

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 BRIDGET HARDT, :

4 Petitioner :

5 v. : No. 09-448

6 RELIANCE STANDARD LIFE INSURANCE :

7 COMPANY. :

8 - - - - - x

9 Washington, D.C.

10 Monday, April 26, 2010

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

15 APPEARANCES:

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

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

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

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P R O C E E D I N G S

(11:05 a.m.)

CHIEF JUSTICE ROBERTS: We will 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 that phase and required Respondent to redetermine benefits within 30 days or face adverse judgment. And Miss Hardt then secured the full disability benefits after that court-enforceable order.

Miss 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 Ruckelshaus, "some success on the merits"? What's the

1 "some success on the merits" that you claim your client  
2 achieved?

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

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

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

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

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

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

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

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

22 JUSTICE SCALIA: But it's the same in  
23 Hanrahan. There was a right to a certain process in the  
24 lower court, and the -- the person complaining achieved  
25 reversal. It was sent back and said, do it right. Give

1 this person the process that -- that he is entitled to.

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

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

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

16 MR. ATES: I'm sorry?

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

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

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

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

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

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

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

25 MR. ATES: Absolutely, the court at that

1 point, if he is closing the case out in particular, and  
2 entering judgment as to the violation --

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

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

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

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

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

1 argument.

2 MR. ATES: Again --

3 CHIEF JUSTICE ROBERTS: I'm just saying, I  
4 think you are giving up too much.

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

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

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

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

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

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

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

19 But to get back to our main point, which is:  
20 This is not a prevailing party statute. That was the  
21 fundamental error by the Fourth Circuit in imposing a  
22 prerequisite to determining whether a claimant is  
23 entitled to fees. Section 502(g)(1) is not a prevailing  
24 party statute for three primary reasons. First, the  
25 language and structure of the statute. The words

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

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

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

10 MR. ATES: This case -- in the Bradley case,  
11 which was cited in Hanrahan, said you have many final  
12 orders in a case, and if the court determines an issue  
13 of a particular issue in a case -- and here it's finding  
14 an ERISA violation -- and as relief for that they are  
15 issuing an order requiring Reliance to act within  
16 30 days, let's say the case settles at that point.  
17 That's enough for fees to issue should the parties not  
18 be able to agree on fees as a part of the settlement.  
19 It's the judicial act in finding the violation that  
20 triggers -- triggers the success on the merits.

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

24 JUSTICE SOTOMAYOR: But under your theory,  
25 presumably no relief has to be granted?

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

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

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

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

24 JUSTICE SOTOMAYOR: Going back to  
25 Justice Scalia's question, what's the difference between

1 Hanrahan, where there is a violation of the civil  
2 procedure code which is an entitlement to process? Why  
3 aren't you successful if this is a non-ERISA situation,  
4 merely for a finding that the district court acted  
5 improperly?

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

12 Here -- and that's not a violation of the --  
13 of law. That's a -- that's a misapplication of a  
14 civil -- of a Rule of Civil Procedure. Here we have a  
15 violation of law by a party. That's the fundamental  
16 difference between us and Hanrahan.

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

25 MR. ATES: The district court can exercise

1 its discretion and not award fees. I think, however,  
2 that the better result is when a violation of law is  
3 proven, the plaintiff or in this instance a claimant or  
4 beneficiary should be entitled to some amount of fees  
5 because the purpose of the statute, explicitly stated in  
6 the statute, is to protect beneficiaries and claimants  
7 and have access to the Federal courts.

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

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

1 not have prevailing party language.

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

9           I would like to reserve the remainder of my  
10 time.

11           CHIEF JUSTICE ROBERTS: Thank you, counsel.

12           Mr. Shah.

13           ORAL ARGUMENT OF PRATIK A. SHAH,

14           ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

15           SUPPORTING THE PETITIONER

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

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

25           Those facts established Petitioner's

1 eligibility for a fee award under ERISA section  
2 502(g)(1), which authorizes a court to award reasonable  
3 attorney's fees, quote, "in its discretion," end quote.  
4 That discretion, as per ERISA more generally, is to be  
5 exercised in accordance with well-established trust law  
6 principles, and those principles quite clearly reject a  
7 strict prevailing party standard.

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

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

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

21 MR. SHAH: Okay.

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

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

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

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

14 MR. SHAH: Pardon?

15 JUSTICE SOTOMAYOR: No order, just a  
16 finding.

17 MR. SHAH: So there is a finding of an ERISA  
18 violation, period?

19 JUSTICE SOTOMAYOR: And then a settlement.

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

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

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

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

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

24 But we are far afield from Ruckelshaus here,  
25 because we actually have a judicial order, and we are

1 far afield from the outer limits of the trust limit --  
2 trust law cases which -- which, for example, In re  
3 Catell's Estate, which I just mentioned -- and by no  
4 means is In re Catell's Estate an outlier. The Third  
5 Circuit's opinion in Dardovitch, which is also cited in  
6 our brief, recounts In re Catell's Estate as falling  
7 well within the history of trust law cases.  
8 Petitioner's reply brief at page 11 cites  
9 Grien v. Cavano.

10 That's another case where a plaintiff  
11 brought -- brought a claim that a union fund was not  
12 complying with accounting and proper bookkeeping  
13 procedures. After he filed the suit they fell in line,  
14 adopted the various procedures that plaintiff had  
15 sought, and the court still said: Drawing upon trust  
16 law principles, we are going to award fees.

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

18 JUSTICE SCALIA: As the Respondent points  
19 out, the position you are taking is unusual for the  
20 government. The government is usually arguing against  
21 fees, because the fees are often assessed against the  
22 government.

23 MR. SHAH: Right.

24 JUSTICE SCALIA: So long as you know that  
25 you are making your bed and you are going to have to lie

1 in it --

2 (Laughter.)

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

12 MR. SHAH: Your Honor, a couple of  
13 responses. First of all, ERISA is somewhat unique in  
14 that ERISA -- first of all, this provision doesn't have  
15 prevailing party languages, unlike --

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

19 MR. SHAH: Okay. I think still this  
20 provision is unique in that it is informed explicitly by  
21 trust law principles, as this Court has held numerous --  
22 in numerous decisions regarding other ERISA provisions.  
23 And the trust law principles depart from the American  
24 rule. All of those other statutes which you have in  
25 mind, Justice Scalia, are premised on the background of

1 the American rule. The trust law departs from American  
2 rule, and so when you interpret ERISA Section 502(g)1  
3 based upon the trust law principles, I think that  
4 supports a different --

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

8 MR. SHAH: Well, even --

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

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

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

23 MR. SHAH: Correct.

24 JUSTICE KENNEDY: But just in going through  
25 the list of the statutes, there are many statutes that

1 are not prevailing party statutes. And it seems to me  
2 that -- you say it's unique. Well, it's unique in the  
3 sense it's in ERISA, but I -- I think it's very close to  
4 many -- many of the statutes with the language there in  
5 the red brief's appendix.

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

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

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

24 MR. SHAH: Under your hypothetical, Justice  
25 Breyer, a district court would be within its

1 jurisdiction to deny attorney's fees. That doesn't --

2 JUSTICE BREYER: My question is, does the  
3 statute, in the view of the government, permit  
4 attorney's fees in the case I just mentioned?

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

7 JUSTICE BREYER: Your answer is, yes, it  
8 does permit?

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

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

14 (Laughter.)

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

21 MR. SHAH: No, Your Honor --

22 CHIEF JUSTICE ROBERTS: The plaintiff has  
23 had -- why? He has had some success.

24 MR. SHAH: No, Your Honor, because that  
25 would be captured within Hanrahan, we think, and

1 that's -- and that's easily distinguishable because  
2 those are errors -- even if some of those procedural  
3 victories were overturned on appeal or procedural losses  
4 were overturned on appeal, those are all errors within  
5 the court system or victories within the procedures of  
6 the court system, not a violation on the merits of the  
7 underlying claim, which is what we have here.

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

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

13 MR. SHAH: Pardon, Your Honor?

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

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

20 Now, the trust law cases -- there is  
21 language in some of the trust laws case that suggests  
22 that fees -- fees could be awarded to unsuccessful  
23 litigants or regardless of outcome. But I think if you  
24 read those cases, on the facts of those cases they don't  
25 go that far. But I think what they do embody is a much

1 broader notion of success than the strict prevailing  
2 party jurisprudence that this Court has promulgated --

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

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

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

15 MR. SHAH: May I respond, Your Honor? A  
16 couple of responses, Justice Kennedy. First, if they  
17 didn't retain jurisdiction -- and in the Seventh  
18 Circuit, for example, that's one circuit which says that  
19 these orders have to be final and final judgment has to  
20 be entered -- then we are exactly analogous to a  
21 sentence 4 Social Security case.

22 And this Court has made it clear in a line  
23 of decisions that upon entry of final judgment, and  
24 those are exactly analogous in the sense that what  
25 happens is that the court finds that the decision below

1 committed some error in law, it vacates that decision,  
2 and then sends it back to the Social Security  
3 Administration for a new determination without  
4 preordaining the result. Regardless of the result  
5 there, at the time of the remand and entry of judgment  
6 that plaintiff is eligible for -- for fees.

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

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.

11 Mr. Rosenkranz.

12 ORAL ARGUMENT OF NICHOLAS Q. ROSENKRANZ

13 ON BEHALF OF THE RESPONDENT

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

16 No judge has ever decided the merits of  
17 Petitioner's claim for benefits. Under this Court's  
18 holding in Ruckelshaus, the Petitioner must demonstrate  
19 some success on the merits, and under Rule 54 she must  
20 specify the judgment entitling her to an award.

21 JUSTICE GINSBURG: What about the footnote  
22 that was mentioned in Ruckelshaus that said: "Congress  
23 found it necessary to explicitly state that the term  
24 'appropriate' extended to suits that forced defendants  
25 to abandon illegal conduct" -- illegal conduct was found

1 here -- "although without formal court order"?

2 MR. ROSENKRANZ: Yes, Your Honor. Footnote  
3 8 of Ruckelshaus addressed one sentence of legislative  
4 history of a different statute, and only so far as the  
5 Court pointed out that the sentence was of no use to  
6 Sierra Club in that case. I don't think the footnote is  
7 properly read to be a full-fledged endorsement of the  
8 catalyst theory.

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

15 So the Court had evaluated the evidence at  
16 that point as favoring Hardt. To that extent, it wasn't  
17 a purely procedural ruling. It says: As things stand  
18 now, Hardt should get fees; but I'm leaving the door  
19 open. So it wasn't just a procedural decision. It was  
20 an evaluation of the evidence up to that point, wasn't  
21 it?

22 MR. ROSENKRANZ: Yes, Your Honor, but it  
23 would be an utterly unadministrable rule to attempt to  
24 weigh the inclinations of judges in their opinions.  
25 This Court's precedence has made clear that we weigh

1 success on the merits by evaluating judicial judgments.

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

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

15 Now, if that isn't -- I mean, what words of  
16 English -- if -- we are talking about partial success.  
17 Partial success, or not total defeat. That is the  
18 language from Ruckelshaus. Not "total success." You  
19 still get it. Okay. What in the English language can  
20 we read in a case or a statute that would say you  
21 shouldn't reach that common sense result? Now, of  
22 course, I am characterizing it a little bit, but it does  
23 seem like a common sense result.

24 MR. ROSENKRANZ: Your Honor, Petitioner in  
25 this case, like all plaintiffs, arrived in court

1 requesting a judgment, a judgment awarding her benefits.  
2 Indeed, she believed she was entitled to such a judgment  
3 as a matter of law, and she moved for judgment as a  
4 matter of law for summary judgment.

5           What the district court actually did was  
6 deny that Motion for Summary Judgment. Rather than give  
7 her the judgment she sought, the district court employed  
8 a particular procedural maneuver, which was to remand  
9 the case -- quote, "remand the case" -- to her  
10 litigation adversary to reconsider the question.

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

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

24           MR. ROSENKRANZ: Your Honor, this is a  
25 purely interlocutory order, so this was not an end to

1 the case. This was not a decision on the merits. This  
2 was a purely interlocutory order, on the road to a  
3 decision on the merits, perhaps, but the district court  
4 denied her motion for summary judgment, did not conclude  
5 she was entitled to benefits as a matter of law and  
6 instead remanded the case for further proceedings.

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

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

15 CHIEF JUSTICE ROBERTS: I would have thought  
16 that it -- one thing it did emphasize is that in the  
17 typical case, the likely relief is going to be sending  
18 it back rather than making a judicial decision, which --  
19 which seems to me, then, that -- and then presumably, in  
20 most cases, the person would prevail before the plan  
21 administrator.

22 So given *Conkright*, your position is going  
23 to severely limit the circumstances under which  
24 Plaintiffs are entitled to fees.

25 MR. ROSENKRANZ: Your Honor, it's -- you are

1 correct that in Conkright, the Court -- Court indicated  
2 that in most cases the district court should remand  
3 under circumstances like this. You are quite correct.  
4 Under circumstances like this, then, there would be  
5 fewer opportunities for district courts to award fees.  
6 And that is a correct result under 502(g)(1), which, as  
7 informed by --

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

13 MR. ROSENKRANZ: Your Honor, I'm not sure  
14 this should be characterized as a victory. This was not  
15 a procedural maneuver that the plaintiff sought. The  
16 plaintiff asked for summary judgment and her summary  
17 judgment motion was denied. And instead, the district  
18 court chose to remand the case to her litigation  
19 adversary. Surely, at that moment at least, that surely  
20 could not have felt like a victory.

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

1 MR. ROSENKRANZ: I don't think that future  
2 claimants will ask for a remand as their final form of  
3 relief. The relief that one asks for in one's complaint  
4 is the final judicial relief that one wants. This is --

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

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

12 JUSTICE SCALIA: What if the claimant  
13 doesn't really claim that? The claimant just says this  
14 was a wrong decision and they should do it correctly.  
15 And the claimant knows that all he's going to get from  
16 the district court is a remand.

17 MR. ROSENKRANZ: But the correct way to --

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

22 MR. ROSENKRANZ: No, Your Honor. A properly  
23 framed complaint under ERISA should still be a claim for  
24 benefits. The remand that Conkright contemplates is  
25 still an interlocutory remand, like the remand here.

1 One does not put in one's complaint a desire for  
2 interlocutory relief, any more than one --

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

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

16 MR. ROSENKRANZ: Your Honor --

17 JUSTICE BREYER: If that's what you think.

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

25 JUSTICE BREYER: You distinguish between him

1 saying, you have to give her at least 30, and his  
2 saying, the evidence that supports giving her less than  
3 30 is -- insufficient, is substantially -- is -- what's  
4 the word? Yes, worthless.

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

8 JUSTICE BREYER: But that's the line you  
9 draw?

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

13 JUSTICE SOTOMAYOR: That -- that's  
14 difficult. Let's assume that a claims administrator or  
15 plan administrator is not deciding the claim. The party  
16 comes to court and says abjures; I have a right to a  
17 decision within X number of days; force them, mandamus  
18 them to give me a decision. The court says, reasonable,  
19 you have a right to one, and orders them to. Under your  
20 theory they have won nothing?

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

25 JUSTICE SOTOMAYOR: So you're -- you're --

1 wait a minute. Then we go back to a question that was  
2 asked by one of my colleagues; if a plan participant  
3 came in and said, "they didn't consider evidence they  
4 should have. They didn't seek my treating physician's  
5 documents and here they are. They should consider them  
6 now," and the court says, "you're right," enters a  
7 remand order and dismisses the case -- that's enough?

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

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

17 MR. ROSENKRANZ: If the -- if the gravamen  
18 of the complaint is a complaint for benefits then the  
19 complaint should ask for benefits and the judge should  
20 resolve that case. A remand would always maintain  
21 jurisdiction -- should always maintain jurisdiction over  
22 the case, thus always be interlocutory and procedural.

23 CHIEF JUSTICE ROBERTS: Is that how it  
24 works? Remands always retain jurisdiction? I would --  
25 I would have thought the district judge would want the

1 thing off his or her docket, you know, for the  
2 statistics if anything --

3 (Laughter.)

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

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

20 JUSTICE BREYER: That may be, but why can't  
21 they do this? What would be wrong with this heretical  
22 idea, that as long as the plaintiff wins something out  
23 of the court, the district judge -- that group of people  
24 we were talking about -- has discretion to decide  
25 whether ultimately they got something significant of

1 what they wanted, and as long as that judgment helped  
2 them get them something significantly of what they  
3 wanted, attorney's fees are fine; and we leave it all up  
4 to the district judge as long as the district judge  
5 doesn't abuse the discretion that that standard gives  
6 him?

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

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

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

21                   MR. ROSENKRANZ: Your Honor, the Court was  
22 careful in Ruckelshaus to say that a purely procedural  
23 victory would not suffice. Now purely procedural  
24 victory may well -- may well result in success for a  
25 plaintiff at some later stage; it could result in

1 out-of-court success. This Court has been crystal clear  
2 that we do not look for success out of court; we do not  
3 look for it in interlocutory orders --

4 JUSTICE GINSBURG: Mr. Rosenkranz, suppose  
5 the complaint was, "I asked for a turnover of certain  
6 documents. They refused without reason. " And the Court  
7 said: "You are right. You are entitled to those  
8 documents." It's interlocutory; there is no decision;  
9 but the only thing the plaintiff asked for, the  
10 plaintiff got, that is entitlement to the documents.  
11 The court said: "You are entitled to the documents."  
12 And then it goes back and the documents are turned over  
13 because the court has ordered that.

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

18 MR. ROSENKRANZ: On your hypothetical, Your  
19 Honor, that would not be an interlocutory order. So if  
20 the plaintiff arrives seeking only documents and the  
21 district court awards her, her documents, that would be  
22 the end of the case, and the district court would  
23 properly relinquish jurisdiction, and we could evaluate,  
24 compare the result that the district court gave -- gave  
25 a plaintiff with what the plaintiff originally asked

1 for. But this is not the --

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

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

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

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

21 JUSTICE GINSBURG: Well, I'm not dealing  
22 with something obscure. If the -- the plaintiff says, I  
23 have asked for certain documents, they withheld those  
24 documents with no good cause at all, and the court said,  
25 "you are right. Turn over documents," it's that

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

4 MR. ROSENKRANZ: Yes, Your Honor.

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

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

14 JUSTICE SCALIA: What if you --

15 JUSTICE GINSBURG: You are changing -- you  
16 are changing the answer. The answer that you first gave  
17 me was it's a discreet issue, final judgment, yes.  
18 Qualifies for fees. Now you are saying no, no fees?

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

1 JUSTICE GINSBURG: Suppose the claim were,  
2 they're just not processing my application. So court,  
3 ordered them to process my application. Right: They  
4 are not doing anything, we order them to go process the  
5 application. End of case in the district court.

6 Fee entitlement?

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

16 JUSTICE KENNEDY: The government in response  
17 to questions about the significance and the consequences  
18 of its position said, oh, this is a unique statute.  
19 ERISA -- it's is an ERISA statute.

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

23 MR. ROSENKRANZ: No, Justice Kennedy, I  
24 don't. The Court has oftentimes emphasized that  
25 fee-shifting statutes ought to be read in parallel, that

1 we ought to have fewer rather than more fee-shifting  
2 standards in the world. And so presumably the result in  
3 this case would govern any number of fee-shifting  
4 statutes of similar language.

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

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

14 MR. ROSENKRANZ: I'm sorry, Your Honor. In  
15 this hypothetical, the district court grants the  
16 discovery order, but still holds jurisdiction over the  
17 case?

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

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

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

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

12 JUSTICE SOTOMAYOR: So under Buckhannon, 51  
13 percent only entitles you to fees, and under your view  
14 of this statute, you have -- as long as you get  
15 1 percent order, that's enough.

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

20 At that time, prevailing party had been read  
21 quite narrowly to require substantially prevailing, and  
22 the Court understood Congress to reject that standard in  
23 adopting a statute that doesn't include language like  
24 "prevailing party." Subsequently, this Court has  
25 adopted a much more liberal understanding of the words

1 "prevailing party," so there may not be --

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

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

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

17 The ease of administrability of our rule is  
18 that it turns on the contents of judicial judgments. If  
19 the Petitioner wins in this case, the policy result will  
20 merely be stingier plans. So these are not plans that  
21 any private party is obliged to create, and this Court  
22 has emphasized that the purpose of ERISA is to balance  
23 the interests of beneficiaries on the one hand, but also  
24 the interest in the creation of these plans and the  
25 generosity of these plans on the other. And a fee award

1 under circumstances like this would result in far less  
2 generous plans for -- for --

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

7 Is there a basis for distinguishing on a  
8 sort of a sovereign immunity approach for saying that  
9 maybe there should be a stricter standard when you are  
10 taking money away from the sovereign than when you are  
11 taking it away from private litigants?

12 MR. ROSENKRANZ: Your Honor, I don't think  
13 so. The Solicitor General is here arguing that this  
14 ought to be the rule, and it would presumably be the  
15 same rule even in a statute that applied against the  
16 government. Again, this Court has cautioned against the  
17 proliferation of different fee-shifting standards. I  
18 would think there would be a concern about having a  
19 different standard applied to the government than a  
20 private party on -- on similar statutory text.  
21 Certainly no indication in this statutory text --

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

24 MR. ROSENKRANZ: Your Honor, I agree with  
25 you that it seems artificial in a way to apply those --

1 to apply -- to import those principles entirely. On the  
2 other hand, this Court has emphasized that ERISA is  
3 informed by trust principles. And under Sprague, the  
4 Court emphasized that trust principles would very rarely  
5 shift fees in a context like this. So to that extent, I  
6 do believe that this provision should be informed by  
7 this Court's holding on that point.

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

15           And as this Court emphasized, the second  
16 inquiry by the claims administrator would be reviewed  
17 for abuse of discretion. It could easily have come out  
18 the other way, as the district court itself  
19 acknowledged.

20           JUSTICE BREYER: She also received -- she  
21 also received a conditional judgment in her favor.

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

25           JUSTICE BREYER: She said: Unless this

1 order goes into effect within 30 days, the judgment will  
2 be entered for the plaintiff, for her.

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

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

13 MR. ROSENKRANZ: Your Honor, she didn't  
14 actually get a judgment.

15 JUSTICE BREYER: Oh, let's read the  
16 judgment. Let's see. It says in a -- what is it  
17 called? I just saw it here. My colleague has it here.

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

25 Now, that's in a kind of judgment, I guess.

1 It's in an order. So an order saying, We will issue a  
2 judgment -- it sounds to me like you could say that's a  
3 judgment in her favor. You don't have to, but you  
4 could.

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

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

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

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

20 MR. ROSENKRANZ: Again, Your Honor, the  
21 district court did not decide the merits of this case.  
22 The district court offered the possibility that it would  
23 enter judgment if something happened in the future.  
24 That thing did not happen in the future, but there was  
25 no judgment in her favor in this case. Again, the issue

1 was remanded to a private party to determine the issue.  
2 The grant of benefits on remand certainly could not  
3 constitute success on the merits.

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

10 And those are the actual actions the  
11 district court took: Denying the Motion for Summary  
12 Judgment and dismissing the case. And under this  
13 Court's precedents, where we look for success in those  
14 judgments, those judgments show us no success on the  
15 merits for Ms. Hardt.

16 If there are no further questions --

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Ates, you have four minutes remaining.

19 REBUTTAL ARGUMENT OF JOHN R. ATES

20 ON BEHALF OF THE PETITIONER

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

23 I have two points on rebuttal. Under there,  
24 we must have a final judgment on the benefits on her  
25 claim for -- final judgment on the merits on her claim

1 for benefits. That is absolutely foreclosed by this  
2 Court's decision in Schaefer, where a Social Security  
3 claimant comes forward, shows a violation by the  
4 secretary; it's remanded back to the secretary; the case  
5 is closed at that point. There was no decision on the  
6 merits for the benefits, and yet this Court found that  
7 was prevailing party.

8 Here, we don't need prevailing party, but  
9 moreover, even accepting their theory it leads to absurd  
10 results. There is a provision in ERISA, 1132(c),  
11 that gives a claimant the right to seek documents. And  
12 yet, they are saying if the claimant is wholly  
13 successful to get the plan document from which certain  
14 claims you don't even know if you have until you read  
15 those plans, they would say it's a purely procedural  
16 victory, you cannot get attorney's fees. The whole  
17 point of that provision was to require the fiduciary to  
18 give the documents over so people can understand their  
19 rights.

20 Moreover, their final judgment on the merits  
21 for benefits rule leads to perverse incentives under  
22 ERISA. The plan administrator is incented to deny the  
23 first time around, challenge it all the way through the  
24 courts, on remand maybe if they get a conditional  
25 judgment, as here that says "if you don't act within

1 30 days I'm giving you that judgment," they then grant  
2 the benefit and the court gets rid of the case.

3 They have succeeded in eliminating the right  
4 of claimants to get to court to pursue their rights,  
5 because of the cost of litigation.

6 But moreover, here we have a judgment. To  
7 be clear, that is not our argument. We had a  
8 conditional judgment by the district court sending it  
9 back. "If you do not act in accordance with law within  
10 30 days, I will enter judgment on this case." We have  
11 that. But at the end of the day it was not a dismissal.

12 They overlooked district court docket 57.  
13 There was a judgment entered in Ms. Hardt's favor  
14 against Reliance in the amount of attorney's fees. The  
15 original order merges into that judgment. We have a  
16 final judgment here as well. Although we don't need it,  
17 under section 502(g)(1), we have it here.

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

25 They did not follow proper procedure. They

1 abused their discretion. They breached a fiduciary  
2 obligation to the claimant. In these circumstances,  
3 under the clear language and clear structure of this  
4 statute, this claimant is entitled to fees.

5 The only -- may I finish?

6 CHIEF JUSTICE ROBERTS: Sure.

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

10 Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you, counsel.

12 The case is submitted.

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

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