



U.S. Supreme Court Allows Relitigation of Class Certification in State Court

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While acknowledging that “serial relitigation” of class certification motions could result, the U.S. Supreme Court nonetheless recently held that a federal district court had improperly enjoined a state court from considering a plaintiff’s motion for class certification. *Smith v. Bayer Corp.*, No. 09-1205, 564 U.S. __ (June 16, 2011).

As background, Plaintiffs Kevin Smith and Shirley Sperlazza (“Smith”) filed a putative class action lawsuit against Bayer in West Virginia state court, asserting state law claims arising from Bayer’s allegedly defective drug Baycol. Smith also named certain West Virginia companies as defendants, so the case—filed before the Class Action Fairness Act (CAFA) took effect—was not removable to federal court. George McCollins previously had sued Bayer in West Virginia state court, asserting the same claims regarding Baycol as Smith. Both Smith and McCollins purported to represent a class of all West Virginia residents who had purchased Baycol.

Bayer removed the *McCollins* case to federal court, where it became part of the Baycol-related MDL cases consolidated in the District of Minnesota. The district court denied McCollins’ motion to certify a class. The court found that, under West Virginia law, each class member would have to show actual injury resulting from his or her use of Baycol and, as a result, under Federal Rule 23, individual issues of fact predominated over common issues. Bayer then asked the district court to enjoin Smith from proceeding with a class certification motion in Smith’s state court case. The district court entered an injunction under the relitigation exception of the Anti-Injunction Act, 28 U.S.C. §2283, finding an injunction necessary to “protect or effectuate [the court’s] judgments.” The Eighth Circuit Court of Appeals affirmed. *In re Baycol Prods. Litigation*, 593 F.3d 716 (2010).

The Supreme Court reversed, finding that the certification issues to be decided under state law in *Smith* were not the same as those the district court decided in *McCollins* under Rule 23. Additionally, the Court held that Smith, not a party in *McCollins*, could not be bound by the district court’s judgment in that case.

The Court began its analysis with the Anti-Injunction Act, which has as its “core message ... respect for state courts.” Slip op. at 5. The exceptions to the Act, including the relitigation exception, must be applied strictly and narrowly, and an injunction under the Act should issue only if preclusion is crystal clear. In the case before it, the Court noted the relitigation exception to the Act would apply only if the federal court’s denial of McCollins’ class certification motion would preclude the state court’s adjudication of Smith’s certification motion. Preclusion has two requirements. First, the issues the federal court actually decided must be identical to the issues before the state court. Second, Smith



must be a party to the federal court case or fall within one of the few exceptions to the general rule against binding nonparties.

As to the first requirement, the Court held that the federal court's consideration of *McCollins*' motion to certify a class under Federal Rule 23 was not identical to the issues before the West Virginia state court on Smith's certification motion. Granted, the proposed classes were the same, the claims overlapped substantively, and West Virginia's class certification rule is nearly identical to Federal Rule 23. But the West Virginia Supreme Court has made clear that West Virginia state courts should not blindly follow Rule 23 precedent. Further, the West Virginia Supreme Court has applied a different predominance analysis from that applied by the district court. Because there was no clear evidence that the West Virginia court's certification analysis would track the federal court's analysis under Rule 23 (indeed, there was evidence to the contrary), the Court found that the federal and state courts would decide different issues. Where the applicable legal standards—and thus the issues—differed, an injunction was improper. Slip op. at 10-12.

The Court also found the second requirement—that plaintiff Smith be a party to the federal court case—not met. The class in *McCollins* was never certified, so unnamed putative class member Smith could not be bound by a judgment in *McCollins*: “Neither a proposed class action nor a rejected class action may bind nonparties.” Slip op. at 15.

Finally, the Court noted Bayer's argument that reversing the injunction would allow for serial relitigation of class certification motions. But the Court explained that the rule against nonparty preclusion trumped Bayer's policy argument. “[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. We have not thought that the right approach ... lies in binding nonparties to a judgment.” Slip op. at 17.

Where does the Court's decision in *Smith v. Bayer* leave class action defendants? Potentially defending against the same class certification motion in federal and state courts, if the state class certification standards are not the same, or similarly applied, as Rule 23 and if the state court plaintiff is not a party to the federal court case. The Class Action Fairness Act allows defendants to remove to federal court cases where there is just minimal diversity, so class action defendants should remove putative class actions out of state court whenever possible. But even CAFA does not get all class actions to federal court (note the local controversy exception, 28 U.S.C. §1332(d)(4)), leaving a class action defendant potentially defending against, and getting different results in, certification motions in essentially the same cases pending in federal and state courts.

For more information on the matters discussed in the *Locke Lord QuickStudy*, please contact the author:

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