

Litigation

At Kaplan Kirsch & Rockwell, litigation is an integral part of our practice that serves as an important strategic tool for clients to achieve their objectives. We routinely appear in federal and state appellate and trial courts as well as administrative forums, across the country, frequently litigating high-profile issues of first impression. We pride ourselves on principled, zealous, and creative advocacy on behalf of our clients and are equally proud of the diverse range of cases we have won in every area of our practice. Our attorneys are adept at framing complex and contentious cases in the way that maximize the chances of success. Our strategic approach to litigation is designed not just to win cases, but to win on grounds that allow our clients to achieve their long-term goals beyond the courtroom in legislative bodies, administrative agencies, and boardrooms.

Representative Cases

- **Interwest Energy Alliance, Colorado Renewable Energy Standard:** We represented Interwest Energy Alliance in federal court litigation filed by a special interest group opposed to renewable energy that sought to strike down Colorado’s leading Renewable Energy Standard as being inconsistent with the Dormant Commerce Clause. Working with the State of Colorado and other intervenors supporting the state standard, we were able to secure a summary judgment in favor of the Renewable Energy Standard on all counts from the District of Colorado. On appeal, we argued and briefed the case with the State of Colorado before the Tenth Circuit. In July 2015, the Tenth Circuit upheld the District Court’s decision and conformed that the Renewable Energy Standard is consistent with the Commerce Clause. The Tenth Circuit’s decision is the first federal appellate holding regarding whether the Commerce Clause affects renewable electricity standards and serves as a critical precedent for other states.
- **City of Golden, Lookout Mountain Towers:** Our client, the City of Golden, Colorado, was concerned about the effects that a proposed HDTV telecommunications tower proposed to be located above the City would have on City emergency communications and local residents. We represented the City in judicial challenges to county special use permits issued for the tower. We were able to secure three separate injunctions and remands to the Board of County Commissioners, having demonstrated substantive and procedural errors in the permitting process. *City of Golden v. Jefferson County*, Case No. 03CV3045 (Colo. Dist. Ct. 2004). The proponent of the tower ultimately had to secure special legislation in Congress to overcome the challenges brought by our client.
- **Naples, Florida, Noisy Aircraft Restrictions:** Our client, the Naples Airport Authority, responded to community concerns about airport noise by banning the noisiest aircraft at the airport, comprising less than 1 percent of all flights, following procedures under the Airport Noise and Capacity Act. The Federal Aviation Administration (FAA) determined, however, that the measure violated the Airport’s federal grant obligations. After several years of administrative litigation with FAA, including a contested evidentiary hearing under 14 C.F.R. Part 16, we succeeded in overturning FAA’s decision in the federal Court of Appeals for the District of Columbia, allowing the client to provide noise relief to its neighbors. *In the Matter of Compliance with Federal Obligations by the Naples Airport Authority*, FAA Docket No. 16-01-15 (Final Agency Decision, Aug. 25, 2003), *reversed*, *City of Naples Airport Auth. v. FAA*, 409 F.3d 431 (D.C. Cir. 2005). In parallel litigation, we also obtained summary judgment in federal district court dismissing a range of constitutional challenges to the measure by aviation interest groups. *Nat’l Bus. Aviation Ass’n v. City of Naples Airport Auth.*, 162 F. Supp. 2d 1343 (M.D. Fla. 2001). Subsequently, we defeated collateral attacks by an FBO whose business interests were affected by the noisy aircraft ban in Part 16 proceedings before FAA and in several state court and bankruptcy court proceedings. *Jet 1 Center v. Naples Airport Authority*, FAA Docket No. 16-04-03 (Final Agency Decision, 2005); *Continental Aviation Services, Inc. v. City of Naples Airport Auth.*, 29 Fla. L. Weekly D1236 (Fla. Dist. Ct. App. 2004); *City of Naples Airport Auth. v. Jet 1 Center Inc.*, Case No. 02-5010-CA-HDH (Fla. Cir. Ct. 2003).



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- Philadelphia, Pennsylvania, Capacity Enhancement Program: In order to address growing capacity constraints at Philadelphia International Airport, our client, the City of Philadelphia, sought and obtained FAA approval of a major capacity enhancement project, which requires the acquisition of property in neighboring jurisdictions to build two new runways, extend existing runways, make substantial terminal improvements, relocate two major cargo facilities, and numerous other improvements. When that approval was challenged by neighboring jurisdictions, we represented the City of Philadelphia as the intervenor defending FAA's decision. The Third Circuit affirmed FAA's approval, rejecting challenges under NEPA, the Clean Air Act, and the Airport and Airways Improvement Act. *Tinicum Tp., Pa. v. U.S. Dep't. of Transp.*, 685 F. 3d 288 (3d Cir. 2012). Subsequently, we represented the City of Philadelphia in negotiations with neighboring jurisdictions to reach a permanent resolution of tax, land acquisition, land use, and environmental issues. We also have advised the City of Philadelphia on how to structure the agreement to comply with federal grant obligations regarding revenue use, land acquisition, and leasing, enabling the City to consummate a historic agreement with its neighbors and allowing the Capacity Enhancement Project to proceed.
- Colorado School of Mines Research Institute, Environmental Cost Recovery and Remediation: Our client, the Colorado School of Mines Research Institute, owns a parcel of contaminated property that it plans to clean up and sell. We serve as its general counsel for environmental issues. In that capacity, we have brought or defended multiple legal actions in federal court and before state and federal administrative agencies. We have successfully handled actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Clean Water Act, the Colorado Radioactive Materials Licensing Act, and state common law. Our resolution of these environmental matters has moved the client to a position where it can market the property as planned.

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