

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

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D&H THERAPY ASSOCIATES, LLC and)	
ROBIN DOLAN,)	
Plaintiffs,)	
)	
v.)	C.A. No. 08-05-M
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)	
BOSTON MUTUAL LIFE INSURANCE)	
COMPANY,)	
Defendant.)	
)	
)	

ORDER

JOHN J. McCONNELL, JR., United States District Judge.

This matter is before the Court on Plaintiffs’ Motion for Attorneys’ Fees and Costs (ECF No. 83) and Plaintiffs’ First Supplemental Motion for Attorneys’ Fees and Costs (ECF No. 88). While Defendant objects to the original motion’s request for fees (ECF No. 85), it does not object to the award of costs. *Id.* at n.2.

There is no need to recount the substance or history of this case. That was done by the First Circuit in its 2011 opinion at 640 F.3d 27. The single issue before the Court is whether the Court should exercise its discretion pursuant to 29 U.S.C. § 1132(g)(1)¹ to award attorneys’ fees and costs to Plaintiffs.

¹ This section, which is part of the larger ERISA statute, authorizes a “court in its discretion [to] allow a reasonable attorney’s fee and costs of action to either party.”

It is abundantly clear to the Court that this case warrants an exercise of discretion under the ERISA statute to award attorneys' fees and costs. Plaintiffs filed suit because Defendant insurance company ceased paying Ms. Dolan's long-term disability after making those payments for approximately six years. She was forced to sue in order to redress her grievance and assert her contractual and statutory rights. The path to justice for Ms. Dolan was long and tortured in this hard fought litigation, and it included a visit to the First Circuit. Ultimately, Ms. Dolan achieved total and complete success on the merits of her claim.

Plaintiffs far exceed the "some degree of success on the merits" standard set forth in *Hardt v. Reliance Standard Life Ins. Co.*, 130 S.Ct. 2149, 2158 (2010). Moreover, without deciding whether the five *Cottrill* factors are applicable post-*Hardt*, this Court finds that each of the factors are more than adequately met to support the awarding of fees in this case. *See Cottrill v. Sparrow, Johnson & Ursillo, Inc.*, 100 F.3d 220, 225 (1st Cir. 1996) (setting forth five factors that were customarily weighed pre-*Hardt* in determining whether to exercise discretion to award counsel fees). As such, this case warrants the exercise of the Court's discretion to award attorneys' fees and costs.

Upon review of all of the submissions, including contemporaneous time and expense records and affidavits, the Court finds appropriate the lodestar method of calculating attorneys' fees and further finds that both the time submitted by Plaintiffs and the rates assigned to those hours are very reasonable.²

² Defendant does not challenge Plaintiffs' method of computing attorneys' fees and does not dispute any specific fee, hourly rate, or cost. Defendant does assert that the Court should reduce the total fee request by a certain percentage because Plaintiffs did not win all of the claims initially asserted. The Court does not believe that such an arbitrary fee reduction is warranted in this case as Ms. Dolan was entirely and completely successful in both recovering the full amount

