

# Insolvency Litigation

## Overview

The prosecution, defense and resolution of litigation claims held by or against a debtor or the estate often determines the success or failure of restructuring initiatives, both within and outside of the context of a formal bankruptcy case or other insolvency proceeding. We recognize each situation presents its own set of unique issues, which in turn requires our team to develop custom and principled strategic plans to bolster our clients' legal positions and ultimately achieve their litigation objectives.

Munsch Hardt's Bankruptcy, Restructuring & Insolvency practice includes attorneys who focus on and have been recognized for their expertise in bankruptcy and insolvency litigation. Whether before state or federal court, or alternative forums, such as specialized courts and arbitration, Munsch Hardt's stable of aggressive and sophisticated business litigation attorneys possess the skills, experience, relationships and reputations needed to properly address a principled strategic plan to attack and resolve the myriad issues that can arise in connection with insolvency litigation.

A unique trait of our insolvency litigators is that they are particularly experienced in the courtroom as well as in the boardroom. Their experience allows them to analyze each litigation claim to devise a comprehensive strategy, and recommend an individualized and cost effective approach to the prosecution, defense and possible settlement. While we are constantly vigilant for opportunities to efficiently maximize our clients' interests, we also litigate with the confidence and know-how to succeed through trial when litigation is the only viable option. Our attorneys have litigated scores of fiduciary, avoidance and other insolvency litigation claims, representing both plaintiffs and defendants. Our trial experience, coupled with our representation of insolvency estates representatives, proves to be an invaluable resource for our clients.

Our track record of success for our clients in the bankruptcy arena is the product of persistence and tenacity in pre-trial preparation and discovery, coupled with an ability to synthesize and simplify complex commercial transactions at trial. The group is fully integrated with the firm's eDiscovery practice. This means document-intensive cases are handled with state-of-the-art-technology and procedures. As a result, we achieve greater efficiency and larger net recoveries than firms with less experience in this area of the law, particularly in cases with substantial portfolios of litigation claims.

Our clients in the most complex matters of insolvency litigation typically include debtors, committees, trustees, lenders, vendors, insurers, as well as corporate officers and directors. We bolster every engagement with effective and zealous advocacy of our clients' legal positions and interests.

## FIDUCIARY LITIGATION

Our attorneys have substantial experience in litigation involving director and officer liabilities, malfeasance and self-dealing, as well as matters involving fraud and commercial crimes, that commonly arise out of insolvency proceedings. They also have extensive experience representing estate fiduciaries, including Chapter 11 trustees, Chapter 7 trustees, post-confirmation trustees and state and federal court receivers. Whether the case involves fraud, avoidable transfers or officer and director litigation, our team is accustomed to providing sophisticated legal counsel to standing, appointed and elected estate fiduciaries.

## AVOIDANCE ACTIONS

In the context of avoidance litigation, there are three primary types of transfers that are typically at issue:

- **Fraudulent Transfers:** There are generally two types of fraudulent transfers – transfers made on account of actual fraud and transfers made on account of constructive fraud. Transfers made on account of actual fraud are those that were made with the intention to hinder, delay or defraud creditors. Transfers made on account of constructive fraud

are usually transfers made for no consideration or less than reasonably equivalent value, made at a time in which the debtor's liabilities exceeded the debtor's assets or when the debtor was not paying creditors when the debtor's debts came due. These transfers do not necessarily have to involve any fraudulent intent. There are many nuanced rules and exceptions to these rules, and it is important to seek the advice of an attorney with knowledge of fraudulent transfer law.

- **Preferential Transfers:** These are claims asserted by a bankruptcy debtor's estate in order to recover prior payments made to creditors in order to prevent debtors from preferring certain creditors over others prior to receiving bankruptcy protection. If avoided, the estate may be able to recover money from the creditor/transferee, or even its subsequent transferee. Numerous exceptions apply, and again, it is important to seek the advice of an attorney with experience in preferential transfer litigation.
- **Post-Petition Transfers:** These are transfers of property of the bankruptcy estate made after the bankruptcy is filed and without due authorization. These types of transfers are rare but are applicable under specific circumstances and can involve nuanced issues, such as but not limited to, the scope of a debtors' ordinary business activities.

Munsch Hardt's Bankruptcy, Restructuring & Insolvency attorneys have vast experience resolving the entire spectrum of avoidance claims and litigation on behalf of debtors, committees, trustees, liquidating and post-confirmation trusts, and defendants, from "mega cases" to smaller, individual matters. Munsch Hardt on multiple occasions has represented post-confirmation debtors and trustees in successfully managing the liquidation of the entire portfolio of avoidance actions held by their estates.

## Bankruptcy Contested Matters and Other Insolvency Litigation

Our experience in state and federal insolvency litigation reaches far beyond customary fiduciary and avoidance claims, and includes all types of bankruptcy contested matters and disputes regarding estate administration, specifically:

- Fraud and misrepresentation claims
- Multi-district litigation
- Alter ego, disregard of corporate entity, and single business enterprise claims
- Royalty disputes, contract interpretation and enforcement claims
- Claims involving disputes under the Uniform Commercial Code (UCC)
- Contract disputes
- Bankruptcy contested matter litigation: plan confirmation, claims estimation and liquidation (both contract and tort) and objection proceedings, equitable subordination and recharacterization claims, lien valuation and avoidance, asset valuations, and turnover actions

## Experience

### Telecommunication Representation

Represented the Chapter 7 trustee of VarTec Telecom, Inc. and its debtor affiliates in litigation brought against the debtors' former directors and officers seeking damages in excess of \$100 MM for claims based on breaches of fiduciary duties, gross negligence, avoidance of fraudulent transfers and conversion.

## Real Estate Representation

Represented the Chapter 7 trustee in a proceeding commenced by a non-debtor party seeking specific performance of a contract concerning the sale of real property. The district court affirmed the bankruptcy court's ruling allowing the trustee to sell the real property free and clear of the non-debtor party's interest in the property. This is an important opinion regarding the enforceability of specific performance against a bankruptcy trustee.

## Fiduciary Representation

Represented the Chapter 7 trustee of Auto International Refrigeration, Inc. in a usury action against the debtor's prepetition lender under a revolving credit facility.

## Fiduciary Representation

Represented the post-confirmation plan administrator for a major league baseball franchise in claims administration and litigation that resulted in \$268 MM plus litigation recoveries under the franchise's reorganization plan.

## Fiduciary Representation

Represented the litigation trustee of ETS Payphones, Inc. in a \$400 MM Ponzi scheme.

## Practice Leaders



**Kevin Lippman**

Dallas  
214.855.7553  
[klippman@munsch.com](mailto:klippman@munsch.com)



**Davor Rukavina**

Dallas  
214.855.7587  
drukavina@munsch.com

## Related People

Phil Appenzeller  
Beverly Bass  
Thomas Berghman  
John Cornwell  
Maddison Craig  
Jay Evans  
Brenda Funk  
Steven Harr  
James Jaksa  
Jacob King  
Kevin Lippman  
James McGee  
Brie Miller  
Jay Ong  
Ross Parker  
Alexander Perez  
Deborah Perry  
Jonathan Petree  
Dennis Roossien  
Davor Rukavina  
Garrick Smith  
Marc Taubenfeld  
Julian Vasek  
Fred Wahrlich  
Conor White

## Related Practices

Bankruptcy, Restructuring & Insolvency  
Asset Acquisitions  
Committees  
Creditors  
Debtors  
Cross-Border Insolvency  
Fraud & Asset Recovery  
Trustees  
Receiverships

---

## Related Industries

Financial Services  
Construction  
Energy  
Health Care  
Hospitality  
Insurance  
Manufacturing  
Retail  
Technology & Telecommunications  
Transportation

## Achievements

- *Best Lawyers*® “Best Law Firms” – Litigation – Bankruptcy, Metropolitan Tier Ranking (2010-2025)

## Newsroom

---

**Press Release:** Best Lawyers® Ranks Munsch Hardt in 2025 “Best Law Firms” in America Listing

**Press Release:** Best Lawyers® Names Munsch Hardt to 2024 “Best Law Firms” in America List

**Press Release:** Munsch Hardt Ranks Among Nation’s Top Firms in 2023 “Best Law Firms” List by U.S. News - Best Lawyers®

**Press Release:** Munsch Hardt Named to 2022 “Best Law Firms” List by U.S. News – Best Lawyers®

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

**Press Release:** Munsch Hardt Ranks Among Nation’s Top Firms in 2020 “Best Law Firms” List by U.S. News - Best Lawyers®

**Press Release:** Munsch Hardt Ranks Among Nation’s Top Firms in 2019 Best Law Firms List

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

**Press Release:** Munsch Hardt Earns Top-Tier Rankings in 2016 Best Law Firms List

**In The News:** Female Powerbroker Q&A: Munsch Hardt's Deborah Perry

**In The News:** Ex-Howrey Partners' Clawback Deal Will Pressure Holdouts

**In The News:** The Scooter Store Proposes 'Aggressive' Sale

**Speech:** Munsch Hardt Attorney Phil C. Appenzeller, Jr. Speaks at Webinar on In Pari Delicto Doctrine