

Selendy Gay Obtains Trial and Appellate Victories to Secure Largest Earnout Award in Delaware History

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Selendy Gay secured a major victory in the Delaware Supreme Court, successfully defending on appeal the firm's 2024 trial victory on behalf of Fortis Advisors LLC ("Fortis") and securing the largest earnout-related damages award in the history of Delaware.

The final stipulated judgment of approximately \$811 million was entered by the Delaware Chancery Court on January 26, 2026 – two weeks after the Delaware Supreme Court affirmed the vast majority of the ruling that the Selendy Gay trial team obtained for Fortis in its capacity as representative for the former shareholders of Auris Health, a surgical robotics company involved in a long-running dispute with its acquirer, Johnson & Johnson ("J&J"). On September 4, 2024, Vice Chancellor Lori W. Will ruled that J&J breached its merger agreement with Auris and defrauded the shareholders to ensure that certain earnout milestones would not be reached.

The Delaware Supreme Court en banc affirmed V.C. Will's interpretation of the merger agreement's efforts clause, agreeing with her conclusion that J&J breached its express obligation to use "priority" commercially reasonable efforts to achieve certain milestones and upholding her damages methodology for those milestones. The appellate court also affirmed V.C. Will's determination that J&J, through its CEO, fraudulently induced Auris to accept a \$100 million contingent payment for a milestone, concealing that a patient had recently died in a critical clinical study related to that milestone. The justices rejected J&J's argument that the merger agreement's exclusive remedy clause barred Fortis's fraud claim.

The winning trial and appellate team was led by Selendy Gay partners Philippe Selendy, Jennifer Selendy, Sean Baldwin, Oscar Shine, Meredith Nelson, and Julie Singer, and included appellate specialist Corey Stoughton and associates Aine Carolan, Jack Collins, and Jeff Zalesin, together with Delaware co-counsel Ross Aronstam & Moritz LLP.

The team was recognized by *The American Lawyer* as [Litigators of the Week](#) for these significant courtroom victories.

Attorneys

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- Sean Baldwin
- Oscar Shine
- Meredith Nelson
- Julie Singer
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- Aine Carolan
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