

John Burritt McArthur, Esq.

Arbitrator



John Burritt McArthur is an arbitrator with experience in a wide range of complex commercial disputes, with his most substantial experience in energy and natural resources, particularly in oil and gas disputes. He has served as a party-appointed arbitrator, sole arbitrator, and chair since his first appointment in 1994. His background combines decades of commercial litigation and arbitration experience with advanced training in economics and public policy. He also researches, writes, and speaks extensively on arbitration law and practice.

From Lawyer to Arbitrator

McArthur began his legal career in 1982 when he clerked for a federal judge on the Ninth Circuit Court of Appeals in San Francisco. A year later, he became the twelfth lawyer to join a fledgling, little-known Houston law firm named Susman, Godfrey & McGowan.

McArthur's interest in arbitration was piqued a few years later when he successfully defended a large natural-gas award against vacatur in a Houston state trial court and in the court of appeals. But McArthur squelched that interest because he was too devoted to developing his trial practice.

In 1988, while still at Susman Godfrey, McArthur and his best friend from high school, Mark Wawro, secured a \$536.2 million take-or-pay verdict against El Paso Natural Gas Company from a jury in Houston state court. The verdict was one of 1988's top ten verdicts nationally. It was a pioneering result because of its repudiation theory. Their success in the case changed the dynamics for hundreds of take-or-pay cases on file around the country.

For the first twenty-five years of his practice, McArthur represented plaintiffs and defendants in a diverse docket involving the contract, tort and statutory claims common in complex corporate commercial disputes. His clients included major oil companies like BHP, BP, and Unocal; the States of Alaska, Louisiana, and Hawai'i; independent oil and gas companies; small businesses; one of the country's largest insurers (Aetna); two Alaskan Native Corporations; and a qui tam relator. He was involved in litigation at all stages of the oil-and-gas industry, but his practice was diverse. It included litigation over the FA-18 jet fighter, tennis balls, the furniture industry, and the Washington Public Power Supply System, as well as representing Aetna in investment disputes and a dispute over reimbursement for a cancer treatment.

Arbitrator Experience Since 1994

In 1994, an independent oil company mired in a natural-gas pricing dispute in New Mexico gave McArthur his first appointment. He only began consciously developing an arbitration practice, however, a decade later. In the mid-2000s, McArthur was a partner at San Francisco's Hosie McArthur LLP, which had a docket largely composed of oil-and-gas and IP cases. Pacific Gas and Electric Company, one of the country's largest public utility companies, appointed him in a dispute that changed his career.

PG&E was the respondent in two half-billion-dollar disputes consolidated into a single arbitration. Each claim alleged damages in excess of a damages cap, and a total of a billion dollars was at stake. The dispute concerned a PG&E subsidiary's alleged failure to satisfy take-or-pay obligations to accept deliveries of electricity from two generating plants in the Southeastern United States. Working on this arbitration, which required roughly a year of his time, persuaded McArthur to change his practice to arbitration. He began the transition not long after the PG&E award was issued in 2007.

In May 2008, McArthur opened a solo practice in Berkeley, California, as he began intentionally dedicating more time to arbitration. He joined FedArb's panel in 2014 and is Co-Leader of its Energy Practice Group. He is also an arbitrator of long standing on the American Arbitration Association's Large, Complex Commercial Case, Oil and Gas, and National Energy Panels; on CPR's California and Oil and Gas Panels; and on the Financial Industry Regulatory Authority's (FINRA) roster. Internationally, he is a member of the North American Users' Council of the London Court of International Arbitration (LCIA) and is listed by the international arbitration centers in Hong Kong (HKIAC), Kuala Lumpur (AIAC, formerly KLRC), and Dubai (DIAC). He recently served as the head of the Northern California section of the Chartered Institute of Arbitrators, North American Branch. He is listed in the Arbitration Law Roster of International Arbitrators.

McArthur has been appointed as an arbitrator by claimants and respondents. Appointing parties include some of the country's largest corporations, independent oil companies, midstream companies, a variety of smaller businesses, and investors.

McArthur's practice as an arbitrator has been as diverse as his earlier work as a lawyer. Many of the arbitrations in which he has been appointed involve complex energy issues or other disputes over complex technology. His experience includes drafting sections of awards addressing technology, economics, statistics, and damages, both as chair and as a panel member. His largest arbitrations have involved gas sales contracts, electricity transmission, operation of midstream natural gas and liquids processing, fractionating, and transportation systems, fuel cell batteries, natural-gas pipeline compressors, equity investments including many securities disputes, operation of an electronic trading platform, commissions from the sale of a company, questions of market definition and market power, and offshore drilling disputes.

McArthur's peers repeatedly have recognized him for his expertise. The Chartered Institute of Arbitrators admitted him as a Fellow in 2013, and the College of Commercial Arbitrators made him one of its Fellows in 2016. The CCA put him on the team revising the awards chapter in the 2017 Fourth Edition of its *Guide to Best Practices*. He became a member of the National Academy of Distinguished Neutrals in 2020. In 2024, he was among a handful of general editors who oversaw revisions to the Fifth Edition of the *Best Practices Guide*.

McArthur has spoken frequently to arbitrators and lawyers on arbitration issues. His talks and publications over roughly the last decade are listed under Selected Publications and Presentations. In 2022, he published a treatise on reasoned awards, vacatur rates, drafting awards to avoid vacatur, and challenges to defective awards. His book is titled *The Reasoned Arbitration Award in the United States: Its Purposes, Preparation, Problems, and Preservation* (Juris Publications 2022).

As a trial lawyer, McArthur usually assumed responsibility for preparing, presenting, and cross-examining technical experts. As an arbitrator, he thrives on disputes with intricate technical issues. In addition to his extensive experience in these areas as a lawyer and an arbitrator, McArthur has formal training in economics and techniques of policy analysis through an M.A. in economics from the University of Connecticut, an M.P.A. from Harvard University's Kennedy School of Government, graduate-level economics training at the London School of Economics, and a Ph.D. in public policy from the Goldman School of Public Policy at the University of California, Berkeley. This analytical background supports his work on complex economic and technological questions.

Areas of Expertise

- Antitrust
- Complex Commercial Litigation and Arbitration
- Contract Disputes
- Oil and Gas, Energy, and Natural Resources
- Investment Disputes, including Fiduciary, Partnership, and Joint Venture Claims
- Securities
- Technology
- Trade Secrets
- Copyright
- IP Claims

Energy, Oil and Gas, Electricity

The energy field is McArthur's largest single area of practice. He has handled matters at every level of the oil and gas industry. He has been appointed an arbitrator by major oil companies, independents, investors, field-service companies, and one of the country's largest public utilities. As a lawyer, his experience included major take-or-pay and oil posted-price litigation. In 2004, he was one of two lead counsel in one of the few oil posted-price cases to go to trial. A jury in Thibodaux, Louisiana, returned a verdict of over \$100 million for his client, the State of Louisiana, against a dominant major oil company. In 2013, in his last trial (and his first administrative trial) in Anchorage, Alaska, McArthur represented the State of Alaska as lead counsel and defended it in an allocation dispute over millions of barrels of oil that, at then-existing market prices, were worth \$600 million. He often arbitrates oil-and-gas and other energy cases.

McArthur has served as an expert in more than two dozen oil-and-gas cases. He serves on the AAA's National Energy and Oil and Gas Panels and CPR's Oil and Gas Panel. He has been one of the leaders of FedArb's Energy Practice Group since its inception, and co-founded the LCA's International Institute of Natural Resources, Energy and Environmental Law. McArthur was for many years a sustaining member of the Institute for Energy Law. Since shifting his focus to arbitration, he has been a sustaining member of the Institute for Transnational Arbitration.

Selected energy publications, including his book on implied covenants, appear under Selected Publications and Presentations.

Complex Commercial Disputes: Contract, Tort, and Statutory Claims

McArthur primarily arbitrates complex commercial disputes involving contract, common-law tort, and statutory claims. His experience includes breach of fiduciary duty, deceptive trade practices, distributor and franchise disputes, fraud, tortious interference, racketeering, and disputes under the Uniform Commercial Code (UCC).

Technology

Technical evidence and complex damages models have been central to McArthur's work as both a lawyer and an arbitrator. As counsel, he regularly prepared, deposed, and presented technical and damages experts. Early in his career, he handled alleged withholding of technical information in an antitrust and contract dispute between the manufacturers of the F-18 jet fighter, examining how withheld software and component information affected costs and operations.

As an arbitrator, McArthur has addressed technical questions involving pipeline compressor defects, drilling equipment and well failures, offshore drilling rigs, electricity delivery capacity, marketing and allocation of natural gas and natural gas liquids, and gold production and proceeds. His computer-related arbitrations have involved the capabilities of an electronic trading platform and electronic discovery concerning information

allegedly taken by former employees. His former firm, Hosie McArthur LLP, handled a substantial number of software disputes involving trade secrets, confidential information, nondisclosure agreements, and patents, including cases against Microsoft and Visa.

McArthur's broader experience includes disputes over energy production, transportation and processing costs, reserve estimation, and allocation of production among underground reservoirs. These matters have required analysis of technical evidence and detailed accounting and financial records. Drawing on his training in economics and statistics, he is familiar with complex damage models, including discounted cash flow analysis, debt-to-equity ratios, and risk discounting.

Investment Disputes, Including Securities Claims

McArthur has extensive experience with investment disputes involving partnerships, joint ventures, alleged misrepresentations over material information affecting the price and value of stock, joint operating agreements, and other equity structures. He litigated securities disputes while at Susman Godfrey and, since becoming a FINRA arbitrator in 2010, he has been appointed in securities arbitrations involving alleged schemes to defraud under federal and state law.

Antitrust

When McArthur joined Susman Godfrey in 1983, the three-year-old firm had been founded as, and was operating as, an antitrust boutique law firm. He handled Section 1 per se and rule-of-reason claims, Section 2 monopolization and attempted-monopolization claims, and violations of the Clayton Act and Federal Trade Commission Act. His antitrust experience spans a diverse range of industries and products, including tennis balls, jet fighters, pipelines, a major gasoline price-fixing and market-division case for the State of Hawai'i against the oil companies selling gasoline in that state, and fuel-cell pricing and markets. His graduate training in economics, statistics, and techniques of policy analysis supports his analysis of disputes over relevant markets, market power, the incentives behind corporate behavior, and antitrust damages.

Employment

McArthur successfully resolved a race discrimination lawsuit as a court-appointed lawyer while at Susman Godfrey. Since becoming a FINRA arbitrator in 2010, almost half of his FINRA arbitrations have involved employment disputes, including tort, contract, and statutory claims.

Professional Recognition and Leadership

- Martindale-Hubbell, AV rating
- Fellow, Litigation Counsel of America, since 2007
- Fellow, Chartered Institute of Arbitrators, 2013
- Fellow, College of Commercial Arbitrators, 2016
- Co-Founder, LCA International Institute of Natural Resources, Energy and Environmental Law
- Co-Leader, FedArb Energy Practice Group
- Member, National Academy of Distinguished Neutrals, 2020

Education

- Ph.D., Public Policy, Goldman School of Public Policy, University of California, Berkeley
- M.P.A., John F. Kennedy School of Government, Harvard University
- J.D., University of Texas School of Law — Chancellor, Order of the Coif; Editor-in-Chief, *Texas Law Review*, 1981–1982
- M.A., Economics, University of Connecticut
- B.A., Brown University, magna cum laude, Phi Beta Kappa
- Graduate-level economics study, London School of Economics

Selected Publications and Presentations

Books and Chapters

- Editorial team, College of Commercial Arbitrators (CCA), *Guide to Best Practices in Commercial Arbitration* (5th ed. 2025)
- With Mark Travis, Chapter 25, “Reforming Judicial Review to Permit Bargained-For and Fast-Track Judicial Review,” in *The Federal Arbitration Act: Successes, Failures, and a Roadmap for Reform* (Cambridge University Press; Richard Bales and Jill Gross, eds. 2025)
- Chapter team, Chapter 12, “Awards and Substantive Interlocutory Arbitral Decisions,” in College of Commercial Arbitrators (CCA), *Guide to Best Practices in Commercial Arbitration* (4th ed. 2017)
- *The Reasoned Arbitration Award in the United States: Its Purposes, Preparation, Problems, and Preservation* (2022)
- *Oil-and-Gas Implied Covenants in the Twenty-First Century: The Next Step in Evolution* (2014)

Selected Articles and Presentations on Arbitration

2026

- “NYSBA’s *Arbitration Training*: A Valuable New Tool for Arbitrators and Counsel,” 31 NY No.1, at 25-29 (2026)

2025

- With Gary Benton, “The Right Balance: When Do Arbitrators Need to Be Proactive, When Should They Leave Things to the Parties?,” Jan. 23, 2025 CPR webinar
- “Restoring Party-Choice of Judicial Review and Smoothing Challenges with Fast-Track Review,” presented by Zoom at a Conference on the 100th anniversary of the Federal Arbitration Act at Washington College of Law, American University, Washington, D.C. (June 5, 2025).
- “Best Practices for Drafting Reasoned Arbitration Awards: A Conversation with John Burritt McArthur,” CCA podcast, interview by Richard Silberman (June 9, 2025)
- With Gary Benton and Carmela Romeo, “Making Arbitration Work for You: Strategic Considerations in Leveraging a Flexible Process,” CPR webinar (July 29, 2025)
- With Mark Travis, “Improving Arbitration: Restoring Consensual Judicial Review of Arbitration Awards and Expediting Review with Fast-Track Judicial Procedures,” 41 Am. Bus. L.J. 609 (2025)

2024

- “Awards, Reasons, and Remedies: More Difficult than They Seem?,” presented at ITA-IEL-ICC 12th Joint Conference on International Energy Arbitration, Houston, TX (Jan. 18-19, 2024)

- “The Importance of a Well-Drafted Arbitration Award: What You Need to Know as an Arbitrator and Advocate,” Phone interview by Jeff Zaino, Senior Vice President, American Arbitration Association, for podcast to Business Law Section, American Bar Association (June 26, 2024)
- Panelist with Dana Welch (moderator), Eric Weichman, and Vivian Shelanski, “After the Evidentiary Hearing, the Award and Post-Award Issues,” CCA podcast (Sept. 25, 2024)
- “Building Success: Strategies for Arbitrators to Secure Cases and Advance,” John McArthur interview of Serena Lee, President and CEO, CPR, for CIARB North American Branch podcast (Dec. 4, 2024)
- “Unsettled Issues in Modern Domestic Arbitration, and a Few Tips,” presented at Louisiana State Bar Arbitration-Mediation Program, New Orleans, LA (Dec. 12, 2024)

2023

- “More on Why You Should Consider Serving as a FINRA Arbitrator,” 41 Alternatives 1 (Vol. 1)(January 2023)
- “The Rule of Law and Reasoned Awards in Arbitration,” presented by Zoom at CCA Webinar (Mar. 15, 2023)
- “Why Courts Vacate Awards – And How to Prevent It,” presented at AAA/ICDR 2023 Panel Conference, Rancho Mirage, CA (Mar. 24-25, 2023)
- “Is There More to Drafting a Reasoned Award than You Think?,” presented at CIARB North American Branch Meeting, Santa Fe, N.M. (Apr. 15, 2023)
- “Savvy Arbitration Advocacy: Making Arbitration Work for You,” with Lawrence Mills, Zoom presentation for California Lawyers’ Association (Apr. 26, 2023)
- “Reasoned Awards and the Rule of Law,” Zoom presentation to LA ADR Study Group (Apr. 26, 2023)
- “Your Right to a Reasoned Award and Its Significance,” Presenter and Moderator (with Dana Welch and Gary McGowan), at ABA, Section of Dispute Resolution, Las Vegas, NV (May 11, 2023)
- “Two Views of Arbitrators’ Injecting their Own Views into an Arbitration,” Zoom presentation to LA ADR Study Group (Oct. 24, 2023)
- “Is there More to Drafting a Reasoned Award than You Think?,” Zoom presentation to AAA roundtable for Louisiana/Mississippi (Nov. 22, 2023), AAA roundtable for Texas (Houston) (Dec. 6, 2023)

2022

- “Ten Reasons for Serving as a FINRA Arbitrator, Part 1 of 2,” 40 Alternatives 171 (vol. 11)(Dec. 2022)

2021

- “Delivering a Quality Award: Problems Posed by Reasons,” presented by Zoom for Denver Interstate Group (Feb. 19, 2021)
- “What Every Lawyer Needs to Know about Arbitration: A Conversation with Experts, Part I,” Panelist, with moderator and fellow panelists Cedric Chao, Natalie Anderson, and Eric Tuchmann, presented by Zoom for Litigation Counsel of America Webinar (Mar. 18, 2021)
- “Drafting a Truly Reasoned Award, and the Vacatur Risk of Conclusory ‘Reasoned’ Awards,” presented to LA ADR Study Group (Sept. 28, 2021)

2020

- With Allison Snyder, “How to Protect Your Right to a Reasoned Construction Award, When That is What You Want,” 16 Construction L.J. 7 (Summer 2020)
- “Tribunals, Providers, and Courts Must Help Protect Reasoned Awards,” 38 Alternatives 56 (Apr. 2020)
- “Parties Usually Benefit Most from Reasoned Awards, Not Standard Awards,” 38 Alternatives 44 (Mar. 2020)
- “Parties, Beware: Current Practices and Judicial Standards Threaten Your Right to Truly Reasoned Awards,” 38 Alternatives 19 (Feb. 2020)

2019

- With Allison Snyder, “The Second Circuit Needs to Break Precedent to Protect Reasoned Arbitration Awards,” 12 N.Y.S. Disp. Resol. Lawyer 16 (2019)
- “The Arbitration Award: Delivering a Quality Decision,” half-day presentation at AAA/ICDR 2019 annual Panel Conference, Nashville, Tenn. (Mar. 8-9, 2019)
- “The Reasoned Arbitration Award: Traps, Trends, Tricks, and Tribulations,” with Richard Chernick, presented at JAMS San Francisco office, CA (May 7, 2019)
- “Traps, Trends, Tricks, and Tribulations of Award Writing Part 2: The Law’s Boundaries and Avoiding Vacatur,” with Richard Chernick, presented at JAMS San Francisco office, CA (July 9, 2019)
- “Practicum – Writing a Clear and Effective Award – Plenary Session,” Moderator, with Professors Cheryl Berg and Lucinda Sikes (University of California, Berkeley), CCA Fall Meeting, San Francisco, CA (Oct. 3-5, 2019)
- “The Unexpected Challenges of Writing Reasoned Awards,” presented at JAMS Boston office, MA (Dec. 3, 2019)

2018

- “Real-World Questions about Awards and Arbitrator Decisionmaking: A Modest Problem Set,” presented at AAA Roundtable, San Francisco, CA (June 6, 2018)
- “Ten Practices to Embrace, Ten to Shun, When Writing Awards” and “Award and Post-Award Issues” [moderator, with Karen Evans and Francisco Rodriguez], both presented at ABA Arbitrator Training Institute, Miami, FL (May 17-18, 2018)
- “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

- “The Tom Brady Award and the Merit of Reasoned Awards,” 8 Harvard J. of Sports and Entertainment Law, no. 2 (2017)
- “Reasoned Awards: Why the Fuss? Why the Confusion?” presented at AAA Roundtable, San Francisco, CA (Feb. 8, 2017).

2015

- “Arbitrator Use and Misuse of Experts,” presented at AAA Roundtable, San Francisco, CA. (Nov. 11, 2015)
- With Glen Ashworth and Dick Watt, “Arbitration: The Underused Alternative for Oil and Gas Disputes,” Texas Lawyer (June 17, 2015).

Earlier Articles on Judicial Case Management:

- “Lessons for Judges from the Civil Justice Reform Act,” 83 Judicature 222 (April 2000).
- “Inter-branch Politics and the Judicial Resistance to Federal Civil Justice Reform,” 33 University of San Francisco Law Review 1 (1999).
- “The Need for Uniform Discovery Time Limits,” 80 Judicature 1 (Viewpoint May-June 1997).
- “The Strange Case of American Civil Procedure and Its Missing Discovery Time Limits,” 24 Hofstra Law Review 865 (1996).

Selected Energy, Oil and Gas Articles

- “How the Texas Supreme Court Lost Its Position as a Leading Oil and Gas Royalty Court: A Tale of 18 Cases,” 49 Texas Tech Law Review 263 (2017).

- “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).
- “Stewarding Public Oil, Gas, and Hard Minerals: The Express and Implied Development Rights that Protect Public Resources,” 9 *Texas Journal of Oil, Gas & Energy Law* 215 (2014).
- “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).
- “The Restatement (First) of the Oilfield Operator’s Fiduciary Duty,” 45 *Natural Resources Journal* 587 (2005).
- “The Precedent Trap and the Irrational Persistence of the Vela Rule,” 39 *Houston Law Review* 979 (2002).
- “The Mutual Benefit Implied Covenant for Oil and Gas Royalty Owners,” 41 *Natural Resources Journal* 795 (2001).
- “Cost Responsibility or Regulatory Indulgence for Electricity’s Stranded Costs?,” 47 *American University Law Review* 775 (1998).
- “The Irreconcilable Differences Between FERC’s Natural Gas and Electricity Stranded Cost Treatments,” 46 *Buffalo Law Review* 71 (1998).
- “Coming of Age: Initiating the Oilfield into Performance Disclosure,” 50 *SMU Law Review* 663 (1997).
- “Antitrust in the New [De]Regulated Natural Gas Industry,” 18 *Energy Law Journal* 1 (1997).
- “A Twelve-Step Program for COPAS to Strengthen Oil and Gas Accounting Protections,” 49 *SMU Law Review* 1447 (1996).
- “The Class Action Tool in Oilfield Litigation,” 45 *Kansas Law Review* 1 (1996).
- “The Take-or-Pay Crisis: Diagnosis, Treatment, and Cure for Immorality in the Marketplace,” 22 *New Mexico Law Review* 353 (1992).