

Energy Litigation

Winstead's energy litigation attorneys are experienced in all aspects of the energy industry, having handled matters concerning disputes from the bottom of the wellbore, on and offshore, to the pipeline and on to final distribution. We are also experienced in unconventional drilling litigation, assisting energy producers in cases filed in jurisdictions in eight of the major U.S. shale plays.

Winstead litigators understand the technical complexity of oil and gas production and marketing and how it effects the bottom line for clients. Our energy trial attorneys have handled cases before judges, juries or arbitrators in Texas, New Mexico, Oklahoma, Kansas and California.

Case Study No. 1: Defending groundwater contamination via hydraulic fracturing cases.

Our Client's Issue: Our client was sued in high profile cases in which landowners claimed that their water wells were contaminated as a result of the client's hydraulic fracturing of natural gas wells in the area. Since our client fracture-stimulates all of its oil and gas wells, the client needed a victory or be faced with significant copycat litigation. These cases were some of the first filed against an oil and gas operator involving modern fracturing techniques and the methodology needed to be substantiated as environmentally safe. Merely winning the case was not enough. The client wanted to disprove the theory that fracture stimulation causes water well contamination.

Our Approach: Winstead attacked the allegations with a multi-disciplinary approach. We hired experts in fracture stimulation, geology, petroleum engineering, aquifers and water-well design/construction. The water of the Plaintiffs' wells was thoroughly tested, the flow of the aquifer analyzed, the wellbore integrity of the nearby gas wells was studied and confirmed, the geologic features of the horizons that the gas wells were drilled through were examined, and the fracture stimulation of the wells was reviewed.

Outcome: We proved that the water wells were not contaminated as a result of any oil and gas operations in the area, nor by any fracturing operations of our client. In doing so, we demonstrated that the problem with the Plaintiffs' water wells was that they were poorly designed and constructed, and they were allowing sand from the aquifer to infiltrate their water. Winstead filed both a motion for summary judgment and a motion to strike the various Plaintiffs' expert witnesses. When faced with these motions, the Plaintiffs dismissed their cases and admitted that their wells were not contaminated by the client's operations. One of these cases was ultimately dismissed with prejudice.

Case Study No. 2: Defeating class certification in a royalty class action.

Our Client's Problem: Our client was sued in multiple class action cases concerning its payment of royalties on oil, gas and natural gas liquids produced from thousands of leases in several states. The class certification rules in each jurisdiction were virtually the same, however, the legal issues concerning the lessee's royalty payment obligations varied from state to state. Though our client's royalty payment methods were similar in each jurisdiction, it desired to defeat class certification in each case.

Our Approach: Our approach was to demonstrate in each class that the client had differing obligations to the royalty owners within the putative class. We also demonstrated that marketing differences affected the royalties due to individual members and that, in many instances, some royalty owners were overpaid. In these cases, we also prepared a set of Jury Instructions and Questions for the individual courts in order to present the practical management problems of a certification to the Court – thus demonstrating how difficult it would be to try each certified class claim to a jury. This also has the effect of showing the tribunal that one common answer for each royalty owner could not be obtained.

Outcome: The class certification applications were either denied or trial court orders certifying a particular case as a class action were reversed by the court of appeals. In each instance, the court found that individual issues predominated over common issues to the class.

Snapshot of Energy Litigation Strengths

Because of our understanding of the energy industry and decades of energy litigation experience, Winstead attorneys have the environmental, regulatory, condemnation, litigation and transactional talent that our clients need. We create customized multidisciplinary teams to resolve the specific issues that clients face. Particular strengths include:

- Antitrust claims in the energy field
- Class action suits
- Condemnation
- COPAS accounting procedures and other energy accounting issues
- Development rights and obligations
- Drainage issues
- Energy-related environmental issues including contamination/remediation issues
- Indemnity claims
- Joint venture/partnership issues
- Land, boundary and mineral ownership issues
- Offshore marine construction and transportation issues
- Patent infringement—oil and gas equipment
- Personal injury defense
- Plant construction and maintenance issues
- Plugging and abandonment obligations
- Product liability claims
- *Qui Tam* cases
- Reserve issues
- Royalty and overriding royalty claims
- Seismic and trade secret matters
- Unconventional drilling
- Working interest/surface owner disagreements

Next Steps

Winstead's energy litigation team is equally talented and skilled at trial and at the negotiation table. We have ample experience trying hotly contested oil, gas and energy disputes in both state and federal courts, and before administrative judges, regulatory agencies and arbitration tribunals. Having the right team in place that will quickly assess the risks and determine the right path means Winstead clients are one step closer to resolving their energy industry disputes.