

# Practices

## Related Practices

Breach of Contract  
Antitrust  
Bankruptcy and Insolvency Litigation  
Business Divorce – Shareholder & Partnership Disputes  
Directors and Officers Liability Litigation  
Fiduciary and Receiver Representation  
Financial Institution Litigation  
High Stakes Litigation  
International Dispute Resolution  
Probate and Trust Litigation  
Professional Liability Litigation

## Related Sectors

Healthcare & Life Sciences  
Energy and Natural Resources

## Initial Contacts

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## Fiduciary Litigation

Fiduciaries are legally obligated to serve the best interests of their corporate or individual beneficiaries and exercise the highest degree of good faith, care and loyalty while fulfilling their duties. When fiduciaries fail to honor those obligations, litigation often arises, and Diamond McCarthy is one of the most sought-after law firms to guide clients through those complex breach of fiduciary litigation claims. Our team of seasoned trial lawyers has represented both fiduciaries and beneficiaries in such litigation arising around the United States and beyond, and we have the demonstrated expertise to get results.

Our fiduciary litigation practice is often focused on answering a seemingly simple question that arises when a business or fails: “who killed the company?” Diamond McCarthy built its reputation on being fearless and conflict-free to aggressively get answers to that question, and to hold the responsible persons accountable. In many cases, misconduct by company fiduciaries and professionals takes center stage, typically in connection with failed corporate transactions and/or various types of financial fraud. Working with our forensic accounting partners, Diamond McCarthy has recovered hundreds of millions if not billions of dollars for investors and others who have fallen victim to fiduciary misconduct.

## Fiduciary Litigation in Bankruptcy and Insolvency Scenarios

Trustees, liquidators, creditors’ committees, corporations, CRO’s, financial entities, shareholders and other clients rely on Diamond McCarthy to determine why the business failed, and to pursue complex litigation arising from large-scale corporate insolvencies and other financially-distressed situations. Our team has been hired in some of the most high-profile frauds in U.S. history to dissect the sequence of events that resulted in a company’s failure, and to bring claims to hold the culpable parties responsible by pursuing all available damages through asset recovery, negotiations and tenacious advocacy in the courtroom. Our lawyers 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, fraudulent transfers and misappropriation of assets.

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 extends 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.

Diamond McCarthy is methodical and highly effective at turning over every rock, examining every transaction, and pursuing every possible legal avenue to ensure that the responsible parties are held accountable. Many times, our investigation reveals that fiduciary professionals such as auditors, accountants, lawyers, bankers, and appraisers facilitated the frauds that led to the company's demise. Our team has resolved litigation concerning every type of professional misconduct, including when professionals are complicit in fraudulent transactions, look the other way, are careless in failing to detect wrongdoing, or provide negligent advice, opinions or services. Unlike many larger law firms who also handle this type of work, Diamond McCarthy's size and plaintiff-orientated practice allow us to bring such claims without concerns about conflicts of interest that may prevent our competitors from being able to sue the major accounting firms, law firms, banks, and other such professionals.

## Fiduciary Litigation Arising from Corporate Transactions

Not every corporate fraud results in the company's demise, but every corporate officer and director is obligated to exercise the highest degree of care while engaging in corporate transactions and to hold the best interests of the company and shareholders above their own. When those duties are not honored, Diamond McCarthy is able to apply its extensive experience representing shareholders in derivative, class and mass actions to recover damages from corporate insiders who breach their fiduciary duties, self-deal, have conflicts of interest or commit negligence in connection with all types of high-value financial transactions, including mergers, acquisitions, asset dispositions and business or asset spin-offs.

## Probate and Trust Litigation

Trustees and estate executors also owe fiduciary duties to their beneficiaries, and when those duties are not honored Diamond McCarthy has the expertise to hold those fiduciaries accountable. We have represented trust and estate beneficiaries in complicated probate and trust litigation with substantial assets at stake concerning alleged misconduct by estate and trust fiduciaries, such as breach of fiduciary duties, fraud, self-dealing, conflicts of interest and mismanagement or misappropriation of assets.

We also handle a variety of other probate and trustee fiduciary matters, including suits to remove executors and trustees, modification and accounting proceedings, disputes over the ownership and control of family-owned and closely held businesses, and litigation involving guardianships, conservatorships and agents acting under powers of attorney.

## Representative Experience

### Shareholder Dispute

- Acted on behalf of Plaintiff as co-counsel in a six-week trial that resulted in a jury finding awarding a \$65 million dividend to the shareholders and more than \$2 million in additional damages to the minority shareholder. The case was brought on behalf of a minority shareholder against the majority shareholder and the corporation for claims of shareholder oppression, fraud, breach of fiduciary duty, and breach of contract. The jury found Diamond McCarthy's client entitled to a substantial dividend, back pay, and attorney's fees.

### 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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **Parmalat**

- Acted as lead trial counsel to the Cayman Island court-appointed liquidators for two former Cayman Island based companies related to the former Italian international food and dairy conglomerate, Parmalat, in connection with their multibillion-dollar claims against financial institutions and professional service firms in a global MDL proceedings in NYC along with related proceedings in the courts of Grand Cayman, Malta, and other countries. Diamond McCarthy was the only law firm to go to trial in the MDL proceedings in the S.D.N.Y, and argued before the U.S. Court of Appeals for both the 2nd Circuit and 7th Circuit

**For more information on our representative experience please reach out to our initial contacts or email [michael.evian@diamondmccarthy.com](mailto:michael.evian@diamondmccarthy.com).**