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AmTrust Investors Get Class Cert. In Stock Drop Suit

By **Sarah Jarvis**

Law360 (February 3, 2022, 7:53 PM EST) -- A New York federal judge granted class certification to investors in AmTrust Financial Services Inc. and appointed Wolf Popper LLC as class counsel Thursday in a suit alleging the insurance company committed securities fraud.

U.S. District Judge Katherine Polk Failla certified a class consisting of anyone who purchased Series A preferred stock of AmTrust or certain depositary shares on the open market on a U.S. stock exchange from Jan. 22, 2018, to Jan 18, 2019. The court also appointed Jan Martínek — who alleges he suffered more than \$176,000 in damages — as class representative.

Martínek filed suit against AmTrust, CEO and Chair Barry D. Zyskind, and directors George Karfunkel and Leah Karfunkel in August 2019, alleging the defendants stated on several occasions that a planned acquisition of AmTrust's outstanding common stock wouldn't disturb the preferred stocks' status as publicly traded securities.

But after the company finalized the acquisition, it announced in January 2019 that it would voluntarily delist and deregister the preferred stocks. That announcement led to a 40% dip in the price of the preferred stocks, Martínek alleged.

The suit survived a motion to dismiss for failure to state a claim in 2020, with the court finding that "certain but not all of defendants' alleged misstatements were actionable."

Judge Failla focused much of her 51-page opinion Thursday on the predominance requirement of Rule 23(b)(3) of the Federal Rules of Civil Procedure, which requires that questions common to the whole class predominate over any questions that only affect individual members.

AmTrust had argued that individual issues would predominate because Martínek can't invoke the "fraud-on-the-market" presumption endorsed in the 1988 U.S. Supreme Court decision [Basic Inc. v. Levinson](#). Securities plaintiffs need to show that they relied on allegedly fraudulent conduct in buying or selling securities.

Under the fraud on the market theory, a defendant's material misrepresentations that impact the price of a security traded on an open, efficient market are presumed to have been relied upon by the plaintiff who suffered a loss on that security, even if that plaintiff didn't know about the alleged fraudulent conduct at the time it occurred.

The defendants argued for various reasons that Martínek can't show that the preferred stocks traded in an efficient market over the proposed class period, as required under Basic. Quoting the 2017 Second Circuit decision in [Waggoner v. Barclays PLC](#), Judge Failla said an efficient market is one in which stock prices "incorporate most public information rapidly."

The court ultimately found that Martínek showed the stocks traded in an efficient market during the class period, saying that while there are shortcomings in Martínek's evidence, there is sufficient evidence to show that the market for the preferred stocks incorporated material public statements during the class period.

"Accordingly, the court finds that individual issues of reliance will not predominate with respect to plaintiff's claims," Judge Failla said.

Class counsel Carl L. Stine of Wolf Popper said in a statement that the court's ruling didn't come as a

surprise.

"This case is perfectly suited for class treatment and the decision is a welcome step in holding defendants responsible for what the court had earlier termed as 'a classic bait and switch,'" Stine said.

Counsel for the defendants didn't immediately respond to a request for comment Thursday.

The class is represented by Carl L. Stine, Adam J. Blander and Patricia I. Avery of Wolf Popper LLP.

AmTrust and its executives are represented by Kevin S. Reed and Michael B. Carlinsky of Quinn Emanuel Urquhart & Sullivan LLP.

The case is *Martinek v. AmTrust Financial Services Inc. et al.*, case number 1:19-cv-08030, in the U.S. District Court for the Southern District of New York.

--Editing by Jill Coffey.

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