

# Restaurants

## Overview

Texas-based restaurateurs, restaurant groups, chefs, investors and those who service the restaurant industry turn to Munsch Hardt as a “one-stop-shop” for their restaurant-related business and legal needs. Based on decades of experience, including previously serving as in-house counsel, our team of more than 20 attorneys offers both working knowledge and a deep understanding of the growing number of legal needs and challenges those in the restaurant industry encounter on a daily basis.

In addition, our Restaurant Practice Group shares in your passion for your business. You will often find our attorneys dining at your restaurants and otherwise using your services. By getting to know your business from every angle, we are able to serve as a strategic, cost-effective and forward-thinking partner. Whether choosing and forming your business entity, negotiating your lease, protecting your trademarks and trade secrets or resolving disputes, we have you covered. Among the many legal services Munsch Hardt provides to our restaurant clients are:

- **Real Estate:** Leasing negotiations; property and land acquisitions; zoning issues.
- **Risk Management & Litigation:** Contract negotiations; contract disputes; risk management; lease disputes; trade secrets; non-compete disputes.
- **Corporate:** Asset acquisitions and sales; entity creation; management agreements; licensing; marketing and distribution agreements; succession planning; Software as a Service (Saas) agreements.
- **Employment:** Fair Labor Standards Act (FLSA) wage and hour litigation; discrimination; sexual harassment; equal employment law; trade secrets; Family and Medical Leave Act (FMLA); Americans with Disabilities Act (ADA); wrongful termination disputes; employer policy manuals; non-compete agreements; union-avoidance counseling.
- **Intellectual Property:** National enforcement and protection of trademarks, trade dress and service marks; patents and litigation of patent infringement claims; intellectual property licensing and development.
- **Data Privacy & Cybersecurity:** Crafting and implementing privacy and data security policies; preparation for and response to data breaches; addressing emerging developments, such as accumulation of “Big Data”.
- **Insurance:** Risk assessment; insurance coverage evaluation, recovery and defense.
- **Immigration:** I-9 compliance; No-Match Letters; obtaining temporary visas and permanent resident status for foreign workers; ICE audits and investigations.
- **Franchise:** Agreements from both the franchisor and franchisee perspective, as well as disputes between the two parties.
- **Alcoholic Beverage Laws:** TABC compliance, licensing and regulatory issues; dram shop liability.
- **Construction:** Contract drafting and negotiation, as well as litigation of defect and lien claims.
- **Environmental:** Due diligence; permitting; state and regulatory compliance and litigation.
- **Finance:** Loan and equity structuring.
- **Health Care:** Affordable Care Act.
- **Tax:** Planning and negotiations with federal and state tax authorities.
- **Bankruptcy:** Business reorganization; debtor and creditor representation.
- **Personal Injury:** Slip-and-fall injuries; equipment malfunctions; alcohol matters; dram shop liability claims.

## CONSTRUCTION

With one of the largest, most experienced Construction groups in Texas, we offer elite experience in the drafting and negotiation of construction contracts, and resolving disputes related thereto, on behalf of restaurant industry clients. Our Construction group attorneys have successfully represented clients in various cases involving alleged design and construction defect and construction fee disputes. This experience allows our team to provide unique, critical advice to our restaurant industry clients.

Other risk management services our Construction team offers include pre-bid risk analysis; lien and bond claims; project delivery method selection; and analysis of crucial construction-related insurance issues.

Our team members include attorney Robert Hancock, who, prior to practicing law, gained several years of construction management experience working for multiple large general contractors; Board Certified Construction Law attorney Mason Hester; and licensed Professional Engineer and LEED® Accredited Professional attorney Adam Richie.

## CORPORATE & SECURITIES

Our attorneys handle the full range of matters to help you establish and grow your restaurant business. Services we provide to our restaurant clients include the following:

- Business & Entity Formation
- Business Succession Planning
- Corporate Governance
- Corporate Finance & Lending
- Capital Raising & Equity Financing
- Compensation Arrangements
- Employment Agreements
- Franchise Agreements
- Joint Venture Agreements
- Management and Vendor Agreements
- Concession Agreements
- Software and other Technology Contracts
- Data Privacy

## DATA PRIVACY & CYBERSECURITY

Restaurant owners also turn to Munsch Hardt to identify possible data security vulnerabilities and review privacy and cybersecurity insurance options. We partner with clients to identify and resolve regulatory compliance needs; craft and implement privacy and data security policies; and address emerging developments, including the legal issues presented by the accumulation of "Big Data." We also help clients prepare for data breach incidents; respond when such incidents occur; and provide counseling on privacy matters arising from mergers and acquisitions, joint venture and strategic alliance formations.

## ENVIRONMENTAL

Munsch Hardt's Environmental attorneys represent restaurant businesses in all aspects of state and federal matters, environmental permitting, compliance, transactional due diligence and dispute resolution. We help our restaurant clients balance the benefits of being proactive with the operational impacts and the expense of complying with environmental requirements. Our services include:

- Air emission, solid waste and wastewater discharge compliance issues
- Eminent domain
- Environmental due diligence in the sale or acquisition of businesses and business assets
- Environmental permitting
- Defense against agency enforcement
- Defense of cost-recovery actions
- Federal and state environmental reporting requirements
- Prosecution to recover cleanup costs from responsible parties
- Regulatory compliance
- Toxic tort claims
- U.S. Environmental Protection Agency multimedia audits

## FRANCHISEE / FRANCHISOR

At Munsch Hardt, we understand the business needs of franchisors and franchisees and how to manage these dynamic relationships. In addition to a strong Franchise Litigation practice, our attorneys also have vast experience representing franchise clients in planning, forming and organizing franchises, including the preparation and review of franchise agreements and offering circulars for compliance with federal and state franchise laws and regulations.

## IMMIGRATION

Foreign workers are essential to the restaurant industry's economic growth and success, and remaining in compliance with immigration laws is critical in order for a restaurant to flourish. Our Immigration attorneys have a breadth of experience assisting restaurant owners and employees in obtaining temporary visas and permanent resident status for foreign workers. We regularly counsel clients regarding I-9 compliance and responding to ICE audits and investigations, which often require an expedited expert response.

## INSURANCE

Munsch Hardt's Insurance Recovery practice group seeks insurance solutions that maximize the value of insurance products and claims in "bet-the-company" disputes, as well as day-to-day insurance conflicts for restaurant industry clients. Our team assists insureds on the front end with risk assessments and insurance audits, including careful review of insurance and risk management provisions in key contracts that are a critical part of the insured's business model. We help the insured from the outset to navigate the claims process, including providing practical and strategic advice affecting the bottom line recovery and assisting building a team of experts to better process the claim.

Our team is known for its creative and aggressive management of all aspects of third-party liability claims for our restaurant industry clients, including providing appellate and litigation related "defense" ideas and suggestions to motivate claimants to settle, representing the insured in insurance declaratory actions and related liability coverage conflicts, helping the insured get the best defense counsel for the particular case involved, aggressively pursuing additional insured coverage and indemnity dollars from others to increase the settlement pot and in the care and feeding of excess and umbrella carriers. From coverage relating to slip and falls, to liquor and dram shop liability, to catastrophic injuries from a floor collapse under a restaurant's fryers, to racial, sexual, religious discrimination, to ADA claims, to FTC and Department of Labor investigations, and more, our Insurance Recovery group has been there before, and finds the shortest distance between two points to solve the problem.

We are also well-versed in the procurement, interpretation and handling of specialty insurance products for business, such as non-subscriber coverages, cyber liability, related government investigative coverages, Fair Labor Standards Act (FLSA) defense coverages, employment practices liability insurance, recall policies, representations and warranties coverage and technology errors and omissions coverage.

## INTELLECTUAL PROPERTY

Restaurant owners and operators know that a strong brand can help a restaurant thrive in a competitive environment. Likewise, a brand must be cultivated, optimized and protected through sophisticated intellectual property strategies in order to maximize the value of those rights.

Munsch Hardt's Intellectual Property attorneys regularly handle a full range of intellectual property matters for our restaurant clients, including the selection, clearance and registration of trademarks, trade names, trade dress and service marks, as well as the preparation of applications with state agencies and the United States Patent and Trademark Office. We represent clients in litigation involving infringements of trademark, trade name, trade dress and service marks in cases before state and federal courts; governmental proceedings, such as opposition, cancellation and domain name disputes; and in appeals to the Trademark Trial and Appeal Board, the Court of Appeals for the Federal Circuit and other appellate courts.

## LABOR & EMPLOYMENT

While indispensable to a restaurant's success, employees present significant challenges and potential liabilities to a restaurant's business. Munsch Hardt's sophisticated Labor & Employment team provides clients with practical advice on everything from employment contracts; non-compete agreements; tip credits; workplace safety issues, including workplace violence and emergency preparedness policies and training; and traditional labor relations and union avoidance strategies.

We also offer guidance on compliance with anti-discrimination, harassment and family leave laws, as well as defend class action litigation involving the Fair Labor Standards Act (FLSA), wage and hour laws, meal and rest break regulations, off-the-clock-claims and other employee allegations of wrongdoing.

Our preference is to work with you on the front-end to avoid employment disputes and litigation. We regularly develop policy and employment manuals for our clients, which cover the many federal, state and local government laws and assist with supervisor and manager training over a broad range of employment areas. While not guaranteeing the absence of litigation and potential for human resources-related risks, it goes a long ways in reducing the risk to manageable and predictable levels.

## LITIGATION

Due to the often costly and disruptive nature of disputes, our primary goal is to guide you in avoiding litigation when possible. However, should a dispute arise that must be resolved through the courts or other third-party resolution processes, our seasoned trial attorneys are prepared to vigorously defend you and your business.

Our litigators have successfully represented clients in the restaurant industry in a wide variety of claims, including, but not limited to, non-subscriber claims, shareholder disputes and corporate control cases, premises and products liability claims and labor and employment issues. We also regularly counsel restaurant businesses in a variety of real estate litigation matters, such as prosecuting and defending claims for specific performance, royalties, breach of contract matters, foreclosures, eminent domain, land use issues, title defects and lender's liability claims.

In addition to traditional dispute resolution matters, our team is also accustomed to the following:

- General Risk Management
- Lease Disputes and Exit Strategies
- Employment Litigation and Discrimination
- Trade Secrets and Non-Competition Agreements
- Contract Disputes, Drafting and Negotiations
- Shareholder / Partner Disputes
- Fair Labor Standards Act (FLSA) Wage and Hour Litigation
- Dram Shop Liability
- Trademark Enforcement
- Customer and Employee Personal Injury Claims
- Employee Theft and Asset Recovery
- Franchise Agreements
- TABC Compliance, Licensing and Regulatory Issues
- Affordable Care Act

## PERSONAL INJURY

Opening your doors to the general public can also open your doors to lawsuits and litigation, including employee negligence, slip-and-fall incidents, injuries that occur due to equipment malfunction and alcohol/dram shop matters. With more than 30 years of experience and hundreds of successes before state and federal courts throughout Texas, we understand what it takes to represent our clients in these situations – we understand the applicable statutes, the relevant standards of care and the injury-related damage models. When appropriate, our team also advocates for our clients' interests through settlements, mediation and/or arbitration proceedings.

Our team of attorneys have dedicated the majority of their careers to defending companies against personal injury cases. As true experts in their field, they serve as faculty members of the IADC Trial Academy, TADC Trial Academy and the Texas College of Trial Advocacy. Their first-chair experience enables them to minimize litigation costs and maximize the probability of a successful outcome for our clients every time.

## REAL ESTATE

Location is one of the most significant factors in the success of any restaurant or hospitality business. Whether the location selected is in a shopping mall, urban shopping area, strip center or freestanding location, our team of more than 30 Real Estate attorneys is standing by to guide you through every step of the process. This includes due diligence, site selection, acquisition, development and construction, as well as drafting and negotiating leases and loan documents. Other aspects include the land use and zoning process (including alcoholic beverage permitting), environmental issues, letters of intent, contracts, cross-easements, acquisition documents, leases and signage.

Having the opportunity to represent brands on an on-going basis, our Real Estate team is poised to manage any project in an efficient and cost effective manner.

## TAX

At Munsch Hardt, our Tax team collaborates with colleagues in our Corporate, Real Estate and Bankruptcy sections to ensure restaurant owners, operators and developers make the most tax-efficient decisions. We frequently guide our restaurant clients in structuring restaurant acquisitions, dispositions, joint ventures and financings, as well as the design and implementation of incentive compensation structures for key employees.

Our team has significant experience negotiating and drafting transactional documents, partnership agreements, LLC operating agreements, shareholder agreements and buy-sell agreements, as well as with federal and state income, sales and employment tax issues. Should a tax controversy arise, we are experienced in resolving both federal and state tax disputes at the administrative level and through litigation.

## Experience

### Outside Corporate Counsel

Represented a significant Dallas-based restaurant group as outside corporate counsel, including the selection and formation of their entity.

### Intellectual Property Litigation

Represented various restaurant groups in the registration and enforcement of trademarks and service marks.

### Construction Contracts

Represented a restaurant owner for an upscale restaurant in Dallas, Texas in the drafting and negotiation of a construction contract.

### Outside Corporate Counsel

Serving as U.S. outside general counsel for one of the largest casual dining restaurant companies in Canada.

### Labor + Employment

Represented Texas-based restaurant groups in all employment matters, including executive employment agreements, executive severance agreements, personnel policies and handbooks, as well as wage and hour claims, tipping pool improprieties, age discrimination claims and workers' compensation retaliation claims.

### Real Estate Acquisitions + Leases

Representing several expanding, Texas-based restaurant groups in acquisitions and lease transactions throughout the United States.

## Immigration Compliance

Represents local restaurants in I-9 in-house audits and Social Security Administration No-Match Letter issues.

## Tax Planning

Design and implementation of incentive compensation arrangements for multiple restaurant owners and operators, including Profits Interest, Stock Option, Restricted Stock and Phantom Equity Plans.

## Environmental Contamination

Secured favorable results in contribution actions for restaurant owners seeking recovery of costs necessary to respond to environmental contamination.

## Practice Leaders



**Robert Kibby**

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## Related People

Theo Bruton  
Glenn Callison  
William Zac Duffy

William Finegan  
Jared Greathouse  
Craig Harris  
Mason Hester  
Anne-Alise "Ali" Hinckley  
Sunil Jamal  
James Jordan  
Robert Kibby  
Michael Krywucki  
J. Lucas Lechler  
Nicole Manley  
Andrew McDonald  
Michael Navarro  
Gregory Noschese  
Deborah Perry  
Irina Plumlee  
James Ray  
Sarah Rogers  
Kala Simpson  
Garrick Smith  
Christopher Speer  
Toni Swanger  
Hunter Taylor  
William Toles

## Related Practices

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

## Related Industries

Construction  
Hospitality  
Insurance  
Retail

## Newsroom

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**In The News:** Munsch Hardt Launches Sports + Entertainment Practice



**In The News:** Houston Texans' Former Associate General Counsel Joins Local Law Firm to Launch New Sports Practice

**In The News:** Houston Texans Associate GC Jumps to Munsch Hardt

**Newsletter:** COVID-19: Texas Governor Greg Abbott's Statewide Executive Order No. GA-30

**Newsletter:** Minimum Standard Health Protocols for Restaurants

**Newsletter:** CDC Decision Tree for Restaurants and Bars

**Newsletter:** OSHA Alert: Guidance for Restaurants & Beverage Vendors Offering Takeout or Curbside Pickup

**Newsletter:** COVID-19: Return-to-Work Checklist for Employers

**Newsletter:** COVID-19: Dallas Code Compliance - Notices of Violation

**Newsletter:** Governor Abbott Waives Certain Regulations To Allow Delivery Of Alcohol From Restaurants & To Support Hospitality Industry

**In The News:** After Bankruptcy Mr. Gatti's Plans Expansion

**In The News:** Midsize Moves: A Texas Restaurant Practice, an LA Labor Lawyer

**Press Release:** Munsch Hardt Launches Texas Restaurant Practice

**In The News:** Experts Outline the Hotel Industry's Top Legal Hurdles

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