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Supreme Court Weighs In On FLSA Class Action Issues

April 17, 2013

By Patrick F. Hulla

On April 16, 2013, the U.S. Supreme Court ruled in Genesis Healthcare Corp. et al. v. Symczyk that a collective action brought by a worker under the Fair Labor Standards Act (FLSA) was properly dismissed because the worker's suit was moot and no longer justiciable when she failed to accept.....

On April 16, 2013, the U.S. Supreme Court ruled in *Genesis Healthcare Corp. et al. v. Symczyk* that a collective action brought by a worker under the Fair Labor Standards Act (FLSA) was properly dismissed because the worker's suit was moot and no longer justiciable when she failed to accept an offer of judgment from her employer. According to Justice Clarence Thomas, the suit became moot when the individual claim became moot, because the worker lacked any personal interest in representing others in this action. Thus, the Court ruled that the case was appropriately dismissed as moot. You can learn more about the opinion by reviewing Ogletree Deakins' eAuthority summarizing the case.

Several trends will likely emerge as a result of this decision. First, for collective actions in their infancy, we should expect more plaintiffs to move for conditional collective action certification to be filed shortly after complaints are filed. To avoid the Court's ruling, more and more wage-and-hour cases are likely to be pled as hybrid class and collective actions (cases that raise both FLSA claims and state wage-and-hour

claims in the same lawsuit). Likewise, to avoid the Rule 68 bar, plaintiffs will likely begin filing more cases in state court under state law.

The majority opinion notes that Rule 23 class actions and FLSA collective actions are "fundamentally different" creatures. Plaintiffs may try to turn these passages of the opinion to their advantage. For example, the Court's distinction between Rule 23 class actions and FLSA collective actions will likely encourage plaintiffs to argue not only that lower courts should not apply *Dukes* in collective actions but also that the conditional-certification standard is not rigorous (as Rule 23's requirements are) and that lower courts addressing conditional certification should defer the similarly–situatedness analysis to decertification and focus instead on notice.

Although the opinion makes clear that FLSA plaintiffs have no interest in representing others when their individual claims become moot, the decision nevertheless leaves several other questions open. The opinion does not address whether an unaccepted Rule 68 offer that fully satisfies a plaintiff's individual claim is sufficient to render that claim moot. Furthermore, and perhaps more importantly, the opinion does not address the standard for conditional certification of a collective action under 29 U.S.C. § 216(b), an issue that never seems to be subject to review.

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