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Arbitration Required In $6M Breach Suit, Pharma Co. Says

By **Hannah Sheehan**

Law360, New York (December 7, 2015, 8:50 PM ET) -- Chinese herbal pharmaceuticals manufacturer Bohai Pharmaceuticals Group Inc. asked a New York federal judge Friday to force Euro Pacific Capital Inc.'s $6 million breach-of-contract suit into arbitration, saying an arbitration clause in an agreement the investment firm's allegations rely on is binding.

Bohai urged the court to dismiss Euro Pacific's suit, arguing the investment firm's accusations of bad-faith stalling cannot be separated from a May 2012 fund escrow agreement between Euro Pacific and Yantai Shencaojishi Pharmaceuticals Co. Ltd., Bohai's wholly owned operating subsidiary, which contains the arbitration provision. In Friday's reply brief, Bohai said it could enforce the provision as the parent of Shencaojishi even though Bohai itself did not sign.

"It is clear — and undisputed — that plaintiff executed and entered into the FEA. Euro Pacific's sole contention is that it should not be compelled to arbitrate with Bohai, a non-signatory," the brief said. "Courts have recognized that equitable estoppel principles allow a non-signatory to compel the arbitration of claims brought by a signatory to the arbitration clause."

Euro Pacific, the lead placement agent and investor representative for most purchasers in Bohai's January 2010 $12 million offering, sued the pharma company in June, accusing it of withholding information since filing its last financial statement with the U.S. Securities and Exchange Commission in November 2014 and impeding investors' ability to calculate the market value of its securities.

Bohai contended Friday that Euro Pacific only began treating the pharma company and Shencaojishi as separate entities in order to avoid resolving the matter before theChina International Economic and Trade Arbitration Commission, saying it failed to demonstrate that its claims fall outside the broad scope of the escrow agreement's arbitration provision.

David Graff of Anderson Kill PC, an attorney for Euro Pacific, told Law360 on Monday that the filing "constitutes an effort to conflate entirely unrelated transaction documents with one another in its continued bid to avoid the U.S. courts."

Euro Pacific claimed in November that under jurisdictional and forum provisions laid out in its promissory notes, Bohai is required to resolve the suit in New York, saying the company is pursuing an unfair 'hometown advantage' in China without basis in law or fact.

The Westport, Connecticut-based investment firm is seeking $5 million in damages and reasonable costs and expenses from the alleged breach of the purchase agreement, as well as $1 million in damages including business losses and reputational harm.

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

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

Bohai is represented by Leodis C. Matthews and 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.

--Additional reporting by Matt Sharp. Editing by Richard McVay and Brian Baresch.
