

Dacheng Parts With Chinese Pharma Client In \$6M Suit

By **Alex Wolf**

Law360, New York (February 19, 2016, 11:52 PM ET) -- A month after a failed arbitration bid, attorneys with Dacheng Law Offices LLP have asked a New York federal judge for permission to withdraw as counsel for a Chinese herbal pharmaceuticals manufacturer in a \$6 million lawsuit over a botched note offering, saying Friday they are no longer authorized to represent the company.

In a letter to U.S. District Judge Victor Marrero of New York's Southern District, Dacheng attorney Eugene Meyers requested a 21-day extension for Bohai Pharmaceuticals Group Inc. to file a response to an amended complaint in order "to allow Bohai an opportunity to locate substitute counsel and file a responsive pleading."

"Bohai no longer authorizes Dacheng to continue to represent its interests in this litigation. Therefore, Dacheng is unable to file a responsive pleading on behalf of Bohai," the letter said. "Pursuant to Local Civil Rule 1.4, until the court grants our request for leave to withdraw, we are required to continue to represent Bohai as attorneys of record."

The attorneys' request to withdraw as counsel comes less than a month after the company lost its bid to arbitrate Connecticut-based investment firm and investor-representative Euro Pacific Capital Inc.'s claims in China. Judge Marrero ruled that the parties had explicitly agreed to resolve all their disputes in New York courts.

Bohai, which allegedly defaulted on the notes, had tried to argue that the case should be arbitrated on the grounds that a 2012 fund escrow agreement to pay for the notes between its subsidiary, Euro Pacific and a Chinese bank contained a clause to arbitrate before the China International Economic and Trade Arbitration Commission in Shanghai.

But Judge Marrero gave weight to Euro Pacific's arguments that the arbitration clause was designed specifically to protect the Chinese bank, which has no presence in the U.S., and that Bohai and the investors could have agreed to arbitrate in the transaction documents if they had wanted to.

Speaking to Law360 on Friday, Euro Pacific attorney David Graff of Anderson Kill PC said his side can no longer be sure of what Bohai intends to do in light of the withdrawal of "its excellent counsel."

"That it comes in the aftermath of Bohai's losing bid to compel arbitration in China, from our perspective, fits with our theory articulated within our briefs that Bohai does not want to face U.S. courts on the merits of the action as stated against it by the plaintiffs," he said.

He added that if Bohai fails to obtain new counsel and answer his clients' complaint, the plaintiffs will immediately move for judgment and commence "the techniques for recovery from Chinese enterprises pioneered by their counsel."

Dacheng attorney Leodis C. Matthews declined to comment on the company's plans.

Euro Pacific sued Bohai last June seeking \$5 million in damages with interest from the breach of contract claim in regard to the purchase agreement, and another \$1 million for damages allegedly suffered by Euro Pacific including business losses and reputational harm.

The firm, which handled the placement of slightly more than \$11 million out of the \$12 million offered in promissory notes, claims that Bohai left investors on the hook by failing to publicly report to the U.S. Securities and Exchange Commission since November 2014 in violation of the transaction documents and impeding investors' ability to calculate the market value of the securities at issue.

In addition to rejecting the bid for arbitration, Judge Marrero refused to grant Bohai's motion to dismiss the case altogether, saying that the breach of contract claim arises out of its alleged failure to file timely reports with the SEC — a requirement under the transaction documents and not the fund escrow agreement — and that Euro Pacific had pleaded enough facts to state a claim for relief for alleged breaches of covenant of good faith and fair dealing.

Euro Pacific 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 Vidya Kauri. Editing by Mark Lebetkin.

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