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COVER STORY

Persistent attorneys win \$20M settlement

By America Hernandez
Daily Journal Staff Writer

Taiwanese manufacturer Tatung Co. Ltd. reached a \$20 million settlement with Orange-based Westinghouse Digital Electronics, resolving nearly a decade of litigation on claims that Westinghouse ordered LCD televisions from Tatung in 2006 but then refused to pay the \$11 million bill.

The path to recovering the funds plus attorney fees and interest involved two international arbitrations, several bankruptcy proceedings, a trip to the 9th U.S. Circuit Court of Appeals and a civil racketeering case to unravel what plaintiffs' attorneys called a defense shell game to move money out of judgment-bound entities and into tax havens. *Tatung Company Ltd v. Hsu et al*, 13-CV1743 (C.D. Cal., filed Nov. 15, 2013).

Tatung lead counsel Daniel T. Pascucci and Joseph R. Dunn of Mintz Levin Cohn Ferris Glovsky and Popeo P.C. in San Diego said the victory has reaffirmed an asset recovery mantra of theirs: Don't stop when the money goes offshore.

"A lot of lawyers at that point will throw up their hands and say the money's gone, will advise their clients that chasing after it is throwing good money after bad, and to just get in line at bankruptcy court to collect their five cents on the dollar," Pascucci said.

"Sometimes that's true, but if the money's there, one of the things we've learned to do is look at the world as a smaller place and recognize that these other countries have laws, and if you put in the effort to figure out what they are, there's always a mechanism to try and recover," Pascucci added.

Paul S. Chan of Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow PC in Los Angeles — who represented Westinghouse's chief executive and several family members alleged to have been part of a fraudulent scheme to evade payment — did not respond to a request for comment.

Benjamin D. Scheibe of Browne George Ross LLP represented six managers of Westinghouse-related entities first named in the racketeering suit, and said each of them settled for five-figure amounts, less money than the cost of a defense.

"Our clients vehemently deny all allegations against them and believe Tatung was improperly trying to hold them responsible for the debts of others," Scheibe said.

The underlying suit against Westinghouse for lack of payment began as a straightforward breach of contract case, which had to be arbitrated pursuant to the companies' commercial agreement, plaintiffs' attorneys said.

About a month before the arbitration was scheduled to begin in April 2010, Westinghouse's chief executive and parent company completed an assignment for the benefit of creditors, a bankruptcy-like proceeding under state law, the plaintiffs' attorneys said.

Westinghouse also sold its assets to a related entity, leaving about \$500,000 in the account of the company to be arbitrated, Dunn said.

Tatung made the tactical decision to continue proceedings, where it obtained crucial discovery about the network of Westinghouse's involved companies in Taiwan and the United States, several findings of fraud

by the arbitrators, and a paper judgment of about \$27.6 million, according to the petition to confirm arbitration award in Orange County Superior Court. *Tatung Co Ltd v. Westinghouse Digital Electronics LLC et al*, 30-2010-00376687 (O.C. Super. Ct., signed Dec 12, 2012).

"We were then able to go into bankruptcy court and get relief from the automatic stay that freezes litigation during insolvency," Dunn said. The judge also agreed, due to the findings of fraud, to make the judgment non-dischargeable, Dunn added.

By coordinating with the bankruptcy-related entity now in charge of Westinghouse, plaintiffs gained enough information about related entities to compile a detailed racketeering complaint, complete with the names of the Westinghouse CEO's relatives in Taiwan and California named as executives of related corporations through which money flowed to the British Virgin Islands, plaintiffs' attorneys said.

"We had to lay lots of traps that worked, like sending a copy of the complaint in an email, then when we received a call from an attorney claiming to represent the person, asking U.S. District Judge David Carter to rule that email was an acceptable form of service since the lawyer acknowledged the email had worked," Pascucci said.

On the eve of trial in Santa Ana, after Carter's oral rulings in limine to allow plaintiffs' evidence on the network of corporations, the parties arrived at a \$20 million settlement backed by collateral, Dunn said.

Joseph S. Wu of US Asia Law Inc. in La Jolla also represented the plaintiffs.

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