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In Hearing Cyan, the USSC Tackles "Gibberish" of SLUSA

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On Nov. 28, 2017, the U.S. Supreme Court heard oral argument in *Cyan Inc. v. Beaver County Employees Retirement Fund*. This case addresses whether state courts have subject matter jurisdiction over covered class actions that allege only Securities Act of 1933 claims. It also addresses the question of whether the Securities Litigation Uniform Standards Act of 1988 (SLUSA) created a right to remove such cases to federal court – even if concurrent state and federal jurisdiction survives SLUSA.

State courts have had concurrent jurisdiction to decide federal law claims brought under the 1933 Act. SLUSA was passed to prevent securities plaintiffs from filing class actions in state courts in order to evade the requirements of the Private Securities Litigation Reform Act of 1995 (PLUSA).

Gibberish

Oral argument was especially interesting because the justices all seemed to agree on one thing: SLUSA, as written, is “gibberish.”

Other language used in discussion of SLUSA included “lack of clarity,” “obtuse,” and “odd.” Justice Samuel Alito said: “Is there a certain point at which we say this means nothing, we can't figure out what it means, and therefore it has no effect, it means nothing?”

The statute reads:

District courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and territorial courts, except as provided in Section 16 with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this title.

The dispute is over the meaning of the “except” clause, which some courts have interpreted as divesting state courts of jurisdiction of Securities Act cases.

Background

Telecommunications networking company Cyan went public in 2013. In 2014, it was sued by shareholders in a class action alleging that the company's stock price fell as a result of an inaccurate and misleading

registration statement filed in connection with the company's IPO.

The plaintiffs brought only federal claims and filed suit in California state court, which had become a haven for such cases. Cyan and its officers and directors moved for judgment on the pleadings for lack of subject matter jurisdiction.

Cyan's motion was denied. The company then filed a petition with the California Court of Appeals, which denied relief without opinion. Then, the California Supreme Court denied review. Cyan filed a petition for *certiorari* in the U.S. Supreme Court, which was granted.

Much of the confusion arises from the fact that Section 22(a) of the 1933 Act provides for both federal and state court jurisdiction for civil actions alleging violations of the Securities Act.

Arguments

Three competing interpretations of SLUSA were presented to the Supreme Court. Petitioner Cyan contends that SLUSA divests state courts of jurisdiction over class actions (with 50 or more plaintiffs) that assert Securities Act claims, and that these cases must be litigated in federal court.

Respondent Beaver County contends that SLUSA did not address class actions asserting Securities Act claims at all, meaning that once in state court they are not removable to federal court.

The Solicitor General took a position somewhere in between, finding that SLUSA did not strip state courts of the authority to hear purely Securities Act claims, but still allowed these cases to be removed to federal court.

All of participating justices resisted the idea that any of these three readings flow readily from the actual language of the Act. In trying to determine intent, there appeared to be no clear majority for any of these positions. Alito stated:

Our late colleague [Antonin Scalia] wrote a book called Reading Law, which provides guidance about how you read statutes. And I looked through that to see what we are supposed to do when Congress writes gibberish. And that's what we have here. You said it's obtuse. That's flattering. And we have very smart lawyers here who have come up with creative interpretations, but this is gibberish. It's ... just gibberish."

Analysis

Defense lawyers are hoping for a ruling in Cyan's favor which would require 1933 Act claims be brought in federal court where they could be consolidated and managed under the PSLRA's procedural reforms.

A ruling for Beaver County would likely encourage "forum shopping," speeding the flow of Securities Act class actions to state courts, where they would proceed outside of the procedural reforms of the PSLRA. It

could result in inconsistent decisions in federal and state courts, and have a dampening effect on how companies go public.

The decision in Cyan will not affect securities class actions brought under Section 10(b) of the Securities Exchange Act of 1934, which is the most commonly used basis for such actions. Under the 1934 Act, federal district courts have exclusive jurisdiction to decide claims.

For more information regarding this case, please contact Holly Stein Sollod at hsteinsollod@hollandhart.com

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