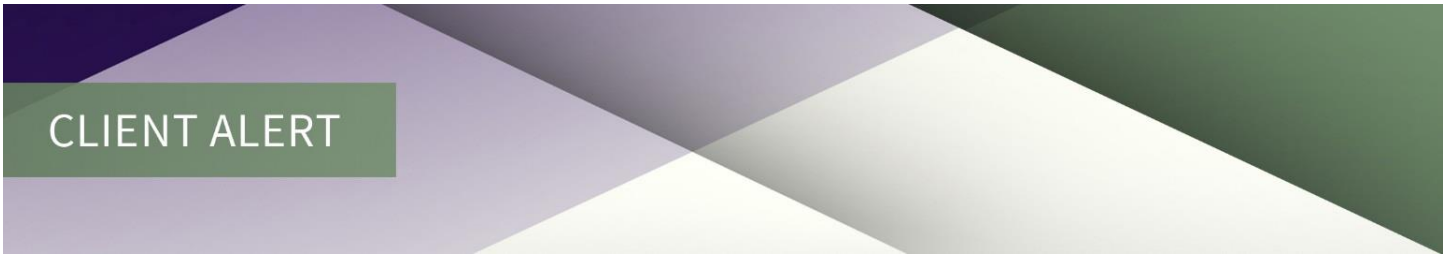

Supreme Court Unanimously Upholds State Court Jurisdiction Over 1933 Act Class Actions And Bars Their Removal To Federal Court

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On March 20, the United States Supreme Court decided whether the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") deprives state courts of concurrent jurisdiction over class actions alleging violations of the Securities Act of 1933 ("1933 Act") and whether such actions are removable to federal court. In a unanimous decision authored by Justice Kagan, the Court held that state courts continue to enjoy jurisdiction over 1933 Act class actions, SLUSA notwithstanding, and that removal of such actions to federal court is impermissible. The decision serves as a boon to the plaintiffs' bar and may well give rise to a surge in 1933 Act claims being filed in state court, where key substantive and procedural limits on securities class actions imposed by the Private Securities Litigation Reform Act of 1995 ("PSLRA") do not apply.

Cyan, Inc. v. Beaver Cnty. Employees Ret. Fund, No. 15-1439, 2018 WL 1384564 (U.S. Mar. 20, 2018), presented a familiar fact pattern. Respondents were three pension funds and an individual who invested in Cyan, Inc., a telecommunications company that went public in 2013. After Cyan's stock price fell the following year, the investors brought suit in California state court on behalf of a putative class, alleging that Cyan's registration statement and prospectus issued in connection with its IPO contained material misstatements and omissions in violation of Section 11 of the 1933 Act. The investors did not allege any state law claims. Cyan promptly filed a motion to dismiss for lack of subject matter jurisdiction, arguing that SLUSA had stripped state courts of concurrent jurisdiction with respect to "covered class actions." After the trial court denied the motion and the California appellate courts declined to review the ruling,

Cyan filed a petition for certiorari, which the Supreme Court granted on June 27, 2017, agreeing to resolve whether SLUSA deprived state courts of concurrent jurisdiction over covered class actions asserting only 1933 Act claims.[1]

In a strongly worded opinion parsing both SLUSA's statutory language and legislative history, the Court held that "SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations. Neither did SLUSA authorize removing such suits from state to federal court." The judgment below was therefore affirmed.

The Court began its analysis with a historical review of the enactment of the federal securities laws, noting that while cases brought under the Securities Exchange Act of 1934 fall within the exclusive jurisdiction of the federal courts, the 1933 Act authorized both federal and state courts to exercise jurisdiction over private securities law suits and, "more unusually," bars the removal of such suits from state to federal court. In 1995, however, in order to stem perceived abuses of the class action vehicle in securities litigation, Congress enacted the PSLRA, which included both substantive reforms (applicable in state and federal court alike) and procedural reforms (applicable only in federal court). Rather than confront the new obstacles erected by the PSLRA, plaintiffs began filing securities class actions under state law. To prevent this end-run around the PSLRA, Congress enacted SLUSA, whose amendments to the 1933 Act—two operative provisions, two associated definitions, and two "conforming amendments"—lay at the heart of the dispute.

First, SLUSA instituted the "state-law class-action bar,"[2] prohibiting "covered class actions" based on state law where damages are sought on behalf of more than 50 persons[3] in respect of any "covered security" traded on a national stock exchange.[4] *Second*, SLUSA provided for the removal of class actions subject to the state-law class-action bar as well as their disposition—*i.e.*, dismissal.[5] *Third*, the 1933 Act's jurisdictional provision, codified at 15 U.S.C. § 77v(a), was amended to include two new phrases framed as exceptions.

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1 *Compare Luther v. Countrywide Financial Corp.*, 195 Cal. App. 4th 789, 797–98, 125 Cal. Rptr. 3d 716, 721 (2011) (state courts retain jurisdiction over 1933 Act actions), *with Knox v. Agria Corp.*, 613 F. Supp. 2d 419, 425 (S.D.N.Y. 2009) (state courts lack jurisdiction over 1933 Act actions).

2 15 U.S.C. § 77p(b).

3 15 U.S.C. § 77p(f)(2).

4 15 U.S.C. § 77p(f)(3).

5 15 U.S.C. § 77p(c). *See also Kircher v. Putnam Funds Trust*, 547 U.S. 633, 644 (2006) (holding that the "proper course" after removal under SLUSA is "to dismiss" the action).

The first exception altered the 1933 Act's removal provision:

> *Except as provided in Section 77p(c) of this title*, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States.[6]

The second exception expressed a caveat to the general rule that state and federal courts were to have exclusive jurisdiction:

> The district courts of the United States . . . shall have jurisdiction[,] concurrent with State and Territorial courts, *except as provided in section 77p of this title with respect to covered class actions*, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter.[7]

Petitioners argued that this second exception (which the Court referred to as the "Except Clause") operated to exclude all covered class actions from concurrent state court jurisdiction, including those asserting 1933 Act claims. According to petitioners, this reading was supported by the section's reference to "covered class actions," whose definition was not limited to claims based on state law alone, and by the legislative history of SLUSA, which was designed to curtail resort to state courts as a means of evading the PSLRA.

The Court rejected both arguments. As far as the statutory language was concerned, the Court noted that the Except Clause referenced § 77p as a whole—not the definition of "covered class action" in § 77p(f)(2)—and was therefore designed to make clear that "in any case in which § 77v(a) and § 77p come into conflict, § 77p will control." Section 77p, the Court continued, does not limit state courts' jurisdiction over class actions alleging violations of the 1933 Act. Rather, it bars only certain class actions based on *state*—not federal—law. Further, the Court reasoned, if Congress sought to overhaul years of longstanding precedent in the manner petitioners proposed, it would not make "radical—but entirely implicit—change[s] through technical and conforming amendments." Congress, the Court remarked, "does not hide elephants in mouseholes."

The Court also rejected Cyan's arguments regarding SLUSA's legislative purpose and history. "Even assuming clear text can ever give way to purpose," the Court observed, petitioners "would need some monster arguments on this score to create doubts about SLUSA's meaning." But petitioners' arguments came "nowhere close to that level." SLUSA served the PSLRA's purposes through the inclusion of substantive provisions protecting defendants, including by barring state-law class actions as well as through revisions to the 1934 Act. Although the Court acknowledged that it is not sure what Congress "had [] in mind" when drafting the Except Clause, "Congress's reasons for drafting th[e] clause do[] not matter."

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6 15 U.S.C. § 77p(b) (emphasis added).

7 15 U.S.C. § 77p(c) (emphasis added).

Whatever Congress may have intended, the Court "has no license to disregard [the] clear language" and no "sound basis" for giving the Except Clause "a broader reading than its language can bear."

Finally, although not directly presented because Cyan never attempted removal, the Court nonetheless went on to address the removal issue since it was related to the parties' jurisdictional arguments and was raised by the Federal Government as *amicus curiae*. Not surprisingly, given the Court's analysis of the jurisdictional question, the Court concluded that SLUSA does not permit the removal of 1933 Act class actions from state to federal court: The class actions described in § 77p(b) are "*state*-law class actions," the Court said. Class actions asserting 1933 Act violations "are *federal*-law class actions" and thus "subject to the 1933 Act's removal ban."

The Court's decision in *Cyan* comes as unwelcome news for defendants, who are likely to face increased use of state courts to resolve 1933 Act claims, and to suffer increased costs and unpredictability as a result. As the Court made amply clear, only covered class actions based on state law claims are barred, whether asserted together with 1933 Act claims or on their own. If plaintiffs' efforts to evade the strictures of the PSLRA are to be curtailed, therefore, it is now up to Congress to act.

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