

ALERTS

Commercial Litigation Law Alert - The Seventh Circuit Agrees That Defendants May Not “Pick Off” Class Representatives With Full Settlement Offers

August 13, 2015 | [Atlanta](#) | [Chicago](#) | [Los Angeles](#) | [Columbus](#) | [Delaware](#) | [South Bend](#) | [Elkhart](#) | [Dallas](#) | [Grand Rapids](#) | [Indianapolis](#) | [Minneapolis](#) | [Fort Wayne](#)

On August 6, 2015, in *Chapman v. First Index, Inc.*, the Seventh Circuit reversed its own precedent, agreed with decisions from the Third, Fifth, Ninth, Tenth and Eleventh Circuits, and concluded that an unaccepted full settlement offer to a class representative does not moot the named plaintiff's individual claims or the class action. The Supreme Court will definitively decide the issue this term in *Gomez v. Campbell-Ewald Company*.

In *Chapman*, plaintiff sought to assert claims under the Telephone Consumer Protection Act on behalf of a class. While the Northern District Court of Illinois considered plaintiff's motion for class certification, defendant made a full-compensation settlement offer to plaintiff that would expire fourteen days after the court ruled on the class certification motion. The court denied plaintiff's request for class certification. Plaintiff then requested certification of a different class and allowed the settlement offer to lapse. The District Court granted defendant's motion to dismiss plaintiff's individual claims as moot because of the declined full-compensation settlement offer.

On appeal, the Seventh Circuit overruled its own precedent, reversed the district court's decision, and joined decisions from the Third, Fifth, Ninth, Tenth and Eleventh Circuits. The court held that an unaccepted full-compensation settlement offer to the named plaintiff does not moot that plaintiff's individual claims or those of the class. The court, however, questioned whether a failure to accept a fully compensatory offer suggests that the plaintiff is a bad class representative. The court further implied that it may allow defendants to assert a rejected full-compensation offer as an affirmative defense.

This issue is currently before the Supreme Court in *Gomez*. Given the Seventh Circuit's discussion, it is possible that even if the Supreme Court rules that individual and class claims do not become moot under these circumstances, the Seventh Circuit will provide defendants with an affirmative defense against surviving individual and class claims.

For more information, contact the Barnes & Thornburg attorney with whom you normally work, or one of the following attorneys: Adey Adenrele at adey.adenrele@btlaw.com or 317-231-7365; Christine Skoczylas at christine.skoczylas@btlaw.com or 317-214-5613; or Joseph Wendt at joseph.wendt@btlaw.com or 317-231-7748.

You can also visit us online at www.btlaw.com.

© 2015 Barnes & Thornburg LLP. All Rights Reserved. This page, and all

RELATED PEOPLE



T. Joseph Wendt

Partner
Indianapolis

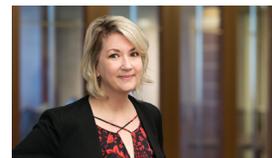
P 317-231-7748
F 317-231-7433
joe.wendt@btlaw.com



Adeyemi O. Adenrele

Associate
Washington, D.C.

P 202-408-6936
F 202-289-1330
adey.adenrele@btlaw.com



Christine E. Skoczylas

Partner
Chicago

P 312-214-5613
F 312-759-5646
christine.skoczylas@btlaw.com

RELATED PRACTICE AREAS

Commercial Litigation

information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

Follow us on Twitter [@BTLawNews](#).