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Wood Scientist Dings Certain Brazilian Lumber In Lanham Suit

By **David Minsky**

Law360, Fort Lauderdale, Fla. (December 12, 2022, 10:39 PM EST) -- A Baton Rouge, Louisiana, wood scientist testified Monday in Florida federal court that at least half the wood from Brazil's southern pine forests is inherently "less favorable" for plywood, which a lumber coalition says makes it likely that Forestwood Industries Inc. is fraudulently certifying the wood as a superior construction grade product to U.S. consumers.

Todd Shupe of Wood Science Consulting LLC took the stand before U.S. Magistrate Judge Patrick M. Hunt in Fort Lauderdale and testified during an evidentiary hearing as an expert witness for the U.S. Structural Plywood Integrity Coalition, which is seeking a preliminary injunction against Forestwood to revoke the company's ability to certify wood from dozens of Brazilian lumber mills.

The coalition of several U.S. companies sued Forestwood in May, alleging the company is deceiving consumers by fraudulently labeling substandard plywood manufactured by Brazilian lumber mills with the PS 1 certification — a recognized construction material standard in the U.S.

"This case involves a counterfeiting scam of epic proportion," the coalition said in its lawsuit. "As a result, huge volumes of off-grade structural plywood that is stamped as PS 1 compliant continue to enter the U.S. and specifically, the Florida market, both endangering human health and safety in an earthquake or hurricane and threatening the long-term viability of the U.S. plywood industry that consistently manufactures on-grade structural plywood."

In its lawsuit, the coalition accused Forestwood of issuing sham certifications for plywood manufactured by more than a dozen lumber mills that it described as being part of a "collusive and corrupt cartel" attempting to maintain Brazil's position as the leading foreign supplier of PS 1 plywood in the U.S. market.

Defendants include the American Association for Laboratory Accreditation Inc., or A2LA, which the coalition said is harming consumers by providing Forestwood the ability to certify plywood. The coalition accuses Forestwood of Lanham Act violations for its false certifications.

The coalition is seeking a preliminary injunction that would force A2LA to revoke Forestwood's accreditation as a PS 1 certification body.

In addition to Shupe's testimony, the coalition said Forestwood's plywood was tested at three independent laboratories in the U.S. from 2018 to 2021, which each one showing failed tests, including tests for bending stiffness or deflection.

During testimony, Shupe testified that up to 55% of pine plantations from the Brazilian southern states of Paraná and Santa Catarina consist of juvenile trees that would be ideal for paper manufacturing, but that he would be "more concerned" if they were used for plywood because the younger wood is not as dense. This is compared with the 20% to 25% of the pine plantations in the U.S. consisting of younger trees.

Shupe added that those areas have more juvenile trees because that part of Brazil gets more rain, whereas the U.S. pine plantations where lumber is derived experience more drought, and that the more evenly distributed rain allows the pine trees in Brazil to reach a "merchantable" size in a short period of time.

Before Shupe began testimony, Nina Christine Welch of Nelson Mullins Broad & Cassel, representing A2LA, challenged him on his qualification as an accreditation expert, saying he was never employed by a specific accreditation body and has no knowledge on the primary standard that governs all accrediting bodies.

Judge Hunt nevertheless admitted Shupe as an expert on southern yellow pine lumber and for his "professional familiarity" with PS 1 testing standards.

Peter R. Goldman, of Nelson Mullins Broad & Cassel, representing Forestwood, said his client shouldn't be a part of a Lanham Act lawsuit because they don't actually sell wood or compete with the plaintiffs.

Additionally, Goldman said the coalition is trying to "upend the status quo by eliminating competition" and raise prices.

"We're not in the supply chain," Goldman said. "We don't compete for consumer dollars. We are an accrediting body. Accrediting bodies are what makes the world of commerce go around."

The hearing continues Tuesday morning in Fort Lauderdale.

The plaintiffs are represented by Michael E. Haglund of Haglund Kelley LLP and Edward Randall Nicklaus of Nicklaus & Associates PA.

The defendants are represented by Peter R. Goldman and Nina Christine Welch of Nelson Mullins Broad & Cassel and Michael Stanton of Kosakoff & Cataldo LLP.

The case is U.S. Structural Plywood Integrity Coalition et al. v. Forestwood Industries Inc. et al., case number 0:22-cv-60976, in the U.S. District Court for the Southern District of Florida.

--Editing by Michael Watanabe.