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Bankrupt Cancer Center Fights Patient Data Breach Claims

By **Rick Archer**

Law360, New York (November 2, 2017, 9:04 PM EDT) -- Bankrupt cancer treatment center operator 21st Century Oncology asked a New York bankruptcy court Wednesday to reject a proposal to lift the Chapter 11 stay for the claims of a putative class of patients arguing that a data breach exposed their personal information, saying it would waste time with duplicate litigation.

While the 14 patients who filed the class action proposed allowing them to pursue their claims in Florida federal court with a pledge to limit their recovery to 21st Century's available insurance, they have no power to bind the millions of other potential claimants to their promise, 21st Century said.

"Those other data breach claimants can continue litigating their Individual data breach claims in this court, not the Florida district court, burdening the estates by requiring duplication of resources by debtor witnesses, including the debtors' management, at this critical time when they are preparing for confirmation of the plan and to emerge from chapter 11," it said.

21st Century **entered Chapter 11 In May** in the midst of responding to government inquiries related to potential violations of the Health Insurance Portability and Accountability Act arising out of a 2.2 million-patient data breach in 2015, criminal antitrust violations and other potential False Claims Act violations.

The putative class, which is in the midst of a fight for certification in the bankruptcy case, has asked that the bankruptcy stay be lifted so it can pursue its claims in Florida.

However, 21st Century argued that would open the door to patients who have not chosen to take part in the class action to pursue their own claims in bankruptcy court with no limitations. The company also said the proposal would require it to assign its insurance coverage rights to the patient class.

"For the avoidance of doubt, at this time the debtors have not consented, and do not consent, to such an assignment, and the data breach plaintiffs cite no authority supporting the proposition that they can simply force an assignment of rights to litigate coverage disputes to the data breach plaintiffs absent the debtors' consent," it said.

21st Century said the patient class' alternative proposal, an order requiring it to use all available means to get coverage for the suit, would drag it into a third set of litigation, costing still more time and money.

The treatment center also argued that the Florida case is at least months away from trial, as discovery has just begun and there has been no motion for class certification yet.

Counsel for the debtors and the patients did not immediately respond to requests for comment Thursday.

The debtors are represented by Christopher Marcus, John T. Weber, James H.M. Sprayregen, William A. Guerrieri and Alexandra Schwarzman of Kirkland & Ellis LLP.

The patients are represented by Michael S. Etkin, Andrew Behlmann and Nicole Fulfree of Lowenstein Sandler LLP, and Melissa Emert of Stull Stull & Brody.

The bankruptcy case is In re: 21st Century Oncology Holdings Inc. et al., case number 17-22770, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Alex Wolf. Editing by Adam LoBelia.

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