

Climate Change Litigation Capabilities

Pillsbury has deep expertise in both complex dispute resolution, including environmental litigation, and in the growing body of law relating to climate change. Our expert team combines that experience to bring you the strongest possible capabilities in climate change litigation.

Litigation Strength

The hallmark of a litigation powerhouse is the ability to try major cases of a successful outcome. This ability is not universal among big firms. Pillsbury has a track record of trying and winning novel and high-stakes cases in the environmental and energy arenas.

Pillsbury litigators take on emerging issues and set positive precedents in some of the largest and most complex matters. We have achieved top-tier recognition in litigation and have earned the respect of judges, juries and rivals. Our litigation team has deep experience representing some of the world's largest and most sophisticated businesses. We have won a wide range of disputes in federal and state trials, in appellate courts, through alternative dispute resolution, and at the negotiating table.

Environmental Trials

Trials involving liability claims under the federal and state environmental statutes and common law can be complex, motion-heavy and expert-intensive. These factors explain why most environmental cases are settled prior to trial. While Pillsbury works hard and creatively with clients to resolve cases early, we also have the deep experience in environmental litigation necessary to see the matter through to trial, and appeal when appropriate.

Indeed, Pillsbury has tried numerous environmental cases, as needed. We recently tried two federal cases in a six-month period in 2015-2016. Our environmental lawyers are

comfortable in the courtroom and well versed in environmental policies, regulations and statutes, and they have the wherewithal to try cases and win. This depth of knowledge and experience allows us to shape matters from the outset with an eye to settlement when appropriate and trial when needed. Pillsbury attorneys have tried cases in the past few years under several federal environmental statutes (CERCLA, RCRA, TSCA, and CAA), as well as state and federal common law claims.

Our team draws on a deep understanding of evolving federal and state environmental policy and regulation, to give Pillsbury clients an advantage in what to expect and how best to approach and resolve cutting-edge environmental claims. Pillsbury boasts an expert team including former DOJ, EPA, DOI and NOAA personnel, as well as other high-profile trial attorneys, appellate counsel and insurance recovery experts. From compliance, enforcement, remediation and cost recovery to common law torts such as nuisance, negligence and trespass, Pillsbury has a seasoned team that can help you prevail.

Representative Environmental and Energy Litigation

- Defeated Endangered Species Act claims brought against hydropower companies.
- Successfully represented former steel mill in alleged contamination of San Francisco Bay shoreline.
- Advised an oilfield services company on all legal and technical work conducted at a wildlife refuge, bringing an end to remediation and closing out the client's ongoing responsibilities at a Superfund site outside of St. Louis, IL.
- Won a writ of mandamus for Valero Energy overturning an air district's denial of millions of dollars in emissions reduction credits for Valero's voluntary installation of significant refinery emissions controls and upgrades.

- Successfully represented Whittaker Corp. in prosecuting CERCLA cost recovery claims against the U.S. Department of Defense.
- Defeated environmental whistleblower claims against Valero Energy under four federal environmental laws.
- Defended a timber company against CERCLA, RCRA and common law nuisance claims arising from alleged contamination at property formerly owned by company.
- Represented Chevron against a real estate developer who sued for solid waste contamination from a landfill.
- Advised the owner and operator of the largest molybdenum mine in the U.S. on complex environmental liabilities involving multiple statutes applied by both state and federal agencies, including performance of a Remedial Investigation/Feasibility Study (RI/FS) under CERCLA and dealing with the EPA regarding performance of human health and ecological baseline risk assessments.
- Defended mining company against claims by the EPA and the State of South Dakota for recovery of past and future response costs at Superfund Site in South Dakota.
- Represented a major energy company in connection with alleged surface water contamination from abandoned mines in Montana.
- Assisted an environmental management company in resolution of federal, state and tribal natural resource damage claims, including damage assessment and allocation processes, associated with active and legacy facilities at the Portland Harbor NPL site, a nine-mile-long Superfund site.
- Represented Southern California municipality in a CERCLA recovery action for a six-mile plume of perchlorate affecting the municipality's water supply.
- Represented a major mining and smelting company in federal court insurance coverage litigation for transboundary environmental claims under CERCLA.
- Represented Occidental Chemical Corporation in connection with the Turtle Bayou Superfund site in Liberty County, TX.
- Defended Kelly Pipe in third party claims relating to alleged historical contribution at the Omega Superfund Site.
- Counseled client which voluntarily undertook cleanup of the former Whittaker Ordnance site and is seeking to

recover past and future response costs from the U.S. based on the Department of Defense's liability.

- Represented client in a CERCLA investigation regarding the Mammoth Mill site by the U.S. Forest Service.
- Represented client in a CERCLA cost recovery action against the former owner of Alco Controls facility in Hazlehurst, GA.
- Defended Emerson Electric Co. in claims by neighbors of facility in Aiken, SC.
- Defended major Japanese manufacturer and several of its U.S. subsidiaries in an International Chamber of Commerce Arbitration involving claims in excess of \$7 billion stemming from the claimed failure of certain critical components manufactured and supplied by our clients to the San Onofre Nuclear Generating Station ("SONGS"). Our clients were found to be the "prevailing party," and were awarded fees and costs in excess of \$58 million.
- Successfully defended Duke Energy against Westinghouse's \$482 million claim for termination costs resulting from the termination of an EPC Agreement for the Levy County nuclear power plant, after bench trial in federal court.
- Represented a large engineering company in the arbitration of over \$100 million in disputes arising out of the design and construction of copper and molybdenum mining facilities in Arizona, then settled the matter on favorable terms.
- Served as lead counsel for petroleum trade associations in a series of cases brought by environmental and agricultural groups challenging underground injection operations and well stimulation techniques (hydraulic fracturing) in California. Prevailed in four lawsuits to date.

Tort Litigation

One trend in climate litigation is to plead complex policy issues in the guise of common law tort claims. We are well experienced in all manner of tort litigation. Both in the environmental context and otherwise, Pillsbury has a long and successful history of defending its industrial, chemical, transportation and manufacturing clients in tort and product liability actions.

Representative Tort Litigation

- Represent Chiquita Corporation, as international coordinating counsel, in a series of class actions claiming chronic exposures to DBCP, a pesticide used worldwide on banana plantations in the 1970s. Over 26,000 plaintiffs, from 14 countries, brought suit in Texas,

Mississippi, Florida, Hawaii, California, Delaware and Louisiana, as well as in the Philippines, Costa Rica, Honduras, Guatemala and Nicaragua. Approximately 3,000 such claims remain pending, with a substantial number of these claims having been resolved by the Fifth Circuit's conference counsel as mediator. Dismissals with no liability have been obtained in all but two jurisdictions.

- Represent the owner and operator of Exxon Mobil's former Torrance refinery in a toxic tort action in which personal injuries and property damages are alleged to arise from an explosion in 2015, as well as from continued refinery operations. The action is pled as a class action.
- Defended approximately 900 claims of personal injury or property damage, or both, following a November 23, 2001 refinery explosion and fire. These cases are venued in Harris County, Texas, with all but a dozen or so now settled. We also continue to represent client in a related suit, pending in the same court, which seeks to recover all settlement costs from the two subcontractors that caused the explosion and fire.
- Represented a chrome plating facility in California against numerous claims by neighbors and others, based on alleged impacts of airborne emissions.
- Represented Aeros Aeronautical Systems Corp. in a \$65 million federal Tort Claims Act case. Aeros was awarded summary judgment on liability in June 2016.
- Represented Japanese airline parts manufacturer for all U.S. based contract and tort claims related to the alleged falsification of safety paperwork required for regulatory approval of their products.

Over the years, we have taken lead or coordinating roles in other major environmental and tort litigation dealing with tort claims alleging industry coordination and fraudulent communications, chemical class actions and tobacco litigation. From this experience we have developed case strategies that have proven successful for our clients. There often are three components to this process: defeating class action allegations, winnowing down the claims and "managing" discovery and litigation through case management orders.

Climate Change Capabilities

Pillsbury is at the forefront in representing refiners, utilities, and their trade associations on regulatory issues, transactions and litigation, including issues related to climate change. Our lawyers have advised companies, associations and governments on over 100 climate change matters. The

firm's multidisciplinary approach to this emerging topic, which includes lawyers from environmental, insurance, corporate and other practices, helps our clients to tackle these issues from multiple angles.

We are one of the few legal advisors serving all industry fuel lines, which gives us a comprehensive understanding of the unique issues specific to oil and gas, LNG, and other forms of power, whether generated from hydro, coal, nuclear or renewable sources.

Our multidisciplinary energy team of 125+ lawyers and in-house economists enables us to bring together teams of the most experienced practitioners for optimal results and efficiencies. Our group includes lawyers who have served at federal agencies, including the U.S. EPA, Department of Energy, Department of the Interior, Department of Justice, Federal Energy Regulatory Commission and NOAA, allowing for unrivaled perspective and insights.

Representative Climate Change Matters

- Adviser to one of the largest combined natural gas and electric utilities in the U.S. on national and state legislation and strategic initiatives related to climate change and sustainability.
- Advise major energy industry association in connection with various matters relating to climate change legislation and regulation.
- Advised global manufacturing company on the international and national trends specific to carbon regulation and general climate change and sustainability issues. Also advised on trends in the energy industry, including the development of renewable technologies and the renaissance of the nuclear industry.
- Advised one of the nation's leading greenhouse agricultural growers on its entry into California's greenhouse gas (GHG) cap-and-trade program, resulting in regulatory changes that will allow the client to receive free GHG allowance allocations.
- Represented Costco with respect to environmental regulatory compliance concerning its service station operations throughout California. We also assisted the company in reviewing proposed regulatory changes and preparing company comments on those proposals.
- Assisted energy industry client with research and advice concerning the ability of agencies to require further GHG reductions after AB 32 expires in 2020 and the options for new state authorizing legislation.

- Represented Puget Sound Energy (PSE), the largest private utility in the state of Washington, in promoting the company's federal energy agenda. Our team worked with PSE to craft a comprehensive and proactive energy policy agenda. This project required the strategic deployment of the firm's professional relationships with key Administration officials and Members and staff of Congressional Committees. Pending federal energy and climate change legislation has enormous implications for utilities like Puget Sound Energy.
- Advised one of the world's leading industrial mineral producers on creating a strategic plan to address potential GHG emission regulations and identifying business opportunities that have arisen from such regulations.
- Represented VCLF Land Trust, Inc. in the acquisition from Patriot Coal's chapter 11 estate, certain limited mining assets and assumption of responsibility for various obligations to reclaim land and treat water. The transaction advances VCLF's mission to reduce carbon emissions by 50% per year through bundling coal purchases with reforestation efforts.
- Represent the AAR and its principal members (Union Pacific Railroad and Burlington Northern Santa Fe Railway) on all air quality, climate change and similar matters affecting the industry in California, Oregon and Washington State.
- Work for AAR and its members on the industry-leading California cap-and-trade and greenhouse gas programs.

Insurance Recovery

Our insurance capabilities for environmental cases are broad and deep. Our firm has one of the largest policyholder-side insurance groups in the United States. It includes more than 50 lawyers in Washington, DC, New York, Texas and California. We have many lawyers who specialize in environmental insurance recovery and currently are handling more than \$5 billion in environmental claims. More than 25 years ago, our lawyers created an alternative dispute process for settling large and complex environmental coverage claims with insurers outside of litigation. That process has been used to settle dozens of complex legacy environmental claims for petrochemical companies, mining companies, utilities and general manufacturers. Where negotiation was not possible, our team has successfully arbitrated or litigated environmental insurance claims. Recently, our lawyers prevailed in a trial in Louisiana for a petrochemical company with legacy environmental liabilities; winning the ability to access 40 years of historic insurance the insurers claimed our client had no rights to pursue.

We have litigated transboundary pollution claims and have handled environmental claims around the world in Africa, South America, Europe, Canada, and the Caribbean. We have handled insurance claims for two of the three largest oil spills in U.S. history. Our experience involves legacy pollution under historic policies, modern day pollution under pollution legal liability policies and assistance with the placement of pollution-specific insurance.

Representative Insurance Recovery Matters

- \$72 million recovery for Lion Oil in Arkansas pipeline rupture lawsuit.
- Recovered \$835 million in insurance proceeds for Duke Energy, covering repair and power replacement costs stemming from the dormant Crystal River nuclear energy plant in Florida.
- Insurance recovery for liabilities of more than \$2 billion for one of the three well owners involved in the 2010 Gulf of Mexico well blowout and oil spill.
- Asserted claims for CITGO Petroleum in litigation seeking coverage for \$40 million+ in environmental liabilities arising out of one of the largest petrochemical refineries in the U.S.
- Represented a global engineering firm with insurance claims valued over \$100 million in connection with design and construction issues related to a number of coal-fired power plants.
- Secured \$71.7 million jury award for an energy client, achieving full recovery against 14 insurers on a contingent business interruption claim resulting from a pipeline rupture.
- Secured one of the largest insurance jury verdicts in California in 2015, a \$55.3 million breach of contract, bad faith and punitive damages award for Victaulic Company, a mechanical pipe-joining manufacturer.

Appellate Insight

Our climate change capabilities are bolstered by the fact that Pillsbury has been at the forefront of environmental and energy issues in the appellate courts for several decades. Our lawyers authored briefs on the merits in the landmark U.S. Supreme Court case *Chevron v. Natural Resources Defense Council*, which has been described as "the most cited case in modern public law." We are currently involved in several high-stakes environmental cases in the federal and state appellate courts, involving a wide range of topics—including CERCLA, greenhouse gas emissions, air permitting and hydraulic fracturing. Pillsbury has taken a leading role in litigating environmental issues in the appellate

courts—since 2014, Pillsbury has represented the winning appellant in three of the nine CERCLA decisions issued by the Ninth Circuit:

- *Pakootas v. Teck Cominco Metals Ltd.*, 830 F.3d 975, 2016 U.S. App. LEXIS 13662 (9th Cir. 2016) (holding that district court erred in allowing plaintiffs to proceed with CERCLA claims based on aerial emissions)
- *Whittaker Corp. v. United States*, 825 F.3d 1002, 2016 U.S. App. LEXIS 10660 (9th Cir. 2016) (holding that district court erred in dismissing as time-barred claims for reimbursement pursuant to CERCLA section 107(a))
- *Pakootas v. Teck Cominco Metals Ltd.*, 563 Fed. Appx. 526 (9th Cir. 2014) (holding that district court erred in awarding attorney's fees to the plaintiffs in a CERCLA case)

Thought Leadership

- [Trump Jettisons Obama Climate Policies](#)
- [The Trump Energy Agenda](#)
- [Practitioner Insights: Adapting to Climate Adaptation: Implications and Opportunities for the Private Sector](#)
- [Circuit Split Cries Out for Supreme Court Review](#)
- [SEC's Negotiating Power Curbed](#)
- [Controversial Climate Change Video Results in Significant FOIA Decision by DC Circuit](#)
- [EPA Double Down with Expansive New Methane Regulation](#)
- [Grazing Cattle Could Hold the Key to Reducing Greenhouse Gases](#)
- [Challenges Face Clean Power Plan at the D.C. Circuit](#)
- [Implementing The Texas Coastal Exchange](#)
- [EPA Charts Middle Path for Making "Stationary Source" and "Major Source" Determinations](#)
- [Sixth Circuit Rejects Clean Air Act Preemption of State Common Law Claims: Four Things to Know](#)

Recognition & Awards

- Clients describe Pillsbury's Litigation practice, nationally ranked in the 2015 edition of *The Legal 500 U.S.*, as "excellent in every way."
- *Chambers USA* ranks Pillsbury among the *Best Law Firms for Oil and Gas, LNG, Renewables & Alternative Energy and Nuclear*, with a Band 1 ranking for Nationwide – Projects: LNG.
- Pillsbury's Environmental practice ranked by *Chambers USA* in national, California and Washington, DC, categories (2016) and *The Legal 500 U.S.* recognized Pillsbury for excellence in environmental litigation (2016).
- *Law360* named our Insurance Recovery & Advisory practice "Insurance Group of the Year."
- *The National Law Journal* counts Pillsbury's insurance recovery wins for Lion Oil and Victaulic among 2015's top biggest wins.
- Team lawyers are lauded by *Chambers USA*, *The Legal 500 U.S.* and *Best Lawyers in America* and *Who's Who Legal* in the field of insurance.

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

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