NEW YORK LAW SCHOOL

NYLS Law Review

Volume 54
Issue 1 *New York Law School Law Journal Alumni Issue*

Article 13

January 2009

Estate of Pew v. Cardarelli

Rachel Bell
New York Law School Class of 2010

VOLUME 54 | 2009/10

RACHEL BELL

Estate of Pew v. Cardarelli

ABOUT THE AUTHOR: Rachel Bell is a 2010 J.D. candidate at New York Law School.

The class action allows a single, representative plaintiff to bring a lawsuit on behalf of a larger group of similarly situated individuals.[1] The popularity of the class action arises from its ability to combine multiple claims against one defendant in one large suit.[2] But the popularity of class actions has also given rise to problems and reports of abuse.[3] To respond to these concerns, in 2005 Congress enacted the Class Action Fairness Act ("CAFA").[4] "Congress found that class action abuse harmed both class members who had legitimate claims and defendants who behaved responsibly."[5] To address these problems, CAFA expanded federal jurisdiction over certain types of class action lawsuits.[6] However, CAFA also limited federal jurisdiction over certain other types of class actions,[7] including those that solely involve state-law securities claims or state-law corporate governance claims.[8]

In *Estate of Pew v. Cardarelli*, the Northern District of New York addressed the question of whether a federal court had jurisdiction under CAFA for a class action lawsuit alleging violations of New York State law in connection with the sale of subordinated money market certificates.[9] The court analyzed section 1332(d)(9)(C) of CAFA, which specifically exempts from federal court jurisdiction any class action that "solely involves a claim . . . that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security . . . ."[10] The court noted that while the reach of CAFA is extremely broad, subdivision (d)(9) of section 1332 "carves out a substantial exception for state law securities and business-related claims," and is based specifically on the subject matter of the litigation.[11] The court found that section 1332(d)(9)(C) was properly construed to encompass the type of state-law securities-related claim that the plaintiffs asserted,

---

1. Ilana T. Buschkin, *The Viability of Class Action Lawsuits in a Globalized Economy—Permitting Foreign Claimants to be Members of Class Action Lawsuits in the U.S. Federal Courts*, 90 Cornell L. Rev. 1563, 1564 (2005).

2. *Id.*

3. John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L. Rev. 370, 371 (2000) ("Where once [the class action] was seen as the plaintiff's sword, it is now increasingly recognized that it can be the defendant's shield.").

4. *See* Sarah S. Vance, *A Primer on the Class Action Fairness Act of 2005*, 80 Tul. L. Rev. 1617, 1618 (2006) (discussing the features of CAFA, developing case law under CAFA, and offering observations on how CAFA may affect complex litigation).

5. *Id.*

6. *Id.* at 1620.

7. *See* 28 U.S.C. § 1332 (d)(9) (2006); Vance, *supra* note 4, at 1621.

8. Vance, *supra* note 4, at 1621.

9. *See* Estate of Pew v. Cardarelli, No. 5:05-CV-1317, 2006 WL 3524488 (N.D.N.Y. Dec. 6, 2006). The subordinated money market certificates were fixed-interest debt instruments which were subordinated to Agway's other debt. *See id.* at *1–2.

10. *Id.* at *3.

11. *Id.* at *6.

and that the federal courts did not have jurisdiction to hear the claim.[12] The Second Circuit reversed, holding that the action did not "relate to the rights" created in holders, and therefore the federal courts had jurisdiction under CAFA.[13] This case comment contends that the Second Circuit incorrectly reversed the district court's decision because it improperly interpreted the plain language of section 1332(d)(9)(C), and therefore contradicted congressional intent to limit the jurisdictional reach of CAFA.

Agway, Inc. is an agricultural supply and marketing cooperative that sought to raise capital by issuing money market certificates (unsecured, fixed-interest debt instruments).[14] Agway had traditionally financed its working capital with proceeds from the sale of these certificates, which were subordinated to Agway's other debt.[15] The plaintiffs were purchasers of the certificates from November 1, 2000 through November 3, 2001.[16] On March 6, 2002, Agway suspended the sale of the certificates and never resumed selling them.[17] On June 17, 2002, Agway announced that it would no longer repurchase the certificates prior to maturity.[18] In October 2002, Agway filed a petition for reorganization under Chapter 11 of the Bankruptcy Code.[19]

Plaintiffs argued that Agway[20] made false and misleading statements in filings made to the Securities and Exchange Commission ("SEC") that were relevant to the issuance of the certificates.[21] Among several claims, plaintiffs asserted that Agway was insolvent from the beginning of the Class Period; the only substantial liquid

12. *See id.*

13. Estate of Pew v. Cardarelli, 527 F.3d 25 (2d Cir. 2008).

14. *Id.* at 27.

15. *Pew*, 2006 WL 3524488, at *1.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. The individual defendants were Donald P. Cardarelli, then Agway Chief Executive Officer, Peter J. O'Neill, then Agway Senior Vice President of Finance and Control, and PricewaterhouseCoopers LLP, an accounting firm that audited Agway's financial statements and issued audit reports that were incorporated into and made part of Agway's Registration Statements and Annual Reports filed with the SEC. The plaintiffs asserted that Cardarelli and O'Neill signed the false and misleading documents. *Id.*

21. *Id.* at *2. The filings included:

> [T]he 1998 and 2001 Registration Statements, which incorporated . . . all pertinent annual, quarterly and current reports, and . . . included by consent the Pricewaterhouse unqualified audit reports for . . . fiscal years ending in June 1999, 2000 and 2001; the 2000 and 2001 Annual Reports . . . , which included by consent the Pricewaterhouse unqualified audit reports; . . . five Quarterly reports . . . ending September 2000, December 2000, March 2001 and December 2001; and . . . two Current Reports . . . dated March 1, 2001 and March 31, 2001.

Id.

source of funds to discharge the money market certificates was money derived from the sale of new money market certificates; that the potential proceeds from Agway's remaining businesses were only a fraction of the money market certificates outstanding and maturing in the future; and at the time of purchase, the newly issued money market certificates were worth at most only a small fraction of the face amount that Agway collected from the plaintiffs and the class.[22] Additionally, plaintiffs argued that the statements and SEC filings were "materially deceptive, untrue and misleading . . . because they . . . failed to disclose . . . Agway's . . . insolvency from the beginning of and throughout the Class Period . . . and that . . . continuing [to sell the Certificates] . . . was in essence a Ponzi scheme intended solely to keep Agway afloat without any possibility of discharging the . . . Certificates."[23] Plaintiffs further alleged that the defendants engaged in materially deceptive acts or practices in the conduct of business, trade, or commerce in violation of section 349 of New York General Business Law.[24]

Defendants removed the case to federal court. They asserted two grounds for jurisdiction in the federal courts, including diversity jurisdiction under CAFA.[25] CAFA grants federal diversity jurisdiction for class actions in which the amount in controversy exceeds $5 million dollars and in which any member of a class of plaintiffs is a citizen of a state different from any defendant.[26]

Plaintiffs argued the case should be remanded to state court because federal jurisdiction was limited as set forth in section 1332(d)(9)(C).[27] Plaintiffs claimed that defendants' SEC filings led plaintiffs "to believe that the Certificates represented rights which . . . were illusory, and created obligations which . . . Agway could not . . . fulfill."[28] Plaintiffs asserted that the action "solely" involved this claim and did not relate to any other rights, duties, or obligations, and therefore fell within the limitation on federal court jurisdiction in 1332(d)(9)(C).[29]

Defendants contended that although the certificates were securities within the meaning of the section, section 1332(d)(9)(C) did not apply because the plaintiffs' action did not "solely involve[ ]" a claim "that relates to the rights, duties . . . and

22. *Id.* For a detailed list of the plaintiffs' claims that the statements in the Registration Statements and incorporated SEC filings were "materially deceptive, untrue and misleading," see *id.*

23. *Id.*

24. *See id.* at *3. Section 349 of New York Business Law provides in (a): "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful." N.Y. Gen Bus. § 349 (McKinney 2004). Further, subdivision (h) grants a private cause of action to "any person who has been injured by reason of any violation of this section." *Id.*

25. *Pew*, 2006 WL 3524488, at *3. The defendants also sought federal jurisdiction based on the relationship between this action and Agway's bankruptcy proceedings, which were located in the Northern District of New York in United States Bankruptcy Court. *Id.*

26. 28 U.S.C. § 1332 (d)(2) (2006). Here, the requirements for diversity jurisdiction were satisfied.

27. *Pew*, 2006 WL 3524488, at *5.

28. *Id.*

29. *Id.*

obligations related to or created by or pursuant to" the certificates.[30] The defendants maintained that the limitation should be read to apply "only to claims that relate[d] to the rights arising out of the security itself or the rights that a corporation's bylaws and other organizational documents confer[red] on a holder of the . . . securities" and to exempt only claims "based on [plaintiffs'] rights as securities holders" such as "voting rights, rights to receive dividends, rights upon liquidation, or any other claim arising from their ownership of the Certificates."[31] Unlike the plaintiffs' argument that the language of the statute allowed the right to bring a claim which related to a security, the defendants argued that the statute limited causes of action to those which arose only from the security itself.[32]

The Northern District of New York remanded the case to state court.[33] The court looked to section 1332(d)(9), which excludes from federal jurisdiction any class action that "solely involves" claims related to state-law securities matters.[34] The court found that the wording of section 1332(d)(9)(C) did not support the defendants' restrictive reading.[35] The court held that in referring to rights, duties, and obligations "relating to" a security, the limitation not only covered the rights, duties, and obligations conferred by the terms of the security itself, but also the rights, duties, and obligations that are connected with the security.[36] The court also noted that CAFA is extremely broad in its reach, but it specifically carved out a limitation to federal court jurisdiction for state-law securities and business-related claims, and is the only category of claims that CAFA exempted based specifically on the subject matter of the litigation.[37] The district court held that the limitations in section

30. *Id.*

31. *Id.* at *5.

32. *See id.*

33. *See id.* at *7.

34. *See id.* at *5.

35. *Id.* The court stated that "[a] plain reading of the complaint establishes that plaintiffs' claim falls within the section 1332(d)(9)(C) exception to CAFA" since the complaint only involved a claim "relate[d] to the rights, duties . . . and obligations related to or created by or pursuant to the Certificates." *Pew*, 2006 WL 3524488, at *5 (quoting 28 U.S.C. § 1332(d)(9)(C)(2006)). The court read the complaint to allege that the defendants' SEC filings led the plaintiffs to falsely believe that the Money Certificates represented rights, and created obligations which Agway could not possibly fulfill. *Pew*, 2006 WL 3524488, at *5.

36. *Id.*

37. *Id.* at *6. The District Court noted that the other exceptions to CAFA, located in sections 1332(d)(3) and 1332(d)(4) apply to any type of action, and "require the district court to consider factors bearing on the extent of a particular state's interest in the litigation . . . ." *Pew*, 2006 WL 3524488, at *6 n.8. Whereas section 1332(d)(9)(C) limits federal jurisdiction based only upon the subject matter of the claim, the other limitations to federal jurisdiction in CAFA require a weighing of such factors as "the proportion of the plaintiffs who are citizens of the state in which the action was originally filed, whether the action will be governed by the laws of that state, where the alleged conduct or injury occurred, and whether the claims involve matters of national or interstate interest" by the District Court in determining whether the CAFA limitations apply. *Pew*, 2006 WL 3524488, at *6 n.8.

1332(d)(9), when read together, showed an overall legislative intention to maintain federal protection of the market for nationally traded securities, but to preserve the significant role of the states in the regulation of business and securities that are not nationally traded.[38]

In an issue of first impression for the circuit courts,[39] the United States Court of Appeals for the Second Circuit reversed the district court's decision and held that the action did not relate to the rights created in the holders.[40] The court interpreted section 1332(d)(9)(C) to read as follows: "[i] [This section] shall not apply to any class action that solely involves a claim . . . that relates to [ii] the rights, duties (including fiduciary duties), and obligations [iii] relating to or created by or pursuant to [iv] any security . . . ."[41] The court found that the sentence as a whole could not cover any and all claims that relate to any security, because [ii] and [iii] would have no meaning.[42] The court saw [ii] and [iii] as terms of limitation on the exception.[43] The court also relied on certain passages from the Senate Judiciary Committee Report[44] to find that Congress intended that the limitation was to be reserved for "disputes over the meaning of the terms of a security."[45] The court held that section 1332(d)(9)(C) applies only to class actions seeking to enforce terms of instruments that create and define securities, and to duties imposed on those who administer securities.[46]

Judge Pooler dissented. She argued that the majority departed from the plain statutory text in favor of a "dubious consideration of the supposed legislative intent of the statute's drafters."[47] Judge Pooler argued that section 1332(d)(9)(C) should apply because the "plaintiffs were fraudulently deprived of their *right* to repayment of the

---

38. *Id.* The District Court also cited various cases from other circuits, which state that it is well-settled that federal securities laws do not dominate "the entire field" of corporate or securities law and "Congress has expressly preserved the role of the states in securities regulation." *Id.*

39. *Split 2nd Circuit: No CAFA Exceptions in Agway Fraud Suit*, Andrews Bankr. Litig. Rep, (Andrews Publications, Wayne, Pa.), June 13, 2008, at 1.

40. *See Pew*, 527 F.3d at 25.

41. *Id.* at 31.

42. *Id.*

43. *Id.*

44. The passages that the Second Circuit relied upon included the following:

> [T]he Act excerpts . . . from [its grant to the district courts of original] jurisdiction those class actions that solely involve claims that relate to the matters of corporate governance arising out of state law . . . . By corporate governance litigation, the Committee means only litigation based solely on . . . the rights arising out of the *terms of the securities* issued by business enterprises.

See Pew, 527 F.3d at 33.

45. *Id.*

46. *Id.*

47. *Id.* at 34.

principal component of their investment."[48] The dissent contended that the majority's recitation of what claims "must be" in order to fall within the limitation is purely its own invention, and that its specifications as to unqualified terms in CAFA amounted to "judicial re-drafting."[49] Judge Pooler argued that the Senate report's assertion that section 1332(d)(9)(C) is limited to disputes over the terms of securities has no relation to the enacted text, and that the Supreme Court has instructed that it is improper to consult legislative history as to the meaning of a disputed statutory provision when the words of the provision are unambiguous.[50]

By failing to read the plain language of section 1332(d)(9)(C) of CAFA, and by instead imposing its own interpretation of what criteria must be met for a class action to fall outside the scope of jurisdiction under CAFA, the Second Circuit misconstrued the statute and incorrectly reversed the decision of the district court. By departing from the plain language of the statute, the Second Circuit's interpretation will now permit many cases to be heard in federal court that should remain in state court.

Federal jurisdiction under CAFA is broad and far-reaching. Section 1332(d)(2)(A) provides that district courts shall have original jurisdiction in civil actions where the matter in controversy exceeds $5,000,000 and where any member of the class of plaintiffs is a citizen of a state different from any defendant.[51] However, CAFA includes three limitations to federal jurisdiction as outlined in section 1332(d)(9).[52] Congress excluded from the federal courts class actions solely involving state-law

48. *Id.* at 35. Justice Pooler contended that:

> By issuing the Certificates, Agway took on an obligation to pay interest and principal to the purchasers of the Certificates. These purchasers therefore possessed a corresponding right to receive these payments. The instant suit plainly concerns Agway's failure to fulfill its obligations with respect to the Certificates and the plaintiffs' deprivation of their rights with respect to the same.

Id.

49. *Id.* at 36.

50. *Id.* at 37. Justice Pooler cited the Supreme Court:

> We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.

Id. (citing Conn. Nat. Bank v. Germain, 503 U.S. 249, 253–54 (1992)).

51. 28 U.S.C. § 1332(d)(2)(A) (2006).

52. The three limitations in this section are as follows:

> (9) Paragraph (2) shall not apply to any class action that solely involves a claim—
>
> (A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;
>
> (B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
>
> (C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security . . .

28 U.S.C. § 1332(d)(9) (2006).

securities claims or state-law corporate governance claims because it had already addressed the issue of securities class actions in the Securities Litigation Uniform Standards Act ("SLUSA") of 1998.[53] The relevant SLUSA provisions are found in sections 22(a), 16(c), and 18(b)[54] and were designed to remove securities class actions involving "covered securities"[55] to federal court, while leaving non-covered class actions protected by the Act's anti-removal provisions.[56] In deciding *Pew*, the Second Circuit, while acknowledging that "[r]eview of SLUSA and CAFA confirms an overall design to assure that the federal courts are available for all securities that have national impact," also noted that the design was aimed not to hinder "the ability of state courts to decide cases of chiefly local import or that concern traditional state regulation of the state's corporate creatures[.]"[57] The Second Circuit, although recognizing the relevant SLUSA provisions, did not discuss how they interacted with CAFA. In *Luther v. Countrywide Home Loans Servicing LP,* the Ninth Circuit distinguished *Pew*, and held that *Pew* was not controlling because the *Pew* court did not address the interplay between CAFA and SLUSA.[58] The Ninth Circuit then held that remand of the case to state court was appropriate because the general grant of the right of removal under CAFA did not trump the specific bar to remove cases under SLUSA.[59]

Instead of applying the plain language of the statute, the majority in *Pew* interpreted this to be "cryptic text" of CAFA and determined that the statute needed clarification.[60] However, in the plain text of the statute, there are no words of limitation in section 1332(d)(9)(C) that restrict the type of claim that falls within the limitation. The majority's interpretation rendered the words "relating to" in section 1332(d)(9)(C) superfluous,[61] and it justified this by arguing that its interpretation preserved the meaning of the entire subsection.[62] To the contrary, Congress's deliberate

53. *See* Vance, *supra* note 4, at 1621–22.

54. 15 U.S.C. § 77(p) (2006).

55. *Id.* Sections 16(f)(3) and 18(b) of the Securities Act of 1933 define "covered security." These include exclusive federal registration of nationally traded securities (such as those securities listed on the New York Stock Exchange), securities issued by investment companies registered under the Investment Company Act of 1940, and securities offered or sold to qualified purchasers. 15 U.S.C. §77(r)(b)(2006). The court in *Pew* acknowledged that the Certificates were not covered securities because they were not nationally traded or listed on any national security exchange. *See Pew*, 527 F.3d at 30.

56. Plaintiff's Reply Memorandum of Law in Further Support of Its Motion to Remand at 2, N.J. Carpenters Health Fund v. NovaStar Mortgage Funding Trust, No. 08-5310 (S.D.N.Y. 2008).

57. *Pew*, 527 F.3d at 32.

58. Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031, 1034 (9th Cir. 2008).

59. *Id.* at 1032, 1034.

60. *Pew*, 527 F.3d at 32.

61. *Id.*

62. *Id.*

inclusion of the phrase "relates to" in the text of the statute is an indication that the limitation does not only apply to rights, duties, and obligations created by the security itself, but also to those arising from the security. As the dissent argued, the majority departed from the plain text of the section and instead judicially re-drafted the limitation in CAFA in an act of "legislating from the bench."[63]

A number of cases have criticized the reasoning in *Pew*[64] and other federal courts have applied the plain statutory text of section 1332(d)(9)(C) without having to break down the provision or having to produce their own interpretation of the "ambiguous" or "cryptic" language within the text. The Northern District of California correctly held in *In re Textainer Partnership Securities Litigation* that the federal court lacked jurisdiction under the limitation in section 1332(d)(9)(C) for a single claim alleging breach of fiduciary duty under state law.[65] The court analyzed whether the alleged breach of fiduciary duty was one "relating to or created by or pursuant to" a "security," which would exclude the claim from federal jurisdiction under CAFA.[66] Although the issue that the court ultimately decided in *In re Textainer Partnership Securities Litigation* was whether a limited partnership qualified as an "investment contract" to meet the definition of "security," once it determined that the limited partnership did qualify as a security, it concluded that the claim was outside the scope of federal jurisdiction because the sole claim was "related to or created by or pursuant to a security."[67] The court's analysis did not focus on whether the rights, duties, or obligations arose from the security itself, nor did the court attempt to break apart the language of the statute. Rather, the court used the language of the statutory text to guide its analysis. Similarly, the Second Circuit court in *Pew* should have analyzed whether the action "solely involves" a claim "related to the rights, duties and obligations relating to or created by or pursuant to" a "security."[68] Since the plaintiffs in *Pew* alleged a sole state law claim related to their rights as security-holders, the claim fell under the exception to CAFA's grant of federal jurisdiction, and the case should have been remanded to state court in New York.[69]

The Second Circuit's holding in *Pew* also created a split among the Circuits as to which claims fall within section 1332(d)(9)(C). Other federal courts have held that CAFA limits federal jurisdiction in cases related to the right of payment owed to security holders. The Southern District of California properly held in *Genton v. Vestin Realty Mortgage II, Inc.* that the CAFA limitation applied where plaintiffs'

63. *Id.* at 36.

64. *See In re* Textainer P'ship Securities Litigation, No. C 05-0969 MMC, 2005 WL 1791559 (N.D. Cal. July 27, 2005); Genton v. Vestin Realty Mortgage II, Inc., No. 06cv2517-BEN WMC, 2007 WL 951838 (S.D. Cal. Mar. 9, 2007); Blockbuster, Inc. v. Galeno, 472 F.3d 53, 58 (2d Cir. 2006).

65. *See In re Textainer*, 2005 WL 1791559, at *6.

66. *Id.*

67. *Id.* at *7.

68. 28 U.S.C. § 1332(d)(9)(C) (2006).

69. *See* Estate of Pew v. Cardarelli, No. 5:05-CV-1317, 2006 WL 3524488 (N.D.N.Y. Dec. 6, 2006).

"claims ar[o]se directly from Vestin Realty's alleged failure to pay Plaintiffs their pro rata share as security owners in Vestin . . . ."[70] As the dissent in *Pew* contended, this case held that section 1332(d)(9)(C) applied in cases that involved the rights of payments to holders of debt securities, and not just in the rights created by the instruments themselves.[71] *Genton* held that "[a] claim 'relates to' or 'is pursuant to' a security as required by section 1332(d)(9)(C) when a party's claim relies entirely on ownership of that security, and alleges no interest that would allow the party to pursue the case on grounds other than the ownership in that security."[72] In *Pew*, plaintiffs alleged that Agway failed to fulfill its obligations that were created by issuing the certificates, and that plaintiffs were deprived of their rights as a result.[73] *Pew* and *Genton* are analogous because they both involve claims that solely involve rights of payment to the security holders. The interpretation by the *Genton* court would have properly excluded the *Pew* case from federal jurisdiction had the Second Circuit analyzed the statute by the plain text, rather than applying its own interpretation of the statute.

The majority's reliance upon the legislative history of CAFA is also flawed because it contradicts its earlier decision in *Blockbuster, Inc. v. Galeno*.[74] In *Blockbuster,* the Second Circuit noted that "CAFA's detailed modifications of existing law show that Congress appreciated the legal backdrop at the time it enacted this legislation."[75] The Second Circuit also held that "the Senate report was issued ten days after the enactment of the CAFA statute, which suggests that its probative value for divining legislative intent is minimal."[76] While the Second Circuit declined to use the Senate reports on CAFA in *Blockbuster*, the court—in an effort to justify its narrow interpretation of section 1332(d)(9)(C)—places heavy emphasis on the same Senate reports in *Pew*.[77] This inconsistency casts a dubious shadow on the majority's decision in *Pew*. While the Second Circuit previously acknowledged the detailed alterations to CAFA and the minimal assistance of the Senate reports to justify refusing to change the burden of proof in establishing federal subject matter jurisdiction,[78] the court refused to give deference to the plain text of the statute Congress enacted in *Pew*. Instead, the court justified its reasoning based on the once "minimally" indicative Senate reports.[79]

---

70. *Genton*, 2007 WL 951838, at *3.

71. *See* Estate of Pew v. Cardarelli, 527 F.3d 25, 35 (2d Cir. 2008).

72. *Genton*, 2007 WL 951838, at *3.

73. *See Cardarelli*, 527 F.3d at 35.

74. Blockbuster, Inc. v. Galeno, 472 F.3d 53 (2d Cir. 2006).

75. *Id.* at 58.

76. *Id.*

77. *See* Estate of Pew v. Cardarelli, 527 F.3d 25, 33 (2d Cir. 2008).

78. *See Blockbuster*, 472 F.3d at 58.

79. *See id.*

The Second Circuit departed from the plain text of the Class Action Fairness Act and instead imposed its own interpretation of section 1332(d)(9)(C). The decision of the court in *Pew* will deeply affect the outcome of future state-law, securities-related claims in the Second Circuit's jurisdiction. By narrowly construing the requirements limiting a securities-based state claim from the reach of federal jurisdiction, the court improperly opened the door to many suits that Congress intended to only be heard by state courts. A plain reading of the text of section 1332(d)(9)(C) is the more accurate and proper interpretation of the provision, and by departing from this, the Second Circuit created its own rule and a split with the Ninth Circuit, instead of following the precisely-worded legislation of Congress.