

Bankruptcy and Insolvency



Selendy Gay has deep experience representing private equity funds, hedge funds, trustees, non-profit and not-for-profit organizations, and other clients in high-stakes insolvency-related proceedings. We combine our litigation and trial expertise with our knowledge of bankruptcy and insolvency law to develop effective solutions and strengthen our clients' positions in forums including federal bankruptcy court and the Delaware Court of Chancery.

Lex Machina's 2022 Law Firms Activity Report lists Selendy Gay as one of the two most active firms representing bankruptcy plaintiffs and appellants in federal court.

We lack the conflicts that disable larger firms and we have a track record of litigating and winning against the major money center banks—and so are often brought into adversary proceedings as conflicts counsel and courtroom specialists.

Our representative engagements include:

- An **ad hoc group of secured noteholders** in potential breach of contract claims against the collateral trust agent for failing to properly perfect oil and gas leases pledged by a major energy company currently in chapter 11 proceedings in the Southern District of Texas Bankruptcy Court.
- **Athilon Capital Corp.**, a financial services firm, in a trial victory in the Delaware Court of Chancery in front of Vice Chancellor Travis Laster, involving claims of breach of fiduciary duty, breach of contract, and fraudulent transfer claims which sought hundreds of millions of dollars in damages, as well as a court order which would have forced our client, the defendant, to liquidate its assets and close the business entirely. The press described this trial victory as a “resounding win” in a “literal bet-the-company case” that set precedent concerning the test for insolvency under Delaware law and that was affirmed by the Delaware Supreme Court.
- **Nexstar Broadcasting, Inc.**, as the largest unsecured creditor of Marshall Broadcasting Group, Inc., (“MBG”) who filed for chapter 11 protection in the Southern District of Texas. Nexstar, one of the largest television station operators in the United States, sold 3 television stations to MBG in 2014 and contracted with MBG to provide crucial services to allow MBG to operate. Among the issues being litigated in the chapter 11 case are the past payments for these services owed to Nexstar and the ability of MBG to reject the contracts as part of its restructuring.
- **A group of the Sandy Hook Elementary School shooting victims' families**, in Alabama Bankruptcy Court, seeking to preserve claims brought against Remington Outdoor Co. in its chapter 11 bankruptcy filing.
- **Fairfield Sentry Limited (in liquidation) et al.**, represented foreign representatives 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 about \$6 billion in redemption payments from hundreds of entities arising out of the Madoff scheme.

- The **Joint Official Liquidators of Herald Fund SPC**, a Cayman-Islands based Madoff feeder fund, in clawback litigation brought by the Madoff trustee against the Fund. Successfully negotiated a groundbreaking settlement with the Madoff Trustee resolving the clawback claims and obtaining an allowed \$1.6 billion SIPA claim.
- **ResCap Liquidating Trust**, a trust established to liquidate and distribute assets of debtors in the ResCap bankruptcy, in suits against dozens of loan originators for indemnity and breaches of contract arising from the sale of defective mortgage loans. Achieved settlements of \$590 million in proceedings in multiple state and federal jurisdictions, including in the Southern District of New York Bankruptcy Court.
- An **ad hoc committee of secured lenders** in the Capmark Financial Group bankruptcy. Successfully obtained approval of a \$975 million settlement after a month-long trial in the District of Delaware, allowing Capmark to pay back a \$1.5 billion loan at a 9% discount in return for the release of avoidance claims by Capmark's junior creditors, which challenged the payment as a fraudulent transfer.
- **Samsung, IBM, Infineon Technologies, and Elpida Memory**, four of the world's largest semiconductor companies, in a landmark Chapter 15 insolvency matter to establish the right of U.S. patent licensees to the protections of Section 365(n) of the Bankruptcy Code despite contrary German law governing the foreign main proceeding. Bankruptcy Court decided in our clients' favor, and was later affirmed by the 4th Circuit.
- **Washington Mutual**, a savings bank holding company, in a lawsuit against JPMorgan in Delaware federal bankruptcy court—that arose out of one of the largest bankruptcies in history and resulted in a settlement of over \$6 billion.
- **Yamana Gold**, a Toronto-based precious metals mining company, in bailment and reclamation claims arising from the Chapter 11 insolvency of Republic Metals Corporation in the Southern District of New York.
- **SemGroup adversary proceedings**, in Delaware Bankruptcy Court, represented the SemGroup Litigation Trust, instituted following SemGroup's bankruptcy, in obtaining confidential settlement of claims against entities and individuals who allegedly orchestrated fraudulent transfers and breaches of fiduciary duties.
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Directors of MSR Hotels & Resorts Inc., in a three-day hearing in the Southern District of New York Bankruptcy Court. We successfully represented defendant investment fund directors and executives against claims of breach of fiduciary duty. All claims were dismissed in their entirety.