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Supreme Court Grants Certiorari to Determine Whether State Courts Have Jurisdiction over Securities Act Claims

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On June 27, 2017, the United States Supreme Court granted a petition for writ of certiorari in *Cyan, Inc. v. Beaver County Employees Retirement Fund* to decide an issue that has sharply divided federal district courts across the country—whether state courts have subject matter jurisdiction over class actions that exclusively allege claims under the Securities Act of 1933 (“Securities Act”).¹

Background

In recent years, plaintiffs asserting Securities Act claims have flocked to state courts—particularly, those in California—in an attempt to circumvent the federal procedural requirements of the Private Securities Litigation Reform Act (“PSLRA”)² including, in particular, the automatic stay of discovery before a motion to dismiss is decided. Plaintiffs’ ability to bring federal Securities Act claims in state courts arises from a highly contested issue of statutory interpretation regarding the Securities Litigation Uniform Standards Act (“SLUSA”).³

The Securities Act generally provides that actions can be filed in either state or federal court, and actions filed in state court cannot be removed.⁴ As part of a series of reforms designed to curb frivolous lawsuits and prevent forum shopping, Congress in 1998 passed SLUSA, which amended the Securities Act to permit removal of “covered class actions” (*i.e.*, those involving 50 or more class members) to federal court.⁵ Since the passage of SLUSA, dozens of federal district courts have split on whether SLUSA eliminated state courts’ concurrent jurisdiction over Securities Act class actions. For example, district courts in California and Massachusetts have found that state courts continue to possess jurisdiction over Securities Act claims after SLUSA,⁶ while courts in New York, New Jersey, and other jurisdictions have reached the opposite conclusion.⁷

Procedural History

The *Cyan* petition arises from a class action lawsuit filed in California Superior Court on behalf of purchasers of Cyan’s IPO stock. The complaint alleged claims solely under Sections 11, 12(a)(2) and 15 of the Securities Act. Defendants moved for judgment on the pleadings for lack of subject matter jurisdiction, arguing that SLUSA amended the Securities Act to withdraw state court jurisdiction over class actions alleging only Securities Act claims.⁸ The trial court denied the motion and defendants’ appeals were also denied.⁹



In May 2016, defendants filed a petition for writ of certiorari with the United States Supreme Court arguing, among other things, that the California courts' interpretation of SLUSA is contrary to the Congressional intent behind the PSLRA and SLUSA.¹⁰ After the petition was fully briefed, the Supreme Court invited the views of the Office of the United States Solicitor General. Acting Solicitor General Jeffrey B. Wall filed an amicus curiae brief in May 2017 supporting the grant of the petition, but arguing for an interpretation of SLUSA different from Cyan—that SLUSA does not divest state courts of jurisdiction over Securities Act class actions, but rather allows such actions to be removed to federal court.¹¹

Ramifications

The issue of whether state courts possess jurisdiction over Securities Act class actions is an important one, particularly for public companies, their officers and directors, and underwriters involved in public securities offerings. Since remand orders are generally non-appealable, federal appellate courts are unlikely to rule on this issue, let alone resolve the deep divide among district courts around the country. *Cyan* represents a rare opportunity for the Supreme Court to provide clarity on this divisive issue and stem the tide of Securities Act class actions filed in state court.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings New York lawyers:

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¹ Order granting Certiorari (No. 15-1439).

² Pub. L. No. 104-67, 109 Stat. 737 (1995).

³ Pub. L. No. 105-353, 112 Stat 3227 (1998).

⁴ 15 U.S.C. § 77v(a).

⁵ *Id.*

⁶ Petition for Writ of Certiorari ("Petition") at 11-12, Appendix F (collecting cases).

⁷ Petition at 11-12, Appendix G (collecting cases).

⁸ Petition at 1-2, 10.

⁹ *Id.* at 1, 10.

¹⁰ *Id.* at 1-2.

¹¹ Brief for the United States as Amicus Curiae at 6.

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