

Practices

Related Practices

Antitrust
Corporate Asset Affirmative Recovery Practice
Bankruptcy, Business Insolvency, and Restructuring Representation
Complex Commercial Litigation
Directors and Officers Liability Litigation
Fiduciary Litigation
Fiduciary and Receiver Representation
Financial Institution Litigation
International Dispute Resolution
Professional Liability Litigation

Related Sectors

Real Estate

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Bankruptcy and Insolvency Litigation

One of Diamond McCarthy's largest core practice area focuses on representing trustees, liquidators, receivers, private equity and hedge funds, financial institutions, creditors' committees, debtors and other clients in complex bankruptcy and insolvency litigation, especially legal actions relating to "who and what killed the company?". We have a global reputation and track record in litigating many of the most difficult and high-profile cases arising out of large-scale corporate bankruptcies and international insolvency matters.

Our premier practice is well-known for developing innovative litigation strategies aimed at recovering, protecting and preserving company assets in Chapter 7 and 11 bankruptcy cases, Chapter 15 ancillary proceedings, international insolvency matters and other financially-distressed scenarios. With offices strategically located in New York, Texas and California, we have the firepower and resources to litigate high-stakes disputes across the U.S., and our vast global network of foreign counsel enables us to handle far-reaching cases where clients, transactions, courts and witnesses cross borders.

Our team of trial lawyers prosecutes claims covering a broad spectrum of business torts and misconduct issues that arise in bankruptcy and insolvency cases, including director and officer liability, professional malpractice, breach of fiduciary duties, fraud, aiding and abetting, conspiracy and banking liability. We also handle large portfolios of fraudulent transfer, preference and other Chapter 5 avoidance claims, financial controversies involving distressed debt and equity securities, and the full gamut of contract, insurance, licensing and other business disputes.

We have resolved difficult litigation spanning a number of market sectors, from financial services, banking, energy, oil and gas, chemicals, plastics and environmental to healthcare, steel, retail, technology, transportation, agro-foods and real estate. With our diverse industry experience, we can tackle complex regulatory issues that often impact bankruptcy and insolvency matters.

Complex Litigation Relating to "Who and What Killed the Company?"

Diamond McCarthy built its reputation on being fearless and conflict-free to pursue massive cases where "who and what killed the company" is a common theme. This has become a household phrase

used throughout the industry to describe cases of considerable size and scale when there is no longer a company to “bet the house.”

Investigating what led to a company’s demise is an extremely challenging and time-intensive process. Key witnesses have left the company and relocated, thousands of important records are stored in warehouses and electronically, and the trail often goes across the U.S. and abroad. The process is even more difficult when fraudulent schemes, gross negligence and other unlawful activities triggered the company’s collapse, and the responsible parties went to great lengths to cover their tracks of ill-gotten gains.

Our team is highly skilled in dissecting the sequence of events that resulted in a company’s failure, identifying culpable parties, and pursuing all available damages through asset recovery, negotiations and tenacious advocacy in the courtroom. In virtually every case, misconduct by company insiders and outside professionals takes center stage, typically in connection with failed corporate transactions and/or various types of financial fraud.

As we uncover wrongdoing by company insiders, we are methodical and highly effective at ensuring they are held accountable while recoveries are achieved. We have significant experience handling cases involving director and officer misconduct that contributes to corporate insolvencies, from negligence, breach of fiduciary duties, self-dealing and conflicts of interest to intentional wrongdoing such as Ponzi schemes, misappropriation of assets, fraudulent transfers, securities fraud and money laundering.

Our lawyers have in-depth knowledge of director and officer protection statutes across many jurisdictions. We excel at maneuvering through the window between the business judgment rule and intentional dishonest acts to implicate Directors & Officers Liability Insurance policies in violation of duties of care (e.g., gross negligence and recklessness) and loyalty (e.g., self-dealing and conflicts of interest).

We also prosecute malpractice claims against professionals that commit misdeeds and become entangled in these situations, including auditors and accountants, lawyers, asset and solvency valuation firms and banking professionals that advise on financial transactions, investments and valuations. Our team has resolved litigation concerning every type of professional misconduct, including when they are complicit in illegal transactions, look the other way, are careless in failing to detect wrongdoing or provide negligent advice, opinions or services.

International and Cross-Border Capabilities

Diamond McCarthy has substantial experience playing lead or significant roles in international litigation and insolvency matters, including cases involving cross-border joint protocol and enforcement and collection of foreign assets, among many others. We have developed a large network of foreign counsel through decades of international practice, allowing us to provide end-to-end dispute resolution capabilities in key jurisdictions around the world, including Europe, Asia, South and Latin America, the Caribbean, the Middle East, Africa and the CIS.

Our team has deep knowledge and experience concerning U.S. and international litigation procedures, such as *forum non conveniens*, rules of jurisdiction, extra-territorial statutory paradigms, Mareva proceedings, and the role of international treaties. We have also resolved numerous disputes under the major international arbitration frameworks, including ICSID, ICC, LCIA, UNCITRAL, SCC, SIAC, HIAK, ICDR and others.

Our international lawyers are multilingual, culturally diverse and admitted to practice in several jurisdictions. Many have also lived and worked abroad, enhancing our understanding of the cultures, politics, legal systems and economic factors that are important to any case with international ramifications.

We Are Free to Litigate Against All Adversaries

Diamond McCarthy generally has no conflicts to prosecute claims against: (1) directors and officers of large corporations; (2) global, national and regional professional services and consulting firms; and (3) the major banks that are typically secured creditors in corporate bankruptcy and insolvency matters. Indeed, pursuing these claims is a large component of our practice.

Representative Experience

Direct Lending Investments LLC

- Acting as international counsel for U.S. SEC Receiver and Cayman Islands Liquidator in connection with cross-border frauds related to Direct Lending, Inc. Commenced litigation in California and the Cayman Islands against institutional valuation firm; ongoing investigations against international professional firms, lenders, and others. Significant recoveries have been achieved to date with other matters still in pursuit.

Platinum Partners Arbitrage Fund, LP

- Acting as lead trial counsel to Martin Trott and Christopher Smith, Joint Official Liquidators appointed in the Cayman Islands in connection with cross-border litigation proceedings in the United States and the Cayman Islands arising out of a billion dollar investment fund fraud.

International Manufacturing Group, Inc. (IMG)

- Acting on behalf of Beverly McFarland, Trustee in the IMG Wannakuwatte matter since 2014 and as lead special litigation counsel to the joint bankruptcy trustees in connection with what has been called the largest Ponzi scheme in the history of the Eastern District of California (approximately \$500mm). In connection with our representation we have prosecuted claims against a multitude of parties including financial institutions/banks and others involving claims of money laundering and negligence and other claims. Opposing counsel in the cases include numerous large and small law firms throughout San Francisco, San Jose and Sacramento, California. Favorable outcomes have been achieved with more claims against parties ongoing.

Major US Energy Company

- Acted as lead trial counsel and recently completed cross-border litigation in the U.S., Trinidad & Tobago, and the British Virgin Islands on behalf of a major US energy corporation, based in Texas. This matter involved bringing liquidation proceedings in both Trinidad, Tobago and BVI against various defendants in connection with the of a \$38 million dollar judgment issued by a Texas court. We also brought international enforcement proceedings in NYC in connection with post-judgment enforcement proceedings under 28 U.S.C. Section 1782. We served as both lead counsel and/or coordinating counsel in all of the litigations in the various jurisdictions

Pasquinelli Homebuilding

- Acted on behalf of Chapter 7 trustee Alex Moglia for the Bankrupt Pasquinelli Homebuilding "PHB" Family of companies, which was a pyramid of more than two hundred privately held homebuilding entities operating in the Midwest and the South. Claims were brought against a myriad of defendants including company principals and insiders, outside directors, as well as family-affiliated persons and entities who directly and indirectly received money and other assets flowing out of PHB, and helped orchestrate the funneling of millions of dollars away from creditors. Diamond McCarthy and local counsel brought claims of breach of fiduciary duty, aiding and abetting, gross negligence, civil conspiracy, alter ego, and construction and actual intent of fraudulent transfers. Significant results were achieved in amounts upwards of \$50 million.

Grail Semiconductor

- Acted on behalf of the chapter 7 trustee of the bankruptcy estate of Grail Semiconductor Inc., in the Bankruptcy Court for the Eastern District of California, Diamond McCarthy recovered millions of dollars against the debtor's former law firm and pre-petition litigation funder. In that same case, Diamond McCarthy negotiated with another of the debtor's former law firms successfully avoiding the law firm's asserted security interest and providing for an estate recovery from the prosecution of a case against a third party.

Crescent Resources

- Acted as special litigation counsel to the post-confirmation litigation trust in connection with the Texas based bankruptcy litigation proceedings. We pursued claims for fraudulent transfers and illegal dividends seeking more than \$1.2 billion in damages against Duke Energy Corporation and its affiliates. This litigation was on the cutting edge of various issues, including interpretation of the U.S. Supreme Court decision in Stern v. Marshall. The case settled for substantial sums that remain subject to confidentiality restrictions.

Appalachian Fuels

- Acted as lead trial counsel for the Creditors Committee in the Appalachian Fuels LLC and related company bankruptcies in the Eastern District of Kentucky in connection with the investigation and pursuit of claims arising from this coal mining company's losses of more than one hundred million dollars. Claims involve a multitude of companies, former officers and directors, insurers and professional firms.

Equipment Acquisition Corp

- Acted as as lead trial counsel to the Plan Administer in connection with the Chicago bankruptcy proceedings of Equipment Acquisition Resources, Inc. We investigated, analyzed and litigated fraudulent transfer claims under federal law, as well as pendent state claims against more than twenty (20) financial institutions in the commercial and financial leasing industry in this substantial nine figure Ponzi like fraud. One of the primary defendants was TD North America, a subsidiary of Toronto Dominion Bank of Toronto, Canada. While the case settled after five years on the eve of trial commencement and is confidential, we obtained for our client in settlement the same multi-million dollar recoveries as if the case had been successfully tried and won in federal court. Other Defendant financial institutions included both global, national, and Chicago area banks and hedge funds (NY and Chicago based). Opposing counsel in these cases included global firms as well as more than a dozen other major and smaller law firms.

MCG Capital

- Acted on behalf of the post-confirmation litigation trust arising from the Dallas bankruptcy of MCG Capital Corp. This multi-party litigation involved claims for fraudulent transfers, violations of state securities laws, breach of contract and fraud against financial institutions, accountants and other professionals/advisors resulting in eight figure recoveries that compensated our client for virtually one hundred percent of its damages/losses. The claims against financial institutions involved some of the largest banks in Dallas, Texas. Opposing counsel in this case included many of the largest and well known law firms in Dallas.

Howrey LLP

- Howrey LLP is one of the largest law firm bankruptcies in US history with over 750 lawyers and offices throughout the world in Belgium, France, Germany, the Netherlands, Spain, Taiwan and the United Kingdom. The DOJ appointed Allan Diamond as the Chapter 11 Trustee for the Howrey LLP law firm bankruptcy estate to wind down the global operations and oversee the

recovery and monetization of its assets, including litigation claims. recovered upwards of a hundred million dollars for the Howrey bankruptcy estate to date.

Agribiotech

- Acted as lead trial counsel to the post-confirmation trustee of Agribiotech, Inc., the former Las Vegas, Nevada publicly traded forage and seed manufacturing company (largest in North America at the time) in connection with officer and director breach of fiduciary duty claims, software implementation breach of contract claims, accounting and other professional negligence and fraudulent transfer claims in the United States District and Bankruptcy Courts in Las Vegas involving more than \$80 million in damages

Enron/LJM2

- Acted as special litigation counsel to the pre- and post-confirmation trustee of LJM2 Co-Investment, LP, the Enron-affiliated partnership formerly managed by Andrew Fastow that received much scrutiny following Enron's collapse. LJM2 structured the infamous "Raptors" transactions, which allowed Enron to avoid reporting some \$1 billion in losses. We investigated and successfully resolved claims against LJM2's former legal counsel, "big four" accountants, and investment bankers for confidential amounts following extensive multi-year negotiations and mediations in New York and Dallas.

Syntax Brillian Corporate Liquidating Trust

- Acted as lead trial counsel for the post-confirmation Syntax/Brillian Corporation Liquidating Trust arising out of this former publicly traded HDTV television manufacturer's losses in the hundreds of millions of dollars. Claims were investigated and pursued against financial institutions, corporations and professional firms in the federal courts of Los Angeles, Delaware and Arizona as well as international claims in Taiwan and China.

USACM Liquidating Trust

- Acted as lead trial counsel for the post-confirmation arising out of the former USA Capital based sub-prime mortgage lending entities in connection with the Trust's investigation and pursuit of litigation claims involving hundreds of millions of dollars in damages in the federal courts of Las Vegas, Nevada. These claims and recoveries involve major financial institutions, corporations, accounting and legal professional organizations and other third parties.

For more information on our representative experience please reach out to our initial contacts or email michael.evian@diamondmccarthy.com.