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## Second Circuit Requires Reevaluation of ERISA Attorney Fee Judgment

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The Second Circuit determined that a district court erred when it denied an attorney fee award to an ERISA plaintiff who had sought benefits from a plan. In so ruling, the Second Circuit first concluded the district court incorrectly determined that the plaintiff had not achieved “some success”—a threshold requirement for an ERISA fee award—because “some success” was achieved by getting the district court to vacate its earlier decision based on an intervening Second Circuit decision. The underlying issue pertained to the appropriate standard of review where a plan allegedly did not have claims procedures that complied with the DOL regulations. The Second Circuit next determined that the district court’s ruling failed to adequately apply the five-factor test used to determine the propriety of a fee award. Those factors include: (1) the offending party’s culpability or bad faith, (2) the offending party’s ability to satisfy an award, (3) whether an award would deter similarly conduct, (4) the merits of the parties’ positions, and (5) whether the action conferred a common benefit on other participants. The Second Circuit explained that the district court relied too heavily on its conclusion that defendants demonstrated no bad faith, neglected to consider plaintiff’s success on the merits, and failed to assess the extent of defendants’ culpability or their ability to pay an award. The Second Circuit thus vacated the district court’s decision and remanded for further consideration. The case is *Tedesco v. I.B.E.W. Local 1249 Ins. Fund*, No. 17-cv-3404, 2018 WL 3323640 (2d Cir. July 6, 2018).

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Article By

[Benjamin O Flaxenburg](#)  
[Proskauer Rose LLP](#)  
[Employee Benefits & Executive Compensation Blog](#)  
[Labor & Employment Litigation / Trial Practice](#)  
[2nd Circuit \(incl. bankruptcy\)](#)