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## Commercial Litigation Law Alert - New York Court Finds Depositing The Full Value Of Plaintiff's Claim Under Rule 67 Cannot Moot A Plaintiff's Class Action Claim

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On Feb. 3, the U.S. District Court for the Eastern District of New York (EDNY) ruled that depositing funds with the court sufficient to cover the full amount of the plaintiff's claim under Fed. R. Civ. P. 67 cannot moot a named plaintiff's class action claim, at least not prior to an opportunity for class certification. *Ashley Brady and Stephanie Dalli Cardillo v. Basic Research, LLC et al.*, No. 2:13-cv-07169, Dkt #81 (EDNY, Feb. 3, 2016).

The court's ruling came just 14 days after the Supreme Court held an unaccepted settlement offer of complete relief under Rule 68 could not moot a named plaintiff's claim. *Campbell-Ewald Co. v. Gomez*, 2016 WL 228345, at \*8 (U.S. Jan. 20, 2016). However, in *Gomez*, the Supreme Court left open whether depositing complete relief into an account or with the court could render the claim moot.

The day after the Supreme Court's ruling in *Gomez*, the defendants filed a motion to deposit complete relief with the court under Rule 67. The defendants cited *Gomez* and argued that "depositing of funds sufficient to cover the full amount of a plaintiff's individual claims, in an account payable to the plaintiff prior to the Court entering judgment, may provide the basis for mooting a plaintiff's case." In response, the plaintiffs stated that the Supreme Court did not make this determination in *Gomez*, that the defendants were "misus[ing] Rule 67," and that "depositing monies with the Court does not provide complete relief as 'it does not address the class claims, it does not admit liability, and it fails to address the Plaintiff's claims for injunctive relief.'"

In denying the defendants' motion, the court held that Rule 67 was not the proper mechanism for mooting a named plaintiff's class claim. Rule 67 was "intended to relieve a depositor of the burden of administering an asset[.]" not to moot a plaintiff's claim. Furthermore, the court relied upon the *Gomez* majority opinion stating that "a would-be class representative with a live claim of her own *must be accorded a fair opportunity* to show that certification is warranted." (Emphasis in original).

Undaunted by the denial of their motion, the defendants notified the court that they placed the full amount of the plaintiffs' claim into an Interest on Lawyer Trust Account (IOLTA) "segregated and held for the benefit of the Plaintiffs." The defendants argued that Chief Justice John Roberts'

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dissenting opinion in *Gomez* “made clear that paying [complete relief] into an account *will* moot a plaintiff’s claim.” The court has not yet ruled on whether the defendants’ deposit of complete relief into an IOLTA is sufficient to moot the plaintiffs’ individual and class claim.

Although the EDNY is the first court since *Gomez* to rule whether a motion to deposit complete relief with the court under Rule 67 is permissible, it will likely not be the last.

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