Litigation Highlights 2011

MAKING A DIFFERENCE, YEAR AFTER YEAR

" ... our go-to firm for this kind of bet-the-company litigation."

" ... extremely pleased with Pillsbury's leadership in these complex cases ... "

" ... lawyers truly partner with us in achieving [our] goals."

" ... an excellent example of the successes we have achieved working with them."

"This is a victory for all New Yorkers ... "

" ... an excellent job in gathering and presenting the facts to secure such a result."

"[U]nanimously reversed, on the law and the facts ... "

"With limited time to prepare and an aggressive adversary, Pillsbury was able to achieve an excellent result ... "

pillsbury

ATTORNEY ADVERTISING. Results depend on a number of factors unique to each matter. Prior results do not guarantee a similar outcome.

Pillsbury Winthrop Shaw Pittman LLP
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Broadening Our Litigation Practice

The broad-based strength of Pillsbury's litigation practice has been the key factor that has allowed us to thrive in this difficult economic climate. As we head into 2012, we are particularly pleased to note the further depth we have recently gained through our additions of top-tier practitioners in multiple disciplines, including construction litigation, white collar, insurance recovery and intellectual property. In fact, in 2011 we doubled the size of our insurance recovery & advisory practice and tripled the size of our construction disputes team.

The benefit of this dynamic growth for our clients is clearly evident here, in our fifth annual Litigation Highlights report to you.

- We have featured a victory garnered by new members of our insurance recovery team, recently ranked one of the top five in the nation.
- Among our many intellectual property victories this year was a win for our new client Mattel. The toy company's courtroom success was spearheaded by a partner who joined Pillsbury in 2011 along with three of his trademark and copyright colleagues.
- Working behind the scenes on matters reflecting the increased focus on federal criminal enforcement efforts in the United States are our four new white collar defense colleagues. These attorneys are now serving Pillsbury clients from Washington, DC, where much of the stepped-up activity in investigations and prosecutions is originating. Our white collar defense team was nationally ranked in the latest *U.S. News/Best Lawyers* survey.
- We were joined in 2011 by members of a top-ranked construction litigation team that was named a finalist in the *Chambers USA* 2011 Awards for Excellence.

This top talent was eager to join the exceptional litigation practice we have built at Pillsbury. The 2011 *U.S. News/Best Lawyers* survey now ranks us as among the nation's best litigation practices in environmental, tax, commercial, antitrust, ERISA, real estate, regulatory enforcement, banking & finance, bankruptcy, intellectual property, employment, securities, and trusts & estates.

Please contact us at any time for more information about our litigation practice or for a fresh perspective on any situation you may be facing.

Kenneth W. Taber
Litigation Co-Leader

Kirke M. Hasson
Litigation Co-Leader

Contracts

In 2011, Pillsbury prevailed in complex commercial contract disputes for a long list of companies, including AOL, Yogurtland, and Pathmark Stores.

> “Our Pillsbury lawyers truly partner with us in achieving AOL’s goals. This substantial recovery is an excellent example of the successes we have achieved working with them.”
>
> —Jeffrey Novak, Assistant General Counsel, AOL

Winning Redress for Costly Broken Promises

When AOL looked to set up a new software system that would support and accelerate its online ad sales, the company had well-founded confidence in its likelihood of success. In large part, that confidence was based on AOL’s hiring of a large, well-known consulting group for guidance on the selection and implementation of the system.

But after significant expenditures had been made, AOL found that the Order-to-Cash (OTC) system the consultants had recommended was manifestly ill-suited to the company’s needs. Moreover, despite repeatedly claiming that it had vast experience in implementing OTC systems similar to the one recommended to AOL, the consulting group failed to complete the project.

Having spent millions of dollars on an uncompleted project, AOL filed suit for damages in Fairfax County, Virginia. The company requested and received a jury trial on its damage claims, with Pillsbury serving as trial counsel.

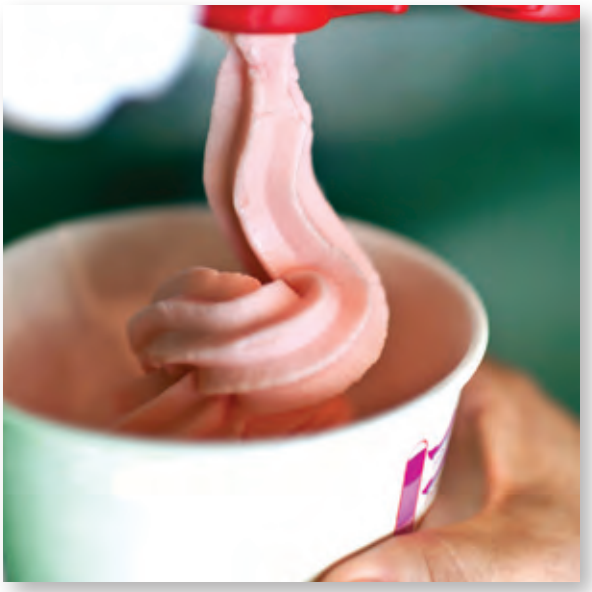
The biggest challenge Pillsbury faced was in conveying the total loss AOL had suffered—that despite paying out $6.1 million, the company had ended up with literally nothing of value. Pillsbury’s approach involved a judicious deployment of both expert witnesses and AOL employees who described the worthless mess the consultants had left behind.

The jurors were convinced and awarded AOL the full $6.1 million it spent on its primary contract with the consulting group.

Client:	**AOL**
Industry:	Internet services
Area of Law:	Contracts
Venue:	Virginia Circuit Court, jury trial
Result:	The jury awarded $6.1 million to Pillsbury’s client

> “[Yogurtland’s] financial ratios are strong and best in class. We credit this to management’s superior operating model and meticulous growth plans.”
>
> —The FranchiseHound.com, on its “strong buy” recommendation for Pillsbury’s client

Client:	**Yogurtland**
Industry:	Retail food and beverage
Area of Law:	Contracts
Venues:	American Arbitration Association and California Superior Court (Los Angeles)
Result:	Won a bet-the-company case for our client, which was facing alleged damages that exceeded all its profits at the time



Freeing a Rapidly Growing Company from an Unreasonable Service Contract

Yogurtland is among the hottest new franchise chains, having grown from two Southern California stores to more than 150 locations in less than four years. And thanks to Pillsbury, Yogurtland successfully terminated a regional distribution arrangement that threatened to severely limit the company’s burgeoning business.

The five-year agreement allowed for termination of the contract if the distributor failed to provide “reasonable service.” So when Yogurtland saw that its distributor’s service wasn’t keeping up with the franchise’s rapid growth, it switched to a nationwide company.

But the regional distributor sued, claiming damages of up to $16 million, an amount that exceeded Yogurtland’s profits at that point. So Yogurtland hired Pillsbury to handle what was a bet-the-company case.

The distributor argued that Yogurtland had terminated its contract solely due to pricing, and that the contract provided an exclusive, systemwide relationship. The distributor’s stated strategy was to force Yogurtland back into a business relationship under the threat of annihilating damages. Unable to reach a reasonable resolution through negotiations, Pillsbury took Yogurtland’s case to the arbitration hearing.

Because the contract signed by the parties was ambiguous, there was no way to win the case on summary judgment. Pillsbury focused instead on detailed questioning of the witnesses from both sides, to demonstrate how the contract’s language should be interpreted.

The arbitrator agreed with Pillsbury’s arguments that 1) the contract was limited to Southern California, and 2) was not exclusive. Given this and its admittedly higher pricing structure, the arbitrator held that the distributor had not shown any damages. The arbitrator awarded Yogurtland attorneys’ fees as the prevailing party, resulting in a Superior Court judgment confirming the award.

Securing a Complete Reversal on Appeal from New York State's Highest Court

Overturning a trial court's denial of summary judgment, and then sustaining that victory against a further appeal, is not something one sees every day. But when Pathmark Stores turned to Pillsbury for a high-stakes appeal, we secured a reversal and successfully defended the result in New York's highest court.

Pathmark, a supermarket chain subsidiary of A&P, has more than 100 stores on the East Coast. In 2007, the company agreed to sell the leases it held on two properties on Manhattan's Lower East Side for $87 million. The buyer was CPS, a special-purpose vehicle created by a real estate developer that envisioned new housing on the properties.

After real estate values plummeted, CPS backed out of the transaction on the eve of closing. CPS cited a nearly expired clause in a Land Disposition Agreement (LDA), which required approval from the City of New York before the property could be leased or subleased to someone other than Pathmark. No city approval had yet been obtained, and the Pathmark-CPS contract clearly listed the LDA as a "Permitted Exception" to the contract.

CPS sued Pathmark to get back its contract deposit; Pathmark countersued, also claiming the escrowed funds. The trial court denied motions for summary judgment from both sides, finding disputed issues of fact. That was when Pathmark retained Pillsbury to appeal the trial court's order.

Pillsbury argued before the New York Appellate Division that Pathmark should have been granted summary judgment. In a 4-1 decision, the court's majority agreed and granted the motion itself, without sending the case back to the trial court.

CPS nonetheless obtained leave to appeal, and the case was then heard by New York State's highest court. The Court of Appeals unanimously affirmed the Appellate Division's grant of summary judgment to Pathmark, stating that, because the LDA was a Permitted Exception, "the risk that Pathmark might be 'prohibited from consummating' the assignment agreement by the LDA was a risk that plaintiff expressly agreed to take." With its 7-0 opinion, the court also awarded costs to Pillsbury's client.

Client:	**Pathmark Stores Inc.**
Industry:	Retail
Areas of Law:	Contracts, real estate
Venues:	New York State Court of Appeals, New York State Appellate Division
Result:	Won an appellate reversal awarding summary judgment and costs, and allowing the client to retain the deposit on an uncompleted $87 million sale

> "No public policy prohibited plaintiff from agreeing [to the contract's Permitted Exception], as it did, but this was plaintiff's problem and not Pathmark's..."
>
> —Unanimous decision by the New York State Court of Appeals, agreeing with Pillsbury's argument

Client:	**1113 York Realty Company LLC and 60th Street Development LLC**
Industry:	Real estate
Area of Law:	Contracts
Venue:	New York State Appellate Division
Result:	In a unanimous decision, the appellate court vacated the earlier judgment against Pillsbury's clients and denied the plaintiff's underlying motion

> "[U]nanimously reversed, on the law and the facts, without costs, the judgment vacated and plaintiff's motion denied."
>
> —New York State Appellate Division's decision in favor of Pillsbury's client

Rescuing Clients from the "Harshest Available Penalty"

In mid-2010, observers of New York's real estate scene were stunned to see an auction scheduled for the property at 1113 York Avenue, on Manhattan's Upper East Side. Instead of a new 32-story residential tower, the site was headed toward "one of the largest non-mortgage foreclosure auctions in years."

"It's not often that a mechanic's lien reaches the *lis pendens* stage," wrote a PropertyShark.com blogger. "It is even more uncommon for one to reach the foreclosure stage."

But then Pillsbury was hired to appeal the lower court's auction order and other unusual decisions. The previously ordered sale of the property was stayed and ultimately reversed—saving Pillsbury's clients from that harsh outcome.

Plaintiff W&W Glass claimed that two companies owned by prominent New York real estate developer Sheldon Solow failed to pay for work done on a glass curtain wall for the unconstructed building. In court, the plaintiff sought monetary damages and foreclosure of mechanic's liens filed on two Solow-owned properties.

Before the close of discovery, W&W Glass moved to strike defendants' answer, claiming that evidence had been concealed or destroyed by the defendants. The judge granted that motion, throwing out the defendants' entire case without further proceedings, awarding the plaintiff all of the $10 million in requested relief, and ordering a property auction to satisfy that judgment.

On appeal, as newly retained counsel, Pillsbury argued that the plaintiff had failed to show that documents had been concealed or destroyed, and that the lower court had abused its discretion in imposing such a drastic sanction against the defendants. The Appellate Division panel unanimously agreed.

"The record fails to support the motion court's determination that defendants' failure to comply with discovery obligations was willful, or in bad faith," the court wrote. "Absent such showing, the motion court erred in imposing the 'harshest available penalty' against defendants." The appellate court vacated the judgment against Pillsbury's clients and denied the plaintiff's underlying motion.

Energy/Environmental

Pillsbury's representation of key energy industry companies dates back more than 100 years, and major environmental disputes are always on our docket. This year we scored two important victories for Dynegy—one in antitrust and one in environmental regulation.

"Dynegy is extremely pleased with Pillsbury's leadership in these complex cases and with the resulting dismissals. They are our go-to firm for this kind of bet-the-company litigation."

—Jason Buchman, Vice President and Dynegy Group General Counsel

Client:	**Dynegy**
Industry:	Energy, natural gas
Area of Law:	Antitrust
Venue:	Multidistrict litigation in Nevada that included putative class actions and independent claims filed in Colorado, Illinois, Kansas, Missouri and Wisconsin
Result:	Won dismissal of all state claims that comprised the multidistrict litigation

Delivering the Oral Argument to Win Dismissal of Nine Cases Across Seven States

A Pillsbury litigation team achieved victory on behalf of longtime client Dynegy and nine other major energy companies alleged to have manipulated prices in the 2000-2001 Western states energy crisis. In a Nevada courtroom, a Pillsbury litigator presented oral argument for the defendants' summary judgment motion that resulted in the U.S. District Court's dismissal of nine cases across multiple states. U.S. District Judge Philip Pro ruled that the state claims are barred because the Federal Energy Regulatory Commission had exclusive jurisdiction over the price-reporting practices at issue.

The ruling is the team's latest success in defending the client on various related claims over alleged manipulation of published index prices for natural gas. Last year the team scored a victory when the Tennessee Supreme Court ruled that retail gas customers could not use state law to challenge prices in allegedly manipulated wholesale markets. Previously the Pillsbury team defeated state law claims challenging wholesale prices in California's energy markets on Filed Rate Doctrine grounds.

Judge Pro had previously denied the defendants' motion with regard to FERC's jurisdiction. But in response to a motion spearheaded by the Pillsbury team, he reconsidered that decision, concluding that the plaintiffs' state law claims would be barred if the defendants proved they were subject to FERC's jurisdiction and that the alleged misconduct would have affected FERC jurisdictional rates.

Following Pillsbury's oral argument on behalf of the 10 energy company defendants, Judge Pro issued his 2011 order dismissing all state claims that comprised the multidistrict litigation. Included among these cases were putative class actions in Wisconsin, Missouri, Kansas, Colorado and Michigan, together with independent actions in Kansas, Illinois and Wyoming.

Successfully Defending "Best Technology Available" Determination by Water Board

Located on the coast of California near Monterey, the Moss Landing Power Plant has provided electricity for millions of consumers for almost 60 years. In 2000, the plant's owners obtained permission from state regulatory bodies to replace older units taken out of service with two new generating units and to make related upgrades to the cooling water system.

In its review of the proposed permit, the California Regional Water Quality Control Board found the planned intake system upgrade was the best technology available (BTA) for minimizing adverse environmental impact. A local environmental group objected to the BTA finding and began a series of challenges in state courts, starting with a petition for administrative mandamus in the Superior Court of Monterey County.

As counsel to the plant's owners, Pillsbury helped defeat these challenges at every judicial level. In addition, the plant's operation was not curtailed during the prolonged review process.

After remanding the BTA question to the Water Board for further analysis and evidence, the trial court denied the environmental group's petition. That group appealed the decision, and the California Court of Appeal unanimously affirmed the trial court's judgment. The group then sought review in the California Supreme Court on multiple grounds.

The California high court ruled 7-0 in favor of Pillsbury's client. The proper standard was applied, the Supreme Court held, and it saw no error in the Water Board's finding that the costs of alternative cooling technologies for the plant were "wholly disproportionate" to the anticipated benefits.

The Supreme Court also approved the trial court's limited remand to the Water Board for additional evidence and analysis, rejecting rulings in other cases to the contrary. Our client's victory on this important issue of administrative mandamus law may well benefit other businesses that need state permits.

Client:	**Dynegy**
Industry:	Energy
Areas of Law:	Regulatory, environmental, appellate, administrative mandamus
Venues:	California Supreme Court, California Court of Appeal (6th District), California Superior Court (Monterey County)
Result:	Enabled the client's power plant to operate as permitted without interruption. Confirmed the appropriateness of both cost-benefit analysis in the agency's determination and interim remands as part of judicial review of agency decisions

> "[W]e discern no basis to hold that the board erred ... [in] finding that the costs of alternative cooling technologies for the [power plant] were "wholly disproportionate" to the anticipated benefits."
>
> —Opinion from the California Supreme Court

Securities

Plaintiffs' lawyers seem to see "securities fraud" in every stock market gyration. Pillsbury continually proves them wrong.

> "The defendants argue, and the Court agrees, that these additional allegations are not facts showing how plaintiffs can establish that their shares are traceable to the Secondary Offering."
>
> —U.S. District Court Judge Susan Illston, agreeing with Pillsbury on the plaintiffs' lack of standing, in her decision dismissing all claims with prejudice

Persistently Beating Back a Would-Be Securities Class Action

It wasn't a complete surprise when plaintiffs tried to mount a securities class action against Monterey, Calif.-based Century Aluminum Company. Thanks to a 50% decline in worldwide aluminum prices coinciding with the U.S. recession, the company's stock price had dropped precipitously in 2008.

So when the company issued a financial restatement in March 2009, plaintiffs' attorneys pounced. Pillsbury attorneys helped Century successfully weather the ensuing litigation and defeated three successive amended complaints, each of which contained multiple claims against the company and 11 individual directors and officers.

The plaintiffs alleged that Century had made "false and misleading statements" in the prospectus for its January 2009 secondary offering of common stock. But Pillsbury showed that the prospectus was in fact quite candid about the challenges the company faced at the time. "The prospectus is like a prolonged cold shower," Pillsbury stated in its motion to dismiss.

Pillsbury's arguments regarding the plaintiffs' lack of standing, scienter, and other issues ultimately secured a complete dismissal and judgments in favor of all of our clients. And since the cases were filed, Century's stock has rebounded to much higher levels.

Client:	**Century Aluminum Company, its directors and officers**
Industry:	Materials
Area of Law:	Securities class action
Venue:	U.S. District Court for the Northern District of California
Result:	Won dismissal of the third amended complaint with prejudice, and obtained judgment in favor of all defendants

Insurance

Pillsbury's insurance recovery practice dates back to the San Francisco earthquake of 1906 and, like the risks our clients face, has become ever more sophisticated. In 2011, we were joined by the nation's most highly regarded lawyers in construction insurance recovery.

> "A New York federal judge on Wednesday tossed a suit brought by Gibson Guitar Corp.'s insurer seeking to dodge responsibility for covering a flood at Gibson's Nashville, Tenn., headquarters ..."
>
> —*Insurance Law360*, Sept. 8, 2011

Thwarting a Countersuit and Returning an Insurance Dispute to Its Rightful Venue

Nashville experienced a catastrophe in May 2010, when the Cumberland River crested 11 feet above its banks and left ruined pieces of Music City history in its wake. The Gibson Guitar Corp. saw $17 million in losses at its manufacturing and storage facilities, including irreplaceable treasures like the Stratocaster guitar played by rock icon Jimi Hendrix.

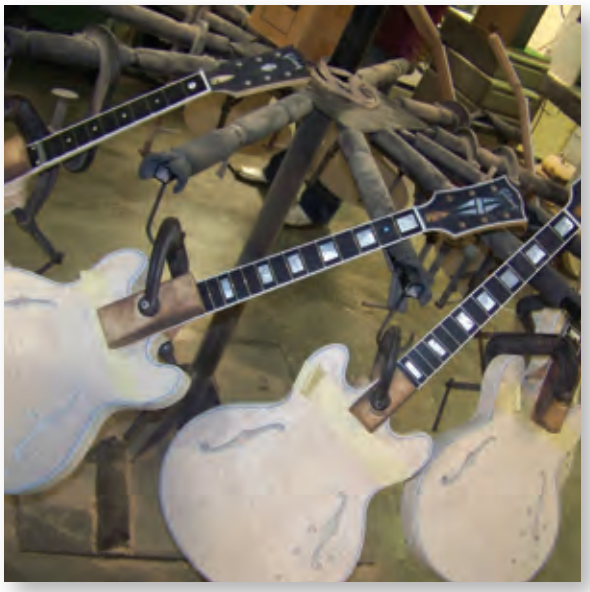
Gibson had $25 million in insurance coverage including a primary policy and a second for damage in excess of $10 million. But after the company filed its claims, it fell victim to a dispute over whether the two buildings where Gibson's combined losses occurred should be treated as two locations, or as a single physical location with two addresses, at Nos. 641 and 643 Massman Drive.

The excess-losses insurer sued Gibson in New York federal court, seeking a declaratory judgment that it was not obligated to pay because one of the buildings was allegedly not covered by its policy, and damage to the other did not exceed the $10 million threshold. Pillsbury lawyers argued an abstention motion three times before it was granted by the District Court judge.

The same insurer also sought federal jurisdiction for the case in Tennessee, but the District Court there remanded the matter to state court, saying Pillsbury was correct in arguing that the primary purpose of the litigation was to allocate responsibility among the brokers and insurers for Gibson's loss.

Having won favorable rulings in New York and Tennessee, Pillsbury attorney Geoffrey Greeves told *Insurance Law360*, "allows us to proceed apace in Davidson County, the forum where the policy was delivered, where the water-damaged inventory was located and where most witnesses work and live."

Client:	**Gibson Guitar Corp.**
Industry:	Consumer goods
Area of Law:	Insurance
Venues:	U.S. District Court for the Southern District of New York, U.S. District Court for the Middle District of Tennessee
Result:	Won back-to-back rulings keeping the client in tune to recover $17 million for insured losses



Intellectual Property

The tougher the times, the more important one's intellectual property often becomes. Our latest victories in IP litigation served longtime clients such as Stanley Black & Decker and new ones, including Mattel.

> "We flagged the claim construction issue early on as case dispositive ... [so] we were able to litigate the No. 1 issue."
>
> —Pillsbury attorney Bryan Collins, quoted by *Law360* on how the firm efficiently handled Stanley's case

Prevailing at All Levels in Technology Patent Litigation

In another win for longtime client Stanley Black & Decker, in 2011 Pillsbury prevailed in federal appellate court over an industry rival that claimed patent infringement on a mathematical process used in devices that locate stud beams behind walls.

Pillsbury had already efficiently defeated the claims by plaintiff Zircon Corp. at the lower court level in 2010. Having identified a critical gap between the Zircon patent and the separate, specific mathematical process used by Stanley's stud finders, Pillsbury's team obtained a summary judgment of non-infringement from the California district court.

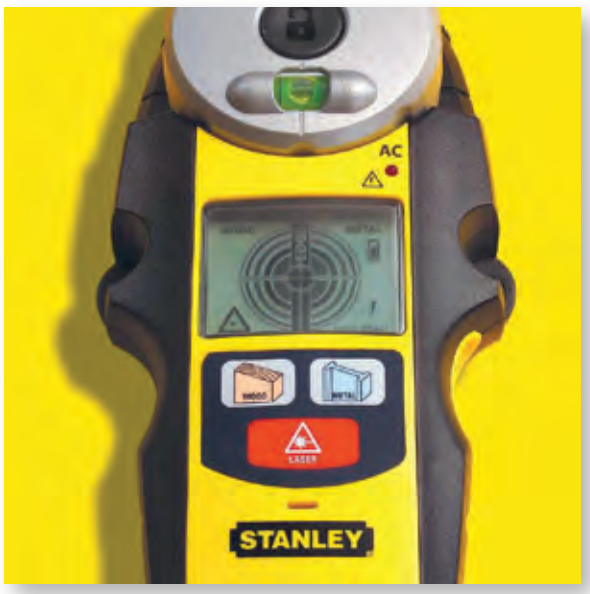
By asking the court to construe a single, but critical, term in Zircon's patent claim, Pillsbury negated the infringement claim, avoided a jury trial, and spared Stanley from protracted litigation and unnecessary legal expenses. The district court judge complimented Pillsbury's strategy as "a wise use of resources."

When Zircon nonetheless appealed the lower court decision under the doctrine of equivalents, the Federal Circuit found the company's claim failed again under the disclosure-dedication rule.

"Because we conclude that the district court correctly construed 'ratio' [in Zircon's patent] to encompass only division, and it is undisputed that Stanley's products use subtraction, we affirm the district court's entry of summary judgment of no literal infringement," wrote the unanimous three-judge panel.

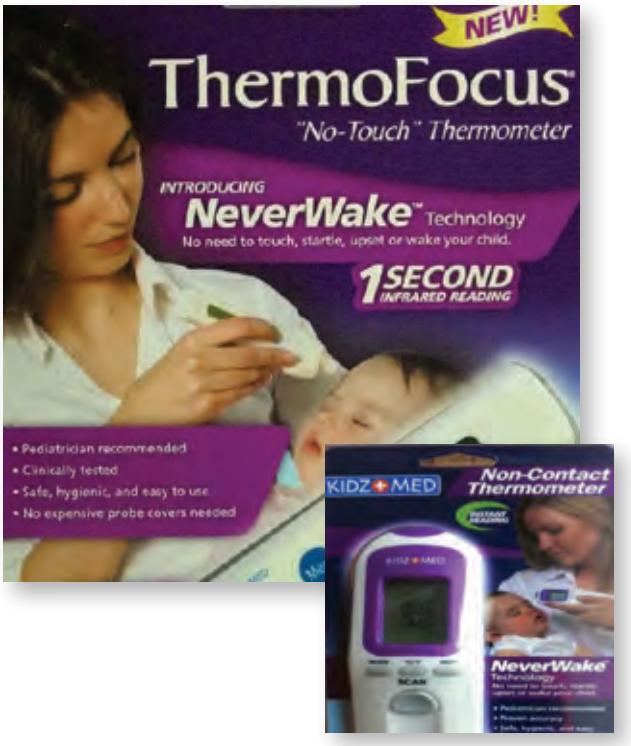
The win lets Stanley Black & Decker keep its Stud Sensor® line—a key piece of its layout and measurement tool portfolio—on the market, in competitive retail locations.

Client:	**Stanley Black & Decker**
Industry:	Construction tools
Area of Law:	Intellectual property
Venue:	U.S. Court of Appeals for the Federal Circuit
Result:	Won Federal Circuit affirmation of the District Court's summary judgment in favor of our client



> "I know that it is rare to have a competing product recalled from the market. The Pillsbury team did an excellent job in gathering and presenting the facts to secure such a result."
>
> —Francesco Bellifemine, President, Tecnimed Srl.

Client:	**Tecnimed**
Industry:	Medical electronics
Area of Law:	Trademark infringement
Venue:	U.S. District Court for the Southern District of New York
Result:	In a rare outcome for a trademark case, Pillsbury secured a complete recall of a competitor's infringing product



Winning the Recall of a Competitor's Infringing Product

Italian electronics manufacturer Tecnimed distributed its Thermofocus non-contact thermometer in the U.S. through a distribution deal with U.S.-based Kidz-Med. Soon after that arrangement ended in a dispute and settlement, Kidz-Med launched a competing product using what the U.S. District Court for the Southern District of New York would later call "confusingly similar packaging."

Tecnimed called on Pillsbury to lead an aggressive response to Kidz-Med's infringement. The IP Litigation team identified what amounted to deliberate infringement by Kidz-Med, including copying promotional language and a physician's endorsement of the Tecnimed product, and using "Thermofocus" metatags on the Kidz-Med site.

After a hearing, the Pillsbury team not only secured an injunction against the infringing packaging, but a complete recall of the competitor's product from more than 1,000 retail outlets. In his decision, U.S. District Judge Paul G. Gardephe noted that a recall is an "extreme remedy" but one that was supported by Pillsbury's convincing presentation of the defendant's bad faith, as well as Kidz-Med's inability to pay damages because of insolvency.

Clarifying a Lack of Trademark Confusion in Online Marketing

While many companies today conduct much of their product marketing on the Internet, case law is still catching up. In winning a victory for Mattel, Pillsbury also spurred a decision acknowledging that there is no such thing as "google confusion," and that courts must carefully evaluate litigants' social media and search engine advertising when evaluating a claim of trademark infringement.

In 2010, Mattel's Fisher-Price subsidiary launched its new iXL handheld device for young children. The toy incorporates a music player, camera, digital notebook, photo album, and software for reading e-books, creating art, and playing computer games. Mattel was subsequently sued by Quia Corporation, whose IXL program and website offer math practice questions for children.

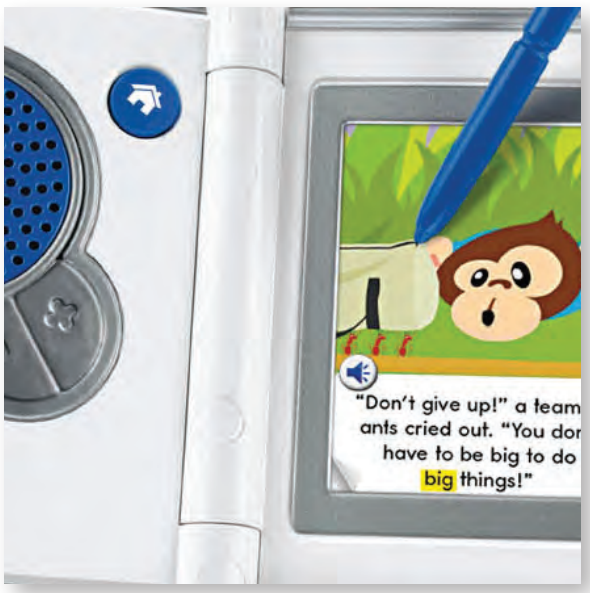
Quia alleged that Mattel's extensive use of online "marketing channels" for its iXL device caused confusion with Quia's online IXL. Mattel's Internet and social media promotions included email blasts, Facebook applications, You Tube channels, and tie-ins with bloggers.

But as Pillsbury and our co-counsel argued, and the court agreed, the fact that Mattel's product showed up in search results for "ixl" was legally irrelevant. "The mere fact that an internet search engine intermingles links to two products is not evidence of consumer confusion," the judge wrote.

Equally significant, the court granted a rare summary judgment dismissing not only the plaintiff's forward confusion claims, but most of the plaintiff's damages theories. The court rejected the plaintiff's "reasonable royalty" claim, noting that the "mere possibility of a future license cannot create an issue of fact as to the availability of lost royalties." On the theory of "corrective advertising," the court held that the plaintiff failed to offer any non-speculative basis to warrant such an award: "[t]he claim that every click-through to a site related to Defendants' product results in measurable or otherwise compensable harm to Plaintiff is based entirely on conjecture."

The court therefore held the plaintiff was entitled only to a bench trial to decide its remaining claims for equitable relief. The court also partially invalidated the plaintiff's trademark registration on grounds that it impermissibly overstated the services that were used in commerce.

Client:	**Mattel Inc.**
Industry:	Consumer technology
Area of Law:	Intellectual property, trademark
Venue:	U.S. District Court for the Northern District of California
Result:	Defeated a preliminary injunction, which enabled Mattel to release its product, and won summary judgment finding no trademark confusion



> "Defendants observe correctly that 'trademark laws protect against mistaken purchasing decisions, and not against general confusion due to coexistence.'"
>
> —U.S. District Court Judge Jeremy Fogel, noting Pillsbury's arguments in his favorable decision

> "With limited time to prepare and in the context of an aggressive adversary, Pillsbury was able to achieve an excellent result for Clearwire at the preliminary injunction phase of the litigation."
>
> —Chuck Lobsenz, Senior Corporate Counsel/Director of Intellectual Property, Clearwire

Client:	**Clearwire**
Industry:	Wireless broadband
Area of Law:	Trademark infringement
Venue:	U.S. District Court for the Eastern District of Virginia
Result:	Clearwire defeated Sony Ericsson's request for a preliminary injunction

CLEAR™ Sony Ericsson

Quickly Clearing a Disputed Trademark

After spending tens of millions of dollars to promote its CLEAR C trademark, Pillsbury client Clearwire was sued by Sony Ericsson in the U.S. District Court for the Eastern District of Virginia. Sony Ericsson claimed the logo for the CLEAR broadband product was confusingly similar to Sony Ericsson's own logo, and immediately moved for a preliminary injunction prohibiting its use anywhere in America. Compliance would have cost Clearwire more than $8 million.

The Pillsbury team had just 11 days to get up to speed on the case and file opposition papers.

The court recognized some similarity between the marks, but rejected the speculative nature of Sony Ericsson's argument in favor of Clearwire's argument that the best proof of whether the marks were indeed confusingly similar was the real-world marketplace. Clearwire successfully argued that the lack of any real-world confusion was determinative of whether there existed a likelihood of confusion between the two marks. The court also accepted Clearwire's argument that its harm in being enjoined was greater than any demonstrable harm to Sony Ericsson from Clearwire's use of its mark.

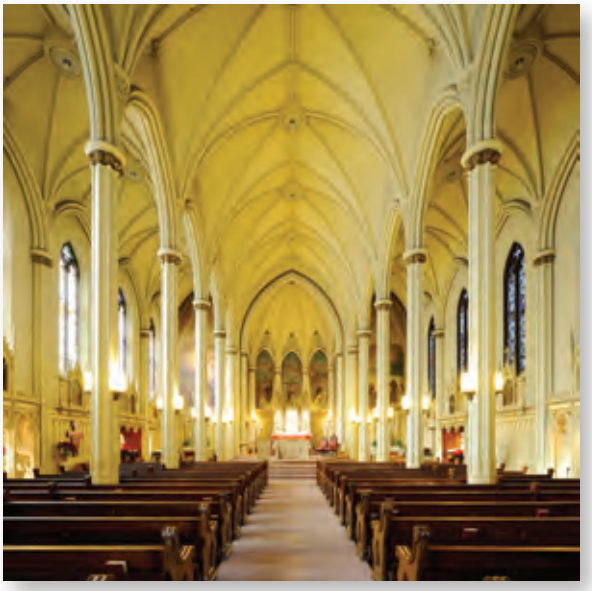
The court denied Sony Ericsson's request in its totality, freeing Clearwire to use its CLEAR C mark on any and all products anywhere in America.

Public Policy & Pro Bono

Pillsbury's high-profile public policy and pro bono cases included in 2011 the first post-*Kelo* test of eminent domain reform in California and a Second Circuit victory in gun-related litigation we have pursued for five years on behalf of the City of New York.

> "The Archdiocese of San Francisco is delighted that the Superior Court has vindicated the position the Archdiocese has taken all along, and has rejected this unilateral attempt to ignore existing tax law and practice."
>
> —George Wesolek, Director of Communications for the Archdiocese, on the victory secured by Pillsbury

Client:	**The Roman Catholic Archdiocese of San Francisco**
Industry:	Religious and charitable nonprofit
Area of Law:	Tax
Venue:	California Superior Court (San Francisco)
Result:	Halted the imposition of an unprecedented transfer tax that, if not defeated, could have led to similar multimillion-dollar tax bills to other reorganizing nonprofits and corporations



Defeating a $22 Million Attempt at Unprecedented Taxation

When the Archdiocese of San Francisco reorganized itself and transferred title for more than 200 parish and school properties between two church corporations, it was guided by church law. But when the diocese subsequently received a massive transfer tax bill from the City and County of San Francisco, it sought guidance from Pillsbury's top-rated State & Local Tax team.

Pillsbury litigators quickly determined that the $22 million assessment was unprecedented. San Francisco's assessor had never before sought a transfer tax of this kind from any nonprofit organization, or from any for-profit company—nor had any other county assessor in California.

If San Francisco's unprecedented action wasn't stopped, the archdiocese faced an immediate risk of additional tax bills for similar property transfers in Marin and San Mateo County. And other cash-strapped local governments might assess similar taxes against nonprofits or for-profit companies after corporate reorganizations.

Fortunately for the thousands of parishioners, young students and others who benefit from the church's mission, the Superior Court judge agreed with Pillsbury and rejected the city assessor's claims that the properties had been "sold" in San Francisco.

"Ironically, if [the assessor's] office had been successful, the tax would have drained, not filled, the City's coffers," the Archdiocese noted in its statement on the victory. "It would have cost the City an enormous sum to replace the services now being provided with this money, such as schooling for thousands of children."

Winning a Rare Victory Against a Regulatory Agency

When Pillsbury agreed to challenge a decision by the California Public Utilities Commission, it faced a real uphill battle. As noted by the court itself, the CPUC is no ordinary government agency but rather "a constitutional body with broad legislative and judicial powers," whose decisions are "presumed valid."

But Pillsbury litigators overcame this presumption to win a huge victory on behalf of a small telephone company that provides approximately 10,000 phone lines to remote customers in California's Sierra Nevada mountains. The firm's advocacy helped Ponderosa Telephone recover more than $5 million—a sum equivalent to two years' net income for the service provider.

At issue were proceeds from stock in the Rural Telephone Bank. As a condition of receiving a loan from this federally created bank, Ponderosa purchased RTB stock equal to 5 percent of the loan amount. When Ponderosa sold its stock, the CPUC said the proceeds should be transferred to the company's customers—despite the fact that, under an earlier CPUC decision, the stock had never been included among the "rate base" assets used to calculate what the company could charge its customers.

In the California Court of Appeal, Pillsbury overcame the high bar for reversing a CPUC decision by arguing that the commission's action was unconstitutional under the Takings Clause. Although Ponderosa was a regulated utility company, its stock was an asset owned by its shareholders and could not simply be taken away by the government.

The California Court of Appeal unanimously agreed with Pillsbury's argument, delivering a rare defeat to a government agency whose decisions are almost always affirmed.

Client:	**The Ponderosa Telephone Co.**
Industry:	Public utility, telecommunications
Areas of Law:	Regulatory, constitutional
Venue:	California Court of Appeal
Result:	Recovered the equivalent of two years' net income for the client

"[T]he Class B shares purchased by Ponderosa were public utility assets that were owned by Ponderosa. Therefore, the Commission's decision to credit the par value redemption proceeds of those shares to the ratepayers constituted an illegal appropriation of Ponderosa's property."

—Unanimous opinion by the California Court of Appeal, agreeing with the argument made by Pillsbury

> "This is a victory for all New Yorkers and validates our efforts to hold all the gun dealers we have previously sued accountable."
>
> —Statement from Pillsbury's co-counsel, the City of New York Law Department, as reported in a front-page story by the *New York Law Journal*

Client:	**City of New York**
Industry:	Municipality
Area of Law:	Litigation
Venue:	U.S. Court of Appeals for the Second Circuit
Result:	The court approved the groundbreaking legal approach taken by Pillsbury and NYC to stem the flow of illegal guns into the city

Winning Second Circuit Endorsement of a Groundbreaking Legal Strategy

In 2011, Pillsbury won a decision from the Second Circuit endorsing our five-year effort, working with the City of New York, to keep guns from reaching the city's criminal element from out-of-state gun dealers. The federal appeals court affirmed the first-of-its-kind litigation we pursued against those dealers whose wares showed up with disproportionate frequency in New York City crimes.

Pillsbury's work began with an offer of pro bono assistance that evolved into a novel application of public nuisance law: the City would sue gun dealers for disregarding laws designed to keep guns out of the hands of those prohibited by law from having them, like felons and minors.

In particular, the lawsuits targeted "straw" purchases, in which the offending dealers repeatedly sold guns to the companions of the actual buyers. So long as the companion could pass the required background check, a felon could easily obtain a new gun.

Based on an analysis of the serial numbers of weapons connected to crimes in NYC, and undercover sting operations, the city filed its suits against 27 out-of-state gun dealers. Most of the retailers settled and agreed to monitoring of their sales practices by a court-appointed Special Master to avoid illicit purchases. But two dealers balked and fought the suits in multiple venues.

At the Second Circuit, Pillsbury won an overwhelming—and dispositive—victory against those two dealers. The decision affirmed the use of injunctions that require retailers to be monitored by a court-appointed Special Master to ensure their compliance with laws prohibiting straw sales. While remanding the injunctions for refinement, the Second Circuit endorsed the dealer-monitoring structure sought by Pillsbury and New York City, which has already yielded dramatic decreases in the flow of illegal weapons from out of state.

Protecting Private Property from Unjustified Government Seizure, in a First Test

After the controversial U.S. Supreme Court decision in *Kelo v. City of New London*—holding economic development a permissible reason for a city to transfer real property between private owners—many states adopted new laws to prevent abuses of eminent domain. In the first case to test California's eminent domain reforms, Pillsbury helped a nonprofit preserve its community center for at-risk youth.

The Community Youth Athletic Center (CYAC) runs a boxing gym and education center in National City, California, a community of 58,000 residents just south of San Diego. In 2007, CYAC learned that its property had been labeled as "blighted," along with 692 others. That would have enabled eminent domain seizures of these properties under the City's redevelopment plan.

CYAC contested the blight designation at the City's public hearing, to no avail. So Pillsbury, working pro bono as co-counsel with the Institute for Justice, a public interest law firm, helped CYAC challenge the City's designation.

The case ultimately went to trial in San Diego. Pillsbury lawyers and co-counsel argued that National City had failed to produce the "specific, quantifiable evidence" as required under California law, of "physical and economic conditions [] so prevalent and substantial that, collectively, they seriously harm the entire project area." Moreover, even if this definition of "blight" had been met, National City had failed to show that these conditions could only be corrected through the use of eminent domain.

The Court agreed and, in a 50-page decision, held the original blight designation invalid and unenforceable. The court also found that National City had violated CYAC's constitutional due process rights by denying the nonprofit a meaningful opportunity to be heard at the only public hearing on the matter.

"The city can have redevelopment, but that has to be done through private negotiation, not by government force," said Clemente Casillas, president of the CYAC.

Client:	**Community Youth Athletic Center**
Industry:	Nonprofit organization
Area of Law:	Constitutional law, eminent domain
Venue:	California Superior Court (San Diego)
Result:	In the first test of California's eminent domain reforms, Pillsbury helped to establish that an underlying "blight" designation was invalid and unenforceable

> "It just shows that the city cannot just come in and bully everybody."
>
> —Victor Nunez, board member of the Community Youth Athletic Center, as quoted by station KGTV about Pillsbury's victory

About Our Litigation Practice

Pillsbury has more than 200 litigators handling complex commercial cases, matters of substantial public interest, sophisticated technology disputes, and a wide variety of other assignments. We offer the depth and breadth of knowledge across industries necessary to help our clients avoid disputes and, when necessary, resolve disputes favorably and efficiently, either by trial or settlement. Our practice often involves large-scale, complex litigation with multiple parties, in multiple proceedings and forums.

The firm's litigators appear regularly in U.S. federal and state courts, and also before regulators, arbitrators, and mediators, both domestically and internationally. Our attorneys also regularly assist clients with internal corporate investigations and potentially sweeping e-discovery requests.

What Others Say About Us

- In 2011, *Corporate Counsel* magazine's survey of Fortune 500 in-house counsel once again named Pillsbury a "Go-To Firm" for litigation—for the fifth year in a row.
- *2011 Chambers USA* ranked 45 Pillsbury practices and 96 of our lawyers among the nation's best, including the leader of our firm's e-discovery practice.
- *Legal 500* in 2011 named 61 Pillsbury lawyers and 17 practices among the best, including our antitrust, construction litigation, environmental litigation, and patent litigation groups.
- The 2011 *U.S. News/Best Lawyers* survey ranked Pillsbury litigation practices among the nation's best for environmental, tax, commercial, antitrust, ERISA, real estate, regulatory enforcement, banking & finance, bankruptcy, intellectual property, employment, securities, trusts & estates, and white collar defense matters.

About Pillsbury

Pillsbury is a full-service law firm with a keen industry focus on energy & natural resources, financial services, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global regulatory, litigation and corporate matters. We work in multidisciplinary teams that allow us to anticipate trends and bring a 360-degree perspective to complex business and legal issues—helping clients to take greater advantage of new opportunities and better mitigate risk. This collaborative work style helps produce the results our clients seek.

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