

# Appellate

## Overview

Munsch Hardt has a long track record of appellate victories that advance our clients' interests.

By combining our skills in crafting persuasive briefs and presenting oral argument, with extensive experience guiding high-stakes appellate matters, we have obtained notable results for our clients. Our lawyers are well versed in the nuance of the appellate process and know how to navigate a case effectively. There is, of course, no "one size fits all" approach for handling an appeal. Defending a hard-fought trial judgment may require a different approach than challenging a statute's constitutionality. Our practice is equipped for any appellate challenge.

Our appellate experience spans all areas of our litigation practice, with notable victories in the areas of administrative, antitrust, bankruptcy, creditors rights, energy, environmental, labor and employment, financial services, insurance, patent, product liability, and securities law. Because of our substantive knowledge and deep experience, in addition to conventional appeals, we routinely serve as counsel in interlocutory appeals and in matters involving mandamus and other extraordinary writs. We also have experience preparing amicus briefs in important cases to address legal issues in which our clients have a vested interest.

Our team also conducts pre-suit case evaluations, drafts summary judgment and other case dispositive motions, drafts jury charges, handles jury charge conferences, and ensures preservation of error during trial. Post-trial, we assist in judgment formation, post-trial motions and judgment enforcement.

Whether we represent a party in the lower court or we are brought in specifically for our appellate capabilities, our attorneys regularly serve as counsel for corporations, trade associations, public interest groups and industry groups at every stage in the process.

## Experience

### Judgment Creditor Litigation

Obtained appellate ruling preventing the offshore transfer of more than \$20 MM in avoidance of a judgment debt. During the second Gulf War, our eventual client participated in a contract to transport fuel to U.S. troops in Iraq, but was defrauded by other participants who funneled approximately \$28 MM out of the enterprise to avoid sharing profits. The eventual client filed suit in Florida state court, and his trial team obtained a \$28 MM award of damages, \$85,000 in costs and prejudgment interest of \$3.5 MM. Those judgments were domesticated in Texas by a team of Munsch Hardt attorneys, who thereafter obtained a temporary injunction to prevent the judgment debtor and his "alter ego" from transferring \$21.8 MM offshore to avoid collection efforts in Texas. The judgment debtor sought mandamus relief and simultaneously sought interlocutory appellate review, seeking to reverse the temporary injunction and transfer the funds beyond the jurisdictional reach of United States courts. Munsch Hardt briefed and presented oral argument to the court of appeals, which denied the judgment debtor's request for mandamus relief and affirmed the temporary injunction forbidding transfer of the funds.

### Energy + FLSA Litigation

Represented client in an action to recover enhanced attorneys' fees to remedy the United States' inappropriate attempt to enforce the Fair Labor Standards Act (FLSA). Munsch Hardt's client was the target of a Department of Labor (DOL) investigation and eventual civil enforcement action, wherein the DOL alleged the client mischaracterized workers under the FLSA. The DOL initially sought civil penalties against the client, which were roughly equivalent to the client's entire net worth. A team of Munsch Hardt attorneys obtained summary judgment dismissal of the DOL's enforcement action, then sought to recover attorneys' fees under provisions of the Equal Access to Justice Act. The district court awarded fees under a provision that caps recoverable fees, but declined to award fees under a provision reserved for situations in which the United States acts in "bad faith." The United States appealed the fee award made against it, and Munsch Hardt cross-appealed on behalf of the client requesting the appellate court rule the more punitive bad faith provision had been triggered. The court agreed and ruled the United States indeed had conducted the investigation and enforcement action in bad faith, reversing the lower court.

### Energy Litigation

Represented a major gas marketing company in 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. A team of Munsch Hardt attorneys prevailed on summary judgment in the trial court based on a contractual bar against consequential damages and other issues. After five appellate opinions, including two by the Texas Supreme Court, Munsch Hardt successfully defended the trial court judgment, which was affirmed in favor of the client.

### Appellate Victory

Obtained an appellate ruling in favor of a mobile phone manufacturer, against allegations the client's technology led to the death of a 9-1-1 caller. A team of Munsch Hardt attorneys obtained a Rule 12(b)(6) dismissal of the underlying claims before a district court, because the plaintiffs could not establish a causal link between the operation of the mobile phone and the caller's death. The litigation team established on the face of the pleadings, it was evident emergency responders could have reached the 9-1-1 caller in time to assist if they timely had used information relayed by a 9-1-1 dispatcher. Munsch Hardt briefed and presented oral argument in the subsequent appeal, where the court affirmed the lack of a causal relationship to the 9-1-1 caller's death and further ruled mobile phone manufacturers, as well as data service providers, are beneficiaries of a Texas "immunity" statute that applies to equipment or services used for 9-1-1 calls.

### Environmental + Tort Litigation

Obtained appellate ruling authorizing a malicious prosecution claim against the United States. In 1999, an eventual Munsch Hardt client was indicted and criminally prosecuted for allegedly transporting hazardous waste without appropriate legal authority. The criminal charges were dismissed in 2003—and eight years later, the client learned agents from the United States Environmental Protection Agency and Federal Bureau of Investigation had fabricated the bases for the charges—motivated by their involvement in an extra-marital affair with one another. A team of Munsch Hardt attorneys filed suit against the United States in 2012, based on a provision of the Federal Tort Claims Act that waives the United States' sovereign immunity for select claims, including claims for malicious prosecution. A district court held the claims were time barred, although the underlying misconduct by the federal agents had been concealed. Munsch Hardt appealed and obtained a ruling reversing the trial court holding, thereby enabling the malicious prosecution claim to proceed.

## Environmental Litigation

Represented a railcar manufacturer initially in an enforcement action brought by the Commonwealth of Pennsylvania, then in derivative civil litigation against a predecessor owner of a manufacturing facility located in western Pennsylvania. In the derivative civil litigation, the client asserted claims against the predecessor owner, including claims premised on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The lower court dismissed the CERCLA claims based on its rationale the client's "state law" settlement with the Commonwealth of Pennsylvania could not serve as a predicate for a federal right of action under CERCLA. Munsch Hardt attorneys were part of a team of attorneys who successfully appealed and obtained reversal of that ruling, thus clarifying state law resolutions of environmental liability can support a federal right to relief under CERCLA.

## Practice Leaders



### Nolan Knight

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## Related People

Connor Best  
Ruth Brenton  
Todd Frank  
Stephen Gibson  
Michael Huddleston  
Sameer Karim  
Nolan Knight  
Michael Lee  
David Mattkka  
D. Mitchell McFarland  
James McGee  
Rebecca Mower  
Daniel Pipitone  
D. Ronald Reneker  
Dennis Roossien  
Davor Rukavina  
Carrie Schadle  
Fred Wahrlich  
B. Lee Wertz

## Related Practices

Litigation  
Antitrust  
Arbitration  
Director & Officer Litigation  
Financial Institution Litigation  
Insolvency Litigation  
Lawyer & Law Firm Litigation  
Personal Injury & Wrongful Death  
Products Liability  
Warranty  
Environmental Litigation  
Intellectual Property Litigation  
Employment Litigation  
Trade Secrets  
Tax Controversy

## Related Industries

Admiralty & Maritime  
Financial Services  
Construction  
Energy  
Health Care  
Hospitality  
Insurance  
Manufacturing  
Real Estate  
Retail  
Technology & Telecommunications  
Transportation

## Newsroom

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**Oral Argument:** State Farm Lloyds v. Janet Richards; Case No. 18-10721

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**Oral Argument:** Life Partners Creditors' Trust v. Cowley; Case Nos. 17-11477, 17-11480, 17-11488, 18-10051, and 18-10056

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**Oral Argument:** Trinity Industries, Inc. v. Greenlease Holding Co; Case Nos. 16-1994 & 16-2244

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**Oral Argument:** Vickie Cook v. City of Dallas; Case No. 16-10105

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**Oral Argument:** Ted L. Kubala, Jr. v. Supreme Production Services, Incorporated; Case No. 15-41507

**Article:** Turnover Orders and Special Proceedings

**Oral Argument:** Trinity Marine Products, Inc. v. United States of America; Case No. 14-31130

**Oral Argument:** BTB Refining LLC v. Mohammad Anwar Farid Al-Saleh; Cause Nos. 13-15-00327-CV & 13-15-00395-CV

**Oral Argument:** Gate Guard Services, L.P. v. Perez; Case No. 14-40585

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

**In The News:** Memo Could Be Catalyst In Audit Battle