

Supreme Court Rules Against Using Settlement Offers to Moot Class Actions

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In *Campbell-Ewald Co. v. Gomez*, a decision released in January, a majority of the United States Supreme Court held that an unaccepted Rule 68 offer of judgment by a defendant cannot moot a putative class action.

Campbell-Ewald arose in the context of a Telephone Consumer Protection Act (TCPA) lawsuit. The TCPA provides for a maximum of \$1,500 in statutory damages per violation and does not provide for attorney's fees. Thus, the statutory damages this plaintiff could obtain were clear. The defendant offered to settle the case for \$1,503, which was more than the plaintiff could receive as statutory damages for his claim. The plaintiff declined the offer.

The defendant then argued that the court lacked subject matter jurisdiction because the offer mooted the plaintiff's individual claim, and that because the plaintiff had not yet moved for class certification, the class claims were also mooted. The *Campbell-Ewald* majority adopted Justice Kagan's analysis from her dissent in the court's 2013 *Genesis HealthCare Corp. v. Symczyk* decision. There, Justice Kagan noted that an unaccepted offer cannot moot a case because "[a]s every first-year law student learns, the recipient's rejection of an offer 'leaves the matter as if no offer had ever been made.'"

The majority reserved the question of whether the result would differ if the defendant had deposited the full amount of the plaintiff's individual claim into an account payable to the plaintiff and the trial court had entered judgment for the plaintiff in that amount. In the case before the court, that question was "hypothetical."

On its face, the opinion leaves an open question: Would an actual tender of payment by certified check to the court's registry, rather than a Rule 68 offer of judgment, moot the individual and class claims?

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