INTRODUCTION

In 1985, the United States Supreme Court held in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), that state courts can, within certain due process constraints, adjudicate claims of non-resident class members. This ruling opened the door for state courts to entertain multi-state and nationwide class actions that had traditionally been filed in federal forums. While some state courts proved more hospitable than others to multi-state class actions, the succeeding decade witnessed a significant increase in the number of multi-state class actions being adjudicated in the state courts.

The trend toward increasing Supreme Court involvement in major class actions was fueled by several factors, not the least of which was the perception that state courts offered a more flexible forum for adjudication of both certification and liability issues, as well as for approval of class-wide settlements. This was only partly accurate, since most states address class certification and other class action procedural issues, such as class notice and class action settlement approval, under statutes or rules that rely heavily upon, and are often identical to, Fed. R. Civ. P. 23 itself. However, differences in substantive laws, standards of proof, and statutes of limitations meant that claims that might have been barred in a class member’s home jurisdiction could nevertheless be adjudicated in a multi-state class certified by a state court in a different jurisdiction. Accompanying the shift of much class action litigation from federal to state forums was an increase in the number of competing class actions, *i.e.*, the filing of separate class action complaints, commenced in different courts and by different plaintiffs, asserting essentially identical claims against the same defendant.

The appeal of state court forums for class actions was enhanced when the United States Supreme Court ruled that state courts have subject matter jurisdiction to resolve nationwide class actions and that class settlements reached in state courts have preclusive effect even over federal claims that were not litigated in the state forum. *Matsushita v. Epstein*, 516 U.S. 367 (1996). The following year, the Supreme Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), confirmed that settlement classes are not exempt from the requirements of Rule 23 in a decision which, though technically applicable to both federal and state courts, reinforced the view that parties seeking approval for multi-state settlement classes might encounter fewer obstacles in state than in federal courts.

The 2005 enactment of the Class Action Fairness Act ("CAFA") added a new dynamic to the state vs. federal equation. CAFA exponentially expanded federal diversity jurisdiction over cases brought as class actions by, inter alia, amending 28 U.S.C sections 1332 and 1445. Under these provisions of CAFA, parties have a broader right to file class action claims in, or remove them to, federal court, including claims that previously would have been outside the federal courts’ diversity jurisdiction. For example, class members’ individual claims need not meet the $75,000 traditional federal diversity jurisdiction threshold. Cases brought as class actions in which any unnamed class member is of diverse citizenship from any defendant, and involving over $5 million in controversy, may be filed in or removed to federal court under the expanded diversity jurisdiction provisions of 28 U.S.C. § 1332(d)(11).

A thorough and thoughtful understanding of the workings of the relevant state class action rules and case law will be an important component of either side’s decision on filing in, or
removal to, federal court. Additionally, and notwithstanding the CAFA-fueled substantial increase in federal forum selection for state-law-based class actions that formerly did not qualify for federal court jurisdiction (either through original federal filing by plaintiffs; or, more frequently, by removal of state-filed class actions to federal court by defendants), the states’ class action jurisprudence remains highly relevant. This is particularly true for the more populous or influential states, such as California, Massachusetts, Ohio, Illinois, Texas, and Florida, which have a longstanding class action tradition, a highly developed class action jurisprudence, may have specialized Rules of Court for class actions and other complex cases, and which, the sea change wrought by CAFA notwithstanding, will likely continue to preside over a substantial number of significant class action cases.

The issuance by state courts of a number of key issues in 2012-2014, summarized in this survey and the Supreme Court’s ruling in Smith, et al. v. Bayer Corp., 131 S. Ct. 2368 (2011), demonstrate the continuing important role of state courts and their class action-related decisions. In Smith, the Supreme Court found that the federal court’s rejection of Rule 23 certification did not preclude later adjudication in state court of a consumer’s class certification motion because federal and state certification rules are not identical and because the state court plaintiff was not a party to the federal suit. Significantly impacting the scope of class action claims potentially litigable in the state courts is the United States Supreme Court’s 2013 opinion in American Express Co. v. Italian Colors Restaurant holding that contractual arbitration clauses containing class action waivers are enforceable notwithstanding potentially prohibitive transaction costs in arbitrating individual claims one by one. The impact of arbitration on class certification is an especially active and volatile area. In 2014, the state courts continued to address the procedural and enforceability issues following from arbitration clauses, such as whether courts, or arbitrators, are to decide whether claims can be arbitrated on a class basis. See, e.g., Sandquist v. Lebo Automotive, Inc., 228 Cal. App. 4th 615 (Cal. App. June 25, 2014) (reversing dismissal of class action in favor of arbitrator determination on class certification). This area will continue to be active and to produce a variety of outcomes in 2015.

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