

# Energy

## Overview

Our energy clients rely on us to provide a considerable depth and breadth of services. From the most routine to the most complex transactions, projects, controversies and regulatory issues, our clients trust us to provide timely and practical legal representation that adds value. Our attorneys understand the energy business, not just energy law. We approach each matter in the context of its materiality to our client, we deploy the appropriate legal resources to protect our clients' interests and achieve its business objectives practically and efficiently and we never lose sight of the bottom line.

We represent clients in diverse segments of the energy industry, including:

### EXPLORATION & PRODUCTION

Munsch Hardt attorneys have significant experience in all aspects of hydrocarbon exploration and production. Our transactional attorneys have negotiated and drafted geoscientific data licenses, mineral leases, surface use agreements, farm-in and farm-out agreements, joint operating agreements, joint exploration and development agreements, onshore and offshore drilling contracts, master service agreements and contracts for the engineering, procurement and/or construction of production facilities, pipelines and processing plants. We have helped clients acquire or divest mineral interests, leases, wells and gathering systems through purchase-and-sale transactions and mergers. We also have helped clients raise the funds they need to develop their assets or maintain their operations during lean times through asset sales, debt restructuring, finance transactions and equity offerings. We provide counsel on compliance with federal and state regulations pertaining to fair competition, public integrity, immigration, employment, well spacing and permitting, environmental quality, land use and workplace safety.

Our Energy Litigation attorneys have helped clients resolve class action royalty lawsuits, lease termination disputes, title disputes, subsurface trespass claims, surface owner conflicts, acreage dedication disputes, joint accounting conflicts, condemnation proceedings, engineering and construction claims arising from defects and from cost overruns, natural gas measurement and allocation controversies, disputes arising from deliveries of contaminated or off-spec product, conflicts pertaining to joint operations, insurance coverage and indemnity claims and serious personal injury claims arising from toxic exposures, blowouts and accidents occurring at well sites, processing plants and refineries. We thoroughly believe that the courthouse doors should never be closed to our clients because of excessive litigation costs; therefore, we work to find flexible fee arrangements that assure our interests remain aligned and the cost of litigation does not outweigh the value of the dispute. Using available procedural rules and discovery techniques, we effectively posture cases for early settlement on the most favorable terms when a reasonable settlement is possible and consistent with the client's business objectives; however, we are seasoned courtroom veterans who know how to get results in arbitrations, bench trials, jury trials and appeals when settlement is not the client's objective or when reasonable terms cannot be reached.

### GATHERING & PROCESSING

Munsch Hardt attorneys have considerable experience in advising our clients with respect to the gathering, compressing, dehydrating, treating, conditioning, processing and marketing of natural gas and crude oil. With the wide variance in composition of natural gas, depending on the field, the formation and the reservoir from which it is produced, a myriad of different issues can arise in this sector of the energy industry.

Our attorneys advise clients in both transactional matters related to the gathering and processing of natural gas and crude oil, including the acquisition and sale of gas gathering systems; gas fractionation; processing and treatment plants and storage facilities; take or pay contracts; processing master service agreements and similar contractual matters; as well as contracts for the engineering, procurement and/or construction of gathering and processing facilities.

Our Energy Litigation attorneys have helped clients resolve disputes with Engineering Procurement and Construction (EPC) contractors related to the construction and placement into service of all types of gas gathering and processing facilities, between power plant operators and processing companies related to gas quality and content, related to the measurement and analysis of natural gas and crude oil and the resulting under/over payment of proceeds and pipeline damage issues. We also have assisted our clients with respect to construction defects, antitrust and unfair competition issues, insurance disputes, employment litigation, OSHA investigations, regulatory enforcement actions and debt collection and insolvency matters and proceedings.

## OILFIELD SERVICES

Munsch Hardt regularly represents participants in the oilfield services industry. Whether the goal is expansion through an acquisition, promotion of a new technology, managing a specialized workforce or navigating the complexities that arise from regulatory investigations and lawsuits, we help our oilfield services clients and their investors achieve their business objectives effectively and efficiently. We deliver a broad variety of transactional, regulatory and dispute resolution services to companies providing the capital, infrastructure, equipment, intellectual property, skilled personnel and services needed by the oil and gas exploration and production industry. Our clients range from small start-up enterprises to large regional providers serving local or regional markets. The Firm also represents financial institutions, a variety of private funds and other capital providers investing in oilfield services companies.

## REFINING & MARKETING

Munsch Hardt attorneys works closely with oil and gas refiners, petrochemical companies, investors and lenders to downstream participants around the world. From environmental and regulatory concerns to a full spectrum of transactional and corporate advice, our attorneys have a detailed understanding of the market conditions that affect the refining and sale of refined oil and gas products.

Our attorneys have significant experience in mergers, acquisitions, joint ventures, financings and investments in the refining and petrochemicals sector. We also advise downstream clients with respect to controversies arising from their operations and interactions with counterparties to their operations.

## RENEWABLE & ALTERNATIVE ENERGY

Munsch Hardt's Energy practice group leverages its considerable experience in renewable energy – geothermal, nuclear, solar and wind – to provide clients with valuable market knowledge and experience. The Firm represents clients engaged in innovative and challenging alternative energy matters involving solar, wind, energy storage, fuel cells, geothermal, smart grid applications, biofuels, biomass, waste-to-energy and other state-of-the-art technologies. We offer a full spectrum of legal advice and services to our renewable energy clients, including:

- Acquisitions and financings
- Project development
- Project financing
- Regulatory issues advice and counseling
- Tax equity transactions
- Technology licensing
- Environmental permits, wildlife impact and land use advice

- Purchase and sale of environmental attributes, including renewable energy credits

## TRANSPORTATION, STORAGE & TERMINALLING

Munsch Hardt attorneys have considerable experience in construction and related contracts, environmental regulation, joint venture development, master limited partnerships (MLP), mergers and acquisitions, public and private placements of debt and equity securities, private equity investments, operating and maintenance agreements, project development, project finance, and taxation matters related to the transportation, storage and terminalling of oil and gas hydrocarbons and by-products, including chemicals and natural gas liquids (NGL).

Our controversy attorneys have been involved in disputes related to gas gathering systems (including compressors); gas fractionation, processing and treatment plants; NGL, condensate and crude oil gathering and transportation (rail, truck and pipeline) facilities; condensate splitters, NGL, condensate and crude oil terminals and docks; storage facilities; and liquefied natural gas (LNG) export and import terminals.

We also have assisted our clients in employment matters (including immigration issues), OSHA investigations, maritime personal injury matters, environmental litigation and insurance litigation. Clients range from private companies owning pipeline gathering systems, storage facilities and/or truck and rail transportation assets, to large public companies and MLP providing the full spectrum of transportation, storage and terminalling facilities and services.

Our clients include private individuals, private equity funds, joint ventures, master limited partnerships, closely-held entities and publicly-traded entities based in the U.S. and abroad. For smaller clients, we often substitute for an in-house legal department, providing legal representation in every aspect of the clients' operations. For larger clients that typically handle operational matters in-house, including several Fortune 500 companies, we handle more complex mergers and acquisitions, financing and debt restructuring transactions, immigration and employment issues, regulatory compliance and enforcement matters, arbitration and litigation.

Clients quickly discover we speak their language and team well with their internal staff. Our attorneys have dedicated their careers to serving the energy industry, with several of our senior shareholders having served in-house for many years with major energy companies. We understand geoscientists, engineers, land men, IT professionals, risk managers, EHS professionals, accountants, traders and asset managers, because we've worked with them on a daily basis, side-by-side. Our clients benefit from lean, tailored teams led by senior attorneys with deep experience managing every phase of a particular matter, which ensures that initial scoping, strategy development and implementation is seamless and cost-effective. Our controversy attorneys use their substantial experience to thoroughly assess the case on the front end, establish realistic plans and budgets and execute those plans efficiently and effectively.

In order to provide this broad range of experience, the Energy industry team draws upon the experience of the Firm's attorneys, across all of our offices, in the following practice groups:

- Admiralty & Maritime
- Finance
- Corporate & Securities
- Immigration
- Labor & Employment
- Real Estate
- Bankruptcy, Restructuring & Insolvency
- Construction
- Environmental
- Information Technology
- Litigation
- Tax

## Experience

### Energy Fund Formation

Represented a private investor in the formation and offering of securities in a \$20 MM drilling fund formed to acquire prospects and drill for oil in the Barnett Shale. The engagement involved the preparation of all company documents (both general partner and limited partnership), the private placement memorandum, subscription documents and the placement agent agreement with an independent investment bank based in New York. Additional documentation included all acquisition documents for the oil and gas leases.

### Energy Litigation

A suit by a power plant claiming more than \$7 MM in damages alleging that gas delivered to the plant did not meet gas quality specifications. We prevailed summary judgment and obtained a take nothing judgment for client based on the contractual bar against consequential damages and other issues. The case was affirmed by the court of appeals, but was reversed in part and remanded by the Texas Supreme Court. On remand the force majeure issues were affirmed for our client, but the court of appeals held that the power plant could proceed with claims for replacement power. On a further appeal to the Texas Supreme Court the latter finding was reversed and the case was remanded a second time. On the second remand to the court of appeals the trial court judgment in favor of our client was affirmed.

### Merger and Acquisition

Represented the general partner of a publically-traded, limited partnership involved in the storage of hydrocarbons and related chemicals to an oilfield services company, in the sale of all membership interest of the general partner and the contribution of additional assets by the oilfield services company to the limited partnership in exchange for newly-issued common units of the limited partnership.

### Energy Litigation

*Betsy Mecom v. Kerr-McGee Oil & Gas Onshore, L.P.* (Anadarko Petroleum Corporation) (49th District Court of Zapata County, Texas). Representing the operator on a claim for underpayment of royalties on the Mecom Ranch. The claim involves lease interpretation issues and interpretation of a Compression Agreement executed in 1985 related to the sale of royalty gas taken in-kind. Plaintiffs claim a gas marketing provision found later in the lease modifies the market value royalty provision. There are at least three Texas Supreme Court cases on point in opposition to their argument, but the trial court in Zapata County granted summary judgment in Plaintiff's favor on the legal issue. The case was tried to verdict but the jury rejected Plaintiff's \$11.8 MM damage model and only awarded \$2.3 MM in damages. On appeal, the case was reversed and rendered in favor of Kerr-McGee with plaintiffs taking nothing.

## Contaminated Gas

Represented a major gas marketing company in a suit by a power plant claiming over \$7 MM in damages alleging that gas delivered to the plant did not meet gas quality specifications. We obtained summary judgment for our client based on the contractual bar against consequential damages and other issues. After five appellate opinions, including two by the Texas Supreme Court, the trial court judgment in favor of our client was affirmed.

## Employment Litigation

Successfully represented an oilfield services company in an Fair Standard Labor Act (FLSA) suit against the Department of Labor (DOL). The DOL investigated the company for wrongly misclassifying its employees as independent contractors, and ordered it to pay more than \$6.2 MM in fines and back pay. We appealed on behalf of the client and obtained a judgment dismissing the agency's enforcement action and validating the company's business model and use of independent contractors. We then filed a claim to recover attorneys' fees under the Equal Access to Justice Act (EAJA). The federal district court awarded our client's fees, but ruled they were capped by the EAJA at \$600,000. We successfully appealed, and obtained an opinion from the Fifth Circuit that an enhanced fee recovery was appropriate "as a sanction for the government's bad faith."

## Practice Leaders



**Todd Frank**

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## Related People

James Bettis

John Cornwell

Mark Deaton

Todd Frank

Mary Koks

Kristy Le

Julie McClintock

D. Mitchell McFarland

José Molina

Daniel Pipitone

Justin Ratley

Dr. Chad Ray

David Roth

Carrie Schadle

Richard Schwartz  
Clifton Squibb  
Fred Wahrlich  
W. Phillip Whitcomb

## Related Practices

Bankruptcy, Restructuring & Insolvency  
Corporate & Securities  
Finance  
Immigration  
Intellectual Property  
Labor & Employment  
Real Estate  
Tax  
Litigation  
Environmental

## Newsroom

**Press Release:** Clifton Squibb Joins Munsch Hardt's Energy Practice as Shareholder

**Speech:** Enforcing Contractual Risk Shifting as an Additional Insured: The Good, The Bad, The Disastrous

**Press Release:** Munsch Hardt Secures Significant Energy Litigation Win for West Texas Landowners

**Press Release:** Munsch Hardt Named Among Top Energy Law Firms in Houston

**Press Release:** Win Secured for West Texas Landowners in Energy Litigation Case

**In The News:** Midland Jury Rejects FLSA Overtime Claim Against Oilfield Services Co.

**In The News:** Overtime Pay Collective Action Fails to Overcome Federal Exemption

**Press Release:** Munsch Hardt Wins Fair Labor Standards Act Case for Oil and Gas Client Flowco in Jury Trial

**In The News:** 5th Circ. Won't Budge From Ch. 15 Power Price Suit Remand

**In The News:** Fifth Circuit: Bankruptcy Court Cannot Decide Validity of ERCOT, PUC Pricing During Winter Storm Uri

**In The News:** 5th Circ. Remands Just Energy Ch. 15 Suit Over Power Prices

**In The News:** Bankruptcy Judge 'Conditionally Approves' Brazos Disclosure Agreement After Intense Hearing

**In The News:** Brazos Gets Nod On Ch. 11 Plan Docs With ERCOT Deal

**In The News:** Brazos Electric Bankruptcy Heads to Finish Line

**In The News:** Brazos Wants To Set Trial Date On ERCOT \$1.9B Ch. 11 Claim

**In The News:** Brazos Trial Over \$1.9B ERCOT Bill Paused For Mediation

**In The News:** CEO: Brazos in Great Shape Until Crippling Uri Bills

**In The News:** Brazos Execs Knew Electric Prices Would Soar Even Before Winter Storm Uri Hit

**In The News:** Brazos Bankruptcy Trial: Ex-ERCOT CEO Knew 'Financial Storm Was Brewing' After Winter Storm Uri

**In The News:** Brazos Calls ERCOT Billing Unreasonable In Ch. 11 Trial

**In The News:** Texas Bankruptcy Trial Begins Over \$2 Billion Energy Bill After 2021 Winter Storm

**Press Release:** Munsch Hardt Ranks Among Nation's Top Firms in 2021 "Best Law Firms" List by U.S. News - Best Lawyers®

**In The News:** Munsch Hardt in Law360: Oil & Gas Bankruptcies May Drag As Secured Debt Swells

**Speech:** Internal Investigations and Ethics in Emergencies

**Article:** Sexual & Gender Discrimination in the Oilfield

**In The News:** Energy Industry Bankruptcies Will Accelerate in Coming Months: A Q&A With Munsch Hardt's John D. Cornwell

**In The News:** 2020 Oil & Gas Bankruptcy Trends: Midyear Report

**Press Release:** Munsch Hardt Welcomes Back Corporate Finance Attorney Walter Buchanan

**Press Release:** Munsch Hardt Adds Corporate, Energy Shareholder in Houston

**Oral Argument:** Edwards, et al v. 4JLJ, L.L.C., et al; Case No 19-40553

**In The News:** Texas Justices Told Emails Can't Support Breach Claims

**Press Release:** Munsch Hardt Adds Seasoned Investment Management Partner in Dallas, Litigation Associates in Houston

**Speech:** When Financing Goes Bad: Doing Deals and Litigating Cases When Bankruptcy, Workouts, or Ability to Pay for Environmental Liabilities is at Issue

**Speech:** What's It Worth? Evaluating Risk and Exposure in Complex Damage Cases

**In The News:** Munsch Hardt Adds Former Shell Tax Advisor, 2 Energy Attys

**Press Release:** Munsch Hardt's Growing Houston Office Adds Two Energy Litigation Shareholders, One Tax Shareholder

**Press Release:** Munsch Hardt Attorney Closes Two Middle-Market Transactions, Signs Up a Third in Less Than 30 Days

**In The News:** Law360 Covers Addition of Craig Harris in Dallas Office

**Press Release:** Experienced Trial Lawyer Craig Harris Joins Munsch Hardt's Growing Litigation Practice

**Press Release:** Munsch Hardt Launches Blog, Brings Attention to the Latest in Immigration Law

**Speech:** On Land and Sea: A Practical Guide to Indemnity in the Energy Sector

**Speech:** All Good Things Must End: Decommissioning Oil and Gas Facilities

**Article:** Dealing in Distressed Energy Assets

**Speech:** 2016 Employment Law Update

**In The News:** Munsch Hardt Snags Norton Rose Bankruptcy Pro In Houston



**In The News:** Firm Finance: Texas Firms Powering Through Energy Slump

**Speech:** Risk Shifting in the Oil Patch

**Article:** Regulations cause offshore companies to examine independent contractor status

**In The News:** Employer wins fight with feds on worker classification

**In The News:** Government to Pay \$1.5 MM in Attorney Fees in FLSA Suit

**In The News:** DOL Settles Oil Field Service Co.'s Bad Faith Case For \$1.5 MM

**Press Release:** Thirteen Munsch Hardt Attorneys Recognized as 2015 Texas Super Lawyers

**In The News:** Appeals court finds 'government overreach' in DOL's handling of Eagle Ford case

**In The News:** Appeals court says Labor Department acted in bad faith in contractor case

**Article:** The Domestic Oil & Gas Industry's Current Debt Problem – A New Chapter of an Old Book

**In The News:** Texas Justices Say Court Misread Gas Contract Ruling

**In The News:** Munsch Hardt attorney already making a difference with labor-law ruling

**In The News:** Latest labor law case has big impact on energy sector

**In The News:** Judge chews out Labor Department over its handling of wage case

**In The News:** DOL Dinged \$600K For Oil Field Service Co.'s Atty Fees

**In The News:** Munsch Hardt Poaches Two Attorneys From Houston's Old Guard

**Press Release:** Munsch Hardt Expands Energy and Maritime Practice Through Addition of Attorney in Houston Office

**In The News:** Dallas Law Firm Moves Into New Houston Digs

**In The News:** Reservoir Exploration Files for Chapter 11 with Plan

**Speech:** Employment in the Energy Sector, Key Terms in Employment Agreements and Workplace Policies

**In The News:** Worker Deaths Not 'Occurrence' Under Okla. Law, Insurers Say

**Article:** The Right Time to know Rules: What the Energy Sector Needs To Know

**Article:** Premiums and Risk Management in the post-Macondo Era

**Article:** Anti-Corruption Measures

**Speech:** VP On A Forklift: Wage & Hour Regulations