

## Stutman Law Turns Back Attempt to Remove Mass Tort Action to Federal Court Under the Class Action Fairness Act (CAFA)

After filing a mass tort action on behalf of 26 insurers in the San Bernardino Superior Court against EZ FLO International, Inc, a California manufacturer of water supply lines, EZ FLO attempted to remove the case to Federal Court under the Class Action Fairness Act of 2005. EZ FLO alleged that the 145 individual insureds or subrogors referenced in the lawsuit must be considered Plaintiffs, and therefore the CAFA requirement that non-class action cases involving "monetary relief claims of 100 or more persons" had been met. (See 28 USC1332(d)(5)(B)).

In this case of first impression, the United States District Court, Central District of California, rejected the argument, finding that under the US Supreme Court's unanimous decision in *Mississippi ex rel. Hood v. AU Optronics Corp.*, 134 S. Ct. 736 (2014) the language "100 or more persons" refers to the actual Plaintiffs in a suit, which here were the 26 insurance companies, and that "[t]o conclude otherwise would flout the Supreme Court's holding and all but ignore its thorough textual analysis." Further, the Court held that simply naming the insureds as subrogors "does not make them named plaintiffs that should be included in the CAFA calculus." The matter was, therefore, ordered remanded to the San Bernardino Superior Court for further proceedings. EZ FLO has sought permission to appeal the ruling to the 9th Circuit Court of Appeals.

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## Mass Tort Alert - Stutman Law Preparing Mass Tort Action Against Gree

On November 29, 2016, Gree expanded its 2013 dehumidifier recall, which now encompasses approximately 2.5 million dehumidifiers sold in the United States and Canada under brand names such as Frigidaire, GE, Kenmore, and Danby. Gree initially announced a recall involving dehumidifiers manufactured by Gree Electric Appliances of China on September 12, 2013. Per the United States Consumer Product Safety Commission, the dehumidifiers are known to possess a defect that causes the subject units to overheat, smoke, and catch fire. These defects have resulted in over 450 reported fires. The dehumidifiers were manufactured in China and sold nationwide from January 2005 through August 2013 by retailers such as Home Depot, Lowe's, Menards, Sears, and Walmart.

For several years, Stutman Law has been amassing property damage claims involving the Gree dehumidifiers which are now subject to the expanded recall. By aggregating these claims, Stutman Law's Mass Tort Program has been able to effectively combat Gree's delay tactics and obtain expeditious settlements for its clients. By treating these claims, which involve a common defect, as a "mass tort," and through obtaining information during the course of individual test litigations against Gree, Stutman Law is now positioned to file a mass tort action against Gree.

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## Stutman Law Beats City's Governmental Immunity Defense in North Carolina

Stutman Law recently settled a lawsuit filed on behalf of its client against the City of Gastonia, North Carolina for \$760,000.00. Stutman Law's client insured a historic building that was undergoing renovations when a fire service line froze and burst. A few days after the initial break, warmer temperatures caused the frozen pipe to thaw, which resulted in water flowing unrestricted throughout the building. Stutman Law alleged that the City's negligence caused the water loss. The City denied liability, claimed the plaintiff's insured was contributorily negligent, and also claimed that it was protected from suit by governmental immunity.

The case was aggressively litigated and defended. There was extensive paper discovery and numerous depositions were taken. Towards the end of discovery, the City filed a Motion for Summary Judgment, in which the City argued that it was entitled to governmental immunity and requested that the case be dismissed. Stutman Law argued that the City waived immunity because it purchased liability insurance. However, the City countered that the policy it purchased contained a non-waiver of immunity, which preserved its governmental immunity status. The City relied on case law in which another Court dealing with almost identical policy language ruled that immunity applied. Despite the great weight of case law in favor of governmental immunity, Stutman Law undertook additional discovery to identify the differences between the present case and the cases previously decided. The Court subsequently denied the City's motion and ordered the case to go to trial.

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