

## MVP: Vinson & Elkins' Jeremy C. Marwell

*Law360 (December 13, 2018, 11:24 AM EST)* -- Vinson & Elkins LLP's Jeremy C. Marwell has helped clients in the energy industry defend project approvals and challenge federal regulations, including the U.S. Environmental Protection Agency's so-called sham recycling rule, earning him a spot as one of Law360's 2018 Environmental MVPs.

### **WHY HE ENJOYS THE ENVIRONMENTAL PRACTICE AREA:**

Though Marwell wears “a couple of hats” as a partner in the appellate group, he said much of his work is in the environmental sector. He said he enjoys the environmental practice because he likes the challenge of trying to effectively communicate federal environmental law — “often a very technical and complicated subject matter” — to the generalist judges on the U.S. appellate courts.

“This often requires pulling together a couple of different strands,” Marwell said. “First, really understanding a client’s business operations and the environmental considerations that are presented. Second, getting down into the weeds of a really complicated and technical area and understanding it, and that’s something that lets me work closely with our great environmental lawyers here at V&E. And then third, taking a step back and being able to put the case into the broader context.”

Marwell said part of his motivation comes from seeing the real-world consequences of the appellate cases that he works on. He noted a lot of his work involves litigation for clients who build natural gas pipelines and that “millions and millions of people” would ultimately depend on those large infrastructure projects.

“These projects are enormous, they take many, many years and billions of dollars to develop,” Marwell said. “But there’s something really rewarding in seeing those projects move forward, helping with the litigation that is often involved with them — much of which these days is environmental litigation — and then hopefully, ultimately seeing the project go into service and seeing it serve the needs of real-world people.”



**Jeremy C. Marwell**  
Vinson & Elkins

#### **NOTABLE SUCCESSES:**

Marwell said one win that stands out to him is the American Petroleum Institute and other industry groups' successful challenge of certain portions of an EPA rule concerning the definition of solid waste. The rule was meant to reduce "sham recycling," referring to when companies purport to reuse materials that they're actually discarding as waste.

Marwell — who presented oral arguments on behalf of industry groups, including Vinson & Elkins client Freeport-McMoRan Inc. — said the rule could have potentially interfered with processes in the mineral processing and mining industries, among others. The rule was possibly attempting to regulate as "solid waste" certain valuable intermediates in the ore refining process, Marwell said.

"For generalists, the interesting thing about this statute is you're trying to balance the need between regulating waste — things that are no longer useful, being thrown away — but at the same time encouraging industries to recycle materials that can be recycled that aren't waste, where there's still valuable product," Marwell said. "Because I think everyone agrees, industry and environmental groups, that recycling is beneficial when you can do it."

A 2-1 panel on the D.C. Circuit sided with the industry petitioners in July 2017 and struck down parts of the rule, including the provision known as Factor 4 that was part of a test for determining whether materials are actually recycled or discarded. Still, the industry groups Marwell represented asked for a rehearing on the order the following October, seeking to vacate Factor 4 in all of its applications, not just those regarding certain provisions as the appeals court had initially ruled.

The appeals court granted the petition and in March vacated Factor 4 in its entirety, among other things. In May, the EPA released a new rule that Marwell said essentially implemented what the court had ruled and is currently being challenged by environmental groups in the D.C. Circuit.

Last year, Marwell was also part of the team that represented Algonquin Gas Transmission LLC in a challenge at the D.C. Circuit to the Federal Energy Regulatory Commission's greenlight for a \$971 million natural gas pipeline improvement project in the northeastern U.S.

In July, a three-judge panel unanimously upheld FERC's approval of the Algonquin Incremental Market project. Marwell had coordinated Algonquin's appellate briefing and argued on its behalf at oral arguments.

Marwell also helped obtain a favorable result for PennEast in a suit challenging the constitutionality of FERC's review procedures. Marwell led briefing efforts and argued at both the district and appeals courts, and in July, the D.C. Circuit affirmed the lower court's March 2017 toss of the case.

Marwell said one factor that makes his pipeline work interesting and challenging is the sheer number of cases proceeding contemporaneously through the federal courts that relate back to authorizations issued by some of the same federal agencies.

“For litigators, you kind of have to play three-dimensional chess. You have to be aware of your case and all the factors there but also all these other cases and how the law might change during the pendency of your litigation,” Marwell said. “That’s particularly true just given that this is a time period where there’s been a significant number of new projects being proposed that are all now working their way through litigation.

#### ***HIS PROUDEST MOMENTS:***

Marwell joined Vinson & Elkins in 2010 after having served in the Office of Legal Counsel at the U.S. Department of Justice and clerked for U.S. Supreme Court Justice Sonia Sotomayor. Marwell said the firm’s D.C. office had just begun creating a group dedicated to the Supreme Court and appellate practice in the capital at the time, although the firm long had appellate attorneys in other parts of the country. Marwell was the second attorney in the D.C. appellate group, he said.

The team they formed at the firm is a source of pride for him, Marwell said.

“I’m very proud of the team that we’ve built here at V&E, which combines, I think, great lawyers in appellate, environmental and for these pipeline projects, the energy regulatory field, all of which really just have to work seamlessly together throughout the project development but also then the litigation phase,” Marwell said.

He also said he was proud of his time in the federal government in addition to his work in the private sector.

“That work involved advising White House and various federal agencies on issues that come up, often some of the most difficult and sometimes disputed issues that affect the federal government,” Marwell said. “And the [Office of Legal Counsel] plays, I think, an important role in ensuring consistency in the federal government and ensuring fidelity to the rule of law. So that government service is obviously a particularly rewarding part of practice.”

#### ***HIS ADVICE TO YOUNGER ATTORNEYS:***

Marwell had two pieces of advice for young attorneys.

“Writing, writing, writing,” Marwell said. “At least in my field, there are very few skills that are more important than the ability to communicate really complicated ideas in a clear and accessible way to an audience that may not have any or much background in the subject matter.”

It’s also important for new or junior attorneys deciding on a practice area to identify those in more senior positions who are interested in helping or mentoring, Marwell said, and to look for places where those mentors are open to creating opportunities for less-experienced attorneys.

“That can happen in the private sector, it can also happen in the government and the public sector,” Marwell said. “But I’ve definitely benefited from working with lawyers who have given me those opportunities.”

— As told to Danielle Nichole Smith

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.*

All Content © 2003-2018, Portfolio Media, Inc.