

Updates

March 22, 2018

U.S. Supreme Court Confirms State Courts Can Resolve Covered 1933 Act Class Actions

On Tuesday, a unanimous U.S. Supreme Court held that state courts have jurisdiction to hear "covered" class-action claims under the Securities Act of 1933 (1933 Act), and that defendants may not remove such claims to federal court. [*Cyan Inc. v. Beaver Cty. Emp. Ret. Fund*](#), No. 15-1439 (Mar. 20, 2018). A "covered" claim under the 1933 Act is one with more than 50 class members.

In *Cyan v. Beaver County*, the plaintiff pension fund, representing a putative class of investors, filed an action in state court alleging that defendant Cyan Inc. (Cyan) made material misstatements in securities offering documents in violation of the 1933 Act. Cyan moved to dismiss for lack of subject matter jurisdiction, arguing that the Securities Litigation Uniform Standards Act of 1998 (SLUSA) amended the 1933 Act to prevent plaintiffs from bringing covered 1933 Act claims in state court. The Supreme Court sided with plaintiff, holding that while the SLUSA amendments prevent a plaintiff from bringing securities claims based on state *law*, they do not deprive a state *court* of jurisdiction over claims brought under the federal 1933 Act.

SLUSA was enacted to close loopholes in its better-known predecessor, the Private Securities Litigation Reform Act (the Reform Act or PSLRA). Congress passed the Reform Act in 1995 in an effort to stem perceived abuses by class-action plaintiffs of the federal statutes proscribing fraud and misstatements in connection with the purchase and sale of securities, namely the 1933 Act (regulating initial securities offerings) and the Securities Exchange Act of 1934 (regulating the exchange of existing securities). Soon thereafter, plaintiffs began avoiding the Reform Act's effects by bringing securities class actions under state law.

The *Cyan v. Beaver* parties agreed that Congress enacted SLUSA to reduce the flow of securities class actions to state court, but they disagreed on the law's impact on 1933 Act claims. Cyan argued that SLUSA was meant to "make good on the promise of the Reform Act" by divesting state courts of jurisdiction over all covered 1933 Act class actions. Plaintiff countered that lawmakers did not intend to alter the longstanding tradition of concurrent federal/state court jurisdiction over 1933 Act claims, and if Congress had so intended, SLUSA would be clearer on this point.

Agreeing with plaintiff, the Court reasoned that SLUSA was more concerned with prohibiting state-law claims than state-court jurisdiction over federal 1933 Act claims. The Court summarized SLUSA's amendments as follows:

Under our reading of SLUSA, all covered securities class actions must proceed under federal law; most (*i.e.*, those alleging 1934 Act claims) must proceed in federal court; some (*i.e.*, those alleging 1933 Act claims) may proceed in state court.

Accordingly, plaintiff could proceed in state court on its 1933 Act claim.

The Court also considered whether a defendant can remove to federal court a 1933 Act claim lodged in state court. The 1933 Act generally bars removal of claims thereunder to federal court, but SLUSA provides that certain claims can be removed to federal court if they are subject to dismissal. Rejecting the argument that a 1933 Act claim falls within the class of claims subject to removal, the Court read SLUSA to allow removal only of state-*law* class actions alleging securities misconduct and not federal 1933 Act claims.

Impact of *Cyan v. Beaver County*

Cyan v. Beaver County is a win for the plaintiff's bar, which may continue to bring sizable 1933 Act claims in state court. Lodging such claims in state court avoids the procedural aspects of the PSLRA amendments to the 1933 Act, which apply only in federal court. Also, many state courts lack the resources to address complicated securities class action issues in a timely manner. These state courts can be a preferred venue for a plaintiff seeking to engage in lengthy litigation at considerable expense to the defendant before the court scrutinizes the plaintiff's allegations.

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