

Cross-Border Disputes



Selendy Gay offers steadfast guidance and assertive advocacy to safeguard and uphold our clients' interests in cross-border litigations and investigations, as well as international arbitrations. We have handled disputes arising in the Middle East, Europe, Asia, and Latin America involving claims valued in billions of dollars.

Our team is trained in both common law and civil law legal systems and works in English, Portuguese, Spanish, and French. We have expertise in numerous industries, including life sciences, healthcare, telecommunications, energy, mining, oil and gas, and construction, and practices, including M&A, commercial litigation, shareholder disputes, corporate governance and "divorce," and executive employment and lift-outs, among many others.

We represent international clients in their most challenging litigations in the United States, especially in Delaware and New York. We go to trial multiple times each year and have the experience to litigate and win. Among our clients are foreign financial institutions in disputes against major Wall Street banks and foreign liquidators in chapter 15 and adversary proceedings.

Our international arbitration matters are administered under the rules of every major arbitral institution around the world. In arbitration within the United States, we make appropriate use of the range of levers and rules available, such as those relating to threshold jurisdictional issues, the territorial reach of arbitration subpoenas and other issues concerning party and non-party discovery, the interaction of the Federal Arbitration Act with international arbitration, public policy exceptions to arbitrability, post-hearing review standards, and enforcement of awards.

This experience makes us uniquely qualified to handle arbitration-related litigation, such as court proceedings for antisuit injunctions, motions to compel arbitration, and requests for Section 1782 discovery in aid of international arbitration.

Our representative engagements include:

- **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 Selendy Gay's motion for injunctive relief and ordered the recovery of 100% of the clients' attorney fees associated with bringing the action.
- **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.

- **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.
- **Mohammed Aljabri and the New East entities** in multiple litigations across the globe in connection to allegations of fraud by state-owned Saudi companies. We intervened on behalf of the New East entities and moved to prevent 1782 discovery in SDNY.
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Merrill Lynch Capital, the private equity arm of Bank of America, in an international arbitration with a joint venture partner in Brazil.

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Victor Mones Coro, the operator of a private air charter services company based in Fort Lauderdale, who has been charged with violating and evading U.S. trade sanctions against Venezuela by arranging foreign flights for Tareck Zaidan al Aissami, the former Vice-President of Venezuela, and businessman Samark Jose Lopez Bello, after each had been designated under the Foreign Narcotics Kingpin Act. The case was referenced/featured in the front page of a New York Times article dated May 2, 2019 and entitled "Secret Venezuela Files Warn About Maduro Confidant."

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Daniel Yarur Elsaca, the former chairman of the Superintendencia de Valores y Seguros, Chile's equivalent of the SEC, in RICO litigation brought against him and several affiliates in the Southern District of New York as part of a larger dispute involving multiple litigations and arbitrations in Chile and the British Virgin Islands.

- **Saama Technologies, Inc.'s former CEO and shareholder representative** in an earnout litigation in the Delaware Court of Chancery against Warrior Holdings (an entity owned by funds managed by Carlyle).
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Herald Fund SPC, one of the largest "net loser" feeder fund victims of the Bernard L. Madoff Investment Securities Ponzi scheme. In the bankruptcy and district courts in New York, we led a group of similarly-situated funds in novel litigation on, among other things, application of safe harbor and good faith defenses, and the import of Stern v. Marshall in the Madoff clawback cases before negotiating a precedent-setting settlement with the Madoff Trustee resulting in an unencumbered allowed customer claim in excess of \$1.6 billion. We are currently advising the fund's Joint Official Liquidators on U.S. securities and insolvency issues in connection with ongoing court proceedings in the Cayman Islands and Luxembourg.

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National Public Finance Guarantee and MBIA Insurance Corporation, a monoline insurer, in a lawsuit to hold eight major Wall Street banks accountable for inequitable conduct that contributed to Puerto Rico's economic collapse. Plaintiffs in this case are bond insurers that have been presented with, and fully honored, over \$1 billion dollars in claims after the municipal debt underwritten by the banks— without proper due diligence or disclosures— became unsustainable for Puerto Rico and its agencies, leading to massive defaults.

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CCR Rodoanel, a Brazilian infrastructure company, in a swap dispute against French and Portuguese banks. We obtained a directed summary judgment on appeal.

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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.

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North Atlantic Refinery Limited, a world-class crude oil refinery, in an international arbitration over an exclusive oil supply agreement. On behalf of our client, we developed critical counter-claims and won key rulings against BP that transformed the nature of the action, allowing the bankruptcy-threatened refinery to resolve all claims and expand its operations.

- **A major technology company** in ad hoc arbitration in Vienna against Qimonda AG relating to purported cancellation of DRAM patents in German insolvency proceeding.
- **A U.S. private equity fund** in an ICC arbitration relating to a contract dispute with a Brazilian portfolio company.
- **A large Chinese pharmaceutical company** in connection with an affiliated drug discovery start-up accused of misappropriating trade secrets.
- **One of the world's largest IT infrastructure companies** in several disputes subject to arbitration clauses with confidentiality provisions.
- **A joint venture between two global pharmaceutical companies** with milestones required for the development, licensing and marketing of a new gastrointestinal drug – in a billion-dollar ICC arbitration in the United Kingdom.
- **An oil and gas producer** in a confidential arbitration concerning a dispute with a midstream company.