

From: Tim Brick
Sent: Thu 1/21/2016 3:31 PM
Gallagher Sharp Newsflash: Supreme Court Limits Use of Offers of Judgment in Class Actions

On Wednesday, January 20, 2016, the Supreme Court of the United States, in *Campbell-Ewald Co. v. Gomez*, Slip Op. No. 14-857, 2016 U.S. LEXIS 846, limited the use of Fed. R. Civ. P. 68 offers of judgment in ending class actions.

Campbell-Ewald Co. involved the attempt of text-message recipient Gomez to initiate a class action lawsuit against a marketing and communications agency. Gomez alleged a violation of federal law for sending unsolicited messages. Prior to seeking class certification, an offer of judgment purporting to provide full relief was made to Gomez, without compensation for the yet-to-be identified class members. The offer was not accepted and therefore lapsed after 14 days. The defendant then moved to dismiss the case for lack of subject matter jurisdiction, arguing a controversy no longer existed because it agreed to fully compensate Gomez for the alleged injury claim prior to certification, thereby rendering the class claims moot. The motion to dismiss was denied and upheld by the Ninth Circuit. The United States Supreme Court granted certiorari to resolve a split among the Courts of Appeals over whether an unaccepted offer of judgment moots a plaintiff's claim, thereby depriving federal courts of Article III jurisdiction. (Prior to this decision, the Sixth Circuit, among others, held offers of judgment can moot the claim).

Adopting Justice Kagan's dissent in *Genesis Health Care Corp. v. Symczyk*, 133 S.Ct. 1523, 185 L.Ed.2d 636 (2013), the Court rejected the defendant's attempt to avoid the class action, reasoning "Under basic principles of contract law, [the defendant's] settlement bid and Rule 68 offer of judgment, once rejected, had no continuing efficacy." *Campbell-Ewald Co.* at *14. Thus, Gomez's decision not to accept the offer permitted the entire case to proceed as if the offer of judgment never occurred. The Court did not fully close the door on this issue, noting 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 judgment for the plaintiff in that amount." *Id.* at 19.

Justice Thomas wrote a separate, concurring opinion agreeing with the result, but noting the Court's opinion failed to confront the broader issue -- whether the offer of judgment eliminated the case or controversy required by Article III. Chief Justice Roberts, joined by Justices Scalia and Alito, wrote a dissenting opinion, addressing the Article III issue and concluding a case or controversy no longer exists when a defendant agrees to fully redress an alleged injury. While Chief Justice Roberts does not agree that actual payment is necessary, his dissent stresses that this case is limited to its facts; he notes that the majority opinion holds that an offer of judgment does not moot a case, but leaves open the issue of whether payment of complete relief, by depositing funds with the District Court, does. A separate dissenting opinion by Justice Alito agrees with and emphasizes this point, which may provide hope to putative class action defendants looking to obtain a dismissal prior to class certification.

While this decision has been lauded as a victory for class action plaintiffs, its application may be more limited. One response to this decision may be defendants depositing the full amount of an offer into an account payable to the plaintiff, and then asserting that any later purported class action be barred, relying on the reasoning of several justices.

A full copy of the Supreme Court's opinion may be found at http://www.supremecourt.gov/opinions/15pdf/14-857_8njq.pdf.

If you have any questions, please contact

Tim Brick
Business & Employment Practice Group Manager
Julie Juergens
GALLAGHER SHARP
Sixth Floor, Bulkley Building
1501 Euclid Avenue
Cleveland, Ohio 44115-2108
Ph: (216) 241-5310
tbrick@gallaghersharp.com
jjjuergens@gallaghersharp.com
www.gallaghersharp.com