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Using Offers Of Judgment In Class Actions

Law360, New York (September 21, 2011, 12:15 PM ET) -- Offers of judgment, whether under Federal Rule of Civil Procedure 68 or state law equivalents, are often used to resolve nuisance suits or to put pressure on plaintiffs to agree to a reasonable settlement when liability may not be hotly contested. An offer of judgment for complete relief — all the relief to which a prevailing plaintiff would be entitled — "will generally moot the plaintiff's claim." Weiss v. Regal Collections, 385 F.3d 337, 340 (3d Cir. 2004).

More and more often, offers of judgments have been used in the early stages of putative class actions in an effort to moot the named plaintiff's claims and, thereby, knock out a class action before it gets off the ground. These efforts have been met with mixed results.

Overview of Rule 68

Rule 68 provides, in part, that "[a]t least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued." The other party then has 14 days to accept the offer, in which case judgment will be entered after proper filing with the court. Id. After 14 days, the offer is deemed rejected.

In a typical individual plaintiff case, when the offer of judgment is "[a]n offer of complete relief," in other words the defendant offers to provide all that the plaintiff would be entitled to, then the offer "will generally moot the plaintiff's claim." Weiss v. Regal Collections, 385 F.3d 337, 340 (3d Cir. 2004).

The reason that an offer of judgment for complete relief moots an individual claim is grounded in the Constitution's Article III standing requirements. Article III requires that the "judicial Power" of the United States be applied only to decide "Cases" and "Controversies." U.S. Const. Art. III.

The U.S. Supreme Court has interpreted Article III to require that: "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006) (quoting Allen v. Wright, 468 U.S. 737, 751 (1984)); see also Friends of Earth Inc. v. Laidlaw Envtl. Servs. Inc., 528 U.S. 167, 180-181 (2000).

An offer of complete relief, therefore, generally moots the plaintiff's claims because "as at that point the plaintiff retains no personal interest in the outcome of the litigation. Thus, whether or not the plaintiff accepts the offer, no justiciable controversy remains when a defendant tenders an offer of judgment under Rule 68 encompassing all the relief a plaintiff could potentially recover at trial." Symczyk v. Genesis Healthcare Corp., No. 10-3178, 2011 U.S. App., at *17 (3d Cir. Aug. 31, 2011).

Offers Of Judgment In Class and Representative Actions

In class actions and other representative actions (such as claims under the Fair Labor Standards Act), courts have taken a different approach to questions of mootness arising from offers of judgment to named plaintiffs. See, e.g., Lusardi v. Xerox Corp, 975 F.2d 964, 974 (3d Cir. 1992) ("[S]pecial mootness rules apply in the class action context, where the named plaintiff purports to represent an interest that extends beyond his own.").

Courts Finding Offer Of Judgment Can Moot Class Claims

A number of courts have held that an offer of judgment for complete relief to a named plaintiff made prior to certification of any class will moot both the named plaintiff's claims as well as the putative class claims. See, e.g., Ambalu v. Rosenblatt, 194 F.R.D. 451, 453 (E.D.N.Y. 2000) ("If a named representative's claim becomes moot before class certification, the entire case is to be dismissed for lack of subject matter jurisdiction."); Tallon v. Lloyd & McDaniel, 497 F. Supp. 2d 847, 855 (W.D. Ky. 2007) (granting summary judgment after offer of judgment prior to certification); Jones v. CBE Group Inc., 215 F.R.D. 558, 570 (D. Minn. 2003) (dismissing claim after offer of judgment made prior to motion for class certification being filed).

Once a motion for class certification has been filed, the results are usually different. As one court described it, "[t]he great weight of federal authority holds that a Rule 68 offer of judgment cannot moot the named plaintiffs' claims after a motion for class certification has been filed." Stewart v. Cheek & Zeehandelar LLP, 252 F.R.D. 384, 385 (S.D. Ohio 2008) (emphasis added). These courts have held that the filing of the motion for class certification vests the putative class representative with some on-going stake in the litigation (for example, to appeal the class certification decision). See id.; see also Symczyk, (discussing mootness issues raised when offer of judgment made after motion for class certification filed).

Using The Relation-Back Doctrine To Avoid Mootness

Just this summer, two federal courts of appeals have weighed in on the issue. Both have held that an offer of judgment for complete relief does not moot the named plaintiff's claims (or the putative class claims) even when the offer of judgment is made before a motion for class certification is filed. See Symczyk v. Genesis Healthcare Corp. (3d Cir. Aug. 31, 2011); Pitts v. Terrible Herbst Inc. (9th Cir. Aug. 9, 2011). These courts join two other courts of appeals that have similarly held that pre-certification offers of judgment do not moot a class or representative action. See Lucero v. Bureau of Collection Recovery Inc., 639 F.3d 1239, 1249 (10th Cir. 2011); Sandoz v. Cingular Wireless LLC, 553 F.3d 913, 920-21 (5th Cir. 2008); see also Weiss v Regal Collections, 385 F.3d 337, 348 (3d Cir. 2004).

The Ninth and Third Circuits based their decisions on the so-called "relation back" doctrine. "[T]he relation back doctrine allows a district court to retain jurisdiction over a matter that would appear susceptible to dismissal on mootness grounds by virtue of the expiration of a named plaintiff's individual claims." Symczyk. Under this doctrine, the courts view the motion for class certification as if it relates back in time to the date of the filing of the complaint. "This equitable principle has evolved to account for calculated attempts by some defendants to short-circuit the class action process and to prevent a putative representative from reaching the certification stage." Id. at *22.

As the Third Circuit described the purpose of the relation back doctrine, "[b]y invoking the relation back doctrine, a court preserves its authority to rule on a named plaintiff's attempt to represent a class by treating a Rule 23 motion as though it had been filed contemporaneously with the filing of the class complaint. Consequently, "the 'relation back' principle ensures that plaintiffs can reach the certification stage." Symczyk (quoting Sandoz v. Cingular Wireless LLC, 553 F.3d 913, 919 (5th Cir. 2008)).

When the motion for class certification is viewed as "relating back" to the filing of the complaint then an offer of judgment for complete relief does not moot the putative class representative's case because he or she is deemed to have some stake in the litigation such that (if timely filed) he or she may proceed to seek certification of the proposed class. Pitts v. Terrible Herbst Inc. (9th Cir. Aug, 9, 2011) (discussing reasons why offer does not moot case). If a class is then certified, "the case may continue despite full satisfaction of the named plaintiff's individual claim because an offer of judgment to the named plaintiff fails to satisfy the demands of the class. Conversely, if the district court denies class certification ... the plaintiff may still pursue a limited appeal of the class certification issue." Id. at *23-24.

Conclusion

There may still be good reason to make offers of judgment in class actions, including the fact that it could lead to an award of costs if the plaintiff ultimately does not recover more than the offer. However, at least in some jurisdictions, the offer of judgment does not carry as much weight as it once did. Some courts of appeals have not yet weighed in on the issue, but the recent decisions cast doubt on the ability to rely on such offers as a method of avoiding a class action dispute. Parties should familiarize themselves with the law in their jurisdiction and decide whether an offer makes sense in their particular case.

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