

March 21, 2018

Cyan Inc. v. Beaver County Employees Retirement Fund: U.S. Supreme Court Holds That State Courts Have Jurisdiction Over Class Actions Brought Under the Securities Act of 1933

Decision Has Important Implications for Securities Class Actions Filed in State Court Asserting Solely Federal Claims

SUMMARY

In *Cyan Inc. v. Beaver County Employees Retirement Fund* (March 20, 2018),¹ the U.S. Supreme Court held that (i) state courts have jurisdiction over class actions alleging violations of only the Securities Act of 1933 (“1933 Act”), and (ii) defendants are not permitted to remove such actions from state court to federal court. The decision resolves a split among state and federal courts about whether the Securities Litigation Uniform Standards Act (“SLUSA”) amendments to the 1933 Act deprived state courts of jurisdiction over 1933 Act class actions. In a unanimous ruling, the Supreme Court held that “SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations.”² As a result of the decision, plaintiffs likely will continue to file suit strategically in state courts where they can try to circumvent some of the procedural restrictions of the Private Securities Litigation Reform Act (“Reform Act”) and be subject to more plaintiff-friendly state courts and procedural standards.

BACKGROUND

The 1933 Act provides that both state and federal courts can hear claims brought under the Act, and bars defendants from removing such claims to federal court. The Securities Exchange Act of 1934 (“1934 Act”), in contrast, grants federal courts exclusive jurisdiction to hear claims brought under that Act.

In 1995, Congress passed the Reform Act, which amended both the 1933 Act and the 1934 Act. The Reform Act aimed to protect against “perceived abuses of the class-action vehicle in litigation involving nationally traded securities.”³ Following its passage, an increased number of plaintiffs filed *state* law securities class actions in state court in order to circumvent the Reform Act’s requirements and procedural protections. In response, in 1998 Congress passed SLUSA, which amended, among other things, the 1933 Act’s jurisdictional provision, 15 U.S.C. § 77v(a). The amendments provided for an exception to the 1933 Act’s general rule that state and federal courts exercise concurrent jurisdiction over claims brought under the Act. Following SLUSA, a split developed among state and federal courts over whether that exception deprived state courts of jurisdiction over “covered class actions” (actions in which plaintiffs seek damages on behalf of 50 or more persons) that assert only federal 1933 Act claims.

In 2014, three pension funds and an individual filed a class action against Cyan, a telecommunications company, in California Superior Court, following an announcement of weaker-than-expected results in the wake of Cyan’s May 2013 initial public offering. Plaintiffs alleged that Cyan’s offering documents contained material misstatements in violation of the 1933 Act. The complaint alleged no state law claims. Cyan moved to dismiss, and the California Superior Court denied the motion. State appellate courts denied review, and the U.S. Supreme Court granted *certiorari* to resolve the split over the meaning of SLUSA’s amendments.⁴

THE CYAN DECISION

In a unanimous decision authored by Justice Kagan, the U.S. Supreme Court held that (i) state courts have jurisdiction over class actions alleging violations of only the 1933 Act, and (ii) defendants are not permitted to remove such actions from state court to federal court.

The Court reasoned that amendments to the 1933 Act’s jurisdictional provision do not operate to deprive state courts of jurisdiction over “covered class actions” asserting only 1933 Act claims. The Court rejected Cyan’s argument that SLUSA’s amendment of the 1933 Act’s jurisdictional provision altered state court jurisdiction, stating that Congress could have used more precise language if it wanted to provide for an exception to state court jurisdiction.⁵ The Court concluded that Cyan’s arguments about the legislative history and purpose behind the relevant amendments “fail to overcome the clear statutory language.”⁶ The Court stated that it “has no license to disregard clear language based on an intuition that Congress must have intended something broader” (i.e. for 1933 Act class actions to be litigated only in federal

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court).⁷ Acknowledging that “[w]e do not know why Congress declined to require . . . that 1933 Act class actions be brought in federal court,” as class actions under the 1934 Act are, the Court then stated, “[b]ut in any event, we will not revise that legislative choice.”⁸

After finding that state courts maintain jurisdiction over class actions arising under the 1933 Act, the Court addressed the U.S. Solicitor General’s argument that defendants are nevertheless permitted to remove such cases to federal court. The Court held that its prior decision in *Kircher v. Putnam Funds Trust* foreclosed that possibility.⁹ According to the Court, the statute permits removal only of class actions based on state law (which SLUSA precludes), not class actions based on federal law.¹⁰

IMPLICATIONS

The *Cyan* decision means that, unless and until Congress acts, plaintiffs will be able to file 1933 Act class actions in state court, and defendants will not be able to remove those cases to federal court. The decision creates the anomalous result that a case asserting state law claims may be removed to federal court, but a case asserting only federal 1933 Act claims cannot be.

Many securities class action plaintiffs lawyers have filed these cases in state courts in the hopes of avoiding some of the restrictions of the Reform Act, such as the standards for appointment of lead plaintiff and counsel and the pre-motion to dismiss stay of discovery. Indeed, although the Reform Act stay of discovery is not limited by its terms to federal court proceedings, some plaintiffs have argued that cases in state courts may proceed with discovery. In *Cyan*, Justice Kagan noted that the “Reform Act’s *substantive* protections necessarily apply” “wherever [1933 Act] suits go forward,” i.e. whether brought in state or federal court.¹¹

State courts are also generally less familiar with securities class actions and with the substantive legal arguments that defendants often make in motions to dismiss 1933 Act claims. As a result of *Cyan*, plaintiffs will file more 1933 Act cases in state courts, and those courts will make more rulings on motions to dismiss 1933 Act claims, which may create less uniformity in 1933 Act case law.

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ENDNOTES

- 1 *Cyan Inc. v. Beaver Cty. Emps. Retirement Fund*, No. 15-1439, 538 U.S. ____ (2018).
- 2 *Id.*, slip op. at 24.
- 3 *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006).
- 4 *Cyan*, slip op. at 6.
- 5 *Id.* at 8–10.
- 6 *Id.* at 7.
- 7 *Id.* at 24.
- 8 *Id.* at 15.
- 9 *Id.* at 20 (citing *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (2006)).
- 10 *Cyan*, slip op. at 18–20.
- 11 *Id.* at 14 (emphasis added).

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