

Practices

Related Practices

Antitrust
Bankruptcy and Insolvency Litigation
Bankruptcy, Business Insolvency, and
Restructuring Representation
Complex Commercial Litigation
Fiduciary Litigation
Fiduciary and Receiver
Representation
Financial Institution Litigation
High Stakes Litigation
International Dispute Resolution
Professional Liability Litigation

Related Sectors

Energy and Natural Resources
Healthcare & Life Sciences
Real Estate

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Directors and Officers Liability Litigation

Diamond McCarthy is well-known for holding corporate directors and officers accountable when they engage in misconduct that triggers a company collapse, make negligent decisions that cause significant financial harm, or fail to put the best interests of the company above their own. Few law firms can match our forensic skills and trial experience in the most demanding fraud and breach of fiduciary duty cases, typically involving numerous parties and witnesses, carefully-concealed schemes that may cross-borders in multiple relating proceedings in the U.S. and abroad.

We represent trustees, international liquidators, creditors' committees, financial entities, shareholders and other clients in litigation arising from high-profile corporate insolvencies and other financial distress scenarios. These cases invariably focus on alleged wrongdoing by directors and officers that many law firms are not inclined to or are disqualified from suing due to conflicts.

We are hired because of our ability to come into these complex situations conflict-free and take a fearless approach to solving difficult problems. Diamond McCarthy regularly prosecutes claims against corporate insiders and other culpable parties and executes various strategies to retrieve stolen assets and maximize recovery of damages through litigation and negotiations.

We have guided clients to positive outcomes in challenging insolvency-related litigation, shareholder derivative suits and other commercial disputes covering virtually every type of misconduct by directors and officers, including:

- Breach of fiduciary duties, self-dealing, conflicts of interest and mismanagement of company assets
- Fraud and other intentional misconduct, including Ponzi schemes, fraudulent transfers, misappropriation of assets, securities fraud and money laundering
- Breach of fiduciary duties or negligence in connection with mergers, acquisitions, asset dispositions and other significant financial and commercial transactions
- Negligence in corporate governance and decision-making

Most companies have Directors & Officers Liability Insurance to limit their exposure when directors and officers engage in wrongdoing, which often involves many levels of coverage. Our team helps clients navigate the complicated insurance issues that arise in litigation, including evaluating the

existence and limitations of coverage, negotiating with insurance carriers and advocating aggressively in the courtroom when they refuse to honor the policy.

Our Investigation and Forensic Capabilities

Highly advanced investigation and forensic capabilities are the hallmark of Diamond McCarthy's practice. We use a variety of legal and accounting forensic tools to answer the most important questions at the heart of every case – what happened to the company's money, was there any wrongdoing, who was responsible, and can we get the money back?

We have staffed our team with lawyers that have strong backgrounds in accountings, fraud examination, and finance. This experience helps us analyze complex transactions and financial documents more efficiently and discover the negligence or hidden fraud that harmed the company.

Representative Experience

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.

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.

Yellow Cab Bankruptcy

- Acting on behalf of Trustee for the Yellow Cab Bankruptcy and prosecuting claims against directors and officers in major litigation pending in the Yellow Cab bankruptcy matter in Chicago, Illinois

Oil and Gas Company

- Acted on behalf of a client and received a final arbitration award, after trial, for more than \$35 million against two former officers of an oil and gas production company for acting grossly negligent and failing to exercise due care.

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.

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.

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.

Investment Management Firm

- Acted on behalf of the Assignee for the benefit of creditors of which Diamond McCarthy obtained a judgment in excess of \$20million against the directors and officers for fraud

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

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.