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OTHER NEWS
 June 17, 2010

Supreme Court eases standard for attorney fees in ERISA claims
 Carmel Sileo

A recent Supreme Court decision will make it easier for ERISA plaintiffs to be awarded attorney fees. In a unanimous opinion, the Court held that "a fee claimant need not be a prevailing party to be eligible for attorney fees under ERISA's general fee-shifting statute" but only needs to show "some degree of success on the merits." (*Hardt v. Reliance Standard*, 2010 WL 2025127 (U.S. May 24, 2010).)

Gregory Dell, a lawyer in Hollywood, Florida, whose firm handles ERISA cases nationwide, said the ruling "will allow lawyers to take cases that they otherwise couldn't" and that the standard for allowing attorney fees "has been substantially relaxed."

In 2000, Bridget Hardt, an executive assistant at the Dan River company in Danville, Virginia, was diagnosed with carpal tunnel syndrome. By 2003, she had undergone surgeries on both wrists with no alleviation of her symptoms, and she filed a claim for long-term disability benefits.

After the company's insurer, Reliance Standard Life Insurance, denied her claim, she sued the insurer under ERISA. A district court remanded her claim to Reliance, citing deficiencies in the insurer's administrative processes. Reliance then paid the benefits, and the court awarded attorney fees to Hardt, saying she was the "prevailing party."

On appeal, the Fourth Circuit vacated the award of attorney fees on the ground that the district court had not ordered Reliance to pay her claim, and so Hardt had not been given an "enforceable judgment on the merits."

But writing for the Supreme Court, Justice Clarence Thomas found that "the district court . . . properly exercised its discretion to award her attorney fees, even though [the] district court did not grant her summary judgment on her claim."

Referring to the requirement to "show some success" on the merits, Thomas wrote that "a claimant does not satisfy that requirement by achieving trivial success on the merits or a purely procedural victory, but does satisfy it if the court can fairly call the outcome of the litigation some success on the merits without conducting a lengthy inquiry into the question [of] whether a particular party's success was substantial, or occurred on a central issue."

Dell said the Court's opinion reflected the reality of ERISA litigation.

"In almost all ERISA cases," he said, "the claimant gets denied and there's a long post-denial period, sometimes well over a year, at which point the judge almost always remands the case asking for a reevaluation. Usually, so much time has passed that the judge can't make a decision about the claimant's disability without new evidence." Dell cited as an example a case he tried in Hawaii, where the appeal took place five years after the initial denial.

In the *Hardt* case, Dell said, "Reliance tried to argue that because the judge didn't award the claimant any money, she was not a prevailing party. But the Supreme Court said otherwise and affirmed that judges are right to use their own discretion in awarding fees."

Dell said the ruling will give much-needed clarity to an issue that has confounded lawyers fighting these claims in various jurisdictions.

"Before this ruling, you saw tremendous variation around the country," he said. "As an example of two extremes, in the Ninth Circuit you almost always got fees and in the Eleventh Circuit, almost never. This ruling gives more uniformity and direction. It basically tells judges that they're smart enough to make these decisions on their own."

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