

Show Them the Money? The US Supreme Court Rules Unaccepted Offers Do Not Moot Claims

The US Supreme Court ruled 6-3 on January 20, 2016 in [Campbell-Ewald Co. v. Gomez](#), No. 14-857, that an unaccepted offer of judgment on a plaintiff's individual claim does not render a case moot when the complaint seeks both individual and class relief. The Court held that such an unaccepted offer "has no force." The Court, however, expressly left open the question of whether actually tendering to a plaintiff full payment of the relief requested also fails to moot a case. In other words, payment of full relief to a plaintiff may still be a viable means for a defendant to moot an individual or class action lawsuit.

Unaccepted Offers = Legal Nullity

In the case, Mr. Gomez alleged that the US Navy's advertising contractor violated the Telephone Consumer Protection Act (TCPA) by sending him unsolicited recruitment text messages. After the plaintiff rejected Campbell-Ewald's offer of full relief, the defendant moved to dismiss, asserting the offer provided full redress and mooted the claim. The district court denied the motion, the Ninth Circuit agreed and the US Supreme Court granted *certiorari*.

Justice Ginsburg's majority opinion adopted Justice Kagan's dissenting analysis in [Genesis HealthCare Corp. v. Symczyk](#), 133 S. Ct. 1523 (2013), finding that an "unaccepted settlement offer – like any unaccepted contract offer – is a legal nullity, with no operative effect" under Rule 68 of the Federal Rules of Civil Procedure. That is, if the offer is rejected or expires, the claim is unsatisfied, meaning that the parties remain adverse, which is sufficient for Article III standing, and the suit continues.

"Offer" Versus "Payment"

Chief Justice Roberts' dissent noted the "good news" – while an *offer* is insufficient to moot a case, the Court specifically left "for another day" whether a defendant tendering *payment* in full relief of the plaintiff's claims leads to the same result. Payment of a plaintiff's claims by, for example, certified check, deposit with the court, or through a bank account payable to the plaintiff may, therefore, still present a means to moot claims – even against plaintiffs who, in the words of the Chief Justice, "won't take "yes" for an answer."

Also, despite the Court's decision, unaccepted offers of full relief could have continued usefulness to defendants even though they do not moot the case, such as in attacking the adequacy of lead plaintiffs who turn down offers or asserting that plaintiffs have waived their claims.

Derivative Sovereign Immunity Not Available

A separate question was whether Campbell-Ewald's status as a federal contractor allowed it to "share the Government's unqualified immunity from liability and litigation" under "derivative sovereign immunity." The Court answered no, finding that when a contractor violates "clearly established" federal law and the Government's explicit instructions, as the plaintiff had alleged, no derivative immunity is available. Note that the Court was required to accept the plaintiff's allegations as true for the purpose of its analysis.

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