

A P P E L L A T E

A L E R T

JULY  
2013

## SUPREME COURT TO DETERMINE THE APPEALABILITY OF MERITS DECISIONS WHEN CONTRACTUAL FEE DISPUTES REMAIN UNRESOLVED

By *Monica C. Platt*

The U.S. Supreme Court recently granted *certiorari* in a case that could have far-reaching impact in litigation involving federal claims for attorney's fees. In *Ray Haluch Gravel Co. v. Central Pension Fund of the International Union of Operating Engineers & Participating Employers*, the Court will address "whether a district court's decision on the merits that leaves unresolved a request for contractual attorney's fees is a 'final decision' under 28 U.S.C. § 1291." This issue is extremely important to trial attorneys, as it impacts the timing of appeals and whether objections to district court rulings on the merits of a contract dispute are properly preserved.

Many contracts provide for an award of attorney's fees if disputes arise under the contract, but trial courts often do not resolve the fee issues at the same time as the substantive contractual dispute. The federal circuit courts are split on whether a case is final for appeal purposes if the merits of a contract dispute are adjudicated, but the attorney's fee issue remains outstanding. This split in authority can cause substantial confusion and lead to the filing of either premature appeals that waste litigants' time and money or, worse, untimely appeals that lead to the forfeiture of all substantive appellate issues.

The Supreme Court last addressed this issue a quarter century ago, in *Budinich v. Becton Dickinson & Co.* (1988). In *Budinich*, the Court held that as a general matter, a claim for attorney's fees is not part of the merits of the action to which the fees pertain, but is generally an element of costs that are considered separate from the merits. The Court therefore enunciated a "bright line rule" that a decision on the merits that disposes of all claims is final for appellate purposes,

even if the attorney's fee issue remains unresolved. As a result, litigants such as the appellant in *Budinich* who waited to appeal until after the attorney's fee issue was resolved faced forfeiture of their other appellate issues if their appeal was filed (as it typically would be) more than 30 days after resolution of the merits issues.

Despite this "bright line rule," circuit courts have not uniformly held that contractual, rather than statutory, fee decisions are not part of the merits. In the case now before the Supreme Court, the district court issued a final decision on the merits of the case and then awarded attorney's fees in a separate order more than a month later. The defendants filed a notice of appeal within 30 days of the fee decision but more than 30 days after the merits decision. On appeal, the First Circuit held that the appeal was timely as to both decisions, holding that a contractual fee award is not collateral because the fees were part of the contract damages in the case. Because the fee award was part of the merits, there was no final decision until the attorney's fee decision was issued.

Other federal courts of appeal have approached this issue in a wide variety of ways. The Second, Fifth, Seventh, and Ninth Circuits apply the *Budinich* rule to both statutory and contractual claims for fees, finding that such claims are *always* collateral to the decision on the merits of the underlying issue, and therefore, once a merits decision is issued, it is final and ripe for appeal. In contrast, the Eleventh Circuit has held that as long as the district court retains jurisdiction over a contractual fee award, there is no final order and any appeal would be premature.

*(continued on page 2)*

---

*(continued from page 1)*

The First, Third, Fourth, and Eighth Circuits have all held that whether a contractual fee award is collateral to the merits decision depends on the nature of the fees. The First Circuit in *Ray Haluch Gravel* held that if fees are an element of damages, they are part of the merits, and *Budinich*'s bright-line rule does not apply. Similarly, the Third Circuit has held that a fee issue is not collateral if the fees are an integral part of the contractual relief sought, but it has issued decisions seemingly on both sides of the circuit split. The Fourth and Eighth Circuits have focused their analysis on whether the contractual fees sought are limited to those incurred in litigation in determining whether an outstanding fee issue prevents a judgment from being final.

The jurisprudence on this issue is thus far from clear, even within some of the circuits. Whether or not the Supreme Court reaffirms *Budinich*'s "bright line rule" in the contractual fee context when it issues its decision in *Ray Haluch Gravel*, clear guidance on this issue is greatly needed. Until then, parties may waste time and money on premature appeals and, even

---

worse, appellate rights may be waived because of confusion about when to file. ♦

*This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.*

*For more information about Schnader's Appellate Practice Group or to speak with a member of the Firm, please contact:*

*Carl A. Solano, Chair  
215-751-2202  
csolano@schnader.com*

*Monica C. Platt  
215-751-2334  
mplatt@schnader.com*

www.schnader.com  
©2013 Schnader Harrison Segal & Lewis LLP