

For the second time in two months, on Monday, May 18, 2015, the US Supreme Court agreed to review a case directly implicating litigation under the Telephone Consumer Protection Act ([TCPA](#)). In *Campbell-Ewald v. Gomez*, No. 14-857, the Supreme Court will consider whether a case is moot when the defendant serves an offer of judgment under Rule 68 of the Federal Rules of Civil Procedure (FRCP) offering full relief to the named plaintiff. The Supreme Court will also consider whether the answer to that question is different when the individual plaintiff has asserted a class claim under FRCP 23, but receives an offer of judgment *before* the class is certified. There is currently a split in the Circuits over the answer to these questions, and while the case addresses claims for relief under the TCPA, the Supreme Court's decision could have a broad impact on the use of offers of judgment in consumer class actions generally.

SCOTUS' History with "Unaccepted Offers"

In *Gomez v. Campbell-Ewald*, the plaintiff alleged that the US Navy's advertising partner violated the TCPA by sending unsolicited recruitment texts on behalf of the Navy. The defendant offered the plaintiff total relief on its individual claims prior to class certification. When the plaintiff failed to accept the offer of judgment, the defendant moved to dismiss the case, asserting that the offer provided full redress and thus mooted the plaintiff's individual and class claims. The District Court denied the motion and the Ninth Circuit agreed. On May 18, 2015 the Supreme Court granted *certiorari*.

The Supreme Court's 2013 decision in *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, left open the question of whether an unaccepted offer of judgment that fully satisfied a plaintiff's claim renders the claim moot. Since *Genesis*, courts have continued to struggle with this issue, reaching inconsistent results. The Supreme Court is now poised to resolve this question that has split the Circuits.

Other TCPA Class Actions before SCOTUS

In April 2015, the Supreme Court granted *certiorari* in *Spokeo v. Robins*, No. 13-1339, which presents a different issue relevant to TCPA litigation: whether Congress may confer Article III standing upon a plaintiff who suffers no concrete harm, and who therefore could not otherwise invoke the jurisdiction of a federal court, by authorizing a private right of action based on a bare violation of a federal statute. While the *Spokeo* case is brought under the Fair Credit Reporting Act, that statute, like the TCPA, provides for statutory damages with no requirement of actual injury.

Read our client alert about the Supreme Court granting *certiorari* in [Spokeo](#).

Both of these cases will have a significant impact on TCPA litigation which has grown steadily in the US in recent years, as well as other consumer class actions involving uncapped statutory damages under federal statutes.

Regardless of the outcome, we can assist clients in addressing their class action and TCPA needs.

About Our Global Litigation & Dispute Resolution Practice

Spanning 44 offices in 21 countries, we have more than 300 lawyers who focus on commercial litigation, dispute resolution, and appellate work. In the US, we have more than 150 commercial litigators located in 17 offices in 10 states. Our Class Action & Multidistrict Litigation team represents clients, across all industries, in nationwide, multistate and statewide class actions, mass actions and multidistrict litigation (MDL). We also have extensive experience advising clients on all aspects of the TCPA, including the use of automated calling technologies and pre-recorded messaging, facsimiles, and text messaging, and we represent clients before the FCC and FTC. Our TCPA team includes former FCC officials experienced with TCPA rulemaking and enforcement.

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