

Bohai Pharma Hit With Suit Claiming Securities Shenanigans

By **Ben Conarck**

Law360, New York (June 8, 2015, 10:40 PM ET) -- Investors led by Westport, Connecticut-based investment firm Euro Pacific Capital Inc. have launched a \$6 million lawsuit accusing Chinese herbal pharmaceuticals manufacturer Bohai Pharmaceuticals Group Inc. of breaching contracts and defaulting on an agreement over a \$12 million financing offering by “going dark” and leaving investors on the hook.

Euro Pacific, the lead placement agent and investor representative in the January 2010 offering, alleges that Bohai last filed reports to the U.S. Securities and Exchange Commission in November and has refused to provide any reports or respond to a demand letter since, thus breaching two separate contracts and impeding the investors' ability to calculate the market value of the securities at issue.

“As a result of Bohai’s ‘going dark,’ Bohai has failed to issue the required payments to noteholders and defaulted in accordance with the notes,” the complaint said. “Accordingly, the noteholders have been unable to recoup the monies due and owing on the notes.”

Euro Pacific, which handled the placement of \$11 million out of the \$12 million offered in promissory notes, said the company breached sections of a securities purchase agreement and a registration rights agreement that obligate Bohai to report to investors.

The complaint said that the two sections “are designed to ensure a market exists for the issued securities and that the securities themselves are transferable.”

“Bohai’s failure to report not only deprives the shareholders of the ability to ascertain the present fair value of their equity holdings, but also deprives other market participants of the same,” the complaint said.

In the offering, Bohai issued 6 million units at \$2 per unit as part of a \$12 million financing offer, with each unit consisting of a \$2 principal amount two-year convertible note and a three-year common stock purchase warrant to purchase one share of Bohai common stock at \$2.40 per share, according to the complaint.

Bohai’s “breach of its reporting obligations and covenants under the SPA and RRA has caused the complete illiquidity of issued securities due to market participants’ inability to ascertain the present fair value of the company’s shares,” the complaint said.

The lawsuit seeks the \$5 million in damages with interest and all reasonable costs and expenses including attorneys' fees from the breach of contract in regards to the purchase agreement and another \$1 million for damages suffered to Euro Pacific including business losses and reputational harm.

The complaint also charges that Bohai failed to report to the SEC and breached Section 10(b) of the Exchange Act and its Rule 10b-5 for carrying out a scheme to deceive investors over its ability and intent to perform under the transaction documents.

A message left for an attorney listed on Bohai's website was not immediately returned on Monday and further defense counsel information was not immediately available.

Plaintiffs are represented by David Graff, Christopher Ayers and Rachael Kierych of Anderson Kill PC.

The case is Euro Pacific Capital Inc. et al. v. Bohai Pharmaceuticals Group Inc., case number 1:15-cv-04410, in the U.S. District Court for the Southern District of New York.

--Editing by Kelly Duncan.

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