SQUIRE SANDERS

US SUPREME COURT UNANIMOUSLY HOLDS: STATE ACTION DOES NOT CONSTITUTE "MASS ACTION" UNDER CAFA

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On January 14, 2014, in a unanimous opinion, the US Supreme Court held in *State of Mississippi, ex rel. Jim Hood, Attorney General v. AU Optronics Corp.,* No. 12-306, that the Mississippi Attorney General's antitrust lawsuit against LCD manufacturers does not constitute a "mass action" under the federal Class Action Fairness Act (CAFA). Resolving a Circuit split, the Court found that a lawsuit filed by a state in state court cannot be removed as a "mass action" under CAFA.

This is an important ruling for companies exposed to class actions, particularly antitrust and consumer class actions.

"Mass Action" Under CAFA

The Court began its analysis with the definition of "mass action" under CAFA: "any civil action . . . in which monetary claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." Relying on CAFA's "plain text," the Court found that Mississippi was the only named plaintiff and rejected the defendant manufacturers' argument that individual consumers – on whose behalf Mississippi was suing – were the real parties in interest. "[T]he statute says '100 or more persons,' not '100 or more named or unnamed real parties in interest.' Had Congress intended the latter, it easily could have drafted language to that effect."

The Court further found that defendants' reading of CAFA would produce "an administrative nightmare that Congress could not possibly have intended," as district courts would only have CAFA jurisdiction over unnamed parties whose claims exceed $75,000. Courts would have to grapple with how to identify the unnamed parties, how to evaluate the amount of their claims, and then what to do with individuals whose claims were valued at less than $75,000. The Court found "it unlikely that Congress intended that federal district courts engage in these unwieldy inquiries."

Definitive Answer from the Supreme Court

With this definitive ruling from the Supreme Court, a *parens patrie* lawsuit filed by a state in state court will remain there, even though the same lawsuit filed by the real parties in interest would be removable under CAFA. This means that we are likely to see more cooperation between the plaintiffs' bar and the offices of states attorney general in pursuit of these types of lawsuits. And in situations where both a state and private parties sue, defendants may have to simultaneously defend the same lawsuit in state and federal court, providing duplicative discovery and risking inconsistent and conflicting judgments.

About Squire Sanders' Class Action & Multidistrict Litigation Practice

Squire Sanders' Class Action & Multidistrict Litigation Practice represents clients – across all industries – in nationwide, multistate and statewide class actions, mass actions and multidistrict litigation (MDL).

We have particularly strong experience in the most aggressive class action states, including California, Florida, Illinois, New Jersey, New York and Ohio.

Clients regularly retain us as their national coordinating counsel in their most complex mass actions and MDLs. We have also served as court-approved liaison counsel in a number of MDL proceedings, including appearances before the Judicial Panel on Multidistrict Litigation. For further Information on the practice or how we can provide assistance, please contact one of the lawyers listed in this publication.

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