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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Removing Securities Act Cases: MoneyGram Bucks The Trend

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On Sept. 2, 2016, Chief Judge Leonard Stark of the U.S. District Court for the District of Delaware held, in a thorough and well-reasoned opinion, that federal district courts have exclusive jurisdiction over class actions asserting claims under the Securities Act of 1933. Thus, such actions brought in state court can be removed to federal court. Iron Workers District Council of New England Pension Fund v. MoneyGram International Inc., C.A. No. 15-402-LPS (D. Del. Sept. 2, 2016).


Ethan Dettmer


Alex Mircheff


Noah Stern

The holding bucks a series of recent decisions by district courts holding that such actions are not removable, including several decisions from district courts in California. This trend has led to a marked increase in Securities Act cases brought in state courts, particularly California state courts. The MoneyGram decision follows the logical interpretation of the Securities Act, as amended by the Securities Litigation Uniform Standards Act, and should embolden defendants to remove cases including claims arising under it. Defendants, however, should be aware that, for the time being, geography may be an important consideration in whether a state or federal court ultimately adjudicates the case. MoneyGram draws further attention to this geographic divide and may encourage theU.S. Supreme Court to grant the petition for certiorari in Cyan Inc. v. Beaver County Employees Retirement Fund, which raises this very issue and is scheduled to be considered at the court's Sept. 26, 2016, conference.

Background

Congress enacted SLUSA in 1998 to prevent plaintiffs and their lawyers from evading the protections of the Private Securities Litigation Reform Act, which had been enacted three years before, by bringing securities actions in state court. Prior to SLUSA, Section 22(a) of the Securities Act provided for concurrent jurisdiction in state and federal courts over claims arising under the Securities Act, and prohibited removal of such cases from state courts of competent jurisdiction. SLUSA amended the jurisdictional component of Section 22(a) to provide for concurrent jurisdiction over claims arising under the Securities Act, except as provided in Section 16 with respect to covered class actions. 15 U.S.C. § 77v. It also amended the removal provision to prohibit removal of cases brought in a state court of competent jurisdiction "[e]xcept as provided in [Section 16(c)]." Id.

Section 16 defines "covered class action" as "a single lawsuit in which damages are sought on behalf of

more than 50 persons," among other things. 15 U.S.C. § 77p(f). Section 16(b) precludes "covered class action[s] based upon the statutory or common law of any State" that allege a misrepresentation, omission or fraud in connection with the sale of certain nationally traded securities from being maintained in state or federal court. And Section 16(c) provides that these precluded covered class actions are removable to federal district court.

District courts have struggled with the interplay between these provisions in analyzing (1) whether state courts continue to have jurisdiction over class actions asserting only Securities Act claims (and no state law claims) and (2) whether such cases can be removed to federal court. Several district courts have held that SLUSA's amendment to the jurisdictional provision of Section 22(a) divested state courts of jurisdiction over covered class actions asserting Securities Act claims and, therefore, the removal provision does not apply because the state court is not one of "competent jurisdiction." See, e.g., Knox v. Agria Corp., 613 F. Supp. 2d 419 (S.D.N.Y.). But many of these cases were decided in 2012 or earlier.[1]

Many recent decisions, including several from district courts in California, remand these cases to state court on the ground that Section 22(a) prohibits removal unless the case asserts state law claims and, thus, is a precluded and removable action under Sections 16(b) and 16(c). See, e.g., Patel v. TerraForm Global Inc., No. 16-cv-00073-BLF, (N.D. Cal. Mar. 3, 2016); Liu v. Xoom Corp., No. 15-CV-00602-LHK, 2015 U.S. Dist. LEXIS 82830 (N.D. Cal. June 25, 2015).

These later cases rely heavily on the Supreme Court's decision in Kircher v. Putnam Funds Trust, 547 U.S. 633 (2006). But that case involved actions brought in state court, asserting only state law claims. The district court had remanded the actions to state court after they were removed, holding that they were not precluded under Section 16(b) and it therefore lacked subject matter jurisdiction. The Seventh Circuit reversed, holding that all covered class actions are removable under Section 16(c) whether or not they are precluded by Section 16(b). The Supreme Court, after holding that the Seventh Circuit lacked jurisdiction to hear the appeal, rejected the Seventh Circuit's reasoning on the removal issue, stating in dicta that removal under Section 16(c) is restricted to precluded actions defined by Section 16(b). The court also stated that nothing in SLUSA gave federal courts exclusive jurisdiction over preclusion decisions, and a defendant can elect to leave the case in state court and trust the state court to make the preclusion determination.

MoneyGram

In MoneyGram, the plaintiff filed a putative securities class action in Delaware state court alleging false statements in a prospectus in connection with an offering of MoneyGram stock in violation of Sections 11, 12(a)(2) and 15 of the Securities Act. The defendants removed the case to the federal district court and the plaintiff moved to remand, relying in part on recent California district court cases. Chief Judge Stark denied the plaintiff's motion to remand, holding that SLUSA "expressly eliminated state courts' concurrent jurisdiction over covered class actions arising under the Securities Act." Judge Stark reasoned that the amendment to the jurisdictional provision refers to the entirety of Section 16, and thus refers to all covered class actions arising under the Securities Act. If Congress had wanted to only exempt covered class actions brought under state law, it would have referred specifically to Section 16(b) in the amendment to the jurisdictional provision. Judge Stark further explained that this was the only interpretation of Section 22(a) that comports with the legislative history and stated purpose of SLUSA, which included "enact[ing] national standards for securities class action lawsuits involving nationally traded securities." His order also rejected the plaintiff's reliance on the dicta from Kircher, because that case involved only state law claims and there was no question (but for the preclusion issue) that the

state court was otherwise a court of competent jurisdiction.

Analysis

Chief Judge Stark's decision in MoneyGram is well-reasoned and should become the law of the land. For many reasons, it is the most logical textual interpretation of Section 22(a), and carries out the clearly expressed intent of Congress in amending the statute. The amended jurisdictional provision of that section provides concurrent jurisdiction over suits arising from the Securities Act "except as provided in [Section 16] ... with respect to covered class actions." Plaintiffs have argued that this language refers to precluded actions as defined in Section 16(b), but, if that were the case, the addition of the exception language would have been wholly unnecessary.

Section 16(b) relates to claims brought under state law, and it would make no sense to create an exception to a grant of concurrent jurisdiction over Federal Securities Act claims that refers to state law claims. The exception to the jurisdictional provision only has meaning if it excepts certain cases arising from the Securities Act from concurrent state jurisdiction. That is exactly what the provision does when read as it is drafted — to refer to Section 16 generally and its definition of a covered class action. MoneyGram's conclusion is also the only one that comports with the purpose of SLUSA and common sense. It is illogical to allow removal of covered class actions asserting state court claims (which the state courts have a greater interest in adjudicating), but prohibit the removal of covered class actions involving only Securities Act claims (which the federal courts have a greater interest in adjudicating). Indeed, this interpretation gets the purpose of SLUSA exactly backward.

Defendants in Securities Act class actions brought in state court will need to carefully consider whether to attempt to remove the action to federal court. While the MoneyGram decision weighs in favor of seeking removal, in some jurisdictions, the chances of success will remain low. Even defendants in unfavorable jurisdictions should strongly consider seeking removal because they will be significantly better off in federal court where they are more likely to prevail on a motion to dismiss and obtain a stay of discovery under the PSLRA.

And indeed, there is some chance that this issue will be resolved on a national level soon, as a petition for certiorari that raises the issue is currently pending before the U.S. Supreme Court. Cyan Inc. v. Beaver County Employees Retirement Fund, No. 15-1439. In that case, the defendants seek review of a ruling of a California Superior Court that raises the issue of whether a state court has jurisdiction over these claims. The Supreme Court is scheduled to consider the petition at its conference on Sept. 26, 2016.

—By Ethan Dettmer, Alex Mircheff and Noah Stern, Gibson Dunn & Crutcher LLP

Ethan Dettmer is a partner in Gibson Dunn & Crutcher's San Francisco office, where he is a member of the firm's general commercial litigation practice, and serves on the steering committee of the firm's securities litigation practice group.

Alex Mircheff is a partner in Gibson Dunn's Los Angeles office, where he is a member of the firm's securities litigation and appellate and constitutional law practice groups.

Noah Stern is an associate in the Palo Alto, California, office of Gibson Dunn. He practices with the firm's litigation department.

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[1] Notable exceptions are Hung v. iDreamSky Tech. Ltd., No. 15-CV-2514 (JPO), 2016 U.S. Dist. LEXIS 8389 (S.D.N.Y. Jan. 25, 2016) and Wunsch v. Am. Realty Capital Props., No. JFM-14-4007, 2015 U.S. Dist. LEXIS 48759 (D. Md. Apr. 14, 2015).
