



Case study: Coal company directed to pay a fraction of cover damages sought by plaintiff

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Problem

Our client acquired a coal company which had been party to a long-term coal supply agreement with a utility. The agreement had been breached, with no coal being supplied during 2007 and 2008 when prices had spiked to more than \$100.00 per ton. As a result, our client faced a cover damages claim in an arbitration filed by the utility potentially amounting to tens of millions of dollars.

Solution

The client retained Frost Brown Todd (FBT) to defend the arbitration. FBT's trial team, led by [Barry Hunter](#), pursued hotly contested discovery into the utility's portfolio of coal purchases during 2007–2009, enabling FBT to identify numerous purchases that the utility had made during late 2007 and early 2008. These purchases occurred after the contract in question had been breached but before prices had spiked.

While the utility contended that these purchases were merely normal-course hedge purchases, and not the direct result of the breach of the contract at issue, FBT's coal economist was able to support FBT's contention that these low-priced purchases were made in anticipation of non-deliveries under the contract at issue. As such, FBT was successful in establishing a cover price of only approximately \$40.00 per ton — rather than the \$125.00 per ton that the utility ultimately paid for coal during the last months of the contract's term.

Client Benefit

Rather than being tagged for \$40 million of cover damages, the amount initially sought by the utility, the arbitration panel awarded

less than \$1 million in cover damages.

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