
Supreme Court Reverses Federal Court Injunction of State Court Class Action

On June 16, 2011, the Supreme Court unanimously held that a federal court, which had denied a class certification motion, exceeded its authority in entering an injunction against a parallel state court class action. *See Smith v. Bayer Corp.*, No. 09-1205 (U.S. June 16, 2011). The Court's decision has significant implications for class certification defense.

The case involved two parallel putative class actions filed in West Virginia state courts seeking to certify the same class of West Virginia residents who had been treated with the prescription medicine Baycol, and purporting to assert the same claims for the same relief. The defendant removed one of the putative class actions to federal court, where it was transferred by the Judicial Panel on Multidistrict Litigation to a federal district court in Minnesota for coordinated and consolidated proceedings with similar actions. The other putative class action remained in West Virginia state court due to a lack of complete diversity. The case was filed prior to the enactment of the Class Action Fairness Act ("CAFA"), which altered the rules to permit removal of class actions to federal court absent complete diversity under some circumstances.

The federal district court denied plaintiffs' motion for class certification. Subsequently, the district court granted the defendant's motion to enjoin the state court from hearing the class certification motion pending there. The Court of Appeals for the Eighth Circuit affirmed. *See In re Baycol Prods. Litig.*, 593 F.3d 716 (8th Cir. 2010). The Court of Appeals held that the injunction was supported by the "relitigation exception" to the Anti-Injunction Act, which generally "authorizes an injunction to prevent state litigation of a claim or issue 'that previously was presented to and decided by the federal court.'" *Smith*, slip op. at 6 (citation omitted). In particular, the Court of Appeals held that the relitigation exception justified the injunction because the state court plaintiff was "invoking a similar class action rule [as the federal court plaintiff] had used to seek certification 'of the same class' in a suit alleging 'the same legal theories,'" and because the state court plaintiff was an unnamed member of the proposed federal class and therefore, bound by the federal court judgment. *Id.* at 4.

Resolving a split among the Circuits concerning the application of the "relitigation exception" to the Anti-Injunction Act, the Supreme Court reversed. Writing for a unanimous Court, Justice Kagan stated that the Anti-Injunction Act's "core message is one of respect for state courts," and "broadly commands that those tribunals 'shall remain free from interference by federal courts.'" *Id.* at 5 (citation omitted). As a result, in "applying [the relitigation] exception, we have taken special care to keep it 'strict and narrow.'" *Id.* at 6 (citation omitted). In doing so, the Court concluded that "every benefit of the doubt goes toward the state court; an injunction can issue only if preclusion is clear beyond peradventure." *Id.* at 6-7 (citation omitted).

The Court held that the district court's denial of class certification did not satisfy either of the two conditions for preclusion: "the issues before the two courts were not the same, and [the state court plaintiff] was neither a party nor the exceptional kind of nonparty who can be bound." *Id.* at 7. With respect to the former issue, the Court held that "a federal court considering whether the relitigation exception applies should examine whether state law parallels its federal counterpart" and "must resolve any uncertainty on that score by leaving the question of preclusion to the state courts." *Id.* at 10.

In making that determination, the Court noted the “near identity” of the texts of Federal Rule Civil Procedure 23 and its West Virginia counterpart, but stated that “was the right place to start, but not to end,” because “[f]ederal and state courts ... can and do apply identically worded procedural provisions in widely varying ways.” *Id.* at 9. The Court concluded that the federal courts and West Virginia state courts “decide distinct questions” on class certification (*id.* at 12) because the West Virginia Supreme Court has “declar[ed] its independence from federal courts’ interpretation of the Federal Rules – and particularly Rule 23.” *Id.* at 10. Indeed, “the West Virginia Supreme Court has *disapproved* the approach to Rule 23(b)(3)’s predominance requirement that the Federal District Court embraced.” *Id.* at 11. As a result, the “federal court’s resolution of one issue does not preclude the state court’s determination of another” and “the federal court may not issue an injunction.” *Id.* at 12.

The Court held that the injunction did not fit within the relitigation exception to the Anti-Injunction Act for the independent reason that the state court plaintiff was not a party to the federal court proceeding. As the Court explained, “[t]he definition of the term ‘party’ can on no account be stretched so far as to cover a person like [the state court plaintiff], whom the plaintiff in a lawsuit was denied leave to represent.” *Id.* at 13. Nor could the state court plaintiff be bound as a nonparty to “the determination that there could not be a class action” (*id.* at 14) because an uncertified class action cannot bind proposed members: “Neither a proposed class action nor a rejected class action may bind nonparties. What does have this effect is a class action approved under Rule 23. But [the federal court action] was never that.” *Id.* at 15.

The Court noted that “Bayer’s strongest argument comes ... from policy concerns related to the class action device.” *Id.* at 16. As a result of the Court’s holding, defendants might be subject to “‘serial relitigation of class certification’” leading to coercive settlements. *Id.* at 16 (citation omitted). But the Court held that that outcome was a function of “the rule against nonparty preclusion,” which “leads to relitigation of many issues as plaintiff after plaintiff (none precluded by the last judgment because none a party to the last suit) tries his hand at establishing some legal principle or obtaining some grant of relief.” *Id.* at 16.

Moreover, the Court noted that “to the extent class actions raise special problems of relitigation,” Congress had ameliorated that problem somewhat in enacting CAFA. *Id.* at 17. Under CAFA, “Congress enabled defendants to remove to federal court any sizable class action involving minimal diversity of citizenship.” *Id.* After removal, federal courts can consolidate overlapping class actions under 28 U.S.C. § 1407 and, in any event, “we would expect federal courts to apply principles of comity to each other’s class certification decisions when addressing a common dispute.” *Id.*

The Court’s holding in *Smith* highlights the need for class action defendants to make every attempt to employ CAFA to consolidate proposed class actions in a single forum. The failure or inability to do so can provide plaintiffs with multiple bites at class certification, which a federal court may be powerless to prevent.

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