



<i>Genesis Healthcare Corp. v. Symczyk</i>: FLSA Collective Action May Be Mooted by Full Offer of Judgment

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Tuesday, the Supreme Court issued its opinion in [Genesis Healthcare Corp. v. Symczyk](#), No. 11-1059. In a 5-4 decision, Justice Thomas wrote for a majority of the Court that a named plaintiff in a collective action could be “picked off” when she failed to accept a full offer of judgment.

Laura Symczyk worked in a nursing home owned by Genesis Healthcare. She sued Genesis in a collective action for violation of the Fair Labor Standards Act (FLSA), alleging that Genesis had failed to pay her for 30 minutes of meal breaks when she had not actually taken all or some of the break. Genesis answered the complaint and made a Rule 68 offer of judgment, offering to satisfy all of Symczyk’s claims for \$7,500 in unpaid wages, plus attorneys’ fees, costs and expenses. She did not accept the offer.

Therefore, Genesis moved to dismiss the suit on the basis that Symczyk no longer had a “personal stake” in the outcome, as she had been offered all the relief she was

seeking. Symczyk conceded her claim had been satisfied, but argued her suit was still justiciable based on the collective action allegations in her complaint. The district court disagreed and granted Genesis' motion to dismiss.

But the Third Circuit reversed and remanded, holding that while Symczyk's personal claim was mooted, the use of offers of judgment before class certification could "short-circuit the class action process" and "prevent a putative representative from reaching the certification stage."

The Supreme Court began by noting that for federal jurisdiction to exist, a plaintiff must have a legally cognizable claim and a personal stake in the outcome of the action. This requirement must exist at all stages of the litigation — not just at the filing of the complaint. The Court conceded that the federal appeals courts are split on whether an offer of full settlement to a class representative in a class action moots the representative's claims. But it indicated it would not resolve that dispute because it was "not properly before us" since Symczyk had waived and not appealed the mootness argument.

The Court then found that Symczyk had no remaining personal stake in representing other workers. According to the Court, the worker had "no personal interest in representing putative, unnamed claimants, nor any other continuing interest that would preserve her suit from mootness." The Court found that a "collective action" cannot continue "once the individual claim is satisfied." Therefore, unless others have come forward to participate in the litigation, nothing survives the satisfaction of the plaintiff's claim. Thus, "the mere presence of collective-action allegations in the complaint cannot save the suit from mootness once the individual claim is satisfied."

In a cheeky dissent, Justice Kagan held that the majority's decision involved "the most one-off of one-offs" because it resolved a situation that would never arise. Recounting the facts of the case, Kagan's opinion asks the audience to "[keep] an eye out for anything that would render any part of [the case] moot." She then disagreed with the "assumed but unaddressed issue" that an unaccepted offer of judgment providing full relief could moot a lead plaintiff's case. According to Kagan, an unaccepted offer of judgment is a nullity, and does not have the effect of stripping the plaintiff of a justiciable claim or ability to represent others in the litigation.

Symczyk is significant because it is further evidence of the dim view that the Supreme Court is taking of collective actions in general — a view that has become ever clearer and more pronounced after several decisions this term. And while the Court suggested a distinction between collective actions under the FLSA (where joining members are added as co-plaintiffs) and class actions (where class representatives represent absent class members), it is no doubt the case that this decision will have some bleed over into the class action arena. Going forward, one would expect that defendants will make offers of judgment to class representatives prior to class certification being sought or granted in an attempt to kill the class action by mootng

the class representative's individual claim. And plaintiff's counsel will be more apt to file conditional class certification motions with the filing of a class action complaint in order to stave off the effect of such offers of judgment.