

## Securities and 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 \$46 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.

**"They're outstanding. Very hard-working, focused, and knowledgeable about the law, with an instinctively solid grasp of the case." - *Chambers & Partners***

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 the 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:
  - Against Credit Suisse (DLJ) in a successful appeal to the New York Court of Appeals, establishing that plaintiffs are entitled to correct fatal errors regarding procedural conditions precedent even after the expiration of the applicable statute of limitations, and currently representing the trust in its ABSHE RMBS contract action against Credit Suisse (DLJ) and Ameriquest on remand, seeking hundreds of millions of dollars in damage.
  - Against UBS Real Estate Securities, seeking recovery for losses suffered by three UBS-sponsored RMBS trusts for UBS's breaches of representations and warranties. The case was the first RMBS trustee put-back action to go to trial, and the settlement—an unprecedented \$850 million recovery—constitutes the largest recovery ever achieved in such a case. We worked closely with U.S. Bank as trustee to ensure the settlement was reasonable, and its reasonableness was subsequently confirmed in a Minnesota trust instruction proceeding.
  - Against GreenPoint Mortgage Funding in New York Supreme Court, Commercial Division, obtaining a \$540 million settlement in breach-of-warranty suit over a defective RMBS.
  - Against investment bank Merrill Lynch, regarding defective mortgages originated by ResMAE that were sold into two RMBS. 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.
  - Against Credit Suisse (DLJ) in an RMBS put-back action seeking recovery of losses suffered by four RMBS trusts on the basis of Credit Suisse (DLJ)'s breaches of representations and warranties in four RMBS trusts, obtaining a favorable summary decision that allowed the case to proceed to trial.
  - Against JPMorgan, as successor in interest to EMC and Bear Stearns, in two separate RMBS put-back actions seeking recovery of losses suffered by five RMBS trusts on the basis of defendants' breaches of representations and warranties, obtaining favorable settlements in both cases.
- **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 entered judgment for Cerberus for \$855 million in February 2023.
- **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.
- **Computershare**, as separate securities administrator of 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

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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 multiple class actions in the Southern District of New York against several of the world's major crypto-asset exchanges and 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.
- **Kingate Global Fund and Kingate Euro Fund**, Joint Liquidators of two BVI-based Kingate Funds, in defending against claims brought by Deutsche Bank Securities Inc. relating to DBSI's alleged purchase from the Funds of more than \$1.6 billion of claims against the Bernard Madoff estate. The parties reached a mediated settlement.
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**Represented 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, securing a \$145 million settlement. The suit alleged that, instead of managing the Mutual Funds as represented, AllianzGI prioritized returns over risk management in ways that were fundamentally inconsistent with AllianzGI's representations concerning the Mutual Funds Principal Investment Strategies. Selendy Gay was co-lead counsel with Silver Golub & Teitell and Bernstein Litowitz Berger & Grossman.