

U.S. Supreme Court Clarifies An Attorneys' Fee Award In ERISA Suits May Be Appropriate Based on "Some Degree Of Success On The Merits" — But What Constitutes "Some Degree of Success"?

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On May 24, 2010, the U.S. Supreme Court unanimously held in *Hardt v. Reliance Standard Life Insurance Co.*, No. 09-448-cv, that "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.'" The standard announced by the Court followed rulings regarding other statutes that failed to indicate clearly whether and under what circumstances attorneys' fees should be awarded.

In so holding, the Court resolved a split among the Court of Appeals and rejected the Fourth Circuit's earlier determination that a party must be a "prevailing party" to be eligible for an attorneys' fee award pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), since the statutory text speaks of no such requirement. The Court further rejected the five factor test (e.g., culpability, ability to satisfy an award, deterrence, significance of the matter, and relative merits) that many courts had used to decide whether a party was entitled to attorneys' fees, reasoning that these factors "bear no obvious relation" the statute. The Court did not, however, foreclose the possibility that district courts may continue to use these factors to guide their discretion in deciding whether to award attorneys' fees, once it is first determined that the participant had achieved "some success."

The finding that the participant had in this instance satisfied the standard for an award of fees was limited to the unique facts of the case. The district court had stated that there was “compelling evidence” that Hardt was totally disabled and that it was inclined to rule in her favor, but declined to do so before remanding to the plan administrator to ensure that she was provided a full and fair review of her claim. Under these circumstances, the Court held that plaintiff Hardt established “some degree of success on the merits” by persuading the district court to find that the plan administrator failed to comply with ERISA’s guidelines and that she did not get the kind of review during the administrative process that she was entitled to under ERISA. Accordingly, the Court affirmed the award granting Hardt her attorneys’ fees.

The standard for an award of attorneys’ fees — “some degree of success on the merits” — adopted by the Supreme Court today is likely to generate more litigation as courts struggle to interpret the contours of what “some degree” actually means. Significantly, the Supreme Court declined to rule on whether a “remand order,” without more, would constitute “some success on the merits,” for purposes of triggering potential entitlement to attorneys’ fees.

A more detailed analysis will appear in the next *Proskauer ERISA Litigation Newsletter*.

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