PORZIO
BROMBERG & NEWMAN P.C.
ATTORNEYS AT LAW

Class Action Newsletter

Attorney Advertising

January 2014

EDITOR-IN-CHIEF

Steven P. Benenson
973.889.4339
spbenenson@pbnlaw.com

CLASS ACTION ATTORNEYS

Steven P. Benenson
John T. Chester
Roy Alan Cohen
Eric L. Probst
Jeffrey M. Pypcznski

STAY CONNECTED

More On Us

Join Our Mailing List!

Supreme Court Holds State AG Actions Not Removable As Mass Actions Under CAFA

By John T. Chester

In a unanimous opinion authored by Justice Sotomayor, the Supreme Court in *Mississippi ex rel. Hood v. AU Optronics Corp.* (slip opinion) has held that a *parens patriae* suit filed by the State of Mississippi seeking restitution for injuries suffered by the State's citizens is not a "mass action" that may be removed to federal court under the Class Action Fairness Act of 2005 ("CAFA").

Congress enacted CAFA to expand federal jurisdiction out of concern that diversity jurisdiction requirements had functioned to keep significant cases in state courts rather than permitting their filing in, or removal to, federal courts. Accordingly, CAFA made it easier for defendants to remove two types of actions to federal court -- class actions and "mass actions."

In *Hood*, the Mississippi Attorney General sued manufacturers of LCDs (liquid crystal displays) in state court, alleging that they had formed an international cartel to restrict competition and raise prices for LCDs. Suit was brought under the Mississippi Antitrust Act and the Mississippi Consumer Protection Act, and sought restitution for the State's own LCD purchases and "the purchases of its citizens." *Hood*, slip op. at 3.

The manufacturers removed the case to federal court on the basis that it was a removable mass action under CAFA, which defines a "mass action" as any civil action (except a class action) "in which monetary relief 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, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the [$75,000] jurisdictional amount requirements under subsection (a)." 28 U.S.C. § 1332(d)(11)(B)(i).

On appeal, the question before the Supreme Court was whether CAFA's mass action definition includes a suit brought by fewer than 100 named plaintiffs on the theory that there may be 100 or more persons who are real parties in interest as beneficiaries of the plaintiffs' claims. *Hood*, slip op. at 6. The manufacturers argued that the case was a mass action because in referring to "claims of 100 or more persons," CAFA means "the *persons* to whom the claim belongs, i.e., the real parties in interest to the claims, regardless of whether those persons are named or unnamed." *Id*. The Court, however, rejected this position, concluding that Congress meant for the "100 or more persons" and the proposed "plaintiffs" to be one and the same. *Id*. at 6-7. The Court also noted:

> The mass action provision . . . functions largely as a backstop to ensure that CAFA's relaxed jurisdictional rules for class actions cannot be evaded by a suit that names a host of plaintiffs rather than using the class device. . . . [I]f Congress had wanted representative actions brought by States as sole plaintiffs to be removable under CAFA on the theory that they are in substance no different from class actions, it would have done so through the class action provision, not the one governing mass actions.

Accordingly, the Court held that the action was not a

mass action removable under CAFA.

The *Hood* decision is significant in that manufacturers and other businesses have faced a growing number of *parens patriae* actions brought by state attorneys general -- many of which look and feel very much like class actions -- and, under the Supreme Court's holding, will not be able to invoke CAFA jurisdiction to remove such suits from state to federal court.

John T. Chester is Counsel with Porzio, Bromberg & Newman P.C. in Morristown, New Jersey, and is a member of the firm's Litigation Practice and Life Sciences Groups. John litigates complex commercial, class-action, and pharmaceutical and medical-device product-liability matters in state and federal trial and appellate courts across the country.