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*CRST Van Expedited, Inc. v. EEOC*, No. 14-1375

A defendant defeating a Title VII action is entitled to attorneys' fees when the plaintiff's claim was "frivolous, unreasonable, or groundless," or if "the plaintiff continued to litigate after it clearly became so." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978).

Today, in *CRST Van Expedited, Inc. v. Equal Opportunity Employment Commission*, No. 14-1375, the Supreme Court held that Title VII defendants may still be eligible for attorneys' fees even if they won dismissal of the case on procedural grounds. In the particular case at issue, the district court awarded approximately \$4 million in attorneys' fees against the EEOC after concluding that the agency had wholly failed to satisfy its statutory obligation to engage in pre-suit investigation and conciliation efforts. The Eighth Circuit reversed the award, concluding that a judicial determination on the merits is necessary to establish that the claim was, indeed, "frivolous, unreasonable, or groundless."

In a unanimous opinion by Justice Kennedy, the Supreme Court disagreed. The Court reasoned that the defendant's objective is to rebuff the plaintiff's challenge by any available means and that there is no indication that Congress intended to spare defendants from frivolous litigation only if the litigation was frivolous on the merits. But the Court left two issues open for remand: (1) whether a judgment must be preclusive to entitle the prevailing party to attorneys' fees; and (2) whether the EEOC's claim was actually frivolous.

This decision will give the EEOC greater incentives to take seriously its obligation to pursue conciliation before filing suit, particularly in light of the Court's decision last Term in *Mach Mining v. EEOC*, which confirmed that the EEOC's statutory obligation to attempt conciliation is subject to judicial review.

Any questions should be directed to [Miriam R. Nemetz](#) (+1 202 263 3253) in our Washington office.