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Husch Blackwell Prevails for Enbridge Energy in Land-Use Permitting Dispute

Husch Blackwell secured a high-profile victory before the Wisconsin Supreme Court for Enbridge Energy Co. in connection with a dispute over the grant of a conditional use permit (CUP) made by Dane County, Wisconsin allowing for the upgrade of Enbridge's pipeline facilities.

In 2015 Dane County granted the CUP to Enbridge, but added multiple conditions requiring Enbridge to obtain additional insurance beyond the significant insurance it already carried. While Enbridge was pursuing an administrative appeal, the Wisconsin Legislature passed statutes prohibiting counties from requiring pipeline operators to obtain additional insurance if they meet certain minimum standards. These statutes rendered the conditions in Enbridge's permit unlawful.

After Dane County refused to remove the unlawful conditions, Enbridge sued, and the case eventually made its way to the Wisconsin Supreme Court. On June 27, the Court ruled that Dane County exceeded the proper scope of its land-use authority.

The Court agreed that the relevant insurance statutes prohibited Dane County from imposing the insurance conditions in Enbridge's permit. Because Enbridge had presented uncontested evidence during the permitting process that it carries sufficient insurance to satisfy the statutes' minimum standards, Dane County could not require Enbridge to obtain additional insurance.

Additionally, as a remedy, the Court struck the unlawful conditions but otherwise left Enbridge's permit intact. Unlike other cases in which permit applicants had challenged permit denials, Enbridge challenged only part of a

granted permit. Dane County, along with intervening landowners, argued that the Court should remand to the County, giving it another chance to impose other, lawful conditions. But the Court disagreed, holding that it (and lower courts) has the authority to modify permits and to strike unlawful conditions in a granted permit, depending on the circumstances of the case.

This second holding has far-reaching potential for Wisconsin land-use law. It makes it clear that a permit holder can challenge unlawful portions of a granted permit without putting the entire permit in jeopardy.

The Husch Blackwell team was led by Eric McLeod and included Joseph Diedrich and Joslyn Benrud.