

Euro Pacific Fights Bid For Arbitration In \$6M Contract Row

By Matt Sharp

Law360, New York (November 17, 2015, 9:13 PM ET) -- Investment firm Euro Pacific Capital Inc. on Monday moved to derail an herbal pharmaceuticals manufacturer's bid to force Chinese arbitration in a \$6 million breach of contract battle, ripping its "misstatements of fact, overactive hyperbole and strained arguments."

The Connecticut-based firm said that Bohai Pharmaceuticals Group Inc. is required to resolve the dispute in New York courts under jurisdictional and forum provisions laid out in its defaulted promissory notes, not in arbitration before the China International Economic and Trade Arbitration Commission.

"Bohai's attempt to remove this litigation to an arbitration forum in China without basis in law or fact — under the belief that it would receive a 'hometown advantage' — is yet another instance of Bohai's bad faith conduct and should not be well received by this court," the brief said.

Euro Pacific, the lead placement agent and investor representative for most purchasers in Bohai's \$12 million offering in 2010, alleges that the company last filed U.S. Securities and Exchange Commission reports last November and has since refused to provide further information, impeding investors' ability to calculate the securities' market value.

The investment firm handled the placement of slightly more than \$11 million out of the \$12 million offered in promissory notes, and claims Bohai has not only "gone dark," but breached sections of a securities purchase agreement and a registration rights agreement that obligate it to report to investors.

Euro Pacific's 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.

Bohai's "breach of its reporting obligations and covenants under the securities purchase agreement and registration rights agreement has caused the complete illiquidity of issued securities due to market participants' inability to ascertain the present fair value of the company's shares," Euro Pacific's complaint said.

Still, Bohai claims that Euro Pacific ignored a purportedly broad arbitration clause in a fund escrow agreement that requires all related disputes, including the present breach of contract row involving separate transaction documents, to be arbitrated. The company also seeks to nix certain claims in the dispute — a move rejected by Euro Pacific on Tuesday.

"Pursuant to the relevant transaction documents and the applicable case law, Euro Pacific finds the motion to compel arbitration, as well as the application to dismiss the claims for breach of covenant and fair dealing, to be without merit," Euro Pacific's counsel David Graff of Anderson Kill PC told Law360.

Counsel and representatives for Bohai did not immediately respond to requests for comment.

Euro Pacific is represented by David Graff, Christopher Ayers and Rachael Kierych of Anderson Kill PC.

Bohai is represented by Eugene Meyers of Dacheng Law Offices LLP.

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 John Quinn.

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