

ALERTS

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

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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.

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