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LEGAL ALERT

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Supreme Court Holds that ERISA Does Not Impose "Prevailing Party" Requirement for Award of Attorneys' Fees

The U.S. Supreme Court ruled today in *Hardt v. Reliance Standard Life Insurance Company*, Case. No 09-448 (May 24, 2010), that the Employee Retirement Income Security Act of 1974 (ERISA) does not impose a "prevailing party" requirement for an award of statutory attorneys' fees and costs in most ERISA cases. The fee claimant, however, must show "some degree of success on the merits."

In this case, the plaintiff, Hardt, sought benefits under her employer's ERISA-governed, long-term disability plan (Plan). The claims administrator initially determined that Hardt was not disabled as defined by the Plan and denied her claim for benefits. The claims administrator then reversed its decision on administrative appeal, awarding benefits to Hardt for a 24-month period. After the initial 24-month period, the Plan imposed a more stringent definition of disability. The claims administrator determined that Hardt could not meet this definition and denied her claim for benefits after the initial 24-month period had expired. The claims administrator upheld this decision on administrative appeal, and Hardt filed suit seeking benefits. The United States District Court for the Eastern District of Virginia denied cross-motions for summary judgment and remanded the claim for further administrative review. On remand, the claims administrator ultimately determined that Hardt was disabled as defined by the Plan and awarded long-term disability benefits.

Hardt then moved for an award of attorneys' fees and costs. The District Court held that Hardt was a prevailing party and was entitled to attorneys' fees under ERISA §502(g)(1), 29 U.S.C. § 1132(g)(1). The claims administrator appealed. The Fourth Circuit Court of Appeals reversed, holding that Hardt was not a prevailing party because a remand for administrative review is not a judgment on the merits. The Supreme Court granted certiorari and undertook to decide (1) whether §502(g)(1) contains a prevailing party requirement, an issue on which the circuits were split, and (2) under what circumstances may a court award attorneys' fees.

The Supreme Court held that §502(g)(1) – which gives courts discretion to award reasonable attorneys' fees and costs to "either party" in most ERISA litigations – does not contain a prevailing party requirement. The term "prevailing party" does not appear in the text of the statute and, in a brief analysis, the Court declined to infer such a requirement. (The Court read the defendant's reply brief substantially to concede this point.) In contrast, the Court noted that the other subsection of §502(g) – which applies only to ERISA litigation by multiemployer plans to recover delinquent employer contributions – requires a "judgment in favor of the plan" before fees may be awarded.

In next considering the circumstances under which a court may in its discretion award attorneys' fees, the Court looked to other cases interpreting fee-shifting statutes without a prevailing party requirement, principally *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983) (under the Clean Air Act). Based on *Ruckelshaus*, the Court held that fee claimants must show "some degree of success on the merits." Because the District Court found "compelling evidence" that Hardt was disabled as defined by the Plan and was "inclined to rule in Ms. Hardt's favor" but for the need to remand the case for a full and fair administrative review, at which time she was awarded long-term disability benefits, the Court held that the plaintiff demonstrated sufficient success on the merits to be entitled to attorneys' fees even though she did not win summary judgment.

The Supreme Court did not attempt comprehensive guidance on how much success a party must achieve before being entitled to an award of attorneys' fees under ERISA.

- According to the opinion, the party must achieve more than "trivial success on the merits" and more than a "purely procedural victory."

- The Court specifically did not address "whether a remand order, without more, constitutes 'some success on the merits' sufficient to make a party eligible for attorney's fees" under ERISA.

Eight of the justices joined the opinion, which was issued only four weeks after oral argument. Justice John Paul Stevens agreed that ERISA does not impose a "prevailing party" requirement and that the District Court acted within its discretion in granting attorneys' fees to Hardt, however, Justice Stevens indicated he would not have followed *Ruckelshaus* (from which he dissented) without further analysis of the text, structure and history of ERISA.

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If you are interested in more information about these developments, please contact any of the following attorneys or the Sutherland attorney with whom you regularly work:

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