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**U. S. Supreme Court Lowers Standard for
Attorney's Fees Award Under ERISA**

On May 24, 2010, the U. S. Supreme Court held unanimously that a party seeking attorney's fees under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, need not be a "prevailing party," but instead need only achieve "some degree of success on the merits." Hardt v. Reliance Standard Life Ins. Co., No. 09-448, 2010 U.S. LEXIS 4164 (May 24, 2010). The Court held that section 1132(g)(1) of ERISA "expressly grants district courts 'discretion' to award attorney's fees to 'either party.'" *Id.* at *18. The words "prevailing party" do not appear in section 1132(g)(1), and thus the "prevailing party" standard used in many employment cases is not the correct standard used to award attorney's fees under that section.*

The Hardt decision makes it easier for employees to recover attorney's fees under section 1132(g)(1) of ERISA. In rejecting the tougher "prevailing party" standard, the Court has made it clear that an employee does not have to be a clear winner to recover fees, but only show "some degree of success."

Key Facts & Points of Law

Bridget Hardt, an employee of the textile manufacturer, Dan River, Inc., resigned after surgeries failed to alleviate pain caused by carpal tunnel syndrome. Hardt initially was awarded long-term disability benefits, but was later informed that she was ineligible for continued benefits. She filed suit against the insurance company, Reliance Standard Life Insurance Company ("Reliance"), claiming ERISA violations. The U. S. District Court denied the parties' cross motions for summary judgment. However, the District Court instructed Reliance to reconsider all the evidence of Hardt's alleged total disability within 30 days, or judgment would be entered in favor of Hardt. Reliance did as instructed, found Hardt eligible for continuing disability benefits and paid her \$55,250 for past due benefits. Hardt, thereafter, sought attorney's fees (\$58,920, according to the briefs). The District Court awarded attorney's fees; the Fourth Circuit Court of Appeals reversed on the basis that Hardt was not a "prevailing party."

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The Court's ruling does not affect section 1132(g)(2) of ERISA, which governs the award of attorney's fees in actions to recover delinquent employer contributions to multi-employer plans and grants fees to plaintiffs who obtain "a judgment in favor of the plan." See, 29 U.S.C. § 1132(g)(2); Hardt, 2010 U.S. LEXIS 4164 at *18.

The U. S. Supreme Court reversed the Fourth Circuit’s decision and application of the “prevailing party” standard, holding that Hardt had achieved “some degree of success” because among other things, she persuaded the trial court that she was permanently disabled and that judgment would be entered in her favor unless Reliance reconsidered its decision within 30 days. Thus, the trial court had discretion to award attorney’s fees.

The Supreme Court’s narrow ruling does not clarify what constitutes “some degree of success on the merits” entitling a party to attorney’s fees, nor does it provide any definitive test or step-by-step analysis for courts to apply in future cases. The Court stated only that the party seeking an award of attorney’s fees needs to establish more than “trivial success on the merits” or a “purely procedural victory.” Hardt, 2010 U.S. LEXIS 4164 at *25-26.

Implications for Employers

- More adverse ERISA determinations will likely be challenged by employees in the federal courts given the lower standard for recovery of attorney’s fee awards articulated in Hardt.
- The law in the Seventh Circuit will change as a result of the Hardt decision. The Seventh Circuit had previously awarded attorney’s fees in ERISA actions only where the party seeking fees was a “prevailing party.”
- After Hardt, similar statutes with fee-shifting provisions that have been interpreted as allowing only prevailing parties to recover attorney’s fees, but do not actually contain “prevailing party” terms, may be subject to the less stringent “some degree of success on the merits” standard.
- Because section 1132(g)(1) of ERISA allows district courts discretion to grant attorney’s fees to *either* party, employers should be subject to and may also benefit from the Court’s “some degree of success on the merits” standard when defending ERISA claims.

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August 1, 2010

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