Analysis of US Supreme Court case Hardt v. Reliance Standard Life Insurance Co.
by Mark DeBofsky

The Employee Retirement Income Security Act of 1974 (ERISA) provides: "In any action under this title (other than an action described in paragraph 2) 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." 29 U.S.C. § 1132(g)(1). In *Hardt v. Reliance Standard Life Ins.Co.,* No. 09-448, 2010 U.S.LEXIS 4164 (Supreme Court May 24, 2010), the question before the Supreme Court was whether the United States Court of Appeals for the Fourth Circuit had improperly read a "prevailing party" requirement into that provision. The Supreme Court unanimously ruled that such a reading conflicts with the "plain text" of the statute and held "that a court 'in its discretion' may award fees and costs 'to either party,' *ibid.,* as long as the fee claimant has achieved 'some degree of success on the merits.'" (citing *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 694, 103 S. Ct. 3274, 77 L. Ed. 2d 938 (1983)).

The case began when Bridget Hardt, an employee of Dan River, Inc., ceased working in 2003 due to various medical impairments and applied for disability benefits from Reliance Standard Life Insurance Company which underwrote group disability insurance for Dan River employees. Although benefits were initially approved, the insurer terminated payments after 24 months, contending that Hardt was capable of working even though a concurrent application for Social Security disability benefit payments resulted in a finding that Hardt was unable to work in any capacity whatsoever. After exhausting pre-suit appeals, Hardt brought a civil action under ERISA seeking reinstatement of the benefits she claimed were due to her.

Although the court did not award Hardt benefits outright, the court found Reliance abused its discretion and failed to meet its fiduciary obligation to provide her with a full and fair review of her benefit claim. The court ordered Reliance to reconsider the claim within 30 days; otherwise, judgment would be entered in Hardt's favor. That ruling resulted in Reliance approving the claim and paying all past due benefits. Hardt then applied to the district court for an award of fees and costs pursuant to § 1132(g)(1) which the court granted after concluding Hardt was a "prevailing party" and that consideration of the following five factors favored an award of benefits:

> (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.

The Fourth Circuit reversed the fee award. The court of appeals concluded Hardt was not a "prevailing party" because she failed to receive an outright award of benefits. The Supreme Court granted review to consider two questions: First, did the Court of Appeals correctly conclude that § 1132(g)(1) permits courts to award attorney's fees only to a "prevailing party"? Second, did the Court of Appeals correctly identify the circumstances under which a fee claimant is entitled to attorney's fees under § 1132(g)(1)? The Court noted that the courts of appeal were split on the issue.

The ruling began by pointing out that whether the fee-shifting statute limits the availability of attorney's fees to a "prevailing party" is a question of statutory construction. The Court noted

the phrase "prevailing party" does not appear in § 1132(g)(1) which grants courts discretion to award fees "to *either* party." (emphasis in opinion). In contrast, 29 U.S.C. § 1132(g)(2) permits fees to be awarded to plans that sue for delinquent employer contributions to multiemployer benefit plans and secure "a judgment in favor of the plan." That contrast makes it clear that Congress was cognizant of how to draft limitations in statutes as to the availability of attorney's fees. Hence, the failure to limit eligibility to recover fees to the "prevailing party" meant Congress intended no such limitation. The Court thus held "that a fee claimant need not be a 'prevailing party' to be eligible for an attorney's fees award under § 1132(g)(1)."

The Court then turned to consideration of circumstances under which a court may award fees under § 1132(g)(1), a statute in derogation of the general "American Rule" that each party pays its own fees. Applying its precedent from *Ruckelshaus,* which dealt with a fee award under the Clean Air Act, 42 U.S.C. § 7607(f), and, like ERISA, lacks a "prevailing party" requirement, the Court found the achievement of "some degree of success on the merits" makes an award of fees achievable subject to the court's discretion. The Supreme Court rejected the necessity of applying the five factors that had been utilized by the lower court (although the Court left open the possible continued use of such factors) and instead pointed to *Ruckelshaus* as laying out the "proper markers to guide a court in exercising the discretion that § 1132(g)(1) grants."

The Court explained that in order for there to be "some degree of success on the merits," it must be more than achieving "trivial success on the merits" or a "purely procedural victor[y];" however, a lengthy inquiry is not required to examine the question of "whether a particular party's success was 'substantial' or occurred on a 'central issue.'" Thus, as in this case, it was enough that the court determined the plan administrator had failed to comply with ERISA guidelines and denied Hardt a full and fair review of her claim. The Court was careful to note, though, that it was not deciding "whether a remand order, without more, constitutes 'some success on the merits' sufficient to make a party eligible for attorney's fees under § 1132(g)(1)."

Given the ubiquity of remands of ERISA cases, even after plaintiffs achieve the near-impossible – a finding the insurer's denial of benefits was arbitrary and capricious – the result reached by the Supreme Court is consistent with ERISA's intent. ERISA's attorney's fee provision serves two purposes. First, it discourages frivolous claim denials by providing a disincentive or sanction against improper claim denials. *See, e.g., National Cos. Health Benefit Plan v. St. Joseph's Hosp.,* 929 F.2d 1558, 1575 (11th Cir. 1991) ("With nothing to lose but their own litigation costs, other ERISA-plan sponsors might find it worthwhile to force underfinanced beneficiaries to sue them to gain their benefits or accept undervalued settlements."). Thus, by placing insurers who administer employee benefit claims on notice that they may be required to pay fees for their unlawful behavior even if benefits are not awarded outright, it creates the incentive to decide the claim properly in the first instance. Second, fee awards enable claimants to secure legal representation even when their claims are of low to moderate value, thereby helping plan participants obtain remedies as contemplated in ERISA's declaration of policy. *See* 29 U.S.C. § 1001(b)("It is hereby declared to be the policy of this Act to protect . . . the interests of participants in employee benefit plans and their beneficiaries, . . . by providing for appropriate remedies, sanctions, and ready access to the Federal courts.").

Hardt is also consistent with an unbroken string of Supreme Court rulings involving both public benefits and civil rights. For example, in *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct.

1933, 76 L. Ed. 2d 40 (1983), the Court explained, "[P]laintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." The same rationale was expressed in *Farrar v. Hobby,* 506 U.S. 103, 111-12 (1992), which held a party prevails when "actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying defendant's behavior in a way that directly benefits the plaintiff." Thus, a court ruling that overturns a benefit denial and gives the claimant a renewed opportunity to secure benefits plainly transforms the plaintiff into the equivalent of a prevailing party.

The example of the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A) ("EAJA") is particularly instructive. Even though EAJA explicitly includes a "prevailing party" requirement as a prerequisite to a fee award, a Social Security disability benefit claimant who receives a remand pursuant to Sentence 4 of 42 U.S.C. § 405(g) is eligible to apply for fees according to *Shalala v. Schaefer,* 509 U.S. 292, 113 S. Ct. 2625 (1993), which held that fee applications under EAJA are available following a remand without the need to await an outright award of benefits, finding, "No holding of this Court has ever denied prevailing party status (under 28 U.S.C. § 2412(d)(1)(B)) to a plaintiff who won a remand order pursuant to sentence four of § 405(g)." *Shalala,* 509 U.S. at 302. Although EAJA was not mentioned in the *Hardt* ruling, the Court obviously had it in mind. There are two types of remands of Social Security cases pointed out in *Melkonyan v. Sullivan,* 501 U.S. 89 (1991). The remand in *Hardt* was the result of an adjudication on the merits, comparable to a remand pursuant to Sentence 4 of 42 U.S.C. § 405(g). However, Sentence 6 of that statute would permit a remand to allow consideration of new evidence without any adjudication on the merits – and such remands do not permit fee awards under EAJA. Nor, under *Hardt,* would such a remand generally allow for a fee award. What *Hardt* accomplishes, though, is that the regime of cases such as *Quinn v. Blue Cross and Blue Shield Ass'n,* 161 F.3d 472 (7th Cir. 1998) and *Tate v. Long Term Disability Plan for Salaried Employees of Champion International Corp. #506,* 545 F.3d 555 (7th Cir. 2008), which flatly disallowed fees following a remand overturning benefit terminations but which did not award benefits outright, is over.

Mark DeBofsky was the principal author of an amicus brief filed in *Hardt* on behalf of United Policyholders (along with Donald Bogan and Mala Rafik) and was also counsel for Appellants in *Quinn* and *Tate.*