

Securities & Structured Finance



We have litigated to verdict or settlement many of the highest-stakes cases in the history of the field, establishing key precedents in securities law and winning landmark victories that include recoveries in excess of 100% of principal and market losses. Our recoveries for our clients total over \$35 billion. On the defense side, we frequently succeed in having claims dismissed early or in negotiating favorable resolutions for clients.

Our mastery in structured finance and related insurance matters includes mortgage-backed obligations, synthetic and asset-backed collateralized debt obligations, credit-default swaps, credit-linked notes, financial guaranty insurance, reinsurance, and other complex financial structures.

Selendy & Gay's partners also have a track record of working closely with private equity and hedge funds, not only to overcome the recurring litigation risks that funds face across industry sectors, but also to capitalize on opportunities where litigation drives an investment's value. This expertise, combined with our proven trial skills, have resulted in successes in a broad array of matters involving 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, among others. We have also leveraged our experience and familiarity 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:

- **Federal Housing Finance Agency** in a one-month securities fraud trial in the Southern District of New York, in which plaintiff asserted claims under the 1933 Securities Act and the Blue Sky statutes of D.C. and Virginia based on statements made by Nomura and RBS in offering materials for residential mortgage-backed securities. After the presentation of over 40 witnesses including a dozen experts, FHFA won on all of its claims, obtaining over \$800 million for U.S. taxpayers from Nomura and RBS. The judgment was unanimously affirmed by the Second Circuit.
- **Federal Housing Finance Agency**, for over seven years in the Southern District of New York and District of Connecticut, as lead counsel across FHFA's entire platform of RMBS litigation, obtaining \$25 billion in settlements for U.S. taxpayers in residential mortgage-backed securities suits against Bank of America, Barclays, Citigroup, Credit Suisse,

Countrywide, Deutsche Bank, First Horizon, Goldman Sachs, HSBC, JPMorgan, Merrill Lynch, RBS, and UBS.

- **U.S. Bank**, as trustee, in multiple actions, including:
 - In a RMBS putback action against UBS Real Estate Securities, for losses suffered by three UBS-sponsored RMBS trusts. The case was the first RMBS trustee putback action to go to trial, and the settlement—an unprecedented \$850 million recovery—constitutes the largest recovery ever achieved in such a case.
 - Against GreenPoint Mortgage Funding in New York Supreme Court, Commercial Division, obtaining \$540 million settlement in breach-of-warranty suit over a defective residential mortgage-backed securities trust.
 - Against investment bank Merrill Lynch, regarding defective mortgages originated by a ResMAE that were sold into two RMBS trusts. The court ruled in our client’s favor on all loan-level issues raised, including its motion to strike a loss-causation defense. This precedent-setting case proved that an ambiguous term in a contract was a guaranty, and that plaintiffs did not have to show that defects in mortgages caused a loss to assert a put-back claim.
- **Cerberus Capital Management**, a leading private equity firm with more than \$40 billion under management, as plaintiff in a \$950 million breach of contract action against the Canadian Imperial Bank of Commerce, one of Canada’s largest banks. 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.
- **Ambac Financial Group, Inc.**, a financial services holding company, as plaintiff in an action seeking recovery of more than \$2 billion in damages from Countrywide Financial (and its parent, Bank of America) for misconduct that played a substantial role in causing the global financial crisis of 2008.
- **MBIA**, a monoline insurer, against Bank of America, Countrywide, and related entities in litigation in New York state court arising out of securitization insurance. We obtained a series of rulings including at summary judgment that set the basic framework for RMBS litigation nationwide, ultimately allowing MBIA to survive as a going concern and to achieve a multi-billion dollar settlement including the commutation of \$7.4 billion in swaps.
- **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.
- **CIFG**, a family of financial guaranty companies, against Bear Stearns in a suit seeking to hold Bear Stearns (and JPMorgan, as its successor) accountable for both the RMBS and collateralized debt obligations it created and sold, contributing to the housing and global financial crisis of 2008.
- A **separate securities administrator** for the Natixis Real Estate Capital Trust 2007-HE2 Trust, in a putback action against Natixis Real Estate Capital Inc. This case represents the largest exposure for Natixis resulting from the mortgage crisis; the trust’s losses total over \$500 million. The case has also made new law; in a matter of first impression, we obtained a ruling from New York’s Appellate Division, First Department that a non-trustee could assert claims on behalf of a trust against Natixis as the trust sponsor.
- **Crypto-asset investors**, in 11 class actions in the Southern District of New York against four of the world’s major crypto-asset exchanges and seven digital token issuers who

allegedly offered and sold billions of dollars of unregistered digital tokens and other financial instruments to investors in violation of federal and state securities laws.

- **AIG**, in Article 77 proceedings initiated by RMBS trustees over the distribution methodology in a \$8.5 billion settlement with Bank of America and a \$4.5 billion settlement with JPMorgan.
- **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.