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January 28, 2020

Janet Rickerschauser, AMSAT Counsel
Hurwit & Associates
1150 Walnut Street, Newton, Massachusetts 02461

Dear Ms. Rickerschauser

I have been retained by Patrick Stoddard and Michelle Thompson, two new members of the Board of Directors, to assist them in their request for certain Radio Amateur Satellite Corporation (“AMSAT”) corporate documents. I understand you represent AMSAT in this matter.

1. DEMAND

With this letter, Mr. Stoddard and Ms. Thompson formally request the following information:

1. All documents referring or relating to the following:
 - a. The election process for the 2019 election, including requests of candidates, the policy on candidate statements, legal advice regarding the election, choice and performance of software used for the election process, and information about how and when ballots were cast;
 - b. Financial performance, statements and information;
 - c. List of members, software and procedures to manage these lists;
 - d. Derogatory, profane, retaliatory, threatening, or impolite communications regarding members, directors, officers, or candidates, especially those with differing views or approaches;
 - e. Comments about candidates running for office;
 - f. Decisions regarding AMSAT technology, including whether to use open source and/or digital technology, vendors, procurements, and/or policies regarding the same;
 - g. International collaborations; and
 - h. Problems such as failed website functions, failed satellites, and the actions taken by AMSAT to address them, as well as communications with members regarding the same.

2. All Communications between or among directors, and/or any director and Counsel, at any time in the last ten years referring or relating to the above.

The purpose of this demand is to inform Ms. Thompson and Mr. Stoddard so that they may (i) fulfill their fiduciary duties (ii) ensure that the other members of the Board are fulfilling their fiduciary duties, and (iii) investigate rumored and/or possible mismanagement, financial or otherwise. More specifically, their goal is to obtain sufficient information to help them to suggest changes in policies, procedures and/or vendors to help AMSAT improve its capability of meeting its mission and serving its members.

2. LAW

Under the law of the District of Columbia (D.C.), AMSAT is legally required to provide my clients with the information described above. D.C. law unambiguously grants nonprofit directors unfettered access to corporate books, records and documents (broadly, “Records”). The only exception is when the Records are not reasonably related to the performance of the director’s duties. Please note, however, that there is a strong presumption in favor of providing directors with access to Records.

Section 29-413.05 of the Nonprofit Corporation Act of 2010 includes the following provision:

(a) A director of a nonprofit corporation shall be entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director’s duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this chapter.

If for some reason, the nonprofit corporation decides not to comply with this plain language, the statute also includes a remedy. Section 29-413.05(b) provides a procedure by which a director can apply for an expedited Superior Court order allowing inspection and copying of the Records. Subsection (c) permits courts to order the corporation to reimburse director costs, including attorney’s fees.

Corporations are not permitted to deny access to records without evidence that the exception to the entitlement applies.¹ In fact, one court has stated that “[a] director who has a proper purpose ... has virtually unfettered rights to inspect books and records.”² This is true because a director cannot fulfill fiduciary obligations without access to books and records. This court further noted, “[a] director’s purpose is not automatically rendered improper ‘because of the possibility that he may abuse his position as a director and make information available to persons hostile to the Corporation or otherwise not entitled to it ...’”³ In this case, the company had argued that the director’s stated purpose was only a pretext and that his real purpose was

¹ See *Becker v. Elm City Food Coop., Inc.*, 2015 Conn. Super. LEXIS 267, *11-12, where the court required disclosure to a director after the corporation provided no evidence of an improper purpose.

² See *Schnatter v. Papa John's Int'l, Inc.*, 2019 Del. Ch. LEXIS 18, 20 (citing *Chammas v NavLink*, 2016 Del. Ch. LEXIS 22).

³ See *Id.* at 21 (citing *Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 129 (Del. Ch. 1969)).

personal and improper. The court ruled that the director was still entitled to the records as long as he had legitimate fiduciary concerns – even if he also had a personal motive.⁴

Please note that corporations bear the burden of proving by a preponderance of the evidence that a director's purpose is not reasonably related to his position as a director.⁵ Commentators have noted that companies should be "very cautious before denying a director's demand and should anticipate litigation if they do deny the director access to books and records."⁶

3. CONCLUSION

AMSAT is not permitted to deny my clients their statutory right to examine the Records requested. As new board members, they have fiduciary obligations to make decisions in the best interest of AMSAT and its members. If AMSAT illegally blocks their access to ordinary corporate communications, they will not be able to effectively fulfill this responsibility.

I understand that you spoke with Mr. Stoddard regarding this matter on October 24, 2019. Broadly, you and the board have communicated to my clients that they are being denied access for one or more of the following reasons:

1. Mr. Stoddard and Ms. Thompson have a personal motive in asking for this information, rather than a goal of meeting their fiduciary responsibility;
2. Mr. Stoddard and Ms. Thompson might use the information provided as a basis for a possible lawsuit against AMSAT;
3. It is possible that my clients would breach their fiduciary obligation to keep the information confidential if they are provided access to it; and
4. AMSAT cannot release these materials to my clients until it has created a Conflict of Interest Policy and/or Confidentiality Policy.

I am not aware of any evidence to support any of these claims. My clients were elected by members of AMSAT after campaigning for reform and transparency. They have a legal right to inspect AMSAT's records to determine what changes, if any, should be made to AMSAT's policies and procedures. In addition, they have a mandate from the voting members to fulfill their campaign promises to ensure good governance and appropriate oversight.

⁴ See *Id* at 28.

⁵ See *Id* at 22.

⁶ See <https://www.pepperlaw.com/publications/court-of-chancery-reaffirms-directors-broad-books-and-records-inspection-rights-2019-02-06/>

Ms. Thompson stated the following in her campaign materials:

Members of AMSAT deserve to see what is going on in engineering. Members deserve to know the financial and membership numbers. Members deserve to be able to communicate with and, when necessary, critique board members, without threats of retaliation and retribution. Members deserve to be treated fairly. Members should see problems acknowledged, explained, and addressed reasonably quickly. Whether the problem is a failed satellite or a failed website function, we need leadership that views questions as opportunities and not existential threats.

It is hard to imagine that the AMSAT Board would disagree with the above sentiment. It is harder still to understand how this desire could be characterized as “personal” rather than “fiduciary.” My clients have no desire to initiate lawsuits, waste resources, or harm AMSAT in any way.

My clients are hoping that this matter can be resolved amicably and quickly for the benefit of all parties. They understand their fiduciary responsibility and are committed to upholding the best interests of AMSAT. There is no good reason to continue to argue over access to the Records. Our goal is to resolve this issue without additional expense. My clients anticipate working productively with the other members of the AMSAT Board in the future.

I look forward to a response from you by February 7, 2020. I can be contacted by email at cklamp@klamplaw.com or phone at 202-223-4600.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carolyn A. Klamp', written in a cursive style.

Carolyn A. Klamp,
Counsel to AMSAT Board Members

cc: *Michelle Thompson*
Patrick Stoddard