

From: Julie Juergens
Sent: Fri 5/1/2015 4:34 PM

Gallagher Sharp Newsflash: United States Supreme Court Clarifies Courts' Ability to Review EEOC Conciliation Obligations

Title VII requires the Equal Employment Opportunity Commission (“EEOC”) try to remedy unlawful work practices of employers by way of informal methods of “conciliation” before filing suit against an employer. Lower federal courts reached different conclusions on whether and how courts may review such conciliation efforts of the EEOC. On April 29, 2015, in a unanimous decision, the United States Supreme Court addressed this split in the lower courts, and held that review of whether the EEOC fulfilled its Title VII duty of attempted conciliation with an employer prior to filing suit in federal court is permissible, but the scope of judicial review of the EEOC’s conciliation efforts is narrow because of the discretion afforded to the EEOC.

In *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. ____ (2015), after finding probable cause to believe that Mach Mining, LLC engaged in unlawful hiring practices, the EEOC engaged in conciliation. First, a letter inviting Mach Mining to join the complainant in an informal conciliation process was sent. Approximately one year later, another letter was sent advising the Company that the EEOC concluded that conciliation efforts were unsuccessful. Then, suit was filed by the EEOC in federal court. In its defense, Mach Mining alleged the EEOC failed to conciliate in good faith prior to bringing suit. The EEOC disagreed that its conciliation efforts were inadequate and, further claimed its conciliation efforts were not subject to judicial review.

The Supreme Court concluded that courts can review the EEOC’s conciliation efforts, reasoning that although “Congress gave the EEOC wide latitude to choose which ‘informal methods’ to use, it did not deprive courts of judicially manageable criteria by which to review the conciliation process.” *Mach Mining*, syllabus. Recognizing the EEOC’s “extensive discretion to determine the kind and amount of communication with an employer appropriate in any given case,” the Court further held that a reviewing court should employ a narrow scope of review when determining whether the EEOC fulfills its Title VII duty to attempt conciliation. *Id.* at *4. A reviewing court should also determine whether the Commission informed the employer about the specific discrimination allegation, including what the employer has done and which employees have suffered, and whether the EEOC attempted to engage the employer in discussion to try provide the employer with the opportunity to remedy the allegedly discriminatory practice. Additionally, “[a] sworn affidavit from the EEOC stating that it has performed these obligations should suffice to show that it has met the conciliation requirement.” *Id.* at syllabus.

Following the decision, the EEOC issued a press release stating that it remained committed to the conciliation process. In our view, this continued commitment coupled with court oversight should allow for just and fair conciliation efforts after a finding that there is reasonable cause to believe discrimination has occurred.

The full opinion can be found at: http://www.supremecourt.gov/opinions/14pdf/13-1019_c1o2.pdf.

If you have any questions, please contact:

Julie L. Juergens
Kevin R. Marchaza
GALLAGHER SHARP
Sixth Floor, Bulkley Building
1501 Euclid Avenue
Cleveland, Ohio 44115-2108
Ph: (216) 241-5310
jjjuergens@gallaghersharp.com
kmarchaza@gallaghersharp.com
www.gallaghersharp.com