

# David R. McCourt

## Of Counsel

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David McCourt concentrates his practice in the areas of insurance coverage, class action defense, and complex commercial and financial litigation.

David has extensive experience in class action litigation, and has defeated class actions in the areas of securities fraud, tax, consumer fraud, the Uniform Commercial Code, the Fair Debt Collection Practices Act (FDCPA), environmental pollution, and the Telephone Consumer Protection Act (TCPA), both before and after certification.

He has represented insurance companies in coverage and bad faith litigation, and in class actions challenging claims handling and subrogation practices or seeking to impose class action judgments obtained against insureds on the insurer.

His general litigation experience is broad. He has represented both plaintiffs and defendants in securities and commodities fraud claims. He has represented corporations in commercial contract and business tort litigation and has litigated close corporation, partnership and LLC member disputes, and litigation arising out of acquisitions, mergers, and asset purchases. He has represented commercial borrowers in workouts and lender liability claims, and in litigation involving complex derivative instruments such as interest rate swaps. David also has experience in litigation involving shareholder derivative claims, tax, and insurance insolvency.

Last year David successfully petitioned the Missouri Supreme Court for an extraordinary writ vacating a trial court's ruling certifying a large consumer class, resulting in a landmark class action decision. He has successfully argued in the U.S. Court of Appeals.

David is currently representing a major insurer in a large bad faith claim in federal court in Missouri asserting commercial damages of hundreds of millions of dollars, plus punitive damages.

## EXPERIENCE

### Representative Engagements

- *Weatherspoon v. GCAC, appealed sub nom. State ex Rel. General Credit Acceptance Company, LLC v. The Honorable David L. Vincent, III*, 570 S.W.3d 42 (Mo. banc 2019). Successfully petitioned the Missouri Supreme Court for an extraordinary writ ordering the trial court to vacate its certification of a class action of more than 5,000 plaintiffs, where the class was grossly overbroad, and where the sole named representative was not typical. On appeal the Missouri Supreme Court held that consumers – more than 87% of the class – who had final judgments entered against them in deficiency actions were precluded from participation in a class, as were consumers who had their debts extinguished in bankruptcy without disclosing their claims against the defendant. The decision is likely to have a profound impact on consumer class actions in the state.

- *Car Credit, Inc. v. Pitts*, (Circuit Court of Jackson County, Mo., 2016-2020). Took over defense of a class action counterclaim by consumers, after the court had denied a motion by the prior firm to compel individual arbitration of the named class claimant's claims, and had entered summary judgment. Succeeded in obtaining an order vacating the prior order of summary judgment on client's claims; and after class was certified persuaded trial court to grant renewed motion to compel arbitration of the named class counterclaimant's claims only. Defeated numerous objections to and appeals of the court's favorable rulings. Then comprehensively defeated on the merits each of the named claimant's individual claims in arbitration, setting up the case for class decertification.
- *Williams v. Employers Mutual Casualty Company, et al.* (E.D. Mo. 2015), *aff'd*, 845 F.3d 891 (8th Cir. 2017). After removal to federal court, defeated an \$85 million equitable garnishment action by the judgment creditor class against the judgment debtor's insurer, which had denied the duty to indemnify or defend, through a motion for judgment on the pleadings successfully invoking the insurer's pollution exclusion; the ruling was affirmed in the United States Court of Appeals.
- *General Credit Acceptance Corporation v. Deaver* (Circuit Court of St. Louis County, Mo., 2012-2016). Repeatedly defeated efforts to certify a class action counterclaim by Illinois and Missouri debtors seeking more than \$100 million for alleged violation of the pre-sale notice provisions of the Uniform Commercial Code.
- *Kimble v. Jefferson City, Missouri, et al.* (W.D. Mo. 2014). Successfully represented 35 municipalities in a telecom tax class action in federal court, defeating the class action on summary judgment.
- Defeated repeated efforts by plaintiff in state court to recertify a decertified class in a TCPA case, resulting in a reduction in potential liability of more than 99.9 percent.
- Represented an insurance company in federal court in a putative class action challenging the purported settlement of subrogation claims between insurers by means of inter-insurer arbitration.
- In multiple lawsuits successfully defended a law firm against consumer fraud class action claims arising out of the firm's representation of a consumer lender.
- *Int'l Envtl. Mgmt., Inc. v. United Corp. Servs., Inc.*, 858 F.3d 1121 (8th Cir. 2017). Represented plaintiff corporation in a federal lawsuit against its former and current registered agents arising out of a \$10-million default judgment. Secured a favorable settlement against the current registered agent (the largest registered agent nationwide), after obtaining a ruling on summary judgment invalidating its limitation of liability contractual defense. Obtained a favorable settlement against the other defendant after appealing to the U.S. Court of Appeals, which reversed the dismissal in district court of the claim for breach of fiduciary duty against the former registered agent.

## **CREDENTIALS**

### **Education**

Northwestern Pritzker School of Law, J.D., 1998, *cum laude*

Union College, B.A., 1976, *magna cum laude*

Phi Beta Kappa



## Bar Admissions

Illinois

U.S. Court of Appeals for the Eighth Circuit

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Eastern District of Missouri

## Professional Memberships

American Bar Association

Illinois State Bar Association