Case: Disney Derivative
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Participants:
Gregory P. Williams, Richards, Layton & Finger P.A.
Seth Rigrodsky, Partner, Rigrodsky & Long P.A.

Williams: Ok, so we are now completing the saga of the Disney derivative litigation. We've spoken to defense lawyers, Chancellor Chandler, and we're very fortunate to be joined here today by Seth Rigrodsky, who was one of the lead plaintiffs lawyers on the case. Seth, how did you come to be involved in the matter?

Rigrodsky: Well, I had been a member of the Delaware bar, and I joined Milberg Weiss, the firm prosecuting the case back in 2001, 2002. And I had, you know, a good knowledge and expertise in Delaware law, so I guess I was just a natural fit for the team.

Williams: Remind me, did Milberg have a Delaware office at the time you were in Wilmington?

Rigrodsky: Yes, we opened a Delaware office when I joined the firm. I clerked for the Delaware Supreme Court, and so we had... And Milberg had a sort of a history of doing corporate litigation in Delaware for many many years.

Williams: Yeah. So when you first learned of the matter and understood it was a challenge to executive comp, that must have presented some questions because executive comp was an area that largely the courts had exercised deference to the judgment of directors?

Rigrodsky: [00:01:52] Yeah, I think obviously this was a case that caught our attention because of the sheer size of the payout that was awarded to Mr. Ovitz, and the relatively short time--his tenure--at the company. So it seemed like a case for us that really called out for investigation and prosecution. Again, this is before the era of the spring loaded options backdating cases and those cases.

Williams: And Steve Schulman from your firm, he was the lead attorney, is that correct?

Rigrodsky: Yeah, that's correct. He was the partner in charge, he was one of the senior members of the firm and he had been litigating the case even before I arrived there.

Williams: Do you remember was there any discussion or consideration of making a 220 demand before you filed your first complaint?

Rigrodsky: I don't really recall that, I have to say. I wasn't at the firm at the time. I think back at the time the notion of asking for books and records before you filed the derivative case was something novel, it wasn't something that the court had really spoken to. And it was something that, you know, at the time, there was more of a notion of the first one to file a lawsuit would get a lead position in the case. So it was still a situation where this is, you know, right after the time the PSLRA passed. But it was still a time when you had to get your case on file. I think there was another case filed in California, if I recall.

Williams: There was, yeah.

Rigrodsky: So again, this notion of getting on file was really the critical point.

Williams: So you filed your complaint and you're hit, not surprisingly, with a 23.1 motion. And that motion was initially was successful with Chancellor Chandler writing a relatively, I'll say, predictable decision that you had a majority of outside directors dismissing the case. It goes up on appeal and you get a much different feeling from the Supreme Court's opinion. While the Supreme Court agreed with a lot of the CChancellor's analysis, there seemed to be an element in the opinion of there may be something here. And they take the, at least in my experience at that time, relatively unusual action of expressly allowing you to replead and inviting you to pursue a 220 action and get books and records. [00:04:18] Do you recall your team's reaction to that]Supreme Court opinion?

Rigrodsky: I believe the reaction at the firm was hopeful and very positive. Again, we had the benefit of 20/20 hindsight. Hard to know what the Supreme Court was thinking at the time, but our impression was since it was a high profile company, the high profile chairman, and again, given the size, the magnitude of the payout and given the circumstances, we felt that the Supreme Court said well maybe give them a second chance at this.

Williams: And when did you did your books and records [00:04:56]demand you received a lot of material, is that correct?

Rigrodsky: Yes

Williams: And did you think it was good stuff?

Rigrodsky: Yeah, I think that we... you know, again, books and records litigation at the time was something a little new to us, that we received documents before a motion to dismiss was, or excuse me, after our motion to dismiss was decided, before a motion to dismiss was decided. But after a motion was decided was somewhat unique. Yeah, we thought we had good information, certainly about the termination and the employment agreements.

Williams: When you drafted your next complaint it was a completely different beast than the prior one, much longer, much more information. Were you personally involved in drafting that complaint?

Rigrodsky: I think I did some work on that complaint, if I recall. Maybe I did some editing on that complaint. It's hard for me, it was so long ago, it's hard for me to recall.

Williams: But it told a story, a little bit unlike the first one. So now you had this more complete complaint and it goes before the CChancellor on another motion to dismiss and very different outcome, he denies the motion. Do you remember reading his opinion and your reaction to it?

Rigrodsky: Well again, the reaction was a very positive one. The Chancellor had a reputation, at least amongst us folks on the plaintiffs bar of being somewhat cautious in his rulings. We used to say that on a preliminary injunction, for example, if you brought a motion for preliminary injunction to enjoin a deal based on lack of disclosure or some problem or deliberation, that the Chancellor would often not grant that motion. So when he granted and basically reversed themselves, granted--denied the motion on the second motion to dismiss, we were very encouraged. We thought it was a very significant victory for us.

Williams: And it was a strongly worded opinion if you recall. I mean, there are many portions of it that read as if, to me anyway, that read as if he had made up his mind or was at least inclined to think that in fact there had been bad faith here. And if you recall, he also at the same time that he issued that opinion he entered a scheduling one, which brought the case to a very prompt trial which was unusual at the time and sort of I can tell you, it sort of sent shudders down the backs of the defense attorneys because this seemed now to be a judge that was in a hurry to get to trial and didn't seem too inclined to our view of things. And so you already finished your discovery. Was your team optimistic going into the trial?

Rigrodsky: [00:07:46] Very optimistic. You know, we... I took a number of the depositions. I reviewed all the documents. We thought we had some fantastic testimony, we thought we had a very compelling story to tell. We had a lot of things that you don't see, at least nowadays. Again, this is back, the events that occur here, people have to remember, occurred in the mid-90's. Things were a little different back then.

Williams: Ten years before trial.

Rigrodsky: Ten years before trial. So you were never really dealing with as many emails, you know, the electronic things. You have a lot of handwritten things. Michael Eisner was a notewriter. We had a lot of his personal thoughts and contemporaneous thoughts memorialized in paper. We thought they were very favorable thoughts. So yeah, I personally, and our team, felt very confident about the trial.

Williams: What was the testimony, not specifically, but where going into trial had you thought you had scored big wins in the depositions? Was it with Eisner's discussion of those notes where he talks about Ovitz and can't tell right from wrong, etc, etc? Was it with the outside directors, the Sidney Poitiers and folks like that who admittedly did have limited recollection of things?

Rigrodsky: I think you're touching on a lot of things that we thought were good. We thought that the process itself was very much one dominated by Eisner, where he and a couple of his trusted associates, Mr. Russell, Mr. Wilson, seemed to have directed the whole hiring and firing process outside the purview of the board of the directors, and that the board seemed very much like a rubber stamp. [00:09:30] And these are some of the things that come out in the Chancellor's opinion after trial where he talks about these aren't ideal corporate governance situations here. He is critical of some of the things that Mr. Eisner did without finding liability. So from a procedural standpoint we thought wow this is very sloppy, especially involving the hiring of a chief operating officer, a second in a command of a major multi-national corporation. It seemed very much of a handshake kind of deal, a lot of letters, a lot of winks and nods, things like that, without active board participation. As far as the other things in discovery, I mean, I guess we talk about it now. One of the notes I was going through here--and again, you have to excuse me, this was a while ago.

Williams: Sure was. Nobody's recollection is perfect, that's for sure.

Rigrodsky: The opinions were really like a trip down memory lane, or the bad memory lane from our perspective. But you know, one of the things that we thought was one of the best things that was there was a draft report prepared by Price Waterhouse that

had--someone had gone through and did a report taking into account Ovitz's expenditures and expenses. And we thought we had seen... we thought that the document stood for the proposition that Mr. Ovitz had basically taken money from the company for his own personal use. And this all goes to the issue of whether did the board, did Mr. Eisner, did Mr. Litvack, the person who supposedly researched this, have a basis to say Mr. Ovitz can be terminated for cause? And if he had been terminated for cause then he wouldn't be entitled to the payout that he received. So we thought that that was a very damning document which the Chancellor said was hearsay and wasn't admitted into evidence. But there's that, and also, as you had mentioned, the Eisner notes. Mr. Eisner at various times referred to Mr. Ovitz as being a psychopath, totally incompetent, he was described by one of his confederates that he would act like a wounded animal if he had been fired from the company. [00:11:53] He was... there is a memo where Mr. Eisner said that Mr. Ovitz had displayed erratic behavior and had pathological problems. So again, all of these things, not to denigrate Mr. Ovitz or say anything about Mr. Eisner, but we thought that wow, with unequivocal words coming out of the chairman's mouth about second lieutenant like pathological and you know, statements like this, we thought wow, I mean.

Williams: You don't see documents like that very often.

Rigrodsky: You don't see that, and why couldn't a person like this be terminated for cause? So we thought we had a really strong case.

Williams: Yeah. And as you approach trial, I mean, there were so many lawyers on the defense team that sometimes organization was a problem. How did you and Steve, you know, chart strategy? Were you coordinated? Did you have a set of things that you were trying to establish with each of the witnesses? I mean, how much of a well oiled machine was it on your side? I know it wasn't very well oiled on ours.

Rigrodsky: I think it was a very well oiled machine in a sense that Steve and I were on the same page. We met basically almost every day. We mapped out our strategy, we knew which witnesses were important. We went through all the testimony several times. We targeted on certain key issues, we had a key issue sheet. You know, Steve wanted to depose Mr. Eisner, Mr. Ovitz, of course. I was left with some of the others. But we had a very definitive plan in mind as far as depositions and trial. And a lot of it based upon the motion to dismiss, motion denied and motion to dismiss by the Chancellor.

Williams: Yeah. And I don't mean to suggest the defense lawyers weren't well prepared. They were very well prepared. There were just so many constituencies and so many different sets of lawyers, sometimes hard to coordinate. You didn't have that problem,

you only had expert witnesses. Nonetheless, you also had nothing to do largely but cross examine which comes with its own challenges.

Rigrodsky: Well, it does. And I will say we were surprised when we were going through the case that it seemed like not only that you had sets of defendants, but you almost had factions. [00:14:17] For example, Mr. Litvack was someone who was described in the Chancellor's opinion as someone who felt jilted. He felt that he was going to be in line to be the next second in command or next chairman of Disney, so he felt affronted when Ovitz was placed above him. You had Stanley Gold and Roy Disney, I think who had their own faction. I'm not sure if they were great lovers of Mr. Eisner. So they were off in their corner. Then you had the Eisner camp, and then you had your independents, like Sidney Poitier, who was a wonderful witness and a very charming person. He was a very interesting person to meet.

Williams: Yeah. Well, how were you going to get over the bad faith hurdle? Because that had to seem like a pretty high hurdle to get over. I mean, due care is hard enough, you've got to show gross negligence. Now you've got to go a step beyond, and none of us were quite sure exactly how far beyond you had to go. But it was clearly going to be more hard than due care. So what was your strategy for doing that?

Rigrodsky: Again, the bad faith element of this case was really focused on Eisner, that Eisner had engineered the hiring and then engineered the firing to save face. Basically to use company funds to paper up the challenges he had with Ovitz, to paper up the issues he had with him and to avoid a personal embarrassment by what happened. And so we thought that we could show that he reached out to his friend who he acknowledged was a friend of his for twenty years. He hired him without really any input from any other members of the board, at least initially. I don't remember. There were certain candidates that they looked at to replace... I can't remember who it was, who unfortunately passed away... Mr. Wells, I guess, who passed away. And so we felt that he basically brought his friend aboard without proper supervision by the board, without a robust process and without a vetting. And then when everything went south it was really an effort by Eisner to protect his reputation [00:16:31] from you know, from diminishment. So we thought that was enough, also with the loyalty violations as well. Mr. Ovitz and Mr. Eisner.

Williams: Did you think about jettisoning all these outside directors? You had Sidney Poitier, you had a Catholic priest who had been the president of Georgetown University, you had a lot of, you know, respectable folks, no loyalty issues with them. Did you think about you know, narrowing the set of defendants and getting rid of those defendants and focusing just on Eisner, maybe Litvack and maybe one or two others?

Rigrodsky: By the way I also remember a former senator brokered--

Williams: George Mitchell--

Rigrodsky: Brokered peace treaty in Ireland, so yeah. It's funny you say that now that I think about that. I don't know that we gave that much thought. I think that we thought that the board was culpable because of the lack of care that they exhibited in the process and that we felt that we had enough of a personal connection between them and Eisner that maybe we could hook them in with loyalty violations. In retrospect, I'm not sure it would have simplified our case in any way, shape, or form. Because we still would have had to take their depositions, and there's a good chance they would have testified on behalf of the defendants anyway, even if they weren't actual defendants in the lawsuit.

Williams: [00:18:01] Well so as the trial starts, Seth, Ovitz is the first witness, first fact witness. How did you feel he did on the stand? And I want to just walk through with you the plaintiff's team's reaction to the trial. We were in separate hotels, but sometimes we'd walk by your hotel in the evening, we could look in and see you guys on that first floor area they had there, and you seemed like you're in good spirits. So what reaction did you have to Ovitz extended testimony?

Rigrodsky: I thought Ovitz brought to bear all the things we had seen before in his deposition and what we read and heard about. He was a very flamboyant guy, we thought that he was bending the truth in several respects. I remember thinking that they didn't really score any points, and I thought it would really be great for us for the Chancellor to actually see him in person and testify in person and judge his credibility. I mean, you have to recall that one of Ovitz's... or I shouldn't say one. His main theme in all of this when we talked about the camps [00:19:12 of defendants, his theme which we thought was actually amusing was that he was a victim, that he had been victimized by DIsney and by Eisner. That he really came in and he tried to do his job the best he could and that because of the culture and because of Eisner in particular, he wasn't allowed to succeed. And we found that, frankly from the evidence that we saw, we found that just play acting and really just role playing as the victim. So we thought great. When he came into court, and it was a whole media circus and he did his thing, we sat there thinking wow, that's not really credible, the story he's weaving. But I guess we were wrong because to a large extent the Chancellor did credit a lot of his testimony.

Williams: And then we had other witnesses in between. But then you come to Eisner, and I remember Steve did a long cross on Eisner. What was your team's reaction to Eisner's testimony?

Rigrodsky: Better witness. I mean, obviously he's Eisner. And we thought he did a good job protecting himself. He walked back a lot of the memos that I had just referred to before where he had... and you can see it having reread the opinion now, I shake my head where he says, where Eisner calls Ovitz a pathological liar, he says, oh, Eisner was just venting. It's not really what he meant. So what's interesting about the outcome of the trial and reading this again is you could take every one of these exhibits that we put in front of the court and all the things he mentions in the opinion and you could turn it the other way as well. Like if you took Eisner's memos that said Ovitz is a pathological liar, you could say well how did a pathological liar end up with a non-fault termination? How could a pathological liar be the Chief Operating Officer of the Walt Disney Company and basically get a hundred-plus million dollar payout? [00:21:06] But if you characterize it as venting and he was just emotional, didn't really mean it, then it seems a lot more benign than it was.

Williams: Yeah. Now there were all these other directors who testified and some of them didn't have a lot of recollection, but they all--most of them anyway, I'm guessing came across to you folks as sort of upstanding people. Did you have a strategy? Let's not try to beat up on these people too hard, it might backfire, or was the strategy to go after them?

Rigrodsky: I don't know. I think it was more of a witness by witness, you know, challenge. We ultimately, we felt that the directors all fell in line, like Sandy Litvack could have thought, potentially could have been one of our best witnesses because it was clear from the depositions and the words don't do justice to the tone and the tenure of what the deposition was like. Very disappointed in the process, very disillusioned at what happened at Disney. Yet when it came time for him to testify he wasn't going to say it was all Eisner's fault or Ovitz was this and that... he kind of skirted around the issue. [00:22:20] What was disappointing to me personally is that a lot of the witnesses who seemed to not be able to recall certain facts at their depositions somehow had their memories refreshed at trial, or somehow remembered things. A perfect example is--I made a note of this--there was a--and we still laugh at this all the time. I guess it wasn't so funny, yet. Was the famous glass wall in the conference room executive committee in November of 1996, where Ovitz was first nominated to the three year term as a director at that meeting which we thought was extraordinary, at the same time that they were basically saying he was about to be fired. And the testimony was well they didn't want to have a public execution of him, which I found absolutely incredible. And then a

number of witnesses testified about a secret meeting that went on in a glass walled conference room, an executive committee where no minutes were taken. And some people remember what happened there and some people didn't, and some people at trial remembered what they didn't remember at their deposition. I felt very let down by that, but frankly, there's not really much you could do when a finder of fact is a judge. I think if--and I think clearly if this case had been tried in front of a jury we may have come out with a different outcome.

Williams: And why do you say that?

Rigrodsky: [00:23:39] I think because we called into question a lot of credibility of the witnesses. There's a lot of I can't recall, I can't recall, and then they could recall. I think the Eisner notes, the note taking, the Price Waterhouse report and whether that would have been hearsay or not, and the jury could have considered it, that would have been a pretty damning piece of evidence. I think that the jury for better or for worse probably would have looked at the underlying facts of this case and said was this is a matter of common sense. How could somebody work somewhere for less than a year, and frankly, start failing after a few months in office, walk away with this huge bag of money? I had a case recently just as a diversion, I had a takeover case going on in New Jersey, it's now settling, [00:24:26] where a private buyout firm teamed up with the CEO and they bought the company and took it private and then eighteen months later they sold it for twice what they paid. And the court in that case said that the later payment was irrelevant and non-material and couldn’t come in. So it was excluded, which caused us to settle the case. But if I got that case in front of a jury I would say this is very simple, someone came in, stole the company, paid less than what they should have and flipped it for twice what they paid, how could you do that? Same thing here. As a matter of common sense and just, you know, common sense really is you know, how could this possibly have happened in America?

Williams: Your firm was dumping a lot of money into this case. I mean, the trial was two and a half months long, roughly speaking. I know there had been some stalled settlement talks prior to trial with the two sides very far apart. Did you have discussions during the trial about maybe we should see if they're softening a little bit and maybe we should reopen a dialogue?

Rigrodsky: [00:25:29] There was a conversation or a meeting that happened in New York, and I'm trying to remember when. It was certainly was during the later phase of the deposition cause I remember I took a deposition and I had to fly back overnight to get to this meeting. And my--

Williams: Prior to trial--

Rigrodsky: This is prior to trial. And then my understanding was that the insurers and Eisner, it was Michael Eisner were not seeing eye to eye on a lot of issues. And I think the insurers were taking the position that we're not just going to even come close to, you know, funding this. And so off it went to trial. And during trial, as far as I know, it wasn't shared with me. There was absolutely no discussion.

Williams: I think there were none.

Rigrodsky: Of settlement, I think at that point they said just try it and see what happens.

Williams: Do you know what your firm investment was in the case?

Rigrodsky: Yeah, I think it was between four and five million dollars.

Williams: Which, I mean, today would be double.

Rigrodsky: Yeah and it was a very significant amount of time. And we were talking off camera before [00:26:31] it's absolutely extraordinary in a plaintiffs firm to assign a team of people to work exclusively on one matter for the year and half, two years that we worked on this. Because even after the trial we had post-trial briefing as you recall and then we had briefing with the Delaware Supreme Court. And we were kept together... there were forces inside the firm saying now I want him to work on this, I want that. And you know, we were kept together in a room and basically sequestered. So it was an extraordinary undertaking both in terms of the investment of money, but also the investment of time and energy.

Williams: So after post-trial briefing there was no argument. Were you surprised at that?

Rigrodsky: No, I don't think so. I think that the court had seen enough, you know, and I think he was prepared to make his decision.

Williams: Were you surprised the trial took so long?

Rigrodsky: I did. I did. We had a lot of witnesses, you know, in retrospect, maybe we could have cut it down a little bit. There were a lot of witnesses and there was a lot testimony and a lot of documents. And again, we went through every piece of evidence that we had. We didn't leave any stone uncovered as far as we knew. So we were basically going to give it our best shot and do as best we could or lose.

Williams: Do you remember when we went into chambers before Thanksgiving and we all had decided that we needed more time? And I think we said we needed ten more days or something, and the Chancellor said I'll give you whatever time you want. And that ended up becoming end of November, December, part of January, extraordinary in that way. You guys were very meticulous. So after you get through trial, you get through the briefing, how were you assessing your odds?

Rigrodsky: We thought that we were gonna win. We thought that we had done very well. [00:28:31] We thought that the court had received us very well. We thought the evidence was very strongly in our favor. And keeping in mind that it was Delaware, so I guess what I should temper that by saying we thought we had as good a chance that anybody could as a plaintiff's lawyer in Delaware. Because it was our impression that the Delaware courts were you know, somewhat more inclined to favor defendants just as a general matter, and that's what plaintiffs lawyers think. And so we thought we had a very good chance. And so I was just telling someone the other day, I was the person since I was in the Delaware office of Milberg Weiss, I was the person who went down to the court the day we were all called to get a copy of the opinion. And we actually had a party planned for that day up in New York. And that's... I don't want to say that we were over confident, but we were thinking this is going to be a real celebration for the firm. It was a national, worldwide news. And so that we saw the opinion, I felt pretty unhappy and I had to make the call to New York and tell them all that we had lost. And so the celebration turned into a sort of a wake in the way. But we felt that, you know, there's always the Supreme Court in Delaware, we'll give it another shot.

Williams: Well that's one of the hardest things about being a litigator, I think. You can do a really good job and lose. And so it is certainly tough. And so tell me about that. Did you think that the opinion was vulnerable on appeal?

Rigrodsky: [00:30:21] Personally I thought that we didn't have much of a chance on the appeal. I think there were people in the firm--Steve, other people, felt more optimistic about it. I had been Delaware for a while. The Chancellor had done a very good job going through all the facts, making his findings. It would have been hard to say there was an abuse of discretion or that even on a de novo standard [00:30:51 that he could be overturned. We thought that maybe panel of the court would see the facts differently than the Chancellor had seen. But then again, there's deference to the notion that he was there in this long trial. And maybe to a large extent the length of the trial and all the documents that were allowed into the records, beside the few that I mentioned, cut against us, because he couldn't argue that he failed to consider an important piece of evidence or hadn't considered the certain facts. And when you read the Supreme Court

opinion, which I did the other day, it does very much follow what the court had done below.

Williams: And you did have the prior time, the last time you were before the Supreme Court in this matter, had gone well for the plaintiffs.

Rigrodsky: Yes

Williams: And so there was some receptivity to your theories at that time. And so you come back. How did you folks prepare for argument? Did you have Steve do more court arguments, or do you recall?

Rigrodsky: Yeah, that was a real undertaking. [00:31:56] We spent a lot of time doing oral argument. We prepared questions to ask him. We spent an incredible amount of time on the briefs. I mean, I was the primary draftsperson. We had a team of people sitting in a room very much like this without windows, down one of the lower floors of One Penn Plaza, and we wrote the briefs. And then we went back with Steve and we edited everything and we wrote it again and wrote it again. And you know at the end of the day we had what we thought was our best product. And then again, the preparation for the oral argument, which in a lot of ways to me was sort of a let down because I don't recall the argument being particularly... let's say there were no surprises and I don't remember the argument being particularly difficult necessarily, for one side or the other. I do recall somebody getting up--it may have been Ovitz's lawyer who just got up and said you know if the court has any questions I'm here to answer them. And the court said no we don't. [00:32:51] And so that was sort of the end of it. But you know, the ultimate result by the Supreme Court was not a surprise to me, I don't think it was a surprise to anyone else. It was really the Chancellor's opinion that took us by surprise.

Williams: And if you look back at it, we all maybe would do things differently. And I'm sure on the defense side we would do things differently. Is there anything that with the benefit of all these years you looked back and said maybe we should have played this a little bit differently?

Rigrodsky: Well I am on camera. I think the first thing I would do is probably file the case somewhere else. [laugh] You know, because, again, I think if this case was tried in front of a jury we'd have a different outcome. And it goes back to the question you asked. I think maybe in this day and age where the Supreme Court has said, you know, at least in some of these going private cases, we're going to drop the outside directors out of these cases, you know, almost initially. Maybe in retrospect a thing to have done would have been to focus on maybe on maybe just sued Eisner or sued one of the other

members of the board. [00:33:58] A couple of the insiders. Maybe Mr. Russell who was Eisner's personal attorney. Maybe Mr. Litvack, maybe a few of the others. And maybe things would have been different. If you look back at the Gold or maybe kept Litvack out of it. You know, we didn't know about Litvack until we got into the documents. Maybe kept him out of it, maybe kept Gold and Disney out of it, maybe they would have been more helpful. I don't know at the end of the day. I mean the part of all this is, you know, we found Disney had a whole culture, a whole Hollywood culture that you don't necessarily see in other corporations of personal fiefdoms and infighting and some jealousies and things like that, and rival agendas, which may as practical matter could have helped us at the end of the day. I mean, certainly Mr. Eisner had his detractors outside and within the company, and there may have been people there who would have been more than happy to see him suffer a loss in a case like this. But when we put everybody in the same basket and they're, you know, their motives and goals are pretty much the same, you know, you get what you get. [00:35:09] Again, Mr. Gold, Mr. Disney, Mr. Litvack’s testimony, it was always like right on the edge but they would never cross the line. They would never say you know, what we thought they would say or we thought that they at least they felt.

Williams: Yeah. Well the two teams, defense and the plaintiffs, the lawyers maintained a good relationship throughout the trial. There was not a lot of animosity that I recall. It certainly made the trial easier, I think in the sense that there wasn't bitterness and all. From your perspective, how were the defendants to deal with, the defense team?

Rigrodsky: Oh I thought it was you know, it was one of the reasons I continue to practice here and practice here because there is a tradition here in Delaware of the plaintiffs and defendants, you know, getting along well. You know, not playing games with each other. Everyone acted very professionally. I guess my only complaint personally is I remember I used to get documents the night before a deposition, would be delivered to my hotel room and would say here's another five hundred pages of documents. I thought wow, you know. But at the end of the day everybody was above board and I think [00:36:21] acted very professionally, very cordially. I think the court appreciated that. There really wasn't fireworks amongst the lawyers in the courtroom at least for the most part. And I think that really helped us because we really, at the end of the day you want to focus on the merits of the case, and you want to focus on your case and not about the sort of extraneous things that are going on. And all of that could have happened with the media circus that was down there, and people really did accord themselves in a very professional way. So that was very good.

Williams: Seth, one thing you mentioned was the for cause termination issue. He was terminated... Ovitz was terminated without cause which meant he was entitled to under

his contract, his termination benefits. Had he been terminated for cause, he would have not received those benefits. And you guys made a strong pitch to the Chancellor that it should have been a for cause termination. How did you feel about that claim? Did you think it was a winner?

Rigrodsky: [00:37:23] Yeah, we thought that actually that was one of our central claims and theories on the termination side of things. As an initial matter from a procedural standpoint we deposed and had the opportunity to cross examine Sandy Litvack who was general counsel at the time, and say to him what did you do to assess whether you did have cause? Cause that would have saved the company a hundred million dollars. And the testimony was very, we thought was not very credible and very strange, that he didn't write a memo to file. He didn't do any legal research. He didn't hire an employment lawyer to look at this. He called somebody at another law firm in New York and asked him his opinion. He said no, I don't think we have cause, but there's nothing in writing. It was just phone calls that are not documented. He supposedly spoke with some of the junior counsel in the office of counsel's office in Disney talked about the situation with them and they said no, there's no cause. He was supposedly questioned about it by some of the directors, and we said to, when we deposed the directors in a trial, well did you ask to see a memo, did you ask to see any documentation? [00:38:38] They either couldn't recall or said no. So a major decision was made about the second senior most senior person at a major multinational corporation without a paper trail, which we thought was extraordinary. So we thought that in and of itself was another marker of bad faith and improper procedure that we thought would support the rest of our case. Then you got into the secondary issue, the legal issue, what is for cause and not cause. And had experts testifying about that, one way or the other, as if the Chancellor had to make a decision what is cause in California law, which is, I think that was more of a side show. I'm not sure I was really in favor of that strategy. And last but not least, we thought that we had introduced sufficient evidence from Eisner's own lips, contemporaneous notes, contemporaneous statements he had made to his subordinates calling Ovitz erratic, pathological, that he couldn't tell the truth, that he doesn't know right from wrong. These were things that we thought well, if that's not for cause, what could possibly be for cause? [00:39:50] If your second in command is a pathological liar, how can you say that it's not for cause, termination, under the law of any state? So I think when I look back at this case, that's one of my most biggest disappointments was that whole line that because of for cause. Because, again, when you look at it, it was as the whole process was consistently as irregular as the hiring, the firing, his time there. Nothing seemed to be done the way corporations should do things or boards should do things. Everything was done sort of on the, you know, without writings, without procedures, without communications, without discussion.

Williams: If it were just a due care case, I'm guessing you would have thought it would come out differently?

Rigrodsky: It was due care case, certainly, think it would have come out much differently. I think the Chancellor probably would have agreed with that. And again, I think if it was tried in front of a jury it would have certainly come out differently. But it is what it is and if nothing else at least we had the pure victory of at least tightening up some corporate standards and very proud of the job that the team did. [00:41:02] I think we all acquitted ourselves very well. It was a pleasure working with the other defendants and certainly appearing in the Court of Chancery and I think at the end of the day we did a good service for not only the state of Delaware, but also the courts and the Court of Chancery, a place where you know, you can try a case and get a hearing and present evidence in a way that was very professional and very well managed.

Williams: Great. One last question: did you guys, nothing wrong with it, I don't mean to imply there would be, did you talk with the press regularly during the trial? Did you sort of view communicating with the press to be part of what you should be doing?

Rigrodsky: We had a publicist that worked for the firm. But no, as far as I know there was no strategy that I knew of where we leaked to the press or talked to the press. Pretty sure, if I recall, we were under--myself and other people who worked on the case--were under a ban of not speaking to anybody in the press about it. I think there was a real reluctance on our part, obviously, in any way inpugn the process. Certainly reporters... I believe there was--someone did a story in was it Esquire magazine?

Williams: Dominick Dunne.

Rigrodsky: Dominick Dunne, right, he was there, he was a reporter, he was following it. As far as I know we had no direct contact with him. And I don't know if he even asked us for information. He may have, I just don't recall.

Williams: Seth, thank you very much.

Rigrodsky: Thank you very much.

[00:42:37 end of video]