

Defending Federal Securities Act Claims in Texas State Court

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The prospect of defending complex litigation in Texas state court has long struck fear in the heart of many out-of-state defendants. Indeed, we have lost count of how many times sophisticated clients and co-counsel have reacted in shock when we explained there was no traditional motion to dismiss practice in Texas state court.

It has now been a year since the Supreme Court issued its ruling in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018), allowing securities class action plaintiffs to pursue public offering claims in state courts. In *Cyan*, the Court held that: (i) state courts have jurisdiction to hear class actions brought under the federal Securities Act of 1933 (“1933 Act”); and (ii) the Securities Litigation Uniform Standards Act (“SLUSA”) does not empower defendants to remove class actions alleging only 1933 Act claims from state to federal court. The practical effect of the Supreme Court’s decision is that more public offering securities are now being litigated in state courts. We are seeing 1933 Act cases filed in state court in Texas, and there has been an uptick in 1933 Act cases in state courts in other states as well.

Leveraging our substantial experience litigating all manner of securities claims in both state and federal courts in Texas, as well as our deep bench of Texas appellate talent, we have given thought to various strategies for how issuers, directors, underwriters, and others can defend 1933 Act suits when they are brought in Texas state court. Although each case will be unique, the various sections of this paper walk through issues that we believe are likely to recur throughout the procedural stages of a case. In the unfortunate event that your company is targeted with a 1933 Act suit in Texas state court, Haynes Boone would welcome the opportunity to discuss appropriate defense strategies and how we can help.

To read the full alert, please click on the PDF linked below.

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