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Supreme Court Rules Unaccepted Settlement Offer Does Not Moot Class Action Lawsuits

In a blow to class action defendants, on January 20, 2016, the Supreme Court ruled, resolving a split among the Circuit Courts of Appeal, that a defendant cannot use a settlement offer or a Rule 68 offer of judgment to cut off plaintiff's claims, including sweeping claims in class actions, by offering full relief to individual named plaintiffs. This conclusion was previously accepted by the First, Second, Fifth, Seventh, Ninth and Eleventh Circuits and rejected by the Third, Fourth and Sixth.

The Supreme Court case is *Campbell-Ewald Co. v. Gomez*, Case Number 14-857 (FOUND HERE). It involves a purported consumer class action for unsolicited text messages under the Telephone Consumer Protection Act against a long time U.S. Navy advertising partner. In a 6-3 ruling authored by Justice Ruth Bader Ginsberg, the opinion stated, "We hold today, in accord with Rule 68 of the Federal Rules of Civil Procedure, that an unaccepted settlement offer has no force." "Like other unaccepted contract offers, it creates no lasting right or obligation. With the offer off the table, and the defendant's continuing denial of liability, adversity between the parties persists."

Notably, this issue was reserved in a prior Supreme Court case, *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. ___ (2013), a collective action under the Fair Labor Standards Act of 1938. The Court now has adopted Justice Kagan's dissent in that case, which argued that the Court should have reached that threshold question and reasoned:

> When a plaintiff rejects such an offer—however good the terms—her interest in the lawsuit remains just what it was before. And so too does the court's ability to grant her relief. An unaccepted settlement offer— like any unaccepted contract offer—is a legal nullity, with no operative effect. As every first-year law student learns, the recipient's rejection of an offer "leaves the matter as if no offer had ever been made." *Minneapolis & St. Louis R. Co. v. Columbus Rolling Mill*, 119 U. S. 149, 151 (1886). Nothing in Rule 68 alters that basic principle; to the contrary, that rule specifies that "[a]n unaccepted offer is considered withdrawn." Fed. Rule Civ. Proc. 68(b). So assuming the case was live before—because the plaintiff had a stake and the court could grant relief—the litigation carries on, unmooted.

The Justices decision is likely to have a wide impact on defendants' ability to offer settlements to moot class action claims, especially in cases where the damages can easily be calculated, such as under the Telephone Consumer Protection Act and employment class actions. However, it is likely the door is not entirely closed on this type of class action defense strategy. Chief Justice John G. Roberts filed a dissenting opinion, in which Justices Antonin Scalia and Samuel Alito joined, and Justice Alito additionally filed a separate dissenting opinion, all of which present various arguments in support of the defendant's ability to moot such cases.

To learn more about this topic and how to defend your company when it is threatened with litigation, please contact Cheryl Tama Oblander or the Aronberg Goldgehn attorney with whom you normally consult.

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