STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF CONTROL OF ARI CASUALTY COMPANY A SUBSIDIARY OF AMTRUST FINANCIAL SERVICES BY EVERGREEN PARENT, L.P. AND EVERGREEN GP, LLC, DAVID WERMUTH and NICHOLAS D. ZERBIB	HEARING OFFICER'S REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated May 2, 2018 and as supplemented through November 19, 2018 Evergreen Parent, L.P. ("Evergreen LP") and Evergreen Parent, GP, LLC, ("Evergreen GP"), David Wermuth ("Wermuth") and Nicholas D. Zerbib ("Zerbib") (collectively, "the applicants"), filed with the Department of Banking and Insurance ("the Department") an application to acquire control ("the Form A filing") of ARI Casualty Company ("ARI"), an indirect subsidiary of AmTrust Financial Services, Inc. ("AmTrust"). ARI is a New Jersey domiciled stock and property casualty company, which is in turn a direct, wholly owned subsidiary of ARI Insurance Company, a Pennsylvania domiciled property and casualty insurer, which is in turn a wholly owned, direct subsidiary of ARI HoldCo., Inc., a Delaware corporation, which is in turn a direct, wholly-owned subsidiary of AmTrust, which is a publicly traded Delaware corporation. ARI, the only New Jersey domestic insurer in this transaction, currently has no policyholders.

This transaction is part of an agreement whereby Evergreen, GP and Evergreen LP would acquire control of AMTrust, and thus ARI. As discussed in more detail below, Wermouth and Zerbib are two of five principals of the investment funds acquiring an interest in Evergreen LP and

the only principals that will assume board seats on Evergreen, GP. As a result of the proposed transaction, ARI would become an indirect wholly-owned subsidiary of Evergreen, LP.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on November 26, 2018. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The hearing panel and Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2(b). Public comments were allowed to be submitted through the close of business on November 26, 2018. One comment letter was received on November 26, 2018 from Arca Capital The comment identifies Arca Captial as a "significant shareholder" of AmTrust, owning 2.4% of the outstanding shares of AmTrust. Another comment was also received on November 26, 2018 from Alistair Capital. No other documents were required and the record was closed on November 26, 2018.

Findings of Fact

AmTrust owns various property and casualty companies throughout the United States, including ARI. AmTrust is a publicly traded Delaware Corporation. Barry Zyskind, George Karfunkel and Leah Karfunkel. (collectively, the "Karfunkel-Zyskind family") are the controlling shareholders of AmTrust and collectively control approximately 42.7% of the outstanding shares of common stock of AmTrust. Six persons related to the Karfunkel-Zyskind family ("Related Persons"), none of whom have a controlling interest, control an additional 12.6% of the common stock. In the aggregate, the Karfunkel-Zyskind family and related persons own or control approximately 55.3% of the common stock of AmTrust. Public stockholders hold 44.7% of the remaining stock. The effect of the transaction will be to privatize AmTrust such that it will be

owned by Evergreen LP, the Karfunkel-Zyskind family, and two minority co-investors, Madison Dearborn Partners, LLC ("MDP") and Enstar Group Limited ("Enstar").[1]

As set in the Form A filing, Evergreen LP was formed on February 27, 2018, for the purpose of the proposed acquisition of control. The general partner of Evergreen LP is Evergreen GP, which was formed on February 27, 2018 for the sole purpose of acting as the general partner of Evergreen LP by managing, operating and controlling its business and affairs, but Evergreen GP does not have an economic interest in Evergreen LP. Evergreen LP's limited partners and Evergreen GP's members are Trident Pine Acquisition, L.P., a Delaware limited partnership, ("Trident Pine") and K-Z Evergreen, LLC, a Delaware limited liability company, which is currently owned by the Karfunkel-Zyskind family ("K-Z LLC").

The limited partners of Trident Pine are Trident VII, L.P. (a Cayman Islands limited partnership); Trident VII DE Parallel Fund, L.P. (a Delaware limited partnership); Trident VII Parallel Fund, L.P. (a Cayman Islands limited partnership); and Trident VII Professional Fund, L.P. (a Cayman Islands limited partnership).

Neither Evergreen LP or Evergreen GP have engaged in any business other than in connection with the proposed acquisition of control.

The Trident VII Funds were established in 2016 to make private equity investments in the global financial services industry. Except for Trident VII Professional Fund, L.P., their general partner is Trident Capital VII, LP and they are managed by Stone Point Capital, LLC ("Stone Point Capital"). Trident VII Professional Fund, LP's general partner is Stone Point, GP, Ltd. The Trident VII Funds have total capital commitments of $5.55 billion, of which approximately $1.177 billion is invested in seven portfolio companies as of May 2, 2018.

[1] Neither MDP nor Enstar will acquire 10% or more of AmTrust, and thus are not "applicants" for purposes of this proposed transaction.

Stone Point Capital is a Delaware limited liability company and private equity firm headquartered in Greenwich, Connecticut that was formed on March 16, 2005. Stone Point Capital has raised and managed seven private equity funds with aggregate committed capital of approximately S19 billion to make investments in the global financial services industry. This company is controlled by Charles A. Davis, David J. Wermuth, James D. Carey, Nicolas D. Zerbib and Stephen Friedman (collectively the "Stone Point principals"). Stone Point GP Ltd., a Cayman Island limited company, was formed on April 22, 2005, and is the general partner of Trident VII Professionals Fund, L.P. Two of the principals, Wermouth and Zerbib, will receive board seats and thus shall have the ability to exert direct control over the actions of the AmTrust group and its New Jersey domestic insurer.

The applicants also state that approximately $1.2 billion of the consideration for the transaction will be funded with cash from the following sources:

a) approximately $567 million by the Trident VII Funds (through Trident Pine);
b) approximately $283 million by K-Z LLC;
c) $150 million by the MDP VII Funds (through MHJV Holdings, L.P.); and
d) $200 million by Enstar via cash.

The balance of approximately $56.5 million will be funded with available cash resources at AmTrust. The applicants stated that no dividends or other distributions are contemplated to be paid by the insurer to fund any portion of such balance.

Additionally, the Karfunkel-Zyskind Family have entered into a $300 million line of credit from J.P. Morgan, the proceeds of which are sufficient to fund all of their obligations. The total aggregate consideration for transaction is expected to be approximately $1.26 billion.

Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

> (1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:
>
> (i) After the change of control the domestic insurer ... would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
>
> (ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein ... [applying the competitive standard as set forth in the statute];
>
> (iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
>
> (iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50 percent of the purchase price of the insurer;
>
> (v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Upon a thorough review of the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, the insurer will continue to meet the requirements to transact the business for which it is presently licensed pursuant to Title 17 of the New Jersey Statutes. ARI was formed on August 27, 1979, commenced business in New Jersey on October 5, 1979. There is nothing in the record to indicate that after the proposed acquisition the insurer would not be able to continue to satisfy the requirements to transact the business for which it is presently licensed. Moreover, ARI is presently in runoff and has no active policyholders, and does not presently write business in New Jersey. Additionally, by way of Consent Order A18-113, ARI has committed that it will not commence writing new business in New Jersey without the prior permission of the Commissioner.

Second, it does not appear that the acquisition of ARI will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1d shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. ARI is presently in run-off and does not write any business, and has no policyholders in New Jersey. Also, as noted above, ARI may write no new

business without the consent of the Commissioner pursuant to the terms of Consent Order A18-113. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the overall market share of the involved insurers after the acquisition. See N.J.S.A. 17:27A-4.1(b)(2)(d). As the applicant is not an insurer, the applicant and ARI do not compete against each other in New Jersey, and consequently no increase post-acquisition in the market share of the involved insurers would occur in the New Jersey insurance market. Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1. Thus, it does not appear that the acquisition of ARI will substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, based on a review of the application including extensive confidential financial information submitted with the application, it does not appear that the financial condition of the applicants will jeopardize the financial condition of ARI.

Fourth, it appears that the financial condition of the applicants for the relevant time periods is such that it has been solvent on a basis of generally accepted accounting principles. A review of the assets and liabilities contained in the December 31, 2017 confidential financial statements of the Trident VII Funds filed with the Form A, combined with the represented initial total funding capability of the funds of $5.5 billion is adequate to fund the transaction. However, the income information in those financial statements, reflective of one year of existence of the funds, is not sufficiently indicative of a fund's income capacity. Therefore, it does not provide particularly relevant information, and in such a case, is not a relevant factor that would disqualify approval of the transaction, and the Department's extensive review of confidential financial information submitted with the application provided additional support for this factor.

Further, no debt is being used to finance the transaction on behalf of the applicants. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicant does not propose to liquidate ARI or sell its assets. As set forth above, the applicant does not intend to make any material change to ARI's business operations, corporate structure, management, or general plan of operations. Further, as noted above, ARI currently is in runoff and has no active policyholders, and may not continue writing new business without the consent of the Commissioner.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience, and integrity of the persons who will control the operations of the ARI are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. The composition of the Board of Managers after the closing of the merger is contemplated to consist of Barry Zyskind, Geroge Karfunkel and Leah Karfunkel and two Stone Point principals, Nicolas Zerbib and David Wermuth. Mr. Zyskind and the Karfunkels are already associated with AmTrust. In addition, as discussed above, ARI is in run-off and has no active policyholders. The applicants have not indicated any intention to change this in the near future, and any plans to resume active writing will be subject to the prior approval of the Commissioner pursuant to Consent Order No. A18-113. Thus, the Commissioner will have the continuing ability to review any future plans of the applicants and ARI to conduct insurance business to ensure that the proposed operations are in not in conflict with the best interests of policyholders, consumers and the public.

Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for all of the reasons set forth above.

Arca Capital cites two reasons for disapproval of the transaction. One is that Arca Capital "believe [sic] the transaction is not permissible per the regulations outlined in New Jersey Insurance Code Section 17:27A-2 [sic]- Acquisition of control of or merger with domestic insurer." By this, the commenter is understood to cite to N.J.S.A. 17:27A-2 to -14. The other reason cited for disapproval is that it "ha[s] reason to believe that there are still questions about the legitimacy of this transactions [sic] on the grounds that appropriate shareholder approval may not have been received and the special committee of the board that negotiated the deal may have been excessively conflicted, and that [t]hus, we are asking for a delay in your review and decision on this merger while investigations are being conducted and while litigation is making its way through the Delaware Court of Chancery."

Under N.J.S.A. 17:27A-2, Arca Capital cites that the following reasons give rise to disapproval:

First, Arca Capital states that "the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest." N.J.S.A. 17:27A-2(1)(v). In support of his statement, the commenter cites to various online news articles, none of which support the allegation and which concern alleged conduct of other AmTrust companies in the past, not the domestic insurer, ARI. Most notably, the comment does not take into account, as noted above, that ARI is in runoff, has no active policyholders, and cannot not commence writing new business

in New Jersey without the prior permission of the Commissioner pursuant to Consent Order No. A18-113. Thus, the hearing panel and Department staff do not believe that this reason cited by Arca Capital constitutes a reason to recommend that the proposed transaction be disapproved.

Arca Capital further states that "the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control." N.J.S.A. 17:27A-2(d)(1)(vi). Again, the commenter cites to various online articles that do not address the management that will control ARI, which as noted, is in runoff and has no active policyholders, and which cannot write new business without prior approval of the Commissioner. Indeed, a review of the articles cited reveals that they are perfunctory in nature and do not support the allegations made by Arca Capital, including unsubstantiated allegations of "investigations for embezzlement." Thus, the hearing panel and Department staff do not believe that this reason cited by Arca Capital is a reason to recommend that the proposed transaction be disapproved.

Arca Capital also states as a reason for disapproval that '[t]he acquisition is likely to be hazardous or prejudicial to the insurance buying public." N.J.S.A. 17:27A-2(d)(1)(vii). In support of this statement, it is stated that "[w]ithout the oversight of public shareholders, AmTrust management will answer to no one which will likely lead to further discriminatory denials of coverage, unfair denials of payouts and failure to keep sufficient reserves. If you reject the transaction you can be assured that Arca Capital will keep a close watch on management and call out any future dubious dealings." Though Arca Captial contends that management will have to "answer to no one" other than "public shareholders," this fails to note that the Department maintains regulatory oversight over the companies and individuals involved in this transaction and its subsequent dealings with the insurance buying public. The proper regulatory role lies with the

Department, and not AmTrust shareholder Arca Capital. Thus, this commenter's stated reason is not a reason sufficient for the hearing panel and Department staff to recommend that the proposed transaction be disapproved.

The last reason cited for disapproval is that it "ha[s] reason to believe that there are still questions about the legitimacy of this transactions on the grounds that appropriate shareholder approval may not have been received and the special committee of the board that negotiated the deal may have been excessively conflicted." However, as noted in its comment letter, that is properly a matter for the Chancery Court in Delaware, where Arca Capital states there is pending litigation. Thus, this reason is not a basis to disapprove the transaction that is cognizable under the insurance law of this State in N.J.S.A. 17:27A-2.

Further, Alistair Capital states that the transaction should be disapproved because:

(1) The financial condition of certain acquiring parties are such as might jeopardize the financial stability of the insurer or prejudice the interests of policyholders;

(2) the competence, experience, and integrity of the persons who would control the operation of the insurer are such that approving the proposed transaction would not be in the interest of its policyholders or the insurance-buying public; and

(3) the acquisition is likely to be hazardous or prejudicial to its policyholders and/or the insurance-buying public. This commenter further states that "while I believe each of the criteria referenced above are implicated and, therefore, warrant disapproval of Evergreen's proposed acquisition of AmTrust, I believe the risk the proposed transaction poses to

existing policyholders and the insurance-buying public in particular mandates disapproving the proposed transaction without modifications and conditions.

Regarding its comments about the financial condition of the acquiring party, Alistair Capital refers to the contribution from the Karfunkel-Zyskind Family funded by a $300 million line of credit from J.P. Morgan. It should be noted that this line of credit to the Karfunkel Zyskind Family, which already controls the insurer, and is not an applicant in the current proposed transaction, is being utilized as part of increasing their existing ownership share of AmTrust, and thus the insurer.

It is significant that Alistair Capital proposes disapproving the transaction "without modifications and conditions." This commenter directs most of its letter to AmTrust in general, the parent of ARI, the New Jersey domestic insurer. The comments are not principally directed to the applicants. Of particular note is that, although AmTrust will be acquired by the applicants as part of the transaction to be evaluated by the Department, it is more specifically the acquisition of ARI that is before the Department. As discussed above, it is highly relevant that ARI is in run-off and has no active policyholders. The applicants have not indicated any intention to change this in the near future, and any plans to resume active writing will be subject to the prior approval of the Commissioner pursuant to Consent Order No. A18-113. Thus, the Commissioner will have the continuing ability to review any future plans of the applicants and ARI to conduct insurance business to ensure that the proposed operations are in not in conflict with the best interests of policyholders, consumers and the public. Thus, the modifications and conditions with which Alistair Capital is concerned are already embodied in Consent Order A18-113.

Alistair Capital further comments about the terms of the transaction, and what is viewed as its favorable treatment to some AmTrust investors over other investors. In this regard, Alistair Capital states that "I believe the structure of the proposed transaction raises serious questions about the integrity of all of the acquiring persons, including the Private Equity Investors." Such a conclusion refers principally to the business decisions of sophisticated parties that have negotiated the terms of a transaction at arms-length. More importantly, however, the terms of a transaction dealing with the treatment of various AmTrust investors do not bear on the "competence, experience and integrity of those persons that would control the operations of the insurer [ARI]," which as noted above, is in runoff, has no active policyholders, and cannot write new business without the permission of the Commissioner. Moreover, the assertions regarding the financial condition of certain acquiring parties are such as might jeopardize the financial stability of the insurer or prejudice the interests of policyholders are also belied by the fact that ARI is in run-off, cannot write new business without the approval of the Commissioner – which if it occurs will be subject to this Department's continuous risk-focused solvency monitoring and market conduct regulation, and by the Department's review of the subject filing pursuant to N.J.S.A. 17:27A-2. Thus, the hearing panel and Department staff do not believe that the proffered reasons are not sufficient to disapprove of the transaction.

Recommendation

Based on the foregoing analysis, the hearing panel and Department staff recommend that the proposed acquisition be approved.

Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed acquisition be approved.

11/27/18
Date

Jonathan Cuttler
Hearing Officer

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Exhibits List

IN THE MATTER OF THE ACQUISITION OF CONTROL OF ARI CASUALTY COMPANY ("ARI") by EVERGREEN PARENT, L.P., EVERGREEN PARENT GP, LLC , DAVID J. WERMUTH and NICOLAS D. ZERBIB (the "Applicants")

Exhibit 1- Form A application dated May 2, 2018 including narrative, certain confidential financial information and agreements, biographical affidavits and pre-closing and post-closing organizational charts

Exhibit 2 – June 26, 2018 Amendment to Form A application

Exhibit 3 – July 30, 2018 2nd Amendment to Form A application (CONFIDENTIAL – certain investment structures)

Exhibit 4 – August 2, 2018 – Biographical Affidavit supplement to Form A application (CONFIDENTIAL)

Exhibit 5 – August 23, 2018, 3rd Amendment to Form A application (CONFIDENTIAL – Amended and restated partnership agreements)

Exhibit 6 – September 5, 2018 - Supplement to Form A application (CONFIDENTIAL – certain investment strategies)

Exhibit 7 – October 7, 2018 Notice of potential additional rollover shares to rollover agreement Submitted by Lara Zaitzeff, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP

Exhibit 8 - October 15, 2018 – 4th Amendment to Form A application with certain information noted as CONFIDENTIAL

Exhibit 9 - October 16, 2018 – 5th Amendment to Form A application from Fred Marro, Esq. confirming runoff status of ARI Casualty Company

Exhibit 10 – November 15, 2018 6th Amendment to Form A application from Scott Riley, Esq.

Exhibit 11 – November 19, 2018 supplement to Form A application with certain confidential financial information

Exhibit 12 – Affidavit of Publication of Notice of Hearing in New Jersey Herald for date of November 19, 2018

Exhibit 13 – Affidavit of Publication of Notice of Hearing in The Press of Atlantic City for date of November 19, 2018

Exhibit 14 – Waiver of 20-day notice of hearing submitted by Fred Marro, Esq. (for Applicants), dated November 21, 2018

Exhibit 15 – Waiver of 20-day notice of hearing submitted by Stephen Ungar, Esq. (for domestic insurer ARI Casualty, a subsidiary of AmTrust), dated November 21, 2018

Exhibit 16 – Comment letter of November 26, 2018 by Adam Swart of Arca Capital

Exhibit 17 – Comment letter of November 26, 2018 by Casey Nelson of Alistair Capital