I. INTRODUCTION

On January 14, 2014, the Supreme Court, in a unanimous ruling, handed down a decision in *Mississippi ex rel. Hood v. AU Optronics Corporation*, which assists certain states attorneys general civil lawsuits by refusing to subject them to a federal law aimed at limiting class actions. The Mississippi attorney general, with the support of forty-six other states, successfully argued that *parens patriae* lawsuits did not qualify as class actions, and therefore are not capable of being removed from state court to the federal system.¹ The Supreme Court’s decision allows states to maintain their sovereignty, which affirms the power of the state to protect the well being of its citizenry, and also promotes the Class Action Fairness Act’s goal to put jurisdictional limits on class and mass actions.

II. LCD PRICE-FIXING ALLEGATIONS

In 2006 the Department of Justice began a grand jury investigation into price-fixing allegations against six liquid crystal display (“LCD”) manufacturers from Japan, Korea, and Taiwan.² The Department of Justice’s investigation revealed that AU Optronics Corporation and other LCD manufacturers orchestrated a conspiracy to fix prices on various forms of displays, a series of clearly anticompetitive actions resulting in several states attorneys general suing the manufacturers on behalf of...

the residents in their states. Many states eventually entered into settlement agreements with the LCD manufacturers, but five — Mississippi, California, Illinois, South Carolina, and Washington — decided not to settle, opting instead to pursue their cases in state court.

III. THE LOWER COURT HISTORY

A *parens patriae* lawsuit is one where the state brings a suit on behalf of its citizens for the harms and injuries suffered by them. In March 2011, the Mississippi attorney general brought this particular *parens patriae* lawsuit on behalf of the state, communities, and residents who purchased LCDs, alleging international anticompetitive actions and also price collusion in the marketplace. Mississippi claimed that the actions by the LCD manufacturers violated the Mississippi Antitrust Act (“MAA”) and the Mississippi Consumer Protection Act (“MCPA”). The state sought injunctive relief, civil penalties, restitution, punitive damages, costs, and attorney’s fees.

The LCD manufacturers removed the case to federal court, arguing that it was removable as either a class action or a mass action under the Class Action Fairness Act of 2005 (“CAFA”). In order for the suit to qualify as a class action, it must be brought pursuant to Federal Rule of Civil Procedure 23, or another similar state statute or rule of judicial procedure. Since this case was not brought pursuant to any of those, the district court held that this case did not qualify as a class action. However, the district court held that the suit did qualify as a mass action because it considered the suit to be a civil action where more than 100 persons monetary relief claims are to be tried together under a common question of

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4 The settlement amount in the private class actions against the LCD manufacturers totaled $530 Million. Karmasek, *CAFA Case is ‘Straightforward’*, supra note 2.
5 All states have an interest in ensuring that their laws are implemented, enforced, and obeyed. Richard R. leyoub & Theodore Eisenberg, *State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae*, 74 TUL. L. REV. 1859, 1863 (2000).
7 *AU Optronics Corp.*, 134 S. Ct. at 740.
8 *Id.*; Karmasek, *CAFA Case is ‘Straightforward’*, supra note 2.
10 *AU Optronics Corp.*, 134 S. Ct. at 740.
11 *Id.*
law or fact. Even though the 100 persons were unknown in this case, the district court explained that the unidentified Mississippi consumers were the real parties in interest to the claims. The district court nonetheless remanded the case under the “general public exception,” “which excludes from the ‘mass action’ definition ‘any civil action in which . . . all of the claims in the action are asserted on behalf of the general public pursuant to a State statute specifically authorizing such action.’”

The Fifth Circuit Court of Appeals reversed on the grounds that it did not fall within the “general public exception.” In applying CAFA to parens patriae cases, the various circuits have come to a split. More specifically, the circuits disagree as to whether a state parens patriae action is removable to federal court under CAFA’s mass action provision. The Fifth Circuit’s decision was contrary to three circuits with cases similar to this one brought by states attorneys general, where the federal courts remanded the cases back to the state courts. The Supreme Court felt that the circuit split was a compelling reason to grant certiorari.

IV. THE SPLIT OF AUTHORITY AND WHETHER PARENS PATRIAE ACTIONS QUALIFY AS “MASS ACTIONS”

The Supreme Court granted certiorari in order to resolve the split of authority between three Courts of Appeals and the Fifth Circuit. The point of disagreement among the split circuits, and question presented in AU Optronics Corporation, is whether a case brought by a state attorney general arising under state law on behalf of its citizens, which does not join any individually named citizens

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13 AU Optronics Corp., 134 S. Ct. at 741.
15 AU Optronics Corp., 134 S. Ct. at 741.
18 Karmasek, CAFA Case is ‘Straightforward’, supra note 2.
19 “CAFA is one area where there are now several mature circuit splits that the high court could begin to resolve. . .” Juan Carlos Rodriguez, Consumer Protection Cases to Watch in 2014, LAW360 (Jan. 1, 2014, 10:08 AM), http://www.law360.com/articles/493322/print?section=consumerprotection. “The Fourth, Seventh and Ninth Circuits have held that such attorney general actions are not removable.” Id.
20 AU Optronics Corp., 134 S. Ct. at 741.
within the state, may be removed to federal court under the mass action provision of CAFA, which requires 100 or more named plaintiffs.\footnote{Mary Pat Dwyer, Petition of the Day, SCOTUSBLOG (May 14, 2013, 9:27 PM), http://www.scotusblog.com/2013/05/petition-of-the-day-452/. See also AU Optronics Corp., 134 S. Ct. at 739 (describing the issue on certiorari).}

Justice Sotomayor, writing for the unanimous Court, dismissed the Fifth Circuit’s rationale that regardless of whether persons are named or unnamed, “claims of 100 or more persons” refers to real parties in interest to those claims.\footnote{AU Optronics Corp., 134 S. Ct. at 742.} In dismissing this rationale, the Court first focused on Congress’ intent in specifically excluding any express language to reflect unnamed persons, as it specifically included for class actions under CAFA.\footnote{Id.} The Court noted that Congress used the phrase “named or unnamed” in its class action provision, but intentionally chose to omit that phrase from the mass action provision.\footnote{Id.} The Court gave great deference Congress’ omission of language in one section of the Act that it included in other sections of the same Act.\footnote{Dean v. United States, 556 U.S. 568, 573 (2009).} As a result, the Court dismissed the respondent’s contention that the phrase “100 or more persons” as it appears in the mass action provision, refers to unnamed and unknown individuals.\footnote{Id. at 743 (quoting Blacks Law Dictionary 1267 (9th ed. 2009)).}

The Court further disagreed with the interpretation of the word “plaintiff,” to cover all named and unnamed real parties that had an interest in the suit.\footnote{AU Optronics Corp., 134 S. Ct. at 742.} The Court stressed that the word “plaintiff” meant “a party who brings a civil suit in a court of law,” and was not intended to cover all anticipated unnamed parties with some interest.\footnote{Id. at 743 (quoting Blacks Law Dictionary 1267 (9th ed. 2009))).} The Court noted that all plaintiff’s that join a mass action must meet the diversity jurisdiction requirements of $75,000, which would cause the courts to inquire and investigate claims of an immeasurable amount of consumers if it expanded the term “plaintiff” to include all unnamed individuals.\footnote{AU Optronics Corp., 134 S. Ct. at 743.} The Court refused to adopt such an interpretation.
The Court also held that the statutory framework supported an objective reading of the mass action provision by specifically requiring that a majority of the plaintiff’s request transfer to another court, a requirement that cannot be fulfilled if they are unnamed.\(^{30}\) The Court emphasized that one of the main factors in moving a case under CAFA, is whether there are more than one hundred named plaintiffs.\(^{31}\) Regardless of whether Mississippi was bringing the case on behalf of its citizens, since there was only one named plaintiff, the case was not a mass action under the express language of CAFA.\(^{32}\) The Court ultimately held that the Mississippi attorney general could keep the consumer-protection case in state court because CAFA’s mass action provision was never intended to cover actions brought by states, and thus provided no grounds for removal to federal court.\(^{33}\)

**V. IMPACT**

Through the Supreme Court’s decision in *AU Optronics Corporation*, the split that had developed between the circuits has now been resolved. When Mississippi or other states sue to recover for harms caused to its residents, the defendant’s involved in such cases cannot force the case to be litigated in federal court, at least under CAFA’s mass action provision.\(^{34}\) This decision provides states attorneys general and plaintiff’s lawyers suing in state court the assurance that certain claims will not be removable to federal court. While, the impact of the case is yet to be seen, it appears that states attorneys general

\(^{30}\) *Id.* at 744.

\(^{31}\) *Id.* at 743, 746. The Court stated that “[t]he 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.” *Id.* at 744.

\(^{32}\) Robert Barnes, *Supreme Court Extends Protections for Multinational Companies*, WASH. POST (Jan. 14, 2014) http://www.washingtonpost.com/politics/supreme-court-extends-protections-for-multinational-companies/2014/01/14/43bf3b4c-7d36-11e3-95e6-0a7aa80874bc_story.html. Furthermore, the Court noted that Congress intended to focus solely on plaintiff’s proposed to join the suit because it included an explicit exclusion in CAFA that mass actions do not include civil actions where claims are joined by the defendant, thereby eliminating the background real party interest inquiry. *AU Optronics Corp.*, 134 S. Ct. at 746.

\(^{33}\) *Id.* at 746; Barnes, *supra* note 32.

should be less wary of large corporations trying to move every action alleging only violations of state law to the federal system.\textsuperscript{35}

Contrary to some criticism, the outcome of this case should not encourage lawsuits by states attorneys general because CAFA has never discouraged lawsuits by attorneys general.\textsuperscript{36} States attorneys general act with the purpose to protect the public, and to prevent egregious harmful actions against its consumers from occurring repeatedly.\textsuperscript{37} An important part of parens patriae actions are the scope of remedies. While private parties might benefit from attorneys general actions, the remedies sought are on behalf of the public.\textsuperscript{38} For instance, states attorneys general are less motivated by monetary relief so long as strong injunctive relief can be achieved.\textsuperscript{39}

Some argue that this ruling is contrary to Congress’ intent when enacting CAFA, to broaden federal jurisdiction to cover class actions.\textsuperscript{40} But a strict reading of the statute in reference to mass actions is not contrary to Congressional intent. Many suits filed by states attorneys general that have been removed to federal court under the mass action provision, have been remanded back to state courts based on the courts’ clear interpretation of the statute, and this decision only confirmed those previous interpretations.\textsuperscript{41} This outcome removes the potential for future unknowns regarding mass actions under CAFA, and will create consistency among the circuits moving forward, even if new strategies surface to attempt removal of these cases to federal court.

\textsuperscript{35} Kendall, \textit{supra} note 1. Although the ability for states attorneys general to maintain their state forum can reasonably be anticipated for suits brought under parens patriae.


\textsuperscript{37} Kriger & Abrams, \textit{supra} note 36.

\textsuperscript{38} Id.

\textsuperscript{39} Id.

\textsuperscript{40} In re TFT-LCD (Flat Panel) Antitrust Litig., C 07-1827 SI, 2011 WL 560593 (N.D. Cal. Feb. 15, 2011); Jessica M. Karmasek, \textit{Groups Urge U.S. SC to Protect Foreign Defendants’ Rights to Federal Forum}, L\textsc{E}G\textsc{A}L N\textsc{E}WS\textsc{L}INE (Sept. 12, 2013), http://legalnewsline.com/issues/tort-reform/244165-groups-urge-u-s-sc-to-protect-foreign-defendants-right-to-federal-forum.

\textsuperscript{41} See, \textit{e.g.}, Illinois v. AU Optronics Corp, 794 F. Supp. 2d 845, 859 (N.D. Ill. 2011) (holding that that state court suit against LCD manufacturer for price fixing antitrust violations did not qualify as a mass action under CAFA); LG Display Co., LTD., v. Madigan, 665 F.3d 768, 774 (7th Cir. 2011) (same); South Carolina v. AU Optronics Corp, 699 F.3d 385, 394 (4th Cir. 2012) (same); Nevada v. Bank of America Corp., 672 F.3d 661, 665 (9th Cir. 2012) (holding that the states attorney general suit in state court against a mortgage lender did not qualify as a mass action under CAFA).
Furthermore, this ruling came down after various decisions “that were hostile to the plaintiffs’ bar and class actions.”42 And with the support of forty-six other states arguing that the Fifth Circuit’s limitation on parens patriae was improper, the Supreme Court interpreted the plain language of the statute to resolve the circuit split. Though defendant’s like the LCD manufacturers worry about the reality of appearing in state court and adhering to local rules with concerns about paying damages twice, to private plaintiffs and state attorneys general, that was not enough to convince the Court to allow these suits removable under CAFA.43

Removal is usually sought because federal courts are often considered to be more accommodative towards defendants in cases similar to this one with LCD manufacturers.44 With this option now unavailable, defendants will have to find alternative legal grounds to necessitate removal of these cases to federal court in the future.45 Defendant’s may attempt to get around this ruling by utilizing other provisions of CAFA, or they may “argue that an attorney general parens patriae action is a class action even in the absence of an explicit underlying class action procedure,” which was not an issue in this case.46 Overall, this ruling will further promote CAFA’s legislative and judicial goal to limit class and mass actions, while at the same time keeping parens patriae cases in state courts, where they properly belong.47

42 Kendall, supra note 1.
44 James Jr. & O’Toole, supra note 43.
45 Id.