

## 09-448 HARDT V. RELIANCE STANDARD LIFE INS.

DECISION BELOW:336 Fed.Appx. 332

LOWER COURT CASE NUMBER: 08-1896

### QUESTIONS PRESENTED:

Section 502(g)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) provides: "In any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of the action to either party." 29 U.S.C. § 1132(g)(1).

The Fourth Circuit in the decision below held that "only a prevailing party is entitled to consideration for attorneys' fees in an ERISA action," while the Second, Fifth and Eleventh Circuits have declined to read a "prevailing party" requirement into § 502 (g)(1) and other circuits have issued conflicting authority. The Fourth Circuit also held that the "prevailing party" standard was not met and vacated an award of attorneys' fees to petitioner, even where the district court found "compelling evidence that [petitioner] is totally disabled," ruled that petitioner "did not get the kind of review to which she was entitled under applicable law" and remanded for a redetermination of benefits with an instruction that respondents "act on [petitioner's] application by adequately considering all the evidence discussed within this Opinion within thirty (30) days of its date of issuance" or "judgment will be issued in favor of [petitioner]" and petitioner obtained the requested long-term disability benefits upon remand.

The questions presented are:

1. Whether the Fourth Circuit erred in holding that ERISA § 502(g)(1) provides a district court discretion to award reasonable attorney's fees only to a prevailing party?
2. Whether a party is entitled to attorney's fees pursuant to § 502(g)(1) when she persuades a district court that a violation of ERISA has occurred, successfully secures a judicially-ordered remand requiring a redetermination of entitlement to benefits and subsequently receives the benefits sought on remand?

CERT. GRANTED 1/15/2010

EXPEDITED BRIEFING SCHEDULE