

Recent U.S. Litigation Involving Chinese Companies and Individuals

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Overview/Purpose

- ▶ Unique legal and procedural aspects of litigation in U.S. state and federal courts
- ▶ Vulnerability of Chinese companies and individuals in U.S. litigation
 - Recent government investigations and criminal proceedings related to Chinese reverse mergers
 - Targets of class action litigation, particularly alleging antitrust or securities violations

Antitrust prosecutions and investigations

- ▶ Laws designed to protect free and open markets and promote aggressive competition
 - Violations include price fixing and unlawful market domination
- ▶ Violators may face severe penalties, including:
 - Fines of over a million dollars
 - Divestment of business units to competitors
 - Limitations on future business
 - Prison time for individuals

Foreign Corrupt Practices Act

- ▶ Prohibits the bribing of foreign officials for government contracts or other business and also
- ▶ Requires companies keep and maintain accurate books and records

SEC Action - *SEC v. China Energy Savings Technology*, No. CV-06 6402, United States District Court for the Eastern District of New York

- ▶ The SEC sued China Energy, New Solomon, and several individual defendants for illegal sale and price manipulation of its common stock through a “pump and dump” scheme
 - China Energy was formed through a reverse merger
- ▶ Defendants did not appear and default judgment was entered against them
 - Ordered to disgorge over \$36 million and pay over \$1 million in civil fines

SEC Action & Criminal Case against China Northeast Petroleum Holdings (“CNEP”)

- ▶ SEC sued CNEP and its senior executives for alleged related-party transactions and diverting funds to corporate insiders and family members
 - CNEP was formed through a reverse merger
- ▶ SEC action stayed pending outcome of criminal case against executives Jiang and Wang
 - Jiang’s nearly month-long trial resulted in a mistrial; will be retried in September 2014
 - Wang awaits trial

Trade Secrets - *U.S. v. Sinovel Wind Group Co., Ltd, et al.*, No. 13-cr-84-bbc, United States District Court for the Western District of Wisconsin

- ▶ Sinovel, a Chinese wind turbine manufacturer, indicted on theft of trade secrets and related conspiracy, and wire fraud
 - Allegedly recruited and bribed an employee of a competitor to steal source code from the competitor.
- ▶ Sinovel's motion to quash summons for invalid service was denied. Case is still in progress.
 - Court held service on subsidiary Sinovel USA was adequate because it was merely an alter ego and puppet of Sinovel Wind Group in China.

Criminal Action - *U.S. v. Jianyu Huang*, No. 1:12-cr-01246, United States District Court for the District of New Mexico

- ▶ Huang, physicist for U.S. government owned research facility, indicted for transporting U.S. government owned computer and hard drive to China and lying about it; and for stealing electronic files and documents
- ▶ Court denied Huang's motion to dismiss the indictment; pled guilty to unlawfully transporting government property to China and for lying about his intention to do so. Faces 1 year and 1 day in prison and 3 years supervised release

Antitrust - *Solyndra Residual Trust v. Suntech Power Holdings Co., Ltd.*, No. 12-cv-5272, United States

District Court for the Northern District of California

- ▶ Bankrupt U.S. solar power company, Solyndra, sued several Chinese solar power companies alleging conspiracy to fix prices at below-cost, non-competitive prices to drive Solyndra and other U.S. companies out of the market
 - Solyndra alleged Chinese government-related entities and trade associations enabled the defendants' scheme
- ▶ Court denied defendants' motion to dismiss the complaint. The case is pending

Antitrust / Consumer Class Action - *In re*

Vitamin C Antitrust Litigation, No. 06-MD-1738, United States District Court for the Eastern District of New York

- ▶ Class action lawsuit filed against several Chinese pharmaceutical companies alleging conspiracy to fix prices and restrict competition in U.S. Vitamin C market
- ▶ Defendants did not dispute the conspiracy, but claimed they were compelled by Chinese government to fix prices and set output restrictions
- ▶ Both the court and the jury rejected compulsion defense. Plaintiffs awarded over \$145 million

IP - *Advanced Access Content Systems*

Licensing Administrator LLC v. Shen, No. 14-cv-1112, United States District Court for the Southern District of New York

- ▶ AACS sued several Chinese software companies and individuals alleging their DVDFab software illegally circumvented AACS's technology
 - AACS manufactures technology that protects DVDs and Blue-ray discs from being copied
- ▶ Defendants failed to appear; default judgment and preliminary injunctions were entered against them
- ▶ Months later, defendant Feng Tao moved to vacate default judgment claiming he did not purposefully default. A ruling on this motion is pending

Securities Class Actions

- ▶ *In re Sina Corp. Securities Litigation*
- ▶ *In re China Life Securities Litigation*
- ▶ *In re PetroChina Co. Ltd. Securities Litigation*

MDL - *In re Chinese-Manufactured Drywall Products Liability Litigation*, No. 2:09-md-02047, United States District Court for the Eastern District of Louisiana

- ▶ Multidistrict litigation alleging Chinese manufacturers of drywall sold defective drywall which caused property damage and health issues
 - Several state and federal cases brought
- ▶ Defendant Taishan Gypsum Co. Ltd. (“TG”) defaulted in one case and argued no personal jurisdiction in others. Rejected because TG’s subsidiary's contacts were imputed to TG
- ▶ Many cases settled, but appeals ongoing

Shareholder Action - *Deutsch v. ZST Digital Networks, Inc.*, No. 8014-VCL, Delaware Court of Chancery

- ▶ Plaintiff stockholder brought suit under Sec. 220 of the Del. Code to inspect ZST's books and records in Delaware, not in China as ZST required
- ▶ ZST did not appear and default judgment was entered against the company
- ▶ Plaintiff also granted "put option," forcing ZST to buyback plaintiff's shares if requested
 - Plaintiff received above-market price of \$8.21 for each share, totaling over \$32 million

Commercial Litigation

- ▶ Any lawsuit involving a business transaction
 - Breach of contract
 - Tortious interference with business or contractual relationship
 - Fraud or misrepresentations
 - Employment disputes
 - And many more...

*Hubei Gezhouba Sanlian Industrial Co., Ltd.
v. Robinson Helicopter Co., Inc.*, No. 2:06-cv-01798,
United States District Court for the Central District of California

- ▶ Chinese plaintiffs brought action to enforce \$5.5 million judgment entered against defendant in Chinese Higher Court
- ▶ Court first granted defendant's motion for summary judgment; plaintiffs appealed
- ▶ On remand, after bench trial, court reversed itself and ordered enforcement of Chinese judgment against defendant. Affirmed on appeal

Protections from U.S. Litigation

- ▶ Build a strong compliance department
 - Code of ethics and compliance trainings
- ▶ Separate U.S. business segments from Chinese business segments
- ▶ Utilize favorable international arbitration and choice of law clauses in commercial dealings
- ▶ Importance of litigation holds

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