



Clients:	Virginia Conservation Legacy Fund Inc. and ERP Compliant Fuels LLC
Industry:	Mining
Area of Law:	Insolvency & Restructuring
Venue:	U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division
Result:	Claim against clients for \$67 million in damages denied

Prevailing at Trial Against a Determined Plaintiff

Pillsbury lawyers represented the Virginia Conservation Legacy Fund and its affiliate ERP Compliant Fuels in their \$860 million purchase of Patriot Coal's assets in bankruptcy. *The Financial Times* hailed this transaction as the most innovative North American law firm engagement of the year in the category of unlocking and delivering value. But it almost didn't happen.

On the eve of closing this highly complex deal, in which VCLF and ERP were to assume more than \$400 million in environmental and employee liabilities from Patriot Coal, hedge fund lender Black Diamond Commercial Finance LLC insisted on new, onerous terms for the \$25 million in financing it had committed to provide. After VCLF and ERP rejected the demands, Black Diamond filed suit.

Our lawyers and their clients managed to close on the purchase without Black Diamond's funding, but a battle royal ensued in court. Black Diamond initially filed in New York state court. After 10 months of contested motions in several venues, our team succeeded in transferring the lawsuit to the Bankruptcy Court in Richmond, Virginia.

After this series of early defeats, Black Diamond commenced a year-long campaign of scorched-earth litigation and discovery, apparently intended to get

VCLF to submit. That tactic likewise failed: Pillsbury forced Black Diamond to proceed to depositions, expert discovery and trial—at which Black Diamond sought more than \$67 million in damages against VCLF.

Following an eight-day trial in June 2018, and extensive post-trial briefing, Judge Keith L. Phillips of the U.S. Bankruptcy Court of the Eastern District of Virginia issued an opinion completely rejecting Black Diamond's claims against VCLF for breach of contract and damages, holding, as our team contended, that Black Diamond had itself effectively withdrawn its financing commitment and was therefore not improperly excluded from the deal.

“In sum, Black Diamond had the burden of proving that VCLF breached the Commitment Letter. It has failed to meet that burden.”

—Judge Keith L. Phillips, U.S. Bankruptcy Court of the Eastern District of Virginia