

JOHN BURRITT McARTHUR

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John Burritt McArthur has been serving as an arbitrator since 1994. He has 26 years of experience as an arbitrator, 37 years experience as a trial lawyer in state and federal courts around the country, and is licensed to practice law in Texas, California, and Alaska as well as in a variety of federal courts. He spent his first decade of practice in Houston at Susman Godfrey LLP, where he became a partner in 1988. After a few years in solo practice while completing course work for his Ph.D, Mr. McArthur worked from 1999 to 2008 at what became San Francisco's Hosie McArthur LLP. Since 2008, he has had a solo practice that combines his arbitration practice with complex commercial trials. He is based in Berkeley, California.

Mr. McArthur has had extensive arbitration experience since 1994 and extensive litigation experience since 1983. The largest arbitrations in which he has been appointed range from a half-billion dollar electricity dispute to cases over natural gas sales, fuel cell batteries, compensation arrangements, equity investments, pipeline compressors, compensation for sale of a company, gold mining, high tech companies, and allocation of offshore oil production. He is on the Complex Case, Commercial, Oil and Gas, and National Energy Panels of the American Arbitration Association and a Distinguished Neutral on the California; Energy, Oil, and Gas; and Banking Panels of the International Institute for Conflict Prevention and Resolution (CPR). He is listed on a number of panels with Fed-Arb of Palo Alto, including on its oil, gas and energy; insurance; and securities panels. McArthur is a Fellow of the Chartered Institute of Arbitrators and of the College of Commercial Arbitrators. Listed with the London Court of International Arbitration, he is also a listed arbitrator for the Hong Kong, Dubai, and Kuala Lumpur International Arbitration Centers and is included in The Roster of International Arbitrators. He has published many articles on arbitration, including in the *World Arbitration and Mediation Review* and in *Judicature*, and presented widely on arbitration topics, including particularly on reasoned arbitration awards.

Major litigation and arbitrator experience in the following areas:

Energy, Oil and Gas, Electricity, and Resource Extraction. Largest single practice area. Cases include litigation at all levels of oil and gas industry: exploration, development, production, transportation, oil refining, natural gas processing, and marketing. Cases have included investor billing arrangements (partnership, joint venture, and JOA investors), prospect structure, geology, reservoir engineering, oil prices, gasoline prices, natural gas prices and deductions, review of equipment prices and salvage, offshore drilling rigs, production allocation, purchase and sale agreements for oil and for gas, royalties, and severance taxes. Also has experience in gold mining and coal mining and with electricity markets, including appointment as an arbitrator in a major gold-mining dispute and as an arbitrator by Pacific Gas & Electric Company in a billion-dollar electricity tolling dispute.

Contract and Tort Business Disputes, including UCC Disputes. Substantial part of practice has involved business disputes over claims for breach of contract, breach of good faith, and torts ranging from fraud and negligent misrepresentation to breach of fiduciary duty, deceptive trade practices, distributor and franchise disputes, and conversion or constructive trust claims. A number of matters involved contracts for sale of goods subject to UCC.

Antitrust. Extensive experience in antitrust litigation. When joined Susman Godfrey LLP in Houston in 1983, the firm specialized in antitrust work, with *Corrugated Cardboard* litigation still in class administration phase. Has handled as trial lawyer and as arbitrator disputes regarding alleged per se and rule of reason claims under section one of the Sherman Act; monopoly and attempted monopoly claims under section two of the Act; and merger issues. Antitrust cases in wide range of industries, from jet fighters to tennis balls, pipeline mergers to gasoline and fuel cell battery pricing and markets.

Investment Disputes, Fiduciary and Joint Venture Claims. Handled investment disputes in partnership, joint venture, stock, and other equity structures, including fraud and breach of fiduciary duty claims. Represented Aetna in a variety of claims over its business investments.

Securities and Finance. Extensive experience in securities litigation, a major focus of Susman Godfrey's practice, as arbitrator as well as trial lawyer. Disputes handled include claims over registration and alleged schemes to defraud under federal securities laws and various state Blue Sky statutes. Has served as FINRA arbitrator for over a decade, with detailed experienced as FINRA panel member and as chair in substantial FINRA investment and employment cases.

Insurance. Early practice involved substantial work for Aetna in prosecuting claims over failed investments. Insurance experience includes defense of allegedly unsupported medical claims brought by alternative treatment cancer clinic, defense of surety bond issuer, and pursuit of storm damage claims following Hurricanes Katrina and Rita.

As an arbitrator, Mr. McArthur is dedicated to ensuring that arbitration provide as fair and neutral an outcome as the best state and federal courts, while the parties get to decide in conjunction with the arbitrator whether they want a quicker and more efficient resolution than available in the courts, full-fledged federal-style discovery, or another alternative. Statement of arbitration philosophy about need for neutrality in arbitration can be found at <http://www.johnmcarthurlaw.com/arbitration.htm>.

Mr. McArthur has a strong educational background for complex commercial arbitration and trial work. He graduated Phi Beta Kappa and magna cum laude from Brown University in 1975. He was Editor-in-Chief of the Texas Law Review in 1981-1982 and is a Chancellor and member of the Order of the Coif at the University of Texas School of Law. Upon graduation, he clerked for Judge Joseph Sneed of the Ninth Circuit Court of Appeals in San Francisco. In addition to practical experience gained in over three and a half decades representing clients in a wide array of industries, Mr. McArthur has graduate-level academic training in economic concepts and analysis. He has an M.A. in economics from the University of Connecticut; took a summer graduate program in economics at the London School of Economics in 1992; and holds an M.P.A. from Harvard's Kennedy School of Government and a Ph.D from the Goldman School of Public Policy at the University of California – Berkeley. Much of his coursework in all of the graduate programs was in economics.

Mr. McArthur's work experience is equally suited to commercial arbitration and litigation. He has represented plaintiffs and defendants in large, often highly technical commercial cases throughout his career. He has handled federal and state court cases, arbitrations, cases in MDL proceedings, and class actions. His clients have ranged from some of the world's largest corporations, including Aetna and British Petroleum, to Alaska native corporations, States (Alaska, Louisiana, Hawaii, and Mississippi), individuals, and small businesses. His practice has been highly diverse by subject matter as well. At Susman Godfrey LLP, the firm's specialties included antitrust and securities law and Mr. McArthur handled cases in both areas then and later as well as insurance cases, corporate and partnership disputes, investment disputes, and many oil-and-gas and other energy cases.

Mr. McArthur has been acknowledged for his litigation experience by his peers. In 2007, he was elected a Fellow of the Litigation Counsel of America, an elective fellowship that seeks to connect some of the top American lawyers. He is past chair of the LCA's International Institute on Natural Resources, Energy, and Environmental Law (IINREEL). McArthur has long held an "av" rating from Martindale-Hubbell. He is a member of the Million-Dollar and Multi-Million-Dollar Advocates Forum. He has published dozens of articles on legal issues, including on energy issues, arbitration, case management, various aspects of deregulation, and antitrust. He has also served as an expert in many energy cases.

Areas of Expertise: Complex Commercial Litigation and Arbitration; Oil and Gas and Energy; Antitrust; Securities and Finance; Investment including Partnership, Fiduciary, Joint Venture, and Equity investments; Breach of Contract and Business Torts; Insurance; Trade Secrets, Patents and Other Intellectual Property.

Publications.

Books and Dissertation:

1. THE REASONED ARBITRATION AWARD IN THE UNITED STATES: ITS MEANING, VIRTUES, JUDICIAL EROSION, AND PROTECTIONS (forthcoming Juris Publications fall 2020);
2. Co-author, revisions to Chapter 12, *Awards and Substantive Interlocutory Arbitral Decisions*, in COLLEGE OF COMMERCIAL ARBITRATORS, GUIDE TO BEST PRACTICES IN COMMERCIAL ARBITRATION (4th ed. 2017);
3. OIL AND GAS IMPLIED COVENANTS FOR THE TWENTY-FIRST CENTURY: THE NEXT STEP IN EVOLUTION (Juris Publications 2014);
4. THE GREAT DEPRESSION AND THE LIMITS OF MARKET-BASED POLICY (University of California at Berkeley, Spring 2003).

Selected Publications and Presentations:

2020:

1. With Allison Snyder, “How to Protect Your Right to a Reasoned Construction Award, When That is What You Want,” __ Construction Law Journal__ (forthcoming Winter 2020);
2. “Tribunals, Providers, and Courts Must Help Protect Reasoned Awards,” 38 Alternatives 56 (Apr. 2020);
3. “Parties Usually Benefit Most from Reasoned Awards, Not Standard Awards,” 38 Alternatives 44 (Mar. 2020);
4. “Parties, Beware: Current Practices and Judicial Standards Threaten Your Right to Truly Reasoned Awards,” 38 Alternatives 19 (Feb. 2020).

2019:

1. With Allison Snyder, “The Second Circuit Needs to Break Precedent to Protect Reasoned Arbitration Awards,” 12 N.Y.S. Disp. Resol. Lawyer 16 (2019), 12 N.Y.S. Disp. Resol. Lawyer 16 (2019);
2. “Real-World Questions about Awards and Arbitrator Decisionmaking: A Modest Problem Set,” presented at AAA Roundtable, San Francisco, CA (June 6, 2018);
3. “The Arbitration Award: Delivering a Quality Decision,” presented at AAA/ICDR 2019 Panel Conference, Nashville, Tenn. (Mar. 8-9, 2019).

2018:

1. “Mineral Implied Covenants: Why Royalty Owners Still Should Care About Them,” presented at National Association of Royalty Owners (NARO) Annual Convention, Denver, CO (October 19, 2018);
2. “Real-World Questions about Awards and Arbitrator Decisionmaking: A Modest Problem

- Set,” presented at AAA Roundtable, San Francisco, CA (June 6, 2018);
3. “Ten Practices to Embrace, Ten to Shun, When Writing Awards” and “Award and PostAward Issues” [moderator, with Karen Evans and Francisco Rodriguez), both presented at ABA Arbitrator Training Institute, Miami, FL (May 17-18, 2018);
 4. “Putting Arbitration in Your Trial Toolbox: How to Stop Worrying About the Panel Hearing and Learn to Love It Instead,” presented at Litigation Counsel of America Renaissance Symposium XIII, San Francisco, CA (April 20, 2018).

2017:

1. “The Tom Brady Award and the Merit of Reasoned Awards,” 8 Harvard Journal of Sports and Entertainment Law, no. 2 (2017);
2. “How the Texas Supreme Court Lost its Position as a Leading Oil and Gas Royalty Court: A Tale of 18 Cases,” 49 Texas. Tech. L. Rev. 1 (2017);
4. “A Straying Court? What Has Happened to Implied Covenants and Other Landowner Protection in Texas?,” presented in Austin, Texas Graves Dougherty Fourth Annual Landowners’ Seminar (May 12, 2017).
3. “Reasoned Awards: Why the Fuss? Why the Confusion?” presented at AAA Roundtable, San Francisco, CA (Feb. 8, 2017).

2016:

1. “Implied Covenants in Texas and in the More United States,” presented at Houston Bar, Oil, Gas and Mineral Law Section, Houston, Texas (May 26, 2016);
2. “Implied Covenants in Texas and Out: Has the Texas Supreme Court Abandoned a Mainstream Approach?” presented at Texas State Bar, Oil and Gas Disputes 2016, Houston Texas (Jan. 28, 2016).

2015:

1. “American Oil and Gas Implied Covenants and their Functions: ‘As Much A Part of the Contract – Is As Effectually One of Its Terms – As If Had Been Plainly Expressed,’” 2015 Rocky Mountain Mineral Law Foundation ¶ 29.01 (2015);
2. “Some Advice About *Bice*, North Dakota’s Marketable-Product Decision,” 90 North Dakota Law Review 545 (2015);
3. “Mineral Royalties, Deductions, and *Fawcett v. OPIK*: Continuity and Change in the Revised But-Still-Standing Kansas Marketable-Product Rule,” 64 University of Kansas Law Review 63 (2015);
4. “Arbitrator Use and Misuse of Experts,” presented at AAA Roundtable, San Francisco, CA. (Nov. 11, 2015);
5. “Implied Covenants: Landman’s Friend or Foe?,” presented at Rocky Mountain Mineral law Foundation Annual Institute (July 18, 2015);
6. Co-author, “Arbitration: The Underused Alternative for Oil and Gas Disputes,” Texas Lawyer (June 17, 2015);
7. “Preserving Public Natural Resources: Value and Sustainability in A World of High Costs and Budget Shortfalls,” 10 Texas J. Oil, Gas & Energy Law 265 (2015);

8. "Clarifying Oklahoma's Marketable-Product Royalty Rule," 86 Oklahoma Bar J. 370 (2015).

2014:

1. "Mineral Implied Covenants: Why Royalty Owners Should Care About Them," presented at National Association of Royalty Owners (NARO) Annual Convention, Santa Fe, N. M. (October 2014);
2. "Stewarding Public Oil, Gas, and Hard Minerals: The Express and Implied Development Rights that Protect Public Resources," 9 Texas J. Oil, Gas & Energy Law 215.

2013

1. "Twenty-Five Years On: Arbitration Sails Onward Over the Supportive Sea of International Commerce," 7 World Arb. & Med. Rev., No. 2 (2013);
2. "International Environmental Law: Can It Overcome Its Weaknesses to Create an Effective Remedy for Global Warming?," 10 Santa Clara Int'l L. Jo. 253 (2013);
3. Co-presenter: "Trying the Expert Case," presented at Litigation Counsel of America Fall Conference, The Greenbrier, West Virginia (Oct. 17, 2013).

2011:

1. "Growing Pains: Building American Arbitration's Legitimacy Through Everyday Arbitral Decisions, 5 World Arbitration & Mediation Review 57 (2011).

2010:

1. "Do Arbitrators Know Something that Judges Don't?," 94 Judicature 107 (2010).

2009:

1. "Draft to Make Arbitrators Follow the Law," The Recorder (Dec. 18, 2009).
2. "Global Warming, the Regulations Ahead, and the Oil-and-Gas Industry," 48 Natural Resources Journal 745 (2009).

2005:

1. "The Restatement (First) of the Oilfield Operator's Fiduciary Duty," 45 Natural Resources Journal 587 (2005);
2. "A Minority of One? The Reasons to Reject the Texas Supreme Court's Recent Abandonment of the Duty to Market in Market-Value Leases," 37 Texas Tech Law Review 271 (2005).

2003:

1. "Judging Made Too Easy: The Judicial Exaggeration of Exculpatory and Liability-Limiting Clauses in the Oilfield's Operator Fiduciary Duty Cases," 56 S.M.U. L. Rev. 925 (2003).

2001:

1. "The Mutual Benefit Implied Covenant for Oil and Gas Royalty Owners," 41 Natural Resources Journal 795 (2001).

2000

1. "Lessons for Judges from the Civil Justice Reform Act," 83 Judicature 222 (2000).

1998:

1. "Avoiding the Mistakes of FERC and California's Full Stranded-Cost Recovery in Electricity," 11 Electricity Journal 57 (1998);
2. "The Irreconcilable Differences Between FERC's Natural Gas and Electricity Stranded-Cost Treatments," 46 Buffalo Law Review 71 (1998).

1997:

1. "Coming of Age: Initiating the Oilfield into Performance Disclosure," 50 Southern Methodist University Law Review 663 (1997);
2. "Antitrust in the New [De]Regulated Natural Gas Industry," 18 Energy Law Journal 1 (1997);
3. "The Need for Uniform Discovery Time Limits," 80 Judicature 1 (1997)

1996:

1. "The Strange Case of American Civil Procedure and Its Missing Discovery Time Limits," 24 Hofstra Law Review 865 (1996);
2. "A Twelve-Step Program for Copas to Strengthen Oil and Gas Accounting Protections," 49 Southern Methodist University Law Review 1447 (1996).