



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

ChinaCast, Creditors Prodded To Settle Insurance Payout Row

By **Alex Wolf**

Law360, New York (October 18, 2017, 9:14 PM EDT) -- A private equity fund sitting on a \$66 million class action judgment against now-bankrupt ChinaCast Education Corp. may be able to sue the debtors' insurers for payment without stepping on the toes of the company or other creditors, a New York bankruptcy judge observed Wednesday, encouraging the sparring parties to negotiate.

Jayhawk Private Equity Fund II LP appeared in front of U.S. Bankruptcy Judge Mary Kay Vyskocil on Wednesday in an effort to win a fight with e-learning services provider ChinaCast and some of the company's senior lenders over whether it can pursue a case to collect from ChinaCast's insurers, but it ended up walking away with a potential solution that could temporarily appease all parties.

The suggestion framed by counsel to Jayhawk, the lead plaintiff for a class of shareholders that won a \$66 million default judgment against ChinaCast a day before the company **filed for Chapter 11**, would have the private equity firm litigate to recover under ChinaCast's securities claims insurance policies, put into escrow any settlement or judgment amount it receives, and then let the distribution of those funds be decided in the bankruptcy case.

Judge Vyskocil declined to rule on whether the proceeds of the insurance policies are property of the debtors' estate and therefore automatically protected under ChinaCast's Chapter 11 litigation stay, but she encouraged the sides to discuss Jayhawk's proposal, saying it may make the most sense.

"I think this is a practical approach," she said. "I think it has potential."

Prior to the hearing, Jayhawk **had asked** Judge Vyskocil to rule that the stay in ChinaCast's bankruptcy didn't apply to its pursuit of funds from two different insurance policy towers, each worth \$15 million.

In response, ChinaCast and a group of its senior lenders **called on the judge to reject** the motion, saying any directors and officers insurance proceeds are property of the estate and, if made available, must be used in accordance with creditor priority rules. ChinaCast also noted that some of the proceeds may be needed to pay the \$6 million in legal fees it incurred defending against the class action.

Jayhawk contends that neither ChinaCast nor other creditors have a property interest in the insurance policy proceeds because only the certified class has claims against the policies.

While Judge Vyskocil questioned some of Jayhawk's arguments concerning entitlement to the insurance proceeds, she said she would give the parties 30 days to negotiate a plan that may allow an opening for the insurance policy lawsuit to move forward.

In the shareholder litigation against ChinaCast, investors sought to hold the company accountable for its chief executive officer's looting of \$120 million from the company's coffers.

Though initially dismissed, the case was revived in October 2015 by the Ninth Circuit, which found that fraud perpetrated by a CEO can be blamed on the corporation, even if the actions were against the company's interests. The appeals court ruled that former CEO Ron Chan's fraud could be imputed

to ChinaCast.

The company filed for Chapter 11 after the class won a default judgment in California federal court, citing 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.

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.

--Additional reporting by Cara Salvatore and Rick Archer. Editing by Marygrace Murphy.

All Content © 2003-2017, Portfolio Media, Inc.