

Insights: Publications

The Seventh Circuit Forecloses One “Pick Off” Method Under Rule 67, But Leaves A Trail Of Crumbs For Both The Plaintiffs’ And Defense Bar

JD Supra

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Takeaway: The U.S. Supreme Court ruled in January 2016 in *Campbell-Ewald Co. v. Gomez* that an unaccepted Rule 68 offer of judgment has no legal effect and therefore does not serve to moot a class action. 136 S. Ct. 663 (2016). Since that time, defendants in class actions – especially defendants in Telephone Consumer Protection Act (TCPA) cases and other lawsuits in which statutory damages are sought – have been exploring the question reserved in *Campbell-Ewald*: what if a defendant actually pays what is offered, rather than merely offering the payment? The Seventh Circuit recently rejected one such method of “picking off” the named plaintiff in its recent decision in *Fulton Dental, LLC v. Bisco, Inc.*, No. 16-3574, 2017 WL 2641124 (7th Cir. June 20, 2017), but left open issues for further exploration by the plaintiffs’ and defense bar.

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