

## CASE STUDY

# Protecting Companies from Coerced Disclosures

*“Companies that turned over confidential documents to the government during the U.S. Justice Department’s Thompson Memo era shouldn’t have to share that information with plaintiffs’ attorneys, a state appeal court ruled Wednesday.”*

—The Los Angeles Daily Journal, July 31, 2008



Client:	<b>A major energy industry company</b>
Industry:	Energy
Areas of Law:	White Collar Defense, Appellate
Venue:	California 4th District Court of Appeal
Result:	Unanimous 3-0 ruling for the client that benefits many other companies

Under a controversial policy issued by the U.S. Department of Justice, companies were routinely threatened with indictment or penalties if they did not cooperate with federal investigators by waiving their attorney-client privilege and attorney work-product protection. And the companies weren’t just laying themselves bare to prosecutors. In practice, this requirement often made sensitive documents available to civil litigation plaintiffs following a federal investigation.

Pillsbury successfully broke that stranglehold, defeating a demand by plaintiffs in civil antitrust litigation for documents turned over to the government in a prior antitrust investigation.

Taking an innovative tack, Pillsbury lawyers focused on the implicit coercion in the requirement to waive privilege or face harsh penalties. The three-judge panel hearing the case agreed, ruling that it would have been unreasonable for companies to resist or challenge federal investigators. The privileged documents produced under coercion, therefore, need not be turned over to the civil suit plaintiffs.

While this ruling came under California law, the precedent should have force in any U.S. jurisdiction where privileges are not waived when prior disclosures are deemed coerced.

