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THE RIGHT TO A JURY TRIAL IN BENEFIT RECOVERY ACTIONS BROUGHT UNDER ERISA SECTION 502(a)(1)(B)

I. INTRODUCTION

Much litigation has ensued over whether a party is entitled to a jury trial in a civil suit brought in federal court pursuant to § 502 (a)(1)(B) ("§ 502") of the Employee Retirement Income Security Act of 1974 ("ERISA").¹ ERISA establishes a comprehensive scheme of federal laws governing pension plans, private welfare plans, benefit claims, and fiduciary responsibility. Enforcement under ERISA may arise when employees seek to recover earned pension benefits.

Various federal courts, including some district courts within the same circuit, have considered the right to a jury trial in actions brought under ERISA and have reached conflicting decisions.² The importance of a jury trial to the plaintiff becomes obvious if one believes that the jury may be swayed by the relative financial resources of the opposing parties.³

This Comment begins with an overview of standards employed by federal courts⁴ in determining whether a party is entitled to a jury trial generally. Next, the comment discusses how courts have applied these standards to jury trial requests in claims brought pursuant to § 502. This second tier of analysis specifically focuses on: 1) cases decided prior to 1989; 2) Supreme Court decisions in *Firestone Tire and Rubber Co. v. Bruch*,⁵ *Granfinanciera, S.A. v. Nordberg*,⁶ and

1. 29 U.S.C. § 1132(a)(1)(B) (1988 & Supp. I 1989) [hereinafter § 502].

2. The United States Supreme Court has never directly addressed this issue.

3. Note, *The Right to Jury Trial in Enforcement Actions Under Section 502(a)(1)(B) of ERISA*, 96 HARV. L. REV. 737 n.7 (1983).

4. Although state courts have concurrent jurisdiction to hear claims brought under ERISA, the scope of this comment is limited to the federal law. Federal courts continue to interpret ERISA as broadly preemptive of state law claims relating to employee benefit plans in the area of employee benefits, which narrows the extent to which these courts will hear pendent claims grounded in state law. 29 U.S.C. § 1144 (1988 & Supp. I 1989) (stating that the provisions of ERISA supersede "any and all State laws" insofar as they relate to any employee benefit plan as described in the coverage of ERISA). See generally *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1989) (ERISA preempts state common law tort and contract claims alleging improper processing of an insured's claim for health benefits).

5. 489 U.S. 101 (1989).

6. 492 U.S. 33 (1989).

the 1990 decision of *Chauffeurs, Teamsters and Helpers, Local 391 v. Terry*;⁷ and 3) the impact of the *Firestone*, *Granfinanciera* and *Terry* decisions on federal courts deciding the § 502 litigant's right to a jury trial. The Comment concludes that if the present Supreme Court were to decide the § 502 jury trial issue, it would most likely decide that a constitutional right to a jury trial does exist in certain circumstances.

II. SECTION 502 AND THE RIGHT TO A JURY TRIAL

ERISA provides a "panoply of remedial devices" for both participants and beneficiaries of employee benefit plans.⁸ These remedies are specifically provided in § 502. Although this section defines six separate civil enforcement provisions granting participants, beneficiaries, fiduciaries, and/or benefit plan administrators the right to bring suit if specified rights have been violated,⁹ the most frequently litigated provision - § 502 (a)(1)(B) - provides:

[a] civil action may be brought by a participant or beneficiary . . . to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan¹⁰

An issue frequently raised in the context of § 502 litigation is whether the participant or beneficiary is entitled to demand a jury trial. While the standards are well settled for determining whether a litigant in a federal civil action is entitled to a jury trial,¹¹ application of these principles to a § 502 action has proved troublesome.

The analysis of a federal civil litigant's right to a jury trial has two steps. First, the court will attempt to ascertain from the statute at issue whether Congress, either expressly¹² or implicitly,¹³ intended

7. 494 U.S. 558 (1990).

8. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985).

9. 29 U.S.C. § 1132(a) (1988 & Supp. I 1989).

10. *Id.* at § 1132(a)(1)(B).

11. *See, e.g., Curtis v. Loether*, 415 U.S. 189, 192 (1974) (seventh amendment preserves the right to a jury in suit for damages brought pursuant to Title VIII); *Ross v. Bernhard*, 396 U.S. 531, 533-34 (1970) ("corporation's suit to enforce a legal right was an action at common law carrying the right to a jury trial at the time the Seventh Amendment was adopted"); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 476 (1962) (claim for breach of a licensing agreement seeking monetary damages is "unquestionably legal"; hence, seventh amendment preserved the right to a jury).

12. *See, e.g., Allen v. United Mine Workers*, 319 F.2d 594 (6th Cir. 1963) (An employee who sues pursuant to the Labor Management Relations Act of 1947

to grant the right to a jury trial. If the court finds that Congress neither provided for nor intended to grant the right to a jury trial, then the court must determine if a litigant has a jury trial right pursuant to the seventh amendment to the United States Constitution.¹⁴ The seventh amendment provides that, "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"¹⁵

III. THE LAW PRIOR TO 1989

A. Jury Trials Under ERISA

ERISA does not expressly grant a litigant the right to a jury trial.¹⁶ Thus, a party seeking a jury trial in an ERISA action must attempt to establish that ERISA implies such a right, by proving that the statutory scheme and legislative history support such congressional intent. As the case law demonstrates, the jury trial determination has proved to be a strained exercise in legislative intent analysis that has divided the federal courts.¹⁷ Moreover, the differences in the rationales argued by each side on the issue are not easily reconciled.

1. Section 502 Claims - An Action at Law or Equity?

In determining whether Congress intended to provide a jury trial right in ERISA, it is important to recognize initially that laws enacted by Congress are presumed to be constitutional.¹⁸ Furthermore, when Congress enacts a law or permits a remedy, it is presumed to know

for monetary damages caused by the breach of a collective bargaining agreement is expressly entitled to a jury trial on request.).

13. See, e.g., *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 504 (1959) (Congress intended to provide a litigant with a jury trial in cases brought under federal antitrust laws); *Dice v. Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359 (1952) (implied right to a jury trial in cases brought under the Federal Employers' Liability Act).
14. A cardinal rule which is followed by federal courts addressing the issue of whether a litigant has a right to a jury trial in an action brought under a federal statute is to "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *Curtis v. Loether*, 415 U.S. 189, 192 n.6 (1974) (quoting *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 369 (1971)).
15. U.S. CONST. amend. VII.
16. 29 U.S.C. § 1132(a) (1988 & Supp. I 1989). See *Turner v. CF & I Steel Corp.*, 770 F.2d 43, 46 (3d Cir. 1985), cert. denied, 474 U.S. 1058 (1986).
17. *United States v. Thompson*, 452 F.2d 1333 (D.C. Cir. 1971). See also *infra* notes 25-34 and accompanying text.
18. *Clements v. Fashing*, 457 U.S. 957 (1982).

the judicial gloss previously given to the statutory language of that law or remedy,¹⁹ and it adopts the existing interpretation of the language unless it expressly acts to change the meaning.²⁰

The Supreme Court has previously held that the right to a jury trial depends on whether the action is analogous to a "suit at common law;" that is, a suit appropriately brought in the English law courts prior to the adoption of the seventh amendment in 1791.²¹ If an action is analogous to a suit at common law, the plaintiff may demand that it be tried before a jury.²² Conversely, if an action is analogous to those historically tried in the courts of equity or admiralty in 18th century England, no jury trial is permitted.²³ The modern Supreme Court approach in determining whether an action should be tried as one "at law" or "in equity" is to examine both the nature of the action and the remedy sought.²⁴

To determine whether Congress intended to convey a right to a jury trial under a federal statute, courts examine Congressional language to see if the conferred remedies are "legal" in nature. If the language or remedies Congress has provided are "legal" in nature, courts are apt to find an implied right to a jury trial.²⁵ On the other hand, if courts find that Congress has used language or conferred remedies that are "equitable" in nature, courts are apt to find no such intent, and no right to a trial by jury.²⁶

The courts, however, are divided over whether § 502 grants legal or equitable rights. A minority have read § 502 to confer a right "at law." The minority adopts the reasoning first set forth in *Stamps v. Michigan Teamsters Joint Council* 43.²⁷

In *Stamps*, plaintiff brought suit to recover employee and union retirement benefits.²⁸ The district court, noting jurisdiction under

19. *Blitz v. Donovan*, 740 F.2d 1241, 1245 (D.C. Cir. 1984).

20. *Id.*

21. *Tull v. United States*, 481 U.S. 412, 417 (1987).

22. *Id.*

23. *Id.*

24. *Curtis v. Loether*, 415 U.S. 189, 193 (1974); *Ross v. Bernhard*, 396 U.S. 531, 538 n.10 (1970); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962).

25. *Tull*, 481 U.S. at 417-18.

26. *Id.* The Supreme Court also noted that it "considered the practical limitations of a jury trial and its functional compatibility with proceedings outside of traditional courts of law in holding that the seventh amendment is not applicable to administrative proceedings." *Id.* at 418 n.4. However, in light of *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), discussed *infra* at notes 109-24 and accompanying text, consideration of the jury's "functional compatibility" with non-Article III forums no longer appears to be relevant for purposes of the seventh amendment analysis.

27. 431 F. Supp. 745 (E.D. Mich. 1977).

28. *Id.* at 746. Initially an action for breach contract in state court, defendants removed the case to federal court.

both § 502 as well as the Labor-Management Relations Act (the "LMRA"), found that § 502 was silent as to whether Congress had created a legal or equitable claim.²⁹ The federal court, however, denied the defendant's motion to strike plaintiff's request for a jury trial, reasoning that, because a companion provision — § 502(a)(3) — expressly provided for equitable relief,³⁰ the absence of such a provision in § 502(a)(1)(B) should be construed as creating a legal claim entitling the plaintiff to a jury trial.³¹

The *Stamps* court found support for its interpretation of ERISA in the legislative history. The court alluded to the Joint Explanatory Statement of the Committee of Conference, which provides:

All such [§ 502] actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor Management Relations Act of 1947.³²

Relying upon this statement in the legislative history, the *Stamps* court reasoned that, because a plaintiff would have been entitled to a jury trial under the LMRA for benefits which arose before ERISA was enacted, Congress must also have intended a jury should "in similar fashion" be available for claims under § 502.³³ In analogizing the plaintiff's claim to one brought under the LMRA, the court characterized the recovery action under § 502 as one at law "for damages flowing from an alleged breach of contract."³⁴

Several district courts and, arguably, one circuit have agreed with some of the reasoning adopted by the *Stamps* court and its construction of § 502.³⁵ Beginning with the Seventh Circuit's decision

29. *Id.* at 746-47.

30. § 502(a)(3) provides that "[a] civil action may be brought . . . by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations, or (ii) to enforce any provisions of this subchapter or the terms of the plan. . . ." 29 U.S.C. § 1132(a)(3) (1988).

31. *Stamps*, 431 F. Supp. at 747.

32. *Id.* (quoting H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess., reprinted in 1974 U.S. CODE CONG. & ADMIN. NEWS 5038, 5107).

33. *Stamps*, 431 F. Supp. at 747.

34. *Id.*

35. See, e.g., *Pollock v. Castrovincini*, 476 F. Supp. 606, *aff'd without opinion*, 622 F.2d 575 (2d Cir. 1979) (following statutory construction propounded in *Stamps* in granting right to jury); *Puz v. Bessemer Cement Co.*, 700 F. Supp. 267 (W.D. Pa. 1988) (ERISA dispute that is contractual in nature and does not relate to trustee's use of discretion may be heard by a jury); *Bower v. Bunker Hill Co.*, 114 F.R.D. 587 (E.D. Wash. 1986) (ERISA suit is contractual in nature and could be tried before a jury); *Paladino v. Taxicab Indus. Pension Fund*, 588 F. Supp. 37 (S.D.N.Y. 1984) (expressly following the *Stamps*

in *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*,³⁶ however, the overwhelming majority of circuits addressing the issue have either expressly refused to follow the reasoning in *Stamps* or have followed *Wardle*.³⁷

The *Stamps* court argued that § 502(a)(1)(B) would be superfluous in light of the language in § 502(a)(3). The majority of courts addressing the issue, however, have decided that treating claims brought under § 502(a)(1)(B) as equitable would not make § 502(a)(3) superfluous. For example, in *Wardle*, the Seventh Circuit stated:

We must respectfully disagree with the reasoning of the *Stamps* court. . . . The specific types of claims enumerated in § 502(a)(1)(B) would still have to be separated in some manner from general equitable actions under § 502(a)(3) because Congress granted state courts concurrent jurisdiction only over § 502(a)(1)(B) claims. Thus, the statutory scheme does not imply that § 502(a)(1)(B) claims are legal.³⁸

Wardle and its progeny have also refused to follow the *Stamps* court's construction of the legislative history of ERISA as providing an action at law. These courts have determined that the legislative

rationale); *Bouton v. Central States, Southeast and Southwest Areas Pension Fund*, B.N.A. Pens. Rep. No. 226, D-1 (E.D. Tenn. 1978). *But see* *Katsaros v. Cody*, 744 F.2d 270 (2d Cir. 1984), *cert. denied*, 469 U.S. 1072 (1984) (explicitly refusing to follow *Pollock*).

36. 627 F.2d 820, 828-30 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981). The Seventh Circuit was the first federal court of appeals to decide the § 502 jury trial issue.

37. *See, e.g., In re Vorpahl*, 695 F.2d 318, 321-22 (8th Cir. 1982) (expressly rejecting *Stamps* in favor of *Wardle* in holding that plaintiffs were not entitled to a jury trial for claims that retirement plan violated § 502 by denying employees present and future benefits); *Calamia v. Spivey*, 632 F.2d 1235, 1236-37 (5th Cir. 1980) (expressly agreeing with *Wardle's* criticism of *Stamps* in holding that plaintiff was not entitled to have a jury hear § 502 claims for compensatory damages); *see also* *Pane v. RCA Corp.*, 868 F.2d 631, 636-37 (3d Cir. 1989) (citing with approval the decisions in *Wardle*, *Calamia* and *Vorpahl* in holding that no jury trial exists for employee suing his employer under § 502); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1006-07 (4th Cir. 1985) (citing *Wardle* and *Vorpahl* with approval in holding that Congress did not intend for a jury trial right in a § 502 action); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1357 (9th Cir. 1984) (no statutory or constitutional right to jury exists in ERISA actions), *cert. denied*, 474 U.S. 865 (1985). *See generally* Note, *The Right to Jury Trial in Enforcement Actions Under Section 502(a)(1)(B) of ERISA*, 96 HARV. L. REV. 737 (1983); Note, *The Right to a Jury Trial in ERISA Section 502(a)(1)(B) Actions: Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 65 MINN. L. REV. 1208 (1981).

38. *Wardle*, 627 F.2d at 829 (citations omitted); *see also* *Vorpahl*, 695 F.2d at 321; *Calamia*, 632 F.2d at 1237; *Pane v. RCA Corp.*, 667 F. Supp. 168, 174-75 (D.N.J. 1987).

history cited by *Stamps* merely indicates that Congress' intent was for federal courts to create a federal common law under § 502, much the same way that courts could establish a federal common law for claims arising under LMRA. The courts that follow *Wardle* distinguish claims under LMRA from claims under ERISA and argue that federal common law rights do not necessarily apply to ERISA claims.³⁹

2. *Is a § 502 Claim More Like a Trust Action or an Action for Breach of Contract?*

Prior to 1989, another prevalent § 502 jury trial issue concerned whether a claim fell under the law of trusts, which historically has been treated as equitable, or whether the claim was more like a breach of contract with disputed questions of material fact that were more appropriate for a jury to resolve. The courts have shown far more division on this issue than on the issue of legislative intent addressed in *Stamps*.

a. *Breach of Trust Theory*

Federal courts have analogized the rights and remedies created by ERISA with those created under the law of trusts.⁴⁰ In fact, the Supreme Court recently characterized ERISA as "abound[ing] with the language and terminology of trust law."⁴¹ As the Third Circuit remarked in *Turner v. CF&I Steel Corp.*:⁴²

The remedies of trust beneficiaries against trustees or third parties are equitable rather than legal . . . [w]e are persuaded that the [§ 502] remedy plaintiffs sought in the case at hand is equitable. The Supreme Court's pronouncement in *Central States, Pension Fund v. Central Transport, Inc.* - that the duties of plan trustees are to be examined under the common law of trusts - supports our conclusion that only equitable relief is available under § 502(a)(1)(B) of ERISA.⁴³

39. See, e.g., *Wardle*, 627 F.2d at 829; *Vorpahl*, 695 F.2d at 321; *Calamia*, 632 F.2d at 1237.

40. Under the common law of trusts, courts have almost uniformly held that proceedings to determine rights under employee benefit plans are equitable, and thus should be tried to a judge and not a jury. *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1007 (4th Cir. 1985); *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d at 829 (7th Cir. 1980), *cert. denied*, 419 U.S. 1112 (1981); *Strout v. GTE Products Corp.*, 618 F. Supp. 444, 445-46 (D. Me. 1985).

41. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989).

42. 770 F.2d 43 (3d Cir. 1985).

43. *Id.* at 47 (citations omitted).

The *Turner* court concluded that ERISA actions are similar to trust actions but held that litigants are entitled to a jury trial when money must be paid by the trustee "unconditionally and immediately."⁴⁴ Moreover, the Supreme Court noted that "ERISA's legislative history confirms that the fiduciary responsibility provisions 'codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.'"⁴⁵ Consequently, some courts have concluded that, because the law of trusts has historically been considered equitable in character, Congress' silence on the jury trial right reflects an intention that ERISA suits must likewise be treated as arising in equity.⁴⁶

In support of the conclusion that a § 502 action is akin to an equitable action and should not be tried before a jury, courts have pointed to the standard of review utilized in trust actions; prior to 1989, federal courts uniformly accepted the "arbitrary and capricious" standard of review found in LMRA.⁴⁷ Under this reasoning, courts will not set aside the decision of an ERISA fiduciary or administrator unless they find that such a decision was "arbitrary and capricious," not supported by substantial evidence, or erroneous on a question of law.⁴⁸ Some of the federal courts that adopted the view that ERISA actions should be tried without a jury reasoned that the standard of review used in ERISA claims shows an intent that such cases are equitable.⁴⁹ These courts have held that such a deferential standard of review "bespeaks a legislative scheme granting

44. RESTATEMENT (SECOND) OF TRUSTS §§ 197-98 (1959).

45. *Firestone*, 489 U.S. at 110 (quoting H.R. Rep. No. 93-533, p.11 (1973)). See generally ERISA, 29 U.S.C. §§ 1101-1114 (1982 & Supp. 1987).

46. *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1007 (4th Cir. 1985); *In re Vorpahl*, 695 F.2d 318, 321 (8th Cir. 1982) (concluding that § 502 lawsuits should be considered as equitable in character based on the law of trusts); *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d 820, 829 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981).

47. *Wardle*, 627 F.2d at 823-24; *Rehmar v. Smith*, 555 F.2d 1362, 1371 (9th Cir. 1976); *Maness v. Williams*, 513 F.2d 1264, 1265 (8th Cir. 1975); see Labor Management Relations Act, 29 U.S.C. § 186(c) (1988).

48. *Brown v. Retirement Comm. of Briggs & Stratton*, 797 F.2d 521, 525 (7th Cir. 1986).

49. See, e.g., *Chilton v. Savannah Foods & Ind., Inc.*, 814 F.2d 620, 623-24 (11th Cir. 1987) (standard of review for both federal district courts and courts of appeal is limited in ERISA cases to the arbitrary and capricious standard); *Turner v. CF&I Steel Corp.*, 770 F.2d 43, 46-47 (3d Cir. 1985) (limited scope of review over a trustee's decision not compatible with the right to a jury trial); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1006-07 (4th Cir. 1985) (suits to determine rights under employee benefit plans are equitable in character); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980) (determination of whether pension fund acted arbitrarily and capriciously was traditionally performed by judges, not juries); *Wardle*, 627 F.2d at 829-30 (pension benefit suits are equitable in nature).

initial discretionary decision making to bodies other than the federal courts, with which federal jury trials have proved incompatible."⁵⁰ For example, in *Berry v. Ciba-Geigy Corp.*⁵¹ the Fourth Circuit reversed a district court for improperly giving a matter to a jury that should have been decided by the court, stating:

The district court used [the arbitrary and capricious] standard in its jury instructions. . . . It was error, however, for the judge to submit this matter to a jury. Whether a fiduciary has violated the arbitrary and capricious standard is a matter for the court. The significance of the standard, while second-nature to a judge, is not readily communicated to jurors.⁵²

The Fourth Circuit concluded that, because the limited scope of review was not compatible with the jury function, the plaintiff was not entitled to have a jury apply this standard.⁵³ The court also concluded that the limited scope of review was proof that Congress did not intend to give a § 502 litigant a jury trial right.⁵⁴

b. Breach of Contract Theory

In contrast, other federal district courts have taken the analysis a step further and found an implied right to a jury trial. These courts have characterized the ERISA suit as one for breach of contract seeking damages,⁵⁵ which is a traditional action at law triable to a jury.⁵⁶

An example of this approach is found in *Bower v. Bunker Hill Co.*⁵⁷ In *Bower*, present and future pensioners brought a class action against a corporation to obtain reinstatement of their medical insurance and damages for wrongful termination of the insurance. The plaintiffs also brought a separate claim for breach of fiduciary duty. Jurisdiction was based on both § 502 and LMRA. In response, the corporation filed a motion to strike the plaintiffs' jury demand, arguing that the claims were "essentially equitable."⁵⁸ While the

50. *Wardle*, 627 F.2d at 830; *accord Chilton*, 814 F.2d at 623-24; *Turner*, 770 F.2d at 46; *In re Vorpahl*, 695 F.2d 318, 321 (8th Cir. 1982).

51. 761 F.2d 1003 (4th Cir. 1985).

52. *Id.* at 1006-07.

53. *Id.* at 1007.

54. *Id.*

55. *See, e.g., Abbarno v. Carborundum Co.*, 682 F. Supp. 179, 181-82 (W.D.N.Y. 1988); *Bower v. Bunker Hill Co.*, 114 F.R.D. 587, 597-98 (E.D. Wash. 1986); *Paladino v. Taxicab Indus. Pension Fund*, 588 F. Supp. 37, 39-41 (S.D.N.Y. 1984).

56. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962).

57. 114 F.R.D. 587, 598 (E.D. Wash. 1986).

58. *Id.* at 597.

court granted the motion to strike on the breach of fiduciary duty claim, it held that the plaintiffs' other claims could be tried before a jury.⁵⁹ Noting that the plaintiffs' claim for relief sought monetary damages, including money spent to obtain other medical coverage from the time that the plan had been terminated, the court concluded that the claim was similar to a claim for breach of contract.⁶⁰

In granting the plaintiffs a jury trial on counts for wrongful termination of the plan benefits, the *Bower* court, following the reasoning propounded by the Supreme Court in *Dairy Queen, Inc. v. Wood*,⁶¹ declared:

§ 502(a)(1)(B) of ERISA provides that a beneficiary may bring an action for redress of violations of the terms of the plan. A suit for breach of contract seeking damages was traditionally an action at law and thus triable to a jury under the Seventh Amendment. Thus, the plaintiffs have a right to a jury determination of not only whether the contract has been breached and the extent of damages if any, but also just what the contract is.⁶²

Recognizing that its decision might appear facially inconsistent with *Wardle*, the *Bower* court distinguished *Wardle* by noting that "*Wardle* involved an [accounting] action brought by a beneficiary against the plan trustee to enforce payment of pension benefits" which is traditionally an equitable remedy.⁶³ Consequently, the court found that there was "no basis for equating the present action with those cases involving the discretionary refusal to pay benefits by a trustee interpreting an existing plan."⁶⁴

59. *Id.*

60. *Id.* at 597-98.

61. 369 U.S. 469 (1962). In *Dairy Queen*, plaintiff brought suit for the breach of a written licensing contract. The complaint sought injunctive relief and an award for damages in an amount to be determined from an accounting. In reversing the motion to strike granted by the district court, the Supreme Court noted that since the adoption of the Federal Rules, the right to a jury remained for all legal claims, even where both legal and equitable relief are sought in the same case. The Court held that an action to collect a debt under a contract was "traditionally legal." *Id.* at 477.

62. *Bower v. Bunker Hill Co.*, 114 F.R.D. 587, 598 (E.D. Wash. 1986) (citations omitted).

63. *Id.* The reasoning of the *Bower* court is not entirely correct. In fact, the plaintiff in *Wardle* sued for \$92,400 in "compensatory damages" (plaintiff's estimate as to the amount of benefits that would have accrued during his lifetime), punitive damages, attorney's fees, costs, and "all other just and proper relief." *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d 820, 823 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981).

64. *Bower*, 114 F.R.D. at 598. In a footnote, the court extended its holding even further when it stated, "[e]ven if this case could be analogized to *Wardle*, it

The decision in *Bower* has supplied several methods for plaintiffs to plead a § 502 cause of action which would support a jury trial demand: first, by fashioning a complaint for wrongful termination of or interference with an employee benefits plan as a claim for breach of contract; second, by disputing or questioning the meaning of one or more material provisions of the benefits plan; third, by questioning the intent of the parties at the time they entered into the employee benefits plan; and finally, by requesting relief for compensatory and punitive damages resulting from the alleged breach.⁶⁵ A number of federal district courts, as well as one circuit court (albeit in dicta), have similarly held that certain actions brought under § 502 were contractual and could be tried to a jury.⁶⁶

B. The Seventh Amendment Right To a Jury Trial

If the right to a jury trial does not exist as an implied right based upon the intent of the legislative body, the analysis turns on whether the seventh amendment to the United States Constitution provides such a right. The seventh amendment preserves the right to a jury trial in suits "at common law."⁶⁷ The phrase "common law"

would not alter the conclusion that I reach today at least as to present pensioners. Plaintiff present pensioners allege that they have met all of the requirements of eligibility to medical benefits required under the plan. As far as their claim for damages is concerned, it more closely resembles an action to force payment of money immediately and unconditionally due. Such actions have traditionally been construed as being legal." *Id.* at n.6 (citations omitted).

65. See *Id.* at 598; *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984).

66. See *Transamerica Occidental Life Ins. Co. v. DiGregorio*, 811 F.2d 1249, 1251 n.2 (9th Cir. 1987) (dicta) (issue relating to the interpretation of an insurance policy was contractual in nature; thus, the beneficiary could have demanded a jury trial had the case been tried); *Puz v. Bessemer Cement Co.*, 700 F. Supp. 267, 268 (W.D. Pa. 1988) ("Although the present case does involve some issues, such as the breach of fiduciary duty claims, which must be tried by the court . . . the initial question and major issue in the case is contractual in nature and involves factual ambiguities relating to the interpretation of the termination provisions contained in the various agreements. Accordingly, the court concludes that the plaintiffs are entitled to have these factual ambiguities resolved by a jury."); *Paladino v. Taxicab Indus. Pension Fund*, 588 F. Supp. 37, 39 (S.D.N.Y. 1984) ("[B]eneath this seemingly 'equitable' issue [of having the court review the exercise of fiduciary power by a plan trustee], there lurks a simple question: whether plaintiff had a break in his service in the taxicab industry which forfeited his prior service credit. This represents a pure question of fact . . . particularly appropriate for resolution by a trial jury.")

67. U.S. CONST. amend. VII. The seventh amendment has not been made binding on the states through the due process clause of the fourteenth amendment. See *Chicago, Rock Island & Pac. Ry. Co. v. Cole*, 251 U.S. 54, 56 (1919) (dicta).

in the seventh amendment is used to contrast cases in equity, admiralty, and maritime law.⁶⁸

The Supreme Court has asserted that the right to a trial by jury guaranteed by the seventh amendment is a fundamental right of the people⁶⁹ which will be "guarded by the court with jealousy."⁷⁰ This view was reaffirmed by the adoption of the Federal Rules of Civil Procedure, which provide that, "the right to a trial by jury as declared by the Seventh Amendment . . . shall be preserved to the parties inviolate."⁷¹

The seventh amendment's reference to "suits at common law" is not limited to actions traditionally tried in the law courts of England in 1791, but includes suits in which legal rights are to be "ascertained and determined."⁷² The Supreme Court has further held that this analysis not only applies to common law forms of action, but also to causes of action created by congressional enactments, even where the action created was unheard of at common law.⁷³

The Supreme Court in *Tull v. United States*⁷⁴ set forth factors for courts to consider in determining the "legal nature" of an issue. These factors include the custom of dealing with such questions before the merger of the courts of law and equity and the remedy sought.⁷⁵ The Court emphasized that the second factor is more important than the first.⁷⁶ A third factor to consider when determining whether the seventh amendment confers a jury trial right is the practical abilities and limitations of juries.⁷⁷

68. *Parsons v. Bedford*, 28 U.S. 433, 446 (1830). In *Parsons*, the Court noted that the distinction between these types of actions was present in the framers' minds when they drafted the amendment. Thus, the Court concluded that the scope of the "common law" was not limited to those types of suits which the common law recognized among its "old and settled proceedings," but also included suits in which legal rights were determined and legal remedies administered. *Id.* at 447.

69. *Jacob v. New York City*, 315 U.S. 752 (1942).

70. *Baylis v. Travelers Ins. Co.*, 113 U.S. 316 (1885).

71. FED. R. CIV. P. 38(a).

72. *Parsons*, 28 U.S. at 447.

73. *Curtis v. Loether*, 415 U.S. 189, 193 (1974).

74. 481 U.S. 412 (1987). See generally Note, *Tull v. United States: Jury Trial Required in Statutory Civil Penalty Actions*, 1988 UTAH L. REV. 435.

75. *Tull*, 481 U.S. at 417-18.

76. *Id.* at 421.

77. *Ross v. Bernhard*, 396 U.S. 531, 538 n.10 (1970). As noted in *Tull*, however, the Court has never relied on this consideration "as an independent basis for extending the right to a jury trial under the Seventh Amendment." *Tull*, 481 U.S. at 418 n.4 (1987). Additionally, the Court may have severely restricted the viability of this step when it noted in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989), that the consideration of whether the action is appropriate for a jury is only relevant in determining whether Congress permissibly delegated certain adjudications to administrative agencies, and whether the jury trial would impair the functioning of the legislative scheme.

Prior to 1989, few courts found claims brought under § 502 conferred a seventh amendment jury trial right.⁷⁸ The courts that ultimately denied the right to a jury trial based on the seventh amendment provided little discussion of the governing principles announced by the Supreme Court. For example, in *Blau v. Del Monte Corp.*,⁷⁹ the Ninth Circuit relegated its entire analysis of the plaintiff's constitutional right to a jury trial to a single sentence when it summarily stated "[n]or is there an independent constitutional or statutory right to jury trial in ERISA actions."⁸⁰

Similarly, in *In re Vorpahl*,⁸¹ the Eighth Circuit, after rejecting the claim that the right to a jury trial was implied by § 502, dismissed petitioner's constitutional claim that the seventh amendment granted him a jury trial. In so doing, the court held:

The right to a jury trial under the seventh amendment depends on the nature of the issue to be tried. Traditionally, claims for present and future pension benefits . . . have been viewed as equitable in nature and triable by a court. As we observed earlier [in the discussion of whether ERISA impliedly gave the right to jury trial], Congress intended to preserve this view when it enacted section 502 of ERISA. The mere fact that plaintiffs pray for monetary relief in part does not mandate that this action be characterized as legal rather than equitable.⁸²

78. See, e.g., *In re Vorpahl*, 695 F.2d 318, 322 (8th Cir. 1982) (no constitutional right to a jury trial in § 502 actions); *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d 820, 830 n.21 (7th Cir. 1980), cert. denied, 449 U.S. 1112 (1981) ("In light of our conclusion above that this claim is equitable, no further discussion is necessary to reject [plaintiff's] constitutional argument."); *Whitt v. Goodyear Tire & Rubber Co.*, 676 F. Supp. 1119, 1133 (N.D. Ala. 1987) (supplementary memorandum opinion) ("The Eleventh Circuit either has not yet been called upon to address, or has not addressed, the Seventh Amendment when comparing ERISA claims which are kin to traditional common law claims and ERISA claims which are like those formerly dealt with by the chancellor."), rev'd, *Amos v. Blue Cross-Blue Shield of Ala.*, 868 F.2d 430 (11th Cir. 1989), cert. denied, 493 U.S. 855 (1989); *Paladino v. Taxicab Indus. Pension Fund*, 588 F. Supp. 37, 39 (S.D.N.Y. 1984) (summarily agreeing with defendants that "there is no Seventh Amendment right to jury trial in ERISA actions"). But see, *Bower v. Bunker Hill Co.*, 114 F.R.D. 587, 597-98 (E.D. Wash. 1986) (plaintiff's § 502 claim is akin to a claim for breach of contract, which is traditionally legal; thus, the constitution guarantees plaintiff's right to a jury trial).

79. 748 F.2d 1348 (9th Cir. 1984), cert. denied, 474 U.S. 865 (1985).

80. *Id.* at 1357.

81. 695 F.2d at 322.

82. *Id.* at 322 (citations omitted); See also *Pane v. RCA Corp.*, 868 F.2d 631, 636 (3d Cir. 1989) (benefits under § 502 are equitable in nature; therefore, plaintiff is not entitled to a jury trial).

Some of the federal courts analyzing the § 502 jury trial issue have given at least minimal consideration to the seventh amendment issue before denying a jury trial request. Other courts, however, have been silent on the constitutional question, relying entirely on implied statutory grounds in concluding that no jury right exists.⁸³

Those courts which expressly addressed the seventh amendment in the ERISA context prior to the 1989 Supreme Court decisions in *Firestone Tire & Rubber Co. v. Bruch*⁸⁴ and *Granfinanciera, S.A. v. Nordberg*,⁸⁵ as well as the later *Chauffeurs, Teamsters & Helpers, Local 391 v. Terry*⁸⁶ decision, have generally maintained that there is no constitutional guarantee of a right to a jury trial in cases under § 502.⁸⁷ Moreover, while few courts found an implied statutory right to a jury trial in a § 502 action, not all of those courts similarly found that a constitutional guarantee of a right to a jury trial existed in the absence of the legislative intent embodied in the statute. For example, in *Paladino v. Taxicab Industry Pension Fund*,⁸⁸ the court began its discussion on whether plaintiff was entitled to a jury trial by "agreeing with the defendants that there is no seventh amendment right to jury trial in [all] ERISA actions," and viewing those actions as "essentially equitable in nature."⁸⁹

In § 502 cases where a jury trial right has been found, some of the opinions are vague as to whether the right was preserved based on legislative intent grounds or on seventh amendment grounds. For example, although the district court in *Abbarno v. Carborundum Co.*,⁹⁰ did not address the seventh amendment, it nonetheless appeared to be applying the constitutional standard when it held:

In the present case, . . . plaintiffs bring an ERISA claim that does not seek equitable relief. Rather they seek an

83. See, e.g., *Pane v. RCA Corp.*, 868 F.2d 631 (3d Cir. 1989) (no discussion of the seventh amendment in denying plaintiff's prayer for a jury); *Chilton v. Savannah Foods & Indus., Inc.* 814 F.2d 620 (11th Cir. 1987) (no discussion of the constitutional right to a jury trial); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir. 1985) (no discussion of the constitutional right to a jury trial); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980) (holding only that ERISA does not entitle plaintiff's to a jury trial). But see *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 394 (3d Cir. 1988) (remanding plaintiff's claim to examine the substance of the pleadings and determine whether plaintiff had pleaded a cause of action under § 502, and, if so, to decide if the seventh amendment entitled him to a jury trial).

84. 489 U.S. 101 (1989).

85. 492 U.S. 33 (1989).

86. 494 U.S. 558 (1990).

87. See *supra* notes 78-83 and accompanying text.

88. 588 F. Supp. 37, 39 (S.D.N.Y. 1984).

89. *Id.* The court went on to find that Congress nevertheless intended to grant a litigant the right to a trial by jury. *Id.*

90. 682 F. Supp. 179 (W.D.N.Y. 1988).

award for damages for nonpayment of benefits. . . . The plaintiffs' claim being essentially legal in nature, it is wholly appropriate for them to request a trial by jury.⁹¹

One case that specifically did employ the seventh amendment as a basis for granting an ERISA jury trial right is *Bower v. Bunker Hill Co.*⁹² In *Bower*, the court cited the three part test developed by the Supreme Court,⁹³ and agreed with plaintiff's seventh amendment argument that because the ERISA claim asserted was similar to a breach of contract action for damages, the plaintiffs had a constitutional right to a trial by jury.⁹⁴

C. Summary of the Law Prior to 1989

Prior to 1989, a majority of the federal courts considering the § 502 jury trial issue had concluded that there is neither a statutory nor constitutional basis for granting a § 502 litigant a jury trial. Additionally, a minority of courts that did grant a jury trial were more comfortable relying upon legislative intent grounds rather than the seventh amendment. In light of several recent Supreme Court decisions, however, litigants seeking a jury trial in an ERISA action may have an easier time supporting their jury request on constitutional grounds.

IV. THE SUPREME COURT'S RECENT POSITION ON STANDARD OF REVIEW IN ERISA ACTIONS AND THE SEVENTH AMENDMENT

In three recent decisions, the Supreme Court both changed the standard of review used in § 502 actions and reaffirmed the scope of the seventh amendment's preservation of the jury trial right in cases brought under federal statutes that are silent on the jury trial issue.

A. The ERISA Standard of Review: *Firestone Tire and Rubber Co. v. Bruch*

In *Firestone Tire & Rubber Co. v. Bruch*,⁹⁵ plaintiffs, employees of a division of Firestone Tire and Rubber Company ("Firestone"), sued Firestone under § 502 to recover severance benefits allegedly due when Firestone sold the division to another company. Firestone

91. *Id.* at 181-82.

92. 114 F.R.D. 587 (E.D. Wash. 1986).

93. *Id.* at 597-98 (citing *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962)).

94. *Id.* See *supra* notes 56-66 and accompanying text.

95. 489 U.S. 101 (1989).

had denied plaintiffs' request on the grounds that there had not been a reduction in work force that would authorize benefits under the terms of the plan.⁹⁶

The district court granted Firestone's motion for summary judgment on the grounds that the company had not breached its fiduciary duty and that its decision was not arbitrary or capricious.⁹⁷ The Court of Appeals for the Third Circuit reversed, holding that where an employer itself is a fiduciary and administrator of an unfunded benefit plan, the employer's decision to deny benefits should be subject to a *de novo* standard of review, and not an arbitrary and capricious standard.⁹⁸

The Supreme Court granted certiorari and affirmed the Third Circuit's holding as to the appropriate standard of review.⁹⁹ The Court held that although it was the "general intent" of Congress to incorporate in ERISA much of the fiduciary law of LMRA, the arbitrary and capricious standard of review developed under LMRA should not be adopted "wholesale" and applied to claims brought under § 502.¹⁰⁰ In distinguishing ERISA from LMRA, the Court stated:

Unlike the LMRA, ERISA explicitly authorizes suits against fiduciaries and plan administrators to remedy statutory violations, including breaches of fiduciary duty and lack of compliance with benefit plans. Thus, the [reason behind]...the LMRA arbitrary and capricious standard-the need for a jurisdictional basis in suits against trustees-is not present in ERISA. Without this jurisdictional analogy, LMRA principles offer no support for the adoption of the arbitrary and capricious standard insofar as [§ 502] is concerned.¹⁰¹

The Court held that a *de novo* standard of review would apply to plaintiff's § 502 claims, "regardless of whether the plan at issue is funded or unfunded and regardless of whether the administrator or fiduciary is operating under a possible or actual conflict of interest."¹⁰²

Despite preference for a *de novo* standard of review, the Court indicated one instance when an arbitrary and capricious standard would still apply in § 502 actions. According to the Court, the arbitrary and capricious standard would apply if the benefit plan

96. *Id.* at 105.

97. *Bruch v. Firestone Tire & Rubber Co.*, 640 F. Supp. 519 (E.D. Pa. 1986), *aff'd in part*, 828 F.2d 134 (3d Cir. 1987).

98. 828 F.2d 134 (3d Cir. 1987).

99. *Firestone*, 489 U.S. at 108.

100. *Id.* at 109.

101. *Id.* at 110 (citations omitted).

102. *Id.* at 115.

expressly gives the plan administrator or fiduciary discretionary authority to either construe the terms of the plan or determine eligibility for plan benefits.¹⁰³

The Court rejected Firestone's argument that plan interpretation is an "inherently discretionary function," precluding the requirement that the plan's terms grant the trustee authority to interpret the plan's provisions. Instead, the Court analogized the judiciary's role in construing terms of trust agreements to their role in construing terms of contracts.¹⁰⁴ In the Court's view, actions which challenged an employer's denial of benefits before ERISA was enacted were governed by the law of contracts.¹⁰⁵ Thus, the terms of trusts that are created by written instruments must be "determined by the provisions of the instrument as interpreted in light of all the circumstances."¹⁰⁶ as construed by the court, and "without deferring to either party's interpretation."¹⁰⁷

B. The Supreme Court's Recent Position on the Seventh Amendment Right to a Jury Trial: Granfinanciera, S.A. v. Nordberg and Chauffeurs, Teamsters and Helpers, Local 391 v. Terry

1. *Granfinanciera, S.A. v. Nordberg*

In *Granfinanciera, S.A. v. Nordberg*,¹⁰⁸ the plaintiff, a bankruptcy trustee for the Chase & Sanborn Corporation ("Chase and Sanborn"),¹⁰⁹ filed suit in the district court against Granfinanciera,

103. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 112-13 (1989). This exception may have swallowed the rule since, as a matter of course in light of *Firestone*, nearly all new ERISA governed benefit plans now include language which provides for administrator discretion. Flint, Jr., *ERISA: The Arbitrary and Capricious Rule Under Siege*, 39 CATH. U. L. REV. 133, 136 (1989). See generally Beaver, *The Standard of Review in ERISA Benefits Denial Cases After Firestone Tire & Rubber Co. v. Bruch: Revolution or Deja Vu*, TORT & INSURANCE L.J. 1 (Fall 1990) ("At least one lesson from *Bruch* is obvious: Plan sponsors and drafters should craft new plans, and review and amend existing ones, to incorporate this elective deferential review of benefit claims decisions.").

104. *Firestone*, 489 U.S. at 112.

105. *Id.*

106. *Id.* (quoting RESTATEMENT (SECOND) OF TRUSTS § 4, Comment d (1959)).

107. *Id.*

108. 492 U.S. 33 (1989).

109. *Id.* at 36. Chase and Sanborn was undergoing a reorganization proceeding under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101-1174 (1982 & Supp. V).

S.A. and Medex, Ltda.¹¹⁰ In this suit, the trustee alleged that the defendants had fraudulently received funds from Chase & Sanborn's corporate predecessor within one year of the date that its bankruptcy petition was filed without receiving consideration.¹¹¹ The trustee sought to avoid these allegedly fraudulent conveyances and to recover damages for constructive and actual fraud, as well as interest, costs and expenses, as allowed under the Bankruptcy Code.¹¹²

The district court referred the proceedings to the bankruptcy court, and both defendants requested a jury trial "on all issues so triable."¹¹³ The bankruptcy court denied defendant's request, reasoning that a suit to recover a fraudulent transfer was "a core action that originally, under the English common law . . . was a non-jury issue."¹¹⁴ After a bench trial in which monetary damages were assessed against both defendants on the fraud claim, the district court affirmed the bankruptcy court without discussing defendants' claim that they had a right to a jury trial.¹¹⁵

The Court of Appeals for the Eleventh Circuit affirmed.¹¹⁶ In affirming, the court held that defendants lacked a right to a jury trial under the statute because the provision of law under which suit was brought contained no express grant of a jury trial right.¹¹⁷ Additionally, the Eleventh Circuit held that the seventh amendment did not preserve the jury trial right because actions to recover fraudulent transfers were "equitable in nature, even when a plaintiff seeks only monetary relief," and further, because "bankruptcy proceedings are inherently equitable."¹¹⁸

The Supreme Court reversed the Eleventh Circuit on seventh amendment grounds. In doing so, the Court applied long established rules for analyzing the constitutional right to a jury trial and noted that, of these standards, the examination of the remedy sought is more important than trying to find an 18th-century English common law analogy.¹¹⁹

Nonetheless, in comparing the statutory action at issue to 18th-century actions brought in the courts of England, Justice Brennan,

110. *Id.* at 36-37. Granfinanciera was a bank located in Bogota, Colombia. After being served with the plaintiff's complaint, the government of Colombia nationalized Granfinanciera. The opinion does not discuss whether Medex Ltda. is also a Colombian corporation.

111. *Granfinanciera*, 492 U.S. at 36.

112. *Id.*

113. *Id.* at 36-37.

114. *Id.* at 37.

115. *Id.*

116. *Re Chase & Sanborn Corp.*, 835 F.2d 1341 (11th Cir. 1988).

117. *Id.* at 1348.

118. *Id.* at 1349.

119. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989).

writing for the majority, found that the historical practice in England to recover funds from a fraudulent conveyance were often brought in the courts of law, and that had the plaintiff in *Granfinanciera* brought suit in 1791 in England, a court of law, not equity, would have adjudicated it.¹²⁰ The Court also concluded that the nature of the relief requested, that is, monetary damages, “strongly supports our preliminary finding that the right [plaintiff] invokes should be denominated legal rather than equitable.”¹²¹ The Court found that the relief of monetary damages of a fixed amount in this case could not go forward in equity because an adequate remedy was available at law. According to the Court, the rule favoring actions at law “serves to guard the right of trial by jury preserved by the seventh amendment and to that end it should be liberally construed.”¹²²

Even more astonishing than the Court’s liberal construction of the seventh amendment was the fact that the parties in *Granfinanciera* were litigating their case in bankruptcy court, assigned to non-Article III judges sitting without juries. The Court, however, disregarded this fact and asserted that Congress’ assignment of such actions to an administrative agency could not be used to justify denying a jury.¹²³ Specifically, the Court rejected the notion that jury trials could not be had because “bankruptcy proceedings have been placed in an ‘administrative forum with which the jury would be incompatible.’”¹²⁴

2. *Chauffeurs, Teamsters and Helpers, Local 391 v. Terry*

A recent Supreme Court opinion concerning the seventh amendment’s preservation of the jury trial right in an action arising under a federal statute is *Chauffeurs, Teamsters and Helpers, Local 391 v. Terry*.¹²⁵ In *Terry*, employees sued both their employer and union for injunctive relief and monetary damages, alleging that the employer had breached their collective bargaining agreement in violation of

120. *Id.* at 42-43.

121. *Id.* at 47.

122. *Id.* at 48 (quoting *Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 94 (1932)).

123. *Id.* at 51-52. The majority did note in dicta that Congress could permissibly deny a jury trial in an administrative adjudication “in cases where ‘public rights’ are litigated.” *Id.* at 51. The term “public right” was defined by the Court as involving “the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.” *Id.* at 51 n.8 (quoting *Crowell v. Benson*, 285 U.S. 22 (1932)).

124. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 61-62 (1989). In dissent, Justice White severely criticized the majority’s approach as failing to consider the forum that the dispute is to be heard in as an element of the seventh amendment analysis. *Id.* at 79-84 (White, J., dissenting).

125. 494 U.S. 558 (1990).

the LMRA and that the union had violated its duty of fair representation.¹²⁶ Subsequently, the employees' suit against the employer was voluntarily dismissed after the employer filed for bankruptcy. The union, however, still facing a claim for breach of its duty to represent, moved to strike the plaintiffs' jury demand.¹²⁷ The district court denied the motion to strike, asserting that, because plaintiffs had asserted legal rights and remedies, the seventh amendment preserved their right to a jury trial.¹²⁸ On interlocutory appeal, the Fourth Circuit affirmed, holding that the district court had correctly upheld the plaintiffs' jury trial right on the issues of declaratory judgment relief and damages.¹²⁹

The Supreme Court granted certiorari and, in an opinion written by Justice Marshall, affirmed the judgment of the Fourth Circuit.¹³⁰ In so doing, the Court recognized that because the plaintiffs' claim against the union was only inferred from and not expressed in the LMRA, the analysis of the statute for any expressed or implied jury trial provisions contained therein was "unavailing."¹³¹ Given this, the Court focused its analysis on the seventh amendment.¹³²

In comparing the claim before it to 18th-century actions brought in England, the Court discussed the Union's argument that a claim for breach of duty of fair representation was comparable to an action brought by trust beneficiaries for breach of fiduciary duty, which were exclusively within the jurisdiction of the equity courts.¹³³ Although persuaded that the Union's analogy to the law of trusts extended to suits brought against a union by its members, six members of the Court nevertheless agreed that, "the trust analogy does not persuade us to characterize [the Union's] claim as wholly equitable."¹³⁴ Instead, the Court stated that "[t]he Seventh Amendment question depends on the nature of the *issue* to be tried rather than the character of the overall action."¹³⁵ The Court reasoned that, because the plaintiffs were required to first prove the legal issue of

126. *Id.* at 562 n.1. The Labor Management Relations Act of 1947 provides for suits by and against labor unions for violation of the union contract with the employer. LMRA § 301(a), 29 U.S.C. § 185(a) (1982).

127. *Terry v. Chauffeurs, Teamsters & Helpers, Local 391*, 676 F. Supp. 659, 661 (M.D.N.C. 1987).

128. *Id.*

129. *Terry v. Chauffeurs, Teamsters & Helpers, Local 391*, 863 F.2d 334 (4th Cir. 1988).

130. 494 U.S. 558 (1990).

131. *Id.* at 564 n.3.

132. *Id.* at 564-65.

133. *Id.* at 568-69.

134. *Id.* at 569.

135. *Terry v. Chauffeurs, Teamsters & Helpers, Local 391*, 494 U.S. 558, 569 (1990) (emphasis in original) (quoting *Ross v. Bernhard*, 396 U.S. 531 (1970)).

whether the employer had violated the LMRA before proving the "equitable issue" of whether the union breached its duty of fair representation, the plaintiffs' action against the union encompassed both legal and equitable issues.¹³⁶ The Court concluded that "[t]he first part of our Seventh Amendment inquiry, then, leaves us in equipoise as to whether [plaintiffs] are entitled to a jury trial."¹³⁷

In the second step of the analysis, the Court considered the remedy sought by the employees, noting that the remedy consisted of an award of money for lost wages and benefits and that the "general rule" was that such relief was "the traditional form of relief offered in the courts of law."¹³⁸ Consequently, the Court held:

[B]ecause we conclude that the remedy [plaintiffs] seek has none of the attributes that must be present before we will find an exception to the general rule and characterize damages as equitable, we find that the remedy sought by [plaintiffs] is legal.¹³⁹

The "attributes" of monetary relief which the Court referred to as possibly being "equitable" included: (1) restitutionary damages such as in "action[s] for disgorgement of improper profits,"¹⁴⁰ and (2) a monetary award that is "incidental to or entwined with injunctive relief."¹⁴¹

In dissent, Justice Kennedy, joined by Justices O'Connor and Scalia, believed that an award of back pay is an equitable remedy because it is closely analogous to damages awarded to beneficiaries for a trustee's breach of trust.¹⁴² The majority criticized this view because it would render dispositive that part of the seventh amendment analysis analogizing claims to 18th-century English claims.¹⁴³ In the majority's view, such a result would be contrary to earlier law which defines the nature of the relief requested as "more important to the Seventh Amendment determination."¹⁴⁴ In a concurring opinion, Justice Brennan posited that he would do away altogether with

136. *Id.* at 569.

137. *Id.* at 570.

138. *Id.* at 570 (quoting *Curtis v. Loether*, 415 U.S. 181, 196 (1974)).

139. *Id.* at 570.

140. *Id.* The Court concluded that the back pay sought by the plaintiffs was not money wrongfully held by the defendant, but wages and benefits that they would have received from their employer had the defendant not breached its duty of fair representation. Thus, the relief sought was not, in the Court's view, restitution. *Id.* at 571-72.

141. *Id.* at 571. The Court held that because the plaintiffs had only sought money damages, "this characteristic is clearly absent from this case." *Id.* at 571.

142. *Id.* at 586-88 (Kennedy, J., dissenting).

143. *Id.* at 571 n.8.

144. *Id.*

the 18th-century analogy test, and would instead "decide Seventh Amendment questions on the basis of the relief sought."¹⁴⁵

V. THE CURRENT STATE OF THE § 502 JURY TRIAL ISSUE

A. *The Impact of Firestone*

The change in the standard of review mandated by the Supreme Court in *Firestone* has been followed by one federal district court as support for granting a jury trial in a § 502 action. In *Vicinanzo v. Brunshwig & Fils, Inc.*,¹⁴⁶ the plaintiff was insured under a group insurance policy when she became permanently disabled. Several years after coverage under the major medical portion of this policy began, the policy was terminated.¹⁴⁷ The plaintiff filed suit under § 502 challenging the cancellation and defendants (both her employer and insurance company) moved to strike the demand for a jury trial. The defendants argued that the plaintiff's claim was equitable in nature and that the statutory scheme did not imply a jury right.¹⁴⁸

In rejecting the motion to strike, the district court relied in part upon the *Firestone* decision. The court did not cite *Firestone*, however, as supporting the implied statutory right to a jury trial.¹⁴⁹ On the contrary, the court stated:

Quite apart from the implied statutory right to a jury trial . . . recent Supreme Court jurisprudence in the area of ERISA . . . implies that contests over the meaning of ambiguous plan provisions - the resolution of which often results in the recovery of money damages or a declaration as to whether money will be recovered in the future - more closely resemble legal than equitable claims.¹⁵⁰

145. *Id.* at 574 (Brennan, J., concurring in part and concurring in judgment). Justice Brennan added that given that over the past 15 years, the Court has explained that the two parts of the seventh amendment test are unequally weighted, "there remains little purpose to our rattling through dusty attics of ancient writs." *Id.* at 575.

146. 739 F. Supp. 882 (S.D.N.Y. 1990).

147. *Id.* at 883.

148. *Id.*

149. Following its own pre-*Firestone* decision in *Paladino v. Taxicab Indus. Pension Fund*, 588 F. Supp. 37 (S.D.N.Y. 1984), the court declared that "it was the intent of Congress that ERISA plan enforcement actions be regarded as legal in nature, and that litigants be entitled to a jury trial." *Vicinanzo*, 739 F. Supp. at 885.

150. *Vicinanzo*, 739 F. Supp. at 890.

In reaching its decision, the *Vicinanzo* court read *Firestone* as holding that contests over the interpretation of vague plan provisions more closely resemble actions at law,¹⁵¹ and under such circumstances the right to a jury is preserved by the seventh amendment.¹⁵²

In contrast to the position taken by the *Vicinanzo* court, other courts that have addressed the § 502 issue, including one circuit court, have rejected the proposition that the *Firestone* change in the standard of review supports the right to a jury trial.¹⁵³ For example, in *Blake v. Unionmutual Stock Life Insurance Co.*,¹⁵⁴ beneficiaries to a group health insurance plan brought suit to recover compensation allegedly owed by the insurer. The plaintiffs were denied a jury trial and appealed. On appeal the beneficiaries argued, based upon *Firestone*, that the change in the standard of review from arbitrary and capricious to de novo "converts the claim from an equitable claim to a breach of contract action, which entitles them to a jury trial under the Seventh Amendment."¹⁵⁵

The Eleventh Circuit disagreed, holding that the plaintiffs' § 502 action was still equitable notwithstanding the requested monetary relief.¹⁵⁶ The court characterized the plaintiffs' request for money damages as "the benefits they are allegedly entitled to under the plan."¹⁵⁷ While admitting that, since medical treatment had already been completed, an award of money "would satisfy [p]laintiff's demands," the court nevertheless opined that "if the claimant were still under treatment, only an order for continuing benefits would be sufficient."¹⁵⁸ The court concluded that such a judicial order would amount to "traditionally equitable relief."¹⁵⁹

Similarly, in *Quesinberry v. Individual Banking Group Accident Insurance Plan*¹⁶⁰ the court rejected the *Firestone* argument. In *Quesinberry*, plaintiff argued that *Firestone* called into doubt earlier cases holding against a § 502 jury trial right.¹⁶¹ The plaintiff further argued that *Firestone* had invalidated the reasoning of the Fourth Circuit's

151. *Id.*

152. *See id.* at 890-91.

153. *See, e.g., Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990); *Quesinberry v. Individual Banking Group Ins. Plan*, 737 F. Supp. 38 (W.D. Va. 1990); *Pardini v. Southern Nevada Culinary & Bartenders Pension Plan & Trust*, 733 F. Supp. 1402 (D. Nev. 1990).

154. 906 F.2d 1525 (11th Cir. 1990).

155. *Id.* at 1526.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525, 1526 (11th Cir. 1990).

160. 737 F. Supp. 38 (W.D. Va. 1990).

161. *Id.* at 41.

decision in *Berry v. Ciba-Geigy Corp.*,¹⁶² which had held that a jury trial should be denied because jurors were not capable of applying the arbitrary and capricious standard.¹⁶³ The *Quesinberry* court, however, rejected this reasoning. The court correctly noted that the Fourth Circuit in *Berry* had given more than one reason for its decision to deny a jury right:

the Court in *Berry* also cited the common law of trusts as support for its decision, stating that "[c]ourts addressing this issue have almost uniformly held that under the common law of trusts proceedings to determine rights under employee benefit plans are equitable in nature, and thus a matter for a judge, not a jury."¹⁶⁴

The lower court's treatment of the *Firestone* change in the standard of review has not resulted in any sweeping changes to a § 502 litigant's right to a jury trial. The few district courts that have discussed the ERISA jury trial in light of *Firestone* continue to deny a jury right on implied statutory grounds. These courts have reasoned that earlier decisions which found no implied statutory right to a § 502 jury trial were grounded on more than just the arbitrary and capricious standard of review. *Firestone's* impact on the seventh amendment right to a § 502 jury trial has been equally unavailing. To date, only one district court has cited *Firestone's* change in the standard of review as lending constitutional support to a jury right. Consequently, at this juncture *Firestone* has had minimal impact on the litigant's jury trial right under § 502.

B. The Impact of Granfinanciera and Terry

While *Firestone* has not caused widespread revision in the federal courts' position that ERISA does not impliedly grant a jury trial, a number of courts have relied on the *Granfinanciera* and *Terry* decisions in extending a jury trial right under the seventh amendment to § 502 claims. Various district courts, including several district courts within the Eleventh Circuit, have embraced either *Granfinanciera* or *Terry*, or both, in holding that a constitutional right to a jury trial exists in § 502 actions.¹⁶⁵ The Eleventh Circuit is the only

162. 761 F.2d 1003 (4th Cir. 1985).

163. 737 F. Supp. at 41.

164. *Id.*; accord *Pardini v. Southern Nevada Culinary & Bartenders Pension Plan & Trust*, 733 F. Supp. 1402 (D. Nev. 1990) (recognizing that the earlier circuit court decisions against giving a jury trial right relied in part on the arbitrary and capricious standard of review).

165. See, e.g., *Weber v. Jacobs Mfg. Co.*, 751 F. Supp. 21 (D. Conn. 1990); *Rhodes v. Piggly Wiggly Ala. Distrib. Co.*, 741 F. Supp. 1542 (N.D. Ala. 1990); *Vicinanzo v. Brunswick & Fils, Inc.*, 739 F. Supp. 882 (S.D.N.Y. 1990); *Gangitano v. NN Investors Life Ins. Co.*, 733 F. Supp. 342 (S.D. Fla. 1990); *Jordan v. Reliable Life Ins. Co.*, 716 F. Supp. 582 (N.D. Ala. 1989).

federal appellate court which has addressed the seventh amendment § 502 jury trial issue in light of *Granfinanciera* and *Terry*.¹⁶⁶

One court which has interpreted *Granfinanciera* and *Terry* in the § 502 context is the U.S. District Court for the Southern District of Florida. In *Gangitano v. NN Investors Life Insurance Co.*,¹⁶⁷ plaintiffs filed a claim with defendant insurer to recover \$850,000 for medical treatment arising from a brain stem hemorrhage. Defendant denied the claim, asserting that the hemorrhage was the result of a pre-existing medical condition.¹⁶⁸ Plaintiffs then sued under § 502 to recover medical insurance benefits allegedly owed under a policy issued by defendant and sought a jury trial.¹⁶⁹

In granting the plaintiffs' request for a jury trial, the district court noted that "[t]he fact finder will therefore be determining nothing more than whether defendant's pre-existing defense is or is not applicable . . ."¹⁷⁰ as well as determining the extent of damages.¹⁷¹ In short, the court characterized the plaintiffs' claim as "nothing more than a breach of contract claim for the recovery of money damages."¹⁷²

In holding that a constitutional right to a jury trial existed, the court relied on both *Granfinanciera* and *Terry*. The court viewed the reasoning in *Granfinanciera* as "directly applicable to the present case."¹⁷³ The court also noted, based on *Terry*, that the statutory right created by § 502 is essentially a legal claim for a breach of contract.¹⁷⁴ The court concluded that based on this recent seventh amendment precedent, the plaintiffs in *Gangitano* could similarly have a jury.¹⁷⁵

In two recent opinions from the federal district court in Alabama, *Rhodes v. Piggly Wiggly Alabama Distributing Co.*¹⁷⁶ and *Jordan v. Reliable Life Insurance Co.*,¹⁷⁷ the district court of Alabama denied motions to strike jury trial requests and concluded that *Granfinanciera* was controlling.

In the earlier *Jordan* decision, the court presaged in dicta what would later be its holding in *Rhodes* when it observed that "[t]he

166. See *infra* notes 183-185 and accompanying text.

167. 733 F. Supp. 342 (S.D. Fla. 1990).

168. *Id.* at 342.

169. *Id.*

170. *Id.* at 343.

171. *Id.*

172. *Gangitano v. NN Investors Life Ins. Co.*, 733 F. Supp. 342, 343 (S.D. Fla. 1990).

173. *Id.*

174. *Id.*

175. *Id.* at 343-44.

176. 741 F. Supp. 1542 (N.D. Ala. 1990) (mem.).

177. 716 F. Supp. 582 (N.D. Ala. 1989) (mem.).

Supreme Court, as presently constituted most definitely believes in the Seventh Amendment, a belief this court enthusiastically shares."¹⁷⁸ The court interpreted the recent Supreme Court jurisprudence as being written "in terms unmistakably applicable to ERISA cases."¹⁷⁹ In *Rhodes*, the court went further, holding that, in its view, the leading Eleventh Circuit case on ERISA jury trial jurisprudence, *Chilton v. Savannah Foods and Industries*,¹⁸⁰ no longer represented the law of that circuit in the aftermath of *Granfinanciera* and *Terry*. The court concluded that a seventh amendment right to a jury trial exists in § 502 actions in light of "the Supreme Court's post-*Chilton* decisions bearing on the availability of a jury trial in an action invoking a congressional enactment."¹⁸¹ The court also borrowed an earlier observation made by Chief Judge Briant of the Southern District of New York, when it hypothesized that "[p]erhaps because the right to a jury trial on claims of legal entitlement is so obvious, ERISA makes no express provision for jury trials. . . ."¹⁸²

Finally, in *Vicinanzo v. Brunschwig & Fils, Inc.*,¹⁸³ the district court thoroughly discussed the seventh amendment right to a jury trial in § 502 actions in light of the recent Supreme Court jurisprudence. In concluding that plaintiffs had a seventh amendment right to a jury, the court characterized the Supreme Court cases as a "recognition of the true force of the Seventh Amendment" which "suggests doctrinal change affecting a host of federal statutes that do not involve the adjudication of 'public rights' by non-Article III tribunals."¹⁸⁴

178. *Id.* at 585 (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)).

179. *Id.* at 583 n.1.

180. 814 F.2d 620 (11th Cir. 1987). *But see infra*, note 186.

181. 741 F. Supp. at 1543. Although the court never explicitly referred to the *Terry* or *Granfinanciera* decisions, the court did cite to a number of previous district court decisions which had cited to the Supreme Court cases by name. *Id.*

182. *Id.* at 1544 (citations omitted). The opinion also contains a lengthy, often vibrant, discussion of the history of the seventh amendment, and the jury practice in pre-1791 England.

183. 739 F. Supp. 882, 887-90 (S.D.N.Y. 1990).

184. *Id.* at 889. As further proof of the scope of these changes, the court referred to a gratuitous footnote published in *Lytle v. Household Mfg., Inc.*, 494 U.S. 545 (1990), decided on the same day as *Terry*. In *Lytle*, the Supreme Court observed that it had "not ruled on the question whether a plaintiff seeking relief under Title VII has a right to a jury trial[.]" *Id.* at 549 n.1. The *Vicinanzo* court found this footnote to be "astonishing" since Title VII has "long been regarded as a non-jury statute." 739 F. Supp. at 889. The Southern District of New York concluded that "[t]aken together, the Supreme Court's recent cases suggest that statutory causes of action giving rise to individual claims for money damages are rarely, if ever, beyond the reach of the Seventh Amendment." *Id.* at 890.

Of the courts facing the seventh amendment right to a jury trial in a § 502 action after *Granfinanciera* and *Terry*, only one court - the Court of Appeals for the Eleventh Circuit - has expressly cited to *Terry* and *Granfinanciera* while still denying the jury right. In *Blake v. Unionmutual Stock Life Insurance Co.*,¹⁸⁵ the court denied plaintiffs request for a jury trial in a § 502 action to recover a fixed sum of money allegedly due under a group insurance plan. It is noteworthy, however, that despite citing to both Supreme Court jury trial cases, the *Blake* court never explicitly discusses the effects of either *Terry* or *Granfinanciera* on the jury trial right. In fact, while the court does address those two cases, it does so only in supporting a separate proposition; namely, that the change in the standard of review caused by *Firestone* from arbitrary and capricious to de novo does not "control the application of the Seventh Amendment" in a § 502 action.¹⁸⁶ Thus, it is not entirely clear whether the Eleventh Circuit would read *Terry* and *Granfinanciera* to support the seventh amendment jury trial right in a § 502 action.¹⁸⁷

VI. CONCLUSION

The issue of whether a litigant has a right to a jury trial in a § 502 action is still open among the federal courts at both the district and circuit level. While a majority of courts tend to agree that there is no implied statutory authority that preserves the right, a handful of courts continue to read the legislative history to imply a right to a jury trial. Although the change in the standard of review in *Firestone* has had minimal impact on the § 502 jury trial issue, the recent Supreme Court decisions in *Granfinanciera* and *Terry* have sparked some new debate in federal courts deciding whether the seventh amendment preserves a jury trial right in a § 502 action. Several district courts have interpreted the Supreme Court's seventh amendment jurisprudence to grant a constitutional right to a § 502 jury trial.

Given the force of the holdings in *Granfinanciera* and *Terry* and the present composition of the Court, if the Supreme Court were to

185. 906 F.2d 1525 (11th Cir. 1990).

186. *Id.* at 1526.

187. Thus, the Northern District of Alabama was in error when it asserted in *Rhodes v. Piggly Wiggly Ala. Distrib. Co.*, 741 F. Supp. 1542 (N.D. Ala. 1990), that the leading Eleventh Circuit case on the § 502 jury trial issue, *Chilton v. Savannah Foods & Indus.*, 814 F.2d 620 (11th Cir. 1987), was no longer good law in light of the recent Supreme Court jurisprudence on the seventh amendment issue. *Rhodes*, 741 F. Supp. at 1543. *Rhodes* was decided just one day before *Blake*. Since the *Blake* court cited its earlier decision in *Chilton* with approval, see *Blake* 906 F.2d at 1526, then *Chilton* is apparently still the law of the Eleventh Circuit on the § 502 jury issue.

decide whether a litigant in a § 502 action is entitled to a jury trial, it appears quite likely that if the litigant were to seek monetary relief, the Court would hold that the seventh amendment preserves the right to have a jury hear the case. This conclusion is drawn from several observations: (1) the Court's increasing emphasis on the "type of relief requested" element of the seventh amendment test, and its corresponding waning emphasis on the importance of the historical analogy; (2) the Court's treatment of the trust analogy in *Terry*, in which it held that even though the plaintiff's claim was analogous to a suit at trust, which is historically equitable, the Court nevertheless found a jury trial right; (3) the Court's decision in *Firestone* changing the standard of review to de novo, thus avoiding any potential problem a jury would have in applying the "arbitrary and capricious" standard of review; and (4) the Court's decision in *Granfinanciera* granting a jury trial right in an administrative bankruptcy proceeding, where jury trials had never been held previously and which are seated by non-Article III judges. Taken together, these three Supreme Court decisions indicate that the present court is quite willing to utilize the seventh amendment to preserve the right to a trial by jury in cases where the plaintiff seeks legal relief, regardless of the historical practice.

A civil litigant in federal court seeking an ERISA jury trial should argue, based on this recent Supreme Court jurisprudence, that the seventh amendment preserves the right to a jury trial. The § 502 claim should be styled as an action for breach of contract (the contract being the benefit's plan that is covered by ERISA), requesting monetary relief. Moreover, if the complaint alleges disputes as to the interpretation of provisions in the "contract," the litigant will be even more likely to have a jury resolve his claims, as long as the ERISA plan does not expressly grant the plan administrator the discretion to interpret its provisions.

Michael McCabe, Jr.