

Securities Regulation Daily Wrap

Up, INITIAL PUBLIC OFFERINGS—U.S.: High Court asked to weigh in on states' jurisdiction under SLUSA, (Jun. 1, 2016)

By [Anne Sherry, J.D.](#)

A corporate defendant is asking the Supreme Court for a writ of certiorari on state courts' jurisdiction—or lack thereof—over covered class actions alleging Securities Act claims. Such an action was filed against Cyan, Inc., in a California court, but the court held that it had subject matter jurisdiction under an appellate court decision. Cyan argues that the Securities Litigation Uniform Standards Act must be read broadly as withdrawing, rather than continuing, state courts' concurrent jurisdiction over Securities Act class actions ([Cyan, Inc. v. Beaver County Employees Retirement Fund](#), May 24, 2016).

Cyan argues that, to remedy an unintended consequence of the Private Securities Litigation Reform Act that led to increased state-court filings, SLUSA withdrew state courts' concurrent jurisdiction over class actions alleging Securities Act claims. Lower courts are split on whether SLUSA withdrew state court jurisdiction or continued it. This has relevance in two contexts, the petition argues: when a class-action alleging Securities Act claims is removed to federal court and the plaintiff moves for remand back to state court, and when a defendant in such an action moves the state court to dismiss for lack of subject-matter jurisdiction. *Luther v. Countrywide Financial Corp.* (Cal. App. 2011) and four other California cases involving the second situation held that SLUSA continued state-court jurisdiction over class actions under the Securities Act. Following *Countrywide*, the petition asserts, filings of Securities Act class actions in California state courts have risen 1,400 percent.

Cyan shareholders sued the company over weaker-than-expected results following Cyan's IPO. The complaint was brought as a class action to pursue strict-liability remedies under the Securities Act. It was brought in state court, but alleged no state-law claims. Cyan moved for judgment on the pleadings for lack of subject matter jurisdiction. The trial court denied the motion on the basis that it was bound by *Countrywide*. (In California, a decision from the court of appeal for one appellate district is binding on trial courts in all districts.) The appellate court and state Supreme Court denied the petitioners' requests for review of that decision.

Cyan urges that Supreme Court intervention is necessary because both federal and state appeals courts are unlikely to resolve the split among federal district courts in removal cases. Procedural roadblocks make federal orders granting remand effectively unreviewable, and discretionary interlocutory review is disfavored under state law. Settlements and denials of remand at the federal level have also reduced state-court litigation of the jurisdictional question.

As a result of *Countrywide*, a key SLUSA provision has been largely nullified, the petition argues. Allowing Securities Act class actions to continue in state court "splinters, rather than makes uniform, the application of national standards in class actions." Cyan asserts that plaintiffs challenging IPOs in federal court class actions have brought parallel state-court class actions, forcing defendants to litigate the same issues simultaneously in different forums with different procedural regimes. For example, the PSLRA automatically stays discovery pending a motion to dismiss, but state courts disagree on whether the parallel action should be stayed in deference to the federal case.

The holding below was incorrect, Cyan concludes, because SLUSA's amendment to Securities Act Section 22 should be read broadly as eliminating concurrent state jurisdiction over "covered class actions" alleging Securities Act violations. *Countrywide* and other decisions reading the provision narrowly violate principles of statutory interpretation and lead to a bizarre result of state courts lacking jurisdiction to hear state-law securities class actions but retaining jurisdiction over Securities Act class actions. "According to *Countrywide* and similar federal cases, Congress ... interfered with states' adjudication of their own laws, but chose not to act within its power to give federal courts exclusive jurisdiction over federal claims."

The case is [No. 15-1439](#).

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Companies: Cyan, Inc.; Beaver County Employees Retirement Fund; Goldman Sachs & Co.

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