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1 P R O C E E D I N G S

2 (11:05 a.m.)

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

6 Mr. Ates.

7 ORAL ARGUMENT OF JOHN R. ATES

8 ON BEHALF OF THE PETITIONER

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

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

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

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

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

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 we 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 our -- the meaning of our footnote, 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 --
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: It was 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's 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 Ms. 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 he --
24 can the district court award attorney's fees?

25 MR. ATES: Absolutely, the court at that

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

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

25 JUSTICE SOTOMAYOR: But under your theory,

1 presumably no relief has to be granted?

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

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

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

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

25 JUSTICE SOTOMAYOR: Going back to

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

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

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

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

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

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

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

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

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

10 I'd like to reserve the remainder of my 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'm
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's 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 are 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's 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 on which framework we're
22 operating under. I think if we're 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 a 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 with
17 that?

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

25 But we're far afield from Ruckelshaus here,

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

9 Petitioner's reply brief at page 11 cites
10 Grien v. Cavano. 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're 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're 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're making your bed and you're going to have to lie

1 in it --

2 (Laughter.)

3 JUSTICE SCALIA: -- and you're 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're -- you're 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 language as -- unlike EAJA, for example.

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

19 MR. SHAH: Okay.

20 JUSTICE SCALIA: Sure.

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

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

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

10 MR. SHAH: Well, even --

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

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

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

25 MR. SHAH: Correct.

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

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

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

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

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

4 JUSTICE BREYER: My question is --

5 MR. SHAH: He wouldn't --

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

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

11 JUSTICE BREYER: Your answer is, yes --

12 MR. SHAH: Yes.

13 JUSTICE BREYER: -- it does permit?

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

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

19 (Laughter.)

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

1 has had --

2 MR. SHAH: No, Your Honor --

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

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

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

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

19 MR. SHAH: Pardon, Your Honor.

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

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

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

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

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

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

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

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

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

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

16 Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Rosenkranz.

19 ORAL ARGUMENT OF NICHOLAS Q. ROSENKRANZ

20 ON BEHALF OF THE RESPONDENT

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

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

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

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

9 MR. ROSENKRANZ: Yes, Your Honor. Footnote
10 8 of Ruckelshaus addressed one sentence of legislative
11 history of a different statute, and only so far as the
12 Court pointed out that the sentence was of no use to
13 Sierra Club in that case. I don't think the footnote is
14 properly read to be a full-fledged endorsement of the
15 catalyst theory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. ROSENKRANZ: Your Honor, it's -- you are
8 correct that in Conkright, the Court -- Court indicated
9 that in most cases the district court should remand
10 under circumstances like this. You are quite correct.
11 Under circumstances like this, then, there would be
12 fewer opportunities for district courts to award --
13 to award fees. And that's a correct result under
14 502(g)(1), which, as informed by --

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

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

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

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

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

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

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

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

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

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

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

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

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

24 MR. ROSENKRANZ: Your Honor --

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

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

8 JUSTICE BREYER: You distinguish between him
9 saying you have to give her at least 30 and his
10 saying the evidence that supports giving her less than
11 30 is -- insufficient, is substantially -- is -- what's
12 the word? Yes, worthless.

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

16 JUSTICE BREYER: That's the line you draw?

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

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

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

2 Under your theory, they've won nothing?

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

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

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

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

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

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

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

9 (Laughter.)

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

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

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

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

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

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

1 get something significantly of what she wanted.

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

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

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

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

25 MR. ROSENKRANZ: On your hypothetical, Your

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

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

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

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

24 MR. ROSENKRANZ: Your Honor --

25 JUSTICE GINSBURG: -- so she gets benefits.

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

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

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

13 MR. ROSENKRANZ: Yes, Your Honor.

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

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

23 JUSTICE SCALIA: What if --

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

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

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

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

15 Fee entitlement?

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

25 JUSTICE KENNEDY: The government in response

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

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

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

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

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

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

1 over the case?

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

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

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

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

22 JUSTICE SOTOMAYOR: So under Buckhannon, 51
23 percent only entitles you to fees. And under your view
24 of this statute, you have -- as long as you get
25 1 percent order, that's enough.

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

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

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

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

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

1 simple and easy to administer.

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

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

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

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

1 government. Again, this Court has cautioned against a
2 proliferation of different fee-shifting standards. I
3 would think there would be a concern about having a
4 different standard applied to the government than to a
5 private party on -- on similar statutory text.

6 Certainly, no indication in this statutory text --

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

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

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

25 And, as this Court emphasized, the second

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

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

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

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

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

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

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

25 JUSTICE BREYER: Well, let's read the

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

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

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

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

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

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

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

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

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

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

1 merits for Ms. Hardt.

2 If there are no further questions --

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 Mr. Ates, you have 4 minutes remaining.

5 REBUTTAL ARGUMENT OF JOHN R. ATES

6 ON BEHALF OF THE PETITIONER

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

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

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

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

6 Moreover, their final judgment on the merits
7 for benefits rule leads to perverse incentives under
8 ERISA. The plan administrator is incented to deny the
9 first time around, challenge it all the way through the
10 courts, on remand maybe, if they get a conditional
11 judgment, as here, that says if you don't act within
12 30 days I'm giving you that judgment, they then grant
13 the benefits and the court gets rid of the case, they
14 have succeeded in eliminating the right
15 of claimants to get to court to pursue their rights,
16 because of the cost of litigation.

17 But moreover, here we have a judgment. To
18 be clear, that is not our argument. We had a
19 conditional judgment by the district court sending it
20 back: If you do not act in accordance with law within
21 30 days, I will enter judgment on this case.

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

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

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

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

16 The only -- may I finish?

17 CHIEF JUSTICE ROBERTS: Sure.

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

21 Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you, counsel.

23 The case is submitted.

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

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