Pillsbury’s award-winning team of more than 200 litigators takes on emerging issues, sets precedent in complex large-scale matters and has earned the respect of judges, juries and rivals. We partner with clients around the world to help them successfully resolve disputes in and out of court.

From representing insurance policyholders facing ever more clever payment obstacles from their insurers, to structuring unprecedented settlements between financial institutions and U.S. prosecutors, to preserving a client’s rights to a lifesaving medical innovation, Pillsbury litigators take on emerging issues and set precedents in some of the most complex, large-scale matters. We have garnered top-tier recognition in dozens of litigation categories and have earned the respect of judges, juries and rivals.

Our litigators are also highly experienced in arbitration, mediation and other forms of alternative dispute resolution, and regularly appear before regulators to resolve issues before they become problems. In each instance, we employ the latest technologies to streamline data analysis, efficiently manage litigation and enhance evidence presentation in court.

In 2017, the firm once again received top-tier recognition in the litigation areas of appellate, antitrust, commercial, bankruptcy, construction, securities, labor and employment, environmental, M&A, land use and zoning, patent and trademark, tax controversy, insurance recovery, and white-collar defense.
Winning When and Where It Counts

They say that winning isn’t everything. But in the world of litigation, it really matters. That is why, as the new leader of Pillsbury’s global Litigation practice, I am especially proud of our firm’s litigators. We go to trial, and we win—a lot.

Over the course of the past 18 months, Pillsbury litigators have logged win after win in high-profile cases that went to the mat. We also have prevailed in countless cases before trial, whether by summary disposition or by obtaining a favorable settlement. In the pages that follow, we highlight cases where victory came the old-fashioned way—in high-stakes trials or arbitration hearings. Also of note, in a year when the dearth of women in courtrooms has been the subject of broad critical concern and commentary, many of the biggest wins described in this report were by teams led by our female litigation partners.

Whether we are representing a David versus a Goliath, or a Goliath facing off against another Goliath, Pillsbury teams keep winning.


But we’re not resting on our laurels. We added more powerhouse litigators and trial lawyers where our clients need us most. Some of these lateral additions have introduced new strengths (such as the establishment of an ANDA practice), while others have further bolstered existing prowess, including in construction and international arbitration. In addition to our already robust litigation presence in important markets such as New York and Washington, DC, we established a new office in Miami in 2017.

As always, the victories we describe in this highlights piece are the direct product of close collaborations among our professionals with in-house counsel and corporate leadership. We thank all of our clients for allowing us to share in their victories, large and small.

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.

Deborah B. Baum
Leader, Litigation Practice
Reducing a $7.6 Billion Arbitration Claim to a Pittance

When officials at a major Japanese corporation learned that critical components it had manufactured and supplied to the San Onofre Nuclear Generating Station (SONGS) outside Los Angeles had allegedly failed, resulting in the plant’s immediate shutdown, it called on Pillsbury. We assisted the company in responding to calls from the impacted utilities, fulfilling its reporting requirements to the Nuclear Regulatory Commission, handling future dealings with an anticipated California Public Utilities Commission investigation, dealings with state and federal politicians, and the potential litigation that would arise in the contractual arbitration process that would be invoked under the terms of the parties’ contract.

Our clients’ instincts proved correct. After the plant’s owners decided to use the event as grounds for permanently decommissioning the entire nuclear facility, the owners initiated arbitration before the International Chamber of Commerce (ICC). The owners asserted that the limitation of liability provisions negotiated in the parties’ contract were unenforceable, seeking damages in excess of $7.6 billion, including the cost of the facility and the present value of 40 years of lost power sales.

Over the course of six weeks of hearings, the arbitration tribunal heard from more than 45 percipient and expert witnesses, who testified about the factual history of the dispute, the complex engineering issues involved in the design of both the original equipment and the proposed repair, and the intricate economic models used to quantify the owners’ claims.

After considering hundreds of pages of post-hearing briefings, the tribunal issued an award finding that none of the design errors alleged by claimants either fell below the standard of care or caused the failure, that the manufacturer’s proposed repair was viable and should have been installed, and that the contractual provision limiting the manufacturer’s exposure to $137 million should be enforced.

Client: A major Japanese manufacturer
Industry: Energy
Area of Law: Commercial Litigation
Lawyers: Barbara L. Crouth, John R. Heisse, Jack McKay
Venue: International Chamber of Commerce
Result: Rejection of a $7.6 billion claim and award of $58 million in fees and costs
A Bet-the-Company Win against Walmart on Its Home Turf

David and Goliath must have been on the minds of a small-town Arkansas jury and everyone else in a Fayetteville courtroom on April 21, 2017. That day, just 30 miles down the road from the headquarters of the world’s largest retailer, Pillsbury lawyers delivered a stunning trial win for a small San Diego-based web design agency, Cuker Interactive, against Walmart.

Cuker pioneered responsive website technology, which allows all devices to interact with one website regardless of screen dimensions. Walmart hired Cuker in 2014 for a limited, fixed-bid website project. Almost immediately, the retail giant insisted that the design and development teams do much more work than the contract required, withholding approvals and payments to pressure Cuker. Walmart also tried to force Cuker to turn over its responsive website design and development know-how so Walmart could use it to source additional web work from lower-cost offshore vendors.

As the relationship between the two parties unraveled, and sensing that Cuker was preparing to take legal action, Walmart declared its legal team would destroy Cuker. Walmart preemptively sued Cuker for breach of contract in July 2014. Cuker then filed a counterclaim for breach of contract, unjust enrichment and misappropriation of trade secrets.

Following many legal challenges from both sides—including numerous motions to compel and for sanctions filed by Cuker against Walmart—the trial began in April 2017. After 10 days, the Fayetteville jury returned a verdict that not only cleared Cuker, but also found Walmart had breached its contract with Cuker, demanded and received work it did not pay for and thus was unjustly enriched, and “willfully and maliciously” misappropriated Cuker’s trade secrets. The jurors, some weeping visibly because they were so moved by the design firm’s travails, awarded Cuker more than $12.4 million in damages. Cuker’s motions for sanctions and to recover its attorneys’ fees are currently pending.

“They came in, and they pillaged our technology and know-how and took it over to a lower-cost provider…. Their goal was to destroy us.”

—Aaron Cuker, Chief Creative Officer, Cuker Interactive, speaking to reporters after the verdict
Crude oil refiner Lion Oil, an Arkansas-based unit of Fortune 500 conglomerate Delek USA, was impacted severely when a 60-year-old Exxon pipeline ruptured in April 2012, causing a yearlong outage that prevented oil from reaching Lion’s refinery. Suffering a major disruption to its plant operations, the company filed a business interruption claim under its all-risks policy with its group of 14 insurance carriers—basically, all of the major players in business interruption insurance.

Not only did the insurers take a year to reject the claim, but on the same day they rejected it, they also sought a declaratory judgment in federal court denying Lion’s claim and requiring that all claims disputes involving the company be decided in Tennessee, where Delek USA is based.

Pillsbury stepped in and got the Tennessee case dismissed. We then filed suit in Arkansas, home of the impacted refinery and where the economic harm was truly felt. Despite the insurers’ summary judgment bids, numerous coverage-related trial motions, and repeated attempts to disqualify our expert witnesses through evidentiary objections and a request for a mistrial, Pillsbury’s Insurance Recovery & Advisory team ultimately cleared every hurdle to recovery. In an unprecedented decision, the court sided with Lion’s argument that its different insurance policies should be “stacked” to maximize recovery proceeds.

After eight days of trial and just two hours of deliberation, the 12-member jury delivered a spectacular win for our client. It awarded $71.7 million—the full amount requested in our opening statement, the largest insurance recovery jury award in recent memory, and one of the largest jury verdicts ever obtained in the state of Arkansas. This victory was one of the rare instances when an insured succeeded in obtaining full recovery on a disputed contingent business interruption claim.

“... the Court finds that service interruption coverage and contingent business interruption coverage in the policies at issue can be ‘stacked’ to provide an aggregate coverage of $50 million.”

—Susan O. Hickey, Judge, U.S. District Court for the Western District of Arkansas, El Dorado Division
Taking a Health Care Heavyweight to Task for Its Breach of Good Faith and Fair Dealing

Disputes between companies over services provided are a common enough occurrence, regardless of the industry. But when the claimant happens to be one of the country’s largest managed care companies, and the amount in dispute is $120 million? That’s a position no company wants to be in.

Our client, one of the nation’s largest providers of home health care services, found itself the defendant in just such a dispute with a health care plan with whom our client had contracted to provide services for the insurer’s Medicare Advantage (Medicare Part C) members.

The claimant alleged fraud and breach of contract, claiming that our client had failed to provide required documentation to support claims going back to 2008. The damages claim, extrapolated from the results of audits that the claimant’s experts contended showed serious deficiencies in documentation, sought the recovery of $120 million, nearly 88 percent of the total paid by the claimant to our client during the multiyear period. We counterclaimed, alleging a breach of the managed care plan’s obligation of good faith and fair dealing—the claimant had never had a reasonable basis to suspect “fraud,” we asserted. Instead, the allegations had been made in an effort to avoid statutes of limitations that would have otherwise barred its claims.

In January and February 2017, a three-arbitrator panel heard the trial over a period of nearly five weeks. At the conclusion of the claimant’s case, the panel granted our client’s motion dismissing the fraud claim. (This was significant given a large percentage of the damages was contingent on that claim.) Then, on August 2, after weeks of testimony from 20 different witnesses and post-arbitration briefing, the panel issued a blistering 25-page opinion rejecting all of the claims against our client and finding that it had sustained its burden in establishing a breach of obligation of good faith and fair dealing. Coupled with an award of fees and costs, the decision amounted to a complete victory for our client.
BTI Consulting’s 2018 Litigation Outlook report identifies Pillsbury as a “Standout” law firm for Class Action, Complex Commercial, Complex Employment, IP, Product Liability, and Securities & Finance litigation. The firms named on these lists are “consistently recognized as the ones corporate counsel turn to for their most pressing litigation needs.”
Ruling Clears Duke Energy of $482 Million in Claims

When a prolonged negotiation between a predecessor of Duke Energy and Westinghouse became a full-fledged, nine-figure dispute, Duke Energy looked to Pillsbury to resolve the complicated matter at trial. After three years of work on behalf of our client, Pillsbury secured a huge victory in 2017.

The dispute dated back to a 2008 agreement between Progress Energy Florida (Duke Energy’s predecessor) and Westinghouse to develop and build two AP1000 units at a nuclear plant in Florida. In 2014, after approval delays at the Nuclear Regulatory Commission and many years of the project being in partial suspension, Duke Energy exercised its right to terminate the contract. In response, Westinghouse presented Duke Energy with an invoice seeking $512 million, $482 million of which covered Westinghouse’s development costs for the AP1000.

At the outset of litigation, Pillsbury helped Duke Energy secure venue in its hometown of Charlotte, N.C., thwarting Westinghouse’s efforts to have the case heard in its own hometown of Pittsburgh, Pa. After two and a half years of difficult discovery, the judge issued a 29-page decision that included many findings of fact adapted from Pillsbury’s post-trial submissions.

More importantly, the judge adopted Pillsbury’s interpretation of the language in both the contract at issue and in related contracts to find Duke Energy not liable for any of the $482 million in claimed development costs.
Delivering Victory in Scorched-Earth Litigation

This case was about broken promises, bad faith and malicious conduct.

Vicotalic, a Pennsylvania-based leading producer of pipe-joining systems, paid insurance giant AIG premiums for commercial general liability policies for more than a decade, from 2001 until 2012, relying all the while on that insurance to protect it in the event of product-liability lawsuits. Year after year, AIG honored those policies. That was, until 2012, when, following a series of new product-liability claims, Vicotalic turned to AIG for the protection it had promised to provide. But rather than honoring its promises, AIG sued Vicotalic to avoid more than $340 million in promised coverage.

Vicotalic handed Pillsbury a mission: Beat back AIG, the eight different law firms the insurer hired and the multiple actions it filed against Vicotalic around the country. And beat back AIG Pillsbury did. Pillsbury sued AIG in Oakland, Calif., and succeeded in getting each of AIG’s three other actions dismissed.

Pillsbury also obtained multiple sanctions awards against AIG for its discovery abuses. And, in an initial bench trial, the California court ruled in Vicotalic’s favor on all declaratory relief counts.

In August 2015, the Pillsbury team then tried Vicotalic’s remaining claims for breach of contract, bad faith and punitive damages to an Alameda County jury. The jury awarded Vicotalic a sweeping victory. The jurors found that AIG had breached the insurance policies and did so in bad faith, acting with malice, oppression or fraud; that Vicotalic was entitled to more than $9.3 million in compensatory damages and attorneys’ fees; and that AIG must pay Vicotalic an additional $46 million in punitive damages.

The jury’s award was the largest in Alameda County in nearly a decade. The AIG defendants have appealed the result; meanwhile, though, post-judgment interest accrues at the rate of about $5.5 million a year.

“Not only are we thrilled with the jury’s verdicts, but we could not be more pleased with how these matters have been handled by Pillsbury.”

—Mark Van De Voorde, Chief Legal & Administrative Officer, Vicotalic
A Jury Verdict Protecting Valued Trademarks

Since 1970, San Diego Comic Convention, a nonprofit educational corporation dedicated to celebrating and promoting comics and the popular arts, has put on the internationally acclaimed Comic-Con convention each July. After promoters elsewhere began hosting comic and popular arts events using the “Comic-Con” trademark, San Diego Comic Convention retained a team from Pillsbury to enforce its decades-old trademarks.

The issue came to a head in a lawsuit tried in late 2017 before a jury in San Diego's federal court, amid considerable media attention. San Diego Comic Convention accused the Utah-based operators of Salt Lake Comic Con and Salt Lake Comic Con FanXperience of trademark infringement. “This case is about stealing, taking something that is not yours, something you have no right to,” a Pillsbury lawyer said in the closing arguments. “It's about right, and it's about wrong.”

A unanimous jury held in favor of our client and against the Salt Lake defendants, determining that San Diego Comic Convention has valid, enforceable trademarks in its “Comic-Con,” “Comic Con International” and “San Diego Comic Con International” with the eye logo marks, and that the defendants infringed all three trademarks.

“The decision to bring this lawsuit was not an easy one, and the process has been taxing,” said David Glanzer, San Diego Comic Convention’s chief communications and strategy officer. “We are thankful that the team at Pillsbury effectively told our story and that the result was a victory in our case.”

“A ruling with wide-ranging implications for the multibillion-dollar fan events industry…”

—Forbes, December 8, 2017
An Initial Setback Serves as Fuel for Even Greater Victory

In 2013, private investment firm Cerberus Capital Management found itself on the receiving end of a setback. The case involved the development of a 30-story condominium tower in the Miami area that was found to contain defective Chinese drywall. In the course of pursuing recoveries from insurers and manufacturers for our client, a pretrial ruling barred Cerberus from pursuing roughly 90 percent of the damages it sought. That development necessitated a swift retooling of strategy by Pillsbury, forcing the legal team to file a separate lawsuit over the excluded damages.

Over the next two weeks, Pillsbury presented the case involving the smaller amount to a jury, receiving what seemed like a rather small $1.5 million verdict—but along with that initial verdict were factual findings that would serve as the basis for a much bigger judgment later.

Fast-forward to April 2017, when the strategic recalibration paid off. A Miami-Dade Circuit Court judge ruled that the prior jury verdict operated as collateral estoppel and, as a result, that our client was entitled to an additional $16 million in damages. Without the judge’s earlier unfavorable ruling—and the subsequent adjustment in approach by Pillsbury—Cerberus likely would have received considerably less than the combined $17.5 million verdict.

Turning setbacks into success stories—just another way Pillsbury meets the needs of its clients.

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<td>David T. Dekker</td>
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<td>Melissa C. Lesmes</td>
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<td>Michael S. McNamara</td>
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<td>Venue:</td>
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Preserving the Leadership, and Safeguarding the Endowment, of an Educational Institution

Created in the 1920s, Athens College was founded by two groups of philanthropists, one in Greece and the other in the United States. Befitting the bicultural identity of its founders, the K-12 school adopted bylaws calling for corporate governance powers to be shared among two boards: one Greek (the Hellenic American Educational Foundation, or HAEF) and the other American (the Trustees of Athens College in Greece). The bylaws assigned specific rights and responsibilities to each board.

In 2007, the physical distance between the two boards evolved into an ideological divide when the Greek Board of Directors for HAEF purported to fire the American Board of Trustees and sued the American Board in New York County Supreme Court for a declaration that the termination was valid. The Greek Board also sought a declaration that it should be given control over the valuable endowment raised and administered by the American Trustees.

Following an initial adverse ruling in New York County Supreme Court terminating the parties’ relationship and ordering the endowment transferred to Greece, Pillsbury was brought in. After first negotiating a stay of the trial judge’s orders, Pillsbury successfully obtained a reversal of the initial ruling, with the appellate court finding that disputed issues of fact needed to be resolved at trial.

In the three-week bench trial that followed, the court declared HAEF’s 2007 termination notice “invalid, ineffectual and unenforceable” and held that the school’s endowment funds “shall remain in the custody of the Trustees.” The trial court reached this result after numerous days of Pillsbury’s cross-examination of the Chairman of the Greek Board, whom the court found to be “completely incredible... reject[ing] his entire trial testimony.” Soon after the trial court rendered its decision, the two boards agreed upon new bylaws that recognize the co-governance role of the American Board of Trustees, leaving Athens College well on its way to regaining its prominence as one of the most prestigious private schools in Europe.

Client: The Board of Trustees of Athens College

Industry: Education

Area of Law: Corporate Governance

Lawyers: Edward Flanders
E. Leo Milonas
Joshua I. Schlenger

Venue: New York Supreme Court, Commercial Division

Result: Reversal of a trial court’s orders and subsequent complete victory
Making a Valid Argument for Invalidation

In 2010, in a Northern District of California courtroom, TransPerfect Global brought suit against global technology company MotionPoint Corp., alleging that a number of MotionPoint’s patents were not valid. In response, MotionPoint filed counterclaims of infringement. While the case was still pending, TransPerfect acquired a patent (the Scanlan patent) from an Australian company, WorldLingo.com Pty Ltd., and proceeded to amend its complaint to assert the Scanlan patent against MotionPoint. (Pillsbury was not involved in the litigation.)

A couple of years later the litigation concluded, with a judgment against MotionPoint that found the company’s patents invalid and/or not infringed, and the Scanlan patent valid and infringed by MotionPoint. In addition, a California jury awarded TransPerfect $1 million in damages. The district court later entered an injunction against MotionPoint, and that case currently is on appeal at the Federal Circuit.

Enter Pillsbury as new counsel for MotionPoint. After a brief review of the prosecution history and the Scanlan patent claims, the Pillsbury team developed new claim construction and written description arguments that had not been advanced during the prior litigation. Since an adverse jury verdict had already been reached, the Pillsbury team advanced these new arguments in a CBM Petition before the Patent Trial and Appeal Board (PTAB).

In this venue, Pillsbury lawyers asserted that the Scanlan patent was invalid because it lacked a proper written description. PTAB’s three-judge panel agreed with MotionPoint’s claim construction and written description arguments on every point raised. The PTAB’s decision also highlighted the importance of maintaining consistency between different proceedings in front of the USPTO, as the Board questioned the credibility of TransPerfect’s expert witness, who presented testimony in the CBM proceeding that contradicted a different expert witness’ testimony offered by TransPerfect in a related Inter Partes Reexamination.

The victory, which convinced the district court judge to stay her permanent injunction, was affirmed on appeal by the U.S. Court of Appeals for the Federal Circuit.

The Pillsbury team’s successful invalidation of a patent at the Patent Office—a patent that a district court previously found valid—shows how successful outcomes are possible even in the face of the most adverse rulings if counsel is well-versed in all the relevant venues available.

Top-tier construction dispute resolution and litigation practice, *Chambers USA, Chambers Asia Pacific, The Legal 500 U.S.*

Excellence in environmental litigation, *Chambers USA, U.S. News & World Report/Best Lawyers, The Legal 500 U.S.*

Top-tier firm for nuclear energy regulation and litigation, *Chambers Global* and *Chambers USA*

Insurance Group of the Year with two Insurance MVPs and one Insurance Rising Star, *Law360*

Elite Trial Lawyers list for high-dollar insurance recovery wins, *National Law Journal*

A go-to firm for securities and intellectual property litigation and a Top 10 intellectual property firm for Fortune 500 companies, *Corporate Counsel*

Global Dispute of the Year Award for counseling Swiss banks through the Department of Justice enforcement program, *American Lawyer*

*Global Investigations Review* Top 100 firm for corporate investigations and white-collar defense

Awesome Opponents tier for “highly regarded and fierce litigators,” *BTI Litigation Outlook*

Eight partners recognized as IP Stars, *Managing Intellectual Property*
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About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with offices around the world, and a particular focus on the technology, energy & natural resources, financial services, real estate & construction, and travel & hospitality sectors. Recognized by legal research firm BTI as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

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