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Win for Deloitte in Second Circuit Appeal

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On April 8, the Second Circuit affirmed the dismissal of claims blaming Deloitte & Touche LLP (Deloitte) for tens of millions of dollars in investor losses at ChinaCast Education Corp. The decision was Hughes Hubbard & Reed's third victory for Deloitte in the ChinaCast litigation.

ChinaCast was founded in 1999 by Ron Chan. In 2006, it began trading on the NASDAQ exchange after a reverse merger with a U.S. company. In March 2012, following a bitter proxy fight, the board ousted Chan and announced that it had uncovered "questionable activities and transactions" involving Chan that "raise the specter of possible illegal conduct."

Plaintiffs' lawsuit centered on allegations that Chan engaged in "brazen looting" by diverting \$35 million in cash to parties outside the company. Plaintiffs brought suit against the Chinese firm Deloitte Touche Tohmatsu CPA (DTTC) and Deloitte. The investors alleged that DTTC was liable under Sections 10(b) and 18 of the Exchange Act because it issued false audit opinions on ChinaCast's financial statements, and that Deloitte was liable under Sections 20(a) and 18 of the Exchange Act for allegedly controlling DTTC's audits. The complaint also alleged that both firms were liable for common-law fraud.

After the district court dismissed plaintiffs' initial complaint, plaintiffs filed a motion for leave to amend their complaint, which the district court denied in a decision issued on March 31, 2015. With respect to the claims against Deloitte, the district court held that plaintiffs had failed to adequately allege that Deloitte was a culpable participant in any fraud or that it caused DTTC to issue its audit opinions.

The investors appealed the dismissal of their claims to the U.S. Court of Appeals for the Second Circuit. After hearing oral argument on Feb. 29, 2016, a three-judge panel issued a unanimous order affirming the dismissal of all claims against Deloitte and DTTC.

Bill Maguire argued the appeal for Deloitte.

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