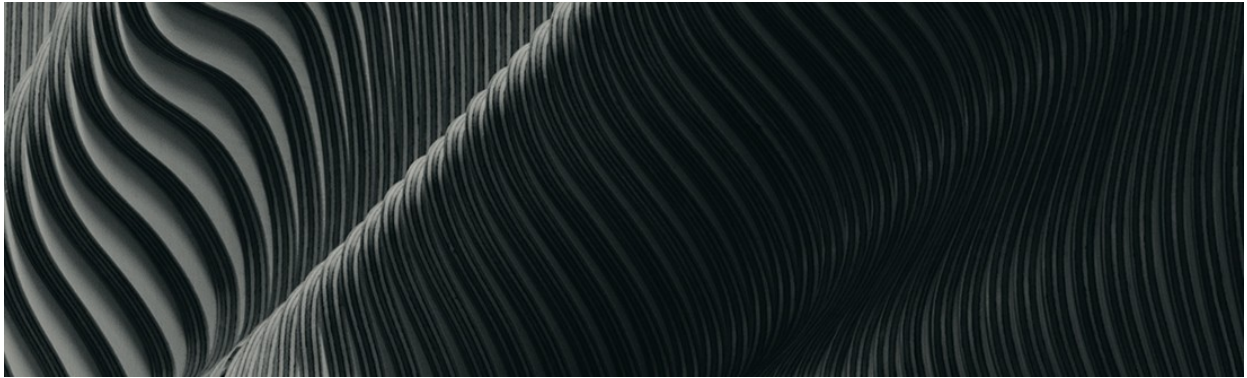


## Bankruptcy and Insolvency



Selendy Gay combines its deep investigations, trial, and appellate prowess with broad proficiency and experience in the bankruptcy and insolvency litigation arena, representing clients in high-stakes restructuring and insolvency disputes, bankruptcy-related investigations, and litigation involving breaches of fiduciary duty, fraudulent transfers, preferences, equitable subordination, alter ego, and veil piercing. Our clients include all participants in bankruptcy cases and corporate restructurings.

We offer a platform that is perfectly suited for handling the most complex, high-stakes bankruptcy-related disputes – a premier and highly active trial practice, sophisticated strategic and analytical skills, experience on both sides of the “v.”, expertise in financial services and with esoteric financial products, and a track record of maximizing speed and efficiency.

Selendy Gay’s bankruptcy and insolvency practice features:

- Representing Litigation Trustees and Boards prosecuting litigation trust claims post-plan confirmation.
- Representing Special Committees and Independent Directors in distressed situations, investigating and, if appropriate, prosecuting estate claims.
- Representing Debtors as Conflicts Counsel investigating and prosecuting major conflicts litigation at all stages of a distressed situation.
- Prosecuting Liability Management Transaction litigation, and advising on structuring such transactions to mitigate litigation risk
- Representing foreign liquidators in Chapter 15 and adversary proceedings.
- Representing Court-appointed Chapter 11 Examiners and Trustees.
- Advising creditors, liquidators, private equity sponsors, acquirers, and other key stakeholders in strategic aspects of distressed situations.

Our representative experience includes:

### **Litigation Trust / Foreign Liquidator Experience**

Selendy Gay represents post-confirmation litigation trustees and foreign liquidators and trust boards, including:

- **Litigation Oversight Committee to Genesis Global Holdco, LLC** and two affiliated debtors who filed for Chapter 11 protection, to prosecute claims, including fiduciary breach, preference,

and fraudulent transfer claims in excess of \$1 billion against the Genesis parent entity, Digital Currency Group, and other entities and parties.

- **Drivetrain as trustee for the Commonwealth Avoidance Actions Trust**, in the Bankruptcy Court for the District of Puerto Rico, seeking, among other things, recovery of hundreds of millions of dollars of underwriting fees and swap termination fees from 13 major Wall Street banks for their role in deepening **Puerto Rico's debt crisis**.
- **ResCap Liquidating Trust**, established to liquidate and distribute assets of the debtors in the ResCap chapter 11 cases in the Bankruptcy Court for the Southern District of New York (Judge Glenn), in suits against dozens of loan originators for indemnity and breaches of contract arising from the sale of defective mortgage loans. Achieved settlements of \$590 million in proceedings in multiple state and federal jurisdictions, including in the Bankruptcy Court for the Southern District of New York.
- **KRyS Global**, a British Virgin Islands-based foreign representative of several funds in liquidation abroad, in Chapter 15 proceedings in Bankruptcy Court for the Southern District of New York, and before the U.S. District Court on appeal, asserting foreign avoidance, common law, and breach of contract claims, seeking to recover approximately \$6 billion in redemption payments from hundreds of entities arising out of the Madoff scheme.
- **BDO Cayman**, the liquidators of **Herald Fund SPC**, a Cayman-Islands based **Madoff feeder fund**, in clawback litigation brought by the Madoff trustee against the fund. Successfully negotiated a groundbreaking settlement with the Madoff Trustee resolving the clawback claims and obtaining an allowed \$1.6 billion SIPA claim.
- **Interpath**, as joint liquidators of the BVI-based Kingate Global Fund and Kingate Euro Fund, in defending against claims brought by Deutsche Bank Securities Inc. relating to DBSI's alleged purchase from the funds of more than \$1.6 billion of claims against the **Bernard Madoff estate**. The parties reached a mediated settlement.
- **The SemGroup Litigation Trust**, instituted following SemGroup's chapter 11 cases in the Bankruptcy Court for the District of Delaware, obtaining confidential settlements of claims against entities and individuals who allegedly orchestrated fraudulent transfers and breaches of fiduciary duties.
- **An affiliate of Cigna Healthcare** in fraudulent transfer litigation brought by the **Madoff Trustee** in the Bankruptcy Court for the Southern District of New York. Settled the case for approximately 1% of the amount in controversy.

## Liability Management Transaction Experience

Selendy Gay is a leader in representing parties in lender-on-lender disputes, which have become increasingly common as borrowers (distressed or otherwise) employ such transactions to access new capital. We represent both groups of lenders excluded from such transactions, as well as companies and lenders seeking to mitigate litigation risk through structuring of the transactions. Notable matters include:

- **An ad hoc group of Robertshaw term lenders**, in New York Supreme Court and the Bankruptcy Court for the Southern District of Texas, alleging defendants Robertshaw, its equity sponsor, and several other lenders violated the governing credit agreements by issuing new senior debt and exchanging other lenders' debt with more senior debt, effectively demoting plaintiffs' first-lien and second-lien debt to sixth-lien and seventh-lien debt. Plaintiffs alleged that the transaction, which included an amendment of the credit agreements, was not permitted without plaintiffs' consent and that the transaction was detrimental to Robertshaw. Robertshaw filed for bankruptcy in February 2024, and a subset of the parties settled the case in March 2024, affording plaintiffs an opportunity to participate in their pro rata share of Robertshaw's Debtor-in-Possession financing and to receive reimbursement of their attorneys' fees.

- **An ad hoc group of Mitel term lenders**, in New York Supreme Court, alleging defendants Mitel, its equity sponsor, the lead arranger and collateral agent of the loans, and several of its other lenders violated the governing credit agreements by issuing new senior debt that effectively converted plaintiffs' first-lien and second-lien debt into fourth- and fifth-lien debt without inviting plaintiffs to participate. Plaintiffs alleged that the credit agreements did not allow defendants to amend them without their consent or to strip them of their pro rata and priority payment rights, and that, even if they did, defendants acted in bad faith by executing a transaction designed to strip plaintiffs of those rights.
- **Thebes Offshore Master Fund, LP** as intervenor plaintiff in litigation against Lions Gate for breaches of contract and the implied covenant of good faith and fair dealing in connection with a non-pro rata debt exchange scheme executed by Lions Gate and its favored noteholders as part of Lions Gate's effort to separate its studio business from the unprofitable STARZ business.
- **An ad hoc group of TriMark term lenders**, in New York Supreme Court, alleging defendants TriMark, its equity sponsors, and several of its other lenders violated the governing credit agreement by issuing new senior debt that effectively converted plaintiffs' first-lien debt into third-lien debt and by issuing new "super senior" debt without inviting plaintiffs to participate. Plaintiffs alleged that the credit agreement did not allow defendants to amend it without their consent or to strip them of their pro rata and priority payment rights. In August 2021, the Court rejected defendants' motions to dismiss plaintiffs' contract claims. In January 2022, the parties settled the case, with TriMark allowing the former first-lien lenders to exchange their debt for new "super senior" debt and to pay all lenders' attorneys' fees.
- **Cerberus Capital Management and Bayside Capital Inc.**, as lenders to the TPC Group, in its chapter 11 cases in the Bankruptcy Court for the District of Delaware. Cerberus and Bayside did not consent to a pre-bankruptcy debt priming transaction that favored another group of lenders and formed the basis for awarding that group additional priming debt and equity in the Chapter 11 proceedings. Our firm prevailed on four motions, obtained a significant ruling that an indenture's "no-action" clause does not bar a suit by minority lenders to vindicate their individual consent rights, and obtained an administrative stay of the bankruptcy court's adverse decision on two motions. The bankruptcy court ultimately ruled that the indenture did not preclude the priming transaction.

### Company-side claims investigation and litigation experience

Our partners have broad experience representing companies and their boards and directors in complex litigation arising in distressed situations. Notable company and board representations include:

- **\* The Restructuring Sub-Committee of the Board of Directors of Sears** in the company's chapter 11 cases in the Bankruptcy Court for the Southern District of New York, including the investigation of claims and causes of action in complex related party transactions, and an estate adversary proceeding asserting over \$1.8 billion in claims.
- **\* Diamond Sports Group**, the nation's largest owner of regional sports networks, in an investigation and the filing of complaints in the Bankruptcy Court for the Southern District of Texas against J.P. Morgan and Sinclair Inc., Diamond's parent company, seeking recovery in excess of \$2 billion for fraudulent transfers of assets, unlawful distributions and payments, breaches of contracts, unjust enrichment, and breaches of fiduciary duties.
- **Hornblower Group**, a global leader in experiences and transportation, representing the debtors as special litigation counsel in their chapter 11 cases in the Bankruptcy Court for the Southern District of Texas with respect to a dispute with the debtors' credit card processing vendor regarding the vendor's credit card chargeback liabilities resulting from the debtors' cancellations of cruise trips.
- **\* Bumble Bee Foods**, one of the world's largest branded shelf-stable seafood providers, in the successful going concern sale of its businesses through coordinated chapter 11 cases in the

Bankruptcy Court for the District of Delaware and Canadian bankruptcy cases precipitated by massive multi-district litigation asserting that the company and its private equity sponsor participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of packaged tuna products.

- **\* Performance Sports Group**, a leading developer and manufacturer of sports equipment and apparel with products marketed under the BAUER, MISSION, MAVERIK and EASTON brand names, in its complex chapter 11 cases in the Bankruptcy Court for the District of Delaware and Canadian bankruptcy cases, including the going concern sale of its business to a leading Canadian private investment firm and the formation of a post-confirmation litigation trust to pursue securities class action claims against certain third parties that were pending at the commencement of the bankruptcy cases.
- **\* AbitibiBowater** (now Resolute Forest Products), North America's largest newsprint, paper, and wood products company, in the restructuring of more than \$8 billion of prepetition indebtedness in its chapter 11 cases in the Bankruptcy Court for the District of Delaware. The plan confirmation proceedings featured the company's successful defense of multibillion-dollar fraudulent transfer claims at a lengthy trial.
- **\* Walter Energy**, a leading producer and exporter of coal for the global steel industry, in successfully restructuring more than \$4 billion of secured and unsecured debt and the going concern sale of the company's core mining operations to its senior lenders in its chapter 11 cases in the Bankruptcy Court for the Northern District of Alabama. The plan confirmation proceedings featured the company's successful rejection of its collective bargaining agreements through a lengthy trial, facilitating the company's successful restructuring.
- **\* TV Azteca, S.A.B. de C.V.**, a leading media and television company in Mexico, and certain of its subsidiaries, in the dismissal after trial of the involuntary chapter 11 creditor petitions filed in the Bankruptcy Court for the Southern District of New York arising from the company's missed interest payments on \$400 million of unsecured notes.
- **Samsung, IBM, Infineon Technologies, and Elpida Memory**, four of the world's largest semiconductor companies, in a landmark chapter 15 insolvency matter to establish the right of U.S. patent licensees to the protections of Section 365(n) of the Bankruptcy Code despite contrary German law governing the foreign main proceeding. The Bankruptcy Court for the Eastern District of Virginia decided in our clients' favor, affirmed by the Fourth Circuit.

Notable representations of company professionals, officers, and directors in bankruptcy matters include:

- **McKinsey & Company**, a worldwide management consulting firm, against claims by Jay Alix, founder of consulting firm AlixPartners, and Mar-Bow Partners, a company founded by Jay Alix, challenging McKinsey's chapter 11 disclosures under Rule 2014 in bankruptcy courts in the Southern District of New York, the Southern District of Texas, the Eastern District of Virginia, and the District of Delaware.
- **The Blackstone Group L.P.**, a multinational financial services firm, in an adversary proceeding in the Bankruptcy Court for the District of Delaware brought by the purchaser of Winstar Communications' assets in a Section 363 sale that sought \$300 million in fraud-based damages against Blackstone, the debtor's restructuring advisor. We secured dismissal at the pleadings stage and successfully defended the decision in the District Court, Third Circuit, and against a petition for certiorari in the U.S. Supreme Court.
- **Directors of MSR Hotels & Resorts Inc.**, in a three-day trial in the Bankruptcy Court for the Southern District of New York, securing dismissal of all breach of fiduciary duty claims brought against investment fund directors and executives.

(\* Kelley Cornish played a leading role in this company-side engagement while at her prior firm.)

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**Creditor Group / Strategic Creditor Experience**

Selendy Gay represents creditors and creditor groups in litigations and investigations related to claims of fraudulent transfer, breach of contract, and confirmation of bankruptcy plans, among other issues.

- **The Official Committee of Unsecured Creditors of Celsius Network LLC, et al.**, in matters adverse to certain equity holders and parties-in-interest in the Celsius chapter 11 cases in the Bankruptcy Court for the Southern District of New York, including issues related to confirmation of Celsius's chapter 11 plan.
- **An ad hoc committee of Capmark Financial Group secured lenders** in chapter 11 cases in the Bankruptcy Court for the District of Delaware. Successfully obtained approval of a \$975 million settlement after a month-long trial, allowing Capmark to pay back a \$1.5 billion loan at a 9% discount in return for the release of avoidance claims by Capmark's junior creditors, which challenged the payment as a fraudulent transfer.
- **An ad hoc group of secured noteholders** in chapter 11 proceedings in the Bankruptcy Court for the Southern District of Texas, asserting breach of contract claims against the collateral trustee for failing to properly perfect oil and gas leases pledged by a major energy company.
- **Sixth Street**, advising in connection with a suit against the directors and officers of Bed Bath & Beyond in its chapter 11 cases in the Bankruptcy Court for the District of New Jersey.
- **Nexstar Broadcasting, Inc.**, the largest unsecured creditor of Marshall Broadcasting Group, Inc., ("MBG") in its chapter 11 case in the Bankruptcy Court for the Southern District of Texas. Nexstar, one of the largest television station operators in the U.S., sold three television stations to MBG in 2014 and contracted with MBG to provide crucial services to allow MBG to operate. Among the issues being litigated are the past payments for these services owed to Nexstar and the ability of MBG to reject the contracts as part of its restructuring.