

Inside the Courts An Update From Skadden Securities Litigators

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Supreme Court Holds That Class Actions Brought Under Securities Act in State Court Are Not Removable

Today, in a unanimous decision, the U.S. Supreme Court held in *Cyan, Inc. et al. v. Beaver County Employees Retirement Fund, et al.*, No. 15-1439, slip op. at __ (Mar. 20, 2018), that state and federal courts have concurrent jurisdiction over class actions based only on claims brought under the Securities Act of 1933 (the 1933 Act), and that such claims are not removable to federal court. This decision brings to an end an almost two-decades-long split among federal district courts over the jurisdictional provisions of the Securities Litigation Uniform Standards Act (SLUSA). Justice Elena Kagan delivered the opinion for a unanimous Court, upholding the decision of the California Supreme Court. The *Cyan* decision means that defendants in securities litigation will have to contend with the difficulties of litigating 1933 Act class actions in state court, where they cannot rely on the full range of protections of the Private Securities Litigation Reform Act (PSLRA).

The decision turned on the interpretation of language in SLUSA that has bedeviled — and divided — dozens of federal district courts. The statute, which as its name implies was intended to promote uniformity in securities cases, includes a provision barring removal to federal court of cases “arising under this subchapter and brought in any State court of competent jurisdiction” and an exclusion from that provision “as provided in section 77p(c).” 15 U.S.C. § 77v(a). Courts addressing the effect of this anti-removal provision have typically centered their analysis on the exception, struggling to find a clear definition of precisely which cases were intended to be carved out “as provided in section 77p(c).” *Cyan* took a different tack, focusing instead on when a 1933 Act case is “brought in [a] State court of competent jurisdiction” and arguing that the statute deprived state courts of concurrent jurisdiction over class actions brought under the statute. *Cyan* contended that because state courts lacked jurisdiction over such claims in the first instance, the anti-removal provision in the statute simply did not apply.

The Supreme Court rejected *Cyan*’s reading of the statute, holding that SLUSA’s jurisdictional amendment was designed to apply only to class actions asserting both state law claims as well as 1933 Act claims, and that concurrent jurisdiction over class actions

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asserting only 1933 Act claims was unaffected by SLUSA. The Court went on to hold that SLUSA's bar on removal of claims brought under the 1933 Act applies to such claims, leaving state courts as viable forums for plaintiffs asserting class action claims under the 1933 Act. The decision is likely to result in an increase

in 1933 Act claims brought in state courts, exposing defendants to litigating in multiple forums, including state courts where plaintiffs may contend that such claims are not subject to the procedural protections of the PSLRA.

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