PALEY ROTHMAN
ATTORNEYS AT LAW

Supreme Court Roundup: 2015-2016 Decided Cases

By Hope Eastman

As the Court enters the last two months of its 2015-2016 term, here is a look at the decided cases that can affect private sector employers. A separate blog will follow, detailing those cases still pending that private sector employers should watch.

DECIDED CASES

DIRECTV v. Imburgia, No. 14-462 [Decided Dec. 14, 2015]

Returning again to the California courts' attempt to invalidate class action waivers in arbitration agreements, the Supreme Court, in its last opinion of 2015, reversed yet another California judicial refusal to enforce arbitration agreements with class action waivers. Three years ago, the Court held in AT&T Mobility v. Concepcion that the Federal Arbitration Agreement preempted California's invalidation of those waivers. The Court clearly saw the *Imburgia* decision in the California Court of Appeals as another attempt to invalidate arbitration agreements and, in its opinion, the Court unmistakably rebuked the state court for attempting to evade the preemptive effect of federal law. This case was a consumer arbitration case, but it has direct applicability to employer arbitration agreements with class action waivers.

Campbell-Ewald Company v. Gomez, No. 14-857 [Decided Jan. 20, 2016]

This case relates to a valuable litigation technique in federal court that allows the employer (or other defendant) to offer full relief to the named plaintiff. When successful, it allows the defendant to limit the plaintiff's right to recover additional attorney fees and sometimes to moot the entire case. This class action suit was brought by people who received unwanted text messages from the Navy. Because they could not sue the Navy, they sued a government contractor under the Telephone Consumers Protection Act of 1991, where the contractor had prepared the list of people who would receive the messages. The defendant company made Rule 68 offers to the named plaintiffs for full relief. The plaintiffs did not accept the offers because they wanted to pursue a class action. The Supreme Court ruled that an *unaccepted* settlement offer or offer of judgment does not moot a plaintiff's case so the contractor could not in effect force dismissal of the case.

The Court's opinion, however, offered defendants a possible roadmap. In the last two sentences of its analysis, the Court stated that:

We need not, and do not, now decide whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount. That question is appropriately reserved for a case in which it is not hypothetical.

Watchers of the Court expect that this issue will return to the Court, whether in this case or others, to see if the Court would allow defendants to "moot" the class action by this mechanism.

Tyson Foods v. Bouaphakeo, No. 14-1146 [Decided Mar. 22, 2016]

This case was about the employer's alleged failure to pay employees for donning and doffing protective gear under the Fair Labor Standards Act. It was a class action brought on behalf of Tyson Foods employees who alleged that the employer's failure to pay them for donning and doffing protective gear violated the Fair Labor Standards Act. The decision is significant because it was widely viewed as an opportunity for the Court to reaffirm its *Dukes* ruling which limited the use of class actions. However, here, the Court allowed the employees to rely on "representative evidence" to determine the number of additional hours that each employee worked, when the employer had failed to keep adequate records. If you want to know more about this decision, see our earlier blog about Use of Statistics in Class Action Cases.

 | 4800 Hampden Lane, 6th Floor, Bethesda, MD 20814-2930 | 301-656-7603 | 301-654-7354 fax