

## Title VII Sex Discrimination and Retaliation/Subject Matter Jurisdiction re Attorneys' Fees

On May 5, 2010, the Ninth Circuit Court of Appeal issued an Opinion, to be published, in the case titled *Porter v. Winter* (9<sup>th</sup> Cir. 07-171250). Attorney Charles L. Post prepared and submitted the briefs and attorney Lizbeth V. West appeared and argued before the Ninth Circuit on behalf of Appellant, Ronald Porter.

Ronald Porter, a former civilian employee of the Navy, brought a complaint before the Equal Employment Opportunity Commission ("EEOC") alleging gender discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. The EEOC found the Navy liable for retaliation, but not gender discrimination. Porter sought to recover the attorney's fees and costs he incurred in the Title VII administrative proceedings, but the Navy awarded him only a fraction of the amount he requested. After reviewing the Navy's fee decision, the EEOC slightly increased the award.

Porter filed a complaint in district court challenging the amount of attorney's fees awarded to him in the Title VII administrative proceedings. The district court dismissed the complaint for lack of subject matter jurisdiction, reasoning that it did not "have jurisdiction to adjudicate solely a claim for attorney's fees without a claim of a substantive violation of Title VII." Porter appeals that ruling. We have jurisdiction under 28 U.S.C. § 1291 and review the district court's decision de novo. *Armstrong v. N. Mariana Islands*, 576 F.3d 950, 954 n.4 (9th Cir. 2009).

We conclude that, under *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980), federal courts have subject matter jurisdiction over claims brought solely to recover attorney's fees incurred in Title VII administrative proceedings. Accordingly, we reverse. For a full copy of the Opinion, visit <http://www.ca9.uscourts.gov/datastore/opinions/2010/05/05/07-17120.pdf>

*Charles "Chuck" Post and Lizbeth "Beth" West are shareholders in the Labor and Employment Law Section at Weintraub Genshlea Chediak. Chuck's practice includes counseling employers in all areas of employment law and representing management in the defense of wrongful termination, discrimination, harassment, trade secret, employee mobility and other employment disputes. He has extensive experience defending multi-party complex litigation involving misappropriation of trade secrets, unfair competition, and corporate raiding. Beth's practice focuses on counseling employers in all areas of employment law, and defending employers in state and federal court, as well as before administrative agencies. She has extensive experience in defending wage and hour claims, and complex whistle-blowing and retaliation claims. Chuck and Beth also provide training services on various employment issues, such as sexual harassment and violence in the workplace. If you have any questions about this Legal Alert or other employment law related questions, please feel free to contact Charles L. Post or Beth West at (916) 558-6000. For additional articles on employment law issues, please visit Weintraub's employment law blog at [www.thelelawblog.com](http://www.thelelawblog.com).*