

# THE REVIEW OF SECURITIES & COMMODITIES REGULATION

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 51 No. 4 February 21, 2018

## CYAN AND THE FUTURE OF SECURITIES CLASS ACTIONS IN STATE COURT

*The Supreme Court in the Cyan case has before it the question whether a 1998 amendment to the Securities Act of 1933 divests state courts of concurrent jurisdiction over “covered class actions” asserting 1933 Act claims. The authors discuss the legislative history of the amendment, the split decisions of the lower courts, the positions of the parties in the Supreme Court, and the comments of the justices at the oral argument. The case is pending.*

By Maeve L. O’Connor and Elliot Greenfield \*

On November 28, 2017, the Supreme Court heard oral argument in *Cyan, Inc. v. Beaver County Employees Retirement Fund* (“Cyan”), which squarely addresses an issue that has divided federal district courts for decades: whether the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) deprives states courts of concurrent jurisdiction over class actions asserting claims under the Securities Act of 1933. Since the enactment of SLUSA nearly twenty 20 years ago, district courts have struggled to interpret the changes that the statute made to the jurisdictional and removal provisions of the 1933 Act. District courts in several states – most notably, California – have concluded that state courts retain jurisdiction over 1933 Act class actions and that such actions filed in state court may not be removed to federal court. As a result, there has been a surge in filings of 1933 Act class actions in those jurisdictions over the past several years, in an apparent effort to avoid the procedural protections provided by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Questions and commentary at oral argument in *Cyan* suggest that,

like the lower courts, the Supreme Court may struggle to interpret SLUSA’s amendments to the 1933 Act – statutory language that Justice Alito referred to as “gibberish.” For the reasons set forth below, the Supreme Court should hold that, after SLUSA, state courts no longer have jurisdiction over most 1933 Act class actions.

### I. SLUSA’s AMENDMENT TO THE 1933 ACT’s JURISDICTIONAL PROVISION

As originally enacted, the 1933 Act provided for concurrent federal and state court jurisdiction, and barred the removal of actions filed in state court. In 1995, Congress enacted the PSLRA to curb “perceived abuses of the class action vehicle in litigation involving nationally traded securities” and to address concerns that securities class actions were “being used to injure the entire U.S. economy” by means of “nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and manipulation by class action lawyers of the

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