



James D. McCarthy

Partner | (214) 389-5307 | jmccarthy@diamondmccarthy.com

Jim McCarthy is a founding partner of Diamond McCarthy. He represents clients (both plaintiffs and defendants) in domestic and international matters regarding commercial contracts, RICO, antitrust, fraud and other business torts, securities, lender liability, officer and director liability, and professional malpractice. He has extensive experience with litigation and arbitration involving the reinsurance and insurance, banking, real estate, and oil and gas industries, and with litigation and arbitration involving international and domestic businesses and transactions of all descriptions. Jim also has substantial experience with insolvency-related litigation.

He has represented clients in federal district and bankruptcy courts in Texas, Oklahoma, Colorado, Louisiana, Mississippi, Delaware, Florida, Arkansas, New Mexico, New York, Nevada, Minnesota, New Jersey, and Washington, D.C.; before the Second, Fifth, Eighth, and Federal Circuit Courts of Appeals; before the Court of Claims; before the United States Supreme Court; and in state courts in Texas and elsewhere.

Jim has been or is involved with the following litigation matters, among others:

- With Skip Scott, Jim is currently leading a team of Diamond McCarthy lawyers in a lawsuit (D. Nev.) against multinational mining companies alleged to have caused severe injuries to the environment of the Philippine island province of Marinduque, and to its people.
- Jim is also currently leading a team of Diamond McCarthy lawyers in a lawsuit (S.D. Tex.) alleging that major international oil company made illegal payments to certain Asian governmental officials in order to preclude a rival from securing lucrative oil and gas concessions in that nation's offshore areas.
- A Diamond McCarthy team led by Jim successfully represented the Chapter 7 Trustee for Precept Business Services, Inc. in bankruptcy litigation (N.D. Tex.) against the officers, directors and professionals of the Precept Debtors. In that litigation, the team prosecuted not only the usual estate and generalized creditor claims, but also pressed secured lender claims that had been assigned to the estate. Like many of Diamond McCarthy's engagements, this one began with a formal investigation into the areas of potential liability.
- Jim and other Diamond McCarthy attorneys have also acted as Special Counsel to the Creditors Committee in the Friede Goldman Halter bankruptcy (S.D. Miss.), and to its successor liquidating trust. In that role, the firm was charged with investigating and, where appropriate, prosecuting litigation against the officers, directors and professionals who once served the Friede Goldman companies. Major actions brought against certain former officers, directors, and professionals were successfully concluded.
- Jim also led a Diamond McCarthy team representing the Chapter 7 Trustee in the Southeast Banking Corporation bankruptcy (S.D. Fla.) in prosecuting numerous civil claims against the former officers, directors, and professionals of Southeast. Those proceedings have now been successfully concluded, with the results greatly benefiting the Southeast bankruptcy estate and its creditors.

Location:

Dallas, Texas

Education:

Canisius College, 1969
B.A., History & Economics

University of Minnesota
M.A., American History, 1975
M.A., American Studies, 1977

Minnesota doctoral candidacy
program
American Studies, 1975

Yale Law School, 1982

Areas of Practice:

Commercial contracts
RICO
Antitrust
Fraud
Business torts
Securities
Lender liability
Officer & director liability
Professional malpractice
Reinsurance & insurance
Banking
Real estate
Oil & gas industries

Admitted to Practice:

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- In the Livent litigation and bankruptcy (S.D.N.Y.), Jim and other Diamond McCarthy lawyers brought: (1) a securities fraud class action on behalf of institutional and individual noteholders of the notes of Livent, Inc.; and (2) a parallel and reinforcing equitable subordination action brought against Livent's lead lender, on behalf of the Creditors Committee. A comprehensive, multi-case settlement with that lender ultimately benefited the estate and its creditors.
- The successful prosecution, on behalf of Jewel Recovery, L.P., the Zale Jewelers post-confirmation litigation entity, of those causes of action held by one of the world's largest jewelry companies and its creditors. This engagement involved the management of hundreds of suits in bankruptcy and other courts in the U.S. and Canada, and the resolution of complex questions of liability and damages relating to company officers and directors, the professionals who serve them, and their insurers. By reason of the efforts of the Diamond McCarthy lawyers, Jewel Recovery substantially benefited Zale's creditors.
- Litigation and arbitration proceedings between an international reinsurance syndicate and related companies, and their former U.K., Irish and U.S. fronting companies.
- The successful prosecution and settlement of a complex suit charging insurance and reinsurance fraud by U.S. and off-shore (primarily Bermuda) insurers and reinsurers.
- The representation of Citicorp and a Citicorp borrower in a contingency fee antitrust action directed at the predatory practices of the competitor whose acts forced the Citicorp borrower out of business. As a result of these attorneys' work, in the state courts of New Mexico and Texas, and in the federal court in El Paso, Citicorp and the borrower obtained a very substantial settlement from the alleged predator, its German foreign parent entities, and certain of their German and American officers and directors.
- The defense of numerous Texas, national and international financial institutions in connection with lender liability and similar actions.
- Service as U.S. litigation counsel for a German real estate investment company.
- Trial to a multi-million dollar jury verdict in favor of a corporate taxpaying client.
- On behalf of the Reinsurance Association of America, the defense and settlement of the Texas and multi-state antitrust litigation against British and domestic insurers and reinsurers.
- The investigation of a multi-million dollar bank fraud and the handling of all fidelity bond, civil litigation, bankruptcy, and criminal prosecution issues relating to that fraud.

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Jim McCarthy received a bachelor's degree in history and economics from Canisius College in 1969, graduating summa cum laude and as the college valedictorian. He also holds Masters degrees in American History and American Studies from the University of Minnesota in 1975 and 1977, and completed the Minnesota doctoral candidacy program in American Studies in 1975. He received his law degree from the Yale Law School in 1982, where he received the Cardozo and Emerson prizes.

Before becoming an attorney, Jim served as a lecturer in American History and Government and Criminal Justice Studies for the University of Maryland in Germany, England, Holland and Iran from 1975 to 1978, and in the United States from 1978-1979. He has also served as a Military Police Captain in the U.S. Army Reserve.

Jim is a member of the American, Texas, and Dallas Bar Associations, and of those bar association sections and committees relevant to his practice areas. He is, among other things, a past chairman of the Dallas Bar Association's Business Litigation Section and a Council member for the International Law Section. He has also been designated as a "Texas Super Lawyer" four times.

Jim is also a member of the International Bar Association, the Institute of Transnational Arbitration, the Dallas Council on World Affairs, the Greater Dallas Chamber of Commerce, the German-American Chamber of Commerce, the French-American Chamber of Commerce, the British-American Business Council, the American Trial Lawyers Association, the Bar Association of the Fifth Federal Circuit, the AIDA Reinsurance and Insurance Arbitration Society, the American Bankruptcy Institute, the Turnaround Management Association, the Rocky Mountain Mineral Law Foundation, the American Society for Legal History, and the Yale Clubs of Dallas and New York City.

Jim has spoken on numerous matters, including:

- "The Subprime Meltdown from an Insolvency Litigation Perspective" (September 5-6, 2008 Panel at the American Bankruptcy Institute's Southwestern Bankruptcy Conference in Las Vegas, Nevada).
- "Subprime 101: The Subprime Meltdown and its Legal Implications" (February 15, 2008 Speech to the Dallas Bar Association) (with Gary Cruciani)
- "*Forum Non Conveniens*: The Battle Over the Most Suitable Forum for International Litigation" (October 16, 2007 Speech to the Dallas Bar Association International Law Section) (with David Ammons).
- "Recent Developments in Professional Liability in the Bankruptcy/Insolvency Context" (for State Bar of Texas' Advanced Business Bankruptcy Seminar in Austin, Texas on May 12-13, 2005).
- "Deepening Insolvency" (November 18, 2004 Panel for the University of Texas School of Law's 23rd Annual Bankruptcy Conference in Austin, Texas).



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- "Litigation Support: Are Disenfranchised Constituencies Using Litigation to Obtain a Post-Confirmation Recovery" (September 20, 2004 Panel for the American Bankruptcy Institute Seminar on "Workouts, Restructurings, and M& Transaction Alternatives: The Dealmaker's Perspective" in New York City)
- "Deepening Insolvency: Practical Reality and Emerging Legal Theory" (November 5, 2003 Speech to the Dallas Bar Association Bankruptcy and Commercial Law Section) (with Eric D. Madden)
- "The United States Liability Environment for Officers, Directors, and the Professionals Assisting Them" (June 28, 2003 Speech to the Center for International Legal Studies Conference on "Corporate Governance in an International Marketplace" in Salzburg, Austria.)
- "Enron, et al.: First and Second Tier Implications for Business Litigators and Other Lawyers" (February 11, 2003 Speech to the Dallas Bar Association Business Litigation Section)
- "Shareholder Litigation in the Shadow of Bankruptcy: the Low Priority Claimants' Search for Justice" (April 5, 2002 Speech to the Houston Bar Association Seminar on "Lessons from Enron - The Issues We Face When Big Companies Fail") (paper with Scott DeWolf and Eric Madden)
- "Mediation as an International Dispute Resolution Tool: Mock Mediation" (Arbitration and ADR Committees of the International Bar Association: at Barcelona, Spain Annual Meeting, September, 1999)
- "Legal Fees: the Legal, Ethical and Practical Issues" (November, 1998 National Business Institute seminar in Indianapolis, Indiana) (with others)
- "How Should Lawyers Behave in ADR" (Arbitration and ADR and Corporate Counsel Committees of the International Bar Association: at Vancouver, Canada Annual Meeting, October, 1998)
- "Law Firm Billing: Getting It Right, and the Criminal, Civil and Ethical Implications of Getting It Wrong" (March 1998 speech to the Dallas Bar Association) (with J. Gregory Taylor)
- "The Basic Problems of International Litigation in U.S. Courts: Plaintiff's and Defendant's Perspectives" (July 12, 1994 Speech to the Dallas Bar Association Business Litigation Section) (with R. Doak Bishop).



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Jim has also written the following articles for publication:

- "When a Corporation Dies: A Dialogue on the Rights and Remedies Available to Victims of a Corporate Collapse", Trial Magazine (June, 2006) (with Bert Black and Eric Madden).
- "Perils of International Arbitration", Texas Lawyer (March 7, 1999) at 26 (with Greg Taylor).
- "The Year in Review: Civil Litigation", Texas Lawyer (December 14, 1998) at 21 (with Doak Bishop).
- "Avoiding Global Litigation Glitches: Ten Traps for the Unwary in International Suits", Texas Lawyer (August 31, 1998) at 19-20.
- "The New Face of International Arbitration", Texas Lawyer (June 29, 1998) at 30-31 (with Doak Bishop) reprinted in Washington Legal Times (August 3, 1998) at S32.

Jim and his wife Jane have two children. Their son J.J. is the President and CEO of SecondFloor.com and Gumshoe.com, two e-commerce companies in Palo Alto, and their daughter Elise is a student at Rhodes College.

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