

## High Court Gives Appeal Deadline Certainty In Contract Suits

By **Abigail Rubenstein**

*Law360, New York (January 15, 2014, 8:10 PM ET)* -- The U.S. Supreme Court's ruling Wednesday clarifying the deadline for appealing a decision that leaves a contractual request for attorneys' fees pending resolved a major divide among the circuits, bringing new certainty for contract litigation that will resonate well beyond the Employee Income Security Act realm from which the case came, attorneys say.

The high court's unanimous ruling held that its 26 year-old decision in *Budinich v. Becton Dickinson & Co.* — which said that a decision on the merits is a "final decision" that can be appealed even if a bid for attorneys' fees remains up in the air — applied even when the bid for fees was based on a contract rather than a statute.

The ruling brings welcome clarity to an issue that had deeply divided the circuits in the years since the *Budinich* decision came down, creating a potential trap for unwary litigants, lawyers told Law360. And because it touches a fundamental jurisdictional question, its impact will be felt not just in ERISA cases, but also in other contract litigation, lawyers say.

"The issue frequently arises in employment and ERISA cases because there are frequently fee provisions in employment agreements, as was the case in *Budinich* ... and collectively bargained for benefits plan like the one at issue in *Haluch*. ... But there are also a lot of commercial disputes and consumer cases where this would also come up," said J. Timothy McDonald of Thompson Hine LLP.

"While this is a case that clearly helps in ERISA and employment litigation, it really branches out across almost any area in which the underlying claim may result from a contract," he said.

The high court ruled in favor of landscape supplier Ray Haluch Gravel Co.'s appeal in a suit brought by the International Union of Operating Engineers Local 98 over delinquent contributions to ERISA-regulated union benefit funds.

The high court agreed with the company that the First Circuit, which had vacated a pair of lower court decisions, lacked jurisdiction over the case because although the union pension fund had filed its appeal within 30 days of a fee award being issued, it had not done so within 30 days of the district court's decision on the merits.

Because the case is primarily about appellate jurisdiction, the decision has significant applications outside the ERISA sphere, according to Bob Christenson, chairman of Fisher & Phillips

LLP's employee benefits practice group.

The court's decision resolves any ambiguity that might have hung over the timeline for filing appeals in contract cases where attorneys' fees are still being sought, regardless of the grounds a party has to back up its demand for fees.

Before the ruling, the Second, Fifth, Seventh and Ninth circuits had found that Budinich applied to all fee awards regardless of whether the fee request was made under a statute or a contractual provision. But the Third, Fourth, Eighth and Eleventh circuits — and in the Haluch case, the First Circuit — had determined that claims for contractual attorneys' fees might not be covered by Budinich.

As a result of Wednesday's decisions, litigants will no longer have to grapple with this patchwork of rules.

"I think the main reason the court took the case was that nine of the 13 circuits had weighed in, and they were pretty evenly divided," said Dan Himmelfarb of Mayer Brown LLP, who represented Ray Haluch in the case. "The main virtue of resolving a jurisdictional dispute like this is to provide clarity."

"Budinich made the point that it is not about analytical purity or logical sense in the abstract; it's just about having a clear rule, since it is a question of jurisdiction," Himmelfarb said. "That is basically what drove the court today as well."

The high court even went so far as to address concerns that its decision would lead to new procedural headaches — namely, that it would require piecemeal appeals in single cases.

This concern was counterbalanced, the opinion said, by the court's interest in determining promptly and clearly whether a ruling on the merits would be appealed. It went on to say that the Federal Rules of Civil Procedure already provide a mechanism for the district court to stay the appeal deadline for a decision on fees under Rule 54(d)(2) — a point attorneys say can guide future litigation.

"[The decision] not only brings clarity but also provides some needed guidance and almost some encouragement from the court to take the step of trying to get the district court to stay the need to file notice of appeal while a request for attorneys' fees is pending," Richard Siegel of Alston & Bird LLP said.

Overall, the decision demonstrates the high court's commitment to sorting out technical but important questions that affect the day-to-day experience of litigants, lawyers say.

"Cases like this bust the myth [that] court is inherently a political body because it shows that the justices really do sit there and try to make things right and easy for people involved in the system," McDonald said. "This court is very attuned to trying to make this process predictable and helpful to litigants, as opposed to creating a problem on top of a problem."

Dan Himmelfarb of Mayer Brown LLP argued the case for Ray Haluch.

James Feldman of the University of Pennsylvania Law School Supreme Court Clinic argued the case for the pension fund.

The case is Ray Haluch Gravel Co. et al. v. Central Pension Fund of the International Union of Operating Engineers and Participating Employers et al., case number 12-992, in the U.S. Supreme Court.

--Editing by Kat Laskowski.

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