



Litigation Highlights 2015

DELIVERING SUCCESS ACROSS INDUSTRIES

pillsbury

Pillsbury's Litigation practice, nationally ranked in the 2015 edition of *Legal 500*, is described by clients as
“excellent in every way.”

A Boom Year

This year, no fewer than six of the victories recounted in this annual report played out the old-fashioned way: in high-stakes trials before judges and juries. But the issues at stake in Pillsbury's top litigation cases of 2015 were anything but stodgy. We succeeded, repeatedly, for insureds facing ever-more-clever payment obstacles from their insurers; structured unprecedented settlements between Swiss financial institutions and U.S. prosecutors; and even preserved a client's rights to a lifesaving medical innovation—among the other cutting-edge disputes described in these pages.

Leading independent evaluators once again recognized Pillsbury for excellence. *Best Lawyers* magazine named us its 2016 Law Firm of the Year in Construction Law and cited 42 of our U.S. litigators as Best Lawyers. *Managing Intellectual Property* magazine named 10 Pillsbury partners to its annual "IP Stars" guide. A partner from our Insurance Recovery & Advisory practice made *Law360's* Insurance MVPs List, and the practice was ranked one of the top five policyholder practices in the U.S.

The firm also once again received top-tier recognition 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.

Not surprisingly, a record number of standout litigators also chose Pillsbury as their new home in 2015—with 12 new Litigation partners joining us from other firms—while we simultaneously promoted four lawyers to partner. Among those joining us were four acclaimed IP litigators, and a seasoned trial and appellate lawyer we welcomed to our new Austin office. In Los Angeles, a renowned entertainment partner came aboard, together with two veteran partners who joined our rapidly growing Real Estate Litigation group. And, in New York, we brought on a former prosecutor with the U.S. Attorney's Office for the Southern District of New York, while adding a financial institutions litigator and an insurance coverage litigator from our associate ranks. Moreover, as we enter 2016, three more insurance coverage partners have joined us in Washington, DC.

As always, the victories we describe in this annual report are the direct 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

Litigation Practice Areas

Antitrust & Competition
Appellate
Arbitration & Alternative Dispute Resolution
Construction Counseling & Dispute Resolution
Corporate Investigations & White Collar Defense
Employment
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
Real Estate Litigation
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

Insurance Recovery

At the forefront of insurance recovery efforts for more than a century, Pillsbury produced several client victories in 2015 notable even by our own high standards.

“... 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

Client:	Oil Refinery Company
Industry:	Oil & Gas
Area of Law:	Insurance Recovery
Venue:	U.S. District Court for the Western District of Arkansas
Result:	Secured a \$71.7 million jury award for our client



Holding Insurers Accountable with a \$71.7 Million Insurance Recovery

A crude oil refinery company in El Dorado, Arkansas, was impacted severely when a 60-year-old Exxon crude pipeline ruptured in April 2012, causing a yearlong outage that prevented crude oil from reaching the company’s refinery. Suffering a major disruption to its plant operations, the refinery 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 finally deny the claim, but on that same day, they also sought a declaratory judgment in court denying the refinery company’s claim, and requiring that all claims disputes involving the company be decided in Tennessee.

Pillsbury stepped in, got the Tennessee case dismissed and then filed suit in El Dorado, Arkansas. 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. After eight days of trial, and just two hours of deliberation, the 12-member jury delivered a spectacular win for our client. They awarded \$71.7 million—the full amount requested in our opening statement.

Not only was the award among 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 case made news throughout the industry, delivering a clear and strong message that Pillsbury’s trial lawyers deliver winning results, even under the most intense pressure.

Delivering Victory in Scorched-Earth Litigation

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

Victaulic, a Pennsylvania-based 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 is, until 2012, when, following a series of new product-liability claims, Victaulic turned to AIG for the protection it had promised to provide. But rather than honoring its promises, AIG turned around and sued Victaulic to avoid more than \$340 million in promised coverage.

Victaulic handed Pillsbury a mission: Beat back AIG, the eight different law firms the insurer hired and the multiple actions they filed against Victaulic 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 sanction awards against AIG for its discovery abuses. And, in an initial bench trial, the California court ruled in Victaulic's favor on all declaratory relief counts.

The Pillsbury team then tried Victaulic's remaining claims for breach of contract, bad faith and punitive damages to an Alameda jury. In one surprising courtroom moment, a senior AIG claims director even invoked her Fifth Amendment right to avoid self-incrimination during a Pillsbury cross-examination about sworn statements she'd made in AIG's discovery responses.

In August 2015, the jury awarded Victaulic 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 Victaulic was entitled to more than \$9.3 million in compensatory damages and attorneys' fees; and that AIG must pay Victaulic 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.

Client:	Victaulic Company
Industry:	Manufacturing
Area of Law:	Insurance Recovery
Venue:	Superior Court of California, Alameda County
Result:	Jury verdict awarding \$9.3 million in compensatory damages and attorneys' fees, plus \$46 million in punitive damages



“It was readily apparent that any witness AIG might put forward was going to be eviscerated by the Pillsbury cross-examination. You certainly don't expect somebody to take the Fifth Amendment during a civil litigation.”

—Mark Van De Voorde, Chief Legal & Administrative Officer, Victaulic

Client:	Metropolitan Development Group
Industry:	Residential and Mixed Use Communities
Area of Law:	Insurance Recovery
Venue:	U.S. District Court for the Eastern District of Virginia
Result:	Secured appraisal award of more than \$39 million, substantially improving client's case for pending jury trial

A Pretrial Victory for Apartment Developer

In December 2015, Pillsbury achieved an appraisal award of more than \$39 million for client Metropolitan Development Group in its ongoing insurance coverage dispute with National Surety Services Corp.

The case centers on Metropolitan's coverage claim, after defective construction at a 400-unit apartment complex in Camp Springs, Md., resulted in more than \$39 million in water damage and business interruption. National Surety refused to pay the full claim, contending that much of the damage was the result of uncovered construction defects, not water damage. Metropolitan filed suit in 2013 for breach of contract and bad faith.

To avoid a highly factual and potentially confusing jury trial, the Pillsbury Insurance Recovery team demanded an appraisal of the loss, in accordance with the terms of the policy. When National Surety refused to submit the matter to appraisal, Pillsbury filed a motion with the court seeking to compel appraisal, which was granted.

The appraisal panel awarded Metropolitan \$10.5 million more than National Surety had paid Metropolitan thus far. This award supports Metropolitan's claim that National Surety acted in bad faith when it refused to pay the claim in full. The case now moves into its next phase—a trial on the merits in the Eastern District of Virginia—where Metropolitan will seek its full complement of damages, including breach of contract, consequential and bad faith damages due to National Surety's baseless refusal to pay and the significant damages caused by its delayed payments.

Client:	Global Chemical Company
Industry:	Petrochemical
Area of Law:	Insurance Recovery
Venue:	Texas
Result:	Negotiated a nine-figure recovery, including contested business interruption losses

Securing a Nine-Figure Insurance Claim Recovery

A global petrochemical company suffered a fire that caused massive damage to one of its largest production facilities, resulting in a five-month shutdown while the facility was rebuilt. The property damage portion of the company's insurance claim went smoothly, but the business interruption portion of the claim was hotly contested. The carriers argued that covered losses were severely limited based on the claimed ineligibility of losses incurred during a 90-day waiting period and the revenues preserved through the sale of existing inventories during that period. Once the repairs were completed, however, the company wanted to use some of its new production to replenish its inventories to pre-loss levels, but the carriers also claimed that replenishment was not a covered loss under the policy.

“ ... [Pillsbury's lawyers] provided tremendous support, excellent counsel, and were largely responsible for the additional ... recovery

... ” —Client's Insurance & Claims Manager

Pillsbury's lawyers vigorously argued against each of the carriers' defenses, ultimately achieving a very favorable settlement with an aggregate recovery well into nine figures. Pillsbury was even able to help the client recover several million dollars in additional recoveries after what the insurers claimed was their “last and final” offer.

Insurer Forced to Pay for Damage Caused by Subcontractors' Mistakes

When you're a contractor building a 63-story luxury condominium building on Biscayne Bay in a posh section of Miami, you hope your subcontractors aren't skimping on, say, the structural steel that supports the building. But Florida construction can be a risky proposition. So, as a prudent business practice, you buy insurance to cover the cost of fixing damage caused by any lapses on the part of your subs.

Pillsbury client Pavarini Construction Company (Southeast) did just that. Then, in 2009, shortly after 900 Biscayne Bay assumed its place on the Miami skyline, the building's exterior stucco started falling off. In the course of investigating the problem, Pavarini discovered that its subcontractors had incorrectly installed, and in some cases completely omitted, reinforcing steel in the concrete beams and walls.

As crews worked to remediate the damage, Pavarini sought coverage for the repairs. But its insurer refused payment, claiming the policy did not cover the type of loss the builder had suffered. The parties went to the U.S. District Court for the Southern District of Florida, each seeking summary judgment in its favor.

After hearing both sides, Senior Judge James Lawrence King found that the insurer owed complete indemnification to our client. Specifically, Judge King ruled that, "[e]ven if the predominant objective of the repair effort was to fix the instability caused by the defective subcontractor work," that was plainly necessary to repair and put an end to the ongoing damage to the building. Consequently, the judge ruled that all costs were covered, awarding our client more than \$23 million in damages, plus its costs, interest and attorneys' fees.

Client:	Pavarini Construction Company (Southeast)
Industry:	Construction
Area of Law:	Insurance Recovery
Venue:	U.S. District Court for the Southern District of Florida
Result:	Recovered more than \$23 million in damages, plus costs, interest and attorneys' fees



“Defendant owed a duty to indemnify Plaintiff for all costs to resolve the claim ... for repair of property damage resulting from the [subcontractors'] defective work ...”

—Senior Judge James Lawrence King

U.S. District Court for the Southern District of Florida

Financial Services

From key locations around the globe, we regularly litigate for top financial services clients.

In 2015, *The American Lawyer* recognized our work guiding multiple Swiss banks through DOJ's Swiss Bank Program.

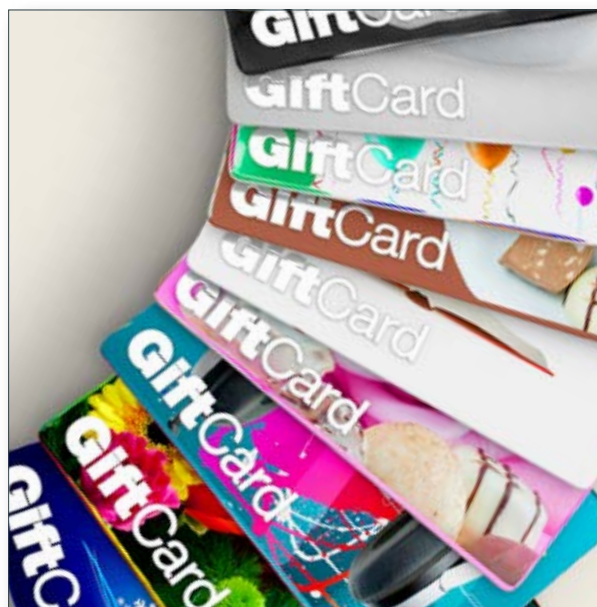
Gift Card Win for Wells Fargo

A Wells Fargo Visa®-branded gift card purchaser sued Pillsbury client Wells Fargo for claimed violations of the California Consumers Legal Remedies Act and Unfair Competition Law, seeking class action status. Alleging that the gift cards were not “easy to use,” and were subject to numerous holds and other conditions that were not as represented, plaintiff sought to represent a class of all gift card purchasers. With millions of these gift cards sold, Wells Fargo faced significant potential liability, and the bank turned to Pillsbury for help.

Plaintiff argued she had no pre-purchase access to the cards and therefore should not be held to the user agreement’s terms, including its arbitration clause. But the court agreed with us that the plaintiff was legally prevented from denying access to the packaging and the gift card before purchase, and that the parties were bound to the card-user agreement terms, including mandatory arbitration—without the right to bring a class action.

By convincing the court that the gift card’s arbitration provision was enforceable, the Pillsbury team eliminated the threat to Wells Fargo of a consumer class action, effectively ending the litigation. The case also set an important precedent as the Consumer Financial Protection Bureau now considers the use of arbitration clauses in consumer financial contracts.

Client:	Wells Fargo Bank
Industry:	Financial Services
Area of Law:	Financial Services Litigation
Venue:	U.S. District Court for the Central District of California
Result:	Defeated gift card class action



“Impressive result!”

—Bill Reichert, Senior Counsel, Wells Fargo Bank

Clients:	Multiple Swiss Banks (one of the largest groups of banks participating in DOJ's Swiss Bank Program)
Industry:	Financial Services
Areas of Law:	Corporate Investigations & White Collar Defense/Federal Tax Controversy & Tax Policy
Venues:	U.S. Department of Justice (DOJ) and Internal Revenue Service (IRS)
Result:	Achieved DOJ resolutions that enabled each client to substantially limit its liability under U.S. tax laws and avoid criminal prosecution



Saving Swiss Banks from Criminal Prosecutions and Potentially Staggering Fines

When presented with the opportunity to resolve potential criminal liability for aiding and abetting tax law violations in the United States, several Swiss banks called on Pillsbury to steer them through the U.S. Justice Department's (DOJ) Swiss Bank Program.

Established through a DOJ-Swiss Federal Department of Finance agreement in August 2013, the Swiss Bank Program was created to encourage Swiss banks to come forward if they suspected that U.S. taxpayers may have used secret Swiss accounts at their institutions to conceal assets and avoid paying taxes to the Internal Revenue Service.

Representing one of the largest groups of Swiss banks participating in the program, Pillsbury lawyers successfully negotiated non-prosecution agreements with the DOJ for each of them, in exchange for bank cooperation in the DOJ's ongoing probe into tax evasion. In addition to escaping potential prosecution for tax-related crimes, Pillsbury clients avoided liability for restitution, forfeiture and potentially crippling penalties. In one instance, Pillsbury helped a Swiss bank client facing the prospect of millions in fines reach a DOJ settlement of just \$34,000, the third-lowest penalty under the Swiss Bank Program, and a far cry from the millions in potential exposure the client otherwise faced.

Recognizing the firm for its outstanding achievements in these and other cases, *The American Lawyer* awarded Pillsbury its 2015 Global Legal Awards for Global Dispute of the Year in the area of Investigations.

“ I would like to thank you and your team for the excellent result we achieved.” —A Swiss bank counsel

Defeating Investors' \$80 Million Claim against Bank

When the Dodd-Frank Act was enacted after the 2008 financial crisis, it required that trust-preferred securities issued by bank holding companies be phased out as Tier 1 capital, greatly reducing their usefulness. Since financial institutions reassure investors and regulators about their financial strength by holding sufficient amounts of “Tier 1” capital, Wells Fargo responded to Dodd-Frank by exercising its right to early redemption of several series of such trust-preferred securities. This move drew lawsuits from securities holders, who had hoped for a longer maturity for these high-yielding securities. While some plaintiffs argued that Dodd-Frank was not a “capital treatment event,” others argued that it only qualified as such when the phase-out period for Tier 1 treatment of the securities ends, in 2016.

In one such lawsuit, securities holders challenged a portion of Wells Fargo’s 2011 redemption of \$837.5 million in trust-preferred securities. The plaintiffs sought \$80 million in damages. Representing the bank from start through appeal, we convinced the district court to rule that the Dodd-Frank Act indeed constituted a “capital treatment event” that allowed the bank to redeem the securities under the terms of its contract. Holders of the securities then appealed to the Ninth Circuit, which affirmed the district court’s decision, including its dismissal of the class action without leave to amend. The ruling marks the end of a series of class actions that Wells Fargo—represented by Pillsbury—has won at every stage.

Not only was this a resounding victory for our client, the Ninth Circuit’s decision marks the first test of the impact of Dodd-Frank on Tier 1 capital, setting a strong precedent for all bank holding companies.

Client:	Wells Fargo & Company
Industry:	Financial Services
Area of Law:	Financial Services Litigation
Venue:	U.S. Court of Appeals for the Ninth Circuit
Result:	Won dismissal of an \$80 million investor class action



“ [I]t does not make sense to read the Capital Treatment Event clause as permitting redemption ... only upon actual, as opposed to prospective, status change. ” — *Ninth Circuit Court of Appeals*

Intellectual Property

In the last 10 years alone, Pillsbury has been involved in over 300 IP cases in U.S. courts, appearing in 77 of the 94 District Courts and, repeatedly, in the U.S. Court of Appeals for the Federal Circuit.

“ [P]laintiff has pointed to no legal authority that a trademark infringement claim can succeed based on anticipatory infringement that is as speculative as is the case here. ” —U.S. District Judge David O. Carter

Defeating a Trademark Claim against Facebook’s Oculus VR

Members of Pillsbury’s Intellectual Property team achieved a victory in 2015 for client Oculus VR, a Facebook-owned leading provider of virtual reality headsets. A video-hosting service called Oculu had filed a trademark lawsuit claiming that the use by Oculus of a similar name would confuse consumers and lead them to believe Oculu was an affiliate of Oculus.

After Pillsbury’s lawyers presented evidence of no likelihood of confusion and filed papers attacking Oculu’s claim of damages, U.S. District Judge David O. Carter ruled in favor of Oculus in June 2015, dismissing the case on summary judgment. The court—which had twice sanctioned the plaintiff for failing to comply with discovery orders—ruled that the plaintiff’s claims were predicated solely on its 2014 belief as to what might happen in the future, and that it could not seek damages in the form of a portion of the \$2 billion purchase price Facebook had paid to acquire Oculus VR in 2014.

Client:	Oculus
Industry:	Consumer Technology
Area of Law:	Trademark Litigation
Venue:	U.S. District Court for the Central District of California
Result:	Client granted summary judgment, ending the lawsuit against it



Client:	Medtronic PLC
Industry:	Medical Devices
Area of Law:	Patent Litigation
Venue:	The U.S. Patent Trial and Appeal Board
Result:	Validity of key patents upheld in multiple proceedings



“ We determine that Medtronic has demonstrated by a preponderance of the evidence that [a rival patent holder’s claims] are unpatentable as anticipated.”

—A three-judge panel of the U.S. Patent Trial and Appeal Board

Inter Partes Victories Safeguard Client’s Innovations

When leading medical device maker Medtronic PLC faced the potential of multiple, costly patent infringement trials attacking two of its life-saving products, it tapped Pillsbury to challenge the validity of the asserted patent claims.

The firm utilized the U.S. Patent Trial and Appeal Board’s *inter partes* review (IPR) process, a trial-like procedure created as part of the 2012 America Invents Act. This case was part of the earliest wave of IPR success stories, producing much faster (and thus much less costly) results than could be obtained in the past, and fulfilling the intent Congress articulated in creating the PTAB.

IPR offers a quicker, less costly and more efficient way to determine the validity of a patent, particularly when compared to District Court litigation. However, these benefits come with the risks of venturing into new territory with limited guiding precedent, and the potential of being thwarted in other proceedings.

Pillsbury secured a series of resounding victories for Medtronic in which all the patent claims at issue were held unpatentable by the Board.

In the first victory, a plaintiff alleged that Medtronic’s Endurant stent grafts infringed claims of the plaintiff’s patent. The district court litigation was stayed in favor of the IPR proceeding, allowing Medtronic to focus its efforts on the sole issue of invalidating the patent. The PTAB issued a decision in March 2015 holding that the asserted claims of the patent in question were unpatentable.

Only a month later, Pillsbury achieved further success with two more IPR victories invalidating all claims asserted by an Oklahoma City cardiologist against Medtronic’s CoreValve transcatheter aortic valve replacement. Again, the underlying District Court litigation was stayed in favor of the IPR proceedings. And, once again, Pillsbury was able to convince the Board that our opponent could not establish an earlier date of conception, that the challenged claims were unpatentable and that his motion to amend the claims should be denied. The Board held the asserted claims of the patent unpatentable.

Protecting a Client's Flying Fairy

Spin Master, Canada's largest children's toy and entertainment company, is producer of the Flutterbye® Flying Fairy, which has secured a big following among young girls. When Spin Master discovered that a competitor was marketing a competing toy with similar appearance and functionality at the adjacent booth during the 2014 New York Toy Fair, it called on Pillsbury for help.

As news emerged that its rival was about to broadly launch its similar, but cheaper, doll—"Starfly"—Pillsbury's IP Litigation team swung into action. We filed trade dress and copyright infringement claims against the product exhibitor, product manufacturer and its marketer/distributor, stressing that the Starfly toy and packaging were deceptively similar to our client's Flutterbye® Flying Fairy, in a calculated attempt to illegally capitalize on Spin Master's success.

Defendants countersued, claiming our client's press release announcing the lawsuit itself constituted tortious interference with contract, resulting in cancelled orders, lost sales and damages. But the defendants produced no evidence that the press release was even read by their customers or that it had the supposed effect on Starfly toy orders.

After fully briefing summary judgment papers, the parties reached a favorable settlement, preventing the infringing product from ever being sold in the U.S.

Client:	Spin Master Ltd.
Industry:	Consumer Technology
Area of Law:	Intellectual Property Litigation
Venue:	U.S. District Court for the Central District of California, Los Angeles
Result:	Kept copycat version of client's popular doll off U.S. retail shelves



“ I think we have shown that Spin Master will vigorously pursue companies who misappropriate our intellectual property for their own profit. ”

—Christopher Harrs, General Counsel of Spin Master Ltd.

Energy and Environmental

We represent energy enterprises around the globe and across the full spectrum of energy sources, with energy litigation clients that include Chevron, Duke Energy and Valero.

“Vacating the emergency regulations ... in the manner preferred by Plaintiffs appears likely to cause greater harm to the environment than allowing the corrective action plan to remain in place.”

—Judge George C. Hernandez Jr., Superior Court of California, County of Alameda

Preserving California’s Energy Supply

Faced with a possible shutdown of thousands of injection wells across the state of California, the Western States Petroleum Association (WSPA)—the oldest petroleum trade association in the United States, with members responsible for the vast majority of oil production in California—called on Pillsbury. We defended WSPA’s interests in a lawsuit brought by environmental groups against the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR).

Injection wells are essential to 80 – 85 percent of all oil production in California, and underground injection operations have been used safely for decades to enhance oil recovery and dispose of water produced along with oil and gas. Injection wells are sometimes used in combination with hydraulic fracturing and other well stimulation treatments to increase the flow of oil to the surface. A shutdown of even a small percentage of injection wells would have adversely impacted the public, the oil industry, California’s economy and the state’s tax base, at a cost in the billions.

Certain environmental groups nonetheless moved for a preliminary injunction to close thousands of these injection wells and set aside the DOGGR regulations that contemplated their continued operation. Pillsbury lawyers successfully intervened in the lawsuit for WSPA and, together with DOGGR and energy companies, defeated plaintiffs’ motion for a preliminary injunction.

The court agreed with WSPA and the energy companies that the harm to the public from granting the requested injunction—“including the impact on California’s economy of an immediate, across-the-board shut-down of injection wells”—would be “substantial and almost certain to occur.” The court therefore denied the requested injunctive relief, holding the “theoretical and speculative” threat of contamination was “plainly outweighed” by the “potential harm to the public if this court were to vacate the emergency regulations and order DOGGR to proceed against over 2,000 (and possibly up to 6,100) wells via individual enforcement actions... ”

Client:	Western States Petroleum Association
Industry:	Energy
Area of Law:	Environmental Litigation
Venue:	Superior Court of California, County of Alameda
Result:	Won denial of the preliminary injunctive relief sought by plaintiffs



Antitrust and Unfair Competition

With clients ranging from multinational and Fortune 50 corporations to middle-market companies and startups, we advise on all aspects of antitrust and competition law.

Ensuring an Assault on a Client-Critical Business Model Runs Out of Gas

Fuel reward programs represent a staple by which major grocery retailers build and maintain customer loyalty in a fiercely competitive marketplace.

So, when multiple independent fuel retailers in California filed antitrust lawsuits against Pillsbury client Safeway, the second-largest supermarket chain in North America, company executives and industry leaders paid careful attention.

In three separate lawsuits, plaintiffs Dixon Gas Club LLC, Springtown Fuels Corp. and BPG Pacific LLC, represented by the same lawyers, all alleged that Safeway's redemption of grocery-based fuel promotions had resulted in below-cost and loss leader sales, violating California's Unfair Practices Act and Unfair Competition Law.

In *Dixon Gas Club LLC v. Safeway, Inc.*, after a three-week trial consisting almost entirely of the plaintiff laying out its case, the trial judge granted Pillsbury's motion for judgment, agreeing that plaintiff had failed to prove any violation of law.

That decision was then affirmed on appeal. The appellate court agreed that Safeway had properly adopted its grocery-based fuel promotions to compete with its grocery competitors, who had their own fuel promotions—not to injure other fuel retailers or to destroy competition in the Dixon fuel market.

The appellate panel also pointed to Pillsbury's evidence proving that "the Dixon-area fuel market was healthy and competitive, with relatively low barriers to entry," which "tended to disprove Dixon's theory that Safeway's below-cost unfair pricing was stifling robust competition."

Following entry of the Dixon judgment in favor of Safeway, Springtown Fuels and BPG Pacific both voluntarily dismissed their parallel cases against our client.

Client:	Safeway
Industry:	Grocery
Area of Law:	Antitrust
Venue:	First Appellate District of the California Courts of Appeal
Result:	Affirmation of trial court decision in one case, leading to voluntary dismissal of two others



SAFEWAY

“ It is not enough for a plaintiff alleging that a competitor's pricing practices are ‘unfair’ to offer evidence that those practices ‘hurt’ the plaintiff or make it more difficult for the plaintiff or others to compete. ”

—Judge Martin J. Jenkins, First Appellate District
of the California Courts of Appeal

Client:	American Media Inc. and Distribution Services Inc.
Industry:	Publishing
Area of Law:	Antitrust
Venue:	U.S. District Court for the Southern District of New York
Result:	Dismissal of a \$1.4 billion antitrust case



“If there were ever an antitrust case of the pot calling the kettle black, this is it.” —Judge Paul Crotty

Defending Clients against Significant Sherman Act Antitrust Claims

The last decade has undeniably been a challenging time for companies in the magazine publishing industry. Anderson News, the second largest wholesaler of single-copy magazines to retail outlets, attempted to alleviate its own financial distress by imposing a surcharge on magazine publishers—charging a fee for every magazine delivered by Anderson News and shifting its inventory costs to publishers. Faced with this substantial price increase, most magazine publishers took their business to other wholesalers that were not raising prices.

In response, Anderson News closed its doors—and sued magazine publishers, national distributors and other wholesalers, including our clients American Media Inc. and its subsidiary, Distribution Services Inc. The suit accused defendants of conspiring to put Anderson News out of business through a group boycott, in violation of Section 1 of the Sherman Act. Anderson sought damages well in excess of \$1 billion.

The U.S. District Court for the Southern District of New York granted our motion to dismiss, ruling that Anderson News had failed to meet the pleading standard under *Twombly* and *Iqbal*. But the Second Circuit reversed, triggering three years of fact and expert discovery.

With that full factual record before it, the District Court again dismissed Anderson’s claims, granting our clients and the other defendants summary judgment. The court was unconvinced that a refusal to pay above-market prices was anticompetitive conduct at all, observing, “[A]fter six years of litigation, Anderson still [could not] explain why it was in Defendants’ interest to pay more per magazine, and assume substantial inventory costs.” The court also concluded that Anderson had caused its own injury by shuttering its doors instead of agreeing to withdraw its surcharge demand.

Class Actions and Mass Torts

In 2015, Pillsbury's lawyers again received top-tier recognition for their work in mass tort litigation and class action defense.

Client:	Medora Holdings
Industry:	Retail
Areas of Law:	Class Action and Deceptive Advertising
Venue:	U.S. District Court for the Northern District of California
Result:	A strong rejection of class certification followed by dismissal with prejudice



“ Plaintiffs *allege* both they paid ... a price premium and that they were misled into buying PopCorners. But Plaintiffs make no such *showing* for either theory anywhere in their motion, reply or supplemental brief.”

— Judge Paul Grewal, U.S. District Court for the Northern District of California

Rebuffing False Advertising Claim Made by Anti-GMO Plaintiffs

When it comes to food labeling, few phrases have drawn more litigious attention over the past few years than “all natural.” Hundreds of such cases are now moving through the courts nationwide, and though some are ultimately withdrawn or thrown out, defending against them can be costly and time-consuming. As a result, many defendants have chosen settlement over protracted litigation.

It was against this backdrop that Pillsbury client Medora Holdings, which developed, manufactured and distributed a new popped corn chip named “PopCorners,” faced two class action lawsuits over past labeling of its product. Although its “Sea Salt” flavor chip contained only three ingredients—corn, sea salt and sunflower oil—plaintiffs claimed Medora was guilty of false advertising, since any product made from GMO-derived seed automatically failed to qualify as “natural.”

Not wishing to settle or be mired in years of litigation, Medora Holdings looked to Pillsbury for a better alternative.

Though it can be difficult to get class action status denied in false advertising cases—efforts in similar lawsuits have fallen short in recent years—Pillsbury’s depositions of the plaintiffs uncovered substantial flaws in their case.

First, plaintiffs admitted they had suffered no financial harm, nor could they show any likelihood of being “misled” by Medora’s advertising in the future. For its part, Medora had removed the “all natural” language from its packaging in 2013—months before the suit was filed. Finally, sales for PopCorners had increased significantly after the label change, providing strong evidence there was no basis for either damages or injunctive relief.

Taking these facts into account, the trial judge denied class certification on the ground that the individual plaintiffs lacked standing to sue and ordered them to show cause why their individual claims should not be dismissed for the same reason.

In response, the individual plaintiffs elected to dismiss their claims voluntarily and with prejudice, rather than test their luck with the Court of Appeals.

Government Contracts

Ranked nationally, once again, by *Chambers USA* in 2015, our Government Contracts & Disputes team provides clients advice and representation over the full spectrum of government contract matters at the federal and state levels.

Client:	Boston Properties
Industry:	Real Estate
Area of Law:	Government Contracts
Venues:	U.S. Court of Federal Claims
Result:	Lease awarded to rival bidder declared void



“Despite foreseeing a protest, GSA chose to execute the lease ... It would be inequitable to permit the government to ‘preserve its ill-gotten gain’ in such a manner.”

—Judge Charles F. Lettow, U.S. Court of Federal Claims

Reversal of Federal Contract Decision Offers Client Opportunity

In a ruling that overturned long-held precedents, the U.S. Court of Federal Claims in November 2015 held that the General Services Administration (GSA) violated bidding rules in awarding the lease for a new Transportation Security Administration (TSA) headquarters to a competitor of longtime Pillsbury client Boston Properties.

Judge Charles F. Lettow’s order set aside the GSA’s contracting decision and voided the lease to the bidder the agency had chosen over Boston Properties, a real estate investment trust (REIT) that is one of the largest owners, managers and developers of Class A office properties in the U.S.

On behalf of Boston Properties, Pillsbury challenged the awarding of the 15-year lease for the TSA’s new headquarters in the Washington, DC area. Attorneys from the firm’s Government Contracts & Disputes practice made the case that the GSA’s preferred bidder had exceeded the 625,000-square-foot maximum specified in the request for lease proposals and the Congressionally approved prospectus for the procurement, when it added some 24,000 square feet of supposedly “free” office space in an effort to conform to the TSA’s needs.

As the case proceeded, the Pillsbury team learned of an internal memorandum in which GSA officials acknowledged that the winning bid was nonconforming but declined to disqualify it nonetheless. The Pillsbury team argued that the “free” space offered by the winning bidder was not part of the Congressionally approved prospectus and that its inclusion therefore violated an important federal appropriations statute. This argument was essentially an issue of first impression at the court, as was Pillsbury’s request that the court invalidate the already-executed lease as a result of the violation.

A Stellar Win for NASA Info-Tech Service Provider

Abacus Technology Corporation, the information-technology service provider for NASA's Kennedy Space Center, faced a potentially crippling preliminary injunction request from its subcontractor and the subcontractor's parent entity. It turned to Pillsbury for help.

NASA had changed Abacus' contract, valued at close to \$900 million, from a cost-reimbursable contract to a higher-risk fixed-price contract. Abacus therefore needed better control over costs and decided against exercising options to continue subcontracting the work.

One subcontractor and its parent company sued, however, seeking a preliminary injunction to stop Abacus from terminating the subcontract and hiring the subcontractor's employees, together with \$50 million in damages. Plaintiffs claimed they'd been promised at least a 25 percent share of the work under the NASA contract in exchange for helping to win the original NASA contract bid in 2008. They further claimed that Abacus was interfering with the subcontractor's relationship with its employees in violation of a non-solicitation provision in the subcontract.

Had the injunction been granted, Abacus would have had to replace its highly skilled tech team within days of a scheduled launch, seriously impacting its ability to perform under its contract with NASA.

But investigation by Pillsbury revealed that the Abacus subcontractor was not actually performing under the subcontract, had no assets and did not employ the workers at issue. Instead, the subcontractor's parent was actually the one performing that work, in clear violation of the subcontract's anti-assignment provisions.

Pillsbury's efforts resulted in dismissal of the plaintiffs' claims, delivering a decisive victory for Abacus. The court denied plaintiffs' motion for a preliminary injunction, enabling Abacus to move forward with hiring the employees needed to fulfill its contract with NASA.

Client:	Abacus Technology Corporation
Industry:	Information & Communications Management
Areas of Law:	General Contract and Government Contracts Law
Venue:	Circuit Court for Fairfax County, Virginia
Result:	Obtained denial of all preliminary injunctive relief sought by plaintiffs



“ It does not get any better than this! ”

—Don Sherwin, General Counsel of Abacus

State and Local Tax

Our State & Local Tax team has litigated cases before administrative tribunals, and in state and federal trial and appellate courts throughout the United States, as well as in the U.S. Supreme Court.

Winning Big in Two California Tax Disputes

Client:	Two major multinational corporations
Industry:	Entertainment
Area of Law:	State & Local Tax
Venue:	California Franchise Tax Board
Result:	Saved clients \$80 million in taxes and interest

Saving Clients \$80 Million in Tax and Interest

Pillsbury's State & Local Tax (SALT) team represented two major multinational corporations in a long-running California corporate income tax dispute with the Franchise Tax Board (FTB) concerning tax years 1997 through 2004. The case involved complex Commerce Clause, unitary business, business/nonbusiness income, apportionment formula, interest expense and dividend issues. The SALT team built its case, presented a series of comprehensive submissions at the FTB protest level and convinced the hearing officer to rule in our clients' favor on virtually all of the major issues. The team achieved nearly \$80 million in savings in taxes and interest.

Client:	A high-net-worth couple
Area of Law:	State & Local Tax
Venue:	California State Board of Equalization (SBE), on appeal from Franchise Tax Board
Result:	Won unanimous SBE decision, resulting in an abatement of \$10 million in taxes and interest for our clients

Key Victory in Personal Income Tax Case

Representing a high-net-worth couple in a nearly six-year personal income tax battle before California's State Board of Equalization (SBE), Pillsbury's SALT team was successful in completely abating a proposed \$10 million assessment.

The case involved complex residency and source of income issues related to the husband's withdrawal from an investment firm partnership in California. Our clients, who moved from California upon the husband's retirement, had received payments for the liquidation of his interest in the partnership. They excluded those payments from their California income on the basis that they were nonresidents of California upon receipt, and the income was sourced to their new state of residence.

California's Franchise Tax Board claimed that the couple actually moved after the liquidation payments, and thus the payments were taxable by California. After convincing the SBE on the residency issue, Pillsbury successfully argued that the payments qualified as intangible payments and should be sourced to the new state of residency. The SBE unanimously agreed, resulting in an abatement of \$10 million in taxes and interest for our clients.

Public Interest

We proudly take on high-profile causes that draw the attention of policymakers, as well as cases for indigent clients who need legal assistance in our communities.

Victory for an Environmentalist Underdog

Pillsbury litigators achieved a victory for client Lyme Land Conservation Trust in a lawsuit against a landowner who flagrantly violated conservation restrictions granted by the predecessor owner of the property she purchased for \$4 million in 2007. In its decision, the Court required complete restoration of all 17 protected acres along the Connecticut River, and awarded the Land Trust \$650,000 in damages and attorneys' fees.

This case had long held the attention of the land trust community nationally. The issue: Can land trusts succeed against landowners who buy substantial parcels subject to easements and then ignore those easements? With so much land to police, assuring easement compliance and fighting easement violators can be prohibitively expensive.

The landowner here had destroyed protected areas, tearing out native shrubs, grasses and forest to create a parklike setting. She installed an irrigation system, created a beach and poisoned the natural habitat with pesticides. Attempting to bury the Land Trust in litigation, the landowner brought a defamation lawsuit against the trust after it filed suit over the easement violations. She also filed numerous objections and motions, and engaged in other legal maneuvers spanning more than six years.

Recognizing the importance of the case to the state's goal of conserving vital natural resources and the need to protect the public interest, the Connecticut Attorney General intervened. The state's conservation statute, which permits such intervention, also allows courts to grant up to five times the actual restoration costs.

Following a six-day trial, the court not only awarded 3.5 times the court-determined restoration costs plus attorneys' fees, it also retained jurisdiction to oversee the remediation. The court's decision thus enabled the trust to fulfill its responsibility to easement donors, preserving the property entrusted to it.

With few such cases litigated to conclusion, the case provides a strong warning to would-be conservation easement violators, setting an important precedent nationwide.

Client:	Lyme Land Conservation Trust
Industry:	Real Estate
Area of Law:	Environmental Litigation
Venue:	Superior Court of Connecticut, Judicial District of New London
Result:	Full restoration, damages and \$300,000 in attorneys' fees



“ ... What the Court finds is a deliberate violation of the existing restrictions. Because the violations are so extensive and so apparent, the Court's order is that the property will be restored to the situation that existed when the defendant took title to the property. ”

—Honorable Joseph Q. Koletsky, Superior Court of Connecticut, Judicial District of New London

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is a leading international law firm with offices around the world and a particular focus on the energy & natural resources, financial services, real estate & construction, and technology sectors. Recognized by *Financial Times* as one of the most innovative law firms, 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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