

## Drug Co. May Hide Assets Instead Of Hire Attys, Investor Says

By Jack Newsham

*Law360, New York (March 11, 2016, 9:01 PM ET)* -- A Chinese drug company facing a \$6 million claim over a botched note offering in New York federal court was given two weeks to find new lawyers on Friday after its efforts to force arbitration failed, despite concerns by an investor that the pharma company would use the time to hide its assets.

After its efforts to force Connecticut-based investment firm Euro Pacific Capital Inc. to arbitrate in China went nowhere, herbal drugmaker Bohai Pharmaceutical Group sought permission to part ways with its counsel at Dacheng Law Offices LLP three weeks ago and on Thursday asked for another month to find new lawyers who would formally answer the firm's lawsuit.

U.S. District Judge Victor Marrero on Friday allowed Dacheng to quit and met Bohai halfway — over a letter of protest from Euro Pacific — by giving them until March 28 to file an answer. Any longer, he wrote, and Euro Pacific could request a win by default.

David Graff of Anderson Kill PC, an attorney for Euro Pacific, said in a Thursday letter that Bohai was testing the court's patience in order to hide its assets and equity behind "the 'Chinese Wall'" that makes recovery difficult. On Friday, he told Law360 he anticipated that Bohai wouldn't answer the complaint and he was prepared to pursue the company.

In the event of a default, Graff said Euro Pacific would "use the court system to access and have rights to 100 percent of the shares of Bohai's U.S. parent company, and then use such rights to change the complexion of Bohai's board of directors."

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 including business losses and reputational harm.

The firm, which handled the placement of slightly more than \$11 million 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 it was in violation of the transaction documents and was impeding investors' ability to calculate the market value of the securities at issue.

In addition to rejecting the bid for arbitration in January, 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 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 was 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 and Alex Wolf. Editing by Brian Baresch.

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