



JAMES D. MCCARTHY

Partner

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Jim McCarthy is a founding partner of Diamond McCarthy. Based in the firm's Dallas office, Jim represents clients in domestic and international litigation and arbitration matters.

Jim handles disputes regarding commercial contracts, RICO, antitrust, fraud and other business torts, securities, lender liability, officer and director liability, and professional malpractice. His extensive experience includes litigation and arbitration involving the financial services, reinsurance and insurance, real estate, and oil and gas industries, and litigation and arbitration involving a wide range of corporate transactions. Jim also has very substantial experience with environmental litigation, *qui tam* litigation, business bankruptcies and insolvency-related litigation.

High-profile, high-stakes litigation with national and international reach is a hallmark of Jim's career, and Jim has represented clients in numerous federal district and bankruptcy courts in such matters. He has also practiced before numerous state courts around the country.

Before becoming an attorney, 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 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 their sections, and is a member of numerous other professional and civic organizations. He is a past Chairman of the Dallas Bar Association's Business Litigation and International Law Sections. He is also an AV Preeminent-rated lawyer, and has been selected by his peers as one of the "Best Lawyers in America" (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law) since 2013, as one of "Texas Top Rated Lawyers" (Litigation; Commercial Litigation; and Bankruptcy), and as a Texas Super Lawyer. He has written and spoken on topics that include business litigation and arbitration, insolvency, and the implications of the subprime meltdown and financial crisis. Jim is also active in Yale Law School alumni affairs and serves as his Class Secretary and on the YLS Alumni Association Executive Committee.

Location

Dallas, Texas

Education

Yale Law School (1982)

Minnesota Doctoral
Candidacy Certificate
(American Studies, 1975)

University of Minnesota
(M.A. in American
Studies, 1977)

University of Minnesota
(M.A. in American History,
1975)

Canisius College (B.A. in
History and Economics)
summa cum laude
(valedictorian)

Areas of Practice:

Business Insolvency &
Restructuring

Complex & High-Stakes
Litigation

- Bankruptcy, Third Party
& Professional Liability

- International & Cross-Border
- Antitrust
- Financial Institution Litigation
- Energy & Environmental
- Real Estate

Admitted to Practice:
New York

Texas

Representative Engagements

- Jim is currently leading a team of Diamond McCarthy lawyers investigating and prosecuting claims on behalf of the Chapter 7 trustee in the Pasquinelli Homebuilding, LLC, et al. bankruptcy (Northern District of Illinois).
- Jim is also currently involved in resolving and, if necessary, arbitrating disputes regarding the development of Mexican real estate.
- With Jason Fulton and MaryAnn Joerres, Jim recently and successfully 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.
- With New York and Miami co-counsel, Jim also successfully 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 Nevada District and Supreme Courts.
- Jim and a team of Diamond McCarthy lawyers also joint-ventured with several other law firms, to successfully 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.
- With Jason Fulton, Jim and a team of law firms successfully concluded the prosecution of multimillion 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 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 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 concluded successfully.

- 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 successfully, 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 successfully concluded to the great benefit of the estate and its creditors.
- Jim also led the Diamond McCarthy team that successfully 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 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 successful 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 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.
- 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.

Publications & Speaking Engagements

- "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)
- "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).