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In This Issue:

- Class Actions: U.S. Supreme Court Settles Circuit Split On Whether Attorney General Actions Are "Mass Actions" For Purposes Of Class Action Fairness Act
- Expert Witnesses: Ninth Circuit Holds That Appeals Court Can Make Findings Regarding Admissibility Of Expert Testimony

Class Actions: U.S. Supreme Court Settles Circuit Split On Whether Attorney General Actions Are "Mass Actions" For Purposes Of Class Action Fairness Act

The Class Action Fairness Act (CAFA) authorizes removal of "mass actions," defined 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 questions of law or fact." Circuit courts have split on the issue of whether a state attorney general can be forced into federal court if he brings an action on behalf of the citizens of his state. The Fifth Circuit held that such actions were "mass actions" because the real parties in interest were the individual Mississippi citizens, while the Seventh and Ninth Circuits held that such actions were not "mass actions."

In *Mississippi v. AU Optronics Corp.*, No 12-1036 (Jan. 14, 2014), the U.S. Supreme Court held that the "100 or more persons" language in CAFA means "100 or more plaintiffs," not merely "100 or more real parties in interest." Accordingly, where an attorney general is the only named plaintiff, CAFA does not authorize removal to federal court.

Expert Witnesses: Ninth Circuit Holds That Appeals Court Can Make Findings Regarding Admissibility Of Expert Testimony

The question of whether an expert's testimony meets standards for reliability is generally considered to be the province of the trial court. Accordingly, if a trial court fails to conduct a reliability inquiry, appeals courts will remand for further evidentiary proceedings.

In *Estate of Barabin v. AstenJohnson*, No. 10-36142 (9th Cir. Jan. 14, 2014), however, the Ninth Circuit, in an en banc decision, held that the appeals court can make a reliability finding in the first instance. Although the court found that the record in the case before it was insufficient for the court to make such a determination, the ruling puts pressure on parties to ensure that a proper reliability analysis is performed in the trial court. If the trial court does not conduct the appropriate inquiry, the unsuccessful party may get a second bite at the apple on appeal.

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