

Dismantling \$5 Billion in Antitrust Claims

Client:	Dynergy Inc.
Industry:	Energy
Area of Law:	Antitrust
Venue:	U.S. District Court for the Southern District of West Virginia
Result:	Defeated certification of a putative class action involving more than 400 natural gas shipper and marketer plaintiffs



“Pillsbury’s knowledge of recent legal developments and diligence in applying them resulted in novel and important rulings that significantly reduced Dynergy’s exposure in this important matter.”

—Jason B. Kinzel, Corporate Counsel, Dynergy Inc.

Competition in the natural gas shipping and marketing industry grew fierce during deregulation in the 1980s and ‘90s. When a number of gas shippers and marketers failed to thrive in this new market, they filed antitrust claims against their competitors, alleging that natural gas pipelines had given preferential treatment to a group of gas shippers and marketers. The supposed beneficiaries, and therefore defendants, included Pillsbury client Dynergy Inc.

Pillsbury obtained dismissal of the plaintiffs’ horizontal conspiracy and monopolization claims under the then-recently decided U.S. Supreme Court decision in *Bell Atlantic Corp. v. Twombly*, becoming one of the first firms to win dismissal of such claims under that decision. This achievement was particularly significant given that substantial discovery had been proceeding in the case for more than two years.

That success set the stage for an even bigger victory in 2008, when the U.S. District Court denied the plaintiffs’ request to certify a class that would have included several hundred gas shippers and marketers. Given Pillsbury’s earlier victory, the plaintiffs were left only with allegations of separate vertical antitrust conspiracies. Pillsbury successfully argued that the plaintiffs had failed to demonstrate that each of those remaining vertical conspiracies injured each purported class member, and the judge therefore declined to certify a class action.

Given the treble damages available under antitrust law, the plaintiffs in the putative class action had raised the specter of \$5 billion in damages. Instead, Dynergy’s litigation risk has now been reduced to defending a handful of individual plaintiff suits.