IN THE SUPREME COURT OF THE UNITED STATES

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BRIDGET HARDT, :

Petitioner :

v. : No. 09-448

RELIANCE STANDARD LIFE INSURANCE :

COMPANY. :

- x

Washington, D.C.

Monday, April 26, 2010

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:05 a.m.

APPEARANCES:

JOHN R. ATES, ESQ., Alexandria, Virginia; on behalf of Petitioner.

PRATIK A. SHAH, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the United States, as amicus curiae, supporting Petitioner.

NICHOLAS Q. ROSENKRANZ, ESQ., Washington, D.C.; on behalf of Respondent.

C O N T E N T S

P R O C E E D I N G S

(11:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 09-448, Hardt v. Reliance Standard Life Insurance Company.

Mr. Ates.

ORAL ARGUMENT OF JOHN R. ATES

ON BEHALF OF THE PETITIONER

MR. ATES: Mr. Chief Justice, and may it please the Court:

The Fourth Circuit vacated an award of attorney's fees to Petitioner Hardt even though the district court found Respondent violated ERISA in bad faith and required Respondent to redetermine benefits within 30 days or face adverse judgment. And Ms. Hardt then secured the full disability benefits after that court-enforceable order.

Ms. Hardt is entitled to -- is eligible for a fee award under section 502(g)(1) of ERISA by proper application of this Court's established fee standards under any test this Court has previously established. But to be clear --

JUSTICE SOTOMAYOR: What do you define as -- assuming that we go back to our prior language and use -- in Ruckelshaus, "some success on the merits," what's the

"some success on the merits" that you claim your client reached?

MR. ATES: In that instance, the "some success on the merits" is the finding of the ERISA violation in this instance.

JUSTICE SOTOMAYOR: Now, I believe that this circuit said, yes, there are cases where we have so held, but that's because there was a cause of action under the complaint that -- that alleged a violation of the Act. But here there wasn't. Here, there was a claim for benefits only, and you didn't get benefits. That was the circuit's reasoning. So tell me where they erred and how we go back to defining "some success on the merits" in light of that position by the circuit?

MR. ATES: They misread the complaint, Justice Sotomayor. We are claiming a claim for benefits. As part of that claim, we asked for equitable relief for the ERISA violation. The heart of ERISA is the full and fair review process in 1133 of the statute. Because without a full and fair review by the plan administrator, that fiduciary cannot get to the right result. It violated that obligation here.

We asked for the benefits, but the district court, instead of awarding the benefits, said in the first -- in the second instance, here's your second bite

at the apple; get it right this time. That's success on the merits under ERISA, because they must abide by their fiduciary obligations, and they breached it here.

The relief the district court formulated in essence was an equitable-type relief: Do it again. We asked for that in the complaint. We asked for equitable relief.

JUSTICE SOTOMAYOR: So what do you think our -- the meaning of our footnote, Chief Justice Rehnquist's footnote in Ruckelshaus, who said a procedural victory is not some success on the merits. How do you differentiate what he meant by a -- some procedural victory is not enough?

MR. ATES: I think it foreshadowed the Hanrahan-type case, and we are miles apart from Hanrahan. Hanrahan, which Respondent is relying upon, was the circuit court reversing the district court on a pure civil procedure issue. Here, there is a -- a right; it is a process right. So when the process right is violated, your relief is going to necessarily be process-driven.

JUSTICE SCALIA: It was the same in Hanrahan. There was a right to a certain process in the lower court, and the -- the person complaining achieved reversal. It was sent back and said: Do it right. Give

this person the process that -- that he's entitled to.

MR. ATES: But, in Hanrahan, there was no finding of a violation of law, Justice Scalia. Here we have a violation of ERISA, a violation of a fiduciary obligation by the plan administrator. The relief accorded for that violation was a remand back to the plan administrator to get it right.

That's the difference between our case and Hanrahan. In Hanrahan, there was no finding of a violation of law. No one was found to be a legal wrongdoer. We have that here. The fiduciary breached its obligation.

JUSTICE GINSBURG: Are you saying that in Hanrahan there was no prod at all from the court, and here there is?

MR. ATES: I'm sorry --

JUSTICE GINSBURG: In Hanrahan, there was no prod from the court; the court didn't say anything that -- it was the filing of the complaint that led to the action, wasn't it?

MR. ATES: Well, what happened was the district court, I believe, granted a motion to dismiss or a motion for judgment as of law at trial. The -- the court of appeals reversed that. What we have here is a prodding from a court, but moreover a finding of a

violation by a court. The court found Reliance violated ERISA. That's the key distinction between here and Hanrahan. And --

JUSTICE GINSBURG: Suppose now, in response to "Do it right," Reliance on a complete record and very careful review finds that total disability was not proved. Then there would be no fees, right?

MR. ATES: No. Under our position, the -- Ms. Hardt is eligible for fees and the district court can take into account trust law principles which are embodied in what we call this five-factor test to determine whether to award fees. She's eligible for fees based on the violation by Reliance in bad faith. We have a legal wrongdoer here.

The amount of those fees, Justice Ginsburg, may be determined in part by her degree of success.

JUSTICE KENNEDY: Well, this district court kept jurisdiction over the action. He more or less waited to see how the story came out before he wrote the plot. Suppose the district court said: All you came to me for was an order for remand. I give you the order for remand. Case ended. At that point, he doesn't know how it's going to come out. At that point, can he -- can the district court award attorney's fees?

MR. ATES: Absolutely, the court at that

point, if he's closing the case out in particular and entering judgment as to the violation --

JUSTICE KENNEDY: So that even if, when it goes back to Reliance, Reliance finds that it's patently frivolous, close to a fraud, she -- the employee still gets the fee?

MR. ATES: The only way it's going back, Justice Kennedy, is from a violation of law. So, in that regard, she has succeeded on the merits by proving a violation regardless of the outcome at the end of the day.

Now, here certainly she got the benefits, so we -- we meet even Buckhannon and beyond. But in the case where the district court is sending it back, it must be sending it back for a violation of law, save one instance. The claimant comes forward and says: I have additional evidence that I didn't -- I didn't submit below. I've got an equitable ground to -- to convince the court to, in essence, reopen the record. I want -- I want to send it back.

In that instance, fees should not be awarded because it was the claimant's fault in not getting this record -- this record evidence in.

CHIEF JUSTICE ROBERTS: Well, she prevailed in some way to give her another chance to make that

argument.

MR. ATES: Again --

CHIEF JUSTICE ROBERTS: I'm just saying I think you're giving up too much.

MR. ATES: Maybe I am, Mr. Chief Justice. But my point is to try to distinguish Hanrahan, in the sense that we have a judicial finding of a legal violation here. What I was trying to articulate earlier, perhaps inartfully, was that she -- she's eligible for fees under the five-factor test, but in that instance the district court is not likely to use its discretion to grant fees in that instance. I was not --

CHIEF JUSTICE ROBERTS: Well, what if you get in Justice Kennedy's situation, where the court doesn't know what's going to happen on remand? You know, the objection is -- the administrator throws it out, saying, you know, you filed the wrong form, so you lose. And the district court says you can't throw it out on that basis; under trust law, it doesn't matter. And it goes back.

Now, the district court doesn't know what's going to happen. Does she get fees or not?

MR. ATES: It -- it depends on what the district court does with it. But she has to prove a

violation of ERISA for it to go back. And if she proves that, she's eligible for fees. And the district court in its discretion can take all these factors into account.

CHIEF JUSTICE ROBERTS: So is the district court -- is the district court supposed to wait until the whole thing is over before deciding the fee application?

MR. ATES: I think the better practice is for the district court to hold the case over and supervise the remand. But if the district court enters judgment at that point, then -- then under Rule 54 or the -- they have to come in and apply for fees within 14 days of that judgment. But this case does not give this Court an opportunity specifically to give the courts, district courts, guidance whether to keep these cases open or not, much like the Social Security cases that happened in the late '80s and early '90s.

But to get back to our main point, which is this is not a prevailing party statute, that was the fundamental error by the Fourth Circuit in imposing a prerequisite to determining whether a claimant is entitled to fees. Section 502(g)(1) is not a prevailing party statute for three primary reasons: first, the language and structure of the statute. The words

"prevailing party," a term of art that has been used for hundreds of years, is not within section 502(g)(1), but it is in other sections of ERISA.

Its statutory sibling, section 502(g)(2), contains a judgment requirement. Another provision of ERISA, 1451(e), uses the terms "prevailing party."

JUSTICE SOTOMAYOR: How could somebody have some success on the merits if they don't achieve a judgment of some sort?

MR. ATES: This case -- in the -- in the Bradley case, which was cited in Hanrahan, said you have many final orders in a case, and if the court determines an issue of -- a particular issue in a case -- and here it's finding an ERISA violation -- and as relief for that they are issuing an order requiring Reliance to act within 30 days, let's say the case settles at that point. That's enough for fees to issue should the parties not be able to agree on fees as a part of the settlement. It's the judicial act in finding the violation that triggers -- triggers the success on the merits.

And this case was on the merits. As we pointed out in our very yellow brief, the district court --

JUSTICE SOTOMAYOR: But under your theory,

presumably no relief has to be granted?

MR. ATES: Relief does not have to be granted. The district court --

JUSTICE SOTOMAYOR: But then what -- what's the difference -- is it your theory that if the district court -- for whatever reason, if this wasn't an ERISA case where a remand -- or where the court said they did violate, but I've now looked at the evidence that you're proffering, the new evidence they did not consider, and it's not enough for benefits; you don't get it. Is your argument that you are entitled to fees because they decided there was -- the court decided there was a violation of ERISA?

MR. ATES: Yes, it is. My argument is you're eligible for fees, and the amount of fees will be taken into account in determining the degree in the district court, taking these five factors into account, taking into effect your position on the merits, the defendant's position on the merits, and determining what that fee award should be. But it should not operate as a barrier to getting into an eligibility question.

So she's eligible for fees in that instance, but what those fees should be is at the district court's discretion.

JUSTICE SOTOMAYOR: Going back to

Justice Scalia's question, what's the difference between Hanrahan, where there's a violation of the civil procedure code which is an entitlement to process? Why aren't you successful, if this is a non-ERISA situation, merely for a finding that the district court acted improperly?

MR. ATES: Because you have to look at the party who is violating. Here it's the party who's violating the law. It's a party to the suit who is violating the law. That violation is found in Hanrahan. It's a civil procedure. The district court didn't -- didn't do something right.

Here -- and that's not a violation of the -- of law. That's a -- that's a misapplication of a civil -- of a rule of civil procedure. Here we have a violation of law by a party. That's the fundamental difference between us and Hanrahan.

JUSTICE STEVENS: May I ask -- ask this question? The question here is whether there was eligibility for fees. Could the district judge in your view say, yes, I think the plaintiff is eligible for fees, but it was actually a very difficult legal issue, and the defendant's position was entirely reasonable, so I think as a matter of discretion I will not award any fees?

MR. ATES: The district court can exercise its discretion and not award fees. I think, however, that the better result is when a violation of law is proven, the plaintiff or in this instance a claimant or beneficiary should be entitled to some amount of fees because the purpose of the statute, explicitly stated in the statute, is to protect beneficiaries and claimants and have access to the Federal courts.

If every case is a close case and you're not giving -- giving fees, then -- these are folks with limited means. These are folks by definition cannot work when they are disabled, and you are eating up their benefit through attorney's fees. And that cannot be the point of the statute when Congress enacted this. It is to protect beneficiaries, to give appropriate -- give appropriate relief and keep open access to the Federal courts.

If I can get back to, again, why this is not a prevailing party statute, the language and structure clearly show that. The history and context show it as well. And I'm not talking legislative history. I'm talking about the fact that ERISA supplanted the Welfare and Pension Plans Disclosure Act, which required a judgment before fees could issue, but Congress chose to remove that requirement when it originally enacted

ERISA. It does not have that judgment language and does not have prevailing party language.

Moreover, this Court repeatedly has held that trust law should inform the interpretation of ERISA. Trust law, for hundreds of years, has taken into account these principles that the district courts and courts of appeals have relied on for at least 30 years under ERISA to inform, guide, and limit district courts' discretion in awarding fees.

I'd like to reserve the remainder of my time.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Shah.

ORAL ARGUMENT OF PRATIK A. SHAH,

ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

SUPPORTING THE PETITIONER

MR. SHAH: Mr. Chief Justice, and may it please the Court:

The district court found that Respondent's original decision denying benefits disregarded pertinent medical evidence in violation of ERISA and found that the decision was otherwise unsupported by substantial evidence. Based on those findings, the district court ordered Respondent to make a new benefits determination, after which Respondent finally granted the benefits due.

Those facts established Petitioner's

eligibility for a fee award under ERISA section 502(g)(1), which authorizes a court to award reasonable attorney's fees, quote, "in its discretion," end quote. That discretion, as per ERISA more generally, is to be exercised in accordance with well-established trust law principles, and those principles quite clearly reject a strict prevailing party standard.

JUSTICE SOTOMAYOR: Could you tell me whether you differ in your definition of "some success on the merits" than your predecessor colleague? Do you define it as in the manner he did, that it's any legal judgment in the Petitioner's favor that another party has done a wrongful act? I think -- I think I'm summarizing his position accurately.

MR. SHAH: Yes, I -- I think we are in an agreement, Your Honor, with -- with -- with Petitioner's characterization. When there's a judicial order finding a violation --

JUSTICE SOTOMAYOR: No, that's different than what he said.

MR. SHAH: Okay.

JUSTICE SOTOMAYOR: All right. Yes, here there was an order of remand. That's clear. And I can understand the difference between an order, because there are many decisions of the court that end up in

orders that are not final judgments. But there are decisions, like this one, I think according to him, that if the district court had said there was a violation of ERISA and the parties then settled without a judicial order reflecting that finding and/or requiring a remand, I think according to him he would say this party was entitled to fees.

MR. SHAH: I don't want to characterize his view, but here's our view on -- on "some success on the merits." If the order -- to be concrete about it, the order in this case -- assuming this case, all that --

JUSTICE SOTOMAYOR: No, I didn't assume this case.

MR. SHAH: Pardon?

JUSTICE SOTOMAYOR: No order, just a finding.

MR. SHAH: So there’s a finding of an ERISA violation, period?

JUSTICE SOTOMAYOR: And then a settlement.

MR. SHAH: And then a settlement. Well, Your Honor, I think it depends on which framework we’re operating under. I think if we’re operating under well-established trust law principles, that clearly qualifies as enough success to justify a fee award. And we can look at several of the trust cases cited in both

our brief and Petitioner's brief. In re Catell's Estate is discussed in all the briefs. There the plaintiff brought a claim to remove a trustee, and the basis for the claim to remove the trustee was a contention that the trustee wasn't complying with one of the terms of the trust.

After he filed the suit -- and this was before even any finding by the judge -- the trustee then complied with that particular term of the trust. And then what the court said was, well, because the trustee complied with the underlying premise or the motivation for your suit, I'm going to deny your claim to have the trustee --

JUSTICE SOTOMAYOR: Well, that seems like a catalyst theory, and that was, at least in dicta, rejected in -- in Ruckelshaus. So how do you deal with that?

MR. SHAH: Well, it wasn't -- in the dictum in Ruckelshaus; it was actually accepted, Your Honor, in that -- in the footnote the Court -- in the dictum within Ruckelshaus, the Court says quite plainly that Congress, in departing from a strict prevailing party language in Ruckelshaus, meant to embrace judicial -- relief that wasn't encapsulated within a judicial order.

But we’re far afield from Ruckelshaus here,

because we actually have a judicial order, and we're far afield from the outer limits of the trust -- trust law cases which -- which, for example, In re Catell's Estate, which I just mentioned -- and by no means is In re Catell's Estate an outlier. The Third Circuit's opinion in Dardovitch, which is also cited in our brief, recounts In re Catell's Estate as falling well within the history of trust law cases.

Petitioner's reply brief at page 11 cites Grien v. Cavano. That's another case where a plaintiff brought -- brought a claim that a union fund was not complying with accounting and proper bookkeeping procedures. After he filed the suit, they fell in line, adopted the various procedures that plaintiff had sought, and the court still said: Drawing upon trust law principles, we're going to award fees.

Now, again, I don't think the court has --

JUSTICE SCALIA: As the Respondent points out, the position you're taking is unusual for the government. The government is usually arguing against fees, because the fees are often assessed against the government.

MR. SHAH: Right.

JUSTICE SCALIA: So long as you know that you're making your bed and you're going to have to lie

in it --

(Laughter.)

JUSTICE SCALIA: -- and you're essentially saying that when there is simply a procedural victory, which happens all the time, when -- when an agency is -- is reversed in its procedure even though the -- the -- the petitioner here doesn't get any concrete relief until it goes back to the agency and may lose in the agency ultimately, you're -- you're content to say that fees are assessable in that situation, just by reason of the procedural victory.

MR. SHAH: Your Honor, a couple of responses: First of all, ERISA is somewhat unique in that ERISA -- first of all, this provision doesn't have prevailing party language as -- unlike EAJA, for example.

JUSTICE SCALIA: No, I'm talking about other prevailing -- I'm talking about other statutes that don't say "prevailing party."

MR. SHAH: Okay.

JUSTICE SCALIA: Sure.

MR. SHAH: I think still this provision is unique in that it's informed explicitly by trust law principles, as this Court has held numerous -- in numerous decisions regarding other ERISA provisions. And the trust law principles depart from the American

rule. All of those other statutes which you have in mind, Justice Scalia, are premised on the background of the American rule. The trust law departs from American rule, and so when you interpret ERISA section 502(g)(1) based upon the trust law principles, I think that supports a different --

JUSTICE SCALIA: I'm -- I'm -- I'm not sure it's reasonable to interpret an attorney's fee provision as having anything to do with trust law.

MR. SHAH: Well, even --

JUSTICE SCALIA: It's -- it's a requirement of attorney's fees enacted by -- by the Federal Congress, and I -- I find that very artificial.

MR. SHAH: Well, Your Honor, it's -- it's a fee provision enacted within ERISA which explicitly states as one of its purposes to protect beneficiaries and to provide them access to courts. This is in the legislative history.

JUSTICE KENNEDY: Well, I -- I can see now why the red brief has a very substantial appendix with statutes. Now, you say, oh, this is unique. Well, then we may have many, many different kinds of statutes. This does not provide for -- this is not a prevailing party statute.

MR. SHAH: Correct.

JUSTICE KENNEDY: But just in going through the list of the statutes, there are many statutes that are not prevailing party statutes. And it seems to me that -- you say it's unique. Well, it's unique in the sense it's in ERISA, but I -- I think it's very close to many -- many of the statutes with the language there in the red brief's appendix.

MR. SHAH: Right. And, Your Honor, previously the government has made narrow arguments. For example, there were arguments --

JUSTICE BREYER: Take the case, though -- just take the -- what is the government's position? The ERISA plaintiff wants $5 million. They get denied everything. The -- the court says: I noticed here there was a 30-day deadline that you had, and he only gave you 28 days, so I'm sending it back, but I'll tell you your claim that there was enough evidence is absurd; you're never going to win it. And then he goes back, and he loses it. Okay? He has had a procedural victory.

Does he get attorney's fees? Not -- not a chance that he's going to win this claim, and, indeed, he loses it. He doesn't get a penny. Does he get attorney's fees, because on a technicality he won a new hearing?

MR. SHAH: Under your hypothetical, Justice Breyer, a district court would be within its jurisdiction to deny attorney's fees. That doesn't --

JUSTICE BREYER: My question is --

MR. SHAH: He wouldn't --

JUSTICE BREYER: -- does the statute, in the view of the government, permit attorney's fees in the case I just mentioned?

MR. SHAH: Probably not in application. He would be eligible, but a district court --

JUSTICE BREYER: Your answer is, yes --

MR. SHAH: Yes.

JUSTICE BREYER: -- it does permit?

MR. SHAH: Yes. But a district court applying --

JUSTICE BREYER: All right. You're just saying it won't be a problem because the district court judges are all reasonable, and I know they think that.

(Laughter.)

CHIEF JUSTICE ROBERTS: What if -- what if the success is preliminary? You know, the plaintiff survives a motion to dismiss, the plaintiff survives a motion for summary judgment, wins every procedural issue, wins a privilege issue, gets discovery issues resolved, and at the end of the day loses? The plaintiff

has had --

MR. SHAH: No, Your Honor --

CHIEF JUSTICE ROBERTS: Why? He has had some success.

MR. SHAH: No, Your Honor, because that would be captured within Hanrahan, we think, and that's -- and that's easily distinguishable because those are errors -- even if some of those procedural victories were overturned on appeal or procedural losses were overturned on appeal, those are all errors within the court system or victories within the procedures of the court system, not a violation of -- on the merits of the underlying claim, which is what we have here.

We have a finding of a violation of ERISA and then relief ordered to --

JUSTICE STEVENS: But then, aren't you treating the statute as though it did have a prevailing party clause in it?

MR. SHAH: Pardon, Your Honor.

JUSTICE STEVENS: Is not your construction one that just treats the statute as though it required the plaintiff to be a prevailing party?

MR. SHAH: Well -- well, Your Honor, no. I think our -- our -- our argument is to interpret it in light of trust law principles.

Now, the trust law cases -- there is language in some of the trust laws cases that suggests that fees -- fees could be awarded to unsuccessful litigants or regardless of outcome. But I think if you read those cases, on the facts of those cases they don't go that far. But I think what they do embody is a much broader notion of success than the strict prevailing party jurisprudence that this Court has promulgated --

JUSTICE KENNEDY: Well, under your -- under your rule would it be error for the district court to terminate its jurisdiction? It must keep jurisdiction to see how the play comes out in the end?

MR. SHAH: No -- no, Your Honor, I don't think it must keep jurisdiction. But certainly in a case where it does retain --

JUSTICE KENNEDY: Well, but it certainly has to in order to adopt the ameliorating factors that you -- that you use in order to justify this rule. And I -- I -- it's not clear to me that courts usually retain jurisdiction in these cases.

MR. SHAH: May I respond, Your Honor? A couple of responses, Justice Kennedy: First, if they didn't retain jurisdiction -- and in the Seventh Circuit, for example, that's one circuit which says that these orders have to be final, and final judgment has to

be entered -- then we're exactly analogous to a sentence 4 Social Security case.

And this Court has made it clear in a line of decisions that upon entry of final judgment -- and those are exactly analogous in the sense that what happens is that the court finds that the decision below committed some error in law, it vacates that decision, and then sends it back to the Social Security Administration for a new determination without preordaining the result. Regardless of the result there, at the time of the remand and entry of judgment, that plaintiff is eligible for -- for fees.

We think that the same outcome would be controlled here, even if the Court applied its strict prevailing party jurisprudence.

Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Rosenkranz.

ORAL ARGUMENT OF NICHOLAS Q. ROSENKRANZ

ON BEHALF OF THE RESPONDENT

MR. ROSENKRANZ: Mr. Chief Justice, and may it please the Court:

No judge has ever decided the merits of Petitioner's claim for benefits. Under this Court's holding in Ruckelshaus, the Petitioner must demonstrate

some success on the merits, and under Rule 54 she must specify the judgment entitling her to an award.

JUSTICE GINSBURG: What about the footnote that was mentioned in Ruckelshaus that said: "Congress found it necessary to explicitly state that the term 'appropriate' extended to suits that forced defendants to abandon illegal conduct" -- illegal conduct was found here -- "although without a formal court order"?

MR. ROSENKRANZ: Yes, Your Honor. Footnote 8 of Ruckelshaus addressed one sentence of legislative history of a different statute, and only so far as the Court pointed out that the sentence was of no use to Sierra Club in that case. I don't think the footnote is properly read to be a full-fledged endorsement of the catalyst theory.

JUSTICE GINSBURG: This is not merely a catalyst. In Buckhannon, the catalyst theory was rejected. Here the court said: If I were to decide right now -- the district court said: I am inclined to rule for Hardt, but I'm going to give Reliance an opportunity to respond.

So the court had evaluated the evidence at that point as favoring Hardt. To that extent, it wasn't a purely procedural ruling. It says: As things stand now, Hardt should get fees; but I'm leaving the door

open. So it wasn't just a procedural decision. It was an evaluation of the evidence up to that point, wasn't it?

MR. ROSENKRANZ: Yes, Your Honor, but it would be an utterly unadministrable rule to attempt to weigh the inclinations of district judges in their opinions. This Court's precedents have made clear that we weigh success on the merits by evaluating judicial judgments.

JUSTICE BREYER: Well, the judgment is, send it back. That's what it says: Send it back. And the reason for sending it back is this woman was undergoing terrible pain, that the Social Security Administration says she's completely disabled, that she's entitled in the -- on the evidence shown. There's no substantial evidence to the contrary. But you, the company, want to take money from her instead of giving her the money.

Now, I've read the record. It doesn't support anything contrary to what I've said. So now you send it back. Now, what is that but a big victory for the other side? Which then leaves the company to say: They're right; pay them.

Now, if that isn't -- I mean, what words of English -- if you're -- we're talking about partial success. Partial success, or not total defeat. That is the language from Ruckelshaus. Not "total success." You

still get it. Okay. What in the English language can we read in a case or a statute that would say you shouldn't reach that commonsense result? Now, of course, I'm characterizing it a little bit, but it does seem like a commonsense result.

MR. ROSENKRANZ: Your Honor, Petitioner in this case, like all plaintiffs, arrived in court requesting a judgment, a judgment awarding her benefits. Indeed, she believed she was entitled to such a judgment as a matter of law, and she moved for judgment as a matter of law for summary judgment.

What the district court actually did was deny that motion for summary judgment. Rather than give her the judgment she sought, the district court employed a particular procedural maneuver, which was to remand the case -- quote, "remand the case" -- to her litigation adversary to reconsider the question. Now --

JUSTICE SOTOMAYOR: His point -- your adversary's point -- is the court couldn't effect that procedural move without taking step one in what was requested. It had to find some sort of violation, either to remand or to grant benefits, so that the relief sought, by definition, needed a finding by the court. And your adversary says the court found an ERISA violation.

Now, the type of relief it grants is up to its discretion. This is an equitable situation, and it exercised its discretion by doing a remand. Why is that view different than calling it a procedural step? Isn't that a substantive win?

MR. ROSENKRANZ: Your Honor, this is a purely interlocutory order. So this was not an end to the case. This was not a decision on the merits. This was a purely interlocutory order, on the road to a decision on the merits, perhaps, but the district court denied her motion for summary judgment, did not conclude that she was entitled to benefits as a matter of law and, instead, remanded the case for further proceedings. So --

CHIEF JUSTICE ROBERTS: Counsel, what is the impact on your position of our decision last week in Conkright v. Frommert? I know you haven't had a chance to brief it, but I'm also sure had you a chance to read it.

MR. ROSENKRANZ: Your Honor, Conkright emphasizes that these judgments are to be made in the first instance and, in fact, in the second instance by claims administrators, that that is --

CHIEF JUSTICE ROBERTS: I would have thought that it -- one thing it did emphasize, that in the typical case, the likely relief is going to be sending it back rather than making a judicial decision, which --

which seems to me, then, that -- and then presumably, in most cases, the person would prevail before the plan administrator.

So given Conkright, your position is going to severely limit the circumstances under which claimants are entitled to fees.

MR. ROSENKRANZ: Your Honor, it's -- you are correct that in Conkright, the Court -- Court indicated that in most cases the district court should remand under circumstances like this. You are quite correct. Under circumstances like this, then, there would be fewer opportunities for district courts to award -- to award fees. And that’s a correct result under 502(g)(1), which, as informed by --

CHIEF JUSTICE ROBERTS: Even though the -- as in Conkright, the claimant's success can -- before an agreement, can be quite dramatic. This was a very, very significant victory for the claimant to get it sent back under those circumstances.

MR. ROSENKRANZ: Your Honor, I'm not sure this should be characterized as a victory. This is not a procedural maneuver that the plaintiff sought. The plaintiff asked for summary judgment, and her summary judgment motion was denied. And, instead, the district court chose to remand the case to her litigation

adversary. Surely, at that moment at least, that surely could not have felt like a victory.

JUSTICE SCALIA: Future claimants will not ask for summary judgment from the district court, presumably, in light of Conkright. They will ask that the case be remanded. So, in future cases, will they have obtained a victory?

MR. ROSENKRANZ: I don't think that future claimants will ask for a remand as their final form of relief, Your Honor. This was -- the relief that one asks for in one's complaint is the final judicial relief that one wants. This is --

JUSTICE SCALIA: Well, we've -- we've already told them they can't get that.

MR. ROSENKRANZ: Your Honor, a plaintiff could get an -- could get the relief of benefits if a claims administrator had acted severely improperly or in very bad faith. A district court still has power to issue an award on summary judgment.

JUSTICE SCALIA: The claimant doesn’t -- doesn't really claim that. The claimant just says this was a wrong decision and they should do it correctly. And the claimant knows that all he's going to get from the district court is a remand.

MR. ROSENKRANZ: But the correct way to --

JUSTICE SCALIA: So he would not ask for money and, therefore, would be victorious, on your analysis. If all he asked for was a remand, he got a remand.

MR. ROSENKRANZ: No, Your Honor. A properly framed complaint under ERISA should still be a claim for benefits. The -- the remand that Conkright contemplates is still an interlocutory remand, like the remand here. One does not put in one's complaint a desire for interlocutory relief, any more than one asks --

JUSTICE BREYER: If someone wants a remand, it's a remand, but on limited grounds; that is, a holding of the district court. The ERISA administrator was -- it's an abuse of his discretion to refuse to give this woman nothing. In my opinion, she's entitled at least to $30,000, but whether it's 30 or 35, I don't know. So I remand it to the ERISA administrator so he can decide to act within -- within his discretion, give her either 30, 1, 2, 3, 4, or 5.

Now, in your view, attorney's fees -- all the statute says is the court, in its discretion, may allow a reasonable attorney's fee. Nothing more. Now, what would stop an attorney's fee in that situation?

MR. ROSENKRANZ: Your Honor --

JUSTICE BREYER: If that's what you think.

MR. ROSENKRANZ: Your Honor, a remand order under those circumstances might constitute success on the merits because it resolves an issue in the case, which was liability in the case. So that perhaps would constitute success on the merits. This resolved no substantive issue on the case. This remand order simply says: As a procedural matter, go back and look at it again.

JUSTICE BREYER: You distinguish between him saying you have to give her at least 30 and his saying the evidence that supports giving her less than 30 is -- insufficient, is substantially -- is -- what's the word? Yes, worthless.

MR. ROSENKRANZ: Yes, Your Honor, this Court has -- this Court has expressly distinguished between judicial --

JUSTICE BREYER: That's the line you draw?

MR. ROSENKRANZ: Yes, Your Honor, the difference between judicial pronouncements and judicial relief is one that this Court has --

JUSTICE SOTOMAYOR: That -- that's difficult. Let's assume that a claims administrator or a plan administrator is not deciding the claim. The party comes to court and says: Under ERISA, I have a right to a decision within X number of days; force them, mandamus them to give me a decision. The court says: Reasonable;

you have a right to one. And orders them to.

Under your theory, they've won nothing?

MR. ROSENKRANZ: No, Your Honor, in your hypothetical the -- the remand order would presumably be a final judgment, and it might well constitute success on the merits.

JUSTICE SOTOMAYOR: So you're -- you're -- wait a minute. Then we go back to a question that was asked by one of my colleagues. If a plan participant came in and said they didn't consider evidence they should have; they didn't seek my treating physician's documents, and here they are; they should consider them now, and the court says you're right, enters a remand order, and dismisses the case -- that's enough?

MR. ROSENKRANZ: Your Honor, I'm not sure that's a properly formatted ERISA complaint. If the gravamen of the complaint is "I want my benefits" then --

JUSTICE SOTOMAYOR: Well, what -- what's the difference between the first example I gave, a mandamus to issue a decision -- that's not a claim for benefits, either; it's a claim for a decision. What's the difference between that and the second hypothetical?

MR. ROSENKRANZ: If the -- if the gravamen of the complaint is a complaint for benefits, then the complaint should ask for benefits, and the judge should

resolve that case. A remand would always maintain jurisdiction -- should always maintain jurisdiction over the case, thus always be interlocutory and procedural.

CHIEF JUSTICE ROBERTS: Is that how it works? Remands always retain jurisdiction? I would -- I would have thought the district judge would want the thing off his or her docket, you know, for the statistics, if anything. And --

(Laughter.)

CHIEF JUSTICE ROBERTS: -- and would say, and maybe could say -- well, what if the judge says: Look, I don't know if you're going to prevail or not on remand. My decision actually doesn't help you much one way or the other, but if you get benefits, then the other side is liable for attorney's fees, and I assume you'll be able to work out the amount. If you don't, he's done. End of case. Sent back to the administrator.

MR. ROSENKRANZ: Your Honor, on the research that we have done, most district courts hold jurisdiction on remands such as this, and we believe that is the proper course. When the case -- the gravamen of the case is a complaint for benefits, the district court merely remands to the ERISA claims administrator, the merits of the case simply have not been decided.

JUSTICE BREYER: That may be, but why can't they do this? What would be wrong with this heretical idea, that as long as the plaintiff wins something out of the court, the district judge -- that group of people we were talking about -- has discretion to decide whether ultimately they got something significant of what they wanted, and as long as that judgment helped them get them something significantly of what they wanted, attorney's fees are fine; and we leave it all up to the district judge as long as the district judge doesn't abuse the discretion that that standard gives him?

What would -- I mean, would the Earth come to an end? What would happen that would be so terrible if we said something like that?

MR. ROSENKRANZ: Your Honor, I believe that would be to embrace the catalyst theory that this Court rejected in 2000 --

JUSTICE BREYER: It didn't say anything against the catalyst theory. It said you have to remember this is an American country, we follow the American rule, and there has to be something special in the situation. And what would be special in this situation is that the judge has to decide that as a result of the favorable ruling, the plaintiff really did

get something significantly of what she wanted.

MR. ROSENKRANZ: Your Honor, the Court was careful in Ruckelshaus to say that a purely procedural victory would not suffice. Now, purely procedural victory may well -- may well result in success for a plaintiff at some later stage; it could result in out-of-court success. This Court has been crystal clear that we do not look for success out of court; we don't look for it in interlocutory orders --

JUSTICE GINSBURG: Mr. Rosenkranz, suppose the complaint was: I asked for a turnover of certain documents; they refused without reason. And the court says: You're right; you're entitled to those documents.

It's interlocutory; there is no decision; but the only thing that the plaintiff asked for the plaintiff got, that is entitlement to the documents. The court said: You are entitled to the documents. And then it goes back, and the documents are turned over because the court has ordered that.

Under your theory, because there was no determination of benefits, even that ruling which was a total victory for the plaintiff doesn't open the door to fees.

MR. ROSENKRANZ: On your hypothetical, Your

Honor, that would not be an interlocutory order. So if a plaintiff arrives seeking only documents and the district court awards her, her documents, that would be the end of the case, and the district court would properly relinquish jurisdiction, and we could evaluate, compare the result that the district court gave -- gave a plaintiff with what the plaintiff originally asked for. But this is not such a case.

JUSTICE GINSBURG: So that would fall -- even if in the end of the -- at the end of the day no -- no award is made? No benefits are awarded?

MR. ROSENKRANZ: Your Honor, it might be proper to frame a complaint under ERISA for a purely procedural remedy like some documents. That is not the main run of ERISA cases. So in the normal case, a petitioner arrives -- a plaintiff arrives asking for benefits. And --

JUSTICE GINSBURG: But you -- but you say -- you called it purely procedural and you said yes, but that's the only thing that she asked for. So she got it. So she qualifies for fees. Even though you just characterized it as purely procedural, it's a purely procedural ruling, but it's all she asked for --

MR. ROSENKRANZ: Your Honor --

JUSTICE GINSBURG: -- so she gets benefits.

MR. ROSENKRANZ: -- I'm not sure that a properly framed ERISA complaint would be -- would be for a purely procedural result. If one could frame an ERISA claim like that, which I think is extremely --

JUSTICE GINSBURG: Well, I'm not dealing with something obscure. If the -- the plaintiff says, I have asked for certain documents, they withheld those documents with no good cause at all, and the court said: You're right; turn over documents.

It's that hypothetical. It's just -- that's the situation. There is a final order: Turn over the documents. But it's a procedural order, right?

MR. ROSENKRANZ: Yes, Your Honor.

JUSTICE GINSBURG: But, nonetheless, benefits would be -- nonetheless, fees would be available?

MR. ROSENKRANZ: Your Honor, our position is that in this case the remand order was both purely procedural and interlocutory. So it fails under both those grounds. On your hypothetical, the -- the order would be a final order, but presumably still purely procedural, and so perhaps not success on the merits even on that hypothetical.

JUSTICE SCALIA: What if --

JUSTICE GINSBURG: You're changing -- you're changing the answer. The answer that you first gave

me was it's a discrete issue -- final judgment, yes, qualifies for fees. Now you're saying no, no fees?

MR. ROSENKRANZ: Your Honor, it would qualify in the sense that it would be a final judgment, not an interlocutory order. Whether that's properly characterized as a purely procedural victory or not, I'm not sure. Most ERISA claims are not framed that way. They are usually framed as claims for benefits, not for purely procedural --

JUSTICE GINSBURG: Suppose the claim were: They're just not processing my application. So, Court, order them to process my application. Right; they're not doing anything; we order then to go process the application. End of case in the district court.

Fee entitlement?

MR. ROSENKRANZ: Again, Your Honor, that would perhaps be best characterized as a purely procedural victory even though it's a final judgment and even though it's what the plaintiff sought. Again, in this case, this order was purely interlocutory, and so it's a much easier case. This -- in this case, this was a procedural step on the road to a final judgment. This was not a final judgment at all and not at all what the petitioner sought.

JUSTICE KENNEDY: The government in response

to questions about the significance and the consequences of its position said, oh, this is a unique statute. ERISA -- it's is an ERISA statute.

Do you agree that if -- if we rule for you, it would be applicable primarily to ERISA and it wouldn't have an effect on these other statutes?

MR. ROSENKRANZ: No, Justice Kennedy, I don't. The Court has oftentimes emphasized that fee-shifting statutes ought to be read in parallel, that we ought to have fewer rather than more fee-shifting standards in the world. And so, presumably, the result in this case would govern any number of fee-shifting statutes of similar language.

CHIEF JUSTICE ROBERTS: What if the parties -- to follow up on Justice Ginsburg's line of questioning, what if the parties decide, look, this case rises or falls on the discovery issue? If we have to go through discovery, it's going to cost us a lot more than to pay you. So we stipulate whatever the ruling is on discovery will decide the issue.

In that case, can the party -- can the claimant get fees?

MR. ROSENKRANZ: I'm sorry, Your Honor. In this hypothetical, the district court grants the discovery order, but the -- but still holds jurisdiction

over the case?

CHIEF JUSTICE ROBERTS: Well, it grants the discovery order, and as a result, a direct result of that ruling, the plan pays benefits.

MR. ROSENKRANZ: No, Your Honor. I believe that this Court has rejected the direct results theory and has instructed us to look at the content of judicial judgments, not at their ancillary effects on parties out in the world.

JUSTICE SOTOMAYOR: So what is the difference between prevailing party and some success on the merits for you? The only difference is whether they won on one cause of action as opposed to four?

MR. ROSENKRANZ: Your Honor, in Ruckelshaus, the Courts emphasized that omitting words like "prevailing party" or "success" from a statute is significant, but it's not revolutionary, that what it accomplishes is a decrease in the quantum of success required -- the degree, I believe was the Court's language -- but not the type of success required. But it was still --

JUSTICE SOTOMAYOR: So under Buckhannon, 51 percent only entitles you to fees. And under your view of this statute, you have -- as long as you get 1 percent order, that's enough.

MR. ROSENKRANZ: Your Honor, the -- the Court in Ruckelshaus was speaking of the interpretation of "prevailing party" that -- that held sway in circuit courts in the 1970s.

At that time, "prevailing party" had been read quite narrowly to require substantially prevailing, and the Court understood Congress to reject that standard in adopting a statute that doesn't include language like "prevailing party." Subsequently, this Court has adopted a much more liberal understanding of the words "prevailing party," so there may not be --

JUSTICE SOTOMAYOR: So you -- you see no difference today?

MR. ROSENKRANZ: There may still be a difference, but it will be a smaller difference and a difference only in quantity, certainly not a difference in type. The result -- the success still has to be success that you can find in a judgment of a court.

Your Honors, if I could -- Your Honors, as a matter of policy, the plaintiffs have argued that this will result in -- that -- I'm sorry. As a matter of policy, the plaintiffs -- or the Petitioner's rule would result in a second major litigation over attorney's fees, and this Court has rejected any such rules. The concern is that the fee-shifting inquiry ought to be

simple and easy to administer.

The ease of administrability of our rule is that it turns on the contents of judicial judgments. If the Petitioner wins in this case, the policy result will merely be stingier plans. So these are not plans that any private party is obliged to create, and this Court has emphasized that the purpose of ERISA is to balance the interests of beneficiaries, on the one hand, but also the interest in the creation of these plans and the generosity of these plans, on the other. And a fee award under circumstances like this would result in far less generous plans for -- for --

JUSTICE STEVENS: May I ask this question? You rely very heavy on Ruckelshaus, which of course was a case in which the fees were sought to be imposed against the government.

Is there a basis for distinguishing on a sort of a sovereign immunity approach for saying that maybe there should be a stricter standard when you're taking money away from the sovereign than when you're taking it away from private litigants?

MR. ROSENKRANZ: Your Honor, I don't think so. The Solicitor General is here arguing that this ought to be the rule, and it would presumably be the same rule even in a statute that applied against the

government. Again, this Court has cautioned against a proliferation of different fee-shifting standards. I would think there would be a concern about having a different standard applied to the government than to a private party on -- on similar statutory text. Certainly, no indication in this statutory text --

JUSTICE SCALIA: Well, it's a trust -- trust law is at issue here, is the government's assertion.

MR. ROSENKRANZ: Your Honor, I agree with you that it seems artificial in a way to apply those -- to apply -- to import those principles entirely. On the other hand, this Court has emphasized that ERISA is informed by trust principles. And under Sprague, the Court emphasized that trust principles would very rarely shift fees in a context like this. So to that extent, I do believe that this provision should be informed by this Court's holding on that point.

Just to re-emphasize, Your Honors, what actually happened in the district court below: So the Petitioners sought judgment as a matter of law for benefits, and that motion was denied. Instead, she received an interlocutory procedural order, a remand to her adversary, a private party in litigation, to consider the question again.

And, as this Court emphasized, the second

inquiry by the claims administrator would be reviewed for abuse of discretion. It could easily have come out the other way, as the district court itself acknowledged.

JUSTICE BREYER: You also received -- she also received a conditional judgment in her favor.

MR. ROSENKRANZ: The district court specified that if Reliance did not comply with this procedural --

JUSTICE BREYER: She said: Unless this order goes into effect within 30 days, the judgment will be entered for the plaintiff, for her -- for her.

MR. ROSENKRANZ: Yes, Your Honor. That's true, but I don't think that distinguishes this from --

JUSTICE BREYER: Well, she got one judgment in her favor. It was a conditional judgment. I mean, if we're being technical, if we're going to just do this totally on some kind of procedural theory of what's a judgment, what's a judgment in your favor, and we just don't want to look to the merits of it and see what really happened, then why doesn't she win? Because she got a judgment in her favor, okay? End of the matter.

MR. ROSENKRANZ: Your Honor, she didn't actually get a judgment. She got a --

JUSTICE BREYER: Well, let's read the

judgment. Let's see. It says -- it says judgment. It says in a -- what is it called? I just saw it here. My colleague had it here.

It says -- I think this it. It says “Conclusion” -- it says -- and it's in the conclusion, and it says what happens. And it says it denies, denies, denies, denies. And then it says: "Reliance to act on Ms. Hardt's application, adequately considering all the evidence, within 30 days. Otherwise, judgment will be issued in favor of Mrs. Hardt."

Now, that's in a kind of judgment, I guess. It's in an order. So an order saying we’ll issue a judgment -- it sounds to me like you could say that's a judgment in her favor. You don't have to, but you could.

MR. ROSENKRANZ: Your Honor, I think that's only -- the district court was only saying what is implicit in most all procedural orders --

JUSTICE BREYER: No. Normally, a judge -- a judge doesn't say: It is ordered that if you do not act within 30 days, there will be a judgment entered in flavor of the plaintiff. That's not a usual thing.

MR. ROSENKRANZ: But, Your Honor, if a party ignores the procedural order of a district court, it does so often on peril of default. So it --

JUSTICE BREYER: I'm just saying, if we're going to be formal and we're going to look to certain words included in -- in certain papers, irrespective of what really happened, don't we have those words in the paper that's relevant here?

MR. ROSENKRANZ: Again, Your Honor, the district court did not decide the merits of this case. The district court offered the possibility that it would enter judgment if something happened in the future. That thing did not happen in the future. There was no judgment in her favor in this case. Again, the issue was remanded to a private party to determine the issue. The grant of benefits on remand certainly could not constitute success on the merits.

That was not judicial action at all. That was the action of a private party. Purely voluntary action. Certainly, couldn't constitute a judgment under Rule 54. And then when the case arrived back at the district court, the district court did the only thing that it was left to do, which was to dismiss the case.

And those are the actual actions the district court took: denying the motion for summary judgment and dismissing the case. And under this Court's precedents, where we look for success is in those judgments. Those judgments show us no success on the

merits for Ms. Hardt.

If there are no further questions --

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Ates, you have 4 minutes remaining.

REBUTTAL ARGUMENT OF JOHN R. ATES

ON BEHALF OF THE PETITIONER

MR. ATES: Mr. Chief Justice, and may it please the Court:

I have two points on rebuttal: Under their we must have a final judgment on the benefits on her claim for -- final judgment on the merits on her claim for benefits, that is absolutely foreclosed by this Court's decision in Schaefer, where a Social Security claimant comes forward, shows a violation by the Secretary; it's remanded back to the Secretary; the case is closed at that point. There was no decision on the merits for the benefits, and yet this Court found that was prevailing party.

Here, we don't need prevailing party, but moreover, even accepting their theory, it leads to absurd results. There is a provision in ERISA, 1132(c), that gives a claimant the right to seek documents. And yet, they are saying if the claimant is wholly successful to get the plan document from which certain claims you don't even know if you have until you read

those plans, they would say it's a purely procedural victory; you cannot get attorney's fees. The whole point of that provision was to require the fiduciary to give the document over so people can understand their rights.

Moreover, their final judgment on the merits for benefits rule leads to perverse incentives under ERISA. The plan administrator is incented to deny the first time around, challenge it all the way through the courts, on remand maybe, if they get a conditional judgment, as here, that says if you don't act within 30 days I'm giving you that judgment, they then grant the benefits and the court gets rid of the case, they have succeeded in eliminating the right of claimants to get to court to pursue their rights, because of the cost of litigation.

But moreover, here we have a judgment. To be clear, that is not our argument. We had a conditional judgment by the district court sending it back: If you do not act in accordance with law within 30 days, I will enter judgment on this case.

We have that, but at the end of the day, it was not a dismissal. They overlooked district court docket 57. There was a judgment entered in Ms. Hardt's favor against Reliance in the amount of attorney's fees. The

original order merges into that judgment. We have a final judgment here as well. Although we don't need it under section 502(g)(1), we have it here.

This Court should not require a judgment before fees can be awarded. The whole -- and it certainly shouldn't adopt a purely procedural rule out of thin air that's not in the statute. This is a procedural statute. The only way claimants can effectuate their right is ensuring the procedure is followed. That is what we have here.

They did not follow proper procedure. They abused their discretion. They breached a fiduciary obligation to the claimant. In these circumstances, under the clear language and clear structure of this statute, this claimant is entitled to fees.

The only -- may I finish?

CHIEF JUSTICE ROBERTS: Sure.

MR. ATES: The only issue that Reliance contested was whether she was a prevailing party. Knock that leg of the stool, their case fails.

Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

The case is submitted.

(Whereupon, at 12:06 p.m., the case in the above-entitled matter was submitted.)

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90s 10:18