

A P P E L L A T E

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SUPREME COURT CONFIRMS THAT MERITS DECISIONS ARE FINAL AND APPEALABLE EVEN WHEN CONTRACTUAL FEES REMAIN UNRESOLVED

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The U.S. Supreme Court has provided much-needed clarity and uniformity on the issue of whether contractual attorney's fees are a part of a merits decision for the purposes of determining timeliness of a federal appeal. *Ray Haluch Gravel Co. v. Central Pension Fund of International Union of Operating Engineers and Participating Employers*, No. 12-992 (Jan. 15, 2014). The Court reaffirmed its earlier holding in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196 (1988), that an unresolved application for attorney's fees does not prevent a judgment on the merits from being considered final for purposes of the 30-day deadline to file a notice of appeal under Rule 4 of the Federal Rules of Appellate Procedure. Moreover, the *Haluch Gravel* decision makes clear that neither the source of a fee claim nor the fact that other fees (such as expert fees) are included in a fee request alters the time for filing an appeal from a decision on the merits.

As we noted in a previous [Alert](#) about this case, the Court held in *Budinich* that as a general matter, a claim for attorney's fees is not part of the merits of the underlying action, but is generally a separate element of costs. While the Court intended in *Budinich* to provide a "bright line rule" that a decision on the merits disposing of all claims is final for appeal purposes even when a fee dispute remains unresolved, some circuit courts had held that contractual fee claims are not collateral to the merits. This led to significant and sometimes costly confusion, as parties often wasted time and money on potentially premature appeals to avoid waiver, or worse, had appellate rights waived because of confusion about when to file a notice of appeal.

The petitioner in *Haluch Gravel* was a landscape supply company that was required to make certain contributions to union-affiliated benefit funds pursu-

ant to a collective bargaining agreement. When the company failed to meet its obligations, the funds filed suit alleging a violation of the Employee Retirement Income Security Act of 1974 (ERISA). The funds sought an award of attorney's fees under both ERISA and the collective bargaining agreement. On June 17, 2011, the district court issued a memorandum and order finding that the funds were entitled to some unpaid contributions. The district court did not rule on the funds' request for attorney's fees and costs until July 25, 2011. On August 15, 2011, 59 days after the merits ruling but 21 days after the ruling on fees, the funds appealed both decisions. The company argued that the funds' notice of appeal from the merits decision was untimely, but the First Circuit Court of Appeals disagreed, drawing a distinction between requests for fees under a statute and those under a contract and finding that the latter are part of the merits.

As noted in our prior [Alert](#), federal courts of appeals approached the timing issue in confusingly varied ways. The Second, Fifth, Seventh, and Ninth Circuits all found that, regardless of whether a claim for fees was statutory or contractual, it was always collateral to the merits decision; therefore once a merits decision was issued, it was final and ripe for appeal. The First, Third, Fourth, and Eighth Circuits held that whether a contractual fee award was collateral to the merits depended on the nature of the fees. For example, in the Third Circuit, a fee issue was not collateral when the fees sought were an integral part of the relief. Other circuits had yet different rules depending on other factors.

The Supreme Court found that the basic principle underlying *Budinich* was that a bright line rule regarding

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when the 30-day period for filing notices of appeal begins to run is necessary and trumps any countervailing interest in avoiding piecemeal litigation. The Court noted that it may not always be clear whether a claim is contractual or statutory, and distinguishing between these sources of a fee request would create potential confusion where clarity is required. The Court also noted that the Federal Rules of Civil Procedure comport with *Budinich* and “confirm[] the general practice of treating fees and costs as collateral for finality purposes.” Thus, the Supreme Court held that a pending application for attorney’s fees, whether based on a statute or a contractual provision, does not prevent the underlying merits decision from being considered final. In this case, that meant the funds’ notice of appeal was untimely as to the merits decision.

The Supreme Court has now eliminated any doubt whether a pending application for attorney’s fees prevents a merits decision from being considered final for purposes of the 30-day deadline for filing notices of appeal in federal court. Yet, this decision highlights the need to be extremely vigilant about filing timely federal notices of appeal. In this case, the funds forfeited any challenge to the trial court’s decision on the merits. Litigants and their trial attorneys would be wise to proceed cautiously when determining whether a trial court decision is appealable, as either a final judgment or appealable interlocutory order. Failure to appeal at the appropriate time is generally fatal to any attempt

to challenge the ruling in question, as the funds discovered to their dismay in *Haluch Gravel*. ♦

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