

Inside the Courts

An Update From Skadden

Securities Litigators

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Supreme Court to Resolve Split on Removing Securities Act Claims to Federal Court

The Supreme Court today granted the petition for *certiorari* in *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, No. 15-1439 (U.S. May 24, 2016), setting the stage for the resolution of a long-standing division among federal courts regarding the removability of class actions asserting claims under the Securities Act of 1933. As a result of this split among lower courts, there has been a significant increase in state court Securities Act filings, undermining the Congressional intent behind the Private Securities Litigation Reform Act of 1995 (the Reform Act) and the Securities Litigation Uniform Standards Act of 1998 (SLUSA). Congress passed the Reform Act to curb abusive securities class actions, which Congress determined were harming the economy. To prevent state court litigation from circumventing the Reform Act, Congress passed SLUSA. See *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 78 (2006).

Cyan, Inc. argued in its petition that SLUSA eliminated state courts' concurrent jurisdiction over class actions alleging Securities Act claims. Cyan posited that the anti-removal language in the Securities Act was amended by SLUSA to allow for the removal of "covered class actions" — those seeking damages on behalf of more than 50 people. Cyan further argued that state courts lack subject matter jurisdiction over covered class actions that allege only Securities Act claims. Respondents countered that SLUSA only prohibited, and allowed for the removal of, class actions asserting state law securities fraud claims, and not those asserting Securities Act claims. In an *amicus* brief filed at the request of the Court, the acting solicitor general supported a grant of *certiorari* based on a third interpretation of the statutory language, arguing that the statute did not deprive state courts of jurisdiction, but that SLUSA's exceptions to the anti-removal provisions nevertheless allowed removal of federal class action claims under the Securities Act.

Because remand orders are typically nonappealable, *Cyan* represents a rare opportunity for the Supreme Court to resolve this important division among lower courts.

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