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Supreme Court Holds That State Attorney General Suits Brought on Behalf of a State's Residents Cannot Be Removed to Federal Court Under the Class Action Fairness Act

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Introduction

On January 14, 2014, in *Mississippi ex rel. Hood v. AU Optronics Corp.,* the U.S. Supreme Court unanimously held that lawsuits brought by state attorneys general seeking, among other things, recovery of funds for the benefit of a state's residents, do not qualify for removal to federal court under the "mass action" provision of the Class Action Fairness Act of 2005. The ruling is significant for corporate defendants because they will have to defend such suits, including suits seeking redress for violations of state consumer protection laws, in state court. Because state attorneys general, and a significant segment of the class action bar, prefer litigating in state court, it may be that the effect of the Supreme Court's decision will be to increase state attorney general suits brought on behalf of a state's residents, with the active assistance of class action plaintiffs' lawyers.

Background

Under the Class Action Fairness Act of 2005 ("CAFA"), defendants in civil suits may remove certain "mass actions" from state to federal court. CAFA defines a "mass action" as "any civil 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 question or law or fact."[1] CAFA also contains a "general public" exception which excludes from the "mass action" definition "any civil action in which…all the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorized such action."[2]

Mississippi v. AU Optronics Corp.

On March 25, 2011, Jim Hood ("Hood"), the state attorney general of Mississippi, filed a complaint against several manufacturers, marketers, sellers and distributors of LCD panels, which are components of computers, televisions and a wide variety of other electronic devices. The complaint alleged that the defendants had engaged in price-fixing in violation of the Mississippi Consumer Protection Act ("MCPA") and the Mississippi Antitrust Act by forming an international cartel that conspired to artificially limit the supply and increase the price of LCD panels between 1996 and 2006, thereby increasing the price of every product containing an LCD panel during that time period.[3] The complaint also alleged that several of the defendants and their co-conspirators had pled guilty to criminal charges brought by the U.S. Department of Justice and paid more than $890 million in criminal fines to the U.S. government. However, none of those fines were dedicated to recompense Mississippi's consumers and governmental entities, nor were funds set aside for civil penalties owed to states under state laws; hence Attorney General Hood's lawsuit.[4]

The defendants removed the case to federal district court in Mississippi under CAFA, and Hood removed to remand. The district court granted Hood's motion, holding that the case qualified as a "mass action"[5] under CAFA, but fell within CAFA's "general public" exception.[6]

The Court of Appeals for the Fifth Circuit reversed. The appellate court held that the real parties in interest in Hood's suit were the state and individual citizens who purchased the products within Mississippi and that, therefore, the "mass action" requirement under CAFA was satisfied.[7] The Fifth Circuit held that for the same reason, the case did not fall within CAFA's "general public" exception. The court reasoned that the fact that individual citizens were the real parties in interest meant that the claims were not asserted on behalf of the general public.[8]

Hood sought a writ of certiorari noting a split in the Circuits on this issue, and the Supreme Court granted the writ.[9] In a unanimous opinion, the Supreme Court reversed the Fifth Circuit decision, holding that because Mississippi was the only named plaintiff in the lawsuit, there was no basis for CAFA jurisdiction under a "mass action" theory.

The Supreme Court rejected the Fifth Circuit's rationale that CAFA's provisions covered lawsuits brought by a state attorney general where there were 100 or more unnamed persons who are real parties in interest as beneficiaries to any of the plaintiff's claims. The Supreme Court also noted that CAFA's "mass action" provision makes references to "plaintiffs," the parties who are proposing to join their claims in a single trial.[10] The Court held that the term "plaintiff" is understood to be "a party who brings a civil suit in a court of law," not "anyone, named or unnamed, whom a suit may benefit."[11]

Impact

Although the case in question was an antitrust suit, the Supreme Court's holding likely would apply to suits for violation of state consumer protection statutes as well. As discussed above, companies within the reach of state false advertising and other state consumer protection statutes should be aware that such lawsuits brought by state attorneys general will have to be defended in state courts.

[1] 28 U.S.C. § 1332(d)(11)(B)(i).

[2] 28 U.S.C. § 1332(d)(11)(B)(ii) and (d)(11)(B)(ii)(III).

[3] *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758, 761-763 (S.D. Miss. 2012).

[4] *Id*. at 762.

[5] *Id*. at 771.

[6] *Id*. at 772-775.

[7] *Mississippi ex rel. Hood v. AU Optronics Corp*., 701 F.3d 796, 800, 802 (5th Cir. 2012)

[8] *Id*. at 802-803.

[9] *Mississippi ex rel. Hood v. AU Optronics Corp*., 81 USLW 3658 (May 28, 2013).

[10] *Id*. at *6.

[11] *Id*.