Plaintiffs"), upon knowledge as to themselves and upon information and belief as to all other matters, allege for their Verified Complaint as follows:

I. INTRODUCTION

1. This action challenges a going-private transaction in which a controlling—and self-dealing—family is seeking to take a company private at the wrong time, through the wrong procedures and at a very wrong price. The transaction will transfer huge amounts of value belonging to the company's public stockholders to the controlling family—which has already used its control of the

company to engage in self-dealing on a massive scale. The company, defendant AmTrust Financial Services Inc., ("AmTrust" or the "Company"), operates primarily in the insurance business, and one of its particular specialties is workers' compensation. The extended family that controls AmTrust—which is described by the company as the "Karfunkel-Zyskind Family" (and which is referred to herein as the "KZ family")—dominates and controls the affairs of the Company to such an extent that AmTrust often appears to be a private company that is operated solely in the family's interests.

2. That domination and control has manifested itself in multiple ways. For example, the KZ family owns numerous other corporate entities and properties (collectively the KZ family and the entities it controls other than AmTrust are referred to as the "KZ Group"), many (and perhaps most) of which do business with AmTrust. AmTrust's 2017 proxy statement takes eight pages of very small print to nebulously outline the business relationships between the Company and multiple KZ Group companies and entities. Among other things, the KZ Group owns the building in Manhattan where the Company is headquartered, provides over half of the Company's reinsurance coverage, and receiving sharply discounted rides on AmTrust's corporate jets. These various relationships have, not surprisingly, led to stockholder class and derivative suits and Section 220 demands, which are listed at length in the Company's financial filings.

3. In addition, defendant Barry Zyskind, the Company's very lavishly paid Chairman and CEO, and a core member of the KZ family, is chairman of at least two KZ Group entities that do substantial business with the Company—including the carrier that covers over half of the Company's reinsurance, which places Mr. Zyskind on both sides of those transactions.

4. Mr. Zyskind has the background one might expect in a family-controlled company. He is the son-in-law of one of the two Karfunkel brothers who co-founded AmTrust, was named as a director of the Company at the age of 26, and was installed as CEO before the age 30. His wife's brother, meanwhile, became CEO of another insurance company owned by the KZ family, and Mr. Zyskind is chairman of that company.

5. Mr. Zyskind has been richly rewarded as CEO. From 2012-2017, Mr. Zyskind was granted compensation totaling almost $66 million—which amounted to 5.55% of the Company's net income for those years. In his best year his total compensation exceeded 10% of AmTrust's net income.

6. The flow of riches to Mr. Zyskind has not been paralleled by the returns to the Company's public stockholders, however. Under Mr. Zyskind's stewardship, AmTrust grew rapidly for a while. Subsequent events have shown that this growth was in part fueled by what may be euphemistically called overly optimistic accounting as well as an excess of leverage. In recent years, growth has

stopped, the Company's stock price has fallen by two-thirds, and the Company has been under siege from regulators.

7. As far as the stockholders know—and that is not very far because the Company is less-than-transparent in its disclosures—the first of a series of problems struck in June 2013 when the Securities and Exchange Commission began an investigation of Company. ***That investigation is still ongoing—five years later.*** AmTrust did not inform its stockholders—or at least its public stockholders—of the SEC's half-decade investigation until Friday, May 4, 2018, or approximately four years and 11 months after the investigation began,[1] and the very terse disclosure came buried at page 125 of the Company's definitive merger proxy statement.

8. According to that disclosure, the SEC has been investigating "the Company's investment in life settlement contracts, acquisition of Luxembourg captives, certain accounting practices, including accounting for loss and loss adjustment expense reserve estimates for the Company's major business lines and segments, internal controls and other related matters." After five years, that is the sum total of what the Company decided the public stockholders needed to know.

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[1] The Wall Street Journal reported the SEC Investigation in April 2017, but that report was not confirmed by AmTrust until the definitive merger proxy statement was filed on May 4, 2018.

9. And that is far from the only shoal the Company has struck under Mr. Zyskind's recent stewardship. In 2016 the Company started experiencing economic difficulties. In 2017, the Company was forced to restate several years of earnings (which were materially overstated originally) and its loss ratio ballooned, going from a steady average of about 67% for the past 5 years to over 80%. The expense ratio, which had been hovering around 25%, increased to 32.1%, meaning that the combined ratio was 112.9%. To put it another way, for every dollar of premiums written the Company lost 13 cents. Those loses caused economic problems and a capital shortage that required AmTrust to sell assets and stock at low prices (happily for the KZ family, though, some of its members were able to buy $300 million of that stock below the proposed merger price). Overall, the experience was devastating for Amtrust's public stockholders as its stock price fell by two thirds in a little over a year's time.

10. The following chart, which is taken from the Company's 10-K filed in March 2018, shows the effects of Mr. Zyskind's mishaps on the stockholders' total returns:

Comparative Cumulative Total Returns Since 12/31/12 for AmTrust Financial Services, Inc.: Nasdaq Composite and Nasdaq Insurance

	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
AmTrust Financial Services	$100.0	$129.6	$227.1	$260.7	$235.7	$93.4
NASDAQ Composite Index (IXIC)	$100.0	$138.3	$156.8	$165.8	$178.3	$228.6
NASDAQ Insurance Index (INSR)	$100.0	$128.8	$139.8	$148.8	$172.1	$177.6

11. As can be seen, from 2012 until 2015 the Company seemed to be doing well. Then, it hit a wall, and its public stockholders were crushed as the stock price plummeted in 2016 and 2017.

12. There was some light in the darkness, however—at least for Mr. Zyskind. In 2015, when the Company was hitting that wall (and the SEC investigation had already been ongoing for two years), the value of his compensation was almost $15 million. In 2016, with the stock starting its freefall and the SEC investigation in its third year, Mr. Zyskind still was given almost $5 million in compensation. Even in 2017—a dreadful year for the stockholders in which the Company's stock lost over two-thirds of its value because of bad

decisions made by management—Mr. Zyskind still received almost $2 million in compensation. He even received a direct reward for failure when he was paid a bonus.

13. Nor was 2017 a year of total darkness for the rest of the extended KZ family. Not only did they indirectly profit from all of the KZ Group's side deals with AmTrust, but they directly received tens of millions in cash from it as well. The members of the KZ family apparently depend on the Company's robust dividend for income, and although in 2017 AmTrust was metaphorically selling the corporate silver to stay afloat, no thought appears to have been given to cutting the dividend.

14. That dividend amounted to almost $125 million in 2017, and eliminating it could have kept the Company from being forced to sell other assets or stock. But since the KZ buy-out group owns over half of the Company's shares, suspending the dividend would have cut their income by the better part of $70 million per year from that source alone. This prospect was apparently utterly unthinkable.

15. Instead, in the face of a looming economic crisis, in the third quarter of 2016 the Company *raised* its annual dividend from $0.60 to $0.68 per share, giving the KZ group more than an extra $8 million per year. And since Mr. Zyskind owns or controls almost one quarter of the Company's outstanding shares,

he and his entities took in around $2 million of that dividend increase—a very sweet supplement to the bonus already granted to him.

16. The self-created crisis at AmTrust presented Mr. Zyskind and the KZ family an even larger opportunity. Over the years, the KZ family has done extraordinarily well with AmTrust as a public company, but towards the end of 2017 it concluded that with the Company's stock price beat down to below $10 per share—a third of the level in the start of 2017—it could do even better by taking the Company private. It obtained a financial partner (though the family will have effective control of the post-merger entity), made the traditional low bid ($12.25 per share), and finally agreed to a $13.50 buyout price.

17. The bid is financially unfair. The discussion of financial fairness in the merger proxy statement shows that the Company has a relatively low market value today because of all of its recent problems. However, the painful steps taken in selling both stock and assets cheaply raised approximately $1.7 billion in new capital, which has put AmTrust on far sounder footing. This conclusion is confirmed by the KZ Group's actions. It has an unequaled insight into the Company's finances and operations, yet it is a buyer.

18. Insurance companies are difficult to value by nature. Their income—premiums, investment income and the like—are known, as are their selling and administrative expense. But what is inherently unknowable is how much insurance

companies will have to pay out over time on the claims that are associated with those premiums. Actuaries try to estimate the value of those claims and establish appropriate reserves, but these are estimations only.

19. This uncertainty is compounded for an insurance company's public stockholders, as insurance companies only disclose some summary information about the claims that are coming in. In addition, the quality of a Company's reinsurance is also uncertain to outsiders. Thus, to outsiders the key calculations about insurance companies—whether established reserves will cover the claims coming in, and whether reinsurance provides adequate cover—cannot be easily estimated. Stockholders necessarily must take management for its word.

20. Insiders, though, have far better information. That is particularly the case here, where the KZ Group has access to the inside data, and Mr. Zyskind, one of the KZ family leaders, is privy to everything—including the quality of the half of AmTrust's reinsurance that is written by KZ Group companies. Outsiders cannot know what the KZ Group knows, but they can know one thing for sure—the KZ Group is an eager buyer at $13.50.

21. In addition, outsiders can only know what management has said. Here, although not advertised, before Mr. Zyskind was approached in November 2017 by his financial partner about a possible deal, he and his management team told stock analysts something very different about the Company's financial

prospects than what is relayed to the stockholders in the merger proxy statement. These insider statements point to far higher values for AmTrust than $13.50 per share.

22. The asymmetry of knowledge between controlling and public stockholders is one reason for the "entire fairness" test created by Delaware's courts in such situations. Under fixed principles of equity, controlling stockholders must prove the entire fairness of their conduct—and that this bid is the result of a fair process and constitutes a fair price. The KZ Group is attempting to bypass this test by following the *MacAndrews & Forbes Worldwide* ("*MFW*") approach to a controlled going private transaction. It negotiated its bid with a special committee of the board of directors (three of the four members of which had participated in granting Mr. Zyskind his extraordinary compensation over the year) and now seeks to have a majority of the public stockholders vote in favor of it. But the "majority" of stockholders it seeks is <u>not</u> a majority of current stockholders. Rather, through a manipulation of the record date for the meeting, the KZ Group has created a situation in which a large percentage of the "public stockholders" voting will actually be former public stockholders or public stockholders who retain some shares but will be voting far more.

23. In short, the KZ Group is attempting to use what are called "empty votes" to gain the approval of what it will claim was a majority of the minority.

24. The deal was signed on March 1, 2018. The parties filed a preliminary proxy statement on April 9, 2018, which had a blank inserted for the record date. The plain implication was that the record date had not been chosen yet. On May 4, 2018, though, the final merger proxy statement was issued, announcing that the meeting date would be June 4, 2018, while the record date was set for April 5, 2018. In other words, since record dates cannot be set retroactively, the board of directors <u>must</u> have set that date on or before April 5th, and the Company <u>must</u> have consciously decided not to include that fact when it filed its preliminary proxy statement. It did not want to disclose the record date at that time.

25. Nor was there a legitimate need to hurry the vote. The deal must receive multiple regulatory approvals and those will take many months. The special meeting thus could have been scheduled to occur months later. However, such a schedule might have given the Company the time it needs to turn around and start recording the kind of results previously predicted by Mr. Zyskind. Such results would have undermined the KZ family's chance to get the needed stockholder vote.

26. The setting of the record and meeting dates thus was a manipulation, and it was a manipulation with consequences. As discussed hereafter, it effectively disenfranchised the holders of tens of millions of shares bought between April 4

and May 5, 2018 when the purchasers had no idea that the shares they bought could not vote. In addition, it means that many of the votes of the public shares will be "empty" votes, cast by holders who have either no or a diminished economic interest in the outcome of the vote. That, in turn, undercuts the central insight of *MFW*: that the combination of a special committee and the affirmative vote of a majority of the outstanding public stock can take the place of third-party bargaining.

27. Former stockholders who vote shares that they owned as of the record date but sell before the meeting have no such economic incentive. Instead, they can be swayed by inducements that have nothing to do with the substantive merits of the deal. Structures such as that here, which induce empty voting should not be given the deference outlined in *MFW*, but should instead be evaluated under the entire fairness standard. And this proposed transaction cannot survive such scrutiny.

II. THE PARTIES

28. Plaintiffs High River Limited Partnership, Icahn Partners LP and Icahn Partners Master Fund LP (the "Icahn Stockholders" or "Plaintiffs") are holders of common stock. As of May 17, 2018, Plaintiffs collectively owned approximately 6.9 million of the Company's outstanding shares, with a value of approximately $93 million. In addition, plaintiffs were parties to forwards

contracts for an additional approximately 11.5 million shares. Plaintiffs bought many of its shares after April 5 but before May 4, 2018, thus purchasing shares that they could not have known lacked voting rights.

29. On May 17, 2017 plaintiffs launched a proxy contest seeking to persuade the Company's public stockholders to vote against the proposed merger.

30. Defendant AmTrust is a Delaware corporation principally involved in the insurance business with headquarters in New York City.

31. Defendant Barry D. Zyskind is Chairman and Chief Executive Officer of the Company. Defendants George Karfunkel and Leah Karfunkel are directors of AmTrust. Mrs. Karfunkel is the widow of the late Michael Karfunkel, who was George Karfunkel's brother, and is the mother of Mr. Zyskind's wife. Mr. Zyskind, George Karfunkel and Mrs. Karfunkel, who are collectively referred to herein as the "Director Defendants," are all members of the KZ family and comprise three of Amtrust's eight directors[2]. Together with other members of the KZ Group and other stockholders who will be "rolling over" their shares and not being cashed out in the buyout that own a majority of the Company's stock.

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[2] One director was added in April 2018 to the seven existing members of the board.

III. BACKGROUND

A. AmTrust and the KZ Group.

32. AmTrust was acquired in 1998 by George and Michael Karfunkel, and went public in November 2006 at a price of $7.50 per share. AmTrust operates in a number of specialties within the insurance industry. As stated in its Form 10-K filed on March 16, 2018:

> "Our product mix primarily includes workers' compensation, extended warranty and other commercial and select personal lines in property/casualty insurance. Our workers' compensation and property/casualty insurance policyholders in the U.S. are generally small and middle market businesses. Our extended warranty clients and partners include original equipment manufacturers, distributors, e-commerce and other retailers of commercial and consumer products. Key services performed on behalf of clients and policyholders include claims administration and device refurbishment, repair, recycling and logistics programs. The majority of our products are sold through independent third-party brokers, agents, retailers or administrators."

33. From the start, the Company's operations were interwoven with other enterprises of the KZ Group. The following is just a short overview of some of those other relationships that only begins to describe their complexity.

a) <u>59 Maiden Lane Associates, LLC ("59 Maiden Lane").</u> 59 Maiden Lane, which owns an office tower at 59 Maiden Lane in New York City, is wholly owned by George and Leah Karfunkel. The building serves

as the headquarters of much of the KZ Group, including AmTrust. The Company pays about $2 million yearly in rent to 59 Maiden Lane.

b) Maiden Holdings, Ltd ("Maiden"). Maiden is a Bermuda-based public company that was formed by the KZ family in 2007 and is mainly involved in reinsurance. Mr. Zyskind is the chairman of its board. As previously mentioned, it (or its subsidiaries) provided slightly over half of AmTrust's reinsurance, and the AmTrust account comprises over 70% of Maiden's total business. Since Maiden's subsidiaries have only an "A-" rating from A.M. Best (A- is not a strong rating for an insurance carrier), one may wonder what reasons Mr. Zyskind has—other than loyalty to the KZ Group—for placing so much reinsurance with Maiden, particularly as that Maiden is so over-exposed to AmTrust.

c) National General Holding Corp ("NGHC"). NGHC is another publicly traded insurer headquartered at 59 Maiden Lane and a member of the KZ Group. Mr. Zyskind is its chairman, his brother-in-law, Barry Karfunkel (the nephew of defendant Barry Karfunkel) is NGHC's CEO. According to NGHC's most recent 10-K, "[W]e are a specialty personal lines insurance holding company that, through our subsidiaries, provides a variety of insurance products, including personal and small business automobile, homeowners, umbrella, recreational vehicle, motorcycle, lender-

placed, supplemental health and other niche insurance products. We sell insurance products with a focus on underwriting profitability through a combination of our customized and predictive analytics and our technology driven low cost infrastructure." AmTrust and NGHC accordingly overlap in certain business areas. The Company and NGHC also engage in numerous business transactions with each other. The Company sold approximately a 10% stake in NGHC in June 2017 at a discount to market as it was trying to raise capital. In addition, in September 2017, AmTrust sold NGHC management software it had developed for $200 million, again to raise capital. The Company and NGHC also hold interests in other office buildings, including one in Chicago where AmTrust's special meeting will be held to vote on the proposed going-private transaction.

d) ACP RE, Ltd. ("ACP"). ACP is a privately held reinsurer owned and controlled by the KZ family, and in particular by Mrs. Karfunkel and Mr. Zyskind. ACP ran into serious financial difficulties due to its efforts to acquire a failing insurance company, and one of its subsidiaries was put into conservatorship by the California insurance regulators. That, in turn, required the KZ family (and specifically Mrs. Karfunkel and Mr. Zyskind) to put in $200 million of fresh capital in 2016, and also caused the Company to participate with NGHC in loaning ACP $250 million in 2014—

cash the Company could have used in 2017. Currently, ACP owes the Company close to $130 million in principal and interest pursuant to the loan agreement.

e) Aircraft. The Company and a subsidiary own at least two jets between them. The Company allows Maiden, NGHC and Mr. Zyskind personally to use the jets at their variable cost, and does not change their pro-rata shares of the full costs. That means Maiden, NGHC and Mr. Zyskind are permitted to use the jets for a fraction of the total cost of the flight, which is far less than they would pay for any commercial service.

34. One result of all these overlapping relationships—and the foregoing description gives just a small taste of their extent and complexity—is that it is extremely difficult for an outsider, or anyone without an intimate understanding of AmTrust's operations and finances, to understand whether the relationships are fair to the Company or the extent to which the Company's finances are dependent on other KZ Group entities. It appears that ACP's financial difficulties have also strained AmTrust's finances but a true understanding of its extent is lost in the fog of the Company's opaque disclosure documents, whose frequent use of the passive voice makes understanding difficult.

B. Mr. Zyskind's Princely Compensation.

35. As previously mentioned, Mr. Zyskind is extremely well compensated by the Company. As shown in the chart below, Mr. Zyskind's compensation equaled 5.55% of AmTrust's net earnings from 2012 through 2017. That number is staggering, particularly given as the Company has been subject to an SEC investigation relating to large parts of its business since 2013.

Year	Zyskind Comp	Amtrust Net Income	Percentage
2017	**$ 1,980,104**	-415,173,000	NMF
2016	**$ 4,902,193**	363,139,000	1.35%
2015	**$ 13,942,205**	419,115,000	3.33%
2014	**$ 22,130,044**	402,942,000	5.49%
2013	**$ 4,916,858**	240,181,000	2.05%
2012	**$ 18,120,917**	177,987,000	10.18%
Total Comp:	**$ 65,992,321**	**% Total Net Income:**	**5.55%**

36. It is noteworthy that of the Company's four "independent" directors (with an average age of 74) who made up the Special Committee that approved the going-private merger, two were elected when AmTrust went public in 2006 and one joined the board in 2010. Those three approved all of the compensation outlined above, which perhaps helps explain why they also approved the buy-out. (Though in fairness the "facts" they were provided in approving compensation

might have been no better than the facts relating to the buy-out, a subject that will be discussed hereafter).

C. **Mr. Zyskind Runs AmTrust Aground**.

37. One thing can be said for certain, though. Even though Mr. Zyskind is carefully insulated by the protective cocoon of the KZ family, and thus receives bonuses in years of utter failure, the fact that AmTrust ran aground during Mr. Zyskind's watch cannot be denied.

38. In its 2018 10-K, AmTrust proudly announced that, "[*O*]*ur business model focuses on achieving industry-leading returns on equity and long-term stockholder value through operational excellence and profitable growth with the careful management of risk*." (Emphasis added).

39. Historically, there was truth to this claim. The Company's published financial results did show long-term value creation and excellent returns on equity. The following table shows the company's earnings per share and return on equity from 2012 through 2017. It takes into account earnings restatements that occurred after the years in question.

Year	EPS	ROE
2017	**$ (2.23)**	**-17.9%**
2016	**$ 2.08**	**15.8%**
2015	**$ 2.49**	**21.8%**
2014	**$ 2.53**	**28.3%**
2013	**$ 1.54**	**20.6%**
2012	**$ 1.03**	**15.7%**

40. As can be seen, AmTrust appeared to be doing well through 2014. A 28.3% return on equity is outstanding. The Company started having some financial difficulties in 2015, which accelerated in 2016, and the wheels came off in 2017 when the Company lost large sums in underwriting and needed to raise capital. An amendment to AmTrust's 2018 10-K explains the situation this way:

> "As discussed throughout the Form 10-K filed on March 16, 2018 (the "Original Filing"), 2017 was a transitional year for us. Our acquisition activity slowed as we took actions to strengthen our balance sheet and capital base and focus on our core business. This transition from growth to balance sheet strengthening followed several significant events in 2017, including the delayed filing of our annual report on Form 10-K for the year ended December 31, 2016 and a restatement of our consolidated financial statements for fiscal years 2015 and 2014, material weaknesses in our internal control over financial reporting as a result of our year-end 2016 and 2017 assessments, and adverse loss development trends in all three of our operating segments.
>
> In addition, we undertook several transformative transactions in 2017 including a $300 million private placement of common stock in May 2017, the June 2017 sale of substantially all of the shares of common stock we owned in NGHC for approximately $211.7 million, our entry into an adverse loss development cover agreement effective June 30, 2017, and the sale of our personal lines policy management system that we had developed for NGHC, and related intellectual property, to NGHC for $200.0 million. In addition to these and other measures, we also commenced a process to monetize our U.S.-based fee business that concluded in February 2018 with the transfer of the U.S.-based fee business to Mayfield and MH JV Holdings L.P.'s acquisition of a majority interest in Mayfield (additional information about this last transaction is presented in Note 28.

> "Subsequent Events" to our consolidated financial statements appearing in the Original Filing)".[3]

41. To put it more simply, Mr. Zyskind's decisions over multiple years resulted in the Company running hard aground. Its historic financial statements had badly overstated past income (although understating income never seemed to be an issue under Mr. Zyskind); it was unable to file its 10-K on time; had to sell assets to raise capital; and stopped repurchasing stock and instead sold shares (at approximately half what it had been repurchasing them for in 2016) to various non-employee members of the KZ family. AmTrust's stock price fell from a high of $27.93 in the first quarter of 2017 to a low of $8.80 in the fourth quarter.

42. And, of course, the stockholders have now learned that the Company has been under investigation by the SEC since June 2013. This extraordinarily long investigation was well known to the KZ Group from the start, but not disclosed to the public stockholders until the last minute (perhaps to persuade them that the Company is too risky and that they ought to therefore approve the merger).

D. The Buy-out at the Bottom of the Market.

43. As previously described, the reaction of Mr. Zyskind and the members of the KZ family to the disasters of 2017 was to take a lemon and turn it into

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[3] According to the Company's 10-Q for the first quarter of 2018, the Mayfield transaction closed on February 28, 2018. The base cash price was $933 million and the Company recognized a $724.1 million gain on sale. AmTrust also kept an interest in the business.

lemonade—at least lemonade for the members of the family. The Company had repurchased almost $140 million worth of stock in 2016 at prices averaging over $24.60 per share. In May 2017 family members purchased $300 million in stock at $12.45 per share. Now they had the opportunity to buy out the minority and take the Company private.

44. In its valuation work, the Special Committee's investment banker (Deutsche Bank) essentially concluded that the Company's glory days were over, and that earnings per share and returns on equity would never return to pre-2017 levels. Indeed, the merger proxy statement notes that the Company's "peers" had an average price to next-twelve-month ("P/NTM") EPS of 16.8x. If that ratio were applied to the Company's 2016 earnings of $2.08 per share, one would get a price of almost $35 per share.

45. Deutsche Bank also noted that the Company's problems in 2017 had pushed its P/NTM multiple to a 57% discount to its peers, while the predicted EPS numbers were far below those of the Company's recent past.

46. In other words, based on the information supplied by management, Deutsche Bank assumed that low and risky earnings were the new norm at the Company, and it valued the Company accordingly.

47. Even if such a valuation otherwise made sense, it still would provide a purchaser with what is, in effect, a free option on the upside. In other words, if for

reasons unforeseen by Deutsche Bank (if not by Mr. Zyskind) the Company's economics improve, an acquirer will capture that improved value without paying for it since the $13.50 assumes little upside.

48. And, if the acquirer is an insider that knows far more about the corporation being valued than any investment banker possibly could, and if it has reason to believe that substantial improvements are likely, then the acquirer stands an excellent chance of capturing that value.

49. There are many reasons to believe that the KZ family has such information. First, as mentioned previously, in May 2017, its members bought $300 million of stock in a private placement at $12.45 per share. In addition, the Company has been hinting that things are getting better. For example, the following disclosure comes in its 10-K/A filed on April 23, 2018: "2017 was a transitional year for us. Our acquisition activity slowed as we took actions to strengthen our balance sheet and capital base and focus on our core business. While our 2017 financial results and stock price performance were disappointing, we accomplished important steps to position ourselves for the future, including adding several new key leaders and restructuring the management team." In addition, to boost the Company's prospects, the family can push to make sure that its various interrelationships with the rest of the KZ group are profitable and fair to the Company.

50. In short, unless the Company's claimed focus on long-term stockholder value is deceptive, there appear to be valid reasons to conclude that the Company should be able to achieve results that, while short of the 2014 peak, could rapidly cause its annual earnings per share and P/E multiple to return to levels that would increase the Company's value by a factor of two—or more. Better yet for defendants, the profits would largely remain in the family rather than having to be shared with outsiders they do not know.

51. There is another reason to believe that the Company's future results are not likely to be as gloomy as forecast in the merger proxy statement—Mr. Zyskind and his management team said so.

52. During a presentation to stock analysts held on November 8, 2017—the last such presentation made by management—Mr. Zyskind and his team aggressively made two points. First, the large Mayfield transaction would materially increase the Company's tangible book value (an estimated increase of $5.92 to $6.24 per share). Second, given the large amount of cash and new capital the Company had generated, it would be able to deliver 12-15% annual operating-earning returns on book value within a relatively short time.

53. It should be noted that these predicted returns do not come close to the returns on equity the Company previously enjoyed, but that 12-15% operating-

earning returns on the Company's book value would cause the Company to be valued far above $13.50 per share.

54. Deutsche Bank, the special committee's valuation expert[4], estimated the Company's December 31, 2017 book value to be $16.26 per share. That figure does not appear to include the large boost in book value that AmTrust received from the Mayfield transaction (which did not close until the day before the merger agreement was signed on March 1, 2018). Nevertheless, a range of 12-15% would lead to operating earnings per share of $1.95 to $2.44 or a mid-point of $2.20. Those numbers should be compared to the projections provided to Deutsche Bank by management or created by the committee:

Operating Earnings per Share

	2018	2019	2020	2021	2022
Special Committee Case	0.87	0.98	1.25	1.52	1.88
Case 1	1.21	1.44	1.71	1.98	2.28
Case 2	0.87	0.94	1.05	1.18	1.31
Downside Case	0.21	-0.13	0.23	0.48	0.69

[4] The structure of Deutsche Bank's compensation is less-than-comforting. According to the merger proxy statement, Deutsche Bank was paid a total of $8.5 million for its services. Of that, less than a quarter—$2 million—was payable on delivery of its fairness opinion. The other $6.5 million "is contingent upon consummation of the merger." In addition, Deutsche Bank does business with the KZ family's financial partner and, while the disclosures are opaque, it appears to do business with others in the KZ family and KZ Group as well. The stockholders are not told how significant these relationships are.

55. As can be seen, the Special Committee Case, Case 2 and the Downside Case never get operating earnings close to what Mr. Zyskind had told analysts was reasonable just a few months before. Indeed, the Company reiterated Mr. Zyskind's remarks in its 10-Q for the first quarter of 2018, which states that "[o]ur overall financial objective is to produce a return on equity of 12.0%-15% over the long term." Even Case 1—which the Committee was told was unduly optimistic—barely reaches such returns by 2021. Indeed, the implied returns on book value—a book value that does not appear to reflect (or at least fully reflect) the Mayfield transaction—are extremely low throughout the projections. If one were to use Deutsche Bank's tangible book value projection at December 31, 2018 to calculate book value, you would arrive at $17.32 per share.[5] (That number should include the Mayfield transaction but does not appear to). A mid-point 13.5% return on equity would result in operating earnings per share of $2.34. That suggests a per-share value well over $20 even if Deutsche Bank's unreasonably low earnings multiples are used.

56. And it appears that the KZ family is hoping to achieve exactly those types of results. They hope to purchase the minority's shares for values similar to those in Case 2 or the Special Committee case, and then achieve returns well north

[5] Based on Deutsche Bank's projected tangible book value per share at December 31, 2018, plus goodwill and intangibles per share as of March 31, 2018.

of those estimated in Case 1. Mr. Zyskind and his team evidenced little doubt that they could achieve such results relatively quickly in November 2018, and the huge haul of cash brought in by the Mayfield sale (which is only a partial sale—the Company still keeps a substantial interest in the "fee" business being sold), together with another $700 million of cash infusions in 2017, has stabilized the Company's finances.

57. Thus, based upon Mr. Zyskind's and the Company's own statements, this transaction should be a home run for the KZ family and its financial partner—all at the expense of the public stockholders.

E. The Record Date Manipulation.

58. The problem for the KZ Group, though, was how to avoid searching judicial review of the deal. Having to prove the "entire fairness" of a transaction involving a company with as many conflicts-of-interest as AmTrust would not be easy.

59. The Special Committee of "independent" directors did not present a difficult obstacle. As previously noted, of the four "independent" directors on the Committee, two have been directors since the Company went public in 2006, one of those is on the board of another KZ Group entity, NGHC, and three of the four have a pattern of rewarding Mr. Zyskind with large sums of money and looking on placidly as the related-party transactions between the Company and the KZ Group

get more tangled and thorny. Their technical independence is thus somewhat obscured by the number of fastballs Mr. Zyskind has been able to throw past them. Moreover, even the most aggressive special committee would have been faced with an enormous disparity of knowledge between themselves and the KZ family. Mr. Zyskind and his team know the Company intimately. The Special Committee did not have, and could not have had, a fraction of Mr. Zyskind's knowledge. It was not, therefore, the ideal setting for a negotiation that would protect the public stockholders.

60. The stockholders, by contrast, could have been a more difficult proposition. Many undoubtedly bought their stock at higher prices and cannot be happy at the prospect of the family taking advantage of the disparity of knowledge just after the stock hit bottom.

61. With close to 88 million shares held by the public, the KZ family needed to persuade approximately 43.9 million shares to vote in favor of the merger. One way to do that would be to push shares into the hands of those betting in favor of the merger. For example, if stockholders believe that a merger is likely to succeed, they often sell their shares at near the merger price even if they think the price is too low. Many of those shares end up in the hands of merger arbitrageurs, who either want the deal to succeed or a higher bid, and who are less likely to consider the fundamental value of the shares.

62. Here, the merger agreement was signed on March 1, 2018 and then publicly announced. As with most merger announcements, there was immediate spike in trading as arbs bought shares.

63. On April 9, the Company filed its preliminary Form 14A with the SEC. That filing, which was publicly available on the SEC's Edgar system, left blanks for the record and meeting dates. Plaintiffs do not know whether the meeting date had been set at the time. However, the record date had to have been set before then because the Delaware General Corporation Law (the "DGCL") prevents record dates from being backdated, and on May 4th the final merger proxy statement informed the stockholders that the record date was April 5th.

64. Hiding the record date until May 4th meant that investors would continue to buy stock under the belief that their shares would be able to vote at the special meeting (as happened to Plaintiffs), and the late announcement of the record date meant that there would be potentially tens of millions of "empty" votes, the party entitled to vote the shares held either no, or a reduced, economic interest in them.

65. In addition, the defendants ensured that the special meeting would be held a full 60 days after the record date—the maximum permitted under the DGCL—which will also maximize the number of empty votes. Although the process to distribute proxy materials takes time, it can be done in much less than

60 days. The time between the record and meeting dates could have been considerably compressed—but defendants chose to follow an approach that maximized empty voting.

66. Defendants and their advisors are now in a position in which they can encourage the holders of potentially tens of millions of empty votes to vote their long-sold shares in favor of the merger for relationship or other purposes since they no longer have the same, if any, economic interest in the outcome.

67. And that violates the fundamental principles upon which the *MFW* test stands. *MFW* is based upon the view that if the public stockholders are given a chance to vote separately on whether a deal is in their economic interest, that (and a functioning special committee) serves as an adequate proxy for real third-party bargaining.

68. But that view is based on the assumption that the public stockholders who are voting have a full economic interest in the vote. Some empty voting is inescapable, and will continue to be inescapable until technology allows the record date and the meeting date to be the same day. But for *MFW* to be meaningful, the manipulation of record dates to maximize the amount of empty voting, such as happened here, cannot be allowed.

69. This transaction should be evaluated under the entire fairness test, and defendants should be required to prove that both their conduct and the price they pay is entirely fair. They cannot do either.

COUNT I

Breach of Fiduciary Duty

70. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 69 as if fully set forth herein.

71. The Director Defendants, as members of the Company's board of directors, owe fiduciary duties of loyalty and care to the Company and its stockholders.

72. For the reasons set forth previously, the Director Defendants have violated their fiduciary duties by proposing an unfair transaction that would pay the public stockholders, including plaintiff, an unfair price for their stock.

73. Defendants must prove the entire fairness of their behavior and should the merger close it should either be rescinded or recessionary damages should be levied against them.

COUNT II

Declaratory Judgment

74. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 73 as if fully set forth herein.

75. For the reasons previously summarized, the plaintiffs respectfully request that, even if a majority of the public stockholders are reported by defendants to have voted in favor of the going-private merger, this Court declare that the merger was not entirely fair and that the manipulation of the record date both constituted a breach of fiduciary duty and caused the vote of the public stockholders to be an insufficient proxy for the purposes of *MFW*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order granting the following relief:

A. Finding that the Director Defendants have breached their fiduciary duties to the Company and its stockholders;

B. Entering a Declaratory Judgment as set forth above.

C. Rescinding any merger that occurs or granting plaintiffs an award of recessionary damages, interest, and their reasonable expenses, including attorneys' fees and costs.

D. Granting such other and further relief as this Court deems just and proper.

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