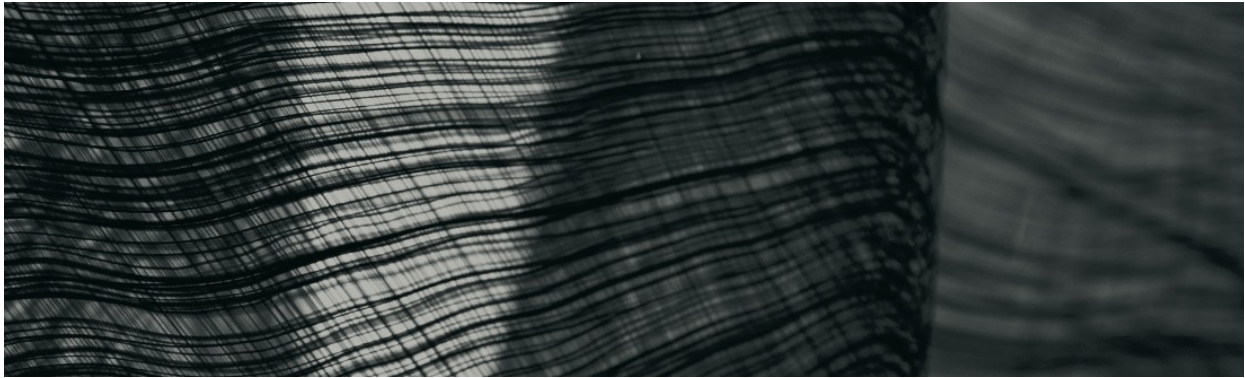


Private Equity, Venture Capital, and Hedge Funds



Selendy Gay's partners have a track record of working closely with private equity and venture capital firms, as well as hedge funds, to overcome litigation risks related to investments, corporate transactions, partnerships, products, and regulation, and to capitalize on opportunities where litigation drives an investment's value. Our goal is always to achieve our clients' ideal resolution, while considering the potential exposure, possible publicity, and significance of the matter.

This subject-matter expertise, combined with our proven trial skills, have resulted in successes for our fund clients in a broad array of matters involving, for example, 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:

- **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 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.
- **A tech-based venture capital firm** and its founders in a confidential arbitration dispute brought by a group of minority investors over a merger transaction that resulted in the investors being cashed out of the firm. The investors brought claims for breach of contract, breach of fiduciary duties, and unjust enrichment. Following a week-long hearing in February 2024, in which we demonstrated the fundamental unfairness of the claimants' demands and significant flaws in their arguments, the panel ruled in our clients' favor, concluding they did not breach any contract and

acted with subjective good faith, consistent with their fiduciary duties. Claimants were ordered to pay our clients' share of the arbitration costs, plus reasonable attorneys' fees and expenses.

- **Warburg Pincus**, a global private equity firm, and obtained a total dismissal of all claims in securities and breach of contract litigation arising from the acquisition of FSNS, LLC, a food safety and testing company, in the federal district court in Delaware.
- **Vista Equity Partners**, a San Francisco-based private equity fund, in shareholder litigation alleging breaches of fiduciary duty arising out of its acquisition of TIBCO Software, Inc. for approximately \$4.3 billion, in which we defeated preliminary injunction, permitting the deal to close, and then defeated all claims against Vista at the pleading stage.
- **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 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 fund manager in a dispute against Deutschebank regarding eligibility criteria for a reference obligation in a swap backing a synthetic CLO.
- **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.