No. 09-448

In the Supreme Court of the United States

BRIDGET HARDT, PETITIONER

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether Section 502(g)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(g)(1), permits courts to award reasonable attorney's fees only to a "prevailing party."

2. Whether a benefits claimant may be awarded attorney's fees pursuant to ERISA Section 502(g)(1) when a district court finds that the administrator has violated ERISA and orders the administrator to redetermine the claimant's entitlement to benefits, and the administrator then grants the benefits sought.

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INTEREST OF THE UNITED STATES

This case concerns the standard under which a court may award attorney's fees pursuant to Section 502(g)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(g)(1). The Secretary of Labor has primary authority for administering Title I of ERISA, see 29 U.S.C. 1002(13), 1135, 1136(b), of which Section 502(g)(1) is a part.

STATEMENT

1. Congress enacted ERISA "to protect * * * the interests of participants in employee benefit plans and their beneficiaries * * * by establishing standards of conduct, responsibility, and obligations for fiduciaries of employee benefit plans, and by providing for appropri-

ate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). Section 502 of ERISA, 29 U.S.C. 1132, sets forth a comprehensive enforcement scheme that authorizes plan participants and other interested parties to sue to enforce their rights under ERISA benefit plans and under the statute. In particular, Section 502(a)(1)(B) permits a participant or beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. 1132(a)(1)(B).

ERISA expressly provides for an award of attorney's fees in actions under Section 502. As relevant here, Section 502(g)(1) states:

> In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

29 U.S.C. 1132(g)(1).[1]

ERISA Section 503 imposes requirements on a plan's consideration of benefits claims, including a reasonable opportunity for a "full and fair review" by the plan fiduciary of any denial. 29 U.S.C. 1133(2). Pursuant to Section 503, the Secretary of Labor has promulgated a regulation requiring, *inter alia*, that the claimant be allowed to appeal an initial denial of a claim to an appropriate named fiduciary, who (on a disability claim) must

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[1] Paragraph 2 governs actions by a plan fiduciary to recover delinquent contributions and provides for an award of attorney's fees against the defendant only when "a judgment in favor of the plan is awarded." 29 U.S.C. 1132(g)(2)(D).

take into account all the information submitted by the claimant; and that the claimant be given, upon request and free of cost, reasonable access to documents, records, and other information relied upon as part of a "full and fair review" process. 29 C.F.R. 2560.503-1(b) and (h).

2. a. Petitioner worked as an administrative assistant at Dan River, Inc., a textile manufacturer. Pet. App. 31a-32a. Dan River sponsors the Group Long-Term Disability Insurance Program Plan (the Plan), an ERISA-governed welfare plan, in which petitioner is a participant. *Id.* at 32a. The Plan provides 24 months of benefits to a claimant who is unable to perform her existing job due to a medical disability. After 24 months, the Plan provides benefits only so long as a claimant is unable to perform any occupation. *Id.* at 36a. Respondent both decides whether a claimant is entitled to benefits and pays any such benefits. *Id.* at 32a.

In 2000, while employed at Dan River, petitioner began experiencing pain in her neck and shoulders. After being diagnosed with carpal tunnel syndrome, petitioner underwent surgery on both wrists. Petitioner continued to suffer pain, however, and she stopped working at Dan River in January 2003. In August 2003, petitioner applied for disability benefits under the Plan. Respondent provisionally approved petitioner's claim for benefits, pending the results of a functional capacity evaluation. The evaluation was conducted in October 2003. Pet. App. 32a.

The evaluator found that petitioner had several major physical limitations, but nonetheless concluded that she could perform sedentary work. Pet. App. 32a-33a. In December 2003, based on the results of that assessment, respondent denied benefits to petitioner. *Id.* at

33a. On petitioner's appeal, respondent partially reversed its decision and agreed to provide 24 months of benefits based on petitioner's inability to do her former job. *Ibid.*

Meanwhile, petitioner was diagnosed with hereditary small-fiber neuropathy, and her pain worsened. Pet. App. 33a. Petitioner also developed pain and swelling in her calves and feet that made walking difficult and that did not respond to increased dosages of prescribed pain medication. *Id.* at 34a-35a.

b. In addition to seeking benefits under the Plan, petitioner applied for Social Security disability benefits. In support of her claim, petitioner submitted reports from two treating physicians who concluded that she was unable to perform even sedentary work. Pet. App. 35a. The Social Security Administration awarded benefits, concluding that petitioner was physically unable to return to her old job or adjust to other work. *Id.* at 35a-36a.

c. Shortly after petitioner received the award of Social Security benefits, respondent notified petitioner that her disability benefits would terminate at the end of the 24-month period because, according to the 2003 functional capacity evaluation, she could perform available sedentary work. Pet. App. 4a-5a, 36a. Petitioner appealed again and submitted all her medical records, including the materials submitted to the Social Security Administration. *Id.* at 5a. In March 2006, after requiring petitioner to submit to two additional functional capacity evaluations and retaining a physician to review her medical records, respondent notified petitioner that it had not changed its decision to terminate her benefits. *Id.* at 4a-6a, 36a-38a.

3. a. Having exhausted her remedies under the Plan, petitioner filed this action in federal district court pursuant to ERISA. The complaint alleged, *inter alia*, that respondent violated ERISA by failing to pay benefits under the terms of the Plan. J.A. 90a-110a. Petitioner sought payment of past benefits due, a declaration of her right to future benefits, and "other relief as the Court may deem necessary and proper to secure [her] rights." J.A. 109a-110a; see Pet. App. 38a.

Both petitioner and respondent filed motions for summary judgment. The court denied respondent's motion. Pet. App. 41a-47a. It found that respondent had relied on an "incomplete and inadequate" peer review report, a vocational report based on outdated information, and functional capacity evaluations that did not assess the impact of petitioner's neuropathy, and that respondent had also failed to consider other relevant medical records submitted by petitioner. *Ibid.* The court accordingly concluded that respondent's "decision to deny [petitioner] long-term disability benefits was not based on substantial evidence." *Id.* at 47a. At the same time, the court also denied petitioner's motion for summary judgment. Although it found "compelling evidence that [petitioner] is totally disabled due to her neuropathy" and that she "did not get the kind of review to which she was entitled under applicable law," the court concluded that it would be unwise to rule on whether petitioner was disabled "without first giving [respondent] the chance to address the deficiencies in its approach." *Id.* at 48a.

The court therefore "remand[ed]" the matter to respondent "to act on [petitioner's] application by adequately considering all the evidence discussed," stating that if respondent did not do so within 30 days, "judg-

ment will be issued in favor of [petitioner]." Pet. App. 49a. Upon reconsideration, respondent granted petitioner the requested benefits. *Id.* at 13a.

b. After respondent granted her benefits, petitioner filed a motion for attorney's fees and costs pursuant to ERISA Section 502(g)(1), which the district court granted. Pet. App. 12a-30a. The court noted that, "[a]lthough not statutorily-mandated," Fourth Circuit precedent imposed a "prevailing party" prerequisite to the award of fees in ERISA cases. *Id.* at 15a (citing *Martin* v. *Blue Cross & Blue Shield of Va., Inc.*, 115 F.3d 1201, 1210 (4th Cir.), cert. denied, 522 U.S. 1029 (1997)). The court held that petitioner satisfied that standard because the order remanding the matter to respondent, which then granted benefits, constituted a "judicially sanctioned change in the legal relationship of the parties." *Id.* at 18a-22a (quoting *Buckhannon Bd. & Care Home, Inc.* v. *West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 605 (2001)).

Having found the "prevailing party" requirement satisfied, the court next addressed the propriety of a fee award under a flexible five-factor test, considering: (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to satisfy an award of attorney's fees; (3) whether a fee award would have a desired deterrent effect; (4) whether the party requesting attorney's fees sought to benefit all participants and beneficiaries of a plan or to advance and resolve a significant legal issue under ERISA; and (5) the relative merits of the parties' positions. Pet. App. 16a-17a. The court concluded that all the factors other than the fourth favored an award of fees to petitioner. *Id.* at 22a-25a. After adjusting the number of billed hours, the court awarded petitioner $39,149 in attorney's fees and

costs—approximately two-thirds of the amount she had requested. *Id.* at 29a-30a.

c. The court of appeals reversed. Pet. App. 1a-11a. The court of appeals relied on circuit precedent holding that only a "prevailing party" is entitled to fees in an ERISA action. *Id.* at 7a-8a (citing *Martin*, *supra*). Citing this Court's decision in *Buckhannon*, 532 U.S. at 604, the court stated that a party must receive relief in the form of either an "enforceable judgment[] on the merits" or a "court-ordered consent decree[]" to be considered "prevailing." Pet. App. 8a. Because the district court did not indicate in its remand order that petitioner was "about to prevail" (*Goldstein* v. *Moatz*, 445 F.3d 747, 751 (4th Cir. 2006)) or "require [respondent] to award benefits to [petitioner]," the court held that petitioner did not obtain an "'enforceable judgment[] on the merits,' as *Buckhannon* requires." Pet. App. 10a (quoting *Buckhannon*, 532 U.S. at 604)). The court of appeals also distinguished two cases in which district courts had awarded attorney's fees after a benefits claim was sent back to a plan administrator, noting that the plaintiffs in those cases "included a second count alleging procedural error under ERISA and requesting remand as the appropriate legal relief." *Id.* at 10a-11a. The court concluded:

> Because (1) [petitioner]'s only request for relief was the award of benefits, which the district court did not award, and (2) the district court's remand order did not satisfy the requirements of *Buckhannon* or *Goldstein*, [petitioner] does not qualify as a prevailing party and is thus not eligible for an award of attorney's fees.

Id. at 11a.

SUMMARY OF ARGUMENT

I. ERISA Section 502(g)(1) does not impose a strict "prevailing party" requirement.

A. In contrast to the vast majority of fee-shifting provisions in other statutes as well as within ERISA itself (including the subsequently added Section 502(g)(2)), the text of Section 502(g)(1) omits the term "prevailing party" or its equivalent. The absence of a strict "prevailing party" requirement is consistent with ERISA's purpose of protecting plan beneficiaries' access to courts and with the legislative history indicating that Congress deliberately departed from "prevailing party" requirements present in the preexisting statutory regime and in industry proposals.

B. Under trust-law principles, attorney's fees may be awarded at the discretion of the court without the constraints of a strict "prevailing party" requirement. Those principles are reflected in the flexible, five-factor test widely employed by courts in determining the propriety of a fee award under Section 502(g)(1). That test is consistent with this Court's decision in *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680 (1983), in which the Court interpreted a fee-shifting provision of the Clean Air Act that also lacked "prevailing party" language. Although the Court held that a completely losing party could not recover under that provision, it explained that Congress's omission indicated rejection of a strict "prevailing party" standard and instead required only "some success." *Id.* at 686-690.

II. An ERISA claimant who obtains a court order finding a violation of law and requiring the claims administrator to redetermine benefits eligibility, and who is thereafter granted benefits, is eligible for attorney's fees under Section 502(g)(1).

A. Petitioner here satisfies even a strict "prevailing party" requirement of the kind construed by this Court in *Buckhannon Board & Care Home, Inc.* v. *West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001). *Buckhannon* held that the plaintiff was not a prevailing party by virtue of having brought a nonfrivolous but potentially meritless suit that acted as a "catalyst" for voluntary compliance by the defendant. *Id.* at 606. The Court's analysis suggested, however, that when the court determines that the defendant acted unlawfully and retains jurisdiction to ensure compliance, the plaintiff has prevailed in the relevant sense. *Id.* at 607-608 n.9. That is essentially what happened in this case: the district court found that respondent had violated ERISA in originally denying benefits, and the court ordered a new benefits determination under the threat of an adverse judgment.

This Court's decisions concerning remands and attorney's fees in cases under the Social Security Act, although not analogous in every respect, support that conclusion. Under those precedents, a plaintiff is a prevailing party for attorney's fee purposes if she obtains a judgment reversing the agency's denial of Social Security benefits and remanding to the agency for a new decision, regardless of the outcome on remand. See *Shalala* v. *Schaefer*, 509 U.S. 292, 301 (1993). Alternatively, a plaintiff is a prevailing party if a court remands a case for further proceedings without reaching the merits of the agency decision denying benefits and, subsequently, one of two events occurs: the agency grants benefits on remand or the court enters a favorable judgment after the proceedings on remand are completed. *Id.* at 300. Petitioner here would be deemed a prevailing

party by analogy to either of those scenarios under the Social Security Act.

B. Because petitioner could satisfy the traditional "prevailing party" standard, *a fortiori* she is eligible for attorney's fees under the more flexible test derived from trust law. A contrary conclusion would allow ERISA plan administrators to deny a meritorious benefits claim in the plan's review proceedings and then oppose the claim in a federal action, yet insulate themselves from any award of attorney's fees—all because the district court gave the administrators the task of reconsidering the benefits claim upon finding that they had committed legal error. There may be circumstances, however, in which a district court decides that a remand alone is insufficient to justify a fee award after weighing the relevant factors.

ARGUMENT

Petitioner obtained a court order finding that respondent had violated the law in denying her benefits and requiring that respondent reconsider her claim; petitioner then was awarded benefits as a result of that reconsideration. Despite her success, the court of appeals held that petitioner is categorically ineligible for attorney's fees under ERISA Section 502(g)(1). The court of appeals erred in two respects. First, Section 502(g)(1), which is premised on trust-law principles, does not impose a strict "prevailing party" requirement. Second, even if it did, the unquestionable success that petitioner achieved through her suit would satisfy that requirement.

I. ERISA SECTION 502(G)(1) DOES NOT IMPOSE A STRICT "PREVAILING PARTY" REQUIREMENT

A. The Statutory Text, Context, And History Establish That Attorney's Fees May Be Awarded Under Section 502(g)(1) Without Regard To Strict "Prevailing Party" Status

1. ERISA Section 502(g)(1) provides that "[i]n any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the [district court] in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. 1132(g)(1). Like a number of other fee-shifting provisions, the language of Section 502(g)(1) confers on district courts "discretion" to allocate attorney's fees—to be exercised by considering factors "faithful to the purposes of the" statute. *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994). Unlike the great majority of other fee-shifting provisions, however, Section 502(g)(1) makes no mention of "prevailing party" status. See *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 684 (1983) (noting that "virtually every one of the more than 150 existing federal fee-shifting provisions" contains an express requirement of success by the claimant—*e.g.*, "prevailing party," "substantially prevailing" party, or "successful" party).

Section 502(g)(1)'s lack of "prevailing party" or related language stands in stark contrast to fee-shifting provisions not only in many other federal statutes, but also within ERISA itself. In 1981, Congress amended ERISA Section 502(g) to add Paragraph (2), which is applicable to actions by a plan fiduciary to recover delinquent contributions. See Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, § 306, 94

Stat. 1208. At the same time, Congress excluded such actions from Section 502(g)(1). *Ibid.* Section 502(g)(2), in contrast to Section 502(g)(1), provides for an award of attorney's fees and costs against the defendant when "judgment in favor of the plan is awarded." 29 U.S.C. 1132(g)(2). Title IV of ERISA, which governs terminations of defined benefit pension plans, contains two other attorney's fees provisions—both of which contain an express "prevailing party" requirement. See 29 U.S.C. 1370(e)(1), 1451(e) (reproduced App., *infra* 3a-4a). Similarly, Title IV further permits the court, in an action against the Pension Benefit Guaranty Corporation (PBGC), to award "costs and expenses * * * to any party who prevails or substantially prevails in such action." 29 U.S.C. 1303(f)(3).[2]

Congress's use of "prevailing party" or comparable success-related language in every fee-shifting provision within ERISA except Section 502(g)(1) bespeaks a deliberate choice. See *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) ("The contrast between the language used in the two standards * * * certainly indicate[s] that Congress intended the two standards to differ."). An "assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated, and interdependent remedial scheme, which is in turn part of a 'comprehensive and reticulated statute.'" *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 146 (1985) (quoting *Nachman Corp.* v. *Pension Benefit Guar. Corp.*, 446 U.S. 359, 361 (1980)).

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[2] Courts have held that awards of "costs and expenses" in Title IV suits against the PBGC do not include attorney's fees. See, *e.g.*, *Stephens* v. *US Airways Group*, 555 F. Supp. 2d 112, 121-122 (D.D.C. 2008).

2. The purpose and history of Section 502(g)(1) reinforce the conclusion that Congress's omission of a "prevailing party" requirement was deliberate.

a. As noted above (pp. 1-2, *supra*), ERISA was designed to provide plan beneficiaries with ready access to courts to help protect their rights. 29 U.S.C. 1001(b); see, *e.g.*, S. Rep. No. 127, 93d Cong. 1st Sess. 35 (1973) (ERISA's enforcement provisions are "designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of [ERISA]. * * * The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law or recovery of benefits due to participants."); *Meredith* v. *Navistar Int'l Transp. Corp.*, 935 F.2d 124, 128-129 (7th Cir. 1991) ("[W]e must keep in mind ERISA's essential remedial purpose: to protect beneficiaries of pension plans."). "[I]n answer to a possible concern that attorney's fees might present a barrier to maintenance of suits for small claims, thereby risking underenforcement of beneficiaries' statutory rights," Congress authorized the award of attorney's fees under Section 502(g)(1). *Russell*, 473 U.S. at 147. Allowing fee awards to plaintiffs even in some circumstances in which a strict "prevailing party" requirement is not satisfied thus furthers the statutory purpose.

b. One of ERISA's statutory predecessors was the Welfare and Pension Plans Disclosure Act, 29 U.S.C. 301 *et seq.* See *Jordan* v. *Federal Express Corp.*, 116 F.3d 1005, 1012-1013 (3d Cir. 1997). As relevant here, that act's fee-shifting provision contained language equiva-

lent to a "prevailing party" requirement: "The court in such action [by any participant or beneficiary] may in its discretion, *in addition to any judgment awarded* to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. 308(c) (repealed 1974) (emphasis added). ERISA Section 502(g)(1) eliminated the requirement that a judgment be awarded in the plaintiff's favor.

ERISA's drafting history shows that the change in language was not merely stylistic. Congress had entertained, but did not ultimately adopt in Section 502(g)(1), various proposals from industry representatives to include a prevailing party standard in ERISA's civil enforcement section. See, *e.g.*, *Welfare and Pension Plan Legislation—Pt. I: Hearings on H.R. 2 and H.R. 462 Before the Subcomm. on Labor of the House Comm. on Education and Labor*, 93d Cong., 1st Sess. 164, 170 (1973) (American Bankers Ass'n); *id.* at 775-776 (Corporate Fiduciaries Ass'n of Illinois); *id.* at Pt. II, at 647-648 (Lauren Upson, Member, California Bankers Association Committee On Employee Benefit Trusts); *Private Pension Plan Reform—Pt. I: Hearings Before the Subcomm. on Private Pension Plans of the Senate Comm. on Finance,* 93d Cong. 1st Sess. 281 (1973) (Frank Seibert, Vice President, Bank of America). And, as discussed above (pp. 11-12, *supra*), Congress several years later chose to add a success element in new Section 502(g)(2), but did not amend the relevant language in Section 502(g)(1) to do so.

B. Trust Law Principles Do Not Impose A Strict "Prevailing Party" Requirement And Instead Support A More Flexible Approach

1. This Court has explained that trust law principles inform the proper interpretation of ERISA. One of ERISA's purposes was to establish federal standards of trust law and apply them to fiduciary conduct, especially with regard to plan administration. See, *e.g.*, *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 110 (1989). Much of ERISA reflects a congressional desire that employee plans be "operated under traditional trust law principles," in order to serve the same kinds of protective goals. *Central States, Se. & Sw. Areas Pension Fund* v. *Central Trans.*, 472 U.S. 559, 570 n.10 (1985). Courts have thus "drawn" on "the law of trusts that 'serves as ERISA's backdrop,'" *Kennedy* v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 871 (2009) (quoting *Beck* v. *Pace Int'l Union*, 551 U.S. 96, 101 (2007)), at least to the extent that trust law is consistent "with the language of the statute, its structure, or its purposes," *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 447 (1999) (internal quotation marks omitted).

2. Fee awards have long been allowed in trust cases in the exercise of a court's equitable discretion. See, *e.g.*, *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc.*, 421 U.S. 240, 253-254 (1975); *Dardovitch* v. *Haltzman*, 190 F.3d 125, 145 (3d Cir. 1999). Traditionally, courts in trust cases taxed a "common fund" for attorney's fees and costs. See *Alyeska Pipeline*, 421 U.S. at 257; *Trustees* v. *Greenough*, 105 U.S. 527, 536 (1882) (recognizing the Court of Chancery's "long-established control over the costs and charges of the litigation, to be exercised as equity and justice may require, including proper allowances to those who have instituted proceedings for the

benefit of a general fund"). Trust law, however, also allowed courts, in the exercise of equitable discretion, to allocate the obligation to pay fees and costs to a litigant in appropriate circumstances. See, *e.g.*, *Sprague* v. *Ticonic Nat'l Bank*, 307 U.S. 161, 165-166 (1939) ("The sources bearing on eighteenth-century English practice—reports and manuals—uniformly support the power * * * to give * * * as much of the entire expenses of the litigation [including attorney's fees] of one of the parties as fair justice to the other party will permit."); *Dardovitch*, 190 F.3d at 145-146; George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 871, at 195-198 & nn.53-54 (2d ed. rev. 1995) (Bogert) (listing authorities). Consistent with the principle that fee awards may be made to protect trust funds and their beneficiaries pursuant to the flexible "power of equity in doing justice," *Sprague*, 307 U.S. at 167, Section 502(g)(1) expressly provides for an award of attorney's fees from the opposing party in ERISA cases.

Courts in equity are not bound by a strict "prevailing party" requirement in considering fee awards in trust cases, and in certain situations fees have been awarded even when the plaintiff did not receive the relief sought. See, *e.g.*, *Dardovitch*, 190 F.3d at 146 ("[A] trustee may be found liable for a beneficiary's attorney's fees when the trustee has acted wrongfully, * * * [i]n spite of the fact that the beneficiaries did not receive the relief they sought.") (citing *In re Catell's Estate*, 38 A.2d 466 (Del. Ch. 1944));[3] *Daniel* v. *White*, 252 S.E.2d 912, 915

[3] In *In re Catell's Estate*, the trustee failed to give a bond as required by the settlor. The beneficiaries of the trust brought an action to have the trustee removed, but the court refused because the trustee gave the bond after the suit was filed and the trust suffered no loss. The court nonetheless ordered the trustee to pay the beneficiaries' attorney's fees

(S.C. 1979) (awarding attorney's fees to losing plaintiff because he "spent much time and effort in the location of these heirs" to the estate); *In re Bittson's Trust*, 244 N.Y.S.2d 926, 931 (Sup. Ct. 1963) ("The court has requisite power, under [the New York probate statute], to grant an allowance even 'to an unsuccessful litigant [where an issue of construction has been litigated] as the nature and importance of the subject matter and the good faith of the participant may warrant.'") (second brackets in original; citation omitted).

In addition, state statutes relating to trusts provide for flexibility in the award of fees. See Uniform Trust Code § 1004 (2005) (UTC) ("In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.").[4] That flexibility extends to cases in which the fiduciary rather than the trust is being charged with the opposing party's expenses. See, *e.g.*, *Dardovitch*, *supra*; *Marshall* v. *Babson Inst.*, 254 N.E.2d 886, 890 (Mass. 1970) (remanding to probate court for consideration of attorney's fees against trustees despite finding that, while trustees had been stingy, their discretion had not "quite" been abused); *Crutcher* v. *Joyce*, 146 F.2d 518, 521 (10th Cir.

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on the ground that the suit was made necessary only because of the trustee's failure to observe the clear terms of the trust. See 38 A.2d at 470.

[4] UTC Section 1004 is based on the similarly worded Mass. Gen. Laws ch. 215, § 45. See UTC cmt. (2005). That statute has been applied to support an award of attorney's fees against defendants "regardless of the outcome." *Hurley* v. *Noone*, 196 N.E.2d 905, 910 (Mass. 1964).

1945) (assessing fees against trustee and counsel even though plaintiffs prevailed on only minor issues).

3. Section 502(g)(1)'s omission of a strict "prevailing party" requirement reflects the flexible approach of trust law, based on the sound exercise of equitable discretion. Consistent with that tradition, courts of appeals uniformly apply in Section 502(g)(1) cases some form of the test used by the district court in this case, taking account of five relevant factors. Pet. App. 16a-17a; see *Eddy* v. *Colonial Life Ins. Co.,* 59 F.3d 201, 206 & n.10 (D.C. Cir. 1995) (collecting cases); cf. *Sullivan* v. *William A. Randolph, Inc.*, 504 F.3d 665, 671 (7th Cir. 2007) (referring to the five-factor test as an attempt to structure or implement a "substantially justified" standard). The five factors, illustrative rather than exclusive, are (1) the degree of culpability or bad faith; (2) ability to pay; (3) the potential for deterrence; (4) the number of persons benefitted or the significance of the legal question raised; and (5) the relative merits of the parties' positions. Pet. App. 16a-17a. Those factors, rather than a strict "prevailing party" standard, properly guide the discretion of district courts in making fee determinations under Section 502(g)(1). As in equity, the "guidelines" provided by these factors, *e.g.*, *Gray* v. *New England Tel. & Tel. Co.*, 792 F.2d 251, 258 (1st Cir. 1986), "flow[] naturally from the importance of preserving flexibility in this area of the law," *Cottrill* v. *Sparrow, Johnson & Ursillo, Inc.*, 100 F.3d 220, 226 (1st Cir. 1996).

The factors generally taken into account by the courts under Section 502(g)(1), like the text of that Section, do not embody a "prevailing party" requirement, but rather provide broader discretion in awarding fees. But that discretion of course has limits. An award of fees would almost never be appropriate under Section

502(g)(1) when a party was wholly unsuccessful in obtaining any favorable determination for herself or for participants and beneficiaries of the plan more broadly. See, *e.g.*, *Gibbs* v. *Gibbs*, 210 F.3d 491, 504 (5th Cir. 2000) ("[G]enerally, a proper analysis of the five factors will in most instances favor an award of fees to the party which has most substantially prevailed."); *Doe* v. *Travelers Ins. Co.*, 167 F.3d 53, 61 (1st Cir. 1999) (Section 502(g)(1) fee awards "are normally for the prevailing party, if at all."); but cf. *Antolik* v. *Saks, Inc.*, 463 F.3d 796, 803 (8th Cir. 2006) (leaving as "an open issue" whether defendant's "deceptive behavior and flagrant disregard of its ERISA disclosure duties may make this the rare case where some modest award is appropriate" even though plaintiffs were not entitled to relief on the merits).

4. Reliance on the five-factor inquiry under ERISA Section 502(g)(1), without a strict "prevailing party" prerequisite, is consistent with this Court's decision in *Ruckelshaus* v. *Sierra Club, supra*. The question presented in *Ruckelshaus* was whether a completely losing party could recover attorney's fees under Section 307(f) of the Clean Air Act, 42 U.S.C. 7607(f), which permits a fee award "whenever [the court] determines that such award is appropriate." The court of appeals applied that provision to award attorney's fees to the *Ruckelshaus* plaintiff for its contributions to the goals of the Clean Air Act, even though the plaintiff had lost on every claim presented in its petition for review of various EPA actions. 463 U.S. at 682.

This Court reversed. It demanded clear evidence before imputing to Congress an intent to make such a radical departure from the American Rule as requiring the winning party to pay the losing party's fees, espe-

cially in light of the sovereign immunity considerations implicated by Section 307(f)'s potential application to fee awards against the United States. *Ruckelshaus*, 463 U.S. at 683-686. At the same time, the Court acknowledged that Congress's omission of "prevailing party" language was meant "to expand the class of parties eligible for fee awards." *Id.* at 688. Accordingly, the Court concluded that "the term 'appropriate' modifies but does not completely reject the traditional rule that a fee claimant must 'prevail' before it may recover attorney's fees." *Id.* at 685-686. Unlike in the application of the traditional "prevailing party" requirement, a fee award could be "appropriate" under the Clean Air Act provision as long as there was "some degree of success." *Id.* at 694.

Like the Clean Air Act provision in *Ruckelshaus*, ERISA Section 502(g)(1) omits any reference to a "prevailing party." And as was the case in *Ruckelshaus* (see 463 U.S. at 686-690), the legislative context and history of ERISA indicate that the omission was meant to establish a more generous standard for awarding attorney's fees (see pp. 13-14, *supra*).[5] Here, moreover, Section 502(g)(1) should be interpreted in light of the distinct trust-law principles that serve as a backdrop to ERISA. As discussed above (pp. 15-18 , *supra*), trust law invokes the traditional flexibility of equity law and permits the

[5] In addition, the United States is rarely a proper defendant in a Section 502 enforcement action, and is not one of the plaintiffs enumerated in Section 502(g)(1). See, *e.g.*, *Donovan* v. *Dillingham*, 668 F.2d 1196, 1198 (11th Cir.), modified on other grounds on reh'g en banc, 688 F.2d 1367 (11th Cir. 1982)). Because the United States will rarely, if ever, be subject to a fee award under Section 502(g)(1), the sovereign immunity concerns that counseled in favor of the interpretation of the Clean Air Act in *Ruckelshaus* are much less significant here.

award of attorney's fees without reliance on rigid rules. The approach developed by the lower courts, looking to the five factors described above in making fee awards under Section 502(g)(1) (see pp. 18-19, *supra*), captures the flexibility of equity within the context of ERISA.

II. AN ERISA CLAIMANT WHO OBTAINS A COURT ORDER FINDING AN ERROR AND REQUIRING A CLAIMS ADMINISTRATOR TO REDETERMINE BENEFITS, AND WHO IS SUBSEQUENTLY GRANTED BENEFITS BY THE ADMINISTRATOR, IS ELIGIBLE FOR ATTORNEY'S FEES UNDER SECTION 502(g)(1)

For the reasons explained in Part I, Section 502(g)(1) should not be interpreted to incorporate by implication the traditional "prevailing party" standard, as interpreted in *e.g.*, *Buckhannon Bd. & Care Home, Inc.* v. *West Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001). Rather, this Court should ratify, without a strict "prevailing party" prerequisite, the flexible five-factor test distilled from trust-law principles and employed in the lower courts to determine the propriety of a fee award under Section 502(g)(1). But even if the *Buckhannon* standard applies, petitioner—who obtained a court order finding that respondent violated ERISA and requiring respondent to redetermine benefits eligibility in accordance with the court's opinion, and who was granted benefits as a result of that redetermination—should receive attorney's fees.

A. Petitioner's Success In This Case Satisfies The Traditional "Prevailing Party" Requirement

Given that the vast majority of fee-shifting statutes contain an explicit "prevailing party" requirement, most of this Court's pronouncements on the propriety of a fee award interpret that traditional standard. Contrary to

the Fourth Circuit's decision (Pet. App. 10a-11a), neither *Buckhannon* nor any other decision of this Court requires a view of "prevailing party" status so cramped as to preclude an award of attorney's fees in the circumstances of this case.

1. *Buckhannon* presented the question whether a party could be deemed "prevailing" under a "catalyst theory." On that theory, a fee award would be permissible if the defendant responded to a suit by voluntarily providing the requested relief. 532 U.S. at 600-601. In *Buckhannon*, the plaintiffs sued state officials who had ordered the closure of residential group homes pursuant to an allegedly discriminatory state-law requirement. While the litigation was pending, the state legislature eliminated the relevant requirement, and the district court granted defendants' motion to dismiss the case as moot. *Id.* at 601. The plaintiffs argued that they were entitled to attorney's fees as "prevailing parties" because their suit had operated as a "catalyst" by bringing "about a voluntary change in the defendant's conduct." *Ibid.* The Court rejected that argument. The Court concluded that Congress employed the term "prevailing party" as "a legal term of art," and held that the term cannot be read to "authorize[] federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit (it will never be determined), has reached the 'sought-after destination' without obtaining any judicial relief." *Id*. at 603, 606 (citation omitted).

The Court contrasted such a "catalyst" case with cases in which a judicial determination had occurred. The Court noted its prior holdings that both "judgments on the merits" and "settlement agreements enforced through a consent decree may serve as the basis for an

award of attorney's fees," because they "create '[a] material alteration of the legal relationship of the parties." 532 U.S. at 603-604 (quoting *Texas State Teachers Ass'n* v. *Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-793 (1989)). The Court also indicated, in discussing the Eighth Circuit's decision in *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421, 429-430 (1970) (which the Court characterized as "consistent with [its] holding in *Farrar* [v. *Hobby*, 506 U.S. 103 (1992)]"), that when a court determines "that the defendant had acted unlawfully," and the court "retain[s] jurisdiction over the matter for a reasonable period of time to ensure" compliance, the plaintiff has prevailed in the relevant sense. *Buckhannon*, 532 U.S. at 607-608 n.9.

That is essentially what happened in this case. Here, as in a typical benefit suit brought under ERISA Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B), the issue to be resolved by the court was whether the claims administrator, in denying benefits, abused its discretion or issued a decision unsupported by substantial evidence. See *Metropolitan Life Ins. Co.* v. *Glenn*, 128 S. Ct. 2343 (2008). Because the district court concluded that respondent's decision "was not based on substantial evidence" and "failed to comply with the ERISA guidelines" (Pet. App. 47a, 48a), the court found that respondent had acted unlawfully. The district court thus ordered respondent to redetermine petitioner's eligibility for benefits in accordance with its opinion and under the threat of an adverse judgment. That finding and order constitute "'[a] material alteration of the legal relationship of the parties'" with the "necessary judicial imprimatur." *Buckhannon*, 532 U.S. at 604-605 (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792-793). Under *Buckhannon*'s reasoning, that makes petitioner a "prevailing

party." Petitioner's receipt of benefits as a result of the court-ordered reconsideration removes any doubt that she prevailed. See *Hensley* v. *Eckerhart*, 461 U.S. 424, 433 (1983) ("[P]laintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.") (quoting *Nadeau* v. *Hedgemoe*, 581 F.2d 275, 278-279 (1st Cir. 1978)).

2. This Court's analysis of the attorney's fee issue in cases involving remands under the Social Security Act, although not directly applicable, supports the same conclusion. In *Shalala* v. *Schaefer*, 509 U.S. 292 (1993), a Social Security disability claimant sought fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d), which provides for an award of attorney's fees in specified circumstances to a "prevailing party" in a civil action against the government. This Court held that a claimant who obtains a decision vacating a denial of Social Security benefits pursuant to "sentence four" of 42 U.S.C. 405(g)—under which the district court enters "a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing"—is a "prevailing party" for EAJA purposes regardless whether she ultimately obtains benefits on remand. *Schaefer*, 509 U.S. at 301. But a different approach to the fee issue is called for when a court remands a case pursuant to "sentence six" of 42 U.S.C. 405(g), which may be done only "on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer" or for consideration of "new evidence which is material [where] there is good cause for the failure to incorporate such evidence into the re-

cord in a prior proceeding." When a court orders a remand of that sort, it does not rule on the merits of the claim for benefits, but rather "retains jurisdiction of the civil action pending the completion of the administrative proceedings." *Schaefer,* 509 U.S. at 300. Under that scenario, the plaintiff becomes a prevailing party only if she receives an award of benefits in the administrative proceedings pursuant to the limited remand, or if the court enters a final judgment in her favor after the remand proceedings are completed. *Id.* at 300 & n.4.

Although not fitting precisely into the categories envisioned by *Schaefer* and the Social Security Act in this case,[6] this case is analogous to a case adjudicated under sentence four of 42 U.S.C. 405(g). As in a sentence four

[6] The principles governing procedural review of Executive agency action, such as those embodied in 42 U.S.C. 405(g), are not directly applicable in the ERISA context. See *Glenn*, 128 S. Ct. at 2353-2354 (Roberts, C.J., concurring in part and concurring in the judgment). And as relevant here, there are several textual differences between the Social Security Act regime and Section 502 of ERISA. While 42 U.S.C. 405(g) authorizes judicial review of "any final decision of the Commissioner of Social Security," Section 502(a)(1)(B) of ERISA authorizes a claimant to bring suit specifically "to recover benefits" or "to enforce his rights under the terms of the plan." 29 U.S.C. 1132(a)(1)(B). The Social Security Act expressly provides for a "remand," which formally returns the case to the Executive Branch. ERISA Section 502(a)(1)(B), by contrast, does not expressly provide for a "remand," and the matter is returned not to the Executive Branch but to a private entity that often has a financial interest in the outcome. See *Glenn*, 128 S. Ct. at 2349-2350; *Brown* v. *Blue Cross & Blue Shield of Ala., Inc.*, 898 F.2d 1556, 1564 n.7 (11th Cir. 1990), cert. denied, 498 U.S. 1040 (1991) ("[T]he individuals who occupy the position of ERISA fiduciaries are less well-insulated from outside pressures than are decisionmakers at government agencies."). The use of the "remand" procedure in ERISA cases therefore is properly viewed as an exercise of the court's general equitable discretion under ERISA Section 502 to dispose of the case fairly in furtherance of the provisions and purposes of ERISA.

case, in which the court finds error in the Commissioner's decision denying Social Security benefits and remands for reconsideration under the proper standards, the court in this case found error in respondent's decision denying plan benefits and remanded for reconsideration in accordance with its opinion. The principal distinction is that the court here did not enter a final judgment upon issuance of its remand order, as 42 U.S.C. 405(g) requires in a sentence four case. Instead, the court retained jurisdiction, stating that "judgment will be issued in favor of [petitioner]" if respondent did not timely act on petitioner's benefits application in accordance with the court's opinion. Pet. App. 49a. Only after respondent granted petitioner benefits on reconsideration did the district court enter judgment in favor of petitioner, and then only on the fee award. *Id.* at 30a.

But that distinction, when viewed in light of trust-law principles, does not warrant a substantially different application of the "prevailing party" standard under Section 502(g)(1) of ERISA—assuming the Court holds that standard applies—than in sentence four remands under the Social Security Act. Under trust law, equity courts did not enter judgment and "remand" cases in the same sense as when a court sends a case back to an agency or lower court. Instead, equity courts sometimes used a procedure (called a "reference") to send back a case to a trustee while retaining jurisdiction. More specifically, if a court found that a trustee had abused a discretionary power, the court could, in its discretion, "order a new decision to be made in the light of rules expounded by the court." Bogert § 560, at 222; see 3 Austin Wakeman Scott, et al., *Scott & Ascher on Trusts* § 18.2.1, at 1348-1349 (5th ed. 2007). While that determination was ongoing, equity courts could retain jurisdic-

tion, including for the purpose of determining fees and costs and otherwise settling the trust's accounts. See, *e.g.*, *In re Haupt's Estate*, 252 P. 597, 599 (Cal. 1926); cf. *Lingo* v. *Lingo*, No. 4483-s, 2009 WL 623720, *15 (Del. Ch. Feb. 26, 2009) (retaining jurisdiction to supervise interim trustee appointed to "determine how best to proceed to recover the amounts which [the faithless trustee] should repay to [the trust]"). Such practice follows from the general principle that "[o]nce invoked, equity retains jurisdiction over the entire action to see that complete relief is administered." *In re Estate of Archambault*, 520 A.2d 154, 154 (Vt. 1986). Accordingly, notwithstanding the retention of jurisdiction, a court may treat a case like this one as sufficiently analogous to a "sentence four" remand in a Social Security case under 42 U.S.C. 405(g)—and regard the plaintiff as sufficiently prevailing at the time of the order to the trustee to redetermine benefits—for the plaintiff to be eligible for an award of fees under ERISA Section 502(g)(1).[7]

And even if this Court were to decide that the "sentence six" framework under 42 U.S.C. 405(g) is a better analogy (because of the court's retention of jurisdiction on remand), petitioner still would be eligible for a fee award. In a sentence six case, as noted above, a party

[7] Of course, not all remands automatically confer "prevailing party" status. In the administrative law context, if a court retains jurisdiction and issues a limited remand to an agency for a better explanation of a particular issue or consideration of new evidence, without vacating the underlying decision (as in a "sentence six" remand in a Social Security Act case under 42 U.S.C. 405(g)), the remand order alone does not mean the claimant has "prevailed." That is because (unlike here) there is no judicial finding that the claimant was correct or that the agency erred; such remands are used to obtain more information prior to the court rendering a decision on the merits.

becomes "prevailing" only after a favorable benefits determination by the claims adjudicator on remand (or by the court following the remand). Here, respondent granted petitioner's benefits claim as a result of the court-ordered reconsideration, so the prerequisite for the court to find "prevailing party" status in sentence six cases is satisfied. Thus, under either analogy to the Social Security cases, petitioner was entitled to attorney's fees.[8]

3. As the Court concluded in *Schaefer* (509 U.S. at 301-302), other decisions rejecting assertions of "prevailing party" status are distinguishable from this case. In *Hanrahan* v. *Hampton*, 446 U.S. 754 (1980), the Court rejected plaintiffs' claim of "prevailing party" status because they had obtained only reversal of a directed verdict during the litigation—that is, only a procedural ruling that kept their suit alive. *Id.* at 758-759.

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[8] The courts of appeals are in conflict on whether a district court "remand" to a plan administrator in an ERISA case produces an appealable judgment. The First, Sixth, Eighth, and Eleventh Circuits have held that such orders are non-final. See *Gerhardt* v. *Liberty Life Assurance Co.*, 574 F.3d 505, 511-512 (8th Cir. 2009); *Bowers* v. *Sheet Metal Workers' Nat'l Pension Fund*, 365 F.3d 535, 537 (6th Cir. 2004); *Petralia* v. *AT&T Global Info. Solutions Co.*, 114 F.3d 352, 353-354 (1st Cir. 1997); *Shannon* v. *Jack Eckerd Corp.*, 55 F.3d 561, 563-564 (11th Cir. 1995). The Seventh Circuit has held that they constitute final appealable orders. See *Perlman* v. *Swiss Bank Corp. Comprehensive Disability Prot. Plan*, 195 F.3d 975, 977-980 (1999). The Ninth and Tenth Circuits have taken an intermediate, case-by-case approach, focusing on whether review would effectively be foreclosed after remand. See *Metzger* v. *UNUM Life Ins. Co.*, 476 F.3d 1161, 1164-1165 & n.1 (10th Cir. 2007); *Hensley* v. *Northwest Permanente P.C. Ret. Plan & Trust*, 258 F.3d 986, 994 (9th Cir. 2001), cert. denied, 534 U.S. 1082 (2002). For the reasons stated in the text, however, resolution of that conflict should not affect the availability of a fee award under Section 502(g)(1).

By contrast, petitioner here obtained a determination that the claims administrator had committed legal error and an effective vacatur of the underlying decision. In *Hewitt* v. *Helms*, 482 U.S. 755 (1987), this Court held that a plaintiff did not become a "prevailing party" merely by obtaining "a favorable judicial statement of law in the course of litigation that resulted in judgment *against the plaintiff*." *Id.* at 763 (emphasis added). Not only is there no judgment against petitioner in this case, but she obtained the result she had sought in every respect.

The Fourth Circuit's suggestion (Pet. App. 11a) that petitioner's lack of a request for a remand in her complaint defeats "prevailing party" status is also unavailing. Resolving this ERISA benefits case on that ground would be overly formalistic: a decision finding that the administrator's benefits denial was erroneous and requiring a redetermination based on all the pertinent evidence, while less than the outright award of benefits that petitioner expressly sought, is at least partial relief. Cf. *United States* v. *Denedo*, 129 S. Ct. 2213, 2219-2220 (2009) (construing the term "relief" in 28 U.S.C. 1259(4) to encompass "any 'redress or benefit' provided by a court" and not just "ultimate relief" or "complete relief," noting that "courts reverse and remand lower court judgments—rather than issuing complete relief—with regularity"). In any event, petitioner not only alleged numerous procedural deficiencies in respondent's denial of benefits, J.A. 99a-105a,[9] but also requested, in addition to an award of past benefits due and a declaration

[9] Although the complaint does not explicitly allege a violation of either ERISA Section 503 or its claims-review regulations (see pp. 2-3, *supra*), the complaint implicitly does so as part of its allegations that respondent wrongfully denied her benefits.

of her entitlement to future benefits, "such other relief as the Court may deem necessary and proper to secure Plaintiff's rights." J.A. 109a-110a. The "remand" to the claims administrator, with instructions to adequately consider all of the evidence discussed in the court's opinion (Pet. App. 49a), fits comfortably within that residual clause.

B. An Award Of Fees Is Not Automatic Under The Five-Factor Test

Because petitioner could satisfy the traditional "prevailing party" standard, *a fortiori* she is eligible for attorney's fees under both the looser *Ruckelshaus* standard and the more flexible five-factor test derived from trust law and applied by the lower courts under ERISA.

Petitioner's eligibility for attorney's fees under *Ruckelshaus* is evident from that decision's discussion of relief obtained other than pursuant to a court order. The Court explained that by omitting the term "prevailing party," Congress had "reject[ed] the restrictive notions of 'prevailing party' adopted in *Pearson* [v. *Western Electric Co.*, 542 F.2d 1150 (10th Cir. 1976)]," which held that a litigant who obtained full relief from the defendant was not a "prevailing party" because the relief was not obtained through a court order. *Ruckelshaus*, 463 U.S. at 689-690. And in addressing certain legislative history, the Court acknowledged that the Clean Air Act provision "extended to suits that forced defendants to abandon illegal conduct, although without a formal court order." *Id.* at 686 n.8. *Ruckelshaus* thus indicates that, if a fee-shifting statute does not contain "prevailing party" language, a defendant's change in conduct prompted by the filing of a suit rather than by judicial decree might support a fee award in appropriate circum-

stances. See, *e.g.*, *Sierra Club* v. *EPA*, 322 F.3d 718 (D.C. Cir. 2003), cert. denied, 540 U.S. 1104 (2004). Given that discussion, there should be no question that an award of fees was permissible here. After all, petitioner secured benefits because of a *court-ordered* reconsideration by the claims administrator following a decision that the administrator had violated ERISA. The standard set forth in *Ruckelshaus* is therefore satisfied.

In any event, under our proposed framework, a court in ERISA fee-shifting cases need apply only the five-factor test set forth above (see pp. 18-19, *supra*). Petitioner would at the least be eligible for attorney's fees under that flexible inquiry. As the petition for certiorari points out (Pet. 11), respondent "did not appeal the district court's use or application of the five factor test." Nor is it evident from the record that the district court abused its discretion in that regard.

A decision that petitioner is not eligible for attorney's fees would have unfortunate consequences. Such a conclusion would allow ERISA plan administrators to deny a meritorious benefits claim in the plan's review proceedings and then oppose the claim in a federal action, yet insulate themselves from any award of attorney's fees—all because the district court delegated the task of reconsidering the benefits claim to the administrators upon finding that they had committed legal error. Such a rule would create incentives for ERISA plan administrators to deny claims until under an imminent threat of adverse judgment, and thus would run counter to ERISA's purpose of protecting beneficiaries. Given that Section 502(g)(1) omits any "prevailing party" language, this Court should not interpret the provision in that manner.

That is not to say that a court must award fees under Section 502(g)(1) in every case in which a court orders a remand to the claims administrator for reconsideration. Rather, the proper five-factor inquiry permits the court to consider all the relevant circumstances. A determination as to the relative merits of the parties' positions, for example would be informed by whether the court found an abuse of discretion in the initial denial of benefits and whether the claimant ultimately obtained the benefits sought. And other factors, such as the ability of the opposing party to pay and whether the court's ruling could be expected to have effects beyond the claim of the particular plaintiff, could also affect the propriety of a fee award.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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APPENDIX

1. 29 U.S.C. 1132 provides in pertinent part:

Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * * * *

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may

allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney’s fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

* * * * *

2. 29 U.S.C. 1133 provides:

Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

3. 29 U.S.C. 1370 provides in pertinent part:

Enforcement authority relating to terminations of single-employer plans

* * * * *

(e) Awards of costs and expenses

(1) General rule

In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

* * * * *

4. 29 U.S.C. 1451 provides in pertinent part:

Civil actions

* * * * *

(e) Costs and expenses

In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

* * * * *

5. 42 U.S.C. 7607 provides in pertinent part:

* * * * *

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.