CLIENT ALERT

Supreme Court Holds That Securities Act Class Actions May Be Litigated in State Court

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The Supreme Court has resolved a persistent debate in securities cases: whether a plaintiff can litigate federal Securities Act claims in a class action filed in state court. The answer is yes, and decisively so. *See Cyan, Inc. v. Beaver County Employees Retirement Fund*, No. 15-1439. The fact that this decision was unanimous comes as a bit of a surprise, after an oral argument in which more than one justice referred to the underlying statutes as "gibberish."

Cyan arose from a series of federal statutes with somewhat confusing provisions about state and federal roles in securities litigation. The Securities Act of 1933—which relates to securities offerings—allows private lawsuits and provides that such claims may be litigated in both state and federal court (and cannot be removed from one to the other). In contrast, private claims under the Securities Exchange Act of 1934—which relates to securities trading—must be litigated in federal court. In 1995, in an effort to curtail abuses in securities litigation, Congress enacted the Private Securities Litigation Reform Act, which added both procedural and substantive hurdles to securities claims brought under federal law. This new statute had the unintended consequence of prompting plaintiffs to frame their securities claims in terms of state law (and to file them in state court).

In response, Congress enacted the Securities Litigation Uniform Standards Act ("SLUSA"), which does two separate but related things. First, it precludes any state law claim in a "covered class action" that alleges dishonesty "in connection with the purchase or sale of a covered security." 15 U.S.C. § 77p(b). Second, it gives defendants the ability to remove certain covered class actions to federal court, where they can be dismissed under the Act's preclusion provision. 15 U.S.C. § 77p(c). SLUSA made a "conforming amendment" to the non-removal provision in the 1933 Act, which now bars removal of Securities Act cases "except as provided in section 77p(c)." It also made a "conforming amendment" to the 1933 Act's jurisdiction provision, which now says that state and federal courts will have concurrent jurisdiction over 1933 Act claims "except as provided in section 77p . . . with respect to covered class actions."

This "except clause" was the subject of the Court's decision in *Cyan*. The plaintiffs brought a class action against Cyan, Inc. and its officers and directors, after the stock Cyan issued in an initial public offering declined in value. Plaintiffs filed their action in state court, asserting claims solely under federal law—specifically, the 1933 Act. They took the position that the definition of "covered class action" in SLUSA refers specifically to class actions that include state law claims, such that the except clause does not affect the state courts' concurrent jurisdiction over lawsuits asserting claims solely under federal law. The state court denied the defendants' motion to dismiss, and the case made its way to the Supreme Court.

The Supreme Court unanimously agreed with the plaintiffs. Writing for the Court, Justice Kagan explained that the background rule since 1933 has been to allow state and federal courts concurrent jurisdiction over claims brought under the Securities Act. SLUSA's section 77p—referenced in the except clause—precludes class claims based on *state* law, but it does not purport to impact class claims brought under *federal* law. And while a subsection of section 77p provides a definition of "covered class action" that is not tied to state law claims, the except clause does not refer specifically to that definition—nor does the definition purport to "provide[]" jurisdiction for "covered class actions" in the sense discussed in the except clause. Interestingly, the Court seemed to acknowledge the risk that its interpretation leaves the except clause without any work to do, speculating that Congress could have enacted the except clause as a "fail-safe device" designed to protect against as-yet-unanticipated tactics to manipulate jurisdiction. But no matter what Congress actually had in mind, the Court "had no basis for giving the except clause a broader reading than its language can bear."

The Court then went on to consider (and reject) a separate argument raised by the Solicitor General, who had argued that the defendants in *Cyan* could at least have removed the case to federal court. As noted above, SLUSA amended the removal bar in the 1933 Act to say "except as provided in section 77p(c)." But that subsection allows removal only for covered class actions described in "subsection (b)," which refers specifically to a "covered class action based upon the statutory or common law of any State or subdivision thereof." Suits like the one against Cyan raise only federal claims and thus remain subject to the 1933 Act's ban on removal.

Cyan will have immediate practical implications for securities litigation. It makes clear that plaintiffs may continue to file Securities Act class actions in state court, and defendants cannot rely on SLUSA to dismiss or remove them. More broadly, though, *Cyan* is also interesting from the perspective of statutory interpretation. It shows that the Court may be willing to interpret a statutory provision in a way that leaves it with little work to do, if a straightforward reading of the text requires that interpretation. It also shows that members of the Roberts Court can still reach a unanimous decision—even when interpreting a statute that many called "gibberish," and even when the outcome solidly

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