

Court Finds Presentation to Regulators Was an Official Proceeding and Why That Is Important

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California's Anti-SLAPP statute is intended to cut short lawsuits "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition . . .". Cal. Code Civ. Proc § 425.16(a) Application of the statute involves two-steps. First, the defendant must establish that the cause of action arises from protected activity, as defined by section 425.16(e) which sets forth the following four categories of protected speech and conduct:

- any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law,
- any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law,
- any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or
- any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

If the defendant succeeds in making this showing of protected activity, the burden shifts to the plaintiff at the second step to establish a probability it will prevail on the claim.

The Woodbridge Group of Companies, LLC raised over \$1 billion in note offerings to investors what later was exposed as a massive Ponzi scheme. After Woodbridge entered bankruptcy, the trustee sued several lawyers and law firms, including Sidley Austin LLP. Among other things, the trustee faulted Sidley for preparing a memorandum concluding that Woodbridge notes were not securities under federal law. This memorandum was prepared and presented to the Texas Securities Board in an effort to convince the Board to withdraw an emergency cease and desist order.

In an unpublished decision, *Goldberg v. Sidley Austin LLP* (Cal. Ct. Appeal Case No. B307487 c/w B310865), the Court of Appeal had "little trouble" concluding that Sidley's memorandum was a communication before an official proceeding authorized by law pursuant to Section 425.16(e). Thus, Sidley was successful in satisfying the first step of the Anti-SLAPP statute.

As for the second step, the Court of Appeal found that the litigation privileged barred claims against Sidley.

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