

Private Equity & Hedge Funds



Selendy & Gay's partners have a track record of working closely with private equity and hedge funds to not only overcome the recurring litigation risks that funds face across industry sectors, but also to capitalize on opportunities when litigation drives an investment's value.

Our securities and structured finance experience, which includes litigating to verdict or settlement many of the highest-stakes cases in the history of the field, has proven our mastery of synthetic and asset-backed collateralized debt obligations, credit-default swaps, credit-linked notes, financial guaranty insurance, re-insurance, mortgage-backed obligations, and other complex financial structures.

This subject-matter expertise, combined with our proven trial skills, have resulted in successes for our fund clients in matters as diverse as insider trading, market timing, distressed investments, adversary proceedings in bankruptcy, claims of breach of fiduciary duty and self-dealing, PIPEs investing, and disputes of many types with the nation's largest banks and broker dealers. We have also leveraged our experience with major regulators in successfully representing investment funds, or executives of such funds, in proceedings conducted by the DOJ and the SEC.

Our representative engagements include:

- **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. The case is now proceeding through discovery.
- **The Blackstone Group L.P.**, a multinational financial services firm, in an adversary proceeding in the Delaware Bankruptcy Court 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). Defeated the claim at the motion to dismiss stage, and successfully defended the decision in the District Court, Third Circuit, and against a petition for certiorari in the U.S. Supreme Court.
- **Christofferson Robb & Co.**, a hedge fund sponsor, regarding the terms of a credit default swap issued by Deutsche Bank AG.

- **Multiple KKR funds** against Goldman Sachs and other investment banks in the Southern District of New York, based on alleged violations of federal and state securities laws arising from the issuance of SunEdison securities.
- **Trilantic Capital Partners**, a private equity company, in a declaratory judgment action challenging the pension fund's assertions of ERISA withdrawal liability against a private equity investor.
- **The former stockholders of the robotic medical devices company Auris Health**, in a \$2.3 billion dollar earn-out suit against Johnson & Johnson and its subsidiary Ethicon in the Delaware Court of Chancery, in an action centered around the acquiror's post-merger failures to achieve regulatory and net sales milestones.
- **Lazard Real Estate Partners**, a real estate private equity fund, in discrimination claims against its portfolio company.
- **Merrill Lynch Capital**, the private equity arm of Bank of America, in an international arbitration with a joint venture partner in Brazil.
- **Lincolnshire Management**, a private equity firm, in an investor dispute.
- **A private equity firm and its portfolio company** against a former CEO in an employment action.