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Labor & Employment Law Alert - Supreme Court Finds Dismissal Of Collective FLSA Action Appropriate Where Named Plaintiff's Claim Is Moot; Leaves Uncertainty Regarding Offers Of Judgment

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In a [5-4 decision](#), the Supreme Court held that an individual's Fair Labor Standards Act (FLSA) suit filed on behalf of herself and other "similarly situated" employees can be dismissed for lack of subject-matter jurisdiction where the named plaintiff's claim has become moot and no other claimant has opted into the suit. In reaching this decision, however, the Court declined to resolve a Circuit split regarding whether an unaccepted offer of judgment that would have satisfied the plaintiff's individual claim fully, if made in accordance with Federal Rule of Civil Procedure 68, is sufficient to render the individual claim moot. By declining to decide that issue, the Court left lingering uncertainty for employers evaluating the possible strategic use of Rule 68 in their defense of collective actions brought under the FLSA.

Background

The case is *Genesis Healthcare Corporation, et al. v. Symczyk*, Case No. 11-1059, 569 U.S. ____ (2013). Symczyk initiated the action in 2009 against Genesis, her former employer, alleging that Genesis violated the FLSA by automatically deducting 30 minutes of time worked per shift for meal breaks, even when the employees performed compensable work during those breaks. The FLSA provides that an employee may bring an action to recover damages for specified violations of the Act on behalf of herself and other "similarly situated employees," and Symczyk proceeded accordingly.

Genesis answered the complaint and simultaneously served on Symczyk an offer of judgment pursuant to Rule 68, in an amount that would have afforded Symczyk complete relief on her individual claim. Genesis stipulated that the offer would be deemed withdrawn if Symczyk did not accept within 30 days. When Symczyk failed to respond, Genesis filed a motion to dismiss, claiming that because it offered Symczyk complete relief on her individual claim, she no longer possessed a personal stake in the outcome of the suit, rendering her individual claim and the collective action moot. Finding it undisputed that no other individuals had joined Symczyk's suit and that the Rule 68 offer fully satisfied her individual claim, the District Court agreed and dismissed Symczyk's complaint.

On appeal, the Third Circuit reversed. It agreed with the District Court's findings and that, under its precedents, whether or not a Rule 68 offer extending complete relief is accepted, it generally moots a plaintiff's individual claim. It went on to hold, however, that Symczyk's collective action remained justiciable.

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Supreme Court Decision

On April 16, 2013, the Supreme Court reversed the Third Circuit's decision, holding, as noted, that an individual's FLSA claim on behalf of herself and other similarly situated employees may be dismissed for lack of subject-matter jurisdiction where the individual's claim has been mooted and no other claimant has opted into the suit.

Before it reached its decision, however, the Court made a significant assumption. Rather than decide the issue of whether the Rule 68 offer of judgment mooted Symczyk's claim, the Court "assumed, without deciding" that Symczyk's claim was mooted by the offer of judgment Genesis had made to her. The Court noted that the Courts of Appeals "disagree" with respect to this issue, citing the Third and Second Circuits. The Third Circuit, as evidenced by its decision in this case, has held that Rule 68 offers of judgment moot an individual's claim where the offer is sufficient to afford complete relief. Conversely, the Second Circuit has held that an individual's claim remains justiciable even after her rejection of such an offer. Rather than resolve this split, the Court determined that Symczyk waived the issue by conceding it in the lower courts and failing to raise the argument in her brief in opposition to the petition for certiorari filed by Genesis.

The Court then went on to hold that, in the absence of any claimant's opting into the collective action, Symczyk's suit became moot when her individual claim became moot, because she lacked any personal interest in representing others in the action. As a result, the Court decided, Symczyk's suit was properly dismissed for lack of subject-matter jurisdiction.

In reaching its decision, the Court distinguished between FLSA collective actions and class actions filed under Federal Rule of Civil Procedure 23, noting that these actions are "fundamentally different." Putative class members in collective actions brought under the FLSA are only bound by the outcome of the lawsuit if they "opt-in" by filing a written consent with the court. Class members of a Rule 23 class action lawsuit are bound by the outcome of the lawsuit unless they affirmatively "opt-out" of the action.

What This Means for Employers

The decision is positive for employers, as it supports the notion that an FLSA collective action is moot once the named plaintiff's individual claim is rendered moot, if no other claimant has opted into the suit.

Further, it is important to note the Court's distinction between FLSA collective actions and Rule 23 class actions, as their fundamental differences affect the way each are litigated.

What the decision fails to resolve for employers is whether the Rule 68 strategy utilized by Genesis truly moots the named plaintiff's individual claim. As such, employers are left to wonder whether and, if so, under what circumstances, a Rule 68 offer of judgment made to the named plaintiff(s) might be used successfully as a strategy to bring an early end to a collective action under the FLSA. As this question is likely to reach the Supreme Court again, employers are encouraged to remain abreast of the issue.

To obtain more information, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's



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