

Quickly Ending a Competitor's Antitrust Claims

Client:	Headwaters Resources
Industry:	Construction materials
Area of Law:	Antitrust
Venue:	U.S. District Court for the Middle District of Louisiana
Result:	After obtaining a court ruling requiring plaintiff to substantially amend each count of its complaint, convinced plaintiff to stipulate to a dismissal of its case with prejudice



“Pillsbury’s attorneys resolved this legal issue quickly and with finality. Their mastery of the applicable law was evident in the motion to dismiss, which went a long way towards inducing our competitor to abandon the litigation.”

—Harlan Hatfield, Vice President, General Counsel and Corporate Secretary, Headwaters Incorporated

In 2013, a Pillsbury litigation team needed only a few months to fend off a former competitor’s antitrust challenge against client Headwaters Resources, a leading U.S. purveyor of coal combustion products in the heavy construction materials industry. After obtaining a favorable ruling on a motion to dismiss, the Pillsbury team convinced the plaintiff that surrender was the better part of valor.

Plaintiff, a subsidiary of a global conglomerate, filed suit in federal court (M.D. La.), alleging Headwaters engaged in anticompetitive conduct in violation of federal and state antitrust laws. The plaintiff had long been the exclusive distributor of fly ash—a byproduct of coal combustion used, among other things, to create concrete with lower CO2 emissions and energy consumption—from a utility plant near Baton Rouge. Plaintiff claimed that, when its contract came up for renewal, Headwaters manipulated the bidding process, forcing plaintiff into a deal requiring it to pay too much for the fly ash. Headwaters allegedly then lowered its fly ash prices to squeeze its rival into default on required payments to the utility, paving the way for Headwaters to take over the distribution contract and allegedly monopolize a vaguely defined relevant market.

In its motion to dismiss, Pillsbury lawyers not only laid out the deficiencies in each of plaintiff’s claims but accurately anticipated plaintiff’s likely responses with an eye toward maximizing the effectiveness of our client’s upcoming reply. For example, in response to Headwaters’ challenge to both the interstate commerce and geographic market allegations of the complaint, plaintiff—as expected—argued for a broader relevant geographic market. In reply, Pillsbury showed plaintiff would face a daunting task trying to allege facts demonstrating market power over such a wide area. Moreover, Pillsbury argued Headwaters’ conduct was more consistent with aggressive competition than with anticompetitive behavior.

The judge found all of plaintiff’s theories of liability wanting. The court then set a 30-day deadline for the plaintiff to file an amended complaint, if it could do so.

Facing an uphill battle to prepare a viable amended complaint, the adversary agreed to a dismissal with prejudice. Headwaters made no settlement payment, and the court subsequently ordered the action dismissed.