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Chinese Companies and U.S. Class Actions: Securities Litigation and Product Liability

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SYMPOSIUM

CHINESE COMPANIES AND U.S. CLASS ACTIONS: SECURITIES LITIGATION AND PRODUCT LIABILITY

MODERATOR

GEOFFREY SANT – Special Counsel at Dorsey & Whitney LLP

Geoffrey Sant is also an adjunct professor at Fordham University School of Law, President of the Board of Directors of the New York Chinese Cultural Center (a 40-year-old nonprofit devoted to Chinese arts and culture) and Director of the Chinese Business Lawyers Association. He has a BA from the University of Chicago, an MA in Chinese and Japanese literature from Columbia University, and a JD from NYU School of Law. Geoffrey Sant has professionally translated between Chinese, Japanese, and English.

COMMENTATOR

CHARLES YABLON – Director Emeritus at The Heyman Center, Professor of Law at Benjamin N. Cardozo School of Law

Charles Yablon is Director Emeritus of The Samuel and Ronnie Heyman Center on Corporate Governance and Professor of Law at Benjamin N. Cardozo School of Law. He brings to Cardozo experience as an attorney at Cravath, Swaine & Moore and at Skadden, Arps, Slate, Meagher & Flom and was clerk to Chief Judge Irving R. Kaufman, US Court of Appeals for the Second Circuit.

PANELISTS

STEPHEN A. RADIN – Partner at Weil, Gotshal & Manges LLP

Stephen A. Radin is a partner in Weil's Securities Litigation practice group and Adjunct Professor of Law at Benjamin N. Cardozo School of Law. Mr. Radin has litigated, counseled, written and lectured for more than 30 years on corporate governance subjects, including the business judgment rule, fiduciary duties of corporate directors and officers, controlling shareholder and going private transactions, special committee investigations, federal securities laws, disclosure requirements, and indemnification and insurance of corporate directors

and officers. Much of Mr. Radin's practice focuses on shareholder derivative and class action litigation. Mr. Radin has won over 25 consecutive motions to dismiss (or affirmances of rulings granting motions to dismiss) in shareholder derivative actions alleging breaches of fiduciary duty by directors and officers of some of the largest and most prominent corporations in the United States, in state and federal courts throughout the country. These include multiple actions on behalf of both AIG and General Electric arising out of the financial crisis and the Government's financial assistance to AIG and additional actions involving claims against directors and officers of Aeropostale, Allstate, American Airlines, BearingPoint, Computer Sciences, ExxonMobil, Francesca's, Kid Brands, LaBranche, Lululemon, Ralph Lauren and WalMart.

KAYVAN SADEGHI – Counsel at Morrison Foerster LLP

Kayvan Sadeghi is a member of the firm's Securities Litigation, Enforcement, and White Collar Criminal Defense Group. He represents leading global companies and financial institutions in complex litigation. He also represents corporate and individual clients in regulatory enforcement matters and investigations conducted by the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the U.S. Senate, and state attorneys general.

CHRISTOPHER A. SEEGER – Founding Partner at Seeger Weiss LLP

Christopher A. Seeger is broadly admired as one of the nation's most versatile, innovative and accomplished members of the plaintiff's trial bar. Since founding Seeger Weiss LLP in 1999, Mr. Seeger has earned leadership appointments from state and federal courts throughout the United States in many of the country's most complex and noteworthy multidistrict litigations. Most recently, Mr. Seeger was appointed co-lead counsel and served as the chief negotiator in the NFL concussion injury multi-district litigation, where he successfully represented thousands of retired NFL players who suffered brain-related injuries as a result of hits sustained during their playing careers. Nationally recognized for his groundbreaking work in pharmaceutical mass actions involving Vioxx, Zyprexa, Rezulin, PPA and Gadolinium, among others, which resulted in the recovery of over \$8 billion for injured victims nationwide, Mr. Seeger has achieved similar milestone successes in class and mass actions encompassing a vast array of corporate misconduct. Mr. Seeger earned his law degree magna cum laude in 1990 from the Benjamin N. Cardozo School of Law, where he

served as the Managing Editor of the *Cardozo Law Review*, and which honored him with its *Alumnus of the Year Award* in 2009, the highest honor bestowed on an alumnus of the Law School. Mr. Seeger's undergraduate career was similarly distinguished, graduating *summa cum laude* in 1987 from Hunter College of the City University of New York, which inducted Mr. Seeger into its *Alumni Hall of Fame* in 2007. In recognition of his preeminence in the trial bar, Hunter College honored Mr. Seeger with its *Distinguished Alumni Lawyer Award* in 2013.

RICHARD H. SILBERBERG – Partner at Dorsey & Whitney LLP

Mr. Silberberg is the Co-Chair of the Firm's Class Action Litigation Group and previously served as Partner-in-Charge of the Firm's global litigation, intellectual property and regulatory practices.

Mr. Silberberg has a highly diversified commercial and international dispute resolution practice, which emphasizes the representation of domestic and foreign suppliers in consumer and business product class actions and other multi-party litigation matters arising from dealership, distributorship, franchise and other commercial relationships. For more than three decades, Mr. Silberberg has served as principal outside litigation counsel for one of Japan's most prominent, publicly traded, multi-national consumer and business products companies, representing its affiliates in a wide variety of business disputes throughout the Americas. Mr. Silberberg has also handled significant commercial litigation matters for the U.S. affiliate of one of Japan's largest trading companies.

TRANSCRIPT OF THE 23RD ANNIVERSARY SPRING SYMPOSIUM

March 24, 2015

MR. GEOFFREY SANT: I just want to repeat, thank you to all the different organizations and groups that have supported us today, and especially to Greg Wong, who really kind of kicked everything off in the very beginning. I hope that this is the beginning of a yearly collaboration with both the *Cardozo Journal of International and Comparative Law*, and also *Cardozo Law* itself. Chinese Business Lawyers Association puts on these kinds of events at many law schools in the New York region, and I'm very happy to start this off with *Cardozo*.

I want to start by thanking the members of Cardozo who are on this panel, and Chris Seeger was mentioned as one of the leading lights of the class action field. And I can verify that this man is indeed one of the greatest, cleanest class action litigators that you will find. I don't know whether you've ever heard of the NFL concussion case, that's Chris Seeger. If you haven't, perhaps you've heard of the drywall litigation, and that's Chris Seeger. We're just delighted to have him here.

Steve Raden, we're so excited to have him. He's a partner at Weil, Gotshal, and when I see that this man has written the treaties on the corporate governance, I kid you not, he's been given prizes for his writing. He's written a multi-volume set that's something like 6,000 pages on the topic of corporate governance. This is one of the greatest men that you could have as an adjunct professor and you should be delighted that he's here at Cardozo.

In addition, we have Chuck Yablon, who has kindly agreed to be our closing speaker, and somehow knit together the different threads that we talk about today. And I'm so happy to have Chuck here. He's not just a great professor, but just like Steve, he's a former practitioner. He worked at Skadden, and I think it was Paul Weiss before that, which you're kind of hitting on a lot of the famous names in the field here.

But I definitely also want to introduce the folks from my current law firm and my former law firm; like Kayvan Sadeghi is at Morrison & Foerster, where I began my own career. He's of counsel there, and is a very prolific writer, every year coming out with information about some of the key topics on securities litigation. And we're so happy to have him with us today.

And lastly, I want to introduce the man that brought me away from Morrison and Foerster, and over to Dorsey and Whitney, that's Rich Silberberg. He's the Co-chair of our Class Action Litigation Group, and he's been representing Asian entities in class actions, here in the U.S., for many decades. Originally working on behalf of Japanese entities, and more recently we've obviously had Chinese companies become more and more to the forefront. Rich is a real leader in this field, and a kind of mentor to me, personally.

So I appreciate having all of these people here. I'm humbled to be among this group and I should probably stop talking since these folks are here and you're not listening to them if you're listening to me. So I want to give us a ruling here, and I'll kick it off by asking Steve to give us some information about what's going on in class action litigations with Chinese companies today? And let's focus first on securities litigation, because you are one of the brightest lights in the field of

corporate governance. What's the recent news with securities litigations involving Chinese companies?

MR. STEVE RADEN: I'm going to put off securities litigation *per se*, for a minute, and maybe even leave that to the rest of the panel, and talk about corporate governance. And look at securities litigation, the broad context, including corporate governance. And as most of you know, corporate governance is really Delaware law. That's where all of the action is, that's where most of the decisions come down from the courts, and there have been a number of cases—and they're in the package that I put together for this evening—in the Delaware courts in the last two or three years, which have really provoked a lot of discussion, scared a lot of Chinese companies, and made a lot of plaintiffs' lawyers very happy.

Indeed there was a hearing last week on the settlement of a couple of these cases, in front of Vice Chancellor Astor, who was curious to know why both cases were settling for exactly the same amount of money, \$3 million, and why the attorneys' fee in both cases was exactly the same, \$750,000. But I'll get to those cases in a moment.

Before I look at the cases I wanted to talk about a couple of big picture themes. And I think the biggest picture take-away is probably the most important and the most simple. And that's simply that the rules that govern directors in the U.S. apply to the directors of U.S. companies based in China. And that may come as a surprise to a lot of directors of Chinese based companies. It shouldn't, but it is a fact now in Delaware. And this has important implications in both directions. Chinese directors need to familiarize themselves with a legal regime, with which they are not familiar.

I think it's fair to say that directors of companies that are based in the U.S., incorporated in the U.S., have come to the U.S. in order to take advantage of our capital structure. They typically go to Delaware to be incorporated there. They are governed by Delaware law, and they have to understand what the Delaware law expects of a director, and it's not what Chinese law expects of a director. So that's one direction.

The other direction is U.S. directors of Chinese companies need to familiarize themselves with assets, and a culture, and a language that is very different from the culture they're used to here. And when you sign up to be the director of a Chinese based company, which is incorporated in the U.S., incorporated in Delaware, you take on responsibilities, and those responsibilities may well include travel, they may well include language requirements, at least overcoming certain language barriers and cultural barriers.

And some of the cases that I'll talk about in a moment or two, take those considerations and put a lot of flesh on them, and illustrate how directors have gotten into a lot of trouble by not understanding that.

MR. SANT: I just wanted to mention that the book I mentioned earlier, the business judgment rule is the one that you were recently awarded the prize in, and that's over 6,000 pages long. I think I might have misspoken when I was introducing you. But you just mentioned cases. Is there any particular case that you had in mind that you think maybe illustrates some of these issues?

MR. RADEN: There are three, but let's focus on one and we'll see how much time we have. This is a case called Puda Coal, P-U-D-A. There's been a whole bunch of securities litigations involving Puda as well. But now I'm focusing on the Delaware Court of Chancery decision. This was a decision in 2013, it was decided by way of a transcript ruling, and the transcript is included in the package that I gave you. And this was a very widely-circulated transcript ruling at the time, in part because it is so rare that a Delaware court says that the directors have failed in their monitoring obligations.

You know, there were very high aspirational duties for directors of companies that are very low liability standards. You have to be pretty darn low to hit gross negligence, or anything of that ilk. And that was one reason this case was given a lot of attention.

The other of which is that the judge in the case was a fellow who a lot of you may not have heard of; his name is Leo Strine. At the time he was the Chancellor of the Delaware Court of Chancery; he's now the Chief Justice of the Delaware Supreme Court. He doesn't mince words and his decisions in the Board of Chancery didn't mince words, and his decisions in the Supreme Court are no less tame than they were in the Court of Chancery. So people in Delaware listen to what Chancellor Strine, now Chief Justice Strine, has to say.

And this particular transcript had a number of particularly colorful quotes that go directly to what we're here talking about today, and my theme, which is that the rules in the U.S. apply in China if you're going to come take our capital. And while I ordinarily don't like reading, I am going to read two or three of these quotes, 'cause I can't possibly summarize them as well.

The chancellor said with respect to the complaint, and this was on a motion to dismiss the defendant's claim. They had reached no fiduciary duties and the case should be dismissed. And he said, one possible inference you can draw from this complaint is that somebody took hold of an American vehicle, filled it with assets, sold a large

amount of stock to the American investing public that independent directed a ruling to go on, and be a vehicle, and get payments without understanding the duties they were taking on. The entire asset base of the company was sold out from under the independent directors nearly two years before they discovered it.

He then went on to say if you're going to have a company domiciled, for purposes of its relations with its investors, in Delaware, and the assets in operation of that company are situated in China, in order for you to meet your duty of good faith, [1] You better have your physical body in China an awful lot. [2] The words are his; the numbers are mine. Better have in place a system of controls to make sure you know that you actually own the assets. [3] You better have the language skills to navigate the environment in which the company is operating. And [4] You better have retained accountants and lawyers who are fit to the task of maintaining a system of controls over a public company.

The duty of loyalty of independent directors who step into situations involving essentially the fiduciary oversight of assets in other parts of the world, includes understanding that if the assets are in China—he then mentions two or three other locals, but China is our focus this evening—you're not going to be able to sit in your house in the U.S. and do a conference call four times a year, and discharge your duties.

Earlier this month, a \$69 million judgment was entered in the case against a group of non-appearing defendants. It remains to be seen what the plaintiffs in that case will be able to do with that \$69 million judgment in China, but a \$69 million dollar number, just this month, tells you that this stuff is pretty serious.

And again I emphasize, it goes in both directions, that if you're a U.S. citizen overseeing a Chinese company, a public company, you've got to do these things. And if you're a Chinese director overseeing a Chinese company that's taking U.S. capital, people are going to look to you. And even if the default judgment is not ultimately enforceable in China, I don't think anybody wants to have a judgment like that hanging over their heads.

MR. SANT: Thank you, Steve. And we'll have those packets for you to pick up as you go out. You'll definitely want to take a look, because I was reading through the decision myself, and it's pretty shocking how harsh the language was from the judge in that case, was really something to behold. Let me turn over to Kayvan for a moment. We just heard about how tough the judges in the U.S. can be in the U.S.

Steve was talking about U.S. directors of a Chinese company. But obviously that applies to the Chinese company as well.

If you have a Chinese client who wants to avoid this kind of securities litigation—I know obviously, you can't completely avoid a securities litigation ever, and it's going to bring a suit anytime they want—but how can you minimize that risk? What could a Chinese company focus on that maybe they don't necessarily do?

MR. SADEGHI: Sure. Let me see if I can get one of these microphones a little closer. I think there are a few things. As you said, there's nothing you can do to eliminate the risk. That's something that I think a lot of people outside the U.S. don't fully understand about U.S. securities litigation. In particular, it's really best to view it as a cost of doing business in certain ways. People in other countries sometimes take incredible personal offense at the notion of a securities litigation and want to know how they can fight back, and things like that; and understanding in some sense this may happen and may not be preventable, I think is important.

But that said, there are a lot of steps that should be taken, and picking up on what Stephen just said, really the key to it is to understand that the same rules apply if you are a company with your operations elsewhere as it would to a U.S. company. And I think the biggest overall take-away is transparency, and that's one of the hardest things to get across to people in other cultures, sometimes, who aren't used to this sort of disclosure obligations that come with your U.S. securities laws.

And there are a lot of aspects of that, but I think developing an effective set of internal controls is obviously one of the key things and one of the things that the counsel [phonetic] focused on. That's something that can definitely be done in advance.

I think another thing that's very important is to develop consistent and careful disclosures. This is somewhere where having counsel that operates both in China and in the United States is important. There have a number of cases—I know they're referenced in the materials—that look at the discrepancies that can exist between disclosures in the United States and disclosures in China; that doesn't necessarily indicate a misstatement. There are reasons for these discrepancies, chained to different accounting standards and the like.

But it's important for companies to consider that issue and to have counsel that really understands the regulatory landscape in China and in the United States, and to be thinking about disclosure obligations in both countries, and trying to minimize discrepancies, or at least

understand them, is very helpful.

MR. SANT: Now in just a little bit I'll open this up to the audience to start asking questions. But let me ask a question that I think quite a few people are interested in already. You know, of course, of the recent high profile accusations and litigation being brought against Alibaba. There's a lot of discussion about a white paper that was put out by the - administration for industry and commerce that was later withdrawn.

What are your thoughts about—how would a U.S. court react to that. That's not a document that Alibaba created; it's a document from the government. The government has now withdrawn it for whatever that means. How do they deal with that kind of a scenario?

MR. SADEGHI: And this is, I think, one good example of how fact-intensive the inquiries really have to be. And it really comes down to a question of disclosure obligation. There are a couple of different issues it raises, but one large one is disclosure obligation and where that obligation attaches.

The white paper, for people who aren't familiar, came out relatively recently this year, but referenced conversations with the top executives at Alibaba, that took place in July, prior to the IPO [phonetic], and actually included a statement suggesting that the port was not released sooner to not interfere with the IPO, which was people who practice in the United States, it's pretty impossible to imagine an SEC analog to that situation.

But I think the issues it raised; there are two primary issues that it raises for me. One is a question of whether the report itself suggests that there will be some further adverse action to the company, so that the issuance of the report is itself an event. And another issue that that raises is the conduct underlying the report. A report like this provides a link that is often hard for securities litigants to satisfy, which is to show that some events going on at a company were actually raised to the level that they were red flags management should have been aware of. And showing that any omission or material misstatement was something done with the recusant knowledge or recklessness is something very difficult.

The existence of a report like this that mentions that regulators in China were meeting with top executives of the company suggests that issues were brought to their attention much earlier and it's an easy way for plaintiffs to meet that threshold, or at least the potential to meet that threshold. So it sort of depends on which aspect you look at, whether you think there will be an event that results from it, or whether it's related to the underlying disclosures and for the underlying issues.

And then with that, in the U.S. we have a bit more of an established body of law with respect to the way the SEC works. There's a Wells Process that is very familiar to the courts, they know what a Prewell submission looks like, they know what the Wells Process means. It's generally when the SEC indicates to a company that it's planning to bring an enforcement action.

There have been cases recently, including a case against Goldman-Sachs, suggesting that the existence of a wells notice does not automatically create a duty to disclose, but there's at least a body of law that allows courts to understand what that notice, that sort of report from the SEC means. I think the U.S. courts would be much less familiar with something like an SAIC white paper means, what the retraction of it might mean, and so it'll really come down to a fact-intensive inquiry, and that's where having counsel that's familiar with sorts of issues that trigger disclosure obligations is important.

I think people in many other countries, not just China, who don't operate in the common law system, aren't used to - - civil systems, are not used to systems with so few Bright Line rules and really, you have to develop an expertise over time and sort of know when you see it, as far as whether something is material. So something like this white paper situation is just caution to take things on a case-by-case basis.

MR. SANT: Sure. And I'll just tell the audience, I'm going to open it up for questions in a little bit. But get your questions in your head ahead of time; because what I find often happens is people are excited to be the first one asking the question, and then at the end you have 50 hands up. So you can be the first one to ask and we'll then hear it.

I did want to follow-up though, Kayvan, in one other aspect of the Alibaba case, 'cause I know that's something that's so hot right now and a lot of people are really interested in this. One of the things that was somewhat unusual about their IPO prospectus was in the risk factors. They actually listed a risk factor of being, if you obtain a damages award against us in the U.S., you may not be able to collect. What do you think of that? What do you make of that? Is that just an example of, you know, what some people say, risk factors have everything under the sun put in there, and meteor strikes and things like that are probably going to be in there someday. Or is this seriously an issue, and if so, who is it of concern to?

MR. SADEGHI: Yeah, I think it's a very interesting question and I think the \$69 million recent judgment from - - defendants is an indication that there are some companies that will essentially take their

chances, allow a default judgment in the U.S. and basically say, come and enforce it. And there are real issues with trying to enforce the U.S. judgment in China. So I don't want to suggest that's not a concern. I think that's less of a concern for companies like Alibaba. Companies that either are likely to consider a return to the U.S. capital markets for capital in the future; companies that have any U.S. operations would be another type of company where that's less of a concern. It strikes me as relatively unlikely that a company like Alibaba would decide not to appear and accept a default judgment, and then say come and enforce it. As compared to some other companies.

MR. SANT: It's not just, not appearing, it's also losing. You could fight the case for five years, lose, and have the judgment, and what if your assets are in China, then you have the same problem.

MR. SADEGHI: Right. And that's where I think with companies of the scale of Alibaba, in particular, so few securities litigation matters go to trial that likely resolution would come before that, and it's not clear that it would get to that stage. If it got to that stage it may be an issue. I think it's a much bigger problem for companies that are smaller, that really have—or are less likely to want to return to the capital markets here that are less high profile. I think there it becomes a real concern. I'm reading tea leaves to an extent, but it strikes me that for a company the scale of Alibaba, it's less likely to be a concern.

MR. SANT: Sure. And in a little bit we'll ask our resident - - attorney what he thinks on collecting judgments from China. I did want to say, though, I thought there was a really weird paradox that in the risk factors they said you might not be able to obtain damages from us; because usually the purpose of putting risk factors in is to avoid liability for not warning about it. But if you don't think that they can collect on the damages, what's the point of warning in the first place? I'm just kind of befuddled.

MR. RADEN: What I'm wondering is—and I apologize for monopolizing; it's the last thing I'll say before everyone else talks—but what I'm wondering is, as you said, no one ever goes to trial. Does this give the Chinese company, or any foreign company whose assets might not be able to be reached through a U.S. judgment, an ability to go to trial? Whereas a U.S. company wouldn't, because a U.S. company wouldn't go to trial, because they can't afford to lose. Maybe a foreign company can afford to lose and can go the distance because the judgment can't be collected.

MR. SADEGHI: And I do think that this is one of the factors. Again maybe the plaintiff's perspective is more important than mine on

this issue, among others. But I think that the risk of enforcement is something that really impacts the settlement value, and we've seen a lot. The settlements we've seen out of securities litigation involving Chinese companies tend to be comparative low value. I think that factors in not only enforcement risk but some of the difficulties in actually prosecuting securities litigation involving the Chinese company. I'm not sure that would apply the same way to Alibaba. I can imagine some people thinking that that is a big enough fish that if they chase it long enough there'll be something there, unlike maybe some other.

MR. SANT: I think Stephen's point just a moment ago was truly fascinating, because I think a lot of people who don't closely follow securities litigation don't realize just how rare it is for one of these cases to actually go to trial. It is so incredibly rare. If you have one in a year, that's a lot. It's really rare for these to go the distance, as Stephen put it.

Usually they're either dismissed or you settle; you rarely have it go all the way to the end in - - your company litigation scenario. And so as Stephen said if a Chinese company is willing to take that risk because they think you can actually collect on it, we might actually start to get some judgments in here. So that's really fascinating.

I wanted to turn it over to Rich, because as I mentioned initially, one of the reasons I jumped over to join Rich at Dorsey was because of Rich's four decades-plus of experience doing class actions and litigations for Asian companies, both Japan and elsewhere in Asia. And I wanted to ask you about if both China and Japan, and just generally in Asia, what do you think are some of the myth perceptions that people have here in the U.S. about Asian companies or Chinese companies and how they respond to suits?

MR. RICHARD SILBERBERG: Well thanks, Geoff, and I will answer that question, but I'll take a lead from Stephen and answer a different question first.

MR. SANT: Sure, why not?

MR. SILBERBERG: For those of you who are following this discussion about the risk factors that were disclosed in the prospectus by Alibaba, but are not precisely familiar with exactly what was said, I've included those in the materials. And I thought I might just read it; it's an extraordinary paragraph. I, for one, have never seen a disclosure like this in a prospectus.

It reads as follows: We are incorporated in the Cayman Islands, and conduct substantially all of our operations in China through our wholly foreign owned enterprises and the variable interest entities.

Most of our directors and all of our executive officers reside outside the U.S., and a substantial part of their assets are located outside of the U.S.

As a result, it may be difficult or impossible for you to bring an action against us or against these individuals in the Cayman Islands, or in China, in the event that you believe that your rights have been infringed under the securities laws of the U.S., or otherwise. Even if you are successful in bringing an action of this kind, the laws of the Cayman Islands and China may render you unable to enforce a judgment against our assets or the assets of our directors and officers. Stephen, have you ever seen anything like that in a prospectus filed with the SEC?

MR. RADEN: No. But I'm thinking about some of the options I have in a couple of my cases now. [Laughter].

MR. SILBERBERG: Okay. I just have a question for the audience, actually. How many of you are involved or have been involved in litigation involving class actions, or other high stakes litigation? Good. Whoever seated me next to Stephen, a plaintiff lawyer and a defense lawyer, [crosstalk]. Yeah, exactly. So we may have a difference of opinion about certain things, but I think that'll be interesting.

The question that was posed to me by Geoff was are there any myths that you're familiar with or that you think are myths, about litigating against Chinese companies in high stakes litigation, such as class actions. And I think there is one. And this is putting aside the practical difficulties that are obviously involved in enforcing a judgment that one may obtain in the United States, in China. And I think that myth is that Chinese companies will settle cases simply because they don't have the resources and/or they don't want to undergo the embarrassment or because they are simply terrified as they should be, in some respects, of the U.S. judicial system. And I think that is a myth.

In my experience, Asian companies in particular, the Japanese being my first locust of experience, dating back to the seventies, and more recently the Chinese companies as they embark upon doing business in the U.S., they are not prone to settle at early stages, or sometimes at any stage of the litigation that's initiated by a U.S. plaintiff. And I have heard many plaintiffs' lawyers over the years say to me, it makes absolutely no sense for your client not to resolve this matter; it's financially imprudent for them not to settle this matter; it's going to cost them substantially more in attorneys' fees and out-of-pocket expenses than the settlement would otherwise cost. And my response to all of those things has been over the years, all of that is true.

But Asian companies in particular, in my experience, have elevated the importance of whether they are right, over financial considerations, when it comes to resolving litigation. My clients, in particular, and I don't think mine are an exception; if they believe that they didn't do anything wrong, and if they believe that the claims that have been certified [phonetic] against them in litigation are deficient, factually, legally, or both, they will not settle; even if it will be much cheaper to settle than if they were to litigate through trial, if necessary. And that comes as a great surprise to a lot of people, including judges.

I've had judges, and magistrate judges, and mediators say to me, you've got to move your client in the direction of settlement. This makes no sense to litigate this case under these circumstances. And again, my response is, they will not settle because they perceive nothing to have happened that violated anybody's rights. So this is something to keep in mind as a practical pointer.

There are, obviously, as we discussed, some very [background noise] significant barriers to enforcements of judgments, and that may explain in some respects, why some Chinese companies, and Japanese companies, and others, do not settle cases because of those barriers. But I suggest to you that it's not just the enforcement barriers, it's because of a cultural view that if I didn't do anything wrong, I am not going to pay.

And where does that come from? Well in my experience again, it comes from a sense that even if you settle a case, and even if the settlement agreement contains that universal language that the settlement does not reflect an admission on the part of any party, of any wrongdoing of any kind whatsoever, these companies nevertheless view it as an admission of fault. They don't care what's in the agreement. They know that in their culture it is perceived by their colleagues as an admission of some kind of wrongdoing or mistake; and one loses face if one admits a mistake. So it's worth a lot more to them to litigate, to establish that they are right, rather than to make what may be a very modest settlement pay.

MR. SANT: Let me ask another question, but you can not answer if you like. Just kidding.

MR. SILBERBERG: I'm very proficient at that.

MR. SANT: What about in the practice aspect, when you're representing, whether it's a Chinese client or another Asian client, what are some of the unique issues that clients in China or Japan, or what have you, you know, that have a very different language and a different culture; what are some of the unique issues that they come across when

they're dealing with class actions?

MR. SILBERBERG: It's a broad question with a long answer, which I will try to keep short, and then if there's time, we can go into it at greater length later. And I'd be curious as to whether Chris sees this from the flipside, from the plaintiff's point of view when one is litigating against a Chinese company.

MR. SANT: Your comments are right on. . . . That pushback.

MR. SILBERBERG: In terms of. . . ?

MR. SANT: [Off mic].

MR. SILBERBERG: I'd be curious about your comments, because that has been my, almost consistent, experience throughout. And by the way, you scared me a little bit when you said at the beginning that I'd been involved in this many decades. You know, many, is a dangerous word when you get to be our age. I'm glad you've lowered that bar a little bit. Okay. So if you're a U.S. lawyer who is representing a Chinese company in a class action, what are some of the unique challenges that are presented? And there are many.

And first, amount many, in my view is the terror that Chinese companies and other Asian companies express when they are sued in a class action. And the reason that that should strike terror in the mind of the U.S. lawyer, trying to represent them or actually representing them, is that it's hard to explain to that client how our system works. And just as one illustration; before I left the office, just to satisfy my curiosity I took a look at the number of class actions that were commenced against Lenovo, the computer manufacturer, earlier this year, relating to a single incident.

And that incident was Lenovo's apparent, or alleged, incorporation of software, called SuperFish, in certain of its models of computers. And for those of you who are not familiar with SuperFish—I had never heard of it until I actually saw it on my own computer screen—but it is a software program which directs the user to unwelcome and unwanted advertisements, as you are trying to either work, or research something, or what have you. And around February 15th, a class action was initiated. I believe the first one was in the Northern District of California. And since February 15, 23 additional class actions have been commenced against Lenovo, based upon the identical allegation.

MR. SANT: Are these the same claims?

MR. SILBERBERG: The same claims.

MR. SANT: And is this the same complaint you Xeroxed 23 times?

MR. SILBERBERG: Yeah. Chris is going to explain what some of

the practical reasons are for this phenomenon.

MR. SANT: If we talk long enough, he'll never get to talk. [Laughter].

MR. SILBERBERG: That's true. So most of these 23 class actions are in the Northern District of California. And try explaining to a Chinese company, like Lenovo—I mean, picture yourself, you're their outside counsel—how are you going to explain the legitimacy and the reasons for 23 separate cases having to be filed? And why haven't they all been wrapped up into one, and how do we deal with that? What you people are doing in the United States.

MR. SANT: Wasn't that the point of a class action, that you had it all grouped together?

MR. SILBERBERG: Correct. So I think the biggest challenge that one has is to develop a relationship of trust and confidence with a Chinese entity. And I have to say that that is a work in progress, even for me, in situations where I literally spent 40 years representing one client. I'm still working on that trust and confidence relationship. Because that is something that's unique when you're dealing with a foreign company, and particularly with a company that is not used to dealing with a judicial and legal environment quite like ours.

MALE VOICE: Is it a lack of trust in the judicial process here, and therefore you're part of that. Is that what—'cause I'm just kind of curious what the - - is.

MR. SILBERBERG: It is.

MALE VOICE: The American Counsel on foreign interests.

MR. SILBERBERG: It is. It's a lack of trust in the judicial process, and it's a lack of confidence that frankly, as U.S. lawyers for these companies you have to come back and overcome, because there are perceptions that U.S. lawyers, for example, are too fast to produce documents that may be hurtful to the company. I mean we would never do that in China. Why would you do that in the United States?

And I have to say—and this is not a joke—I have to say that even after 40 years of doing this—and I have a wonderful relationship with the client—sometimes I wonder whether they're sharing with me some of the documents that are good for them. Because out of a concern that this is really, really sensitive stuff, and once we lose control of it, you know, we've lost control forever. So it's a constant battle to make sure that you establish that trust that will enable you to represent that company and to make sure their rights are vindicated and to make sure that they comply, fully, with U.S. obligations.

I'll just mention—then I'm going to turn it over to Chris. I'll just

mention one anecdote, and this does go back 35 or 40 years. I represented at that time, a nascent company, which is now one of the world's largest and most important multi-national corporation. And the then president of the company came to my office and said, what is this? And my colleague and I reached out for the document, and looked at it, and it was plain to us that what it was a summons. And we said to the gentleman that it's a summons; somebody is suing you, and handed the summons back to him.

And it was like a hot potato. He didn't want to take it back. And he took the summons and he gave it to us, and he said, I don't accept this. They can't do this; we will not cooperate; we don't do things that way; if they have something to say to us they should set up a meeting, but we are not going to accept this. And that's kind of how they felt about it. You know, dispute resolution is a lot different in many other cultures than it is here, and we really have to get over that fundamental issue before you can go much further.

MR. SANT: Now before, when I introduced Chris Seeger, I mentioned that he's lead counsel in the NFL concussion case, and I feel like you've listened now for 45 minutes to the defense counsel speak; you probably learned what it's like to have a concussion. [Laughter]. So let me first ask you, is there anything that you either agree with or disagree with, from the perspective of this defense counsel—I actually meant from the perspective of the plaintiff's counsel on what's been said [phonetic].

MR. CHRIS SEEGER: I think that the panelists have been very frank about things I've observed, just in litigating against foreign companies and Chinese companies. I thought your comments were very insightful. And things I suspected but wouldn't be privy to, being on the other side, you know, look there's a big difference, obviously, and I have a very different perspective on a lot of these things. I don't do securities litigations so I'm not that helpful there. I do product liability litigation; mostly personal injuries, and many times, property damage. The Chinese drywall case involved property damage.

The big difference, right away, that comes to mind is when you talk about the NFL versus a Chinese company. The NFL is here. They're not judgment-proof and they have assets right here. And we knew, litigating against bringing these cases which had to be brought; I mean if you know anything about the Chinese drywall litigation, after Hurricane Katrina, tens of thousands of homes were destroyed; and we had a drywall shortage. They could not get enough domestically produced drywall. So many of the builders turned to foreign entities to

import the drywall.

China, at that time, was really ramping up and looking to get very much involved in the U.S. building market. They wanted to avail themselves of the market here, and sell their drywall. The problem is that almost all of the Chinese drywall that came over—and I shouldn't say all—but a large batch of it came from a particular mine, where something went wrong in the mining process and it came over here with way too much sulphur. It had other materials in there that were not good, but the sulphur was the big problem; because what I've learned by handling this case is, sulphur is like kryptonite for copper and silver.

So what you found is copper pipes in homes that last 100 years, 200 years in some cases, were corroding out in 6 to 12 months. And copper and silver are also conductors of electricity, so appliance were failing, refrigerators didn't work, clocks didn't work. All kinds of things were failing in the homes. So not bringing the case wasn't an option; something had to be done, there had to be some relief. And if I'm giving you too much background on this litigation, just shut me up, but I wanted to give you a little bit of background.

So there were really two big manufacturers that were involved here. One where Chinese companies owned by a very large German company called KDOF [phonetic]. And we didn't really have a problem with the Germans. The Germans appeared and they kind of understand it, don't like the system very much either; I'm friends with the defense lawyers, I get it. Even there, there were problems, but nothing like what we saw with the Chinese companies. And the defendants—ultimately the KNOF defendant, the German company with the Chinese mines—did sell, and we recovered probably close to a billion dollars there.

The entities that are owned by the Chinese manufacturers, we obviously had big problems with, and we knew that we were going to have big enforcement issues. So we had some concern, but you just don't stop litigating at that point; we have to keep pushing, seeing what we can do. They did default; they defaulted that we had trials scheduled. They didn't show up and we got a default judgment. We got a default judgment in one of the class cases. There were these massive complaints where, you know, I won't get into the complexity of that, but there were, you know, it probably involved about 10,000 homeowners.

After we got the default judgment, they retained counsel. My suspicion is counsel was there, but they allowed them to appear. And they came in and they challenged jurisdiction, which led to all kinds of

fighting over what we could get, what we couldn't get. I'm going to really try to shortcut this story because it's actually—the conclusion is pretty fascinating. Because recently, and when I say recently, I mean like last week, the Chinese showed up. And I'm going to tell you why.

So they came, they contested jurisdiction, we went over to Hong Kong with a group of lawyers to take depositions. They agreed to bring people throughout China, to Hong Kong.

MR. SILBERBERG: Tell them why, because you cannot take depositions in China.

MR. SEEGER: You cannot.

MR. SILBERBERG: Yeah. Thank you.

MR. SEEGER: I actually forgot that but that's why we did them in Hong Kong. And it was a mess. To make a long story short, it was a mess. We showed up to take depositions; we had an interpreter both sides agreed to. The Chinese manufacturer had American counsel. They also hired an interpreter to be what they called a challenge interpreter. I've taken depositions throughout the world, never experienced this before, but what it turned into was three days of our interpreters fighting. And at one point, almost a fist fight, no kidding. We were separating them, going that's okay, your interpretation is just fine. I'm sure - - , and just separating them. And it was a mess.

We came back to the states, Judge Fallon in the Eastern District of Louisiana, all the cases from Virginia throughout the Gulf Coast, Florida were MDLed [phonetic] through a multidistrict coordination, in front of Judge Fallon. He read this stuff and was really horrified by it, and said, we're going to do this again. This time, he said, I'm going to go over to Hong Kong and supervise the depositions.

Now the reason I kind of worked my way into this is because what was really fascinating is as much as a circus as it was the first time we went over, we weren't really getting answers to questions. I had a deponent who insisted on working through the interpreter, and we had an English Literature, college degree, from a university in Europe. But he insisted that he didn't speak Chinese; there were kind of crazy things that went on. When we went back with Judge Fallon—and maybe it was his gray hair, the black robe, or whatever it is—everyone behaved very nicely. They conducted themselves unbelievably professionally, and we got answers to questions.

Now the thing that was interesting, going into the corporate formalities with the governance issue, is that these entities, these Chinese manufacturers who did business through some American companies, companies throughout the world, really did not, in this

particular case, did not maintain any corporate formalities. And in fact, to make a long story short, we have one jurisdiction, we have pierced the veil of some of these companies, through alter-ego theories, and these have been upheld through the Fifth Circuit already.

Now how did we get them back? They decided, once they lost in the Fifth Circuit, that they were going to take a hike, and they basically said, you know, we're done with this. This thing's not going really well. They fired their counsel, who did a great job, had nothing to do with their abilities, and just decided they were going to walk.

And Judge Fallon had a real problem with that. And he entered criminal and civil contempt, a civil contempt order against them, and all of their affiliates. And for every single day they were to do business in the U.S., they or any of their affiliates working through them, with them, in concert with them, assisting them—which may include Alibaba, 'cause we're conducting discovery on all these issues—were also subjecting themselves to some problems.

So look, in this particular case it's not a matter of somebody saying, I lost \$5 on my stock. It's somebody's home that now needs to be rebuilt. And you've got this really bad material and a very active judge, who I think is willing to move this case and hold them responsible for what's going on here. So they showed up last week and they actually paid one of the verdicts—it was a smaller one—they paid one of the smaller default verdicts; and I think that was to send a signal that Fallon and we have gotten their attention.

And I'm just giving you this by way of background, 'cause I'm listening to some of the things that people are saying. And one of the comments you made before about getting the \$69 million default judgment and then you could just go home. One thing I'm pretty proud of in this case is that we didn't just allow them to go home. Now we'll see how it all plays out.

There may be challenges to the civil and criminal contempt citation that was issued against them; but it is leading to some very interesting discovery that the Chinese entities didn't maintain any of the corporate formalities, and that there were some interesting relationships with some U.S. sophisticated entities that are going to be interesting for us to delve into. So we're basically just going to keep the pressure on until this gets resolved for the homeowners.

MR. SANT: There's one aspect to what you said that struck me right in my heart, 'cause as a person who came into law after focusing on linguistics first, I've always been fascinated by the language side of it. And a lot of times when I'm in depositions involving Chinese

entities, I'm the one who's being that annoying—objecting to the translations a lot.

But from my view, I feel like it's a hugely problematic issue; because I think a lot of Americans, there's an old joke, in the U.S., if you speak three languages we say you're trilingual, if you speak two, you're bilingual, if you speak one, you're American. [Laughter]. Americans don't sometimes understand that languages don't work like an equation, where you plug this word, or phrase, or sentence in, and then you pop out that one, and there you have it; and that's the correct translation. We're done. The languages operate so differently.

MR. SEEGER: Yeah, we learned that, because many of them spoke Mandarin as their main dialect, but then there are Cantonese—

MR. SILBERBERG: Some dialects I get—well Cantonese was a whole nother thing. But I guess apparently some of the witnesses lived in certain parts of the country, where while it was Mandarin, it was also, you know, so the translation issues were real, but like I said, that happened to turn into a circus. We fixed it.

MR. SEEGER: Yeah. With the Mandarin Language, since the birds normally don't have tenses, for example. Or the nouns normally don't have singulars and plurals, or things like that. You can just imagine how deeply significant that can be when the translator is making a guess as to whether the person was referring to multiple times in the past versus one time in the present. That's hugely different, and significant, and that's not even going into some of the other issues. Yeah, go ahead.

MR. SADEGHI: I had an instance recently. It had nothing to do with my legal practice and nothing to do with this presentation, but this was shown to me by somebody. There was an article in the New York Post that somehow got picked up by the Chinese press, and translated into Chinese, and when you click on the button it says, see English translation from the Chinese back to the English. It had no relationship whatsoever to the original English.

MR. SANT: I actually got a copy of the Chinese version of the white paper that was issued on Alibaba, and I was just taking a look at it. If I was Alibaba's counsel how would I read this document? And I can give you a couple of examples. They talk about wenti [phonetic], right? wenti could be translated as problem, so maybe Alibaba has a lot of problems. But it can also be translated as question; it can also be translated as issue. So depending on how you interpret that single word, either they're talking about problems at Alibaba, or they're talking about issues that they want to go over with Alibaba, which is very

different in meaning.

Or another issue that came up in depositions and how it is; how would you translate ja-chung [phonetic]? If you translate that as, like, strengthen, like we need to strengthen our capabilities. It implies that your capabilities are weak, you need to strengthen it. But if I'd interpret it differently, if I'd interpreted it ja, as further, and chung is strengthen, further strengthen; now my capabilities are strong, and I'm just making them even better.

And it's exactly up to you whether you interpret it as strengthen or further strengthen, because they're both completely fair. But the interpretation has a huge significance on whether that document is now seen as positive or negative for you. It's just massively important, and I think a lot of folks doing Chinese litigation, or litigation in general, you think of fighting over the law or fighting over the facts, but you also need to fight over the language.

I'll just point out one other thing here, in the white paper. At one point there's a phrase, [Chinese language]. Now this is very typical in Chinese. There's no subject. So it says, depending on how you interpret it, it says that for a long time there wasn't sufficient attention paid. Who wasn't paying attention? Was it Alibaba not paying attention, was it the government that wasn't paying attention, was it the general public that wasn't paying attention? Depending on how you interpret it into English is very different meanings, and it's not clear. But you need a subject in English. You cannot translate a sentence and leave out the subject. So you're translator has to make a decision. I think it's a big issue.

Anyway, I'm sorry to go off, because that's one of my little loves is the language side. Now I wanted to open up to the audience; I'm sure there's lots of questions because some of these topics are extremely hot. Who would like to go first? Yes, sir.

MALE VOICE: [Off mic].

MR. SILBERBERG: It's a great question and I think that's part of the reason that I prefaced my comments with to first make sure that the client understands, in some sense, is some of the securities litigation is effectively a cost of doing business, and to not take it so personally. I agree with the comments, generally throughout, that there is a resistance to settling, perhaps for more than the insurance coverage, if nothing else.

I think one of the other aspects of that that we've seen is we'll get questions as to whether there's any way to fight back; if it's a short-seller, for example, can we sue them for defamation. And we have to

explain that there are lot of good reasons not to do that. Partially because it's almost impossible to win that case, but also—

MALE VOICE 1: [Interposing]. That'll give them all the discovery they wouldn't get. [Laughter]. [Crosstalk].

MR. SEEGER: You have to explain that the discovery stay and the securities - - is a beautiful thing. Obligation to plead at such a high pleading burden, without the event of the discovery, is real bad for defendants. And to bring a claim to which truth is a defense, and open yourself up to all of the discovery that you are otherwise immune from; while motions to dismiss are pending, is not the best way to go about it.

And I really think that it comes back to that terror that Richard mentioned, trying to get people to understand that some of these cases are going to be filed. If one suit is filed, and I don't mean to - - , the lawsuits, though, like cockroaches. When you see one, you know another one's coming. There's going to be another suit and probably a number of them. And to explain the process that there will be a lot of suits, eventually there will be a motion for lead plaintiff, that these things do get consolidated, but they should expect a series of lawsuits at the outset, is important.

I do think some of the steps that we talk about the disclosures in particular, can help avoid some of these lawsuits. We know that some of the plaintiffs' firms have people dedicated now to specifically monitoring Chinese companies, and people on the ground in China, and looking at things like the disclosures the company's made to the discrepancies between them. So things like that really may help to some degree. As far as internal controls and other things like that, it may just provide a better chance of getting out of the case at an earlier stage, where there are failings in some of those areas, they make it more difficult for you. But ultimately, I agree that many of these things - - .

MR. SANT: One thing—

MALE VOICE 3: [Off mic].

MR. RADEN: Why isn't the investigation privileged?

MALE VOICE 3: It is. [Off mic].

MR. SEEGER: Steve, did you want to respond?

MR. RADEN: No, I just wanted to—on the point about your second unattractive alternative, which is, was be under insured. As someone who counsels directors of companies, I would not advocate—and if you're going to make that decision, you better have it documented that you made a business judgment that you wanted to be under insured.

MALE VOICE 3: [Off mic].

MR. SANT: Let's open up for other questions and we'll come back to you in a little bit. Do other folks have questions they'd like to ask? We might come back to you soon. Hey?

MALE VOICE 4: [Off mic].

MR. RADEN: So the Hong Kong question was answered because you cannot conduct depositions anywhere else in China. That was the only place that we legally could do them. I understand there's some prohibition.

MR. SANT: I think his question is, why would they agree to have those depositions in the first place if they were defaulting?

MR. SEEGER: I think some of it has to do with some of the comments you heard but that we're very insightful about the risks involved. They did default on a big case. One was a very small verdict of about \$2.6 million, but they also defaulted in a class case, where really all we'd have to do at that point is model damages and present them to a judge, and probably would have had it entered, and they would have a massive, potentially billion-dollar verdict hanging out there.

So I think what—and this is hard for me to answer. My guess is they did some calculation and it said, well, let's go in there and do what we can to challenge jurisdiction. Maybe they felt they had a good chance at showing that the U.S. courts had no jurisdiction over the Chinese entities.

In doing that, though, they opened themselves up to discovery. Now they were never happy about that and they fought very hard. On the amount of discover we should get, they pushed back on us doing depositions there, and then the court's response was, well, if we can't do them here, you can't do them there, you've got to fly them here. And we fought back and forth for months. Ultimately, once they allowed the depositions we limited it to three individuals in a pretty big entity, and a very limited document production where people fought for weeks over what the translations were. You are spot on on that.

Both sides spent a lot of money and I know we did. But ultimately, the discovery that we took on jurisdiction did not bode well for these Chinese entities because we had enough to show, not only purposeful availment [phonetic] of these jurisdictions where they marketed—you know, it was a great opportunity—after Katrina, if you were a building product manufacturer anywhere in the world, it wasn't just the Chinese—it was a great opportunity to start selling to U.S. Builders like Lennar, some of the really big builders in the country who had to rebuild tens of thousands of homes. So it was a great business

opportunity.

We had great documents that showed purposeful availment, a shipping board directly to the port in Florida—Miami—and to New Orleans. And then we were able to also establish minimum contacts. What we were also able to show is that because there was not a very strict adherence to corporate formalities—and again, this is through the Fifth Circuit—we were able to pierce through the—we had alter ego theories we were able to basically say, these entities, this one that was shipping, well that's really part of all of these other entities.

And we haven't stopped there; we're still fighting—we do think we're going to be able to establish that these smaller companies were ultimately owned by a company called BNB, which is Beijing National Building Materials, and it's CNBM, which is China National Building Materials. Someone's shaking their head; they know, those are big companies.

MR. SANT: I have a question for you on the jurisdictional fight. When I read the Fifth Circuit decision, I thought that the defendants had—I apologize—I thought they had a strong argument.

MALE VOICE: You're not biased though, are you? [Laughter].

MR. SANT: Probably I am. I've have seen decisions that there was availment of the U.S. market 'cause they cut the drywall to certain lengths, which seemed to me a very minimal fact.

MR. SEEGER: Well I mean that fact alone, there were a lot of things mentioned, but you know what, I'm glad you brought that up. Everywhere else in the world, they use meters and centimeters. So this board was cut exactly to U.S. specs. And I think it was just one brick in the wall that showed, you know, you were marketing that—

MR. SANT: [Interposing]. I think he said specifics there. I'm just curious as to your view. Do you think that the initial decision to default colored the feelings of the judge and the appellate court towards the defendant?

MR. SEEGER: No. If you want my view on it, and again, I don't have insight into what Judge Fallon was thinking. I mean I think Judge Fallon was—I think if anything really got the court going was they came in, appeared through a really big, good law firm, they were doing a great job, we were making agreements on discovery. We were making motions and fighting back and forth, and then when they didn't get the decision they wanted, they said good-bye. And I think that the court felt like a lot of court time was wasted. This is a judge who actually flew over to Hong Kong to supervise depositions.

And again, I don't want to pooh-pooh my colleagues at the

securities. I don't do them, and I hear some of the comments about copying complaints and stuff, but this is a case about real people who have to rip all this—I mean they had their homes knocked down as a result of a hurricane, and now have to basically gut them again and rebuild them. So it's a big issue.

MR. SANT: My plaintiffs' friends in the security bar say our case is about real people. These are people who invested all of their money in their 401K and lost it all.

MR. SEEGER: Well it's true. It's true. I mean it is. Look, I'm not a securities lawyer; I would imagine if there were a securities lawyer up here, he'd say that the market works best when it works efficiently. It works efficiently based on truthful information. If companies are not putting out truthful information they should be sued. And they should pay people back.

MR. SANT: It seems to me, and I'll just throw this out there and open it back up to questions. But it seems to me they made some questionable decisions, both in the initial default and then not appealing it right away, and the time ran out. If they had appealed it they could have at least fought for jurisdiction further.

MR. SEEGER: They came in late and then didn't like what they got, and took off again.

MR. SANT: Yeah. It seems that this is one of the issues that you sometimes, not always, and hopefully not usually, but you sometimes have with dealing with a Chinese client is that sometimes they handicap their own counsel by making these unfortunate decisions.

MR. SEEGER: I'm pretty friendly with the defense lawyers on the other side, and I believe that is exactly what was happening. They did not confide that in me; when we were litigating. I just had sense that these guys had a very difficult client. And one thing to a point that you made, which I remembered, one of the depositions we took were of the chairman of the entity, you know, the parent company that was selling the board. And they really thought this whole idea about elemental sulphur, off-gassing and corroding copper; he just thought that was just a bunch of BS, not that he didn't think it was happening.

But what he did is he gave me a very long speech that was translated, and I got it, and I saw his passion, which was do you understand what an important achievement it has been for the Chinese to not only make drywall, but the fact that it's being used in China; because apparently I guess it was a wet application of plaster that they used in homes, up until relatively recently. Drywall or wallboard really goes a long way to not only keeping down mold, making the house

drier, but helping to regulate temperatures in the home. And he viewed this passionately, like look, this is a great thing, we even installed this same board throughout China, so why are you complaining about it? There was a lot of that.

MR. SANT: I do want to open it back up to questions from the audience. Yes, sir.

MALE VOICE 4: [Off mic].

MR. SANT: I know, Kayvan, we were chatting a little bit before hand about the VIA [phonetic] structure. What are your thoughts on that?

MR. SADEGHI: Well the only case I can think of that we've been involved in, they're - - into settlements. There wasn't an effort to actually pursue. But because there was a settlement there, that did work. The VIA structure leads to a lot of other complications as well. We actually went through to get a judgment, or a dismissal, with respect to a derivative suit, because the Cayman BBI laws prevent derivative suits, generally. So that's another complication of the VIA structure. But I can't think of any efforts to - - . And I know the status of the VIA structures, in China, has been left a little bit ambiguous, which is another risk factor one could layer on to all these entities. But it doesn't seem like that is necessarily an unintended state of - - .

MR. SEEGER: I have a case now, involving a Cayman company and I learned, happily for my client's sake, that in Cayman it's loser pay. It's not the U.S. system and that changes the dynamic of this a lot.

MALE VOICE 4: [Off mic].

MR. SANT: So there was a question in the back? Yes, ma'am.

FEMALE VOICE: [Off mic].

MR. SANT: Sure. You know, I think in America we often almost take the concept of class action for granted at this point. And it's sometimes surprising for us when we go abroad, how foreign it is to people from outside the U.S., 'cause this is truly something that most of the world does not accept. It's almost unique to the U.S. Sure, go ahead.

MR. SADEGHI: We, typically, before we announce a deal, or before we announce bad news, we have a pool, an office pool. And sometimes we include the client and sometimes we even use it as a means to educate the client ahead of time about what's going to happen. And the pool question is how many lawsuits will be filed, by how many shareholders, claiming to represent the class of all shareholders? And 23 or whatever the number was, is a high number, but you often do get four, five, six, seven, eight that are often carbon copies of each other.

We typically have an associate assigned to go through the complaints, line-by-line, to produce a chart showing us who copied through who, the typos are often even copied. And the trick is exactly your point. How do you consolidate the cases? How do you reduce the number of cases? And often the first six months of this litigation is nothing more than consolidating the cases.

In the federal system it's easy because there are 1404A transfers, you can get them all sent to the same district as a multidistrict panel. It's much harder in state court because there's no way to—the state simply has to say, no, and back down. No, I'm not going to. And it's often just a forward non-convenience motion on the ground that we shouldn't be litigating in multiple forums. But there's a lot of litigation—and there's a lot of jockeying on both sides.

MR. SILBERBERG: That's generally what the multiple complaints are about on the plaintiff's side.

MR. RADEN: Yeah. On the plaintiff's side, the jockeying—close your ears—is who's going to be lead counsel and get the biggest share of the fee? And on the defendant's side, it's what's the most favorable forum. And you get a lot of jockeying back and forth, and sometimes you end up with the same case pending in multiple jurisdictions.

MR. SILBERBERG: Which is the worst of all possible worlds if you're a defense counsel. But to your question, specifically, as Stephen said, it's all about the money because the reason that 23 actions have been filed is so that each of them, each of the plaintiffs' lawyers that have brought each of those cases, can maintain a stake in the game and have a hope of establishing to the satisfaction of the judge who inherits all these cases, that he or she should serve as co-lead counsel. Because co-lead counsel has the authority to parcel out the work that's done on behalf of the combined plaintiffs, and normally they will parcel out that work to themselves.

So I had a situation that actually was only six months ago, in which a class action was filed, here in the Eastern District of New York, by a plaintiff's firm. And then a second action was filed, also in that same court, by a different firm. And then two weeks later, the firm that filed the first case, filed a second case in the Western District of Texas, on the same facts. The pleading was identical except for the name of the plaintiff.

I called him up; I said, what are you doing? You've already got a case in the Eastern District of New York and you were the first to file, which gives you a leg up. And he said to me, well, now I have two cases, so it's two against one. And what he was essentially saying is, I

think having more cases is going to give me a leg up in establishing to the satisfaction of the judge that I should be lead counsel.

MR. RADEN: Well I think under the PSLRA [phonetic], they also have to have an investor with the biggest lawsuit. I mean, before, the PSLRA it really was about first to file and then jockeying for position. It's not a practice area I have, and I don't—I respectfully heard your comment about you hear the same things. But you don't have that, really, in the meshed world, or in class actions dealing with personal injuries or products, because most of the lawyers are actually representing people, as opposed to a fund, or whatever it is.

And they get a lot more power and a lot more say in how litigation is conducted. So it's whacked up a little differently. Not that you need to know that. I feel like I'm not doing a good job defending the plaintiff's lawyer in the securities world right now, but it's not one that I'm not—I'm involved with.

MR. RADEN: I think that's a good point about the PSLRA changing and so that really, it's the large institutional shareholders that will end up being the lead plaintiff. Before that it really was a race to the courthouse and the PSLRA in the mid-nineties really changed that.

And I think as that's become a more structured and routine process, another thing for people to realize with that first flurry of complaints that some clients just don't understand is that these are not the best complaint they are going to see. They are place-holder complaints, they are very bare-boned, they often are essentially copied, just where the court ever happens to be and get something filed. But you're going to get an amended complaint once you have a lead plaintiff established. And that's going to be a much better effort, generally, than the initial - - complaints. So we don't want people to get too sanguine [phonetic] based on the first one out of the box.

MR. SANT: I realize that the audience here varies in your background. The PSLRA was an act that was passed, - - go by Congress, and then attempt to kind of curb what I guess the defense counsel would see as the abuses of the securities litigation that were going on at the time. One really interesting aspect of it is that it requires judges, after the case is complete, to consider whether or not the case was improperly brought and they can impose sanctions if the case was improperly brought, where there was no basis for it.

And one of the great success we had recently for a Chinese client, was the case was not only dismissed with prejudice but we were able to get sanctions against the plaintiff's firm that brought the case, which was a really nice result to get that kind of a ruling. In that instance we

were kind of lucky because it was one of those reverse murder cases, and the plaintiff suing us for a supposedly fraudulent misrepresentation, so the market got all their shares through the reverse merger. None of them bought shares on the market.

And so when we pointed this out to the judge, the judge was like, how in the heck was this case brought in the first place. So it's a special set of facts, but it is something there for those of us defending the Chinese companies to make use of.

MR. RADEN: One thing the PSLRA, which stands for Private Securities Litigation Reform Act of 1995, only applies to federal securities litigation. It doesn't apply to corporate governance cases, either brought in state court or brought in federal court under diversity of jurisdiction. So there still is a lot of that jockeying. And what you see in a lot of the state court cases is the plaintiffs put in the bare-bones complaint, knowing that at some point in the next two, to three, to four months, there'll be a lead plaintiff appointed in the federal securities action.

That plaintiff will invest the money in a really good complaint and then so the plaintiff in the state court corporate governance case simply does the rope-a-dope for two or three months, delay, delay, delay, until they can copy the good federal securities complaint, which in today's world, for those of you who don't know much about securities litigation, really turns on what they call CWs, confidential witnesses. And when you become the lead plaintiff, you go out and hire a private investigator; where actually most of these plaintiff firms have these people in-house, and they use LinkedIn and every other social media device—Facebook.

And they find out who works for you, who's left. And they actually call up all of your former employees who left and are unhappy, and you get the complaint. And it's got confidential witness one, says this, confidential witness two, says that, and you actually litigate the motion to dismiss based on whether or not confidential witness three's allegation is enough to get you over the pleading hurdle. When you get over the pleading hurdle, you then take the deposition of confidential witness number three, and it turns out, confidential witness number three had no idea that he was talking to a lawyer, claims he never said it.

And in fact, often when you get the complaint, you can figure out who confidential witness number three was, and confidential witness number three tells you, I never said those things. But you can't use it because it's a motion to dismiss and you're stuck with the - - of the complaint.

MR. SEEGER: It's amazing. It sounds like you're the one - - that really has clients that are just picked on by the [crosstalk]. [Laughter]. Never done anything wrong. Picking on your clients.

MR. RADEN: I wouldn't work for anybody [crosstalk].

MR. SEEGER: [Interposing]. Of course.

MR. RADEN: I think poor Chris really is going to be a big concussion here.

MR. SANT: Yes, sir, in the front row.

MALE VOICE: [Off mic].

MR. RADEN: That's a really complicated question that it's hard to answer briefly. But I'll tell you one answer and an anecdote. Back when I was at Moofa [phonetic], one of the first clients that I was able to bring to the firm was a company that was sued on a contract case. It was a U.S. plaintiff who had been hired by a Chinese firm, and he sued on the contract, and they brought the contract, in translation, to the court. And when I looked at it very carefully, I saw that some of the translations were clearly wrong. It was a very sloppily done translation.

And so we pointed that out and made the motion to dismiss as a non-convenient form—a form non-convenience—and said that the case should go to China. It's an employment litigation, the contract's in Chinese, most of the witnesses are in China, this case doesn't belong here. And in response to pointing out the errors of their translation, they hired a good translator who came back with a new translation.

And so we said to the judge, Your Honor, we have now three different translations of the same document; their first translation, our response translation, and then their new translation. This just proves our point that the U.S. is the wrong forum to be deciding this issue. And the judge agreed and kicked the case out and sent it to China. So I mean it's a challenging issue, with fighting over the language, and I mean I could go on for days about this, and I will try not to. Rich, go ahead.

MR. SILBERBERG: Several times members of the panel have talked about the importance of language in these cases. And I wanted to pick up on that a little bit because in my judgment, if one wants to become counsel, representing a Chinese company, the value of being a Chinese language speaker, or having access in your firm to Chinese language speakers, cannot be overstated. Our office, currently in New York, has 13 Chinese language speakers because of some very sophisticated litigation that we're handling.

And in my judgment you simply cannot duplicate that by going to outside vendors, which is what most of the time you're confronted with.

You have a big case, you go to a vendor who provides translators, they don't have, however, any context. They don't have any experience with the client; they're not steeped in the case. If you can provide language capability from your own firm, that will provide enormous comfort to your client. We've seen that time and time and time again. Having an asset like a Geoff Sant—who's one of those tribe lingual guys, or maybe there are four languages he's got—is an amazing commodity, because—

MR. SANT: [Interposing]. I have trouble speaking one.

MR. SILBERBERG: Because the client immediately feels taken care of by somebody who understands how they speak and what the nuances are. There was a reference made by Chris a little while ago about these depositions that become wars between translators. And he was precisely accurate. These depositions have become, frankly, useless. Because what happens is you'll have a translator that's been retained by the deposing party; you'll have a checking translator that's been retained by the party that's being deposed. And then the question is posed, and the question is translated.

And then the checking translator says you didn't translate that properly. You should have said, blah, blah, whatever. And then the original translator will contest that and before you know it, they're arguing back and forth, in Chinese, with regard to what the right words were. And then when it's finally straightened out, if it's straightened out, the question is reposed to the witness, and the witness says, what was that question? And you start all over again.

A kind of apocryphal story involved a product liability case that we handled a number of years ago. And the allegation was that a whole line of products were defective. They malfunctioned in a way that they shouldn't have. And there were some documents that were produced by the defendant, and those documents, depending upon who you spoke to, said in Chinese that they were defective. That was one translator's construction; or that there was a problem. Now just think about the difference between the words defect and problem.

A problem may not result in any liability; a defect could. So there was this ongoing battle between the translators that resulted, in my view, in an absolutely useless transcript. And the people sitting in that room probably generated six figures in fees for that one day alone, between all of the counsel, all of the translators, all of the services, the court reporter, the videographer, and so on.

One last point. We talked about the cultural differences and why it's so difficult sometimes to gain that trust of a foreign company in a

venue where they're uncomfortable. And Chris mentioned the depositions that were taken in Hong Kong, because you cannot take a deposition in China. Think about that for a moment. The reason that depositions are not taken in China is because it's prohibited by the government. So inevitably, if depositions are taken, you're probably deposing somebody who doesn't know what a deposition is, because it's not common there. They don't have any experience.

So we had a case with a significant Chinese company. And the plaintiffs indicated that they were going to videotape all of the depositions. So the deposition was going to take place in a hotel conference room, in Hong Kong. And the first question the client had was, well I assumed this deposition was going to be in a court. No. It's not going to be in a court. Well then we're not going to go; if it's not going to be in a court, we're not going to go. Well you have to assure them that a deposition, even though it involves sworn testimony, can be taken someplace other than a court.

So the next question was, well, will the judge be there? And I was listening very carefully to what you said about the judge overseeing these depositions. Because there's consternation about the prospect of submitting to a deposition, but there's no judicial officer there. Now we're used to it in the U.S. We have a notary public there, it's good. They're a designee; they're there to ensure that there is a sworn statement that the deposition testimony is correct. But try to convince a Chinese company that nobody needs to be there; certainly no judicial officer, which I'm sure made them feel much more comfortable, and that's why there were less disputes, because the judge was there.

And what some companies have done in cases that we've handled is they have suggested to the judge that, judge, we understand that you, personally, can't come, and disrupt your trial schedule. But will you deputize a private mediator, perhaps, or a former judge, to come over to Hong Kong, or wherever the depositions are going to be conducted, and serve as that quasi judicial officer to make the client feel more comfortable? And that happens with great frequency.

And then the next question is what's this about a video? I assume that the video means that there'll be a judge sitting in a courtroom who's watching. So they're construction of that was that there would be a live video link to the judge overseeing the case while the deposition was going on, which of course was not the intention.

And then think about the difficulties of that witness, after all of these issues and the fights with the translators, try getting that witness to take a look at that transcript, which now has to be translated into

Chinese. And have that witness also view the video tape, in order to ensure that he or she is comfortable that the testimony that's reflected there is their true testimony. It's a huge burden.

MR. RADEN: Again it's a paradox or an etymological [phonetic] problem, because if the witness doesn't speak English well enough to testify in English, how can they verify that the deposition transcript is accurate? It's such a problem and you have to spend so much time making sure that it reflects the intended meaning is really challenging.

MR. SEEGER: Can I add one little practical point?

MR. RADEN: Yes, please.

MR. SEEGER: There's not much to add to what you said, 'cause again, you're spot on. But I would tell you this, if you're going to go—and maybe some of you have experience with this—but if you're going to go over to China and take a deposition, I would recommend that you act a little less like an American lawyer, and try to have more of a conversation. I mean I've done depositions in Germany and they don't like it. But in China, if you think you're going to be able to just go there and berate somebody, or try to embarrass them, or be rude, you're not going to get anything back in exchange.

And because I saw other lawyers I try not to be an asshole in depositions, but at trial, that's a different story. I did try four of these cases in the Eastern District of Louisiana, but I think the approach would be more conversational, more respectful, more of a dialog. I know that we're not really trained to take depositions that way. A lot of lawyers like to take them like they're cross-examinations, but, you know. And maybe if it's a cross, it makes sense for you to do it that way. But if it's a discovery deposition, you might go a lot farther if you try to strike up more of a conversational approach.

MR. SILBERBERG: I completely agree with that.

MR. RADEN: I was going to say that's not even a point or has anything to do with Asia or China.

MR. SEEGER: Most witnesses, really.

MR. RADER: With most, nine times out of ten, you're going to get a lot more out of a deposition even if it's a bunch of New Yorkers. You know, being just friendly, 'cause you want a conversation type of thing.

MALE VOICE: I agree with that.

MR. RADEN: I would just add to what Richard said, you know, he correctly laid out all the things that you'd like to happen in the deposition, to make people comfortable, and to make it work out, et cetera, et cetera. But usually that's not going to happen, because usually if one side wants X, the other side wants not X. And if one side

wants the judge there, the other side doesn't want the judge there. If one side—either because people are just being difficult for the sake of being difficult, or because they're clients really have different interests. So it is very rare, in my experience, to actually get people to agree to a protocol that will really get you to "justice." It's a game.

MALE VOICE: One other quote—I think some of the trust issues that have been raised are very important, and it is difficult to do. But talking about how you try to build that trust, I know we try to have a combination; pick upon the other points - - ; having people on the ground who really understand the issues and are thinking of it in the right perspectives, and trying to find people who not just necessarily speak the language, but may be present. Time change can be a big problem, especially in the - - litigation, where people are reacting quickly and tension is high.

I think it helps a lot to have counsel that we can have presence both in China and in the United States. People in China who understand U.S. securities law; and a U.S. securities litigator based in China; people who are also local lawyers in China, who aren't just being important. To get that mix is very difficult and it helps that we build a lot of trust and you go to firms that have that sort of presence across markets, and people in whatever time zone you need to be in, and can help that coordination in your firm, as opposed to trying to - - .

MR. SILBERBERG: That's a very good point. And before we close this, I want to ask the panelists about what I perceive to be another unique challenge in representing a Chinese company in litigation, whether it be class actions or other commercial litigation. And that is, in the U.S., when we represent corporations, the people that we normally deal with on a day-to-day basis are the in-house counsel. And they are the ones that are intervening between our firms and the business people who are ultimately going to be witnesses and who are going to know where the documents are.

And sometimes we don't appreciate the role of U.S. inside counsel as much as we should. And we start appreciating it when you start dealing with the representation of foreign countries. And when you deal with the representation of Chinese companies in particular, and this is true of Japan as well, the in-house "legal departments" are primarily, if not exclusively, comprised of people who are not lawyers. They're not trained as lawyers. They are trained by the company to do lots of different things. And for a period of their career, they may be in the Human Resources Department, and then they may go into the Legal Department, from the Legal Department, then they go into the Finance

Group.

MR. RADEN: It's a very unusual aspect, but it's true, yes.

MR. SILBERBERG: And during the period that they're in the Legal Department and you are representing the company, you are dealing with them as if they were in-house counsel, but they're not lawyers. And the ramification of that could be very serious, because there are privilege issues. And one of the things that one must be very sensitive to is that when you speak with a U.S. in-house counsel, you have a pretty good sense that your conversations and their conversations with people inside the company, who have a need to know, are going to be privileged.

But when you're dealing with people who are not lawyers, and who are not imparting legal advice, there have been rulings that their communications are not privileged, and therefore you need to be exceedingly careful in your dealings and keep those rulings in mind. It's a unique problem in dealing with companies in that part of the world.

MR. SANT: I'm going to seize my lucky position here as moderator, to add a couple more comments before I turn it over to Chuck. You mentioned about how there's fights over translation. I think that should be the case. I really believe that you should have a senior litigator who knows the case well enough to know where the translation issues are, to seize on the ambiguity, or to seize on the unfavorable translation, and object to it.

But what often happens, if you hire a person who doesn't know the case, from outside, to come in and act as your check, they don't know the case, so they don't know what to object to. And that's a huge problem. They can be active or not active, but they just don't know what is important and what matters. And it's a big problem. I think a lot of firms without the kind of experience that folks here have, people sometimes make that mistake and hire somebody who maybe doesn't understand their case.

I'll just close with a little humorous note. You know, in depositions in America, they often ask in the very beginning, it's a very common opening question, have you taken medication today. And I just find it hilarious to think how that's translated into Chinese sometimes. [Chinese language]. Can you imagine as a Chinese witness coming in and you sit down and you're like, alright, I've got to do my deposition. And the witness says, what's your name? I'm Lee Wong, and they say, have you had your medication today? Which, in Chinese it sounds like that you're saying are you—yeah, I was going to

say something that I shouldn't say out loud—are you fricking crazy—type of question. [Laughter]

So it's just hilarious. And I always—when I'm sitting in on the deposition, I'm always listening, how are they going to translate it. We're going to have an incident again. But anyway, I want to turn it over to Chuck, but before I do, I want to thank each of the panelists. Steve, thank you so much for showing your deep knowledge of corporate governance, and it's great to have somebody who's not just a partner at Weill, but also an adjunct here at Cardozo.

And thank you, from my old firm of Morrison & Foerster. It's great to see you guys are continuing the tradition and Kayvan, it's great to have you here. And I'm so delighted to have a member of the plaintiff's bar join our heavy defense team on this panel, and especially someone like Chris, who is truly an on the Mount Rushmore of graduates from Cardozo. This is one of the greatest minds we've had come out of this school. And of course, Rich, who's been my leader here in my new firm of Dorsey. So take us away.

MR. CHARLES LABLON: Terrific. Let me just echo your thanks to this panel. I think we had a very, very fruitful discussion here. My job as commentator is to give a little bit of a professorial overview and a few lessons learned from this discussion, which I think was filled with lessons to be learned.

It's important to realize here that we're dealing with a country with a long standing in complex culture; one which has many unique institutions and methods of operations. I'm speaking, of course, of the United States. [Laughter]. In many ways the title for this panel discussion could be, Chinese Cultural Exceptionalism Meets American Legal Exception; because that's what this discussion seemed to me was focused on was the way in which bringing clients in from another culture, a very different culture, and explain to them the weirdness of American law, which we all recognize is very strange to everybody in the world, and maybe even more so to people who are coming from a different culture which doesn't share the same legal roots.

It has different historical backgrounds, not to mention language that creates this very difficult system for what really requires education. And I would submit to you that a lot of what we heard here, even from the defense counsel, is these are lawyers who also have to act as teachers. And a lot of this discussion was about how you educate your client. How you make your client aware of the nature of the American legal system, all the differences that are involved in the American legal system. How you teach them, how you translate, and I'm using the

word translate, not just as a language, but how you translate different legal institutions.

As we all know, language is filled with false - - . It's filled with words that sound the same but mean different things in different languages. Law is the same way. The word judge, right? They have judges in China, they have judges in the United States. They are very different people. They are very different kinds of people; they react very different. Explaining all of that to clients, it seems to me, is a very important part of what lawyers do.

And as these defense lawyers discuss the differences between American law and other systems, they're going to talk a lot about people like Chris. They're going to talk a lot about plaintiffs, 'cause one of the important differences between the way America works and the way most other countries work, is we regulate in part, by litigation. Litigation is not just about controversies and contests, it's also a form of regulation in the United States.

They taught you back in the first year of court, you act at your peril, and then if you do something that's deemed to be negligent or wrongful, then you get sued. Right? And one of those things we're seeing here is explaining that to a group of people who are coming from a very different environment, where the rules are - - laid out; the rules tend to be explicit rather than—I think Kayvan was the one who said that a lot of the American rules are kind of vague and unclear, and that's one of the many, many differences between the systems that were pointed out here.

A lot of them are obviously and I knew them before hand, like the ubiquity of class actions, the world of discovery, but what I thought was interesting was the way a whole bunch of subtler distinction between the American system came out in the course of your discussion. One of the big ones is judges. Like I say, in most of the rest of the world, and I think this is certainly true in China, judges are bureaucrats. They see themselves as bureaucrats, they see themselves as part of the political system.

In the United States, judges see themselves as, well, judges. Right. Wielders of the sword of justice. And some of the discussion that I was hearing from Stephen about if you get on the wrong side of the judge, in terms of the things that you've said; or if a judge decides that these are people who are not acting in accordance with Delaware standards of corporate governance, or things of that sort, the potential effects are very grave.

Another interesting point, I thought, was the one that Richard was

making about the lack of general counsel and the fact that when you're trying to talk to your clients—teach your clients—you're dealing pretty much with the principles involved. You don't have general counsel to rely on, you also don't have what's become fairly ubiquitous in American corporate firms, compliance officers. There's no compliance structured mechanism which also forms a translation function for many American companies, as a first line of defense and as preventive measures.

And that's another thing that struck me about this discussion, was the point that Stephen was making. These are litigators. They go to battle after something bad has happened. But your corporate partners, it seems to me, need to be involved a lot more with their Chinese clients, because it's not enough, obviously, to just register as an American company.

As Stephen was saying it's a lot to learn about what it means to be a director, what it means to run a company effectively, from a corporate point of view. And I thought Chris' comments about the lack of corporate formalities was very telling, right. 'Cause you have companies that are created to be the American subsidiaries and they made them, and they just forgot about them. Right? Clearly there are problems there in terms of the guidance and the teaching structures that are going on, with at least some of these companies.

And finally, I think also the other big, big difference is attitudes towards litigation, which Richard touched on. In the United States, litigation is very much a cost of doing business. Most general counsel just see it as something that they do; it's part of the cost structure like that. It's not a challenge to your bonify [phonetic]; it's not a challenge to your honor. In other parts of the world, and clearly what Rich was telling us in China for sure, it can be. And that's another important distinction to keep in mind.

So as you represent Chinese clients, it seems to me these all important lessons that were brought forward today, and were definitely worth learning and worth thinking about, it raises another question, which is why are the Chinese bothering to come in in the first place? I mean there's a lot of money to be made in China. They don't really have to come here. Sometimes there are specific reasons, so you could say Alibaba wanted to do a class [phonetic] stock, they couldn't get that in Hong Kong, but they could get it here.

But it seems to me there's a broader point as well, which is that I think this goes to the point about China's peaceful ride. Chinese companies wanting to become global companies, wanting to compete

with the best in the world, and that means entering the American markets. That means subjecting yourself to all of these rather strange and rigorous constraints that are going on. It seems to me that that's an important part of this discussion as well; just the big picture. That's a part of what we're seeing. And so the good news is that none of you folks are going to be without work anytime in the near future, no matter how scary you make the American litigation structure seem.

And so I think I'll stop there and thank our panel one more time; and thank you all for coming.