

## ChinaCast Bankruptcy Can't Stop Insurance Payout: Creditors

By **Cara Salvatore**

Law360, New York (September 18, 2017, 9:31 PM EDT) -- ChinaCast Education Corp. creditors asked a New York bankruptcy judge on Monday to find that their \$66 million securities class action judgment against the company the day before its bankruptcy filing must be paid out by insurers despite a bankruptcy litigation stay.

Creditor Jayhawk Private Equity Fund II LP, representing a certified class, asked U.S. Bankruptcy Judge Mary Kay Vyskocil to rule that the bankruptcy stay in ChinaCast's Nov. 9 bankruptcy didn't apply to Jayhawk's pursuit of judgment money from \$15 million worth of insurance policies.

The Nov. 9 bankruptcy filing came a day after a default judgment for \$65.8 million was entered for Jayhawk in a California federal court securities class action.

"Although legal ownership of the D&O policies themselves are covered by the automatic stay provision of the bankruptcy code, the proceeds of a securities claim insurance policy are not property of the estate except in unusual circumstances and therefore the proceeds of the D&O policies are not typically covered by the automatic stay," Jayhawk's attorney, Laurence Rosen of Rosen Law Firm PA, said Monday.

"Debtor has no property interest in the proceeds of the the securities claims insurance policies for satisfying the securities litigation judgment," he said.

A hearing on the motion is set for Oct. 18.

ChinaCast's policies, three of them for \$5 million each, were issued in 2011 by Liberty Insurance Underwriters Inc.; Monitor Liability Managers LLC and Berkley Insurance Co.; and XL Specialty Insurance Co. and Greenwich Insurance Co., according to the motion.

Jayhawk filed suit against the insurers in California state court in June of this year, and the insurers removed that action to federal court and filed for an automatic stay of the litigation in July.

New York insurance law clearly "intends for the injured persons to be compensated by the proceeds of the debtor's insurance policy, rather than for such proceeds to become property of the debtor's estate," Jayhawk said.

In the larger shareholder litigation against ChinaCast, the Ninth Circuit in October 2015 **reversed the initial dismissal** of the suit, saying fraud perpetrated by a CEO can be blamed on the corporation, even if the actions were against the company's interests, because the CEO "acted with apparent authority on behalf of the corporation, which placed him in a position of trust and confidence and controlled the level of oversight of his handling of the business."

Investors sought to hold ChinaCast Education LLC accountable for its chief executive officer's looting of \$120 million from the company's coffers.

The appeals court ruled that Ron Chan Tze Ngon's fraud could be imputed to ChinaCast.

ChinaCast's **Nov. 9 filing for Chapter 11** cited Chan's misconduct and related litigation costs, though the company's chief financial officer failed to mention the default judgment.

"As a result of Chan's looting of ChinaCast in 2012 ... the debtor was left in financial ruin, has no current operations, and is winding up its affairs," ChinaCast CFO Douglas Woodrum said in a declaration at the time.

Representatives for the parties were not immediately available for comment on Monday.

Jayhawk and the class are represented by Laurence Rosen of Rosen Law Firm PA.

ChinaCast is represented in the bankruptcy by Tracy Klestadt and Joseph Corneau of Klestadt Winters Jureller Southard & Stevens LLP.

Monitor and Berkley are represented by Jennifer Mathis of Troutman Sanders. Liberty is represented by Valerie Rojas of Cozen O'Connor. XL and Greenwich are represented by Randolph Sinnott of Sinnott Puebla Campagne and Curret APLC.

The case is In re: ChinaCast Education Corp., case number 1:16-bk-13121, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Bruce Goldman.