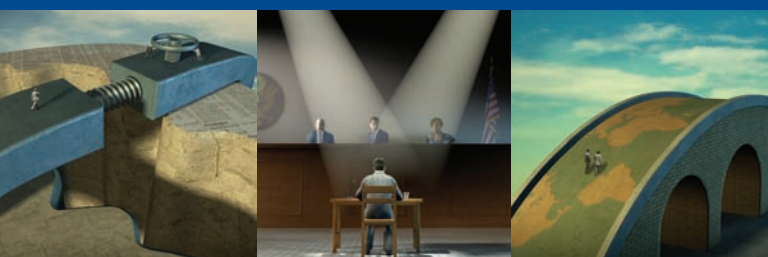




LITIGATION ACHIEVEMENTS

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PATTON BOGGS' LITIGATION PRACTICE

The litigation practice at Patton Boggs focuses on four core areas – government litigation and investigations, international litigation, complex financial disputes, and disputes relating to mass torts, product liability, and environmental issues.

Our experienced litigation team excels in the courtroom and works with members of the firm's other practice groups to combine litigation strategies with creative public policy and business strategies.

Our experience working with various government agencies and other branches of government enables us to seek an array of solutions to a client's government challenges. We handle white-collar criminal matters, challenges to administrative and regulatory decisions, fraud and false claim matters, and contract and commercial disputes involving the government. Our attorneys represent clients facing a broad range of government investigations and we have a long history of experience with congressional investigations.

For decades, Patton Boggs has represented international clients in domestic and foreign courts and in arbitration and other forms of alternative dispute resolution. Our practice includes representation of foreign governments, government-sponsored enterprises, and organizations in commercial disputes with U.S. and multinational corporations, as well as representation of U.S. corporations against foreign companies, sovereigns, and instrumentalities. We also handle disputes relating to international trade and are proficient at coordinating litigation strategies that require legal action in multiple jurisdictions.

Our experience with disputes arising from complex contract, financial, and other business transactions includes securities

litigation, loan recovery, lender priority and bankruptcy/restructuring matters, and regulatory oversight matters. We advise clients on business disputes, including matters involving civil and criminal fraud, professional negligence, international business, technology, and intellectual property, and regularly team with members of our business group in order to offer first-rate representation to investment-related entities.

Our attorneys have a wealth of experience in high-stakes U.S. and international mass tort matters, including toxic torts, as well as in environmental compliance, enforcement, and remediation, public lands and land use, and product safety and liability. We have coordinated national defense efforts for clients in numerous high-profile cases, including the World Trade Center disaster site litigation, Agent Orange litigation, and all-terrain vehicle (ATV) litigation. We also have extensive experience representing clients in disputes with the government and private litigants involving environmental laws and regulations. The firm represents a wide variety of companies in the energy development and production and resource extraction industries, litigating under all the principal federal and state environmental statutes and addressing issues arising under land use and operational restrictions.

The following booklet highlights many of the firm's noteworthy successes. To learn more about Patton Boggs' litigation capabilities and more about the firm in general, please visit www.pattonboggs.com/litigation. There you will find not only in-depth descriptions of the core areas of our litigation department, but also information on each of the firm's litigation professionals.

The information provided in this booklet about specific matters we have handled is intended only as a brief summary to acquaint you with the scope of our practice. Each of the results described in this booklet was dependent on the specific facts and circumstances of the case, which are not provided in detail here. Past results do not guarantee a similar outcome in other matters.

ABOUT PATTON BOGGS LLP

Based in Washington D.C., Patton Boggs is a national leader in public policy, litigation, and business law, and is well known for its deep bipartisan roots in the national political arena. The firm's core practice areas are Public Policy and Regulatory, Litigation, Business, and Intellectual Property.

With offices in Northern Virginia, New Jersey, New York, Dallas, Denver, Anchorage, and internationally in Doha, Qatar and Abu Dhabi, United Arab Emirates, our more than 600 lawyers and professionals provide comprehensive, practical, and cost-effective legal counsel to clients around the globe.

Patton Boggs is one of *American Lawyer's* "Top 100" U.S. law firms as well as a 2008 "Go-To Law Firm" for financial services companies in the area of litigation. In 2007 and 2008 *Chambers USA* singled out several of the firm's practice groups for recognition, including a #3 ranking for our general commercial litigation practice. The firm was also recognized by Vault, Inc. in a number of "Quality of Life" categories, including a #4 ranking for our Pro Bono practice. In 2007, Patton Boggs provided 35,465 hours, or 5.3% of all billable hours, to pro bono work helping low-income and disadvantaged individuals, families, and non-profit organizations in the communities where we live and work. This marked the third year in a row that the firm exceeded its goal of devoting 5% of all billable hours to pro bono work.

For more information, visit us at www.pattonboggs.com.

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GOVERNMENT INVESTIGATIONS AND LITIGATION

GOVERNMENT INVESTIGATIONS

Charges Not Sought, Separate Lawsuit Dismissed Against Key White House Official in High-Profile Case

Patton Boggs represented White House official Karl Rove in the grand jury proceedings relating to the disclosure of Valerie Plame's status as a CIA official. In the investigation into Mr. Rove's alleged involvement in the leak of the CIA official's identity, the firm continually brought new information to the attention of the special prosecutor and steered Rove through a virtually unprecedented five appearances before the grand jury. Upon concluding this portion of the investigation, the special prosecutor announced he would not seek charges against Mr. Rove.

An article in *The Wall Street Journal* observed, "even some who wanted to see Karl Rove indicted credit the skillful lawyering by Patton Boggs attorney Robert D. Luskin and his open-door strategy with the prosecution and the press alike with convincing the grand jury of his innocence."

Later, Patton Boggs won dismissal of the civil lawsuit brought by Valerie Plame and her husband, Ambassador Joseph Wilson, against Mr. Rove. The firm argued on behalf of all defense counsel at the hearing. The judge dismissed the case against all defendants, including Vice President Dick Cheney, former White House aide I. Lewis "Scooter" Libby, and former Deputy Secretary of State Richard Armitage, as well as Mr. Rove. The Court of Appeals for the D.C. Circuit subsequently affirmed the district court's dismissal of the lawsuit.

Patton Boggs lead counsel: Robert D. Luskin

Firm Persuades Government to Drop All Charges and Grant Client Full Immunity

In this criminal matter brought in the U.S. District Court for the Northern District of Illinois, Frank Cowles Jr., a prominent Northern Virginia businessman and one of the founders (and chairman of the board) of Commerce Bank, was charged in federal court in Chicago with participation in a \$25 million

fraud. The government sought a twelve-and-a-half year jail sentence. After extensive negotiation, the government was persuaded that Mr. Cowles was innocent, dropping all charges against him (while continuing to prosecute two others) and granting him full immunity from prosecution. It is extremely rare for the government to back away from a case it has already brought on the grounds that it simply made a charging mistake.

Patton Boggs lead counsel: Robert D. Luskin

Patton Boggs Defends Client in Alleged Accounting Fraud Action

Patton Boggs represented the former chief accounting officer of a public company who entered a guilty plea to obstruction charges related to the shredding of certain documents in connection with an accounting fraud investigation. Despite the government's claim that the client should be held responsible for \$130 million in losses, plus a pre-sentence report that recommended two-and-a-half years in prison, our client received a 10-day local jail sentence plus probation, which was an especially difficult outcome to obtain in today's environment.

Patton Boggs lead counsel: Robert D. Luskin

Patton Boggs Negotiates Highly Favorable Settlement, Resolving Securities Fraud Claims Arising From High-Profile Merger

The State of Alaska and various public retirement funds brought an action against AOL/Time Warner and other parties, alleging securities fraud arising out of the merger of the companies. The state, and several of its public retirement funds, initially claimed that, as a result of the alleged fraud, they lost \$72 million in the value of their stock with these companies. They later amended their claim to allege over \$150 million of damages, and later still, in a settlement conference, alleged damages in excess of \$200 million.

Patton Boggs was Time Warner's principal negotiator with the State in reaching a \$50 million settlement of the case, to the client's immense satisfaction.

Patton Boggs lead counsel: Douglas J. Serdahely

Contract Negotiated With Department of Justice on Behalf of Client Maximus, Inc.

Patton Boggs successfully negotiated a comprehensive settlement on behalf of client Maximus, Inc., a leading provider of government services. The agreement with federal authorities concerned an investigation of work on healthcare claims that Maximus had performed for the District of Columbia. Maximus agreed in a civil settlement to reimburse the federal government for \$30.5 million worth of Medicaid claims for which the Department of Justice alleged that Maximus provided insufficient documentation. Maximus also entered into a Corporate Integrity Agreement with the United States Department of Health and Human Services, and entered into a Deferred Prosecution Agreement with the United States Attorney's Office for the District of Columbia. Because no criminal charges were brought, the Company was able to retain the bulk of its government contracting work.

To make this settlement possible, the Patton Boggs team engaged in countless discussions with multiple government officials, enabling the client to negotiate acceptable terms. **Patton Boggs lead counsel: DeMaurice F. Smith, Laurence F. Freedman, and Laura F. Laemmle-Weidenfeld**

Firm Successfully Represents Executive from British Petroleum (BP) Exploration Alaska in Grand Jury Proceedings

Patton Boggs represented a high-level executive in a grand jury proceeding stemming from two oil pipeline leaks at Prudhoe Bay, Alaska. After the firm guided the client through a successful appearance before prosecutors from the Anchorage United States Attorney's Office and the Department of Justice Environmental Crimes section, the government reached a plea agreement with the company but declined to pursue charges against the firm's client. **Patton Boggs lead counsel: Robert D. Luskin**

GOVERNMENT CONTRACT & COMMERCIAL LITIGATION

Government Contract Secured For Firm Client

The firm successfully represented Hesco Inc. before the U.S. Court of Federal Claims, which upheld the government's award to Hesco of a contract with a potential value in excess of \$500 million.

Patton Boggs was able to support the government's award of this significant contract on a sole source basis by demonstrating that only Hesco offered the product – barriers used to protect U.S. forces fighting in Iraq and Afghanistan – that met the needs of the U.S. troops in the field. The court denied a temporary restraining order, two preliminary injunctions, and the underlying bid protest filed by our client's adversary, who offered a competing product.

Patton Boggs lead counsel: Douglas C. Proxmire

Firm Obtains Rare Preliminary Injunction for Government Contract Client in Bid Protest of \$150 Million Procurement

Patton Boggs filed a General Accountability Office bid protest on behalf of a firm client, challenging a \$150 million procurement by the Department of Defense (DoD). When the DoD refused to suspend contract performance, the firm filed suit in the U.S. Court of Federal Claims to enjoin the government (and the contract awardee) from performing the contract. Patton Boggs obtained a rare preliminary injunction from the Court of Federal Claims, and as a result, the DoD and the awardee were enjoined from performing the contract, the award of which Patton Boggs successfully protested on behalf of its client.

Patton Boggs lead counsel: Michael J. Schaengold

Client Prevails In Florida Bid Protest

Patton Boggs client TechRadium, Inc. won a bid from the Florida Department of Education to conduct a pilot program to use advanced technology to quickly notify parents and staff in emergencies. A losing bidder filed a protest on several grounds. TechRadium intervened in the case, and after expedited discovery, Patton Boggs tried the case before an administrative

law judge (ALJ). The ALJ subsequently ruled in favor of our client, enabling TechRadium to implement the pilot program during the subsequent school year.

Patton Boggs lead counsel: Richard J. Oparil

GOVERNMENT REGULATORY LITIGATION

Firm Secures Victory on Behalf of American Family Insurance

After 13 years of litigation, nine different complaints from plaintiffs, and four appearances before the U.S. Court of Appeals for the 8th Circuit, a Patton Boggs litigation team achieved a significant victory for American Family Mutual Insurance Company. Initially filed in 1995 as a comprehensive Fair Housing Act class action suit against 13 Missouri insurance companies, the case against American Family never made it past numerous motions to dismiss. The plaintiffs alleged that all home insurance companies serving Kansas City discriminated against minority-dominated neighborhoods

Since the suit was filed, ten defendants have either settled or obtained a dismissal, with just American Family and two other defendants fighting against the allegations into this year.

At the heart of the final chapter of the case was whether a somewhat obscure federal law, the McCarran-Ferguson Act, preserved the traditional priority of state insurance rules and precluded federal civil rights claims based on price discrimination. The Patton Boggs team successfully argued that the McCarran-Ferguson Act applies and that Missouri's insurance rate regulation law would be interfered with if the plaintiffs' claims proceeded. The Court of Appeals affirmed a district court's opinion dismissing the plaintiffs' claim, ending the 13-year saga with a victory for our client.

Patton Boggs lead counsel: John L. Oberdorfer

Ruling Attained in Complex Regulatory Battle for Firm Client

An administrative law judge for the Federal Energy

Regulatory Commission (FERC) ruled in favor of firm client, Public Utility District No. 1 of Snohomish County (Washington State). In this complex litigation, the judge found that the \$160 million being sought by Enron from Snohomish in the form of an electricity contract termination payment constituted unjust profits in violation of the Federal Power Act. In addition, the judge ordered Enron to disgorge \$1.6 billion in profits derived from West Coast electricity sales.

This decision was based on evidence of market manipulation and other legal violations presented by the Patton Boggs team during a five-week administrative hearing held at FERC. Among other things, the judge found that Enron had violated the law “by plotting and engaging in schemes to withhold power from the markets. Enron intentionally shut plants down for unplanned maintenance, which an Enron executive knew was the easiest way to withhold power thereby raising prices.” The judge concluded that, due to Enron’s “repeated and continued violations,” the entire amount of Enron’s profits from Western trading activity had to be disgorged as “unjust profits.”

Patton Boggs lead counsel: Deborah Swanstrom

Work for Pharmaceutical Company Establishes a Viable Defense to Future False Claims Act Cases

The firm’s client, a pharmaceutical company, was accused of violating the False Claims Act by allegedly selling misbranded pharmaceuticals to Medicaid beneficiaries. The company had certified that it was in compliance with all applicable laws. Patton Boggs persuaded the District Court to grant summary judgment on the grounds that the certification was not false because the Food, Drug, and Cosmetic Act was not a precondition for payment under Medicaid. The U.S. Court of Appeals for the 7th Circuit affirmed.

Importantly, this case followed an earlier 3rd Circuit decision in which the firm succeeded in arguing that a plaintiff must identify at least one misbranded pill sold to

Medicaid in order to prevail under the False Claims Act. In addition, in ruling that the Food, Drug, and Cosmetic Act is not a precondition for payment under Medicaid, the Court established a viable defense to future False Claims Act cases brought against drug and device companies for off-label sales.
Patton Boggs lead counsel: Harry R. Silver

Firm Protects Trade Secrets for Client

Patton Boggs protected the trade secrets of a group of smokeless tobacco companies by convincing the First Circuit to invalidate, on constitutional grounds, a Massachusetts law requiring public disclosure of product ingredients. The tobacco companies filed this case immediately after the law was enacted, alleging that it violated the Commerce, Takings, and Due Process clauses of the United States Constitution. The district court granted summary judgment in favor of the tobacco companies on all three grounds. After en banc review, the First Circuit affirmed, holding that the mandated disclosure was an unconstitutional taking of property without just compensation.

Patton Boggs lead counsel: John L. Oberdorfer

Regulatory Defense and Litigation Victory on Behalf of Salt Industry Leader

The firm's Health and Safety Practice Group successfully defended Morton International, Inc., the world's best-known salt producer and a long-time firm client, in a case filed by two employees of Morton's Weeks Island Mine in Louisiana.

The plaintiffs claimed to have suffered injuries in connection with the routine use of explosives at Weeks Island. Patton Boggs first defended the regulatory investigation and then defended the litigation, demonstrating that the client had followed proper procedures and best practices. The firm exercised its combined litigation and regulatory expertise to secure a win for the client in the U.S. District Court for Western District of Louisiana. Chief Judge Richard T. Haik, Sr. ruled in Morton's favor, and Patton Boggs was able to help Morton avoid potentially costly and unjustified litigation.

Patton Boggs lead counsel: S. Cass Weiland

Patton Boggs Wins Summary Judgment in False Claims Act/Medicaid Case

Thomas Quinn, a former employee of Patton Boggs client Pompton Nursing Home Suppliers, initiated a whistleblower action against Pompton under the False Claims Act. Quinn alleged that Pompton submitted false claims by failing to credit Medicaid fully for returned and re-dispensed medication and also that Pompton failed to handle returned pharmaceuticals in a manner consistent with state pharmacy regulations, resulting in the sale of adulterated medication to Medicaid. The district court in New Jersey granted Pompton's motion for summary judgment, which was affirmed by the Third Circuit.

Patton Boggs lead counsel: Harry R. Silver

POLITICAL AND ADMINISTRATIVE LITIGATION

Dismissal Obtained for Republican Governors Association in Enron-Related Contract Case

On behalf of the Republican Governors Association (RGA), Patton Boggs obtained dismissal of a complaint alleging a wide-ranging conspiracy, including former Connecticut Governor John Rowland, to force a Connecticut state agency into a contract with Enron. With Enron's bankruptcy, the Connecticut state agency lost roughly \$250 million, and a putative class of Connecticut towns sued former Governor Rowland, the RGA, numerous former Connecticut officials, and members of Governor Rowland's political circle to recover the loss to the state, which the towns alleged had been passed on to them.

After a three-day bench trial, the trial court accepted the firm's argument that the towns lacked standing to sue for the loss to the state, which had not pursued any legal action against the RGA. The plaintiffs dismissed their appeal to the Connecticut Supreme Court in 2008.

Patton Boggs lead counsel: Benjamin L. Ginsberg and Mitchell R. Berger

LITIGATION ARISING OUT OF COMPLEX FINANCIAL AND COMMERCIAL TRANSACTIONS

Client's Award of \$96.7 Million Judgment from Government for Breach of Contract Affirmed by Court of Appeals

In the Bluebonnet Savings Bank litigation, Patton Boggs obtained and collected a \$96.7 million judgment against the U.S. Government for breach of contract. The client was an investor who acquired a group of insolvent Texas savings & loan institutions from federal receivers as part of the government resolution of the 1980s thrift crisis. The federal government offered incentives for that investment, including the promise of economically-favorable regulation for the first ten years following the acquisition. Legislation enacted shortly after the investment withdrew those regulatory promises, and substantially increased our client's cost of financing the acquisition.

Based on evidence developed during a 25-day trial and six additional days of expert testimony following an appellate remand, the trial court awarded damages to compensate the firm's client for those increased acquisition costs. The government appealed, but the Court of Appeals affirmed because the damages award reflected the harm to the client that Patton Boggs had documented during the extensive evidentiary proceedings, and through its expert's financing models and critique of the opposing expert.

Patton Boggs lead counsel: Mitchell R. Berger

Major Arbitration Victory on Behalf of an Institutional Client

Patton Boggs secured a major arbitration victory in a contract dispute for an institutional client who planned new business activities to respond to changing market conditions. The other party, a major service provider, threatened to cease performing key obligations under the contract if the firm's client did so. The client demanded arbitration to resolve the dispute and requested a declaratory judgment that its new business activities would not breach the contract or justify the other party's ceasing performance of its key obligations. After a series of legal motions and counterclaims, the firm's

client won its affirmative claims and, at the same time, won dismissal of all the counterclaims except for one. Later, on day six of an eight-day evidentiary arbitration hearing, the opposing party moved for dismissal of its claim, thereby ending the case. The team's success has significance for this client of 26 years beyond assuring continued contract performance, because it protects the client's right to enforce its major service contract and concurrently respond to changes in its markets.

Patton Boggs lead counsel: John L. Oberdorfer

Firm Fends Off Suit to Enable Successful Merger

Patton Boggs represented Blair Corporation in relation to merger negotiations with Appleseed's Topco, Inc., and ultimately the parties agreed that Appleseed's would acquire Blair. A Blair shareholder filed suit to challenge the merger, and after the firm filed a motion to dismiss that case and a motion for protective order to prevent any discovery from taking place, the plaintiff announced a plan to amend the complaint in an effort to avoid dismissal. However, the plaintiff voluntarily dismissed his case, and the merger subsequently was approved by a vote of the stockholders.

Patton Boggs lead counsel: Charles E. Talisman

Jury Rules Technology Company Owes No Damages to Plaintiff Seeking \$140 Million

The jury in this state action found in favor of the defendant, firm client SulphCo, and against plaintiff EcoEnergy Solutions, Inc. (EES) on all of the counts before it, including claims for civil conspiracy and intentional interference with contract. EES had sought \$140 million based on allegations that the defendants unlawfully converted its sulfur removal technology.

Patton Boggs lead counsel: Benjamin G. Chew and T. Michael Guiffré

Litigation Team Wins Crucial Commercial Liability Decision

Patton Boggs won a ruling from the Third Circuit that holds significant implications for commercial liability insurance. The panel decision in favor of our client, Houbigant, held that commercial policies cover claims that allege trademark

infringement of brand names of commercial products and rejected the contention that “trademark infringement” coverage extends only to trademarked names of “works of art.” Rather than breach the vexing “What is art?” issue, the court agreed that the limitation was contrived. After winning in the Third Circuit, the case was remanded for a determination of the amount of the insurer’s liability. Rather than litigate that issue, the insurer chose to settle the case, resulting in a substantial recovery by Houbigant -- all without having to engage in any discovery practice.

Patton Boggs lead counsel: John W. Schryber

Patton Boggs Secures Dismissal of More than \$100 Million in Liability Claims

Patton Boggs successfully defended client CIT against lender liability claims exceeding \$100 million. The favorable trial court ruling was affirmed on appeal by the Fifth Circuit. The Fifth Circuit’s ruling also resulted in the dismissal, with prejudice, of companion litigation filed against CIT, other lenders, and their legal counsel in state court.

Patton Boggs lead counsel: Michael S. Forshey

Litigation Team Achieves Favorable Settlement in Complex Telecommunications Class Action Matter

Patton Boggs successfully resolved complex class-action litigation on behalf of firm clients IDT Corporation, IDT Telecom, and Union Telecard Alliance, LLC. In these consolidated, complex, consumer fraud class action cases, the plaintiffs alleged that the firm’s clients had distributed and/or sold prepaid and rechargeable calling cards without fully disclosing the applicable rates and charges, violated consumer protection laws, engaged in tortious conduct, and breached various contracts and/or warranties.

After more than two years of intense mediation and hard-fought settlement negotiations, the Patton Boggs team entered into a comprehensive class action settlement. There were many complex and novel legal issues involved, so the team faced several objectors to the Settlement. Despite these objections, after hearing oral arguments on the motion for final approval, the Court issued its decision from

the bench, granting the firm's motion for Final Approval of the Settlement.

Patton Boggs lead counsel: James E. Tyrrell and Scott L. Weber

Patton Boggs Successfully Represents Former UnitedHealth Group Inc. Executive in Connection with Shareholder Derivative Litigation

Patton Boggs represented a former executive of UnitedHealth Group in connection with consolidated federal shareholder litigation arising from the company's alleged back-dating of stock options. The firm represented the client in appearing before, and making submissions to, the company's Special Litigation Committee, which ultimately issued a report concluding and recommending that all claims against the client be dismissed with prejudice. The trial court certified to the Minnesota Supreme Court the question of whether it must defer to the Special Litigation Committee's decision under the business judgment rule. The Minnesota Supreme Court, answering the trial court's certified question, held that the court must defer to an independent Special Litigation Committee's decision under the business judgment rule.

Patton Boggs lead counsel: Robert D. Luskin

\$75 Million Liability Claim Dismissed

Patton Boggs won a ruling from the Appellate Court of Illinois, First Judicial District, that affirmed the dismissal of a suit seeking \$75 million in damages for the alleged breach of an executive employment agreement.

Patton Boggs lead counsel: Douglas Mishkin

Successful Defense Against Enforcement of International Arbitration Award

Patton Boggs successfully represented the Department of Civil Aviation of the Government of Dubai in a case against International Bechtel Company, Ltd. At issue was the confirmation of a \$25 million arbitration award in Bechtel's favor in respect of a major construction contract. The award was annulled by the Dubai courts for procedural errors, and the case was closely watched by the international arbitration community for its impact on the longstanding debate between those favoring truly stateless international arbitration and those favoring the retention of some modicum of local control.

The trial court granted the firm's motion to dismiss Bechtel's petition, finding that, in the absence of a governing treaty regime, the Federal Arbitration Act could not be invoked to confirm and enforce an arbitral award that had been annulled under contractually selected foreign law.

Patton Boggs lead counsel: Benjamin G. Chew

Funds and Real Property Recovered for Dominican Bank in Massive, Multi-District Litigation

Patton Boggs began work on behalf of Banco Dominicana del Progreso ("Banco"), the third-largest bank in the Dominican Republic, after its board and audit committees had become aware of some irregularities.

Assisted by the forensic accounting skills of PriceWaterhouseCoopers, the firm eventually discovered a conversion of funds by former executive management in excess of \$60 million, not including interest. Patton Boggs coordinated simultaneous aggressive litigation in Colorado, New York, Massachusetts, Florida, and the Dominican Republic.

The action in Florida was tried during 2008, and showcased \$22 million in transactions which, when trebled pursuant to Florida's Civil Theft, plus statutory interest, produced a final claim of \$80 million.

Patton Boggs lead counsel: Read K. McCaffrey

Firm Represents New York City in Consolidated Action Resulting from Events of September 11

Patton Boggs is lead counsel for the City of New York and 150 of its contractors in the defense of 11,000 separate lawsuits involving the clean-up of the World Trade Center site following the 9/11 terrorist attacks. The firm is also Court-appointed co-liasion counsel for 300 defendants in those cases.

The cases were consolidated before the Honorable Judge Alvin K. Hellerstein of the U.S. District Court for the Southern District of New York. The trial court recognized the continuing validity of state and federal laws providing immunity to the City and its contractors for their response to the 9/11 terrorist attacks, but noted that further factual development was necessary in order to determine the precise scope and extent of such immunities. The Court, in essence, held that it was too early in the case to decide to apply state and federal laws that provide immunity for the City and its contractors. The City and its contractors appealed this ruling to the United States Court of Appeals for the Second Circuit, which found that it did not have jurisdiction over that portion of the appeal seeking immunity under state law. As to the City's and its contractors' protection under federal law, the Second Circuit affirmed the district court's ruling that such federal immunity may apply, but could not be determined on the record before it. This landmark litigation is currently in the process of active discovery.

Patton Boggs lead counsel: James E. Tyrrell and Joseph E. Hopkins

Major EPA Rulemaking Overturned

Patton Boggs brought long-standing firm client Marathon Oil Company a victory in its challenge to the jurisdictional reach of the Environmental Protection Agency's (EPA) 2002 Spill Prevention Control and Countermeasure (SPCC) regulations under the Clean Water Act. The ruling in this case releases the client and other members of this industry from an excessive regulatory burden and will save Marathon millions of dollars that it would have been required to spend to comply with the SPCC rule.

Relying in large part on Marathon's filings, the U.S. District Court for the District of Columbia held that the EPA failed to offer a sufficient explanation for the definition of "navigable waters" in its 2002 SPCC rulemaking, rendering the definition arbitrary and capricious under the Administrative Procedure Act. The court vacated the EPA's definition and directed the EPA to return to a pre-existing definition of "navigable waters," limiting the reach of this regulatory scheme to waters properly within the federal statute's jurisdiction.

Patton Boggs lead counsel: John C. Martin and John L. Oberdorfer

\$164 Million Environmental Settlement Victory for City of San Bernardino

After litigating a major Superfund case on behalf of the City of San Bernardino against the United States Army, whose operations had contaminated over eight square miles of the city's drinking water aquifer, Patton Boggs obtained an approved Consent Decree settlement valued at \$164 million. Under the terms of the decree, the United States agreed to pay the City of San Bernardino \$69 million, while the city was also given title to large, complex remedial systems paid for by the Environmental Protection Agency (EPA). These systems protect the City's primary drinking water source, the Bunker Hill Basin Aquifer.

The settlement includes the U.S. Army, EPA, the State of California Department of Toxic Substance Control (DTSC), and the City of San Bernardino. The firm also represented the City's interests in subsequent matters relating to implementation of the complex settlement.

Patton Boggs lead counsel: Russell V. Randle

Firm Coordinates Investigation and Provides Multi-Faceted Defense After Catastrophic Industrial Accident

After an explosion leveled a refinery operated by an aluminum manufacturer, causing an estimated \$350 million in damage (and spawning over twenty thousand individual toxic tort claims), Patton Boggs coordinated the company's investigation, including retaining experts

in various fields, providing emergency response and crisis management counsel, and defending a six-month government investigation conducted by more than 20 regulatory and technical enforcement agents spurred by a striking union seeking criminal prosecutions.

Patton Boggs litigators coordinated a joint defense with local counsel for individual management personnel, preventing inappropriate but publicly threatened prosecutions, and assisted the joint defense/prosecution of state class actions and third-party causation claims. Our crisis management investigation identified and documented third-party causation claims, and resolved Department of Labor and Environmental Protection Agency enforcement actions without adverse impacts on the civil litigation. Ultimately, the plant was rebuilt, and the firm later provided counsel to successfully resolve construction and insurance coverage disputes through mediation.

Patton Boggs lead counsel: Henry Chajet and Mark N. Savit

Firm Settles Claim and Obtains U.S. Agreement to Share Future Costs for World War II Munitions Facility

A Patton Boggs litigation team succeeded in arranging a settlement for MAXXAM Group, Inc., a client that was required by the New Jersey Department of Environmental Protection to participate in the multi-million dollar cleanup of a former ammunition manufacturing facility in New Jersey that was used during World War II and the Korean War to manufacture ammunition for U.S. war efforts. The United States had provided the specifications for the products, stationed personnel at the site to review and monitor production, had exclusive access to several of the buildings at the site, supplied and owned the equipment and raw materials, and arranged for the disposal of rejected ammunition.

As part of the terms of the settlement, the U.S. agreed to pay over \$1.45 million for reimbursement of MAXXAM's past response costs, as well as to pay 55% of any future response costs.

This was particularly noteworthy because it showed U.S. concern over potential liability for former WWII facilities where it owned, operated, or arranged for disposal of hazardous waste.

Patton Boggs lead counsel: John McGahren

Maryland Court Grants Summary Judgment in Favor of Firm Client

In a policyholder coverage action seeking a declaration that the insurance company breached its duty to provide a defense to a Potentially Responsible Party (PRP) letter from the Environmental Protection Agency (EPA), the United States District Court for the District of Maryland granted summary judgment in favor of the policyholder represented by Patton Boggs, Industrial Enterprises, Inc. The judgment declared that Penn America Insurance Company must pay all reasonable defense costs incurred from the date of the letter identifying the policyholder as a Potentially Responsible Party for environmental clean-up costs at a site listed on the National Priorities List.

Penn America had rejected the policyholder's tender of defense on the basis of the policy's "sudden and accidental" pollution exclusion. The Court held that because the EPA letter did not rule out the possibility that the pollution at issue arose suddenly and accidentally, the insurer's "duty to defend" a "suit" was triggered by the PRP letter, which the Court deemed to be the equivalent of a "suit" for coverage purposes.

Like most states, Maryland law requires insurers to pay for a defense whenever there is a remote chance that the underlying suit could ripen into a covered judgment. As the average remediation costs for sites listed on the NPL are \$30 million or more, the defense of a PRP designation is critical to the survival of a small company like Industrial, which owns property on the periphery of the EPA's proposed site, but which the EPA may seek to hold liable for the entire clean-up.

Patton Boggs lead counsel: John W. Schryber and Russell V. Randle

ENERGY AND NATURAL RESOURCES OIL AND GAS

Patton Boggs Blocks Effort to Derail Seismic Exploration in the Alaska Outer Continental Shelf

A Patton Boggs team achieved a major victory for client Shell Oil in a lawsuit brought by over a dozen environmental and Alaska Native groups seeking to stop all seismic exploration activities in the Alaska Outer Continental Shelf. At issue was whether the National Marine Fisheries Service (NMFS) and the Minerals Management Service (MMS) complied with the National Environmental Policy Act (NEPA) and Marine Mammals Protection Act (MMPA) when the Agencies issued permits necessary for Shell to conduct its open-water seismic exploration program in the Beaufort and Chukchi Seas. The case was closely watched nationally and internationally, as it had significant ramifications for the oil and gas industry in Alaska, as well as for Shell.

The lawsuit was originally filed in the Federal District Court for the District of Alaska, and the plaintiffs immediately moved for a preliminary injunction to halt all seismic exploration activities pending a decision on the merits. After expedited briefing, the District Court Judge denied the plaintiffs' motion for a preliminary injunction, rejecting their appeal on merit and dismissing their complaint. The plaintiffs appealed to the Ninth Circuit the next day and filed an emergency motion for an injunction pending appeal. Working closely with Shell's in-house counsel, a team of Patton Boggs attorneys worked around the clock to write and file an appellate brief in two days.

In a decision rendered within a week, the Ninth Circuit denied the plaintiffs' emergency motion for a stay pending appeal, effectively resolving the matter, because Shell's seismic exploration will be completed before the case is briefed and decided.

Patton Boggs lead counsel: Kyle W. Parker and Mary Beth Bosco

Firm Protects Client's Leasehold Interests

Patton Boggs represented then-Phillips Alaska, Inc. in a matter in which Chevron USA, Inc. claimed a right to notice and an opportunity to participate in leasehold interests, valued at over

\$100 million, acquired by Phillips when it purchased all of the shares of ARCO Alaska, Inc. U.S. District Judge Sedwick granted Phillips' motion for summary judgment, and denied Chevron's cross-motion. Final judgment was entered in favor of our client. Judge Sedwick's rulings and the judgment were affirmed on appeal to the ninth Circuit.

Patton Boggs lead counsel: Douglas J. Serdahely and Kyle W. Parker

Ninth Circuit Victory on Behalf of Coalbed Natural Gas Industry

Patton Boggs won a significant victory for coalbed natural gas producers before the United States Court of Appeals for the Ninth Circuit. Under the Ninth Circuit's ruling, coalbed methane development could proceed in phases on federal lands in the Montana portion of the Powder River Basin while the Bureau of Land Management (BLM) continued with preparations of a Supplemental Environmental Impact Statement (EIS) under the National Environmental Policy Act. For two-and-a-half years, development on federal leases in Montana had been barred by a Ninth Circuit injunction pending appeal.

Appeals brought by opponents of development had challenged the scope of an earlier injunction issued by the Montana District Court in response to its finding that BLM should conduct the Supplemental EIS. The District Court had issued an injunction narrowly tailored to address the flaw that the District Court had identified in the EIS prepared by BLM. Opponents argued that the District Court should have issued a blanket injunction barring any and all development, instead of an injunction aimed at addressing the alleged shortcomings in the EIS. The Ninth Circuit rejected those arguments, affirming the District Court's focused injunction, and permitting development to proceed in accordance with the terms of that injunction.

Patton Boggs lead counsel: John C. Martin and Susan M. Mathiascheck

Dismissal of \$1 Billion Dollar Private Antitrust Action

The Federal District Court in Alaska dismissed a \$1 billion private antitrust action brought by a competing gas pipeline sponsor against Patton Boggs client ExxonMobil (and BP).

The firm worked alongside other major law firms across the country defending ExxonMobil in this matter. Patton Boggs' "preemption" argument formed a central basis for the court's dismissal order.

Patton Boggs lead counsel: Douglas J. Serdahely

Success in Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

In these cases, scores of municipal and state water authorities throughout the country brought state court actions against major petroleum companies, alleging that the ingredient Methyl Tertiary Butyl Ether ("MTBE") contained in gasoline has contaminated the nation's water resources. Two defendants, ChevronTexaco and Shell Oil, hired Patton Boggs to advise as to whether the prior bankruptcy and reorganization of Texaco, Inc. could form the basis of federal jurisdiction. Based on our advice and arguments, all MTBE cases against all defendants were removed to federal court and then consolidated as multi-district litigation in the Southern District of New York.

Patton Boggs lead counsel: Robert W. Jones

Litigation Team Secures Dismissal of Age Discrimination Claims

A Patton Boggs employment litigation team successfully refuted age discrimination claims arising from a complex set of company actions. The firm's client, a publicly-traded retailer, had many employees who were being paid more than the maximum rate for their position, even as other current employees were being paid less. In a very competitive business environment, the client could not justify continuing to pay these employees more than the market rate and more than their co-workers in similar jobs. To level the playing field, the client put a freeze on pay raises to allow those who were being underpaid to catch up. When that failed to solve the problem, the client reduced the pay of those who were being overpaid. Coincidentally, almost all of the employees being overpaid were 40 years old or older. In response, 137 employees filed claims of age discrimination, citing federal and Pennsylvania anti-discrimination laws.

A Patton Boggs litigation team successfully demonstrated that age was not a factor in deciding which employees would have their pay reduced, and obtained a determination that there was no evidence of discrimination.

Patton Boggs lead counsel: Sally D. Garr

Favorable Outcome Achieved for Mortgage Company in Class Action Litigation

A national mortgage company was facing a nationwide class action claim in U.S. District Court for the Southern District of New York. Brought under the Fair Labor Standards Act and New York Labor Laws, the claim alleged that loan officers were owed overtime pay for any additional time worked over forty hours during a standard work week.

The Patton Boggs team succeeded in preventing the class from being certified until it had managed to negotiate a favorable settlement.

Patton Boggs lead counsel: Sally D. Garr

Complete Victory on Appeal in Patent Case

In a patent case, LG Electronics suffered a major loss in U.S. District Court when all of its patent-related claims were dismissed or denied. Following the loss, LG Electronics hired Patton Boggs. The firm was able to convince the Federal Circuit to reverse or vacate the District Court's opinions on all 8 issues (covering 5 patents) that it appealed and was able to obtain an affirmance on the few issues that LG Electronics won before the District Court.

The issues that the firm prevailed upon before the Federal Circuit included implied license, patent exhaustion, whether a contractual non-assertion provision applied to LG Electronics, whether certain language constituted a means-plus-function limitation, the doctrine of equivalents, and various claim construction issues. The case was a significant victory for LG Electronics.

Patton Boggs lead counsel: Michael J. Schaengold

Litigation Team Successfully Protects Hesco Bastion Ltd's Intellectual Property

Patton Boggs effectively prosecuted a patent and trademark action on behalf of Hesco Bastion Ltd. -- the manufacturer of patented Concertainer® units used in military force protection, flood protection, and erosion control -- leading to a favorable consent order and judgment. The firm's efforts resolved a case that Hesco had brought against Akar Logistics LLC, a company in Owings Mills, Maryland. Hesco sued Akar in U.S. District Court for the District of Maryland, alleging that Akar infringed two of Hesco's patents and three of its trademarks and was improperly using its name on Akar's website.

As part of the consent order, Akar was enjoined from infringing any of Hesco's patents and trademarks. Akar agreed to remove any reference to "Hesco" and "Hesco Bastion" from its advertising, marketing materials, and website, and paid Hesco's attorneys' fees.

**Patton Boggs lead counsel: Richard J. Oparil,
Scott A. Chambers, and Kevin M. Bell**

Firm Advocates for Resort Guests Subjected to Discriminatory Policies

Patton Boggs, working with the NAACP, filed a lawsuit against the owners of the Yachtsman Resort Hotel in Myrtle Beach, South Carolina. The plaintiffs were African-American guests of the resort during "Black Bike Week" and were subjected to various restrictions that were in place at the hotel during one weekend of the year when a large number of African Americans were expected to stay at the hotel. Guests for that weekend were required to sign a 34-point "guest contract," visiting hours were restricted, and advance deposit policies were made more burdensome than at any other time of the year.

After the suit was filed, Patton Boggs negotiated a settlement which provided a fund for all the guests who stayed at the hotel during Black Bike Week over a three-year period, and the hotel also agreed to eliminate the special practices in place for that weekend. Patton Boggs received a Washington Lawyer's Committee Outstanding Accomplishment Award for Pro Bono Work for this effort.

Patton Boggs lead counsel: Charles E. Talisman

District Ordinance Declared Invalid

Patton Boggs won an appeal on behalf of the Native American Rights Fund (NARF) in a case against the City of Boulder contesting the validity of a city ordinance designating a historic district that included certain properties owned by the NARF. The petition raised federal and state due process, equal protection, and zoning law violations. The Colorado Court of Appeals reversed a lower court ruling, and declared the district ordinance invalid, agreeing with the arguments by Patton Boggs. This litigation closed favorably when the Colorado Supreme Court denied Boulder's petition for writ of certiorari.

Patton Boggs lead counsel: Carolyn L. McIntosh

Unpaid Funds Recovered for Firm Client

Patton Boggs represented the Republic of Rwanda in its effort to recover funds paid for work that was never performed on behalf of a falling genocidal regime that committed atrocities in Rwanda in 1994. The D.C. Circuit Court affirmed the monetary judgment obtained for our client and remanded the case to the district court to recalculate prejudgment interest.

Patton Boggs lead counsel: David J. Farber

Patton Boggs Comes to Aid of Abused Mother and Child

The Firm's client, the mother of a seven-year-old American-born child, fled Argentina to avoid the physical, verbal, and sexual abuse imposed on her and her child by the child's father, who in turn filed a petition seeking return of the child to Argentina, where he intended to pursue custody.

After an order compelling the return of the child to Argentina was issued, Patton Boggs took over the case on a pro bono basis and obtained an emergency stay of the District Court's order from the Court of Appeals for the Third Circuit just days before the child was set to return to Argentina. Patton Boggs briefed the appeal, and also coordinated the submission of amicus curiae briefs to the Court by the New Jersey Office of the Child Advocate, New Jersey Department of Children and Families, and a consortium of anti-domestic violence organizations.

Patton Boggs argued the case before the Third Circuit. The Court of Appeals immediately ruled from the bench that the District Court's order was in error because the child faced a serious risk of grave physical and psychological harm if returned to Argentina. Accordingly, the Third Circuit reversed and remanded the case to the District Court with instructions to dismiss the father's petition.

Patton Boggs lead counsel: Eric S. Westenberger

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