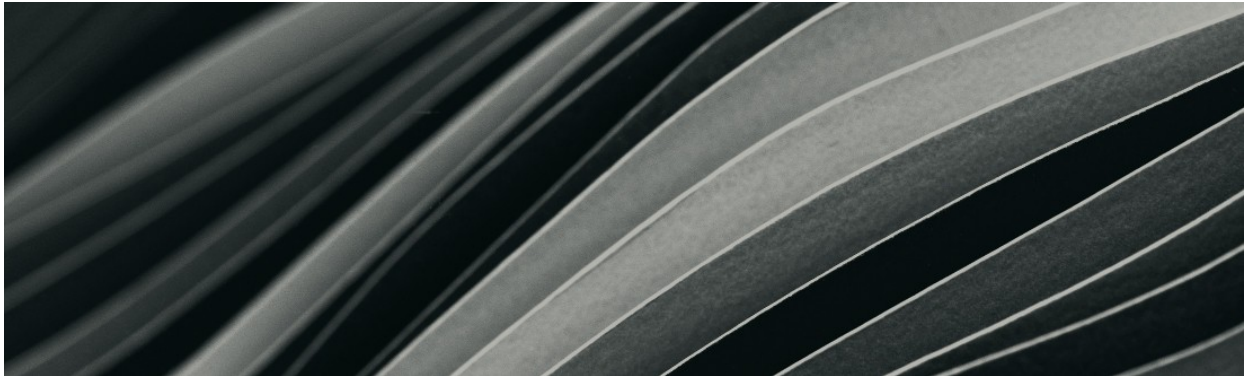


Appellate



Selendy Gay's appellate practice draws on the firm's foundational mastery of the law, paired with a deep grounding in our clients' needs and the factual record. Our partners have exceptional depth of experience, including numerous appearances before the U.S. Supreme Court, and regular appearances before federal circuit courts of appeal and state appellate courts. Selendy Gay's attorneys have achieved successes in overturning erroneous decisions, obtaining reversals of criminal convictions, and upholding trial court wins, delivering significant recoveries—or shielding businesses from losses—amounting to billions of dollars.

Our representative engagements include:

- **A former senior partner at a leading private equity firm**, in an appeal before the Second Circuit of a district court judgment that found him liable for violations of the Investment Advisers Act. Selendy Gay was engaged for the client's appeal, and after a nine-day bench trial, obtained a reversal of the district court's ruling.
- **The Federal Housing Finance Agency**, as conservator for Fannie Mae and Freddie Mac, in obtaining from the Second Circuit a unanimous affirmance of an \$806 million judgment against Nomura and RBS in a landmark residential mortgage-backed securities litigation under the federal securities laws.
- **U.S. Bank**, as trustee of a residential mortgage-backed securities trust, in obtaining a unanimous decision from the New York Court of Appeals that RMBS plaintiffs may cure contractual notice requirements after filing suit, upholding the viability of CPLR 205(a), a nearly 400-year-old pleading rule.
- **Cerberus Capital Management**, a leading private equity firm, as plaintiff in a breach of contract action against the Canadian Imperial Bank of Commerce, one of Canada's largest banks. In 2018, the First Department agreed with Cerberus' interpretation of the agreements and held that CIBC's contrary interpretation was "unmoored" from the contracts. After a damages hearing and related decision that rejected nearly all of CIBC's damages arguments, the New York Supreme Court – on February 6, 2023 – entered judgment for Cerberus for \$855 million. The trial verdict, which CIBC did not appeal following a post-trial settlement, was substantially shaped by our appellate work on interlocutory issues that preceded trial.
- **Public service workers**, members of the American Federation of Teachers union, in a settlement of a nationwide class action lawsuit with Navient, one of the nation's largest student loan servicers, challenging Navient's practices with respect to advising federal student loan borrowers on Public Service Loan Forgiveness (PSLF). We secured approval of a novel class settlement under which Navient agreed, among other things, to enhance its practices for public

service workers (teachers, nurses, Legal Aid workers, firefighters and police officers, for example) and, in addition, to contribute millions to a nonprofit organization that provides education and student loan counseling to public service workers. Selendy Gay successfully secured a unanimous affirmance of the approval on appeal in front of the U.S. Court of Appeals for the Second Circuit. In April 2023, the United States Supreme Court denied certiorari in two objector petitions in the case, bringing the litigation to an end and allowing the terms of the settlement to become effective.

- **Cyrus Vance**, the Manhattan District Attorney, as co-counsel in securing a landmark Supreme Court decision which reaffirmed the centuries-old principle that “no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding.”
- **SJP Properties, a New York-based real estate developer**, in obtaining a unanimous reversal from the Appellate Division, First Department of a trial court decision ordering SJP to tear down numerous floors of its residential building at 200 Amsterdam Avenue on Manhattan’s Upper West Side. The New York Court of Appeals subsequently denied the challengers’ motion for leave to appeal, bringing the lengthy battle to a close.
- A **Separate Securities Administrator** of a mortgage-backed securities trust, in obtaining a decision from New York’s Appellate Division, First Department in an issue of first impression that a non-trustee could assert claims on behalf of a trust against the trust’s sponsor.
- A **Fortune 100 beverage company** in securing affirmances in the Eleventh Circuit and the Second Circuit of dismissals of Alien Tort Statute claims arising from doing business abroad.
- **E-Trade Financial Corp.** an online retail brokerage firm, in obtaining an affirmance from the Second Circuit of a dismissal of two separate putative class actions related to purported improper steering of trades—one alleging federal securities fraud claims, and the other alleging breach of fiduciary duty under state law.

Selendy Gay’s attorneys also have led major appellate matters in the public interest and pro bono space, representing:

- **Garden State Equality**, in successfully defending before the Third Circuit the dismissal of a lawsuit challenging the constitutionality of New Jersey’s 2013 ban on the practice of so-called gay conversion therapy on minors under the age of 18.
- **Marissa Alexander**, in obtaining before the Florida appellate court a complete reversal of a conviction and mandatory 20-year sentence for allegedly firing a warning shot at her serially abusive spouse.
- By invitation of the court, an amicus brief in an **immigration case** before the Second Circuit regarding factors that an immigration judge may consider in granting adjustment of removal status.
- **Former judges and prosecutors** in an amicus brief to the New York Court of Appeals recommending use of a jury instruction in criminal prosecutions that rely on a cross-racial eyewitness identification.
- **Constitutional law scholars** in various amicus briefs arguing for a federal constitutional right to a minimally adequate education, the appropriate legal framework for evaluating constitutional challenges to abortion restrictions, and liability of military service academies for sexual assault committed on campus.
- **Criminal defense lawyers** in an amicus brief in the U.S. Supreme Court regarding a defendant’s waiver of jury trial right in capital cases.

- **Multiple plaintiffs** in appeals of Section 1983 civil rights actions concerning issues such as sentencing and inmate health care.