No. 09-1205

# In the Supreme Court of the United States

KEITH SMITH and SHIRLEY SPERLAZZA,

*Petitioners*,

v.

BAYER CORPORATION,

*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

**BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT**

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# BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

## INTEREST OF THE *AMICUS CURIAE*

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit association with 99 corporate members representing a broad cross-section of American and international product manufacturers. These companies seek to contribute to the improvement and reform of the law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed over 900 briefs as *amicus curiae* in both state and federal courts, including more than 75 in this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability. Appendix A lists PLAC's corporate members.[1]

Because PLAC's members often face parallel litigation relating to product-liability claims in state and federal courts, PLAC has substantial experience

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

with the circumstances in which the relitigation exception to the Anti-Injunction Act is invoked. PLAC believes that this exception properly does and should protect a wide variety of federal judicial decisions, thus ensuring finality of federal judgments and efficiency in the judicial system.

## SUMMARY OF ARGUMENT

Because respondent has ably addressed the specific issues raised in petitioners' brief in this case, PLAC is filing this *amicus* brief to analyze at greater length one of the underlying legal doctrines at issue—how the Anti-Injunction Act and its exceptions should be interpreted. These doctrines are critical to the relationship between the state and federal judicial systems in numerous contexts.

Given our unique federal structure, complex litigation often involves parallel actions in state and federal courts. Although courts must avoid "'needless friction between state and federal courts'" (*Atl. Coast Line R.R.* v. *Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970) (quoting *Okla. Packing Co.* v. *Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940))), Congress has expressly recognized that direct interaction may be required in limited circumstances.

In particular, when a federal court has finally decided a claim or an issue, the loser may not move to state courts for a second bite. The legal system, instead, is founded on finality and repose, values that ensure the efficient use of limited judicial resources. When a losing party nonetheless attempts a collateral challenge in a state forum, a federal court may, pursuant to the "relitigation exception" of the Anti-Injunction Act, protect its decisions through the issuance of appropriate injunctive relief. As this Court

has found, the relitigation exception is necessary "to ensure the effectiveness and supremacy of federal law." *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 146 (1988).

Because the exception incorporates principles of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion), it may be invoked in a wide variety of settings. *Chick Kam Choo*, 486 U.S. at 146-147. Not only does it apply to a federal court's final adjudication of *claims*, but the exception may also find application in a federal court's resolution of certain *issues*, such as class certification, personal jurisdiction, and choice of law. This expansive nature of the relitigation exception is critical to the efficiency and fairness it is designed to achieve.

A federal court's decision to enjoin state proceedings plainly has significant implications with respect to the nation's federalist structure. Several doctrines have properly emerged, therefore, to cabin the usage of the relitigation exception in any particular case. But contrary to the suggestion of petitioners and their *amici*, the interests of states are preserved not through narrowly construing the *kinds* of federal decisions to which the relitigation exception may attach. Instead, federalism is protected through the several well-established case-by-case limitations that control *when* a federal court can and should actually invoke its equitable authority to enjoin state proceedings.

Here, the courts below properly applied the relitigation exception. None of the relevant limitations on federal power are implicated. The Court should accordingly affirm. In so doing, the Court will resolve the particular dispute at hand; but as important, the Court will reaffirm the appropriate scope of the reli-

tigation exception to the Anti-Injunction Act, which is significant in a wide array of cases.

## ARGUMENT

### THE RELITIGATION EXCEPTION TO THE ANTI-INJUNCTION ACT AUTHORIZES FEDERAL COURTS TO ENJOIN STATE COURTS FROM RELITIGATING FINALLY-DECIDED CLAIMS AND ISSUES.

Petitioners suggest that the Anti-Injunction Act (the Act) applies narrowly to "only truly substantive ruling[s]." Pet. Br. 24. They further contend that use of the relitigation exception is inappropriate here because a class determination is a "procedural ruling" issued by the federal court. *Id*. at 8. Petitioners' apparent interpretation of the Act, however, is inconsistent with precedent, would undermine the efficient and fair administration of the courts, and would upset the appropriate balance of federal and state interests in our federalist system.

The Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments.

28 U.S.C. § 2283. Congress, accordingly, has carved out three specific circumstances in which a federal court may enjoin a state proceeding. When one of the exceptions is implicated, the All Writs Act provides affirmative statutory authorization for federal courts to enjoin state proceedings. 28 U.S.C. § 1651(a). See

also *United States* v. *N.Y. Tel. Co.*, 434 U.S. 159, 172 (1977).

The third exception—that a federal court may enjoin state proceedings "to protect or effectuate its judgments"—is often referred to as the "relitigation exception." It "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court." *Chick Kam Choo*, 486 U.S. at 147. The exception, therefore, is "founded in the well recognized concepts of *res judicata* and collateral estoppel." *Ibid*. Appropriate functioning of this exception is critical, this Court found, "to ensure the effectiveness and supremacy of federal law." *Id.* at 146.

Because it incorporates principles of collateral estoppel, the relitigation exception applies to a wide variety of federal judicial decisions, not just final decisions on the merits. It has proven crucial, for example, to the management of complex multi-party litigation, such as federal multi-district proceedings.

This approach to the relitigation exception also accords with principles of federalism. Although a federal court may fashion injunctions to protect an assortment of federal determinations, several doctrines restrict the permissible usage of an injunction in any particular case. These limitations ensure that state and federal interests are properly calibrated.

### A. The Relitigation Exception Is Critical To The Efficient And Fair Administration Of The Courts.

The fundamental purpose of the relitigation exception is to preserve the "supremacy of federal law" (*Chick Kam Choo*, 486 U.S. at 146), and in so doing, to create enormous judicial efficiencies that benefit

the courts and parties alike. At bottom, the relitigation exception is rooted in the need for finality of decisions, notwithstanding the dual system of state and federal courts. See *Fernandez-Vargas* v. *Pfizer Pharm., Inc.*, 522 F.3d 55, 68 (1st Cir. 2008).

The relitigation exception achieves this end by incorporating principles of both *res judicata* and collateral estoppel. *Chick Kam Choo*, 486 U.S. at 146-147. The exception thus properly applies to a wide range of different judicial orders. This broad applicability underscores the importance of the relitigation exception, which preserves judicial resources and spares parties from continuous relitigation of otherwise-settled issues. Because an interpretation of the Act that protects this wide-ranging application to many kinds of orders is well established and fundamental to the very meaning of the relitigation exception, it is not, as petitioners contend, an "enlarge[ment]" of the exception "by loose statutory construction." Pet. Br. 14.

*1. Judicial efficiency and finality inform the relitigation exception.*

The relitigation exception to the Anti-Injunction Act reflects a fundamental need in the judicial system for efficient and final resolution of disputes. This Court has long recognized the necessity of finality and repose. "It is just as important that there should be a place to end as that there should be a place to begin litigation." *Stoll* v. *Gottlieb*, 305 U.S. 165, 172 (1938). There is a "historic wisdom in the value of repose." *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197, 219 (2005) (internal quotation omitted). Indeed, it is "[a] fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, * * * that a

'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies.'" *Montana* v. *United States*, 440 U.S. 147, 153 (1979) (alteration omitted) (quoting *Southern Pac. R.R.* v. *United States*, 168 U.S. 1, 48-49 (1897)).

Collateral estoppel and *res judicata* are designed to ensure both efficiency and fairness. As this Court has explained, "[c]ollateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 326 (1979). See also *Lytle* v. *Household Mfg., Inc.*, 494 U.S. 545, 553 (1990) ("Collateral estoppel protects parties from multiple lawsuits and the possibility of inconsistent decisions, and it conserves judicial resources."); *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980) ("As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.").

The history of the relitigation exception underscores that these values lie at its heart. In 1948, Congress codified the exceptions to the Anti-Injunction Act for the express purpose of superseding this Court's decision in *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118 (1941), and to "restore 'the basic law as generally understood and interpreted prior to the *Toucey* decision.'" *Mitchum* v. *Foster*, 407 U.S. 225, 236 & n.21 (1972) (citing H.R. Rep. No. 80-308,

(1947)) (recounting history of Anti-Injunction Act exceptions). Congress explicitly and approvingly referenced the "vigorous dissenting opinion" in *Toucey* as motivation for the restoration of power to the federal courts. *Ibid.* Justice Reed's dissent in *Toucey*, in turn, argued that a robust relitigation exception is necessary for efficient administration of justice. 314 U.S. at 143-145 (Reed, J., dissenting). Without a relitigation exception,

> a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be only the basis for a plea of res judicata which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled by the former adjudication.

*Id.* at 144. An injunction ground in the relitigation exception, Justice Reed explained, "forbids parties bound by its decree to fight the battle over on another day and field." *Ibid.*

Justice Reed's dissent was by no means an isolated observation. Prior to *Toucey*'s repudiation of the common-law doctrine, the lower courts routinely focused on the efficiency of finality engendered by the common-law relitigation exception. "[U]seless and baseless litigation by subsequent suits in courts, with no appellate jurisdiction to relitigate issues decided in a federal court * * * inflict[s] ample injury to sustain a suit in equity." *St. Louis-San Francisco Ry.* v. *McElvain*, 253 F. 123, 135 (E.D. Mo. 1918). The relitigation exception thus prevents "one * * * party to the original suit * * * from relitigating the questions of right which have already been determined." *Wil-*

*son* v. *Alexander*, 276 F. 875, 880 (5th Cir. 1921). In restoring federal law to the pre-*Toucey* standards through the 1948 amendment (see *Mitchum*, 407 U.S. at 236 & n.21), there can be no doubt that Congress expressly sought to restore to the federal courts the authority to protect their orders, and thereby ensure finality of judgment.

And this is precisely how the lowers have seen the relitigation exception following the 1948 codification. Indeed, courts routinely note the efficiency and repose engendered by it. As one court explained:

> In a case such as this it would be a disservice not only to the defendants, but also to the state judiciary, to allow the entire record to be placed in the lap of the New York State courts to be argued over by lawyers and puzzled over by judges for years to come. While comity requires respect for the ability of the state courts to decide the issue of res judicata properly, it also requires sympathy for their calendar problems and for the task that would confront them were this litigation to be imposed upon them.

*Browning Debenture Holder's Comm.* v. *DASA Corp.*, 454 F. Supp. 88, 105 (S.D.N.Y.), aff'd, 605 F.2d 35 (2d Cir. 1978). The First Circuit has similarly explained that "[a]pplication of the exception (1) reinforces the preclusive effect of federal court judgments, (2) ensures the finality of federal court decisions, and (3) prevents harassment through repetitive state court proceedings of those litigants prevailing in federal court." *Fernandez-Vargas*, 522 F.3d at 68. See also *In re Nat'l Student Mktg. Litig.*, 655 F. Supp. 659, 663 (D.D.C. 1987) ("[T]he relitigation exception was adopted precisely to prevent repetitive suits generat-

ing unnecessary litigation by parties and needless friction between the courts.").

Indeed, whenever there exists "contemporaneous exercise of concurrent jurisdictions, * * * by state and federal courts," principles of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" routinely come into play. *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976) (internal quotation omitted). Preservation of federal court decisions, and the efficiency and fairness this doctrine begets, is evident throughout a wide variety of federal litigation.

*2. The relitigation exception may appropriately attach to a broad variety of federal decisions.*

Petitioners appear to claim (Pet. Br. 24) that the injunction in this case was improper because a ruling on class certification is separate from a final decision adjudicating the merits underlying a suit. This argument ignores the fact that the relitigation exception "is founded in the well-recognized concepts of *res judicata and collateral estoppel*," and thus incorporates *both* of those doctrines. See *Chick Kam Choo*, 486 U.S. at 147 (emphasis added).

Collateral estoppel, by its very nature, may attach to judicial decisions other than a final judgment. "It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion." *Christo* v. *Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000). Thus, pursuant to the collateral-estoppel doctrine, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a

different cause of action involving a party to the first case." *Allen*, 449 U.S. at 94. Collateral estoppel is expansive because it "can apply to preclude relitigation of both issues of law and issues of fact if those issues were conclusively determined in a prior action." *United States* v. *Stauffer Chem. Co.*, 464 U.S. 165, 170-171 (1984).

A federal court's final resolution of a particular *issue* therefore may trigger the relitigation exception, regardless of whether the court has resolved the underlying *claim*. Indeed, courts apply the relitigation exception to federally decided *issues* in a wide variety of contexts. The breadth of the relitigation doctrine's application is ultimately essential to its purpose of ensuring supremacy of federal law and creating the substantial efficiency that this finality ensures. Several applications of the relitigation exception have proven critical for the business community:

**Class certification.** As respondent correctly explains (Resp. Br. 17-31), application of the relitigation exception is sometimes appropriate in the context of class-certification determinations. Otherwise, "[r]elitigation can turn even an unlikely outcome"—the certification of a highly inappropriate class—"into reality." *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 333 F.3d 763, 766 (7th Cir. 2003). The exception thus "permits a federal court to issue an injunction that will stop such a process in its tracks and hold *both* sides to a fully litigated outcome, rather than perpetuating an asymmetric system in which class counsel can win but never lose." *Id.* at 767.

This doctrine is essential because an enormous number of lawyer-driven class action lawsuits are filed annually, with many overlapping class actions

seeking relief for the same underlying conduct. As one report recently explained, 2,354 class actions were filed in federal court between January and June 2007 alone. *See* Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act of 2005 on the Federal Courts*, Federal Judicial Center, at 3, Apr. 2008, *available at* http://tinyurl.com/273h2bh. In such cases, a "parallel state action[]" may create a "particularly significant" risk of undermining federal resolution of complex litigation. *In re Diet Drugs*, 282 F.3d 220, 236 (3d Cir. 2002) (discussing jurisdiction exception to the Anti-Injunction Act). Indeed, in PLAC's experience the same class-action attorneys will bring virtually the same claim in numerous forums throughout the country, using plaintiffs as pawns, hoping to win just once. Cf. *Thorogood* v. *Sears, Roebuck & Co.*, 624 F.3d 842 (7th Cir. 2010). The relitigation exception empowers courts to ensure that a large number of different class action suits in multiple courts cannot have the effect of nullifying a federal decision. See *In re Bridgestone/Firestone*, 333 F.3d at 766.

**Multi-district litigation.** As with enforcing their class-action determinations in appropriate contexts, federal courts sometimes also require injunctive power to protect a multi-district litigation from inappropriate disruption by parallel state proceedings. That is precisely what occurred in this case. See Resp. Br. 3. Similarly, in *Blue Cross of California* v. *SmithKline Beecham Clinical Laboratories, Inc.*, 108 F. Supp. 2d 130, 136 (D. Conn. 2000), the district court enjoined the prosecution of state actions in order to protect its ability to resolve a complex MDL. And in *Winkler* v. *Eli Lilly & Co.,* 101 F.3d 1196, 1202 (7th Cir. 1996), the Seventh Circuit used the related jurisdiction-preserving exception, finding that

"courts have extended the exception to consolidated multidistrict litigation, where a parallel state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation."

The multidistrict litigation mechanism is a necessary component of modern litigation, and ensures coordination across diverse actions seeking relief arising out of the same underlying circumstances. Indeed, "Congress established MDL protocols" specifically "to encourage efficiency." *In re Guidant Corp., Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863, 867 (8th Cir. 2007). And this process has worked: "[t]he MDL Statute has proven to be a useful procedural tool for consolidating thousands of related cases pending in federal courts and has led to substantial judicial and party savings." Yvette Ostolaza & Michelle Hartmann, 26 REV. LITIG. 47, 75 (2007). The exceptions to the Anti-Injunction Act have regularly served as a critical means of precluding parallel state proceedings from derailing federal MDLs. While the question whether such an injunction is necessary in a specific case is of course highly idiosyncratic and the circumstances where such injunctions may be necessary are limited, the relitigation and jurisdiction-preserving exceptions are important tools the federal courts use to manage complex litigation in appropriate cases.

**Choice of law.** A federal court's determination of a choice of law question may, in certain cases, have preclusive effect in a subsequent suit. Thus, a federal court may issue an injunction through the relitigation exception to preclude reconsideration of a choice-of-law decision in state proceedings. *See Chick Kam Choo*, 486 U.S. at 148-149. See also *Quintero* v. *Klaveness Ship Lines*, 914 F.2d 717, 721 (5th Cir.

1990) ("We must conclude that the district court did not abuse its discretion by enjoining Mr. Quintero from relitigating the choice-of-law issue in Louisiana state court.").

**Personal jurisdiction.** If a federal court grants a motion to dismiss for lack of personal jurisdiction, this order may also form the basis of an injunction precluding the losing party from relitigating the issue in a state forum. See *Bordelon* v. *Jefferson Feed & Garden Supply, Inc.*, 703 F. Supp. 25, 27-28 (E.D. La. 1988) ("The Court finds that the personal jurisdiction issue in the case at bar fits within the relitigation exception to the Anti-Injunction Act.").

**Compelling arbitration.** Likewise, a federal court's decision to compel arbitration is entitled to protection against challenge in state court. *Am. Heritage Life Ins. Co.* v. *Orr*, 294 F.3d 702, 714 n.3 (5th Cir. 2002) (Dennis, J., concurring). A federal court may enjoin a "state-court suit [that] seeks to relitigate the validity of the arbitration clause and obtain judicial resolution of the underlying dispute." *Great Earth Cos.* v. *Simons*, 288 F.3d 878, 894 (6th Cir. 2002). See also *TranSouth Fin. Corp.* v. *Bell,* 149 F.3d 1292, 1297 (11th Cir. 1998) ("When a federal court has ordered arbitration, a stay of the state-court action may be necessary to insure that the federal court has the opportunity to pass on the validity of the arbitration award.").

**Enforcement of an arbitral award.** And when a party enforces an arbitral award in federal court, a district court may enjoin attempts by the losing party to frustrate execution of the award in state court. See, *e.g.*, *G.C. & K.B. Invs., Inc.* v. *Wilson*, 326 F.3d 1096, 1106-1107 (9th Cir. 2003); *United States* v. *Am.*

*Soc'y of Composers, Authors & Publishers (In re Karmen),* 32 F.3d 727, 731 (2d Cir. 1994).

**Enforcement of a federal judgment.** In a similar vein, a federal court may issue an injunction pursuant to the relitigation exception to enjoin efforts to enforce a federal judgment in state courts, where the state proceedings are an attempt to reopen the federal judgment. See *Flanagan* v. *Arnaiz*, 143 F.3d 540, 545-546 (9th Cir. 1998).

These applications of the relitigation exception to specific legal determinations in ongoing litigation are frequently of critical importance to the business community and other litigants. And they are largely uncontroversial. Furthermore, these are just a sampling of the circumstances in which the relitigation exception has appropriately been held to apply. The point is that, by empowering federal courts to protect their decisions against collateral challenge, the relitigation exception helps foster finality and efficiency in the resolution of disputes. That is in the interest of the courts, and of litigants.

### B. The Relitigation Exception And Its Limitations Accord With Principles Of Federalism.

Because the relitigation exception enables federal courts to enjoin state proceedings, an injunction must balance state and federal interests. Cognizant of these implications, the federal courts have developed several limitations on the exception to ensure that state interests are properly preserved. Thus, the contention by petitioners and their *amici* that the exception must be "narrowly construed" (Pet. Br. 14; see also Am. Assoc. Justice Br. 5), is satisfied not by limiting the Act to certain types of determinations or

cases, but instead by the limiting doctrines that courts already apply to cabin when they will issue injunctions addressing ongoing state-court litigation.

In our federalist system, it is little surprise that state and federal judicial systems may occasionally overlap. Indeed, in certain circumstances, "simultaneous litigation in state and federal courts" may be unavoidable—"one of the costs of our dual court system." *Parsons Steel, Inc.* v. *First Ala. Bank*, 474 U.S. 518, 524-525 (1986). A broadly applicable relitigation exception that is subject to substantial limitations in its exercise properly calibrates the distinct state and federal interests at stake. Compared against similar doctrines that control other intersections between the state and federal judicial systems, it is apparent that the balance struck by the relitigation exception and its limitations lies in the heartland of appropriate federalism.

*1. Several well-established limitations on the relitigation exception ensure that state interests are protected.*

Several overlapping doctrines limit the applicability of the relitigation exception. These doctrines, alone and in combination, operate to protect state courts from inappropriate interference.

**Final resolution.** The relitigation exception attaches only to a select set of federal judicial decisions. By its terms, the exception applies to "judgments" rendered by a federal court. Although judgments in this context is a necessarily broad concept due to the incorporation of collateral estoppel principles (see 17A Wright & Miller, FEDERAL PRACTICE & PROCEDURE § 4226 (3d ed. 2010)), the "judgment" requirement creates tangible limitations nonethe-

less. See Fed. R. Civ. P. 54(a) (defining judgment for purposes of the Federal Rules of Civil Procedure as "a decree and any order from which an appeal lies"). Non-final, temporary, or intermediary decisions cannot form the basis for an injunction. For example, the exception does not attach to a federal court's rejection of a provisional class settlement, because such an order is inherently transitory. See *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.* (*In re G.M.*), 134 F.3d 133, 146 (3d Cir. 1998). On the other hand, just as an appellate court may review any order incorporated by a judgment, so too does the relitigation exception attach to "any order from which an appeal lies" and any order necessary to a court's judgment.

**Full faith and credit.** Under the Full Faith and Credit Act, 28 U.S.C. § 1738, federal courts must respect state court judgments regarding issue or claim preclusion. In *Parsons Steel*, 474 U.S. at 524, the Court harmonized the Anti-Injunction Act with the Full Faith and Credit Act by explaining that the relitigation exception of the Anti-Injunction Act is applicable only "to those situations in which the state court has not yet ruled on the merits of the res judicata issue." If a state court "has finally rejected a claim of res judicata, then the Full Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision." *Ibid*. As a result, "[c]hallenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court." *Id*. at 525. In this way, federal courts cannot become a forum to re-

litigate state judgments. See *In re G.M.*, 134 F.3d at 141-143.[2]

**Temporality.** The relitigation exception also applies only to judgments that a federal court has already entered. A party cannot seek to enjoin state proceedings on the basis of a judicial order that could be entered in the future. See *Garcia* v. *Bauza-Salas*, 862 F.2d 905, 910 (1st Cir. 1988) ("Since the Commonwealth litigation was concluded before any federal determinations were made, the injunction was not necessary either to prevent relitigation of matters already decided or to protect a judgment previously entered by a federal court."). In other words, a litigant may not use the Act preemptively.

**Limited *res judicata*.** A number of courts have limited the scope of the *res judicata* doctrine incorporated by the relitigation exception, holding that "the relitigation exception's incorporation of res judicata extends only to those claims *actually litigated* in federal court, not to claims which merely could have been litigated." *Jones* v. *St. Paul Cos.*, 495 F.3d 888, 892 (8th Cir. 2007) (emphasis added). These courts cite *Chick Kam Choo* for the proposition that the relitigation exception only "authorizes injunctions against state adjudication of issues that 'actually have been decided by the federal court.'" *Weyerhaeuser Co.* v. *Wyatt*, 505 F.3d 1104, 1110 (10th Cir. 2007) (quoting *Chick Kam Choo*, 486 U.S. at 148). To the

[2] This restriction is informed by the *Rooker-Feldman* doctrine, which generally prohibits "review of state court judgments." *In re G.M.*, 134 F.3d at 143.

extent that this approach is valid,[3] it may establish another limitation on the relitigation exception.

**Equitable discretion.** Importantly, because the All Writs Act is permissive rather than mandatory, a district court retains substantial discretion to determine whether enjoining state proceedings is appropriate in any given case. As is true across the federal courts' exercise of equitable remedies (see, *e.g.*, *eBay Inc.* v. *MercExchange, LLC*, 547 U.S. 388 (2006)), "the fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue." *Chick Kam Choo*, 486 U.S. at 151 (emphasis in original). See also *Bailey* v. *State Farm Fire & Cas. Co.*, 414 F.3d 1187, 1191 (10th Cir. 2005). Rather, "an injunction, even where allowed by the letter of the relitigation exception, remains permissive at the discretion of the federal court, which discretion should be exercised in the light of the historical reluctance of federal courts to interfere with state judicial proceedings." *Blanchard 1986, Ltd.* v. *Park Plantation, LLC*, 553 F.3d 405, 407-408 (5th Cir. 2008) (internal quotations omitted).

Accordingly, even after the threshold criteria for the relitigation exception are satisfied, a federal court must nonetheless consider whether an injunction is warranted given the totality of the circumstances. *Brown* v. *McCormick*, 608 F.2d 410, 416 (10th Cir. 1979) ("Analysis by a federal court necessarily includes general equitable principles for issuing an injunction."). Principles of comity essential to fede-

[3] Some courts, like the Ninth Circuit, "disagree with those Circuits which have concluded that the relitigation exception is limited to issues 'actually litigated' in a prior court proceeding." *Western Sys., Inc.* v. *Ulloa*, 958 F.2d 864, 870 (9th Cir. 1992).

ralism feature prominently in this analysis. See, *e.g.*, 17A Wright & Miller, *supra*, § 4226. Likewise, when a federal court decides to issue an injunction, these same considerations inform the scope and features of the particular injunctive relief. Federal courts are well equipped to protect state interests through the careful exercise of judicial discretion.

#### 2. *The relitigation exception appropriately calibrates federal and state interests.*

The relitigation exception and its limitations strike the correct balance between state and federal interests. Given the overlapping nature of the state and federal courts, the dual judicial systems intersect in a host of different ways. Across these varying doctrines, one theme holds common: state and federal interests are balanced by broad rules that are checked by limited exceptions, and federal courts are empowered with discretionary tools to ensure the proper calibration of federalism.

For nearly one hundred and fifty years, federal courts have employed the relitigation exception in a manner respectful of the balance between state and federal interests. Indeed, in 1941, Justice Reed noted that "for more than half a century there has been a widely accepted rule supporting the power of federal courts to prevent relitigation." *Toucey*, 314 U.S. at 152-153 (Reed, J., dissenting). And long before *Toucey*, in *French* v. *Hay*, 89 U.S. (22 Wall.) 250, 253 (1874), the Court explained that the Anti-Injunction Act "has no application" where a federal court has already exercised jurisdiction over a matter. A rule to the contrary, this Court found, would constitute "a great defect in our Federal jurisprudence" and "a reproach upon the administration of justice," because it would render federal judgments "nullities" and re-

quire the parties to "engage[e] in a new conflict elsewhere." *Ibid*. It is as true today as it was in 1874 that such an approach "would be contrary to the plainest principles of reason and justice." *Ibid*. See also *Dietzsch* v. *Huidekoper*, 103 U.S. (13 Otto) 494, 497 (1880) ("[T]he court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by a direct proceeding.").

When Congress codified the relitigation exception, it embraced the balance of federalism long adopted by this Court. It was the balance "indispensable to the harmonious working of our systems of federal and state jurisprudence." *Starr* v. *Chicago R.I. & Pac. Ry.*, 110 F. 3, 6 (D. Neb. 1901), aff'd sub nom. *Prout* v. *Starr,* 188 U.S. 537 (1903). The relitigation exception thus "represent[ed] Congress' considered judgment as to how to balance the tensions inherent in [a federal] system." *Chick Kam Choo*, 486 U.S. at 146.

The same balancing approach is also evident in discretionary abstention doctrines this Court has adopted to mitigate friction between state and federal courts in other contexts. The Court has "held that federal courts may decline to exercise their jurisdiction, in otherwise exceptional circumstances, where denying a federal forum would clearly serve an important countervailing interest, for example, where abstention is warranted by considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration." *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (quotation and citations omitted).

Under the *Colorado River* doctrine, for example, principles underscoring the "regard for federal-state relations" have led to limited "circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration." 424 U.S. at 817-818. This analysis, which seeks to preserve both federalism and judicial efficiency, turns on the discretion of the federal court: "In assessing the appropriateness of dismissal in the event of an exercise of concurrent jurisdiction, a federal court may also consider such factors as the inconvenience of the federal forum; the desirability of avoiding piecemeal litigation; and the order in which jurisdiction was obtained by the concurrent forums." *Id*. at 818 (citations omitted). The balance here is no different.

Likewise, even absent concurrent state proceedings, the *Burford* abstention doctrine balances state and federal interests where "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Colorado River*, 424 U.S. at 814. See *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943). Like others, this doctrine is designed to break the "whole cycle of federal-state conflict." *Burford*, 319 U.S. at 332. Again, the discretion of federal courts is critical to appropriately balance state and federal interests.

The discretionary approach to the intersection of state and federal interests is also evident in the *Ex parte Young* doctrine. In *Ex parte Young*, 209 U.S. 123 (1908), the Court found that state officials may be sued in federal court, notwithstanding protections created by the Eleventh Amendment. But the Court has "described certain types of cases that formally

meet the *Young* requirements of a state official acting inconsistently with federal law * * * that [nonetheless] stretch that case too far and would upset the balance of federal and state interests that it embodies." *Papasan* v. *Allain*, 478 U.S. 265, 277 (1986). Thus *Ex parte Young* is restrained to focus on prospective conduct, not relief for past wrongs. *Id*. at 277-278. Although the federal courts may hold substantial power over state interests, state interests are preserved via judicial discretion. See *Idaho* v. *Coeur d'Alene Tribe*, 521 U.S. 261, 278 (1997) ("Our recent cases illustrate a careful balancing and accommodation of state interests when determining whether the *Young* exception applies in a given case.").[4]

Congress too has struck the same balance between state and federal courts. The recent Class Action Fairness Act (CAFA), Pub. L. 109-2, 119 Stat. 9, is one highly analogous example of a careful balancing of state and federal interests. There, Congress expanded federal jurisdiction over class actions by, among other provisions, providing for minimal diversity and aggregated damages for amounts in controversy. It did so, in part, because it found that parallel state and federal proceedings generate "enormous waste" because "multiple judges of different courts must spend considerable time adjudicating precisely

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[4] Many other doctrines incorporate a similar balancing approach. The Court has taken precisely the same tact, for example, in balancing state criminal proceedings with federal civil rights actions. In *Younger* v. *Harris*, 401 U.S. 37, 46 (1971), the Court noted "the fundamental policy against federal interference with state criminal prosecutions." But against this general principle that federal courts must abstain from state criminal proceedings, the Court recognized several circumstances in which federal action would be justified. *Id*. at 45, 53-55.

the same claims asserted on behalf of precisely the same people." S. Rep. No. 109-14, at *23 (2005), reprinted in 2005 U.S.C.C.A.N. 3, 23. This waste occurs because "[p]laintiffs' lawyers frequently file copycat class actions in various state courts around the country, clogging judges' dockets and forcing judges to duplicate each other's work." *Id.* at 60. "[E]fficiency and fairness," Congress ultimately concluded, were best served by consolidating claims in federal courts. *Id.* at 38.

Not only does federal jurisdiction create efficient resolution of claims, but Congress determined that expanded federal court jurisdiction over class actions was an appropriate balance of state and federal interests. "The effect of class action abuses in state courts is being exacerbated by the trend toward 'nationwide' class actions, which invite one state court to dictate to 49 others what their laws should be on a particular issue, thereby undermining basic federalism principles." S. Rep. No. 109-14, at *24. Indeed, Congress was of the view that precluding federal primacy in class actions "flies in the face of basic federalism principles by embracing the view that other states should abide by a deciding court's law whenever it decides that its own laws are preferable to other states' contrary policy choices." *Id.* at 26.

Congress's solution, therefore, was to expand the federal courts' jurisdiction over class action proceedings. But Congress nonetheless recognized that state interests necessitated keeping some actions in state court. Congress carved out certain exceptions to federal jurisdiction over class actions, such as actions that involve less than an aggregate amount of $5 million (28 U.S.C. § 1332(d)(2)) as well as other suits that are substantially local in nature (*id.*

§ 1332(d)(4)). Moreover, for the category of cases in which state and federal actions most overlap, Congress bestowed discretion on the federal courts to consider the "interests of justice" and the "totality of the circumstances" to determine whether an action belongs in a state or federal forum. *Id.* § 1332(d)(3).

The relitigation exception strikes the same chord. Although federal courts have the ability to protect their decisions against collateral challenge in state courts, several limitations ensure that state interests are preserved. And even when an injunction is permissible, federal courts must nonetheless exercise discretion in deciding whether an injunction is appropriate. This doctrine, accordingly, represents the consistent doctrine this Court and Congress have taken to balancing the federalism interests inherent in our nation's overlapping judicial systems.

### C. The Lower Courts Properly Invoked The Relitigation Exception.

Here, the relitigation exception properly supports an injunction of the state court proceeding. Respondent has addressed this point exhaustively (see Resp. Br. 17-30), so suffice it to say that the federal court's denial of class certification in this case is precisely the sort of decision to which collateral estoppel may attach. And none of the relevant limitations find applicability here. No state court, for example, has previously adjudicated the collateral estoppel value of the federal decision in *McCollins*. Moreover, *McCollins* decided the same issues implicated by *Smith*. The district court, therefore, was correct to exercise its discretion and subsequently conclude that equity warranted an injunction.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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## APPENDIX A

## CORPORATE MEMBERS OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC.[1]

3M
Altec Industries
Altria Client Services Inc.
Arai Helmet, Ltd.
Astec Industries
Bayer Corporation
Beretta U.S.A Corp.
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
Boeing Company
Bombardier Recreational Products
BP America Inc.
Bridgestone Americas Holding, Inc.
Brown-Forman Corporation
Caterpillar Inc.
Chrysler Group LLC
Continental Tire the Americas LLC
Cooper Tire and Rubber Company
Crown Cork & Seal Company, Inc.
Crown Equipment Corporation
Daimler Trucks North America LLC
The Dow Chemical Company
E.I. duPont de Nemours and Company
Eli Lilly and Company
Emerson Electric Co.
Engineered Controls International, Inc.
Environmental Solutions Group
Estee Lauder Companies
Exxon Mobil Corporation

[1] As of December 17, 2010.

Ford Motor Company
General Electric Company
General Motors Corporation
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
Hawker Beechcraft Corporation
Honda North America, Inc.
Hyundai Motor America
Illinois Tool Works, Inc.
International Truck and Engine Corporation
Isuzu Motors America, Inc.
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Johnson Controls, Inc.
Joy Global Inc., Joy Mining Machinery
Kawasaki Motors Corp., U.S.A.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Kraft Foods North America, Inc.
Leviton Manufacturing Co., Inc.
Lincoln Electric Company
Magna International Inc.
Marucci Sports, L.L.C.
Mazak Corporation
Mazda (North America), Inc.
Medtronic, Inc.
Merck & Co., Inc.
Michelin North America, Inc.
Microsoft Corporation
Mitsubishi Motors North America, Inc.
Mueller Water Products
Niro Inc.
Nissan North America, Inc.

Novartis Pharmaceuticals Corporation
PACCAR Inc.
Panasonic
Pella Corporation
Pfizer Inc.
Porsche Cars North America, Inc.
Purdue Pharma L.P.
Remington Arms Company, Inc.
RJ Reynolds Tobacco Company
Schindler Elevator Corporation
SCM Group USA Inc.
Segway Inc.
Shell Oil Company
The Sherwin-Williams Company
Smith & Nephew, Inc.
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Synthes (U.S.A.)
Techtronic Industries North America, Inc.
Terex Corporation
TK Holdings Inc.
The Toro Company
Toyota Motor Sales, USA, Inc.
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Company
Whirlpool Corporation
Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.