

June 24, 2011

## Supreme Court Limits Federal Courts' Ability to Enjoin Relitigation of Class Certification in State Courts

On June 16, 2011, the U.S. Supreme Court unanimously reversed a decision by the U.S. Court of Appeals for the Eighth Circuit that had affirmed an injunction against a state court's certification of a class where the U.S. District Court had earlier denied certification of a similar class. *Smith v. Bayer Corp.*, No. 09-1205, 2011 WL 2369357 (2011). In reaching its decision, the Court clarified the scope of the Anti-Injunction Act's relitigation exception, which authorizes a federal court to enjoin state litigation on claims or issues that were previously decided by the federal court. Prior to *Smith*, circuit courts were split on the application of two key conditions of the relitigation exception: (1) whether the issue decided by the federal court was the same as the one presented to the state court; and (2) whether the plaintiff in the state court action was a party to the federal suit or subject to an exception to the general rule against binding nonparties.

The Eighth Circuit had affirmed a decision that enjoined two individuals from seeking to certify a class in a West Virginia state court after the U.S. District Court for the District of Minnesota (MDL court), which was overseeing the multidistrict litigation, denied certification of a similar West Virginia class by another individual. In both putative class actions, the plaintiffs sought to represent a class of West Virginia residents who had purchased Baycol, an allegedly hazardous cholesterol-lowering prescription drug. In August 2001, Plaintiff McCollins instituted his putative class action against the Bayer Corporation, asserting various state law claims arising from Bayer's sale of Baycol. One month later, Plaintiffs Smith and Sperlazza (Smith) filed a similar action in a different West Virginia state court. Both McCollins and Smith sought to certify their class under West Virginia Rule of Civil Procedure 23.

In January 2002, Bayer removed the *McCollins* case to the U.S. District Court for the Southern District of West Virginia on the basis of diversity of citizenship. The case was later transferred to the MDL court. Because of a lack of complete diversity, however, Bayer was unable to remove the *Smith* case.

In August 2008, the MDL court granted Bayer's motion to deny class certification of the class proposed by McCollins. Applying Federal Rule of Civil Procedure 23, the court reasoned that individual issues of fact predominated over common issues because the necessary showing of "actual injury" would vary from plaintiff to plaintiff. Based on this denial of class certification, Bayer obtained an order from the MDL court enjoining the *Smith* plaintiffs, as absent putative class members in the *McCollins* class, from relitigating the federal court's decision in West Virginia state court.

Affirming that decision, the Eighth Circuit noted that, generally, the Anti-Injunction Act prohibits federal courts from enjoining state court actions. *In re Baycol Prods. Litig.*, 593 F.3d 716 (2010). Nevertheless, the Eighth Circuit held that the Act's relitigation exception barred Smith from seeking certification of the "same class" in an action alleging the "same legal theories" previously rejected by the MDL court in *McCollins*. Thus, the court found that the issues in *Smith* were "sufficiently identical" to *McCollins* to warrant preclusion.

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In reversing the Eighth Circuit's decision, the Supreme Court held that the relitigation exception did not apply in this case and, therefore, the MDL court was not authorized to issue an injunction against the *Smith* court. In reaching this conclusion, the Supreme Court first noted that the relitigation exception is applied narrowly. "Because deciding whether and how prior litigation has preclusive effect is usually the bailiwick of the *second* court—here, the West Virginia court — . . . an injunction can issue only if preclusion is clear beyond peradventure." 2011 WL 2369357, at \*1. In addition, for a federal court decision to have preclusive effect, the issue the federal court decided must be the same as the one presented in the state court, and the state court plaintiff must have been a party to the federal suit or fall within an exception to the general rule against binding nonparties. The Court found that "the issues before the two courts were not the same, and Smith was neither a party nor the exceptional kind of nonparty who can be bound." *Id.* at \*6. Accordingly, the lower courts "erred in finding the certification issue precluded, and erred all the more in thinking an injunction appropriate." *Id.*

In analyzing whether the same issues presented in *Smith* were decided in *McCollins*, the Court discussed its holding in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988), where it applied the "same issue" requirement to invalidate a federal court injunction. In *Chick Kam Choo*, the federal court dismissed an action involving Singapore law on the grounds of *forum non conveniens*, and later issued an injunction barring the plaintiffs from seeking relief in a state court action. The Court held that the federal court erred in granting the injunction because the federal issue was not the same as the state issue—the federal court applied the federal *forum non conveniens* principles, but the state court would apply different principles based on state law. "Because the legal standards in the two courts differed, the issues before the courts differed, and an injunction was unwarranted." *Smith*, 2011 WL 2369357, at \*6.

Applying a similar analysis, the Court found that although the members of the classes and the substantive claims in *Smith* and *McCollins* were similar, the legal standards were different, and thus, the issues before the court were different. In *McCollins*, the MDL court held that the class did not meet the requirements under Federal Rule of Civil Procedure 23. But the *Smith* court would have decided whether the proposed class satisfied West Virginia Rule of Civil Procedure 23. The Court rejected the Eighth Court's reliance on the near-identical wording of the two provisions. Even if a state's procedural provision mirrors its federal counterpart, the federal court should consider whether the state court's interpretation differs from the federal court's. If there is any uncertainty, the federal court must leave the question of preclusion to the state court.

Based on relevant West Virginia case law, the Court found ample reasons to doubt that the *Smith* court's interpretation of its Rule 23 would mirror the MDL court's approach. Specifically, in *In re West Virginia Rezulin Litigation*, 585 S.E.2d 52 (2003), the West Virginia Supreme Court declared "its independence from the federal court's interpretation of the Federal Rules," (*Smith*, 2011 WL 2369357, at \*7), and disapproved of the approach taken by the MDL court to Rule 23(b)(3)'s predominance requirement. Rather than embracing the MDL court's rationale that the presence of a single individualized issue precluded class certification, the West Virginia Supreme Court embraced a balancing approach to interpreting its Rule 23. Because the *Smith* court could have applied the *In re Rezulin* and not the *McCollins* standard, the MDL court's resolution did not preclude the *Smith* court's determination of the issue for itself.

The Court then turned to the second condition—whether *Smith* was a party to *McCollins* or subject to an exception which would allow the binding of nonparties. The Court noted that *Smith* was not a party to *McCollins*. Although an unnamed member of a class may be considered a "party" for certain purposes, the Court was not "willing to advance the novel and surely erroneous argument that a nonnamed class

member is a party to a class-action litigation *before the class is certified*. Still less does that argument make sense *once certification is denied*.” *Id.* at \*9.

The Court also rejected Bayer’s arguments that Smith was bound to the *McCollins* decision based on principles of nonparty preclusion. As the Court noted, *McCollins* was never a class action and, in the absence of class certification, the precondition for binding Smith was not met. “Neither a proposed class action nor a rejected class action may bind nonparties.” *Id.* at \*10.

Finally, the Court dismissed Bayer’s policy arguments concerning the possibility that the court’s approach could lead to “serial relitigation of class certification,” *id.*, because class counsels can repeatedly try to certify the same class by simply changing the named plaintiff. The Court pointed to the Class Action Fairness Act of 2005, which allows defendants to remove to federal court sizeable class actions and consolidate multiple overlapping suits against a single defendant in one court. In the Court’s view, that Act addressed the policy concerns without departing from the usual rules of preclusion. The Court, however, noted that this decision did not “foreclose[] legislation to modify established principles of preclusion” should Congress deem it necessary. *Id.* at \*11 n.12.



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