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RATINGS - CALIFORNIA

California Public Employees' Retirement System v. Moody's Investors Service, Inc.

Court of Appeal, First District, Division 3, California - May 23, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5720

California Public Employees’ Retirement System (CalPERS) brought action against credit rating agencies for negligent misrepresentation after CalPERS lost $1 billion in structured investment vehicles, rated “AAA” by agencies, that subsequently collapsed. The Superior Court denied anti-strategic lawsuit against public participation (SLAPP) motion. Agencies appealed and CalPERS cross-appealed.

The Court of Appeal held that:

- Negligent misrepresentation cause of action arose from an act in furtherance of agencies’ right of petition or free speech;
- Ratings potentially were representations of material fact giving rise to negligent misrepresentation liability;
- Agencies potentially lacked a reasonable ground for believing the credit ratings to be true;
- Agencies potentially intended through their ratings to influence CalPERS or a class to which CalPERS belonged; and
- CalPERS potentially relied upon credit rating agencies’ alleged misrepresentations.

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