ALERTS AND UPDATES

In Smith v. Bayer Corp., Supreme Court Breathes New Life into Repetitive State Court Class Actions

June 23, 2011

On June 16, 2011, the U.S. Supreme Court issued its much-anticipated decision in *Smith v. Bayer Corp.*,[1] concluding that a federal court having jurisdiction over a class action may not use the "relitigation exception" to the federal Anti-Injunction Act to enjoin an almost identical class action pending in a state court. In doing so, the Supreme Court has greatly limited federal courts' ability to prevent litigation of substantially similar class action claims in state court. This decision effectively grants plaintiffs' counsel a potentially unlimited number of bites of the certification apple.

The *Smith* case involved two lawsuits filed in West Virginia state court, alleging that the drug Baycol was defective, among other things. One lawsuit, *McCollins v. Bayer Corp.*,[2] was removed to federal court; and the other, *Smith*, remained in state court. In federal court, *McCollins* was dismissed after the district judge, applying Federal Rule 23, denied class certification. Acting afterwards upon a request of the defendant Bayer, the district court granted an injunction precluding the *Smith* case in state court from proceeding under the Anti-Injunction's Act relitigation prohibitions.

In what can be viewed as a bold decision authored by Justice Kagan, a unanimous Supreme Court reversed, finding that the Anti-Injunction Act's relitigation exception is appropriate only in the most "strict and narrow" of circumstances. The Anti-Injunction Act, described as "heavy artillery" by Justice Kagan, "broadly commands that those tribunals [state courts] 'shall remain free from interference by federal courts.'" The Court determined that the relitigation proscription applies only if: (1) the triable issue in federal court is the same as that in state court; and (2) the plaintiff in the state court action was a party to federal court case. The Court found neither requirement satisfied in the case before it.

Triable issues cannot be the same, the Court held, unless the law as well as the application of that law to those issues are identical in both the state and federal courts. Here, the law at issue was the application of West Virginia's equivalent of Federal Rule 23. Although the relevant rules were nearly identical, West Virginia's *application* of its rule differed from that of the federal court. As to the prior-party requirement, the Court found that when a class is not certified, absent class members like Smith cannot be deemed to be parties to the case. The federal court's ruling denying class certification made Smith a nonparty to the federal action, and a "court's judgment cannot bind nonparties," the Supreme Court said.

What This Means to Companies

The *Bayer* decision is likely to open the floodgates for class action plaintiffs to bring repetitive litigation in state court. Mindful of a defendant's plight facing multiple lawsuits arising out of the same causes of action, the Supreme Court suggested steps defendants can take to reduce the burden and expense as well as their potential liability. One such suggestion is for defendants to remove cases to federal court under the Class Action Fairness Act and thereafter avail themselves of multidistrict litigation proceedings to consolidate cases. As a way to potentially minimize the risk of multiple lawsuits arising out of common operative facts or transactions, or common legal issues, companies may want to consider including mandatory arbitration clauses in consumer and commercial contracts to avert this litigation merry-go-round.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact Alan Klein, Fletcher W. Moore, any member of the Products Liability and Toxic Torts Practice Group or the attorney in the firm with whom you are regularly in contact.

Notes

1. *Smith v. Bayer Corp.*, 2011 U.S. LEXIS 4559 (U.S. June 16, 2011).
2. *McCollins v. Bayer Corp. (In re Baycol Prods. Litig.)*, 265 F.R.D. 453 (D. Minn. 2008).