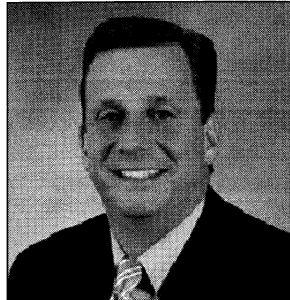


U.S. Supreme Court: FRCP 23 Trumps State Law Limits on Class Action Practice

By Robert T. Horst and Mark H. Rosenberg

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The United States Supreme Court has held that Federal Rule of Civil Procedure 23 takes precedence over state statutes that place limits upon the class action mechanism. In *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, No. 08-1008, ___ S. Ct. ___, 2010 WL 1222272 (U.S. Mar. 31, 2010), the



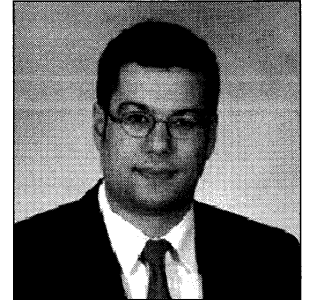
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Court considered a putative class action challenging an automobile insurer's purported failure to pay interest on overdue medical payment benefits, as required by New York statutory law. The United States District Court for the Eastern District of New York dismissed the lawsuit on the grounds that the putative class action was precluded by N.Y. Civ. Prac. Law § 901(b), which prohibits the use of a class action to recover "penalties." The trial court's decision was affirmed by the United States Court of Appeals for the Second Circuit.

In a 5-4 decision, the Supreme Court held that Federal Rule of Civil Procedure 23 superseded the limitations on class action procedure set forth in the New York statute. Writing on behalf of himself, Chief Justice Roberts, Justice Thomas, and Justice Sotomayor, Justice Scalia observed that under the Rules Enabling Act, 28 U.S.C. § 2072, the Supreme Court is authorized to enact federal procedural rules, so long as these rules do not "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). Accordingly, Justice Scalia noted that under the Act, federal civil rules are valid and enforceable so long as they truly concern matters of procedure, rather than a litigant's substantive rights.

Justice Scalia concluded that Rule 23 was a procedural rule that did not affect a party's substantive rights, explaining that "a class action, no less than traditional joinder (of which it is a species), merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits." *Shady Grove*, 2010 WL 1222272 at *8. Justice Scalia also observed that "like traditional joinder," the class action process "leaves the parties' legal rights and duties intact and the rules of decision unchanged." *Id.* Justice Scalia emphasized that the defendant insurer's "aggregate liability" for the conduct at issue "does not depend on whether the suit proceeds as a class action," as the potential class members are free to bring individual lawsuits regarding the alleged conduct. Justice Scalia also noted that the fact that "some

plaintiffs who would not bring individual suits for the relatively small sums involved will choose to join a class action" has "no bearing" on the litigants' "legal rights." *Id.* at *9. In conclusion, Justice Scalia noted that while "keeping the federal-court door open to class actions that cannot proceed in state court will produce forum shopping," such a consequence was "the inevitable (indeed, one might say the intended) result of a uniform system of federal procedure." *Id.* at *12.



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In contrast, the dissenting opinion, written by Justice Ginsburg and joined by Justices Kennedy, Breyer, and Alito, found that, in light of the absence of any collision between Rule 23 and N.Y. Civ. Prac. Law § 901(b), there is no reason to undermine state legislation designed to protect a legitimate state interest limiting a legal remedy, just as a state-imposed statutory cap on damages would do so.

The *Shady Grove* opinion may hamper the ability of states to place statutory limits upon the class action mechanism. The expanded federal jurisdiction over putative class actions established by the Class Action Fairness Act will provide plaintiffs with opportunity to bypass these limits by bringing similar cases in federal court, consistent with *Shady Grove*. Ironically, the plaintiffs' bar that long-resisted expanded federal jurisdiction over class actions may now utilize this jurisdiction to pursue otherwise-barred class claims.

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