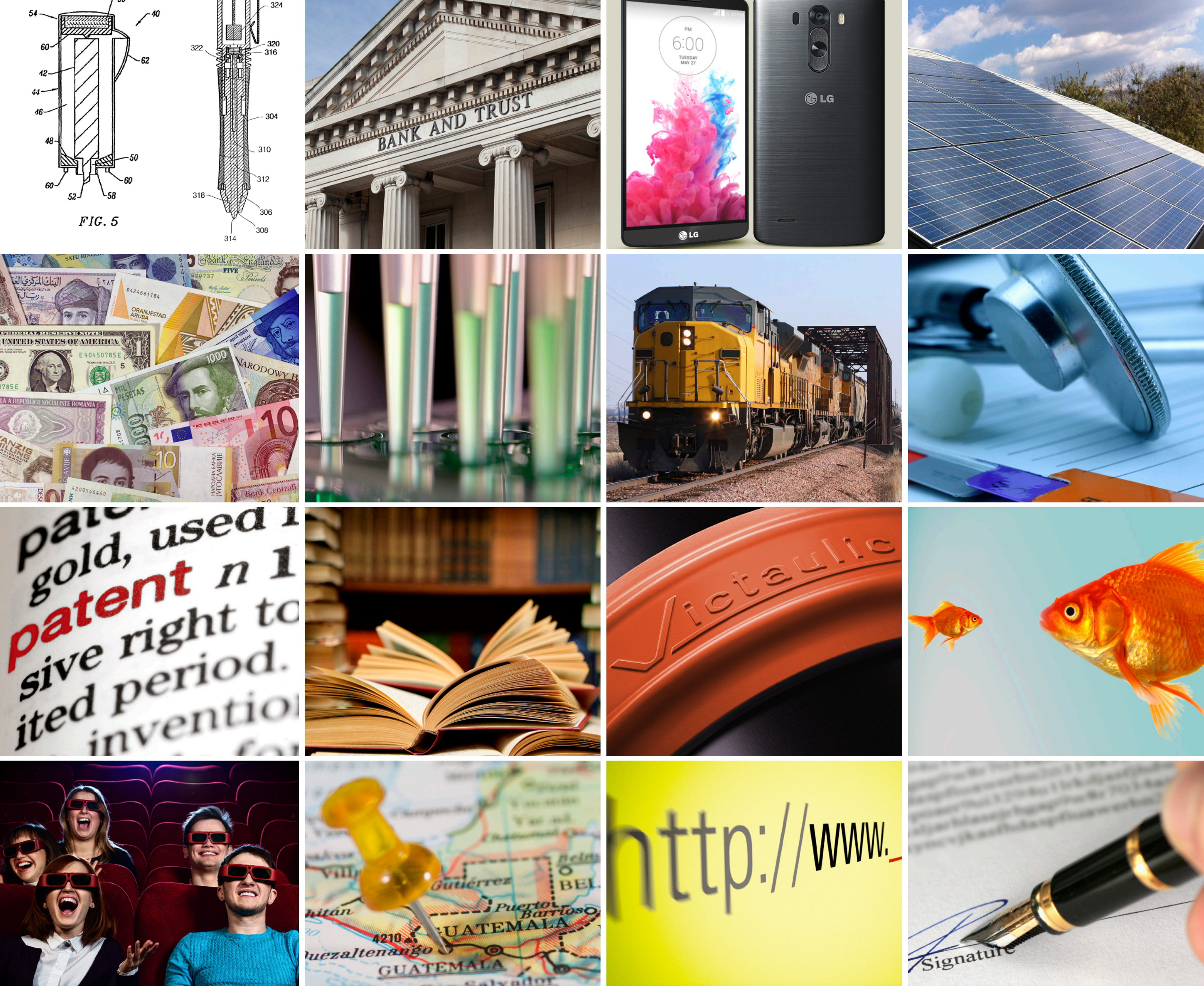


Litigation Highlights 2014

DELIVERING SUCCESS ACROSS INDUSTRIES

pillsbury

Pillsbury Winthrop Shaw Pittman LLP

Delivering Success Across Industries

Once again in 2014, clients honored us by engaging us to work with them on some of their most challenging matters. And we understand that the highest and best way for us to express our thanks is to produce useful results. This brochure highlights some of the results we were able to achieve last year.

But knowing the law and the forum are only two ingredients in producing such positive outcomes. Equally important is intimately knowing our clients' businesses and business goals. Many of the cases featured in this 2014 Highlights illustrate how we combined such in-depth knowledge of the client's industry, the dispute resolution forum and the law to achieve victory.

To meet the evolving business needs of our clients and address the emerging legal issues they face, our Litigation practice must also continuously expand, and deepen, our capabilities at all levels of service. In the past two years, we have therefore added 11 new partners to bolster our global breadth and depth in key service areas, including insurance recovery, complex environmental litigation, construction litigation, intellectual property, litigation involving Japanese clients and regulatory enforcement. Pillsbury also launched a path-breaking Legal Services Department in Nashville with highly qualified staff attorneys who can support our Litigation group with more cost-effective legal services.

In 2014, we achieved positive outcomes in new areas likely to present even greater challenges for our clients going forward—privacy and cybersecurity, global white collar investigations and novel False Claims Act, IP and patent disputes. Highlighted cases this year include victories on behalf of Deutsche Bank, Wells Fargo, LG Electronics, Victaulic and Union Pacific.

We are equally proud to have been recognized yet again by major U.S. ranking groups, garnering top-tier recognition nationally in the areas of appellate, antitrust, commercial litigation, bankruptcy litigation, construction litigation, environmental litigation, M&A litigation, land use and zoning, patent and trademark litigation, tax controversy, insurance recovery, white collar defense and mass tort litigation/class action defense.

As always, the victories we describe here are the product of close collaborations 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.

Kenneth W. Taber
Litigation Co-Leader

Kirke M. Hasson
Litigation Co-Leader

Technology and Telecommunications

Pillsbury draws on a long history of successful conflict resolution for technology and telecom clients, producing results this year that range from a decisive insurance recovery to victory in a bet-the-company arbitration.

Pillsbury has litigated trade secrets claims in a wide variety of industries, including high tech, pharmaceuticals, medical devices, financial services, construction and manufacturing.

Moving Swiftly to Prevent the Misappropriation of Valuable Trade Secrets

When a key LG Electronics MobileComm U.S.A. employee suddenly left the company with valuable trade secrets concerning new cell phones under development, the client turned to Pillsbury for assistance in responding to this corporate crisis.

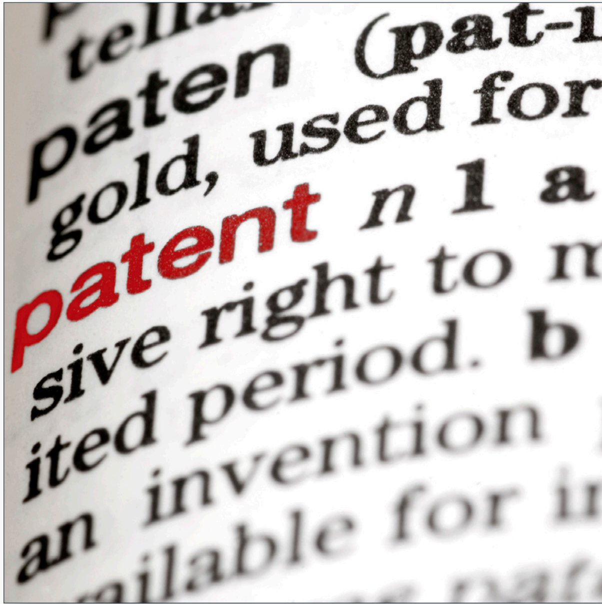
The wheels of justice may be proverbially slow, but the result obtained by Pillsbury for this South Korean electronics trendsetter was not. The time from initial contact to the issuance of a temporary restraining order was only four court days.

Further investigation determined the former employee had lied about his new employer—he was actually joining a direct competitor at the height of the bidding wars for customers. Not only did he know LG's product line and development pipeline, he was a team leader for the key customers for whom the new cell phones were being designed. The former employee's offer letter from his new employer further revealed his new compensation was to be directly based on the business he took from LG. Forensic analysis of the employee's personal electronic devices and those he used at his new job quickly led to even more evidence of wrongdoing.

Following the Court's observation that Pillsbury had proven a classic case of trade secret theft, Pillsbury convinced LG's former employee and his new employer to destroy all evidence of LG's trade secrets and to agree to a permanent injunction prohibiting their use.

Client:	**LG Electronics MobileComm U.S.A., Inc.**
Industry:	Technology
Area of Law:	Trade secrets
Venue:	California Superior Court, San Diego
Result:	The destruction of all trade secret information and a permanent injunction covering both the former employee and his new employer

Client:	**ZTE Corporation**
Industry:	Telecommunications
Area of Law:	Intellectual property
Venue:	U.S. International Trade Commission
Result:	Trial court's finding of noninfringement upheld by full commission



> "We do not find Flashpoint's argument persuasive… . [T]he Commission has determined to affirm the … finding that the accused products do not infringe."
>
> —International Trade Commission's Opinion, March 21, 2014

Winning Dismissal of a High-Stakes Patent Infringement Suit

Under U.S. patent law, all infringing products can be banned from importation. It's not surprising, then, that one cell phone manufacturer after another has given in to claims lodged by a New Hampshire-based patent troll holding several patents on cell-phone components, paying settlements to avoid the risk of exclusion from the U.S. market.

But Pillsbury client ZTE Corp. took a stand. When FlashPoint Technology, a nonpracticing entity, claimed ZTE's Chinese-made mobile phone handsets infringed some of its patents related to smartphone cameras, ZTE and Pillsbury mounted a spirited defense.

Pillsbury lawyers made ZTE's case through claim construction, arguments and expert witness testimony before the U.S. International Trade Commission. The case went to trial in March 2013. In an initial determination opinion handed down six months later, an administrative law judge found no violation of trade law, because ZTE did not infringe any of the asserted patents. The opinion went on to state there was no domestic industry protected by the patents at issue, because the alleged licensed products did not practice the patents.

A petition for reconsideration followed and, in 2014, the ITC's commissioners upheld that initial finding, leaving ZTE free to continue its importation.

Client:	**Bazaarvoice, Inc., a leading maker of software for consumer rating engines**
Industry:	Technology
Area of Law:	Insurance recovery
Venue:	District Court of Travis County, Texas
Result:	Potentially huge outlay averted, with insurance proceeds completely covering claims resolution

"When our insurers fell short at the worst possible moment, Pillsbury had our backs. The forceful advocacy of its attorneys saved us millions of dollars."

—Bryan Barksdale, Chief Legal Officer, Bazaarvoice, Inc.

A Graceful Recovery after a Client's Tough Break

Before engaging Pillsbury, Bazaarvoice had suffered a costly adverse judgment in antitrust litigation arising from its 2012 acquisition of its primary competitor, PowerReviews. That acquisition had consolidated the two leaders in the consumer rating-engine software business. After the court-ordered divestiture of PowerReviews, Bazaarvoice recorded a loss on disposal of $10.7 million.

But that was not the end of the matter. A derivative lawsuit alleged that the company's board and senior executives had knowingly acquired the company's only competitor in violation of the Clayton Act and had illegally profited from their knowledge through alleged insider trading. The derivative action sought $27 million in compensation for legal costs incurred in the unsuccessful defense of the Justice Department's antitrust prosecution, plus damages allegedly incurred in divesting PowerReviews, disgorgement of alleged insider trading profits and other damages to the company.

On the eve of mediation, Bazaarvoice's directors and officers liability insurance carriers suddenly disclaimed coverage for any potential damages. That's when the company retained Pillsbury's Insurance Recovery & Advisory team. Through the firm's efforts, Bazaarvoice swiftly overcame its carriers' coverage objections.

At mediation, with the insurers' enforced support, the client was thus able successfully to resolve the derivative claim solely with insurer payments. Bazaarvoice was thus able to put this potentially devastating exposure in its rear-view mirror.

> “Pillsbury stayed strong and confident from the district court’s mistaken Markman ruling through to a Federal Circuit win that completely turned the case around. Now we are heading back to the District Court with the right claim constructions and much stronger infringement positions, which have been ratified by the Federal Circuit.”
>
> —Gidi Shenholz, Chief Executive Officer

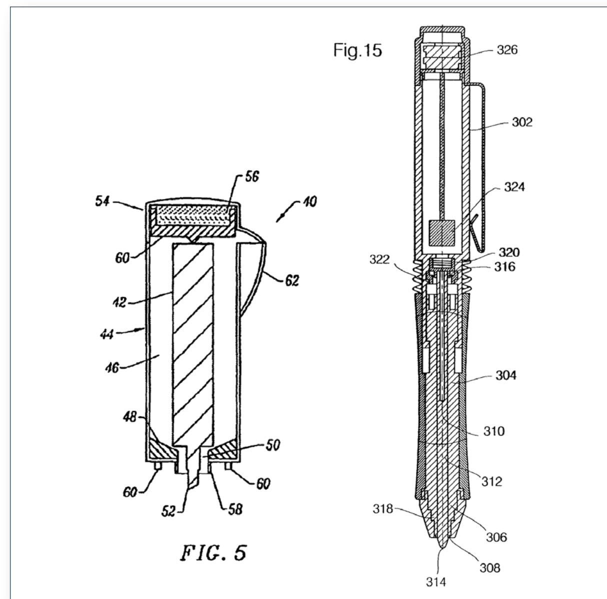
Protecting a Tech Company’s IP from a Patent-Infringing Competitor

Israel-based Pegasus Technologies patented a pen which uses ultrasonic transmitters to digitally capture what a user draws or writes on a pad of paper.

Another Israeli company, Epos Technologies Ltd., offered a digital pen which used Pegasus’ patented technology. Epos filed a declaratory judgment action against Pegasus in Washington, D.C. Epos asked the court to declare that Epos did not infringe any of Pegasus’ patents. Pegasus responded by asserting that Epos’ pens infringed Pegasus’ patents. In January 2013, the District Court granted Epos’ motion for summary judgment of noninfringement on all of the asserted Pegasus patents.

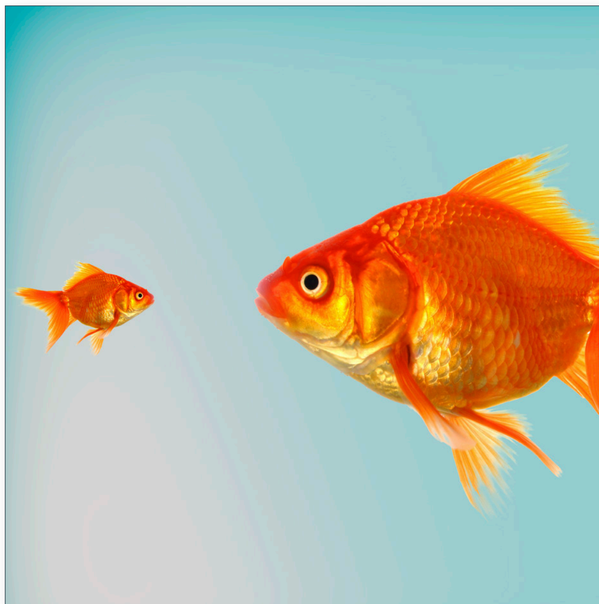
Pillsbury appealed the District Court’s judgment against Pegasus, and Pillsbury’s evaluation of the flaws in the District Court’s ruling was vindicated, with the Federal Circuit reversing the lower court’s ruling on five different patents. The Federal Circuit adopted Pegasus’ claim constructions, reversing the District Court’s grant of summary judgment for all five patents at issue on appeal, and remanded the case for further litigation.

Client:	**Pegasus Technologies**
Industry:	Technology
Area of Law:	Intellectual property
Venue:	U.S. Court of Appeals for the Federal Circuit
Result:	The adoption of Pegasus’ claim constructions win the reversal of the District Court’s grant of summary judgment of non-infringement of five patents



> "The Panel... concludes that [the vendor's] unequivocal written notice to [the telecom company] that it would cease providing all services under the Agreement constituted an anticipatory repudiation—and a material breach—of the Agreement."
>
> —Award of Arbitrators, American Arbitration Association

Client:	**Telecommunications services company**
Industry:	Telecommunications
Areas of Law:	Contracts, Global Sourcing
Venue:	American Arbitration Association
Result:	Defeat of large vendor's $7 million claim, securing instead an award of more than $1.5 million to our client



At the Side of a Client under Siege

When our small business telecommunications services client encountered a much larger adversary in a dispute that threatened the company's very existence, it turned to Pillsbury. And in an arbitration decided in 2014, our client decisively prevailed.

Pillsbury has represented this company since the late 1980s. During 2012, a major dispute erupted, and escalated, between our client and its most important business partner—a large, publicly traded corporation that handles all of our client's billing (including calculating usage, printing and sending bills, processing payments and other support). Our client had terminated several contracts relating to the vendor's failed implementation of a new billing system for a separate line of business. The vendor not only rejected that termination; in retaliation, it ceased services under long-standing contracts that our client had not sought to terminate.

As matters escalated, the vendor ultimately notified our client that it would stop providing all services—including mission-critical operations that our client had relied on for 20 years.

The vendor then filed an arbitration demand seeking more than $7 million for the initial contract termination. Our client counter-claimed for damages arising from the vendor's anticipatory repudiation of the long-standing support relationship.

After a weeklong arbitration hearing, and before final briefing and closing argument, the three-arbitrator panel ordered the vendor to produce thousands of documents it had improperly withheld. That proved to be a decisive interim ruling.

In April 2014, the arbitrators issued their final ruling: on the vendor's $7 million claim, they awarded just $20,570. The arbitrators then granted our client $753,300 in damages and approximately $800,000 in attorneys' fees and arbitration costs.

Energy

We work with energy enterprises around the globe and across the full spectrum of energy sources, from oil and gas, coal and nuclear to electricity and all forms of renewable and alternative energy.

> “It was a pleasure working with Pillsbury. They were very professional and responsive during the entire litigation process. They knew the evidence, the law and our business, which resulted in a win for us during the arbitration.” —Former Legal Director, Trina Solar U.S.

Client:	**Trina Solar**
Industry:	Energy
Area of Law:	Contracts
Venue:	International Centre for Dispute Resolution
Result:	Arbitration recovering over $20 million

Recovering Millions Owed in the Solar Energy Field

The American Recovery and Reinvestment Act of 2009—part of the federal government's stimulus program—included some powerful, but complex, incentives for solar energy. In this dispute between our client, a pioneering Chinese manufacturer and seller of photovoltaic modules, and a Canadian project developer (both acting through their U.S. subsidiaries), the question was whether the latter would still be forced to pay for $15 million in solar panels after it had failed to qualify for those incentives. The dispute lay squarely at the intersection of complex federal energy credit law, cutting-edge Uniform Commercial Code questions and international arbitration procedure.

Our client, the photovoltaic module seller, prevailed completely in arbitration before the International Centre for Dispute Resolution of the American Arbitration Association, recovering over $20 million. The buyer's claims that it had been misled and/or made mistakes regarding the qualification of the purchase under the stimulus plan were held no defense.

The combined efforts of Pillsbury's Litigation team, which knew the arbitration process, our Energy team, schooled in the nuances of the stimulus program, and our Commercial team, which understood the intricacies of the UCC, made for a compelling case at the arbitral hearings, leading to this win for Trina Solar.

Integration among our practice groups, such as this Litigation-Energy-Commercial combination for Trina Solar, is a Pillsbury hallmark.

Financial Services

We litigate for major financial institutions across the globe in matters that include bankruptcy, restructuring and workouts, M&A matters, the USA Patriot Act, international discovery disputes, and more.

> “This is a significant case.”
>
> —San Diego Superior Court Judge Timothy M. Casserly, dismissing entirely the claims against Deutsche Bank subsidiaries

Clients:	**DB Fund Services, LLC and Hedgeworks Fund Services Limited, subsidiaries of Deutsche Bank**
Industry:	Financial services
Area of Law:	Contracts
Venue:	Superior Court of California, San Diego County
Result:	Summary judgment in favor of clients

Dismantling Millions in Claimed Hedge Fund Losses

Pillsbury has long provided representation at the highest levels for the financial services industry. We were pleased to deliver a victory for Deutsche Bank after its Cayman Islands and U.S. hedge fund administration subsidiaries were sued in San Diego.

The plaintiffs—two hedge funds and a number of their investors—sued DB's subsidiaries after the funds suffered significant losses, asserting they would have avoided the losses if only the defendant fund administrators had alerted them to certain problems.

It was critical to establish what the plaintiffs knew, and when. Pillsbury overcame the plaintiffs' own failure to preserve documents by assiduously gathering documents from a range of third parties.

Pillsbury's team then methodically proceeded to dismantle the plaintiffs' case. First, Pillsbury knocked out 40 percent of the plaintiffs' claimed damages by proving that the plaintiffs' case relied on an agreement the parties never entered into—a position confirmed by documents produced by the plaintiffs' former corporate counsel (yet conveniently missing from the plaintiffs' own files).

Pillsbury then disposed of the remaining claims, identifying multiple points of law to refute the plaintiffs' attempt to convert the hedge fund administrator's contractual duties into a quasi-fiduciary relationship, and defeating the plaintiffs' last-minute request to amend their complaint to add over a dozen new claims.

The Pillsbury team knew the law and the client's business, combining litigation and finance experience across three offices. This combination of experience ultimately secured a sweeping summary judgment win in favor of Deutsche Bank's subsidiaries.

Creating Ninth Circuit Precedent for the Banking Industry

Client:	**Wells Fargo**
Industry:	Banking
Area of Law:	Bankruptcy
Venue:	U.S. Court of Appeals for the Ninth Circuit
Result:	Final, precedent-setting affirmance of an earlier ruling

When the Ninth Circuit's Bankruptcy Appellate Panel (BAP) issued its decision in *Mwangi v. Wells Fargo Bank* in 2010, that decision threatened to set an industry-wide precedent that would trigger an avalanche of lawsuits by individuals entering bankruptcy.

At issue was Wells Fargo's policy of placing a freeze on an account when the account holder filed for bankruptcy; the bank would freeze the account until it received instructions from the bankruptcy trustee. The Bankruptcy Appellate Panel's decision in 2010 held that the policy violated the "automatic stay" provision of the federal bankruptcy code, and remanded the case for a determination of sanctions against the bank.

The decision was soon viewed by plaintiffs' lawyers as an opportunity to seek class action damages against Wells Fargo, opening the door to a flood of lawsuits against Wells Fargo and any other bank with similar practices.

With industry precedent at stake, Pillsbury entered the scene, representing Wells Fargo in *Mwangi* and dozens of copycat cases. Over the course of several years, Pillsbury successfully defeated every case asserting similar claims against the bank.

In 2014, after winning in the bankruptcy court and federal district court, Pillsbury took the *Mwangi* case to its final stop, the Ninth Circuit. The Court rejected all of the debtors' arguments, ruling that the account funds did not belong to the debtors while they were part of the bankruptcy estate and, once those funds were no longer part of the bankruptcy estate, the automatic stay provision would no longer apply.

The Ninth Circuit's ruling sets an important precedent for the banking industry, protecting banks that freeze accounts to preserve the assets of the bankruptcy estate. Plaintiffs' lawyers can no longer attempt to challenge this commonsense practice.

Over the course of several years, Pillsbury successfully defeated every case asserting similar claims against the bank.

Health Care

From hospitals and health systems to biotech companies, medical device makers and data service providers, clients across the nation rely on the litigation prowess of Pillsbury lawyers.

Helping a Pharmaceutical Company Dismiss Groundless Investor Claims

Client:	**Incyte Corp.**
Industry:	Pharmaceuticals
Area of Law:	Securities
Venue:	U.S. District Court of Delaware
Result:	Dismissal of case with prejudice

When biopharmaceutical company Incyte Corp. announced that revenues for Jakafi, its drug targeting a rare disease called myelofibrosis, were up more than 50 percent from the previous quarter, one might think investors would have viewed it as a positive development. After all, it was only the second full quarter of revenue for the small molecule drug, and the market had reacted well to the previous quarter's earnings announcement.

Instead, after analysts expressed concern over what they perceived as a high rate of discontinued use among patients, the stock price dropped by over 20 percent.

This drop then triggered a securities fraud suit by investors in the District of Delaware. The complaint alleged, among other things, that the company knew about, but failed to disclose, the drug's higher-than-expected rate of patient discontinuations, and that numerous other comments by management had been false and misleading.

The suit didn't make it past Pillsbury's motion to dismiss.

After reviewing the full content of relevant press releases and conference transcripts, the court ruled that the plaintiffs had failed in the first instance to allege a materially false or misleading statement. Pillsbury's lawyers argued, and the court agreed, that the plaintiffs should not be permitted to base their complaint on incomplete excerpts from those materials. The court also agreed with Pillsbury that vague expressions of optimism—such as "the initial launch is going well" and "early response to the drug is encouraging"—could not be the basis for legal liability.

The judge went even further, however, noting that the evidence submitted showed that the cautious and conservative predictions that *were* made—for example, that the company expected slow but steady increases in revenue over subsequent quarters—actually came true.

When the plaintiffs thereafter failed to file an amended complaint within the time allowed, the court entered an order dismissing the case with prejudice, allowing Incyte to focus its full attention and resources on the continued development of its proprietary pipeline of cancer-treating drugs.

"We could not have hoped for a better result. Pillsbury's strategy from the outset led to a swift and favorable outcome in a very cost-effective manner."

—Eric Siegel, Executive Vice President & General Counsel

> "The Court concluded that the whistleblower's 'actions constitute an unfair litigation tactic and a type of self-help discovery.'" —From the Court Record

Client:	**A nonprofit health care system**
Industry:	Health care
Area of Law:	White Collar
Venue:	Eastern District Court of Virginia
Result:	Total relief granted, resulting in the return of computers and data

Helping Draw the Line Against Improper "Self-Help Discovery"

The emergence of "self-help discovery"—the surreptitious gathering of evidence outside the civil discovery process by someone who is party to current or anticipated litigation—is causing concern for courts and companies throughout the nation. In this precedent-setting case, Pillsbury did its part to clarify what constitutes improper conduct, protecting the rights of a nonprofit health care company.

Our client's terminated former employee had obtained three computers containing company data and information from a former independent contractor (subject to confidentiality restrictions). He then provided that information to his attorneys, who used it to file a complaint under the False Claim Act's *qui tam* provisions. The complaint accused our client of committing hundreds of millions of dollars of Medicare and Medicaid fraud.

Pillsbury's defense team filed a motion arguing that the employee's self-help discovery was unlawful and improper. The motion sought the return of the computers and data, the deletion of all company data in the possession of the former employee and his attorneys, and a protocol to examine the computers to determine the extent to which the former employee and his attorneys had already improperly mined that data.

The Court granted our client total relief, finding that the former employee and his attorneys engaged in impermissible self-help discovery, and had also acted in bad faith, likely prejudicing both the company and the proceedings themselves.

The judge's ruling that an allegation of fraud does not justify or permit the retention of property belonging to the defendant represents a significant development in FCA jurisprudence.

Tax Controversy

Pillsbury's tax lawyers understand U.S. federal, state and local tax laws and tax systems from all angles, having litigated hundreds of cases across countless venues.

Client:	**A large entertainment company**
Industry:	Entertainment
Area of Law:	Income tax
Venue:	California State Board of Equalization
Result:	Franchise Tax Board allowed R&D credits worth more than $4 million

“Thanks to everyone who has worked so diligently and hard on [our] behalf...”

—Client In-house Legal Counsel

A Major R&D Tax Win for a Multinational Entertainment Company

One of California's most prominent entertainment companies had Pillsbury's State & Local Tax (SALT) team to thank for its April 2014 victory in a contentious income tax dispute before the California State Board of Equalization (SBE)—a win worth more than $4 million to the client.

The state had examined several years of the company's tax returns, and questioned its research and development (R&D) credit claims. To establish the client's case, Pillsbury's SALT attorneys worked with the company's outside accountants and interviewed more than 20 witnesses who could furnish evidence of qualification for the credit. The Pillsbury SALT team laid out the company's case in an extensively documented opening brief and successfully opposed the Franchise Tax Board's attempt to defer the case on procedural grounds.

As the due date for the FTB's opening brief approached, the legal team geared up for its reply brief and the declarations of the witnesses who had been interviewed. There was every reason to believe the matter would move forward, since it is extremely rare for the FTB to concede a case after only a single brief has been filed at the SBE.

And yet that is exactly what happened. In a letter to the SBE requesting dismissal of the appeal, the FTB stated that, "[a]fter reviewing the above-named appeal, the Franchise Tax Board… will allow the claimed research and development credit."

The FTB letter set out millions of dollars in refunds and credit carryovers that would now be due the client. Additionally, the company's tax benefit for future years as a direct result of this win will be worth millions more.

In Leading Cases, Garnering $104 Million in Tax Refunds

Pillsbury secured major unitary tax settlements in 2012 and again in 2014 involving a hot issue for banks that have subsidiaries engaged in broker-dealer operations.

In taxing corporations, California generally looks to a unitary group's worldwide income and determines what portion is earned in the state by using an apportionment formula. California's apportionment formula is determined by averaging the percentages from three factors: the unitary group's property in California divided by all of its property, its California payroll divided by its global payroll, and its California sales divided by its global sales. This case focused on the sales factor: whether any or all of the gross receipts generated by our client's broker-dealer subsidiary, which operated outside of California, should be included in the denominator of the unitary group's sales factor.

The Franchise Tax Board took the position that the inclusion of the gross receipts in the sales factor created a distortion in the formula by understating the amount of income attributable to our client's business activity in the state. We disagreed.

In 2012, Pillsbury lawyers sat down for an eight-hour settlement conference with the Franchise Tax Board and obtained a refund for our client. In 2014, in a related case involving an affiliate of our client, Pillsbury attorneys obtained additional refunds, with a total recovery for the client of $104 million.

Client:	**A large U.S. bank in a Japanese conglomerate**
Industry:	Commercial banking
Area of Law:	California unitary tax
Venue:	California Franchise Tax Board
Result:	Total refund settlements of $104 million

"Everyone at [the bank] is very pleased with the result. ... Thank you all for your excellent work."

—Client In-house Legal Counsel

Education

Our clients include Stanford, Texas A&M, the University of Chicago, the University of California, George Washington University, American University and the Los Angeles Unified School District.

> “Sharp disputes of fact over the misfeasance and existence of deadlock preclude the granting of summary judgment to either side. As such, the subsequent orders governing escrow of the funds must also be reversed.” —Supreme Court, Appellate Division, First Department

Preserving the Leadership, and Safeguarding the Endowment, of an Educational Institution

Client:	**The Board of Trustees of Athens College**
Industry:	Education
Area of Law:	Appellate
Venue:	New York Supreme Court, Appellate Division, First Department
Result:	A complete reversal of a trial court’s orders

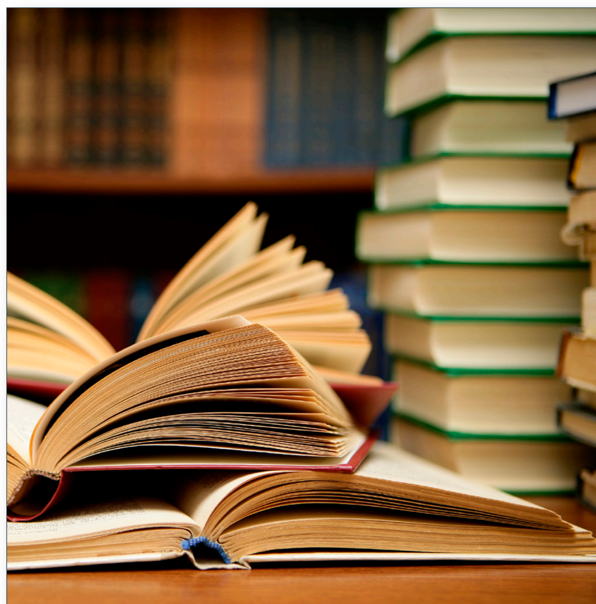
Created in the 1920s, Athens College was founded by two groups of philanthropists, one in Greece and the other in the United States. Befitting the bi-cultural identity of its founders, the K-12 school adopted bylaws calling for corporate governance powers to be shared among two Boards: one Greek (the Board of Directors) and the other American (the Board of Trustees). 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 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.

An initial ruling in New York County Supreme Court granted the summary judgment requested by the Greek Directors, terminating the parties’ relationship and ordering the endowment transferred to Greece.

Pillsbury was then brought in as appellate counsel. After first negotiating a stay of the trial judge’s orders, Pillsbury lawyers took an appeal, arguing that the orders were wholly improper on a summary judgment motion because key facts were sharply in dispute. Pillsbury also argued there was no basis for transferring the endowment funds to the Greek Board.

The decision handed down by the appellate court was a total win for the American Board of Trustees. The Court held that the parties’ relationship could be equitably terminated *only* based on proof of misfeasance or deadlock, both of which are disputed questions of fact—issues on which the American Board is confident of its ability to prevail.



Industrials and Transportation

Pillsbury's litigation attorneys have extensive experience representing clients in the industrial and transportation sectors, as demonstrated in 2014 victories on behalf of major railroad and manufacturing clients.

Defeating a Novel Attempt to Expand the Scope of Federal Environmental Laws

A team of Pillsbury environmental and appellate lawyers secured an important win for Union Pacific Railroad Company. In *Center for Community Action and Environmental Justice v. BNSF Railway Company and Union Pacific Railroad Company*, the U.S. Court of Appeals for the Ninth Circuit ruled that the plaintiff environmental organizations could not use the federal solid waste laws to challenge diesel particulate emissions from railyards in Southern California.

The plaintiffs had alleged that diesel locomotive emissions at railyards operated by Union Pacific and co-defendant Burlington Northern Santa Fe violated federal solid waste laws, specifically the Resource Conservation and Recovery Act (RCRA), which addresses disposal of hazardous solid waste. Had plaintiffs' attempt to expand the scope of RCRA succeeded, it would have drastically altered the environmental regulatory landscape, not only for the railroad industry, but also for any industries involving emission of diesel particulate matter.

With the stakes high, Pillsbury delivered a win for the client.

In August 2014, a three-judge panel of the Ninth Circuit ruled that to adopt the plaintiffs' interpretation of the law "would effectively be to rearrange the wording of the statute—something that we, as a court, cannot do." The court held that "reading [the law] as Congress has drafted it, 'disposal' does not extend to emissions of solid waste directly into the air." Accordingly, the panel affirmed dismissal of the plaintiffs' lawsuit.

Two months later, the Ninth Circuit denied a petition by the plaintiffs seeking a rehearing en banc by the full court, bringing the matter successfully to closure.

Client:	**Union Pacific Railroad Company**
Industry:	Transportation
Area of Law:	Environmental
Venue:	U.S. Court of Appeals for the Ninth Circuit
Result:	Prevented environmental organizations from challenging air emissions under a solid waste statute

Pillsbury was named 2014 "Law Firm of the Year" for Environmental Law by *Best Lawyers/U.S. News & World Report.*

> "Pillsbury did a great job on the case."
>
> —Mark Van De Voorde, Chief Legal and Administrative Officer, Victaulic

Client:	**Victaulic Co., a major global producer of mechanical pipe joining solutions**
Industry:	Manufacturing
Area of Law:	Contracts
Venue:	U.S. District Court, Eastern District of Pennsylvania
Result:	Lawsuit under False Claims Act dismissed with prejudice

Countering a New Threat Under the False Claims Act

For companies in certain business sectors, such as defense contracting and health care, employee whistleblower lawsuits under the Federal False Claims Act are a familiar concern. But client Victaulic, the world's leading producer of mechanical pipe joining solutions, never expected to face FCA litigation brought by a "whistleblower" with no connection whatsoever to the company.

A Pillsbury courtroom victory in September 2014 spared Victaulic from those substantial potential damages—but also highlighted the novel ways plaintiffs are using the False Claims Act to target companies in industries where FCA lawsuits have previously been rare.

The FCA allots a share of funds recovered to whistleblowers ("relators") who alert the government to fraud against it. Recent amendments have expanded the law's scope, enabling plaintiffs to bring lawsuits against defendants in an even broader range of economic sectors—including manufacturers like Easton, Pennsylvania-based Victaulic.

In the past, such relators were almost always current or former insiders with some connection to the alleged fraud. Not so now. The relator in this case was a self-styled customs expert with no connection to Victaulic or its business. She claimed Victaulic had routinely failed to mark pipe fittings made outside the U.S. with their country of origin, a violation of the Tariff Act.

Pillsbury's attorneys laid out a number of grounds for dismissal, including the fact that she was not an original source of non-public information, as expressly required by the FCA, and that such regulatory noncompliance, even if proven, cannot give rise to a claim under the FCA.

"Where, as here, the complaint pleads facts that are 'merely consistent with' a defendant's liability, the plaintiff has failed to state a claim," the trial judge ruled. The case was dismissed with prejudice.

Pro Bono & Public Policy

Pillsbury has a long track record of taking on high-profile pro bono and public policy cases—as well as representation of indigent clients in our communities.

"We are delighted!!! Great result."

—Francine Radford, Moderator, Berkeley Parents Network

Client:	**Berkeley Parents Network**
Area of Law:	Intellectual property
Venue:	National Arbitration Forum
Result:	Client nonprofit gains rightful domain name

Vanquishing a Faraway Cybersquatter

Berkeley Parents Network, one of the most popular and respected parent-to-parent networks in the United States, provides recommendations and advice to more than 30,000 Bay Area parents.

The group had long desired to own and use the domain name BerkeleyParentsNetwork.org, but an anonymous entity in Vietnam had already registered it. Efforts to purchase the name went ignored, so BPN turned to a Pillsbury intellectual property attorney for help. Working pro bono, the Pillsbury lawyer pursued a proceeding under the Uniform Domain-Name Dispute-Resolution Policy of the Internet Corporation for Assigned Names and Numbers through the National Arbitration Forum.

In addition to making a strong case under the UDRP criteria, a draft complaint furnished to the cybersquatter included language to remind the defendant—a serial domain name offender—that a negative decision could hurt his chances in future proceedings with others. The defendant soon agreed to transfer the domain name to Berkeley Parents Network for free and to refrain from using or registering any similar names. The group's website is now live at BerkeleyParentsNetwork.org.

Coming to the Aid of a Vulnerable Young Immigrant

As the heartrending plight of Central American children fleeing violence, poverty and abandonment continues to make news, Pillsbury is supporting Kids in Need of Defense (KIND), an initiative cofounded by actress Angelina Jolie that secures pro bono representation of young people facing deportation from the U.S.

The needs of such children are starkly evident in the numbers. The Department of Homeland Security's U.S. Citizenship and Immigration Services received 3,993 applications for Special Immigrant Juvenile Status in 2013—and a majority of these applicants obtained the requested status, which confers residency and working rights, and serves as a path to citizenship. But data from the Executive Office for Immigration Review, a unit of the Department of Justice, show that 21,351 unaccompanied juveniles entered the U.S. in 2013, meaning that only a small fraction of refugee minors avail themselves of the system.

The story of one such young migrant illustrates the hardships they face. Juan was a 16-year-old orphan when he embarked on a dangerous, 18-day journey from the central Guatemalan town of Santa Cruz Barillas in late 2011. His father had abandoned the family shortly after Juan's birth, and his mother passed away in 2009. These circumstances qualified him for Special Immigrant Juvenile Status as an "abused, abandoned and neglected" minor.

U.S. government authorities detained Juan as he crossed the border and held him in custody for two months before finally releasing him to the custody of a cousin in Los Angeles. Shortly thereafter, the cousin contacted KIND to help establish Juan's legal status in the United States. KIND approached Pillsbury to work on Juan's case, and over the next two years, Pillsbury attorneys saw the case through to successful completion.

Two attorneys from Pillsbury's Los Angeles office accompanied Juan at his adjustment of status hearing in July 2014. As the hearing concluded, Juan learned he would be able to stay in the U.S. He received his green card at the beginning of August 2014.

Pillsbury has successfully handled several other KIND cases and continues to take on new ones.

Client:	**A young refugee from Guatemala**
Area of Law:	Immigration
Venue:	U.S. Citizenship and Immigration Services, Department of Homeland Security
Result:	Pro bono client secured the right to live and work in the United States

"I am just happy that I don't have to worry anymore."

—Juan, a Guatemalan orphan who obtained legal residency status in the U.S. through Pillsbury's efforts

About Our Litigation Practice

Pillsbury litigators handle 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.

About Pillsbury

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

Practice Leaders

Kirke M. Hasson
kirke.hasson@pillsburylaw.com
415.983.1077

Kenneth W. Taber
kenneth.taber@pillsburylaw.com
212.858.1813

For more information about our litigation practice, please visit us at **www.pillsburylaw.com/litigation**.

Litigation Practice Areas

Antitrust & Competition
Appellate
Arbitration & Alternative Dispute Resolution
Construction Counseling & Dispute Resolution
Corporate Investigations & White Collar Defense
Employment
ERISA Litigation
Federal Tax Controversy & Tax Policy
Financial Services Litigation
Government Contracts & Disputes
Information Law & Electronic Discovery
Insurance Recovery & Advisory
Intellectual Property Litigation
Product Liability & Toxic Torts
Securities Litigation & Enforcement
State & Local Tax

Related Practice Areas

Aviation, Aerospace & Transportation
Communications
Consumer & Retail
Education
Energy
Environment, Land Use & Natural Resources
Financial Services
Health Care & Life Sciences
Hospitality
Indian Law (American)
Intellectual Property
International Trade
Real Estate
Regulatory
Technology
Wine, Beer & Spirits

Offices

Abu Dhabi | Austin | Beijing | Houston | London | Los Angeles | Nashville | New York | Northern Virginia | Palm Beach
Sacramento | San Diego | San Diego North County | San Francisco | Shanghai | Silicon Valley | Tokyo | Washington, DC

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
1540 Broadway | New York, NY 10036 | 877.323.4171

www.pillsburylaw.com

© 2015 Pillsbury Winthrop Shaw Pittman LLP. All rights reserved.