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Supreme Court Decision in *Genesis Healthcare Corp. v. Symczyk* Aligns with DRI Amicus Brief

Court Holds That FLSA Case Is Non-Justiciable When the Lone Plaintiff's Individual Claim Becomes Moot

CHICAGO – (April 16, 2013) The Supreme Court this morning issued its decision in *Genesis Healthcare Corp. v. Symczyk*, in an opinion that closely aligns with the position taken by DRI - The Voice of the Defense Bar in its amicus curiae brief filed last September. The Fair Labor Standards Act of 1938 (FLSA) allows an employee to bring a collective action to recover damages on behalf of him- or herself and other "similarly situated" employees who "opt in" to the lawsuit. In a 5–4 decision, the Supreme Court held that a case is not justiciable when the lone plaintiff's individual claim becomes moot.

The case involved Laura Symczyk, a nurse formerly employed by Genesis. Symczyk sued under the FLSA's collective-action provision, seeking damages for an alleged policy of automatically deducting time for meal breaks regardless of whether an employee worked through the break. Pursuant to Federal Rule of Civil Procedure 68, petitioners offered Symczyk $7,500 to cover all of the unpaid wages she claimed for herself, as well as her court costs and attorneys' fees. Symczyk failed to respond and the offer expired.

The district court concluded that the Rule 68 offer would have fully satisfied Symcyzk's individual claim. Because no other plaintiff with a live claim had opted in to the suit, the court dismissed Symczyk's case as moot. The Third Circuit reversed. It held that, even though Symczyk's individual claim was moot, the case could proceed to allow others the opportunity to opt in. Otherwise, the court ruled, a defendant could end collective action suits prematurely by "picking off" named plaintiffs.

The Supreme Court reversed. First, based on Symczyk's concession (and the Third Circuit's holding) that an unaccepted Rule 68 offer to satisfy fully a plaintiff's individual claim renders that claim moot, the Court assumed without deciding that petitioners' offer mooted her individual claim. Second, the Court held that Symczyk's suit no longer remained justiciable after her individual claim became moot. "While the FLSA authorizes an aggrieved employee to bring an action on behalf of himself and 'other employees similarly situated,'" wrote Justice Thomas, author of the majority opinion, "the mere presence of collective-action allegations in the complaint cannot save the suit from mootness once the individual claim is satisfied."

In so holding, the Court rejected Symczyk's attempts to analogize the FLSA's collective-action provision to a traditional Rule 23 class action that does not have a similar opt-in requirement. The Court recognized that a certified Rule 23 class action survives after the named plaintiff's claim becomes moot because the class has separate legal status. Similarly, if the named plaintiff's claim becomes

moot after an erroneous *denial* of class certification, the class action may continue because a later decision correcting that error and certifying the class will "relate back" to the time of the original certification decision. But the Court held those rules do not apply where the named plaintiff's claim becomes moot *before* any certification decision. Nor do they apply to an *opt-in* collective action under the FLSA, where additional parties do not enter the suit unless they file written consent with the court. The Court also rejected Symczyk's policy argument that a defendant should not be allowed to dispose of FLSA actions by "picking off" named plaintiffs, holding that such concerns cannot justify keeping a suit alive where no plaintiff has any continuing personal stake in the litigation.

DRI's brief was authored by DRI members Jeffrey Lamken, Lucas Walker, and Martin Totaro of MoloLamken LLP, who are available for interview or for expert comment through DRI's Communications Office.

For the full text of the brief, click here.

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