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From MDL Strategy to Hundreds of Millions in Verdicts: Hughes Hubbard's Playbook for the Danish Tax Authority

By Ross Todd

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In most instances, my first question for **Neil Oxford** and **Marc Weinstein** of **Hughes Hubbard & Reed** would have been a softball.

"How do you pronounce your client's name?"

In this case, though, the client is Skatteforvaltningen, the Danish tax authority they've been representing in U.S. courts since 2018 trying to recover about half the proceeds in a \$2.1 billion global fraud scheme.

The pronunciation question might just have been my most difficult question during the entire interview.

"Having failed to learn much Danish over the course of six or seven years, I recommend 'SKAT,'" suggested Oxford, using the shorthand that most English-speaking lawyers and judges have adopted in the litigation.

When Weinstein finally took a shot at pronouncing the full name late in the interview, my transcription software rendered it as "scatter for development again."

It sounded nothing like that.

Let's take Oxford's advice and stick with SKAT.

Regardless of how you say it, the Hughes Hubbard team has been doing stellar work on the matter. In February, Weinstein, Oxford and their partner **Bill Maguire** led a team that secured a verdict of about \$500 million for SKAT in the first bellwether trial in multidistrict litigation in the U.S. After a five-week trial in Manhattan federal court, jurors found that the defendants—a group of investors and pension funds—filed thousands of fraudulent requests for tax rebates on dividends—part of a complex series of arbitrage deals known as «cum-ex» trades. The accused mastermind behind



Courtesy photos

Neil Oxford (L) and Marc Weinstein (R) of Hughes Hubbard & Reed.

the scheme, British hedge fund trader Sanjay Shah, was sentenced to 12 years in prison after being found guilty of fraud last year in Denmark. Jurors in the first U.S. bellwether also turned back the investors' defense that SKAT was negligent in making the refund payments—another key win.

That Hughes Hubbard same team and partner **Dustin Smith** played both offense and defense for SKAT in a case brought by three men who previously settled with SKAT, but who were later charged criminally by Danish police for their role in the scheme. After a three-day bench trial this spring, U.S. District Senior Judge Naomi Reice Buchwald held in September that SKAT hadn't breached its contract with the criminal defendants-turned-civil plaintiffs, who claimed SKAT hadn't fulfilled its obligation to

inform Danish prosecutors about the deal. Buchwald further sided with SKAT, entering a judgment of more than \$160 million for amounts unpaid on the prior settlement between the parties.

So far, the Hughes Hubbard team has collected more than \$440 million for SKAT and, because of the trial work, secured additional judgments of more than \$600 million.

How did we get here?

The Hughes Hubbard team representing SKAT has faced plenty of thorny legal and strategic issues since signing onto the case in 2018. Oxford told me lawyers at the firm previously got to know lawyers at **Poul Schmith**, the Danish law firm that handles litigation for the nation's government through the International Bar Association. Those connections led to an invitation to pitch for work on SKAT's efforts to recover fraudulent claims for refunds on tax withheld from stock dividends. Three of the four Hughes Hubbard lawyers who were at that pitch meeting—Weinstein, Oxford and Maguire—ultimately represented SKAT in the jury trial early this year in the first bellwether in the MDL pending before U.S. District Judge Lewis Kaplan in Manhattan. (The fourth, **Sarah Cave**, took a position as a federal magistrate judge in the interim.)

The Hughes Hubbard team, veterans of being on the defense side of MDLs, convinced the Judicial Panel on Multidistrict Litigation to route the docket of more than 150 cases they filed to the Southern District of New York. On summary judgment, they persuaded the judge that SKAT's claims were not subject to the revenue rule, the common law principle that prevents foreign sovereigns from coming into U.S. courts and enforcing their tax laws.

"We thought it would be a very useful—if novel—strategy here once we filed all these claims, which were in 11 or 12 different jurisdictions, to use the MDL statute and coordinate them so we're not dealing with 11 different discovery deadlines, 11 different judges ruling on the revenue rule," Oxford said. "So that was ultimately a very successful strategy for us and for the client."

Proving a Negative?

What exactly is SKAT alleging in these cases?

Danish companies withhold a certain percentage of shareholder dividends to pay SKAT for taxes. However,

when those withholdings are exempt from Danish tax under a "double taxation" treaty, shareholders can apply for a refund. SKAT claims that Sanjay Shah engineered a scheme to make it look like tens of billions of dollars' worth of stock in Danish companies traded hands to claim tax refunds on dividends that were never received. Those who received those "refunds" benefited from the fraud and should return the funds.

Going into the first bellwether trial, the individual defendants and pension plans they controlled had insisted that their trades were authentic and their dividends were real. Weinstein and company had prepared to prove a negative—that the dividend and taxes withheld were a fiction—through bank and trading records gathered through discovery requests under the Hague Convention, including from the insolvency of Shah's company in London and his companies in Dubai, where he relocated. During opening statements, the defendants changed tacks and claimed they had been deceived by Shah's fraud.

"Every trial has some surprises, and this is probably one of the bigger surprises that I'd had to deal with in my career, where you really have someone take a very consistent legal position for six years right up until opening, and then they present an entirely different defense," Oxford said. "It was a little bit of a high-wire act, but that's ultimately what makes the case so interesting."

Weinstein said that one thing he was prepared for, though, was to have the defendants tie his client to the Internal Revenue Service and tax collection. After all, who likes paying taxes? Weinstein estimated that defense counsel referred to his client as "the Danish IRS" dozens of times. He said the team met that association head-on. "We're not claiming these defendants needed to pay tax. They didn't owe any tax. They were never taxpayers. What they did do is steal our money," he said.

"So you could bet, if the shoe was on the other foot and it was the IRS getting fleeced of your tax money, you'd want the IRS to go around the world and try to get it back from whoever stole it," Weinstein said.

Correction: This story has been updated to reflect that the Hughes Hubbard team has obtained judgments of more than \$600 million and the JPML routed the SKAT MDL to the Southern District of New York.