

# **Bond Case Briefs**

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## **Appellate Court Warning: Pension Funds May Get Stuck With Unintended Oral Contracts With Their Investment Managers - Reed Smith**

On May 8, 2015, the Second District Court of Appeal in Los Angeles revived a \$35 million lawsuit against CalPERS in *Centinela Capital Partners LLC v. California Public Employees' Retirement System*. In an unpublished opinion, the appellate court reversed in part a trial court ruling dismissing the plaintiff's claims against CalPERS. According to the appellate court, plaintiff's pleading contained sufficient factual allegations to establish that CalPERS and the plaintiff had entered into an enforceable oral agreement that CalPERS allegedly breached.

Centinela Capital Partners, LLC ("Centinela") had been engaged by CalPERS as an investment manager for two separate funds. When CalPERS declined to enter into a third Centinela fund, Centinela sued, claiming that CalPERS had orally agreed to award Centinela a contract to manage an additional \$100 million.

On appeal, the appellate court reversed the trial court's ruling on the \$100 million investment portfolio breach of contract claim. Centinela's pleading alleged 13 specific material terms of the oral agreement. The pleading further alleged that the parties had agreed that the management of the \$100 million portfolio was to be governed by the same terms and conditions set forth in a separate preexisting written agreement the parties had for the management of another fund. Based on these allegations, the appellate court found that Centinela's pleading contained sufficient facts to establish a breach of contract claim against CalPERS for the oral promise related to the management of the \$100 million portfolio. The court stated that "[w]hether the parties intended their communications to be a binding...agreement or an agreement to further negotiate after a formal draft was prepared is a factual question not properly the subject of a demurrer." The case was remanded back for further discovery and trial.

*Centinela Capital Partners LLC v. California Public Employees' Retirement System* provides an important warning to plan fiduciaries and their investment staff: Be careful what you say when discussing investment opportunities with managers, especially those incumbents with whom you already have a contractual relationship. Make it clear in your communications - whether by phone, in person, by email or letter - that nothing will be binding on your plan unless and until a complete set of documents has been approved and inked by both sides.

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