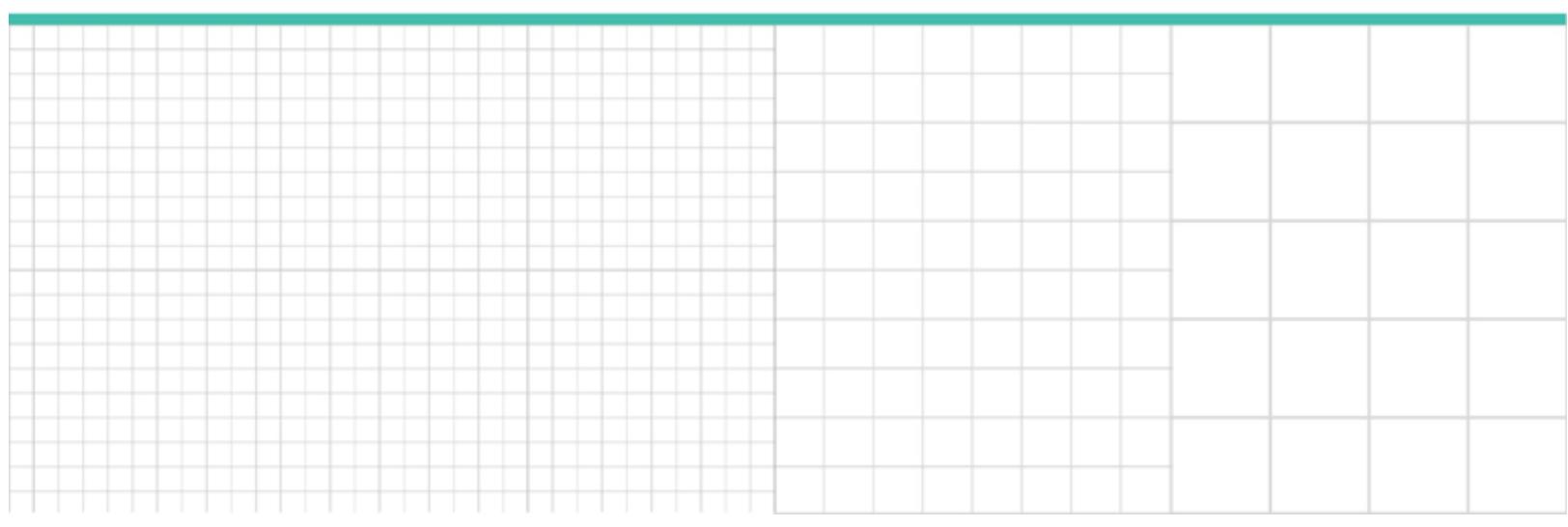


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The Right to Jury Trial in ERISA Actions



Contributed by:
[Jamie Bowers, Esq.](#)
Cohen Milstein
Washington, D.C.

Jamie Bowers is an Associate at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In her role, Ms. Bowers represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country. Bowers holds a Juris Doctor from Georgetown University Law Center and a Bachelor of Arts from Duke University.

Seventh Amendment Jurisprudence —

The Seventh Amendment to the United States Constitution guarantees that “In Suits at common law [...] the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States.” Despite the simple language of the amendment, courts have struggled to determine which lawsuits today constitute “suits in common law” that merit a jury trial—particularly actions brought under newly-passed statutes such as ERISA.

In 1987, the Supreme Court explained in *Tull v. U.S.* that the phrase “suits at common law” was to be interpreted as analogous to lawsuits brought in English courts of law that would have required a jury trial, in contrast to cases tried in English courts of equity or admiralty.¹ The Court stated that to determine whether a current statutory action is more similar to a “suit[] at common law” or a case tried in equity, the Court first “compare[s] the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity.”² Next, the Court “examine[s] the remedy sought and determine[s] whether it is legal or equitable in nature.”³ The Supreme Court later clarified that the second determination—whether the remedy was legal or equitable in nature—was more important.⁴

¹ *Tull v. U.S.*, [481 U.S. 412](#), [417](#) (1987).

² *Tull v. U.S.*, [481 U.S. 412](#), [417](#) (1987).

³ *Tull v. U.S.*, [481 U.S. 412](#), [417-418](#) (1987).

⁴ *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, [494 U.S. 558](#), [565](#) (1990).

Application to ERISA —

ERISA is silent as to whether litigants are entitled to a jury trial in an ERISA action.

No Jury Trial Permitted —

Most courts that have addressed the issue of whether ERISA litigants are entitled to a trial in actions under § 502 have concluded that they are not.⁵ These courts have come to this conclusion for two reasons. Following *Tull*, they have first noted that ERISA is closely related to the common law of trusts, which was typically within the exclusive jurisdiction of the courts of equity.⁶ Then, they have considered the nature of the remedy sought and concluded that it is equitable and thus not suitable for a jury trial.⁷ Some of these courts have also noted

that even though ERISA plaintiffs seek monetary damages, those damages are considered restitutionary and thus sound in equity.

⁵ See, e.g., *Katsaros v. Cody*, [744 F.2d 270, 278](#) (2d Cir. 1984) (in ERISA action for breach of fiduciary duty seeking the equitable remedy of restitution, there was no right to a jury trial); *Cox v. Keystone Carbon Co.*, [861 F.2d 390, 392](#) (3d Cir. 1988); *Pane v. RCA Corp.*, [868 F.2d 631, 637](#) (3d Cir. 1989); *Berry v. Ciba-Geigy*, [761 F.2d 1003, 1006-07](#) (4th Cir. 1985); *Phelps v. C.T. Enterprises, Inc.*, [394 F.3d 213, 222](#) (4th Cir. 2005); *Borst v. Chevron Corp.*, [36 F.3d 1308, 1324](#) (5th Cir. 1994); *Bair v. General Motors Corp.*, [895 F.2d 1094, 1096](#) (6th Cir. 1990); *Mathews v. Sears Pension Plan*, [144 F.3d 461, 468](#) (7th Cir. 1998); *In re Vorpahl*, [695 F.2d 318, 321](#) (8th Cir. 1982); *Thomas v. Oregon Fruit Prods. Co.*, [228 F.3d 991, 996-97](#) (9th Cir. 2000); *Spinelli v. Gaughan*, [12 F.3d 853, 857](#) (9th Cir. 1993); *Teutscher v. Woodson*, [835 F.3d 936, 940](#) (9th Cir. 2016); *Adams v. Cyprus Amax Minerals Co.*, [149 F.3d 1156, 1162](#) (10th Cir. 1998); *Broaddus v. Florida Power Corp.*, [145 F.3d 1283, 1287 n.**](#) (11th Cir. 1998).

⁶ See, e.g., *Berry*, [761 F.2d at 1007](#); *Borst*, [36 F.3d at 1324](#); *Mathews*, [144 F.3d at 468](#); *In re Vorpahl*, [695 F.2d at 322](#); *Adams*, [149 F.3d at 1159](#).

⁷ See, e.g., *Katsaros*, [744 F.2d at 278-79](#); *Cox*, [861 F.3d at 392](#); *Borst*, [36 F.3d at 1324](#); *Thomas*, [228 F.3d at 996](#); *Adams*, [149 F.3d at 1159](#).

A few courts have gone so far to say that the Supreme Court has already ruled on the issue of whether ERISA litigants may receive a jury trial. Several courts have interpreted the Supreme Court decision in *Mertens v. Hewitt Assocs.*, [508 U.S. 248](#) (1993) as holding that ERISA does not provide for monetary damages under § 502(a)(3) and thus, no jury trial is available.⁸ But this is a broad reading of *Mertens*—*Mertens'* holding with respect to remedies was much narrower. *Mertens* held that ERISA did not allow monetary damages against a *nonfiduciary* under § 502(a)(3).⁹ *Mertens* specifically notes that a fiduciary is personally liable for damages caused by any breach of their duties and restitution or other equitable relief.¹⁰ Later Supreme Court rulings have clarified that an ERISA plaintiff may receive monetary compensation against a fiduciary sued under § 502(a)(3) (although it is categorized as traditionally equitable relief, rather than legal).¹¹ Finally, *Mertens* does not at all address whether an ERISA litigant is entitled to a jury trial—only available remedies under § 502(a)(3).¹² In conclusion, even though a few courts have interpreted *Mertens* to block a jury trial in ERISA actions, this is a very reaching interpretation of *Mertens*—which does not expressly address the jury trial issue—that most courts have not adopted.

⁸ . See, e.g., *Houghton v. SIPCO, Inc.*, [38 F.3d 953, 957](#) (8th Cir. 1994); *Spinelli*, [12 F.3d at 857](#).

⁹ *Mertens v. Hewitt Assocs.*, [508 U.S. 248, 253-56](#) (1993).

¹⁰ *Mertens v. Hewitt Assocs.*, [508 U.S. 248, 252](#) (1993).

¹¹ *CIGNA Corp. v. Amara*, [563 U.S. 421, 441](#) (2011).

¹² *CIGNA Corp. v. Amara*, [563 U.S. 421, 441](#) (2011); *Tracey v. Massachusetts Institute of Technology*, [395 F. Supp. 3d 150, 153](#) (D. Mass. 2019) (pointing out that *Mertens* and other Supreme Court precedent do not address whether an ERISA plaintiff has a right to a jury trial).

Jury Trial Permitted —

Although circuit courts generally agree that ERISA litigants are not entitled to a jury trial, the Second Circuit and several district courts have awarded jury trials in particular instances.¹³

¹³ See, e.g., *Bona v. Barasch*, No. 01-civ-2289 (MBM), [2003 WL 1395932](#), at *33 (S.D.N.Y. Mar. 20, 2003); *Cunningham v. Cornell Univ.*, No. 16-cv-6525 (PKC), [2018 U.S. Dist. LEXIS 152972](#), at *11 (S.D.N.Y. Sep. 6, 2018); *Pereira v. Farace*, [413 F.3d 330](#) (2d Cir. 2005).

First, in *Bona*, the court held that pursuant to the Supreme Court's recent decision in *Great-West Life & Annuity Ins. Co. v. Knudson*,¹⁴ plaintiffs were seeking legal relief—in contrast to equitable relief—from the trustees of the plan pursuant to § 409 of ERISA. Because the remedy sought was legal instead of equitable, the litigants were allowed a jury trial. The Second Circuit in *Pereira* also relied on the *Great-West* decision in remanding the case for trial before a jury, stating that *Great-West* distinguished between imposing personal liability on the defendant (a legal remedy) and restoring to the plaintiff particular funds or property in defendant's possession (an equitable remedy), and found that because the defendants never possessed the funds sought as damages, plaintiffs were seeking a legal remedy and a jury trial was warranted.¹⁵ After *Pereria*, several district courts have followed its interpretation of *Great-West* as binding and awarded jury trials in ERISA cases alleging breach of fiduciary duty and seeking compensatory damages under § 409.¹⁶

¹⁴ *Great-West Life & Annuity Ins. Co. v. Knudson*, [534 U.S. 204](#) (2002). The relevant holding in *Great-West* was that the relief sought under § 502(a)(3) was legal, because the litigants were seeking to impose personal liability on the plan beneficiary for a contractual obligation to pay money. The Court concluded that because that type of relief was legal, it was not available under a suit brought under § 502(a)(3).

¹⁵ *Pereira v. Farace*, [413 F.3d 330](#) (2d Cir. 2005).

¹⁶ See *Cunningham v. Cornell University*, No. 16-cv-6525, [2018 WL 4279466](#), at *4 (S.D.N.Y. Sept. 6, 2018); *In re: FKF 3, LLC*, 13 cv 3601 (KMK), [2016 WL 4540842](#), at *16–17 (S.D.N.Y. Aug. 30, 2016); *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, 11 cv 282 (JCH), [2012 WL 162361](#), at *6 (D. Conn. Jan. 19, 2012).

Moreover, some district courts in the Eighth Circuit—finding that there was no binding authority on jury trials for actions for breach of fiduciary duty under §§ 502(a)(2) or (a)(3)—denied a motion to strike a jury demand on the basis of strong federal policy favoring jury trials.¹⁷

¹⁷ *Utilicorp United Inc. for Benefit of Utilicorp United Inc. Employee Ben. Plans Master Trust v. Kemper Financial Services, Inc.*, [741 F. Supp. 1363](#) (W.D. Mo. 1989); *Hellman v. Catalado*, [2013 WL 4482889](#) (E.D. Mo. 2013).

Conclusion —

In sum, courts largely agree that under the factors enumerated in *Tull*, an ERISA action is typically not subject to a jury trial. However, one circuit court (and several district courts) have permitted jury trials in instances where the litigants seek legal relief (as opposed to equitable relief) such as personal liability for losses.