

## David A. Super

Partner

david.super@bracewell.com

WASHINGTON, DC  
+1.202.828.5836



David Super offers first-chair trial experience to clients across multiple industries. He handles complex commercial litigation in federal and state courts throughout the country.

David's experience includes litigation involving regulatory and environmental challenges to major infrastructure projects, including pipelines and off-shore windfarms, and environmental claims under the Clean Air Act, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. Beyond his experience in environmental litigation, David has taken a lead role in a diverse set of complex commercial disputes, including defense of class actions, allegations of fraud and other business torts, breach of contract, partnership disputes, actions before federal agencies, energy issues and constitutional takings.

David has substantial experience in banking issues, receivership issues, regulation of financial institutions, the interpretation of statutes and agency regulations and principles of administrative law, having served as counsel to the Federal Deposit Insurance Corporation (FDIC) and the former Resolution Trust Corporation for 25 years.

### Industries

[Energy](#)

### Practices

[Litigation](#)

[Environmental Litigation](#)

[Financial Institutions Litigation](#)

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## Experience

### NEXUS Gas Transmission, LLC

- successful defense of FERC-certificated \$2 billion interstate natural gas pipeline against multiple environmental and Natural Gas Act challenges in the U.S. Court of Appeals for the D.C. Circuit and Sixth Circuit, including briefing

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and oral argument (*City of Oberlin v. FERC*, 39 F.4th 719 (D.C. Cir. 2022); *City of Oberlin, Ohio v. FERC*, 937 F.3d 599 (D.C. Cir. 2019))

## **Westlake Vinyls, Inc.**

- defense of owner of chemical manufacturing facility in cost allocation arbitration involving highly-complex Superfund site and consisting of 35 trial days over a four-month period before a three-member JAMS panel (*PolyOne Corporation v. Westlake Vinyls, Inc.*, 2020 WL 695657 (W.D. Ky. Feb. 11, 2020)); briefed and argued a related appeal in the U.S. Court of Appeals for the Sixth Circuit successfully defending against challenge to validity of the arbitration agreement (*PolyOne Corporation v. Westlake Vinyls, Inc.*, 937 F.3d 692 (6th Cir., 2019))
- defense of actions in federal court and related arbitrations regarding allocation of soil and groundwater remediation costs arising from contamination at a chemical manufacturing facility\*

## **Equinor**

- successful defense against fisheries' appeal to D.C. Circuit challenging Bureau of Ocean Energy Management's issuance of a lease for an off-shore windfarm off the coast of New York based on alleged violations of the National Environmental Policy Act (NEPA) and the Outer Continental Shelf Lands Act (OCSLA)

## **Kinder Morgan**

- obtained dismissal of federal court action by landowners challenging Permian Highway Pipeline based on alleged violations of the Natural Gas Act

## **Group of power producers**

- defense of owners and operator of coal-fired power plant against claims under New Source Review provisions of Clean Air Act in action by environmental groups in Montana\*

## **NRG Energy, Inc.**

- defense of power producer against claims under New Source Review provisions of Clean Air Act in actions in Louisiana and Pennsylvania federal courts\*

## **Federal Deposit Insurance Corporation**

- defense of \$200 million-plus arbitration against bank regarding breach of contract governing valuation of assets under Generally Accepted Accounting Principles\*
- serving as national litigation counsel in defense of more than 60 consumer class action suits against the FDIC as receiver for IndyMac Bank, Washington Mutual Bank and other failed banks. E.g., *Jones-Boyle v. Washington Mutual*

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Bank, 2010 WL 2724287 (N.D. Cal. July 8, 2010); Cassese v. Washington Mutual, Inc., 2010 WL 1936131 (E.D.N.Y. May 13, 2010); Hilton v. Washington Mutual Bank, 2010 WL 727247 (N.D. Cal. March 1, 2010); Punzalan v. FDIC, 633 F. Supp. 2d 406 (W.D. Tex. July 6, 2009); Tombers v. FDIC, 2009 WL 3170298 (S.D.N.Y. Sept. 30, 2009); Brandow v. FDIC, 2008 WL 5378348 (N.D. Ohio Dec. 22, 2008)\*

- prosecuting breach of contract actions against acquirers of failed savings and loans, including action in federal court in Detroit in which the FDIC obtained a \$220 million judgment. FDIC v. First Heights Bank, FSB, 229 F.3d 528 (6th Cir. 2000)\*

## **Liberty Media Corporation**

- defense of a billion-dollar breach of contract, fiduciary duty, and fraud action; jury found no liability; verdict affirmed on appeal. Klesch & Co. Ltd, v. Liberty Media Corp., 2007 WL 1219418 (10th Cir. April 26, 2007)\*

## **Raytheon Company**

- defense of a class action suit alleging breach of contract. CC Investors Corp. v. Raytheon Co., 2005 WL 1026904 (D. Del. April 22, 2005)\*

## **Various electric utility companies**

- defense against claims under New Source Review provisions of Clean Air Act. E.g. New York v. Niagara Mohawk Power Corp., 263 F. Supp. 2d 650 (W.D.N.Y. 2003)\*

## **Rifle manufacturer**

- obtained complete reversal by Ninth Circuit Court of Appeals of district court injunction prohibiting rifle manufacturer from making and selling rifles due to alleged trade dress infringement under Lanham Act\*

## **Reliant Energy, Inc.**

- action by the state of California relating to an alleged breach of energy supply contracts in the context of the California energy crisis\*

## **Group of small business owners**

- obtained unprecedented judgment by federal court finding an inverse condemnation by the Washington Metropolitan Area Transit Authority in the construction of an underground subway station. Mekuria v. Washington Metropolitan Area Transit Authority, 45 F. Supp. 2d 19 (D.D.C. 1999)\*

\* *Work completed prior to Bracewell*

## Credentials

### Education

- University of Maryland School of Law, J.D., 1990, *Order of the Coif*
- University of Maryland, B.S., 1986

### Bar Admissions

- Maryland
- District of Columbia

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## Recognition

### ***The Legal 500 United States***

- Energy Litigation: Conventional Power, 2018
- Energy Litigation: Oil and Gas, 2018
- Energy Regulation: Oil and Gas, 2023
- Environment: Litigation, 2018, 2023 – 2024
- Environment: Regulatory, 2018

### **Lawdragon Inc.**

- *Lawdragon 500 Leading US Energy Lawyers*, Energy Litigation, 2024 – 2025

### **Portfolio Media, Inc.**

- *Law360*, Trials Editorial Advisory Board, 2019

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## Resources

### **Contractual Performance in the Age of Coronavirus: Force Majeure, Impossibility and Other Considerations**

Update