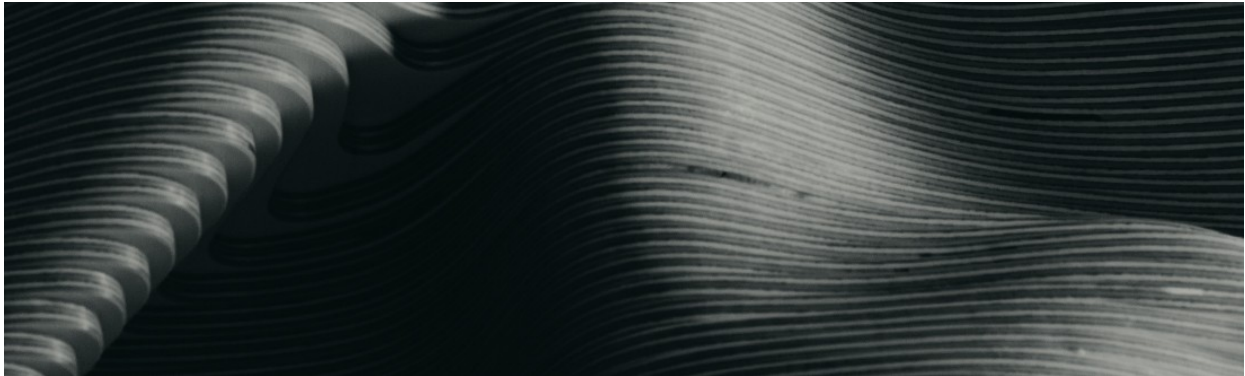


## Complex Commercial Disputes



Selendy Gay's complex commercial litigation practice, which includes significant contractual disputes, is the backbone of the firm. We represent parties on all sides in litigations and arbitrations across the country, defending bet-the-company matters threatening the existence of our clients' businesses and pursuing massive plaintiff-side judgments to protect our clients' interests. Our goal is always to achieve our clients' ideal resolution, while considering the potential exposure, possible publicity, and the significance of the dispute.

### Our representative engagements include:

- **Fortis Advisors**, as representatives of the former shareholders of revolutionary robotic surgery startup Auris Health, in an earnout dispute with its acquiror, Johnson & Johnson. Our clients alleged that Johnson & Johnson breached the merger agreement and defrauded the shareholders, resulting in its failure to achieve certain earnout milestones. After four years of litigation—including approximately 70 depositions, nine experts, and a 10-day trial—the Delaware Court of Chancery ruled on September 4, 2024, that Johnson & Johnson owed the former shareholders more than \$1.1 billion in damages. The significant 145-page decision found the former shareholders entitled to the largest earnout-related damages award in Delaware history.
- **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 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.
- **Matterport Inc.**, a leading real estate technology company, against its former CEO following its loss in a phase one trial regarding the effectiveness of the company's post-SPAC by-laws to lock up legacy shareholders. As new counsel in a five-day phase two trial in Delaware Court of

Chancery, defeated all remaining claims and cut the plaintiff's damages in half on the claim lost in phase one.

- **Albertsons Companies, Inc.**, in a merger dispute against Kroger in the Delaware Court of Chancery, alleging that Kroger materially breached the Merger Agreement by failing to undertake efforts required under the specific terms of that agreement to secure regulatory approval and, additionally, by failing to pay the termination fee. Albertsons seeks in excess of \$6 billion.
- **Represented mutual fund shareholders** who purchased, sold, or liquidated mutual fund shares managed by Allianz Global Investors U.S. LLC's Structured Property Groups from January 1, 2015 to December 31, 2020, securing a \$145 million settlement. The suit alleged that, instead of managing the Mutual Funds as represented, AllianzGI prioritized returns over risk management in ways that were fundamentally inconsistent with AllianzGI's representations concerning the Mutual Funds Principal Investment Strategies. Selendy Gay was co-lead counsel with Silver Golub & Teitell and Bernstein Litowitz Berger & Grossman.
- **Archer Aviation Inc.**, an aircraft manufacturing company, against The Boeing Company in a California state court lawsuit seeking up to \$1 billion in damages caused by defamatory statements made by Wisk Aero LLC in furtherance of The Boeing Company's joint venture with Kitty Hawk Corporation. The case settled on terms that were favorable for our client.
- Chilean businessman Álvaro Saieh Bendeck, **Chairman of Corp Group**, and several of his family members and business associates in a cross-border dispute over claims brought by creditors of a subsidiary in a Chilean court that violated a permanent injunction ordered by a Delaware bankruptcy court. The Delaware court granted our motion for injunctive relief and ordered the recovery of 100% of our clients' attorney fees associated with bringing the action.
- **Trifecta Multimedia Holdings** as plaintiff in an earnout dispute in the Delaware Court of Chancery. The lawsuit contends that the defendant, WCG Clinical, took steps immediately upon purchasing Trifecta that prevented the company from reaching revenue milestones and interfered with its ability to secure new customers, which deprived Trifecta's founder and employees of up to tens-of-millions of dollars in earnout payments. In June 2024, the court denied the majority of the defendant's motion to dismiss, ruling that we had adequately pleaded our claim for fraudulent inducement based on representations made at the time of contracting. This matter is especially important because much of the earnouts were intended for Trifecta employees who helped build the business over nearly 20 years.
- **SaveOnSP, LLC** in a lawsuit brought by Johnson & Johnson Health Care Systems, Inc. for tortious interference with contract and deceptive trade practices. The first of its kind, this suit attacks the ability of commercial health plans, and companies like SaveOnSP that advise them, to set plan terms that take full advantage of drug manufacturers' copay assistance programs. The case could have a deep impact on such plans, affecting billions of dollars in assistance payments annually.
- Representing **Ligado Networks**, a satellite communications company, in an action for tens of billions of dollars against the Department of Defense, the Department of Commerce, and the National Telecommunications and Information Administration in connection with claims that the agencies' actions constituted an unconstitutional taking of a mobile satellite services license granted to Ligado by the Federal Communications Commission to operate within defined bands of the electromagnetic spectrum.
- **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.

- **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.
- **UMB Bank**, as Trustee for holders of Celgene contingent value rights ("CVRs"), seeking nearly \$7 billion in damages arising from Bristol Myers's failure to timely secure regulatory approval of the cancer therapies associated with the CVR payout.
- **Drivetrain as trustee for the Commonwealth Avoidance Actions Trust**, 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.