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LITIGATION

S&P enlists heavyweights in DOJ suit

Keker-Keller 'dream team' signals ratings agency's willing to go to trial, observers say

By Henry Meier
Daily Journal Staff Writer

While the legal team defending Standard & Poor's in the government's civil suit over alleged ratings inflation of mortgage-backed securities is keeping a tight lid on its strategy, the attorney lineup suggests the company is ready to take the case to trial if necessary.

With white collar defense luminary John W. Keker and his Keker & Van Nest LLP partner Elliot R. Peters joined by criminal and civil litigator Jennifer Keller of Keller Rackauckas LLP, the team is well positioned to handle any aspect of the litigation, according to attorneys not involved in the case.

The pairing of Keker and Keller was particularly noteworthy, according to several lawyers following the matter.

"Both are brilliant, experienced and highly qualified lawyers," said Evan Jenness, president of the Los Angeles chapter of the Federal Bar Association and a criminal defense attorney. "It shows the defense's intent to try the cases."

Keller declined to comment for this story and Keker did not immediately respond to a request for comment.

The government accuses S&P of intentionally inflating the ratings of mortgage-backed securities and companies that were heavily invested in them from 2004 through 2007. The U.S. Department of Justice's main office and the U.S. attorney's office for the Central District are jointly prosecuting the case. In a complaint filed in federal court on Feb. 5, the government asks for some \$5 billion in penalties from the ratings giant.

The U.S. attorney's office is heavily invested in the case and went so far as to temporarily reassign the number two prosecutor in the office,



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S&P's hiring of John Keker and another noted defense lawyer suggest the ratings giant may be willing to take the case to trial, some speculate.

George S. Cardona, to the matter full time — a move Jenness said "beefs up the plaintiff's side."

But the Keller and Keker duo is formidable, attorneys said, especially given the venue — the Santa Ana federal courthouse in front of U.S.

a stunning reversal after an appellate court ruled the initial trial was invalid and won an \$88 million jury verdict for her client. However, in January, the 9th U.S. Circuit Court of Appeals tossed that amount and additional damages awarded by the

success in his courtroom."

Keker brings a wealth of experience in securities litigation to the team. His high profile cases in recent years include representing KB Homes executive Bruce Karatz and former investment banking heavy-weight Frank Quattrone in their criminal cases.

"He's widely recognized as one of the top white collar defense attorneys in the country," Newhouse said.

But regardless of the lawyers on the respective sides, Newhouse said cases like this often boil down to the actual information presented in court.

"The stronger your legal team is the more likely it is you'll be able to work something out before trial or get a favorable trial result," he said. "But at the end of the day you can have the greatest trial lawyer in the country and the case will still be decided on the facts."

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— George B. Newhouse Jr.

District Judge David O. Carter.

That's Keller's home turf. Based in nearby Irvine, she's spent much of her 35 years as a litigator trying cases in Orange County and figures to know the jury pool well. She's also spent the last several years representing MGA Entertainment Inc. in its copyright litigation with Mattel Inc. over MGA's line of Bratz dolls, which also played out in front of Carter. In April 2011, she secured

judge, and the parties continue to brawl over the doll line.

Keller's previous success and familiarity in front of Carter could give the defense an advantage in the Standard & Poor's battle, according to George B. Newhouse Jr., a partner at Brown, White & Newhouse LLP.

"Judge Carter is a unique and challenging district court judge," he said. "So S&P must figure [Keller] is comfortable in front of him given her

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