



## James D. “Jim” McCarthy

### Partner

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### Locations

Dallas

### Related Practices

Bankruptcy, Business Insolvency, and Restructuring Representation

Complex Commercial Litigation

Antitrust

Bankruptcy and Insolvency Litigation

Breach of Contract

Directors and Officers Liability Litigation

Fiduciary Litigation

Financial Institution Litigation

High Stakes Litigation

### Education

- Yale Law School (1982)
- Minnesota Doctoral Candidacy Certificate (1975)
  - American Studies
- University of Minnesota (MA in American Studies, 1977)
- University of Minnesota (MA in American History, 1975)
- Canisius College (BA in History and Economics, *summa cum laude*, Valedictorian, 1969)

Jim McCarthy is a trial lawyer and problem-solver with decades of experience leading clients to effective outcomes in the most difficult commercial litigation and arbitration matters. High-profile business disputes with a national and global reach are the hallmark of Jim’s career, including numerous cases spanning the financial services, reinsurance and insurance, and commercial real estate industries.

Jim has very significant experience representing a variety of clients in complex insolvency-related litigation involving fraud and other business torts, officer and director liability, professional malpractice, fraudulent transfers, commercial contract disputes, and much more. He handles every aspect of the dispute, from reconstructing the events that triggered the corporate collapse to determine whether misconduct occurred, to tracing misappropriated assets and recovering damages from responsible parties.

Clients also trust Jim to resolve business litigation issues in regard to corporate transactions, financial transactions, and cases giving rise to RICO, securities fraud, lender liability, antitrust, and qui tam litigation, as well as environmental damage actions.

Before starting his legal career, Jim served as a Lecturer in American History and Government and in Criminal Justice Studies for the University of Maryland – teaching in Germany, England, Holland and Iran from 1975-1978, and in College Park from 1978-1979. He has also served as a Military Police Captain in the U.S. Army Reserve.

### Representative Experience

- Jim and Jason Fulton are currently representing a secured lender in guaranty litigation arising out of the collapse of a Las Vegas hotel and casino and the consequent bankruptcy proceedings. That litigation is filed in Nevada federal court.
- Jim and David Reynolds are currently representing the seller of a multi-company/insurance combine in enforcing the terms of the purchase and sale agreement against the buyer.
- Jim led a team of Diamond McCarthy lawyers in successfully investigating and prosecuting claims on behalf of the Chapter 7 trustee in the Pasquinelli Homebuilding, LLC, et al. bankruptcy (Northern District of Illinois). Those claims

were recently resolved with a \$25 million payment to the Trustee, after extensive litigation in the state and federal courts of Illinois.

- With Jason Fulton and MaryAnn Joerres, Jim recently concluded bank fraud litigation in Texas State Court on behalf of a subordinated lender defrauded by the borrowers, their counsel and investment advisers, and the lead lender.
- Jim has recently been involved in resolving and, if necessary, arbitrating disputes regarding the development of Mexican real estate.
- With New York and Miami co-counsel, Jim also prosecuted *qui tam* and retaliation claims in Miami federal court. Those claims related to the allegedly unlawful drawdown of federal grant monies by Miami-Dade Transit and Miami-Dade County and produced a \$10 million settlement to the client.
- Jim has co-led a team of Diamond McCarthy lawyers in a Nevada state court lawsuit against multinational mining companies alleged to have caused severe injuries to the environment, economy and people of the Philippine island province of Marinduque. The case has involved proceedings in the Nevada federal courts, the Ninth Circuit and the United States Supreme Court, as well as the Philippine courts and the District and Supreme Courts of the State of Nevada.
- Jim and a team of Diamond McCarthy lawyers also joint-ventured with several other law firms, to prosecute a number of very substantial claims arising out of the bankruptcies of Crescent Resources, LLC, Crescent Holdings, LLC and nearly two hundred of their subsidiaries. Those cases (filed on behalf of the post-confirmation trustee) were directed at the parent corporation, and those of the debtors' officers, directors and lawyers believed to be responsible for those entities' collapse. All cases were filed in the Western District of Texas, Austin Division and have been very successfully concluded.
- With Jason Fulton, Jim and a team of law firms concluded the prosecution of multi-million-dollar antitrust claims owned by the post-confirmation trust arising in the Syntax-Brilliant bankruptcy. The Trust's claims in that case asserted an international price-fixing conspiracy relating to the liquid crystal display panels used in, *inter alia*, Syntax-Brilliant televisions. The SB Trust claims were part of the TFT-LCD (Flat Panel) Antitrust Litigation in San Francisco.
- Jim also co-led a team of Diamond McCarthy lawyers that restructured one of the newest and largest and most environmentally sophisticated landfill businesses in the United States, in proceedings before the United States Bankruptcy Court in Mobile, Alabama.
- A Diamond McCarthy team led by Jim 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 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 concluded with the results greatly benefiting the Southeast bankruptcy estate and its creditors.

- 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 against Livent's lead lender, on behalf of the Creditors Committee. A comprehensive, multi-case settlement with that lender was concluded to the great benefit of the estate and its creditors.
- Jim also led the Diamond McCarthy team that prosecuted, on behalf of Jewel Recovery, L.P., the Zale Jewelers post-confirmation litigation entity, 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 served 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 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 an antitrust action directed at the predatory practices of the competitor whose acts forced the Citicorp borrower out of business. As a result of the work of Jim and his colleagues 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.
- 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 taxpayer seeking to recover federal taxes improperly assessed in connection with a major acquisition.
- 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.
- The defense of numerous Texas, national and international financial institutions in connection with lender liability and similar actions.

### **Professional Associations**

- International Bar Association
- American Bar Association
- State Bar of Texas
- New York State Bar Association
- Dallas Bar Association
  - Former Chairman of both the Business Litigation and International Law Sections
- American Association for Justice

- Fifth Circuit Bar Association
- American Bankruptcy Institute
- Center for American and International Law
- Institute of Transnational Arbitration
- American Constitution Society for Law and Policy
- Turnaround Management Association
- INSOL
- Texas Center for Legal Ethics and Professionalism
- Texas and Dallas Bar Foundations

### **Bar Admissions**

- New York
- Texas

### **Honors and Awards**

- Texas “*Super Lawyers*”, published by Thomson Reuters (2005-2006 and 2016-2020)
- Best Lawyers in America – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law (2020 Edition)

### **Resources**

- Trustee Alex Moglia Recovers \$25 Million In Chicago Bankruptcy Litigation
- Diamond McCarthy is pleased to announce five attorneys have received “Best Lawyers 2021” recognitions and one “One’s to Watch 2021”
- Seven Diamond McCarthy Attorneys Recognized as 2019 Texas “Super Lawyers”, with One Additionally Recognized with Two “Top 100” Recognitions
- Five Diamond McCarthy Attorneys Selected as “Best Lawyers in America” by Best Lawyers
- “International Law in Texas: An Overview from the Bar Associations” (February 23, 2017 presentation at the State Bar of Texas’ International Law Section 29th Annual International Law Institute)
- Jim McCarthy was a panelist at the State Bar of Texas’ 29th Annual International Law Institute in Houston
- “Emerging Issues: The Cutting Edge of Qui Tam Developments: What’s New for 2015 and Beyond” (August 19, 2015 Webinar Sponsored by The Knowledge Group)
- “Constitutional Limits on the Authority of the Bankruptcy Courts” Dallas Bar Association Headnotes (July, 2015 with MaryAnn Joerres)
- “Protecting Against Anticompetitive Conduct Abroad?: The U.S. Experience Under the Foreign Trade Antitrust Improvements Act (“FTAIA”)” (October 21, 2014 presentation to the Dallas Bar Association’s International Law Section) (with Jason Fulton).
- The Next Four Years: Thoughts on the Law and Practice of International Business During Obama I” (May 19, 2009 Panel presentation to the Dallas Bar Association’s International Law Section) (panel moderator).
- “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).

- “International Litigation in U.S. Courts: The Basics You Need to Know” (December 20, 2006 Webinar sponsored by the National Constitution Center (with Greg Taylor).
- “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).
- “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).
- “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)
- “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).
- “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)
- “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.
- “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).

