



Sixth Circuit Holds That Rule 68 Offer to Class Representative Does Not Moot Class Claims

June 14, 2013

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On Tuesday, the Sixth Circuit decided the much-anticipated case *Hrivnak v. NCO Portfolio Management, Inc.* At issue in the case is whether a defendant's pre-certification offer of complete relief to a plaintiff who purports to bring a class action operates to moot the plaintiff's complaint and strip the plaintiff of Article III standing.

Christopher Hrivnak sued several debt management companies and a law firm seeking monetary and injunctive relief on behalf of a class of like-situated individuals, alleging several federal and state consumer protection claims. In response, the defendants gave Hrivnak a Civil Rule 68 "offer he could not refuse — \$7,000 plus reasonable costs and attorney's fees — or so they thought."

Hrivnak rejected the offer. The defendants argued that their offer mooted the case and, with it, the class action because it satisfied all of Hrivnak's claims. The court disagreed, holding that the offer at most resolves some, but not all, of Hrivnak's claims.

The court explained that the defendants did not offer to satisfy all of Hrivnak's individual demands. Rather, they offered to satisfy just those demands the defendants believed were legitimate under state law and the Fair Debt Collection Practices Act (FDCPA). Hrivnak asked for more than \$25,000, reasonable attorney's fees, and injunctive and declaratory relief. But the defendants offered him only \$7,000 plus costs and attorney's fees. The court concluded: "Reasonable though the defendants' offer may have been (and may still prove to be), the disparity between what they offered and what the plaintiff sought generally will preclude a finding of mootness. Just so here."

The Rule 68 offer did create a risk that Hrivnak would be hit with all costs later incurred if he failed to obtain more than \$7,000 on the merits. But, the court notes, that is not the same thing as mooting the claims — and ending the otherwise-vested subject matter jurisdiction of the court.

Judge Sutton, writing for a unanimous panel, wrote the opinion. The decision may be found on the [6th Circuit website](#).