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Supreme Court Permits Otherwise Banned Class Actions to Proceed In Federal Courts.

Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co., No. 08-1008

The Supreme Court on March 31 held that some class actions can proceed in federal courts even when state law prohibits them. The decision may make it easier for plaintiffs to bring certain types of class actions – including, possibly, such actions in antitrust cases.

In the case, *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, No. 08-1008, a Maryland medical group sued an insurance company that paid an insurance claim late, but that refused to pay a $500 penalty imposed by N. Y. Civ. Prac. Law § 901. That statute permits class actions for penalties only when statutes explicitly allow such actions. Both the Eastern District of New York and the Second Circuit held that the state law governs and blocked the class action. The Supreme Court disagreed, in a 5-4 majority opinion written by Justice Scalia. According to the Court, Federal Rule of Civil Procedure 23 governs all class actions filed in federal court. That rule establishes only four criteria for class actions (numerosity, commonality, typicality, and representation). According to Justice Scalia, the federal rule therefore trumps the state law, which he wrote effectively adds a new element. In an unusual alliance, the main portions of Justice Scalia's opinion were joined by the often conservative Chief Justice Roberts and Justice Thomas, and the often liberal Justices Stevens and Sotomayor. (Justice Stevens separately concurred with the other four justices' holding that Congress acted within its power when it passed Rule 23.)

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Justice Ginsburg wrote a dissent for herself and three other justices. According to Justice Ginsburg, the majority opinion serves to "transform a $500 case into a $5,000,000 case." She reasoned that federal courts have an obligation to read the federal rules, including Rule 23, in a way that tries to avoid conflicts with state substantive law. Her dissent, like the majority, was joined by an ideologically diverse group of justices consisting of the often liberal Justice Breyer, and the often conservative Justices Kennedy and Alito.

It is possible that the decision will make it more likely for class actions to proceed in federal court when state laws – and, therefore, state courts – would prohibit them. Thus, at least in theory, plaintiffs might now choose to file more class actions in federal court, as Justice Ginsburg's dissent predicted. However, in practice, at least three issues may prevent an uptick in such filings from occurring. First, the opinion does not list how many state laws limit class actions. If few such laws exist, or if the laws block few class actions, then the decision will have little practical effect on most potential litigants. Second, the majority's decision was based on the text of Federal Rule 23, which Congress can change if federal courts face a flood of new class actions. Third, with regard to the specific New York statute at issue, it remains possible for New York to amend its law to limit the amount of monetary relief available to a class.

The *Shady Grove* case did not involve antitrust law. However, plaintiffs commonly bring antitrust class actions. In theory, the Supreme Court's holding might allow an antitrust class action to proceed in federal court, even when a state court would have prohibited it. But the practical effect would depend on how many state laws prohibit state antitrust class actions, and how many cases such laws actually block.

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