

## [Securities Regulation Daily Wrap Up, TOP STORY—High Court asked to consider states' jurisdiction under SLUSA, \(Dec. 12, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Rodney F. Tonkovic, J.D.](#)

A corporate defendant has filed a petition asking the Supreme Court to weigh in on whether or not state courts have jurisdiction over covered class actions alleging only Securities Act claims.

This jurisdictional question has caused chaos in the lower courts, and the petition urges the Court to find that Congress clearly intended that the Securities Litigation Uniform Standards Act be read broadly as withdrawing, rather than continuing, state courts' concurrent jurisdiction. The court has also denied certiorari in an insider trading case ([FireEye, Inc. v. Superior Court of California](#), December 5, 2016).

Shareholders sued FireEye in the Superior Court of California, County of Santa Clara, following the company's May 2014 announcement of its financial results. The complaint alleged only claims under the Securities Act. There was also no dispute that the case is a "covered class action" or that the stock was a "covered security." The court, however, denied FireEye's motion for judgment on the pleadings based on lack of subject matter jurisdiction. The California appellate and Supreme Court also denied FireEye's petitions for review.

**Cyan, Inc.** FireEye's petition asks the court to consider the same question as an earlier petition in [Cyan, Inc. v. Beaver County Employees Retirement Fund](#). The two petitions were submitted by the same counsel of record, and the petitioner has requested that *FireEye* be consolidated with the *Cyan* petition for all purposes. In October 2015, the Court asked the acting solicitor general to file a brief in *Cyan* expressing the views of the United States.

**Concurrent state jurisdiction is erroneous.** Like the *Cyan* petition, FireEye argues that SLUSA withdrew state courts' concurrent jurisdiction over class actions alleging Securities Act claims to remedy an unintended consequence of the PSLRA that led to increased state-court filings. Lower courts, however, are split on the issue, which can arise in two contexts: 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 five 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 by over 1,600 percent.

Dozens of federal district court decisions have split on the question presented, and the petition asserts 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 settlements and denials of remand at the federal level have also reduced state-court litigation of the jurisdictional question.

Certiorari should be granted to correct erroneous holdings such as *Countrywide*, the petition concludes, and vindicate Congress' intent to curb abusive securities class actions. *Countrywide* violated basic norms of statutory interpretation, leading to the bizarre result of state courts lacking jurisdiction to hear state-law securities class actions but retaining jurisdiction over Securities Act class actions. Further, there is currently a lack of uniform standards that encourages forum shopping. There is no middle ground, the petitioner states: state courts have jurisdiction, or they do not.

**Riley petition denied.** In the wake of its recent decision in [Salman v. U.S.](#), the court has also [denied certiorari](#) for David Riley's [petition](#) to vacate and remand a Second Circuit decision upholding his insider trading conviction.

The petition involved the same issue under consideration in *Salman*, that is, whether the "personal benefit" element of the insider trading proscription of Section 10(b), established in *Dirks v. SEC*, requires the government to show that the insider/tipper disclosed material, nonpublic information in order to obtain tangible, pecuniary gain. In *Salman*, the court reiterated the trading family member theory articulated in *Dirks* while stating that the requirement that the tipper must receive a tangible gain is inconsistent with that precedent.

**Read the docket.** This case, and others pending before the Court, can be referenced in the latest version of the [Supreme Court Docket](#). Cases are listed separately, along with a brief summary of the questions raised and the status of the appeal.

The petition is [No. 16-744](#).

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Companies: FireEye, Inc.

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