# "Prevailing Party" Status Not Necessary for an ERISA Attorneys' Fees Award

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*Hardt v. Reliance Standard Life Insurance Co.*, __ U.S.__ (2010)

In a decision authored by Justice Clarence Thomas, the United States Supreme Court has declared that an ERISA claimant need not be a "prevailing party" to be eligible for an attorneys' fees award. In *Hardt v. Reliance Standard Life Insurance Co.*, __ U.S.__ (2010), the Court ruled that under 29 U.S.C. §1132(g)(1), a party may be awarded attorneys' fees if "some degree of success on the merits" is achieved, as opposed to the more stringent requirement imposed by some circuit courts that they be a "prevailing party."
Bridget Hardt initiated the litigation seeking long-term disability benefits under an ERISA plan. Faced with cross motions for summary judgment, the United States District Court for the Eastern District of Virginia denied Reliance's motion finding that "Reliance's decision to deny benefits was based on incomplete information." The District Court also denied Hardt's motion for summary judgment, but in doing so, found "compelling evidence" that Hardt was totally disabled. The District Court accordingly remanded the claim to Reliance with instructions that all of the evidence in the file be adequately considered within 30 days, otherwise "judgment will be issued in favor of Ms. Hardt."

As instructed, Reliance reconsidered Hardt's claim, finding her entitled to further benefits and paying $55,250 in accrued, past-due benefits. Hardt then moved for attorneys' fees and costs under §1132(g)(1) which provides that "the court in its *discretion* may [award] reasonable attorney's fee and costs of action *to either party*." (Emphasis added.) The District Court assessed her motion under the Fourth Circuit Court of Appeal's three-step framework, the first step of which is to consider whether the fee claimant is a "prevailing party." The District Court deemed Hardt to be a prevailing party because the remand order "sanctioned a material change in the legal relationship of the parties," and, after applying the other two steps, awarded $39,149 to Hardt for attorneys' fees and costs.

Reliance appealed the award, arguing that Hardt failed to establish that she was a prevailing party because she did not obtain an "enforceable judgment on the merits" or a "court-ordered consent decree." The Fourth Circuit vacated the award of fees and costs, holding that because the remand order "did not require Reliance to award benefits to Hardt," it did "not constitute an enforceable judgment on the merits," and thus Hardt was precluded from establishing prevailing party status.

In granting *certiorari*, the Supreme Court framed two questions to be decided. First, does an ERISA claimant need to be a prevailing party in order to be awarded fees? Second, under what circumstances may a court award fees under §1132(g)(1)?

Answering the first question in the negative, the Court noted that the term "prevailing party" does not appear in §1132(g)(1) and that nothing in §1132(g)(1)'s text purports to limit the availability of attorneys' fees to a "prevailing party." The Court also took into account that fees awarded under §1132(g)(2)(D) (governing award of attorneys' fees in actions to recover delinquent employer contributions to multiemployer plans) are permitted only to plaintiffs who obtain "a judgment in favor of the plan," finding that the contrast between the two sections

makes clear that Congress' failure to impose express limits on the availability of attorneys' fees under §1132(g)(1) was intentional. Accordingly, for this "question of statutory construction," the Court declared that "a fee claimant need not be a 'prevailing party' to be eligible for an attorneys' fees award under §1132(g)(1)."

Addressing the second question of the circumstances in which attorneys' fees may be awarded under §1132(g)(1), the Court, citing its ruling in *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 686 (1983) (a case involving the Clean Air Act, not ERISA), held that "a fees claimant must show some degree of success on the merits." A fee claimant does not satisfy this requirement by achieving "trivial success on the merits" or a "purely procedural victor[y]." Instead, fees should only be awarded "if the court can fairly call the outcome of the litigation some success on the merits without conducting a lengthy inquiry into the question whether a particular party's success was substantial or occurred on a central issue." (Internal quotations omitted.)

However, in footnote 8, the Court explained that showing some degree of success on the merits does not automatically entitle a claimant to a fees award. Instead, once a claimant has satisfied that requirement, a court may consider the five factors adopted by many courts of appeal when determining whether to actually issue an attorneys' fees award. *See Quesinberry v. Life Ins. Co. of North Am.*, 987 F.2d 1017, 1029 (4th Cir. 1993); *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980).

By dispensing with the "prevailing party" requirement, ERISA plans and insurers now have ammunition to defeat fee requests sought when claimants have achieved only "trivial success" or a "purely procedural victory." In addition, footnote 9 confirms the viability of attacks on the reasonableness of fees sought (and ultimately awarded), but these arguments were not preserved by Reliance on appeal. Finally, although not addressed by the Supreme Court, the issue of proportionality (comparing amount of fees incurred with the amount of benefits awarded) remains an avenue that is worth exploring when opposing fee requests.