

# TEXAS LAWYER

An **ALM** Publication

texaslawyer.com | June 4, 2021

## Lawyers Expected Force Majeure Suits— But No One Foresaw What’s Happening in Texas

“Huge winners and huge losers emerged,” said Corey Wehmeyer, partner in Santoyo Wehmeyer in San Antonio. “There is no doubt litigation will continue to proliferate.”

BY ANGELA MORRIS

Energy litigators are seeing a litigation trend unfolding in Texas unlike anything they’ve seen before.

Contract disputes are arising between energy companies that buy and sell natural gas in at least 40 lawsuits filed since a massive winter storm disabled Texas’s energy grid in February.

Companies are arguing about whether Winter Storm Uri was a “force majeure” event, which means an “act of God” or other unforeseen circumstance that excuses their contractual obligations.

“It’s really the litigation trend now for energy companies in Texas,” said Chris Hogan, a Houston energy litigator. “I had thought with COVID-19, we would see a spike in force majeure claims, but it is nothing compared to what is happening now.”

Some gas marketing companies are looking to get out of performing under their contracts since the storm crippled their infrastructure. Other companies are trying to dodge extremely



Photo: weerapong/Adobe Stock

high invoices for gas during the storm.

Court dockets show that at least 40 similar lawsuits have been filed in Texas courts—mostly in Houston, but also in Dallas, San Antonio and Austin.

The parties in the cases involve some of the biggest names in the energy industry: Marathon Oil Co., Chesapeake Energy Marketing, BP Energy Co., ConocoPhillips Co., Chevron USA Inc. and more.

One of the most litigious parties so far has been CPS Energy,

San Antonio’s electric and gas utility company, which has filed 17 lawsuits in Bexar County.

Harris County is emerging as the primary location for the litigation because many companies’ contracts chose it as the venue to resolve disputes, said Hogan. While Big Law firms are getting this type of work, he said that energy companies are also tapping energy litigation boutiques like his own, Hogan Thompson, for representation.

“Some of these have huge amounts of money—tens, or



Chris Hogan, partner in Hogan Thompson in Houston. Courtesy photo

hundreds of millions of dollars at issue,” Hogan said.

### ‘Huge winners and huge losers’

In one recent example, defense attorneys at Locke Lord in Houston **moved a lawsuit to federal** court that involves two energy marketing companies, DCP Midstream Marketing and NextEra Energy Marketing.

Originally filed in Harris County, DCP’s lawsuit alleged that Winter Storm Uri was a force majeure event that prevented the full delivery of gas to NextEra.

But DCP alleged that for the gas that was still delivered, NextEra has short-changed a \$20.5 million invoice by about \$2 million.

Locke Lord partner David Harrell, who represents NextEra, didn’t respond to a call or email seeking comment. Neither did DCP’s lawyer, Arnold & Porter partner Katherine Treisman of Houston.

The case **first surfaced on Law.com Radar**.

Sign up for **Law.com Radar** to keep up with the latest news and lawsuits in a personalized legal news feed. Track federal litigation, deals and who’s getting the work by industry, practice area and region.

This dispute between DCP and NextEra is not unique.

Energy litigator Corey Wehmeyer of San Antonio said disputes have proliferated because the winter storm interrupted the facilities of natural gas producers and gatherers. These interruptions decreased the state’s supply of natural gas, he said. Also, some generation plants could not accept volumes of gas. But some parts of the state were not as badly impacted, and some companies didn’t face severe interruptions, he added.

“Demand was all the while surging, with astronomical daily prices for gas. The average monthly gas price reached exponential multiples over anything seen before,” said Wehmeyer, partner in Santoyo Wehmeyer. “Huge winners and huge losers emerged. There is no doubt litigation will continue to proliferate as the losers pursue strategies to alleviate the financial burden associated with the winter storm.”

Hogan, the Houston energy litigator, said the trend would continue for quite some time, since current cases could take years to get to trial and appeal. There are still companies negotiating



Chris Hogan, partner in Hogan Thompson in Houston. Courtesy photo

to try to find business solutions for their disputes before they file litigation. As the negotiations end, if they can’t agree, it would mean more lawsuits.

“People talk about force majeure a lot and there are cases out there, but in my practice in the energy field, I have never seen anything quite like it in terms of the volume of force majeure lawsuits in court right now,” Hogan said. “I think a fair amount will go up to trial and through appeal, and we will probably a new host of force majeure case law.”

*Angela Morris is ALM Media’s Texas litigation reporter. She covers lawsuits in all levels of Texas state and federal courts. Based in Austin, Morris earned journalism and government degrees from the University of Texas at Austin in 2006, and since then, has worked primarily as a reporter and writer, but also has skills in videography, photography and podcasts. Follow her on Twitter at @AMorrisReports.*