Attempt to Curb Class Actions in Federal Courts Rejected

By Randall A. Spencer

In *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 2010 DJDAR 4835, the Supreme Court rejected an attempt to restrict the availability of class actions in the federal courts and explained the interaction between the Rules of Decision Act and the Rules Enabling Act.

In *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817 (1938), the Court held that under the Rules of Decision Act, (now contained in 28 U.S.C. 1652) federal courts sitting in diversity must apply state substantive law and federal procedural law. Shortly thereafter, Congress enacted the Rules Enabling Act (now contained in 28 U.S. C. 2072) which provides that the Federal Rules of Civil Procedure "shall not abridge, enlarge or modify any substantive right," and that any "laws in conflict with such rules shall be of no further force or effect." Over the last 70 years, the tension between the two rules has been the subject of numerous decisions by the Court.

Randall A. Spencer is admitted to practice in Illinois and California. He practices in civil appeals, creditors' rights and business litigation in Beverly Hills.

Shady Grove accordingly commenced a diversity action in the New York Federal District Court against Allstate on behalf of itself and a class of all others to whom Allstate owed interest on overdue benefits. Relying on Section 901(b), Allstate moved to dismiss Shady Grove's complaint. The district court held that Section 901(b) applied in federal diversity suits, notwithstanding Rule 23 of the Federal Rules of Civil Procedure and that statutory interest was a penalty under New York Law. Since Shady Grove's individual claim was worth roughly $500.00, it fell far short of minimum amount in controversy for individual suits pursuant to 28 U.S.C. 1332(a). The district court therefore dismissed the suit and the Court of Appeals affirmed.

In an unlikely coalition, the Supreme Court reversed by a 5-4 margin. Justice Antonin Scalia announced the judgment of the court and delivered an opinion joined by Chief Justice John G. Roberts Jr. and Justice Clarence Thomas and joined in certain parts by Justices Sonia Sotomayor and John Paul Stevens and concurred in part by Stevens.

The Court began its analysis by stating the question to be "whether Rule 23 answers the question in dispute. If it does, it governs...unless it exceeds statutory authorization or Congress's rulemaking power. We do not wade into *Erie's* murky waters unless the federal rule is inapplicable or invalid." The Court then stated that under Rule 23 '[a] class action may be maintained' if two conditions were satisfied. "The suit must satisfy the criteria set forth in subdivision (a) and it also must fit into one of the three categories described in subdivision (b). The court thus concluded that Rule 23 provides a "one size-fits-all formula for deciding the class-action question and that "because 901(b) attempts to answer the same question...it cannot apply in diversity suits unless Rule 23 in ultra vires."

Allstate made the same argument, relied upon by the Court of Appeals, that while Rule 23 addressed the issue of whether a given class can and should be certified, Section 901(b) addressed the antecedent question of whether a particular claim is eligible for certification in the first place. The Court, however, rejected that argument as "entirely artificial" because relabeling Rule 23(a)'s perquisites as "eligibility criteria" would obviate Allstate's objection and was a sure sign that the argument was "made-to-order." The Court further rejected Allstate's argument that "Rule 23 neither explicitly nor implicitly empowers a federal court 'to certify a class in each and every case' where the Rule's criteria are met" by responding "that is *exactly* what Rule 23 does."

The dissent argued that the purpose of Section 901(b) was substantive-to restrict available remedies. The court responded that the legislative history of 901(b) was "pretty sparse" and even if its purpose was to restrict the remedy a plaintiff could obtain, the Court could not rewrite the law to reflect its perceived purpose. "The manner in which the law 'could have been written'...has no bearing; what matters is the law the [L]egislature *did* enact." The Court further stated that an attempt to determine whether state and federal rules conflict based on the subjective intent of a state Legislature was destined to produce 'confusion worse confounded,' but even if 901(b) did further a substantive policy, it still would conflict with Rule 23 which 'authorizes *any* plaintiff in *any* federal civil proceeding to maintain a class action if the Rules' perquisites are met.'

Justice Scalia, joined by Justices Thomas, Sotomayor, and Chief Justice Roberts then addressed the question of whether Rule 23 exceeded the statutory authorization of the Rules Enabling Act. The test is "what the rule ...regulates: if it governs only 'the manner and the means' by which the litigants' rights are enforced,' it is valid; if it alters 'the rules of decision by which *the* court will adjudicate those rights,' it is not." Justice Scalia then observed that the Court had rejected every statutory challenge to a Federal Rule that had come before it. Rule 23 is no different from Rules 18 and 20, pertaining to joinder of claims and parties and [S]ection 901(b)" is no different from a state law forbidding simple joinder."

In a concurring opinion, Justice Stevens agreed with the majority that "[i]f no federal rule applies, a federal court must follow the Rules of Decision Act...and make the 'relatively unguided *Erie* choice....' But when a situation is covered by a federal rule...the Rules Enabling Act...controls." Justice Stevens then opined that if a federal rule displaced a state rule that is "'procedural' in the ordinary sense of the term," but sufficiently interwoven with the scope of a substantive right or remedy, there would be an Enabling Act problem, and the federal rule would have to give way." Justice Stevens, however said that this was not such a case.

The dissent complained that the Court's decision approved an attempt to transform a $500 case into a $5,000,000 award, "although the state creating the right had proscribed such alchemy." Justice Scalia responded that "a Federal Rule governing procedure is valid whether or not it alters the outcome of a case in a way that induces forum shopping. To hold otherwise would be to 'disembowel either the Constitution's grant of power over federal procedure' or Congress's exercise of it." Comment: Since Justice Stevens cast the deciding vote, his concurrence ultimately may prevail.