There's No Elephant in This Mousehole: The Supreme Court Upholds State Court Jurisdiction Over Class Actions Brought Under the Securities Act of 1933

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On March 20, 2018, the Supreme Court issued a unanimous decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*,[1] a case concerning the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), which imposes certain limitations on class actions under the Securities Act of 1933 and the Securities Exchange Act of 1934. The Court resolved a split among state and federal courts[2] in affirming a California state court that held that SLUSA does not strip state courts of jurisdiction over class actions alleging only violations of the Securities Act of 1933.[3] The Court further held, after being asked by the United States appearing as *amicus curiae*, that SLUSA does not authorize defendants to remove such actions to federal court.[4]

Justice Kagan, writing for the court, first examined the interrelationship between the three relevant acts. The 1933 Act requires companies selling public securities to make disclosures and creates private rights of action, over which both federal and state courts have jurisdiction, for the failure to do so.[5] If brought in state court, such actions were not removeable to federal court by express provision of the Act.[6] The 1934 Act regulated the exchange of securities after their offering to the public, and could also be enforced through private right of action. However, in contrast to the 1933 Act, Congress gave federal courts exclusive jurisdiction over all actions arising from the 1934 Act.[7] Congress, in 1995, enacted the Private Securities Litigation Reform Act, which amended both the 1933 and the 1934 statutes.[8] The Reform Act modified certain procedures for litigating a securities action, but only when such an action was brought in federal court. Afterwards, more class actions were filed in state courts under state law.[9] In response, Congress enacted SLUSA, which "completely disallows (in both state and federal courts) sizable class actions that are founded on state law and allege dishonest practices respecting a nationally

[1] *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, 138 S. Ct. 1061 (2018).
[2] *See, e.g., Luther v. Countrywide Fin. Corp.*, 195 Cal. App. 4th 789, 797-798 (2011); *Knox v. Agria Corp.*, 613 F. Supp. 2d 419, 425 (S.D.N.Y. 2009).
[3] *Cyan*, 138 S. Ct. at 1065-66.
[4] *Id.* at 1065.
[5] *Id.* at 1066.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Cyan*, 138 S. Ct. at 1067.

traded security's purchase or sale" and allows removal of such prohibited actions to federal court for dismissal.[10]

In the case before the Court, Cyan, a telecommunications company, and its officers were sued in California state court by three pension funds and an individual alleging that Cyan's initial securities offering was supported by false information, in violation of the 1933 Act.[11] Cyan moved to dismiss for lack of subject matter jurisdiction, arguing that SLUSA stripped the state courts of jurisdiction through its definition of a "covered class action," found in 15 U.S.C. §77p(f)(2).[12] The Court disagreed, holding that Cyan was attempting to read a major statutory alteration into a definitional provision, where such seismic alterations normally do not go, and in so doing was violating a well-established precept:

> Congress does not make 'radical—but entirely implicit—change[s]' through 'technical and conforming amendments.' *Director of Revenue of Mo. v. CoBank ACB*, 531 U.S. 316, 324 (2001), 121 S. Ct. 941, 148 L. Ed. 2d 830 (2001) (internal quotation marks omitted). Or to use the more general (and snappier) formulation of that rule, relevant to all 'ancillary provisions,' Congress does not 'hide elephants in mouseholes.' *Whitman v. Am. Trucking Assns., Inc*., 531 U.S. 457, 468 (2001), 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001).[13]

The Court noted that in the face of "recalcitrant statutory language, Cyan stakes much of its case on legislative purpose and history."[14] The Court countered Cyan's reasoning with the notion that the true aim of the reform act "does not depend on stripping state courts of jurisdiction over 1933 Act class suits."[15] Cyan's final argument that the "except clause would serve no purpose at all unless it works as Cyan says" was similarly rejected by the Court.[16] The

[10] *Id.* (explaining that SLUSA bars a "covered class action" (which is defined as "a class action in which damages are sought on behalf of more than 50 persons") alleging "an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security" or "that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security."); *see also* 15 U.S.C. § 77p(b).
[11] *Cyan*, 138 S. Ct. at 1068.
[12] *Id.* at 1070. 15 U.S.C. § 77v(a) provides, *inter alia*, that "[t]he district courts of the United States . . . shall have jurisdiction . . . concurrent with State and Territorial courts, *except as provided in section 77p of this title 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 subchapter." (emphasis added).
[13] *Cyan*, 138 S. Ct. at 1071-72 (alterations in original).
[14] *Id.* at 1072.
[15] *Id.*
[16] *Id.* at 1073-1075.

Court noted that the "except" clause may have been intended as a failsafe provision, to ensure that state courts respected "SLUSA's new limitation on what they could decide."[17]

Finally, the Court responded to the Government's assertion as *amicus curiae* that any class action brought in state court under the 1933 Act could be removed to federal court.[18] "At bottom," the Court held, this argument "makes the same mistake as Cyan: It distorts SLUSA's text because it thinks Congress simply must have wanted 1933 Act class actions to be litigated in federal court."[19] The Court concluded that "SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations" and likewise did not authorize removal of those suits to federal court.[20]

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[17] *Id.* at 1074.
[18] *Id.*
[19] *Cyan*, 138 S. Ct. at 1078.
[20] *Id.*