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Supreme Court to Review Ability of Federal Courts to Enjoin Relitigation of Class Certification in State Courts

The United States Supreme Court has granted a writ of certiorari to review an Eighth Circuit decision affirming an injunction against a state court's certification of a class where the U.S. district court had already denied certification of a similar class. *In re Baycol Products Litigation*, 593 F.3d 716 (8th Cir. 2010), *cert. granted*, No. 09.1025 (September 28, 2010). (Please click [here](#) for the Eighth Circuit opinion.)

On January 15, 2010, the U.S. Court of Appeals for the Eighth Circuit 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 multidistrict litigation, had denied certification of a similar West Virginia class by another individual.

Plaintiffs in both putative class actions sought to represent a class of users of a cholesterol-lowering medication against the manufacturers and producers of the drug. Plaintiff McCollins had originally initiated his putative class action in a West Virginia state court in August 2001. His suit was transferred to the MDL court after the defendants removed the case on diversity grounds. In September 2001, different plaintiffs (Smith and Sperlazza) brought a similar putative class action in another West Virginia state court, but defendants were unable to remove the case because the one-year deadline for removal had run before complete diversity existed (and because the Class Action Fairness Act of 2005 was not yet in effect).

In August 2008, the MDL court granted defendants' motion to deny class certification of the West Virginia class proposed by McCollins, finding that issues of fact predominated with regard to the state law claims for economic loss brought by McCollins. Shortly after this ruling became final, plaintiffs Smith and Sperlazza moved to certify a similar class in the West Virginia state court where their lawsuit had been pending for seven years. Attempting to preempt the motion to certify, defendant Bayer moved the MDL court to enjoin Smith and Sperlazza, as absent putative class members in the class previously denied, from "relitigating" the MDL court's prior decision in a West Virginia state court.

The MDL court held that the federal Anti-Injunction Act's "relitigating exception" applied, which allows a federal court to enjoin state proceedings to "protect or effectuate its judgments." The MDL court further determined that West Virginia collateral estoppel principles precluded a redetermination of the MDL court's legal conclusion that individualized factual issues predominated the claims under West Virginia substantive law.

In affirming that decision, the Eighth Circuit concluded "that in the context of MDL proceedings, the certification in a state court of the same class under the same legal theories previously rejected by the federal district court presents an issue sufficiently identical to warrant preclusion under federal common law." The Eighth Circuit's decision follows a similar holding by the Seventh Circuit in *In re Bridgestone/Firestone*, 333 F.3d 763 (7th Cir. 2003).

In granting certiorari, the Supreme Court will likely address (i) whether the principles of collateral estoppel can be applied to the second set of plaintiffs as absent putative class members in the initial class action; (ii) whether the assertion of a fraud claim in state court that was not brought in federal court and/or possible differences in class certification standards in state court would preclude application of collateral

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estoppel; and (iii) whether the MDL court could properly exercise personal jurisdiction over the absent putative class members where no class had previously been certified.



If you have any questions regarding this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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