
Hughes Hubbard & Reed

Firm Delivers Clean Sweep for Canada in Softwood Lumber Dispute

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A tribunal of three distinguished international arbitrators delivered a unanimous award in favor of Canada in a sovereign-to-sovereign arbitration, commenced in January 2011 by the United States, in which Hughes Hubbard & Reed represented Canada.

The US requested arbitration under the provisions of the Softwood Lumber Agreement of 2006 (SLA), an agreement intended to end an extended trade war between the two countries over Canadian exports of softwood lumber. Under the terms of the SLA, the parties agreed to refer all disputes to arbitration under the rules of the London Court of International Arbitration, marking the first time two sovereigns had agreed to settle treaty-based disputes in this forum.

The latest arbitration, the fourth under the SLA, involved a claim by the US that British Columbia was circumventing the SLA by mis-grading timber to sell it at a cheaper price. The provincial government owns 90 percent of the forested land and sells to private companies under a complex system in which prices for timber are set by a combination of auction sales and grading of logs. The U.S. Department of Justice pointed to the sharp rise since 2007 in the percentage of the pine logs graded as Grade 4, the principal “lumber reject” grade, as proof that the British Columbia government was providing help to the local lumber industry as competitors in North America suffered from the drop in demand for lumber following the collapse of the US housing market.

Canada, which is responsible for the actions of its provinces under the SLA, argued that the sharp rise was a result not of government action, but rather of over 50 percent of British Columbia’s pine forests being devastated by a mountain pine beetle infestation. Two to three years after beetle-infested trees die, they typically develop dramatic cracks that are the principal reason for downgrading a log to Grade 4.

A two-week hearing earlier this year followed four lengthy rounds of briefing, including written statements from six fact witnesses and nine experts, almost all of whom were cross examined at the hearing. Post-hearing briefs were

submitted in May, and the arbitrators issued their Confidential Award on July 18. A public version redacting commercially sensitive information was issued on July 27.

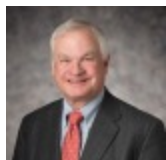
The award is a total victory for Canada. The tribunal adopted Canada's arguments with respect to every disputed point of law under the SLA, and either accepted the view of the facts urged by Canada or agreed with Canada that the US had failed to show that the facts amounted to a breach of the SLA. "The arbitrators clearly understood the evidence well and had good reasons for dismissing the US's complaints in their entirety," John Townsend told Global Arbitration Review in a July 19 report.

The victory drew widespread media coverage in the US and Canada in outlets such as The Wall Street Journal, Reuters, Law360, The Globe and Mail and The Vancouver Sun.

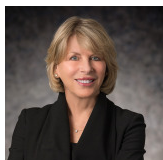
Hughes Hubbard represented Canada throughout the arbitration, along with a group of lawyers from the Government of Canada's Trade Law Bureau, and in close cooperation with the law firms representing British Columbia and the British Columbia Lumber Trade Council. Canada's team was led by Townsend and Joanne Osendarp, and included John Wood, Eric Parnes, Jim Boykin, Liz Solander, Mike Flynn-O'Brien, Ben Grillot, and Alex Hess, as well as paralegals Anupama Chettri, Steve Halpin and Rob Hillenbrand.

July 2012

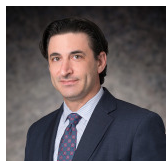
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