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## Not a Hard Case: Supreme Court Resolves Conflict on Awarding Attorney Fees in ERISA Cases in *Hardt v. Reliance Standard Life*

By Russell D. Chapman and Brian S. Clarke

Resolving a long-standing conflict in the Federal Circuits, the U.S. Supreme Court in *Hardt v. Reliance Standard Life*, No. 09-448 (May 24, 2010), has held that a party need not “prevail” in its Employee Retiree Income Security Act (ERISA) litigation for a court to award the party attorneys’ fees; rather, the Court held that a party in an ERISA case is eligible for a fee award if it achieves “some degree of success on the merits” in the litigation.

### Background

After she applied for long-term disability (LTD) benefits from her employer’s LTD plan, Bridget Hardt was awarded temporary benefits for 24 months. She later applied for and received a determination of total and permanent disability under the Social Security Act from the Social Security Administration, and applied for permanent LTD benefits from Reliance, the plan’s claims administrator. After several medical evaluations, Reliance hired a physician and vocational rehabilitation expert to review the file. The expert determined that Hardt did not meet the plan’s definition of disability for permanent benefits. Based on that determination, Reliance upheld the termination of Hardt’s LTD benefits after 24 months.

After exhausting her administrative remedies, Hardt sued Reliance. The district court held that Reliance had ignored much of the medical evidence available in the administrative record, and though it was inclined to hold in her favor, chose to remand the case back to Reliance to reconsider its decision, “adequately considering all of the available evidence” in its review. The court ordered Reliance to issue its determination within 30 days, or judgment would be rendered for Hardt.

Upon further review, Reliance reversed its prior decision and approved Hardt’s application for permanent LTD benefits. After this determination, Hardt moved for attorneys’ fees under section 502(g)(1) of ERISA.<sup>1</sup> The district court granted her application for attorneys’ fees, applying a three-step analysis used in the Fourth Circuit in cases under ERISA section 502(g)(1).

## Lower Courts' Analyses

Under the district court's analysis, to be eligible for an award of attorneys' fees under ERISA, the litigant must be a "prevailing party." If the party is a "prevailing party," the court then applies a "five factor" test to determine if a fee award is appropriate. The five factors are:

1. culpability or bad faith of the opposing party;
2. the ability of the opposing party to satisfy a fee award;
3. deterrence effect of the award;
4. whether the decision will benefit all the participants and beneficiaries or resolve a significant legal question; and
5. the relative merits of the parties' positions.

Based on this five-factor test, if the reviewing court believes that the prevailing party is entitled to a fee award, the court determines a reasonable amount of fees and costs to be awarded.

On review, the Fourth Circuit Court of Appeals rejected the district court's analysis, holding that because Hardt sought benefits in her suit, but only obtained an order remanding the case to the claims administrator for further consideration, she did not prevail on the merits, and therefore was not a "prevailing party" as required by ERISA's fee-shifting provision. The Supreme Court granted certiorari to review the case.

## Supreme Court's Opinion

A unanimous Supreme Court rejected the Fourth Circuit's reasoning and held that a party need not be a "prevailing party" in order to recover attorneys' fees under ERISA section 502(g)(1). The Court reasoned that the plain language of section 502(g)(1) states that in any action by a participant, beneficiary, or fiduciary, not described in ERISA section 502(g)(2), "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." The Court contrasted this language in section 501(g)(1) with the language of section 501(g)(2), which provides that in an action to recover delinquent employer contributions to a multiemployer plan, fees may be awarded only to a party who obtains "a judgment in favor of the plan."

Because Congress included an express prevailing party restriction in section 501(g)(2), that was "conspicuously absent" from section 502(g)(1), the Court easily concluded that a party need not be a "prevailing party" in order to receive a fee award under section 501(g)(1).

However, the Court cautioned that its holding did not mean that a party may be awarded attorneys' fees in an ERISA case if it achieves no success whatsoever in the litigation. The Court explained that the traditional "American Rule" requires each party to pay its own attorneys' fees and court costs in the absence of a statute "shifting" those obligations to the other party. Thus, where the fee-shifting statute leaves the matter of an award of attorneys' fees to the discretion of the court, "some success" by the applicant on the merits of the case, which is not merely trivial or procedural, is required in order to support the award. However, the Court explicitly rejected the "five factor" test long applied in fee-award cases by the lower courts, holding that their use "bears no relation" to ERISA's text or to the Court's holdings in cases involving similar fee-shifting statutes.

In applying its holding to the facts of *Hardt*, the Court had little trouble determining that Ms. Hardt had indeed enjoyed "some success" in the litigation. Alleging that Reliance had not followed ERISA's guidelines in reaching its decision, she succeeded in obtaining an order remanding her claim to Reliance because Reliance's initial determination had ignored so much of the medical evidence available in the administrative record that it was not based on "substantial evidence." The court gave Reliance 30 days to complete a second review, taking into account all of the evidence, or the court would issue judgment for Ms. Hardt. Reliance apparently got the message, and on remand, awarded Ms. Hardt the permanent LTD benefits she sought. The Court held that this easily met its standard of "some success" on the merits necessary to support an award of fees under ERISA section 502(g)(1).

By resolving the long-standing split in the Circuit Courts of Appeal on this issue (and rejecting the positions of the First, Fourth, Seventh and Tenth Circuits), the *Hardt* decision brings some certainty to the award of fees and costs under section 501(g)(1) in ERISA cases.

For example, *Hardt* resolves a question that has hovered over fee awards in ERISA cases for many years in those jurisdictions that did not impose the “prevailing party” requirement. That is, the reviewing court may not award fees to the losing party, for example, on the ground that the litigation benefited the participants and beneficiaries as a whole, or resolved a legal issue critical to the administration of the plan, and thus in fact benefited the plan administrator or sponsor.

Nevertheless, with that certainty some clouds of doubt remain as the lower courts now must work to define the parameters of the “some success” standard in the ERISA litigation context. While the Court found Ms. Hardt met that standard by obtaining a remand order and, upon remand, the benefits she claimed in her lawsuit, it is unclear whether a litigant who obtained a remand order but was then denied the benefits on remand would meet the “some success” standard.

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<sup>1</sup> 29 U.S.C. § 1132(g)(1).