Supreme Court Rules Dismissal Of FLSA Collective Actions Are Appropriate When Individual Claim Is Rendered Moot

Insights
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On April 16, 2013 the U.S. Supreme Court upheld the concept that a wage and hour collective action brought pursuant to the Fair Labor Standards Act (FLSA), can be dismissed for lack of subject matter jurisdiction when the named plaintiff's claim is rendered moot – in this case by virtue of the plaintiff being offered complete relief through an offer of judgment made pursuant to Rule 68 of the Federal Rules of Civil Procedure. *Genesis HealthCare Corp. v. Symczyk*.

At first glance, the Court's ruling allows businesses to resolve claims brought under the FLSA early in the life of a lawsuit, and encourages early settlement as a way to avoid the often expensive and protracted litigation that collective actions naturally trigger. This is generally good news for employers. A critical component to the decision, however, was the assumption that the individual plaintiff's claim is moot. The Court did not address the mootness issue because the plaintiff had conceded it below and did not properly preserve it for appeal.

Background

FLSA litigation has exploded recently – over a 300% increase over the last decade according to the Federal Judicial Caseload Statistics. It's easy to see why. The FLSA allows employees to bring collective actions for alleged violations and requires an award of reasonable attorneys' fees if they are successful. In other words, a single employee can file an FLSA lawsuit on behalf of him- or herself, as well as everyone else at the company who is "similarly situated." This significantly increases the potential amount of damages at issue, as well as the recovery of attorneys' fees. The result is that these lawsuits can be very expensive for an employer not only because of the class-wide exposure, but because of the cost of defending these actions.

A collective action brought under the FLSA, however, is not the same as a class action brought under Rule 23 of the Federal Rules of Civil Procedure. In fact, there is a significant difference between the two – under the FLSA employees must opt-in, rather than opt-out of the lawsuit. To put it differently, no person is made part of an FLSA lawsuit – and is not bound by its outcome – unless he or she affirmatively chooses to opt-in to the lawsuit, even though the court certified a "collective action." On the other hand, class members in a Rule 23 action are bound by the outcome of the lawsuit unless they affirmatively take action to withdraw from the class.

It is this difference that had led some employers to make an offer of judgment as a way to resolve these lawsuits early in the litigation. In the situation where there was only one named plaintiff or a

these lawsuits early in the litigation. In the situation where there was only one named plaintiff or a small number of plaintiffs present in an FLSA lawsuit, some employers would make what is called an "offer of judgment" under Federal Rule 68 to the named plaintiff or plaintiffs.

The offer of judgment compensates the existing plaintiffs for the amount they think they are owed, as well as for attorneys' fees and costs. After the named plaintiff or plaintiffs had been offered full relief, employers in certain jurisdictions would successfully move to dismiss the case because no other employee had an interest remaining in the lawsuit and no one could represent the interests of the putative class.

In *Genesis HealthCare Corp. v. Symczyk,* the Court considered whether an FLSA collective action was appropriate for dismissal based on lack of subject matter jurisdiction, where the plaintiff had no personal or continuing interest in the suit. Plaintiff did not respond to an offer of judgment for complete relief but conceded in the courts below that the offer of full relief rendered her own claim moot.

Facts

From April 2007 through December 2007, Genesis Healthcare Corporation employed Laura Symczyk as a registered nurse. While she was employed, Genesis implemented a policy that automatically deducted time for meal breaks for certain employees regardless of whether they took the break, according to Symczyk. Symczyk filed a collective action on behalf of herself and all similarly-situated individuals alleging that Genesis' meal-break policy violated the FLSA. After Genesis filed its answer, it served Symczyk with a Rule 68 Offer of Judgment, offering to pay all of Symczyk's alleged unpaid wages and attorneys' fees. At the time of the offer, no other employee had joined the lawsuit, nor had Symczyk moved for conditional certification of the class.

Symczyk did not respond to the offer. In March of 2010, Genesis filed a motion to dismiss the complaint for lack of subject-matter jurisdiction arguing that Symczyk no longer had an interest in the outcome of the lawsuit. The federal district court dismissed the lawsuit, finding that no other individuals joined her lawsuit, and that Symczyk did not dispute that the offer of judgment fully satisfied her claims.

Symczyk appealed the district court's decision. The U.S. Court of Appeals for the 3rd Circuit reversed, holding that a full offer of relief to the named plaintiff does not require dismissal of an FLSA collective action. According to the 3rd Circuit, the named plaintiff is entitled to move for conditional certification of the collective action before a defendant could use an offer of judgment to moot the case. Additionally, the 3rd Circuit commented that it would be unfair and inefficient to allow defendants to use offers of judgment to dismiss collective actions by "picking off" the named plaintiffs before they had the opportunity to move for certification.

The Supreme Court's Decision

The U.S. Supreme Court rejected the 3rd Circuit's view. First, the Supreme Court noted that the lower courts disagree on whether an unaccepted Rule 68 offer that fully satisfies a plaintiff's

individual claim is sufficient to render that claim moot. But, because Symczyk conceded that point below, the Court assumed that her claim was moot.

Next, the Supreme Court rejected the notion that the "relation-back doctrine" should be applied in collective actions brought pursuant to the FLSA. Generally, in Rule 23 class actions the relation-back doctrine allows a court to look back to the date the complaint was filed to determine if a cause of action existed, and to treat the motion for class certification as having been filed on the date the complaint was filed. It is an equitable procedure by which a trial court retains jurisdiction over a case that would otherwise be dismissed as moot. The Supreme Court here determined that the reasoning underpinning the use of the relation back doctrine in Rule 23 cases is inapplicable to FLSA collective actions. While a putative class certified under Rule 23 gains an "independent legal status," under the FLSA, a "conditional certification" gains no such status and does not join automatically additional parties to the action.

The Supreme Court also distinguished an FLSA collective action from a Rule 23 action by explaining that putative plaintiffs in an FLSA action are not foreclosed from vindicating their rights in others suits upon the dismissal of the original suit. In other words, putative plaintiffs retain their ability to bring their own lawsuits or do nothing at all.

Lastly, the Court rejected Symczyk's argument that "picking off" named plaintiffs to moot a collective action frustrated the efficient resolution of common claims. In so doing, the Court explained that unlike the Rule 23 cases cited by the plaintiff, she failed to assert any continuing economic interest in the lawsuit.

How Can Employers Use This Decision in Their Favor?

Employers have a powerful arrow in their quivers for resolving collective actions brought pursuant to the FLSA early and controlling the substantial costs associated with them. Assuming that an employer is willing to provide full relief to the named plaintiff or plaintiffs and reasonable attorneys' fees, an offer of judgment should be considered – but not used lightly.

The offer can provide substantial benefits to an employer by eliminating the potential for a collective action to proceed. But you should still be cautious. One concern is that only the named employee is bound by the offer of judgment, that is, assuming your court decides that the offer makes the claim moot. Thus, instead of having one lawsuit with many plaintiffs, employers may be subject to many small lawsuits: death by a thousand paper cuts. Additionally, today's opinion left open the issue of whether an *unaccepted* Rule 68 offer renders a plaintiff's interest moot.

Plaintiffs' attorneys may try to avoid early offers of judgment or detract from their use by filing a motion for conditional certification early in the case and arguing that an unaccepted offer can never moot an action as the dissenting opinion strenuously asserts. Such a tactic likely would put employers on the defensive very early in a lawsuit and in the position of having to respond to a complaint and a motion for conditional certification before having time to fully investigate the claims.

claims.

And the Labor Department's Wage and Hour Division still has the authority to investigate and prosecute claims made to it. Over the past two to three years, the DOL has stepped up its efforts in this area and undertaken additional efforts to reach out to employees. This decision may cause the Department of Labor to further increase and become more aggressive in its efforts.

Given that, employers may not be able to affirmatively avoid the fees and costs associated with defending against collective actions entirely, although this decision will certainly help. Should you find yourself defending a collective action, weigh the options of using the Rule 68 offer early in the case and at other appropriate intervals. It can be immensely helpful as confirmed by this decision.

Our overall advice, of course, is that employers should focus on their wage-and-hour and time-reporting policies as well as the enforcement of those policies to better defend against claims of violations of the FLSA and class-wide violations in the first instance.

For more information contact your regular Fisher Phillips attorney.

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