

Practices

Related Practices

Business Divorce – Shareholder &
Partnership Disputes
Fiduciary Litigation
High Stakes Litigation

Related Sectors

Real Estate

Initial Contacts

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Probate and Trust Litigation

Diamond McCarthy is the go-to litigation firm for diverse clients in high-stakes probate, trust and fiduciary disputes. With our team's strong knowledge of the unique legal issues that arise in these cases and deep experience navigating different rules and procedures across multiple jurisdictions, we can hit the ground running in every dispute and focus on achieving the most effective outcome for our clients.

Will Contests

Diamond McCarthy represents executors, administrators, beneficiaries and other parties in complex will contests involving considerable assets, business interests and real estate holdings. We have substantial experience resolving litigation covering the various grounds for contesting a will, including undue influence, fraud, lack of testamentary capacity, improper execution, revocation and failure to fulfill the technical requirements of a valid will.

Fiduciary Litigation

Clients rely on our team to achieve the best possible outcome in disputes where alleged misconduct by trust and estate fiduciaries takes center stage, including claims of breach of fiduciary duties, fraud, self-dealing, conflicts of interest, improper pre-death asset transfers and mismanagement, misappropriation of and failure to diversify assets. We guide clients through all types of challenging breach of fiduciary duty claims, suits to remove executors and trustees, and clawback actions to recover stolen assets or improper distributions.

In addition, we represent clients in other matters concerning the administration of trusts and estates, from modification and accounting proceedings to declaratory actions focused on clearly defining the rights and obligations of both fiduciaries and beneficiaries. We also handle a variety of disputes involving guardianships, conservatorships and agents acting under powers of attorney.

Family-Owned and Closely-Held Business Disputes

Diamond McCarthy's in-depth experience resolving business divorce matters and intra-company conflicts gives our clients a distinct advantage when a valuable business is the focus of a probate or trust dispute. Our team represents fiduciaries, business entities, shareholders, partners and LLC members in controversies involving the ownership, control and management issues that often arise in family-owned and closely-held companies.

Counseling on Risk Management and Dispute Resolution

Counseling fiduciaries on best practices for discharging their duties and minimizing risk is another important strength of our practice. We analyze complex estate plans and trusts, advise fiduciaries and beneficiaries on their rights, duties and legal exposure or remedies, and provide strategic guidance when litigation is necessary to protect an estate or trust.

Our team recognizes that a long, highly emotional courtroom battle not only takes a toll on family and business relationships, but can also drain significant estate or trust assets. Litigation is always the last resort for our clients, after we have explored opportunities to resolve the case quickly and cost-efficiently through informal settlement negotiations or mediation.

Representative Experience

Real Estate

- The couple in this divorce owned several large tracts of raw land, and disagreed about the potential for substantial increases in the real estate's value based on anticipated future zoning changes. Diamond McCarthy was able to resolve these business conflicts by negotiating the terms of a structured divorce settlement providing for payments to be tied to the future sale of the property under differing parameters for the sale.
- The divorcing couple owned interests in real estate development projects, and they entered into a marital agreement to divide their interests in the event of a divorce. Under the terms of the marital agreement, the husband continued to retain full control over most of the assets that were formerly in the marital estate, which created substantial conflicts. Diamond McCarthy helped negotiate the terms of a new, revised settlement agreement that addressed the business concerns of each party in the divorce, and which provided for a long-term, structured buyout of the wife's interest in the community estate.

Food Conglomerate Estate

- Represented representative of estate of widow of ice cream magnate Tom Carvel in Surrogate's Court proceedings including trial concerning approximately \$67 million estate. (In re Thomas Carvel, 3285/90 (Surr. Ct. Westchester Co.)).

Oil & Gas

- The principal asset in this divorce was a minority interest in a private company that produced raw materials for the oil and gas industry. The illiquid nature of this minority interest required the couple's divorce settlement to provide for a long-term structured payout. Diamond McCarthy therefore negotiated a payment structure that included both a floor and a ceiling in terms of the ultimate amount to be paid under the terms of the divorce settlement.

Private Company Investments

- In this divorce, the couple had made substantial, but minority, investments in a number of private companies. To conclude the settlement, Diamond McCarthy negotiated a trust agreement that transferred all of the private company investments into a newly formed trust with the husband serving as Trustee and the wife as one of two trust beneficiaries. The trust agreement protected the former wife's ownership interest in the investments held in the trust while allowing both of the parties to benefit from the anticipated appreciation in the value of the assets held in trust.

VA Hospitals

- This marital estate included multiple investments in privately held companies that had entered into long-term lease contracts with government operated VA hospitals. The successful

negotiation of the divorce settlement in this matter resulted in a division of assets that required analysis of this asset class, including various tax, real estate and financial issues.

Long-Term Alimony

- In this divorce, the husband agreed to provide the wife with alimony payments for the rest of her life, but this long-term payment stream needed to be protected by some form of collateral. Diamond McCarthy provided family law counsel with a number of alternative methods for collateralizing the alimony obligation to permit the couple to conclude their divorce settlement on mutually acceptable terms.

Government Contracting

- In this divorce, the wife owned the majority stake in a consulting service business that did extensive contracting with the federal government. Diamond McCarthy negotiated a transfer of the wife's business majority ownership interest to the husband in order to conclude the divorce settlement in a manner that optimized the value to both parties.

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