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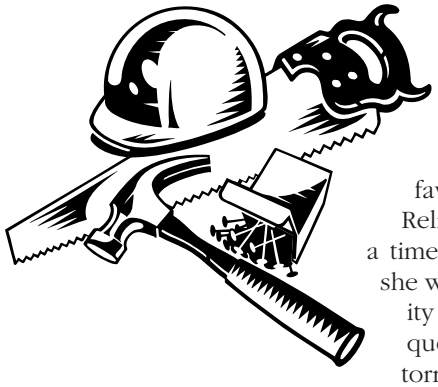
The Supreme Court Says "Some Success on the Merits" is Enough Under ERISA

The U.S. Supreme Court agreed to decide whether "prevailing party" status is a requirement for awarding attorneys' fees under the Employee Retirement Income Security Act (ERISA) § 502(g). In a recent decision, *Hardt v. Reliance Standard Life Insurance Co.*,[1] the Court held that an award for attorneys' fees in a suit under ERISA § 502(g)(1) is not limited to the "prevailing party." In the unanimous decision, the Court ruled that either party may recover attorneys' fees under the statute, and "some success on the merits" is all that is required for a claimant to recover an award of fees.

In *Hardt*, the plaintiff, Bridget Hardt, filed a claim for long-term disability benefits under a plan provided by her employer. Even though the employer administered the plan, the employer's disability insurance carrier, Reliance Standard Life Insurance Co., was the party that determined whether or not claimants actually qualified for benefits. Reliance also underwrote any benefits awarded. Ultimately, Reliance denied Hardt's claim, and she filed suit in federal court, claiming that the company had violated ERISA by wrongfully denying her claim for benefits.

The trial court determined that the decision to deny Hardt benefits was not based on substantial evidence. However, the court refused to grant summary judgment to Hardt and, instead, remanded the case to Reliance to review Hardt's claim and adequately consider all the evidence in making a determination. The court further ordered that, if Reliance did not review Hardt's claim within 30 days, the court would issue judgment in her favor.



Reliance reviewed Hardt's claim in a timely manner and determined that she was eligible for long-term disability benefits. Hardt's counsel subsequently moved for an award of attorneys' fees and costs under ERISA § 502(g)(1). The district court granted her request, but the Fourth Circuit vacated the trial court's order and held that Hardt was not entitled to attorneys' fees, because she had failed to show that she was a prevailing party. The Fourth Circuit reasoned that the trial court's order—remanding the case back to Reliance for further review—was not an enforceable judgment on the merits. Therefore, the Fourth Circuit concluded that Hardt was not a "prevailing party" as a matter of law.[2]

The U.S. Supreme Court found the Fourth Circuit's interpretation of § 502(g)(1) contrary to the plain language of the statute.[3] In doing so, the Court first considered the statutory language of ERISA § 502(g)(1), which states: "In any action under this subchapter … by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party."[4] The Court noted that the statute does not mention prevailing party and thus does not limit the availability of attorneys' fees to a prevailing party. The Court further pointed out that the language in § 502(g)(1), which gives a court discretion to award fees and costs to either party, is in sharp contrast with the language of ERISA § 502(g)(2), which governs the availability of attorneys' fees in actions brought under ERISA that seek to recover delinquent employer contributions to a multiemployer plan.

Section 502(g)(2) specifically states that fees may be sought only by plaintiffs who obtain "a judgment in favor of the plan."[5] The Court held that the contrast between these two provisions demonstrates that Congress "knows how to impose express limits on the availability of attorney's fees in ERISA cases."[6] The Court reasoned that, because Congress had failed to include an express "prevailing party" requirement in § 502(g)(1), the Fourth Circuit's decision imposing such a requirement "more closely resembles 'inventing a statute rather than interpreting one.'"[7]

The Court determined that, under § 502(g)(1), a court "in its discretion" may award fees and costs "to either party," as long as the fee claimant has achieved "some degree of success on the merits."[8] The Court held that a claimant would not meet this requirement by achieving "trivial success on the merits" or a "purely procedural victory."[9]

According to the Court, a claimant will satisfy this requirement if the court can fairly say that the outcome of the litigation had "some success on the merits" without conducting a "lengthy inquiry" into the question of whether a particular party was successful. The Court further held that Hardt was able to meet this requirement, because the trial court had found "compelling evidence" that she was totally disabled and stated that it was "inclined to rule" in her favor.

This decision leaves the door open to plaintiffs

filing claims under ERISA to try to recover attorneys' fees based on even low levels of success. For example, the Court noted that it was not determining the issue of whether a remand order automatically constitutes some success on the merits sufficient to justify an award of attorneys' fees. However, in many ERISA cases, it is typical for a court to remand decisions to the plan administrator in order to allow the deficiencies to be cured without further interference from the court. It is not hard to imagine that lower courts will have significant trouble making any determination without a "lengthy inquiry" into the sufficiency of the claimant's success on the merits. Indeed, the Court has provided no standard by which to measure the inquiry. Therefore, a likely consequence could be that some lower courts will determine that remand alone will be an indication of sufficient success on the merits.

Once the determination has been made regarding whether a claimant is entitled seek attorneys' fees, a court must still determine whether or not to actually *award* such fees. The Court did state that its decision in *Hardt* does not foreclose the possibility that, once a claimant has satisfied the "some success on the merits" requirement, a court may consider the five factors adopted by the Fourth Circuit in *Quesinberry v. Life Ins. Co. of North Am.* when deciding whether to award attorneys' fees.[10] However, the Court stopped short of enunciating these factors as guidelines or requirements.

In leaving the question open, the Court left it to the individual circuits to determine standards for awarding attorneys' fees once a claimant has shown some success on the merits enough to entitle the claimant to seek attorneys' fees under the act. The *Hardt* decision undoubtedly expands the number of claimants entitled to seek attorneys' fees under ERISA, and the district courts will now be the gatekeepers charged with filtering out those who deserve an award of attorneys' fees and those who do not.

During these lean economic times, employee benefits are becoming the subject of more and more litigation. The questions raised—and left unanswered—by the *Hardt* decision may well create a perfect storm for inconsistent decisions from one circuit to the next. As the issue of what constitutes "some success on the merits" is litigated and re-litigated, employers may face costly consequences as employees recover attorneys' fees for succeeding on some part of their claims. **TFL**

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Endnotes

[1]*Hardt v. Reliance Standard Life Ins. Co.*, ___U.S.___ (May 24, 2010), full text available at www.supremecourt.gov/opinions/09pdf/09-448.pdf (last visited June 2, 2010).

[2]*Hardt v. Reliance Standard Life Ins. Co.*, No. 08-1896, 2009 U.S. App. LEXIS 15478 (4th Cir. July 14, 2009).

[3]*Hardt*, *supra* note 1, at 4.

[4]*Id.* at 7.

[5]*Id.* at 9.

[6]*Id.*

[7]*Id.*

[8]*Id.* at 4.

[9]*Id.* at 12.

[10]*Id.* The factors the Fourth Circuit considered were: (1) the degree of opposing parties' culpability or bad faith; (2) ability of opposing parties to satisfy an award of attorneys' fees; (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances; (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions. *Quesinberry v. Life Ins. Co. of North Am.*, 987 F.2d 1017, 1029 (4th Cir. 1993).

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and be amenable to a disposition that protects the noncitizen defendant's immigration status. As noted by the Supreme Court, thoughtful and effective plea bargaining incorporates the noncitizen defendant's potential deportation consequences in the plea bargaining process so that the eventual plea agreement satisfies the interests of both the state and the defense. *Id.* at 1486. **TFL**

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