

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Proposed)	
Exemption of)	
)	
AMTRUST FINANCIAL SERVICES, INC.)	
NAIC Group Code 2538)	Docket No. 81788
WESCO INSURANCE COMPANY, INC.)	
NAIC No. 25011)	
)	
and)	
)	
AMTRUST INSURANCE COMPANY OF)	
KANSAS, INC.)	
NAIC No. 15954)	
)	

ORDER

Now on this 30th day of December, 2019, the above matter comes before the Commissioner of Insurance of the State of Kansas (the “Commissioner”) upon the request of AmTrust Financial Services, Inc. (“AmTrust”) and Wesco Insurance Company, Inc. (“Wesco”), concerning AmTrust Insurance Company of Kansas, Inc. (“AICK”) (collectively, “the Parties”) dated September 23, 2019, and received by the Kansas Insurance Department (“Department”) on September 24, 2019. The Parties request an Order, pursuant to K.S.A. 40-3304(e)(1), exempting AmTrust and Wesco from the filing and approval requirements of K.S.A. 40-3304(a), as said statute may be construed to apply to a proposed internal change of control of AICK.

Pursuant to the authority granted to the Commissioner by K.S.A. 40-3301 and 40-3304(e) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, *et. seq.*, the

Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law, and orders the following:

DECLARATION OF PUBLIC INTEREST AND POLICY

The following statements of fact and conclusions of law are made with the intent to promote the policies and objectives enumerated in K.S.A. 40-3301.

FINDINGS OF FACT

The findings of fact and conclusions stated herein are based upon the statements made by the Parties.

1. The Commissioner has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 40-3301, *et seq.*
2. AmTrust and Wesco have requested an exemption pursuant to K.S.A. 40-3304(e) from the prior approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements outlined in K.S.A. 40-3304(a).
3. Currently, AmTrust directly owns all of the issued and outstanding shares of AICK, a domestic Kansas insurance company. Additionally, AmTrust owns all of the issued and outstanding shares of Wesco. Under the proposed transaction, AICK will become a direct subsidiary of Wesco, pursuant to a capital contribution of the shares of AICK from AmTrust to Wesco. As a result of the transaction, AICK will remain an indirect subsidiary of the same ultimate controlling person and a member of the AmTrust insurance holding company system.
4. **Background**
 - a. Effective October 1, 2017, Technology Insurance Company, Inc. (“Technology”), a Delaware insurance company and an affiliate of the Parties, entered into an

intercompany reinsurance pooling agreement (“Pooling Agreement”) with sixteen of AmTrust’s United States property and casualty insurance affiliates, including AICK (“Pool Members”), whereby the Pool Members agreed to cede and transfer to Technology, and Technology agreed to assume:

- i. 100% of the Pool Members’ respective liabilities on all insurance policies and all assumed reinsurance contracts that were in force as of October 1, 2017, or that had expired or that had been terminated or non-renewed as of October 1, 2017, and
 - ii. 100% of the Pool Members’ respective liabilities on all insurance policies and all assumed reinsurance contracts issued subsequent to October 1, 2017.
- b. In accordance with the Pooling Agreement, Technology retrocedes 45% of its net retention risk (net of its quota share reinsurance agreement with AmTrust International Insurance, Ltd., a Bermuda reinsurance company and an affiliate) to three affiliates: Wesco (25%), Security National Insurance Company (“SNIC”) (10%), and Developers Surety and Indemnity Company (“DSI”) (10%) (collectively, with Technology, the “Risk Bearing Pool Members”).

5. Proposed Plan

- a. To ensure that Risk Bearing Pool Members receive the benefit of the surplus available to the pool, AmTrust proposes to contribute its ownership of certain non-risk bearing pool members to the Risk Bearing Pool Members (the “Stacking Plan”), so that each of the Risk Bearing Pool Members would become a direct owner of certain non-risk bearing pool members, who hold 22% of the total

pooled surplus. AmTrust would contribute its direct ownership of the non-risk bearing pool members as a capital contribution to the Risk Bearing Pool Members.

- b. Each of the Risk Bearing Pool Members would own 100% of the net equity and surplus of the non-risk bearing pool members as an admitted asset that would become part of each entity's overall surplus. The Stacking Plan would enable the utilization of close to 100% of the Pool Members' surplus to support 100% of the Risk Bearing Pool Members' net insurance risk, while maintaining the gross written premium leverage requirement at the individual Pool Member, thereby improving substantially the risk based capital ("RBC") ratios of the Risk Bearing Pool Members without changing the RBC ratios of the non-risk bearing pool members.
- c. Under the Stacking Plan, AICK will become a direct subsidiary of Wesco, which will own 100% of the net equity and surplus of AICK. AICK will remain an indirect subsidiary of the same ultimate controlling persons: Barry Zyskind, George Karfunkel, and Leah Karfunkel, who are each considered an ultimate controlling person of AmTrust.
- d. AICK's current business plan and slate of directors and officers will not change under the proposed transaction.
- e. Neither Wesco nor any affiliate will acquire or incur any debt, guarantee, or other liability related to the proposed transaction.

APPLICABLE LAW

6. K.S.A. 40-3304(a)(1) provides:

“No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.”

7. K.S.A. 40-3304(e) provides:

“The provisions of this section shall not apply to:

“Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as:

“(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

“(2) as otherwise not comprehended within the purposes of this section.”

CONCLUSIONS OF LAW

8. Representatives of the Financial Surveillance and Legal Divisions of the Department inspected and reviewed the contents of the request.
9. Based on the information enumerated in the Findings of Fact, contained in paragraphs 1-5 above, and the representations made on behalf of AmTrust, Wesco, and AICK, the Stacking Plan within the holding company system is not made for the purpose of, and

will not have the effect of, changing or influencing the control of the domestic company, AICK.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The Parties shall be exempt from the formal filing and approval requirements of K.S.A. 40-3304(a) as it may apply to the proposed transaction.
2. The Parties shall continue to comply with the provisions and requirements of K.S.A. 40-3301 *et seq.*, in the future.
3. The Commissioner retains jurisdiction over the subject matter of this proceeding and over the Parties for the purpose of entering such further order or orders as may be deemed proper.

NOTICE OF RIGHTS

This Final Order is effective upon service. Pursuant to K.S.A. 77-529, the Applicant may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, *et seq.* Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within thirty (30) days following the service of this Final Order, unless the Applicant petitions the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within thirty (30) days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event the Applicant files a petition for judicial review, the agency officer to be served on behalf of the Department is:

Justin McFarland, General Counsel
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, Kansas 66604

IT IS SO ORDERED THIS 30th DAY OF DECEMBER, 2019, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.



Vicki Schmidt
Commissioner of Insurance

By:




Paige Blevins
Staff Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order was forwarded via electronic mail on this 30th day of December 2019, to:

Janie V. Clark
Vice President
Regulatory Counsel
AmTrust Financial
janie.clark@amtrustgroup.com



Toni Garrard
Senior Administrative Assistant