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**Gallagher Sharp Newsflash: U.S. Supreme Court Holds That Third Party
Retaliation Claims Viable Under Title VII**

On January 24, 2011, the Supreme Court of the United States held that an employee who was fired shortly after his fiancée filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) could maintain a lawsuit for unlawful retaliation under Title VII of the Civil Rights Act of 1964. In *Thompson v. North American Stainless, LP*, Slip. Op. 09-291, Eric Thompson and his fiancée, Miriam Regalado, were both employees of North American Stainless (NAS). Regalado filed a discrimination charge against NAS with the EEOC. Three weeks later, Thompson was terminated. Thompson then filed a charge with the EEOC and eventually sued NAS in the U.S. District Court for the Eastern District of Kentucky under Title VII of the Civil Rights Act of 1964.

Thompson's complaint alleged that NAS fired him to retaliate against Regalado for filing her charge with the EEOC. The District Court granted summary judgment for NAS finding that Title VII does not permit third-party retaliation claims. 435 F. Supp. 2d 633, 639 (E.D. Ky 2006). On appeal the Sixth Circuit Court of Appeals held that Thompson "did not engage in any statutorily protected activity either on his own behalf or on behalf of Miriam Regalado" and therefore, he is not "included in the class of persons for whom Congress created a retaliation cause of action." The case was appealed to the Supreme Court which addressed two issues: 1) Did the firing of Thompson constitute unlawful retaliation? 2) If so, did Thompson have a cause of action under Title VII?

The Supreme Court first noted that Regalado's filing of the EEOC charge constituted a protected activity under Title VII and assumed that NAS fired Thompson to retaliate against Regalado, a fact which Thompson will have to prove at trial. With this premise the Court then turned to the first issue: whether Thompson's termination constituted unlawful retaliation. According to the Court, activities by employers "that well might have dissuaded a reasonable worker from making or supporting a charge of discrimination" are prohibited under Title VII. Rejecting NAS's argument that prohibiting reprisals against third parties would lead to difficult line drawing problems concerning the types of relationships entitled to protection under Title VII, the Court unanimously held that "a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." However, the court declined to identify "a fixed class of relationships for which third-party reprisals are unlawful" since "the significance of any given act of retaliation will often depend upon the particular circumstances."

In addressing the second issue, the Court turned to the language of Title VII which provides that "a civil action may be brought... by the person claiming to be aggrieved." Rejecting NAS's argument that a "person aggrieved" means only those employees who "engaged in the protected activity," the Court relied upon the "zone of interests" test and held that a plaintiff may sue under Title VII "if he or she falls within the zone of interest sought to be protected by a statutory provision whose

violation forms a legal basis of the Complaint." Applying the test, the Court held that Thompson fell within the zone of interests protected by Title VII. "Thompson was an employee of NAS, and the purpose of Title VII is to protect employees from their employers' unlawful actions." Accordingly, he is a person aggrieved with standing to sue under Title VII.

The opinion can be found at:

<http://www.supremecourt.gov/opinions/10pdf/09-291.pdf>.

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