Complex Commercial Disputes

Selendy Gay Elsberg'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:

- **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.
- **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.
- 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.
- **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 hedge fund sponsor, regarding the terms of a credit default swap issued by Deutsche Bank AG.

- **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.
- **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.