

A satellite image of a large hurricane with a distinct eye and spiral cloud bands over the ocean. The image is the background for the top half of the page.

pillsbury

Insurance Recovery & Advisory

Advocating for the Insured

Pillsbury's Insurance Recovery & Advisory practice is one of the first policyholder-focused insurance practices in the United States—dating back to the Great San Francisco Earthquake and Fire of 1906, when the firm helped its clients recover from their insurers and set the legal precedent needed to rebuild the city. Just within the past five years, we have recovered over \$3 billion for our policyholder clients.



Our insurance recoveries have arisen from major disasters like the Japan earthquake and tsunami and the Gulf of Mexico well blowout and oil spill, complex directors and officers (D&O) liability disputes and disastrous cyberattacks. We are recognized among the leading construction insurance firms in the country, and are at the forefront of new coverages and claims in cybersecurity and many other areas. We advise policyholders seeking coverage under virtually every kind of commercial insurance policy and represent policyholders around the world in all major industries. We negotiate or litigate as needed to provide the most advantageous results for our clients.

With a deep understanding of the insurance business and the business needs of our clients, the Pillsbury team is recognized as a go-to coverage firm by leading international insurance brokers, who frequently refer their clients when coverage disputes arise. The Pillsbury team is also among the leaders in advising clients on insurance policy wording and structure, adding needed value to negotiations of D&O and errors and omissions (E&O) liability insurance policies, cybersecurity insurance policies, property policies, wrap-up insurance programs, pollution policies and captive programs.

Pillsbury's leading policyholder practice and its lawyers have been recognized by *Chambers USA*, *Law360*, *The Legal 500*, *Best Lawyers in America* and *Who's Who Legal*.

On the Forefront of Insurance Recovery

Pillsbury is engaged in numerous significant and often headline-grabbing coverage disputes for our clients, including:

Natural Disasters

- Representing a university and medical center in major litigation against insurers for over \$2 billion in losses suffered due to Superstorm Sandy. Recoveries to date of over \$1 billion from FEMA and \$100 million from insurers.
- Representing three prominent Big Sur businesses seeking in excess of \$22 million in damages from their property and business interruption insurers following severe mudslides.
- Represented the owners of a New York office building in lower Manhattan in litigation seeking \$150 million for property damage and rental income losses caused by Superstorm Sandy. The case settled shortly before trial.
- Representing numerous businesses impacted by Hurricanes Harvey Irma and Maria, including Puerto Rican locations of pharmaceutical manufacturers, Caribbean resort properties, health care providers and transportation companies, among others.

D&O

- Represent dozens of public and private companies and their boards in resolving securities class actions, derivative actions, merger objection, event driven litigation and Delaware appraisal proceedings, serving as coverage and settlement counsel. Clients include the largest public utilities and energy companies and leading financial institutions, IT, software, entertainment, health care and transportation companies.
- Represented major public REIT in litigation with carriers over priority of coverage rights claimed by external manager.
- Representing a national bank seeking coverage from a \$120 million tower for Ponzi scheme claims in class action litigation.

Cyber

- Representing client that manages loyalty programs to recover insurance proceeds for losses and liabilities due to fraudulent exfiltration of gift card redemption codes, via a spear phishing attack, followed by installation of suspected malware.
- Represented Japanese electronics manufacturer and gaming company on insurance issues related to the November 2014 cyberattack on its network and IT infrastructure and on insurance claims arising out of attacks on its online gaming networks in 2011.
- Handled a fintech company's claims arising out of malware that disrupted virtual inspections during the height of the COVID-19 pandemic and caused substantial losses.

- Obtained coverage for a medical center for class action litigation defense related to alleged release of protected health information; secured ruling that such statutory damages are covered under CGL policies.

Product Liability and Recalls

- Representing Japanese manufacturer regarding coverage for alleged bodily injury claims arising out of largest product recall (airbags) in U.S. history.
- Representing product manufacturer against seven insurers seeking CGL coverage for products liability for class action claims. Successful duty to defend motions were followed by defense and indemnity recoveries, with trial pending against Fireman's Fund.
- Represented a meat processing company with respect to the recall of more than 8 million pounds of contaminated beef.
- Represented a mechanical pipe joining manufacturer and secured a jury verdict for breach of contract, bad faith and punitive damages, including attorney's fees and punitive damages, after denial of coverage for defense of product liability claims by AIG. This was one of the largest insurance jury verdicts in California in 2015.
- Represented multiple construction and real estate clients in pursuit of insurance recoveries for Chinese drywall claims from insurance carriers.

Pollution

- On behalf of several of the largest utilities, seeking coverage for the billions in projected costs to remediate coal ash disposal sites. Assignments include representing a utility in litigation over coal ash claims in multiple states, with a value in excess of \$1 billion.
- Represented one of the three well owners on insurance claims arising from the 2010 Gulf of Mexico Macondo well blowout and oil spill for liabilities of more than \$2 billion.
- Representing an energy company against 14 property insurers for claims in excess of \$200 million.
- Represented an oil refiner in litigation seeking coverage for environmental liabilities arising out of one of the largest petrochemical disasters in the United States.
- Represented a global engineering firm with insurance claims exceeding \$100 million in value in connection with design and construction issues related to a number of coal-fired power plants.
- Representing a petrochemical company regarding damages for oil spill under Bermuda form.

Representative Matters (continued)

Business Interruption

- Represented an oil refiner in an insurance coverage jury trial against AIG and 13 other insurance companies arising from the rupture of a crude supply pipeline. Jury awarded our client's full demand of \$72 million for contingent business interruption losses, the largest insurance verdict of the year.
- Representing oil refiner and waste-to-energy company in separate litigations over measure of damage for shutdowns due to facility fires.
- Represented leading airline in recovery of business lost due to Japan earthquake and Fukushima nuclear accident.
- Represented a Fortune 500 utility and recovered hundreds of millions for repairs and power replacement costs stemming from a nuclear energy plant containment failure in Florida.

Construction

- Representing a joint venture on construction and insurance issues arising from the sinking and leaning Millennium Tower in San Francisco.

- Representing an EPC contractor in pursuing recovery of more than \$200 million of insurance claims arising out of the construction of enhancements to four coal-fired power plants. Tenth Circuit sided with our client, who can now pursue coverage for construction defects at the plants in question.
- Represented a national developer of commercial and residential property against National Surety Corporation and more than 20 different contractors and subcontractors in connection with its significant property and business interruption losses. We secured a substantial appraisal award for our client. The matter settled confidentially mid-trial.

Other Industries

- Representing a former FIFA representative on an insurance coverage dispute in connection with defense costs arising from racketeering charges in a high-profile bribery case.
- Represented health care provider in an insurance litigation seeking liability insurance coverage for an underlying lawsuit alleging Sherman Act violations and other commercial torts.



The Insurance Recovery & Advisory practice has been named
“Insurance Practice of the Year” five times by *Law360*
(2022, 2020, 2016, 2015, 2010.)



THE PILLSBURY DIFFERENCE

Insurance Recovery & Advisory Services

Claims Litigation and Settlement

Pillsbury's claims litigation and settlement services begin with framing the presentation to the insurer in an initial notice, guiding our client through the initial discussion with the insurers and often resulting in early resolution of the claim. Before resorting to litigation, our attorneys may engage in extensive negotiations with insurers, mediation or other alternative dispute resolution procedures, where appropriate. Our attorneys have experience and a proven record of success in litigating coverage issues through arbitration, trial and appeal in the United States, Bermuda and the UK.

Insurance Counseling

The Pillsbury team works closely with our clients' brokers and other advisors in evaluating enterprise risk and structuring the appropriate coverage. We are frequently called upon to provide a "second look" at coverages to ensure that the client has the most advantageous terms and wordings, and to negotiate with insurers to secure appropriate enhancements to coverage. For example, the firm's proprietary D&O Review and Cyber Insurance Advocacy services permit clients to benchmark their coverage against best-available enhancements in the current marketplace.

We have extensive experience with the structuring and placement of pollution and cleanup-cost-cap policies, and in creating specialized liability transfers. We also advise clients and assist in structuring pooled risk or captive insurance programs and other risk management issues, including contractual indemnity rights and related efforts to minimize their potential exposure to losses that may adversely impact their businesses.

Our Approach to Insurance Coverage Disputes

The firm's Insurance Recovery & Advisory group is an integrated national network of more than 50 lawyers who use their deep understanding of the insurance business to devise optimal strategies and solutions for our clients. We understand that resolving insurance disputes often requires a combination of creativity and a sound commercial approach to the parties' positions. Our clients—and insurers—often remark that we "get it," where others frequently do not. On the other hand, our attorneys are not reluctant to use their skills and experience as litigators to enforce our clients' rights when litigation is necessary. The group draws on the experience of Pillsbury attorneys in fields such as bankruptcy, aviation, energy and environmental law to supplement its teams.



Our Capabilities

Property, Business Interruption and Casualty



Pillsbury's Insurance Recovery & Advisory attorneys have successfully handled some of the largest and most high-profile property damage and business interruption losses stemming from natural disasters, terrorist attacks and other casualties, and have recovered several billion dollars in first-party

proceeds. The team is at the forefront of efforts to recover on some of the largest insurance claims arising out of Superstorm Sandy and is recognized as one of the leading firms in this area.

Construction Insurance



The team has successfully recovered insurance proceeds for real estate developers, construction companies, condo associations, manufacturers and others under commercial general liability, builders risk, first-party property and professional liability policies.

Our attorneys are frequent speakers and authors on topics such as construction defect, wrap-up and builders risk insurance issues.

Product Liability Insurance



For many years, Pillsbury's Insurance Recovery & Advisory team has successfully represented clients in recovering under their insurance policies for a wide range of product liability-related issues, including design, manufacturing and distribution claims involving electronic

devices, asbestos and toxic chemicals, building materials, medicines and medical devices, food contamination and even football helmets. Members of our firm have authored treatises on product liability, and our lawyers frequently speak on risk management issues at events, such as the RIMS annual conference.

D&O, Executive and Professional Liability



We assist clients in obtaining coverage for lawsuits against directors and officers, including shareholder class action lawsuits. Our attorneys can counsel clients on policy wordings, and have significant experience litigating and negotiating settlement of D&O coverage disputes, including a

precedent-setting D&O coverage "workout" for a disputed securities claim. In bankruptcy, where D&O insurance proceeds are highly coveted by both the estate and the directors and officers of the company, we offer experience and insight enabling the preservation and realization of this important asset.

In addition to D&O, we assist policyholders in obtaining coverage for errors and omissions (E&O), fidelity and fiduciary liability policies.

Cyber Insurance



The proliferation of cyber threats—and increasing regulations governing data security and privacy—has led to near-daily reports of hacking and a constantly changing web of legal obligations. As a result, organizations must be increasingly focused on maximizing their insurance coverage

for the myriad of cyber threats in an increasingly difficult insurance market. As cyber insurance has become more ubiquitous, the market has faced new challenges: complicated, overlapping coverages; increasing premiums; contested exclusions. Yet conventional insurance—including D&O, E&O, CGL, crime, and property policies—still provide valuable coverage for cyber losses.

Our team has extensive experience in helping clients structure and negotiate insurance programs to protect themselves from losses, liabilities and the high cost of responding to data and security breaches. We provide guidance to a wide range of clients, including highly regulated, at-risk businesses, such as financial institutions and health care companies, as well as retailers and wholesalers, professional service and data management firms, communications, media and technology companies and others that deal with legally protected information.

Pollution and Environmental Insurance



We have negotiated and litigated insurance coverage disputes for *Fortune* 500 companies and municipalities in numerous single- and multisite environmental remediation cases, as well as in the first climate-change insurance coverage dispute.

Firm attorneys have successfully

represented policyholders in litigation and trial under pollution legal liability and cleanup-cost-cap policies. Our lawyers have also provided clients with insurance coverage advice on issues from construction of nuclear plants to environmental cleanup-cost exclusion in nuclear liability policies.

Insurance Due Diligence



Pillsbury helps ensure that the benefits of insurance policies are properly transferred, designing runoff or tail coverage, structuring coverage to match the terms of the transactional documents, assessing pending claims, and evaluating whether potential claims have been properly

reported and whether they are adequately insured. While the majority of the work is performed by brokers, their work is not privileged. Involving our Insurance Recovery & Advisory practice in your due diligence process ensures greater control over the quality of information and analysis generated. It also ensures that appropriate legal scrutiny will be brought to bear on the target company's claims history and adequacy of its insurance coverage.

Specialty Insurance

From life insurance to employment, our attorneys have represented clients in various specialty policies. Our experience covers a wide range of policies, including employment practices liability, intellectual property, life insurance and other coverage disputes.



About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with a particular focus on the technology & life sciences, energy, financial, and real estate & construction sectors. Recognized as one of the most innovative law firms by *Financial Times* and one of the top firms for client service by BTI Consulting, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their authoritative commercial awareness.

Offices

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