

# Construction

## Overview

With more than 200 years of combined experience in construction law, Munsch Hardt's highly regarded Construction team has empowered public and private owners, developers, lenders, design professionals, general contractors, subcontractors and suppliers to complete many of the most significant construction projects throughout the country.

Our team fully understands that developing a dynamic, cost-efficient project requires a single firm's consistent management of the numerous phases and moving parts at every level, from start to finish. Our range of services include extensive procurement document preparation at all levels of the construction process and the resolution of construction disputes, such as contract litigation and arbitration, contract termination, insolvency, defect litigation, dispute resolution, lien perfection, lien litigation and virtually all types of construction litigation of any order of magnitude.

Our Construction lawyers also offer extensive experience in contract negotiation and document preparation in relation to all phases of the investigation, development, design, management and construction of projects of all sizes and character (vertical construction, plant and line projects, heavy highway and bridge projects, as well as industrial projects). By utilizing various delivery methods, including Design-Bid-Build, CMAR, Design-Build, Progressive Design-Build, Job Order, Construction Manager Agent, Public-Private Partnerships (P3) and other hybrid delivery combinations, our attorneys have provided transaction and document preparation advice and services on nearly \$5 B worth of construction in the last five years alone.

Representative matter types for transaction, claims and dispute resolution projects include:

- Federal and state claims against governmental owners
- Delay and impact claims, including complex cpm analysis cases
- Defective design claims
- Defective construction claims
- Residential construction claims
- Differing site conditions claims
- Professional malpractice defense
- Lien, bond and payment claims of all types
- Insurance recoveries
- Project close-out, warranty and liquidated damages claims
- Administrative agency claims relating to TxDOT, the State Office of Administrative Hearings, professional licensing boards and related appeals
- Default, termination and performance bond claims
- Jobsite injury claims
- Environmental non-compliance claims
- Wage disputes, including prevailing wage, Davis Bacon and FLSA claims
- Cardinal change claims
- Project workouts
- Acceleration and efficiency claims
- Price escalation claims
- Bid protests
- Bankruptcy and receivership claims
- Immigration raids, audits and compliance
- Public and private works procurement documentation for various delivery methods and project types
- Preparation of procurement documents for energy sector construction, such as plant and pipeline projects, pilot projects and power plant projects
- Preparation of licensing and technology contracts
- Preparation of documentation for performance guarantees and all types of surety bonds

When working with our team, clients quickly discover our lawyers talk and think like they do, partly because of the rare industry insight and experience we gained while working in their world. Some of our lawyers have experience and training in relevant areas such as engineering, project management and general contracting, or in-house legal experience with large architectural and engineering firms. This unique combination of technical skill and first-hand project experience enables us to identify opportunities and obstacles and then develop practical road maps to achieve the desired outcome.

Our lawyers also demonstrate their commitment to the construction industry through leadership roles in legal and construction industry organizations. Some of our more prominent roles and responsibilities currently include American Arbitration Association (Construction Arbitration Panel Member); Associated Builders and Contractors (ABC) of Greater Houston (Appointed to Legal Issues Committee and Legislative Task Force); Associated General Contractors of Texas Highway, Heavy Utilities and Industrial Branch (Legislative Drafting and Review Committee; State Water & Waste Water Committee); Construction Lawyer's Society of America (Fellow); Houston Bar Association, Construction Section (Chairman and Executive Council Member); State Bar of Texas, Construction Section (Immediate Past Chair, Current Editorial Board Member); Texas Board of Professional Engineers, and we are proud to have attorneys as part of the inaugural class to receive Board Certification for Construction Law from the Texas Board of Legal Specialization (TBLS). Our attorneys also serve as regular panelists and presenters at seminars and conferences, guest lecturers at law and business schools and are frequent contributors to legal and construction industry journals.

Finally, at Munsch Hardt, we don't just say we do it all – comprehensive service is built into our culture. With broad experience in managing every issue imaginable – contract negotiations, tax planning, project dispute resolution (formal and informal), personal injury litigation, labor and employment issues, liens, work visas and permits, insurance coverage, restructuring, plus many more – we stand ready to respond at any time with a tailored, cost-efficient team you will not find at another firm.

Practices include:

## **BANKRUPTCY, RESTRUCTURING & INSOLVENCY**

Recognized by *Chambers USA* since 2005, our Bankruptcy, Restructuring & Insolvency group has extensive experience representing all major constituencies in bankruptcy, restructuring and insolvency matters. We are adept at every facet of the bankruptcy and restructuring process, which allows our clients to better evaluate possible outcomes, develop strategies, assess risks and ultimately plan for the future.

## **CORPORATE & SECURITIES**

We represent dynamic, growing businesses in transactions and other matters that are critical to their success. Our services include mergers and acquisitions; venture capital; private equity; family office investments; business succession planning; technology contracts and intellectual property licensing; corporate governance and special board committees; securities offerings and capital raises; outsourced counsel services; executive compensation; joint ventures; and transactional tax planning and tax controversies.

## **ENVIRONMENTAL**

Our construction industry lawyers work closely with Munsch Hardt's nationally ranked environmental group to provide our clients with the highest quality counseling and trial performance on a variety of environmental matters. With the growing complexity of environmental laws, the construction industry has become more sensitive to environmental issues, including air, water, solid and hazardous waste, superfund, non-hazardous oil field waste, underground storage tanks, wetlands, endangered species, land use and development, insurance coverage litigation, natural resources, oil pollution, coastal zone management and restoration, forestry management, aquaculture and environmental justice. We regularly represent clients on avoidance or minimization of liability when acquiring real property for a construction project; coordinating due diligence and environmental site assessments and permitting; developing creative ways to close transactions involving contaminated properties and assisting clients in taking advantage of brownfields, municipal settings designation, and other laws providing economic incentives for development of contaminated properties.

## FINANCE

When clients partner with Munsch Hardt, they partner with some of the best and most experienced finance attorneys in the industry. In fact, there are few law firms involved in as many complex lending transactions as Munsch Hardt. Our Finance attorneys represent lenders from a variety of disciplines within the industry, including banking institutions, non-regulated lenders, private equity and hedge funds, as well as domestic and foreign financial institutions in a broad range of transactions.

## IMMIGRATION

Foreign workers comprise a significant percentage of the available work force in the construction industry. Our Immigration attorneys assist clients in obtaining temporary visas, permanent resident status, labor certifications and temporary work permits for foreign workers. We also have significant experience with I-9 compliance and responding to ICE audits and investigations, which often require an expedited expert response.

## INTELLECTUAL PROPERTY

We understand the intersection between intellectual property (IP) and construction. Along with our Firm's IP lawyers, we counsel clients on issues including copyright and trade secret protection. We help clients protect their ownership of IP assets in a variety of ways, including creating protective business practices, drafting and negotiating IP provisions in industry contracts and drafting and negotiating licensing and transfer of ownership agreements. We advise on e-commerce and IP considerations for project communications and information sharing technologies. We also counsel clients on issues that arise in connection with the termination of project participants who have IP rights or obligations. When necessary, our lawyers vigorously protect our clients' interests by either prosecuting or defending against copyright and trade secret infringement lawsuits.

## LABOR & EMPLOYMENT

Our Construction Law attorneys are experienced in drafting labor and employment-related provisions in construction and design contracts. On the labor side, our attorneys address traditional labor issues involving double-breasting, multiemployer withdrawal liability issues, collective bargaining, project labor agreements, OSHA and unfair labor practice claims. On the general employment side, we counsel clients on hiring, firing and disciplinary decisions, drafting of employee handbooks, interpretation of wage and hour laws, Equal Employment Opportunity Commission (EEOC) compliance, Family and Medical Leave Act (FMLA) leave and disability/accommodations, Americans with Disabilities Act (ADA) access matters, employer issues associated with business transactions and workplace harassment and training programs and affirmative action obligations of government contractors.

## LITIGATION

We routinely represent clients in the various types of disputes inherent to the construction industry, such as delay, disruption and other scheduling disputes, terminations, scope and extra work claims, design and construction defect claims, and mechanics lien and fee disputes. Munsch Hardt works hand-in-hand with clients to properly evaluate risks of a claim and the possibility of achieving an early and economical resolution, where possible. When early resolution is not possible, our attorneys tout a strong record trying complex claims in virtually every forum in which construction disputes arise, including state and federal courts and American Arbitration Association proceedings throughout the United States.

## REAL ESTATE

Munsch Hardt's Construction and Real Estate teams are a natural extension of one another, providing a full range of services for all aspects of real estate acquisitions and dispositions, financing, leasing and land use and zoning. Our clients benefit from our significant experience in structuring, documenting and concluding complex projects and, when necessary, litigating on their behalf. Seasoned Munsch Hardt attorneys regularly use their industry knowledge to help clients with traditional office and retail projects, mixed-use developments, industrial facilities, sports and entertainment venues, hospitality and leisure projects, restaurants and Public-Private Partnerships (P3). In fact, Munsch Hardt's P3 team provides end-to-end service, not as generalists, but as counsel with specific experience advising sponsors, financing parties, governmental agencies, equity investors and contractors.

## Experience

### Water Purification Plant Construction

Representing public water authorities providing financing, concerning legal issues relating to progressive Design-Build delivery of a \$1.4 B water purification plant. Currently, the largest project of its type in the United States.

### Headquarter Relocation

Prepared and managed multiple Design-Build Agreements on behalf of a publicly traded company, consolidating its headquarters, manufacturing and distribution facilities and relocating them from California and other U.S. locations to North Texas.

### Construction Procurement Project

Represented a Municipality in all of the procurement work associated with a new \$84 MM, state-of-the-art, indoor performance venue, using a two-step Construction Manager At Risk delivery method. The representation included FF&E purchase contracts, working through a Public-Private Partnership and the infrastructure development associated with the facility.

### Construction Contracts

Represented a large, private high school in negotiating and drafting construction, design, project management and procurement contracts for a mid-seven figure campus-wide expansion commencing with a new academic building, parking structure, central plant renovations and additions and site civil works.

### Contractor Representation

Successfully prosecuted a multi-million dollar payment claim on behalf of a general contractor against a large, national retailer.

### Construction Litigation

Defended an engineering firm in a three-week design defect case in Galveston County, Texas, where the plaintiff's demand to the jury was \$6.2 MM. The Firm's client received a defense verdict on all of the claims against it, while other defendants were found liable.

## Practice Leaders



**Adam Richie**

Austin  
512.391.6131  
arichie@munsch.com



**Robert Hancock**

Houston  
713.222.1825  
rhancock@munsch.com

## Related People

Logan Adcock  
Mark Deaton  
Nicolas Gavrizi  
Robert Hancock  
Mason Hester  
W. Garrett Hicks  
Winston Huff  
Mark Huffman  
Earl Ingle  
Julie McClintock  
Austin Moorman  
Gregory Noschese  
Adam Richie  
Timothy Word

## Related Practices

Bankruptcy, Restructuring & Insolvency  
Corporate & Securities  
Finance  
Immigration  
Real Estate  
Litigation  
Environmental

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## Related Industries

Energy  
Health Care  
Hospitality  
Insurance  
Real Estate  
Transportation

## Achievements

*Chambers USA – Texas* (2019-2023)

*Best Lawyers®* “Best Law Firms”, published by *Woodward/White, Inc.* – Construction Law, National Tier Ranking (2022-2024)

*Best Lawyers®* “Best Law Firms”, published by *Woodward/White, Inc.* – Construction Litigation, National Tier Ranking (2020-2024)

*Best Lawyers®* “Best Law Firms”, published by *Woodward/White, Inc.* – Construction Law, Metropolitan Tier Ranking (2020-2024)

*Best Lawyers®* “Best Law Firms”, published by *Woodward/White, Inc.* – Construction Litigation, Metropolitan Tier Ranking (2020-2024)

## Newsroom

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**Speech:** The Contractual Right to Offset Money Owed on Other Projects: I Can Do That ... Right?

**Article:** Contractual Right to Offset Money Owed on Other Projects: I Can Do That ... Right?

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

**Press Release:** Mason Hester to Serve as Chair-Elect of Houston Bar Association Construction Law Section

**Article:** Texas Construction Statute Of Repose Leaves Open Questions

**Article:** Construction Attorneys Featured in State Bar Publication

**Press Release:** Chambers USA 2023 Directory Highlights Munsch Hardt Practices + Attorneys

**Speech:** Project Documents

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

**Article:** Misconceptions, Potential Traps, and Practice Tips for the 2021 Changes to the Texas Lien Laws

**Article:** Construction Associates Featured in State Bar Publication

**Press Release:** Six Munsch Hardt Practice Groups and 12 Lawyers Ranked by Chambers USA 2022

**Article:** Quantum Meruit: The Other Cause of Action

**Speech:** Insurance: Practical Advice for Construction Lawyers

**Speech:** Residential Construction – A Holistic Approach

**In The News:** Newsmakers: Week of Nov. 16, 2021

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

**In The News:** Munsch Hardt Further Expands Construction Practice with New Associate

**In The News:** These 8 New Laws Will Impact Construction in Texas

**Article:** Texas Legislature's 87th Regular Session Construction Update

**Press Release:** Munsch Hardt Further Expands Construction Practice with Five Associates

**In The News:** Munsch Hardt Appoints New Co-Chairs for the Firm's Growing Construction Practice

**Press Release:** Munsch Hardt Appoints New Co-Chairs for the Firm's Growing Construction Practice

**Press Release:** Chambers USA 2021 Rankings Include Six Munsch Hardt Practice Groups and Ten Attorneys

**Speech:** Legal Issues in Arbitration

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

**Speech:** Construction Supervision Fundamentals

**Speech:** Getting Paid: Lien and Bond Claims in Texas, the COVID-19 Edition

**Press Release:** Munsch Hardt Announces 2020 Shareholder Promotions

**Press Release:** Munsch Hardt's Chambers USA 2020 Rankings Include Four Practice Groups and Six Attorneys

**Newsletter:** COVID-19: Construction Owner Lien Notices Due to Economic Downturn

**Speech:** Hotel Owners + The Novel Coronavirus Webinars

**In The News:** What's Happening in Washington & How It Could Affect Your Company

**Article:** Construction Litigation: Representing the Owner

**Speech:** Contracts From the Owner's Perspective

**Speech:** Insurance Basics for the Construction Lawyer

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

**In The News:** Jury sides with company in industrial death of employee

**In The News:** Trial begins in wrongful death lawsuit of man crushed by hydraulic lift

**Speech:** Richie Speaks at Construction Law Seminar

**Speech:** Contracts, Tariffs and Rising Material Costs: Strategies for Risk Allocation

**Press Release:** Chambers USA 2019 Ranks Five Munsch Hardt Practice Groups and Seven Lawyers

**Press Release:** Eight Munsch Hardt Attorneys Named on the Super Lawyers 2019 Rising Stars List

**Article:** Legal - Responding to OSHA's Multi-Employer Citation Policy



**Article:** The Tariffs Are Here, Now What?

**Speech:** Richie Speaks at Legal Issues for Texas Civil Engineers Seminar

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

**Article:** How to Navigate Tariffs in Your Construction Contracts

**Press Release:** Munsch Hardt Expands Houston Office Due to Continued Growth

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

**In The News:** Law360 Examines Construction Industry Growth with Shareholder Bob Hancock

**In The News:** Ben Wheatley and Mason Hester Discuss Construction Industry with Law360

**In The News:** Firms Add Construction Lawyers As Cities See More Cranes

**Article:** Differing Site Conditions: A Quick Primer on What Every Contractor Needs to Know by Mason Hester

**Article:** Who Breached First, and Was It Material?

**In The News:** Munsch Hardt Adds Four Construction Law Laterals in Houston

**Press Release:** Munsch Hardt's Construction Practice Experiences Significant Growth

**In The News:** Austin Builders Overcoming Challenges to Keep Pace with Construction Demand

**Article:** Employment Agreements Mitigate Construction Litigation Concerns

**Speech:** Differing Site Conditions: What Difference Do They Make?

**Press Release:** Karim Completes Board Certification from the TBLS

**Speech:** 2016 Employment Law and Construction Law Updates

**Press Release:** Munsch Hardt Hires Austin-Based Construction Attorney

**Press Release:** Munsch Hardt Recognized as Industry Leader in 2016 Chambers USA

**In The News:** Trinity Industries pursues \$4.4 MM claim after EPA-FBI agents' extramarital affair

**Article:** Cardinal Sin? Should you make a cardinal change argument in Texas?

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

**Speech:** Causes of Action 2015

**Press Release:** Munsch Hardt Attorneys Recognized as 2014 Super Lawyers

**Speech:** Residential Construction Disputes: Practical Advice & Updates

**Article:** Surety Obligation in the Face of a Struggling Contractor: A Primer for Bond Claims in Texas

**Article:** Attorney's Fees in Modern Construction

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

**Article:** Window For Better Rates Downtown About To Open



**Article:** The New Normal in Residential Construction

**Speech:** Out of Bounds: Dallas Cowboys practice facility collapse & builder's implied covenant to build to code

**Speech:** Pay-If-Not-Paid? Understanding the crucial, and confusing, Texas pay-if-paid law

**Article:** Construction Industry – 2011 Legislative Update

**Article:** Proceed with Caution: Liability for Invalid Liens

**Speech:** Texas Mechanics Liens and Bond Claims

**Article:** Recent Developments in Texas Construction Law

**Speech:** The Fraudulent Lien Law: Where are we now?

**Speech:** How Can Architectural and Construction Law Affect My Practice?

**Speech:** The Subcontract: Key Clauses from General Contractor and Subcontractor Perspectives

**Speech:** Introduction to Consensus Docs and Comparison to AIA Forms on Key Issues

**Speech:** Causes of Action for a Construction Defect Claim

**Speech:** Comparison of Consensus Docs & AIA Forms on Key Issues: Delays, Changes, Change Management

**Speech:** Comparison of Consensus Docs and AIA Forms on Key Issues: Liability Risk Transfer

**Article:** Bankruptcy Law's Effect on Your Lien Rights: Who can you trust?

**Article:** The Statute of Repose: 10 Years May Not Be What it Used to Be

**Article:** Causes of Action for a Construction Defect Claim in 2008

**Article:** SB 9: Fingerprints, Photographs, Background Checks, Oh My

**Article:** Pay-if-not-Paid: Understanding the New Contingent Payment Law

**Article:** Not So Fast: That Indemnity Agreement Might Not Be Enforceable

**Article:** The New Frontier: Electronic Discovery in Construction Cases

**Article:** Non-traditional Uses of the Constitutional Lien