

Recent Victories

Selendy Gay has attained an extraordinary set of victories across multiple areas of practice. Just a few of our victories include our representation of:

- **Cerberus Capital Management**, a leading private equity firm, in a 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. In December 2022, Justice Cohen resolved all liability issues in Cerberus's favor following a two-week bench trial against CIBC. After a subsequent damages hearing and related decision that rejected nearly all of CIBC's damages arguments, the New York Supreme Court entered judgment for Cerberus for \$855 million in February 2023.
- An **ad hoc group of term lenders**, in New York Supreme Court, alleging defendants TriMark, its equity sponsors, and several of its other lenders violated the governing credit agreement by issuing new senior debt that effectively turned plaintiffs' first-lien debt into third-lien debt and by issuing new "super senior" debt without inviting plaintiffs to participate. Plaintiffs alleged that the credit agreement did not allow defendants to amend it without their consent or to strip them of their pro rata and priority payment rights. In August 2021, the Court rejected defendants' motions to dismiss plaintiffs' contract claims. In January 2022, the parties settled the case, with TriMark allowing the former first-lien lenders to exchange their debt for new "super senior" debt and to pay all lenders' attorneys' fees.
- 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 enhance its practices for public service workers (teachers, nurses, Legal Aid workers, firefighters and police officers, for example) and, in addition, to contribute millions to a nonprofit organization that provides education and student loan counseling to public service workers. Selendy Gay successfully secured a unanimous affirmance of the approval on appeal in front of the U.S. Court of Appeals for the Second Circuit. In April 2023, the United States Supreme Court denied certiorari in two objector petitions in the case, bringing the litigation to an end and allowing the terms of the settlement to become effective.
- Represented **Joint Liquidators and Foreign Representatives for three of the largest Madoff feeder funds** in over 300 adversary proceedings before the U.S. Bankruptcy Court for the Southern District of New York. We defended the Joint Liquidators' foreign common law claims from dismissal by "knowledge defendants" who are alleged to have known their redemption values were inflated by the Madoff fraud. The Bankruptcy Court rejected the knowledge defendants' arguments that the U.S. Bankruptcy Code's statutory safe harbor applied to bar those particular claims. As a result, the Joint Liquidators may continue their pursuit of more than \$2 billion in overpaid redemptions.
- **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. Selendy Gay secured a \$145 million settlement for the mutual fund shareholders.
- Working with Legal Aid Society, Selendy Gay is defending the rent stabilization laws that protect **hundreds of thousands of tenants in New York State**, helping families stay in their homes and securing their right to have their voices heard in court. In 2020 and 2021, the firm successfully obtained dismissals of the five suits at the district court level. In 2022 and 2023, we defended all five dismissals on appeal before the U.S. Court of Appeals for the Second Circuit and secured favorable rulings in all five. The landlords in the first three cases petitioned the Supreme Court for

certiorari review. The U.S. Supreme Court denied the first petition in October 2023, and denied two more in February 2024.

- A **former senior partner at a leading private equity firm** in obtaining a reversal, in an appeal before the Second Circuit, of a district court judgment finding him liable for violations of the Investment Advisers Act after a nine-day bench trial.
- **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.
- A class action on behalf of **hundreds of thousands of New York City public employees and retirees**, successfully arguing to the New York Court of Appeals that New York's consumer protection law covers misrepresentations regarding the scope of coverage in an insurer's marketing materials.
- A **major energy company**, as respondent in a confidential international arbitration victory in front of a AAA Panel that awarded claimant zero and dismissed with prejudice its claim for hundreds of millions of dollars.
- A **leading biotechnology company**, in successfully obtaining a judgment dismissing a complex patent infringement suit brought by a multinational pharmaceutical company that sought over \$500 million in damages.
- **U.S. Bank** as Trustee of an asset-backed securities trust before the New York Court of Appeals in upholding the viability of CPLR 205(a), a nearly 400-year-old pleading rule. Defendant-appellant DLJ Mortgage Capital, Inc. attempted to avoid the Trustee's timely breach of contract suit by arguing the Trustee failed to satisfy the so-called "notice-and-cure protocol" as to a defunct contracting party. Agreeing with all of the Trustee's arguments on appeal, the Court of Appeals held that CPLR 205(a) allowed a plaintiff six months after dismissal of a timely action for failure to comply with a procedural condition precedent to remedy the defect. In holding that the "notice-and-cure protocol" was a procedural condition precedent to suit, not a substantive element of a Trustee's breach of contract claim, the Court rejected a defense-friendly interpretation of its prior precedent and reaffirmed that banks that sold faulty asset-backed securities in the mid-2000s may be held accountable to those they misled. The Court's unanimous 7-0 opinion confirms New York's long-standing policy of allowing plaintiffs to correct technical defects so that courts may decide cases on the merits—a crucial result for commercial entities and individuals doing business in this state.
- **The Niskanen Center**, a leading policy think-tank, as amicus curiae supporting New Jersey in an appeal of a decision that allowed a pipeline company to use the federal power of eminent domain to seize state lands. In a precedential decision specifically citing our analysis, the Third Circuit Court of Appeals vacated the lower court's decision, holding that the Eleventh Amendment bars private parties from condemning state lands under the Natural Gas Act.
- **U.S. Bank**, as trustee, in a RMBS putback action against UBS Real Estate Securities, for losses suffered by three UBS-sponsored RMBS Trusts (MARM 2006-OA2, MARM 2007-1, and MARM 2007-3). This 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.
- **Mudrick Capital Management** in achieving a trial victory in the Delaware Court of Chancery in an action commenced under Section 220 of Delaware's General Corporation Law, seeking corporate books and records to investigate an allegedly unfair merger. In an order adopting many of our factual allegations regarding the proposed merger, the defendant was ordered to produce e-mails from its C.E.O., its General Counsel, and the chair of the Special Committee that had approved the merger. One day after this ruling, the challenged merger was called off.
- **Altaba** (formerly Yahoo Inc.), against claims by BNY Mellon Trust in Delaware Court of Chancery in front of Vice Chancellor Travis Laster that our client owed \$300 million under a \$1.4 billion convertible note agreement after the sale of Yahoo's operating business to Verizon. On behalf of our client, we succeeded in having the case dismissed with prejudice at the pleading stage.
- **E*Trade Financial Corp.**, an online retail brokerage firm, and its related parties, in successfully obtaining affirmance from the Second Circuit in the dismissals of two separate putative class

actions related to the purported improper steering of trades. In one decision, the Second Circuit affirmed the dismissal of a putative class action alleging claims under state law as precluded by the Securities Litigation Uniform Standards Act of 1998. In the second decision, the Second Circuit affirmed the dismissal of another putative class action alleging claims under federal securities laws on a rare ground, for failure to plead reliance.