



News Release

For Immediate Release

For more information, contact:
Tim Kolly 312-698-6220 | tkolly@dri.org

**DRI –The Voice of the Defense Bar Submits Amicus Brief to Supreme Court in *Mississippi ex rel. Hood v. AU Optronics Corp.*
*Seeks High Court Ruling That Would Block “Court Shopping” by Plaintiffs***

Chicago—(September 11, 2013)— DRI – The Voice of the Defense Bar has filed an amicus brief on the merits with the U.S. Supreme Court on *Mississippi ex rel. Hood v. Au Optronics Corp.*, a class action jurisdiction dispute.

The enactment of the Class Action Fairness Act of 2005 (CAFA) brought about a major change in diversity jurisdiction. Congress saw abuses in the current class action scheme, particularly by lawyers “gam[ing] the procedural rules [to] keep nationwide or multi-state class actions in state courts whose judges have reputations for readily certifying classes....” S. Rep. No. 109-14, p. 5 (2005). CAFA opened federal-court doors and ensured that “interstate cases of national importance” would be litigated in a federal forum, free from the state-court biases. CAFA dispensed with the traditional requirement of complete diversity, opting instead to require only minimal diversity for federal court removal.

In the case at hand, the Mississippi Attorney General filed a complaint in Mississippi state court asserting a claim for violation of the Mississippi Consumer Protection Act and for violation of Mississippi's Antitrust Act. The complaint was brought not only on behalf of the State of Mississippi, but also on behalf of Mississippi residents. Accordingly, the petitioner sought to represent Mississippi consumers who purchased LCD products, and also sought restitution on behalf of citizens who suffered losses by purchasing LCD panel products during the relevant time frame.

Respondents removed the action to federal court under CAFA as a “mass action” under 28 U.S.C. 1332(d)(11), and as a “class action” under 28 U.S.C. 1332(d)(2). Following this removal, Mississippi moved to remand to state court, and the district court granted the request. The district court rejected respondents' argument that this was a “class action” under 28 U.S.C. 1332(d)(1)(B).

However, the Fifth Circuit Court of Appeals reversed, upholding the removal to federal court under CAFA. In the Fifth Circuit's view, the “real parties in interest in Mississippi's suit are those more than 100 persons who, by substantive law, possess the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery. The Fifth Circuit then applied a claim-by-claim analysis to conclude that both the State (as a purchaser of LCD products) and individual citizens who

purchased the products within the State of Mississippi possess "rights to be enforced." Thus, the real parties in interest are both the State and the individual Mississippi consumers.

The primary issue is whether an action filed by a state attorney general in state court is removable under CAFA where the State is the only named plaintiff but the action includes monetary relief claims on behalf of particular citizens of the state.

"Our position," said Mary Massaron Ross, DRI President and co-author of its brief in this case, "is that under CAFA's minimal-diversity requirement, the inclusion of a State as a party should not destroy diversity if the action filed by the State seeks to recover for monetary relief claims on behalf of unnamed persons who are real parties in interest and any one of them is diverse from any defendant. If the Mississippi Attorney General is allowed to defeat removal here it will create a huge potential exception to the rule permitting removal and thus circumvent the will of Congress as expressed in CAFA."

Ms. Massaron Ross and co-author Hilary A. Ballentine, both of Plunkett Cooney PC (Bloomfield Hills, MI), are available for interview or expert comment through DRI's Communications Office.

The full text of DRI's amicus brief is available via the DRI website or by [clicking here](#).

###

About DRI – The Voice of the Defense Bar

For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log onto www.dri.org