

SolarWorld To Appeal \$793M Award In Supply Contract Suit

By Adam Lidgett

Law360, New York (July 27, 2016, 5:58 PM ET) -- A unit of the German solar panel company SolarWorld said Wednesday it would appeal a \$793 million damages judgment entered Tuesday in Michigan federal court, two weeks after a judge found SolarWorld breached a supply contract with Hemlock Semiconductor Corp.

U.S. District Judge Thomas L. Ludington on July 13 granted summary judgment in favor of Hemlock in a suit seeking to force SolarWorld Industries Sachsen GmbH, formerly known as Deutsche Solar GmbH, to make good on a promise to buy \$83 million worth of polycrystalline silicon. Tuesday's judgment put a final dollar amount on that ruling, but SolarWorld said in a statement that, after the appeals process is complete, German courts will likely decline to enforce it.

"[The] judge explicitly said that the court did not consider proof of illegality under EU antitrust [law] but also that this argument would receive its day in court later on," SolarWorld said. "Thus, SolarWorld AG is convinced that such a procedure of recognition and enforcement will fail to be concluded successfully in Germany. The risk assessment of SolarWorld AG has thus not changed."

In his summary judgment ruling, Judge Ludington said SolarWorld didn't meet the burden of proof to show why it shouldn't have to follow the contract's terms. He ruled that SolarWorld was on the hook for at least \$770 million, finding that it wasn't a penalty to be imposed but rather a term of the agreement.

Judge Ludington also said SolarWorld didn't help the court come to any other conclusion by providing other figures to go by.

SolarWorld had argued that it should be able to get out of the agreement it had with Hemlock because China's participation in the solar industry created market conditions that made the contracts impracticable.

Judge Ludington said that argument had already been rejected in a similar dispute between Hemlock and Kyocera Corp.

Hemlock spokesman Jarrod Erpelding said in a statement the company remains confident in its position that SolarWorld's appeal won't prevent Hemlock from enforcing the judgment.

"After 14 days, Hemlock Semiconductor is able to begin the process to enforce the judgment," he said.

SolarWorld is represented by Anthony Cillo, Larry K. Elliott and David F. Russey of Cohen & Grigsby PC, and Daniel P. Malone and Joseph E. Richotte of Butzel Long PC.

Hemlock is represented by Craig W. Horn of Braun Kendrick and Peter Coll, John Ansbro, Danny Robertson, Alvin Lee, Tom Kidera, Kyle Howard and James Fee of Orrick Herrington & Sutcliffe LLP.

The case is Hemlock Semiconductor Corp. v. Deutsche Solar GmbH, case number 1:13-cv-11037, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Keith Goldberg and Stan Parker. Editing by Mark Lebetkin.

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