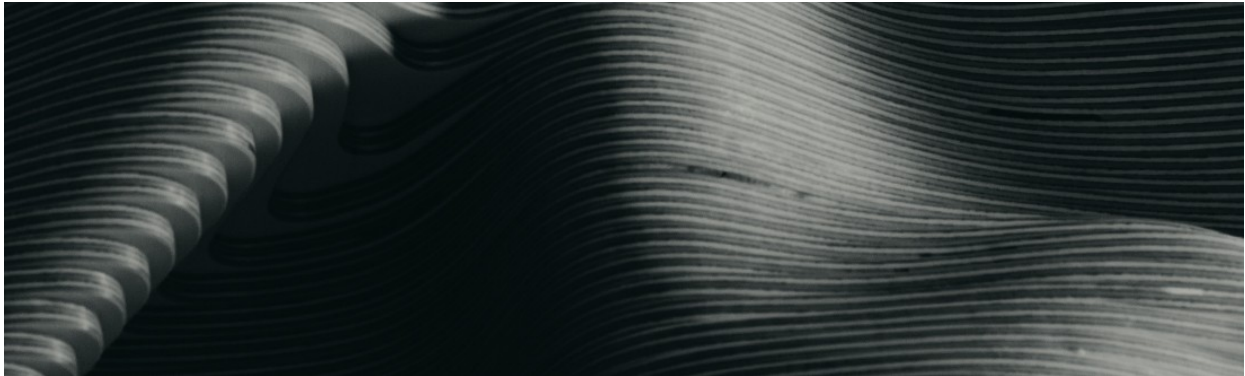


Complex Commercial Disputes



Selendy Gay's complex commercial litigation practice, which includes significant contractual disputes, is the backbone of the firm. We blend our business savvy with our formidable courtroom skills to represent parties on all sides in litigations and arbitrations across the country. Our partners have defended bet-the-company matters threatening the existence of our clients' businesses and pursued massive plaintiff-side judgments to protect our clients' interests. We achieve superior results by first obtaining a firm grounding in our clients' businesses, then using our legal and technical prowess to operate steps ahead of our opponents, seeing strategic opportunities that others do not. Our goal is always to achieve our clients' ideal resolution, while considering the potential exposure, possible publicity, and the significance of the dispute.

We have achieved favorable verdicts in an array of cases, including contract, fraud, unfair competition, antitrust, RICO, class actions, manufacturing, securities and structured financial instruments, corporate governance, trade secrets, energy, consumer products, pharmaceuticals, and insolvency related disputes, extracting multiple billions of dollars in value for our clients.

Our representative engagements include:

- **Cerberus Capital Management**, a leading private equity firm, in a 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. In December 2022, Justice Cohen resolved all liability issues in Cerberus's favor following a two-week bench trial against CIBC. After a subsequent damages hearing and related decision that rejected nearly all of CIBC's damages arguments, the New York Supreme Court entered judgment for Cerberus for \$855 million in February 2023.
- An **ad hoc group of 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 turned 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.
- 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 forgive the loans of all named plaintiffs, to enhance its practices for public service workers (teachers, nurses, Legal Aid workers, firemen and policemen, for example) and, in addition, to contribute millions to a nonprofit organization that provides education and student loan counseling to public service workers.

- **UMB Bank**, as Trustee for holders of Celgene contingent value rights (“CVRs”), seeking over \$6 billion in damages arising from Bristol Myers’ alleged failure to timely secure regulatory approval for the drugs associated with the CVR payout.
- **An investment fund**, in obtaining a complete dismissal with prejudice of claims that it breached a letter of intent and a purchase agreement to acquire certain real-estate related assets.
- **AOL**, a web portal and online service provider, defending two separate putative class action lawsuits seeking statutory damages in excess of \$650 million under the Electronic Communications Privacy Act relating to a data breach that was referred to at the time as the “Exxon Valdez” of data breaches.
- **Christofferson Robb & Co.**, a fund manager in a dispute against Deutschebank regarding eligibility criteria for a reference obligation in a swap backing a synthetic CLO.
- **Altaba (formerly Yahoo Inc.)**, against BNY Mellon Trust in Delaware Chancery Court, obtaining dismissal at the pleading stage of a claim that our client owed \$300 million under a \$1.4 billion convertible note agreement after the sale of Yahoo’s operating business to Verizon.
- **A proposed class of cryptocurrency investors** alleging that the controllers of the cryptocurrency exchange Bitfinex falsely represented that their purportedly “stable” cryptocurrency Tether was backed by U.S. Dollars in order to control the price of Bitcoin and other cryptocurrencies in an elaborate market-manipulation scheme that cost investors hundreds of billions of dollars.