

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3436

Dillard’s Inc., Individually and as
Assignee of Janet Bolton,

Plaintiff/Appellee,

v.

Liberty Life Assurance Company of
Boston, a Member of the Liberty
Mutual Group,

Defendant/Appellant.

Appeals from the United States
District Court for the
Eastern District of Arkansas.

[PUBLISHED]

Liberty Life Assurance Company of
Boston,

Third Party Plaintiff/
Appellant,

v.

Janet Bolton,

Third Party Defendant/
Appellee.

No. 05-3438

Dillard's Inc., Individually and as
Assignee of Janet Bolton,

Plaintiff/Appellant,

v.

Liberty Life Assurance Company of
Boston, a Member of the Liberty
Mutual Group,

Defendant/Appellee.

Liberty Life Assurance Company of
Boston,

Third Party Plaintiff,

v.

Janet Bolton,

Third Party Defendant.

Submitted: March 17, 2006
Filed: July 19, 2006

Before WOLLMAN and RILEY, Circuit Judges, and ROSENBAUM,¹ District Judge.

PER CURIAM.

Dillard's, Inc. (Dillard's), on behalf of itself and as assignee of Janet Bolton, sued Liberty Life Assurance Co. of Boston (Liberty) under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, arguing that Liberty abused its discretion in terminating Bolton's long-term disability benefits. The district court entered judgment in favor of Dillard's and directed Liberty to pay Dillard's for the benefits due to Bolton under her benefits plan. Dillard's then sought an award of attorney's fees and costs. The district court granted this request, but awarded a lesser amount than Dillard's requested. Liberty appeals from this order, arguing that the district court erroneously awarded attorney's fees and costs. Dillard's cross-appeals, arguing that the district court erred in awarding a lesser amount than requested. We vacate the award.

In an opinion filed today, we reversed the district court's judgment that Liberty abused its discretion in terminating Bolton's benefits. Dillard's, Inc. v. Liberty Life Assurance Co. of Boston, Nos. 05-2482/2517, slip op. (8th Cir. July 19, 2006). Because Dillard's is no longer the prevailing party in the underlying ERISA suit, we vacate the district court's award of attorney's fees and costs. Jackson v. Metro. Life Ins. Co., 303 F.3d 884, 890 (8th Cir. 2002) ("[B]ecause our decision eliminates [the claimant's] temporary status as the prevailing party, we also reverse the District Court's award of [his] attorney fees.").

The order awarding fees and costs is vacated.

¹The Honorable James M. Rosenbaum, Chief Judge, United States District Court for the District of Minnesota, sitting by designation.