



## Class Actions Legal Update

### Shady Grove Orthopedic Associates P.A. v. Allstate Insurance Co.

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On March 31, 2010, the United States Supreme Court issued a significant decision in *Shady Grove Orthopedic Associates P.A. v. Allstate Insurance Co.*, No. 08-1008, slip op. (U.S. Mar. 31, 2010), holding that, under Fed. R. Civ. P. 23, a class action may be brought in federal court for violation of a state statute, even w the same claims could not be pursued as a class action in state court because a state statute expressly bars such claims from being asserted in a class action. This case likely will result in an increase in filing of class actions seeking recoveries under state laws that impose minimal penalties for certain types of statutory violations but do not allow class actions for such penalties to be brought in state courts. As the dissent notes, ironically, the Class Action Fairness Act of 2005, which was widely considered a pro-defendant statute that would reduce potential class action exposure, will now, under this decision, allow class actions to be brought in federal court w such class actions would not satisfy the amount in controversy for traditional (pre-CAFA) diversity jurisdiction and w such class actions could not be brought in state courts. (Ginsburg, J., dissenting, at 24.)

In *Shady Grove*, the named plaintiff alleged a claim under a New York statute requiring that certain insurance claims be paid or denied within 30 days and requiring payment of interest on late payments. Shady Grove's individual claim for interest was worth approximately \$500, but the aggregate amount of statutory interest claimed on behalf of the putative class was at least \$5 million. New York Civil Practice Law & Rules § 901(b) prohibits such a claim for a statutory penalty or minimum measure of recovery from being brought as a class action (unless the statute providing for the penalty expressly authorizes class actions). The Second Circuit had held that § 901(b) was enforceable in federal court, finding it to be substantive in nature and not in conflict with Rule 23. In a sharply divided decision, the Supreme Court reversed the Second Circuit.

Justice Scalia wrote the lead opinion, which was partially a majority opinion and partially a plurality opinion. A majority (Chief Justice Roberts and Justices Stevens, Scalia, Thomas, and Sotomayor) concluded that Rule 23 and § 901 (b) are in conflict because they both regulate the procedure for deciding whether a class action may be maintained. The Court explained that "Rule 23 unambiguously authorizes any plaintiff, in any federal civil proceeding, to maintain a class action if the Rule's prerequisites are met," and "[w]e cannot contort its text." (Slip op. at 11.) Under the Rules Enabling Act, however, the Court may promulgate rules of procedure, subject to review by Congress and the limitation that the rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072 (b). The Court did not reach a majority opinion with respect to the application of the Rules Enabling Act. A plurality (Chief Justice Roberts and Justices Scalia, Thomas, and Sotomayor) concluded essentially that because Rule 23 "really regulat[es] procedure," it is authorized by the Rules Enabling Act, "regardless of its incidental effect upon state-created rights." (Slip op. at 12-16.)

Justice Stevens, concurring in part and concurring in the judgment, agreed that Rule 23 is procedural and conflicts with the New York state law. Justice Stevens, however, disagreed with Justice Scalia's reasoning. In determining whether a federal rule violates the Rules Enabling Act,

Justice Stevens instead fashioned a rule that would show "sensitivity to important state interests" by requiring an inquiry into what constitutes a substantive right. (Stevens, J., concurring, at 6-11.) In Justice Stevens' view, a federal rule cannot govern w it would "displace a state law that is procedural in the ordinary use of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created right." (Stevens, J., concurring, at 8.) Applying the rule to § 901 (b), Justice Stevens considered the plain language of the New York statute and concluded that it is procedural. Justice Stevens observed that § 901 (b) cannot be regarded as defining New York's rights or remedies because, by its express terms, the statute applies "not only to claims based on New York law, but also to claims based on federal law or the law of any other state." (Stevens, J., concurring, at 17.)

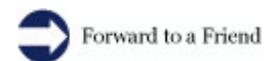
In a dissenting opinion, Justice Ginsburg, joined by Justices Kennedy, Breyer, and Alito, concluded that Rule 23 is not in conflict with § 901 (b) because Rule 23 pertains to the procedural aspects of class litigation and cannot be read to preempt state law that limits a remedy, i.e., the size of a damages award that could be maintained by a class plaintiff. (Ginsburg, J., dissenting, at 11-12.) Justice Ginsburg determined that § 901(b) is substantive and that *Erie* should apply to "prevent a federal court from awarding statutory penalties aggregated through a class action when New York prohibits this recovery." (Ginsburg, J., dissenting, at 23.) Criticizing the majority for failing to properly consider state regulatory interests, the dissent observed that the majority should have read Rule 23 to avoid any conflict with § 901(b). (Ginsburg, J., dissenting at 16.)

Importantly, a different result might be reached if the state statute expressly limits the remedies available in a class action rather than prohibiting a plaintiff from maintaining a class action at all for the alleged violation. The majority noted that "[w]e need not decide whether a state law that limits the remedies available in an existing class action would conflict with Rule 23; that is not what § 901(b) does." (Slip op. at 7). Justice Stevens also noted that he "agree[d] with Justice Ginsburg that t are some state procedural rules that federal courts must apply in diversity cases because they function as a part of the State's definition of substantive rights and remedies." (Stevens, J., concurring, at 1.)

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For further information on this opinion or Robinson & Cole's class action practice, please contact [Wystan M. Ackerman](#), [Jamie M. Landry](#), or another member of the firm's [Class Action Team](#).

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