Aon Financial Services Group Client Alert: *Cyan* Case Ruling

United States Supreme Court Decides *Cyan* Case and Holds that State Courts have Jurisdiction over Claims Brought Only Under the 1933 Act.

In a decision that was anxiously anticipated, on March 20, 2018, the United States Supreme Court ruled that state courts have jurisdiction over securities class action lawsuits based only on claims brought under the Securities Act of 1933 ("1933 Act"). *Cyan, Inc. et al. v Beaver County Employees Retirement Fund,* et al. 583 U.S._______(2018).

Justice Kagan delivered the unanimous opinion of the Court, holding that state courts have concurrent jurisdiction over class action lawsuits that allege only 1933 Act violations, and defendants in such lawsuits may not remove the litigation to federal court.

The 1933 Act was the first Congressional response to the 1929 stock market crash and required companies offering securities to the public to make full and fair disclosures of information. A company's offering documents must contain accurate information so that investors can make informed decisions about their potential purchase. The 1933 Act created a private right of action for investors in an offering and Congress permitted the litigation to be heard in either state or federal court.

Next, Congress enacted the Securities Exchange Act of 1934 ("1934 Act"), which regulated all trading subsequent to the original offering of securities. Cases brought under the1934 Act are subject to the exclusive jurisdiction of the federal courts.

In 1995, Congress passed the Private Securities Litigation Reform Act ("PSLRA") to address perceived abuses of class action litigation against publicly-traded companies. The PSLRA amended both the 1933 Act and the 1934 Act; however, important procedural protections were included only for cases filed in federal court, such as the stay of discovery until after a motion to dismiss has been decided. Without the stay, defendants in state court cases could be forced to engage in costly and time-consuming discovery at a much earlier point in time than federal defendants. An unintended consequence of the PSLRA was that litigants began filing state law claims to circumvent procedural requirements that they deemed unfavorable.

Congress addressed this unintended consequence through the passage of the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). SLUSA was intended to create uniformity in the treatment of securities class actions. The question presented in *Cyan* was whether SLUSA eliminated concurrent state and federal court jurisdiction for those lawsuits alleging only 1933 Act claims. *Cyan* resolved a split between state and federal courts on this issue.

The Court analyzed the statutory construction of SLUSA and unanimously held that the text, read "straightforwardly", left state court jurisdiction over 1933 Act claims in place, noting that "SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations. Neither did SLUSA authorize removing such suits from state to federal court."

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If you have questions as to the implications of this decision, please contact your Aon FSG broker, or contact one of the members of the Aon FSG Legal & Claims team below

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