

INSIGHTS

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

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Resolving a question left open by its 2013 decision in *Genesis HealthCare Corp. v. Symczyk*, as well as a split among the circuit courts, the Supreme Court on January 20, 2016 held that defendants cannot moot and defeat class action lawsuits through an unaccepted offer of settlement pursuant to Fed. R. Civ. P. 68. The Court, however, left open the possibility that actual payment to the plaintiff, rather than an offer of payment, could extinguish a class action claim.

Until its decision in [Campbell-Ewald Co. v. Gomez](#), No. 14–857, slip. Op, (January 20, 2016), some circuit courts of appeals, such as the Third Circuit, had held that a mere offer of judgment in the full amount of the proposed class representative’s damages qualified as an offer of complete relief under Rule 68, rendering the plaintiff’s claims moot and subject to dismissal.

The Court’s ruling in *Campbell-Ewald* stemmed from a class action brought pursuant to the Telephone Consumer Protection Act (“TCPA”), after the named plaintiff, Jose Gomez, received allegedly unsolicited text messages from an advertising firm hired to create a recruiting campaign for the U.S. Navy. Prior to the class certification deadline, Campbell-Ewald offered to settle with Gomez for the full amount of his statutory damages. When he refused, Campbell-Ewald moved to dismiss the case on the ground that the individual settlement offer mooted Gomez’s claim. The district court denied that motion, but ultimately granted summary judgement in favor of Campbell-Ewald on the ground that as a government contractor, it acquired the Navy’s sovereign immunity. The Ninth Circuit reversed on the immunity issue, but affirmed the district court’s determination that the case was not moot.

Writing for the 6-3 majority, Justice Ginsberg agreed, holding that “[a]n unaccepted settlement offer has no force” and reasoned that “[a]bsent Gomez’s acceptance, Campbell’s settlement offer remained only a proposal, binding neither Campbell nor Gomez.” The Court found support for its decision in the language of Rule 68, which provides that an offer of judgment “is considered withdrawn” if not accepted within 14 days.

Notably, due to the hypothetical nature of the issue, the Court did not decide “whether the result would be different if a defendant deposits the full amount of the plaintiff’s individual claim in an account payable to the plaintiff, and the court then enters a judgment for the plaintiff in that amount.” Thus, it remains to be seen whether that strategy would effectively moot a plaintiff’s claims.

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