



Securities Litigation ADVISORY ■

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U.S. Supreme Court Rules State Courts Can Hear Certain '33 Act Claims

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On March 20, 2018, the U.S. Supreme Court issued a much-anticipated decision in [*Cyan Inc. v. Beaver County Employees Retirement Fund*](#), ruling that, pursuant to the Securities Litigation Uniform Standards Act of 1998 (SLUSA), state courts have concurrent subject-matter jurisdiction to hear certain securities class actions alleging violations of the Securities Act of 1933.

The high court's decision brings finality to a long-standing split among state and federal courts regarding whether states courts have authority over "covered class actions" alleging only 1933 Act claims.

Justice Kagan, writing for the unanimous court, found that amendments made to §77(v)(a) of the Securities Act of 1933 did not give federal courts exclusive jurisdiction over such Securities Act claims; rather, SLUSA allowed state courts to exercise concurrent jurisdiction over securities claims involving 50 or more plaintiffs. The Court explained, "SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations. Neither did SLUSA authorize removing such suits from state to federal court." Ultimately, the Court held that Cyan's "appeals to SLUSA's purposes and legislative history fail to overcome the clear statutory language" and, consequently, state court jurisdiction over 1933 Act claims "continues undisturbed."

The Securities Act of 1933 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). Thus, the *Cyan* decision is particularly significant for companies conducting IPOs and underwriters, as the state courts have been the preferred venue for IPO-related securities class actions brought by investors given the perception that state courts have more relaxed pleading and discovery rules.

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As a result of this decision, we expect the following:

- A potential increase in Section 11 filings in state court, particularly in those jurisdictions where the courts employ a more relaxed pleading standard or there is a vibrant market for public offerings.
- A possible increase in inconsistent determinations between state courts and federal courts interpreting federal securities law.
- Further potential exposure for third parties and advisors who are often added to these types of cases.
- Reaction by the D&O insurers for these sorts of claims to the potential exposure, which may result in new coverage terms and issues arising.

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