
Class and Derivative Actions

To: Our Clients and Friends

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Supreme Court Substantially Limits Federal District Courts' Ability To Enjoin Similar Class Actions In State Courts

In a case the Court indicates "does not even strike us as close," the United States Supreme Court placed considerable limits on district courts' powers to enjoin copycat class actions from proceeding in state courts. *Smith v. Bayer Corp.*, No 09-1205, Slip Op. at 18. Class action defendants that defeat class certification in federal court will have a difficult time obtaining injunctions to prevent another plaintiff from seeking to certify a similar class action in state court.

This opinion highlights the importance of the removal decision under the Class Action Fairness Act of 2005. When facing class action claims that may lead to similar actions in a number of jurisdictions, it is important to evaluate and structure the defense across multiple lawsuits, accounting for whether those cases may remain in state court. Any corporation wants to avoid facing the same claims repeatedly as plaintiffs' counsel simply moves from court to court trying to certify the same class.

The Two Suits Against Bayer

This case involves Bayer's cholesterol-lowering drug, Baycol[®], which it sold from 1997 through August 2001. Bayer withdrew the drug after it was linked to 31 deaths in the United States. George McCollins sued Bayer in West Virginia state court in August 2001, alleging various economic injury claims. One month later, the plaintiffs in this case (Smith/Sperlazza) sued Bayer in a different West Virginia county, but neither McCollins nor Smith/Sperlazza knew of the other suit.

Bayer removed McCollins' suit to federal court, and the Judicial Panel on Multidistrict Litigation consolidated that suit with thousands of other Baycol suits in the District of Minnesota. In 2003, the Minnesota court denied certification of a nationwide class seeking refunds of money paid for the drug. Bayer later asked the Minnesota court to deny certification of a West Virginia economic injury class, and the Minnesota court did so in 2008, reasoning that individual showings of harm would predominate over common issues.

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Unlike McCollins' suit, Bayer could not remove Smith/Sperlazza's suit to federal court—diversity was lacking, and the Class Action Fairness Act did not yet exist—so that matter proceeded in West Virginia state court. After the 2008 class certification ruling in the federal action, Bayer asked the Minnesota federal court to enjoin the West Virginia state court from hearing Smith/Sperlazza's class certification motion. Bayer argued that the injunction "was appropriate to protect the District Court's judgment in McCollins' suit denying class certification." Slip Op. at 4. The District Court issued the injunction, and the Eighth Circuit affirmed.

The Supreme Court Reverses: The Injunction Was Improper Under The Anti-Injunction Act

The Anti-Injunction Act prohibits federal courts from enjoining proceedings in state courts "except where authorized by Act of Congress, or where necessary in aid of its jurisdiction, *or to protect or effectuate its judgments.*" 28 U.S.C. § 2283 (emphasis added). Bayer argued that the last clause, known as the "relitigation exception," applied and permitted the injunction here. In a unanimous and unambiguous opinion, the Court rejected Bayer's position. A federal court enjoining a state court proceeding under that statute is "heavy artillery," and "every benefit of the doubt goes to the state court." Slip Op. at 6. A party like Bayer seeking such an injunction must satisfy two requirements: (1) "the issue the federal court decided must be the same as the one presented in the state tribunal" and (2) the person or entity to be enjoined (Smith/Sperlazza) "must have been a party to the federal suit, or else must fall within one of a few discrete exceptions to the general rule against binding nonparties." *Id.* at 7. Bayer failed on both counts, and it was not a close call for the Court on either.

No Injunction When The Issues Are Not The Same

Both McCollins' and Smith/Sperlazza's complaints contained similar consumer fraud and warranty allegations about Baycol; from that perspective, the issues were the same. The legal standards for class certification, however, differed. The federal court denied class certification under Federal Rule of Civil Procedure 23. The West Virginia court, of course, would apply that state's rule 23.

It is not enough that the West Virginia rule tracks the federal rule's language because the West Virginia Supreme Court interprets its rule differently, so the state court "is using a different standard and thus deciding a different issue." Slip Op. at 9. While the Court rejected Smith/Sperlazza's argument that a federal court may *never* enjoin a state court class action to be decided under a state rule, ample substantive differences existed between the federal and West Virginia rules. If state courts make it "crystal clear that they follow the same approach as the federal court applied . . . the issues in the two cases would indeed be the same." *Id.* at 9-10. Any uncertainty on the point, however, must be left for the state court to decide. *Id.* at 10. There must be "clear evidence" that the state court will follow the federal analysis under Federal Rule of Civil Procedure 23 before this type of injunction may issue. *Id.*

In this instance, the West Virginia Supreme Court made clear that it is *not* bound by interpretations of the federal rule when interpreting the state rule. The state court has emphasized that it is important to avoid "Pavlovian" responses to interpretations of the federal rule. *Id.* Indeed, in a 2003 class certification opinion involving a drug's efficacy, the West Virginia Supreme Court used a predominance analysis different than what the district court used when denying certification of McCollins' Baycol claims. *Id.* at 11. Thus, a state court "would decide a different question than the one the federal

court had earlier resolved.” *Id.* at 11-12. “Minor variations in the application of what is in essence the same legal standard do not defeat preclusion,” but the West Virginia Supreme Court’s approach was significantly different. *Id.* at 12 n.9. While this was enough to preclude an injunction here, the Court also analyzed whether Smith/Sperlazza were “parties” to the earlier federal action.

No Injunction When The Parties Are Different

Equally problematic for Bayer was that Smith/Sperlazza were not parties to the earlier federal action. A lower court’s judgment only binds parties, subject to a few, narrow exceptions. And Bayer could not stretch the notion of “party” to encompass Smith/Sperlazza when the earlier federal court proceedings never certified a class including them. The definition of “party” cannot encompass an absent class member (like Smith/Sperlazza) “whom the plaintiff in a lawsuit was denied leave to represent.” *Id.* at 13. “So in the absence of a certification under that Rule, the precondition for binding Smith[/Sperlazza] was not met. Neither a proposed class action nor a rejected class action may bind nonparties.” *Id.* at 15.

The Court was less dismissive of Bayer’s argument that public policy suggests that injunctions should be available in these situations in order to avoid abuse of the class action process. Bayer suggested that, following a denial of class certification, the same counsel may keep seeking to certify the same class by changing the named plaintiff and filing an otherwise-identical complaint. While true, that was not enough to persuade the Court because other tools exist to prevent such abuse. “[O]ur legal system generally relies on principles of *stare decisis* and comity among courts to mitigate the sometimes substantial costs of similar litigation brought by different plaintiffs.” *Id.* at 17. If class actions present “special problems of relitigation, Congress has provided a remedy that does not involve departing from the usual rule of preclusion”—the Class Action Fairness Act of 2005. *Id.* “[W]e would expect federal courts to apply principles of comity to each other’s class certification decisions when addressing a common dispute.” *Id.* With Congress addressing the relitigation concerns of class actions through CAFA removal, federal courts should continue to follow longstanding principles of issue preclusion when deciding whether to enjoin a state proceeding.

Leaving no doubt about the effect of its ruling, the Court closed by noting that the Anti-Injunction Act’s “relitigation exception” permits injunctions “only when a former federal adjudication clearly precludes a state-court decision.” *Id.* at 18. In close cases, the “federal court should not issue an injunction, and the state court should decide the preclusion question. But this case does not even strike us as close.” *Id.*

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