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JULY 5, 2017

Supreme Court to Review Concurrent State Court Jurisdiction in Securities Act of 1933 Cases

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On June 27, 2017, the U.S. Supreme Court granted a writ of certiorari in *Cyan Inc. v. Beaver County Employees Retirement Fund* to decide whether, pursuant to the Securities Litigation Uniform Standards Act of 1998 (SLUSA), state courts have concurrent subject-matter jurisdiction over class actions solely alleging violations of the Securities Act of 1933. The Securities Act creates liability in investor suits over securities offerings, including false registration statements (Section 11), false prospectuses (Section 12(a)(2)), and control person liability for violations of Section 11 or Section 12 (Section 15); therefore, cases involving these acts are typically related to initial public offerings (IPO), like *Cyan*.

Cyan was filed in 2014 in the Superior Court of California, County of San Francisco alleging solely federal claims pursuant to Sections 11, 12(a)(2), and 15 of the Securities Act. On August 25, 2015, Cyan moved for judgment on the pleadings on the basis that SLUSA divested the superior court of subject-matter jurisdiction over the case. The superior court denied the motion, finding that its "hands are tied by" the California appellate court decision in *Luther v. Countrywide*,[1] which held in favor of concurrent state court jurisdiction for Securities Act claims. The California Court of Appeal, and later the Supreme Court of California, denied Cyan's petitions for review of the superior court decision, which gave rise to the U.S. Supreme Court's jurisdiction to decide the issue. Cyan filed the petition for a writ of certiorari on May 24, 2016.

Although SLUSA has been in place for nearly two decades, the jurisdictional question at issue in *Cyan* has been answered differently by the courts and has never reached a decision in a federal appellate court. In its petition for certiorari, Cyan argued that unless the Supreme Court correctly reads SLUSA to find that state courts lack jurisdiction over Securities Act claims, SLUSA cannot achieve its purpose of preventing plaintiffs from circumventing the Private Securities Litigation Reform Act (PSLRA) requirements aimed at curbing abusive securities class actions.

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[1] 195 Cal. App. 4th 789, 797, 125 Cal. Rptr. 3d 716, 721 (2011).

The crux of the issue is how to interpret SLUSA provisions that define the jurisdiction of federal and state courts over Securities Act claims. The analysis begins with 15 U.S.C. § 77v(a), which provides that state and federal courts have concurrent jurisdiction, "*except as provided in section 77p of this title with respect to covered class actions*…." As the certiorari briefing exemplifies, however, the provisions of Section 77p do not make clear the exceptions to which Section 77v(a) is referring, and courts and parties alike have disagreed on how the provisions should be interpreted. A further question exists whether SLUSA's removal provisions provide an alternate route to the federal forum.

The upcoming *Cyan* decision will be particularly significant to companies conducting IPOs, as the conflicting lower court decisions have resulted in a number of IPO-related securities class actions in state courts, the preferred venue for investors due to their more liberal discovery rules. Indeed, a number of these cases, including *Cyan*, have been filed in state courts in Northern California, home to several of the world's largest technology companies. At the very least, the *Cyan* decision should provide companies with certainty and uniformity as to the forums in which they may be expected to defend Securities Act class actions. If the Supreme Court agrees with Cyan, defendant companies will be afforded heightened protections in these cases going forward.

The parties will now begin briefing the issues on the merits, and the case will be set for oral argument during the Court's term commencing October 2017. The Court's decision on the merits is expected during the 2017–2018 term.

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