

## 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:

- 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, in a \$950 million breach of contract action against the Canadian Imperial Bank of Commerce (CIBC), one of Canada’s largest banks. The dispute centers on two complex structured finance transactions backed by credit default swaps, CDOs, and RMBS. We argued a successful appeal in which the First Department agreed with Cerberus’ interpretation of the agreements and held that CIBC’s contrary interpretation was “unmoored” from the contracts. The case is now proceeding through discovery.
- **Manhattan District Attorney Cyrus R. Vance, Jr.**, in a matter before the U.S. Supreme Court concerning whether the Constitution provides a President with immunity from criminal investigation for private, unofficial conduct.
- 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.
- A **Fortune 500 consumer products company** in obtaining a key appellate ruling from an en banc panel of the Fourth Circuit that federal judges may vacate otherwise unappealable remand orders where there is evidence of attorney fraud associated with the remand.
- A restructuring **advisor of Winstar Communications**, defending the dismissal of a \$300 million fraud lawsuit arising from a Section 363 bankruptcy sale and in the Third Circuit.
- **Athlon Capital Corp.**, a financial services firm, in which we obtained an affirmance from the Delaware Supreme Court of our trial victory in the Delaware Court of Chancery involving claims of breach of fiduciary duty, breach of contract, and fraudulent transfer claims seeking hundreds of millions of dollars in damages, as well as a court order that would have forced our client to liquidate its assets and close the business entirely.
- Successfully arguing to the New York Court of Appeals in **a class action on behalf of hundreds of thousands of New York City public employees and retirees** that New York’s consumer protection law covers misrepresentations regarding the scope of coverage in an insurer’s marketing materials.
- A **New York partnership**, obtaining a landmark decision from the New York Court of Appeals on the dissolution of partnerships.
- **MassMutual**, one of the largest U.S. insurance companies, obtaining affirmances of a full dismissal of a corporate governance suit arising out of its investment in Scottish Re, raising claims of breach of fiduciary duty and waste asserted against shareholder clients.
- A **multinational package delivery company** in arguing a case before the U.S. Supreme Court concerning the standard for bringing disparate treatment claims.

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.