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AmTrust Investor Seeks Records In \$2.7B Take-Private Deal

By **Vince Sullivan**

Law360, Wilmington (May 30, 2018, 9:52 PM EDT) -- A large investor of AmTrust Financial Services Inc. filed a petition Wednesday in Delaware state court demanding an inspection of corporate books and records to investigate whether the \$13.50 per share being offered by AmTrust's controlling shareholders in a take-private transaction is fair value for its holdings.

Arca Investments a.s. and affiliates filed the petition in Delaware Chancery Court asserting their rights under Section 220 of the state's general corporate law, wanting to look into the merger proposed by the family that controls the company to determine if the deal price is fair and if the directors that voted in favor of the deal are disinterested or breached their fiduciary duties.

The \$2.7 billion deal was proposed by CEO Barry Zyskind and directors George Karfunkel and Leah Karfunkel, who are all related to one another. Private equity firm Stone Point Capital LLC will also be a party to the merger.

"Based on their analysis of publicly available information, Arca is of the belief that the merger price is inadequate, and that Stone Point and the Karfunkel-Zyskind family are attempting to purchase AmTrust at a discount, at a time when the company's fair value is not necessarily reflected in its public trading prices," the petition said.

Arca, which holds 4.8 million common shares of AmTrust stock, said the company's share price has been subject to wild fluctuations since February 2017.

The petition further alleges that the special committee tasked with negotiating against the Karfunkel-Zyskin family — which controls 55 percent of AmTrust stock — did not act independently or disinterestedly during those negotiations.

Arca served its initial inspection demand on AmTrust on May 2, but claims the company has failed to meet its obligations under Section 220, prompting the filing of the petition.

An internal valuation conducted by Arca using publicly available information indicated the fair value of AmTrust stock was between \$15 and \$22, the petition said, a far cry from the \$13.50 per share deal price announced in March. The investor believes that Zyskind and the Karfunkels are taking advantage of a market overcorrection that began in February 2017, when AmTrust announced that it would need to restate several years of financial statements, according to the petition.

Trading at \$27.66 per share in February 2017, AmTrust stock fell over the course of several weeks as the extent of the financial misstatements became clearer, winding up at \$15.30 on April 11, Arca said.

Arca began acquiring stock in the company on April 4, 2017, in the midst of the slide, believing that the core fundamentals of AmTrust were sound and the stock price was not reflective of its actual fair value, the petition said.

The investor alleges that the controlling shareholder is purporting to comply with Delaware law for take-private transactions by a controller through the use of a special committee of independent

board members. Arca believes the committee is made up of nonindependent members who did not negotiate in good faith against the Karfunkel-Zyskind family.

Specifically, Arca alleges that four members of the special committee have been named as defendants in derivative actions spurred by the 2017 restatements, calling into question their independence because the take-private deal could extinguish any derivative actions and give them an incentive to approve the deal regardless of its fairness to minority shareholders.

A take-private deal is subject to the enhanced scrutiny of an entire fairness analysis under a standard known as M&F Worldwide unless the deal is approved by an independent special committee and a vote of the majority of minority shareholders. If those criteria are met, the deal is judged by the more lenient business judgment standard.

The deal has already been subject to litigation, with activist investor Carl Icahn lodging a breach suit against the Karfunkel-Zyskind family and others for allegedly pushing through the transaction at an unfair price.

Icahn says the deal is the latest power grab by the Karfunkel-Zyskinds, who allegedly exert control over AmTrust through relationships with businesses owned or controlled by the family, including the Manhattan building where AmTrust is headquartered and its reinsurance coverage provider.

AmTrust was founded in 1998 by brothers Michael and George Karfunkel. Leah Karfunkel is Michael's widow and the mother-in-law of Barry Zyskind, according to court filings.

Representatives for Arca and AmTrust could not immediately be reached late Wednesday for comment.

Arca is represented by Marcus E. Montejo of Prickett Jones & Elliott PA and Carl L. Stine and Adam J. Blander of Wolf Popper LLP.

Counsel information for AmTrust was not immediately available late Wednesday.

The case is Arca Investments a.s. et al. v. AmTrust Financial Services Inc., case number 2018-0381, in the Court of Chancery of the State of Delaware.

--Additional reporting by Hayley Fowler and Matthew Guarnaccia. Editing by Catherine Sum.

Correction: This story has been updated with corrected plaintiffs' counsel information.