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SunEdison's creditors, shareholders spar over insurance policies

Jim Christie

(Reuters) - SunEdison Inc has no stake in insurance policies providing $150 million in coverage for directors and officers of the renewable energy company so its bankruptcy stay should not block lawsuits against them, according to a manager of public pensions.

The Municipal Employees' Retirement System of Michigan argued in court papers on Monday that its securities fraud class action should not be stayed by SunEdison's bankruptcy, because payments from the policies may not be swept into the company's estate.

The "relevant question is whether the proceeds of the policies are property of the estate," the pension manager said. "They are not."

Any payments would be "devoted" first to plaintiffs pressing a securities class action in U.S. District Court in Manhattan against SunEdison, according to the pension manager, represented by Cole Schotz and Bernstein Litowitz Berger & Grossman.

SunEdison's unsecured creditors want the class action case stayed and they will square off against the pension manager at hearing scheduled for Dec. 6 in U.S. Bankruptcy Court in Manhattan.

SunEdison's unsecured creditors said in court papers earlier this month that the costs of defending the directors and officers against allegations such as breaches of fiduciary duty could deplete insurance coverage.

That could leave SunEdison on the hook to cover remaining liabilities, posing a risk to the company's estate and creditors, the unsecured creditors' committee said.

The committee also argued SunEdison has a property interest in the insurance policies because its coverage had been triggered by securities fraud claims.

Last week, SunEdison argued in court papers for lifting its bankruptcy stay to press a request to mediate the dispute over the insurance polices in District Court.

The company said it had the support of its unsecured creditors' committee for mediation. The committee earlier this month had said it intended to assert claims similar to those of the class action plaintiffs in an adversary proceeding.

The unsecured creditors have been warring with SunEdison's lenders. The judge overseeing the case denied a request by SunEdison shareholders for an official committee.

SunEdison was once the fastest-growing U.S. renewable energy company. It filed for Chapter 11 bankruptcy protection in April after a short-lived binge of debt-fueled acquisitions proved unsustainable.

The case is In re SunEdison Inc et al, in U.S. Bankruptcy Court, Southern District of New York, No. 16-10992.

For the Municipal Employees' Retirement System of Michigan and the class: John Drucker and Mark Tsukerman of Cole Schotz and Salvatore Graziano, Katherine Sinderson and Jake Nachmani of Bernstein Litowitz Berger & Grossman

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