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U.S. Supreme Court: Federal Court Could Not Enjoin State Court from Addressing Class Certification Issue

June 21, 2011

In a decision with implications for companies facing class action litigation, the U.S. Supreme Court ruled unanimously that a federal district court, having rejected certification of a proposed class action, could not take the additional step of enjoining a state court from addressing a motion to certify the same class under state law. In an opinion authored by Justice Kagan, the Court in *Smith v. Bayer Corp.*, No. 09-1205, 564 U.S. ____ (June 16, 2011), held that principles of stare decisis and comity should have governed whether the federal court's ruling had a controlling or persuasive effect in the later case, and the state court should have had an opportunity to determine the precedential effect (if any) of the federal court ruling.

Facts of *Bayer*

In *Bayer*, a plaintiff sued in West Virginia state court alleging that Bayer's pharmaceutical drug Baycol was defective. After removal to federal court, the plaintiff moved to certify the action as a class action on behalf of all West Virginia purchasers of Baycol. The federal court rejected class certification because proof of injury from Baycol would have required plaintiff-specific inquiries and therefore individual issues of fact predominated over common issues. It then dismissed the plaintiff's claims on independent grounds.

A different plaintiff, who had been a putative class member in the first action and was represented by the same class counsel in the federal action, moved to certify the same class in West Virginia state court. Bayer sought an injunction from the federal court in the first case, arguing that the court's rejection of the class bid should bar the plaintiff's relitigation of the same class certification question in state court. The district court granted the injunction, and the Circuit Court affirmed.

The Supreme Court's Decision

The issues before the Court were (i) the district court's power to enjoin the later state-court class action to avoid relitigation of the previously decided class certification determination; and (ii) whether the federal court's injunction complied with the Anti-Injunction Act, 28 U.S.C. § 2283, which permits a federal court to enjoin a state court action when necessary to "protect or effectuate its judgment." The Court granted certiorari to resolve a circuit split concerning the application of the Anti-Injunction Act's relitigation exception.

The Supreme Court overturned the injunction. It determined that enjoining the state court proceedings under the circumstances of the case was improperly "resorting to heavy artillery." The Court noted that "[d]eciding whether and how prior litigation has preclusive effect is usually the bailiwick of the second court." It observed that a federal court may under the relitigation exception to the Anti-Injunction Act enjoin a state court from relitigating an already decided issue—including whether to certify a case as a class action—when two conditions are met: "First, the issue the federal court decided must be the same as the one presented in the state tribunal. And second, [the party in the later case] 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." Notably, the Court commented that, in conducting this analysis, "every benefit of the doubt goes to the state court" being allowed to determined what effect the federal court's prior ruling should be given.

The Court held that neither condition was met in *Bayer*. The issue of class certification under West Virginia's Rule 23 (the language of which mirrored Federal Rule of Civil Procedure 23) was not "the same as" the issue decided by the federal court because the West Virginia Supreme Court had expressly disapproved of the approach to the "predominance" analysis adopted by federal courts interpreting the federal class action rule. In addition, the Court also held that unnamed persons in a proposed class action do not become parties to the case if the court declines to certify a class. By contrast, the Court affirmed the established rule that "a judgment in a properly entertained class action is binding on class members in any subsequent litigation."

According to the Court, Bayer's "strongest argument" centered on a policy concern that, after a class action is disapproved, plaintiff after plaintiff may relitigate the class certification issue in state courts if not enjoined by the original court. The Court suggested that these concerns were ameliorated by the Class Action Fairness Act of 2005, through which Congress gave defendants a right to remove to federal court any sizable class action involving minimal diversity of citizenship. The Court noted the availability of consolidating certain federal class actions to avoid inconsistent results and offered that the Class Action Fairness Act's expanded federal jurisdiction should result in greater uniformity among class action decisions and in turn reduce serial relitigation of class action issues.

Implications of *Bayer*

Bayer exposes defendants to the potential for repetitive class action litigation by plaintiffs in state courts. *Bayer* does not alter existing standards for class certification, however, and its holding is a limited one: a defendant who has defeated class certification may not invoke the "heavy artillery" of an injunction against future state-court bids for class certification in a case raising the same legal theories unless that future bid is advanced by the same named plaintiff(s) (or a person who falls within one of the few discrete exceptions to the general rule against binding nonparties) and the defendant can establish that state standards for class certification are similar to Federal Rule 23. In this regard, the Court held that "[m]inor variations in the application of what is in essence the same legal standard do not defeat preclusion," but if the state courts would apply a "significantly different analysis" than the federal court, an injunction will not be upheld. The Anti-Injunction Act analysis from Bayer applies directly only where the enjoining court is a federal court and the second court is a state court.

The *Bayer* opinion also highlights avenues for companies facing serial class actions to mitigate risk. The Court all but acknowledged that "class actions raise special problems of relitigation." These relitigation problems in the class action context and beyond will remain after *Bayer.* But a number of strategic steps

can be taken to reduce the burdens, expenses, and risks associated with multiple lawsuits. For example, the enactment of the Class Action Fairness Act provides expanded federal jurisdiction over many class actions and therefore permits enhanced removal opportunities for state court class actions. If subsequent class actions are filed and removed, the Court noted that multidistrict litigation proceedings may be available for coordination of pretrial proceedings to avoid repetitive litigation. Even if transfer and consolidation cannot be effectuated, the Court observed that "we would expect federal courts to apply principles of comity to each other's class certification decisions when addressing a common dispute."

Finally, the Court's treatment of absent class members as nonparties to the class certification question in the first action may have significance to other issues in class actions, including often hotly disputed issues relating to communications with putative class members by the defendant before class certification.

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