

CASE STUDY

Pillsbury Prevails in Landmark Uranium Fuel Case Before the European Court of Justice



Client:	Luminant Corporation (formerly TXU Corp.)
Matter	Contested ownership of enriched uranium fuel
Areas of Law:	Nuclear energy regulation and litigation (Europe)
Result	Achieved client's litigation goals and prompted the first review of Europe's principal nuclear fuel regulations in 50 years



A Complex Dispute

Luminant's highly complex dispute over enriched uranium fuel involved multiple transactions, the bankruptcy of a key player, and companies based in five countries on three continents.

The matter began with Luminant's \$50 million purchase of uranium fuel from Swiss trader NUEXCO in 1995. NUEXCO had received the uranium on loan from the Brazilian government's national nuclear fuel company, Industrias Nucleares do Brasil SA (INB), and then contracted to sell the fuel to Luminant—an otherwise routine transaction until NUEXCO filed for bankruptcy prior to completion of the transfer.

An Uphill Battle

From the outset, Pillsbury's primary challenge was addressing the fact that the ESA, the EU's principal nuclear fuel regulatory agency, had not approved Luminant's purchase. This was a particularly significant hurdle since a German utility and a French mining concern had each attempted—and failed—to challenge the ESA's authority in the past.

After a series of appearances in German lower courts, the Pillsbury team achieved favorable rulings on all issues except the question of the ESA's fundamental authority. On this issue, Brazil's INB argued the status quo: the ESA had the exclusive right to approve the transfer of ownership in uranium that was enriched in the EU. The question was referred to the European Union's highest court, the European Court of Justice (ECJ).

A Landmark Ruling

The Pillsbury team developed an innovative legal strategy that targeted the foundation of EU nuclear regulation, the Euratom Treaty of 1957. They argued that proper interpretation of the treaty meant that the ESA had the right to regulate certain aspects of European uranium trade but lacked sufficient authority to prevent Luminant's purchase.

In a landmark ruling, the ECJ's Grand Chamber sided with Luminant's position, ruling that parties did not need ESA approval on contracts for the sale of enriched uranium. The significance of the ruling quickly reached the European Commission, which began exploring options to reform the ESA's governing statutes, the first such rewrite in its 50-year history.

While the ruling had wide-ranging implications, the key result for our client was more straightforward. Luminant was finally able to secure the fuel it had contracted to buy—without any disruption to its operations or its customers. And as a result of Pillsbury's innovative strategy, Luminant's next uranium fuel purchase in Europe can proceed without the risk of disruptive regulatory interference.