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FEBRUARY 7, 2014
CLIENT BULLETIN

Supreme Court Holds a Judgment is Final Even When a Fee Claim is Pending

Ray Haluch Gravel Co. v. Central Pension Fund of the International Union of Operating Engineers and Participating Employers, 134 S.Ct. 773 (2014)

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It should come as no surprise that parties seeking appellate review have 30 days to file a notice of appeal from a district court's "final decision." 28 U.S.C. § 1291; Fed R. App. P. 4(a)(1)(A). However, what precisely qualifies as a final decision has been the subject of much deliberation, especially when the district court makes an initial decision on the merits but only later determines the propriety of awarding attorney's fees. In January 2014, however, a unanimous Supreme Court put the debate to rest and held that a district court's decision on the merits of an ERISA case constitutes a final decision even if the issue of attorney's fees remains open, regardless of whether the entitlement to the fees arises from statute, contract, or both. *Ray Haluch Gravel Co. v. Cent. Pension Fund of the Int'l Union of Operating Eng'rs & Participating Emp'rs*, 134 S.Ct. 773 (2014). *Haluch* accordingly expanded a 1988 Court decision, changed controlling law in a number of circuits, and serves as a reminder that a party only has 30 days to appeal a substantive judgment even if the court has yet to rule on attorney's fees.

In *Haluch*, various employee benefit funds audited a landscape supply company to determine whether the employer was abiding by a collective bargaining agreement ("CBA") and making sufficient fund contributions. *Haluch*, 134 S.Ct. at 777. The audit allegedly revealed that the employer was making inadequate contributions; the employer refused to increase its payments, and the Funds consequently filed suit in the District of Massachusetts. *Id.* at 777. In addition to asserting ERISA violations, the Funds also sought to recover attorney's and auditor's fees pursuant to Section 502(g)(2)(D) of ERISA and the CBA itself (which provided that "[a]ny costs, including legal fees, of collecting payments due these Funds shall be borne by the defaulting Employer"). *Id*.

After the conclusion of a bench trial in February 2011, the district court asked the parties to submit proposed findings of fact and conclusions of law and gave the Funds the option to submit a contemporaneous fee petition or to "wait to see if I find in your favor and submit the fee petition later on." *Haluch*, 134 S.Ct. at 777. The Funds chose the latter option, and in April 2011 moved for over $143,000 in attorney's fees and costs. Although the Funds' complaint sought attorney's and auditor's fees pursuant to ERISA and the CBA, the motion itself only cited ERISA as authorizing the fees and the CBA reference only came in the supporting affidavit. *Id.* at 777-78. On June 17, 2011, the district court issued a judgment in favor of the Funds for approximately $27,000 on the substantive claims and, on July 25, 2011, awarded the Funds almost $35,000 in attorney's fees and costs. *Id.* at 778. The Funds appealed both decisions on August 15, 2011.

On appeal, the employer asserted that the Funds' notice of appeal was untimely because it came more than 30 days after the arguably final June 17 order. The First Circuit sided with the Funds, however, reasoning that the June 17 order was not final because the entitlement to attorney's fees derived from a contract and was consequently part of the merits of the case. *Id.*; *Cent. Pension Fund of Int'l Union of Operating Eng'rs and Participating Emp'rs v. Ray Haluch Gravel Co.*, 695 F.3d 1, 7 (1st Cir. 2012).

The Supreme Court granted cert and reversed. The Court began its analysis by citing to *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196 (1988), in which the Court held that, with respect to statutory attorney's fees, "an unresolved issue of attorney's fees . . . does not prevent judgment on the merits from being final." *Haluch*, 134 S.Ct. at 779; *Budinich*, 486 U.S. at 202. The Court moreover noted that *Budinich* opted for a bright line approach in favor of "operational consistency and predictability in the overall application of § 1291." *Id.*

The Funds initially attempted to distinguish *Budinich* by asserting that the contract-based attorney's fees, unlike statutory attorney's fees, are intended to remedy the injury giving rise to the action and are, in effect, a measure of damages. As a result, the Funds argued, a district court's order is not final until it determines whether to award contractual attorney's fees. The Court rejected the Funds' argument. At the outset, the Court stressed that contractual at-

torney's fees are not always a measure of damages, as they are often awarded to prevailing defendants. The Court then reasoned that *Budinich* sought to provide a uniform rule and was not based on the underlying justification for attorney's fees. *Haluch*, 134 S.Ct. at 780 (further noting that the court was not and is not "inclined to adopt a disposition that requires the merits or nonmerits status of each attorney's fee provision to be clearly established before the time to appeal can be clearly known"). Moreover, permitting the basis for attorney's fees to dictate the finality of judgments would not "promote predictability," as the authority can be opaque at times – especially in the case before the Court, in which the Funds' motion cited ERISA as authority for the fees and the reference to the CBA only arose in its affidavit. The Funds also argued that establishing such judgments as final orders would result in piecemeal litigation, but the Court held that such concern was counterbalanced by maintaining clear rules that indicate when a ruling on the merits may be appealed, noting that attorney's fees are often complex creatures that require a significant amount of time to resolve. *Haluch*, 134 S.Ct. at 781. Finally, Federal Rule of Civil Procedure 58(e) provides that the entry of judgment may not be delayed in order to award fees, which, according to the Court, was in accord with *Budinich* and contemplated treating fees as collateral for finality purposes.

The Funds also asserted that the June 17 order was not final because *Budinich* only referred to fees "for the litigation in question," and a portion of the Funds' requested fees were incurred prior to the commencement of litigation. *Id.* at 782. The Court quickly rejected this argument, however, as "some of the services performed before a lawsuit is formally commenced by the filing of a complaint are performed 'on the litigation.'" *Haluch*, 134 S.Ct. at 783; *Webb v. Dyer County Bd. of Ed.*, 471 U.S. 234, 243 (1985). Although the Court did leave the door open if a party incurred fees attempting to collect payments unrelated to the subject of the litigation, in the case before the Court the pre-litigation fees included fees for the initial audit and attorney's fees to obtain records from the employer, conduct legal research, draft a demand letter, and draft the complaint, all of which qualify as fees incurred in an attempt to collect payments that were indeed the subject of the litigation. *Id*.

Under *Haluch*, when the district court issues a judgment on the merits and only later decides attorney's fees, a party desiring appellate review must file a notice of appeal within 30 days of the judgment on the merits. *Haluch* will likely have a broad impact. Initially, the case will immediately be felt in the First, Third, Fourth, Eighth, and Eleventh Circuits, which had previously held that a district court's order on the merits that delays an attorney's fees determination is not final when the fees are a creature of contract.[1] *Haluch's* application will moreover likely not be limited to pension contribution litigation and will indeed have repercussions not only among all ERISA-governed benefit plans, but also all instances in which a district court delays an attorney's fees award.

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[1]*See generally Gleason v. Norwest Mortg., Inc.*, 243 F.3d 130 (3d Cir. 2001); *Carolina Power & Light Co. v. Dynegy Mktg. & Trade*, 415 F.3d 354 (4th Cir. 2005); *Justine Realty Co. v. Am. Nat'l Can Co.*, 945 F.2d 1044 (8th Cir. 1991); *Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. Medpartners, Inc.*, 312 F.3d 1349 (11th Cir. 2002). *Haluch* affirmed precedent in the Second, Fifth, Seventh, and Ninth Circuits. *See generally O&G Indus., Inc. v. Nat'l R.R. Passenger Corp.*, 537 F.3d 153 (2d Cir. 2008); *First Nationwide Bank v. Summer House Joint Venture*, 902 F.2d 1197 (5th Cir. 1990); *Cont'l Bank, N.A. v. Everett*, 964 F.2d 701 (7th Cir. 1992); *U.S. v. RG &B Contractors, Inc.*, 21 F.3d 952 (9th Cir. 1994).

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