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# COURT DECLINES TO LIMIT ATTORNEY FEES COLLECTED FROM DISABILITY CLAIMANTS

*(Gisbrecht v. Barnhart, No. 01-131)*

The U.S. Supreme Court yesterday declined to impose restrictions on the size of attorney fees that can be collected from disabled Americans who win suits claiming entitlement to disability benefits under the Social Security Act (SSA).

The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *Gisbrecht v. Barnhart*, urging restrictions on the size of fees. WLF had argued that Congress intended to limit attorney fees charged in such cases to a "reasonable" fee, and that attorneys should not be permitted to collect a fee based on a percentage of the past-due disability benefits awarded to the claimant.

The Supreme Court disagreed, holding that in most cases, lawyers ought to be permitted to charge a contingency fee equal to 25% of the benefits awarded, if that was the amount the client previously agreed to pay. The Court held that trial courts are permitted to reduce the fee below the 25% threshold in unusual cases, in order to prevent the attorney from receiving a windfall.

"Those who receive Social Security disability benefits are unable to work and thus are unlikely to have other substantial sources of income," said WLF Chief Counsel Richard Samp after reviewing the Court's decision. "That is why we think it is important that such individuals not be forced to pay large fees to their attorneys when they are awarded such benefits in a court proceeding," Samp said. Samp noted that Congress is free to overrule the Court's decision if it believes that excessive fees are being awarded.

The case involved an effort by an Oregon law firm to collect fees in three separate Social Security cases in which the firm's clients were awarded disability benefits. The trial court computed fees under what is known as the "lodestar" method -- it multiplied the hours that the attorneys worked by a reasonable hourly rate. The law firm appealed, arguing that they should have been awarded a fee based on 25% of the past due benefits awarded to their clients; if that "contingency method" had been used in computing fees, the law firm's fee award would have doubled. The law

firm noted that the written retainer agreements it entered into with each of its clients called for 25% contingency fees.

In its brief supporting use of the lodestar method of fee computation, WLF argued that Congress adopted a law in 1965 (42 U.S.C. § 406(b)) that explicitly limits the fees that successful disability claimants can be required to pay their attorneys. Section 406(b) provides that the fee award is to be determined by the district court; the judge is directed to award a "reasonable fee" that may not, under any circumstances, exceed 25% of the past-due benefits awarded to the claimant.

WLF argued that it was irrelevant that the disabled claimants in this case agreed to pay an attorney fee equal to 25% of any benefits awarded. WLF argued that Congress passed § 406(b) precisely because it did not want to give disability claimants the freedom to agree to pay high fees. Congress believed that, due to the unequal bargaining positions between disability claimants and their lawyers, the claimants were not in a position to negotiate reasonable fee awards. WLF noted that virtually all retainer agreements in Social Security disability cases nationwide provide for payment of a 25% contingency fee; WLF argued that that uniformity is strong evidence that Congress got it right: disability claimants -- no matter how strong their cases -- simply have no ability to bargain effectively with their attorneys over fees.

In a dissenting opinion, Justice Scalia endorsed virtually all of WLF's arguments. The majority, however, held that in adopting § 406(b), Congress did not intend to interfere with the rights of lawyers and disability claimants to enter into contingency fee contracts. The Court held that § 406(b)'s requirement that fees be "reasonable" should be invoked to reduce the parties' agreed-upon 25% contingency fee only in unusual circumstances.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. WLF has long opposed what it views as widespread abuses of the contingent fee system. WLF has petitioned the Federal Trade Commission and bar authorities in all 50 states regarding the need to more closely regulate contingent fee agreements entered into between attorneys and their clients. WLF filed its brief in this case on behalf of itself and the Allied Educational Foundation.

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