THE AMERICAN CIVIL JUSTICE SYSTEM

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I. HISTORY

The American civil justice system has its roots in English common law. The early goal of American law at the time of the United States' transition from colony to independent country was to ensure the right of every citizen with a grievance to have a court adjudicate that wrong.[1] The law focused on fixing problems for individuals and rested on the primary principle that for every wrong, an individual had a remedy at law. In the abstract, this system of law appears to be broad-reaching. However in practice, the courts narrowly construed the common law precedents, and individuals whose grievances did not precisely fit the established common law formula for recovery were left without recourse.

As time passed, the laws of the United States evolved along with the country. The American common law doctrines that developed over the first few centuries were designed to promote the rights of individuals, support enterprise, and limit liability. Doctrines such as the tort of negligence and limited liability for corporate shareholders achieved the goals of urging individuals to act with common sense, discouraging litigation, and encouraging investments. American society strongly disfavored litigation, and prominent Americans strongly opposed litigation. For example Abraham Lincoln wrote in 1850, "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."[2]

By the mid-twentieth century, the American civil justice system had changed, along with American attitudes toward litigation. Litigation was no longer based solely upon common law, but was based upon a combination of common law and statutory law. As Americans' attitudes toward litigation became more favorable, the federal and state legislatures used their

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[1] *See* the Massachusetts Body of Liberties (1641).
[2] Lecture notes dated July 1, 1850, THE COLLECTED WORKS OF ABRAHAM LINCOLN (Roy P. Basler ed. 1953).

Constitutionally granted powers to enact bodies of law that created new liabilities that did not exist at common law. This hybrid common law and statutory system of liability creates the body of law that a Chinese company doing business in the United States will have to navigate, including the law of torts.

The term "tort" refers to a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.[3] This paper will provide a general overview of some of the tort law a Chinese company doing business in the United States may encounter, and a summary of how a lawsuit proceeds through the American court system.

There are two types of law that control a civil action. The first type is substantive law, which is the statutory and common law that creates, defines, and regulates rights and obligations. The second type is procedural law, which is a set of established rules governing the process a civil action must take through the court system, controlling the events that occur before and after a trial, and the trial itself. For an action in federal court, either federal or state substantive law may apply, and federal procedural law will apply. For an action in state court, state substantive law will apply, and that state's procedural law will apply. [4]

II. THE STEPS OF A CIVIL LAWSUIT

A. Complaint and Answer

In the American civil justice system, civil actions (also called lawsuits) may be heard in either state court or federal court. A case in the federal court system begins in a Federal District Court, where the trial will eventually take place. There are eighty nine Federal District Courts located throughout the fifty states, with at least one Federal District Court in each state.[5] A case in state court begins in that state's trial court, where cases are filed and heard.

A tort lawsuit is initiated when an individual or entity, who has suffered an alleged injury that potentially entitles them to damages, files a complaint in civil court against the individual or

[3] W. Page Keeton, Prosser and Keeton on Torts § 1 (4th ed. 1984).
[4] There are many variations in states' laws, and to address all of the states' substantive and procedural law would be a massive undertaking. Therefore, this presentation will focus in on general principles of state substantive law, and on the Federal Rules of Civil Procedure. Although procedural rules also vary between the states, many states have based their own rules of civil procedure upon the Federal Rules of Civil Procedure
[5] 28 U.S.C. §§ 81-144.

entity whom the injured party feels is responsible for the injury.[6] The party who alleges injury and files the complaint is called the plaintiff, and the party who is alleged to be responsible for the injury is called the defendant. A complaint must contain three things: first, a statement of the grounds showing that the court may exercise its authority over the action and the defendant, a concept known as jurisdiction; second, a short and plain statement of the claim showing that the plaintiff is entitled to relief; and third, a demand for the relief the plaintiff seeks.[7]

Upon the filing of the complaint, the court will issue a document known as the summons. The summons is given to the plaintiff, who must deliver it along with a copy of the complaint to the defendant within one hundred and twenty days, a procedure known as "service."[8] Service of the summons and complaint must be completed in one of the methods provided for in the rules.[9] Service may generally be made by anyone who is over eighteen years old and not a party to the lawsuit. Common methods of service in the United States are hand delivery to an individual, leaving a copy at an individual's place of residence, or delivering a copy to a corporation's officer. A business who is a resident of another country, like China, may have special rules that apply to serving the summons and complaint based upon international treaties such as the Hague Service Convention.[10] If the plaintiff does not follow the proper rules for service, then the defendant may file a motion with the court asking that the court dismiss the action for failure to properly serve the summons and complaint.[11] American courts take the issue of service very seriously and will consider dismissing the entire action if service is not properly made, because service of the summons and complaint constitutes the defendant's notice of the lawsuit and without proper notice, a defendant may not be able to defend itself properly.

The defendant has twenty days to respond to the complaint after service of the summons and complaint.[12] That response can be in the form of an answer which states any defenses and either admits or denies the allegations of the complaint, a motion to dismiss the complaint because it is defective as a matter of law, or a motion asking that the plaintiff clarify the

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[6] Fed.R.Civ.P. 3.
[7] Fed.R.Civ.P. 8.
[8] One hundred and twenty days is the amount of time allocated by the Federal Rules of Civil Procedure. A state's rules of civil procedure may provide more or less time for service.
[9] The methods are enumerated in Fed.R.Civ.P. 4.
[10] The People's Republic of China ("the PRC") acceded to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, also called the Hague Service Convention, on May 6, 1991, and its provisions entered into force on January 1, 1992.
[11] Fed.R.Civ.P. 12(b)(5).
[12] Fed.R.Civ.P. 12(a).

allegations in the complaint with a more definite statement because the complaint is too vague or ambiguous to reasonably respond to it.[13] At the time the defendant responds to the complaint, it must also assert any claims it has against the plaintiff that relate to the facts and circumstances underlying the lawsuit. Claims made by the defendant against the plaintiff are known as counterclaims and claims made against another defendant are called crossclaims.[14] Parties to whom these types of claims are directed must answer them just as the defendant must answer the complaint.

Parties to a civil action have the right to a trial by jury pursuant to the Seventh Amendment of the Constitution of the United States. A jury is a panel of citizens who are summoned to court and sworn to decide the facts of the case on the evidence presented. A party can demand a jury trial when it files the complaint or answers the complaint.[15] Failure to demand a jury trial may permanently waive that right. If neither party demands a jury trial, the case will be tried before a judge who will decide the issues of fact between the parties.

B. Discovery

After the defendant has answered the complaint, the court usually holds a scheduling conference or issues a scheduling order to set the deadlines for the pretrial portion of the lawsuit.[16] In the pretrial phase, these deadlines relate to a process known as discovery. Discovery refers to the formal procedures through which parties to a lawsuit obtain information regarding the claims and defenses of the other litigants by requesting documents and information from one another and from third parties who are not involved in the lawsuit.

There are many types of discovery, and common methods of discovery include depositions, interrogatories, and requests for production of documents[17] Depositions are an out of court proceeding in which a witness or a party answers questions under oath with the testimony recorded by a court reporter. Interrogatories are written questions from one party to another that must be answered in writing, under oath. Parties are usually limited to a certain number of interrogatories (in federal court, the limit is twenty five). Requests for production of documents are written requests that require a party to search for and produce for inspection any

[13] Fed.R.Civ.P. 8(b) and (c), 12(b), and 12(e).
[14] Fed.R.Civ.P. 13.
[15] Fed.R.Civ.P. 38.
[16] Fed.R.Civ.P. 16
[17] Fed.R.Civ.P. 30, 31, 33, 34, 36.

document or other tangible evidence in its possession, custody or control (including electronically stored material) that is responsive to the request.

Discovery is limited to non-privileged information that is material to the claims at issue between the parties.[18] If an opposing party requests information that is privileged or not reasonably calculated to lead to the discovery of admissible evidence, then the party responding to the discovery may object rather than answer. In addition, a party may object to disclosing information if the discovery sought will create an unreasonable burden or expense on the answering party, or if the discovery can be obtained from another source that is more convenient and less expensive.

Privilege refers to communications within certain relationships that American law protects from disclosure. The attorney-client privilege protects communications between the party and its attorney from disclosure, and the work product doctrine protects from disclosure materials prepared by the party's attorney in anticipation of the lawsuit. There is also a privilege that protects communications between spouses. In general, communications that are made in the presence of a third party or are shown to a third party will not be protected by privilege. Therefore, a business which has been sued or is no notice of a potential suit should not communicate its legal strategies and impressions to outside vendors or third parties as those communications may be discovered by the other side in a lawsuit.

If objections are made to discovery requests, the courts prefer that the parties work out discovery disputes without the court's intervention. However, both the party seeking disclosure and the party attempting to prevent disclosure may seek relief from the court if they cannot reach an agreement. The party seeking disclosure of the discovery may file a motion to compel the discovery, while the party attempting to prevent disclosure of the information may file a motion for a protective order to protect that party from annoyance, embarrassment, oppression, or undue burden or expense.[19]

Unless there is a valid, clearly stated objection to the discovery, the responses must be made fully, completely, and truthfully. If a party fails to fulfill its duty to answer the discovery properly, the court may sanction that party with a penalty ranging from a monetary fine to an

[18] Fed.R.Civ.P. 26(b).
[19] Fed.R.Civ.P. 26.

order that the offending party be held liable on the claims asserted against it or a dismissal of the claims it has asserted.

C. Summary Judgment

The discovery period continues according to the time limits set by the court, and its end marks the completion of the parties' exchange of factual information. In some circumstances, at the end of discovery the facts show that either the plaintiff or the defendant is entitled to judgment on all or part of its claim. If the evidence shows that there is no material issue of fact, and that judgment should enter for a party as a matter of law on all or part of its claims, then that party may file a motion for summary judgment with the court. At this stage in the proceedings, a judge may only decide questions of law. Therefore, if there is a legitimate dispute as to a factual issue that is necessary to decide the claim, a judge cannot grant summary judgment and the claim must await decision at trial.

D. Trial

The trial portion of a civil action begins with pretrial motions. These motions relate to the evidence that will be admitted at trial, including evidence from expert witnesses. Pretrial motions allow parties to assert that certain evidence that a party intends to present is not admissible. As a general rule, relevant evidence is admissible and irrelevant evidence is inadmissible, however there are numerous exceptions contained in the rules of evidence.[20]

Following pretrial motions, jury selection will begin if one of the parties has demanded a jury trial. Jury selection starts with a jury pool, which is a group of people from the community chosen at random. Then the court (and sometimes the attorneys) engage in a process known as *voir dire*, in which members of the jury pool are questioned about their backgrounds and potential biases. The goal of the *voir dire* process is to obtain a fair and impartial jury, and the lawyers may be permitted to request that potential jurors be excluded from the jury based upon their answers to the questions. A jury must have at least six people, but generally may have no more than twelve people.[21]

Once a jury is selected, the presentation of evidence begins. The plaintiff goes first because the plaintiff bears the burden of proof, which is the responsibility to make a sufficient showing of each fact necessary to establish the claims in the plaintiff's complaint. The showing

[20] Federal Rule of Evidence 402.
[21] Fed.R.Civ.P. 48.

the plaintiff must make is by a "preponderance of the evidence," which means that the jury must be convinced that the facts more probably happened in the way the plaintiff asserts than in the way the defendant asserts. Once the plaintiff's presentation of the evidence ends, the defendant is given a chance to present its evidence.

Following the presentation of the evidence, the judge instructs the jury on the applicable law. The judge's role in the trial is to guide the jury on matters of law, while the jury determines questions of fact. If the judge makes an error when instructing the jury on the law, or fails to give an instruction that was requested, the parties should object to preserve their right to appeal the jury's verdict.

After the judge has instructed the jury, the jury leaves the courtroom to deliberate on the evidence and make its decision. Deliberations may be brief, or may last several days or longer. The jury's verdict in a federal trial must be unanimous, but in roughly two thirds of state courts only a simple majority is required. In civil actions, the jury will determine first whether the defendant is liable for the plaintiff's injury, and if the defendant is liable the jury will then determine the appropriate measure of damages.

Once the jury has returned with a verdict, the verdict is read to the parties and the court enters judgment. At that time, the parties may file post-trial motions, including a motion for a new trial, a motion to amend the judgment, or a motion for relief from a judgment.

E. Appeal

In the event that it believes that there is an error of law made by the judge during the trial, following the entry of judgment the losing party may appeal the judge's decision. If a party wishes to appeal a Federal District Court's ruling, it may file an appeal to the Federal Circuit Court of Appeals in the circuit in which the Federal District Court geographically resides. There are thirteen Circuit Courts of Appeal across the United States. Following a Circuit Court of Appeal's decision, if a party believes that the Court's decision was in error, the party may petition the United States Supreme Court to hear the matter. The Supreme Court receives numerous petitions each year, and grants a hearing to less than one percent of the petitions it receives. In state court, each of the fifty states has its own appellate system, but in many states it mimics the federal system and is comprised of an appellate court and a state supreme court.

III. THE SUBSTANTIVE LAW OF TORTS

The term "tort" refers to a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.[22] Chinese companies doing business in the United States may be subject to tort liability for personal injuries and property damage caused by the products they design, manufacture or sell.

A. Damages

The purpose of tort liability is to allow an individual or entity that has been injured to bring an action so that the injured party can be compensated for the damages it suffered, at the expense of the wrongdoer.[23] The damages that are awarded are usually monetary damages, and may be in the form of compensatory or punitive damages. Compensatory damages, also known as actual damages, are paid to compensate the injured party for the injury, loss or other harm actually suffered. For example, in the case of an action for personal injury, the compensatory damages may include past medical expenses, an amount for the estimated future medical expenses, lost wages, and pain and suffering. Some states also have provisions for punitive damages in particular tort actions. Punitive damages, also known as exemplary damages, are meant to punish the wrongdoer. An award of punitive damages is usually based on willful, wanton, reckless, intentional or deliberate conduct, and the purpose of punitive damages is not only to punish the wrongdoer but also to deter others from following the defendant's example.[24]

B. Products Liability

Products liability is the term used to describe the area of the law involving the liability of those who supply products, for losses resulting from defects in those products.[25] Product liability actions may include counts for "breach of warranty," "strict liability" or "negligence" or a combination of all three. Typically, the plaintiff alleges that the product has a design defect, a manufacturing defect, or that there has been a failure to warn about a danger inherent in the product. These cases may contain allegations of personal injury, damage to property, or damage to the product itself.

1. Breach of Warranty

Typically there are three causes of action in product liability cases seeking redress for a breach of warranty: breach of an express warranty, breach of an implied warranty of

[22] W. Page Keeton, PROSSER AND KEETON ON TORTS § 1 (4th ed. 1984).
[23] Id. at § 2.
[24] Id.
[25] Id. at § 95.

merchantability or breach of implied warranty of fitness for a particular purpose. An express warranty is a promise or statement made by a manufacturer or seller about a product accompanying the sale of that product. An implied warranty is an expectation that is inherent in all products but is not an express promise or statement. The implied warranty of merchantability is an expectation that a product is as represented and does not have hidden defects, that the product is fit for the ordinary purpose for which such products are used, that the product is adequately packaged, and that the product conforms to any promises or facts on the label or container.[26] The implied warranty of fitness for a particular purpose pertains to situations in which a seller knows or has reason to know of a particular purpose for which the product is being purchased. In such cases, the seller may impliedly guarantee that the product is fit for that particular purpose and, if so, may held liable if the product does not conform to that particular purpose.[27]

2. Negligence

The term negligence means the failure to exercise that degree of care which a reasonable person would exercise under the same circumstances. To succeed on a claim for negligence, the plaintiff must prove by a preponderance of the evidence that the defendant owed the plaintiff a duty, that the duty owed was breached, the plaintiff was injured, and the defendant's breach proximately caused the plaintiff's injury. Proximate causation means that the defendant's breach of duty was the direct cause of the plaintiff's injury. In the product liability context, a manufacturer of a product has a duty to exercise reasonable care to avoid and discover unintended dangers that occur from defects in design or in the manufacturing process. A manufacturer also has a duty to adequately warn about a risk or hazard in the design of a product that is related to the intended use of the product.[28] Generally, a manufacturer does not have a duty to warm of obvious dangers, and does not have a duty to warn against obvious or unforeseeable misuse.

3. Strict Liability

While in a negligence action, the plaintiff must prove that the manufacturer acted negligently, the concept of strict liability focuses on the product itself, not on any action of the manufacturer. Under the doctrine of strict liability, a manufacturer is liable if the product is

[26] Uniform Commercial Code § 2-314
[27] Uniform Commercial Code § 2-315.
[28] W. Page Keeton, PROSSER AND KEETON ON TORTS § 96.

defective, even if the manufacturer was not negligent in making the product defective. Strict liability is a relatively recent development in American law, and over the past fifty years has been adopted by most of the states. Strict liability rests upon the concept that even when there is no negligence, public policy demands that the manufacturer be held responsible for injuries from defective products. This shifting of responsibility is justified under the presumption that the risk of injury can be insured by the manufacturer and distributed to the public through the product's pricing as a cost of doing business.[29]

IV. CONCLUSION

A Chinese company doing business in the United States may face a variety of different claims, and a civil action in the American court system may take a number of procedural twists and turns. The American litigation process is complex, and cannot be entirely covered in a short seminar. The most important point to be drawn out of this information is that a Chinese company doing business in the United States must be prepared to deal with the unique issues present in American litigation, and the best way to protect a company's rights is to retain competent legal counsel to deal specifically with a company's individual needs and circumstances.

[29] *Greenman v. Yuba Power Products*, 59 Cal. 2d 57 (1963).