

Fee Wars: Supreme Court Eases Defendants' Burden for Attorneys' Fees in Baseless Discrimination Actions

By Paul Patten

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In an 8-0 decision, the U.S. Supreme Court has ruled that attorneys' fees for successfully defending a Title VII action can be recovered by an employer even if the defendant's victory is not based on the merits of the case. *CRST Van Expedited, Inc. v. EEOC*, No. 14-1375 (May 19, 2016). The ruling overturned an earlier Eighth Circuit decision that had allowed the Equal Employment Opportunity Commission to escape payment of attorneys' fees. The ruling is important because defendants sometimes prevail in frivolous lawsuits for procedural reasons that are not merits-based.

Background

Writing for the Supreme Court, Justice Anthony Kennedy devoted almost half of his opinion to the lengthy procedural history of the case.

- In 2009, in a series of rulings, the district court dismissed all the EEOC's Title VII sexual harassment claims. Finding the defendant, CRST Van Expedited, to be a "prevailing party," it awarded the company \$4 million in attorneys' fees relating to the EEOC's pursuit of claims for 67 women. The district court found the EEOC's lawsuit was unreasonable because the EEOC has "wholly abandoned its statutory duties" to fulfill its pre-suit requirements of investigating and conciliating prior to filing its lawsuit on behalf of the women.
- In 2012, the U.S. Court of Appeals for the Eighth Circuit (in St. Louis) upheld the district court's dismissal of the suit on behalf of the 67 women (*CRST I*). The Eighth Circuit reversed the district court's dismissal of the claims of two other women: Tillie Jones and Monika Starke. The Eighth Circuit also vacated without prejudice the \$4 million attorneys' fee award to CSRT. With Jones and Starke still having viable claims, the EEOC's lawsuit was still alive and CRST, in the appeals court's view, was no longer a prevailing party.
- On remand, the EEOC withdrew its claims for Jones and settled Starke's claim.
- In 2013, after the Jones and Starke matters were resolved, the district court reinstated the \$4 million attorneys' fee award against the EEOC.
- In 2014, the Eighth Circuit reversed the district court's 2013 attorney fee award (*CRST II*). Following prior Eighth Circuit precedent, the court of appeals held the dismissal of the 67 claims was not a decision on the merits and, therefore, CRST was not a "prevailing party" entitled to its fees under Title VII. The Eighth Circuit ruled that CRST was required to prevail on an "element of a Title VII claim" and a dismissal because of the EEOC's failure to fulfill its pre-suit obligations to investigate and attempt to conciliate discrimination charges was not an element of a Title VII claim resulting in a decision on the merits.
- CRST petitioned for U.S. Supreme Court review, and the Court granted the petition.

Developments at Supreme Court

The EEOC switched gears once the matter reached the Supreme Court. Declining to argue the validity of the Eighth Circuit's rule that a defendant must prevail on the merits to be considered a prevailing party that can obtain attorneys' fees, the EEOC instead advanced two alternative arguments to avoid paying CRST's attorneys' fees. First, the EEOC alleged that CRST had not obtained a preclusive judgment against the EEOC. According to the EEOC, based on the manner of the lower courts' dismissal of the 67 woman, it had the ability to file a new lawsuit against CRST, making claims identical to the claims that had already been dismissed. The EEOC reasoned that its alleged ability to restart the lawsuit prevented CRST from claiming that it is a prevailing party entitled to fees. Second, the EEOC argued that, as a matter of law, the EEOC's lawsuit against CRST was not frivolous, unreasonable, or groundless. The EEOC claimed the investigation and conciliation tactics used against CRST — investigating and conciliating on behalf of a class of unknown individuals — is standard operating procedure at the EEOC. Moreover, the EEOC argued the Supreme Court had recently endorsed the EEOC's tactics by instructing that the EEOC fulfills its

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conciliation obligation if it identified the “class of employees” for which it seeks relief. *Mach Mining, LLC v. EEOC*, 135 S.Ct. 1645 (2015).

Ruling

With the EEOC having waived the argument relied on by the court below (that a merits-based judgment was necessary to obtain “prevailing party” status), Justice Kennedy proceeded to explain why the Supreme Court was reversing the Eighth Circuit. According to Justice Kennedy, a plaintiff’s goal in litigation is to alter the legal relationship between the parties. A defendant’s goal is to prevent an alteration in the plaintiff’s favor. When a defendant obtains a court decision rebuffing the plaintiff’s challenge, the defendant has prevailed even if the final judgment rejects the plaintiff’s claims for nonmerits-based reasons.

Justice Kennedy, noting the EEOC’s preclusive judgment argument was raised at the “eleventh hour” and was potentially forfeited, remanded the issue to the Eighth Circuit. The Supreme Court also remanded the issue of whether the EEOC’s conduct was “frivolous, unreasonable or groundless.”

CRST III – Return of the Fees?

The Supreme Court’s decision and remand brings promise of a *CRST III*. Because the Eighth Circuit did not previously reach the question of whether the EEOC’s lawsuit was “frivolous, unreasonable or groundless,” that issue will now be before the Eighth Circuit. Even more interesting is the EEOC’s hint that it might engage in conciliation for each of the 67 woman already dismissed from the EEOC’s lawsuit, and if conciliation fails, file a brand new lawsuit in federal court on behalf of the 67 women.

Obtaining Defense Attorneys’ Fees after *CRST*

While the Supreme Court in *CSRT* evaluated Title VII’s attorneys’ fee provisions, Justice Kennedy noted that the term “prevailing party” is contained in various fee-shifting statutes and the Supreme Court has interpreted the term in a consistent manner. Lower courts may be expected to take notice of Justice Kennedy’s observation and apply the *CRST* ruling to other fee-shifting statutes awarding attorneys’ fees to a “prevailing party.”

Even after the *CRST* ruling, it will continue to be more difficult for prevailing defendants, as compared to prevailing plaintiffs, to obtain an award of attorneys’ fees. In his concurring opinion, Justice Clarence Thomas pointed out that prior Supreme Court precedent concluded that a prevailing plaintiff “ordinarily is to be awarded attorneys’ fees in all but special circumstances,” but a prevailing defendant is to be awarded fees only “upon a finding that plaintiff’s action was frivolous, unreasonable, or without foundation.” *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978). Employers, therefore, should not expect such awards routinely, even when they litigate a discrimination case to a successful conclusion. According to Justice Thomas, the language in Title VII does not support such a distinction. However, no other justice appears interested in revisiting *Christiansburg Garment*.

Jackson Lewis attorneys are available to answer inquiries regarding this case.

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