

**Pruss v AmTrust N. Am. Inc.**

2022 NY Slip Op 31795(U)

June 6, 2022

Supreme Court, New York County

Docket Number: Index No. 150223/2018

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

*Justice*

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EITA PRUSS, HARRY KLEIN,

Plaintiff,

INDEX NO. 150223/2018

MOTION DATE 04/22/2022

MOTION SEQ. NO. 012

- v -

AMTRUST NORTH AMERICA INC., AMTRUST FINANCIAL  
SERVICES, INC., BRIAN KUHN, SHERRI PAVLOFF,  
FARBER BROCKS & ZANE L.L.P., LESTER SCHWAB  
KATZ & DWYER, LLP,

Defendant.

**AMENDED  
DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 450, 452, 453, 454

were read on this motion to/for DISCOVERY

**BACKGROUND**

In approximately December 2015 Sherri Pavloff (Pavloff) was retained by AmTrust Financial Service Inc (AmTrust) to advise it and the CastlePoint National Insurance Company (CastlePoint) for which AmTrust acted as claim administrator concerning the settlement of a serious bodily injury action brought by Eita Pruss (Pruss). On July 28, 2016, CastlePoint was placed in Conservation in California.

In August 2016, Pavloff attended the settlement conference and committed CastlePoint to contribute its \$5 million policy limit to a \$9 million settlement "so ordered" by Justice Silver. However, the Conservation Order provided that AmTrust could not offer CastlePoint's \$5 million policy limit without the prior approval of the Conservator or Conservation Court. The Conservator did not approve CastlePoint's participation in the settlement. The Court (Silver, J),

held a conference on August 9, 2017, wherein Pavloff stated she did not have the Conservation Order at or prior to the settlement conference in August 2016.

In January 2017, AmTrust was sued by Pruss for fraud, negligent misrepresentation, and deceptive business practices.

On March 7, 2019, Pavloff was deposed as part of the Liquidation Proceedings of CastlePoint. After the deposition, AmTrust decided to file the instant action for legal malpractice as against Pavloff and the law firm of Farber Brocks & Zane, LLP (FBZ). Pavloff left FBZ in and became employed by Stonberg Moran LLP.

### **PENDING MOTION**

AmTrust moves for the court to “so order” a judicial subpoena directed to the law firm of Stonberg Moran LLP and for an order pursuant to CPLR §3124 to compel defendants Sherri Pavloff (Pavloff) and Farber Brocks & Zane (FBZ) to fully comply with outstanding discovery requests.

On or about April 20, 2022, Amtrust withdrew the portion of the motion seeking to compel FBZ to comply with outstanding discovery request, specifically copies of liability insurance policies.

Pavloff submitted opposition.

On May 25, 2022, due to misinformation provided to the court by court staff, a decision was issued granting the motion only to the extent of setting the matter down for a conference. Thereafter, once the court was made aware that a conference had already taken place, the court notified the parties that the May 25, 2022 decision would be amended, with the consent of all parties, and a decision would be issued on the merits.

On June 1, 2022 Stonberg filed opposition and the court reserved decision.

## DISCUSSION

Amtrust is requesting the court to so-order a subpoena which orders Pavloff and nonparty law firm Stonberg Moran LLP to provide a copy of the 2020 liability insurance policy without redactions, as well as copies of policies from 2017-2018, 2018-2019, and 2019-2020. Amtrust is also seeking various communications between the insurance broker and Stonberg, Pavloff, FBZ and the Furman firm.

CPLR §3101 provides, in pertinent part

(f) Contents of insurance agreement. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purpose of this subdivision, an application for insurance shall not be treated as part of an insurance agreement.

Both Pavloff and Stonberg argue that the information requested by AmTrust has in part already been provided. Pavloff provided a sworn affidavit stating the only policy she is aware of was that with Travelers Casualty and Surety Company of America, under Policy Number 105795499, with coverage limits of \$2,000,000 per claim / \$2,000,000 aggregate (NYSCEF Doc 428). This affidavit is further supported by the copies of those Travelers policies submitted by FBZ.

In addition, Pavloff affirms that this specific lawsuit was excluded under the professional insurance policy provided by her employment with Stonberg. This information and the policy showing the exclusion of the instant proceeding was provided to AmTrust in November 2021. As a matter of fact, AmTrust provided Pavloff's Affidavit and the copy of the Stonberg policy as an exhibit in support of the instant motion (NYSCEF Doc 407 and 408).

This statement is further supported by the affidavit of Michael L. Stonberg, Esq., in opposition to the instant motion, as member of the law firm Stonberg Moran LLP, where in Mr. Stonberg affirms that Pavloff was not affiliated with Stonberg Moran before May, 2019, and any information sought which pre-dates her employment is wholly irrelevant to this matter. However, Stonberg did offer initially the policy insurance in effect from November 15, 2020 to November 15, 2021, and then the 2019 policy, with information redacted.

The document information AmTrust is requesting in the subpoena has already been disclosed by Pavloff, FBZ and/or Stonberg. The requests for Stonberg's policies prior to when Pavloff was employed is irrelevant to the instant action and overly broad. As is the Broker's information for each of the policies requested.

As to AmTrust request (No 6) for communications between the Broker and Stonberg as to the 2020 policy, as it does concern the exception to coverage of this action, the court will so order a subpoena for Stonberg to comply. As to AmTrust requests (No 7, 8, 9), for communications between Pavloff and Stonberg concerning this action and insurance coverage, as it is relevant to the policy exception to coverage of this action, the court will so order a subpoena for Stonberg and Pavlov to comply.

As to Amtrust request (No 10, 12 and 13) for communications between FBZ and or its counsel, and communications between Furman firm concerning this action, as it is requested is denied as irrelevant and overly broad. Stonberg is not a party to this action and has clearly established that they have not provided Pavloff with insurance coverage for this incident which occurred years before her employment with Stonberg began.

As to AmTrust request (No 11) for communications between FBZ and Stonberg concerning the Stonberg Moran 2020 Policy and/or Specific Prior Acts Date endorsement in the

Stonberg Moran 2020 Policy as it is relevant to the policy exception to coverage of this action, the court will so order a subpoena Stonberg to comply.

AmTrust's requests for fees and costs for having to bring this motion is denied, as the majority of information being requested by AmTrust was already provided by Pavloff and Stonberg, prior to the motion being filed.

### CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff AmTrust's motion to compel and so order a subpoena for defendant Pavloff and non party Stonberg to comply with discovery requests is granted only to the extent as provided above; and it is further

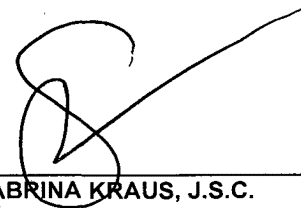
ORDERED that AmTrust may submit a subpoena as outlined above for the court to so order; and it is further

ORDERED AmTrust's motion for fees is denied for the reasons stated above; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on all parties and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

This constitutes the decision and order of the court.



6/6/2022  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE