

# PUBLICATION

---

## **Class Action Fairness Act (CAFA) is Challenged Before the U.S. Supreme Court**

**September 19, 2013**

**A significant protection afforded by the 2005 Class Action Fairness Act (CAFA) is being challenged before the U.S. Supreme Court in *State of Mississippi ex rel Jim Hood, Attorney General v. AU Optronics Corp, et al.*, No. 12-1036.**

CAFA was enacted by Congress to expand federal court jurisdiction over class actions and mass actions with over 100 plaintiffs, thus enabling defendants to transfer such cases to federal court which would otherwise remain in plaintiff-friendly state court jurisdictions. Companies in the oil and gas, energy, and insurance industries and others have taken advantage of the protections under CAFA. But CAFA's protection becomes more critical when plaintiff attorneys collaborate with state attorneys general to evade federal jurisdiction by creatively labeling class and mass actions on behalf of numerous plaintiffs as *parens patriae* cases ostensibly on behalf of the state alone. The U.S. Circuit Court of Appeals for the Fifth Circuit upheld transfer to federal courts under CAFA and ruled against attorney generals' improper use of this *parens patriae* power in Louisiana *ex rel Caldwell, Attorney General v. Allstate* and most recently in Mississippi *ex rel Jim Hood, Attorney General v. Auoptronics, et al.*

The Mississippi attorney general challenged the Fifth Circuit's ruling in *AU Optronics* and the U.S. Supreme Court granted review. The Defense Research Institute and others have filed amicus briefing, which supports the Fifth Circuit's ruling. The U.S. Supreme Court has set the case for oral argument on November 6, 2013.