

ChinaCast Shareholders Defend Bid To Collect From Insurers

By **Cara Salvatore**

Law360, New York (October 17, 2017, 7:27 PM EDT) -- After winning a \$66 million judgment against now-bankrupt ChinaCast Education Corp., private equity fund Jayhawk continued fighting Monday for payments from ChinaCast insurers, telling a New York bankruptcy judge its pursuit is not an "asset grab" but the logical outcome of the situation.

Jayhawk **wants a bankruptcy judge to lift** the automatic litigation bar now protecting ChinaCast, which **filed for bankruptcy** the day after the \$66 million judgment was entered.

ChinaCast **has opposed** the payout. Because ChinaCast paid to defend against the securities suit, it argued, it should be the recipient of the insurance coverage. But Jayhawk said Monday that bankruptcy's estate protections are moot in a situation like this.

"The proceeds of the securities claims insurance policies for satisfying the judgment are not property of the estate; the securities claims insurance policies are not protecting the estate's other assets from diminution; neither debtor nor any of its directors or officers are defendants in the insurance action," Jayhawk said in its Monday filing. "Jayhawk's lawsuit against the D&O insurers is not an asset grab impacting the debtor's estate, but the culmination of a well-known and transparent five-year effort to obtain compensation for the victims of the debtor's securities fraud," it said.

In the Jayhawk securities class action, investors sought to hold ChinaCast accountable for what they said was its chief executive officer's looting of \$120 million from the company's coffers. An appeals court ruled that CEO Ron Chan Tze Ngon's alleged fraud **could be imputed** to ChinaCast.

Meanwhile, the Jayhawk insurance litigation targets three groups of insurers, each of which provided a \$5 million D&O policy in 2011: Liberty Insurance Underwriters Inc.; Monitor Liability Managers LLC and Berkley Insurance Co.; and XL Specialty Insurance Co. and Greenwich Insurance Co. Jayhawk's suit was filed in June and removed later to federal court.

But the promise of litigation had been hovering for a year, according to the private equity firm. It also pointed out that ChinaCast hasn't even made an insurance claim "and has failed to demonstrate that it has any claim."

If ChinaCast has no "cognizable interest" in the payout, then it's not estate property and Jayhawk is free to assert dibs, it says.

Recently, ChinaCast and a group of senior lenders asked a judge to block Jayhawk's attempts, calling it an asset grab. ChinaCast and the investors said that, while the \$66 million judgment was entered the day before ChinaCast's Chapter 11 filing, Jayhawk filed its claim for the insurance too late.

ChinaCast's Chapter 11 filing cited Chan's misconduct and related litigation costs, but not the judgment.

The insurers filed for an automatic stay in July.

Representatives for the parties were not immediately available for comment.

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.

The lenders are represented by Michael Cook of Schulte Roth & Zabel LLP.

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 Alanna Weissman.