



California Corporate & Securities Law

Federal Court Says City Is Immune From State Securities Law Claims

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It's a good situation when you can make the rules for everyone else but immunize yourself from those same rules.

California's Corporate Securities Law of 1968 declares it unlawful for any "person" to offer or sell a security by means of any written or oral communication that includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Cal. Corp. Code Section 25401. The CSL provides the remedy for a violation of this statute is either rescission or damages. Cal. Corp. Code Section 25501.

Because the CSL defines a "person" to include a government or a political subdivision of a government, one might expect that a city that issues bonds could be held liable under Sections 25401 and 25501. However, in *In re Nuveen Funds/City of Alameda Securities Litigation*, 2011 U.S. Dist. LEXIS 52135 (N.D. Cal. May 16, 2011), Judge Susan Illston recently concluded that the City of Alameda enjoyed absolute immunity under California Government Code Section 818.8 which provides: "[a] public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional."

Judge Illston was clearly troubled by the policy implications of holding a public entity immune from state claims of securities fraud when the plaintiffs allege that the municipality itself has engaged in fraud with regard to the issuance of municipal bonds. However, she found that "the weight of authority strongly indicates that California courts would hold that Alameda is immune under § 818.8."

An interesting question is whether immunity results in lower or higher overall financing costs for governmental issuers. The reduced risk of liability should lower costs but the increased risk to investors may result in less favorable pricing.

Prosperitas terra mari que!

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